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MSHA/OSRV

# INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL

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April 5, 2004

Marvin Nichols, Director  
Office of Standards, Regulations and Variances  
MSHA  
US DOL  
1100 Wilson Blvd, Room 2350  
Arlington VA 22209

Re: RIN 1219-AB29  
Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

Dear Director Nichols:

The International Chemical Worker Union Council of the United Food and Commercial Workers Union (ICWUC/UFCW) represents miners in the salt, zinc, phosphate and stone industries. Our comments will focus primarily on the Stillwater Study, which is the one piece of information here which can be called either "new" or substantive. The BLS-NIOSH survey on respirator use, while it does provide information on respirator use and respirator programs, was available before the end of the previous comment period and is of limited value in determining the feasibility of the diesel particulate rule. We would like to note that various employers are known to have determined respirator use in facilities with known overexposures to air contaminants to be "voluntary", apparently in an attempt to avoid the use of medical evaluation of the fitness of workers to wear respiratory protection. It should also be noted that this survey was sent to employers and not specifically to any workers in those facilities. The results of this survey does indicate probable problems with respirator programs in all industries; the ICWUC believes that the results of this survey show even more the necessity for developing and requiring engineering controls to lessen worker exposures to below the required PEL in mines.

The Chase paper, if it is solely a submitted comment by MARG on the progress of the not yet completed NIOSH/NCI study, is of some interest. However, it and similar submissions should not be used as MSHA as the rationale to reopen this or any other rule. Not only are the data behind this paper (the paper refers several times to "PowerPoint" charts and slides") not posted on the MSHA website along with this paper, there is no indication of what is the state of data collection or analysis by NIOSH/NCI or the author. We would also note that one mine of the top ten was not studied due to the allegation that historical background medical and monitoring data was no longer available due to sale of the mine and such information having disappeared. The ICWUC is not convinced of the validity of this statement at the time it was made. Unfortunately, the union was not aware of this claim at the time it was made so could not address it at that time. While this may not have any effect on the outcome of the study, we note this as the authors of the paper have mentioned it as an issue.

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The Stillwater Study is a good beginning to a more thorough study of the ability of equipment in real life situations to reduce DPM. Clearly, there are questions which still remain as to the effects on emissions of mixtures of Diesel #1 and #2, as well as the results which could be found with some of the other technologies which were not tested (e.g., those which required periodic regeneration). In addition, the rise in NO<sub>2</sub> concentrations, both upstream and in the breathing zones do require additional evaluation. But the ability of levels to remain below the PEL for NO and NO<sub>2</sub> when ventilation is kept at or above the MSHA ventilation rates does indicate that controlling these emissions is still possible.

The reduction in DPM levels for several of the technologies is very impressive (unfortunately less so for other simpler methods such as biodiesel). We believe that these results do show the feasibility of engineering controls to reduce the DPM levels to below the MSHA PEL. Thus, we do not believe that delays in excess of those already adopted are indicated. We do hope that further evaluations of equipment by MSHA, NIOSH and industry will continue to be shared with all parties, mines, associations, miners and unions so that the can be continued progress in reducing the exposures to miners of this hazard and better ensuring the improved health of those same workers.

Thanks you for the opportunity o comment on this study. Please contact us if you need additional information or if we can contribute in any additional way.

Sincerely,

Michael Sprinker, CIH, Director  
Health and Safety Department