

Chronology of Correspondence Between NMA/BCOA and MSHA re: Coal Mine Dust

- April 5, 1996 Letter from Richard Lawson and Joseph Brennan to Assistant Secretary McAteer transmitting a concept proposal for revisions to the current respirable coal mine dust program
- February 6, 1998 Letter from Richard Lawson and Joseph Brennan responding to a request from the Assistant Secretary to comment on options to revise the coal dust program discussed at a meeting conducted 12/97
- May 21, 1998 Letter from Assistant Secretary McAteer responding to the 2/6/98 Lawson/Brennan
- November 2, 1998 Letter from Richard Lawson to Assistant Secretary McAteer reiterating industry's resolve to work with MSHA to effectuate revision of the respirable coal mine dust program
- December 16, 1998 Letter from Assistant Secretary McAteer responding to Richard Lawson

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AB 18-HEAR-6C
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National Mining Association
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BITUMINOUS COAL OPERATORS' ASSOCIATION, INC
918 SIXTEENTH STREET, N.W. • SUITE 303
WASHINGTON, D.C. 20006-2971

April 5, 1996

The Honorable J. Davitt McAteer
Assistant Secretary
Mine Safety & Health Administration
4015 Wilson Boulevard
Arlington, VA 22203-1984

Dear Davitt:

The Secretary of Labor's appointment of the Advisory Committee on the Elimination of Pneumoconiosis among Coal Mine Workers presents a unique opportunity for management, miners and government to address the many issues affecting dust generation and exposure in our Nation's underground coal mines. We hope the results of the Committee's recommendation will lead to the development of an improved, technologically reliable and feasible respirable dust program that will solve past sampling problems.

We agree that after 25 years of experience with the present respirable coal mine dust program efforts must be made to restore confidence in the dust sampling process and provide miners with the confidence that they will not suffer adverse health consequences from exposure to excessive concentrations of respirable coal mine dust, as determined by accepted industrial hygiene principles of time-weighted averages. We have before us several significant issues:

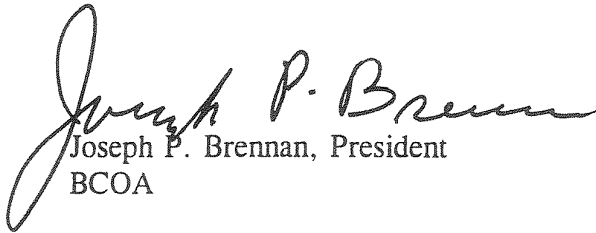
1. The final disposition of the respirable dust abnormal white center (AWC) cases.
2. The National Institute for Occupational Safety and Health criteria document
3. MSHA's proposal for the use of single-shift sampling by inspectors to determine operator compliance with the respirable dust standard.
4. The development of new technology to sample respirable coal mine dust levels in the underground environment.

The industry has long maintained that litigation of the abnormal white center cases, including the existing appeals, represents a misdirection of resources. Given the challenges ahead, we feel that the resources would be better redirected to afford miners better protections through the development of new, reliable and accurate respirable coal mine dust monitoring systems.

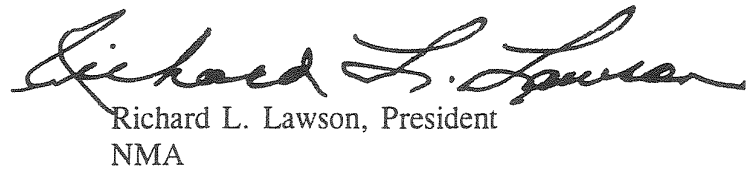
We have reviewed the final NIOSH Criteria Document and find, as we did during our review of the draft, that it contains several issues that warrant further examination. The document is designed around the old paradigm where results and corrective actions lagged days, if not weeks, behind the sampling process. We share your frustration with that system. New technology could afford us the opportunity to chart a new course designed to provide real time results so that intervention can be taken when problems are identified, not after the fact.

We have developed for your consideration a concept paper, taking each of these issues independently and in combination, that outlines the elements of a new respirable coal mine dust program that we believe will restore confidence in the sampling process. We stand ready to work with you and your agency to develop these concepts into a viable and effective program.

Sincerely,



Joseph P. Brennan, President
BCOA



Richard L. Lawson, President
NMA

Concept Proposal

Respirable Coal Mine Dust Program

I. Control

■ Continuous Monitoring

To assure that coal mine operators and their employees, in underground coal mines, are aware of the respirable coal mine dust levels to which miners are exposed, continuous coal mine dust monitoring instrumentation (when reliable, accurate and commercially available) should be utilized. This monitoring will enable the mine operator to determine that engineering controls are adequately maintaining respirable coal mine dust exposures at or below 2.0 mg/m^3 (TWA).

■ Methane and Dust Control Plan

The plan should contain the parameters which control exposures to respirable coal mine dust. The primary control must be through application of engineering control technology and administrative procedures. When demonstrated through sampling that compliance cannot be achieved with proper application of such controls and procedures, for example when operating under a reduced standard because of quartz content or where adverse geologic conditions exist, then personal protective equipment will be accepted as a means to maintain compliance. The respirable coal mine dust sampling program must reflect the accepted use of these practices in general industry and give the operator the flexibility to implement controls that afford coal miners the greatest degree of protection while assuring that feasible engineering controls are utilized and maintained.

II. Compliance

■ Compliance Sampling

Compliance determinations must be based upon personal sampling utilizing the current gravimetric sampling protocol until new technology which is reliable and accurate is developed and becomes commercially available. After reliable and accurate continuous personal coal mine dust monitoring equipment becomes commercially available it may be appropriate for compliance and noncompliance determinations in underground coal mines to be based upon the results of single-shift personal sampling.

It must be clear that where properly operating engineering controls are used in an effort to obtain compliance as a result of continuous personal dust monitoring, no citation should be issued where administrative controls or approved personal protective devices are utilized.

National Mining Association
1130 17th Street, NW
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Bituminous Coal Operators' Association, Inc.
918 Sixteenth Street, NW Suite 303
Washington, DC 20006

February 6, 1998

Mr. J. Davitt McAteer
Assistant Secretary for Mine Safety and Health
Department of Labor
4015 Wilson Boulevard
Arlington, VA 22203

Dear Mr. Secretary

Late last year, during meetings with our organizations, you set forth your thoughts regarding resolution of the many issues surrounding respirable coal mine dust and the steps necessary to bring closure to this issue. You asked that we discuss this and provide our thoughts regarding the options outlined; particularly, a comprehensive option involving the use of continuous dust monitors, a single-sample enforcement strategy, MSHA responsibility for compliance sampling and the use of supplied air helmets as a compliance tool; or an option which would result in a reduction of the respirable coal dust standard from 2.0 mg/m³ to that proposed in the NIOSH criteria document.

We have discussed this issue at great length and are sensitive to your desires as well as the time constraints imposed upon us by virtue of your publishing the final single-sample determination. We, like you, want to resolve the respirable dust issue so that miners and mine operators alike can, with some degree of certainty, have confidence that the compliance determinations made are correct and are protective of miners' health. While this is the goal that we all strive to achieve, we must recognize and accept that various means for reaching that goal exist and that the highly complex nature of this issue makes resolution in a simple, expedient manner difficult.

In order to address the vast array of multifaceted issues regarding coal miner exposure to respirable coal mine dust and the sampling, control and analysis of such conditions, we offer the following:

- MSHA assumption of sampling for compliance with the existing respirable coal mine dust standard based upon the results of single-sample determinations.
- Furtherance of the design, development and testing of technology to provide for the continuous personal monitoring of respirable coal dust concentrations.

- MSHA recognition of the use of supplied air helmets or other NIOSH approved powered air purifying respirators as a supplemental means for attaining compliance with the respirable coal dust standard.
- MSHA recognition, through publication in the *Federal Register* as required by 101(a)(1) of the Act, that the science underlying the NIOSH Criteria Document is insufficient to warrant a reduction in the respirable coal dust and silica standards.

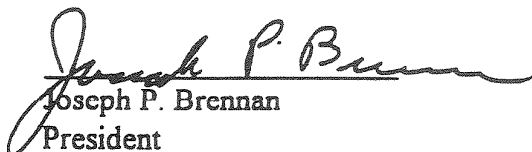
In April 1996, we communicated our commitment to work with you and your agency to embark upon a new course — to restore confidence in the respirable dust sampling program and, most important, to provide miners with the confidence that they will not suffer adverse health consequences from exposure to excessive concentrations of respirable coal mine dust. Today, a comprehensive solution, outside the bounds of the judicial system, is within our reach. It is time we work cooperatively to secure that outcome.

We look forward to your response.

Sincerely,



Richard L. Lawson
President & CEO
NMA



Joseph P. Brennan
President
BCOA

U.S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203-1984



21 MAY 1998

Mr. Richard L. Lawson
President and CEO
National Mining Association
1130 17th Street, NW.
Washington, DC 20036

26 May 98

Dear Mr. Lawson:

Thank you for your letter of February 6, co-signed by Joseph P. Brennan, outlining a proposal to improve the current program to protect miners from the hazards associated with respirable coal mine dust. We welcome your suggestions and the opportunity we have had during the past several months to discuss this matter with you and your staff. We believe that these discussions have been helpful in assisting us to formulate our plan to eliminate occupational lung disease among coal workers.

In your letter, you outline four specific actions to improve the current program and offer your assistance in working with us to implement this proposal. In our view, your proposal is consistent with the direction the Mine Safety and Health Administration (MSHA) is taking to implement the recommendations of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (Advisory Committee). Accordingly, I would like to respond to each of your suggestions, and, where applicable, outline where they fit into our plan of action.

First, with regard to the use of single sample determinations, the United States Court of Appeals for the Eleventh Circuit has rejected the request by industry for a stay of the notices that allow us to implement this inspector sampling procedure. Accordingly, we began using single sample determinations during MSHA inspector sampling this month. We sincerely believe that the use of single samples to determine compliance with the dust standard is a major improvement in protecting coal miners from occupational lung disease and, as indicated in your letter, wish that this issue could have been resolved outside the bounds of the judicial system.

Second, Dr. Linda Rosenstock, Director of the National Institute for Occupational Safety and Health (NIOSH), informed me that they will commit funding to work with MSHA to develop a device that will allow for the continuous personal monitoring of respirable coal mine dust. We hope to finalize these arrangements shortly, leading to the development of a person-wearable unit in


18 months. We ask for your continued support for this effort. In addition, we would again request your continued assistance in helping us secure mines to field test production models of the machine mounted continuous dust monitor. This technology also needs to be proven and made available to mine operators to allow them the opportunity to monitor the effectiveness of existing dust controls.

Third, an MSHA committee is working to develop new regulations to address the Advisory Committee recommendation that mine operator dust control plans be verified under normal operating conditions. As part of their deliberations, I have asked that they also address the conditions under which respirators could be used as a supplemental means for attaining compliance with respirable dust standards, the elimination of operator sampling for compliance purposes and the required use of personal continuous monitors. That regulatory committee is chaired by Edwin P. Brady, who will meet with all segments of the mining industry to secure input into the development of the rule.

Finally, it was an unanimous decision of the Advisory Committee, based on the NIOSH Criteria Document, to consider reducing the current respirable dust standard. As we evaluate the need for and the feasibility of such an action, our primary focus will be developing a comprehensive program to assure compliance with the current standard. Accordingly, this Agency is committed to working with miners, miners' representatives, and mine operators to make the changes in the respirable dust monitoring and control program that will significantly reduce the respirable dust levels.

We sincerely appreciate your commitment to work with us to restore confidence in the respirable dust program and, most importantly, to eliminate black lung now and forever.

Sincerely,


J. Davitt McAteer
Assistant Secretary for
Mine Safety and Health



National Mining Association
Foundation For America's Future

Richard L. Lawson

President and Chief Executive Officer

(202) 463-2647

November 2, 1998

The Honorable J. Davitt McAteer
Assistant Secretary for Mine Safety
And Health
Department of Labor
4015 Wilson Boulevard
Arlington, VA 22203

Dear Davitt

For the past four years we have had numerous conversations and have exchanged several letters sharing ideas regarding the current respirable coal dust program. While I believe these discussions have advanced our understanding of the difficulty in effectuating meaningful change, we still have some way to go. It is time to advance these discussions to develop an integrated program which addresses all aspects of this multifaceted problem.

You have publicly stated concerns regarding our challenge of MSHA's single-shift sampling program. Let me set the record straight. Our position has been, and remains, that there is a role for single shift sampling as part of the respirable dust program. However, we continue to have substantive questions regarding the implementation a single-shift sampling program. When personal monitors are commercially available, single-shift samples would properly become an integral part of the dust control program.

As I understand, your desire is to employ a single-shift sampling protocol, as quickly as possible, so that the agency can assume responsibility for compliance sampling. While we have publically stated our support for MSHA to conduct compliance sampling, we must be assured that the variability in single-shift samples is accounted for before we can endorse its use as part of your compliance sampling program. To advance MSHA's conducting all compliance sampling, we see no reason why the agency could not continue to take multiple samples on a single-shift, which are averaged to determine compliance with the dust standard. While this is an interim step, and but one example of what can be accomplished in the near-term, it is one that can be implemented in short order. Congress' approval of your budget request should expedite MSHA's ability to implement such a program or possibly a program that enables sampling to be conducted over multiple days. There may be other, equally valid, interim steps that can be taken and we would be happy to explore these with you.

Moving beyond single shift sampling, we need to remain cognizant of the challenge which underground operators face today -- namely, market demands which require greater production and the limitations of currently feasible engineering controls to protect workers from exposure to dust.

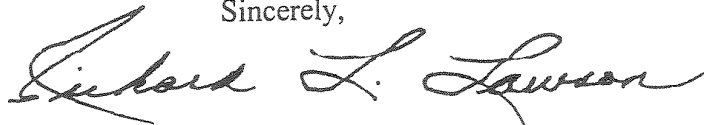
I understand that MSHA is working on regulations that will address some aspects of this problem and that industry has met with your staff on two occasions to discuss these concepts. To avoid any misunderstanding, let me reaffirm that we recognize and accept that the utilization of feasible engineering controls must be our first line of defense to prevent overexposures. We never have, nor will we ever, advocate that these be ignored through the use of either administrative controls or personal protective devices. However, in those instances where feasible engineering controls are not sufficient to maintain concentrations below the 2.0mg/m³ level, an allowance must be made for such alternative compliance methods. To suggest, as some have, that mine operators should cut production to achieve compliance is both illogical and infeasible. I can assure you that such a scenario will lead to premature mine closures and job losses. We have technology available to protect miners -- it is time we establish the conditions for the use of such approaches.

The final issue is whether the current 2.0 mg/m³ respirable coal dust standard should be lowered. As you are well aware, this has caused considerable discussion and debate. I have been advised that you are working on an Advance Notice of Proposed Rulemaking (ANPRM) on this matter. I would strongly urge you to withhold publishing the ANPRM until an overall approach on the dust issue can be developed. Publication of the ANPRM will, in my estimation, limit our ability to discuss and resolve these other matters. Our experience with the single shift matter confirms this.

We know that problems remain today with compliance with the current standard. This was recognized by the Dust Advisory Committee and is reflected in their multiple recommendations. Moreover, the failure to establish verifiable individual exposure monitoring systems prevents us from adequately determining today what level of exposure will prevent miners from experiencing respiratory difficulties. These are indisputable facts that must be resolved before rational and scientifically valid judgements can be made regarding the appropriateness of the current standard. This does not mean that interim steps cannot be taken to further protect miners -- they should and must be taken.

I look forward to your response so that we can initiate our collaborative efforts. I believe that together, working in good faith, we can finally reach a fair and workable resolution of this longstanding and complex problem.

Sincerely,

A handwritten signature in cursive script that reads "Richard L. Lawson". The signature is written in dark ink and is positioned below the word "Sincerely,".

Richard L. Lawson

U.S. Department of Labor

Mine Safety and Health Administration
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Mr. Richard L. Lawson
President and
Chief Executive Officer
National Mining Association
1130 17th Street, NW.
Washington, DC 20036

Dear Mr. Lawson

Thank you for your letter of November 2 in which you outline the current position of the National Mining Association on the respirable dust sampling program. We share your view that progress has been made in addressing problems with the current program. Like you, we also recognize that more needs to be accomplished to eliminate black lung disease in the coal mining industry. I appreciated the opportunity to discuss these matters with you personally at our meeting on November 23.

In your letter, you recommend that the Mine Safety and Health Administration (MSHA) delay the implementation of single sample measurements until such time as continuous personal monitors are commercially available. While we appreciate your effort to find a mutually acceptable solution to this matter, I believe that the adoption of your suggestion is not in the best interest of protecting miners from occupational lung disease. The current sampling system averages the exposures of the occupation exposed to the highest level of respirable coal mine dust with those that are exposed to less dust. As a result, there are many instances where one or more individual exposures exceed the applicable standard, yet the average of all exposures is below the standard. We do not believe that we can allow such over exposures to knowingly continue for the period of time necessary to develop, test and deploy personal continuous monitors. In our view, it is in the best interest of miners' health that MSHA continue its rulemaking process which will address the concerns of the United States Court of Appeals for the Eleventh Circuit.

Single sample measurements are used to make compliance determinations with respirable dust standards in all other industries except coal mining. Moreover, our experience with using single sample measurements for 2 years at coal operations in the early 1990's, and most recently earlier this year, did not reveal any major problems. The use of single sample measurements also was recommended by the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers (Advisory Committee) without any reference to personal continuous monitors. We ask that your organization reconsider its position on this matter and support the implementation of this important recommendation.

While I understand your concern, as stated at our recent meeting, that a single sample measurement may not reflect the long term exposure of miners, the Mine Act is very specific that the environment where miners work cannot exceed the respirable dust standard on any shift. We continue to believe that the scientific evidence shows that a sample collected over a single shift, with the equipment used by MSHA inspectors, does accurately measure the work environment to which the miner is exposed. In addition, adjustments are made for sampling and analytical errors in the measurement process which permit MSHA to issue citations only when there is at least a 95 percent confidence that the standard has been exceeded.

Pending the outcome of our rulemaking on the use of single sample determinations by MSHA, we will continue our current practice of averaging multiple samples taken over a single shift. When sampling results show that one or more individuals are overexposed and the section average is in compliance with the applicable standard, MSHA will conduct additional follow-up sampling inspections to minimize risk to the miners.

In my earlier letter to you and Mr. Brennan on May 21, I indicated that the proposal outlined by the coal mining industry was consistent with the direction MSHA is taking to implement the recommendations of the Advisory Committee. We hope that we can continue to work together to address those matters outlined in that proposal. As you know, a rulemaking effort is underway on dust control plan verification which addresses the use of respirators under limited circumstances, requires the use of continuous monitoring in the future, and eliminates operator compliance sampling when continuous monitors are adopted. We are also currently working on a protocol with officials from Energy West Mining Company that will, in effect, allow us to field test many of the elements being considered in this rulemaking. I believe that the meeting we are currently scheduling with you, Mr. Brennan and President Roberts will allow us a further opportunity to discuss these issues and take the steps necessary to restore confidence to the program to control coal mine respirable dust.

Your continued support in developing and testing both a machine mounted and personal continuous monitor is essential to their introduction into the mines at the earliest possible date. Like you, we believe that this new technology promises improved monitoring of miners' exposure to respirable coal mine dust.

With regard to lowering the current respirable dust standard, I recognize the concern that the industry has in adjusting to a lower standard. As I indicated to you in my earlier letter, we are continuing to evaluate the need for, and the feasibility of, such an action. Our primary focus remains on making changes in the current respirable dust monitoring and control program that will reduce miner exposure to respirable dust. Progress toward

this objective clearly has to be a relevant factor impacting on the decision of this Agency when determining whether any reduction in the current standard is necessary to protect miners' health.

We hope this clarifies our position on these matter and I look forward to a continuing dialogue with you and your organization on how to restore miner confidence in the respirable dust program.

Sincerely,



J. Davitt McAteer
Assistant Secretary for
Mine Safety and Health