



VIRGINIA BLACK LUNG ASSOCIATION
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MSHA
Office of Standards, Regulations and Variances
1100 Wilson Blvd., Rm. 2313
Arlington, Virginia 22209-3939

Comments Re: Proposed Dust Rules

My name is Sparkle Bonds and I work for a non-profit organization, the Virginia Black Lung Association. The VBLA is a self-help organization that assists claimants in their pursuit of federal black lung benefits. I am the daughter, sibling and wife of a coal miner(s). **Every day, at work and in my home, I "see" the effects of what breathing coal and silica dust does to the coal miner!**

When my father worked in the mines, they did not have the mining technology that we have now, especially the long-wall mining. And, as one "old timer" puts it – you didn't raise much dust with a pick and shovel. But, even without the advanced machinery with its inherent dust, my father contracted black lung, it progressed to massive fibrosis and he died as a result of cor pulmonale, the end result of complicated black lung. My husband started working in the coal mines when The Mine Safety and Health Act of 1969 was in its infancy and they were just beginning to enforce necessary laws to ensure safe working conditions and to provide the ventilation that was desperately needed to keep "air" on the mine sections.

The 1969 Mine Safety and Health Act was instrumental in recognizing that the conditions in the mines were in desperate need of oversight. It was a beginning, a work in progress. On a number of occasions, MSHA committed to improving the respirable dust sampling program -- but did not deliver. In 1980, MSHA acknowledged serious problems with the program and they pledged to be more vigilant about the dust sampling; and, they promised to pursue development of continuous dust monitors. Shortly after those promises were made, MSHA cut back on dust sampling, let the mine operator control the program and ignored their promise to follow through on the continuous dust monitor. By the 1990's these broken promises unraveled when fraudulent dust sampling became rampant – over 160 operators/individuals were criminally prosecuted for fraudulent dust sampling. This "uncovering" was no surprise to coal miners; they had known for years that **the dust sampling was not being administered "properly" and that the samples that were submitted were misleading and frequently falsified!**

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In 1996, the Federal Advisory Committee was appointed by the Secretary of Labor to develop recommended actions on the elimination of pneumoconiosis among coal miners. Those concerns included MSHA "taking over" the mine operator-controlled compliance dust sampling program, increase the number of shifts on which dust sampling was conducted, operate the dust samplers the full shift, have MSHA verify the dust control plan at the mines to make sure that the plan would control the dust, lower the 2.0 mg/m³ respirable dust levels, increase the sampling of the dust in the areas in the out-by, and require continuous monitoring of the dust levels.

However, these 2003 Proposed Rules not only fail to bring about the above-listed necessary action, unfortunately, they will reverse many improvements currently in place. The proposal eliminates mine operator compliance sampling and MSHA's own compliance sampling will be reduced by as much as 50% from the 2000 proposal, and that sampling is only by policy – not regulation! Compliance dust sampling on mining sections would be cut up to 90%, and as noted, these are only by policy. The MSHA proposal will allow dust levels to exceed the standards before being citing, substantial increases in unhealthy respirable dust concentrations by as much as four times the current dust levels. *Is this how MSHA is proposing to "enforce mine safety and health"?*

With the higher levels of dust permitted as recommended by the proposed rules, we may very well see an increased danger of mine fires and explosions. This year alone, three fires have broken out at three long wall mines owned by Consol Energy.

Moreover, instead of MSHA verifying the mine operator's dust control plan, the new rule allows the mine operator to verify their own plan -- **we call this letting the fox guard the hen house!** There will not be full shift compliance sampling, and in some mines, the rest of the mines will be sampled only one shift a year. **And, what about the 1980 promise to give miners a continuous monitoring device? Well, that decision has been left up to the mine operator. When considering the proposed rules, it makes one wonder – exactly who is operating the Agency?**

Clearly, these proposed rules ignore the 1969 and 1977 Mine Act, the 1996 Federal Advisory Committee Report on recommended actions for the elimination of pneumoconiosis among coal miners, NIOSH criteria, and ultimately, the health and long life of coal miners!

The new proposed rules are not only a substantial retreat from the previously proposed rule, but are in direct conflict with the 1969 Mine Safety and Health Act and the amended 1977 Mine Act. Section 202(b)(2) of the Act states that "... each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 mg. of respirable dust per cubic meter of air." The Agency rule would allow operators to use respirators as a replacement to environmental controls to control coal mine dust. This is prohibited by the Act.

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Section 202(h) clearly states, "Use of respirators shall not be substituted for environmental control measures in the active workings." If allowed to use the PAPR solely as a substitute for dust control measures, instead of as an additional protection, the gains made over three decades to clean up the dust in the coal mines will be destroyed. Mine operators will be "encouraged" to ignore development of dust control technologies as they build faster producing mining equipment.

One of our members is recovering from a double-lung transplant performed in December of 2002. A life and death procedure that had to be performed because his lungs were two-thirds destroyed by fibrosis from complicated coalworkers' pneumoconiosis! This individual, now in his fifties, started working in the mines in the mid-seventies. And, he is not the exception. We have assisted several miners with their claims, and, documented the work narrative from others. They all have one similarity – they have progressive massive fibrosis. **They are only in their forties and fifties and dying from complicated black lung, contracted working under the present rules.**

What will be the expectations of miners working under these new proposed rules?
Maybe death at an even earlier age? **Please reform the respirable dust-sampling program, but not like this!**

Sincerely,



Sparkle Bonds
VBLA Staff