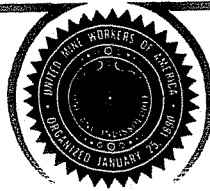


United Mine Workers of America



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RECEIVED
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MSHA/OSRV

April 17, 2003

VIA FAX: 202-693-9401
and First Class Mail

David D. Lauriski
Assistant Secretary of Labor
Mine Safety and Health Administration
U.S. Department of Labor
1100 Wilson Boulevard, 21st Floor
Arlington, VA 22209-3939

Dear Mr. Lauriski:

On March 6, 2003, MSHA issued two proposed rules affecting enormous changes in the coal mine respirable dust standards with public hearings to commence on the rule within 60 days: Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust and the Determination of Concentration of Respirable Coal Mine Dust (Dust Rules) could not have occurred at a more inopportune time. This letter addresses two matters regarding those rules. One is our inability to effectively and completely respond to the rule in the time allotted, and the second is the substance of the highly-flawed rule, both of which should result in the withdrawal of the current rule making.

The recent rash of serious mining accidents, mine emergencies and ongoing investigations is causing coal mine health and safety resources to be stretched thin. The mine fires, explosions and accident investigations at Consol Energy's Loveridge # 22 Mine, Mine 84, McElroy and VP # 8 Mines have placed burdens on personnel well beyond the normal. The investigation into the Jim Walter # 5 Mine disaster also identified widespread deficiencies in the application of the Federal Mine Safety and Health Act (Mine Act) that requires considerable attention and response. These situations alone are making it extremely difficult to adequately address other pressing concerns, including the rule making process.

As you know, the mining industry, including the UMWA, is also currently attempting to understand and formulate comments and responses on the comprehensive rule proposed by

MSHA on Underground Coal Mine Ventilation - Safety Standards for the Use of a Belt Entry as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Equipment Is Being Installed or Removed. That proposed rule would permit mine operators to utilize air ventilating conveyor belt entries (which are prone to mine fires) to ventilate coal faces which was prohibited by the 1969 Coal Mine Health and Safety Act as well as the current mandatory standards. A number of recent coal mine fires have originated in belt entries which has increased apprehensions about the Agency proposal. The Union's concerns about the MSHA rule undercutting protections miners currently have just to satisfy mine operator interests to ventilate coal faces with the belt entry air is of utmost concern and we are diligently trying to respond to that important rule making within the June 30, 2003 deadline set by MSHA.

The issuance of the extremely complex and highly controversial coal mine Respirable Dust Rules by MSHA in the midst of this and other activity simply does not offer commentors sufficient time to properly address all the important issues they raise. Because the Dust Rules just proposed by MSHA would completely overhaul standards that are to protect miners from the deadly "black lung" disease, and are extremely complex, requiring exhaustive review, research and study it is not possible for the UMWA to perform the comprehensive review and preparation of comments within the time frame laid out by the Agency. The Dust Rules were found to be so cumbersome, confusing and complex that MSHA translators are needed to interpret it. The rule was designed with so many formulas, qualifiers and exemptions that it is more than difficult to determine the number of compliance and plan verification samples to be made at mines as well as the quartz and coal mine dust levels that would have to be maintained. Changes that would dramatically alter the amount of respirable dust in mines are hidden in the rule. For example, the MSHA proposal would allow mine operators to increase the respirable dust levels in the mine atmosphere to four times the 2 mg/m³ set by Congress in 1969 - increasing such dust levels to 8 mg/m³. That is not stated in the rule and only known by interpreting formulas, qualifiers and exemptions that are not easily understood.

Rushing this rule, which will have an immediate and significant impact on the miners of this nation, is ill-advised. It is well known, miners' exposure to unhealthy coal mine **dust** has led to the deaths of tens of thousands of miners and billions of dollars of costs for those stricken **by** the disease. Such action would be a great disservice to the very men and women such regulations are supposedly designed to protect and such rulemaking including public hearings should be delayed for those reasons. There are however even greater concerns about the proposal.

Our preliminary review of the complicated Agency rules (along with the needed explanations and interpretations provided by MSHA) has already identified several proposals that would diminish protections to miners, violate provisions of the Mine Act, ignore numerous concerns and facts registered by miners with MSHA as well as the Federal Advisory Committee, National Institute of Occupational Health (NIOSH) and other government findings. The Dust Rules also ignored extensive work and taxpayers' dollars expended to develop continuous monitoring of the unhealthy coal mine dust.

MSHA's proposed Dust Rules ignore and are contrary to the needs of miners.

We were highly disturbed and frightened to find that, in crafting the new proposed Dust Rules, MSHA turned a deaf ear toward the extensive record the Agency supposedly used to develop the new proposal. Well-documented concerns raised by miners and miners' representatives across the country during the earlier Agency public hearings on the prior proposed rules were outright ignored by MSHA. (See the records of hearings held by MSHA in response to the previously proposed respirable Dust Rules in 2000 and the 1996 Federal Advisory Committee appointed by the Secretary of Labor to develop recommended actions on the "Elimination of Pneumoconiosis Among Coal Workers".) The miners' and other concerns delineated the need for the Dust Rules to include an effective takeover of the mine operator-controlled compliance dust sampling program by MSHA; increasing the number of shifts on which compliance dust sampling is conducted at coal mines to make sure unhealthy dust levels were controlled; having dust samplers run the full shift instead of having the sampling shut down well before the shift ended (which was allowing mine operators to expose miners to more of the unhealthy dust than permitted by law); providing full participation by miners and their representatives during dust sampling to curb mine operator cheating; citing mine operators when ever they exceed the legal exposure levels (as opposed to dust levels being in excess of the standard before citing); having MSHA conduct verification of dust control plans to make sure the plans would control the unhealthy dust; requiring a lowering of the 2 mg/m³ respirable dust levels in coal mines as sought by the Mine Act and government findings to reduce risk of pneumoconiosis; increasing the sampling of the coal mine dust levels in areas out-by the coal face to protect miners' exposure to unhealthy dust; and requiring continuous monitoring of dust levels in coal mines to make sure dust levels are maintained at safe levels each shift as called for by the Mine Act.

The Agency not only failed to heed these needed improvements but, the new proposal reverses and extensively weakens current protections and would substantially undercut the dust standards proposed in 2000. The new proposed rule eliminates mine operator regulatory compliance sampling, with no MSHA take over of the sampling program – leaving no regulatory dust compliance sampling program in place. Instead of increasing the number of shifts of which compliance sampling will take place, the new proposal substantially reduces compliance sampling – by as much as 90% at some mines. Based on MSHA's own projections, the 34 shifts currently sampled on a mining section could drop to only three (3) and those are not even guaranteed by the Dust Rules. Instead of reducing the dust concentrations in mines, the new proposals would allow substantial increases of unhealthy respirable dust concentrations in coal mines by as much as four times the current dust levels (From 2mg/m³ to 8mg/m³ based on MSHA's own projections). Instead of MSHA verifying the mine operator dust control plans to assure they are credible, the new proposal lets the mine operator verify its own plans – in other words, letting the fox guard the hen house. The new proposals ignore the need for full shift compliance sampling by having dust samplers shut down while miners are still subject to the dust as they continue mining – which could be for hours during a shift. The Dust Rules contain no mandatory requirement for continuous dust sampling and do not increase compliance dust sampling in areas away from coal faces – leaving most of the mine to be sampled only one shift a

year. It does not require citing the mine operator when specific mandatory exposure levels are exceeded. The Dust Rules allow mine operators to replace environmental dust controls – which are mandated by the Mine Act -- with a type of respirator which have faulty applications. Permitting this would violate the Mine Act. The Dust Rules reduce dust sampling to a point where there is little for the miners to participate in.

These changes serve to disenfranchise and mute the very people the Agency is responsible to protect. Further, these actions wipe out some protections from the unhealthy dust that miners already have, and is outrageous. Such reduction constitutes a diminution, and violates the Mine Act. While neglecting the concerns and needs of the miners, the Agency has crafted a rule that clearly appears to cater to the interests of mine operators and raises troubling questions about the credibility of the rule making process.

MSHA's proposed Dust Rules ignore and are contrary to the 1996 Federal Advisory Committee report on recommended actions for the "Elimination of Pneumoconiosis Among Coal Workers" and the NIOSH Criteria for a Recommended Standard- Occupational Exposure to Respirable Coal Mine Dust

The Agency Dust Rules proposals also ignore and are in conflict with highly credible government findings identifying reforms needed to fix the respirable coal mine dust program and protect miners from black lung disease in several areas. Those include the Secretary of Labor's 1996 Federal Advisory Committee report on recommended actions for the "Elimination of Pneumoconiosis Among Coal Workers" and NIOSH's 1995 "Criteria for a Recommended Standard" - "" (*Criteria Document*) Those government findings and recommendations are consistent with concerns outlined by the miners and are also part of the record that MSHA should have reviewed in the development of the rule.

On January 31, 1995, the Secretary of Labor appointed a Federal Advisory Committee (Advisory Committee) to provide recommendations for improved health and safety standards to overhaul the respirable coal mine dust program. The Advisory Committee was officially chartered under Section 101(a) and 102(c) of the 1977 Mine Act with recommendations to be forwarded to MSHA for development of proposed rules to reform the dust sampling program. In September of 1995, NIOSH issued a Criteria Document calling for reforms in the coal mine dust program. That document was forwarded by MSHA to the Advisory Committee for consideration as they developed recommendations to overhaul the coal mine dust sampling program. The Advisory Committee was comprised of two representatives each of miners and mine management, and five neutral representatives who had no interest in the mining industry. The Committee deliberated for months assessing the historical and current status of the coal mine respirable dust program. They examined a vast range of data and information on dust sampling, state of the art dust control measures, health effects of exposure to coal mine dust, medical surveillance of exposed miners, enforcement of coal mine dust standards and a host of other matters concerning coal mine respirable dust. Experts from MSHA and NIOSH provided constant guidance and assistance through the full course of the Committee discussions and deliberations. MSHA and NIOSH had numerous experts present technical and other information

to the Advisory Committee which was utilized in crafting the recommendations. The Advisory Committee had presentations from several individuals from labor, industry, manufacturers and the general public, who offered recommendations, advice and information. Following the several months of reviewing enormous information the Advisory Committee carefully constructed several recommendations to reform the troubled coal mine respirable dust program and eradicate pneumoconiosis. On November 14, 1996, the Advisory Committee sent its report with its recommendations to the Secretary of Labor for action. When compared to the Advisory Committee recommendations, several of MSHA's new proposals outright contradicted Advisory Committee recommendations, along with undercutting protections miners would have had. For example, the Advisory Committee called for beefing up respirable dust sampling. MSHA's proposals instead cut the frequency of compliance dust sampling by **up** to 90%. The following outlines how some of MSHA's proposed Dust Rules contradict the Advisory Committee recommendations.

- The Advisory Committee called for lowering dust exposure levels / MSHA's proposals increase them.
- The Advisory Committee said MSHA should make no upward adjustment in the personal exposure levels to account for measurement uncertainty / MSHA made the upward adjustment.
- The Advisory Committee called for increased compliance sampling / MSHA's proposals substantially decreased compliance sampling.
- The Advisory Committee called for an effective MSHA take over of the mine operator compliance dust sampling program / MSHA's proposal instead eliminated the operator compliance sampling program.
- The Advisory Committee called for a major expansion of miners and their representatives participation in the respirable dust program, paid by the operator / MSHA's proposals substantially reduced the respirable dust program with little for miners to participate in.
- The Committee called for use of continuous dust monitors / MSHA's proposals contain no rules requiring them.
- The Committee called for single full-shift compliance sampling / MSHA's proposed rule specifically excluded that for compliance dust sampling.
- The Committee called for personal exposure levels to account for extended work weeks / MSHA's proposals contained no rules on that.
- The Committee called for environmental controls to continue to be the method to control coal mine dust, and not to be replaced by respiratory devices / MSHA's proposals allow respiratory devices to replace environmental controls while dramatically increasing dust levels.
- The Committee called for MSHA to verify mine operator dust control plans / MSHA's proposed rule lets operators do that.

There are other areas that the MSHA proposed Dust Rules are contrary to the Advisory Committee Recommendations as well as the 1995 NIOSH *Criteria Document*

MSHA's proposed Dust Rules ignore and are contrary to the 1969 and 1977 Mine Act

The new proposed MSHA rule is not only a substantial retreat from the previously proposed rule, but is in direct conflict with the 1969 Mine Act and the amended 1977 Mine Act. The pertinent language of 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 milligrams of respirable dust per cubic meter of air." The proposed rule would outrageously destroy and reverse the dust standard established in 1969 by allowing mine operators to exceed the requirement by up to four (4) times that amount – to 8.0 milligrams of respirable dust per cubic meter of air – in direct violation of the Act.

The Agency rule would allow mine operators to use respirators as a replacement to environmental controls to control coal mine dust which is prohibited by the Mine Act. The pertinent language of the Act is unambiguous. Section 202(h) clearly states, "Use of respirators shall not be substituted for environmental control measures in the active workings." That section of the Mine Act requires operators to make respirators available to miners where dust levels exceed the mandatory levels as an additional protection not as a substitute for dust control measures to meet the compliance standards of the Act. This wrongheaded proposal is not only a violation of the Act, it would destroy the gains made over three decades to clean up the dust in coal mines and also encourage mine operators to ignore development of dust control technologies as they build faster producing mining equipment.

The Agency proposal would also violate Section 303(b) of the Mine Act which specifies that "the minimum velocity and quantity of air reaching each working face reduce the respirable dust to the lowest attainable levels." That mandate by Congress in the passage of the 1969 Mine Act would be dead in its tracks!

The dust sampling scheme MSHA is proposing does not comport to the requirements of Section 202(g) which dictates the Agency must "cause [there] to be such frequent spot inspections as he deems appropriate of the active workings of the coal mines for the purpose of obtaining compliance..." Similarly, it would eliminate from Title 30 of the Code of Federal Regulations all mandatory compliance dust sampling. For example, the current compliance sampling of at least 34 shifts a year on mining units (which has been found to be **far** too infrequent) could be reduced to only three (3) shifts a year at mines and those are not even guaranteed by the proposed rules. <

MSHA's proposed Dust Rules ignores dust sampling technology long sought and extensively developed to provide constant monitoring of respirable dust in miners work places.

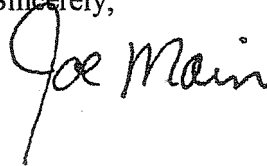
As you are aware, testing of the Personal Dust Monitor (PDM-1) by NIOSH is in the final stages and been found thus far to be very accurate. The development of that device has been supported by both labor and industry and would allow continuous monitoring of the coal mine dust in the Nation's mines. It is the result of years of development and expenditure of considerable taxpayer dollars. Unlike current dust monitoring, that device could comfortably be worn by miners, allowing the unhealthy dust conditions to be monitored during each shift, each day and

providing the miner with instant information on the dust levels with projections of the dust concentrations over the remainder of the shift. That device could keep miners out of unhealthy dust levels. Similarly, extensive testing and development has been conducted to develop machine mounted continuous dust monitoring. That monitoring would likewise provide opportunities for the unhealthy dust to be monitored at its source. The Agency rule however ignores the tremendous benefit of having all miners in high risk areas equipped with such a needed instrument and have machine mounted devices to constantly monitor the dust to protect miners from disease. At best, MSHA's rules simply let a mine operator decide if they wish to provide miners such devices. With the tremendous cheating that coal mine operators have engaged in over the years to hide unhealthy dust levels, there is little expectation that operators would voluntarily provide these devices to miners. MSHA must not rush the rule making process at this point, because with the PDM-1 testing completed in the near future, and with the machine mounted monitors that have been developed, MSHA would be able to incorporate those into the rule to give miners the ability to continuously monitor the dust they breathe and satisfy the 1980 promise the Government made to miners to develop continuous monitoring.

The review concludes that MSHA's proposed Dust Rules would reverse both decades of advancements in the reductions of coal mine dust levels in mines and destroy compliance sampling needed for measuring of coal dust levels to assure mine operators do not expose miners to the unhealthy dust. As pointed out, miners' exposure to unhealthy coal mine dust has led to the deaths of tens of thousands of miners and billions of dollars of costs for those stricken by the disease. The proposals are contrary to; the Mine Act; decades of advancement in protecting miners from unhealthy dust levels; Advisory Committee and NIOSH findings; and concerns delivered extensively and loudly to MSHA. In addition to the need for delaying action on the complex proposed MSHA Dust Rules, they must be withdrawn and new proposals drafted that address the needs of miners.

I anticipate a quick response to this request and thank you for your immediate attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Joe Main". The signature is written in a cursive, slightly slanted style.

Joseph A. Main, Administrator
Department of Occupational Health and Safety