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MSHA/OSRV

COMMENTS FROM JIM WALTER RESOURCES, INC.

Concerning

**MARCH 6, 2003 FEDERAL REGISTER NOTICE REGARDING
VERIFICATION OF UNDERGROUND COAL MINE OPERATOR'S DUST
CONTROL PLANS AND COMPLIANCE SAMPLING FOR RESPIRABLE DUST**

Jim Walter Resources, Inc. would like to thank MSNA for the opportunity to comment on the proposed respirable dust regulation. Quite frankly, we are very disappointed in MSHA's feeble attempt at drafting legislation to control and sample respirable dust. The proposed regulation is nothing more than a mirror image of the legislation proposed July 7, 2000. This rule does fill in the blanks of detail left out of the 2000 proposal, but is totally contrary to what Jim Walter Resources, the UMWA, the BCOA, and NMA commented on, in 2000. The rule is complicated, confusing, and impracticable to comply with. This rule reverts back to the same old policies that MSHA has relied on for years, make plan verification so restrictive and conservative that by sampling an array of people at an ultra conservative level that surely all the people on the section will be in compliance. We believe that the message was delivered to MSHA loud and clear in 2000 on basically the same regulation (**DEVELOP A RELIABLE SAMPLING DEVICE AND SAMPLE THE MAN**). We understand that the personal dust monitor is in it's final stages of development and testing, we encourage MSHA to complete the testing to draft a meaningful regulation that utilizes this technology. We will include our comments on the 2000 proposal with these comments because many of the comments stated then are still valid today.

Jim Walter Resources has major concerns with MSHA's Plan Verification Process under Part 70 of the proposed regulation. One particular area of concern is Part 70.201(e). This part addresses the verification production level and utilizing dust control parameters that do not exceed 115 percent of the levels specified in the plan. Under this sampling guideline, the operator will continually be trying to collect valid samples to submit to MSHA. In this coal bed where mining takes place in difficult conditions, the operator will constantly be trying to get samples where the production meets the verification level. Even in the best conditions and as admitted by MSHA, a large percentage of time samples would be thrown out because they did not meet the verification production level (VPI). I hope this is not MSHA's idea of the best way of getting additional samples, collecting samples that MSHA knows and admits will not be acceptable a large percentage of time. At Jim Walter's mines, it is not feasible for plan dust control parameters to always be within 115 percent of plan. This is not practicable, and has been commented on by many companies with high methane levels. You have to set your ventilation levels to control the level of methane present. The operator must have some flexibility to adjust ventilation in order to meet the needs of the mine. Also, water pressure can fluctuate widely depending on usage at that point in time.

It is odd to us at Jim Walter's why under 70.204 that to determine that the plan parameters are adequate, with a high level of confidence, the equivalent concentration of

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respirable coal mine dust and respirable quartz dust must be maintained below the verification limit by meeting the critical values in Table 70-1. What is odd about this is that this is not a portal-to-portal sample. The pump is to be turned on when reaching the work area. The pump will be run until leaving the work area even though this can exceed 8 hours. The pump will be worn by the DO even though this might be more than one person. It could be many people. When the pump is brought outside and samples are evaluated for concentration, for one shift, it cannot exceed 1.71 mg/m³. On page 10811 of the preamble to the proposed rule it states that MSHA's samples are to be portal-to-portal or for 8 hours. The citation threshold value for citing respirable dust for one shift under Table 70-2 is 2.33 mg/m³. I believe that MSHA's pumps are to be worn by an individual and not a number of individuals. It's amazing how MSHA's sample can be so radically different from the operator's sample. The length the wimple is to be worn, how the sample is to be taken, and the huge difference between what is a valid single shift concentration are all extremely less restrictive under MSHA's sampling program. Also, as stated earlier, the operator must achieve a production level that is within the tenth highest of the last 30 shifts and plan parameters cannot exceed 15%. It is quite evident to us that MSHA's intent was to burden the operator's plan verification process to the point that he is constantly sampling to try to get a verified dust plan. It was our understanding that one of the recommendations of the Dust Advisory Committee was for MSHA to do the sampling and not the operator.

We would like to commend MSHA on their incorporating the use of administrative controls and PAPR's in this regulation. There is certainly a need for both of these supplemental controls but not after an exhaustive attempt at making an overbearing plan process work. The process can be streamlined to where the man is sampled, his work practice (administrative control) compliments the dust control parameters stated in the ventilation plan, and if conditions are such for a period of time that compliance cannot be maintained then PAPR's can be used until conditions return to manageable levels. The nucleus to making a process such as this work is to sample the man. The technology to continuously sample the man is close to completion. MSHA recognizes this under 70.220 where they address the use of the personal dust monitor. Our question is why not wait until this technology has been tested and proven and then draft a regulation to utilize this technology. It gives MSHA the tool to accomplish what has been commented on many times before and that is to sample the man and administer his work practices. The PAPR provides the supplemental control when conditions are such that it is impossible for the operator to manage dust compliance and assistance is needed.

Jim Walter Resources, Inc. would like to see this regulation either be drastically rewritten to include comments presented today and in the past or withdrawn. This rule is not workable in its present state. It is overly burdensome and does not represent respirable dust that a person is exposed to.

COMMENTS FROM JIM WALTER RESOURCES, INC.**Concerning****JULY 7, 2000 FEDERAL REGISTER NOTICE REGARDING SINGLE, FULL-SHIFT MEASUREMENT OF RESPIRABLE COAL MINE DUST TO DETERMINE AVERAGE CONCENTRATION ON A SHIFT****And****JULY 7, 2000 FEDERAL REGISTER NOTICE REGARDING VERIFICATION OF UNDERGROUND COAL MINE OPERATORS' DUST CONTROL PLANS**

It is the contention of Jim Walter Resources (JWR) that the subject July 7, 2000 Federal Register Notice concerning Single Shift Measurement of Respirable Dust and Plan Verification should be withdrawn. 72.500 states that "The Secretary may use a single, full-shift measurement of respirable coal mine dust to determine average concentration on a shift if that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift." This single statement replaces all of the current Part 70 Subparts B and C without providing any detail of how the proposed regulation intends to provide reliable single shift results. It is impossible to comment on a regulation that does not exist. MSHA testified at the public hearing in Morgantown, WV, that they could establish sampling strategies and procedures through policy as they deemed necessary. Basically, this is another way in which the agency ignores proper rule making and utilizes unwritten policy to dictate their will on the industry. The Preamble to the Regulation does go into some detail into the agencies intentions, but again the Preamble is not regulation.

JWR testified in 1994 and again in 1996 concerning the reliability of a single shift dust sample to determine average concentration of dust over a single shift. Again, we will restate what we testified to previously, and that is that sampling technology has not appreciably changed in the last 30 years. Therefore, we cannot see why a single shift sample is valid to determine dust concentration over a single shift today but was not considered valid by the people who originally drafted the 1969 Act. JWR believes that until technology exists that can accurately and reliably determine a persons dust exposure, then a single shift dust sampling strategy will not work.

JWR has major concerns with MSHA's Plan Verification Process under Part 70 of the proposed regulation. JWR's primary concern is that under the Plan Verification Process MSHA samples the jacksetters as well as the designated occupation (DO). The DO for longwall operations is 060. This is an occupation created by MSHA that supposedly reflects the dust concentration of the longwall worker who works the furthest downwind. JWR commented on the 060 occupation as early as 1994. This sampling strategy, as testified to in 1994, represents no individual's exposure to dust. JWR believes that to truly protect the miner the individual must be sampled. The pump must be put on the individual and remain with that person for the full sampling period.

In the Preamble to 72.500 MSHA goes into great detail to defend why they are sampling the individual, They discuss why the pump must be with an individual for the full shift and not be averaged to truly represent what a miner is exposed to. If this is necessary by MSHA's own justification for compliance sampling to accurately and reliably measure an individual's exposure, then why did MSHA change the way it samples for plan verification. Plan verification sampling should represent sampling conducted during compliance sampling to truly determine the effectiveness of the dust control plan,

MSHA has also diluted the true measure of dust exposure during plan verification sampling by sampling the occupation for the full shift. The full shift for plan verification is for the entire work shift including travel time, which could be for up to twelve hours. Mass is collected on the sample filter for the entire shift, but by MSHA's definition of concentration it is divided by only 480 minutes. This automatically inflates the concentration to a higher value. If MSHA intends to sample for an entire shift then do the mathematics properly to determine the true exposure. MSHA should not arbitrarily manipulate the concentration formula to fit preexisting regulations.

Once MSHA has established a concentration for an occupation, which will be sampled as more than one person and calculated with flawed mathematics, MSHA determines plan verification with a sliding compliance scale. As stated earlier, all jacksetters are sampled and the designated occupation, which could mean that four to five occupations are sampled for plan verification. Each of these occupational samples is considered for plan verification based on the number of times it is sampled. For one sample shift the critical limit is 1.71 mg/m³, for two sample shifts the critical limit is 1.85 mg/m³, for three sample shifts the critical limit is 1.93 mg/m³, and for four or more shifts the critical limit is 2.0 mg/m³. Therefore, assuming there are three jacksetters and the 060 occupation which are sampled for four shifts, then there would be sixteen occupation samples collected. Each of these sixteen samples must be less than 2.0 mg/m³ for plan verification. If any of these samples is over 2.0 mg/m³ then MSHA continues to sample and modifications to the plan will be required. For an operator to maintain compliance for plan verification is an impossibility. Once again, if MSHA wants to truly verify that the dust control plan is protecting the miner then **SAMPLE THE MINER.**

If an operator is having trouble maintaining compliance with MSHA's plan verification sampling, the operator must continue to modify the Dust Control Plan by adding engineering or environmental controls until MSHA has determined that all engineering or environmental controls have been exhausted. Once the MSHA District that the mine is located in determines that all controls have been exhausted, a letter by the operator must be written to a MSHA panel requesting to utilize Powered Air Filters PAPR's or Administrative controls. People outside of the District the mine is in primarily make up this panel. Only they have authority to grant permission for the operator to utilize PAPR's or Administrative controls for interim relief. PAPR's and Administrative Controls can only be used on longwall MMUs. Only people working downwind of the shear will be allowed to wear PAPRs. By the time the operator finally gets to utilize either of these protection methods, their plan is so burdened by engineering or other controls that they cannot operate the longwall. MSHA can dictate lower production levels

on the longwall as a final dust control technique. JWR does not understand why MSHA has such a total reluctance to use the two control methods that will truly protect the miner. JWR again states that MSHA should **SAMPLE THE MINER** and by sampling the miner MSHA will automatically be sampling administrative controls. Should a sample be out of compliance for geological conditions or some other reason, MSHA should allow the operator to utilize PAPR's as an interim relief until the reason for the noncompliance can be determined. This allows the operator to protect the worker while additional sampling is being conducted, and to determine if the plan truly needs modifying or if there are other reasons for the noncompliance. In either case, it allows the operator a way to instantly protect the miner regardless of where he works until such time that the plan can be properly evaluated. One bad sample does not mean that a plan is not functioning properly as many times MSHA would like to believe.

JWR has not tried in these comments to point out all the problems with these regulations. JWR does believe that again MSHA is trying to circumvent the rule making process by a lack of detail in what is written in the compliance sampling regulation 72.500. The sampling strategy under the Plan Verification Regulations is totally unacceptable as pointed out in our comments. The plan verification process as outlined by MSHA will not work. It does not represent a persons exposure or what a Dust Plan is suppose to do and that is to protect the miner. For the reasons pointed out JWR requests that MSHA withdraw these regulations.