



University of
Massachusetts
Lowell

RECEIVED Office of
Standards, Regs,
and Variances

JUL 1 2 3:25 PM

MSHA
U.S. Dept of Labor

One University Avenue, Kitson 200
Lowell, Massachusetts 01854-2867 USA
tel: 978.934.3250
fax: 978.452.5711
web site: <http://www.uml.edu/Dept/WE>



DEPARTMENT OF WORK ENVIRONMENT

July 1, 2003

The Honorable Elaine Chao
Secretary of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Chao:

In 1995, Secretary of Labor Robert B. Reich appointed us to serve as members of the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers. We were appointed as the neutral members and we were joined by two representatives each from labor and industry. After five months of work, including three mine visits and five public meetings where we heard from 75 miners and industry officials, we issued a comprehensive report and recommendations. As noted in a letter to Secretary Reich transmitting the report, the chairman of the Committee (David Wegman, MD, MS) wrote: "I can state unequivocally that no group with as much diversity of views has made a greater effort at reaching consensus than this Advisory Committee."

The recommendations outlined by the Advisory Committee reflected our best judgment on how to eliminate coal workers' pneumoconiosis and silicosis. We understood at the time that a number of the recommendations would require new regulations and expected the Mine Safety and Health Administration to act promptly to promulgate them. After reviewing the proposed rule published on March 6 in the *Federal Register*, we noted several provisions that directly contradict recommendations made by the Advisory Committee. We would like to bring these to your attention.

(1) The nine-member Advisory Committee approved unanimously a recommendation that stated:

"MSHA should consider lowering the level of allowable exposure to coal mine dust."

The proposed rule published by MSHA ignores this recommendation. Moreover, MSHA is advocating changes that would allow underground miners to work in concentrations of coal mine dust that are as much as four times the current limit. We are appalled that MSHA leadership would propose this change.

AB14-COMM-144
AB18-COMM-140

(2) The nine-member Advisory Committee approved unanimously a recommendation that stated:

"Environmental control measures should continue to be the primary means of maintaining respirable dust levels in the mine atmosphere in the active workings in compliance."

In our report, we explicitly stated "...the Mine act specifically prohibits the substitution of the use of respirators for environmental control measures in the active workings." During our service on the Advisory Committee, we saw Airstream® helmets being used by miners and heard presentations by industry representatives about these devices. We concluded, however that *"The use of administrative controls does not reduce the responsibility of the operator to maintain the ambient dust levels in active workings at or below the mandatory level [that is 2.0 mg/m³]."*

The Advisory Committee acknowledged "...improvements in environmental control technology have not kept pace with increases in production technology. The Committee encourages the development and use of improvements in technology to control miners' exposure to respirable coal mine dust." The proposed rule published by MSHA, however, encourages the use of respiratory protection at the expense of innovations in control technology. These changes directly contradict the Advisory Committee's conclusions that respiratory protection should only be used as an interim control measure while environmental controls are being installed.

(3) The nine-member Advisory Committee approved unanimously a recommendation that stated:

"Within 30 days of receipt of operator verification data documenting that the plan is effective, MSHA should, in consultation with the operator, perform scheduled independent dust monitoring to verify the operator's plan."

In our report, we explicitly stated that MSHA should develop a review process "...with rapid follow-up testing of the proposed plan or revision to verify its effectiveness for dust control." We went on to note: *"Although current MSHA procedures provide for periodic assessment of plan effectiveness by its inspectorate, the Committee questioned their adequacy and timeliness."* The intent of this recommendation was unambiguous—MSHA should verify the effectiveness of a mine operator's dust control plan within 30 days of receipt and through a process of dust monitoring and review of recorded parameter data.

The proposed rule published by MSHA turns this recommendation on its head. The Advisory Committee members believed strongly that the key to eliminating coal workers' pneumoconiosis is through effective mine ventilation plans. We noted that the "...initial evaluation, approval, in-mine verification and monitoring" of the operator's dust control plan are the critical components in protecting miners from this disabling lung disease. MSHA's proposal is a weak substitute for the plan verification recommendation advocated by the Advisory Committee.

(4) The nine-member Advisory Committee approved unanimously a recommendation that stated:

"MSHA should explore innovative ways to enhance its presence in mines for compliance sampling."

The proposed rule published by MSHA refers readers to a separate document describing the enforcement strategy that the Agency plans to adopt when the final rule becomes effective. (Coal Mine Health Inspection Procedures Handbook, dated February 11, 2003.) By adopting this enforcement strategy, MSHA's sampling presence at coal mines will not be enhanced as the Advisory Committee recommended, but instead will be diminished significantly. The "modified sampling schedule" described in the handbook completely contradicts the judgment expressed by the Advisory Committee. MSHA provides no rationale for this radical change in enforcement policy, fails to acknowledge the potential harm to miners' health due to this change, and offers no protection or guarantee of compensation for miners who may be harmed by it.

(5) The nine-member Advisory Committee approved unanimously a recommendation that stated:

"The Committee considers it a high priority that MSHA take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposure under usual conditions of work.... Compliance sampling should be carried out at a number and frequency at least at the level currently required of operators and MSHA."

In our report, we recognized the value of frequent exposure sampling by MSHA to verify the effectiveness of an operator's dust control plan and to **determine** compliance with the respirable dust standards. The proposed rule published by MSHA and the above-mentioned Coal Mine Health Inspection Procedures Handbook completely ignores the Advisory Committee's recommendation and our judgment that frequent dust monitoring is a key component of a program to prevent coal workers' pneumoconiosis.

Throughout our service on the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, we repeatedly heard from miners and operators alike that underground coal mining is like no other job. Minute to minute, miners are vigilant about methane gas levels, roof supports, pinch points, falling rocks and other hazards. They impressed upon us that the underground mine environment is constantly changing and demands faithful attention to keep it healthful and safe. Miners also reminded us that at many mines, production goals can interfere with the application and maintenance of dust controls. This proposed rule ignores that reality.

We urge MSHA leadership to read completely the Advisory Committee report. The rule proposed on March 6 should be revised significantly to reflect the five points mentioned above along with a provision for enforcement sampling based on a single, full-shift, portal-to-portal dust sample.

I have attached the cover-page from the "Report of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers" to facilitate your efforts to identify this report and review our findings and recommendation.

Sincerely,



David Wegman, MD. Ms c
Professor and Chair
Department of Work Environment
College of Engineering
University of Massachusetts Lowell
(Chair, Advisory Committee on the Elimination of
Pneumoconiosis Among Coal Mine Workers)



John Dement, PhD, CIH
Associate Professor
Division of Occupational and
Environmental Medicine
Duke University Medical Center
(Member, Advisory Committee on the Elimination of
Pneumoconiosis Among Coal Mine Workers)



Carol Rice, PhD, CIH
Professor of Environmental Health
Kettering Laboratory
University of Cincinnati
(Member, Advisory Committee on the Elimination of
Pneumoconiosis Among Coal Mine Workers)

Report of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers



Submitted by the Committee to:

U.S. Department of Labor
Robert B. Reich, Secretary

Mine Safety and Health Administration
J. Davitt McAteer, Assistant Secretary

October 1996

