

Statement for July 26 Public Meeting on MSHA
Request for Information on Diesel Exhaust
July 22, 2016

My name is Ed Green and I am here today to present a statement regarding MSHA's Request for Information on Exposure of Underground Miners to Diesel Exhaust (the "RFI"), as published in the Federal Register for June 8, 2016. 81 Fed. Reg. 36,826. Docket No. MSHA—2014—0033. My statement is offered on behalf of Murray Energy Corporation, the Bituminous Coal Operators' Association ("BCOA"), and Bridger Coal Company (the "Companies"). To begin, the Companies are pleased to provide MSHA with this Statement. We are reviewing the RFI with great interest and are of the preliminary view that it will help us and all stakeholders focus on a topic that is worthy of attention. At the very outset, however, we want to support and agree with the statements of the Industrial Minerals Association—North America ("IMA—NA") proposing that MSHA and NIOSH establish a Diesel Health Effects Partnership and that MSHA grant at least a 90-day extension of the comment period from the current deadline of September 6. Such an extension will allow stakeholders to benefit from what we expect will be learned from the first meeting of the Partnership.

This statement will briefly describe how MSHA currently regulates the exposure of underground coal miners to diesel exhaust, pointing out the fundamental difference between those regulations and the MSHA rules governing the exposure of underground metal/nonmetal miners to diesel exhaust. The statement will also briefly address the recent research identified in the RFI; and will introduce Dr. Roger McClellan to the MSHA Public Meeting Panel again, as he is an advisor to the Companies as well as to IMA-NA.

Finally, this statement will address our understanding of the true underlying basis for the initiation of this RFI and will remind MSHA that, at a time when the Companies are dealing with the greatest ever economic downturn of the entire US coal industry, MSHA must take into special account the economic feasibility of any regulatory steps MSHA may advance as a next step of the RFI.

From a personal perspective, I want the MSHA Panel to know that I have been working frequently on diesel safety and health issues since 1972 as: (1) a lawyer in the early days of the modern federal mine safety and health program; (2) the general counsel of the American Mining Congress (a precursor trade group to the National Mining Association); and (3) an attorney in the nationally recognized mining practice at the Washington, DC-based law firm of Crowell & Moring LLP.

Current MSHA Regulations Relating to the Exposure of Underground Coal Miners to Diesel Exhaust

Current MSHA regulations dealing with the exposure of underground coal miners to diesel exhaust are contained in:

- Subpart E of 30 C.F.R. Part 7—Diesel Engines Intended for Use in Underground Coal Mines;
- Subpart F of 30 C.F.R. Part 7—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Required;
- 30 C.F.R. Part 36, Approval Requirements for Permissible Mobile Diesel-Powered Transportation Equipment;
- 30 C.F.R. Part 72, Health Standards for Coal Mines, Subpart D, Diesel Particulate Matter—Underground Areas of Underground Coal Mines; and
- 30 C.F.R. Part 75, Mandatory Safety Standards—Underground Coal Mines, Subpart T—Diesel-Powered Equipment.

Central to these coal rules are the provisions of Subpart D of Part 72. Sections 72.500, 72.501, and 72.502 set forth grams/hour emission limits of diesel particulate matter (“DPM”) for permissible diesel-powered equipment (§72.500), nonpermissible heavy-duty diesel-powered equipment, generators, and compressors (§72.501), and nonpermissible light-duty diesel-powered equipment other than generators and compressors.

Importantly, although there are some exceptions, generally speaking, MSHA will determine compliance with these emission requirements by using the amount of DPM emitted by a particular engine during Part 7 engine approval testing. Of course what this means is that once deployed underground, the engine emission limits are not tested in real time. Real-time testing would be unworkable in an underground coal mine considering that the ambient atmosphere contains particles of carbon from the coal being mined, as well as the carbon contained in the coal itself.

This regulatory scheme for exposure of miners to diesel exhaust in underground coal mines is thus necessarily very different from that in underground metal and nonmetal mines, where miners’ exposure is based on a measured real-time personal exposure limit (“PEL”) of DPM expressed as total carbon, as set forth in 30 C.F.R. §57.5060.

Recent Research

The Companies note that the RFI identifies key recent research on which the RFI depends. You have already heard from Dr. Roger O. McClellan speaking for IMA—NA. Dr. McClellan is a consultant for the Companies too. As such, we not only endorse his presentation for the IMA—NA, but also, following my statement, Dr. McClellan will have some additional commentary to give you on our behalf. Of course, we want to remind the Panel that pursuant to section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (the “Mine Act”), MSHA must consider all “of the latest scientific evidence in the field.” The Companies also endorse Dr. McClellan’s Critique of the HEI Report referenced in the RFI. And very importantly, the Companies strongly

agree with the idea of establishing an MSHA-NIOSH Partnership with all the stakeholders to discuss in detail the questions MSHA has raised in the RFI. The Partnership, we earnestly believe, will lead to development of additional relevant science.

What is the True Underlying Basis for the RFI?

The Companies have read the introductory language in the RFI that precedes the questions asked. We also understand that at the public meetings last week in Salt Lake City, UT and Pittsburgh, PA (on July 19 and 21, respectively), MSHA has said the agency's mind is open at this juncture as to whether additional rules dealing with the exposure of underground miners to diesel exhaust are necessary.

The Companies are pleased to hear that; but, candidly, we wonder about its accuracy. We say that because we are aware of 2012 letters from the United Mine Workers' of America (the "UMWA") and a group of public health academicians appearing to petition MSHA to promulgate stricter DPM standards for both coal and metal/nonmetal mines than those currently in effect. The Companies also understand that, at the Pittsburgh public meeting, representatives of the UMWA and the United Steelworkers of America called upon MSHA for new and more stringent rules. We also want to say, categorically, that although we are not opposed to new rules, we want to make sure they are need- and science-based.

Feasibility

Thus, as I conclude before re-introducing Dr. McClellan to you for his specific comments on our behalf, please allow me to re-emphasize our support for his Critique of the HEI Report and our endorsement of the establishment with NIOSH and MSHA of a Diesel Exhaust Health Effects Partnership. Returning to Mine Act section 101(a)(6)(A), the Companies also wish to remind MSHA of its mandatory obligation to consider the feasibility of any new rules the agency may adopt. Feasibility not only includes technological feasibility (a difficult enough requirement), but also economic feasibility. In that regard, MSHA must take into account the fact that the US domestic coal mining

industry is under severe stress, with several major coal producers undergoing Chapter 11 reorganization as we meet here today, and with prices down and environmental regulatory pressure up.

With this introduction in mind, please allow me to turn to Dr. McClellan so he may give you his additional comments. Thank you very much for your attention.