

# PUBLIC SUBMISSION

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**Docket:** MSHA-2010-0007

Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

**Comment On:** MSHA-2010-0007-0001

Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

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Comment from George Ellis, Pennsylvania Coal Association

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## General Comment

See attached file(s)

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## Attachments

V0016430

PA Coal Assn attachment RIN1219-AB64

*AB64-COMM-86*



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June 13, 2011

Ms. Roslyn Fontaine, Acting Director  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
1100 Wilson Boulevard, Room 2350  
Arlington, Virginia 22209-3939

Re: Proposed Rulemaking on Respirable Coal Mine Dust  
February 8, 2011 Hearing

**RIN: 1219-AB64**

Dear Ms. Fontaine:

The Pennsylvania Coal Association (“PCA”) offers the following comments to the Mine Safety and Health Administration (“MSHA”) concerning its Proposed Rule for modification of 30 C.F.R. Parts 70, 71, 72, et al. with respect to respirable dust control to supplement PCA’s testimony at hearing on February 8, 2011. The proposal was published at 75 Fed. Reg. 64412 (October 19, 2010).

PCA is an association that represents the majority of underground and surface coal mine operators in Pennsylvania. It represents large longwall mines and one section continuous miner mines. Our members are committed to reducing the exposure of their miners to respirable coal mine dust.

We urge MSHA to withdraw the proposed rule and to propose a new rule that 1) relies on a transparent review of the current science on miners’ health; 2) addresses

Ms. Roslyn Fontaine, Acting Director  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
June 18, 2011  
Page 2

directly the health concerns illuminated in the science; and 3) utilizes a comprehensive, rather than limited, approach to improving worker health.

We would respectfully request that MSHA set aside this rulemaking and recommend that MSHA continue on the course it set out last year when it launched the End Black Lung Initiative. That approach was all encompassing, clearly envisioned all interested parties, i.e. government, labor, healthcare and industry to work together towards our shared goal of ending Black Lung. It is unfortunate that the spirit of the End Black Lung Initiative and ability for all of us to continue to work effectively going forward has been severely compromised as a result of this proposed rulemaking.

We commented extensively in our previous testimony and we will not reiterate these comments here. We join in the comments of the National Mine Association concerning the flawed science behind the proposed rule. We think that the reports and testimony offered by NMA and its members have demonstrated conclusively that the proposed rule can not be justified.

We thought it is important to make several additional comments that are of significance. It is absolutely critical that any rule restore confidence in the respirable dust sampling, both from an operator's standpoint as well as from the standpoint of the miners. There is a fundamental distrust of the respirable dust sampling system as well as a symptom of the deficiencies in the program and the closed-minded attitude of the agency on respirable dust issues. The distrust of the program by the regulated community has existed for years and continues to this day, especially in light of the flawed approach by the agency as exemplified by its "Dust Busters" teams. The proposed rule will create regulatory chaos without a marked change in respirable dust levels.

The current proposal does not restore the credibility of the program. It relies upon uncertain new technology as well as single shift samples. As we said, the CPDM technology represents an opportunity to manage respirable dust differently and to shift the focus to individuals but it can not support the enforcement scheme that is being imposed on it.

Ms. Roslyn Fontaine, Acting Director  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
June 18, 2011  
Page 3

Everyone who has had any familiarity with the respirable dust sampling programs knows such single-shift samples are not reliable indicators of actual exposure. There have been too many obvious aberrational samples that MSHA has considered valid to provide the program with any credibility. The arbitrariness of how MSHA approaches such samples, and the program as a whole, is also demonstrated by MSHA's use of such single samples to compel changes in ventilation plans.

Any rule also must take into account individual miner's exposure and potential for disease. We are not sure why MSHA is wary of bringing the individual miners into the equation. The development of the CPDM makes their participation essential and provides a unique opportunity to focus on the individual miner. To foster this protection, we think all miners should be subject to a mandatory medical surveillance. It makes no sense to us to avoid making this tool available to the individual miner or give the operator the information useful to managing exposures.

We also believe that mine operators should be permitted to use administrative controls to minimize respirable dust exposure to the individual miners, particularly when confronted with abnormal geologic abnormalities. This was permitted with the noise rule. The proposed rule virtually eliminates the use of such controls and it is inappropriate to eliminate this useful tool, especially when the CPDM is most effective at identifying personal exposure.

The proposed rule also ignores Personal Protective Equipment ("PPE"), which is an effective means of reducing an individual miner's exposure to respirable dust. Other regulatory agencies give credit for the use of PPE. Most longwall mines require the use of air stream helmets or the equivalent and there is no recognition of this in the rulemaking. Even if primary reliance is on engineering controls, PPE can be used to supplement engineering controls and it is critical to ensure that individual miners are not overexposed.

We also want to reiterate that the emphasis on plans in the proposed rule is unworkable and renders the program as less than credible. Plans are no substitute for real rulemaking and the existing plan system itself is severely flawed. District Managers have used plans to impose across-the-board requirements that cannot otherwise be justified. They are used to circumvent notice and comment rulemaking.

Ms. Roslyn Fontaine, Acting Director  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
June 18, 2011  
Page 4

They can be used unfairly, arbitrarily and capriciously. The fiction is that they are the "operator's" plans and this is utterly false. They are evaluated in litigation not on the basis of what the operator proposed, but rather on whether the District Manager's requirements were arbitrary and capricious, a legal standard that is heavily-weighted in MSHA's favor.

Further operators have no effective remedy in plan disputes. MSHA opposes expedited hearings before the Review Commission on this sort of issue and the current backlog precludes actual expedited consideration. The plan system is already irreparably broken. To require new plans and constant changes based on single samples will make this system worse, if that is possible.

This rulemaking is premised on the existence of so-called CWP hotspots. If so-called hotspots do exist or existed within certain geographical areas and are further the result of substandard mine operation practices, they simply do not warrant industry-wide rulemaking, especially of the draconian nature of the proposed rule. One of these hotspots purportedly is Somerset County, Pennsylvania. We have attached a letter from Dale Broadwater, Executive Director, Coal Mine Compensation Rules Bureau of Pennsylvania which addresses Federal Black Lung claims filed and awarded in the period 2000-2009. This data does not indicate that there is any rise in Black Lung or Coal Worker's pneumoconiosis.

PCA appreciates this opportunity to testify and comment on the proposed rules. We would hope that the agency would step back from what we believe is a misguided approach and adopt a more cooperative and fact based concept that can be realistically implemented and help eliminate CWP.

Respectfully Yours,



George Ellis