

**Testimony of Linda Raisovich-Parsons at the
Public Hearing on the Proposed Rule for
Lowering Miners' Exposure to Respirable Coal Mine Dust, Including
Continuous Personal Dust Monitors
February 15, 2011**

Good Morning/Afternoon. My name is Linda Raisovich-Parsons (spell) and I am here today on behalf of the United Mine Workers of America. I have worked in the coal industry since 1976, first as an underground coal miner, then a mine inspector and currently as the Deputy Administrator for the UMWA's Department of Occupational Health and Safety. We would like to thank you for the opportunity to address an issue that has been a priority for the UMWA for many years. For too long we have watched our nation's miners suffer and die from Black Lung disease, an illness that is unnecessary and totally preventable. We are grateful that MSHA has taken these steps toward serious measures to prevent this unnecessary suffering and death. I grew up in a small coal camp in southern West Virginia and personally watched the pain and suffering this horrid disease inflicted on my community as well as my own family. As a young woman, I lost my father at the age of 56 to black lung and heart disease, creating a hardship on my family and the loss of our Dad far too soon. So this issue is a personal one for me as well as a professional one.

I should begin by saying that the UMWA is overall supportive of MSHA's proposed rule and is glad the government is finally taking concrete steps toward preventing this dreadful disease. Black Lung has crippled and killed tens of thousands of miners over the years. According to NIOSH studies, between 1987 and 1996 at least 18,245

deaths occurred from Black Lung. The latest studies show that after a long period of declining incidence of Black Lung, recent surveillance data indicates that it is rising again. Coal miners are developing Black Lung at relatively young ages, below 50 years. What is most disconcerting about this is a connected increase in years of potential life lost due to Black Lung in these young miners. So not only are the cases of Black Lung on the increase, but miners' lives are being shortened more so than ever. Adding insult to injury, those filing claims for federal black lung disability compensation face a harsh and unfair system. Nearly 87% of claims are rejected. The UMWA is more than pleased to see the Federal Government finally step up after years of senseless pain and suffering inflicted on the mining community and takes a serious step toward preventing Black Lung. However, even though we are supportive of most of this proposal, there are a few issues with which we disagree. I will summarize our primary concerns:

The first issue which troubles us is that the sampling program continues to be placed in the hands of the coal operators. The Government's regulatory program intending to protect miners from exposure to unhealthy coal mine dust, has failed to protect miners through the years. Since passage of the Federal Mine Health and Safety Act of 1969, the coal mine dust sampling program has been the subject of much criticism. Reports of cheating and fraud in the coal mine dust program, with miners exposed to unhealthy levels of mine dust, has been common place over the years. In 1971 and 1975, US General Accounting Office and National Bureau of Standards reports document serious problems with the mine operator-controlled coal mine dust sampling program. The reports identified widespread fraud in the program. Since 1990, over 160 companies and individuals have been

criminally prosecuted for fraudulent coal mine dust sampling in the nation's coal mines. An in-depth investigative report published by the Louisville Courier Journal in 1998 cited widespread corruption with the coal mine dust sampling program. Miners and their representatives on numerous occasions have also provided evidence on the flawed coal dust program.

For decades, miners and the UMWA have demanded that the respirable coal mine dust program be reformed. As far back as 1977 and 1978 miners testified at public regulatory hearings demanding major changes in the program. Among the changes miners sought were: full miner participation to oversee the coal mine dust sampling, a government take over of the sampling program, and devices installed in the mines to constantly record coal mine dust levels. We applaud the Agency's requirement of the use of the Continuous Personal Dust Monitor in response to one of those concerns, but the UMWA still believes the sampling program should not be left in the operators' hands. We expect that most coal companies will do the right thing to comply with the new standards. However, even with the use of the CPDM we know that there are the renegades of the coal industry who will find a way to cheat the system.

The UMWA wants to see the Agency play a bigger role in the sampling program and to at least adopt the Dust Advisory Committee recommendation for government funding of such a program and giving MSHA a bigger role in the dust sampling process. Paragraphs b and c of Recommendation No. 16 of the Dust Advisory Committee recommended:

b. The Committee believes that any MSHA resource constraints should be overcome by mine operator support for MSHA compliance sampling. The Committee recommends that to the degree that MSHA's resources cannot alone serve the objective identified, resource constraints should be overcome by mine operator funding for such incremental MSHA compliance sampling. One means for obtaining this support could be a reasonable and fair operator fee, based on hours worked, or other equivalent means designed to cover the costs of compliance sampling. Any operator fee program should include an accountability system to ensure the uniform applicability of the program throughout the industry. The fee should only be utilized for the specific purposes of required compliance sampling.

c. 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 exposures under usual condition of work. In this regard, MSHA should explore all possible means to secure adequate resources to achieve this end without adverse impact on the remainder of the Agency's resources and responsibilities. Compliance sampling should be carried out at a number and frequency at least at the level currently required of the operators and MSHA. The miner's representative would be afforded the opportunity to participate in these inspection activities as provided in Section 103(f) of the Mine Act.

The UMWA believes that one of MSHA's highest priorities must be to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program. To accomplish this, we believe that MSHA must take full responsibility for the tasks of compliance sampling in lieu of the proposed system under which

operators will still be primarily responsible for carrying out such compliance sampling.

The second problem with the proposed rule is with the formulas set forth in the rule for calculating equivalent concentrations when a miner works an extended shift. These formulas are too complicated and confusing. Although our nation's miners are very skilled at their trade and the most productive in the world, most are not mathematicians. The Union would recommend that these calculations be simplified and set forth in an easy to read chart. As proposed in the rule we fear that miners will not be able to figure out their exposure limits when working extended shifts. The UMWA appreciates the Agency taking into account the fact that most miners work more than an eight hour shift but there must be a simplified way to arrive at the permissible concentrations than that in the proposed rule.

The last problem with the proposed rule falls under Section 70.208 paragraph (h). Under this section, when an operator is unable to maintain compliance with the applicable standard for an MMU and makes the determination that all feasible engineering or environmental controls are being used, it may request approval through the District Manager to use supplementary controls, including worker rotation, to reduce affected miners' dust exposure. The UMWA understands that the intent of this proposal is to protect the affected miner from the dusty environment, however, this practice would be completely contrary to the requirements and spirit of the collective bargaining agreements in place at all UMWA represented mines. Under the UMWA collective bargaining agreement, all jobs are posted and awarded based on each miner's seniority at that mine. The miners' seniority, and job bidding right, are cherished, revered and held as a

sacred right of all miners working at unionized operations. An employee who has bid for and been awarded a particular job expects that he will work in that position. To rotate a miner from their job classification for six months is totally unacceptable. The UMWA has historically agreed that respirable dust must be controlled through engineering and environmental measures. Rotating a miner out of their normal job is not an adequate solution.

Another problem with this provision is that it gives the operator the explicit right to determine “that all feasible engineering or environmental controls are being used” or have been exhausted. When the operator determines that it has done all it can to control dust through engineering or environmental controls it then simply asks the MSHA District Manager to approve a plan that permits worker rotation. The UMWA questions what role MSHA plays in making the determination that all “feasible and engineering or environmental controls” have been exhausted. That decision must not be left entirely up to the operator, and MSHA must play an affirmative role in determining that all such measures have actually been exhausted to control the dust through engineering or environmental means. Miners' representatives must also be involved in this process. Worker rotation is not the answer to controlling respirable dust. Simply rotating workers would only expand the number of miners exposed to inappropriate levels of coal dust instead of addressing the problem by reducing the dust. All shearer operators, shield operators, and miner operators are the prime candidates who would likely be rotated from their job classification to another position. MSHA must take a more substantial role in requiring operators to implement all feasible means of engineering or environmental controls and provide expert advice to

the operator on how to achieve this goal rather than simply reviewing requests to rotate miners. Permitting workers to be rotated out of their normal job will not solve the problem, but simply exposes additional miners to excessive dust, and allow the mine atmosphere to remain too dusty. This is not an acceptable solution to control dust and the UMWA opposes this part of the proposed rule.

In sum, the UMWA is generally pleased with this proposed rule, and is supportive of the majority of measures the Agency has taken to reduce miners' exposure to respirable dust. We are delighted that the Federal Government is finally willing to take serious steps to prevent Black Lung. However, we believe that MSHA must be in charge of the sampling; the calculations in the rule must be simplified and miners must not be removed from their jobs as a means for preventing their exposure to dust. Thank you.