

**TESTIMONY OF EDWIN P. BRADY  
AND MURRAY ENERGY CORPORATION  
BEFORE THE  
MINE SAFETY AND HEALTH ADMINISTRATION  
ON THE PROPOSED RULE  
“LOWERING MINERS’ EXPOSURE TO  
RESPIRABLE COAL MINE DUST,  
INCLUDING CONTINUOUS PERSONAL DUST MONITORS”  
RIN 1219-AB64**

Edwin P. Brady  
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January 11, 2011  
Evansville, Indiana

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Good afternoon, Dr. Wagner and members of the panel. My name is Pat Brady. I am the Manager of Safety and Regulatory Affairs for Murray Energy Corporation, the largest privately-owned coal production and sales company in the United States. Murray Energy has subsidiary operations in six states, and produces approximately 30 million tons of bituminous coal per year. Our 3,000 dedicated employees take tremendous pride in knowing that our work provides affordable energy to homes and businesses throughout the country.

We want to thank the panel for the opportunity to present our concerns about the proposed rulemaking. I have spent my entire adult life advocating and working to make coal mines safe. I spent over 34 years at MSHA, and the past 3½ years at Murray Energy, and I know many of you from my years of working on coal mine safety and health issues.

I am here today to request that this rule be withdrawn because it is unsupported by science and because it will be impossible for mine operators to follow.

I have a Bachelor of Science degree in Mining Engineering from West Virginia University, and a Master of Science in Safety from Marshall University. I will provide a copy of my CV as an attachment to my comments which will detail my certifications and work experience for MSHA and the coal industry.

Thirty-eight years ago I started working as a co-op student for the U.S. Bureau of Mines, Coal Mine Safety and Health, in Morgantown, WV. Part of my duties then was working in the dust lab preparing and taking care of dust pumps and weighing dust samples. Eventually, I began training our inspectors in health regulations and dust sampling procedures. In 1976, I began working for the Mining Enforcement and Safety Administration as a Mining Engineer in District 3, in West Virginia, reviewing roof control and ground control plans, conducting engineering studies, and handling other matters relating to mine health and safety. I started out in 1977 performing health audits, leading an accident reduction team, judging mine rescue meets, and writing various safety guidelines for MSHA. In my 34½ years with Coal Mine Safety and Health, I was exposed to mines of all type – large mines, small mines, mines with longwalls,

conventional mining, mines with different levels of methane, mines with various types of roof support systems, mines with widely varying seam thicknesses or vastly different geological conditions – you name it, I've seen it. While with MSHA, I was involved in rescue and recovery operations at serious mine accidents in the last three decades, and have seen first-hand the reason coal mine safety and health is such a critical responsibility for the industry and the regulators. Good intentions and effort are never enough. It is essential that we get it right. It is a highly technical endeavor in an industry that is becoming increasingly complex. My goal here today is to offer my insights, based on my experience and technical knowledge, so that MSHA can avoid promulgating an unreasonable and unfounded rule.

During my career with the federal government, I held a number of positions, including Mining Engineer, Supervisory Coal Mine Safety and Health Inspector, Assistant District Manager for Technical Programs, and then a District Manager, where I remained until 2003, when I became Manager of National Mine Health and Safety Academy. As Manager of the National Mine Academy, from 2003 to 2007, I was responsible for training MSHA inspectors to enforce federal health and safety standards. Throughout my three decades with the agency, I was constantly and deeply involved in efforts to deal with the respirable dust that is present in coal mines.

In the early and mid-1990s, I was the Chairman of a regulatory rewrite committee, charged by my superiors at the agency with rewriting portions of the dust regulations to address ongoing concerns with respirable dust exposures. We were making some progress in this endeavor when NIOSH issued its 1995 Criteria Document. From that point on, the process of rewriting the dust regulation stopped. Instead, various interested parties continued to push for the reduction to a 1 milligram standard. Many of us questioned the data NIOSH used in recommending the 1 milligram standard. In fact, I can remember being in Cincinnati listening to the disagreements between MSHA and NIOSH. MSHA rejected, or as history proves, did not follow NIOSH's recommendations. I find it strange that it has taken fifteen years for MSHA to decide to implement the Criteria Document, especially when it had little, if any, support in 1995 from MSHA. My beliefs in 1995 that NIOSH's data was flawed have been strengthened by comments from various scientists whom we have engaged to study the issue.

What I do know is that MSHA began showing great interest in the development of a Continuous Personal Dust Monitor. This concept was intended to give the miner a tool with which he could protect himself from the harms of respirable coal dust. Never did I hear discussion that this tool would be used for enforcement of an environmental standard. Its conception was to give instant real time measurements to the miner for his individual protection and to help determine when respiratory protection, i.e., an air stream helmet was needed. Another hope for the CPDM was its conceived ability to evaluate mining systems and to optimize dust control measures. The CPDM of today has the potential of accomplishing these tasks.

MSHA has a legal responsibility, and the industry has a moral responsibility, to honestly and thoroughly evaluate the evidence and thereafter make rules that will protect our nation's coal workers. But it is simply irresponsible to resurrect NIOSH's outdated and defective conclusions from 1995 to support a drastic overhaul of the coal dust standards and sampling processes without valid, peer-reviewed scientific analysis. In fact, and after listening to experts in health science, I am appalled that the Federal Government after being given the directive in the 1969 Federal Mine Safety and Health Act to eliminate Black Lung did not develop a game plan put together by experts from the workers, industry, and government to study and develop an agreed upon strategy to eliminate black lung from the mining industry. If that plan exists, I would like to have a copy, and I will stand corrected. I was part of this problem while attempting to rewrite health regulations in the 1990's, but I also remember our group voicing similar concerns without any resolve.

The issue is simply too important to do it in a haphazard manner. I have long shared with many of you here today the commitment to protect our nation's coal miners from the harmful effects of respirable dust. I have personal experience with the issue, as do many of us who have made our careers in coal mining. My grandfather entered the mines at age 13, was later told that he had contracted black lung, and left the mines by age 28. My father spent 50 years working in coal mines, and I joined him when I was 13 years old, handling explosives in both underground and surface mines. I have seen others suffer from the consequences of exposure to coal dust in the past when dust levels were high and we lacked sophisticated methods to address it. I spend a lot of time in coal mines myself, breathing the same air as the workers we employ. I have spent countless hours at every Murray Energy underground operation training our miners in the hazards of respirable coal dust, accepted ventilation and dust control techniques, and applicable federal health and safety regulations. We have had instructors from the National Mine Health and Safety Academy doing the same. So we take this issue extremely serious. However, after spending over three decades working towards safer conditions, I am extremely disappointed with the proposed rule and must request that MSHA withdraw the rule in its entirety and start over. Not only is this proposed rule unsupported by the relevant scientific data, but compliance is simply not feasible for the majority of U.S. coal mines.

I again encourage MSHA to listen closely to some of the scientific and economic experts who will offer their expertise at future hearings during this rulemaking period. It is essential that any rule modifying the working environment in American coal mines be based upon sound epidemiological data and fully evaluated in terms of its true costs and benefits. One need not dig deeply into the epidemiological studies to see the flaws in MSHA's logic. MSHA says on the one hand that the industry is already close to complying with the 1 milligram standard, but on the other hand, now insists that reducing the standard to 1 milligram will cause a dramatic reduction on coal workers pneumoconiosis. This is illogical.

We are closely examining MSHA's quantitative risk assessment and cost/benefit analysis and we see a number of items that have been either ignored or not given proper consideration. While we hope to provide a more thorough analysis detailing the flaws in MSHA's analysis at a later hearing, it is apparent that the agency has largely ignored the additional compliance costs, particularly increased manpower requirements, that this new rule will entail. It's beyond dispute that more personnel will be required underground just to monitor the CPDMs and handle the increased sampling.

MSHA also needs to give careful consideration to the ergonomic cost of loading further heavy equipment onto the bodies of coal miners, who are already burdened with heavy tools and equipment while performing their difficult work. What effect will the addition of the CPDM have upon the worker's body, his day-to-day mobility, and his safety? We don't know because no studies have been done. We will provide further information on potential ergonomic issues with the CPDM units during future hearings.

Those of us who have been working with the CPDM units continue to have very serious doubts about the validity and reliability of those devices when subjected to actual working conditions. We are not reassured by the manufacturer's declarations that the CPDMs are working properly because we have seen them repeatedly fail despite expensive and time-consuming maintenance efforts. We continue to explore these shortcomings, and will provide MSHA with further detail on the technological concerns relating to the essential technology upon which these proposed rules are based.

From a logistical standpoint, I have grave concerns about MSHA's ability to keep up with the dramatically increased sampling. MSHA has an ongoing problem with getting plan approvals done in a timely manner, which has caused extensive production delays throughout the nation, so we cannot begin to imagine how the agency will deal efficiently with another series of plans that will be generated with this rule. And we predict that the many mine operators who find themselves simply unable to comply because the proposed standard is simply technologically impossible, will be faced with countless citations and violations and, in many cases, ultimately be shut down. I mistakenly used the word citation. In my opinion, these will be unwarrantable orders giving your special investigators several new cases to investigate. These production delays and shutdowns don't just cost the industry profits, they cost jobs. They also lead to higher electricity prices for households and businesses already struggling to overcome one of the worst recessions in our country's history. Even if this rule were effective – which it is not – MSHA should not inflict these onerous and technologically impossible requirements without honestly and accurately evaluating their impact on our coal-mining communities and our nation as a whole.

Many of us who have been in coal mining for since the 1970s fear that the proposed rule will also undermine the industry's ongoing efforts to become more mechanized. And given that the relatively shallow coal reserves have been pretty thoroughly mined, today's operators have to mine even deeper than ever before. Technological advances in the industry, such as longwall mining, have allowed more coal to be produced by fewer employees, thus reducing health and safety risks dramatically.

However, the proposed rule will make the highly productive and efficient longwall method of mining much less feasible for many operators. In your economic analysis, you cost out items such as surfactant systems and headgate scrubber systems. I assume your purpose of including these systems is to suggest that these types of controls will effectively control respirable coal dust. I would simply ask how many longwalls employ these systems and what type of information is available to show that they work as anticipated. Longwall mining is also safer, as it offers better roof control and eliminates the need for roof bolting at the face. It also allows for better ventilation controls, which has a positive impact on respirable dust levels. MSHA should promote the automation of coal mining by encouraging the use of the longwall method – not promulgating rules that make it infeasible.

There is certainly more that can be done to protect our coal miners' lungs from damage. Murray Energy wishes to be an active participant in the ongoing efforts to protect workers and will continue to offer, through myself and others, technical and scientific information to assist the agency in this process.

Thank you for your time. I am willing to answer any questions you might have for me.