TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
EXPOSURE OF UNDERGROUND)
MINERS TO DIESEL EXHAUST)

Pages: 1 through 23

Place: Pittsburgh, Pennsylvania

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BEFORE THE U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:)
)
EXPOSURE OF UNDERGROUND)
MINERS TO DIESEL EXHAUST)

Room 1-3
Hyatt Place Pittsburgh -
North Shore
260 North Shore Drive
Pittsburgh, Pennsylvania

Wednesday,
July 21, 2016

The parties convened, pursuant to the notice, at 10:00 a.m.

APPEARANCES:

SHEILA McCONNELL, Director
Office of Standards, Regulations and Variances

MICHAEL WRIGHT, Director
Health Safety and Environment for the
United Steelworkers

ALFRED DuCHARME
Office of the Solicitor, Department of Labor

GREG MEIKLE, Chief of Health, Coal,
Mine Safety and Health

PAMELA KING
MSHA Office of Standards

MARVIN LICHTENFELS
Deputy Administrator, Metal and Nonmetal Mine
Safety and Health

P R O C E E D I N G S

(10:00 a.m.)

MS. MCCONNELL: Again, my name is Sheila McConnell. I am the Director of the Office of Standards, Regulations and Variances for the Mine Safety and Health Administration. I would like to remind everyone that is here if they could please sign the attendance sheet out front. If you sign the sheet for our public hearing, we would also ask that you also sign the sheet for this public meeting.

I am the moderator for this public meeting on the Agency's request for information on exposure of underground miners to diesel exhaust, which was published in the Federal Register on June 8, 2016. On behalf of Assistant Secretary Joseph Main, I want to welcome all of you here today and thank you for your attendance and participation.

Let me introduce the members of our panel today. We have Marvin Lichtenfels, Deputy Administrator, Metal and Nonmetal Mine Safety and Health; Greg Meikle, Chief of Health, Coal, Mine Safety and Health; Al DuCharme, our Office of Solicitors; and again Pamela King in the front who works with the MSHA'S Office of Standards.

This is the second of four public meetings.

The remaining meetings will take place at MSHA's Headquarters in Arlington, Virginia and on August 4 in Birmingham, Alabama. We held our first meeting in Salt Lake City, Utah this past Tuesday.

The purpose of this public meeting is to receive information from the public that will help MSHA evaluate the Agency's existing standards and policy guidance on controlling miners' exposure to diesel exhaust, and to evaluate the effectiveness of the protection now in place to preserve miners' health.

This meeting will be conducted in an informal manner. Speakers and other attendees may present information to the court reporter for the rulemaking record. MSHA will accept comments and other information for the record from any interested party.

If you have not already done so, as I mentioned, please sign the attendance sheet. We have copies of the request for information and the notice announcing the public meetings in the hallway in front of the room. The verbatim transcript may be viewed on Regulations.gov and MSHA's website.

But before we hear from you, I want to provide some background on why MSHA is reviewing the

Agency's existing standards. MSHA regulates miners' exposures to diesel exhaust to prevent the health risk and to prevent material impairment of health in miners.

Diesel engines are widely used in mining operations because of their high power output and mobility. Many mine operators prefer diesel powered machines because they are more powerful than most battery-powered equipment and can be used without electrical trailing cables which can restrict equipment mobility.

In March 2012, the National Institute for Occupational Safety and Health and the National Cancer Institute completed the Diesel Exhaust and Miner Study. This epidemiological study was conducted to determine whether breathing diesel exhaust could lead to lung cancer and other health outcomes.

In June 2012, the International Agency of Research on Cancer concluded that there is sufficient evidence of carcinogenicity in humans from diesel exhaust exposure to classify diesel exhaust as a human carcinogen.

Following the International Agency for Research on Cancer classification of diesel exhaust as a human carcinogen, MSHA issued two health hazard

alerts, one on diesel exhaust and diesel particulate matter in underground coal and metal/nonmetal mines and one on nitrogen dioxide emissions in underground coal mines.

MSHA issued the first health hazard in partnership with OSHA on January 10, 2013. MSHA issued a second health hazard on August 6th, 2013. This alert reinforced the dangers of platinum-based particulate filters as a source of increased concentration of nitrogen dioxide in underground coal mines.

This request for information seeks information and data on the effectiveness of the existing standards and controlling miners' exposures to diesel exhaust, including diesel particulate matter.

MSHA specifically requests information on a series of questions related to (1) the use of non-permissible light-duty diesel powered equipment in underground coal mines; (2) maintenance of diesel powered equipment in underground coal mines and record keeping requirements; (3) the types and effectiveness of after treatment and engine technologies used in coal and metal/nonmetal underground mines.

MSHA's interested in best practices for

selecting and using after treatment devices, and (4) under MSHA's existing standards for metal/nonmetal underground mines, total carbon measurements are used as a surrogate for diesel particulate matter when determining miners' exposures. MSHA is seeking information on alternative surrogates, other than total carbon, to estimate a miner's diesel particulate matter exposure.

MSHA's also seeking information on the advances and sampling and analytical technology and other methods for measuring a metal and nonmetal miner's exposure to diesel particulate matter. Lastly, MSHA's also interested in data and information on existing controls that were most effective in metal/nonmetal's exposures and what are the technological challenges and relative cost of reducing diesel particulate matter exposure limit from the existing standard of 160 micrograms of total carbon per cubic meter of air.

MSHA is interested in receiving any other data or information that may be useful to MSHA in evaluating miners' exposure to harmful diesel exhaust emissions including the effectiveness of existing control mechanisms for reducing harmful diesel emissions and limiting miners' exposures to harmful

diesel exhaust emissions.

At this time, we will hear our first presenter. Again, when you come make your presentation, please give your name, spell your name for the court reporter, and she has asked if you could speak either louder or more directly into the microphone. So our first speaker is Ron Bowersox and Curt Burton. Again, could you just, for the record.

MR. BOWERSOX: My name is Ron Bowersox, and that's B-O-W-E-R-S-O-X. Curt, come on.

MR. BURTON: And I'm Curtis Burton, that's C-U-R-T-I-S, B-U-R-T-O-N.

MR. BOWERSOX: Okay. We're going to add additional comments later on, but want to briefly speak today. Okay, I said my name is Ron Bowersox, and I'm an International Safety Representative for the United Mine Workers of America. Curtis Burton, he's a local safety committeeman. He works at the Cumberland Mine, and he's also a mechanic on diesel equipment.

My area I cover is Pennsylvania, West Virginia and Ohio. I'm also a member of the PA Diesel Tech Advisory Committee on Diesel Equipment. The United Mine Workers of America is happy to see the Agency begin the rulemaking process for much needed enforcement on light-duty diesel equipment in

underground coal mines.

As a Safety UMWA Representative for the International Union, I coordinate safety committee training classes at the Beckley Mine Academy two times a year. We have UMWA members attend that class from all parts of the United States, even Canada. One of the classes we offer down there, it's a week long class and what it is, is West Virginia Diesel Training Class and also gives you the right to be an instructor. Actually, Curtis attended one of those classes.

Many of our members request this diesel class even though they don't work in PA, Ohio or West Virginia, because just the technology and the knowledge they learn really helps them at their mine sites. You know, of course, we have diesel law in PA, West Virginia and Ohio, all three states have a state law which really addresses light-duty diesel equipment.

After these guys start their class, it only takes a few hours into the class to realize, you know, what protections are missing. There are hundreds of pieces of light-duty equipment being operated in underground coal mines outside of PA, West Virginia and Ohio that are not being inspected by a state

agency or MSHA.

The UMW believes all miners should have the same protection. The right thing to do is for the Agency to include in their inspections, light-duty diesel equipment, which is just more of the Mantrips. We need this done quickly to protect our miners, and that's the most precious resource we have. So that's kind of all I need to say today. Curt?

MR. BURTON: Really, I would like to reiterate the things my colleague, Ron, said. As he stated, I've been through the training course in Beckley, and I went in, Randy Bell is the instructor, and he takes us in and he shows us an MSHA approved light-duty piece of equipment. I wouldn't want that in my mine. I believe every coal miner in the United States should be protected by the same standards that I'm afforded the opportunity to work under.

With the filtration and the reduction in emissions that our state law requires us to achieve, I believe all miners should have that luxury of working in that atmosphere that I get to work in.

MS. MCCONNELL: Are you going to be making comments for the record in terms of written comments?

MR. BURTON: Oh, we will definitely make comment.

MS. MCCONNELL: And you're going to be providing some specifics in terms of the types of protections you think are missing.

MR. BOWERSOX: Exactly. Correct, correct.

MS. MCCONNELL: The issues that you see with light-duty equipment.

MR. BOWERSOX: Yes.

MS. MCCONNELL: The type of protections provided to PA that should be protected -- I'm sorry, to Pennsylvania coal miners that should be protected to other coal miners, underground coal miners.

MR. BOWERSOX: That's correct.

MS. MCCONNELL: Okay. Just wanted to --

MR. BOWERSOX: Actually, I just found out about the meeting. So I wasn't really prepared today for that.

MS. MCCONNELL: No, that's fine.

MR. BOWERSOX: But I will definitely do that.

MS. MCCONNELL: That's great. Okay, well, I don't have any other questions. But I do encourage you to provide some specific detailed information and data to the record for us to help evaluate our existing standards.

MR. BOWERSOX: That will happen.

MS. MCCONNELL: Do you have anything, Greg, that you want to ask or add?

MR. MEIKLE: No.

MS. MCCONNELL: Okay. Well, I thank you for coming and presenting today, and we look forward to hearing your, see your written comments.

MR. BOWERSOX: Thank you.

MS. MCCONNELL: Thank you. These gentlemen were the only ones that had signed up to speak. It doesn't prevent anyone else who may want to come and make remarks. This is a request for information. So we're seeking data information specific to allow us to evaluate our existing standards and their protection. So this is a good opportunity to come forward if you have anything to say.

MR. CHAJET: Good morning again. My name is Henry Chajet with the firm of Husch Blackwell, and we're here today representing the Mining Coalition as we were in the earlier portion of this hearing on mine examination proposed rules.

The request for postponement and additional time that we filed with the Agency applies to both rulemakings. So you will note that we've asked you to extend this request for information, and to separate the two rulemakings.

We don't view back to back hearings as separate rulemakings, and it is very difficult to address a highly scientific medical and engineering question, which you have posed, a series of, in a compressed time frame.

You may recall that a similar Coalition participated extensively in your diesel exhaust rulemaking activities, and that that Coalition presented probably ten scientists, physicians, toxicologists and engineering witnesses or more, perhaps, over time and did specific research on the issues you're addressing now. That was a multi-year rulemaking, and again we are concerned that this looks like an attempt to do a compressed and double rulemaking at the same time that won't allow for adequate time for input.

I don't have any specific input today, because the time's so short that you provided. And we focused on the mine exam rule because it's a proposed rule and this is a request for information. So we're hoping that you will extend and permit additional time and separate these issues.

Again, I have never seen, in 37 years, an accelerated rulemaking like this, or a back-to-back rulemaking two for one on the same day on complex --

it just hasn't happened ever. And the reason for that is because it doesn't allow the regulated parties or the Agency to adequately understand and comment and evaluate the issues that you've raised.

So we would encourage you to separate these rulemakings, extend the time and not try to do this in what appears to be a three to five month rulemaking. Thank you very much.

MS. MCCONNELL: Thank you, Mr. Chajet, for your comments, and I'd like to acknowledge that we have received your request and are considering your request for extension.

MR. CHAJET: I remember going to MSHA for the first time in 1978, and I went to meet with the head of Coal and he looked at me about the conversation we were having about an issue in the field, and he says, "I understand your concerns. I sympathize with you, and I'll get back to you." I haven't heard back since then. I'll just leave you with that thought. Thank you. That was Don Schlick, by the way.

MS. MCCONNELL: Is there anyone else who would like to make a presentation or remarks or speak? Come on down. Again, for the record, could you state your name?

MR. WRIGHT: Mike Wright, the Director of Health Safety and Environment for the Steelworkers. Along with Henry, I was deeply involved in the rulemaking that established the current standard. Before that rulemaking commenced, working in some underground mines, metal/nonmetal mines, was like working in the tailpipe of a city bus.

Today, it's better. It's like working three feet back from the tailpipe of the city bus. But from what I've been able to see, underground miners are still the most highly exposed occupational group when it comes to diesel emissions. So MSHA's current activity on this issue is very welcomed.

Let me comment on some of the issues that I think need to be considered. We will submit more comments and what information we can, what technical information we can at the appropriate time. But I just want to raise a few issues.

First, there was a lengthy back-and-forth about whether the proper surrogate was total carbon or whether it was elemental carbon, and in fact as you know and as MSHA points out in the notice –- I'm sorry, in the Request for Information, the original standard was based on total carbon because the epidemiology was based on total carbon.

During the lengthy period after the rule was promulgated, but before it went into effect when various parties, MSHA, us and the industry were discussing how to respond to an industry lawsuit; we agreed that the proper surrogate really was elemental carbon and NIOSH was able to provide a conversion factor from total carbon to elemental carbon at what was then the MSHA interim level. Of course, the standard was due to be reduced in sort of two steps.

The problem was they were not able to provide such a conversion factor for the final step. So the final standard had to go back to total carbon.

We believe that the proper surrogate really is elemental carbon. And the way to determine that proper final standard is not to try to get a conversion factor, because the data shows that that's unstable. But to really look at feasibility with respect to elemental carbon, to look at what kind of elemental carbon levels are really achievable, and I believe NIOSH is working on that.

Second, and let me say this. I think the only issue in this possible rulemaking ought to be feasibility. The health effects debate is done. We know that diesel causes cancer. There should be no further debate about that. And the only real question

is how low we can get those exposures. That's what the rulemaking ought to concentrate on. That's what the analysis ought to concentrate on.

But it ought to concentrate on one thing in addition to what the standard is currently based on. The current standard is based on, essentially total mass, 160 micrograms.

We are concerned that mass may not be the only thing we need to measure. Carcinogenicity may be a surface phenomenon. It may be that what really is important is not the amount of mass that a miner breathes but the amount of surface area you get when you add up all of those particles. That's not – it's not proven that that's the proper measurement, but it's also not proven that mass is the proper measurement. So we really need to look at both.

If it is a surface phenomenon, then the small particles are probably more dangerous than the large ones. Because an equivalent mass of, say, one microgram particles has more surface area than an equivalent mass of 5 microgram particles.

Some of the filtering media may have the effect of reducing mass, but actually increasing surface area. That's because if they're taking out the larger particles but letting the smaller ones

through, all things being equal, that should not increase the surface area. That should decrease the surface area.

But if the large particles are needed for the smaller ones to agglomerate on, and there's some indication that that may be the case, then we need to look at what those filtering media should do.

So the data in the examination of what comes in and in NIOSH's research and research generally on this issue, we need to look not only at mass but at surface area and what the different diesel controls are doing with respect to surface area. Those are things we are keenly interested in.

As for the requested delay, we're of two minds on that. One is that if we need to delay in order to get the right data, then we ought to. On the other hand, diesel kills. So every day we delay, certainly every month we delay, every year we delay, in moving to a standard based on feasibility -- which we are convinced will be a lower standard than what we have now, the data certainly support that. Every day we delay in moving to that lower standard puts miners at risk and costs miners' lives.

So if we need to delay to get the data, that's one thing. But delay for the purpose of delay

has a cost. Thank you.

MS. MCCONNELL: Mr. Wright, are you preparing written comments, too, as well for the record or --

MR. WRIGHT: Yes.

MS. MCCONNELL: Okay. Thank you. I don't have any further questions. None?

Anyone else like to provide some remarks? Please state your name and organization for the record.

MR. DAVIS: Yes, my name is Jene Davis. I'm an independent consultant, and I hadn't really figured -- I didn't prepare anything. But I need to bring one thing out, and that is that as I read through the Federal Register, they tied it at 2.5 gram per hour output of diesel engine, okay, and that was done in the last rulemaking. We argued it in the last rulemaking that 2.5 grams per hour is not a standard. We must, MSHA has to get rid of that and has to come up to a standard.

What 2.5 grams per hour allows is: a smaller 30, 40, 50 horsepower engine is allowed to produce much more DPM per cubic meter of air than a 100 or 200 or 300 horsepower engine. So the grams per hour is not a standard. Grams per horsepower hour

would be a standard, but grams per hour is not a standard.

To get down to a standard, what MSHA needs to look at is: the grams per hour output of the engine versus the vent plate. After all, it is what the coal miner's breathing is what we're worried about; okay. So we've got to get down to how many, what is the milligram per cubic meter of air.

And the 2.5 gram standard will not get us there. We must take an equation that takes into known gram per output of the engine and a known vent plate to get to grams per hour. We then add a filtration system to reduce it further; okay. And like I said, I really didn't -- but that point has to come out. We argued that point 20 years ago, and it didn't go anywhere.

Since I'm here, I might as well bring another one up that has, this has bothered me for years.

MS. MCCONNELL: Sure.

MR. DAVIS: The definition of a light-duty. Any time I've spoken to anyone at MSHA about light-duty equipment, the hierarchy of MSHA believes light-duty equipment to be personnel carriers. But by definition, it is not solely personnel carriers.

And for years, I have tried to get testing and filtration of light-duty equipment. And I keep being told that the equipment is only run for an hour or so a day, light-duty, and therefore the output, the DPM output of this is insignificant to the amount of DPM that goes into the air.

Well, what you have to understand is: we have mines in Pennsylvania, of course they're under Pennsylvania rule. They were filtered, and they are tested, emissions tested. But nowhere else in the nation are they.

If you have a 20-ton locomotive rail mount, and that locomotive does not haul long wall components, it is considered light-duty equipment even though it runs back and forth through the mine all day long with supplies hooked to it, 10-12 cars it supplies. This is light-duty. Anywhere else but Pennsylvania, West Virginia and Ohio, this piece of equipment never needs testing emissions-wise, never needs filtration. This is ludicrous, guys. This is the 21st century.

We also have on light-duty, heavy-duty, your categories, we have engines that fall in between. We use them for both either light-duty or heavy-duty. One of the engines I'll bring up that is very easy to

check is the 2011 Deutz. 2011 Deutz is used in the heavy duty category. If it's in the heavy duty category according to MSHA, it must be filtered to 2.5 grams at least; okay. It must be tested emissions-wise weekly. Take that same engine, put it in a mantrip personnel carrier, never has to be tested, never has to be filtered.

So therefore you, MSHA must figure it is the piece of equipment that's causing the problem, not the engine; correct? Because we have the same engine that falls into two categories here. One category must be tested, must be filtered. The other category does not, same engine.

Those two items must be corrected. I will put electronic -- yeah, I'm in the process of putting it together now. I had no intention to speak, but those couple things have bugged me for 15 years now. So I needed to get it off my chest.

MS. MCCONNELL: No, I appreciate you making your comments. I thank you for coming and making your comments, and I appreciate your comments being -- written comments being submitted to the record as well.

MR. DAVIS: Yeah, that will be coming in a couple of weeks.

MS. MCCONNELL: That's fine. That's good.

MR. DAVIS: All right.

MS. MCCONNELL: Thank you.

Anyone else like to come and make comments for the record? I'm just pausing here for everyone to collect their thoughts.

(Pause.)

MS. MCCONNELL: So it seems that no one else will like to speak. Okay. Therefore, I am going to conclude MSHA's public meeting on the request for information on exposure of underground miners to diesel exhaust.

Again, on behalf of Assistant Secretary Joseph Main, we appreciate your participation in this rulemaking process and encourage you to submit your comments by September 6, 2016. And please, in your comments be as specific as possible. Only through specific information are we going to be able to sufficiently evaluate our existing standards.

With that, the meeting is now concluded, and I thank you, and all have a good day.

(Whereupon, at 10:29 a.m., the meeting in the above-entitled matter concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: N/A

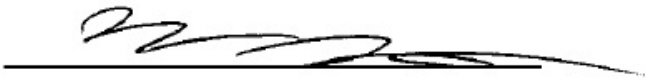
CASE TITLE: Exposure of Underground Miners to Diesel Exhaust

DATE: July 21, 2016

LOCATION: Pittsburgh, Pennsylvania

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the U.S. Department of Labor, Mine Safety & Health Administration.

Date: July 21, 2016



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