

IN THE MATTER OF:)
)
REQUEST FOR INFORMATION ON)
EXPOSURE OF UNDERGROUND MINERS)
TO DIESEL EXHAUST)

Pages: 1 through 24
Place: Salt Lake City, Utah
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BEFORE THE U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:)
)
REQUEST FOR INFORMATION ON)
EXPOSURE OF UNDERGROUND MINERS)
TO DIESEL EXHAUST)

Salt Lake City, Utah

Tuesday,
July 19, 2016

The parties convened, pursuant to the notice, at
11:30 a.m.

APPEARANCES:

MSHA Panel: SHEILA McCONNELL, MARVIN LICHTENFELS,
ALFRED DUCHARME

Also present:

DON ROBY, Health Specialist in Coal Mine Safety
and Health.
DWAYNE BROWN, Diesel Specialist, District 9

Speakers:

DORIAN PIA
JAMES NEWMAN
JIM POULSON

P R O C E E D I N G S

(11:30 a.m.)

MS. McCONNELL: Good afternoon. My name is Sheila McConnell, and I am the Director of the Office of Standards, Regulations and Variances for the Mine Safety and Health Administration. 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 8th, 2016.

On behalf of the 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. We have Marvin Lichtenfels, our Deputy Administrator, Metal/Nonmetal Mine Safety and Health. In the audience we have Don Roby, our Health Specialist in Coal Mine Safety and Health. On my left we have Al Ducharme from our Office of the Solicitor. Also in our audience we have Dwayne Brown, Diesel Specialist, District 9. And Pamela King, from the Office of Standards, is in the front, and she also works for MSHA.

This is the first of four public meetings. The remaining meetings will take place on July 21st

1 in Pittsburgh, Pennsylvania; July 26th at MSHA
2 headquarters in Arlington, Virginia; and August 4th
3 in Birmingham, Alabama.

4 The purpose of this meeting is to receive
5 information from the public that will help MSHA
6 evaluate the Agency's existing standards and policy
7 guidance on controlling miners' exposures to diesel
8 exhaust and to evaluate the effectiveness of the
9 protections now in place to preserve miners' health.

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

16 If you do not -- if you have not already
17 done so, and this is important, please sign the
18 attendance sheet at the back of the room. We need a
19 separate attendance sheet for this meeting from our
20 public hearing held this morning.

21 We have copies of the Request for
22 Information and the notice announcing the public
23 meetings in the back of the room. A verbatim
24 transcript can be viewed on regulations.gov and
25 MSHA's website.

1 Before we hear from you, I would like to
2 provide some background on why MSHA is reviewing our
3 existing standards.

4 MSHA regulates miners' exposures to diesel
5 exhaust to reduce the health risk and to prevent
6 material impairment of health in miners. Diesel
7 engines are widely used in mining operations because
8 of their high power output and mobility.

9 Many mine operators prefer diesel powered
10 machines because they are more powerful than most
11 battery-powered equipment and can be used without
12 electrical trailing cables which can restrict
13 equipment mobility.

14 In March 2012, the National Institute of
15 Occupational Safety and Health and the National
16 Cancer Institute completed the Diesel Exhaust in
17 Miners Study. This epidemiological study was
18 conducted to determine whether breathing diesel
19 exhaust could lead to lung cancer and other health
20 outcomes.

21 On June 12th, the International Agency for
22 Research on Cancer concluded that there is sufficient
23 evidence of carcinogenicity in humans from diesel
24 exhaust exposure to upgrade its classification of
25 diesel exhaust to a classification of diesel exhaust

1 as a human carcinogen.

2 Following the International Agency for
3 Research on Cancer classification of diesel exhaust
4 as a human carcinogen, MSHA issued two Health Hazard
5 Alerts: one on diesel exhaust and diesel particulate
6 matter in underground coal and metal and nonmetal
7 mines, and one on nitrogen dioxide emissions in
8 underground coal mines.

9 MSHA issued the first health hazard in
10 partnership with OSHA on January 10th, 2013. MSHA
11 issued a second health hazard alert on August 6,
12 2013. This alert reinforced the dangers of
13 platinum-based particulate filters as a source of
14 increased concentrations of nitrogen dioxide in
15 underground coal mines.

16 This Request for Information seeks
17 information and data on the effectiveness of our
18 existing standards in controlling miners' exposure to
19 diesel exhaust, including diesel particulate matter.

20 We specifically request information on a
21 series of questions related to the following topics:

22 The use of non-permissible light-duty
23 diesel-powered equipment in underground coal mines;

24 Maintenance of diesel-powered equipment in
25 underground coal mines and recordkeeping

1 requirements;

2 The types and effectiveness of
3 after-treatment and engine technologies used in coal
4 and metal and nonmetal underground mines. MSHA is
5 interested in best practices for selecting and using
6 after-treatment devices.

7 Under MSHA's existing standards for metal
8 and nonmetal underground mines, total carbon
9 measurements are used as a surrogate for diesel
10 particulate matter when determining miners' exposure.
11 MSHA is seeking information on alternative
12 surrogates, other than total carbon, to estimate a
13 miner's diesel particulate matter exposure.

14 MSHA is also seeking information on the
15 advances in sampling and analytical technology and
16 other methods for measuring a metal and nonmetal
17 miner's exposure to diesel particulate matter.

18 MSHA is also interested in data on
19 existing controls that are most effective in
20 metal and nonmetal miners' exposures; and what are the
21 technological challenges and relative costs of
22 reducing diesel particulate matter exposure limit
23 from the existing standard of 160 micrograms of total
24 carbon per cubic meter of air.

25 MSHA is interested in receiving any other

1 data or information that may be useful to MSHA in
2 evaluating miners' exposure to harmful diesel exhaust
3 emissions, including the effectiveness of existing
4 control mechanisms for reducing harmful diesel
5 emissions and limiting miners' exposures.

6 At this time, I do not think anyone has
7 signed up to make a presentation. So I call on our
8 audience to come forward and provide remarks,
9 information, data on our Request for Information.

10 Just a pause as we wait and gather our
11 thoughts.

12 We really are in an exploratory fashion
13 with our Request for Information in that we will be
14 best served if you provide any thoughts, information,
15 data on our existing standards, existing controls
16 being used. Are they sufficient to protect miners'
17 health?

18 Any examples of best practices operators
19 have used in controlling exposures, especially metal
20 and nonmetal mines? I believe that's below the
21 existing
22 exposure limit of 160 micrograms of total carbon.

23 We don't have any presentations beyond
24 this opening statement.

25 Go ahead.

1 (Mr. Pia speaks from the back of the room.)

2 MS. McCONNELL: Could you -- I'm sorry; I
3 didn't hear you. Could you just -- you can sit down.
4 You don't have to come to the --

5 MR. PIA: No, that's fine.

6 MS. McCONNELL: Unless the -- our court
7 reporter won't be able to hear you.

8 You can hear him?

9 THE REPORTER: No. If you want it on the
10 record, he'll need to come up.

11 MS. McCONNELL: Okay. Yeah, if you're
12 going to have to be on the record -- you don't have
13 to be on the record and I don't have to be on the
14 record --

15 MR. PIA: I just know that many people
16 probably are going to have more questions. I'm
17 surprised that we haven't. But when announcement
18 come out --

19 MS. McCONNELL: Right.

20 MR. PIA: -- where the preliminary -- you
21 know, they mentioned the West Virginia and PA --

22 MS. McCONNELL: And --

23 MR. PIA: -- probably something to be
24 gotten into.

25 MS. McCONNELL: That's right.

1 MR. PIA: Can you explain or maybe magnify
2 it based off of that principle?

3 MS. McCONNELL: Well, they have -- their
4 existing -- they have standards that go beyond our
5 existing standards. They have maintenance and
6 recordkeeping requirements that we do not have. And
7 it's Ohio, Pennsylvania, and West Virginia. And so
8 we threw out -- and "threw out" is too colloquial.
9 We included those states in the RFI and the Request
10 for Information specifically to say, should our
11 standards emulate existing state standards that may
12 be more protective in some senses in terms of
13 maintenance and recordkeeping. That's the only
14 reason.

15 And so if the regulated community doesn't
16 feel that's necessary, then we need to hear that. Or
17 if they feel that it is, then we need to hear that as
18 well.

19 MR. PIA: Is there any data from those
20 specific states using those standards different from
21 anything that's used anywhere else, as far as --

22 MS. McCONNELL: We don't have -- we don't
23 have data, and that's what we're asking for. And
24 that's the thing -- so this is so different than what
25 we just went through. Before, in terms of -- and

1 this is like a rulemaking lesson 101. What we had in
2 the morning was our suggestions of a -- in a proposed
3 rule.

4 In a request for information we are really
5 looking in a very broad manner and requesting
6 anything that we can get on the public in terms of
7 our -- we're evaluating our existing standards. So
8 we need to hear from you in terms of specific
9 questions that will help us evaluate whether or
10 not -- if we move forward and how we move forward.

11 MR. PIA: That's understood. I just --
12 what many of the guys do now to comply is pretty
13 effective, in my mind.

14 MS. McCONNELL: Uh-huh.

15 MR. PIA: And I'm just curious to know
16 what was the strain or what was the idea going to on
17 a broader approach (inaudible). Do they know that
18 what they do is actually better other than what's on
19 paper?

20 MS. McCONNELL: We don't have any -- yes,
21 and we don't have any data. So we have two separate
22 standards for our underground coal and our
23 metal and nonmetal. They're different. So we -- and
24 that's what we're asking for. I mean, they went in
25 that direction, and we need to know if that's

1 something we should consider. And we are -- we're
2 asking that specific question you're asking me, is
3 there data.

4 MR. PIA: So it's basically an open book?
5 And it's not really --

6 MS. McCONNELL: This is an open book.

7 MR. PIA: So in my mind, information you
8 need is based off of what we do now and how we feel
9 that approach is going to be compared to --
10 (inaudible).

11 MS. McCONNELL: Exactly.

12 MR. PIA: And I think it varies in the way
13 that work is done now.

14 MS. McCONNELL: As it applies to the
15 relevant standard in terms of underground coal or
16 underground metal and nonmetal.

17 MR. PIA: So in my mind, some of these
18 end-users really need to share their opinions based
19 upon this. Because from what I know, West Virginia
20 and PA
21 (inaudible)...and I'm not saying it's better or worse
22 or any different. But it is a different way of doing
23 work, and the maintenance of. Is it better or not?
24 That's something to be said. Is it beneficial?
25 Again, that's something to be said. I just thought

1 maybe you guys had some data or some information from
2 there that we could base off of where we are
3 currently now in understanding.

4 MS. McCONNELL: No, we don't. We don't
5 have the data you're asking for. We don't have the
6 data. We're asking you for the data.

7 MR. PIA: Are they willing to give us the
8 information they have?

9 MS. McCONNELL: I'm hoping that they will
10 comment. They can comment just like the rest of the
11 mining community.

12 MR. PIA: Okay. Thank you.

13 MS. McCONNELL: Thank you.

14 Good afternoon.

15 MR. NEWMAN: Good afternoon. My name is
16 James Newman. My thoughts are independent, so -- but
17 a few thoughts about looking into this.

18 First off, in the last few years we've had
19 a lot of new regulations coming out, and I know
20 you're not to that point yet. But an example with
21 the dust regulations and requiring a lot of new
22 technicians, proximity, the new RAs, a lot of this,
23 it's coming on the industry very fast, and the
24 industry is trying to catch up with this rulemaking
25 that is coming faster than anyone can actually keep

1 up with it.

2 So what -- my suggestion along those lines
3 is let's take our time on this in figuring it out.
4 Let's not rush it. Let's get time for some of these
5 other regulations to come into play before we throw
6 another regulation in.

7 Part of the -- a lot of the regulation
8 involves that when a test is taken of the actual
9 diesel, it's right up next to the exhaust, which is
10 not a location that people are really working. I
11 don't know of anyone who goes down and starts
12 breathing up the exhaust.

13 I mean, it's more similar to what you're
14 finding on the roads today, that it's the -- you're
15 within the range of the vehicle, within 25, 30,
16 50 feet, you're downwind of it. So I would like --
17 let's keep in mind that diesel dilution must be a
18 major part of it, because trying to say that one
19 vehicle emits a certain amount of NO₂ or NO, any of
20 those different chemicals -- sorry, I couldn't think
21 of the word -- is not enough. Because if it's
22 diluted, there isn't the issue that you would
23 normally have as if someone was right next to it.

24 And that's where I would suggest that in
25 the studies done by NIOSH, done by MSHA, to really

1 look at the different dilution distances and to take
2 that into account. Because how much air you have
3 going through a section, just an example, you have
4 one section that has bare minimum amount of air, it's
5 going to have a bigger effect. If you have another
6 section that's putting three times the air down that
7 section, it's going to have a much smaller effect.

8 So whether a need is needed on the actual
9 vehicle, I can kind of put that into question, but
10 more looking at the ventilation surrounding it.

11 MS. McCONNELL: Okay.

12 MR. NEWMAN: Those were --

13 MS. McCONNELL: That's very good.

14 MR. NEWMAN: And just once again, let's
15 take our time on this one. We had a lot of stuff
16 coming through very quickly, and it would be good for
17 the industry to be able to discuss this over a longer
18 period than a few months, and next thing we know,
19 we've got it.

20 MS. McCONNELL: Okay. Thank you.

21 Anyone else want to share some thoughts on
22 some of the issues? Any particular interest, coal or
23 metal and nonmetal? We have some broad categories
24 that affect both, which would be any type of
25 after-exhaust treatment and engine technologies.

1 Anybody have any
2 issues there or data, information?

3 This is a pause for us all to collect our
4 thoughts.

5 MR. PIA: Again, can I --

6 MS. McCONNELL: You can come down.

7 THE REPORTER: Can he be at the
8 microphone? Because when he was talking before, I
9 was getting maybe half of what he was saying.

10 MR. PIA: It's good.

11 The information, like the information
12 that's done during testing at the approval center --

13 MS. McCONNELL: Right.

14 MR. PIA: -- you guys review that and see
15 that in comparison to --

16 MS. McCONNELL: We're only approving
17 for -- you're talking about diesel equipment, right?

18 MR. PIA: Yes, our package. Diesel
19 emissions, exactly what -- yeah. Those readings are
20 published for public information. Okay. Based off
21 of that information, that's some of the information
22 you're asking us to get for you is when we have an
23 improved power package or a machine, so to speak,
24 those standards are already -- or those readings are
25 posted. Correct?

1 MS. McCONNELL: So you're an underground
2 coal operator?

3 MR. PIA: No.

4 MS. McCONNELL: Okay. You're metal,
5 underground metal?

6 MR. PIA: I'm actually with a
7 manufacturer.

8 MS. McCONNELL: Oh. You're with a
9 manufacturer of diesel equipment?

10 MR. PIA: Yeah. We specialize in diesel
11 emissions for underground use, and whether it be
12 metal, nonmetal, coal or -- but I guess where I'm
13 going is where these readings are now based off
14 whichever engine is known. Do we have -- or you
15 guys's intent is to improve those numbers? Some of
16 those numbers you look at are raw.

17 MS. McCONNELL: Right. Some of the things
18 that we're asking about is looking also at existing
19 fleet of equipment, which are maybe older engines
20 that are -- light duty is nonpermissibles, meaning
21 that being tested for permissibility. But the use of
22 those, how after-treatment, after-exhaust treatment
23 can be applied -- we're talking now for just
24 underground coal -- could help mitigate exposures.
25 That's a couple of things.

1 So in terms of you being a new
2 manufacturer and getting permission from our approval
3 center, sometime we're even looking for those that
4 have already been approved and underground.

5 MR. PIA: Yes. So my question is based
6 off of that. That information you have now, is there
7 an idea or a discussion of how the PA and West
8 Virginia has come up, is the improvement thereof
9 before, you know, anything gets done, where does
10 that -- my question is where does it actually stem
11 from? Where is it coming from, saying that we need
12 to reach a different number? Does that make sense?

13 MS. McCONNELL: So the reason why we're
14 here is mainly because of recent NIOSH reports that
15 are basically telling us that exhaust -- we've been
16 regulated -- that exhaust now has the ability to
17 cause lung cancer. So it's making us take a second
18 look at our existing -- and we've issued some health
19 haz reports. So we're just taking a second look.
20 And it's not so much what our data has been showing
21 us, because what we've been seeing is some best
22 practices in terms of -- that have, especially in
23 underground metal mines, that exposures have been
24 taken below our existing limit. So --

25 MR. PIA: You just want to see how much

1 better we can get?

2 MS. McCONNELL: Exactly.

3 THE WITNESS: Yes. So based off of --

4 MS. McCONNELL: Our existing data -- we'll
5 be looking at our existing data; we'll be hearing
6 what best practices and information that we're
7 getting from the mining community to determine what
8 is -- what benefits can be achieved, what costs would
9 be occurred by making any changes.

10 MR. PIA: It's just -- where I'm going
11 with this too is a better understanding from you
12 guys, which I'm sure the communication with the
13 approval center is sometimes, and we've seen this
14 many times, is the more restrained or the more
15 components we put on an engine is -- actually, the
16 numbers go south. They don't actually get better,
17 you know. And based off the ruling that we had to
18 follow prior to, our restrictions start right from
19 the start, you know. In other words, like
20 temperature, cooling temperatures, you know. When
21 you get into the above-ground stuff, room
22 temperatures have a lot to do with emissions.

23 Well, underground we can't go 212s. Well,
24 we're basically restricted right off the bat. So now
25 you're asking us -- I shouldn't say you're asking us;

1 but now we want to look at different ways of trying
2 to lower those numbers.

3 MS. McCONNELL: Yeah.

4 MR. PIA: My suggestion is we may want to
5 take some look at some previous -- previous
6 regulations that will allow us to do the technology
7 that's available now based off those restrictions
8 that we're not able to.

9 MS. McCONNELL: Okay. That makes sense,
10 and that's fair.

11 MR. PIA: And I think that the guys in the
12 approval center, they have a lot of information,
13 especially if they will be involved. They've been
14 through every engine that goes underground, right?

15 MS. McCONNELL: Uh-huh.

16 MR. PIA: They know the ins and outs.
17 They know what's been -- and some suggestions have
18 been up. We're all kind of tied from the regulation
19 before. So we're going to put new regulations in.
20 My view, whether it be right or wrong, is if we're
21 going to be changing things, we need to go back and
22 look and see what can be changed.

23 MS. McCONNELL: And you're looking at the
24 standards that you have to meet to get approval.

25 MR. PIA: Yes.

1 MS. McCONNELL: Right. And that's
2 something you didn't really specifically ask about.
3 But --

4 MR. PIA: Some of those restrictions
5 restrict us today --

6 MS. McCONNELL: Okay.

7 MR. PIA: -- because we have to fall under
8 these -- under these guidelines. That's what I'm
9 saying --

10 MS. McCONNELL: Yes.

11 MR. PIA: -- is some of those would be
12 beneficial here if that's the route we're going to
13 go. You know, like, for instance, PA and West
14 Virginia do a lot of wrap around their hot components
15 to get them under the temperature required.

16 MS. McCONNELL: And just for the record,
17 could you say what a wrap is?

18 MR. PIA: A wrap is a -- it's the device,
19 I guess you would use, that would wrap around an
20 exhaust manifold -- a turbo, so to speak, that --
21 it's an insulating wrap, high-temperature insulating
22 wrap. In previous years post '99 we did a lot of
23 that stuff out west, and it failed. In fact, it
24 caused more issues than it was intended to. We
25 basically said, we're not doing it. So we went to

1 other means, you know.

2 In PA, West Virginia, I think it had a lot
3 to do with horsepower ratings as well. Had a lot to
4 do with that issue. So again, we have to -- in my
5 mind, we have to look at these previous standards
6 before we want to put more in, because in my mind --
7 and I don't think I'm alone -- a lot of these
8 restrictions, why we're restricted here if we want to
9 make real improvement.

10 MS. McCONNELL: Okay.

11 MR. PIA: But yeah, the wrap is definitely
12 an issue if we have to put wrap around 230 horsepower
13 out West or any other mine. But if you're asking
14 for -- again, you can probably go back in public
15 records from previous meetings post '99 and it will
16 make clear sense.

17 And I think that's some of -- some of our
18 worries is how much of this do we -- we've already
19 been through and we're going to do it again. So I
20 think we really need to look at some of the lessons
21 we've already learned before we start asking, do we
22 want to do something that PA and West Virginia does
23 with these little horsepowers. It's a different
24 world from east to west type of thing.

25 Anyway, I really would ask some of you

1 guys who really deal with this on a day-to-day basis
2 to give these guys some information based off of our
3 personal experience. Because if this goes in the
4 direction, it's going to make a lot of our jobs --
5 and I'm not going against wanting to improve. We
6 have to do that. It's a constant improvement. But
7 you guys know as well as I do, we improve things to
8 the point to where we're actually hurting ourselves,
9 literally hurting ourselves.

10 That's my two cents on it.

11 MS. McCONNELL: Thank you very much.

12 Anything else? So there's other
13 opportunities to comment. The comment period closes
14 on September 6th. We have other public hearings.
15 The transcripts of this and those hearings will be
16 made available two weeks after they occur, so you can
17 review what your colleagues and others in your
18 community have said and provide comments at another
19 juncture if you wish.

20 Okay. So I think we've heard -- unless
21 I'm told otherwise, I think we don't seem to have any
22 other speakers. Therefore, I'm going to conclude the
23 Mine Safety and Health Administration's public
24 meeting on the Request for Information on Exposure of
25 Underground Miners to Diesel Exhaust. On behalf of

1 Assistant Secretary, Joe Main, we appreciate your
2 participation in this process and encourage you to
3 submit your comments on or before September 6th,
4 2016.

5 Oh, would you like to speak?

6 MR. POULSON: I believe there's a -- the
7 belief is out there that a lot of people have been
8 caught off guard by what's being asked of them, and
9 they didn't have an understanding, because I don't,
10 of what you're requesting in the Request for
11 Information at this time. What I would suggest, or
12 what I would like to request from the Agency is that
13 the time frame for comment be extended.

14 MS. McCONNELL: Okay.

15 MR. POULSON: Now that we have a small
16 understanding, and I'm saying small, of your
17 requirements and your request, I believe an extension
18 of time frame for comments is in order, so people can
19 evaluate what they've heard and where we are, and we
20 can assess the situation and then respond.

21 MS. McCONNELL: Okay. Thank you.

22 Anyone else?

23 Okay, thank you again. The meeting is now
24 concluded, and I appreciate your participation.

25 (The hearing concluded at 12:02 p.m.)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, VICKY McDANIEL, Registered Merit
Reporter and Notary Public in and for the State of
Utah, do hereby certify:

That on July 19, 2016, the foregoing proceedings were reported by me in stenotype and thereafter transcribed, and that a full, true, and correct transcription of said proceedings is set forth in the preceding pages.

WITNESS MY HAND this 26th day of July,
2016.

Vicky McDaniel
Vicky McDaniel, CSR, RMR
Notary Public
Residing in Salt Lake County