

IN THE MATTER OF:)
)
PUBLIC MEETING, REQUEST)
FOR INFORMATION ON SILICA)
(QUARTZ))

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

IN THE MATTER OF:)
)
PUBLIC MEETING, REQUEST)
FOR INFORMATION ON SILICA)
(QUARTZ))

201 12th Street South
Arlington, Virginia

Thursday,
October 17, 2019

The parties convened, pursuant to the notice, at
9:25 a.m.

APPEARANCES:

SHEILA McCONNELL, Director, Office of Standards,
Regulations, and Variances, Mine Safety and
Health, Department of Labor

PAT SILVEY, Deputy Assistant Secretary, Office of
Operations, Mine Safety and Health, Department
of Labor

MATTHEW WARD, Solicitor, Mine Safety and Health
Division

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

PRESENTERS:

TOM HARMAN, National Mining Association	7
ADELE ABRAMS, Law Office of Adele L. Abrams	11
TODD MOORE	35
JOSH ROBERTS, United Mine Workers of America	39
ROBIN MARKUSSEN, Lehigh Hanson	44

P R O C E E D I N G S

(9:25 a.m.)

MS. McCONNELL: Good morning. My name is Sheila McConnell. I'm trying to position this so everybody can hear me. I'm the Director of the Office of Standards, Regulations, and Variances in the Mine Safety and Health Administration. I will be the moderator of this public meeting to gather information and data on MSHA's request for information on respirable quartz.

On behalf of David G. Zatezalo, Assistant Secretary of Labor for MSHA, I want to welcome you to this public meeting. Let me introduce the other members of the panel. To my left, we have Matt Ward, Solicitor of the Mine Safety and Health Division. To his left, we have Gregg Meikle, Chief, Health Division for Mine Safety and Health.

As you know, quartz is found in rocks such as granite, sandstone, limestone, and shale. Mechanized mining operations can generate large amounts of dust, potentially exposing miners to elevated levels of airborne dust, including quartz. Particles with aerodynamic diameters smaller than 10 micrometer are respirable, and as the particle diameter decreases, the portion of particles that can

1 reach the deep tissues of the lungs increases. Such
2 respirable particles may be deposited and retained
3 there, leading to disease development.

4 The onset and progression of disease
5 development depends on various factors, such as the
6 cumulative dust exposure, tenure in mining, and
7 genetic predisposition to lung damage. Miners with
8 short working tenures exposed to respirable quartz may
9 develop exposure-related lung disease if exposures are
10 high. Chronic lung disease develops more slowly over
11 a miner's working lifetime if exposures are low and
12 dust controls are in place. Progression of lung
13 disease can occur even if exposure is eliminated.

14 NIOSH researchers have recently documented
15 large number of coal miners in eastern Kentucky,
16 southern West Virginia, and southwest Virginia with
17 progressive massive fibrosis, the most severe form of
18 black lung disease. NIOSH further reported that a
19 high proportion of these cases developed in miners
20 with less than 20 years of working tenure.

21 In addition, other studies indicate that
22 overexposure to quartz presents similar health risks
23 to metal and non-metal miners. Although most metal
24 and non-metal miners with early stage silicosis
25 typically do not experience respiratory symptoms, the

1 primary risk to affected miners is progression of
2 disease with progressive decline of lung function.
3 Several studies of metal and non-metal miners exposed
4 to respirable quartz have shown that once silicosis is
5 detected by X-ray, progression will continue for many
6 affected miners, resulting in a substantial proportion
7 of these miners diagnosed with silicosis beyond the
8 ILO Category 1.

9 On August 29, 2019, MSHA published a request
10 for information in the *Federal Register*. We are
11 asking for information and data on a variety of topics
12 concerning respirable quartz. MSHA is requesting
13 information on economically and technologically
14 feasible best practices to protect coal and metal/non-
15 metal miners' health from exposure to quartz,
16 including a reduced standard, new or developing
17 protective technologies, and/or effective technical
18 and educational assistance.

19 MSHA is interested in any information and
20 data on engineering controls, administrative controls,
21 and personal protective equipment that can be used,
22 either alone or concurrently, to protect miners from
23 exposure to quartz dust. MSHA is also interested in
24 obtaining any information on additional feasible dust
25 control methods that could be used by mining

1 operations to reduce miners' exposure to respirable
2 quartz during high silica cutting situations, such as
3 development sections, shaft and slope work, and
4 cutting overpass.

5 Our meeting today will be conducted in an
6 informal manner. Speakers and other attendees may
7 present information for the record. MSHA will accept
8 comments and other information for the record from any
9 interested party. If you have not already done so,
10 please sign the attendance sheet at the back of the
11 room so that we may have an accurate record of your
12 attendance.

13 MSHA will make available a verbatim
14 transcript of this public meeting in about a week.
15 The transcript will be posted on our website,
16 www.MSHA.gov, and on regulations.gov. All comments
17 beyond those for the record today must be received by
18 Monday, October 28. If you have a copy of your
19 testimony or presentation, please give a copy to the
20 court reporter so it can be appended to the meeting
21 transcript.

22 With that, we have a few people who have
23 spoken. So, when you make your presentation, please
24 spell your first and last name so the court reporter
25 can have an accurate record. So we have two people

1 who signed up to speak. That doesn't preclude anyone
2 else from coming forward. But our first presenter is
3 Tom Harman.

4 MR. HARMAN: The name is Tom, T-O-M, Harman,
5 H-A-R-M-A-N.

6 MS. McCONNELL: Good morning, Tom.

7 MR. HARMAN: Good morning, Sheila. On
8 behalf of the National Mining Association, I want to
9 thank MSHA and its panelists today for holding this
10 public meeting on the agency's request for information
11 on respirable silica in the form of quartz. The
12 safety and health of our nation's miners is the
13 primary concern of all our members, and NMA has a long
14 history of engagement in efforts to improve
15 protections for miners.

16 It is only through collaboration with MSHA,
17 the National Institute of Occupational Safety and
18 Health, equipment manufacturers, and others that we
19 will be able to fully examine, identify, and advance
20 new technologies and techniques that will protect
21 miners' safety and health. To that end, the
22 prevention of lung disease is an area that needs our
23 collective attention.

24 Over the last two decades, effective
25 ventilation engineering controls have been widely

1 adopted to control mine dust both in surface and
2 underground coal and hard rock mines. Adopting best
3 practices, strictly adhering to ventilation and dust
4 control plans, and increasing miner and operator
5 awareness have all contributed to exponentially
6 lowering dust levels in both underground and surface
7 mines.

8 Working together, equipment manufacturers
9 and mine operators have invented and implemented
10 effective ventilation controls, such as the full-face
11 miner that removes dust at its generation point to
12 within five feet of the face. Wet bed scrubbers and
13 water spray technology have greatly reduced dust
14 exposures. HEPA-filtered enclosed cabs in surface and
15 underground haulage equipment keep dust levels to a
16 minimum. Throughout the development of all these
17 engineering controls, NIOSH has conducted research to
18 establish effectiveness, which has hastened adoption
19 and widespread use.

20 Technological advancements continue to be
21 made. For example, as envisioned by the 2014 Coal
22 Dust Rule, the continuous personal dust monitor gives
23 coal miners a minute-by-minute readout of dust
24 exposures. We look forward to the development of a
25 similar device to measure silica exposures, which is

1 currently under development by at least one
2 manufacturer.

3 While progress is positive, disease
4 persists, and we believe more can be done. MSHA's
5 current interpretation of the Mine Act is overly
6 narrow. MSHA interprets the statute as preventing the
7 recognition of the use of either administrative
8 controls or respiratory protection to lower miners'
9 dust exposures. Though MSHA requires operators to
10 keep a supply of respiratory equipment, MSHA's
11 interpretation prohibits the use of PPE to be
12 substituted for environmental controls.

13 MSHA's position is in stark contrast with
14 OSHA's 2016 Respirable Silica Rule. OSHA's rule
15 treats engineering and administrative controls equally
16 in controlling silica dust, and if both fail to lower
17 dust levels, OSHA allows the use of respirators to
18 achieve compliance when administered as part of a
19 respiratory protection program.

20 While some have questioned whether
21 discomforts associated with respirators could diminish
22 their use and acceptance, these questions ignore the
23 advances in respiratory protections. When the Mine
24 Act passed, respiratory protection that was available
25 to miners was limited to uncomfortable, tight-fitting

1 filter face pieces held in place to the wearer's head
2 by straps or cloth. Both breathing and communication
3 were difficult.

4 Today, miners can wear powered air-purifying
5 respirators. PAPRs, as they're known, fit loosely and
6 surround the miner's head and cover the face. They
7 provide a continuous flow of filtered air, and there's
8 minimal breathing resistance. However, the approvals
9 process for using these health-improving respiratory
10 technologies must be streamlined so that miners can
11 use the devices without delay.

12 NMA believes that the time has long since
13 passed for the use of supplemental controls to be
14 recognized as effective in controlling exposures to
15 respirable mine dust, and we believe the Mine Act
16 permits this interpretation, given the great
17 advancements made in controlling dust exposures
18 through engineering controls and OSHA's acceptance of
19 work practices as well as protective equipment to
20 lower dust levels.

21 Thank you for your time, and I'll be happy
22 to answer any questions from the members of the panel.

23 MS. McCONNELL: Thank you, Tom. I don't
24 have any questions. I do have a request. You do
25 mention several best practices, several ventilation

1 systems, several forms of PPE. In your comments for
2 the RFI, it would be helpful if you provide additional
3 information regarding -- more specific information
4 regarding those types of controls and those types of
5 PPE, and if you have any type of cost data information
6 related to those and, in particular, how that -- how
7 these controls would be used in the mines that you
8 represent.

9 MR. HARMAN: We'll do that.

10 MS. McCONNELL: Okay. Do you guy -- any
11 questions from the panel?

12 (No response.)

13 MS. McCONNELL: Okay. Thank you very much.

14 MR. HARMAN: Thanks.

15 MS. McCONNELL: Adele Abrams is our next
16 speaker.

17 MS. ABRAMS: Good morning, Panel.

18 MS. McCONNELL: Good morning.

19 MS. ABRAMS: My name is Adele, A-D-E-L-E,
20 last name is Abrams, A-B-R-A-M-S, and I'm president of
21 the Law Office of Adele L. Abrams, P.C., with offices
22 in Beltsville, Maryland; Denver, Colorado; and
23 Charleston, West Virginia. And we represent mine
24 operators in all types of mining, surface and
25 underground, metal and non-metal, on a variety of MSHA

1 issues, as well as doing safety and health consulting
2 and training.

3 And just by way of a little background, I am
4 a certified mine safety professional. Back -- I am an
5 attorney, but back before I was an attorney, I used to
6 be the Director of Government Affairs with the
7 National Stone Association going back to the 1980s, so
8 I've been looking at silica issues for many years.
9 I'm also an MSHA-approved trainer for Part 48, and I
10 do Part 46 training as well, and, you know, as part of
11 the training activities that I do, I regularly cover
12 the health effects and best practices for silica
13 controls as part of that.

14 I'm also the secretary of the ASTM E34
15 Committee, which is the Occupational Safety and Health
16 standards, and I was active in the promulgation and
17 development of the ASTM E1132 standard, which sets
18 best practices for control of occupational exposure to
19 respirable crystal and silica for general industry,
20 and also the ASTM E2625 standard, which similarly
21 describes best practices for occupational control of
22 respirable crystal and silica in the construction
23 sector. We don't have one for the mining sector.

24 But I want to note that both of those ASTM
25 standards, while not incorporated by reference into

1 any OSHA rules that have now been adopted in 2016,
2 they are mentioned very liberally throughout the
3 preamble to the final rule and are also referenced in
4 the appendices as things that people can look to to
5 assist compliance. And so, right out of the gate, I
6 would like to suggest that MSHA take a look at those
7 standards. They do need to be updated at this point.

8 In fact, I'm -- I was going to chair the
9 committee working on that, and because of the flux and
10 the OSHA rule being reopened, that is on hold right
11 now. But there's still a lot of valuable material in
12 those that could inform MSHA's rulemaking process. In
13 addition, there are a lot of tables in these ASTM
14 standards, and much of OSHA's rule Table 1, as we call
15 it, for the construction sector actually was imported
16 from these various ASTM standards.

17 I wanted to note that, you know, I have done
18 a lot of work on the OSHA rule, as have my firm
19 colleagues, who include mining engineers and also
20 certified industrial hygienists and certified safety
21 professionals. And since the OSHA rule came out in
22 2016, I would estimate that we have trained over 2,000
23 individuals on the OSHA construction and general
24 industry rules. We've also done a lot of site work at
25 both construction and manufacturing facilities,

1 including precast concrete and ready-mix concrete. So
2 we've gotten a pretty good handle on, you know, how
3 things are going in terms of compliance with the OSHA
4 rule.

5 And, clearly, there are some similarities,
6 and there are also distinctions between the OSHA
7 regulated environments and the MSHA work-related
8 environments. But I'm a big believer in "if it ain't
9 broke, don't fix it," and also in not reinventing the
10 wheel. And regardless of what OSHA -- what MSHA
11 decides to do in terms of the permissible exposure
12 limit -- and I want to stress I am not taking a
13 position on that today, nor am I speaking today on
14 behalf of any of our clients, whether they be
15 associations or whether they be individual mining
16 companies. You know, regardless of what you do on the
17 PEL, the OSHA rule is a good starting point to look at
18 for a number of things, including Table 1.

19 Now I want to note that I work with publicly
20 traded companies that are, you know, very large. I
21 work with very, very small mine operators, and always
22 have, literally the functional equivalent of OSHA's
23 five guys and a truck on the construction sector.
24 They do not have corporate health departments. They
25 do not know what industrial hygiene means. They don't

1 know what I.H. stands for. And they have largely been
2 relying on MSHA in many ways to be their I.H.
3 department. And so they don't have any real practical
4 experience, you know, with doing sampling or anything
5 of that nature.

6 It is really going to sound the death knell,
7 in my opinion, for these small, family-owned quarries
8 and sand and gravel operations if a very laborious
9 sampling regimen is imposed upon them, and I'm going
10 to circle back to this, especially if MSHA does not
11 allow for the use of respiratory protection to achieve
12 compliance. You know, extraordinarily expensive
13 engineering controls will put these companies out of
14 business.

15 And I will tell you just anecdotally, when I
16 settle cases, very often we have to arrange for
17 payment plans even for things as small as \$5,000 in
18 penalties, and we provide financial tax information,
19 you know, balance sheets, for these small mining
20 companies in support of these payment plans. And if a
21 \$5,000 penalty having to be paid at once could wipe
22 them out, you're going to see similar closures if you
23 impose something that's really, really expensive on
24 these operators.

25 PPE is part of the hierarchy of controls

1 that safety and health professionals have long
2 recognized. MSHA, in years past, did allow it, for
3 example, with P-codes for noise. And so, in addition
4 to a Table 1 approach for MSHA, if there are mines
5 that are doing unique tasks that don't lend themselves
6 to a Table 1 overarching approach for those tasks,
7 please consider revisiting the P-code approach, where
8 an individualized mine operator would work out, in
9 cooperation with MSHA, what were truly feasible
10 controls for that operation, supplementing that with
11 appropriate worker rotation, and these administrative
12 controls MSHA really needs to recognize as well.

13 I -- we do not read the Mine Act as
14 prohibiting that at all on the metal/non-metal side,
15 and I think it's arguable on the coal side as well.
16 But I think you do have that latitude. And then, you
17 know, once a system of controls is developed, maybe
18 including use of control cabs with the windows closed,
19 properly operating ventilation, heating-A/C systems,
20 that becomes compliance. And as long as those
21 controls are in place, including appropriate
22 respiratory protection, the operator would not be
23 cited.

24 As things stand now with MSHA, if you're
25 using an appropriate respirator, you won't get cited

1 as S&S, but you'll still get cited as a non-S&S
2 violation of the current silica rule, and that just
3 builds up a track record, and I hate to say this, for
4 litigation against these operators, who really are
5 doing the right thing, because it has a documented
6 overexposure in red type when you go on MSHA's data
7 retrieval system. And I'm not a plaintiffs' attorney,
8 nor do I play one on TV, but it's very easy for them
9 to search the MSHA website in the hopes of finding
10 companies that have a history of violations, and even
11 if they are non-S&S, no likelihood to result in any
12 injury, it still can come in in any tort or worker's
13 comp litigation. So these are some things to
14 consider.

15 So going back to Table 1, there are a lot of
16 tasks that are -- there are commonality between OSHA
17 and MSHA that are already included on the 18 tasks and
18 equipment in Table 1. OSHA has reopened its rule and
19 is looking to expand Table 1 for construction and also
20 looking at cross-applicability for the general
21 industry and maritime sectors. And I would submit
22 that, for tasks that are common, MSHA consider that if
23 you're in compliance with OSHA Table 1 for those tasks
24 that MSHA would consider that as compliant for its
25 silica purposes as well.

1 There's also, in some circumstances, trading
2 of employees. Coming out of the aggregate sector, and
3 having been at hundreds of aggregates' operations over
4 the 30-plus years I've been in mining now, I can tell
5 you that if they need a loader operator at their sand
6 operation, and they have a ready-mix operation across
7 the street with a loader operator who's doing nothing,
8 they will dispatch him over.

9 And, you know, for someone who, say, is
10 going to be doing a task at both a ready-mix operation
11 and a quarry or a sand operation, and they're already
12 following Table 1, perhaps in the future under the
13 OSHA rule, it's going to be crazy-making for them to
14 have to adopt -- to adapt to doing the task in a
15 totally different way for the three hours that they
16 might be doing a repair or operating a piece of
17 equipment at the quarry, so please consider that as
18 well.

19 Another issue that I wanted to mention is
20 training. As I mentioned, I've done a lot of training
21 under the OSHA rule for companies, and I am an MSHA-
22 approved trainer as well. Please, please, please,
23 let's inject some common sense and follow the model
24 that you already did when you promulgated the hazard
25 communication standard, and allow that training to be

1 done for the silica rule as part of your Part 46 new
2 miner or your part 48 new miner, and annual refresher
3 training, and your task training.

4 Do not force operators to separately do
5 training under a different, you know, Part 56, Part
6 57, Part 58, wherever you might codify it, because all
7 that is going to do is lead to redundancy of
8 citations. And you're already training workers on
9 silica under the existing Part 47 hazcom requirements.
10 This is simply an expansion of those requirements,
11 ultimately, so let's achieve a little economy of scale
12 there.

13 Now, beyond that, I wanted to note that --
14 and I want to be careful about this. I'm not going to
15 mention any clients in particular, but I will note,
16 first of all, and I applaud this, that MSHA is trying
17 to capture data about historical sampling results
18 which will help improve its database for this
19 rulemaking. I applaud that you're doing this request
20 for information and holding this meeting, capturing
21 more information through the comment process, and I
22 know there will be additional opportunities for
23 comment and for testimony in the future.

24 But we have had clients who have gotten
25 very, I will say, exhaustive and burdensome data

1 requests from MSHA, in some cases 20 years' worth of
2 their own internal sampling records. And these are
3 companies that have robust occupational health
4 programs. They have gone beyond minimum compliance.
5 In most cases, they are fully compliant with the
6 100 microgram standard. And they show few, if any,
7 instances of occupational lung disease or other
8 illnesses historically.

9 The concern we have is that this data, once
10 captured by MSHA, becomes public. It becomes part of
11 the database, even if they do blind or redact for
12 privacy the names of the miners who were sampled. And
13 while this is a complement to MSHA's own sampling
14 data, which, in my experience, has been fairly sparse
15 and is -- typically, the sampling is done by your
16 inspectors, who are not certified industrial
17 hygienists. Many of them have somewhat limited
18 industrial hygiene training.

19 You know, I don't want to brag, but we've
20 gotten a lot of these citations vacated in settlement
21 because we've been able to show that the pumps weren't
22 calibrated properly or, you know, they didn't hang the
23 meters in the right place, or the pumps were taken off
24 while they were still running by the inspector and
25 laid on the table. So there have been sampling

1 irregularities even within MSHA's database. And, you
2 know, to be blunt, we don't know the precision of the
3 data that our clients had captured, you know, going
4 back 20 years.

5 So the concerns are twofold. One is this
6 be -- becoming part of a public database, being FOIA-
7 able, perhaps being used against individual companies
8 in the future who have not voluntarily submitted this
9 data as part of the rulemaking, but rather it's being
10 captured through the routine inspection process under
11 threat of citations under Section 103(a). The heavy-
12 handed approach should stop. We will work -- our
13 clients, the associations we work with and are members
14 of -- we will work cooperatively with MSHA on this
15 rulemaking, but this should not be done under the lash
16 of citations and penalties that could be as much as
17 \$266,000.

18 Second, we have an issue because MSHA is a
19 strict liability -- or the Mine Act is a strict
20 liability statute, and there is no statute of
21 limitations. And so, technically, you know, there's
22 at least an arguable argument, if that's not too
23 redundant, that MSHA could take the data from our
24 clients, find an overexposure from 15 years ago, and
25 issue a citation to our client. And while we hope

1 that they would not do that, I will tell you that I
2 have gone to court --

3 MS. McCONNELL: Could you -- could you
4 repeat that again?

5 MS. ABRAMS: Yes. The Mine Act does not
6 have a statute of limitations.

7 MS. McCONNELL: Okay. Mm-hmm.

8 MS. ABRAMS: It says citations shall be
9 issued within reasonable promptness, and the trigger
10 is also, when an inspector believes a violation has
11 occurred, he shall issue a citation. It is a strict
12 liability statute.

13 MS. McCONNELL: Right.

14 MS. ABRAMS: And I will tell you -- and I'll
15 quote the -- the case name was Pennsy Supply.

16 MS. McCONNELL: Mm-hmm.

17 MS. ABRAMS: A number of years ago, MSHA
18 went to trial on a case, and I won it -- spoiler --
19 based on a miner saying in response to a question that
20 seven years earlier he had walked up a belt. And they
21 issued a citation for fall protection based on that.

22 I had a citation that was issued for a miner
23 telling MSHA that 10 years earlier he had been
24 splashed with a caustic solution and they had not
25 issued a 7001 form to MSHA, and MSHA gave a Part 50

1 citation based on something that allegedly happened 10
2 years earlier. So that's what I'm talking about with
3 the statute of limitations.

4 MS. McCONNELL: Okay.

5 MS. ABRAMS: So here's where I'm going with
6 this.

7 MS. McCONNELL: Okay.

8 MS. ABRAMS: I would like MSHA -- and you
9 may not be able to do it today, but if you can, please
10 do; you've got a solicitor sitting next to you --
11 please, please assure us that if we voluntarily
12 produce historical sampling data to MSHA that MSHA
13 will not use this as the basis for a citation,
14 regardless of when it was -- of when the data was
15 captured, and furthermore, that you won't use it going
16 forward to show a pattern or a practice of
17 overexposures, because, when companies are doing
18 robust sampling and they're trying to be proactive,
19 their best efforts should not be used against them.

20 So that's a big deal. I really would urge
21 MSHA to come out with a policy. Otherwise, you are
22 going to find very few companies voluntarily
23 submitting their data, at least in an unblinded way,
24 as part of this rulemaking information gathering.

25 The second thing is -- and I will wrap up

1 here -- that OSHA has a policy. It's been in effect
2 for many, many years. It was even published in the
3 *Federal Register* -- where they offer a safe harbor
4 from enforcement based upon self-audit informations.
5 And to put it in layman's terms, if you're doing
6 safety or health audits, as long as any kind of non-
7 compliant conditions have been rectified, have been
8 abated, before OSHA shows up, they will not use those
9 audits against the company for purposes of issuing
10 citations. And, in fact, very often, OSHA will give
11 you positive credit in reducing penalties if you do
12 have a voluntary self-audit program in effect. And so
13 this is something that I would really urge MSHA to
14 consider.

15 The biggest obstacles you're going to have
16 in this rulemaking are the strict liability and no
17 statute of limitations. You know, there are many,
18 many other challenges dealing with silica we will deal
19 with in the future in written comments. But the
20 bottom line is, if you adopted this voluntary self-
21 audit safe harbor from enforcement use, you will go a
22 long way in improving operators' willingness to adopt
23 these robust programs and to share their information
24 with MSHA.

25 So, again, I am not speaking on behalf of

1 any clients, only on behalf of the Law Office of Adele
2 L. Abrams, P.C. I thank you for listening to me, and
3 I'd certainly be happy to respond to any questions.

4 MS. McCONNELL: Thank you, Adele, for your
5 very informed testimony, and we appreciate that.

6 I just want to make something for the
7 record -- is that, you know, MSHA has always
8 recognized the hierarchy of controls. We -- you know,
9 we've always stated that the primacy was environmental
10 controls, but we've never prohibited administrative
11 controls from being used, and in -- we have two
12 separate standards regarding PPE, obviously, in coal.
13 It's only used after, you know, they've been taking
14 corrective action and making them available to our
15 coal miners. So I do want to set that straight, that
16 we do identify the hierarchy of controls and
17 understand those, and we enunciate those in various
18 preambles.

19 I'd like to ask a couple questions about
20 your experience with the OSHA silica rule, and just
21 since -- that they have two parts, general industry,
22 and they have the construction industry. If you were
23 looking at MSHA and comparing it, would you see the
24 construction or the general industry -- which of those
25 would be much more comparable to OSHA's -- I mean

1 MSHA's enforcement activities?

2 MS. ABRAMS: I would say, overall,
3 construction --

4 MS. McCONNELL: Mm-hmm.

5 MS. ABRAMS: -- because -- and the major --

6 MS. McCONNELL: And are you speaking from --
7 for the metal/non-metal industry, or are you speaking
8 for --

9 MS. ABRAMS: I'm going to explain.

10 MS. McCONNELL: Okay.

11 MS. ABRAMS: Certainly, for the metal/non-
12 metal sector, there is much more alignment with the
13 construction rule. The majority of the operations are
14 on the surface. There's a lot of commonality of the
15 equipment that is used, whether it is drills, whether
16 it is, you know, the front-end loaders, haul trucks.
17 And you do have a lot of commonality in terms of the
18 companies, the integration.

19 Many of the construction companies also have
20 aggregate operations as well as the ready-mix or
21 cement, so many of their -- and ready-mix, of course,
22 is under OSHA. They have a lot of experience with
23 that already, you know, that can be carried over. So
24 there are some general industry parallels as well.

25 MS. McCONNELL: Mm-hmm.

1 MS. ABRAMS: But for the majority of the
2 surface -- I'll call it production activities, I think
3 the alignment is with the construction rule.

4 For the manufacturing side of things in
5 mining, I do a lot of work, for example, up in the
6 Iron Range with the taconite operations. I work with
7 some industrial sand operations that have bagging
8 operations. I work with dimension stone operations
9 that have saw shops and finishing shops. And those
10 certainly align more with the general industry
11 standard.

12 But I want to note this. OSHA's already
13 recognizing that the general industry standard is kind
14 of unworkable in terms of requiring this, you know,
15 constant, every three months, sampling for any tasks
16 where you have exposures above 50, every six months
17 for tasks that have exposures above 25. For goodness
18 sake, in the mining sector, you go to an aggregate's
19 operation or a sand plant, you know, in Arizona or
20 California, you're going to have background levels
21 above 25 micrograms, which is the action level --

22 MS. McCONNELL: Right.

23 MS. ABRAMS: -- before you even start
24 generating any mining activity. So that's another
25 thing you probably need to look at, is not having a

1 25 action level for mining.

2 MS. McCONNELL: Right.

3 MS. ABRAMS: But going back to your
4 question, OSHA's recognizing that they're going to
5 have to use a Table 1 approach for a lot of general
6 industry tasks now.

7 MS. McCONNELL: Mm-hmm.

8 MS. ABRAMS: And so I would look to what
9 OSHA is doing in its active RFI and rulemaking right
10 now.

11 MS. McCONNELL: So do you see any type of
12 monitoring activity done by the operator? Or, if any,
13 what would it look like?

14 MS. ABRAMS: Well, for tasks that are unique
15 that fall outside of Table 1, even now in construction
16 they are expected to do exposure monitoring. For --

17 MS. McCONNELL: But you were seeing some
18 deficiencies as they apply that. In your experience,
19 if you were going to recommend monitoring activities
20 by an operator --

21 MS. ABRAMS: In the mining sector now?

22 MS. McCONNELL: -- in the mining sector --

23 MS. ABRAMS: Okay.

24 MS. McCONNELL: -- what would you suggest?

25 MS. ABRAMS: I would like -- you know, in a

1 perfect world, I would like to see operators, where
2 they do not already know what the exposures are --
3 and, again, objective data could be inferred by OSHA's
4 experience with Table 1. There's a lot of data out
5 there already, and let you know that --

6 MS. McCONNELL: So you don't see any -- you
7 don't -- you're not recommending or you don't see a
8 need for like sampling.

9 MS. ABRAMS: No, no, no, I --

10 MS. McCONNELL: Oh, okay.

11 MS. ABRAMS: -- hadn't finished yet.

12 MS. McCONNELL: Oh, I'm sorry.

13 MS. ABRAMS: I was going to say OSHA looks
14 at its sampling in a bifurcated manner. You can do
15 the periodic sampling every three months, every six
16 months, based upon what your last sample was for that
17 task, you know, and that kind of dictates where you
18 fall in the sampling regimen. They also allow for you
19 to look at your performance data and objective data,
20 and it's my hope that maybe some of the associations
21 in the mining sector will be able to develop or assist
22 their members in developing objective databases that
23 could help avoid the need to do what is very expensive
24 sampling.

25 You're looking at \$70 to \$100 a pop just for

1 the analytical and the sampling costs, and that
2 doesn't, you know, account for disruption in
3 production or the likelihood of having to bring in
4 third parties to do this. I mean, I mentioned we're
5 doing sampling for our clients in large measure
6 because we have a CIH on our staff and they don't. So
7 that's an additional cost you have to factor in. But
8 you could reduce the need for operator sampling by
9 going to objective data that has been vetted through
10 third parties like the various associations or by
11 reference to the OSHA Table 1, which itself has been
12 predicated on the objective data gathered by that
13 agency in its rulemaking that went on for many years.

14 But, beyond that, for tasks that fall
15 outside of Table 1, operators would need to do some
16 kind of initial benchmarking, find out where they lie,
17 because, otherwise, you couldn't properly determine
18 what the appropriate engineering controls,
19 administrative controls --

20 MS. McCONNELL: Right.

21 MS. ABRAMS: -- and PPE.

22 MS. McCONNELL: I agree.

23 MS. ABRAMS: I would think for high-exposure
24 tasks, it would be a best practice to do some periodic
25 monitoring to make sure that circumstances haven't

1 changed. But, for things that are fairly common --
2 operating a haul truck -- you know, as long as you're
3 maintaining those trucks, the seals on it, you're
4 doing the training, maintaining that the windows are
5 being kept up, you're enforcing your rules, you
6 shouldn't have to be monitoring haul truck operators
7 every three months or every six months.

8 So I think, if you can hone down and do a
9 rifle shot approach on which tasks might require
10 periodic sampling, and then allow for the utilization
11 of objective data as well as an alternative, you're
12 going to make this rule a lot more workable regardless
13 of whether you continue a 100 microgram equivalent PEL
14 or whether you drop down to a 50.

15 MS. McCONNELL: Okay. I think they're my
16 questions.

17 I do want to go back to Tom, if I could
18 ask -- can I ask you a question?

19 MR. HARMAN: Sure.

20 MS. McCONNELL: Adele wasn't going to take a
21 position on the PEL. Did you guys -- did you all want
22 to take a position on the PEL?

23 MR. HARMAN: Not right now.

24 MS. McCONNELL: Okay. Do you have any
25 positions on monitoring?

1 MR. HARMAN: The coal sector you know has a
2 robust government program.

3 MS. McCONNELL: Yes. Yeah, I'm talking on
4 your side of the house.

5 MR. HARMAN: And --

6 THE COURT REPORTER: Do you want to get him
7 near a microphone?

8 MS. McCONNELL: You may want to come up to a
9 microphone, I'm sorry.

10 MS. ABRAMS: We can share. We could, except
11 it will take up the table.

12 MS. McCONNELL: So we brought Tom Harman
13 back to -- from NMA back to ask a couple follow-up
14 questions which I failed to pose. But Adele's
15 presentation is making me think about these questions,
16 and I guess the question is monitoring.

17 Do you have a position or some
18 recommendations on -- for the mining industries that
19 you represent how operators would monitor exposures?
20 Or if they should? Any --

21 MR. HARMAN: Yeah, operators do need to know
22 what the exposure levels are of all the miners who are
23 there.

24 MS. McCONNELL: And do you -- and will you
25 submit for the record any suggested recommendations

1 for MSHA to consider regarding operator monitoring
2 policy or requirements?

3 MR. HARMAN: You know, I'd have to give that
4 some thought. You know, the frequency and protocol
5 would require some deliberation about what that should
6 be. I mean, you know what it is in coal.

7 MS. McCONNELL: Yes.

8 MR. HARMAN: And that's a lot.

9 MS. McCONNELL: Yes.

10 MR. HARMAN: You know, so, you know, we'd
11 have to think about, beyond the fact that you need
12 monitoring, we'd have to think about what the
13 frequency and what the protocol would have to be for
14 that for the hard rock sector.

15 MS. McCONNELL: Right. Okay.

16 MR. HARMAN: So -- and we'll -- I'll survey
17 some members.

18 MS. McCONNELL: Okay.

19 Yes, Adele.

20 MS. ABRAMS: If I might double dip on this,
21 another thing I wanted to mention -- and I said at the
22 outset, I think, that I've been through noise and
23 dust --

24 MS. McCONNELL: Yes.

25 MS. ABRAMS: -- training, which was the

1 course back with MSHA's Rocky McKinney, and National
2 Stone, Sand & Gravel Association were offering those
3 courses in conjunction with MSHA. They've kind of
4 petered off. They haven't really been doing them very
5 often, and, you know, at most, they can typically have
6 20 people in. So at -- you know, even if they did
7 three of them a year, that's 60 people that a group
8 that represents 700 mining companies could get through
9 that program.

10 The benefit of the MSHA noise and dust
11 workshops was that you could then borrow sampling
12 equipment from the local field office without charge.
13 And I just want to put out there, if you do go forward
14 with any mandated sampling, please consider really
15 rolling that program out in a big way. Don't rely on
16 associations to carry the ball. Don't force people to
17 go into the hills of West Virginia. Make this
18 available every time you're going to do, say -- you
19 know, in a couple of weeks we're going to have the
20 Southeast Mine Safety Conference in Birmingham. You
21 could offer a workshop in tandem with that.

22 You're going to need to make this training
23 available at no cost, especially to small operators.
24 Make that equipment available at no cost, because,
25 otherwise, it's going to be garbage in, garbage out.

1 They'll do their best efforts to sample, but it may
2 not reflect what the valid conditions are. And
3 there's nothing worse than spending, you know,
4 \$100,000 on engineering controls only to find out that
5 they --

6 MS. McCONNELL: They're not working.

7 MS. ABRAMS: -- weren't needed because you
8 sampled incorrectly.

9 MS. McCONNELL: Right. Mm-hmm. Or they're
10 not working.

11 MS. ABRAMS: Or they're not working.

12 MS. McCONNELL: Right.

13 Okay. I don't have any further questions
14 for the -- Tom or Adele. Do you guys have anything?

15 (No response.)

16 MS. McCONNELL: Okay.

17 MS. ABRAMS: Thank you.

18 MS. McCONNELL: Thank you.

19 Is there anyone else who would like -- we
20 don't have anyone signed up, but -- come on -- come on
21 down, Todd.

22 MR. MOORE: My name is Todd Moore, T-O-D-D,
23 M-O-O-R-E. I didn't really expect to speak here
24 today, but I just, in hearing the testimony so far
25 this morning, I just want to make a statement to make

1 sure that everybody is aware that, as we move forward,
2 I do think that we will be looking at some type of
3 respiratory protection being part of this solution
4 ultimately.

5 And, currently, it's been brought to my
6 attention that the only approved MSHA device that is
7 battery powered for respiratory protection underground
8 that is approved by MSHA will no longer be supported
9 by the company that has been providing that. That'll
10 be in June of 2020. So, after that date, there will
11 no longer be a battery-powered approved respiratory
12 protector for our people.

13 MS. McCONNELL: Okay.

14 MR. MOORE: That's really all. I just
15 wanted to make sure that everybody was aware of that
16 and understand that.

17 MS. McCONNELL: What was -- what's the name
18 of that? What is the name of that?

19 MR. MOORE: Well, it's a -- I really didn't
20 want to say, but I'll say, I guess, since you asked
21 me.

22 MS. McCONNELL: I am. I'm curious.

23 MR. MOORE: Yeah, it's manufactured by 3M
24 Company.

25 MS. McCONNELL: Mm-hmm.

1 MR. MOORE: And it's what we call an
2 Airstream helmet. I'm not sure what the --

3 MS. McCONNELL: Oh, an Airstream helmet,
4 yeah, that's what I thought.

5 MR. MOORE: Yeah. So they've informed the
6 industry that they'll no longer be supporting that
7 after June of next year.

8 MS. McCONNELL: Okay.

9 MR. MOORE: And that's real problematic,
10 because we don't know of anything else in the country
11 that's approved, and we think that's a big piece of
12 this puzzle moving forward, so --

13 MS. McCONNELL: Do you use Airstream helmets
14 now?

15 MR. MOORE: We do. It's voluntary at two of
16 my locations and mandatory at one of my locations.

17 MS. McCONNELL: Okay.

18 MR. MOORE: And it's a self-imposed
19 mandatory thing.

20 MS. McCONNELL: Yes. Mm-hmm.

21 MR. MOORE: We're not required, but we
22 just -- when we opened the new location, we decided to
23 make it mandatory there.

24 MS. McCONNELL: So you don't see anything
25 else equivalent to the Airstream helmet that would

1 provide equivalent protections to your miners?

2 MR. MOORE: We are scouring the country and
3 the world right now, trying to find a device that
4 would fit into that mold for us.

5 MS. McCONNELL: Okay.

6 MR. MOORE: So -- and we're open. If
7 anybody has anything that's available, we're -- we'd
8 love to hear about it.

9 MS. McCONNELL: Okay. Okay, thank you, Mr.
10 Moore.

11 MR. MOORE: Thank you.

12 MS. McCONNELL: Do you guys -- did you guys
13 have anything?

14 MALE VOICE: No.

15 MS. McCONNELL: No? Does he want to say
16 anything? Dave -- does he -- does Dave want to talk?
17 No? Okay.

18 MALE VOICE: (Away from microphone.)

19 MS. McCONNELL: Yeah, let's take -- that's a
20 good idea. Let's take a five-minute break. Let's
21 take a 10-minute break, and everyone --

22 FEMALE VOICE: (Away from microphone.)

23 MS. McCONNELL: That's right. Let's take a
24 10-minute break and everybody can reconsider whether
25 or not they want to come down and say a few words.

1 (Whereupon, a brief recess was taken.)

2 MS. McCONNELL: We will -- if everyone's
3 ready, we're going to reconvene MSHA's public meeting
4 on our request for information on respirable quartz.
5 We did not have anyone sign up, but I am going to
6 solicit from the audience anyone who would step right
7 up. Feel comfortable. The chair is available for
8 anyone who would like to add or provide information
9 and data to help us -- give us informed decisions as
10 we move forward on this issue. As Pat said, it's the
11 information we receive from our stakeholders that
12 helps us develop sound, reasoned approaches.

13 (Pause.)

14 MS. McCONNELL: Great. You know the drill.

15 MR. ROBERTS: Yeah. Josh Roberts, J-O-S-H,
16 R-O-B-E-R-T-S. I'm the Administrator of Health and
17 Safety for the United Mine Workers of America. I
18 didn't really come prepared with written comments or
19 anything to read off. Just a few things that I wanted
20 to touch on and, you know, of course, we'll go into
21 more detail in our written comments that we submit.

22 We, as most probably imagine, we do not
23 support respirators being used as an engineering
24 control or as a primary means of controlling dust for
25 compliance. We feel that the Mine Act is clear in

1 what it says as to the use of respirators, and I don't
2 see any other way you can interpret it. You know, I
3 don't -- I don't see any gray areas or any vague word
4 usage or anything like that, so I just wanted to make
5 sure that that was on the record here today.

6 We're not against the use of respirators, by
7 no means, or any form of personal protective
8 equipment. We think that it's important for safety
9 and health to use personal protective equipment. But,
10 to use it in compliance of a dust standard, we are
11 against that. You know, it is an atmospheric
12 monitoring system, not a personal miner monitoring
13 system. It's to monitor the mine atmosphere, not
14 necessarily the miner's atmosphere.

15 The other things I wanted to touch on -- you
16 know, I heard today a few comments, you know, about
17 rules and reg -- pretty much this could apply to rules
18 and regulations in general, the cost of rules and
19 regulations, the burden of these rules and
20 regulations, sampling, and things like that, and I'll
21 just be honest with you, the way I look at it, if an
22 operator can't afford to protect their miners' safety
23 and health, they don't need to be in business.
24 Period. That's the end of that discussion.

25 You know, if a fine for not obeying the law

1 is going to cost you going out of business, then, you
2 know, all I can tell you is go by the law. You know,
3 I don't -- I don't have a whole lot more. I'm sure
4 you may have some questions, and I'll be happy to
5 answer any questions. But that's all I have.

6 MS. McCONNELL: Okay. Thank you, Josh, for
7 your comments.

8 I'm going to turn to my colleagues first to
9 see if they have any questions.

10 Greg, do you have any, anything?

11 MR. MEIKLE: No.

12 MS. McCONNELL: I want to thank you for
13 your -- I don't have any comments at this time or
14 questions, but I thank you for coming and speaking and
15 putting your position forward.

16 MR. ROBERTS: Okay.

17 MS. McCONNELL: Thank you very much.

18 MR. ROBERTS: Thank you.

19 MS. McCONNELL: Is there anyone else that
20 would like to speak?

21 (No response.)

22 (Pause.)

23 MS. McCONNELL: While we wait, I'll just
24 remind our members, our stakeholders, who are here
25 today that the comment period for the program policy

1 letter *Federal Register* notice on escapeways for
2 underground metal/non-metal mines is -- or comments
3 are due on October 28, the same day comments are due
4 on the RFI for respirable quartz.

5 MS. ABRAMS: Can I ask a question while
6 we're --

7 MS. McCONNELL: Yes. Mm-hmm.

8 MS. ABRAMS: -- just on the record? This is
9 Adele Abrams again. I am aware that some of the
10 mining associations, including National Stone, Sand &
11 Gravel Association, which our firm is a member of, did
12 request a two-month extension on the RFI comment
13 period for respirable crystal and silica, and I was
14 just wondering if the agency had made any decision on
15 that, or when it could be expected.

16 MS. McCONNELL: We have made a decision on
17 that, and we are not extending the comment period, and
18 they -- and we are -- we will -- we have put their
19 request -- and that's not -- we received another
20 request, and the name of the association escapes me at
21 this time, and I apologize. They're in the record.
22 But we will be officially not extending.

23 (Pause.)

24 MS. SILVEY: Would you mind if I say
25 something?

1 MS. McCONNELL: You may -- I invite Pat
2 Silvey to speak.

3 MS. SILVEY: Thank you. As she was saying,
4 unfortunately, we are not able to extend the comment
5 period.

6 (Discussion held off the record.)

7 MS. SILVEY: Unfortunately, we are not able
8 to extend the comment period. You all know MSHA's
9 practice that we try to do so when we can, and in this
10 situation, we are just unable to do that.

11 But we do ask you very heartily, for lack of
12 a better word, to please get your comments in before
13 the comment period. I know that some of you noticed
14 -- noted, as Josh did, that they would be getting
15 their comments in. But get your comments in, to the
16 best of your ability, with your specific position and
17 to the best that you can with the data and rationale
18 to support your position. It's only with that kind of
19 specific information that will inform us and will be
20 more meaningful to us as we move forward in making a
21 decision.

22 I mean, you are all -- a lot of you have
23 been through this rulemaking process, and you have
24 read the preambles. And the preambles represent our
25 rationale for the positions that we take, and we can

1 only develop such positions, and we can only put that
2 rationale in the preamble if we have meaningful data
3 and information from you. I hate to be looking just
4 this way. That's why I asked the people over here to
5 sit over here, and I forgot about them.

6 (Laughter.)

7 MS. SILVEY: I'm not ignoring you all. But,
8 please, if you can do that, I -- that's the only thing
9 I just underscore to do as best you can to make this a
10 healthy standard and to be as specific as you can in
11 your comments. Thank you.

12 MS. McCONNELL: Thank you, Pat.

13 So I'm going to ask one more time, anyone
14 else who would like to make a presentation or a
15 statement today?

16 MS. MARKUSSEN: I'll make one.

17 MS. McCONNELL: Come on up.

18 MS. MARKUSSEN: Although it's really just a
19 reiteration.

20 MS. McCONNELL: Okay.

21 MS. MARKUSSEN: But Robin Markussen.

22 MS. McCONNELL: You have to spell it.

23 MS. MARKUSSEN: R-O-B-I-N, M-A-R-K-U-S-S-E-
24 N, and I'm Director of Occupational Health and Systems
25 with Lehigh Hanson.

1 MS. McCONNELL: Okay.

2 MS. MARKUSSEN: Really just wanted to agree
3 with and reiterate any of the statements that talk
4 about the burden of doing exposure monitoring only
5 versus being able to use --

6 (Discussion held off the record.)

7 MS. MARKUSSEN: Versus being able to use
8 some sort of control table. Certainly, a combination,
9 as was discussed earlier -- we have large operations
10 through North America and we struggle to be able to
11 hit the monitoring as a check box item and then move
12 into the controls. We would like to be able to use
13 that monitoring information and the table to perfect
14 putting the controls in place and using them
15 specifically, instead of just what's our monitoring
16 data and now to respond to it.

17 We feel that the construction table, where
18 it's appropriate, has been very useful for us in the
19 OSHA standard. We are working to use those type of
20 tables internally as well, so we really support any
21 effort being able to use that.

22 MS. McCONNELL: I don't have any questions,
23 but I do ask that you provide data and information on
24 your experiences that go beyond just your testimony.
25 It's through that type of information that we will be

1 informed on how to move forward. So how you have
2 applied Table 1 and how you've -- and accompanying
3 that and going along with Table 1, as well as
4 monitoring, how that works the best for your
5 represented -- your industries.

6 MS. MARKUSSEN: And I can -- I can provide
7 some of that. I would say that within the time frame,
8 being able to say -- we'll try to look at our data and
9 say what controls we would put in place outside of
10 just separately the construction one.

11 MS. McCONNELL: Right.

12 MS. MARKUSSEN: I'd like to be able to say
13 more about that, but we're still kind of researching
14 that for anything additional, but I'll provide what we
15 can in confidence.

16 MS. McCONNELL: That would be great.

17 MS. MARKUSSEN: Okay.

18 MS. McCONNELL: Thank you very much.

19 Oh, I'm sorry, did you guys have anything?

20 MALE VOICE: No, that's all right.

21 MS. McCONNELL: Okay, thank you.

22 So I'm going to make one last call. Any
23 presentation or statement today?

24 (No response.)

25 MS. McCONNELL: Okay. There appears to be

1 none. Therefore, I'm going to conclude our public
2 meeting on the request for information on respirable
3 silica. I remind you also to take a look at our
4 stakeholder meetings for the -- the notification was
5 published today, and it relates to our working place
6 examinations rule, and there's five meetings starting
7 on the 29th and into November.

8 But, with that, on behalf of the Assistant
9 Secretary, David G. Zatezalo, we appreciate your
10 participation in this process and encourage you to
11 submit your comments on or before Monday, the 28th.
12 This meeting is now concluded. Thank you.

13 (Whereupon, at 11:00 a.m., the meeting in
14 the above-entitled matter adjourned.)

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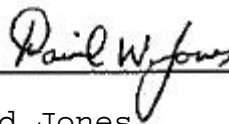
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REPORTER'S CERTIFICATE

DOCKET NO.: N/A
CASE TITLE: Public Meeting, Request for Information
on Silica (Quartz)
DATE: October 17, 2019
LOCATION: Arlington, Virginia

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: October 17, 2019

A handwritten signature in dark ink, appearing to read "David Jones", is written over a horizontal line.

David Jones
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