



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

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BlueGreen Alliance Comment on DOL MSHA's Proposed Respirable Silica Rule
Docket No: MSHA-2023-0001

The BlueGreen Alliance (BGA) unites labor unions and environmental organizations to solve today's environmental challenges in ways that create and maintain quality jobs and build a clean, prosperous, and equitable economy. We thank you for the opportunity to comment in support of the U.S. Department of Labor Mine Safety and Health Administration's (OSHA) proposed standard on Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection [Docket No. MSHA-2023-0001] RIN 1219-AB36.

BGA supports the reduction of the permissible exposure level (PEL) of respirable silica to 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and 25 $\mu\text{g}/\text{m}^3$ as an action level for a full shift, aligning the MSHA protection of miners with the OSHA standard for other workers. However, we note that the NCOSH recommendation of 50 $\mu\text{g}/\text{m}^3$ on which the proposal is based is almost 50 years old. The standard should prioritize engineering controls, administrative actions, and education and training that recognize that PELs and action levels are not synonymous with NOAELs (No Observed Adverse Effect Levels) and encourage practices that lower the levels of respirable silica that miners breathe as much as possible.

Commented [ES1]: was missing a unit here, is this correct?

We believe that it is important that miners of all types be provided with the same level of protection and medical surveillance. While open pit mining of copper is different than the underground mining of coal, the lungs and heart of a copper miner and a coal miner are the same. BGA supports the emphasis in the proposed rule on engineering controls, given MSHA's findings that effective engineering controls are feasible. We support the prohibition on miner rotation and respirators as methods of compliance. However, the language in each of these sections should be stronger and the penalties for noncompliance with the rules should be larger.

This proposed standard focuses on the monitoring and sampling of silica dust by mine management. But it also needs to address the absence of trust that was powerfully described at the public hearings on these proposed rules. Entities that have shown a proven disregard for regulations cannot be trusted to implement new standards in good faith. The coal industry in Appalachia in particular has a history of skirting environmental rules in addition to health and safety standards. In recent years, coal companies have been caught attempting to falsify water quality data, with two prominent cases occurring in West Virginia and Kentucky.^{i,ii} Some companies have racked up violations and refused to pay the associated fines, while mines of all types across the country are left unreclaimed at alarming rates as companies continue to find ways to avoid fulfilling their legal obligations to reclaim sites.^{iii,iv}

There is no shortage of bad actors among mine operators. As a result, many of the miners exposed to entirely avoidable health and safety risks at work are forced to return home to a community exposed to equally avoidable environmental damage.

More Inspections. More Inspectors. Higher penalties. An Expanded Role for Miners Who Are Well Trained and Well Protected.

To address the absence of trust, BGA proposes increasing the number of **Mine Safety and Health Administration (MSHA)** inspections and inspectors who will enforce the rule and issue penalties that are high enough to financially discourage the continuation of the practices that expose miners to illegal levels of respirable silica dust. These penalties should increase exponentially for repeat offenders.

In addition to more oversight by MSHA and more serious penalties for violations, the focus on sampling and medical surveillance in the proposed rule necessitates the addition of requirements for training beyond the current language on respirator use training. Training is also required to enhance the rule's language on the effective use of administrative controls. Rank and file miners and their representatives need to understand what the effective administrative controls, sampling methods and results and medical exam findings mean to be able to do their part in keeping miners and mines safe. Strong whistleblower protections will help turn good training into meaningful action.

Several sections of OSHA's 1926.1153 Respirable Crystalline Silica Standard should be incorporated into the proposed MSHA rule to ensure that workers are educated, trained and better informed about silica dust in their mine:

- 1926.1153(d)(2)(vi)
 - *Employee notification of assessment results.*
- 1926.1153(d)(2)(vi)(A)
 - Within five working days after completing an exposure assessment in accordance with paragraph (d)(2) of this section, the employer shall individually notify each affected employee in writing of the results of that assessment or post the results in an appropriate location accessible to all affected employees.
- 1926.1153(d)(2)(vi)(B)
 - Whenever an exposure assessment indicates that employee exposure is above the PEL, the employer shall describe in the written notification the corrective action being taken to reduce employee exposure to or below the PEL.
- 1926.1153(d)(2)(vii)
 - *Observation of monitoring.*
- 1926.1153(d)(2)(vii)(A)
 - Where air monitoring is performed to comply with the requirements of this section, the employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to respirable crystalline silica.
- 1926.1153(d)(2)(vii)(B)
 - When observation of monitoring requires entry into an area where the use of protective clothing or equipment is required for any workplace hazard, the employer shall provide the observer with protective clothing and equipment at no cost and shall ensure that the observer uses such clothing and equipment.
- 1926.1153(i)(2)(i)

Commented [JW2]: Some spacing issues in the below that should be resolved. We may also want to consider bulleting the sections to clarify that they are all related to the OSHA standard. Also, sections should hyper-linked consistently if possible.

- The employer shall ensure that each employee covered by this section can demonstrate knowledge and understanding of at least the following:
- 1926.1153(i)(2)(i)(A)
 - The health hazards associated with exposure to respirable crystalline silica;
- 1926.1153(i)(2)(i)(B)
 - Specific tasks in the workplace that could result in exposure to respirable crystalline silica;
- 1926.1153(i)(2)(i)(C)
 - Specific measures the employer has implemented to protect employees from exposure to respirable crystalline silica, including engineering controls, work practices, and respirators to be used;
- 1926.1153(i)(2)(i)(D)
 - The contents of this section;
- 1926.1153(i)(2)(i)(E)
 - The identity of the competent person designated by the employer in accordance with paragraph (g)(4) of this section; and
- 1926.1153(i)(2)(i)(F)
 - The purpose and a description of the medical surveillance program required by paragraph (h) of this section.

We would encourage the addition of language that requires that training programs be designed and implemented with workers and their representatives and that the trainings not only help miners learn how to do their jobs but also how to do their part in assuring that the mine operate safely.

ENDNOTES

ⁱ Charleston Gazette-Mail, "Lab official admits faking coal water quality reports," October 9, 2014. Available online:
https://www.wvgazettemail.com/news/special_reports/lab-official-admits-faking-coal-water-quality-reports/article_7b2e295e-abcf-50fb-bb91-0c5b217b635d.html

ⁱⁱ Louisville Public Media, "Groups Again Allege Kentucky Mining Company Falsified Pollution Record," November 17, 2014. Available online:
<https://www.lpm.org/news/2014-11-17/groups-again-allege-kentucky-mining-company-falsified-pollution-records>

ⁱⁱⁱ Politico, "DOJ sues Jim Justice's coal empire over unpaid fines for mining violations," May 31, 2023. Available online:
<https://www.politico.com/news/2023/05/31/doj-sues-jim-justices-coal-empire-over-unpaid-fines-for-mining-violations-00099421>

^{iv} Center for Public Integrity, "While 'zombie' mines idle, cleanup and workers suffer in limbo," September 4, 2019. Available online:
<https://publicintegrity.org/environment/while-zombie-mines-idle-cleanup-and-workers-suffer-in-limbo/>