

**Supplemental Testimony
regarding the
June 20, 2019 Hearing
“Breathless and Betrayed”
before the
United States House of Representatives
Committee on Education and Labor
Subcommittee on Workforce Protections
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Madam Chairwoman,

The attached testimony provides follow up comments and observations pertaining to the recent hearing conducted by your Subcommittee on June 20, 2019, regarding the alarming resurgence of Pneumoconiosis or Black Lung disease among the Nation’s coal miners. After careful consideration, I have determined it is necessary for me to present the members of the Subcommittee on Workplace Protections with a rebuttal to some of the comments presented by other panel members at that hearing. The purpose of these comments are to clarify the facts surrounding the resurgence of Black Lung disease and dispel any questionable comments and misstatements that were presented to the Subcommittee.

In an effort to keep my comments brief I will focus on the testimony of Mr. Bruce Watzman, Vice President of Regulatory Affairs for the National Mining Association, retired and Mr. David Zatezalo, Assistant Secretary of Labor for the Mine Safety and Health Administration.

Initially Madam Chair, I would like to recognize Mr. Watzman for his decision to interrupt his retirement momentarily in order to testify before the Subcommittee. However, it must be noted that, according to his own testimony, Mr. Watzman’s views were solely his own. It is quite shocking that no health and safety expert currently employed in the industry was made available to offer any comments concerning this critical issue. This fact alone should compel the members of the Subcommittee to question whether the industry employs any qualified health and safety experts or whether the industry simply does not care about the health and safety of coal miners.

In order to effectively clear up any confusion or misapprehension introduced into the hearing by the testimony of Mr. Watzman and Mr. Zatezalo, I would like to address each item the Union takes exception to as they arose in their respective testimony.

Mr. Watzman opened his comments by declaring that the surge in Black Lung disease cases being reported today are the, “results from exposures that occurred 10 to 20-years ago”.

He suggested that if we simply trust the current sampling system run by the coal operators and overseen by MSHA for the next 10 to 20-years, “there will be no more suffering nor the need for another hearing because lung disease among coal miners has been eradicated.”

With all due respect Madam Chair, miners have heard these promises from coal operators for decades. This is the same perverse logic the coal operators used to convince Congress to set the arbitrary date of December 31, 2018, to reduce the Coal Excise Tax that funds the federal Black Lung Program. December 31, 2018, has passed, Black Lung disease is worse than ever, and mine operators were rewarded with a tax break. We should not be crafting policy based on promises about what may happen in the future, especially when those promises have so often been disregarded in the past. Instead, Congress should act based on what is actually happening: an unprecedented surge in the occurrence of Black Lung disease. Mr. Watzman begs for more time and promises things will be better in the future. Miners do not have time to wait.

The key to solving this problem is not to accept that the new dust standard will eradicate the disease, but to recognize that in order to stamp out the disease you must eliminate the operator from the compliance process. As I stated in my previous testimony, the eradication of Black Lung disease cannot be expected to occur as long as coal operators are conducting compliance sampling. The wholesale deception and fraud that has been a conscious and continuous practice in the industry for as long as Congress has sought to regulate coal dust. An operator-administered sampling program will not eradicate the disease. Miners have heard the argument that operators would eliminate Black Lung diseases for 20, 30 and 40-years after the adoption of the Coal Mine Health and Safety Act of 1969 (Coal Act). It is time to stop repeating the same old lies and force MSHA to do its job.

Likewise, attempts to claim the current surge in the disease is the result of exposures from decades ago is patently false. There is clear and documented evidence that younger miners, who have worked their entire careers under the Coal Act and the Federal Mine Safety and Health Act of 1977 (Mine Act), are contracting Black Lung disease. Some of these miners have worked as little as five years in the industry. The bottom line is that the life of every worker at the mine is still in the hands of mine operators who cannot be trusted to protect their health and safety. This truth is easily established by looking at the failed history of the federal Dust Sampling Program and the untold number of deceptive actions by the operators that I was only able to briefly describe in my previous testimony

Mr. Watzman’s testimony seems to questions the research conducted by NIOSH in identifying “rapid progression coal workers pneumoconiosis”. His objections do not appear to be based on the scientific research performed by the Agency. Rather he basis his objections to NIOSH’s conclusions on the fact that the industry was refused access to the medically sensitive information the Agency used to make the determination.

The Union is fully supportive of NIOSH’s decision to refuse the release of such data to anyone outside the authorized medical professionals and research staff. The Union is especially

gratified that this information was not shared with coal mine operators. There is absolutely no rational reason to entrust this sensitive information to the very industry that is responsible for inflicting this disease on miners for more than a century and a half. In fact, the Union is convinced there is a far greater chance of mine operators weaponizing this information against miners who have contracted Black Lung than there is of any possibility that it would be used by the operator for any positive purpose. The industry's track record in this regard speaks for itself.

The UMWA does not oppose the idea of requiring miners to participate in the NIOSH x-ray surveillance program. The process should include x-ray screening of all miners on a routine basis in the manner that affords NIOSH the best possible data regarding the health status of each miner, in order to better protect miners and to assist the Agency in improving the Respirable Dust Control Program. The x-ray and other data collected must remain confidential as is currently the case. In absolutely no case or for any reason should this sensitive medical information be released beyond the medical professionals and research staff necessary to evaluate the information and make recommendations. For reasons the Union has previously stated, no coal operator nor any other party should be given access to this data.

The Union would agree with the statement by Mr. Watzman that the Continuous Personal Dust Monitor (CPDM) represents a massive change in technology for measuring respirable coal mine dust exposures in real time. If used as designed these sampling devices would permit miners the ability to monitor their immediate exposure as well as full shift exposure. This would allow miners to take an active role in preventing potential overexposure to respirable coal mine dust. However, the Dust Sampling Program, even with the introduction of the CPDM is still controlled by the mine operator. Therefore, it is inevitable that the same fraud and abuse that rendered the gravimetric sampler irrelevant will eliminate the effectiveness of the CPDM. The problem is not now, nor has it been for a long time, a lack of effective technology. Instead, the root problem of the Dust Sampling Program is operator control of compliance sampling.

The problem, identified by Mr. Watzman, of the CPDM not providing real-time measurements of silica dust in the mine atmosphere is a longstanding concern of the Union. The Union has advocated for the development of an instantaneous silica sampling device since the CPDM was in its early development stages. I would agree with his assessment that Congress should include funding to move this process forward and foster the creation of such a sampling device as soon as possible.

However, Mr. Watzman's testimony did not go far enough in seeking to protect miners from the hazards associated with breathing respirable coal mine dust that contains silica. Respirable coal mine dust containing silica is estimated to be at least 20 times more toxic to the lungs than coal dust absent silica. Despite being in possession of volumes of studies and mountains of data clearly identifying the extreme hazard silica presents to miners, MSHA has never promulgated a separate Permissible Exposure Limit (PEL) for silica. Instead the Agency simply reduces the overall respirable dust level miners may be exposed to in areas of the mine

where silica is present. This process does not eliminate the hazard of silica dust in general or even silica dust in the impacted mine. This is an unacceptable approach to this life-threatening problem.

MSHA must immediately promulgate an emergency temporary standard that creates a separate Permissible Exposure Limit for silica. The Standard must set the PEL at the current level recommended by the National Institute for Occupational Safety and Health. In no case should the PEL be permitted to exceed 50µg/m³. The emergency standard must require that the PEL for silica be separate and distinct from the Respirable Dust Standard and enforceable in accordance with all other standards established by the Agency. This would give miners the same protection afforded to all other workers covered by OSHA.

The Union takes exception to Mr. Watzman's suggestion that the regulatory action prescribed by Congress in the Coal Act and the Mine Act, as well as the regulatory structure promulgated by MSHA since the adoption of these laws, has effectively punished "recalcitrant operators". The history of the mining industry, including its recent history have proven time and time again that it is incapable of policing itself. It is also very clear that, nothing short of civil penalties and monetary fines are an effective means of regulating this industry. In fact, it is becoming more evident that the current assessment scheme administered by the Agency may not be severe enough to correct what is evidentially an industry with many recalcitrant operators.

The Union would also support the strict enforcement of criminal penalties for individuals found to be violating mandatory health and safety standards and placing the lives of miners in jeopardy. This would include holding the corporation, an individual as determined by the United States Supreme Court, liable for its actions.

Madam Chair, Mr. Watzman emphasizes several methods he believes should be implemented in the industry to control miners' exposure to respirable dust. In particular, he advocates requiring, "...the use of administrative controls and an approved respiratory program that utilizes personal protective equipment (PPE)" and that "...worker rotation guided by the data obtained from personal monitoring devices..."

Congress, both in The Federal Coal Mine Health and Safety Act of 1969 Public Law 91-173 and in the Federal Mine Safety & Health Act of 1977, Public Law 95-164, clearly prohibited the very practices Mr. Watzman is advocating. In section 202(h) of the Coal Act, which survives in the Mine Act, states, "[r]espiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this chapter. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust the mine atmosphere in excess of the levels required to be maintained under this chapter." 30 U.S.C. § 842(h) (emphasis added).

Congress considered a host of possibilities during its deliberations on how best to control respirable coal mine dust and protect the health of the nation's miners. Members of Congress ultimately realized that the only effective method to accomplish the results they desired was to limit the amount of respirable dust permitted in the mine atmosphere by setting a prescribed permissible exposure limit (PEL). During these deliberations, Congress considered the history of the industry and recognized that permitting coal operators to require miners use PPE would inevitably cause the PEL to be ignored and render the law moot.

The idea of requiring the use of administrative controls promoted by Mr. Watzman have no place in the mining industry and should not be considered either by Congress or MSHA as a means of dealing with the respirable dust problem. The Union is convinced that using such methods simply masks the actual dust miners are being exposed to in the atmosphere. Further, Mr. Watzman's suggestion clearly demonstrates that, even today, mine operators either are not utilizing all the environmental controls necessary to achieve compliance or that they have no intention of meeting the current legal standard. This is unacceptable and mine operators should not be permitted to skirt the law by such schemes. Ultimately, the Union believes that operators would use the required use of PPE as an excuse to allow excessive dust. Then, when miners contract the Black Lung disease, operators will argue that they are not a fault, but instead assert that miners are responsible for contracting the disease for failure to properly use PPE.

The Committee must also consider the potential long-term implications should operators be given this authority. Rotating employees, measuring air quality inside an air-stream helmet or the use of other PPE will not give miners a true assessment of the hazards they are exposed to in the mine. These schemes will certainly lead to an increase in the amount of respirable dust in the mine atmosphere. We cannot avoid the fact that increases in respirable dust will also lead to increases in float coal dust. Float coal dust has been the catalyst for hundreds of the worst coal mining disasters in the United States. We cannot permit this to occur.

Madam Chair, the majority of Mr. Watzman's testimony was nothing more than a rehash of the same stonewalling and delaying tactics we have heard from the industry for decades. They want more time, they need more data, they seek to place the burden on the miner and they attempt to eliminate their culpability. With all due respect, Mr. Watzman should have remained in retirement rather than present his opinions to the Subcommittee. If the industry does not have a spokesman, who is actively engaged in protecting the health and safety of the nation's miners, they should be given no consideration by the Subcommittee.

As with Mr. Watzman's testimony, the UMWA objected to several portions of the testimony offered by Assistant Secretary Zatezalo during the Subcommittee hearing. Mr. Zatezalo evaded the topic at issue, the resurgence of Black Lung disease, and instead spent most of his testimony advocating the restructuring of MSHA by merging the Agency's Coal and Metal/non-Metal inspectorate. The Union would argue, should this process be permitted to come to fruition that both Coal and Metal/non-Metal miners will suffer reductions in the health and safety protections MSHA is required to provide. The Union is convinced Mr. Zatezalo's

proposal is about reducing enforcement activity and nothing else. However, while the Union objects to a restructuring of MSHA, Mr. Zatezalo's testimony regarding that project was not germane to the topic at hand. In essence, Mr. Zatezalo's testimony was largely irrelevant.

As for his cursory testimony regarding the resurgence of Black Lung disease in the nation's coalfields, the Union was disappointed with what we viewed as the Secretary's lack of candor or concern. His testimony regarding respirable dust was insufficient in detailing the enormity of the problem. His attempts to minimize the current hazards miners are facing by citing exposure levels obtained from mine operator compliance sampling reinforced the Union's view that the Agency is not serious enough about protecting miners from Black Lung disease.

Secretary Zatezalo did briefly note that, "MSHA continues to aggressively enforce existing standards to protect miners from exposure to respirable dust and quartz". However, in spite of the scientific and medical data, he did not advocate lowering the current quartz standard, nor did he even suggest creating a separate enforceable PEL.

Further, Assistant Secretary Zatezalo's testimony regarding exposure levels arguably contradicted the testimony of Mr. Watzman. As noted above, Mr. Watzman testified that PPE and environmental controls are necessary to limit dust exposure. The fact that Mr. Watzman argued the need for PPE is a tacit admission that operators are not controlling dust levels in their mines. Further, it implies that dust levels are actually higher than reported to MSHA. However, in his testimony, Assistant Secretary Zatezalo noted that tens of thousands of dust samples taken over the past several years show an average concentration of respirable dust in the nation's mines to be .61mg/m³. This is well below the current standard of 1.5 mg/m³. If that were the case, PPE would not be necessary. If operators were controlling the amount of dust in the mine, it would not be necessary to argue that miners should wear PPE. Therefore, Assistant Secretary Zatezalo seems to be more optimistic about the accuracy of the operator-administered dust sampling than the operator's former representative! The Union has already testified that it considers the data presented by MSHA regarding dust sampling to be subjective and not scientifically sound.

Finally, as with Mr. Watzman's testimony, the Secretary requested additional time to study the situation. He noted that, "due to the typically decades-long latency between exposure and disease, a medically valid study likely cannot be completed for a decade or more..." This is unacceptable. The Black Lung crisis exists in the coalfields today, it is killing miners today, and we have the information necessary to deal with this problem now. There is no justifiable reason for Congress and the Agency to delay taking immediate steps to finally eradicate this disease.

I would once again like to make the following recommendations, on behalf of the nation's miners, as the starting point to correct this appalling abuse miners have faced for far too long.

- 1) Congress must take necessary action to require the Federal Mine Safety and Health Administration assume the responsibility for conducting all respirable dust sampling used to ensure mine operators are in compliance with all aspects of the Respirable Dust

Sampling Program. The standard must require that a Representative of the Secretary be present for all such sampling for the entire duration of the sampling process.

- a) This can be accomplished either through immediate Congressional legislative action or by Congress directing MSHA to issue an emergency temporary standard meeting this requirement.
 - b) In an effort to pay for any additional financial burden this new sampling program would impose on MSHA, Congress must require the Agency to issue an emergency temporary standard that permits it to charge a fee for service or any other reasonable method to recover the cost associated with the program.
 - c) Congress must direct MSHA to move immediately after the issuance of these emergency standards to codify them into regulation by promulgating a permanent standard that accomplishes these goals.
- 2) Congress must take necessary action to require the federal Mine Safety and Health Administration promulgate an emergency temporary standard that creates a separate Permissible Exposure Limit for silica. The Standard must set the PEL at the current level recommended by the National Institute for Occupational Safety and Health. This will be consistent with the exposure limit set by OSHA.
- a) This can be accomplished either through immediate Congressional legislative action or by Congress directing MSHA to issue an emergency temporary standard meeting this requirement.
 - b) The emergency standard must require that the PEL for silica be separate and distinct from the Respirable Dust Standard and enforceable in accordance with all other standards established by the Agency.
 - c) MSHA must implement a sampling program for silica similar to the current Respirable Dust Sampling Program. MSHA must be responsible for conducting all respirable dust sampling used to ensure mine operators are in compliance with all aspects of the silica standard.
 - d) In an effort to pay for any additional financial burden this new sampling program would impose on MSHA, Congress must require the Agency to issue an emergency temporary standard that permits it to charge a fee for service or any other reasonable method to recover the cost associated with the program.
 - e) Congress must direct MSHA to move immediately after the issuance of these emergency standards to codify them into regulation by promulgating a permanent standard that accomplishes these goals.
- 3) Congress must take necessary action to require the federal Mine Safety and Health Administration promulgate an emergency temporary standard that expands the 103(f)

“walk around” rights afforded miners. The standard must permit the Representative of the Miners the right to participate in all activity conducted by a Representative of the Secretary while on mine property or in any activity that directly impacts the health and safety of miners at the operation.

- a) This can be accomplished either through immediate Congressional legislative action or by Congress directing MSHA to issue an emergency temporary standard meeting this requirement.
 - b) This emergency temporary standard must require the mine operator to compensate all Representatives of the Miners who participate in such activity at their regular pay, including applicable overtime, for all such work performed.
 - c) Congress must direct MSHA to move immediately after the issuance of these emergency standards to codify them into regulation by promulgating a permanent standard that accomplishes these goals.
- 4) Congress must take necessary action to require the federal Mine Safety and Health Administration to address the problem of miner representation and participation at mines not represented by a recognized labor organization and target such mines for compliance with all aspects of the Mine Act and all rules promulgated by the Agency to advance the safety and health of the miners. MSHA targeting should be active in nature, and include accident reporting, compliance history and patterns of noncompliance with all health and safety laws. Given the seriousness of the problem known to exist at these operations, MSHA should immediately start auditing and appropriately targeting these types of operations.
- a) This can be accomplished either through immediate Congressional legislative action or by Congress directing MSHA to issue an emergency temporary standard meeting this requirement.
 - b) Congress must direct MSHA to move immediately after the issuance of these emergency standards to codify them into regulation by promulgating a permanent standard that accomplishes these goals.
- 5) Congress must take immediate action to restore and increase the funding stream necessary to pay for benefits owed to coal miners from the Black Lung Disability Trust Fund. **This must include coal that is produced for domestic use as well as coal produced for the export market.** The increase must be sufficient to pay all disability and medical benefits, as well as retire the debt currently incurred by the Trust Fund. Payment of the debt must be completed in a reasonable and cost-effective time frame, not to exceed 30 years from the date of the legislation.

This legislation must contain language that does not permit companies who do not have the financial ability to pay for required benefits or refuse to pay required benefits to remain in business.

In the event current mine operators are in arrears in payments to any beneficiary for required benefits, for any reason, the legislation must contain language that permits the Trust Fund to recover any assets it has expended to pay these benefits, either by garnishing the revenue of the mine operator or if necessary attaching the mine's assets and selling those assets to cover the debt.

Madam Chairman I would like to take this opportunity to thank you, Ranking Member Byrne and the entire Committee for allowing me the opportunity to add to my previous testimony.