From: Parris, Michael G. [mailto:mparris@jwrinc.com]

Sent: Monday, December 14, 2009 5:29 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219-AB48

Jim Walter Resources, Inc, ("JWR") offers the following comments on "Respirable Coal Mine Dust: Continuous Personal Dust Monitor (CPDM)." JWR has recited the questions, below, posed in the Federal Register.

1. Please address conditions and circumstances under which CPDMs should be proposed for use in underground coal mines. In your response, include factors such as mine size, compliance history, type of mining, presence of quartz, and designated occupation. In addition, please address whether the CPDM could be integrated into the existing compliance strategy, and, if so, how. Please be specific in your response, and address any technological and economic feasibility issues associated with using CPDMs.

As a threshold matter, JWR is concerned that the increase in the incident rate of black lung is not understood well enough to appropriately understand the effect of the adoption of the CPDM. For instance, what geographical area is the increase in Black Lung coming from? Is this a true industry issue, or one that if broken down could be addressed in a more precise manner than blanketing the industry with new regulations and programs? Is the present Dust Sampling program failing industry or is it just time for an update?

JWR notes that the comments solicited by the Secretary do not appear to have been addressed by NIOSH. In particular, the testing reported by NIOSH in RI 9669 does not show the "existing compliance strategy" in effect at the mines where the field testing of the CPDM was performed. Nor does the NIOSH data provide any other comparative basis between the testing performed by the CPDM and the "mine size, compliance history, type of mining, presence of quartz, and designated occupation" test results obtained by the mines during the field tests.

In short, JWR does not believe that a reliable basis can be formed to address the matters for which the Secretary is requesting comments.

2. Please address the advantages and disadvantages of the existing compliance strategy, which relies on a combination of occupational and area sampling, versus a personal exposure monitoring strategy only. Please be specific in your response, noting the safety and health benefits of each strategy.

JWR believes that it is not possible to compare the existing compliance strategy with a personal exposure monitoring strategy, based on the NIOSH

data. JWR believes that before the CPDM is adopted as a compliance determination tool, it should be tested under comparative conditions to the existing monitoring strategy.

3. If CPDMs were to be required, how should a compliance strategy based on CPDMs be structured? Please be specific as to miners and occupations covered and include the rationale for your response. Include suggestions for the role of the mine operator, miner, miners' representatives, and MSHA under such a strategy.

JWR believes that it is not possible to propose or evaluate a compliance strategy, based on the NIOSH data. JWR believes that before the CPDM is adopted as a compliance determination tool, it should be tested under comparative conditions to the existing monitoring strategy. However promising the CPDM may be, it should first be determined to provide at least the same level of reliability for compliance determinations as the current system. NIOSH has not provided such comparative analysis, and JWR does not believe it is prudent to propose changes in the absence of such analysis.

4. How would the use of CPDMs impact the frequency of sampling? Please be specific and address how the concentration and exposure levels impact the frequency of sampling.

JWR believes that it is not possible to project the effect of the CPDM on the frequency of sampling, based on the NIOSH data. Again this is because the reliability of the samples taken by the CPDM was not determined by NIOSH, as compared to the conventional samples taken at the test mines. While the internal consistency of the CPDM samples is very promising, based on the NIOSH data, it is unclear from the data if the results were verified by the regular testing performed at the mines.

5. What examinations should be performed to assure the validity of exposure measurements, and how frequently should these examinations be made?

JWR agrees that these are good questions. JWR believes that NIOSH should address these questions, or explain how these questions are addressed in their prior research.

6. Since the current exposure limits were developed from 8-hour shift exposure measurements, how should the miner's end-of-shift exposure be reported when the work shift is longer than 8 hours?

This is an important question that has not been determined for the CPDM. If NIOSH has not evaluated the reliability of the CPDM for use when the work shift is longer than eight hours, JWR believes that this question cannot be addressed properly at this time.

7. Since the CPDM cannot be used to monitor for quartz, how should the applicable dust standard, including reduced standards established when the quartz content of the respirable dust exceeds 5 percent, be addressed when using a CPDM?

JWR agrees that this is a serious limitation of the CPDM that needs to be studied. With MSHA pushing toward a lowered dust standard, how will we address the quartz issue and how will it play into this new program? JWR does not believe that this question can be addressed based on the current level of knowledge of the CPDM.

8. Please address the use of CPDMs for sampling in outby areas, including specific areas, occupations, and frequency of sampling.

As with other points, JWR believes that it is not possible to project the effect of the CPDM in outby areas, based on the NIOSH data. Again this is because the reliability of the samples taken by the CPDM was not determined by NIOSH, as compared to the conventional samples taken at the test mines. While the internal consistency of the CPDM samples is very promising, based on the NIOSH data, it is unclear from the data if the results were verified by the regular testing performed at the mines.

9. Please address the use of engineering and administrative controls including how such controls should be applied to the CPDM's real-time exposure readings.

As with other points, JWR believes that it is not possible to assess the effect of the CPDM along with "the use of engineering and administrative controls," based on the NIOSH data. Again this is because the reliability of the samples taken by the CPDM was not determined by NIOSH, as compared to the conventional samples taken at the test mines. While the internal consistency of the CPDM samples is very promising, based on the NIOSH data, it is unclear from the data if the results were verified by the regular testing performed at the mines.

10. What action should be taken by the mine operator when a miner's exposure during a working shift reaches the dust standard limit?

JWR is unable to propose actions that should be taken, when the basis for those actions has not been determined to be valid. JWR is interested in learning more from NIOSH about the actions taken in the test mines, when exposure reached the dust standard limit as indicated by the CPDM.

11. Please address the use of CPDMs at surface mines, including sampling of areas, occupations and miners.

JWR has no comments on this request.

Dust Control Plan Requirements

1. Please address the advantages and disadvantages of using engineering controls to maintain the mine atmosphere in the area where miners work or travel. Please be specific in your response and include the technological and economic feasibility of such controls. In addition, please address the advantages and disadvantages of using administrative controls as part of an effective exposure control program.

JWR is unable to provide comments on this request without knowing particular engineering controls to which the Secretary is requesting information.

2. If CPDMs are used, please address the information that would need to be included in the dust control portion of the mine ventilation plan, including information related to addressing silica.

This question is a key concern of JWR that has not been addressed adequately by NIOSH. JWR is unaware of any study that has been done on how to incorporate CPDMs into the present dust control plan. JWR does not know how to implement the CPDM into its existing dust control plan, which is based on the current sampling system, because the CPDM has not been evaluated side-by-side with an existing system and program in a test mine.

Recordkeeping

1. Who should be responsible for maintaining the CPDM data files and why? How long should exposure records be maintained? How should information be used?

JWR is not certain how to respond. What exactly goes into the maintaining of CPDM data files, and how can the information be used? NIOSH should describe the maintenance of the data files with particularity.

2. How should the data from operator monitoring using the CPDM be transmitted to MSHA? What data should be transmitted? How often should the data be transmitted (e.g., daily, weekly, or some other frequency)? What steps should be taken to ensure the integrity of the data transmitted to MSHA?

This is a key concern to JWR. Under the current system, the Data Retrieval system was put in place by MSHA to expedite the return results. This program was working well, allowing the operator to see results within days of taking the samples, which improved the health and safety of all our employees. Due to the suspicious nature of the government this program was stopped. Now we are back to waiting two weeks for the mail-outs. JWR

does not understand the change, nor does JWR know enough about the CPDM to comment on whatever differences there may be in a system where it is used.

3. Under current regulations, mine operators, with few exceptions, post the monitoring results on the mine bulletin board for a period of 31 days. How practicable would it be for operators to continue this practice if the monitoring is conducted with the CPDM, which results in the collection of significantly more data than with the current MRE instrument? Would it be appropriate for operators to only provide miners with a portion of the data captured by the CPDM or to post the data for a period less than 31 days? Please be specific with your response, including your rationale.

According to NIOSH RI 9669, miners at the test mines were able to view their data in realtime. JWR is unaware of the reporting abilities of the CPDM. NIOSH should provide this information, along with the comparative data referred to above, so that operators can provide a specific response to these questions.

Education and Training

1. What training should miners receive if required to wear a CPDM? What type of training would be necessary to assure that the miner understands how the device works, what information it provides, and how that information should be used to reduce miners' exposure to respirable dust? How often should miners be required to receive this training?

2. What qualifications should be required before an individual is permitted to operate and maintain a CPDM? How should an individual be required to demonstrate proficiency before being permitted to operate and maintain a CPDM?

3. Which mine personnel should oversee CPDM usage, download exposure information, and interpret data? What type of qualifications/ certifications should these personnel be required to have?

Each of these questions can only be addressed after the CPDM has been more thoroughly evaluated in actual mining conditions.

Benefits and Costs

1. What would be the benefits of using CPDMs in a comprehensive and effective compliance strategy? Note that benefits might differ depending upon which compliance strategy is selected.

Each of these questions can only be addressed after the CPDM has been more thoroughly evaluated in actual mining conditions.

2. What costs would be associated with using CPDMs? Please be specific as to every component, such as, initial outlay, maintenance, and training.

3. What would be the advantages, disadvantages, and relative costs of different methods of using CPDMs?

4. Would the use of CPDMs affect small mines differently than large mines, and if so, how?

5. What incentives, if any, should MSHA consider to promote effective use of CPDMs in coal mines?

6. What actions, if any, should MSHA take to encourage coal mining industry acceptance of the CPDM technology, stimulate economic market forces for more competitive pricing of CPDM devices, and promote innovation in respirable dust monitoring technology?

Unfortunately, JWR can only speculate based on the data presented by NIOSH to date. Unless the government takes responsibility for the bulk of the sampling requirements the cost factor will be tremendous on both the large and small operators. We can see the potential failure of a large portion of smaller operators. At a cost of over $10,000.00 each and a need for 90 to 100 units just to cover one mine site you get some idea of the cost burden. This does not include the three extra employees needed to make this program function properly: two extras to program, issue out, collect, clean and re-charge the CPDM and another just to handle the data collected. Furthermore, MSHA regularly emphasizes the use of "administrative controls" in addressing health issues. What effect will this have in a UMWA operation? Has the issue of contractual rights and past practices been looked into at all? JWR is concerned that use of the CPDM could result in its miners being removed, by MSHA.

Thank you,

Jim Walter Resources, Inc.