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October 28, 2019

David G. Zatezalo, Assistant Secretary, Mine Safety and Health Administration
Sheila A. McConnell, Director, Office of Standard, Regulations, and Variances
U.S. Department of Labor
201 12th Street South, Suite 4E401
Arlington, VA 22202–5452

SUBJECT: Request for Information on Respirable Silica
RIN 1219-AB36; Docket No. MSHA-2016-0013

Dear Mr. Zatezalo and Ms. McConnell:

Since 2002, Appalachian Citizens' Law Center (ACLC) has represented claimants for federal black lung benefits and advocated for the safety and health of coal miners through rule-making petitions, litigation, and policy. Prior to 2010, we represented only a few miners diagnosed with complicated coal workers' pneumoconiosis or progressive massive fibrosis (PMF). Since that time, scores of miners have come through our doors with PMF. In just the past few years, many of the miners with PMF that we represent have been younger and their x-ray readings have progressed to Category B complicated coal workers' pneumoconiosis.[1] Thus, many of our clients are suffering from an increasingly severe sensation of breathlessness and will likely experience horrible, suffocating deaths.

We know that our experience is not isolated as an epidemic of complicated black lung disease has emerged in Central Appalachia. Incidence of disease is occurring at an unprecedented rate (Blackley et al., 2018). This increase in disease severity is also reflected in the claimants of the Federal Black Lung Disability Trust Fund. In 1988, there were only 18 claimants with PMF

[1] There is an irrebuttable presumption that a coal miner is totally disabled due to coal workers' pneumoconiosis if his x-ray yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A, B, or C in accordance with the classification system established in Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses. 20 C.F.R. § 718.304. Category B is defined as a large opacity having the longest dimension exceeding 5 cm.

whereas in 2014 there were 350 (Almberg et al., 2018). Most of these miners last mined in West Virginia, Kentucky, Virginia, or Pennsylvania (Almberg et al., 2018).

As MSHA acknowledges in the federal register, silica dust is implicated in disease causality. Medical studies have found that rapid disease progression and PMF are more often associated with lung opacities that occur due to silicosis rather than coal workers' pneumoconiosis (i.e. Laney et al., 2010). A recent study, the first to examine lung pathology specimens from miners with rapid disease progression, provided evidence that confirmed the role of respirable silica and silicates in rapidly progressive disease and PMF (Cohen et al., 2016).

In this RFI, MSHA states that it is seeking "information and data to determine if existing engineering and environmental controls can continuously protect miners and ensure that they do not suffer material impairment of health or functional capacity over their working lives from working in areas with high levels of quartz." First, we urge MSHA to focus on *improved enforcement* of existing, best practice engineering, administrative, and environmental controls. No controls are effective if they are inadequately enforced. Specifically, MSHA must develop improved practices for validating whether or not dust samples are representative of daily dust conditions in the mines. Second, it is imperative that MSHA create a *stricter, separately enforceable silica dust standard*. Third, MSHA should maintain the hierarchy of controls such that engineering, administrative, and environmental controls are prioritized over personal protective equipment for reducing dust exposure.

The higher incidence rate of PMF and rapidly progressive disease in Central Appalachia corresponds to higher levels of silica dust as demonstrated in a 2019 study. Doney et al. (2019) uses MSHA sampling data from 1982-2017 to demonstrate trends in coal mine dust and quartz dust levels over time.[2] This study compares dust levels in Central Appalachia to other coal mining regions. Though dust samples show that levels are generally decreasing over the examined time period, the percentage of quartz in dust samples is both historically, and presently, higher in Central Appalachia districts. In all years, the average percentage of quartz dust in MSHA samples has exceeded 5% in Central Appalachia - the percent content at which MSHA should reduce the overall coal dust standard in a particular mine.

However, it is very likely that many miners are actually exposed to even higher concentrations of dust than those reported by sampling. Reynolds et al. (2018) conducted interviews with 27 Appalachian miners with PMF and many of these miners reported that engineering dust control methods were not operated consistently. Fourteen miners stated that ventilation was not

[2] Respirable quartz dust is also called respirable silica dust. *National Mining Association v. Secretary, U.S. Department of Labor*, 812 F.3d 843, 850 (11th Cir. 2016). Thus, in this comment letter we use the terms interchangeably.

consistently maintained and eight miners reported that ventilation plans were followed more closely when MSHA inspectors or corporate safety personnel were on site. Reynolds et al. (2018) quoted one miner that said, "We didn't [follow the ventilation plan] except when the inspector was [there]. I mean, they'd still ventilate but when it [the ventilation curtain] got tore down just go on 'cause you got to run coal. And if you want to keep a job, you done it." (p.6).

An investigative journalist, Howard Berkes with National Public Radio, also conducted interviews with 34 Central Appalachian miners affected by PMF.[3] In his investigation, miners reported that dust was consciously and deliberately minimized during inspection in a notably different way than during a typical work day. Sixteen miners stated that ventilation was robust, machines were idled, and production was diminished during inspections. Eighteen miners said that they had witnessed or participated in deception during inspection.

A miner from Harlan County, Kentucky told ACLC that the only time when ventilation curtains were hung or when surfactants were put in the water of the sprayers to depress the dust was when MSHA was sampling. His comment is attached to this letter (Appendix A).[4] He also said that when MSHA was there with the dust pumps to sample quartz, the MSHA inspectors would leave the pumps with the miners and then go sit at the power center. That was far enough away from the pumps so that the miners could cover the pumps with a rag and keep the dust intake down. It is clear that even samples taken during inspection are likely not representative of daily conditions in the mine. Therefore, MSHA must act to develop an improved enforcement program for validating quartz dust field samples that would deter the types of outlaw behavior described in the miner's statement.[5]

In addition, it is imperative that MSHA develop a stricter, separately enforceable standard for silica dust. Under current regulations, exposure to quartz dust is controlled indirectly. If a

[3] See: https://www.npr.org/2019/07/23/743152782/coal-miners-to-demand-congress-restore-full-black-lung-benefits-tax

[4] ACLC is protecting the identity of this miner to avoid any retaliatory actions in response to his comments regarding his observations of industry and agency practices. Though we are aware the CPDM technology is currently not administered to assess quartz dust, we are particularly concerned that MSHA is not reviewing the CPDM data it receives from operator samples to verify that the respirable coal dust samples have not been manipulated as described by the miner in his comment below.

[5] Of course, falsification of dust sampling is not unique to central Appalachia mining operations, it has long been a widespread problem throughout the industry. In fact, after three ACLC clients blew the whistle on management at Armstrong Coal by filing a 103(g) complaint that accused them of cheating on their dust sampling, MSHA caught mine management hiding a dust pump in the clean air course at the mine. The three miners' willingness to report unsafe and unhealthy conditions at their mine led the U.S. Attorney for the Western District of Kentucky to file indictments against nine Armstrong Coal officials. Unfortunately, despite many coal miners' repeated assertions of widespread dust sampling cheating throughout the coal industry, investigations and criminal prosecutions like in the Armstrong Coal case are still rare.

respirable coal mine dust sample has a quartz content greater than 5% (as determined by weight) the coal mine dust standard is reduced in an effort to keep quartz dust exposure over a shift to less than 100 µg/m^3. In a publication produced by NIOSH, Joy (2012) argues that a separate standard specific to respirable quartz may diminish coal miners' exposure to harmful dust. Joy (2012) examined MSHA sampling data from 1995 to 2008 and found that 11.7% of samples were below the respirable coal mine dust standard but exceeded 100 µg/m^3 quartz and 4.4% of samples were less than 5% quartz but actually exceeded 100 µg/m^3 quartz. The mines that produced these samples were not subject to any kind of compliance action yet those miners were exposed to concentrations of respirable quartz dust over 100 µg/m^3. Joy (2012) also highlights that results from samples submitted for quartz dust analysis are not available until weeks after the sample is taken and thus there is a lag time for any kind of enforcement of a reduced dust standard based on sample results.

In order to protect miners, a silica standard that is separately enforceable from respirable coal dust must be promulgated and that standard must be less than 100 µg/m^3. Scientific studies have promoted a lower standard for decades. Kriess et al. (1996) suggested that an exposure limit of 100 µg/m^3 was not sufficient to prevent against silicosis. In 1995 the National Institute of Occupational Safety and Health (NIOSH) suggested a reduced standard to 50 µg/m^3 (NIOSH, 1995). In 2009, ACLC petitioned MSHA to a) reduce the permissible exposure limit (PEL) for respirable coal mine dust b) establish a separate standard for quartz/silica, independent of the PEL for respirable coal mine dust and c) reduce the PEL for respirable silica/quartz dust by half (Appendix B).

In 2010, MSHA granted ACLC's petition and committed to commence a rulemaking process for both a coal dust standard as well as a separate standard for silica dust (Appendix C). Yet still, there is no separate standard for silica dust. In July 2019, the United Mine Workers and the United Steelworkers petitioned MSHA requesting that the PEL for silica be a separately enforceable standard that matches the Occupational Safety and Health Administration's (OSHA) silica rule. We support their petition. During its rule making process for the revised permissible exposure limit to silica dust it instituted in 2016, OSHA found that a revised exposure limit of 50 µg/m^3 substantially reduces worker risk of silicosis mortality (OSHA, 2013). Though we will defer to medical experts to determine a safe permissible exposure limit, it is clear that an exposure limit of 100 µg/m^3 per shift is nowhere near sufficient to adequately protect miners' health.

Last, in this RFI, MSHA articulates interest in the use of personal protective equipment (PPE), particularly respiratory protective equipment, to protect against respirable quartz. In reference to 30 CFR 56/57.5005 the RFI states, "...where accepted engineering control measures have not been developed or when necessary by nature of work involved, miners may work for reasonable periods of time in a location where concentrations of respirable quartz exceed permissible levels only if they are protected by appropriate respiratory equipment…" Though we recognize that PPE may provide further protection for miners, as is enforced in the coal dust standard,

respiratory protection should not be considered a means through which to achieve quartz dust compliance.

First, the burden of protection should not fall on miners and their access to respirators. As stated by Reynolds et al. (2018), "In general, using personal protective equipment (PPE) such as respirators is the least preferred method to control hazardous occupational exposures. To reliably reduce exposures, the correct type of respirator must be worn at the correct time and must fit and function properly. Breakdowns can occur with any of these steps. This is why engineering controls to reduce respirable dust exposures to safe levels are preferred," (p. 9). Many of the miners in their study reported that they had used respirators, but they still developed large lung opacities (Reynolds et al., 2018). Among the miners that Berkes interviewed, 17 of the 34 complained about dust masks and said that they impaired their breathing, that dust would leak in, that filters would clog, or that they were too hot to wear.

Second, we fear that there is too much interpretative error in the statement "when by necessary by nature of work involved." This is vague and unclear. Mine operators may be able to justify many scenarios under this statement. For example, how will a "reasonable period of time" be established? Third, as has been demonstrated by current litigation, respirators have not been reliable protection for miners.[6] In fact, many coal miners that used them diligently throughout their mining careers still developed totally disabling and, in some cases, fatal black lung disease. Even if worn properly, respirators have not granted miners the protection that they claim to provide.

In conclusion, in order to reduce exposure to silica dust we recommend the following: MSHA should 1) create new enforcement protocols to validate dust samples and ensure that they represent daily dust conditions in the mine 2) create a separately enforceable silica dust standard and 3) maintain the present hierarchy of controls such that administrative, engineering, and environmental controls are prioritized over personal protective equipment as the primary means to reduce exposure to dust.

Finally, given the epidemic of PMF that is currently sweeping through Central Appalachia and the evidence that links PMF to silica exposure, we urge MSHA to issue an emergency silica dust standard. The Administrative Procedure Act, 5 U.S.C. § 553, allows for exceptions to procedure for rule-making when there is a "good cause" to find that the notice-and-comment process would be "impracticable, unnecessary, or contrary to the public interest." These situations may include emergencies where problems must be addressed immediately to avert threats to public health. In response to this health threat affecting so many miners, researchers at NIOSH have reported that, "We can think of no other industry or workplace in the United States in which this would be

[6] See: https://www.kentucky.com/news/state/article209783724.html

acceptable" (Blackley et al., 2018). This is a public health emergency and MSHA must act now to protect miners and end this epidemic.

Sincerely,

Wes Addington
Executive Director

Rebecca Shelton
Coordinator of Policy & Organizing

References:

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Reynolds, L.E. et al. (2018). Work practices and respiratory health status of Appalachian coal miners with progressive massive fibrosis. *J Occup Environ Med.* 60(11): e575-e581.

Appendix A

Comment from --------- ----------

I have eight years of experience as an underground miner. As an underground miner, I have worked every job at the coal face. I have experience operating a roof bolter, shuttle car, and continuous miner.

I got my MSHA certification to do dust sampling in 2017. I then got a job doing dust sampling for a mine in Harlan County. However, once the company realized that I wanted to do the sampling correctly, they stopped me from going underground to monitor the CPDM devices.

We would get voided samples all the time because the dust was too low to register as valid. The superintendent would write letters to MSHA saying that there was equipment failure or something like that so MSHA wouldn't get suspicious. Because of the voided samples, it would take the company longer to do their dust sampling to get the required number.

Although some of the data the company was submitting to MSHA would show that the company was in compliance with the dust exposure limit, the data also seemed to indicate the CPDM wasn't with the continuous miner operator during the entire shift. The data readouts should have had spikes when each cut was being made during the shift, but the results didn't show this.

I assumed that MSHA would also review the data that the company was submitting and notice the same things I was and start asking questions. But they never did. The CPDM will not work to protect miners if MSHA doesn't closely review the data it creates.

I only did the dust sampling for a few months because the mine I was working for appeared to be violating the rules so much that I was afraid they would get caught and I would be held responsible. So, I stopped sampling and went back to work underground as a continuous miner operator. I learned that the company would hang the CPDMs in the intake air. Although the CPDM recognizes motion, the intake air course would blow and move the CPDM around and make it appear like someone was wearing it.

We were mining a lot of rock – about 3 feet of rock for a 5.5 feet coal seam. It was very dusty work. We would always have warning when MSHA was coming to do their sampling because we were way up on top of the mountain and the truckers that were running coal out could see MSHA coming and warn us in the mines. When MSHA came, the company would put soap in the water sprays to keep the dust down and they would hang the curtains, which they never did when MSHA wasn't there. When MSHA was there with the dust pumps, the MSHA inspectors would leave the pumps with the miners and then go sit at the power center instead of staying with the pumps. That was far enough away from the pumps so that the company could cover the pumps with a rag and keep the dust intake down. The MSHA inspectors couldn't see it and they didn't seem to care because they didn't want to come back to re-do the samples.

Even with the new dust rules and the CPDM, coal companies are still cheating on their dust sampling and MSHA isn't doing a good enough job to make sure they don't.

Appendix B

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September 1, 2009

Gregory R. Wagner, M.D.
Acting Assistant Secretary of Labor
Mine Safety and Health Administration
1100 Wilson Blvd., 21st Floor
Arlington, VA 22209-3939

Petition for Rulemaking to Reduce the Level of Respirable Coal Mine Dust

Dear Dr. Wagner:

This Petition for Rulemaking is submitted by the Appalachian Citizens Law Center and Charles Scott Howard, a coal miner, pursuant to 5 U.S.C. § 553(e). The Petitioners request that the Mine Safety and Health Administration (MSHA) revise its regulations governing respirable coal mine dust to protect miners from pneumoconiosis and other occupational respiratory impairments by making the following rule changes: (1) reduce the permissible exposure limit (PEL) for respirable coal mine dust to 1 mg/m^3 TWA_{10}; (2) establish a separate standard for quartz/silica, independent of the PEL for respirable dust; and (3) reduce the PEL for respirable silica/quartz dust by half.

Coal Workers Pneumoconiosis [CWP] is an irreversible and progressive lung disease caused by the inhalation, deposition and retention of respirable coal mine dust particles and the subsequent scarring and destruction of the lung tissue. Miners also develop chronic obstructive pulmonary disease [COPD] due to coal mine dust exposure, including chronic bronchitis and emphysema even where there is no x-ray evidence of nodule formation indicative of CWP. Both CWP and COPD due to coal mine dust exposure are commonly called black lung. Black lung causes severe shortness of breath and sensations of smothering. It can be disabling and it can cause death.

Under the Mine Act of 1977 the Secretary of Labor, through the Mine Safety and Health Administration (MSHA), must promulgate standards to assure that miners won't suffer a material impairment of health even if exposed to a hazard their whole working life. The purpose of the law is "to provide, to the greatest extent possible, that working conditions in each underground mine are sufficiently free of respirable coal mine dust concentrations in the mine atmosphere to permit a miner to work underground during his entire working life without incurring any disability from pneumoconiosis or other occupation-related disease." 30 U.S.C. § 841(b). In the 1969 Coal Mine Act and in the

1977 Federal Mine Safety Act Congress stated that the first priority of the coal industry must be the health and safety of the coal miner. Congress created MSHA to protect miners' health and safety. To protect miners from black lung, the Mine Act created a scheme requiring MSHA to reduce the level of respirable dust so that miners did not develop pneumoconiosis. The Mine Act requires the Secretary to "set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life." 30 U.S.C. § 811(a)(6).

The Act directs the Secretary of Health and Human Services to establish a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed "to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person." 30 U.S.C. § 842(d). The National Institute for Occupational Safety and Health [NIOSH], a branch of the Centers for Disease Control, an agency of Health and Human Services, in a Criteria Document issued in 1995, established this level should be 1.0 mg/m³ of air, as a time-weighted average concentration for up to 10 hours per day during a 40-hour workweek. Moreover, NIOSH recommended that MSHA use single, full-shift samples to determine compliance with the exposure limit and that no upward adjustment in the limit be made to account for measurement uncertainties.

Moreover, in 1998, the American Conference of Governmental Industrial Hygienists (ACGIH) adopted a threshold limit value for respirable bituminous coal dust of 0.9 mg/m³ and 0.4 mg/m³ for respirable anthracite coal as a time weighted average exposure limit for eight hours. These health-based values were established following a comprehensive review of the peer-reviewed literature from the scientific disciplines, including industrial hygiene, toxicology, occupational medicine and epidemiology. At the time of their adoption, the value represented a level of exposure that a typical worker can experience without adverse health effects. (ACGIH, TLVs (R) and BEIs (R), 1998.)

In the Mine Act, Congress set standard for respirable dust standard at 2.0 mg/m³ to assure elimination of respiratory illness wrought by working conditions in mines. 30 U.S.C. § 842(d) stated that from time to time thereafter, the Secretary of Health and Human Services must establish, in accordance with the provisions of 30 U.S.C. § 811, a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed below the levels established in this section to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person. The NIOSH Criteria Document issued in 1995 stated that MSHA should reduce the level of respirable dust to 1.0 mg/m³.

Scientific evidence of the insufficiency of the current 2 mg/m³ standard was presented to the Secretary in 1995 by NIOSH. The Act requires the Secretary to respond to NIOSH's recommendations with positive action to reduce the level of respirable dust.

30 U.S.C. § 811(a)(1).

In January, 1995, the Secretary of Labor established an Advisory Committee on the Elimination of Pneumoconiosis Among Coal Miners. This committee held hearings and received information from many sources. It also reviewed the NIOSH 1995 Criteria Document. The Secretary's Advisory Committee recommended in 1996 that "MSHA should consider lowering the level of allowable exposure to coal mine dust."

The Advisory Committee also found that there was a significant silica exposure hazard in mining, especially for some occupations, such as roof bolting. The Advisory Committee found that many miners were at risk for silicosis, which is a particularly dangerous lung disease. It recommended separate standards be applied to silica exposure. It recommended MSHA lower the silica exposure. MSHA should reduce the permissible exposure limit for silica.

In 1999, MSHA stated in the Federal Register: "Respirable coal mine dust is one of the most serious occupational hazards in the mining industry. Long-term exposure to excessive levels of respirable coal mine dust can cause black lung and silicosis, which are both potentially disabling and can cause death." (Unified Agenda, April 26, 1999, Occupational Exposure To Coal Mine Dust (Lowering Exposure Limit)), 64 FR 21519-01 (Apr. 26, 1994).

In 2003, following a study of x-ray evidence of pneumoconiosis, NIOSH concluded:"CWP continues to occur among working coal miners, even among those first employed after the current federal exposure limit became effective." Centers for Disease Control and Prevention (Pon MRL, Roper RA, Petsonk EL, Wang ML, Wagner GR, Castellan RM). Pneumoconiosis Prevalence Among Working U.S. Coal Miners Examined in Federal Chest X-ray Surveillance Programs, 1996 – 2002, MMWR - Morbidity & Mortality Weekly Report 336-40 (2003).

Further studies have identified areas where the rate of progression of pneumoconiosis is rapid. Dr. V. Antao wrote in the journal, Occupational and Environmental Medicine: "Rapidly progressive cases of CWP can be regarded as sentinel health events, indicating inadequate prevention measures in specific regions. Targeted investigations should take place to identify causal factors and to prompt appropriate strengthening of disease prevention measures." 62 Occup. Environ. Med. 670-674 (2005).

In 2006 NIOSH stated: "The continuing occurrence of advanced forms of CWP emphasizes the importance of comprehensive measures to control coal mine dust effectively and reduce the potential for inhalation exposures in coal mining." Centers for Disease Control and Prevention (Antao VC, Petsonk EL, Attfield MD.) Advanced Cases of Coal Workers' Pneumoconiosis --- Two Counties, Virginia, 2006. 33 MMWR - Morbidity & Mortality Weekly Report, 909-13 (2006).

In the past three years, NIOSH reports show that miners have developed pneumoconiosis from coal mine dust at a greater rate than was previously believed true. NIOSH reported that a study in 2006 of 85 working coal miners in Letcher County, Kentucky found 12% had x-ray evidence of CWP; 1% had PMF; 7% had chronic bronchitis and 5% had emphysema. A study of 68 miners in neighboring Knott County, Kentucky found 15% had x-ray evidence of CWP; 1% had PMF; 9% had chronic bronchitis and 7% had emphysema. In September 2007, Dr. Edward L. Petsonk, who worked on the NIOSH study, reported that the rate of CWP had more than doubled among miners who worked 25 years or more underground, from about 4 percent in 1997 to 9 percent in 2006. The rate among miners with 20 to 24 years' experience jumped even more, from 2.5 percent to 6 percent. The fact of rapidly progressive CWP is occurring among miners who worked their entire careers after 1973, when the 2 mg standard was in effect, indicates that the current dust control approach is not adequate to protect miners from serious, disabling, and lethal lung disease. Clearly MSHA needs to reduce the level of exposure to respirable coal mine dust.

Further, according to a recent NIOSH study published by the American Thoracic Society's American Journal of Respiratory and Critical Care Medicine, emphysema severity was significantly elevated in coal miners compared to non-miners. Exposures at the current U.S. standard for a full working lifetime at 2.0 mg/m^3 would increase the average emphysema severity index by 99 points, providing additional evidence of the need to reduce exposures to respirable coal mine dust to 1.0 mg/m^3 or less, as recommended by NIOSH.

MSHA needs to act now and promulgate a standard reducing the level of respirable coal mine dust. The uncontroverted evidence establishes that there is an unacceptable risk of black lung posed by the current respirable dust standards. The uncontroverted evidence thus establishes that there is an unacceptable risk of black lung posed by current exposure levels. Yet, despite this information demonstrating a compelling need to reduce the amounts of respirable dust to which miners may be lawfully exposed, DOL has failed to reduce the standard. MSHA needs to act immediately to promulgate a standard reducing the level of respirable coal mine dust and silica dust.

Under the Administrative Procedure Act, "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. § 553(e). Also, the Mine Act itself incorporates this APA provision in speaking to petitions for rulemaking:

> The Secretary shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life

and prevention of injuries in coal or other mines.

30 U.S.C. § 811(a). Thus, any interested person or organization, such as the Petitioners herein, may submit a petition for rulemaking to MSHA.

The Petitioners thank MSHA for its consideration of this matter.

Sincerely,

Stephen A. Sanders
Attorney at Law

Appendix C

RECEIVED JAN 19 2010

U.S. Department of Labor

Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939

JAN 08 2010

Mr. Stephen A. Sanders, Esq.
Appalachian Citizens' Law Center, Inc.
317 Main Street
Whitesburg, KY 41858

Dear Mr. Sanders:

Thank you for your contribution to our recent "End Black Lung—Act Now" event in Frankfort, KY. I am optimistic that this campaign and comprehensive program can make substantial progress and eventually eliminate Black Lung risk in US coal miners

I want to follow up on my previous letter of September 24, 2009. In it I indicated that the Mine Safety and Health Administration (MSHA) would provide you with a final response upon publication of the Department of Labor's Fall 2009 Semi-Annual Regulatory Agenda. The Regulatory Agenda was published on December 7, 2009.

The petition you filed requested that MSHA make the following changes to protect miners from pneumoconiosis and other occupational respiratory impairments: (1) reduce the respirable coal mine dust standard to 1 mg/m^3 TWA; (2) establish a separate standard for respirable quartz/silica, independent of the standard for respirable coal mine dust; and (3) set the standard for respirable quartz/silica at 50$\mu g/m^3$.

As you know, the Secretary cannot promulgate a mandatory standard without first providing public notice and an opportunity for comment. 30 U.S.C. § 811(a). MSHA is granting your petition to the extent allowed by law in that the goal of the Secretary's rulemaking agenda is to address miners' exposure to respirable coal mine dust and silica and reduce miners' risk of disease. That is, the Secretary is actively preparing proposed standards addressing the goal of the issues you have raised - lowering exposure coal mine dust to reduce disease risk. Specifically, as stated in the semi-annual regulatory agenda, the Secretary intends to publish proposed standards to address miners' exposure to respirable coal mine dust by September 2010, and to publish a proposed standard to address miners' exposure to respirable crystalline silica by April 2011. MSHA is committed to meeting these regulatory timetables.

I am sure that you are aware of both the great care the Secretary must take in the development of every new standard, and the many legal requirements that govern the Secretary's rulemaking activities. The development of these new, proposed standards is one part of MSHA's comprehensive plan to reduce Black Lung. While these standards are being developed, the plan also includes education and training for the mining community to reduce miners' exposure to respirable coal mine dust and silica; enhanced enforcement of the existing respirable dust standards; and effective use of available dust control technology. The comprehensive plan has already been put into action.

Formally, this letter provides the final response of MSHA to the Petition for Rulemaking submitted by you on behalf of the Appalachian Citizens' Law Center and Mr. Charles Scott Howard on September 1, 2009. I do encourage you and your clients to participate actively in both the rulemaking process and in the End Black Lung campaign moving forward.

Thank you for your continued interest in improving the health and safety of our nation's miners.

Sincerely,

Gregory R. Wagner, M.D.
Deputy Assistant Secretary for Policy
Mine Safety and Health Administration

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Respirable Crystalline Silica/Quartz

Comment On: MSHA-2016-0013-0001
Respirable Silica (Quartz) - Request for Information

Document: MSHA-2016-0013-0069
Comment from Rebecca Shelton, Appalachian Citizens' Law Center

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General Comment

See attached file(s)

Attachments

ACLC_silica_comment