As of: June 22, 2011
Received: June 20, 2011
Status: Posted
Posted: June 21, 2011
Tracking No. 80e69f02
Comments Due: June 20, 2011
Submission Type: Web

PUBLIC SUBMISSION

Docket: MSHA-2010-0007
Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

Comment On: MSHA-2010-0007-0001
Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

Document: MSHA-2010-0007-0367
Comment from David Young, Bituminous Coal Operators' Association, Inc.

Submitter Information

Name: David M Young
Address:
801 Pennslylvania Avenue NW #612
Washington, DC, 20004
Email: dyoungbcoa@aol.com
Phone: 202-783-3199
Organization: Bituminous Coal Operators' Association, Inc.

General Comment

This is in support of BCOA's filing. An executed copy of the MOU in the submission.

D. Young

Attachments

UMWA-
BCOA_Comments_on_the_Proposed_Rule_for_Lowering_Miners'_Exposure_to_Respirable_Coal_Mine

AB64-COMM-88

United Mine Workers of America
International Union
18354 Quantico Gateway Drive
Suite 200
Triangle, VA 22172

Bituminous Coal Operators'
Association, Inc
801 Pennsylvania Avenue, NW
Suite 612
Washington, DC 20004

June 20, 2011

UMWA/BCOA
MEMORANDUM OF UNDERSTANDING
MODERNIZING COAL MINE RESPIRABLE DUST SAMPLING

The following paper reflects years of dialogue and development between the UMWA and BCOA. With MSHA's publication of its proposed rule on Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors, the UMWA and BCOA have agreed to the following principles. The parties believe that these improvements will materially reduce miners' exposure to respirable coal dust while also allowing time to gather real data that will further add to the protections necessary to shield the miners from being exposed to conditions that can lead to black lung disease.

The Personal Dust Monitor (PDM), which is now available for use in the nation's underground coal mines, presents an opportunity to deliver meaningful reform in coal mine respirable dust sampling. It allows individual coal miners to monitor their respirable dust exposure in real time and empowers them to make adjustments to reduce their individual exposure to concentrations of respirable dust that do not exceed relevant standards. The PDM can become a powerful tool in the fight against coal worker's pneumoconiosis (black lung).

Respirable dust monitoring in the nation's underground coal mines has not kept up with the changes in mining technology and miners' work schedules. For example, the current sampling system does not account for non-traditional work schedules, which have generally replaced the traditional 8 hour per day / 5 days per week format, or the increases in coal production that have been achieved—in part due to the prevalence of longwall mining.

To date, regulatory and legislative responses to this situation have been to attempt to reform and "tighten" the current antiquated system rather than look toward new ways to measure compliance, such as focusing on a miner's respirable dust exposure and seeking a reduction in the actual amount of respirable dust to which a miner is exposed. Mere changes to the gravimetric system, rather than developing a new sampling system, would perpetuate the

gravimetric system's core problem: the built in time delay between the time the sample is collected and the time the results of that sample are made known to the miner tested and the operator.

The common goal of the coal mining community is to develop a system that is easily understandable and credible to the miner, who is the individual we are all trying to protect. The PDM provides the Mine Safety and Health Administration (MSHA), mine operators and miners the ability to monitor and collect exposure data for compliance purposes.

Therefore, it is strongly recommended that we—MSHA, mine operators and miners—take out a clean sheet of paper and start a process to replace the current gravimetric system with PDMs. The current regulations and proposed changes neither address the shortcomings in the current system, nor find an acceptable remedy.

While the PDM was being developed[1], some members of the mining community began thinking about how best to use this instrument. The shortcomings of the present gravimetric sampling system provided the starting point. The PDM has superior capabilities over the present gravimetric system and it is important to take advantage of them. The PDM's significant sampling improvements should be used as the basis for new regulations to be developed.

The development of the PDM and the discussions about how it should be introduced led the industry to the "dose concept"—measuring the actual respirable dust exposure where miners are being exposed to high concentrations of dust in the mine atmosphere for the miner's full shift over a specific period of time. The UMWA/BCOA partnership has developed a framework for the implementation of the PDM and a new regulatory regime for respirable dust compliance and exposure. The framework and its concepts have been shared with interested parties.

Discussions between the BCOA and UMWA safety committees reached the following agreements for the introduction of PDMs:

1. Representatives of the UMWA and many operators made it clear in public testimony related to MSHA's failed 2003 dust proposal that the Agency, not the operator, should be responsible for compliance sampling. There is a strong perception that an operator-controlled system is not

[1] See NIOSH RI 9669/2006

credible with regard to compliance sampling. Therefore, mine operators are willing to cede compliance sampling to MSHA as long as sufficient safeguards are put in place.

2. The Personal Respirable Dust Program (PRDP) must be considered in its entirety and not by its individual parts. The PRDP would be applicable to all underground areas of underground coal mines. MSHA will designate which occupations are to be sampled for compliance and will select from those occupations that have the highest potential for a miner to be overexposed. We recommend that the current designated occupations be utilized as a starting point for the PDM wearers. After MSHA performs an evaluation at each operation it may determine that additional occupations need to be sampled at particular operations.

3. MSHA will take all compliance sampling for quartz, Part 90 miners and intake air. MSHA must enforce, audit and monitor the PDRP compliance sampling program to verify that valid procedures are being used. All monitoring of mine personnel by MSHA will require MSHA to download the data electronically at the mine so that the mine operator and miners have access to that data. MSHA will be responsible for all aspects of the deployment and maintenance of their sampling devices under this section.

4. MSHA will purchase sufficient numbers of PDMs for use in both compliance and monitoring determinations. MSHA will be responsible for replacement and/or refurbishing of MSHA PDMs, including maintenance. The mine operator shall be responsible for cleaning and consumable parts replacement of MSHA PDMs. Mine operators will be responsible for MSHA PDM's operational readiness and deployment. Mine operators will be required to have an adequate number of personnel, certified by MSHA, to administer the mine operator's responsibilities.

5. MSHA PDM compliance sampling will be conducted on all designated occupations and any other occupations MSHA may determine at each underground coal mine on all shifts on which coal is produced during a calendar week, (Sunday through Saturday). Miners designated to wear the MSHA PDM will wear the device for a full shift. Miners may request additional sampling not already designated by MSHA if they have reason to believe they are being exposed to excessive respirable dust.

6. The exposure limit for a miner per week will not be permitted to exceed the dose equivalent to that received as if exposed to 10 mg/m^3 for a scheduled forty-hour week. If a miner (or work

crew) works for more than forty hours during a week, the exposure limit must be reduced to the level that would equal the dose equivalent to 2.0 mg/m^3 for eight hours. For example, if a miner works for sixty hours during a week, the exposure limit for that week would equal (2.0 mg/m^3) x 40/H where H is the hours worked for that week for H>40 hours. However, under no circumstances could the exposure limit be increased to a level above 2.0 mg/m^3 if, for example H<40 hours. If the miner who is in the Designated Occupation is absent, the exposure of his replacement will be measured as if the absent miner was operating the equipment. If a miner or work crew is scheduled to work for more or less than forty hours during a week, the exposure limit for the miner or work crew must be reduced to the level that would equal the dose equivalent to 10 mg/m^3 for forty hours. Therefore, if a miner or work crew is scheduled to work for more or less than forty hours during a week, the exposure limit for that week would have to be at a lower rate per hour. Measuring the dose over a week improves the accuracy for determining a miner's respirable dust exposure and therefore is an improvement over the single shift sample methodology.

7. Because of the real time capability of the PDM, dust control plans will take on a different role in this program. The "Engineering Control Plans" will identify the major dust control features in use and will be used to assist miners if they detect an unaccounted for increase in their exposure. After the representative of the miners is given an opportunity to review and provide comments, the initial Engineering Control Plan (ECP) will be provided to MSHA for approval. Approved ECPs will be posted on the mine bulletin board and/or other approved locations for communication for all interested parties.

   Based on the real time results of the PDM, if significant increases and /or additions need to be made to the existing ECP, the mine operator, after consulting with the miners' representative may make changes. Once the operator sets its ECP changes, it will notify MSHA and immediately post the ECP plan changes on the mine bulletin board and/or other approved locations for communication for all interested parties. MSHA may require additional changes if the plan revisions are not adequate.

8. Mine operators are encouraged to purchase their own PDMs to help identify dust sources and manage exposures in a timely manner. Operator PDMs will be distinctively marked to readily distinguish them from the MSHA PDMs. The mine operator will be responsible for all costs

associated with its PDMs. The operator will be responsible for keeping data from the Operator PDMs separate and distinct from data collected from the MSHA PDMs. Maintenance records for Operator's PDMs will be kept on mine property and made available to the representative of the miners.

9. Additional items of agreement:

   A. There should be an interim period of 24 months before the new standard is fully implemented. During the interim period, a Coal Mine Dust Committee consisting of representatives from MSHA, NIOSH, NMA, BCOA, and UMWA shall meet quarterly each calendar year and more often if needed to develop recommendations for the sampling protocol, and consider other issues and problems that may arise as the PDM equipment and new standard become integrated into underground mining. The Coal Mine Dust Committee should also develop a training program for the certification of dust technicians, and for miners' use of PDM equipment.

   B. During the 24-month interim period:

      1. MSHA shall use the existing gravimetric sampling equipment to determine operators' compliance and for enforcement;
      2. Compliance sampling shall remain unchanged (five shifts/eight hours);
      3. To be valid, production sampling must be at 80% of the average production for the most recent 30 production days.
      4. The parties will seek these changes to the existing PDM equipment:
         a. Creation of a lapel-based sampling unit;
         b. Use of a clear hose; and
         c. Reduction of the battery size, without reliance on the cap light.

   C. In addition, these parties urge MSHA to focus enforcement activities on the areas where NIOSH has identified as "hot spots," and to conduct inspections seven days of the week and on all shifts.

David M. Young
David M Young
President, BCOA

Dennis O'Dell (JRP) 6-20-11
Dennis O'Dell
Administrator
UMWA Department of Occupational Health and Safety