

TRANSCRIPT OF PROCEEDINGS

MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:)
)
PUBLIC HEARING ON THE PROPOSED)
RULE TO REVISE EXISTING)
REQUIREMENTS TO APPROVE)
SAMPLING DEVICES THAT MONITOR)
MINER EXPOSURE TO RESPIRABLE)
COAL MINE DUST)

REVISED AND CORRECTED COPY

Pages: 1 through 43
Place: Arlington, Virginia
Date: July 8, 2009

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
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 MINER EXPOSURE TO RESPIRABLE)
 COAL MINE DUST)

Room 2539
 U.S. Department of Labor
 Mine Safety and Health
 Administration
 1100 Wilson Boulevard
 Arlington, Virginia

Wednesday,
 July 8, 2009

The parties met, pursuant to the notice, at
 8:58 a.m.

BEFORE: MARIO DISTASIO, Acting Director
 Mine Safety and Health Administration
 Office of Standards, Regulations
 and Variance

ATTENDEES:

PANEL MEMBERS:

KENNETH DICKENS
 RON FORD
 FRANK HEARL
 PAMELA KING
 GEORGE NIEWIADOMSKI
 JON VOLKWEIN

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APPEARANCES: (Cont'd.)

SPEAKERS:

DENNIS O'DELL, Administrator
Occupational Health and Safety
United Mine Workers of America

LINDA RAISOVICH-PARSONS, Deputy Administrator
Occupational Health and Safety
United Mine Workers of America

JAMES L. WEEKS, Director
Evergreen Consulting, LLC

JOSEPH LAMONICA, Safety Consultant
Bituminous Coal Operators Association, Inc.

BOB SELWYN, VP Sales & Marketing
Casella USA

ALAN MATTA, Product Manager
Thermo Fisher Scientific

P R O C E E D I N G S

(8:58 a.m.)

1
2
3 MR. DISTASIO: Good morning. My name is
4 Mario Distasio. I'm the Acting Director of the Mine
5 Safety and Health Administration, Office of Standards,
6 Regulations and Variances.

7 I'll be the moderator of the hearing today
8 on MSHA's proposed rule to revise the existing
9 requirements to approve sampling devices that monitor
10 mine exposure to respirable coal mine dust. The
11 hearing is being held jointly with the National
12 Institute for Occupational Safety and Health, NIOSH,
13 and the Mine Safety and Health Administration, MSHA.

14 I want to welcome you all to this hearing,
15 and I want to point out and introduce the members of
16 the panel. To my right over here is George
17 Niewiadomski. He's the Coal Mine Safety and Health
18 Specialist with MSHA's Office of Mine Safety and
19 Health.

20 Let's see. Frank Hearl to my left is Chief
21 of the Centers for Disease Control and Prevention,
22 National Institute for Occupational Safety and Health;
23 Jon Volkwein on the right, Research Physical Scientist
24 with the Centers for Disease Control and Prevention,
25 National Institute for Occupational Safety and Health;

1 Pam King to my left, and she's a reg
2 specialist in the Office of Standards with Mine Safety
3 and Health Administration. Let's see. Ron Ford is an
4 economist in the Standards Office with the Mine Safety
5 and Health Administration, and Mr. Kenneth Dickens on
6 the left is our solicitor.

7 The existing 30 C.F.R. Part 74 includes
8 requirements by which MSHA and NIOSH jointly approve
9 design, construction, performance and manufacturing
10 quality of the coal mine dust personal sampler unit,
11 the CMDPSU.

12 The regulatory requirements were issued in
13 1972, are design specific and do not permit the
14 approval of any other sampling device of a different
15 design. The CMDPSU is currently the only personal
16 dust monitor design that is approved for collecting
17 respirable dust samples in coal mines.

18 MSHA and NIOSH recognize the ability to
19 directly measure in real time the amount of respirable
20 coal mine dust to which a miner is exposed offers the
21 best solution for protecting miners from disabling
22 occupational lung disease. Therefore, on January 16,
23 2009, MSHA and NIOSH issued a proposed rule that would
24 revise requirements in 30 C.F.R. Part 74 for approval
25 of coal mine personal dust sampling devices.

1 The proposed rule would establish
2 performance-based requirements for approval of the new
3 personal monitoring device, the continuous personal
4 dust monitor, which I'll refer to as the CPDM. The
5 CPDM is capable of continuously monitoring and
6 displaying dust concentration measurements during the
7 shift and providing end-of-shift summary measurements.

8 The performance-based approach in the
9 proposed rule would allow for continued innovation of
10 the CPDM designs to accommodate improvements or
11 alternative designs in technology that may be
12 introduced in the future.

13 This rulemaking is limited to the approval
14 requirements and does not address issues concerning
15 how the sampling devices must be used to determine
16 compliance; for example, who, when and how often to
17 sample. Those requirements are addressed in existing
18 30 C.F.R. Parts 70, 71 and 90.

19 We have a notice of request for information
20 that we're working on. It's in the reg plan that was
21 published in the spring, so that's a separate
22 rulemaking. That's not what we're doing in this
23 rulemaking.

24 MSHA has estimated the economic impact of
25 the proposed rule and has included a discussion of the

1 costs, benefits and paperwork required in the preamble
2 to the proposed rule. We have additional copies of
3 the proposal available today.

4 I will now summarize the provisions for
5 which we have received comment:

6 Section 74.7(d). Proposed 74.7(d) (dust
7 concentration range) would require the CPDM provide
8 accurate measurements of respirable coal mine dust
9 concentrations for end-of-shift average measurement
10 within the range of 10 percent to two times the
11 permissible exposure limit, PEL, for respirable coal
12 dust.

13 A commenter asked if the requirement would
14 remain the same, that is 10 percent to two times the
15 reduced PEL, if dust sample contains more than five
16 percent quartz. The commenter also asked if MSHA
17 reduces the PEL for respirable dust or quartz dust in
18 the future would this requirement remain the same,
19 that is 10 percent or two times the new PEL.

20 Section 74.7(f). Proposed 74.7(f)
21 (electromagnetic interference) would require that the
22 CPDM meet standards for control of and protection from
23 electromagnetic interference established by the
24 American National Standards Institute, ANSI, the
25 Federal Communication Commission, the FCC, and the

1 International Electrotechnical Commission, the IEC.

2 To address immunity and susceptibility, the
3 proposed standard would require that persons must
4 proceed in accordance with IEC 61000-4 and -6
5 (Electromagnetic compatibility, Part 4-6: Testing and
6 measurement techniques -- Immunity to conducted
7 disturbances, induced by radio-frequency field.)

8 A commenter stated that as written the
9 standard is confusing to the depth of testing
10 required. The commenter asked if the intent of the
11 standard was to test the entire sections of 61000-4
12 and 61000-6 or only Sections 61000-4 and 61000-6 or
13 the specific test defined in 61000 4-6.

14 MSHA inadvertently cited the IEC reference
15 of the proposed standard as IEC 61000-4 and 61000-6.
16 The proposed standard should have been phrased as,
17 "Persons must proceed in accordance with IEC 61000 4-6
18 (Electromagnetic compatibility -- Part 4-6: Testing
19 and measurement techniques -- Immunity to conducted
20 disturbances, induced by radio-frequency fields.)"

21 In response to this commenter's question,
22 the Agency clarified in the hearing notice and is
23 clarifying again today its intent that the proposed
24 test be in accordance with the specific test defined
25 in IEC 61000 4-6.

1 Section 74.7(h). Proposed 74.7(h) (1) and
2 (2) (reporting of monitoring results) would require:

3 Adequate legibility or audibility of
4 monitoring results; computer, that is digital,
5 recording of results in the form of compatibility with
6 widely available computer technology; reporting of
7 results as cumulative mass concentrations in units of
8 mass per volume of air, that is milligrams per cubic
9 meter. It would also require a digital display that
10 is illuminated and provides a minimum character height
11 of six millimeters.

12 A commenter stated except for the provisions
13 of the size of the characters and the end-of-shift
14 results, there is nothing in this proposed rule that
15 provides for results for shorter periods of time (for
16 minutes to hours). This commenter stated that an
17 instrument that provides only end-of-shift results
18 would not be acceptable.

19 Additionally, whatever the number the
20 instrument displays should not be truncated and
21 instead should be rounded as is customary practice in
22 most other applications. The commenter suggested that
23 the information displayed on the CPDM be the same as
24 described in NIOSH Publication RI 9669, Laboratory and
25 Field Performance of a Continuously Monitoring

1 Personal Respirable Dust Monitor.

2 Section 74.7(i). Proposed 74.7(i) (power
3 requirements) would require the power source for the
4 CPDM have sufficient capability to enable continuous
5 sampling for 12 hours in a mine dust atmosphere of two
6 times the PEL. It also would require the battery
7 charger for the CPDM powered by a rechargeable battery
8 operate from a 110 volt (nominal) 60 Hz power line.

9 A commenter supported the proposed
10 requirement that the CPDM be powered continuously for
11 12 hours since miners' shifts are longer than eight
12 hours. However, the commenter also suggested that the
13 CPDMs be capable of operating for a minimum of 16
14 hours to accommodate full work shifts up to 16 hours.

15 This commenter further suggested that if this is not
16 feasible it should be required in two years.

17 Section 74.7(m). Proposed 74.7(m)
18 (tampering safeguards or indicators) would specify
19 performance requirements that would help ensure the
20 CPDMs are designed to prevent intentional tampering
21 and limit inadvertent altering of monitoring results.

22 It would require the CPDM have a safeguard or
23 indicator that either prevents altering the measuring
24 or reporting function of the device or indicates if
25 these functions have been altered.

1 A commenter supported this requirement.
2 However, the commenter doubted that such safeguards
3 could prevent tampering altogether. This commenter
4 suggested that MSHA have other methods to prevent and
5 detect tampering and to prosecute those who perpetuate
6 such frauds.

7 Section 74.10(a). Proposed 74.10(a)
8 (operating instructions and maintenance and service
9 life plan) is new and would require the manufacturer
10 to include operating instructions and maintenance and
11 service life plan with each new CPDM sold. Under the
12 proposal, operating instructions would have to be
13 clearly written.

14 A commenter suggested that the proposal
15 provide more specific and objective criteria and that
16 operating instructions be written so that anybody in
17 the industry can, after reading them, operate the
18 CPDM.

19 That concludes the summary of the comments
20 we received. As you address the proposed rule
21 provisions either in your testimony today or in the
22 written comments, please be as specific as possible.
23 Please include specific alternatives or rationale and
24 any technological and economic feasibility
25 considerations and data to support your comments.

1 The posthearing comment period for the
2 proposal closes on August 14, 2009, and MSHA must
3 receive your comments by midnight Eastern Daylight
4 Savings Time on that date. You can review the
5 comments on the Agency website, www.msha.gov.

6 The hearing, as many of you know, will be
7 conducted in an informal manner. Cross-examination
8 and formal rules of evidence will not apply. The
9 panel may ask questions of the speakers. The speakers
10 may ask questions of the panel.

11 MSHA will make a transcript of the hearing
12 available on the Agency website within a week of the
13 hearing. If you wish to present written statements or
14 information today, please clearly identify your
15 material and give a copy to the court reporter. You
16 may also submit comments following the hearing by any
17 of the methods identified in the proposal. We ask
18 that those in attendance sign the attendance sheet in
19 the back of the room.

20 If you have a hard copy or electronic
21 version of your presentation, we would appreciate it
22 if you would give it to the court reporter. Please
23 begin by stating your name and organization and spell
24 your name for the court reporter so that we have an
25 accurate record.

1 And now we will begin today's hearing. Our
2 first speakers will be: The United Mine Workers,
3 Dennis O'Dell, Administrator, Occupational Safety and
4 Health, United Mine Workers; Linda Raisovich-Parsons,
5 Deputy Administrator, Occupational Safety & Health,
6 United Mine Workers; and Dr. James Weeks, Director of
7 Evergreen Consulting.

8 MR. O'DELL: If it's okay with the panel,
9 we'd like to wait and go at a later time.

10 MR. DISTASIO: That's fine. We'll go to the
11 second one, Joe Lamonica, Safety Consultant,
12 Bituminous Coal Operators Association.

13 MR. LAMONICA: Good morning.

14 MR. DISTASIO: Good morning.

15 MR. LAMONICA: Joe Lamonica, BCOA,
16 L-A-M-O-N-I-C-A. BCOA would like to thank the panel
17 for allowing us to offer some comments on this
18 important rulemaking.

19 This rulemaking was brought about by the
20 application of taper element technology to a sampling
21 device that can measure in real time respirable coal
22 mine dust in the breathing zone of a coal miner. The
23 BCOA has been actively involved for over 10 years in
24 bringing the continuous personal dust monitor to
25 reality.

1 Rather than going through the alphabet soup
2 that's in the rule publication, I'll just say the PDM
3 and the gravimetric sampler because I get tongue-tied
4 with all the letters.

5 As background, I was personally involved in
6 the development of the existing coal mine dust
7 personal sampling unit, the gravimetric, which is also
8 being addressed in this rulemaking. I refer you to
9 Bureau of Mines Technical Progress Report 17 entitled
10 Personal Respirable Dust Sampler, which was published
11 in September 1969 and authored by Murray Jacobson and
12 yours truly.

13 This effort started in 1965 and led to the
14 existing gravimetric sampler. This sampling system
15 has been an important tool in significantly reducing
16 miners' exposure to respirable coal mine dust compared
17 to exposures of pre 1970. However, this tool,
18 combined with the existing 30 C.F.R. Parts 70, 71 and
19 90 regulations that deal with the who, when and how
20 often has not gotten us to our goal of zero black
21 lung.

22 In 1996, the Secretary of Labor Committee on
23 Miner Health recommended better respirable dust
24 monitors for coal mining. The government immediately
25 began development of the machine mounted dust monitor,

1 which used taper element technology. In 1998, the
2 reality of the machine mounted dust monitor and the
3 poor comparison to personal exposure ended the
4 project.

5 In 1999, the manufacturer of the tapered
6 element technology came up with a technical
7 development which created the potential for a true
8 person wearable mass measuring monitor. Today, the
9 PDM is a commercially available monitor that can be
10 used in an underground coal mine. This rule making
11 process is another step towards making the PDM able to
12 be used as both a dust control and an enforcement
13 tool.

14 The published summary of the scope of this
15 rule by MSHA states that it is only to establish
16 criteria for the approval of a new type of technology,
17 the PDM, and update application requirements for the
18 existing gravimetric sampler. The summary also stated
19 that the who, when and how often are covered in the
20 existing 30 C.F.R. Parts 70, 71 and 90.

21 The BCOA and UMWA have made numerous
22 presentations to MSHA, including at the Assistant
23 Secretary level, that the PDM is not just another
24 sampling device to be used in lieu of the gravimetric
25 sampler. I have attached for the record a copy of the

1 last presentation.

2 We have strongly urged the Agency to revise
3 existing 30 C.F.R. Parts 70, 71 and 90 to fully
4 utilize the potential that the PDM brings. We are
5 very confident that a new paradigm built on the
6 potential of the PDM will get us to our goal of zero
7 black lung disease.

8 The UMWA comments, which were submitted for
9 the record in March, point out some of the advantages
10 of the PDM over the gravimetric sampler so I'm not
11 going to repeat them here, but I will quote from their
12 comments on the comparison of the two units.

13 "The qualitative difference is profound.
14 One enables targeted dust controls. The other does
15 not. They are in fact two different instruments and
16 should not be treated as interchangeable. Because of
17 these differences, we look forward to the PDM being
18 the sole acceptable method for measuring miners'
19 exposure to respirable dust."

20 That concludes my comments. I'm available
21 for questions.

22 MR. DISTASIO: Thank you.

23 MR. LAMONICA: Thank you.

24 MR. DISTASIO: Bob Selwyn, Vice President of
25 Sales and Marketing at Casella, USA. Bob?

1 MR. SELWYN: Good morning.

2 MR. DISTASIO: Good morning.

3 MR. SELWYN: My point is fairly simple and
4 straightforward. Our company, Casella Measurement
5 based in the U.K., manufactures a range of dust
6 monitoring products, and we look at the specifications
7 for the changes to the pump, particularly in the sizes
8 that you've mentioned.

9 We would like to suggest that rather than
10 going on a size thing -- this length by this width by
11 this height -- that perhaps a more practical and open
12 solution might be to specify a volume rather than
13 physical sizes.

14 So we're suggesting that perhaps a more
15 universal limit for the size of the pump would be
16 based on volume at around about 500 cubic centimeters.

17 That's it.

18 MR. DISTASIO: Thank you.

19 MR. HEARL: May I ask another question?

20 MR. DISTASIO: Sure.

21 MR. HEARL: Here's one question.

22 MR. SELWYN: Yes. I'm sorry.

23 MR. HEARL: Along with the volume
24 recommendation, would you recommend some kind of other
25 limit, so to say no dimension greater than some value?

1 Would that work for you to, I mean, because obviously
2 --

3 MR. SELWYN: We did think about that, but
4 haven't initially come to a final conclusion on that
5 one.

6 Obviously the pump doesn't need to be so
7 long that it makes it unwieldy, so a practical,
8 wearable size, I guess. We could certainly look at
9 that in a bit more detail if it was felt to be useful.

10 MR. DISTASIO: If you would submit a comment
11 that might be helpful.

12 MR. SELWYN: Okay.

13 MR. DISTASIO: Okay.

14 MR. NIEWIADOMSKI: I have one question for
15 you.

16 MR. SELWYN: Yes?

17 MR. NIEWIADOMSKI: George Niewiadomski. You
18 must be referring to the existing sampling unit, the
19 pump that we use currently?

20 MR. SELWYN: I believe so, yes. Yes.

21 MR. NIEWIADOMSKI: As you know, our intent
22 was when those regulations were promulgated those were
23 design specific, and we certainly continued -- we were
24 just trying to update it to reflect the current
25 technology. Our intent was not to totally change,

1 okay, from design specific to performance related,
2 okay?

3 MR. SELWYN: Okay.

4 MR. NIEWIADOMSKI: That's why we left it the
5 way it is.

6 MR. SELWYN: Okay. I'll pass that on.

7 MR. NIEWIADOMSKI: But I was just curios
8 whether or not you were talking about the PDM
9 configuration or whether or not you're referring to
10 the existing sampling.

11 MR. SELWYN: We're referring to the existing
12 sampling on that.

13 MR. NIEWIADOMSKI: Thank you.

14 MR. SELWYN: Yes.

15 MR. DISTASIO: Raja Ramani, a professor of
16 mining engineering emeritus at Pennsylvania State
17 University?

18 MALE VOICE: Not here.

19 MALE VOICE: I don't see him.

20 MR. DISTASIO: Not here? Okay.

21 Alan Matta, Project Manager, Thermo Fisher
22 Scientific?

23 MR. MATTA: Yes. Good morning. My name is
24 Alan Matta. First name is A-L-A-N, last name
25 M-A-T-T-A, and as stated I'm the Product Manager for

1 Thermo Fisher Scientific for the PDM 3600. I'd like
2 to thank both NIOSH and MSHA for the chance to speak
3 today.

4 As mentioned earlier, I won't rehash some of
5 the earlier discussions on the product itself. I
6 think it's well known. But rather I'd like to have
7 the chance to update the panel on what has transpired
8 since the last formal hearing in 2003 with both the
9 instrument and the company.

10 In the May 2003 hearing, Eric Rupprecht, who
11 is co-owner of Rupprecht & Patashnic, the original
12 developer of this product, spoke indicating we were
13 ready to have this unit go underground. At that time,
14 the unit had not been approved for underground use.
15 However, the product did successfully pass testing
16 shortly thereafter and was brought to the mine and
17 testing did begin.

18 In April 2005, at that time Thermal Electron
19 Corporation acquired Rupprecht & Patashnic, known as
20 R&P. Following the acquisition, the work continued
21 with the same team in place with both NIOSH and MSHA
22 to validate the unit's performance.

23 During this testing, there were
24 approximately eight suggested improvements that should
25 have been made to the product to make it more suitable

1 for this application. Among these were better
2 pneumatic seals, longer cord lengths, improved run
3 time, changes to the internal fuses and improved
4 battery charging.

5 A ninth change, the dedicated software, is
6 currently in the development stage through the efforts
7 of NIOSH, and that would address one of the issues
8 about any tampering that could take place with the
9 data coming from the instrument.

10 In April 2006, the parent company, Thermo
11 Electron, acquired Fisher Scientific and the company
12 is now known as Thermo Fisher Scientific. As we
13 combined these two large companies along with the
14 group we acquired from the former R&P, we set forth
15 two goals of this new entity. One is to bring
16 laboratory grade equipment to the field, and the
17 second is more holistic, to make the world a cleaner,
18 healthier, safer place to live. We believe the PDM
19 satisfies two of these goals.

20 A little later, in April of 2007, the
21 decision was made to close the R&P facility located in
22 Albany, New York, and consolidate it to our larger
23 facility in Franklin, Massachusetts, which allowed us
24 to get some economies of scale and put the facility
25 into an area where it establishes a world class

1 manufacturing facility that is ISO certified.

2 In May of 2007, the informal partnership
3 comprising of MSHA, NIOSH, BCOA, UMWA and Thermo met
4 in Pittsburgh to address any remaining issues and to
5 calibrate where we were with the product and the
6 status of the necessary changes to permit formal use
7 underground. It was just prior to that time that I
8 became involved formally with the product.

9 As a manufacturer, we had concerns the PDM
10 would never become a reality of a goal of being
11 underground as it had been nearly 20 years since the
12 first design had been put out at the machine mount
13 level and 10 years for the initial unit. We had a
14 concern the design was becoming stagnant.

15 Fortunately, the activities at that meeting
16 made us feel better that the progress was going to
17 continue, and we continued to work closely with NIOSH
18 and MSHA to make several of the additional
19 modifications.

20 When the S-MINER Act slowed in the beginning
21 of 2008, we continued forward with the progress on
22 that and submitted for MSHA approval in the fall. We
23 did receive MSHA approval for intrinsic safety in
24 September of last year.

25 Shortly after that we approached a number of

1 the mining companies, as well as MSHA and NIOSH, to
2 see if there was any intent in obtaining the PDM units
3 as an engineering tool to help identify ventilation
4 controls and changes to those controls.

5 We were fortunate at that time. We received
6 orders for approximately 100 of these early units to
7 be put in the field, and those have been shipped over
8 the past few weeks. Those orders came in from many of
9 the mining groups, MSHA and NIOSH, and it's apparent
10 the value of this instrument was clear to those users.

11 To assist in successful deployment of these
12 units in the field, NIOSH established and coordinated
13 some training courses in conjunction with MSHA and
14 ourselves, Thermo, to put on four day-long training
15 courses over the past few months.

16 These courses took place at the Pittsburgh
17 Research Laboratory in Pittsburgh; Louisville,
18 Kentucky; Grand Junction, Colorado; and the MSHA Mine
19 Academy in Beckley, West Virginia. The hands-on
20 training consists of instrument operation, data
21 interpretation, communication and maintenance.

22 It is true the procurement cost of the PDM
23 is higher than the current coal mine dust personal
24 sampler unit. However, we believe the benefits
25 outweigh the cost, and NIOSH has constructed cost

1 models to show the actual cost of ownership is lower
2 over a four to five year ownership period in a typical
3 mine.

4 The cost data presented did not take into
5 consideration a number of cost elements such as the
6 expected reduction in health costs and the savings in
7 the handling, documentation and gravimetric measure of
8 the individual filters as done today.

9 Additional benefits include a hoped for
10 reduction in mine absenteeism and a healthier and
11 safer operations in the mine. The early adopters who
12 purchased these 100 units confirmed the value as an
13 engineering tool.

14 In my personal career I've been involved
15 with many products that provide real, immediate
16 benefits to the user. While the PDM does offer
17 immediate benefits in verifying the effects of
18 engineering controls, unfortunately it's not one that
19 provides immediate remedy to the health of the user.

20 CWP is a chronic disease and has been
21 increasing over the past few years. I'm proud to be
22 part of this valuable effort to help protect the
23 health of the miners and contribute to the reduction
24 of black lung disease. I believe we truly now have a
25 technology to allow us to measure the exposure levels

1 in real time and implement controls to minimize this
2 exposure.

3 I ask your assistance to take the necessary
4 actions to put this technology to work now. The
5 future health of the miner begins with the first step.
6 Let's take that step. Thank you.

7 MR. DISTASIO: Thank you. Thank you, sir.

8 MR. MATTA: Thank you.

9 MR. WEEKS: Good morning. My name is Jim
10 Weeks. I'm an occupational hygiene consultant to the
11 United Mine Workers, and I wish to speak in favor of
12 this proposed rule.

13 I think my take home message here is that we
14 need to get this instrument, the continuous personal
15 dust monitor, we need to get it into coal mines as
16 soon as possible. This rule is an important first
17 step, but, as the Chairman mentioned, there are other
18 steps along the way having to do with compliance
19 determination and so on.

20 I wish to support the Chairman's statement
21 that those are separate rulemakings from this and that
22 they're essentially independent from this rulemaking.

23 All we're doing here today is saying this is what
24 this instrument has to conform to in order to meet its
25 goals.

1 At the outset, I think it's important to
2 acknowledge the work of many people that have gone in
3 to make this possible -- the Bureau of Mines that
4 supported the development of the core technology of
5 this instrument, the tapered element; NIOSH that
6 picked it up; NIOSH, R&P and Thermo Fisher which
7 developed it with the support of MSHA.

8 I should mention also that the United Mine
9 Workers has been working with the Bituminous Coal
10 Operators and other operators to try and find areas of
11 agreement where we could support the deployment of
12 this instrument in the mines. That's been a very
13 fruitful endeavor. We did in fact find a great,
14 fairly broad collection of issues in which we had
15 substantial agreement which we have given to the
16 Agency in the past.

17 The instrument that's before us -- actually,
18 I expected one to be here today. So you can imagine
19 the instrument that's before us -- which it isn't;
20 it's out doing what it's supposed to do -- commonly
21 referred to as the PDM. This instrument actually is
22 twice removed from the forces that make it important.

23 The first driving force is that it measures
24 the concentration of respirable dust in real time in
25 mines. That is a huge step forward. Imagine, if you

1 would, a car without a speedometer and you're trying
2 to maintain a speed limit. At best you go by your
3 instincts. You go by the flow of traffic. You avoid
4 the police, traffic cameras and so on and so forth,
5 but essentially you're flying blind.

6 When you put a speedometer in that car you
7 get information back in real time at a time when you
8 can do something about it. It makes a world of
9 difference, and that's the kind of shift that this
10 instrument gives mine operators and miners. It's
11 difficult in fact to underestimate the significance of
12 that change that this instrument gives us.

13 The second driving force is black lung.
14 Controlling dust is not merely a legal requirement.
15 Its purpose is to prevent black lung. There are
16 certain features about this disease that make it
17 important to control dust on a consistent basis.
18 First of all, it's a chronic disease. It develops
19 slowly over time. Every exposure adds to the risk of
20 burden, the risk of disease and disability.

21 Secondly, it's not curable. We can
22 alleviate symptoms to some extent, but for the most
23 part once you get it you get it, and there's not a
24 whole lot you can do about it. It is absolutely
25 essential that this disease be prevented.

1 And it can be prevented. The way of doing
2 it is actually fairly straightforward. It's to reduce
3 miners' exposure to dust and to reduce it every shift,
4 every day, every miner, every mine.

5 One may think that one shift of overexposure
6 is not that important. It's only essentially a drop
7 in the bucket. One shift's exposure seen by itself is
8 in fact not that critical an issue, but what makes
9 that one shift important is the bucket itself, and
10 that is miners' lungs, because every shift of exposure
11 means that dust goes into the miners' lungs. This
12 requires a constant vigilance to keep dust exposure
13 down.

14 When the Federal Coal Mine Safety and Health
15 Act was passed in 1969, it created a medical
16 surveillance program which has been an invaluable tool
17 not only to identify miners that might be developing
18 black lung, but also to monitor progress over the
19 years, progress in our efforts to prevent black lung.

20 From 1970 when it first went into effect,
21 for the next 25 years up until about 1995 or so
22 there's been a very steady and welcome decline in the
23 prevalence of black lung. From 1995 over the next 10
24 years, however, the prevalence of black lung for
25 experienced miners has nearly doubled.

1 We essentially have lost control of
2 preventing this disease, and we need to bring the full
3 array of tools to prevent this disease. One of them
4 is this instrument, the continuous personal dust
5 monitor.

6 Now, the causes for the increase are not
7 clear. I mean, obviously the cause is exposure to
8 excess amounts of dust, but why? There are a variety
9 of theories. One is that miners have been exposed to
10 more quartz dust. I think in large part that's true.

11 The other is that miners have been working
12 longer shifts. The two milligram standard assumes an
13 eight hour shift, but miners work 10, 12, longer, 16
14 hour shifts these days, and because of that they're
15 exposed and they absorb more dust.

16 If you look at the annual hours worked of
17 miners over the past say 15 or 20 years, there's been
18 a steady increase from about 1,500 hours to over 2,000
19 hours, 2,200 hours per year the miners are working,
20 and that I think is another factor contributing to the
21 increased risk of black lung.

22 And I think we need to investigate both of
23 these issues to find out what exactly is going on and
24 take appropriate measures to stop them, some of which
25 is being done now, but in the meantime whatever else

1 we have to do, we have to reduce exposure to
2 respirable dust even before we have convincing answers
3 to the questions of causality.

4 And one of the things we can do and I think
5 must do is to get this device into mines and to use it
6 to pinpoint in a timely manner those circumstances
7 when miners could be exposed to higher levels and to
8 take corrective action in order to reduce exposure.
9 The PDM is the instrument to do that, and I think the
10 instrument that it replaces, the gravimetric
11 instrument that Joe Lamonica referred to, simply
12 cannot do that.

13 Now, the balance of my testimony essentially
14 is a recapitulation of what I submitted in my written
15 comments, I think some of which were discussed earlier
16 today, so I don't see much point in going over that
17 again.

18 We'll be expanding on these comments prior
19 to the August 14 deadline and giving you some more
20 material, but everything that was said in our written
21 testimony remains concerns of ours about shift length,
22 about this device and replacing the earlier device and
23 so on.

24 If you have any questions, I'd be glad to
25 take them at this time.

1 MR. DISTASIO: Thank you.

2 MS. RAISOVICH-PARSONS: Okay. Good morning.

3 My name is Linda Raisovich-Parsons -- it's spelled
4 R-A-I-S-O-V-I-C-H hyphen P-A-R-S-O-N-S -- and I am the
5 Deputy Administrator for the United Mine Workers
6 Department of Occupational Health and Safety.

7 The proposed rule we address today sets
8 forth the criteria for approval of the continuous
9 personal dust monitor, a new technology for providing
10 continuous readings of dust exposure. This technology
11 is achievable, will be a dramatic improvement to dust
12 monitoring and is long past due.

13 Nearly 40 years have passed since the
14 passage of the Coal Mine Health and Safety Act, which
15 established the rules for controlling respirable dust
16 in the coal industry. Years later, we are still faced
17 with black lung disease.

18 NIOSH findings in 2007 showed the incidence
19 of black lung disease has been on the rise since 1995,
20 with some miners developing advanced cases. The NIOSH
21 chest x-ray program currently underway has identified
22 counties in West Virginia, Pennsylvania and Kentucky
23 they call hot spots where we are seeing miners
24 progressing very rapidly through the different stages
25 of black lung.

1 When Congress passed the Mine Act that many
2 years ago, I am certain they did not envision that we
3 would still see increasing cases of black lung today.

4 The continuous personal dust monitors have the
5 potential to bring the coal industry out of the dark
6 ages and provide the serious attention to dust control
7 that is so direly needed. For that reason, it has the
8 full support of the UMWA.

9 I have worked in the coal industry since
10 1976, with many years of that experience being in mine
11 health and safety. The dust testing program has been
12 rife with fraud and failure for many years. The rise
13 in black lung progression is very troubling to us,
14 especially among younger miners.

15 The toll black lung has taken is frequently
16 overshadowed by the mine explosion or the disaster of
17 the day which steal the headlines, but attention
18 focused on these events has overlooked a simple fact:

19 That black lung displaced accidental deaths as the
20 principal killer of miners at least 50 years ago.

21 Every year black lung disease kills hundreds
22 of people who have worked in this nation's mines.

23 It's as if a 9-11 happens every year unnoticed while
24 miners slip into early graves one by one. It is time
25 to put this national tragedy behind us. It can be

1 done.

2 Black lung among British miners who worked
3 in mines that were government owned have a much lower
4 incidence of the disease than American miners because
5 dust test cheating was rare. I am certain that with
6 this new technology and strong enforcement of the
7 standards we can also make black lung a thing of the
8 past in the United States.

9 Upon review of the proposed rule, we would
10 like to make the following suggestions concerning the
11 proposal.

12 1) The UMWA notes with concern that MSHA
13 and NIOSH propose to update requirements for coal mine
14 personal sampler units, the instrument the continuous
15 personal dust monitor is designed to replace. We
16 realize that the continuous personal dust monitor is
17 limited to sampling for coal dust and that the old
18 sampling units must be retained to sample for silica
19 content.

20 However, we ask that this be made clear in
21 the standard that all sampling for coal dust will be
22 with the continuous personal dust monitor. The coal
23 mine dust personal sampler units must be limited in
24 use. Approving both instruments implies that the mine
25 operators may use either. This should be clarified.

1 2) The proposed rule notes that the continuous
2 personal dust monitor will allow mine operators to
3 identify and immediately respond to high dust
4 exposures. The Union would point out that these units
5 would benefit the miners who can also take corrective
6 actions in their own interest to respond to higher
7 concentrations of dust and make adjustments in their
8 work environment to better control dust.

9 The rule should note that the continuous
10 personal dust monitor will permit the mine operator
11 and the miner to take the most effective steps needed
12 to reduce the dust concentrations.

13 3) The Union looks forward to the
14 continuous personal dust monitor being the only
15 acceptable method of measuring miners' exposure to
16 respirable dust. We realize that with any new
17 technology a transition period must be permitted to
18 phase in the new devices. The UMWA recommends that
19 this transition period be no longer than two years.

20 4) The proposed rule would require the
21 continuous personal dust monitor provide accurate
22 measurements for a shift of 12 hours. The UMWA
23 believes it is important for the instrument to have a
24 capacity to monitor for a full shift where miners work
25 extended shifts of 12 hours or more.

1 We would also ask that in the near future
2 the continuous personal dust monitor be capable of
3 operating for a minimum of 16 hours. Some miners work
4 shifts longer than 12 hours, and a dust sampling unit
5 must be available to sample for their full shift.

6 5) The UMWA is glad to see that this
7 proposal includes requirements to design tampering
8 safeguards in the new units. However, it would be
9 naive to believe that such mechanical safeguards would
10 prevent tampering altogether.

11 MSHA must address means through other
12 regulation to prevent tampering and to detect it and
13 prosecute those who perpetrate such fraud. We would
14 expect to see these issues addressed when the Agency
15 reviews those standards.

16 6) Lastly, the UMWA would ask that the
17 operating instruments for the continuous personal dust
18 monitor be clear and easy to understand. Further,
19 those using these devices must receive training to
20 assure that they are completely familiar with the
21 correct operation of these devices.

22 In conclusion, the UMWA is glad to see MSHA
23 propose the use of the continuous personal dust
24 monitor in a step toward eradicating the scourge of
25 black lung which has plagued the coal industry for far

1 too long.

2 Being born and raised in the coal fields of
3 West Virginia, I have personally witnessed the
4 devastation of this disease in my community and my own
5 family. I watched my father die far too soon at the
6 age of 56 due to complications of black lung and heart
7 disease, so I, too, am personally glad to see MSHA
8 move forward with these rules.

9 Thank you.

10 MR. DISTASIO: Thank you. I have a question
11 about the 16 hours --

12 MS. RAISOVICH-PARSONS: Yes?

13 MR. DISTASIO: -- because I saw that in your
14 comments earlier. Do you have many miners that are
15 working that long?

16 MS. RAISOVICH-PARSONS: I wouldn't think
17 we'd have that many. We have a lot that work 12 hour
18 shifts as what we call our weekend warrior schedules
19 under the contract, but --

20 MR. DISTASIO: So you're concerned that the
21 12 hours is not enough for a 12 hour shift?

22 MS. RAISOVICH-PARSONS: If some of the
23 miners choose to work overtime or whatever, we expect
24 there would be a unit available that would sample for
25 that entire shift that they worked.

1 MR. DISTASIO: Because the concern is
2 obviously the battery weight.

3 MS. RAISOVICH-PARSONS: Right.

4 MR. DISTASIO: The longer the shift, the
5 more battery weight you're going to have. We're
6 trying to keep the weight down to two pounds.

7 MS. RAISOVICH-PARSONS: Well, we would hope
8 you would take a look at that anyway.

9 MR. DISTASIO: Any other questions?

10 (No response.)

11 MR. DISTASIO: No? Thank you.

12 MS. RAISOVICH-PARSONS: Thank you.

13 MR. O'DELL: My name is Dennis O'Dell. I am
14 currently the Administrator of Occupational Health and
15 Safety for the International Office of the United Mine
16 Workers of America. I have 32 years' experience in
17 the mining industry, close to 20 years as an
18 underground miner and the remainder as a health and
19 safety specialist for the UMWA.

20 The United Mine Workers of America
21 appreciates the opportunity to participate in this
22 important rulemaking. The UMWA has already submitted
23 written comments on this rule, and we may submit
24 additional written comments based on this hearing.

25 Even though this proposed rule is limited to

1 establishing a criteria for approval of a new type of
2 technology, I would like to reiterate the importance
3 of this device as a means to help reduce and possibly
4 one day eliminate the dreaded disease known as black
5 lung that continues to kill our miners across this
6 nation.

7 For the purpose of my testimony I, along
8 with Joe, will refer to the coal mine dust personal
9 monitor as a PDM.

10 The proposed regulations set forth
11 requirements for approval of the units designed to
12 determine concentrations in the atmosphere.
13 Understanding initially that there will be a need for
14 the existing sampling unit used today, the CMDPSU, and
15 until such time as the PDM can safely perform these
16 functions it's the Union's recommendation that the
17 existing units be used only for sampling silica,
18 designated area sample or, if modified for other
19 exposures, other than respirable coal mine dust; for
20 example, diesel particulate matter and things such as
21 that.

22 The Union insists that this rule defines and
23 is made clear that all mine operators, large or small,
24 will be required to use the PDM as a means for
25 sampling and compliance of respirable coal mine dust

1 exposures for miners and the mine environment. This
2 is even more important noting that NIOSH's hot spots
3 that have been recognized are mostly small mines where
4 we see these increased cases.

5 The Union also recognizes that 30 C.F.R.
6 Parts 70, 71, 90 will need to be revised prior to the
7 use of the PDM, and we look forward to offering our
8 comments when the time occurs in the proposed rule of
9 its own.

10 As I have stated to you in my opening, I've
11 served as UMWA International Health and Safety
12 representative for 14 years, the last four years of
13 that time as the Administrator of the Department. I
14 choose to let Thermo, who is the experts of the
15 equipment, speak on the technicality of the PDM, but
16 let me now speak to you as an individual who worked as
17 an experienced underground coal miner for close to 20
18 years prior.

19 You're looking at an individual who had to
20 wear the existing gravimetric pump and has been
21 subjected to the system we now have in place today.
22 And although it served its purpose in helping to
23 control and reduce black lung and eliminate some dust
24 exposures, the system and the manner in which we do
25 sample for dust today is broken.

1 For years you've heard from miners across
2 this country like myself who have told you that the
3 manner in which coal dust samples are currently taken
4 is not effective. We've testified in years past
5 begging MSHA to come up with a better way to sample
6 miners for coal dust mine exposure.

7 We went through a period of time when sample
8 cheating and fraud occurred throughout parts of this
9 industry, and I'm sure they still occur. We've
10 testified on when MSHA came in to sample these days
11 were not a true indication of the conditions that we
12 actually worked on a day-to-day basis.

13 We've told you how production is cut back to
14 qualify for a valid sample, how outby roads are
15 watered when they normally aren't, how more time is
16 taken to change bits and change bits more often, how
17 changing water sprays occurs more often, how the
18 ventilation controls are tighter, and we've even seen
19 cases where the air is maxed out only on sample days,
20 but not maintained after the sampling is over.

21 To this, this is nothing more than a legal
22 way to cheat and beat the system. The stories go on
23 and on and on on how miners have lost faith in the
24 system as we know it today.

25 Again, we have seen a rise in black lung

1 cases, many new cases of younger miners with fewer
2 years in the mine than one would expect for having the
3 progressive stages of black lung we are saying, yet
4 rather than focus on stopping the killing spree the
5 focus is centered in a debate of whether it's coal
6 dust or silica, whether it's a regional issue, if it's
7 extended shifts with less time to purge the lungs.

8 And although there has been some debate
9 also, the lack of MSHA's enforcement under the Bush
10 Administration, and that's why it's allowed to surface
11 now.

12 Although these debates need to occur so that
13 we may understand why, it's time to focus more on a
14 way to fix the problem. Today is the beginning of a
15 new opportunity to do that. Today MSHA has a chance
16 to provide miners with a tool that will allow us to
17 correct and reduce our exposures as they occur.

18 Real time measurement and projected exposure
19 will be at our fingertips. Currently we have to wait
20 sometimes for our sampled results after MSHA's five
21 days of samples. Samples are sent back to a lab to be
22 analyzed. The samples are averaged out, which I think
23 is a crock in itself. Then the results are sent back
24 to the mine where they're supposed to be posted for
25 review.

1 But guess what? It's too late. We've
2 already been exposed. We can't fix what's happened,
3 and by the time the results are processed we forget
4 all about being sampled so in a lot of cases we don't
5 even look at the mine bulletin board for our results.

6 And if we did look, most of the time they're buried
7 under motorcycle or 4-wheeler ads for sale.

8 The PDM will change this madness. The PDM
9 will empower miners and mine operators with the
10 ability to take corrective action immediately and on
11 the spot. Miners will wear these for their entire
12 shifts, not just six hours being sampled, three hours
13 if we're lucky during production time.

14 We've done a fairly good job in putting
15 protection in place to protect miners' safety. The
16 approval of the PDM will be a step forward in putting
17 protections in place to protecting miners' health.

18 I'd like to offer one more comment if I may
19 as a follow-up to the question that you asked Linda
20 about the 16 hours.

21 MR. DISTASIO: Go ahead.

22 MR. O'DELL: That comes into play a lot of
23 times when miners work vacations and when miners are
24 on the weekend warrior crews. Sometimes these miners
25 do work, counting their travel time in and travel time

1 out, 16 hour shifts so it's out there more often than
2 what you think.

3 We believe that during a phase-in period of
4 time that surely -- I mean, Eveready does wonderful
5 jobs with their batteries now and small and how long
6 they last. I'm sure we can come up with a manner to
7 find a battery that will not be overburdensome or
8 overweight to miners, so that's why we would like that
9 looked at.

10 MR. DISTASIO: If you could supply some data
11 on the 16 hours we'd appreciate it.

12 MR. O'DELL: Sure. Yes, sir.

13 MR. DISTASIO: Thank you. Any other
14 questions?

15 (No response.)

16 MR. DISTASIO: No. Thank you.

17 MALE VOICE: That was painless.

18 MR. DISTASIO: All right. Is there anybody
19 else that wants to make a statement?

20 (No response.)

21 MR. DISTASIO: It doesn't appear to be, so
22 that concludes our hearing today. Thank you for
23 attending, and we appreciate your comments.

24 (Whereupon, at 9:53 a.m. the hearing in the
25 above-entitled matter was concluded.)

REPORTER'S CERTIFICATE

DOCKET NO.: --
CASE TITLE: Public Hearing
HEARING DATE: July 8, 2009
LOCATION: Arlington, Virginia

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Mine Safety and Health Administration.

Date: July 8, 2009

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