

Oral Statement
on
Diesel Particulate Exposure of Underground Metal and
Nonmetal Miners
MSHA RIN 1219-AB29

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Good morning. My name is Michael Wright. I'm the Director of Health, Safety and Environment for the United Steelworkers, a union representing 850,000 workers in North America, including the majority of unionized metal and non-metal miners in both the United States and Canada. With me today are Wesley Smith, President of our Local Union ~~37-996~~, **5-966** which represents miners at the Morton Salt mine in Fairport, Ohio, along with his Vice-President, Eddie Bowman. Our group also includes Dr. James Weeks, a consultant to the USW, who I know is familiar to many in MSHA from his long service with the United Mineworkers.

This is, of course, a sad day – a day on which the entire mining community is united in mourning the loss of twelve miners in West Virginia. In our brief comments today and in the written material we will submit later, we will be sharply critical of MSHA's proposal to change the diesel particulate standard. But the West Virginia tragedy reminds us of how much we depend on this agency, how much we honor its history and its values, and how grateful we are for the dedicated work of the MSHA career staff both in Arlington and in the field. So if we are critical in this case, it is because we believe that MSHA's recent actions on this standard are inconsistent with that history, those values, and the commitment to protect miners that motivates so many who work in this agency.

Inconsistent, because this is the first time that MSHA – indeed the Department of Labor itself, MSHA or OSHA – has attempted to significantly weaken an existing health standard. If MSHA succeeds, many

miners will continue to risk cancer, and some will die from it. Others will contract serious respiratory disease.

We currently have a standard on the books. The final exposure limit of 160 ug/m³ total carbon was scheduled to become effective in a few days and is now scheduled to become effective later this Spring. When the standard became law in 2001, mine operators were given five years to come into compliance with that limit. MSHA and NIOSH gave the industry an extraordinary amount of help in the form of compliance assistance and research into feasible, practical, and relatively inexpensive controls. The USW consented to a change in the standard that will give individual mine operators an unlimited number of special extensions where they can demonstrate the need.

None of that was enough for some operators or their trade associations. While many operators have made a good faith effort to lower exposures and come into compliance, history shows that some will wait until the day that the government finally has the power to cite them and impose penalties. MSHA now proposes to delay that day for five more years. Reopening the record gives others the opportunity to argue that the standard should be weakened further, perhaps to the point where the day of reckoning never comes at all.

Again, this is different from other rulemakings in that a standard is already in place. MSHA has found that the standard protects miners from a significant threat to their health and is feasible. Yet the agency proposes to weaken it by a lengthy, unjustified delay. The burden of proof rests squarely with MSHA and anyone else who might propose a more drastic weakening. In the words of Carl Sagan: "Extraordinary claims require extraordinary evidence." It is extraordinary for MSHA to claim that it has to weaken protection for thousands of miners. So far we have seen no evidence to back that claim, let alone extraordinary evidence. Indeed, the evidence which has accumulated since 2001 gives us even more confidence that the standard is—feasible.

Although we have no obligation prove our case that the existing standard should be retained, the USW intends to show in this rulemaking that the existing standard is feasible both technologically and economically under applicable legal standards. We will do so through written documentation, later in the process. Today we want to touch briefly on a

different issue in the rulemaking – respirators, and the need for medical evaluation and transfer rights.

Every employer regulated by OSHA is required to provide medical evaluations for workers required to wear respirators. Every professional association involved in safety and health recommends it – the American Industrial Hygiene Association, the American Conference of Governmental Industrial Hygienists and the American College of Occupational and Environmental Medicine, to name the most prominent. There is very substantial evidence in the record of the relevant OSHA hearings to support medical evaluations, and we would ask that that evidence be incorporated into this record as well.

We believe that all miners should receive a medical evaluation before being assigned to wear a respirator to ensure that they may do so safely. Only a few will be unable to wear a negative pressure respirator. Most of those will be able to wear a powered respirator. Very few miners will have to be reassigned. But unless miners are assured that they will keep their jobs even if they cannot wear a respirator, our experience over decades, and the experience of other unions under both the Mine Act and the OSH Act is that some workers will be deterred from fully participating in medical evaluations. Some may refuse the evaluation altogether; others may give inaccurate answers on the medical history. No one should have to choose between their health and their job. Miners removed from high-exposure areas must therefore have transfer rights and full earnings protection – both as a matter of health and as a matter of simple justice.

And, of course, as a matter of law, for transfer rights and earnings protection are explicitly required by Section 101 of the Mine Act. Of course, we will elaborate all these points in our written submission, and Brothers Smith and Bowman will also discuss them in a moment.

That concludes my statement. After all of us have finished, we will of course be happy to answer any questions to the best of our ability. I would ask that you direct all questions for our group to me initially, since I am more familiar with the particular expertise of each panel member.

Thank you for your consideration.