

**Fontaine, Roslyn B - MSHA**

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**From:** Brian Keaton [bkeaton@alphanr.com]  
**Sent:** Monday, June 20, 2011 6:06 PM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Cc:** John Gallick  
**Subject:** RIN 1219-AB64  
**Attachments:** Fontaine\_Comments Proposed Rulemaking RIN1219-AB64.pdf

Please find attached the following:

Comments on Proposed Rule: Lowering Miner's Exposure to Respirable Coal  
Mine Dust, Including Continuous Personal Dust Monitors  
RIN 1219-AB64

2011 JUN 20 P 6:06



June 20, 2011

Ms. Roslyn Fontaine, Acting Director  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
1100 Wilson Boulevard, Room 2350  
Arlington, Virginia 22209-3939

Re: Comments on Proposed Rule: Lowering Miner's Exposure to  
Respirable Coal Mine Dust, Including Continuous Personal Dust  
Monitors  
RIN 1219-AB64

Dear Ms. Fontaine:

Alpha Natural Resources ("Alpha") on behalf of itself and its affiliates offers the following comments to the Mine Safety and Health Administration ("MSHA") concerning its Proposed Rule for modification of 30 C.F.R. Parts 70, 71, 72, et al. with respect to respirable dust control to supplement Alpha's testimony at a hearing on February 15, 2011. The proposal was published at 75 Fed. Reg. 64412 (October 19, 2010).

Alpha's affiliates, as you know, operates a number of underground coal mines ranging in size from our large longwall operations to relatively small mines that depend on continuous miners to produce coal. Alpha's affiliates operate underground coal mines in Pennsylvania, West Virginia, Kentucky and Virginia.

We urge MSHA to withdraw the proposed rule and to propose a new rule that 1) relies on a transparent review of the current science on miners' health; 2) addresses directly the health concerns illuminated in the science; and 3) utilizes a comprehensive, rather than limited, approach to improving worker health. Our

comments should be viewed as suggesting ways that the rule could be reconfigured once it is pulled back.

We join in the comments of the National Mining Association concerning the flawed science behind the proposed rule. We think that the reports and testimony offered by NMA and its members have demonstrated conclusively that the proposed rule can not be justified. We do not believe that the proposal is based upon sound science; we do not believe it will improve miner's health; and finally, we do not believe that it will promote confidence in the respirable dust sampling program.

We also believe that a just released NIOSH study demonstrates that the issue with respect to the so-called "hotspots" is silica, not respirable coal mine dust generally and that any new proposal should focus on that issue. MSHA has informed the stakeholders that it intends to move forward after this proposed regulation is enacted with a silica standard similar to a proposed OSHA standard. It seems logical in light of the clear evidence that any health concerns is likely the result of silica exposure that this proposed rule be pulled back and reintroduced in combination with any silica standards. The Agency needs to approach the entire respirable dust issue – both respirable coal dust and silica in one proposed regulation while at the same time implementing the new CDPM sampling system into an appropriate sampling system design.

It is also absolutely critical that any rule restore confidence in the respirable dust sampling, both from an operator's standpoint as well as from the standpoint of the miners. The current proposal does not do this. It relies upon uncertain new technology. Alpha supports, in principal and in practice, this new technology while recognizing the need for more extensive testing prior to its use as the only regulatory sampling instrument available. This issue is further exacerbated with the proposed rules inclusion of single shift samples. As we have said, the CPDM technology represents an opportunity to manage respirable dust differently and to shift the focus to individuals but it can not support the enforcement scheme that is being imposed on it.

Everyone who has had any familiarity with the respirable dust sampling programs knows that single-shift samples are not reliable indicators of actual exposure. There have been too many obvious aberrational samples that MSHA has considered valid to provide the program with any credibility. The arbitrariness of how MSHA approaches such samples, and the program as a whole, is also demonstrated by MSHA's use of such single samples to compel changes in ventilation plans.

Any rule also must take into account individual miner's exposure and potential for disease. We are not sure why MSHA ignored the exposure of individual miners. We assume it is a carryover from the 1970's when the personal dust sampling program was eliminated. The development of the CPDM makes the participation of individual miners the critical component of any program and provides a unique opportunity to focus on the individual miner. To foster this protection, we think all miners should be subject to a mandatory medical surveillance in the form of x-rays. It makes no sense to us to avoid making this tool available to the individual miner or to deprive the operator the information useful information to managing exposures.

We also believe that mine operators should be permitted to use administrative controls to minimize respirable dust exposure to the individual miners. The proposed rule virtually eliminates the use of such controls and it is inappropriate to eliminate this useful tool, especially when the CPDM is most effective at identifying personal exposure. MSHA needs to move away from the sort of thinking that has characterized the program of seeking to artificially create elevated samples by requiring pump transfers and the like. It is time to put in a system that permits control and analysis of individual exposures. Otherwise, there is no point in moving forward with the new technology.

The proposed rule also ignores Personal Protective Equipment ("PPE"), which is an effective means of reducing an individual miner's exposure to respirable dust. MSHA's position actively discourages the use of PPE but it is an effective tool and the agency should promote its use. There is no reason that the coal mining industry should not follow the same tenets and hierarchy of controls that the rest of industry follow and that hierarchy includes PPE. The hierarchy of

control for dust exposure for all industries is —Engineering, Administrative and Personal Protective Equipment (PPE), underground coal mining should be no different.

We also want to reiterate that the emphasis on plans in the proposed rule is unworkable and renders the program as less than credible. Those of us in the industry place no credence in a program that relies on plans and requires the submission of a new plan for every individual exceedance. Leaving aside the fact that the plan process currently is unfair, arbitrary and unworkable, the proposed rule will inundate the already overburdened MSHA plan personnel. Plan delays have already become a major impedance to mine operations at various MSHA districts with unacceptable delays in getting answers to plans or worse no response at all occurring often enough to no longer be a one off problem. As proposed, plans for a MMU could be in so many various stages of implementation: a proposed stage, a submitted stage and finally an approved stage. This system is ultimately unworkable and is truly unfair to a supervisor charged with maintaining compliance for that MMU.

Plans are no substitute for real rulemaking and the existing plan system itself is severely flawed. District Managers have used plans to impose across-the-board requirements that cannot otherwise be justified. They are used to circumvent notice and comment rulemaking. They can be used unfairly, arbitrarily and capriciously. The fiction is that they are the “operator’s” plans and this is utterly false. They are evaluated in litigation not on the basis of what the operator proposed, but rather on whether the District Manager’s requirements were arbitrary and capricious, a legal standard that is heavily-weighted in MSHA’s favor.

This rule needs pulled back and re-proposed using the CPDM unit’s unique capabilities to address personal sampling and individual workplace respirable dust control behavior. As proposed the standard fails to achieve this and generally uses the CDPM as just “another sampling unit”. With all the flaws in the proposed standard that have been well stated in the public hearings and the numerous other submissions by trade associations and companies not designing a standard around the CDPM e.g. a personal sampling system may be the ultimate flaw. We think

that if the rule is pulled back that a new draft should include the following elements:

1. The respirable dust standard of 2.0 mg/m<sup>3</sup> should not be reduced. (Please refer to the technical submissions from the NMA and other groups refuting the need to reduce the respirable coal dust standard as is proposed in the standard.) As we see it that standard would be the standard MSHA applied in its compliance sampling.

Although not supporting a radical reduction in coal respirable dust standards, Alpha and its affiliates support a full shift sampling system using the CDPM and transferring the present system to a system where management of exposures is based upon a full shift weekly dose. An exposure limit for a week should be implemented so that exposure of an individual miner in a DO will not be permitted to exceed the dose equivalent to that received as if exposed to 2.0 mg/m<sup>3</sup> for forty hours per 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<sup>3</sup> for forty hours. For example, if a miner works for sixty hours during a week, the exposure limit for that week would equal  $(2.0 \text{ mg/m}^3) \times 40/60 = 1.33 \text{ mg/m}^3$ . In general, the exposure limit for a week would be equal to  $(2.0 \text{ mg/m}^3) \times 40 / H$  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<sup>3</sup> if, for example,  $H < 40$  hours.

In order to assure that workers are not overexposed for the weekly dose operator sampling should be conducted on each shift for each individual that is designated as working in a designated occupation (DO). While the operator's 24 /7 (weekly sampling) data would be available to MSHA and the miner's representative, this intensive sampling regime would not be considered as compliance sampling per se.

2. The operator would not be cited based on its sampling but on a failure to mitigate the exposure of an employee so that 10 mg/m<sup>3</sup> was not exceeded.
3. Single shift sampling has no place in a compliance system for managing chronic exposure. Single shift sampling should not be used for compliance determinations or as the basis of any actions required of an operator.
4. The Agency, not the operator, should be responsible for compliance sampling.
5. MSHA should designate which individual occupations are to be sampled by the operator from those occupations that have the highest potential for a miner to be overexposed. The current designated occupations should 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. An operator may choose to sample other miners as part of its management of its program.
6. Mine operators will 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 cost 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 will be kept on mine property and made available to MSHA inspectors and the representative of the miners. The operator sampling shall not be the basis for compliance sampling but will be the basis for its dust management program to ensure that the DOs will not exceed the weekly exposure limit. The sampling by operators would be conducted of the DOs on any shift where the DO was operative in the

mine. This latter requirement would take into account that there may be malfunctions or other reasons that a sample is not valid.

7. MSHA must conduct all compliance sampling including designated occupations, quartz sampling, Part 90 miner sampling, and any other sampling the Agency determines is needed to assure the operators' respirable dust management program is being properly managed and control systems are being maintained appropriately. It would further monitor whether the operator was conducting all its required sampling and managing the exposures of miners so that the weekly exposure limit was not met.

8. MSHA PDM compliance sampling will be conducted on all designated occupations, as determined by MSHA on an operation-by-operation basis, on all shifts on which coal is produced or processed during a calendar week, (Sunday through Saturday). Miners designated to wear the MSHA PDM will wear the device for a full shift and such devices shall not be required to be transferred between miners. Miners may request additional sampling for occupations not designated by MSHA if they have reason to believe they are being exposed to excessive respirable dust. MSHA should 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. MSHA will need during the period described below to discuss and develop how it will conduct compliance sampling since it is not anticipated that MSHA inspector could be present for a full 40 hour period.

9. When MSHA monitors mine personnel, MSHA should 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 all sampling devices under this section.

10. MSHA will purchase and maintain sufficient numbers of PDMs for use in both compliance and monitoring determinations.

11. When abnormal conditions (such as the initial start up of cutting an overcast, roof fall, longwall tailgate blockage) require reducing the respirable dust standard on a particular Mechanized Mining Unit (MMU) due to respirable dust and or quartz, to a level where existing controls are not adequate to keep miners exposure under the permitted limits, the mine operator must implement the use of NIOSH approved self-contained or powered air respirators.

12. Because of the real time capability of the PDM, dust control plans will take on a somewhat different role in this program. The plan 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. They will not include however the management program that the operator implements to ensure that the weekly exposure limit is not exceeded. After the representative of the miners is given an opportunity to review and provide comments, the initial plan will be provided to MSHA for approval. Approved control plans will be posted on the mine bulletin board.

Based on the real time results of PDM sampling, if significant increases occur and additions need to be made to the existing plan, the mine operator, after consultation with the miners' representative, will make those changes. Once the changes have been determined to be adequate, the operator will submit the changes to for approval MSHA and post the changes to the ECP on the mine bulletin board.

13. 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 periodically to develop recommendations of the sampling protocol, and consider other issues and problems that may arise as the FDM 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 FDM equipment.

14. During the 24-month interim period:

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

In addition to the above comments Alpha also comments on some provisions of the proposed rule that do actually address respirable dust exposure. Proposed section 75.332(a)(1) requires each working section and each area where mechanized mining equipment is being installed or removed, shall be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls. The language of the revised 75.332(a)(1) standard dictates the addition of permanent ventilation controls. Also, it may require additional entries be driven to accommodate the ability to operate two independent MMUs within the

same working section. Many underground coal mines in the United States successfully operate two independent and separate MMUs within the same working section. In these cases, two separate production crews and two separate sets of mining equipment are used. Each MMU is ventilated with a separate split of intake air. This is accomplished by using permanent ventilation controls to direct an intake air split to the working section and then splitting the intake air split near the working places in by the section loading point using approved temporary ventilation controls so that two separate and distinct splits of intake air ventilate the working faces. This method of 'fishtail' ventilation provides a separate split of intake air for each set of mining equipment associated with the individual MMU. The separate intake air split provided to each MMU has not been used to ventilate any other working section. This method of providing 'fishtail' ventilation for two MMUs being operated on the same working section was outlined in the Federal Register dated May 15, 1992, and was intended to provide miners with a separate intake air split that was not contaminated with gases or dust from another set of mining equipment. As a result of the success of this type of ventilation scheme from a health and safety standpoint, many mining operations have designed their coal mines to operate two MMUs within the same working section.

The operational cost of redesigning the ventilation systems of underground mines would be excessive and unnecessary. There have not been any recent mine safety issues related to 'fishtail' ventilation. The permanent ventilation controls have proven effective in delivering a separate split of intake air to the working section. In conjunction with the permanent ventilation controls, the approved temporary ventilation controls have proven effective in splitting the air near the working places to provide each MMU with a separate and distinct split of intake air.

Proposed regulations on record keeping issues, i.e., shift production, shift length, overexposures and administrative paper work are too extensive, not practical and provide no value. When utilizing a PDM the sample time is set according to shift length and 30 day production average should not be of concern if sampling of the DO is done on a full time 24/7 basis. In a personal sampling scenario using the dose concept, only the weekly accumulated dose would be of concern. Entering shift overexposures in a fire boss book as a hazardous condition by a non-certified person may become problematic. Requiring weekly results of

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dust samples to be electronically transmitted to MSHA within 12 hours after the end of the last shift of the week by a designated mine official is not feasible and there is no reason for such transmission since MSHA personnel will not be present generally to evaluate the data until Monday morning, a normal workday to receive results.

Requiring the mine operator's designated mine official to validate, certify and post daily end of shift sampling information on mine bulletin board within one (1) hour after the end of the shift is also unrealistic, since the miner will most likely have already left the mine those results should be required to be posted before the beginning of the next shift for that miner and those results be maintained on the mine bulletin board for at least 15 calendar days.

Alpha appreciates this opportunity to testify and comment on the proposed rules. We would hope that the agency would step back from what we believe is a misguided approach and adopt a more cooperative and fact based concept that can be realistically implemented and help eliminate CWP.

Respectfully Yours,

*John Gallick* /s/

John Gallick  
Vice President – Safety and Health  
Alpha Natural Resources Services, Inc.