Fontaine, Roslyn B - MSHA

From: Phil Gonet [philgonet@springnet1.com]
Sent: Monday, June 20, 2011 3:36 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: "RIN 1219-AB64"
Attachments: ICA Comments on MSHA Dust Rule June 2011.pdf

2011 JUN 20 P 3:36

Please accept the attached comments from the Illinois Coal Association on the proposed rules. Thanks.

Phil Gonet
Phillip M. Gonet
President
Illinois Coal Association
212 S. Second St.
Springfield, IL 62701
p:217-528-2092
f:217-523-5191
c:217-971-7766

AB64-COMM-76

Illinois Coal Association
212 S. Second Street
Springfield, IL 62701
(217)528-2092 phone / (217)523-5191 fax
www.ilcoalassn.com

June 20, 2011

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

Re: RIN 1219-AB64; Comments on MSHA Proposed Rule for Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

Dear Ms. Fontaine:

The following comments regarding the above-referenced proposed rules (Proposed Rules) are submitted by the Illinois Coal Association (ICA), a professional trade association responsible for the promotion of Illinois coal. The ICA represents 22 coal producers and coal reserve owners who employ 3,500 direct workers and are responsible for an additional 24,500 related jobs that provided an impact of about $1 billion to the State of Illinois' economy in 2010. The majority of coal produced in Illinois is by the long wall and fish tail super section methods of mining. Therefore, the proposed rule will have a significant impact on the operation of our member companies.

The ICA is a member of the National Mining Association (NMA) and, to minimize repetitive comments, the full comments of NMA are incorporated herein. In addition, some ICA companies also operate in Illinois Basin neighbor Indiana and share similar operating procedures, so the comments on the proposed rulemakings by the Indiana Coal Council (ICC) are also incorporated herein.

Over many years, ICA members have demonstrated their commitment to working with MSHA to ensure a safe and healthy working environment for all miners. The underground mines in Illinois are large, well-run operations with excellent health and safety records. We share the same goal as coal operators across the country: to eliminate coal workers' pneumoconiosis (CWP) from our industry. Today our operators work diligently to maintain the lowest possible levels of respirable coal dust in their operations. Evidence of this commitment is the reductions in dust exposure that have occurred in the Illinois Basin since 2007.

At the January 11, 2011 Public Hearing on the Proposed Rules, the ICA testimony raised the following 4 issues that will be briefly restated here. First, recent studies by the National Institute of Occupational Safety and Health (NIOSH) show that Illinois Basin CWP rates that are lower than what would be expected for Chronic Obstructive Pulmonary Disease (COPD) rates in the general population. Therefore, revising the dust standard may not have any effect on CWP in the Midwest since it is already so low.

Second, the Proposed Rules are constructed on three data sources that have significant deficiencies and are inadequate to support the proposed lowering of the coal mine dust exposure limit by 50%. These data sources are (1) a 1995 NIOSH criteria document entitled *"Occupational Exposure to Respirable Coal Mine Dust"* (the criteria document); a NIOSH report entitled *"A Review of Information Published Since 1995 on Coal Mine Dust Exposures and Associated Health Outcomes"* (the review), and, the results of enhanced medical surveillance studies conducted by NIOSH's Division of Respiratory Disease Surveillance Studies (DRDS) that form the basis for several published articles (the articles). The Proposed Rules must be based on sound science, not these data sources.

The third issue is the Continuous Personal Dust Monitor (CPDM). The ICA has supported the development of the Personal Dust Monitor. We have agreed that full shift sampling of the highest risk miner on all production shifts will provide a valuable data base for researchers to use to pinpoint areas in need of improvement. These practices alone would have effectively reduced the dust concentrations without any alteration in the standard. Moreover, this would also provide the miners with real time data that they can use to keep themselves from being overexposed. Unfortunately, the Proposed Rules prevents any of these improvements by continuing the antiquated practice of area sampling rather than personal sampling.

Also, the ICA has serious concerns about MSHA's plan to use the CPDM as a compliance tool, rather than a monitoring device. Currently, the CPDM is a single-source piece of equipment with unproven reliability in underground mining conditions. To develop empirical data on the CPDM, the ICA joined the ICC, Murray Energy Corporation, Alliance Natural Resources, and Arch Coal, Inc. to engage Exponent, Inc. to conduct laboratory testing of the CPDM.

Exponent's report will be submitted with Murray Energy Corporation's comments on the Proposed Rule, and is incorporated by reference herein. Major findings in the Report were: CDPMs are not reliable in typical underground coal mine conditions, particularly when operating in elevated temperatures and humidity levels; the variation between dust readings from CPDM units and gravimetric samplers has even exceeded the proposed regulatory limit of 1.0 mg/m3; the CPDM units fail when exposed to certain radio frequency signals; and CPDM failures are often unrecorded.

The purpose of the CPDM unit is to accurately report the airborne dust concentration to which a miner can be exposed. The conclusion of Exponent's Report is that the current CPDM does not operate reliably under normal mining conditions. The ICA maintains that the current CPDM clearly can not be used as the compliance tool for any dust standard, let alone be the basis for a reduced standard.

Finally, the ICA testified at the January 11, 2011 Public Hearing that the compliance costs of Proposed Rules would threaten the economic viability of the Illinois coal industry. We noted that to comply with the proposed revisions to Part 75 standards, current mines with fish tail sections with two MMUs will be required to be split up and operated as individual sections. This will double the number of belt lines, belt drives, travel ways, escape ways and air courses that must be maintained in safe operating conditions. All of these actions would be very costly.

We challenged MSHA to provide details of its estimated $40 million nationwide cost of compliance as we believed this estimate is dramatically understated. Instead of a response, the ICA was asked by MSHA to develop its own compliance costs for Illinois operators.

To gather this information, the ICA requested each member with an underground mine to complete a survey of its Mechanized Mining Units (MMUs), which is attached to these comments as Exhibit A. Next, the ICA developed a template, attached as Exhibit B, for each mine to use as a guide to estimate its cost of compliance with the Proposed Rules. The template identifies the additional personnel, equipment and capital investments that the Proposed Rules will require.

In 2010, Illinois coal operators produced 33 million tons of coal, 85% coming from underground mines. These mines currently operate 63 MMUs, with 53 utilizing fish tail or sweep ventilation, which will not be allowed in the Proposed Rule. Based upon the surveys submitted by ICA underground mines, the Proposed Rules will have an estimated first year cost of $185 million, and subsequent annual expenses of $99 million. These cost estimates, just for Illinois operators, clearly show that MSHA's nationwide estimate of $40 is totally unrealistic.

Not included in the compliance costs noted above are the costs due to the loss of production. These costs could be substantial, and would depend on how MSHA handles the ventilation plan approval process after a mine exceeds the one milligram standard.

The Proposed Rules require plan changes following a violation of the single shift one milligram standard. The rules also require an approved revised plan prior to operating the MMU. Exceeding the proposed dust standard would result in shutting down the section or long wall until a plan could be revised, submitted, reviewed and approved. With nearly 100 MMUs in operation in Indiana and Illinois, how can MSHA devote sufficient manpower to act on the revised plans in a timely manner? The current track record for plan approvals is not good.

Even when the plan is approved, it would have to be sent to the mine and all involved miners trained on the plan revisions prior to restarting the section or long wall. In the past, it has taken weeks, and in some cases months, for MSHA to approve a plan. The cost to a mine operator due to this downtime would be staggering to the point of putting some operators out of business.

In closing, the ICA has studied your Proposed Rules and concludes that it will not further the effort to eradicate CWP in the Illinois Basin. We find the Proposed Rules to be based on faulty assumptions, technical impracticalities, bad science, and unrealistic costs of compliance. Adoption of the Proposed Rules will destroy the economic viability of coal mining in the Illinois Basin, with devastating consequences for the region's and nation's economy. We strongly urge MSHA to withdraw the rule in its entirety.

Sincerely,

Phil Gonet

Phillip M. Gonet, President

EXHIBIT A

COMPANY NAME: _____ **MINE NAME:** _____

Total number of MMU's: _____

PLEASE PROVIDE THE FOLLOWING INFORMATION FOR EACH

	MMU #	MMU #	MMU #	MMU #	MMU #
Is this MMU part of a Super Section?					
If yes, is this MMU one of two MMU's being operated simultaneously as part of the Super Section?					
Type of ventilation (eg - fish tail, sweep, walk-between, other- explain)					
Is MMU approved for extended cuts?					
If yes, what is the maximum depth of cut?					
Are 'perimeter' cuts being taken on this MMU?					
Are scrubbers being operated on the continuous miner?					
Is the face ventilation curtain exhauting, blowing, or combination?					
Are auxilliary fans being used for face ventilation?					

EXHIBIT B

RE: Proposed Rules on Lowering Miners` Exposure to Respirable Coal Mine Dust and CPDMs.

1. **One Dust Control Supervisor:**
   §70.202, §70.203, §70.210, §70.211
   This supervisor's responsibility would include roving during day shift and ensuring the required paper work is submitted, instruments have been calibrated, and tracking the hourly personnel's accumulative respirable dust measurement.

2. **Seventeen Additional Safety Technicians:**
   §70.202, §70.203, §70.204, §70.205, §70.210, §70.211
   We have five working sections and produce coal during first and second shift. Our third shift construction crew start producing coal after their scheduled work is completed. This would give the mine one dust technician per-unit, per-shift and one rover on second shift and one rover on third shift to replace certified dust personnel during vacations and sickness.

3. **Twelve Miner Helpers:**
   Company Safety Policy
   This would provide one miner helper per unit per first and second shift. Two additional employees would be hired to replace the helpers' during vacations and sickness. We currently do not provide continuous miner operators with help handling cable but with the bulky design of the CPDM operators cannot be ask to handle miner cable alone.

4. **Four Mechanics:**
   §75.1914, §75.512, §75.1911, §75.400
   As we purchased additional equipment, as outlined below, each would need washed and serviced as well as performing the required weekly examinations.

5. **Newly Hired Employee Initial Cost:**
   Company Policy
   Each employee would be required to take a physical, submit to a background check, and would need mining belts, hard hats etc.

6. **Eighty Two Self Contained Self Rescuers (SCSR`s):**
   §75.1714, §75.1714-4
   An additional SCSR would be purchased for each employee and unit cache. Each mantrip would require an additional SCSR per seat (calculated on a two-man mantrip)

7. **Twenty Three Multi-Gas Detectors:**
   §75.1714-7
   Each newly hired safety technician would need a multi-gas detector as they may travel throughout the mine alone. Five additional detectors would be purchased for calibration and repair.

8. **Thirty Four Cell Phones (Wireless Communication and Tracking)**
   Carlisle Mine MSHA Approved Emergency Response Plan
   Each new employee would be required to have a wireless communication and tracking device.

9. **Six Mobile Refuge Alternatives:**
§75.1506

Our operation currently utilizes 35 man A.L.Lee life shelters. With the added miners on working sections we would need to add an additional refuge alternative to each section. A sixth refuge would be purchased for working section unit moves.

10. **One Hundred and Fifty CPDM`s:**
§70.208, §70.209,

During the by-monthly ODO`s we will be sampling up to one hundred samples per-day. Additional CPDM`s are needed for calibration and units sent off for repair. We are concerned with one company manufacturing the CPDM turn around on repair and or calibration would be time consuming so the additional CPDM`s would be necessary to stay in compliance with the proposed standard.

11. **Six Wet Dusters:**
§75.403

Currently our working sections are hand dusted during production shifts and machine dusted during construction shifts. Although our mine has complied with the 2 mg/m^3 standard we would be forced to change the way we comply with the incombustible content of dust. Each working section would require a wet duster and a back up duster will be needed in the event of needed repairs.

12. **Six Battery Operated Scoops:**
§75.403

We would need battery powered scoops to operate the wet dusters. The scoops we currently have are used to stay in compliance with §75.400. An additional scoop would be purchased for needed servicing and repair.

13. **Six Mantrips:**
General Mining

The respirable dust personnel including the rover will need transportation to and from their working sections.

14. **One Mantrip Garage:**
Manufactures Recommendations

Mantrips must be parked in a garage at our location due to extreme high and low temperatures.

15. **Two Dust Labs:**
§70.204, §70.210, §70.211

We have two portals and will need to add room for the CPDM`s and the work stations for the dust technicians.

16. **Security System for Dust Labs:**
Company Policy

Due to the high investment we would have purchasing CPDM`s as well as deterring non-certified personnel from tampering with the instruments these labs would require the installation of security cameras and alarms.

17. **Seven Computers and Two Printers:**
§70.210, §70.211

The data collected from the sampling must be posted within one hour following the end of the production shift. Each technician will need his own work station. This includes one back up computer and printer

18. Training and Certifications:

§48.8, §70.153, §70.202, §70.203, §75.1504, §75.1713-6, §75.1915

The respirable dust personnel will need trained and certified on the CPDM's. Each employee would be required to yearly training such as annual refresher, electrical, first aid, etc.

19. Writing Plans and Modifying Approved Plans:

§70.208

As outlined in the new rule each time a respirable dust sample is out of compliance with the applicable standard a modification to the Ventilation Plan and CPDM Performance Plan must be submitted to MSHA.

20. Accident Budget:

Company Policy

The year ending 2010 the XXXX Mine had 7% of our employees sustain an injury. We would budget from the new employees an injury rate of 2 miners a year.

21. Respirable Dust Citation Budget:

Company Policy

If the XXXX Mine was able to drop the dust citations from 14% to 7% and using the data from 2010, we would receive approximately 665 citations this would be a great expense and would have to be budgeted yearly.