JOINT COAL BOARD RESPONSE

TO DRAFT REPORT OF INDUSTRY COMMISSION INQUIRY
INTO THE AUSTRALIAN BLACK COAL INDUSTRY

Introduction

The Joint Coal Board (the Board) has considered the draft report of the Industry Commission Inquiry into the Australian Black Coal Industry. Section 9.6 of the draft report referred to the Board and made certain recommendations about its continuing role in the coal industry. This response will deal with the issues raised, using the same major headings as in the report - "dust monitoring", "workers' compensation insurance" and "other functions"

Dust Monitoring

In his submission to the Industry Commission, Mr Rod Ruston makes the statement that "...there are ample alternatives to the Joint Coal Board's monopoly on the dust sampling.. ."(I/C report Vol I p239). Mr Ruston's statement is not correct. The Board does not have a monopoly on dust sampling, and has not made the claim that it does

The **Board has** a statutory power to monitor dust in coal mines It exercises this power by taking dust samples and recording the results in an industry-wide database This is the primary function of the Board's sampling service.

Mine managers, on the other hand, have a statutory duty to ensure that their mine's dust level satisfies the Coal Mine Regulations Act (CMRA). Mine managers have a duty to sample the dust levels in their mine. The Board's samples are available to mine managers to assist them with this duty.

However, the Board is not the only provider of dust sampling services in the industry that will assist mine managers to meet their statutory duty. Mines that wish to source their samples from other providers are free to do so.

The Board's monitoring role is independent of individual coal companies, and allows the industry access to data from consistent testing across the entire NSW coalfield.

The Board's initial submission made a comment about dust monitoring in the US black coal industry. Mr Ruston commented that "the submission virtually makes an accusation that

Australian mine operators will cheat or be biased if they are given the opportunity to undertake the sampling themselves". The Board's submission was not in any way meant to be accusatory. It was intended to highlight the problems that the US industry is experiencing as a result of operators having responsibility for both sampling and monitoring. There is an obvious potential for conflict of interest. In support of this

assertion [7] appendix A of this report provides evidence of the problems encountered when operators are responsible for both monitoring and sampling in the US. [1]

Along with the apparent fraudulent sampling that occurs in the US is a persisting level of pneumoconiosis. Current "black lung" prevalence in NSW is approaching zero. Appendix B shows the decrease in prevalence of pneumoconiosis in NSW over the past 25 years, along with figures for the US industry over a corresponding period.

The Board still asserts that where dust sampling and monitoring responsibility are separate (eg NSW) the potential for conflict of interest is reduced, and the danger of a distant future externality such as chest disease appearing is minimised.

The Board is an unbiased monitor of dust levels across the entire NSW industry, and the Board strongly believes that this role is fundamental to maintaining a disease-free workforce.

Workers' Compensation Insurance

The Board's workers' compensation scheme, operating as Coal Mines Insurance (CMI) has been demonstrated to achieve significantly reduced premiums to that which would be available under WorkCover. The Industry Commission acknowledges this fact. (Vol I. P240)

However, the NSW Minerals Council's submission to the Industry Commission (Vol I, page 240) makes the misleading statement that "potential changes to the current workers' compensation arrangements in the coal industry estimated that coal premiums might be reduced by 20 to 25 per cent if legislative provisions that apply to industry in general were applied to the coal industry".

The legislative changes the NSW Minerals Council refers to are changes to the Workers' Compensation legislation controlled by the NSW Department of Industrial Relations. These changes were recently proposed by the Minerals Council and rejected by the Department. That is, the Board is not the barrier to the changes desired by the NSW Minerals Council. The barrier is the State regulatory process over which the Board has no control. However, were the changes to be implemented at some future time, they would also flow through to the existing scheme operated by CMI, further reducing the premiums CMI would charge.

[1] One of the people quoted is Mr J. Davitt McAteer, Assistant Secretary of labor at MSHA. Mr McAteer is a congressional appointee. His Australian equivalent would be a Government Minister.

Other Functions

Occupational Health

The Commission's report, Vol I page 241, says that it is not clear why the Board provides occupational health and rehabilitation services. The Board's Occupational Health Division **competes** in the free market. It charges fees for all services with the exception of some health assessments. The purpose of the "free" health assessments is to collect epidemiological data on the health of mineworkers. This is one of the Board's statutory powers, and the exercise of this power requires the Board to be involved in occupational health.

International Training

The Commission makes the claim that "the international coal training program, funded by the United Nations, would appear to be capable of being coordinated by the NSW Department of Mineral Resources".

Australia is a donor country to the United Nations. Unfortunately, no donor country's government can be the recipient of funding from the United Nations. This of course includes State governments Any appointed subcontractors for the program have to be independent statutory entities or private sector companies. The Board, unlike the NSW Department of Mineral Resources, is an independent statutory entity, and as such is able to coordinate the program.

Summary

The service provided to the NSW coal industry by the Joint Coal Board appears on any economic ground to be provided efficiently. If the Board is abolished its functions will still remain to be performed. There is no plausible evidence that in the absence of the Board those functions can be performed more cheaply or efficiently.

Objections to the Board continuing to perform these functions appear to stem from an ideological position, not an economic one.

The Board's Executive is available for further comment

Joint Coal Board

DUST, DECEPTION & DEATH
solutions

Seeking solutions for black lung

Many ideas have been proposed for cleaning up coal mines and wiping out the disease. They have come from experts on mining, the government and the industry.

By GARDINER HARRIS ~ The Courier-Journal April 26, 1998

Some current solutions being discussed for wiping out black lung:

NO. 1: **NEW TEST SYSTEM**

In 1996, a federal black-lung advisory committee recommended that coal operators no longer be in charge of testing dust levels inside their own mines and that federal inspectors supervise more tests.

J. Davitt McAteer, assistant secretary of labor for mine safety and health, has said that he intends to stop using operator tests to monitor compliance with the law, but he won't say when.

He said that asking operators to continue taking dust tests that might result in fines defies human nature. "Anybody would cheat under this system," McAteer said. "It simply does not work and will not work."

Even some in industry agree that the operator sampling program must end.

"I think the present system is ludicrous," said Joe Lamonica, vice president for health, safety and training for the Bituminous Coal Operators Association. "The enforcement should be done by the enforcement agency."

Drawbacks: Inspector tests are taken under ideal conditions, when all dust controls are working, not under the dusty conditions in which many miners work.

Operators sample the air during 30 working shifts at each mine each year. Inspectors oversee testing at most during four working shifts in each mine each year. Union miners -- whose mines generally take the operator tests properly -- oppose the change unless inspectors test during 30 shifts. That's because many mines use dust controls only on testing days.

"To replace 30 clean days with four days is not a good trade-off for miners," said Joe Main of the United Mine Workers of America.
But having 30 inspector tests at each mine would be costly. That would mean nearly doubling the number of mine inspectors, which would cost at least another $32.7 million a year. The committee recommended billing the industry for the extra tests, but industry bitterly opposes such an idea.

IDEAS FROM ADVISORY PANEL
Some on the recommendations made in 1996 by the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers:

McAteer said there are currentQS ly no plans to implement a testing fee on operators.

Congress is considering a Clinton administration request for $2.7 million to hire 40 more inspectors and increase testing to four times a year at all mines.

· The Mine Safety and Health Administration should take over all dust sampling in coal mines to make sure dust levels are safe, and it should consider lowering the maximum amount of dust allowed below 2.0 mg. per cubic meter of air.

NO. 2: FILTERED HELMETS

Some industry representatives have promoted miners use of a helmet that sends a stream of filtered air across their faces. Called the Airstream helmet, it filters out 84 percent of the dust in the atmosphere, according to a study sponsored by its maker. So far, the helmet is in limited use at some mines.

· Mine inspectors should take many more air tests, and MSHA should charge operators a fee for conducting these tests.

· Dust tests should be valid only when mines produce at least 90 percent of their normal production levels.

"This is proven, off-the-shelf technology which would virtually guarantee that the miner is breathing clean air at all times," said Bruce Watzman, the National Mining Association's vice president of health and safety.

The association is lobbying the U.S. Mine Safety and Health Administration to exempt mine operators who give these helmets to their employees from the federal limit on airborne dust.

MSHA does encourage operators who are unable to keep dust levels under the legal maximum to give their miners respirators such as the Airstream. But the agency has refused to relax the dust standard for mines that do so.

Drawbacks: Dr. David Wegman, a professor at the University of Massachusetts-Lowell and chairman of the Labor Department's 1995-96 dust advisory committee, has argued that relying on bulky respirators -- instead of controlling dust at its source -- is both inefficient and ineffective. Miners sometimes don't wear respirators correctly, and they can break, he said.

And Mike South, president of the National Black Lung Association, said miners should not have to work as if they're underwater. "If it's so dusty that you need an Airstream helmet, you shouldn't be working in that environment," he said.

· The government should begin a special program to investigate dust fraud.

· Strip mines should have to take as many air tests as underground mines, and strip miners should be given the same free chest X-rays to screen for black lung that underground miners get.

· Those who take air tests for operators should get more thorough training, should be required to get regular retraining, and should lose their certification if they don't perform their duties properly.

· The National Institute for Occupational Safety and Health should study what happens to the health of miners after they leave the coal mines.

NO. 3: A ’BLACK BOX’

A device to continuously monitor dust levels has been proposed.

In 1996, the black-lung advisory committee endorsed this idea, saying black boxes would give mine operators the chance to adjust their dust controls immediately when dust becomes excessive.

The devices are now being tested in underground mines. And McAteer said they might be ready for widespread use in two years. The devices, which could be worn by miners or mounted on machines, could eventually eliminate the need for air tests by operators and inspectors.

Drawbacks: In interviews, advisory committee members and other experts said black boxes are no cure-all. "If it's tamper-resistant and accurately measures dust levels, great," said Tony Oppegard, directing attorney of the Mine Safety Project in Lexington, Ky. "If it's not, it will be worthless."

And Lamonica said, "If someone's hell-bent on cheating, I'm sure it's going to happen."

Many of the ways miners now cheat dust tests -- covering the air-intake or having miners who are wearing the machines sit in clean air -- might also work with a black box.

NO. 4: BETTER TRAINING

The black-lung advisory committee and others say that the contractors hired by mine operators to conduct dust tests need better training and oversight.

Testers need only pass a test to become certified. And a 1992 federal study said that spot checks showed that a third of them don't know basic information about how to take the tests.

McAteer said MSHA is considering requiring testers to periodically renew their certification.

Drawbacks: There are so many people certified to take dust samples that most contract testers can't charge enough to spend the time needed to properly oversee tests. Last year, for instance, 2,491 different people oversaw operator dust tests in underground coal mines. At least half of the tests overseen by 325 of these people in mines' working areas had impossibly-low dust readings of 0.1 ma.

But MSHA almost never revokes the certification of testers.

NO. 5: PROSECUTIONS

Coal industry observers say that a renewed get-tough approach to criminal prosecutions would scare operators into taking accurate dust tests.

When the Bush Administration launched a crackdown on cheating in 1991 that included both criminal and civil actions obvious dust-test fraud dropped. But the Clinton Administration has given up busting cheaters almost entirely, and obvious fraud, as shown by the percentage of nearly dust-free samples, is again on the rise.

"It would be a deterrent, like it is for breaking any other law. That's just common sense," said South of the National Black Lung Association.

Convictions for dust-test fraud dropped to just one last year from 46 cases in 1992.

And yet evidence shows that criminal crackdowns do work. During the Bush Administration's crackdown, average dust levels in tests taken by operators went up and, as a result, a larger percentage of mines got fined for dusty conditions.

Drawback: McAteer, the head of MSHA, says that busting cheaters isn't his priority. Fixing the system is. "I'm not so much concerned about the criminal stuff," he said.

NO. 6: LOWER DUST LIMIT

The National Institute for Occupational Safety and Health has proposed that MSHA cut the dust maximum to 1.0 ma. from 2.0 ma. The researchers argue that because so many miners are still getting black lung, the current maximum is inadequate.

Most of the academics on the black-lung advisory committee agree that the limit needs to be lowered.

Drawbacks: Non-academic experts are less enthusiastic about this proposal. Oppegard, McAteer and Main all argue that cheating is so common on dust tests that many mines don't come close to meeting the 2.0 ma. standard on most days.

"We need to come to grips with reality," Main said. "We haven't achieved a 2.0 ma. level. Let's get ourselves credibly to 2.0, and then work down from there."

Further, McAteer said he has no plans to halve the limit. But he said that if the coal industry successfully lobbies against some of his other initiatives -- such as bringing black boxes into mines -he may push to reduce the dust maximum.

DUST' DECEPTION & DEATH

Dust, Deception & Death
Analysing how the tests are done

Low dust levels: 'Unfathomable'
Most mine tests about as dirty as street corner

By GARDINER HARRIS ~ The Courier-Journal April 19, 1998

Most of the nation's underground coal mines routinely send the government air samples so clean that experts -- including the nation's top mine-safety official -- contend they can't possibly be accurate.

Samples are supposed to be taken in a mine's dustiest areas, but many contain just 0.1 ma. of dust per cubic meter of air. That's the equivalent of two teaspoons of dust spread across a warehouse the size of a football field and the height of the goalposts. The air around a typical city street corner has about that much dust.

At 365 of the nation's 766 underground bituminous coal mines, at least 15 percent of the air samples taken in working areas had 0.1 ma. of dust in fiscal year 1997, according to The Courier-Journal's analysis. That's 48 percent of these mines.

CRYSTAL FUELS: Rusty Booth, 38, works in Mine No. 1 in Lobato, W. Va. It is one of the 10 mines with the highest percentage of very low dust tests in Kentucky, West Virginia and Virginina. *Photo by Stewart Bowman.*

By contrast, when federal inspectors supervised dust tests last year, just 1 percent of the tests had 0.1 ma. readings -- and they were inaccurate too, experts say.

The findings corroborate statements of 234 miners who told the newspaper that mines cheat to conceal illegally high dust levels.

The head of the agency responsible for monitoring the tests agrees. Samples of 0.1 ma. are "inaccurate," "unfathomable" and "statistically impossible," said J. Davitt McAteer, the head of the U.S. Mine Safety and Health Administration, in an interview.

McAteer said the newspaper's analysis prompted him to direct **mine-safety** inspectors in December to begin making monthly spot checks **of mines** that submit a large number of 0.1 ma. samples.

The agency had decided several years ago to void all samples that had no dust at all. It still gets about 100 of those every year, but now it requires mine operators who submit them to retest the air.

Other experts agree that 0.1 mg readings -- taken from areas where coal is clawed by steel bits or splintered by explosives -- defy logic.

Mines With Low Dust Tests: The chart shows underground bituminous coal mines in Kentucky, Virginia and West Virginia with the highest percentage of fiscal-year-1997 dust tests

"Well, in science almost anything is possible. If all the molecules to move at once, skyscrapers could hop," said Les Boden a mining expert and professor of public health at Boston University. "This is sort of like skyscrapers hopping."

Boden said 0.1 ma. samples are not the only falsified tests, just the most obvious ones. Many tests with 0.2 mg., 0.3 ma. or even more dust also may have been taken improperly, he said. The newspaper's finding that four in five bituminous-coal mines submitted at least one test last fiscal year with just 0.1 ma. of dust shows that dust-test fraud is routine, he said, and that many coal operators feel they don't have to put much effort into disguising it.

Asked to comment on the newspaper's findings, Bruce Watzman, vice president for health and safety at the National Mining Association, defended mines where low dust tests are common. The samples "are accurate until MSHA says they're not," he asserted.

The 1969 Mine Act required mines to drastically reduce dust by 1972, and it set a maximum level of 2.0 ma. of dust per cubic meter of air. That's 20 times the amount found in the 0.1 ma. samples.

Operators must test air in working areas of their mines every two months, and government inspectors are required to supervise dust tests at least once a Year to ensure they are done correctly.

Falsified Tests: There is strong statistical evidence that many coal operators falsify tests of coal dust levels. *Click the image to view the full-size chart.*

For its analysis, the newspaper excluded the 34 anthracite, or hard - coal, mines in Eastern Pennsylvania. A 0.1 ma. reading is possible in those mines because they are shallow and coal is often loaded by hand instead of machine, producing less dust.

Since 1972, 0.1 ma. samples have been by far the most common submitted by operators. They have accounted for between 10 percent and 21 percent annually of all tests taken in working areas, according to the newspaper's analysis of 2 million records from 19 of the 25 years.

Even a few coal operators who routinely send in 0.1 ma. samples said in interviews that the results can't Possibly be accurate.

"Sometimes I don't think they are weighed right" by the Mine Safety and Health Administration, said Robert Hughes, owner of the Chele Energy mine in Floyd County, Ky. "I mean, you can't run one in this building and get 0.1 . You can't. It's just not accurate. "

Eighty percent of the tests taken at Hughes' mine in the last fiscal year registered just 0.1 ma. of dust. Hughes said he doesn't cheat.

When Hughes talked about the issue, he had just emerged from his 30-inch-high mine through an entrance that a man couldn't comfortably crawl into. Such low mines are common in Eastern Kentucky. His face, like those of the miners who rode out of the mine on their backs with him, was black with coal dust.

Dirty faces don't prove cheating on tests. Dust that accumulates on miners' faces is often heavier than the fine, breathable dust measured by sampling machines.

each state, the chart shows the percentages of very low dust tests in fiscal year *1997. Click the image to view the full-size chart.*

But Noah Seixas, a mining expert and professor of environmental health and industrial hygiene at the University of Washington, said that where there's a lot of heavy dust. there's bound to be a lot of breathable dust.

It's also possible that mines could have had less dust on sampling days than on the days when a reporter visited. But it's unlikely that mines that had all but eliminated dust on one day would have excessive levels on another, said Jim Weeks, a professor at George Washington University in Washington, and a health consultant to the United Mine Workers.

Hughes' mine had excessive dust levels in working areas last year when federal inspectors supervised the tests. The samples overseen by inspectors contained an average of 2.2 ma. of dust compared with an average of 0.7 ma. for the samples that Hughes took.

While Hughes faulted the weighing of dust samples by the government, the mine-safety agency defends the accuracy of its lab. The lab has recently been certified by the American Industrial Hygiene Association, an independent group. And Weeks said it was unlikely that the lab would make so many mistakes measuring some samples while accurately measuring those of other mines that had few or no 0.1 readings.

Seven bituminous, or soft-coal, mines had 0.1 ma. readings on all their samples in the 1997 fiscal year, but only two are still in business. One is Durbin Coal in Ragland, W. Va.

When a reporter visited the mine, Rickey Slone, the superintendent, said the mine quit producing coal in February 1997 and that's why his dust tests were so clean.

But all of Durbin's dust samples were taken before February. Government records show that the mine was producing between 380 and 610 tons of coal a day when the low samples were obtained.

HUSKY MINING CORP.: Ersel Wolford, 43, at the Phelps, Ky., mine that ranks No. 2. *Photo by Stewart Bowman.*

Asked to explain how the company's dust tests could be accurate, Slone said he had started working at the mine in April 1997.

"I ain't been here long," he said. "I don't know."