Testimony of

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on

“Breathless and Betrayed: What is MSHA Doing to Protect Miners from the Resurgence of Black Lung Disease?”

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Thank you, Madam Chair, and members of the Subcommittee. I appreciate the opportunity to be with you today to share my views based on my years of experience working on issues related to miner safety and health. In December 2018 I retired following a 37-year career with the National Mining Association and one of its predecessor organizations, the National Coal Association. During my career, I was primarily responsible for representing the industry on issues impacting the health and safety of our nation's coal miners, including issues related to the federal black lung program. During my employment I served as a member of the National Institute for Occupational Safety and Health (NIOSH), Mine Safety and Health Research Advisory Committee and participated as a member on numerous NIOSH and Mine Safety and Health Administration (MSHA) partnerships formed to address specific safety and health problems. The views expressed today are solely mine. They do however reflect positions the industry has advanced to improve miner safety and health, as I was involved in the development of those positions and believe they would, if enacted, result in safety and health improvements beyond those already achieved.

At the outset let me be clear, if we had the ability to turn back the hands of time to prevent the suffering that has been reported I can assure you that the industry would have already done so. Unfortunately, this cannot be done but what can and must be done is to ensure that 10, 15 or 20 years from now there will be no more suffering nor the need for another hearing because lung disease among coal miners has been eradicated. The disease being reported on recently results from exposures that occurred 10 to 20-years ago. It does not reflect the improvements brought about by

MSHA's new dust rule and the impacts of that will not be known for many years to come. What is needed today is to ensure that the actions MSHA has already taken, and those being contemplated, are based on sound science, reflect a complete understanding of the relationship of exposure and disease, provide mine operators the ability to utilize all the tools available to protect their workforce, and most importantly are protective of miners' health.

During my career I was privileged to work with many talented individuals in the industry and academia who worked day-in-and- day-out to ensure that every miner returned safely to his or her loved ones each day and who, upon their retirement, would be able to enjoy the fruits of his or her labors. Given the fact that the number of mine fatalities and injuries continues to decline and the goal of zero fatalities is within reach, I believe these efforts have been largely, although not entirely successful. What we missed, and everyone bears some responsibility, is that we ignored certain warning signs that should have caused us to broaden our examination of the emerging increases in cases of lung disease.

I recall being invited to a meeting at NIOSH during which NIOSH researchers presented the results of research into what they characterized as "rapid progression coal workers pneumoconiosis." In short, the researchers were identifying the onset of lung disease following latency periods far shorter than had been experienced in the past. In an effort to better understand this phenomenon, industry requested more detailed information on the identified cases. Unfortunately, the requests were denied due to HIPAA concerns.

The next event was NIOSH's designation, based on the results of the institute's limited x-ray surveillance program, of a geographic clustering of cases of progressive massive fibrosis (PMF) in the region of Southern West Virginia, Southwest Virginia and Eastern Kentucky. This area, which became characterized as the "Hot Spot" region, became of keen interest as cases of PMF were being diagnosed following a latency period far shorter than traditional coal workers pneumoconiosis. It was following this that researchers, including those within NIOSH, began to identify silica as the culprit resulting in these cases of early on-set lung disease.

During this same period the industry, in conjunction with researchers, initiated a detailed program to improve the sampling technology for coal mine dust. This multi-year effort culminated in the development and production of a commercially available Continuous Personal Dust Monitor (CPDM). The new CPDM represented a massive change in the technology from the prior system, providing real-time exposure results so miners and mine operators could take actions, if necessary, during the miner's working shift to prevent end-of-shift over-exposures. NIOSH's financial participation in funding development of this technology and their technical expertise were central to this effort. I was fortunate to have participated with these dedicated professionals. As reliable as the CPDM is in measuring coal dust concentrations it, unfortunately, does not able to provide real-time silica sampling and the industry must continue to rely on an antiquated system that requires MSHA collected samples to be sent to the MSHA lab for analysis. A renewed effort to develop a real-time silica sampler must be a priority. While I know you are not the appropriators, I implore you to encourage your colleagues on the Appropriations Committee to ensure that

sufficient funding is provided to NIOSH to further ongoing efforts to develop and commercialize a real-time silica sampler.

In addition to the development of a real-time silica sampler others changes to MSHA regulations and policy are necessary to eradicate lung disease among coal miners. Under current law these changes cannot be accommodated. Congress has a constructive role to play in achieving our shared goal and I encourage you to consider targeted revisions that promote miner safety and health rather than ones designed to punish who some believe are recalcitrant operators. Politics needs to be set-aside if we are to achieve the goal of ending lung disease among coal miners.

There are steps that can be taken beyond what is already underway. First, there is no baseline understanding of the prevalence of black lung disease. The one-third participation in NIOSH's x-ray surveillance program across the entirety of the workforce does not provide a realistic appraisal of disease frequency across the workforce. To overcome this, participation in NIOSH's x-ray surveillance can no longer be voluntary. Screening must be mandatory so that intervention actions, if necessary, can be taken during the miners working career.

Second, and in tandem with a mandatory surveillance program, a process must be established for miners showing evidence of disease to share these results with their employer. Under the Mine Act miners who have evidence of black lung have the option, at their discretion, to utilize their rights under Part 90 to switch to a job in a less dusty environment at no loss in pay. Unfortunately, the current process is solely at the discretion of the miner. Throughout the history of this program few miners have exercised this right even though the Mine Act provides protection. Recent studies found that

less than 15 percent of miners eligible for transfer notified their employers. Employers must be afforded the opportunity to help their employees by transferring them to alternate locations or offering additional personal protection equipment.

Third, the use of administrative controls and an approved respiratory protection program that utilizes personal protective equipment (PPE) should be recognized and encouraged. The Act recognizes neither work practices nor PPE as tools to reduce miner's exposure to dust. Respiratory equipment is a recognized control measure to mitigate health risks in many industrial work environments. The same protections should be extended to miners. Some operators voluntarily provide PPE to their workforce but to the detriment of miner health, MSHA does not recognize their use in mining.

Lastly, MSHA should recognize the utility of having personal dust monitoring devices that provide real time measurement of dust exposures by permitting mines to implement worker rotation programs. Such programs could be designed to reduce worker exposure independent of occupational or environmental dust concentrations. In many cases, representative dust sampling techniques are adequate for ensuring workers are protected from overexposure to dust. However, in some cases, worker rotation guided by the data obtained from personal dust monitoring devices could offer greater protection. Regulations should be modified to allow miners to rotate with personal dust monitors to provide accurate sampling of individual exposures across shifts.

Madam Chair, thank you for the opportunity to be here today. I look forward to your questions.