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March 7, 2007

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VIA FACSMILE – 202-693-6111

The Honorable Elaine L. Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Room S-2018
Washington, DC 20210

Dear Secretary Chao:

I was pleased to learn that the U.S. Court of Appeals for the District of Columbia recently rejected long-standing industry arguments against the rule issued by the Mine Safety and Health Administration (MSHA) to protect metal and nonmetal workers from exposure to diesel particulate matter (dpm).

As you may recall, I expressed my concern to you last year about the many actions taken by this Administration to weaken this critical health rule under pressure from the industry (copy enclosed). The court's decision is quite clear that the industry arguments were without foundation, finding that:

- the risk assessment prepared by MSHA was more than adequate to justify the final exposure limit established by the rule;
- the technological and economic feasibility analysis by MSHA was more than adequate to establish that the Nation's underground metal and nonmetal mines can meet that final exposure limit; and
- the record compiled by MSHA was more than adequate to establish that the agency has reliable methods to accurately measure mine operator compliance with the final exposure limit.

March 7, 2007

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I intend to watch the implementation of this rule closely over the next two years, to ensure that recalcitrant mine operators are not being allowed to take advantage of loopholes this Administration created for them. For example, the rule permits mine operators to apply for more time to comply with the limit based upon allegations of economic problems or technological constraints. These decisions are assigned to individual MSHA District Managers. Moreover, even without an extension, a mine operator can seek MSHA's consent to require the miners to wear respirators rather than reduce dpm to the prescribed limit.

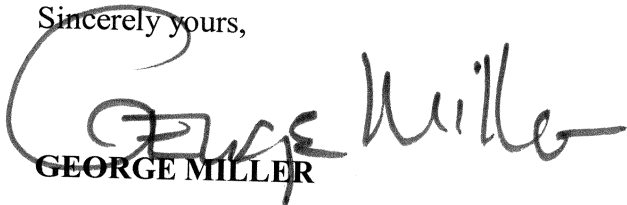
In order to ensure that these opportunities are not abused, I request that you promptly forward me the following information, updated regularly:

- any extension applications, and the decisions on those applications, pursuant to 30 CFR §57.5060(c), if those extensions apply with respect to the limit which went into effect on January 20, 2007 and/or with respect to the limit that will go into effect on May 20, 2008; and
- any determinations not to issue or to void a citation pursuant to 30 CFR 57.5060(b) based upon a mine operator's assertion under 30 CFR 57.5060(d) that there are not feasible engineering and administrative controls to reduce a miner's dpm exposure to or below the applicable limit, and an explanation of your efforts to verify the operator's assertion prior to determining not to issue or to void a citation on that basis.

Additionally, I ask that you post the above information on the MSHA website in a timely manner as a matter of course. Once such regular postings are established, you may consider this ongoing request for information satisfied.

I hope the decision in the Court of Appeals will remind MSHA, the Department, the Office of Management and Budget, and the mining community that the Congress gave this agency considerable authority and a mandate to address the many occupational health risks continuing to face miners.

Sincerely yours,



GEORGE MILLER

Enclosure (letter dated 1/18/06)

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January 18, 2006

The Honorable Elaine Chao
Secretary
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Diesel Particulate Matter

Dear Secretary Chao:

As Members of Congress and Ranking Members of the Committee on Education and the Workforce, we are writing to you directly to express our great concern with the continued efforts of your Department to delay and weaken the health standard protecting metal and nonmetal miners from cancer and other adverse health effects associated with exposure to diesel particulate matter (dpm). A key exposure limit to protect miners had been scheduled to go into effect this Friday, January 20, 2006, following a five-year phase-in. Yet, we understand that you have proposed to delay implementation of this requirement for an additional five years, until 2011.

For some years now, it has been clear that the diesel-powered equipment used in many mining operations emits vast quantities of a fine particulate matter (known as diesel particulate matter, or dpm) into the confined spaces in which underground miners labor. The scientific community recognizes that significant exposures to such fine particulates are associated with an increased risk of lung cancer, heart disease and many other serious health problems. In fact, based on this evidence, the Environmental Protection Agency (EPA) has taken numerous actions in recent years to deal with excessive public exposures to such particles. While the EPA has acted, even if weakly, the Department of Labor has stalled.

Miners in underground metal and nonmetal mines remain exposed to such high concentrations of these harmful particles that they face a significant risk of death or serious disease. For your reference, we attach a chart on dpm exposures for various workers. As you can see, miners experience exposures dramatically higher than any other at-risk worker. This chart was published by the Department – in 2001. Indeed, miners today are dying from conditions that are

known to be associated with such exposures. Those who continue to work are only too aware of the ravages that occupational diseases have taken on those who came before.

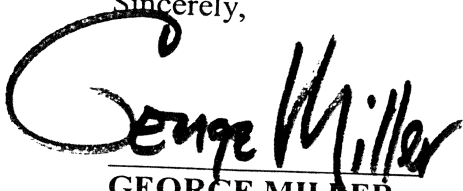
In January 2001, after many years of study and rulemaking, the Department's Mine Safety and Health Administration (MSHA) issued rules to limit such harmful exposures. The rules were not onerous. The rules did not attempt to fully eliminate the risks to miners; only to reduce miner exposures to the levels experienced by other workers exposed to diesel emissions. The agency set a final limit on exposure which, according to overwhelming evidence, was feasible for the industry to achieve. Moreover, that limit was only scheduled to go into effect this month, on January 20, following a 5-year phase-in.

Since it took office, however, this Administration has taken numerous actions to thwart implementation of this rule. Various provisions were delayed time and again. Important requirements were amended or eliminated. Most recently, in September of 2005, the Department of Labor formally proposed that the industry receive yet another five years to comply with the final exposure limit. Moreover, the Department has stated that even further rulemaking will be required before the final exposure limit can be implemented.

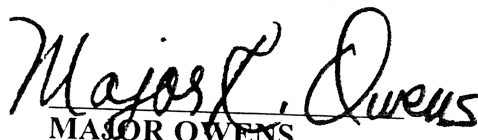
There has been an intensive campaign by the metal and nonmetal mining industry to delay and weaken this rule. It is unfortunate that the Department's actions since 2001 have been guided by the unsubstantiated assertions of the industry rather than the extensive rulemaking record. That record continues to demonstrate that it is feasible for the industry to comply with the existing final exposure limit. Further delays and changes to weaken the rule are unwarranted.

The diesel particulate rule is desperately needed to protect miners from serious hazards to their health. We urge you to let the 2001 rule go into effect without further delay, and to take actions to strengthen the protections it affords to underground metal and nonmetal workers. We ask that a copy of this letter be included in MSHA's rulemaking docket.

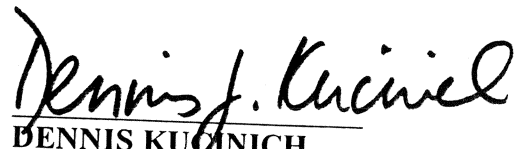
Sincerely,



GEORGE MILBER
Senior Democrat
Committee on Education
& the Workforce



MAJOR OWENS
Ranking Member
Subcommittee on
Workforce Protections



BENNIS KUCINICH
Member of Congress

Attachment

cc: Mine Safety and Health Administration
Office of Standards, Regulations and Variances

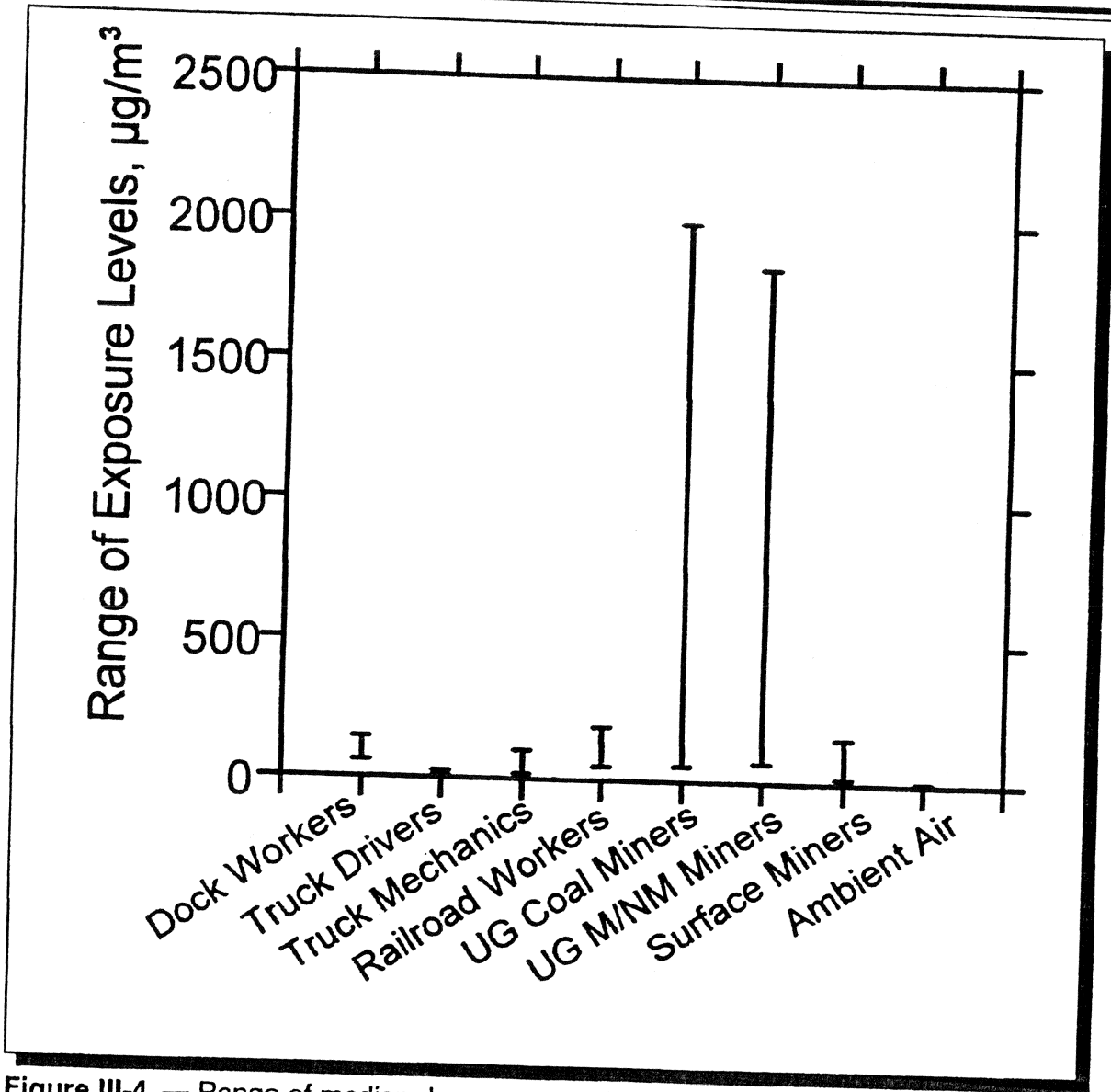


Figure III-4. — Range of median dpm exposure levels observed within various mines for underground and surface miners compared to range of median Dpm exposure levels estimated for other occupations. Range of dpm exposure levels for ambient air is for urban environments only and is based on the monthly mean for different months and locations in Southern California. Range for ambient air is roughly 1 to 10 $\mu\text{g}/\text{m}^3$.