



317 Main St.
Whitesburg, KY 41858

the **black lung**
BULLETIN

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Relief for Survivors of Miners Act

On March 16, Senators Warner (D-VA), Manchin (D-WV), Casey (D-PA), Kaine (D-VA) and Brown (D-OH), introduced the Relief for Survivors of Miners Act. After visiting with Black Lung Association members and widows whose husbands had passed away from black lung disease, Senator Warner led the introduction of this bill to support widows and other survivors in their pursuit of black lung benefits. Below is a brief summary of the contents of the bills:

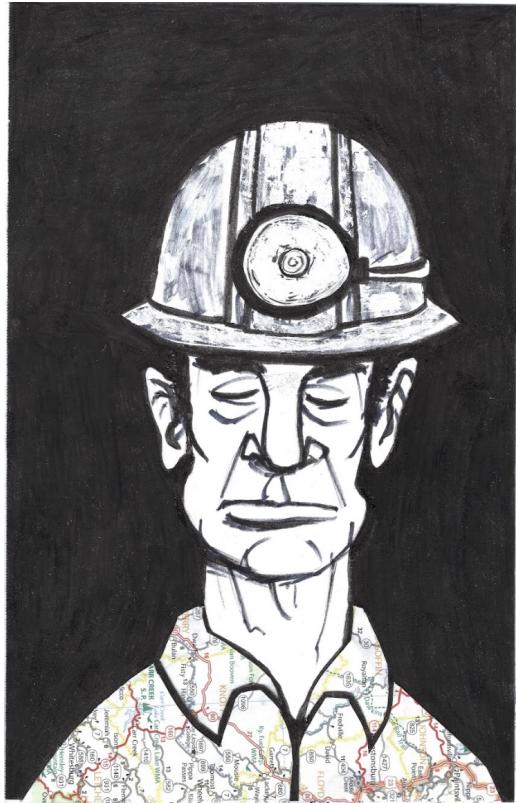
1. Makes it such that if a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease, it will be presumed that his/her death was due to pneumoconiosis.
2. Makes it such that if a miner was totally disabled due to pneumoconiosis during his/her life, it will be presumed that his/her death was due to pneumoconiosis.
3. Includes a provision for attorney fees and medical costs very similar to that which was included in Senator Casey's Black Lung Benefits Improvement Act of 2019. Rather than reimbursement for these costs coming only at the end of the case, these costs/fees will be reimbursed during the case. But there is a cap on reimbursement. No more than \$4500 in attorney fees or \$3000 in medical costs will be paid in reimbursement prior to the close of the case.

4. Requires the Government to conduct studies concerning black lung benefits on three topics:

A) a study to determine the impact of the government recouping costs for overpayment in cases where a miner or survivor is granted interim benefits but then loses their case in front of the ALJ. We (and others) shared with their office that the thought of potentially having to pay back interim benefits is stressful for individuals and may, in some cases, even cause miners and their families not to spend those benefits before they've fully won their case. We hope they will see that the cost of recouping overpayments in those situations is more costly to the government as well as terrible for individuals. In many cases, overpayments are already waived and it seems likely that the study would determine that it is not worth the government's time to try to recoup costs in cases where they granted the interim benefits in the first place.

B) a study to determine whether or not current benefit rates are adequate to meet the expenses of miners and survivors

C) a review that examines the impact of permitting a survivor to file more than one claim for benefits



Artwork by Hayden Miles, Whitesburg, KY

same. “. According to Debbie Wills, Black Lung Program coordinator at Valley.

Vaccines were provided on April 8th in Pax and April 9th in Mammoth directly at the mine sites. Valley Health Systems worked with Alpha Metallurgical Resources and the National Institute of Occupational Safety and Health (NIOSH) to facilitate these vaccination days. Vaccines were provided to miners on three separate shifts through the NIOSH mobile unit.

East Kentucky Coalfield Black Lung Association Chapter Profile

The East Kentucky Coalfield Black Lung Association held its first meeting in January of 2019. The group’s officers are Barry Johnson as President, Fred Pinson as Vice President, Linda Adams as Secretary, and Andy Roberts as Treasurer. The leadership of this black lung association continues to work to create a space where retired and working miners can be educated about black lung, the benefits process, and policy related to mine safety. Prior to the pandemic, the group met monthly at the Pike County Health Department with members attending from both Pike and Floyd counties. The

group has been holding monthly zoom meetings since the end of last year to begin planning for the future and to also stay up on current policy updates.

Several of our members attended the lobbying trip to Washington, D.C. in the summer of 2019 and were successful in receiving a one-year extension of the excise tax. We have also assisted with call campaigns and held phone conferences with a staff member from our representative’s office to ask for a 10-year extension of the excise tax.

Death in the Dust

By James Ryan

Coal, coal glorious coal black as the blackest sin
Dust, dust we all must breathe the poison in
We dig the coal from the hole and pay with our very lives
An arm here, a leg there that fall the surgeon's knives

Every day we all pray we won't get pneumoconiosis
But it's for sure that more and more that's the diagnosis
So, we spend our time in the mine trying to gain a little wealth
But tell me honey, what is money when you don't have your health

The companies cry then they deny every black lung claim
The children cry when parents die and that's a terrible shame
The Department of Labor is not a good neighbor, they won't pass better laws
They just shrug and say "That's okay. We help the company's cause."

They say the coal miners are all just whiners nobody cares if they die
There's another one born at the dawn of each morn and their mothers cry
It kills us off because we cough and cough 'til we can't get our breath
Then the staff of the companies laugh after each and every death

The companies think it's funny because its more money they don't have to pay
They don't realize that all of their lies will come back to them some day
Everyone knows that when the trumpet blows it's the truth, they'll have to tell
And the miners will fly to their home on high because they've spent their time in hell

About the Bulletin:

The Bulletin was originally published from 1970-1972. The Bulletin has reemerged, now, as a way to stay connected in a time when it is challenging to be together. In collaboration with Black Lung Association leaders, this bulletin has been organized by John Cline, Debbie Wills (Valley Health), Willie Dodson (Appalachian Voices), Courtney Rhoades (Appalachian Citizens' Law Center), and Rebecca Shelton (Appalachian Citizens' Law Center) and published by Appalachian Citizens' Law Center. We hope that a bulletin can be sent out every few months. Please contact your chapter president or Courtney Rhoades if you have ideas for content (articles you would like to see, or art or poetry you would like to share), if you would like to participate in editing and distributing this bulletin, if you do not want to receive this bulletin, or if you would prefer to receive this bulletin via email.

Courtney Rhoades: courtney@acle.org or (606) 633-3929

Tighter Silica Rules Needed to Protect Miners from Black Lung Disease

It is well-documented that breathing in silica (or quartz) dust is a prime culprit in the ongoing epidemic of complicated black lung disease, but regulations protecting coal miners from this dangerous substance are weak. With 1 in 5 veteran Appalachian coal-miners now afflicted with the deadly disease, the consequence of these weak worker protections can be measured in lives.

Currently, the Mine Safety and Health Administration (MSHA) allows miners to be exposed to as much as 100 micrograms of silica dust per cubic meter of air. The National Institute for Occupational Safety and Health (NIOSH) and the Department of Labor's Office of Inspector General (DOL-OIG) both recommend that this level be reduced to 50 micrograms per cubic meter, which is the current legal level of exposure in all other industries. (You read that right. It is currently legal for coal miners to be exposed to twice as much silica dust as any other worker.) The American

Conference of Governmental Industrial Hygienists, a non-profit research organization, sets the recommended silica exposure level even lower, at 25 micrograms/ cubic meter.

In addition to the current silica exposure limit being too high, it is also difficult to enforce. Rather than MSHA simply imposing fines and requiring corrective actions in mines with unacceptably high silica levels, current enforcement methods address silica only as a

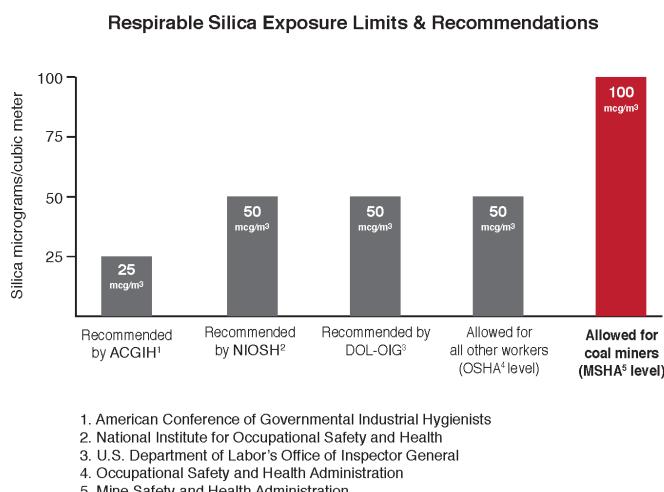
percentage of total respirable dust, rather than as a dangerous substance on its own.

The way it works is this: if silica makes up more than 5% of a mine's total respirable dust sample (which consists of coal dust plus silica and other particulates), then that mine is required to bring its total dust level down. This assumes that reducing the amount of total dust in the mine will also bring the level of silica into compliance. The problem with that approach is that most coal mines currently operating in Appalachia require miners to cut through large amounts of sandstone, the source of silica dust. As a result it is entirely possible for a coal mine to comply with even a lowered total respirable dust level, but still contain unsafe levels of silica.

Appalachian Voices' analysis found 34 instances since 2014 when silica comprised less than 5% of total respirable dust, but exceeded the legal limit of 100mcg per cubic meter, and 337 instances when silica exceeded the recommended limit of 50mcg per cubic meter. The Black Lung

Association, United Mine Workers of America, Appalachian Citizens Law Center, and others have been calling on the Mine Safety and Health Administration (MSHA) to strengthen these regulations for years.

Specifically, we must call on MSHA to lower the Permissible Exposure Limit for silica from 100 to 50 micrograms per cubic meter, thus affording coal miners the same protections as workers in every other industry. We must also demand that MSHA implement effective mechanisms targeting silica levels specifically, regardless of the levels of other



Graph: Appalachian Voices

(Silica, cont'd) types of dust in the mines.

Additionally, we need to urge MSHA to improve enforcement of existing controls intended to keep dust down in the first place. Enforcement of these controls should be the primary strategy to protect miners, rather than overly relying on personal protective equipment, such as respirators, which can be difficult to properly use and maintain, and which unfairly makes the individual miner, rather than the mine operator, responsible for that miner's safety. The many dust mask lawsuits that exist are evidence that it is not safe to rely only on personal protective devices.

During the Obama administration, MSHA worked to address these issues. At that time, the agency was led by Joe Main, who had previously directed UMWA's Health and Safety Department for over two decades. In 2014, Joe Main's MSHA took actions that dramatically improved the accuracy of monitoring and enforcement of exposure limits for total respirable dust, improving safety conditions for miners.

Under Main's leadership, MSHA had also been working on strengthening protections against exposure to silica dust specifically. But this process was incomplete when Donald Trump won the 2016 election, and Trump's MSHA director, David Zatezalo, ultimately took no steps to protect miners from the dangerous substance.

In February, President Biden appointed Jeannette Galanis as acting Assistant Labor Secretary overseeing the Mine Safety and Health Administration. Galanis had served as

chief of staff to Joe Main during his tenure with the department, a sign that the unfinished efforts to improve silica regulations will now resume.

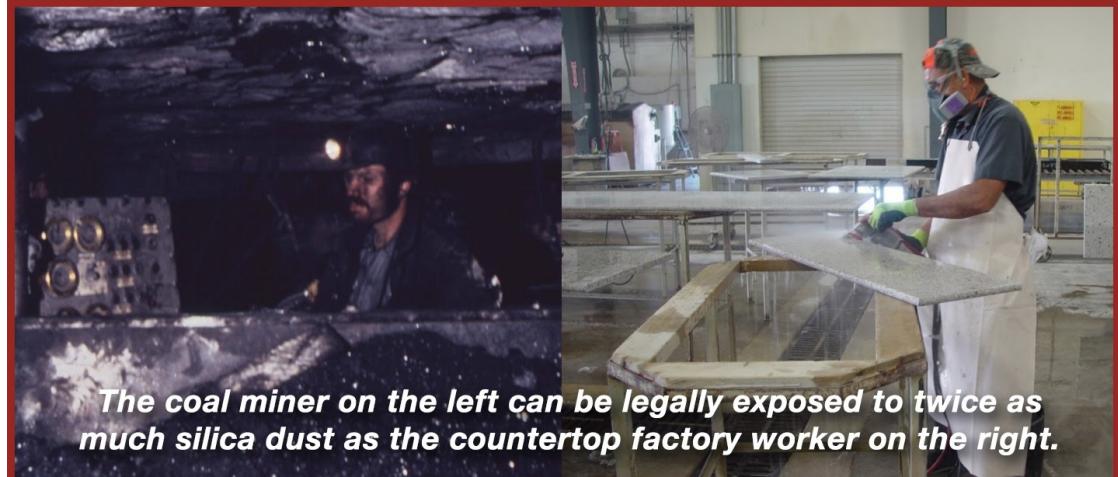


Photo: U.S. National Archives & U.S. Centers for Disease Control and Prevention

An export loophole is leaving millions of dollars for federal black lung benefits on the table. Changing the excise tax to a severance tax would fix it.

The Black Lung Excise Tax is a crucial lifeline to thousands of mining families. The coal industry has experienced a wave of bankruptcies starting around 2014 that has had the effect of releasing some operators from their obligations to workers and revealing that others never posted sufficient insurance with the Department of Labor to take care of all their miners. This leaves the Black Lung Disability Trust Fund on the hook for providing black lung benefits and healthcare coverage, just as increased exposure to silica in the mines is causing black lung to spike in Appalachia.

Last year, more than 18,000 miners and their families relied on the Black Lung Disability Trust Fund. The fund itself has been insolvent for years, digging ever deeper into debt. In 2020, benefits paid out and administrative costs totaled \$339 million, but the excise tax only generated \$301 million, leaving a tab of \$38 million to be picked up by the American taxpayer.

(Export tax, cont'd) In 2019, the shortfall was even greater. Trust fund revenues were only \$217 million and benefits and administrative costs totaled over \$326 million.

If those numbers sound bad, brace yourself. Due to revenue shortfalls since the inception of the black lung program, the Black Lung Disability Trust Fund is more than \$4 billion in debt to the general treasury.

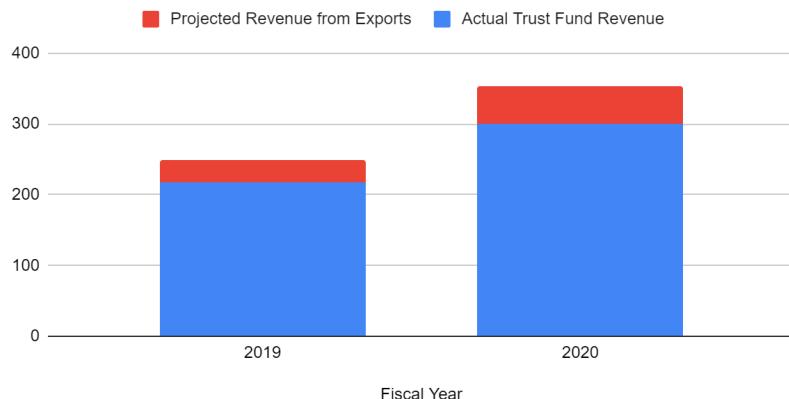
Despite all this, the coal industry has pushed Congress to cut the excise tax in half, a move that would, in all likelihood, add over \$100 million annually to the trust fund's already astronomical debt. These efforts were successful in 2019, before grassroots pressure from the Black Lung Association and others compelled Congress to reinstate the full tax rate for one year at the end of 2019 and again in 2020. The Black Lung Association is now pushing Congress to extend this tax rate for 10 years.

While miners and coal companies continue to fight over the rate of the Black Lung Excise Tax, there's another way the industry is shirking its responsibility to workers with black lung. This is the export loophole.

There is a clause in the U.S. Constitution preventing Congress from taxing exported goods, so the black lung fund does not receive any tax dollars from coal that is mined in the United States but sold overseas. However, while an excise tax applies to the sale of a product, a severance tax applies to the extraction of a natural resource. In other words, if Congress were to pass a law establishing a Black Lung Severance Tax in place of the current Black Lung Excise Tax, this would apply to all coal mined in the United States.

"Just because coal is exported doesn't mean the miners didn't get black lung when they mined it," says Bethel Brock, a retired miner with

Actual Trust Fund Revenue and Projected Revenue from Exports (in millions)



Graph: Appalachian Citizens' Law Center

complicated black lung, and President of the Norton, Virginia chapter of the Black Lung Association. "The black lung tax needs to be applied where the coal comes out of the ground. It doesn't matter to the miners struggling to breathe if it ends up going on a boat or not."

Even with declining coal markets, replacing the excise tax with a severance tax is one piece of the remedy that is needed to address the financial requirements of the chronically insolvent trust fund..

U.S. coal mines produced just over a half a billion tons in 2020, and about 13% of this coal was exported. If we assume that exported coal is similar to overall production, in that roughly 64% was surface mined and 36% was mined underground, then simply changing the Black Lung Excise Tax to a severance tax would have brought in about an additional \$51.5 million to the Black Lung Disability Trust Fund in 2020. This would have accounted for that year's \$38 million shortfall, and put a stop to the fund's decades-long debt spiral.

"It's disgusting how these companies will do whatever they can to not pay what they ought to," says Bethel Brock. "We've got to save this Black Lung Trust Fund so that the miners working today are taken care of when they get sick, and we need to make the companies pay a severance tax to do it."

(Chapter Profile, cont'd) The 10-year extension bill did not pass in 2020 however, we are hopeful to see a new 10-year extension bill introduced in 2021.

Last year, members from our group completed a lobby day at the Kentucky state capital, Frankfort, to see if the bill affecting radiologist b-readers could be overturned. Our goal is to once again see radiologists, such as Dr. Crum, able to read x-rays for the state's benefits system. We met with several representatives in 2020; however, the traction on the bill was halted due to the pandemic shutdown. In 2021, this bill was re-introduced however, was never assigned to a committee. With encouragement from local state politicians, we are hoping for the bill to be heard in committee during the interim session.

We are hopeful to have our first in-person meeting since February 2020 this summer outside at a local park.

Do you have an update from your chapter?
Tell us about your chapter and what you are working on and we'll include it in the next edition of the bulletin!

Understanding the PRO Act and Its Impact on UMWA Organizing

As previously discussed during our last National Black Lung Association call, the Protecting the Right to Organize (PRO) Act was recently introduced into Congress. This bill, if passed, will overhaul much of the current labor laws by targeting ways to expand union organizing. Currently, labor laws are outdated and greatly biased in favor of employers rather than focused on protecting employees and their rights.

This bill would include stronger and swifter penalties for companies to prevent employers from firing pro-union workers and the permanent replacement of workers during strikes. Companies would also face penalties if they try to prevent workers from getting their first contract by bad faith work time. Additional aspects of the bill include eliminating state right-to-work laws, restricting employer influence on unionization and would allow workers to bring claims to court around employment-related rights. Lastly, it

prohibits the almost universal employer practice of mandatory anti-union meetings during work time. All of these measures and many others included in the PRO Act are needed to allow workers free and fair elections to decide whether they want a union.

In order to protect the basic right to join a union, the PRO Act empowers workers to exercise their right to organize, holds employers accountable for violating workers' rights, and secures fair and safe union elections. Union leaders see this bill as an opportunity for growing union presence in big corporations that previously would prevent organizing. The bill was introduced by Representative Bobby Scott (VA) and was passed in the House in early March and has moved to the Senate. President Biden has also shown support of the bill, however; it is unclear if there will be enough votes for it to pass from the Senate.