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Bush's disturbing nomination

By Celeste Monforton

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In a year when 55 men have lost their lives at U.S. mining operations, including 15 from Kentucky (14 coal miners and one worker at Powell County limestone mine), it's more important than ever to scrutinize President Bush's nominees for top regulatory posts.

On July 31, the President nominated Susan E. Dudley to head his Office of Information and Regulatory Affairs (OIRA), which oversees the administration's (and therefore the nation's) regulatory policies, including rules issued by the federal Mine Safety and Health Administration. Dudley currently directs the Mercatus Center's Regulatory Studies Program, an industry-friendly think-tank made up of scholars who criticize public health and safety regulations as unnecessary, too onerous or interfering with the free-market system.

Friends of Kentucky's miners might be particularly interested in a recent law review article that she co-authored about silicosis and workplace safety rules. Clearly, Dudley knows little about the adverse health effects of silica, the disabling disease silicosis or workers' struggles for occupational health protections. Most troubling, she feigns expertise and argues that more study is needed before protections for silica-exposed workers can be put in place.

In the article "Defining What to Regulate: Silica and the Problem of Regulatory Categorization" (*Administrative Law Review*, Summer 2006), this Bush nominee claims, "There are serious problems in identifying the cause of lung damage from silica exposure."

Article untrue

This is not true. The cause of lung damage is exposure to respirable crystalline silica. Despite the authors' assertions, physicians, toxicologists and other experts have known for nearly a century that microscopic particles of SiO_2 (silicon dioxide, or quartz), when inhaled, can penetrate deep into the lung's alveoli. The body's natural defense mechanisms attack the tiny silica particle, thereby creating scar tissue -- and with too much exposure and too much scar tissue, silicosis develops.

When materials containing SiO_2 , such as cement, bricks or rock are drilled, sawed or otherwise disrupted and create dust, or when crystalline silica sand is used for abrasive blasting or in foundry processes, workers are at risk of breathing respirable particles containing quartz.

This is all well-known, indisputable science.

Dudley and her co-author are following the script first popularized many decades ago by the tobacco industry: When faced with regulation to protect the public health, always raise doubt and manufacture uncertainty about the scientific evidence.

Smoking to silica

Instead of cigarette smoking, the topic is now silica. The authors assert that a workplace regulation to prevent silicosis would be premature because "we do not know whether particular forms of silica are harmful" and the scientific evidence "comes from extremely limited sources."

Not true. The American Thoracic Society's 1997 official statement on the health effects of exposure to respirable crystalline silica includes more than 140 references, and the National Institute for Occupational Safety and Health's health hazard review lists nearly 500 scientific papers and documents to support its findings. Claims of scientific uncertainty by two law professors do not make it so.

Dudley also asserts in her article that epidemiological studies of silica-exposed workers may not be relevant because the studied workers "were exposed to silica of particular types, which may or may not be representative of silica found elsewhere."

Again, this tactic follows the uncertainty script, and, again, it is not true: SiO_2 is SiO_2 . If confirmed to the White House post, is this how Dudley would interpret scientific evidence, even such settled science as the cause of silicosis or coal workers' pneumoconiosis?

Following her logic, might she declare that the coal mine dust from the Upper Harlan seam and the Pocahontas seam are substantially different? If so, would she require MSHA to develop "coal-seam specific" regulations before miners could be protected from the deadly dust?

Delaying regulations

Sounds ludicrous, but stranger things have happened when ill-qualified ideologues are appointed to decision-making posts for the sole purpose of delaying or stopping all regulations.

As *The Courier-Journal* noted in its Aug. 17 editorial "Tolerating a killer," better protection for miners will not materialize without strong commitment from federal regulators. But, if the U.S. Senate confirms Bush's nominee for OIRA, expect her to question whether coal mine dust and respirable silica actually cause lung disease, and expect the long wait for personal dust monitors and tougher rules to protect miners from black lung disease to continue.

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