

TRANSCRIPT OF PROCEEDINGS

30 CFR PART 57)
)
DIESEL PARTICULATE MATTER)
EXPOSURE OF UNDERGROUND METAL)
AND NONMETAL MINERS; PROPOSED)
RULE)

Pages: 1 through 91

Place: Albuquerque, New Mexico

Date: May 13, 1999

HERITAGE REPORTING CORPORATION

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UNITED STATES DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

30 CFR PART 57)
DIESEL PARTICULATE MATTER EXPOSURE)
OF UNDERGROUND METAL AND NONMETAL)
MINERS; PROPOSED RULE)

Salon III
DoubleTree Hotel
201 Marquette, N.W.
Albuquerque, New Mexico

Thursday,
May 13, 1999

The hearing in the above-entitled matter commenced,
pursuant to notice, at 8:30 a.m.

PANEL:

THOMAS TOMB, Chief, Dust Division, Pittsburgh Health
and Safety Technology Center, MSHA, Pittsburgh,
Pennsylvania
JON KOGUT, Office of Program Evaluation and Information
Resources
GEORGE SASEEN, Technical Support
ROBERT HANEY, Technical Support
SANDRA WESDOCK, Office of the Solicitor
JAMES CUSTER, Metal and Nonmetal Division
RONALD FORD, Office of Standards, Regulations and
Variances
PAMELA KING, Office of Standards, Regulations and
Variances

SPEAKERS:

PATRICK S. ALLEN, Getchell Gold, Golconda, Nevada
PAUL SCHEIDIG, NVMA, Reno, Nevada
BRUCE WATZMAN, NMA, Washington, D.C.
DEBORAH GREEN, U.S. DOL, Office of the Solicitor

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1 P R O C E E D I N G S

2 OPENING STATEMENT OF THOMAS TOMB, CHIEF, DUST DIVISION,
3 PITTSBURGH HEALTH AND SAFETY TECHNOLOGY CENTER, PITTSBURGH,
4 PENNSYLVANIA

5 CHAIRMAN TOMB: All right, I'd like to get this
6 hearing started.

7 For the record I'd like to read the following
8 opening statement:

9 My name is Thomas Tomb and I am the Chief of the
10 Dust Division, Pittsburgh Health and Safety Technology
11 Center in Pittsburgh, Pennsylvania. And I will be the
12 moderator for this public hearing on MSHA's proposed rule
13 addressing diesel particulate matter exposure of underground
14 metal and nonmetal miners.

15 Personally, and on behalf of Assistant Secretary
16 J. Davitt McAteer, I would like to take this opportunity to
17 express our appreciation to each of you for being here today
18 and for participating in the development of this rule. With
19 me on the panel today from MSHA are Jon Kogut, from the
20 Office of Program Evaluation and Information Resources;
21 George Saseen and Robert Haney, from Technical Support;
22 Sandra Wesdock, from the Office of the Solicitor, Mr. James
23 Custer from Metal and Nonmetal's Health Division; Ron Ford

1 and Pamela King from the Office of Standards, Regulations
2 and Variances.

3 This hearing is being held in accordance with
4 Section 101 of the Federal Mine Safety and Health Act of
5 1977. As is the practice of this Agency, formal rules of
6 evidence will not apply.

7 We are making a verbatim transcript of this
8 hearing. It will be made an official part of the rulemaking
9 record. The hearing transcript along with all of the
10 comments that MSHA has received to date on the proposed
11 rule, will be available to you for review. If you want to
12 get a copy of the hearing transcript for your own use,
13 however, you must make your own arrangements with the
14 reporter.

15 We value your comments. MSHA will accept written
16 comment and other data from any one, including those of you
17 who do not present an oral statement. You may submit
18 written comments to Pamela King, who is on the panel here,
19 during this hearing or send them to Carol Jones, Acting
20 Director of the Office of Standards, Regulations and
21 Variances, at the address that's in the notice. We will
22 include them in the rulemaking record. If you feel you need
23 to modify your comments or wish to submit additional

1 comments following the hearing, the record will stay open
2 until July 26, 1999. You are encouraged to submit to MSHA a
3 copy of your comments on computer disk.

4 Your comments are essential in helping MSHA
5 develop the most appropriate rule that fosters safety and
6 health in our nation's mines. We appreciate your views on
7 this rulemaking and assure you that your comments, whether
8 written or oral, will be considered by MSHA in finalizing
9 this rule.

10 In April 1998, MSHA published a proposed rule to
11 address exposure to diesel particulate matter in underground
12 coal mines. Hearings were held in 1998. The rulemaking
13 record will close on July 26, 1999 for that rulemaking, the
14 same date as it is for the metal and nonmetal comment
15 period.

16 The scope of this hearing today is limited to the
17 October 28, 1998 proposed rule published to address diesel
18 particulate matter exposure of underground metal and
19 nonmetal miners. This hearing is the second of four public
20 hearings to be held on the proposed rule. The first hearing
21 was held in Salt Lake City, Utah, on May 11. Additional
22 hearings are scheduled to be held on May 25 in St. Louis,
23 Missouri and on May 27 in Knoxville, Tennessee.

1 On October 29, 1998, MSHA published a proposed
2 rule that would establish new health standards for
3 underground metal and nonmetal mines that use equipment
4 powered by diesel engines.

5 The proposed rule is designed to reduce the risks
6 to underground metal and nonmetal miners of serious health
7 effects that are associated with exposure to high
8 concentrations of diesel particulate matter. Diesel
9 particulate matter is a very small particle in diesel
10 exhaust. Underground miners are exposed to far higher
11 concentrations of this fine particulate than any other group
12 of workers. The best available evidence indicates that
13 such high exposures puts these miners at excess risk of a
14 variety of adverse health effects, including cancer, lung
15 cancer.

16 The proposed rule for underground metal and
17 nonmetal mines would establish a concentration limit for
18 diesel particulate matter and require mine operators to use
19 engineering and work practice controls to reduce diesel
20 particulate matter to that limit. Underground metal and
21 nonmetal mine operators would also be required to implement
22 certain "best practice" work controls similar to those
23 already required of underground coal miners under MSHA's

1 1996 diesel equipment rule. Additionally, operators would
2 be required to train miners about the hazards of DPM
3 exposure.

4 Specifically, the proposed rule would require
5 that:

6 The limit would restrict DPM concentrations in
7 underground metal and nonmetal mines to about 200 micrograms
8 per cubic meter of air;

9 Operators would be able to select whatever
10 combination of engineering and work practice controls they
11 want to keep the DPM concentrations in the mine below this
12 limit;

13 The concentration limit would be implemented in
14 two stages:

15 An interim limit that would go into effect
16 following 18 months of education and technical assistance by
17 MSHA; and a final limit after five years.

18 MSHA sampling would be used to determine
19 compliance. The proposal for this sector would also require
20 that all underground metal and nonmetal mines using diesel-
21 powered equipment observe a set of "best practices" to
22 reduce engine emissions, such as the use of low-sulfur fuel.

23 The comment period on the proposed rule was

1 scheduled to close on February 26, 1999. However, in
2 response to requests from the public for additional time to
3 prepare their comments, and with additional data added to
4 the rulemaking record by MSHA, the Agency extended the
5 public comment period until April 30, 1999.

6 The Agency welcomes your comments on the
7 significance of the material already in the record, and any
8 information that can supplement the record. For example, we
9 welcome comments on: additional information on existing and
10 projected exposures to DPM and to other fine particulates in
11 various mining environments; the health risks associated
12 with exposure to DPM; on the costs to miners, their families
13 and their employers of the various health problems linked to
14 DPM exposure; or additional benefits to be expected from
15 reducing DPM exposure.

16 The rulemaking record will remain open for
17 submission of post-hearing comments until July 26, 1999.

18 MSHA received comments from various sectors of the
19 mining community and has preliminarily reviewed the comments
20 it has received thus far. MSHA would particularly like
21 additional input from the mining community regarding
22 specific alternative approaches discussed in the economic
23 feasibility section of the preamble. As you might recall,

1 some of the alternatives considered by MSHA included: an
2 approach that would limit worker exposure rather than
3 limiting particular concentration; a lower limit; shortening
4 the time frame to go to the final limit; more stringent work
5 practices and engine controls; and requiring particular
6 filters on all equipment.

7 The Agency is also interested in obtaining as many
8 examples as possible of specific situations in individual
9 mines; for example, the composition of the diesel fleet,
10 what controls cannot be utilized due to special conditions,
11 and any studies of alternative controls you might have
12 evaluated using MSHA's computerized Estimator, which was
13 published in the "Federal Register." We would also like to
14 hear about any unusual situations that might warrant the
15 application of special provisions.

16 The Agency welcomes comments on any topics on
17 which we should provide initial guidance, as well as any
18 alternative practices which MSHA should accept for
19 compliance before various provisions of the rule go into
20 effect.

21 MSHA vies these rulemaking activities as extremely
22 important and knows that your participation is also a
23 reflection of the importance you associate with the

1 rulemaking. To ensure that an adequate record is made
2 during this proceeding, when you present your oral
3 statements or otherwise address the panel, I ask you to come
4 to the podium and clearly state your name, spell your name,
5 and state the name of the organization that you represent.

6 It is my intent that during this hearing anyone
7 who wishes to speak will be given an opportunity. Anyone
8 who has not previously asked for time to speak needs to tell
9 us of their intention and sign the speaker sheet that is --
10 is it still out in the front, Pam?

11 MS. KING: Yes.

12 CHAIRMAN TOMB: That's out on the table outside
13 the room. Time will be allocated for you to speak after the
14 scheduled speakers. We are scheduled to go until 5 p.m.
15 today, however, we will call a limit or a halt to the
16 hearing if we're out of speakers.

17 I will attempt to recognize all speakers in the
18 order in which they requested to speak. However, as a
19 moderator, I reserve the right to modify the order of
20 presentation in the interest of fairness. I doubt that it
21 will be necessary, but I also may exercise discretion to
22 exclude irrelevant or unduly repetitious material, and, in
23 order to clarify certain points the panel may ask questions

1 of the speakers.

2 Today we have three people that have signed up to
3 speak. The first is Mr. David Sheffield from the Nevada
4 Mining Association.

5 He spoke in Salt Lake.

6 MR. SCHEIDIG: David spoke in Salt Lake and won't
7 be here today. So I think we had reserved that in each of
8 the hearings. But it won't be necessary to today to take
9 that spot and that time.

10 CHAIRMAN TOMB: Okay. Is he going, is he going to
11 be at the other hearings though? You mentioned you signed
12 up.

13 MR. SCHEIDIG: I'm with the Nevada Mining
14 Association. And David may be at one of the other hearings.
15 I will, I will definitely speak in Knoxville in his place.

16 CHAIRMAN TOMB: Okay. But you're not going to
17 make a presentation?

18 MR. SCHEIDIG: No. No, sir.

19 CHAIRMAN TOMB: Could you give us your name?

20 MR. SCHEIDIG: Paul Scheidig.

21 CHAIRMAN TOMB: Paul?

22 MR. SCHEIDIG: Yes. S-C-H-E-I-D-I-G. And I'm
23 with the Nevada Mining Association.

1 CHAIRMAN TOMB: All right, thank you.

2 MR. SCHEIDIG: You're welcome.

3 CHAIRMAN TOMB: The next person we have on the
4 list is Mr. Henry Chajet from Patton & Boggs.

5 MR. SCHEIDIG: When I was speaking to Henry the
6 other day in Salt Lake he wasn't going to make this one but
7 I thought he, I think he said he was going to be in St.
8 Louis.

9 CHAIRMAN TOMB: Okay, thank you.

10 And the final speaker that we have on our list so
11 far is Mr. Patrick Allen from Getchell Gold.

12 MR. ALLEN: Yes, sir.

13 CHAIRMAN TOMB: Okay.

14 MR. ALLEN: I'm here.

15 (Laughter.)

16 CHAIRMAN TOMB: You have the rest of the day.

17 MR. ALLEN: All right. I've got a 35 cents sermon
18 here this morning.

19

20 STATEMENT OF PATRICK S. ALLEN, CMSP, LOSS CONTROL MANAGER,
21 GETCHELL GOLD, GOLCONDA, NEVADA

22 MR. ALLEN: Mr. Chairman, members of the panel, I
23 appreciate this opportunity to speak to you this morning.

1 My name is Patrick, P-A-T-R-I-C-K, middle initial S, last
2 name Allen, A-L-L-E-N. I am the Loss Control Manager for
3 Getchell Gold. And at the end of my presentation -- or
4 you're getting them now -- I have some comments there. I'm
5 not going to read those to you. You'll find out I don't
6 read so well.

7 But if I may, an opening statement this morning or
8 story. I'm reminded as I came in here this morning of a
9 minister during the Depression. He was asked to fill the
10 pulpit for another minister who was called away suddenly.
11 So as he went into the church he took his young son with
12 him. And back in those days, as you well recall, a quarter
13 was worth something. At the back of the church in the foyer
14 there was a little sealed box where you put your tithe in.
15 And as the minister walked in he dropped his quarter into
16 the box.

17 He got up and he delivered what he thought was the
18 finest sermon he had ever given. And, boy, he was just
19 happy. It was over. And one of the elders approaches and
20 says, "As our tradition is, we're going to give today's
21 tithe to the minister."

22 Well, lo and behold, they opened up that tithe box
23 and there was a quarter in it. And as they were leaving the

1 church that day the minister was somewhat dismayed. And he
2 was just shaking his head. And his young son looked at him
3 and he said, "Dad, had you put more into it you would have
4 gotten more out of it."

5 That's kind of the position we in mining are right
6 now. We have something to say, we want to say it, and we
7 hope we get something out of it and it's worth our time.
8 And that's why I'm here today.

9 There is nothing that I can recall in the short
10 term or even the long term that has unified mining, and
11 especially mining in northern Nevada, as this proposed rule.
12 I am not an industrial hygienist. I am not an engineer. I
13 have nothing but a CMSP. I'm a certified mine safety
14 professional. I implement and I oversee safety programs.
15 And I'm also a dumb Kansas farm boy. And that's where I'm
16 coming from today, I hope from a common sense approach as to
17 why this rule should not go as it's written or proposed.

18 As I've said, this has unified the mining industry
19 in northern Nevada, and I think you're going to see it
20 throughout the United States because we have some concerns.
21 They are spelled out in my comments this morning.

22 But one of the things that really concerns me is
23 the fact that there is a possible health hazard associated

1 with DPM. And I use the word "possible." I have a 22-year-
2 old son. He works at the mine during his summer breaks from
3 college. And I can tell you as a father and as somebody
4 concerned about the health and safety of the miners at our
5 mine I would not knowingly expose my son or somebody else's
6 son, husband or relative to a known hazard. I would not. I
7 could not in all clear conscience do that, nor would I. I'm
8 in the wrong profession.

9 But they're possible health effects and we are
10 concerned about them. I think there are some things that
11 could be done. But the one thing that worries us is that
12 this proposed rule is a premature rush to regulation. You
13 know, I was in California last week. And a lot of impetus
14 comes out of California for this rulemaking. And as I stood
15 in a restaurant I was reading a sign, a placard on the
16 restaurant wall that said something to the effect, if I can
17 paraphrase it, caution: drinking of distilled liquors, beer
18 and wines may cause cancer. The air we breathe may cause
19 cancer. Are we going to tell all miners they have to stop
20 drinking because there is an associated or a possible health
21 effect? It would really limit the number of miners we have
22 out there.

23 It's a common sense approach. There is nothing

1 concrete that spells out that DPM is a carcinogen. You're
2 asking us to fight a battle; we don't know who the enemy is
3 or what it is.

4 In its preamble, the Agency refers repeatedly to
5 the Supreme Court's "Benzene Decision." It is worth
6 recalling, however, that the "Benzene Decision" struck down
7 OSHA's benzene regulation because it was not supported by
8 adequate findings.

9 In the "Benzene Decision" the Supreme Court
10 emphasized its serious concern with the inadequacy of OSHA's
11 findings concerning a dose response correlation between
12 adverse health effects and any realistic occupational
13 exposure level. We find MSHA's Risk Assessment singularly
14 lacking in reliable evidence based on reputable scientific
15 thought that any particular occupational DPM exposure level
16 is associated with adverse human health effects. And the
17 existing studies are far from dispositive and reveal many
18 conflicting and inconclusive results. And we just need to
19 take our time and we need to weigh it and more studies need
20 to be done.

21 To compare miners to rats is an irrational thought
22 to me. These are living, breathing human beings, they are
23 not caged laboratory animals. And there has not been a

1 study on these miners as to what the effects are.

2 The Mine Act requires as a necessary predicate for
3 a health standard dealing with a potentially toxic substance
4 the best available, reliable evidence that miners are at
5 significant risk of suffering material impairment of health
6 at given levels of the occupational exposure in question.

7 In our view, the cumulative weight of all of
8 MSHA's needed disclaimers in its proposal as to the flaws,
9 inadequacies, contradictions and inconclusiveness of the
10 various studies means that the best available evidence
11 really isn't very good at all for the proposition that there
12 are significant occupational DPM health risks justifying the
13 severe PELs proposed.

14 In view of the uncertainty of this available
15 evidence, we urge MSHA to adopt a more reasonable approach
16 to DPM control. Such a stance is particularly appropriate
17 because, as noted by the Agency and the National Cancer
18 Institute, two other arms of the government, are presently
19 conducting what may prove to be, if appropriately designed,
20 a more illuminating study of the relationship between DPM
21 and health effects.

22 And we'd also join as Getchell Gold in the Nevada
23 Mining Association's recommendation in its 1999, April '99

1 letter to you of MSHA, that MSHA continue development of its
2 1997 Toolbox approach in reducing exposure to DPM. And like
3 the Nevada Mining Association, we believe the continued
4 application of the flexible Toolbox process is the most
5 reasonable regulatory and industry strategy. Moreover, we
6 strongly suggest that MSHA conduct an endeavor in meaningful
7 concern with all segments of the mining industry.

8 When we talk about a level playing field, that's
9 the only way we're going to get a level playing field is for
10 industry and the regulatory agencies to set down and have
11 some dialogue and do what's best for our miners, if that's
12 what we're all about.

13 As I said before, I'm not an industrial hygienist.
14 I don't conduct the tests at the mine, but I can tell you
15 this, that since the 1st of January we have spent thousands
16 of dollars on doing sampling underground. And the NIOSH
17 5040 methodology in the Nevada undergrounds, and that's what
18 I'm talking about today, and in particular the Getchell
19 Gold, is flawed.

20 Getchell has conducted its own extensive sampling
21 for DPM using the NIOSH 5040 method set forth in the
22 Proposed Rule. The fact of the matter is we not only have
23 carbonaceous ores which was taken into consideration in coal

1 mining, we also have graphite bearing ores which also impact
2 the 5040 methodology. We have oil mists down there from
3 jacklegs, pneumatic drills, etc. Our results are completely
4 unreliable as indicators of DPM.

5 Similar problems with testing in underground coal
6 mines led MSHA in its coal proposal to reject a PEL approach
7 to control of DPM exposure in the mining sector. And PEL
8 methodology is no more appropriate for underground Nevada
9 mines with carbonaceous ores, and it should be rejected here
10 too for substantially the same reasons. To force PEL
11 approach in these circumstances, while rejecting it in
12 similar context, would be arbitrary and would be capricious.

13 If adopted, the proposed rule would be financially
14 burdensome on Getchell. Where we came up with this 89 to
15 100 thousand dollars first year I don't know, but if cabs
16 alone at \$7,000 and we've got over 60 pieces of mobile
17 equipment underground, that's over a half a million dollars.
18 And I'm not a match expert either. That's just for one
19 proposed reg.

20 And cabs to me are just a no-brainer. Because not
21 everybody can work in contained environment. What about
22 that miner out there at the face drilling the round? What
23 are we going to do for him? How do we control it for him if

1 it is the health hazard that everybody says it is? Do we
2 put him in protective suits which increase the hazard? I
3 think not.

4 Going to electrical equipment is just, it's out of
5 the question. The feasibility. Now, I'm talking strictly
6 about precious metals now, and I don't know how in tune you
7 are to what gold's doing, but the fact of the matter it's
8 dropping. At some point in time enough is enough.

9 The other thing when it comes to feasibility is
10 it's unattainable. This standard is unattainable for the
11 mining industry. What's going to happen is if you go with
12 the 400 PEL and then you drop it to the 160 as the proposed
13 rule says, we in mining are going to do one of two things:
14 we're going to fly in the face of it and we're going to get
15 closure orders. And then what about the economic impact?
16 We only employ 670 employees. That's a major impact in
17 Winnemucca, Nevada, if they're not working.

18 Or, as I say, we're going to fly in the face of
19 those orders and we're going to end up by litigating. And I
20 don't think that's a reasonable outcome. I believe that
21 dialogue is the way to go.

22 Let me say that Getchell cannot afford to
23 eliminate and replace its diesel fleet and continue

1 profitable mining. And why are we in business? Nor can it
2 realistically absorb the heavy cost of refitting that fleet
3 and upgrading ventilation to comply with the proposed rule.

4 Ventilation. We estimate that it would add about
5 \$10 per ton to production to do the ventilation necessary to
6 control the diesel particulate as outlined in this rule.
7 Now, that begs the question of an already identified hazard
8 being silicosis. One way we control it is by keeping our
9 roads wet. So what does the increased ventilation do to us?
10 How do we keep those roads. How do we control dust. All of
11 a sudden we have increased our exposure to another health
12 concern.

13 To assess the validity of the proposed rule
14 Getchell has carried its own preliminary DPM sampling with
15 NIOSH 5040 method set forth by MSHA in its proposal. We
16 have also preliminarily analyzed compliance costs with the
17 Proposed Rule. And as discussed, the resultant data is very
18 troubling and has convinced us that MSHA just substantially
19 rethink its approach.

20 And as noted, Getchell's mobile fleet is almost
21 entirely diesel powered. Based on realistic estimate costs
22 of outfitting our affected diesel vehicles with appropriate
23 aftertreatment control devices, and some of which do not

1 actually exist in today's market, and/or installation of
2 fully enclosed cabs, needed ventilation upgrades to
3 accommodate the stringent proposed PELs, and annual costs,
4 maintenance and upkeep tied to such changes, we find that
5 our annualized costs would be approximately five times that
6 identified in this Proposed Rule.

7 We will supply specific economic data in our final
8 comment. Wholesale replacement of our diesel fleet is
9 simply not an option from an economic standpoint.

10 And the other thing that concerns me about diesel
11 particulate -- and like I say, I'm not a rocket scientist
12 here -- but the cleaner you get that diesel engine to burn
13 the smaller the particulate comes out. Now we've bypassed a
14 natural defense in our body. As you know, the hair in your
15 nose is intended to keep larger particulate out of the
16 system. Now all of a sudden we've increased the exposure to
17 our miners because we have cleaner burning. And I'm not
18 saying we need dirty burning engines down there either. But
19 I think that we could come to some amiable remedy to this.

20 And, as a matter of fact, speaking for Getchell I
21 know that we replace engines on the average of every two
22 years and we put the most modern on the market in at the
23 date that we install them. It's an ongoing process. Our

1 entire fleet is less than three years old.

2 We urge MSHA and the Department of Labor, of which
3 it is a constituent part, not to lose sight of the economic
4 health of this industry. At what point are speculative
5 marginal improvements in health protection based on
6 inconclusive evidence outweighed by the disappearance of the
7 jobs assertedly protected as a result of the imposition of
8 the heavy new compliance costs?

9 Concerns with the Proposed Rule's provisions. And
10 it is a concern, there are so many new things added to it.
11 The preceding comments address the basic, but infirm,
12 rationale of the Proposed Rule. Getchell also has concerns
13 with many of the proposal's specific provisions. Like the
14 Nevada Mining Association we find the proposal overly
15 complicated.

16 That old acronym I remember as a Marine was KISS,
17 "keep it simple stupid." Napoleon had a rule that before he
18 issued an order for battle he wouldn't have his officers
19 read it, instead he'd go out to the corporal who stood guard
20 outside his tent, he would give him that battle order and
21 say, "Corporal, do you understand this?" And if the
22 corporal didn't he'd rewrite it. We need to keep it simple.

23 As one example of the flaw, note the proposal's

1 addition of a separate new training component for DPM.
2 That's already covered in Part 48. Hazard communications;
3 there's a section in there. Mine gases is covered in Part
4 48. Why do we need a separate new entity out there that
5 just causes more paperwork?

6 Similar problems with overcomplexity exist with
7 regard to the Proposed Rule's recordkeeping and equipment
8 maintenance requirements. There are already maintenance
9 requirements, i.e., an operator does a pre-op check on his
10 piece of equipment. If he finds something that affects
11 safety, etc., he's to red tag it, notify the shop. The shop
12 is to keep that pre-op card until the correction is made and
13 then there is a permanent record in that vehicle's file
14 already. Why do we need to throw more records to keep? Is
15 it a way of circumventing what we're already required to
16 keep and adding more paperwork to us?

17 Simplicity is the key to acceptance,
18 implementation and success of any reasonable strategy to
19 control DPM exposure.

20 Not only that, now we have to keep records on our
21 mechanics. Now, I ask you, if you had a \$250,000 piece of
22 equipment would you just let anybody work on your equipment?
23 I think not. I think you bring in the manufacturer's rep

1 and he trains these people already on how to work on it.
2 Why do we need to keep more records.

3 Downgrading of PPE. We also endorse the Nevada
4 Mining Association's criticism of the Agency's continuing
5 downgrading of administrative controls and the use of
6 personal protective equipment in favor of considerably more
7 expensive and presently infeasible engineering controls.
8 Operators will act in good faith to use all available
9 methods to reduce exposure to toxic substances, and miners
10 today will accept PPE. If MSHA's goal is the protection of
11 miners in the context of actual jobs in a viable industry,
12 it must permit flexible control approaches and not penalize
13 operators for using one of the most efficient tools it has,
14 and that's PPE.

15 Getchell welcomes a constructive dialogue with the
16 Agency, and urges MSHA not to commit itself to the proposed
17 approach, which, for the reasons summarized above, is
18 premature, overly-stringent and infeasible.

19 Getchell is committed to proactive approach to
20 mine safety and health and environmental issues. For
21 example, there is a Toolbox out there concerning mercury.
22 The crux of that toolbox was the settlement and the
23 agreement which Getchell worked out with the Secretary of

1 Labor back in 1997-1998. Davitt McAteer himself has used
2 that in many talks about the interaction between industry
3 and the agency. And if we can do it once I know we can do
4 it again. And it's imperative that we do it.

5 As one grassroots member of the mining community,
6 we would be pleased to work with the Agency to develop a
7 more reasonable strategy than the Proposed Rule for
8 controlling DPM exposure.

9 And if I might, in closing, you know, I, and I'm
10 not an attorney either but I've spent a lot of time with
11 attorneys here lately, but I kind of feel like an attorney.
12 You're the jury. We've got a man convicted of murder out
13 here. Rightfully or wrongfully there's been a lot of press
14 on him. And, by golly, I hope that I'm not and that the
15 mining industry itself is not delivering its closing
16 arguments to a jury that's already made up its mind. I hope
17 not. Because we're all in it for the same reasons I
18 believe, and that's the protection of these miners and to
19 keep an industry viable and alive in the United States.
20 There are things we can do. And I think as a group both
21 industry and as the Agency we can work it out.

22 Thank you for your time.

23 CHAIRMAN TOMB: Thank you, Mr. Allen.

1 Don't leave.

2 MR. ALLEN: All right. I'm an industrial
3 hygienist. I have no technical data with me. That will be
4 provided later.

5 CHAIRMAN TOMB: Do you have any questions?

6 MR. SASEEN: Yes.

7 CHAIRMAN TOMB: George?

8 MR. SASEEN: You said that you change your engines
9 out every two years?

10 MR. ALLEN: Approximately, yeah.

11 MR. SASEEN: Is that the entire fleet or just more
12 your production, loaders, trucks, larger horsepower type
13 engines?

14 MR. ALLEN: Yeah. I like to think that everything
15 we have is production.

16 MR. SASEEN: Okay.

17 MR. ALLEN: So we have no unnecessary pieces
18 sitting around. But that's on average is the engines wear
19 out. Some of those we'll change out even more often. You
20 know, and the majority of ours are now the new computerized
21 D-beck type engines, cabs. A lot of the old air-cooled are
22 going by the wayside. So we get better efficiency out of
23 what we do have. But that's just on average is about two

1 years just by wear and tear.

2 MR. SASEEN: What's the horsepower range of your
3 fleet just roughly?

4 MR. ALLEN: I didn't even bring that information
5 with me.

6 MR. SASEEN: Okay.

7 MR. ALLEN: But the Wagner six yards, Elfenstone
8 which is a new product with Cat engines in them. So.

9 MR. SASEEN: You made a, you also made a statement
10 that some aftertreatment controls were not available. And I
11 assume you may be meaning filters. Was that based on the
12 size of your engines they're not available or is that based
13 on the duty cycle of your vehicles that they're not
14 available?

15 MR. ALLEN: I believe it's on the size of the
16 engines. Everything I've gathered is that people say, yeah,
17 we can make them. Well, you can make anything for a cost.

18 MR. SASEEN: Okay.

19 MR. ALLEN: You know.

20 MR. SASEEN: Okay, thank you.

21 MR. ALLEN: You bet.

22 CHAIRMAN TOMB: Jim?

23 MR. CUSTER: Here, as in Salt Lake, you've raised

1 the issue that MSHA has I guess the word is deprecated the
2 use of PPE and administrative controls. And I gather from
3 the presentations there and here that one of the problems
4 you have with the proposed rule is that it is indeed an
5 environmental standard as opposed to a personal exposure
6 standard.

7 Given that, do you believe, and I realize you
8 can't speak for all the stakeholders, but given that would
9 you be willing as representing Getchell to accept a standard
10 that indeed was a personal exposure standard and in line
11 with the application of good industrial hygiene practice
12 agree to look at the hierarchy of controls: engineering,
13 PPE, administrative?

14 MR. ALLEN: Yeah, feasible engineering would --

15 MR. CUSTER: Feasible, obviously.

16 MR. ALLEN: I mean that word, you know, we say
17 "engineering" but I think you need to look at feasible
18 engineering. That's always been the way it's been enforced
19 in the field. If you have a health or a safety standard
20 it's feasible engineering, noise control. In the recent
21 noise proposal, you know, PPE is not given any credence,
22 it's just, you know, it used to be all right, now it's not
23 all right.

1 And what I think, I'd have to give that some
2 thought.

3 MR. CUSTER: I think in the noise proposal we do
4 look at the hierarchy of controls, engineering first,
5 obviously, to control at the source and then PPE -- or
6 administrative controls and essentially PPE last. But the
7 rule does not preclude the use of PPE.

8 Thank you.

9 CHAIRMAN TOMB: Ron?

10 MR. FORD: Yes. Mr. Allen, do you have any
11 aftertreatment devices on any of your existing machines now?

12 MR. ALLEN: We use a catalytic converter type or a
13 scrubber type device on them.

14 MR. FORD: On your production pieces?

15 MR. ALLEN: Uh-huh. That's pretty normal

16 MR. FORD: You talked about the tag-out provision
17 that how you follow the existing tag-out provisions that are
18 on the books now.

19 MR. ALLEN: Uh-huh.

20 MR. FORD: Does that account for also emission
21 problems like when if someone sees a lot of black smoke
22 coming out do they tag out the machine or?

23 MR. ALLEN: They have that, not only that

1 responsibility, they have the authority to do that. If they
2 feel that there is something -- I don't care if we have to
3 go in there and do a gas test for them, which we had the
4 TMXes readily available to go in and do it, we do it. They
5 have that authority right now. I mean I tell every miner
6 that hires on there, don't make them make you do an unsafe
7 act or operate an unsafe piece of equipment. And I mean
8 that, and so does the rest of the management. We're that
9 strong on it.

10 So they do. I mean if they feel if that machine
11 is not operating properly, it's running rough or what have
12 you, they can shut it down (right then and there. And we
13 expect them to.

14 MR. FORD: Okay. And they have shut it down for)
15 emission type problems in the past?

16 MR. ALLEN: They've noted on their operator cards
17 exactly, you know, that this thing needs to be looked at,
18 etc.

19 MR. FORD: I've just got one more question. And
20 that is, you talked about your mechanics a lot of times
21 manufacturer reps will come in and train them on a
22 particular task.

23 MR. ALLEN: Or on a piece of equipment.

1 MR. FORD: Or on a piece of equipment.

2 MR. ALLEN: Yeah.

3 MR. FORD: When they do that do they ever given
4 them a paper or anything saying they're certified or do you
5 make a record in the book that as of this day this person
6 was trained or received this training?

7 MR. ALLEN: It has not been a requirement up to
8 this point in time. And like I said, when we bring these
9 guys in they're not training them on a particular task. For
10 example, Elfenstone, we have the largest fleet of Elfenstone
11 equipment right now in the United States at our Turquoise
12 Ridge Mine. So we bring Elfenstone in on a regular basis to
13 work on the equipment with our mechanics.

14 And Elfenstone will, you know, they'll hand out a
15 certificate if you would, you know, just kind of a has met
16 the 40 hour requirement, whatever type training he's
17 getting. It's kind of a "attaboy" type thing.

18 MR. FORD: Okay. Do you keep that certificate on
19 file in the company at the mine or?

20 MR. ALLEN: If we're made aware of the training
21 they've got we'll make a copy for their safety record. But
22 to say right now that we do it unequivocally without fail, I
23 wouldn't make that statement.

1 MR. FORD: Okay. Thank you.

2 CHAIRMAN TOMB: Just a, I just want to pick up on
3 one of his questions, Mr. Allen.

4 From your presentation, from the tag-out
5 procedure, what in the rule requires more than what you're
6 doing right now?

7 MR. ALLEN: It's the fact that it's just another
8 step out there that M -- that having to deal with the
9 inspectors on a daily basis almost here recently. You know,
10 the unfortunate thing is not all inspectors inspect the same
11 way, you know.

12 CHAIRMAN TOMB: I know, but --

13 MR. ALLEN: They see an apple and I've got an
14 orange. And then they're going to write me citations
15 because that thing doesn't appear to be running right or
16 what have you. Where's your tag? You know, why is he
17 operating? I don't know. It's a personal judgment type
18 thing.

19 CHAIRMAN TOMB: I don't think that's -- in the
20 discussion of the rule that hasn't been a issue for
21 compliance purposes. I mean in examples that are given that
22 isn't one of the permanent things.

23 MR. ALLEN: But why would you, if you've already

1 got it, if it's already established why do you need to put
2 another standard in place for us? It's just one more we get
3 beat up on.

4 CHAIRMAN TOMB: Well, okay, but I guess the
5 question, it seems like you do these things out of habit,
6 okay.

7 MR. ALLEN: Right.

8 CHAIRMAN TOMB: But there are other mines out
9 there that should be doing them that don't.

10 MR. ALLEN: Then we should be enforcing the
11 existing standards on them and not creating more standards
12 and more paperwork for us. Because if I'm in violation of -
13 -

14 CHAIRMAN TOMB: And that's my question, though,
15 from what you just said -- I don't mean to interrupt you --
16 but just from what I just said then, from what you just
17 said, what additional paperwork are we create -- is the rule
18 creating, not us, is the rule creating over what you do now,
19 right now?

20 MR. ALLEN: What I perceive happening is you're
21 going to come up with a new section on diesel particulate
22 just as you did air quality Part 5800, okay. You're
23 separated it out. 14.100 already tells me that if I have a,

1 if I have a -- I'm looking for the right terminology here.
2 I know the standard.

3 CHAIRMAN TOMB: Defect.

4 MR. ALLEN: Yeah. If you have a defect in it and
5 it applies to safety, you know, for the piece of equipment
6 that you are to tag it out and repairs are to be made as
7 soon as possible, okay, it's already there.

8 CHAIRMAN TOMB: Yeah, but if those are the words
9 though we don't have "health" in there. That's, then that's
10 the sticking point. That's an argument.

11 MR. ALLEN: I don't have my CFR with me.

12 CHAIRMAN TOMB: Okay. Well, anyway, that's --

13 MR. ALLEN: But anyway, my sticking point is, you
14 know, if you're training them under health hazards, if
15 you're training them during their initial training about
16 orange card operators' responsibilities, etc., which we do,
17 which most of the mines around here do, you've already
18 covered it. And what you're doing is you're just giving us
19 one more standard that we're going to get hammered on, that
20 we're going to be written for on a very regular basis. And
21 that's our position is it becomes another hammer for
22 enforcement.

23 And I'm being, I'm being honest with you.

1 CHAIRMAN TOMB: Yeah, okay. Okay. That's my
2 question.

3 MR. ALLEN: Because I have to deal with this on a
4 daily basis.

5 MR. CUSTER: Let me just finish up Tom's question.
6 If the diesel particular standard had a section or a, yeah,
7 a section or a paragraph stating that equipment would need
8 to be inspected in accordance with, what is it, 14 --

9 MR. ALLEN: 14.100.

10 MR. CUSTER: -- 14.100, would that be acceptable
11 to the industry?

12 MR. ALLEN: I can't speak for the industry.

13 MR. CUSTER: I understand, but would it be
14 acceptable to Getchell? Because it's not putting another
15 standard on, it's merely reiterating a current standard.
16 And I'm not sure, but I thought 14.100 indeed did mention
17 health in there.

18 MR. ALLEN: I think it does too. That's what I
19 said, I don't have my CFR with me. And I --

20 CHAIRMAN TOMB: I don't either. That's --

21 MR. ALLEN: You know, I've got good recall but not
22 total.

23 MR. CUSTER: I think it's defects affecting health

1 and safety.

2 MR. ALLEN: Health and safety. I think you're
3 exactly right. And it's already there. And why not include
4 that in the preamble of that particular standard of 14.100.

5 MR. CUSTER: But would it create a problem for
6 Getchell to have it simply reiterated --

7 MR. ALLEN: Oh, I think any --

8 MR. CUSTER: -- there as a reminder?

9 MR. ALLEN: Oh, I don't know about Getchell. But
10 I know about me personally it would. Because it just
11 becomes one more thing that we have to deal with and it's
12 already covered.

13 MR. CUSTER: Well, you're already dealing with it.
14 This is simply --

15 MR. ALLEN: Yeah, but.

16 MR. CUSTER: Well, I don't want to debate the
17 issue.

18 CHAIRMAN TOMB: Okay. Are you done, Jim?

19 MR. CUSTER: Her's looking that up.

20 CHAIRMAN TOMB: Oh, okay.

21 MR. SASEEN: Tom. Could you -- back to my engine
22 question, Mr. Allen. Could you supply us with an inventory
23 of your engines?

1 MR. ALLEN: I'd be more than happy to when we do
2 our closing comments --

3 MR. SASEEN: Okay.

4 MR. ALLEN: -- by July the 26th.

5 MR. SASEEN: Fine.

6 MR. ALLEN: We'll give the technical data we need
7 to at that time.

8 MR. SASEEN: Have you had the opportunity to do
9 any estimate using the Estimator?

10 MR. ALLEN: No, we have not.

11 MR. SASEEN: Okay, thank you.

12 MR. ALLEN: You bet.

13 CHAIRMAN TOMB: Bob?

14 MR. HANEY: I just, I had a couple of questions to
15 help me clarify the conditions at your mine. What mining
16 height do you normally have?

17 MR. ALLEN: Backs?

18 MR. HANEY: Yeah.

19 MR. ALLEN: We're running 14, 15 feet in the back.

20 MR. HANEY: Of those 60 pieces of equipment that
21 you have do any of those have cabs on them currently?

22 MR. ALLEN: No, they do not. We have ROPs. And
23 it's hard to keep the ROPs on.

1 MR. HANEY: Your loaders and your stopes don't
2 have cabs? No?

3 MR. ALLEN: No.

4 MR. HANEY: Okay. When you said you replace
5 equipment every two years is that the equipment or the
6 engines?

7 MR. ALLEN: The engines.

8 MR. HANEY: Okay. And what about --

9 MR. ALLEN: And it's just a rotation, it's must a
10 matter, it's just normal maintenance procedure. You
11 schedule or budget X number of engines and that's usually
12 what you end up replacing.

13 MR. HANEY: Do you have any idea how frequently
14 you would be replacing the equipment, what the life of a
15 piece of equipment is?

16 MR. ALLEN: Three to five years would be a norm
17 for underground mining equipment. But you can get, you
18 know, it depends on the operators how often they take it
19 into the rib and other unknowns at this time how long you
20 would keep it.

21 MR. HANEY: Are you currently using low-sulfur
22 fuel?

23 MR. ALLEN: I believe we are. But I'm saying that

1 as I haven't checked into it, to tell you the truth.

2 MR. CUSTER: Mr. Allen, I stand corrected on the
3 14.100. It indeed does strictly --

4 MR. ALLEN: Safety.

5 MR. CUSTER: -- say safety. So I guess the
6 follow-up question then to that would you, representing
7 Getchell, be agreement to an amendment to 14.100 to include
8 health as one of the things that you would look for in
9 defects that would have an effect on the miner's health
10 issue?

11 MR. ALLEN: I think that if I said no I'd be lying
12 to this committee. You know, I believe it should be.

13 MR. CUSTER: And if it were entirely, if that were
14 entirely removed from the diesel particulates Proposed Rule
15 and this simply amended to include health would then --

16 MR. ALLEN: Yeah, it would be --

17 CHAIRMAN TOMB: -- address your concerns?

18 MR. ALLEN: Well, health is a concern. So, yes.

19 MR. CUSTER: Thank you, sir.

20 CHAIRMAN TOMB: Do you have another question, Bob?

21 MR. HANEY: I have a few more questions.

22 You said it would cost, add \$10 a ton to your cost
23 to provide ventilation to meet this PEL. Is that

1 ventilation to dilute to 160 micrograms?

2 MR. ALLEN: That's just to meet the 400 to start
3 with.

4 MR. HANEY: Okay. So that would be to dilute to
5 400. Okay, so then you must have some idea of what your
6 current levels are? Do you have? Would you be willing to
7 share those with us?

8 MR. ALLEN: I don't have that information with me.
9 As I said, that was a best guess estimate at this time as to
10 what we would be adding to it. But I know that we're moving
11 over 200,000 cfm into those mines. And I believe at the
12 Turquoise Ridge it's even closer to 300,000 right now.

13 MR. HANEY: Is that on a single, continuous split
14 through the mine or do you have several air splits going
15 through the mine?

16 MR. ALLEN: The Turquoise Ridge is a shaft mine.
17 So we're pulling off each one of the levels.

18 MR. HANEY: Okay. And you said you're in favor of
19 the Toolbox approach. What criteria would you use as a
20 leveling criteria to ensure that all companies or maybe just
21 your company was doing everything equally across the
22 industry so that it wasn't left open to individual mines to
23 decide what was feasible for their mine?

1 MR. ALLEN: Well, I think the first thing is we
2 need to have the dialogue. I don't believe that the Agency
3 should have the burden of writing, you know, that Toolbox.

4 As I said before, even on the lead and mercury or
5 on the mercury toolbox, most of that was the result of
6 dialogue between the Agency and Getchell Gold. Those best
7 practices in there, that was our settlement agreement in
8 essence that became -- So there was some dialogue. And
9 that's what needs to happen here. For a Toolbox it needs to
10 be the mining, whether it's mining associations or whoever
11 need to sit down with the members of the Agency and let's
12 work it out. Because if they have the input, you know, it's
13 one of those things that if I have input into it and I feel
14 comfortable with what I said then I'm going to do what I
15 said. And mining is that way. But if we have no say in it,
16 you know, it's just, it's frustrating.

17 MR. HANEY: Okay. then one final question. You
18 said you're not an engineer and you're not an industrial
19 hygienist but then you went and said this is unattainable.
20 What are you basing that on?

21 MR. ALLEN: The fact that it's an arbitrary
22 number. You know, and what we've seen in our mines with
23 everything out there, you know, with the results of our

1 studies, we're not going to get there from here.

2 As I say, this is a common sense thing. I'm just
3 a dumb Kansas farm boy. And you haven't proven to me, first
4 of all, or to the industry that we have a health effect. I
5 mean you can't say it may then say it is. Either it is or
6 it isn't. And just to throw numbers out there, nobody has
7 shown me how we came to those numbers. Nobody. It's an
8 arbitrary, capricious ruling right now, or proposed rule.

9 CHAIRMAN TOMB: Ron?

10 MR. FORD: Just a quick question. In your written
11 comments you say, you make, you also make the statement that
12 to put on aftertreatment control devices including, and also
13 including the ventilation, would cost five times as much.

14 MR. ALLEN: Uh-huh.

15 MR. FORD: And then you also made the statement
16 that you haven't on -- I don't know on how many pieces of
17 your equipment, but on some you can't even -- you don't even
18 know how to do it, how to put that stuff on. I'm just kind
19 of wondering how did you get your estimate of five times
20 more?

21 MR. ALLEN: Well, like I say, a cab is an
22 aftertreatment because we have no cabs. Put the cabs on and
23 just using a conservative figure of \$8,000 to retrofit that

1 cab, that's over \$500,000.

2 MR. FORD: Okay.

3 MR. ALLEN: And that's five times more. And
4 that's just for one fix.

5 MR. FORD: Okay.

6 MR. ALLEN: If you go with ceramic scrubbers or
7 ceramic filters out there, after so many hours you have to
8 take them out and send them off and get them cleaned because
9 we can't afford a half a million dollar processing plant to
10 clean those ceramic filters. So now we have to carry two
11 filters for every piece of equipment. But it does get
12 costly.

13 CHAIRMAN TOMB: Jim?

14 MR. FORD: Thank you.

15 CHAIRMAN TOMB: Oh, I'm sorry, are you don't?

16 MR. FORD: Yes.

17 CHAIRMAN TOMB: Jim?

18 MR. CUSTER: While you may have started out as a
19 poor Kansas farm boy I think you've certainly evolved into
20 quite an intelligent mining individual. And in line with
21 that, what I've said, and in line with the dialogue that you
22 would like to establish I would like to throw out -- well, I
23 don't want to throw out -- I want to put out to the audience

1 because in the audience there's an NVMA representative,
2 there's an NMA representative and other people here, I'd
3 like to throw out to them the challenge to provide comment
4 if they would in regard to the issue of the health and
5 safety defect inspection since we seem to have gone down
6 that line just a bit today.

7 MR. ALLEN: Okay.

8 MR. CUSTER: Thank you. And yourself, too, sir.

9 MR. ALLEN: One other thing, too, that I didn't
10 mention in this, when we talk about the unnecessary burden
11 is all of a sudden we look at a control plan also. If we go
12 with the 400 and the 160 there's also a control plan that we
13 have to maintain. And once we put that in writing if we
14 don't maintain that control plan we're hammered, you know.
15 We have no way out.

16 CHAIRMAN TOMB: I think that's only for situations
17 of where the standard's been found to be exceeded, isn't it?

18 MR. ALLEN: Yeah, but by the same token I don't
19 believe we're going to get there.

20 CHAIRMAN TOMB: Oh, okay. Well, I'm just saying -
21 -

22 MR. ALLEN: Okay.

23 CHAIRMAN TOMB: -- I'm just making the point that

1 that is not a across-the-board requirement --

2 MR. ALLEN: Right.

3 CHAIRMAN TOMB: -- of the standard, that's all.

4 MR. ALLEN: And I think in northern Nevada mines
5 it may very well become that just by virtue of the fact we
6 have all this carbonaceous ore out there.

7 MR. SCHEIDIG: Could you gentlemen speak up a
8 little bit? I'm having difficulty hearing your questions
9 again, especially since you said something about the Nevada
10 Mining Association. I couldn't hear what.

11 MR. CUSTER: What I had asked is because there are
12 NVMA and NMA representatives here as well as representatives
13 from other companies, in light of the dialogue that's been
14 asked for I would like to see comment come in from you folks
15 in regard to 14.100, amending that to include health as one
16 of the defects that we look for, whatever affects health as
17 well as safety, and your views or your perspective on making
18 that amendment, and then not having that blurb appear in the
19 diesel particular rule.

20 MR. SCHEIDIG: Thank you.

21 MR. ALLEN: And I think along the same lines that
22 issue on the training could be addressed under Part 48.

23 MR. CUSTER: I think that as I recall, as you're

1 aware there is the rider which obviously I think is somewhat
2 by the boards now with Part 46.

3 MR. ALLEN: Right.

4 MR. CUSTER: But there was concern that some parts
5 of the metal/nonmetal industry would be automatically
6 exempt, or not exempt from the training but exempt from the
7 enforcement of the training requirement. And I think that's
8 why that was written originally.

9 Is that correct, Deborah?

10 MS. GREEN: I'm sorry, I was thinking of something
11 else.

12 MR. CUSTER: Oh, okay. That's okay.

13 MS. GREEN: What's your question? Please restate
14 the question.

15 MR. CUSTER: The question of Part 40 and including
16 this additional training in the diesel particulate rule,
17 wasn't that done in order to bring into those, bring under
18 the rule those operations that were exempt from enforcement
19 of the current Part 48 regulation as a result of the budget
20 rider?

21 MS. GREEN: My name is Deborah Green. And I work
22 for the Solicitor's Office. I'm counsel for metal and
23 nonmetal.

1 The approach that the Agency took in the proposed
2 rule in reference to training is consistent with its
3 approach it has taken in all of the health rulemakings with
4 regard to training. It's the same in hazard communication.
5 It's the same for any training where we require it in a
6 health regulation. We like to have a separate component to
7 make certain that specific areas of training are covered.
8 Part 48, notwithstanding its application, because it applies
9 to all underground mines. We can -- It applies to all mines
10 but we can enforce it with all underground mines presently.

11 But in the Part 48 training it's not always so
12 specific as to what has to be covered under a particular
13 health regulation. It's not that specific. And the Agency
14 wanted to make certain that minimal requirements for
15 training were covered for purposes of diesel particulate.
16 Now, whether or not that approach is taken in the final rule
17 has a lot to do with looking at the comments of a necessity
18 for the requirement in the final rule.

19 Thank you.

20 MR. CUSTER: Thank you.

21 CHAIRMAN TOMB: I told you, you have eight hours
22 to kill here.

23 (Laughter.)

1 CHAIRMAN TOMB: Okay, anybody else at this end of
2 the table have some questions?

3 MR. CUSTER: No.

4 CHAIRMAN TOMB: Okay, I'm going to go down the
5 table this way. So let me ask a couple, okay?

6 Can you supply us with some information relative
7 to how many pieces of equipment of your 60 pieces of
8 equipment are operating at one time in the mines, you know,
9 during a --

10 MR. ALLEN: Duty cycle?

11 CHAIRMAN TOMB: -- duty cycle? Yeah.

12 MR. ALLEN: We would make that available I think.

13 CHAIRMAN TOMB: Yeah. I mean I'd expect that.

14 MR. ALLEN: Yeah.

15 CHAIRMAN TOMB: Okay. One thing that I'm a little
16 confused about from both comments that were made at this
17 hearing and the last hearing relative to the Toolbox. What,
18 when you say we should use the Toolbox approach, to be
19 honest with you that's what we tried to do when we wrote the
20 rule. And I'm not clear on what's different from your
21 definition of using the Toolbox to what, I mean the Toolbox
22 approach compared to what yours is or ours is?

23 MR. ALLEN: Well, what we have is we have another

1 rule that we're going to be enforced on. You're setting a
2 standard, says 400, 160. And if we don't meet it.

3 CHAIRMAN TOMB: Yeah, but I mean what is the
4 Toolbox approach?

5 MR. ALLEN: The Toolbox is just simply best
6 practices, if you would. If we're doing this, this and this
7 then we're doing all we can without enforcement.

8 CHAIRMAN TOMB: Okay, with not everybody getting
9 down to trying to achieve the same level; is that what
10 you're saying? Everybody can do what they can do? I'm just
11 trying to clarify this.

12 MR. ALLEN: Yeah, well, because you're going to
13 come into these mines, like I say, you're going to come into
14 northern Nevada and you're going to shut us down. It's
15 plain and simple because of our ore type and everything that
16 hasn't been taken into consideration. And I think in the
17 interim before a Proposed Rule comes out and it gives us
18 some time to have this dialogue on this rule, you know, at
19 least we have something out there that we can be working
20 towards. That's what a toolbox is. A toolbox is not an
21 enforcement tool.

22 CHAIRMAN TOMB: Okay.

23 MR. ALLEN: It's just to get us started and get us

1 all on the same page. And it's not a perfect document.

2 CHAIRMAN TOMB: Okay. We're using toolbox in the
3 definition of the technology out there that has been
4 demonstrated to reduce DPM. And we sort of tried to make
5 that kind of information available to the industry. And the
6 industry can pick and choose that technology that's out
7 there that best suits their operation and gets down to the
8 levels that we've proposed.

9 MR. ALLEN: Yeah.

10 CHAIRMAN TOMB: Okay. And that, I guess the
11 difference is we say that you can use that technology to get
12 down to the level and you're saying you don't want the level
13 specified.

14 MR. ALLEN: Exactly.

15 CHAIRMAN TOMB: The same thing. Okay.

16 Okay, another question that I have relative to
17 your presentation is that you said you spent thousands of
18 dollars in making measurements in your mines. And I was
19 wondering if you could make that data available to us,
20 whatever you've done and what you've found and relative to
21 your specific mine, not as an overall Nevada.

22 MR. ALLEN: Well, we would include that with the
23 Nevada Mining Association when they --

1 CHAIRMAN TOMB: Okay, is it going to be broken out
2 so that we know what --

3 MR. ALLEN: Well, I believe that is going to be
4 broken down. Isn't it, Paul? Or are we going to generalize
5 it? Or we haven't even talked about it.

6 MR. SCHEIDIG: We haven't talked about the policy
7 of the underground mines.

8 MS. KING: Excuse me, could you come to the podium
9 so the reporter can get your dialogue?

10 MR. SCHEIDIG: Thanks for helping, Paul.

11 (Laughter.)

12 MR. SCHEIDIG: I misunderstood your question.
13 This is Paul Scheidig. But we haven't yet decided as to how
14 we're going to present all that. I think that Chris Rose
15 and Dave Sheffield at the Salt Lake Hearing made it quite
16 clear that what we'll do is put the data in a form that is
17 somewhat genericized, if you will. That was also sort of
18 agreed to at the Salt Lake meeting. And we haven't yet I
19 don't think decided exactly what form we're going to put
20 that data in.

21 CHAIRMAN TOMB: Okay.

22 MR. SCHEIDIG: But the data will be on the
23 sampling data. I misunderstood, I thought you were talking

1 about some of the cost data relative to --

2 CHAIRMAN TOMB: No, I just think it would be
3 important that if Mr. Allen's mine has specific information
4 on levels that he measured. You said some of your mines had
5 graphitic ore and others didn't. That seems to be a big
6 component of the interference that we're looking at from the
7 sampling standpoint. And if he's made assessment of his DPM
8 exposures it's my -- I think it would be important to the
9 committee if we had that kind of information.

10 MR. SCHEIDIG: I think you'll get a very good
11 representation from Nevada Mining Association as to the
12 exposure and other data that we found in the Nevada, period,
13 from all mines.

14 CHAIRMAN TOMB: Okay. I would just like to
15 reiterate, and I think I asked this, asked you to do this
16 before, if you can and when you turn in your written
17 comments maybe emphasize for like the maintenance, the
18 training and the -- what was the other one we were
19 discussing?

20 MR. CUSTER: Recordkeeping.

21 MS. WESDOCK: Recordkeeping.

22 CHAIRMAN TOMB: Yeah, the recordkeeping that would
23 be above and beyond, you know, what you'd be doing right now

1 in your particular mine. You know, because I mean you might
2 be doing everything that this rule requires.

3 MR. ALLEN: And speaking from my point of view we
4 may very well but also, you know, it's just another
5 requirement out there. You know, and if you're doing it and
6 if you have a way of already enforcing it, you know, why
7 keep building on it? That's my whole take on it.

8 CHAIRMAN TOMB: Okay, but just realize that every
9 mining situation isn't identical.

10 MR. ALLEN: Oh, I'm --

11 CHAIRMAN TOMB: All right? And maybe you're the
12 only one that's following "perfect practices."

13 MR. ALLEN: Oh, no, no.

14 CHAIRMAN TOMB: And I'm just using that as an
15 example.

16 MR. ALLEN: All mines do it.

17 CHAIRMAN TOMB: Okay.

18 MR. ALLEN: Just kidding.

19 CHAIRMAN TOMB: I guess my last question would be
20 you mentioned in summing up a more reasonable strategy and
21 that the Agency should follow. And I'm not asking you to
22 answer that question right now.

23 MR. ALLEN: Thank you.

1 CHAIRMAN TOMB: But if you're going to have a
2 summation for your mine that you could submit to us maybe
3 you could be a little specific on that, you know, other than
4 just a more reasonable strategy, you know, what did you have
5 in mind?

6 MR. ALLEN: Okay.

7 CHAIRMAN TOMB: Okay? Jon?

8 MR. KOGUT: Yeah. Please -- Thank you very much
9 for your comments. And I appreciated in particular what you
10 had to say about your concern for potential health effects
11 if they were established.

12 I did get the impression from your comments,
13 though, that you were under the impression that we did not -
14 - that there were no human-based studies linking miners who
15 are exposed to diesel particulates with lung cancer. And
16 that there were no human-based studies establishing a health
17 effect for particulates in general.

18 So there are just sort of two parts to what I want
19 to say. And the first of them is in the nature of a
20 question. Part of what our risk assessment was based on was
21 apart from the literature that directly links diesel
22 particulate specifically to lung cancer or other health
23 outcomes, adverse health outcomes, there is also a large

1 body of literature looking at associations between particles
2 in general, fine particles specifically but particles in
3 general and adverse health outcomes. And the main body of
4 that literature is not occupational but comes from studies
5 on air pollution in various cities and the effects that are
6 seen on air pollution.

7 As a result of those studies and a lot of other
8 research that's been carried out in support of those studies
9 the Environmental Protection Agency has come out with clean
10 air standards that regulate the level of fine particulates
11 in the atmosphere to a limit that's quite a lot lower than
12 not only the concentrations of fine particulate that we've
13 seen in mining environments but even quite a bit lower than
14 what we're proposing to set as a limit here.

15 So the first part of what I want to ask is what is
16 your reaction to these proposed limits in view of the fact
17 that they're considerably higher than the EPA regulations?

18 MR. ALLEN: Well, I think the EPA when they do
19 theirs they look at places like Los Angeles, Spokane,
20 Washington, where you get into a valley down there, there is
21 no air movement. You have all these, especially during the
22 winter your stoves are going full bore, etc. We're moving
23 200,000 plus cfm through a mine. We are moving air as it

1 is. That's not saying that there aren't some dead headings
2 down there, etc., but still, we have a wind going through
3 that mine at all times. We have ventilation to keep it
4 circulating.

5 And the fact of the matter is we have elements out
6 there that interfere with this carbon reading, okay.
7 Smokers are the biggest health risk going. Are we concerned
8 about miners who smoke? If so, why don't we make all miners
9 non-smoking? It's a proven carcinogen.

10 MR. KOGUT: That's possible. But what I'm talking
11 about specifically is whether it comes from smoke, there's
12 fine particulate in smoke, there's fine particulate in
13 diesel. Now, you know, there's even some amount of fine
14 particulate that comes from the tail end of the size
15 distribution in, you know, from the extracted ore.

16 But the point that I'm making is that EPA saw a
17 need and saw plenty of evidence to justify regulating the
18 concentration of fine particulate to down at the level of,
19 say, 15 micrograms per cubic meter. Now, are you saying
20 that with the, all the ventilation that's available in
21 mining that meeting a limit of 15 micrograms per cubic meter
22 is not a problem or what?

23 MR. ALLEN: I'm saying it is a problem.

1 MR. KOGUT: Yeah.

2 MR. ALLEN: I'm saying it's a problem because we
3 don't live in a perfect world. You know, and there are
4 certain risks associated with every job. If we could remove
5 all the risks or if I could tell you how to do that I'd be
6 worth some money. Okay. But the fact of the matter is, you
7 know, I'm not aware of these studies that you allude to on
8 the human beings. And how long did those studies go?

9 MR. KOGUT: You're talking about the fine
10 particulate in general or?

11 MR. ALLEN: Yeah. Yeah. Well, and the one that
12 you alluded to that said that there was a cause and
13 relationship between health and DPM. The fact of the matter
14 is we know that the cleaner engine these -- or cleaner
15 burning these engines get the smaller and the finer the
16 particulate gets. Okay. Have we in fact increased the
17 exposure of these miners, you know?

18 MR. KOGUT: Okay. I think we'll address that in
19 our response to these hearings.

20 The other part of the point, though, that relates
21 specifically to diesel particulate is that I think you left
22 the impression that there weren't any studies specifically
23 relating or looking for associations between miners and

1 associations with their exposure to diesel particulate and
2 lung cancer. And I wanted to point out to you or suggest
3 that you take a look at tables in the preamble, Tables III-4
4 and III-5. And part of the purpose of those tables was to
5 do exactly what I think you rightfully suggest that we do do
6 and put this in a language that is easily digested and
7 easily read by not just experts but anybody who is
8 interested in the subject. And certainly the members of the
9 mining community would be.

10 In Tables 3 and 4 there are six studies, a total
11 of six studies identified that look for an association
12 between miners' exposure to diesel particulate or miners and
13 an increased risk of lung cancer. Table III-4 which is a
14 compilation of cohort studies contains two such studies.

15 First there is one by Boffetta, that's B-O-F-F-E-
16 T-A, et al., in 1988. And in that study after adjusting for
17 smoking differences in the cohort, after adjusting for
18 smoking and also adjusting for occupational exposures to
19 asbestos, coal and stone dusts, coal tar and pitch and
20 gasoline exhaust, adjusting for those factors in addition to
21 age and smoking, the relative risk relative to workers who
22 were not miners was found to be 2.67. That means that the
23 risk of lung cancer was 2.67 times the risk in non-miners

1 after making those adjustments. And that's a statistically
2 significant result.

3 The other cohort study listed in that table is one
4 by -- that relates to miners is one by Waxweiler, et al., in
5 1973 which was on potash miners specifically.

6 I should say that the Boffetta study didn't look
7 just at miners, it looked at a lot of different occupations.
8 And that was, the result I gave was just the one tied to
9 miners.

10 The Waxweiler study in 1973 was done specifically
11 on potash miners. In that study, and we didn't -- we found
12 some shortcomings in that study because there was no smoking
13 adjustment, no allowance made for smoking. There was also
14 no adjustment for any kind of a healthy worker effect. But
15 still the relative risk of miners compared to workers in New
16 Mexico -- or, I'm sorry, the general population in New
17 Mexico was greater than one.

18 And one problem with that study is that the
19 comparison was drawn to the population of New Mexico as
20 opposed -- I'm sorry, to the general U.S. population rather
21 than to the population in New Mexico where these workers
22 resided. And, actually, the lung cancer rate at that time
23 in New Mexico was lower in New Mexico than it was in the

1 general population. So if you adjust for that and make that
2 adjustment then the relative risk compared to population of
3 New Mexico would be about 1.5. That was based on a small
4 sample and so it didn't achieve statistical significance
5 but, again, it's an elevated risk.

6 There are in the next table, in Table III-5, there
7 were four studies identified. All four of those studies
8 showed, all four of those case control studies showed an
9 elevated risk of lung cancer for miners. There's one by
10 Benhamou, et al., 1988, which was adjusted for smoking and
11 showed relative risk of 2.14. And that's statistically
12 significant.

13 There was one by Lerchen, et al., 1987, which was
14 adjusted for smoking. And it showed an odds ratio, an
15 elevated risk of 2.1 for underground non-uranium miners.

16 There was one by, I'm not sure how to pronounce
17 this but the spelling is S-I-E-M-I-A-T-Y-C-K-I, et al.,
18 1988, which was also adjusted for smoking. It showed an
19 elevated risk with an odds ratio of 2.8 for mining.

20 And there is one by Swanson, et al., 1993, which
21 was an extension of a study by, published by Burns and
22 Swanson, 1991, which showed an elevated risk for mining
23 machine operators. And the odds ratio in that study was

1 5.03 which is quite a large elevated risk. And that's a
2 statistically significant result. That study also was
3 adjusted for smoking.

4 So that's six studies out of six that looked at
5 miners. And all six of those studies although they
6 admittedly differ in the quality of the study they all
7 showed an elevated risk for mining. And some of them were
8 statistically significant results.

9 Now, as we said in the text of the risk analysis,
10 we did not want to do just a simple tabulation of the
11 studies because we recognize that studies differ in quality
12 and you can't just do a tally, you know, and count out how
13 many come out one way and come out another. But even so,
14 the fact that all six of those studies showed at least some
15 elevated risk for miners, you know, that has to raise some
16 concern I would think.

17 What's your reaction to that?

18 MR. ALLEN: There is concern. But once again, you
19 know, several questions are raised. 1973, that was pre the
20 act when metal/nonmetal wasn't, you know, it was out there.
21 What was the ventilation in each one of these mines? What
22 type of, you know, did they have scrubbers on this
23 equipment, on these machine operators? You know, there are

1 questions that just come to mind to me that, you know,
2 they're available out there.

3 So although it does show and elevated, and I'm not
4 going to discount them and say that they're not there, I
5 think that more work needs to be done in conjunction with
6 the mining associations, etc.

7 MR. KOGUT: Okay. And I just wanted to clear up
8 the impression, though, that we were not, you know, that we
9 weren't taking into account any studies having to do with
10 mining and that we were relying entirely on --

11 MR. ALLEN: Rats.

12 MR. KOGUT: -- rat studies whose, you know, whose
13 applicability to humans might be questioned.

14 MR. ALLEN: Right. But, you know, and my position
15 is I appreciate, you know, the clarification but by the same
16 token I guess I'm from Missouri and on some days you have to
17 show me, you know, what all was included in those studies,
18 i.e., the type of ventilation they moved, type of equipment
19 they were operating. Was it air-cooled equipment as opposed
20 to the water-cooled type? You know, were they in areas
21 where they allowed their equipment to idle?

22 There are a lot of questions I'd have. And I
23 think the mining, we would all have those questions.

1 CHAIRMAN TOMB: Okay, any other questions?

2 Cassandra?

3 MS. WESDOCK: Cassandra?

4 CHAIRMAN TOMB: I'm sorry.

5 MS. WESDOCK: No. You asked all my questions. So
6 I don't have any.

7 CHAIRMAN TOMB: You don't have any?

8 MS. WESDOCK: No.

9 CHAIRMAN TOMB: Okay. Pam?

10 MS. KING: No.

11 CHAIRMAN TOMB: Okay, thank you very much.

12 MR. ALLEN: Thank you.

13 CHAIRMAN TOMB: I'm sorry I couldn't extend this a
14 lot longer.

15 I appreciate your comments though.

16 MR. ALLEN: Thank you.

17 CHAIRMAN TOMB: And really hope that you can
18 supply some details on the information in your final comment
19 submittal.

20 MR. ALLEN: And I think you will see them
21 forthcoming. It just is, you know, this is our first kick
22 at the can.

23 CHAIRMAN TOMB: Yeah, my specific comments are

1 very good to look at. Okay.

2 MR. ALLEN: But I appreciate everybody's
3 attention, questions. And, you know, I do take it
4 personally because I am concerned about the health and
5 welfare of those guys down there as are the other mine
6 companies. And appreciate your attention. Thank you.

7 CHAIRMAN TOMB: Thank you.

8 I think what we'll do at this time, at this time I
9 think we'll take a 15 minute break. If anybody else wants
10 to make a sign-up and make a presentation after we come
11 back, I guess, Bruce, you want, you want to say something?
12 Okay, I will do that.

13 Yes?

14 MR. WATZMAN: Mine will only take two minutes if
15 I'm the only one.

16 CHAIRMAN TOMB: Well, I'll tell you what I'd like
17 to do. I'd like to take a break and then just if anybody
18 else, you know, wants to come or something if it's okay with
19 you. If you wanted to leave I would be glad to give you
20 time to do that.

21 MR. WATZMAN: No, I'm fine. I'm fine.

22 CHAIRMAN TOMB: Okay. Why don't we do that when
23 we come back then and do this. Thank you.

1 (Brief recess.)

2 CHAIRMAN TOMB: If you take your seats we'll get
3 back on the record.

4 Our next speaker will be Mr. Bruce Watzman from
5 the National Mining Association.

6 STATEMENT OF BRUCE WATZMAN, NATIONAL MINING ASSOCIATION,
7 WASHINGTON, D.C.

8 MR. WATZMAN: Thank you, Tom. My name is Bruce
9 Watzman. That's spelled W-A-T-Z-M-A-N. And I'm with the
10 National Mining Association.

11 I did not intend to speak today but based on the
12 discussion that took place previous to the break I felt the
13 need to do so. And I need to start out by asking Dr. Kogut
14 if he would, he referenced six studies that looked at
15 miners' exposure and lung cancer. You named Boffetta and
16 there were five others. And if you could run down the names
17 of those for me, please?

18 MR. KOGUT: I might say, though, that you said
19 that looked at miners' exposure. One of the reasons that we
20 stated in the preamble that we relied more heavily on other
21 studies than on these studies, despite the fact that these
22 related to miners, was that they didn't necessarily look at
23 levels of exposure to diesel particulate specifically.

1 MR. WATZMAN: That's fine. If you could --

2 MR. KOGUT: Yeah.

3 MR. WATZMAN: -- run down the name of, the six

4 names.

5 MR. KOGUT: You have the Boffetta, et al.?

6 MR. WATZMAN: I have Boffetta.

7 MR. KOGUT: Okay, the next one which is in the

8 same table, that's in Table III-4, is Waxweiler, et al.

9 That's W-A-X-W --

10 MR. WATZMAN: I have that. I'm going through the

11 references in the rule and I'm trying to identify them. So

12 if you could just give me the six names.

13 MR. KOGUT: Oh, okay.

14 MR. WATZMAN: And I'll circle them as you go.

15 MR. KOGUT: Benhamou. That's B-E-N-H-A-M-O-U.

16 MR. WATZMAN: Say that one more time?

17 MR. KOGUT: I don't know how to pronounce it.

18 It's B as in ball.

19 MR. WATZMAN: Oh, B.

20 MR. KOGUT: -- E-N-H-A-M-O-U, et al.

21 MR. WATZMAN: Okay.

22 MR. KOGUT: 1988.

23 MR. WATZMAN: Thank you.

1 MR. KOGUT: Lerchen, et al. That's L-E-R-C-H-E-N.

2 MR. WATZMAN: Okay.

3 MR. KOGUT: Siemiatycki.

4 MR. WATZMAN: Right.

5 MR. KOGUT: Okay. And Swanson, et al.

6 MR. WATZMAN: Swanson. And those were the six
7 that you drove, you made specific reference that those six
8 studies were used in the preparation of figures III-4 and
9 III-5; am I correct?

10 MR. KOGUT: No. It's not, no, not figures. They
11 were included in the tabulations in tables III-4 and table
12 III-5.

13 MR. WATZMAN: In the risk assessment, not the
14 tables of exposures?

15 MR. KOGUT: No, this has nothing to do with
16 exposures.

17 MR. WATZMAN: Okay.

18 MR. KOGUT: This has to do with the risk
19 assessment. So it's tables III-4 and III-5.

20 MR. WATZMAN: Okay.

21 MR. KOGUT: Which are a table of cohort studies
22 and case control studies.

23 MR. WATZMAN: And of the six studies that you

1 mentioned how many of them were specific to miners as
2 opposed to looking at miners as one of the populations
3 looked at? Of those six how many looked only at the miner
4 population?

5 MR. KOGUT: Let's see. I think it may only have
6 been Waxweiler. Let me verify that.

7 MR. WATZMAN: Only Waxweiler. So then there
8 really is only as far as you know and as what's contained in
9 your reference documents, only one study that looked at the
10 miner population?

11 MR. KOGUT: I'm just verifying that. Yeah, all
12 six of these looked at the miner, population of miners as
13 subpopulations of larger populations. They all looked at
14 miners. But only that one looked exclusively at miners.

15 MR. WATZMAN: Okay. That's what I needed to know
16 because that was my reading of them. Yet you gave the
17 impression that those six studies, at least you gave the
18 impression to me sitting in the audience that those six
19 studies looked at miners as a population and studying the
20 exposure to diesel particulate matter and the incidence of
21 lung cancer.

22 MR. KOGUT: They did do that. They did look at
23 miners but they also looked at --

1 MR. WATZMAN: Not solely miners. Only one of them
2 looked solely at miners?

3 MR. KOGUT: Right.

4 MR. WATZMAN: Okay. That's what I wanted to
5 clarify that.

6 The other matter, Mr. Chairman, that I wanted to
7 mention is you have asked here as you did in Salt Lake City
8 for mining companies to provide information to the panel.
9 In some instances very specific information. And I think to
10 the degree that they can do so they will provide that
11 information.

12 But I have to let you know that earlier this year
13 I obtained from the agency the 25 metal/nonmetal studies
14 that served as the basis for Figure III-4 in the preamble
15 and the 12 I believe it was underground coal surveys
16 conducted by the Agency that serve as the basis for the
17 range of exposures for underground coal miners.

18 Additionally, I received copies of the surveys
19 that the Agency conducted that were not included in the
20 preparation of these tables.

21 Following my review of those I've submitted two
22 follow-up letters to the Office of Standards and the Acting
23 Director Carol Jones. The first letter was submitted in

1 February. The second letter was submitted in March. I have
2 yet to receive responses to those letters.

3 The information I have requested is central to us
4 completing our review of this rule by the July 26 deadline.
5 I'm going to be submitting requests for additional
6 information. I'd like to know what sampling MSHA has
7 conducted using the NIOSH 5040 method for analysis. We'd
8 like the results of those samples -- that sampling, just as
9 you've asked that of the industry.

10 We'd like to know the organic component of those
11 samples, the elemental and the total. We'd like to know the
12 loadings on those filters. We'd like to know whether those
13 filters, if there was a belief that they contained
14 carbonaceous ores, if those filters were acid washed prior
15 to them being analyzed.

16 So there is a wealth of information that you may
17 have that we'd like to review at the same time so that,
18 hopefully, at some point we will come to some meeting of the
19 minds regarding the utility or lack thereof of the NIOSH
20 5040 method. But these requests are pending with the
21 Agency, at least two of them.

22 I want to know of the 25 metal/nonmetal surveys
23 that were conducted, the preamble makes reference to the

1 fact that all but two of them were analyzed using the RCD
2 method. I want to know the validity of that in terms of the
3 NIOSH 5040 method.

4 We know that the RCD method burns the filters at
5 400 degrees. We also know today that there are carbonaceous
6 ores that don't burn off until in excess of 900 degrees.
7 What impact does that knowledge have on the validity of this
8 table? So --

9 MR. HANEY: In response to your question --

10 CHAIRMAN TOMB: Let him finish, okay.

11 MR. WATZMAN: Go ahead, Bob.

12 MR. HANEY: in response to your question the RCD
13 method uses the amount that was burned off, not the amount
14 as Mr. Ing incorrectly said in his testimony in Salt Lake,
15 the remaining. Therefore, by burning the sample off at 400
16 degrees we remove only the diesel particulate, we do not
17 remove the carbonaceous material which as you correctly said
18 does not burn off until 900 degrees.

19 MR. WATZMAN: Do we remove other confounders that
20 may be on the filter so that we know at that point that only
21 the diesel particulate is remaining?

22 MR. HANEY: We know that it removed the organics.
23 There are also several minerals such as bicarbonates and

1 gypsum where it has moisture hydration which also comes off
2 at those temperatures. So that's why we recognize that the
3 RCD method is not a universal method. But for most of the
4 studies that are shown on that table RCD is an appropriate
5 method of analysis.

6 MR. WATZMAN: When you say for most of them, Bob,
7 is it appropriate method of analysis for the 23 that use the
8 RCD? And what method of analysis was used for the two that
9 did not use the RCD method?

10 I mean these are some of the things that I've laid
11 out in the letter. And, you know, if it's as easy to answer
12 as you just implied to me then I don't know why it has taken
13 as long as it has for me to get a response to the inquiries
14 that I have before the Agency. And that's all I'm asking.
15 If we can't get this information then I can guarantee you
16 that come the end of July we're going to be coming to the
17 Agency and saying we need more time.

18 CHAIRMAN TOMB: Okay, let me have --

19 MS. WESDOCK: Tom. Tom.

20 CHAIRMAN TOMB: Yes?

21 MS. WESDOCK: I, Mr. Watzman, in regards to your
22 four letters it is my understanding --

23 MR. WATZMAN: Three letters.

1 MS. WESDOCK: Well, there was one dated April 1999
2 that we just, we received not too long ago.

3 MR. WATZMAN: That's correct.

4 MS. WESDOCK: It is my understanding that all
5 those letters have been answered and forwarded to you. If
6 you have not received those letters, the responses, please
7 let us know. But those letters have been answered.

8 MR. WATZMAN: Well, I can tell you as I stand here
9 that by the -- when I left my office close of business last
10 Friday I had not received responses to two of the four
11 letters.

12 MS. WESDOCK: Well, please let us know because as
13 I'm sitting here before I left my office for this hearing I
14 surnamed the last letter of April 1999. If, like I said --

15 MR. WATZMAN: That's the only response that I've
16 received.

17 MS. WESDOCK: Then you should have received the
18 February, the two letters in February and the March letters
19 because we also surnamed those letters. So they should have
20 been out.

21 MR. WATZMAN: Well, then maybe it would just be
22 simpler if you're sure that you've already sent me responses
23 if early next week you could send me copies of the

1 responses.

2 MS. WESDOCK: We'll do so.

3 CHAIRMAN TOMB: Go ahead, Jon.

4 MR. KOGUT: I just wanted to clear up one question
5 that you said that you asked about in the letter. I don't
6 know if I can clear up the other one about whether the RCD
7 is appropriate for the 23 mines that it was used for. But
8 with regard to the two in which the RCD was not used I think
9 you asked what method was used for those two. And in the
10 caption to Figure III-2, three dash two, which utilizes
11 exactly the same data as what went into Figure III-4, it
12 says that measurements at mines other than D and T were made
13 using the RCD method. Measurements at mines D and T which
14 are the remaining two mines were made using the size-
15 selective method based on gravimetric determination of the
16 amount of submicrometer dust collected with an impactor.

17 MR. WATZMAN: Fine. Thank you.

18 CHAIRMAN TOMB: Also, one comment that I can add
19 maybe, Bruce, is that most of those comments came down to
20 our office for response. And I had looked at the material
21 for response. And if you, my opinion is if you look at the
22 reports closely, okay, all the data is in there that can
23 answer the questions that you. Not that we, not that -- not

1 that we're reluctant to answer the questions specifically,
2 but I'm just saying to do that I went to the reports to
3 respond to them.

4 So that material is in there and if somebody is
5 reading it you can find out what samples were RCD samples,
6 what samples were size-selective samples, and what samples
7 were analyzed for elemental and organic. The data is there.
8 Okay? We're not pulling the data to answer those questions
9 is not coming from anyplace else.

10 Is that correct, Bob?

11 MR. HANEY: Yes.

12 CHAIRMAN TOMB: Okay.

13 MR. WATZMAN: Okay.

14 CHAIRMAN TOMB: So I'm just saying it's -- and the
15 data was, the individual reports that you asked for was
16 submitted as soon as we could get it out to you. And you've
17 had it quite a while, so.

18 MR. WATZMAN: That's correct.

19 CHAIRMAN TOMB: Yes. Okay.

20 MR. WATZMAN: And that's --

21 CHAIRMAN TOMB: And we'll be happy to answer
22 the --

23 MR. WATZMAN: That served as the basis for the --

1 CHAIRMAN TOMB: Yeah.

2 MR. WATZMAN: -- two follow-up letters.

3 CHAIRMAN TOMB: We'll be happy to answer any
4 questions you have. But I'm just saying all what we do to
5 go back, to be honest with you, we go back to those reports
6 because that's the documentation that was there when we
7 compiled the data for the preamble.

8 MR. WATZMAN: Okay. Tom, on my last question, has
9 the Agency conducted, have you analyzed based upon samples
10 you've taken diesel particulate using the NIOSH 5040 method?

11 CHAIRMAN TOMB: Yes.

12 MR. WATZMAN: Will you share those with the
13 industry, the results of that sampling? They are not --

14 CHAIRMAN TOMB: You mean other than what's in,
15 what already out there in those reports?

16 MR. WATZMAN: Yes. Have you conducted sampling --
17 You did not sampling using the NIOSH 5040 method in
18 preparation for this?

19 CHAIRMAN TOMB: Yes, we did.

20 MR. WATZMAN: Or it's not contained in here, the
21 results of which are not contained in here.

22 (Pause.)

23 CHAIRMAN TOMB: Do they have that information?

1 MR. WATZMAN: I mean, if I go to the table we've
2 been talking about, III-4, and the 25 surveys, 23 were RCD
3 and two were by another means. None of them were analyzed,
4 none of those samples used in the preparation of that table
5 were analyzed using the NIOSH 5040 method.

6 CHAIRMAN TOMB: Okay. Right.

7 MR. HANEY: I believe we had forwarded you an
8 electronic copy of the data that we used that contained the
9 results of the multiple sampling.

10 MR. WATZMAN: No, you have not.

11 MR. HANEY: I believe we have.

12 MR. WATZMAN: I never requested that. What I
13 requested was the studies that served as the basis for
14 Figure III-4.

15 CHAIRMAN TOMB: Okay, but somebody when it came
16 across my desk, the questions, you specifically asked for
17 information relative to the method 5040. And I went back to
18 those reports. And whether that data was used in here or
19 not I can't -- I think Jon and Bob put the tables together --
20 -- but I know that data is in those reports. I mean, if we
21 go out and do it --

22 MR. WATZMAN: Tom, some of these reports that
23 serve as the basis for Table III-4, these surveys pre-date

1 the NIOSH 5040 method.

2 CHAIRMAN TOMB: Yeah, but then, then if there's
3 carbon data presented then those reports wouldn't have
4 carbon data in them.

5 MR. WATZMAN: Forget these reports for a minute.
6 All I'm saying is can we get from you --

7 CHAIRMAN TOMB: Yeah, you can get it.

8 MR. WATZMAN: -- any subsequent information --

9 CHAIRMAN TOMB: Right.

10 MR. WATZMAN: -- you have developed where you
11 utilized --

12 CHAIRMAN TOMB: Yes.

13 MR. WATZMAN: -- the NIOSH 5040 method --

14 CHAIRMAN TOMB: Right.

15 MR. WATZMAN: -- to analyze samples?

16 CHAIRMAN TOMB: Yes. But my comment on that is we
17 will look. But I think you have all of that data already in
18 those reports. And if there isn't carbon data presented
19 then the samples that were reflected on that survey were not
20 analyzed using method 5040.

21 MR. WATZMAN: Go ahead, Bob.

22 MR. HANEY: The reports that you have that weren't
23 included in the preparation of this table, there was half a

1 dozen or a dozen subsequent studies, those are the ones that
2 would have the carbon data in it. There are a few of these
3 that are used that have carbon data in it but because there
4 was not that many it was not included in these tables. But
5 the subsequent reports is where you will find the carbon
6 data.

7 MR. WATZMAN: Those are the reports we'd like.

8 MR. HANEY: We've provided those already but if
9 they're not sure let us know what you still need.

10 MR. WATZMAN: Okay. I'm not -- I was -- I, my
11 impression was the reports I got were the ones that were
12 specific to the preparation of these tables.

13 MR. HANEY: I believe we sent you everything to
14 date that we had even if it wasn't included in these tables.

15 MR. WATZMAN: Okay. Have you done any additional
16 sampling using the NIOSH 5040 method?

17 MR. HANEY: I would say maybe two or three mines
18 since then.

19 MR. WATZMAN: If we could have those as well.

20 CHAIRMAN TOMB: Okay.

21 MR. WATZMAN: Thank you.

22 CHAIRMAN TOMB: Let me ask you a question.

23 (Laughter.)

1 MR. WATZMAN: No.

2 CHAIRMAN TOMB: Since we are going to supply you
3 all this data are we going to get all this data back from
4 what we requested?

5 You don't have to come to the podium to answer
6 that.

7 MR. WATZMAN: Tom, I think that, you know, I can't
8 speak for the individual companies.

9 CHAIRMAN TOMB: I know.

10 MR. WATZMAN: And some of whom represented the two
11 associations yesterday, others of which appeared on their
12 own. Each company will make its own determination. I'm
13 sure that to the degree they feel that they can share the
14 data in the format that's useful to you they will. And we
15 will do the same.

16 As far as obtaining the sample filter medium
17 themselves, I doubt if many companies have those.

18 CHAIRMAN TOMB: Fine.

19 MR. WATZMAN: Or if the labs retained those. And
20 I doubt --

21 CHAIRMAN TOMB: We understand that. If they don't
22 have it and they can't supply it --

23 MR. WATZMAN: Yeah.

1 CHAIRMAN TOMB: -- then that's an explanation.

2 MR. WATZMAN: But to the degree they'll share the
3 information with you, I'm sure they will.

4 Our objective is the same here. I mean we're
5 really not at odds. We want to arrive at a useful program,
6 a reliable program and a verifiable program. We don't think
7 that exists today. And through the sharing of this data if
8 we can arrive at that we're all better off.

9 CHAIRMAN TOMB: Okay. The data that we have, why
10 we're so concerned is the data that we have using the NIOSH
11 method, all right, we have not found the same degree of
12 problems, okay, not that there may not be some
13 interferences. We're not saying that. Okay, any analytical
14 method has some interferences when you go out to sample.
15 And it's subject upon the analysts, okay, providing you give
16 him the information that you get the reliable number back or
17 you don't get a reliable number back.

18 And if the Agency didn't get reliable numbers back
19 then they couldn't withstand a court challenge for a
20 citation, okay, then that wouldn't be used to issue or the
21 basis for a citation. But, you know, we're right not at the
22 point where we see the majority of the samples that we
23 collect and analyze -- I don't want to say a majority. That

1 looks at sometimes 50 percent. The preponderance are, the
2 preponderance of the information we have says that the NIOSH
3 5040 method is a viable method for determining total carbon
4 in mine environments, not coal mine, other than coal mine
5 environments. All right.

6 Now, we're seeing other information that's coming
7 in, all right, that says, hey, there's problems out there
8 and we have all this data available. And we need that data.
9 And we need the specificity of the data because, you know,
10 we're going to go back to NIOSH and we're going to say, you
11 know, here's a method you recommended for elemental carbon
12 and for total carbon. And now we're finding that we have
13 these problems when we use it in these certain mining
14 situations. And, you know, we're looking to get the right
15 answer, you know.

16 MR. WATZMAN: Understood.

17 CHAIRMAN TOMB: Do we or don't we have a good
18 method to use?

19 And that's why, you know, we're not trying to
20 pinpoint people to come in and say, you know, we're going to
21 challenge that data. That's not what we're looking for.
22 Okay. But, you know, what are the problems with the method,
23 if they're there? And can they be corrected?

1 MR. WATZMAN: I understand that, Tom. I will tell
2 you again, to the degree they can share it, they will. Our
3 experience and our track record has not been very good. And
4 I can only go back to the noise proceeding where we as an
5 industry undertook a very detailed audiometric study of some
6 6,000 miners and presented the results of our study to MSHA.
7 And MSHA then turned around and went to Dr. Franks at NIOSH
8 and said, Will you please critique this study?

9 And NIOSH's critique of our study then became a
10 part of the rulemaking record. And then we had to rebut Dr.
11 Franks' work.

12 So recognize that we don't walk into this process
13 everyone with clean hands. And there are some scars that
14 have to be overcome. And to the degree that companies feel
15 that they can share this freely with you, they will.

16 CHAIRMAN TOMB: Yeah. Okay.

17 Well, that's all we can ask. You know, that
18 information I can only point out is valuable to us for
19 developing the Proposed Rule. All right. And if all our
20 data says we can go out to a mine and make a appropriate
21 measurements that we think could withstand an enforcement
22 action, if we don't have any other data that we can look at
23 that sort of says, Hey, you know, there's problems with the

1 method, this is it, or where we can intelligently sit down
2 and discuss with people what the differences are between the
3 way we're looking at the data and you're looking at the
4 data, that doesn't do us any good. That's the problem.

5 MR. WATZMAN: I agree.

6 CHAIRMAN TOMB: So.

7 MR. WATZMAN: I agree.

8 CHAIRMAN TOMB: We appreciate your comments.

9 MS. WESDOCK: Mr. Watzman.

10 MR. WATZMAN: Yes?

11 MS. WESDOCK: Once you go back to your office if
12 you, you know, go and if you don't have the information that
13 you requested just now as regarding, you know, the 5040
14 method that you were asking here, if you don't have it
15 please let us know and that information will be forwarded to
16 you.

17 MR. WATZMAN: I have two stacks of information on
18 diesel that probably are smaller than Bob Haney's but each
19 of one of which is probably on the lines of two feet tall at
20 this point. If Bob knows readily and has handy the studies
21 that he's talking about it would be much simpler just to get
22 copies.

23 MS. WESDOCK: Okay.

1 MR. HANEY: There may be some sent that you
2 already have just to make sure you've got them.

3 MS. WESDOCK: That's okay. I mean if we -- we'll
4 make sure that you have the information.

5 MS. GREEN: For the record, and this is -- I'm
6 Deborah Green again from the Solicitor's Office. Rather
7 than have you go through your data to look for whether or
8 not you have it, send him another copy. The Agency will
9 send it to you.

10 MR. WATZMAN: Thank you.

11 MS. GREEN: That's the bottom line.

12 MR. WATZMAN: Thank you.

13 Thank you.

14 CHAIRMAN TOMB: Mr. Sheffield, I guess you --

15 MR. SCHEIDIG: No, it's Scheidig.

16 CHAIRMAN TOMB: I mean Scheidig. I'm sorry.

17 MR. SCHEIDIG: That's okay.

18 CHAIRMAN TOMB: You want to do an hour's
19 presentation?

20 MR. SCHEIDIG: No, I don't want to do an hour's
21 presentation.

22 CHAIRMAN TOMB: Okay.

23 MR. SCHEIDIG: This works out really well for

1 me --

2 CHAIRMAN TOMB: We'll give you time.

3 MR. SCHEIDIG: -- because I have to go to Vegas
4 today and I was hoping this wasn't going to be until 5:00
5 o'clock like Salt Lake.

6 But there's one item that was raised earlier with
7 regards to the EPA rulemaking on fine particulate matter. I
8 think that I am sort of curious as to whether or not MSHA is
9 really relying on that for the basis of this particular
10 rulemaking, especially in light of the fact that it should
11 be clarified that, number one, that rulemaking was
12 promulgated. However, the President, Mr. Clinton, postponed
13 that rulemaking till -- and I can't remember the date, but
14 sometime in the first decade of the year 2000. So it was
15 postponed for some time for implementation because of some
16 of the issues relative to implementation as well as a number
17 of issues relative to some of the health and other related
18 aspects that the industry and others raised.

19 In fact, that particular rulemaking is under
20 litigation right now because of the fact that the industry,
21 many different industries, not just mining, believe that
22 there is substantial evidence that the rulemaking was not
23 done with and using good science and good techniques. And I

1 think the CASAC study that was used to sort of underscore
2 that by EPA, you know, wasn't necessarily, it was just a
3 simple majority of the CASAC members that felt there was
4 some substance to the 2.5 micron size parameter for
5 rulemaking. But I think there's some real questions there.

6 Using that as a reference to why you're going
7 forward with this particular rulemaking maybe certainly
8 inappropriate, certainly premature and maybe unfounded at
9 this stage of the game. And I don't, I didn't see any real
10 references in the rulemaking relative to that particular
11 study, or to that rulemaking anyway.

12 CHAIRMAN TOMB: Well, let me say something along -
13 - let me say something, a comment.

14 MR. SCHEIDIG: Yeah.

15 CHAIRMAN TOMB: The Agency is not relying as far
16 as with respect to the preamble as that for the basis for
17 this rulemaking. I think though that this preamble presents
18 a preponderance of information that says, that the Agency
19 has interpreted to say that high exposures to diesel
20 particulate matter present a health hazard to people --

21 MR. SCHEIDIG: Right.

22 CHAIRMAN TOMB: -- that are exposed to those
23 exposures and that the Agency doesn't know what the absolute

1 safe level is. All right. But there are studies out there
2 other than miners that have linked exposure to DPM to other
3 health risks. All right?

4 And, consequently, what this rulemaking is trying
5 to do is to get the exposure of miners down to at least
6 those levels, those levels at which at least we know other
7 people --

8 MR. SCHEIDIG: Okay, I just point it out.

9 CHAIRMAN TOMB: Okay, not getting it down to 15 or
10 to 20, a small particulate, a fine particulate standard of
11 15 or 20 microns.

12 MR. SCHEIDIG: Tom, I understand that. I just
13 think I wanted to clarify for the record the fact that I
14 think that you as panelists, you know, hearing the testimony
15 of the public on this that, you know, you should maybe be
16 careful in terms of what are the references you might bring
17 into the record that really don't have any bearing or have
18 minimal if not minuscule bearing on this particular issue
19 unless you have some, some rational evidence that you've
20 already provided to the public that says that the EPA
21 studies on 2.5 are included and substantive to this issue.
22 And I don't recall anything, reading anything about that nor
23 ever hearing anything about that.

1 So I just wanted to clarify for the record that
2 that's not an issue.

3 CHAIRMAN TOMB: Okay. Jon, do you have a comment
4 on that?

5 MR. KOGUT: Yeah. I just want to direct your
6 attention to a few sections of the risk assessment that was
7 published in the preamble. If you look at the -- on page
8 58,145 of --

9 MR. SCHEIDIG: Hopefully somebody is going to
10 write this down.

11 CHAIRMAN TOMB: You can have my copy.

12 MR. SCHEIDIG: I've got to go get my glasses.

13 MR. KOGUT: On page 58,145 of the "Federal
14 Register" notice there is a table of contents, a separate
15 table of contents for the risk assessment, which is Section
16 III of the preamble.

17 MR. SCHEIDIG: Right. Under lung cancer.

18 MR. KOGUT: Okay.

19 MR. SCHEIDIG: Under just characterization of
20 risk.

21 MR. KOGUT: No. The table of contents covers the
22 entire risk assessment.

23 MR. SCHEIDIG: Oh. Okay.

1 MR. KOGUT: And the sections in that table of
2 contents that I want to direct your attention to are, first
3 of all, Section 2.a.ii., which is in -- I'm sorry, small
4 Roman numeral iii, which is entitled "Relevant of Health
5 Effects Associated with Fine Particulate Matter in Ambient
6 Air."

7 MR. SCHEIDIG: Okay.

8 MR. KOGUT: And then below that in, under Section
9 3 in the table of contents, Roman numeral small ii or Roman
10 numeral two, "Excess Risk of Death from Cardiovascular,
11 Cardiopulmonary, or Respiratory Causes," the evidence for
12 that section is taken from the air pollution studies.

13 And it's also addressed in, let's see, did I say
14 Roman -- I said that one. Okay. Also in Section III.3.c.,
15 entitled "Substantial Reduction of Risk by Proposed Rule."
16 The first part of that section deals with a quantification
17 of the potential health impacts of the rule on reducing --

18 MR. SCHEIDIG: That's referring to this Proposed
19 Rule; correct?

20 MR. KOGUT: It's referring to this --

21 MR. SCHEIDIG: Yeah.

22 MR. KOGUT: -- Proposed Rule based on reduction in
23 diesel particulate in their capacity as a fine particulate.

1 The whole first part of that section relates exactly to what
2 you were talking about, and it's based on the air pollution
3 studies on fine particulates. It makes reference to Tables
4 III-2 and in particular III-3.

5 Table III-3 at the end of that risk assessment
6 section is entitled "Studies of Acute Health Effects Using
7 Gravimetric Indicators of Fine Particles in the Ambient
8 Air." So I believe all of that material is directly in
9 support of what you were talking about.

10 MR. SCHEIDIG: Well, I won't disagree with you
11 there. I'm just saying that's only a portion, probably of,
12 you know, not having read through all those. But I would
13 venture to guess having done quite a bit of work in the air
14 quality arena in my environmental side of my business that
15 that's only a very small portion of what EPA relied on to
16 promulgate its rulemaking. And so there's a lot of other
17 things that come in to bear, come into play with regards to
18 EPA's rulemaking on 2.5 that is not necessarily referenced
19 nor included in this record or the preamble.

20 There are a couple of references to fine
21 particulate study. But I don't know that as a public
22 reading this whether or not that's all-inclusive for
23 everything that was included in the PM 2.5 record or not.

1 MR. KOGUT: That's, it would be very helpful to us
2 if you did do a careful review of those sections.

3 MR. SCHEIDIG: Okay.

4 MR. KOGUT: And if you find that we left out an
5 important body of material we would very much appreciate in
6 your post-hearing comments --

7 MR. SCHEIDIG: But like I said --

8 MR. KOGUT: -- letting us know --

9 MR. SCHEIDIG: Yeah.

10 MR. KOGUT: -- what other material we should
11 consider.

12 MR. SCHEIDIG: I think you'd be very careful here
13 in the sense that, number one, the CASAC group that
14 basically underscored a lot of these studies for the EPA's
15 rulemaking did not do that, only as a very simple majority
16 was there concurrence, there was a lot of disagreement with
17 even that scientific body as to whether or not all of those
18 studies were relevant or consistent with their finding and
19 their rulemaking.

20 Secondly, is that that rulemaking was put in
21 abeyance for some period of time. And to try to bring some
22 of that into this record at this time I think would be
23 certainly premature and violating sort of the idea of what

1 President Clinton established of not promulgating that rule
2 any sooner than sometime at least I know it's, you know,
3 like 2005, 2008, somewhere in that period.

4 So I just urge this panel and MSHA to be very
5 careful with how they use references to the EPA 2.5
6 rulemaking.

7 MR. KOGUT: I think that what we are making
8 reference to is not so much the rulemaking but the
9 underlying studies that the rulemaking that they did have
10 relied upon. So I don't think --

11 MR. SCHEIDIG: Okay. I get it, yeah.

12 MR. KOGUT: -- we're relying on the fact that they
13 promulgated a standard. But we are relying to some extent
14 on the underlying studies.

15 MR. SCHEIDIG: But your statement earlier was
16 based on the promulgation of a standard because you asked a
17 specific question relative to that standard.

18 MR. KOGUT: That's -- I don't remember exactly
19 what I said but I think, as I said before, if there are
20 bodies of evidence related to that rulemaking that you think
21 we should be considering additional bodies --

22 MR. SCHEIDIG: I understand. Yeah.

23 MR. KOGUT: -- of evidence we'd like to know about

1 it.

2 MR. SCHEIDIG: We'll take a review and get back to
3 you. But I hope that's clear in terms of what I was trying
4 to get at here too.

5 Thanks very much for your time today.

6 MR. KOGUT: Thank you.

7 Would you like a copy of that?

8 MR. SCHEIDIG: I do have a copy.

9 MR. KOGUT: Okay.

10 MR. SCHEIDIG: I just didn't have it right with me
11 at the moment.

12 CHAIRMAN TOMB: Do we have anybody else in the
13 audience that would like to make comments relative to the
14 proposed, these Proposed Rules?

15 (No response.)

16 CHAIRMAN TOMB: Okay, what we're going to do is
17 we're going to close this hearing until 12:00 o'clock.
18 We're going to come back at 12:00 and see if anybody else --
19 we'll have a notice on the door, so if you know of anybody
20 that's coming, let us know. But we are going to give
21 sufficient time for maybe other people that are coming
22 distances and so forth to get here and have the opportunity
23 to make a presentation.

1 For those of you that are here and that are not
2 going to be coming back, I want to thank you for coming,
3 whether you made a statement or didn't make a statement. If
4 you, as I said in the opening statement, if you want to make
5 a statement you have until July 26 to get it in and it will
6 be considered by the committee. We are also, we would
7 welcome you to make oral comments at the other public
8 hearings that we're going to have on this proposed rule
9 later this month.

10 So thank you for coming. Thank you for your
11 attention. And, hopefully, all of us together can come out
12 with a good rule on this.

13 Thank you.

14 (Whereupon, at 10:53 a.m..m., the hearing was
15 recessed, to reconvene later this same day.)

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A F T E R N O O N S E S S I O N

(12:55 p.m.)

CHAIRMAN TOMB: Okay, we're going to open the record and see if there is anybody else in the audience who would like to make a presentation.

(No response.)

CHAIRMAN TOMB: And since we have nobody else signed up for attendance at the meeting since noon and nobody indicates they want to make a presentation we are going to close this hearing for the day.

(Whereupon, at 12:56 p.m., the hearing was concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: 30 CFR PART 57, DIESEL PARTICULATE MATTER
EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS; PROPOSED
RULE

HEARING DATE: May 13, 1999

LOCATION: Albuquerque, New Mexico

I hereby certify that the proceedings and evidence are
contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
Mine Safety and Health Administration.

Date: May 15, 1999

Raymond M. Vetter
Official Reporter on behalf of
Heritage Reporting Corporation
Suite 600
1220 L Street, N.W.

Heritage Reporting Corporation
(202) 628-4888

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Washington, D.C. 20005

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