TRANSCRIPT OF PROCEEDINGS

UNITED STATES DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

In the Matter of:	)
	)
MSHA'S PUBLIC HEARINGS HEALTH	)
STANDARDS FOR OCCUPATIONAL NOISE	)
EXPOSURE IN COAL, METAL AND	)
NONMETAL MINES,	)
	)

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UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)
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MSHA'S PUBLIC HEARINGS HEALTH)
STANDARDS FOR OCCUPATIONAL NOISE)
EXPOSURE IN COAL, METAL AND)
NONMETAL MINES,)
)

Bourbon Street Hotel
Oak Alley Room
120 E Flamingo
Las Vegas, Nevada

Thursday,
May 15, 1997

The hearing in the above-entitled matter commenced, pursuant to notice, at 9:01 a.m.

BEFORE: JAMES CUSTER
Moderator

APPEARANCES:

ELTON HOGG, Safety Manager
Cyprus Cerita Corporation

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General Organizational Services Representative
Cyprus Bagdad Cooper Mine
Bagdad, Arizona

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Industrial Hygienist
Newmont Gold Company

P R O C E E D I N G S

MR. GOMEZ: On the record. Good morning. I'm Vern Gomez, the Administrator for Metal and Nonmetal. Welcome to MSHA's public hearing on its proposed standards for occupational noise exposure in coal and metal and nonmetal mines.

The members of the panel are, starting from my right, Victoria Pilot from the Office of Standards and Regulations, Bob Thaxton from Coal Mine Health and Safety, and moving to my left immediately next to me is Jim Custer from Metal and Nonmetal, Mike Valoski from Tech Support, Jack Powasnik from the Solicitor's Office and Roslyn Fontaine from the Office of Standards and Regulations.

We're here to listen to your comments on the December 17th, 1996 proposed rule revising certain portions of the existing health standards for occupational noise exposure in coal and metal and nonmetal mines. The hearings are being held in accordance with Section 101 of the Federal Mine Safety and Health Act of 1977 as is the practice of this agency. Formal rules of evidence will not apply.

MSHA published an advance notice of proposed

rulemaking on December 4th, 1989 as part of the Agency's ongoing review of its safety and health standards. The Agency's existing noise standards which were promulgated more than 20 years ago are inadequate to prevent the occurrence of occupational noise, induced hearing loss among miners.

In the advance notice of proposed rulemaking, the Agency's listed information for revisions of the noise standards for coal and metal and nonmetal mines. The comment period was closed on July 15th, 1990. On December 17th, 1996 in response to information received on the advance notice of proposed rulemaking, MSHA published the proposed standard.

The Agency has developed a proposal that it estimates can reduce by two-thirds the number of miners currently projected to suffer a material impairment of their hearing, but which is estimated can be implemented at a cost of less than $9 million to the mining industry as a whole.

The focus of the proposal is on the use of the most effective means to control noise. Engineering controls to eliminate the noise or administrative controls, for

example, rotating miners' duties to minimize noise exposure whenever feasible.

The proposed standard would retain the existing permissible exposure levels withheld. It would also establish a new action level of the eight hour time weighted average of 85 DBAs.

If a miner's exposure exceeds the PEL, the proposal would require that the mine operator use feasible engineering and administrative controls to reduce the noise exposure to the PEL.

If engineering and administrative controls do not reduce the miner's noise exposure to PEL, the operator must use those controls to lower the exposure to as close to the PEL as is feasible or achievable.

In addition, the operator would have to provide any exposed miner, audiometric examinations, properly fitted hearing protection, and ensure that the miner takes the annual audiometric examinations and uses such protection.

The comment period was extended from February 18th, 1997 to April 21st, 1997, due to requests from the mining community. MSHA has received a broad range of

comments from over 60 different interests which include mine operators, industry trade associations, organized labor, colleges and universities and noise equipment manufacturers.

The comments address the primary provisions of the proposed rule such as the action level, the PEL, methods of compliance, exposure monitoring and audiometric testing.

Exposure to noise is measured under the proposed Section 62.120. The proposed section would require that a miner's noise exposure not be adjusted for the use of hearing protection. That a miner's noise exposure measurement integrate all sound levels from 80 DBAs to at least 130 DBAs during the miner's full workshift and that the current five DB exchange rate to measure the level of a miner's noise exposure would continue to be used.

An action level of 85 DBAs during any workshift are equivalently a dose of 50 percent would also be established under the proposed rules. For miners who are exposed to the 85 DBA action level, the proposed rule does not require the use of engineering and administrative controls. Rather, operators would be required to provide

personal hearing protection upon a miner's request.

Annual employee training and enrollment in the hearing conservation program. The proposed rule would also retain the existing PEL of 90 DBAs requiring that no miner be exposed to noise exceeding a time weighted average of 90 DBA during any workshift or equivalently a dose of 100 percent while the Agency would not change. The action required if noise exposure exceeds the PEL are different from the current requirements.

MSHA's existing metal and nonmetal noise standards, for example, already require the use of feasible engineering or administrative controls when a miner's exposure exceeds the PEL. The existing standards, however, do not require the mine operator to post a procedure for any administrative controls used to conduct specific training or to enroll miners in a hearing conservation.

Under MSHA's current coal mining standard, a citation is not issued when a miner's exposure exceeds the PEL if appropriate hearing protection is being used by the miners.

In the event of a violation of the Coal Mine

Safety Standard, operators are required to promptly institute engineering or administrative controls and to submit to MSHA a plan for the administration of continuing effective hearing conservation program. The proposed rule would establish a hierarchy of controls for all miners when exposure exceeds the PEL.

In addition, other aspects of the rule increase protection to miners and further reduce the potential for hearing loss.

Under the proposal, miner operators must first utilize all feasible engineering and administrative controls to reduce sound levels to the PEL before relying on other controls to protect against hearing loss.

Furthermore, an operator would be required to ensure that a miner whose exposure exceeds the PEL takes the hearing examination offered to enrollment in the hearing conservation program.

Under proposed Section 62.120(f), MSHA would require operators to establish a system of monitoring which effectively evaluates each miner's noise exposure. The proposal would also require that within 15 calendar days of

determining that a miner's exposure exceeded the action level, the PEL, the new hearing protection level or the ceiling level, the mine operator notifies the miner in writing of the over exposure and the corrective action being taken pursuant to Section 103(c) of the Mine Act.

The proposed rule also provides for hearing protection and training. Under proposed Section 62.125, miners would be given a choice from at least one month type and one plug type hearing protectors. Under Section 62.130, miners would be given required training.

Additionally, under proposed Section 62.140, operators would be required to offer baseline audiogram to miners enrolled in the Hearing Conservation Program. That is when a miner's exposure exceeds the action level. Prior to conducting baseline audiogram, operators would be required to make certain that miners have at least a 14 hour period where they are not exposed to workplace noise. Use of hearing protection as a substitute for this quiet period would be prohibitive.

The proposed rule would also require mine operators to offer a valid audiogram at intervals not

exceeding 12 months for as long as a miner remains in the Hearing Conservation Program.

Proposed Section 162.150 would require the operator to assure that all audiometric testing is conducted in accordance with scientifically validated procedures. MSHA would also require that audiometric testing records be maintained at the mine site for the duration of the effected miner's employment plus at least six months thereafter.

Under proposed Section 62.150, operators would have 30 days in which to obtain audiometric test results and interpretations. Additionally, under proposed Section 62.180, MSHA would require that unless a physician or audiologist determines that a standard threshold shift is neither work related nor aggravated by occupational noise exposure within 30 calendar days of receiving the evidence of a standard threshold shift or results of a retest confirming the standard threshold shift, the operator must do the following:

(1) Retrain the miner.

(2) Allow the miner to select a hearing protector or a different hearing protector and review the

effectiveness of any engineering and administrative control to identify and correct any deficiencies.

Proposed Section 62.190 would require that within ten working days of receiving the results of the audiogram or receiving the results of the followup evaluation, the operator notify the miner in writing of the results and interpretation of the audiometric test including: (1) finding of a standard threshold shift or reportable hearing loss, (2) if applicable, the need and reason for any further test or evaluation.

Finally, the proposed rule would require that the operator provide the miner upon termination of employment with a copy of all records that the operator is required to maintain under this part without cost to the miner.

In closing, this is the fourth of six hearings. We will receive comments and testimony on the proposed rule in Atlanta, Georgia on May 28th and in Washington, D.C. on May 30th. The hearings all begin at 9:00 a.m. and end at 5:00 p.m. If necessary, however, MSHA will continue the hearings into the evening hours.

A verbatim transcript of this hearing is being

taken. It will be made an official part of the rulemaking record. The hearing transcript, along with all of the comments that MSHA has received to date on the proposed rule will be available for review by the public. If you wish a personal copy of the hearing transcript, however, you can make your own arrangements with the Reporter.

I will now turn the hearing over to Jim Custer who will be the moderator for this session. Thank you.

MR. CUSTER: Thank you, Vern. Good morning. I'm Jim Custer and I will be the moderator for this public hearing. The Mine Safety and Health Administration views these rulemaking activities as extremely important and knows that your participation is a reflection of the importance that you, the mining community attaches to the rulemaking.

Presentation of public statements will be in the order in which requests are received. The following parties have notified MSHA of their intent to speak at the public hearing: Elton Hogg, Jeannette Bush, Paul Scheidig, Mary McDaniel, Tom Phelps and Fred Fowler, Dan Faulkner, David Sheffield, Christopher Rose.

It is intended that during this hearing anyone who

wishes to speak will be given the opportunity to do so. Anyone who has not previously requested to speak should indicate their intention to do so by signing the list of speakers which is under the care of Mrs. Rosalyn Fontaine at my extreme left of the table.

Time will be allocated for you to speak following the scheduled speakers. The Chair will attempt to recognize all speakers in the order which they requested to speak. If necessary, however, the moderator reserves the right to modify the order of presentation in the interest of fairness.

Also as the moderator, I may exercise discretion to exclude irrelevant or unduly repetitious material. In order to clarify certain points, the panel may ask questions of the speakers. Also, you are asked to refrain from asking questions of the presenters during the hearing, but you may direct questions to the panel.

All comments are important to the Agency. MSHA will accept written comments and other appropriate data on the proposal from any interested party including those who will not present an oral statement. Written comments may be

submitted to Mrs. Fontaine during this hearing or sent to Patricia Silvey, Director of MSHA's Office of Standards, at the address listed in the hearing notice.

All written comments and data submitted to MSHA will be included in the rulemaking record. Should anyone desire to modify their comments or submit additional comments following this hearing, the record will remain open as stated in the public hearing notice until June 20, 1997 to allow for submittal of post-hearing comments and data.

If possible, the Agency would appreciate receiving a copy of your comments on computer disk.

The comments are essential in helping MSHA develop the most appropriate rule that fosters health among our nation's miners. We appreciate the constructive criticism and the hard work and careful thought which your comments represent.

Personally, and on behalf of Assistant Secretary of Labor for Mine, Safety and Health, J.W. Debit McIntire, I would like to take this opportunity to express our appreciation to each of you for being here today and for your input. MSHA looks forward to your continued

participation in the Agency's rulemaking activities.

Before we begin with the first speaker, you are reminded to sign the attendant sheet that we have on our table in the rear of the room, whether or not you choose to speak. Also, once again if your name does not yet appear on the list of speakers, you will still have an opportunity to present your testimony by notifying Ms. Fontaine of your intent to do so.

For each speaker, before you begin your statement, please come to the podium, state your name and organization and spell your name for the reporter. If you have copies of your prepared testimony, please present copies to the panel as you begin. Thank you.

Our first speaker is Elton Hogg. Am I pronouncing that right, sir?

MR. ELTON HOGG: Yes, sir. I respond either way, Hogg or Hogg. It depends on whether you're still back on the farm or whether you've become citified.

Good morning. My name is Elton Hogg, E-L-T-O-N, last name H-O-G-G. I'm the Safety Manager for Cyprus Cerita Corporation, a division of Cyprus Amex or Climax Metals.

Our operation is a large copper open pit located near Green Valley, Arizona.

In April of 1986, Cyprus purchased the Duwall Mine Corporation and renamed it Cyprus Cerita Corporation. Duwall did not leave us any records that we could use to assess past hearing losses. So we began a hearing conservation program modeled after the OSHA guidelines.

Prior to beginning employment at Cerita, every employee was given a baseline audiogram, areas and jobs were sampled for noise levels, and hearing protection was required to be worn at noise levels above our action level which was 85 DBA.

All these jobs were then resampled annually. Since we're a hard rock mining business, it was apparent that engineering controls alone were not going to reduce our loading, crushing and milling noises below our action level.

Employees receive annual audiogram by a physician and are counseled by the safety department when shifts are reported by the physician. The required training is conducted for the new hires and at all of our annual refresher training.

Field tests have shown that whether in equipment tab or in a crusher building or in the mill, noise level assault both ears at about the same intensity. It has been noted that audiogram results indicate most of the employees who have a significant hearing shift have that loss in only one ear. In the same area or job, the loss is sometimes in the left ear, sometimes in the right.

Although not recognized by the regulations, there appears to be hearing losses other than from age and/or work related activities. The employees have active lives outside of the workplace such as shooting, motorcycling, outboard motor boating and the like. And companies have little if any control over our employees' private activities and the use of personal protection off the job.

We do counseling on hearing hazards and methods of protection for both on the job and off the job situations. Employees are encouraged to use the company provided hearing protection devices off the job as well as on.

Hearing protective equipment manufacturers have improved their products. So they have an approved sound attenuation rating of 20 plus DBA. It is generally agreed

that hearing protective equipment, properly worn will reduce hearing loss potential.

The hearing noise standard requires using all feasible engineering or administrative controls to reach that 90 DBA level. But if exposure is less than 100 DBA, exposure can be first reduced by a value of 1/2 the rated value of the hearing protection minus seven.

In case there's any doubt by this panel, let me say that Cyprus Cerita believes in a good hearing conservation program with required audiogram, noise sampling of working employees, use of hearing protectors when the action levels are exceeded.

Regular training in the hazards of noise exposure and the proper use of hearing protection according to our warehouse usage, we issued 154,178 pair or sets of hearing protectors during the past 12 months. This includes muffs, reusable and disposable plugs. We have found the OSHA noise level standard works well. And we believe that MSHA would better serve the miners if they adopted the OSHA noise standard instead of trying to reinvent the wheel.

I do have eight overheads. I notice we're not

setup for overheads. I will submit those.

MR. CUSTER: We've got an overhead.

MR. ELTON HOGG: Okay. These overheads, let me start out with saying they're biased. Not knowing what we were going to find, I went through and picked employees that have 15 plus years in mining, have had over ten years at Cyprus Cerita and work in our most noisy areas. The findings surprised us as well.

I heard Bruce was pretty good at it yesterday or Tuesday. What we've done is gone mainly to the fine crushing area which is historically my noisy area. We've taken the baseline, the most current baseline which is 1986, of this employee against his most current which is 1997 this year.

The first figures you see are the differences for the two, three and four thousand hertz levels in both ears. We then corrected for the age. I got gross data from the physician and we corrected for the age according to the charts shown in the Federal Register.

What we came up with was in this particular person in the right ear they lost two decibels. He has a negative

hearing or reduction in the left ear which would indicate that he's beat the aging process. We assume that's because of the use of the plugs or the hearing protection that he's been using.

We can go to the next one, please. '87 and '97 are the years of the comparative tests. Right ear, 1.2 decibel loss. The other one, he's beat the hearing, the aging process by 5.3 in the left ear.

Okay. Again, this is '86 and '97, 11 year span, right ear 2.6 DBA loss, 3 DBA loss in the left ear.

Okay. And like I said these were picked at random of the ones I thought would probably be my worst. Minus 4.6 for the right ear, 3.6 loss for the left ear. Again, in that one ear he's beating the aging process according to the chart. Four DBA loss, minus 2.6 and this is '88 to '97 comparison.

Okay. I said when we do get a big difference, it's generally in one ear. Generally, when I counsel this person, I can look at his audiogram and tell him whether he's right or left handed and whether or not he shoots, is he a hunter. The loss is in the left ear on this one. I

would assume that he's right handed, his left ear's exposed to the muzzle blast.

Okay. 3.3 for the right ear, 21 DBA loss for the left ear. All of our sampling in the plan indicates that the noise is going to assault both ears at about the same level.

Okay. And fine crushing, maintenance man. His loss is in the right ear, 9.6, 1.3.

Thank you for the assistance. That's all I have unless there are questions.

MS. PILATE: I have a question.

MR. ELTON HOGG: Yes, ma'am.

MS. PILATE: You mentioned that your company does monitoring and also does audiogram, training, retraining/counseling, when SCS is found and you also provide hearing protection.

MR. ELTON HOGG: Yes, ma'am.

MS. PILATE: What is the cost of your monitoring?

MR. ELTON HOGG: I have not looked at it per test. We have 745 employees. We do every employee, regardless of their job annually. I have not figured it out as a per test

cost.

MS. PILATE: I'm thinking about the cost of the machine, the dosimeter.

MR. ELTON HOGG: The dosimeter? Again, I have 18 of them. I don't know.

MS. PILATE: Do you know the cost of a lab calibration?

MR. ELTON HOGG: No.

MS. PILATE: Do you have a staff audiologist or do you contract with an audiology --

MR. ELTON HOGG: We contract with a physician.

MS. PILATE: Do you know off hand the cost of audiogram under the contract?

MR. ELTON HOGG: No, not exactly.

MS. PILATE: Do you know roughly how much?

MR. ELTON HOGG: Approximately $100.

MS. PILATE: Have you ever had to give or have an audiological exam taken for one of your employees? The question was have you ever had to have one of your employees take an audiological exam?

MR. ELTON HOGG: If there is a recorded shift from

the physician, then during counseling, the employees recommended to go see his personal physician to see if there are reasons other than noise if there is a medical problem.

MS. PILATE: You mentioned that you have annual training for your employees?

MR. ELTON HOGG: Yes.

MS. PILATE: How long does that last?

MR. ELTON HOGG: Annual training is eight hour session of which audiometric is a part of it, normally half an hour to an hour.

MS. PILATE: And how long is the counseling session when SDS is found?

MR. ELTON HOGG: Again, depending on the amount of understanding the employee and whether we've counseled him before, that may be anywhere from 15 minutes to a half an hour.

MS. PILATE: Thank you.

MR. ELTON HOGG: Yes, sir.

MR. CUSTER: Mr. Hogg, I noticed, and you pointed out, that hearing loss when it occurs is predominately in one year only and you've attributed some of that, and

probably rightfully so, to what you think are maybe activities that occur away from the job like the hunting, for example.

Have you ever looked at individuals on the job and studied their orientation, their normal orientation, their normal orientation to a noise source, particularly maybe a control panel operator who'd be in the same position much of the workshift, noise source perhaps on his left or his right?

MR. ELTON HOGG: No, I have not.

MR. CUSTER: Mr. Hogg, were these intended as representations of what's typically going on? Or are they just isolated instances?

MR. ELTON HOGG: Those were ones that I pulled at random of people I knew normally have exposure and have been in mining a long length of time. We didn't have to do the hunters to see what my whole workforce is doing. I have a staff working on that this week. That will be submitted within your June deadline.

MR. CUSTER: Okay. And when you attributed the greater hearing loss to non-occupational activities, do you

know that for certain? Or were you making an assumption?

MR. ELTON HOGG: In a couple of cases, yes. I've had employees where I've said, gee. You're a left handed hunter and actually had them say, well, how'd you know that? When you sit down for a counseling, just based on his audiogram. All of them? No, I cannot say that.

MR. POWASNIK: In the data that you're intending to submit.

MR. ELTON HOGG: Yes, sir.

MR. POWASNIK: Would you be able to indicate that?

MR. ELTON HOGG: The right or left handed?

MR. POWASNIK: Yes, and whether or not they're hunting or anything else that you might attribute the hearing loss to?

MR. ELTON HOGG: I'll certainly make that effort, yes sir.

MR. POWASNIK: Thanks.

MR. CUSTER: Sir, would you be willing to submit audiometric examination results? Obviously something that does not identify a person, but gives us an indication of what losses we're looking at through the various frequency

ranges.

MR. ELTON HOGG: We could do that, yes sir.

MR. CUSTER: Okay. Thank you. Thank you, Mr. Hogg.

MR. VALOSKI: Anyone else got any slides?

MR. CUSTER: For anyone that may have come in after the hearing commenced, you are asked to sign the attendance sheet on the table on the far right side of the room. The next speaker, Jeannette Bush.

MR. STANFIELD: I got designated as a hostage today. My name's Rich Stanfield.

MR. CUSTER: Rich Stanfield?

MR. STANFIELD: Correct. Rich Stanfield, R-I-C-H, S-T-A-N-F-I-E-L-D. I'm the general organizational services representative for Cyprus Bagdad Cooper Mine located in Bagdad, Arizona. I've been at Bagdad for nine months. I've been in the mining industry for some 21 years, 20 of that was -- almost all of it's been in coal mining.

For many years, actually that I can find so far, 20 years, Cyprus Bagdad has adopted the OSHA standard. We've been wearing hearing protection in any area that

exceeded an 85 or above DBA.

We have annual audiogram and annual training for all miners. All miners are given audiogram at the time of hiring. The annual audiogram currently is they have a voluntary wellness physical. So the annual audiogram basically is a voluntary issue.

Knowing that the process of receiving and reviewing audiometric testing results is slow, I went through and picked out the high noise areas at the mill and selected persons that have worked in those areas for a long time which results showed is that our employees have for the most part been unaffected by their work environment. As there hearing after the age factoring, everything falls well within the guidelines.

One must also remember that we do not know what our employees do in their off time. In other words, their off the job exposure may be considered, must be considered when investigating the job effectiveness of hearing protection.

And what I wanted to do is I kind of did what Elton did was kind of pull out what I considered long term,

people that have worked at the mill. If I could use that overhead, I'll show you real quick.

What you can see on there is this particular employee has been at the mill. The date of the baseline was 1989. You can see the current audiogram January of '97. The age factoring was done under the OSHA standards. And I'm not going to read off the results of each of these. I think everybody can see that we feel well within the guidelines after the age correction takes place. Like I said, the age correction was done under the OSHA standards.

We can go ahead and flip through the rest.

MR. POWASNIK: Mr. Stanfield, are you going to submit the paper into the record now?

MR. STANFIELD: I can. I can't quite see, but I believe that says 1988 was the baseline.

MR. VALOSKI: That's the best this thing focuses.

MR. STANFIELD: Okay. You can go ahead and flip to the next one. Again, I'm just trying to make the point that Bagdad has had the hearing protection in place for a long time. These are long-term employees from the mill.

Okay. You can ahead to the next one. There are

two more of those. I believe that date, what year is that? '95. Okay.

MR. VALOSKI: '75.

MR. STANFIELD: '75. Okay. Thank you.

MR. VALOSKI: You're welcome.

MR. POWASNIK: Mr. Stanfield, we changed our mind. We'd like to have you sanitize these and take out the name and the Social Security number and then resubmit them.

MR. STANFIELD: Okay. I can do that. Or what I wanted to do when I get more time is put this package together before the June deadline and submit them that way.

MR. POWASNIK: Okay. Just so that you realize for the record there will be a typewritten transcript here and it won't indicate any of the information that you've shown on the slides.

MR. STANFIELD: Okay. Thank you. I'm just going to put up one more overhead here. But the fact that hearing protectors are regularly utilized can easily be confirmed by our purchasing data for such devices. We utilize quite a few earplugs and ear muffs. The use of ear plugs is so economical that boxes are provided throughout the

operations.

The number of employees in defined occupations have reported over exposures to MSHA and plants requiring protection has never been a concern for MSHA or company officials. Use of hearing protection is taken for granted as employees consider it a matter of culture similar to safety glasses and the wearing of safety shoes.

Thank you. I just wanted to show the usage. We believe the hearing protection provides adequate protection for all our employees in the level of exposures that we experience and that the results of automatic testing verifies that effectiveness. We support the proposed regulations and the ADDBA measuring threshold and the '85 DBA action level.

We have proved that a large operation with many employees that OSHA standard does work. So why reinvent the wheel. Thank you. Any questions?

MS. PILATE: I have a question. How many employees do you have at this facility?

MR. STANFIELD: Approximately 520.

MS. PILATE: And how long is the annual training?

MR. STANFIELD: Well, we did it just like Elton. Annually on just hearing itself, probably a half hour to an hour at that particular training. Supervisors may during their weekly safety talks discuss hearing, but that's not an accounted for time.

MS. PILATE: Do you also have counseling for employees who are found to have an SDS?

MR. STANFIELD: Yes, we do.

MS. PILATE: And how long is that?

MR. STANFIELD: Depending on the situation, probably 15 to 30 minutes.

MS. PILATE: Do you have a staff or contract audiologist?

MR. STANFIELD: We have a physician that's contracted.

MS. PILATE: And where are the tests performed?

MR. STANFIELD: We have a clinic there in Bagdad, medical clinic.

MS. PILATE: On site?

MR. STANFIELD: Yes, it's within the town of Bagdad. It's kind of a close situation.

MS. PILATE: Thank you.

MR. STANFIELD: Thank you.

MR. CUSTER: Thank you, Mr. Stanfield. the next scheduled speaker is Paul Scheidig.

MR. PAUL SCHEIDIG: Good morning. My name is Paul Scheidig. It's P-A-U-L, S-C-H-E-I-D-I-G. I'm the Director of Regulatory and Environmental Affairs with the Nevada Mining Association. We're located at 5250 South Virginia, Suite 220 in Reno, Nevada.

The Nevada Mining Association, and for brevity I'll use the acronym NMA from now on even though we use a V in there so you don't confuse us with the National Mining Association, represents over 500 operating mine sites and mining related businesses in Nevada which employ over 13,000 miners and another 40,000 plus mining related personnel.

NMA strongly endorses safety programs that protect miners and the goals of the proposed rule. However, many specific provisions in the rule are unnecessary and create unjustified and unnecessary costs and burdens with little or no attendant safety related benefits for the miner.

In comments filed April 21st, 1997 by NMA, we

identified some 20 provisions of the proposed rule that required change or clarification. I am providing another copy of those NMA comments and request that they be entered into the record of this hearing. They're attached to the handout which I gave each of you.

In the interest of time, I'll not repeat any of those points today, but instead I would like to emphasize a few very important points. First, the MSHA proposal continues the absolute priority for feasible administration and engineering controls in metal and nonmetal mines and would extend it to coal mines. The proposal thus forbids the use of personal hearing protectors to help achieve the PEL until all physical administrative and engineering controls have been used.

MSHA's proposal is short-sighted, out of date and moves in exactly the wrong direction. MSHA should seize this opportunity to revise its existing rules for the metal and non-metal mines to allow use of personal hearing protection as a cost-effective means of protecting hearing and it should abandon its proposal to remove the credit for hearing protection that is presently available under the

coal mine rules.

As you know, OSHA permits the use of hearing protectors in the context of a well-designed hearing protection program to protect workers hearing. NMA urges MSHA to follow OSHA's lead.

There is no reason any longer to saddle the mining industry with a needlessly costly requirement to use feasible administrative engineering controls in circumstances where personal hearing protection used in the context of well-designed hearing conservation program will work effectively.

The statement by one of the Nevada's Mining valued members, and I know there's others here as well that are present among our membership that will speak to you this morning or afternoon. New Line Gold Company provides useful data about the effectiveness of such a hearing conservation program.

Second, MSHA has underestimated the economic cost of its proposed rule. As shown in Nevada Mining Association's prepared comments filed April 21st, the ruling poses unnecessary paperwork and administrative burdens, most

of which will be the responsibility of safety professionals, not clerical personnel. Unnecessary paperwork and administrative burdens should not be imposed by the rule.

Third, NMA objects to the requirement that noise exposure always be measured by the slow response method. NMA understands the slow response to the dosimeter when normally exaggerate noise dose in fluctuating sound environments. There's no justification for MSHA to require the use of inaccurate instruments to implement and enforce its rules. The inaccuracy of slow response to dosimetry has been explained and documented in the statement presented today by the New Line Gold Company and other companies I'm sure in our membership.

NMA objects to the proposed rule to integrate all noise from ADDBA in calculating the noise dose. That proposal will unnecessarily overestimate the calculated noise dose, especially to workers on extended shifts.

NMA agrees that the proposed five DBA exchange rate and that a three DBA exchange rate would cause difficult issues of compliance, particularly on the extended 12 hour shifts which we have in Nevada.

NMA objects to the presumption in the rule that a reportable hearing loss would be reported to MSHA as noise induced unless a physician or audiologist determines the loss is neither work related or aggravated by workplace noise. The presumption is totally unwarranted.

Miners in Nevada are subject to many sources of noise that are unrelated to work, guns, motorcycles, machinery, used in highways, et cetera. This was not necessarily an organized effort to say the same thing as previous speakers, but it certainly underscores the point.

Moreover, there are many causes of hearing loss other than work related noise and noise in general. Mine operators should not be deemed responsible for hearing loss that is in fact attributable to non-mining cause and may not even be attributable to noise.

Finally, NMA is baffled by MSHA's proposal that mine operators should be required to offer audiometric testing to miners, but that acceptance of such audiometric testing would be strictly voluntary on the part of the miners.

MSHA apparently believes that regular audiogram

are important for several reasons. For example, one, to determine the need for hearing protection. Two, to determine the effectiveness of hearing protection. And, three, to detect threshold shifts early enough so that medical referrals, counseling and training can help to prevent actual hearing loss.

Those are important objectives. If MSHA gives miners the option to refuse audiogram, MSHA can sanction miners' unwillingness to accept responsibility for -- let me back up. MSHA will sanction miners' unwillingness to accept responsibility for protecting their own hearing. Worse, MSHA will give the impression that audiogram are unimportant. That will seriously hinder mine operators' attempts to offer hearing conservation programs that work.

In conclusion, NMA urges MSHA to write a rule that is cost-effective. A cost-effective rule is one that would provide very good protection for miners and yet would not impose unreasonable or unnecessary costs on mine operators. We especially urge MSHA to permit the use of hearing protection and a comprehensive hearing conservation program as a cost-effective substitute for engineering and

administrative controls. Thank you, very much for this opportunity.

MR. VALOSKI: I have a couple of questions for you I'd like to get started. You're against the use of the slow response. What response would you deem us to use?

MR. PAUL SCHEIDIG: Not being a technician of hearing or an expert in the hearing arena, I really cannot answer your question at this time. We certainly can address that in our further comments that we'll submit by the June 20th date.

MR. VALOSKI: Okay. You're also against our ADDBA threshold. What threshold would you deem appropriate for mining?

MR. PAUL SCHEIDIG: I believe we suggested something in our comments earlier. At this time, I'm not going to respond to you directly, but if nothing else I'll note that question as well and make sure we give you a response later on. We objected to in our earlier comments of April 21st. I just can't recall off the top of my head if we suggested something else. Chris, do you remember at all?

CHRIS: Ninety.

MR. PAUL SCHEIDIG: Ninety.

MR. VALOSKI: Thank you. And in your comments to MSHA said that MSHA's Denver technical support group attempted to require a mine operator to retrofit numerous pieces of underground haulage equipment with cabs. With an approximate cost of $190,000 each. How did you actually come up with a number of $190,000?

MR. PAUL SCHEIDIG: I cannot answer that at this time. Being a trade association, I'm sure you recognize that we have a number of members in our membership that pull together to respond and provide you data and information. That's exactly what we use in developing these comments is a group of experts within our association. And we got that from some of our members and I'd have to go back and check with them to find out where that came from and how we derived that if you need some clarification.

MR. VALOSKI: We would like to have some clarification. You just put retrofit, shipping and lost production and $190,000 seemed awful high.

MR. PAUL SCHEIDIG: We'll certainly get back to

you on that in terms of how we responded in April.

MR. CUSTER: If you would, we would appreciate the information on that cost, maybe grouped by what you've listed here as the reasons, retrofit, shipping, were attributed to lost production.

MR. VALOSKI: Or any other reasons that you use.

MR. PAUL SCHEIDIG: Okay. I'll make sure I get a copy of the transcript so I understand your question correctly.

MR. POWASNIK: What we're looking for is supporting documentation for your figures. So if you submit a figure to us, we'd like to see the supporting documentation that you use to arrive at that figure.

MR. PAUL SCHEIDIG: We'll make every attempt to give you that.

MR. POWASNIK: Thanks. That would be helpful.

MR. PAUL SCHEIDIG: Sure.

MR. THAXTON: I have a couple of questions for you as well. You indicated earlier that you think that MSHA should revise the rule to allow the use of personal hearing protection, must as what's allowed in the current coal

industry, is that correct?

MR. PAUL SCHEIDIG: That's correct. What's allowed under OSHA as well I think is what we said too.

MR. THAXTON: But you stated specifically in relation to what the coal was. Given the fact that coal has allowed the use of personal hearing protection for a number of years and that we continue to have extremely high hearing loss claims among coal miners, would you agree then that the program currently as it stands, if you want to use personal hearing protection as a means of control, that the mine operator should ensure that miners utilize the personal hearing protection that is provided to them at all times that they're exposed to high noise levels?

MR. PAUL SCHEIDIG: Well, number one is, again, I'll refer you back to my previous answer where we put these comments together by a number of our members. I am not familiar with the coal industry whatsoever. So I am at a loss to be able to answer your question directly, but we'll certainly try to attempt to get at that if you could be more specific in our future comments.

MR. THAXTON: Well, what I'm asking is in relation

to your proposal, you're advocating that we allow the use of personal hearing protection as a means of control. Do you also agree then that for that to be a means of control that miners must wear that hearing protection?

MR. PAUL SCHEIDIG: Well, we'll get back to you and elaborate on that in our future comments.

MR. THAXTON: Second, in your prepared comments that you presented to the panel, item number five on your list, you have the MVMA agrees that the proposed five DBA exchange rate and that a three DBA exchange rate would cause difficult issues of compliance, particularly on extended 12 hour shifts. You're saying both the exchange rates that are actually used, the one currently in both metal, nonmetal and coal mine regulations as well as that which was the three DB which was asked for comments on. You're saying both exchange rates present problems with this statement. Is that true?

MR. PAUL SCHEIDIG: I will have to get back to you on that question as well? Again, you have to recognize that a trade association tends to just draw from its membership and that's what we attempted to do and that's what I'm here

to present to you today. And those specific questions are good questions and we'll certainly try to get you some answers that are more definitive than our presentation this morning.

MR. THAXTON: Thank you.

MS. PILATE: How many of your members have ACPs now?

MR. PAUL SCHEIDIG: We don't necessarily survey our members in terms of what they do specifically. So I don't have an answer for you.

MS. PILATE: On item number two, you mentioned that the rule imposes unnecessary paperwork and administrative burdens. What specifically do you mean by that, which items and the proposal you're referring to?

MR. PAUL SCHEIDIG: I think it was reflected in our April 21st comments and again in my statement this morning, that most of the paperwork burdens with regards to documentation, reporting requirements are not necessarily done by clerical folks. Those are done by the safety professionals at the mine sites. And the added sort of heap of additional reporting that this rule mandates puts an

additional administrative burden on most safety professionals at the mine site to go any more specific than that at this time, I'm not able to.

MS. PILATE: When you do back to your members and question them about the existing ACPs, it might be helpful to also ask them the paperwork that they have under their existing ACPs because we designed the paperwork requirements, modeling them on existing ACPs of other companies.

MR. PAUL SCHEIDIG: Number one is we probably will not monitor, go out with a survey with regards to our members in that respect. However, there are several of our members that have responded and commented and they individually can give you some indication of what you're looking for, for that -- in that particular question area.

MS. PILATE: Thank you.

MR. PAUL SCHEIDIG: Thanks.

MR. CUSTER: Thank you, Mr. Scheidig. We'd like to take a break at this point for 15 minutes and reconvene at 10:20.

(Whereupon, a brief recess was taken.)

MR. CUSTER: Back on the record. Our next scheduled speaker is Mary McDaniel. She has canceled. After that, Fred Fowler has signed to speak.

MR. FRED FOWLER: Fred Fowler, RCP Block Company, San Diego. Fowler, F-O-W-L-E-R. Good morning, ladies and gentleman. I am Fred Fowler, as I previously stated, and I am the Safety Officer for RCP Block & Brick, Inc. We are a cinderblock manufacturer, and as of this year we've been manufacturing block products in San Diego for 50 years. My father, Bob Fowler, retired after 35 years with RCP Block and Marvin Finch, the President, said goodbye. My dad heard Marvin just fine and waved goodbye.

Yes, RCP mines sand, and as Tom Phelps will tell you, we do a good job and we've mined a lot of sand. But I want to tell you that we've been dealing with sound issues on our production side for many years.

We have employees' hearing who've been monitored for eight to ten years in our production side, and we are allowed to use all the major means to protect employee hearing and RCP uses hearing protection devices quite heavily throughout manufacturing areas as a means of

safeguarding our employees' hearing.

We believe we can be just as successful in our sand mining operations under Tom Phelps. RCP Block uses administrative controls when manpower and scheduling permits and in the more severe cases, we have used engineering options to reduce sound levels in those areas where needed.

We rely heavily on our supervisors to watch our employees and ensure that employees' safe hearing programs are being followed. We do employee training and annual employee hearing tests for approximately the last 12 years.

To monitor the effectiveness of our hearing program, Tom on his side does continuous sound monitoring and tries to be in front of identifying problem areas. As a team, we are very well supported by our company requests for resources necessary to maintain the hearing safe mining operation.

Cost regulation, regulation cost, back and forth. The fight goes on in the private enterprise. You impose a regulation and we in the private sector must find a balance between making it work and going out of business. A drop of 90 decibels to 85 decibels would be very costly for a small

family business such as ours to implement. When in fact what you're doing is asking us to fix something that already works.

As our records indicate, we do not have a problem that needs any change in regulation to fix. All these mitigating efforts must be accomplished, however, within a level of resources that does not increase the overall manufacturing cost to a level that would force our product out of the competitive market.

In closing, Marvin Finch thanks you for allowing us to speak here today and I thank you. And we'll be glad to answer any questions at this time about our hearing program.

MR. VALOSKI: I have a question for you. you said you use administrative controls where it permits and engineering controls where needed. What's your priority, administrative controls over engineering controls? Or do you do engineering controls over administrative controls?

MR. FRED FOWLER: I would try and take care of it. I'm going to speak to you from a different tier because I am really come out of the OSHA side where we're allowed three

in the triad. And where possible we use a third PPE, administrative controls a balance there. Engineering we use, but cost is a factor.

I'm going to fall back and speaking from our OSHA side, we fought back heavily and we do rely on a lot of PPE in those certain things. And as I've stated here, we do have about 12 years of being in an OSHA program with all the requirements and documentation in place.

If I may, I'd like to make one other comment and I'd like to address it to the gentleman there in the shirt regarding the comment on the floor earlier. I was at an OSHA update hearing about three weeks ago and an instructor came in and he said, hi. I'm from out of state. I'm going to teach you fed OSHA. We have about 1,000 laws on the books and you folks in California you have 4,000 on the books.

And what I found interesting in going, taking my classes out at San Diego State, our instructor pointed out there isn't one law that places the burden for safety or hearing protection or whatever directly and squarely on the shoulders of the employee. And if we had those things, that

would be of great benefit to us as the employer. So having made that, I thank you for your time.

MR. VALOSKI: You said, you'd been running a hearing conservation program for 12 years.

MR. FRED FOWLER: Yes, sir.

MR. VALOSKI: Do you have any data that shows the number of SDS's or OSHA recordable losses?

MR. FRED FOWLER: I do. I don't have that with me, but we do.

MR. VALOSKI: Could you please provide some of that to us?

MR. FRED FOWLER: Sure. And the lady asked, and I want to say that we do have an audiologist service that comes in once a year. Backup to that, we have a hearing consultant that we go to with our questions after that. And our costs right now to run just the audiology on the people is about $25 to $30 a head.

MS. PILATE: I have questions. How many employees do you have at your facility?

MR. FRED FOWLER: How many employees do we test currently?

MS. PILATE: No, how many employees do you have? And then how do you many do you test?

MR. FRED FOWLER: Our total employee force, it's kind of a misleading figure, is 180, but that's in all of our retail yards. It includes salespeople, counter people, stock. In the manufacturing plant under OSHA, we have around 40. In Tom Phelps sand mining operation, we have eight employees and we include those in our programs. It's just something we've always done.

MS. PILATE: So you have 48 that you test?

MR. FRED FOWLER: 46 to 48 folks that we test.

MS. PILATE: And you spoke of having a training program?

MR. FRED FOWLER: Yes, we do.

MS. PILATE: That's annual?

MR. FRED FOWLER: Annual.

MS. PILATE: And how long do you train?

MR. FRED FOWLER: The training in that, it runs right around 15 minutes to a half an hour. Our audiology service provides that as part of their service to us. They get quite a bit of that training as they're sitting there

with the headset on. We pay additional costs.

MS. PILATE: When SDS is found, what do you do with the employee? Do you have retraining and counseling?

MR. FRED FOWLER: We have retraining and counseling. And like I stated previously, if we get a letter from the audiologist, and I refer the gentleman onto an off site counselor for followup.

MS. PILATE: Do you know the cost of a dosimeter for your business?

MR. FRED FOWLER: Excuse me, ma'am?

MS. PILATE: Do you know the cost of a dosimeter for your business?

MR. FRED FOWLER: I know that in talking to our sand plant superintendent, he just purchased one for around $50 to $60 and we do have one.

MS. PILATE: Do you know the cost of a lab calibration for a dosimeter?

MR. FRED FOWLER: I do not. In a case such as that where we want the areas checked, I called in our insurance provider and they bring in the equipment and their equipment is calibrated by their companies.

MS. PILATE: You said that you have an audiologist under contract to provide audiogram and the cost of the audiogram per employee runs approximately $25 to $30.

MR. FRED FOWLER: That's approximate, yes.

MS. PILATE: Do you also have to pay an annual maintenance fee for this contract?

MR. FRED FOWLER: No.

MS. PILATE: Thank you.

MR. CUSTER: Thank you, Mr. Fowler. Tom Phelps. Mr. Phelps declines. Dan Faulkner.

MR. FAULKNER: I hit the mike here. I don't know what I've exactly done. My name is Dan Faulkner. I'm the safety Superintendent at Coeur Rochester. This is my first time ever presenting any information in front of a hearing. Unfortunately, my documentation I was going to submit to you has names on it. But you can look at this information and I'll get the names removed from it and then submit it from there, okay?

MR. CUSTER: That would be fine.

MR. FAULKNER: Okay.

MR. CUSTER: Sir, would you spell your name for

the Reporter?

MR. FAULKNER: It's F-A-U-L-K-N-E-R. That's my last name. Coeur Rochester is an open pit operation, silver and gold mine, approximately producing six million ounces of silver and 60,000 ounces of gold. Extraction of the silver and gold from the orders done by BML drills, caterpillar 85 ton haul trucks, support equipment such as the 16G graders, 992D loaders, rubber tire dozers, D9 and D10 dozers, a three stage crushing plant and a precious metals processing plant.

Coeur employs about 285 people. Crews work shifts day and night, scheduled 365 days a year. Coeur Rochester supports a hearing conservation program and since January 1, 1988 annually tracked employees exposed to noise in various work environments. Dr. Joseph Evans with Family Care, Sparks, Nevada, has administered Coeur Rochester's audiogram testing, hearing conservation program since January, 1988.

Coeur utilizes 85 DB action level for the initial audiogram testing and also offers audiogram for any employee requesting that information -- or requesting one.

Currently, Coeur has 165 employees enrolled in the hearing conservation program. Furthermore, Coeur uses

engineering controls when possible, rubber bedliners and haul trucks, shot pinning machines to replace pneumatic needle tools, replace equipment that produced high noise exposures such as bobcats and preventive maintenance.

Equally as important includes the monitoring employee exposures, training, education and work practices, hearing protection devices and follow up dosimetry and audiogram testing has significantly shown to decrease the occurrence of the standard threshold shift.

The performance of our hearing conservation program since January of 1988 and through March 1997, Coeur has performed 1,309 audiogram and experienced 103 people for personnel with an SDS. Utilizing the SDS criteria outlined in the OSHA 1910 '95 hearing conservation amendment, this represents about 7.9 percent at-risk employees for an SDS.

In 1996, Coeur experienced 11 standard threshold shifts of the 165 audiogram. So about a 6.6 percent at-risk employees. This represents an improvement from our nine history of about 1.3 percent.

Throughout the same period of time, audiogram testing showed 231 tests with a significant hearing loss and

173 of the 231 with no standard threshold shift. Several of these cases do not represent an occupational original. Lifestyles outside the potential noise exposure Coeur picked up during a pre-employment exam and annual exam. Childhood diseases, perforated ear drum and aging has influenced a number of cases with a significant hearing loss.

Coeur Rochester has never experienced worker's compensation claim associated with an SDS test result. Essential elements preventing a worker's compensation claim are the monitoring of employee exposure, correcting any bad work practices, followup dosimetry and audiogram retesting, retraining the employee, education about how to limit exposure in the work environment. That is the duration of employee and practices.

Proper use of the hearing protection device and engineering controls. Education and training about how to limit employee in the work environment has to be an ongoing process. Dosimeter tests are excellent training exercises to show employees immediately how they are interacting with noise in their work assignments.

Coeur believes that providing a variety of hearing

protection devices, the attenuation provided by the hearing protection devices, and dosimeter tests have significantly impacted whether personal experience hearing loss. Coeur uses half the noise reduction rating published by the manufacture of hearing protection devices. If this amount of attenuation does not bring the employee below the criteria for the workshift, then Coeur utilizes the dual protection as proposed in the standard, ear muffs and plugs.

Now, specific to the noise regulation sections, Section 62.120(c) permissible exposure level, the PEL of 90 decibels, DBA, is an eight hour exposure criteria and not an exposure criteria for extended workshifts, for shifts that exceed eight hours. Since compliance will be based on the measured dose and if the measured dose exceeds 100 percent, the employee will be considered over exposed.

An employee who works more than eight hours must be further restricted to the amount of noise exposure. How does applying an eight hour criteria to extend the workshift decrease the potential for hearing loss when the referenced duration for an extended workshift is a lower sum level and that's referenced in Table 62.1, reference duration.

Coeur Rochester believes a mistake on behalf of the miner will be made if MSHA does not recognize adjustment of TWA for a standard workshift.

Section 62.120(c)(1) Coeur Rochester's nine years of audiometric testing demonstrates that hearing protection devices play an important role in the potential for hearing loss. Equally important are the engineering and administrative controls. However, MSHA's not giving here protection devices equal importance, i.e., mine operators have three choices, engineering controls, administrative controls or both.

Although their primary reliance on hearing protection devices in coal mines is misplaced, is this a true statement for surface metal mines? Coeur Rochester's experience is that hearing protection devices do provide protection. Applying a consistent hierarchy of controls for all mines is not supported since our experience shows that making each control equal would work for a surface mine.

Also, MSHA can minimize the impact on employees with temporary attached to the mining workforce by allowing miner operators to primarily hearing protection devices.

Posting administrative controls is not an effective means to notifying employees of their job requirements, providing a copy to the employee is an effective means to help the employee understand the job requirements. The posting requirement is not necessary since there is a more effective means published in this section.

Section 62.100(e), the ceiling level. Attached are -- I have also provided exposure profiles throughout our property. I've got to remove the names. I'll submit that as well. And that's throughout 1996. These profiles exhibit 27 examples of brief activities producing sound level pressures above 115 decibels. A total of five examples above the 115 decibels criteria exceed the proposed 100 percent measured dose criteria and 22 do not.

Also in 1996 all employees that exceeded the proposed no exposure above 115 DBA did not incur a standard threshold shift. These brief exposures above the 115 DBA have impact on the overall measured dose, but as can be seen by the results provided, the impact is small to the overall exposures. The lowest measured dose was 5.2 percent when

someone was above 115 decibels.

The no exposure above 115 DBA is too restrictive and from Coeur's experience unjustified. Table 62.1 referenced duration like OSHA allows exposures at above the 115 DBA for .25 hours. A quarter hour of exposure above the 115 DBA is justified from our body of history.

In conclusion, the Coeur would like to reserve the opportunity to present further comments at a later date. Dr. Evans, who provided the data on audiogram, has been out on a sabbatical for a month and he will be back within the next week. I'd like to give him a chance to review the proposed standard and to provide comment. Thank you for this opportunity. Any questions?

MR. VALOSKI: I have a couple. You were saying that you have in 1996 eleven significant threshold shifts.

MR. FAULKNER: Correct.

MR. VALOSKI: How many of those were due to occupational noise exposure?

MR. FAULKNER: Nine of them were due to occupational noise exposure. If you rule in aging as well, nine of those. Two were not. One was a perforated eardrum

and the other one was something else. That would be nine of 165.

MR. VALOSKI: And what about during the previous nine years? How many of the SDS's were due to occupational noise exposure? You said that you had 7.9 percent of the people with them.

MR. FAULKNER: I suspect we figured about 90 were due to occupational versus the 103. But I'd like Dr. Evans to comment on that, how he came up with that number.

MR. VALOSKI: Thank you.

MS. PILATE: In your presentation, you mentioned something called followup dosimetry. What exactly did you mean by that?

MR. FAULKNER: It's once you sampled the area initially for the exposure and you've trained and talked to the individual about work practices and what's creating the exposure and you follow that up at a later point.

MS. PILATE: So it's not --

MR. FAULKNER: To see how he's improved or how he's changed or what exactly is current. Does that make sense?

MS. PILATE: You don't mean that you're going to take another noise measurement. You mean that you're going to talk to the employee and so forth?

MR. FAULKNER: No, it's an actual other noise measurement. It's a recoaching. To see how he's done with the current training.

MS. PILATE: You mentioned that you have training for your employees. How long do you train your employees?

MR. FAULKNER: Between a 1/2 hour and hour annually. And that's -- and the refresher training part of that. But in addition to that is the supervisor and the dosimetry that goes on and so forth. So it's well over an hour.

MS. PILATE: Do you know the cost of a lab calibration for a dosimeter?

MR. FAULKNER: It's less than $100.

MS. PILATE: You said that you had a contract with Dr. Joseph Evans of Sparks, Nevada to do your audiometric testing. What is the cost of the contracted audiogram?

MR. FAULKNER: Our audiogram are $39 each and the followup is $53.

MS. PILATE: Has he ever had to do an audiological exam for one of your employees?

MR. FAULKNER: He refers them out. And in some cases, yes. People that determine non-occupational exposure. But it really, if it's non-occupational, it goes to our insurance at that point. So I haven't been able to track that number.

MS. PILATE: Thank you.

MR. CUSTER: Thank you, Mr. Faulkner. The next speaker listed, David Sheffield.

MR. DAVID SHEFFIELD: Good morning, ladies and gentlemen. For the record, my name is David Sheffield. Last name is spelled S-H-E-F-F-I-E-L-D. I'm the superintendent of Safety and Health Services at Barrick Gold Strike Mines, Inc.

Gold Strike is located on the Carlin Trend in Northeastern Nevada and is a wholly owned subsidiary of Barrick Gold Company. Gold Strike currently employs approximately 750 miners engaged in surface and underground mining milling and refining of gold. The Gold Strike Mine is the leading single producer of gold in the United States

with production of 2.1 million ounces of gold in 1996. Barrick Gold Company is the third largest producer of gold in the world with annual production of over 3.15 million ounces in 1996.

Since its inception, Gold Strike management and employees have repeatedly demonstrated their utmost commitment to the health and safety of all personnel working at the Gold Strike property. Included in specific programs at Gold Strike are state of the art hearing, conservation and hearing protection programs that have demonstrated their effectiveness over time at protecting employees' hearing in the mining environment. Our comments have been submitted to MSHA in conjunction with the Nevada Mining Association report and we've expressed our concerns with proposed standards as written in many areas.

However, today we'd like to present information to you that demonstrates the success of Gold Strike at controlling employee hearing loss through a moderate approach in keeping with current hearing conservation recommendations than the ones proposed by MSHA.

Equipment used at Gold Strike to measure noise

exposure, test employee hearing and provide protection from noise means all published standards for such equipment. Personal noise dosimetry in area sound level surveys are conducted in all occupations where noise exposure may occur utilizing the weighted scales, fast response segments, and five decibel exchange rate of the instrumentation.

Use of these equipment settings allows for accurate assessment of the actual level of employee exposure in the workplace without overstating exposure to employees from intermittent noise.

All personal sample results are reported to employees in writing with any recommendations including PPE requirements if necessary.

MSHA proposes to utilize slow response segments in determining exposure through dosimetry and sound level measurement. This could lead to extensive noise control activities in areas of our facility that do not requirement. Sole response would increase emphasis on intermittent or impact noises and therefore skew the determination of actual harmful industrial noise exposure.

Employees who were shown to be exposed to more

than 85 decibels on a regular basis based on personal dosimetry or who work in areas where ambient noise levels are shown to be above 85 decibels by sound level surveys are entered in the Gold Strike Hearing Conservation program.

Areas where ambient noise levels are above 85 decibels and are included in division and department level hearing protection programs. PPE is required in these areas regardless of other engineering or administrative controls that may be in use until reduction of noise levels, if possible, is achieved.

Mandatory enrollment in the hearing conservation program and use of hearing protection programs is terminated when personal dosimetry and area sound level surveys together show that exposures have been reduced below 85 decibels.

In contrast, MSHA would impose an 80 decibel requirement. We believe based on our experience utilizing 85 decibels that employee protection from hearing loss is adequate.

An 80 decibel requirement as proposed would result in unnecessary and expensive testing and controls, the much

larger segment of our employee population and is not currently manifesting hearing loss and is shown to be adequately protected below the TLVs by current controls based on personal noise dosimetry.

In effect, utilizing 80 decibels would negate the proven effective environmental caps on equipment and other engineering controls currently in use. Currently, approximately 400 surface and underground miners are enrolled in the Gold Strike hearing conservation and hearing protection programs. Approximately, 22 percent or one-fourth of the workforce estimated costs of the programs of current enrollment runs about $35,000.

Use of an 80 decibel level could potentially raise the enrollment in these programs to over 1,000 employees, almost 60 percent of the workforce. And estimated cost of $140,000 plus, an increase of over 400 percent. Costs include employee man hours, testing man hours, administrative man hours and lost production from employees removed from the job. This would impose an unnecessary and expensive burden on Gold Strike without achieving any more beneficial results to employees realized at this time.

Those costs, gentlemen, pertain to just hearing. It doesn't go into the effect of any of our other health programs or industrial hygiene programs.

Only those employees enrolled in the hearing conservation program and annual audiogram administered at the mine site by technicians who have completed a certified course in occupational hearing conservation. Interpretation of audiometry as performed by these technicians, utilizing guidelines and protocols established in conjunction with Gold Strike's oversight physician. At the time of testing, results of the audiogram and any changes in hearing levels are discussed with the employee.

MSHA would require baseline audiometry for all newly hired employees if the employee is not assigned work in defined high noise areas, there is no need for this baseline test. This would impose a significant and unnecessary cost to our property.

MSHA proposes to permit testing only by a technician certified by the counsel for accreditation of occupational hearing conservationists or a physician. To the best of my knowledge, CAOHC does not have an audiometric

technician certification. CAOHC certifies occupational hearing conservationists that are trained to perform audiometric examination, interpret changes and hearing based on audiogram and administer hearing conservation programs.

Use of microprocessor audiometers does not require excessive training or an extensive degree or technical skill. A trained audiometric technician responsible to appropriate medical personnel is more than able to deliver quality, audiometric testing. In the typical physician's office, it is not the physician who delivers the audiometry, but a technician or nurse who may or may not have any specific certification pertinent to audiometry.

Audiogram records are stored electronically and strict medical confidentiality is observed in release of these personal medical records. Employees may obtain a copy of audiogram or release audiogram to their physician at any time upon signed request.

MSHA required the availability of these personnel records to inspectors at any time. I can see little value to either enforcement or analysis in violating medical confidentiality by allowing access to these records without

employee permission.

Standard threshold shift determination is performed using a 15 decibel change in the 2,00, 3,000, 4,000 hertz testing ranges in either ear as compared against the employee's initial or baseline audiogram.

Hearing protection use removal from defined high noise areas and confirmation testing within 30 days is mandatory under Gold Strike's program guidelines. Confirmation of a standard threshold shift results in a referral to a physician for evaluation and further examination by an audiolaryngologist or audiologist.

This 15 decibel definition of standard threshold shift is more shift than current definitions of standard threshold shift within the proposed MSHA standard that allows earlier intervention. To prevent further loss to employee hearing than the 25 decibel definition.

SDS has been verified in the above manner, the employees returned to the workplace only after medical clearance and recommendations have been received from the treating physician. Protective measures based on physician recommendations are closely followed to ensure that no

further loss of hearing is incurred.

In addition, audiometric examination is increased to at least every six months. When two consecutive audiogram measure stable hearing thresholds, the last audiogram is used as the new baseline for the employee which is standard protocol. Establishing a new baseline allows for easier tracking of any further hearing loss that may be incurred by narrowing the range of analysis.

Comparisons against the original baseline are still possible as these records are retained in the employee's electronic file.

Barrick Gold Strike's goal is protection of employees from hearing loss. To achieve that goal, all technologically and economically feasible resources available are mustered to control noise exposure.

To ensure that control efforts are pinpointed to provide the best protection possible for employees, regular measurement of noise exposure within the Gold Strike facilities by use of noise dosimeters and sound level meters is performed by qualified personnel.

Using 85 decibels measured with fast response

settings as an action in implementation level has allowed us to protect our employees without incurring expensive unnecessary testing as would be the case with an 80 decibel action level.

Engineering, administrative, and PPE controls are utilized in concert to reduce employee exposure to safe levels. A combination of these controls is usually the most feasible solution for protection from elevated noise levels. Our experience has shown that even the most carefully engineered controls and the strictest administrative controls must be complemented by the use of PPE to provide assured protection at the TLV.

Audiometric testing is utilized as a final measure of effectiveness of the controls established in the mining workplace. Testing and interpretation by qualified technicians under physician direction has proven highly effective in informing tested employees and accurately measuring your hearing acuity.

Training of employees during site specific tasks and any refresher ensures employees understand and comply with the requirements put in place for their protection.

Gold Strike's success at protecting employee hearing is illustrated by audiometric workers compensation and MSHA citation data.

Since its inception in 1987, there has never been a worker's compensation case filed against Gold Strike for hearing loss. Of the many audiometric tests taken at Gold Strike since the inception of the hearing conservation program, there has never been a standard threshold shift for any employee tested. Gold Strike has been sampled regularly in the past three years by MSHA and there have been no noise citations issued. This year the local MSHA field office has reclassified Gold Strike as a B rank mine for noise assessment.

In conclusion, we believe that this proposed rule is unnecessarily strict and will be prohibitively expensive to implement with no real benefit to the mining industry or the miners working in the industry. Our opinion is supported by this and a more reasonable approach is outlined for you as an example of Gold Strike's hearing conservation program. Thank you for your time.

MS. PILATE: When you spoke of the $35,000 figure

for doing the audiometric testing program, how many employees were you referring to?

MR. DAVID SHEFFIELD: Approximately 400.

MS. PILATE: And am I to understand that you have a staff audiologist on duty?

MR. DAVID SHEFFIELD: We have two industrial hygienists and both of them are certified and we have a physician on contract that oversees not only the hearing conservation program and all the testing analysis which follows up on our analysis, but also all of our emerging response activities and medical enabling services, et cetera. So they're both certified.

We have our own booth and we do our test. And we do the analysis. And then for anyone that is outside, if we've got any type of deterioration, we send it to a physician for a second opinion. We send all of them to the physician, but immediately those that we feel may have a problem, but we've never, as I mentioned ever had a problem to date.

MS. PILATE: What is the cost of the contract with the physician?

MR. DAVID SHEFFIELD: Actually, there is no cost to the physician as far as a payout. As I mentioned, we use the physician. We're not required to have an emergency response team or environmental service, but because we're so far out we do. So they provide support there. Also provide oversight with our first aid locations and stations. We use that, individual as a gatekeeper for our workers comp cases, et cetera. So basically some of those services are thrown in for all the other things we do for them. There's actually several physicians in that office.

MS. PILATE: Do you know the cost of a lab calibration for a dosimeter?

MR. DAVID SHEFFIELD: I'm sorry?

MS. PILATE: Do you know the cost of a lab calibration for a dosimeter?

MR. DAVID SHEFFIELD: Total -- again, we -- I'd have to break that up, because we kind of do that total as a group. But as the other gentleman said, I think it runs about $30, $40, roughly $30 to $40. I'd have to ring that up to give you specific figures.

MS. PILATE: Have you had to send one of your

employees for an audiological exam?

MR. DAVID SHEFFIELD: No. Now, we have -- well, I'll rephrase that. On baselines we found people who have had hearing problems. We also do as part of our preplacement physicals for employees who come to work and one of the requirements is an audiogram, of course. And so we send people that way, but not people who've been employed in the standard threshold shift.

MS. PILATE: For the $140,000 figure that you gave, was that to test the 1,750 employees?

MR. DAVID SHEFFIELD: No, we did some, we do very extensive area sound surveys. So we really pretty much pinpointed all the areas as well as their cabs as well. We have a pretty massive equipment haulage fleet. And so we've actually been able to calculate if we dropped it to 80 decibels at the next level how many people will be involved and we're running somewhere between 950 to 1,150 people would be effected. And so we base that on 1,000 people, that $140,000. It actually came to $140,000 and some change.

MS. PILATE: That's if the action level were 85 or

the PEL 85?

MR. DAVID SHEFFIELD: I'm sorry?

MS. PILATE: That was for the action level being 84 or the PEL being 85?

MR. DAVID SHEFFIELD: Well, you see, if you move the PEL to 85, it's incumbent upon you to move the action level.

MS. PILATE: But what I'm asking --

MR. DAVID SHEFFIELD: So therefore, to answer your question, it would be both.

MS. PILATE: Thank you.

MR. DAVID SHEFFIELD: You're welcome.

MR. CUSTER: Sir.

MR. DAVID SHEFFIELD: Yes, sir.

MR. CUSTER: You noted your dissatisfaction with the secretarial access to audiometric examination records because it violates minor confidentiality, is that correct?

MR. DAVID SHEFFIELD: That's one reason. I mean, there's others. But that's the main one. We keep a lot of medical records besides those and we keep them as required by law in the medical file.

MR. CUSTER: What would you offer, if anything, as an alternative to Secretarial access as it's proposed?

MR. DAVID SHEFFIELD: Sure. I think one of the things that we do with a lot of things that MSHA comes and asks for, they inspect. So I think like some of the gentlemen showed today, I think if there's any particular cases or problems that we're working with them, we have no problem with inspection of the overall records.

It's just like when you come out and do any of your sampling, you know, the overall analysis results. And I think every mine I think would be happy for you to come inspect that versus all the other types of whether it's training records or desk sampling records or whatever. But I think to be able to go to an individual's file, I think is probably intrusive.

Plus, the other issue too is I think the time, I know Chris is going to speak to this later, but the time consuming method of trying to even when you have no standard shift when we put a sheet of paper in everybody's file to say, you know, no change. I mean, that's kind of a redundant activity where we could have that resolved just by

having one closer.

Now, we typically do that now, but I know that it is very time consuming and I agree with the rest of my industry that is something that we -- I don't think should be required to do.

So in answer to your original question, I think like many other things, if they want to inspect when they come out, I mean, there's a lot of documents that are proprietary besides that, that maybe you don't hit the confidentiality aspect that we don't give out because of the proprietary nature. But we welcome MSHA to look at those records.

MR. CUSTER: Thank you, sir.

MR. DAVID SHEFFIELD: Thank you.

MR. CUSTER: Christopher Rose.

MR. ROSE: Good morning. My name is Chris Rose. That's C-H-R-I-S, R-O-S-E. I'm here this morning to present the views of Newmont Gold Company on MSHA's proposed health standards for occupational noise exposure.

I'm employed by Newmont Gold Company as an industrial hygienist, and in that capacity I have numerous

responsibilities for designing an administering Newmont's miner safety and health programs, including Newmont's existing noise control and hearing conservation programs.

Newmont is the largest gold producer in the United States. We're engaged in the mining, bonification and refining of gold bearing ores in Northeastern Nevada and Southern California.

Newmont currently employs over 6,400 miners, 4,000 in Nevada, many of whom are exposed to workplace noise. I brought a prepared written statement with exhibits which I have previously handed to you which I'd like to enter into the record at this time.

Newmont strongly endorses the goals of the proposed rule. However, Newmont is convinced that many of the provisions in the proposed rule are regulatory overkill. My prepared statement discusses 32 different provisions of the proposed rule and requests numerous changes or clarifications on those provisions. Because time today is limited, I will not attempt to detail all of Newmont's requested changes and clarifications. Instead, I will emphasize only a few points at this time.

Point number one. First, Newmont strongly objects to MSHA's continuation of the requirement for metal and nonmetal mines that all feasible engineering administrative controls be used to reduce noise exposures the PEL with no allowance for attenuation provided by the use of personal hearing protectors.

The priority for administrative and engineering controls imposes large costs on mine operators that are not justified or necessary to protect miners' hearing.

MSHA's proposal for that reason alone is not cost-effective. Newmont's experience has been that personal hearing protection will work effectively to protect miners' hearing when hearing protection is used in the context of a comprehensive hearing conservation program.

By that, I mean a program that not only includes the use of hearing protectors, but also annual audiometric testing, training, counseling, and medical referrals.

Newmont has administered such a hearing conservation program since 1988 and Newmont's program works. As required by MSHA's rules, Newmont, of course, uses feasible engineering and administrative controls to reduce

exposures to the PEL.

Nevertheless, some employees in circumstances where engineering or administrative controls are not feasible will be exposed to noise above the PEL. Newmont requires such employees to wear hearing protectors and to participate in Newmont's hearing conservation program.

Our hearing conservation program is largely modeled on the requirements of OSHA's rule. However, we provide annual audiometric testing to all employees, including even office workers without regard to the level of noise to which they're exposed.

Also, hearing protectors are provided to all employees who want them. Again, regardless of noise exposure.

If the annual audiogram of any Newmont employee, again, regardless of noise exposure, shows a standard threshold shift, as defined by the proposed MSHA rule, the individual is referred for medical evaluation and followup, and if appropriate the individual's counseled about the effect of noise on hearing and about the importance and proper use of hearing protection.

Newmont recently reviewed all annual audiogram taken between 1992 and 1996 an all baseline audiogram from earlier years back in 1988. The audiogram reviewed were taken from thousands of miners. During the 1992 to 1996 period, among all of Newmont's employees, the audiogram revealed not one single incidence of a reportable hearing loss as defined by MSHA's proposed rule. Only about eight percent of the miners working in very noisy areas, that is were noise exposures could equal or exceed the PEL, experienced a standard threshold shift.

The inclusion of all workers, including office workers, in our program, has provided some interesting comparative data. The percentage of workers in very noisy areas who experience an SDS was nearly identical to the percentage of office workers who experienced an SDS.

Among workers in the noisiest areas, the percentage of workers experiencing SDS was 8.21 percent. Among office workers, the percentage was nearly identical, 7.69 percent. Company-wide, the incidence of SDS was 6.29 percent. The similarity of the data for office workers and for miners exposed to all levels of noise on the job,

including those working in the noisiest areas suggests strongly that most or all of the SDS experience can be attributed to non-occupational reasons. Newmont's experience shows that personal hearing protection works when personal hearing protection is used in the context of a comprehensive hearing conservation program including audiometric testing, training, counseling, and medical referrals.

Newmont's experience thus demonstrates the validity of OSHA's approach which allows employers to consider the attenuation provided by personal hearing protectors when personal hearing protection is used in the context of a hearing conservation program.

MSHA's adherence to a rigid policy or rigid priority for costly administrative and engineering controls is outmoded and unjustly burdens mine operators with unnecessary costs.

Now, I'd like to discuss a few real world examples at this time which might shed some light on how the current requirement is being enforced. Newmont was recently cited for a dozer operator who received a noise dose of

approximately 200 percent.

Now, our sampling before and after the citation was issued indicated compliance with the PEL. An interview with the operator indicated that he wore ear plugs because he didn't like the annoying, but acceptable background noise of the dozer. And so because he had ear plugs, then he had to turn up his AM/FM radio. That's where the noise dose came was the AM/FM radio.

Now, is MSHA suggesting that mine operators take away the radios from miners just to prevent noise that is not even present at the eardrum?

A second example, again, Newmont was cited for another dozer operator, again receiving a dose of approximately 200 percent. Again, our sampling before and after the citation indicated compliance with the PEL. The cab of that piece of equipment was in compliance.

An interview with this operator revealed that he liked fresh air in the cab. So he would put in ear plugs to protect himself adequately and he would roll down the window to get the fresh air into the cab. Why is MSHA requiring us to prevent miners to work in a comfortable environment

simply to prevent noise that is not even present at the eardrum?

Let's take another hypothetical situation. Let's say the guy was a smoker and he just didn't like the smoke building up in the cab. So he would roll down the window to keep the air a little cleaner in there. He can't do that because that short circuits an engineering control and now he's overexposed, on the outside of his eardrum, he's over exposed to noise where actually he's really protected because of the ear plugs.

A third example points out the difficulty MSHA has had in identifying where to require engineering controls. Three separate pieces of underground mining equipment. Now, this is mining equipment, not underground miners. Three separate pieces of underground mining equipment were recently cited for noise at Newmont simply because that's what the miners were operating at the start of the shift.

Newmont rotates underground miners to any number of different tasks in a single shift. And these might include loading, hauling, jumbo drilling which were the three pieces of equipment that were cited, but also jack leg

drilling, back filling, scaling, any number of other tasks. MSHA was unable to demonstrate that the cited pieces of equipment were the actual sources of the noise exposure, but still forced Newmont into costly, ineffective cumbersome and high maintenance engineering controls. Again, simply to attenuate noise that was not even present at the ear drum because of the proper use of hearing protection.

Point number two. A second major problem with the proposed rule is a requirement that noise be measured with instruments using the slow response site. It is well-established that slow response dosimeters will overstate noise exposure, particularly in a rapidly changing, fluctuating noise environments. Extensive documentation for that point is included in Newmont's prepared statement.

Newmont objects strongly to any requirement to use inaccurate instruments. And it would be unconscionable for MSHA to rely on inaccurate instruments to enforce its rules. MSHA should at least give operators the option to measure exposure accurately through the use of fast response dosimetry.

Point number three, Newmont objects to the proposal to allow workers the option to choose whether to accept audiometric testing in some circumstances, whether to wear proper hearing protection. If operators are required to offer audiometric testing and hearing protectors, miners should be required to accept them. To the extent protective measures are voluntary, they're taken less seriously by miners and operators will be handicapped in attempting to offer an effective program.

Point number four. Newmont endorses the continued use of the proposed 5 DBA exchange rate. Newmont agrees that a 3 DBA exchange rate would likely be infeasible.

Point number five. Newmont objects to the proposal to integrate all noise from ADDBA. Integration of noise at that level will unnecessarily inflate the measured noise dose. We have provided a table prepared by OSHA that shows how an ADDBA threshold will inflate those measurements under various eight hour exposure conditions in the inflation of our 12 hour shift which is common in a lot of western metal mines will obviously be greater.

Point number six. Newmont is concerned that

numerous other provisions of the rule are unclear or are unnecessarily burdensome, impractical and unnecessary to achieve the purposes of the rule. My prepared statement lists approximately 30 provisions of the rule and requests appropriate clarifications and modifications. For these points I refer MSHA to Newmont's written statement and ask that our requests for clarifications and modifications be granted.

Point number seven. Finally, I would like to point out that if Newmont's experience is representative, MSHA's estimation of noise exposure in metal and nonmetal mines is very likely inaccurate. Since 1994, no fewer than six noise citations issued to Newmont Gold Company have been vacated by MSHA because of improper and inaccurate methods to measure noise including improper sampling, improperly calibrated dosimeters, poor measuring methodology, failure to check placement of dosimeters, failure to check for sensitivity for interference with nearby radios, incorrect placement of dosimeters and similar problems.

In closing, I'd like to simply reiterate Newmont's request that the Agency adopt OSHA's policy of permitting

the use of hearing protection to attenuate noise to the PEL. On this important point, there is reason for MSHA to treat the mining industry differently than information treats the rest of American industry.

MSHA's rules not only be effective, but cost effective. It is not cost effective to adhere rigidly to the priority for any engineering and administrative controls.

Experience has shown that personal hearing protection in the context of a comprehensive hearing conservation program works to reduce noise exposure where it matters, at the eardrum.

Thank you for your time. I'd now like to answer any questions that you have.

MR. CUSTER: You mentioned two instances where citations were issued by federal inspectors in locations that you had previously surveyed and subsequently surveyed showing compliance. Have you ever conducted simultaneous sampling with MSHA inspectors?

MR. ROSE: I believe after that point, we started doing that with every sample that's been taken.

MS. PILATE: Can you give us any indication of what the results have been, the comparison?

MR. ROSE: Frequently, drastically different. Beyond that, I can't comment anymore specifically. We could try to address that in our post-hearing comments.

MS. PILATE: You indicated that start of shift noise sources resulted in citations, although miners did not work around those sources for the full shift.

MR. ROSE: That's right. Newmont, the nature of our underground work is that you send your miners where the work is. And the result is you'll start a guy on a drill. He'll be there for two hours. He'll then go to a jack leg drill which is a lot louder and it's not nearly as easy to control the noise.

In fact, I understand there's a P rating assigned to a jack leg drill as long you've got the muffler in place. And they can spend a certain amount of time there. They can spend a certain amount of time hauling. They can spend a certain amount of time scaling the rib. In these three citations, the inspectors cited the piece of equipment that the operators started on rather than the miner himself, the

miner's job description was the piece of equipment that the citation was assigned to.

MR. CUSTER: So in essence, the inspector may not have identified the primary constituent of the exposure, is that correct? In other words, the higher -- the machine that was observed at the beginning of the shift may not have been the unit that actually contributed to major noise component to the --

MR. ROSE: That's definitely possible. He did not have the information to make that decision when he wrote the citation.

MR. CUSTER: And you mentioned citation was vacated and I didn't quite understand what you were saying there. Could you clarify that?

MR. ROSE: That's clarified a little bit more in the prepared statement and I believe what it says is of the 11 noise citations Newmont has received, six have been vacated due to improper sampling. The other five are currently in litigation for similar reasons.

MR. CUSTER: The vacation was by MSHA or administrative law judge?

MR. ROSE: I believe the vacations were by MSHA. The other ones I believe are in litigation.

MR. VALOSKI: I have a couple of questions for you. You said that your office workers had an SDS of 7.69 percent and your workers in a high noise area had an SDS of 8.21 percent. Yet, your company-wide average is 6.29 percent.

MR. ROSE: That's correct.

MR. VALOSKI: How'd you get the 6.29 percent? If you got the high noise and the low noise --

MR. ROSE: It's the intermediate. It's the intermediate classification and we were able to identify occupations with negligible noise exposure.

MR. VALOSKI: Such as your office workers?

MR. ROSE: Such as office workers. Occupations with exposures that could realistically reach or exceed the PEL and those were the two clearest examples we had are the intermediates. We did not get specific on those.

MR. VALOSKI: Okay. Thank you. You also said that miners should be required to use HPDs and participate in audiometric testing. You want MSHA to put requirements

on the miners to do that?

MR. ROSE: That's a good idea. Put some responsibility -- and this is explained a little bit more in our prepared statement, but emphasize the responsibility of the miners in protecting their own hearing. Newmont can make a rule, but as far as actually making the miner stick the thing in his ear, only the miner can really choose to do that.

MR. VALOSKI: Do you have rules and regulations for hard hats?

MR. ROSE: We have our rules and regulations. The miner needs to understand his responsibility.

MR. VALOSKI: And what would happen if they don't wear their hard hats?

MR. ROSE: I can't comment on that. I'm an industrial hygienist. I'm not the supervisor.

MS. PILATE: On page seven of your written comments under economic analysis, it suggests that MSHA did not fully consider the costs of additional professional personnel that would be required to administer the programs. It also suggests that we did not adequately account for

extra costs to the items listed or training people in proper calibration and sampling procedures and also in obtaining rooms, equipment and supplies. On those last two, what exactly did you mean? Training people in proper calibration and sampling procedures?

MR. ROSE: That's something we can address in our post-hearing conference.

MS. PILATE: Okay. On those three issues, please.

MR. CUSTER: Thank you, Mr. Rose.

MR. ROSE: Thank you

MR. CUSTER: At this time, we have exhausted the list of speakers who have signed. Is there anyone in attendance who has not yet signed the speakers list and wishes to do so and make a comment for the record? Is there anyone who would like to come back after lunch and clarify or go into greater detail on anything that they've presented up to this point? Sir.

MR. SCHEIDIG: Paul Sheidig with Nevada Mining Association. I just on one question that was asked with regard to the five and three DBA levels, I was informed that obviously our written statement and my presentation had an

error in it. We support the five and not the three and I was not able to recognize that earlier.

MR. CUSTER: Thank you for that clarification.

MR. SCHEIDIG: Sure.

MR. CUSTER: With that, this hearing is adjourned until 1:00 o'clock.

(Whereupon a lunch break was taken from 11:22 p.m. to 1:00 p.m.)

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

[1:00 p.m.]

MR. CUSTER: It's now 1:00 o'clock and the panel will reopen the hearing. Is there anyone in the audience of six who wishes to make a statement at this time? Just for the record, we should clarify one point that was brought up by an earlier presenter having to do with miner responsibility. Neither the Mine Safety and Health Act nor the OSHA Act place burdens on the miner or the employee to comply with the regulations. That's entirely a mine operator or other employer of responsibility. It's the mandate of the Congress and this panel really has nothing to do with making a change in that approach to employee safety and health. And with that, and if there are no objections, we will close the record for an hour and reconvene at 2:00 o'clock.

(Whereupon, a brief recess was taken.)

MR. CUSTER: It's now 2:00 o'clock p.m. The hearing panel has reconvened. There are not presenters in the audience. The panel will adjourn until 3:00 p.m.

(Whereupon, at 2:00 p.m. the hearing was

adjourned.)

MR. CUSTER: It is now 3:00 p.m. The panel has reconvened to accept further testimony. No one is present to offer testimony at this time, so the panel will recess until 4:00 p.m.

(Recess.)

MR. CUSTER: It is now 4:00 p.m. The panel has reconvened to accept further testimony. No one is present to offer testimony at this time, so the panel will recess until 5:00 p.m.

(Recess.)

MR. CUSTER: It is now 5:00 p.m. This hearing is adjourned.

(Whereupon, at 5:00 p.m., the hearing in the above-entitled matter was adjourned.)

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REPORTER'S CERTIFICATE

DOCKET NO.: N/A

CASE TITLE: MSHA'S PUBLIC HEARINGS HEALTH STANDARDS FOR OCCUPATIONAL NOISE EXPOSURE IN COAL, METAL AND NONMETAL MINES

HEARING DATE: May 15, 1997

LOCATION: Las Vegas, Nevada

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 United States Department of Labor, Mine Safety and Health Administration.

Date: May 15, 1997

MarDean Nielsen

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