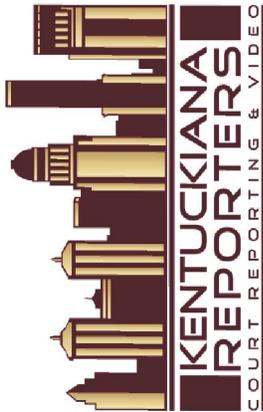


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Louisville, KY 40202

U.S. DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION

PUBLIC HEARING ON  
EMERGENCY TEMPORARY STANDARD  
SEALING OF ABANDONED AREAS - FINAL RULE

TRANSCRIPT OF PROCEEDINGS

Crowne Plaza Hotel  
1375 South Broadway  
Lexington, Kentucky 40504

July 12, 2007

**PROCEEDINGS**

(Hearing was called to order at 9:14 a.m.)

**MS. SILVEY:** Good morning. I'd like to get started, for those of you in the back, please. Again, good morning. My name is Patricia W. Silvey and I am the Director of Department of Labor Mine Safety and Health Administration, Office of Standards Regulations and Variances.

I will be the moderator of this public hearing on MSHA's Emergency Temporary Standard, or ETS, for sealing abandoned areas in underground coal mines.

On behalf of Richard E. Stickler, the Assistant Secretary of Labor for Mine Safety and Health, I want to welcome all of you here today.

And I want to underscore, at this point, our appreciation for your participation in this rulemaking, and for your attendance and for your attention and interest in all of MSHA's activities.

At this time I would like to introduce the members of the panel. The members of the panel are to my left, John Urosek, and John is with MSHA's Pittsburgh Health and Safety Technology Center. To

1 his left, Deborah Green, and Deborah Green is our  
2 lawyer with the Office of the Solicitor.

3 And to her left, Ron Ford. Ron Ford is  
4 the economist on this project and he is from my  
5 office.

6 To my right, Erik Sherer. Erik is with  
7 the Coal Mine Safety and Health, and to his right  
8 William Baughman, and he is the regulatory specialist  
9 from my office.

10 And I would also like to introduce at  
11 this time a few people in the audience who were also  
12 instrumental in working on this project and helping  
13 us develop this ETS and such, in an expeditious  
14 fashion.

15 We have on the front row here, Javier  
16 Romanach is with the Office of the Solicitor.

17 Clete Stephan with MSHA's Office of Tech  
18 Support, Rosalind Fontane with the Office of Tech  
19 Support, and Pamela Keene in the back by the table  
20 who is with my office. And the people that I just  
21 named were part of the committee that was just  
22 instrumental in developing the ETS.

23 Before we start the hearing, I would like  
24 to ask if everyone in this room would join me in a  
25 moment of silence in memory of the miners who died in

1 the Sago, the Alma and the Darby accident in 2006,  
2 and also all of the miners who died in the year 2006  
3 and who have lost their lives so far in mining  
4 accidents in this country.

5 And I would also ask if we would do this  
6 moment of silence in memory of the miners who have  
7 lost their lives worldwide. So if you would join me  
8 in a moment of silence, I would appreciate it.

9 (Moment of silence.) Thank you. As some of you know,  
10 this is the second of four hearings on MSHA's  
11 emergency temporary standard. The first hearing was  
12 held in Morgantown on Tuesday. The next hearing will  
13 be held in Denver, Colorado on July 17th, and the  
14 fourth will be in Birmingham, Alabama on July 19th.

15 In the back of the room we have copies of  
16 the ETS and the Federal Register notice extending the  
17 comment period to August 17th. The purpose of these  
18 hearings, as many of you who participated in MSHA's  
19 rule makings know, is to allow the Agency to receive  
20 information from the public that will help us  
21 evaluate the requirements in the ETS and produce the  
22 final rule that protects miners from hazards  
23 associated with sealed abandoned areas.

24 We will also use the data and information  
25 gained from these hearings to help us craft a rule

1 that responds to the needs and concerns of the mining  
2 public, so that the provisions of the ETS can be  
3 implemented in the most safe, effective and  
4 appropriate manner.

5 We published the ETS in response to the  
6 grave dangers that miners face when underground seals  
7 separating abandoned areas from active workings fail.

8 Seal failures at the Sago Mine and the  
9 Darby No. 1 Mine in 2006 raised awareness of the  
10 problems with the construction and design of  
11 alternative seals.

12 MSHA investigated these and other  
13 failures of alternative seals, and conducted in mine  
14 evaluations of these seals. MSHA also reviewed the  
15 history of seals in the United States and other  
16 countries. On February 8th, 2007, NIOSH issued a  
17 draft report entitled "Explosion Pressure Design  
18 Criteria for New Seals in U.S. Coal Mines.

19 The report makes recommendations for seal  
20 design criteria which would reduce the risk of seal  
21 failure due to explosions in abandoned areas of  
22 underground coal mines. Based on MSHA's accident  
23 investigation reports, the draft NIOSH report, MSHA's  
24 in mine seal evaluations, and review of technical  
25 literature, MSHA has determined that new standards

1 are necessary to immediately protect miners from  
2 hazards associated with sealed areas.

3           The emergency temporary standard  
4 addresses seal strength, design and installation,  
5 construction and repair, sampling and monitoring and  
6 training. This ETS was issued in accordance with  
7 Section 101 (b) of the Federal Mine Safety and Health  
8 Act of 1977, the Mine Act, and Section 10 of the Mine  
9 Improvement and New Emergency Response of the Mine  
10 Act of 2006.

11           Under Section 101 (B) of the Mine Act,  
12 the ETS is effective until superseded by a mandatory  
13 standard. A mandatory standard under the Mine Act  
14 must be published no later than nine months after  
15 publication of the ETS.

16           And also in accordance with the Mine Act,  
17 the ETS serves as the proposed rule and commences  
18 this rulemaking proceeding. As stated earlier, we  
19 would use the information provided by you to help us  
20 decide how best to craft the final rule.

21           The preamble to the rule discusses the  
22 provisions of the ETS and indicates a number of  
23 specific requests for comment and information. As  
24 you address the provisions of the ETS, and any  
25 specific requests for comment, even in your comments

1 to us here today, or in information sent to us in  
2 Arlington, please be as specific with respect -- as  
3 possible with respect to the impact on miner health  
4 and safety, mining conditions, and feasibility of  
5 implementation.

6 At this point, I want to reiterate the  
7 specific requests for comment and information that we  
8 included in the preamble to the ETS. Number one, in  
9 the ETS, MSHA considered a performance based approach  
10 to the strength requirements for seals.

11 However, as you know, MSHA includes  
12 specific pounds per square inch numbers when  
13 referring to the strength of seals in the ETS as the  
14 Agency believes that this approach represents a more  
15 appropriate approach.

16 MSHA is interested in receiving comments  
17 on the Agency's approach to the strength requirement  
18 for seals. MSHA is also interested in receiving  
19 comments on the appropriateness of a three tiered  
20 approach to seal strength in the ETS, and the  
21 strategy in the ETS for addressing seal strength  
22 greater than 120 psi.

23 Under the ETS requirement, new seals must  
24 be constructed and designed to maintain -- to  
25 withstand a 50 psi overpressure when the atmosphere

1 in the sealed area is monitored and maintained inert.  
2 A 120 psi overpressure if the atmosphere is not  
3 monitored, and is not maintained inert, and an  
4 overpressure greater than 120 psi if the atmosphere  
5 is not monitored and is not maintained inert and  
6 certain other specified conditions are met.

7 MSHA requests comments on the  
8 appropriateness of the Agency's strategy for  
9 addressing seal strength greater than 120 psi. If  
10 commenters believe a different regulatory approach  
11 should be developed in the final rule, MSHA would  
12 like commenters to provide the details for such a  
13 strategy, the rationale for such a strategy, and the  
14 feasibility of using such a strategy.

15 MSHA seeks the views of the mining  
16 community regarding whether there are other effective  
17 alternatives to the requirements in the ETS with  
18 respect to providing the most appropriate and  
19 protective action for miners exposed to hazards of  
20 existing sealed areas.

21 Most alternative seals constructed before  
22 July, 2006 were constructed to withstand a static  
23 horizontal pressure of 20 psi. MSHA considered  
24 requiring mine operators to remove the existing seals  
25 and replace them with seals that withstand at least

1 50 psi.

2 MSHA also considered whether to require  
3 mine operators to build new seals outby existing  
4 seals, or structurally reinforce them. At this time,  
5 MSHA believes that replacing existing seals is  
6 impractical, and instances may create additional  
7 safety hazards.

8 MSHA seeks comments on the feasibility of  
9 including in the final rule a requirement that  
10 existing seals be removed and replaced with higher  
11 strength seals. MSHA also considered whether to  
12 require mine operators to reinforce existing seals.

13 The Agency is concerned with the  
14 feasibility of this option and whether such a  
15 requirement could also expose miners to greater  
16 hazards. MSHA however will continue to explore  
17 technological advances addressing feasible and safe  
18 methods to reinforce existing seals in underground  
19 coal mines.

20 Commenters are encouraged to submit  
21 information and supporting data regarding new  
22 technologies to reinforce seal strength. MSHA  
23 believes that the sampling strategy in the ETS will  
24 yield results that reflect a reasonable  
25 representation of the atmosphere in a sealed area.

1 MSHA requests comments addressing the  
2 sampling approach in the ETS. The Agency is  
3 particularly interested in comments concerning  
4 sampling, the sampling frequency, including sampling  
5 only when a seal is outgassing.

6 MSHA requests comments on whether another  
7 approach is more appropriate in the final rule, such  
8 as when the seal is ingassing. MSHA also requests  
9 comments, information, and experiences of the mining  
10 community concerning sampling sealed areas.

11 In the ETS, mine operators must develop a  
12 sampling protocol to be included in the ventilation  
13 plan and submit it to the district manager for  
14 approval. The ETS requires the mine operator to  
15 implement the action plan specified in the sampling  
16 protocol, or to withdraw all persons from the  
17 affected area when specified concentrations are  
18 encountered.

19 Action plans must provide protection to  
20 miners equivalent to withdraw and address the hazards  
21 presented, and actions taken when gas samples reach  
22 levels specified in the ETS.

23 Historically, when methane levels reach  
24 4.5 percent in active areas of mines, miners were  
25 withdrawn from the areas that were dangerous due to

1 high concentrations of methane.

2 MSHA requests comments on this approach  
3 and whether it provides adequate protection for  
4 miners.

5 Commenters are encouraged to submit  
6 specific language, with supporting data for MSHA to  
7 consider as the Agency develops the final rule.

8 MSHA is soliciting comments concerning  
9 issues related to establish in a sampling baseline.  
10 The ETS requires the mine operators specify  
11 procedures in the protocol to establish a baseline  
12 analysis of oxygen and methane concentrations at each  
13 sampling point over a 14 day sampling period.

14 The baseline must be established after  
15 the atmosphere in the sealed area is inert or the  
16 trend reaches equilibrium. MSHA is particularly  
17 interested in comments concerning the establishment  
18 of this baseline.

19 The Agency also requests comments,  
20 information and experiences with sampling of sealed  
21 areas, including data, analytical information,  
22 establishment of equilibrium, and trends.

23 MSHA is requesting comments on the  
24 appropriateness of the ETS requirement regarding the  
25 use of open flames or arcs associated with cutting

1 and soldering activities within 150 feet of a seal  
2 and the feasibility of this requirement.

3 The Agency suggests that commenters  
4 provide specific rationale in support of that  
5 position, and include alternatives, if applicable.  
6 The ETS requires that each newly constructed seal  
7 have at least two sampling pipes.

8 One sampling pipe must extend into the  
9 sealed area approximately 15 feet. The second pipe  
10 must extend into the middle of the intersection with  
11 the first connecting crosscut.

12 The ETS affords flexibility to mine  
13 operators for the placement of the sampling end to  
14 allow a more accurate sampling strategy to better  
15 protect miners.

16 Therefore, the ETS requires that the  
17 location of sampling points be specified in the  
18 protocol provided under the ETS.

19 And MSHA requests comments on this  
20 provision, and the number and the location of  
21 sampling pipes for the final rule. The ETS requires  
22 that corrosion resistant water drainage system be  
23 installed in the seal at the lowest elevation within  
24 a set of seals, and that seals not impound water.

25 MSHA requests comments on this

1 requirement for water drainage systems, including  
2 effective alternatives for a final rule. The Agency  
3 also requests comments on the appropriateness of the  
4 ventilation plan content and whether additional  
5 information should be included.

6 As you know, if you are familiar with the  
7 ETS, the operator must include a number of  
8 information items in the ventilation plan. When  
9 submitting information, please include your  
10 information that supports your position, and please  
11 include data related to projected economic and  
12 technological feasibility.

13 The ETS requires removal of insulated  
14 cables from the area to be sealed, and removal of  
15 metallic objects through or across seals. MSHA  
16 believes that removal of insulated cables and  
17 metallic objects through or across seals, if  
18 feasible, and will not involve significant technical  
19 or practical problems.

20 The Agency solicits comments on this  
21 provision. MSHA is also requesting comment on the  
22 scope and possible alternatives concerning site  
23 preparation, examinations, training, and  
24 notifications related to the construction and repair  
25 of seals.

1           The Agency has prepared a regulatory  
2 economic analysis for the ETS. The regulatory  
3 economic analysis contains supporting cost data.  
4 MSHA requests comments on all of the estimates of  
5 costs and benefits presented in the ETS and the  
6 regulatory economic analysis.

7           To date, MSHA has received one comment,  
8 and I believe that's still accurate, on the ETS. You  
9 may view that comment and any other comments that the  
10 Agency received on the Agency's website at  
11 [www.msha.gov](http://www.msha.gov), under the section entitled rules and  
12 regulations.

13           MSHA has answered a number of compliance  
14 questions from the mining public covering a range of  
15 issues on the ETS. These questions and answers are  
16 posted on the Agency's seal single source page. The  
17 format of the public hearing, as many of you know who  
18 have participated in these hearings in the past know  
19 will be as follows: formal rules of evidence will not  
20 apply, and this hearing will be conducted in an  
21 informal manner.

22           Those of you who have notified MSHA in  
23 advance of your intent to speak, or have signed up  
24 today to speak, will make your presentations first.

25           After all scheduled speakers have

1 finished, others can request to speak.

2 If you wish to present written statements  
3 or information today, please clearly identify your  
4 material. You may also submit comments following  
5 this public hearing. To be considered, they must be  
6 submitted to MSHA by August 17th, 2007, the close of  
7 the comment period.

8 Comments may be submitted by any method  
9 identified in the ETS. MSHA will post transcripts  
10 from the public hearings on the Agency's website.  
11 Each transcript should be posted there approximately  
12 one week after the completion of the hearing.

13 We will now begin with persons who have  
14 requested to speak. And please begin by clearly  
15 stating your name and organization for the record to  
16 make certain we have an accurate record.

17 And also, I would like to ask you to  
18 spell your name, please, for the reporter, if you  
19 would. Our first speaker is -- at this point we will  
20 now start with our first speaker, and our first  
21 speaker is Melissa Lee with the Appalachian Citizens  
22 Law Center.

23 Miss Lee.

24 **MS. LEE:** Thank you all for allowing me to speak  
25 today. I'm Melissa Lee, m-e-l-i-s-s-a, l-e-e. I am

1 here with my attorney, Wes Addington, with the  
2 Appalachian Center, and Tony Opegard. This was my  
3 husband.

4 And I do stress, was my husband. Again,  
5 I am Melissa Lee, one of five Kentucky Darby widows.  
6 Ugly word, don't you think, widow. I'm a widow due  
7 to the fact that the seals at Kentucky Darby, which  
8 were built May of '06, were faulty and they were  
9 constructed improperly.

10 But that is only half of the problem.  
11 The major problem was the same seals were never  
12 inspected or confirmed to have been built properly.  
13 They weren't up to standard. The materials used were  
14 not up to code. The sealant was slapped on the  
15 seals.

16 It wasn't even applied properly. The  
17 gentlemen say that they put on a rubber glove and  
18 smeared the compound on to the seals. Smeared. With  
19 that, clearly, MSHA did not approve the sealant. It  
20 was proven that it was not one of the sealants that  
21 was to be used.

22 Jimmy was a man who loved his job. He,  
23 I've said before, loved the smell of coal. Sometimes  
24 I would joke that I'm going to have to dab coal dust  
25 behind my ears to keep him home on Saturdays instead

1 of going into work.

2 And he would laugh and say that's the  
3 only other woman that I have is the mine. Don't feel  
4 inferior. Just be a little bit jealous of her. The  
5 day that the state released the report to us, and  
6 then the MSHA report, it was like I was a bird  
7 sitting on my husband's shoulders.

8 I owned my own business in 2006. A new  
9 business. I had been open almost a year. Two months  
10 and it would have been a year that I had opened my  
11 own business with Jimmy backing me 100 percent.

12 I kissed him goodbye on May 19th, 2006  
13 with the hopes that the next morning at 4:00 a.m. we  
14 were leaving to go away, away for a weekend that we  
15 had not had alone in six years. The report read just  
16 like I was sitting on his shoulder hearing  
17 everything.

18 He was told by Amon Cotton Brock  
19 (phonetic), the foreman, that there was a job that  
20 needed to be done. In the MSHA and state report on  
21 Mr. Brock's notepad that he carried in his pocket, it  
22 said remove strap.

23 Jimmy was never a miner to leave his  
24 foreman hanging. Jimmy, like I said, loved his job.  
25 Little did my husband know that the job he was going

1 to do would cost him his life, and his fellow co  
2 -workers, which he considered not just his co-workers  
3 but his brothers, Roy Middleton, Paris Thomas, Bill  
4 Petra.

5 These gentlemen had worked together at  
6 Manila pan mining.

7 They went to Kentucky Darby at different  
8 times, but they were always, always together. Isn't  
9 it the oddest thought that they would die together,  
10 too.

11 During the explosion, my husband's head  
12 was partially -

13 - he was partially decapitated.

14 The top part of his head was removed in  
15 the explosion and he had a cylinder impale his chest.  
16 Any coal miner sitting in this room, how would you  
17 feel if this was the day you kissed your wife and  
18 children goodbye.

19 You go to do a job, a job that is not  
20 something that is just out of the ordinary. This was  
21 a common job. Using a torch, to cut a metal strap,  
22 was not uncommon. That was part of a miner's job. I  
23 doubt there's a miner in this room who hasn't at one  
24 time or another seen or used a torch to cut a piece  
25 of metal underground.

1 My husband's life was taken from us. My  
2 husband became a father for the first time at the age  
3 of 30. At the age of 30, he had become a father to  
4 Seth Grayson. Eighteen months later he became a  
5 father to Ross Braden. Ross was 21 months old when  
6 his father died.

7 He just celebrated his third birthday on  
8 the sixth of July. When he was 21 months old he  
9 wasn't speaking. Jimmy never got to hear his son say  
10 Daddy or Dada. He's three years old now. Seth looks  
11 just like his father.

12 The older boys, Jimmy's stepsons that he  
13 never referred to as stepsons, are 15 and 13. I'm a  
14 widow, and I hate the word. So be it, this is what  
15 happened at Kentucky Darby. It can't be swept under  
16 the carpet. I refuse for it to be swept under the  
17 carpet.

18 The problem with the seals was the lack  
19 of inspection, and please, Ms. Silvey, if I'm  
20 correct, if you have a brand new vehicle, and you're  
21 driving it, and say for instance it's two years down  
22 the road, and you get a card in the mail from GMAC  
23 saying we're having a recall on your car, bring it  
24 in, what do you do.

25 You take it in and have that faulty piece

1 of equipment removed and a new one put in. Why  
2 should we overlook the seals that have already been  
3 built.

4 **MS. SILVEY:** Um-hum.

5 **MS. LEE:** Why should we overlook those and go  
6 on. Okay, we're going to start inspecting the ones  
7 that are installed now. That's wonderful. I have a  
8 brother and two uncles and some cousins that are  
9 miners. Wonderful. That's great. How about the  
10 seals that were built in 2006 that have not had a  
11 problem.

12 Should they not be removed and  
13 reconstructed with MSHA approving their rebuilding.  
14 This only is common-sense. This is not something  
15 that is out of the ordinary done. We do it for our  
16 vehicles. If you build a home, and you use a piece  
17 of material that is not up to code, and they have a  
18 recall on say, for instance, a piece of sheet rock  
19 because of the material that it's made of, they will  
20 contact all homeowners and say, you know, you have  
21 purchased this in the past.

22 You need to redo your porch, your bedroom  
23 wall, for the safety of your children, for the safety  
24 of your family. Why not go back in to every seal  
25 that has been built and inspect them, and if they're

1 not to code, rebuild those, for the safety of all  
2 these men.

3 I'm sure every one of you who are married  
4 would like to go home to your wife every night,  
5 wouldn't you? Do you all like to kiss your children?

6 My husband can no longer kiss his  
7 children. Seth will be five in December. Not a day  
8 goes by that he doesn't -- this is his picture.

9 I had to take this one from his bedroom.  
10 He misses his father. He tells people, when he goes  
11 to the playground -- when I take him out to the park  
12 in the afternoon, he tells kids in the sandbox, my  
13 daddy boomed up to heaven. That's what my four year  
14 old's comments are.

15 The first thing he wants everyone to know  
16 is his father boomed up to heaven. That he went to  
17 work and God come and took him in a boom. No one  
18 told my son about the explosion. That's his  
19 explanation because he says God come and told him  
20 that.

21 The boom was the cause of faulty sealant,  
22 bad craftsmanship, and the fact being that no one  
23 inspected those seals when they were built. No one  
24 is being held at fault for those seals, but we are  
25 the ones left grieving.

1 We're the ones that are left behind  
2 without husbands, with kids that don't have daddies.  
3 These three little girls behind me, and my four sons,  
4 miss their daddy. If you look right here at Natalie,  
5 this is looking at Roy Middleton.

6 This child -- my husband would say  
7 there's little Roy and Natalie would go errrrrr. She  
8 would growl. This is what her -- this is -- if you  
9 look at her, this is what her daddy looks like. Mary  
10 has to look at this child every day and remember Roy.

11 Danielle, her father was proud of her.  
12 He bragged about her. He was all the time -- the men  
13 would get together and discuss their children and  
14 their accomplishments. My 15 year old runs cross  
15 country.

16 Jimmy went without work tires on his work  
17 car to make sure Hayden had his shoes to run here in  
18 Lexington during state.

19 My son doesn't have that anymore. He  
20 never was a stepfather. He was a Daddy, and I no  
21 longer have my husband. I never have to worry about  
22 ever dabbing coal dust on the back of my ears anymore  
23 to entice him because he's not with me anymore.

24 He was a wonderful, wonderful man, and I  
25 miss him dearly. But I ask you all to take that into

1 consideration. These seals could have -- if they had  
2 been inspected like they should have been, maybe they  
3 would have found the fault then and my husband, Roy  
4 Middleton, Paris Thomas, Bill Petra, Cotton Brock,  
5 they never would have died.

6 **MS. SILVEY:** Thank you, Ms. Lee.

7 **MS. LEE:** Thank you.

8 **MS. SILVEY:** I would just like to say before you  
9 leave, Ms. Lee, on behalf of my panel here, and I  
10 know I express the feelings for them that, again, we  
11 give our sympathies and our condolences to you and  
12 your family and your children for your husband.

13 And I know there's no way we can say  
14 exactly that we know what you're going through, but I  
15 want you to know a little bit that we do.

16 **MS. LEE:** Again, Ms. Silvey, I would just like  
17 to -- this is not for Jimmy any longer. This is for  
18 my brother Bobby, my Uncle John, the ones that are  
19 left mining. Nothing brings Jimmy back, nothing.  
20 But you all can save other miners.

21 **MS. SILVEY:** Thank you. Next, we have Mary  
22 Middleton, Appalachian Citizens Law Center.

23 **MS. MIDDLETON:** My name is Mary Middleton, m-  
24 a-r-y, m-i-d-d-l-e-t-o-n. I am the 32  
25 year old widow of Roy Middleton that was killed by

1 carbon monoxide poisoning at Kentucky Darby May 20th  
2 of 2006. We were married for 13 years and we had two  
3 daughters.

4 My oldest daughter, Danielle Middleton,  
5 age 18, Natalie -- I mean 14, and my youngest, age  
6 eight.

7 My husband, he worked in the mines for  
8 practically half of his life, which was 18 years  
9 because he was just 35 years of age when he was  
10 killed.

11 And he had been employed with Kentucky  
12 Darby for three years. He had worked for Ralph  
13 Napier at previous mines, but for three years at  
14 Kentucky Darby.

15 He was a repairman/electrician is what he  
16 held as his job duties, the last of his job, it was a  
17 repairman and electrician.

18 And I would just like to talk to you all  
19 today about these seals. I feel like if the seals  
20 had been built stronger at Kentucky Darby, that my  
21 husband would probably still be alive today because  
22 the carbon monoxide wouldn't have got through them  
23 and that's what killed him.

24 My husband, he was a devoted Christian  
25 and a Deacon at the Church of God. He was just the

1 greatest guy ever and the best father. He really  
2 didn't like coal mining, but it was just a way of  
3 living in Harlan because we had children, and that's  
4 about the only source of work that you could work at  
5 to make a decent living.

6 And I feel like if the seals had been  
7 built properly at Kentucky Darby, even at a 20 psi  
8 standard, they may have withstood the explosion, or  
9 at least lessened the impact of the explosion, and  
10 perhaps the overcast -- the overcast had fallen in  
11 the roadway and that's why my husband could not  
12 escape, him and two other miners.

13 And I agree that the company should have  
14 to make sure that all equipment is removed from the  
15 area to be sealed, just sealed off, not to leave  
16 anything, any old equipment, anything back behind  
17 there. And I also think it's important to remove any  
18 metal straps that extend from the working part of the  
19 mine into the sealed areas because that was a problem  
20 at Kentucky Darby.

21 And I'm asking you today to please do not  
22 weaken these rules so that the coal -- I have these  
23 two pictures here of the -- money can't buy this. I  
24 had this family, but money -- by spending money, you  
25 can prevent another wife or child from having to go

1 visit -- we go visit our husband and father now.

2 I don't want another family to have to be  
3 experiencing what me and my daughters are going  
4 through right now. Thank you.

5 **MS. SILVEY:** Thank you, Ms. Middleton. And  
6 again, on behalf of our panel here, I would like to  
7 express our sympathies to you and your daughters and,  
8 you know, we are so very sorry. And that's -- with  
9 you, that's one of the reasons we issued this ETS,  
10 but we do express our sympathy. Thank you. Next, we  
11 have Ms. Priscilla Petra.

12 **MS. PETRA:** Petra.

13 **MS. SILVEY:** Right, Petra.

14 **MS. PETRA:** My name is Priscilla Petra, p-r-  
15 i-s-c-i-l-l-a, p-e-t-r-a, and I am the  
16 widow of George W. Petra. Most people know him as  
17 Bill. His family called him Billy. We've been  
18 married for 16 years. We have two children, William  
19 Daniel, Little Bill, and Ashley who's 12. She's with  
20 me.

21 Bill was working the mines for I guess  
22 more than 25 years, and he spent a lot of time at  
23 Kentucky Darby. He was 49 when he died and his death  
24 I truly believe was because of carbon monoxide from  
25 the seals.

1 As Melissa has clearly explained, they  
2 weren't built properly, and I don't want him to be  
3 just a statistic or a name on a list of dead miners.  
4 I want his death to make a difference for the miners  
5 who are still working to provide for their families.

6 So the reason that I'm here today is to  
7 support the rule for stronger seals. Had the seals  
8 at Kentucky Darby been built properly, my husband  
9 Bill and the other miners I believe could have made  
10 it out because the seals could have held.

11 Instead, the seals were so -- the seals  
12 were so poorly constructed that I believe that it  
13 wouldn't have withstood about 4 psi. And that's  
14 pretty pitiful.

15 I know that there's already been some  
16 opposition to the rule.

17 I know that there has been men who have  
18 argued that the rule is too stringent, that it will  
19 cost the coal companies too much money, that MSHA  
20 should give full control to professional engineers to  
21 build the seals, but hasn't the coal companies and  
22 these engineers already had control for years.

23 And look at just in the past year, 17 men  
24 have died because of improper built seals. Coal  
25 operators, since mining began in this country, have

1 been entrusted with the lives of thousands of men,  
2 and they've repeatedly violated safety rules and  
3 ignored MSHA's warnings and have lived above the law.

4 They are in a class of their own. They  
5 think that they live above the law. If I'm out there  
6 driving a car and I cause an accident, and somebody  
7 dies, I have to pay that price. I mean I'm going to  
8 be liable.

9 Are coal operators liable?

10 It seems like they can get away with  
11 murder.

12 And yet, they are above the law. They  
13 can't be prosecuted for criminal charges when they  
14 are at fault for the deaths of these men. How many  
15 more wrongful deaths are going to have to take place  
16 before these rules are truly, truly enforced.

17 I think operators have proven that they  
18 can't be on that honor system. They've got to have  
19 someone standing over them making sure that they do  
20 their job to provide a safe working place. You know,  
21 men have a choice.

22 They don't have to work in the mines.  
23 You know, I've heard people say, well, you know, your  
24 husband didn't have to go in that mine. Well, no he  
25 didn't, but then you look at our area in Harlan and

1 what else is there to provide for your family.

2 I think the coal industry makes millions  
3 of dollars on the backs of coal miners, and money can  
4 make the mines a safer place. It's not the problem.  
5 The problem is they don't care. They don't want to  
6 take the time to build these things correctly.

7 I guess if they slow down production,  
8 that means less money for them, but yet I have --  
9 even if they slow down on production and they bring  
10 in less money, I still haven't seen a coal operator  
11 in a food stamp line or -- I've seen coal operators  
12 with million dollar homes.

13 I mean they're making that money. They  
14 can make these mines safer and I'm just -- they knew  
15 to make sure that they do their job right. So don't  
16 back down. MSHA has finally began to recognize that  
17 the system has failed miners.

18 The rule for stronger seals is very  
19 important. Every time that men goes in the mine with  
20 the seals that are not properly built, it's like  
21 playing Russian roulette. Well, maybe tonight it  
22 won't explode. Maybe tomorrow night we go in we  
23 won't come home.

24 Please don't allow political pressure,  
25 and pressure from the coal industry, to cause you to

1 water down the rule or to change it. Make operators  
2 liable for their actions. Every other citizen and  
3 worker in this country has to abide by the law.

4 Coal operators and the coal industry  
5 should not be exempted. My children don't have their  
6 father.

7 Had Ralph Napier and his foremen, had  
8 they trained those men properly, had they done what  
9 was right, he would be home today.

10 And when my daughter has her first prom,  
11 he would see her there in her prom dress. When Bill  
12 or Ashley get married, he would be there. Now, who's  
13 going to walk her down the aisle.

14 You know, he's not going to see his first  
15 grand baby, and I just really beg you to please keep  
16 the rule as it is and make sure it's enforced. Thank  
17 you.

18 **MS. SILVEY:** Thank you, Ms. Petra, and we want  
19 to express our sympathies to you and to your family  
20 also. We understand. Thank you. Next we have Scott  
21 Howard, Appalachian Citizens Law Center.

22 At this point we are going to -- at this  
23 point then, for the audience, we are going to view a  
24 video, and so that's the next in the presentation  
25 from the Appalachian Citizens Law Center. So if you

1 would just let us take a minute, please.

2 (Whereupon the video was viewed.)

3 **MS. SILVEY:** Thank you Mr. Howard. Maybe I'll  
4 ask Mr. Opegard a few questions. He probably would  
5 prefer that instead of you.

6 Just after continuation of the video, and  
7 in terms of my responsibility here, Mr. Opegard,  
8 representing MSHA, if we could get the name of the  
9 mine, for the record, and when was the video taken,  
10 and are these seals still in existence. And if you  
11 could --

12 **MR. HOWARD:** It's on the video. When you watch  
13 the video you got, the sound on it, it will tell you  
14 the date that the video was taken, the mine, the  
15 company, the session. I narrated it on --

16 **MS. SILVEY:** Oh, that's on the video?

17 **MR. HOWARD:** Yeah, if you listen to the sound,  
18 it's on there.

19 **MS. SILVEY:** That's fine.

20 **MR. OPEGARD:** It was taken on April 20th, but we  
21 would ask if you --

22 **MS. SILVEY:** April 20th of this year?

23 **MR. OPEGARD:** Yes. We would ask that if you --  
24 Mr. Baughman had told me on the phone that you might  
25 put it on the Web, on your website. We would ask if

1 you do that that the narration not be included, that  
2 it be muted.

3 **MS. SILVEY:** Okay. We have not decided that  
4 issue.

5 **MR. OPEGARD:** Okay.

6 **MS. SILVEY:** Okay. All right. Okay, well,  
7 again, thank you, Mr. Howard. And as Mr. Howard  
8 said, we will all know that that information is on  
9 the --

10 it's on the video so that everybody -- so  
11 we will look at that information and we will take the  
12 actions that we -- that the Agency, from an Agency  
13 standpoint, that we have to, with respect to that  
14 mine and those seals.

15 Is there anything else you want to say  
16 about that?

17 **MR. SHERER:** We will put it in the record and it  
18 will be available.

19 **MS. SILVEY:** Yeah, we will put it in the record,  
20 too, yeah.

21 **MR. OPEGARD:** Mr. Howard wanted to make it clear  
22 that he was presenting the video to MSHA as evidence.  
23 So, you know, as his lawyer, we would certainly  
24 consider that protected activity under the Mine Act  
25 for Section 105 (c).

1       **MS. SILVEY:** Okay.

2       **MR. OPEGARD:** We want to make that clear.

3       **MS. SILVEY:** Okay.

4       **MR. OPEGARD:** We don't expect any retaliation  
5 against him for coming forward to this public  
6 service, what he's doing.

7       **MS. SILVEY:** Okay. That's duly noted. Thank  
8 you. Before I -- before I proceed with the next  
9 witness, Mr. Addington, we had another person who  
10 helped tremendously on this rule, and I missed -- you  
11 know, you know when you're calling people's names,  
12 inadvertently you miss somebody, and he's our field  
13 representative, Dennis Swintosky (phonetic). Dennis,  
14 are you here?

15       **MR. SWINTOSKY:** Yeah.

16       **MS. SILVEY:** Where is Dennis? And he's probably  
17 just not --

18       **MR. SWINTOSKY:** I'm glad you missed me.

19       **MS. SILVEY:** No, he's just giving me a break.

20               Trust me. He's just smiling, always  
21 smiling and so I'm sorry. I apologize for missing  
22 Dennis. Okay, next we will have Mr. Wes Addington  
23 with the Appalachian Citizens Law Center.

24       **MR. ADDINGTON:** Ms. Silvey, members of the  
25 panel, and those within the Agency that are present

1 in the room. My name is Wes Addington, a-d-d-i-n-g  
2 -t-o-n.

3 I'm an attorney and I'm testifying on  
4 behalf of the Appalachian Citizen Law Center. It's a  
5 mine safety project.

6 The Law Center is a nonprofit law office  
7 in Prestonsburg, Kentucky. We advocate for  
8 additional protections for coal miners. We represent  
9 miners that have been discriminated against for  
10 making complaints about safety and conditions in the  
11 mines.

12 We also represent miners and widows in  
13 black lung benefits claims. Seal strength  
14 construction and monitoring is an area of grave  
15 danger in the nation's mines. I applaud MSHA's  
16 emergency temporary standard on mine seals and  
17 commend this panel and the rest of the Agency for the  
18 work they've completed, and for their continued work  
19 towards a final rule.

20 I urge MSHA to retain the current  
21 protections for miners in the ETS, not to weaken the  
22 rule in any way, and actually to increase protections  
23 for miners in a few areas that I will discuss.

24 Turning to 75.335, seal requirements, 335  
25 (a), seal strength, I applaud the new requirements

1 for seal strength and monitoring of new seals.

2           Unfortunately, the disasters at Sago and  
3 Darby illustrated that the former requirements for  
4 seal construction and monitoring were completely  
5 inadequate to protect miners in this country.

6           Requiring that all seals designed to  
7 withstand less than 120 psi to be monitored and  
8 continuously maintained inert is a major step to  
9 protect America's miners. More than doubling the psi  
10 requirement of all new seals and requiring monitoring  
11 in an inert atmosphere behind all existing seals  
12 designed to withstand under 120 psi is commendable.

13           However, I would question the ETS's  
14 failure to require at least a 50 psi standard for  
15 existing seals constructed before May 22nd. I don't  
16 understand how MSHA can do such a good job of  
17 providing solutions to this admitted grave danger  
18 looking forward, yet completely fails to address the  
19 grave dangers that is currently lurking for 30,000  
20 miners in 372 of the nation's mines.

21           The ETS raises a number of solutions for  
22 existing seals, such as replacement, reinforcement,  
23 or building new seals outby existing seals. But the  
24 Agency discounts each approach because they may not  
25 provide optimal results in some cases.

1 Just because you don't have a one-size  
2 -fits-all solution for existing seals doesn't mean the  
3 correct approach is to effectively do nothing about  
4 this grave danger. The final rule must provide a  
5 solution, if not multiple solutions, to bring all  
6 existing seals up to the 50 psi standard.

7 Turning to 335 (b), sampling and  
8 monitoring requirements, I commend the new sampling  
9 and monitoring requirements, including requiring a  
10 certified person to do the monitoring and requiring  
11 that they be retrained annually.

12 It's correct to continue to define inert  
13 as less than three percent methane or more than 20  
14 percent methane. However, I would like to see more  
15 explanation in the final rule as to what "not all  
16 close to explosive range" means, in cases where the  
17 district manager can approve a less frequent sampling  
18 strategy.

19 I would like a further explanation of  
20 what does "far less or far greater" mean as it's  
21 listed currently in the comments. It's a good idea  
22 to have monitoring protocol approved as part of the  
23 ventilation plan.

24 This builds in a layer of accountability,  
25 not only for the mine operator but also for the

1 Agency.

2 MSHA did a good job throughout the ETS of  
3 creating accountability across the board for the  
4 design, construction and monitoring of seals.

5 However, I do have a problem with 335 (b)  
6 (4) regarding the action plan that must be approved  
7 by MSHA. The plan goes into effect when the  
8 atmosphere behind the seal is in the explosive range  
9 for two hours, if I'm reading the rule correctly.

10 The ETS says that the action plan must  
11 provide protection to miners equivalent to  
12 withdrawal.

13 I'm not sure how that even theoretically  
14 is possible because if you created a situation where  
15 the atmosphere behind a seal is in the explosive  
16 range, dictating that this action plan go into  
17 affect, well, obviously there's some concern there,  
18 and I don't understand how anything could be  
19 equivalent to withdrawal, I mean unless there is some  
20 noted danger outside the mine.

21 So I would recommend withdrawal when the  
22 atmosphere is explosive behind a seal. The record  
23 -keeping requirements regarding hazardous conditions  
24 in 335 (b) (6) are necessary and should already be  
25 standard practice in a safe mine.

1 335 (c), prohibition of the use of open  
2 flames or arc within 150 feet of a seal is protection  
3 that may prevent a repeat of a Darby. Turning to  
4 336, seal design, I commend the Agency for requiring  
5 the seal design applications and installation  
6 procedures be approved prior to construction.

7 Professional engineers should certify the  
8 seal design application and should oversee  
9 installation and should certify that the installation  
10 complies with the site specific seal design. This  
11 also adds a layer of accountability for the safety  
12 and confidence for miners and mine operators that  
13 they desperately need.

14 Turning to 337, seal construction and  
15 repair, I applaud the removal of all metallic objects  
16 behind or through seals. Darby also showed that this  
17 should be done. I applaud the requirement of a  
18 certified person, persons present before, during and  
19 after seal installation as noted in 337 (b).

20 Also the countersigning requirement by  
21 mine management builds in accountability and provides  
22 a standard for mine management to stay involved  
23 during seal construction. 335 (c) is a good  
24 requirement.

25 Mine management should already want to

1 know whether the seal was installed as designed.

2 Certification of this fact is no burden  
3 whatsoever. 337 (b), notification requirements are  
4 necessary so MSHA can properly oversee seal  
5 construction.

6 I do recommend amending a few of the  
7 record-keeping requirements, however, and  
8 specifically looking at the graph on Page 811, and  
9 looking at 337 (e), training, and in the comments,  
10 MSHA notes that failure of a seal may result in  
11 significant injury, loss of life and/or significant  
12 economic loss.

13 Based on recent explosion investigations,  
14 MSHA learned that numerous persons involved in  
15 constructing seals that failed were not adequately  
16 trained. And then you go on to list the new record  
17 -keeping requirements for training.

18 However, unlike other record-keeping  
19 requirements in the ETS, the certification of  
20 training for miners doing the construction of these  
21 seals is only one year. Well, if we have a seal  
22 failure outside of that time period, those records  
23 are no longer available during the investigation  
24 process that MSHA noted that was so important in  
25 finding out what led to the failure.

1 And I sort of have the same problem also  
2 with 337 (b) (5), and that's the record-keeping of  
3 examinations. And the way I read that, those would  
4 be examinations that were conducted during the  
5 construction of the seal.

6 So you would sort of have the same  
7 problem.

8 I think both 337 (b) (5) and 337 (e)  
9 should be just like other provisions in the ETS, and  
10 those should be kept for as long as the seal is used  
11 for the design that it was built.

12 And that concludes my comments on the  
13 ETS, and I just want to reiterate my support of the  
14 ETS and my appreciation for the work that MSHA has  
15 done in this regard and in an area of grave danger.  
16 Thank you.

17 **MS. SILVEY:** Thank you, Mr. Addington. I just  
18 have one comment, Mr. Addington, before we get to Mr.  
19 Opegard, and that is with respect to the existing  
20 seals, and I want to clarify to everybody here also.

21 And maybe it didn't come through quite as  
22 clearly as we intended it in the ETS, that with  
23 respect to existing seals, the Agency -- the  
24 requirement was that they be immediately sampled and  
25 monitored on the effective date of the ETS.

1 And so the Agency requires that the  
2 operators immediately inspect and sample existing  
3 seals, and also the Agency will be continuing its  
4 inspection of existing seals. Also, if with respect  
5 to existing seals, while you're right, the ETS -- and  
6 I mentioned that in my opening statement, did not  
7 require wholesale removal and repair of existing  
8 seals.

9 But if when -- upon inspection of  
10 existing seals, that hazardous conditions were found,  
11 are found in terms of high gas levels, then the -- as  
12 with even the new seals, the ETS still requires that  
13 corrective actions be taken and that those seals  
14 either have to be inert or if they can't be, then new  
15 seals have to be constructed as we said, and maybe  
16 you said that, too, have to be constructed outby that  
17 seal.

18 Now, obviously it doesn't mean that --  
19 you all understand what I'm talking about. It has a  
20 round perimeter of a seal outby so the standard is  
21 constructed in that manner. So just so everybody  
22 understands. Some corrective action with respect to  
23 existing seals.

24 **MR. ADDINGTON:** And if I may briefly just  
25 respond. I do applaud MSHA's work in the area of

1 monitoring all seals. I still would like to  
2 reiterate, though, I feel as though that there is a  
3 grave danger here.

4 MSHA has recognized that, thus we have an  
5 emergency temporary standard, which is a rare  
6 occurrence. And I feel that existing seals, the  
7 strength of those seals, should be addressed and then  
8 brought up to the same standard in which new seal  
9 construction is required. Thank you.

10 **MS. SILVEY:** Okay. Thank you, Mr. Addington.

11 Now, next we will hear from Tony Opegard.  
12 Mr. Opegard.

13 **MR. OPEGARD:** My name is Tony Opegard. I'm  
14 testifying on behalf of the Appalachian Citizens Law  
15 Center of Prestonsburg, Kentucky, the same law office  
16 that Wes works for, but I'm also in private practice  
17 and I'm the attorney for Melissa Lee, Priscilla  
18 Petra, Mary Middleton and Childa (phonetic) Thomas  
19 who couldn't be here today, all of whom lost their  
20 husbands in the Kentucky Darby explosion and it's  
21 aftermath.

22 And I'm also the attorney for Paul  
23 Ledford who is the sole survivor of the Kentucky  
24 Darby disaster. Mr. Ledford was going to testify  
25 today and he could not be here either.

1 I also applaud MSHA for this rule, and  
2 I'll say specifically Mr. Stickler, too, for getting  
3 this rule out before it was mandated by Congress and  
4 getting it out in time to help save miners' lives.

5 And I know most of you on the panel, and  
6 I know you're all good people, and you all care about  
7 miners. I know Clete was on the panel in Morgantown,  
8 and John Urosek and Clete Stephan, and in my  
9 experience, nobody cares more about miners and mine  
10 safety than they do.

11 So I know you're all going to try to do  
12 the right thing. Having represented these five  
13 Kentucky Darby families since the disaster, I've seen  
14 some of what they have had to endure as a family.  
15 They're some of the most humble, finest people I've  
16 ever met.

17 You know, it's difficult to watch  
18 families grieve and suffer because of the loss of  
19 their husbands, their fathers and their brothers. We  
20 asked them to travel long distances today to testify  
21 so that MSHA can see the pain and agony that weak  
22 mining regulations could cause, and we wanted to put  
23 a human face on this tragedy.

24 As Priscilla said, she doesn't want Bill  
25 just to be a name on a list of miners who have died,

1 and we don't want any of these miners just to be a  
2 number or a name. There's human consequences for  
3 these failures and they're far reaching.

4           What you don't see today, although  
5 Melissa talked about them, is some of the smaller  
6 children, like Ross who is three and Seth who is  
7 four, who will never see their dads again. And I  
8 know we can all relate to that, just as the older  
9 children who are here will never see their fathers  
10 again.

11           I'm also the attorney for Scott Howard  
12 who showed the video, and I just want to state on the  
13 record that Scott is one of the bravest coal miners  
14 I've ever met. And I hope you understand, and I hope  
15 you all appreciate the guts it takes for an Eastern  
16 Kentucky coal miner, working in a non UMWA mine, to  
17 testify on behalf of his fellow miners and how rare  
18 that is.

19           I really do feel that MSHA should be  
20 holding these hearings in the coal fields. I don't  
21 consider Lexington the coal fields. I think you  
22 should be in Hazard or Harlan, places where miners --  
23 it's more accessible to miners, but having said that,  
24 the reality is that nonunion miners aren't going to  
25 come to these hearings and testify because they're

1 afraid of retaliation.

2 They appreciate it when the widows speak  
3 out. The widows have had a lot of miners talk to  
4 them about how much they appreciate what they are  
5 saying, because they, the miners, cannot say it  
6 themselves. In going back to Scott, you know, how  
7 many of you or any of us in this room have ever  
8 risked our job and our livelihood to help our fellow  
9 employees.

10 And that's exactly what Scott's doing by  
11 being here today. During my career as an attorney  
12 I've represented about 130 miners in 105 (c) cases,  
13 and most of these are miners who were fired, almost  
14 all of them from Eastern Kentucky for complaining  
15 about unsafe conditions.

16 And that's a fact of life. You know, if  
17 you complain about unsafe conditions in a nonunion  
18 mine in Eastern Kentucky, chances are you're going to  
19 be fired.

20 You're going to be labeled a troublemaker  
21 and I want to commend Scott for coming before you  
22 because it was a great act of courage.

23 And it's probably unprecedented in any  
24 hearing that MSHA has ever had to have a miner come  
25 in and show a video of actual conditions in his mine.

1 In the 2007 session of the Kentucky General Assembly,  
2 I helped to write and lobby for a stronger state mine  
3 safety law.

4 That bill, which was introduced by  
5 Representative Brent Yantz (phonetic), and eventually  
6 passed the House and the Senate and became law in  
7 Kentucky, contained about a dozen provisions that  
8 exceed the requirements of the federal mine safety  
9 law.

10 The bill encountered fierce opposition  
11 from the Kentucky coal industry, and which provision  
12 of that proposed state mine safety bill do you think  
13 generated the most intense opposition from the  
14 industry.

15 Well, it was a provision that would have  
16 required coal mine operators to certify that the  
17 seals in their mines were built according to the  
18 specifications submitted to MSHA in the mine seal  
19 construction plan. That was the biggest topic of  
20 disagreement.

21 That generated the most heat from the  
22 industry. And why is that? It's because operators  
23 don't want to be held accountable. They do not want  
24 to be held accountable for building seals correctly.  
25 When we first wrote the provision in the state law,

1 it was very similar to what MSHA has now.

2 We would have required that a certified,  
3 a professional engineer, certify that the seal was  
4 built according to the specifications. Through  
5 negotiation, debate, that was weakened to where it  
6 was no longer a professional engineer.

7 It was the mine superintendent, or the  
8 mine manager had to certify. We could live with  
9 that.

10 Industry couldn't live with that. They  
11 got it weakened further. The next draft of the bill,  
12 which was now the third draft, said that a senior  
13 mine official, not designating a mine superintendent  
14 or the mine manager, just a senior mine official, had  
15 to certify that the seal was built according to the  
16 specifications.

17 Then it was weakened even further. We're  
18 getting -- the bill has already passed the House.

19 We're getting near a vote in the Kentucky  
20 Senate, which is going to determine whether our bill  
21 goes through or not.

22 The fourth version of the bill said, "to  
23 the best of their knowledge and belief, a senior mine  
24 official must certify that the seal was built  
25 properly." So at this point, it's basically

1 worthless, if all you have to do is say, well, to the  
2 best of my knowledge and belief, it was built the way  
3 it was supposed to be.

4 That's the honor system that my clients  
5 have spoken about. The honor system that's been in  
6 place for decades, and it's worthless. It doesn't  
7 work. You can't just say, well, here's  
8 specifications. Build it this way, then never check  
9 and see whether it has been built that way.

10 And the fact that is -- as Mr. Stickler  
11 has acknowledged, I think, and we met with him in  
12 April, he said in the previous three months, MSHA had  
13 found over 500 seals in the United States that were  
14 not built according to their specifications. That's  
15 a major problem.

16 On the eve of the vote in the Kentucky  
17 legislature, our provision requiring certification of  
18 mine seals was dropped completely. We were told by  
19 the committee chairman that it was dropped because of  
20 frantic calls from the coal industry up until 11:00  
21 o'clock the night before the vote, from lobbyists to  
22 the Republican leader of the Kentucky Senate saying  
23 we can't live with this provision. And in fact, it  
24 was dropped.

25 The bill went ahead and it was approved

1 without that provision. Steve Role of United Mine  
2 Workers is a tireless lobbyist for mine safety. He  
3 and I were helping to lobby for this bill, and he and  
4 I and Wes Addington were told by the chairman of the  
5 committee in the Senate, that we had to sit down with  
6 lobbyists from the coal industry to discuss our  
7 differences.

8 That they objected to the many provisions  
9 in the bill. So we want you to sit down and see if  
10 you can reach any compromises so we can get this bill  
11 passed. And we did that. We sat down with the major  
12 lobbyist for the coal industry in Kentucky, a  
13 prominent coal attorney as well, to discuss any  
14 compromises we might could make on the bill.

15 And the industry made it very clear to us  
16 that they would not accept any type of accountability  
17 when it came to the building of seals. Some of the  
18 questions they asked us were do you actually expect  
19 us to have a person watch the seals being built to  
20 make sure that they are being built correctly.

21 Now, is that a major imposition to have  
22 somebody make sure the seals are being built the way  
23 that you told MSHA they're going to be built. I  
24 don't think so. Not when you consider that it's  
25 miners' lives that are at risk if they are not built

1 properly.

2           They complained that they could never get  
3 engineers to go underground to certify these. It  
4 would be too expensive. Engineers don't want to go  
5 underground. Well, engineers are underground all the  
6 time. Companies, a lot of them have engineers within  
7 their safety departments and other companies hire  
8 them out. That's not a big problem either.

9           Although the industry knew that 17 miners  
10 had just been killed because seals were blown out in  
11 Kentucky and West Virginia, and that the lives of  
12 thousands of Kentucky coal miners depend on seals  
13 being built properly, the industry's lobbyists' only  
14 concerns were cost and accountability.

15           They don't want to be held accountable,  
16 period. And we feel that this rule will hold the  
17 industry accountable. If a single one of those  
18 wealthy coal lobbyists, or the rich industry  
19 attorneys who complain that these rules are too  
20 burdensome, had a spouse or a son or a parent working  
21 in the mines in Eastern Kentucky, we would hear a  
22 completely different tune from them.

23           My clients are the people who suffer when  
24 production is valued more than human life. Coal  
25 miners are the people who suffer. The lobbyists

1 don't.

2           According to MSHA's Federal Register  
3 Notice, there are almost 31,000 miners working  
4 underground today in the United States in mines that  
5 contain seals.

6           That's approximately three-quarters of  
7 all the underground miners in the United States, and  
8 every one of these miners potentially could be  
9 affected by a faulty or inadequate seal. So the  
10 families of these 31,000 miners, all of whom are  
11 potential widows and orphans, just like my clients,  
12 are depending on you to keep this rule strong.

13           So I'm asking you not to let them down by  
14 weakening this rule. You don't want to have another  
15 hearing six months from now, or a year from now, and  
16 have other widows and children without fathers coming  
17 before you. Don't bend under the pressure that the  
18 coal industry is going to try to exert on you.

19           And I've seen that there's at least 30  
20 some people signed up to testify after us today, and  
21 I'm sure most of them are going to oppose this rule,  
22 and you're going to have a lot of opposition. Hank  
23 Moore, an industry attorney, was quoted in the paper  
24 as saying on Tuesday at the hearing in Morgantown  
25 that the Sago explosion was an aberration.

1 One can argue that point, but regardless,  
2 Kentucky Darby was not an aberration. If there had  
3 been properly built 50 psi seals at the Kentucky  
4 Darby mine on May 20, 2006, five miners would be  
5 alive today.

6 And we mustn't forget Paul Ledford, the  
7 survivor of that disaster, who is suffering mentally  
8 and physically because of the disaster. Although he  
9 lived, he wouldn't be suffering today either had we  
10 had 50 psi seals.

11 And what Priscilla said was accurate. We  
12 were told by MSHA that those seals at Darby were so  
13 poorly built that they probably would not have  
14 withstood a four psi explosion, or that was the  
15 maximum they would have, even though the standard was  
16 20 psi.

17 Seventeen West Virginia and Kentucky  
18 miners died last year because of inadequate and  
19 improperly built seals. How many dead miners does it  
20 take to insist on a rule that's actually going to  
21 protect miners.

22 There is no reason why one more miner  
23 should die because of inadequately constructed seals.  
24 You have the power to help prevent another such  
25 tragedy.

1           You have to make coal operators  
2 accountable for protecting the safety of their  
3 employees, which is exactly what we believe this rule  
4 will do.

5           And I don't want to reiterate what Wes  
6 said.

7           I just have a few comments about the  
8 specific provisions in the rule, and although my  
9 clients are very supportive of the rule, let me  
10 discuss briefly the one part of the rule that they're  
11 not supportive of.

12           And as you might guess, this is the part  
13 about the existing seals. MSHA issued the ETS  
14 because of the quote, unquote, grave dangers to which  
15 miners are exposed because the seals are not  
16 explosion proof.

17           And as you know, the Coal Act, as far  
18 back as '69, required explosion proof seals.

19           MSHA has admitted that the Agency erred  
20 in 1992 when it determined the 20 psi seals were  
21 explosion proof. There's 31,000 miners working in  
22 mines today that have portions of the mine sealed and  
23 everyone of these miners is at risk.

24           Therefore we believe that the final rule  
25 should include the requirement that all existing

1 seals be replaced with the higher strength seal. If  
2 it's not feasible to replace a particular seal, and I  
3 understand it may not be in every case, then we  
4 believe that operators should be required to  
5 reinforce existing seals to meet the higher standard.

6           What Wes was saying about the one size  
7 fit all, I know you all have heard Abbott McAteer his  
8 phrase that the perfect is the enemy of the good.  
9 And you know, the industry uses that all the time.  
10 Well, we don't have a perfect mine refuge chamber.

11           Therefore we can't use any in any mines  
12 or, you know, there's some seals that won't fit so  
13 therefore we shouldn't do anything. Do what's best.

14           You know, make those seals stronger, and  
15 if you have a problem, then we'll deal with it and  
16 find a way to do the best that you can.

17           I know that existing seals right now have  
18 to be monitored, but I want to try to be realistic  
19 about monitoring and compare it to pre-shift exams.  
20 And if you're in a small nonunion mine,  
21 realistically, honestly, pre-shift exams aren't done  
22 in a lot of them.

23           There's something in one of the internal  
24 reviews recently that said -- noted that pre-shift  
25 exams clearly weren't being done because -- I forget

1 what percentage it was. Like 80 or 90 percent of the  
2 measurements noted in the exam book were exactly the  
3 same for a year period.

4 I mean, you know, someone was just  
5 writing down a air measurement, calling it outside or  
6 whatever.

7 They weren't doing the exams. And  
8 realistically, a lot of small operators, are not  
9 going to -- they're not going to take the time and  
10 trouble to monitor behind these seals.

11 And I really think that MSHA is fooling  
12 itself if you think that they are. If you think that  
13 monitoring behind seals is going to be done correctly  
14 and accurately by the majority of operators, I think  
15 you're fooling yourself.

16 The seals at Kentucky Darby were not  
17 checked properly. We had testimony during the  
18 interviews that two miners traveled together. One  
19 miner did a test, told the other what he found and he  
20 wrote it in the book and certified it, even though he  
21 had no idea whether that information was accurate or  
22 not.

23 One foreman could have found four percent  
24 methane leaking out of that seal, said I found .1.  
25 The other guy marks down .1 and certifies it. And

1 that's if they're being done at all. We found at  
2 Kentucky Darby that there was no on shift  
3 examinations done for 11 months, on the second shift,  
4 on the outby areas, and MSHA missed that,  
5 unfortunately.

6 But ordinarily, if no on shift exams are  
7 being done, they would just mark them in the book  
8 that they were done and sign them. Why they didn't  
9 in that case, who knows. But the point I'm trying to  
10 make is don't rely on monitoring.

11 Make the companies build stronger seals.  
12 If I was a miner, I would feel a whole lot better  
13 knowing that I had a 50 psi seal than a 20 psi seal  
14 that is supposedly being monitored. Scott's video  
15 shows you the conditions of those seals.

16 I mean would you want to be working in  
17 that mine? If you didn't have a way out, if those  
18 seals collapsed, would you want to be in there? I  
19 wouldn't.

20 You're not supposed to have water pouring  
21 out of the seals.

22 Out of the water trap, yeah, but not out  
23 of the other parts of the seals. In 75336, the  
24 certification by a professional mine engineer, this  
25 is a critical part of the rule, and I hope you don't

1 back off of that.

2 Don't weaken that to be a senior mine  
3 official, or to the best of the knowledge or belief  
4 of somebody. Make an engineer do it, and then, you  
5 know, someone can be held accountable.

6 If an engineer is given -- you know,  
7 testifies falsely or certifies falsely, his license  
8 can be at risk. You know, all of us who have  
9 licenses, whether we're doctors, lawyers, whoever,  
10 you know, you have to meet certain standards or you  
11 can lose that license.

12 An engineer should be the same and coal  
13 companies should have to -- when they certify that  
14 something is done, it should be accurate. Miner's  
15 lives depend on it. We agree with the construction  
16 provisions in 75.337, removing cables, et cetera,  
17 batteries and all of that from the sealed area.

18 Direct supervision of making seals.  
19 That's critical. Training is critical. What we  
20 found at Kentucky Darby was these guys didn't know  
21 what they were doing. I mean the supervisor didn't  
22 know what he was doing.

23 The miners didn't know what they were  
24 doing.

25 They just did what they were told. They

1 were, you know, putting it up half way, just throwing  
2 the things together, not mortaring. They were using  
3 the wrong sealant.

4           You know, the seal between the top of the  
5 --

6           top of the seal in the roof, they didn't  
7 have the materials they needed there. You know, they  
8 were just stuffing whatever in the top. There was  
9 gaps. Of course, there were straps there, too.

10           Everything was wrong there. So the  
11 training, the direct supervision are important.  
12 Dates, times, and initials, just like a pre-shift.  
13 That's important.

14           That should be done. And a written  
15 record is important. And I agree with Wes, that the  
16 time frames for keeping those records I think need to  
17 be extended to three years.

18           You know, the intake seals at Kentucky  
19 Darby had been built I think three or four years  
20 before the explosion. They weren't built properly  
21 either. Nobody knew about it for three or four years  
22 until after the return seals blew out.

23           Then they checked the intake seals and  
24 found that none of them had been built properly  
25 either.

1           There were like seven or eight  
2 deficiencies in those seals. And had a record been  
3 required at that time that those seals were built,  
4 then maybe there could have been some accountability  
5 there.

6           And the requirement of the rule that a  
7 senior mine management official must certify the  
8 construction of these seals is important. We also  
9 support the notification provisions, but with a  
10 caveat. I don't think these notification provisions  
11 are going to be very important if MSHA doesn't take  
12 the opportunity to get out and check the seals.

13           You're saying that operators have to  
14 notify MSHA within two to 14 days before building  
15 seals, if we're going to build seals. Well, you need  
16 to have an inspector there at least for part of that  
17 time. I know you can't have a guy sit there for days  
18 while seals are being built, but I think somebody  
19 needs to make a visit, make sure they're following  
20 the plan, and then go back out afterwards.

21           The operator has to notify MSHA within  
22 five days after completion. It's critical that MSHA  
23 take advantage of this and send an inspector out and  
24 make sure that those seals were built properly.

25           The training is important, again, at

1 Kentucky Darby. Nobody had been trained on how to  
2 build seals.

3           You know, these were hourly employees who  
4 went in.

5           They were told what to do. They didn't  
6 -- you know, threw the thing up haphazardly.

7           Really quite frankly, it was a pretty  
8 pathetic job and there was no accountability and it  
9 leaves the impression that they really didn't care.

10           You know, it was like we don't want -- we  
11 have a worked out part of the mine.

12           We don't want to ventilate it. We don't  
13 want that trouble, so we'll just throw up a wall and  
14 pretend that we're protecting people when in fact  
15 there was no protection at all.

16           I appreciate the opportunity to testify.

17           What we're really asking here is for  
18 accountability from coal operators and asking you to  
19 do the right thing. You know, again, we don't want  
20 another tragedy.

21           There's no reason in 2007 that we should  
22 have miners dying because of improperly constructed  
23 seals.

24           So please don't weaken the standard.

25 Thank you.

1 **MS. SILVEY:** Thank you, Mr. Opegard. I have  
2 just a few comments. First of all, I would like to  
3 say for the record, that we agree with you, that we  
4 must not, and we do not forget Mr. Ledford, so our  
5 sympathies are with Mr. Ledford and his family.

6 Second of all, with respect to the mine  
7 video, you know, let the record show that the Agency  
8 will exercise its responsibility with respect to the  
9 conditions on the video, and take the action that is  
10 appropriate with respect to the seals.

11 I notice now on the cover of the video,  
12 it says 4/20/07. So I want the record to show that  
13 MSHA will do that. With respect to existing seals,  
14 and we've gotten a lot of comments on the Agency's  
15 approach to existing seals.

16 And to some extent, I'm being redundant.

17 Now, you heard me say part of it earlier.  
18 Some of the people in Morgantown heard me say this.  
19 Even after we laid out our approach with existing  
20 seals, that while we did not require complete --  
21 either complete or replacement or complete  
22 reinforcement.

23 In the instance that we found an  
24 inspection, a monitoring revealed hazards, then we  
25 did require corrective action. We did, at the same

1 time, we solicited comments on the Agency's approach.

2 In Morgantown, what I would like to let  
3 everybody know that the industry -- the state -- we  
4 had a representative on behalf of the Interstate  
5 Mining Commission, which is this compact of states.  
6 The state and the UMWA supported MSHA's overall  
7 approach to existing seals, recognizing that in some  
8 instances, and just as I said in my opening  
9 statement, it may be indeed to replace, to completely  
10 replace existing seals, and I think you sort of  
11 acknowledged that.

12 That might introduce a increased hazard.  
13 So if I took down what you said, and I thought that I  
14 did, I might not. I think at one point you said to  
15 the extent that these seals should -- I don't think I  
16 did take it down. I remember it.

17 To the extent that the seals -- that it  
18 was feasible to do so, the seals should be  
19 reinforced. So if -- I don't know whether you are  
20 going to send us anything in Arlington before August  
21 17th or not, but if you have any more specific  
22 comments on either the feasibility or situations in  
23 which existing seals should be reinforced, we would  
24 appreciate that.

25 And actually, those are all the comments

1 I have. I don't know if anybody else has any  
2 comments.

3 Thank you, Mr. Opegard, and thank you and  
4 your clients and everybody who has testified on  
5 behalf of Appalachian Citizens Law Center.

6 At this time, I think probably people are  
7 looking to see if we are going to take a break. So  
8 if we could take a five minute break, please, because  
9 we do have other people on the list to testify.

10 (Whereupon a break was taken.)

11 **MS. SILVEY:** Can we reconvene, please?

12 Again, please, everybody, so that we can  
13 sort of keep our schedule. At this point, I would  
14 like to reconvene the Department of Labor's Mine  
15 Safety and Health Administration's hearing on  
16 sealing.

17 The emergency temporary standard related  
18 to sealing abandoned areas in underground coal mines.  
19 At this point we have Joe Jacobs, COA. Mr. Jacobs.

20 **MR. JACOBS:** Thank you, Ms. Silvey, for the  
21 opportunity to discuss a issue that is very important  
22 to us. My name is Joe Jacobs. I represent COA,  
23 which is a trade group that represents mostly small  
24 coal operators in Eastern Kentucky, Western Kentucky.

25 I appreciate the fact that you have taken

1 my call, and we have had some discussions about seals  
2 and rebuilding seals. And so we want to make some  
3 comments on those and asking questions.

4 And we're not asking questions to cast  
5 aspersions on anybody. We're just asking questions  
6 for a matter of information. Our feeling is is that  
7 the Agency, the Mine Safety and Health  
8 Administration, through it's sister Agency, NIOSH,  
9 has an obligation to aid and assist the coal industry  
10 and the coal industry has an obligation to aid and  
11 assist NIOSH and MSHA in working to develop a safer  
12 atmosphere for our coal miners to work in.

13 And therefore, to that end, we have some  
14 questions in regards to seal construction, and we  
15 want to ask you all to look at some situations that  
16 we have not seen. As far as the seals that have been  
17 posted online, we find that there's one, i.e.,  
18 Mitchell Barrett type seal that has been posted, and  
19 the rest of them are from other pre manufactured  
20 seals.

21 And we have some areas that we want to  
22 ask that you look at. For example, in the area of  
23 seal construction, what happens if we place flash in  
24 front of the seals, or in the inby side of the seal,  
25 or if we place sand or if we place gob.

1 We feel that that would dissipate the  
2 explosion as the explosion drew nearer the seal and  
3 would serve to dissipate some of the force,  
4 therefore, making the 50 psi seal an even more  
5 stronger seal. So we point that out to you and ask  
6 you to take a look at that and to see if there is any  
7 areas that we can work with you to aid and assist in  
8 developing seals that work in the coal mines that we  
9 represent, which is mostly conventional type  
10 sections, 20-foot wide.

11 They're going to be anywhere from 30 to  
12 48 inches in height. Some of our engineers have  
13 stated to us that the calculations that you have on  
14 the 50 psi seal is actually a 96 psi seal, and we ask  
15 that you look at that.

16 Also we find no Mitchell Barrett type  
17 construction seals for 120 psi on the website at this  
18 time and we ask is there a possibility that we would  
19 have one of those. And I'm talking about concrete  
20 block laid in a traverse pattern to obtain the 120  
21 psi.

22 And as for the rebuilding or  
23 strengthening of seals, we have some seals that are  
24 built with whatever the term was. We were using the  
25 prefabricated seals.

1                   What happens if we build a Mitchell  
2 Barrett type seal in front of that. What is the --  
3 we ask you to develop for us the strength and the  
4 overpressure and tell us what that is.

5                   And we're just looking at what happens if  
6 we ask you to aid us in preparing catalogs for this  
7 is the seal design and this is how that seal should  
8 be constructed. And then we'll get into the argument  
9 later on of whether it was properly constructed or  
10 not because you as the Agency look at it, and we have  
11 people who are going to be there supervising the  
12 construction and the certification of it.

13                   But we believe that there ought to be a  
14 way that NIOSH and the Mine Safety and Health  
15 Administration would develop these to where they're  
16 actually developed to give us a cookbook type seal  
17 design of 50 psi overpressure and 120 psi  
18 overpressure.

19                   And we need to look at those that are  
20 erected in 30-inch high seams, and look at those that  
21 would be erected at 48-inch seams, 42-inch seams, six  
22 foot and seven foot seams as well.

23                   I think the ones that we have on the  
24 Internet today are seals that are erected in 20 to 22  
25 foot entries with seven to eight foot in height. And

1 most of our coal seams in the Eastern Kentucky region  
2 is not that size.

3 So when you have a less volume of area  
4 where the area is smaller, what happens to the  
5 pressures.

6 And if we have those, then it would  
7 probably be easier for us to find people who would be  
8 willing to look at the certification of these seals.

9 As of right now, there's not a lot of  
10 folks who want to stake their livelihood and the  
11 future on certification of seals. So we ask you to  
12 look at that and to look at those design criterias  
13 that you had.

14 And maybe we need to develop a cookbook.  
15 We at the coal associations of Kentucky stand ready  
16 to work with the Mine Safety and Health  
17 Administration and NIOSH in developing these and  
18 developing the regulations as we think that we should  
19 be a joint partner in doing this, in developing them  
20 so that compliance can be easily achieved.

21 And I'm not talking about fabrication,  
22 but I'm talking about compliance. For example, we  
23 look at monitoring behind seals, and for years the  
24 Agency utilized a G60 pump to pull the air from  
25 behind the seals to look at what it was, and to get a

1 sample from behind the sealed area.

2 Now that we're being required to monitor  
3 that, all of a sudden no one wants to do that. They  
4 don't want us to do that because they're saying  
5 that's not utilizing that pump for it's intended  
6 purposes.

7 That's using it for something different.  
8 It still pulls two milliliters of air. So we don't  
9 see why. So don't make it so cumbersome for us to  
10 comply that the small operator is not going to be  
11 able to do that.

12 We employ quite a few people in Kentucky  
13 coal mines, and we offer employment to them, and we  
14 produce an awful lot of the energy that is used to  
15 ensure America's independence in the energy source.  
16 So therefore, we as small operators are asking you as  
17 an Agency to help us and let's be partners in  
18 compliance rather than being in an adversarial  
19 position.

20 I'm not saying that you're in that  
21 position now, and I appreciate you have been willing  
22 to take my phone calls, talk to me, and we did get a  
23 50 psi seal on the Internet. But I'm asking that we  
24 go farther than that.

25 And if there is strengthening values in

1 the use of Kevlar in bladders that have been  
2 proposed, that's science and may we utilize that to  
3 strengthen the seals that we now have by utilizing  
4 the same kind of coating that goes into our  
5 policemen's bulletproof vests.

6 There are some Kevlar bladders that are  
7 out there. How we secure those is a matter of some  
8 experimentation that we still need to do, but there  
9 is that possibility out there.

10 There's also the possibility out there if  
11 we take flash and place that flash behind that seal,  
12 or if we take sand or if we take rock or gob, and we  
13 insure to the best of our ability that that gob is  
14 properly aligned with rock dust, it will dissipate  
15 the force of the explosion coming out to the seal and  
16 afford a greater protection. So we ask you to look  
17 at those.

18 All right?

19 **MS. SILVEY:** Okay. Well, I have a few comments,  
20 Mr. Jacobs.

21 **MR. JACOBS:** Yes, ma'am.

22 **MS. SILVEY:** First of all, so that everybody  
23 will understand in terms of the structure of the  
24 rule, and before I say that, I would like to say that  
25 MSHA stands ready and willing, and indeed has

1 responsibility to assist the entire mining community  
2 in terms of achieving greater safety and protection  
3 for miners.

4 And there I mean industry, the labor, the  
5 state and we intend to live up to our responsibility.

6 **MR. JACOBS:** That's right.

7 **MS. SILVEY:** Now, as I say that, and I hope Mr.  
8 Jacobs that as you gave me your general comments,  
9 before the record closes on August 17th, that you  
10 will reduce them to writing.

11 And to the extent that you have specific  
12 suggestions for us, as I said in my opening statement  
13 to everybody, that you would include specific  
14 language.

15 **MR. JACOBS:** Yes, ma'am.

16 **MS. SILVEY:** That type of information will help  
17 us as we move forward in developing the final rule.  
18 The way the standard -- the ETS is structured is the  
19 operator or manufacturers that operate -- or a  
20 manufacturer can do that. There is a two-step  
21 process for seal design, approval and installation.

22 The operator or the manufacturer sends in  
23 the seal design to MSHA's office of technical  
24 support, based on having an approval application, and  
25 as many of you know, the seal design will be

1 structured so that it meets and addresses specific  
2 mining conditions.

3           So that's the first step. And then our  
4 office of tech support engineers will review it and  
5 look at it based on whether the application meets the  
6 criteria in the rule, and based on the criteria that  
7 we've laid out in the rule.

8           The office of tech support will look at  
9 it and approve that design. That design then, an  
10 approved design, an operator would take that approved  
11 design, and based on specific mining conditions, will  
12 ask for an approval of the site installation, the  
13 seal installation in a particular mine, based on the  
14 mining conditions.

15           Now, I guess what I'm trying -- and you  
16 asked why did I say that. I guess what I'm trying to  
17 ask you is it seems that what you are asking us is to  
18 work with you in developing design for your mine, I  
19 think, it looks like.

20           **MR. JACOBS:** In developing -- in developing seal  
21 construction for all mines, and I know that all  
22 mining conditions are --

23           **MS. SILVEY:** Seal design. You said  
24 construction. Seal design.

25           **MR. JACOBS:** -- going to be -- yeah, seal

1 design.

2 **MS. SILVEY:** And we have put some templates,  
3 because we do believe we have a role in assisting and  
4 trying to get a handle on seals, just as we've heard  
5 people say, we've had issues with seals and we have  
6 admitted that.

7 So we have put certain designs, I  
8 believe, on our website. In fact, we have a 50 psi,  
9 one or two, and 120. Do we have at least one or more  
10 than one?

11 **MR. UROSEK:** Yeah, we have more than one.

12 **MS. SILVEY:** Two. Two 120's on our website.

13 **MR. SHERER:** One gentleman has -- we got  
14 several.

15 **MS. SILVEY:** We've got several on our website.  
16 Thank you for help from the audience. We've got  
17 several on our website.

18 **MR. JACOBS:** Yes, ma'am.

19 **MS. SILVEY:** And, you know, I'm sure that our  
20 office of tech support is going to be as helpful as  
21 possible to people and organizations who send  
22 applications in. And in terms of seeking an approval  
23 and trying to work with them and getting certain  
24 designs approved.

25 But as I said, if you want to be more

1 specific in your comments, you can feel free to do  
2 that. For example, one specific thing you said that  
3 you think that certain material, when used in by the  
4 seal, might help to mitigate the damage.

5 So I would ask you to be specific, and if  
6 you -- in terms of what exactly you are talking  
7 about, and if you have experiences using that. If  
8 you sent in a particular application.

9 **MR. JACOBS:** Those have not been sent to you for  
10 approval. It's merely suggestions that we have by  
11 utilizing our experience in mining and, you know,  
12 I've been at this since 1969.

13 **MS. SILVEY:** I know.

14 **MR. JACOBS:** And as you well know, since 1969 we  
15 found that seals have gone from the Mitchell Barrett  
16 seal that we were utilizing to the Omega Block seal,  
17 and even if you go back to the 69 Act itself, we had  
18 the right to lay timbers skin to skin in heavier  
19 caved areas.

20 Now, I don't know any of us that did  
21 that, but we also had some water seals that were  
22 there because of the water being roofed in low or  
23 dipping areas. And as long as we could prove that  
24 the water was roofed and there was no air passing  
25 over those, a water seal was acceptable, under the

1 alternative seal section of the previous regulation  
2 that we had.

3 We're simply asking that we look at,  
4 through tech support, the placing of flash, sand or  
5 gob, inby a properly constructed Mitchell Barrett  
6 seal to see if it improves the overpressure and  
7 mitigates the outward force of the explosion. And  
8 that may be something that we would be able to do to  
9 obtain a 120 psi Mitchell Barrett type seal.

10 **MS. SILVEY:** Okay.

11 **MR. JACOBS:** Or we may need to lay additional  
12 solid concrete blocks in a traverse pattern to  
13 achieve the 120 psi Mitchell Barrett seals.

14 **MS. SILVEY:** I do have an additional comment on  
15 -- you mentioned that calculations, your calculation  
16 showed that we have -- that the calculations we have  
17 on the 50 psi really come to 96 psi, and I would like  
18 it if you would provide that to us, specific, the  
19 calculations that you have that show differently than  
20 ours.

21 **MR. JACOBS:** Yes, ma'am. All right.

22 **MS. SILVEY:** Okay. And that's really all I  
23 have. Does anybody have anything? Okay, thank you,  
24 Mr. Jacobs.

25 **MR. JACOBS:** Thank you.

1       **MS. SILVEY:** Next we will hear from Tony Huff  
2 with THA Engineering. Tony Huff? No?

3       **MR. HUFF:** I'm Tony Huff, h-u-f-f. Tony, t-  
4                   o-n-y. I am a professional engineer and  
5 I just want to express my thanks to MSHA for bringing  
6 the attention that you are to the seal issue. I do  
7 have a few comments and questions, but most of them  
8 are technical issues and I think what I'll do is get  
9 with tech support and kind of put our heads together  
10 and maybe make some comments later in writing when I  
11 get my thoughts a little more clearly defined.

12                   As an engineer, I do want to express  
13 optimism that we can come up with a cost-effective  
14 and feasible solution to seals, and we are working on  
15 that. And that's all I have to say.

16       **MS. SILVEY:** Okay. Well, I would encourage you  
17 -- you know, you said you would get with tech  
18 support, but I would encourage you, if you have  
19 specific comments, to get them in to us before the  
20 record closes on August 17.

21       **MR. HUFF:** The 17th.

22       **MS. SILVEY:** That's right. Thank you.

23       **MR. HUFF:** Thank you.

24       **MS. SILVEY:** Next we have Bill Caylor, Kentucky  
25 Coal Association.

1       **MR. CAYLOR:** Ms. Silvey, members of the panel.  
2       I want to welcome you to Lexington today. My name is  
3       Bill Caylor. It's c-a-y-l-o-r. I am president of  
4       the Kentucky Coal Association. The Kentucky Coal  
5       Association represents large and small surface and  
6       underground operators in both the Eastern and Western  
7       Kentucky coal fields.

8               Since this hearing is in Kentucky, at the  
9       beginning of my remarks, I would like to make some  
10      brief comments on the basic Kentucky coal facts and  
11      some industry trends. In terms of production, we  
12      mined 120 million tons of coal in 2006.

13              Approximately 80 percent of that figure  
14      is mined in East Kentucky and 20 percent of that  
15      figure is mined in West Kentucky. Of the coal that's  
16      mined in East Kentucky, roughly 60 percent is mined  
17      underground and roughly 40 percent is mine to  
18      surface.

19              In West Kentucky roughly 80 percent is  
20      mined by underground mining methods and roughly 17 --  
21      or roughly 20 percent is mined by surface methods.

22              Production in Kentucky peaked in 1990 at  
23      179.4 million tons.

24              Currently Kentucky ranks third in the  
25      nation in production behind Wyoming, which mines 450

1 million tons and West Virginia which mines at 150  
2 million tons.

3 In terms of miners, we have over 17,000  
4 -- actually 17,190 coal miners in Kentucky, and  
5 that's down from roughly 48,000 in 1981.

6 The multiplier effect, because we have  
7 17,000 miners working, we have a multiplier effect of  
8 around four other people working for every one person  
9 employed by the coal industry. So we have a  
10 multiplier of trickle-down jobs of around 50,000  
11 jobs, actually statewide.

12 These could be people that work for  
13 utilities, equipment vendors, repairmen, engineers,  
14 truckers, accountants, lawyers, and just people that  
15 work in every form of occupation in East Kentucky,  
16 East and West Kentucky.

17 The Kentucky coal miner earns an average  
18 of \$47,000 a year, and that's usually a very nice  
19 wage in the areas that are impoverished in the coal  
20 fields.

21 Three percent of the working miners are  
22 members of the United Mine Workers.

23 There's nobody with the United Mine  
24 Workers in East Kentucky. They represent mines and  
25 miners in West Kentucky. In terms of exports,

1 Kentucky will export about 70 percent of its coal.  
2 We export to about 23 states and four foreign  
3 countries.

4 About 70 percent of our coal production  
5 in Kentucky goes to utilities and about 30 percent  
6 goes to industrial users. Of the about 70 percent  
7 that sold out of state, we bring in over \$3.5 billion  
8 into the State of Kentucky, and about 85 cents on  
9 each dollar stays here in Kentucky in terms of wages,  
10 benefits, operating expenses, royalties and taxes.

11 So the majority of the money that we  
12 bring in stays here in Kentucky. Coal paid over \$230  
13 million in severance packages last year, in addition  
14 to the normal business and taxes that companies pay.

15 Reserves, we have 88 billion tons of  
16 reserves in Kentucky, well more than we could mine in  
17 over 200 years. West Kentucky has 36 billion tons  
18 reserved and East Kentucky has 52 billion tons of  
19 reserves. In terms of the nation's supply of  
20 electricity, coal provides between 50 and 52 percent  
21 of our nation's electrical needs.

22 That's followed by nuclear with 20  
23 percent, natural gas with about 16 percent,  
24 hydropower at about 7 percent, oil at about 3  
25 percent, and renewables at only 2 percent. And when

1 I refer to renewables I'm talking about wind, solar,  
2 biomass and geothermal, with biomass being the  
3 majority of that.

4 In Kentucky, coal provides 91 percent of  
5 our electricity. We have one of the lowest  
6 electrical rates in the nation because of coal. Coal  
7 miners truly are American heroes. I couldn't be more  
8 proud of our coal industry.

9 Now let me touch on Kentucky and U.S.  
10 production trends very briefly. To the  
11 year to date, through June, Kentucky's production is  
12 down a little over six percent. Production east of  
13 the Mississippi is down nearly 3 percent.

14 If you ask yourself why, there's several  
15 reasons for this. A drop in the coal process paid by  
16 utilities, the implementation of state and federal  
17 safety laws, general expense increases, such as the  
18 cost of steel, fuel, explosives, benefits, and the  
19 trend toward surface mining.

20 Surface production is generally cheaper  
21 and safer than underground production. This is  
22 especially true in a state like Wyoming where you  
23 have 50 to 60 foot thick seam of coal. My forecast,  
24 you will probably see the continued decline in  
25 production east of the Mississippi, especially in the

1 Appalachian region.

2           Production costs for underground mines  
3 continues to escalate. The small operator is quickly  
4 becoming a thing of the past. Just like the Wal  
5 -Mart's and the McDonald's, the coal industry is  
6 rapidly becoming dominated by large multistate  
7 corporations.

8           And what many people fail to realize is  
9 that the corporate philosophy is to obey the laws.  
10 It's easy to say the coal industry is an outlaw  
11 industry, but these statements are untrue and very  
12 misleading.

13           The coal industry has a very positive  
14 safety record, something we've lost sight of.  
15 Nationally we have witnessed a steady downward trend  
16 in both fatalities and injuries over the past 30  
17 years. This is fact, not emotion.

18           We've had good years and bad years, but  
19 the trend clearly is a downward trend. We are making  
20 a very positive progress, and the thanks go to state  
21 and federal safety agencies, company safety  
22 philosophies and the quality of our workforce.

23           With regards to injuries, did you know  
24 that the Kentucky coal miner is safer from injuries  
25 than the average Kentucky worker. And yet, if you

1 listen to the news press, you would think just the  
2 opposite. In terms of fatalities, in Kentucky,  
3 during a three-year period, between 2002 and 2005,  
4 the following Kentucky categories had average annual  
5 fatalities as follows.

6 Service, providing as a category, had an  
7 average of 52 fatalities per year. The trade,  
8 transportation and utilities had an average of 36  
9 fatalities a year. Agriculture, forestry, fishing  
10 and hunting had an average of 26 fatalities a year.

11 Transportation and warehousing had an  
12 average of about 26 fatalities a year. Construction  
13 had an average of about 21 fatalities a year.  
14 Government had an average fatality of about 14  
15 fatalities per year.

16 State and local government had an average  
17 of about 12 per year.

18 Manufacturing had about 12 per year.  
19 Coal mining had just over eight fatalities a year on  
20 an average. Retail trade had almost eight and  
21 professional business services had approximately four  
22 per year.

23 Coal mining fatalities are much fewer  
24 than other industries but because of press coverage,  
25 every coal death is front-page news, while a

1 construction fatality is buried in the second  
2 section.

3 Here's an interesting fact. Did you know  
4 that 750 people die each year in the U.S. from eating  
5 bad or ruined potato salad. Do you think that we  
6 could get some new laws put on the books to control  
7 these deaths?

8 There are numerous, numerous other  
9 examples like that example. The point is, regardless  
10 of the reason why, coal clearly has been singled out  
11 by the news press. So have the hard working people  
12 at MSHA.

13 MSHA inspectors are honest, hard-working  
14 individuals, dedicated to safety.

15 It's frustrating to read otherwise in the  
16 papers. Like all of us here this morning, our goal  
17 is zero fatalities. We all have this common goal.  
18 How to reach this goal is what we sometimes disagree  
19 over. We think the key to taking safety to the next  
20 level is with behavior modification.

21 Behavior modification is the key to  
22 ensuring miners know and want to work in a very safe  
23 manner.

24 Behavior modification is teaching the  
25 miners why it is important to work safely. Not just

1 for themselves but for their employers, and more  
2 importantly for their families.

3 To affect behavior modification takes  
4 time, commitment and money. Too much emphasis is  
5 being placed on enforcement while behavior  
6 modification is being ignored. While enforcement is  
7 critical, an equal emphasis should be placed on  
8 behavior modification.

9 We strongly encourage MSHA to focus more  
10 on this aspect of mine safety. We support safety  
11 improvements, but need rational safety requirements.

12 In the rush to get emergency standards  
13 published, many questions were left unanswered.

14 There have been many hardships, many  
15 questions where different answers are given in each  
16 of the MSHA district offices. We need rational  
17 safety requirements. MSHA still doesn't have the  
18 answers to many of the questions on seal  
19 construction.

20 In this emotional rush, we are over  
21 designing and needlessly wasting efforts. We  
22 question MSHA's urgency and inflexibility with this  
23 emergency standard.

24 We fear MSHA has set a basis with its  
25 emergency temporary standard, from which they will be

1 unable to back down from, even based on the  
2 engineering and technical comments they may have  
3 received during these public hearings.

4           Why the ETS? What made a grave danger 16  
5 months after Sago, and with the July 12th PIB in  
6 place with much of the same requirements, we should  
7 have issued a proposed regulation with a quick  
8 comment period to eliminate mistakes we're facing  
9 under this emergency rule.

10           It is imperative that we take politics  
11 and emotion out of this process. We are frustrated  
12 with the inability to comment on many of the  
13 assumptions used by MSHA in seal design. Based on  
14 various Powerpoint presentations by MSHA, how can  
15 tech support require a two to one safety factor in  
16 the seal design with it not being required in the PIB  
17 or the ETS.

18           And all requirements, assumptions,  
19 inputs, et cetera, used by tech support to evaluate  
20 seal designs should be publicized for review and  
21 comment. We oppose the replacement of existing  
22 seals. MSHA solicited comments in the preamble on  
23 the feasibility of requiring existing seals to be  
24 removed and replaced.

25           The final rule should not require the

1 replacement of existing seals, due to several  
2 reasons.

3           It can be dangerous to replace seals. It  
4 increases the chance of getting someone hurt or  
5 killed. Many times there isn't sufficient space for  
6 a second seal.

7           In many cases there is only a walking  
8 path to get to seals, making it difficult to get  
9 materials to the seal area. You cannot do a one size  
10 fits all, and the cost of such replacement is a  
11 factor. The seals are currently required to be  
12 monitored, and the atmosphere behind the seals to be  
13 inert as required by the ETS.

14           Strengthening existing seals could be  
15 accomplished if a simple cost-effective product were  
16 available. We understand that testing has been done  
17 on a substance, but the results have not been  
18 released.

19           So I think we've got some very promising  
20 things to look forward to. We oppose having a  
21 professional engineer certify as built seals. The  
22 requirement that a professional engineer must be  
23 knowledgeable in structural engineering will cause  
24 problems.

25           MSHA's interpretation of this proposal is

1 that the engineer must be a structural engineer.

2 Engineers like attorneys and physicians  
3 are licensed to practice their profession, but their  
4 profession does not recognize certain practice areas.

5 In other words, once one receives his  
6 professional license, whether it be a physician, an  
7 attorney or an engineer, he can practice in any area.

8 Professional ethics require him to ensure  
9 his own competency in the area he intends to  
10 practice.

11 Further, structural engineers may not be  
12 competent in mining engineering. There are many  
13 areas of underground mining where a structural  
14 engineer would not be competent to practice. So  
15 requiring an engineer to be a structural engineer is  
16 improper.

17 The words knowledgeable in structural  
18 engineering should be deleted. We also have concerns  
19 over the requirement for the engineer to have  
20 oversight of the seal installation. This would be  
21 difficult, expensive and not necessary.

22 There are many unknowns in the  
23 construction of seals, i.e., the concrete mix that's  
24 shipped to the mine and various other materials that  
25 are used in the construction of the seal. There are

1 so many factors completely beyond the engineer's  
2 control.

3           Even the term oversight itself is  
4 somewhat vague. You have double certification since  
5 MSHA is requiring someone from the company to certify  
6 construction. It is obvious that MSHA just wants  
7 someone to blame if something goes wrong, but in  
8 reality, this will prove difficult.

9           Most serious or fatal accidents are a  
10 result of a series of mistakes or wrong actions.  
11 Having predefined scapegoats is owners at best.  
12 Finding a mine foreman is becoming increasingly  
13 difficult. Who wants the responsibility. It will be  
14 hard to find someone to certify seals when the  
15 liability will stay with this person many years into  
16 the future, long after he's left the company.

17           I can see right now someone retired in  
18 Harlan, or maybe in Georgia or Florida, 10 or 15  
19 years later and there's an explosion, and he'll have  
20 his retirement proceeds attached in some type of a  
21 prejudgment attachment.

22           It is going to be difficult to get people  
23 to certify that these seals are constructed. We  
24 suggest the use of Mitchell Barrett seals and other  
25 pre designed seals approved by MSHA. And basically

1 we're backing up what Joe Jacobs testified to earlier  
2 just a few minutes ago.

3 We join with others in urging MSHA to  
4 allow the Mitchell Barrett seals for the 50 psi  
5 standard.

6 The cost of installing the new approved  
7 seals will put a lot of smaller operators out of  
8 business and would force some to avoid sealing  
9 altogether, which will increase exposure to workers,  
10 supervisors and inspectors in traveling extensive  
11 abandoned works that are not sealed.

12 This concludes my oral remarks. Our  
13 technical comments will be submitted at a later date.

14 Thank you very much.

15 **MS. SILVEY:** Thank you. Thank you, Mr.

16 Caylor. I have a few comments and maybe  
17 some members of the panel might have some also.  
18 First of all, let me just say we appreciate, and for  
19 everybody here today, we appreciate your comments and  
20 testimony to us, and I will say again that -- I think  
21 I said it earlier, that we know it takes some time  
22 for people to come and participate in these MSHA  
23 hearings.

24 And we understand that and we appreciate  
25 that. And that's one -- but one of the reasons is

1 that we need these comments and testimony as we go  
2 and develop this final rule that we've heard from  
3 some people so far during this rulemaking process,  
4 why some people have liked it and some people have  
5 liked most aspects of it.

6 And some people have probably not liked  
7 it a lot, that a lot of the people have had comments  
8 that they said they want us to improve certain areas.  
9 And so that's why we are here. With respect to the  
10 -- you said many questions were left unanswered when  
11 we issued the ETS.

12 And toward that end, we have issued some  
13 compliance guides that certain questions were sent  
14 directly to us. We got it out and I said earlier, we  
15 had to try to quickly get it out, and we've answered  
16 questions in the compliance guide and we put them on  
17 the website. And I think we have another compliance  
18 guide about ready to come out.

19 **MR. SHERER:** Should be soon.

20 **MS. SILVEY:** Should he out soon. Now, to the  
21 extent -- and I say this for everybody in the room  
22 now.

23 To the extent that you say to us in a  
24 general way that different districts are given  
25 different answers, yeah, you know, sometimes

1 different answers are appropriate, obviously, because  
2 the mining conditions are different.

3 But sometimes when it gets to maybe  
4 certain principles of things, they may not, they  
5 should not be different. So we try where we should.  
6 We try to achieve consistency in our districts.

7 So where districts are given different  
8 answers on certain basic things, I would ask people  
9 who make those comments to us, to give us specific  
10 examples. And I'm not asking you to do that now when  
11 you send your comments to us before the record  
12 closes.

13 Would you like to add anything to that,  
14 Erik, since you were here for coal mine health and  
15 safety?

16 **MR. SHERER:** Sure. A couple of things.

17 First of all, thank you for your  
18 participation and your input. The second thing is I  
19 thank you for your patience. This is an emergency  
20 temporary standard.

21 It's something that we felt that we  
22 needed to get out there immediately to address the  
23 grave hazard to miners.

24 And it is something that is in the  
25 process of being improved as part of the ETS process.

1 There is a learning curve for all of us and I ask  
2 your forbearance.

3 **MS. SILVEY:** Yeah, okay. I would like to now  
4 state, Mr. Caylor, and I know you'll appreciate this,  
5 why this is an ETS, and I said this in my opening  
6 statement. It also serves as the proposed rule and  
7 commences the regular rule making progress.

8 And I know, you know, people have come to  
9 us and said, you know, things are cast in concrete  
10 because it's an ETS and the Agency cannot, will not  
11 change anything, but even though it is an ETS, under  
12 the Mine Act, it commences regular rule making.

13 So to the extent the Agency gets  
14 justifications and comments and rationale, with  
15 supporting rationale, as to areas that we should  
16 change for the final rule, then that's what we need  
17 to do and that's what we will do where appropriate.

18 So I want to say that here, and I'll  
19 probably end up saying that at two more hearings, the  
20 same thing. The Agency, as our attorney advised me  
21 -- you know, I have an attorney, too, that we stated  
22 that in the proposed rule, and she's right.

23 Also, we heard this in Morgantown, too,  
24 and I've heard it intimated here today, intimated and  
25 now specifically stated in your comments, Mr. Caylor,

1 how can tech support require a two to one safety  
2 standard when it's not in the ETS or the PI -- and  
3 you're right.

4           It is not in the ETS, a two to one safety  
5 factor and we are not requiring a two to one safety  
6 factor. As I said to Mr. Jacobs, if you have  
7 calculations that differ from ours, or are in your  
8 mine, show -- convince you that we are requiring a  
9 two to one safety factor, then I want you to get  
10 those in to us.

11           The ETS does not indeed require a two to  
12 one safety factor. With respect to the replacement  
13 of existing seals, and I think I mentioned -- I  
14 talked about that enough already, in terms of what  
15 the Agency requirement is, but with respect to why we  
16 should not in the final rule, require replacement of  
17 existing seals, due to several factors, I, like you  
18 -- because we stated in the preamble why we did not,  
19 and I think I said that when Mr. Opegard was up here  
20 in his -- with the Appalachian Citizens Law Center.

21           But with respect -- and you stated  
22 specific factors here, but I would like you to, if  
23 possible, expand on the specific factors. Be as  
24 specific, no pun intended, be as specific as you can  
25 with respect to the specific factors that you

1 included in your written statement here to us today.

2 For example, you said it could be  
3 dangerous to replace. Be as specific as you can, and  
4 we indeed said that in the preamble. Also, with  
5 respect to strengthening existing seals, we did state  
6 that we were reviewing new technologies, that they  
7 have come onboard to look at as to whether there are  
8 better technologies coming on board that we could use  
9 to strengthen existing seals.

10 So we are going to continue to do that,  
11 but if you all have ideas about new technology, new  
12 and better technology, please provide that to us in  
13 written comments.

14 The only last comment I have is on the --  
15 well, I have two actually. On the  
16 requirements that's the engineer, in terms of the  
17 site installation, that there be an engineer --  
18 certified by the engineer, and you state that you  
19 oppose that.

20 And you do have specific reasons as to  
21 why you oppose it right here. Do you oppose it, and  
22 this is sort of -- you have specific reasons here,  
23 but is part of your rationale that you oppose it in  
24 terms of just the -- at the time of the engineer to  
25 be there or are you opposing it for other reasons?

1       **MR. CAYLOR:** Well, there's a whole lot of  
2 questions when you talk about just the time to be  
3 there. Are we talking about, you know, 24/7 or are  
4 we talking about --

5       **MS. SILVEY:** Okay. That's what I wanted to get  
6 out.

7       **MR. CAYLOR:** -- reasonable? Are we talking  
8 about having a designated person under the control of  
9 the engineer do that, which is very common under  
10 other engineering practices.

11       **MS. SILVEY:** Okay.

12       **MR. CAYLOR:** So there's a lot unanswered, and I  
13 think we're going to see the answers as we move down  
14 the road. That's why the emergency standard being in  
15 force was troublesome. You know, if we could discuss  
16 these factors, we could understand more of what is  
17 required.

18       **MS. SILVEY:** And that's what we are trying to do  
19 now. So I gather, partially I gather, what you're  
20 saying is that if we were to clarify that we are not  
21 indeed talking about the engineer being there 24/7,  
22 but just have -- then there might be some way to  
23 where we can make clarifications.

24                   And as to matter of fact, as I said, we  
25 are getting another set of questions that are getting

1 ready to come out now, and I think some of the issues  
2 even maybe that we are discussing today will be  
3 clarified.

4 **MR. CAYLOR:** We have normal engineering  
5 practices, and I would strongly encourage MSHA to  
6 deal with some of the Kentucky Board of Registration  
7 for engineers to discuss even with these agencies  
8 what are the normal engineering practices. I think  
9 that would be very helpful for the Agency.

10 **MS. SILVEY:** Okay. With respect to the --  
11 and just so everybody knows, I like to  
12 call it the concrete block seal. I know it's  
13 commonly referred to in the industry as the Mitchell  
14 Barrett seal, but with respect to the concrete block  
15 seal, and we heard this testimony before, that  
16 everybody joins in pushing MSHA to allow for that  
17 seal, but it's my understanding that we do allow the  
18 concrete block seal as a 50 psi seal.

19 And I clearly am not -- I understand, I  
20 think what commenters are saying. Commenters I think  
21 are saying to us the concrete block seal, as  
22 specifically specified in the prior standard. I  
23 think that's what I'm hearing, and maybe with the  
24 concrete block seal that we are allowing now, there  
25 are some additional requirements for it.

1 But just so -- I don't want people to go  
2 out and everybody think that MSHA did away with the  
3 concrete block seal, because that is -- so maybe it's  
4 the concrete block seal with additional parameters.

5 But, one comment that you said, you said  
6 the cost of installing the new approved seals would  
7 put a lot of smaller operators out of business and  
8 would force some to avoid sealing altogether. I  
9 would like you to provide -- be as specific as you  
10 can there, and provide specific examples in your  
11 comments before August 17th.

12 **MR. CAYLOR:** That follows up on what Joe Jacobs  
13 mentioned. He was asking for off-the-shelf designs  
14 that could be used, especially by the small guy. A  
15 lot of times the small guy doesn't have the financial  
16 wherewithal to put so much engineering design into  
17 the development of a seal.

18 And as much as we can get from MSHA in  
19 designing some off-the-shelf seals, that would be  
20 very helpful, especially for the small operator. And  
21 I'll tell you, those guys are getting fewer and  
22 fewer, like it or not, but we're no different from  
23 any other business.

24 The Wal-Mart's and McDonald's are  
25 replacing the family restaurants and the local

1 department stores.

2 It's just a fact of life in this country  
3 and we're seeing it in our industry.

4 **MS. SILVEY:** Anybody else? Okay, Mr. Caylor,  
5 thank you very much.

6 **MR. CAYLOR:** Thank you very much.

7 **MS. SILVEY:** We next have John Salley with James  
8 River Coal Company.

9 **MR. SALLEY:** My name is Jonathan Salley, j-o-  
10 n-a-t-h-a-n, s-a-l-l-e-y. I'm born and  
11 raised in Hazard, Kentucky. I'm from the coal  
12 fields, third generation coal miner. I work for  
13 James River Coal as an engineer for a couple of its  
14 subsidiaries. And a lot of my questions were more  
15 technical in nature.

16 I'll just kind of touch on a couple of  
17 those in generality and then give you more detailed  
18 questions to tech support to address. A lot of our  
19 coal mines will have a problem with a note in the ETS  
20 in regards to cutting and welding within 150 feet of  
21 existing seals.

22 A lot of our mines are developed with  
23 very narrow main lines that by it's very nature, the  
24 center of those main lines have our belt lines  
25 installed in them. And to maintain head drives and

1 such, they're pretty close to those seals that are  
2 already in existence.

3 That being said, they're on a separate  
4 split of air, so when tech support starts looking at  
5 this issue, it would be nice if you could just take  
6 that into consideration knowing that there's  
7 substantial air quantity passing by those seals.

8 That they are in a separate air course in  
9 its entirety and there probably isn't the same kind  
10 of situation as if you were cutting and welding on a  
11 return close to a set of seals, as is stated in the  
12 ETS.

13 Another thing that I wanted to make sure  
14 and mention was Sago -- cite as a possible cause for  
15 that explosion was a lightening strike. And in the  
16 ETS, it's been noted that all abandoned cables in  
17 sealed areas should be removed by the operator to  
18 help eliminate any cause for future explosion as a  
19 result of a lightening strike.

20 My question is, in a lot of these sealed  
21 areas, we have gas wells from the oil and gas  
22 industry that have drilled wells all around our  
23 sealed works in these abandoned areas. It just seems  
24 from an engineering standpoint, and a practical  
25 standpoint, that the most direct route for a

1 lightening strike to enter the coal mine would be  
2 down the casing of a gas well or an oil well.

3 I think it's pretty much a requirement  
4 that there are multiple casings there that could  
5 transmit a lightening strike in to the coal mine  
6 area. Most of the time these wells are in barrier  
7 blocks in between worked out areas of the coal mine,  
8 but the coal companies can't really certify how much  
9 the steel has wandered and how close that gas well is  
10 to the actual mine works underground.

11 And neither will the oil and gas industry  
12 give you any guarantee on how much that steel has  
13 wandered. If the well has been drilled several  
14 hundred feet, it could be dramatically different from  
15 a surveyed location on the surface.

16 So I would just ask that tech support  
17 look at that issue and maybe give us some kind of  
18 additional protection for the miners because, you  
19 know, I am from the coal industry. I have family and  
20 friends that work in the coal mines, and I want to  
21 make sure that they are safe.

22 And I go underground as an engineer. So  
23 it's important for me to know that you guys look at  
24 that issue and it's taken into consideration. I'm no  
25 professional guy that's been in the industry for 30

1 years, and the people at tech support probably know a  
2 lot more than I do, but just from a practical  
3 standpoint, a piece of cable that's laying in a  
4 worked out area that's separate from the outside  
5 atmosphere, just doesn't seem like it's as likely a  
6 cause for a spark as maybe a gas well steel casing  
7 that comes from the surface to ground all the way  
8 through that coal seam and below.

9 We've talked about how NIOSH and tech  
10 support is interested in getting more comments from  
11 industry, and I applaud that because really it just  
12 seems like from my short career in mining, we have  
13 dictated to the coal industry what we're supposed to  
14 do a lot of times when you have these guys that have  
15 30 years in the coal mines, that have all this  
16 practical experience that can really help people at  
17 tech support or NIOSH understand what they can do and  
18 what they can't do it in a coal mine.

19 You know, we see designs that are posted  
20 that really look more like civil engineering projects  
21 than something of what we're used to doing in a coal  
22 mine.

23 And I just think that a greater industry  
24 participation and a better communication with NIOSH  
25 and tech support may give us better designs that are

1 more practical and easier to construct, easier to  
2 comply with that our coal miners won't have such a  
3 hard time making sure that they do it correctly.

4           There's some questions that I will note  
5 on a card or a questionnaire to tech support on the  
6 pressure piling. It's mentioned in the ETS, and I'm  
7 not so sure how that's calculated, but any of those  
8 calculations, as well as some of the basis for the  
9 designs that are posted, would be nice to see just so  
10 that we can see how you arrived at those designs.

11           And the certification for the engineers  
12 on the design and the construction process of the  
13 seals, I think Bill kind of mentioned something that  
14 I myself am personally a little bit afraid of. If  
15 I'm involved in the certification of some seals at  
16 one of my mines, and I do go somewhere else, or  
17 something changes in that coal mine, because coal  
18 mines, they're not static.

19           They are dynamic animals. Seals require  
20 maintenance, and as we mine more and more coal in  
21 East Kentucky, you have multi seam interactions to  
22 where the conditions for that coal mine, when the  
23 seal is constructed today, may not be the same five  
24 years from now and who's going to be held liable.

25           Is it going to be me? Especially when I

1 have no control over Mother Nature or whatever you  
2 want to call it. I have additional questions, but  
3 like I said, I'll leave the more technical in nature  
4 to a letter or a request to tech support, but that's  
5 all I have today.

6 **MR. UROSEK:** I guess the only comment I would  
7 like to put out there for you is in the overall  
8 design and the ones that you see on the Web -- of  
9 course, when any is submitted to MSHA, that design  
10 will go on to the Web, and it can be used by others  
11 that have that same type of ground or same type of  
12 conditions.

13 So in any design that's up there, it is  
14 designed for the 50 or the 120 psi. So for example,  
15 if at your mine you have a design using concrete  
16 blocks or any other type of material that you believe  
17 will exceed the 50 psi using common mining  
18 construction techniques, and you provide the  
19 calculations to technical support and certify those  
20 calculations, that that design will meet 50 psi.

21 That's something we will look at to  
22 approve, and as long as it has all the requirements  
23 of the information necessary in the ETS, and it is  
24 certified by a registered professional engineer, it's  
25 most likely that design will be approved.

1 So it is open for that. Some of the  
2 designs are going to be more robust than others, but  
3 it depends on what someone submits and to whether  
4 they meet that requirement. That's something that is  
5 certified by the professional engineer that submits  
6 it to us.

7 **MS. SILVEY:** One of the reasons we are putting  
8 them up on the Web is so this information will be  
9 available to all who have an interest in even maybe  
10 taking one particular design we put up there, and  
11 then use different materials or different things in  
12 conjunction with that material.

13 And maybe they might come up with another  
14 design. So to that extent, I think that is useful to  
15 the mining industry.

16 **MR. SHERER:** I have a comment about the gas  
17 wells.

18 **MS. SILVEY:** Okay.

19 **MR. SHERER:** First of all, I appreciate you  
20 coming down and I especially appreciate your comments  
21 about oil and gas wells. We do realize that they are  
22 a problem, and in fact MSHA met with the State of  
23 Kentucky last week to try to coordinate between the  
24 oil and gas permitting process in the coal mine  
25 locations and such.

1           So we are working on that. There are  
2 some differences of jurisdiction and such that we've  
3 got to work through, though.

4           **MS. SILVEY:** Okay. Thank you very much.

5           Next we have Mike Amick. Mike Amick.

6           **MR. AMICK:** My name is Mike Amick. It's a-m-i  
7 -c-k. I want to thank you for allowing me to speak  
8 this morning. I would like to offer some of my  
9 opinions from working with seals since 1991,  
10 everything from installing the seals to research and  
11 development of seals.

12           I would like to make it clear that these  
13 views are my own and they're not of my current  
14 employer, or previous employers, or any currant or  
15 prior clients. I view myself as an interested party,  
16 independent, that can offer some points of  
17 information that might make the nation's mines a  
18 little safer.

19           I'd like to spend a lot of time on some  
20 of these issues, but I'm going to keep it as concise  
21 as I can, and please ask me any questions to clarify.  
22 The first thing I'll touch on is the professional  
23 engineer issue that you've already heard from. So  
24 I'll keep that brief.

25           Some of the issues that I see, one is the

1 professional engineer and the certified person  
2 responsible for the area, can often be in conflict  
3 and it should be clear that in the narrow definition  
4 of the seal design, that the PE be responsible for  
5 the design and as an as built and not necessarily as  
6 some of the wording is in the explanation text as  
7 accompanied with these proposed regs.

8 I see that the best solution is that the  
9 professional engineer certify the seals on an as  
10 built basis, including the design and maybe some of  
11 the key building points. For example, that the rebar  
12 was such and such facing, and it was such and such  
13 diameter, and the seal form was so thick, et cetera.

14 In fact, we have to ask ourselves,  
15 listening to people this morning, if these designs  
16 are so complicated and complex that we need  
17 professional engineers, certified persons, and other  
18 experts to watch every moment of the design, are we  
19 being unreasonable.

20 One thing I would like to offer is that  
21 the proposed 75336 (b) (2) should have the words  
22 stricken, conduct or have oversight of seal  
23 installation in order to make that section more  
24 workable. And I'll also admit these written, also  
25 before the August 17th deadline.

1 I also think that because the actual work  
2 of installing the seals is done by miners or the  
3 contractors, and because of the importance of the  
4 seals, that not only should you have the PE certify  
5 the design and as an as built, and it should have  
6 your certified person sign the construction book.  
7 You should also have the members of the construction  
8 crew sign this book.

9 They are just as important as everyone  
10 else on this team and they need to signify that they  
11 had performed these tasks as they were trained to do.  
12 It's no different than a roof bolter operator  
13 installing roof bolts correctly or the rock dusters  
14 putting on rock dust correctly.

15 And also I think it's important to keep  
16 in mind that the professional engineer and certified  
17 persons cannot be expected to be experts in all  
18 fields.

19 And what I'm saying there is on concrete,  
20 steel, different materials used, you can't expect  
21 them to certify them per se, but the regulations  
22 should allow them to accept certification from the  
23 manufacturer or whomever these materials were  
24 received from.

25 On some small mine costs, I was in a mine

1 last week at East Kentucky, 25 inches high, that if  
2 he put in seals as proposed on the Internet now, the  
3 cost would be approximately 25 percent of his total  
4 profits last year.

5 If you took it on a revenue basis, it  
6 would be somewhere between 10 and 15 percent. So  
7 it's far more than what's on Pages 28812 and 28813.  
8 And I'll try to get some more detail and submit that  
9 at a later time.

10 I also think that mines that are above  
11 the water table, which are generally small by nature,  
12 both in number of employees and in arial extent,  
13 still be allowed to use the 20 psi standard. When  
14 it's been shown historically that there's no methane  
15 and that the area could be monitored and the methane  
16 is below two and a half percent, and the oxygen  
17 remains below 17 percent.

18 If these areas should ever approach these  
19 two and a half or 17 percent ranges, then either the  
20 50 or 120 psi seals should be installed. There's a  
21 lot of these seals out there that have not failed,  
22 and I don't know that it's right to all of a sudden  
23 crucify them all.

24 On Pages 28799 in column one, it  
25 discusses the development of alternative seal

1 designs. I believe this section is incomplete and  
2 it's more like what I've seen in the media that it's  
3 just inaccurate on how these standards were  
4 developed.

5           It's always stated that the seal  
6 standards were weakened, and that's not the case.  
7 One of the goals of that program, if not the goal of  
8 the program, was to find an alternative to the  
9 standard block seal because they were failing and  
10 under certain conditions.

11           The Mitchell seals were failing in mines  
12 that had higher rates of convergence. Now it's  
13 difficult to tell, but probably in that video what  
14 you saw was those seals failing due to convergence,  
15 and an alternative design would probably have been  
16 more effective in that situation, but again, it was a  
17 video in the dark and it's kind of hard to say.

18           But my point is that having been there  
19 and lived through all of those testing programs,  
20 there was never any intent to weaken designs. It was  
21 the sole intent that I was aware of was to allow  
22 designs that could be installed in difficult  
23 conditions.

24           The failure of the seals at either Sago  
25 or Darby is not ironclad evidence that all

1 alternative seal designs are bad. Only in these two  
2 specific instances they failed whether they were  
3 improperly built, they were built properly but in the  
4 wrong application, or they were built properly and  
5 the explosion was simply higher than the design. I  
6 don't know.

7 I've only read what I've read in the  
8 media and I know that the media is typically  
9 inaccurate.

10 Mitchell seals have been blown out  
11 several times where in the same set of seals,  
12 alternative seals survived, and therefore you might  
13 call them superior.

14 I've seen it with my own eyes, and like  
15 at Sago, they were caused by lightening strikes. The  
16 MSHA report dealing with Oak Grove explosions back in  
17 the '90s goes into these events in great detail. I  
18 also think it's important that there is an atmosphere  
19 of cooperation.

20 Many of these mines, they have unique  
21 situations that need to be addressed and trying to  
22 come up with an iron clad, bulletproof set of  
23 regulations to cover every situation is just  
24 impractical. A mine with soft ribs or floor, for  
25 example, they need a design that has a much greater

1 plug than anchoring it to the rock because of the  
2 rock's weak nature.

3 This gets back to my earlier point of  
4 professional engineers being allowed to have more of  
5 a role in the design and not having some flexibility.

6 I've seen seals that were blown out that  
7 the ribs failed first.

8 Since the entry was six feet wider than  
9 when we put the seals in, there was no doubt that the  
10 ribs failed. Now, whether the seal failed first or  
11 the ribs failed, I couldn't tell you, but the pieces  
12 laying down in the entry that were larger than this  
13 table would indicate to me that the ribs failed and  
14 that when the seals started to move, it broke apart.

15 Another thing I think I've seen over the  
16 years is that MSHA needs to improve their  
17 communication to the district offices. One of the  
18 experiences that I had is we installed seals in  
19 different districts. We had different standards,  
20 depending on the district, and it really had nothing  
21 to do with how we were tested or oftentimes even with  
22 any specific condition.

23 I have seen some seal designs used in  
24 situations that were specifically mentioned by tech  
25 support to not be used in. The inspection force

1 somehow needs some kind of a rapid access to what was  
2 approved, along with some key points.

3 And that may be what you had in mind in  
4 the proposed regs where now a design is submitted to  
5 tech support and then to the district manager.

6 Because many seal designs are easy to build in a  
7 manner that looks like they are properly installed,  
8 but if you do not know what you're looking for,  
9 they're not properly installed and shouldn't be used  
10 in those situations.

11 So again, the inspector force needs to be  
12 thoroughly trained in all of these new designs that  
13 are coming out. This is my first experience with  
14 this kind of a meeting, and one thing I would like to  
15 state is that I hope that when all of the regs and  
16 rules come out that the discussion section is clearly  
17 left out.

18 Because when you read the regs and you  
19 read the discussion, you can get two different  
20 interpretations, and that's the last thing we need if  
21 something happens is, well, which -- what are we  
22 following, on the reg or are we going to follow what  
23 the interpretation of the reg says.

24 One of the things I noticed is that it  
25 says that the -- 75335 now, it says seals shall be

1 designed, constructed and maintained to protect  
2 miners from hazards related to sealed areas. In the  
3 past, the seals were always designed to protect not  
4 only the active area but the sealed area.

5 As it began years ago, there was a lot  
6 more explosions in the active area of the mine, and  
7 one of the fears were that the active area explosions  
8 would blow out the seal and get into the gob, and now  
9 either cause a further explosion or release further  
10 gases into the ventilation system.

11 I think this is important because up  
12 until this time, engineers could not use shapes to  
13 help increase the strengths of their designs. Take  
14 the Grand Cooley Dam. It's shaped in an arch because  
15 the water is on one side of it.

16 What these guys are forced to do is build  
17 a dam, if you will, but they don't know if the water  
18 is going to be on this side or the other side. So  
19 with the new reg, this is an improvement, and I hope  
20 that the tech support people that are reviewing these  
21 designs are thinking that now we can use shapes, if  
22 that was the intent of this proposed 75335 section.

23 And then finally, on the question that  
24 was brought up about existing seals, I really don't  
25 think that's a good idea to go around and replacing

1 the existing seals unless there's evidence that they  
2 are improperly installed, used in the wrong  
3 situation, that there is a compelling reason. Because  
4 for every non compelling reason to change a seal out,  
5 I can think of the great dangers and hazards that you  
6 are going to expose the crews to that have to go in  
7 and replace these seals, if it's in a situation where  
8 they have to knock the seals out.

9           So I would use caution there and only  
10 exercise that profound action in an event that the  
11 seals are suspect anyway. So to close, I think we  
12 all have in mind that we have to mine coal safely.  
13 The safest thing to do, strictly speaking, is just  
14 not mine the coal.

15           The most dangerous thing is to mine the  
16 coal and just walk away. What we have to do is  
17 provide a level of safety that is practical and  
18 addresses all but the most unlikely events. The  
19 worst thing we can do is just try to solve the  
20 political questions, and the popular perceptions.

21           And the only thing that has changed  
22 really is that now it's easier to blame somebody.  
23 Thanks for your time. If there's anything I can  
24 clarify, please ask.

25           **MS. SILVEY:** Thank you, Mr. Amick. I'll start

1 with my last comment first that I had in the order  
2 that I had them written down here. You said that you  
3 hope that in the future, the discussion section is  
4 left out, and I probably would even ask my attorney  
5 for some help here, but -- because you said sometimes  
6 you can get two different interpretations.

7 And clearly, that's not our intent that  
8 one who reads the preamble and the rule itself get  
9 two different interpretations. In point of fact, the  
10 intent is just the opposite, that the discussion in  
11 the preamble clarifies and provides a rationale for  
12 what the Agency did in the rule.

13 So in the event that you indeed have  
14 gotten two different interpretations from some of the  
15 five standards, 335, six, seven, eight, four, I  
16 guess, four standards in the ETS, and the provisions  
17 under the four standards, then I would really like  
18 you to let us know that.

19 You said you were going to be providing  
20 additional written comments, so I would like you to  
21 let us know that because I foresee that, as we do  
22 this final rule, it indeed will have the rule part of  
23 it, the language part, 33567 and eight, and it will  
24 also have a discussion part in the preamble.

25 With respect to your statement on the

1 cost, you did say, and I think you anticipated what I  
2 was going to ask you, you did say that you were going  
3 to get more specific numbers, and you would get that  
4 to us.

5 But you said the cost had been 25 percent  
6 of total profits and maybe 15 -- 10 or 15 percent of  
7 revenue. If you would, in terms of making a  
8 statement that it -- if you would get us specific  
9 amounts. You disagree with the amount that we had in  
10 our estimate because we put in the best good faith  
11 estimate that we had in terms of getting the  
12 experience of our people and many times called in the  
13 mining industry itself, both manufacturers and  
14 operators.

15 So if you could indeed, if you have  
16 different numbers, get those numbers to us. With  
17 respect to the professional engineer and the  
18 certification of the professional engineer, and I  
19 know that our attorneys will be looking at this very  
20 closely also.

21 I guess I'm speaking for them, but on  
22 that issue, and a number of people have raised that.  
23 I mentioned earlier, we have an additional set of  
24 questions coming out, answers coming out, and they  
25 are -- we got a lot of comment about, well, what do

1 you want. The PE, professional engineer there,  
2 looking over the construction 24/7, and I don't think  
3 -- I mean I think I can say to you here, we didn't  
4 anticipate that the professional engineer would be  
5 looking at the construction 24/7, even in the ETS  
6 that we put out, but we will be getting some  
7 clarification on that issue out to everybody. Did  
8 you want to add anything?

9 **MS. GREEN:** No, just to say, Erik Sherer  
10 actually from Coal Mine Safety and Health has been  
11 working on another set of Q's and A's, and actually  
12 there's a question related to this issue where MSHA  
13 makes that clarification.

14 **MS. SILVEY:** Does anybody else want to add  
15 anything? Anybody else? Okay, Mr. Amick. Thank you  
16 very much, but we do look forward to you following up  
17 with specific comments and specific rationale for  
18 suggestions you make before the record closes on  
19 August 17th.

20 **MR. AMICK:** Thank you.

21 **MS. SILVEY:** Is there anybody else who wishes to  
22 make a comment? Anybody else in the audience who  
23 wishes -- yes, sir.

24 **MR. BARKER:** I'd like to make a comment. You  
25 want me up here?

1 **MS. SILVEY:** Okay. Yes. Yeah.

2 **MR. BARKER:** My name is Gary Barker, b-a-r-k-  
3 e-r and I'm a private consultant. I just  
4 have a real quick comment that is basically in the  
5 form of a question. It doesn't have to be answered  
6 here, but I think the question needs to be answered  
7 at some point in time.

8 My question is, after a PE submits a seal  
9 to MSHA, and MSHA approves the design and assigns it  
10 a number, is or is not MSHA agreeing with that  
11 design?

12 That's it.

13 **MS. SILVEY:** Okay. Thank you. Are there any  
14 more comments?

15 **MR. BELL:** I've got one. Donald Bell, d-o-n-  
16 a-l-d, b-e-l-l. I'm from West Kentucky.  
17 I'm a professional engineer for the local mine there.  
18 I've heard a lot of comments today about seal design  
19 and certifications and things of this nature, and  
20 I've also heard a lot of comments about how we can  
21 make seals safer, perhaps through making them  
22 stronger through the 120 psi or the 50 psi pipe  
23 designs and construction.

24 At my particular mine, back in 2000, due  
25 to an unfortunate incident, we had an inundation of

1 water.

2 To save the majority of the mine, we  
3 constructed through MSHA's approval a set of bulkhead  
4 seals. These seals are some 120 feet thick.

5 I don't recall the exact number of yards  
6 that we put in this set of seals, but obviously these  
7 seals will not blow out. And the reason I'm bringing  
8 this up, I've heard comments about the atmosphere  
9 migrating out from behind a set of seals if we use  
10 these new type that are proposed.

11 I can assure you, because I have been  
12 there personally, the atmosphere behind these seals  
13 120 feet thick, and by the way, these seals were  
14 hitched into the roof, ribs and floor five feet each  
15 direction. I personally looked at that and assured  
16 that this was done correctly.

17 These seals still would leak atmosphere  
18 because now they have approximately 55 psi of water  
19 behind them. They are completely inundated which  
20 they were designed to be done. Water leaks out of  
21 the strata around the seals.

22 So regardless of how strong we build the  
23 seal, to say that we can build it 100 percent safe to  
24 where anything could be done outside that seal, is  
25 not accurate. I don't think that can be done. I

1 just wanted to bring that up so that MSHA would take  
2 that into consideration when you're looking at these  
3 seal designs.

4 Also, as we speak right now, we have a  
5 set of Mitchell Barrett seals which are being inerted  
6 with nitrogen gas to render the atmosphere there  
7 harmless.

8 To do so, I had to go and drill down into  
9 a sealed area. Again, I went through my local  
10 office.

11 So now in a sealed area, which I'm  
12 inerting, I have a two inch lightening rod, 331 feet  
13 in the ground. According to some of the speculation  
14 around the Sago disaster, lightening was transmitted  
15 down a borehole. Now, I don't want Mr. -- I forgot.  
16 One of the previous speakers mentioned oil wells.

17 We have several oil and gas wells in our  
18 mining field as well, which the casing is still  
19 intact from surface to below the coal seam. In this  
20 particular case, my casing dead ends at the coal seam  
21 itself.

22 Anyone familiar with electricity knows  
23 lightening or electricity is going to the easiest  
24 point of ground. So I would kind of like you to  
25 think about those issues as well. No one can replace

1 any of the tragedies that's happened.

2 No one can replace any of these loved  
3 ones.

4 I've had friends that I have lost myself,  
5 in particularly 1989, Pyro Mine disaster. Some of  
6 you may know that one as well. So I live with it  
7 daily, as many of the people in this room.

8 Unfortunately some of the ladies that  
9 have lost husbands, no one can replace what they've  
10 lost.

11 No amount of money can make them feel  
12 better. My heart goes out to them personally. I  
13 have friends that are at my operation right now that  
14 I see daily.

15 Nothing could replace their loss, but  
16 just like some of the other speakers that have  
17 presented testimony here today, we need to be  
18 realistic in what we are doing, and we don't need to  
19 do something that is unrealistic from the standpoint  
20 that it's just unachievable to meet the goals that we  
21 would all like to achieve, which is better safety for  
22 everyone. And that's my only comment.

23 **MS. SILVEY:** Thank you.

24 **MR. SHERER:** I've got a question, if you don't  
25 mind.

1       **MR. BELL:** All right.

2       **MR. SHERER:** Did you inject liquid nitrogen or  
3 gaseous nitrogen?

4       **MR. BELL:** Gas nitrogen.

5       **MR. SHERER:** Gaseous nitrogen. May I suggest in  
6 the future maybe a bigger diameter hole in a  
7 nonmetallic casing.

8       **MR. BELL:** You can. However, sir, the company  
9 that supplies the nitrogen specified to us if we used  
10 any type of a plastic casing, it would shatter.

11       **MR. SHERER:** So it was a pressure issue?

12       **MR. BELL:** It was the fact that the gas -- as  
13 the coal, it would just change the properties.

14       **MR. SHERER:** Yeah, the temperature. There are  
15 fiberglass casings available, but that may be an  
16 alternative. We can discuss this further in the  
17 rulemaking process. If you have any specific  
18 information, could you please submit it for the  
19 record?

20       **MR. BELL:** Certainly.

21       **MR. SHERER:** Thank you.

22       **MR. BELL:** Thank you.

23       **MS. SILVEY:** Is there anybody else? Anybody  
24 else here who wishes to comment? Having not seeing  
25 anybody else who wishes to make a comment or

1 presentation at this second Mine Safety and Health  
2 Administration public hearing, I will now tentatively  
3 draw this hearing to a close.

4 Now, you ask why do I say tentatively.

5 Because as I close it, we will remain  
6 here until 1:00 o'clock. And if anybody -- a little  
7 after one, and if anybody shows up after one, then we  
8 will hear whatever testimony they have, but I'm going  
9 to officially close it now, but before I close it,  
10 I'm going to make one final comment again, and that  
11 is to thank all of you for your time and attendance,  
12 and quite honestly, for your attention.

13 For those of you who gave us input, who  
14 made a presentation, and for those of us who did not  
15 make presentations, but just the fact that you were  
16 here and you showed that you have an interest in this  
17 matter.

18 We will take your information with us as  
19 we -- for the remainder of the public hearings and  
20 back to Arlington as we develop the final rule.

21 And we will do so in the manner we've  
22 heard, as I said in my opening statement, try to  
23 develop a rule that's safe, effective and can be  
24 appropriately implemented. And so with that in mind,  
25 thanks to everybody again, and the hearing is now

1 closed.

2 (Whereupon the meeting adjourned at 1:02 p.m.,  
3 it having been determined that no additional speakers  
4 were present.)

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**CERTIFICATE OF REPORTER  
COMMONWEALTH OF KENTUCKY AT LARGE**

I do hereby certify that I reported the public hearing of the Mine Safety and Health Administration on July 12, 2007, and that this transcript is a true record of those proceedings. As witness my hand and Notarial Seal this 24th day of July, 2007.

BARBARA J. ENNEKING, CERTIFIED VERBATIM  
REPORTER/NOTARY

SUBMITTED ON: 07/25/2007

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