

R E P O R T E R ' S T R A N S C R I P T O F

M I N E S A F E T Y A N D H E A L T H
A D M I N I S T R A T I O N

P U B L I C H E A R I N G

O N P R O P O S E D R U L E
F O R M I N E R E S C U E T E A M S

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Little America Hotel
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OCTOBER 23, 2007 - 9:00 A.M.

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A P P E A R A N C E S

Members of the Panel
Present: Patricia W. Silvey, Moderator
Michael Kalich
Tom MacLeod
Jeff Kravitz
Michele Curran
Cherie Hutchison
Phuc Phan
(Present for William "Bill" Wilson
afternoon session)

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1 OCTOBER 23, 2007 - 9:00 A.M. - SALT LAKE CITY, UTAH

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P R O C E E D I N G S

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5 MS. SILVEY: Good morning. My name is
6 Patricia W. Silvey, and I'm the Director of the Mine
7 Safety and Health Administration, Office of Standards
8 Regulation and Variances. I will be the moderator of
9 this public hearing on MSHA's proposed rule for mine
10 rescue teams. On behalf of Assistant Secretary
11 Richard E. Stickler, I want to welcome all of you
12 here today.

13 The MSHA members on the panel are, to my
14 left, Michael Kalich, who is with MSHA's Office of
15 Coal Mine Safety and Health, and he's the team leader
16 for this project. To his left, Tom MacLeod, who is
17 with the Office of Education and Policy Development,
18 and Jeff Kravitz, to his left, who is with MSHA's
19 Office of Technical Support in Pittsburgh. On my
20 right is Cherie Hutchison, who is on my staff, and to
21 her right is Michele Curran, who is our lawyer on the
22 project, and to her right is Mr. Phan, who is an
23 economist in my office.

24 Before we start this hearing this morning,
25 I would like to ask if you would be so kind as to

1 join me in a moment of silence in memory of all the
2 miners and rescuers who have lost their lives in mine
3 accidents in this country and throughout the world,
4 including those in Crandall Canyon. So right now, if
5 you would please join me in a moment of silence.

6 (Moment of silence)

7 Thank you very much. As many of you know,
8 this is the first of four public hearings on this
9 proposed rule. We will hold the other hearings on
10 Thursday in Lexington, Kentucky, that's October 25th,
11 and Charleston, West Virginia next Tuesday,
12 October 30th, and in Birmingham, Alabama on November
13 1st. We will be holding a public hearing on the mine
14 rescue team equipment proposal this afternoon at 2:00
15 p.m. in this same room. We are holding these two
16 separate hearings on the same day so that persons who
17 are interested in both rules can attend both
18 hearings. The mine rescue team proposal applies only
19 to underground coal mines.

20 In the back of the room we have copies of
21 the *Federal Register* that contain the proposal. The
22 comment period for the proposal ends on November 9th,
23 and I must underscore to you that MSHA must receive
24 your comments by midnight, Eastern Standard Time, on
25 that date. And for those of you who have been

1 participants in MSHA's rule-making process, you will
2 note that this is the first time that we have put a
3 precise time zone for the receipt of the comments,
4 because this became an issue in one of our earlier
5 rule-makings, so we want to make it perfectly clear
6 to the public.

7 As of October 19th, MSHA has received
8 three comments on the proposal, but that's not
9 unusual because most people wait until the end of the
10 comment period to submit their comments. You can
11 view the comments on the agency's web site,
12 www.msha.gov, under the section Rules and
13 Regulations.

14 The proposal would implement the
15 provisions of section 4 of the Mine Improvement and
16 New Emergency Response (MINER Act) of 2006, which
17 strengthens timing requirements and addresses
18 composition, availability and certification
19 requirements for coal mine rescue teams.

20 The purposes of these hearings is to
21 receive information from the public that will help us
22 evaluate the requirements in the proposal and produce
23 a final rule that will improve overall mine rescue
24 service, mine emergency response time, mine rescue
25 team effectiveness, and the quality of mine rescue

1 team training.

2 The preamble to the proposal discusses the
3 provisions in the rules and includes a number of
4 specific requests for comments and information.
5 Significantly, as you address these provisions,
6 either in your testimony to us here today or in your
7 written comments, please be as specific as possible
8 about how these changes would affect the safety and
9 health of miners and mine rescue team members. MSHA
10 also requests detailed information and data on the
11 cost and feasibility of implementing these proposed
12 provisions.

13 At this point I want to reiterate the
14 specific requests for comment and information that
15 are in the preamble. MSHA requests comments on the
16 proposed reorganization of 30 CFR Part 48 and on the
17 approach taken. We request comments on the
18 designation of existing standards as Subpart A for
19 under metal and nonmetal mines, and the creation of a
20 new, separate Subpart B containing both the existing
21 standards and the proposed new MINER Act provisions
22 for underground coal mines.

23 MSHA is proposing that team members of
24 state-sponsored teams who are full-time state
25 employees may substitute their regular job experience

1 for 50 percent of the training requirements. MSHA
2 requests comments on allowing experience to
3 substitute for 50 percent of the training
4 requirements.

5 MSHA also requests comments regarding the
6 types of state relationships with teams and team
7 members that would qualify the team member as
8 employees and the team as state-sponsored. What is
9 proposing that mine rescue teams be available at the
10 mine within one hour from the mine rescue station,
11 which is in accordance with the MINER Act.

12 MSHA solicits comments on whether some existing
13 stations may need to be moved to meet this
14 requirement.

15 To assist in developing our regulatory
16 economic analysis, the Agency would like to know how
17 many additional mine rescue stations would be needed
18 to comply with new requirements. Where would the new
19 mine rescue stations be located.

20 The Agency also solicits comments on
21 whether mine operators, state agencies and other
22 entities will encounter any difficulties in meeting
23 this requirement. The Agency asks that comments
24 include the specific feasibility information, such as
25 cost or technical capability, in support of their

1 positions.

2 MSHA requests comments on the proposed
3 64-hour training requirement, specifically whether
4 the proposed hours of training should be increased or
5 decreased in the final rule. Commenters should
6 address, and as I said earlier, be specific, the
7 rationale for any amount of training, the type of
8 training, the number of hours of training that should
9 be required for specific activities, and the impact
10 of such a requirement on the mining industry's
11 ability to form additional mine rescue teams or
12 retain current mine rescue team members.

13 The proposal requires mine rescue teams to
14 train at each covered mine or at each mine that they
15 service. Teams serving mines with 36 or fewer
16 employees must train at each covered mine
17 semiannually. Mine site teams and state-sponsored
18 teams, which are required to train at large mines
19 annually, would have to train at small mines
20 semiannually if they serve as a small mine. MSHA
21 invites comments regarding this matter.

22 MSHA also requests comments on whether
23 training at the covered mine needs to be conducted
24 underground. MSHA solicits comment regarding the
25 types of teams that are available to mines having 36

1 or fewer employees, and whether these mines should be
2 able to use other types of teams, such as teams
3 consisting of one miner per covered mine. Would
4 additional mine rescue teams be needed to comply with
5 the new requirements to train at each covered mine?
6 What would be the makeup and composition of these new
7 teams? Commenters should explain any suggested
8 alternative, including supporting documentation and
9 data.

10 The proposal would require underground
11 coal mine operators to provide certified mine rescue
12 teams, and requires MSHA to develop criteria for
13 certifying the qualifications of mine rescue teams.
14 The proposal would require each mine operator to
15 submit an annual statement to the district manager
16 certifying the qualifications of the mine's rescue
17 teams.

18 To make this certification less burdensome
19 for mine operators, the Agency developed a form that
20 can be filed online. MSHA welcomes any suggestions
21 on the form and requests comments and recommendations
22 for other alternatives for certification of mine
23 rescue teams. The proposal requires mine rescue
24 teams to participate in two local mine rescue
25 contests each year. MSHA developed criteria for

1 local mine rescue contests, and requests comments on
2 the proposed criteria.

3 The Agency solicits comment on whether
4 there should be a minimum amount of annual training
5 prescribed for contest judges. The Agency is
6 considering allowing attendance at training on
7 contest rules and interpretation to satisfy the
8 requirements for annual training for judges. The
9 Agency requests comment on this approach and whether
10 some other training is more appropriate.

11 The proposal would allow training that
12 provides an equivalent -- the proposal would allow
13 other training that provides an equivalent realistic
14 simulation exercise, such as Mine Emergency Response
15 Development, or MERD, drills to substitute for
16 participation in a local mine rescue contest. MSHA
17 requests comments on this alternative.

18 The Agency has prepared a preliminary
19 regulatory economic analysis for the proposal which
20 contains the supporting data and costs and benefits.
21 MSHA assumed that the proposal would result in 28
22 additional mine rescue stations, 56 additional mine
23 rescue teams, and no change in the level of service
24 provided by state-sponsored teams and stations. MSHA
25 estimated a total annual compliance cost of \$3.1

1 million. MSHA questions comments on all the
2 assumptions and data used in deriving the estimates.

3 This hearing will be conducted in an
4 informal manner, and formal rules of evidence will
5 not apply. As most of you who have participated in
6 prior MSHA hearings know, the panel may ask questions
7 of the witnesses and the witnesses may ask questions
8 of the panel. Cross-examination, however, is not
9 allowed.

10 To ensure an orderly progress of the
11 hearing -- and I don't think I need to do this
12 looking at the sign-in sheet, but I'll read what's
13 down here -- I may limit presentations to 20 minutes.
14 MSHA will make a transcript of the hearing and post
15 it on the Agency's web site one or two weeks after
16 completion of the hearing.

17 If you wish to present written statements
18 on information to date, please clearly identify your
19 material and give it to one of the panel members.
20 You may also submit any comments following the
21 hearing by any method identified, and as I said, we
22 must receive your comments by the close of the
23 comment period.

24 We ask that everyone in attendance this
25 morning sign in on the attendance sheet. Those of

1 you who have notified MSHA in advance will make your
2 presentations first. If you have a hard copy or
3 electronic version of your presentation, please
4 provide it to the court reporter. Please begin by
5 clearly stating your name and organization and
6 spelling your name for the reporter.

7 And our first speaker, and actually our
8 only speaker, is Mr. Litvin with the Utah Mining
9 Association. Mr. Litvin.

10 MR. TUTTLE: I'll be sitting in with
11 Mr. Litvin.

12 MS. SILVEY: And if you'll state your
13 name.

14 MR. TUTTLE: My name is Kevin Tuttle,
15 K-e-v-i-n T-u-t-t-l-e.

16 MR. LITVIN: Good morning, Madam Chairman
17 and panel members. I'm David Litvin, president of
18 the Utah Mining Association. The Utah Mining
19 Association is a trade business association that's
20 been in existence in Utah since 1915. It's one of
21 the oldest and most prestigious business associations
22 in the State. We represent all the major mining
23 companies in the State, including all the major
24 underground coal operations in Utah.

25 All of our mines, coal mines, are

1 underground mines. We have 13 underground mines,
2 eight of which are operating now, and also all the
3 suppliers and consultants to the industry as well.
4 Our association represents about 200 companies that
5 are based in Utah or do business in this state.

6 I'm very honored to be here this morning
7 before you. I'm here really for two reasons in
8 commenting on the proposal. The first is to help
9 make sure that we have procedures which will ensure
10 the safe rescue of trapped miners to the maximum
11 extent that we possibly can, to rescue them as
12 quickly and as safely as possible; and second, to
13 ensure that the mine rescue teams are properly
14 trained and can conduct their rescue procedures in as
15 safe and effective manner as possible.

16 With this in mind and looking at the
17 proposal, we would urge and hope that MSHA would
18 contact and work with the real professionals in this
19 arena, and that is members of the National Mine
20 Rescue Executive and Rules Committee, which are the
21 professional experts in mine rescue, and they should
22 be requested to provide their guidance and
23 recommendations on any needed changes that are
24 necessary or needed in the mine rescue arena so that
25 we can have the best trained rescue teams in the most

1 effective rescue procedures.

2 I have given you a prepared written
3 statement. I would like just to summarize that very
4 briefly, and then myself and Mr. Tuttle are here to
5 answer any specific questions that you may have.

6 First of all, we do believe that
7 metal/nonmetal and underground coal mines should
8 remain separate in the MSHA rule-making. These
9 mines, of course, as you know, operate very
10 differently. They have different procedures,
11 different characteristics. They have different
12 histories. And, therefore, we would continue to urge
13 that separation that you asked about.

14 Beginning my statement, I just want to
15 address some overall general comments that I think
16 are very important to remember as we proceed moving
17 forward with finalizing this rule-making. One, you
18 have large mines and you have small mines and you
19 have medium-sized mines. These mines operate in
20 different parts of their mine lives.

21 Some mines are starting up. They may have
22 very few people at the mine site. They may have
23 insufficient people to actually have a rescue team
24 for themselves, their own rescue team. They may have
25 to have a contract rescue team. As that mine grows,

1 then possibly they have more personnel than they have
2 rescue teams. Large mines may have no problem in
3 having two certified rescue teams. Some mines may be
4 isolated and they may need to rely on other mining
5 rescue teams to meet the requirements of the
6 proposal.

7 So it's important, as we move forward in
8 addressing a final rule, that we understand that
9 there's big differences in capabilities between large
10 mines, medium-sized mines and small mines, and also
11 depending on where a mine is in its operation, if
12 it's a startup situation or if it's reaching closure
13 or whether there's very few people who may be still
14 in the mine, or if it's at maximum production where
15 there may still be a large number of people in the
16 mine.

17 Also, there's different types of rescue
18 teams. There's mine rescue teams themselves.
19 There's contract rescue teams that other mines may
20 utilize, and then in some states there's state teams.
21 In Utah we do not have state teams, so I won't
22 address that issue here. So there needs to be
23 flexibility in being able to provide rules which will
24 work for all of those different types of teams, in
25 terms of training, in terms of their ability to get

1 to a mine accident situation, in terms of meeting the
2 requirements of having two certified teams available.

3 Also, travel distances for teams. In the
4 West, this is a particularly important issue, because
5 we have very large distances between mining
6 operations. In some cases we may have an isolated
7 mining operation where its closest mining neighbor
8 may be 100 or more miles away.

9 And if it does not have the capability to
10 have its own rescue team, then it's going to have to
11 rely on a contract team to be available, and it may
12 be a very long distance away, which means that the
13 one-hour travel time requirement is a tremendously
14 burdensome situation for mines in the West, such as
15 this state, and many times would be completely
16 infeasible. So there needs to be longer travel
17 times. The current two-hour travel time is workable.
18 One hour would not be.

19 Also, coverage for other mines. In the
20 past, under the two-hour time rule, most mines, if
21 not all, could be covered adequately by contract
22 rescue teams or by a company team that's located in
23 another operation, but can go to its sister mine
24 within the two-hour time frame.

25 So with those general themes, I would now

1 like to proceed to some specific comments. You asked
2 whether experience can be utilized in lieu of
3 training requirements for mine rescue teams, and you
4 mentioned specifically state-sponsored teams. We
5 believe that that is a good concept. We think that
6 it should apply across the board, not just to
7 state-sponsored teams, so we do support experience
8 being used to satisfy some of the requirements for
9 training, but it should be applicable to whether it's
10 a state-sponsored team, a private-contracted team or
11 a company rescue team.

12 As I mentioned, the one-hour travel time
13 for mine rescue teams, the requirement to be
14 available within one hour, is a major concern for
15 Utah mine operations, and in some cases would be
16 infeasible. Currently most mine rescue stations for
17 Utah mine operators are less than one hour travel
18 time, so, therefore, it's not an issue. However,
19 when you have mine rescue coverage for small mines in
20 the state that do not have the mine rescue
21 capability, the one-hour travel time requirement
22 would not be adequate to allow the rescue coverage
23 team to be available.

24 Also, as I mentioned, in startup
25 situations with some coal mines, we have less people

1 at the site, or even in a closure situation, we have
2 less time. Also, in Utah we do not have
3 state-sponsored teams, so that is not an option in
4 this state.

5 Moving on, I think it's important that in
6 the rule that you make sure that you have training
7 flexibility. You talked about increasing the mine
8 rescue training from 40 hours to 64 hours of rescue
9 training.

10 We do not see a problem with that. In
11 fact, having two certified teams, you probably would
12 do more than 64 hours of training per year to have
13 those teams adequately trained and certified.
14 However, the one problem we do have is the proposal
15 would require eight hours of training every two
16 months.

17 That would create some major difficulties,
18 and the reason why is that training does not occur
19 every month of the year. There's some months when
20 you do lots of training. There's other months when
21 you don't do training, or you may do just a little
22 bit of training.

23 And also, the training is designed to work
24 with the workers' schedules. Some workers are not
25 available in some months for training, but they are

1 available in other months. So we would concur with
2 the 64 hours of training annually, provided that
3 there is not any specific monthly requirement to meet
4 the 64 hours of annual training.

5 Also, the new mine rescue regulations
6 would require all mine rescue teams to participate in
7 a minimum of two contests per year. We do not see a
8 problem with that. It does add additional training,
9 of course, and therefore we think the 64 hours
10 definitely would be utilized.

11 Also, as you know, in the mining industry
12 we have an aging workforce, and we want to have as
13 much flexibility as possible to ensure that we do not
14 lose those very good, experienced people from our
15 teams because they cannot train the eight hours every
16 month requirement. Also, we want to have new miners
17 enter rescue mine teams and also we need flexibility
18 for them as well.

19 Also, during the year at certain times
20 it's more easy to do training. We have very severe
21 winters here. Sometimes it's difficult for people to
22 travel to locations in the winter, and we do more
23 training in the summer and spring months of the year.
24 We do, in general, anticipate that the mine rescue
25 teams for large mines, the rules that you propose

1 will have some difficulties, but for smaller mines,
2 as we indicated, there could be some very major
3 obstacles.

4 Now I'd like to address very briefly mine
5 rescue contests training and training for judges. We
6 disagree with MSHA's requiring mine rescue teams to
7 participate solely in mine rescue contests. There
8 are other methods which are very beneficial in
9 training rescue teams outside of doing mine rescue
10 contests, and this sort of training should be
11 recognized and allowed in conjunction with rescue
12 mine contests.

13 Teams often go through industry training
14 programs where they're given a problem to solve.
15 They're timed, and these training exercises, we have
16 found, are extremely valuable. We believe that
17 rescue mine judges, having training for judges would
18 be important. However, we do not believe that
19 training of judges should be a responsibility for
20 mine operators, but should be something that MSHA has
21 responsibility to do.

22 We do not want contests that we set up to
23 not be allowed to go forward because there's not a
24 trained judge available. We often have intercompany
25 or interindustry contests that we feel are very

1 beneficial, and we do not want them to be limited
2 because of the lack of a properly-trained judge.

3 Let me go on and talk a little bit more
4 about training. Contests, we find, are very
5 beneficial, but are not the final answer for
6 effective mine rescue training. There are many
7 alternate means that are also effective, and these
8 should be recognized. Problems can be given to
9 rescue teams. The problems can be evaluated, can be
10 solved, and they can be properly timed. Mine rescue
11 training should not be limited to just mine rescue
12 contests.

13 That concludes my overall summary of the
14 comments. I'd be happy to answer any questions that
15 the panel may have.

16 MS. SILVEY: Thank you, Mr. Litvin. I
17 have some comments and some questions for you and
18 your colleague, and other members of the panel may
19 also. First of all, I do appreciate your coming here
20 today, and obviously that evidences that you have an
21 interest in this proceeding, and I well know that
22 your organization has participated in prior MSHA
23 rule-makings.

24 And the two goals that you stated at the
25 outset, and I hope that we reflected them in our

1 proposal, those are the Agency's goals also, and also
2 were the goals included in the MINER Act. And I
3 guess that's the first segue for me today. And I say
4 this for Mr. Litvin, but it's also applicable to
5 everybody else in the room, and whether you speak
6 here today or not, or whether you have some similar
7 concerns or different concerns, and you wish to
8 provide us comments before the end of the comment
9 period, I want you to reflect on some of the overall
10 things that I'm going to say to Mr. Litvin.

11 First of all, I want to reiterate that the
12 proposal implements the MINER Act requirements, the
13 MINER Act of 2006. And I know everybody in this room
14 is probably familiar with the MINER Act signed into
15 law by the President on June 15th, 2006.

16 Why do I say that? And we have our
17 attorney here on the panel with me, and I hasten to
18 tell people, because some of the people in this room
19 know -- and this is a bit of humor here, maybe I
20 won't like this when I see it in the transcript
21 posted on the web site -- I say to some people, and
22 some of the people know I happen to be an attorney
23 myself, but I quickly add that I'm not MSHA's
24 attorney. This is our attorney right here, Michele
25 Curran, although some of the people in MSHA might say

1 differently, but I don't say that.

2 But I say that because on a serious note,
3 the Agency is constrained by some of the things in
4 the MINER Act. The MINER Act was very specific on
5 certain provisions. Now, one of the reasons for the
6 rule-making here is for us to try to implement the
7 MINER Act provisions in the proposal, but also to
8 extract from the mining community how the different
9 provisions in the proposal might impact on the mining
10 community.

11 But to the extent that the MINER Act is
12 very specific -- and I'm going to get to that -- you
13 know, to some extent, if it says blue, it is blue,
14 and it's hard to change blue to green. I mean, I
15 guess I don't know what these color combinations are,
16 you mix blue and green or something and you get
17 something in the basic colors.

18 But I think you understand what I'm trying
19 to say, and I'll talk more about specific examples
20 when we get to them. So that being said, I guess
21 that's a good segue. That gets to my first specific
22 example that probably comes up -- you heard it -- a
23 number of times in Mr. Litvin's comments, and that
24 was the travel distance. And he started out by using
25 an example of 100 miles.

1 And I can understand that being in the
2 West, in the West a lot of times it's not like being
3 in the East where a lot of the mines are located
4 close together. And you talked about the travel
5 distances, the one-hour travel being extremely
6 burdensome, and, in fact, infeasible in some
7 situations. And so that I won't be redundant myself,
8 I'm going to try to skip over and find other examples
9 where you said this.

10 But basically, what I want to suggest to
11 you, Mr. Litvin, and ask you, is if you would,
12 please, if you have any specific examples, if you can
13 provide me with specific mine rescue stations that
14 are members of your association, if you would provide
15 those to us as examples of where this would be
16 absolutely infeasible to comply with the one-hour
17 requirement, because the MINER Act does say one hour,
18 and that's what I said, as I go through here, I'll
19 talk to you about what I meant when I said we are
20 constrained to some extent by things that are in the
21 MINER Act.

22 If there are other persons in this room
23 who feel similarly-situated, then I would ask that
24 you do the same thing also. If you don't want to
25 speak today, if you want to provide comments to us

1 before the record closes, then if you would do that,
2 that would be very useful and very helpful to us.
3 You know, a lot of times an organization can make
4 general comments, but it's very difficult for the
5 Agency to take general comments and then translate
6 them into specific impacts.

7 The next thing, and I think you
8 specifically said that you thought this might be a
9 problem for small mines. If you have any small mines
10 that are members of your association, and I believe
11 for purposes of the MINER Act, it describes small
12 mines as 36 or fewer. If you have any small mines --
13 and this goes for anybody else in here, everything I
14 say to Mr. Litvin -- if you experience similar
15 situations, if you would provide specific examples to
16 us.

17 The next issue I want to talk about was
18 training, and clearly one of the core concepts in the
19 MINER Act that's reflected in the proposal was that
20 there be increased training and increased/improved
21 mine rescue team training, and that that would result
22 in improved emergency response and improved
23 effectiveness, team effectiveness.

24 You mentioned, Mr. Litvin, that the
25 eight-hour training every two months may present some

1 major difficulties. You needed some flexibility.
2 One of the things that I wanted to iterate to people
3 is that this proposal did not change the existing
4 regulations. It was only meant to implement the
5 MINER Act requirement, and the existing regulation
6 requires, if I'm not mistaken, that the training be
7 four hours monthly or eight hours every two months.
8 So with this proposal it was not our goal to, in this
9 proposal, to change the existing requirements, and
10 that's all I say on that one.

11 You said that you saw no problem with the
12 two rescue contests, but that there were
13 alternatives, that there should be alternatives. And
14 we did ask the question of what should constitute a
15 contest. One of the things I would say to you here
16 is you noted that oftentimes the companies give
17 problems to rescue teams and they time them, etc.,
18 etc.

19 I would ask you, if you could, if we are
20 to provide alternatives in the final rule, then it
21 has to be the description of what constitutes the
22 alternatives has to be specific enough so that it
23 provides notice to the public as to what MSHA is
24 going to be evaluating for compliance purposes.

25 So on that, I would ask you if what you

1 were telling me about, the situations in which the
2 companies provide the problem, if you could describe
3 that as specifically as you can. I mean, is there a
4 set, realistic simulated emergency response exercise?
5 You know, name it something and describe all aspects
6 to it so that we can evaluate it as to whether it
7 should be an effective alternative.

8 Then you mentioned the aging workforce,
9 and I wrote down the aging workforce. I don't know
10 whether I went off cue there. I might have gone off
11 cue because I'm filling in that category now. I
12 might have just purposely gone off cue. But if you
13 would explain to me again exactly what you said about
14 the aging workforce.

15 MR. LITVIN: Be happy to. As one gets
16 older, one oftentimes has more commitments, family
17 commitments, may be more involved in community
18 activities, may be looking at longer vacation times
19 because you've earned more vacation. So your time
20 availability to do training is maybe somewhat more
21 limited than it would be if you were earlier in your
22 career.

23 And these people have a sense of
24 experience. These are the people that we want to
25 have on mine rescue teams or to be training younger

1 workers on mine rescue capabilities or procedures.
2 These are the people that have to try the hardest to
3 get the time available to get the training done that
4 we need to have done. So that was the point of my
5 comment.

6 And if I could just respond to a couple
7 other things that you commented on, I'd appreciate
8 that opportunity. We understand that MSHA is
9 implementing the MINER Act of 2006, and maybe if all
10 of us had a chance to sit down and redo that law with
11 less emotion now than was occurring after Sago and
12 the other mine accidents that have occurred, we may
13 be willing to come up with different requirements.

14 Oftentimes we find, in the West, laws and
15 requirements that were enacted with a slant towards
16 eastern mining operations, and sometimes there's a
17 disconnect between what happens in the East and what
18 happens in the West. And so sometimes we're forced
19 to do things that, if you were in the East, would be
20 no problem at all, but in the West, because of our
21 different geological situations, because of our much
22 larger distances, it's often that requirements become
23 much more burdensome.

24 And on the one-hour requirement, that was
25 one that I really wanted to highlight to the panel

1 members, because, as we know, these laws oftentimes
2 are amended and changed, and if something is not
3 workable, you need to be aware of it so that you can
4 be a voice back to Congress, as we can be also, to
5 get unworkable provisions changed so that they're
6 more workable. And this one-hour requirement
7 training, this one-hour travel distance requirement
8 is a very burdensome requirement for us here, where
9 in West Virginia it may not be at all burdensome.

10 Also, the definition of small mines, 36
11 employees or less, I mean, mines, large mines, don't
12 start out large. They start out small and they get
13 large, and then get small again as they're getting
14 close to closure. Sometimes you have an operation
15 that never gets large. It's always under 36. But
16 when you have a startup situation, you have much
17 fewer employees there than you'll have later when
18 it's under full production.

19 So there has to be flexibility in the
20 requirements to address different phases of a mine's
21 operation or for a different size of a mine compared
22 to a larger mine. That's what we're talking about,
23 is that flexibility needs to be there, because you
24 can have two certified rescue teams on site for an
25 operation that only has 12 people. Maybe a year

1 later it will have 180 people, but maybe this year it
2 only has 12 people because it's not into full
3 production. So this is what we're talking about.
4 Flexibility is very, very key.

5 MR. TUTTLE: Can I add to that? You asked
6 for some different scenarios. We provide mine rescue
7 coverage to a small hard rock mine.

8 MS. SILVEY: And when you say "we," the
9 Utah Mine Association?

10 MR. TUTTLE: No, no. I'm with Energy West
11 Mining Company.

12 MS. SILVEY: That's what I thought.

13 MR. TUTTLE: We provide -- they have asked
14 us to provide coverage to 35 people at the mine. How
15 do you provide that? We're a two-hour travel
16 distance. With this proposed rule, we will no longer
17 provide service to that company.

18 MS. SILVEY: When you say a "hard rock
19 mine"?

20 MR. TUTTLE: A hard rock mine.

21 MS. SILVEY: Because this rule only
22 applies to underground coal.

23 MR. TUTTLE: I understand that. I'm just
24 giving you some examples of what's going to be facing
25 us, because we have another mine, a startup mine

1 within our area, who requested that we be their team.

2 MS. SILVEY: Is that a coal mine?

3 MR. TUTTLE: A coal mine -- that requested
4 that we be their team while they get started up. We
5 said we would do that, and as soon as they could,
6 they would provide one team and then two teams. That
7 took a two-year process to get that done, and then we
8 pushed that company to make that commitment to do
9 that.

10 But on their startup, they was -- didn't
11 have the amount of people to get that team ready, so
12 we did that. Now we will be over the one-hour travel
13 time. We will not provide that service to any other
14 mine that comes and asks us for that. We cannot do
15 that. We had our mine, we had a sister mine in
16 Wyoming, an underground coal mine, on startup that
17 requested -- they wanted to know if we could be their
18 backup. We was over two hours away from them.

19 It was the grace of a hard rock mine that
20 provided coverage to that mine. If they would not
21 have provided that coverage, where would our mine be?
22 There is no contract team there within an hour.
23 There's no state team there within an hour. We're
24 over a one-hour travel time. What would we do with
25 our mine? We have no ability to provide mine rescue

1 coverage there on a startup. There is no mine.

2 If somebody come and ask me to provide
3 coverage to them for mine rescue, if I don't say yes,
4 what does that mine do? They have no options. You
5 have taken the options out of that mine. They cannot
6 provide it. There's nobody around to provide
7 coverage for them. And if I don't, as a company
8 that's a competitive company, if I don't provide that
9 for them, where do they go?

10 There's got to be something in there to
11 allow that, some mechanism there to provide some kind
12 of coverage for some of these people who don't have a
13 mine within a one-hour travel distance from them, who
14 don't have enough ability, enough people in there to
15 even form a team.

16 And then you have to get to the point
17 where I got -- say I've got 12 people at the mine.
18 Do I force those 12 people to be mine rescue members?
19 That's what you're getting down to, is if I have 12
20 members there, I'm going to say, "You're a mine
21 rescue member whether you want to be or not."
22 Because when we have to have a mine here, we have to
23 have two mine rescue teams, and now you've got people
24 who are mine rescue team members who really don't
25 want to be mine rescue members but are being forced

1 into that position because we had to meet the
2 regulations.

3 And if I can have you just look at that
4 and say, "How do I provide for those who can't?"
5 Now, if I got somebody close to me and we've provided
6 coverage for other mines before in our area,
7 especially on startup situations, we've had some that
8 in the past we've covered, and we've forced those
9 people to get their own mine rescue teams. But I
10 feel strongly about that, that they should have their
11 own mine rescue team because they have the ability on
12 that. But if there's no ability there, where do they
13 go?

14 MS. SILVEY: Why don't you hold your
15 point. If you want to write it down then I'll come
16 back to it, mostly for me to remember to come back to
17 it. But I'll go back first to Mr. Litvin and say on
18 the one hour, I still would ask you to provide
19 specifics, and Mr. Tuttle to provide specifics.

20 And I want to say, first of all, and I
21 think you heard me, that as to hard rock mines, the
22 rule is not applicable to hard rock. This rule is
23 not applicable to hard rock mines. But your example
24 with respect to the startup coal mine, it is
25 applicable. So I would ask you to provide as many

1 examples of that as you can.

2 MR. LITVIN: We'd be happy to do that.

3 MS. SILVEY: Okay.

4 MR. LITVIN: On all of the issues that
5 you've got here.

6 MS. SILVEY: Right. Now, one of the
7 things I want to say, because you made me think about
8 this when you started talking, and I want to say this
9 to everybody in the room, that one of the things --
10 it is not the goal of the Agency to negatively
11 impact -- to use Mr. either Litvin's or Tuttle's
12 statement -- to negatively impact mine rescue
13 service.

14 And I want to say here, on behalf of my
15 panel, and I know that I reflect all their
16 sentiments, that we believe that there's no more
17 noble cause than the people who are on mine rescue
18 teams and who are serving and providing that service.
19 And, I mean, I think personally that that is a --
20 what's the word I want to say -- that it is a task
21 that one takes on and takes it on willingly when you
22 know it's voluntary, and it is -- it's a generous
23 giving of one's own person really, and I don't think
24 that there's more than we see it right now going on
25 in LA with respect to Southern California, with

1 respect to the firefighters. So I don't think that
2 there is any more noble service.

3 We clearly, for those of us who have been
4 in the mining industry as long as we have, we clearly
5 believe that there is a need and a role for mine
6 rescue teams. And it's our goal to only try to help,
7 try to implement, as you said, Mr. Litvin, and to try
8 to implement the goal to try to make it better, make
9 that service better. But in doing so we have to do
10 it within the constraints of what the Congress
11 provided us.

12 MR. LITVIN: Madame Chair, maybe we could
13 say that it's heroic.

14 MS. SILVEY: Heroic.

15 MR. LITVIN: It's a heroic endeavor.

16 MS. SILVEY: That's right.

17 MR. LITVIN: On the part of these rescue
18 teams.

19 MS. SILVEY: Heroic. That's right. Thank
20 you for the word I was looking for.

21 MR. LITVIN: I think Mr. Tuttle would be
22 prepared to follow up with written comments as well.
23 But I think Mr. Tuttle will be prepared to talk a
24 little bit in greater detail about what companies in
25 Utah have been doing to train mine rescue teams

1 outside of just the mine rescue contests, raise that
2 question.

3 MS. SILVEY: Okay.

4 MR. TUTTLE: I'm also the chairman of the
5 Rocky Mountain Coal Miner Rescue Association, and so
6 there's no doubt I am in favor of mine rescue
7 contests. I think they're valuable, and we have put
8 one on every year. But when we look at our contests,
9 we have the contests in Price, Utah.

10 We have one in Colorado that fluctuates
11 between Gray one year and goes down to Paeonia,
12 Colorado on the alternate year. Those are two local
13 contests. Have had one in New Mexico, but I don't
14 think we had it this last year. Our next probably
15 local contest is the national contest. So what do
16 you consider as a local contest?

17 If I'm forced to participate in two local
18 contests per year, what if I'm sick and I miss that?
19 As a team member, I missed it. Is that for the team
20 to participate or each individual member to
21 participate in the contest? That needs to be spelled
22 out. If I missed one, how do I get another contest
23 under my belt? I have no place to go.

24 For example, Willow Creek. Willow Creek
25 happened four days before our contest. We come that

1 close to canceling the Price contest. If that had
2 happened, what do we do for a contest? We have no
3 contest out there. And so there's got to be some
4 alternates out there. And I'm all for contests, but
5 going to a contest does not make you a mine rescuer.
6 The benefit of a contest is all the work prior to the
7 contest. It's all the training done prior to it, all
8 the work put in studying and doing stuff.

9 The contest is just a culmination of all
10 the work that you've done as a mine rescue team for
11 the contest. And I'm all for that, but some
12 companies may not want to participate in a mine
13 rescue contest.

14 As the head of the Rocky Mountain Coal
15 Mine Rescue Association, I have some great concerns.
16 Last year we had 14 members, 14 teams come to our
17 contest. That pretty much stretches our contest. We
18 have to rely on MSHA judges. MSHA from the district
19 comes out and judges our contest. If MSHA does not
20 judge our contest, the contest will not go on.

21 If we have to go out and have people go
22 through an annual training, we will not be able to
23 provide judges for our contest, if MSHA is not an
24 integral part of that process.

25 Also, if I have a team that wants to come

1 to a contest just to satisfy the regulations, the
2 number one year we had 25 teams. We got through at
3 10:00 that night trying to put the contest on. To
4 have a team come and participate in our contest just
5 for the sole purpose of saying I attended a contest
6 does nothing for the contest. It's going to put a
7 burden on the contest. We're going to have to have
8 more fields, we're going to have to go out and find
9 more material, more framing to make that contest
10 work.

11 And so I have a real fear that we will get
12 double or triple the number of subteams coming to our
13 subcontests just to satisfy the regulations that I've
14 attended two contests. And it is not doing them any
15 good and it's not going to provide any benefit to go
16 out and walk through a contest problem. The benefit
17 comes from the prior work going on there. Now,
18 there's the Edgar Mine in Colorado. Western Energy
19 Training Center is starting up a training facility.

20 Now, I'm not saying that we just throw
21 anything out there, but if we're allowed to have some
22 certified programs out there where the regulation
23 says that you'll cover certain subjects, that you'll
24 run through a contest problem in that and you'll be
25 timed on it, that you'll go through smoke on that

1 contest, you'll learn things such as firefighting and
2 gas detection and those types of things, if we can
3 provide those things through an organized -- a
4 professional organization, why shouldn't I get as
5 much credit for that as going to a contest where I go
6 to a contest and run through a problem and that's it?

7 I've met the requirements. And I can gain
8 just as much training through a program. I'm all for
9 contests, but don't limit it just to contests. Give
10 something else out there as the option for those who
11 don't want to participate in contests, because
12 contests are competitively driven, and some people
13 don't want that.

14 We've had -- in the past we've had some
15 other teams -- some other mines that have taken their
16 teams up to a professional firefighting class that
17 year and put them through a Firefighting One
18 experience, to learn how to fight fires instead of
19 going to a contest because they didn't want to
20 participate in a contest that year. They ought to
21 have that ability. As long as we are providing the
22 training for these people, we ought to have some
23 flexibility on that.

24 Don't take away the contests that are
25 still beneficial, but don't force a person into a

1 contest that has no desire to go to a contest that
2 puts a burdensome exposure to that contest to
3 participate in it. So that's one of the things I
4 have on that, on the contest, that we've got to be
5 real careful how we play that because we can destroy
6 our contests.

7 MS. SILVEY: And as I said in my opening
8 statement, we did allow, although we solicited
9 comment on that, we allowed other training that
10 provides equivalent skill development, and we
11 specifically mentioned that one example being the
12 MERD. But a realistic, simulated training exercise,
13 that seems to be what you're saying. So once you
14 provide examples of that, we solicited comments on
15 other examples for local contests.

16 MR. LITVIN: And that flexibility is very
17 important.

18 MS. SILVEY: Yes. Now, one thing I do
19 want to ask, and if you don't want to answer it right
20 now, you don't have to, but several times I've heard
21 that if you all have to provide the judges, that you
22 think the contests will go by the wayside. And why,
23 exactly, if you have to provide the judges -- because
24 you were saying MSHA should provide the judges -- why
25 are you saying that there will be no contests if you

1 have to provide the judges?

2 MR. TUTTLE: This is my personal opinion.
3 For MSHA to come over there, and they bring 30, 40
4 people over there, and they go through training and
5 do that, and if I've got to go out into my community
6 and get judges to put on a contest, and I can't just
7 get people to put a contest, I've got to tell that
8 person, "Now you've got to go through a training
9 course before you can be a judge," I don't know if
10 I'm going to be able to find that many people that
11 will come and give service. They may say, "Well, if
12 you do that, you'll pay me."

13 And if that's the case, then that's going
14 to affect that. I don't know. I haven't run that
15 all the way through. But for me to go out there,
16 it's going to put a big burden on me personally, and
17 my organization, to go out there and try to find 30
18 or 40 qualified, MSHA-qualified judges to put on a
19 contest, it's going to -- we rely on the vendors for
20 our apparatus. They put on the contests.

21 If we have to start putting those on, it's
22 going to be a big burden to try to go out there and
23 try to find people that are MSHA-certified for
24 training. MSHA right now is providing that for our
25 contests. They provide the training for their

1 people, and I think that's a benefit. I just have a
2 concern that if we have to go out in the industry
3 whether we're going to have the ability to put on a
4 contest.

5 If I can't get the number of people to put
6 on the contest, the contest goes away, and now we
7 don't have two contests to come to.

8 MS. SILVEY: Okay, well, those are all the
9 comments I have. Does anybody on the panel have
10 anything?

11 MR. KALICH: I think we've covered
12 everything that I had.

13 MR. PHAN: In one of your responses you
14 said that for equipment costs it's going to range
15 around \$110,000 to \$120,000, and I was just wondering
16 if you can supply more detail on how you came up with
17 that calculation.

18 MR. TUTTLE: Happy to.

19 MS. SILVEY: On that, I have a different
20 question on that than Mr. Phan asked. My different
21 question is you gave equipment costs, and that was,
22 you said, to equip a station. Are there any other
23 costs? You know, you learn you never ask leading
24 questions. You ask yes or no questions. But I'm
25 going to ask it. Are there any other costs related

1 to mine rescue stations than equipment costs? And if
2 there are, that's the question I have. If there are,
3 would you include those.

4 MR. TUTTLE: I will. Apparatus, I'm going
5 to give you a ballpark of between \$5,000 to \$10,000
6 per apparatus, and it would be on the \$10,000 side.
7 That is 12 units. That's \$120,000 right there, just
8 for apparatus alone, not including the support
9 material that has to go along with that. You have to
10 have bottles, you have to be able to fill your
11 bottles or send them out for repair.

12 You have to have a building to house all
13 that stuff in. You have to have lifelines associated
14 with that. You have to have cath lamps, you have to
15 have instruments. With the new regulations now
16 you're going to be looking at a special instrument
17 now with the 100 percent methane and stuff like that.
18 We're going to have to purchase --

19 MS. SILVEY: We're going to discuss that
20 this afternoon.

21 MR. TUTTLE: That's a new issue right now,
22 though. The instruments we have now are useless
23 under the new regulations. We're going to have to --
24 there's some units out there in what's going to be
25 proposed that we're going to have to purchase new

1 instruments for them, and they're probably going to
2 be, I'd say, \$2,000 or \$3,000 apiece. You're going
3 to have four, five of those. So just on the
4 \$120,000, that's strictly an apparatus cost.

5 MS. SILVEY: But as I said, I'm interested
6 in if there are costs additional to the equipment.
7 That's what I'd like to have answered. Thank you.

8 MR. LITVIN: Thank you very much.

9 MS. SILVEY: For example, building,
10 leasing or whatever. I know how sometimes there can
11 be, for example, I know how we had different examples
12 for things that are done now. It should be sort of
13 things like building an appurtenance to an existing
14 mine, if it's a mine site team.

15 And maybe there won't be any additional
16 building costs. But if it's not, you know, or it
17 could be, if it's a contract team or composite team
18 or an association team, there might need to be some
19 other costs. So that's what I would like to see
20 included, if there has to be.

21 MR. LITVIN: There are other costs.

22 MS. SILVEY: That's what I would like to
23 hear. Well, if my panel members have no further
24 questions, then I want to say that we appreciate very
25 much your thorough presentation and your patience

1 with us and your response to the many questions that
2 he had. And I also would like to ask you, please, if
3 you would provide those additional comments to us
4 before the record closes on this proposal. Thank you
5 both very much.

6 MR. TUTTLE: One more comment. I
7 appreciate the efforts on mine rescue. I've been
8 involved with mine rescue for many years. I know the
9 importance of it. I know liability of a mine rescue
10 teams. Been involved with mine rescue myself. So I
11 appreciate it, and anything we can do to inform mine
12 rescue, I'm all for it. We've got to make sure we do
13 it right so we don't get ourselves into a bind.
14 Thank you.

15 MR. LITVIN: Thank you very much.

16 MS. SILVEY: Mr. Litvin, I hate to call
17 you back up, but it's not that I know everything.
18 One of my colleagues just whispered something to me
19 and I didn't do it in quick enough time. But one of
20 the questions we had, that I had in my opening
21 statement, I think we were exhausted, we've covered
22 about everything, but it was whether the training --
23 did all the training have to be conducted
24 underground. And I don't know if you have any
25 thoughts on that, or Mr. Tuttle, or if you wanted to

1 provide an answer to us before the record closes.

2 MR. LITVIN: We'll be happy to supply
3 that.

4 MS. SILVEY: Thank you.

5 MR. TUTTLE: As far as underground, I
6 think it's good sometimes to go underground. I'm
7 more concerned, probably, with working in smoke.
8 That can be simulated. A team who does not know how
9 to work in smoke is at a very big disadvantage. I
10 don't think that has to be done underground. I think
11 you can do that just as well in a building or
12 someplace like that.

13 But a team, in my opinion, needs to be
14 able to know how to work in smoke, because you're
15 disoriented. We've been down an entry, turned right
16 in to a stopping and then think we've made a turn.
17 So there's some positives with working in smoke that
18 I think are valuable. But going underground, it's
19 not a bad idea, but I think you can do without it.

20 MS. SILVEY: That's fine, and if there's
21 anything else you want to add, you feel free to do
22 that.

23 MR. TUTTLE: As far as the training, one
24 issue on the training. The mine rescue contests
25 usually run between April and September, roughly.

1 There's a time frame on that. That's where we spend
2 a lot of our time, on training.

3 And we train during the wintertime
4 sometimes, sporadically, just to meet the regulations
5 on that. But our biggest hit comes on -- the company
6 put a lot of time, way above the 64 hours, on a
7 contest, at least on our operations. We've had some
8 people that would say, "I don't want to do that."
9 This is a time where the constraints are too much
10 there. A lot of this training is done on a weekend
11 or an overtime shift.

12 We've had people that have come off team
13 and they say, "I've only got so much time with my
14 family. And I want to be a mine rescue team member,
15 but I can't, because all my spare time, you're
16 causing me to come back out and do mine rescue work."
17 So we lose a lot of good people on those types of
18 situations.

19 I don't know how to remedy that. That's
20 why, when we talk about providing so much during the
21 year, some people can do it at certain times of the
22 year, and sometimes they can't. Sometimes they're
23 involved with farming.

24 It might be that some people like to do
25 stuff in the wintertime. I don't know how you'd

1 apply that, but being strictly on that month by month
2 by month, some people can put more in at certain
3 times than they can on another. Sometimes we lose
4 some good mine rescue people because they can't be
5 that steady during the every-two-months period.

6 MS. SILVEY: Okay.

7 MS. HUTCHISON: If you had to suggest a
8 different distribution?

9 MR. TUTTLE: I would think as long as a
10 team member has so much training within the year.
11 That's what we're looking at. And maybe so much on
12 the off-year. But I know that's different than the
13 regulations, but you opened the regulations up.

14 MS. SILVEY: But I didn't open that one
15 up, and I didn't -- I went as far as I wanted to go,
16 and that's the lawyer in me, and if I stopped,
17 because I could go further and say that bimonthly and
18 every month is out of the scope of the rule-making.
19 But I didn't say that. I sort of did, but I censored
20 it, didn't I? So now I've got to be clarifying,
21 then.

22 MR. TUTTLE: I understand.

23 MS. SILVEY: I appreciate your comments,
24 though, any and all comments you've made. We
25 appreciate that.

1 MR. TUTTLE: But we don't have to change,
2 don't have to add to the every two months. You may
3 say that other time can be during the year.

4 MS. SILVEY: Can be.

5 MR. TUTTLE: But I just had some concern
6 there, because we've lost a lot of good members.

7 MS. SILVEY: That's a fair point you just
8 made.

9 MR. TUTTLE: A lot of good team members
10 and a lot of good people, because, "I just can't meet
11 your schedule for training. And if I miss that
12 month, if I can't make it up, where am I?" And so
13 the training issue becomes a real issue with some
14 people, and we've lost a lot of good people that just
15 can't meet that.

16 MS. SILVEY: I understand. But you did
17 make a good point that you made at the end there.
18 Thank you very much.

19 Mr. Litvin is the only person signed up on
20 the list. Is there anybody else in the room who
21 wishes to speak? I was going to say, all these
22 people in the room? Oh, I see it. Yes, sir.

23 MR. HEAD: My name is Rodney Head. I'm
24 the Safety Director for McClane Canyon Mining, LLC,
25 in Loma, Colorado. I was going to submit my written

1 comments, but I thought I'd take the opportunity to
2 address just a few of the things Mr. Litvin and Mr.
3 Tuttle spoke of and that you asked questions about.

4 MS. SILVEY: Yes, sir.

5 MR. HEAD: While being very cognizant of
6 the fact that the MINER Act states that the distance
7 from the mine rescue station will be limited to
8 one-hour travel time, we're located in rural
9 Colorado, north of Grand Junction, Colorado. The
10 nearest other mine rescue station to us is one hour
11 and 15 minutes travel time, and that was from Blue
12 Mountain Energy - Deserado Mine to the north of us.

13 At the present time, we do not have rescue
14 coverage. Blue Mountain Energy provides that for us.
15 If we go strictly by the rule of one hour, that will
16 directly impact McClane Canyon Mining, LLC. We're a
17 very small operation. Presently we employ 19 people
18 underground. So that travel distance does impact us
19 tremendously.

20 MS. SILVEY: Thank you.

21 MR. HEAD: If the one-hour limit stands as
22 it is written now, we were in the process or are in
23 the process of forming a mine rescue team right now.
24 With 19 people working underground at the mine, if
25 I've got to put two teams together, then I run into

1 the problem of, Do I have people that are motivated
2 enough that they want to be on a mine rescue team?
3 Do they have the physical ability to be on a mine
4 rescue team? Where do I get the people? Can I force
5 those people, as Mr. Tuttle talked about, to be on a
6 mine rescue team?

7 I was a mine rescue team member for 22
8 years in western Kentucky. I was honored to be on
9 that team. But on the same token, you have folks
10 that don't want to be on it. They don't want to put
11 the time in for it. They don't have the drive or the
12 initiative to participate in it. So where does that
13 leave McClane Canyon Mining, LLC?

14 The part on the training, I agree with the
15 prior speakers on the attending the two mine rescue
16 contests. I think there's other things that could be
17 done that would be just as beneficial as the two
18 contests. But speaking strictly for McClane Canyon
19 Mining, if we have to attend two mine rescue contests
20 every year, the closest ones would be either in
21 Paeonia and Price, or alternatively in Craig,
22 Colorado.

23 If I'm going to take a team out of our
24 mine and send them to whether it be Craig, Paeonia or
25 Price, that affects the mine, because I'm taking

1 these valuable people that we have off to a contest.
2 If one of the team members is my miner operator, for
3 instance, I don't have another miner operator. So
4 now you're impacting the production of the mine
5 directly.

6 And the last thing is the realism of the
7 contest, and I think Mr. Tuttle spoke more to that.
8 You can put somebody in smoke outside, it's one
9 thing. You put them in smoke underground or at the
10 Edgar Mine or whatever, that's a completely different
11 story. That is much better, realistic training, in
12 my opinion.

13 MS. SILVEY: What are you saying is much
14 better?

15 MR. HEAD: I'm sorry?

16 MS. SILVEY: Which is much better?

17 MR. HEAD: I think the contests are good
18 in their own way, but there's training that you can
19 do, either at the Edgar Mine or underground at my
20 mine or at a firefighting center or whatever.

21 MS. SILVEY: Okay, the smoke training is
22 much better.

23 MR. HEAD: Right.

24 MS. SILVEY: Okay.

25 MR. HEAD: And those are the things that I

1 just wanted to touch on.

2 MS. SILVEY: Okay. I just appreciate
3 those comments very much, because as I said in my
4 opening statements, we need specifics. To move from
5 one place to another, generalities won't help us. We
6 need specifics. And I clearly understand your
7 situation, and I'm glad you gave it to us. One of
8 the things I want to ask you, you said that you were
9 an hour and 15 minutes?

10 MR. HEAD: That's correct.

11 MS. SILVEY: Away from this other mine.
12 Are there any other mines in proximity to you?

13 MR. HEAD: No, ma'am. The next nearest
14 one would be about one hour and 45 minutes.

15 MS. SILVEY: I see. So any other mines
16 would be further away, not closer?

17 MR. HEAD: Yes, ma'am.

18 MS. SILVEY: Okay. So make sure, when you
19 provide your written comments, that you say that.
20 And I don't have anything else. Okay, thank you very
21 much.

22 MR. HEAD: Thank you.

23 MS. SILVEY: I appreciate your comments.

24 Is there anybody else who wishes to speak?
25 Well, I was going to have a break now anyway, but

1 I'll tell you what I'm going to do. I'm going to
2 have a break now. And so if anybody changes your
3 mind during the break, you just come up to me and let
4 me know if you wish to speak, because you all know
5 that we're going to reconvene this hearing this
6 afternoon in this same room, another hearing.

7 So if you change your mind about wishing
8 to speak on this one, if you'll come up to me and let
9 me know, and I will reopen this hearing and take your
10 testimony. And I think I'm changing my own mind
11 right now, but just in case you don't change your
12 mind, I'm going to tentatively close this hearing.

13 So at this time, I want to thank everybody
14 who came to the hearing. I want to thank those who
15 spoke. I want to thank those who came and were in
16 attendance here who may not have spoken but showed
17 their interest in mine rescue team requirements, and
18 in, as Mr. Litvin said, so noble a service, and to
19 use his term, "heroic."

20 If you did not sign the attendance sheet,
21 I would ask you to do so so the Agency will have an
22 official statement of who was in attendance here
23 today. We have an attendance sheet in the back of
24 the room, and again, we want you to submit to us any
25 comments that you may have before the record closes.

1 And we appreciate your interest in this
2 rule-making and in all of the Agency's rule-making,
3 and we appreciate your commitment to mine safety and
4 health. We hope to see at least some of you later on
5 today in this room. Thank you very much.
6 (Whereupon, the proceedings were adjourned for the
7 morning at 10:25 a.m.)

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1 OCTOBER 23, 2007 - 1:00 P.M. - SALT LAKE CITY, UTAH

2
3 P R O C E E D I N G S

4
5 MS. SILVEY: Let's get started. Good
6 afternoon. Let me know if anybody can't hear
7 anything. My name is Patricia W. Silvey. I am the
8 Director of the Mine Safety and Health Administration
9 Office of Standards, Regulation and Variances. I
10 will be the moderator of this public hearing on
11 MSHA's proposal for mine rescue team equipment. On
12 behalf of Assistant Secretary Richard E. Stickler, I
13 want to welcome all of you here this afternoon.

14 The MSHA members of the panel are, to my
15 left, William "Bill" Wilson, who is with MSHA's Metal
16 and Nonmetal Office of Mine Safety and Health. To
17 his left, Michael Kalich of the office of Coal Mine
18 Health and Safety, and to his left, Jeff Kravitz, who
19 is with our Office of Technical Support. To my
20 right, Cheri Hutchison, who is with my office, the
21 Regulatory Project Officer. To her right, Michele
22 Curran, who is our attorney on the project, and to
23 Michele's right, Mr. Phan, who is the economist in my
24 office.

25 Before we start the hearing this

1 afternoon, and I know many of you were here with us
2 this morning, but I would like to ask you if you
3 would, please, to join me in a moment of silence in
4 memory of all miners and rescuers who have lost their
5 lives in mine accidents, including those who recently
6 lost their lives in the Crandall Canyon accident. So
7 right now, if you would, please, if you would join me
8 in a moment of silence.

9 (Moment of silence)

10 Thank you. This is the first of four
11 public hearings on this proposal. We will hold the
12 other hearings in Lexington, Kentucky on Thursday,
13 October 25th, and in Charleston, West Virginia next
14 Tuesday, October 30th, culminating in Birmingham,
15 Alabama on November 1st. We are holding two public
16 hearings each day, one in the morning on the mine
17 rescue team proposal, and the other in the afternoon
18 on the equipment proposal so that persons interested
19 in both rules can attend the hearings.

20 The mine rescue team equipment proposed
21 rule applies to all underground mines, both
22 underground coal and underground metal and nonmetal.
23 In the back of the room we have copies of the *Federal*
24 *Register* that contain the proposal. The comment
25 period for the proposal ends on November 9th, and the

1 Agency must receive all comments by midnight, Eastern
2 Standard Time, on that date.

3 And I will point out, and I know those of
4 you who were here this morning, this is redundant,
5 but this is the first time that we have noticed in
6 the *Federal Register* we've included the time zone, so
7 that there will be no confusion as to what time the
8 comments are due. They are due midnight, Eastern
9 Standard Time, on that date. As of October 19th,
10 MSHA has received three comments on the proposal, and
11 you can review the comments on the Agency's web site
12 at www.msha.gov under the section entitled Rules and
13 Regulations.

14 The proposal addresses mine rescue team
15 equipment and mine rescue stations serving
16 underground coal and metal and nonmetal mines. MSHA
17 proposes to amend the existing standard to reflect
18 advances in mine rescue equipment technology. It is
19 critical that mine rescue team members be provided
20 with the latest in protective equipment so that they
21 can safely and effectively carry out their mission.

22 The purpose of these hearings is to
23 receive information from the public that will help
24 the Agency evaluate the requirements in the proposal
25 and produce a final rule that enhances team safety

1 and effectiveness. The preamble to the proposal
2 discusses the rules provision and includes a number
3 of specific requests for comment. MSHA requests
4 comments on all of the proposed equipment provisions
5 and on the validity of the Agency's assumptions and
6 estimates, and particularly on the cost estimates,
7 the assumptions that the Agency used in deriving the
8 cost estimate.

9 As you address these provisions, either in
10 your testimony to us today or in any written
11 comments, please be as specific as possible about how
12 these changes would affect the safety and health of a
13 mine rescue team members. MSHA also requests -- and
14 the safety and health of miners. MSHA also requests
15 detailed information and data on cost and feasibility
16 of implementing those proposed provisions.

17 At this point I want to summarize the
18 substantive changes in the proposal. The mine rescue
19 team equipment proposal upgrades and enhances certain
20 types of equipment, and increases the amount of
21 critical supplies that must be available. The
22 proposal would upgrade requirements for
23 self-contained breathing apparatus, for SCBA, from
24 two-hour to four-hour devices. MSHA determined that
25 all mine rescue stations in the United States

1 currently have the four-hour SCBA.

2 The proposal would increase the required
3 number of extra accident oxygen bottles from one
4 additional to two additional bottles to provide an
5 added measure of safety for mine rescue teams during
6 time-sensitive rescue operations.

7 The proposal would increase the amount of
8 liquid air, liquid oxygen, pressurized oxygen or
9 oxygen-generating chemicals and carbon
10 dioxide-absorbent chemicals to maintain SCBA for
11 eight hours rather than six hours, as it is under the
12 existing regulation.

13 Because industry practice is to stock
14 these supplies in bulk, MSHA estimated that there are
15 no costs associated with this requirement, but MSHA
16 specifically requests comments on this assumption and
17 on the estimate.

18 The proposal would require mine rescue
19 stations to be equipped with four gas detectors
20 appropriate for each gas which may be encountered in
21 the mines served. If methane, oxygen or carbon
22 monoxide may be encountered, the gas detector must
23 measure concentrations of methane from zero to
24 100 percent of volume; oxygen from zero to at least
25 20 percent of volume; and carbon monoxide from zero

1 parts per million to at least 10,000 parts per
2 million. MSHA is particularly interested in comments
3 on its assumption that all mine rescue stations,
4 including those serving non-gaseous, metal and
5 nonmetal mines, would be equipped with four multi-gas
6 detectors with multiple sensor heads, rather than
7 four single gas detectors for each gas likely to be
8 encountered.

9 The proposal would delete the existing
10 requirements for flame safety lamps and oxygen
11 indicators due to advances in gas-detector
12 technology. These outdated devices could still be
13 used as backup. Mine rescue teams have relied on
14 SCSR or SCBA to revive or help survivors breathe
15 better during rescue operations. Light-weight oxygen
16 resuscitators, weighing about six pounds with the
17 oxygen bottle, are now available through at least one
18 manufacturer.

19 MSHA requests comments on whether an
20 oxygen resuscitator should be required at the mine
21 rescue station for use by rescue teams.

22 The preliminary regulatory economic
23 analysis for the proposal is contained in the
24 preamble. There's no separate regulatory economic
25 analysis for this proposal. The Agency estimated a

1 total annual compliance cost of \$237,000 for
2 underground coal mines and \$131,000 for underground
3 metal and nonmetal mines, as well.

4 This cost estimate supports the Agency's
5 finding that the proposal is economically feasible.
6 MSHA requests comments on all of the assumptions and
7 data used in the estimate of the costs and benefits
8 present in the preamble. This hearing will be
9 conducted in an informal manner, as many of you know
10 who participated in the Agency's hearing, and formal
11 rules of evidence will not apply.

12 The panel may ask questions of the witness
13 and the witness may ask questions of the panel, but
14 cross-examination is not allowed. And I'm going to
15 say this, as I said this morning, because it's here,
16 to ensure orderly progress of the hearing, I may
17 limit presentations to 20 minutes, and I don't think
18 I even needed to say that.

19 MSHA will make a transcript of the hearing
20 and post it on the Agency's web site one or two weeks
21 following the hearing. If you wish to present
22 written statements on information, please clearly
23 identify your material and give it to one of the
24 panel members.

25 You may also submit comments following

1 this public hearing. To be considered, as I said
2 earlier, MSHA must receive your comments by
3 November 9th. Comments may be submitted by any of
4 the methods identified in the proposal. We ask
5 everyone in attendance, even if you are not speaking,
6 if you would sign the attendance sheet. If you have
7 a hard copy or electronic version of your
8 presentation, please provide a copy to the court
9 reporter.

10 Please begin by clearly stating your name
11 and organization, and spelling your name for the
12 reporter to make certain that we have an accurate
13 record.

14 And now we will begin with the speakers
15 who have signed up, and our first speaker is Jack
16 Cottrell with Kinross. Mr. Cottrell. And I should
17 have remembered the pronunciation. I know you've
18 spoken to us before.

19 MR. COTTRELL: Yes, it's been -- we've got
20 to stop meeting like this. My name is Jack Cottrell.
21 It's C-o-t-t-r-e-l-l. I'm the Corporate Manager of
22 Health and Safety for Kinross Gold Corporation.
23 Kinross Gold is a multi-national mining company with
24 underground mining operations in Nevada and
25 Washington State. We'd like to offer the following

1 comments to the Mine Safety and Health Administration
2 concerning its proposal to rule on modifications, 30
3 CFR Part 49, Mine Rescue Team Equipment.

4 The proposed rule fails to provide
5 justification for MSHA's determination that the
6 existing equipment and maintenance requirements at 30
7 CFR Part 46.6 are no longer adequate to non-gassy
8 underground metal and nonmetal mines. The primary
9 impetus behind the proposed rule is the hazards mine
10 rescue teams face when performing rescue activities
11 in the aftermath of methane explosions or fire.

12 However, as MSHA plainly recognizes,
13 methane does not exist in explosive concentration at
14 the overwhelming majority of underground metal and
15 nonmetal mines. In fact, only eight of the 240
16 underground metal and nonmetal mines that would be
17 subject to the proposed rules are classified by MSHA
18 as gassy mines.

19 Kinross believes that the proposed rule
20 would subject the operators of non-gassy underground
21 metal and nonmetal mines to unnecessary and
22 burdensome new requirements because mine rescue teams
23 are unlikely to encounter methane in elevated or
24 explosive concentrations at such mines.

25 For MSHA to impose new requirements on the

1 operators of non-gassy underground metal and nonmetal
2 mines, mine operators, it must provide an adequate
3 justification for doing so. Such justification must
4 be based on actual consideration of hazards that
5 exist at non-gassy underground metal and nonmetal
6 mines.

7 In support of the rule, MSHA identifies
8 several recent underground coal mine accidents,
9 including accidents at the Willow Creek Mine, Jim
10 Walters Number 5 Mine and the Aracoma Alma Number 1
11 Mine. In each of these instances, mine rescue teams
12 were performing rescue activities in the aftermath of
13 a methane explosion or fire.

14 While the experiences of mine rescue teams
15 at Willow Creek, Jim Walters Number 5 and Aracoma
16 Alma Number 1 may justify new equipment and
17 maintenance requirements for underground coal mines,
18 and gassy underground metal and nonmetal mines, such
19 experience cannot be relied upon by MSHA as its sole
20 basis for imposing new requirements on the operators
21 of non-gassy underground metal and nonmetal mines.

22 Unless and until MSHA explains why it
23 believes the equipment and maintenance requirements
24 that exist in 30 CFR, Section 49.6 are no longer
25 adequate for non-gassy underground metal and nonmetal

1 mines, MSHA should not seek to impose new
2 requirements on such mines.

3 MSHA's existing equipment and maintenance
4 requirements at 30 CFR Section 49.6 apply equally to
5 all underground mines, including underground mines,
6 gassy underground metal and nonmetal mines, and
7 non-gassy underground metal and nonmetal mines.

8 In contrast, the proposed rule would
9 impose one set of equipment and maintenance
10 requirements on underground metal and nonmetal mines
11 and a different set of equipment and maintenance
12 requirements on underground coal mines.

13 Because of hazards encountered by mine
14 rescue teams at underground coal mines and gassy
15 underground metal and nonmetal mines are different
16 from the hazards that mine rescue teams encounter at
17 non-gassy underground metal and nonmetal mines and
18 because MSHA is proposing to require mine rescue
19 equipment at different types of mines, Kinross
20 recommends that MSHA restructure its proposed rule so
21 that mine rescue teams at non-gassy underground metal
22 and nonmetal mines are regulated under one Part (for
23 example Part 49) and mine rescue teams at underground
24 coal mines and gassy underground metal and nonmetal
25 mines are regulated under another Part.

1 Structuring the mine rescue regulations as
2 Kinross suggests would minimize potential for
3 confusion and would be consistent with MSHA's
4 longstanding convention of grouping regulations by
5 mine type, for example Parts 56 and 57.

6 Notwithstanding Kinross' position that
7 MSHA has not adequately justified imposing any new
8 requirements on other operators of non-gassy
9 underground metal and nonmetal mines, we offer the
10 following comments concerning two specific provisions
11 of the proposed rule.

12 One is 30 CFR 49.6(a)(1). MSHA's
13 reference to self-contained breathing apparatus, or
14 SCBA in the proposed rule is confusing. An SCBA is a
15 breathing apparatus that is used by firefighters in
16 surface firefighting and rescue situations. Kinross
17 believes that MSHA should use different terminology
18 for underground mine rescue breathing apparatus.

19 Two is 30 CFR 49.6 (a)(6). This provision
20 imposes unnecessary requirements on operators of
21 non-gassy underground metal and nonmetal mines.
22 Because methane does not exist at elevated levels or
23 in explosive concentrations at non-gassy underground
24 metal and nonmetal mines, there is no justification
25 for requiring such mines to have gas detectors that

1 are capable of measuring methane.

2 Also, the requirement that mines have for
3 gas detectors appropriate for each gas that may be
4 encountered could be read as requiring a mine with
5 three types of gasses, methane, oxygen, carbon
6 monoxide to have a minimum of 12 gas detectors if
7 such detectors are not multi-gas detectors.

8 Kinross believes that the standard should
9 only require that non-gassy underground metal and
10 nonmetal mines have gas detectors which collectively
11 can deduct the range of gasses that will be
12 encountered at the mine.

13 We appreciate having the opportunity to
14 provide input on the proposed rule and we sincerely
15 hope that MSHA will give full consideration to our
16 comments. Thank you.

17 MS. SILVEY: Thank you. I have some
18 comments. We appreciate your comments. I've got to
19 figure out how I'm going to first start out with my
20 comments. First, on your suggestion on
21 self-contained breathing apparatus, and I might need
22 some help here from my colleagues, when you said it's
23 confusing and leads to different terminology, I think
24 we referenced the self-contained breathing apparatus
25 that is approved by MSHA and NIOSH on the 42 CFR Part

1 84.

2 And when you say that it's confusing and
3 it needs a different terminology, I mean, what are
4 you suggesting? That to call it a self-contained
5 breathing apparatus is confusing?

6 MR. COTTRELL: No. I'm saying that when I
7 hear the word or the term SCBA, I think of a unit
8 that a firefighter would use, not an apparatus that
9 an underground mine rescue team would use. And I
10 know that MSHA -- I know where you're going with
11 this, that it's a self-contained breathing unit. But
12 when you use the term SCBA, I think of a firefighter
13 suiting up and putting on his tank and using that in
14 their rescue. I've never seen that type of a unit
15 used in a metal/nonmetal rescue situation.

16 MR. WILSON: Well, it's the same
17 terminology. All we did was took out the word
18 "oxygen breathing." It's the same term as from 1979.

19 MR. COTTRELL: Yeah, I know. When you
20 took out -- when you reference SCBA, what's the first
21 thing that pops into your mind? It's a two-hour tank
22 on a firefighter's back.

23 MR. WILSON: Is an acronym for
24 "self-contained breathing apparatus."

25 MR. COTTRELL: I understand that. I'm

1 just saying it's confusing, and that, you know,
2 miners that I've talked to, when you say SCBA,
3 they're talking about, you know, a tank on the back.

4 MR. WILSON: Good point.

5 MS. SILVEY: I mean, we'll take that under
6 consideration. I guess the operative -- and we put
7 that in there -- the operative is the device that's
8 approved by MSHA and NIOSH under 42 CFR Part 84, an
9 acronym. And then Bill said that it's identical to
10 the existing standard except for "oxygen" being taken
11 out of it.

12 MR. COTTRELL: But my leaving "oxygen" in
13 there, it references more clearly, I think, what we
14 use, at least in metal/nonmetal underground mines.

15 MS. SILVEY: I was going to say, I mean,
16 I've been in a number of mine rescue contests, and
17 the local ones, the national, international, don't
18 they use the same breathing apparatus?

19 MR. COTTRELL: They don't use SCBA as --
20 they don't use something that a firefighter would
21 use.

22 MS. HUTCHISON: What do you call it?

23 MR. KRAVITZ: That's just aligning with
24 the proper terminology.

25 MR. COTTRELL: It's a terminology

1 question. I'm not arguing on what you can use and
2 what you can't use. But by using the term SCBA, does
3 that mean that, you know, you can use one on an
4 underground rescue? I wouldn't think so.

5 MR. KRAVITZ: That's just a category that
6 it's under.

7 MS. SILVEY: That it fits into. We'll
8 look at that, thank you. I now want to next get to
9 the question of I'm very interested in your overall
10 lead-in that MSHA did not provide justification or
11 failed to provide justification for non-gassy
12 metal/nonmetal mines, and that the regulations are
13 unnecessary and burdensome.

14 And from your comments, and I don't want
15 to put words in your mouth, it seems to me that the
16 only regulation you are saying is unnecessary and
17 burdensome is the multi-gas detectors, is the one
18 we're dealing with. Excuse me, that was a slip.
19 It's the one dealing with the gas detection, gas
20 detectors requirement.

21 MR. COTTRELL: That's part of it. The
22 bigger issue is that all of the justification that I
23 could see, and I think it's in section 3 of the
24 standard, and I don't have the page number in front
25 of me, the only thing that you referenced was coal

1 mine accidents. There was nothing in there about any
2 accidents or incidents from a metal non-gassy, metal
3 and nonmetal mine that would justify these
4 regulations. These regulations may be justified
5 completely for coal and gas mines, but not for
6 non-gassy mines.

7 MS. SILVEY: Let me ask you something,
8 then, following up on that. For a non-gassy metal
9 and nonmetal mine, the standard requires four gas
10 detectors appropriate for each type of gas. And,
11 well, before I ask you that, it requires, however, as
12 I said in my opening statement, methane, oxygen and
13 CO are encountered, that they have to measure
14 specified concentrations.

15 MR. COTTRELL: Right.

16 MS. SILVEY: So with what I'm hearing you
17 say, are you saying that there's no need for that
18 requirement for your mine?

19 MR. COTTRELL: Not for methane.

20 MS. SILVEY: For non-gassy and metal
21 mines.

22 MR. COTTRELL: Not for methane, yes,
23 that's right.

24 MS. SILVEY: Wait a minute, now. So am I
25 hearing you say that there's no need for that

1 requirement for non-gassy metal and nonmetal mines?

2 MR. COTTRELL: For methane, yes.

3 MS. SILVEY: Okay. So there would be the
4 need for oxygen and for CO?

5 MR. COTTRELL: That's right, but the mine
6 should have the ability, you know, to have the gas
7 detectors they need. If they have secondary
8 explosions in sulfides, for example, they need to
9 have something that detects acids.

10 MS. SILVEY: And it does say "for each gas
11 encountered." So if you encounter sulfide, then you
12 should have a gas detector to measure that?

13 MR. COTTRELL: But that unit may not fit
14 into a multi-gas meter.

15 MS. SILVEY: It didn't require a multi-gas
16 one. We assumed that. That's one of the things I
17 wanted to get to.

18 MR. COTTRELL: Yeah, and I don't think you
19 should assume that every -- that metal/nonmetal --

20 MS. SILVEY: I was going to ask you that.

21 MR. COTTRELL: -- is going to have a
22 multi-gas meter that is going to contain all the
23 gasses that we need for our rescue efforts.

24 MS. SILVEY: Okay, and tell me something
25 now. At your mine, what do you have? What detection

1 equipment do you have at your mine in case of an
2 unfortunate event, in case of an accident?

3 MR. COTTRELL: We have the oxygen, the
4 carbon monoxide, CO.

5 MS. SILVEY: And the oxygen measures what
6 percent?

7 MR. COTTRELL: It measures up to 20
8 percent.

9 MS. SILVEY: Okay, and the CO measures
10 what?

11 MR. COTTRELL: I'm not sure what the CO
12 measures right now.

13 MS. SILVEY: Okay. And the methane?

14 MR. COTTRELL: I know that it will measure
15 up to the TLV, in excess of the TLV.

16 MS. SILVEY: And the methane measures up
17 to what?

18 MR. COTTRELL: Well, we don't have
19 methane.

20 MS. SILVEY: Oh, you don't have methane,
21 right.

22 MR. COTTRELL: However, I do have a
23 question about why you would require methane to go
24 from zero to 100 percent when the dangerous level is
25 in the LEL range. If you're above the LEL, or, you

1 know, the upper explosion limit, you know you're in
2 an oxygen-deficient atmosphere anyway. What good
3 does it do to go to 100 percent? This is just a
4 curiosity question, why you wanted to go to
5 100 percent on methane.

6 MR. KRAVITZ: When you look at gas trends
7 and you look at, especially in coal mines, the
8 explosibility limits, there's a flow chart. And
9 basically you have to find out, based on your
10 concentration of methane and oxygen, you know, what
11 the explosibility of that particular mixture might
12 be.

13 If you just go with the LEL at 5 percent,
14 then you're not getting exactly the whole picture as
15 to what the explosibility of that gas might be. So
16 that's the reason we did that.

17 MR. COTTRELL: And there again, I refer
18 back to my earlier comments that, you know, your
19 answer was based on coal mine scenarios, not on
20 metal/nonmetal scenarios. And one of the things that
21 I see that MSHA is doing is that they're, because of
22 the pressure that's being put on them from above,
23 they're lumping all the mining together, trying to
24 cover everything in one regulation.

25 And it's -- the comparison I'd use is the

1 transportation industry. You wouldn't regulate the
2 trucking industry the same way you would regulate the
3 airline industry simply because they're under the
4 Department of Transportation. And I don't think you
5 should try and regulate metal and nonmetal mines
6 under coal mine regulations simply because we're all
7 coal mines -- we're all in the mining industry.

8 I think MSHA has to recognize the
9 different industries within the mining industry, and
10 that metal and nonmetal is a totally different type
11 of industry than coal mining is, other than we're
12 both pulling ore out of the ground. The hazards are
13 different, the risks are different, the problems are
14 different.

15 The same with sand and gravel. It's a
16 different industry altogether, and nobody else would
17 regulate -- you know, I mean, you wouldn't regulate
18 trucking and railroad simply because they're both on
19 the ground under the Department of Transportation.

20 MS. SILVEY: And I think we clearly
21 understand that, and that was one of the reasons we
22 asked for some of the comments and questions in the
23 preamble, and I reiterated them in my opening
24 statement this afternoon.

25 Now, as you said, and the standard reads,

1 as does the existing standard, for the gasses that
2 are likely to be encountered. And if there's no
3 possibility that you're going to encounter methane,
4 then you wouldn't have to have a gas detector for
5 methane. So that's the answer to that.

6 To that extent, the standard is somewhat
7 performance-oriented. It says "four gas detectors
8 appropriate for each type of gas that may be
9 encountered." So that part doesn't change from the
10 existing rule, except that before the "two" was
11 changed to "four." That's all.

12 Now, the change in terms of measuring
13 specified concentrations, that is a change. You were
14 right there. But if you were not -- if your mine
15 doesn't encounter methane, you don't have to worry
16 about having a methane detector that measures
17 concentrations up to whatever, 20 percent of
18 volume -- or I mean 100 percent for methane -- up to
19 100 percent volume.

20 MR. COTTRELL: I know that in the preamble
21 it states one thing, but when I read the actual
22 regulation, it was more definitive to me. I may have
23 missed that, because it was more definitive to me.

24 MS. SILVEY: No, you didn't. Just says, I
25 want everybody to be aware, it says: "For gas

1 detectors appropriate for each type of gas that may
2 be encountered at the mine served." Then it does
3 say: "Gas detectors must measure concentrations of
4 methane." And that means if it's appropriate for you
5 to have a detector for methane, then it must measure
6 methane up to a certain level, CO up to a certain
7 level, and oxygen up to a certain level.

8 MR. COTTRELL: Well, the primary point
9 that we'd like to make is that the standards for most
10 regulations are metal and nonmetal. It's really
11 based on coal and gassy mine problems, not on
12 non-gassy metal and nonmetal mines. And therefore,
13 we don't believe that MSHA has a justification to
14 regulate, to enforce or to promulgate these
15 regulations on non-gassy metal and nonmetal mines.

16 MS. SILVEY: But what I'm hearing from
17 you, you said "these regulations," and I don't want
18 to put words in your mouth, but some parts of these
19 regulations, because I just asked you, and you said
20 you have gas detectors for CO, you have gas detectors
21 for oxygen, you don't have one for methane because
22 you're not likely to encounter methane.

23 MR. COTTRELL: Not only that, we have
24 monthly -- we're doing everything that the regulation
25 requires right now. I can't imagine that a metal and

1 nonmetal mine wouldn't have the checks for equipment
2 and everything simply from a liability standpoint. I
3 mean, we've done this for 20 years, we really have.
4 But you're now making this a regulation.

5 MS. SILVEY: You've done what for 20 years
6 that we're now making a regulation?

7 MR. COTTRELL: We've done basically
8 everything in the regulation for 20 years. I've been
9 in the field, I've checked the equipment on a monthly
10 basis, I've certified them, I've sent them out for
11 calibration, I've done all this. It's a part of
12 running a good mine rescue program. You just do that
13 stuff.

14 But now you're making this a regulation
15 and you're using problems in the coal industry to
16 impose this on metal and nonmetal, and I don't mind
17 if you impose it on us, but you should impose it on
18 us because of the problems we're having, not coal and
19 gassy mines are having.

20 MS. SILVEY: And I understand you, but I'm
21 having a hard time following you, because you've done
22 this for years. And it seems to me that the only
23 difference you're talking about, quite honestly, is
24 you mentioned the terminology issue with SCBA, and I
25 said I take knowledge of that, and the gas detection

1 equipment.

2 MR. COTTRELL: There's two points. Now
3 that you're making it a regulation --

4 MS. SILVEY: Making what a regulation?

5 MR. COTTRELL: You're making the
6 equipment, the checks, everything that we've been
7 doing for 20 years, you're making it now a
8 regulation, and an inspector can come in now and cite
9 us for doing what we've been doing for 20 years.

10 MS. SILVEY: But I'm pointing out the
11 changes that are existing mine rescue team
12 regulations for underground -- I know you know
13 that -- for underground metal/nonmetal mines already.

14 MR. COTTRELL: That's right.

15 MS. SILVEY: And we didn't change
16 anything -- quite honestly, we did change the oxygen
17 bottle and the eight hours of oxygen, six to eight,
18 and one additional extra oxygen bottle, and I
19 mentioned that in the opening statement.

20 And then the other big change was the gas
21 detection equipment, and quite honestly, I would have
22 been surprised if we hadn't gotten any comments on
23 that provision. But that's the only changes.

24 MR. COTTRELL: But again, the changes are
25 being made based on the problems that coal mining

1 has, not on the metal/nonmetal mining.

2 MS. SILVEY: Okay. So now, I just want to
3 make sure we're talking on the same issue here so
4 that when we leave this hearing today, we know we
5 have an understanding of what the difference is, and
6 the difference is that the gas detection -- I'm just
7 listening to you, and what I hear you saying is that
8 your main difference, some other underground metal
9 and nonmetal mine, non-gassy mine, may have a
10 different issue than you.

11 But what I hear you saying, your main
12 issue is with the requirement in the regulation for
13 the specific specified concentrations that the
14 detector must measure, and you're specifically
15 pointing out methane because your mine doesn't have
16 methane, but you wouldn't have to have a methane
17 detector.

18 MR. COTTRELL: Right. No, I'm saying that
19 the whole 49 Part A is being justified on coal mine
20 problems and gassy mine problems, not on metal and
21 nonmetal mines. The whole regulation that's going to
22 affect metal mines is justified in the regulations
23 based on coal mining and gassy mine problems.

24 If you took out coal and gassy mines from
25 the justification, you don't even see metal and

1 nonmetal in there. It's not in there. So I don't
2 believe that MSHA has justified making this a metal
3 and nonmetal regulation.

4 MS. SILVEY: But let me ask you something,
5 then, as you say that, and you may be right when you
6 say you won't see metal and nonmetal in there. Do
7 you have -- and I know you do, I'm asking you -- do
8 you have backup provisions for -- might there be a
9 possibility that you might encounter a fire in your
10 mine?

11 MR. COTTRELL: Oh, yeah.

12 MS. SILVEY: And you have backup
13 provisions for that? Might there be a possibility
14 that you might encounter oxygen deficiencies?

15 MR. COTTRELL: Yes.

16 MS. SILVEY: Okay, that's all. And there
17 are existing MSHA regulations, including mine rescue
18 team regulation, too, to address emergency situations
19 in which that might occur in your mine?

20 MR. COTTRELL: That's right.

21 MS. SILVEY: That's right, okay.

22 MR. COTTRELL: We're covered. But the
23 changes that you're making in this regulation as they
24 affect metal and nonmetal aren't justified in your
25 analysis because your analysis was all based on coal

1 and gas mines.

2 MS. CURRAN: But it's not that they're not
3 effected -- I guess what we're trying to understand
4 the current rules, you've met that current rule, but
5 you have above it, what you currently have in your
6 mine rescue team equipment.

7 Now that we know that everybody over the
8 past years have made that adjustment, most people
9 have that extra equipment already, all we're doing is
10 making it a part of the rule. So how . . .

11 MR. COTTRELL: But you're making it a part
12 of rules because of the problems in coal mining, that
13 coal mining had. In the specific mines that you
14 outlined in your regulation -- and I don't remember
15 offhand -- Willow Creek, the Jim Walters 5 and
16 Aracoma Alma mine, those are the mines that you used
17 to support the need for these regulations in metal
18 and nonmetal mines. And it's totally different.
19 It's a totally different industry.

20 MS. SILVEY: But you do meet the new
21 requirements, right?

22 MR. COTTRELL: Well, in our own way, yes,
23 we do. We don't -- yes.

24 MS. SILVEY: I think that one of the
25 things I want to say, because I'm still having a hard

1 time following you. You know, I understand your
2 general point about overall justification, but when
3 it gets to hazards, hazards are hazards. And that's
4 why I'm asking you, might you, in your mine, have a
5 fire? And you said yes. Might there be an oxygen
6 deficiency situation?

7 Now, you point out to me that there's no
8 possibility that you're going to encounter methane,
9 from 0.1 percent or whatever. Maybe I shouldn't say
10 no possibility, but likely possibility. You're not
11 likely to encounter.

12 MR. COTTRELL: From even the standpoint
13 that MSHA does in our mines on a regular basis, it
14 never indicates that there's methane.

15 MS. SILVEY: And all I'm saying to you,
16 under this regulation you wouldn't have to have a
17 methane gas detector to measure methane. So I'm
18 trying to figure out where the problem is. I'm just
19 trying to figure that out. That's really it. So one
20 of the things about me, before I leave, I like to --
21 I will try to have a clear opinion so we're on the
22 same wavelength.

23 MR. COTTRELL: Okay.

24 MS. SILVEY: So not to belabor the point,
25 but you wouldn't have to be worried about methane.

1 MR. COTTRELL: Then it isn't a problem.
2 Okay.

3 MS. SILVEY: Okay. All right, that's what
4 I think. That's what I was trying to get to.

5 MR. COTTRELL: If I could go back to your
6 question about a fire, though, a fire in an
7 underground metal mine is different than a fire in an
8 underground coal mine, because typically, if we have
9 a fire, it's going to be an electrical fire.

10 Unless the power's cut, it dies out. Or
11 we're going to have an equipment fire. That's
12 happened. In every mine I've been in with an
13 equipment fire, we got people out and let the
14 equipment burn.

15 MS. SILVEY: I understand that part. I
16 appreciate that.

17 MR. COTTRELL: And so again, the
18 justification on the regulation is based on coal mine
19 problems, not metal and nonmetal. And that's the big
20 issue that I'd like to bring up.

21 MS. SILVEY: All right, I understand.
22 Okay. Thank you. Anybody else have anything?

23 MR. COTTRELL: Are we done already?

24 MR. KRAVITZ: Can I comment?

25 MS. SILVEY: Yes.

1 MR. KRAVITZ: We could strengthen the
2 justification by looking at the Sunshine Silver Mine
3 fire, the methane outburst and other types of
4 problems where they're having methane problems in
5 metal and nonmetal mines, but you're correct in that
6 non-gassy metal and nonmetal mines may not need the
7 methane gas detectors.

8 MR. COTTRELL: But if you strengthen that
9 based on, you know, mines that are gassy mines, again
10 that justification doesn't come over to non-gassy
11 mines.

12 MR. KRAVITZ: Right. Right.

13 MR. WILSON: We do have some instances
14 where metal mines have backed up coal mines. In
15 fact, on Wilberg, I was an inspector in Salt Lake at
16 the time, and we had metal mines going in as mine
17 rescue. And currently we have metal teams that back
18 up, that serve as a coal mine rescue team.

19 MR. COTTRELL: And I think that's healthy,
20 and I think that they should train together, and I
21 think that that's healthy for the industry.

22 MR. WILSON: Yes, I do, too.

23 MR. COTTRELL: But as you know, it's a
24 different world. When you go into either one of
25 those two mines, it's a different world altogether.

1 MR. WILSON: Good point.

2 MS. SILVEY: Okay.

3 MR. COTTRELL: Thank you very much.

4 MS. SILVEY: Thank you.

5 Is there anybody else who wishes to speak?

6 Mr. Cottrell was the only name we had on our sign-up

7 list. We had another name on here, but somebody

8 clearly and effectively scratched their name off.

9 (Laughter) Now, quite honestly, they may have signed
10 on the wrong sheet, because we had two sheets. To be

11 charitable, they may have signed on the request to

12 speak sheet instead of the attendance sheet. But I

13 can't tell you who it was. Is there anybody else?

14 Thank you. At least we have one person

15 more. I have a few questions I want to ask, and I

16 know we have one manufacturer in the audience.

17 MR. ANGWIN: I just have a few comments

18 I'd like to make, and I do recognize --

19 MS. SILVEY: Your name, please.

20 MR. ANGWIN: John Angwin, A-n-g-w-i-n. I

21 recognize that previous speaker's concerns on the

22 different gas detectors used in the industry, but

23 there's a concern I feel like I want to address.

24 MS. SILVEY: Excuse me, sir. Would you
25 spell your company name?

1 MR. ANGWIN: Solvay Chemical, Green River,
2 Wyoming.

3 MS. SILVEY: Right. I know it, but it's
4 so she can reference it.

5 MR. ANGWIN: I've been in mine rescue
6 going on about 30 years now, and I have seen a
7 decline in mine rescue teams across the nation. We
8 are metal and nonmetal. We have dealt with
9 100 percent methane in our mine. There's other
10 metal/nonmetal mines around that do have methane in
11 them. I would like to see the rules and regulations
12 for metal/nonmetal and coal, as far as detecting
13 gasses, be very similar.

14 I know there's some teams, gold teams,
15 Barak is one, Homestake is one, that if we have a
16 disaster, we will call them. They're trained in
17 methane detection, they know how to deal with
18 methane. You know, God help us if we get into a
19 position where we're bringing in numerous teams that
20 aren't trained in the methane detection. How do you
21 handle the methane? I think that would hinder the
22 rescue effort, and I just would like to see MSHA and
23 the industry look at any possible scenario and train
24 that way.

25 It may be an additional cost to everyone.

1 If companies go out of their way to do additional
2 training for additional gasses, maybe there's some
3 kind of a tax break they could receive, some kind of
4 incentive to promote the training.

5 But don't limit the training to a specific
6 area, because we may be calling other people in. I
7 know we've got the equipment that we don't need, and
8 it's expensive, and we didn't think we'd ever need
9 it, and we did. And we were part of the teams that
10 were on call for Wilberg. We backed up some coal
11 mines up there, their rescue teams.

12 And I'm just saying to encourage the
13 industry and MSHA to just train for the worst,
14 because the teams are on decline. That's the only
15 comments I have.

16 MS. SILVEY: Thank you. I do have some
17 questions, and I don't know whether I should ask you
18 this or just wait, and after you ask the
19 manufacturer, who probably has a better sense of
20 this, because this is one of the questions.

21 We assumed that -- actually, and I might
22 have to call Mr. Cottrell back, because one of the
23 questions we asked was with respect to gas detection
24 equipment. We assumed that the stations would be
25 equipped with multi-gas detectors. We made that

1 assumption for cost purposes.

2 So I want to ask you, in your mine rescue
3 station, is your equipment multi-gas detectors? Do
4 you use multi-gas detectors?

5 MR. ANGWIN: Yes, we do.

6 MR. COTTRELL: You do. The equipment
7 we've used for probably the last 15 years, we used a
8 612 and a 620, which measures 100 percent methane.
9 It measures up to 20,000 parts per million CO. Each
10 gas detector will be methane O2, CO and NO. We also
11 have additional gas detectors because we do run into
12 high amounts of ammonia.

13 They are coming out with new technology.
14 There are some detectors that will measure up to six
15 gases, but I don't believe they'll do the limits
16 proposed by MSHA.

17 MS. SILVEY: Well, for the multi-gas
18 detectors, when we asked for comments on this, we
19 asked for all of our assumptions used. Do you have a
20 cost on the multi-gas detectors about how much they
21 cost? And if not, I know we do have at least one
22 manufacturer in the audience.

23 MR. ANGWIN: I believe our 620, the last
24 one we purchased, which was the standard model, was
25 \$2,600.

1 MS. SILVEY: \$2,600?

2 MR. ANGWIN: Yes. Then we did purchase
3 battery packs for pumping and sampling capabilities,
4 which added to that. But I believe the original cost
5 was \$2,600.

6 MS. SILVEY: So with the battery pack and
7 the remote sampling, do you know how much that is,
8 about?

9 MR. ANGWIN: I think about \$2,900 to
10 \$3,000.

11 MS. SILVEY: Okay.

12 MR. ANGWIN: And these are just rough.

13 MS. SILVEY: I understand they're just
14 estimates. And I think you said that you think that
15 you all, what do you have? Four sensor heads to
16 yours?

17 MR. WILSON: The \$2,600 has six.

18 MR. ANGWIN: Yes, you could order the gas
19 detector sensors that you want.

20 MR. WILSON: Right, the \$2,600 for full.

21 MR. ANGWIN: Yes.

22 MS. SILVEY: And the equipment that you
23 ordered will accommodate how many sensor heads?

24 MR. ANGWIN: Four.

25 MS. SILVEY: Four. You said you think

1 they make some that accommodate six?

2 MR. ANGWIN: You can mix and match, but
3 you're limited to your toxics on that.

4 MS. SILVEY: Okay. Does anybody else have
5 any questions?

6 MR. WILSON: So if you only get two sensor
7 heads, is it fair to assume \$1,200? Multi-gas
8 detectors. \$1,500?

9 MR. ANGWIN: I don't believe that's
10 correct, sir. You may be up to \$1,800 because your
11 sensor heads are different prices, you know.

12 MR. WILSON: Okay. But it would be less
13 than the \$2,600?

14 MR. ANGWIN: It possibly could be.

15 MS. SILVEY: I'm going to ask for more
16 information on that. Okay, thank you. I appreciate
17 your comments. I'm not sure Mr. Cottrell heard your
18 comments.

19 Mr. Cottrell, do you mind? I have one
20 more question that I want to ask you, sir. Thank you
21 very much.

22 Now, I'm making an assumption now. You
23 know what they say happens when you assume?

24 MR. COTTRELL: Yes, ma'am, I do.

25 MS. SILVEY: Right.

1 MR. COTTRELL: Been there, done that.

2 MS. SILVEY: What?

3 MR. COTTRELL: Been there, done that one.

4 MS. SILVEY: Been there, done that. But
5 I'm assuming that you all do not use -- your station,
6 mine rescue station, is not equipped with multi-gas
7 detection equipment?

8 MR. COTTRELL: Which one?

9 MS. SILVEY: Multi-gas detectors.

10 MR. COTTRELL: We have them.

11 MS. SILVEY: Oh, you do have them?

12 MR. COTTRELL: Oh, yeah, yeah.

13 MS. SILVEY: Okay, so you do. I told you
14 about assumptions, and that's a wrong assumption. So
15 you do have multi-gas detectors?

16 MR. COTTRELL: Oh, yeah. We use them for
17 confined-space entry and all kinds of things, yes.

18 MS. SILVEY: All right, and what kind do
19 you use?

20 MR. COTTRELL: You ask tough questions.

21 MS. SILVEY: If you don't know now, send
22 us --

23 MR. COTTRELL: I couldn't give you a name.
24 I'm not at a site right now, and it's been a while.

25 MS. SILVEY: Okay, but I'm very interested

1 in it. Send it to me. If you use multi-gas
2 detectors in your mine, send it to us before the
3 comment period closes, and send us the type of
4 equipment that you use, how many sensor heads you
5 have on there, and the type of any additional
6 equipment associated with that.

7 MR. COTTRELL: Okay.

8 MS. SILVEY: What you paid for it.

9 MR. COTTRELL: Now, understand that the
10 multi-gas meters that we use we not only use in mine
11 rescue but we also use on the surface. And so we'll
12 have sample heads for cyanide, for example, because
13 of the cyanide. Sometimes we'll have to have them
14 for hydrogen sulfide. And so it's -- we use a
15 multi-gas detector because it works for us in
16 multiples ways.

17 MS. SILVEY: Multiple situations?

18 MR. COTTRELL: That's right. But on an
19 underground rescue, what we're worried about is
20 oxygen and carbon monoxide. So if we can get an
21 oxygen, carbon monoxide, hydrogen sulfide and cyanide
22 in our multi-gas meter, that's what we're going to
23 use.

24 MS. SILVEY: I got you. That makes sense.
25 And the rule wouldn't require you to have methane.

1 MR. COTTRELL: Right.

2 MS. SILVEY: Right. Okay. Anybody have
3 anything else, any additional questions for Mr.
4 Cottrell? Okay, thank you. Sorry to have to call
5 you back up. So now, I know we have a manufacturer
6 in here, and the manufacturer, first of all, is there
7 anybody else who wishes to comment?

8 Our manufacturer hasn't raised his hand to
9 comment, but I do have some questions about cost,
10 primarily just for the multi-gas detectors. So
11 rather than put anybody on the spot -- oh, you're
12 going to come on up.

13 MR. ARMSTRONG: Do you want me to?

14 MS. SILVEY: Yes, sir. Yes, sir, I do, if
15 you don't mind. I just want to make sure the record
16 is reflective of the best information we have, that's
17 all.

18 MR. ARMSTRONG: Kent Armstrong. Kent,
19 K-e-n-t, Armstrong, A-r-m-s-t-r-o-n-g. Sales
20 manager, mining division for Draeger Safety, U.S.A.,
21 Canada and Mexico.

22 MS. SILVEY: Okay. And I think you've
23 heard some of the discussion that we've had right now
24 about these multi-gas detectors, and I know that your
25 company supplies multi-gas detectors. If you don't

1 mind, if you would tell us a little bit about the
2 cost of the detectors and, like, I mean, the
3 configuration of -- I don't want to say a normal, but
4 a regular gas detector. I mean, how do they
5 generally come?

6 And I know you can change the sensor
7 heads, and what would be a common package. I mean,
8 we included some costs in our cost analysis, and they
9 may have been, like, simple costs, not taking -- you
10 know what Mr. Cottrell said about the other gentleman
11 about a battery pack, and, you know, a remote
12 sampling piece of equipment and that type of thing.
13 If you would just talk to us a little bit about how
14 they generally come and that type of thing.

15 MR. ARMSTRONG: Okay.

16 MS. SILVEY: And do you have one? Do you
17 now have one that would do six gasses at one time, or
18 is yours limited to four now?

19 MR. ARMSTRONG: Five.

20 MS. SILVEY: Five, okay.

21 MR. ARMSTRONG: We have five. We have
22 different manufacturers.

23 MS. SILVEY: Right. I understand that.

24 MR. ARMSTRONG: To market product to meet
25 different market demands and individual applications.

1 MS. SILVEY: Okay.

2 MR. ARMSTRONG: So the gentleman that was
3 speaking here, again, from the metal and nonmetal
4 site, was quite correct in what they're presently
5 doing. The application depends on the type of mining
6 they're doing and the inherent atmospheres that they
7 want to measure.

8 As a manufacturer, we try to make
9 individual instruments in various configurations to
10 suit that marketplace. We make single gas
11 instruments to be worn by individuals to measure, for
12 instance, CO or NO2 or something like that, on a
13 production cycle that they wear it every day. We
14 make multi-gas, more than one, two-sensor
15 instruments, three- and four-sensor.

16 That depends on the individual. He can
17 adapt those specific instruments to suit his
18 environment. So that becomes more site-specific, or
19 more specific to their own applications. And that's
20 determined, again, by their own environment. Yes, we
21 can put in a four-gas instrument and reduce it to a
22 three-gas by removing a sensor, and yes, that would
23 reduce the cost.

24 MS. SILVEY: Okay.

25 MR. ARMSTRONG: Because the price is

1 sensor-driven.

2 MS. SILVEY: And you say you can go up to
3 five?

4 MR. ARMSTRONG: Yes, depending, again, on
5 having new technology is in the infrared range for
6 combustibles and for carbon dioxide. It's commonly,
7 in some cases, purging or that type of thing in the
8 coal industry, if they were entering an area. It may
9 be, again, specific to that application and not
10 across the board being purchased.

11 MS. SILVEY: So in terms of your average
12 cost of the detector. And if you don't mind, one of
13 the things I said, if you would talk about, like, the
14 additional requirements that have to keep these
15 things in accordance with -- I should say this
16 equipment in accordance with manufacturing
17 specifications. If you would talk about the base
18 cost and then the additional cost that would have to
19 be paid.

20 MR. ARMSTRONG: Again, depending --
21 strictly depending on the . . .

22 MS. SILVEY: Let's take a multi-gas
23 detector.

24 MR. ARMSTRONG: There again, a multi-gas
25 detector base unit, if you want cataloging

1 capabilities or some of the other technologies that
2 are extra and built in, it's like buying a car. You
3 can get additions to that. You can get GPS put in.
4 There again, specific to your application. To keep
5 it simple, the ranges that were mentioned in the
6 vicinity of \$2,000 to \$3,000 is correct.

7 What must be looked at, such as extra
8 batteries or a scavenger pump on that, remote
9 sampling pump might be required in the \$400 to \$500
10 range, again. And also the long-term maintenance has
11 to be looked at where you want to buy your
12 calibration gas, your calibration equipment stand,
13 etc. to be able to maintain and keep those
14 instruments up to proper working capability. That,
15 there again, is an extra cost. That can be prorated
16 over six months or a year.

17 MS. SILVEY: A year period?

18 MR. ARMSTRONG: Yes.

19 MS. SILVEY: An estimate in terms of
20 maintenance cost and calibration cost, and quite
21 honestly, and, you know, I don't know, training cost,
22 if somebody has to be trained to do this. Do you all
23 have an estimate of that?

24 MR. ARMSTRONG: Well, we do have . . .

25 MS. SILVEY: Just a general ballpark.

1 MR. ARMSTRONG: You're probably looking
2 at, I would say -- now, if I have four instruments
3 and I have my cal-gasses, I prorate those over four
4 instruments over the period of a year. So, you know,
5 you're probably looking at somewhere around \$200 to
6 \$300, maybe, an instrument.

7 MS. SILVEY: Okay.

8 MR. ARMSTRONG: And if you want to add in
9 there -- and I'm adding to make sure we're on the
10 positive side. I don't want to be short.

11 MS. SILVEY: No, I'd rather be. I don't
12 want us to, you know, to come out with something that
13 we didn't appropriately estimate the cost. I mean,
14 it's not our goal to undershoot something. That's
15 one of the reasons we're doing it.

16 MR. ARMSTRONG: We're trying to make this
17 as general and across the board as manufacturers are.
18 Most manufacturers that sell multi-gas instruments do
19 offer field service, technical . . .

20 MS. SILVEY: Technical support?

21 MR. ARMSTRONG: -- support where they will
22 train and certify a site person with a certificate, a
23 one-day certificate on training that he's capable of
24 maintaining that equipment.

25 MS. SILVEY: Okay.

1 MR. ARMSTRONG: And there again, it's up
2 to the individual cost, but those costs usually run
3 about \$500 per day per man per course. That's it.

4 MS. SILVEY: Okay.

5 MR. WILSON: I just want to clarify some
6 of the costs. You said \$250 to \$300 for calibration
7 gasses, so if you have four sensor heads --

8 MR. ARMSTRONG: No, that would be per
9 instrument.

10 MR. WILSON: Per instrument?

11 MR. ARMSTRONG: Yeah.

12 MR. WILSON: So if you have four
13 instruments, you're looking at \$1,000 to \$1,200?

14 MR. ARMSTRONG: Initially.

15 MR. WILSON: Initially. And then
16 maintenance and training, you said about eight hours
17 to certify someone to maintain this, use it, etc.?

18 MR. ARMSTRONG: Yes.

19 MR. WILSON: And if you all, or your
20 competitors, the industry folks that sold this
21 training, it would cost the mine operator \$500 a day
22 per person. So if they train four people, \$2,000?

23 MR. ARMSTRONG: Yes.

24 MR. WILSON: But \$500 is a rough guess?

25 MR. ARMSTRONG: Yeah, \$500.

1 MR. WILSON: Per person?

2 MR. ARMSTRONG: That's correct.

3 MS. SILVEY: Now, the training, is that
4 training good forever?

5 MR. ARMSTRONG: No. No.

6 MS. SILVEY: That's what I was wondering.
7 They would have to be retrained, to be like, let's
8 say, in accordance with, you know, your requirements?

9 MR. ARMSTRONG: Yes. And, you know, most
10 of the manufacturers are ISO certified.

11 MS. SILVEY: That's right.

12 MR. ARMSTRONG: And we have written
13 protocol within our ISO certification programs that
14 we meet. For instance, on our -- I'm going to use
15 the term not SCBA but CCBA, Closed Circuit Breathing
16 Apparatus, for our Draeger apparatus. We have a
17 Benchman certificate that qualifies somebody to
18 maintain that apparatus for over a two-year period.

19 MS. SILVEY: Over a two-year period, okay.

20 MR. ARMSTRONG: And then go back for a
21 refresher, because instruments do change, apparatuses
22 do change, new pieces are added to it or new
23 procedures are added in. That can happen in two
24 years and they must be up to that.

25 MR. WILSON: The training certificate for

1 the gas detectors is good for two years also?

2 MR. ARMSTRONG: In most cases. It depends
3 on the individual manufacturer and what he has in his
4 certification program. It could be three years.

5 MS. SILVEY: That's good enough for what
6 we have to do to estimate, okay. Anybody else?

7 MS. HUTCHISON: I have a question for
8 Mr. Armstrong.

9 MR. ARMSTRONG: May I make a comment?

10 MS. SILVEY: Yes, sir.

11 MR. ARMSTRONG: There is a section that is
12 addressed in the paper that was prepared there, and
13 that was regarding an oxygen resuscitator.

14 MS. SILVEY: Yes, sir.

15 MR. ARMSTRONG: As being involved in that
16 specific product for some time, we felt that it's
17 very, very important that this apparatus be included
18 in the mine rescue as standard equipment. The
19 ability to have mine rescue teams now resuscitate a
20 conscious person not breathing or an unconscious
21 person not breathing in an ideal-age atmosphere
22 immediately dangerous to life and health is very,
23 very important. We now have the capability of doing
24 that, where in the past we did not.

25 MS. SILVEY: Okay. Let me ask you

1 something on that, and I'm glad that you brought that
2 up. We asked that, or I asked that, in the opening
3 statement. Do you see that occasion, the occasion of
4 having to use that device in the mine rescue team
5 situation? And how often do you see the occasion of
6 having to use that device?

7 MR. ARMSTRONG: We have seen it globally
8 numerous times. Some jurisdictions around the world
9 allow the use of the BG-174 as a resuscitator. That
10 was not standard practice here in the United States,
11 but it was standard practice in other jurisdictions.
12 When Draeger, after --

13 MS. SILVEY: When you say the BG-174 --

14 MR. ARMSTRONG: Yes.

15 MS. SILVEY: Right.

16 MR. ARMSTRONG: Was utilized as a
17 resuscitator and had the capability of doing that by
18 a trained individual. That was not the case in the
19 United States mine rescue regulations and practice
20 for training. When Draeger discontinued the
21 manufacture of the BG-174 and went to the BG-4, it
22 was -- we needed to still be able to do that. We had
23 applications around the global mining market where we
24 have had mine rescue teams come to patients or come
25 into situations where they have found unconscious

1 people, not breathing.

2 The inability, then, to provide CPR in an
3 ideal-age atmosphere, or resuscitation, in an
4 ideal-age atmosphere, you would have to then take
5 that individual to a fresh air location before you
6 could put on an oral nasal mask. With time being
7 critical, it's very, very important that you get the
8 oxygen therapy to that individual.

9 MS. SILVEY: Have you seen the occasion to
10 use that in the U.S. market?

11 MR. ARMSTRONG: A few months ago at a mine
12 rescue competition in Beckley, where a mine rescue
13 participant took very ill, and the team was equipped
14 with the care van, and it was applied right to the
15 patient at the contest.

16 MS. SILVEY: That's the device, is the
17 care van?

18 MR. ARMSTRONG: That's correct.

19 MS. SILVEY: And what was the cost of that
20 device?

21 MR. ARMSTRONG: Depending, again, on what
22 you have.

23 MS. SILVEY: Well, let's go with an
24 average cost, with at least the minimum requirements,
25 including the maintenance, the calibration, a minimum

1 of things to comply with the manufacturer's
2 specifications.

3 MR. ARMSTRONG: All included?

4 MS. SILVEY: Yes, a general. You know, we
5 don't want a prolonged --

6 MR. ARMSTRONG: \$5,000.

7 MS. SILVEY: \$5,000 per unit? Okay.
8 \$5,000 per unit, okay. Any more?

9 MR. KRAVITZ: In Sago, when the mine
10 rescue teams used the SCSRs to resuscitate them
11 coming out of the barricades into the fresh air base,
12 did you feel that this care van could have been
13 appropriate for that particular situation?

14 MR. ARMSTRONG: Very much so. That's --
15 we've had that situation, to evacuate patients or
16 evacuate people traveling through an ideal-age
17 atmosphere or a concentration, and to have them
18 protected was very critical.

19 In the scenario of using an oxygen
20 self-rescuer, our facts have proven that you need at
21 least six liters of breathable air volume to keep a
22 K02 unit working, and to produce oxygen back where,
23 in that case, it wasn't. Also, wearing a mouthpiece,
24 for the six individuals or the person that's not
25 breathing, you can't do it. It can't -- it just

1 won't work.

2 MS. SILVEY: Thank you. Anybody else?

3 Okay. Thank you very much, Mr. Armstrong.

4 Is there anybody else who wishes to
5 comment or ask a question? Anybody else who wishes
6 on comment?

7 If nobody else wishes to make a statement,
8 ask a question or add anything, then on behalf of the
9 Mine Safety Health Administration, we appreciate your
10 comments and your testimony here at this afternoon's
11 hearing. For those of you who came and did not
12 testify, we appreciate your attendance because that
13 still says to us that you have an interest in these
14 proceedings.

15 But those of you who provided testimony,
16 we appreciate that, and if there is anything else
17 that you wish to tell us before the comment period
18 closes on November 9th, please do so. Send it to the
19 addresses notified in the *Federal Register* by any of
20 the methods listed in the *Federal Register* notes.
21 And as you heard me say over and over, be as specific
22 as you can.

23 We appreciate everybody who came out
24 today. We will be continuing this in Lexington and
25 then in Charleston and Birmingham, and hopefully my

1 issuing a final rule in accordance with the MINER Act
2 requirement, time frame requirement, by December, the
3 end of December of '07. And at this time I'm going
4 to tentatively -- I'm going to say tentatively --
5 bring this hearing to a close. We will stay around
6 in case anybody changes his or her mind, and so we
7 will be here in case that happens. But I am going to
8 bring the hearing to a close. Thank you again

9 **(Exhibit Numbers 1 and 2 marked.)**

10 (Whereupon, the proceedings were
11 concluded at 3:06 p.m.)

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REPORTER'S HEARING CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Kathy H. Morgan, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That said proceeding was taken down by me in stenotype on October 23, 2007, at the place therein named, and was thereafter transcribed, and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 2nd day of November, 2007.

Kathy H. Morgan, CSR. RPR
Notary Public
Residing in Salt Lake County