

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION
* * * * *

IN RE: LOWERING MINERS' EXPOSURE TO RESPIRABLE COAL
MINE DUST, INCLUDING CONTINUOUS PERSONAL DUST MONITORS

BEFORE: Gregory R. Wagner, M.D.

Susan Olinger

Ronald Ford

Jennifer Honor

Robert Thaxton

George Niewiadomski

HEARING: Tuesday, January 11, 2011

9:00 a.m.

LOCATION: Marriott Evansville Airport

7101 Highway 41 North

Evansville, IN 47725

WITNESSES: William Eschenbacher, M.D., John Stachura,
Jeff Messel, Mark Fridley, Gerome Thomas, Tom Benner,
Butch Oldham, Edwin P. Brady, Tony Wright, Chuck
Burggraf, Bill Risinger, Mark Eslinger, Gary Fritz

Reporter: Amanda Kennedy

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DR. WAGNER:

Good morning. My name is Gregory Wagner. I'm a physician. I'm also Deputy Assistant Secretary of Labor for Mine Safety and Health. I'd like to welcome you here today and express my gratitude for those of you who traveled through the snow and some of you traveling long distances, I think reflecting the importance that the proposed rule that we're talking about today has to all of us.

I want to bring you greetings from Mr. Joe Main, the Assistant Secretary of Mine Safety and Health, who's made ending black lung a significant focus of his work at MSHA and previously.

Before we go into the official hearing, I want to speak a little bit about why it is that the Agency has the concerns that we do, that we're trying to address through this proposed rule to lower miners' exposure to respirable coal mine dust, and also to discuss a few of the key provisions that are in the proposed rule.

Many of you will recognize the picture from the Farmington Mine disaster in West Virginia in 1968 that provided the stimulus for the 1969 Coal Mine

1 Health and Safety Bill. You may recall that 78 miners
2 lost their lives in this explosion. There was an
3 outpouring of concern about safety conditions in the
4 mines, but it wasn't only safety conditions. There
5 was also concern about the health consequences of
6 miners breathing in excessive levels of coal mine
7 dust. There was an effort to have --- the law that
8 resulted from the public response to that event
9 covered not only safety, but also health. In fact,
10 Congress mandated in the 1969 Federal Coal Mine Safety
11 and Health Act that respirable coal mine dust
12 exposures be reduced to a level which will prevent new
13 incidences of respiratory disease and the further
14 development of such disease in any person. It's quite
15 clear that Congress intended in 1969 that the
16 government move forward to end black lung.

17 As consequence of the Scotia Mine
18 disaster that occurred, I believe, in 1966 (sic), the
19 Federal Mine Safety and Health Act of 1977 passed.
20 And that Act instructed --- Congress instructed the
21 Secretary of Labor to set standards that ensure on the
22 basis of the best available evidence that no miner
23 will suffer material impairment of health or
24 functional capacity, even if such miner has regular
25 exposure to the hazards dealt with by such a standard

1 for the period of his working life. Again, no
2 material impairment of health as resulted for the
3 place of exposures that hazards, including the hazard
4 of coal mine dust.

5 Fast forward from the mid '70s to the mid
6 '90s. The National Institute for Occupational Safety
7 and Health did a comprehensive review of the world's
8 scientific literature about the health effects of coal
9 mine dust, summarized and came up with series of
10 recommendations. And their recommendations concerning
11 occupational exposure to respirable coal mine dust
12 included conclusions that said that people were still
13 getting disease, that the dust limits were defective
14 and that there were a number of things, including
15 lowering the dust limit, that should be done in order
16 to be able to protect miners effectively. That was
17 followed up by a Blue-ribbon panel of scientific
18 experts and representatives of labor and industry,
19 indeed by the Secretary of Labor looking both to
20 NIOSH, reporting anything that they may have missed.
21 This Blue-ribbon panel presented a report of the
22 Advisory Committee on the elimination of
23 pneumoconiosis among coal mine workers. And it
24 provided first endorsement of the NIOSH findings,
25 endorsement to follow the NIOSH recommendations and

1 its own recommendations for eliminating black lung.

2 So what are we talking about with black
3 lung? You can see over on the left, a normal lung
4 --- or a normal lung from somebody who's died. And in
5 between you can see the beginnings of deposition of
6 black coal mine dust and the reactions of the lung to
7 the dust. And then you can see on the right, a piece
8 of lung where the reaction to the dust has created
9 shrinking holes and an inability to breathe.

10 There are a variety of lung diseases that
11 come from exposure to coal mine dust that this rule is
12 intended to address. First, coal workers'
13 pneumoconiosis. The x-ray diagnosed condition, that
14 you see spots on the lungs, and that creates a
15 progressive respiratory impairment that can lead to
16 death in its advanced forms. But there are also air
17 flow diseases that don't necessarily show up on x-ray.
18 Chronic obstructive pulmonary disease. Miners that
19 are at a substantially increased risk to lose their
20 breathing. They have an inability to climb stairs, to
21 hunt, to go out and do what they would normally have
22 been able to do had they not had the exposure to
23 excessive levels of dust. Bronchitis, emphysema and
24 miners who are exposed to high levels of TB --- of
25 silica also have increased risk of tuberculosis

1 infection.

2 What happened since the passage of the
3 first 1969 Act? This slide from NIOSH shows that when
4 the Act was originally passed, if you look for example
5 up here, miners with 25 years of experience in the
6 mines had over 30 percent chance of having some black
7 lung showing up on their x-ray. The dust limits
8 imposed in the early '70s resulted in a progressive
9 decrease in the number of miners, percentage of
10 miners, that showed up with disease.

11 But around the year 2000, perhaps as a
12 result of variety of changes in mining, disease
13 incidents started to go back up, as identified in the
14 X-ray Surveillance Program from NIOSH. Miners who had
15 experienced exposure only under current working
16 conditions, only under the current dust limit had
17 begun to show up with more disease and, in fact, more
18 advanced disease.

19 NIOSH, which is part of the Centers for
20 Disease Control, took a look at the information that
21 they were getting on who was getting this, and found
22 that in some areas of the country where they were
23 doing surveillance, that there were people who were
24 showing rapidly progressive disease. Let me give you
25 some examples. Here's a chest x-ray from somebody, a

1 37-year-old with only 16 years underground experience.
2 In 1997, he already had advanced disease as a
3 37-year-old. And three years later, with less than 20
4 years of experience, he was showing complicated
5 pneumoconiosis, which is a life-shortening,
6 devastating condition. He was a roof bolter.

7 Another example that came out of their
8 survey. Here's a miner, 42 years old, 22 years of
9 underground experience. In 2002, he was found to have
10 the most advanced form of coal workers' pneumoconiosis
11 and black lung, where his lungs, if you sliced through
12 them, would have been like the picture that I showed
13 on the far right-hand side with the replacing of the
14 lung by holes and by the deposition of coal mine dust.
15 It's a condition that's not only devastating for
16 families and the individuals who have it, but it's
17 also economically devastating. This is a chart that
18 shows that over the years, through the benefits
19 program --- and I think many of you in the room know
20 that these are not lavish benefits. But through the
21 benefits program for people, only looking at those who
22 have been found to be totally disabled from all coal
23 mine work as a result of their black lung, over \$43
24 million --- billion, excuse me, \$43 billion have been
25 paid out since the beginning of this program. And the

1 payouts are continuing.

2 The Agency is being pushed to intervene
3 because pneumoconiosis is rising in miners with
4 greater than 20 years of tenure. Cases of severe
5 disease are being seen in young miners, even those
6 less than 40 years old. The prevalence of
7 pneumoconiosis exceeds that which was predicted in
8 1969 based upon the best available scientific
9 evidence. And what we found out since then, and
10 confirmed in numerous studies, is that miners are also
11 suffering from other forms of chronic lung disease,
12 like emphysema and bronchitis.

13 Here's the bottom line, here's what we
14 know. Black lung is caused by excessive exposure to
15 coal mine dust. It's simple. That's the only thing
16 that's causing it. Our goal is to reduce the miners'
17 exposure to respirable coal mine dust in order to
18 prevent black lung.

19 So how are we going to do this? The
20 proposed rule addresses a number of problems.
21 Problems that people have discussed in trying to
22 explain why it is that black lung went down and went
23 back up. Miners are working longer shifts than they'd
24 been working in 1970, '71, '75. The current sampling
25 program samples a miner for eight hours, but as

1 someone told me when we met previously, you don't turn
2 your lungs off after eight hours. You just turn the
3 dust pump off. This proposal would address that
4 concern and sample for the entire shift. Right now,
5 the dust limits are based upon an average of five
6 shifts. The new proposal would say each shift counts,
7 that averaging masks potential exposures of three and
8 four milligrams, and the proposal would make
9 determinations based on each single shift sample.
10 Right now the way the rules are, the bimonthly samples
11 for dust may not be collected --- may be collected at
12 times that are not representative of normal mining
13 conditions. I think that many of you know the dust
14 samples can be collected if it's like over 50 percent
15 of what it was during the last bimonthly cycle. That
16 may not reflect the normal mining conditions, the
17 day-after-day exposures. The proposal would require
18 representative samples of normal production levels.

19 As I showed in the earlier slide, miners
20 are getting disease at the current standard and
21 younger miners are developing the most severe forms of
22 disease. And in order to address this, the
23 permissible exposure limit would be reduced.

24 Black lung affects breathing. Right now
25 miners have a right to periodic chest x-rays that

1 don't really measure breathing, and they can act upon
2 that chest x-ray information. The proposed medical
3 monitoring would involve not just chest x-rays but
4 also a breathing test so that miners could have the
5 additional information about their health to be able
6 act on it. And currently, dust sample results are
7 delayed. They're only available after a one to
8 two-week delay. By use of the continuous personal
9 dust monitor as proposed in the rule, there can be
10 immediate feedback as to the amount of dust that the
11 miner is being exposed to, so that working conditions
12 can be adjusted then in order to control that day's
13 exposure rather than waiting for information down the
14 line.

15 This proposed rule is part of an ongoing
16 commitment that MSHA has been working on in
17 conjunction with Labor & Industry, other government
18 agencies. It's our commitment to end black lung.
19 This is one action that we feel is important in order
20 to progress in that direction. And in order to do
21 that, in addition to our efforts at education,
22 outreach and engagement, we have proposed the rule
23 that we are here to discuss today.

24 What I'd like to do is invite our panel
25 to come up to the front. I'll introduce them and then

1 we'll get started on the formal hearing.

2 As I mentioned, my name is Gregory
3 Wagner. My panel members include Robert Thaxton and
4 George Niewiadomski from the Coal Mine Safety and
5 Health part of the Agency. Starting at the far right,
6 Susan Olinger and Ronald Ford are here from the Office
7 of Standards, and Jennifer Honor from the Office of
8 the Solicitor from the Mine Safety and Health Division
9 of the Department of Labor.

10 The proposed rule for lowering miners'
11 exposure to respirable coal mine dust is an important
12 part of the Agency's Comprehensive Black Lung
13 Initiative. Our initiative to End Black Lung, Act
14 Now. The Secretary of Labor considers ending black
15 lung disease as one of the Department's highest
16 regulatory priorities.

17 The proposed rule was published in the
18 Federal Register on October 19th, 2010. In response
19 to requests from the public, MSHA is extending the
20 comment period from February the 28th, 2011 to May
21 2nd, 2011. All comments and supporting documentation
22 must be received or postmarked by May 2nd, 2011. This
23 meeting here is the second of seven public hearings on
24 the proposed rule. The first public hearing was held
25 on December 7th, 2010 at the MSHA Academy. Five

1 others will be held. One will be held this coming
2 Thursday, January 13th, 2011 in Birmingham, Alabama.
3 The next, January 25th, 2011 in Salt Lake City, Utah.
4 The next on February 8th, 2011 in Washington,
5 Pennsylvania. The next, February 10th, 2011 in
6 Prestonsburg, Kentucky. And the final on February
7 15th, 2011 at the MSHA headquarters in Arlington,
8 Virginia.

9 Before we start --- we're now going to
10 proceed with the public hearing. As many of you know,
11 the purpose of these hearings is to allow the Agency
12 to receive information from the public that will help
13 us evaluate the proposed requirements and produce a
14 final rule that protects miners from the health
15 hazards that result from exposure to respirable coal
16 mine dust. MSHA will use the data and information
17 from these hearings to help us craft a rule that
18 responds to the needs and concerns of the mining
19 public so that its provisions can be implemented in
20 the most effective and appropriate manner.

21 MSHA solicits comments from the mining
22 community on all aspects of the proposed rulemaking.
23 Commenters are requested to be specific in their
24 comments and submit detailed rationale and supporting
25 documentation for suggested alternatives submitted.

1 At this point, I would like to reiterate
2 some requests for comments and information that were
3 included in the preamble to the proposed rule. Number
4 one, the proposed rule presents an integrated
5 comprehensive approach to lowering miners' exposure to
6 respirable coal mine dust. The Agency is interested
7 in alternatives to the proposal that would be
8 effective in reducing miners' respirable dust exposure
9 and invites comments on any alternatives.

10 MSHA solicits comments on the proposed
11 respirable dust concentration standards. Please
12 provide alternatives to be considered in developing
13 the final rule, including specific suggested standards
14 and the rationale.

15 The proposed rule bases the proposed
16 respirable dust standard on an eight-hour work shift
17 and a 40-hour workweek. In its 1995 Criteria Document
18 on Occupational Exposure to Respirable Coal Mine Dust,
19 the National Institute for Occupational Safety and
20 Health, NIOSH, recommended lowering exposure to one
21 milligram per meter cubed for each miner up to a
22 ten-hour work shift during the 40-hour workweek. MSHA
23 solicits comments on the NIOSH recommendation.

24 MSHA included the proposed phase-in
25 periods for the proposed lower respirable dust

1 standards to provide sufficient time for mine
2 operators to implement or upgrade engineering or
3 environmental controls. MSHA solicits comments on
4 alternative time frames and factors that the Agency
5 should consider. Please include any information and
6 detailed rationale.

7 In the proposal, MSHA also plans to phase
8 in the use of CPDMs, continuous personal dust
9 monitors, to sample production areas of underground
10 mines and Part 90 miners. MSHA solicits comment on
11 the proposed phasing in of CPDMs, including time
12 periods and any information with respect to their
13 availability. If shorter or longer time frames are
14 recommended, please provide the rationale.

15 MSHA understands that some work shifts
16 are longer than 12 hours, and that dust sampling
17 devices generally last for approximately 12 hours.
18 MSHA solicits comments on appropriate time frames to
19 switch out sampling devices, whether gravimetric
20 samplers or CPDMs, to ensure continued operation and
21 uninterrupted protection for miners for the entire
22 shift.

23 The proposed single sample provision is
24 based on improvements in sample technology, MSHA
25 experience, updated data and comments and testimony

1 from earlier notices and proposals that address the
2 accuracy of single sample measurements. The Agency's
3 particularly interested in the comments on new
4 information added to the record since October 2003
5 concerning MSHA's quantitative risk assessment,
6 technological and economic feasibility, compliance
7 costs and benefits.

8 MSHA's interested in commenters' views on
9 what actions should be taken by MSHA and the mine
10 operator when a single shift respirable dust sample
11 meets or exceeds the Excessive Concentration Value
12 known as ECV. In this situation, if the operators use
13 the CPDM, what alternative actions to those contained
14 in the proposed rule would you suggest that MSHA and
15 the operators take? MSHA's particularly interested in
16 alternatives to those in the proposal and how such
17 alternatives would be protective of miners.

18 The proposal includes the revised
19 definition of normal production shift, so that
20 sampling is taken during shifts that reasonably
21 represent typical production and normal mining
22 conditions on the MMU. Please comment on whether the
23 average of the most recent 30 production shifts
24 specified in the proposed definition would be
25 representative of dust levels to which miners are

1 typically exposed.

2 The proposed sampling provisions address
3 interim use of supplementary controls when all
4 feasible engineering or environmental controls have
5 been used but the mine operator is unable to maintain
6 compliance with the dust standard. With MSHA
7 approval, operators could use supplementary controls,
8 such as rotation of miners or alteration of production
9 schedules in conjunction with CPDMs to monitor miners'
10 exposures. MSHA solicits comments on this proposed
11 approach and any suggested alternatives, as well as
12 the types of supplementary controls that would be
13 appropriate to use on a short-term basis.

14 The proposed rule addresses, one, which
15 occupations must be sampled using CPDMs, and two,
16 which work positions and areas could be sampled using
17 either CPDMs or gravimetric samplers. MSHA solicits
18 comments on the proposed sampling occupations and
19 locations and the proposed frequency of sampling. For
20 example, please comment on whether there are other
21 positions or areas where it may be appropriate to
22 require the use of CPDMs, and whether, for instance,
23 sampling of other designated occupations should be
24 more frequent than 14 days each calendar quarter.
25 Also, comment on whether the proposed CPDM sampling of

1 other designated occupations on the MMU is sufficient
2 to address different mining techniques, potential
3 overexposures and ineffective use of approved dust
4 controls.

5 The proposal would require that persons
6 certified in dust sampling or maintenance and
7 calibration retake the applicable MSHA exam every
8 three years to maintain certification. Under the
9 proposal, these certified persons would not have to
10 retake the proposed MSHA course of instruction. MSHA
11 solicits comments on this approach to certification.
12 Please include specific rationale for any suggested
13 alternatives.

14 In the proposal, MSHA would require that
15 the CPDM daily sample and error data file information
16 be submitted electronically to the Agency on a weekly
17 basis. MSHA solicits comments on suggested
18 alternative time frames, particularly in light of the
19 CPDM's limited memory capacity of about 20 shifts.

20 The proposal contains requirements for
21 posting information on sampling results and miners'
22 exposures on the mine bulletin board. MSHA solicits
23 comments on the lengths of time proposed for posting
24 data. If a standard format for reporting and posting
25 data were developed, what should it include?

1 The periodic medical surveillance
2 provisions in the proposed rule would require
3 operators to provide the initial examination to each
4 miner who begins work at a coal mine for the first
5 time and then at least one follow-up examination after
6 the initial examination. MSHA solicits comments on
7 the proposed time periods specified for these
8 examinations.

9 The proposed respirator training
10 requirements are performance-based, and the time
11 required for respirator training would be in addition
12 to the time required under Part 48. Under the
13 proposal, mine operators could, however, integrate
14 respirator training into their Part 48 training
15 schedules. The proposal would require that operators
16 keep records of training for two years. Please
17 comment on the Agency's proposed approach and whether
18 the final rule should specify the content and format
19 of the training record.

20 The proposed rule specifies procedures
21 and information to be included in the CPDM plans to
22 ensure miners are not exposed to the respirable dust
23 concentrations that would exceed the proposed
24 standards. For example, the proposed plan would
25 include pre-operational examination, testing and setup

1 procedures to verify the operational readiness of the
2 CPDM before each shift. It would also include
3 procedures for scheduled maintenance, downloading and
4 transmission of sampling information, and posting of
5 reported results. Please comment on the proposed plan
6 provisions and include supporting rationale with your
7 recommendations.

8 The Agency has prepared a Preliminary
9 Regulatory Economic Analysis which contains supporting
10 cost and benefit data for the proposed rule. MSHA has
11 included a discussion of the costs and benefits in the
12 preamble. MSHA requests comments on all estimates of
13 costs and benefits presented in the preamble and the
14 Preliminary Regulatory Economic Analysis, including
15 compliance costs, net benefits and approaches used and
16 assumptions made in the preliminary economic analysis.

17 A commenter at the first public hearing
18 suggested that the time frame for miners' review of
19 the CPDM Performance Plan be expanded. I want to
20 clarify MSHA's position in the proposed rule. In
21 developing the proposed rule, MSHA relied on the time
22 frame and process in the existing requirements for
23 mine ventilation plans. In the proposal, MSHA did not
24 intend to change the existing time frame and process
25 and stated that the proposed rule is consistent with

1 the ventilation plan requirements and would allow
2 miners' representatives the opportunity to
3 meaningfully participate in the process.

4 As you address the proposed provisions,
5 either in your testimony today or in your written
6 comments, please be as specific as possible. We
7 cannot sufficiently evaluate general comments. Please
8 include specific suggested alternatives, your specific
9 rationale, health benefits to miners of your proposals
10 and any technological or economic feasibility
11 considerations, and please provide data to support
12 your comments. The more specific your information is,
13 the better it will be for us to evaluate and produce a
14 final rule that will be responsive to the needs and
15 concerns of the mining public.

16 As many of you know, this public hearing
17 will be conducted in an informal manner. Cross
18 Examination and formal rules of evidence will not
19 apply. The panel may ask questions of the speakers.
20 Those of you who have notified MSHA in advance of your
21 intent to speak or have signed up today already to
22 speak will make your presentations first. After all
23 scheduled speakers have finished, any of you who wish
24 to speak may do so. And if you wish to present
25 written statements or information today, please

1 clearly identify your material and give a copy to the
2 court reporter. But you may also submit comments
3 following the public hearing. Comments must be
4 received or postmarked by May 2nd, 2011. Comments may
5 be submitted by any method identified in the proposed
6 rule and certainly comments can be submitted well
7 before May 2nd as well.

8 MSHA will make available transcripts of
9 all the public hearings approximately two weeks after
10 the completion of the hearings. You may view the
11 transcripts of the public hearings and comments on
12 MSHA's website at www.msha.gov.

13 We ask everybody in attendance please
14 sign the attendance list in the back of the room.

15 I'd say that we aren't imposing any
16 specific time limits on the individuals who will be
17 testifying, but given the number of people in the room
18 and the number of people hoping to testify, I'd ask
19 that the speaker please be mindful of the speakers who
20 will be coming after you.

21 I'd like to begin the hearing. And I'm
22 going to ask each person to clearly state your name
23 and organization, spelling your name for the court
24 reporter so that we have an accurate record.

25 Our first speaker will be William

1 Eschenbacher, a professor of pulmonary medicine at the
2 Cincinnati VA Medical Center, who, I believe, is
3 presenting remarks on behalf of the American College
4 of Occupational and Environmental Medicine. So Bill,
5 please come up and make sure that the microphone is
6 on. And again, state your name, organization, and
7 spell your name.

8 DR. ESCHENBACHER:

9 My name is ---.

10 DR. WAGNER:

11 It's on.

12 DR. ESCHENBACHER:

13 My name is William Eschenbacher,
14 E-S-C-H-E-N-B-A-C-H-E-R. And as Dr. Wagner stated, I
15 am representing the American College of Occupational
16 and Environmental Medicine, providing these comments
17 as the Chair of the Lung Disorders Committee.

18 Inhalation of excessive amounts of
19 respirable coal mine dust results in several lung
20 diseases, including coal workers' pneumoconiosis, CWP,
21 silicosis and occupationally-induced chronic
22 obstructive pulmonary disease. Satisfactory control
23 of dust inhalation can entirely prevent coal miners
24 from developing impairment, disability and death due
25 to these diseases.

1 The Coal Mine Safety --- Health and
2 Safety Act of 1969. The Act was passed in part as a
3 response to periodic mine disasters which plagued U.S.
4 coal mines, including the 1968 Farmington Mine
5 explosion, and addressed multiple ongoing mine safety
6 issues as well as the increasing recognition that
7 important respiratory health problems resulted from
8 coal mine dust exposures. The Act was landmark
9 legislation. It established the first U.S. national
10 mandatory mine dust exposure limits, provided specific
11 approaches to ongoing workplace exposure monitoring
12 and established an agency with the authority to
13 enforce compliance with the law. Congressional intent
14 for the Act was clearly stated. Congress declares
15 that the first priority and concern of all in the coal
16 mining industry must be the health and safety of its
17 most precious resource, the miner. And the existence
18 of unsafe and unhealthful conditions and practices in
19 the nation's coal mines is a serious impediment to the
20 future growth of the coal industry and cannot be
21 tolerated. Operators of such mines have the primary
22 responsibility to prevent the existence of such
23 conditions.

24 A major objective of the legislation,
25 based upon the scientific evidence available at the

1 time, was to eliminate severe and disabling
2 occupational lung disease in all U.S. underground coal
3 miners. In addition, a medical surveillance program
4 was initiated under the Act with the goal of enabling
5 increased preventative measures among miners whose
6 chest x-rays showed evidence of early dust-related
7 lung disease, as well as providing a mechanism to
8 track progress in disease prevention. During the
9 first 30 years of the Act, after the Act was passed,
10 as anticipated, participants in the radiographic
11 surveillance program demonstrated an 89 percent
12 decline in the tenure-related prevalence of
13 abnormalities consistent with pneumoconiosis. After
14 full implementation of the dust control measures in
15 the Act of 1973, the years of potential life loss from
16 pneumoconiosis, this is a measure YPLL, a measure of
17 mortality attributed to CWP, coal workers'
18 pneumoconiosis, decreased 91.2 percent between the
19 years 1968 to '72, and it rose in 2002, 2006 among
20 U.S. coal miners.

21 However, as the number of new research
22 results became available over the last 40 years, it
23 became clear that the 1969 dust limit would not fully
24 eliminate advanced pneumoconiosis. Also, newer
25 scientific literature established that inhalation of

1 air with concentrations of coal mine dust at or below
2 the permissible exposure limits of two milligrams per
3 cubic meter in the Act also caused clinically
4 significant losses in ventilatory lung function in a
5 proportion of exposed miners, irrespective of any
6 radiographic changes. In the face of these findings,
7 in 1995, the National Institute for Occupational
8 Safety and Health, NIOSH, issued a Criteria Document
9 which was shown previously, which formally recommended
10 that respirable dust exposures in coal mines be
11 limited to a time-weighted full-shift average of one
12 milligram per cubic meter, or half the previous limit.
13 As part of that recommendation, NIOSH indicated that
14 respiratory health monitoring for miners should be
15 expanded to include spirometry, symptom questionnaires
16 and occupational history information. This was
17 recommended in order to assure the early recognition
18 and control of all adverse respiratory health effects,
19 in recognition that dust-related lung dysfunction has
20 been demonstrated to occur in the absence of the
21 radiographic abnormalities. The Criteria Document
22 also affirmed an earlier 1973 NIOSH recommendation
23 that occupational exposure to respirable silica be
24 limited to 50 micrograms per cubic meter. A number of
25 relevant studies and reports that have been published

1 since 1995 reinforce the earlier recommendations.

2 Over the last five years, the American
3 College of Occupational Environmental Medicine is
4 aware that there have been a number of peer-reviewed
5 scientific studies and public health reports, the
6 references are attached, that document a partial
7 reversal of 30 years of improvement in coal miner
8 occupational health. A number of these reports have
9 demonstrated an increased prevalence of radiographic
10 evidence of pneumoconiosis among groups of miners who
11 participated in national coal miner health
12 surveillance program. Lung function deficits have
13 also been documented among coal miners, along with
14 recognition of increasing morbidity in coal miners,
15 annual years of potential life loss from CWP have been
16 increasing since about 2002. In particularly
17 worrisome findings, severe and fatal dust-induced lung
18 disease has recently been documented among many U.S.
19 coal miners, including young miners that have worked
20 entirely under current permissible limits and
21 enforcement regime. In the face of these advanced
22 cases of preventable occupational lung disease among
23 currently employed miners, ACOEM strongly encourages
24 the implementation of actions to assure that both
25 respirable silica and mixed mine dusts are

1 continuously controlled to healthful levels at all
2 coal mines.

3 The College strongly endorses the
4 following section of the proposed MSHA rulemaking,
5 RIN 1219-AB64. Number one, the dust standards.
6 Thirty (30) CFR, Parts 70 and 71, Subparts B. That
7 the adoption of the current science-based NIOSH
8 recommended exposure limits monitored over an entire
9 work shift of one microgram per cubic meter for
10 respirable dust and establishment of a separate limit
11 for respirable silica. MSHA also is committed to
12 future rulemaking addressing the permissible limit for
13 respirable silica exposures.

14 ACOEM takes note of the thousands of measurements
15 of respirable dust levels which have been reported
16 from active coal mines over the last several decades.
17 These dust measurements on average are well below the
18 proposed limits, including many performed by MSHA
19 inspectors as well as those completed by coal mine
20 health and safety personnel, and thus fully support
21 the feasibility of implementation of the reduced dust
22 standard. ACOEM also stresses the importance of MSHA
23 identifying, retaining and training the competent
24 professional staff required to assure effective and
25 equitable enforcement of protective standards, and

1 thereby to assure that all working coal mine
2 environments provide continuous and universal
3 adherence.

4 ACOEM further supports the MSHA proposals that
5 aim to assure that airborne measured respirable dust
6 levels be maintained at or below a safe level by, A,
7 measuring samples during each individual work shift,
8 rather than the current strategy of averaging samples
9 over multiple shifts, B, requiring appropriate
10 application of real-time continuous dust monitoring
11 technologies that permit timely actions for
12 controlling dust, and C, establishing a weekly
13 permissible accumulated exposure limit to reduce the
14 likelihood of excessive dust exposures among miners
15 who work extended hours.

16 Number two, medical surveillance. Thirty
17 (30) CFR, Part 72, Subpart B. The addition of
18 spirometry, symptom questionnaires and occupational
19 histories to the performance of chest radiographs for
20 the ongoing monitoring of respiratory health for all
21 coal miners at both surface and underground mines. We
22 firmly concur that all such testing be done only by
23 competent personnel using equipment and procedures as
24 approved by NIOSH. NIOSH has been using such
25 personnel, equipment and procedures as part of their

1 Enhanced Coal Workers' Health Surveillance Program.
2 Medical surveillance for occupationally-induced COPD,
3 including chronic bronchitis and emphysema, requires
4 the complementary findings of lung function testing,
5 that is screening spirometry, and respiratory
6 symptoms. Either modality alone is not sufficient for
7 the accurate detection of these diseases. We also
8 encourage continued efforts to recognize and overcome
9 barriers to participation in health monitoring,
10 through approaches such as the Miner's Choice Program
11 and NIOSH's Enhanced Coal Workers' Health Surveillance
12 Program. Program statistics indicated that
13 participation in the Coal Workers' X-ray Surveillance
14 Program declined after the initial rounds. The recent
15 increased levels of participation stimulated by these
16 programs broaden opportunities for early interventions
17 and secondary disease prevention, provide more
18 accurate estimates of the population burden of disease
19 and should permit better evaluation of the impact of
20 regulatory efforts on disease prevalence.

21 Three, scope. Thirty (30) CFR, Part 90.
22 In addition to extending the definition of a Part 90
23 miner to include surface coal miners, we also
24 recommend that miners who have developed occupational
25 obstructive lung disease, COPD, due to mine dust

1 exposure be included as Part 90 miners with the option
2 to be transferred to areas of the mine where the
3 concentration of respirable dust is documented to be
4 at or below 50 percent of the permissible level.
5 Since it is known that, in addition to the
6 interstitial dust diseases, obstructive lung diseases
7 can also be caused and worsened by mine dust exposure,
8 miners who have been shown to develop these diseases
9 will also benefit from transfer rights, to facilitate
10 secondary prevention and reduce the risk of worsening
11 lung disease.

12 Four, silica. Current science clearly
13 demonstrates important risks to workers exposed to the
14 100 micrograms per cubic meter of respirable silica
15 limit proposed in this announcement, and ACOEM
16 supports MSHA's intention, stated in the NPRM, to
17 promulgate a silica PEL that is more protective than
18 the current rule. That's the end of my comments.

19 DR. WAGNER:

20 Thank you. I'm going to turn to the
21 panel first to see if there are any questions. Thank
22 you very much.

23 MS. HONOR:

24 Thank you very much.

25 DR. WAGNER:

1 The next speaker who registered in
2 advance was Joe Thomas. Is he here? The next was
3 John Stachura.

4 MR. STACHURA:

5 Good morning.

6 DR. WAGNER:

7 Good morning.

8 MR. STACHURA:

9 Everybody hear all right? Okay. My name
10 is John Stachura, S-T-A-C-H-U-R-A. I am here as the
11 Chairman of the Underground Committee for the Indiana
12 Coal Council. To begin, the Indiana Coal Council,
13 Incorporated is a trade association representing
14 Indiana coal producers and related business entities.
15 Our association was formed to foster, promote and
16 defend the interest of Indiana coal producers. All of
17 our members will be affected by this rule proposal.
18 It is the desire of the Indiana Coal Council and all
19 of its members to see coal workers' pneumoconiosis,
20 CPW (sic), eliminated from coal mining in Indiana.
21 Obviously, CPW is a serious issue. It is one that the
22 Indiana Coal Council, and frankly, anyone associated
23 with the coal industry is committed to eradicating.
24 As we gather today for this meeting, no one disputes
25 that the health and safety of miners is paramount.

1 In 2009, miners spread across nine
2 counties in Indiana produced more than 35 million tons
3 of coal. In fact, over the course of the past decade,
4 Indiana's miners have mined more than 30 million tons
5 of coal every year. Consequently, any issue impacting
6 the welfare of these miners deserves scrutiny and
7 consideration, and on behalf of the Indiana Coal
8 Council, I thank you for providing today's forum to
9 candidly discuss the general issue of CWP as well as
10 the more specific issue of MSHA's proposed rule,
11 lowering miners' exposure to respirable coal mine
12 dust, including continuous personal dust monitors.

13 After careful consideration, the Indiana
14 Coal Council cannot and will not support the proposed
15 rulemaking and joins the growing number of commenters
16 who respectfully request the proposed rulemaking be
17 withdrawn in its entirety. Is it our belief that this
18 is the only course of action which achieves our stated
19 goal of eradicating CPW and maintaining the wellbeing
20 of Indiana miners.

21 Our objections to the rule are numerous
22 and specific; however, the basis of our complaint is
23 with the recipe used by MSHA in its rulemaking
24 procedures, which begins with a noble cause being
25 combined with faulty assumptions, technical

1 misapplications, convoluted science and inconsistent
2 enforcement policies and results in a rule that
3 Indiana miners and mine operators will have to ingest
4 for years, taking precious resources away from the
5 real objective of eliminating CWP. Any proposed rule
6 should be based upon facts and rationality. MSHA's
7 current proposed rule is based upon neither.

8 As a starting point, MSHA's proposed rule
9 does not even rise to the level of junk science. In
10 junk science, underlying statistics and facts relied
11 upon by their advocate are manipulated. Still the
12 underlying statistics and facts are revealed. Here
13 MSHA and NIOSH have alluded to prohibit the disclosure
14 of the very information necessary to perform the
15 serious scientific critique of the conclusions relied
16 upon by MSHA to justify the move to the one milligram
17 standard. Perhaps MSHA believes that the data is so
18 clear that revealing it would unnecessarily complicate
19 the validity of this rule. The Indiana Coal Council
20 encourages MSHA to humor its critics and reveal the
21 underlying data, rather than pass a rule that hasn't
22 been subjected to the light of day, let alone
23 scientific peer-review. It is ironic that this rule
24 emanates from an administration that has, from its
25 first day in office, touted itself as the most open in

1 governmental history.

2 Even after taking at face value the
3 information MSHA actually has revealed as part of its
4 rulemaking process, it is abundantly clear that CWP is
5 not the easily explained and nationwide problem that
6 MSHA claims as reason and justification for
7 implementation of the one milligram standard, okay,
8 along with a host of 30 CFR, Part 75 changes which
9 appear to bear no relation whatsoever to preventing
10 CWP.

11 It should be recognized that mines
12 located in Indiana and Illinois have the lowest
13 prevalence of CWP in the nation. Whether this
14 decreased prevalence is the result of thicker seams of
15 coal with decreased silica concentrations or the
16 decreased prevalence is the result of specific mining
17 methods utilized throughout the region, the
18 justification for a nationwide rule has not been
19 adequately demonstrated. In fact, a nationwide rule
20 would disproportionately impact MSHA districts, such
21 as MSHA District 8, where higher concentrations of
22 respirable dust have been found, but CWP is actually
23 decreasing without any intervention of MSHA. This
24 proposed rule also fails to recognize the improvements
25 that have been made in respirable dust concentrations

1 as operators implement advanced dust control
2 technologies and improve work practices.

3 In 2006, the average dust concentration
4 for continuous miner operators in District 8 was 1.21
5 milligrams per cubic meter of air. In 2010, this
6 number was reduced to .84 milligrams per cubic meter,
7 a 31 percent reduction in four years. This recent
8 downward trend demonstrates that operators are already
9 committed to lowering miners' exposure to respirable
10 coal mine dust, which is the stated purpose of this
11 rule. Meanwhile, the proposed rule claims to advocate
12 for health and safety of miners while at the same time
13 ignoring personal protective equipment as the singular
14 most effective means of reducing an individual miner's
15 exposure to respirable dust.

16 Additionally, a proposed rule that claims
17 to advocate for health and safety of miners fails to
18 acknowledge the serious burdens and risk this proposed
19 rule would place upon MSHA, miners and mine operators
20 alike. As a point of perspective, a single coal mine
21 will be required to produce and comply with 17,000
22 samples each year. The notion that the industry and
23 MSHA can administer a program that increases from the
24 industry-wide 25,000 respirable dust samples per year
25 to 750,000 compliance samples per year is blatantly

1 absurd. It is the equivalent of Chapter 30 of the
2 Code of Federal Regulations expanding by 3,000 percent
3 and expecting mine operators to comply and MSHA to
4 administer it over the course of a single year. While
5 the Indiana Coal Council is certainly not advocating
6 for such a drastic expansion of MSHA's authority,
7 under this hypothetical paragraph, one could imagine
8 that MSHA's expansion of power might involve a
9 provision or two of which operators have a realistic
10 shot at compliance. Under the proposed rule, however,
11 MSHA has made faulty assumptions about any operator's
12 ability to comply on a consistent basis. And the most
13 notable of these faulty assumptions is that the CPDM
14 was and is designed as a compliance tool that can be
15 consistently and accurately used as a single shift
16 sampler of respirable dust. In short, it's not.

17 Earlier it was mentioned that the rule
18 also appears to include a variety of 30 CFR, Part 75
19 changes that bear no rational relationship whatsoever
20 to preventing CWP. One such proposal under the rule
21 is the revision of the current 30 CFR, 75.332(a)(1),
22 which currently requires that each working section and
23 each area where mechanized mining equipment is being
24 installed or removed shall be ventilated by a separate
25 split of intake air directed by overcast, undercast or

1 other permanent ventilation controls. Aside from the
2 fact that there is no apparent or explained
3 correlation between the proposed change to this
4 section in preventing CWP, the proposed rule change
5 also suggests there could be additional costs.
6 Interestingly, there is no specific discussion that
7 outlines the benefit of such costs or how much such
8 costs would be. From a practical standpoint, this
9 proposed rule change provision would result in most
10 cases in the installation of additional overcasts and
11 an additional intake stopping line to deliver intake
12 air to each individual MMU within a single working
13 section. Of course, this would also require, in many
14 cases, the mine's installation of additional
15 airshafts. Perhaps this was not the intent of the
16 proposed rule with regard to this provision, but the
17 current proposed revision to the 75.332(a)(1) standard
18 could certainly create ambiguity, uncertainty and the
19 possibility of arbitrary and capricious enforcement in
20 situations where these types of additional permanent
21 ventilation controls had not been installed. While
22 the Indiana Coal Council does not want to belabor this
23 point, the problems with the proposed revisions of
24 75.332(a) is indicative of the apparent sloppiness and
25 lack of cogent thought that has been put into this

1 proposed rule as a whole.

2 Consider for a moment that many
3 underground coal mines in the United States
4 successfully operate two independent and separate MMUs
5 within the same working section. In these cases, two
6 separate production crews and two separate sets of
7 mining equipment are used. Each MMU is ventilated
8 with a separate split of intake air. This process is
9 accomplished by using permanent ventilation controls
10 to direct an intake air split to the working section.
11 Then the intake air split is near the working places
12 inby the section loading point using approved
13 temporary ventilation controls so that the two
14 separate and distinct splits of intake air ventilate
15 the working faces with enough volume to comply with an
16 MSHA-approved ventilation plan for the mine.

17 This method of fishtail ventilation
18 provides a separate split of intake air for the mining
19 equipment associated with each individual MMU.
20 Notably, the separate intake air split provided to
21 each MMU is not used to ventilate any other working
22 section. This fishtail ventilation method for two
23 MMUs operating on the same working section was
24 outlined in the Federal Register dated May 15, 1992,
25 and was intended to provide miners with a separate

1 intake air split uncontaminated with gasses or dust
2 from another set of mining equipment. As a result of
3 the health and safety success of this type of
4 ventilation scheme, many mining operations have
5 designed their coal mines to operate two MMUs within
6 the same working section. And the benefits of the
7 current 75.332(a) are clear. As revisions of the 1992
8 ventilation regulations were proposed in the Federal
9 Register dated March 11th, 1996, commenters suggested
10 that 75.332(a)(1) be revised to permit the
11 installation of mechanized mining equipment in either
12 the return or intake air sources of a working section.
13 However, the risk of introducing potential mine fire
14 explosion hazards resulted in the final rule ignoring
15 that suggestion. Instead, MSHA stayed the course of
16 enjoying the safety benefits of using a separate split
17 of intake air as established in 1992.

18 Now, despite no apparent relationship to
19 CWP or any indication that this 19-year ventilation
20 scheme presents a problem, MSHA proposes a change to
21 the standard. In the process, underground coal mines
22 would engage in the expensive and completely
23 unnecessary exercise of completing overhauling and
24 redesigning their ventilation systems. Not a single
25 recent mining disaster has related to fishtail

1 ventilation. Permanent ventilation controls have
2 proven effective in delivering a separate split of
3 intake air to the working section, and the approved
4 temporary ventilation controls have proven effective
5 in splitting the air near the working places to
6 provide each set of mining equipment with a separate
7 and distinct split of intake air. No scientifically-
8 supported data suggests that fishtail ventilation
9 presents a hazard to the miners or contributes in any
10 way to CWP. Quite simply, all this is is to say that
11 the proposed revision of 75.332(a) is just one of many
12 examples throughout the proposed rule of an Agency
13 proposing a change without any apparent logical basis
14 for doing so.

15 Another prime example of such a change,
16 also completely unrelated to CWP, is the proposed
17 change related to 30 CFR, 75.363 and the posting,
18 correcting and reporting of hazardous conditions. My
19 examiners are highly trained certified safety
20 professionals who evaluate certain areas for mine
21 hazardous conditions on a mine-by-mine and
22 case-by-case basis. The proposed change to this
23 standard is quite possibly the clearest example in
24 recent history of MSHA's micromanagement of the work
25 coal miners do every day in this country. To dictate

1 through a regulation that a respirable dust
2 concentration of a one milligram standard constitutes
3 a hazardous condition regardless of circumstances is
4 inconsistent with a historical deference paid to the
5 experience and judgment of qualified mine examiners.
6 Furthermore, there is no scientifically-supported data
7 that a hazard exists at the current respirable dust
8 standard, let alone at a one milligram standard.
9 There has been no quantitative risk assessment and no
10 exposure response relationship based on appropriate
11 risk characterization. In other words, MSHA has
12 failed to prove the basis for its own generalized
13 assumptions.

14 Adding these type of requirements to Part
15 75 adds a burden, costs and complication to MSHA's
16 plan approval process that is already overburdened and
17 inefficient with only discretionary expedited hearings
18 when good faith negotiations reach an impasse. And
19 now MSHA's proposed rule creates a new plan for dust
20 control that would add to an already broken system,
21 another duplicative plan process which would clearly
22 be subject to frequent changes, particularly when, as
23 mentioned earlier, compliance based upon a single
24 shift sample fails to occur. No mechanism exists for
25 effective and timely resolution of disputes.

1 Insufficient staff exists to process the plans. And
2 the end result is an arbitrary process based on the
3 District manager's whims or on written or unwritten
4 across-the-board policies that cannot be reasonably
5 challenged.

6 Of course, all of this from MSHA's
7 failure to release and subject its conclusions to peer
8 review to MSHA's underestimation of the size, scope
9 and impracticality of the proposed rule result in yet
10 another example of MSHA underselling the potential
11 costs of a proposed rule as a way of avoiding the
12 scrutiny that comes with what this rule in all
13 actuality may do. Increased compliance costs by more
14 than \$1 billion a year provide additional means for
15 government officials to exercise de facto control over
16 day-to-day operations of coal mines and ultimately
17 result in increased coal costs with reduced wages for
18 miners with no discernable guarantee that CWP will be
19 reduced, let alone eliminated.

20 As a side note, the technology mandated
21 for implementation under the proposed rule is
22 proprietary. MSHA's proposed rule, particularly
23 without the information necessary for a critical
24 review, forces an entire industry to bow down before a
25 single manufacturer who would have little incentive to

1 further the development of the technology and/or
2 engage in reasonable pricing practices. In short,
3 this proposed rule runs the risk of becoming a
4 government-sponsored boondoggle.

5 We understand the previous commenters,
6 including the West Virginia Coal Association, as they
7 indicated that they intend to submit a series of
8 recommendations for MSHA's consideration prior to the
9 final deadline for comments on the proposed rule. The
10 Indiana Coal Council may or may not do the same.
11 Frankly, this proposed rule is so fraught with
12 problems that offering alternatives on a
13 point-by-point basis seems an exercise in futility.

14 However, for the basis of making many of
15 these problems clear in the administrative record, the
16 Indiana Coal Council offers the following specific
17 questions for answering by MSHA. Number one, with
18 regard to the proposed rule regarding 30 CFR, 70.2,
19 will the equivalent concentration of a sample shift
20 less than eight hours in duration be penalized for
21 considering that exposure to be 480 minutes?

22 Secondly, with regard to the proposed
23 rule regarding 30 CFR, 70.100, upon what analysis
24 and/or statistics is MSHA basing its premise that CWP
25 is such an acute cause of death or illness among

1 underground coal miners in MSHA Districts 8 and 10,
2 that a 50 percent reduction in respirable dust
3 exposure limit is warranted?

4 Number three, additionally with regard to
5 30 CFR, 70.100, upon what analysis and/or statistic is
6 MSHA basing its conclusion that a reduced respirable
7 dust exposure limit will result in fewer cases of CWP?

8 Number four, with regard to the proposed
9 rule regarding 30 CFR 70.201, which CMDPSUs and CPDMs
10 were considered to be approved sampling devices for
11 the purposes of conducting an economic analysis of
12 this rule and what were the prices of each sampling
13 unit used in such calculations? Furthermore, if the
14 technology used in the devices considered is
15 proprietary, how did MSHA factor in increased demand
16 for such units and monopoly-driven price increased in
17 projecting the economic impact of requiring all
18 underground coal mines to purchase such equipment?

19 Number five, with regard to the proposed
20 rule regarding 30 CFR 70.202 and 70.203, in the course
21 of conducting an economic analysis of the proposed
22 rule, what were the numbers, data and calculations
23 used for verifying the accuracy of the training and
24 testing costs of certifications required for dust
25 sampling and maintenance/calibration personnel?

1 Number six, with regard to the proposed
2 rule regarding 30 CFR, 70.206, in the course of
3 conducting an economic analysis of the proposed rule,
4 what were the numbers, data and calculations used for
5 determining the economic impact of underground coal
6 mines developing and maintaining the CPDM performance
7 plan?

8 Number seven, with regard to the proposed
9 rule regarding 30 CFR, 70.206, in the course of
10 conducting an economic analysis of the proposed rule,
11 what were the numbers, data and calculations used for
12 determining the economic impact of all procedures
13 required to be conducted as part of an approved CPDM
14 performance plan?

15 Number eight, with regard to the proposed
16 rule regarding 30 CFR, 70.207 and 70.208, in the
17 course of conducting an economic analysis of the
18 proposed rule, what were the numbers, data and
19 calculations used for determining the cost of
20 developing corrective action plans to lower the
21 concentration of respirable dust and for making
22 subsequent changes to the CPDM performance plan
23 reflecting control measures used to abate violations,
24 including the cost of respiratory equipment available
25 to affected miners and production delays associated

1 with the plan preparation, submittal, review and
2 approval process?

3 Number nine, with regard to the proposed
4 rule regarding 30 CFR, 70.210 and 70.211, in the
5 course of conducting an economic analysis of the
6 proposed rule, what were the numbers, data and
7 calculations used for determining the economic impact
8 of the cost of transmittal that requires data and
9 posting of received data for at least 46 days?

10 Number ten, with regard to the proposed
11 rule regarding 30 CFR, 72.100, in the course of
12 conducting an economic analysis of the proposed rule,
13 what were the numbers, data and calculations used for
14 determining the economic impact and projected costs of
15 periodic examinations?

16 Number 11, with regard to the proposed
17 rule regarding 30 CFR, 75.332, is the language in the
18 proposed rule intended to modify and/or eliminate the
19 practice known as fishtail ventilation by changing the
20 rule to apply to each MMU on each working section
21 rather than the current language referring to each
22 working section? If so, can you provide numbers, data
23 and calculations used to support the correlation
24 between the need for a proposed rule change to this
25 provision and the prevention of CWP?

1 Furthermore, what were the numbers, data
2 and calculations used for determining the economic
3 impact and projected costs of implementing ventilation
4 changes associated with providing additional stopping
5 lines, overcasts and fans required to deliver intake
6 air to each individual MMU in underground coal mines?

7 Number 12, with regard to the proposed
8 rule regarding 30 CFR, 75.363, in the course of
9 conducting an economic analysis of the proposed rule,
10 what were the numbers, data and calculations used for
11 determining the economic impact of additional
12 examinations required by certified persons and the
13 costs of recording the results of such examinations,
14 including mine foreman or equivalent mine officials'
15 time in countersigning each such examination record?

16 Thirteen (13), with regard to the
17 proposed rule regarding 30 CFR, 75.371, in the course
18 of conducting an economic analysis of the proposed
19 rule, what were the numbers, data and calculations
20 used for determining the economic impact of developing
21 and maintaining additional information required in the
22 mine ventilation plan?

23 Fourteen (14), what were the numbers,
24 data and calculations used for determining the
25 economic impact and burden upon rural communities

1 negatively impacted by mines closed as a result of the
2 burden of this rule upon the operators?

3 Number 15, what were the numbers, data
4 and calculations used for determining the economic
5 impact of the projected monetized benefits of the
6 proposed rule, considering the additional unemployed
7 workforce that will be created as a result of mine
8 operators closing due to regulations with which they
9 cannot reasonably hope to comply?

10 Number 16, assuming projected monetized
11 benefits of the proposed rule are based upon reduced
12 healthcare costs for retired underground coal miners
13 and a longer life expectancy of the same, can you
14 provide the numbers, data and calculations used for
15 verifying how said miners are projected to provide for
16 themselves financially until retirement if they become
17 unemployed due to mine closures caused by this
18 proposed rule?

19 Additionally, what numbers, data and
20 calculations were considered in the economic analysis
21 of the proposed rule related to the financial impact
22 upon mining families whose miners see a reduction in
23 work hours and pay as a result of lower respirable
24 dust standard exposure limits?

25 Furthermore, under any such analysis,

1 what consideration was given to the need of mining
2 families to secure additional childcare as a result of
3 couples having to work additional jobs in order to
4 maintain their current standard of living?

5 Finally, did the economic analysis
6 consider the loss to the government of the federal,
7 state, locality income tax revenue as a result of the
8 reduction in miner earnings created by the proposed
9 rule?

10 Number 17, in conducting its economic
11 analysis of the proposed rule, what data, statistics,
12 numbers and calculations were considered by MSHA
13 regarding the increased costs to the American consumer
14 and/or the increased reliance upon foreign energy
15 sources in the event that the underground coal mines
16 in the United States close as a result of the costs
17 and regulatory structure of this proposed rule?

18 In closing, it is apparent that without
19 any actual scientific analysis and forethought, MSHA
20 has proposed a conglomeration of mandates in the hopes
21 that something will help reduce CWP. The whole
22 proposed rule should be scrapped and MSHA and NIOSH
23 should begin again with the instruction to prepare
24 rules that are, number one, based upon scientific
25 facts and analysis, two, share openly with industry

1 and other interested individuals, three, based upon
2 the application of proven technology, four, designed
3 to reduce and/or eliminate CWP, and five, have a
4 wellbeing of this nation's miner as the central focus.
5 Thank you.

6 DR. WAGNER:

7 Thank you very much. I'm going to turn
8 to the panel first.

9 MR. FORD:

10 I have a couple questions. One's a
11 comment in the economic analysis, to answer one of
12 your questions, the price that we used for the
13 continuous personal dust monitor, the CPWM --- CPDM,
14 excuse me, was \$10,000 as an average price. And then
15 we also included to each unit that \$2,875 for a
16 five-year warranty. So that's close to \$13,000.

17 There's other portions of costs that
18 you've asked for the numbers that are contained in the
19 economic analysis. We did estimate some value to loss
20 of production for the issue for 75.332, split of air.
21 It did note that there would be a few mines that could
22 and may incur huge costs, such as, you know,
23 installing additional shafts, and it could be in the
24 millions of dollars.

25 But my one question to you is that, can

1 you help us in that area of the split of air by maybe
2 crystallizing what those costs might be right now, or
3 you know, some time in your written comments?

4 MR. STACHURA:

5 We could do that in the written comments.

6 MR. FORD:

7 Thank you.

8 MR. NIEWIADOMSKI:

9 Can you hear me? I think you made it
10 clear that the Indiana Coal Council supports MSHA's
11 goal to eliminate CWP; is that correct?

12 MR. STACHURA:

13 That's correct.

14 MR. NIEWIADOMSKI:

15 You also made it clear what you don't
16 like about this rule. Is there anything that you like
17 about this rule that you support?

18 MR. STACHURA:

19 No.

20 MR. NIEWIADOMSKI:

21 Which tells me that you felt that the
22 current program that's in place is adequate to prevent
23 CWP?

24 MR. STACHURA:

25 Yes, I do.

1 MR. NIEWIADOMSKI:

2 You wouldn't change anything about it?

3 MR. STACHURA:

4 No. And I'm speaking on behalf of the
5 Indiana Coal Council that represents every kind of
6 coal miner in the State of Indiana. We don't have a
7 problem in District 8. We really don't have a problem
8 in District 10. And even your own slides project
9 where the problem is. But we're a one-size-fits-all
10 country. That's what we have a problem with.

11 MR. NIEWIADOMSKI:

12 Miners in the State of Indiana are still
13 developing black lung; isn't that true?

14 MR. STACHURA:

15 No.

16 MR. NIEWIADOMSKI:

17 No miner had developed CWP?

18 MR. STACHURA:

19 Not that we're aware of.

20 MR. NIEWIADOMSKI:

21 Thank you.

22 MR. THAXTON:

23 I just have a couple of follow-up
24 questions for you. On the '92 regulation for
25 ventilation, you indicated that the design of the 332

1 was to provide intake air to each section so that it's
2 not contaminated by another work group. Is that
3 correct? Can you describe how your sections are set
4 up with your section dump points and your intake air
5 to indicate how you operate them so that no pieces of
6 equipment from one MMU is encroaching upon the intake
7 air of another MMU?

8 MR. STACHURA:

9 If it's all right with you, I'd like to
10 defer to some of our members that are actually using
11 the fishtail air.

12 MR. THAXTON:

13 You want to wait until they come up to
14 speak or ---?

15 MR. STACHURA:

16 No. I'd defer to them now. Is there
17 anybody who wants to address that? I would prefer to
18 put it in our written comments then.

19 MR. THAXTON:

20 Okay. On 75.363, you indicated that it
21 is not appropriate for --- you didn't feel that the
22 overexposure or the fact of having a dust control
23 design in place at the beginning of a shift does not
24 rise to the occasion of being a hazardous condition.
25 The regulation's actually written that it only

1 requires a record similar to those required for
2 hazardous conditions. It's not saying that you record
3 it as a hazardous condition. Does that make a
4 difference to your comments in that we're only saying
5 use that as your guide of how to record that
6 situation, not that it's being recorded in your
7 hazardous condition book? It is a separate book
8 designed to actually maintain and track the
9 availability and maintenance of your dust controls on
10 each and every shift?

11 MR. STACHURA:

12 What we have an issue with is recording
13 anything of that nature because it's --- the long arm
14 of the law seems to come in and want to take a look at
15 all that and then start writing citations right off
16 the bat.

17 MR. THAXTON:

18 So that it's not that you're opposed to
19 the fact of having the dust controls, it's that you're
20 afraid that it's going to result in additional
21 citations for a failure to maintain those controls?

22 MR. STACHURA:

23 No, that's not it. We don't think that
24 having these new controls are necessary, period.

25 MR. THAXTON:

1 It's not requiring new controls, it's
2 only asking you to record ---

3 MR. STACHURA:

4 To record.

5 MR. THAXTON:

6 --- the controls that you state in an
7 approved plan that are necessary, so the miner already
8 knows that these controls are required. The only
9 thing that this is requiring is that you record that
10 you actually do the check that you're doing now.

11 MR. STACHURA:

12 Right.

13 MR. THAXTON:

14 It's not adding a check. It's only that
15 you have to record the results of that check, so that
16 it can be seen if there's anything that happens
17 routinely over and over or if it's not being done.

18 MR. STACHURA:

19 We have a problem of having to record
20 everything.

21 MR. THAXTON:

22 Okay.

23 MR. STACHURA:

24 Like you said, it's in the law. We're
25 supposed to do it. If we don't, we get a citation.

1 So why do we have to record it again? We either
2 follow our plan or we don't.

3 MR. THAXTON:

4 You also indicated that MSHA has not made
5 available the data that we have utilized or it relied
6 on. Can you be specific as to what data you don't
7 think --- other than the cost data, what data you're
8 talking about?

9 MR. STACHURA:

10 Not at this time. We could put that in
11 our comments. I'd like to have everybody's input into
12 that.

13 MS. HONOR:

14 First, I'd just like to say thank you for
15 your comments. And at this point, there's only one
16 thing that I wanted to add to the comments that have
17 been made so far by the other panel members. In the
18 early portion of your statement you said, essentially,
19 that operators should just be permitted to use PPEs to
20 help reduce miners' exposure to dust. And I just want
21 to clarify that the Mine Act does not permit that. It
22 seems like an easy fix. But the Mine Act doesn't
23 permit that. And we've heard that comment also going
24 back, so I wanted to clarify that the Act does not
25 permit that to be a primary control.

1 MR. STACHURA:

2 And that is where we're coming from.
3 We're here taking a look at possibly changing the
4 regulations as they presently are and lowering the
5 dust standard. This is the type of thing we need to
6 take a look at. You know, under OSHA, if you're in
7 dusty atmosphere, you put on a dust mask. Under OSHA,
8 if you're in a noisy environment, you wear ear
9 protection. We're not allowed to do that. We kind of
10 wonder at times, are we protecting the equipment or
11 the people?

12 DR. WAGNER:

13 On the PPE issue, I'd also like to thank
14 you for your comments, particularly the specific
15 comments that were scattered within your testimony.
16 You stated that the personal protective equipment is
17 the singular most effective means for protecting
18 miners. Do you have any data on which to base that?
19 And if so, I would hope that you would present that
20 data to us.

21 MR. STACHURA:

22 We would have data on that. We can
23 present that in our comments.

24 DR. WAGNER:

25 Great. I'd appreciate that. In the

1 course of your remarks, you noted that in 2010, the
2 average dust sample was at .8 milligrams per cubic
3 meter in Indiana. Did I hear that right?

4 MR. STACHURA:

5 .84.

6 DR. WAGNER:

7 .84. So that would be below the dust
8 limits that would be proposed by MSHA with this rule;
9 is that correct?

10 MR. STACHURA:

11 That's correct.

12 DR. WAGNER:

13 So what you're basically communicating is
14 that this is a feasible dust limit to achieve and
15 that, in fact, you are already achieving it; is that
16 right?

17 MR. STACHURA:

18 But I also refer to the fact that it
19 could be due to our coal seam. It could be due to the
20 roof structure, the outside rock that you get into
21 versus the rest of the country.

22 DR. WAGNER:

23 But Indiana, your area achieving the dust
24 limit that would be enforced under this regulation?

25 MR. STACHURA:

1 Yes. But there again, it's not
2 necessarily on a minute-by-minute basis. Overall,
3 yes.

4 DR. WAGNER:

5 Thank you. You expressed substantial
6 concern about the scientific basis upon which the rule
7 was based. Have you had an opportunity to read
8 through the NIOSH Criteria Document from the mid '90s
9 that I showed earlier, this?

10 MR. STACHURA:

11 I haven't personally, no. The people on
12 the Committee have.

13 DR. WAGNER:

14 Okay. I'd encourage you when you read
15 through it or when the members of the Committee read
16 through it, to please pay attention to the
17 approximately 400 scientific peer-reviewed references
18 that were included in the document in order to be able
19 to provide specific information about the basis of
20 your concerns that these recommendations were not
21 scientifically based. In addition, there are probably
22 an additional 100 or 200 publications that were
23 examined in addition to those that were referenced.
24 And again, we'd appreciate information about those
25 about which you have scientific concerns.

1 And finally, within the proposed rule,
2 there is a table five that lists the epidemiologic
3 studies and reported effects from 1997 to the present
4 that were also examined in addition to the NIOSH
5 Criteria Document that provides a peer-reviewed
6 scientific basis for the proposed regulations. And if
7 there's specific concerns that you have about the
8 science that's included in those peer-reviewed
9 publications, we would appreciate learning what that
10 is, rather than being just general expression of
11 concern about the scientific problems.

12 MR. STACHURA:

13 We intend to do that in our written
14 comments.

15 DR. WAGNER:

16 Excellent. And in addition, I noted that
17 the initial speaker mentioned that the American
18 College of Occupational Environmental Medicine was
19 also providing scientific references on which their
20 scientific recommendations were being based, and I'd
21 appreciate, once we've posted their comments on the
22 website, that if you have concerns about that, that
23 you provide specific indications as well as any
24 additional scientific information that's peer-reviewed
25 and available to the Agency that the Agency may have

1 ignored in preparing its proposed rule that you feel
2 we should be taking into consideration.

3 MR. STACHURA:

4 All right.

5 DR. WAGNER:

6 Thank you for that. You expressed
7 concerns about a lack of industry involvement. I
8 wondered whether you or your Committee have had the
9 opportunity to look at the report of the Secretary of
10 Labor's Advisory Committee on the elimination of
11 pneumoconiosis among coal miners that was comprised of
12 individual scientific experts as well as experts from
13 industry and labor? Were you able to read and reflect
14 on this and take into consideration of that in your
15 comments?

16 MR. STACHURA:

17 Yes, we did.

18 DR. WAGNER:

19 Okay. And do you have any thoughts about
20 whether this did or did not reflect the involvement of
21 people who have the expertise to be able to review the
22 scientific literature and come up with
23 recommendations?

24 MR. STACHURA:

25 Our feeling was that on several fronts

1 the actual people that can make those types of
2 comments and statements were not necessarily
3 represented by the industry or otherwise. But, you
4 know, it's like a lot of things. Take global warming.
5 I go out and I canvas 100 scientists, 50 said it
6 exists and 50 said it doesn't. That's our issue with
7 the scientific data. We need to have a chance --- you
8 put it --- you know, once you put it out there, we
9 need to digest it and see if in fact it's accurate,
10 and we don't feel that we have that.

11 DR. WAGNER:

12 So the information that's been available
13 from the mid 1990s that provides a part of the
14 scientific basis for the Agency's actions, you feel
15 that it has not been available to you for
16 sufficient ---?

17 MR. STACHURA:

18 It's been available. We felt that a lot
19 of it was faulty.

20 DR. WAGNER:

21 Okay. We would appreciate specific
22 information that you have on --- that identifies the
23 faulty information that's included in those documents.

24 MR. STACHURA:

25 Okay.

1 DR. WAGNER:

2 I end with, again, a repeat of what I
3 said earlier. In order to be the most effective in
4 having the Agency analyze and respond to and improve
5 the work that will result in approval, we would
6 appreciate additional information, additional data and
7 any specific critique of data that has been relied
8 upon by the Agency in order to come up with its
9 proposed rule. I'd like to thank you for your time,
10 Mr. Stachura.

11 MR. STACHURA:

12 Thank you.

13 DR. WAGNER:

14 We're now moving to individuals who
15 signed up today. The first is Jeff Messel.

16 MR. MESSEL:

17 Good morning. My name is Jeff Messel,
18 spelling of last name, M-E-S-S-E-L. I am here
19 representing myself. However, I do work at Gibson
20 County Coal. Many people in this room I have worked
21 with and recognize me by the name of Twinkie
22 (phonetic). I graduated from Vincennes University
23 with Honors in 1976 with a degree in distributing
24 marketing. I worked in sales for several years, but
25 for 20 years I worked in the coal mines in JR Coal in

1 Bicknell, Solar Sources Underground in Monroe City and
2 now Gibson County Coal. Thank you, John, for hiring
3 me some 20 years ago, and also for stealing the
4 thunder. I should have went first.

5 I come from a great family history of
6 miners. My two greatparents were coal miners. My two
7 grandfathers were coal miners. Five uncles were coal
8 miners. My entire family has followed me into the
9 coal mining business. My son, Donald, come to work at
10 Gibson County Coal, got into mine rescue. And in
11 2009, was the national champion in the men's
12 competition. He has since went on to work for
13 Kennametal. My youngest son, Keith, is a surveyor,
14 coming to work at Gibson County Coal. He has moved
15 onto Sunrise Coal in Carlisle in the engineering and
16 surveying department. My daughter, Amy, is a
17 registered nurse, but she married a coal miner. And
18 low and behold, his dad and his uncle were already
19 coal mining. My wife, which many of these people here
20 know, Ruth, works at the Peabody Midwest Training
21 Center as an administrative assistant. And my sister,
22 Jan, is in purchasing at Peabody's Bear Run Mine. So
23 I do have a vested interest in these standards that
24 are being proposed.

25 I will be blunt with you, I do not like

1 the Obama-Biden administration. They are tax and
2 spend liberals, and I am a conservative. They speak
3 out of both sides of their mouth. On one side, they
4 want us to be not dependent on foreign oil. And on
5 the other side, they're making it virtually impossible
6 to mine our coal. And we are the Saudi Arabia of
7 coal. I personally think that they're trying to
8 eliminate my job. Quite frankly, all in the name of a
9 hoax called global warming.

10 I come to you today in my mining attire.
11 Quite frankly, I didn't know who I'd be addressing,
12 whether it'd be doctors or lawyers or secretaries,
13 MSHA officials. So I wanted you to know what a real
14 coal miner looks like. And I bring my attire because
15 I don't think I represent the thousands of men and
16 women that go down in the hole every day to produce
17 coal. But I will tell you that I work with 16 great
18 men at my mine. And they are extremely happy that I
19 have taken my time to come here to speak today.

20 Let me explain some of the equipment that
21 I wear. Obviously my hardhat, my self-rescuer, my
22 hammer, my life pouch. Now, many of our fellow
23 employees wear a lot more than I wear. They have
24 pouches for their radios, pouches for an anemometer,
25 nail pouches. We wear steel-toed metatarsal shoes.

1 And now you want me to wear a personal dust pump. I
2 will tell you that two months ago, they brought one of
3 those things underground for me to wear. And it's
4 about two and a half times the size of this life pouch
5 that I have. And I'm a shuttle car operator. And it
6 made it practically impossible for me to run my
7 shuttle car. This thing is bulky. It's noisy. It
8 gets in the way. The cord ripped the back of my ---
9 on my hardhat, and I had to get it fixed. I got it
10 caught on the steering arm on my car. I got it caught
11 on all the switches in my panel.

12 Now, I wear my self-rescuer. Many of my
13 fellow coal miners take their rescuer off and put it
14 on the ledge of their car so it makes it a little bit
15 easier for them to move. I do not. I never have
16 taken this thing off in 20 years. But it made it
17 impossible for me to lean out of my car to see the
18 loads coming into my car, and virtually impossible to
19 turn around in my car. So it's certainly a very big
20 pain to be wearing that piece of equipment.

21 Let's get to the heart of the matter,
22 which is this. And I reiterate what John said. I
23 really don't believe that we have an issue with dust.
24 I'll leave all the facts and figures to the safety
25 department and to the administration. But I honestly

1 don't think we have a problem with the dust. As a
2 young man, I worked on farms, putting up hay and
3 putting up straw, working in the loft of a barn. Now,
4 there you had dusty jobs. I honestly believe that we
5 do not have a dusty job.

6 Let me explain, because I think we do
7 everything humanly possible to control the dust at
8 this stage. We have water sprays in our transfer
9 points in our belt. We have water sprays in the
10 feeders to stop the dust from getting stirred up with
11 the chunk breaker. We use calcium on the roadways and
12 walkways. At our mine, we have a 500-gallon water
13 wagon that a guy takes around all night long, putting
14 water on the roadways to kill any road dust. On our
15 particular unit, we have hoses and we spray down the
16 entire unit to kill any dust. As we're moving the
17 miner from face to face, we leave the water sprays on
18 to knock down any dust that might be in the air or the
19 dust that's on the ground. And let alone, we have the
20 ventilation plans that MSHA approved, that carry the
21 dust off. However, my best defense for dust is this
22 (indicating), this respirator. I operate a shuttle
23 car, I wear it all the time.

24 Now, it is very difficult to wear it if
25 you're a roof bolter. That is a hot, dirty, sweaty

1 job. And I did it for three years. And I did without
2 a respirator. But I do use it all the time operating
3 my shuttle car. It's just like a seatbelt, ladies and
4 gentlemen. If you don't use it, it can't help you. I
5 do participate in the NIOSH chest x-ray program. And
6 after 20 years, I'm glad to say there is no black
7 lung.

8 Now, let's get to the heart of the matter
9 here. I think the problem is not outby. If you have
10 a problem with the dust, it's not outby, but it's at
11 the point of attack. Where that bit strikes that coal
12 and strikes that rock, that's where we need to focus.
13 And as I said before, I think we have done everything
14 we can do. I think now we must depend upon technology
15 to lower the dust. Here we're talking about
16 monitoring the dust. But let's talk about lowering
17 and getting rid of the dust in the first place. I
18 think that through technology, with companies like Joy
19 and Bucyrus, with Fletcher, with Kennametal, with
20 SANY, anyone that's involved at the point of attack,
21 that is where we need to focus our attention. A wise
22 man once said to do the same thing over and over and
23 over again and expect a different result is foolish.
24 We want to go from a 2.0 to 1.0 standard, but we're
25 not doing anything to change the dust that's being

1 developed. We need to eliminate that dust at the
2 point of attack. And I don't believe we can do it
3 without improvement in technology.

4 Lastly, as John mentioned, quite frankly,
5 I fear for my job. I work between 50 and 60 hours a
6 week. Out of all that 50 to 60 hours a week, I think
7 I have 25 percent tax, there's state tax, there's
8 local tax, there's Social Security. There's 17
9 percent for my 401(k), there's \$75 a week for driving
10 back and forth to get to work. There's ten percent
11 for my church. There's all the utilities and the
12 living expenses and the rest I have as discretionary
13 income. By implementing these standards, I think it's
14 possible that my work may be cut to six or seven hours
15 a day, maybe less than 40 hours a week. That, quite
16 frankly, would make me a part-time employee and not
17 eligible for benefits or healthcare. I guess I just
18 join the Obama healthcare plan, since I'm already
19 paying for it.

20 So in closing, I'd like to thank you for
21 allowing me to speak to you this morning. From a coal
22 miner's perspective, I don't believe we have a
23 problem. But if we do, let's use technology to
24 improve the creation of the dust. I don't want to be
25 burdened with this personal dust device that made my

1 job nearly impossible to do. But I certainly don't
2 want to lose my job that I love so much. I thank you.
3 And I'll take your questions.

4 DR. WAGNER:

5 Thank you very much.

6 MS. OLINGER:

7 Have you --- I don't think this is on
8 right. Have you operated the CPDM?

9 MR. MESSEL:

10 I wore it. I wore it for a whole shift.
11 It was a burdensome piece of equipment to use.

12 MS. OLINGER:

13 And what features of the CPDM did you
14 like or find useful?

15 MR. MESSEL:

16 Quite frankly, I just wore it. I didn't
17 look at it. I didn't want to wear it to begin with,
18 quite frankly. But I wore it because the safety
19 department wanted me to, to just get my feedback on
20 how it worked and how it would impede or how it would
21 help my work. So how it functions, quite frankly, I
22 don't really know.

23 MS. OLINGER:

24 So you weren't looking at the
25 displays ---

1 MR. MESSEL:

2 No.

3 MS. OLINGER:

4 --- and what capabilities it had?

5 MR. MESSEL:

6 No. No.

7 MS. OLINGER:

8 Okay. Thank you.

9 MR. FORD:

10 I just have one question. When you were
11 --- the company gave you this to wear, did they give
12 you any training beforehand on how to use the unit or
13 look at it?

14 MR. MESSEL:

15 You know, I don't remember. I don't
16 remember such. We had to put it on my belt, and that
17 was quite a problem to begin with. He may have went
18 over the function. I know it had the suction hose
19 come up here by the light. But no, I really don't
20 know. I don't remember anything in that regards.

21 MR. NIEWIADOMSKI:

22 Mr. Messel; right?

23 MR. MESSEL:

24 Messel, M-E-S-S-E-L.

25 MR. NIEWIADOMSKI:

1 It appears that you are concerned about
2 your health, because you say you wear your respirator?

3 MR. MESSEL:

4 That's correct.

5 MR. NIEWIADOMSKI:

6 Then would it be important for you to
7 know --- apparently you want to make sure you protect
8 yourself, what the dust levels are in your environment
9 at all times? Are you concerned about that?

10 MR. MESSEL:

11 Well, I'll tell you what --- and I was
12 discussing this with my son on the way down here. You
13 know, about the only time that I'm in any dust of any
14 magnitude is when we're over in the far left entry.
15 Our air comes up. We're at this tail unit, the air
16 comes up at Number Five and swings across to Number
17 Nine. The only time that I really see any dust in the
18 air is whenever I come around in the last to the next
19 to the last crosscut with my car. And the dust
20 actually has no place to go other than down that last
21 entry. When I'm running at Six or Seven or Eight, you
22 can --- as you're going up the face, you can see the
23 clear air coming through the curtain side of the entry
24 and any residual dust coming out and poof, going right
25 in that direction. So I'm in the dust for very little

1 time. The only time that I'm really in any dust at
2 all is in the last entry because that's where the air
3 has to go out. But other than that, I see no issue
4 with the dust.

5 MR. NIEWIADOMSKI:

6 I'm sure that dust you're talking about,
7 of course, is coal dust. Okay. Now, the respirable
8 portion, you don't really see that?

9 MR. MESSEL:

10 I understand, yes.

11 MR. NIEWIADOMSKI:

12 So the air might be clear to you, okay,
13 but you still could be overexposed to respirable dust.
14 Now, this device will tell you what you're being
15 exposed to. So it appears you are concerned about it
16 because, in fact, you wear that at all times; correct?

17 MR. MESSEL:

18 That's correct.

19 MR. NIEWIADOMSKI:

20 Now, the gentleman behind you probably
21 couldn't do that.

22 MR. MESSEL:

23 Oh.

24 MR. NIEWIADOMSKI:

25 Okay.

1 MR. MESSEL:

2 Well, that could be.

3 MR. NIEWIADOMSKI:

4 I mean, the problem is --- I don't know
5 if anyone mentioned earlier is that the Act of '69
6 recognized the burden if you wear a respirator because
7 it is very --- becomes very --- if you have any
8 problems with it, it's very difficult. You have to be
9 fit tested, whatever. And that's why the rules have
10 been in place. Okay. It's an environmental standard.

11 What Congress realized is that they want to make sure
12 that everybody in this room, okay, is being protected.

13 Okay. And so that's the intent of --- and we're
14 continuing that practice, policy of implementing an
15 environmental standard.

16 MR. MESSEL:

17 I would like to reiterate what John said,
18 though. I don't believe it's a one-size-fits-all. I
19 don't think the size fits everywhere. I don't think
20 what works in West Virginia works in Indiana. And I
21 don't believe what works in Indiana may work in
22 Alabama. I think that you have a system that says
23 this is the way it is, is not the way it is. I think
24 if you're going to do that, you need to adjust for
25 certain areas, whether it be out east or here or

1 elsewhere. I don't think a one-size-fits-all rule
2 will work. I think it's entirely inappropriate.

3 MR. NIEWIADOMSKI:

4 Thank you for your comments.

5 MR. THAXTON:

6 I have one question for you.

7 MR. MESSEL:

8 Okay.

9 MR. THAXTON:

10 You indicated that you wore the CPDM for
11 the one shift.

12 MR. MESSEL:

13 Yeah.

14 MR. THAXTON:

15 Was that all you wore it, one shift?

16 MR. MESSEL:

17 Yeah, just the one shift. They were
18 actually spreading it around. My miner man wore it
19 one day. The roof bolter wore it one day. The
20 utility man, the scoop man. We were just kind of
21 getting a sense of what it would feel like, what it
22 would be like if in fact we have to wear one. And I
23 cannot speak for the other gentlemen, it'd be
24 speculation on my part. But I can tell you on my
25 part, I don't like it one bit.

1 MR. THAXTON:

2 Okay. Given that you had that experience
3 with the CPDM, have you worn the current gravimetric
4 sampler in the past?

5 MR. MESSEL:

6 Dan, what do we have?

7 UNIDENTIFIED SPEAKER:

8 L/min pump.

9 MR. THAXTON:

10 ELF pump, yeah.

11 MR. MESSEL:

12 Okay.

13 MR. THAXTON:

14 That's the only approved unit, ---

15 MR. MESSEL:

16 All right.

17 MR. THAXTON:

18 --- is the ELF pump.

19 MR. MESSEL:

20 There you go.

21 MR. THAXTON:

22 You have worn it in the past?

23 MR. MESSEL:

24 Okay. Yes, I have. You're getting into
25 some technical stuff that this guy doesn't know

1 anything about.

2 MR. THAXTON:

3 I'm just going to ask you if you have a
4 big problem with wearing that? Did it interfere with
5 your work and stuff? And if there was a --- would you
6 recommend then, if we're not able to --- miners are
7 not able to wear the CPDM, would you agree that
8 wearing the current sampler would be less intrusive
9 and you'd be able to do that, in order to be able to
10 find out what your exposures are?

11 MR. MESSEL

12 I'll try whatever they want me to try.
13 I'll be their guinea pig. I'll try whatever they want
14 me to try.

15 MR. THAXTON:

16 Okay. Thank you.

17 DR. WAGNER:

18 Thanks. I have just a couple questions
19 also. You said that you are choosing to wear the
20 respirator all the time now for respiratory
21 protection. And when you were a roof bolter, you
22 didn't wear the respirator. Can you describe a little
23 bit more what kept you from wearing the respirator
24 protection at that point?

25 MR. MESSEL:

1 Let me ask you, have you ever worked in a
2 coal mine?

3 DO.R WAGNER:

4 I have not worked in a coal mine, no.

5 MR. MESSEL:

6 Well, let me tell you. On the face, it's
7 a hot and dirty-ass, nasty job. And I sweat
8 profusely. And I just couldn't wear it. I mean,
9 you're sweating, you're perspiring. It made it
10 virtually impossible to work. And the biggest problem
11 I had was the fogging up of my glasses.

12 DR. WAGNER:

13 Uh-huh (yes).

14 MR. MESSEL:

15 So I just couldn't wear it. It was just
16 impossible to wear it.

17 DR. WAGNER:

18 So it sounds like the job where the
19 exposure is possibly greatest are the ones where it's
20 going to be most difficult to wear respiratory
21 protection?

22 MR. MESSEL:

23 I would agree with that. I would concur
24 with that. Now, I don't think that the miner man,
25 he's always staying back here behind the curtain, so

1 he's got fresh air to his back all the time anyway.
2 So I'm not sure that his dust exposure is very great.
3 The miner --- we have a double-boom roof bolter. And
4 they're up there. They've got the air, the curtain up
5 to the back of the bolter with the air coming across.
6 But still, it's just a hot job. It's not particularly
7 dirty. People ask me, how is my job. I say it's dark
8 and dirty. I never tell them it's dusty, because I
9 don't believe it's dusty. But it's just --- you know,
10 you're up there sweating profusely. Some places in
11 our mine have four-foot coal. I'm lucky enough to
12 work in an area that has nine-foot coal, so at least
13 you could stand up. When there's four-foot coal,
14 these guys are on their hands and knees, and sometimes
15 in water and sometimes in mud. So, you know, to ask
16 them to burden themselves with more equipment is just
17 way too much.

18 DR. WAGNER:

19 Any more questions?

20 MS. HONOR:

21 One last question before we let you go.

22 You said that you had participated in the x-ray
23 program in the past.

24 MR. MESSEL:

25 Yes, I do. Last June, matter of fact,

1 was my last x-ray.

2 MS. HONOR:

3 And I'm very happy that, you know, your
4 results so far have indicated no health effects. But
5 I wanted to know if you've had an opportunity to read
6 the provisions of the proposal related to the x-ray
7 program?

8 MR. MESSEL:

9 No, ma'am.

10 MS. HONOR:

11 Okay. All right.

12 DR. WAGNER:

13 Thank you, once again, for taking the
14 time to share comments.

15 MR. MESSEL:

16 Yeah, thank you.

17 DR. WAGNER:

18 I apologize if I can't read your writing,
19 but it looks like Mark either Fridley or Findley.

20 MR. FRIDLEY:

21 Fridley.

22 DR. WAGNER:

23 I'm sorry?

24 MR. FRIDLEY:

25 Fridley.

1 DR. WAGNER:

2 Fridley. Thank you very much.

3 MR. FRIDLEY:

4 My name is Mark Fridley, F-R-I-D-L-E-Y.
5 I work at White County Coal, but really I'm here
6 representing myself. I heard about this hearing and
7 proposed changes from the bulletin board and I thought
8 it'd be kind of interesting to see what the rationale
9 was to cut the dust standard in half. That's really
10 the main part that I was aware of. I wasn't aware of
11 a lot of the other things that are proposed in this,
12 whatever's going on here.

13 I'm a coal miner. I've been a miner for
14 20 years. I started out as a loader helper, cutter,
15 cutting machine helper, rail loader a little bit, run
16 roof bolter, ran shuttle car. And I did that for
17 about nine years. And then I became a surveyor helper
18 and a surveyor. And still go underground day-to-day
19 doing that. My main interest in being here today, the
20 reason I'm here is to find out a little bit about the
21 rationale behind lowering --- lowering it from two to
22 one. I'm not sure that I'm completely satisfied with
23 all the --- with the rationale going from two to one,
24 as far as how they came up with that number.

25 But I'm not a scientist. I'm not a

1 professor. I'm not somebody who's made a real deep
2 study of this. All I know is that my job, as well as
3 the job of all the other guys underground, is a lot of
4 hard work and we have a lot of equipment on. And I
5 wouldn't want to have to carry around that big ---
6 that big dust pump, the new one that you guys are
7 proposing. I have not had to wear it, but I seen the
8 guys who did have to wear it, and they said it was a
9 royal pain. Quite a bit more than the regular dust
10 pump.

11 I want to say that I know a lot of coal
12 miners, and I don't know any that have black lung. I
13 know that there --- some are out there, but I don't
14 know of any. I don't know of any at our mine. None
15 of the old guys that have worked at other places that
16 have been in our mine have had problems with black
17 lung that I know of. But I'm not a scientific guy.
18 That's just my exposure to different people. I do
19 want to say that I know that it is a problem, but
20 especially has been a problem in the past. And
21 certainly my heart goes out to those people and their
22 families. And I wouldn't wish it on anyone. I just
23 --- I don't see that it's a problem in my personal
24 exposure. And that's all I can do is come up here and
25 tell you my personal experience with it. There are a

1 lot of other more expert people than I am.

2 But I do know that it would make my job
3 very difficult to have another bulky piece of
4 equipment hanging off my belt or strapped to my
5 suspenders or hung around my neck or wherever it would
6 go. And I'm not sure that it would make that much
7 difference, at least in my experience. In my
8 experience, because I have --- I don't know of anybody
9 who has had black lung in my area, which is a
10 blessing. I think it says that the standards that
11 exist are doing the job.

12 Now, not only did I come here on my own
13 curiosity to see what this was all about, but as I
14 thought about it more, I think I'm here, too, for the
15 younger guys that haven't been working in the coal
16 mine for 20 years and have the benefit of the
17 lifestyle that the income and benefits a coal mining
18 career gives. I live in a small town and I know that
19 there aren't very many jobs anywhere around that
20 provide the lifestyle that mining coal does. And I
21 get very concerned when I see the regulatory
22 environment getting so incredibly burdensome that it
23 starts to really make me wonder if it's going to start
24 affecting the existence of the underground coal mining
25 industry and that's a lifestyle --- a job that's been

1 awfully good to me. And for these younger guys, I
2 would hate to see that taken away from them.

3 And the way it sounds is with listening
4 to the previous speakers, including your introduction,
5 it sounds like the regulatory overhead on this thing
6 is going to be enormous. We might have to build a
7 Super 8 on mine sites to house our MSHA staff.
8 Really, though, I am concerned. You see the
9 regulatory overhead getting huge, and it's a big
10 concern. So that's simply my take as a personal take,
11 as a miner, somebody's whose livelihood depends on
12 this job. And I have serious concerns about it.

13 DR. WAGNER:

14 Thank you very much for your comments.
15 I'm going to start with Susan.

16 MR. FRIDLEY:

17 Oh, I do --- I'm sorry, I do have one
18 more comment. And that is I understand that there are
19 drawbacks to using a dust mask or a respirator. I
20 have worn one quite regularly, ever since I started in
21 the coal mine. I wore one before I started working in
22 the coal mine. I'm a woodworker and when I --- when
23 there's dust, when I'm in a dusty environment, I wear
24 it. It's kind of like when it's raining, I wear a
25 raincoat. Now, I know that that --- it was mentioned

1 before that OSHA includes that as part of its
2 procedures, and you gave the rationale as to why MSHA
3 doesn't count it as a part of the dust control
4 procedure. And I don't know --- I don't know what the
5 absolute best solution is. I do know that personally
6 the dust mask is a pretty obvious choice, and I think
7 it makes an enormous difference. One of the previous
8 speakers was asked about do you have data to show that
9 the dust mask is going to be so effective. And my
10 data is if it's raining, when I put on a raincoat, I
11 stay dry. And if it's dusty and I wear my dust mask,
12 I feel a whole lot better than if I don't wear it. So
13 there's my data.

14 DR. WAGNER:

15 Thank you.

16 MR. NIEWIADOMSKI:

17 Well, you know, we commend you for taking
18 care of yourself and being concerned about your
19 health. And we're not opposed to miners wearing the
20 respirators. We certainly, you know, --- I mean, it's
21 something that if you feel it protects you --- as I
22 said before, you can't see respirable dust. Okay? If
23 you see a lot of dust in the air, then certainly you
24 have probably a lot of respirables, you really need to
25 protect yourself. But it's kind of the point that

1 while we don't oppose the use of respirators, the law
2 is very clear that they want operators to control the
3 environment. Okay? And so we do not give any credit,
4 all right, for use of respirators. And this is for
5 obvious reasons. Okay? We want the environment
6 controlled, because some people can't wear
7 respirators. We want to make sure that everybody is
8 being protected, and in fact, you're controlling the
9 environment. A respirator will only protect an
10 individual if it's properly worn. That's my comment
11 to you. Thank you very much.

12 DR. WAGNER:

13 Since I was going to ask the question
14 about the respirators, this actually had to do with
15 the specific broad statement that it was the most
16 protective --- provided the most effective protection.
17 And I note that the speaker immediately previous to
18 you got no protection from his respirator while he was
19 working as a roof bolter, and that is part of the
20 concern about respiratory protection. Under certain
21 circumstances there really is not a very feasible or
22 acceptable form of protection. But again, to your
23 credit and to his, no one's keeping anyone from
24 wearing a respirator. And if they find to choose
25 protection using a respirator, that's great. I don't

1 think that anybody out there would discourage the use
2 of the respirators. All right. And other than that,
3 I just want to thank you again for taking the time to
4 come over here. The scientific basis for the
5 reduction in the dust level, which is what you started
6 your remarks asking about, is really included in the
7 scientific review in the literature. Basically it is
8 a pretty straight line issue. The more dust you're
9 exposed to, the more likely you are to get disease.
10 The less dust, the less likely you are. Indiana
11 miners have shown black lung and it's possible to go,
12 for example, on the NIOSH website and do a state-
13 specific search and find out about the numbers of
14 miners that participated in the X-ray Surveillance
15 Program whose x-rays have been positive. No one feels
16 --- or at least no one has told us that Indiana miners
17 themselves are more resistant, but I think the
18 interesting information that we have gotten today is
19 that dust controls that are in place here have
20 resulted in an average dust level that's below the
21 level that MSHA's imposing that all miners be exposed
22 no more than.

23 So already in Indiana, we've been told
24 that the average dust level is at .84 in 2010, not
25 above the one milligram that people would be limited

1 to in Indiana and the rest of the country. So I have
2 to say that in the efforts to control exposure and
3 risk within Indiana, it sounds like there's been a
4 successful effort to keep dust under control here.
5 And I think, again, that's, you know, something that's
6 already in place, so a mandate to keep it below one
7 milligram would already be in place. So with that, I
8 again thank you for coming and sharing your thoughts.

9 MR. FRIDLEY:

10 Thank you for your comments.

11 DR. WAGNER:

12 I'm going to now, since I've seen
13 sufficient shuffling in my crew up here --- it's 11:03
14 by this thing, and let's take a break until 11:10.
15 We'll reconvene and the next speaker will be called.
16 Thank you.

17 SHORT BREAK TAKEN

18 DR. WAGNER:

19 Is Gerome Thomas in the room? Before we
20 get started, I wanted to make a couple points of
21 clarification from the earlier discussions and some of
22 the information coming from here. I want to make sure
23 the --- that I clarify the difference NIOSH in the mid
24 '90s recommended that occupational exposure to
25 respirable coal mine dust be reduced to one milligram.

1 The Advisory Committee unanimously said that MSHA
2 should consider lowering the levels of allowable dust,
3 exposed to coal mine dust, and recommended that there
4 be a phase-in period to allow allocations for
5 sufficient resources for the compliance of that. So
6 they didn't recommend a specific reduction, but their
7 suggestion that MSHA consider it was based upon their
8 review of the coal mine Criteria Document.

9 The other issue that may have been
10 confusing, but there was a request from, I believe,
11 Mr. Stachura for information about the data and the
12 processes, the procedures, the methods that were used
13 in the quantitative risk assessment and the economic
14 analyses that were performed. All of that is included
15 in links to the proposed rule. Is that right?

16 MR. FORD:

17 Yes.

18 DR. WAGNER:

19 Okay. Go ahead.

20 MR. FORD:

21 There is a summary of the cost analysis
22 in the preamble that accompanies the proposed rule.
23 But the full economic analysis is --- that accompanies
24 the rule can be found on a link to the MSHA website,
25 or they can get it directly from us by contacting

1 MSHA.

2 DR. WAGNER:

3 Yeah. So it's both the economic analysis
4 and the quantitative risk assessment. So I know there
5 were concerns that were raised about the availability
6 of this. And what we would appreciate is after anyone
7 who has concerns about this does look at it and
8 reviews it, if there are problems or concerns, better
9 alternative methods or approaches, improved data that
10 would help us reach better conclusions, please be as
11 specific as possible and provide that, because we
12 have, in fact, provided comprehensive information
13 about the approaches and methods that we've used and
14 the data that we relied upon. So with that, I'm going
15 to ask Mr. Thomas to please give us his remarks.

16 MR. THOMAS:

17 Thank you. My name is Gerome Thomas, and
18 that's spelled G-E-R-O-M-E, Thomas, T-H-O-M-A-S. I'm
19 an hourly employee at River View Coal Mine. I started
20 mining in 1981. I've worked at three different coal
21 companies. I've been at Alliance for almost six years
22 now. Three of which I've worked at the face on
23 extended mine sections. I've operated a roof bolter,
24 scoop, and I've drove a shuttle car. I was an
25 examiner for about a year and a half, making belt and

1 preshifting the mine.

2 In April 2010, I started out in the
3 safety department at River View. My primary job is to
4 run dust. Part of the job is working with the
5 personal dust monitors which we know as the PDMs.
6 River View has purchased ten of the first PDMs that
7 Alliance has. Whenever we run dust with the L pump,
8 we also run a PDM with it. We have taken over 350
9 samples with the PDMs. We probably have taken more
10 PDM samples than anybody else in our region. As a
11 result, we have found that there are problems with the
12 PDM.

13 One of these problems that we have seen
14 is the PDM doesn't distinguish between coal dust, rock
15 dust or any other dust that may be in the air. One
16 example I can give you is in our staging area, when we
17 require a person to wear the dust monitor, we have had
18 spikes up to 2.5 or higher just by somebody walking by
19 and maybe kicking up dust off the floor or one of his
20 buddies sitting there beside him and putting on a
21 dusty jacket or whatever the case may be. We have
22 seen a lot of spikes in it. The PDM is not that
23 accurate when compared to the data numbers we receive
24 from MSHA on our actual dust concentrations. The
25 average difference between the cassette and PDM

1 readings that we have seen have been a 0.18
2 difference.

3 We have also seen problems in our PDM, as
4 far as having to send five of our ten PDMs back for
5 warranty repairs in the last ten months. Also, the
6 PDMs will show errors, errors of outflow range, the
7 high filter velocity and the outflow frequency, the
8 mass offset, all of which will affect the final
9 outcome of our PDM readings. As of December --- from
10 July of last year to December, we had 499 cassette
11 samples, including company and MSHA dust. We have had
12 over 200 PDM readings with that. We've got an average
13 PDM reading of 0.59. The average difference between
14 and L and PDM is 0.19, which is a 32 percent
15 difference.

16 When I say that PDMs are not that
17 accurate, we've also noticed that, like I said, in our
18 mailers that come back, we've had PDM readings as low
19 as .44 when actual cassette dust come back have been
20 as high as 2.87. We very seldom get a PDM reading
21 that's over one. But we've seen a lot of our
22 cassettes come back greater than one. So I don't feel
23 that our PDMs are what we need to go to to actually
24 monitor our dust reduction.

25 At River View alone, with the 16 MMUs and

1 all the car drivers, roof bolter operators, anyone
2 else down in the mine will have to be sampled. This
3 could result in River View taking over 17,000 samples
4 in one year. 17,000, that's a lot of samples. With
5 an accuracy rate of 95 percent, that alone could
6 result in 850 inaccurate readings. And we haven't
7 even got into the cost part of it. It was stated
8 earlier that PDMs will cost nearly \$13,000 a piece.
9 And with the amount of PDMs that we would be required
10 to have, which would be approximately close to 200,
11 you're looking at \$2,600,000 just on PDMs.

12 As a result of the new standard that
13 MSHA's wanting to implement here, with the one
14 milligram for each eight-hour shift, it lowers as it
15 goes along. A nine-hour shift, it goes down to 0.89.
16 A ten-hour shift goes to a 0.80. And if one sample
17 comes out of compliance, then we're --- we'll be
18 cited. Okay. Under this proposal, at the standard
19 rate right now, zero to six months, we're still at a
20 standard of two at eight hours. The shift average
21 level is 1.78 for a nine hour. And a ten hour goes to
22 a 1.60. After the 24-month period, it goes down to a
23 one. That same action from eight hours to one. The
24 nine hour is 0.89 and the ten hour is a 0.80. Under
25 the shift, single shift average citation level, right

1 now with the eight hour, we're allowed 2.26. After
2 the 24-month period, we'll go down to a 1.13 before
3 we're cited.

4 I've seen a lot of these PDMs in use.
5 I've heard the comments from the people that wear
6 them. All the miner men and all the car drivers do
7 not like them. They are very heavy. They're awkward
8 and very hard to wear. If this one percent goes
9 through, the amount of hours that is worked in a day
10 will be less, the amount of hours that's worked in a
11 week will be less, overtime will be affected, jobs
12 will be affected for a problem that a lot of us here
13 doesn't feel that exists in western Kentucky or
14 Indiana. If there's a problem somewhere else, let's
15 work to find solutions to that problem. Please don't
16 penalize us. That's all I have. Thank you.

17 DR. WAGNER:

18 Thank you very much.

19 MR. NIEWIADOMSKI:

20 I've got a couple comments. One of them
21 you mentioned is that the PDM doesn't distinguish
22 between coal dust and rock dust.

23 MR. THOMAS:

24 Yes, sir.

25 MR. NIEWIADOMSKI:

1 Well, the current sampler that you use
2 doesn't distinguish either. It's coal mine dust.
3 Remember, it's a coal mine dust standard. What that
4 PDM sees and what the conventional sampler sees is the
5 respirable dust, whether it's coal dust or rock dust
6 or whatever, it's respirable. It's bad for your
7 lungs. Okay? And that's really what we're measuring.

8 MR. THOMAS:

9 Correct.

10 MR. NIEWIADOMSKI:

11 It was never designed --- even the
12 current sampler doesn't distinguish between different
13 types of dust. That's why we have coal mine dust
14 standard.

15 MR. THOMAS:

16 Yes, sir.

17 MR. NIEWIADOMSKI:

18 The other comment is that you indicated
19 that the PDM is inaccurate because you've seen
20 differences between what you get on the cassette and
21 what your --- or what the unit is displaying; correct?

22 MR. THOMAS:

23 Yes, sir.

24 MR. NIEWIADOMSKI:

25 All right. Well, I think it's important

1 to recognize that --- you know, that this unit was
2 tested by NIOSH. You know, quite a bit of testing was
3 done in underground mines, and they determined that
4 unit to be accurate, okay, based on the NIOSH accuracy
5 criteria. So, you know, they basically did all the
6 testing to say that it, in fact, is accurate. You're
7 going to see differences --- and this is kind of
8 important, you're going to see differences when, in
9 fact, you have a sampling point over here, okay,
10 that's on a PDM, ---

11 MR. THOMAS:

12 Yeah.

13 MR. NIEWIADOMSKI:

14 --- and you have a sampling location over
15 here, which is your current sampler, because there's
16 spatial differences. Okay? Dust in the environment
17 is not uniform. So you could have a sampler here, two
18 conventional samplers, you know, a cassette sample on
19 block one, on the right one and the left one and
20 they're going to show differences. And the difference
21 is somewhat more significant than what you mentioned
22 here on the average of .18, which is pretty close. So
23 I just wanted to point that out that if you expect to
24 see exactly the same concentrations, you're not going
25 to see them because concentrations in the readings do

1 vary.

2 Now, you indicate you're a certified
3 sampler; correct?

4 MR. THOMAS:

5 That is correct.

6 MR. NIEWIADOMSKI:

7 All right. Do you think it's important,
8 as a certified sampler, to know what the dust levels
9 are in the air at all times? Is that important to
10 you?

11 MR. THOMAS:

12 Yes, it is. But then as it was stated
13 before, I don't think that we need to lower our
14 standard as much as we need to --- I think it was Jeff
15 said, go to the point of where it's being impacted at.

16 MR. NIEWIADOMSKI:

17 Now, what's the average concentration in
18 your mine? I think it's, what, about --- .6, is it?

19 MR. THOMAS:

20 Yes. That's our average for our PDM
21 weights.

22 MR. NIEWIADOMSKI:

23 Do you know how many times you've
24 exceeded --- you know, if the one milligram standard
25 was in effect, do you know how many times you would

1 have exceeded that?

2 MR. THOMAS:

3 As far as PDMS, I've seen three or
4 four ---

5 MR. NIEWIADOMSKI:

6 That were ---?

7 MR. THOMAS:

8 --- that were over one.

9 MR. NIEWIADOMSKI:

10 All right. Most of the time you're below
11 the permissible --- or the exposure limit that's being
12 proposed. You're significantly below that. And
13 you've indicated that --- well, if that standard
14 becomes effective, as a result of that, people --- the
15 amount of time they're going to spend in the mine is
16 going to be reduced. People are going to lose their
17 jobs. What is that based on? Since you're meeting it
18 right now and you're way below it. It's not that
19 you're ---.

20 MR. THOMAS:

21 It's the fact that as we go along when,
22 this is finally emphasized here as after the 24-month
23 period, that based on the ten hours that we work, we'd
24 have to come under a 0.80. All right. And if you
25 have that difference of a .18, then you have to come

1 in somewhere like .6 something?

2 MR. NIEWIADOMSKI:

3 No. Can you just clarify? You said that
4 if you're at one milligram --- if the limit was what's
5 being proposed, which is one milligram, which would be
6 for an eight-hour standard, okay.

7 MR. THOMAS:

8 Correct.

9 MR. NIEWIADOMSKI:

10 And you said if you're working ten hours,
11 what would happen?

12 MR. THOMAS:

13 As of --- if this proposal goes through,
14 the longer you work, it's prorated and your actual
15 rate has to come down, your actual samples have to be
16 down. So according to this sheet I have right here,
17 if you work a ten-hour shift, after this proposal goes
18 to a 1.0 for a ten-hour shift, you have to be at a
19 0.80. That's for a single shift rate. Yeah, for a
20 single shift. Therefore, you know, if you have that
21 difference of that 1.8 (sic), ---.

22 MR. NIEWIADOMSKI:

23 I think it's important to clarify really
24 what we're trying to do with this. We've heard Dr.
25 Wagner talk about the sample before the shift to make

1 sure people are being protected, whether or not you
2 work 8 hours, 9 hours or 10 hours, 11 hours.

3 MR. FORD:

4 We're having trouble hearing you, George.
5 I don't know if the speakers are on or not.

6 MR. NIEWIADOMSKI:

7 Can you hear me now?

8 MR. FORD:

9 Excellent.

10 MR. NIEWIADOMSKI:

11 Okay. I think it's kind of important to
12 mention that the permissible or the allowable exposure
13 limit that's being proposed is one milligram. Okay?
14 And of course, that's something that's not --- and
15 that's something that's not going to change. Okay?
16 We're not adjusting --- there's several --- two ways
17 of actually trying to protect people that work longer
18 shifts. Okay? One is we take the one milligram
19 standard and we reduce it. Okay? Because the intent
20 of the eight-hour standard is to make sure that if
21 you're working 11 hours or 10 hours, whatever, you
22 know, extended shifts, you're going to be provided the
23 same level of protection that if you were working
24 eight hours. Okay? That's the intent. So we want to
25 make sure that the amount of dust that you accumulate,

1 okay, over the 11 hours is the same as you would be
2 permitted under eight hours. Okay? And so what we
3 would be doing, instead of reducing the standard, all
4 right, we sort of raise the concentration to account
5 for that. Okay? And so it's kind of important.
6 That's what the intent is.

7 We're trying to make sure that you're
8 provided, regardless of how --- what length of shift
9 you're working, you're going to be provided the same
10 level of protection as if you were working an eight-
11 hour shift, because the standard that we've been
12 enforcing since 1969 was an eight-hour standard. We
13 intend to continue to do that. Okay? I don't have
14 any further comments. I really appreciate your
15 responses to what I've asked. Thank you.

16 MR. THOMAS:

17 Thank you.

18 MR. THAXTON:

19 I just have a few follow-up questions.
20 One, you indicated that you had taken 400 --- or 350
21 CPDM samples, that you've also collected gravimetric
22 samples at the same time.

23 MR. THOMAS:

24 Yes, sir.

25 MR. THAXTON:

1 You indicate that some of them show a
2 very big difference, ---

3 MR. THOMAS:

4 Yes.

5 MR. THAXTON:

6 --- .44 versus well over two milligrams.
7 Would you be willing to share that data with us,
8 provide that to us, so we could actually review the
9 data to see what it consists of?

10 MR. THOMAS:

11 Yes, sir.

12 MR. THAXTON:

13 In addition, you said that for your
14 operation, you did a calculation where you'd have to
15 have 200 CPDMs in order to be able to perform the
16 sampling that this rule calls for. Can you describe
17 to us your operation and how many MMUs? How you come
18 up with that number of 200 units that you would need?

19 MR. THOMAS:

20 Yes, sir. At current right now, we have
21 16 MMUs. And if you take ---.

22 MR. THAXTON:

23 Sixteen (16)?

24 MR. THOMAS:

25 Yes, 16.

1 MR. THAXTON:

2 Okay. So you're not talking about one
3 single mine?

4 MR. THOMAS:

5 Yes, sir.

6 MR. THAXTON:

7 You have 16 units in one?

8 MR. THOMAS:

9 If you take your two miner operators
10 times eight units times two shifts times 240 run data,
11 7,680 samples we'd have to run.

12 MR. THAXTON:

13 Okay. You're saying two units --- or 16
14 units, two shifts of operation?

15 MR. THOMAS:

16 Yes, sir.

17 MR. THAXTON:

18 And then are you doing your other
19 occupations as well ---

20 MR. THOMAS:

21 Yes, sir.

22 MR. THAXTON:

23 --- as part of these samples?

24 MR. THOMAS:

25 The ODOs on eight units with shuttle

1 cars, roof bolters times eight units times two shifts
2 times 14 days and four quarters is another 7,168
3 samples.

4 MR. THAXTON:

5 I'm not talking about the number of
6 samples.

7 MR. THOMAS:

8 Okay.

9 MR. THAXTON:

10 I'm talking about the number of CPDMs
11 that you're coming up with.

12 MR. THOMAS:

13 Yes, sir.

14 MR. THAXTON:

15 Can you provide us how you calculated the
16 number of units that you actually would need?

17 MR. THOMAS:

18 We can get that to you. That was just
19 kind of a ballpark figure, our average that I would
20 think that we'd have to have for the amount of people
21 that we'd have to run it on. You'd have to have
22 extras in case one goes down or something or you have
23 to send some off, you know. So you are looking at
24 quite a few PDMs to run a mine that size.

25 MR. THAXTON:

1 The last question I have for you is that
2 you indicated a concern with not being able to comply
3 with this regulation if we reduce the standard. Is
4 your concern with the lowering of the standard in
5 general since you're already showing that you're
6 beating that standard? Or is your concern is that the
7 Agency is going to be getting samples upon every day
8 at every shift and that you're not sure that you'd be
9 able to meet that on every day every shift and you're
10 concerned that you'd be cited or be determined a
11 non-compliant situation on a single sample?

12 MR. THOMAS:

13 That is correct, the latter part of your
14 question is what I'm concerned with.

15 MR. THAXTON:

16 Okay. Thank you.

17 DR. WAGNER:

18 Thank you very much.

19 MR. THOMAS:

20 Thank you.

21 DR. WAGNER:

22 Let me add a final question. You
23 expressed concern about the single shift citation.
24 And do you have suggestions for alternatives that
25 would be equally protective?

1 MR. THOMAS:

2 Not at this time. But I don't see where
3 our current situation is with our L pump, why we
4 couldn't continue that.

5 DR. WAGNER:

6 Well, if you do think about specific
7 alternatives that would be equally protective as the
8 single shift, we'd appreciate hearing from you.

9 MR. THOMAS:

10 Okay. Thank you.

11 DR. WAGNER:

12 Thank you very much. Tom Benner, please.

13 MR. BENNER:

14 Good morning.

15 DR. WAGNER:

16 Morning.

17 MR. BENNER:

18 My name is Tom Benner, B-E-N-N-E-R. I am
19 here today as a former chairman and current executive
20 board member of the Illinois Coal Association to
21 represent that association. Unfortunately, Tom
22 Austin, our current chairman, was unable to be here
23 this morning due to weather. And I just found out
24 before the meeting --- hearing that I'd be doing this
25 today.

1 We appreciate the opportunity to
2 participate in today's hearing. The Illinois Coal
3 Association is a professional trade association
4 responsible for the promotion of Illinois coal and
5 includes as members all the companies mining coal in
6 the State of Illinois. The Illinois Coal Association
7 represents 19 coal producers and coal reserve owners,
8 who in 2010 mined 33 million tons of coal while
9 employing 3,500 workers that provided an impact of
10 over \$1 billion to the state's economy.

11 The majority of the coal was produced
12 through longwall and fishtail super section methods of
13 mining. Therefore, the proposed rule will have a
14 significant impact on the operations of our member
15 companies.

16 Over many years, Illinois Coal
17 Association members have demonstrated their commitment
18 to working with MSHA to ensure a safe and healthy
19 working environment for all miners. The underground
20 mines in Illinois are large, well-run operations with
21 excellent health and safety records. We share the
22 same goal as our coal operators across the country, to
23 eliminate coal workers' pneumoconiosis, CWP, from our
24 industry.

25 Today our operators work diligently to

1 maintain the lowest possible levels of respirable dust
2 in their operations. Evidence of this commitment is
3 in the reductions in coal exposure that have occurred
4 in the Illinois basin since 2007. Recent studies have
5 shown for all intended --- intents and purposes that
6 CWL --- or CWP has been eliminated in the Midwest due
7 to our combined efforts. NIOSH data states that in
8 the Illinois basin, the incident rate of CWP is one
9 half of one percent. This is compared to the general
10 population who has an OPD incident rate of two to
11 three percent. This is based on over 5,000 x-rays in
12 a sampling. Revising the dust standard may not show
13 affect at all on CWL --- or CWP in the Midwest since
14 it is already so low. Areas in central Appalachia
15 that have much lower overall respirable dust
16 concentrations also have an implicitly high number of
17 low weight samples --- with low weight samples. This
18 is the same three state region of central App that has
19 a resurgence in the disease. NIOSH's own research has
20 stated that the hot spots could be a result of
21 silicosis rather than CWP. The industry supports the
22 development of the personal dust monitor. We have
23 agreed with full shift sampling of the highest risk
24 miners on all production shifts will provide a
25 valuable database to researchers to use to pinpoint

1 areas in need of improvement. These practices alone
2 have effectively reduced dust concentrations that
3 monitors are exposed to without any alteration of the
4 standards. This would also provide monitors with
5 real-time data that they could use to keep themselves
6 from being overexposed. This rule prevents any of
7 these improvements by continuing the antiquated
8 practice of area sampling rather than personal
9 sampling.

10 The Illinois Coal Association has studied
11 your proposal, your proposed rule and concludes it
12 will not further the effort to eradicate CWP in the
13 Illinois basin. We find the rule based on faulty
14 assumptions, technical impracticalities and bad
15 science. Therefore, we strongly urge MSHA to withdraw
16 the rule in its entirety.

17 The proposed rule will threaten the
18 economic viability of the Illinois coal industry at a
19 time when we are just about to rebound from the
20 negative impacts of the Clean Air Act Amendment of
21 1990. The Acid Rain Program in the 1990 Amendments
22 nearly destroyed the Illinois coal industry. In order
23 to comply with the lower emission standards for sulfur
24 dioxide, nearly every power plant in Illinois switched
25 from Illinois coal to sub-bituminous coal from the

1 Powder River Basin. Our coal production fell from 62
2 million tons in 1990 to 31 million tons in 2003, a 50
3 percent reduction. Worse, the employment declined
4 from 10,000 coal miners to 3,500 coal miners, reducing
5 the workforce by two-thirds. In addition, tens of
6 thousands of ancillary jobs were lost. The economic
7 impact to southern Illinois was devastating.

8 Since 2003, the coal production has been
9 in the low 30 million tons per year level with
10 production at --- in closing mines being offset by new
11 mines coming online. Most mines of the Illinois basin
12 make their living on highly productive continuous
13 miner and longwall miner units. As such, they have
14 been able to, again, become competitive against the
15 large Powder River Basin Mines after these 20 years of
16 production decline.

17 As we begin 2011, there are five coal
18 mines under construction, four of which are expected
19 to start production by the end of the year. Expanding
20 markets for Illinois coal are power plants, installing
21 scrubbers, exports out of the country and gasification
22 projects in Illinois. In addition, there are another
23 six permit applications under review by the Illinois
24 Department of Natural Resources. The expected
25 resurgence in the production of Illinois coal will be

1 jeopardized by this proposed rulemaking.

2 The MSHA estimated compliance cost of the
3 proposed rule of \$40 million annually to the coal
4 industry is drastically understated. How did MSHA
5 calculate this cost? Did it include the extra cost
6 incurred by MSHA to administer the rule? The proposed
7 rule will penalize underground mining and make it
8 impossible for miners to work more than three to four
9 hours per week. We believe the fiscal burdens caused
10 by the proposed rule would force mines to close.
11 Therefore, we strongly urge MSHA to withdraw the rule
12 in its entirety.

13 The proposed rule is constructed on three
14 data sources, the 1995 National Institute for
15 Occupational Safety and Health Criteria document
16 entitled Occupational Exposure to Respirable Coal Mine
17 Dust, a NIOSH report entitled A Review of Information
18 Published Since 1995 on Coal Mine Dust Exposure and
19 Assorted Health Outcomes and the results of enhanced
20 medical surveillance studies conducted by NIOSH's
21 Division of Respiratory Disease surveillance studies
22 that form the basis of several published articles.
23 All these data sources have deficiencies and are
24 inadequate to support the proposed lowering of coal
25 mine dust exposure by 50 percent. Therefore, we

1 strongly urge MSHA to withdraw the rule in its
2 entirety. Thank you.

3 DR. WAGNER:

4 Thank you very much for your comments.
5 Susan?

6 MR. FORD:

7 I think one question. You stated that as
8 a result of the rule that you believe that it may
9 force mines to close. And could you either tell us
10 now or in written comments, can you detail to us what
11 mines would be closing you believe and the reasons and
12 the dollar cost of why they would be closing?

13 MR. BENNER:

14 Yes.

15 MR. FORD:

16 Thank you.

17 MR. BENNER:

18 We can do that.

19 DR. WAGNER:

20 I have a similar request. You mentioned
21 your concerns about the scientific basis upon which
22 the rule is relying, the proposed rule. And I hope
23 that as you or your group evaluates the scientific
24 basis and the over 400 peer-reviewed scientific
25 articles that were incorporated into NIOSH

1 recommendations that you help provide us a better
2 understanding, through specifics, express your
3 concerns and critiques as to what the scientific
4 shortcomings are, and provide your alternate analysis
5 that would result, perhaps, in improvements in the
6 recommended rule.

7 MR. BENNER:

8 We would be glad to do that.

9 DR. WAGNER:

10 Very good. And similarly, you made a
11 number of other fairly broad concerns that were
12 expressed both from the economic front and the
13 scientific front and on the technological feasibility
14 front. And again, I would appreciate it if you would
15 be able to provide both specific data, analytic
16 methods and any specific recommendations that would
17 improve protection of miners.

18 MR. BENNER:

19 We will do that.

20 DR. WAGNER:

21 Thank you.

22 MR. BENNER:

23 I am assuming we will be getting these
24 requests in writing ---

25 DR. WAGNER:

1 No.

2 MR. BENNER:

3 --- that you gave us today?

4 DR. WAGNER:

5 No. They'll be part of the
6 transcript ---

7 MR. BENNER:

8 Okay.

9 DR. WAGNER:

10 --- which will be on the website, so
11 you'll be able to review it.

12 MR. BENNER:

13 Thank you.

14 DR. WAGNER:

15 Appreciate it. Thank you very much. The
16 next speaker will be Butch Oldham.

17 MR. OLDHAM:

18 Thank you. My name is Butch Oldham,
19 O-L-D-H-A-M. I'd just like to say almost good
20 afternoon. But I'm the health and safety rep for the
21 UMWA here in District 12. I have been in the mining
22 industry for 36 years and I worked underground for
23 Peabody Coal and Consol. I'd like to first thank you
24 for the opportunity to speak here today. And I
25 applaud you for bringing forth this proposed rule

1 aimed at reducing miners' exposure to coal dust.

2 You know, I realize we've come a long way
3 in reducing miners' exposure to dust, because I can
4 still remember operating the shuttle car and you could
5 barely see the tail of the miner through the dust due
6 to the fact that we didn't have scrubbers on the
7 miners at that time. I can remember having to change
8 my filter on my respirator at least twice per shift.
9 And this was only an eight-hour shift at the time.
10 Yes, we've come a long way, but we're still asking the
11 same question, why are miners' exposure to black lung
12 disease on the increase instead of decreasing?

13 Will this new rule to help reduce miners'
14 exposure, or will people continue to circumvent the
15 system and make the numbers look good on sampling days
16 while miners continue to get black lung disease? We
17 know this happens, because it happened several years
18 ago in this very district. A company was caught
19 tampering with samples they were taking. And they
20 were prosecuted for it. This is why the UMWA has
21 pushed for MSHA to take over the dust sampling
22 program, to ensure miners that this would never happen
23 again. But this proposed rule doesn't provide for
24 that, even though we are still finding companies doing
25 all those extra things on their dust sampling days in

1 order to come into compliance, such as making sure the
2 roadways are watered down, making sure every water
3 spray is working, keeping the curtains hung properly,
4 making sure all miners stay upwind of where they're
5 mining, among other things. But on non-sampling days,
6 all these things don't happen. So what makes MSHA
7 sure that operators won't continue to manipulate the
8 system unless they take it over?

9 I am pleased this rule will apply to
10 surface miners also, because they have been left
11 behind for too long. I believe the proposed rule
12 should be expanded to include individuals working at
13 coal loading facilities, such as coal terminals, prep
14 plants and open-belt systems. These individuals are
15 exposed to a lot more coal dust in handling this
16 product than you think they are. Just drive by one of
17 these facilities when the workers are leaving and see
18 the coal dust on their faces.

19 I agree with the use of CPDM to ensure
20 miners are working in an atmosphere that is
21 continuously monitored for dust exposure. This will
22 give the miners a degree of confidence the air they
23 are breathing will allow them to leave at the end of
24 their shift as dust free as possible. The use of the
25 CPDM may not solve the respirable dust issue, but it

1 is a step in the right direction.

2 In closing, I know the UMWA has submitted
3 other comments regarding this proposed rule that I
4 fully support. I know as this rule progresses, there
5 will be other issues to come up, and I look forward to
6 seeing the comments of others and the final rule. I
7 just hope at the end of the day this rule would be
8 something that will allow miners the opportunity to
9 work their entire shift in the mining industry and be
10 able to enjoy the rest of their lives during their
11 retirement. Thank you.

12 DR. WAGNER:

13 Thank you very much. Susan?

14 MS. OLINGER:

15 You were bringing up that the rule should
16 be expanded to coal loading facilities and production
17 facilities, is that what you were saying?

18 MR. OLDHAM:

19 Yes. We have some open belts and coal
20 loading facilities that are not under this rule, and I
21 think they should be expanded, because they are
22 exposed to a lot of dust.

23 MS. OLINGER:

24 Do you have sampling data from positions
25 at those facilities?

1 MR. OLDHAM:

2 They don't even --- a lot of them don't
3 even sample.

4 MS. OLINGER:

5 Right.

6 MR. OLDHAM:

7 So like I say, all you got to do is, at
8 the end of their shift, see the dust on their faces
9 and you can see the exposure they're getting.

10 MS. OLINGER:

11 Thank you.

12 MR. NIEWIADOMSKI:

13 A couple questions, Mr. Oldham. You
14 mentioned that you want MSHA to take over the sampling
15 program. That's what you said in your opening
16 remarks; correct?

17 MR. OLDHAM:

18 Yes, sir.

19 MR. NIEWIADOMSKI:

20 Because of the manipulations and past
21 manipulation during sampling versus non-sampling
22 periods?

23 MR. OLDHAM:

24 Yes.

25 MR. NIEWIADOMSKI:

1 You also indicated that the UMWA supports
2 the use of CPDM, which tells the miner what he's being
3 exposed to and he knows that at the end of his shift
4 what he's being exposed to. Now, do you think that
5 with the way the rule requires sampling to be
6 conducted on a continuous basis, there still could be
7 manipulation?

8 MR. OLDHAM:

9 I think so. I think there's a
10 possibility of it because you can always move people
11 around. And also, the fact of being able to swap
12 people out, we don't agree with that also. You know,
13 if a person's exposed or overexposed half a shift,
14 then he goes somewhere else and --- on a contractual
15 issue, that's a problem for us because a lot of those
16 guys bid on those jobs and that's their job. So for
17 us to say now you got to swap yourself out when that
18 was your job because you're out of compliance, you
19 know, there's an issue there for us also. But just
20 swapping people out to keep in compliance, there's got
21 to be a better way.

22 MR. NIEWIADOMSKI:

23 One final question. On wearing the CPDM,
24 do you, in fact, support the use of the CPDM, the way
25 it's proposed on every shift?

1 MR. OLDHAM:

2 Yes.

3 MR. NIEWIADOMSKI:

4 Thank you.

5 MR. THAXTON:

6 I just have one quick follow up. When
7 you gave your list of operations that you thought
8 should be included under the protections of this rule,
9 you indicated --- included preparation plants in that.
10 Any facility, shop, prep plant or anything that's
11 covered by MSHA right now would be covered by this
12 rule. So the prep plants, shops would be included or
13 any belt that's tied to a mining facility or on mine
14 property, those are already covered. Understand? Are
15 you then asking for the --- like the river loadouts
16 and things like that that are not under our
17 jurisdiction, that they should be included?

18 MR. OLDHAM:

19 Yes, that's what I'm talking about. We
20 have some facilities, an open belt, that's not tied to
21 the mine that shifts the coal. They're only under
22 basically the state's jurisdiction. And we also have
23 a coal loading facility in Illinois that is under
24 OSHA's regulations. And, you know, those guys don't
25 have any real protection there.

1 MR. THAXTON:

2 Okay. Thank you.

3 DR. WAGNER:

4 Thank you very much for your time.

5 MR. THAXTON:

6 Thank you.

7 DR. WAGNER:

8 Pat Brady is our next speaker.

9 OFF RECORD DISCUSSION

10 MR. BRADY:

11 Go ahead?

12 DR. WAGNER:

13 Yes.

14 OFF RECORD DISCUSSION

15 MR. BRADY:

16 My name is Edwin P., technically Pat,
17 Brady, B-R-A-D-Y. The microphone. See, you got me so
18 shook up, Mark, I forgot the microphone. Edwin P.,
19 Pat, P-A-T, Brady, B-R-A-D-Y. And I do appreciate the
20 opportunity to speak here. Thank you very much. I'm
21 going to make my lawyer shake in their seats a little
22 bit, because I'm going to read this because we
23 prepared it, but I am also going to give you some
24 personal feelings that I have when I try to explain
25 some of these. Your opening introduction today, Dr.

1 Wagner, thank you for the slides. Several of those
2 slides we use in our training, and several of the
3 slides bring back some memories, which I'll try to
4 explain to you when I go through these. That's what
5 I'm going to do. Let me start reading from this, what
6 we're supposed to do with this.

7 It says good afternoon. To Mark's
8 benefit, it is afternoon, I think, now.

9 MR. FRIDLEY:
10 Five minutes.

11 MR. BRADY:
12 One minute?

13 MR. FRIDLEY:
14 Yeah, two.

15 MR. BRADY:

16 It's pretty good planning then. Good
17 afternoon, Dr. Wagner and members of the panel. I am
18 the manager of Safety and Regulatory Affairs for
19 Murray Energy Corporation, the largest privately-owned
20 coal production and sales company in the United
21 States. Murray Energy has subsidiary operations in
22 six states, produces approximately 30 million tons of
23 bituminous coal per year. Over 3,000 employees take
24 tremendous pride in knowing that our work provides
25 affordable energy to homes and businesses throughout

1 this country.

2 We want to thank the panel for the
3 opportunity to present our concerns about the proposed
4 rulemaking. I have spent my entire adult life
5 advocating and working to make coal mines safe. I
6 spent 34 and a half years with the Mine Safety and
7 Health Administration, the past three and a half years
8 with Murray Energy, and I know many of you from my
9 years of working on coal mine safety and health
10 issues.

11 I'm going to take a break here for just a
12 second because I am going to say some things, and I
13 know that it's agreeable to you, but please don't
14 underestimate that we don't feel that you have a
15 passion for doing what is right for coal mine health
16 and safety, because those words are strong, but we
17 never question your integrity or the passion that you
18 have in making mines safer and healthier. So please
19 don't take the words wrongly, and I know there's been
20 some harsh words today. Likewise, we don't question
21 Joe Main's passion for the health and safety of
22 miners, because he's made it his lifetime also. We
23 just simply believe that there are some things in this
24 rule that are just unacceptable. So please, when I
25 make the statements, don't underestimate or question

1 our passion for doing what's right either, because we
2 have a tendency to do that, you know, when we give
3 some harsh words, yes.

4 And with that said, I'm here today to
5 request that this rule be withdrawn because, in our
6 opinion, it is unsupported by science and because it
7 will be impossible for miner operators to follow.

8 Let me follow up with that statement a
9 little bit, too. You asked for specifics, and Murray
10 Energy Corporation has employed several scientists to
11 explore this entire rule in its entirety. My
12 testimony to you today is no more than a prelude to
13 introduce some of the things that we're looking at.
14 Nevertheless, it will lack the specifics that you
15 want, but those specifics will come in other public
16 hearings. And we're going to allow the scientists to
17 speak on their own, present their reports and give you
18 their findings. And that will start happening
19 probably in Salt Lake City.

20 There are some specifics in my testimony
21 and there are some general statements that I'll try
22 get away and pose to you. When I say unsupported by
23 science, again, Dr. Wagner, you helped me I think a
24 little bit this morning, because you, sir, made a
25 statement that it was based on the best available

1 scientific information. And personally, I believe
2 that you used what you had at your disposal. We are
3 questioning whether the best is good enough. And I'm
4 going to try to expand on that a little bit, too, of
5 what I've seen through the industry in time. We
6 understand that nothing was made up, that you had data
7 available to you, but we certainly are questioning
8 whether it is the best data you could come up with.

9 So with that, I have a Bachelor of
10 Science degree in mining engineering from West
11 Virginia University, have a Master of Science degree
12 from Marshall University, and I have used all of those
13 in my career with MSHA and both Murray Energy.

14 Thirty-eight (38) years ago I started
15 working as a co-op student with the U.S. Bureau of
16 Mines, Coal Mine Safety and Health in Morgantown.
17 Part of my duties then was working in the dust lab
18 preparing and taking care of dust pumps and weighing
19 dust samples. Eventually I began training our
20 inspectors in health regulations and dust sampling
21 procedures. In 1976, I began working for the Mining
22 Enforcement and Safety Administration as a mining
23 engineer. I reviewed roof control plans, ground
24 control plans, conducted engineering studies, and
25 handled other matters related to mine safety and

1 health. 1977, I began performing health audits,
2 leading accident reduction teams, judging mine rescue
3 and recovery work and various other safety guidelines
4 I was involved with MSHA in helping develop. In my 34
5 and a half years with Coal Mine Safety and Health, I
6 was exposed to mines of all types, large mines, small
7 mines, mines with longwalls, conventional mining,
8 mines with different levels of methane, mines with
9 different types of roof support systems. And
10 basically I can say that in the United States, as the
11 mining systems existed, I probably saw and was
12 involved with it to some degree. While with MSHA, I
13 was involved in rescue and recovery operations at
14 serious mine accidents that occurred in the last three
15 decades and I've seen firsthand the reason coal mine
16 safety and health is critical to the industry and for
17 the regulators both. And one of the slides you showed
18 was smoke rising from the main shaft at Consol
19 Number 9. And the first recovery I was involved with
20 in 1974. recovering Consol Number 9. My uncle and a
21 good friend worked there and died in the Consol Mine.
22 So I'm very familiar with the picture and what had
23 occurred at that time.

24 It leads me to the comment that good
25 intentions and efforts are never enough. It's

1 essential that we get it right. It's essential that
2 we get it right in the year 2011. It's a highly
3 technical endeavor in an industry that has become
4 increasingly complex. And my goal here today is to
5 offer my insights based on experience and knowledge,
6 hopefully helping MSHA to avoid promulgating another
7 unreasonable and unfounded rule. And again, that is
8 based on the scientists that have employed, some of
9 the words that they have used. And you helped me to
10 understand that you were using the best data that you
11 had available. So it's not a criticism. It's just
12 our opinion on what we're looking at at this point in
13 time.

14 During my career with the federal
15 government, I held a number of positions, including a
16 mining engineer, supervisory of Coal Mine Safety and
17 Health inspector and assistant district manager for
18 Technical Programs. I became a district manager in
19 District 9 --- or 4. I was District 4 until the year
20 2003. In which time I became the manager of the
21 National Mine Health and Safety Academy. As the
22 manager of the National Mine Academy from 2003 to
23 2007, I was responsible for the training of MSHA
24 inspectors and enforcement of federal health and
25 safety standards. And throughout my three decades

1 with the Agency, I was constantly and deeply involved
2 in efforts to deal with respirable dust that is
3 present in the mine.

4 George, at the last meeting we had,
5 reminded me of a comment that I made to a group that I
6 still believe in and so strongly I believe in, I think
7 the government has forgotten, George, and that the
8 title to National Mine Health and Safety Academy is
9 not Safety and Health Academy, it is Health and Safety
10 Academy. And I think that the government, and I will
11 say it here again, I repeat it, has not done their
12 job. And looking at the scientific data, creating
13 scientific data, creating programs and procedures to
14 really study coal workers' pneumoconiosis to try to
15 find out what the real reasons are. Used the best
16 data. Possibly. I agree and I believe that you did.
17 But have you really studied what we need to study?
18 1969 that Act was written. I understand the dilemma
19 and the kind of working that was there. This is the
20 year 2011. The Mine Acts have been altered. What has
21 been done to study coal workers' pneumoconiosis? And
22 I will again address those situations.

23 In the early and mid 1990s, I was the
24 chairman of the Regulatory Rewrite Committee charged
25 by the Agency with rewriting portions of the dust

1 regulation to address ongoing concerns of respirable
2 dust exposures. And quite honestly, Dr. Wagner, some
3 of the slides that you put up this morning were some
4 of the things we were working on, some of the
5 suggestions when that rule was rewritten in two or
6 three different versions that address the normal
7 production, that address the exposure and all the
8 things that the science that you put up were addressed
9 in the regulatory rewrite back in the early '90s. We
10 were certainly making progress in this endeavor when
11 NIOSH issued its 1995 Criteria Document. And from
12 that point on, the process of rewriting the dust
13 regulation stopped. Instead, various interested
14 parties continued to push for reduction of a one
15 milligram standard. And many of us questioned that
16 data that NIOSH used in recommending the one milligram
17 standard. In fact, as my memory brings me back, I
18 remember sitting in Cincinnati listening to the
19 disagreements between MSHA and NIOSH over the data
20 that was used for the one milligram standard. MSHA
21 rejected, or at least history proves that it rejected,
22 and did not follow NIOSH's recommendation. And again,
23 I find it strange that it's taken 15 years for MSHA to
24 decide to implement the Criteria Document, especially
25 in the opinion of our scientists, it has very little

1 support. In fact, MSHA apparently did not support
2 that in 1995. My belief is the 1995 NIOSH data was
3 flawed. And again, flawed based on what our
4 scientists are saying. It has been strengthened by
5 the comments that I've received from them in the past
6 few days over studies that they have done.

7 What I do know is that MSHA began showing
8 great interest in the development of a continuous
9 personal dust monitor. This concept at the time was
10 intended to give the mines a tool with which he ---
11 the miner himself, a tool with which he could protect
12 himself from the harms from respirable coal dust.
13 Never did I hear in the discussion that this tool
14 would be used for the enforcement of environmental
15 standard. Its conception was to give an instant
16 real-time measurement to the miner for his individual
17 protection, to help him determine when respiratory
18 protection, such as air stream helmet respirators,
19 moving to a different area was needed. Another hope
20 of the CPDM was conceived ability to evaluate mine
21 systems and to optimize dust control measures. The
22 CPDM today has the potential for accomplishing all
23 these tasks. And I'll just say the word again,
24 potential. But it is like any other new technology
25 that enters the field, we have hardhats and metatarsal

1 shoes, and all those things entered into the mining
2 industry, there was resistance to those. But as time
3 moves on and the value is seen and technology changes,
4 the difficulties of the things of that piece of
5 equipment that needs to be fixed, we see that the
6 technology and the concept of the CPDM is important,
7 and we support the use of the CPDM, and certainly not
8 in its current configuration. We feel it needs a lot
9 of work.

10 MSHA has a legal responsibility, and
11 certainly the industry has a moral responsibility, to
12 honestly and thoroughly evaluate the evidence and
13 thereafter make rules that will protect our nation's
14 miners. We feel it's really irresponsible to
15 resurrect a NIOSH outdated and defective conclusion
16 from 1995 to support a drastic overhaul of the coal
17 dust standard and sampling processes without valid
18 scientific analysis. In fact, after listening to the
19 experts in the health science, I'm appalled that the
20 federal government after being given a directive in
21 the 1969 Federal Mine Safety and Health Act to
22 eliminate black lung, did not develop a game plan put
23 together by experts, from the workers, industries and
24 government, to study and develop an agreed-upon
25 strategy to eliminate black lung from the mining

1 industry. If that plan exists, I would like to have a
2 copy, and I will stand corrected. Now, you're going
3 to tell me that the plan exists in the Labors Advisory
4 Committee. And my point of that is that if it was the
5 document that we think it is, why has it not been
6 implemented? Why is it being resurrected between the
7 coal workers --- or the data that NIOSH had done and
8 then as this resulted in this, the Labors Advisory
9 Committee. There are a lot of good recommendations.
10 And again, we point to a Blue-ribbon panel that was
11 among the people who put this document together. The
12 people, again, had good intentions, without question.
13 They had passion for taking what they had to try to
14 determine the causes of coal workers' pneumoconiosis,
15 but it's no more than a summary of the Criteria
16 Document and some of the things they had seen with
17 enforcement problems in the regulations and that they
18 thought were problems and that they were trying to
19 resolve them to eliminate coal workers'
20 pneumoconiosis.

21 I have to stand here and I have to admit
22 that I was probably a part of that problem when we
23 were trying to rewrite the dust regulations without
24 really being given sufficient information to do so in
25 the early '90s. Maybe that's why this dust regulation

1 has now been promulgated. But I know that MSHA never
2 did anything to deal with the Criteria Document or
3 with its Advisory Committee until 2011, when both of
4 them were revised or pulled out to look at again. I
5 guess our point is that this problem, it's too
6 important to be haphazard. We've long shared with
7 many of you today the commitment to protect our
8 nation's coal miners from harmful effects of
9 respirable dust. And I do have personal experience
10 with the issue, as many of us do in our careers. My
11 grandfather entered the mines at 13, later told me he
12 had black lung. He left the mines at 28. My father
13 spent 50 years working in the coal mines. I joined
14 him when I was about 13 years old handling and
15 carrying explosives working in the mines. At that
16 time, not wanting to give away my age, we wore tennis
17 shoes and baseball caps. And I did see a turtle cap
18 turn into a compo (phonetic) cap. So I'm not old, but
19 I've seen those things in my career. I've seen others
20 suffer from the consequences of exposure to coal dust
21 in the past with dust levels high, but we lacked
22 sophisticated methods to address it. And quite
23 honestly, I remember when I worked in District 4 and
24 going into a mall and sitting and looking at the old
25 time coal miners carrying oxygen behind them. I don't

1 want to see that, and neither does the industry. That
2 is a slow, painful death that nobody wants. And to be
3 certain we don't want that for our miners. We want to
4 protect them to the extent that we can. I spent a lot
5 of time in coal mines myself breathing the same air as
6 the workers we employ. I spent countless hours at
7 every Murray Energy underground operation training our
8 miners in the hazards of respirable dust, accepted
9 ventilation and dust control techniques, applicable
10 federal and state regulations. And we have had 12
11 instructors from the National Mine Health and Safety
12 Academy doing the same to our operations, trying to
13 make this a point of awareness to our miners,
14 explaining to them what it will do to their health and
15 how they have to protect themselves and the things we
16 have to do from an engineering standpoint to make sure
17 that they have a safe working environment. We take
18 this extremely serious. However, after spending three
19 decades working towards safer conditions, I really am
20 disappointed with the proposed rule, and again, I'm
21 going to request MSHA to withdraw the rule in its
22 entirety. Not only is this proposed rule unsupported
23 by relevant scientific data, the compliance does not
24 appear to be feasible for the majority of the coal
25 mines, in our opinion, and based on sampling data. We

1 will give you the specifics of these things.

2 I encourage MSHA to listen closely to
3 some of the scientific and economic experts who offer
4 their expertise at future hearings during this
5 rulemaking period. It is essential that any rule
6 modifying the work environment of American coal mines
7 be based upon sound epidemiological data and fully
8 evaluated in terms of true costs and benefits. One
9 need not dig deeply into the epidemiological studies
10 to see the flaws in MSHA's logic, which our scientists
11 will explain during their testimony in the future.
12 MSHA says that on one hand that the industry is
13 already close to complying with the one milligram
14 standard, but on the other hand, now insists that
15 reducing the standard to one milligram will cause a
16 dramatic reduction on coal workers' pneumoconiosis. I
17 am having trouble understanding the logic to how those
18 two statements go together.

19 We are closely examining MSHA's
20 quantitative risk assessment and cost benefit
21 analysis. We see a number of items that have either
22 been ignored or not given a proper consideration.
23 While we hope to provide a more thorough analysis
24 detailing the flaws in MSHA's analysis at a later
25 hearing, it is apparent that the Agency has largely

1 ignored the additional compliance costs, particularly
2 increased manpower requirements that this new rule
3 will entail. It is beyond dispute that more personnel
4 will be required underground just to monitor the CPDMs
5 and handle the increased sampling.

6 MSHA also needs to give careful
7 consideration to the ergonomic costs of loading
8 further heavy equipment onto the bodies of coal miners
9 that are already burdened with heavy tools and
10 equipment while performing their difficult work. What
11 effect will the addition of the CPDM have upon the
12 worker's body, his day-to-day mobility and his safety?
13 We're not sure, but we are engaged in doing those
14 types of studies, because, to our knowledge, these
15 studies have not been done. We will provide further
16 information on potential ergonomic issues with the
17 CPDM units during the future hearings.

18 Those of us who have been working with
19 CPDM units continue to have very serious doubts about
20 the validity and reliability of those devices when
21 subjected to actual working conditions. We are not
22 reassured by the manufacturer's declarations that the
23 CPDMs are working properly because we have seen them
24 repeatedly fail despite expensive and time-consuming
25 maintenance efforts. We continue to explore these

1 short-comings and will provide MSHA with further
2 details on the technological concerns relating to the
3 essential technology upon which these proposals are in
4 place. That will be coming to you in future hearings
5 and in our written comments. And again, I am not
6 questioning the integrity of the manufacturer in any
7 way. We're seeing some inconsistencies in the lower
8 concentrations. These are the lower concentrations
9 that this rule is asking us to live in and we're
10 seeing the air being compounded by these which will be
11 expanded more in future hearings and studies. I'm
12 going to allow those people to explain that, for they
13 are qualified and all I know is what --- basically
14 what they're explaining to me.

15 From a logistical standpoint, I have
16 grave concerns about MSHA's ability to keep up with
17 the dramatic increased sampling. MSHA has an ongoing
18 problem with getting plan approvals done in a timely
19 manner now, which has caused extensive production
20 delays through the nation, so we cannot begin to
21 imagine how the Agency will deal efficiently with
22 another series of plans that will be generated with
23 this rule. We predict that many mine operators will
24 find themselves simply unable to comply because the
25 proposed sample --- excuse me, standard is simply

1 technologically impossible, be faced with countless
2 citations and violations and, in many cases,
3 ultimately be shut down. And I mistakenly in this
4 reading put the word citation because, in my opinion,
5 these will not be citations issued against the
6 company. They will be unwarrantable orders given the
7 attitude with which MSHA handles the unwarrantability
8 of situations today. And quite honestly, we are
9 concerned about that and we feel that these citations
10 will be unwarrantable. Very simply, if you have a
11 device that tells you that you're going out of
12 compliance or not, if you put a certified person in
13 charge of that unit, and for any reason they allow
14 that miner to exceed a standard, you will term them
15 being unwarrantable. So these citations won't be
16 citations, they'll be unwarrantable failure. You'll
17 have numerous, numerous 110 investigations. Your
18 special investigators will be able to retire with this
19 rule given the set of parameters that you're putting
20 in right now.

21 Production delays, shutdowns don't just
22 cause the industry profits, they cost jobs. They also
23 lead to higher electricity prices for household and
24 businesses already struggling to overcome one of the
25 worst recessions in our country's history. If this

1 rule were effective, and we don't believe that it is,
2 MSHA should not inflict the onerous and
3 technologically impossible requirements without
4 honestly and accurately evaluating their impact on our
5 coal mining communities and our nation as a whole.
6 And we will give you the costs analysis.

7 Many of us who have been in coal mining
8 since the 1970s fear that the proposed rule will also
9 undermine the industry's ongoing efforts to become
10 more mechanized. And given that the relatively
11 shallow coal reserves have been pretty thoroughly
12 mined, today's operations have to mine even deeper
13 than ever before. Technological advances in the
14 industry, such as longwall mining, have allowed more
15 coal to be produced by fewer employees, thus reducing
16 health and safety risks dramatically.

17 It is felt the proposed rule will make
18 production and effectiveness of the longwall and mine
19 methods less feasible to the operators.

20 OFF RECORD DISCUSSION

21 MR. BRADY:

22 Excuse me. In your economic analysis,
23 you cost out items such as surfactant systems and
24 headgate scrubber systems. And as I looked at the
25 economic analysis, scientists that we have looking at

1 this have created spreadsheets which we will share
2 with you. But these surfactants, there are mines in
3 operation using surfactant systems. And there are
4 scrubber systems that you have crossed out. So I have
5 to suppose, and I assume that you propose including
6 these systems to suggest that these types of controls
7 will effectively control respirable coal dust. I'd
8 like to know how many longwalls employ these and
9 what's the cost analysis, and what types of
10 information is really there to show us that these
11 systems are working effectively. And we have
12 operations using surfactant. We have many operations
13 who don't use surfactants. And I asked them, you
14 know, why. And they really can't answer. They don't
15 know whether it's helping them or not. Just the very
16 presence of it makes MSHA feel better, so they put in
17 the cost and expense to do it. What kind of studies
18 do we have to show that they work? What do we have to
19 show that these things really will work and that the
20 cost spent is cost that is effective and will truly
21 protect our miners? We feel strongly that mining,
22 longwall mining, is safer, provide better roof
23 controls, eliminates the need for roof bolting, better
24 ventilation controls, which has a positive impact on
25 respirable dust levels. MSHA should promote the

1 automation of coal mining by encouraging the use of
2 longwall, not promulgating rules that we feel that
3 will possibly make it infeasible in many cases, simply
4 because it's one of the things that we can't do if the
5 rule is imposed upon us.

6 Someone had mentioned a minute ago about
7 the creation of shafts and the separate splits of air
8 for fishtail ventilation. We've asked MSHA,
9 questioned different people from MSHA, about what is
10 actually intended by that rule, that proposed rule.
11 We get different answers. I guess the answer is
12 really in the economic analysis because you do cost
13 out the shafts, you do cost out the stoppage, you do
14 cost out the separate split of intake air. If that is
15 the intent, and that's what the economic analysis
16 looks like it intended, basically what you're asking
17 miner operators to do is to put shafts in for each
18 MMU, to exaggerate to this extent. Okay. I'll say
19 that's an exaggerated extent. Bob smiled at me.
20 He'll probably fire a question at me here in a minute.
21 But that is an issue that I think needs to be
22 resolved, that is reflected in your economic analysis.

23 We certainly believe that there is more
24 that can be done to protect our coal miners' lungs
25 from damage. We do not want to see any of our workers

1 contract coal workers' pneumoconiosis or any other
2 coal miner in the United States, whether they work for
3 Murray Energy or not. Murray Energy wishes to be an
4 active participant in the ongoing efforts to protect
5 our workers and will continue to offer, through myself
6 and others, technical, scientific information to
7 assist the Agency in this process. And again, we will
8 provide all the studies in upcoming public hearings
9 and in our final comments. I thank you for your time,
10 sir. And I will answer any questions you might have
11 of me.

12 DR. WAGNER:

13 Thank you very much. We'll start with
14 Susan.

15 MS. OLINGER:

16 I have one follow-up question for you.
17 You said, and I don't want to steal any thunder from
18 you, Bob or George, when you get to this. But you
19 said that you do support the use of CPDMs but not
20 under the current configuration. Could you just
21 expand on that a little bit more? What do you mean by
22 not in its current configuration? What configuration
23 would be acceptable to you?

24 MR. BRADY:

25 Certainly one that is ---. Certain angle

1 here. Certainly the concept of CPDM I think is very
2 important. We support CPDMs. We support the ability
3 of a miner to look and see what his exposure is. And
4 I think anybody would be foolish not to support that
5 concept. But it needs to be developed. You know,
6 this --- in 19 --- and I'm going to go back. In 1995,
7 the Criteria Document came out. The work on proposed
8 regulations that we were charged to do basically
9 stopped. The concept, everything turned towards the
10 development of continuous personal dust monitors, and
11 there was a reason for that, I'm sure. And I have my
12 feelings of why that occurred. In about 2004 or '05,
13 somewhere in that area, it was brought out that work
14 with CPDMs was progressing, and eventually we got a
15 unit where NIOSH had said that it was accurate and is
16 reading accurate. We're questioning that to some
17 degree, but not as a criticism. We want to get it
18 right. I support the CPDM, but I think it needs
19 further development. I think it needs to be more
20 ergonomically designed. I think it needs to be more
21 friendly to the miner wearing it and I think that we
22 need to look at the accuracy of that unit and in how
23 it is used. So I say its current design. You know,
24 we have it, we're using it. All miners are wearing
25 it. It's the same complaint that everybody else is

1 giving it. But I don't want to abandon the technology
2 of the CPDM. We think that it's a very valuable tool.
3 But we think that with any new technology, that what
4 we're trying to employ are old techniques with new
5 technology. And the things that the rule proposes are
6 things that the rule has been proposing for years,
7 since 1969. But we now have in our hands technology
8 of the CPDM that could change the way miners are
9 exposed and how they protect themselves, but we're
10 trying to inflict the old ways of doing business on
11 that new technology. So I'm saying the CPDMs, you
12 know, yeah, we agree with it. We want it. We want
13 the technology. We want the unit to be friendly to
14 the miner. We want them to understand it. We want
15 our technicians who are taking care of it being able
16 to put filters on it and not lose the sampling or, for
17 some reason, if you lift one up, and that you have to
18 let another one warm up because that one doesn't work
19 anymore. Those are all growing pains. They are not
20 criticisms of the manufacturer, but growing pains they
21 need to know. The unit needs to be developed and
22 designed for the miner for his protection. So yes, we
23 are in agreement with the CPDM. We think it needs a
24 lot of development and a lot of things taken care of.
25 Now, how is that done? The manufacturer

1 who is the sole manufacturer in the United States,
2 there are no other people doing it, needs some
3 assistance to make that unit better. And I'm sure
4 that if it takes 200 CPDMs for a mine, and your cost
5 is low, unless the costs come down, because we're
6 finding the cost of the CPDM to be more like \$15,000
7 and \$16,000. And I'm sure that supply and demand will
8 dictate the cost of that. That's America. But with
9 the --- you know, if you're going to make sure --- we
10 just ask that the money be used to make sure that the
11 unit is redesigned to the degrees it can, it becomes
12 miner friendly from an ergonomic standpoint and user
13 friendly.

14 MR. NIEWIADOMSKI:

15 Pat, let me just --- let me comment on
16 you were asking what brought about the development and
17 proposal to use the CPDMs. As you well know, that's
18 something --- that technology the Agency has been
19 supporting the development since the '70s. Okay. If
20 you look at the preamble in the 1980 rules, the UMWA
21 specifically asked the Agency what the status was
22 because we made promises early on to develop
23 continuous monitoring. Everybody knew that continuous
24 monitoring is the way to --- that's probably the ideal
25 way to prevent overexposures. In 1992, the task

1 recommended because it determined that the long-term
2 solutions to prevent CPW is continuous monitoring.
3 You know what you're exposed to on every shift and you
4 could take corrective action. And that's why I want
5 to ask a follow-up question to what you said about the
6 compliance costs. That the compliance costs under
7 this proposal would be prohibitive. Is that your
8 words?

9 MR. BRADY:

10 The overall compliance costs with the
11 entire rule.

12 MR. NIEWIADOMSKI:

13 The entire rule, not the CPDM?

14 MR. BRADY:

15 Because if the device gives us what we
16 want, and it is miner friendly, gives us the
17 information to protect the miner, then some of your
18 economic analysis admits that health benefits --- you
19 can put costs when you're dealing with people's lives
20 and health, I understand that. I think the CPDM has
21 that ability to do. So a CPDM that gives us what we
22 want, gives us the technology, the user friendliness,
23 the protection to the miner, that \$15,000 is
24 immaterial at this point in time. If it is usable.
25 And if it's used in a scheme, a regulatory scheme, an

1 entire package to where it fits perfectly where the
2 industry can take the information and use it
3 effectively to protect the miner. This package, the
4 way it's put, we're going to be looking over our backs
5 all the time. It's going to turn our attention to
6 protecting the miners and protecting the liability ---
7 to protecting the liability. You know, I don't hope
8 that you all would want that. But I'm telling you
9 that is what the rule structure is right now.

10 MR. NIEWIADOMSKI:

11 In your comments that you're going to be
12 submitting later on, are you going to be proposing a
13 regulatory scheme for the CPDM?

14 MR. BRADY:

15 We have asked the scientists to come up
16 not only with the strengths and the weaknesses of this
17 proposed rule, but based on sound scientific and
18 industrial hygiene principals, what are your
19 suggestions in some of these things that we're dealing
20 with. And I can certainly come up with a regulatory
21 scheme. And I can propose it if that would be of any
22 benefit. But it would not be in the context of this
23 proposed rule. It would not be within the boundaries
24 that this rule imposes.

25 MR. NIEWIADOMSKI:

1 Thank you, Pat.

2 MR. BRADY:

3 You're welcome.

4 MR. THAXTON:

5 It seems like everybody else is getting
6 the same question that I'm getting to, Pat. Really
7 it's only two areas. I'm trying to get a little
8 better understanding of your concern that you don't
9 support the CPDM in its current configuration. You
10 alluded to some of the design deficiencies of the unit
11 that you see. Are you also then looking at the ---
12 are you saying that there's deficiencies in how the
13 proposal is addressing the use of CPDMs?

14 MR. BRADY:

15 You're wanting to take the CPDM
16 technology that has, in my opinion, all the chances in
17 the world of protecting our miners, and you're wanting
18 to put it in an enforcement scheme monitoring the
19 environment. And I understand the limits you have
20 with that and I understand the limits you have with
21 the way they're actively written for the environmental
22 standard. But I also think that if we, the government
23 is concerned, that we are protecting the health of the
24 miner, they weren't beside themselves in submitting
25 the 2006 Miner Act and proposing legislation that

1 dealt with everything in the world of trying to put
2 the operator in its place, quote/unquote, where we
3 didn't have any idea or thought or suggestions on
4 health. And all I'm saying is I understand that your
5 dilemma with MSHA is about environmental standard, but
6 I'm saying that the scheme of the CPDM, the UMWA, BCOA
7 both white paper the other. And they proposed a way
8 of using the CPDM for protecting the miner. And that
9 involved not only the use of the CPDM as an
10 administrative tool and for personal protective
11 equipment. Logically, logically in every area of
12 industrial hygiene that you look at there is a
13 hierarchy of control. And if that hierarchy of
14 control weren't feasible and weren't effective, why
15 isn't anybody calling the hierarchy of control? And I
16 understand your dilemma of how the Act is written
17 about environmental control, but I think you're taking
18 new technology, you're appointing it to an old problem
19 of environmental control, DOs, you apparently are
20 concerned because of DAs that have been created in the
21 past, so you create a ODO, and essentially what you've
22 done is create this scheme where everybody will be
23 wearing CPDM anyway for all practical purposes all of
24 the time. So why not develop it, and in these high
25 risk areas have a unit to where they are protecting

1 themselves?

2 If the scientific data --- I'm saying if
3 it points to a reduction in standard. From what I'm
4 being told, it does not. If that is the case, the
5 miner can protect themself. Now some people are
6 concerned about administrative controls and are
7 concerned about grievance. I understand that, and I
8 respect the position. I understand where they're at
9 in their scheme of things with the people who they are
10 representing. But I believe that the time is here
11 that we look at the miner, that we protect them to the
12 best that we can, because hopefully we have. The CPDM
13 being part of that. But recognizing that the concept
14 of that unit was not an environmental control to
15 protect that individual miner. And to give him the
16 latitude and the right to protect himself, whether it
17 be administratively, whether it be through personal
18 protective equipment, whatever the scheme of things
19 might be. But there is a hierarchy that I think
20 should be employed. And I don't think we need to take
21 the old way of approach for the unit that has
22 potential of doing a lot for the protection of our
23 miners. I don't know if I answered your question or
24 not.

25 MR. THAXTON:

1 To some extent, but the additional part
2 is then, given your comments and such as it relates to
3 an individual miner, then you know, who will take the
4 unit and make decisions and try to protect themselves
5 whichever way they can. Then given that fact that
6 you're looking at it from an individual, then would
7 you agree then that your use of CPDM would have to
8 change from what the Agency has proposed to something
9 more like every miner would have to wear the unit all
10 the time in order to be able to do that?

11 MR. BRADY:

12 I think a scheme in that, in what you
13 just said, is reasonable other than all the time. I'm
14 not sure that every miner needs to wear them all the
15 time. But I think that every miner at some point in
16 time needs to wear it, because that device was also
17 designed to train the miner. The concept behind that
18 is to allow the miner not only to see what generated
19 the source --- and we use that. We use our CPDMs in
20 our mine. We put dust technicians with the designated
21 occupation and we show him where you stand has a lot
22 to do with what you're exposed to, if you put yourself
23 in this position where you're not supposed to be, or
24 you put yourself in this position where you're
25 supposed to be. Now, I think every miner in the mine

1 should be wearing a CPDM at some point in time. It
2 should be used as a training mechanism, and I strongly
3 agree that the environmental standard is a standard
4 that you probably are fenced in by the cap. But I
5 think the government's serious about making the health
6 of the miner the single most important issue.

7 MR. THAXTON:

8 Okay. Let's move on to the second area
9 that I had a question about. You made the comment and
10 I smiled. You said that if we go forward with doing a
11 separate intake split for each section, you thus want
12 to require putting down shafts for every MMU. Are you
13 telling me right now that you don't have the air for
14 each section? Because if you're using split
15 ventilation right now, you are actually already
16 providing the quantity of air at the last open
17 crosscut for each MMU; is that correct?

18 MR. BRADY:

19 The way our people are interpreting that
20 regulation is that if you have split ventilation on a
21 section that you've done away with, that you can't
22 take the air to the section and split it for two
23 returns. And you usually do that at some point in the
24 mine, your feeder. That you can't share a common
25 feeder and that you want separate stopping line at

1 every MMU with a separate flow of intake air. Not
2 delivering it to the working section and splitting it
3 on section, but you want a stop --- or the air
4 delivered to keep the air by permanent ventilation
5 controls. And you cost it out that way. You ---.

6 MR. THAXTON:

7 But don't you agree? I mean, if the
8 gentleman that said he had 16 MMUs, that he's not ---
9 it's basically probably maybe eight super sections.
10 But if that's the case, though, all the feeders of his
11 units don't have separate shafts?

12 MR. BRADY:

13 They do not.

14 MR. THAXTON:

15 No. so I mean, the air is still brought
16 into the mine, it can be a million, two million CFM of
17 air brought in a single shaft, single fan. It's
18 distributed throughout the mine. It doesn't
19 necessarily mean that you have to have a separate
20 shaft for each MMU. The distribution of the air
21 throughout the mine may change somewhat, but it's not
22 that you actually have to have the expense of the
23 shaft, a separate shaft.

24 MR. BRADY:

25 But then let me ask you the question,

1 does the current ventilation schemes that are being
2 used both --- the question was raised by Illinois and
3 Indiana --- is the current ventilation scheme --- and
4 you were the district manager for a while and then
5 since. Does the current ventilation scheme used in
6 Indiana comply with this regulation?

7 MR. THAXTON:

8 The current scheme, no, it does not.

9 MR. BRADY:

10 What does it ---?

11 MR. THAXTON:

12 There's change there.

13 MR. BRADY:

14 What needs to be done?

15 MR. THAXTON:

16 It means that there would be a separate
17 intake for each mechanized mining unit, whether they
18 had --- they keep the units as they are now and they
19 keep them as two separate units, then, yes, they would
20 have to have separate intakes. But that is still
21 taking the same amount of air and putting it through
22 entries that are separated.

23 MR. BRADY:

24 Where do the entries come from?

25 MR. THAXTON:

1 I'm sorry?

2 MR. BRADY:

3 Where do the entries come from? You said
4 put it in two separate entries. Some of these mines
5 and super sections have one intake that delivers air
6 and then they have two and they need two for the
7 volume to deliver the air into their section. Where
8 do the extra entries come from? Where does the extra
9 air split? How's it done? Other than doing what your
10 economic analysis has cost out? So you have ---
11 there's our questions. Is that you expect to be
12 separate intakes. And then if there's only one intake
13 or two intakes going to a section, you're expecting,
14 under this rule, for more entries to be driven, more
15 stoppings to be put in, more overcast to be put in,
16 and more shafts to be put in.

17 MR. THAXTON:

18 It does --- the rule actually says for
19 provided by a permanent control, not a temporary
20 control. So yes, we did cost out that you would have
21 to establish a separate, physically separate, intakes
22 for each MMU. It's still up to the mine how they set
23 up and design their mine.

24 MR. BRADY:

25 Absolutely. And the only thing I can say

1 to that, Bob, is that does cost money. And that does
2 cost the engineering feasibility of doing those kinds
3 of things. What documentation do you have that shows
4 that that is essential?

5 MR. THAXTON:

6 The cost and the expense of ---

7 MR. BRADY:

8 No.

9 MR. THAXTON:

10 --- is all in the documents that ---.

11 MR. BRADY:

12 The benefit of it? The benefit of it?

13 MR. THAXTON:

14 The benefits are expressed in the
15 preamble of the rule.

16 MR. BRADY:

17 Okay. I'm sorry.

18 DR. WAGNER:

19 Thanks a lot for your comments.

20 MR. NIEWIADOMSKI:

21 Pat, just to clarify. I think you're
22 advocating that the rule should permit that the
23 standard be enforced as a personal exposure standard
24 instead of environmental. Correct?

25 MR. BRADY:

1 I am saying that we have, for decades,
2 because of the way that the Act is written and how we
3 should interpret that, we have created environmental
4 standards. Okay? I'm saying with the advent of the
5 CPDM, that we should look at whether it should be an
6 individual standard where he can protect himself.

7 MR. NIEWIADOMSKI:

8 Thank you.

9 MR. BRADY:

10 You're welcome.

11 DR. WAGNER:

12 I wanted to go back early on in your
13 remarks. I want to make sure that I understood. Were
14 you supporting the idea of having sampling being done
15 during normal production?

16 MR. BRADY:

17 I think that sampling should be conducted
18 for what the miner's exposed to. I don't think
19 there's a person in here that wants his people exposed
20 to anything that they don't know what they're exposed
21 to. So that the definition of normal production has
22 been kicked around for years. What is normal
23 production? You all come up with a definition of it,
24 normal production. There are things in the production
25 sequence that will affect the definition that the rule

1 imposes. There are mining conditions at times that
2 will affect that 30-day average. Whatever you come up
3 with, Dr. Wagner, there's going to be controversies
4 and there's going to be pros and cons for it. But I
5 think the definition that defines normal production,
6 the best we can get it, is acceptable. And I have to
7 study for normal production that the Act has given us
8 now and implications of it. But any rule should be
9 able to define normal production and what a working
10 shift is.

11 DR. WAGNER:

12 And I hope that, as you said in your
13 written remarks, and in the additional remarks that
14 others from the company will be providing going
15 forward, that you will be as specific as possible on
16 those kinds of issues where you have, you know, ideas
17 about how best amidst the controversy to define things
18 like a normal production shift, what a complete shift
19 for sampling purposes is. How it is that you get an
20 accurate sample of the individual's exposure, ---

21 MR. BRADY:

22 Yes.

23 DR. WAGNER:

24 --- so that we'll be able to do that.

25 MR. BRADY:

1 Yes.

2 DR. WAGNER:

3 I note that you either said or implied
4 that the basis of the proposed rule is the 1995
5 Criteria Document. Yet within the rule, there's the
6 table that lists epidemiology beyond 1995 that was
7 reviewed and consulted in the formation of the rule.
8 I wanted to make sure that you were aware that the
9 examination of the scientific literature, the peer-
10 reviewed scientific literature, didn't stop in 1995.

11 MR. BRADY:

12 I am aware of that. I believe the
13 number's right. There were 38 epidemiological studies
14 that were reported. And I have three sets from ---
15 Murray Energy has three sets of different scientists
16 who have individually taken all those studies and are
17 looking at it, plus the data that we have been given
18 from 1995 on. Someone mentioned a minute ago that we
19 didn't have all the data. The National Mining
20 Association has filed a release for information, one
21 from NIOSH and one from MSHA. And that is medical
22 surveillance data that we feel that you have used,
23 that you are holding back from giving it to us. And
24 that's part of the thing, that's part of the comments
25 that have been made here by saying that we don't have

1 all the data to look at, especially this data that
2 apparently is a little more current that we could use
3 to evaluate what we need to evaluate. And we
4 understand that there's HIPAA regulations that the
5 Agency feels is the reason for it. But we also feel
6 that information can be sanitized where our scientists
7 can be given the data where we can evaluate it and
8 accurately look at it without having any indication of
9 violating any HIPAA laws. And we're going to push
10 that issue. We'll push the issue that we want the
11 data. We've given the letters and we'll push further.
12 We'll push to the extent we can look at it. And
13 that's the simple fact of where we're at with this.

14 DR. WAGNER:

15 And we will look forward to the
16 scientists and economists that you hired and to learn
17 specifically what their critique is as far as the
18 recommendations is for any improvement in the studies
19 and the reviews of the methods and the conclusions
20 that the Agency has drawn. In addition, we'll
21 certainly evaluate any additional information that you
22 or your colleagues are able to provide in order to
23 improve this rule. And I thank you very much.

24 MR. BRADY:

25 Thank you, sir.

1 DR. WAGNER:

2 There are four more people who have
3 signed up in order to be able to present testimony
4 today. My inclination is to just move ahead, because
5 there are a number of people in the room who have
6 travel plans that will be impacted both by the snow
7 and if we have an excessive break for lunch. So
8 unless anybody raises a significant objection, we'll
9 try and get these last four presenters, give them the
10 opportunity that they deserve to be heard by everyone.
11 The next is Tony Wright. If there's anybody who feels
12 the need to leave and come back, nobody's holding you
13 here. But I do want to give everybody the best chance
14 to hear everyone.

15 MR. WRIGHT:

16 I'm Tony Wright, W-R-I-G-H-T. I've been
17 in the mines since 2005. I work for Perry Mine.
18 Spent three years as a mine operator, just about three
19 years. And I know no one with black lung. And I
20 don't see there being a dust problem where we're at,
21 or at our mine, in our area. I mean, I don't want to
22 be penalized by wearing this PDM, because of really
23 other people's errors, other people's carelessness. I
24 think our mine --- at our mines, we have --- our main
25 topic is dust. We try to keep the dust down. We got

1 men that sprays it all day long. They come down to
2 follow through with it and make sure our dust is all
3 right.

4 Now, I'd just like to get to this PDM. I
5 don't want to wear one. They're big, they're heavy.
6 And I'd like to know if any of you all have worn one
7 yet. Is there anybody out here who wore a PDM all
8 shifts? Not very many people have. And I guess I
9 probably wore one probably about 15 times or so. And
10 they're big. You saw the guy's --- you saw the man
11 that was here earlier, you got a light, you got your
12 PDM, you got a spotter, you got a text pager, you got
13 your rescuer, you got a hammer. I mean, I'm a little
14 guy. That takes a whole --- that's a lot of weight on
15 one man to pack around all day. That kind of goes
16 against --- maybe you get so uncomfortable, now you're
17 worried about your belt, you're worried about this
18 cord that if you kink it up, your PDM's done. And the
19 cord is easy to kink up. I mean, now you're worried
20 about that. So what about these cars pulling in here?
21 I'm not worried about them now. Now I'm worried about
22 my belt, worried about the PDM. What about the rocks
23 over my head? I mean, all that goes into play over an
24 uncomfortable piece of equipment. It's really not
25 that well. It's not a real good tool as far as an

1 all-day-accurate tool.

2 I do agree with it being a good learning
3 tool, protecting young miner men, giving them that
4 tool to let him see where he's supposed to stand,
5 where he's not supposed to stand. It'll show you
6 where your dust is, and then go from there. Get
7 yourself into clean air. And I mean, I've learned ---
8 I've used it. I monitored it as well. And now, I can
9 wear it or I can wear my dust mask if it's a little
10 bit more dusty. Sometimes in a crosscut, I put the
11 dust mask on. Maybe like you've got an entry that's
12 kind of dusty on you, most of them are clear, and wear
13 my dust mask in there. I believe in the PPE from
14 blasts to ear plugs, the dust mask, knee pads. I
15 believe that I'm a safe miner. And this PDM is just
16 not a good tool, I don't believe, as far as an all-day
17 everyday tool that you need to wear.

18 And the one percent for an eight hour, we
19 usually work nine. Now I got to drop that down.
20 That's going to cut into money in my pocket really,
21 honestly, and I don't need that. We're worried about
22 the dust being in, but yet, MSHA wants us to rock dust
23 everything. Earlier I tried to rock dust, and I mean,
24 it didn't matter. It didn't go in your cassette, but
25 apparently now that the rock dust is measured. So now

1 you got this thick dust, you're creating more hazard
2 by having that type of dust from being up there at the
3 face. So you're pulling more dust to everybody. And
4 my main thing up here is that I don't want to wear
5 this PDM. And any of your questions --- I'd like to
6 answer any questions of you guys about wearing or the
7 operation of his PDM. I believe I monitor it well,
8 I've watched it from car to car, from place to place
9 all day long. I'd like to hear any questions you all
10 have on it.

11 DR. WAGNER:

12 Thank you very much. Susan?

13 MS. OLINGER:

14 You say you wore it about 15 times? I'm
15 sorry. You say you wore it about 15 times. Was that
16 for the whole shift?

17 MR. WRIGHT:

18 Yes, ma'am.

19 MS. OLINGER:

20 And did they train you on the use of the
21 CPDM?

22 MR. WRIGHT:

23 Yes, ma'am, as far as all the functions
24 that it had. Is that what you're asking?

25 MS. OLINGER:

1 Yes.

2 MR. WRIGHT:

3 Yes, ma'am.

4 MS. OLINGER:

5 And what functions did you find most
6 useful?

7 MR. WRIGHT:

8 The whole tool is useful to some extent.
9 I mean, it can tell you what dust you're in, basically
10 right now, sitting right here, or as Gerome said, or
11 whenever you put it on and your buddy's putting his
12 jacket on beside you. I mean, it can be an asset, but
13 as far as wearing it all day, I see it being more of a
14 hazard than doing you well.

15 MS. OLINGER:

16 Thank you.

17 MR. NIEWIADOMSKI:

18 I wanted to sort of follow up on what you
19 said. You said it can be, you know, but it's not
20 worthwhile wearing it all day. But it's kind of
21 important to remember that we're talking about average
22 concentration over the full shift. That's kind of
23 important to know what's going on so that you can take
24 some corrective action. Why don't you think that it's
25 --- are you interested in knowing what your exposed to

1 at the end of the shift or during the shift, to make
2 sure that you're --- if you're in a dusty area, you
3 can take action?

4 MR. WRIGHT:

5 No, I'm not now. I wore it and I've
6 monitored myself. And I know where my problem areas
7 are and where they're not. That's why I say it's a
8 good learning tool.

9 MR. NIEWIADOMSKI:

10 Okay. But let me ask you this, don't you
11 think things change every day?

12 MR. WRIGHT:

13 Yes.

14 MR. NIEWIADOMSKI:

15 Whatever you saw yesterday that, in fact,
16 was high could be not high today? It changes every
17 day, so it's kind of important to wear something like
18 that that tells you what you're being exposed to every
19 day so you can take action. Not what happened last
20 week and you worry because it may not work this week.
21 The conditions change. You agree that conditions
22 change every shift?

23 MR. WRIGHT:

24 Yeah.

25 MR. NIEWIADOMSKI:

1 The dust conditions also change?

2 MR. WRIGHT:

3 Yeah. But do they change to that far of
4 an extent? Not that I've seen yet.

5 MR. NIEWIADOMSKI:

6 So you don't believe that ---?

7 MR. WRIGHT:

8 I don't believe that they go from a one
9 to a one and a half or from a five to a one and a half
10 all in one day, no.

11 MR. NIEWIADOMSKI:

12 Okay.

13 MR. WRIGHT:

14 I believe it's all in where you stand and
15 how you do your run. You wet down, you do what you're
16 supposed to do with the dust parameter, follow your
17 --- just follow your dust parameter, follow your plan
18 that they set for you. You do that, you're in good
19 hands with your dust.

20 MR. NIEWIADOMSKI:

21 Thanks.

22 MR. THAXTON:

23 I'd just like to follow up a little bit
24 on what you were saying as far as, I believe, in using
25 your personal protective equipment and stuff. But you

1 indicated that you don't wear the respirator all the
2 time. You only use it when you think you have a high
3 dust exposure? Is that correct?

4 MR. WRIGHT:

5 Yeah.

6 MR. THAXTON:

7 Were you trained on how to use the
8 respirator, how to properly use it, how to properly
9 wear it?

10 MR. WRIGHT:

11 No. I mean, I just put it on. Put it on
12 and breathed through it. How hard can it be? But as
13 far as what I'm saying when I think it's dusty ---
14 that's what I'm saying, I know if I'm sitting in
15 behind my curtain where I'm supposed to be and I had
16 my air at 10,000 that I'm supposed to have it at and I
17 go to wet down, every spray is working, my dust
18 parameters are right, then I know I'm in good air, so
19 I don't need it.

20 MR. THAXTON:

21 So I mean, as long as you're --- you
22 understand you're looking at your controls, you're
23 seeing that there's a lot of things that have to work
24 together. And we do encourage people to wear the
25 respirators. I mean, contrary to popular belief. The

1 regulation does not accept them as a control. But we
2 do encourage people to wear them. But we like to ask
3 you wear them properly, so there are some things which
4 could be done when you wear a respirator, the correct
5 way. One is facial hair that affects the respirator's
6 ability. The other thing is being aware to keep it
7 clean and stuff, so that you actually have some ---
8 what worries us is that somebody has a respirator and
9 you just keep laying it somewhere, you get dust inside
10 the respirator, you're really defeating the purpose of
11 the respirator, and it confuses people that you're not
12 getting the protection you think. But it's good that
13 you're looking at not relying on just that as far as
14 looking at your control measures that are provided.
15 And it's true that if you have all of those controls
16 present, then you probably have a good idea of whether
17 you're being protected or not.

18 DR. WAGNER:

19 Thank you very much for your time.

20 MR. WRIGHT:

21 Thank you.

22 DR. WAGNER:

23 Chuck Burggraf.

24 MR. BURGGRAF:

25 Good afternoon.

1 DR. WAGNER:

2 Good afternoon.

3 OFF RECORD DISCUSSION

4 MR. BURGGRAF:

5 I'm Chuck Burggraf, B-U-R-G-G-R-A-F. I'm
6 senior vice president of Peabody Midwest. I
7 appreciate the opportunity to participate in today's
8 hearing regarding the proposed rule lowering the coal
9 mine --- or lowering miners' exposure to respirable
10 coal dust, including continuous personal dust
11 monitors. Peabody does reserve the right to make
12 additional comments at a later public hearing and/or
13 written comments to address this issue and answer some
14 of the questions you may have.

15 We are here today to add a voice of
16 concern to that of the Indiana Coal Council and the
17 Illinois Coal Association and other coal operators in
18 the Illinois basin. We are committed to a safe and
19 healthy environment for our miners, including the
20 elimination of coal workers' pneumoconiosis, CWP. We
21 stand on our performance based on the incidents of CWP
22 in our worker population and respirable dust sampling
23 in District 8. NIOSH data indicates the incidents of
24 CWP among coal miners in the Illinois basin is less
25 than one half of one percent. This is a lower net

1 rate than the general population in the U.S.

2 Much of the success of these results can
3 be attributed to mining practices implemented in the
4 Illinois basin. These include the use of scrubbers on
5 continuous miners, controlling face ventilation,
6 extended cuts, perimeter mining and fishtail
7 ventilation. Yet these mining practices appear to be
8 at risk with these proposed rule changes, despite the
9 lack of empirical data supporting the proposed
10 changes.

11 We have additional concerns, including
12 the use of a single source dust measuring device, the
13 PDM, availability and accuracy, the new sampling
14 methodology and the number of samples to be taken and
15 submitted. We question the estimates of financial
16 impact on the industry and whether it will be --- it
17 will address the targeted health concerns, especially
18 in the region where NIOSH data indicates CWP is not an
19 issue. We support the Indiana Coal Council and the
20 Indiana --- Illinois Coal Association in MSHA --- in
21 urging MSHA to withdraw the ruling in its entirety.
22 Thank you.

23 DR. WAGNER:

24 Thank you very much for your comments.
25 Susan? You note the low incidence of CWP identified

1 by NIOSH in this basin. Have you taken into
2 consideration the other lung diseases that come from
3 exposure to coal mine dust and the impact that they
4 may have on the people?

5 MR. BURGGRAF:

6 No, I'm addressing the CWP incidents.

7 DR. WAGNER:

8 Okay. So yeah, we'll look forward to
9 your additional comments and specific recommendations.
10 Thank you very much. Bill Risinger?

11 MR. RISINGER:

12 Good afternoon.

13 DR. WAGNER:

14 Good afternoon.

15 MR. RISINGER:

16 Bill Risinger, spelled R-I-S-I-N-G-E-R.
17 I started in the coal mine in '03. I've worked at
18 three different mines in western Kentucky. I'm a
19 graduate from Murray State University with a Bachelor
20 of Science degree in civil engineering. I ran a
21 continuous miner for over five years and now I'm
22 section foreman with River View Coal. I also have a
23 son that works at River View Coal, and he's a
24 continuous operator, continuous miner operator. We're
25 both fortunate that we work for a company where dust

1 control is one of our main priorities. I'm currently
2 on the third section that I've helped start up. And
3 each one of these, we been emphasizing the importance
4 of maintaining proper ventilation at all times to our
5 people.

6 And with this new plan, you're asking us
7 to --- you're talking about requiring a miner operator
8 to wear a PDM at all times. Just the weight of this
9 thing, for one person to carry, is a burden. The
10 current device hasn't proven itself to the industry,
11 to us. And with the new standard, there is absolutely
12 no room for error. And what you're asking us to do,
13 the cost and the effort put into collecting these
14 samples is going to be a tremendous feat. I don't see
15 how we're going to be able to achieve that.

16 The dust control today is bigger than it
17 has ever been. The standards that we have in place
18 work in western Kentucky. If someone else has a
19 problem in what you call hot spots, then those
20 problems need to be addressed instead of punishing a
21 company that's in compliance. We maintain, JP said
22 earlier, a 0.66 average. And for us, you know, that's
23 good. That's on a --- based on a five-shift average,
24 of course. But when you have a PDM on every day ---
25 and as we talked about earlier, conditions do change,

1 the weather changes it, it affects the section, how
2 the section's wet down. What you're asking for on a
3 daily basis, if you're not in compliance with the one,
4 what are you going to do, send that guy home? How is
5 he going to pay his bills? It's going to be
6 tremendous feat to achieve a one --- day-in/day-out.

7 So with this --- with the new program,
8 the only real way to eliminate dust --- because we do
9 work in a hazardous workplace, hazardous conditions.
10 Truly the only way that you're ever going to eliminate
11 dust is quit mining coal. And people know about the
12 hazards, they're aware of it. You know, there is
13 going to be some exposure at all times. And I don't
14 see how we're going to be able to achieve this.

15 We're fortunate that we work in an
16 industry where people can make a good living and you
17 have Americans out there that are struggling to make
18 it from paycheck to paycheck. And what we're going to
19 do here is change the way these people live. It's not
20 just reducing black lung, it's --- you're changing
21 their lives with the standard we have in place
22 working. I don't see how we'll ever achieve that.

23 With the PDM also, it has --- just little
24 things can affect it and it's going to affect the
25 lives of individuals. What we do even with --- even

1 with --- excuse me a minute. I got sidetracked. Even
2 with the standards that we have in place that are
3 working, to require these samples on a daily basis is
4 really just going to be a tremendous feat, and I don't
5 understand how we'll ever achieve that.

6 We are implementing a sampling program,
7 but are we truly going after the problem itself? Are
8 we truly trying to eliminate the dust exposure to
9 these folks? It seems like that all we're doing is
10 putting a sampling program in place. And a huge
11 sampling program that's going to require a lot of
12 effort from MSHA, as well as the coal operator. So
13 are we really truly addressing the problem? And
14 that's pretty much all I have.

15 DR. WAGNER:

16 Thank you very much. Susan? The one
17 question that I can ask of you and others who have
18 expressed concern about the amount of sampling, as
19 they provide written comments, is what kind of a
20 sampling program do you feel would be effective in
21 guaranteeing that the exposure to miners is not
22 excessive?

23 MR. RISINGER:

24 The program that we have currently with
25 the five-day average is working. You know, with the

1 PDMS, anything can affect PDM, the weather outside,
2 the humidity. You know, dust from someone's jacket
3 affects it. The current sampling system works. It's
4 showing what our average is. I don't see why we would
5 change that at this point.

6 DR. WAGNER:

7 Thank you. The last person that has
8 signed up to speak is Mark Eslinger.

9 MR. ESLINGER:

10 My name is Mark, M-A-R-K, Eslinger,
11 E-S-L-I-N-G-E-R. I am a general safety manager for
12 Five Star Mining, Incorporated and Black Panther
13 Mining, LLC, also in contact with the Illinois Coal
14 Association and the Indiana Mining Council. I retired
15 from MSHA in 2009 and have 38 years of experience. I
16 appreciate the chance to comment here today. One
17 general comment. This rule is full of acronyms. It
18 makes it very difficult to read it and understand it.
19 Most likely mine operators can understand, but there's
20 a handful in there.

21 The first comment of concern, the
22 designated area. The practice of sampling in
23 designated areas should be stopped. The concern is
24 for dust exposure to the miner and not the
25 concentrations in some areas. A sampling of

1 designated areas is a burden and a cost to mine
2 operators, and it does little to provide indication of
3 what the miner is exposed to. The practice of
4 sampling in designated areas is a cost to both the
5 operator and MSHA and should be discontinued.

6 The under equivalent concentrations under
7 CMPDSU, the ten-hour shift is worked and this proposal
8 requires the concentrations to be multiplied by 600
9 over 480 or 1.5. That's a concentration of 1.0
10 milligrams per cubic meter for ten hours and a
11 concentration of 1.25 milligrams per cubic meter.
12 This exaggerates the dust concentration that the
13 miner's exposed to. The concentrations for shifts
14 longer than eight hours should be the concentration
15 requirement for the dust collected at eight hours. So
16 for a ten-hour, it would be 1.0 when it's collected
17 and it should stay at 1.0. With CPDM, if more than an
18 eight-hour shift is worked, I'm assuming that the same
19 type of T over 480 is used, and I would basically have
20 the same comments that it should be the weight of the
21 sample. If you do the math, if you have four ten-hour
22 shifts, but you work one, you multiply it, it turns
23 into five milligrams for the week. And if you have
24 five eight-hour shifts and accumulated .8, if you had
25 similar work conditions, then you would have five

1 times --- or five times .8 would be 4.0. Actually,
2 the dust that you get for four eights versus the five
3 --- four tens versus five eights would be exactly the
4 same. To me, the multiplication by 1.25 does not make
5 sense.

6 Another thing I do not understand is the
7 creation of multiplying by the number of hours for
8 each shift. You have done this by eight hours times
9 2.0 milligrams to get 16 milligrams per cubic meter.
10 I think if you just counted the amount of weight on
11 the samples, you wouldn't have to worry about the
12 number of hours concerned. So whether you worked 40
13 hours a week, 50 hours a week, 60 hours a week, it
14 would make no difference. To continue to multiply it
15 by the T over 480, you're going to directly affect the
16 length of those shifts that our mines can work.
17 You're actually getting into running the mine when you
18 are saying that you've got do it in this fashion. I
19 think that's a mistake.

20 We've had lots of discussion about 75.332
21 today. I looked at the definition on MMUs, and it
22 says where two or more sets of mining equipment are
23 used in a series of working places within the same
24 working section, and two or more productions are
25 employed, each set of mine equipment shall be

1 identified by a separate MMU. I don't understand how
2 the definition is possible when you have said that
3 75.332 causes you to have separate split of intake air
4 for each individual MMU. So to me there's a conflict
5 between the definition and what you've got proposed in
6 75.332. And to be honest, I didn't understand why you
7 had to have a separate intake for each MMU. I thought
8 you were going after the red light/green light type
9 mining and not running separate intakes.

10 And Bob, you talked about you have to
11 have the same amount of air if you've got the same
12 MMUs, but I think you also forget that you've got a
13 belt air course. And you now have to have two belt
14 air courses. And for your CO system and your air
15 quantities over your place for your diesel part
16 equipment, we have to provide it to each neutral to
17 develop air course. So in essence, more air would be
18 needed to run two MMUs on a separate intake than it
19 would on a single when you split it in by the
20 tailpiece.

21 You're increasing the normal production
22 shift from a 50 percent to 80 percent. I just want to
23 point out that will cause more samples to be
24 designated as it's not, you know, full production,
25 causing more samples to be taken. We've created the

1 term called other designated occupations. And I
2 really think that we need to just sample the miner.
3 We can sample the miner that's assigned to that
4 occupation, but we need to sample the miner and not
5 pass the pump, as we call it. Passing the pump can
6 create errors. It creates problems. So I think we
7 need to sample the individual miner.

8 On quartz, it talks about the MSHA
9 district manager being able to approve a method of the
10 measurement of quartz. So in essence, you've got a
11 rule here that could change when the district manager
12 decides to change the method of analyzing quartz. We
13 need, as operators, miners wherever --- we need to
14 know how you're going to analyze quartz. And as far
15 as I know on a CPDM, I don't know if there is a method
16 to analyze quartz.

17 The weekly accumulated exposure is a new
18 term. Again, it talks about milligram hours per cubic
19 meter. I think you just need to look at weight gain
20 and forget about multiplying by the number of hours
21 and so on and so forth.

22 Again, the miner is the most important
23 thing. And I sat on the other side of that table
24 often, you know, the Federal Mine Safety and Health
25 Act of 1977, Congress declared that the first priority

1 of concern of all coal and other mining industry must
2 be the health and safety of the most precious
3 resource, the miner. And that needs to be of the
4 individual.

5 We now talk about the standard itself.
6 It says the preamble declares on page 64420, middle
7 column, that, quote, the Committee concluded that
8 there is substantial evidence that there's either a
9 significant number of miners that are currently
10 exposed to coal dust at levels well in excess of 2.0
11 milligrams at cubic meter or that the current exposure
12 limit for coal mine dust is insufficiently protective,
13 unquote. I think that MSHA needs to know which of
14 those two is true before the exposure limit is
15 lowered.

16 I worked in District 8 for 38 years. We
17 were criticized for having more trouble weight samples
18 time and time again. And as others have said, and the
19 information that I've watched Mr. Thaxton put on the
20 stage from 2009 shows that District 8 has the lowest
21 incident rate of black lung. It has the incident rate
22 of black lung and yet had the highest number of
23 overweight samples. Then the whole methodology is
24 going out the window here. I mean, how can you have
25 the lowest rate of black lung in the country and yet

1 have the most overweight samples? There's a problem
2 with the methodology here.

3 And then preamble on page 64420, middle
4 column says, quote, the proposed rule does adopt this
5 recommendation. This refers to NIOSH's and the best
6 advice and recommendation to use a single full shift
7 sample to determine compliance. However, the rule
8 uses the single shift excessive concentration to
9 determine compliance. So a single shift sample is
10 used. I think that a single shift sample is unfair to
11 be used to determine compliance. You could have an
12 aberration, you could have rock dust that you get
13 accumulated in your sample. There could be a problem
14 for a day. That one-day problem is not an indication
15 that there's a problem with the respirable dust in the
16 mine atmosphere. Black lung occurs as you collect
17 coal dust in your lungs over a lifetime. A one-day
18 one sample, to me, is not an indication. And that
19 triggers that you have to submit a compliant action
20 plan. Once that compliant action plan goes into
21 effect, you have to resample. Resample. You have to
22 get a new ventilation plan. And I'll talk to you
23 about the plan system in a minute.

24 Another thing, there's a standard for the
25 intake air course. Again, the individual miner is of

1 concern here. Why are we wasting resources sampling
2 intake air courses? It's a burden to MSHA. It's a
3 burden to the mine operator. Again, it's the person.
4 You know, and if you really do think that, you need to
5 look at your distances. 200 feet of the crosscut
6 center is --- 200 feet. You'd have to be in a working
7 place.

8 It talks about under sampling, you know,
9 sampling devices shall be worn or carried directly to
10 and from the MMU or the DA and sampled. The sampling
11 device should be operated should be portal-to-portal.

12 You know, I understand the full shift portal-to-
13 portal, extending the shift, but I really think you
14 need to stay with that person.

15 Designated occupation or designated areas
16 so on and so forth. Again, like I say, you can assign
17 a pump or the instrument to the individual miner.
18 When he goes to lunch, it should go with him. If he
19 goes outby, it should go with him.

20 The preamble on 64423, last column states
21 that, quote, the sampling device must remain with the
22 occupation or DA being sampled during the entire shift
23 to ensure the respirable dust concentration levels are
24 continuing to be monitored. Again, these should go
25 with the miner.

1 Then you want the sampling device
2 switched up for the 13th hour of operation. That
3 necessitates having extra instruments for the CMDPSU
4 (sic), you go through an argument of preamble that
5 says, well, the hours that it can be used go from 8 to
6 11.5 per the manufacturer, but we know that it will go
7 longer. And yet, in other portions of the regulation,
8 you want us to follow the manufacturer's
9 recommendations on instrumentation. So you ignore it
10 here, but you say use it in other locations. You got
11 to be consistent here. Okay? Passing the pump
12 creates problems. And additionally, if a normal mine
13 shift is ten hours and you have problems in your mine
14 and the miner happens to work over 12 hours and what's
15 planned for, that could put that miner and the mine in
16 a non-complaint situation if they did the sample past
17 12 hours. That creates a problem. You have a
18 certified sampler that might be somewhere else and may
19 not know that there was a problem.

20 You're also talking about changing up the
21 CPDM prior to the 13th hour of operation. That's a
22 cost. I mean, that's a lot of instrumentation that
23 you have to have. You have to have backups.

24 And then you want to show --- you want to
25 record the length of each production shift, okay.

1 Again, if you sample, whether it's nine and a half
2 hours, ten hours, ten hours and five minutes, you
3 don't have to worry about the length of the shift.
4 You would reduce the burden of the operator by
5 sampling, you know, from the time you went underground
6 to the time they first come up. You almost have to
7 have a health technician or somebody like that to meet
8 the crew coming out, to record length of time. And it
9 takes variable times sometimes to get up from
10 underground. That could be a problem.

11 You all talked today about training and
12 how good it can be for that person wearing the CPDM.
13 But I just want to make you aware that that's a
14 training burden. It requires certification. That
15 person who is sampling has to be certified. Now, you
16 want to turn around and you also want to train the
17 miner on how it's used. It becomes a lot of training,
18 you know.

19 Certified person, you want to certify a
20 sampler and you want to certify a person for
21 maintenance and calibration. Certification is the
22 burden of the operator. And you want to redo it every
23 three years. I'm a registered engineer. I took the
24 test back in '72 and '76. Technology has changed. I
25 don't have to go get retested. I don't think that a

1 certified person needs to get retested. In fact,
2 because you're certified doesn't make you any more ---
3 not necessarily even better than a non-certified
4 person. I understand what you're trying to do here.
5 But again, you're putting a burden. And MSHA does not
6 have the people. If you look at the health people
7 right now, they can't get the sampling done. They
8 need help from the regular inspectors. They need help
9 from other districts. And yet what kind of people are
10 supposed to go out and administer tests, do the
11 initial training. You know, I'd recommend doing away
12 with the certification. But I really don't think you
13 will do that, but we don't need to retest every two
14 years. And I think you should have one certified
15 person that wants to handle all the duties.

16 The sampling, if a certified person does
17 the sampling, you got to be certified to do the
18 sampling, you got to be certified in maintenance. And
19 also, I'd like to point out that you can do some
20 maintenance as a certified sampler. That's kind of an
21 odd thing. You're mixing roles here. I think it
22 should be one certification. But I figured out that
23 if --- at one of our mines, we're going to have three,
24 hopefully, fishtail units. And you would have to have
25 --- you figure that we're going to have to have three

1 health technicians to take care of the daily counts.
2 And I want to talk about downloading it after. That
3 will be additional two health technicians. It has to
4 be with a miner, has to have papers. Otherwise, he
5 can go underground. The person's going to have to
6 start --- before the shift starts, he's going to have
7 to interface with the next shift with the technician,
8 you know. And you're going to have to take the counts
9 when they come out from underground. The guy that
10 comes on the next shift has to take them off. There
11 has to be at least three. And we only run two
12 production shifts a day. So I'm going to submit
13 information on estimated people and numbers and all
14 that stuff of what --- this is a burden here. And I
15 think that the health technicians, that's always going
16 to see, especially if you're going to go every shift,
17 every day throughout the year. It's a huge, huge
18 burden.

19 It talks a little bit about approved
20 sampling device with maintenance and calibration.
21 Requiring the device to be maintained in, quote,
22 accordance with the manufacturer's instructions,
23 unquote. To give rulemaking by open-ended
24 incorporation. The rule itself could change when the
25 manufacturer changes its requirements. The

1 manufacturer could do this and it would cost more.
2 Okay. And they say that if a different flow rate is
3 recommended by the manufacturer, it would change the
4 amount of dust that would be collected. You know,
5 there could be problems with this open-ended
6 incorporation as per the manufacturer's instructions.

7 CMDPSU devices shall be examined and
8 tested by a certified person within three hours before
9 the start of the shift. And that would change the
10 requirements for MSHA. We never used to do it that
11 way. We used to grab a basket in the morning, go out
12 the door and go on to people. Now, you want the mine
13 operator to do all the testing within three hours
14 prior to the shift. You can't have a live person the
15 night before fix everything up, get everything ready
16 to go, and when they come in, somebody grab up the
17 pumps and put it on the operator.

18 It says that using a CPDM, a certified
19 person in sampling or maintenance and calibration
20 shall follow the examination, testing and setup
21 procedures contained in the approved CPDM performance
22 plan. It appears that MSHA does not know the
23 maintenance and calibration requirements for the CPDM,
24 though it's requiring it to be put in a plan. MSHA
25 District 8 right now cannot handle the plans. When I

1 was there, we couldn't handle the day-to-day
2 ventilation plans. Now you're going to require a CPDM
3 plan. All right? We can't get the plans approved in
4 a timely manner now, and yet you're going to put more
5 burden on MSHA District 8. And other districts that I
6 have talked with in the past when I've met with them
7 have voiced similar concerns. I really don't
8 understand why you're going to have a CPDM plan and a
9 ventilation plan and where the differences are going
10 to be. I mean, I just really don't understand that.

11 And another thing about the CPDM plan, it
12 talks about it shall be reviewed on a non-complaint
13 situation. If we look at it, if I decide it's okay, I
14 don't need --- so I think you're going to get locked
15 in every time there's a violation or a non-compliance
16 that you're going to have to modify that plan.

17 And then there's a caveat --- I don't
18 even know if that can be called a caveat. But there's
19 that number nine in the plan, other information
20 required by the district manager. You're giving him
21 an open-ended checkbook to ask for whatever he wants.
22 And I've been on that side of the fence. Sometimes
23 when you're district manager you want some stuff, he
24 can ask for that stuff. I think if you're going to
25 have a plan, you have to limit exactly what is

1 required to be submitted. It's open-ended stuff.
2 Like I mentioned before, the appeal process is almost
3 nonexistent on it.

4 And also on that plan it says under the
5 proposal, the district manager would not be required
6 to wait until a miner has been exposed to excessive
7 dust prior to determining that a plan is inadequate,
8 unquote. Now, you got a district manager who thinks
9 he can figure out, well, this plan is inadequate. He
10 proved it in the first place. If you haven't been out
11 of compliance, how'd he make that determination? So
12 in other words, he can just say yeah, I want that plan
13 changed, and that's done.

14 Then we got a requirement of three days
15 to submit changes to the mine ventilation plan. Under
16 the CPDM you go out of compliance, you got to take
17 action. You don't download it until the end of the
18 week, you, the operator, may know you'll be out of
19 compliance, or the information is downloaded, the
20 district knows that you got three days to submit it.
21 You're submitting stuff before the district even knows
22 the mine is out of compliance. The time frame up here
23 is really, really difficult for you. And three days
24 when you got three --- all three-day holidays MSHA
25 has, and I love them, you know, you'd be submitting it

1 and there'd be nobody there.

2 I talked about the excessive value ---
3 excessive concentration value. That really puts the
4 mine into jeopardy. Black lung is an average
5 accumulation over time, and if you're using one
6 sample, the limits are very narrow. And one thing,
7 too, when you go out of compliance, it says make
8 approved respiratory equipment available to the
9 affected miners in accordance with 72.700. Now, there
10 you recognize PPE, but you won't let a mine operator
11 use PPE to prevent getting dust in the lungs.

12 You got to have a corrective action plan.
13 Like I said, District 8 cannot process the plans now.
14 I couldn't when I was there. You know, if it's not
15 done in a timely manner --- you're going to have to
16 expand MSHA's workforce, clearly. And the people that
17 are working on the plans can't be hired today. You
18 have to take experienced people with plan approval to
19 do it.

20 And I talked a little bit about, you
21 know, recording corrective actions in a manner that's
22 --- for hazardous conditions required by 75.363. 363
23 is for hazardous conditions found by the mine foreman
24 or by mine official on and on and on. Okay.
25 Hazardous conditions, there's a distinct purpose for

1 that. It's on the books. You know, when you are out
2 of compliance, it has to go on a bulletin board. It's
3 there for everybody to see. And you have to submit
4 modification plans on the bulletin board. All this
5 information is already posted. Now, you're going to
6 be requiring an additional record to be made in the
7 manner of 363. 363, to me, is sacred. Let's not go
8 there with other stuff, okay.

9 Again, talked about sampling using the
10 CPDM, sampling every designated occupation, every
11 production shift is excessive. 100 percent sample.
12 Sampling every shift, every day is not needed to
13 objectively determine how much respirable dust a miner
14 is exposed to. I don't see there is any
15 justification. If you get into statistics, you can
16 get a pretty good idea of what the miner is being
17 exposed to without having to sample every shift every
18 day. I mean, if you really want to go over every
19 shift every day, then I think you should follow the
20 Advisory Committee's recommendation that says the Dust
21 Advisory Committee recommended that MSHA should take
22 full responsibility for compliance sampling as to the
23 number and frequency levels required of both the
24 operator and MSHA to ensure liability with the
25 program. If MSHA can't do it, why are coal operators

1 expected to be able to sample every shift every day?

2 Okay. The other designated occupations,
3 you want the sampling by 14 consecutive days. Mines
4 don't work in consecutive days. I don't really know
5 how you're --- what you're talking about here. I
6 think you're talking about production days. I don't
7 know what they're --- you know, there's some problems
8 there. Probably sampling for five consecutive days
9 would give an accurate indication for the other
10 designated occupations. Again, I think it should be
11 only of the individual themselves.

12 The regulation, unless otherwise directed
13 by the district manager, CPDMs shall be worn by
14 The miner assigned to perform the duties of the DO
15 or ODO. If the district manager can direct
16 otherwise, the rules changes every time the district
17 manager, quote, directs otherwise. To me, this is
18 rulemaking without going through the proper
19 procedures.

20 And then on this ODO, you want to sample
21 shuttle car operators on blowing type face ventilation
22 in the mine. If the shuttle car operates on blowing
23 face ventilation system used for the sampling, then a
24 shuttle car that operates on exhaust type ventilation
25 systems should also be done. When the continuous

1 miner uses a scrubber system, much of the dust
2 generated is scrubbed up by the scrubber and the miner
3 is exposed to much less dust than if the air had not
4 been scrubbed. Using exhaust face ventilation for
5 continuous miners, not using scrubbers, the dust
6 generated will flow downwind. If the shuttle car mine
7 operators run through the air of the downwind side of
8 the miner, they are exposed to high concentrations of
9 respirable dust. Downwind roof bolters would also be
10 exposed to greater respirable dust when you're using
11 miners without scrubbers. To me, if you're going to
12 do it for blowing, you need to do it for exhaust. You
13 need to be fair with the system. Don't penalize
14 blowing type face ventilation systems. Midwest uses
15 it almost exclusively. Again, I think we're being
16 punished for problems that are happening not in our
17 area.

18 Therefore, when valid end-of-shift
19 equivalent concentration meets or exceeds the
20 applicable ECV in 70.2 or weekly accumulative
21 exposure, the weekly permissible accumulated exposure,
22 the operator shall take the following actions before
23 production begins on the next shift. That's
24 impossible, because the next crew is going in before
25 the other crew is coming out. You cannot comply with

1 this regulation. It's impossible. It appears that
2 you want to penalize long-shift mines. Again, it
3 talks about submitting to the district manager.
4 Again, the district manager of District 8 cannot take
5 on approving plans in a timely manner. I couldn't
6 when I was there. The last ten years, I didn't have
7 the people, didn't have the personnel to do it. You
8 know, you've got CPDM plans, corrective action plans,
9 ventilation plans. It's not justified.

10 Then there is this thing about if you
11 cannot maintain compliance with the lower limits, you
12 can submit to the district manager a request for a
13 period not to exceed months, but can go up to 24
14 months. You know, if that's the case, why can't you
15 do it at all times? You know, if you're going to let
16 them do it for 24 months, why can't you go past 24
17 months? If you're going to allow administrative
18 control for rotating out for those six months up to 24
19 months, why can't you do it otherwise?

20 And it talks about using the CPDM,
21 designated mine official shall validate, certify and
22 transmit electronically to MSHA within 12 hours after
23 the end of the last sampling shift of the workweek.
24 Validating and certifying and transmitting within 12
25 hours is quite a time frame. And if they do it, who's

1 there to get it? I mean, are MSHA people going to sit
2 there on a Saturday or a Sunday and look at it? I
3 don't know why it couldn't be by 6:00 a.m. on Monday
4 morning or 8:00 a.m. on Monday morning. I mean,
5 what's the need for such a tight time frame.

6 70.211 (sic) says MSHA shall provide
7 operator a report with the following data on
8 respirable dust samples submitted in accordance with
9 this part. Is this a regulation for MSHA?

10 Within one hour after the end of a
11 sampling shift, the daily end-of-the-day shift
12 sampling results of the monitored occupation, DA, if
13 applicable, shall be posted. You know, this is going
14 to require more people to be hired. You're talking to
15 add additional people to be hired. And like I said,
16 I'll talk about estimated people in a moment. And
17 there's another one about within two hours at the end
18 of a sampling shift. Again, that is overly
19 restrictive.

20 I've basically gone through Part 70 and
21 Part 71. I have comments that would be very similar.
22 And I talked a little bit about 75.362 or 332. In
23 discussing with the Indiana Coal Council, I didn't
24 think there was --- you know, fishtailing, this is
25 done in Indiana and Illinois. Air splits for the

1 protection of the tailgate. The air is split on the
2 unit. Each miner would be protected by the intake
3 air. If it's not for the one miner, it's for the
4 other miner. And operators have been going to that
5 system for dust control. And have pushed that way
6 when I was in District 8, that's the way things were
7 going. We never fishtailed air in the '70 and '80s.
8 I can't say never, but in general it was a single
9 split, one miner. Then we put two miners on there. I
10 was part of the Regulatory Committee that said, you
11 know, simultaneously mining on a single split cannot
12 be done. We had problems with the air of one miner
13 going over to the other miner, the dust, the gas. So
14 now they went to fishtail and now you're trying to
15 push fishtail out the window. I guess I'm
16 flabbergasted that that's being done.

17 I've got comments after comments, but I
18 wanted to hit the high points when I gave you my
19 comments. And that's all I have. Thank you.

20 DR. WAGNER:

21 Thank you very much. Susan?

22 MS. OLINGER:

23 I just wanted --- sorry. I just wanted
24 to clarify that you mentioned when you've exceeded the
25 standard, that PPEs have to be provided and why aren't

1 they provided all the time, if I understood?

2 MR. ESLINGER:

3 I know that we make them available all
4 the time. I'm saying it's like you recognize to use
5 the personal protective equipment ---

6 MS. OLINGER:

7 On a temporary basis?

8 MR. ESLINGER:

9 --- on temporary basis. If you're going
10 to do it on a temporary basis, you got to do it on a
11 full-time basis. Okay. And I know from the Act, it
12 has to be the environment and not to use the PPE. But
13 in here you're putting in there, it says okay, make it
14 available and it's like encouraging to use it, but you
15 can't use it to say, hey, I want to get away from the
16 dust so I use it and therefore I can become compliant.

17 MS. OLINGER:

18 Okay. Just so you understand that it's
19 for a temporary basis for the dust levels that are
20 right now. The other thing you expressed concern
21 about is the redefinition of normal production shifts.
22 And as you know, right now, it's 50 percent of the
23 last five valid samples. And the redefinition would
24 make it the average for the last 30 production shifts.
25 And you thought that that might make it difficult ---.

1 MR. ESLINGER:

2 I guess I'm saying it increases the
3 burden, because you're now having to track more
4 production shifts. And I realize that almost
5 everybody tracks production. And if you go to 80
6 percent, then you're doing samples that aren't even
7 needed. I'm trying to point out the fact of mining.

8 MS. OLINGER:

9 Okay. I just wanted to point out in the
10 preamble on 64418 it does discuss that if there were
11 unique mining conditions encountered, that could be
12 --- the average normal production could be adjusted
13 when you talk to a district manager. There is
14 something in the preamble that addresses that. Thank
15 you.

16 MR. ESLINGER:

17 Okay.

18 MR. NIEWIADOMSKI:

19 Mark, the production requirement, you
20 know, that certainly applies where were using the
21 conventional sampler, but becomes a moot point where
22 we use the CPDM as you're sampling every day. So
23 whatever the production is ---.

24 MR. ESLINGER:

25 So why require all the records and all

1 that kind of stuff? I mean, if you're going to sample
2 --- and I'm --- I encourage you to --- whatever the
3 length the shift is and that's the weight gain.
4 That's what it is. You don't have to worry about the
5 length of shift, whether you're working eight hours.
6 And another thing you do is, if you work a short
7 shift, and it's a high-concentration count, if it's
8 less than, you know, going over the limit, you don't
9 count it. You penalize an operator --- if you have a
10 six-hour shift, he has to go over. But if he works
11 six hours shift and he's under, then you give him
12 credit. I mean, that's not a fair system.

13 MR. NIEWIADOMSKI:

14 The issue about PPEs, what we have in the
15 proposal, which is make them available when you exceed
16 the standard. It's not a new requirement. Okay.
17 That's been in place since 1970 is what I want to
18 point out. That's it's always been the requirement
19 whenever you're in violation, you make them available.
20 So we're not introducing anything new. Okay?

21 The other thing you mentioned about
22 quartz, one of the things I want to point out is that
23 the analytical method, okay, the district manager has
24 nothing to do with saying anything about the
25 analytical method. Okay? What the rule says, that

1 if, in fact, there are changes in analytical methods,
2 new equipment and so forth, more accurate methods,
3 that MSHA can, in fact, adopt it. Okay? But that ---
4 but it's the Agency to make the decision. The
5 district manager doesn't have anything to do with how
6 quartz is analyzed? Okay?

7 MR. ESLINGER:

8 That says the district manager.

9 MR. NIEWIADOMSKI:

10 No, there's nothing in here that says the
11 district manager.

12 MR. ESLINGER:

13 If there isn't, I stand corrected. But I
14 was reading from the comments that I had. And I don't
15 like this where the district manager can basically
16 change the rule down the road, okay, or the
17 manufacturer's recommendations, whatever. And there's
18 a flow rate and it talks about 2.2 liters in one
19 instance. And right now the rate they're pumping is
20 at 2.0 liters. Correct?

21 MR. NIEWIADOMSKI:

22 That's correct.

23 MR. ESLINGER:

24 And you're going to change it to 2.2?

25 MR. NIEWIADOMSKI:

1 Yes. The conventional --- the sampler
2 has been approved. The current sampler that
3 everybody's been using in the past since 1970 is
4 permitted. It's been approved. The CPDM is at 2.2
5 liters per minute. The manufacturer can't just
6 arbitrarily say, well, I'm going to make it 2.5 right
7 now. Okay? Because it's approved as 2.2, it has to
8 go through the approval process through NIOSH and
9 through MSHA to change the flows. So when we talk
10 about manufacturers, it is the maintenance
11 requirements. Okay? Rather than us spell out certain
12 things, it's the manufacturer's. And its manual is
13 going to define all the things that need to be
14 maintained, the checks that needs to be made. Because
15 those can change, but as far as flow rates, whatever,
16 no, it's locked in basically. That's how the system
17 was approved.

18 MR. ESLINGER:

19 But if the manufacturer should say you
20 have to replace the instrument every year or parts of
21 it every year, then you have to do that. He changed
22 his recommendation, you're stuck. The operator is
23 stuck. To me, it's open-ended incorporated. I said
24 that when I was with MSHA, and I'm going to say it
25 today, I don't like it's in accordance with the

1 manufacturer's recommendations, because those
2 recommendations can change. And when the district
3 manager may require, you know, additional information
4 or he may change, dah, dah, dah, that creates a
5 problem.

6 MR. NIEWIADOMSKI:

7 Well, Mark, thanks. I don't have any
8 further questions.

9 MR. THAXTON:

10 Mark, there's not a lot of questions I
11 can ask you, but I can help clarify some things. You
12 said it during your comments and you also used it when
13 you were answering the question from Susan, that
14 normal production is going to from 50 percent and
15 we're going to the average of the 30 shifts. You said
16 80 percent. Eighty (80) percent is what MSHA uses
17 currently right now. The regulation doesn't reduce
18 the 80 percent. It's the average of the 30 shifts, so
19 it's not 80 percent. So that when you make your
20 comments and submit them, there should --- you
21 actually realize that it is the average of the 30
22 shifts and not 80 percent of it.

23 The other thing is in relation to your
24 comments on page 64420 of the preamble, you were
25 indicating that the Committee said not --- you know,

1 made the recommendation that --- you said we weren't
2 adopting that recommendation, obviously in relation to
3 one area. That recommendation was that we make no ---
4 it's NIOSH's recommendation that we make no upward
5 adjustment to the standard to account for the
6 measurement uncertainty. The Agency did not adopt
7 that. We did adopt the upward adjustment, that's why
8 we have the ECV values. So the ECV values actually
9 allow as essentially the single sample where we had
10 before that you --- when you were with us, is that if
11 your rate's two milligrams, we don't stop until we get
12 to 2.23. So that is --- we did not address it. We
13 did not adopt the recommendation to cite at 2.0
14 anything above that. We did adopt the upward
15 adjustment, so that's what that is in relation to.
16 And that comments so that way --- like I said again,
17 when you're submitting your comments, that we get your
18 comments in relation areas that were actually
19 addressed.

20 Lastly is your comment on the three-hour
21 check for the pumps. That's been in existence since
22 the '80s. That policy interpretation is presented by
23 the Solicitors, because the current regulation says
24 that immediately prior to the shift. We gave the
25 opportunity for the mine operators to define

1 immediately to no more than three hours instead of
2 making it immediately prior to the shift. You're
3 right that does not apply to MSHA, because the
4 regulations don't regulate the Agency. We do use
5 slightly different procedures, but that's something we
6 have. Other than that, you know, I make those comments
7 just so that when you're submitting your comments,
8 that they are representative of really what's in the
9 proposal that is proposed before us.

10 DR. WAGNER:

11 First, I want to express my appreciation
12 of the specificity of your comments and we'll look
13 forward to seeing them in their entirety. And thank
14 you very much for your time this afternoon. I want to
15 ask now, whether there are any additional people who
16 may not have signed up originally, who have decided
17 that they want to speak? Please?

18 MR. FRITZ:

19 My name is Gary Fritz. That's F-R-I-T-Z.
20 I am a third generation coal miner. I've spent over a
21 decade in coal mines mining in Indiana. I am also a
22 trained mine inspector at the Beckley Academy. I
23 completed that course there as well as mine accident
24 investigation. In the course --- after finishing
25 those courses, I have inspected mines in Alabama,

1 Kentucky, Illinois and Indiana and done accident
2 investigations in Indiana. I am here today, not at
3 the employment of any coal companies, any coal
4 associations, or any other organizations connected
5 with the coal industry. I feel that's important to
6 make that differentiation since I think most everybody
7 that spoke before me has.

8 I don't have any problem with the
9 lowering of the requirement for the dust sampling. My
10 concerns are about the dust sampling in general. Over
11 the course of my experience, I have seen the dust
12 pumps left in the break room, put in dinner buckets,
13 covered up. I have seen MSHA inspectors come on the
14 property and put the pumps on workers, and then that
15 worker moved to a less dusty environment. Sprinkler
16 systems that have not been in use, all of a sudden
17 were turned on to make sure that the results of that
18 dust pump was in compliance. This wasn't always at
19 --- management wasn't the only person guilty here,
20 because it was explained to the miner if the pump came
21 back out of compliance, then you were going to have to
22 wear that pump for an extended period of time. So
23 there was an incentive basically to go along with all
24 of this and don't say anything to anybody. And of
25 course, then this doesn't address the cassettes, which

1 were very easily tampered with. Basically the custody
2 of those cassettes is to what the result was, which I
3 think that's pretty well-established. Those cassettes
4 were not --- were very easily tampered with and the
5 results therefore.

6 I find it very interesting with the
7 comments made by the coal industry, considering this
8 is the industry that used to claim that coal dust was
9 good for you. Matter of fact, coal dust was healthy
10 for you. And now, all of a sudden, we've got this
11 industry saying, well, there's no problems with dust.
12 We've almost eliminated this as a problem. Matter of
13 fact, statistic-wide, if things keep going at the
14 present rate, eventually coal mine air is going to be
15 cleaner than the air outside. If you got lung
16 problems, you should get a job at the coal mine.

17 Now, the issue that there's nobody around
18 with black lung. Coal industry's been very effective
19 in lobbying, so that to prove that you have black
20 lung, most doctors honestly will tell you that the
21 only way to prove you got black lung is an autopsy. I
22 had an uncle that worked in the coal industry here in
23 Indiana, died in the late '60s. He was applying for
24 black lung. He was turned down. The doctor basically
25 said we can't prove it under the present guidelines

1 that he has black lung. Well, guess what? After he
2 dies, his death certificate says he died of black
3 lung. Coal country.

4 In 2002, I went into the doctor for an
5 examination for what I thought was a bad cold, chest
6 cold. The doctor --- this was in Alexandria,
7 Virginia. The doctor came out and said if you ever
8 worked --- after an x-ray, have you ever worked in a
9 coal mine? And I said yes. He said you have the
10 beginnings of black lung. So if anybody wants to know
11 about black lung in Indiana, yes, it does exist. And
12 there is people that have it. I'm available to any of
13 your questions.

14 DR. WAGNER:

15 Thank you very much. Susan? I
16 appreciate your speaking with us today. Thank you.
17 Are there any other individuals who would like to come
18 forward and make a statement at this point? Seeing
19 none, it appears that nobody else wishes to make a
20 presentation. And again, I want to say that the Mine
21 Safety and Health Administration appreciates
22 everyone's participation at this public hearing and
23 everyone who had made a presentation, as well as those
24 of you who haven't presented, but have a continuing
25 interest in this rulemaking. I want to emphasize that

1 all comments must be received or postmarked by May
2 2nd, 2011, all written comments that anybody wants to
3 present to the Agency for consideration under this
4 rulemaking. MSHA will take your comments and your
5 concerns into consideration in developing the Agency's
6 final rule. I want to encourage all of you to
7 continue to participate throughout the rulemaking
8 process. This hearing is concluded. Thank you very
9 much. Safe travels.

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11 HEARING CONCLUDED AT 2:00 P.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

A handwritten signature in black ink, consisting of a stylized initial 'b' followed by a horizontal line that tapers to the right.