

U.S. DEPARTMENT OF LABOR

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MINE SAFETY AND HEALTH ADMINISTRATION

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DIESEL PARTICULATE MATTER EXPOSURE
OF UNDERGROUND METAL AND NONMETAL MINES

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PUBLIC HEARING

+ + + + +

THURSDAY
SEPTEMBER 18, 2003

+ + + + +

ST. LOUIS, MISSOURI

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The Public Meeting was held at the Renaissance
St. Louis Airport Hotel, 9801 Natural Bridge Road, St.
Louis, Missouri, at 9:00 a.m.

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

(9:00 a.m.)

1 MS. SMITH: Good morning. My name is
2 Becky Smith. I'm the Deputy Director of MSHA's Office
3 of Standards, Regulations and Variances. And on
4 behalf of Dave Lauriski, the Assistant Secretary of
5 Labor for Mine Safety and Health, I would like to
6 welcome all of here this morning.
7

8 The purpose of this hearing is to obtain
9 input from the public on the proposed rule published
10 in the Federal Register on August the 14th, 2003,
11 addressing diesel particulate matter exposure of
12 underground metal and nonmetal miners.
13

14 I would like to introduce to you the panel
15 members who are with me here today. On my left is Jim
16 Petrie. Jim is the Chairman of the Diesel Particulate
17 Committee, and is from MSHA's Metal and Nonmetal
18 Northeastern District. Doris Cash is from MSHA's
19 Metal and Nonmetal Organization. John Kogut is from
20 MSHA's Office of Program Evaluation and Information
21 Resources. On my right is Deborah Green. Deborah's
22 from the Solicitor's Office for Mine Safety and
23 Health. And George Saseen is from MSHA's Technical
24 Support Organization. There are other MSHA staff
25 members with us here today, who might participate with

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1 questions later on in the hearing.

2 This hearing is being held in accordance
3 with Section 101 of the Federal Mine and Safety and
4 Health Act of 1997. As is the practice of this
5 Agency, formal rules of evidence will not apply.
6 Therefore, cross examination of the Hearing Panel will
7 not be allowed, but the Panel may explain and clarify
8 provisions of the proposed rule.

9 As Moderator of this Public Hearing, I
10 reserve the right to limit the amount of time each
11 speaker is given, as well as questions of the Hearing
12 Panel. Those of you who have notified MSHA in advance
13 of your intent to speak, will be allowed to make your
14 presentations first. I will call speakers in the
15 order that requests were made, and following these
16 presentations others who request an opportunity to
17 speak will be allowed to do so. We allow all
18 interested parties to present their views at this
19 hearing, and if you wish to speak, please sign in at
20 the registration table. We will remain in session
21 today, until everyone who desires to speak has an
22 opportunity to do so. Also, if you are not signing up
23 to speak today, we would like for you to sign the
24 general sign-in sheet, so that we have an accurate
25 record of attendance at today's hearing.

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1 We will accept written comments and data
2 at this hearing, from any interested party, including
3 those that are not speaking at the hearing. When I
4 call on you to speak, please come to the speaker's
5 table and begin your presentation by identifying
6 yourself and your affiliation, for the record. If you
7 have a prepared statement or any supporting document
8 for the record, please leave a copy with us. You can
9 give written comments on this hearing to us today, or
10 you can send them to MSHA's Office of Standards
11 electronically by facsimile, by regular mail or hand-
12 delivery, using the address information listed in the
13 Hearing Notice.

14 In addition to this hearing today, there
15 was a hearing in Salt Lake City, Utah, on September
16 the 16th. And there will be two other hearings, in
17 Pittsburgh, Pennsylvania on September the 23rd, and in
18 Arlington, Virginia on October the 7th. The post-
19 hearing comment period will end on October 14th, and
20 submissions must be received on or before that date.

21 A verbatim transcript of this hearing will
22 be made as part of the record, and it will be posted
23 on MSHA's web site. If you would like a copy sooner,
24 you can make your arrangements with the court
25 reporter; that information is available at the

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1 registration table. We will take a lunch break around
2 mid-day, and short breaks during the morning and
3 afternoon, as needed.

4 Before we begin, I would like to give you
5 some background information on the proposed rule we
6 are addressing today.

7 On January the 19th, 2001, MSHA published
8 the Final Rule addressing the health hazards to
9 underground metal and nonmetal miners from exposure to
10 diesel particulate matter. The rule establishing new
11 health standards for underground metal and nonmetal
12 miners, by requiring use of approved equipment and low
13 sulfur fuel, and by setting an interim and final
14 concentration limit for diesel particulate matter in
15 the underground mining environment.

16 MSHA established staggered effective dates
17 for enforcement of the concentration limits. The
18 interim concentration limit of 400 micrograms per
19 cubic meter of air of total carbon, was to become
20 effective on July 20, 2002. The final concentration
21 limit of 160 micrograms per cubic meter of air total
22 carbon was scheduled to become effective January 20,
23 2006.

24 On January 29, 2001, several mining trade
25 associations and individual mine operators challenged

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1 the final rule, and the United Steel Workers of
2 America intervened in the case, which is now pending
3 in the District of Columbia Circuit.

4 On July 5, 2001, as a result of Phase I
5 Settlement Negotiations, MSHA published two notices in
6 the Federal Register. One notice delayed the
7 effective date of Section 57.5066(b), related to
8 tagging requirements of the maintenance standard. The
9 second notice proposed a rule to make limited
10 revisions to Section 57.5066(b), and added a new
11 paragraph to Section 57.5067(b), regarding the
12 definition of introduced in the engine standard. The
13 Final Rule was published on February 27, 2002.

14 Phase II of the Settlement Agreement was
15 reached in June 2002. Under the agreement the interim
16 concentration limit became effective on July 20, 2002,
17 without further legal challenge. Mine operators had
18 one year to develop and implement good faith
19 compliance strategies to meet the interim
20 concentration limit. MSHA agreed to conduct
21 compliance assistance during the one year period.
22 MSHA also agreed to reenter rule- making on several
23 other disputed provisions of the 2001 Rule. The legal
24 challenge to the rule has been stayed, pending
25 completion of the additional rule-makings.

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1 On September the 25th, 2002, MSHA
2 published an Advanced Notice of Proposed Rule-Making.
3 MSHA noted in the Advanced Notice that the scope of
4 the rule-making is limited to the terms of the
5 Settlement Agreement and addresses MSHA's intent to
6 re-propose the interim and final concentration limits.

7 On July 20, 2003, MSHA began enforcing the
8 interim final limit of 400 micrograms. The Agency's
9 Enforcement Policy is also based on the terms of the
10 Settlement Agreement, and was discussed with the
11 litigants and stakeholders on July 17, 2003. The
12 Enforcement Policy is written into the Compliance
13 Guide and both the Compliance Guide and a Program
14 Policy Letter are posted on MSHA's web site on the
15 sole source page for diesel particulate matter.

16 On August the 14th, 2003, MSHA published
17 its proposed rule, which would accomplish four things.

18 (1). Revise the interim concentration
19 limit measured by total carbon, to a comparable,
20 permissible exposure limit measured by elemental
21 carbon, which renders a more accurate diesel
22 particulate matter exposure measurement.

23 (2). Increase flexibility of compliance
24 by requiring MSHA's longstanding hierarchy of controls
25 at metal and nonmetal mines, but prohibit rotation of

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1 miners for compliance.

2 (3). Allow MSHA to consider economic, as
3 well as technological feasibility in determining if
4 operators qualify for an extension of time in which to
5 meet the diesel particulate matter limits.

6 And fourth, simplify requirements for
7 diesel particulate matter control plan.

8 Jim Petrie now, who as I mentioned, is the
9 Chairman of the Diesel Particulate Committee, will
10 give us an overview of the proposed rule, and
11 afterwards I will begin calling speakers.

12 MR. PETRIE: I am going to stand up and
13 do this. I've got to wake up my computer, first, it's
14 asleep here.

15 This is just a brief summary of the rule.
16 It compares the requirements in the existing rule,
17 with those that we are proposing to change. There's
18 only about ten slides total, so it will go pretty
19 quick. But, if you have any questions as I go through
20 this, just speak up and ask them, and I will be glad
21 to clarify any of the proposal requirements.

22 These are the sections in the existing
23 rule that the proposal addresses. It's the interim
24 limit, the special extension, or the extension of time
25 requirements, exception to the diesel particulate

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1 limits. What that is, in the existing rule there is
2 a Section 5060(d), that allows or requires the use of
3 respirators under certain circumstances, when
4 performing maintenance inspection repair activities.
5 Section 5060(e), which prohibits personal protective
6 equipment, except under 5060(d). And then, the
7 prohibition on the administrative controls and the
8 control plan requirements.

9 Under the interim limit the existing rule
10 is based on a 400 micrograms per cubic meter limit.
11 We are proposing to change that to 308 micrograms per
12 cubic meter. And that is derived from taking the 400
13 and dividing it by 1.3. The 1.3 was a factor that
14 came out of the Settlement Agreement. In addition, we
15 would be applying error factor of 1.12 to that. So we
16 wouldn't take enforcement action unless the
17 concentrations were above the error factor, times the
18 proposed limit.

19 The existing rule was based on a total
20 carbon surrogate. The proposal will change that to an
21 elemental carbon surrogate. The existing rule is also
22 based on a concentration limit, and we're proposing to
23 change that from an environmental or concentration
24 limit, to a personal exposure.

25 The final limit is not addressed in the

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1 proposal. The Agency feels it needs more time before
2 it can address any possible revisions to the final
3 limit. And that will be addressed under separate
4 rule-making.

5 The special extension requirements, or the
6 extension of time requirements under the existing
7 rule, that would apply only to the final limit. Under
8 the proposal we would apply that both to the interim
9 and the final limit. Under the existing rule it can
10 only be considered, -- you can only consider
11 technological constraints. Under the proposal we
12 would allow consideration of both economic and
13 technical constraints. The existing rule limits the
14 number of extensions to one, of not more than two
15 years in duration. And we would propose to change
16 that to no limit on the number of extensions, but they
17 would have to be renewed each year.

18 We wanted to go into a little more detail
19 on some of the control requirements. Under the
20 existing rule operators would have to require to use
21 engineering controls or work practice controls to come
22 into compliance, with the exception that rotation of
23 miners would not be allowed. Operators would also
24 have to obtain approval under the existing rule,
25 before using personal protective equipment or

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1 respirators for maintenance inspection repair
2 activities. When respiratory protection is used, it
3 would have to meet the requirements of MSHA's metal,
4 nonmetal existing air quality standards, which
5 incorporate ANSI Z88.2, 1969 by reference.

6 The proposal, it's very similar. It's
7 mainly a difference in semantics. But under the
8 proposal operators would be required to use feasible
9 administration and engineering controls. There would
10 still be a prohibition on rotation of miners. You
11 would be required to use personal protective equipment
12 or respirators, if controls are unfeasible. The
13 Respiratory Protection Program requirements would be
14 based on MSHA's existing air quality standards. And
15 the only addition to the respirator requirements would
16 be that the proposal specifies the types of filters
17 that could be used.

18 On rotation of miners, to elaborate a
19 little bit more on that, the existing rule, as I've
20 said, prohibits the use administrative controls, but
21 it uniquely defines administrative controls as
22 rotation of miners. So, any other type of work
23 crafting controls would be allowed under the existing
24 rule, such as changes in the length of shift,
25 restrictions on engine idling, any type of

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1 administrative control requirements, other than
2 rotation of miners, would be permitted under the
3 existing rule. The proposal is similar. The proposal
4 would still prohibit rotation of workers, but allow
5 any other administrative controls to be used.

6 The proposal does not include any
7 provisions on medical evaluation of respirator wearers
8 or transfer of miners that cannot wear respirators.
9 But we're asking for comments during these hearings in
10 regards to those particular issues.

11 On the Diesel Particulate Matter Control
12 Plan, under the existing rule it's triggered by a
13 single violation. It requires verification
14 monitoring, and it would be in effect for three years
15 from the date of the violation. The proposed rule
16 would require that controlled plan be triggered if the
17 mine is not in compliance within ninety days of the
18 citation. There is no specific verification
19 monitoring, and it would have to remain in effect for
20 one year after the citation is terminated.

21 And lastly, there are conforming changes
22 in other sections of the rule. For example, there is
23 another provision in the rule that talks about
24 concentration limits. A conforming change would be
25 changing it from concentration to personal exposure.

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1 And similarly, another section of the rule talks about
2 total carbon is a surrogate that would make a
3 confirming change to use elemental carbons. So, there
4 is some minor conforming changes throughout other
5 sections of the rule.

6 And then MSHA does have its Compliance
7 Guide and Program Policy Letter on its web site under
8 the dpm single source page, along with a host of other
9 information on diesel particulate regulations,
10 control, filters, a whole host of issues. Any
11 questions?

12 *(No Verbal Response)*

13 MS. SMITH: Thank you, Jim. We had a
14 previous request to speak today, from a representative
15 of the Marg Group. Is there anyone here today from
16 that organization?

17 *(No Verbal Response)*

18 MS. SMITH: All right. Then our first
19 speaker signed up today is Ed Elliott.

20 **ED ELLIOTT - DIRECTOR OF SAFETY & HEALTH**

21 **FOR THE ROGERS GROUP**

22 MR. ELLIOTT: I suppose you want me to
23 sit here?

24 MS. SMITH: Good morning. You may.

25 MR. ELLIOTT: There's nothing attached

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1 electrically or anything?

2 (Laughter)

3 MS. SMITH: Not that we'll tell you
4 about.

5 (Laughter)

6 MR. ELLIOTT: That's what worries me.
7 Thank you. I'll try to make this quick.

8 MS. SMITH: Good morning.

9 MR. ELLIOTT: Good morning. Thank you
10 for the opportunity to present comments on the
11 proposed Dpm Rule. My name is Ed Elliott, and I am
12 Director of Safety and Health for Rogers Group,
13 Incorporated. We are the largest privately held stone
14 producer in the United States, and the seventh largest
15 producer overall.

16 First and foremost, let me say we support
17 protecting miners from over exposure to dpm.
18 Developing guidelines or rules governing exposure must
19 be based on sound science, and also done in such a way
20 that there is widespread confidence in the process
21 used to do so.

22 On January 19, 2001, a final rule was
23 released on dpm. In my estimation, this rule was
24 rushed out because it was realized that it would never
25 stand on its merits, based on objective scientific

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1 review. Numerous points support this view.

2 (1). A NIOSH/NCI Study was commissioned
3 to research possible health effect of dpm and is not
4 yet complete. Second, confounding factors such as oil
5 mist, cigarette smoke, et cetera, were not fully
6 considered. (3). Sampling procedures and equipment
7 had not had sufficient testing. (4). Analysis
8 procedures were not thoroughly developed, nor had they
9 been proven accurate. Economic feasibility was not
10 accurately considered when taking into account the
11 real world application of the recommended technology,
12 or the practical use of associated methods to reduce
13 dpm. There are other shortcomings, but these
14 demonstrate my point.

15 Another aspect of the process that
16 concerns me not only as a miner, but as a taxpayer, is
17 the fact that there appears to have been little or no
18 coordination between Government agencies. In
19 particular, the EPA has done extensive work on the dpm
20 issue. This rule will, in my estimation, is not
21 already, result in duplicative efforts and possible
22 conflicting results.

23 In addition, it appears that NIOSH is now
24 undertaking research on dpm that should have been done
25 prior to the January 19, 2001 rule. The question begs

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1 asking, is the current research looking to justify a
2 flawed rule, or are they truly seeking the
3 scientifically valid answers?

4 Speaking of science, I would like to make
5 comment on the scientific studies I have read
6 concerning the health effects of dpm. First, I want
7 to emphasize I am not a scientist nor a professional
8 researcher. But through my education and training I
9 am able to understand the process and interpret
10 results. I have read many studies on dpm and the
11 related health effects, and I could, if I wanted,
12 select a study that supported opposing points of view.
13 In determining the scientifically valid position on
14 the health effects of dpm, it appears to me that
15 there's no consensus on this point. Even though I
16 might cite a valid study that would refute the need
17 for this regulation, I recognize that there are
18 studies that point to a need for exposure limits. For
19 this reason is it clear we need more research to
20 accurately determine both short and long-term health
21 effects, if any.

22 MSHA is in somewhat of a quandary, in that
23 they are not a research agency, and must rely on
24 others to provide information that guides their rule-
25 making, they have highly qualified personnel within

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1 the Agency who review research and make
2 recommendations.

3 In the case of the Dpm Rule one important
4 aspect of the January 19, 2001 rule may have been
5 influenced by a clear conflict of interest on the part
6 of a MSHA staff member. This staff member was
7 directly involved in the writing of the Dpm Rule, yet
8 at the same time, was on the ACGIH Committee
9 responsible for recommending the dpm threshold limit
10 value of 160. This alone, casts a shadow over the
11 process. Government must have the trust of the people
12 that it will do what is right regardless of personal
13 beliefs, and will maintain the highest level of
14 objectivity.

15 Now I would like to comment on the
16 specifics of the proposed rule. We support the use of
17 elemental carbon as the measurement criteria for dpm,
18 and in principle, support the 308 equivalent, if that
19 is the correct calculation formula. The option of
20 requesting additional time to come into compliance
21 through application for a special extension, is fair
22 and appropriate. The requirement for the application
23 to be on file thirty days prior to the date of
24 application, seems unnecessarily burdensome, and the
25 requirement of providing a copy in the same time frame

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1 to the authorized miner's representative, equally so.
2 It seems sufficient that a copy be made available to
3 the representative of the miners on the date the
4 application is submitted. It would also seem
5 appropriate to post the application on the mine
6 bulletin board for a time necessary, for all miners to
7 have the opportunity to view the application.

8 The contents of the application are
9 reasonable, but the requirement to post a copy for the
10 duration of the extension, is burdensome and subject
11 to factors beyond the control of the operator, such as
12 the posting being inadvertently removed or lost, with
13 potential penalty to the operator without any
14 practical reason. A copy of the approved application
15 should only be made available to the miner's
16 representative.

17 The use of PPE, such as respirators, is
18 the correct approach, but provisions should be allowed
19 for other technology innovations that would achieve
20 the same or greater level of protection. The
21 determination of compliance when using new technology
22 should be done with respect to the direct effect of
23 that technology.

24 Rotation of miners should be considered as
25 an acceptable means of compliance, until definitive

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1 scientific research would dictate otherwise. This is
2 an acceptable means of compliance with other health-
3 related rules, and this rule is no different.
4 Although recent rulings have allowed MSHA to use
5 single samples to determine compliance with other
6 health rules, I believe it is a fundamentally flawed
7 approach. There are many human and equipment factors
8 that could affect the reliability of single samples.
9 Especially when taking into account the major
10 ramifications triggered by this single sample event.
11 At a minimum, at least one follow up sample should be
12 taken to verify the first. In particular, the
13 provision requiring the operator, once receiving a
14 single citation, to establish and implement a written
15 control plan, and maintain that plan in effect for one
16 year after the citation is terminated, is an
17 unnecessary burden. Once the operator has come into
18 compliance with the standard, they should not be
19 required to follow a plan which may or may not have
20 been the factor in compliance determination.

21 The requirement of the operator to perform
22 monitoring as often as necessary is unclear. And
23 since operator sampling has no impact on compliance,
24 it seems unnecessarily burdensome. If this sampling
25 were to be considered in compliance determination,

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1 then this provision would be appropriate.

2 In addition, the associated provision of
3 a posting of corrective action resulting from the
4 operator sampling determination of over exposure, is
5 an unnecessary paperwork burden. This in and of
6 itself, would motivate the operator to reduce the
7 sampling frequency due to the onerous requirements.
8 If there were not paperwork requirements, quite the
9 contrary could be the case. The record keeping
10 requirements are unnecessarily burdensome, and would
11 result in possible violations which have no direct
12 bearing on miner health. The approved extension
13 application and the control plan provisions are
14 reasonable. Purchase records of sulfur content of
15 diesel fuel beyond that being used at the time the
16 testing takes place, is unnecessary. The maintenance
17 law retention beyond the correction of the noted
18 problem, is unnecessary. Competence to perform
19 maintenance evidence is unnecessary because the
20 results of the maintenance are proof of competence.
21 Annual training of exposed miner's retention of
22 records, should follow existing Part 48 requirements.
23 Retention of records of corrective action requirement,
24 is reasonable. Sample detail used by the operator, as
25 long as the sampling and analysis procedures are

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1 according to accepted standards, is unnecessary.
2 Results of sampling done by the operator should be
3 maintained at the operator's discretion.

4 Because of the difficulties encountered in
5 the use of currently recommended filters, there should
6 be consideration given to extending the deadline for
7 compliance with the 400 or 308 limit. I also believe
8 that the final 160 level should be withdrawn for the
9 reason I noted in my earlier comments. A lower
10 exposure level should await further research to
11 determine the validity of any lower level.

12 Also, I would like to comment to the fact
13 that I believe litigation is not the way to develop
14 regulations; with all due respect to Ms. Green, as an
15 attorney.

16 MS. GREEN: Thank you very much.

17 MR. ELLIOTT: The current MSHA leadership
18 was not responsible for the regulation which made
19 litigation necessary, and they have the opportunity to
20 establish the standard that no health rule will be
21 promulgated unless based on independently verifiable
22 scientific research.

23 Finally, I want to state that MSHA has
24 demonstrated a clear interest in seeking to do the
25 right thing with this process. And those persons

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1 involved in the January 19, 2001 rule were sincere in
2 their efforts to put forth the best rule they could by
3 the deadline imposed. But time has shown that in
4 their haste to produce, the inevitable flaws were not
5 addressed. Today, you have the opportunity to correct
6 the clear problems in this rule. And I thank you for
7 the opportunity to speak. And any questions?

8 MS. SMITH: Thank you, Mr. Elliott. Any
9 questions of Mr. Elliott? Mr. Haney.

10 MR. HANEY: As Bill Pomroy and I have
11 been going around giving compliance assistance to, --
12 on dpm to the stone industry, we've seen that the
13 preferred method of control strategy has been
14 ventilation, clean engines, environment cabs, --

15 THE COURT REPORTER: Excuse me. Could
16 you please go the microphone to speak?

17 MS. GREEN: And Bob, if you could clarify
18 for the record, your identity, please?

19 MR. ELLIOTT: He's covert operations.

20 MR. HANEY: Bob Haney. I'm with MSHA's
21 Dust Division. To start over, as Bill Pomroy and I
22 have been going around giving compliance assistance to
23 the stone industry, we've seen that the preferred
24 method of compliance is to use ventilation, clean
25 engines, environment cabs and work practices. And

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1 what I was wondering is, if any of your mines needed
2 to use filters to achieve compliance with the interim
3 limit?

4 MR. ELLIOTT: The short answer is no.
5 And I want to comment on that. We feel that based on
6 everything that I've been able to read and understand,
7 that filters have not been proven in the field, to be
8 as effective as theoretically they should be. And
9 there are, -- I know I've read even MSHA has done the
10 research, and indicated that some of the filters in
11 their catalytic action produced hazardous gases. And
12 so, for this reason alone, we would be, -- we would
13 use filters as the very last resort.

14 And let me make a, -- also a comment also,
15 about the support that the technical people within
16 MSHA have done. They've come to our operations and
17 have really done a heck of a job of trying to help us
18 understand what we're doing, and the most effective
19 measures. And I think MSHA has done an excellent job
20 at trying to help people that have requested. Not
21 only the technical people within MSHA, but the people
22 in the field, the inspectors that have come out, the
23 field supervisors, and so forth, have tried to be very
24 cooperative and helpful anytime we've asked for it.

25 MS. SMITH: Thank you.

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1 MR. PETRIE: This is Jim Petrie. Ed, you
2 had mentioned that the rule should allow for new
3 technology. With the exception of prohibiting
4 rotation of miners, it would allow the use of any
5 engineering controls, or work practice controls,
6 without exception. Do you have examples of new
7 technology that should be maybe specifically addressed
8 in the rule-making, or, --

9 MR. ELLIOTT: One of the aspects of
10 being, -- I'll answer your question kind of in
11 reverse, I want to preface my answer. But in some
12 respects a rule is developed, and then there may be a
13 time down the road that that rule could be in
14 existence for twenty or thirty years. And sometimes
15 technology comes into play down the road, that wasn't
16 considered, or provisions weren't allowed, and you're
17 kind of trapped into using something that's in the
18 rule. So, primarily, I'm seeking to have an
19 appropriate language in the rule that would allow an
20 inspector or MSHA in the future, to take into account
21 technology that we might not know about, that could
22 achieve the same or greater level of protection,
23 without having to go back through the process of
24 getting an, -- what do they call it, an exception, or
25 you know, when they put in a request to get something

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1 approved.

2 MR. PETRIE: Petition for Modification?

3 MR. ELLIOTT: Exactly, a modification.

4 And so, this way it might allow a way to reduce that
5 necessity to do that, if there was a flexibility in
6 the rule.

7 Now, the technology that I have heard of,
8 some of the filtering mask, or the pressure that
9 actually have a forced air helmet, --

10 MR. PETRIE: Powered air purifying
11 respirator?

12 MR. ELLIOTT: You should be doing this
13 testimony. You're right, that's exactly, -- I've
14 heard some people, -- we've experimented with it one
15 time in the past.

16 MR. PETRIE: That would be permitted
17 under the proposal, as long as it had the proper
18 filter in it.

19 MR. ELLIOTT: Right.

20 MR. PETRIE: And you can get those with
21 the appropriate filter.

22 MR. ELLIOTT: Yeah. And right now we
23 know of those being readily available, but having some
24 appropriate wording, --

25 MR. PETRIE: Let me clarify that. It

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1 would be permissible as respiratory protection, not as
2 an engineering control.

3 MR. ELLIOTT: Right. And I understand,
4 I'm not technically trying to get you to say
5 something. We're on the same page, I just want to
6 make sure. It's somewhat like I look at the Part 46
7 Rule, that allows flexibility to modify, without
8 having to go through a detailed paperwork burden to
9 get a change, same thing with this, is what I'm
10 talking about.

11 MS. GREEN: Mr. Elliott, if I could
12 clarify just for the public's sake, that this is a
13 health standard, and therefore the Mine Act does not
14 allow a Petition for Modification.

15 MR. ELLIOTT: Oh, that's good to know.
16 Thank you.

17 MS. GREEN: Only to the safety standard.

18 MR. ELLIOTT: Okay, thank you.

19 MR. PETRIE: That's all I had. Thanks.

20 MS. SMITH: Thank you very much, Mr.
21 Elliott.

22 MR. ELLIOTT: Okay. Thank you.

23 MS. SMITH: Our next speaker is Dana
24 Boyd.

25 **R. DANA BOYD - LOCATION MANAGER**

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ROGERS GROUP, INCORPORATED

MR. BOYD: Good morning. Thank you for allowing me to speak. My name is Dana Boyd. I'm the Location Manager for Rogers Group, Bloomington Crushed Stone Facility of surface and underground mines. I've got several different aspects of things I want to speak to today, according to my personal beliefs and thoughts, as well as the stance from an organization.

MS. SMITH: Mr. Boyd, could you move the microphone just a little closer to you?

MR. BOYD: Okay.

MR. PETRIE: I think we can hear you all right, but I don't know if the persons in the back can.

MR. BOYD: Okay. I don't want to yell too loud, I've got a strong voice anyway. All right. Just to start out by saying first of all, I totally support a Dpm Rule to protect, not only the miners, but my fellow workers, from the over exposure to diesel particulate matter. I also support a single, expedited rule-making to promulgate the changes of MSHA's diesel rules, including adoption of MSHA's diesel exposure limit, and also a final limit that is acceptable to the industry, as well as MSHA. I also support parts of the current rule in effect that

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1 favors the continued dpm research, especially in
2 health effects and feasible controls and exposure
3 limits, as well.

4 As we all know, on January 19, 2001, the
5 Dpm Rule was more or less rushed out the door, and
6 there were several things that were just, in my
7 personal opinion, stuck into the rule at the last
8 minute, without sound data backing and supporting the
9 rule. One being the 160 Rule; micrograms per cubic
10 meter that was put into effect there. My personal
11 belief is that we can meet the 400 micrograms per
12 cubic meter rule in our existing structure, mining
13 strata, and things of this effect. I do foresee
14 issues in the future meeting the 160 Rule. With
15 technology that is being developed daily, not only
16 with the diesel engine manufacturers, but ongoing
17 research. Who was to ever think that we would have
18 purification systems on board twenty years ago, and
19 engines that actually run without any kind of visible
20 emissions. I mean technology over the last ten,
21 fifteen, twenty years, has just changed dramatically.
22 Research needs to be done, and continue to look for
23 feasible engineering controls to help us meet these
24 regulations. Not only on the part of the mining
25 aspect, as far as the miner, or the industry in

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1 general, but as far as the mine equipment
2 manufacturers.

3 A couple of things that have happened
4 because the regulation was more or less rushed out the
5 door on the last day, in my perspective, mine
6 operators experienced several difficulties in
7 complying with the existing regulation. This in
8 effect, -- I'll only read through a few of those that
9 I've noted here. A measurement of total carbon was
10 used in the regulation as a surrogate for dpm. Other
11 carbonatious sources in the mine, including cigarette
12 smoke, oil mist, and things of this effect, plus basic
13 carbon in the rock structures that we mine, the mining
14 strata, were not really given consideration. Several
15 pieces of our equipment in the underground mine;
16 relating to oil mist I'm speaking to now, utilized oil
17 mist as means of lubrication and controls to not help
18 eliminate the possible hazard of a fire, but
19 lubrication of the controls to make certain the
20 equipment runs properly. And one of the things that
21 the oil mist actually contains in it, and several
22 different types of oils that we utilize, is carbon.

23 One of the items that really concerns me,
24 as I go forward and I look at the existing equipment
25 we have on board, the technology today, and example,

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1 my underground drills. The drills that we utilize
2 have several different types of hydraulic oil and the
3 oil actually comes out of the hammers that actually
4 drills the blast holes underground. The oil is put
5 out in a mist spray. And that mist spray as it's
6 entered onto the slide mechanism of the drill unit, --
7 it's doing that for two different reasons. One is the
8 lubrication device for the hammer on the drill, but
9 also, to keep the heat down in the drill. And the
10 reason being, with a diesel engine, -- which this
11 drill is actually a diesel engine-driven drill, the
12 diesel engine needs to run at a consistent
13 temperature, and fluctuations back and forth with
14 drilling speeds, temperatures, how fast we drill in
15 the mine, things of this effect, can affect the
16 operating temperature of that drill. As the operating
17 temperature of that drill fluctuates, due to friction
18 loss, and things of this effect, we're actually
19 generating heat. The heat itself, good, bad or
20 indifferent, technology shows that with the generation
21 of heat the engine is under a strain. And anything
22 outside of the normal aspect of the engine's normal
23 operating temperatures, can cause different
24 fluctuations in diesel particulate matter exposures.

25 The operator of the drill is in a

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1 environment cab. Even with ventilation at the face of
2 the mine there are residues left by, that's actually
3 from the oil mist and sprays, that can be left on the
4 mine wall, for instance. And throughout the day the
5 ventilation of the mine, whether they're using forced
6 air ventilation or natural ventilation, these carbon
7 fragments, or elements, can actually be picked up and
8 carried throughout the mine, affecting other miners.
9 So, I think that when you consider the overall
10 evaluation of the carbon exposure, they really need to
11 research a little bit more on the elemental carbon
12 aspect of things.

13 I've seen the proposed rule, and I agree
14 with some updates on that. I'm not an industrial
15 hygienist by any means, but I understand my equipment,
16 and how to run it, and how to work it. But I really
17 need more investigative research and data to support
18 the existing findings of MSHA.

19 MSHA's position in support of diesel
20 exhaust filter technology as a feasible compliance
21 method, is inconsistent with the position of diesel
22 engine manufacturers across the board, that I've
23 spoken to. These manufacturers that I've spoken with,
24 such as Catapiler, Komatsu, Cummings, Detroit, things
25 of these effect, -- it's amazing, everyone's got their

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1 own opinion. I mean that's what makes the world go
2 around, diversity in action. It would be nice if we
3 could all agree on a common goal there, with what
4 technology is available; what emissions will be
5 available to be met.

6 We understand that EPA has got different
7 Tier Regulations, Tier 1 through 4, that they are
8 looking at right now. The different requirements the
9 engine manufacturers are coming out with, are to meet,
10 whether it's Tier 3 or Tier 4, they're in the process
11 of putting together technology to meet those
12 requirements now. We need to make certain that the
13 engine manufacturers are well aware of our
14 requirements, but also have a say so in what
15 technology is available to meet these requirements.

16 I know there were several engineering
17 controls, -- technology, that was developed. I
18 believe there is a platinum filter-based catalytic
19 controlled catalyst, that was installed as a, -- I
20 believe the recommendation from MSHA. But it was
21 learned later by the mine operators that these
22 catalyst, platinum-based catalyst, generated several
23 toxic or hazardous gases, such as nitrogen dioxide,
24 was actually in excess of the existing MSHA standard.

25 So, as I go back to stating, the data

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1 should be reviewed. We need to research this. I feel
2 that the platinum-based catalyst was stuck out there
3 as a knee-jerk reaction, as some way to comply, not
4 really looking at the cause and effect syndrome. The
5 cause and effect being, well, here is something that
6 will help you, but in return, it causes another effect
7 to happen. Which is probably actually worst than the
8 dpm itself, being the nitrogen dioxide.

9 I personally believe that we have had a
10 failure to coordinate regulations with other agencies,
11 being NIOSH, and also, the National Institute, -- or
12 Cancer Institute, NCI. As far as the information that
13 they've permitted, everything seems to be up in the
14 air right now. MSHA rules don't become fully
15 effective for existing equipment manufacturers until
16 late 2014, on regulations for the dpm.

17 There are several concerns that I've got.
18 We see ongoing lawsuits. Through lawsuits, I don't
19 believe anyone wins, except for the attorneys, who
20 have job security through litigating the situations.
21 I'm really concerned about that aspect, not only as a
22 miner, but a taxpayer. I don't believe in the
23 Government spending ruthless dollars just to make
24 regulations, or throwing good money into a bad
25 situation, when no one really understands what the

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1 final outcome will be.

2 We've had several lawsuits that were
3 actually initiated after the rule went into effect.
4 I support provisions of the rule that are currently in
5 effect. I also support MSHA rule-making to change the
6 measurement of elemental carbon, which is subject to
7 fewer filing interferences. I also support reasonable
8 extensions of time without penalty, to abate these
9 exposures over standard limit for operators, who
10 demonstrate good faith efforts in attempting to reduce
11 the dpm exposures.

12 Several operators are not fortunate to be
13 a part of organizations such as the National Stone,
14 Sand and Gravel Association, and our other
15 organizations such as that, that communicates the
16 information. I'm sure just like Part 46 when it
17 rolled out, there were several operators in them that
18 I'm sure MSHA still sees today, that even though they
19 get mailings, and things of this effect, they are not
20 really in compliance with Part 46. And they are
21 unaware of what the standard actually is. Yes, that
22 is in some ways, an excuse for them, but it's not,
23 it's the law and we have to abide by it. I'm a firm
24 believer that we need to partner and work together and
25 find a common solution.

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1 One nice thing with Part 46 was the
2 Partnership Agreement with several organizations to
3 come to an agreeable regulation that not only MSHA,
4 but the industry could agree to. And it has, I
5 believe, worked well.

6 EPA has stated that research literature
7 does not now support establishing specific
8 occupational exposure limits to dpm. MSHA has adopted
9 its pell (phonetic), with inadequate sympathetic risk
10 assessment; my personal belief. Based on existing
11 data, the Agency has no credible science, based on the
12 information to date, to set a pell. Ongoing studies
13 by NIOSH, as well as the National Cancer Institute,
14 and others, once compiled, should inform the public of
15 what those standards should be. And I believe just
16 putting a permissible exposure limit out there,
17 without the sound science to support it, is doing one
18 of two things. One, it's really not sound science.
19 Two, it's going to be causing more lawsuits,
20 litigation, things of this sort, going forward, due to
21 the fact of it not being sound science.

22 This is kind of an overview of my
23 recommendations. MSHA should immediately initiate a
24 single expedited rule to adopt the needed changes
25 outlined, including deletion of its 2006 permissible

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1 exposure limit, the 160 Rule. I believe that MSHA
2 should partner with the industry and several
3 organizations regarding diesel technology. And
4 research feasible engineering controls, as well as
5 future modifications to existing equipment, to
6 possibly even beat the 160 Rule that they have put
7 into effect. I would love to see that happen, but
8 right now, realistically, as our minds progress, I
9 don't see us being able to meet those limits.

10 I personally believe that worker rotation
11 should be allowed as an administrative control, to
12 comply with not only the existing pell, but to reduce
13 the dpm exposure overall.

14 One of the things that I am personally
15 concerned about, not only being from a large company,
16 but industry in general. I mean to be in business we
17 have to be competitive, and we have to make margin.
18 We all need to be held to the same standards. One of
19 the things that I have seen in several aspects of my
20 career, is not everyone is treated fairly. You now,
21 you've got the small mines initiative, I guess it's
22 mines smaller than five individual employees, they're
23 given different leeway to meet regulations. I
24 personally believe that everyone, regardless of what
25 the situation is, has to abide by the same rules. My

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1 interpretation of this, well, it's just like the speed
2 limit. And the speed limit may be 55 miles an hour,
3 and it doesn't matter if you work for the largest
4 company in the world, or the smallest company in the
5 world, that is the speed limit and that is what you
6 need to abide by. So, rules need to be fair and
7 consistent to all, but they also need to be able to be
8 met by all.

9 I also believe that the paperwork
10 requirements of the regulation are somewhat burdensome
11 and should be scaled back to comply with not only the
12 Paper Reduction Act, but the Bush Administration's
13 mandates to minimize such requirements on businesses.
14 The more we do, the paper trail, if you say, the
15 duplication of reports, it gets somewhat burdensome.
16 And the last thing I want to do is as a mine operator,
17 is to get cited for not having something posted on a
18 bulletin board that someone may have pulled down, or
19 deteriorated over time, -- you know, someone watching.
20 You know, we need to pay attention to these
21 opportunities here.

22 The reckless lack of health effects data,
23 in my opinion, significantly supporting the final
24 rule, we need all underground dieselized mines to
25 implement feasible engineering controls to help us

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1 meet the goal of the 400 micrograms per cubic meter
2 rule that is in effect. And I also believe that MSHA
3 once
4 established, -- whatever the final pell is going to
5 be, needs to implement and put out an additional
6 update to the Diesel Particulate Matter Exposure Guide
7 to update these engineering controls, to help the
8 industry in general. And provide additional training
9 and field support for that. I know for a fact, it's
10 difficult right now within MSHA, the training and
11 field support is difficult to get. I've asked on
12 several occasions, and I am happy to say that I am
13 getting support now from Tech Support, to come out and
14 add technical support to my facility for ventilation,
15 which is a key aspect of this.

16 It's difficult to, -- especially for me,
17 to see the trainings that are available. I can pick
18 up a phone and ask questions and get responses, going
19 about finding proper training, of not only the Diesel
20 Particular Rule, but in understanding the different
21 types of training that is available on, not only the
22 maintenance and upkeep of ventilation, things of this
23 effect from the underground. You know, there are
24 several different technologies that are out there,
25 best practices, and I think those best practices need

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1 to be communicated across the industry in general.
2 Due to the fact, that someone in Wyoming may be doing
3 something that will work excellent for me in Indiana.
4 I'm not aware of that. And MSHA being the regulatory
5 agency, I think should do, personally, a better job of
6 communicating those best practices.

7 I'm happy to say that there are some best
8 practices going out relating to some of the recent
9 safety and training movements that we've had in the
10 industry, and we're seeing better communication, not
11 only with e-mail, but the web page as well. But just
12 to continue to communicate that information.

13 But, like I said, I fully support the dpm
14 rule in the existing fashion. I am not in support of
15 the 2006, 160 Rule. And I really wish that MSHA would
16 look at sound science and data to come to an actual
17 exposure limit that we can all work with. Thank you.

18 MS. SMITH: Thank you, Mr. Boyd.
19 Questions of Mr. Boyd, by the panel? John.

20 MR. KOGUT: You indicated that the EPA
21 had made a statement saying that the existing health
22 effects evidence doesn't justify setting an
23 occupational limit?

24 MR. BOYD: Yes. The information I've
25 read upon, EPA is using a lot of the information

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1 generated from MSHA, as well as what's out there in
2 the market, as far as existing technology. EPA when
3 they are setting material level requirements, Tier 1
4 through 4, there's, in my opinion, a
5 misrepresentation. They are not really communicating
6 amongst agencies, to see what is available or what is
7 going on. The right hand doesn't know what the left
8 hand is doing. And I really think there needs to be
9 more communication and understanding between
10 organizations to see that.

11 MR. KOGUT: My question was, do you have
12 a specific reference to some place where somebody can,
13 --

14 MR. BOYD: I don't have that with me
15 right now. I'm sorry, I don't. Just some bullet
16 points I put together, which the EPA, -- let me find
17 my note here related to the EPA. One of the things
18 that the EPA, -- I saw during my reading, that the
19 EPA, which issued regulations in 2003, to phase-in
20 requirements for off the road sulfur fuel, the
21 emissions for off-road fuel, the EPA rules don't
22 become fully effective until 2014, but there are
23 several things going forward, data lines, to meet
24 these regulations, that we have to make certain that
25 we understand that EPA and MSHA need to work together

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1 as far as the diesel particulate matter for these
2 mines.

3 MR. KOGUT: Well, I'm just particularly
4 interested in the statement you attributed to EPA,
5 saying that there wasn't justification for having an
6 occupational exposure limit. And if you can find a
7 specific reference to that, maybe you could submit it
8 later, for the record, before the close of the comment
9 period?

10 MR. BOYD: Yes. I don't have that
11 information in front of me, I'm sorry.

12 MS. SMITH: If you do have that, we would
13 appreciate you submitting that for the record. That
14 would be good.

15 MR. BOYD: Okay, thank you.

16 MR. PETRIE: I guess I just wanted,
17 maybe, to clarify a point; that under the Small Mines
18 Initiative there is no regulatory relief mechanism.
19 Those operators would still have to comply with all
20 the regulations that a larger operator would.
21 However, it does offer compliance assistance to the
22 small mines to help them better understand those rules
23 and regulations, and comply.

24 MR. BOYD: Jim, correct me if I'm wrong,
25 but I believe just like with the HAZCOM Rules, things

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1 of this effect, there is different time lines in
2 effect for these mines to go into effect. There was
3 like, six months leeway, I believe.

4 MR. PETRIE: There was a delayed
5 effective date for small mines under HAZCOM.

6 MR. BOYD: Yes. And my point to that
7 fact is, that if we're going to be on the same boat,
8 the standards need to apply across the board.

9 MR. PETRIE: Okay.

10 MR. BOYD: At the same time.

11 MR. PETRIE: Thank you.

12 MS. SMITH: Mr. Boyd, you made a
13 recommendation about improved or different types of
14 communication to the industry, about best practices.
15 Can you give us some examples or some ideas that you
16 might suggest for MSHA either to do more of, or
17 differently, in terms of communicating that
18 information to the community?

19 MR. BOYD: Really, the manual that went
20 out on diesel particulate matter, the exposure, was an
21 excellent little tool to get started as a training
22 device. One of the recommendations, -- I know there
23 are several trademarks and copyrights what we have
24 watch, that we don't infringe upon, but if some
25 inspectors or industry officials visit different mines

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1 and see something that they are doing, that doesn't
2 infringe upon those rights, just a brief little
3 statement on the web page, or even sent out to the
4 underground mines related to this, -- you know, if
5 they found a different type of brattice cloth or
6 something, that holds up the underground blasting, or
7 just what's out there. You know, I try to read as
8 much as I can in different trade magazines, and attend
9 different trade shows, to see the technology and
10 advances in equipment, supplies, things of that
11 effect, but you really don't know what's there until
12 you see something in action, how it's working out.
13 But those kind of communications, handouts, mailings,
14 e-mails, things of that effect, in my opinion, would
15 help out.

16 MS. SMITH: Okay. Are you aware of
17 MSHA's new list serve capability on the web site?

18 MR. BOYD: Yes, uh-huh (positive
19 utterance).

20 MR. SASEEN: You do mention best
21 practices and tech supports have been varied. In
22 working on a lot of best practices, you know, we've
23 also worked exclusively, you know, worked with NIOSH
24 on the Filter Guide. And you mentioned that maybe
25 that's not

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1 being, -- are you aware of the best practices on the
2 internet and the NIOSH/MSHA Filter Guide?

3 MR. BOYD: We've read the Filter Guide,
4 --

5 MR. SASEEN: Okay.

6 MR. BOYD: -- and the information's
7 that's there. I've got several concerns related to
8 some of the filtering devices if you actually wear a
9 respirator. My underground blasters, which we have to
10 blast using electronic blasting, we're not allowed to
11 use non-electric blasting due to the debris that's in
12 the shot. I do have concerns as far as static
13 electricity generated by some of these filter medias;
14 that if a miner is wearing this, you know, it doesn't
15 take but just a half a, -- in some cases, depending on
16 the type of blasting cap used, very minute amounts of
17 static electricity or straight current, to initiate
18 these caps. And if I have blasters that are exposed
19 with some of the type of filter media actually wearing
20 some of the filters, through personal protective
21 equipment, or some of the filter media that we have on
22 our machines, and the cabs, and things of that effect,
23 there could be, -- and this is what I am determining
24 from some of my readings, the static can be generated
25 by the air flows through this different media. And I

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1 am really concerned about that aspect of things.

2 MR. SASEEN: I guess I didn't clarify
3 myself. The Filter Guide that we're talking about, is
4 a ceramic, that uses particular traps that are on the
5 exhaust. And that was, -- we worked with NIOSH on
6 that.

7 MR. BOYD: I've read some information
8 about that. I do have some concerns as well.
9 Personal beliefs, -- as my background, I started
10 fifteen years ago in the industry as a mechanic; went
11 to school, got my degree. And one of the concerns
12 with diesel
13 engines, -- diesel engines are very efficient engines
14 when maintained. Some of the ceramic issues is
15 getting the exhaust gas hot enough to more or less
16 remove the dpm. One of the nice things about a diesel
17 engine is that a diesel engine in some cases, will run
18 cooler. You know, I believe some of the information
19 shows that the ceramic filters, after they get in the
20 neighborhood of 300 to 380 degrees, before proper
21 working; most of our engines run around the 200, 230
22 degree, and the exhaust gas that we have from the
23 diesel engines, when properly tuned, using it also for
24 fuel, and things of this effect, shouldn't have any
25 problems meeting that.

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1 They're looking at re-burn units right
2 now, I know, to generate extra heat to burn off these
3 ceramic filters. But now it just goes back to the
4 same thing that they were talking about the platinum-
5 based filters, now you've got an excessive heat source
6 on an underground engine that creates possibly, a fire
7 hazard, if you're not aware of what the surrounding
8 media, or set up on the machine is. And the last
9 thing you want to do is to put something in the engine
10 compartment of 380 degrees, and next to a hydraulic
11 line, if the hose blows the next thing you know I've
12 got a firing inferno on my hands, and I've got more
13 miners exposed to carbon monoxide, fire hazard,
14 explosion hazards, things of that effect, versus what
15 the actual good of the ceramic filter did for me.

16 That goes back to my comments about using
17 the data, using technology to research the information
18 that we've been presented, and utilize that to our
19 best ability. But, it just, -- I personally believe
20 that we have a lot of knee-jerk reactions going on
21 right now. This will work for that; this won't work,
22 because this happens. And we're not realizing that
23 technology, root cause analysis, utilize the data,
24 generate a sound solution. I personally believe that
25 we have to research, and I don't believe that enough

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1 research has been done on this to make a final rule.

2 MS. SMITH: Anymore questions?

3 (No Verbal Response)

4 MS. SMITH: Thank you, Mr. Boyd. We
5 appreciate your testimony.

6 MR. BOYD: Thank you.

7 MS. SMITH: We have no other speaker
8 signed up today. Is there, --

9 UNIDENTIFIED SPEAKER: Steve Castleberry.

10 MS. SMITH: Do you mind if we take a
11 brief break before we begin with your testimony?

12 MR. CASTLEBERRY: Not at all.

13 MS. SMITH: Okay.

14 MR. CASTLEBERRY: But, my comments are
15 very brief.

16 MS. SMITH: Okay. Let's take about ten
17 minutes, if you don't mind. We need to give the court
18 reporter a little bit of a break. And we'll resume in
19 about ten minutes with your comments, sir.

20 (Whereupon, at 10:05 a.m., the hearing was
21 recessed, to reconvene this same day, at 10:15 a.m.)

22 MS. SMITH: Our next speaker is Steve
23 Castleberry.

24 **STEVE CASTLEBERRY - REGULATORY MANAGER**

25 **MISSISSIPPI LIME COMPANY**

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1 MR. CASTLEBERRY: Good morning.

2 MS. SMITH: Good morning.

3 MR. CASTLEBERRY: I'll make my comments
4 quite brief, so that you can all head back to your
5 homes and families, and hopefully they aren't affected
6 by the winds and hurricanes of the east.

7 MS. SMITH: (Raises her hand.)

8 MR. CASTLEBERRY: Oh, well good. We have
9 a great supply of plywood here in the Midwest, if you
10 would like to take a few cases back with you.

11 MS. SMITH: It's getting through security
12 is the question with the plywood.

13 MR. CASTLEBERRY: Yeah. I often use my
14 alias in meetings like this, as Bob Haney, with MSHA,
15 but I see that won't work in this case. So, my real
16 and true name is Steve Castleberry. I am the
17 Regulatory Manager for Mississippi Lime Company. And
18 we are a very large limestone, nonmetal, low silica,
19 facility, located 60 miles south of here.

20 MS. SMITH: Mr. Castleberry, do you mind
21 moving the microphone a little closer to you there,
22 please.

23 MR. CASTLEBERRY: Okay. I would like to
24 first start out by saying that we are extremely
25 concerned with the health and safety of our employees,

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1 and particularly, our miners, and their exposure to
2 diesel particulate matter. We've made some fairly
3 significant changes in our operation, and we're fairly
4 close to be in compliance with the lower limit, but
5 the cost to get us below that limit, will be quite
6 extensive.

7 We first would like to openly support and
8 endorse the Marg comments that were presented in Salt
9 Lake City on September 16th. I understand council for
10 Marg was unavailable to be here today, because he too,
11 is bunkered down in his basement in D.C.

12 Mississippi Lime Company, as I mentioned,
13 is the largest underground nonmetal mine in Missouri.
14 It's been operating since the 1920(s). We have a
15 stable and continuous workforce, and as such, we were
16 an ideal candidate for the NIOSH/NCI Study to evaluate
17 the health effects on our miners. There is no direct
18 evidence of any elevated cancer among our employees.
19 We feel we have a healthy workforce. We have folks
20 who have been there thirty, forty years, and they go
21 on to have great lifestyles, and great lives in
22 retirement.

23 I guess the first comment that I would
24 really like to make, -- and it's been heard hear
25 already today, is that there is no definitive health

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1 study to link diesel particulate and lung cancer. We
2 participated in the NIOSH/NCI Study, we've been
3 following this for years, and the conclusions are
4 being developed. We think it's premature to set a 160
5 limit, until those conclusions have been published,
6 digested, and analyzed by technical folks, and you
7 know, qualified epidemiologists and medical expertise.
8 So, again, the mantra would be to defer the final
9 limit until the conclusions of those health
10 assessments have been published.

11 As I view our mine, and what we're doing
12 to protect our miners as they are working daily, --
13 and we have over fifty working sections, and different
14 isolated areas. We have numerous vent holes to
15 provide fresh air, but there are areas that may become
16 a little bit stagnant at different seasons, at
17 different times, depending upon the activity within
18 the area. Our miners are protected with the latest
19 environmental controls in the cabs, you know,
20 pressurized with filtration systems. But the person
21 on the outside is probably the one who would be
22 exposed to the greatest amount of particulate. And
23 those being the scalers, the roof bolters, --
24 actually, we don't have roof bolters, but the
25 blasters, and blasters' assistants. And I would

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1 encourage that personal protection equipment be
2 considered as an engineering control for meeting with
3 the limit for those people, if it is determined that
4 they are in a high concentration area. It seems
5 prudent, and it's a good fix, it provides them the
6 protection that they need during their day.

7 And those are my remarks. Thank you for
8 your time coming this way, and I wish you all a good
9 trip home.

10 MS. SMITH: Thank you, Mr. Castleberry.
11 Are there questions from the panel?

12 MR. PETRIE: Is your mine naturally
13 ventilated, or you have mechanical ventilation?

14 MR. CASTLEBERRY: We do both.

15 MR. PETRIE: Okay.

16 MR. CASTLEBERRY: We do both, but
17 primarily naturally. We put forced air where need be,
18 and then we have fans down in our operating phases as
19 well. Just to sort of give you a reference, the mine
20 is probably about 15 square miles, and our ceiling to
21 mining height is about 100 feet. So, it's, you know,
22 quite a huge bladder.

23 MR. PETRIE: Thank you.

24 MR. CASTLEBERRY: Thank you.

25 MS. SMITH: Thank you, Mr. Castleberry.

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1 I have no other speakers signed up, is there anyone
2 else, however, who would like to make a remark?

3 MR. ELLIOTT: (Indicating.)

4 MS. SMITH: Yes sir.

5 MR. ELLIOTT: If I could come back?

6 MS. SMITH: Mr. Elliott, yes. Mr.
7 Elliott, would you reintroduce yourself, please.

8 **ED ELLIOTT - DIRECTOR OF SAFETY & HEALTH**

9 **FOR THE ROGERS GROUP**

10 MR. ELLIOTT: Yes. Ed Elliott, Rogers
11 Group, Incorporated. The question arose earlier,
12 concerning a comment that Dana Boyd had made, with
13 respect to a document, EPA document. And I have a
14 copy of that with me. And what it is, it was review
15 of the EPA's Health Assessment Document For Diesel
16 Emissions, EPA-600/8-90/057D. It was a review done by
17 the Clean Air Scientific Advisory Committee. And
18 their report and accompanying letter, was dated
19 February 4, 2002, and certainly would be subject to
20 any changes that have occurred since that time. But,
21 I think an important aspect of this report, is that
22 this Advisory Committee, at that time, did not
23 recommend acceptance of the EPA's Hazard Assessment
24 Document for Diesel Emission.

25 And I might read just one paragraph out of

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1 this, if I might.

2 "Second, there was also
3 substantial disagreement with
4 the use of the descriptor
5 highly, to modify the
6 category likely, used to
7 describe the potential human
8 c a r c i n o g e n i c i s i t y
9 (phonetic)," -- well, yeah,
10 "being a human carcinogen of
11 environmental exposures to
12 diesel emissions.

13 The majority of the
14 panel did not agree that the
15 current level of confidence
16 regarding the exposure
17 response relationship from
18 occupational exposures,
19 warranted the discretionary
20 use of the term highly, to
21 describe the confidence
22 regarding the cancer hazard
23 from environmental exposures.

24 The panel agreed with
25 Agency's judgment that a

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1 quantitative estimate of unit
2 risk for human lung cancer
3 from environmental exposure
4 to diesel emissions, could
5 not be made with an adequate
6 level of confidence at this
7 time. And viewed the source
8 of that lack of confidence as
9 also conflicting with the
10 characterization of hazard,
11 as highly likely."

12 And that was what, -- I think what he was referring
13 to.

14 MR. KOGUT: If I might just clarify two
15 points. First of all, you raised the possibility, and
16 indeed that possibility has been realized. That
17 document has now been replaced by a later document,
18 and they did approve the Hazard Assessment in 2002, I
19 believe it was.

20 The second point is that the discussion
21 that you were alluding to, -- the point that I was
22 asking about, was whether there was any statement that
23 the EPA made, specifically relating to lack of
24 sufficient health effects information to warrant
25 setting an occupational standard. And that reference

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1 that you were talking about, really applied to whether
2 there was sufficient justification from extrapolating
3 health effect studies that had occurred in
4 occupational settings, down to ambient levels,
5 environmental standards, which, of course, are much
6 lower. The estimates that I've seen, in the worst
7 urban areas in the United States, the total dpm is of
8 the order of 10 micrograms per cubic meter. That's
9 total dpm, not elemental carbon or total carbon, but
10 total dpm. So, what they were referring to there, is
11 the justification for extrapolating the occupational
12 studies, which occur at much higher levels, down to
13 setting limits at those ambient environmental levels.
14 And the discussion, particularly that you were talking
15 about, was whether the conclusion, which in the draft
16 of the Health Assessment that you were referring to,
17 said that diesel particulate was highly likely to be
18 carcinogenic at those ambient levels; talking about 10
19 now, whether it warranted saying highly likely to be
20 carcinogenic, rather than likely to be carcinogenic at
21 those lower ambient levels.

22 MR. ELLIOTT: Certainly, I can
23 understand, and I agree with you, and I stand
24 corrected with respect to the more recent document.
25 But one aspect, I think, that's important, is there

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1 even is research that does conflict with respect to
2 the health effects at those higher levels, that we're
3 discussing here. And so, I guess in reference to the
4 fact that the EPA, which has been doing significantly
5 more, I guess, dedicated research to environmental
6 exposures to diesel particulate matter, had doubts in
7 their mind about the scientific research that had been
8 done during this time period. And I think it
9 initially, -- weren't the samples that were going to
10 be taken under the January Rule, going to be
11 environmental samples?

12 MR. KOGUT: There's a difference of
13 definition here, as to what we're talking about as
14 environmental samples. When I said that they were
15 concerned about extrapolating the results down to
16 environmental levels, I'm talking about ambient
17 environmental levels, like in an urban environment,
18 where the, -- in the worst cities, meaning the highest
19 levels of dpm in the country, the total diesel
20 particulate matter is estimated to go up to about 10
21 micrograms per cubic meter. In an urban environment.
22 Now, that's a, you know, an order of magnitude or two,
23 lower than what we're talking about in personal
24 exposures or environmental exposures in an underground
25 mine, at the levels that we're regulating.

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1 So, the passage that you quoted, had to do
2 with extrapolating results from occupational settings,
3 down to ambient environmental settings in, you know,
4 outside air.

5 MR. ELLIOTT: Right. And I agree with
6 you. I can understand the specifics of what you're
7 saying. I don't disagree with it at all. We are
8 talking about significantly different levels. But I
9 think my point was that there is still not what I see
10 as clear evidence, and I believe it was mentioned by
11 another speaker also, that there is a direct
12 relationship. There is differing research on the
13 topic. And I think initially, when the January 19,
14 2000 Rule came out, it had assumed a number of things,
15 I think, with this existing document, that was the
16 only one available with respect to those studies.

17 So, all I'm saying is, I think there were
18 conflicting studies, and I do not see, and did not
19 see, at that time, that there was a clear indication
20 that you had the relationship that was being a very
21 strong supporting point of exposure to diesel
22 particulate matter and cancer. Now, at some level, I
23 think you could, -- I mean exposure to water can kill
24 you, but it's very healthful. I think exposure to
25 extremely high levels of dpm could certainly cause

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1 significant health effects, but that level is where we
2 get into discussion and, -- as we've talked about,
3 with respect to the rule. And I don't, by any means,
4 to besmirch what was done by this, -- the EPA, and
5 what they were trying to achieve. I just think it
6 states, -- it shows me, that there needs to be further
7 research before we come up with definitive consensus
8 positions with respect to adverse health effects for
9 dpm. That was what I was saying.

10 MR. KOGUT: Okay. The document that you
11 were reading from and referred to, by the way, is
12 already in the record, and there is a discussion of it
13 in the existing Risk Assessment that was published in
14 January of 2001.

15 MR. ELLIOTT: Right. And I only wanted
16 to clarify the reference. I know you raised the
17 question, and I wanted to just clarify that.

18 MS. SMITH: Thank you, Mr. Elliott. Any
19 other last requests for remarks?

20 *(No Verbal Response)*

21 MS. SMITH: We are going to go off the
22 record now, since we have no other speakers signed up
23 at this time. We will probably come back on the
24 record about a half an hour from now, and check to see
25 if we have any last minute requests, and if not, we

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1 will close the record at that point in time. So,
2 we'll come back on the record at about eleven.

3 (Whereupon, at 10:30 a.m., the hearing was
4 recessed, to reconvene this same day at 11:00 a.m.)

5 MS. SMITH: All right, we are back on the
6 record. We do have another speaker, Mr. Eck.

7 **MARK ECK - SPRINGFIELD UNDERGROUND**

8 MR. ECK: Good morning.

9 MS. SMITH: Good morning.

10 MR. ECK: My name is Mark Eck, I'm with
11 Springfield Underground, in Springfield, Missouri.
12 I'm representing, what I would say, a very small
13 player in this whole issue. We run one underground
14 mine, we have one surface mine. But we deal with the
15 same issues, and we have concerns about our personnel
16 safety and health, and we are going to do what it
17 takes to keep them in good shape, because that's our
18 life blood. But, we also have the economic balance
19 that we have to deal with.

20 As I listened to this discussion and been
21 involved with the NSSGA Diesel Task Force for the last
22 six months or so, it reminds me of a prior life I've
23 had, where the question came down to with the EPA
24 rules, how clean is clean? And our issue here, in my
25 mind, is twofold. We need definitive evidence as to

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1 what level of dpm causes true health risks to our
2 employees. And the other scientific issue we need, is
3 we need definitive ways to measure dpm levels so we
4 know what we're dealing with. And it was the same
5 exact issues. This was major litigation through the
6 EPA, that I dealt with before. And we struggled with
7 that very issue, and we actually went overboard, and
8 cost the industry, and stifled the industry in doing
9 many, many things; in another industry, in the oil
10 industry, and we stifled the industry, stifled
11 business. And this same thing is going to occur for
12 the small players in this issue as well. Because no
13 one can go out there and afford to invest in an
14 underground mine, if you're a small player, because
15 you don't know where we stand on the issue. Is it
16 going to be 400? Is it going to be 160? Is it going
17 to be more than, -- or even less than 160? And so, as
18 a business owner, it's very difficult to go out and
19 make investments in new mines, or, -- well, we can
20 continue to expand existing, but making investments in
21 new mines, for the small players. Larger players have
22 the wherewithal to deal with it, they'll find a way to
23 overcome those obstacles and stay in business. But
24 the small players are going to get hurt more than
25 others. That's one point I wanted to make.

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1 The other point I wanted to make is
2 barring whatever happens with the new rule-making, I
3 think everyone should realize that you've got
4 industry's attention. When the 400 limit was imposed,
5 and we all went down the path of finding ways to
6 restrict limit, reduce dpm in our mines, which
7 previously was not an issue, you know, we all have
8 gone down that learning curve, and we've made
9 probably, you know, the old 80/20 Rule probably
10 applies very well. We've probably made more than 80
11 percent of the gain by just getting to 400. And I
12 think we have to ask ourselves what is the true value
13 of getting below that 400 level relative to the cost.
14 I say that, not knowing if, -- if there is significant
15 evidence out there, scientific evidence that says, and
16 that we can define; I think it's up in the air right
17 now, personally, but if we can truly define it needs
18 to be lower for health issues, that's what we need to
19 do. But, barring definitive evidence, we need to
20 really be concerned about requiring industry to make
21 significant cost investments to get to that level,
22 when we've gotten the majority of the gain. And I
23 think we should all, industry, MSHA, everyone, should
24 pat themselves on the back to getting to the point
25 we're at. But I think we have to think really, really

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1 hard about going below that level.

2 Those are my comments. Any questions, I'm
3 welcome.

4 MS. SMITH: Thank you, Mr. Eck.
5 Questions?

6 *(No Verbal Response)*

7 MS. SMITH: Thank you very much. I want
8 to thank all of the speakers who came today, and the
9 attendees. We are particularly pleased to be able to
10 offer this hearing in this area, as we were requested
11 by several entities. And we appreciate you coming
12 today. And this record is officially closed for this
13 hearing. Thank you.

14 *(Whereupon, the hearing was concluded at*
15 *11:05 a.m.)*

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