

MINE SAFETY AND HEALTH ADMINISTRATION

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DIESEL PARTICULATE MATTER EXPOSURE OF UNDERGROUND
METAL AND NONMETAL MINERS

PUBLIC HEARING

+ + + + +

WEDNESDAY
JANUARY 11, 2006

+ + + + +

Rooms F&E
Clarion Hotel
9103 East 39th Street
Kansas City, Missouri

The above-entitled matter came on for public
hearing, pursuant to notice, at 9:00 a.m.

PANEL MEMBERS:

EDWARD SEXAUER
JIM PETRIE
DORIS CASH
GEORGE SASEEN
BILL POMROY
DEBORAH GREEN
WILLIAM BAUGHMAN**NEAL R. GROSS**COURT REPORTERS AND TRANSCRIBERS
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P-R-O-C-E-E-D-I-N-G-S

1
2 MR. SEXAUER: Good morning. My name is
3 Edward Sexauer. I am Chief of the Regulatory Division
4 of the Office of Standards, Regulations and Variances
5 for the Mine Safety and Health Administration, and I
6 will be the moderator for today's hearing.

7 On behalf of David Dye, Acting Assistant
8 Secretary for Mine Safety and Health, I want to
9 welcome all of you here today. Let me start by asking
10 that in memory of the 12 miners, who perished last
11 week in the tragedy of the Sago Mine, and an
12 additional miner who's perished this week in, I
13 believe, a ground fall near eastern Kentucky, let's
14 begin the hearing with just a moment of silence,
15 please.

16 (Pause.)

17 MR. SEXAUER: Thank you. The purpose of
18 this hearing is to obtain public input on MSHA's
19 proposed rule published in the Federal Register on
20 September 7, 2005, addressing Diesel Particular Matter
21 Exposures of Underground Metal and Nonmetal Miners.

22 Joining me on the hearing panel today are
23 Jim Petrie to my right -- Jim is the district manager
24 of MSHA's Northeastern District for Metal and Nonmetal
25 and Chair of the Diesel Particular Matter Rulemaking

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1 Committee. On Jim's right is Doris Cash with Metal
2 and Nonmetal Health Division and William Baughman with
3 the Office of Standards, Regulations and Variances.

4 On my left is Deborah Green with the
5 Office of the Solicitor for Mine Safety and Health.
6 To Deborah's immediate left is George Sateen with
7 MSHA's Technical Support Directorate and Bill Pomeroy
8 from MSHA's Metal and Nonmetal North Central District.

9 Also from the Office of Standards,
10 Regulations and Variances Carl Lundgren, an economist
11 with our staff, is here. Let me reemphasize our
12 purpose for being here today is to obtain your views
13 on the September 7 proposed rule.

14 This hearing is being held in accordance
15 with Section 101 of the Federal Mine Safety and Health
16 Act of 1977. As is the practice of this Agency,
17 formal rules of evidence will not apply. Therefore,
18 cross-examination of the hearing panel will not be
19 allowed.

20 But the hearing panel may explain and
21 clarify provisions of the proposed rule in response to
22 questions. Members of the public will not be
23 permitted to cross-examine speakers. Also, as
24 moderator of this public hearing, I reserve the right
25 to limit the amount of time each speaker is given, as

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1 well as questions of the hearing panel.

2 From the sign-up sheet I don't think
3 that's going to be an issue today. Those of you who
4 have notified MSHA in advance of your intent to speak
5 will be allowed to make your presentations first. I
6 will call speakers in the order that requests were
7 made.

8 Following these presentations, others who
9 request an opportunity to speak will be allowed to do
10 so. We invite all interested parties to present their
11 views at this hearing. And if you wish to speak,
12 please be sure to sign in at the registration table or
13 when we're finished. Just let me know during the
14 break.

15 We will remain in session today until
16 everyone who desires to speak has an opportunity to do
17 so. Also, if you are not signing up to speak today,
18 we would like you to sign the general sign-in sheet so
19 that we have an accurate records of today's
20 attendance.

21 That sign-up sheet is just outside the
22 entrance to the room. We will accept written comments
23 and data at this hearing from any interested party,
24 including those who are not speaking. You can give
25 written comments on this hearing today, or you can

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1 send them to MSHA's Office of Standards
2 electronically, by fax, by regular mail or hand
3 delivery using the address information listed in the
4 Federal Register publications.

5 That address is included in the copy of
6 the proposed rule we have just outside the entrance to
7 this room. This is the third of four hearings. The
8 first hearing was held in Arlington, Virginia, on
9 January 5; the second hearing was held in Salt Lake
10 City this past Monday.

11 This is the third hearing. The final
12 hearing will be in Louisville, Kentucky, on Friday,
13 January 13. The post-hearing comment period will end
14 on January 27, 2006. A transcript of this hearing
15 will be made part of the record, and it will be posted
16 on our website at www.msha.gov.

17 Before I begin, I would like to give you
18 some background on the proposed rule that we are
19 addressing today. On January 19, 2001 we published a
20 final rule addressing health hazards to underground
21 metal and nonmetal miners from exposure to diesel
22 particulate matter. I'll be referring to that as DPM.

23 The rule established new health standards
24 for these miners by required, among other things, use
25 of engineering and work practice controls to reduce

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1 DPM to prescribed limits. It set an interim and final
2 DPM concentration limit for underground metal and
3 nonmetal mining environment with staggered effective
4 dates for implementation of the concentration limits.

5 The interim concentration limit 400 total
6 carbon micrograms/cubic meter was to become effective
7 on July 20, 2002. The final concentration limit of
8 160 total carbon micrograms/cubic meter was scheduled
9 to become effective January 20, 2006. On January 29,
10 2001, several mining trade associations and individual
11 mine operators challenged the final rule.

12 The United Steelworkers of America
13 intervened int the case, which is now pending in the
14 United States Court of Appeals for the District of
15 Columbia Circuit. The parties agreed to resolve their
16 differences through settlement negotiations with us,
17 and we delayed the effective date of certain
18 provisions of the standard.

19 On July 5, 2001, as a result of Phase 1
20 settlement negotiations, we published two notices in
21 the Federal Register. One notice delayed the
22 effective date of Section 57.5066(b) related to
23 tagging requirements in the maintenance standard.

24 The second notice proposed a rule to make
25 limited revisions to Section 57.5066(b) and added a

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1 new paragraph to Section 57.5067(b), "Engines,"
2 regarding the definition of the term "introduced." We
3 published the final rule on February 27, 2002.

4 Phase 2 of the settlement agreement was
5 finalized on July 15, 2002 as a written agreement.
6 Under the agreement, the interim concentration limit
7 of total carbon micrograms/cubic meter became
8 effective on July 20, 2002.

9 We afforded mine operators one year to
10 develop and implement good faith compliance strategies
11 to meet the interim concentration limit, and we agreed
12 to provide compliance assistance during this one-year
13 period. We also agreed to proposed rulemaking on
14 several other disputed provisions of the 2001 final
15 rule.

16 The legal challenge to the rule was stayed
17 pending completion of this additional rulemaking. On
18 September 25, 2002, we published an Advance Notice of
19 Proposed Rulemaking or ANPRM. We noted in the ANPRM
20 that the scope of the rulemaking was limited to the
21 terms of the Second Partial Settlement Agreement and
22 proposed a series of questions to the mining community
23 related to the 2001 final rule.

24 We also stated our intent to proposed a
25 rule to revise the surrogate for the interim and final

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1 concentration limits and to propose a DPM control
2 scheme similar to that included in our longstanding
3 hierarchy of controls used in our air quality
4 standards for metal and nonmetal mines.

5 In addition, we stated that we would
6 consider technological and economic feasibility for
7 the metal and nonmetal industry to comply with revised
8 interim and final DPM limits. We determined at that
9 time that some mine operators had begun to implement
10 control technology on their underground diesel-powered
11 equipment.

12 Therefore, we requested relevant
13 information on current experiences with availability
14 of control technology, installation of control
15 technology, effectiveness of control technology to
16 reduce DPM levels and cost implications of compliance
17 with the 2001 final rule.

18 On July 20, 2003, we began full
19 enforcement of the interim concentration limit of 400
20 total carbon micrograms/cubic meter. Our enforcement
21 policy was also based on the terms of the second
22 partial settlement agreement and included the use of
23 elemental carbon -- EC -- as an analyte to ensure that
24 a citation based on the 400 TC concentration limit is
25 valid and not the result of interferences.

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1 The policy was discussed with the DPM
2 litigants and stakeholders on July 17, 2003. In
3 response to our publication of the ANPRM, some
4 commenters recommended that the propose separate
5 rulemaking for revising the interim and final
6 concentration limits to give us an opportunity to
7 gather further information to establish a final DPM
8 limit, particularly regarding feasibility.

9 In the subsequent notice of proposed
10 rulemaking -- NPRM -- published August 14, 2003, we
11 concurred with those commenters and notified the public in
12 the NPRM that we would propose a separate rulemaking to
13 amend the existing final concentration limit of 160 total
14 carbon.

15 We also requested comments on an appropriate
16 final DPM limit and solicited additional information on
17 feasibility. The proposed rule also addressed the interim
18 concentration limit by proposing a comparable Permissible
19 Exposure Limit -- or PEL -- of 308 micrograms/cubic meter
20 based on the elemental carbon surrogate and included a
21 number of other provisions.

22 On June 6, 2005, we published the final rule
23 revising the interim concentration limit. This rule changed
24 the interim concentration limit of 400 micrograms/cubic
25 meter by TC, to a comparable PEL of 308 micrograms/cubic

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1 meter based on EC.

2 The rule requires our longstanding hierarchy of
3 controls that is used by other exposure-based health
4 standards at metal and nonmetal mines. But it retains the
5 prohibition on rotation of miners for compliance.

6 Furthermore, the rule, among other things,
7 requires us to consider economic as well as technological
8 feasibility in determining if operators qualify for an
9 extension of time in which to meet the final DPM limit and
10 deletes the requirement for a control plan.

11 Currently the following provisions of the DPM
12 standard are effective: 57.5060(a), establishing the interim
13 PEL 308 micrograms of EC per cubic meter of air, which is
14 comparable in effect to 400 micrograms of TC per cubic meter
15 of air; 57.5060(d), addressing control requirements;
16 57.5060(e), prohibiting rotation of miners for compliance
17 with the DPM standard; 57.5061, compliance determinations;
18 57.5065, fueling practices; 57.5066, maintenance standards;
19 57.5067, engineers; 57.5070, miner training; 57.5071,
20 exposure monitoring, and 57.5075, diesel particulate
21 records.

22 On September 7, 2005 we proposed a rule to
23 phase in the final DPM limit, because we're concerned that
24 there may be feasibility issues for some mines to meet that
25 limit by January 20, 2006. Accordingly we proposed a five-

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1 year phase-in period and noted our intent to initiate a
2 separate rulemaking to convert the final DPM limit from a
3 total carbon limit to an elemental carbon limit.

4 We set hearing dates and a deadline for
5 receiving comments on the September 7, 2005 proposed rule,
6 with the expectation that we would complete the rulemaking
7 to phase in the final DPM limit before January 20, 2006.
8 However, after publication of the September 7, 2005 proposed
9 rule, we received a request from the United Steel, Paper and
10 Forestry, Rubber, Manufacturing, Energy, Allied Industrial
11 and Service Workers International Union -- USW -- for more
12 time to comment on the proposed rule.

13 The USW explained that Hurricane Katrina had
14 placed demands on their resources that prevented them from
15 participating effectively in the rulemaking under the
16 current schedule for hearings and comments. We recognized
17 the USW's need to devote resources to respond to the
18 aftermath of Hurricane Katrina and the impact that would
19 have on their participation under the established timetable.

20 We also received a request from the National
21 Stone, Sand and Gravel Association -- NSSGA -- for
22 additional time to comment on the proposed rule and for an
23 additional public hearing in Arlington, Virginia.

24 Accordingly, due to requests from the USW and
25 the NSSGA, we published a notice on September 19, 2005 that

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1 changed the public hearing dates from September 2005 to
2 January 2006 and extended the public comment period from
3 October 14, 2005 to the current January 27, 2006.

4 In addition on September 19, 2005 we published
5 a notice in the Federal Register temporarily delaying the
6 applicability date for 57.5060(b) published in the Federal
7 Register on January 19, 2001 from January 20, 2006 to May
8 20, 2006 to provide sufficient time to complete the
9 September 7, 2005 proposed to amend the 2001 DPM rule.

10 At this time Jim Petrie, the chairman of the
11 Diesel Particulate Committee, will present an overview of
12 the proposed rule. After Jim's presentation, I'll begin to
13 call speakers.

14 Jim.

15 MR. PETRIE: Thank you, Ed.

16 This proposal is fairly narrow in scope. It
17 would revise the effective date of the final diesel
18 particulate matter limit and delete the existing provision
19 that restricts newer mines from applying for extensions of
20 time for meeting the final limit.

21 Additionally we request public comments on a
22 number of significant issues, including the appropriateness
23 of including in a final rule a provision for medical
24 evaluation of miners required to wear respirators and the
25 transfer of miners who are unable to wear them, and the

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1 appropriate factor for converting the final limit from total
2 carbon to elemental carbon, although as Ed said, MSHA will
3 address this in separate rulemaking.

4 Regarding revising the effective date of the
5 final diesel particulate matter limit, the proposed rule
6 would gradually phase in the 2001 DPM final concentration
7 limit of 160 micrograms of total carbon per cubic meter of
8 air of a period of five years, until the final limit of 160
9 micrograms is reached in January 2011.

10 The current interim limit of 308 micrograms of
11 elemental carbon will remain in effect until May 20, 2006.
12 Thereafter, the first phase-in final limit would be the same
13 as the current interim limit of 308 micrograms of elemental
14 carbon.

15 That would be effective until January 20, 2007.

16 The final limit would be reduced each year through January
17 20, 2011 as follows: On January 2007, it would be reduced
18 to 350 micrograms of total carbon; January 2008, 300;
19 January 2009, 250; January 2010, 200; and January 2011, 160
20 micrograms per meter cube of total carbon.

21 The preamble to the proposed rule include
22 extensive discussion on MSHA's 2001 assumptions regarding
23 technological feasibility. Our current concerns then tend
24 to these which question these assumptions, implementation
25 issues with available control technology, and our proposed

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1 assessment of the availability of alternative control
2 technologies.

3 MSHA requested that commenters address these
4 and issues related to the scope of the proposed rule.
5 Regarding limitations on the extension of time for meeting
6 the final limit, the proposal would delete 57.5060(c)(3)(i).

7 The 2001 rule restricted MSHA from granting extensions to a
8 mine operator if diesel-powered equipment was not used in
9 the mine prior to October 29, 1998.

10 This was because diesel-powered equipment,
11 prior to the date of the notice of the proposed rulemaking,
12 could experience compliance difficulties relating to such
13 factors as the basic mine design, use of older equipment
14 with higher DPM emissions, and other factors.

15 Also we believe that mines opening after
16 October 29, 1998 would be using equipment with cleaner
17 engines that would have less difficulty meeting the final
18 concentration limit. Presently MSHA believes that this
19 restriction is unnecessary, since applications for
20 extensions are voluntary and the test for granting an
21 extension is similar to that of enforcing existing
22 57.5060(d) for the hierarchy of controls.

23 The preamble discussion clarifies that we will
24 begin to consider granting extensions due to technological
25 or economic constraints for the initial final PEL of 308

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1 micrograms of elemental carbon in January 2006. And this
2 has now been extended to May 20, 2006.

3 MSHA requested comments on the effects of
4 deleting the requirement, the number of miners affected if
5 the provision were eliminated, and whether the elimination
6 would result in a reduction of health protection for miners.

7 Regarding comments requested on a medical
8 evaluation and transfer, specific comments are requested on
9 whether the final rule should provide for a medical
10 evaluation of miners who must wear respirators and transfer
11 of those miners who are deemed medically unable to wear
12 them.

13 In the preamble to the proposed rule, MSHA
14 included a specific example of regulatory language that
15 could be included in a final rule and requested extensive
16 comments regarding the following issues: whether the final
17 rule should contain provision for medical evaluation and
18 transfer of miners; whether the mine operators should be
19 required to notify the district manager of the health
20 professional's evaluation and that the miner will be
21 transferred; whether MSHA should include in the rule a
22 specific time frame for transferring the miner; whether the
23 mine operator should have to maintain a record of the
24 medical evaluation and if so, for how long should the record
25 be maintained; whether the provision include protection of

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1 medical confidentiality; costs to the mine operators for
2 implementing such a requirement, and other relevant
3 information and data.

4 Regarding our request for comments on
5 developing an appropriate conversion factor, MSHA will
6 initiate separate rulemaking to determine what the correct
7 total carbon to elemental carbon conversion will be for the
8 phased-in final limits. In the interim, MSHA wants your
9 comments on data for establishing an appropriate conversion
10 factor and time period for phase-in of the final limit,
11 technological implementation issues and the cost and
12 benefits of the rule.

13 Also we are interested in your views on any
14 other scientific approaches for converting existing total
15 carbon limit to an appropriate elemental carbon limit.

16 If MSHA does not complete the rulemaking to
17 convert the final limits before January 20, 2007, the Agency
18 is considering using the current 1.3 conversion factor that
19 we used to establish the interim diesel particular matter
20 PEL of 308 elemental carbon to convert the phased-in final
21 DPM total carbon limit to elemental carbon equivalents.

22 Regarding economic feasibility, MSHA stated in
23 the preamble to the proposed rule that the Agency intended
24 to use the entire rulemaking record supporting the 2001
25 final rule and the new information gathered during the

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1 recent rulemaking to promulgate the new interim PEL.

2 The data suggests that few mines would
3 experience economic feasibility problems in meeting the
4 interim limit. However, MSHA's interested in gathering more
5 information on economic feasibility implications, especially
6 in light of recent technological developments, leading the
7 Agency to propose a phased-in approach to meeting the
8 ultimate final limit of 160 micrograms.

9 Ed.

10 MR. SEXAUER: Thank you, Jim. If I may, Jim, I
11 think you used the term "milligram." And I think you
12 probably meant microgram per cubic meter.

13 MR. PETRIE: Yes. I'm sorry. Micrograms per
14 cubic meter. You're right.

15 MR. SEXAUER: Before I call the first speaker,
16 let me just mention some logistics here. The microphones
17 have been set down a little bit because of a potential for
18 feedback. So with that adjustment, it's necessary to be
19 fairly close to the microphone when you speak, so that we
20 can pick it up for our transcript.

21 So with that in mind, let me call the first
22 speaker. When I call you to speak, please come to the
23 speaker's table and begin your presentation by identifying
24 yourself and your affiliation for the record. If you have a
25 separate, prepared statement or any supporting documents for

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1 the record, please leave a copy with me.

2 The first speaker I have is John Griesemer.

3 MR. GRIESEMER: Good morning.

4 MR. SEXAUER: Good morning.

5 MR. GRIESEMER: I really didn't want to be
6 first. My name is John Griesemer. I'm vice president of
7 Springfield Underground, here representing our company. Our
8 company has been involved in underground mining for over 60
9 years.

10 Our company is active in trade associations,
11 and one of our employees, Mark Ecks, sits on the National
12 Stone, Sand and Gravel diesel task force committee, but was
13 unable to be here today. Springfield Underground appreciate
14 the efforts of MSHA to consider the data that's been
15 presented over the past few years as the rulemaking has
16 evolved.

17 It's a difficult issue for all of us to deal
18 with. Our general concern is the lack of technology
19 currently available to comply with the levels.
20 Springfield Underground is committed to the health and
21 safety of our miners.

22 We currently employ about 15 people
23 underground, and we also operate an open pit mine. The
24 safety and health of our miners is our number one priority.

25 We're very proud of our safety record in the past, and we

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1 want to do all we can to maintain the health and safety of
2 our employees.

3 So, please, all my comments today are with that
4 in light. I want to say that any rule propagated by MSHA
5 that we have been able to comply with we have not commented
6 on. There have been a number of rules and proposed
7 regulations in the last several years that we have remained
8 silent on, because we knew how we would comply.

9 The diesel particular matter regulation is one
10 that we are not sure in the later phase-in period how we
11 would comply with this regulation. Some of our concerns as
12 a small operator currently are the sampling capabilities and
13 repeatability.

14 The location of the samples relative to the
15 operator and the sampling methodology seem to be highly
16 variable, at least in our mind. Shifting to elemental
17 carbon, in our opinion, is a positive step. But it still
18 has variability that has made it difficult to achieve
19 repeatability in the testing.

20 As I already stated, the current methods to
21 achieve compliance are not economic feasible or present
22 other hazards to employees, specifically some of the
23 filtration technology that we've investigated. I would
24 state that we have not tried those technologies as of yet.

25 As I said, the current filtering technology is

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1 a capital cost and a long-term operating cost that's
2 difficult to absorb in the operations. Implementation of a
3 standard prior to new equipment technology being available
4 is one of our concerns.

5 We believe that the solution should start with
6 equipment manufacturers and engine manufacturers, and in
7 time through maintenance practice required by this rule will
8 cause DPM levels to be reduced. We are a fairly unique and
9 underground mine, in that we are shallow.

10 The roof of our mine is approximately 60 feet
11 below ground. Currently we have seven air shafts in our
12 underground mine. The majority of our ventilation costs,
13 which we believe is the most effective method for complying
14 with DPM -- the cost of those are covered by -- as I said
15 our unique situation, where we are developing the
16 underground for commercial uses.

17 So the ventilation cost is borne by our
18 developed areas, and our mining operations benefit from that
19 ventilation. As I said, it's a unique situation. As I
20 stated earlier, are currently or not concerned -- I believe
21 the term is interim or the current level -- is the later
22 phase-in that we do not know how we will comply with.

23 We have experimented with biodiesel fuels.
24 That was one of your questions. We have tried that.
25 Success -- as I said, reliability and repeatability of the

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1 testing is one of our concerns. The other concern we have
2 with biodiesel is availability.

3 We are currently unable to get shipments of
4 biodiesel, partly, I believe, because of demand for it,
5 because it's a cost savings to a lot of people. In summary,
6 I would say this rulemaking, although much better than the
7 originally proposed, leaves small operators with a lot of
8 uncertainty.

9 We would suggest that you strongly consider the
10 limits at the current levels and not force them down over
11 the five-year phase-in period. Requirements to improve the
12 emissions standards by manufacturers and the already-
13 implemented engine maintenance requirements will over time
14 do more to reduce DPM levels than an arbitrary level set
15 without feasible means of compliance.

16 I want to thank you for your time. I would
17 entertain any questions, if the panel has any.

18 MR. SEXAUER: John, thank you.

19 Jim.

20 MR. PETRIE: Your underground mine is
21 limestone. Right?

22 MR. GRIESEMER: Yes, sir.

23 MR. PETRIE: It's the commodity you're mining.

24 MR. GRIESEMER: Yes, sir. Mainly for
25 construction. Aggregate use is actually almost exclusively

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1 construction aggregate uses.

2 MR. PETRIE: Is it natural ventilation?

3 MR. GRIESEMER: No, sir.

4 MR. PETRIE: Or is it mechanical?

5 MR. GRIESEMER: Mechanical.

6 MR. PETRIE: Do you have any kind of a medical
7 evaluation program for any of your miners that may be
8 required to wear respirators? And if so, how often do you
9 conduct a medical evaluation?

10 MR. GRIESEMER: We currently don't have any
11 employees that are required to wear respirators. We do do
12 medical evaluation for hearing.

13 MR. PETRIE: Okay.

14 MR. SEXAUER: Doris.

15 MS. CASH: You said you had tried biodiesel.
16 Right?

17 MR. GRIESEMER: Yes, ma'am.

18 MS. CASH: There were some problems with
19 getting a supply of it.

20 MR. GRIESEMER: Yes, ma'am.

21 MS. CASH: What grade do you know of biodiesel?
22 Like a B-5, B-20. Was it a low amount of biodiesel or very
23 high?

24 MR. GRIESEMER: We tried different percentage
25 mixes. We were not to 100 percent when we were unable to

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1 receive it. I believe we were up to a 60/40. I'd have to
2 check, and I can before you leave here today. I'll find out
3 what grade it was that we were trying.

4 MS. CASH: Okay. We're you able to get any
5 results? Do you know what type of reductions or any change
6 in your exposure levels or in your emission levels -- were
7 you able get that?

8 MR. GRIESEMER: Not that we were able to
9 document.

10 MS. CASH: Okay. Thank you.

11 MR. SEXAUER: Jim.

12 MR. PETRIE: Is your mine currently in
13 compliance with the 308 milligram limit?

14 MR. GRIESEMER: Yes, sir, we are.

15 MR. PETRIE: Do you foresee any problem in
16 meeting that limit in the future?

17 MR. GRIESEMER: No, we do not.

18 MR. SEXAUER: John, you indicated you'd have
19 some additional information. We need to get that on the
20 record. So if you do get it, if you would just bring it to
21 our attention before we close today.

22 MR. GRIESEMER: Okay.

23 MS. CASH: Or for your information also, if
24 there's additional information, you -- or anybody else --
25 wants to submit, they can still send it to use before the

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1 end of the comment period. So if there's information we ask
2 for today or you think of something else you want to add to
3 what you've already told us, you can still send that to us.

4 MR. GRIESEMER: Okay. I would make one other
5 comment on the transferability of miners. When you're a
6 small operator with 12 people, moving people around to
7 comply is not necessarily feasible in our case. We don't
8 have a large labor pool.

9 To move people is a lot of times restricted
10 from skills and union contracts. We have three union
11 contracts covering 12 people, and transferring positions is
12 sometimes impossible.

13 MR. SEXAUER: George.

14 MR. SUSEEN: John, can you tell us what size
15 engines are in your equipment underground, horsepower size?

16 MR. GRIESEMER: Horsepower -- ballpark around
17 250-300 horsepower. We're running mainly 35-ton trucks and
18 a Caterpillar 988-F front-end loader.

19 MR. SUSEEN: Okay. Do you feel you've reduced
20 your levels? Have you had changeover in engines to newer
21 engines? Has that made a difference? Or have you not
22 changed your fleet?

23 MR. GRIESEMER: We haven't changed our fleet.
24 Actually I take that back. We replaced one older truck with
25 a new cab truck with a newer engine. But it was new to us.

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1 It was not a new truck.

2 MR. SUSEEN: Could you provide us with what
3 engine models your fleet is?

4 MR. GRIESEMER: I'll try.

5 MR. SUSEEN: And the year of the engines -- the
6 manufacturing date.

7 MR. GRIESEMER: Okay. I'll try.

8 MR. SUSEEN: And you said you haven't looked
9 into any filter technologies.

10 MR. GRIESEMER: Just the data available from
11 MSHA and the data available from NIOSH and from our trade
12 associations. From what we've seen it's not a process that
13 we want to try at this point, because we are in compliance
14 today.

15 But in looking in the long-term, as the levels
16 are driven down, we may have to look at it.

17 MR. SUSEEN: All right. Thank you.

18 MR. SEXAUER: Bill.

19 MR. POMEROY: Yes. Just to follow up on the
20 filters. You're in compliance now, so you really don't need
21 to use filters. But you're kind of looking at them as a
22 possible strategy for the future. What is it about filters
23 that concerns you the most?

24 MR. GRIESEMER: Well, I think the NIOSH study
25 is probably the one that concerned me the most -- that

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1 talked about some of the concerns with -- there was an issue
2 of fire, as I recall. There was the problem of having to
3 bake the filters nightly to bake off some of the carbon, as
4 I recall.

5 That was a concern for our operating people,
6 exactly how that would transpire. The fact that some of the
7 filters would not go up full shift, that we'd have to change
8 them mid-shift. In our situation, that's -- again with the
9 small number of people, we're shutting down the entire
10 operation to change out a filter.

11 Mainly this is loading and hauling equipment
12 that we're using. So we'd be shutting down the entire
13 operation to change those filters.

14 MR. POMEROY: What's your typical work shift?
15 Twenty hours?

16 MR. GRIESEMER: Eight to ten hours. We're a
17 single-shift operation.

18 MR. POMEROY: One shift a day.

19 MR. GRIESEMER: Yes, sir.

20 MR. POMEROY: Do you do any work at all in the
21 off-shift? Any maintenance work?

22 MR. GRIESEMER: No.

23 MR. POMEROY: Drilling or anything?

24 MR. GRIESEMER: No, sir.

25 MR. POMEROY: Okay. A fleet would be a drill,

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1 scalar production loader, clean-up loader, two or three haul
2 trucks.

3 MR. GRIESEMER: Exactly. And a couple man
4 lifts.

5 MR. POMEROY: What's the roof height?

6 MR. GRIESEMER: On a first pass we're 30 feet,
7 and then we bench at 12 foot. So we're 42 finished foot.

8 MR. POMEROY: Okay. Do you know what your
9 ventilation quantity is?

10 MR. GRIESEMER: We're over 400,000 cfm.

11 MR. POMEROY: And is that pretty much constant
12 year round?

13 MR. GRIESEMER: Yes, it is. And as I said, the
14 cost of that is borne by our developed areas. So that cost
15 for us -- we're a unique situation -- doesn't get borne out
16 in the mining side.

17 MR. POMEROY: All your equipment have cabs?

18 MR. GRIESEMER: Except for the man lifts. Yes,
19 sir.

20 MR. POMEROY: Okay. What is the ventilation
21 scheme? Do you intake through the shafts?

22 MR. GRIESEMER: The majority of our shafts are
23 exhaust shafts. We do have one downcast shaft. Several of
24 them are reversible. But we don't normally reverse them.

25 MR. POMEROY: You haul out in mine with the

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1 haulage trucks.

2 MR. GRIESEMER: Our primary crusher is
3 underground.

4 MR. POMEROY: Okay. So you haul out on the
5 belt.

6 MR. GRIESEMER: Yes, sir.

7 MR. POMEROY: Just a couple of follow-up
8 questions on the biodiesel fuel. How long were you using
9 the biodiesel? Was it sort of in separate episodes? Or was
10 it sort of a period of a couple of years?

11 MR. GRIESEMER: Actually I believe we just
12 started about six months ago. We started with some blends,
13 because we had some maintenance concerns. We tried it once
14 before -- I want to say seven, eight years ago.

15 It shut down several pieces of equipment when
16 we got the concentrations too heavy. So we were a little
17 leery about trying it this time, and we started with some
18 small blends. Cold weather was a problem for our jobber, in
19 that he couldn't pump the bio to us, so we were unable to
20 get it.

21 Then most recently they are totally out. So we
22 haven't -- the experimentation and increase in percentages
23 we had to stop, because we couldn't get the availability.
24 Now, I understand that in the State of Missouri, I think
25 there's a couple plants coming on line. But don't know when

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1 those will be.

2 MR. POMEROY: How do you store your fuel? Is
3 it on the surface or underground?

4 MR. GRIESEMER: It's underground.

5 MR. POMEROY: Does the distributor bring his
6 on-highway truck right into the mine then to offload into
7 your tanks?

8 MR. GRIESEMER: Yes.

9 MR. POMEROY: Do you know what your fuel usage
10 is per month?

11 MR. GRIESEMER: About 8,000 gallons. That's
12 surface and underground.

13 MR. POMEROY: Right. I think that's it.

14 MR. SEXAUER: Jim.

15 MR. PETRIE: One final question, John. Is
16 there any particular occupations or equipment that you feel
17 might have difficulty in complying with the phase-in limits?

18 MR. GRIESEMER: Personally I believe we've got
19 a problem with the employees that are not in cabs. Our hand
20 scalers and man baskets. The biggest risk is our explosive-
21 loading employee, because he's in a man basket. Our info-
22 loading rig runs to create air pressure to pneumatically
23 load the info.

24 So he's close to a running engine. If he's in
25 a dead end header, I think we will have a problem.

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1 MR. PETRIE: Okay. Thank you very much.

2 MR. GRIESEMER: Also those guys -- they're not
3 moving. They're in one location for long periods of time.
4 The haul truck drivers are moving, and the other ones are
5 not.

6 MR. PETRIE: Okay. Thank you.

7 MR. SEXAUER: Okay. Thank you very much, John.

8 MR. GRIESEMER: I've got some homework. I'll
9 get busy.

10 MR. SEXAUER: Our next speaker is Michael Root.

11 MR. ROOT: Good morning.

12 MR. SEXAUER: Good morning.

13 MR. ROOT: My name is Michael Root. I'm here
14 on behalf of Bruening Rock Products, Skyline Mine number one
15 is Knoxville, Iowa. If you don't mind, I'll use my little
16 notes that I've scribbled here. On behalf of Bruening Rock
17 Products, I'm testifying in opposition to the proposed
18 diesel particular matter rule proposed by the Mine, Health
19 and Safety Administration in the September 7, 2005 Federal
20 Register.

21 Our company is a member of the National Stone,
22 Sand and Gravel Association, and we support the more
23 detailed testimony and written comments that are being
24 submitted to the administrative record by the Association.
25 We are a small, family business with a single underground

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1 mining operation with 17 employees, eleven of which are
2 underground on an average shift day.

3 We are among the approximate eleven active
4 mines in Iowa that are currently subject to the interim
5 exposure limit for the diesel particular matter, which would
6 be affected by the proposed rule. We've explored several
7 different control technologies in order to keep our diesel
8 particular matter exposure within the interim limit.

9 In order to meet the proposed rule's mandatory
10 limit, further control technology would not only be
11 necessary, but in an operation of our size, would be cost-
12 prohibitive and cause undue and unnecessary economic
13 hardships.

14 We currently use a very limited number of
15 diesel machines in our operations. These consist of a one-
16 year old 92-G Cat end-loader, a six-month old tier-three
17 engine scaler, five International 9700 haul trucks, which
18 are six months old to two years old, a six-year old cannon
19 drill and a six-year old Getman powder wagon.

20 We currently ventilate our operations through
21 an air shaft, moving 180,000 cubic feet/minute into the
22 underground area. At the same time we're currently
23 exhausting 165,000 cubic feet/minute. Even with booster
24 fans and low-emission engines running on low-sulfur fuel, we
25 can barely stay under the interim level of 308

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1 micrograms/cubic meter.

2 On our last personal exposure, we ran from a
3 low of 126 to a high of 289. Any future reduction of diesel
4 particular matter based on total carbon would require our
5 operation to make a large capital investment. Even after
6 making this type of mandatory investment, we have no
7 guarantee with the available technology that we could meet
8 the proposed mandatory limits.

9 The larger question is, has the manufacturing
10 industry that provides the machinery for the mining industry
11 had the necessary technology, resources and time to improve
12 the controls required to make compliance attainable.

13 Keep in mind these are the same industries
14 expected to support the war effort since 2003 and help
15 provide support for all of the disasters that have
16 surrounded us since 2001. If this proposed rule takes
17 effect as published in the September 7, 2005 Federal
18 Register, it would without a doubt cause numerous problems,
19 undue economic stress on small mining operations like ours.

20 We've experimented with biodiesel, and we have
21 found several problems. We work approximately 50 weeks a
22 year, hauling from our underground to the surface, which
23 exposes us to extreme temperature changes, which in our part
24 of the State of Iowa is drastic.

25 It gels more frequently, causes inefficient

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1 engine operation, higher maintenance costs and unproductive
2 employee hours due to maintenance problems. We also checked
3 into filter systems. The company that we checked in with --
4 we worked through J.S. Red Path out of Canada to hook us up
5 with a couple of organizations that provide these filters.

6 In talking to these individuals, we found that
7 they required specific engine specification, in that each
8 filter that was to be designed was to be designed
9 specifically for the engine-rated horsepower and total
10 specifications in order for them to design a filter that
11 would be capable of working with that engine.

12 We also found that that filter was extremely
13 expensive, and with the very different machines that we
14 have, would require a separate filter for each engine, and
15 no guarantee again as to the longevity of these filters and
16 what kind of maintenance problems that we'd run into by
17 utilizing this type of filtration system.

18 In closing, I guess I would like to say,
19 setting unobtainable limits and goals does nothing more than
20 cause frustration, confrontation and conflict for both MSHA
21 and the mining industry. This defeats both our purposes,
22 which is to bring safe and healthy atmospheres for all
23 miners. Thank you.

24 MR. SEXAUER: Jim.

25 MR. PETRIE: I just a few questions, Michael.

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1 Do you have a respiratory protection program to any of your
2 miners who wear respirators routinely? And if so, do you do
3 medical evaluation?

4 MR. ROOT: Not at this particular time. No. I
5 will add to that that the individuals that were tested -- I
6 think out of the eleven or 12 miners that work underground,
7 only two of them are non-smokers. The rest of them are all
8 smokers.

9 MR. PETRIE: Does your mobile equipment used in
10 your mine have environmental cabs on it?

11 MR. ROOT: Yes. The most efficient cab that we
12 have right now is on the Caterpillar 972 end loader. It's a
13 very ergonomic and a very positive air-pressured cab. That
14 technology has just been developed within the last, I
15 believe, year or year and half since the G model came up.

16 MR. PETRIE: If we would finalize the phased-in
17 approach, are there particular occupations or equipment that
18 you feel you would have more difficulty than others in
19 complying with the lower limits?

20 MR. ROOT: Yes. I believe right now with the
21 haul trucks that we use -- a 9700 International haul truck
22 is basically an overgrown road truck. It's a straight-
23 forward dump truck that has especially heavy-duty
24 suspensions and everything else.

25 In our particular situation we found out that

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1 the Caterpillar haul trucks and the larger haul equipment
2 did nothing more than cause abusive problems and maintenance
3 problems in the roadways and work areas of the mine.

4 So we went to the lighter vehicle. Those also
5 have positive-pressure cabs, air conditions and filter
6 systems that are inherent to like a road truck or everything
7 else. So those were not consistent with problems.

8 The problem is the operators on those pieces of
9 equipment are all heavy smokers. With the total carbon
10 versus the elemental carbon, you're getting a lot of influx
11 from outside activities that probably are not really showing
12 a true exposure limit to them.

13 The drilling people and the face workers, where
14 your explosives people and scalers and stuff are working,
15 are probably going to be the larger exposure people. And to
16 that end right now, several companies are coming out with
17 new technology -- as far as face drillers are coming out.

18 I understand that there's some individuals that
19 use to be with Cannon that now have started a new company
20 called Fletcher. I believe some of the technology that
21 these people are developing is going to in the future
22 probably be extremely helpful to the industry as a whole for
23 that type of equipment.

24 There again you still have powder people and
25 face workers that are going to be exposed, just simply

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1 because of the atmosphere that they're going to be in in the
2 headings, where a lot of times, unless it's boosted with
3 ventilation, your particle matter is going to settle.

4 MR. PETRIE: Do you have booster fans in those
5 headings currently?

6 MR. ROOT: Correct. Our mine is 230 feet below
7 ground. We went in in 1999. In 2003, I believe, we drilled
8 a ten-foot diameter, 200-foot deep air shaft, which acts as
9 also an escape way. That fan that sits on top of that
10 forces air into the mine.

11 The exhaust comes out the portal. We exhaust
12 out the portal. It is totally reversible. We have five
13 booster fans downstairs that we have available to us --
14 three that are in use right now. Two more that are being
15 built in our shop to be taken down into the underground area
16 to increase the ventilation flow.

17 We have laid out the mine very well, so that we
18 don't seem to have a whole lot of dead space, with the
19 exception of right at the working face during the working
20 shift. There again I think that we can go ahead and
21 increase the ventilation by introducing these additional
22 fans to ventilate those work faces.

23 MR. PETRIE: Thank you. Just to add though,
24 that if we would convert to total carbon limits to elemental
25 carbon, the elemental carbon would not be affected by

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1 smoking in the cabs.

2 MR. ROOT: Exactly. Carbon is a natural
3 forming element. By using total carbon we expose the miner
4 to something that is basically not a true indicator of what
5 the emissions through burnt diesel fuel are indicating.

6 MR. PETRIE: Thank you. Just a clarification.
7 You mentioned some years of equipment -- I think one-year
8 and two-year.

9 MR. ROOT: Correct.

10 MR. SEXAUER: George.

11 MR. SUSEEN: Is that year production or new to
12 your mine? Is that used equipment coming in, or is this
13 new?

14 MR. ROOT: No, this is equipment -- the Cannon
15 drill and the Getman were two pieces of equipment that were
16 purchased six years ago in 2000, when we actually started
17 into production. Our mine started in about 1998-1999 with
18 the dragging of the slope. We actually received from our
19 contractor that took our slope down, our mine in about 2000.

20 These machines were introduced at that time
21 brand-new purchases, the Cannon drill and the Getman. The
22 loader at that particular time was a loader that we had had
23 that had worked on the surface operation. That loader has
24 been replaced within the last year with a newer model,
25 simply because of the size.

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1 We work 35 to 40-foot rooms with a 17 to 20-
2 foot face. So our limestone bed right now is typically
3 limited as far as heights and restrictions on the types and
4 sizes of machines that we can actually use productively in
5 the mine -- i.e., instead of a 980 end loader, we went
6 to a 972, which is a little smaller.

7 Horsepower rating is just a little bit lower.
8 It's more efficient. We were able to eliminate accidents
9 and damages from a larger machine backing into rib or
10 causing some kind of a situation that would be detrimental
11 to employees as well as the equipment.

12 MR. SUSEEN: Would you be willing to supply us
13 with your inventory of equipment and age of the engines that
14 are currently in production underground.

15 MR. ROOT: I just did. Those are the pieces of
16 equipment. We introduced the trucks over the last three
17 years to six months. The last truck that we bought is six
18 months old. We run C-12 to C-15 Caterpillar engines and
19 three or four of the Internationals.

20 I believe the fifth International has a
21 Cummings engine that is rated exactly the same. I believe
22 the Getman uses a Cummings engine, and I believe the Cannon
23 uses a Cummings engine -- that I'll question. But the rest
24 of the equipment uses C-15, C-16 engines.

25 MR. SUSEEN: Okay. Thank you.

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1 MR. SEXAUER: Bill.

2 MR. POMEROY: Just a couple questions. You
3 mentioned that you'd talked to Red Path about diesel
4 particulate filters, and they had indicated to you what type
5 of information they needed about the engines and duty cycles
6 in order to specify a filter.

7 MR. ROOT: I visited with Red Path on two
8 different occasions: one for a safety chamber. At that time
9 I asked them who they would recommend or what kind of
10 individual companies out there that I could visit with.
11 They recommended two or three different companies.

12 I have their names back at the office. I
13 didn't bring those with me. But I have the names of two or
14 three at that time were Canadian companies, that were in the
15 business of doing this. And I believe this was two years
16 ago that I talked to those people.

17 They were indicating that they needed this
18 information and that the filters were specifically designed
19 to the horsepower rating and the typical serial numbers and
20 everything else of each engine. At that time these filters
21 were running anywhere in the neighborhood from \$2,500 to
22 \$5,000 per application.

23 MR. POMEROY: Do you recall what kind of
24 information they needed from you, other than just
25 horsepower?

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1 MR. ROOT: It was pretty much the statistical
2 rating of the machine. They also requested the serial
3 number of the particular engine, so that they could either
4 go to the manufacturer like Caterpillar -- to their
5 people -- and find out -- straight-forward facts such as the
6 horsepower, the torque rating, the exhaust gas temperatures
7 that came out of the stack, all of those different types of
8 facts.

9 It seemed that they were very, very thorough in
10 what they were trying to design and build. It seemed like
11 it was extremely expensive. Since then I've looked at a
12 couple of different filters and found out that through these
13 catalysts that start to use, they do burn the hydrocarbons
14 and the carbons off.

15 But the problem seems to be with the heat that
16 they use and the increased temperatures that come about from
17 these filters in burning off these filters. It seems to
18 increase the amount of carbon monoxide that these engines
19 produce.

20 MR. POMEROY: The information that they would
21 require in order to specify a filter, would it be difficult
22 for you to provide that information? Do you have that
23 information available, should you decide to buy filters?

24 MR. ROOT: A few years ago in the State of Iowa
25 they decided through the Air Quality Bureau, that each and

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1 every one of our crushing operations or plants needed to be
2 permitted. Part of that permitting process was this same
3 type of a thing.

4 They wanted to know what the horsepower
5 ratings and what the emissions and everything else. It took
6 me two and a half months to go through Caterpillar, Detroit
7 and several other individual manufacturers to actually have
8 them send me the specific standards of that engine,
9 including exhaust gas temperatures and everything else.

10 They do have that stuff available through their
11 research. But they're a little slow in trying to get it
12 back to you, because they feel that you probably really
13 don't have a need to know.

14 MR. POMEROY: But you do have that information
15 now.

16 MR. ROOT: Yes. Some of it. But it's hard to
17 get your hand on sometimes.

18 MR. POMEROY: Have you done any exhaust gas
19 temperature measurements yourself at the mine?

20 MR. ROOT: No.

21 MR. POMEROY: The main issues you had with the
22 biodiesel were the cold weather temperature.

23 MR. ROOT: What it would do was -- in the
24 weather conditions in Iowa, one day it can be 40 degrees,
25 and the next day it can be 25 degrees below zero. Sure, in

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1 the mine atmosphere and our diesel storage tanks are below
2 ground.

3 But there haul trucks, we don't have any
4 crushing apparatus or everything else. Shoot, muck out,
5 load it in the truck, haul it out -- crushing operations on
6 the surface of the ground. Coming up and down the slope of
7 the mine, invariably the large temperature change that is
8 being caused through the engine temperature from the surface
9 back to the underground was causing gelling problems, was
10 filling our water filters, clogged fuel lines.

11 Just basically turned into a situation where we
12 were spending more time pulling maintenance on the equipment
13 than we were actually using the equipment. And we were
14 using anywhere from 60/40, and at one time two years ago,
15 tried 100 percent.

16 We did have some failures as far as efficiency
17 on the engine. We did note that that there was some
18 deficient horsepower ratings and stuff like that, that were
19 coming out of the engine and causing to actually burn
20 inefficiently.

21 Horsepower, fuel efficiency and economy went
22 right down the drain. So we went back to a lower sulfur
23 fuel. We find that the lower sulfur fuel has helped some.

24 MR. POMEROY: What percentage of the haul cycle
25 is actually in the underground mine, as opposed as to either

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1 on the ramp or on the surface?

2 MR. ROOT: I would say probably it would run --
3 20 to 30 percent of the time is spent from the unit entering
4 the mine, loading and exiting the mine to the crushing
5 operation. The rest of the time would be spent in travel up
6 and back.

7 The crusher is approximately, I would guess, a
8 half a mile from the portal of the mine to the actual feeder
9 of the crusher.

10 MR. POMEROY: Do you maintain a separate fuel
11 storage for your surface equipment, versus the storage you
12 have underground?

13 MR. ROOT: Yes.

14 MR. POMEROY: Would it be feasible for you to
15 fuel the haulage trucks on the surface with number two
16 ordinary diesel and the underground fleet with the
17 biodiesel, since the trucks are only underground 20 to 30
18 percent of the time anyway?

19 MR. ROOT: I guess I had not considered that as
20 a real possibility -- food for thought. I can understand --
21 I guess I just more or less never even thought of that
22 particular idea. But there again your standard number two
23 diesel, high-sulfur, off-road diesel fuel, which is provided
24 for the surface operation, would probably increase the
25 pollutants as the truck goes underground and comes out from

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1 underground.

2 MR. POMEROY: Do you use an off-road, number
3 two diesel on the surface?

4 MR. ROOT: Yes.

5 MR. POMEROY: Okay. Do you know what the
6 sulfur content is?

7 MR. ROOT: No. Not right off the top of my
8 head I don't.

9 MR. POMEROY: Okay. That's all.

10 MR. SEXAUER: Jim.

11 MR. PETRIE: As a relatively small mine
12 operator, what problems would you envision if you had to
13 transfer a miner that was unable to wear a respirator, if
14 the miner was required to wear a respirator? Are your
15 employees generally cross-trained?

16 For example, could the scaler operator drive
17 your haul trucks if need be? If you could comment on that,
18 I would appreciate it.

19 MR. ROOT: There is always that possibility.
20 Yes. We try to cross-train our miners as much as possible.

21 But in the areas that we work out of, the labor force that
22 we have to draw on to employ miner is somewhat limited.

23 As miners grow older and leave the mine, it
24 becomes harder and harder every day to hire young miners and
25 get them to work in an underground environment. It's

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1 difficult to make an individual do something that is
2 probably a little unnatural to him, especially when it comes
3 to the younger people.

4 I would fear that they would probably be a
5 little bit of a problem with a new miner being told, Look,
6 you're going to be wear a respirator all the day that you're
7 down here. They might balk at that. We do not right now
8 have any medical or anything else in place to be able to
9 transfer a miner from the underground location to the
10 surface location or surface jobs that are at the mining
11 location.

12 MR. PETRIE: Okay. Thank you.

13 MR. SEXAUER: George.

14 MR. SUSEEN: Just one follow-up. You mentioned
15 a statement that you don't believe that some of the
16 manufacturers of mining equipment have the technology to
17 provide you with the equipment to meet any lower levels.
18 Are you referring to the engines, the exhaust filtration
19 cabs?

20 Could you elaborate a little bit more on what
21 you feel that is lacking from the manufacturers?

22 MR. ROOT: There are probably manufacturers out
23 there that have some of the technology available. They just
24 have not quite implemented it totally yet, because of their
25 resources. And some manufacturers that probably have not

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1 developed the technology yet that they want to to proceed
2 on.

3 Being a small mining organization, it's
4 necessary to shop around. You have to have every ability
5 economically that you possibly can and availability for
6 manufacturers of mining equipment, so that you can use the
7 equipment, number one, that's best suited to your operation,
8 and the most economical for you to either purchase, rent or
9 utilize.

10 By some manufacturers having technology that
11 are requiring us to put in place and other manufacturing,
12 you're limiting us economically to certain individual pieces
13 of equipment and manufacturers that we would have to buy
14 from in order to maintain compliance with the rule.

15 Now I've checked with a few manufacturers.
16 Specifically we inherently like to use American-made
17 equipment. Our company seems to have had very good luck
18 with maintenance, less breakdowns and everything else with
19 Caterpillar equipment.

20 Some of the Caterpillar engines and stuff like
21 that are not quite up to speed technologically as would
22 probably be necessary to be able to comply with this rule.
23 Now, I'm not going to say that tomorrow or the next day that
24 one of these manufacturers isn't going to have breakthrough
25 and have the resources that they can apply that will

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1 drastically change exactly what's happening.

2 I don't know. But there is no guarantee that
3 that's going to happen. There's no guarantee that that's
4 not going to happen. But I think there's still some
5 manufacturing people out there that make equipment for the
6 industry that are trying to develop the technologies
7 necessary to make our job easier and keep us in compliance
8 with what's going on with these particular matters.

9 But it's just not there yet. Is it coming?
10 Possibly. When is it coming? I can't answer that
11 question. But the industry generally has a tendency that
12 provides machinery not to be able to keep up with what we
13 are doing and what we're going by rules that are mandated on
14 top of us.

15 It's like a catch-22 situation. Well, maybe
16 tomorrow I can give it to you. But I can't guarantee it.
17 So what are we to do? We get caught in the middle between
18 the rock and the hard place, to put it straight-forward. It
19 puts us in a very, very precarious position, especially when
20 you're a small, family-owned business.

21 Economics and capital outlays, especially
22 underground mining -- up-front capital outlays are
23 extensive. I hope I answered your question, George.

24 MR. SUSEEN: Yes. Thank you.

25 MR. SEXAUER: I think that's all the questions

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1 we have, Michael. Thank you very much.

2 MR. ROOT: Thank you for your time and
3 patience.

4 MR. SEXAUER: What we're going to do now is
5 take a short, ten-minute break and then reconvene. Let me
6 just mention to you that it's our intention to try to post
7 this material, this testimony, on our MSHA webpage in
8 approximately a week.

9 So if you care to look at it, it should be
10 posted around a week from today, more or less.

11 MR. SEXAUER: We have currently signed up two
12 speakers. The second one will be two people together
13 speaking. So we'll now take a break for ten minutes and
14 reconvene.

15 (Whereupon, a short recess was taken.)

16 MR. SEXAUER: Okay. We're back on the record.
17 Our next speaker -- I was negligent in doing this before,
18 but I'm going to ask everyone to spell their names for the
19 reporter as you come to the microphone. Our next speaker is
20 Pete Kaser.

21 MR. KASER: Good morning, ladies and gentlemen.

22 MR. SEXAUER: Good morning.

23 MR. KASER: My name is Pete Kaser, K-A-S-E-R.
24 I am the project engineer and sales manager for Bruening
25 Rock Products at Knoxville, Iowa. I work with Mike Root,

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1 so I'll try not to be repetitious. I'm an engineer. I've
2 spent over 30 years in the limestone industry in Iowa.

3 I've worked with the four different underground
4 mines during that period of time. As Mike mentioned, we
5 started the mine in 2000. I think the important points I
6 want to emphasize of the fact that have professionally
7 designed the mine.

8 We used a national firm to come in and do the
9 design work and do the development work of the mine. As
10 Mike mentioned, we bought brand-new equipment, and we have
11 fairly recent models and fairly new equipment in the mine.
12 We have been very careful to do the surveying, to do the
13 roof control in the mine we scale every day.

14 We have a good variety of fuel systems, as Mike
15 said, both with the soy biodiesel and now with the low-
16 sulfur diesel. We in 2003 installed a ten-foot ventilation
17 shaft, running 24 hours a day, seven days a week,
18 mechanically adding 180,000 cfm of air all the time,
19 continuously.

20 The important point I'm trying to make is we
21 have very good ventilation in this mine. It is a fairly new
22 mine with fairly new equipment. We are pretty much state-
23 of-the-art. As Mike mentioned, we're still struggling and
24 very, very concerned with the proposed limitations.

25 As Mike mentioned, when we've done the

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1 monitoring this last summer, a number of our people are
2 coming out in the 200s, up to 289, micrograms/cubic meter,
3 versus a 308 limit. So we have very, very little room for
4 fluctuation there.

5 We're concerned about the new total carbon. It
6 scares us, since we're unsure about what the conversion
7 factor or what other variables will influence the readings
8 when we do testing. In addition to that, as Mike mentioned,
9 all but two of our employees are smokers.

10 Under the total carbon, obviously smoke can
11 influence that as well as other interferences. So we're
12 very concerned. We cannot require our employees to not
13 smoke during that ten-hour or eleven-hour shift. So we're
14 going to have some real problems with total carbon.

15 That's just a real practical restraint and
16 concern we have. I'm concerned about the proposed rule and
17 whether or not it really is necessary. In our experience,
18 the 308 so far it appears as though we can comply with this
19 under elemental carbon requirements, as opposed to total
20 carbons.

21 We're concerned about any credible, scientific
22 evidence or study that shows that we need to change to the
23 total carbon or that we really need to reduce those limits
24 from the 308 currently to a lower level. As I understand,
25 there have been experiments with lab rats with diesel

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1 emissions at extremely high levels, and they found problems.

2 But is 308 an adequate number? Could it be
3 higher? Does it need to go down to 160? As I understand,
4 there was very limited scientific evidence to show whether
5 or not we really have a problem. I'm concerned about the
6 ramifications of this.

7 We think that by lowering the limits from 308
8 down to a lower level and switching over to the total
9 carbon, that we may create some huge problems. Number one,
10 if we cannot comply with these lower limits, our mines may
11 be shut down.

12 In the State of Iowa underground mines produce
13 probably, I'm guessing, 20 to 25 percent of all the
14 limestone in the State of Iowa. So these eleven or 12
15 active mines are larger handling the metropolitan areas, and
16 there'd be huge disruption to construction for highway
17 safety for other needs for limestone.

18 It'd be a real difficulty trying to provide
19 limestone through open-pit operations. I'm concerned about
20 the technology and capital investment. As Mike said, we're
21 a smaller, family business. When we take a look at new
22 investments -- as you're pretty well aware, capital
23 investments are huge -- if we look at a new underground mine
24 trail, \$325,000.

25 So the capital expenditure -- while we have

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1 fairly new equipment, we'd have to go something new yet.
2 The dollars and cents involved are just huge. We're also
3 concerned about maintenance upkeep of newer technology that
4 is not proven and has very little history.

5 We're concerned about the employees -- again
6 the question of, do we require employees to not smoke during
7 a ten or eleven-hour shift. That's a real problem for all
8 except for two of our underground miners. We're concerned
9 about requiring them to wear respirators.

10 As you're aware, attracting younger people to
11 underground mining is a little bit of a difficult process,
12 particularly in the last week with the tragedy out in West
13 Virginia. People are not going to be particularly attracted
14 to underground mining.

15 A lot of people don't understand the difference
16 between the difficulties and hazards of coal mining versus
17 the relatively safe, underground limestone mining.
18 We have a problem with the perception in underground mining
19 in general.

20 A couple of other concerns we have with
21 citations, MSHA citations and public perception. We're
22 very, very concerned how our insurance companies are going
23 to respond. Are they going to consider underground
24 limestone mining a high-risk?

25 Are our premiums going to go up significantly?

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1 Are they going to cancel? Are they going to back out of
2 underground mining and not write insurance for underground
3 mines? This is a real concern, and it's more perception
4 than fact.

5 But when they have public access to
6 citations -- as we know, a lot of citations are relatively
7 minor. Very few are S&S. The perception to people like
8 this is going to be a real problem for us from an insurance
9 standpoint.

10 Another huge problem for us is going to be the
11 public, and again particularly with the tragedy out in West
12 Virginia. We've had inquiries from the press, because we
13 are an underground mining company. We're very concerned
14 that, when it comes to permitting, when it comes to zoning,
15 when it comes to trying to stay in business, the community
16 is not going to be very understanding or very logical.

17 There's going to be a knee-jerk reaction. So
18 we in the underground limestone mining industry, unless we
19 have an understanding and logical and cooperative
20 relationship with MSHA, it may be misinterpreted, whether or
21 not there is a serious problem here.

22 I'd like to again comment about the
23 environmental benefits of underground limestone mining,
24 because again if we unnecessarily penalize underground
25 limestone mining, it's going to force us to try to comply

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1 with needs for the industry with open pits.

2 There are a number of benefits of underground
3 limestone mining from an environmental standpoint. It is
4 the ultimate land use. We can continue surface operations,
5 whether it's farming or residential or whatever, while we're
6 doing underground limestone mining -- in our case -- 230
7 feet below the surface.

8 Secondly, it does not involve dirt stripping.
9 A lot of the environmental people are very concerned and
10 want to restrict the amount dirt-stripping operations.
11 Certainly with our underground operations we can avoid that.

12 Third, we're a better neighbor, because a lot
13 of that drilling and shooting and noise and dust and smoke
14 is below ground, as opposed to with our open-pit operations.

15 Fourth, we have very, very large reserves below ground,
16 where we're more limited with reserves and availability of
17 land with our above-ground operations.

18 I think the real focus of MSHA should be on
19 our safety record. As examined the record of underground
20 limestone mining operations, you find that they are very
21 safe. You find that we've continued to improve our safety
22 records, as has been the open-pit operations over a period
23 of years.

24 Our concern is we try to find out whether or
25 not air quality and diesel emissions in underground mines

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1 are a serious problem, and most importantly, at what level.

2 We've got several questions. We have a question of at what
3 level it becomes a problem.

4 Secondly, the conversion to the TC versus the
5 current EC -- we think we have a little bit more control on
6 EC. But TC is really an unknown. It's a wild card that we
7 don't have any kind of a handle on, whether or not we're
8 going to be able to comply and at what levels.

9 We have problems right now in trying to
10 understand what controls and what technology can be
11 developed. Again we're asking manufacturers, and right now
12 there are more questions than there are answers. We think
13 that probably ventilation is one of the most important
14 answers to this.

15 We're doing everything we can, as Mike
16 commented, with fresh ventilation, with booster fans, et
17 cetera. But we don't know again what are the limits that we
18 can do with ventilation versus other controls. My concern
19 is that whether or not these artificial restrictions are
20 going to be creating a monster for our industry, which may
21 not be necessary. Those are my comments.

22 MR. SEXAUER: Does anyone from the panel have a
23 question? Hold on just a minute.

24 You've confounded us. You're the first one
25 where we have no questions. Thank you very much.

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1 MR. KASER: Thank you.

2 MR. SEXAUER: Next we have a panel from the
3 United Steelworkers. Dave Ortlieb.

4 Good morning, Dave. Could you take the
5 microphone over to you, please?

6 Then again I would ask that you spell your
7 names.

8 MR. ORTLIEB: Okay. Good morning. My name is
9 Dave Ortlieb. It's O-R-T-L-I-E-B. I am assistant director
10 in the United Steelworkers Health, Safety and Environment
11 Department. The USW represents 850,000 workers in North
12 America, including the majority of metal and nonmetal
13 miners, both in the United States and Canada.

14 With me today are Joseph Rael, president of our
15 local union 12-00659, which represents miners at MolyCorp in
16 Questa, New Mexico, along with Veto Villapando, spelled V-I-
17 L-L-A-P-A-N-D-O. He's vice president of the local.

18 He's also and MSHA miners rep. In our comments
19 today in a much longer written material, that we will be
20 submitting later in January, the USW will be leveling strong
21 criticism against MSHA's proposal that tries to weaken the
22 standard that protects thousands of American miners from
23 cancer-causing diesel exhaust.

24 As recently stated by the president of the USW,
25 Leo W. Gerard, in September 2005, the Administration's

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1 proposal puts the lives of our members at risk. This is the
2 second time MSHA has tried to gut the standard. Miners, in
3 fact, all Americans, have the right to expect better from
4 their government.

5 This is a very sad day indeed for MSHA, for
6 this is the first time that MSHA, as well as the entire
7 Department of Labor or OSHA, has attempted to significantly
8 weaken a major health standard that is already in place.

9 Make no mistake about our position. We honor
10 the history of the Agency and its past values, and are
11 greatly appreciative for all the dedicated work of the MSHA
12 staff both in Arlington and in the field. However, out
13 mission, the USW's mission, is to prevent the senseless and
14 horrible diseases and deaths that miners will have to
15 suffer, and the pain and indescribable agony that families
16 and loved ones will have to endure.

17 If MSHA's mission is ultimately successful,
18 many miners throughout the United States will continue to
19 risk cancer and serious respiratory diseases. Some miners
20 will pay the ultimate price and will become the next
21 generation of workers to die from occupational diseases.

22 This is unacceptable to the USW. Underground
23 miners experience the highest level exposure to diesel
24 particular matter of any population in the United States,
25 much higher than the limit of 160 total carbon. They have

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1 experienced such exposure since diesel particular matter was
2 identified as a carcinogen over 20 years ago.

3 This time period is the average latency for
4 development of lung cancer. Latency, as you know, is the
5 time from the first exposure to development of a tumor. In
6 other words, a miner who entered the industry 20 years ago
7 has already accumulated a significant risk of disease as a
8 direct result of delay in this rulemaking.

9 Furthermore, it is the USW's position that the
10 160 milligrams/cubic meter limit, measured as total carbon,
11 is not adequate. According to risk assessments by NIOSH and
12 others, this limit would not reduce miner's lifetime risk
13 associated with exposure to diesel particular matter to less
14 than one in 1,000.

15 The current diesel exhaust final exposure limit
16 of 160 micrograms/cubic meter total carbon is scheduled to
17 become effective later this spring. When the standard was
18 made law in 2001, miner operators were given five years to
19 comply with the limit.

20 MSHA and NIOSH gave the mining industry an
21 extraordinary amount of help in the form of compliance
22 assistance and research into feasible, practical and
23 relatively inexpensive controls. The USW agreed to a change
24 in the standard that will give individual mine operators an
25 unlimited number of special extensions where they can

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1 demonstrate the need.

2 None of that was enough for some operators or
3 their trade associations. While some operators have made a
4 good-faith effort to lower exposures and come into
5 compliance, history shows that all too many will wait until
6 the day the government finally has the power to cite them
7 and impose penalties.

8 MSHA now proposes to delay that day for five
9 more years. Reopening the record gives other the
10 opportunity to argue that the standards should be weakened
11 further. Perhaps the day of reckoning never comes at all.
12 This is different from most other rulemakings, in that a
13 standard is already in place, and the Agency proposes to
14 weaken it by a lengthy delay.

15 MSHA previously found the standard to be both
16 necessary and feasible. The burden of proof rests squarely
17 with MSHA and anyone else who might propose a more drastic
18 weakening. Although we have no obligation to prove our case
19 that the existing standard is feasible in all its aspects,
20 we will do so through written documentation later in the
21 process.

22 Today we want to touch briefly on a different
23 issue in the rulemaking: respirators and the need for
24 medical evaluation and transfer rights. Every employer
25 regulated by OSHA is required to provide medical evaluations

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1 for workers required to wear respirators.

2 Every professional association involved in
3 safety and health recommends it. The American Industrial
4 Hygiene Association, the American Conference of Governmental
5 and Industrial Hygienists, the American Occupational
6 Medicine Association to name the most prominent.

7 There's very substantial evidence in the record
8 of the relevant OSHA hearings to support medical
9 evaluations. And we would ask as we have before in the two
10 previous hearings, that that evidence be incorporated into
11 this record as well.

12 We believe that most miners unable to wear a
13 negative-pressure respirator will be able to wear a powered
14 respirator. Very few miners will have to be reassigned.
15 But unless miners are assured that they will keep their
16 jobs, even if they cannot wear a respirator, some may refuse
17 the evaluation or may give inaccurate answers on the medical
18 history.

19 No one should have to choose between their
20 health and their job. Miners removed from high-exposure
21 areas must therefore have transfer rights and full-earnings
22 protection, both as a matter of health and as a matter of
23 simple justice.

24 Job rotation should not be utilized by mine
25 operators as a tool for circumventing these issues. And of

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1 course as a matter of law, transfer rights and earnings
2 protection are explicitly required by the Mine Act. We will
3 elaborate all these points in our written submissions, and
4 brothers Rael and Villapando will also discuss them in a
5 moment.

6 That includes my statement. After all of us
7 have finished, we of course will be happy to answer any
8 questions to the best of our ability. I would like to say
9 that of course what we've done here today, is put together a
10 worker panel.

11 Our goal in doing this is to bring the miner's
12 perspective, bring the worker's perspective into this
13 hearing. Neither one of these gentlemen are here to pretend
14 that they're experts on the technology issues, feasibility
15 issues, the economic issues.

16 Having said that, I'm going to ask that our
17 panel members make some brief opening statements.

18 Joseph.

19 MR. RAEL: My name is Joseph Rael. I'm the
20 local president of our union USW. Right now our membership
21 is 150 and is going to increase to 250 at the end of this
22 month. I'm also a member of the mine rescue team for our
23 mine, and I'm also a lead miner in our underground
24 operations.

25 Our mine is a shaft mine at 900 feet. It's a

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1 multilevel mine. We have a grizzly level and a haulage
2 level. Our main problems with diesel equipment is our
3 grizzly level, and our tram electrical units are in the
4 haulage level. That's all I have.

5 MR. SEXAUER: May I say just for the record,
6 that's grizzly level.

7 MR. VILLAPANDO: My name is Veto Villapando.
8 I'm also a lead miner. We've been working in this mine on
9 and off since '81. I'm with the mine rescue team. Some of
10 our equipment that we run underground in the haulage level
11 is also diesel equipment, which is the three-yard loaders.

12 On our grizzly level, we have one-yard loaders.

13 On this equipment we have certain standards where our
14 ventilation should be 50 feet from the phase, which is a
15 good thing. Some of our equipment has been worked on, where
16 they'll change motors from the older models to the newer
17 models, which is a good thing, because it has improved on
18 diesel smoke.

19 But also, like Raymond was saying that we're at
20 150 people and probably 250 by the end of the month.
21 They're hiring a lot of new people. Most of them are young
22 miners within 18 to say, 25. And a lot of these guys don't
23 know how a respirator should fit and that different kinds of
24 filters should be used for the job.

25 Like sometimes we have some guys working where

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1 it's a dusty area, they might use the wrong filter, or
2 they're running a loader, where they should be using the
3 right filter for that certain job. Anyway, we feel that
4 there should be rules and laws where these young people come
5 in and they should be fit-tested.

6 It shouldn't be up to the company. It should
7 be an MSHA regulation that we feel should be done, because
8 you have people working in these areas, and they're not fit-
9 tested. They think the respirator's working right. They're
10 telling me, We feel the air coming on our checks.

11 Well, that tells me, you know, they weren't
12 fit-tested. These guys have been down there for a month
13 underground. That's like sending one of your own sons down
14 there and thinking they're protected, and they're not. We
15 feel like that should be a rule in that area.

16 We brought that across to our safety men, and
17 they said they're going to correct that, because in the past
18 that was one of the rules. You don't go underground until
19 you're fit-tested. But since they're doing so much hiring,
20 either they forgot about that rule, or they're not equipped
21 with enough people to do it.

22 MR. REAL: Our concern also is we feel that if
23 someone cannot use a respirator, he should not be
24 jeopardized with his job. We feel that he can be relocated
25 where it's physical for him to work on the surface.

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1 We feel like he shouldn't be let go just
2 because he can't use his respirator.

3 MR. ORTLIEB: We're going to cover a number of
4 different issues. I am going -- if you could be so kind --
5 to ask some questions of these two gentlemen. To provide
6 you just a little more background information, when I first
7 talked to this local about the hearings and coming in and
8 the possibility of testifying -- of course, I asked the
9 standard background questions to try to get the speed on
10 their situation.

11 Please be aware of the fact that this
12 particular local union -- the company for the most part has
13 never come forward to them and attempted to initiate major
14 dialogue on diesel particular matter issues.

15 To a very large extent they have been kept in
16 the dark about these issues by the employer, as compared to
17 when we testified on Monday and we had our Stillwater local
18 testify before you, that was on the other end of the
19 spectrum, where the mine operator and the local union
20 officers were totally engaged and working hand in hand to
21 try to come up with solutions to control diesel exhaust
22 exposure and we're fully engaged in the diesel exhaust
23 reduction program in the plant.

24 Here we're on the opposite end of the spectrum,
25 that it hasn't been going on. I'll let them tell you about

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1 it.

2 What involvement have you had with diesel
3 exhaust issues in your mine as far as working with your
4 employer? Veto.

5 MR. VILLAPANDO: Back in the '80s -- let's say
6 '81, '82, '83 -- we worked with equipment where the smoke is
7 so bad where your light is following the rib. The rib would
8 be the wall on the ground. And you're just following that
9 little light, making sure that your equipment is not going
10 to hit anything, to get out of the underground.

11 And we ran equipment where the smoke is very
12 bad, where you can't see nothing but that spot to get out of
13 the underground. It has improved. They got rid of those
14 loaders because of the smoke. The loaders now we have are
15 ST 700's with three-yard, four-yard buckets.

16 They're not as bad. I can say that. They've
17 done some improvement on the ventilation, some bigger fans
18 in that area. But that's what happened then.

19 MR. ORTLIEB: Okay. Does the mine operator has
20 a written diesel emissions reduction program? If so, has
21 the local been given a copy?

22 MR. REAL: We haven't. We haven't received a
23 copy of such documentation. No.

24 MR. ORTLIEB: And to your knowledge do they
25 have one?

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1 MR. VILLAPANDO: Not that we know.

2 MR. ORTLIEB: Does the mine conduct regular
3 engine emissions testing?

4 MR. REAL: Yes. Well, they have a quarterly
5 check with MSHA, and they put you -- diesel monitors for
6 noise, DPM, and also emission test of diesel. Right.

7 MR. VILLAPANDO: Yes.

8 MR. ORTLIEB: Is MSHA conducting those tests?

9 MR. REAL: MSHA and also the company. The
10 hygienist will also put a sampler on us. As far as I know,
11 that's the only times that they put those testers on us.

12 MR. ORTLIEB: Do you have any end data on that?

13 MR. VILLAPANDO: One thing is we don't know of
14 anything of emissions. We don't know if they have any kind
15 of testing device to check these loaders. Usually what
16 happens is they'll send it down under ground, and the miners
17 will say, Hey, this loader's running -- you know, it's
18 smoking too much. Then they'll send the mechanics down and
19 change the filters, do adjustments.

20 And then maybe the next shift will say, It's
21 still smoking too much, and it will go on for two or three
22 weeks until they finally pull out the loader and take it to
23 the surface and see what they can figure out. That only
24 tells me that maybe they don't have a device to test these
25 emissions.

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1 MR. ORTLIEB: When you say, change the filters,
2 you're talking about the air filter.

3 MR. VILLAPANDO: Yes. The air filters on the
4 equipment. Sometimes the air filters, if they're clogged,
5 they get dirty, usually that's the cause for the loader to
6 smoke, or if there's any oil leaking into the exhaust or the
7 fuel is too rich or not enough in that area.

8 MR. ORTLIEB: Okay. Now, when the company --
9 I'm not talking about MSHA now -- when the company does
10 industrial hygiene sampling, whether it be personal sampling
11 or area sampling, have they historically -- do they
12 currently provide the local, the membership with the results
13 of that sampling -- that air sampling? Veto?

14 MR. VILLAPANDO: Right now if we have any
15 problems -- we have had problems with certain loaders where
16 it's over the standards, the hygienist will do a testing the
17 same time as the inspector MSHA. We've only seen the MSHA
18 post their standards that a certain loader was over the
19 standards.

20 But we haven't seen anything from our
21 hygienist. Usually our hygienist only does the testing when
22 MSHA's there. We feel that maybe that maybe they should do
23 it on their own, too, not just only when MSHA shows up.
24 This is a standard of safety -- safety first.

25 MR. REAL: We feel before they send any new

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1 equipment down underground, they should be tested. There's
2 times that they take out a piece of equipment for repairs,
3 but they don't check it thoroughly, and they send it down
4 not passing the emissions test.

5 And we feel that before it's sent underground,
6 it should pass all standards with emission testing.

7 MR. ORTLIEB: Okay. There's six primary means
8 being used throughout the mining industry to lower diesel
9 particular matter emissions and reduce worker exposures.
10 These include clean engines, ventilation, environmental
11 cabs, work practices, after-filters, and alternative fuels.

12 Additionally, some mines are replacing diesel-
13 powered equipment with electric-powered mining equipment.
14 What is your mine doing or not doing in these areas? And
15 I'll start off with clean engines.

16 MR. SEXAUER: Excuse me. May I ask -- your
17 information is very helpful to us, but could you move the
18 microphone a little closer. We want to make sure we pick
19 this up for the record. Particularly I think Veto has a
20 softer voice.

21 MR. ORTLIEB: As far as clean engines, are they
22 replacing an older engine with a newer engine?

23 MR. VILLAPANDO: Right now they've purchased an
24 ST-700 with a newer engine, which would be -- what's the
25 name of that engine?

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1 MR. REAL: It's a Mercedes Benz. It's a
2 European engine. It's far more efficient as far as air
3 quality emissions. We've used these engines -- motors now
4 for about a month and a half, and it's really made a
5 different as far as air quality; it's a lot cleaner.

6 It's restricted the power somewhat compared to
7 the old standard engine, but I feel what's an extra scoop,
8 if it makes a difference for our safety, if you have to go
9 for an extra scoop.

10 MR. VILLAPANDO: That was one of the loaders
11 that they purchased. Then one of our older loaders, they
12 sent it to Albuquerque, and they changed the engine out and
13 put that Mercedes engine in it. It's improved our
14 ventilation right now.

15 That's about all. Any different kinds of
16 diesel, we don't know of them trying or testing to see if
17 it'd improve our ventilation on the equipment while it's
18 running.

19 MR. REAL: My main concern is, sure, the
20 improvements that are being done now -- since I've been in
21 operations since 1981, how long was I exposed myself with
22 this high diesel particulates? This is where it comes to
23 health issues. Right now I'm going on 20 years' mining.

24 Health-wise, how has my health been. I haven't
25 took a major physical. I've been exposed to these diesel

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1 particulates going on 20 years right now.

2 MR. VILLAPANDO: Going on the filters, the only
3 filters that we know of that they changes the air filters,
4 there's nothing on any filters on covering the exhaust that
5 we know of. Usually if the loader's smoking too much, we
6 red-tag it, tell the foreman, and he'll get a hold of a
7 mechanic.

8 There have been instances where there was not a
9 mechanic available, so it wasn't changed. Maybe the next
10 shift will come in. Sometimes they'll take the tag off and
11 run the equipment. Then we have to come back the next day,
12 which will be after two other shifts ran the equipment and
13 maybe red-tag it again, because it wasn't done.

14 MR. ORTLIEB: As far as ventilation, any
15 ventilation upgrades in the last five years?

16 MR. REAL: No. There have been some booster
17 fans installed, but still we have the major -- what is it --
18 horsepower fans in the number one shaft. I think it's --
19 what is it, the horsepower?

20 MR. VILLAPANDO: 200 horsepower. We have --
21 well, it's up to the miner to keep that vent bag within 50
22 feet; we know that. Also we're going to be starting a new
23 block. When that starts up, they told us they'll be
24 installing a couple of 600-horsepower fans to keep the
25 ventilation improved.

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1 MR. REAL: Those are going to develop a
2 ventilation drift I think in the main shaft to the reworking
3 areas. They're going to install those 600-horsepower fans.
4 You're going to need more ventilation to the working areas.

5 MR. ORTLIEB: Environmental cabs.

6 MR. REAL: It won't be feasible for us. Right
7 now we're in the development mode. We're exhausting our
8 production mode. Right now we're developing a new block,
9 and we cannot use a cab, primarily because we're running a
10 12-by-12 drift, where in conventional mining, we'd just use
11 a regular jack blade for drilling.

12 So in other words we have to ramp -- we blast.
13 We have to ramp them up. And if we have a cab, you'd be
14 overexposed to the back -- of the back -- or the roof of the
15 mine. So an environmental cab won't be feasible for
16 operation at all, due to the size of our drifts, mainly.

17 MR. VILLAPANDO: Plus we have race stations
18 that we've got to run. They'll go up to 22 feet up.
19 There's sometimes we got to go up and ramp to where we can
20 make our floating level. So there's no way a loader that
21 can get in that area with a cab.

22 MR. ORTLIEB: Okay. The next to the last item
23 is alternative fuels -- biodiesel, et cetera.

24 MR. REAL: Probably with our climate -- like
25 the gentleman from Iowa -- we have a set temperature where

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1 it's -- our temperate in the winter is like 20 degrees one
2 day and can go below zero the next day, and I think we'll
3 have problems with gelling up, freezing lines, and --

4 MR. ORTLIEB: Okay. Replacing diesel-powered
5 equipment with electric-powered mining equipment. I think
6 we had an example there, as far as the welders.

7 MR. VILLAPANDO: They have done some
8 improvement on that area. We had the diesel equipment
9 welders. They did away with those and put us some electric
10 plugs through the main drifts so that we could run electric
11 welders.

12 MR. ORTLIEB: Any unnecessary idling of diesel
13 equipment?

14 MR. VILLAPANDO: No. There's no pressure from
15 the company to keep that equipment running, so when we're
16 done with ramping or mucking or bringing supplies, we'll
17 shut it down, so we have no pressure in that area.

18 MR. ORTLIEB: Okay. I think we've partially
19 dealt with this issue as far as the mine's preventive
20 maintenance programs. Is diesel equipment well maintained?

21 I think you've covered that. Do you have anything else to
22 add on that?

23 MR. VILLAPANDO: They have hired quite a few
24 mechanics now, so we shouldn't have further problems in that
25 area. As long as they keep stock up on filters in that

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1 area --

2 MR. REAL: Just one thing for the health and
3 well-being of our membership. I don't know if the
4 technology has it, is there monitoring system to check the
5 emission test or the particulate matters underground? Is
6 there monitors now?

7 MS. CASH: We have sampling equipment -- you
8 know, personal exposure samplers. There are emissions
9 monitors that you can use for measuring tailpipe emissions,
10 such as the ECOM; there are smoke spot tests you can do.

11 There are measurements you can make at the
12 tailpipe temperatures. Just as you can measure the
13 emissions on an automobile, on the surface like we have to
14 do for the state every couple of years, so you can get that
15 license, you can do the same sort of test for your
16 equipment.

17 I think Bill or George could give you
18 specifics on those, if you want to speak with them later
19 also. But we do have equipment that we recommend be used or
20 that we've discussed the use of, so that the mine operator
21 can measure what those emissions are, to help them in
22 determining what types of controls may be needed for their
23 equipment.

24 MR. VILLAPANDO: On that device, does it
25 change -- you know on the surface you're going to have good

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1 ventilation, good air. Maybe it's cold; maybe it's hot in
2 comparison to underground where --

3 MS. CASH: You can use on the surface or on the
4 underground. They're not temperature -- the working of the
5 device is not dependent on the temperature.

6 MR. SEXAUER: As long as we're clarifying that,
7 let's continue there.

8 MS. CASH: Jim.

9 MR. PETRIE: Just to clarify a point or two.
10 The existing diesel rule does require that mine operators
11 conduct exposure monitoring on the employees for diesel
12 particulate, and that those results be posted on the mine
13 bulletin board, along with the MSHA sampling results.

14 I believe there was concern mentioned a little
15 earlier about fit-testing for respirator wearers. That is
16 also an existing requirement in the diesel particulate rule,
17 that if you have to wear a respirator for protection from
18 diesel particular matter, that you be fit-tested.

19 We currently do not have requirements for
20 medical evaluation of respirator wearers. I was wondering,
21 does your company do that? Do they conduct periodic medical
22 exams?

23 MR. VILLAPANDO: Nothing to do with the
24 respirator.

25 MR. PETRIE: Nothing to do with the respirator.

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1 MR. VILLAPANDO: On that comment that you made
2 about diesel equipment and wearing -- fit-tested, does that
3 also fall under for silica?

4 MR. PETRIE: It would also apply for respirable
5 dust, that there is an existing requirement that, if you
6 have to wear a respirator, that the employee be fit-tested.

7 MR. VILLAPANDO: We have had some people
8 wearing a respirator and not be fit-tested within a month.

9 MR. PETRIE: Let me just clarify. That would
10 only be to the extent that we have found an overexposure. I
11 didn't mean to interrupt here.

12 MR. VILLAPANDO: That's a good thing, because
13 MSHA has cited them for overexposure on silica.

14 MR. SEXAUER: Let's go off the record for a
15 minute here, please.

16 (Off the record.)

17 MR. SEXAUER: Okay. We'll go back on the
18 record. I think Jim has an additional remark.

19 MR. PETRIE: To the extent an operator finds an
20 overexposure as well, the company would be required to
21 provide a respirator if they can't reduce the exposures
22 using feasible controls. In those cases fit-testing would
23 be required.

24 I correct myself. It's not just based on an
25 MSHA sample finding an overexposure. If an operator finds

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1 it, it would also be a requirement.

2 MR. SEXAUER: I think George would like to add
3 a remark.

4 MR. SUSEEN: Yes. You had mentioned about some
5 of the maintenance practice. In there something's defined
6 in the regulation about promptly, when a mine operator has
7 to fix something that's been identified through tagging.
8 That term, just for your information -- the term "promptly"
9 means by the end of the next shift during which a qualified
10 mechanic is scheduled to work.

11 So they'd have up until that -- if you tag
12 something for an emissions-related component, the operator
13 has up to the end of that shift where a mechanic is
14 scheduled to work. If you'd like to address that further on
15 whether that's being done, if you notice that's being done
16 or that's an issue, then we could take your testimony.

17 But I just wanted to clarify that for the
18 record.

19 MR. VILLAPANDO: On a piece equipment, usually
20 when it's red-tagged, the only person who's supposed to take
21 it off would be a mechanic. But we've had some instance
22 where the next crew coming in, being that they need the
23 loader, will take it off themselves.

24 So usually, like I said, a qualified mechanic
25 is the only one that's supposed too take that tag off and

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1 put a green tag saying, that's good. But it doesn't always
2 happen.

3 MR. SEXAUER: Let me also say that the purpose
4 of this meeting is to gather information that could be
5 useful in our decisions on development of a diesel
6 particulate standard. If there are any enforcement-type
7 issues or technical issues relative to your mine, this
8 particular committee and this forum is not going to be
9 determinative or particularly get involved in that.

10 However, we will be happy to talk with you
11 following the meeting and if you have issues in terms of
12 whether MSHA needs to get involved in that. But continue
13 with your testimony with respect to information for the
14 diesel particulate rulemaking.

15 MR. ORTLIEB: Okay. Thank you. Just to
16 clarify for the record, do you have a written respiratory
17 protection program?

18 MR. REAL: We do. The reason is that there was
19 exposure of silica dust above MSHA standards. So anybody
20 entering the grizzly level, working with grizzly lines,
21 exposed to silica dust, are required to use the respirators.

22 As far as diesel emissions, it's fairly new --
23 not fairly new, but it's not really enforced while operating
24 diesel equipment.

25 MR. ORTLIEB: Medical evaluations, are there

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1 any? If so, when are they done -- medical evaluations for
2 miners required to wear respirators?

3 MR. REAL: I don't know. Do you have --

4 MR. VILLAPANDO: The only one I know about is
5 they have a fit-for-duty before you get hired, and that's it
6 for duty. Maybe that's what they use for requirement on
7 using respirator and doing the job itself. That's all I
8 know about that.

9 MR. ORTLIEB: Regarding miners who can't wear
10 respirators, do they have transfer rights with full earnings
11 protections?

12 MR. REAL: Not that we know of.

13 MR. VILLAPANDO: Well, there hasn't been a case
14 where a miner couldn't use the respirator. We haven't
15 experienced that to know yet. We don't know.

16 MR. ORTLIEB: You haven't discussed that with
17 the company.

18 MR. VILLAPANDO: No.

19 MR. ORTLIEB: Okay. Are miners given periodic
20 breaks from wearing respirators without relying on job
21 rotation as it concerns diesel exhaust exposure?

22 MR. REAL: Right now we're on eight-hour
23 shifts. But you've got to understand you've got travel
24 time, 45 minutes to travel into the area; plus you've got to
25 quit 45 minutes early to get out of the mine. Roughly if

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1 you are to use your respirator, it would be five to six
2 hours of actual work, because you also have that leeway of
3 travel time to the mine and out of the mine. That's all I
4 have now.

5 MR. ORTLIEB: Okay. Do you have anything to
6 add?

7 MR. VILLAPANDO: On what Joseph said there,
8 that'd be for the guys that working on the grizzly lines for
9 dust, for silica. Any diesel equipment ramp will require to
10 wear a respirator while the equipment is running. That's
11 the only time we wear it.

12 MR. REAL: That would be when you mark ramp or
13 moving supplies.

14 MR. ORTLIEB: Are you provided with the right
15 type of respirator cartridges to protect workers from diesel
16 exhaust particulate?

17 MR. REAL: Veto has more information this, but
18 the only filters we have was for silica dust. It's a safer-
19 like respiratory filter. It's not a filter or cartridge for
20 diesel fumes. I believe Veto has a couple of samples.

21 It's in front of you there.

22 But I strongly commend Veto. He stressed and
23 stressed that we needed proper cartridges for diesel fumes.

24 MR. VILLAPANDO: They had us using the P-100s.
25 That would be just the dust mask. Then we went to our

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1 respirator, where we had filters. Those were also P-100
2 filters. About two months ago they started bringing us
3 the -- for papers. They claim that was good enough for the
4 diesel.

5 I believe the vapors, no one had it. They
6 just said it was good enough for diesel. So we're not too
7 sure on all that.

8 MR. ORTLIEB: As far as the clogging up of
9 respirator cartridges --

10 MR. VILLAPANDO: They claimed that the more you
11 use it, the more efficient they are, because it'll clog up
12 and the smoke will make -- it'll be harder for the smoke to
13 go through it. So sometimes they wanted to keep up on their
14 filters, so then we'd be using them for a couple weeks or a
15 month before we'd get stocked again.

16 MR. ORTLIEB: Because there's not -- the
17 supply's been depleted in the mine?

18 MR. VILLAPANDO: Yes.

19 MR. ORTLIEB: Okay. We've got a couple more
20 issues. Has the mine conducted any training programs for
21 miners concerning diesel exhaust? Any formal training of
22 any type how to identify the smoking vehicle vis-a-vis
23 repairs, et cetera?

24 MR. VILLAPANDO: There hasn't been any standard
25 set, just that it gets hot and smoky, and it's real bad

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1 where you can't see what you're doing, you're supposed to
2 shut it down. That's about it.

3 MR. ORTLIEB: What has been your overall
4 experience with MSHA as far as concerning diesel particular
5 matter?

6 MR. VILLAPANDO: MSHA, when they come in
7 they'll give us monitors to check the noise level and smoke.
8 They seem pretty good about it. They'll ask if we have any
9 problems in certain areas on ventilation -- that area.

10 MR. ORTLIEB: Okay. Very good. Thank you very
11 much. That concludes our testimony.

12 MR. SEXAUER: Thank you. Let's see if we have
13 any questions up here.

14 Okay. Jim.

15 MR. PETRIE: I'd like to direct these to Joe
16 and Veto.

17 First off I want to thank you for your
18 testimony and particularly your dedication in participating
19 on your company's mine rescue team. I think that's a very
20 commendable effort on your part.

21 Do you have any insight or an estimate on about
22 how many miners wear respirators in your mine underground?

23 MR. REAL: Okay. We have a sub-level mine.
24 Everybody that works a grizzly level is required to use a
25 respirator, due to the fact that that's where the production

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1 lines are when they're exposed to silica dust.

2 MR. PETRIE: Okay. And that's primarily for
3 silica then?

4 MR. REAL: Yes. But right now we're also in a
5 development mode, and development is being done in the
6 grizzly level. We're developing a new block next door to
7 the old production lines. So like Veto said, now they'll
8 use respirators while operating a diesel.

9 Before it's running -- when it's not running,
10 they don't.

11 MR. PETRIE: Can you relate any difficulties
12 that your members have in wearing respirators for either the
13 full shift or while the equipment is operating? Is that a
14 particular hardship for your members?

15 MR. REAL: There's one individual that has a
16 hard time. He says he has a hard time breathing for some
17 reason. Other than himself -- he's the only case really.
18 But as far as really the respirator's only being used maybe
19 five hours, six hours due to our travel time. It's limited
20 to only five hours use.

21 MR. PETRIE: Does your mine allow smoking
22 underground?

23 MR. REAL: Yes. We're a non-gassy mine.
24 Smoking is allowed underground.

25 MR. PETRIE: How do the miners deal with

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1 smoking versus wearing a respirator? Do they take a break
2 or --

3 MR. REAL: I don't know if they have modified
4 their respirator or not --

5 MR. PETRIE: Let's hope not.

6 MR. VILLAPANDO: There is one area where
7 they're not allowed to smoke, and that's in the lines, due
8 to -- after their lunch they usually load powder in that
9 area, so to not get people mixed up that they can smoke
10 whenever they want, they don't smoke in that one area.

11 MR. PETRIE: Okay. Thank you. That's all I
12 had.

13 MR. SEXAUER: Doris.

14 MS. CASH: Yes. I'm wondering if you could
15 give us an idea -- you described you have as couple of
16 different levels, and there's more diesel use on the lower
17 level, your production level or on the grizzly level.

18 MR. REAL: Okay. Right now in the past six
19 months the economy's really boosted up, so we got more money
20 for development. So right now both levels are developing.
21 So right now we have diesel equipment in both levels right
22 now.

23 For the past two or three years we're in
24 production mode, so not too much equipment was being used,
25 primarily because we weren't developing. But now the

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1 economy's boosted up. Now were using diesel fuel in both
2 levels right now.,

3 MS. CASH: Okay. And could you give me an idea
4 of what some of the sizes of the equipment -- horsepower?

5 MR. REAL: As far as the horsepower, it's a
6 regular, basic front-end loader, ST-700s. It's a four-yard
7 to three-and-a-half yard. As far as the horsepower, we need
8 to look. I can't really tell you.

9 MS. CASH: Okay. Could you give maybe me an
10 idea compared to the number of production pieces you have?
11 The larger horsepower -- how many would you say you have?
12 Do you have a lot of utility vehicles and smaller vehicles
13 being used in the mine?

14 MR. REAL: Yes, we do have these. I estimate
15 that in our particular mine I think we have roughly about 30
16 pieces of diesel equipment. And it's going to increase,
17 because production and development mode is increasing. So
18 more equipment's going to be sent down.

19 MR. VILLAPANDO: We also have some contractors
20 coming in to develop the extraction. They'll bring their
21 equipment also. We don't know what they have, but they'll
22 be here by the end of the month in the workings.

23 MS. CASH: Okay. Let me ask you, you said you
24 had some sampling done for diesel exposure, but it's
25 typically done by the IH, only when the MSHA's inspector's

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1 there. So there really doing like side-by-side sampling.
2 Do you know of any other testing? Has anybody else been
3 asked to wear a respirator or the IH?

4 I just want to make sure that I have it clear
5 that you're not aware of them doing any other testing of
6 your people. Only at the positions that MSHA has tested?

7 MR. VILLAPANDO: That's correct. The only time
8 that we know of is would be when MSHA is present. But it is
9 a requirement to wear a respirator when running equipment.

10 MS. CASH: Okay. Now, you said that they
11 brought you the vapor filters. Those are the -- are those
12 the half-mask filters with the two cartridges on the side?

13 MR. REAL: Right.

14 MS. CASH: Okay. And just one thing on the
15 training: You said that there really hadn't been much
16 discussion with the miners about diesel. Have either of you
17 ever been talked to about any of the hazards of diesel
18 exposure or anything you should be aware of?

19 MR. REAL: The first we heard about it was back
20 in September, when we had a SPEFA [phonetic] conference with
21 Dave, and that's the first we heard about, you know, the
22 outcome of diesel fumes as whatever happens as far as
23 causing cancer and health hazards.

24 MS. CASH: Okay. Thank you.

25 MR. SEXAUER: George.

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1 MR. SUSEEN: Yes. Thank you.

2 Gentlemen, you both mentioned -- or one of you
3 mentioned specifically that two of the loaders were -- one
4 was a new loader with a Mercedes engine. The other loader
5 was repowered with a Mercedes. Are those the only two
6 loaders used for production? Or are there other loaders
7 with different engines that you know of?

8 MR. REAL: In the past we had ST-700s powered
9 with whatever standards they come with -- whatever they were
10 built with. Just these two loaders right now are being
11 used. We understand they're supposed to go up to Mercedes
12 in the existing loaders that they have.

13 And that will be done. But that's their plan
14 that we understand.

15 MR. SUSEEN: Those are the only two loaders
16 that are used every day?

17 MR. REAL: Right now within this month --
18 within last month probably, them are the two loaders that
19 they used on the haulage level. But on the grizzly level
20 they have the one-yard loaders, Wagners, that they use. And
21 also for production where they use to clean the lines, they
22 use a three-yard loader.

23 I don't know what brand or name of that loader
24 is. But it doesn't have that Mercedes engine.

25 MR. SUSEEN: Have you gotten positive feedback

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1 when those new loaders with Mercedes were introduced? Did
2 the miners give you positive feedback? Did it look like it
3 was improved?

4 MR. REAL: Yes. Definitely. The power was
5 restricted somewhat. But there's less smoke, I guess, you
6 could say.

7 MR. VILLAPANDO: We witnessed -- we run that
8 equipment. It does -- you can tell there is a difference on
9 smoke. But there also is the other loaders that don't have
10 it, which would be the one-yarders on the grizzly level, and
11 the other one that they use for production.

12 MR. SUSEEN: Let's say that loader you were
13 running breaks down -- with the Mercedes -- is there another
14 loader that you would bring in? Would you jump over to
15 another machine to use? Or would you have to get that one
16 fixed first before you can continue to work?

17 MR. REAL: If it breaks down, where it's
18 unrepairable, they would send it out to the surface and
19 bring down what we'd been using before.

20 MR. SUSEEN: I'm sorry. Can you --

21 MR. REAL: They would bring down what we had
22 been using before, which would be the other ST-700s that
23 don't have the Mercedes.

24 MR. SUSEEN: Okay. Has that happened?

25 MR. REAL: Well, in the past we've never had

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1 these Mercedes. They just brought them into our work areas
2 now within the last month.

3 MR. SUSEEN: Okay. So it's too recent of a
4 history.

5 MR. REAL: Yes.

6 MR. SUSEEN: All right. Thank you.

7 MR. SEXAUER: Bill.

8 MR. POMEROY: Yes. Just a couple qst6s about
9 your maintenance procedures. If you have a situation where
10 an engine is smoking, and the operator is concerned about
11 that, you said you put a red tag on that and it goes off-
12 line.

13 If they have a safety issue, let's say, bad
14 breaks or something, does the same red tag go on it? You
15 don't have a separate kind of tagging system.

16 MR. REAL: It's a red tag, but you identify the
17 problem of the equipment. If it's smoking too much, you
18 put, bad emissions. If it's bad breaks, you indicate bad
19 breaks. You describe the control within the red tag.

20 MR. VILLAPANDO: It is the same tag.

21 MR. SUSEEN: Same tag though.

22 MR. SEXAUER: Does anyone else have a question?

23 (No response.)

24 MR. SEXAUER: Gentlemen, I want to thank you
25 for testifying. I'd like to point out to Joseph and Leto

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1 that, should you have any other issues that are beyond the
2 scope of this rulemaking that are health and safety-type
3 issues that you would like MSHA to address, we have some
4 enforcement and technical folks up here on the panel, who
5 would be happy to discuss them with you following this
6 hearing, if you care to.

7 So, thank you.

8 MR. ORTLIEB: Thank you for allowing us to
9 testify. We are very thankful.

10 MR. SEXAUER: That covers all the speakers that
11 have signed up. Is there anyone else in the audience that
12 would care to address the panel?

13 John.

14 MR. GRIESEMER: John Griesemer with
15 Springfield Underground. I just have one answer to one of
16 the questions, I believe, Ms. Cash raised about the type of
17 biodiesel. It's a B-100 is what we tried.

18 MS. CASH: Thank you.

19 MR. SEXAUER: Okay. There being no other
20 speakers, this concludes the hearing. Thank you.

21 (Whereupon, the hearing was concluded.)
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