

WEST VIRGINIA

DEPARTMENT OF MSHA

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IN RE: MAINTENANCE OF INCOMBUSTIBLE CONTENT OF ROCK  
DUST

FEDERAL PUBLIC HEARING

\* \* \* \* \*

BEFORE: PATRICIA SILVEY, Chair  
Mario Distasio, Member  
Deborah Green, Member  
Gregory Fetty, Member  
Kevin Burns, Member

HEARING: Thursday, November 18, 2010  
9:00 a.m.

LOCATION: Charleston Marriott Town Center  
200 Lee Street East  
Charleston, WV 25301

WITNESSES: Linda Raisovich-Parsons, Mike Harman,  
Brian Seabolt, Sam Hall, Carl Egnor, Chris  
Hamilton, James Maynard

Reporter: Danielle S. Ohm

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CHAIR:

Good morning. My name is Patricia W. Silvey, and I'm the Director of the Mine Safety and Health Administration's Office of Standards, Regulations and Variances. I will be the moderator for this public hearing on MSHA's Emergency Temporary Standard on Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines. On behalf of Assistant Secretary of Labor for Mine Safety and Health, Joseph A. Main.

I want to welcome all of you to this hearing today. At this point, I'd like to introduce the members of the MSHA panel. To my immediate left is Gregory Fetty, and he's with Coal Mine Safety and Health. To his left, Kevin Burns with the Office of Educational Policy and Development. To my right, Deborah Green with the Office of the Solicitor, a division of Mine Safety and Health, who is the attorney on the project.

And to her right, Mario Distasio who is the chief economist in my office. This is the last of four hearings on the Emergency Temporary Standard. As many as you know, the first hearing was in St. Louis,

1 Missouri on October 26, the second hearing in  
2 Birmingham, Alabama on October 28, the third hearing  
3 was this week, Tuesday, Lexington, Kentucky on  
4 November 16.

5           The purpose of these hearings, as many of  
6 you know who have participated in MSHA's rule-makings  
7 over the years, is to receive information from the  
8 public that will help us evaluate requirements in the  
9 ETS and develop a final rule that protects miners from  
10 hazards associated with coal dust explosions.

11           We will also use the data and information  
12 gained from these hearings to help us develop a final  
13 rule that responds to the needs and concerns of the  
14 mining public, so that the requirements of the final  
15 rule can be implemented in the most effective and  
16 appropriate manner. The ETS was issued in accordance  
17 with section 101(b) of the Federal Mine Safety and  
18 Health Act of 1977, which I will refer to as the Mine  
19 Act.

20           Under section 101(b), the ETS is  
21 effective until superseded by a mandatory standard.  
22 And in accordance with the Mine Act, the mandatory  
23 standard must be issued no later than nine months  
24 after publication of the ETS. The ETS also serves as  
25 the proposed rule, as many of you know, and commences

1 the regular rulemaking process. Mine operators apply  
2 rock dust in underground bituminous coal mines to  
3 reduce the explosion potential of coal dust and other  
4 dust generated during the mining operation process.

5           Effective rock dust application is  
6 essential to protect miners from the potential of a  
7 coal dust explosion; or if one occurs, to reduce its  
8 severity. MSHA established a standard, based on the  
9 Federal Coal Mine Safety and Health Act of 1969, that  
10 required Mine operators to maintain at least 80  
11 percent incombustible content of the combined coal  
12 dust, rock dust and other dust in return airways. In  
13 all other areas of the mine, the combined dust needed  
14 to contain at least 65 percent incombustible content.

15           MSHA determined that revising the  
16 standard for Maintenance of Incombustible Content of  
17 Rock Dust is necessary to immediately protect miners  
18 from hazards of coal dust explosions. This  
19 determination is based on MSHA's accident  
20 investigation reports of mine explosions in intake air  
21 courses that involved coal dust. And these reports  
22 are embodied in a report by Dubaniewicz 2009.

23           The National Institute for Occupational  
24 Safety and Health, or NIOSH's Report of Investigations  
25 9679 by Cashdollar and others, 2010 entitled

1 Recommendations for a New Rock Dusting Standard to  
2 Prevent Coal Dust Explosions in Intake Airways; and  
3 MSHA's experience and data. MSHA has estimated the  
4 economic impact of the ETS and has included a  
5 discussion of the costs and benefits in the preamble.

6           As stated earlier, we will use the  
7 information provided by you to help us decide how to  
8 develop the final rule. The preamble to the ETS  
9 discusses the requirements of the ETS and also  
10 includes several requests for comment and information.  
11 As you address the requirements of the ETS, and any  
12 specific requests for comment that we have made,  
13 either in your comments to us here today or those sent  
14 to us in Arlington, we ask that you please be as  
15 specific as possible with respect to the impact on  
16 miner safety and health, specific mining conditions  
17 and feasibility of implementation.

18           That will be very important. At this  
19 point, I want to reiterate several specific requests  
20 for comment and information that we included in the  
21 preamble. MSHA solicits comments from the mining  
22 community, regarding the increase in incombustible  
23 content of dust in air courses where methane is  
24 present. The ETS requires and additional 0.4 percent  
25 TIC for each 0.1 percent of methane, where methane is

1 present in any ventilating current.

2           Please include rationale and supporting  
3 documentation for any suggested alternative compliance  
4 methods. MSHA requests comments on all the estimates  
5 of costs and benefits, including net benefits,  
6 presented in the ETS. Specifically, MSHA requests  
7 comments on the Agency's benefit estimate, as well as  
8 supporting data.

9           MSHA solicits information from the mining  
10 community that would enable a more specific analysis  
11 of costs, which could include the costs of additional  
12 rock dust; increased labor needed to apply the rock  
13 dust; and any additional equipment that would be  
14 necessary, such as pod dusters, trickle dusters,  
15 finger dusters and scoop batteries. For equipment,  
16 please include the type, number of pieces, costs and  
17 expected service life.

18           Please explain whether mining methods  
19 would affect the costs, such as the longwall mine  
20 compared to non-longwall mines. To date, the Agency  
21 has received one comment on the ETS. You can view the  
22 comments on the Agency's website at [www.msha.gov](http://www.msha.gov) under  
23 the section entitled Rules and Regulations. The post-  
24 hearing comment period for the ETS closes on December  
25 20, 2010 and MSHA must receive your comments by

1 midnight eastern standard time on that date.

2           You may submit comments following this  
3 hearing, by any of the methods identified in the ETS.  
4 The hearing, as many of you know, will be conducted in  
5 an informal manner. Cross Examination and formal  
6 rules of evidence will not apply. The panel may ask  
7 questions of the speakers, speakers may ask questions  
8 of the panel. MSHA will make a transcript of the  
9 hearing available on the Agency's website within one  
10 week of each hearing.

11           And I believe that the transcripts of the  
12 St. Louis and the Birmingham hearings are on the  
13 Agency's website. If you wish to present written  
14 statements or information today, please clearly  
15 identify your material and give a copy to the court  
16 reporter. We also ask that those of you in  
17 attendance, who may not be speaking, sign the  
18 attendance sheet. And we have additional copies of  
19 the ETS if people wish a copy.

20           Please begin by clearly stating your name  
21 and organization, so that we will have an accurate  
22 record, if you would spell your name for the court  
23 reporter. And now we will begin today's hearing. Our  
24 first speaker will be Linda Raisovich-Parsons with the  
25 United Mine Workers of America.

1                   Ms. RAISOVICH-PARSONS:

2                   Good morning.

3                   CHAIR:

4                   Good morning.

5                   Ms. RAISOVICH-PARSONS:

6                   My name is Linda Raisovich-Parsons. And  
7 I am the administrator for the United Mine Worker's  
8 Department of Occupational Health and Safety. My name  
9 is spelled R-A-I-S-O-V-I-C-H, hyphen, P-A-R-S-O-N-S.  
10 Let me begin by saying that the United Mine Workers is  
11 in complete agreement with MSHA's actions in enacting  
12 an Emergency Temporary Standard for increasing the  
13 incombustible content in intake entries to 80%. We  
14 agree that sufficient evidence exists to warrant an  
15 Emergency Temporary Standard. As MSHA points out an  
16 Emergency Temporary Standard is intended "to react  
17 quickly to grave dangers that threaten miners before  
18 those dangers manifest themselves in serious or fatal  
19 injuries or illnesses." Until the most recent NIOSH  
20 study, the agency and industry had been relying on a  
21 similar dust particle survey conducted by the Bureau  
22 of Mines in the 1020's. Needless to say the industry  
23 and mining methods have changed significantly since  
24 that time. In fact, current mining methods are highly  
25 mechanized, creating coal dust particles that are much

1 finer and more explosive than those of years gone by.  
2 Consequently, mining methods now used have  
3 significantly increased the dangers of a dust  
4 explosion and must be dealt with swiftly. An  
5 Emergency Temporary Standard is most appropriate and  
6 has the UMWA's 100% support.

7           Early evidence from the Upper Big Branch  
8 Mine Disaster investigation indicates that coal dust  
9 was likely involved in this tragedy. This was the  
10 worst mine disaster in the United States in 40 years.

11 Further, the NIOSH study revealed that between the  
12 years 1976 through 2001 there were 6 explosions that  
13 resulted in 46 fatalities in which rock dusting  
14 conditions in the intake contributed to the severity  
15 of the explosions. So yes, indeed, MSHA has the full  
16 support of the United Mine Workers in this endeavor.  
17 Let's not let one more miner die as a result of this  
18 hazard.

19 Thank you.

20           CHAIR:

21           Any questions?

22           MS. RAISOVICH-PARSONS:

23           I noticed in the rules it had a  
24 compliance date of November 22nd?

25           CHAIR:

1           For any newly mined areas. For any areas  
2 that were mined after the ETS was issued, operators  
3 had to comply with that October 7, then on November  
4 22, for all other areas. So those were mined out of,  
5 areas that had been mined.

6           MS. RAISOVICH-PARSONS:

7           Well, speaking to my folks right here,  
8 there is a lot of rollercoastering going on out there.  
9 But it's the Agency's follow up to check to see if  
10 compliance of the industry is actually really  
11 compliant.

12           CHAIR:

13           Well, our inspectors will be out there  
14 doing regular inspections. We've issued full  
15 information to them, as well as a procedure  
16 instruction manual to our inspector. The procedure  
17 instruction of October 14, which gave our inspector  
18 information, told them about the ETS and the  
19 compliance date and pointed out areas that we wanted  
20 them to pay attention to; particularly on it. And  
21 there was talk about some of those areas that would be  
22 in the areas covered on the November 22 application of  
23 the ETS.

24           CHAIR:

25           Now understand the PIB, Program

1 Information Bulletin. We issued that on September 21,  
2 right after we issued the ETS. And that also talked  
3 about kind of the same thing. And that really was to  
4 the program information bulletin, was to non-operators  
5 and Trade Association and Labor Organization,  
6 manufacturers, all of them was affected. The procedure  
7 instruction was primarily our part to our own people,  
8 including our own staff.

9 MS. RAISOVICH-PARSONS

10 Okay. All right, thank you.

11 CHAIR:

12 Okay. Thank you. The next speaker we  
13 have is Mike Harman.

14 MR. HARMAN:

15 Thank you, very much. I appreciate the  
16 opportunity to come to this hearing and speak. I  
17 didn't come prepared with a written statement, but I  
18 imagine I will provide something in writing later on.  
19 But my name is Michael Harman, H-A-R-M-A-N. I live at  
20 811 Dinden Drive in Saint Albans. That's D-I-N-D-E-N  
21 Drive. And it's Saint Albans, West Virginia, 25177.  
22 I am now retired but in 1980, I was hired to work at  
23 the Cabin Creek Medical Center at West Virginia.

24 I worked there from 1980 to 1987 in a  
25 black lung clinic program that was initiated by Greg

1 Wagner, M.D., who I'm sure you're familiar with. Greg  
2 Wagner was the guy that hired me. I was the first  
3 person hired in the black lung clinic program there in  
4 Cabin Creek. And I was trained by his wife, Emily  
5 Speiler. My job title there at the program was  
6 benefits counselor.

7           Emily Speiler, Greg's wife, was a lawyer  
8 or had been working for several years in Workmen's  
9 Comp and black lung and social security disability and  
10 so forth. She was an expert in those areas. And so  
11 she helped me orient it and help get started in my job  
12 as benefits counselor at the clinic. My job there was  
13 to help miners and other patient clinics with medical  
14 exams, including chest x-rays.

15           Our program did a detailed intake that  
16 included medical history, as well as occupational  
17 exposures and other history that would tell us what --  
18 - smoking history and so forth that would tell us what  
19 these folks were exposed to, in addition to coal dust  
20 in mines. Each week we had a care conference, so all  
21 of the patients that had enrolled in our program for  
22 the week were reviewed by our black lung clinic staff.

23           And a plan was put together for each  
24 patient based on their medical needs and other needs,  
25 including help with smoking cessation if they were

1 interested, and healthcare for whatever they had. I  
2 toured a couple of underground mines during those  
3 years that I worked. And I was able to see mining in  
4 operation in an underground mine, also longwall  
5 mining, very interesting, very educational for me.

6           And over the years, the seven years I  
7 worked at the clinic, surely I saw some --- I don't  
8 know an exact number but I'm sure I saw thousands of  
9 miners and heard a lot of stories about mining hazards  
10 and coal dust and rock dust and the whole bit. I  
11 developed a healthy respect in admiration for coal  
12 miners that continues to this day. I saw first hand  
13 the effects of coal dust exposure.

14           I worked with miners that struggled to  
15 breathe, who you know, would get winded just getting  
16 up and walking across the room in my office. I also  
17 managed to quit smoking during those years. I figured  
18 if I didn't quit, I would end up looking like some of  
19 these folks that was working with at the time. We  
20 performed physical exams and chest x-rays. We had a  
21 certain guideline.

22           With at least ten years of exposure or  
23 ten years of employment in the mines, we would  
24 schedule a chest x-ray, a physical exam and look for  
25 evidence of coal worker's pneumoconiosis. We did see

1 in a number of miners with just ten years of  
2 experience, that they did have early evidence of black  
3 lung, including chest x-ray evidence. Greg Wagner at  
4 the time was a B reader for chest x-rays, so he was  
5 knowledgeable.

6           So my job was to look at the evidence and  
7 explain the evidence, the results of the physical exam  
8 to our patients, to the miners, and advise them if  
9 they were entitled to file Workers' Comp Black Lung  
10 Claim and so forth. And in so doing, I realized at  
11 the time that, you know, whatever was being done to  
12 control dust in the mines was not working perfectly.  
13 If it had been working well, we would not have seen  
14 the cases of pneumoconiosis that we saw at the time.

15           I never recalled any accidents or  
16 explosions that happened during the time that I worked  
17 there, at least not in our local area. So I can't  
18 really comment too much on the relationship of coal  
19 dust with mine explosions. But I certainly can  
20 comment on the relationship of coal dust with health  
21 respects. Not too long ago, within the last couple  
22 years, I encountered someone in Charleston who I had  
23 met years before, who was an official with the West  
24 Virginia Workers' Comp program.

25           He told me that he was seeing evidence of

1 a greater frequency of pneumoconiosis among current  
2 miners, and also increasing severity of black lung  
3 disease. He was not in a position to make this an  
4 issue. He couldn't really speak publicly. But I told  
5 him that I would take a look at some reports that he  
6 referred me to, and try to get those to our  
7 congressional mitigation in West Virginia and I did  
8 that.

9                   And I'm here today, and I'm sorry wasn't  
10 prepared here today. But I'm here in support of the  
11 new standard, the proposed standard for rock dusting  
12 in mines because not only do I feel that it will  
13 decrease the risk of explosion. I'm sure there's no  
14 question of that. There's absolutely no question that  
15 improved and increased rock dusting will reduce the  
16 likelihood of explosion caused by or exacerbated by  
17 coal dust.

18                   I also believe that improved rock dusting  
19 of the mines will result in lower levels of respirable  
20 coal dust in miners and will have a positive  
21 beneficial impact on the occurrence of black lung.  
22 Thanks, very much.

23                   CHAIR:

24                   Oh, thank you. I want to make a few  
25 comments. You don't have to stay up there. Thank

1 you, very much. Let me state that we thought that the  
2 Emergency Temporary Standard would have a positive  
3 impact on benefits on reducing black lung, although we  
4 did not quantify the benefits, and we could not  
5 quantify the benefits. However, I would like to state  
6 we appreciate your comments. I would like to state,  
7 for you and for everybody in our country.

8           And I'm sure you all know this, that on  
9 October 19, we issued the proposed rule lowering  
10 miners exposure to respirable coal dust, subsequent to  
11 that time, we issued a public hearing notice where we  
12 announced the locations of six hearings. So we do  
13 invite everybody to participate in that rulemaking  
14 also. And I'm sure you were all aware of that. Okay,  
15 thank you. Is there anybody who wishes to comment?  
16 Testify?

17           MR. SEABOLT:

18           I have a comment.

19           CHAIR:

20           Come up and please state your name for  
21 the record. Thank you.

22           MR. SEABOLT:

23           Brian Seabolt, S-E-A-B-O-L-T. I'm from  
24 West Virginia, working at the Pinnacle Mountain  
25 Testing. And I had a comment on the PDMs also. But

1 my concern with the dust is at least in the work out  
2 areas, does it have also to be dusted? Actually,  
3 that's what we're having problems with. Well, we've  
4 already mined out all the works because we got a big  
5 mine. And it's you know, ---. I'm just concerned  
6 about those about the men losing their jobs over this.

7 CHAIR:

8 So let me get you straight. You said you  
9 were concerned about the PDM of equipment?

10 MR. SEABOLT:

11 No, I'm concerned about the rock dust,  
12 personally.

13 CHAIR:

14 The rock dust, right.

15 MR. SEABOLT:

16 That's another matter.

17 CHAIR:

18 Right. That's another matter, thank you.  
19 Okay.

20 MR. SEABOLT:

21 Sorry. I should have stated that.

22 CHAIR:

23 Okay, right. That confused me. So you  
24 are confused about the rock dust; aren't you?

25 MR. SEABOLT:

1           Yeah.

2           CHAIR:

3           You were concerned about the requirement  
4 that is worked out there.

5           MR. SEABOLT:

6           Yeah, yeah.

7           CHAIR:

8           Now, would you tell me your concern?

9           MR. SEABOLT:

10          We have a huge amount. I mean, it's been  
11 there for 40 years probably, ---

12          CHAIR:

13          Okay.

14          MR. SEABOLT:

15          --- if not longer. And I mean, all of  
16 the old bleeder areas and all the old seals. Because  
17 some of those seals won't have developed bleeder areas  
18 and stuff, as far as ventilation. Will those also to  
19 be 80 percent?

20          CHAIR:

21          Yes, in all areas.

22          MR. SEABOLT:

23          Okay. That was my concern.

24          CHAIR:

25          In all areas, that's right. That's the

1 area to get right back to Ms. Raisovich-Parson's  
2 question earlier. Those are all the areas that have  
3 to be in compliance by November 22, when they had been  
4 completed at the time when we initiaed the Emergency  
5 Temporary Standard, right.

6 MR. SEABOLT:

7 Okay. I just didn't quite get you.

8 CHAIR:

9 I understand, yeah.

10 MR. SEABOLT:

11 That's all I have to say, thank you.

12 CHAIR:

13 Okay. Is there anybody else who wishes  
14 to make a comment, who wishes to testify? Anybody  
15 else? Yes, sir.

16 MR. HALL:

17 Sam Hall, H-A-L-L. My comment is you  
18 know, the rock dust is bad and it's doing its job.  
19 But as far as a scrubber, which removes 92 percent of  
20 respirable dust out of the air, why do we not use  
21 them?

22 CHAIR:

23 Okay. Tell me now. What company do you  
24 work for?

25 MR. HALL:

1 Mammoth.

2 CHAIR:

3 Mammoth?

4 MR. HALL:

5 Yes.

6 CHAIR:

7 And your question again is what?

8 MR. HALL:

9 Why can't we use scrubbers which removes  
10 92 percent of respirable dust out of the air, which to  
11 me seems like it would put less dust down in  
12 recurrence, wouldn't use --- I mean, it would help out  
13 part of the rock dusting.

14 CHAIR:

15 I understand. You are asking a question  
16 that is not the subject of this rulemaking that we are  
17 having today. But I do understand your question. I  
18 don't understand the details of what's required at  
19 your mine but that is obviously an issue that is  
20 addressed in your ventilation and dust control plan,  
21 I'm sure. Is that right?

22 MR. SEABOLT:

23 Yes, ma'am.

24 CHAIR:

25 Right. And so that would be the plan

1 that would be submitted by your company to the  
2 district manager for that district. Okay. It would  
3 be submitted to that district manager. Though I can't  
4 read it, it would be inappropriate because I wouldn't  
5 be able to comment on the specifics of why they  
6 wouldn't allow scrubbers at your mine, quite honestly,  
7 without making on all the details of why. I assume  
8 that your company sent us a plan to use scrubbers, and  
9 when it was evaluated by our people, they said you  
10 couldn't use the scrubbers. And I don't know the  
11 specifics of why they said you could use them or not.

12 MR. SEABOLT:

13 Nobody's allowed. Nobody's allowed to  
14 use them anymore.

15 CHAIR:

16 That issue is not at issue here, as I  
17 said in the dust control and the ventilation and dust  
18 control plan. And it really is a plan, a mine-by-mine  
19 plan. I'm just saying I hear what other people are  
20 saying; nobody's allowed to use it. And so that is an  
21 issue that I think is being addressed in Arlington  
22 also. So I think we will just have to let that  
23 suffice for now, at this hearing. But knowing that, I  
24 will assure you that that's not the end of the  
25 inquire.

1           And I know we will talk about this some  
2 more. I can assure you of that. And anybody else who  
3 also has that same issue and that same question. It's  
4 just that our panel is not able to address that in  
5 detail. Even though I'm sure you would like an address  
6 at this time. Okay, thank you. Anybody else?

7           MR. EGNOR:

8           My name's Carl Egnor, E-G-N-O-R. I  
9 represent United Mine Workers. I serve on two Boards  
10 for the state of West Virginia, one of those Boards  
11 being the Board of Coal Miner's Health and Safety. It  
12 must have been three months ago we passed a similar  
13 rule. We did the same thing concerning rock dust.  
14 And I fully support the MSHA rule. I think it's a  
15 long time making that.

16           CHAIR:

17           Thank you. Thank you. Anybody else?

18           MR. HAMILTON:

19           Chris Hamilton, West Virginia Coal  
20 Association. We have some question concerning the  
21 Emergency Temporary Standard on rock dusting and we'll  
22 address those questions in a written filing which we  
23 intend on filing before December 20. A couple issues  
24 have been raised here that I feel compelled to comment  
25 on, the scrubbers on mining machines for one. And I

1 know MSHA is in the process of considering a number of  
2 rules and also a fixing or a signing by origins to  
3 those rules.

4           One of the previous speakers indicated  
5 that the current rule has been in effect here in West  
6 Virginia for several months. I believe by virtue of  
7 an Executive Order that was issued by previous  
8 Governor Manchin, now Senator Manchin back in April.  
9 So a Senator requirement has been in effect here in  
10 West Virginia for the biggest part of the last six  
11 months now.

12           And I also heard a previous speaker talk  
13 about some of the previous periods with respirable  
14 dust and that's the topic of an upcoming hearing as  
15 you indicate, Ms. Silvey. But that's a major concern  
16 that we have here in West Virginia, the fact that the  
17 Agency is precluding mine operators and miners from  
18 using scrubbers on continuous miners.

19           And I've heard some of the discussion ---  
20 overheard some of the discussion, an issue for another  
21 day perhaps --- for another forum. But I would urge  
22 the Agency to immediately allow --- and I'm not even  
23 sure an Emergency Standard is necessary to immediately  
24 allow mine operators and miners to begin to use the  
25 machine mounted scrubbers to eliminate and reduce what

1 could be dangerous levels of coal dust, respirable  
2 dust, at the first point of address or its origin,  
3 where it is actually being generated at the face.

4           I would submit to you that that's a much  
5 greater concern here throughout West Virginia and  
6 Appalachia than putting additional five, ten percent  
7 of rock dust in workers that have been there for  
8 decades, part and parcel to the concern that we have  
9 over --- not allowing miners and mine operators to use  
10 machine mounted scrubbers that are designed to dilute,  
11 mitigate and reduce harmless coal dust levels.

12           We would also ask that you immediately  
13 consider allowing mine operators and miners to fully  
14 utilize extended cut remote controlled mining machines  
15 here in West Virginia. We understand for all intents  
16 and purposes there's a moratorium under way. Written  
17 or unwritten, there's clearly a moratorium on  
18 approving deep cut mining plans here in West Virginia.  
19 The consequence of that is that these machines --- and  
20 not just continuous miners, but all face inspection  
21 machines.

22           Including two or more shuttle cars,  
23 scoop cars are being required to be relocated and  
24 moved at much higher frequencies, subject every single  
25 person on the working section to hazards that are

1 experienced with moving large equipment in relatively  
2 small confined spaces. In fact, by not addressing  
3 this issue, and by insisting on the moratorium, MSHA  
4 is responsible for increasing hazards related to  
5 moving equipment around on working sections on the  
6 order of magnitude of 50 percent.

7           If I'm not mistaken, of the 28 or 31  
8 mining deaths that MSHA sites in one of its studies,  
9 pertaining to continuous miners where individuals are  
10 caught between the rib, if I'm mistaken, the majority  
11 of those mining deaths occurred while a machine would  
12 be moved from place to place, or being moved on the  
13 section. Again, by not allowing a machine that has  
14 been engineered to safely mine depths 34, 36, 38 feet,  
15 and by requiring that machine to move to cease mining  
16 and to move when it reaches a 20 foot depth, we are  
17 requiring by that action that machines be moved 50  
18 percent move on a section.

19           Not only that machine but again, I repeat  
20 every other piece of equipment on that section is  
21 required to be moved. One of the things that really  
22 contributes to safety of a mine is stability and  
23 knowing where your fellow worker is, knowing where his  
24 machine is at all times and the coordination of those  
25 various pieces of machinery on a working section. And

1 communication must take place between machine  
2 operators.

3           Again, when we disrupt that and require  
4 twice as many moves around a working section because  
5 we refuse to allow machines to perform as designed and  
6 engineered to perform, we enhance those individual  
7 hazards to individual miners. And I would submit to  
8 you that this is a much greater issue and problem here  
9 in West Virginia, where we account for somewhere  
10 around 50, 60 percent of the nation's underground  
11 mines, than what this proposed rock dust standard is  
12 aimed at the rest of.

13           And since those issues were raised, I  
14 feel compelled to bring them to your attention so  
15 perhaps you can return those to Arlington. And  
16 perhaps let's find a greater priority and level of  
17 importance to it.

18           CHAIR:

19           Thank you.

20           MR. HAMILTON:

21           So with that, I'd be glad to respond to  
22 any questions or ---.

23           CHAIR:

24           I don't really have any questions. I do  
25 have comments to make to everybody.

1                   MR. HAMILTON

2                   All right.

3                   CHAIR:

4                   And that is that I hear what you're  
5 saying and I can assure you that I will take your  
6 concerns back to our Assistant Secretary and back to  
7 our people in Arlington. I will say that as you were  
8 talking, you know, and I do know that to, that that is  
9 a continuing issue. And I saw people in the audience  
10 who were bowing their head as you were talking. And I  
11 want to say for everybody here that we're in the  
12 business of protecting miner's health and safety.

13                   And we do not want to take any action at  
14 all. I wrote down that you stated that MSHA is  
15 responsible for increasing hazards on a magnitude of  
16 greater than 50 percent, which I'm sure I speak for my  
17 panel here that we are in the business of protecting  
18 miner's health and safety and not in bringing  
19 additional hazards in to the mine. So we take very  
20 seriously what you say. And I will take that back.

21                   As I stated earlier, a couple of the  
22 issues go beyond the scope of this rulemaking and yet  
23 they are important issues to us. So in that sense,  
24 they are not issues that we are not concerned about.  
25 So I want everybody to know that. And we will be

1 getting back to people on that. Thank you.

2 MR. HAMILTON:

3 Thank you.

4 CHAIR:

5 Okay. Does anybody else wish to make any  
6 statement?

7 MR. MAYNARD:

8 I would. James Maynard, M-A-Y-N-A-R-D.  
9 Just to sum up on something that he said. Okay, I  
10 run a mine. Well, I've been in the mine for 34 years.  
11 I've been a miner for 27, correct. And everybody I  
12 know, I mean I know a lot of people that's mining  
13 coal. Know this and know that. And I'm not knocking  
14 your, you know, dust thing. Which you know, dust  
15 isn't great. But it all begins in the face. You  
16 know, working outside, running up and down the track.  
17 Do you know what I'm saying?

18 Everybody I know has got one from sitting  
19 in place. He's got one. I know what his is.  
20 Everybody I know that's got one, it's all started in  
21 the face. You know, I'm not mocking you all. I agree  
22 on the rock dusting in certain areas. But just  
23 because you got have 80 percent, you know, in the  
24 third break underground, does not help the people that  
25 you know, needs the help. That's all I'm telling you.

1                   CHAIR:

2                   Excuse me, sir. What did you say your  
3 last name was again?

4                   MR. MAYNARD:

5                   Maynard, M-A-Y-N-A-R-D.

6                   CHAIR:

7                   Okay. Thank you. Does anybody else wish  
8 to make a statement? If nobody else wishes to make a  
9 statement, let's take a break until 10:30. And then  
10 at 10:30, I will then determine how we will proceed on  
11 this. Thank you.

12 SHORT BREAK TAKEN

13                   CHAIR:

14                   At this time we will reconvene the MSHA  
15 public hearing. Is there anybody else who wishes to  
16 make a statement? If nobody else wishes to speak, I  
17 again want to say that MSHA appreciates your  
18 participation at this hearing. I want to say  
19 personally and on behalf of the Assistant Secretary  
20 that we appreciate those of you who did make a  
21 statement, and to those of who attended but may have  
22 not made a statement. We appreciate your  
23 participation because that suggests to us that you are  
24 concerned about the process in the rulemaking. I want  
25 to reiterate that the record closes on December 20,

1 2010, and if you would like to make additional  
 2 comments you can do so on MSHA's website by 12:00 p.m.  
 3 eastern standard time on December 20, 2010. I can  
 4 reassure you that we will take your comments and  
 5 concerns into consideration in determining the final  
 6 rule on the main issue that on the table. Thank you.

\* \* \* \* \*

HEARING CONCLUDED AT 10:30 A.M.

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

  
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Court Reporter