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(8:01 a.m.)

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MR. MARVIN NICHOLS: Good Morning, Everybody.

Welcome to the second day of the dust hearings. Our first presenter this morning will be Jimmy Dunn. Is Jimmy in here? Is George Hobson here?

MR. HOBSON: Yes, sir.

MR. NICHOLS: Come on up, George. We'll work Jimmy in next.

MR. GEORGE HOBSON: My name is George Hobson. That's George, like George Washington. But the Hobson is H-O-B-S-O-N. I'm from central Illinois. I'm a Safety Committeeman on straight midnights. I've been a Safety Committeeman for close to ten years. I've got twenty-three years in the mines.

I've read these regs. I do thank you for letting us from Illinois come down here and have our say. I don't understand them, most of them. I don't agree with a lot of things.

I believe that we are getting less out of it. And from everything I gather, most of it pertains to the preamble and a lot of it is not going to be written as actual rules or laws. I don't think that's right.

1           And from hearing the one company representative  
2 speak, the companies are going to come out with a protest or  
3 whatever on this, or whatever litigation they can.

4           And, I think there's going to be abuse. And, I  
5 would like to see you sit down and rethink this.

6           Instead of going with this preamble, this lawyer  
7 can sit here and do all his talking he wants, he's still a  
8 lawyer in my book. I'm sorry.

9           MR. NICHOLS: This is him, right here.

10          MR. HOBSON: I know it, I know it. He's still a  
11 lawyer. And I'm sorry, I don't trust lawyers. Unless he's  
12 on my side.

13          But really, I would appreciate you sitting down  
14 and rethinking all this.

15          And of course, Illinois is not represented too  
16 much out here. And, we're an endangered species there in  
17 Illinois, as well as most of the coal miners in this area,  
18 in this district.

19          Not only environmental laws, but the way things  
20 are in the coal industry today, everything is faster -- when  
21 I started out, we was running twelve units and we didn't get  
22 one third the coal that we're getting out now with less  
23 people. Our belts are running faster. Our machinery is

1 running faster.

2           And whenever you do this, we're putting more coal  
3 in the air. And that's the reason why I think we really  
4 need to be stringent on this dust thing.

5           I've gone home -- I'm an examiner. I'm an outby  
6 person. I do go to the faces. On midnights, we don't load  
7 a lot of coal because it's supposed to be a maintenance  
8 shift. But when they are loading coal, even with the  
9 scrubbers and stuff -- and, they're supposed to have their  
10 dust parameters -- if them inspectors are not there -- and  
11 I'm not saying one side; both sides are guilty. Our  
12 people's guilty, too. We got to talk to them all the time  
13 about keeping our dust parameters the way they should be.

14           So the more inspections, or the more monitoring of  
15 even the company inspections -- if you take it over, I think  
16 the company should still be responsible for some of their  
17 dust sampling, too, to keep on top of this.

18           I don't believe the records is going to do it. My  
19 opinion is record keeping and you going in to check records  
20 isn't going to do it. We've got records on other things  
21 that the federal is supposed to be in, and our state's  
22 supposed to. Somehow it gets juggled around, forgotten or  
23 whatever.

1           So I really think it's in the best interest of all  
2 miners, and the miners in Illinois, that you sit down and  
3 rethink this.

4           And there's only one other thing that I'd really  
5 like to -- I see these ladies, they're on this panel, too.  
6 Right, with you? Have you ever worn any of this equipment  
7 that they say would help out if the engineering and  
8 administrative things can't keep the dust off the coal  
9 miner? Have you ever wore any of this stuff? Respirator?  
10 I'm not talking about your helmets. I'm not in with your  
11 helmets. I'm like everybody else. But even a respirator  
12 and you men with glasses, have you ever wore a mask to do  
13 painting or any odd jobs around the home? If you wear one  
14 of these and you wear glasses, they fog up, they make you  
15 sweat.

16           And in the coal mines, it's not like walking  
17 around here on the floor. You're walking over coal. You're  
18 falling over stuff that other people might have left behind.

19           Like me, I walk along belt lines and stuff.  
20 There's coal along there. And whenever I wear anything like  
21 that -- of course I'm getting old; I'm one of the older  
22 miners at our mine and I have to wear tri-focals -- and any  
23 time you put something on my face, it just -- and I've been

1 either blessed or punished: I got a pretty good snout on me  
2 and there's nothing that they've come out with that is  
3 custom fitted right now.

4           So personal equipment to help out with the dust,  
5 it's good, but it's not the answer because we're in a  
6 dangerous environment down there. And any time you put  
7 something else on a person, you may help them for dust, but  
8 it makes other things a problem.

9           And our conditions, it's been said, changes by the  
10 shift. It changes by the hour in certain weather, by the  
11 minute. And the job that I do and other outby people do,  
12 even though we're not up there where the actual mining is  
13 going on, our conditions is changing just as much. And like  
14 I say, with everything going so much faster, the air is  
15 moving more. We've got still the particles in the air. So  
16 please, sit down, rethink this.

17           And get away from this preamble stuff.

18           Put it in writing, if you do make changes, so that  
19 we can understand it, the company can understand it, and  
20 their lawyers can understand it, and we wouldn't be tied up  
21 in court with lawyers doing it.

22           And with that note, I'm going to end. And, that's  
23 how every Illinois miner that I've talked to feels about

1 this. But again, personal equipment is not the answer. It  
2 needs to be whatever you can come up with on equipment, air  
3 movement or whatever. Thank you.

4 MR. NICHOLS: Thank you. Is Jimmy Dunn here?

5 MR. URBAN: I haven't seen him, Marvin.

6 MR. NICHOLS: Tim Birchfield? Bill Sharp?

7 MR. SHARP: My name is Bill Sharp. I'm Safety  
8 Committeeman at Local 1969 in Illinois. I'm not going to  
9 beat this dog too much today. But I would present it, if  
10 you folks go back to the Advisory Committee and take their  
11 recommendations and think hard on it, you know, we're trying  
12 to stomp out black lung. And raising the dust levels and  
13 that isn't helping that too much. And, that's all I wanted  
14 to say. I just wanted to go on record.

15 MR. NICHOLS: Okay, thank you.

16 MR. SHARP: Thank you.

17 MR. NICHOLS: Is Birchfield here yet? James Bell?

18 MR. BELL: Mr. Chairman and the Board, my name is  
19 James Bell, J-A-M-E-S, B-E-L-L. I works at U.S. Steel,  
20 Oakgrove Mine, Local 2133.

21 I've been a mine worker for thirty-five and a half  
22 years. I served -- I been serving on the Safety Committee  
23 for the last twenty-one year. And, I also sits on the State

1 Board of Mine Examiners appointed by the governor, mine  
2 foreman certified, and I've been Safety Committeeman for  
3 about twenty-one year. I also serve on the contract  
4 committee and I sits on the State Council.

5 I'm here today because my Local when they heard of  
6 this proposal, they looked at me because I represent about  
7 three hundred people at Oakgrove Mine. And we know, and  
8 we've been around for a while, I have, underground. I've  
9 seen things happen, seen things change, technology change.

10 And when I went to work in the mine at Concord,  
11 U.S. Steel, we was conventional mining. Well, we didn't  
12 have the dust that we have now. But the miners still come  
13 out of the face, if it was a white guy, you couldn't tell  
14 what color he was because of the coal dust.

15 Well according to the Act, they had to clean up,  
16 come up with a standard. We came up with a two milligram  
17 standard. It's to help protect miners from black lung.

18 And I know we had a meeting in Lexington, been a  
19 few years back. And -- excuse me. We had a meeting in  
20 Lexington a few years back concerning black lung and coal  
21 dust. And we had quite a few people there on oxygen and  
22 they even testified.

23 And, we know that black lung prevails today.

1           And at our mine, we also have a longwall and we're  
2 running two CM units, which is one just starting up. And,  
3 we have quite a bit of diesel equipment underground. And  
4 from my calculations, looking at diesel equipment and  
5 looking at respirable float dust, you got two combinations  
6 there and these two is against the health of the coal  
7 miners.

8           But the thing that bothered our people when they  
9 looked at this proposal, they was looking at MSHA to lower  
10 the dust standard, rather than raising the dust standard.

11           And from our calculation, from my calculation --  
12 it was hard for me to understand, I was sitting back here --  
13 you said you didn't raise the dust standard, but from my  
14 calculation, I know that when you took one and add one to  
15 it, that was two.

16           The point that I'm trying to make is that if you  
17 have a valve flowing with water, fifty gallons per minute,  
18 in order to decrease that to twenty-five gallons per minute,  
19 you have to close the valve. You can't open the valve and  
20 decrease it.

21           So my point is that if you raise the standard to  
22 two point three, that's not decreasing. That's increasing,  
23 from my calculation. I mean, you know, I'm not a college

1 student. Maybe they got some other calculation they can say  
2 that's a reduction. But, I can't.

3 We also note that the Advisory Committee that was  
4 appointed, I guess by some of you on the Board here, and  
5 these fellows went out and did a hard, good job to get this  
6 thing where it's at. And from my reading through this  
7 thing, which is hard for me to understand -- I've been going  
8 over it for about a week or longer, still can't get the  
9 understanding of it -- but, I do know that they made some  
10 advice, giving you some advice and some recommendations.  
11 And, they're telling you not to raise the standard. And it  
12 looks like from your proposal that you did.

13 So undoubtedly the Committee that you had, I don't  
14 know whether it was just a scapegoat or somebody you had to  
15 have to say you had peoples out there working on it. But,  
16 you didn't pay them any attention that much. But, y'all  
17 made your own decision because y'all believed that if you  
18 raised it, it was better to calculate it into two milligrams  
19 or you would have something to write a citation on. But if  
20 it reaches two point one, that was a citation anyway, and  
21 not only just a citation, we're looking at lowering of dust  
22 standards so that there will not be a citation with the  
23 perimeter check that they have around the faces. I know it

1 because I'm a four time Safety Committeeman. I see a lot in  
2 the mines. And, there's a lot needs to be done.

3 And I know that with all the technology that we  
4 have around throughout the coal fields, we come in with the  
5 longwall, we come in with the continuous miner, now we have  
6 scrubber miners -- actually you're putting people in dust,  
7 rather than taking them out of dust. There's actually some  
8 of the plans that I rejected as a committeeman as my point,  
9 that we don't need the people to be in this dust. We need  
10 to figure out a way that we can put them somewhere else.

11 But it seems to me like I don't know where you get  
12 this calculation from that there's not as many contracting  
13 black lung, and they feel that you can raise the standards  
14 with it, and I don't know why. But, we need to lower it.

15 So I say to you, the Board, today that if you will  
16 go back, as my Local sent me to ask you this question, would  
17 you go back and reconsider this thing and look out for the  
18 miners? Because the miners are the ones that's going to  
19 suffer in this coal dust. It's not going to be this panel  
20 and it's not going to be the operator. It's going to be the  
21 miners. Thank you.

22 MR. NICHOLS: Thank you. I'm not a mathematician,  
23 either. But, do you understand how this averaging works

1 today? Like let's say you've got four samples. You can  
2 have two of them at four milligrams and two at one  
3 milligrams. Then you can average that out and be in  
4 compliance where you've got two miners breathing twice the  
5 standard, or two locations breathing twice the standard and  
6 you can average that down to compliance. That's what we're  
7 trying to get away from with this single shift rule.

8 Now I'll ask somebody else to try to explain the  
9 correction factor. Anybody want to have a go at that?

10 MS. EILEEN KUEMPEL: It's a different issue.

11 MR. NICHOLS: Different issue? Jon?

12 MR. JON KOGUT: I appreciate what you said about  
13 one plus one making two, and I agree with that. The thing  
14 is that what you need to make the comparison with is not the  
15 two point three against a straight two, but the two point  
16 three against averaging together five samples. Some of  
17 those samples in the upperage, like three or four or  
18 something, and you can come into compliance, even though in  
19 those five samples, some of them might be as high as three  
20 or four. So that's what you need to compare against, the  
21 two point three that we're saying we need to have in order  
22 to have a high enough confidence level to issue a citation  
23 based on just one sample, instead of five.

1           Now if a sample comes in at something like two  
2 point one or two point two, we're not going to consider that  
3 as being in compliance. We're not going to assume from that  
4 that the person, that the occupation from which that sample  
5 was taken is in compliance.

6           What we're going to do those cases is come back  
7 and resample, to see if that first sample that we took just  
8 was higher than two simply because of a measurement error,  
9 or whether there's some reason to think that there is  
10 actually -- you know, that the plan is not effective in  
11 protecting that miner.

12           If we get -- if we come back there and again see  
13 the concentration is at two point one for a second time,  
14 then chances are we're going to decide that there's a good  
15 possibility that that plan is not really effective, and  
16 there's a good chance that we'll go in there and require  
17 that the plan be reverified.

18           Now when we have the plan verified or reverified,  
19 that shifts the burden of proof to the operator, to show  
20 that that plan is effective.

21           So when we issue a citation, the burden of proof  
22 is on us to show that they're really out of compliance, that  
23 it's not just a measurement error.

1           But when the operator of the mine has to  
2 demonstrate to us that the plan is actually effective in  
3 protecting miners on every shift, the burden of proof is on  
4 them.

5           So even though the standard is a two point zero  
6 standard, in order to demonstrate at a high confidence level  
7 that the plan is effective, they're going to have to, in  
8 order to get that high level of confidence, they're going to  
9 have to show, if they're going on a single sample -- or  
10 single shift, rather, they're going to have to show that all  
11 of the samples that they've taken on that single shift come  
12 in below about one point seven approximately.

13           So even though the standard is two, in order to  
14 get that high confidence level, and because the burden of  
15 proof is on them to show that the plan is effective, it's  
16 not going to be enough on a single shift for them to come in  
17 at one point nine. They're going to have to come in at  
18 about one point seven.

19           So that's the same sort of situation that we have  
20 when the burden of proof is on us to show that they're out  
21 of compliance based on a single sample. Does that -- ? You  
22 want to say something on that?

23           MS. KUEMPEL: Jon just explained the MSHA position

1 on how they're enforcing that. And, I wanted to add that of  
2 course the joint rule with the single shift sampling, NIOSH  
3 has demonstrated the accuracy of the single shift sample.

4 But, I wanted to underscore the importance and  
5 benefits that we all recognize with the single shift sample,  
6 and also comment on the frequency issue.

7 There's been a lot of concern about reduced  
8 sampling under the proposed plan. And, I can understand  
9 those issues very well.

10 I also wanted to point out that with the proposal  
11 for the bimonthly, if you take a situation where there's an  
12 unannounced visit to take the sample, that sample is used to  
13 determine compliance. I wonder whether you would feel that  
14 that's a more accurate representation of the actual dust  
15 exposures, compared to a system that's also sampled  
16 bimonthly, but the conditions are selected and then there's  
17 opportunities for additional samples which can be averaged  
18 in and diluted out.

19 I think that you can see that the former case is  
20 more likely to give a realistic determination of the actual  
21 exposures. And that, in combination with a more effectively  
22 running system in the first place, I think are very key  
23 issues.

1           It's equivalent if you have a machine, an  
2 automobile, say, and you know it's well maintained, you're  
3 going to feel safer driving that car and checking it now and  
4 then. Or, getting in a car that you know is not running  
5 right or you really haven't checked one way or another and  
6 now and then stopping to check, it's still not running right  
7 in the first place.

8           The point is to get the system running right from  
9 the beginning. I think those are real key issues that would  
10 help to reduce the exposures.

11           In 1995, NIOSH published a criteria document for  
12 the recommended standard. And in that and in the joint  
13 rule, we outline the studies that show that pneumoconiosis  
14 is a serious problem still. There's been a lot of reduction  
15 over the years. But, it's not eliminated. And, there is  
16 still risk.

17           And, NIOSH is very concerned about reducing  
18 exposure to miners. And, the single shift proposal would  
19 provide more protection and more realistic samples for a  
20 given shift. I hope that helps to clarify.

21           MR. BELL: I agree with single shift samples.  
22 But, we're looking at this span between them, like bimonthly  
23 sampling, you have something like fifty-nine days or more

1 that a miner would be exposed to high concentrations of coal  
2 float dust, respirable dust.

3 And under the contract that we have, our  
4 agreement, the United Mine Workers and the operator, in  
5 Article III, Section 9, it states that we have a right to a  
6 safe work place.

7 If a coal miner would withdraw because of a high  
8 concentration of coal dust in his area, then it appears to  
9 me like the burden would be upon the miner himself to prove  
10 that he has a high concentration of dust.

11 And therefore, that's where we come in as safety  
12 representatives, to be able to call MSHA to give us a  
13 sample, take a dust sample.

14 And at that time while we're waiting there, MSHA  
15 is not available, don't have anyone available at that time,  
16 we're at a stand still, and this person could be forced to  
17 go back in and try to work because MSHA said they could do  
18 this. And, we're putting our peoples at risk with the high  
19 concentration of respirable dust. And, I don't think that's  
20 fair to the coal miners.

21 I think we need more sampling. If you're going to  
22 sample a single shift, I feel like we need more than a  
23 bimonthly sample.

1           If we have something like a monthly sample, or if  
2 you sample twenty-four times a year, I feel, the coal miners  
3 would feel that they're being protected by MSHA, even if  
4 they was doing the samples.

5           But the way it looks now is that the burden would  
6 be upon the miner himself. And, he's the one that would be  
7 sitting in the middle. He'd be sitting in the middle of the  
8 operator and MSHA. MSHA's saying, "it's okay because we've  
9 already sampled and you're in compliance."

10           But over here at the same time, this fellow can't  
11 even see. Visibility is dim. And, they're breathing this  
12 stuff. Airstream helmets are not really going to help you  
13 that much because this respirable dust -- we have a doctor  
14 here and I know, because we have been through this thing so  
15 many times -- the particles are small enough to go through  
16 that airstream helmet, along with air that's able to get  
17 into your lungs.

18           So I feel like that we have had shear operators  
19 come off the face with airstream helmets and their face be  
20 as black as this mike here, and they have on the airstream  
21 helmets, so you know the respirable dust is getting to them.

22           It's just a matter of time before these peoples  
23 contract black lung.

1           At our mine, we have several Part 90 miners. We  
2 had some had to come off. We got some now that have black  
3 lung. It's at a certain stage now. But, it's still  
4 prevalent in the mines right now today, black lung, because  
5 there is so much dust.

6           And with these continuous miners, these scrubber  
7 miners and the shear, longwall shear, and this coal is so  
8 dry -- in Alabama, the coal is so dry -- it'll be airborne  
9 in a minute, this respirable dust.

10           So, we're looking for your help. And, that's what  
11 we need.

12           MR. NICHOLS: This bimonthly sampling, that's the  
13 minimum requirement. If District Managers believe they have  
14 problems with an operator not maintaining the dust controls  
15 in the plan that's been verified, they can choose to do more  
16 sampling.

17           Plus, I think MSHA is responsive to 103(g)  
18 complaints. I mean, if you've got a problem, you have that  
19 avenue.

20           I would just go back to the sampling, you know,  
21 the way we average today, there are miners out there that  
22 could be legally out of compliance the way we average these  
23 samples out. And, that's not a good situation. A single

1 shift would cure that. Okay? Thanks.

2 MR. BELL: I have one more question here. I agree  
3 with that, also.

4 But, we would like to see some rules in the  
5 policy, some rules in your policy that states that when the  
6 company is at a certain point, that this is a requirement by  
7 MSHA, that you will step in and either verify the plan or  
8 disapprove the one that we have in place.

9 See, the burden of proof right now, what you're  
10 telling me is upon the miner or the miner's representatives  
11 to file 103(g), and I don't think that's the way to go.

12 MR. NICHOLS: No, sir, that's one avenue. If  
13 we've verified the plan, posted it, the miners understand  
14 it, the Safety Committees understand it, it seems to me like  
15 that's pretty good compliance leverage there.

16 MR. BELL: Well, let me ask you another question:  
17 At the same time when we're out of compliance, or we feel  
18 that they're out of compliance or not following the  
19 verification plan, if a 103(g) is called in, what time are  
20 we looking at that MSHA would respond? Is this a four hour  
21 response or twenty-four hour response or forty hour  
22 response? But, our people would be exposed to this dust at  
23 the same time while we're waiting on MSHA.

1 MR. NICHOLS: Well, what's our general response  
2 time now? It's pretty good, isn't it?

3 MR. BELL: For 103(g)?

4 MR. NICHOLS: Yes.

5 MR. BELL: Well, we've had several down there, you  
6 know, and I noticed that it's not 103(g) on the code form.  
7 103(g) is the one that if you have a regular inspector there  
8 and he's not well trained in dust control, then he would  
9 just only go and check whatever he's qualified to check.

10 And at the same time, he don't have the  
11 instruments with him to check for dust. So the inspector on  
12 the spot can't really check. You have to have someone with  
13 the instruments to check it with.

14 So therefore, if you call a 103(g) in on a regular  
15 inspection, well the inspector, he can't really protect that  
16 miner, unless he have some means to protect him. Now, he  
17 says he can't shut it down unless -- I mean, you know, you  
18 can say you see dust flying through the air, but this fellow  
19 is working in a high concentration of dust, but the way to  
20 prove it is to sample this person.

21 And when we've got him in there at this time, we  
22 need to sample him at this point, not wait two or three  
23 days. He might be able to clear it up by that time.

1           But then you go right back into that mode again  
2 because most of the time when 103(g) is called in, it's  
3 pretty well cleared up before they get there because if they  
4 know they're coming, they're going to clear it up before  
5 they get there.

6           MR. NICHOLS: I can only tell you we've got a lot  
7 of dust pumps in Alabama. There's three avenues for  
8 sampling. One is the minimum bimonthly. The other is if  
9 the manager chooses, to do some more sampling and then,  
10 through a complaint.

11           MR. BELL: Well, we know -- and I'll leave this  
12 with you in closing, about the miners -- long before I went  
13 in the mines, I started working in '65, as I reported, but  
14 prior to that, I was in a community where there was a lot of  
15 coal miners working in the mines. We knowed there was a lot  
16 of coal dust, because there was a lot of exposure around. I  
17 got some of the history of some of the mines that was in  
18 Alabama owned by different companies that had exposure  
19 caused by a high concentration of float dust.

20           And also, we know that a lot of people died over  
21 the years, and didn't know what they were dying of because  
22 they didn't know anything about black lung.

23           And today, we have a law that is in place, trying

1 to help protect miners from this. And, I think we have  
2 fewer cases than we had in the previous years, over the  
3 years, of black lung.

4 And, I know the coal miners fought it real hard,  
5 their leaders fought real hard in the Congress, and in this  
6 country and in other countries, to try to eliminate black  
7 lung. And MSHA even has stickers they put out saying, "End  
8 black lung forever." So we see right now that that's just a  
9 slap in the face from what you said you would do. And, coal  
10 miners have fought and fought and fought, and worked hard  
11 and died, agony in death, trying to get a better work place  
12 to work and eliminate this coal dust and bad conditions  
13 underground.

14 So we are here today, as my members sent me here  
15 to this panel, to ask them would they go back and reconsider  
16 the miners, and think about more sampling, if they were  
17 going to take control, more sampling, and make sure the  
18 miners have a clean environment to work in. That's all I  
19 have.

20 MR. NICHOLS: Thank you. I think you can sit and  
21 disagree with these rules, but I don't think you can say  
22 that Davitt McAteer, the Assistant Secretary, is not trying  
23 to deal with black lung disease.

1           He has established this x-ray program, where we're  
2 doing free chest x-rays to try to get around to all the  
3 miners over a five year period, and then put these rules in  
4 place.

5           Now you can disagree with the rules. But, you  
6 can't say that MSHA is not interested in ending black lung.

7           MR. BELL: I didn't say that. This (indicating)  
8 says it.

9           MR. NICHOLS: Okay. Has Jimmy Dunn shown up yet?  
10 All right, he's off the list. Tim Birchfield, has Tim shown  
11 up yet?

12           MR. URBAN: Apparently not.

13           MR. NICHOLS: Glenn Loggins.

14           MR. LOGGINS: Mr. Chairman, and other Members of  
15 the Panel, my name is Glenn Loggins. That's G-L-E-N-N, L-O-  
16 G-G-I-N-S. I would like to thank you for the opportunity to  
17 speak. I'm a coal miner from Alabama. I'm a UMWA Safety  
18 Committeeman, Local 2245. I work at Jim Walter Resources in  
19 Brookwood, Alabama, Number Four Mine. I have twenty-three  
20 years mining experience, twelve years on the longwall. I've  
21 been a longwall jack setting and a shear operator.

22           We've tried the airstream helmets. To use the  
23 airstream helmets, when we tried to use them, we had

1 problems with them fogging up. And in water, dust got on  
2 the face and you couldn't keep them clean. The face shields  
3 just fog up and gets covered with dust and you couldn't see.

4 It's hard to breathe. Filters got stopped up.  
5 So, we stopped using them because, you know, it's useless.

6 We mine two seams of coal. And, we got fifteen to  
7 thirty inches to move in. When there's rock rolls out in  
8 the face, if you wear an airstream helmet, you couldn't see  
9 it. It'll just roll out, and we have people hit with a rock  
10 without airstream helmet, just from visual problems, not  
11 being able to see it come across, when they have their head  
12 down and it'll hit them.

13 I feel we have enough hazards on the longwall  
14 without adding to them.

15 Mr. Chairman and other Members of the Panel, in  
16 May of '96, I spoke to the Federal Advisory Committee in  
17 Charleston, West Virginia. I stated how bad longwall dust  
18 sampling was being manipulated on our longwall in Brookwood.

19 We sampled the longwall by 060 sampling. I  
20 described how the supervisor would wear the dust sampling  
21 pump under a raincoat and stay on the tailgate, downwind of  
22 the wall water sprays, instead of being where the dust, coal  
23 dust was generated.

1           Since that time, MSHA hired that Jim Walters  
2 supervisor as a federal mine inspector. We sure appreciate  
3 that, Marvin. We're glad he's gone. And, you solved that  
4 problem.

5           After reading this proposed rule, I want to ask  
6 you to go back and address the issues the miners raised that  
7 spoke before. Thank you.

8           MR. NICHOLS: Thank you. Mike Phillips?

9           MR. PHILLIPS: Good Morning. My name's Mike  
10 Phillips. Well it's Michael, M-I-C-H-A-E-L, P-H-I-L-L-I-P-  
11 S. I'm Safety Committeeman at Shoal Creek Mines, Local  
12 1948. And, I want to appreciate what y'all are trying to  
13 do. It sounds good, if you can understand it. I can't.

14           But, you're looking at a third generation coal  
15 miner. And, I'm the last. The first two are gone from  
16 dust. If you'll look around this crowd, you'll see a lot of  
17 people that probably won't be here much longer, because this  
18 dust is killing us. You just don't understand, unless  
19 you're in it.

20           The single sampling, I don't understand it. I  
21 hope it works. But, I wish that you would really look to  
22 the people and take it in your heart to do the right thing,  
23 because it is killing us.

1           I could sit here and talk about airstream helmets,  
2 longwalls, I've been on all of them. I got nearly thirty  
3 years. But, y'all have heard it. I don't need to say it.  
4 I hope you understand what I'm trying to tell you, and take  
5 this to heart. These men are serious. Thank you.

6           MR. NICHOLS: Thank you. Marcus Shepherd? Ronnie  
7 Griffith?

8           MR. GRIFFITH: I'm Ronnie Griffith. I work with  
9 UMWA. I'm on Safety Committee at 1948, Shoal Creek,  
10 Alabama, work for Drummond Coal Company. I appreciate the  
11 time y'all took to listen to us.

12           But these six shifts y'all come up with, all y'all  
13 going to sample, we got two hundred and eighty-three pieces  
14 of diesel equipment in our mines. We got two longwalls and  
15 they're talking about putting another longwall in. We got  
16 seventy-five people outby. And, I was watching this morning  
17 out here on the highway, we got three and a half to twenty-  
18 five inches -- we have two roadways. The people at the face  
19 are eating a lot of dust. But, our outby people are eating  
20 it, too. I talked to a boy just before I left, forty-nine  
21 year old. He's got thirty years in the coal mines, just  
22 like I have. Forty-nine year old, he worked outby the last  
23 ten years, he's pulling an oxygen bottle behind him.

1           And until you sit and see one of your union  
2 brothers -- this is ludicrous to go from thirty-six to six  
3 shifts taking dust samples. Dust is killing us. You ain't  
4 got to be fifty-eight or sixty-eight to have black lung.  
5 We've got approximately eight people that the doctor has  
6 took out of the mines since '96 at our mines.

7           And you know, when I was a young boy, I listened  
8 to coal miners talk and I thought, "boy, I know all about  
9 coal mines." But until you go in there, it's a different  
10 ball game. It's a monster that'll eat you up.

11           And, I'd appreciate it if y'all would go back and  
12 take this, because when we go back to Shoal Creek and try to  
13 explain this to our people, they're not going to buy into  
14 this. It's going to be hard to sell to them, because when  
15 you go home at night and clear your throat and you spit old  
16 black dust out of your body, I can tell them all this is  
17 going to work, they told us up there this is going to work,  
18 this'll be good for us. They're not buying into this. And  
19 I'm asking you to go back and really take a hard look at  
20 this. That's all I got to say.

21           MR. NICHOLS: Okay, thanks. Is Shepherd here  
22 yet? Frank Winstead?

23           MR. WINSTEAD: My name is Frank Winstead, F-R-A-N-

1 K, W-I-N-S-T-E-A-D. I'm from Local 2305 and I'm a Safety  
2 Committee Member. I intend to keep mine short and to the  
3 point. The first thing is when we sample, what is our  
4 objectives? If our objectives is to get a good,  
5 representative sample to work with, we should sample more  
6 frequently in everyone.

7 Everyone knows that we have good days and we have  
8 bad days. Some days our systems just won't work. To really  
9 know what a person is working in, we need to take a lot of  
10 samples each year.

11 We feel that random sampling by MSHA keeps the  
12 companies more honest.

13 I also believe that hanging more weight on the  
14 workers is wrong. We already carry a great deal of weight  
15 in an awkward way. We all seen the guy that was sitting  
16 back here with the apparatus.

17 Who here is from NIOSH? Okay. If I put a brick  
18 right here, and do this (bending from waist) for a year for  
19 eight hours a day, is that going to injure my health in time  
20 to come? That's the point I would like to make to you.  
21 Everyone that has talked so far wants engineering changes  
22 that involve things like water sprays, scrubbers, air  
23 velocities, wetting agents, not heavy equipment that hangs

1 on miners' bodies.

2 I also feel that you should keep the language  
3 simple. Why do you want to make things so complicated?  
4 When you get down to it, what it's supposed to achieve, it  
5 can be made real simple. When things are made complicated,  
6 people tend to think that someone is trying to hide  
7 something from them.

8 And from the sound of what I've already heard,  
9 there is a lot of untrust out there. Why is that?

10 I can compare this seven hundred page proposal to  
11 trying to fill out my income tax. To get the best results,  
12 I have to hire somebody to tell me how. That by itself is a  
13 major injustice to all the miners that it affects. I think  
14 it should be more concise. No if's and but's.

15 Also, there should never be any avenues that an  
16 operator can take if they can not comply, because if it  
17 takes less effort, these are the avenues that they will  
18 probably want to take.

19 Continuous monitoring is the best way for a good,  
20 representative sample. I believe it can be done and done at  
21 a low cost to MSHA. We need a good, representative sample  
22 to work with, if we are truly to address the problem.

23 This is a very important issue to these miners in

1 this room. We are all trying our best in our own ways to  
2 let you people know we are truly concerned.

3 We want more than this.

4 In conclusion, I think you should go back and look  
5 at what the Committee recommended. Come back with something  
6 simple and concise that keeps the levels, all the levels  
7 less than two milligrams.

8 Sample everyone on a frequent basis. Make it a  
9 rule. Thank you.

10 MR. NICHOLS: Thank you.

11 MR. HEWETT: I wanted to ask him some questions.

12 MR. NICHOLS: Frank, can you come back up?

13 MR. HEWETT: Yes, this is Paul Hewett of NIOSH.  
14 Did you say you work on a longwall?

15 MR. WINSTEAD: Yes, sir, at one of our mines, I  
16 worked on a longwall for a while.

17 MR. HEWETT: Okay.

18 MR. WINSTEAD: I'm not currently. Currently I'm a  
19 belt examiner.

20 MR. HEWETT: Low coal?

21 MR. NICHOLS: Hey, Frank, will you move over and  
22 speak into the mike there?

23 MR. WINSTEAD: Am I all right now?

1 MR. HEWETT: This is a low coal longwall?

2 MR. WINSTEAD: Well, it's between forty-eight and  
3 fifty-two inches. I think that's pretty low.

4 MR. HEWETT: So whenever you get under the shield,  
5 it's going to be --

6 MR. WINSTEAD: Right, even lower than that. At  
7 times, it's really low. At times, you know, we're really  
8 bent over. I think I know what you're getting at.

9 MR. HEWETT: You never have any chance to stand  
10 up, do you?

11 MR. WINSTEAD: Right -- well, no. No, unless you  
12 get to the headgate, and it's possibly, probably this  
13 (indicating) angle most of the time.

14 And then, the operators have something in their  
15 hand, so they don't have the -- they can't do this  
16 (indicating). They can't prop their weight, the weight that  
17 they have out here, this arm, it affects you right here.  
18 You people deal with that a lot more than I do. You know a  
19 lot more about it.

20 MR. HEWETT: I just wanted to clarify that.  
21 Marvin, is it possible for me to find out how many longwalls  
22 have restricted head space, that are below a certain head  
23 height?

1 MR. WINSTEAD: Ninety percent.

2 MR. NICHOLS: Yeah, we have that, can get that.

3 Thanks, Frank. Okay. Robert Acklin?

4 MR. ACKLIN: Good Morning. My name's Robert  
5 Acklin, R-O-B-E-R-T, A-C-K-L-I-N. I work at U.S. Steel,  
6 Local 2133, District 20. I got thirty years in the mines,  
7 and I am a Safety Committeeman there.

8 First of all, I'd like to say that we need more  
9 sampling, more than six times a year. To me, that's  
10 ridiculous.

11 And, I wanted to touch bases on what the young  
12 lady over there said this morning, that sampling -- I mean,  
13 announced visits or unannounced visits would help. And, I  
14 don't really know if that will. I think basically it  
15 wouldn't, because before you go on, we have to let the  
16 company know exactly where you're going.

17 When we get there, they are ready for us. They're  
18 ready for their sample. In fact, if they're not ready  
19 exactly, I have seen times where equipment would break down  
20 where they can't sample it. I don't know if that's  
21 accidental or however you want to say it.

22 And what you said this morning, Mr. Nichols, about  
23 the 103(g), it's the same thing. Before we go on there, you

1 have to let the company know. MSHA has to let them know why  
2 they're there, if they do have a 103.

3           Once we get to that area, it's already been taken  
4 care of or they're ready for us.

5           If the sample is going to be good, I just think we  
6 need to have it more than six times a year because we need  
7 to keep the operators on their toes. And I think having it  
8 more than six times will keep them on their toes, because if  
9 you just go that little few times, they're going to always  
10 be ready for us.

11           The testing on the outby people once a year,  
12 that's definitely not enough, by far, by any means.

13           We miners here have been put in dust far too long.

14           The survey that has been taken that it was 18,245,  
15 I think, coal miners that has died from black lung -- and,  
16 that dust is really a killer. We don't none of us want it.

17           What I want to know is if we did get it, we  
18 couldn't get benefits for it because everywhere you go, they  
19 say you don't have it. I'd like to know if we did, we  
20 wouldn't get any kind of benefits for it.

21           And being a Safety Committeeman, I want to touch  
22 bases on one thing, the airstream helmet. I get plenty of  
23 complaints all the time about the type filter that's in

1 there. It used to be white, I think. The filter used to be  
2 white. They could breathe out of it better. But, that's  
3 supposed to be discontinued now.

4 The filters they have now, they can't breathe out  
5 of. It fogs up. It's just miserable for them. And then  
6 when they do come out of the mines, the shear operator and  
7 everybody is like my people said, just be black as this  
8 microphone. And, the dust is still killing them.

9 Before I became a Safety Committeeman, I was a  
10 miner operator. And to show you how the dust can kill, it  
11 got to the place that I started coughing it up, dust and  
12 stuff, every night in the shower. And, I would really get  
13 sick from it. And I know it had to be that way because I  
14 don't get that way any more because I'm not cutting any coal  
15 any more.

16 So I would like for everyone to think, and just go  
17 back to the drawing board and look at this again.

18 We have been in and out of compliance at our mine  
19 several times on different occasions.

20 I don't have the answers. I wish I did. But, all  
21 we need -- asking of you is to help us, not hurt us. Thank  
22 you.

23 MR. NICHOLS: We don't think sampling is

1 unimportant. But, what we think is important is compliance  
2 day after day after day, good plans that are verified that  
3 will work, that miners understand, that mine operators  
4 understand, that MSHA understands, and that these controls  
5 will be in place every shift, not that we come out and  
6 sample and it's just random sampling, but there's a purpose,  
7 that we've got good, workable plans and sampling to check  
8 those. Thanks.

9 MR. ACKLIN: Thank you.

10 MR. NICHOLS: Lewis Burke? C.A. Phillips?

11 MR. PHILLIPS: My name is C.A. Phillips, C,  
12 period, A, period, P-H-I-L-L-I-P-S. I am a member of Local  
13 Union 6026 located in Coalwood, West Virginia. I have been  
14 a member of the local for twenty-seven years. I am  
15 presently employed by the United Mine Workers of America. I  
16 have been with the Mine Workers for approximately twenty  
17 years. I live in Bluefield, West Virginia, and have been  
18 employed by the Mine Workers for the last twenty years.

19 I'm not going to pass too much on what went on  
20 yesterday. But I have some issues that are key to me  
21 personally that I'd like to bring out in a prepared  
22 statement.

23 Despite years of demands for increased miner

1 participation to help oversee the respirable dust sampling  
2 program, the proposed rule does not contain those.

3 MSHA's announcement that they are giving miners  
4 increased rights to participate in plan verification  
5 sampling does not exist.

6 Can you show me where in the rule it's located,  
7 that this does exist? Of course from the comments I heard  
8 yesterday, the answer is no.

9 MSHA's proposed rule did not address miners'  
10 participation.

11 All things said, the MSHA proposed rule takes  
12 rights and protections away from coal miners. Miners have  
13 been demanding the right to have increased participation in  
14 the respirable dust sampling program for at least a quarter  
15 of a century.

16 Given the fact that so many miners have fallen  
17 victim to the unhealthy coal dust in mines and the dust  
18 sampling program has been corrupt over the years, they  
19 deserve the rights to have representatives overseeing the  
20 dust program.

21 I agree with the Advisory Committee's  
22 recommendations. It calls for an increase in miners'  
23 participation without loss of pay in specific

1 recommendations sent to the Secretary of Labor.

2 Those recommendations called for full rights of  
3 paid participation in every phase of the respirable dust  
4 sampling, verification and training program. That included  
5 all compliance sampling, MSHA and operator verification  
6 sampling, handling of continuous dust monitoring devices and  
7 extraction of data and training of miners.

8 By the way, where in the rule does it require  
9 continuous dust monitors? Of course, we talked about that  
10 yesterday.

11 I can remember talks about continuous dust  
12 monitors for years and years. I am a firm believer that a  
13 rule requiring the use of continuous dust monitors in the  
14 nation's mines is long overdue. This technology can serve  
15 to reduce and eliminate pneumoconiosis in the nation's coal  
16 mines. This technology is available and feasible.

17 Have we forgotten about the Mine Act? The  
18 Advisory Committee called for the development and use of  
19 continuous dust monitors for compliance, surveillance and  
20 controlling dust.

21 We need to implement rules to protect the nation's  
22 miners from unhealthy coal mine dust. We all must not  
23 forget our most precious natural resource, and that is the

1 coal miner himself. We need rules to keep them healthy and  
2 alive. We must not continue to chip away at the very  
3 document that was written to protect coal miners.

4 In the part of West Virginia, southern West  
5 Virginia and northern West Virginia that I cover as an  
6 International Rep, I come across employees who are working  
7 in the outby areas, and they continue to be exposed to  
8 respirable dust.

9 The West Virginia Workers Compensation benefits  
10 are continually being paid to these employees, benefits that  
11 they deserve due to the fact that they have been exposed to  
12 the dust. And, percentages are increasingly getting higher  
13 and higher.

14 You mentioned yesterday how you all get your  
15 information. And, I think the answer to that was the MSHA  
16 folks in the field. I think you need to consider the  
17 comments of the people who work in the coal mines today, and  
18 please listen to their demands and act on their request  
19 immediately.

20 MR. NICHOLS: Thank you. Has Lewis Burke shown  
21 up? Okay. Our next presenter will be Dr. Jim Weeks, and he  
22 has asked for I believe about forty-five minutes. So how  
23 about if we take about a ten minute break before Dr. Weeks

1 comes up? Let's be back at 9:15 ready to go.

2 (OFF RECORD)

3 MR. NICHOLS: Okay, let's get started back. Jim  
4 Weeks was on the list twice and he's only going to present  
5 once, and has chosen to take the later sign-up time. So, is  
6 M.E. Green available, Green? Charles Tipton? Bruce Dotson?  
7 Go get them, Joe. I've called M.E. Green, Charles Tipton  
8 and Bruce Dotson. Are any of those -- okay.

9 MR. DOTSON: Good Evening. My name is Bruce  
10 Dotson, D-O-T-S-O-N. I work in District 17, Local 1511,  
11 Phelps, Kentucky. All I can ask is has anybody on the panel  
12 had anybody to die from this disease? It's a bad disease,  
13 and it's a worse death.

14 Only thing I can say, the sampling part I  
15 understand. I think there should be more.

16 It's like insurance, you ladies and gentlemen,  
17 just like car insurance. Y'all are our insurance policy.  
18 And every man and woman that works in the coal mines, their  
19 lives is in y'all's hands. And, I think y'all have done a  
20 good job.

21 But, I'm not asking you to go back. I'm begging  
22 you to go back. I appreciate your time, and thank you a  
23 lot.

1 MR. NICHOLS: Thank you. Is M.E. Green here?

2 MR. GREEN: Good Morning. My name is Mike Green,  
3 M-I-K-E, G-R-E-E-N. I work for Local 1713 in West Virginia.  
4 I work for U.S. Steel Company. I just have a couple of  
5 questions.

6 Yesterday you talked about -- I worked on longwall  
7 a long time. We have a real low longwall. And, you talked  
8 about being downwind of the shear. We don't have a shear,  
9 you know. We have a plow.

10 And, you talked about a small area downwind of the  
11 shear. And I'm wondering, you know, that sounds to me like  
12 that's just a small area for a small, limited amount of  
13 time.

14 And on our longwall, the area downwind of the plow  
15 could be the majority of the face, you know, for a whole  
16 shift at times. You know, you can still run above that.

17 So what I was worried about was, you know, when we  
18 have problems downwind of it, the majority of our people,  
19 mostly maintenance people, but could be foreman and other  
20 helpers, they would be working in that area for sometimes  
21 the biggest part of the shift. It just didn't sound good to  
22 me, you know, the idea of just put those helmets on because  
23 you know, we've had them probably -- we've had them

1 available to us for ten or twelve years, and they never did  
2 go over too good.

3           Only the people on the headgate in the high top,  
4 where they could stand up and they weren't very mobile  
5 during the shift, they pretty much stayed in one place, they  
6 were the only ones that would wear them for any length of  
7 time, you know. Most people just gave up on them.

8           They couldn't -- you know, mechanically they were  
9 constantly a problem, the batteries, the motors, the little  
10 fan motor. They hated them where we work, you know.

11           But, I just wondered about that little area there  
12 that you had referred to, Marvin, as a small area. But at  
13 times, that's our whole, almost our whole face.

14           MR. NICHOLS: I referred to it as a small area,  
15 looking at an entire mine. The MSHA position is that  
16 engineering controls have been a long time available for  
17 continuous miners and roof bolters, everybody else working  
18 in the mine and generally, the longwall.

19           But, there are situations where we believe that  
20 this piece, working downwind of the shear operator, that it  
21 may or may not be in compliance. Is your longwall in  
22 compliance with the two milligram standard?

23           MR. GREEN: They say it is a lot of times. But

1 you know, I don't believe it is. You know, if you're  
2 anywhere near that thing when it comes by, you can't see for  
3 a long time. I mean, I would doubt it.

4 And it's very low. You know, you have to wear  
5 knee pads and crawl constantly. There's nowhere where you  
6 can get up.

7 MR. NICHOLS: Well, our idea was that if there are  
8 situations, rather than try to keep fooling ourselves that  
9 there is compliance in this one area, that we do something  
10 to protect the miners.

11 You know, this agency would truly love to not see  
12 any requirement for airstream helmets, that engineering  
13 controls could take care of the whole problem. But, we  
14 don't want to fool ourselves, either.

15 And when I said small area, it is a small area if  
16 you look at an entire mine.

17 MR. GREEN: I was thinking in reference to a small  
18 area on the face, you know. And, I believe I heard you all  
19 say yesterday that the outby, you know, this one sample, I  
20 forget, outby, I was amazed that you only had eight  
21 violations. Is that correct?

22 MR. NICHOLS: Yes.

23 MR. GREEN: I've been working probably in the last

1 six or seven years outby a lot, and I'm just amazed that the  
2 dust in certain places outby, you know, preparation plants  
3 and we have a big preparation plant that's really dusty, and  
4 even our haulage where we haul supplies in or equipment we  
5 haul supplies in, has a lot of sand on it, and I've heard  
6 that sand is very high in silica content. And it's an  
7 extremely dusty situation there. And, you're always having  
8 to refill those sanders, especially this time of year when  
9 your track is wet and you know, you just see those huge  
10 clouds of dust, you know, when you're on one of those things  
11 constantly during the shift.

12 And, I don't think I've ever seen them dust pump  
13 those motormen that run those motors. You know, I guess  
14 they do.

15 MR. NICHOLS: Did you want to say something?

16 MR. SCHELL: The only thing I can tell you is what  
17 our sample results show. And, they really do show lower  
18 amounts of non compliance. We do run into dust generating,  
19 or, you do run into dust outby.

20 Maybe the reason you're not seeing the over  
21 exposures is remember, we're talking about eight hour  
22 samples. So, you can get spikes. Just like on the face you  
23 can get spikes. But when you average it over the eight

1 hours, they don't exceed the standard.

2 We are concerned about silica outby. And if  
3 you've got that concern, that we're not sampling outby, I  
4 suggest you contact the district and have them sample that.

5 As I said, their basic way of controlling dust on  
6 outby areas is to go to the dust generating sources. I was  
7 talking yesterday, rather than sampling occupations, we  
8 sample the area where the dust generating source is.

9 So if we're not hitting the proper sources, you  
10 can be very helpful to us by bringing that to our attention.  
11 And, we will go out there and sample it. And if it's a  
12 problem, it should be made a designated area, so we won't  
13 miss it.

14 MR. GREEN: Another thing on that outby, that one  
15 time a year, to me if you've got dust, you got dust. Even  
16 though you have less trouble outby, I don't know, it just  
17 seems like if you're going to do it a certain number of  
18 times, you know, underground, you ought to do the same  
19 outby. Dust is dust. Even though you don't get that many  
20 violations, that's just my opinion.

21 The only other thing I have, I heard y'all talk  
22 about this maybe personal continuous monitoring. That's the  
23 best thing I've heard here in these two days. I mean, I'd

1 never heard that before. I think that'd be a wonderful  
2 thing. I'd just like to see that happen. I think that'd  
3 eliminate a lot of our problems. That's all I have. Thank  
4 you.

5 MR. NICHOLS: Okay, thank you. Is Charles Tipton  
6 here? Rick Lester?

7 MR. LESTER: My name's Ricky Lester, R-I-C-K-Y, L-  
8 E-S-T-E-R. I'm from District 17, Local 1511. I've been in  
9 the coal mines approximately twenty-five years.

10 From what I've heard said, the outby sampling is  
11 once a year. I worked outby for approximately nineteen  
12 years. Never had a dust pump on me.

13 Outby, there's as much dust as there is -- not  
14 inby, but there's a lot outby. A whole lot. You're saying  
15 you want to sample six times a year? Why not twenty-six  
16 times a year?

17 There's a lot of dust in the coal mines. It's  
18 going to be there. We all know it.

19 You say this two point three three is the average  
20 on a one day sample, then they're out of compliance on these  
21 new regs? On a five day sample, they go to a four, one, two  
22 or whatever, then it's averaged out to a two. Why not stay  
23 at the two on a one day sample? Why go to a two three

1 three? In the end, you're getting more dust, whether it's  
2 one day or five days.

3 You said -- I believe it was stated that we're  
4 underground approximately four hundred shifts a year.  
5 You're wanting to sample us six times out of four hundred?  
6 Those, the percentage there is way low.

7 I can see a whole lot more sampling needed in  
8 areas, other than UMWA mines. UMWA mines need sampling.  
9 Non union mines need sampling, because we're all coal  
10 miners. In past history, non union has a lot worse cases  
11 than we do, because they're treated differently, because if  
12 an inspector shows up, they'll just shut the place down and  
13 say, "we're not working." They have to come back.

14 Well when they come back, they're waiting on them.  
15 They're ready.

16 The other three hundred and ninety-four days a  
17 year, they're running out of regs, because they've got no  
18 say. They've got no Safety Committee to handle their  
19 problems. If they speak up, they're gone.

20 So if you sample those guys six days a year,  
21 you're doing a total injustice.

22 The union does have Safety Committees to see that  
23 everything is in place.

1           Everything is not right in our mines. There is no  
2 mines that can run one hundred percent day in and day out  
3 properly on dust. There is spikes.

4           At the same time, you're saying six times a year  
5 is enough, minimum. It could go to thirty times a year if  
6 they stay out of compliance.

7           If you receive a lot of budget cuts, you're not  
8 going to have the money to send an inspector to a mines to  
9 do it thirty times a year. They'll end up being a minimum  
10 of six, is what will happen. That's all I have to say,  
11 except your regs needs to be changed in my opinion.  
12 Appreciate it.

13           MR. NICHOLS: Okay, thank you. Chris Taylor?

14           MR. TAYLOR: Yes, my name is Chris Taylor, C-H-R-  
15 I-S, T-A-Y-L-O-R. I'm a member of District 17, Local 1511.  
16 I'm the Health and Safety Committeeman at our mines. One of  
17 the biggest problems I have is on this six and one thing.  
18 And as an outby, I've been outby probably twelve years.  
19 I've been in the mines a total of twenty years. And we  
20 experience at times more dust than what you do in the face  
21 area, because we're considered outby and they'll have us  
22 back down these back lines -- ours is an old mine -- and  
23 I've seen it so dusty that once you've hauled a load, load

1 of gob or whatever, you couldn't see your way to get back  
2 down to where you was.

3           And, what is going to keep these coal companies  
4 from sending us, especially where it's going to be  
5 announced, what's going to keep them from sending us in an  
6 area where there's more or less no dust for that one shift,  
7 because they know that they're not going to be back again  
8 until the next year?

9           So the one time a year, it just blows my mind that  
10 the outby people is just going to get sampled once a year.

11           And the question that I probably have, that's  
12 bothered me throughout these whole hearings is what is your  
13 point, what are y'all afraid of finding out with this  
14 continuous monitor? If y'all want to know what we breathe,  
15 day in and day out, if y'all set up this continuous  
16 monitoring, then y'all can find out exactly what we do  
17 breathe day in and day out.

18           But otherwise, just like all my brothers have  
19 said, they're going to be ready and they're going to have  
20 everything just right the day that they're monitoring.

21           Then these other days, they don't care what they  
22 put us in.

23           So, that's probably the biggest question I have is

1 why have y'all gone completely away from the ideal of the  
2 continuous monitoring.

3 MR. NICHOLS: Well, we're not afraid of continuous  
4 monitoring. We'd like to have it. We don't think the  
5 technology is there right now that's usable in the mine.  
6 Paul, you want to say anything else about that?

7 MR. HEWETT: I'm Paul Hewett with NIOSH. When the  
8 Bureau of Mines was, as an agency, eliminated about one  
9 third of the Bureau of Mines members came over to NIOSH.  
10 Those mainly related to doing work with health and safety.

11 And therefore, we then took over responsibility  
12 for the development of the machine mounted continuous  
13 respirable dust monitor.

14 And, it has been tested in both laboratory and  
15 field, and found to be fairly accurate in the laboratory.  
16 But in field tests, it was found just not to be durable in  
17 its present development form.

18 And the feeling was -- the opinion was that it  
19 would take a great deal more money to rugged-ize that  
20 instrument so it would last.

21 The original intention was to put it on a  
22 continuous miner or mount it on a shear or somewhere down  
23 the longwall.

1           If you mount it on a shear, mount it on a  
2 continuous miner, it's subject to quite a bit of rugged  
3 abuse, or quite a bit of abuse.

4           And it just, as it's presently developed, it's not  
5 rugged enough to survive.

6           And then you have issues relating to measurements  
7 where it is located, which is usually not where the miner's  
8 at, particularly on a remote mining unit where the operator  
9 is standing considerably back from the continuous miner, but  
10 that's where the machine mounted unit is located. So what  
11 it measured would not be the same thing as what the miner  
12 would experience.

13           But we have -- we are continuing to develop other  
14 instruments. The technology used in the machine mounted  
15 unit is currently being evaluated with a good deal of MSHA  
16 funding. NIOSH is working with it, but using MSHA money and  
17 part NIOSH money, to develop a personal unit that could be  
18 worn by a miner day in and day out, and would give a good,  
19 reliable end of shift indicator of what the exposure was  
20 during the shift -- at the end of the shift, and at points  
21 during the shift.

22           We're also looking at other separate technology  
23 that is very, very promising. We have some very bright

1 engineers at the Pittsburgh research lab that are working on  
2 a personal respirable dust monitor. Or, they call it a dust  
3 dosimeter, that is expected to give a very good end of shift  
4 reading. Therefore, you would have to wait ten days or so  
5 to get a measurement back from the MSHA lab.

6           So, we're continuing to work on it.

7           But, I would like to point out it's far more  
8 difficult to develop a continuous dust monitor than it is a  
9 gas monitor. A gas monitor doesn't have any moving parts  
10 and has been rugged-ized for a long time and you know, has  
11 been utilized.

12           To do the same thing with a machine that has  
13 moving parts, has complicated computer equipment on board  
14 has proven to be very, very difficult.

15           We figure it was going to take quite a few more  
16 dollars in development funds to continue working on that  
17 particular instrument. And even in the end, the per unit  
18 cost was going to be considerable.

19           So, we decided to invest what monies we had in  
20 simpler technologies that would be wearable by individual  
21 miners. So, that's where we're at today.

22           I'd like to mention -- I don't know where this  
23 will go, but I think it's probably appropriate for NIOSH to

1 examine where we're at with the use of continuous monitoring  
2 equipment and perhaps, have a mini symposium or a workshop  
3 where interested parties could come and voice their concerns  
4 and we could bring everybody up to date as to where we're at  
5 with research on this technology. So, that's something that  
6 I'm going to take back to NIOSH and see if we can move  
7 forward, at least on that front.

8 MR. TAYLOR: The last thing that I have to say to  
9 you guys -- and, I appreciate y'all listening to us -- is  
10 you know, go back, you know, to the drawing board and really  
11 take a look at this six times a year, versus one time a  
12 year. That's all I have to tell you.

13 MR. NICHOLS: Thank you. Wyman Owens?

14 MR. OWENS: My name is Wyman Owens, W-Y-M-A-N, O-  
15 W-E-N-S. I work in District 20 for Drummond Company, Local  
16 1948, Shoal Creek Operation. I've been in the mining  
17 industry for twenty-eight years.

18 I can sit up here and talk about the things that's  
19 already been discussed and do the head bashing and the bad  
20 mouthing, the dumping on MSHA, on the industry as a whole.  
21 But, I'm not going to do that.

22 I'm going to ask you, why are we here today, and  
23 look at where the 1969 Health and Safety Act employed you

1 people.

2           Our people were crying for years for help. And,  
3 we finally got some help.

4           We got relief in 1969.

5           The maimed, bloody, horrible deaths, burned,  
6 charred, diseased people gave you a job: To protect the  
7 miners, to help those miners, not take away.

8           If we can't do anything -- and, we've heard the  
9 industry, the coal operators' arguments over the years.  
10 "It's not feasible, it's not manageable." It's not this,  
11 it's not that, excuses.

12           And, you look at the proposal -- and, I'm sure  
13 that you people put some time and energy and funding, but  
14 you didn't go far enough.

15           You got to look at what the purpose of the 1969  
16 Health and Safety Act resolved at that time, and evolved  
17 into an era, to approximately the mid seventies, it had to  
18 be revised because it was not implementable, according to  
19 the coal operators, or it wasn't feasible or it wasn't cost  
20 effective, "it's putting us out of business."

21           Well, you can listen to that. But, you have to  
22 remember why you're here. Take that for a thought, because  
23 I'm not going to go into all the -- and, you've heard the

1 argumentation. You've heard our concerns. You know where  
2 we're at.

3 And to the point of saying that, you know, this is  
4 a guaranteed plan that's going to work or the rules, you  
5 know yourself if the coal operators were intending to do  
6 right, they would've done right before 1969.

7 And, that's where you people came in, to protect  
8 the working folks that was going into those environments,  
9 extracting that coal, that cried and pleaded for help for  
10 years before they got relief.

11 Well, those same folks is crying again in a louder  
12 voice, more sophisticated mines, more new technologies, but  
13 we're a little bit smarter than what our ancestors were, our  
14 forefathers, because in the old days, we wouldn't have had  
15 no resources, or we wouldn't have had the privilege to come  
16 here and sit before the board and discuss the concerns of  
17 our people. Well, we do that now.

18 You didn't go far enough. You didn't follow the  
19 recommendations of your own committee.

20 And we're asking you, remember why you're here, to  
21 protect, not take away. Let's don't extract nothing from  
22 that program. Don't extract nothing from the rules, unless  
23 we can better them, not take away.

1           Let's don't take no backward steps. That's all  
2 I'll ask you. Thank you.

3           MR. NICHOLS: Okay, thank you. John Nolen?

4           MR. NOLEN: Mr. Chairman, Ladies and Gentlemen of  
5 the Board, I thank you for this opportunity to come forward  
6 and speak with you. I'm John Nolen, J-O-H-N, N-O-L-E-N.  
7 I'm the President of Local 1948, Shoal Creek Mine, District  
8 20. Our mine's located in Adger, Alabama.

9           The bad thing about being this close to the end of  
10 the testimony is you run out of anything to say.  
11 Everybody's said it all. But, I would like to say  
12 something on a few of these things that guys have already  
13 talked about. Now, I don't know how to pronounce your name,  
14 but Eileen --

15           MS. KUEMPEL: Kuempel.

16           MR. NOLEN: Ms. Kuempel, you were talking about  
17 unannounced visits at the mine. These operators over the  
18 years have become very, very talented at adapting to a  
19 federal visit.

20           A federal man can come in just in time to get on  
21 the elevator, ride down with the men and go to the face with  
22 them. And they can make their adjustments as they are on  
23 the running shift.

1           There is no such thing as an unannounced visit.

2           As Reginald Stallard was speaking yesterday, he  
3 said that the operator would not let them bolt in dust when  
4 sampling occurs. It happens every day.

5           Every time a federal man comes, they keep you out  
6 of the dusty areas. They won't let that dust pump be in  
7 that area where it'll pick up that dust.

8           The next day when that federal man is not there  
9 taking dust samples, they're right back in it. And they're  
10 in it the next day and the next day and the next day. It  
11 doesn't let up.

12           You people have no understanding of what goes on  
13 down there. These operators don't care about human lives.  
14 And, it makes me angry.

15           And I sit here and I say this, this (indicating)  
16 is an injustice to us. It's a farce.

17           You're trying to take our dust sampling away from  
18 us. You're trying to increase the maximum level that we are  
19 allowed to breathe. This is my life.

20           If this operator can't afford to put in  
21 engineering dust controls, let him close his mine. I don't  
22 want to work in it. It is his obligation to give me a safe  
23 environment to work in.

1           Our current laws are a joke. And, I'm telling you  
2 like it is. I'm angry, yes. And, I don't mean to be  
3 abrupt. But, this is just the way it is.

4           William Sawyer came up here yesterday. He talked  
5 to you people. He told you about when they come down for  
6 dust sampling, they clean the water sprays on the miners and  
7 shears. Okay? They close down for that. They're not  
8 producing like they would be producing on a normal day.

9           On a normal day, if there's enough water running  
10 through that machine to keep those motors on that machine  
11 cool, they run it. They will not shut it down for anything.

12           And, you're talking about increasing the allowable  
13 levels downwind of that shear to three point nine  
14 milligrams. What's that doing? It's creating more float  
15 dust. It's creating respirable dust.

16           The filters on these breathing apparatus that we  
17 use, they don't even filter out the respirable dust in that.  
18 All they take is the larger particles. We're still  
19 breathing the respirable dust.

20           We heard from Mr. Kelsey, one of the operators, or  
21 he was speaking for the operators. By his testimony alone,  
22 you should have made a decision this isn't even worth  
23 having. I sat back there and listened to it and I was

1 appalled to hear how little respect he had for the lives of  
2 miners that work for him.

3 Operators are diabolical. They don't care if you  
4 live or die. Just don't die on their property. And, I  
5 don't know of a single person that's died from black lung on  
6 coal mine property.

7 I want to ask you a question, then I'm going to  
8 close. I told you how diabolical these companies are.  
9 Think about it in your own mind -- this question doesn't  
10 require an answer -- how diabolical are you. You think  
11 about these men behind me right here. Are their lives worth  
12 anything to you? They are to me. Thank you for listening.

13 MR. NICHOLS: Wait a minute, John. Yeah, they are  
14 worth something. They're worth a lot to us. If you work at  
15 Shoal Creek Mine, I dare say that there's hardly a day goes  
16 by that you don't see an MSHA inspector, probably more than  
17 one. Now if you have these shenanigans going on at Shoal  
18 Creek Mine, you ought to be talking to these inspectors.

19 MR. NOLEN: These shenanigans go by because he  
20 reads the sampling off of the cycle that the operators cut.  
21 If they skip a place and don't stay on cycle, they might say  
22 the place was a header cut and had to go back, anything.  
23 They can work these things out to where they work in their

1 favor.

2 MR. NICHOLS: You can choose not to agree with  
3 these rules. But if you're looking for an absolute, that  
4 nobody in this world is ever going to cheat again, I don't  
5 think anybody's going to give you that assurance.

6 What we're trying to do is put together a program  
7 that would give us on a single shift the real working  
8 conditions, exposure that these miners are exposed to on a  
9 daily basis, and trying to put some accountability into  
10 these plans we approve, that they really work.

11 Why don't you (to panel) show them what we're  
12 trying to do, what we're doing with averaging right now?

13 I know at Shoal Creek, you've got inspectors there  
14 all the time. I don't like hearing -- if these shenanigans  
15 go on after you talk to the inspector, that's one thing.  
16 But, we've got people there to inspect those mines. And if  
17 you know of these things being done, you ought to be talking  
18 to them.

19 MR. NOLEN: They will be talked to. That's all I  
20 had to say. I'm going to return to my seat.

21 MR. NICHOLS: Okay, thanks. Jim Linville will be  
22 next, if he wants to come on up.

23 MR. KOGUT: This is is an example of what I was

1 talking about before under the current system.

2 MR. NICHOLS: Wait. Get the mike.

3 MR. KOGUT: This is just a specific example of  
4 what can happen under the current system and the way we're  
5 proposing to take care of that kind of problem under the  
6 proposed system.

7 On the current system, we're averaging five  
8 measurements together. So you could have a situation in  
9 which, in this example, you've got one sample at two point  
10 four, another sample at three point five. The average comes  
11 out to one point nine. So, we don't issue a citation.

12 Under the proposed system, both of these samples  
13 would be citable.

14 MR. SCHELL: If I can, let me give you some real  
15 figures. From May 7th to September 9th, we were using  
16 single samples, citing at the two point three three. Okay?  
17 During that period, we took 3,677 samples. We cited 292  
18 citations.

19 From September 9th to January of '99, same period,  
20 we took 2,519 samples. We cited 55.

21 We cited two and a half times as many violations  
22 using single samples as we did averaging, with the  
23 correction factor.

1 MR. NICHOLS: Okay, Jim, go ahead.

2 MR. LINVILLE: Mr. Chairman, Members of the Board,  
3 my name is James Linville, J-A-M-E-S, L-I-N-V-I-L-L-E. I'm  
4 a member of the United Mine Workers of America, District 17,  
5 Local 2286. I have approximately twenty-three years of  
6 mining experience. Most of that has been construction and  
7 above the ground. I've been a Safety Committee member for  
8 about fifteen years.

9 This issue doesn't concern us quite as much as it  
10 does the people that work underground. But, we know how the  
11 industry works. Whatever's implemented on one group of  
12 people, you have to deal with it sooner or later. And,  
13 that's why we're here.

14 We feel that the deep miners are getting an unfair  
15 shake. So, we want to see what we can do to help them out.

16 As we all know, MSHA inspectors can't write  
17 citations on policies. If mine operators don't have a  
18 threat of a citation, they will become too lax.

19 The Federal Advisory Committee came to our job to  
20 see first hand what a large strip mine looked like. They  
21 talked to the miners to see what their concerns were.

22 They did a good job of finding out what the  
23 problems were and made good, sound suggestions on how the

1 miners could be better protected.

2           Are we going to ignore the advice of those whom we  
3 hold in such high regards? The coal miners depend on you to  
4 look out for our health and safety. We have had confidence  
5 in MSHA and always worked closely with them on health and  
6 safety matters.

7           To allow the dust exposure limits to increase, to  
8 lessen the number of inspections required at our coal mines  
9 would be a step backwards in time.

10           The coal miners have enough problems with more and  
11 more of our mines shutting down each day. The threat of  
12 losing our health care and living, livelihood is enough to  
13 worry about. We don't need to worry about losing our health  
14 and safety, also.

15           In the past when MSHA was faced with devastating  
16 budget cuts, it was the UMWA miners who went to Washington  
17 to fight a fight that MSHA was told they couldn't be  
18 involved in.

19           We ask MSHA not to turn its back on us, now that  
20 we need you, your agency the most.

21           We are the miners who do the work each day and try  
22 to live with the rules and regulations that are imposed on  
23 us by the federal, state and by the coal operators.

1           We wear hard toed shoes, safety glasses, gloves,  
2 back support, airstream helmets, welding hoods, hardhats,  
3 miner's belt, battery pack, self-rescuer and whatever else  
4 the coal company wants to hang on us.

5           It's easy to sit in an air conditioned office in  
6 Washington, D.C. or Arlington, Virginia and say, "I think  
7 the nation's miners should also wear this or that." It's  
8 another matter to be a miner that has to wear more of the  
9 so-called safety equipments because a coal operator doesn't  
10 want to spend the money to make our work environment a safe  
11 place to work.

12           We need engineering controls to keep the dust  
13 down, not the so-called safety equipment such as airstream  
14 helmets.

15           The coal miner knows his job better than anyone.  
16 You can look around the work place and see the coal miner  
17 implementing measures to make his work environment a safer  
18 place to work.

19           The coal miner needs to have a voice in  
20 controlling dust in his work environment. The proposed  
21 rules are not in the best interest of the nation's miners,  
22 and is in need of major changes.

23           We recommend that MSHA go back to the drawing

1 board and publish new proposals that would use the  
2 recommendations of the Federal Advisory Committee.

3 At our mines, we're working hard to improve safety  
4 and health. We're working more days and taking less time  
5 off, to help the company mine more coal with fewer people.

6 In March of this year, we produced more coal than  
7 has ever been produced in the history of Hobeck mining. And  
8 they started in the early seventies. Our company is turning  
9 a profit because of our efforts.

10 We have less incidents of reportable accidents.  
11 And as a result, our company has received a four million  
12 dollar check from Workmen's Compensation.

13 The Federal Advisory Committee has made good,  
14 common sense recommendations to fix our dust problems.

15 In spite of economic hardships, the coal operators  
16 are turning a profit. Let's not let economics stand in the  
17 way of better working environment for our miners.

18 God has blessed us with some of the most  
19 intelligent people in the world to study and make  
20 recommendations on how to lessen respirable dust in the work  
21 place. Let us use their good judgement in taking their  
22 ideas and making them work for us.

23 There has been very little said about the coal

1 companies having a threat now, but if they're not in  
2 compliance, their operations or their particular section  
3 will be shut down.

4 If that threat is taken away by MSHA allowing them  
5 to use airstream helmets, for an example, then they really  
6 don't care if they come in compliance or not because they  
7 know production's going to go right on.

8 We all know that in the mining industry, if  
9 there's an option put out there, it's going to be utilized.

10 And if it's utilized in a small area on a small  
11 group of people, eventually it'll be utilized throughout the  
12 industry at other mines and in other work occupations.  
13 That's our major concern.

14 We ask that you consider the health of the miners,  
15 that you make good, sound judgement whenever you do finalize  
16 your proposal, and that it is in the best interest of the  
17 working miners. Thank you very much.

18 MR. NICHOLS: Thank you. Jimmy Jarrell?

19 MR. JARRELL: My name is Jimmy Jarrell. That's J-  
20 A-M-E-S, J-A-R-R-E-L-L. I'm with the United Mine Workers.  
21 I work at Local 9177, District 17, Boone County, West  
22 Virginia. I work at Rock Lick Prep Plant. I've got  
23 approximately twenty-three years mining experience. I

1 worked underground a little over eleven years. And, I've  
2 been at the plant over eleven years. And, I see a lot of  
3 dust at our plant. I saw a lot underground. But, I see a  
4 lot at our plant.

5 I have some questions about how this is going to  
6 affect us. I'm really not for sure about -- we're outside.  
7 Will we be sampled one time a year? Is that correct? Does  
8 this affect us?

9 MR. SCHELL: Jimmy, there are two rules, as you  
10 know, the single sample rule that applies to both  
11 underground and surface mines. Then we have the plan  
12 verification rule. That only applies to underground mines.

13 So surface mines would be affected by the single  
14 sample rule. But, it would not be affected by plan  
15 verification.

16 In the rule, we did indicate that the Advisory  
17 Committee asked us to take a look at surface mines. So, we  
18 have a separate rule making under way to address surface  
19 mines. But, it's not part of this plan verification rule.

20 MR. JARRELL: Okay. I want to kind of praise you  
21 some. I really appreciate when I see an MSHA inspector at  
22 our place. I mean, I've always considered them out there  
23 for our health and safety, to protect us. And, I still do.

1           I think we need -- that we're going to need more  
2 samples. If you take the sampling program away from the  
3 operators, I don't think we will be adequately protected  
4 with the program that you're proposing.

5           There's a lot of things I see. You allow for  
6 administrative controls. I've dealt with a lot of  
7 administrative controls.

8           One of them at our plant, we have different kinds  
9 of coals that we clean. One type is very dusty. The next  
10 type is not as dusty. Any time there's sampling going to be  
11 done, I guarantee we switch coal to the less dusty coal.  
12 That was an administrative control. There's nothing wrong  
13 with that, is there?

14           MR. NICHOLS: That's not exactly what we had in  
15 mind with administrative controls.

16           MR. JARRELL: But, they do. I mean, that's their  
17 option. That's something that they can do. But, we have to  
18 work in the dustier coal, too. It is not sampled.

19           MR. NICHOLS: But if you know that that's  
20 happening, you ought to talk to the inspector and sample  
21 both.

22           MR. JARRELL: Is there something that he can do  
23 about that?

1           MR. NICHOLS: Yeah, if they're over exposed, if  
2 you're getting over exposure.

3           MR. JARRELL: I don't think that he can control  
4 them, the time that they clean which coal that they clean.  
5 I don't think that's --

6           MR. NICHOLS: Well, he can sample until he's  
7 satisfied that this situation is what would be normal.

8           MR. JARRELL: Well, I've not seen it. Really, I  
9 mean the only time that I've seen -- like I say, we work  
10 with some very smart operators. And, we have met with them  
11 over the years a lot.

12           The only way that I have seen that we have beaten  
13 their system was our place was -- we had some investors that  
14 came in a couple of years ago and we called an inspector to  
15 come in on that same day.

16           Production levels were up where they normally are.  
17 They weren't cut the way they are usually when inspectors  
18 are there. We were running at a hundred percent production.

19           We got a violation.

20           That was the only way that we could find that we  
21 could get a representative sample that was correct.

22           A seventy percent sample, if an inspector comes  
23 and he just needs seventy percent of our normal production

1 average, well, we wouldn't be in business very long if we  
2 just ran at a seventy percent level. I mean, there would be  
3 somebody else working there. The company wouldn't be there  
4 and we wouldn't be there.

5 We also, we have alternative work schedules there.  
6 I personally work Saturday, Sunday and Monday. I work  
7 twelve hours on Saturday, twelve hours on Sunday and ten on  
8 Monday. We're not sampled on those weekend and holiday  
9 schedules. I don't think you have people who have those  
10 same schedules.

11 MR. NICHOLS: No, we've told our people that they  
12 need to do weekend work, night work, whatever is  
13 representative of what the miners are working.

14 MR. JARRELL: Like I say, I haven't seen it.

15 MR. NICHOLS: What you're raising is more of an  
16 enforcement issue with the current rules, rather than what's  
17 in the new rules. If you've got situations that you want  
18 looked at -- where are you located?

19 MR. JARRELL: Rock Lick Prep Plant in Boone  
20 County. But, it seems to me like we're going to get less  
21 testing with the new rules than we got with the old ones.

22 MR. NICHOLS: No, not on the surface. Our policy  
23 right now is to sample once a year on the surface, unless

1 there's a problem and we're called up. Is that --

2 MR. NIEWIADOMSKI: Actually twice on the surface.

3 MR. NICHOLS: Twice on the surface.

4 MR. JARRELL: Well like I say, I've not -- on my  
5 weekend schedule, I've not seen that happen. And, we've had  
6 this a couple years now, we've had this schedule.

7 MR. NICHOLS: Well, we have three District  
8 Managers in Kentucky. Do you know which one has  
9 responsibility for your operation?

10 MR. JARRELL: I do not. I'm not here to get any  
11 of your -- put any of your people on the carpet, because  
12 like I say, I'm glad to see you come whenever you do come,  
13 you know.

14 But I think now that there are underground miners  
15 in my local that I represent, and I think that if you'll  
16 take a lesson from the gentleman that was here from the  
17 Kentucky Coal Association, that's the kind of administrative  
18 control that will be -- that the company that I work for  
19 will do. The airstream helmets will be their way out on  
20 this because in my dealings with them, if it's not in black  
21 and white and specific, we don't have it. It's not there.  
22 Might as well -- you know, the ink's wasted on it.

23 MR. NICHOLS: Well if the company wants to use

1 administrative controls as a means of compliance, they've  
2 got to be written up, demonstrated, and posted. It's not  
3 just to say, "well, we're going to use administrative  
4 controls." They've got to be verifiable, too, that they  
5 work, and that the company is going to use them day after  
6 day after day.

7 MR. JARRELL: Obviously the use of the airstream  
8 helmet, to me is taking the responsibility off of the  
9 operator and putting the burden on the working man. It's  
10 putting it on him. And, it's a big burden.

11 I mean, I've just been a committeeman for about  
12 two years now. I'm an infant compared to some of these guys  
13 here. I mean, I look back here, I see probably two thousand  
14 years of mining experience, is about what I've figured up.  
15 And, I haven't heard one positive thing said about the  
16 airstream helmets. And yet, you people want them in your  
17 rules.

18 MR. NICHOLS: Yeah, but you've got to understand  
19 where it fits. It doesn't fit anywhere, except working  
20 downwind of the shear operator. It only fits there if MSHA  
21 determines that the company has exhausted all engineering  
22 controls.

23 MR. JARRELL: It also doesn't fit the coal miner.

1 And, that's who we're here to protect.

2 MR. NICHOLS: Well, I mean that's what we're  
3 trying to do, too. What's the option? Let's say for the  
4 sake of discussion there is place that the problem can not  
5 be engineered out. Is it better to work with no protection?  
6 Or, is it better to use personal protective equipment?

7 MR. JARRELL: Well, it's been my experience that  
8 that place doesn't exist.

9 MR. NICHOLS: Okay, then when --

10 MR. JARRELL: I've dealt directly with the company  
11 that I work for where we had the problem with the dust and  
12 they could not come up with a solution. And they asked us  
13 to meet with them.

14 We had a committee that met and we went over the  
15 problems that we had, and we worked it out. And, we found  
16 the problems and we corrected them, just to the point where  
17 we got under compliance. And, that's as far as they wanted  
18 to go.

19 MR. NICHOLS: If that problem doesn't exist, then  
20 you won't see an airstream helmet in use. But what we don't  
21 want to do is fool ourselves.

22 It's just what we were showing here about  
23 sampling, that when you get a couple of people over and

1 three under, they're called in compliance.

2 We don't want to go through this creative sampling  
3 to say we've got everybody in compliance downwind, if they  
4 truly aren't.

5 But if engineering controls can handle it, you  
6 won't see any approval of airstream helmets.

7 MR. JARRELL: Well like I say, I've dealt just in  
8 my two years, I've had a lot of dealings and if there's any  
9 way that they can get around a rule, they're around it.  
10 It's their policy, they'll be around it.

11 MR. NICHOLS: You don't think there's any good  
12 companies out there?

13 MR. JARRELL: Well you know, the company I work  
14 for is a good company, I mean, compared to some of the  
15 others, they are a good company.

16 I really don't have many animosities toward them.  
17 I have a few, you know, because of some of the dealings I've  
18 had. I've just been a committeeman now for about two years.  
19 And one of the reasons I got on this was my Dad was a coal  
20 miner and he died of black lung, been about two years ago.

21 This same company denied that he was ever working  
22 in any dust. They fought him every which way they could,  
23 for him to get his black lung benefits. They contended that

1 he had no black lung.

2 But, his autopsy proved different.

3 And just from watching him fight for air to  
4 breathe was very difficult. I don't want my son to have to  
5 go through that.

6 MR. NICHOLS: We don't, either.

7 MR. JARRELL: And, you are the people that can  
8 change that. You have the control to put rules in here that  
9 are enforceable that can change that. And, I challenge you  
10 to do that. And, I hope that you will.

11 MR. NICHOLS: Okay.

12 MR. JARRELL: If you have any questions of me -- ?

13 MR. NICHOLS: I think we've covered it, thank you.

14 MR. JARRELL: Thank you for your time.

15 MR. NICHOLS: Joe Urban?

16 MR. URBAN: Is it finally my turn, Marvin?

17 MR. NICHOLS: It's your turn, Joe. Come on up.

18 MR. URBAN: For the record, my name is Joe Urban,  
19 J-O-E, U-R-B, as in boy, A-N, the same as Urban Cowboy, but  
20 don't get it confused, because John Travolta got all the  
21 fame and glory. I didn't.

22 Marvin, for the record, I have a copy of my  
23 presentation I'd like to hand in.

1 MR. NICHOLS: Okay.

2 MR. URBAN: In light of the fact, Marvin, that I'm  
3 sort of bringing up the rear of our list of candidates that  
4 wanted to speak on the issue, rather than be repetitious, as  
5 a lot of material has been, I'm not going to go through  
6 every page of my presentation, but rather pick out some  
7 aspects I'd like to discuss with you and Ron and with the  
8 Committee.

9 And let me begin by saying that I am currently the  
10 Deputy Director of Organizing in the midwestern United  
11 States for the International Union of the United Mine  
12 Workers of America.

13 In addition to that, my duties as a Deputy  
14 Director of Region Three, also I have the responsibility of  
15 providing representation for our membership concerning  
16 safety in the State of Illinois, both surface and  
17 underground coal mines, as well.

18 In addition to that, I also represent non coal  
19 related facilities, as well.

20 I have approximately twenty-eight years of coal  
21 mining experience, thirteen years of actual underground  
22 experience, and fifteen years of experience conducting  
23 inspections at surface and underground coal mines throughout

1 the United States for compliance with federal coal  
2 regulations, in addition to representing our membership in  
3 safety related matters.

4 I appreciate the opportunity to come here today to  
5 discuss the proposals for the dust rule. Allow me to start  
6 by saying that the job that all of you have taken on with  
7 this assignment is one in which the United Mine Workers of  
8 America has taken on right after the inception of the Coal  
9 Mine Health and Safety Act of 1969, later amended in 1977.

10 Almost immediately -- and, I believe Joe Main has  
11 addressed that in his presentation -- almost immediately the  
12 UMWA began informing MSHA who at that time was called MESA,  
13 about problems that were being echoed all the way to  
14 Washington, D.C. from the remotest mining communities  
15 concerning the self-policing requirement applied to what was  
16 then the newly respirable dust rule.

17 For more than a quarter of a century, the men and  
18 women who have mined and continue to mine the coal that  
19 fuels this great nation have cried out for help, only to  
20 have their pleas fall on deaf ears.

21 In the preamble to the Coal Mine Safety and Health  
22 Act, it states that the miners are the most precious  
23 resource. And, don't misunderstand me. I realize that the

1 United States is somewhat of a capitalistic society. And,  
2 I'm not saying there's anything wrong with that.

3 But with that, it appears that those individuals  
4 who have been elected by the men and women of this great  
5 country, to assure the common good of man is protected, are  
6 in fact at times speaking out of both sides of their mouth.

7 The UMWA fully realizes that in a lot of states  
8 workers, according to the National Labor Relations Act, are  
9 employees of will, which means the Employer has the legal  
10 right to hire and fire as they so please.

11 But employment at will does not have to mean life  
12 at will, which is exactly what is occurring with the  
13 structure of the proposed rules.

14 A man or a woman should not have to jeopardize  
15 their health or their life in order to make a profit for a  
16 company.

17 You don't have to take my word for it. The latest  
18 statistics show that in this country, every six hours a  
19 person dies from black lung, or pneumoconiosis, fifteen  
20 hundred workers each year.

21 We write words to the effect that workers are our  
22 most precious resource. And then we turn around whenever we  
23 promulgate new laws, it appears that we have a deaf ear to

1 their cries.

2           It still amazes me that this great country of ours  
3 can demand clean air to breathe on the surface, but forgets  
4 those individuals who just happen to be working underground  
5 in the coal mines.

6           The coal miners of this nation are tired of being  
7 classed as second rate citizens. If we can demand clean air  
8 for the millions walking on top of the earth, then we sure  
9 as hell can demand it for those going beneath the earth to  
10 mine the coal in order to energize this nation, clean air  
11 for them, also.

12           And in case none of you realize it, the United  
13 Mine Workers of America has always been in favor of clean  
14 air. But, we also want it underground and around equipment  
15 on the surface that generates dust.

16           Don't misunderstand me or my presentation. Some  
17 of the proposed rule has provided additional improvements.  
18 And, we thank you for that.

19           But, those improvements are minute in our opinion  
20 when compared with the majority of the proposed rule, which  
21 we feel is flawed terribly.

22           Gentlemen, our government has spent a great deal  
23 of time, man hours and taxpayer's money in an attempt to

1 provide this agency and this committee with detailed  
2 information on the critical issues surrounding the  
3 respirable dust problems.

4           The purpose was to provide guidance and direction  
5 to the creation of rules to eliminate the problems of the  
6 past.

7           And I feel that the past two days, Marvin, that we  
8 have had a lot of testimony that in the eyes of those that  
9 have testified, that they feel that there are numerous  
10 flaws. And not only that, but the rule itself is somewhat  
11 misguided and very confusing in its structure.

12           And in 1992, the Department of Labor, in fact,  
13 MSHA formulated the task group to look into the problem, and  
14 I won't go into all that.

15           In 1995, the Advisory Committee was formulated,  
16 again by the Department of Labor. We truly appreciate the  
17 hard work and the dedication of those two assignments and  
18 those two groups of committees that worked.

19           In addition to that, NIOSH in 1995 issued a  
20 criteria document. We appreciate that.

21           And on November 14, 1996, the Advisory Committee  
22 forwarded its official report to the Secretary.

23           It is our belief that for whatever reason, that

1 MSHA not only veered off the path, somebody stole their  
2 compass when it comes to adding the protections miners have  
3 struggled so long and hard for, and how its rule could be so  
4 contrary to the findings and the recommendations of the  
5 Advisory Committee.

6 To name a few, of course, the permissible exposure  
7 limits, the PELs, we feel that MSHA should have developed  
8 separate PELs for silica and coal mine dust.

9 We feel that the standard, the two milligram  
10 standard should have been lower.

11 And Ron, if I may, I want to pose this question to  
12 you and your mathematician: With the example that you gave  
13 with the averaging -- and, I understand where you came from  
14 with your averaging; I also understand the figures that you  
15 gave in relation to the citations that was issued as a  
16 result of the single shift sample -- but those that you had  
17 up there that was also a two milligram, could you have not  
18 lowered the standard to one point eight five, and still had  
19 your confidence, your level of confidence to issue that  
20 citation, and been upheld in court at a two milligram limit?

21 MR. SCHELL: Joe, you want me to respond?

22 MR. URBAN: Yes, please.

23 MR. SCHELL: Well the answer is yes, we could

1 have, Joe. As Joe mentioned, Joe Main mentioned the other  
2 day, we did have a separate rule making that addressed  
3 lowering the standard.

4 The scope of this rule making didn't include that.  
5 So that wasn't included.

6 But, that adjustment factor would have been  
7 applied, no matter what the standard would have been. So  
8 the answer to your question is yes. But in this particular  
9 rule making, we weren't addressing the standard. We were  
10 dealing with the standard as it is.

11 MR. URBAN: But, you answered my question. I  
12 appreciate it, Ron.

13 We've heard a lot of testimony over the take over  
14 of the compliance sampling. In fact, I think the Advisory  
15 Committee even recommended that the agency do that. And, I  
16 think they even went to the extent to provide at least one  
17 example of in order for you to provide more sampling, they  
18 gave you an avenue whereby if you needed additional monies,  
19 that there was a remedy avenue there that you could look at  
20 to resolve that solution. But apparently none of that was  
21 considered in the proposal.

22 MR. NICHOLS: No, MSHA has picked up about ninety  
23 additional coal mine inspectors in the last three years to

1 do the increased sampling, the bimonthly sampling.

2 MR. URBAN: I understand that. But again what I'm  
3 referring to, Marvin, is the fact that approximately --  
4 under the current regulation, we have about thirty plus  
5 samples from the operators, plus six or seven a year from  
6 the agency, which makes it somewhere in the ballpark of  
7 thirty-seven samples. Minimum under the proposal we're  
8 looking at six to seven per year.

9 And I guess I'd like to address this to Mr.  
10 Reynolds since he is legal counsel. I appreciate your  
11 position as to what judges look at in reference to basing  
12 their findings for making their decisions. I don't  
13 necessarily agree with that total concept, the reason being  
14 I have just in the last week -- I'm not an attorney, and  
15 don't let me leave any false impressions that I am. I'm a  
16 coal miner.

17 But, I also realize the strength and the power in  
18 statutory regulation. And the issue of which was awarded in  
19 the union's favor dealt with a request that had been made on  
20 a state regulation, whereby we had a mandated statutory  
21 regulation of which the committee did not pay attention to.

22 And the judge clearly ruled that irregardless of  
23 the intention of the committee, however good they may have

1 been, the statutory language is what he had to use in order  
2 to make his determination.

3 Now that doesn't mean that as an attorney you  
4 can't take the preamble and use it as supportive argument to  
5 that judge, which I'm sure that would come in as a plus for  
6 you. But, I personally feel that -- again, I'm referring to  
7 the miners' participation, Mr. Reynolds -- I realize the  
8 committee has said that you all will look at that issue.  
9 You've stated that it is in the preamble under policy. Why  
10 not back that up with statutory requirement by having it in  
11 the rule?

12 MR. REYNOLDS: Again, let me go back to what it  
13 says. When we refer to the term preamble, we mean a  
14 proposed rule that would include everything in this  
15 document, the narrative portion in the beginning where it  
16 explains with the question and answer portion, with actually  
17 the reg text, and the original thinking behind putting this  
18 in here, and the reason we have -- this is what it says in  
19 the preamble. Maybe I should just go ahead and read it.

20 In accordance with Section 103(f) of the Mine Act,  
21 you, meaning the mine operator, must provide miners and  
22 their representatives the same walk around rights during  
23 plan verification sampling as they are provided during any

1 other physical inspection made pursuant to the provisions of  
2 Section 103, and by an authorized representative of MSHA,  
3 and then we have the further explanation that would be  
4 looked at by the courts, that MSHA believes that under the  
5 guidance of the interpretive bulletin which has been around  
6 since 1978, those regs run where an inspection is met its  
7 purpose set forth in Section 103, and the inspector is  
8 physically present at the mine to observe and monitor health  
9 and safety conditions as part of his safety and health  
10 enforcement activity.

11           Verification sampling is necessary to obtain  
12 information related to approval of the mine's ventilation  
13 plan, and whether coal mine dust will be adequately  
14 controlled to protect miners.

15           Consequently, miners and their representatives  
16 would have the right to accompany the inspector with no loss  
17 of pay during which the representative exercises this right.  
18 However, this right is limited by Section 103(f) to only one  
19 such representative of miners.

20           Again the thinking and the reason this was treated  
21 this way was because MSHA had the resources to go ahead and  
22 have MSHA do all the verification sampling.

23           And because of the fact that we were structuring

1 the verification sampling the way that MSHA would be sending  
2 somebody out to do the verification sampling and they'd be  
3 physically present, that it's clear that under the statute,  
4 which of course, just as you've said, is the most important  
5 thing in any legal proceeding, under the statute it was very  
6 clear that the 103(f) rights or the walk around rights with  
7 pay did apply.

8           And as we've said, we said yesterday, what Marvin  
9 said is because of the fact that this has obviously caused  
10 confusion, this would be something that we would clarify  
11 either in the preamble of a re-proposal or in the preamble  
12 of the final rule, whatever the agency decides to do with  
13 this rule.

14           But again I want to say that the statement in here  
15 is very, very clear that under the rules as currently  
16 drafted, we have a very clear statement in there to the  
17 operators that you have to pay, you know, that walk around  
18 with pay does apply during verification sampling, and any  
19 other type of sampling where you have MSHA on the premises  
20 doing that type of inspection.

21           MR. URBAN: And, I appreciate your response.  
22 Partly, I guess it's a little bit because I'm from the old  
23 school, I just would rather see that judge having something

1 to totally lay his hand on and say, "this is what the  
2 regulation says and this is what you have to go by." Okay?

3 That reminds me, Marvin, yesterday you had a  
4 couple of times where you sort of leaned on legal counsel.

5 MR. NICHOLS: Actually, he leaned on me.

6 MR. URBAN: I kind of envision this picture of an  
7 attorney standing in front of St. Peter and he's got his  
8 hands up in the air and St. Peter's standing there and he's  
9 got a long scroll and St. Peter says, "can I help you," and  
10 he said I'd like to plead my case. He said, "St. Peter,  
11 there's got to be a mistake. I shouldn't be here. I'm  
12 forty years old. I've got my life ahead of me. I've got  
13 all this knowledge that I've gained and I ought to be able  
14 to use it to help people." St. Peter really wasn't paying a  
15 whole lot of attention. Pretty soon he asked St. Peter,  
16 said, "did you hear what I said to you?" St. Peter kept  
17 looking at that long scroll and he said, "yeah, I heard  
18 you," but he said, "according to the hours that you've  
19 billed, you ought to be a hundred and five." That's just a  
20 little inside joke for attorneys.

21 In the proposed rule, subpart (b), dust standard  
22 70.100(b), it states that each operator shall continuously  
23 maintain the average concentration of respirable dust within

1 two hundred feet inby the working faces of each section and  
2 the intake airways at or below one milligram of respirable  
3 dust per cubic meter of air as measured with an approved  
4 sampling device and in terms of an equivalent concentration  
5 determined in accordance with 70.2(c).

6 Two questions, this has got me confused. Is there  
7 a different regulation for the two hundred feet inby until  
8 you get to the last open cross cut, of which we consider and  
9 define as the working face? Or, are there no limits on the  
10 amount of respirable dust in this area? Would somebody  
11 respond to that one?

12 MR. SCHELL: I'm not sure I understand the  
13 question.

14 MR. NIEWIADOMSKI: There's no change from the  
15 existing rule.

16 MR. SCHELL: Let George.

17 MR. URBAN: Help me out, George.

18 MR. NIEWIADOMSKI: Joe, there was no change from  
19 the current regs. That's two hundred feet inby, the intake  
20 airway is one milligram. The outby is going to be two  
21 milligrams. But thing I wanted to make sure is Part 70.100,  
22 100(a) is what is in the existing regulation and has been in  
23 place since 1980.

1           MR. URBAN: But, that two hundred feet has got me  
2 thrown, the way that it's worded there.

3           MR. NIEWIADOMSKI: There's no change from the way  
4 it's been. I mean, the current regulation, actually we've  
5 adopted, we've carried the current regulation in Part 70,  
6 and let me just -- it's identical. There's no change.

7           MR. URBAN: Okay, I'll come back to that one  
8 later. Although MSHA has stated --

9           MR. NICHOLS: Joe, let Ron say something about  
10 these six samples annually. We want to clarify that a  
11 little bit.

12           MR. SCHELL: Yeah, just a clarification, Joe.  
13 I've heard a reference to a minimum of six samples per year  
14 proposed, and that's not correct. So we're going to clarify  
15 it for the record.

16           We're talking about taking five samples six times  
17 a year, or thirty samples.

18           We were never proposing to do just six samples a  
19 year. Our proposal was that every time we went out and  
20 sampled, we would sample at least five samples, plus any  
21 sectional DAs and DAs near the section. I just wanted to  
22 clarify that for the record.

23           MR. URBAN: While you've got the microphone, let

1 me ask you another question. Of the five samples that you  
2 take, the DO, okay?

3 MR. SCHELL: Well, it'd be the DO and any roof  
4 bolter DA, plus other occupations on the section.

5 MR. URBAN: I guess my question is if you find one  
6 or two of those out of compliance, will that be one  
7 citation? Or, will there be a citation for each of those  
8 that's out of compliance?

9 MR. SCHELL: It would depend. If they both were  
10 exposed to the same dust source, it would be one citation,  
11 Joe. If they were exposed to separate dust sources, for  
12 example, you were splitting your ventilation, it would be  
13 two citations.

14 We want to look to where the dust source is and  
15 make certain that the dust source is corrected, so the  
16 miners would be protected.

17 MR. URBAN: No, you still missed my question, Ron.  
18 Let's take one MMU. You have your continuous miner being  
19 sampled. You also have roof bolters working inby and they  
20 are being sampled. Both those come out of compliance. Is  
21 that two citations? Or, are you just going to use your one  
22 citation per MMU?

23 MR. SCHELL: That would be one citation, unless

1 the roof bolter was a DA. Then it would be two citations.

2 MR. URBAN: Okay, thank you. I think we heard  
3 yesterday from one of our surface members that is a  
4 construction worker. And again, I'm not casting any stones,  
5 Ron. I've seen through the years that I've been involved,  
6 we've had a lot of proposed changes made to certain  
7 regulations, or at least attempts made. And for whatever  
8 reasons, some of those never did become final.

9 The plea that the construction worker had  
10 yesterday is a serious one and a true one. They do need  
11 severe help. I know that in the preamble that, Marvin,  
12 you've stated that you're going to work on the surface  
13 application for the respirable dust rule. I truly hope that  
14 does happen.

15 But I also am under somewhat of an emotional  
16 feeling that that's sort of like, "the check's in the mail."

17 And, I support that with the fact that we're still  
18 waiting for 48(c) that we never have gotten since the  
19 inception of the Coal Mine Health and Safety Act, which as  
20 you know, is the construction, slope and shaft, and that's  
21 been thirty plus years. So again, I hope that you truly do  
22 come out with the surface application for the respirable  
23 dust rule.

1           There was a lot of talk in the preamble  
2   referencing studies that had been done, not only in this  
3   country, but in other countries as far as those individuals  
4   with CWP or silicosis. And, the Advisory Committee clearly  
5   indicated that they felt that there was a dire necessity to  
6   have medical testing and medical surveillance for the  
7   miners.

8           But for some reason, I don't see any of that in  
9   the proposed rule. Could someone explain to me why there's  
10  not any in there?

11           And Marvin, let me say that the reason I ask that  
12  is because of the problems of the past that we're trying to  
13  get rid of. How do we build up the confidence in the  
14  miners, if we don't have the data to be able to show that  
15  the situation is what it is, if we're not going to do any  
16  medical testing or any medical surveillance?

17           MR. SCHELL: Joe, after the Advisory Committee  
18  finished its work, the first regulation we started working  
19  on was to expand the x-ray surveillance program to the  
20  surface and to contractors, to address just exactly the  
21  issue that you've raised.

22           When we got into that rule making, we came to the  
23  conclusion that what we were doing was taking a broken

1 underground program and extending that to the surface.

2           So, we met with quite frankly a lot of mine  
3 workers at the academy and we asked them, "why aren't people  
4 participating in the x-ray surveillance program."

5           As you know, we're at about a twenty-five percent  
6 participation rate in the NIOSH program. And, the feedback  
7 that we got from the miners was that quite frankly with the  
8 operator involvement in the program, miners were afraid to  
9 participate because they felt that if they had evidence of  
10 the disease, it would be used against them in future  
11 employment, or the operator would discourage them from  
12 participating, because they had to pay for the x-rays.

13           So that's when we initiated this national miner's  
14 choice x-ray program. And, we're starting into our -- going  
15 into our second quarter on that now.

16           As you know, that expands the right for surface  
17 miners, for contractors, slope and shaft, truck drivers,  
18 underground miners to go to any facility that they want and  
19 have an x-ray taken.

20           That's of no charge to them. MSHA picks up that  
21 cost. That goes to NIOSH and they read it, and will collect  
22 data.

23           So what we're doing is we're trying to develop a

1 better program for medical surveillance that addresses the  
2 objective of the Advisory Committee and we've asked for  
3 funding from the Congress to continue that program.

4 And I would hope that within five years, every  
5 miner would have been offered that x-ray under an improved  
6 program.

7 Now we're looking at participation rates around  
8 fifty to sixty percent nationwide, which is significantly  
9 better than we ever got under that NIOSH program.

10 MR. URBAN: And, I appreciate that. And, I do  
11 know that under the chest x-ray program that Marvin had  
12 touched on yesterday, that that was a priority of Davitt's.

13 MR. NICHOLS: You've got to give Davitt a lot of  
14 credit for that. We had no money budgeted for that. That  
15 program, if you get maximum participation, could cost two  
16 million dollars a year.

17 It was not a line in the budget. There were some  
18 questions about it. He stayed the course. We found the  
19 money in other programs. And, it's a good program. He  
20 deserves a lot of credit for that.

21 MR. URBAN: I want to share some information with  
22 you, Marvin, that you may not be aware of. And, I  
23 appreciate the fact that Joe Main had talked with you and

1 the fact that in the midwest and Illinois, we had several  
2 mines that were slated to shut down under this program, we  
3 wanted to try to get as much maximum participation as we  
4 could for those miners because once they leave the coal  
5 fields, it's hard to even track them down.

6 But the problems that we ran into -- and Marvin, I  
7 have participated adamantly in the chest x-ray program that  
8 Davitt had come out with -- the problem we run into was it  
9 appeared to me we were running into problems because of the  
10 scheduling, part of that being the fact that MSHA had  
11 contracted out the actual service of doing the chest x-ray.

12 To give you an example, at the Peabody Coal  
13 Company at Marissa Mine in Illinois, we had somewhere in the  
14 avenue of a hundred and eighty to two hundred miners that  
15 took the x-ray, participated. Ninety of those were bad x-  
16 rays because of one of two errors, either faulty equipment  
17 or people that were doing things that they weren't quite  
18 trained good enough to do.

19 And it just appeared to me -- and, I spoke with  
20 Mr. Oaks, spoke with Mr. Wickman -- it just appeared to me  
21 that it was sort of sidestepped in the fact that, "well,  
22 we've contracted this out to a contractor, we have to go by  
23 their schedules, there's not a whole lot we can do about

1 that." And we got the problem corrected, Marvin. Okay? We  
2 got the machine back in there and we got the people another  
3 x-ray.

4 But again, talking about the confidence in this  
5 program, I mean, that put a severe blow to it.

6 MR. NICHOLS: Well yeah, I mean, but this was a  
7 big undertaking that we had started, and we had contracted  
8 out with a clinic.

9 But as we've seen some of these problems come up  
10 and the participation rate not being what we wanted, we  
11 started using mobile vans. So we adjusted, especially in  
12 the east, by using the mobile vans. And, the participation  
13 rate went on up.

14 MR. URBAN: I share that information with you,  
15 Marvin, because I think our traction starts slipping in the  
16 mud in the midwest, when it comes to the quality of the  
17 service that was being conducted. And, don't get me wrong.  
18 We done the chest x-ray program at Consol Mines and in fact,  
19 I think we had something in the neighborhood of eighty-three  
20 percent that participated. And, I do realize that that was  
21 no easy chore, trying to get a facility, area where we could  
22 set the machine up.

23 And, the program is a good program.

1           But, I just think that NIOSH and MSHA both should  
2 try to work a little more closer with the representatives of  
3 the miners to try and help get this scheduling done.

4           In fact, we had one session that came up in  
5 Illinois, and none of our people that are representatives  
6 was going to be in the area, and yet, it had already been  
7 scheduled and we had no way to get the word out to the  
8 miners. That's not going to do the program any good,  
9 Marvin. Okay?

10           So again, I would ask that on the chest x-ray  
11 program that we try to have a little more better  
12 communication, especially in the scheduling aspect of it.

13           I am happy to say that of numerous recommendations  
14 from the Advisory Committee -- and, there were several on  
15 education and training -- the Department at least, MSHA has  
16 filled the position of Director of Education and Training.  
17 And, we appreciate that. And, we also appreciate the fact  
18 that it's Jeff Duncan, one of our people that used to work  
19 with us. He has extensive knowledge, a very capable  
20 individual.

21           You had talked, Marvin -- and, I'm going to get  
22 off this thing here -- you had talked yesterday about the  
23 fact that you had hoped, or it was your intention that once

1 you have a verification plan in place, then you would hope  
2 that the operator and the Safety Committee would then try to  
3 make sure that that was complied with on all the shifts  
4 continuously.

5 MR. NICHOLS: The operator, the miner, the Safety  
6 Committee and the inspector.

7 MR. URBAN: But, through the verification plan in  
8 and of itself, what assurance is there in that plan that  
9 that will be done as you've stated? It's not there.

10 I mean, the Safety Committees do not have the  
11 power, nor the authority to dictate to management. They  
12 can't tell management, "you're not doing what the plan calls  
13 for, so therefore, you can not operate until you do so."

14 And by the time, Marvin, that they use their Coal  
15 Act rights under 103(g) and notify the agency -- and, I  
16 heard what you said as far as your inspection force at Shoal  
17 Creek. In the midwest, we have inspectors, they're not at  
18 the union operations every day. I hope they're not, with  
19 all the non union operations that's out there.

20 MR. NICHOLS: They're there pretty often, though.  
21 Right?

22 MR. URBAN: But, the thing of it is when a  
23 situation comes up, Marvin, nine out of ten times, if this

1 happened on a particular section, the section committeeman  
2 is not going to know it until the end of the shift. The  
3 inspector's already gone. So, that one's going to have to  
4 wait until tomorrow, if an inspector shows up.

5 Now he goes and he issues a 103(g) to that  
6 inspector the next day. What do you think the company's  
7 going to do as far as going by the plan? They're going to  
8 make sure they do it that day on that shift while the  
9 inspector's there.

10 And Marvin, there's no difference there than in  
11 the rock dust issue and the atmosphere that we've been  
12 fighting for years.

13 Now the mine workers don't oppose rock dusting.  
14 We want rock dusting. We know we need it.

15 But you know there has been umpteen calls that's  
16 come to you saying hey, we're being dusted out, we can't  
17 see, we're having to breathe this all the time. But by the  
18 time you get the inspector there, it's all cleared up.  
19 Can't do nothing.

20 MR. NICHOLS: My point yesterday was that we've  
21 got a plan that's been verified at a high production level  
22 that calls for certain controls, that everybody understands.  
23 And if you've got less water sprayers than the plan calls

1 for, or less air, then the miners, the Safety Committee, the  
2 inspector can look at the plan, look at the conditions and  
3 see that that's not what was called for in the plan.

4 It seems like you think the option of bimonthly  
5 sampling by the operator will do more than our bimonthly  
6 sampling and a good plan that's demonstrated to work.

7 MR. URBAN: No, our point is by having more  
8 additional sampling, we're going to have a higher confidence  
9 level on management people that hey, if it comes down to it,  
10 every other day, I might have an inspector in here checking  
11 my parameters and checking to see that my plan that's  
12 verified, if I'm wrong on it. That's what we're talking  
13 about.

14 And granted, I realize the fact that you can't be  
15 there twenty-four hours a day, seven days a week, Marvin.  
16 But, I think you're relying too much on a piece of paper to  
17 assure what's going to happen on shifts when an inspector is  
18 not there. It won't work.

19 MR. NICHOLS: Plans, enforcement, sampling, I mean  
20 that's what we've got to work with. And you're right, we  
21 can't have an inspector there every day. We've got then  
22 there quite often.

23 MR. URBAN: One of the things, Marvin, that I

1 think really hits the key here -- and Ron, on your overhead  
2 that you had up there, the plan itself, how many times have  
3 we come to you and have told you the same as miners time and  
4 time again, miners have absolutely no control over  
5 administrative controls?

6           When you come to sample, the operator is going to  
7 make damn sure that administrative controls is top priority  
8 over production for that day while you're there.

9           They're going to do that for your plan  
10 verification.

11           But, you know what's going to happen as soon as  
12 you leave? They're going to re-prioritize administrative  
13 controls and it's going to go right back to the bottom of  
14 the list. And the operator's going to say, "all right,  
15 boys, get in there, we've got a record to break, let's mine  
16 that coal." That's the reality of the coal mines.

17           MR. SCHELL: Joe, I guess our concern is this:  
18 Today doing a bimonthly cycle, an operator will sample one  
19 person five consecutive shifts or five consecutive days.  
20 Okay?

21           MR. URBAN: Under company controlled  
22 administrative controls.

23           MR. SCHELL: I agree, that's right. We go in and

1 we sample five people one shift. Okay? So if you take four  
2 hundred shifts on average, across the year and operators  
3 sample thirty shifts, that's four hundred and seventy shifts  
4 that they don't sample.

5 We sample them six times, that's three hundred and  
6 ninety-four shifts we don't sample.

7 We've got to find a way to get compliance on those  
8 shifts where we're not sampling. And, that's what we were  
9 trying to do with this rule.

10 There is a requirement today, a legal requirement  
11 that an operator can be cited if they don't check their dust  
12 parameters before every production shift. Okay?

13 Our concern was if you don't have a good plan,  
14 checking a bad plan doesn't help miners.

15 So we wanted to start out with a plan that we knew  
16 would work with just what they wrote in the plan.

17 You and I have had discussions in the past where  
18 we go in and sample and the parameters are so high above  
19 what's in the dust plan, you can't evaluate the plan.  
20 You've complained to me about that, and then we've had a  
21 problem with it. We wanted to address that.

22 We're going to tell that operator, "when you  
23 submit a plan, we're going to verify it with only those

1 controls in place that you say are going to be in that plan.

2 And then, we're going to verify it near the peak  
3 of production, not some percentage of the average.

4 So we at least ought to start out with a comfort  
5 level, that if the operator does what they say, does what  
6 they're supposed to do and by law, what they're required to  
7 do, is to comply with that plan, the miners ought to be  
8 protected.

9 Now if they don't check it every shift, they're  
10 going to be cited.

11 If an inspector goes in there and they're down on  
12 their air, we don't have to sample. We cite.

13 They don't maintain their water, we don't have to  
14 sample. We cite.

15 You guys can look and see if they're not  
16 maintaining their air and their water. They can call.  
17 Granted we've got to come up and get them.

18 But, my point is what do we do during those shifts  
19 that we're not sampling to protect the miners, Joe?

20 MR. URBAN: Let me interrupt you just a minute.  
21 You made a statement that if they're not doing their  
22 perimeter checks, that they're going to be cited. How are  
23 they going to be cited when number one, is there a record

1 requirement for them to do that regular check?

2 MR. SCHELL: They have to date and initial. And a  
3 lot of times, the miner operator is doing the checks and has  
4 to tell the management official that they've done it.

5 MR. URBAN: But what I'm getting at, if you don't  
6 have an inspector there that observes it at the time, are  
7 you going to issue a citation?

8 MR. URBAN: Probably not. But, we'd have to go  
9 back and do spots on it. But if we hear from you guys that  
10 they're not doing it, we're going to check. And Joe, if we  
11 get a call and come in and we find out that they're supposed  
12 to have "x" amount of air and they don't, they're going to  
13 be cited for a violation of that plan.

14 And again, I'm not trying to be argumentative. I  
15 understand your concern about sampling, and that they comply  
16 when we sample and they comply when they sample.

17 Our question and what we were trying to address in  
18 this proposal is what about the days that no sampling is  
19 occurring? What's the best system that we could come up  
20 with to protect miners and make certain that that plan is in  
21 place and operating?

22 And, that's why we came to this conclusion: Let's  
23 get a good plan that we know works. Operators today are

1 required to have that plan in place, and operating on every  
2 shift. And people can go in and they can eyeball that and  
3 they can tell you for the most part whether or not that plan  
4 is being complied with. I don't know any other --

5 MR. URBAN: But, you know as well as I do if we  
6 report to you ten times in two weeks that they are not going  
7 by the verified plan, then you're going to come out there  
8 and you're going to observe. You may come out on second  
9 shift, may come out on owl shift. But when you're out  
10 there, they're going to do it.

11 That's what I'm trying to -- what I want to do,  
12 Ron, and I hope that you and Marvin want to do, I want to  
13 change Jekyll and Hyde to Jack and Jill. And, a  
14 verification plan is not going to do that.

15 MR. SCHELL: Sampling thirty-six out of four  
16 hundred shifts isn't going to do it either, Joe.

17 MR. URBAN: We didn't say minimize it to thirty-  
18 six. We keep saying more, more samples.

19 MR. NICHOLS: What we're trying to do is keep the  
20 out of compliance situation from occurring. More sampling  
21 will show you you're out of compliance. I mean, that's an  
22 after the fact thing.

23 What we want to do, and the only possibility, I

1 think, of getting compliance is getting compliance or plans  
2 on a daily basis.

3 You can go sample and find over exposure, but  
4 that's not getting ahead of the problem.

5 Plans will get ahead of the problem.

6 MR. URBAN: And I guess, Marvin, the reason why  
7 I'm hammering the verification plans so much, okay, and you  
8 know, we have participation rights in a plan, ventilation  
9 plan development. That was under the ventilation rule that  
10 was changed. Okay?

11 But you know what has happened since that has  
12 occurred? Guess what? The operators have found a way to  
13 manipulate that. Now you know how they do it?  
14 75370(a)(3)(i), which gives us a right to have a copy within  
15 five days, now you would think that prudent, professional  
16 businessmen that are supposed to be up front and forthright  
17 would try to work with labor, because labor has just as  
18 much, if not more, invested in that particular operation as  
19 the company does, the last part of that regulation which  
20 states -- and, don't get me wrong; we know that mining  
21 conditions change constantly. We're also reasonable.

22 And, we know that from time to time, there's going  
23 to be emergency situations crop up, whereby an operator is

1 going to need a revision or is going to have to make a  
2 submittal and is going to have to do it quickly. We  
3 understand that.

4 But, the operators right now are taking a  
5 position. They are waiting to do any type of submittal for  
6 a revision or whatever until they can artificially make an  
7 emergency, and then prevent the miner's rep from having  
8 involvement because of fax machines and today's technology,  
9 because the company will take and submit a submittal to the  
10 MSHA District Manager. He'll approve it and fax it back the  
11 same day before a miner rep will even know what's going on.

12 Now if you don't think that the operators are not  
13 smart enough to figure out a way to get around this, they're  
14 going to do it. They're going to do it.

15 And, don't misunderstand me. I know you have all  
16 put a lot of hard work into this. And again as I said from  
17 the start, I sure as hell didn't envy your job because we've  
18 seen that there have been problems for a quarter of a  
19 century.

20 There was one other part that I wanted to ask you,  
21 Ron, on. The verification sampling, production, it calls  
22 for the tenth highest for the most recent thirty days of  
23 production.

1           And on your chart, you stipulate that the agency  
2 is going to, I'm assuming, going to require the minimum of a  
3 six month record for their production.

4           Define to me then, what is the most recent thirty  
5 days of production? Is that from the time that they start  
6 extracting coal from the MMU unit thirty days?

7           Or, is it once they have quantified to themselves  
8 what their productivity is, and they notify you and you get  
9 out there to do the verification? The most recent is  
10 throwing me off.

11           MR. SCHELL: Yeah, that's a fair question, Joe.  
12 The rule when it goes into effect would require operators to  
13 maintain records on the amount of material produced on each  
14 production shift. They would have to maintain those records  
15 for six months.

16           As you know, as we phase into this, we will be  
17 bringing -- verifying mines on some kind of a schedule. We  
18 would expect the most recent thirty production shifts would  
19 be their last thirty production shifts that they should have  
20 been keeping records on. I'm just turning to George to make  
21 sure I stated that correctly.

22           MR. NIEWIADOMSKI: That's correct.

23           MR. SCHELL: So it's an on going requirement from

1 the date the rule becomes effective. What I'm getting at,  
2 Joe is that when we go out to do our inspections, we'll be  
3 able to look back at production over a six month time period  
4 to just see what they're actually producing every shift and  
5 make certain that they're not producing -- to make sure it's  
6 representative, and they're not producing more than their  
7 plan was verified for, because if they have, they need to go  
8 back into plan verification again.

9           The problem we have is production is on a mine by  
10 mine basis. And, we don't know if it's clean coal or  
11 running mine coal, so it's hard for us to get a handle on  
12 this doggone production issue.

13           Now we want by MMU, and we want amount of material  
14 produced. We're not looking for clean coal. We want amount  
15 of material produced.

16           And then that record will be available to us to  
17 make judgements on plan verification, and then to make  
18 judgements when we sample as to we're seeing representative  
19 production.

20           MR. URBAN: One other question on that issue:  
21 During this phase in period -- and, that's what I'm defining  
22 it as -- for the verification of production, are we still  
23 going to be under the two milligram standard?

1           MR. SCHELL: Well if we have single sample, we  
2 would be enforcing single samples the way we did in that  
3 period, August to September. So we would be under the two  
4 milligram standard, but we would be using the two site  
5 value, Joe.

6           What I'm saying is that if this rule that we have  
7 today went into effect, we would begin citing on single  
8 samples. The standard would be two milligrams.

9           The two site values, the two milligram standard  
10 would be two point three three. We would no longer be  
11 averaging them.

12          MR. URBAN: Okay. Marvin, I guess I've got a  
13 question for you. And correct me, if I'm wrong. It was my  
14 understanding that as far as MSHA being an agency, in your  
15 promulgation of rules, you do not promulgate rules or  
16 criteria that apply to the agency, do you?

17          MR. NICHOLS: I think we've got some stuff in Part  
18 100. Isn't that right? Yeah, I think the answer is yes.

19          MR. URBAN: The reason why I ask that is because  
20 70 -- I believe it's 70.206 and 207 of the proposed rule,  
21 where you talk about who you're going to sample, is that in  
22 and of itself, is that not promulgating criteria for the  
23 agency itself?

1           MR. NICHOLS: Yeah, it could be. Yeah. What's  
2 your point, Joe?

3           MR. URBAN: I just -- it was always my impression  
4 that you didn't do that, that the agency didn't promulgate  
5 criteria against itself.

6           MR. NICHOLS: No, we can.

7           MR. URBAN: Okay. There's been a lot of  
8 discussion in the past two days about the sampling criteria,  
9 how, when, where it'll be done, what's to be done if it's  
10 out. And, there is a lot of discussion in the preamble, but  
11 not in the proposed rule.

12          MR. NICHOLS: And, we've had that comment early  
13 and often.

14          MR. URBAN: So would it be safe to say then, that  
15 that's what you've done with it?

16          MR. NICHOLS: I don't think so. I think we've got  
17 a difference of opinion on whether -- it is your opinion  
18 that it has to be in the rule to be enforceable. I don't  
19 think we totally agree with that. But, we've indicated that  
20 that comment has been made many times, and it will be one  
21 for consideration.

22          MR. URBAN: Just a couple more quick ones and I'll  
23 be done. And Ron, I'm going to pick on you again this time.

1 We had a lot of discussion yesterday. And to be quite  
2 honest with you, I'm still not sure I understand it today.

3 What I would like for you to do is to consider  
4 those that are here as a training class, okay, and walk us  
5 through the complete system as to how you would determine  
6 your verification production, okay, and, how you come to  
7 that final determination.

8 MR. SCHELL: I'm going to try, Joe, but if  
9 history's any -- what we have to do is start by talking  
10 about what average production is. I'm not going to talk as  
11 a statistician. Jon will cringe in back of me.

12 But to determine an average, you take all of the  
13 productions along a spectrum, add them together and divide  
14 them by the number. Right?

15 If you take two plus two plus ten, that's  
16 fourteen, divided by two is seven.

17 As a layman, if you have a normal distribution,  
18 you'd have about fifty percent on the low side, fifty  
19 percent on the high side, so average would be about fifty  
20 percent. If you took a hundred numbers, evenly distributed,  
21 fifty would be about the average. Okay?

22 The Advisory Committee's recommendation was that  
23 we sample at ninety percent of the average. So what's

1 ninety percent of fifty? It's about forty-five. And, Jon's  
2 going to put an average together. So ninety percent of the  
3 average would be forty-five.

4 We're saying we want to sample above the average.  
5 And, Jon's going to put together a little thing to show you.  
6 We want to sample at the seventieth percentile for plan  
7 verification. That's above fifty percent of the average.

8 And if we take a thirty day distribution, okay, if  
9 we take production over a thirty day time period and count  
10 down to the tenth highest production, that equates to about  
11 the seventieth percentile.

12 So we're not sampling, we're not verifying at some  
13 percentage of the average. We are verifying above the  
14 average. And, Jon?

15 MR. KOGUT: I'm just going to try to give you a  
16 concrete example of what we might be talking about. Suppose  
17 you had ninety or a hundred -- say you had a section that  
18 works three shifts a day, so you have -- well, we've got  
19 thirty shifts here. So, why don't we just use thirty?

20 So you've got productions. Some of them are going  
21 to be like eight hundred, nine hundred, eleven hundred.  
22 Some of them will be like seventy-two hundred, seventy-five  
23 hundred. Okay?

1           Over those thirty shifts -- and, Rebecca here just  
2 generated an example, distribution of thirty shifts, an  
3 example of thirty actual productions in that range -- the  
4 average production in her example was 4,467 tons per shift.

5           Ninety percent of that average production then,  
6 would be 4,020 tons. In other words, it's less than the  
7 average.

8           The highest individual production in that example  
9 was 7,600 tons. The average is 4,467. Ninety percent of  
10 that average is 4,020. Okay.

11           Fifty percent of the average, which is what the  
12 operators under the current program when they do their  
13 operator compliance samples, they're required to do fifty  
14 percent of what they did on their last sampling cycle.

15           So say that on their last sampling cycle they were  
16 right at the average production of 4,467. So, then if  
17 that's the case, on a new sampling cycle, they would only be  
18 required to have 2,234 tons.

19           Now that sets up an interesting thing because the  
20 way the current regulation is written, the next time they do  
21 sampling on their next bimonthly cycle, all they're required  
22 to do is fifty percent of what they had on this current  
23 sampling cycle. So it would really only have to be half of

1 that 2,234. So, they could get away on the next sampling  
2 cycle with 1,117.

3 The next time, it could be even more, only be  
4 half, be fifty percent of that. So it really could go lower  
5 and lower under the current system for operator sampling.

6 But to get back to these different percentages,  
7 ninety percent of the average is 4,020. And sixty percent  
8 of the average, which is what the inspector sampling uses,  
9 is 2,680. Okay?

10 Now the tenth highest of those productions is  
11 5,700. 5,700, okay? That's higher than the 4,467 that was  
12 the average. That 5,700, it's going to be somewhere about  
13 halfway between the average and the maximum value.

14 Now the other number that's been thrown around  
15 here is that sixty-seven percent, or Ron was rounding off to  
16 about seventy percent we were talking about.

17 That seventy percent, that sixty-seven percent,  
18 that's a percentile, not a percent of average. What that's  
19 referring to is not a percentage of the average. It's not  
20 like sixty-seven percent of the average.

21 We're talking about the sixty-seventh percentile  
22 which means that sixty-seven percent of all the individual  
23 productions at that level or lower.

1           So in other words, it means that sixty-seven  
2 percent of all the production shifts are less than or equal  
3 to that sixty-seven percentile. And, that corresponds  
4 roughly to that tenth highest production level. So that's  
5 higher than the average value.

6           So it's important to keep track of whether we're  
7 talking about a percentage of the average, or a percentile,  
8 which means two different things. Does that help at all?

9           MR. URBAN: Clear as mud -- no, it did help, and I  
10 appreciate it, although I do think we probably could have  
11 used three or four pages of the preamble just in that  
12 explanation to the common miner.

13           Marvin, in closing -- and again, you and I and Ron  
14 have had several meetings and sat down and talked about  
15 several different issues -- the miners really appreciate  
16 what has been done.

17           We truly feel that you have made an honest effort  
18 to correct the problems. But, we definitely feel that  
19 there's still more work to be done.

20           We truly feel there are a lot of good  
21 recommendations in the Dust Advisory Committee's report. We  
22 would encourage you to go back to the drafting board and  
23 redraft this proposal.

1           And, I'm a little skeptical because Mr. Reynolds  
2 made the comment a couple of times yesterday, "well, we'll  
3 think these over and we'll give it consideration."

4           And, I'm not citing politics in here in this  
5 meeting. But, I'm a registered democrat. And, I've had  
6 numerous republican candidates that's come up and asked me  
7 for support. And I've said, "I'll give you consideration."

8           I truly hope, Marvin, that you do give serious  
9 consideration to what these people have said, not only in  
10 Morgantown, not only here, but what they'll say in Las  
11 Vegas.

12           MR. NICHOLS: Well, that's the way the rule making  
13 works, Joe. You put out a proposal and get the comments.  
14 You have these hearings and get the comments. And then at  
15 some point, you sit down and look at the whole record. And  
16 then, the agency will make a decision. That's the way it  
17 works.

18           MR. URBAN: Thank you. I've concluded. If any of  
19 the committee has any questions, I'll be glad to try to  
20 answer them.

21           MR. NICHOLS: I think we've captured all the  
22 issues. So --

23           MR. URBAN: Thank you.

1           MR. NICHOLS: Thank you. Our next presenter will  
2 be David Gooch of the Coal Operators and Associates.

3           MR. GOOCH: Thank you, Marvin and Members of the  
4 Panel. My name is David Gooch. Spelling of the last name:  
5 G-O-O-C-H. I'm presenting the following comments in my  
6 capacity as President of Coal Operators and Associates.  
7 These comments are being presented not only on behalf of  
8 COA, but the Kentucky Coal Association and the Western  
9 Kentucky Coal Association. Collectively, these three  
10 associations represent over ninety percent of the coal  
11 produced in Kentucky.

12           My colleague yesterday, Mr. Caylor, addressed some  
13 specific objections to various facets of the rule making  
14 proposal. I'm going to address my comments to a broader  
15 area, that being the timing, the motivation and the  
16 inadequacy of the proposals.

17           We will in concert with the National Mining  
18 Association, as well as other state mining associations,  
19 provide exhaustive written comments on each specific section  
20 of this proposal within the allotted time period.

21           As evidenced by the testimony by more than twenty  
22 commenters from the United Mine Workers at the hearing in  
23 Morgantown, West Virginia this past Monday, it's very clear

1 that they are less than enamored with what is before us  
2 today. And the numerous, forceful, articulate arguments  
3 that have been presented by the Mine Workers yesterday and  
4 today bear out the fact that labor doesn't like this  
5 proposal.

6 Well we don't, either.

7 We have some serious problems with it, and we will  
8 address those. The Mine Safety and Health Administration  
9 has two groups of stake holders, the regulated community  
10 which is the mine operators, and the working miner, whether  
11 he's affiliated with the Mine Workers or not.

12 According to testimony presented by the Mine  
13 Workers, this proposal was not written with the health of  
14 the individual miner in mind.

15 And, I can assure you it definitely wasn't written  
16 with any concern for helping the mine operator comply with  
17 the Mine Act.

18 If the proposed regulation doesn't satisfy the  
19 needs of the stakeholders, then who does it benefit? Well,  
20 there's only one logical answer. Joe Main said it  
21 yesterday. I'll say it today: It was written to benefit  
22 the agency.

23 This is perhaps one of the most self-serving and

1 convoluted pieces of bureaucratic mumbo jumbo I've ever  
2 attempted to read, as evidenced by some of the discussions  
3 that we've had here this morning.

4           This regulatory proposal does nothing but swell  
5 the already over sized bureaucracy at MSHA in an attempt to  
6 justify ever increasing appropriation from Congress,  
7 regardless of the fact that MSHA' work load continually  
8 decreases due to fewer mines and fewer miners.

9           Pointing to the self-serving nature of this  
10 proposal is the timing of its offering, and the subsequent  
11 time allotted for the filing of public comments.

12           If history serves as any teacher, there will be a  
13 change in leadership at the Department of Labor and at MSHA  
14 after this upcoming presidential election, regardless of  
15 who's elected.

16           So we're faced with a voluminous regulatory  
17 proposal which changes the scope of ventilation plan  
18 verification and dust sampling in the eleventh hour of a  
19 lame duck administration.

20           And trying to shove this proposal through and  
21 limiting the time for comments in order to finalize the rule  
22 before January, 2001 is a disservice to both mine operators  
23 and to coal miners, themselves.

1           This proposal was noticed in the Federal Register  
2 July 7th, 2000 with a thirty day comment period that was  
3 amended to forty-five days.

4           A request filed by the National Mining Association  
5 for a one hundred twenty day extension was basically denied  
6 with only a two week extension to September 8th.

7           I want you to think of it, sixty days, much of it  
8 during peak holiday time, to respond to hundreds of pages of  
9 proposal and literally thousands of pages of cited  
10 references.

11           I will agree some of this isn't new territory. We  
12 saw it in 1998 in a proposal which was struck down by the  
13 U.S. 11th Circuit.

14           However, there are new proposals. There are new  
15 reference materials that are cited in this notice that must  
16 be researched in order for either side to intelligently  
17 comment on how it will affect both the mine operator and the  
18 miner.

19           The National Mine Association issued a July 25th  
20 request of the agency for the production of various  
21 documents cited in the Federal Register Notice.

22           It took MSHA nearly two weeks to respond. Well,  
23 that took care of the two week extension we got. It

1 nullified it.

2           The lack of time to prepare comments, the timing  
3 of the proposal and an attempt to push it through all tend  
4 to point to denial of due process not only for the mine  
5 operator, but for the miner, as well.

6           And, for what? To justify more money for public  
7 coffers? To justify the hiring of more people? To create a  
8 monument to the legacy of the Assistant Secretary?

9           If the agency was interested in protecting coal  
10 miners from a dusty mine atmosphere, and if the agency was  
11 interested in helping operators comply with dust and  
12 ventilation standards, in other words, if the agency's  
13 motives were pure, this proposal wouldn't be before us.

14           There are too many issues that mine management and  
15 those who represent labor do not agree on.

16           However, we do seemingly agree that a necessary  
17 ingredient for any successful dust control and monitoring  
18 program is the development and implementation of reliable  
19 dust monitoring and dust control technology.

20           As an industry, we have repeatedly, verbally and  
21 in writing told MSHA that we will work with them to solve  
22 the problems inherent to the current regulatory environment  
23 as it affects dust monitoring.

1           Though we must predicate much of that solution on  
2 new technology, this proposal apparently is MSHA's answer to  
3 our promise of cooperation.

4           The agency would rather continue to play games  
5 with smoke and mirrors, instead of finding a lasting  
6 solution.

7           I could go on with a list of grievances such as  
8 the proposal's lack of safeguards to protect both miners and  
9 operators from the inappropriate, inexperienced or illegal  
10 actions of MSHA's enforcement personnel in the collection of  
11 dust samples and their subsequent laboratory analysis, the  
12 lack of comment in the economic analysis regarding the fact  
13 that many small contractors who perform dust sampling will  
14 be permanently put out of business, a possible violation of  
15 subbriefin, the lack of outreach to the small business  
16 community who will be impacted by this proposal, as required  
17 by subbriefin, the possible anti-trust violations regarding  
18 the agency's plan to offer the protection of airstream  
19 helmets or other appropriate respiratory protection to only  
20 one segment of the coal mining industry, to the exclusion of  
21 the rest, and the list goes on.

22           In summary, this industry will submit our combined  
23 written comments and specific objections prior to the end of

1 the comment period.

2 We are of the strong opinion, though, that if the  
3 agency wishes to act in a responsible manner and carry out  
4 its legislative mandate, they will withdraw their proposal,  
5 sit down at the bargaining table with the affected  
6 stakeholders, and work out a plan that will assure both the  
7 health and safety of the miners in the mines, and the  
8 continued operation of legitimate mining operations. Any  
9 action short of that will no doubt lead to protracted  
10 litigation, as it has in the past.

11 And while the attorneys cash the checks, the  
12 problem that MSHA said they were solving with this ill  
13 conceived regulatory proposal will remain, and all because  
14 of the self-serving rush to judgement in the eleventh hour  
15 of a lame duck administration.

16 In closing, there is an old saying, "if it looks  
17 like a duck, if it quacks like a duck, if it walks like a  
18 duck, it's bound to be a duck." In our opinion, this ain't  
19 no duck. This is a turkey. We

20 would like for you to withdraw this proposal.  
21 Thank you.

22 MR. NICHOLS: Thank you. Wait a minute, we may  
23 have some questions. I'm glad you didn't sugar coat it

1 there, David.

2 MR. GOOCH: I was half asleep when I wrote that.

3 MR. NICHOLS: Do you think it's right to average  
4 those samples, if you have two people out of compliance and  
5 three in? What do you think about that?

6 MR. GOOCH: We will address that in our written  
7 comments. However, there is adequate language that has been  
8 around for years and years saying that that is the way to do  
9 it.

10 MR. NICHOLS: So you agree with that?

11 MR. GOOCH: We have some serious reservations  
12 about the validity of the single shift sample. As you know  
13 from our little foray in 1998 and subsequent to that, we do  
14 have questions about its validity.

15 MR. NICHOLS: And what about the good, verifiable  
16 plans that work?

17 MR. GOOCH: We think there needs to be good,  
18 verifiable plans that work.

19 MR. NICHOLS: Anybody else got anything?

20 MR. HEWETT: Marvin?

21 MR. NICHOLS: Yeah? The question is how do you  
22 think this proposal will put small contractors out of  
23 business. I'm assuming you're talking about the people that

1 do contract sampling?

2 MR. GOOCH: Yes, sir.

3 MR. NICHOLS: Yeah, that's what he meant.

4 MR. GOOCH: Those that do contract sampling.

5 MR. NICHOLS: Yeah.

6 MR. GOOCH: Not that I'm any great fan of some of  
7 those folks, but they are a part of the community.

8 MR. NICHOLS: Right. Well, say what you will  
9 about the intent of the agency putting this out, but this  
10 dust issue has been worked on for many years. For a good  
11 part of nineties that I've been in coal, we've worked on  
12 pieces of what you see today.

13 MR. GOOCH: I know what you're saying, Marvin, and  
14 I guess what our point is -- and I think these fellows have  
15 expressed it, too -- there have been several comments made  
16 on behalf of the mine workers that they're afraid that this  
17 is the last time this gets visited.

18 Well, I don't know whether this is the last time  
19 this topic gets visited or not, knowing the slow and often  
20 laborious convolutions the government goes through in its  
21 processes.

22 But, I think both the mine workers and the mine  
23 operators would like to get to a final resolution of this

1 issue, because we're tired of wrestling with it. These guys  
2 are tired of wrestling with it.

3 We would like to get a regulation where we know  
4 what's going on, and where they know what's going on, one  
5 that is understandable and identifiable.

6 And so much of this regulation -- and Marvin, this  
7 isn't aimed at you or anybody else there -- but, so much of  
8 this regulatory proposal before us sort of says, "we're from  
9 the government, we're here to help you, and let us go ahead  
10 and do this, and then we'll tell you how we're going to do  
11 it." There are so many unanswered questions in here that it  
12 leaves us just a little bit leery of saying that this is the  
13 best that can be done.

14 MR. NICHOLS: Well what we get is on the one hand,  
15 all operators cheat, or they take advantage of -- to cheat  
16 legally, you know, set up the conditions we're going to  
17 sample under. So we get that on the one hand.

18 Then we get on the other hand from you guys, take  
19 this program over, then we tell you how we're going to do it  
20 and you don't like that.

21 MR. GOOCH: Well, I guess that's why you're  
22 working for the government. I will say, Marvin, that you  
23 know -- and I think this could be borne out both in the

1 industry and with the mine workers -- we get together where  
2 there aren't microphones and where they're not recording  
3 things and where there's no need to politicize the process  
4 and where there's no need to posture.

5 And, we sit down and have some good, common sense  
6 discussions a lot of times about a whole lot of things.

7 And, I think that's what this regulatory proposal  
8 needs. I think it needs people sitting down and talking  
9 about what the problem is and how we go about solving it in  
10 the best manner in a forum where there is no posturing,  
11 where there is no politicizing of the issue.

12 MR. NICHOLS: Okay, thanks, David.

13 MR. GOOCH: Thank you.

14 MR. NICHOLS: The next presenter will be Shane  
15 Harvey with A.T. Massey. Is Harvey here?

16 MR. URBAN: I don't think he is, Marvin.

17 MR. NICHOLS: Okay. The next presenter will be  
18 Rodney Smith, coal miner.

19 MR. SMITH: My name is Rodney Smith. I work  
20 mostly -- well, I work for all non union mines. I never  
21 worked for a union mines. I don't know a whole lot about  
22 it. But, I've learned somewhat in the last few days and it  
23 sounds like, you know, there's a lot of similar problems.

1           As far as inspectors, you know, everybody agrees  
2 that they can't be there twenty-four hours a day. We have a  
3 right to talk to management, talk to inspectors. If we  
4 choose not to do that, it's our own fault, because they are  
5 there and they will normally take care of the problems.

6           And as far as I've had problems with safety the  
7 last four or five years, and I do stand up and try to let my  
8 opinion be known.

9           As far as MSHA doing the dust sampling, they need  
10 to do the dust sampling because the operator, they're not  
11 going to do a good sample, you know. A lot of times, they  
12 set it up, you know, when they know the MSHA is there.

13           But, I'd rather have one -- you know, talking  
14 about not having enough sampling, if you had one every day  
15 and it was set up, you know, it wouldn't be no account.

16           I appreciate the effort y'all are giving to make  
17 it better. But like I said, you know, it takes the men  
18 that's there to make everything work. Y'all can have the  
19 best rules and stuff, you know, that there are and if we  
20 don't help make it work, it's not going to work.

21           And not averaging the samples out, you know, it's  
22 a good idea. I mean, one might be getting choked to death  
23 and the other, you know, may be all right. But if you find

1 a violation, it ought to be cited.

2           You know, there's a whole lot of things I don't  
3 know about. And, I don't have no speech prepared. But you  
4 know, I worked in the mines for twelve or thirteen years.

5           It's pretty much all the same, the operators ain't  
6 going to do no more than they have to to make it safe for  
7 the men.

8           Far as putting up roof bolts to hold their mine,  
9 you know, they're going to do it.

10           Worrying about how much dust you breathe, they  
11 don't care. Everybody agrees with that.

12           And you know, I've had to walk out of a mines and  
13 quit because I wouldn't cheat on dust samples. I mean, they  
14 left me no choice. I argued with them for thirty minutes  
15 and finally had to -- you know, picked my bucket up and  
16 left.

17           And you know, everybody else, you can either go  
18 along with them and play their game, or you can tell them,  
19 "hey, this ain't right, I ain't going to do it." And, they  
20 will make it hard on you.

21           But if everybody stood together, everybody'd have  
22 to go out. And you know, that's the problem. I know at the  
23 non union mines, you know, everybody talks about this or

1 that not being right or whatever. But most of the time,  
2 they won't stand behind you.

3 And y'all, well we have good laws. I'm not saying  
4 that every one of them is perfect. But enforcing them, you  
5 know, is another thing, and we have to help there.

6 And, I don't know if any of y'all have been in the  
7 mines or not. But, I can tell by the comments and stuff  
8 that y'all know a great deal about the mines.

9 And it seems like, you know, y'all are working  
10 towards the good of the men to me. And you know, the  
11 operators, they're going to try to find a way around  
12 everything that you do, if it's going to cost them money.  
13 If it's going to slow down production, they're going to try  
14 to find a way around it.

15 And it's up to us to help, you know, tell y'all  
16 what they're doing wrong and try to help enforce it ourself.

17 And as far as them doing their own dust sampling,  
18 you know, it's ridiculous. You know they're not going to  
19 accept a fine if they don't have to.

20 Everybody realizes that they cheat on them.

21 As far as verification of the plan, you know, they  
22 need to know exactly what we're working in. And if they  
23 come in and find that they're not doing something, it ought

1 to be a fine. It ought to be a stiff fine. It ought to be  
2 kept on record, and repeat, you know, right on and right on  
3 and get those violations, it ought to go right on up until  
4 they see, you know, that they have to comply with the law.  
5 And every time you catch them, you know, do all you can  
6 against them.

7 And maybe they'll eventually see that they're  
8 going to have to do half way what's right. That's about all  
9 I have.

10 MR. NICHOLS: Okay, thanks. Okay, we've got this  
11 room until two o'clock, so we're going to have to finish up  
12 by then. So, I don't see any way to break for lunch. So,  
13 we just need to keep going. Some of us need to go from time  
14 to time here and check out of the motel, I guess. Is check  
15 out time noon? Two o'clock? Okay. Well, why don't we --  
16 we've got Gary Bartley -- he's not here? Douglas Peterson,  
17 is he present? Okay, I think we've taken care of him.  
18 Let's see, we've got eight more presenters and they're all  
19 United Mine Workers, and we've got about two hours left in  
20 the room. So, you guys need to work out your presentations  
21 within this allotted two hours. We don't have any other  
22 place to go. And, Jim Weeks is next on the list. Do you  
23 want to come on up, Jim? See you in Salt Lake? Okay.

1 Larry Hatton?

2 MR. HATTON: My name's Larry Hatton, L-A-R-R-Y, H-  
3 A-T-T-O-N, from Whitesburg, Kentucky. I worked in the mines  
4 about twenty-five years, a little more. And, I ain't got  
5 much to say.

6 I ain't got the wind that this other fellows has  
7 got, because I've got a disease. It ain't one I can shake  
8 off with a few shots of penicillin, or even a hundred shots.

9 I've got black lung. I'm in second stage. And, I  
10 know what caused it.

11 And, all I want to bring to y'all's attention is  
12 what, there's about ten of y'all, what about if three of you  
13 died before you got to the next one? You want to find out  
14 what killed them. And, you know that it happened here, if  
15 you know it happened, you're going to find out what caused  
16 it. And if you did find out the cause, would you want to  
17 slow it down or would you want to stop it? And, I'd like to  
18 see it stopped.

19 I have a boy of mine, my son started in the mines,  
20 it was about a month ago. And, I don't want to see him  
21 twenty years from now go through what I'm going through.  
22 And like I say, I don't want to talk much, but I'd like to  
23 see y'all do it because what's been going on for the last

1 twenty-five years of my life, it's not worked.

2 And, I don't think that really what you're trying  
3 to do now is going to solve it. It would slow it down, but  
4 it won't stop it.

5 And if you know it's happening, if it was  
6 happening to y'all, y'all don't want to die. Stop it.

7 And, that's really about all I've got to say. I  
8 just want y'all to really consider it, think about. Think  
9 about us boys, the ones that's went before me and the ones  
10 that's going to go after me, if it's not stopped.

11 But, everybody work together and try to get this  
12 thing to where it ought to be.

13 Like I say, we don't want this to be like a boxing  
14 match, ring the bell, and next time we meet, just ring the  
15 bell and start another round.

16 Let's put an end to it. Find a resolution now  
17 while we got time. And, just try to end it. Thank you.

18 MR. NICHOLS: Thank you, Larry. I can't read this  
19 next name. Darrell Perez? Anybody whose first name is  
20 Darrell? Okay. I've got James Linville and James Jarrell  
21 on the list. They've already presented comments. Bobby  
22 Mullins?

23 MR. MULLINS: My name is Bobby Mullins, B-O-B-B-Y,

1 M-U-L-L-I-N-S. I work in District 17, Local 9177 in Boone  
2 County. I've been a coal miner for about twenty-three  
3 years.

4 I don't work underground, never have worked  
5 underground. I've been in a prep plant all my coal mining  
6 career, same one Jim Jarrell works at.

7 And from listening to the testimony, I thought  
8 that perhaps an experience we had at our prep plant might  
9 shed a little light on one of the key issues that seems to  
10 be the panel's proposal to bring dust control under -- or,  
11 to bring dust under control.

12 And, that is the planned engineering controls --  
13 what do you call it, the proposed plan, control plan.

14 We have at our plant, and we've had it almost  
15 since it's been built in '87, we have a dust control program  
16 in place, because when we started up, we were out of  
17 compliance with dust. And it's similar, I think, with what  
18 you propose to do with underground mining and I'm not sure  
19 what you're going to do with surface mining when you address  
20 that.

21 But, we have a dust plan system. And, we were  
22 noticing that at times the dust would get real high in our  
23 plant. The men that worked there could notice the levels of

1 dust going up without having any tests taken.

2 We went to management several times about this  
3 problem. And they said there was no problem, except maybe a  
4 few holes in some of our dust plate tubes and this sort of  
5 thing.

6 Well, this went on for quite some time. So  
7 finally we contacted MSHA. They did come up and do a dust  
8 sample run.

9 And, we were out of compliance. We weren't  
10 citable, but we were above the limits that they wanted to  
11 see us to run at. Okay.

12 So the company was told to correct the problem.  
13 They had to do the, I think it's a thirty day sample for  
14 three months. They had to take the frequent samples. With  
15 the sample averaging, they were able to get it down within  
16 compliance.

17 So I'm really happy to see that you do the full  
18 shift sample. I can see where that would really be a benefit.

19 But, the problem wasn't solved. I could tell it  
20 wasn't solved because I worked in the atmosphere.

21 So, the company formed a committee with the union  
22 members at the mine to address the problem and see if we  
23 could come up with a better solution.

1           And the problem was addressed and the company  
2       said, "this is the way to go with this," new shoes, this  
3       sort of thing, things that had gotten a little bit of age on  
4       them, and they were not doing quite the job they did do.  
5       They did that, and I could still tell that the dust levels  
6       were higher than they should be. And, I insisted that they  
7       do more. And, this went on for three months.

8           And finally, they went to the dust control fan  
9       that we had and I insisted that they take air readings on  
10      it.

11          And come to find out, our dust control fan was  
12      running backwards. So, there was no dust being taken out of  
13      the air. If anything, there was more dust being generated.  
14      It was blowing the dust off the belt.

15          And the reason I bring this up is if you have a  
16      plan and you say the minimum requirement is the bimonthly  
17      samples from MSHA, then if this problem came up under that  
18      system, it seems to me that even if MSHA came in on the  
19      bimonthly thing and they take their readings, if they're out  
20      of compliance, then could not this problem go on for several  
21      months?

22          And then, the burden is all on the miner to prove  
23      that there's something that can be done that's not being



1 paper I had, Tom.

2 MR. NICHOLS: We had an overhead somewhere.

3 MR. KOGUT: No, I had that, I put some data  
4 together.

5 MR. NICHOLS: Are you talking about the averaging  
6 chart we had up on the screen?

7 MR. WILSON: Yeah.

8 MR. SCHELL: Oh, you mean that showed the average,  
9 the difference between averaging and single sample?

10 MR. WILSON: Where you showed -- it was your last  
11 little presentation and then afterwards, you talked about  
12 the number of citations that had been issued during the two  
13 periods.

14 MR. SCHELL: Okay, hold on one second. We can  
15 reproduce it, Tom.

16 MR. WILSON: You don't have to do that. If you  
17 would, for the UMWA by the quickest means possible, provide  
18 that for us, along with a comparison of had it been under  
19 the averaging, current standard, how many citations, side by  
20 side comparison of those same samples?

21 MR. SCHELL: Will do.

22 MR. WILSON: Okay, thank you. Over the last two  
23 days -- is this mike on? Okay. Over the last days, you've

1 heard a lot of testimony concerning the miners' wish for  
2 there to be increased sampling days, and the strong feelings  
3 that under MSHA's proposed rule there's an inadequate number  
4 of sampling days.

5 And, I hope to quickly be able to do this. But, I  
6 want to briefly walk back through the transcript of  
7 Charleston, Salt Lake City and Lexington, just so everybody  
8 can get a feel for where I believe MSHA was at on all three  
9 of those dates.

10 And I don't plan to read all the transcript or  
11 testimony into the record. And, I will say that at least on  
12 Lexington, MSHA's figures at that point was charged by the  
13 committee to come up with something that was reasonable, and  
14 not consider cost at that point.

15 And, we first will deal -- this is the reason I  
16 asked for Ron to be here, because it was his testimony --  
17 with Charleston. This is Mr. Schell. "We have looked at  
18 the issue to determine what we could do and what we  
19 realistically felt that we couldn't do, if a determination  
20 was made that MSHA would do all the compliance sampling.  
21 And a couple of the things that we tried to factor into  
22 that, and there are things that you talked about today that  
23 we think are important, we do think that having adequate

1 plans is key, and we think having verified plans is key.  
2 When we looked at our resources, we basically assumed that  
3 we could be making determinations based on single sample  
4 measurements. So we weren't looking at days of multiple  
5 sampling on a routine basis.

6 We also tried to be realistic in that we don't  
7 anticipate that our agency or any government agency will  
8 continue to grow in the future. So, we need to factor in  
9 what's going to happen in the future.

10 Given that, I can tell you what we can't do. We  
11 can not assume the operator sampling program and sample on a  
12 bimonthly sampling. We don't have the resources now to do  
13 that. And with our estimates of the amount of resources it  
14 would take, I don't think we could ever do that.

15 Our current thinking -- and again, I have to  
16 preface this by saying that we haven't talked to the  
17 Assistant Secretary about it -- but, our current thinking is  
18 that we might perhaps be able to double the amount of  
19 sampling that we do underground. We think that we might be  
20 able to double the amount of sampling on the surface where  
21 we've identified potential problems.

22 We think we also will have to increase targeted  
23 sampling at mines where we've identified problems, and that

1 sampling could include going back four times a year, or five  
2 times a year. So, that's the ballpark numbers that we've  
3 been discussing, given the overall resources."

4 Dr. Wagner: So, you're saying you could get to  
5 each mine twice a year and to troubled mines four or five  
6 times a year, but nothing more? Mr. Schell: I would  
7 probably say we could get to underground operations twice a  
8 year. Dr. Wagner: Above ground once a year? Mr. Schell:  
9 Above ground once a year, except those operations that we've  
10 identified as having a problem or a potential problem.

11 That was in the Charleston hearings. And, that  
12 helped shape the discussion of subsequent hearings.

13 Now we'll flip to Salt Lake City. Mr. Schell: At  
14 the meeting in Charleston, I indicated that at the staff  
15 level we had talked about what additional resources MSHA  
16 could commit to sampling, and that really was a staff level  
17 discussion.

18 After the meeting we went back and we took into  
19 consideration the comments of Mr. LaMonica, Mr. Main and we  
20 have met with our managers, and we've had discussions higher  
21 up in the organization, and we have modified our position on  
22 the level of sampling that MSHA can undertake, recognizing  
23 that we need to do more, and assuming that we're going to be

1 citing based on single sample measurements.

2           What we propose to do now is under our Act, we are  
3 required to inspect every underground mine four times a  
4 year. We're required to inspect every surface mine twice a  
5 year. We will conduct a full shift sampling inspection  
6 during each of those regular inspections. We refer to those  
7 as triple A inspections.

8           So, every MMU underground will be sampled four  
9 times a year. Basically every pit on the surface will be  
10 sampled twice a year.

11           In addition to that, we will target our problem  
12 mines. They would be sampled at least bimonthly.

13           The particular effect of doing that is that the  
14 number of samples taken by MSHA on the surface will increase  
15 significantly. We will sample approximately four times. We  
16 will take approximately four times more samples on the  
17 surface than we do presently.

18           Underground, the number of samples that are taken  
19 will be reduced by approximately one third. However, we do  
20 not think that there are some -- excuse me. However, we do  
21 think that there are some advantages to MSHA sampling over  
22 operator sampling that you should be aware of. First when  
23 MSHA samples, we know and we can document the dust control

1 parameters in place and the work practices that occur on  
2 that section.

3 Over time, that gives us an enormously powerful  
4 tool to be able to make judgement on what works and what  
5 doesn't work.

6 So we think that collecting that information four  
7 and two times a year is a significant improvement in the  
8 program.

9 Secondly, when MSHA samples, we sample multiple  
10 occupations. More miners will be sampled under our program.

11 Currently as you know, the operator samples the DO  
12 once on five consecutive shifts.

13 MSHA samples the DO, all sectional DAs and other  
14 miners up to five miners per shift.

15 So we will be sampling more people underground,  
16 although there will be fewer samples taken.

17 On the surface operations today, they're only  
18 required to sample bimonthly, if MSHA has designated those  
19 occupations as being potentially at risk, the DWPs.

20 There are about three hundred mines in the country  
21 that have to sample on a bimonthly basis.

22 If MSHA conducts two samplings on the surface, as  
23 I have indicated before, we will be sampling four times. We

1 will be taking four times as many samples, and we will  
2 sample a lot more occupations, because like underground,  
3 when we go out in the mine, we will take the pumps with us  
4 and we will try to sample up to five people.

5           Lastly, since our inspections are announced -- are  
6 unannounced, excuse me. Lastly, since our inspections are  
7 unannounced, we think that our sampling will be the most  
8 representative sampling that we can get of what actual  
9 conditions are.

10           Secondly, because our sampling is random, we  
11 believe we'll sample all mining operations, longwall start  
12 ups, turning cross cuts, regular mining.

13           And lastly, we will have the benefit of the  
14 miners' representative on each of these sampling  
15 inspections. They go with us now. That's a statement  
16 raised by one of the speakers here. That's correct. They  
17 have that right now.

18           But currently, basically we sample underground  
19 once, surface once. Now we'll be sampling four times  
20 underground with the miners' rep, and we'll be sampling  
21 twice on the surface with the miners' reps.

22           Chairman Wagner: When you say there will be a  
23 third reduction in sampling underground, you're referring to

1 a third reduction in compliance sampling, not a third  
2 reduction in MSHA sampling. Is that correct?

3 Mr. Schell: Yes. What I'm saying is if you  
4 compare the number of samples operators take now to --

5 Chairman Wagner: To what you would be taking for  
6 compliance? Mr. Schell: Yes, yes. Chairman Wagner: Okay,  
7 fine. Mr. Weeks: So if they sample ninety thousand, you'd  
8 be doing sixty thousand? Mr. Schell: Yes.

9 Dr. Dement: Is that really true, if you include  
10 the plan samples, any samples that might be required to then  
11 show changes in plan or perhaps plan changes triggered by  
12 inspections and third reverification plans required by MSHA?

13 Mr. Schell: We'll be doing more sampling than  
14 just this. As I've indicated to you, we will be doing  
15 targeted inspections.

16 Our discussions have focused on the point that you  
17 thought the verification sampling should be different than  
18 the compliance sampling.

19 We didn't have the benefits of the conversation to  
20 factor that into these figures, and recognize that we do  
21 undertake special initiatives that generate additional  
22 sampling. That's not included.

23 But if you look at the basic quality control

1 sampling program, that's where you get the one third  
2 reduction. And, it basically comes down to the fact that  
3 mine operators today sample on a bimonthly basis. They  
4 sample six times a year underground. We'll be basically  
5 sampling four times a year.

6 Chairman Wagner: You're saying sample, but not  
7 necessarily, when you summarize by saying it's a one third  
8 reduction in total number of sample counts, it's not a one  
9 third reduction.

10 In fact, there's been an expansion in total amount  
11 of information coming out of the mine in a year because  
12 you're sampling different, a fuller range of mines, Mr.  
13 Schell.

14 That's where I'll move on and go to Lexington.  
15 Dr. Wagner: Who can speak for the agency's discussion? Mr.  
16 Miller: Mr. Schell.

17 Mr. Schell: I want to thank you for the  
18 opportunity. This was a tough assignment. Every time we  
19 started talking about it, we'd make one suggestion and find  
20 three other things we needed to add to it. We'd add those,  
21 and we'd find four other things to add to it.

22 So what we're going to give you is what, based on  
23 an ten minute exercise, we felt might be a point at which to

1 start. The amount of time we spent on it may reflect the  
2 value of our presentation to you.

3 But, this is our best attempt to try to address  
4 your comment, that we sample at a level which is sure  
5 representative characterizations of respirable dust  
6 exposure. We would really also like input from you on what  
7 you think that level would be.

8 We also tried to be reasonable, but we didn't try  
9 to factor cost into this. We do recognize that what we're  
10 talking about here would involve significant costs. But  
11 again, we tried to follow your mandate, Doctor, which was to  
12 ignore costs and try something that was reasonable.

13 We started out saying that we would have three  
14 assumptions, the first being that we were using single  
15 sample to make compliance determinations, the second being  
16 that we would have better plans and verified plans, and  
17 that's no small topic in our view.

18 We sincerely believe that verified plans that  
19 control the dust, that are checked every day is a  
20 significant improvement to the existing program.

21 Having said that, what we think might be a  
22 reasonable starting point for a reasonable program would be  
23 to sample each month, each MMU. That would involve taking

1 our five samples, one in the DO, one on four other  
2 occupations, make compliance determinations on each of those  
3 samples.

4 Factored into that, we would like to focus  
5 targeting efforts at bad mines. Targeting, we'd sample as  
6 frequently as we felt we would need to.

7 We also believe we would consider a less frequency  
8 at good mines. That means that we would be sampling each  
9 MMU at a minimum roughly of about twelve times a year, each  
10 surface facility four times a year.

11 That wouldn't be the total sampling, because in  
12 addition to that, we'd have to do abatement sampling. So  
13 abatement sampling would put us there on multiple shifts for  
14 we estimate at a minimum another ten to twenty percent  
15 sampling days.

16 We also would have to return to sample when we  
17 didn't reach production levels. We believe at a minimum  
18 that would be an additional thirty percent of the sampling.  
19 And, that's probably conservative because you could sample  
20 one day and not reach the ninety percent, come back the  
21 second day and not reach the ninety percent, and you'd have  
22 to return a third day.

23 So that would be a significant increase in

1 sampling.

2 Dr. Wagner: Did I understand that with your  
3 explanation of how you would vary sampling according to good  
4 and bad and what have you, that on average, you think the  
5 basic sampling would be twelve times for your underground,  
6 four times for your surface, and the verification to be  
7 determined? Mr. Schell: That's correct.

8 Dr. Wagner: Okay. And then, the percents were  
9 added onto that. Mr. Schell: That's correct.

10 To the best of my ability, that's the three  
11 occurrences where MSHA addressed on the record their ability  
12 to do the sampling.

13 Those three occurrences, each one of them formed  
14 by what they was hearing from MSHA, formed the direction the  
15 committee went on their recommendation, and ultimately  
16 resulted in the committee's recommendation.

17 After each one of those explanations, I think it's  
18 fair to say that it was the consensus of the Advisory  
19 Committee that what MSHA was proposing, even though it was  
20 progressively getting better, each attempt to study it and  
21 determine resources and costs, that even their final  
22 proposal was not adequate.

23 Following the Lexington discussion that I just

1 read, the committee got into a very detail ed discussion  
2 on at least for the interim, maintain the operator's  
3 sampling and how all of this was to be funded.

4 With that said, I don't think it should be of  
5 little surprise that one would get from hearing some of the  
6 panel's comments back to miners, that miners are not  
7 satisfied with where the proposed rule is at.

8 We do not believe there's adequate sampling days  
9 in this proposal, as the Advisory Committee didn't believe  
10 twelve sampling days per MMU per year was adequate. And,  
11 there's a complete discussion in the transcript of the  
12 Advisory Committee as to exactly how that -- all the  
13 feelings on that.

14 I would like to ask that, as many of the miners,  
15 or all of the miners have, again is that consideration, go  
16 back and consider the testimony, the transcript of the  
17 Advisory Committee which spells out clearly how, the reasons  
18 why that's an inadequate number of sampling days in the  
19 nation's coal mines.

20 Now we went from twelve, as I read it, at the  
21 Lexington hearing to when, on July 7th it's down to six.

22 And it is just, it's been said repeatedly, an  
23 inadequate number of sampling days for miners to regain any

1 confidence in the dust sampling program and to adequately  
2 protect miners' health.

3           In the preamble, I'd like to address two of the  
4 areas that MSHA specifically asked for comments on. One  
5 second? These are found on 42128, the middle column. It  
6 reads, we solicit comments on whether MSHA should require a  
7 higher level of confidence that the applicable standards are  
8 being complied with before abating a citation for excessive  
9 dust. Specifically, should abatement determinations be  
10 based on the critical values specified in 70.209?

11           We also solicit comments on whether abatement  
12 sampling should be conducted at or above verification  
13 production level, VPL, as defined in 70.2(a)(a).

14           Under these proposed rules, MSHA isn't proposing  
15 very much sampling at all.

16           Even if MSHA went back and revised these proposals  
17 increasing the number of sampling days, I'm sure that it  
18 would not be raised to the level the Advisory Committee  
19 thought was necessary.

20           Therefore, before abating a citation for excessive  
21 dust, MSHA should have the highest level of confidence  
22 possible.

23           The UMWA believes that abatement determinations at

1 the very least be based on the critical values specified in  
2 70.209.

3           However, the UMWA does not agree that it is  
4 adequate to do abatement sampling at the verification  
5 production level, VPL, as defined in 70.2(a)(a).

6           70.2(a)(a) defines verification production level,  
7 VPL, means the tenth highest production level recorded in  
8 the most recent thirty production shifts.

9           The UMWA believes -- no, we know that the  
10 definition for VPL is one of the weaknesses for MSHA's  
11 proposed rule.

12           This is one of the areas in your proposed rule  
13 where MSHA looked at the sample burden on them, instead of  
14 the health of the miners.

15           MSHA chose to compromise miners' health, so as to  
16 not to have to conduct multiple samples to achieve  
17 production.

18           MSHA should immediately come up with a more  
19 stringent definition for VPL and abatement sampling must be  
20 conducted above the verification production level as  
21 currently defined in 70.2(a)(a).

22           I also need a clarification from MSHA. Is  
23 abatement sampling based on single shift sampling, or not?

1           MR. SCHELL: It's based on single shift, Tom. We  
2 don't intend to average. Tom, let me ask Jon to clarify  
3 this.

4           MR. KOGUT: I just wanted to clarify one thing.  
5 The context of our solicitation when we asked if abatement  
6 should be based on the same set of critical values as  
7 defined in those tables, and that could require more than a  
8 single shift, depending on what the concentration levels  
9 were in accordance with the tables that you cited.

10          MR. WILSON: I want to refer you to page forty-one  
11 of the Advisory Committee report, recommendation number  
12 sixteen, the last sentence of (g), abatement of citations  
13 based on MSHA or operator sample should require the operator  
14 to sample on multiple shifts, as currently required.

15                 Now possibly I'm going to have to think through  
16 that more, on Jon's answer. But, I believe at this point  
17 the intent was not to give the operator just one shot at  
18 cleaning up their act and going down and checking down that  
19 everything's good.

20                 The second part, on page 42128, third column, it  
21 reads, as in the case of MMU abatement samples, we solicit  
22 comments on whether MSHA should require a higher level of  
23 confidence that abatement samples for non MMU, DAs and for

1 Part 90 miners demonstrate compliance with the applicable  
2 standards before abating a citation for excessive dust.

3 Specifically, should abatement determinations be  
4 based on the critical values specified in 70.209?

5 The UMWA would believe that for all the reasons  
6 stated earlier, and even more so in that column, that they  
7 should be based on 70.209. Any questions? Thank you.

8 MR. NICHOLS: Thank you, Tom. Okay, Joe, are you  
9 ready?

10 MR. MAIN: I'm it? Speaking off of what Tom's  
11 testimony was on the Dust Advisory Committee, I did send a  
12 letter to MSHA asking the entire transcript be placed in the  
13 record. And, I'd like to officially provide the committee  
14 with a set of disks. I would urge everybody who has a  
15 laptop to crank it up and look at it. There is a lot of  
16 things that we will be submitting for the record out of the  
17 transcript. It gives a background of the decision making by  
18 the committee, and how they arrived at their conclusions.

19 And for those that would be mystified by the  
20 union's opposition to this rule, I think that if you would  
21 look at the expectations of the union based on the Advisory  
22 Committee created by the government, which we supported, and  
23 which we had believed would be the template for the reform

1 of the dust program, it doesn't take a genius to figure out  
2 why we're disappointed as to where it's at, given the fact  
3 that we've got about twenty-five years of us wearing  
4 ourselves out at microphones talking about the same things.

5 But I would urge, Marvin, that you provide the  
6 committee with a complete copy the most convenient way,  
7 that may be the easiest way, of the testimony on each of  
8 these issues, and request that the panel go through that.

9 One thing I didn't realize until yesterday when a  
10 miner raised it was that there are no coal mining people on  
11 this board. And, I understand the depth of some of the  
12 resources you have, Marvin. But, I do think that poses a  
13 difficulty, as miners are trying to relate to mining  
14 situations that I think the panels really need to be clear  
15 on, the circumstances, to be able to understand how this  
16 rule's going to apply.

17 And I think that my recommendation is that  
18 whenever the government creates panels like these,  
19 particularly on such a serious issue, that we have people  
20 with coal mining backgrounds, who can understand. I think  
21 it's a deficit in the rule making process not to have --  
22 when you have so many people in the agency that could fit  
23 that bill.

1           But, I understand now that question was asked and  
2 the response was there is no coal mining, people that  
3 actually did coal mining in the past.

4           MR. NICHOLS: Well, that's correct. But as you  
5 know, my response was I have several hundred coal mining  
6 people to draw from.

7           MR. MAIN: Yeah, I understand. But this panel  
8 who's taking all this information who are going to help  
9 guide the decision making process, I think it's a deficit.

10          MR. NICHOLS: Okay, but --

11          MR. MAIN: We can disagree on that but I just  
12 wanted to make that a statement from our side.

13          MR. NICHOLS: I'll just say that this document has  
14 been reviewed by a lot of people with coal mining  
15 experience.

16          MR. MAIN: I think it gives people more comfort to  
17 know that people up here understand what they're talking  
18 about from their background.

19                 My next question is what is the MSHA time table  
20 that you have for actually issuing the final rule? As it  
21 stands right now, what is your best guess of the final rule  
22 actually being produced?

23          MR. NICHOLS: Well, we've said we'd like to get it

1 out this year.

2 MR. MAIN: So the expectation is that you'll get a  
3 rule out this year?

4 MR. NICHOLS: That's correct,

5 MR. MAIN: And, there is two rules that we're  
6 talking about. One is the single sample rule. And the  
7 other is the implementation of the whole dust sampling  
8 scheme, the plan verification scheme and all that. Correct?

9 MR. NICHOLS: Yeah, single sample and plan  
10 verification.

11 MR. MAIN: In the plan verification rule or in the  
12 single sample rule, as I understand it, basically it comes  
13 down to a standard by which MSHA may use a single sample  
14 rule to conduct sampling at coal mines. It's a one  
15 paragraph rule that basically just implements a, for lack of  
16 a better word, a policy for conducting inspections in the  
17 regulatory framework.

18 MR. NICHOLS: Yeah, that's right.

19 MR. REYNOLDS: Mandatory standard.

20 MR. MAIN: It's a mandatory standard, yeah. Okay.  
21 And as I understand it, really when you look through that  
22 rule the long term thing that affects that is this standard  
23 or not a standard, but talks about the ninety-five percent.

1 What is it, I've got that word wrong --

2 MR. NICHOLS: The confidence level?

3 MR. MAIN: The confidence level. So, that's  
4 pretty much the single sample rule if you sort of cut it out  
5 from the rest.

6 There are implementation provisions, however in  
7 the plan verification rule that determine on any given  
8 situation how that single sample would be applied, as I  
9 understand it, in that the definitions define what the four  
10 hundred and eighty minute inspection is and through the  
11 preamble policy, defines what is or is not in that category,  
12 to really determine the whole shift aspect of the single  
13 sample. Okay.

14 And as I also understand it, MSHA plans on doing  
15 at least at this stage, six inspections a year or  
16 bimonthly inspections, which is what MSHA as I understand is  
17 currently doing, given the information that was put out.

18 MR. NICHOLS: Yeah, underground, Joe.

19 MR. MAIN: So in other words, if the single sample  
20 rule was implemented, it would allow MSHA to do what they  
21 plan on doing to a great degree, but using -- take out the  
22 averaging problem and deal with that in the single sample  
23 rule, and still do the same number of inspections that they

1 intend to do or that they're currently doing now, kind of  
2 like a round about way of trying to figure out how all of  
3 this works.

4 MR. NICHOLS: Yeah, as we said earlier, that's a  
5 minimum number of inspections.

6 MR. MAIN: But you could use the application of  
7 the single sample rule to carry out the function of getting  
8 rid of that averaging, if the single sample rule went  
9 through, as I understand it, with the same number  
10 inspections that you're doing currently with or without a  
11 change in the regulations.

12 MR. NICHOLS: Yeah, that's right.

13 MR. MAIN: So in other words, we could possibly  
14 resolve of the single sample rule would be with the comments  
15 that have been made by the miners, and some of these other  
16 issues in the Part 90, Part 70, Part 75 areas with regard to  
17 what a full shift is, what the standard actually is using  
18 the ninety-five percent confidence level.

19 As I understand that, you're applying that to Part  
20 70.100 by saying that that two milligram standard in 70.100  
21 would be two point three three, because actually it's the  
22 standards in Part 70 that's going to be affected.

23 The ninety-five percent thing has nothing to do

1 with setting the standard itself. It's a formula by which  
2 you would apply whatever's in 70.100. Correct? And, 90.100  
3 and so on?

4 MR. SCHELL: That's right.

5 MR. MAIN: Okay. I think there's been a lot of  
6 testimony since I started these hearings in Morgantown that  
7 have made a couple of things fairly clear, that miners are  
8 dissatisfied with this rule, and that there have been some  
9 requests to have the rules to go back to the drawing board  
10 and be revised.

11 I'm just trying to figure out, you know,  
12 logistically what the regulatory parameters are here because  
13 I think that does provide some leeway to allow what needs to  
14 be done here on the part of the miners, and allow the agency  
15 to move forward with at least one piece of that rule, if I  
16 understand the separation of the two rules correctly.

17 And having said that, the agency, the Department  
18 of Labor which is the primary party, did in fact at the  
19 request of the operators send a rule back to be revised and  
20 republished in 1999, I believe it was. I've lost track with  
21 all the regulations I'm working on. But I had been working  
22 on the rules to reform the federal Black Lung Disability  
23 program.

1           There was issues raised by the industry that they  
2 were dissatisfied with certain issues. The Department of  
3 Labor pulled that rule back, issued another proposal and  
4 went through the process again.

5           So there's nothing that's been said here that is  
6 uncommon in the regulatory scheme of things that has been  
7 raised in so far as the concerns of the miners.

8           I sat through two days of testimony here and  
9 through a day in Morgantown, and I have walked away with one  
10 clear conclusion, that the miners have been consistent about  
11 saying that these regulations fall far short in several  
12 areas, that there is an overhaul of the regulations that  
13 meets the miners' needs and needs to meet the needs of the  
14 Advisory Committee time after time to the point that I  
15 think, you know, you could just play the worn record over,  
16 as many miners testified.

17           And I think given the mass volume of testimony the  
18 agency has taken thus far, there is an obligation to listen  
19 to what the public comment is on this rule. I think that  
20 that's one small piece of the government's influence that  
21 the public still has left in this country.

22           And, I think when the public does come out with  
23 those kind of straight forward concerns, requests and

1 demands, that there is an obligation on the part of the  
2 government to heed the comments.

3           And along those lines, I will reiterate what we  
4 have said, is that this regulation is fatally flawed, needs  
5 to go back to the drawing board and needs fixed consistent  
6 with the historical record that has been established.

7           And I'm going to build a little bit more on that  
8 historical record here this afternoon because I think the  
9 committee -- there is some of the pieces of the historical  
10 record that's missing that I think we need to make clear  
11 before this whole process winds down.

12           You know, many miners have said, as they testified  
13 here and left, but we talked and asked us guys, you know,  
14 what we all think, and I think that there was a lot of  
15 miners walked out of here thinking that this agency again is  
16 not going to listen to what they have to say, not going to  
17 react to that.

18           Now that's not Joe Main's opinion. That's more  
19 like one of those Joe Main polls where I ask miners as they  
20 go through the process.

21           And if you look at history, you know, they're  
22 probably right, you know, that's one of the sad realities  
23 that we have. We have a legacy of the government talking

1 about doing a lot of things and not following through.

2           And along that line, I'm just going to go back to  
3 another document, which I don't have a copy of. If you need  
4 it, I can provide it. It's actually probably part of the  
5 regulatory record now.

6           But, it's a series of note takings that took place  
7 on plan verification meetings that was held in preparation  
8 for this rule and it was prepared and sent out to us by Pam  
9 King, and it was sent to Ed Green, Joe LaMonica, Joe Main,  
10 Bruce Watsford.

11           And, I'm just going to read. This is the agency's  
12 own documents that was prepared by them on notes of meetings  
13 that were held in preparation for this rule making and in  
14 particular plan verification, airstream helmet use and those  
15 things.

16           On page five of the document that is meetings with  
17 UMW Safety Committees that's attached, there is some  
18 discussions on miners working outby.

19           And of course, I've heard a lot of discussions  
20 about miners working outby. They are not sampled, not as it  
21 is, the clear message I've got as a member of the Advisory  
22 Committee, in talking to coal miners in mines, coming to  
23 these kinds of sessions and there's been a loud and clear

1 message that I think has been out there for some time, but  
2 the contents on page five of this document states another  
3 UMWA commenter wanted to know why sampling was concentrated  
4 only inby. He stated that he had worked outby for twenty  
5 years and never seen sampling take place.

6 Schell -- I don't want to put you in the spotlight  
7 but, I think you're the Ron Schell we're talking about here  
8 -- Schell responded that MSHA had not focused on this, but  
9 would look into it. MSHA has an outby DA and sees no  
10 problem doing this.

11 The same commenter wanted to know about the silica  
12 dust including the outby. Schell indicated that MSHA would  
13 focus on the outby.

14 Now again, just what miners hear from the  
15 government and what they see, this is reality.

16 This miner, whoever he was and these miners  
17 sitting in this room that heard that, and saw the agency  
18 come back with a proposal that did one sample outby, I think  
19 that any way you look at it, it probably shakes those  
20 people's confidence that the government really heard what  
21 they had to say and responded to that.

22 That's again a matter of record. And, it was in  
23 preparation for the very rule that we're talking about

1 today.

2 As I see the end result, there was very little  
3 consideration given to the outby miners and outby sampling  
4 in coal mines.

5 And, I do believe these miners are absolutely  
6 correct in what they're doing is to get a DA tied to a  
7 drive, and get all these miles of belt lines, all this dust  
8 everywhere else, as one gentleman talked about being moved,  
9 as a Part 90 miner, into that area because it was a cleaner  
10 sampling, where they had him shoveling belt the day they did  
11 the sampling. And I think the panel needs to listen to  
12 those kind of things carefully.

13 That's really where I'm talking about really if we  
14 had people with mining experience to understand that, I  
15 think they would be more helpful. I don't know, but in my  
16 opinion, it probably would, for things like that, just  
17 giving it the attention that it probably needs.

18 On page three of that same document when they were  
19 talking about the plan verification process, and I think,  
20 Ron, you were doing it at the time, it says another UMWA  
21 commenter asked about the three verification samples that  
22 MSHA was talking about at the time, and how would MSHA deal  
23 with the other twenty-seven days . He said it's not

1 hard to get three nice samples, which we have all  
2 experienced in a lot of testing over the years and how  
3 operators create nice samples to get in compliance.

4 Schell said that this issue was being addressed by  
5 the plan proposal to require continuous monitoring. And I  
6 think people walked away from that meeting, and people  
7 who've watched the news accounts of continuous monitoring  
8 over the years firmly believed that this agency was, you  
9 know, was going to do it, that it was something that was  
10 going to be coming out as a protection that they had been  
11 seeking for twenty-five years.

12 But as we know when we read the rule, and I'm sure  
13 the miners that was in this meeting that heard that was  
14 probably somewhat disappointed in that the expectation that  
15 was there was not a reality when the government made its  
16 decision. And again, I think those kind of things go to  
17 shake the confidence that the miners have in this whole  
18 regulatory process that makes it very difficult for all of  
19 us. And, I don't defend what you guys say any more. I just  
20 say watch and see what they do. And that's unfortunately,  
21 you know, the situation.

22 With regard to, and I'm going to introduce that as  
23 a document in the record. If you can't obtain a copy of

1 that, let me know. We'll probably talk about that more as  
2 the hearing and public comment period goes on.

3 But, we do have to say that the comment period was  
4 very, very short. Myself and a lot of other folks have  
5 probably trimmed a few years off our life with the sleep  
6 we've lost, maybe some on the panel, too. But, this has  
7 been a tremendous amount of information and a tremendous  
8 amount of change that has taken place in such a short period  
9 of time, I mean a lot of miners came here not even having a  
10 clue and I'm telling you there's miners out there widespread  
11 that this document is so massive, they can not begin to  
12 comprehend what's in it.

13 I've gotten an education at both of these hearings  
14 and I've learned a lot. I've studied this thing frontwards  
15 and backwards, talked to everybody I could to figure it out.

16 There's absolutely no way that the average coal  
17 miner out there has a clue as to what's in the package and  
18 how it works. And, I think the thirty day time period was a  
19 real problem with that.

20 I understand the expediency at which the  
21 government wants to move, but I think there's a detriment  
22 for miners who don't get an opportunity to even understand  
23 what the government's moving on, is something that really

1 happened in this rule making process, and I'm not sure that  
2 we will not ask for an extension because we've tried to cram  
3 so much stuff in a short period of time.

4 We do appreciate the openness and opportunity  
5 we've had at the hearing, but as you can see, there is  
6 virtually a pile of stuff that we're just trying to pull out  
7 and put together as we go.

8 With regard to the sampling scheme, as I  
9 understand it -- and Ron, I think you've done a fair job up  
10 in Morgantown and here in explaining it -- once a mine  
11 operator gets a plan verified, whether it be one sample, two  
12 samples, three samples, then your back up to determine  
13 compliance with the standard and to do the back check as to  
14 what miners are really being exposed to and then measuring  
15 activity is going to be a bimonthly sample which will take  
16 place.

17 MR. SCHELL: Yeah, that's part of it, Joe, also  
18 it's the daily checks.

19 MR. MAIN: Okay, but as far as the verification of  
20 what the exposure is, as I understand it, the only tool they  
21 really have in there to do air measurement to verify is the  
22 bimonthly sample six times a year. There's no other  
23 environmental sampling that takes place to determine a

1 miner's exposure once the plan is verified.

2 MR. SCHELL: That may not be correct, Joe. As you  
3 know, we have a health standards compliance program where we  
4 target mines that have problems, and they get sampled much  
5 more frequently than six times a year.

6 Also if the inspector goes in there and sees  
7 something that isn't right, for example, we mentioned that  
8 one of the things we're going to be doing is checking  
9 production rates, if we see production going up higher than  
10 what it's verified at, we'll be coming back to do sampling.

11 So I want to stress what Marvin had to say, that  
12 that sampling that six times is a minimum. We clearly have  
13 places where we're going to be sampling more than six times.

14 MR. MAIN: But the way the agency's resources is,  
15 and that again gets into what money you have to do what  
16 you're going to do and any budget cuts may influence that,  
17 which we all realize.

18 MR. SCHELL: Well, the one thing we are committed  
19 to is paying more attention to those operations that have  
20 been shown to have problems.

21 MR. MAIN: Now the reason I asked that question is  
22 that I want to introduce another document into the record  
23 and I'll try to provide more copies. My car was packed to

1 the hilt with everything else I had.

2 But, it's the Louisville Courier Journal. It's  
3 the series that was ran in April of 1998. And this is the,  
4 they call it the, I guess edited version or a reprint of the  
5 series, which tidied up all the week long articles into one  
6 collection of newspaper print.

7 And as you read through this, and if there is  
8 anybody on this panel who hasn't read this article, you  
9 should stop what you're doing and take about five --  
10 probably more than five minutes, probably about a couple  
11 hours and read through it, because it has a lot of quality  
12 information, I think well documented pieces put together on  
13 any dust investigations in modern times.

14 As a matter of fact, I understand the chief  
15 investigative reporter was awarded a medal by the President  
16 of the United States for the outstanding job that he did  
17 putting this document together.

18 So having said that, I'm sure the President of the  
19 United States would not bless some kind of article that had  
20 some false parts to it, you know.

21 MR. REYNOLDS: Do you have the date on that, Joe?

22 MR. MAIN: This is the, actually a reprint. I  
23 figure the one on this is April the 19th. It ran through, I

1 think five different days. But, the series reprint will  
2 have that week's worth of information.

3 As I read through this and look at the other  
4 miners that's not represented in this room, I don't know if  
5 anybody noticed there's not many non union miners here in  
6 these hearings. They may have been, and if they were, I  
7 just missed them.

8 But as you read through this article, it tells a  
9 pretty compelling story about how different mine operators  
10 just don't follow the rules and don't work within the  
11 confines of the rules. And, many of those have been nailed  
12 through criminal investigations and have been convicted  
13 because of criminal conduct, to run operations in what we  
14 would call an, I think outlawish way that cheated on dust  
15 sampling and exposed miners to unhealthy dust.

16 And it has -- this story has interviews with mine  
17 officials and miners that was used to put together the  
18 thrust of the article. I think there was two hundred and  
19 fifty-five individuals, either miners, mine officials, mine  
20 superintendent, mine foremen interviewed for this article.

21 But, it tells a pretty clear story here that at  
22 these mines, the mine operators when there is no miners'  
23 representative to protect labor, as is outlined in this

1 article, has ran operations that whenever there is no MSHA  
2 folks around to peer in their door, that they didn't follow  
3 those parameters very well, and that great plan that we want  
4 to get to, Ron, which we agree with, that you need good plan  
5 verification, was out the window, wouldn't put up line  
6 curtains, you know, didn't install the controls and did not  
7 protect these miners.

8           And if you'll read the story, you'll find out that  
9 miners in a lot of these mines are working in economically  
10 depressed areas where in their own mind, "that's the only  
11 job I can get," you know, "I've got to go along with the  
12 program here or you know, I'm not going to have any  
13 employment," and there is a fear of miners to speak out  
14 because of that about the conditions they're in.

15           And as I pondered this in the last several years,  
16 how is it that we protect those miners? And, when I asked  
17 the question about the six samples, I think the six samples  
18 aren't enough there.

19           I think probably a hundred samples or times are  
20 not enough.

21           And, there needs to be something else done that  
22 replaces that MSHA inspector at that coal mine when that  
23 MSHA inspector is not there to help protect those miners who

1 lack a voice, if you believe what you read here, and is  
2 hostage to these dust conditions.

3           And, that's where you get to this whole thing of  
4 bolting down your continuous monitor to the darn machine,  
5 that they can't drag back to the dinner hole, to try to  
6 design it in a way that it's tamper proof, that has some  
7 recording of the dust levels for those miners.

8           At the end of the day, unless you want to send all  
9 your inspectors to these mines that's discussed here, I  
10 don't think that's going to help those miners. Maybe, you  
11 know, on some days you will.

12           The plans they have, I think continuous mining  
13 plans, I think we all know those are fairly well figured  
14 out, been figured out for years.

15           But when you don't employ them, the miners are  
16 stuck in the dust and it's a serious problem.

17           And, we would all hope that the miners would speak  
18 up for themselves and say, "hey, we can't let this happen."  
19 But we also know just the immense intimidation that has  
20 taken place at a lot of mines throughout this country and  
21 some of the tactics that some of these mine operators went  
22 through to cheat the system, exposing those miners to  
23 unhealthy coal dust, who at the end of the day in the State

1 of Kentucky can't get black lung compensation, I think it's  
2 maybe up to two or three to get approved for full time  
3 disability now.

4 On the federal level when they apply for black  
5 lung disability, at best it's seven percent of those who  
6 apply under the current rules are approved for disability  
7 payments.

8 So these poor miners to put it bluntly, are  
9 screwed both ways. They've got to eat the dust for fear of  
10 losing their job. And at the end of the day, they get no  
11 compensation for the disability that they have encountered.  
12 And, I think that is very sad.

13 And, I think that the standards that is proposed  
14 do not in any measurable way take care of that problem. If  
15 they ain't going to follow the plan, the best one we do, and  
16 if we're only infrequently around these mines, what is  
17 there? How do we fix that problem? And, I think that is  
18 the question that the panel really needs to wrestle with.  
19 It is my personal opinion after everything I've read the  
20 worst exposure of miners in this country, the high dust  
21 levels is the mines described in this article. And if you  
22 don't aim something at that, then I think you're missing a  
23 big mark.

1           Now one thing that we were very upset about, which  
2 again relying on the government to carry out its  
3 responsibility, there is the provision for mine operators  
4 who engage in criminal conduct to be punished that way.

5           And, I don't believe in having to stand around and  
6 put everybody in jail. I don't believe in that.

7           But, I do believe that those who go out and engage  
8 in outlawish practices, intentionally exposing miners to  
9 unhealthy coal dust while they keep the mines running should  
10 be treated as criminals when they do that and have miners  
11 there breathing unhealthy levels of coal dust.

12           MR. NICHOLS: You're not saying we don't do that,  
13 are you?

14           MR. MAIN: I am saying on all counts, I have been  
15 told by the agency that that's not an important issue.  
16 There's an article in here by the chief of MSHA that, you  
17 know, that pretty well reflects that.

18           I do know I've looked at the numbers, Marvin, and  
19 I've seen the numbers of criminal cases. And we do have  
20 that information coming, by the way. We still as of this  
21 morning haven't received the FOIA on the update.

22           But, I know the numbers of those has dropped off  
23 dramatically. I know there's a criminal prosecution wing

1 that was eliminated.

2 And, I can only say what I have heard directly  
3 from the agency, that this is not that important.

4 And, I think you was in a meeting when there was  
5 an expression with officials of the mine workers and the  
6 union along that very lines, that there was a lack of  
7 confidence in using the criminal tools because it takes  
8 years to prosecute. Okay?

9 MR. NICHOLS: I don't recall exactly the meeting,  
10 but these special investigators work for me, and I can tell  
11 you that all of those folks who testified in that series of  
12 Courier Journal articles were followed up on.

13 And, there is no backing off of criminal  
14 prosecutions on the part of Coal Mine Safety and Health. I  
15 can tell you that.

16 MR. MAIN: I'm just saying that by the statements  
17 of the agency itself, one of which is contained in this  
18 document, and one in the meeting that I was in, it was very  
19 clear to me that the agency did not believe that was a tool  
20 that should be used to deal with cleaning up the dust  
21 program. That's the clear impression I had been left with  
22 by the statements that have been made. And, I had looked at  
23 the numbers that reflect a major decrease which means one of

1 two things, that things have gotten a lot better, or we've  
2 quit looking as hard.

3 MR. NICHOLS: Well, I think what you've seen was a  
4 period of time there where we prosecuted a lot of  
5 independent dust samplers. We had this big chunk back with  
6 the all white cinders case. And then, it leveled out.

7 I think you had mentioned in Morgantown, if I  
8 recall, a hundred fifty prosecutions, and the number is  
9 greater than that. I don't remember what it is, but it's  
10 more than that.

11 MR. MAIN: Most of those ended, I think -- we'll  
12 have those records -- but most of the cases ended somewhere  
13 around '94/95 and it started getting down to about one or  
14 two cases, Marvin, and I'll let the record reflect  
15 whatever's in the document that you gave us.

16 MR. NICHOLS: But, I believe I'm right on this.  
17 And in fact, a lot of those were the dust samplers at that  
18 time. So.

19 MR. MAIN: There is an article in here which I  
20 will have at the next hearing. I'm not going to waste much  
21 time, but it's a statement of the Assistant Secretary on the  
22 criminal stuff.

23 I think what happened when those messages did go

1 out, Marvin, it left the impression with a lot of us and  
2 probably a lot in the industry that that was a tool that the  
3 agency had pretty well put back in its pocket and now, you  
4 know, whatever happened happened. But, I think the  
5 impressions out there was fairly clear on those activities.

6 And, I think that for the agency to pull that chip  
7 off of the table, or leaving the inference that it did left  
8 a lot of operators in less of a need to be more concerned  
9 about fixing this problem today. I think that was a very  
10 concerning action of the agency, and I think the agency  
11 supported that at the time. And, you don't treat everybody  
12 like criminals. I'm not suggesting that at all. But the  
13 ones that do go out there and, you know, create false  
14 samples by doing them in the basements in their offices and  
15 doing these dastardly things to allow the kinds of  
16 conditions that existed in that article, which I believe is  
17 about half of that story, that is a serious problem that  
18 needs the kind of enforcement tools that Congress put in the  
19 Act to deal with that.

20 The continuous monitor -- and, I'm going to move  
21 as fast as I can -- there's a lot of documentation on  
22 continuous monitoring and I just wanted to bring this all  
23 into the record, and try to bring it into perspective.

1           And having heard so many things from the  
2 government, I'm going to have to go back and read, is that  
3 what they actually said. And, I think it is. It is in the  
4 documentation.

5           On April the 8th, 1980, MSHA published a final  
6 rule. And I guess I mentioned this, but I didn't submit  
7 this actual document into the record, and I will today.

8           And, it will be called CM Number 1. And in the  
9 rule, the commentary on that rule, after hearing pleas from  
10 miners about building a continuous dust monitor, the agency  
11 says that several commenters suggested that respirable dust  
12 sampling under this rule be done with sampling devices that  
13 can be mounted on mining machinery, give a continuous read  
14 out of dust concentrations.

15           Commenters recognize that unlike the current  
16 approved sampling devices such as the MSA Model G or C115  
17 and so on, you know, devices, further technological  
18 developments is necessary before continuous read out devices  
19 can be reliably used to monitor dust in the mines.

20           However, MSHA believes that every effort should be  
21 made to advance sampling technology, and has embarked on an  
22 intensive program to develop a reliable machine mounted  
23 continuous dust monitor.

1           Prototypes have been developed and are currently  
2 being tested in several mines. In addition, the Bureau of  
3 Mines is pursuing research in this area.

4           Now, that was a statement that the government made  
5 in a commitment they made to miners on April 8th, 1980 that  
6 was in response to miners' demands for continuous monitors  
7 being in coal mines. And, this is the year 2000, some  
8 twenty years later, a little over twenty years later.

9           Also on April 17th, 1991 after there was a major  
10 announcement of dust fraud again, this recurring again as we  
11 all know in the coal mining industry because it has been a  
12 real problem; there has been dust problems since we started  
13 the sampling.

14           On April the 17th, the Secretary of Labor in  
15 conjunction with MSHA issued a press release. April 17th,  
16 1991, and I will introduce that into the record later. I  
17 picked up the wrong press statement when I put this package  
18 together in the wee hours of this morning.

19           But what it did was it announced that the  
20 government was forming a task force. Three of the primary  
21 objectives in that task force was basically to look at the  
22 MSHA take over, increased miner participation in the  
23 sampling program and, let's get this continuous dust monitor

1 built.

2           And miners hearing the government and reading this  
3 in the press says, "they're going to do it for us again,"  
4 because it's a commitment of the government to move this  
5 technology forward.

6           The task force issued this report, which is  
7 document number three, CM3. And when they issued their  
8 report, the task force -- this is from page fifty-one -- the  
9 task force recommends the following actions to achieve the  
10 goal of the continuous monitoring of the mine environment,  
11 and a celebrated research program to evaluate existing state  
12 of the art technologies and potential for use, and  
13 development of a fixed site underground mine dust monitor.  
14 Applicable technologies to be considered are light scanning  
15 and the different technologies available at that time.

16           The ultimate goal is to have an instrument that  
17 can be used as a fixed site monitor that will provide  
18 continuous information to the miner, the mine operator and  
19 the status of dust resulting from the mining process, as  
20 well as information on the status of compliance with respect  
21 to the applicable respirable dust standard, and goes on.  
22 But, I think you get the gist.

23           And this was again -- and, this went to all the

1 miners. When this thing came out, I sent it to them and  
2 again, we highlighted, hey, we didn't get what we wanted  
3 here, but you know, the government again is going to deal  
4 with this, this is a commitment by the government. It  
5 wasn't Joe Main's commitment. It was a commitment by Bill  
6 Pattersaw, probably, at the time.

7           Then we get to the DAC, the Dust Advisory  
8 Committee, and they dealt extensively with the issue of  
9 continuous dust monitors, as well. And as a result, they  
10 issued some different recommendations.

11           Well, I'll just point you to one, which is  
12 recommendation number eight, which is that once technology  
13 for continuous dust monitors has been verified, these  
14 monitors should be brought on line in conjunction with other  
15 dust sampling methods for the surveillance and determination  
16 of dust controls in all MMUs and other locations of high  
17 risk or elevated dust exposure.

18           Once verified as reliable, MSHA should use  
19 continuous dust measuring data for assisting operator  
20 compliance efforts in controlling miners' exposure, and  
21 should consider use of continuous dust monitors directly in  
22 compliance.

23           These again was recommendations of the federally

1 constituted Advisory Committee and again, you know, let's  
2 get this thing done. There's some discussion on research in  
3 here to get it developed, and get this thing in the mines.

4           So again, there is another document, which is  
5 already in the record. I make reference to this  
6 recommendation number eight on the issue of continuous dust  
7 monitors.

8           On February the 2nd, 1999, there was a letter sent  
9 to J. Davitt McAteer, the head of MSHA, and Linda  
10 Rosenstock, the Director of NIOSH, outlining our concerns  
11 about the finalization of the development of the machine  
12 mounted continuous dust monitor.

13           And things sort of had gotten a little haywire,  
14 which the letter speaks for itself, confusion, I guess, with  
15 the departments, between MSHA and NIOSH at the time of their  
16 testing and the protocol and those kind of things.

17           But, we were on record again outlining some  
18 historical background to the whole continuous dust monitor,  
19 why miners needed it, and it's very important to miners, and  
20 the urgency to get this process finalized. That's the  
21 letter dated February 22nd, 1999. That's Exhibit Number 6.

22           Exhibit Number 7 is the letter that was sent on  
23 February 15th, 1999 from the principals of the BCOA, UMWA

1 Health and Safety Committee, Joe LaMonica from the BCOA and  
2 Joseph Main from the UMWA.

3 And, this letter represents a position of the  
4 parties to give the government three different monitoring  
5 devices. One was a continuous machine mounted monitor.

6 The second one had to do with the type of dust  
7 monitor that we wanted for miners which we call the PDM1,  
8 and also the PDM2 which is a monitor that MSHA had wished to  
9 get developed.

10 But, I think the letter pretty well lays out the  
11 interest of the parties to get the final developments  
12 completed of the machine mounted monitor, and also state the  
13 claim that one miner did yesterday with all the utensils we  
14 put on him, about building a worker friendly monitor, not  
15 these things that further bog miners into the mud because of  
16 the weight, and obstruct their ability to work. And so,  
17 there's a recommendation strongly for the development of the  
18 PDM1 model, the worker friendly model, which is encased in  
19 the battery, and the finalization of the continuous dust  
20 monitor.

21 On September the 15th, there was a response back  
22 from -- I'm sorry, this is the same letter to Rosenstock.  
23 The first one was to McAteer, the second one to Rosenstock,

1 by Joe LaMonica and Joe Main, and that is UMWA Number 8.

2 On October 22nd, 1999, there was a response back  
3 from NIOSH with regard to the development of the continuous  
4 machine mounted dust monitor.

5 And the excerpt from this letter which I'll read  
6 and I'll put the whole letter into the record -- regarding  
7 work on the machine mounted continuous respirable dust  
8 monitor, NIOSH believes that the device that measures  
9 respirable dust in a mine environment with a variability  
10 comparable to the current approved sampling device. At this  
11 time, we also feel the device has demonstrated sufficient  
12 measurement success to warrant commercial development, which  
13 would be aimed at solving mechanical and system problems  
14 that causes it to operate unreliably.

15 Now the last part of that is dealing with the  
16 harming of the unit we had some discussion on in February of  
17 1999 with the National Mining Association, the United Mine  
18 Workers, the BCOA, MSHA, NIOSH and the manufacturer  
19 of the unit itself, where it was discussed, we  
20 believe, that this unit could be finalized by fixing the  
21 vibration problems that were associated with the pounding of  
22 the equipment where the device is on the equipment.

23 And there was an agreement made as we finalized

1 that meeting to pursue a contract.

2 That for whatever reason, vanished some time after  
3 that meeting was over, which we only worried about, whatever  
4 the official told us, until we started to again started to  
5 pursue this.

6 The bottom line was, I think NIOSH was quoted on  
7 record as saying we're there, let's just get it commercially  
8 built, let's fix these things that we all recognized for the  
9 final leg, what I believed was finalizing the development of  
10 the continuous dust monitor.

11 Exhibit Number 10 is a letter from J. Davitt  
12 McAteer to myself and to Joe LaMonica, and in that letter  
13 what it says is although the group testing the machine  
14 mounted continuous dust monitor has tested it, it is not yet  
15 ready for commercial deployment, which represents a  
16 different view between NIOSH and MSHA there, which I think  
17 can be sorted out.

18 The National Institute of Occupational Health and  
19 Safety has informed us that there were possible benefits  
20 derived from this research project. The current model  
21 demonstrated a feasible technology exists for a continuous  
22 real time dust measurement.

23 Further, the device was as accurate as the current

1 measuring system, and was used by miners and supervisors to  
2 gage changes in dust levels and in testing engineering  
3 controls. In addition, the testing revealed the  
4 shortcomings and irregularities of the unit and provided  
5 valuable insight concerning ways to construct a commercially  
6 reliable unit.

7 In that meeting, we discussed what those were,  
8 that the screws needed to be better screws and better lock  
9 washers and those kinds of things, to harden this unit.  
10 That's the official position of the agency in November and  
11 October of 1999.

12 On May 16th -- this is Document Number 11 -- on  
13 May 16th, a letter was forwarded to Linda Rosenstock, who is  
14 the Director of NIOSH from myself, that lays out our concern  
15 with the stopping of the development of the machine mounted  
16 continuous dust monitor, and raising the question of why did  
17 this happen, who made these decisions, how did the  
18 government agency walk out of the meeting leading all of us  
19 to believe that this thing was going to be finalized, and  
20 zip, we find out other things have occurred, and the  
21 government had actually just shut down the contract on the  
22 final leg of the development, which was very upsetting to  
23 the union and miners who were to rely on this continuous

1 dust monitor.

2           This letter also raised the issue of the personal  
3 samplers. And in regard to one of the questions that was  
4 raised, and the answer, about personal samplers, I think  
5 this letter will provide some further guidance to the agency  
6 on where miners and the Mine Workers are at.

7           We had an opportunity to take prototypes of both  
8 the PDM1, which is the worker friendly unit, and the PDM2,  
9 which is the pop can, and I think Ron, you used that Coke  
10 can at one time and I think that's a good characterization  
11 of that, hanging off your lapel, with a separate battery, to  
12 our convention in Las Vegas this past spring. And, I had  
13 those modelled by two different individuals. I had an  
14 expert from NIOSH that was there that understood the  
15 technicalities of those. But, we explained what both those  
16 could do.

17           And the question I had from the miners was, "why  
18 are they wasting all their time on this PDM2 unit; we want  
19 the PDM1, we're getting tired of you guys treating us like  
20 mules," you know, those are the kind of responses that we  
21 had. And, it was a pretty straight forward position from  
22 the miners and a pretty straight forward position from the  
23 Mine Workers, as well, that that's the kind of worker

1 friendly type devices we need to be spending government  
2 money on building.

3           Unfortunately, we had a meeting in March where the  
4 parties were all present and we were asked with industry and  
5 labor to tell us what you want us to do, because we're only  
6 going to build one of these, as far as expending government  
7 monies. We did that.

8           And in that meeting, we made it quite clear to the  
9 government we wanted the PDM1 type model built. We wanted  
10 something that was worker friendly.

11           And by the way, these devices would allow the  
12 miner to determine themselves how much dust they were in  
13 over a recent period or a long period of time, and we could  
14 package this, if what we were told was true, which there was  
15 a lot of support that it was, that miners could wear this  
16 even with a smaller battery than what they have. The only  
17 thing they would notice is the hose coming up, depending  
18 where we located it, on the lapel or at the cap light.

19           And unfortunately again after we walked out of  
20 that meeting in March, the government made a decision to  
21 shut down the development of the PDM1, switched that over to  
22 the PDM2, and that's where all the money went.

23           So we had a series of meetings which is explained

1 in this document that has tried to reign in this total  
2 confusion and really again, get back to listening to miners.

3 I can tell you unequivocally that every miner who  
4 has looked at both of those has said, "what are we doing  
5 with the PDM2? Give us the PDM1."

6 And if we ever get there, that adds another  
7 feature to empowering coal miners like we've never had  
8 before in this country, where we could package those in and  
9 put a lot of miners who are in high risk and sample them  
10 every day, record the information and utilize the data.  
11 And, the miners would have data like they've never seen  
12 before. We support that use.

13 We've told the industry, which we've had  
14 discussions on, if that thing works effectively, to  
15 accurately record the dust data, we expect it to be used as  
16 a compliance tool, along with the monitoring tool that the  
17 miner will have at their side.

18 At the risk of -- twenty some years ago when I got  
19 into this game about continuous monitors or machine mounted  
20 monitors, I would never ask the government to hold up a rule  
21 until we get this thing fixed.

22 And, I think you can appreciate that, given where  
23 we've went for twenty some years, trying to get a machine

1 mounted monitor.

2           We're hopeful that we can get the PDM1 built. We  
3 have asked NIOSH to take control of that and get it done,  
4 and we hope that we have one day that device to give the  
5 miners where we don't have.

6           All we need, it's my firm belief, is the  
7 regulation to force into mines continuous dust monitors.

8           If anybody here thinks that mine operators are  
9 going to do this on their own, continuous machine mounted  
10 monitors, I think they're living in a different world.

11           We rely on the government to come forth with a  
12 regulation. And I think having said everything that's in  
13 the record, there has been so many promises and insinuations  
14 and public press statements saying about we're getting these  
15 things for miners, and we're sitting here in the year 2000,  
16 I don't think anybody should be surprised that the Mine  
17 Workers are saying, "what the heck are we doing here," and  
18 why did we on the edge of getting this thing finalized into  
19 the mines, did we stop?

20           And, I think that's the question that the  
21 government has some accountability to miners. Why did we  
22 stop that when we was on the edge, after coming out of the  
23 meeting and clearing the air with all the parties there and

1 saying this could be done?

2 And now, it's not done.

3 And when I read the proposed rule, yes, I was very  
4 disappointed on behalf of miners that need it.

5 And those miners that we talked about with no  
6 miners' reps, those poor miners that need something like  
7 that desperately lost out the biggest because there is no  
8 ability for MSHA to get around to every shift, to keep those  
9 operators that want to act like an outlaw contained.

10 Document Number 12 is a document that was placed  
11 in the record of the court proceedings, which is the  
12 presentation that was made by NIOSH at -- and, I serve on  
13 the Fellow Advisory Committee now that deals with Mine  
14 Health and Safety under NIOSH which is another one of the  
15 hats I wear here part of the time -- and at one of the  
16 presentations in January, 2000, there's an update provided,  
17 which is verified by both MSHA and NIOSH, is their position  
18 which was recovered in E-Mail that addresses that.

19 And, what it says is that the continuous monitor  
20 provided a continuous full time measurement in underground  
21 coal mines, its ability to measure coal mine dust in the  
22 coal mine environment has been demonstrated, it has ben  
23 tested in five mines. In one mine, sampling was done for

1 forty-one shifts, all others less than twenty shifts, and it  
2 goes on with some other details about the continuous  
3 monitor.

4 But you know, anybody that would read this would  
5 say, hey, we're ready to put these in the mines, you know,  
6 let's get the thing finalized, let's get it commercially in  
7 there and get it done. That's task force -- or, Exhibit  
8 Number 12. There's a lot more in the record on continuous  
9 dust monitors.

10 But I think for those who are shocked or amazed  
11 that the Mine Workers are, "my god, how could you be upset  
12 with our rule," that's why we are. And, I think there's  
13 legitimate reasons for all the miners to be upset, that this  
14 rule that this rule axes the continuous dust monitor  
15 requirement.

16 Let's kick into another subject here, and I'm  
17 going to try to close this up as quick as I can. Miner  
18 representation has been an issue on the minds of miners for  
19 many, many years, talked about during the hearings back in  
20 '78. MSHA again closes the record, "we're going to make  
21 these changes." And there were some things that happened  
22 back then, too, there were some promises made of doing more.

23 As the system was changed, we all know that there

1 was mass sampling of coal miners that was reduced down to  
2 designated occupations and designated areas.

3 There was miners that came to those hearings that  
4 wanted MSHA take over, continuous dust monitors and miner  
5 participation to help fix it.

6 They made a promise on the continuous monitors, to  
7 engage in the development of those on April the 8th, the day  
8 they issued the rule.

9 But, they also did something else. April 8th,  
10 1980, MSHA issued a proposed rule giving miners the right to  
11 participation in the entire dust sampling program. And of  
12 course, this is the one that was conducted by the operators.

13 MSHA thought then that there was legal authority  
14 to put something like that in the rule, and they did, and  
15 the outline, at least in that setting, what was needed to  
16 help assure credibility in the program by giving miners  
17 representation that they'd asked for.

18 And, I am introducing that into the record because  
19 that is the rule proposed on April 8th, 1980, and there's a  
20 lot of commentary that the committee should read, as well.  
21 I do encourage you to read all this because it's an  
22 important part of the history on the evolvement of miner  
23 participation.

1           Then for some reason on Monday, April 29th, 1985,  
2 MSHA pulled the rule, didn't act on the issue of a final  
3 regulation, and they pulled it.

4           And basically what they said was compliance with  
5 the revised program has improved, resulting in greater  
6 confidence in the overall program. As a result, the miners'  
7 rep rule was pulled.

8           It again arose in the debates over the dust fraud  
9 in 1991. Here is a copy of the press statement by Lynn  
10 Martin that I referred to earlier incorrectly. That was  
11 issued on April 17th, 1991.

12           And in that statement -- and, this is on the heels  
13 of three Congressional hearings that took place, public  
14 attention about dust fraud again, "we need to do something  
15 to clean up this God awful program -- and, Martin has  
16 indicated that Bill Pattersaw, the Secretary of Labor for  
17 Mine Health and Safety, will study other options to improve  
18 the mandatory monitoring of respirable mine dust. Among the  
19 three options or among the options we studied, here are the  
20 three that was listed: Expand the role of the individual  
21 miner in the operator sampling program, review the  
22 feasibility of all sampling to be conducted by MSHA and work  
23 with the Bureau of Mines and the National Institute of

1 Occupational Health, NIOSH, on improving technology to  
2 continuously monitor the mine environment, reducing or  
3 eliminating the need for periodic samples.

4 Now that was again, a promise made to the public  
5 in response to criticisms by miners, miners' representatives  
6 and several others, that there was serious problems with the  
7 dust sampling program.

8 Unfortunately as we know, when the task force  
9 finished their report, they sort of said again there's  
10 enough involvement here, with some modification and changes.

11 But, the heat was off in '92, and so those issues  
12 died, only to be resurrected again as we talked about,  
13 Marvin, when all the criminal cases started hitting the  
14 press, and this was in '93, '94, '95 when there was a lot of  
15 activity.

16 And, we had a new Secretary of Labor. We had a  
17 new government. And, there was an interest on the part of  
18 this government to go back and reform this whole program  
19 that has been so messed up for so many years.

20 And that Secretary of Labor appointed under the  
21 Mine Act, chartered officially an Advisory Committee to go  
22 out, develop recommended standards, deliver them back to the  
23 agency for them to work off to issue rules.

1           That was a function which I was directed to do.

2           I served on the Advisory Committee and we took our  
3 work seriously. And, we did provide a package which we  
4 talked about quite a bit that encompasses all the things on  
5 the table right now.

6           And the Advisory Committee, they dealt with  
7 miners' representation, miners' rights extensively, a lot of  
8 discussions, as Tom pointed out today, and throughout the  
9 record. And, I would encourage you all to go back and read  
10 it so you'll have a good, clear understanding of how that  
11 was developed and what it meant.

12           But, let me read to you some recommendations that  
13 are in the record.

14           Recommendation number six, during this  
15 verification visit, miners and their representatives should  
16 have the same pay, 103(f) walk around rights, as they do  
17 under MSHA inspections. And, that's regarding the plan  
18 verification process, which we understand what you're doing  
19 in your policy, but it doesn't transcend over into the  
20 regulation.

21           It also said in recommendation nineteen, that  
22 miner participation in the interim operator sampling program  
23 should be increased to provide assurances that a credible

1 and effective dust sampling program be in place.

2 To that end, miners in each mine should select  
3 designated representatives who are employed at the mine for  
4 compliance sampling.

5 Miners designated as representatives of the miners  
6 should be afforded the opportunity to participate in all  
7 aspects of the respirable dust sampling for compliance at  
8 the mine.

9 The participation would include protection against  
10 loss of pay, as provided under Section 103(f) of the Mine  
11 Act.

12 (B) Miners representatives should have the right  
13 to participate in dust sampling activities that would be  
14 carried out by the employer for verification of dust plans,  
15 dust control plans at no loss of pay.

16 And, this is tied in with the intention of the  
17 Advisory Committee that the mine operator still be required  
18 to do dust sampling for plan verification purposes.

19 The miners' representatives also have the right to  
20 participate in any activities involving any handling of  
21 continuous dust monitoring devices, or the extraction of  
22 data from continuous dust monitoring devices without a loss  
23 of pay.

1           And, miners' representatives should receive  
2 training and certification to conduct respirable dust  
3 sampling paid by the operator.

4           Miners' representatives should be afforded the  
5 opportunity without loss of pay for the mine operator to  
6 participate in the training of miners.

7           I mean, there's pretty sweeping recommendations.

8           Now I go back to the law hasn't changed. There's  
9 a belief on April 8th, 1980 that there's legal authority to  
10 extend these rights to varied kinds of activities of which  
11 were carried out by the operator.

12           And when we saw the proposed rule that came on  
13 July 7th, this is not there.

14           And what we have is a statement in the preamble  
15 that you've got your walk around rights we passed in '77.

16           This new plan verification will be by policy. The  
17 expectation --

18           MR. NICHOLS: They're there, Joe. We can discuss  
19 whether they're in the right place. But, they're in the  
20 rule as we see the rule.

21           MR. MAIN: They're not in the rule as -- I mean,  
22 we disagree with that.

23           They're in the policy preamble that exists with

1 regard -- these right here I described, if they're in the  
2 rule, show me, the ones I just described in recommendation  
3 number nineteen.

4 They're not in the rule. They're not even in the  
5 preamble, discussed, Marvin, that's my point. Okay?

6 By the time we get to Salt Lake City, if you can  
7 show me where these ones that I just referenced in  
8 recommendation number nineteen are in the rule or in the  
9 program policy even, with the exception of the plan  
10 verification sampling -- I understand it's in the rule --

11 MR. REYNOLDS: The reason they didn't track along  
12 recommendation nineteen is that the Advisory Committee  
13 envisioned the operator doing the verification sampling, and  
14 then MSHA coming along afterwards.

15 But the way that we were able to do the proposal  
16 was that MSHA's doing all of the verification sampling.

17 MR. MAIN: And I understand that's -- and that's  
18 our perspective of the law, and I appreciate why, if you  
19 don't have the operator sampling, you wouldn't have that  
20 piece.

21 MR. REYNOLDS: At the time of the Advisory  
22 Committee, the agency didn't think they would be able to do  
23 the verification sampling. So that's why it's a little bit

1 different than the tracking in the recommendation.

2 MR. MAIN: Okay.

3 MR. REYNOLDS: You understand what I'm saying?

4 MR. MAIN: Okay. So set aside the operator  
5 verification sampling. There's provisions in here that we  
6 have miners' trained and certified in dust sampling, which  
7 is really important if they're going to understand it, paid  
8 by the operator.

9 I understand we have no continuous monitors, that  
10 isn't absent.

11 But training miners, you know, being trained on  
12 the health and safety, you know, I think those were  
13 recommendations that are not anywhere to be found.

14 If you would, and if you can between now and Salt  
15 Lake City, take a look at recommendation number nineteen and  
16 show me where they were specifically addressed one way or  
17 the other. Okay? I would appreciate that, because if we're  
18 missing something, we do want to know.

19 The bottom line on all of this is -- and, I just  
20 picked out quick things. There's so much more record. I  
21 could go back to the '77 testimony which we'll be doing for  
22 the full record, anyway.

23 As a matter of fact, let me just make that a

1 matter of the record now. The complete testimony of miners  
2 at the public hearings in 1977 and '78 on the revision of  
3 the respirable dust program, I think is very relevant yet  
4 today. I think the same issues are relevant today. And, we  
5 would urge that those be, or ask that those be placed in the  
6 record as part of the official record making on this rule.

7 And, there's only so much time I want to take up.  
8 But, I think it's so important that this committee  
9 understand the historical structure.

10 And again, would you be surprised that the Mine  
11 Workers and miners who have pursued these all these years to  
12 see a rule on July the 7th that didn't contain many of those  
13 parts? I think not. I mean if you are surprised, you  
14 shouldn't be.

15 In regard to the UMWA lawsuit we had filed on  
16 January 13th, 2000, there was clear components in that  
17 lawsuit that has been addressed throughout this historical  
18 record, that was addressed by the Advisory Committee, that  
19 again there was no rules to implement those, with the  
20 exception of the single sample rule, which deals with  
21 abatement sampling, and plan verification as it ties into  
22 full shift sampling.

23 Other than that, we believe that rightfully or

1 wrongfully, the agency threw in following that lawsuit  
2 discussion in the preamble, and chose to make that their  
3 method of addressing the issues that miners and Mine Workers  
4 have spent an eternity trying to gain.

5 MR. REYNOLDS: I just wanted to clarify. Earlier  
6 you said that you would like MSHA, you want us to repropose  
7 the rule, basically. What we're hearing is go back to the  
8 drawing board.

9 I just wanted to ask you, there are two proposals  
10 here. Single sample and plan verification are distinct  
11 proposals. They're distinct in the Federal Register.

12 And I just wanted to ask you -- and, all of your  
13 comments have been regarding PAPRs and continuous  
14 monitoring, 103(f) and the number of samples under the MSHA  
15 program -- none of those really have anything to do with  
16 single sample. Are you asking the agency to repropose the  
17 single sample rule?

18 MR. MAIN: I think my first exercise here is to  
19 get some clarifications. And after listening to a lot of  
20 the discussion over the last three hearing days, it's made  
21 it clear that the difficulties in the single sample rule are  
22 mostly contained in the plan verification sampling rule,  
23 along those same lines -- and, we're going to rethink this

1 more -- but along the same lines, it appears that those  
2 demands may not include to go back to the drawing board,  
3 going back to the drawing board on the single sample rule,  
4 since we have a little bit clearer vision of how that's  
5 going to work. But the components that are most troubling  
6 are contained in the --

7 MR. REYNOLDS: Okay, because the proposal is  
8 really the same as the '98 notice. We're just trying to  
9 cure the procedural defects that the 11th Circuit found. I  
10 just wanted to clarify that it really isn't any different  
11 from the '98 notice.

12 MR. MAIN: Yeah, but you've got to read three  
13 hundred pages of preamble to figure out what the heck you  
14 guys are saying and figure out what that all means.

15 But I think as it stands today, I think if we  
16 understand what that first conversation was, that really the  
17 ninety-five percent issue has no bearing on -- with the  
18 exception of defining what the standard will be in Part 70,  
19 in that if you change the Part 70 standard to one point  
20 five, you know, it would come out somewhere around one point  
21 eight, just theoretically. Okay?

22 So the problem that we could fix would be in Part  
23 70, and we really wouldn't have to fix the ninety-five

1 percent problem. Does that make sense?

2 I think, you know, with trying to think through  
3 where we're at, the real problem is without question as we  
4 see it now, in the whole package, separate from the single  
5 sample rule.

6 But, we want to think through that a little bit  
7 more. That's the reason I was asking questions on that. I  
8 think you see where we're heading, right now, anyway.

9 And in closing, I know everybody's been here long  
10 -- I hate to eat up so much mike time -- but my fear is that  
11 if this information doesn't get on the record and doesn't  
12 get plowed through, that it will not be part of the clear  
13 thinking that takes place on any final action.

14 As stated earlier through the miners and I've read  
15 in the paper and I've heard at the hearings, there's a clear  
16 message to go back and fix this.

17 The sampling is far too infrequent for miners. We  
18 don't need to be jacking up dust levels. We need to be  
19 bringing them down.

20 I think there is a clear inconsistency in  
21 publishing your notice in April -- whatever the date was --  
22 calling for lowering the dust standard, and three months  
23 later, issuing a rule that does increase it. We have a

1 debate over that. But by just looking at the numbers, as  
2 one guy said, one and one is two.

3 Two point three three is an increase in the actual  
4 standard that we're talking about, even though we agree that  
5 the averaging out -- you know, getting rid of the averages,  
6 we agree. You know?

7 Let's get it fair, get it done. It's what we  
8 should have been doing for years.

9 But at the same time, let's follow the  
10 recommendations of the Advisory Committee. Let's follow the  
11 instincts of the agency here that was laid out in April.

12 Let's follow the instincts of NIOSH and drop that  
13 thing down where we can accomplish, you know, having a true  
14 two milligram that I think was envisioned by Congress, a one  
15 milligram that was envisioned and take it as low as we can.

16 And in closing on behalf of the nation's miners, I  
17 appreciate the opportunity to be here and provide all this  
18 information to this panel. It's the umpteenth time I've  
19 done this exercise in my life, but this is it.

20 My firm belief is whatever comes out of this  
21 process, and that's what I'm telling miners, that it took us  
22 twenty years to get here and if anybody expects another  
23 reform to this package in their current lifetime, look at

1 history and make their own judgements.

2 And, we ask you to take it back, redo it. You've  
3 done it before, the practice the agency has engaged in. We  
4 hate to have to do that. But, I think this rule has put us  
5 in no other position than to take that position. Thank you  
6 very much.

7 MR. NICHOLS: Thank you. I want to say two  
8 things: One is I just want to re-emphasize again that this  
9 agency has a strong criminal program.

10 With continuous monitoring, that's where everybody  
11 wants to be. As Joe has mentioned, there's a long history.  
12 I don't want anybody to think that MSHA has not done a lot  
13 of work trying to develop this technology. If you didn't  
14 hear what Paul talked about this morning, we can get him to  
15 repeat it.

16 MR. HEWETT: I would like to say something. Yeah,  
17 Joe, I'd like to speak to the single sample notice which was  
18 alluded to earlier.

19 These are two separate notices. With the single  
20 sample notice, the first notice, there the two agencies,  
21 MSHA and NIOSH, are looking at the coal mine dust sampling  
22 unit very narrowly focusing on the accuracy of the unit to  
23 measure exposure over a single shift, because we were put in

1 a position by the '69 Act, and again by the '77 Amendments  
2 Act to determine method accuracy.

3           There was this interim phased in approach to  
4 lowering exposures in coal mines, as described in the '69  
5 Act, with the provision that citations -- or, an average  
6 exposure would be defined over a single shift, provided the  
7 method was reasonably accurate.

8           So in the single sample notice, we're very  
9 narrowly trying to determine whether or not the coal mine  
10 dust sampling unit is accurate using the NIOSH accuracy  
11 criteria which has been in existence for over twenty-five  
12 years. And that, I thought we did very successfully.

13           And we encourage you, as you were encouraged  
14 earlier, to separate the two notices and promote, or  
15 encourage adoption of one notice or you know, do the single  
16 sample notice, if you have no objection to that.

17           We do want to point out that we're looking at  
18 method accuracy, not determining citation threshold guides  
19 or anything like that in the first notice.

20           MR. MAIN: And, I like I say we're looking at that  
21 along those lines. I think we'll have a more clear position  
22 in Salt Lake City.

23           But at least what we have learned through this

1 whole process, it seems like there is that clean break that  
2 does not hamstring at least the concerns we have to the one  
3 paragraph single sample rule.

4 MR. TOMB: Hey, Joe, I'd also like to sort of get  
5 on the record to sort of emphasize what Marvin pointed out  
6 with respect to the continuous monitor.

7 You know Davitt McAteer has been very supportive  
8 since he's been our leader in getting a continuous monitor,  
9 and even the continuous personal monitor. As a matter of  
10 fact, the agency has put over almost two million dollars  
11 into that program itself.

12 I think that I've been involved with that program  
13 for some time, and I can attest to the fact that we've had  
14 less than a lot of support in getting that unit tested in  
15 mines.

16 We had to go to non union mines to actually do  
17 those tests in those mines that you talked about in that one  
18 memo.

19 In order to get a continuous monitor of any kind  
20 into the mine takes a concentrated effort of both the  
21 agency, the industry and the miners themselves.

22 Being that in program, the agency has not had that  
23 support. And, that support has to come around to get

1 continuous monitors.

2           The other thing is you mentioned the PDM1 and the  
3 PDM2. The agency took the option of going with the PDM2  
4 because that was a device that can be delivered in  
5 September, as opposed to taking the PDM1 which wouldn't be  
6 delivered until next year if that project changed.

7           So I just want to emphasize that the agency is  
8 working diligently to come up with new monitoring  
9 technology, putting a lot of its own resources into that  
10 when research funds should be going into that.

11           MR. MAIN: I'm not going to get into a debate  
12 here. You and I have been on this project for quite some  
13 time.

14           And you know, you do a lot of testing at non union  
15 mines, and this is no different than -- and, union mines.

16           But, there have been difficulties and we have  
17 personally went in to provide assistance to get those, get  
18 to the mines where we represent the workers.

19           But, I think that from my view standing back  
20 watching this whole thing, there was personalities that  
21 unfortunately got in the middle of this, and confusion that  
22 lead to a lot of the disruption.

23           And, I think that the record is quite clear when

1 we have the industry and labor saying, "we want this thing  
2 finalized," you know.

3 MR. TOMB: Yeah, but you didn't discuss that  
4 confusion when you entered your documents into the record.

5 MR. MAIN: Well the confusion, if you want me to  
6 get into that from my standpoint, I will. It won't be  
7 pleasant for a lot of people.

8 I know I had phone calls complaining about the  
9 mine operators not offering their mines. I called up the  
10 operator. This was Consol.

11 And apparently there was a dispute between MSHA  
12 and NIOSH over a protocol to be followed that wasn't  
13 followed.

14 And until the government sits down and gets this  
15 thing sorted out, we're not going to do it.

16 I sat down and took a look at it and unfortunately  
17 I had to agree, that we needed to come to terms with what we  
18 were doing.

19 But let's, if you want to go there, I don't think  
20 you want to do that today.

21 MR. NICHOLS: Just one final thing: I don't think  
22 that anybody can say -- you can argue with where we are on  
23 these rules -- but, I don't think that anybody can say that

1 the current Assistant Secretary has not been focused on  
2 trying to finally eliminate black lung.

3 We talked about the two million dollars we put in  
4 the x-ray program. We just mentioned the two million we put  
5 into continuous monitoring.

6 And, we have constantly worked on better  
7 enforcement programs to deal with dust over exposures,  
8 especially on longwalls.

9 Now you can argue about the rules, but Davitt has  
10 done a lot to try to deal with this dust problem.

11 MR. MAIN: My arguments has been about the rules.  
12 And without getting into the Assistant Secretary or Marvin  
13 Nichols or Ron Schell, I'm just trying to lay out a set of  
14 facts here, and the set of facts with the continuous dust  
15 monitor.

16 Somebody made that decision after they walked out  
17 of the room. I don't know who it was. I don't know why it  
18 was done. I've heard conflicting stories about that.

19 But the bottom line is that a lot of work that was  
20 on the verge of being implemented was stopped. And, I think  
21 the miners ought to be upset about that. And I think we  
22 should, too.

23 It's not like trying to accuse somebody of doing

1 something wrong. It's like how do we get this thing back on  
2 track and get it into a rule, and that's our concern.

3 MR. NICHOLS: Well, you do have to make some  
4 different decisions as these things are falling apart. I  
5 mean, that's the nature of the beast.

6 It's pretty easy to say continuous monitoring is  
7 the answer. And, I agree with that. But, it ain't that  
8 easy to get it developed.

9 MR. MAIN: There's one last way that gets us  
10 there. And I think we would all agree that if it's a  
11 regulation, then the operator has to meet it.

12 And, that is about the strongest measure that you  
13 guys could undertake to get it in the mines. And the  
14 declarations, it's on record where it's at, but I think  
15 that's what it's going to take to get it there, quite  
16 frankly.

17 I don't think we're going to see manufacturers out  
18 developing something that they see no market for. We've got  
19 into that problem with CSRs.

20 I don't think the industry is going to go out  
21 there and put something in the mines they don't want to see  
22 you put there, to begin with.

23 So here's the dilemma: If the government won't

1 come forward with the regulation, getting it done, the  
2 miners are never going to see it.

3 I think it's that simple.

4 MR. NICHOLS: We'll give you the last word here,  
5 Joe.

6 MR. MAIN: Okay. We'll see you in Salt Lake.  
7 Thank you.

8 MR. NICHOLS: Thanks, Everybody, for showing up.

9 (Whereupon, the hearing in the above-entitled  
10 matter was closed at 2:02 p.m.)

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REPORTER'S CERTIFICATE

DOCKET NO.: --  
CASE TITLE: Public Hearing - MSHA  
HEARING DATE: August 11, 2000  
LOCATION: Prestonsburg, Kentucky

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Department of Labor.

Date: August 11, 2000

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