

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
EXAMINATIONS OF WORK AREAS IN)
UNDERGROUND COAL MINES FOR)
VIOLATIONS OF MANDATORY HEALTH)
OR SAFETY STANDARDS)

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IN THE MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:)
)
 EXAMINATIONS OF WORK AREAS IN)
 UNDERGROUND COAL MINES FOR)
 VIOLATIONS OF MANDATORY HEALTH)
 OR SAFETY STANDARDS)

Denver, Colorado

Thursday
June 2, 2011

APPEARANCES:

MSHA Panel: PATRICIA W. SILVEY, GREGORY FETTY,
KEVIN BURNS, ALFRED D. DuCHARME

Speakers:

BRENT BAILEY, Miners' Representative, Deer Creek
 Mine, UMWA Local 1769
 GARY LEAMING, Safety Manager, Canyon Fuel
 Company, Sufco Mine
 BILL OLSEN, Colorado Mining Association
 KENT E. LARSEN, Canyon Fuel Company, Sufco Mine
 ROBERT BUTERO, United Mine Workers

P R O C E E D I N G S

(8:33 a.m.)

1
2
3 MODERATOR SILVEY: Good morning. Nobody
4 said good morning.

5 AUDIENCE: Good morning.

6 MODERATOR SILVEY: Thank you.

7 For those of you who I know and who I don't,
8 my name is Patricia W. Silvey and I'm the Deputy
9 Assistant Secretary for Operations for the Mine Safety
10 and Health Administration. I will be the moderator of
11 this public hearing on MSHA's proposed rule -- on
12 MSHA's Proposed Rule on Examinations of Work Areas in
13 Underground Coal Mines for Violations of Mandatory
14 Health or Safety Standards.

15 On behalf of Assistant Secretary Joseph A.
16 Main, I want to welcome all of you here today.

17 I would like to introduce the members of the
18 MSHA panel. To my left, Gregory Fetty, who is with
19 Coal Mine Safety and Health. And to his left, Al
20 DuCharme, who is with the Department of Labor, Office
21 of the Solicitor. And to my right, Kevin Burns, who
22 is with the Office of Educational Policy Development.

23 And in the audience, I would also like to
24 introduce Larry Davey and Erik Peterson, who also
25 assisted on this project.

1 In response to requests from the public,
2 MSHA is holding public hearings on its proposal for
3 Examinations of Work Areas in Underground Coal Mines
4 for Violations of Mandatory Health or Safety
5 Standards. This is the first of four public hearings
6 on this proposed rule.

7 The other hearings will be in Charleston,
8 West Virginia on June 7th; Birmingham, Alabama on June
9 9th; and Arlington, at our headquarters, on Wednesday,
10 June 15th.

11 In the back of the room, we have copies of
12 the Federal Register that contains the proposal.

13 The purpose of this hearing, as many of you
14 know, is to receive information from the public that
15 will help MSHA evaluate the requirements in the
16 proposal and produce a final rule that will improve
17 health and safety conditions at coal mines.

18 This hearing will begin -- obviously, I'm
19 doing my opening statement, followed by an opportunity
20 for members of the public to make oral presentations.
21 Hearings will be conducted in an informal manner.
22 Formal Rules of Evidence will not apply.

23 The hearing panel may ask questions of the
24 speaker, and speakers and other attendees may present
25 information for inclusion in the rule-making record.

1 MSHA will accept written comments and other
2 appropriate information for the record from any
3 interested party, including those not presenting oral
4 statements.

5 We ask everyone in attendance -- and I think
6 most of you have probably have done so -- to sign the
7 attendance sheet so that we have a record of who's
8 here, even if you don't plan to speak. Those of you
9 who've notified MSHA in advance will make their
10 presentations first, followed by others who wish to
11 speak.

12 If you have a hard copy or electronic copy
13 of your presentation, I ask that you please provide a
14 copy to the court reporter, and MSHA will have a
15 verbatim transcript of the proceeding and the
16 transcript will be posted on MSHA's website.

17 The post-hearing comment period for the
18 proposed rule closes on June the 30th. MSHA must
19 receive your comments by midnight, Eastern Daylight
20 Savings Time, on that date.

21 MSHA is proposing to revise the existing
22 standards for pre-shift, on-shift, supplemental, and
23 weekly examination for underground coalmines. The
24 proposed rule would require mine operators to identify
25 and fix violations of mandatory health or safety

1 standards. Requirements for these examinations are
2 mandated in the Mine Act and are a critical component
3 of an effective safety and health program for
4 underground coalmines.

5 The proposal would also require that on a
6 quarterly basis, mine operators review with mine
7 examiners the citations and orders issued in the areas
8 where preshift, supplemental, on-shift, and weekly
9 examinations are required. The proposed rule is an
10 important element in the Agency's "Plan, Prevent and
11 Protect" strategy.

12 MSHA requested comments from the mining
13 community on all aspects of the proposed rule.
14 Commenters are requested to be specific in their
15 comments and submit detailed rationales and supporting
16 documentation for suggested alternatives submitted. I
17 cannot underscore this enough, that if you -- when you
18 submit your comments, if you have suggested
19 alternatives, we welcome those, and please be specific
20 and please include your specific rationale for any
21 suggested alternatives that you might have.

22 At this point, I would like to reiterate
23 some requests for comment and information that were
24 included in the preamble to the proposed rule.

25 The proposed rule presents a more proactive

1 approach in creating a culture of safety at the mine.
2 It would enhance miners' safety because violations of
3 health or safety standards would be identified and
4 corrected, removing many of the conditions that could
5 lead to danger and underground coalmines. The Agency
6 is interested in alternatives to the proposal that
7 could be effective in assuring that operators examine
8 for violations of mandatory health or safety
9 standards, record and correct violations, and review
10 the violations with examiners.

11 Mine examinations are critical to ensuring
12 that all of the requirements in the mine ventilation
13 plan, including the dust control plan, are in place
14 and are working. Examiners check section and outby
15 ventilation controls and respirable dust control
16 parameters that are key factors in reducing miners'
17 exposure to respirable coalmine dust. This could
18 lower miners' exposure to respirable coalmine dust,
19 thereby lowering the incidence of black lung and other
20 respiratory diseases.

21 The Agency has prepared a Preliminary
22 Regulatory Economic Analysis that contains supporting
23 costs and benefit data for the proposed rule. MSHA
24 has included a discussion of the costs and benefits in
25 the preamble. The Agency requests comments on all

1 estimates of costs and benefits presented in the
2 preamble and in the Preliminary Regulatory Economic
3 Analysis, including compliance costs, net benefits,
4 approaches used, and assumptions made in the
5 preliminary economic analysis.

6 MSHA's cost estimates do not include the
7 costs of any corrective actions that would be
8 necessary to come into compliance with the underlying
9 regulatory requirements. These costs were included in
10 the Agency's estimates associated with the existing
11 regulations and are not new compliance costs resulting
12 from the proposed rule.

13 Rather than waiting for violations to either
14 be identified by an MSHA inspector, or rise to the
15 level of a hazardous condition and be identified by a
16 mine examiner, the proposed rule would require mine
17 operators to identify violations of mandatory
18 safety -- or, health standards during mine
19 examinations. This would prevent some accidents
20 because mine operators would be required to take
21 corrective actions earlier than under the existing
22 standards, and that is before things would develop
23 into a hazardous condition.

24 Under MSHA's requirements, if cited,
25 operators must correct a violation of a mandatory

1 health or safety standard (such as removing coal dust
2 accumulations from conveyor belts or maintaining
3 equipment in safe operating condition) to abate the
4 citation. MSHA requests comments on the Agency's
5 estimate of the costs of corrective actions.

6 As you address the proposed provisions
7 either in your testimony today or in your written
8 comments, please be as specific as possible. We
9 cannot -- as I mentioned earlier, we cannot
10 sufficiently evaluate general comments, so -- and I'm
11 saying it one more time and I'll probably say it again
12 before we close -- please be very specific in your
13 comments, not only in terms of providing us with
14 specific suggestions, but also your specific
15 rationale, including benefits to miners and any
16 technological and economic feasibility considerations
17 and data to support your comments.

18 The more specific your information is, the
19 better it will be for MSHA to evaluate and produce a
20 final rule that will be responsive to the needs and
21 concerns of the mining public.

22 As I said earlier, all comments must be
23 received or postmarked by June 30, 2011. Comments may
24 be submitted by any method submitted in the --
25 identified in the proposed rule.

1 We will now proceed to the testimony.

2 Please begin by clearly stating your name
3 and organization, and spelling your name for the court
4 reporter to make certain that we obtain an accurate
5 record.

6 Our first speaker today is Brent Bailey with
7 the United Mine Workers' Local 1769.

8 MR. BAILEY: My name is Brent Bailey --
9 B-R-E-N-T, B-A-I-L-E-Y. I'm currently the miners'
10 representative at Deer Creek Mine, UMWA Local 1769.
11 Also, a mine examiner -- currently a mine examiner and
12 have been for the past 16 years.

13 We have a big mine. It's about -- we have
14 about 12 miles of belt line. We currently have nine
15 examiners that preshift the mine. We feel like we do
16 a good job finding, recording, and correcting
17 hazardous conditions.

18 We have a concern with entering all
19 violations in the preshift book with violations that
20 don't get corrected from the previous shift and have
21 to be carried over. In addition to violations for the
22 current preshift, we feel that this is making the
23 books complicated and possibly overlooking the --
24 possibly with the hazardous conditions being
25 overlooked.

1 We also have concerns with violations that
2 are not being seen by an examiner and an MSHA
3 inspector finding them later. What will be the
4 repercussions? Examiners don't always see everything
5 all the time. MSHA inspectors don't always see
6 everything all the time.

7 We do agree with the part of this proposal
8 that the mine operator review with the examiners all
9 citations issued. In fact, at our mine, we already do
10 this. It is part of our weekly safety meeting to
11 review citations.

12 Thank you.

13 MODERATOR SILVEY: Thank you.

14 Let me ask you a few questions if I -- I
15 appreciate your comments very much and we have gotten
16 comments along this line. And I'm going to ask
17 something now that probably will require some --
18 because I might ask it of every speaker -- people to
19 go back in terms of their memory.

20 At some point in time back -- some years
21 back; and now I'm talking, oh, pre '90 --

22 MR. FETTY: '90 --

23 MODERATOR SILVEY: -- '2. Yes, thank you.
24 Pre '92. And so -- and then that's the thing, so I've
25 got to get people who are doing mine examinations

1 pre '92. Okay. And I don't know who -- you know, who
2 I'm going to get here.

3 But were you doing mine examinations pre
4 '92?

5 MR. BAILEY: Occasionally.

6 MODERATOR SILVEY: Under the old --

7 MR. BAILEY: A fill in.

8 MODERATOR SILVEY: Under the rule that
9 preceded the one that's in place now?

10 MR. BAILEY: Right, yes.

11 MODERATOR SILVEY: There we had in place to
12 preshift for violations of mandatory health or safety
13 standards for the preshift --

14 Was it for the preshift and the supplement,
15 or just the preshift?

16 MR. FETTY: Preshift and the --

17 MODERATOR SILVEY: And the weekly.

18 MR. FETTY: -- weekly.

19 MODERATOR SILVEY: For the preshift and the
20 weekly.

21 So I was going to ask for those of you who
22 could remember; do you recall how that worked?
23 Because I don't recall having a lot of issues with it,
24 to be honest, a lot of problems with it.

25 MR. BAILEY: That's a long time ago.

1 MODERATOR SILVEY: I know. That's why I
2 said, first of all, I might not find anybody who
3 remembers -- who was a, a mine examiner during that
4 time.

5 And, secondly, you're exactly right; that's
6 a long time to remember what, in fact, you were doing.

7 MR. BAILEY: It seems like we recorded
8 everything in the books back then.

9 MODERATOR SILVEY: This seems -- that's what
10 I was thinking. It was two of the examinations, the
11 preshift and the weekly. But I'm just trying to
12 remember. Because, see, I'm getting all of these
13 comments in, so I want to go back and figure out what
14 happened. What, you know, where somebody's saying, I
15 didn't hear anything; we didn't hear anything.

16 And now all of a sudden, you know, people
17 are saying, well, this is going to happen, and we
18 are going to -- MSHA's got to get us twice -- they'll
19 get -- and then the inspector come along and finds
20 something that is not in the book and the inspector
21 will be citing us. So I just wanted to try to get --
22 figure -- get a handle on that.

23 And the second thing is -- excuse me just
24 one minute.

25 (Off the record.)

1 (On the record.)

2 MODERATOR SILVEY: And, well, you know --
3 and I think we said this sort of in the preamble that
4 I will go here with one of preventive -- that we
5 wanted to just make sure that all things that
6 presented before the shift cause kind of like that
7 preshift is the anytime examination, for that matter,
8 is the last line of defense prior to workers cause
9 you -- I mean, you've been a mine examiner, you
10 understand that.

11 So I'll go awash to get all these -- any
12 kind of violations and hazardous conditions corrected
13 before miners came on board. But as I said earlier,
14 if people have alternatives to what we -- I take what
15 you're saying; I hear what you're saying -- if people
16 have alternatives to what we propose, then let us hear
17 your alternatives.

18 I don't want to put you on the spot to
19 actually say if you have an alternative. I'm not
20 going to do that, if you have an alternative. But if
21 you -- we did get one alternative, quite honestly, we
22 got an alternative that was suggested. So if people
23 want to look at the comments that -- if I -- they were
24 to come and submit at least one, I know, where it was
25 embodied in the comments submitted by the National

1 Mining Association. But if people have alternatives,
2 please get them to us. Then we will review them and
3 look at them, because our goal is not to make anything
4 more burdensome, or detract from health and safety.

5 MR. BAILEY: Like I said, we haven't really
6 thought of a better way to do it. The only thing we
7 have thought of is maybe better training for
8 examiners, maybe yearly -- I don't want to say
9 certification -- maybe yearly training like they do
10 electrical certification.

11 MODERATOR SILVEY: Yeah, okay.

12 MR. BAILEY: Or -- yes.

13 MODERATOR SILVEY: Okay.

14 Anybody else?

15 MR. FETTY: Yeah. I guess I had a couple of
16 questions.

17 You said you have nine examiners conduct
18 preshifts. Is that nine examiners for each shift or
19 you have three --

20 MR. BAILEY: Yes.

21 MR. FETTY: Okay. So --

22 MR. BAILEY: Yes.

23 MR. FETTY: That's nine examiners each
24 shift?

25 MR. BAILEY: Nine examiners --

1 MR. FETTY: Okay.

2 MR. BAILEY: -- each shift to complete the
3 preshift, oncoming shift.

4 MODERATOR SILVEY: Anything else?

5 MR. FETTY: Yeah. I guess I have a -- one
6 other question.

7 Can you tell me now what your criteria would
8 be to put something in the book as a hazard? What --
9 would -- what is some -- maybe I'm going to answer
10 this for you, but I'll try not to -- but what -- give
11 me an example of something that you would put in the
12 book that constitutes a hazard.

13 MR. BAILEY: A hazard would be a belt
14 rubbing a structure that would be causing heat. It
15 would be a hazard, a roller -- rolling in
16 accumulations would be a hazard, where maybe
17 accumulations that's not up into the belt is a
18 violation, but it probably wouldn't be a hazard.

19 And then you get into the dust; that is hard
20 to determine what's a hazard, what's not, as far as
21 coal dust. But I --

22 MODERATOR SILVEY: But at some point --
23 excuse me for interrupting you, and I -- not that I --
24 but at some point, you -- at some point, don't you --
25 both of us would probably agree that some amount is a

1 hazard.

2 MR. BAILEY: Exactly.

3 MODERATOR SILVEY: Is that right?

4 MR. BAILEY: Yes, yes. And then other
5 conditions along with it, you know, if there's so much
6 coal dust and then you got melt rubbing a grinder --

7 MODERATOR SILVEY: Together.

8 MR. BAILEY: -- together would definitely
9 cause a hazardous condition.

10 MODERATOR SILVEY: Yeah.

11 MR. BAILEY: Thank you.

12 MODERATOR SILVEY: Do you have anything?

13 MR. FETTY: Do you have questions, Al?

14 MR. DuCHARME: I do have one question.

15 Do you have any sense of -- I know you can't
16 expressly speak for the other examiners you work with,
17 but do you have any sense of you personally, or do you
18 know if they believe that examining our violations of
19 mandatory health and safety standards would be a
20 distraction from the broader purpose that you have in
21 examining and looking for explicit hazards?

22 MR. BAILEY: Yes. In fact, these comments
23 that I made today, we -- I asked all of them -- we had
24 our union meeting and I asked all the miners for input
25 on this proposal. The only input I got was from mine

1 examiners. They -- so these comments that I expressed
2 are also other examiners' comments. I mean, if they
3 put -- they feel that it would take extra time. And,
4 like I say, it would be hard to try to catch
5 everything and what's going to happen to them if they
6 miss them.

7 MODERATOR SILVEY: Okay, thank you.

8 MR. BURNS: I guess my only question is, the
9 hourly examiners, are they generally examining the
10 outby areas and the -- or the foremen still doing the
11 sections?

12 MR. BAILEY: Yes, foremens are doing the
13 sections. The hourly examiners are doing outby,
14 everything outby. All work areas outby, and belts.

15 MODERATOR SILVEY: Okay. Thank you very
16 much.

17 MR. BAILEY: Thank you.

18 MODERATOR SILVEY: But we look forward if
19 you have any specific alternatives.

20 MR. BAILEY: Okay.

21 MODERATOR SILVEY: You did -- like you said,
22 you did give us something, but if you have anything
23 else --

24 MR. BAILEY: Thank you.

25 MODERATOR SILVEY: Thank you very much.

1 MR. BAILEY: Thank you.

2 MODERATOR SILVEY: Our next speaker is Gary
3 Leaming with Canyon Fuel.

4 MR. LEAMING: Good morning. My name is Gary
5 Leaming, Gary W. Leaming -- G-A-R-Y, W, L-E-A-M-I-N-G.
6 I'm the safety manager for Canyon Fuel Company, Sufco
7 Mine. And I worked in underground coal mining
8 industry for nearly 37 years.

9 My responsibilities have ranged from
10 equipment operator to manager of safety. Between
11 those duties, I have been a fire boss, a section
12 foreman, supervisor of training; but most recently for
13 16 years, I've been responsible for the safety at the
14 Sufco Mine. And I appreciate the opportunity to speak
15 with you today.

16 MODERATOR SILVEY: Thank you.

17 MR. LEAMING: I want to tell you why I feel
18 the proposed rule for examinations of work place -- of
19 work places, or work areas, for violations of
20 mandatory health and safety standards is unrealistic;
21 why it will create anxiety and performance problems
22 for examiners; and that safety is an attitude that
23 each miner must embrace and it can't be mandated or
24 forced upon them, I don't believe.

25 I see the safety of miners steadily improve

1 at the operation where I work; and I think we can all
2 say for across the nation, most significantly in the
3 past five years. As a safety professional, I think I
4 had a minimal role in this improvement.

5 The reason we have been much more successful
6 at our operation in this time span is because the
7 management group is working hard to develop an
8 atmosphere where each person of the 375 employee
9 workforce actively cares about their own safety and
10 the safety of their co-workers.

11 Safety standards range in a wide variety of
12 categories. There is much to look for. Adherence to
13 these standards does help with the safety of miners;
14 however, these standards are only a portion of the
15 equation that keep our miners returning home safely
16 each day.

17 The hazards that a mine examiner can locate
18 during their inspections contribute more to getting
19 our miners home safely, and we need to assure that
20 hazards are what they continue to focus on. Expecting
21 an examiner to locate the hazards that may be present;
22 and then knowing, understanding, and finding the
23 violations of the mandatory health and safety
24 standards is not realistic and demonstrates a move to
25 transfer responsibility.

1 An examiner simply can't inspect the various
2 aspects of his or -- of their area of responsibility
3 for violations of standards and locate the potential
4 hazards to miners as well. The timeframe given does
5 not allow for this large task to occur effectively.

6 I think it would be additionally
7 irresponsible to expect most -- the most proficient
8 MSHA inspector that has years of training to locate
9 all the violations and hazards in the three hours
10 given.

11 It is also not prudent to expand the
12 examination timeframe more than three hours because
13 the change in conditions in the areas to be examined
14 can change, and so longer periods of time for a
15 preshift examination is probably unwarranted.

16 Even thoroughly trained MSHA inspectors with
17 years of training and experience can miss a violation
18 or hazard that may cause an injury. Holding examiners
19 to more stringent inspection guidelines, and to also
20 locate violations of safety standards, will create
21 additional stress and confusion for these persons,
22 which, in turn, will undoubtedly create missed
23 hazards.

24 Examiners can have more on their minds than
25 is appropriate for good safety inspections if they are

1 preoccupied with making certain they don't miss
2 anything MSHA may come back and cite them for. Their
3 focus will be on looking for and wondering what
4 they've missed, all the while overlooking issues that
5 will pose hazards to incoming miners.

6 It is good to locate violations of safety
7 standards and correct them as soon as possible; but
8 the fact is, many of those standards don't pose a
9 safety hazard threat to a miner. The difference
10 between 75 percent in combustible content of rock dust
11 in an area, as opposed to 80 percent in combustible
12 content of rock dust in an entry, is difficult to
13 accurately detect. Furthermore, it has very little
14 impact on the safety of miners in their everyday
15 duties.

16 Another example would be the worrying of
17 making sure all equipment was just as it should be as
18 they're walking past a belt head, or something such as
19 that. A mine examiner with the primary focus of what
20 will hurt me, and others who work and travel in the
21 area, is the most reliable source of health and safety
22 for our miners. We will bog them down with too much
23 to see and too much to cover.

24 If we, as a nation, are determined to work
25 together as though we are all pulling for the same

1 cause, our results with the safety of our workers and
2 the efficiency of them will be greatly improved. We
3 should as an industry, which includes MSHA, spend much
4 more time working to help miners understand that
5 actively caring for themselves and others is the most
6 positive way to obtain that zero injury objective that
7 we all achieve -- or that we all want to achieve.

8 In conclusion, safety is held by each
9 individual in their own way and belief. We all want
10 each person to associate with a coal industry to go
11 home safely every day and, subconsciously, they do as
12 well, but it takes more. We cannot mandate an
13 individual, a crew, or an entire coal company to be
14 safe by mandating this legislation. The individual,
15 crew, or company has to believe that safety is good
16 for, and will benefit, them in a way that they want to
17 be effective.

18 This could be demonstrated quite easily by
19 the way that we behave on the highways. Maybe one, or
20 maybe more than one of you, and it happens to me, get
21 over the speed limit on occasion. When we get caught,
22 we probably come back to -- and pay more attention, or
23 it could be like seatbelts. But as we believe that
24 those rules are good for us, we start to do them by
25 ourselves and it's not just when the highway patrolman

1 is looking at us.

2 It is possible to affect behavior while
3 you're watching if you hold someone -- if you hold
4 some type of authority or influence over the person
5 exhibiting that behavior. However, when the authority
6 is not present, which is most of the time, the
7 individual's belief will become the primary mode of
8 function or behavior.

9 It ought to be the primary focus as leaders
10 in this industry, including all of us, to work more at
11 influencing individual behavior and helping workers
12 gain an actively caring attitude toward their own
13 safety and the safety of their co-workers. I know
14 when this occurs in the work place, miners accomplish
15 more in a more cost-effective way with fewer injuries
16 and close calls.

17 It is unrealistic to expect mine examiners
18 to find the safety hazards and the safety violations
19 in the allotted time. It would be just as unrealistic
20 to expect MSHA inspectors to accomplish what is
21 proposed in the time given. We will create anxiety
22 and performance problems for these dedicated miners
23 who are trying to assure that areas they travel are
24 free from hazards that will affect their fellow
25 miners.

1 And, finally, we must begin to focus on
2 safety as an attitude, the behavior that can be
3 influenced by demonstrating a caring attitude toward
4 the very miners that we serve. Safety is not one
5 man's job to keep everyone safe. It's my job to keep
6 me safe; and when we can motivate everyone to embody
7 that mindset, we will identify and prevent injuries.

8 Thank you.

9 MODERATOR SILVEY: Thank you.

10 I want to make a few general comments; then,
11 I'm going to start by asking the same question.

12 First of all, I do agree with you, and I
13 want to say on behalf of the Agency and the Department
14 of Labor, I do agree that safety -- that there's been
15 tremendous safety improvement in the mining industry
16 and that that has -- I think the credit goes just like
17 you said, to not one person and probably at your mine
18 not one person, but at -- to everybody working
19 together and in the mining industry. I think it
20 goes -- the credit goes to the industry, the miners,
21 labor, and the government, the state, everybody who
22 played a role in making sure that the responsibilities
23 that are embodied in the Mine Act, and then that go
24 beyond that because the type of safety and health
25 improvements we've seen are not just the type of

1 improvements that are tied to making sure the letter
2 of the law is done.

3 I think you're right. It is an attitude and
4 an attitude that goes from as we say, quote, the shop
5 floor to the CEO of the company.

6 So with that in mind, though, I think when
7 you strip back everything, when it comes to the mining
8 industry, the way the legal responsibility is, the
9 responsibility is still primarily the mine operator's
10 responsibility to make sure that there is full
11 compliance with the requirements.

12 And within -- toward that end, that we
13 proposed the rule, but the rule was to -- was part of
14 the Department of Labor's approach to making sure that
15 operators plan and that things were presented; i.e.,
16 the identification of all hazards and violations. And
17 then the bottom line would be that workers are
18 protected.

19 Now, with that in mind, I want to go back
20 to -- I'm going to ask you the same question. Before
21 I do that, though, you gave one -- you gave two
22 examples when you said violations of safety and health
23 standards, that may be a violation, technically a
24 violation. I'll echo what you said. You gave that
25 example of a total incombustible content, and you gave

1 the example of equipment not operating properly, and I
2 don't disagree with you at all.

3 The example that you gave in and of itself,
4 you know, probably wouldn't be as you put it a hazard,
5 that I don't -- I may not even go -- I may go so far
6 as to say, and it might not be a hazard to miners.

7 But not the thing about it is, you can take
8 another example like that as I -- as we -- as I said
9 with Mr. Bailey, where that example in and of itself
10 might not present an issue. But if it is coupled with
11 something else -- and even if it's coupled with a
12 second thing, that might just be technically a
13 violation, but that might not present a hazard. That
14 might be okay.

15 But then you bring in a third one. You --
16 see where I am? So that's one of the reasons why
17 there was some purpose behind, hopefully -- I say
18 hopefully -- all of the standards. So that's sort of
19 the reason why you would try to ask for compliance
20 with most or all of them.

21 But even -- but given that, I don't know --
22 you told me you had been working 37 years, I think,
23 but I don't know whether you can go back to pre 1992
24 or not and find -- and see what happened in your mind
25 then, wherever you were, pre 1992, with respect to the

1 rule that predated the 1992 rule on this, which
2 included some aspect of violations of mandatory health
3 and safety standard, and how --

4 And did you see the kind of problems you
5 were telling me that we would have under the proposed
6 rule?

7 MR. LEAMING: I can try to answer that
8 question.

9 MODERATOR SILVEY: Yeah. You're doing good
10 if you can cause I -- yeah.

11 MR. LEAMING: Well, I -- the -- first of
12 all, the proposed rule as written is -- doesn't make
13 allowances for 75 percent or 80 percent, so that's a
14 difficult thing. Because how will it be interpreted
15 and how will it be enforced?

16 But with all that being said, in 1970 -- I
17 don't know, '76, '77, '78, it may be the very late
18 '70s, I was a fire boss and I did inspect belt lines;
19 I inspected sections; I inspected lots of things like
20 that. And I remember that we occasionally looked for
21 things that were more than hazards and I think it was
22 difficult.

23 The Agency was different then. I personally
24 believe, and this is my personal belief, that the
25 Agency greatly changed in 2006 with the disasters that

1 we had in the early part of that year. And so with
2 that given, I think that it was a different climate
3 out there to what fire bosses and examiners were
4 looking for in the 80s and the 70s, and even the 90s,
5 than it is now.

6 And I think that the people that we have
7 doing it now are just as good, if not better, than we
8 were, because they know the microscope that they're
9 under. And I believe that they're very diligent in
10 trying to find things that will hurt people, and I
11 appreciate what you said about one or two or three.

12 I've seen many injuries, unfortunately, in
13 my time -- in this amount of time that I've worked in
14 this business, and almost always -- well, I can't
15 think of a time when there wasn't at least two, maybe
16 four or five things, that all wind up --

17 MODERATOR SILVEY: Come together.

18 MR. LEAMING: -- to hurt someone.

19 MODERATOR SILVEY: Yeah.

20 MR. LEAMING: And so you're very right on
21 that aspect.

22 As far as -- I don't know if I've answered
23 your question --

24 MODERATOR SILVEY: Yes, you have.

25 MR. LEAMING: -- but those are my thoughts.

1 MODERATOR SILVEY: Yeah, no, I hear you.
2 Yeah, yeah.

3 I'm going to say -- and I appreciate your
4 comments -- so I'm going to say to you also, if you
5 all have specific alternatives to --

6 Oh, I know what it was. One more thing I
7 want -- yes, it was something I wanted to say.

8 I'm going -- here, I'm going to draw your
9 attention to the proposed rule, page 81167 of the
10 preamble, and it's the middle column, the paragraph
11 just prior to the section-by-section analysis, that's
12 81167.

13 And there -- and, you know, the Agencies
14 write a lot of stuff in the preamble where we try to
15 articulate what our intent is. And sometimes we do a
16 good job of it; and, sometimes, you know, we try to do
17 a good -- we do -- hopefully, we do the best we can.

18 But when we wrote this, and we meant it, and
19 so and I will say it here today; we said that we did
20 not intend that the proposal would significantly
21 change the general scope of examination under the
22 existing standards.

23 And we hear what you're saying. We know
24 that it says within three hours prior to the oncoming
25 shift. Three hours is only three hour -- you all, you

1 don't have time to do everything in the world in that
2 timeframe. So for everybody who is going to -- who
3 has made that comment and for people who are coming to
4 me to make it, I hear what you're saying. I
5 understand that, and you're right; the answer is not
6 to add five more hours. Five more hours and that will
7 be the entire, you know, so what -- anyway, you hear
8 what I . . .

9 So we said that examiners would not be
10 required to perform additional tasks, take additional
11 measurements, open and examine equipment or boxes.
12 And I'm going to skip down here a few. In accordance
13 with the proposed rule, mine examiners would have to
14 note violations and record them.

15 Then we say the top 10 standards -- this is
16 what I wanted to say -- the top 10 standards cited by
17 MSHA inspectors are the types of violations that well
18 trained and qualified examiners can observe while
19 conducting effective examinations. And those 10
20 standards, then we listed them in this proposal on
21 page 81169. And I'm going to state -- give some of
22 them for the record.

23 Some of those would be obviously roof
24 control at -- for underground coalmines. You know
25 that, 202220. Ventilation controls, the standard deal

1 with ventilation controls, 333. The ventilation plan,
2 and I've heard this from -- but now the second time.
3 Coal dust -- float coal dust, that one, combustible
4 for cumulation.

5 Other safeguards, mobile and stationary
6 equipment, and 1731 that, you know, damaged rollers
7 and things like that. So those are -- so, in a way,
8 we sort of drew your attention. We were trying to
9 guide you to the things that -- and probably not one
10 of my colleagues brought it with them, and I know not
11 to do this. The Code, 30 C.F.R.

12 See, he's going to prove me wrong. So,
13 obviously, by writing that --

14 Is this --

15 MR. FETTY: Part 75.

16 MODERATOR SILVEY: Is this the whole -- is
17 this just for 75? Good. That's good. This is for
18 75. By writing that then, what we said then, we
19 didn't intend for the examiner to be looking for each
20 and every one of these in part 75.

21 So, anyway, that just to, you know, just to
22 try to -- what I'm trying to do here, the purpose of
23 this public hearing is to try to advance the plot a
24 little and see if we can get to a point where we can
25 do something that we think is workable. Anyway, okay.

1 MR. LEAMING: Ms. Silvey?

2 MODERATOR SILVEY: Yes?

3 MR. LEAMING: And I've read that, and I
4 appreciate that you categorized those things. But
5 still back in the proposed rule, it talks -- the real
6 change in language is that it will be an examination
7 for hazardous conditions and violations of mandatory
8 health and safety standards --

9 MODERATOR SILVEY: No, I appreciate that.

10 MR. LEAMING: -- which is --

11 MODERATOR SILVEY: No -- yeah. No, no, no,
12 I understand that. But I'm just -- but as I said, the
13 Agency's intent is also embodied in the preamble and
14 I'm just saying to you that we tried to draw your
15 attention to the things that recognize it, like you
16 said, that there's a defined amount of time.

17 That's all I'm saying. I'm trying to draw
18 your attention to the things that we thought
19 experienced and well-qualified examiners would look
20 for first. That's all I'm -- yeah, okay.

21 Any other questions?

22 Okay. You don't?

23 MR. FETTY: No.

24 MODERATOR SILVEY: Okay.

25 But if you have any specific alternative --

1 now talking about when you said going back to the
2 wording of the proposed rule, if you have any specific
3 alternative to what we propose, if you could send it
4 to us before the record closes, we appreciate that.

5 But thank you for your testimony.

6 MR. LEAMING: Thank you.

7 MODERATOR SILVEY: Okay.

8 MR. LEAMING: Thank you for your time.

9 MODERATOR SILVEY: The next person would be
10 Bill Owen [sic] with Colorado Mining Association.

11 MR. OLSEN: Bill Olsen -- B-I-L-L,
12 O-L-S-E-N. I'm here with the Colorado Mining
13 Association.

14 Good morning to all committee members.

15 MODERATOR SILVEY: Good morning.

16 MR. OLSEN: My name is Bill Olsen, and I'm
17 speaking on behalf of the members of the Colorado
18 Mining Association in regards to the proposed standard
19 entitled Examination of Work Areas in Underground Coal
20 Mines for Violations of Mandatory Health or Safety
21 Standards.

22 We appreciate the opportunity to present our
23 comments. Colorado Mining Association was established
24 in 1876, and includes 154 companies engaged in or
25 related to mining. This includes seven underground

1 coalmining operations that would be directly impacted
2 by the proposed standard.

3 The proposed standard would require
4 certified examiners conducting preshift, including
5 those for pumpers on shift, supplemental and weekly
6 examinations to not only inspect for hazardous
7 conditions as is currently required, but to include an
8 examination for all violations of mandatory health or
9 safety standards.

10 This is a significant departure from the
11 current practice, and we believe that including the
12 additional examination requirement of inspecting for
13 violations of each and every mandatory health or
14 safety standard would be detrimental to the safety of
15 miners by distracting the attention of the examiner to
16 focus attention on mundane and inconsequential
17 conditions that may constitute technical violations of
18 broad base standards, but which create no real hazards
19 to the miners.

20 The examination's limited inspection time
21 will be compromised by this standard by requiring him
22 to conduct compliance inspections, rather than
23 inspections for hazardous conditions that can
24 immediately and adversely affect the miners' safety.

25 The preamble states that the proposed

1 standard would require that the certified mine
2 examiners conduct more complete and thorough
3 examinations, thereby providing a greater protection
4 for underground coal miners. We agree that complete
5 and thorough examinations are necessary to ensure the
6 safety of the miners, but the examinations should be
7 geared towards truly hazardous conditions.

8 Clearly, not all violations of mandatory
9 health or safety standards result in a hazardous
10 condition. One such example is when an examiner
11 simply forgets to record the date, time, and initials,
12 the DT&I of the exam at the designated location and a
13 working place.

14 The required examination was made and
15 documented in the record book, however, the simple
16 mental error of not recording the DT&I is a violation
17 of a mandatory health or safety standard.

18 Under the proposed standard, the examiner's
19 time would be needlessly spent correcting and,
20 thereafter, recording this minor infraction instead of
21 spending time looking for and correcting hazardous
22 conditions. This is but one simple example, however,
23 multiple similar circumstances exist should the
24 proposed standard go into effect.

25 The regulatory history related to the

1 proposed standard to require inclusion of mandatory
2 safety or health standards as part of the examination
3 indicates the need to limit such examinations to
4 hazards that a miner may be exposed to. The proposed
5 and final standards associated with the 1992, 1994,
6 and 1996 examination requirements clearly stated how
7 critical it was to focus the attention of the examiner
8 on critical areas so the examiner could identify
9 conditions that pose a hazard to the miners.

10 In fact, the preamble to the 1992 standard
11 states: "Requiring the preshift examiner to look for
12 all violations, regardless of whether they involve a
13 hazard, could distract the examiner from more
14 important aspects of the examination. The preshift
15 examination is designated to concentrate the
16 examiner's efforts in those areas where they are more
17 suitably applied".

18 CMA members support the continuance of
19 utilizing the examiner's time for looking for and
20 correcting hazardous conditions, rather than all
21 violations of mandatory health or safety standards.

22 The goal of examining for and correcting
23 hazardous conditions should not be compromised by
24 diluting the examiner's concentrated efforts with the
25 burdensome workload so broadly defined.

1 Certified mine examiners are required to
2 pass an examination related to basic knowledge of the
3 applicable MSHA standards. These examiners may spend
4 several days to several weeks preparing for the
5 examination by reading through the standards while
6 trying to interpret exactly what the standards mean.

7 Interpretation of the standard clearly
8 varies from examiner to examiner, as well as from
9 inspector to inspector. If interpretation was clear
10 on every standard, there certainly wouldn't be so many
11 contested citations.

12 To contrast this preparation with that of an
13 MSHA inspector, there's absolutely no comparison since
14 an inspector's certification may take several months
15 to over a year. This is apparently what MSHA
16 considers to be adequate time to become qualified to
17 examine a mine for violations of mandatory health or
18 safety standards.

19 After completing the training, MSHA
20 inspectors then spend many hours inspecting a working
21 section or outby areas of mine. With all of their
22 qualifications, an inspector cannot complete an
23 inspection of the section within the three-hour time
24 period, as the preshift examiner is required to do.

25 Certainly, the inspectors are performing

1 more detailed examinations and performing additional
2 testings during their examinations; but if the
3 proposed standard becomes final, the expectation is
4 the same for both the inspector and the examiner.
5 That expectation is to identify, correct, and record
6 every violation of a mandatory health or safety
7 standard.

8 Through the examiner's experience, he is
9 highly qualified to identify and correct hazards. By
10 certification, he is not highly qualified to identify,
11 correct, and record every violation of a mandatory
12 health or safety standard that is not a hazard.

13 Mine examiners from CMA companies have
14 expressed concern that if the standard goes into
15 effect, MSHA inspectors will further step up
16 enforcement related to inadequate inspections.

17 For example, if an examiner completes his
18 examination, identifies, corrects, and records all
19 observed violations of mandatory health or safety
20 standards, and is then followed by a more qualified
21 MSHA inspector who finds additional violations, not
22 only will a citation be issued for the existence of
23 the violation, but a second citation will be issued
24 for an inadequate examination even though the
25 violation may not be a true hazard.

1 This will deter many miners from becoming
2 certified examiners since they know they will never
3 have the same training and qualifications as an MSHA
4 inspector.

5 Mine examiners have also expressed concern
6 that requiring examinations to be compliance
7 examinations, rather than hazard specific, more time
8 will be spent on compliance rather than focusing on
9 potential hazards.

10 The preamble to the standard lists the top
11 10 cited standards and interpolates that at least
12 three additional fatalities might have been prevented
13 if examinations included violations of mandatory
14 health or safety standards.

15 Many of the cited standards truly relate to
16 potential hazardous conditions, such as loose roof or
17 ribs, inadequate ventilation, missing guarding, etc.
18 This should be identified and corrected during
19 examinations.

20 However, other standards, such as 30 C.F.R.
21 1725(a), the catch-all for standard and mobile
22 equipment, would require spending needless time
23 examining equipment that would otherwise be checked
24 during an operate -- by an equipment operator's
25 preoperational inspection.

1 An examiner's time would be better spent
2 looking for and correcting hazards; such as loose roof
3 and ribs, ventilation, inadequate ventilation, etc.

4 Further, CMA members support the written
5 comments submitted by the National Mining Association,
6 NMA. The NMA states the Agency's justification for
7 the proposed standard is flawed in that it requires a
8 belief that if the top 10 standards have been found by
9 the examiners in the referenced accident reports, the
10 injuries would not have occurred. This is
11 contradictory to the root cause analysis prepared by
12 MSHA in those accident reports.

13 Once violations of mandatory health or
14 safety standards are identified during the
15 examination, the preamble states that MSHA would
16 continue its practice under the existing standard that
17 operators prioritize and correct violations based on
18 the seriousness of the hazard.

19 However, similar statements are not included
20 in the standard itself. Of concern is that the mine
21 foreman or other designated official charged is
22 required to prioritize the order of correction.
23 Prioritization by the mine foreman may certainly
24 differ from that of the inspector, which may result in
25 additional enforcement actions simply based on varying

1 opinions of the potential hazards associated with the
2 identified hazard.

3 In closing, CMA members support reasonable
4 and justifiable standards that enhance the safety and
5 health of miners. The proposed standard is neither
6 reasonable nor justifiable for the reasons previously
7 stated. It will result in a -- and will result in a
8 diminution of miner safety.

9 We encourage the Agency to reconsider, as
10 previously done, the necessity and basis for this
11 standard.

12 Thank you.

13 MODERATOR SILVEY: Thank you.

14 I want to make a few points with a few
15 comments there.

16 I hear everybody saying -- and trust me,
17 I -- the comments are like this, and I was going to
18 bring them with me, and then I thought, for what? I
19 mean, most of them say the same thing and -- but when
20 I --

21 In listening to you, Mr. Olsen, and I messed
22 up your name --

23 MR. OLSEN: Oh, that's fine.

24 MODERATOR SILVEY: -- so, I'm sorry.

25 MR. OLSEN: It's my writing.

1 MODERATOR SILVEY: In listening to you,
2 though, it dawned on me that -- and everybody says,
3 what's going to happen to you, that you are now going
4 to get a citation for the substantive standard;
5 albeit, it may be a technical violation that the date
6 and the time was missed on something, and you are then
7 going to get a citation for not putting it in the
8 record book. So, you are going to get two now.

9 And then I thought about it. Really, our
10 goal was -- and I forget exactly the number of
11 violations that were in underground coalmines last
12 year. For some reason, I want to say in excess of
13 70,000. And just listening now to everybody, our goal
14 was to indeed to get that number down to half,
15 therefore -- the more violations of safety and health
16 standards that you have corrected, then the fewer
17 possibilities that they would be there when the MSHA
18 inspector comes, that the inspector will find
19 something. So that's the first thing.

20 But even having said that, I take -- I
21 understand what you're -- I hear you in terms of what
22 you were saying about the time and the effort to do
23 this, and that kind of thing. And so I'm going to ask
24 you the same question I've asked everybody up until
25 now.

1 And I don't know whether you were in the
2 mining industry or if you were, where you were at that
3 time in terms of pre 1992 and the old -- the rule that
4 predated the one that we are operating under now.

5 MR. OLSEN: I was in the mining industry in
6 the late '70s; however, I was not a certified
7 examiner --

8 MODERATOR SILVEY: Okay.

9 MR. OLSEN: -- at that time.

10 MODERATOR SILVEY: So you wouldn't have
11 any -- right.

12 So the only thing -- other thing I would say
13 then is that -- I would reiterate the point I made
14 earlier, the point when missed between the -- the
15 conversation between Mr. Leaming and me, from the
16 standpoint that sometimes one -- as you put it, one
17 violation that may be a technical violation but
18 doesn't rise to the level of a hazardous condition.

19 And as I said to him, that may be true, and
20 I don't disagree with that in and of itself, but
21 sometimes you might end up having two and the two may
22 relate to each other, may be aimed at the same hazard.
23 Or -- and even the two that come together may not
24 result in a hazardous condition.

25 But then you might have a third one all

1 aimed at the same hazard. And so one of the goals
2 when we did this proposed rule was that we would get
3 things identified and corrected, you know, everybody's
4 focus on telling -- and talking to me has been on
5 hazards. But one of our goals was to get things
6 identified and corrected before hazards develop.

7 Now, as we know with anything, anything in
8 life, there are many ways you can maybe try to
9 approach this, and so that's one of the things we are
10 asking you in terms of -- you know, if you have any
11 specific alternatives to what we proposed.

12 But the goal is to get things identified and
13 corrected in underground coalmines before a hazard
14 would develop.

15 And did you -- you want to -- you can make
16 the clarification point. My colleague here is going
17 to make one clarification point.

18 MR. FETTY: Yeah, just on the scope of the
19 preshift; we haven't changed the scope of the preshift
20 examination. You brought up an example of equipment
21 not being maintained in a safe operating condition,
22 and maybe I'll just use a scoop that doesn't have
23 steering that's adequately maintained.

24 Well, you know, a mine examiner isn't going
25 to check a scoop to make sure that the brakes are

1 functional or that the steering is operational. So if
2 an inspector were to come on the section later in the
3 shift and examine your scoop as part of his regular
4 E01 inspection and find that there was some deficiency
5 which constituted a violation of 1725(a), we would not
6 expect that inspector to issue you the 1725(a) along
7 with an inadequate preshift. That's not the intent of
8 this regulation.

9 MR. OLSEN: But I can just give you one
10 example.

11 MR. FETTY: Okay.

12 MR. OLSEN: Talking about the scoop. If
13 your examiner is supposed to check for all safety or
14 health violations -- let's say you got a fire
15 extinguisher on that scoop and it's missing an
16 inspection tag, he doesn't look at that. The
17 inspector follows him up, there's a violation of
18 mandatory safety standard. Why didn't he pick that up
19 in his preshift? I can see two citations easily being
20 issued for something minor than that. Not even doing
21 a pre-op, but just a fire extinguisher on that scoop.

22 MR. FETTY: And, again --

23 MR. OLSEN: It --

24 MODERATOR SILVEY: Yeah. We've got -- trust
25 me, we've gotten that one in the comments. The

1 comments are replete with that one.

2 MR. FETTY: I think --

3 MODERATOR SILVEY: You know, people always
4 find -- they find the most -- they find the most sort
5 of --

6 MR. FETTY: Miniscule --

7 MODERATOR SILVEY: -- innocuous ones to send
8 into you. So we do have that one. Yeah, thanks.

9 MR. FETTY: And that might be something we
10 will have to clarify. But, again, you know, a scoop
11 is not part of the preshift examination, and, you
12 know, nor would be the fire extinguisher that sits on
13 the scoop. I mean, that's not the intent of a
14 preshift.

15 MR. OLSEN: But that is not what the
16 standard states. I mean --

17 MODERATOR SILVEY: I don't -- Mr. Leaming --

18 MR. OLSEN: -- the standard -- the standard
19 clear --

20 MODERATOR SILVEY: -- made that perfectly
21 clear to me.

22 MR. FETTY: Right.

23 MODERATOR SILVEY: I heard --

24 MR. OLSEN: A certified person shall check
25 for --

1 MODERATOR SILVEY: Yeah. We --

2 MR. OLSEN: -- shall check for hazardous
3 conditions or violations of --

4 MODERATOR SILVEY: Yeah.

5 MR. OLSEN: -- mandatory health and safety
6 standards.

7 MODERATOR SILVEY: We understand, yeah.

8 MR. OLSEN: It's clearly written, and which
9 conflicts what you're saying.

10 MODERATOR SILVEY: Yeah, we hear you. Okay.
11 That's it; isn't it?

12 Thank you very much, Mr. Olsen.

13 MR. OLSEN: Thank you.

14 MODERATOR SILVEY: Okay. All right.

15 Our next speaker is Lar -- Kent Larsen.

16 Yeah, Larsen. Canyon Fuel.

17 MR. LARSEN: Morning.

18 MODERATOR SILVEY: Morning.

19 MR. LARSEN: My name's Kent E. Larsen --
20 K-E-N-T, initial E, L-A-R-S-E-N. I'd like to thank
21 you for this time, for your time, and for letting me
22 comment on these loopholes, little changes in the
23 C.F.R.

24 I've worked for Sufco for 33 -- for 30
25 years. I have 12 years of longwall experience, 12

1 years mine examiner, 6 years outby. I've had 24 years
2 mine rescue, 27 years EMT.

3 When I do my weeklies, or when I do a
4 preshift, I take on responsibility on myself to make
5 sure that there's no hazards that I can find. If I
6 find them, I correct them, if I can, or, you know,
7 take it off because I feel like it's my responsibility
8 to make the area safe for the miners that come in
9 there and work.

10 When you sign that TDI card, when you go
11 outside and fill out the books, sign your name at the
12 bottom, you are taking on the responsibility when you
13 put no hazards -- I mean, none observed; and they come
14 in and read that, they feel like they should be safe
15 to go down and work underground.

16 Sometimes, I feel like they -- it puts a
17 target on your back, which I accept. I feel like if
18 you take on that responsibility, you have -- you know,
19 your name's on the line for that. And I'll give you
20 kind of an example of a target.

21 I was doing my weeklies down where we call
22 the east banks bleeder. In the return, I come upon a
23 water hole that was about 20 inches deep starting out.
24 I have -- on my sound stick, I have a tape -- pieces
25 of tape 8 inches and 16 inches. And I stuck the stick

1 down in the water and I went over that second tape,
2 which told me about 20 inches deep.

3 I dangered that off. I walked around near
4 the intake, vacuumed the return. I dangered that off.
5 I could see both ends of the water hole, say water
6 maybe 30 feet long. I finished my exam. I dangered
7 that off, finished my examination, went outside, put
8 it in the book that it's dangered off as a hazard.

9 That evening, I get a phone call. They
10 wanted to know if I traveled to that water hole. I
11 says, no. I says, it's dangered off. It's 20 -- I
12 said, I don't know how deep it is; it started -- I can
13 tell you it's 20 inches deep about.

14 Anyway, they -- that next morning, went back
15 to work; I was wrote up for an inadequate preshift
16 because I did not travel the whole -- I didn't travel.
17 I just -- entirety because in the C.F.R. book, all
18 airways must be traveled in its entirety.

19 I don't -- I feel like it was -- I didn't
20 feel it was right. But on this -- on our -- I have
21 this little card here I packed with me. It's examples
22 of hazardous conditions, okay.

23 It says here:

24 ➤ Loose roof, ribs that need to be taken down and
25 supported.

- 1 ➤ Danger to our compromised roof support. Sheared
2 bolts, loose bolt plates, etc. This would include
3 wooden and cement support products. Areas sent --
4 areas in need for additional support.
- 5 ➤ Excessive methane.
- 6 ➤ Oxygen deficiency.
- 7 ➤ On the ventilation, ventilation changes from
8 previous examination, ventilation short circuit,
9 damaged or improperly installed ventilation control,
10 down lines brattice ventilation tubing, danger to
11 air lock doors, danger to displaced or leaking
12 seals, air moving in the proper direction.
- 13 ➤ Accumulation of loose coal -- coal fines and/or coal
14 float dust.
- 15 ➤ Rock dust applied into required quantities.
- 16 ➤ Electrical hazard, damaged power lines, power or
17 trailing cables, face equivalent, energized
18 auxiliary fans when no one's in the section.
- 19 ➤ Fires, fire hazards, fire hazards in proper
20 operation of conveyor or rubbing structure,
21 supplement supports, seized rollers or belt -- or
22 bearings.
- 23 ➤ Deep water over one's boot. Stumbling hazard in
24 shallow level of water if trip, slip, or fall
25 hazards present but cannot be seen due to clarity of

1 the water or muddy conditions. This is especially
2 critical in areas designed as the primary and the
3 alternative escape way.

- 4 ➤ Slip, trip, and fall hazards where miners work or
5 travel.
- 6 ➤ Escape way clearances.
- 7 ➤ Equipment guards that are not in place danger -- or
8 damages that are inadequate.
- 9 ➤ Explosives left out of magazine.
- 10 ➤ Equipment parked near haul through curtains or
11 working sections.
- 12 ➤ Fire protections not in place or required and
13 damaged.

14 And then here is the examination checklist
15 we have.

- 16 ➤ All TDI cards signed and visible.
- 17 ➤ All reflectors marked hung and invisible.
- 18 ➤ All ventilation controls installed legally.
- 19 ➤ Three raila on Kennedy stoppings.
- 20 ➤ Two inches of foam around the Kennedy stoppings.
- 21 ➤ No holes in stoppings or overcast.
- 22 ➤ Doors latched shut.
- 23 ➤ Walkways clear of stumbling hazards.
- 24 ➤ No water over 8 inches deep in escape ways.
- 25 ➤ Lifeline hung so it can be easily accessible.

- 1 ➤ Float coal dust.
- 2 ➤ Roof and rib.
- 3 ➤ Pumps in the off entry.

4 On these new proposals, you want us to
5 prioritize the violations based on this system, you
6 know, how serious they are. Well, there's an example
7 there that I thought it was a hazard, deep water, you
8 know, what do you do.

9 Anyway, but I feel like they're trying to
10 put a target on front of me and one on the back of me,
11 and I don't think that's right.

12 Thank you.

13 MODERATOR SILVEY: Thank you.

14 I will say this for everybody and, you know,
15 a number of people who've come up have said either
16 they've been mine examiners or they are currently.

17 And for people who are -- whose job it is to
18 work each and every day as mine examiners of one type
19 or another, I do want to say that for -- and I speak
20 here for myself and I'm sure I speak for, you know,
21 probably all of my colleagues and everybody in MSHA,
22 that we do appreciate what you do each and every day
23 because I'm sure the vast majority, and I would guess
24 that almost all people who do take on that
25 responsibility -- and it is, I think we could all --

1 we could say, just like you said, it is a solemn
2 responsibility to go in there and preshift that work
3 place and then to certify at the end of the preshift
4 either one, that if hazards were found, that they
5 are -- as you said, that they are recorded and the
6 place is dangered off, or they're corrected; or
7 alternatively, it's certified to be free of any
8 hazardous conditions and the area's safe for people to
9 go and work. And that is a solemn responsibility in
10 an underground mine environment where the egress might
11 not be in all cases the easiest in the world to get
12 out.

13 So for people who do that each and every
14 day, we do appreciate that. And in terms of you
15 giving us a real concrete example, you know, I take --
16 I hear what you're saying and we understand what
17 you're saying.

18 And I really -- I don't necessarily have any
19 other -- maybe I could ask you the same thing, and I
20 think at one point you sort of alluded to it, things
21 that happened pre 1992.

22 Do you recall before the existing rule,
23 right, yeah.

24 MR. LARSEN: I --

25 MODERATOR SILVEY: And I'm sure, you know,

1 obviously, when things become more -- probably going
2 back to pre 1992, it was written in the code at that
3 time, but, you know, things were probably done sort of
4 automatic, and maybe without thinking, and that's one
5 of the reasons it may be a little difficult for people
6 to kind of remember exactly what was done at that
7 time.

8 MR. LARSEN: I just know over the past 30
9 years, since I've started there, from there to now,
10 how much it's changed towards the safety aspect of it,
11 you know.

12 MODERATOR SILVEY: Yeah.

13 MR. LARSEN: Having the miners themselves
14 take on the responsibility they work safe.

15 MODERATOR SILVEY: Yeah.

16 MR. LARSEN: It's not forced upon them.

17 MODERATOR SILVEY: Yeah. No. And, I mean,
18 and that's something that -- that is something that is
19 obviously always sort of the best that there is a
20 culture of safety. I mean that. And that sort of
21 everybody accepts it and willingly and becomes a part
22 of it, yeah.

23 Any other comment?

24 Okay. Well, thank you very much. But if
25 you -- again, to you, if you have any specific

1 alternative to what we propose -- and I'm seriously
2 asking everybody -- if you could, if you have any
3 alternative, no matter how worded or whatever, if you
4 could get it in to us before the record closes.

5 Okay, thank you.

6 MR. LARSEN: Thank you.

7 MODERATOR SILVEY: That's everybody who was
8 on the list that were --

9 (Off the record.)

10 (On the record.)

11 MODERATOR SILVEY: Okay. Okay.

12 Bob Butero, where -- oh, yeah, I did see you
13 come in, a United Mine worker.

14 MR. BUTERO: Do you recognize me for all
15 these years?

16 MODERATOR SILVEY: Yes, yes, I do. My
17 memory's not that bad.

18 MR. BUTERO: Hello to everybody here today.
19 My name is Robert Butero. And it's spelled B, as in
20 boy, U-T-E-R-O.

21 And I'm here -- the United Mine Workers have
22 submitted written comments on the new regs and I
23 believe they support the new regs of the enforcement.

24 I listened to my brother back here speak
25 earlier and talk about the examinations and stuff.

1 And the reason why I think we're here today is mainly
2 because of issues such as the Upper Big Branch where,
3 you know, we found a mine that had -- that showed
4 accumulations of float coal dust and nothing recorded
5 in the books.

6 And these are the issues that we're here
7 today to try and eliminate them. And I know that
8 through these citations and stuff, one of the reasons
9 that, you know, the operators hate to have this stuff
10 put in the books is because if it's in the books and
11 it's not corrected, then it becomes a horrible failure
12 and a 104(d) citation.

13 And as we say here, we're all in this for
14 the health and the safety of the miners, and we want
15 to make sure that that is protected in all mines. And
16 at too many of the mines, pre '92 and even up to
17 today, we find too many times that there's two sets of
18 books. There's the books that's required by, you
19 know, the law that's recorded for the hazards, and
20 there's another set of books.

21 And too many times, there's pressure put on
22 these fire bosses. These people take a certification
23 mainly from the states because that's the ones that
24 certify these people as fire bosses. And most of
25 their intentions is to do their job because they

1 understand what the outcome of a bad job is.

2 And the outcome of that bad job is that
3 somebody could get hurt or killed. And they
4 understand that. And to all of these guys, the
5 gentleman who just testified, plus the guy earlier,
6 and as your comments were, these guys should be well
7 respected, and I do respect them for the jobs they do
8 and the work they do.

9 And we're not asking people to go in and to
10 check the methane monitor on the miner to make sure
11 the methane monitor's working. We're not asking them
12 to -- and, you know, one other thing, just kind of,
13 you know, I hope MSHA maybe would, you know, do some
14 reg about the tag on the fire extinguisher. I mean,
15 every time we try to change the law or do something
16 with the law, the biggest thing comes up is the tag on
17 the fire extinguisher. And it just, you know, maybe
18 we could do a new reg to do something about that tag
19 on the fire extinguisher because it just seems it cuts
20 all the health and safety out just because of that,
21 but...

22 So, you know, we do support the regs and we
23 do, you know -- as the gentleman went through his
24 checklist of things to see, you know, that is the
25 proper examination and it's great that he has that and

1 it's great that he's carrying that because that is the
2 proper examination and that's where, you know, you got
3 the weekly examinations and you've got the preshift
4 examinations.

5 And we need to find out what's happening in
6 the mines; we need them to be recorded in the books;
7 and there needs to be corrective action to take there.
8 And if we could achieve that, we're going to go a long
9 way in improving the health and safety of the miners.

10 MODERATOR SILVEY: Okay. Thank you very
11 much.

12 I don't really have any -- like, you know,
13 we both said, and you are right, and I'm going to say
14 it again because I want everybody to hear it and know
15 that we, MSHA, mean it.

16 We do, just like -- we do appreciate the
17 people who carry out that activity of being mine
18 examiners. I mean, we wouldn't have achieved -- and I
19 think, again, it is accurate to say, we would not have
20 achieved the tremendous safety record that we have
21 done over the last number of years without people
22 carrying out that solemn responsibility, doing it in a
23 professional manner, and doing it in the best manner
24 that they could. And so we are thankful of that.

25 But, Mr. Butero, I want to ask you one

1 question. You said the United Mine Workers did
2 support this proposed rule, but you have heard some of
3 the comments and you acknowledge that you've heard
4 some of the comments made this morning in terms of --
5 and that have been sent into us on the record, that
6 this -- the proposed rule basically is unworkable and
7 it's going to require a lot of -- take -- distract
8 away from the more hazardous conditions. It will not
9 be workable, and it will set up a situation for a
10 double citation and all of the things you've heard.

11 And I don't want to put you on the spot and
12 I don't want to ask a leading question. Would you
13 have any response to that?

14 MR. BUTERO: Well, you know, a lot of our --
15 you know, as the brother, the first brother
16 testified --

17 MODERATOR SILVEY: Yes, yeah.

18 MR. BUTERO: -- to the --

19 MODERATOR SILVEY: Mr. Bailey.

20 MR. BUTERO: -- you know, he is a certified --

21 MODERATOR SILVEY: Examiner.

22 MR. BUTERO: -- examiner and he works at a
23 mine, you know. And the way things happen is, is that
24 if he does something that is improper, or citations,
25 and I think that's what their fear is, they're going

1 to get wroten [sic] up --

2 MODERATOR SILVEY: Yeah.

3 MR. BUTERO: -- or MSHA's going to give a
4 citation to them. And then they face the challenge of
5 not performing their work and could be suspended or
6 discharged for not doing that.

7 MODERATOR SILVEY: Disciplinary action.

8 MR. BUTERO: Right.

9 MODERATOR SILVEY: Yeah.

10 MR. BUTERO: And, you know, in, you know,
11 putting the rule together and doing that, I, you
12 know -- I mean, that gentleman that was just up here
13 and he read that checklist, I think that should be the
14 focus on MSHA.

15 Mainly, you know, you're going through --
16 you're looking for bad ribs, you're looking for a top
17 that needs to be scaled down. You know, nobody
18 expects somebody to go in there as an examiner and
19 prove whether you have 70 percent combustion or 80
20 percent combustion.

21 MODERATOR SILVEY: Yeah, right.

22 MR. BUTERO: But the average miner will go
23 in and he'll be able to say, hey, I think this needs
24 to be float dusted. I think there needs to be rock
25 dust. And that's his opinion; he could put that in

1 the book. As such, I don't think they're -- you know,
2 they're going to require that.

3 As I said earlier, I don't think the
4 regulation is set up for an inspec -- I mean, for an
5 examiner to be walking around the mine with a noise
6 meter to see what the decibel level is of the roof --

7 MODERATOR SILVEY: Yeah.

8 MR. BUTERO: -- you know.

9 Same thing with, you know, whether there's
10 the scent -- I mean, the sniffers are working on the --
11 you know, continuous miner machine, you know, those
12 types of violations.

13 But if you're going down and you see damage
14 to the fire suppression system in the belt line, these
15 guys said they see rollers there stuck, you see belt
16 structure that's rubbing that cause fire. Those are
17 things that should be at everybody's -- you know,
18 should be cheering to find that stuff; and if they
19 can't correct it, put it in the books to let the mine
20 management know that those issues exist.

21 And so, you know, those are the things that
22 we support. We don't -- you know, we don't want again
23 to go with the tag on the fire extinguisher.

24 MODERATOR SILVEY: Tag on the -- yeah.

25 MR. BUTERO: That, you know, this examiner

1 did that. He didn't see the tag; now, we want to fire
2 him --

3 MODERATOR SILVEY: Yeah.

4 MR. BUTERO: -- because he didn't see the
5 tag. If that's -- you know, that's not where we're
6 going with this. We want this to be an adequate
7 examination put in the books and taken corrective
8 action so nobody's exposed to that hazard. That's
9 our --

10 MODERATOR SILVEY: Okay. You got anything?

11 MR. FETTY: No comment.

12 MODERATOR SILVEY: Yes, okay. Thank you
13 very much, yeah.

14 That's -- those are the people who have
15 signed up.

16 Is there anybody else who wishes to speak?
17 We've got a lot of people here. Anybody else who
18 wishes to speak?

19 Well, if nobody else wishes to speak, I'm
20 going to -- I tell you what I'm going to do. I'm
21 going to tentatively close the hearing, but we will be
22 here. So if anybody -- while we're on break, if
23 anybody comes up and they want to speak on
24 examinations of work areas, I will re-open the record.

25 But, right now, asking if anybody else

1 wishes to speak on the Agency's Proposed Rule on
2 Examination of Work Areas, and hearing that nobody
3 wishes to speak at this time, I'm going to tentatively
4 bring this hearing to a close.

5 As I do so -- I want to again say that the
6 Mine Safety and Health Administration appreciates your
7 participation in this public hearing. And I want to
8 stress that we appreciate the persons and the
9 organizations that they represented who spoke today.
10 But we also appreciate the people who are in
11 attendance here today who may not have spoken, but who
12 express -- by them being in attendance, they say to us
13 that they have an interest in this rule making.

14 And from some of those of you who are here
15 and who did not speak, but who say to me that you have
16 an interest in this rule making, I hope we hear from
17 you before the record closes on June 30th with any
18 more specific alternatives, if you have them, if you
19 wish to do so, to what we proposed.

20 And as I have said, you've heard me say
21 probably too often today, to please be specific in
22 your alternative, with your specific rationale,
23 including the impact on safe and health to miners, any
24 estimated costs, feasibility considerations, or
25 anything of that sort. If you would do that, that

1 would be very helpful to us.

2 Those of you who have participated in prior
3 MSHA rule makings know MSHA will take your comments
4 and your concerns into consideration, but more
5 importantly, any specific suggestions you have for
6 developing the Agency's final rules.

7 We encourage your continued participation.

8 Again, thank you, and this public hearing is
9 concluded.

10 (Whereupon, at 9:56 a.m., the hearing in the
11 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: Examinations of Work Areas
HEARING DATE: June 2, 2011
LOCATION: Denver, Colorado

I hereby certify that the proceedings and evidence are contained fully and accurately on the audio and notes reported by me at the hearing in the above case before the Department of Labor, Mine Safety & Health Administration.

Date: June 2, 2011

ANTHONY & ASSOCIATES, INC.



ROGER MEYERS
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