

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
PUBLIC HEARING ON PROXIMITY)
DETECTION SYSTEMS FOR CONTINUOUS)
MINING MACHINES IN UNDERGROUND)
COAL MINES)

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Date: October 27, 2011

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AB65-HEAR-4

IN THE MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:)
)
 PUBLIC HEARING ON PROXIMITY)
 DETECTION SYSTEMS FOR CONTINUOUS)
 MINING MACHINES IN UNDERGROUND)
 COAL MINES)

Evansville, Indiana

Thursday
October 27, 2011

APPEARANCES

MSHA Panel:

ROSLYN FONTAINE, MATTHEW WARD, DAVID CHIRDON

Speakers:

BERT HALL, Peabody Energy Corporation
 STEVE EARLE, International Vice President, United
 Mine Workers Association
 MICHAEL BAIZE, Knight Hawk Coal, LLC
 MARK ESLINGER, General Safety Manager, Black
 Panther Mining, LLC; Five Star Mining, Inc.

P R O C E E D I N G S

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(9:00 a.m.)

MODERATOR FONTAINE: Good morning.

AUDIENCE: Morning.

MODERATOR FONTAINE: My name is Roslyn B. Fontaine. I am the Acting Director for the Office of Standards, Regulations, and Variances for the Mine Safety and Health Administration. I will be the moderator for this public hearing on MSHA's Proposed Rule On Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines.

On behalf of Assistant Secretary of Labor for Mine Safety and Health, Joseph A. Main, I want to welcome all of you here today.

I would like to introduce the members of the MSHA Panel. To my left is Dave Chirdon with MSHA's Approval and Certification Center, who is a team leader for the project, and Matt Ward with the Department of Labor, Office of the Solicitor, who is our attorney.

In response to requests from the public, MSHA is holding public hearings on its Proposed Rule On Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines. This is the fourth public hearing on this proposal.

The purpose of this hearing is to receive

1 information from the public that will help MSHA evaluate
2 the requirements in the proposal and produce a final rule
3 that will improve safety conditions at underground coal
4 mines.

5 As most of you know, the hearings will be
6 conducted in an informal manner. Formal Rules of
7 Evidence will not apply. The Hearing Panel may ask
8 questions of speakers and speakers may ask questions of
9 the panel.

10 Speakers and other attendees may present
11 information to the court reporter for inclusion in the
12 rulemaking record. MSHA will accept written comments for
13 the record and other appropriate information for the
14 record from any interested party, including those not
15 presenting oral statements.

16 We ask everyone in attendance to sign in on the
17 attendance sheet to my left by the door.

18 MSHA is proposing to require use of proximity
19 detection systems on continuous mining machines in
20 underground coal mines according to a phased-in schedule.
21 This rule would help protect miners from pinning,
22 crushing, and striking hazards that result from working
23 too close to continuous mining machines in underground
24 coal mines.

25 The proposal would also establish performance

1 and maintenance requirements for proximity detection
2 systems and require training for miners conducting
3 installation and maintenance of these systems.

4 The proposed rule is an important part of the
5 Department of Labor's "Plan, Prevent, and Protect"
6 strategy for protecting workers.

7 MSHA requests comments from the mining
8 community on all aspects of the proposed rule and is
9 particularly interested in comments that address
10 alternatives to keep provisions in the proposal.
11 Commenters are requested to be specific in their comments
12 and submit detailed rationale and supporting
13 documentation for suggested alternatives.

14 At this point, I would like to reiterate some
15 of the requests for comments and information that were
16 included in the Preamble to the proposed rule:

17 1. As stated in the proposal, MSHA proposes to
18 phase in the use of proximity detection systems over an
19 18-month period.

20 Continuous mining machines manufactured after
21 the date of publication of a final rule would be required
22 to be equipped with a proximity detection system three
23 months after the date of publication of a final rule.
24 Continuous mining machines manufactured on or before the
25 date of publication of a final rule would be required to

1 be equipped with a proximity detection system 18 months
2 after the date of a publication of a final rule.

3 The Agency requests comments on proposed
4 compliance dates, consider the availability of systems,
5 the time necessary to process approval for proximity
6 detection systems, and the projected time needed to
7 install systems.

8 2. MSHA proposes to require the use of
9 proximity detection systems that cause a machine to stop
10 no closer than 3 feet from a miner.

11 The continuous mining machine operator would be
12 allowed to be closer than 3 feet only when the machine is
13 cutting coal or rock. However, the proximity detection
14 system would be required to prevent contact with the
15 machine operator.

16 MSHA considered proposing other specific
17 stopping distances and a performance-oriented requirement
18 that would not have included a specific distance. MSHA
19 requests comments on this proposed provision including
20 whether a greater distance or a performance based
21 approach would be effective alternatives to the proposed
22 3 foot stopping distance requirement.

23 3. Some proximity detection systems on
24 continuous mining machines are installed to stop machine
25 tram movement and conveyor swing function when the system

1 is activated while permitting other machine movement,
2 such as rotation of the cutter head and movement of the
3 gathering arms. MSHA requests comments on whether all
4 movement should be stopped or under what, if any,
5 circumstances would it be acceptable for continuous
6 mining machines to continue moving.

7 4. The proposed rule does not cover full-face
8 continuous mining machines. A full-face continuous
9 mining machine includes integral roof bolting equipment
10 and develops the full width of the mine entry in a single
11 cut, generally without having to change its location.

12 The Agency is interested in whether full-face
13 continuous mining machines should be equipped with a
14 proximity detection system, and, if so, why.

15 5. Each of the three proximity detection
16 systems approved for underground coal mines in the United
17 States requires use of a miner-wearable component. These
18 systems cannot detect a miner who is not wearing the
19 component.

20 MSHA solicits comments on which miners working
21 around continuous mining machines should be required to
22 have a miner-wearable component.

23 6. Most proximity detection systems alert
24 miners who get within a certain distance of a machine
25 before causing machine movement to stop. This provides

1 an added margin of safety and is consistent with most
2 standard safety practices.

3 The Agency recognizes that the use of a
4 proximity detection system that causes frequent machine
5 stops can result in frustration to miners, miners
6 ignoring warnings, and can possibly lead to unsafe work
7 practices.

8 MSHA believes that an appropriate warning
9 signal is necessary to optimize safety of miners when a
10 proximity detection system is used. MSHA requests
11 comments on this provision, including whether a greater
12 distance or a performance based approach would be
13 effective alternatives to the proposed 5-foot distance
14 requirement for the warning signal.

15 7. MSHA's estimates of the benefits and costs
16 of the proposal are given in detail in the preliminary
17 regulatory economic analysis and summarized in the
18 Preamble.

19 MSHA requests comments on proposed estimated
20 benefits and costs. As you address the proposed
21 provisions, either in your testimony today or in your
22 written comments, please be as specific as possible. We
23 cannot sufficiently evaluate general comments.

24 As I said earlier, please include suggested
25 alternatives, including those of a performance based

1 nature, your rationale, the benefits to miners, any
2 technological and economic feasibility consideration, and
3 data to support your comments. The more specific your
4 information is, the better it will be for MSHA to
5 evaluate and produce a final rule that would be
6 responsive to the needs and concerns of the mining
7 public.

8 You may submit comments following this public
9 hearing by any method identified in the proposed rule and
10 must be received or postmarked by November 14th of 2011.

11 MSHA will make available a verbatim transcript
12 of this public hearing approximately two weeks after the
13 completion of the hearing.

14 You may view the transcripts of all the public
15 hearings and comments on MSHA's web site at www.MSHA.gov
16 and on www.regulations.gov.

17 We will now begin today's hearing. If you have
18 a copy of your presentation, please provide it to the
19 court reporter.

20 Please begin by clearly stating your name and
21 organization, and spell your name for the court reporter
22 to make certain we obtain an accurate record.

23 Our first speaker today is Bert Hall with
24 Peabody Energy.

25 MR. HALL: Good morning.

1 MODERATOR FONTAINE: Good morning.

2 MR. HALL: Bert Hall -- B-E-R-T, H-A-L-L. My
3 name is Bert Hall. I'm here representing Peabody Energy
4 to provide a statement on MSHA's Proposed Proximity
5 Detection Rule.

6 I'm an operations manager for the Peabody
7 Midwest Underground Division located here in Evansville,
8 and I've been overseeing our company's evaluation and
9 testing of proximity detection systems on continuous
10 mining machines and coal haulers for the past year.

11 Peabody Energy is the largest coal company in
12 the world and our safety processes have developed our
13 history to where we are recognized as leaders in safety
14 performance and innovation. We agree with the Agency
15 that proximity detection is a promising technology. We
16 have been working with one of the leading manufacturers
17 of proximity detection systems for the past year in
18 helping to develop and test a holistic approach that
19 provides protection to all miners on an active coal
20 producing section.

21 This work began last year in a surface shop at
22 our Willow Lake Mine in Southern Illinois. We installed
23 proximity detection on a continuous mining machine and a
24 battery powered coal hauler, and then spent several
25 months with input from our hourly work force simulating

1 the various interactions between the two pieces of face
2 equipment in a mock operating scenario. Of particular
3 interest is the positioning of the miner operator when
4 the coal hauler approaches the mining machine as it's
5 being loaded.

6 Since the two machine detection fields
7 necessarily overlap at the time of loading, we're working
8 to find the best position for the continuous miner
9 operator to stand, which allowed for normal production
10 while protecting the operator from coming in contact with
11 the other piece of equipment. Once our shop trials were
12 completed, we decided to test our outcomes on a full
13 section of coal haulers and a continuous mining machine
14 at our Gateway Mine near Coulterville, Illinois. That
15 test is currently underway and we have been encouraged
16 with the early results that we have.

17 The current proposed rule, though a step in the
18 right direction, will hamper the further development of
19 this promising technology and make it more difficult for
20 operators to provide proximity detection protection for
21 all miners on the working section. Peabody feels very
22 strongly that the Agency is proposing a partial solution
23 to the stated problem, which we believe fails to take
24 into account the important factors that need to be
25 considered if proximity detection is to be successful in

1 the general mining community.

2 If it is MSHA's long-term goal to require
3 proximity detection on all section mobile equipment,
4 including coal haulers, shuttle cars, and scoops, then
5 the Agency started the process under the premise that a
6 section is a collection of independent pieces of
7 equipment, where it's our belief that the equipment on a
8 section is a system of interdependent parts. We
9 recommend that the Agency stop the piecemeal approach and
10 join us in the development of a holistic solution.

11 To date, several MSHA technical support
12 personnel have visited our shop and test sections to
13 observe the approach that we believe makes the most sense
14 while protecting the miners. We've had many good
15 discussions, fruitful discussions, and we're hoping for
16 further input; but we also believe that, currently, the
17 proposed rule will in some cases place miners in a more
18 hazardous position than is currently contemplated in our
19 system.

20 To that end, we recommend the following:

21 1. Proximity detection systems must be
22 installed in an original equipment manufacturer shop
23 setting.

24 The system components can be protected by
25 guards, conduit and armor plating built specifically and

1 to the design of the machine frame. This will reduce
2 errors in system downtime resulting from component damage
3 from falling rocks and vibration. It also assures a more
4 robust and maintainable electrical condition for all the
5 components while reducing the need for MSHA technical
6 field services regarding requests for ramp approvals and
7 for field changes.

8 2. Any proposed system must be judged from a
9 performance standpoint rather than a prescriptive
10 approach taken in this proposed rule.

11 No proximity detection system manufacturer can
12 guarantee that their system will provide the pinpoint
13 accuracy that the proposed rule demands.

14 The regulations should simply specify the
15 machine must stop before contacting any person during the
16 normal place change operation of the continuous mining
17 machine.

18 3. A rule requiring proximity detection
19 systems on continuous mining machines must be mindful of
20 how the machine interacts with all the other pieces of
21 mobile equipment on the section.

22 4. For the proximity detection to work
23 properly and be readily acceptable by miners and
24 operators alike, the system operation must be flexible,
25 easy to understand, and must be reliable while employing

1 the latest technology.

2 5. The Agency must give operators, miners, and
3 manufacturers the freedom to meet the stated goal of the
4 rule, which was to strengthen the protections for miners
5 by reducing the potential for pinning, crushing, or
6 striking accidents in the underground coal mines, without
7 mandating redundant training and recordkeeping, which is
8 burdensome and does not further the cause of safety.

9 6. We also agree with the statement from the
10 West Virginia Coal Association at the Charleston, West
11 Virginia, public hearing that the use of extended cut
12 mining with machine mounted dust scrubbers has improved
13 the level of health and safety of coal miners by reducing
14 levels of explosive respirable dust and by reducing miner
15 exposure to the higher risk tramming operations.

16 And lastly --

17 7. The Agency must maintain the integrity of
18 the red zone restrictions currently in place regardless
19 of what they propose for proximity detection because no
20 mechanical system will be fail safe.

21 Peabody Energy will be providing more in-depth
22 written comments prior to the close of the comment
23 period, which will incorporate our most recent
24 information we've learned from our testing of proximity
25 detection systems underground.

1 Thank you.

2 MR. CHIRDON: I've got one question.

3 You mentioned in your recommendations that the
4 proximity detection system must be flexible, and I just
5 wanted you to maybe clarify what you meant by flexibility
6 of a proximity detection system.

7 MR. HALL: With the new technology and the fact
8 that we're currently, you know, continually learning,
9 have concerns with the 3-foot rule and the 5-foot rule,
10 that it should be more from a performance base standard.

11 When we first started with this a year ago, one
12 of the things we did was include the hourly work force,
13 include the miner operator, include the car operator
14 before we ever started anything with the equipment
15 manufacturer about -- of everyone understanding how this
16 works and how that it can work.

17 Knowing that we were starting down a path that
18 was -- you know, with a lot of changes and have been -- I
19 think that has been very helpful to us. You know, not
20 only does the equipment manufacturer need to satisfy the
21 needs that we request, they also satisfy the needs that
22 the operator requests.

23 MR. CHIRDON: Thank you.

24 MR. WARD: On that point, I'm curious, with the
25 continuous mining machine you have now equipped with a

1 proximity detection system, at what point does it stop
2 away from the continuous mining operator? Do you have it
3 set at a certain distance now?

4 MR. HALL: One of the things that we have
5 experimented with, we have it with the fields. The
6 operator carries the pad on his person and exactly how
7 close that we can get it. We strictly enforce the red
8 zone also, even through this testing that we have. I
9 know that this proposed rule is about continuous miners.

10 You know, one of the points that we feel
11 strongly about is that it should be as the section as a
12 whole. We're interested in protecting everybody in that
13 section. Everybody in that section is -- when they go
14 into that section is protected.

15 We're using it on the hauler operators. From
16 my own personal perspective and here in the Midwest, we
17 have read the data that MSHA has provided. But we see an
18 awful lot of injuries from being hit by equipment other
19 than the miner. Primarily the miner, what I've seen
20 before, is only in a tramming mode and only when it's
21 tramming from one place to another and that goes back a
22 lot of years.

23 The most recent data that I see anyway is from
24 coal haulers, scoops, and other pieces of equipment also,
25 and that's the reason we looked at the holistic approach

1 of the whole section.

2 MR. WARD: One follow-up with respect to the
3 coal section.

4 How much training would you estimate you
5 provide to miners on the section regarding the use of
6 proximity detection systems?

7 MR. HALL: How much have we?

8 MR. WARD: Yeah, how much have you.

9 MR. HALL: Every day.

10 MR. WARD: Obviously, where it's used.

11 MR. HALL: Every day. I mean, it's continual
12 between ourselves and the manufacturer.

13 Again, this is new technology. It's something
14 that we've been working with. It hasn't been, you know,
15 here is a can, a presentation; I'm going to give it to
16 you and that's it. We're continually learning from each
17 other. We're changing the system. We're coming up with
18 different software changes. So it's ongoing. But we do
19 believe very strongly on adequate continuous training. I
20 don't think anybody has ever trained enough, but we'll do
21 all the training necessary.

22 MR. WARD: Thank you.

23 MODERATOR FONTAINE: I just have a follow-up of
24 what Matt asked.

25 You said that you think the rule would

1 strengthen mining safety without having to have mandatory
2 training and recordkeeping. So when you submit your
3 written comments, be sure to include your alternative to
4 us mandating training.

5 MR. HALL: We'll address that in the written
6 comments.

7 MODERATOR FONTAINE: Okay. Thank you.

8 Our next speaker is Steve Earle with the UMWA.

9 MR. EARLE: My name is Steve Earle --
10 E-A-R-L-E -- and I'm the International Vice President for
11 the United Mine Workers in the Midwest.

12 United Mine Workers supports the time period as
13 suggested by MSHA. Experience with the proximity
14 detection systems on remote control continuous mining
15 machines already exists in five coal mines in the United
16 States and on machines and mines in South Africa, Canada,
17 and Australia where the equipment has been reported to be
18 very reliable.

19 Of the 70 fatalities resulting from pinning,
20 crushing, and striking accidents from 1984 through 2010
21 in underground coal mines, 30 were associated with a
22 continuous mining machine. Just think for a moment the
23 number of wives that don't have husbands and countless
24 children that don't have fathers because of these
25 fatalities. The use of proximity detection systems could

1 have prevented these accidents and the fatalities.

2 The union is disappointed that MSHA is not
3 requiring proximity devices on other mining equipment and
4 would urge this rule to be expanded to mandate the use of
5 proximity detection systems to shuttle cars, loading
6 machines, scoops, and other equipment that has been
7 associated with serious accidents or fatalities that have
8 occurred underground. We also are disappointed with MSHA
9 that they are not requiring proximity devices for surface
10 equipment. We recommend that MSHA expand the use of
11 these devices to surface equipment.

12 Attached to our recommendations is a copy of
13 the June 2007 NIOSH report, RI 9672, giving
14 recommendations for evaluating and implementing proximity
15 warning systems on surface mining equipment. Since 2007,
16 many improvements have been made only reinforcing the
17 availability of having MSHA further expand the rule to
18 include surface mines and surface areas of underground
19 mines.

20 In closing, we'd like to simply say that
21 proximity devices work and they will save lives. I think
22 we owe it to the miners who are helping meet this
23 country's energy needs the safest environment to work in
24 that we possibly can. Thank you all for giving us an
25 opportunity to speak here this morning.

1 MODERATOR FONTAINE: Thank you.

2 Our next speaker is Mike Baize with Knight Hawk
3 Coal.

4 MR. BAIZE: If the Panel would so --

5 MR. WARD: Can you take the microphone, please,
6 for the court reporter?

7 MR. BAIZE: Sure. Good morning.

8 MODERATOR FONTAINE: Good morning.

9 MR. BAIZE: My name is Mike Baize -- B-A-I-Z-E.
10 I'm with Knight Hawk Coal, and we respectfully withdraw
11 our public comment. However, we do support the comments
12 of Mr. Hall and support those comments as well.

13 MODERATOR FONTAINE: Okay. Thank you.

14 That's the last person that signed up to speak.

15 Is there anyone else who hasn't signed up but
16 wishes to speak?

17 Mark?

18 MR. ESLINGER: My name is Mark Eslinger --

19 M-A-R-K, E-S-L-I-N-G-E-R. I'm a General Safety Manager
20 for Black Panther Mining, LLC, and Five Star Mining, Inc.

21 First, I want to thank you for this opportunity
22 to speak, and I'm glad that you finally decided to hold a
23 session here in the Midwest. I am disappointed, though,
24 that we do not have anybody here from MSHA Enforcement.
25 I have many comments today to direct towards Enforcement,

1 and I have sat up there and taken the heat, and I don't
2 see anybody from Enforcement here to take the heat today.

3 First, I'm going to have is on the dates of the
4 manufacturing compliance date. I think, Roz, that you
5 talked about the date will be as of the final rule.

6 MODERATOR FONTAINE: Yes.

7 MR. ESLINGER: But the language in the Preamble
8 differs from the language in the proposed rule. The
9 proposed rule uses the date of publication of the
10 proposed rule.

11 MODERATOR FONTAINE: That was an error.

12 MR. ESLINGER: Okay. That was an error.
13 That's fine. I needed to understand that.

14 However, I think that the compliance date for
15 continuous miners needs to be expanded, and it should be
16 six months. I think three months is a real narrow
17 window. In fact, six months is probably too narrow also.
18 The coal mine industry really needs a longer time to do
19 it.

20 The compliance date for continuous miners built
21 on or before the date of the final rule needs to be
22 expanded also, so I would really say that we need to
23 double those dates. Okay? Or the time periods.

24 The exemption for full-face continuous mining
25 machines in the rule is wrong. Full-face continuous

1 miners must tram from working place to working place just
2 as non-full-face continuous miners do, only they do it
3 less frequently. Full-face miners can mine from one
4 entry from one cross-cut to the next cross-cut before
5 having to change places, but they must back all the way
6 out of the working place over to another entry to start
7 mining again. Full-face continuous miners cut entries
8 and crosscuts only as wide as the mining head and, thus,
9 the entries and cross-cuts are generally narrower. This
10 makes the tramping more difficult and can increase the
11 danger to miners near the continuous miner. Pinning,
12 crushing, and striking hazards exist for full-faced
13 continuous miners.

14 In MSHA's web cast on May 3rd, 2005, slide 17
15 showed that 7 out of the 29 fatalities concerning remote
16 control continuous mining machines involved maintenance
17 of the continuous miner. Additionally, MSHA's remote
18 control continuous mining machine fatal accident analysis
19 report states in the conclusion that performing
20 maintenance was the second most dangerous work, 6 out of
21 13 fatalities.

22 The full-face continuous miner controlled by a
23 remote control has to undergo maintenance also. In fact,
24 it might need more maintenance because you have two roof
25 bolting stations alongside that continuous miner.

1 Additionally, a fatality occurred on a
2 continuous miner with a roof bolting station at a trona
3 mine. *MSHA's Remote Control Continuous Mining Machine*
4 *Fatal Accident Analysis Report* declared, quote, OCI
5 Wyoming LP, Big Island Mine and Refinery, Green River,
6 Sweetwater County, Wyoming, February 1st, 2004, a roof
7 bolt operator is fatally injured in an underground trona
8 mine.

9 The victim left the roof bolt station monitored
10 on a remote control continuous miner without activating
11 the emergency stop switch located in his operator cab.
12 The miner operator standing on the other side of the
13 continuous miner backed its setting over from the face to
14 clean up the spillage. The victim tried to pass between
15 the conveyor boom and the rib and he was struck and
16 pinned against the rib.

17 Trona mining is similar to coal mining. As the
18 accident in trona mining shows, pinning, crushing, and
19 striking hazards exist for full-face continuous miners.
20 When mining with full-face continuous miners, two miners
21 bolt the roof alongside the continuous miner. Very
22 little room exists between the machine and the ribs for
23 the miners doing the roof bolting. Additionally, the
24 continuous miner operator must stand near the continuous
25 miner because of the lack of the room in the narrow

1 entries.

2 Some full-faced continuous miners cut coal and
3 deposit the coal on the floor behind the continuous
4 miners where a loading machine gathers the coal and
5 deposits the coal in a shuttle car. The coal further
6 limits the room for the person operating the machine and
7 forces the operator alongside the continuous miner.

8 So the fact that two persons are roof bolting
9 and a person is operating the loading machine means that
10 at least three people are working in the place where coal
11 is being mined, versus normal place change continuous
12 miners. The ventilation tubing also hangs along the rib,
13 therefore, pinning, crushing, and striking hazards exist
14 for full-face continuous miners. The proximity device
15 talks about stopping the miner within 3 feet so on and so
16 forth.

17 I'm worried that this regulation will cause
18 persons to rely on the mechanical safety system instead
19 of exercising care when being near a continuous miner or
20 operating a continuous miner. If the system works every
21 time, a miner comes too near an operating continuous
22 miner, then the miner will be safe. No one will be
23 injured or killed. But what happens when the proximity
24 device fails? No machine operates properly all the time.
25 The proximity device could be used to kill the machine so

1 that work could be done on or near the machine. This
2 would cause accidents to occur. What is done to prevent
3 this type of action? MSHA has increased the risk of
4 pinning, crushing, and striking hazards during tramming
5 of continuous miners.

6 Because of EDIC from MSHA headquarters, new
7 mines and new mechanized mining units that exist in mines
8 that use continuous miners must start with a 20-cut foot
9 depth of an approved ventilation plan. This causes the
10 mine to tram the continuous miner twice as often and
11 twice as far than if a 40-foot cut depth was approved.
12 Continuous miners with scrubbers have been studied and
13 used excessively for more than 30 years. In fact, I was
14 involved in a study starting in the early '70s, and we
15 pushed the curtain distance out from 20 feet back when
16 they had the cab on the miner to the present 40 feet.

17 Looking and having studied scrubbers with
18 blowing line curtains in the Midwest, the ventilation is
19 better at 35 to 40 feet than it is with 20 feet. It
20 makes no sense to start at 20 feet with a line curtain.
21 In fact, when Pittsburgh Technical Support Ventilation
22 has done studies, they use something called a face
23 ventilation index, which is an indication of how well the
24 ventilation works. In many studies, the face ventilation
25 index was better, like I said, at 35 to 40 feet. In

1 fact, I recommend that we need to look at going deeper
2 than a 40-foot setback so that we have less tramming.

3 The language in the regulation talks about
4 cutting coal or rock, and in that case, the proximity
5 must cause the machine to stop before contacting the
6 machine operator. I believe this section of the
7 regulation should say, "when cutting or loading coal or
8 rock." This would make the language consistent with
9 75.325(a)(1). Sometimes coal or rock is loaded off the
10 floor with the continuous mining machine, but cutting is
11 not taking place.

12 The requirement to provide an audible or visual
13 warning signal to distinguish from other signals when the
14 machine is 5 foot and closer to a miner, I think that
15 this could cause a false security that the proximity
16 detection system is working. A miner could walk too
17 close to a continuous mining machine because he or she
18 thinks that the proximity device is working and it will
19 stop the machine's movement. I think it would be better
20 to have no audible or visual signal so that the miner
21 must always assume that the system is not working
22 properly and exercise caution when near a continuous
23 mining machine. Also, it's another thing that can go
24 wrong and MSHA could cite the fact that, you know, the
25 signal is not working. So I recommend to eliminate the

1 warning signal.

2 You have a requirement, too, to prevent
3 movement of the machine if the system is not functioning
4 properly. I'm not sure what functioning properly means.
5 Again, you know, this is something that we need to
6 maintain. It's just another requirement that MSHA could
7 cite.

8 You also have a requirement that it says be
9 installed to prevent interference with, or from, other
10 electrical systems.

11 In Charleston, Joy Manufacturing stated, quote,
12 all electromagnetic base systems are subject to potential
13 interference from other sources; i.e., coil trailing
14 cable, large metal objects, power centers.

15 Joy is obviously the leading manufacturer of
16 continuous miners. If the leading manufacturer of
17 continuous mining machines declares that, quote, the
18 systems are subject to potential interference from other
19 sources, unquote, it brings into question whether the
20 technology exists for electromagnetic systems.

21 The regulations require that it be installed
22 and maintained by a person trained in the installation
23 and maintenance of the system. You know, I don't think
24 it's necessary that we have a requirement that it says
25 that they, quote, be trained in the installation and

1 maintenance of the system, unquote. Either the person
2 working on the system can perform the work or he or she
3 cannot. It's kind of curious to me that the Preamble
4 states, quote, proximity detection systems are needed
5 because training and outreach initiatives alone have not
6 prevented these accidents and the systems can provide
7 necessary protections for the miners.

8 MSHA kind of indicates that training doesn't do the
9 work and, yet, you turn around and require training of
10 the people that will work on these machines. I think
11 that the rule should be performance based. I don't
12 believe that you should mandate training.

13 Then we have a section here about examination
14 and checking. It says that you must designate a person
15 who must perform a visual check of the machine's
16 proximity detection system to verify that the components
17 are intact. This section permits MSHA to write two
18 citations, or orders, if the system is not functioning
19 properly. MSHA will issue one citation, or order, for
20 the system not working and one for inaccurate examination
21 or check. Again, either the system is working properly
22 or it is not. Requiring an examination before the
23 machine is placed in operation at the start of the shift
24 is not needed. It is not fair. MSHA is trying to up the
25 negligence of the miner operator when the system fails.

1 MSHA wants to be able to use 104(d) of the
2 Federal Mine Safety and Health Act examination
3 requirement to substantiate a finding unwarrantable
4 failure. This examination section needs to be
5 eliminated. It should be up to the miner operator to
6 determine how often and when the proximity device is
7 checked for proper operation. Either the system is
8 working properly or it is not. The rules should be
9 performance based.

10 Those comments also apply to, you know -- I
11 mean, you reiterate the same kind of language at the
12 start of the shift: If the machine is not placed in
13 operation when it's started within an hour at the
14 beginning of a shift change on a hot seat system and so
15 on and so forth; it also is for the check of proper
16 operations of the miner-wearable components at the
17 beginning of each shift. Again, I believe that MSHA is
18 just trying to be able to get the enforcement hook into
19 you and up the negligence.

20 Then we get into the electrical stuff requiring
21 that the proximity device be checked for permissibility.
22 Again, to me, this is dictating when and how the mine
23 operator needs to do its work. To me, it should be up to
24 the mine operator how often he needs to check the system
25 to make sure it works.

1 Then we get into certification and records.
2 The system is not functioning properly, then we have to
3 make records. This section greatly increases the
4 paperwork burden to the mine operator. The regulations
5 permit MSHA to write two citations, or orders, if the
6 system is not functioning property. MSHA will issue one
7 for the system not working and another one for an
8 inadequate check; or if the record indicates that the
9 system is working, then the record will get cited.

10 You also have to make a record of persons
11 trained in the installation and maintenance of proximity
12 detection systems required under this section. This is
13 another one that increases the paperwork burden for the
14 mine operator. A record of the persons trained in the
15 installation and maintenance of proximity detection
16 system offers no safety benefit. This is another record
17 that MSHA can cite.

18 The last thing you all talked about is new
19 technology. It says that MSHA may accept proximity
20 detection systems that incorporate new technology. I
21 think MSHA needs to say they must accept the new
22 technology.

23 And then one last comment I have. The Preamble
24 states that, quote, the three MSHA approved proximity
25 detection systems operating using electromagnetic

1 technology, unquote. I didn't see any discussions in
2 there about the long-term health effects of persons
3 wearing components that rely on this technology. I
4 believe the miners should be assured that the wearing of
5 these devices will not cause long-term health problems.

6 Before the rule comes in effect, the miners who
7 will wear these devices need to know that they will not
8 suffer any health problems.

9 MODERATOR FONTAINE: Thank you.

10 MR. CHIRDON: I have a couple questions for
11 you, Mark.

12 MR. ESLINGER: Okay.

13 MR. CHIRDON: You mentioned early on in your
14 comments that you thought our time frames, the 3 months
15 and the 18 months, were too short and you recommended
16 doubling them.

17 MR. ESLINGER: Yes.

18 MR. CHIRDON: When you submit your written
19 comments, will you provide any rationale as to why that
20 an increased time is necessary, you know, why the 3
21 months and 18 months not sufficient.

22 MR. ESLINGER: Okay. I'll do that.

23 I mean, I didn't want to sit and read
24 everything that I have here, but especially the three-
25 month one is really, really tight. You know, rebuilds

1 usually occur after so many tons in that year to year-
2 and-a-half. It's going to take time to cycle through
3 this, and I'll be specific in my comments.

4 MR. CHIRDON: Thank you.

5 In our section where we talk about proximity
6 detection, when you're cutting coal or rock and you
7 recommended stating cutting or loading coal or rock. Is
8 there not the practice relatively common of tramping
9 machine with the cutter head running to trim the bottom
10 or to pick up loose coal?

11 You know, my concern is if we include loading
12 in there, then we're permitting them to tram the machine
13 without proximity detection or with reduced proximity
14 detection and that was why we didn't have loading in
15 there initially.

16 MR. ESLINGER: You know, I would say in
17 general, the cutting head is run to help load the
18 material but not always. I mean, I've observed
19 continuous miners that are loading material, you know,
20 the wind rows and the material, and often coal is cut in
21 between shuttle cars; then the cutting will stop and the
22 loading will start taking place before the cutting head
23 is placed on. I just think it should be consistent with
24 75.325, I mean, the cutting and loading.

25 MR. CHIRDON: Okay. That's all the questions I

1 have.

2 Thank you, Mark.

3 MODERATOR FONTAINE: Wait a minute, Mark. I
4 have a couple.

5 MR. ESLINGER: What?

6 MODERATOR FONTAINE: I have a couple of
7 questions for you, but one is a statement rather than a
8 question.

9 Thank you for your comments concerning the
10 holistic approach as far as extended cuts are concerned,
11 but as you know, this proposed rule is strictly about the
12 proximity detection systems technology.

13 MR. ESLINGER: Well, I understand, but I just
14 think that if -- this is a serious business. Just in the
15 last little bit, we've had some crushing and pinning
16 injuries. If we could cut down on the amount of tram
17 time and the tram distance, I think we need to do that.
18 And there's no good reason for us to be cutting 20-foot
19 cuts. None.

20 The methane control and the dust control is
21 better at 40 feet than it is at 20 feet, and here we are
22 saddled with this because of EDIC that came out of
23 Arlington. I was still with MSHA when that was handed
24 down; I disagreed with it when I was with MSHA and I
25 disagree with it today.

1 MODERATOR FONTAINE: Okay.

2 You also stated something about preventing
3 movement of a system if it's not functioning properly.
4 If you think there is an alternative to that that's just
5 as safe, please provide it in your written comments.

6 MR. ESLINGER: Okay.

7 MODERATOR FONTAINE: And we did mention
8 something about interference. We know that there will be
9 some interference, but basically we're looking for
10 interference that would affect the functionality of the
11 system.

12 MR. ESLINGER: Okay. I just thought it was
13 ironic.

14 I mean, I read through Joy's comments and they
15 said you have interference. Your rule kind of says it
16 can't have it so, you know, I'm just worried whether the
17 technology is there.

18 In general, these are comments that I'm hearing
19 in the industry with proximity; we don't know if the
20 technology is quite there yet. I think the aim is good.
21 You know, we've got some concerns whether the technology
22 is quite there yet.

23 MODERATOR FONTAINE: Okay. Thank you.

24 Is there anyone else that would like to make
25 comments?

1 If nobody else wishes to make a presentation,
2 I, again, want to say that the Mine Safety and Health
3 Administration appreciates your participation at this
4 public hearing.

5 I thank everyone who has made a presentation,
6 as well as those who did not present for your attendance
7 at this hearing and your interest in this ruling.

8 I want to emphasize that all comments must be
9 received or postmarked by November 14th, 2011.

10 MSHA will take your comments and your concerns
11 into consideration in developing the Agency's final rule.

12 I want to encourage all of you to continue to
13 participate throughout the rulemaking process.

14 This public hearing is concluded. Thank you
15 very much.

16 (Whereupon, at 9:50 a.m., the hearing in the
17 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: Public Hearing on Proximity Detection
Systems for Continuous Mining Machines In
Underground Coal Mines

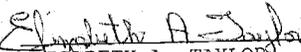
HEARING DATE: October 27, 2011

LOCATION: Evansville, Indiana

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: October 27, 2011

ANTHONY & ASSOCIATES, INC.


ELIZABETH A. TAYLOR
(Official Reporter)

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