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

As most of you know, the hearings will be
c Conducted in an informal manner. Formal Rules of
Evidence will not apply. The Hearing Panel may ask
questions of speakers and speakers may ask questions of
the panel.

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

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

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

The proposal would also establish performance
and maintenance requirements for proximity detection systems and require training for miners conducting installation and maintenance of these systems.

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

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

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

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

Continuous mining machines manufactured after the date of publication of a final rule would be required to be equipped with a proximity detection system three months after the date of publication of a final rule. Continuous mining machines manufactured on or before the date of publication of a final rule would be required to
be equipped with a proximity detection system 18 months after the date of a publication of a final rule.

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

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

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

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

3. Some proximity detection systems on continuous mining machines are installed to stop machine tram movement and conveyor swing function when the system
is activated while permitting other machine movement, such as rotation of the cutter head and movement of the gathering arms. MSHA requests comments on whether all movement should be stopped or under what, if any, circumstances would it be acceptable for continuous mining machines to continue moving.

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

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

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

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

6. Most proximity detection systems alert miners who get within a certain distance of a machine before causing machine movement to stop. This provides
an added margin of safety and is consistent with most standard safety practices.

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

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

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

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

As I said earlier, please include suggested alternatives, including those of a performance based
nature, your rationale, the benefits to miners, any
technological and economic feasibility consideration, and
data to support your comments. The more specific your
information is, the better it will be for MSHA to
evaluate and produce a final rule that would be
responsive to the needs and concerns of the mining
public.

You may submit comments following this public
hearing by any method identified in the proposed rule and
must be received or postmarked by November 14th of 2011.
MSHA will make available a verbatim transcript
of this public hearing approximately two weeks after the
completion of the hearing.

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

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

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

Our first speaker today is Bert Hall with
Peabody Energy.

MR. HALL: Good morning.
MODERATOR FONTAINE: Good morning.

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

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

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

This work began last year in a surface shop at our Willow Lake Mine in Southern Illinois. We installed proximity detection on a continuous mining machine and a battery powered coal hauler, and then spent several months with input from our hourly work force simulating
the various interactions between the two pieces of face equipment in a mock operating scenario. Of particular interest is the positioning of the miner operator when the coal hauler approaches the mining machine as it's being loaded.

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

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

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

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

To that end, we recommend the following:

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

The system components can be protected by guards, conduit and armor plating built specifically and
to the design of the machine frame. This will reduce errors in system downtime resulting from component damage from falling rocks and vibration. It also assures a more robust and maintainable electrical condition for all the components while reducing the need for MSHA technical field services regarding requests for ramp approvals and for field changes.

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

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

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

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

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

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1 the latest technology.

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

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

4 And lastly --

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

6 Peabody Energy will be providing more in-depth written comments prior to the close of the comment period, which will incorporate our most recent information we’ve learned from our testing of proximity detection systems underground.
Thank you.

MR. CHIRDON: I've got one question.

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

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

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

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

MR. CHIRDON: Thank you.

MR. WARD: On that point, I'm curious, with the continuous mining machine you have now equipped with a
proximity detection system, at what point does it stop
away from the continuous mining operator? Do you have it
set at a certain distance now?

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

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

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

The most recent data that I see anyway is from
colon haulers, scoops, and other pieces of equipment also,
and that's the reason we looked at the holistic approach
of the whole section.

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

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

MR. HALL: How much have we?

MR. WARD: Yeah, how much have you.

MR. HALL: Every day.

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

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

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

MR. WARD: Thank you.

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

You said that you think the rule would
strengthen mining safety without having to have mandatory training and recordkeeping. So when you submit your written comments, be sure to include your alternative to us mandating training.

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

MODERATOR FONTAINE: Okay. Thank you.

Our next speaker is Steve Earle with the UMWA.

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

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

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

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

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

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

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MODERATOR FONTAINE: Thank you.

Our next speaker is Mike Baize with Knight Hawk Coal.

MR. BAIZE: If the Panel would so --

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

MR. BAIZE: Sure. Good morning.

MODERATOR FONTAINE: Good morning.

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

MODERATOR FONTAINE: Okay. Thank you.

That's the last person that signed up to speak. Is there anyone else who hasn't signed up but wishes to speak?

Mark?


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

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

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

MODERATOR FONTAINE: Yes.

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

MODERATOR FONTAINE: That was an error.

MR. ESLINGER: Okay. That was an error.

That's fine. I needed to understand that.

However, I think that the compliance date for continuous miners needs to be expanded, and it should be six months. I think three months is a real narrow window. In fact, six months is probably too narrow also.

The coal mine industry really needs a longer time to do it.

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

The exemption for full-face continuous mining machines in the rule is wrong. Full-face continuous
miners must tram from working place to working place just as non-full-face continuous miners do, only they do it less frequently. Full-face miners can mine from one entry from one cross-cut to the next cross-cut before having to change places, but they must back all the way out of the working place over to another entry to start mining again. Full-face continuous miners cut entries and crosscuts only as wide as the mining head and, thus, the entries and cross-cuts are generally narrower. This makes the tramming more difficult and can increase the danger to miners near the continuous miner. Pinning, crushing, and striking hazards exist for full-faced continuous miners.

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

The full-face continuous miner controlled by a remote control has to undergo maintenance also. In fact, it might need more maintenance because you have two roof bolting stations alongside that continuous miner.
Additionally, a fatality occurred on a continuous miner with a roof bolting station at a trona mine. MSHA's Remote Control Continuous Mining Machine Fatal Accident Analysis Report declared, quote, OCI Wyoming LP, Big Island Mine and Refinery, Green River, Sweetwater County, Wyoming, February 1st, 2004, a roof bolt operator is fatally injured in an underground trona mine.

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

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

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

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

I'm worried that this regulation will cause persons to rely on the mechanical safety system instead of exercising care when being near a continuous miner or operating a continuous miner. If the system works every time, a miner comes too near an operating continuous miner, then the miner will be safe. No one will be injured or killed. But what happens when the proximity device fails? No machine operates properly all the time. The proximity device could be used to kill the machine so
that work could be done on or near the machine. This would cause accidents to occur. What is done to prevent this type of action? MSHA has increased the risk of pinning, crushing, and striking hazards during tramming of continuous miners.

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

Looking and having studied scrubbers with blowing line curtains in the Midwest, the ventilation is better at 35 to 40 feet than it is with 20 feet. It makes no sense to start at 20 feet with a line curtain. In fact, when Pittsburgh Technical Support Ventilation has done studies, they use something called a face ventilation index, which is an indication of how well the ventilation works. In many studies, the face ventilation index was better, like I said, at 35 to 40 feet. In
fact, I recommend that we need to look at going deeper
than a 40-foot setback so that we have less tramming.

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

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

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

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

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

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

The regulations require that it be installed and maintained by a person trained in the installation and maintenance of the system. You know, I don't think it's necessary that we have a requirement that it says that they, quote, be trained in the installation and
maintenance of the system, unquote. Either the person
working on the system can perform the work or he or she
cannot. It's kind of curious to me that the Preamble
states, quote, proximity detection systems are needed
because training and outreach initiatives alone have not
prevented these accidents and the systems can provide
necessary protections for the miners.

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

Then we have a section here about examination
and checking. It says that you must designate a person
who must perform a visual check of the machine's
proximity detection system to verify that the components
are intact. This section permits MSHA to write two
citations, or orders, if the system is not functioning
properly. MSHA will issue one citation, or order, for
the system not working and one for inaccurate examination
or check. Again, either the system is working properly
or it is not. Requiring an examination before the
machine is placed in operation at the start of the shift
is not needed. It is not fair. MSHA is trying to up the
negligence of the miner operator when the system fails.
MSHA wants to be able to use 104(d) of the Federal Mine Safety and Health Act examination requirement to substantiate a finding unwarrantable failure. This examination section needs to be eliminated. It should be up to the miner operator to determine how often and when the proximity device is checked for proper operation. Either the system is working properly or it is not. The rules should be performance based.

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

Then we get into the electrical stuff requiring that the proximity device be checked for permissibility. Again, to me, this is dictating when and how the mine operator needs to do its work. To me, it should be up to the mine operator how often he needs to check the system to make sure it works.
Then we get into certification and records. The system is not functioning properly, then we have to make records. This section greatly increases the paperwork burden to the mine operator. The regulations permit MSHA to write two citations, or orders, if the system is not functioning property. MSHA will issue one for the system not working and another one for an inadequate check; or if the record indicates that the system is working, then the record will get cited.

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

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

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

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technology, unquote. I didn't see any discussions in there about the long-term health effects of persons wearing components that rely on this technology. I believe the miners should be assured that the wearing of these devices will not cause long-term health problems. Before the rule comes in effect, the miners who will wear these devices need to know that they will not suffer any health problems.

MODERATOR FONTAINE: Thank you.

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

MR. ESLINGER: Okay.

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

MR. ESLINGER: Yes.

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

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

I mean, I didn't want to sit and read everything that I have here, but especially the three-month one is really, really tight. You know, rebuilds
usually occur after so many tons in that year to year-and-a-half. It's going to take time to cycle through this, and I'll be specific in my comments.

MR. CHIRDON: Thank you.

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

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

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

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

Thank you, Mark.

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

MR. ESLINGER: What?

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

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

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

The methane control and the dust control is better at 40 feet than it is at 20 feet, and here we are saddled with this because of EDIC that came out of Arlington. I was still with MSHA when that was handed down; I disagreed with it when I was with MSHA and I disagree with it today.
MODERATOR FONTAINE: Okay.
You also stated something about preventing movement of a system if it's not functioning properly.
If you think there is an alternative to that that's just as safe, please provide it in your written comments.

MR. ESLINGER: Okay.

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

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

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

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

MODERATOR FONTAINE: Okay. Thank you.

Is there anyone else that would like to make comments?
If nobody else wishes to make a presentation, I, again, want to say that the Mine Safety and Health Administration appreciates your participation at this public hearing.

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

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

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

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

This public hearing is concluded. Thank you very much.

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

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