

TRANSCRIPT OF PROCEEDINGS

MINE SAFETY AND HEALTH ADMINISTRATION)
30 CFR PARTS 48 AND 75)
EMERGENCY EVACUATIONS; EMERGENCY)
TEMPORARY STANDARDS)

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DEPARTMENT OF LABOR

MINE SAFETY AND HEALTH ADMINISTRATION)
 30 CFR PARTS 48 AND 75)
 EMERGENCY EVACUATIONS; EMERGENCY)
 TEMPORARY STANDARDS)

Transcript of proceedings of Public Hearing in the above-styled matter, on the 11th day of February, 2003, commencing at 9:00 a.m. and concluding at 11:45 a.m., at the India Center, 800 Green Road, South Charleston, Kanawha County, West Virginia, pursuant to notice to all interested parties.

BEFORE: MARVIN NICHOLS, JR.
 CARL LUNDGREN
 JENNIFER HONOR
 WILLIAM CROCCO
 WILLIAM A. BAUGHMAN

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I N D E XSpeakers:

Gary Trout, UMWA

J. R. Patsey, UMWA

Mart Lane, UMWA

William Bolts Willis, UMWA, President, Local 8843

James Hancock, General Manager, Riverton Coal Company

Rick Glover, UMWA

Dwight Siemiacko, UMWA, Cannelton Industries

Max Kennedy, UMWA, International Representative

1 from interested members of the public on the proposed rule
2 for emergency evacuation. We'll use these comments to
3 determine the best way to assure that underground coal miners
4 will be protected during mine emergencies.

5 The initial announcement of the four rule making
6 hearings were published in the Federal Register on December
7 12th, 2002, and there's copies of that Federal Register in
8 the back at the sign-in table if you want one.

9 The proposed rule that is the subject of these four hearings
10 is identical to the Emergency Temporary Standard published
11 from December 12, 2002. The proposed rule will establish
12 requirements for mine evacuation in response to mine fires,
13 explosions and gas and water inundations emergencies.

14 Let me give you some background which led us here
15 today. Under Section 101(b) of the Federal Mine Safety &
16 Health Act of 1977 the Secretary had the authority to issue
17 an emergency temporary standard if it is determined that
18 miners are exposed to grave danger from exposure to
19 substances or agents determined to be toxic or physically
20 harmful, or to other hazards, and that such emergency
21 standard is necessary to protect miners from such danger.

22 On December the 12th, 2002, MSHA issued an
23 emergency temporary standard in response to the grave dangers
24 that the miners are exposed to during mine fire, explosions

1 and gas and water inundation emergency.

2 The recent death of 14 miners in two underground
3 coal mines punctuated the need for MSHA to address proper
4 training and mine emergency evacuation procedures. The
5 emergency temporary standard was effective immediately upon
6 publication and is effective until superseded.

7 Under the Mine Act, the Secretary shall have nine
8 months from the day of publication of the emergency standard
9 promulgated from the mandatory health and safety standards
10 which will supersede the emergency temporary standard. By
11 law the emergency temporary standard also operates under the
12 proposed rule. That proposed rule is the subject of this
13 rule making. We're required to have the final rule in place
14 by early September.

15 We're here today, as I said, to receive comments
16 but we're also interested in getting your impressions on how
17 this rule has worked since it was put in place last December
18 the 12th. The major provisions of the proposed rule would
19 require:

20 1) that operators of underground coal mines will
21 designate for each shift that miners are working
22 underground a responsible person in attendance at
23 the mine to take charge when mine fires, explosions
24 and gas and water inundation emergencies.

- 1 2) the designated responsible person must have
2 current knowledge of various mine systems that
3 protect the health and safety of miners.
- 4 3) the responsible person must initiate and conduct
5 an immediate mine evacuation where there is an
6 emergency which present an imminent danger to
7 miners due to fires, explosions and gas or water
8 inundation.
- 9 4) only properly trained and equipped persons who are
10 necessary to respond to mine emergencies may
11 remain underground.
- 12 5) the existing requirements for a program of
13 instruction for fire fighting and evacuation would
14 be expanded to address not only fires but also
15 explosions and gas and water inundation
16 emergencies.
- 17 6) part 48 training requirements would be revised to
18 reflect that the annual safety training includes
19 the review of mine fires, explosions, gas and
20 water inundation emergency evacuation and fire
21 fighting plans in effect.

22 So far MSHA has received several comments on the
23 proposed rule. We have received several comments prior to
24 starting the public hearings and have received several

1 comments during the previous two meetings. One commentor
2 recommended that we expand coverage of the rule to include
3 metal and nonmetal mines. Another commentor supported
4 portions of the rules but felt that some portions were
5 ambiguous and allowed MSHA too much leeway to second guess
6 operator's decisions on whether to evacuate.

7 Finally, the commentor felt that both rules fosters
8 the idea that the first step in mine emergencies is always to
9 evacuate miners. The remaining two commentors offered serious
10 suggestions on how to improve the proposed rule. We posted all of
11 the comments on the web page at www.MSHA.gov and we'll also post
12 the transcripts of these public meetings as quick as we get them
13 back from the court reporter.

14 The issue surrounding the safety and health of
15 miners are important to MSHA. We'll use the information
16 provided by you and also comments to help decide on how best
17 to proceed through this rule making. These four hearings
18 will give mine operators, miners and their representatives
19 another interesting part and an opportunity to present their
20 views on the proposed rule.

21 The format of this public hearing will be as
22 follows: the formal rules of evidence will not apply and the
23 hearing will be conducted in an informal manner. Those of
24 you who have signed up to speak today will make your
25 presentations first. After all scheduled speakers are

1 finished, others can request to speak. When the last speaker
2 is finished, we will conclude the public meeting.

3 If you wish to present any written statements or
4 information today, please clearly identify your material.
5 When you give it to me, I will identify the material by the
6 title as submitted. You may also submit comments following
7 the meeting. Please submit them to MSHA by February the
8 28th, 2003, which is the close of the post hearing comment
9 period. Comments may be submitted to MSHA by electronic mail
10 at comments@MSHA.gov or by fax at 202-693-9441 or by regular
11 mail or hand delivery to MSHA, Office of Standards,
12 Regulations and Variances, 1100 Wilson Boulevard, Room 2352,
13 Arlington, Virginia.

14 A transcript of this public hearing will be
15 available upon request. If you want a personal copy of the
16 meeting transcript, please make arrangements with the court
17 reporter or you may view it on MSHA's website. As I said, it
18 will be posted as quick as possible after the meeting.

19 We'll begin with the persons who have requested to
20 speak and when you come up to present your comments, please
21 state your name and spell it and give us who you are
22 affiliated with.

23 So with that, we will start with Gary Trout with
24 the UMWA.

1 MR. TROUT: Good morning, my name is Gary Trout, T-r-o-u-
2 t. First I'd like to say that the temporary emergency
3 standard is something that we needed and have needed it for a
4 long time. I'm real pleased with them. There are a few areas
5 I think that it should include, and I would like to address
6 this and have a few comments on the variances.

7 The first comment that I would like to comment on
8 is the communication systems. I think the rule does not address
9 those in depth enough and, you know, personally as I've
10 traveled throughout the United States, Jim Walters and 84
11 mine, the Leftwich (sp) mine in the State of West Virginia,
12 and they seem to have problems with some of the vehicles
13 having proper communications on them. I think that, you know,
14 you need to address that in the standard so that we can
15 quickly and efficiently evacuate miners if there happens to be
16 an emergency, and I think with the technology that you have
17 today with some initiative we can get better communications
18 throughout the mines and also because we all know or most of
19 everybody here has ever been miners or been in the mines for
20 a long period of time, we have various folks scattered
21 throughout the mines usually doing the fire boss work or belt
22 work and things of that nature and those folks also need some
23 type of communication and with the technology today, with two-
24 way radio systems and some other things, but also I think if

1 the initiative is put out there, I think we can develop some
2 system that would save miners lives.

3 The other thing that I've run into I'd like to talk
4 about just for a moment and that's the emergency
5 transportation. Right now here in West Virginia we don't face
6 that very often, because we have a standard here where it
7 requires an emergency vehicle be on the section at all times,
8 and therefore we can effectively get our folks off those
9 active sections and get them to the outside real quick. I
10 think that's something that needs to be nationwide. There
11 should be an emergency vehicle on every section; therefore we
12 could get those folks out. We've run into a couple of
13 problems where it took like 15 or 20 minutes in order to get
14 transportation to the section and effectively evacuate the
15 section in the mines up there. So I think, you know, it will
16 really help. It would help a lot.

17 On the responsible person I've got some personal
18 feelings with that. I think that's a good thing. I think we
19 need a responsible person, but I think through the emergency
20 standard we should lay down the groundwork for where he needs
21 to be and at all times, you know, on the emergency standard
22 each shift that person changes, everybody is supposed to be
23 notified, but the problem I have is about the designated
24 person's duties I find that it happens to be the mine foreman

1 who designates the person and he may be inside taking care of
2 some other work looking at a belt. He may have some problems
3 on it or something like that.

4 He would be real hard to get a hold of and then
5 during an emergency, I think most people and really we can't
6 fault them for it, but they want to go take a look at it
7 firsthand, and I think that's a no-no, because if that man is
8 going to be involved, he's going to be the responsible
9 person, he's going to be directing the evacuation, he needs
10 to be stationed on the surface at all times, not underground
11 or somewhere else.

12 You know, here in West Virginia, at most of our
13 mines, especially the larger ones, we've got dispatchers. He
14 knows where each and every person is. He knows where each
15 and every vehicle is in that mines, so I think effectively
16 during the evacuation that, you know, the responsible place
17 to be would probably be right there in the dispatcher's
18 shanty and set up a command center as we do at all these
19 disasters and run the operation from there, and that way, you
20 know, I think the individuals could get outside much, much
21 quicker and we would be more efficient in evacuating miners
22 and also with the drills, as I read through there, I think
23 that's a real good thing. I think we need those drills. I
24 think we need to simulate those drills and actually do a

1 simulated mine emergency and do an actual evacuation.

2 I don't think we can have enough training, because,
3 you know, we put on classes at the academy at least two every
4 year, and we do a simulated mine emergency and as we all know,
5 cause most everybody here has been involved in some emergency,
6 it's really hectic when it comes right down to it; and I
7 think the more training you have the better off you'll be when the
8 actual circumstances arise and with that, that's all I have.

9 MR. NICHOLS: Do you have anything?

10 MR. CROCCO: Let me ask a question.

11 MR. TROUT: Okay.

12 MR. CROCCO: On the location of the responsible
13 person, just say it's the mine foreman for example, if he
14 were required to remain on the surface and couldn't go
15 underground, do you see any safety disadvantages in not
16 allowing him to travel throughout the mine and observe
17 conditions throughout?

18 MR. TROUT: Bill, I think that -- is it all right if I
19 call you Bill?

20 MR. CROCCO: That's fine.

21 MR. TROUT: But I think with the superintendent, if he's
22 the designated person, I think he needs to delegate some of
23 those duties. He needs to be on the surface as we're trained
24 in mine rescue and he needs to stay there, because if he's

1 underground and something happens to him, it would be utter
2 chaos out here trying to evacuate the miners. So that
3 situation needs to be evaluated. He needs to delegate that
4 duty to his assistant or whoever he has confidence in to do
5 that and then him remain on the surface.

6 Personally I think it's an advantage, a big
7 advantage if he's on the surface at all times in my opinion.
8 If he thinks he has that need, he just needs to delegate it,
9 some authority to someone under him to check it out, because
10 if he would happen to be under there and get trapped or
11 something would happen, then he can't efficiently run a
12 rescue operation or an evacuation if he's underground doing
13 something else, because as we all well know, when you've got
14 an emergency situation, you have to concentrate on the
15 situation that's needed not on four or five other things.

16 MR. CROCCO: Okay.

17 DIRECTOR NICHOLS: Okay, you mentioned that when you
18 start talking about communication and transportation, that
19 the rule didn't go far enough and when we issued the
20 emergency temporary standard, we're trying to do three
21 things. First, you had the evidence of 14 miners being
22 killed after the initial explosion in these mines. So the
23 idea was to designate this responsible person to manage the
24 emergency when one occurred to get the people out of the

1 mine. The other one was to -- we had assumed I think all
2 along with mine evacuation plans that explosions was a given,
3 but we wanted to update the current mine emergency plan to
4 include explosions, gas and water inundation, and then be
5 sure the miners understood the new requirement and then
6 incorporate training in Part 48.

7 Now that's what the emergency temporary standard
8 dealt with and as I said in my opening statement, that it
9 also serves the proposed ruling. Now one thing the agency
10 will have to decide is are some of these other issues beyond
11 the scope of this current rule making. I think they're all
12 good comments and may be good for rule making, but whether if
13 fits in this one or not, these lawyers are pretty tough on me
14 about not saying anything up front, when you do a public
15 rule, they want to plug it in a final one.

16 So that's something that came up at both the
17 previous hearings, both transportation and communication. So
18 that's what we'll have to wrestle with when we finish the
19 final one. Thank you, Gary.

20 The next presenter will be J.R. Patsey, UMWA.

21 MR. PATSEY: J.R. Patsey, P-a-t-s-e-y. I'd like to
22 thank you-all for the opportunity to allow us to come here
23 today to have a little bit of input on this. Getting to the
24 responsible person there, I'm just like Gary there, you know,

1 at times, you know, whoever you designate the responsible
2 person, he's going to be traveling throughout other parts of
3 the mines and with him being the responsible person, he could
4 be inby an explosion or, you know, a fall or anything and I
5 think you ought to look in seeing putting -- in case he would
6 happen to be in that inby there -- to put a pager or some
7 type of other communication system where we could get a hold
8 of him if he ain't going to be required to stay on the
9 surface at all times, and we've got a lot of people at our
10 mines -- it's a big mines -- got a lot of fire bosses,
11 pumpers that's way away from any phones whatsoever for three
12 or four hours a day, and, you know, we need to come up with
13 some type of two-way system, a pager system, or something in
14 case we would have an explosion or fatality, something to get
15 a hold of men where they may have a chance to get out of
16 there and, you know, I think we need to do more hands-on
17 training on evacuation at all mines, not just the big mines
18 but the little mines, too.

19 You know, at our mines -- I'm saying that there's
20 a lot better communication at large mines than small mines,
21 and when you get to talk about the people, who is going to be
22 responding to the fire, you know, are you referring to mine
23 rescue people who have been trained for that or are you
24 referring to somebody whose annual training they have in fire

1 fighting, you know, where you go to the firefighters.

2 I think we need to look at that, and another thing
3 from reading a little bit about this and talking to other
4 people who was down there on the inspection, you know, I
5 think the inspectors send people down there, and they didn't
6 come back to follow up on a lot of the citations that was
7 wrote there. I think if they had, you wouldn't had the
8 fatalities we have here today, and as far as, you know, our
9 communication person at the mines there, you know, we've got
10 a dispatcher.

11 In the State of West Virginia the law requires it
12 and at anytime, you know, when he calls for the road, that
13 man is going to know -- the dispatcher pretty well knows the area
14 that individual is -- had went to. At times we will have 25
15 different rides on one shift going throughout different parts
16 of the mines, and then, you know, you've got some people,
17 like I said before, you've got people being on the beltlines,
18 you may have people over in the returns, and we need somebody
19 that -- put the pager, two-way communication or something to
20 get a hold of them people in case we would have an emergency.
21 I thank you for your time and that's all I've got.

22 DIRECTOR NICHOLS: Thanks, J.R. Do you have anything?

23 MR. CROCCO: No.

24 DIRECTOR NICHOLS: Thank you. We'll call Mart Lane with

1 the UMWA.

2 MR. LANE: My name is Mart Lane. I'm with the UMWA.
3 You spell it M-a-r-t L-a-n-e. I guess I'm probably one of
4 those dispatchers they've talked about here. So I would like
5 to talk a little bit about that. It's a position that I have
6 in a large mines. The way it's been handled at our mines
7 since, I think you said December 12th, is we've basically --
8 we have two portals also. We have a slope and a shaft, and
9 the biggest portion of our people portal through a shaft.
10 The other slope is for supplies mostly.

11 My place is on the supply side of the mines, the
12 slope. They actually post beside of the shaft on that side
13 to tell these people each day what the responsible person is.
14 I'm part of that process already by telling me that if that
15 responsible person changes, then I'm to notify each mantrip
16 that leaves the bottom that the responsible person has
17 changed.

18 I think the biggest problem with this standard right
19 now, or the rule, is that when you look at the responsible person
20 in the mining industry and this is my experience with where I'm
21 working, is you have a shift foreman, mine foreman, whatever his
22 title might be, that's pretty much in the industry, in my
23 experience of 30 some years in the mining industry, is already
24 carrying a job that's overloaded and stressed out to the max in
25 the position that he's holding.

1 Then he gets this position that he's required to
2 fulfill, too, and he has other duties and he's not going to
3 neglect those duties because if he does, he's going to get
4 his butt in the ringer, plain and simple, because he's
5 required to be a belt person or a track supervisor in
6 whatever conditions it is, and at times he's going to be gone
7 and you're not going to be able to get a hold of him. We've
8 never had what we said is we had a fatality at our operations.
9 We've never had, I guess what you would call a disaster, but
10 there's been times in my experience at that mine for 30 some years
11 that you can't get a hold of the shift foreman for periods of
12 time just for the fact he has other duties.

13 I think it falls in line with what I've heard prior
14 to me coming up here that, you know, there's some way there
15 needs to be able to communicate with that person or it needs
16 to be a surface person who's going to be there or you're not
17 going to be able to get a hold of this person and, you know,
18 I think in maybe the Alabama, in that situation 50 minutes
19 time elapsed from the explosion one to explosion two,
20 something of that nature.

21 There's times that those people are going to be
22 gone and you can't get a hold of them especially if they're
23 in the airways where there are no phones that you can access
24 them by, and then if they change, delegate that work as Mr.

1 Trout said there prior to me coming up to another person
2 after the shift has started, then it's -- and I'm going to be
3 a big part of that process, because I'm going to be left to
4 get a hold of maybe a 150 people that's in that mines and
5 you're going to change your horses in the middle of the
6 stream or something.

7 I guess that's pretty much what I have to say
8 about it. I just like to see that person, if you're going to
9 have one, it needs to be somebody that's designated you can
10 get a hold of or have some way of communicating.

11 MR. CROCCO: Are you saying that a secondary
12 communication system would be needed for the responsible
13 person?

14 MR. LANE: If you're going to leave it with that mine
15 foreman or shift foreman, who is going to be continually
16 going underground. He may go in and walk belts and get on
17 the belt and walk a belt for an hour and when you're talking
18 about a large operation that covers miles of underground
19 territory, I mean you could foreseeably not get a hold of him
20 for an hour and I think he needs to.

21 MR. CROCCO: At your mine when the mine foreman
22 travels underground, does he make an attempt to let you know
23 where he is?

24 MR. LANE: That's correct. I know where he is. I know

1 where everybody is in the mines all the time pretty much
2 so.

3 MR. CROCCO: Thank you.

4 DIRECTOR NICHOLS: When we developed the rule , the
5 thinking primarily was that the thing missing here is
6 somebody to make a decision to evacuate the mine, not to keep
7 these people underground after you had the first explosion.
8 I don't know that we had anything in the record of the
9 history that there was a problem of locating all the miners.

10 I mean it seemed like the overriding thing was for
11 somebody to be able to make that decision on the spot and not
12 have to call around to try to find upper management or
13 somebody like that that have the confidence to err on the
14 side of safety; just go ahead and get people out and regroup
15 and let's take a look at what we got, rather than to run in some
16 place unequipped and try to deal with an emergency. I don't
17 know that we thought the -- finding the miners is a problem.
18 Did you?

19 MR. CROCCO: Not anything in the records.

20 DIRECTOR NICHOLS: It was getting that decision made
21 to evacuate the mine.

22 MR. LANE: Well, I guess maybe what I'm trying to say
23 and probably didn't make myself clear, you know, just say
24 John Doe was my shift foreman. You know, he's the

1 responsible person and say he is a belt person. Well, he may
2 go down the shaft and he calls me and says, well, I'm going
3 to be on haulage number one belt, walking it from point A to
4 point B, which may be a 40 minute trip without communication.
5 So, you know, the only other choice I have -- I've did this
6 before many times when we had problems that I wanted to get
7 an answer was the only other choice you have then to get a
8 hold of him is you start someone up the track popping through
9 stopping doors maybe every 500 feet going into the belt entry
10 to try to intercept him at this point to get him to a phone.

11 DIRECTOR NICHOLS: The other thing we didn't want to
12 set up was something that led people to believe if you can't
13 evacuate the mine unless this responsible person made the
14 call.

15 MR. LANE: I would do that. I mean there's no doubt in my
16 mind, I've did it before, the times when I couldn't get a
17 hold of people is if it gets right down, you know, I may
18 assume I'm going to get busted for it later if I did the
19 wrong thing, but at times I have made that decision to get
20 people outby in a situation where it could become hazardous.

21 DIRECTOR NICHOLS: Okay, thanks, Mart.

22 MR. LANE: Thank you.

23 DIRECTOR NICHOLS: The next presenter will be Bolts
24 Willis from the UMWA.

1 MR. WILLIS: My name is William, W-i-l-l-i-a-m,
2 Bolts, B-o-l-t-s, Willis, W-i-l-l-i-s. My address is Box
3 126, Pratt, P-r-a-t-t, West Virginia 25162. I'm President
4 of Local Union 8843, Cannelton, West Virginia. I'm presently
5 working for the Cannelton Industries, Incorporated in
6 Cannelton, West Virginia.

7 I started working underground in 1969 at the No. 8
8 mine and worked at several other mines for the Cannelton
9 Industries, including No. 105, 115, 125, No. 10 as well as
10 the No. 8 mine and our present mine, Shardick or Stockton
11 mine, which is connected to our belt system to our No. 130 mine.

12 During the past 33 plus years of mining
13 experience, I've had the opportunity to be part of the
14 investigations of mine fires, inundations, including water,
15 gas, low oxygen and spontaneous combustion fires as well as
16 gas, coal dust and belt fires.

17 Just to give a few examples while working as a
18 full-time employee for the United Mine Workers of America and
19 for the State of West Virginia, I've been exposed to many of
20 these types of situations included in this emergency
21 temporary standard the reason we're here today.

22 Some of the experiences I've had include fires at
23 No. 105 mine at Cannelton, 115 mine at Cannelton and No. 8
24 mine at Cannelton, as well as water and gas inundations at

1 the No. 8 mine and water inundation at the Stockton mine
2 approximately two years ago, the Ferrell No. 17 mine
3 explosion in 1980, Top Mast coal mines and coal dust
4 explosion in Kentucky, the McClure explosion in McClure,
5 Virginia, Marianna mine fire and the Greenwich Collieries
6 mine explosion in Pennsylvania, inundations of gas and low
7 oxygen problems at the Dry Branch mine in West Virginia, and
8 spontaneous combustion mine fires at Cabin Creek, West
9 Virginia, a coal outburst at Imperial Collieries at Paint
10 Creek, West Virginia, mine fires and explosion at the VP
11 operations in Virginia, also the largest disaster in the past
12 30 years at the Welberg mine in Orangeville, Utah, and the
13 explosion at the Fire Creek mine in West Virginia during the
14 start of the Gulf War. As Assistant Commissioner of the Department
15 of Energy, I've also worked with the State of West Virginia.

16 I said all this to begin as myself as a member of
17 the UMWA to agree with most of what is included in this
18 emergency rule for which we're here. With this I will add
19 some suggestions to what is needed to prevent or lessen such
20 events such as Que Creek and the JWR No. 5 in Alabama where I
21 had been underground during my previous jobs while working in
22 Alabama doing training classes, inspecting mines in Jim
23 Walter Resources. I've inspected mines in many states
24 including Virginia, New Mexico, Arizona, Utah, Colorado,

1 Alabama, Pennsylvania, Ohio, Kentucky and West Virginia.

2 First concerning the responsible person. At our
3 two mines in Cannelton we have the dispatcher on duty at all
4 times while miners are underground. Not only does this
5 person know the track system, he also knows the ventilation
6 system and where every miner is working at all times. At our
7 mine on an average day, there is over 110 movements of miners
8 on every shift. So you can see the importance of this person.

9 The person who fills this part of the emergency
10 rule should be the dispatcher as well as the state-assigned
11 person by the mine management which is on each shift listed
12 by the company.

13 Second, communication is a must in my opinion.
14 Several years ago I met with experts at the National Mine
15 Health and Safety Academy to discuss our lack of dependable
16 communications after a mine fire, explosion, inundation or an
17 outburst. These people I met with were from the United
18 States Navy and also the Marine Corps, but
19 at that time used the term subsurface instead of underground
20 communication. They informed me that at that time there was
21 dependable wireless hand-held communications systems within
22 the Armed Forces but to my knowledge, these dependable
23 communications are still not part of the mining industry. I
24 would highly recommend that MSHA do all it can so these type

1 technologies can be obtained as soon as possible from the
2 Armed Forces.

3 Third, do what we are now doing at Cannelton
4 Industry and have been doing for over one year. We use to do
5 this while working for the State of West Virginia as I
6 instituted the program in my previous job. This is how we
7 approach emergency procedures such as fires, explosions,
8 inundations or outbursts. Each year we conduct a smoke-filled
9 training using chemical smoke to prepare the miners for what
10 to do when they can't see while trying to escape or get to
11 fresh air or unaware or go to an area away from rising water.

12 This training using lifelines communication, fire
13 fighting equipment, and escape procedures to areas that are
14 safe, whether it be a safe harbor in case of flooding. In
15 these drills miners are exposed to putting their SDSR's on
16 while visibility is impaired. As a footnote, mine management
17 and the UMWA members at our mine believe in this type of
18 training.

19 Our first goal in this training is to have all
20 miners to be trained in an unplanned -- or prepared plan to
21 notify other persons in the mine to what is taking place.
22 Last year we trained almost every miner in both of our mines.
23 This year our goal is to train everyone and it was our goal
24 before this rule came out.

1 Fourth, I agree with the necessary people who are
2 trained to respond to mine emergencies. One of the biggest
3 problems in waiting for mine rescue teams as we all well know
4 there is a severe shortage in mine rescue teams throughout
5 the United States, and we've also had problems where they
6 respond in a timely manner or whether they respond at all.

7 Even with this training in mind, our gas detection
8 license needs improved and more of the current license to
9 check for multiple gases are needed. Also advancement needs
10 to be made in combination gas detectors that would tell us
11 when the total gases are at dangerous levels, such as two
12 gases being present at one time.

13 One example is most people in the mining industry
14 believe that methane explosion range is 5 to 15 percent, but
15 when heated, the explosion range of methane is 3 to 20
16 percent. We need to add additional training to inform miners
17 and as well as other people in the industry that
18 explosability of all gases change as they are superheated as
19 a result of a fire.

20 Fifth, lighting is crucial in an emergency not just
21 for the scene but common in individual that they have been
22 affected by an emergency. We all agree that what is missing
23 now is available to the miners under certain cap lamps where
24 they can be called by characters on their cap lamp and notify

1 whenever there is an emergency and they may be in outlying
2 areas.

3 Of course, with the advancement of technologies
4 that the Armed Forces has, they could have a hand-held radio
5 no matter where they were in the mine in my opinion with what
6 I've been told.

7 Sixth, during outbursts since many miners have not
8 been exposed to that type of occurrence, a training film
9 needs to be produced by MSHA as well as cutting into old
10 works where inundations of gas or low oxygen occurs. This
11 video can show the miners the signs, such as soft coal
12 cutting when it has been hard to cut, steam coming from the
13 mine face far ahead of the actual cutting into the old works
14 or where an outburst may occur.

15 Speaking just a little bit about outbursts,
16 there's some things that need to be part of the training that
17 are crucial in occurrence of outbursts, that three things
18 usually exist, two especially is you have hard top and hard
19 bottom conditions before an outburst can occur.

20 Also in several of these, I've been part of the
21 investigation, I think there's been eight, that you cut them
22 in a "U" fashion as you're retreat mining and then while the
23 miners are up in that "U", the top doesn't break and the
24 bottom doesn't break, and the coals pillars can explode and

1 some of them that I've seen they were so violent, that it
2 would be just like this table, you've seen a magician take a
3 tablecloth with the tableware on the table and jerk the
4 tablecloth off and leave the glasses and plates on the table
5 -- so somebody probably has seen this happened.

6 During an outburst, one that I investigated, the
7 outburst was so violent that it -- when it exploded, the ribs
8 where the timbers were setting, it knocked the timbers out
9 cutting the timbers up and then the way it was set down on
10 top of the coal, you couldn't see the timbers and we saw that
11 and we started digging around and found the timbers under the
12 coal which they were sitting right on top just like the
13 plates would be on the illustration that I gave.

14 Seventh, in closing we need to train our miners in
15 all situations including intake escapeway, which may not be
16 or may be the best place to get out of the mine, but as in
17 the situation which occurred at our mine where we had an
18 inundation of water, the miners were in the intake escapeway.
19 The water was up to their chest and two entries over the
20 water was only ankle deep. So to have a backup plan is essential.

21 My point being that we only train for one plan and
22 it doesn't work, then a backup plan can be effected for
23 escape. Also on page 76665, Section 75 1502 (c) is vague to
24 say simulation of this type of training. What does

1 simulation mean; to many that means now where they don't go
2 to the extent that we at our company and union have done in
3 exactly hooking up fire hoses, escaping from the -- walking
4 the escapeways out of the section, actually putting out fires
5 -- simulated fires with water, using rock dust, donning self-
6 contained self-rescuers. Simulation to me there means where
7 we show a card in order to be in a classroom, this is how it
8 works. When this type of training occurred, it's not where
9 it needs to be we think.

10 Also on page 112 post disaster help safety
11 improvements such as JWR No. 5 mine report, we agree with all
12 18 recommendations listed in that report. If you have any
13 questions and by the way, as well as myself as part of the
14 Safety Committee is Roger Slaytor and Dwight Siemiacko.

15 DIRECTOR NICHOLS: Okay, we've got that report in the
16 record.

17 MR. WILLIS: If you need any assistance marketing or
18 producing these films, use any of our experience in our
19 company, I am sure anybody would be glad to be part of that.

20 DIRECTOR NICHOLS: Okay, thank you. When did that
21 inundation occur you spoke of?

22 MR. WILLIS: Approximately two years ago, between two
23 and three years ago. We cut into an old works and the water
24 inundated part of the section and some of the miners went to

1 the intake, which they've been trained to do, which is most
2 of the time which is what you would do, but that's where the
3 water -- the lay of the mine was downdip and that is where
4 most of the water went. Two entries over the water was ankle
5 deep.

6 So it's not uncommon in the mining industry as you
7 well know to cut into old works, where you really are not
8 expecting to do that and some things I'm sure discussed and
9 I've read about Que Creek is where you have up-to-date maps.
10 Of course, we totally agree with that. Drilling at all
11 times possible in the site just like the Code says would
12 definitely prevent occurrences such as that.

13 DIRECTOR NICHOLS: Okay, Bill, thanks. The next
14 presenter will be I believe it's James Hancock with Riverton
15 Coal. Did I get the last name right?

16 MR. HANCOCK: That is fine. My name is James
17 Hancock. I'm with Riverton Coal. We operate two deep mines
18 in Fayette County. I'm the general manager on the property.
19 My concern is the responsible person. I'd like to comment
20 on who should be in charge. I don't think no one would be
21 more qualified than the mine foreman and shift foreman.

22 As we all know, and I've section bossed as shift
23 foreman but everyone is not qualified to handle pressure.
24 When the pressure comes on you, you've got to be able to

1 handle it. I mean I don't think the dispatcher should be the
2 one in charge in case of an explosion.

3 I think an inundation -- I think it should be a
4 person that's hands-on. I think it needs to be a person that
5 is familiar with the mine. I think it needs to be a person
6 that knows the elevations of the mine, ventilation controls.
7 I think it needs to be a person that travels the airways
8 weekly because, you know, I think the dispatcher could assist
9 him in telling him where everybody is at, but I don't think -
10 - just like myself, I'm the general manager, but I can't run
11 coal at this mines outside. I count on the people underground
12 to the job, and I can say one thing and it be the wrong
13 thing. They are there. They see and they know what's happening.

14 As far as the communication system, I tried a
15 communication system called the PEDs system. What this
16 consists of is it pages on your cap light. It's hooked to
17 your battery. I put the system in in '97 and it worked for
18 about a year and I had difficulty keeping the system up. If
19 they could perfect this system, it would be great.

20 What you could do from the computer outside, you
21 just say, "Call me outside," and it may be a beltman and you
22 punch it in and I'd say in two minutes his light would start
23 flashing. It would come on his light.

24 Right now the system is not operating. We've had

1 so much trouble trying to keep the lights up. We bought this
2 system from a gentleman out of Australia and if you had
3 someone on the property familiar with the system, and you'd
4 have someone to work on it all the time. We just couldn't
5 keep the system going. When the system would fail, your cap
6 light would just blink all the time. So we just had to do
7 away with the system. It's a great system but if somebody
8 could perfect the system.

9 We went to it because we've got a lot of
10 beltlines. We got ten miles of beltline, and that's one
11 reason we went to it so we could get a hold of our people. So
12 it worked like I say a year and then after it failed.

13 These mines, two mines that I operate follow the
14 new rules and regulations and I'm all for having somebody in
15 charge. We run safe operations. We won the State's Safety
16 Award two years in a row, but like I say, a qualified person
17 needs to be someone that's familiar with the mines and hands
18 on, because I can't run that mines underground outside
19 calling underground telling these production foremen what to
20 do. Thank you.

21 DIRECTOR NICHOLS: There's some other companies using
22 those PEDs system. Have you checked with anybody else?

23 MR. HANCOCK: One of our sister companies Rock Springs
24 --

1 DIRECTOR NICHOLS: Yes.

2 MR. HANCOCK: -- they had some trouble too with their
3 system.

4 MR. CROCCO: What kind of trouble did you have in
5 that mine; would it be receivers on the cap lamps?

6 MR. HANCOCK: On the cap lamps. All the receivers on
7 the cap lamps. I mean if we would bump it, they would go
8 out. What you do you want to you run a loop, about a 10,000
9 foot loop in a big radius, and you can be in a return, you
10 could be -- matter of fact, I could be at the plant and have
11 a cap light and they could send me a signal in the plant.
12 It's a great system, but it takes a lot of upkeep. I would
13 call people. It might be two or three weeks before they come
14 to fix it. Finally, I had so many of them to fail, that we
15 had to go away from them.

16 MR. CROCCO: Did you have one of those for every
17 miner or just certain --

18 MR. HANCOCK: No. My section foreman had one. My
19 beltman had one. My supply crew had one. The reason being I
20 always wanted to know where the supply crew was at. If I
21 called, I needed them, I could just PED them. They call me
22 outside. All my shift foremen, my chief electricians had
23 them. We had a total of about 20 of them, but like I say,
24 they worked fine but they're so hard to keep up. It's a

1 great system if you can get them to work.

2 DIRECTOR NICHOLS: What's the most miners you have
3 underground on any particular shift, Jim?

4 MR. HANCOCK: Forty.

5 DIRECTOR NICHOLS: Forty?

6 MR. HANCOCK: Forty on the day and 40 on the evening.

7 MR. CROCCO: The responsible person you mentioned that
8 the mine foreman would be or a shift foreman would be in the
9 best position to fill that function. Do you have an opinion
10 on whether that person should be required to remain on the
11 surface or do you see some advantages to allowing him to
12 travel throughout the mine? Do you have an opinion on that?

13 MR. HANCOCK: Well, the mine foreman, you know, his
14 duties -- the mine foreman has always been the one
15 responsible for everything and I'm taking his duties -- I
16 feel like I'm taking his duties away from him. I've been a
17 mine foreman before and I feel like I was responsible for
18 everything that went on underground and to take the duty from
19 the mine foreman and give it to like a dispatcher -- like I
20 say, everyone can't be an industrial foreman or a mine
21 foreman because a lot of people can't stand pressure.

22 When something happens, you know, they could just lose it.
23 So, you know, my thinking is the person should be a qualified
24 person that deals with situations every day where he has to make a
25 decision, not for somebody just right off the bat to have to make

1 a decision. I don't think it would work like that.

2 The mine foreman he's got shift foremen. The reason
3 why they are shift foremen is to make a decision when he's
4 not there; that's the way the coal industry has been since I've
5 been in the coal business. So why should we change it?

6 DIRECTOR NICHOLS: Okay, James, I forgot to mention
7 here in my opening statement that if you want to leave any of
8 your notes or written material with us, feel free to do that.
9 I think we've probably captured all the comments with the
10 court reporter. If you want to leave something, why bring it
11 up. Okay, thank you.

12 The next presenter will be Rick Glover with the
13 UMWA.

14 MR. GLOVER: My name is Rick, R-i-c-k, Glover, G-l-o-
15 v-e-r. I think most things have been already said today. I
16 would like to make a few comments which probably basically is
17 the same thing. First of all, I want to thank you and your
18 team there for coming down to give us an opportunity.

19 I think we've got to ask ourselves what stimulated
20 your presence here today, and I think it's evident that your
21 presence here is because we've lost 14 plus miners under
22 situations which you-all have tried to address, and that would
23 be through the emergency reg that you felt it was necessary.
24 As I review that and I try to think open minded as I was in

1 your position, and I think you-all done some nice things here.

2 I think that what has been failed is you haven't
3 went far enough if you're serious about trying to evacuate
4 miners in the event of an emergency or if you're trying to
5 determine whether you should evacuate miners.

6 We can talk about a responsible person, and I agree with what
7 a lot of the comments that have been said is one thing for
8 sure it has to be a qualified, trained person.

9 Now we can say -- we can have one of the most
10 qualified trained person that's available within this
11 industry, and I refer this to the training I had at the
12 Academy and also my experiences that I have also had at the
13 mine sites where we have had disasters, and for the purpose of
14 the record, I worked 13 years underground and I've been an
15 employee with the United Mine Workers for 18 years in the
16 health and safety department. So I also have quite a bit of
17 experience unfortunately with disasters myself.

18 The most important thing that I see were three
19 elements that I see if we want to achieve this is one is time;
20 two is transportation; three is communications, and I think if
21 you leave either one of those elements out, don't worry about
22 the training because the training is not that important and
23 I'm not taking anything away from the training and who the
24 responsible person is, and as an example that I'll use, it

1 doesn't matter where that mine foreman is or that responsible
2 person if he's underground. If you get a call that you
3 have an emergency and he's 45 minutes away from the scene of
4 where the accident is and you take another 30 minutes before
5 you get a hold of him, you're an hour and 15 minutes into a
6 disaster of somebody making a decision what you should do and
7 to me that's completely ridiculous, because if I was a
8 dispatcher or if I was a person on the surface or if I was a
9 section foreman or if I was a belt person, I would make that
10 decision personally to be honest with you.

11 Now if I'm on the surface as a dispatcher or
12 whatever and I make that decision, I'll take my chances of
13 being fired. The point I'm making is not to wait an hour and
14 15 minutes for somebody else to make that decision when
15 somebody calls and tells we've had an explosion. We need
16 help.

17 Now if I can't get a hold of the rest of the crew
18 when I'm talking about communications, then you got the
19 situation, it's just like a mine fire, it develops that much
20 larger. So transportation is just as important as
21 communication or they start walking out. When you start them
22 walking out whenever they may have rail equipment because if
23 they don't have the rail equipment there, which we're
24 fortunate here in West Virginia to have a law to protect us.

1 Nationwide don't. So once you start moving these people to
2 the surface, and I think that's what our objective is here, is
3 you've got to get them out. You've got to evaluate to
4 determine whether you leave people in there or whatever. It
5 goes back to your training of the responsible person, but
6 there have been some good comments about I think training --
7 I lean toward here -- all the comments have been good. I
8 think Bolts is especially good as far as what the criteria
9 should address as far as the training but getting back to that
10 responsible person and the time element in evacuating the
11 mines, we've got an opportunity here.

12 We can look, well, what's the lawyers going to do
13 when you get your final regs or whatever; to me it's
14 immaterial if you're committed to this cause. We've got an
15 opportunity, like I say, for instance here in West Virginia -- I
16 know the rest of the nation isn't like West Virginia. We
17 have very readily available mantrips that sits on the
18 sections. We have dispatchers if you move more than one
19 piece of equipment simultaneously which is an advantage over
20 the rest of the nation, per se.

21 You've got dispatchers who are highly qualified
22 but you don't have to be extremely qualified until you get to
23 the training where the decision making process of how you can
24 handle the situation at the scene because you need somebody

1 immediately start running the people outside, because you
2 should be leaning toward safety.

3 If you get a call that's some -- a good example, and
4 I'll use Alabama, and I'll have to say I was in Alabama. I
5 took care of the rescue -- while they were there -- but they
6 was traveling and they had communication amongst each other
7 and they were going back. That was all in that 50 minutes of
8 elapsed time and then your gas built up and your ignition
9 source, and then you have more people killed, but the point is
10 you need to stop and address require transportation, a way of
11 communicating, and I personally believe that every miner in
12 that coal mine deserves communications, and I think the
13 technology that you require will be improved and I think it
14 will be available.

15 I have seen in my lifetime, and one example a boy
16 covered up for 12 hours right here in this valley cause they
17 hadn't made a preshift. He was a beltman but if he would
18 have had a pager or some means of communication, I think we
19 can accept status quo as it is today or we could move beyond
20 the technology that will exist if we require it when a man
21 needs help, he can page to get the help.

22 If there's an emergency, he deserves to be
23 notified and say it's time for you to start outside. If we
24 believe -- we've got an opportunity to get it done, but if we

1 say we're dealing with a responsible person, whether it's
2 going to be on the surface or whether it's going to be
3 underground or whether a time element expires, and he can't
4 do all his jobs because he's got to run a coal mines, then
5 we're not putting our miners first.

6 Fourteen people how many of them would have survived
7 if we would have had something in motion. I would assume some of
8 them still would have or we wouldn't be sitting here today,
9 but I would encourage you to consider transportation. I
10 encourage you to consider communications. They deserve it.

11 As we watched the shuttle come apart, and which is
12 two things amazing they could communicate a million miles
13 away. We've watched the shuttle come in. It's been on TV
14 ever since and they lost their lives, but there's one thing
15 about it everyone of those 14 people that passed away, we
16 could do something today to move this thing forward and their
17 families hurt as much as what we watched on TV, these other
18 families.

19 With that I would encourage you to keep up
20 anything this panel can do, given our comments to improve the
21 communication, transportation and getting miners outside. I
22 think -- I know the training is available at the Academy. I
23 know we got some good mine managers that's has a lot of
24 training and take that responsibility on. We've got to get

1 these people this service. With that I thank you.

2 DIRECTOR NICHOLS: Thank you, Ray.

3 MR. GLOVER: Any questions?

4 DIRECTOR NICHOLS: I don't think so. I think you've
5 pretty well summarized the comments that we've gotten in the
6 other hearings plus here today.

7 MR. GLOVER: Okay.

8 DIRECTOR NICHOLS: Would anyone else like to come up and
9 speak? That's all the people we had signed up but feel free
10 to come up and make a comment if you want to.

11 MR. SIEMIACCKO: I'd like to. I wasn't planning to,
12 but I think I might.

13 DIRECTOR NICHOLS: Come on up.

14 MR. SIEMIACCKO: My name is Dwight Siemiacko, spelled D-
15 w-i-g-h-t. Last name is ten letters long, S-i-e-m-i-a-c-c-k-
16 o. I worked for Cannelton Industries. My present job status
17 is a belt examiner. I've had mine rescue experience, mine
18 fire experience. This proposed regulation is a good
19 regulation. It's long overdue. It's needed, but one thing
20 it falls short.

21 Communication is the key. Anything that you do
22 you have to communicate, and I think I heard Mr. Nichols from
23 your panel that there's no problem finding a miner. I think
24 that's an incomplete sentence. It's find that miner alive.

1 Communication is the key and if we go to the flood inundation
2 in Pennsylvania, one thing that stands out tremendously was
3 quick communication saved the section of miners.

4 When you compare it to Jim Walters in Alabama,
5 which there's virtually a breakdown in communications and
6 it's undeniable there's a breakdown in communication there
7 and I think people lost their lives due to a breakdown in
8 communication.

9 When we get into your regulations and we have the
10 word person and there's a tug of war here, you know, about
11 being on the surface, being underground. I think it should be
12 persons with one on the surface at all times. If that one
13 person is in that disaster and is removed, now who is going
14 to be the responsible person. How long will it take to get a
15 responsible person? How much time have we lost deciding who
16 is going to be the responsible person?

17 You know, in an event of an emergency, time is of
18 the essence, that's what saves lives, that's been proven, and
19 you know, I hear comments that the -- because you're a mine
20 foreman or a shift foreman that we're led to believe that
21 just because you are a mine foreman or a shift foreman, that
22 you're not going to break under pressure. Well, I think when
23 you get into an emergency situation, you will be surprised
24 who will fold and who will stand up to the plate in an

1 emergency situation.

2 A certificate holder does not qualify -- there's
3 nothing that's there that says you are going to stand up
4 under pressure. There's none. It's not there, and that's an
5 issue that shouldn't even be entertained here, because a
6 certificate holder has nothing to do with mentality and
7 standing up under pressure.

8 Training is essential but we're vague -- the
9 regulations is vague. I mean is training going to be
10 underground; is it going to be on the surface; are we going
11 to have actual simulations where we have smoke or water or is
12 there going be somebody standing up there with a placard
13 saying you're walking into smoke now. You know, our training
14 has to be in depth; like putting on a SDSR, we read in
15 Alabama that miners had to do it in the dark because their
16 cap lights were blown off. That's not -- today we need
17 actual situations that occur in disasters and be trained in
18 those situations, the actual situation what we're faced with
19 in emergencies.

20 Personal emergency devices at our mines it takes at
21 least four people to make a pre-shift exam and they're all
22 isolated and that doesn't include people who walk the return
23 airways practically every shift. They're in an isolated
24 areas, and technology is there for these personal emergency

1 devices. I think that MSHA should carefully consider that and
2 make that a requirement that the people especially in the
3 remote areas of the mines, because sometimes they're hours
4 away and to communicate to those people, you know, we can have
5 an explosion at ten o'clock in the morning and he may not be
6 aware of it, he or she may not be aware of it until one
7 o'clock, so, you know, here again, communication and time goes
8 hand in hand. It's critical that these people be notified.

9 In closing, I'd like to make a statement concerning
10 MSHA. You know, years ago it was very common for a decal to
11 be circulated that the coal miners put on the inside of his
12 hat of what to do in case of an emergency and you had to
13 barricade. Due to the safety committee at our mine site every
14 miner now has that in his hat, but it was a surprise to the
15 federal mine inspectors who inspect our mines that these have
16 been issued, because they couldn't get a hold of them. They
17 couldn't get these decals, and I believe that MSHA needs to
18 back up a little bit and make sure these decals are circulated
19 to the miners and this gives you the basis of what to do. How
20 many times you pound on a roof, what do you listen for.
21 That's all I have to say unless anybody has got any questions.

22 DIRECTOR NICHOLS: Well, let me clarify something that I
23 said earlier about communications. Communication is extremely
24 important and so is transportation, but what I was saying was

1 when we looked at when writing this standard, the records show
2 there's a whole lot of safe evacuations. I mean combined fire
3 evacuations have been on the books forever. What we wanted to
4 do here is clarify explosions and inundations also but what
5 was missing in the two accidents that we referenced in this
6 standard was early decision making to evacuate the miners.
7 Once you had the initial event to evacuate the miners and not
8 send people in that were not equipped or trained.

9 Now there have been a lot of mine emergencies, you
10 know. It appears that if you get people out of the mine,
11 there's no shortage of well-trained people to go back in and
12 recover the miner, but what you need to do is, and we put that
13 in the standard that we would expect some false alarms, that
14 we would expect some people to evacuate, you know, to a false
15 alarm, but once you get the people out of the mine, step back
16 and evaluate the situation. I don't know that there's any
17 problem in recent years of dealing with it. You can't run in
18 without gas detection equipment and you know the likes of that
19 and not get people hurt. So that's what we were trying to
20 deal with. We've been told that all our life that
21 communication and transportation that was already mentioned
22 here along with good decision making is the key to a safe
23 emergency.

24 We assume a couple of those were going pretty good

1 but the decision upfront was what was lacking in the two cases
2 we referenced. So I don't want to downplay the importance of
3 communication and transportation.

4 MR. SIEMIACCKO: But doesn't MSHA sell yourself short when
5 you require only one person, only one responsible person?

6 Again, what are you going to do when if that mine foreman that
7 is going to be underground is the responsible person and he is
8 involved -- he is removed from the equation because he's dead.

9

10 Now we're going to lose people at times. There's no
11 question about it. First of all, who is next in line?
12 Fortunately, at our mines we have two responsible persons per
13 shift, and I tip my hat to mine management for doing that.
14 It's a very smart move. It's an extremely smart move and I
15 believe that we need to have more than one responsible person
16 per shift. It could be a primary responsible person and a
17 secondary, junior, senior, ever how you want to make it, but
18 there needs to be more than one, and I would go as far to say
19 that one of the two needs to be on the surface.

20 DIRECTOR NICHOLS: Yes.

21 MR. CROCCO: I see what you're saying but you've got to
22 remember that you don't have to reach that responsible person
23 before you can start a mine evacuation and to make that clear
24 I think the last line in 1501 states that, you know, this rule

1 is not -- does not mean that you have to wait until you reach
2 the responsible person before you can initiate an evacuation.

3 MR. SIEMIACCKO: Yeah, I agree. It's in the
4 regulation. Anybody can initiate an evacuation.

5 MR. CROCCO: Right.

6 MR. SIEMIACCKO: It's the responsible person who
7 directs, who has knowledge of ventilation, you know, and then
8 can participate in moving the miner, but again, I go back to
9 the point this responsible person, the single responsible
10 person is removed due to this disaster, he's isolated from
11 communication cause he's cut off from communication or he's
12 dead, loses communication, now how much time are we going to
13 lose deciding who is the next person in charge? It needs to
14 be more than one.

15 MR. CROCCO: You can have an alternate, like you say.

16 MR. SIEMIACCKO: You can if the company so desires,
17 but MSHA does not require that. At our mine site we do have
18 that, and I think that was a great decision on mine management
19 and I tip my hat to them, and I tip my hat to them today for
20 doing that, but if it's not spelled out, how many companies
21 are going to do it?

22 DIRECTOR NICHOLS: Based on my 30 years of working with
23 the agency, my guess is that a lot, if not most mine
24 emergencies might be triggered by somebody other than the

1 responsible person if you see a situation. Somebody mentioned
2 Que Creek that the presence of mind that one miner had to make
3 that call to those other nine miners to get people out of the
4 mine; that probably happens a lot but getting back to the
5 rule, I mean when we wrote the rule, the way this thing works
6 the people that write the mine laws set it up was you give it
7 your best shot when you recognize a grave danger.

8 You try to put something in place to deal with that,
9 but that's why we're having -- that's why we're required to do
10 a proposed rule and final rule, that I think they probably
11 anticipated comments and that's what these rule making
12 hearings and comment periods is all about, and we'll have to
13 decide in the end if the rule needs to go forward further or
14 whether you can legally do that, but that's what we're here
15 today for to hear these comments and try to fashion the best
16 practical workable rule possible.

17 It's one thing to have lot of stuff on paper. It's
18 another thing if it works in reality; that's what we're
19 trying to get.

20 MR. SIEMIACCKO: Well, the proposed regulations I would
21 think is the best shot personally. I think it can be
22 improved. I think a lot of miners in the coal fields will
23 agree that we're selling ourselves short. It's a good thing.
24 It's needed. It's been needed. You know, I support it, but

1 I don't totally support it in the form its in cause I think
2 there's areas that are gray. I think there are areas that
3 need to be improved and one area is in particular the person,
4 that should be pleural. There should be more than one and
5 not necessarily even two. Again, you take a
6 situation. You put yourself in a mine emergency and you know
7 you have people that are probably essentially dead. You got
8 that facing you. You have the owner of the company trying to
9 call you. You have public relations, TV stations, radio
10 stations is trying to contact and the responsible person is
11 trying to direct and, you know, or the responsible person is
12 underground isolated and cannot give directions.

13 It's not the question I'm putting in here of who
14 initiates the evacuation. We all know that anybody can
15 initiate an evacuation. The responsible person takes
16 direction of the evacuation to get people out fast and decides
17 who goes in. So what you're doing you're taking your leader
18 away.

19 DIRECTOR NICHOLS: Okay, I think we understand your
20 comments. Thank you, Dwight. Anyone else?

21 (No response.)

22 DIRECTOR NICHOLS: What we're going to do here is take
23 a break. We'll stay around here until at least noon in case
24 people are traveling in because of bad weather that may be

1 late, but we'll stay here to noon. We'll come back in about -
2 - it's almost 10:30. We'll come back at eleven o'clock and go
3 back on the record if someone has something that they want to
4 say or someone who has already spoke wants to add anything to
5 what they said. If not, we'll break up around noon. Thank
6 you.

7 (WHEREUPON, a recess was taken, after which
8 the proceedings continued as follows:)

9 DIRECTOR NICHOLS: Okay, the time is eleven o'clock.
10 Does anybody else want to speak? Anybody think of anything
11 they want to add to what we've already heard? Okay, we're
12 going to go back off the record and we'll be here till noon.
13 If anybody shows up, we'll go back on the record. If not,
14 this will close the public meeting.

15 (WHEREUPON, a recess was taken, after which
16 the proceedings continued as follows:)

17 DIRECTOR NICHOLS: Okay, we're back on the record. Max
18 Kennedy with the UMWA will be our next speaker.

19 MR. KENNEDY: My name is Max Kennedy, M-a-x
20 K-e-n-n-e-d-y. I'm employed by the United Mine Workers of
21 America as an International Representative. I was part of the
22 investigative team due to the explosion that occurred at the
23 Jim Walters No. 5 mine on September the 23rd of 2001 in
24 Brookwood, Alabama.

1 Today I come -- first of all, I'd like to thank the
2 agency for the opportunity to comment on the emergency
3 evacuation rule. It is unfortunate at the time on September
4 23rd on the evening shift that measures weren't taken to
5 protect miners by the responsible person on the surface.

6 This rule itself --and we what we found during our
7 investigation was the fact that evacuation procedures were not
8 instituted at the onset of the communication between the
9 section foreman and the responsible person on the surface due
10 to the lack of training of that person on that surface, due to
11 the lack of procedures that should have been in place by the
12 company and put in place at the time that this occurred.

13 If you look across the country, each mine has a
14 person that is stationed on the surface while miners are
15 underground. A lot of times there is no requirement as to the
16 competency of that person and what training that that person
17 receives as far as the underground plans, the underground
18 escapeways and if there is 101(c) petitions in place as far as
19 CO monitoring, that training is very limited.

20 What I want to key in on today is the fact that even
21 though, if you take a complex mining operation such as the Jim
22 Walter mines or the VP mine that is in Buckingham County,
23 Virginia, those mines already have in place a 101(c) petition
24 that grants the use of conveyor belt air at the face. Those

1 petitions were granted in the early '80s and late '70s and
2 they deal with most issues as far as the ambient CO level in
3 each coal mine. They also deal with the alert alarm modes for
4 that person stationed on the surface to take action to alert
5 miners underground.

6 In those petitions that were granted, the
7 enforcement of those petitions have not been adequate to
8 address alerts and alarms and the records across this country
9 of alerts and alarms and the actions of the operator to
10 respond to those alerts and alarms, but in this rule it does
11 not go far enough to address the additional precautions and
12 actions that are granted in some of the most recent 101(c)
13 petitions that were submitted and granted after the final rule
14 of underground coal mine ventilation.

15 Given the fact that the enforcement during a Triple
16 A inspection if an authorized representative of the Secretary
17 reviewed the records of alerts and alarms of those 101(c)
18 petitions, most likely you would have seen that deficiency
19 prior to this emergency rule and enforcement, like I said, of
20 existing regulations needs to be keyed in on, and as far as
21 training of that responsible person on the surface as far as
22 the miners themselves in dealing with an event, any future
23 event that may occur, and even though in this rule that you
24 may require some type of extensive training for that

1 individual on the surface, keep in mind that that person at
2 the onset of an event has a host of responsibilities and he is
3 in a decision making mode, and his first and primary
4 obligation is to establish communications between himself and
5 the miners underground.

6 Now, then there's a second phase that kicks in your
7 communication between outside sources, he has to fill that
8 also. So given the fact that that individual is trying to
9 address a serious situation underground, he is also having to
10 deal with communications that are coming in from outside
11 sources, which takes away from the fact that he is trying to
12 respond at the quickest possible moment to assess the
13 situation underground and institute whatever procedure,
14 whether it be evacuation or whether it be firefighters,
15 equipment to the area and those type things and that is why
16 that one individual cannot bear that burden on the surface of
17 a mine in a situation like that.

18 If you look at these operations, these complex
19 mining operations that I've spoke to, such as the VP mines and
20 also the Jim Walter mine -- first of all, let's talk about the
21 VP mines. They've petitioned for belt air; a 101(c) petition
22 that was granted. They don't have one, but they have two
23 responsible persons on the surface. They have what we call a
24 dispatcher who controls underground mine traffic.

1 In addition to that person you have the responsible
2 person who is stationed at the CO, what we call the CO
3 monitoring room and his responsibility is to monitor the CO
4 levels and the CO sensors underground and he gets an alert or
5 alarm and he notifies the dispatcher who knows where people
6 are all the time, and in that situation you have that person
7 field the outside communication coming from the CO room and
8 the dispatcher himself is in control of the communications
9 underground.

10 So you have two individuals that have knowledge of
11 the situation, you have two individuals that are able to
12 communicate both with the miners underground and also fielding
13 calls coming in from outside sources and given the fact that
14 you have two individuals, then you also have the ability with
15 those two individuals to make sound decisions at the earliest
16 possible moment.

17 The emergency rule does not go that far and it still
18 places the burden on one individual making these decisions on
19 his own with respect to miners' health and safety. That is
20 something that you really need to take a look at, because
21 given the fact the situation occurred at the Jim Walters No.
22 5 mine on the afternoon shift the responsible person on the
23 surface came after the shift started. He didn't have the
24 opportunity at the time when he came in to actually know where

1 miners were underground, and it happened early in the shift to
2 where he did not have availability to him to find out where
3 the miners were underground but also didn't have
4 communications with all the miners in different areas
5 underground that he should have.

6 So with that in mind this situation occurred, the
7 training that he had was inadequate and plus he did not have
8 assistance that should have been there. There should have
9 been another person on the surface to assist this individual
10 fielding outside calls so that he could have attention to
11 alert those miners that shouldn't have went back in, that
12 should have been given the evacuation order and came out of
13 the mine.

14 The other point I would like to make is the fact
15 that in the year 1993, the proposed rules for underground coal
16 mine ventilation was extensively commented on by the United
17 Mine Workers of America. This was one of those areas that we
18 did comment on and I would point you to those comments and
19 that they be included in this record for review prior to any
20 action with the final rule and I thank you.

21 DIRECTOR NICHOLS: Thank you, Max. Anything?

22 MR. CROCCO: Max, when you talk about the two people,
23 are you saying that the two people will be needed only in
24 mines using a CO system or do we need it at all mines?

1 MR. KENNEDY: Well, you would have to look at the
2 complexity of the operation and, you know, you can't compare
3 apples to oranges or a small hilltop mine that maybe operates
4 one shift and one crew, maybe a total of eight men, compared
5 to an operation that may have a series of ventilation shafts
6 which would be anywhere from 70 to over 100 people working a
7 shift, and if you take one individual and his obligation is to
8 keep up with the 8 people versus 120 people in different areas
9 of the coal mine, then that takes on a new perspective by that
10 individual and, you know, if he's superman, he may be able to
11 do it, but if he's just a common, average coal miner that
12 received -- let's say, he received accident training. Then he
13 has to make split-second decisions and a lot of times if no
14 one is there that can assist him and he may make the wrong
15 decision.

16 So, you know, that's the point I'm trying to get
17 across that even the President of the United States cannot
18 push the red button on his own. There's another individual
19 with a key and he has to do the same thing before any decision
20 is made for a preemptive strike, so no one individual should
21 be able to make a decision on that. He should have assistance
22 when making that decision.

23 MR. CROCCO: You're saying you need a helper and not
24 necessarily that there ought to be --

1 MR. KENNEDY: No, it shouldn't be just a helper. It
2 should be somebody with equal knowledge, equal training, able
3 to make correct decisions, cause, you know, in a crisis
4 situation that individual has the lives of all those miners
5 that are working underground at that time; and if he doesn't
6 have the right information, then he may not make the right
7 decision; whereas, if he's concentrating on the crisis at
8 hand, the other responsible person that is there can be freed
9 up, gathering the other information so that both, the two can
10 make the appropriate decision and also contact the outside
11 sources for that information as far as the situation and what
12 should or shouldn't be done.

13 DIRECTOR NICHOLS: If the decision had been made quickly
14 after the first explosion at the Jim Walters No. 5 to evacuate
15 the mine, would the emergency procedures in place at that time
16 had been adequate to get everybody out of the mine?

17 MR. KENNEDY: As far as the procedures that were in
18 place at the time, they were inadequate as far as deficiencies
19 within the -- the improved decisions themselves, not saying
20 that it was flawed to the point it wouldn't work, but if in
21 fact, the responsible person had the correct knowledge, if in
22 fact he did, we don't know. It was testified to that he
23 was told on the onset that there was an explosion. He
24 testified and it wasn't clear whether or not he gave people

1 underground the right information, whether he told them, which
2 he said he did, but those persons who testified said they were
3 told a host of different things that were occurring
4 underground.

5 Now there was confusion there. If another person
6 had been outside, then he would have had the obligation, if
7 you will, to have reported because two people would have heard
8 the same thing that it was an explosion, so the urgency of the
9 word "explosion" would have caused the two individuals to have
10 been -- to have reacted more quickly and possibly had been
11 able to make a decision so -- the order underground, which
12 even though if they had, there were miners underground they
13 didn't even know was in there.

14 There were three miners working in an area of the
15 mines didn't have -- that he had no knowledge of those miners
16 -- well, those miners were underground in the second explosion
17 anyway. They did survive because they were way off outby the
18 number four section, but I don't know if that's clear enough
19 for you or not.

20 If in fact he had reacted with the knowledge that
21 there had been a first explosion and he had notified the
22 miners underground --

23 DIRECTOR NICHOLS: Right.

24 MR. KENNEDY: -- that there was an explosion, you need

1 to evacuate, then there's no doubt in my mind the majority of
2 those miners would have started toward the surface.

3 DIRECTOR NICHOLS: Yeah, that's the critical issue.
4 All other issues are important to make that decision to
5 evacuate after the first explosion.

6 MR. KENNEDY: Well, that's my point. No one person
7 should be able to make that decision. It should be a
8 combination of at least two people on the surface with
9 responsibility and knowledge of what is going on to make that
10 decision.

11 DIRECTOR NICHOLS: In case one doesn't understand it --

12 MR. KENNEDY: Right, that's right.

13 DIRECTOR NICHOLS: -- you're not going to stand there
14 and debate. They've already had the explosion.

15 MR. KENNEDY: Right.

16 MR. LUNDGREN: So to clarify when we have two people, I
17 assume you mean either one could order the evacuation. You
18 meant we don't have to state evacuate or don't evacuate if
19 they disagree for some reason?

20 MR. KENNEDY: I think that would be addressed in the
21 evacuation plan as to the situations because most of the
22 evacuation procedures as far as a 101(c) petition is spelled
23 out what they do underground if they have an alert. It
24 doesn't mean it's critical enough for them to come outside.

1 It may be critical enough for them to come out by the sensor
2 alarm. So given the situation, the two individuals will be
3 more prepared to deal with it than one person is the point I'm
4 trying to make.

5 DIRECTOR NICHOLS: Okay, Max, thanks. I appreciate it.

6 MR. KENNEDY: Thanks.

7 (WHEREUPON, the hearing was concluded.)

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REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 19th day of February, 2003.

My commission expires November 26, 2010.

Certified Court Reporter