

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
PROPOSED RULE ON DIESEL)
PARTICULATE MATTER EXPOSURE OF)
UNDERGROUND METAL AND NONMETAL)
MINERS)

Pages: 1 through 54

Place: Rosslyn, Virginia

Date: January 5, 2006

AB29 - HEAR - 4

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DEPARTMENT OF LABOR
OFFICE OF STANDARDS, REGULATIONS, AND VARIANCES,
MINE SAFETY AND HEALTH ADMINISTRATION
REGULATORY DEVELOPMENT DIVISION

IN THE MATTER OF:)
)
PROPOSED RULE ON DIESEL)
PARTICULATE MATTER EXPOSURE)
OF UNDERGROUND METAL AND)
NONMETAL MINERS)
)

Room 2500
1100 Wilson Boulevard
Rosslyn, Virginia

Thursday,
January 5, 2006

The hearing commenced, pursuant to notice, at
9:02 a.m.

BEFORE: EDWARD J. SEXAUER
Moderator

APPEARANCES:

On behalf of the Department of Labor:

DORIS CASH
DEBORAH GREEN
JAMES PETRIE
WILLIAM POMROY
GEORGE SASEEN

1 Diesel Particulate Matter Exposure of Underground
2 Metal and Nonmetal Miners.

3 Joining me on the hearing panel today is Jim
4 Petrie, who is the District Manager of MSHA's
5 Northeastern District for Metal and Nonmetal, and
6 Chair of the Diesel Particulate Matter Rulemaking
7 Committee; Doris Cash, who is on his right, with
8 MSHA's Metal and Nonmetal Health Division; and on my
9 left, George Saseen, with MSHA's Technical Support
10 Directorate; Bill Pomroy, from MSHA's Metal and
11 Nonmetal North Central District; and Deborah Green,
12 with the Office of the Solicitor for Mine Safety and
13 Health.

14 Also in the audience is William Baughman and
15 Robert Stone from the Office of Standards, Regulations
16 and Variances. Pam King is also here from our office,
17 and she is currently at the sign-in desk.

18 Let me reemphasize that our purpose for
19 being here today is to obtain your views on the
20 September 7, 2005 proposed rule. This hearing is
21 being held in accordance with Section 101 of the
22 Federal Mine Safety and Health Act of 1977.

23 As is the practice of the Agency, formal
24 rules of evidence will not apply. Therefore, cross-
25 examination of the hearing panel will not be allowed,

1 but the panel may explain and clarify provisions of
2 the proposed rule.

3 Also, as Moderator of this public hearing, I
4 reserve the right to limit the amount of time each
5 speaker is given, as well as questions asked of the
6 hearing panel. Cross-examination from members of the
7 audience of the speakers will not be permitted.

8 Those of you who have notified MSHA in
9 advance of your intent to speak will be allowed to
10 make your presentations first. I will call speakers
11 in the order that requests were made.

12 Following those presentations, others who
13 request an opportunity to speak will be allowed to do
14 so. We invite all interested parties to present their
15 views at this hearing, and if you wish to speak,
16 please make sure to sign in at the registration table.

17 We will remain in session today until
18 everyone who desires to speak has an opportunity to do
19 so. Also, if you are not signing up to speak today,
20 we would like for you to sign the general sign-in
21 sheet so that we have an accurate record of attendance
22 at today's hearing.

23 We will accept written comments and data at
24 this hearing from any interested parties, including
25 those who are not speaking at today's hearing. When I

1 call you to speak, please come to the speaker's table,
2 and begin your presentation by identifying yourself,
3 and your affiliation, for the record.

4 If you have a prepared statement or any
5 supporting documents for the record, you can leave a
6 copy with me or with Pam King from my office. You can
7 submit written comments on this hearing today, or you
8 can send them to MSHA's Office of Standards
9 electronically, by fax, or by regular mail, or hand-
10 delivery, using the address information listed in the
11 hearing notice.

12 The hearing notice is available if you don't
13 have a copy at the sign-in desk, and it has all the
14 information for communicating to us any written
15 comments that you have. In addition to the hearing
16 today, there will be three additional hearings;
17 January 9, 2006, in Salt Lake City; and January 11,
18 2006, in Kansas City, Missouri; January 13, 2006, in
19 Louisville, Kentucky.

20 The post-hearing comment will end on January
21 27, 2006. A transcript of this hearing will be made a
22 part of the official record, and it will be posted on
23 our website in several days at www.msha.gov.

24 Before we begin, I would like to give you
25 some background on the proposed rule we are addressing

1 today, and that I am going to ask Jim Petrie to tell
2 you a little bit about the proposed rule.

3 On January 19, 2001, we published a final
4 rule addressing the health hazards to underground
5 metal and nonmetal miners from exposure to diesel
6 particulate matter. The rule established new health
7 standards for these miners by requiring, among other
8 things, use of engineering and work practice controls
9 to reduce diesel particulate matter -- and I am going
10 to refer to that as DPM -- to reduce DPM to prescribed
11 limits.

12 It sets an interim and final DPM
13 concentration limit in the underground metal and
14 nonmetal mining environment, with staggered effective
15 dates for implementation of the concentration limits.

16 The interim concentration limit of 400 total
17 carbon micrograms per cubic meter was to become
18 effective on July 20, 2002. The final concentration
19 limit of 160 total carbon micrograms per cubic meter
20 was scheduled to become effective on January 20, 2006.

21 On January 29, 2001, several mining trade
22 associations and individual mine operators challenged
23 the final rule. The United Steelworkers of America
24 intervened in the case, which is now pending in the
25 United States Court of Appeals for the District of

1 Columbia Circuit.

2 The parties agreed to resolve their
3 differences through settlement negotiations with us,
4 and we delayed the effective date of certain
5 provisions of the standard.

6 On July 5, 2001, as a result of Phase I
7 settlement negotiations, we published two notices in
8 the Federal Register. One notice delayed the
9 effective date of Section 57.5066(b) related to
10 tagging requirements in the maintenance standard.

11 The second notice proposed a rule to make
12 limited revisions to Section 57.5066(b), and added a
13 new paragraph to Section 57.5067(b), Engines,
14 regarding the definition of the term, "introduced."

15 We published a final rule on February 27,
16 2002. Phase II of the settlement agreement was
17 finalized on July 15, 2002, as a written agreement.
18 Under the agreement, the interim concentration limit
19 of 400 total carbon micrograms per cubic meter became
20 effective on July 20, 2002.

21 We afforded mine operators one year to
22 develop and implement good faith compliance strategies
23 to meet the interim compliance limit, and we agreed to
24 provide compliance assistance during this one-year
25 period.

1 We also agreed to propose rulemaking on
2 several other disputed provisions of the 2001 final
3 rule. The legal challenge to the rule was stayed
4 pending completion of additional rulemaking.

5 On September 25, 2002, we published an
6 Advance Notice of Proposed Rulemaking. We noted in
7 the -- and I am going to refer to this as ANPRM,
8 Advance Notice of Proposed Rulemaking.

9 We noted in the ANPRM that the scope of the
10 rulemaking was limited to the terms of the Second
11 Partial Settlement Agreement, and posed a series of
12 questions to the mining community related to the 2001
13 final rule.

14 We also stated our intent to propose a rule
15 to revise the surrogate for the interim and final
16 concentration limits, and to propose a DPM control
17 scheme similar to that included in our longstanding
18 hierarchy of controls used in our air quality
19 standards for metal and nonmetal mines.

20 In addition, we stated that we would
21 consider technological and economic feasibility for
22 the underground metal and nonmetal mining industry to
23 comply with the revised interim and final DPM limits.

24 And we determined at that time that some
25 mine operators had begun to implement control

1 technology on their underground diesel powered
2 equipment. Therefore, we requested relevant
3 information on current experiences with availability
4 of control technology, installation of control
5 technology, effectiveness of control technology to
6 reduce DPM levels, and cost implications of compliance
7 with the 2001 final rule.

8 On July 20, 2003, we began full enforcement
9 of the interim concentration limit of 400 total carbon
10 micrograms per cubic meter. Our enforcement policy
11 was also based on the terms of the second partial
12 settlement agreement and includes the use of elemental
13 carbon as an analyte to ensure that a citation based
14 on the 400 total carbon concentration limit is valid,
15 and not the result of interferences.

16 The policy was discussed with the DPM
17 litigants and stakeholders on July 17, 2003. In
18 response to our publication of the ANPRM, some
19 comments recommended that we propose separate
20 rulemakings for revising the interim and final
21 concentration limits to give us an opportunity to
22 gather further information to establish a final DPM
23 limit, particularly regarding feasibility.

24 In the subsequent notice of proposed
25 rulemaking, NPRM, published on August 14, 2003, we

1 concurred with these commenters and notified the
2 public in the NPRM that we would propose a separate
3 rulemaking to amend the existing final concentration
4 limit of 160 total carbon micrograms per cubic meter.

5 We also requested comments on an appropriate
6 final DPM limit and solicited additional information
7 on feasibility. The proposed rule also addressed the
8 interim concentration limit by proposing a comparable
9 PEL of 308 micrograms per cubic meter based on the EC,
10 the elemental carbon, surrogate, and included a number
11 of other provisions.

12 On Jun 6, 2005, we published the final rule
13 revising the interim concentration limit. This rule
14 changed the interim concentration limit of 400
15 micrograms per cubic meter measured by TC, to a
16 comparable PEL of 308 micrograms per cubic meter,
17 measured by EC.

18 The rule requires our longstanding hierarchy
19 of controls that is used for our other exposed-based
20 health standards at metal and nonmetal mines, but
21 retains the prohibition on rotation of miners for
22 compliance.

23 Furthermore, the rule, among other things,
24 requires us to consider economic, as well as
25 technological, feasibility in determining if operators

1 quality for an extension of time in which to meet the
2 final DPM limit, and deletes the requirement for a
3 control plan.

4 Currently, the following provisions of DPM
5 standard are effective: Chapter 57.5060(a),
6 establishing the interim PEL of 308 micrograms of EC
7 per cubic meter of air, which is comparable in effect
8 to 400 micrograms of total carbon per cubic meter of
9 air; Chapter 57.5060(d), addressing control
10 requirements; Chapter 57.5060(e), prohibiting rotation
11 of miners for compliance with the diesel particulate
12 matter standard; Chapter 57.5061, compliance
13 determinations; Chapter 57.5065, fueling practices;
14 Chapter 57.5066, maintenance standards; Chapter
15 57.5067, engines; Chapter 57.5070, miner training;
16 Chapter 57.5071, exposure monitoring; and Chapter
17 57.5075, diesel particulate records.

18 On September 7, 2005, we proposed a rule to
19 phase in the final DPM limit because we are concerned
20 that there may be feasibility issues for some mines to
21 meet that limit by January 20, 2006.

22 Accordingly, we proposed a five-year phase-
23 in period and noted our intent to initiate a separate
24 rulemaking to convert the final DPM limit from a total
25 carbon limit to an elemental carbon limit.

1 We set hearing dates and a deadline for
2 receiving comments on the September 7, 2005 proposed
3 rule, with the expectation that we would complete the
4 rule-making phase in the final diesel particulate
5 matter limit before January 20, 2006.

6 After publication of the September 7, 2005
7 proposed rule, we received a request from the United
8 Steel, Paper and Forestry, Rubber, Manufacturing,
9 Energy, Allied Industrial and Service Workers
10 International Union, the USW, for more time to comment
11 on the proposed rule.

12 The USW explained that Hurricane Katrina had
13 placed demands on their resources that prevented them
14 from participating effectively in the rulemaking under
15 the current schedule for hearings and comments.

16 We recognize the USW's need to devote
17 resources to respond to the aftermath of Hurricane
18 Katrina and the impact that would have on their
19 participation under the established timetable.

20 We also received a request from the National
21 Stone, Sand, and Gravel Association, NSSGA, for
22 additional time to comment on the proposed rule, and
23 for an additional public hearing in Arlington,
24 Virginia.

25 Accordingly, due to requests from the USW

1 and NSSGA, we published a notice on September 19,
2 2005, that changed the public hearing dates from
3 September 2005 to January 2006. We extended the
4 public comment period from October 14, 2005, to
5 January 27, 2006.

6 In addition, on September 19, 2005, we
7 published a notice in the Federal Register temporarily
8 delaying the applicability date for 30 C.F.R.
9 57.5060(b), published in the Federal Register on
10 January 19, 2001, from January 20, 2006, to May 20,
11 2006, to provide sufficient time to complete the
12 September 7, 2005 proposal to amend the 2001 diesel
13 particulate matter rule.

14 Now, before calling our first speaker, I
15 would ask Jim Petrie, the Chairman of the DPM
16 Rulemaking Committee, to discuss the elements of this
17 proposed rule.

18 MR. PETRIE: Thank you, Ed. This proposal
19 is fairly narrow in scope, and it would revise the
20 effective date of the final DPM limit, and delete the
21 existing provision that restricts newer mines from
22 applying for extensions of time for meeting the final
23 limit.

24 Additionally, it requests public comment on
25 a number of significant issues, including the

1 appropriateness of including in a final rule a
2 provision for the medical evaluation of miners
3 required to wear respirators, and the transfer of
4 miners who are unable to wear respirators.

5 It would also ask for comments on the
6 appropriate factor for converting the final limit from
7 total carbon to elemental carbon, although MSHA has
8 stated that this would be undertaken in a separate
9 rulemaking.

10 Regarding the proposal to change the
11 effective date of the final limit, the proposal would
12 gradually phase in the 2001 DPM final concentration
13 limit of 160 micrograms of total carbon over a period
14 of five years, until a final limit of 160 micrograms
15 is reached in January 2011.

16 The current interim limit of 308 micrograms
17 of elemental carbon will remain in effect until May
18 20, 2006. Thereafter, the first phase-in final limit,
19 which would be the same as the current interim limit
20 of 308 micrograms of elemental carbon, would be
21 effective until January 20, 2007.

22 The final limit would be reduced each year
23 through January 20, 2011, as follows. In January of
24 2007, it would be reduced to 350 total carbon; and in
25 January of 2008, 300 total carbon; in January of 2009,

1 250 total carbon; in January of 2010, 200 total
2 carbon; and in January of 2011, 160 total carbon.

3 The preamble to the proposed rule includes
4 extensive discussion on MSHA's 2001 assumptions
5 regarding technological feasibility; our current
6 concerns and tentative beliefs which question these
7 assumptions; implementation issues, with available
8 control technology; and our proposed assessment of the
9 availability of alternative control technologies.

10 MSHA requested that commenters address these
11 and issues related to the scope of the proposed rule.

12 Regarding the proposal to change the special
13 extension requirement, we are proposing to delete
14 Section 50.60(c)(3)(i).

15 The 2001 rule restricted MSHA from creating
16 extensions to mine operators if equipment was not used
17 in the mine prior to October 29, 1998. This was
18 because diesel powered equipment prior to the date of
19 the notice of proposed rule-making could experience
20 compliance difficulties relating to such factors as
21 the basic mine design, use of older equipment with
22 higher DPM emissions, and other factors.

23 Also, we believe that mines opening after
24 October 29, 1998, would be using equipment with
25 cleaner engines that would have less difficulty in

1 meeting the final concentration limit.

2 Presently, MSHA believes that this
3 restriction is unnecessary since applications for
4 extensions are voluntary, and the test for granting an
5 extension is similar to that of enforcing existing
6 57.60(d) for the hierarchy of controls.

7 The preamble discussion clarifies that we
8 will begin to consider granting extensions due to
9 technological or economical constraints for the
10 initial final PEL of 308 micrograms of elemental
11 carbon in January of 2006, and as Ed had mentioned,
12 that has now been extended to May 20, 2006.

13 MSHA requested comments on the effects of
14 deleting a requirement, and the number of miners
15 effected in the provision if it were eliminated, and
16 whether the elimination would result in a reduction of
17 health protection for miners.

18 Among the other issues that MSHA is
19 requesting public comments on include medical
20 evaluation and transfer. Specific comments are
21 requested on whether the final rule should provide for
22 medical evaluation of miners who must wear respirators
23 and the transfer of those miners who are deemed
24 medically unable to wear them.

25 In the preamble to the proposed rule, MSHA

1 included a specific example of regulatory language
2 that could be included in a final rule and requested
3 extensive comments regarding the following issues.

4 One is whether the final rule should contain
5 provisions for medical evaluation and transfer of
6 miners; whether the mine operator should be required
7 to notify the district manager of the health
8 professional's evaluation; and that the miner will be
9 transferred; whether MSHA should include in the rule a
10 specific time frame from transferring the miner;
11 whether the mine operator should have to maintain a
12 record of the medical evaluation, and if so, for how
13 long should the record be maintained.

14 And whether the provision include protection
15 of medical confidentiality, the cost to the mine
16 operators for implementing such a requirement, and
17 other relevant information and data.

18 We also requested public comment on the
19 appropriate conversion factor. MSHA will initiate
20 separate rulemaking to determine what the correct TC
21 to EC conversion factor will be for the phased-in
22 final limits.

23 In the interim, MSHA wants your comments on
24 data for establishing an appropriate conversion factor
25 and a time period for the phase-in of the final limit,

1 technological implementation issues, and the cost and
2 benefits of the rule.

3 Also, we are interested in your views on any
4 other scientific approaches for converting the
5 existing total carbon limit to an appropriate
6 elemental carbon limit. If MSHA does not complete the
7 rulemaking to convert the final limits before January
8 20, 2007, the Agency is considering using the current
9 1.3 conversion factor that we use to establish the
10 interim diesel particulate PEL of 308 elemental carbon
11 to convert the phased-in final DPM total carbon limits
12 to elemental carbon equivalents.

13 Regarding economic feasibility, MSHA stated
14 in the preamble to the proposed rule that the Agency
15 intended to use the entire rulemaking record
16 supporting the 2001 final rule, and the new
17 information gathered during the recent rulemaking to
18 promulgate the new interim PEL.

19 This data suggests that few mines would
20 experience economic feasibility problems in meeting
21 the interim limit. However, MSHA is interested in
22 gathering more information on economic feasibility
23 applications, especially in light of recent
24 technological developments, leading the Agency to
25 propose a phased-in approach to meeting the ultimate

1 final limit of 160 micrograms.

2 MR. SEXAUER: Thank you, Bill. Okay. We
3 will call our first speaker, Mike Wright, and I
4 believe you have a panel?

5 MR. WRIGHT: Yes.

6 MR. SEXAUER: Good morning. If you would
7 begin by stating your names and your affiliation,
8 please.

9 MR. WRIGHT: I will do all of that.

10 MR. SEXAUER: Okay. Great.

11 MR. WRIGHT: First, good morning. My name
12 is Michael Wright, and I am the Director of Health,
13 Safety, and Environment for the United Steelworkers.
14 I'm glad that Ed read the whole name of the union, and
15 that prevents me from having to do it. It is a very
16 long name.

17 But we are known as the United Steelworkers.
18 We are a union representing 850 thousand workers in
19 North America, including the majority of unionized
20 metal and nonmetal miners in both the United States
21 and Canada.

22 With me today are Wesley Smith, who is the
23 President of our Local Union 5-996, which represents
24 miners at the Morton Salt Mine in Fairport, Ohio,
25 along with his Vice President, Edward Bowman.

1 Our group also includes Dr. James Weeks, a
2 consultant to the United Steelworkers, who I know is
3 familiar to many in MSHA from his long service with
4 the United Mineworkers of America.

5 This is, of course, a sad day. It is a day
6 on which the entire mining community is united in
7 mourning the loss of 12 miners in West Virginia, and
8 praying for the recovery of the 13th.

9 In our brief comments today, and in the
10 written material that we will submit later, we will be
11 sharply critical of MSHA's proposal to change the
12 diesel particulate standard, but the West Virginia
13 tragedy reminds us of how much we depend on this
14 Agency, and how much we honor its history and values,
15 how grateful we are for the dedicated work of the MSHA
16 career staff, both in Arlington -- or I should say the
17 staff of the Solicitor's Office as well, both in
18 Arlington and in the field.

19 So if we are critical in this case, it is
20 because we believe that MSHA's recent actions on this
21 standard are inconsistent with that history, those
22 values, and the commitment to protect miners that
23 animates so many that work in this Agency.

24 Inconsistent, because this is the first time
25 that MSHA -- indeed the Department of Labor itself,

1 MSHA or OSHA -- has attempted to significantly weaken
2 the existing health standard.

3 If MSHA succeeds, many miners will continue
4 to risk cancer, and some will die from it. Others
5 will contract serious respiratory disease.

6 We currently have a standard on the books.
7 The final exposure limit of 160 micrograms per cubic
8 meter total carbon was scheduled to become effective
9 in a few days, and is now scheduled to become
10 effective later this spring.

11 When the standard became law in 2001, mine
12 operators were given five years to come into
13 compliance with that limit. MSHA and NIOSH gave the
14 industry an extraordinary amount of help, an almost
15 unprecedented amount of help, in the form of
16 compliance assistance and research into feasible,
17 practical, and relatively inexpensive controls.

18 The United Steelworkers consented to a
19 change that has been proposed that will give
20 individual mine operators an unlimited number of
21 special extensions where they can demonstrate the
22 need.

23 None of that was enough for some operators
24 or their trade associations. While many operators
25 have made a good faith effort to lower exposures and

1 to come into compliance, history shows that some will
2 wait until the day the government finally has the
3 power to cite them and impose penalties.

4 MSHA now proposes to delay that day for five
5 more years. Reopening the record gives others the
6 opportunity to argue that the standard should be
7 weakened further, perhaps to the point where the day
8 of reckoning never comes at all.

9 Again, this is different from other
10 rulemakings in that a standard is already in place.
11 MSHA has found that the standard protects miners from
12 a significant threat to their health and is feasible.
13 Those were the findings in 2001.

14 Yet, the Agency proposes to weaken it by a
15 lengthy unjustified delay. The burden of proof rests
16 squarely with MSHA and anyone else who might propose a
17 more drastic weakening. I should say that is the
18 legal burden of proof.

19 In the words of Carl Sagan, "Extraordinary
20 claims require extraordinary evidence." It is
21 extraordinary for MSHA to claim that it has to weaken
22 protection for thousands of miners.

23 So far we have seen no evidence to back that
24 claim, let alone extraordinary evidence. Indeed, the
25 evidence which has accumulated since 2001 gives us

1 even more confidence that the standard is feasible and
2 feasible now.

3 Although we have no obligation to prove our
4 case that the existing standard should be retained,
5 the USW intends to show in this rulemaking that the
6 existing standard is feasible both technologically and
7 economically under applicable legal standards. We
8 will do so through written documentation later in the
9 process.

10 Today, we would like to touch briefly on a
11 different issue in the rulemaking, one that Mr.
12 Sexauer has discussed and Mr. Petrie, and that issue
13 is respirators, and the need for medical evaluation
14 and transfer rights.

15 Every employer regulated by MSHA's sister
16 agency at OSHA is required to provide medical
17 evaluations for workers required to wear respirators.
18 Every professional association involved in safety and
19 health recommends it; the American Industrial Hygiene
20 Association; the American Conference of Governmental
21 Industrial Hygienists, and the American College of
22 Occupational and Environmental Medicine, to name the
23 most prominent.

24 There is very substantial evidence in the
25 record of the relevant OSHA hearings to support

1 medical evaluations, and we would ask that that
2 evidence be incorporated into this record as well,
3 since it is in the files of the Department of Labor.

4 We believe that all miners should receive a
5 medical evaluation before being assigned to where a
6 respirator to ensure that they may do so safely. Only
7 a few will be unable to wear a negative pressure
8 respirator, the simplest and cheapest kind.

9 Most of those who are unable to wear a
10 negative pressure respirator will be able to wear a
11 positive pressure respirator, a powered respirator.
12 Very few miners will have to be reassigned.

13 But unless miners are assured that they will
14 keep their jobs even if they cannot wear a respirator,
15 our experience over decades, and the experience of
16 other unions under both the Mine Act and the
17 Occupational Safety and Health Act, is that some
18 workers will be deterred from fully participating in
19 medical evaluations.

20 Some may refuse the evaluation altogether,
21 and others may give inaccurate answers on the medical
22 history, and it is medical histories that form the
23 basis of most of those evaluations.

24 No one should have to choose between their
25 health and their job. Miners removed from high

1 exposure areas must therefore have transfer rights and
2 full earnings protection, both as a matter of health
3 and as a matter of simple justice.

4 And, of course, as a matter of law, for
5 transfer rights and earnings protection are explicitly
6 required by Section 101 of the Mine Act. Of course,
7 we will elaborate all of these points in our written
8 submission and Brothers Smith and Bowman will also
9 discuss them in a moment.

10 Finally, we think that the final standard
11 should limit the amount of time during a shift that
12 miners are required to wear respirators. There is
13 several ways to do that in regulatory language, and we
14 will suggest some alternatives in our written
15 submissions.

16 The reason for doing that is that nobody can
17 wear a respirator effectively if it is on your face
18 for eight hours a day. I had worn respirators myself
19 in many different situations, including some where
20 atmospheres are immediately dangerous to life and
21 health.

22 And we know enough that unless you provide
23 breaks for people, and they can take their respirator
24 off, people will find ways to take their respirator
25 off their face or to limit its effectiveness to avoid

1 the problems with breathing resistance if they have to
2 do it for eight hours, and we will submit some
3 documentation on that.

4 At the same time, we don't think that is an
5 excuse for complying with the standard through worker
6 rotation, and we will again suggest how those two
7 issues can be separated, and how we can give miners a
8 break occasionally, thereby making the respirator use
9 more effective, without at the same time providing
10 opportunities for employee rotation as a means of
11 compliance.

12 And that concludes my statement, and after
13 all of us are finished, we will of course be happy to
14 answer any questions to the best of our ability. I
15 would ask that you direct all questions for our group
16 to me initially, since I am more familiar with the
17 expertise of each of the panel members. And thank you
18 for your considerations. Wes?

19 MR. SMITH: I was asked to come here, and I
20 am not an expert on diesel. I am a salt miner, and I
21 have worked at Morton Salt in Fairport, Ohio, for 29-
22 1/2 years. I have seen a lot of miners who have
23 worked for 45 years. I just had one retire after 45
24 years last Friday.

25 I have seen a lot of changes in the last 10

1 years with diesel on the ground. I worked on a face,
2 and I have seen yellow smoke. I worked around
3 nitrate. I know the health. I have seen people of a
4 young age die, 50 years old, with cancer, and heart
5 problems, and their friends, and I worked with them
6 for a long period of time.

7 And I am glad to see the changes. We went
8 from six -- we used to salt mine with frontloader
9 trucks, and when we started putting pressure on the
10 company, we went to LHDs, bigger buckets. We went
11 from six machines down to five machines, and I have
12 seen where diesel has come down, which is good, and
13 that makes me happy.

14 I have seen in the last three years that we
15 went to all electric, and we had a Joy machine that is
16 cutting our salt for us, and putting out about a
17 million tons per year of salt, and Barry cutters
18 hauling salt, and I have seen all of this, and I have
19 seen it drop even more.

20 I am proud to say that I work with a company
21 that is trying to meet these goals, and all of the
22 information that I have gotten in the last two months,
23 we are meeting those goals, which is a good thing.

24 That is basically all I have to say. I have
25 seen people at young ages at our company that have

1 been forced to retire with heart problems. They are
2 60 years old, and they still want to work, and the
3 company says no, you can't work no more.

4 If you have a heart problem, we can't let
5 you work anymore because of health and safety. I have
6 seen 53 year olds with lung cancer. I have seen guys
7 retire and the next day they died. I know that we
8 work in an environment where it is tough work, but we
9 like that kind of work.

10 So thank you for your health, and keep
11 putting pressure on these companies. Thank you.

12 MR. BOWMAN: I am Edward Bowman, and I also
13 work at Morton Salt in Fairport, Ohio, with Wesley I
14 am a vice president of our local. I have been there
15 for 22 years this year, and I, myself, have seen a lot
16 of changes in the 22 years that I have been there.

17 Twenty-two years ago when I started, we ran
18 three front end loaders, six to eight Hollins Trucks,
19 four scalers, two Wolfe Loaders, numerous tractors,
20 all of which was putting diesel smoke into our mine
21 since the early '80s when I started there, until the
22 present, though I have seen a lot of changes that the
23 company has made.

24 And they approached our local approximately
25 five years ago, and told us that they were leading

1 into a new direction in mining with the continuous
2 miner. So they are trying to comply with it.

3 For the 22 years that I have worked there, I
4 have seen a lot of my friends -- five of them, and
5 three of them have passed on now, who were strong
6 young men, and two of them today are fighting cancer.

7 And I, too, am glad for this hearing, and I
8 appreciate the help that you people are trying to give
9 us. That's all I have to say.

10 DR. WEEKS: Good morning. My name is Dr.
11 Jim Weeks, and I am certified industrial hygienist,
12 and I have over 20 years experience in the mining
13 industry as a hygienist. I am also trained as an
14 epidemiologist.

15 And today I speak as a consultant to the
16 United Steelworkers. I wish to discuss two topics.
17 First, I want to place this rulemaking in a historical
18 context, and second, I want to discuss some of the
19 risks associated with the delay in rulemaking.

20 One of the events that led to MSHA's
21 addressing the health hazards associated with diesel
22 exhaust, and particularly diesel particulate matter,
23 came from a joint request by the Presidents of the
24 United Mineworkers and the United Steelworkers, to
25 form an advisory committee to address this issue.

1 That request was made in 1984, and the
2 committee was formed, met, and issued its report in
3 1986. I was one of two members of this committee at
4 that time representing the United Mineworkers.

5 The committee concluded that diesel
6 particulate matter was cariogenic and recommended
7 amongst other matters that MSHA initiate a rulemaking
8 to control diesel exposure.

9 They recommended that an integrated approach
10 be taken to control exposure, including consideration
11 of engine design, fuel quality, equipment usage, mine
12 ventilation, maintenance, and emission control
13 technologies, among others. This was 20 years ago.

14 Since that time additional research has
15 confirmed the health risks associated with diesel
16 particulate matter. Engineering research has
17 developed and confirmed the feasibility and
18 effectiveness of several means of reducing exposure,
19 and measurement methods have been developed to monitor
20 exposure.

21 Most of this progress has been supported by
22 NIOSH and MSHA -- that is, by taxpayers -- along with
23 the cooperation of several mine operators.

24 Given this context, I think that additional
25 delay in rulemaking is completely unnecessary. A

1 similar situation occurred nearly 40 years ago when
2 methods for controlling coal miners' exposure to
3 respire dust have been developed by the Bureau of
4 Mines, and were shown to be feasible and effective.
5 That was in the 1950s and 1960s.

6 But with some exceptions, these methods were
7 not uniformly used. On the contrary, coal mine
8 operators claimed that they were not feasible. What
9 caused them to be adopted were the consequent
10 reduction in the concentration of respire dust was
11 passage of the Coal Mine Health and Safety Act of
12 1969, and enforcement of that Act.

13 The difference was enforcement, and that is
14 what MSHA needs to do now. I am reminded in this
15 context of a comment that Martin Luther King made in
16 the early days of the Civil Rights Movement, in which
17 it was proposed that civil rights be introduced
18 gradually.

19 And Dr. King was asked if he believed in
20 gradualism, and he said I certainly do. I want my
21 rights now, and I want the white people to get used to
22 it gradually, and I think that is similar to what we
23 think now.

24 Now, let me go on to the health risks. The
25 final level of the MSHA rulemaking to be achieved in

1 2011 is this 160 microgram level. This limit, without
2 going into any detail, in my professional opinion is
3 not adequate.

4 According to risk assessments by NIOSH and
5 others that I am sure that you are all familiar with,
6 this limit would not reduce miner's lifetime risks
7 associated with exposure to diesel particulate matter
8 to less than one in a thousand.

9 A significant risk would remain at that
10 level. The health risk in the historical context are
11 related issues. Underground miners experience the
12 highest level of exposure to diesel particulate matter
13 of any population in the U.S., much higher now than
14 the limit of 160 micrograms that we have here.

15 And they have experienced such exposure
16 since diesel particulate matter was identified as a
17 carcinogen over 20 years ago, and for long before
18 that. This is an interesting time period.

19 This is the average latency of the
20 development of lung cancer from exposure to an
21 environment carcinogen. Latency is the time from the
22 first exposure to subsequent development of a tumor.

23 In other words, a miner who entered the
24 industry 20 years ago has already accumulated a
25 significant risk of disease as a direct result of

1 delay in the rulemaking. A delay, in other words, has
2 material consequences to the health of miners.

3 I urge MSHA to get on with the rulemaking,
4 and to enforce the rules, and to enforce existing
5 rules, and I urge mine operators to take advantage of
6 the services that the government provides for
7 protecting miners. Thank you for the opportunity, and
8 we will be glad to answer any questions.

9 MR. SEXAUER: All right. Thank you.

10 MR. WRIGHT: Mr. Sexauer, I wonder if you
11 would indulge us in a slightly unusual procedure.
12 This morning, both Mr. Smith and Bowman told me some
13 additional stories about what was going on in their
14 mind that what I think would be useful to have in the
15 record, and I wonder if you would permit me. This is
16 not cross-examination, but just ask them to tell you
17 those specific items if that is acceptable.

18 MR. SEXAUER: All right.

19 MR. WRIGHT: Mr. Smith, one person and one
20 episode is not definitive, but you told me about a
21 gentleman who was diagnosed with cancer who had never
22 been a smoker. Can you tell us about that?

23 MR. SMITH: Yes. His name was Curtis
24 Layman, and he retired two years ago, and he was 60
25 years old, and he had 35 years experience as a salt

1 miner, and he worked out on the face, and he did power
2 tapping, nitrate, frame loader work.

3 He loaded the trucks, and he was in diesel.
4 Back then the tests that I saw were like 280s and
5 250s diesel going through out mine at that time. And
6 he came to the unit one day, and he sat there, and he
7 said, you know, I just came from the doctors.

8 He said that doctor told me that I had to
9 quit smoking. He said I told that doctor that I
10 didn't smoke, and he says that that doctor called me a
11 liar. He goes that doctor says you don't have to lie
12 to me. He says you have got to quit smoking. That's
13 all there is to it.

14 And he told the doctor where he worked at,
15 and this doctor goes, well, I think you had better get
16 out of that mine then. He never smoked, and he was
17 there for 30 years, and his doctor called him a liar,
18 and called him a smoker after he did x-rays on his
19 lungs. So that is one of the stories that I have
20 heard and seen.

21 Plus, I also talked about where I agree with
22 the doctor a lot, is that the longer we pursue this
23 mandate, the longer the companies are going to take
24 advantage of our health, and that is not a good thing.

25 I am 50 years old, and I look like I am 55

1 or 60. A rough life. I enjoy it, but it is hard, and
2 we don't want to shut places down, but we want to work
3 safe. And I think you guys are doing a good at that,
4 and I hope you guys keep it up by sticking to your
5 mandates. Anything else?

6 MR. WRIGHT: Yes. You had shown me some
7 data this morning, and we will put that in the record
8 from the mine, but the data shows that even in the
9 worst occupations the mine is currently complying with
10 the 308 limit; is that correct?

11 MR. SMITH: Yes, that's correct. We are
12 complying with that limit at this time, and Mike knows
13 more about this than I do. I just know numbers. Like
14 I said, I am not a professional at this, but our data
15 right now, I got the information from our safety
16 director two days ago, and he showed me the paperwork
17 that Mike has that says that we are meeting all the
18 requirements, and that's good.

19 And that makes me proud, and I thank my
20 company for doing that. So we are in good hands.

21 MR. WRIGHT: There are some occupations
22 though where they are not getting the 160 limit; is
23 that correct?

24 MR. SMITH: Yes.

25 MR. WRIGHT: And to the best of your

1 knowledge are they in those areas using sort of using
2 modern filter technologies to eliminate diesel?

3 MR. SMITH: No. No, the machinery is older,
4 and I honestly believe we could make those goals in
5 those areas that we have followed proper safety
6 procedures. We have Goiters running around there,
7 Diesel Goiters that people won't shut off.

8 We have lube trucks that service other
9 machinery that they won't turn the key off on them.
10 They leave them there to idle. And I think that is
11 just us teaching our employees how important it is to
12 shut that machinery off.

13 That is an educational thing that we have to
14 work on for safety for our employees in our plant, and
15 something that we have to work with the company and
16 union-wise.

17 And we can get rid of those diesel goiters.
18 There is no reason for us to have those goiters. And
19 I think once we get rid of those and change our
20 thinking patterns with our employees, we are really
21 going to make those goals.

22 MR. WRIGHT: And are they using any
23 alternative fuels underground instead of diesel to
24 your knowledge?

25 MR. SMITH: Not to my knowledge. I don't

1 think so. I am pretty sure that they are not.

2 MR. WRIGHT: And let me ask both Mr. Smith
3 and Mr. Bowman, that if you had a situation where some
4 workers sometimes had to wear respirators, and MSHA
5 provided that they had medical evaluations, and
6 presumably it is at least a possibility that some
7 people would be found unable to wear a respirator, if
8 the result of that is that they lost their jobs, how
9 do you think they would view the medical evaluation?

10 MR. SMITH: Their jobs are important, and so
11 my answer is that if they lose their job, or if they
12 take a physical, they are going to keep their job. I
13 mean, jobs are hard to come by. I don't know how to
14 answer your question other than their jobs are
15 important, and so I guess they would have to take a
16 physical.

17 If they couldn't pass because of the
18 physical, and they had worked there for 35 or 40 years
19 -- and my workforce is an older workforce, and I have
20 been there for 39 years, and I am number 40 on the
21 seniority list. I have 40 guys above me with 35 or 40
22 years, and I just had one with 45 years who retired.

23 My concern is about the new people, and I
24 don't want to see the new people go through the same
25 thing that the older people went through. I don't

1 know how to answer your question to be honest with
2 you, Mike.

3 MR. WRIGHT: Well, let me ask you this. Do
4 you think that people would be tempted to either try
5 to refuse the physical, or might be tempted to maybe
6 cheat on it to save their jobs?

7 MR. SMITH: Oh, they will cheat on it, sure.
8 I mean, they will do that on all physicals. But to
9 answer your question, it is just like hearing, and
10 hearing protection. We have variances on sound and
11 noise, and our company, there is no problem. If a
12 machine makes too much noise, they make it quite
13 clear. We switch it off.

14 For four hours, you drive the machine, and
15 for four hours, you drive the machine. So there are
16 ways to work around that issue. I mean, we do it with
17 hearing, and I am sure that we can do it with diesel.

18 So I agree with you a hundred percent that
19 there is ways to make sure that we can keep our jobs,
20 and not put people in jeopardy who are wearing masks.
21 We rotate jobs now.

22 Ed Bowman, who is beside me, he is a
23 qualified miner. One day, he built beltline, and one
24 day, he will run salt with beltlines, and one day he
25 might run a LHD, and one day he might run a bolter.

1 In today's mining industry, you have to be
2 qualified to do many jobs. If it is cheaper and more
3 feasible for the company, and that is how we mine salt
4 now, and we changed our patterns from 20 years ago.
5 So, yeah, there is no problems in rotating.

6 A person would cheat, I'm sure, if it came
7 down to their job or wearing respirators. They came
8 down with no smoking about 15 years ago, no smoking in
9 the mines. We lobbied against it, but during that
10 period of time we were not supposed to smoke on the
11 grounds.

12 Our foreman would allow us to smoke during
13 our breaks. So does that answer your question?

14 MR. WRIGHT: Yes. Mr. Bowman, do you want
15 to comment on any of those issues?

16 MR. BOWMAN: Well, I am not sure of the
17 question that you are asking me, but if it was my job
18 or wear the mask; is that what you are asking me?

19 MR. WRIGHT: Yes. Suppose the standard said
20 that they couldn't put you in a respirator unless you
21 were evaluated to make sure that it was safe for you
22 to wear it.

23 And what those medical evaluations consist
24 of is usually a medical history. You fill out a long
25 questionnaire, and where they ask you about heart

1 problems and lung problems.

2 If your members thought that maybe if they
3 flunked the physical that they might lose their job do
4 you think they would be tempted to cheat, and to maybe
5 answer those questions wrongly, and to maybe hide the
6 fact that they had some symptoms?

7 MR. BOWMAN: Yes, absolutely.

8 MR. WRIGHT: Thank you. That's all. Again,
9 we are ready for questions.

10 MR. SEXAUER: I have one comment that I
11 would like to make. You had mentioned, Mike, that
12 there is relevant information on the OSHA hearings to
13 support medical evaluations, and you would like for us
14 to put that in the record.

15 We will make an effort to get that
16 information. But if you don't mind, could you have
17 someone contact Pam King of my staff at (202) 693-
18 9440, and let's say in a week or so.

19 And just to confirm that the information
20 that you are requesting and that we are gathering the
21 information so that we have the right information on
22 the record?

23 MR. WRIGHT: Okay.

24 MR. SEXAUER: doris, do you have any
25 questions?

1 MS. CASH: Yes. Mike, I have one question
2 for you. You have already stated that if they felt
3 that there might be some chance that their jobs could
4 be in jeopardy that people might give the wrong
5 answers of a medical evaluation.

6 My question is other than that, if there is
7 a chance that somebody could take a transfer, do you
8 have anything that would tell us if that is possible
9 in the mining industry, and the ability of a company
10 to transfer somebody from one position, and the
11 availability of another position to transfer people
12 to?

13 And as you mentioned, people are cross-
14 trained, and people work in different jobs, and work
15 in different jobs during the week; and would it be
16 possible to transfer people to another position, and
17 if there would be somebody else who could take over
18 that position that could wear respiratory protection?

19 MR. WRIGHT: Well, first, we believe that a
20 number of miners who would be unable to wear
21 respirators would be very small, especially when you
22 allow powered positive pressure respirators to be
23 used.

24 Most of the medical problems with wearing
25 respirators is based on breathing risks, and there

1 isn't any when you have basically a powered positive
2 pressure respirator.

3 They are more expensive, or they actually
4 are a lot more expensive, and the last time we bought
5 one in my department, it was about \$400.

6 And if you can have more than a handful of
7 people at -- well, first, we would expect that there
8 wouldn't be that many respirators of any kind needed
9 in any particular mine.

10 And, second, the number of people who could not
11 wear those respirators would be small; and third, the
12 number of people who would wear even a powered
13 respirator would be even smaller. Maybe nobody in the
14 whole industry. Probably less than 10 or 15.

15 Now, that is a guess, but it is based on a
16 lot of experience with the same kind of issues on the
17 OSHA side. To not have positions available to
18 transfer people to would be to have a mine that was
19 almost uniformly out of compliance, and a workforce
20 that was so sick that they couldn't even wear a
21 positive pressure respirator.

22 And I think that the point that Mr. Smith
23 made that miners are cross-trained, and that there are
24 many places where a miner couldn't work at the face,
25 for example, could have worked.

1 I think that again means that the number of
2 people to be transferred would be small, and there
3 would be lots of positions available for them I think
4 in the average mine.

5 We will see if we can maybe tighten that up
6 a little bit with some actual data in the final
7 submission. I am not sure that we can as it may be
8 hard to get at, but we will do our best.

9 MS. CASH: Thank you.

10 MS. GREEN: Mike, I need to state for the
11 record that you indicated that you were going to be
12 submitting some additional information from the
13 Occupational Safety and Health Administration with
14 regard to their data on the need to test miners and
15 test persons before they are required to wear a
16 respirator.

17 I need to state that in the June 6, 2005
18 preamble, on page 32957, the agency gives a discussion
19 about the OSHA data in reference to their generic
20 respiratory protection standard.

21 You might want to take a look at that
22 information, and decide whether or not you feel that
23 the agency needs additional data for the record.

24 MR. WRIGHT: Yes. Thank you, Ms. Green. I
25 have actually read through that material a couple of

1 times. We just wanted to make sure that as a matter
2 of policy that the information available to OSHA was
3 also available to MSHA since you are both parts of the
4 Department of Labor.

5 MS. GREEN: And that's fine, and I need to
6 clarify for purposes of some of the other audience who
7 may not know that for each phase of the DPM
8 rulemakings, the Agency incorporates the previous
9 rulemaking record, and that is the basis of the 2001
10 rule, and the basis of the 2002 rule, and also the
11 basis of the 2005 rule.

12 Those records have been incorporated into
13 this rulemaking, and so we will be awaiting that
14 information from you.

15 MR. PETRIE: Mike, am I correct that you
16 indicated that you would be providing some regulatory
17 language on how we could limit the amount of time that
18 a miner would wear a respirator, yet not interfere
19 with the prohibition on the rotation of miners?

20 MR. WRIGHT: Yes.

21 MR. PETRIE: Thank you.

22 MR. SEXAUER: George.

23 MR. SASEEN: Mike, I just want to clarify
24 the equipment at the mine that Mr. Bowman and Mr.
25 Smith work at. You said that you went to an electric

1 miner?

2 MR. WRIGHT: Yes. The shuttle cars, did
3 they also go to electric?

4 MR. SMITH: Battery.

5 MR. SASEEN: Battery?

6 MR. SMITH: Yes.

7 MR. SEXAUER: So when was the first pickup
8 of the diesel at?

9 MR. SMITH: In the mine. Well, we have two
10 panels that we are working on now. We have the F
11 panel, which has a continuous miner in it, and that is
12 in the front. The way our mine is set up, we have a
13 maintenance shop, a maintenance area, and we have the
14 electric and battery cars, and then we have the old
15 processors in mining, which is our old cutters, and
16 drills, and haulage with diesel.

17 So, therefore, on the diesel, and there was
18 a lot of planning behind that because of that reason.

19 For blasting purposes and stuff like that, they can
20 still run the continuous miner as they call it, and
21 still have a third shift with the same air.

22 So those employees have no diesel until we
23 start the old section, where we probably at this point
24 in time five or six guys working in that area hauling
25 salt the old way.

1 MR. SASEEN: And have they repowered or
2 updated those machines, those diesel machines with
3 newer engines?

4 MR. SMITH: No.

5 MR. WRIGHT: We should I think repeat that
6 this mine is in compliance with the 308 level. They
7 are not too far from compliance with the 160 level.
8 And it is a mine where arranging simple ventilation is
9 especially difficult because most of it is under Lake
10 Erie, and you can't exactly sink an additional shaft
11 way out there.

12 And yet they are very close, and I think
13 that as Mr. Smith has said, with some relatively
14 simple improvements, they could probably get there.

15 MR. SEXAUER: Any other questions from the
16 panel?

17 (No response.)

18 MR. SEXAUER: Okay. Thank you, gentlemen.

19 MR. WRIGHT: Can I ask you one question?

20 MR. SEXAUER: Yes.

21 MR. WRIGHT: Are we the only witnesses?

22 MR. SEXAUER: Well, I was just going to ask
23 the audience. At this point, you are the only
24 speakers who have signed up to speak. Are there any
25 other speakers in the audience who would like to

1 address the group?

2 MR. WRIGHT: I just think the record should
3 show that this hearing was requested by the NSSGA, and
4 so it is a little surprising that they didn't appear
5 to testify. But of course that is their right. Thank
6 you.

7 MR. SEXAUER: And what we are going to do
8 now is that if no one else is asking to come up to
9 speak at this point, we will take a break until about
10 eleven o'clock, at which point, we will reconvene and
11 see if there are additional speakers. If there are
12 none at that point, we will adjourn. So we will now
13 go off the record until eleven o'clock.

14 (Whereupon, a short recess was taken.)

15 MR. SEXAUER: Okay. We will go back on the
16 record now. We do have one more speaker that is going
17 to speak, but before that speaker comes up, I would
18 just like to as an administrative matter, I would like
19 to mention that OSHA has a list serve.

20 And what this list serve contains with
21 respect to rulemaking is anytime we publish a
22 rulemaking document, we automatically send a notice
23 out to everybody on the list serve that we publish a
24 document, and give a few sentences about what that
25 document contains.

1 And we also have a reference in there where
2 we mention that it will be on MSHA's webpage as a
3 reminder. So this alerts you to every time there is a
4 new document coming from our agency and the Federal
5 Register, and it also refers you to a place where you
6 can view it electronically on our webpage.

7 If you will, you can locate our list serve
8 and subscribe to it. Of course, there is no charge,
9 and just a matter of a few simple clicks. But if you
10 go to the MSHA home page at www.msha.gov, on the left
11 side of the page, you will find Quick Links.

12 And if you will click on the mailing list
13 under Quick Links, and that will take you to a page
14 called MSHA's Mailing List and Subscription Page.

15 And there is just a few simple instructions
16 there for getting on the list serve. It is very easy
17 to do, and you will get a comprehensive reference of
18 any time that we publish a document.

19 Okay. Having said that, let's move on.
20 Gene Elwell, from AMC Testing, Inc.

21 MR. ELWELL: I want to thank you very much
22 for allowing me to speak. I wasn't scheduled to come
23 here to talk. My name is Gene Elwell from AMC
24 Testing, and I am the president and founder of the
25 company.

1 MR. SEXAUER: And that is Gene Elwell?

2 MR. ELWELL: Yes. G-E-N-E, E-L-W-E-L-L.

3 MR. SEXAUER: Thank you.

4 MR. ELWELL: I am from American Medical
5 Compliance Testing, Inc. And again from my company,
6 which we have 30 offices in eight States, and our
7 corporate office is in New Jersey, our feelings and
8 prayers go out to the coal miners in West Virginia.

9 My partner, his wife is actually from that
10 area. She knows that church, and it has been some
11 years ago, but she is familiar with what takes place
12 in a coal mine family.

13 And I just wanted to say something real
14 quick about who we are. We are a medical testing
15 company. I started out as a boilermaker. I am a
16 union construction worker, power plants and refineries
17 with nuclear power for over 25 years.

18 I started this company 10 years ago based on
19 OSHA safety and training, and pulmonary function, and
20 respiratory fits. We also handle drug and alcohol
21 testing, not only for the DOT, but for the airlines,
22 and trucking, and also for the construction.

23 The companies that I work for are my
24 clients, and so it was a nice fit when I started the
25 company. On that, the reason for why I wanted to say

1 something, is that I am not familiar with the coal
2 mines, and I am not familiar with -- and god bless
3 every one of them -- those that go into that industry
4 and work. It takes a brave person to do that.

5 But on the OSHA side, the pulmonary testing
6 for years, and being involved in construction, and
7 working in the Cofab boilers, or individual ones
8 called Gray Lung, and not the Life Lung; and
9 respirators for the first 20 years of the industry,
10 from '70 to '90, it wasn't the in-thing to do, to wear
11 a respirator.

12 And that was one of the problems. Most of
13 the people that I started out with, about 40 of them
14 in 1970, there are only eight of us alive. Most of
15 them are due to asbestosis, lung disease, and other
16 industry accidents on job sites.

17 OSHA has been a major part of helping
18 workers survive the accidents. To be at the job site
19 every day, and be able to go home to their families,
20 and wearing the respirator to protect them is
21 important.

22 About 15 years ago, when I took my first
23 training for OSHA, the OSHA trainers for a group that
24 we were there said that anybody who has been in this
25 business for 20 years and who are over the age of 40,

1 we can't help you. You are already done.

2 It is the ones coming up behind you, and
3 they are the ones that we have to protect, and they
4 are the ones that we have to make sure that they wear
5 their respirators, and their hard hats, and their
6 personal protective equipment.

7 It is for those protections that are there
8 now, and that medical screenings can continue, and
9 with the respirator fits, and in the industry, I test
10 these individuals that I worked with for 20 some
11 years.

12 And it is sad to see that those who can't
13 pass that pulmonary test to wear that respirator can't
14 go to work. If the contractor or the client can't
15 provide them with another -- like a transfer, and our
16 industry is just outside of that hot zone area -- we
17 see that with maybe a hundred workers, that anywhere
18 from three to five cannot go to work because of their
19 lung problems over the years.

20 And not wearing the respirator because it
21 was not mandatory, and it was not pushed as hard as it
22 is today. It is a godsend for the workers in the
23 future and the workers now that they do follow these
24 rules, and abide by them.

25 But the companies have to make sure that

1 they provide this equipment and everything else to
2 those workers. And again, one of the things that I
3 wanted to talk about was the fact that fresh air
4 supplies, and not negative air, but fresh air supply
5 would allow the other workers that can't pass a job,
6 and they can go to work with that fresh air supply,
7 and it is important.

8 Some companies will put the money up for
9 that, and provide a job for these workers. Outside of
10 that, they are out of the business, unless they can
11 find something in their own industry that they don't
12 have to be exposed to the air, the contaminated air.

13 So that is the construction side. OSHA has
14 been growing and has been very important to the
15 industry. A lot more people are surviving accidents,
16 and the safety has increased, and there has been a
17 real improvement.

18 Anything from other than improving on the
19 levels would be a sad situation. It should not be
20 made worse; it should be made better. So, again, just
21 wanted to speak and give you an opportunity from the
22 construction end, my part of it, being in
23 construction, and somebody that has pleural
24 thickening, which is the beginning of the asbestosis,
25 and living in that environment.

1 But now I test the workers to make sure that
2 they don't get that situation in their life. Other
3 than that, that is what I had to say, and I appreciate
4 your time. If there are any questions, I would be
5 happy to answer them.

6 MR. PETRIE: Have you found any workers that
7 would be unable to wear an air supply respirator or a
8 powered air purifying respirator?

9 MR. ELWELL: As long as they were clean-
10 shaven, no, sir. They can go to work and they can
11 work fine. Nobody would be restricted from going to
12 work and having that air supply. It is highly
13 recommended, and the equipment is out there. So it is
14 available, and it is on the shelf.

15 MR. PETRIE: Thank you very much.

16 MR. SEXAUER: If there are no other
17 questions, thank you very much.

18 MR. ELWELL: Thank you.

19 MR. SEXAUER: Is there anyone in the
20 audience that would care to address the group?

21 (No response.)

22 MR. SEXAUER: Okay. Well, there being
23 nobody else, we will adjourn. Thank you very much.

24 (Whereupon, at 11:08 a.m., the hearing in
25 the above-entitled matter was concluded.)

REPORTER'S CERTIFICATE

DOCKET NO.: N/A
CASE TITLE: Diesel Particulate Exposure
HEARING DATE: January 5, 2006
LOCATION: Arlington, Virginia

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Department of Labor.

Date: January 5, 2006

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