

U.S. DEPARTMENT OF LABOR

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MINE SAFETY AND HEALTH ADMINISTRATION

+ + + + +

DIESEL PARTICULATE MATTER EXPOSURE
OF UNDERGROUND METAL AND NONMETAL MINES

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 23, 2003

+ + + + +

PITTSBURGH, PENNSYLVANIA

+ + + + +

Panel Members:
George Saseen
Jim Petrie
Becki Smith
Deborah Green
Doris Cash

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P-R-O-C-E-E-D-I-N-G-S

9:05 a.m.

1
2
3 MS. SMITH: Good morning. My name is Becki
4 Smith. I am the Deputy Director of MSHA's Office of
5 Standards, Regulations and Variances, and on behalf of
6 Dave Lauriski I would like to welcome you to this public
7 hearing today.

8 The purpose of this hearing is to obtain
9 input from the public on the proposed rule published in
10 the Federal Register on August the 14th, 2003 addressing
11 Diesel Particulate Matter Exposure of Underground Metal
12 and Nonmetal Miners.

13 Joining me on the panel, today, are my right
14 is Jim Petrie. Jim is the District Manager for MSHA's
15 Northeastern District, and Chairman of the Diesel
16 Particulate Committee.

17 George Saseen is from MSHA's Technical
18 Support Organization. And on my left, Deborah Green is
19 from the Office of the Solicitor for Mine Safety and
20 Health, and Doris Cash is from MSHA's Metal and Non-Metal
21 organization.

22 This hearing is being held in accordance
23 with Section 101 of the Federal Mine Safety and Health
24 Act of 1977. As is the practice of this agency, formal
25 rules of evidence will not apply; therefore,

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1 cross-examination of the hearing panel will not be
2 allowed, but the panel may explain and clarify provisions
3 of the proposed rule. Also, as moderator of this public
4 hearing I reserve the right to limit the amount of time
5 each speaker is given as well as questions of the hearing
6 panel.

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

11 Following these presentations others who
12 request an opportunity to speak will be allowed to do so.
13 We invite all interested parties to present their views
14 at this hearing, and if you wish to speak please be sure
15 to sign in at the registration table. We will remain in
16 session today until everyone who desires to speak has an
17 opportunity to do so. Also, if you're not signing up to
18 speak today, we would like for you to sign the general
19 sign-in sheet so we will have an accurate record of those
20 in attendance at today's hearing. We will also accept
21 written comments and data at this hearing from any
22 interested party, including those of you who are not
23 speaking at the hearing.

24 When I call on you to speak, please come to
25 the speaker's table and begin your presentation by

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1 identifying yourself and your affiliation for the record.
2 If you have a prepared statement or any supporting
3 documents for the record, please leave a copy with us.

4 You can give written comments on this
5 hearing to us today, or you can send them to MSHA's
6 Office of Standards electronically, by facsimile, by
7 regular mail, or by hand delivery using the address
8 information listed in the hearing notice.

9 In addition to the hearing today, there was
10 a hearing in Salt Lake City, Utah, on September the 16th;
11 one in St. Louis, Missouri on September the 18th, and
12 there will be one other hearing in Arlington, Virginia,
13 on October the 7th.

14 The post-hearing comment period will end on
15 October 14, and submissions must be received on or
16 before that date.

17 A verbatim transcript of this hearing will
18 be made as part of the record and it will be posted on
19 MSHA's website. If you would like a copy sooner, you
20 could make your own arrangements with the court reporter.
21 The company information is available at the registration
22 table.

23 We will have a break at noon, and breaks in
24 the morning, as necessary. Before we begin I would like
25 to give you some background on the proposed rule we are

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1 addressing today.

2 On January the 19th, 2001, MSHA published
3 the final rule addressing the health hazards to
4 underground metal and nonmetal miners from exposure to
5 diesel particulate matter. The rule establishes new
6 health standards for underground metal and nonmetal
7 miners by requiring use of approved equipment and low
8 sulfur fuel, and by setting an interim and final
9 concentration limit for diesel particulate matter in the
10 underground mining environment.

11 MSHA established staggered effective dates
12 for enforcement of the concentration limits. The interim
13 concentration limit of 400 micrograms per cubic meter of
14 air of total carbon was to become effective on July 20th,
15 2002. The final concentration limit of 160 micrograms
16 per cubic meter of air of total carbon was scheduled to
17 become effective on January 20th, 2006.

18 On January 29, 2001, several mining
19 trade associations and individual mine operators
20 challenged the final rule and the United Steelworkers of
21 America intervened in the case, which is now pending in
22 the District of Columbia Circuit.

23 On July 5th, 2001, as a result of Phase 1
24 settlement negotiations, MSHA published two notices in
25 the Federal Register. One notice delayed the effective

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1 date of Section 57.5066(b) related to tagging
2 requirements in the maintenance standard.

3 The second notice proposed a rule to
4 make limited revisions to Section 57.5066(b) and
5 added a new paragraph to Section 57.5067(b) regarding the
6 definition of "introduced" in the engine standard. The
7 final rule was published on February 27th, 2002.

8 Phase 2 of the settlement agreement was
9 reached in June of 2002. Under the agreement the interim
10 concentration limit became effective on July 20th, 2002,
11 without further legal challenge.

12 Mine operators had one year to develop and
13 implement good-faith compliance strategies to meet the
14 interim concentration limit. MSHA agreed to conduct
15 compliance assistance during the one-year period.

16 MSHA also agreed to reenter rulemaking on
17 several other disputed provisions of the 2001 rule. The
18 legal challenge to the rule has been stayed pending
19 completion of the additional rulemakings.

20 On September the 25th, 2002, MSHA published
21 an Advance Notice of Proposed Rulemaking. MSHA noted in
22 that Advance Notice that the scope of the rulemaking is
23 limited to the terms of the settlement agreement and
24 addresses MSHA's intent to repropose the interim and
25 final concentration limits.

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1 On July 20th, 2003, MSHA began enforcing the
2 interim final limit of 400 micrograms. The agency's
3 enforcement policy is also based on the terms of the
4 settlement agreement and was discussed with the litigants
5 and stakeholders on July 17th, 2003.

6 The enforcement policy is written into a
7 Compliance Guide, and both the Compliance Guide and a
8 Program Policy Letter are posted on MSHA's website on the
9 Sole Source page for diesel particulate matter.

10 On August the 14th, 2003, MSHA published
11 it's proposed rule which would accomplishing four things:
12 (1) revise the interim concentration limit measured by
13 total carbon to a comparable permissible exposure limit
14 measured by elemental carbon, which renders a more
15 accurate diesel particulate matter exposure measurement.

16 Number 2, increase flexibility of compliance
17 by requiring MSHA's longstanding hierarchy of controls at
18 metal and nonmetal mines, but prohibit rotation of miners
19 for compliance; number 3, allow MSHA to consider economic
20 as well as technological feasibility in determining if
21 operators qualify for an extension of time in which to
22 meet the diesel particulate matter limits.

23 And, 4, simplify requirements for a diesel
24 particulate matter control plan. Now Jim Petrie,
25 Chairman of the Diesel Particulate Committee, is going to

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1 give you an overview of the proposed rule after which,
2 then, I will begin calling speakers. Jim?

3 MR. PETRIE: Thanks, Becki. This is just a
4 very brief summary of the rule. What it does is it
5 compares the existing rule with the key provisions in the
6 proposed rule. There's only about ten slides, so if you
7 have any questions, as I go through this, just speak up,
8 and I will try to clarify any issues that you may have.

9 These are the sections of the existing rule
10 that I will be addressing, the interim limit, special
11 extensions of time requirements, exceptions to the diesel
12 particulate limits which are the requirements to use
13 respiratory protection for certain tasks, such as
14 inspection, maintenance, and repair activities. The
15 otherwise prohibition on respiratory protection,
16 prohibitions on administrative controls, and the control
17 plan.

18 Regarding the interim limit, the existing
19 rule is based on a 400 micrograms per cubic meter, it
20 uses a total of carbon as a surrogate and it is a
21 concentration, or a carbon element.

22 The proposed rule would change that interim
23 limit to 308 micrograms per cubic meter, and that was
24 derived, I think, from 400 and dividing it by 1.3. Now,
25 the 1.3 came out of the settlement agreement and there

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1 was a general consensus that that was the appropriate
2 factor to use.

3 It is also based on the amount of carbon
4 surrogate, instead of total carbon, and it would be a
5 personal exposure limit, rather than a concentration
6 limit.

7 PARTICIPANT: Jim, a question. So when we
8 measure the elemental carbon figure, under the old rule
9 we took that number and we multiplied that by 1.3 compare
10 it to the 400. Now we simply take that number, as it
11 stands, from the laboratory, and compare it to the 308?

12 MR. PETRIE: Yes.

13 PARTICIPANT: Is it not true that there is
14 still a multiplier at 1.12 --

15 MR. PETRIE: The error factor. Yes, I did
16 not have that. We would have an error factor of 1.12
17 that would be applied to the 308. Mike?

18 MR. WRIGHT: Yes, Jim, I just think that it
19 is probably worth saying that the 1.3 was agreed with the
20 settlement agreement --

21 MR. PETRIE: Thanks. On the final limit,
22 the proposed rule does not address the final limit of 160
23 micrograms per meter cubed. MSHA feels that it needs
24 more time before it can propose a change, or revision, to
25 the final limit, and we will undertake separate

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1 rulemaking to address that.

2 The special extension, or extension of time
3 requirements, under the existing rule it only applies to
4 the final limit, it can only consider technological
5 constraints, and each mine will be limited to one
6 extension of not more than two years.

7 The proposed rule would change that, it
8 would apply that extension of time requirement to both
9 the interim and the final limit; it would consider both
10 economic and technological constraints, and there would
11 be no limit on the number of extensions a mine could
12 receive. However, the mine operator would have to renew
13 those extensions every year.

14 I wanted to talk, a little bit, about
15 hierarchy of controls. Under the existing rule operators
16 would be required to use engineering or work practice
17 controls. Rotation of miners would be prohibited.

18 Operators would need to obtain approval for
19 using respiratory protection for inspection, maintenance,
20 and repair activities. And when respirators are used
21 they would have to meet the requirements of the MSHA's
22 existing air quality standards, which incorporates ANSI
23 Z88.21969 by reference.

24 The proposed is somewhat similar. Operators
25 would be required to utilize feasible and administrative

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1 controls with the exception that rotation of miners would
2 still be prohibited.

3 They would be required to use respiratory
4 protection and controls where, if feasible, would not
5 reduce the concentration to below the permissible limits.

6 When respirators are used, they would also
7 have to meet the existing air quality standards, and the
8 requirements of ANSI Z88.2. With the exception that the
9 proposal would specify the types of filters that would
10 have to be used in those respirators.

11 The existing rule would also prohibit the
12 use of administrative controls. However, it uniquely
13 defines administrative controls as being rotation of
14 miners. Other work practice controls would be allowed
15 under the existing rule.

16 The proposal is similar, and it is mainly a
17 difference in semantics, rotation of miners would still
18 be prohibited, but any other administrative or work
19 practice controls would be allowed.

20 In regards to respiratory protection, the
21 proposal does not include provisions on medical
22 evaluation of respirator wearers or transfer of miners
23 who cannot wear respirators. We do, however, solicit
24 comments on these issues in the proposal.

25 On the control plan requirements, under the

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1 existing rule, they were triggered by a single violation,
2 they would require verification monitoring, and the
3 control planning would be in effect for three years from
4 the date of the violation.

5 Under the proposed rule the control plan
6 would be triggered if the mine was not in compliance
7 within 90 days of receiving the citation. There is no
8 specific verification monitoring requirements, and the
9 control plan would have to remain in effect for one year
10 after the citation is terminated.

11 The last slide, there are some other
12 performing changes that I have not discussed. For
13 example, in other sections of the existing rule, where it
14 talks about double carbon, the proposal would revise
15 those to talk about elemental carbon, or there is a
16 section that talks about a concentration limit, the
17 proposal would change that to personal exposure limit.

18 So there are just some minor conforming
19 changes. Also, and I think Becki mentioned it, MSHA's
20 combined particulate matter, and its appropriate policy
21 letter, are posted on the diesel particulate single-
22 source page on MSHA's website.

23 Any questions? Mike?

24 MR. WRIGHT: Returning to the issue of the
25 special extensions, and the agency's proposal to include

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1 economic feasibility as a reason for getting special
2 extensions, can you expand on what kind of data it will
3 require, in terms of economics, and what the criteria
4 will be for making the determination that particulate
5 control is economically unfeasible, even if it is
6 technologically feasible, and how you plan to get that
7 out to the mining community, so that they will know what
8 the parameters are.

9 MR. PETRIE: It could be a wide range of
10 data, anywhere from the specific box of control, to the
11 effects on mine activity. I would say it could go as far
12 as requiring mine operators to submit TECs, which are the
13 information.

14 We have done that under some cases, under
15 ZINC related standards, where operators have claimed that
16 they could not afford to make, to correct the various
17 violations or citations.

18 So it could be a variety of information that
19 we might ask for, to prove that controls are, indeed,
20 economically unfeasible for the mine operator.

21 MS. GREEN: If I may, Mike? The agency
22 looks at whether or not a similar type of operation, in
23 the area, is able to install a similar type of control.
24 If they are then the agency talks to the operator in
25 question and says, we believe that you can accomplish

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1 this, because they have been able to accomplish it.

2 Unless you can give us, like Jim said,
3 verifying information that it cannot be done, from an
4 economic standpoint. Obviously the agency does not have
5 statistical information on the specific operators capital
6 or ability to buy the equipment.

7 So the onus is more so, it shifts to the
8 operator to demonstrate, to us, why it cannot be
9 accomplished. But feasibility, invariably, has been a
10 consideration, in the agency's enforcement history, has
11 been a consideration of both technological and economic
12 feasibility. This is based on case law.

13 And MSHA has followed that for many years,
14 they are obligated to follow it here.

15 MR. PETRIE: Any other questions?

16 MS. SMITH: Thank you, Jim. Prior to today
17 we had a request to speak, today at this hearing, from
18 MARG. Do we have a representative here who is going to
19 --

20 PARTICIPANT: We are not going to present
21 testimony today.

22 MS. SMITH: Thank you, Mr. Chajet. Our
23 first speaker today will be George Love. George, could
24 you come up, spell your name, and give your affiliation
25 for the Court Reporter, please. Good morning.

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1 MR. LOVE: Good morning. It is a relatively
2 simple name, L-O-V-E. My name is George Love, I work for
3 Carmeuse North America, which is the largest U.S. lime
4 producing company in the U.S.

5 We have two underground mines, both of them
6 are just south of the border, here in Kentucky. I have
7 prepared some comments for you, and in reading through
8 them last night I realized that I can neither spell, nor
9 are they completely literate, so they will be edited and
10 provided to you in a written form.

11 But I do want to go through most of them.
12 And, certainly, if you have questions, do interrupt me.

13 Well, thank you for the opportunity to
14 address certain aspects of the recently promulgated MSHA
15 regulations pertaining to diesel particulate matters, and
16 I'm going to refer to that as DPM, I think we are all
17 familiar with that term, and the anticipated promulgation
18 of revisions to portions of the regulation, which were
19 stayed until further fact-finding scientific
20 investigations could be completed.

21 As I know all of you know, the metal/non-
22 metal industry, has worked very closely with MSHA in
23 numerous areas, both to develop a better understanding of
24 the issues presented by the DPM in the underground mining
25 environment, and to develop and evaluate various methods

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1 to control or limit DPM exposures.

2 Carmeuse Lime and Stone, the largest lime
3 producer in the United States, has moved forward
4 aggressively on several fronts to determine appropriate
5 methods to meet and maintain compliance, with a
6 negotiated 400 micrograms per cubic meter, which I will
7 refer to as the 308 number now, because we are all headed
8 in that direction.

9 And, again, I think we are all familiar with
10 that number. Today I would like to talk about,
11 particularly, about one of the efforts, and give you some
12 additional information that we have been engaged in, and
13 that is the testing and use of alternative fuel blends,
14 specifically yellow grease, and virgin soil-based fuels.

15 The term yellow grease is also known as
16 recycled vegetable oil, so they get used in a lot of
17 different ways but, generally, we refer to it as yellow
18 grease. And I will refer to it with an acronym of B-
19 something, B-20, for example, would be 20 percent yellow
20 grease mixed with 80 percent of low sulfur diesel fuel.
21 So I think some of you are familiar with that particular
22 wording.

23 We, Carmeuse, began a study in the fall of
24 2002 to evaluate the efficacy of two of the two products,
25 the yellow grease and the soy blend. And we invited MSHA

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1 to participate in our studies. And the agency recently
2 penned several reports which, I understand, have been
3 made part of the record.

4 But when I submit my comments, my written
5 comments, I will include another copy of it, just because
6 that is the way I do it.

7 So according to the MSHA sampling, which is
8 generally supported by the Carmeuse data, we had pumps
9 and so forth, side by side, there were measurable
10 reductions in DPM emissions.

11 For example, using the elemental carbon
12 data, which are the only data that I will refer to, as I
13 mentioned before, the return air, this is the air leaving
14 the mine, which is a good indicator, it is fully diluted,
15 the diesel particulate matter is fully diluted.

16 According to MSHA's sampling, the diesel
17 baseline, when we were running the low sulfur diesel fuel
18 only, the weighted average of the return air was 352
19 micrograms per cubic meter.

20 For the B-20 blend, which is 20 percent
21 yellow grease, and 80 percent low sulfur diesel, that
22 number dropped to 235. And when we used a 50 percent
23 blend, the number dropped to 109.

24 These values correspond to a 33 percent, and
25 a 69 percent reduction in DPM, when using those fuel

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1 blends. However, these data alone do not demonstrate
2 compliance with the interim limit. They are fully
3 diluted values, all the incoming fresh air intimately
4 commingled with the diesel exhaust from each working
5 area.

6 The regulations require compliance be based
7 upon personal samples that are corrected in the breathing
8 zone. Therefore the data represent an interesting trend,
9 rather than an actual demonstration of compliance.

10 Focusing, for a moment, on employees, in the
11 MSHA studies they broke the data into two broad groups.
12 Employees working in cabs, and those that were working
13 outside of cabs.

14 And I want to read, just a little section
15 here, briefly. This is a quote from one of the reports
16 that was done by Schultz 2003, specifically the yellow
17 grease study.

18 The average TC concentration of employees,
19 working inside of cabs, during the baseline survey was
20 220. During the B-20 diesel survey this average
21 concentration was 219. During the B-50 survey, the
22 average concentration was reduced to 89 micrograms per
23 cubic meter.

24 Miners working outside of the cab showed
25 similar results. The average TC baseline concentration

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1 was 300 micrograms. During the B-20 survey the
2 concentration was reduced to 208 and since only one
3 employee fell into the category of working outside of the
4 cab, during the B-50, the concentration was measured as
5 216, which was a 28 percent reduction in the baseline
6 concentration.

7 I should correct myself, I have the actual
8 quote here, I have somewhat paraphrased it.

9 Now, I want to describe that sampling just
10 a little bit further. And, again, I will present these
11 numbers to you. During the three-phase study, in which
12 Carmeuse and MSHA worked side by side, Carmeuse took 100
13 samples, 32 of which were personal samples; MSHA and
14 NIOSH, incidentally, was working there with them, 122
15 samples, 65 of which were personal samples.

16 So we have this body of 222 samples that we
17 all took at the same time. For the diesel baseline study
18 Carmeuse had 24 samples, 7 of which were personal, MSHA
19 had 36 samples, 19 of which were personal samples,
20 hanging on individuals.

21 Looking at those data Carmeuse had two
22 values that exceeded the 308 limit, and MSHA had four
23 that exceeded the 308 limit. Carmeuse had six that
24 exceeded the 160 limit or 123, I believe, is the
25 conversion there; and MSHA had 17 of theirs that would

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1 have, in fact, exceeded that limit.

2 When we look at the data for the B-20
3 mixture, Carmeuse had 30 samples, 7 of which were
4 personal; MSHA had 35 samples, 17 of which were personal
5 samples. Looking, again, at that breakdown Carmeuse, we
6 had three personal samples that exceeded the 400 limit,
7 and we had seven that exceeded -- I'm sorry, we had three
8 that exceeded the 308, and we had five that exceeded the
9 161-23 limit.

10 The MSHA sampling, again at the B-20, had
11 two that exceeded the 308, and 14 that exceeded the lower
12 limit of 160-123. For the B-50 Carmeuse had 26 samples,
13 7 of which were personal; MSHA had 32 samples, 14 of
14 which were the personal samples.

15 In all cases no one exceeded the 400/308
16 limit. However, the company sampling, three were greater
17 than the 160/123, and MSHA sampling there were six that
18 exceeded that value.

19 Now, I tell you these things because it is
20 important that we not misconstrue these numbers. The
21 ones that were presented in the MSHA papers are averages,
22 and they are fine averages. But they are averages over
23 time, and they are averages over equipment.

24 As such they do not simply illustrate that
25 changing the fuel is going to be the silver bullet for us

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1 to achieve these levels. There are numerous variables,
2 and MSHA again has provided a list, in their
3 documentation, that have not been factored into these
4 things, variables which are rather important in the
5 mining industry, if you work underground, on a day to day
6 basis.

7 And so we don't think that fuel alone, or
8 other things alone, are going to be the universal silver
9 bullet to take care of these problems.

10 Now, in my opening remarks, I mentioned that
11 we had also tested virgin soy-based diesel blend. The
12 results there were much less satisfactory. The results
13 that we measured and, also I think I can say, that that
14 is demonstrated in the MSHA numbers as well.

15 And, in addition, we provided questionnaires
16 to all of our underground employees. It was rather
17 interesting because, in general, the personnel did not
18 like the smell of the air, and they didn't like the feel
19 of the air, burning the soy blend.

20 I might just tell you that we have a number
21 of women that work underground, something that I cannot
22 identify with, but they told me that they had a hard time
23 washing their hair after the use of the soy blend. So I
24 don't know if that is good or bad. But moving right
25 along here.

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1 I want to talk, a little more, about the
2 impact of the diesel, of the bio-diesel fuel. I have
3 given you some numbers and it shows that the emissions
4 come down. So while these blend data are encouraging,
5 they must be evaluated in light of other factors, such as
6 the operational impacts of using the fuel blends.

7 The information that I'm about to share with
8 you are based upon data that were collected in late 2002,
9 and 2003, through August, because we have very good
10 numbers there.

11 Based upon the initial studies that were
12 done by us, and by MSHA, we decided to use a B-35 blend.
13 We had two data points, we took halfway in between, and
14 that is what we are currently using underground.

15 That is a blend of the yellow grease, at 35
16 percent, low sulfur diesel at 65 percent. We started that
17 in June of 2003.

18 Now, I'm going to specifically focus on our
19 Maysville mine. I have my office there and, frankly, it
20 is a little easier to get the information, and to do
21 additional sampling.

22 Let's talk about fuel information. The cost
23 per gallon of B-100, this would just be the yellow grease
24 fuel, has varied significantly, and is much higher than
25 the cost of low sulfur diesel.

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1 Our supplier, which is Griffin industries,
2 a local here in the Cincinnati area, has informed us that
3 the current government subsidy is scheduled for reduction
4 in 2004, and potentially for elimination in 2005. So
5 this will very significantly impact the cost of fuel.

6 Specifically we have been told that the cost
7 per gallon for the B-100, will be at or above two dollars
8 per gallon in the year 2004, versus the current price of
9 1 dollar 67 per gallon. And when we conducted the
10 original test the cost, at the end of that period, was 1
11 dollar 47 a gallon.

12 In addition to the increased cost of fuel,
13 fuel consumption on an hourly basis has gone up
14 measurably. We began measuring, metering fuel into all
15 of our equipment at the Maysville mine, individual
16 equipment, in January of 2003. And that is why these
17 numbers, we feel, are very pertinent, and they are very
18 good, because we metered it into each piece of equipment.

19 I have a tabulation here, which you will see
20 in the written documents, but I will just paraphrase it
21 for you. I talk, again, about the cost of the various
22 fuels, 89 cents per gallon for diesel, versus a current
23 price of 1.67 a gallon for the bio-diesel, which is an
24 average price, today, of 1.16 per gallon for the B-35.

25 The consumption of fuel, and I will focus

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1 now on tier 2 equipment, this is new caterpillar
2 equipment that we have underground. We have a 988 G-
3 loader, that in the February through May time frame of
4 this year used 11.2 gallons, per hour, of fuel.

5 In the June through August time frame, it is
6 using 11.4, which is a 1.8 percent increase in
7 consumption. We also have 631-G trucks, these are
8 articulated trucks, 40 ton, that transport our product.

9 In the February through May time frame, with
10 the low sulfur diesel only, it was 9.6 gallons per hour.
11 June through August, that is now 9.8 gallons per gallon,
12 which is a little bit more than a two percent increase
13 in fuel consumption for those trucks.

14 What that translates into is a 30, almost a
15 33 percent increase in fuel cost for the 988-G loader, on
16 a per hour basis, and almost a 34 percent fuel cost per
17 hour for the trucks that we are using. So they are
18 significant increases.

19 But those are just numbers, let me translate
20 that into a bit more that we can all deal with. Using
21 the 2002 fuel numbers, the Maysville organization
22 purchased 500,045 gallons of fuel. More than 80 percent
23 of that fuel was burned in the underground mine. But I'm
24 only going to use the 80 percent number.

25 At our current contract price for diesel

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1 fuel, which is 89 cents, and you can get long-term
2 contracts for that fuel, for 2002 we spent more than
3 356,000 dollars for fuel.

4 If you simply translate that into a cost for
5 the B-35, the cost of fuel in 2002, had we been burning
6 it at that blend, would have been more than 465,000
7 dollars, or an increase in excess of 109,000 dollars per
8 year, simply for fuel, just to buy the fuel.

9 Now, I want to go on and show you where that
10 leads to because we have other data, and consumable
11 supplies, for example, just to take a very simple
12 example. On the newer cat equipment, as I say, we are
13 using, in the entire mine, we are using the B-35.

14 The newer cat equipment has tier 2 engines,
15 which we all know produce less DPM emissions, and they
16 are those engines that are required going forward for
17 additions to fleets.

18 The manufacturer tells us that to cool the
19 injectors, fuel is pumped at a very high rate through the
20 engine, so you turn over the fuel that is in the tank a
21 number of times greater than you normally would. I'm not
22 an expert on that, I've told you everything I know, there
23 may be someone else who can explain it better.

24 But the point is that this fuel must pass
25 through the fuel filters. And we have experienced

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1 numerous problems with the fuel filters. The rate of
2 fuel filter replacement, in the last three months, has
3 tripled. The cost of fuel filters has quadrupled.

4 And that is because the larger equipment
5 uses more expensive filters. Now, those are not huge
6 numbers, but they relate to the next problem, which is an
7 operational problem.

8 The fact that we are using -- well,
9 equipment downtime related to filters must be considered
10 in an economic evaluation. In the case of the Maysville
11 mine, phase loaders, that is equipment that is picking up
12 the rock and loading it into the trucks, generally work
13 with one to four trucks, depending on a number of
14 factors.

15 When a loader is inoperable, the trucks
16 become either inoperable, because they have to sit there
17 and do nothing, or some of them can be moved to work with
18 another loader. But in an underground mine it is not a
19 matter of sending all of your equipment to another
20 location because it is a confined area, you just don't
21 have room.

22 And when a truck goes down then it is merely
23 a matter of the truck being down, the loader and the
24 other haulage equipment can continue to work. However,
25 it is at a much less productive rate.

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1 Now, we've monitored our situation with
2 regard to the newer tier 2 equipment. And, for example,
3 our 988-G loader is averaging 1.5 hours of downtime per
4 two operating days. That translates to 18 hours per
5 month, and conservatively that means that we have 45
6 hours of non-productive time for an average of two and a
7 half trucks that are working in that setup.

8 In addition to that time each truck, on its
9 own, can have additional downtime. If a truck has a
10 clogged filter and it has to limp off into a corner
11 somewhere, using Maysville's standard costs, which are
12 probably lower than the industry, because these are new
13 equipment, we have calculated that the additional need
14 for production is costing us in excess of 8,100 dollars
15 per month. That is made up with overtime.

16 Now, that number includes fuel, it includes
17 the overtime premium on the people, it includes the
18 consumable supplies that go into that equipment. Now,
19 that doesn't sound like a particularly big number.
20 Multiply that by 12, it is just under 100,000 dollars.

21 However, our fleet contains a number of
22 older pieces of equipment, which are being phased out,
23 and we are buying the newer equipment with the tier 2
24 engines. We expect this problem will continue, because
25 we have had it for three months, and it is very steady,

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1 it is very measurable, you can predict when the equipment
2 is going to go down, now.

3 As we convert our fleet this number will
4 really translate into, conservatively, 224,000 dollars
5 per year, of downtime, that will have to be made up with
6 overtime. And that number doesn't include the delta cost
7 of fuel.

8 So when you add that in, and again I will
9 tabulate all of these things for you, we can clearly see,
10 it would be a minimum increase in cost to us of in excess
11 of 353,000 dollars per year.

12 I want to emphasize that does not include,
13 when you are working overtime, we have conveyors that are
14 running that would normally have been scheduled down, we
15 have maintenance people that are working, who would
16 normally have been scheduled off. So I haven't even
17 included those costs.

18 But those are very real numbers. So you can
19 see that, very quickly, just with the use of B-35 we are
20 increasing our costs significantly.

21 So I -- and I've talked about the tier 2
22 engines, but we also have Deutz engines. It is just
23 another manufacturer of a diesel engine. We have been
24 having trouble with those engines, as well.

25 So our maintenance people have contacted the

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1 manufacturer, and I will include, when I submit to you
2 the documentation that we've gotten back from Deutz. But
3 I want to just tell you that, I will just read this
4 paragraph.

5 In addition to Cat engines we have the
6 Deutz. Recent communications with Deutz, prompted by
7 numerous mechanical engine problems, have resulted in
8 Deutz stating that biodiesel blends, above 20 percent,
9 are excluded from approval. This was translated from
10 German, and I don't read German, so I accept it for what
11 it says.

12 But they further go on to say, as U.S.
13 biodiesel quality has never been tested by Deutz, there
14 exists no approval, i.e., in the short frame of this,
15 Deutz is telling us that they are not going to warrant
16 their engines for the use of biodiesel in excess of 20
17 percent.

18 And, further, I interpret this to say they
19 are not going to warrant the use of an engine with
20 american biodiesel until such time as they go through the
21 testing and trials to see whether or not it works.

22 I certainly have no idea when, or if they
23 would be inclined to do that. The significant point is
24 that we would be inclined then to purchase Cat engines.
25 And since those Cat engines are going to be tier 2, then

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1 we would expect to have continuing problems with the use
2 of the biodiesel.

3 I want to move on to just a couple of other
4 things. As I mentioned before, Carmeuse is aggressively
5 moving forward on a number of efforts to reach the 308.
6 But our experience tells us that occasions will arise on
7 which personal protective equipment will be the answer to
8 the problems.

9 And because of that, at least in the short
10 term, and because of that we applaud MSHA's move to
11 revoke the prohibition on personal protective equipment.
12 We think that that will give us a lot more flexibility in
13 protecting our employees.

14 In the Carmeuse mine, in our mines, there
15 are occupations, such as a roof bolter, that folks must
16 work outside of the cab. It is not an efficient thing
17 for them to work inside of a cab to do their jobs.

18 And in those cases the use of a full face
19 shield, and filtered air, and so forth, which are
20 protective equipment, will be, at least in the near
21 term, a solution for us to address that. So, like I
22 said, we do appreciate that.

23 But I also want to say something about air.
24 One of the things that we are doing is also to redirect
25 our air into areas where we need it. That is not a

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1 simple thing, and it is not an inexpensive thing.

2 And there are, even, occasions in which
3 getting more air into a mine may not be technically
4 feasible, depending on what the situation is with
5 moisture in the air, as it affects pillar strength, and
6 floor strength, and so forth, it can create other kinds
7 of problems.

8 But in our case, in Maysville, just to give
9 you an example, our mine is 800 to 1,200 feet
10 underground, depending on the topography. In order to
11 effectively put air where you need it, you may not have
12 the choice of putting an air shaft in a valley, you may
13 have to put it at a higher elevation.

14 The construction of the shafts that we use,
15 they are approximately, rule of thumb, 1,000 dollars per
16 vertical foot. So we are looking at a million dollars,
17 on average, to install air shafts.

18 So simply chasing air around is not the
19 easiest thing in the world. So I will move on now to the
20 rotation of personnel. I know that that is still not
21 being allowed. It has never been Carmeuse's practice to
22 rotate personnel to avoid health risks.

23 However, given the lack of substantiated
24 data demonstrating the health risks associated with a
25 specific DPM level, in the underground environment, we

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1 believe that that is an option that should be allowed to
2 us.

3 We ask that MSHA remove all restrictions on
4 the use of rotation as a means to protect the health of
5 company employees.

6 I want to move on to something that is a
7 little more near and dear to my heart, and that is the
8 use of the single sample for compliance. And these data,
9 again, I will provide them to you. We already have some
10 of them, and that is based upon the MSHA study that was
11 done side by side with ours.

12 Frankly we don't believe that a single
13 sample will fairly represent the situation, and we are
14 unsure that the method has been proven to be accurate,
15 and feasible.

16 And I base this statement upon a review of
17 the data that MSHA collected in our mine, and the data
18 that we collected and shared with MSHA. During the three
19 phase study that we conducted with MSHA, we had samplers
20 hanging side by side.

21 I don't know how many of you are familiar
22 with these things, but it is a small device. And they
23 can be hanging, if you hang them side by side, on the
24 personal sample, it would be hanging on the lapel on
25 someone's chest. So they are a foot apart, perhaps less.

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1 The variation in those samples we are
2 concerned about. Because just using the MSHA data, or
3 rather using the comparison of the MSHA and the Carmeuse
4 data, there were variances.

5 And when I say variance I'm not speaking
6 about the statistical variance, I'm not a statistician.
7 I'm speaking about the simple difference between two
8 numbers. If one sample says 200, and the other sample
9 says 100, to me that is a variance of 100 percent, or 50
10 percent, depending on which one you divide by.

11 I would -- so there is a big difference. I
12 think all of us can agree that there is a big difference
13 between those two numbers. We saw that in this side by
14 side business, that there was a variance as small as,
15 essentially, zero which is wonderful, to as much as 51
16 percent between the company samples and MSHA samples.

17 And I would venture to say that the samples
18 were taken appropriately because we stood side by side
19 with MSHA's technical people, and if we were doing
20 something wrong they would tell us. And we worked very
21 well together, it was a very cooperative effort.

22 Now, I want to move on from that. And,
23 again, in the written testimony I will provide you with
24 the specific information that you can look at. But I
25 want to go now to looking only at the MSHA samples, where

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1 MSHA collected two samples next to ours, but MSHA now has
2 two samples side by side.

3 In that particular case the -- and we are
4 talking, again, only about elemental carbon, MSHA samples
5 varied from as little as one percent, to as much as 299
6 percent. And I, frankly, have no idea how one would go
7 about explaining that difference.

8 And that is a huge difference. I might also
9 point out that I will provide you with a couple of these
10 numbers, because they are not in the MSHA report.

11 One of them was a 305, and the sample that
12 was beside it was in the 70s. I know what the -- or 65,
13 rather. I know what those values were, because we shared
14 all of our numbers, as did MSHA, we shared them back and
15 forth.

16 But there is no explanation of the fact that
17 there is this one sample that is, I think, even from a
18 statistical standpoint, could be defined as significantly
19 different. And there is no explanation why that number
20 just simply does not appear.

21 That raises questions in our minds. I don't
22 think, from the statistical standpoint, that that number
23 would necessarily have been used, it is a statistical
24 outlier.

25 But from a day to day standpoint where

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1 people like me, who are standing underground, and I'm
2 standing up to my kneecaps in water, and I have a job to
3 do in the mine, I don't understand that. And if that was
4 hanging on me, either I'm in good shape, or I'm in bad
5 shape, but there needs to be an explanation of that
6 extremely wide variation.

7 Because, as I think you are all aware, in
8 the preamble to this most recent print-out, it is 250
9 pages, there is a pretty good section in there that touts
10 how wonderful the statistical tightness, if you will, on
11 this single sample, and the fact that it is going to be
12 very good.

13 Again, not as a statistical practitioner,
14 but as a guy who lives day to day in the mine, I don't
15 believe it. I would like to see somebody show me why we
16 can have that. And if you write me a ticket for one that
17 is wrong, I will certainly be unhappy.

18 Now, moving on, well just one other thing
19 that I want to say. That is at the 400/308 level. I
20 can't imagine what would happen at the 160 level because,
21 there, a few points difference is going to make a much
22 wider percentage variation.

23 And if we are being written tickets for two
24 or three points over a limit, when we have no idea if
25 that number really should be 10, or 15, or 20 points

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1 either lower, or in all fairness either higher, it begs
2 a lot of questions from us.

3 Now, in reading this most recent document,
4 there is information there about health effects. And I
5 read that, as carefully as I could. I'm not a doctor,
6 I'm simply a geologist. And I see that there is a number
7 of pages that list a number of articles.

8 And to quote, the MSHA text says: We have
9 identified additional scientific literature pertaining to
10 health effects of fine particles in general and DPM in
11 particular, published subsequent to January the 19th,
12 2001, final rule.

13 And then there are pages of recitations.
14 Well, I don't know where that description came from. I
15 suppose that I could read the articles, but I wouldn't
16 understand them. I think there is an obligation, on the
17 part of the agency, to try to explain it to people like
18 me who are regulated by MSHA, but are not experts in a
19 number of areas.

20 And, presumably, this was done by a
21 qualified reviewer, I don't know, not casting aspersions,
22 just simply don't know. I don't know if these papers
23 were peer reviewed. But what I can tell you, from a
24 simple layman's study, I see phrases in the summations,
25 and this is right out of the MSHA text, such as

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1 significantly correlated with CO and NO2 levels, but not
2 with suspended particles, yielded mixed results,
3 exhibited slightly increased asthmatic impacts, suggests
4 that air pollutants may increase.

5 What does that mean? Either it is, or
6 either it ain't, as we use in the mining business. I
7 just don't understand that kind of terminology as a basis
8 for asking people to spend significant numbers of
9 dollars.

10 So, and in all fairness I must tell you that
11 there were some papers whose descriptions appeared to
12 conclusively link DPM to health problems. But, again,
13 I'm not in a position to evaluate that.

14 However, I will tell you that Dr. Jonathan
15 Borak, working for MARG, I admit that that is the case,
16 has asked a number of detailed questions about the risks
17 of -- let me rephrase this, about the nature and the
18 information of the risks, and how those risks were
19 determined.

20 I, personally, have not seen a sound,
21 thorough rebuttal of Dr. Borak's comments by MSHA. I
22 would like to see that. I think that the mining industry
23 deserves such a rebuttal. If Dr. Borak's comments are
24 either unfounded, or there are other data that would lead
25 him to a different conclusion, that is fine. But I would

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1 certainly like to see that.

2 So, in summary, Carmeuse asks that MSHA
3 consider these comments during its deliberation of the
4 Rule. We feel that the current negotiated standard of
5 308 will be difficult and costly to achieve, but we are
6 committed to doing so, and we are spending substantial
7 dollars to achieve that.

8 As to the matter of the final DPM level, we
9 don't really see a justification for that number. And so
10 we ask that you very carefully consider that, and provide
11 us with a meaningful justification, written in a language
12 that a simple geologist could understand.

13 We also ask that you reconsider the single
14 sample criteria because, based on our real world
15 experience in sampling side by side with MSHA's technical
16 people, we see some huge variation. We see data that are
17 missing from the table, one data point that is missing
18 from the table, without explanation, certainly begs
19 questions.

20 And we are not, necessarily, convinced that
21 this method of determining whether we are in compliance
22 or not, is either accurate, or feasible to do. And I
23 hope I didn't bore you, but that concludes my remarks.
24 And I will provide all of this data to you.

25 And I'm told, I think I already said that,

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1 that you have the MSHA papers, but I will give them to
2 you again, anyway. Thank you very much. Questions?

3 MS. SMITH: Any questions by panel members
4 for Mr. Love?

5 MS. CASH: Yes, I have one question for you.
6 You have the data on the costs for the maintenance, using
7 the B-35 blend. Will you also be supplying the
8 maintenance costs from the previous year, on your regular
9 fuel diesel, so that we can have that for comparison,
10 also?

11 MR. LOVE: We certainly can.

12 MS. CASH: That would be very good, thank
13 you.

14 MR. LOVE: You bet. If I forget, let me
15 know. Having said that, there is just one caveat that I
16 have to you. And that is that the new equipment was
17 purchased during 2002, so the comparison will not
18 necessarily be apples to apples, because we have older
19 equipment, and we bought the new equipment.

20 So I will give you what I can, as best I
21 can.

22 MS. CASH: We will appreciate anything that
23 you can share.

24 MR. LOVE: Sure.

25 MS. CASH: Thank you.

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1 MR. SASEEN: This may be a follow-up also.
2 On the 1.5 hours of downtime you have for two days, you
3 are saying on that new loader, the 988 Cat loader, are
4 you specifically saying, is that just fuel filter, caused
5 by fuel filter downtime, or is that fuel filter downtime
6 plus other maintenance downtimes?

7 MR. LOVE: No. It is, specifically, fuel
8 filter downtime. And let me describe the situation to
9 you. The equipment is working out at the face, the
10 loader will loose power. And you've often heard people
11 say, I lose power.

12 What will happen is it really will lose
13 power, but it will have enough to go back to the shop.
14 Our maintenance personnel have a certain diagnostic
15 program that they have to go through, there are certain
16 things that they look at.

17 And, so far, in this three month period
18 every case has been, you replace the fuel filter, and the
19 equipment runs fine, it goes back to work. So, yes, it
20 is a fuel filter.

21 And I will tell you, also, that our PM
22 program requires us to change fuel filters, and do other
23 things, every 335, 350 hours, running hours, on a piece
24 of equipment.

25 This translates to, instead of one filter

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1 per that PM interval, it is ten filters per that PM
2 interval. And, so far, it has always been the filter.

3 MR. SASEEN: And this is on, is the machine
4 new, or is it just the engine new?

5 MR. LOVE: I want to say it is about a year
6 old. It is a Caterpillar 988-G with a tier 2 engine.
7 And we also have the trucks, they are brand new, roughly
8 a year old, maybe a little less.

9 MR. SASEEN: And one more thing. You
10 mentioned about Deutz and their statement, or some sort
11 of statement about the warranty above 20 percent by the
12 diesel?

13 MR. LOVE: Correct.

14 MR. SASEEN: Could you supply that to the
15 record?

16 MR. LOVE: Yes, that will be -- I actually
17 have it attached here. It came in an email to us but,
18 yes, that document will be provided to you folks.

19 MR. SASEEN: Have you gotten that from
20 Caterpillar, or any indication from Caterpillar?

21 MR. LOVE: Interestingly enough Caterpillar
22 says that if we use the biodiesels they continue to
23 warrant their engines. The fuel filter is separate from
24 the engine, I don't know, but --

25 MR. SASEEN: Consumable. Thank you.

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1 MS. CASH: Mr. Love, one other thing. By
2 any chance do you know if Caterpillar, or any of the
3 other manufacturers have developed, or are using filters,
4 that are specifically designed for use for biodiesel?

5 And I'm asking that because I know that in
6 some cases they have recommended you, if you are using a
7 higher blend, that you might need to change gaskets
8 because of the possibility of deterioration.

9 And I wonder if that has also been
10 considered in the fuel filters? You, having talked with
11 the manufacturers probably a little bit more than I have
12 this week.

13 MR. LOVE: Okay. I can tell you that I have
14 no information, whatsoever, about whether they have
15 recommended the filter. However, in our Maysville mine,
16 all of our PM work is done by Caterpillar, through
17 contract.

18 And there have been discussions, as you've
19 pointed out, about the various gaskets, and so forth.
20 But there has been no discussion, that I'm aware of,
21 regarding filters.

22 MS. CASH: Okay, thank you.

23 MR. LOVE: Cat does all of the maintenance,
24 so I guess they will figure out how to do it.

25 MS. CASH: Okay, thank you.

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1 MS. SMITH: And Mr. Haney, from MSHA's
2 technical support center, I think, would like to ask you
3 a question.

4 MR. LOVE: Oh, sure.

5 MR. HANEY: George, on the fuel filters, you
6 have the same problem when you use the virgin soy as you
7 have when you use the recycled vegetable oil?

8 MR. LOVE: No. Now, let me flesh that out
9 a little bit. We tested the virgin soy fuel during the
10 test period for approximately two weeks, as we did with
11 the others.

12 When we did our test period, we would bring
13 the fuel in and start introducing it to the engines, so
14 that we got the engines completely, or the fuel tanks
15 completely cleaned out, and then did the test work.

16 My recollection is that we had no problems.
17 Well, I know that we had no problems. That followed on
18 the heels, however, of using the B-50 at both of the
19 mines. Now, the yellow grease biodiesel is a solvent.
20 And we actually tore some of our engines down for other
21 reasons, after we used that material.

22 And the heads were clean, and it did a fine
23 job of cleaning out all the old crud that was in there.
24 So we don't know, we don't know if we continued to use
25 the soy whether there would be a problem.

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But during that testing period if there were problems they were insignificant, compared to what we are experiencing now. I just wanted to make sure I framed that out to give you the full --

3

4

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7

MR. HANEY: The distributor fuel, you told me, cost a penny, or a percent per gallon. So for B-35 that would be 35 cents a gallon over number 2 fuel. Is that --

8

9

10

MR. LOVE: Well, let's see, in the blend our B-35 is 1.16, and we are paying 89 cents, so that would be 27 cents. It would be a 27 cent premium.

11

12

MS. SMITH: George, any other questions?

13

14

MR. SASEEN: No, I'm fine.

15

16

MS. SMITH: Thank you, Mr. Love, and we would appreciate receiving whatever additional information or data you would like to submit to us, by the close of the comment period on October the 14th.

17

18

MR. LOVE: Okay, it will be coming to you. Thank you very much for the opportunity.

19

20

MS. SMITH: Do we have other speakers who wish, at this point in time, to give comments?

21

(No response.)

22

23

MS. SMITH: Since we have no one else, at this point in time, we are going to go off the record for

24

25

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1 about a half an hour, we will come back on the record, at
2 that point in time, and check to see if we have
3 additional speakers who have signed up to speak. And, if
4 not, then we will close the record at that time.

5 (Whereupon, the above-entitled matter went
6 off the record at 10:08 a.m. and went back
7 on the record at 10:40 a.m.)

8 MS. SMITH: We are going to be going back on
9 the record now. Mr. George Love has asked if he could
10 add additional comments. Mr. Love, please.

11 MR. LOVE: Thank you very much. George
12 Love, with Carmeuse.

13 In my earlier comments, as I was speaking,
14 I got near the end of my summary, and I made the comment
15 about justifying the 160. I need to repeal that because
16 we, in the industry, are really asking that we do away
17 with the 160 limit. We have negotiated the 308, if you
18 will, and certainly on Carmeuse's behalf we will live
19 with that. But we would like to do away with the lower
20 limit. Thank you.

21 MS. SMITH: Thank you very much. Are there
22 any other speakers, at this time, who would like to
23 present information or testimony?

24 (No response.)

25 MS. SMITH: All right, thank you. With that

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1 we will close this hearing. Thank you very much.

2 (Whereupon, at 10:41 a.m., the above-

3 entitled matter was concluded.)

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