Newmont Mining Corporation
Eastern Nevada Operations
26 Miles North of Carlin
Carlin, NV 89822

April 5, 2004

Mr. Marvin Nichols, Director
Office of Standards, Variances and Regulations MSHA
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209

Dear Mr. Nichols:

Newmont Mining Company appreciates this opportunity to submit comments in response to the re-opening of the rulemaking record on MSHA's diesel particulate matter (DPM) rules, announced in the Federal Register on February 20, 2004 (69 FR, page 7881).

Newmont operates three underground mines in Nevada which employ approximately 520 miners and utilize about 230 units of diesel equipment. We are committed to the protection of the health and safety of our workforce, our most important resource. We have taken action to protect our employees against the possible health effects of diesel exhaust, even though we believe that the science does not demonstrate the health effects suggested by MSHA's diesel particulate matter rulemaking. We have increased and improved our equipment maintenance, purchased new, cleaner burning engines, experimented with diesel exhaust filters, tried alternate fuels, trained our employees, instituted personal protection equipment programs, and are in the process of installing environmental cabs on our equipment.

As members of the National Mining Association, the Nevada Mining Association, the MARG Diesel Coalition, and the NIOSH Metal/Non Metal Research Partnership, we have participated in and supported research examining both the potential health effects of diesel exhaust and potential technologies for the reduction of diesel exhaust.

Based on our commitment, experience and perspective, we urge MSHA to conclude this proceeding as quickly as possible. We again urge MSHA to expedite removal of the January, 2006, permissible exposure limit (PEL) of 160 ug/m3 total carbon (TC) and adopt the 308 ug/m3 elemental carbon (EC) "settlement" standard, as the permanent standard.

Stillwater Isolated Zone Study

The first document (Phase 1 or Isozone Study) is the results of in-mine testing of selected diesel particulate matter (DPM) control technologies at an underground mine. The tests were conducted at the Stillwater Mine in Nye, Montana.

The objective of the study was to determine the "viability of DPF [Diesel Particulate Filter] systems and establish confidence in their performance." The study accomplished this limited objective and the DPF systems tested did, for the most part, perform as designed. The design of the study, however, replicated a laboratory type environment that did not represent actual mine conditions. There were also cases documented in the study that did not perform as expected and did not achieve the expected reductions in a controlled environment, or produced levels of gaseous emissions that could create potential problems.

We attach for the record the NIOSH Partnership Phase 2, Case Study, Report, as comments on the Isozone Study since it was designed to "assess the effectiveness of diesel particulate filters in controlling the exposure of underground miners in actual production scenarios," and it is relevant and critical to this rulemaking.

The Phase 2 Case Study showed that in real mining conditions, many systems failed and had performances well below that obtained during the isolated zone testing, as well as those advertised by manufacturers. The following quote taken from the Phase 2 study further supports this position:

> "… the efficiencies for the DPF systems achieved in the mining studies did not always agree with the efficiencies reported in the laboratory studies. These studies also demonstrated that considerable effort is needed to select and optimize DPF systems for individual underground mining applications."

In addition, the Phase 2 Study clarifies the Isozone report by confirming that DPF systems could be retrofitted on only a small fraction of the Stillwater fleet of diesel powered equipment. The vast majority of Stillwater's fleet cannot be retrofitted because feasible controls are not available.

The need for immediate action to address these concerns now is demonstrated by the DPM sampling results posted on MSHA's web site indicating that as of September 2003, of the 167 underground metal and non metal mines in full production, 155 had been tested for DPM levels and 79 (51%) were out of compliance with the 400 TC standard.

Newmont believes that the results of the production zone study conducted at the Nye mine represents the "latest scientific data" and demonstrates again that the final standard of 160 micrograms should be deleted from the rule in this rulemaking. The Isozone and Case Study also demonstrate again the need to adopt the other pending changes,

including: (1) a renewable one year extension of compliance process, for feasibility reasons, applicable to the 308 EC standard; and (2) application of existing policy and regulations to the DPM limits that permit the use of PPE and Administrative Controls.

Dr. Chase Health Effects Review

MSHA chose to promulgate the DPM rule without waiting for the results of a multi-million dollar study being conducted by the National Cancer Institute and NIOSH. Preliminary results are available and have been reviewed by Dr. Gerald Chase. His review "Characterization of Lung Cancer in Cohort Studies and a NIOSH Study on Health Effects of Diesel Exhaust in Miners," also supports deletion the 160 microgram standard.

Since promulgation of the final DPM rule for underground metal/nonmetal mines, the study has advanced and last Fall the first study results were made publicly available. In his analysis of the data made available by the study sponsors Dr. Gerald Chase found that:

> the "number and pattern of lung cancer deaths reported … are in agreement with lung cancer deaths from the general population … and less than what NIOSH appears to have predicted."

The ramifications of Dr. Chase's conclusion cannot, and should not, be ignored.

Ironically, the two premises that MSHA used for promulgating the rule to begin with are: (1) the transitory, reversible health effects of exposure to dpm; and, (2) the long-term impacts that may result in an excess risk of lung cancer for exposed workers. Dr. Chase's analysis of the data provided by the study sponsors, confirms our earlier concerns questioning the scientific foundation upon which MSHA based the DPM rule.

The NIOSH Respirator Report

The final item added to the record is a report prepared by Bureau of Labor Statistics and Centers for Disease Control and Prevention/NIOSH providing the results of a voluntary survey of respirator use and practices in private industry during the period August 2001 – January 2002. The report provides general information on respiratory protection use and practices across all industry, including mining. While the data may be informative, its voluntary basis, limited validation, and lack of detail renders it of little use in any effort to change the existing respirator standards. However, the report does provide broad support for MSHA's proposal to permit the use of personal protective equipment for DPM exposures, in a manner consistent with existing regulations and policy.

In conclusion, we again urge expedited action by MSHA in finalizing this rulemaking consistent with the Interim Settlement Agreement, including: (1) the deletion of the January, 2006 160 TC DPM standard: (2) the permanent adoption of the 308 EC settlement standard; (3) adoption of the compliance extension provisions for the 308 EC standard to permit yearly applications and approvals based on feasibility issues; and (4) adoption of personal protective equipment and administrative control options, to supplement engineering controls, pursuant to existing standards and policy.

Thank you for this opportunity to provide these comments.

Sincerely,

Wes Leavitt, CIH
Underground Health & Safety Manager