502.589.2273 OFFICE
502.584.0119 FAX

The Starks Building, Suite 250
455 South 4th Street
Louisville, KY 40202

U.S. DEPARTMENT OF LABOR

MINE SAFETY AND HEALTH ADMINISTRATION

PUBLIC HEARING ON

EMERGENCY TEMPORARY STANDARD

SEALING OF ABANDONED AREAS - FINAL RULE

TRANSCRIPT OF PROCEEDINGS

Crowne Plaza Hotel

1375 South Broadway

Lexington, Kentucky 40504

July 12, 2007

PROCEEDINGS

(Hearing was called to order at 9:14 a.m.)

MS. SILVEY: Good morning. I'd like to get started, for those of you in the back, please. Again, good morning. My name is Patricia W. Silvey and I am the Director of Department of Labor Mine Safety and Health Administration, Office of Standards Regulations and Variances.

I will be the moderator of this public hearing on MSHA's Emergency Temporary Standard, or ETS, for sealing abandoned areas in underground coal mines.

On behalf of Richard E. Stickler, the Assistant Secretary of Labor for Mine Safety and Health, I want to welcome all of you here today.

And I want to underscore, at this point, our appreciation for your participation in this rulemaking, and for your attendance and for your attention and interest in all of MSHA's activities.

At this time I would like to introduce the members of the panel. The members of the panel are to my left, John Urosek, and John is with MSHA's Pittsburgh Health and Safety Technology Center. To

his left, Deborah Green, and Deborah Green is our lawyer with the Office of the Solicitor.

And to her left, Ron Ford. Ron Ford is the economist on this project and he is from my office.

To my right, Erik Sherer. Erik is with the Coal Mine Safety and Health, and to his right William Baughman, and he is the regulatory specialist from my office.

And I would also like to introduce at this time a few people in the audience who were also instrumental in working on this project and helping us develop this ETS and such, in an expeditious fashion.

We have on the front row here, Javier Romanach is with the Office of the Solicitor.

Clete Stephan with MSHA's Office of Tech Support, Rosalind Fontane with the Office of Tech Support, and Pamela Keene in the back by the table who is with my office. And the people that I just named were part of the committee that was just instrumental in developing the ETS.

Before we start the hearing, I would like to ask if everyone in this room would join me in a moment of silence in memory of the miners who died in

the Sago, the Alma and the Darby accident in 2006, and also all of the miners who died in the year 2006 and who have lost their lives so far in mining accidents in this country.

And I would also ask if we would do this moment of silence in memory of the miners who have lost their lives worldwide. So if you would join me in a moment of silence, I would appreciate it. (Moment of silence.) Thank you. As some of you know, this is the second of four hearings on MSHA's emergency temporary standard. The first hearing was held in Morgantown on Tuesday. The next hearing will be held in Denver, Colorado on July 17th, and the fourth will be in Birmingham, Alabama on July 19th.

In the back of the room we have copies of the ETS and the Federal Register notice extending the comment period to August 17th. The purpose of these hearings, as many of you who participated in MSHA's rule makings know, is to allow the Agency to receive information from the public that will help us evaluate the requirements in the ETS and produce the final rule that protects miners from hazards associated with sealed abandoned areas.

We will also use the data and information gained from these hearings to help us craft a rule

that responds to the needs and concerns of the mining public, so that the provisions of the ETS can be implemented in the most safe, effective and appropriate manner.

We published the ETS in response to the grave dangers that miners face when underground seals separating abandoned areas from active workings fail.

Seal failures at the Sago Mine and the Darby No. 1 Mine in 2006 raised awareness of the problems with the construction and design of alternative seals.

MSHA investigated these and other failures of alternative seals, and conducted in mine evaluations of these seals. MSHA also reviewed the history of seals in the United States and other countries. On February 8th, 2007, NIOSH issued a draft report entitled "Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines.

The report makes recommendations for seal design criteria which would reduce the risk of seal failure due to explosions in abandoned areas of underground coal mines. Based on MSHA's accident investigation reports, the draft NIOSH report, MSHA's in mine seal evaluations, and review of technical literature, MSHA has determined that new standards

are necessary to immediately protect miners from hazards associated with sealed areas.

The emergency temporary standard addresses seal strength, design and installation, construction and repair, sampling and monitoring and training. This ETS was issued in accordance with Section 101 (b) of the Federal Mine Safety and Health Act of 1977, the Mine Act, and Section 10 of the Mine Improvement and New Emergency Response of the Mine Act of 2006.

Under Section 101 (B) of the Mine Act, the ETS is effective until superseded by a mandatory standard. A mandatory standard under the Mine Act must be published no later than nine months after publication of the ETS.

And also in accordance with the Mine Act, the ETS serves as the proposed rule and commences this rulemaking proceeding. As stated earlier, we would use the information provided by you to help us decide how best to craft the final rule.

The preamble to the rule discusses the provisions of the ETS and indicates a number of specific requests for comment and information. As you address the provisions of the ETS, and any specific requests for comment, even in your comments

to us here today, or in information sent to us in Arlington, please be as specific with respect -- as possible with respect to the impact on miner health and safety, mining conditions, and feasibility of implementation.

At this point, I want to reiterate the specific requests for comment and information that we included in the preamble to the ETS. Number one, in the ETS, MSHA considered a performance based approach to the strength requirements for seals.

However, as you know, MSHA includes specific pounds per square inch numbers when referring to the strength of seals in the ETS as the Agency believes that this approach represents a more appropriate approach.

MSHA is interested in receiving comments on the Agency's approach to the strength requirement for seals. MSHA is also interested in receiving comments on the appropriateness of a three tiered approach to seal strength in the ETS, and the strategy in the ETS for addressing seal strength greater than 120 psi.

Under the ETS requirement, new seals must be constructed and designed to maintain -- to withstand a 50 psi overpressure when the atmosphere

in the sealed area is monitored and maintained inert. A 120 psi overpressure if the atmosphere is not monitored, and is not maintained inert, and an overpressure greater than 120 psi if the atmosphere is not monitored and is not maintained inert and certain other specified conditions are met.

MSHA requests comments on the appropriateness of the Agency's strategy for addressing seal strength greater than 120 psi. If commenters believe a different regulatory approach should be developed in the final rule, MSHA would like commenters to provide the details for such a strategy, the rationale for such a strategy, and the feasibility of using such a strategy.

MSHA seeks the views of the mining community regarding whether there are other effective alternatives to the requirements in the ETS with respect to providing the most appropriate and protective action for miners exposed to hazards of existing sealed areas.

Most alternative seals constructed before July, 2006 were constructed to withstand a static horizontal pressure of 20 psi. MSHA considered requiring mine operators to remove the existing seals and replace them with seals that withstand at least

50 psi.

MSHA also considered whether to require mine operators to build new seals outby existing seals, or structurally reinforce them. At this time, MSHA believes that replacing existing seals is impractical, and instances may create additional safety hazards.

MSHA seeks comments on the feasibility of including in the final rule a requirement that existing seals be removed and replaced with higher strength seals. MSHA also considered whether to require mine operators to reinforce existing seals.

The Agency is concerned with the feasibility of this option and whether such a requirement could also expose miners to greater hazards. MSHA however will continue to explore technological advances addressing feasible and safe methods to reinforce existing seals in underground coal mines.

Commenters are encouraged to submit information and supporting data regarding new technologies to reinforce seal strength. MSHA believes that the sampling strategy in the ETS will yield results that reflect a reasonable representation of the atmosphere in a sealed area.

MSHA requests comments addressing the sampling approach in the ETS. The Agency is particularly interested in comments concerning sampling, the sampling frequency, including sampling only when a seal is outgassing.

MSHA requests comments on whether another approach is more appropriate in the final rule, such as when the seal is ingassing. MSHA also requests comments, information, and experiences of the mining community concerning sampling sealed areas.

In the ETS, mine operators must develop a sampling protocol to be included in the ventilation plan and submit it to the district manager for approval. The ETS requires the mine operator to implement the action plan specified in the sampling protocol, or to withdraw all persons from the affected area when specified concentrations are encountered.

Action plans must provide protection to miners equivalent to withdraw and address the hazards presented, and actions taken when gas samples reach levels specified in the ETS.

Historically, when methane levels reach 4.5 percent in active areas of mines, miners were withdrawn from the areas that were dangerous due to

high concentrations of methane.

MSHA requests comments on this approach and whether it provides adequate protection for miners.

Commenters are encouraged to submit specific language, with supporting data for MSHA to consider as the Agency develops the final rule.

MSHA is soliciting comments concerning issues related to establish in a sampling baseline. The ETS requires the mine operators specify procedures in the protocol to establish a baseline analysis of oxygen and methane concentrations at each sampling point over a 14 day sampling period.

The baseline must be established after the atmosphere in the sealed area is inert or the trend reaches equilibrium. MSHA is particularly interested in comments concerning the establishment of this baseline.

The Agency also requests comments, information and experiences with sampling of sealed areas, including data, analytical information, establishment of equilibrium, and trends.

MSHA is requesting comments on the appropriateness of the ETS requirement regarding the use of open flames or arcs associated with cutting

and soldering activities within 150 feet of a seal and the feasibility of this requirement.

The Agency suggests that commenters provide specific rationale in support of that position, and include alternatives, if applicable. The ETS requires that each newly constructed seal have at least two sampling pipes.

One sampling pipe must extend into the sealed area approximately 15 feet. The second pipe must extend into the middle of the intersection with the first connecting crosscut.

The ETS affords flexibility to mine operators for the placement of the sampling end to allow a more accurate sampling strategy to better protect miners.

Therefore, the ETS requires that the location of sampling points be specified in the protocol provided under the ETS.

And MSHA requests comments on this provision, and the number and the location of sampling pipes for the final rule. The ETS requires that corrosion resistant water drainage system be installed in the seal at the lowest elevation within a set of seals, and that seals not impound water.

MSHA requests comments on this

requirement for water drainage systems, including effective alternatives for a final rule. The Agency also requests comments on the appropriateness of the ventilation plan content and whether additional information should be included.

As you know, if you are familiar with the ETS, the operator must include a number of information items in the ventilation plan. When submitting information, please include your information that supports your position, and please include data related to projected economic and technological feasibility.

The ETS requires removal of insulated cables from the area to be sealed, and removal of metallic objects through or across seals. MSHA believes that removal of insulated cables and metallic objects through or across seals, if feasible, and will not involve significant technical or practical problems.

The Agency solicits comments on this provision. MSHA is also requesting comment on the scope and possible alternatives concerning site preparation, examinations, training, and notifications related to the construction and repair of seals.

The Agency has prepared a regulatory economic analysis for the ETS. The regulatory economic analysis contains supporting cost data. MSHA requests comments on all of the estimates of costs and benefits presented in the ETS and the regulatory economic analysis.

To date, MSHA has received one comment, and I believe that's still accurate, on the ETS. You may view that comment and any other comments that the Agency received on the Agency's website at www.msha.gov, under the section entitled rules and regulations.

MSHA has answered a number of compliance questions from the mining public covering a range of issues on the ETS. These questions and answers are posted on the Agency's seal single source page. The format of the public hearing, as many of you know who have participated in these hearings in the past know will be as follows: formal rules of evidence will not apply, and this hearing will be conducted in an informal manner.

Those of you who have notified MSHA in advance of your intent to speak, or have signed up today to speak, will make your presentations first.

After all scheduled speakers have

finished, others can request to speak.

If you wish to present written statements or information today, please clearly identify your material. You may also submit comments following this public hearing. To be considered, they must be submitted to MSHA by August 17th, 2007, the close of the comment period.

Comments may be submitted by any method identified in the ETS. MSHA will post transcripts from the public hearings on the Agency's website. Each transcript should be posted there approximately one week after the completion of the hearing.

We will now begin with persons who have requested to speak. And please begin by clearly stating your name and organization for the record to make certain we have an accurate record.

And also, I would like to ask you to spell your name, please, for the reporter, if you would. Our first speaker is -- at this point we will now start with our first speaker, and our first speaker is Melissa Lee with the Appalachian Citizens Law Center.

Miss Lee.

MS. LEE: Thank you all for allowing me to speak today. I'm Melissa Lee, m-e-l-i-s-s-a, l-e-e. I am

here with my attorney, Wes Addington, with the Appalachian Center, and Tony Opegard. This was my husband.

And I do stress, was my husband. Again, I am Melissa Lee, one of five Kentucky Darby widows. Ugly word, don't you think, widow. I'm a widow due to the fact that the seals at Kentucky Darby, which were built May of '06, were faulty and they were constructed improperly.

But that is only half of the problem. The major problem was the same seals were never inspected or confirmed to have been built properly. They weren't up to standard. The materials used were not up to code. The sealant was slapped on the seals.

It wasn't even applied properly. The gentlemen say that they put on a rubber glove and smeared the compound on to the seals. Smeared. With that, clearly, MSHA did not approve the sealant. It was proven that it was not one of the sealants that was to be used.

Jimmy was a man who loved his job. He, I've said before, loved the smell of coal. Sometimes I would joke that I'm going to have to dab coal dust behind my ears to keep him home on Saturdays instead

of going into work.

And he would laugh and say that's the only other woman that I have is the mine. Don't feel inferior. Just be a little bit jealous of her. The day that the state released the report to us, and then the MSHA report, it was like I was a bird sitting on my husband's shoulders.

I owned my own business in 2006. A new business. I had been open almost a year. Two months and it would have been a year that I had opened my own business with Jimmy backing me 100 percent.

I kissed him goodbye on May 19th, 2006 with the hopes that the next morning at 4:00 a.m. we were leaving to go away, away for a weekend that we had not had alone in six years. The report read just like I was sitting on his shoulder hearing everything.

He was told by Amon Cotton Brock (phonetic), the foreman, that there was a job that needed to be done. In the MSHA and state report on Mr. Brock's notepad that he carried in his pocket, it said remove strap.

Jimmy was never a miner to leave his foreman hanging. Jimmy, like I said, loved his job. Little did my husband know that the job he was going

to do would cost him his life, and his fellow co-workers, which he considered not just his co-workers but his brothers, Roy Middleton, Paris Thomas, Bill Petra.

These gentlemen had worked together at Manila pan mining.

They went to Kentucky Darby at different times, but they were always, always together. Isn't it the oddest thought that they would die together, too.

During the explosion, my husband's head was partially -

- he was partially decapitated.

The top part of his head was removed in the explosion and he had a cylinder impale his chest. Any coal miner sitting in this room, how would you feel if this was the day you kissed your wife and children goodbye.

You go to do a job, a job that is not something that is just out of the ordinary. This was a common job. Using a torch, to cut a metal strap, was not uncommon. That was part of a miner's job. I doubt there's a miner in this room who hasn't at one time or another seen or used a torch to cut a piece of metal underground.

My husband's life was taken from us. My husband became a father for the first time at the age of 30. At the age of 30, he had become a father to Seth Grayson. Eighteen months later he became a father to Ross Braden. Ross was 21 months old when his father died.

He just celebrated his third birthday on the sixth of July. When he was 21 months old he wasn't speaking. Jimmy never got to hear his son say Daddy or Dada. He's three years old now. Seth looks just like his father.

The older boys, Jimmy's stepsons that he never referred to as stepsons, are 15 and 13. I'm a widow, and I hate the word. So be it, this is what happened at Kentucky Darby. It can't be swept under the carpet. I refuse for it to be swept under the carpet.

The problem with the seals was the lack of inspection, and please, Ms. Silvey, if I'm correct, if you have a brand new vehicle, and you're driving it, and say for instance it's two years down the road, and you get a card in the mail from GMAC saying we're having a recall on your car, bring it in, what do you do.

You take it in and have that faulty piece

of equipment removed and a new one put in. Why should we overlook the seals that have already been built.

MS. SILVEY: Um-hum.

MS. LEE: Why should we overlook those and go on. Okay, we're going to start inspecting the ones that are installed now. That's wonderful. I have a brother and two uncles and some cousins that are miners. Wonderful. That's great. How about the seals that were built in 2006 that have not had a problem.

Should they not be removed and reconstructed with MSHA approving their rebuilding. This only is common-sense. This is not something that is out of the ordinary done. We do it for our vehicles. If you build a home, and you use a piece of material that is not up to code, and they have a recall on say, for instance, a piece of sheet rock because of the material that it's made of, they will contact all homeowners and say, you know, you have purchased this in the past.

You need to redo your porch, your bedroom wall, for the safety of your children, for the safety of your family. Why not go back in to every seal that has been built and inspect them, and if they're

not to code, rebuild those, for the safety of all these men.

I'm sure every one of you who are married would like to go home to your wife every night, wouldn't you? Do you all like to kiss your children?

My husband can no longer kiss his children. Seth will be five in December. Not a day goes by that he doesn't -- this is his picture.

I had to take this one from his bedroom. He misses his father. He tells people, when he goes to the playground -- when I take him out to the park in the afternoon, he tells kids in the sandbox, my daddy boomed up to heaven. That's what my four year old's comments are.

The first thing he wants everyone to know is his father boomed up to heaven. That he went to work and God come and took him in a boom. No one told my son about the explosion. That's his explanation because he says God come and told him that.

The boom was the cause of faulty sealant, bad craftsmanship, and the fact being that no one inspected those seals when they were built. No one is being held at fault for those seals, but we are the ones left grieving.

We're the ones that are left behind without husbands, with kids that don't have daddies. These three little girls behind me, and my four sons, miss their daddy. If you look right here at Natalie, this is looking at Roy Middleton.

This child -- my husband would say there's little Roy and Natalie would go errrrrr. She would growl. This is what her -- this is -- if you look at her, this is what her daddy looks like. Mary has to look at this child every day and remember Roy.

Danielle, her father was proud of her. He bragged about her. He was all the time -- the men would get together and discuss their children and their accomplishments. My 15 year old runs cross country.

Jimmy went without work tires on his work car to make sure Hayden had his shoes to run here in Lexington during state.

My son doesn't have that anymore. He never was a stepfather. He was a Daddy, and I no longer have my husband. I never have to worry about ever dabbing coal dust on the back of my ears anymore to entice him because he's not with me anymore.

He was a wonderful, wonderful man, and I miss him dearly. But I ask you all to take that into

consideration. These seals could have -- if they had been inspected like they should have been, maybe they would have found the fault then and my husband, Roy Middleton, Paris Thomas, Bill Petra, Cotton Brock, they never would have died.

MS. SILVEY: Thank you, Ms. Lee.

MS. LEE: Thank you.

MS. SILVEY: I would just like to say before you leave, Ms. Lee, on behalf of my panel here, and I know I express the feelings for them that, again, we give our sympathies and our condolences to you and your family and your children for your husband.

And I know there's no way we can say exactly that we know what you're going through, but I want you to know a little bit that we do.

MS. LEE: Again, Ms. Silvey, I would just like to -- this is not for Jimmy any longer. This is for my brother Bobby, my Uncle John, the ones that are left mining. Nothing brings Jimmy back, nothing. But you all can save other miners.

MS. SILVEY: Thank you. Next, we have Mary Middleton, Appalachian Citizens Law Center.

MS. MIDDLETON: My name is Mary Middleton, m-a-r-y, m-i-d-d-l-e-t-o-n. I am the 32 year old widow of Roy Middleton that was killed by

carbon monoxide poisoning at Kentucky Darby May 20th of 2006. We were married for 13 years and we had two daughters.

My oldest daughter, Danielle Middleton, age 18, Natalie -- I mean 14, and my youngest, age eight.

My husband, he worked in the mines for practically half of his life, which was 18 years because he was just 35 years of age when he was killed.

And he had been employed with Kentucky Darby for three years. He had worked for Ralph Napier at previous mines, but for three years at Kentucky Darby.

He was a repairman/electrician is what he held as his job duties, the last of his job, it was a repairman and electrician.

And I would just like to talk to you all today about these seals. I feel like if the seals had been built stronger at Kentucky Darby, that my husband would probably still be alive today because the carbon monoxide wouldn't have got through them and that's what killed him.

My husband, he was a devoted Christian and a Deacon at the Church of God. He was just the

greatest guy ever and the best father. He really didn't like coal mining, but it was just a way of living in Harlan because we had children, and that's about the only source of work that you could work at to make a decent living.

And I feel like if the seals had been built properly at Kentucky Darby, even at a 20 psi standard, they may have withstood the explosion, or at least lessened the impact of the explosion, and perhaps the overcast -- the overcast had fallen in the roadway and that's why my husband could not escape, him and two other miners.

And I agree that the company should have to make sure that all equipment is removed from the area to be sealed, just sealed off, not to leave anything, any old equipment, anything back behind there. And I also think it's important to remove any metal straps that extend from the working part of the mine into the sealed areas because that was a problem at Kentucky Darby.

And I'm asking you today to please do not weaken these rules so that the coal -- I have these two pictures here of the -- money can't buy this. I had this family, but money -- by spending money, you can prevent another wife or child from having to go

visit -- we go visit our husband and father now.

I don't want another family to have to be experiencing what me and my daughters are going through right now. Thank you.

MS. SILVEY: Thank you, Ms. Middleton. And again, on behalf of our panel here, I would like to express our sympathies to you and your daughters and, you know, we are so very sorry. And that's -- with you, that's one of the reasons we issued this ETS, but we do express our sympathy. Thank you. Next, we have Ms. Priscilla Petra.

MS. PETRA: Petra.

MS. SILVEY: Right, Petra.

MS. PETRA: My name is Priscilla Petra, p-r-i-s-c-i-l-l-a, p-e-t-r-a, and I am the widow of George W. Petra. Most people know him as Bill. His family called him Billy. We've been married for 16 years. We have two children, William Daniel, Little Bill, and Ashley who's 12. She's with me.

Bill was working the mines for I guess more than 25 years, and he spent a lot of time at Kentucky Darby. He was 49 when he died and his death I truly believe was because of carbon monoxide from the seals.

As Melissa has clearly explained, they weren't built properly, and I don't want him to be just a statistic or a name on a list of dead miners. I want his death to make a difference for the miners who are still working to provide for their families.

So the reason that I'm here today is to support the rule for stronger seals. Had the seals at Kentucky Darby been built properly, my husband Bill and the other miners I believe could have made it out because the seals could have held.

Instead, the seals were so -- the seals were so poorly constructed that I believe that it wouldn't have withstood about 4 psi. And that's pretty pitiful.

I know that there's already been some opposition to the rule.

I know that there has been men who have argued that the rule is too stringent, that it will cost the coal companies too much money, that MSHA should give full control to professional engineers to build the seals, but hasn't the coal companies and these engineers already had control for years.

And look at just in the past year, 17 men have died because of improper built seals. Coal operators, since mining began in this country, have

been entrusted with the lives of thousands of men, and they've repeatedly violated safety rules and ignored MSHA's warnings and have lived above the law.

They are in a class of their own. They think that they live above the law. If I'm out there driving a car and I cause an accident, and somebody dies, I have to pay that price. I mean I'm going to be liable.

Are coal operators liable?

It seems like they can get away with murder.

And yet, they are above the law. They can't be prosecuted for criminal charges when they are at fault for the deaths of these men. How many more wrongful deaths are going to have to take place before these rules are truly, truly enforced.

I think operators have proven that they can't be on that honor system. They've got to have someone standing over them making sure that they do their job to provide a safe working place. You know, men have a choice.

They don't have to work in the mines. You know, I've heard people say, well, you know, your husband didn't have to go in that mine. Well, no he didn't, but then you look at our area in Harlan and

what else is there to provide for your family.

I think the coal industry makes millions of dollars on the backs of coal miners, and money can make the mines a safer place. It's not the problem. The problem is they don't care. They don't want to take the time to build these things correctly.

I guess if they slow down production, that means less money for them, but yet I have -- even if they slow down on production and they bring in less money, I still haven't seen a coal operator in a food stamp line or -- I've seen coal operators with million dollar homes.

I mean they're making that money. They can make these mines safer and I'm just -- they knew to make sure that they do their job right. So don't back down. MSHA has finally began to recognize that the system has failed miners.

The rule for stronger seals is very important. Every time that men goes in the mine with the seals that are not properly built, it's like playing Russian roulette. Well, maybe tonight it won't explode. Maybe tomorrow night we go in we won't come home.

Please don't allow political pressure, and pressure from the coal industry, to cause you to

water down the rule or to change it. Make operators liable for their actions. Every other citizen and worker in this country has to abide by the law.

Coal operators and the coal industry should not be exempted. My children don't have their father.

Had Ralph Napier and his foremen, had they trained those men properly, had they done what was right, he would be home today.

And when my daughter has her first prom, he would see her there in her prom dress. When Bill or Ashley get married, he would be there. Now, who's going to walk her down the aisle.

You know, he's not going to see his first grand baby, and I just really beg you to please keep the rule as it is and make sure it's enforced. Thank you.

MS. SILVEY: Thank you, Ms. Petra, and we want to express our sympathies to you and to your family also. We understand. Thank you. Next we have Scott Howard, Appalachian Citizens Law Center.

At this point we are going to -- at this point then, for the audience, we are going to view a video, and so that's the next in the presentation from the Appalachian Citizens Law Center. So if you

would just let us take a minute, please.

(Whereupon the video was viewed.)

MS. SILVEY: Thank you Mr. Howard. Maybe I'll ask Mr. Opegard a few questions. He probably would prefer that instead of you.

Just after continuation of the video, and in terms of my responsibility here, Mr. Opegard, representing MSHA, if we could get the name of the mine, for the record, and when was the video taken, and are these seals still in existence. And if you could --

MR. HOWARD: It's on the video. When you watch the video you got, the sound on it, it will tell you the date that the video was taken, the mine, the company, the session. I narrated it on --

MS. SILVEY: Oh, that's on the video?

MR. HOWARD: Yeah, if you listen to the sound, it's on there.

MS. SILVEY: That's fine.

MR. OPEGARD: It was taken on April 20th, but we would ask if you --

MS. SILVEY: April 20th of this year?

MR. OPEGARD: Yes. We would ask that if you -- Mr. Baughman had told me on the phone that you might put it on the Web, on your website. We would ask if

you do that that the narration not be included, that it be muted.

MS. SILVEY: Okay. We have not decided that issue.

MR. OPEGARD: Okay.

MS. SILVEY: Okay. All right. Okay, well, again, thank you, Mr. Howard. And as Mr. Howard said, we will all know that that information is on the --

it's on the video so that everybody -- so we will look at that information and we will take the actions that we -- that the Agency, from an Agency standpoint, that we have to, with respect to that mine and those seals.

Is there anything else you want to say about that?

MR. SHERER: We will put it in the record and it will be available.

MS. SILVEY: Yeah, we will put it in the record, too, yeah.

MR. OPEGARD: Mr. Howard wanted to make it clear that he was presenting the video to MSHA as evidence. So, you know, as his lawyer, we would certainly consider that protected activity under the Mine Act for Section 105 (c).

MS. SILVEY: Okay.

MR. OPEGARD: We want to make that clear.

MS. SILVEY: Okay.

MR. OPEGARD: We don't expect any retaliation against him for coming forward to this public service, what he's doing.

MS. SILVEY: Okay. That's duly noted. Thank you. Before I -- before I proceed with the next witness, Mr. Addington, we had another person who helped tremendously on this rule, and I missed -- you know, you know when you're calling people's names, inadvertently you miss somebody, and he's our field representative, Dennis Swintosky (phonetic). Dennis, are you here?

MR. SWINTOSKY: Yeah.

MS. SILVEY: Where is Dennis? And he's probably just not --

MR. SWINTOSKY: I'm glad you missed me.

MS. SILVEY: No, he's just giving me a break. Trust me. He's just smiling, always smiling and so I'm sorry. I apologize for missing Dennis. Okay, next we will have Mr. Wes Addington with the Appalachian Citizens Law Center.

MR. ADDINGTON: Ms. Silvey, members of the panel, and those within the Agency that are present

in the room. My name is Wes Addington, a-d-d-i-n-g-t-o-n.

I'm an attorney and I'm testifying on behalf of the Appalachian Citizen Law Center. It's a mine safety project.

The Law Center is a nonprofit law office in Prestonsburg, Kentucky. We abdicate for additional protections for coal miners. We represent miners that have been discriminated against for making complaints about safety and conditions in the mines.

We also represent miners and widows in black lung benefits claims. Seal strength construction and monitoring is an area of grave danger in the nation's mines. I applaud MSHA's emergency temporary standard on mine seals and commend this panel and the rest of the Agency for the work they've completed, and for their continued work towards a final rule.

I urge MSHA to retain the current protections for miners in the ETS, not to weaken the rule in any way, and actually to increase protections for miners in a few areas that I will discuss.

Turning to 75.335, seal requirements, 335 (a), seal strength, I applaud the new requirements

for seal strength and monitoring of new seals.

Unfortunately, the disasters at Sago and Darby illustrated that the former requirements for seal construction and monitoring were completely inadequate to protect miners in this country.

Requiring that all seals designed to withstand less than 120 psi to be monitored and continuously maintained inert is a major step to protect America's miners. More than doubling the psi requirement of all new seals and requiring monitoring in an inert atmosphere behind all existing seals designed to withstand under 120 psi is commendable.

However, I would question the ETS's failure to require at least a 50 psi standard for existing seals constructed before May 22nd. I don't understand how MSHA can do such a good job of providing solutions to this admitted grave danger looking forward, yet completely fails to address the grave dangers that is currently lurking for 30,000 miners in 372 of the nation's mines.

The ETS raises a number of solutions for existing seals, such as replacement, reinforcement, or building new seals outby existing seals. But the Agency discounts each approach because they may not provide optimal results in some cases.

Just because you don't have a one-size -fits-all solution for existing seals doesn't mean the correct approach is to effectively do nothing about this grave danger. The final rule must provide a solution, if not multiple solutions, to bring all existing seals up to the 50 psi standard.

Turning to 335 (b), sampling and monitoring requirements, I commend the new sampling and monitoring requirements, including requiring a certified person to do the monitoring and requiring that they be retrained annually.

It's correct to continue to define inert as less than three percent methane or more than 20 percent methane. However, I would like to see more explanation in the final rule as to what "not all close to explosive range" means, in cases where the district manager can approve a less frequent sampling strategy.

I would like a further explanation of what does "far less or far greater" mean as it's listed currently in the comments. It's a good idea to have monitoring protocol approved as part of the ventilation plan.

This builds in a layer of accountability, not only for the mine operator but also for the

Agency.

MSHA did a good job throughout the ETS of creating accountability across the board for the design, construction and monitoring of seals.

However, I do have a problem with 335 (b) (4) regarding the action plan that must be approved by MSHA. The plan goes into effect when the atmosphere behind the seal is in the explosive range for two hours, if I'm reading the rule correctly.

The ETS says that the action plan must provide protection to miners equivalent to withdrawal.

I'm not sure how that even theoretically is possible because if you created a situation where the atmosphere behind a seal is in the explosive range, dictating that this action plan go into affect, well, obviously there's some concern there, and I don't understand how anything could be equivalent to withdrawal, I mean unless there is some noted danger outside the mine.

So I would recommend withdrawal when the atmosphere is explosive behind a seal. The record -keeping requirements regarding hazardous conditions in 335 (b) (6) are necessary and should already be standard practice in a safe mine.

335 (c), prohibition of the use of open flames or arc within 150 feet of a seal is protection that may prevent a repeat of a Darby. Turning to 336, seal design, I commend the Agency for requiring the seal design applications and installation procedures be approved prior to construction.

Professional engineers should certify the seal design application and should oversee installation and should certify that the installation complies with the site specific seal design. This also adds a layer of accountability for the safety and confidence for miners and mine operators that they desperately need.

Turning to 337, seal construction and repair, I applaud the removal of all metallic objects behind or through seals. Darby also showed that this should be done. I applaud the requirement of a certified person, persons present before, during and after seal installation as noted in 337 (b).

Also the countersigning requirement by mine management builds in accountability and provides a standard for mine management to stay involved during seal construction. 335 (c) is a good requirement.

Mine management should already want to

know whether the seal was installed as designed.

Certification of this fact is no burden whatsoever. 337 (b), notification requirements are necessary so MSHA can properly oversee seal construction.

I do recommend amending a few of the record-keeping requirements, however, and specifically looking at the graph on Page 811, and looking at 337 (e), training, and in the comments, MSHA notes that failure of a seal may result in significant injury, loss of life and/or significant economic loss.

Based on recent explosion investigations, MSHA learned that numerous persons involved in constructing seals that failed were not adequately trained. And then you go on to list the new record-keeping requirements for training.

However, unlike other record-keeping requirements in the ETS, the certification of training for miners doing the construction of these seals is only one year. Well, if we have a seal failure outside of that time period, those records are no longer available during the investigation process that MSHA noted that was so important in finding out what led to the failure.

And I sort of have the same problem also with 337 (b) (5), and that's the record-keeping of examinations. And the way I read that, those would be examinations that were conducted during the construction of the seal.

So you would sort of have the same problem.

I think both 337 (b) (5) and 337 (e) should be just like other provisions in the ETS, and those should be kept for as long as the seal is used for the design that it was built.

And that concludes my comments on the ETS, and I just want to reiterate my support of the ETS and my appreciation for the work that MSHA has done in this regard and in an area of grave danger. Thank you.

MS. SILVEY: Thank you, Mr. Addington. I just have one comment, Mr. Addington, before we get to Mr. Opegard, and that is with respect to the existing seals, and I want to clarify to everybody here also.

And maybe it didn't come through quite as clearly as we intended it in the ETS, that with respect to existing seals, the Agency -- the requirement was that they be immediately sampled and monitored on the effective date of the ETS.

And so the Agency requires that the operators immediately inspect and sample existing seals, and also the Agency will be continuing its inspection of existing seals. Also, if with respect to existing seals, while you're right, the ETS -- and I mentioned that in my opening statement, did not require wholesale removal and repair of existing seals.

But if when -- upon inspection of existing seals, that hazardous conditions were found, are found in terms of high gas levels, then the -- as with even the new seals, the ETS still requires that corrective actions be taken and that those seals either have to be inert or if they can't be, then new seals have to be constructed as we said, and maybe you said that, too, have to be constructed outby that seal.

Now, obviously it doesn't mean that -- you all understand what I'm talking about. It has a round perimeter of a seal outby so the standard is constructed in that manner. So just so everybody understands. Some corrective action with respect to existing seals.

MR. ADDINGTON: And if I may briefly just respond. I do applaud MSHA's work in the area of

monitoring all seals. I still would like to reiterate, though, I feel as though that there is a grave danger here.

MSHA has recognized that, thus we have an emergency temporary standard, which is a rare occurrence. And I feel that existing seals, the strength of those seals, should be addressed and then brought up to the same standard in which new seal construction is required. Thank you.

MS. SILVEY: Okay. Thank you, Mr. Addington.

Now, next we will hear from Tony Opegard. Mr. Opegard.

MR. OPEGARD: My name is Tony Opegard. I'm testifying on behalf of the Appalachian Citizens Law Center of Prestonsburg, Kentucky, the same law office that Wes works for, but I'm also in private practice and I'm the attorney for Melissa Lee, Priscilla Petra, Mary Middleton and Childa (phonetic) Thomas who couldn't be here today, all of whom lost their husbands in the Kentucky Darby explosion and it's aftermath.

And I'm also the attorney for Paul Ledford who is the sole survivor of the Kentucky Darby disaster. Mr. Ledford was going to testify today and he could not be here either.

I also applaud MSHA for this rule, and I'll say specifically Mr. Stickler, too, for getting this rule out before it was mandated by Congress and getting it out in time to help save miners' lives.

And I know most of you on the panel, and I know you're all good people, and you all care about miners. I know Clete was on the panel in Morgantown, and John Urosek and Clete Stephan, and in my experience, nobody cares more about miners and mine safety than they do.

So I know you're all going to try to do the right thing. Having represented these five Kentucky Darby families since the disaster, I've seen some of what they have had to endure as a family. They're some of the most humble, finest people I've ever met.

You know, it's difficult to watch families grieve and suffer because of the loss of their husbands, their fathers and their brothers. We asked them to travel long distances today to testify so that MSHA can see the pain and agony that weak mining regulations could cause, and we wanted to put a human face on this tragedy.

As Priscilla said, she doesn't want Bill just to be a name on a list of miners who have died,

and we don't want any of these miners just to be a number or a name. There's human consequences for these failures and they're far reaching.

What you don't see today, although Melissa talked about them, is some of the smaller children, like Ross who is three and Seth who is four, who will never see their dads again. And I know we can all relate to that, just as the older children who are here will never see their fathers again.

I'm also the attorney for Scott Howard who showed the video, and I just want to state on the record that Scott is one of the bravest coal miners I've ever met. And I hope you understand, and I hope you all appreciate the guts it takes for an Eastern Kentucky coal miner, working in a non UMWA mine, to testify on behalf of his fellow miners and how rare that is.

I really do feel that MSHA should be holding these hearings in the coal fields. I don't consider Lexington the coal fields. I think you should be in Hazard or Harlan, places where miners -- it's more accessible to miners, but having said that, the reality is that nonunion miners aren't going to come to these hearings and testify because they're

afraid of retaliation.

They appreciate it when the widows speak out. The widows have had a lot of miners talk to them about how much they appreciate what they are saying, because they, the miners, cannot say it themselves. In going back to Scott, you know, how many of you or any of us in this room have ever risked our job and our livelihood to help our fellow employees.

And that's exactly what Scott's doing by being here today. During my career as an attorney I've represented about 130 miners in 105 (c) cases, and most of these are miners who were fired, almost all of them from Eastern Kentucky for complaining about unsafe conditions.

And that's a fact of life. You know, if you complain about unsafe conditions in a nonunion mine in Eastern Kentucky, chances are you're going to be fired.

You're going to be labeled a troublemaker and I want to commend Scott for coming before you because it was a great act of courage.

And it's probably unprecedented in any hearing that MSHA has ever had to have a miner come in and show a video of actual conditions in his mine.

In the 2007 session of the Kentucky General Assembly, I helped to write and lobby for a stronger state mine safety law.

That bill, which was introduced by Representative Brent Yantz (phonetic), and eventually passed the House and the Senate and became law in Kentucky, contained about a dozen provisions that exceed the requirements of the federal mine safety law.

The bill encountered fierce opposition from the Kentucky coal industry, and which provision of that proposed state mine safety bill do you think generated the most intense opposition from the industry.

Well, it was a provision that would have required coal mine operators to certify that the seals in their mines were built according to the specifications submitted to MSHA in the mine seal construction plan. That was the biggest topic of disagreement.

That generated the most heat from the industry. And why is that? It's because operators don't want to be held accountable. They do not want to be held accountable for building seals correctly. When we first wrote the provision in the state law,

it was very similar to what MSHA has now.

We would have required that a certified, a professional engineer, certify that the seal was built according to the specifications. Through negotiation, debate, that was weakened to where it was no longer a professional engineer.

It was the mine superintendent, or the mine manager had to certify. We could live with that.

Industry couldn't live with that. They got it weakened further. The next draft of the bill, which was now the third draft, said that a senior mine official, not designating a mine superintendent or the mine manager, just a senior mine official, had to certify that the seal was built according to the specifications.

Then it was weakened even further. We're getting -- the bill has already passed the House.

We're getting near a vote in the Kentucky Senate, which is going to determine whether our bill goes through or not.

The fourth version of the bill said, "to the best of their knowledge and belief, a senior mine official must certify that the seal was built properly." So at this point, it's basically

worthless, if all you have to do is say, well, to the best of my knowledge and belief, it was built the way it was supposed to be.

That's the honor system that my clients have spoken about. The honor system that's been in place for decades, and it's worthless. It doesn't work. You can't just say, well, here's specifications. Build it this way, then never check and see whether it has been built that way.

And the fact that is -- as Mr. Stickler has acknowledged, I think, and we met with him in April, he said in the previous three months, MSHA had found over 500 seals in the United States that were not built according to their specifications. That's a major problem.

On the eve of the vote in the Kentucky legislature, our provision requiring certification of mine seals was dropped completely. We were told by the committee chairman that it was dropped because of frantic calls from the coal industry up until 11:00 o'clock the night before the vote, from lobbyists to the Republican leader of the Kentucky Senate saying we can't live with this provision. And in fact, it was dropped.

The bill went ahead and it was approved

without that provision. Steve Role of United Mine Workers is a tireless lobbyist for mine safety. He and I were helping to lobby for this bill, and he and I and Wes Addington were told by the chairman of the committee in the Senate, that we had to sit down with lobbyists from the coal industry to discuss our differences.

That they objected to the many provisions in the bill. So we want you to sit down and see if you can reach any compromises so we can get this bill passed. And we did that. We sat down with the major lobbyist for the coal industry in Kentucky, a prominent coal attorney as well, to discuss any compromises we might could make on the bill.

And the industry made it very clear to us that they would not accept any type of accountability when it came to the building of seals. Some of the questions they asked us were do you actually expect us to have a person watch the seals being built to make sure that they are being built correctly.

Now, is that a major imposition to have somebody make sure the seals are being built the way that you told MSHA they're going to be built. I don't think so. Not when you consider that it's miners' lives that are at risk if they are not built

properly.

They complained that they could never get engineers to go underground to certify these. It would be too expensive. Engineers don't want to go underground. Well, engineers are underground all the time. Companies, a lot of them have engineers within their safety departments and other companies hire them out. That's not a big problem either.

Although the industry knew that 17 miners had just been killed because seals were blown out in Kentucky and West Virginia, and that the lives of thousands of Kentucky coal miners depend on seals being built properly, the industry's lobbyists' only concerns were cost and accountability.

They don't want to be held accountable, period. And we feel that this rule will hold the industry accountable. If a single one of those wealthy coal lobbyists, or the rich industry attorneys who complain that these rules are too burdensome, had a spouse or a son or a parent working in the mines in Eastern Kentucky, we would hear a completely different tune from them.

My clients are the people who suffer when production is valued more than human life. Coal miners are the people who suffer. The lobbyists

don't.

According to MSHA's Federal Register Notice, there are almost 31,000 miners working underground today in the United States in mines that contain seals.

That's approximately three-quarters of all the underground miners in the United States, and every one of these miners potentially could be affected by a faulty or inadequate seal. So the families of these 31,000 miners, all of whom are potential widows and orphans, just like my clients, are depending on you to keep this rule strong.

So I'm asking you not to let them down by weakening this rule. You don't want to have another hearing six months from now, or a year from now, and have other widows and children without fathers coming before you. Don't bend under the pressure that the coal industry is going to try to exert on you.

And I've seen that there's at least 30 some people signed up to testify after us today, and I'm sure most of them are going to oppose this rule, and you're going to have a lot of opposition. Hank Moore, an industry attorney, was quoted in the paper as saying on Tuesday at the hearing in Morgantown that the Sago explosion was an aberration.

One can argue that point, but regardless, Kentucky Darby was not an aberration. If there had been properly built 50 psi seals at the Kentucky Darby mine on May 20, 2006, five miners would be alive today.

And we mustn't forget Paul Ledford, the survivor of that disaster, who is suffering mentally and physically because of the disaster. Although he lived, he wouldn't be suffering today either had we had 50 psi seals.

And what Priscilla said was accurate. We were told by MSHA that those seals at Darby were so poorly built that they probably would not have withstood a four psi explosion, or that was the maximum they would have, even though the standard was 20 psi.

Seventeen West Virginia and Kentucky miners died last year because of inadequate and improperly built seals. How many dead miners does it take to insist on a rule that's actually going to protect miners.

There is no reason why one more miner should die because of inadequately constructed seals. You have the power to help prevent another such tragedy.

You have to make coal operators accountable for protecting the safety of their employees, which is exactly what we believe this rule will do.

And I don't want to reiterate what Wes said.

I just have a few comments about the specific provisions in the rule, and although my clients are very supportive of the rule, let me discuss briefly the one part of the rule that they're not supportive of.

And as you might guess, this is the part about the existing seals. MSHA issued the ETS because of the quote, unquote, grave dangers to which miners are exposed because the seals are not explosion proof.

And as you know, the Coal Act, as far back as '69, required explosion proof seals.

MSHA has admitted that the Agency erred in 1992 when it determined the 20 psi seals were explosion proof. There's 31,000 miners working in mines today that have portions of the mine sealed and everyone of these miners is at risk.

Therefore we believe that the final rule should include the requirement that all existing

seals be replaced with the higher strength seal. If it's not feasible to replace a particular seal, and I understand it may not be in every case, then we believe that operators should be required to reinforce existing seals to meet the higher standard.

What Wes was saying about the one size fit all, I know you all have heard Abbott McAteer his phrase that the perfect is the enemy of the good. And you know, the industry uses that all the time. Well, we don't have a perfect mine refuge chamber.

Therefore we can't use any in any mines or, you know, there's some seals that won't fit so therefore we shouldn't do anything. Do what's best.

You know, make those seals stronger, and if you have a problem, then we'll deal with it and find a way to do the best that you can.

I know that existing seals right now have to be monitored, but I want to try to be realistic about monitoring and compare it to pre-shift exams. And if you're in a small nonunion mine, realistically, honestly, pre-shift exams aren't done in a lot of them.

There's something in one of the internal reviews recently that said -- noted that pre-shift exams clearly weren't being done because -- I forget

what percentage it was. Like 80 or 90 percent of the measurements noted in the exam book were exactly the same for a year period.

I mean, you know, someone was just writing down a air measurement, calling it outside or whatever.

They weren't doing the exams. And realistically, a lot of small operators, are not going to -- they're not going to take the time and trouble to monitor behind these seals.

And I really think that MSHA is fooling itself if you think that they are. If you think that monitoring behind seals is going to be done correctly and accurately by the majority of operators, I think you're fooling yourself.

The seals at Kentucky Darby were not checked properly. We had testimony during the interviews that two miners traveled together. One miner did a test, told the other what he found and he wrote it in the book and certified it, even though he had no idea whether that information was accurate or not.

One foreman could have found four percent methane leaking out of that seal, said I found .1. The other guy marks down .1 and certifies it. And

that's if they're being done at all. We found at Kentucky Darby that there was no on shift examinations done for 11 months, on the second shift, on the outby areas, and MSHA missed that, unfortunately.

But ordinarily, if no on shift exams are being done, they would just mark them in the book that they were done and sign them. Why they didn't in that case, who knows. But the point I'm trying to make is don't rely on monitoring.

Make the companies build stronger seals. If I was a miner, I would feel a whole lot better knowing that I had a 50 psi seal than a 20 psi seal that is supposedly being monitored. Scott's video shows you the conditions of those seals.

I mean would you want to be working in that mine? If you didn't have a way out, if those seals collapsed, would you want to be in there? I wouldn't.

You're not supposed to have water pouring out of the seals.

Out of the water trap, yeah, but not out of the other parts of the seals. In 75336, the certification by a professional mine engineer, this is a critical part of the rule, and I hope you don't

back off of that.

Don't weaken that to be a senior mine official, or to the best of the knowledge or belief of somebody. Make an engineer do it, and then, you know, someone can be held accountable.

If an engineer is given -- you know, testifies falsely or certifies falsely, his license can be at risk. You know, all of us who have licenses, whether we're doctors, lawyers, whoever, you know, you have to meet certain standards or you can lose that license.

An engineer should be the same and coal companies should have to -- when they certify that something is done, it should be accurate. Miner's lives depend on it. We agree with the construction provisions in 75.337, removing cables, et cetera, batteries and all of that from the sealed area.

Direct supervision of making seals. That's critical. Training is critical. What we found at Kentucky Darby was these guys didn't know what they were doing. I mean the supervisor didn't know what he was doing.

The miners didn't know what they were doing.

They just did what they were told. They

were, you know, putting it up half way, just throwing the things together, not mortaring. They were using the wrong sealant.

You know, the seal between the top of the --

top of the seal in the roof, they didn't have the materials they needed there. You know, they were just stuffing whatever in the top. There was gaps. Of course, there were straps there, too.

Everything was wrong there. So the training, the direct supervision are important. Dates, times, and initials, just like a pre-shift. That's important.

That should be done. And a written record is important. And I agree with Wes, that the time frames for keeping those records I think need to be extended to three years.

You know, the intake seals at Kentucky Darby had been built I think three or four years before the explosion. They weren't built properly either. Nobody knew about it for three or four years until after the return seals blew out.

Then they checked the intake seals and found that none of them had been built properly either.

There were like seven or eight deficiencies in those seals. And had a record been required at that time that those seals were built, then maybe there could have been some accountability there.

And the requirement of the rule that a senior mine management official must certify the construction of these seals is important. We also support the notification provisions, but with a caveat. I don't think these notification provisions are going to be very important if MSHA doesn't take the opportunity to get out and check the seals.

You're saying that operators have to notify MSHA within two to 14 days before building seals, if we're going to build seals. Well, you need to have an inspector there at least for part of that time. I know you can't have a guy sit there for days while seals are being built, but I think somebody needs to make a visit, make sure they're following the plan, and then go back out afterwards.

The operator has to notify MSHA within five days after completion. It's critical that MSHA take advantage of this and send an inspector out and make sure that those seals were built properly.

The training is important, again, at

Kentucky Darby. Nobody had been trained on how to build seals.

You know, these were hourly employees who went in.

They were told what to do. They didn't -- you know, threw the thing up haphazardly.

Really quite frankly, it was a pretty pathetic job and there was no accountability and it leaves the impression that they really didn't care.

You know, it was like we don't want -- we have a worked out part of the mine.

We don't want to ventilate it. We don't want that trouble, so we'll just throw up a wall and pretend that we're protecting people when in fact there was no protection at all.

I appreciate the opportunity to testify.

What we're really asking here is for accountability from coal operators and asking you to do the right thing. You know, again, we don't want another tragedy.

There's no reason in 2007 that we should have miners dying because of improperly constructed seals.

So please don't weaken the standard. Thank you.

MS. SILVEY: Thank you, Mr. Opegard. I have just a few comments. First of all, I would like to say for the record, that we agree with you, that we must not, and we do not forget Mr. Ledford, so our sympathies are with Mr. Ledford and his family.

Second of all, with respect to the mine video, you know, let the record show that the Agency will exercise its responsibility with respect to the conditions on the video, and take the action that is appropriate with respect to the seals.

I notice now on the cover of the video, it says 4/20/07. So I want the record to show that MSHA will do that. With respect to existing seals, and we've gotten a lot of comments on the Agency's approach to existing seals.

And to some extent, I'm being redundant.

Now, you heard me say part of it earlier. Some of the people in Morgantown heard me say this. Even after we laid out our approach with existing seals, that while we did not require complete -- either complete or replacement or complete reinforcement.

In the instance that we found an inspection, a monitoring revealed hazards, then we did require corrective action. We did, at the same

time, we solicited comments on the Agency's approach.

In Morgantown, what I would like to let everybody know that the industry -- the state -- we had a representative on behalf of the Interstate Mining Commission, which is this compact of states. The state and the UMWA supported MSHA's overall approach to existing seals, recognizing that in some instances, and just as I said in my opening statement, it may be indeed to replace, to completely replace existing seals, and I think you sort of acknowledged that.

That might introduce a increased hazard. So if I took down what you said, and I thought that I did, I might not. I think at one point you said to the extent that these seals should -- I don't think I did take it down. I remember it.

To the extent that the seals -- that it was feasible to do so, the seals should be reinforced. So if -- I don't know whether you are going to send us anything in Arlington before August 17th or not, but if you have any more specific comments on either the feasibility or situations in which existing seals should be reinforced, we would appreciate that.

And actually, those are all the comments

I have. I don't know if anybody else has any comments.

Thank you, Mr. Opegard, and thank you and your clients and everybody who has testified on behalf of Appalachian Citizens Law Center.

At this time, I think probably people are looking to see if we are going to take a break. So if we could take a five minute break, please, because we do have other people on the list to testify.

(Whereupon a break was taken.)

MS. SILVEY: Can we reconvene, please?

Again, please, everybody, so that we can sort of keep our schedule. At this point, I would like to reconvene the Department of Labor's Mine Safety and Health Administration's hearing on sealing.

The emergency temporary standard related to sealing abandoned areas in underground coal mines. At this point we have Joe Jacobs, COA. Mr. Jacobs.

MR. JACOBS: Thank you, Ms. Silvey, for the opportunity to discuss a issue that is very important to us. My name is Joe Jacobs. I represent COA, which is a trade group that represents mostly small coal operators in Eastern Kentucky, Western Kentucky.

I appreciate the fact that you have taken

my call, and we have had some discussions about seals and rebuilding seals. And so we want to make some comments on those and asking questions.

And we're not asking questions to cast aspersions on anybody. We're just asking questions for a matter of information. Our feeling is is that the Agency, the Mine Safety and Health Administration, through it's sister Agency, NIOSH, has an obligation to aid and assist the coal industry and the coal industry has an obligation to aid and assist NIOSH and MSHA in working to develop a safer atmosphere for our coal miners to work in.

And therefore, to that end, we have some questions in regards to seal construction, and we want to ask you all to look at some situations that we have not seen. As far as the seals that have been posted online, we find that there's one, i.e., Mitchell Barrett type seal that has been posted, and the rest of them are from other pre manufactured seals.

And we have some areas that we want to ask that you look at. For example, in the area of seal construction, what happens if we place flash in front of the seals, or in the inby side of the seal, or if we place sand or if we place gob.

We feel that that would dissipate the explosion as the explosion drew nearer the seal and would serve to dissipate some of the force, therefore, making the 50 psi seal an even more stronger seal. So we point that out to you and ask you to take a look at that and to see if there is any areas that we can work with you to aid and assist in developing seals that work in the coal mines that we represent, which is mostly conventional type sections, 20-foot wide.

They're going to be anywhere from 30 to 48 inches in height. Some of our engineers have stated to us that the calculations that you have on the 50 psi seal is actually a 96 psi seal, and we ask that you look at that.

Also we find no Mitchell Barrett type construction seals for 120 psi on the website at this time and we ask is there a possibility that we would have one of those. And I'm talking about concrete block laid in a traverse pattern to obtain the 120 psi.

And as for the rebuilding or strengthening of seals, we have some seals that are built with whatever the term was. We were using the prefabricated seals.

What happens if we build a Mitchell Barrett type seal in front of that. What is the -- we ask you to develop for us the strength and the overpressure and tell us what that is.

And we're just looking at what happens if we ask you to aid us in preparing catalogs for this is the seal design and this is how that seal should be constructed. And then we'll get into the argument later on of whether it was properly constructed or not because you as the Agency look at it, and we have people who are going to be there supervising the construction and the certification of it.

But we believe that there ought to be a way that NIOSH and the Mine Safety and Health Administration would develop these to where they're actually developed to give us a cookbook type seal design of 50 psi overpressure and 120 psi overpressure.

And we need to look at those that are erected in 30-inch high seams, and look at those that would be erected at 48-inch seams, 42-inch seams, six foot and seven foot seams as well.

I think the ones that we have on the Internet today are seals that are erected in 20 to 22 foot entries with seven to eight foot in height. And

most of our coal seams in the Eastern Kentucky region is not that size.

So when you have a less volume of area where the area is smaller, what happens to the pressures.

And if we have those, then it would probably be easier for us to find people who would be willing to look at the certification of these seals.

As of right now, there's not a lot of folks who want to stake their livelihood and the future on certification of seals. So we ask you to look at that and to look at those design criterias that you had.

And maybe we need to develop a cookbook. We at the coal associations of Kentucky stand ready to work with the Mine Safety and Health Administration and NIOSH in developing these and developing the regulations as we think that we should be a joint partner in doing this, in developing them so that compliance can be easily achieved.

And I'm not talking about fabrication, but I'm talking about compliance. For example, we look at monitoring behind seals, and for years the Agency utilized a G60 pump to pull the air from behind the seals to look at what it was, and to get a

sample from behind the sealed area.

Now that we're being required to monitor that, all of a sudden no one wants to do that. They don't want us to do that because they're saying that's not utilizing that pump for it's intended purposes.

That's using it for something different. It still pulls two milliliters of air. So we don't see why. So don't make it so cumbersome for us to comply that the small operator is not going to be able to do that.

We employ quite a few people in Kentucky coal mines, and we offer employment to them, and we produce an awful lot of the energy that is used to ensure America's independence in the energy source. So therefore, we as small operators are asking you as an Agency to help us and let's be partners in compliance rather then being in an adversarial position.

I'm not saying that you're in that position now, and I appreciate you have been willing to take my phone calls, talk to me, and we did get a 50 psi seal on the Internet. But I'm asking that we go farther than that.

And if there is strengthening values in

the use of Kevlar in bladders that have been proposed, that's science and may we utilize that to strengthen the seals that we now have by utilizing the same kind of coating that goes into our policemen's bulletproof vests.

There are some Kevlar bladders that are out there. How we secure those is a matter of some experimentation that we still need to do, but there is that possibility out there.

There's also the possibility out there if we take flash and place that flash behind that seal, or if we take sand or if we take rock or gob, and we insure to the best of our ability that that gob is properly aligned with rock dust, it will dissipate the force of the explosion coming out to the seal and afford a greater protection. So we ask you to look at those.

All right?

MS. SILVEY: Okay. Well, I have a few comments, Mr. Jacobs.

MR. JACOBS: Yes, ma'am.

MS. SILVEY: First of all, so that everybody will understand in terms of the structure of the rule, and before I say that, I would like to say that MSHA stands ready and willing, and indeed has

responsibility to assist the entire mining community in terms of achieving greater safety and protection for miners.

And there I mean industry, the labor, the state and we intend to live up to our responsibility.

MR. JACOBS: That's right.

MS. SILVEY: Now, as I say that, and I hope Mr. Jacobs that as you gave me your general comments, before the record closes on August 17th, that you will reduce them to writing.

And to the extent that you have specific suggestions for us, as I said in my opening statement to everybody, that you would include specific language.

MR. JACOBS: Yes, ma'am.

MS. SILVEY: That type of information will help us as we move forward in developing the final rule. The way the standard -- the ETS is structured is the operator or manufacturers that operate -- or a manufacturer can do that. There is a two-step process for seal design, approval and installation.

The operator or the manufacturer sends in the seal design to MSHA's office of technical support, based on having an approval application, and as many of you know, the seal design will be

structured so that it meets and addresses specific mining conditions.

So that's the first step. And then our office of tech support engineers will review it and look at it based on whether the application meets the criteria in the rule, and based on the criteria that we've laid out in the rule.

The office of tech support will look at it and approve that design. That design then, an approved design, an operator would take that approved design, and based on specific mining conditions, will ask for an approval of the site installation, the seal installation in a particular mine, based on the mining conditions.

Now, I guess what I'm trying -- and you asked why did I say that. I guess what I'm trying to ask you is it seems that what you are asking us is to work with you in developing design for your mine, I think, it looks like.

MR. JACOBS: In developing -- in developing seal construction for all mines, and I know that all mining conditions are --

MS. SILVEY: Seal design. You said construction. Seal design.

MR. JACOBS: -- going to be -- yeah, seal

design.

MS. SILVEY: And we have put some templates, because we do believe we have a role in assisting and trying to get a handle on seals, just as we've heard people say, we've had issues with seals and we have admitted that.

So we have put certain designs, I believe, on our website. In fact, we have a 50 psi, one or two, and 120. Do we have at least one or more than one?

MR. UROSEK: Yeah, we have more than one.

MS. SILVEY: Two. Two 120's on our website.

MR. SHERER: One gentleman has -- we got several.

MS. SILVEY: We've got several on our website. Thank you for help from the audience. We've got several on our website.

MR. JACOBS: Yes, ma'am.

MS. SILVEY: And, you know, I'm sure that our office of tech support is going to be as helpful as possible to people and organizations who send applications in. And in terms of seeking an approval and trying to work with them and getting certain designs approved.

But as I said, if you want to be more

specific in your comments, you can feel free to do that. For example, one specific thing you said that you think that certain material, when used inby the seal, might help to mitigate the damage.

So I would ask you to be specific, and if you -- in terms of what exactly you are talking about, and if you have experiences using that. If you sent in a particular application.

MR. JACOBS: Those have not been sent to you for approval. It's merely suggestions that we have by utilizing our experience in mining and, you know, I've been at this since 1969.

MS. SILVEY: I know.

MR. JACOBS: And as you well know, since 1969 we found that seals have gone from the Mitchell Barrett seal that we were utilizing to the Omega Block seal, and even if you go back to the 69 Act itself, we had the right to lay timbers skin to skin in heavier caved areas.

Now, I don't know any of us that did that, but we also had some water seals that were there because of the water being roofed in low or dipping areas. And as long as we could prove that the water was roofed and there was no air passing over those, a water seal was acceptable, under the

alternative seal section of the previous regulation that we had.

We're simply asking that we look at, through tech support, the placing of flash, sand or gob, inby a properly constructed Mitchell Barrett seal to see if it improves the overpressure and mitigates the outward force of the explosion. And that may be something that we would be able to do to obtain a 120 psi Mitchell Barrett type seal.

MS. SILVEY: Okay.

MR. JACOBS: Or we may need to lay additional solid concrete blocks in a traverse pattern to achieve the 120 psi Mitchell Barrett seals.

MS. SILVEY: I do have an additional comment on -- you mentioned that calculations, your calculation showed that we have -- that the calculations we have on the 50 psi really come to 96 psi, and I would like it if you would provide that to us, specific, the calculations that you have that show differently than ours.

MR. JACOBS: Yes, ma'am. All right.

MS. SILVEY: Okay. And that's really all I have. Does anybody have anything? Okay, thank you, Mr. Jacobs.

MR. JACOBS: Thank you.

MS. SILVEY: Next we will hear from Tony Huff with THA Engineering. Tony Huff? No?

MR. HUFF: I'm Tony Huff, h-u-f-f. Tony, t-o-n-y. I am a professional engineer and I just want to express my thanks to MSHA for bringing the attention that you are to the seal issue. I do have a few comments and questions, but most of them are technical issues and I think what I'll do is get with tech support and kind of put our heads together and maybe make some comments later in writing when I get my thoughts a little more clearly defined.

As an engineer, I do want to express optimism that we can come up with a cost-effective and feasible solution to seals, and we are working on that. And that's all I have to say.

MS. SILVEY: Okay. Well, I would encourage you -- you know, you said you would get with tech support, but I would encourage you, if you have specific comments, to get them in to us before the record closes on August 17.

MR. HUFF: The 17th.

MS. SILVEY: That's right. Thank you.

MR. HUFF: Thank you.

MS. SILVEY: Next we have Bill Caylor, Kentucky Coal Association.

MR. CAYLOR: Ms. Silvey, members of the panel. I want to welcome you to Lexington today. My name is Bill Caylor. It's c-a-y-l-o-r. I am president of the Kentucky Coal Association. The Kentucky Coal Association represents large and small surface and underground operators in both the Eastern and Western Kentucky coal fields.

Since this hearing is in Kentucky, at the beginning of my remarks, I would like to make some brief comments on the basic Kentucky coal facts and some industry trends. In terms of production, we mined 120 million tons of coal in 2006.

Approximately 80 percent of that figure is mined in East Kentucky and 20 percent of that figure is mined in West Kentucky. Of the coal that's mined in East Kentucky, roughly 60 percent is mined underground and roughly 40 percent is mine to surface.

In West Kentucky roughly 80 percent is mined by underground mining methods and roughly 17 -- or roughly 20 percent is mined by surface methods.

Production in Kentucky peaked in 1990 at 179.4 million tons.

Currently Kentucky ranks third in the nation in production behind Wyoming, which mines 450

million tons and West Virginia which mines at 150 million tons.

In terms of miners, we have over 17,000 -- actually 17,190 coal miners in Kentucky, and that's down from roughly 48,000 in 1981.

The multiplier effect, because we have 17,000 miners working, we have a multiplier effect of around four other people working for every one person employed by the coal industry. So we have a multiplier of trickle-down jobs of around 50,000 jobs, actually statewide.

These could be people that work for utilities, equipment vendors, repairmen, engineers, truckers, accountants, lawyers, and just people that work in every form of occupation in East Kentucky, East and West Kentucky.

The Kentucky coal miner earns an average of $47,000 a year, and that's usually a very nice wage in the areas that are impoverished in the coal fields.

Three percent of the working miners are members of the United Mine Workers.

There's nobody with the United Mine Workers in East Kentucky. They represent mines and miners in West Kentucky. In terms of exports,

Kentucky will export about 70 percent of its coal. We export to about 23 states and four foreign countries.

About 70 percent of our coal production in Kentucky goes to utilities and about 30 percent goes to industrial users. Of the about 70 percent that sold out of state, we bring in over $3.5 billion into the State of Kentucky, and about 85 cents on each dollar stays here in Kentucky in terms of wages, benefits, operating expenses, royalties and taxes.

So the majority of the money that we bring in stays here in Kentucky. Coal paid over $230 million in severance packages last year, in addition to the normal business and taxes that companies pay.

Reserves, we have 88 billion tons of reserves in Kentucky, well more than we could mine in over 200 years. West Kentucky has 36 billion tons reserved and East Kentucky has 52 billion tons of reserves. In terms of the nation's supply of electricity, coal provides between 50 and 52 percent of our nation's electrical needs.

That's followed by nuclear with 20 percent, natural gas with about 16 percent, hydropower at about 7 percent, oil at about 3 percent, and renewables at only 2 percent. And when

I refer to renewables I'm talking about wind, solar, biomass and geothermal, with biomass being the majority of that.

In Kentucky, coal provides 91 percent of our electricity. We have one of the lowest electrical rates in the nation because of coal. Coal miners truly are American heroes. I couldn't be more proud of our coal industry.

Now let me touch on Kentucky and U.S.

production trends very briefly. To the year to date, through June, Kentucky's production is down a little over six percent. Production east of the Mississippi is down nearly 3 percent.

If you ask yourself why, there's several reasons for this. A drop in the coal process paid by utilities, the implementation of state and federal safety laws, general expense increases, such as the cost of steel, fuel, explosives, benefits, and the trend toward surface mining.

Surface production is generally cheaper and safer than underground production. This is especially true in a state like Wyoming where you have 50 to 60 foot thick seam of coal. My forecast, you will probably see the continued decline in production east of the Mississippi, especially in the

Appalachian region.

Production costs for underground mines continues to escalate. The small operator is quickly becoming a thing of the past. Just like the Wal-Mart's and the McDonald's, the coal industry is rapidly becoming dominated by large multistate corporations.

And what many people fail to realize is that the corporate philosophy is to obey the laws. It's easy to say the coal industry is an outlaw industry, but these statements are untrue and very misleading.

The coal industry has a very positive safety record, something we've lost sight of. Nationally we have witnessed a steady downward trend in both fatalities and injuries over the past 30 years. This is fact, not emotion.

We've had good years and bad years, but the trend clearly is a downward trend. We are making a very positive progress, and the thanks go to state and federal safety agencies, company safety philosophies and the quality of our workforce.

With regards to injuries, did you know that the Kentucky coal miner is safer from injuries than the average Kentucky worker. And yet, if you

listen to the news press, you would think just the opposite. In terms of fatalities, in Kentucky, during a three-year period, between 2002 and 2005, the following Kentucky categories had average annual fatalities as follows.

Service, providing as a category, had an average of 52 fatalities per year. The trade, transportation and utilities had an average of 36 fatalities a year. Agriculture, forestry, fishing and hunting had an average of 26 fatalities a year.

Transportation and warehousing had an average of about 26 fatalities a year. Construction had an average of about 21 fatalities a year. Government had an average fatality of about 14 fatalities per year.

State and local government had an average of about 12 per year.

Manufacturing had about 12 per year. Coal mining had just over eight fatalities a year on an average. Retail trade had almost eight and professional business services had approximately four per year.

Coal mining fatalities are much fewer than other industries but because of press coverage, every coal death is front-page news, while a

construction fatality is buried in the second section.

Here's an interesting fact. Did you know that 750 people die each year in the U.S. from eating bad or ruined potato salad. Do you think that we could get some new laws put on the books to control these deaths?

There are numerous, numerous other examples like that example. The point is, regardless of the reason why, coal clearly has been singled out by the news press. So have the hard working people at MSHA.

MSHA inspectors are honest, hard-working individuals, dedicated to safety.

It's frustrating to read otherwise in the papers. Like all of us here this morning, our goal is zero fatalities. We all have this common goal. How to reach this goal is what we sometimes disagree over. We think the key to taking safety to the next level is with behavior modification.

Behavior modification is the key to ensuring miners know and want to work in a very safe manner.

Behavior modification is teaching the miners why it is important to work safely. Not just

for themselves but for their employers, and more importantly for their families.

To affect behavior modification takes time, commitment and money. Too much emphasis is being placed on enforcement while behavior modification is being ignored. While enforcement is critical, an equal emphasis should be placed on behavior modification.

We strongly encourage MSHA to focus more on this aspect of mine safety. We support safety improvements, but need rational safety requirements.

In the rush to get emergency standards published, many questions were left unanswered.

There have been many hardships, many questions where different answers are given in each of the MSHA district offices. We need rational safety requirements. MSHA still doesn't have the answers to many of the questions on seal construction.

In this emotional rush, we are over designing and needlessly wasting efforts. We question MSHA's urgency and inflexibility with this emergency standard.

We fear MSHA has set a basis with its emergency temporary standard, from which they will be

unable to back down from, even based on the engineering and technical comments they may have received during these public hearings.

Why the ETS? What made a grave danger 16 months after Sago, and with the July 12th PIB in place with much of the same requirements, we should have issued a proposed regulation with a quick comment period to eliminate mistakes we're facing under this emergency rule.

It is imperative that we take politics and emotion out of this process. We are frustrated with the inability to comment on many of the assumptions used by MSHA in seal design. Based on various Powerpoint presentations by MSHA, how can tech support require a two to one safety factor in the seal design with it not being required in the PIB or the ETS.

And all requirements, assumptions, inputs, et cetera, used by tech support to evaluate seal designs should be publicized for review and comment. We oppose the replacement of existing seals. MSHA solicited comments in the preamble on the feasibility of requiring existing seals to be removed and replaced.

The final rule should not require the

replacement of existing seals, due to several reasons.

It can be dangerous to replace seals. It increases the chance of getting someone hurt or killed. Many times there isn't sufficient space for a second seal.

In many cases there is only a walking path to get to seals, making it difficult to get materials to the seal area. You cannot do a one size fits all, and the cost of such replacement is a factor. The seals are currently required to be monitored, and the atmosphere behind the seals to be inert as required by the ETS.

Strengthening existing seals could be accomplished if a simple cost-effective product were available. We understand that testing has been done on a substance, but the results have not been released.

So I think we've got some very promising things to look forward to. We oppose having a professional engineer certify as built seals. The requirement that a professional engineer must be knowledgeable in structural engineering will cause problems.

MSHA's interpretation of this proposal is

that the engineer must be a structural engineer.

Engineers like attorneys and physicians are licensed to practice their profession, but their profession does not recognize certain practice areas.

In other words, once one receives his professional license, whether it be a physician, an attorney or an engineer, he can practice in any area.

Professional ethics require him to ensure his own competency in the area he intends to practice.

Further, structural engineers may not be competent in mining engineering. There are many areas of underground mining where a structural engineer would not be competent to practice. So requiring an engineer to be a structural engineer is improper.

The words knowledgeable in structural engineering should be deleted. We also have concerns over the requirement for the engineer to have oversight of the seal installation. This would be difficult, expensive and not necessary.

There are many unknowns in the construction of seals, i.e., the concrete mix that's shipped to the mine and various other materials that are used in the construction of the seal. There are

so many factors completely beyond the engineer's control.

Even the term oversight itself is somewhat vague. You have double certification since MSHA is requiring someone from the company to certify construction. It is obvious that MSHA just wants someone to blame if something goes wrong, but in reality, this will prove difficult.

Most serious or fatal accidents are a result of a series of mistakes or wrong actions. Having predefined scapegoats is owners at best. Finding a mine foreman is becoming increasingly difficult. Who wants the responsibility. It will be hard to find someone to certify seals when the liability will stay with this person many years into the future, long after he's left the company.

I can see right now someone retired in Harlan, or maybe in Georgia or Florida, 10 or 15 years later and there's an explosion, and he'll have his retirement proceeds attached in some type of a prejudgment attachment.

It is going to be difficult to get people to certify that these seals are constructed. We suggest the use of Mitchell Barrett seals and other pre designed seals approved by MSHA. And basically

we're backing up what Joe Jacobs testified to earlier just a few minutes ago.

We join with others in urging MSHA to allow the Mitchell Barrett seals for the 50 psi standard.

The cost of installing the new approved seals will put a lot of smaller operators out of business and would force some to avoid sealing altogether, which will increase exposure to workers, supervisors and inspectors in traveling extensive abandoned works that are not sealed.

This concludes my oral remarks. Our technical comments will be submitted at a later date.

Thank you very much.

MS. SILVEY: Thank you. Thank you, Mr. Caylor. I have a few comments and maybe some members of the panel might have some also. First of all, let me just say we appreciate, and for everybody here today, we appreciate your comments and testimony to us, and I will say again that -- I think I said it earlier, that we know it takes some time for people to come and participate in these MSHA hearings.

And we understand that and we appreciate that. And that's one -- but one of the reasons is

that we need these comments and testimony as we go and develop this final rule that we've heard from some people so far during this rulemaking process, why some people have liked it and some people have liked most aspects of it.

And some people have probably not liked it a lot, that a lot of the people have had comments that they said they want us to improve certain areas. And so that's why we are here. With respect to the -- you said many questions were left unanswered when we issued the ETS.

And toward that end, we have issued some compliance guides that certain questions were sent directly to us. We got it out and I said earlier, we had to try to quickly get it out, and we've answered questions in the compliance guide and we put them on the website. And I think we have another compliance guide about ready to come out.

MR. SHERER: Should be soon.

MS. SILVEY: Should he out soon. Now, to the extent -- and I say this for everybody in the room now.

To the extent that you say to us in a general way that different districts are given different answers, yeah, you know, sometimes

different answers are appropriate, obviously, because the mining conditions are different.

But sometimes when it gets to maybe certain principles of things, they may not, they should not be different. So we try where we should. We try to achieve consistency in our districts.

So where districts are given different answers on certain basic things, I would ask people who make those comments to us, to give us specific examples. And I'm not asking you to do that now when you send your comments to us before the record closes.

Would you like to add anything to that, Erik, since you were here for coal mine health and safety?

MR. SHERER: Sure. A couple of things.

First of all, thank you for your participation and your input. The second thing is I thank you for your patience. This is an emergency temporary standard.

It's something that we felt that we needed to get out there immediately to address the grave hazard to miners.

And it is something that is in the process of being improved as part of the ETS process.

There is a learning curve for all of us and I ask your forbearance.

MS. SILVEY: Yeah, okay. I would like to now state, Mr. Caylor, and I know you'll appreciate this, why this is an ETS, and I said this in my opening statement. It also serves as the proposed rule and commences the regular rule making progress.

And I know, you know, people have come to us and said, you know, things are cast in concrete because it's an ETS and the Agency cannot, will not change anything, but even though it is an ETS, under the Mine Act, it commences regular rule making.

So to the extent the Agency gets justifications and comments and rationale, with supporting rationale, as to areas that we should change for the final rule, then that's what we need to do and that's what we will do where appropriate.

So I want to say that here, and I'll probably end up saying that at two more hearings, the same thing. The Agency, as our attorney advised me -- you know, I have an attorney, too, that we stated that in the proposed rule, and she's right.

Also, we heard this in Morgantown, too, and I've heard it intimated here today, intimated and now specifically stated in your comments, Mr. Caylor,

how can tech support require a two to one safety standard when it's not in the ETS or the PI -- and you're right.

It is not in the ETS, a two to one safety factor and we are not requiring a two to one safety factor. As I said to Mr. Jacobs, if you have calculations that differ from ours, or are in your mine, show -- convince you that we are requiring a two to one safety factor, then I want you to get those in to us.

The ETS does not indeed require a two to one safety factor. With respect to the replacement of existing seals, and I think I mentioned -- I talked about that enough already, in terms of what the Agency requirement is, but with respect to why we should not in the final rule, require replacement of existing seals, due to several factors, I, like you -- because we stated in the preamble why we did not, and I think I said that when Mr. Opegard was up here in his -- with the Appalachian Citizens Law Center.

But with respect -- and you stated specific factors here, but I would like you to, if possible, expand on the specific factors. Be as specific, no pun intended, be as specific as you can with respect to the specific factors that you

included in your written statement here to us today.

For example, you said it could be dangerous to replace. Be as specific as you can, and we indeed said that in the preamble. Also, with respect to strengthening existing seals, we did state that we were reviewing new technologies, that they have come onboard to look at as to whether there are better technologies coming on board that we could use to strengthen existing seals.

So we are going to continue to do that, but if you all have ideas about new technology, new and better technology, please provide that to us in written comments.

The only last comment I have is on the --

well, I have two actually. On the requirements that's the engineer, in terms of the site installation, that there be an engineer -- certified by the engineer, and you state that you oppose that.

And you do have specific reasons as to why you oppose it right here. Do you oppose it, and this is sort of -- you have specific reasons here, but is part of your rationale that you oppose it in terms of just the -- at the time of the engineer to be there or are you opposing it for other reasons?

MR. CAYLOR: Well, there's a whole lot of questions when you talk about just the time to be there. Are we talking about, you know, 24/7 or are we talking about --

MS. SILVEY: Okay. That's what I wanted to get out.

MR. CAYLOR: -- reasonable? Are we talking about having a designated person under the control of the engineer do that, which is very common under other engineering practices.

MS. SILVEY: Okay.

MR. CAYLOR: So there's a lot unanswered, and I think we're going to see the answers as we move down the road. That's why the emergency standard being in force was troublesome. You know, if we could discuss these factors, we could understand more of what is required.

MS. SILVEY: And that's what we are trying to do now. So I gather, partially I gather, what you're saying is that if we were to clarify that we are not indeed talking about the engineer being there 24/7, but just have -- then there might be some way to where we can make clarifications.

And as to matter of fact, as I said, we are getting another set of questions that are getting

ready to come out now, and I think some of the issues even maybe that we are discussing today will be clarified.

MR. CAYLOR: We have normal engineering practices, and I would strongly encourage MSHA to deal with some of the Kentucky Board of Registration for engineers to discuss even with these agencies what are the normal engineering practices. I think that would be very helpful for the Agency.

MS. SILVEY: Okay. With respect to the --

and just so everybody knows, I like to call it the concrete block seal. I know it's commonly referred to in the industry as the Mitchell Barrett seal, but with respect to the concrete block seal, and we heard this testimony before, that everybody joins in pushing MSHA to allow for that seal, but it's my understanding that we do allow the concrete block seal as a 50 psi seal.

And I clearly am not -- I understand, I think what commenters are saying. Commenters I think are saying to us the concrete block seal, as specifically specified in the prior standard. I think that's what I'm hearing, and maybe with the concrete block seal that we are allowing now, there are some additional requirements for it.

But just so -- I don't want people to go out and everybody think that MSHA did away with the concrete block seal, because that is -- so maybe it's the concrete block seal with additional parameters.

But, one comment that you said, you said the cost of installing the new approved seals would put a lot of smaller operators out of business and would force some to avoid sealing altogether. I would like you to provide -- be as specific as you can there, and provide specific examples in your comments before August 17th.

MR. CAYLOR: That follows up on what Joe Jacobs mentioned. He was asking for off-the-shelf designs that could be used, especially by the small guy. A lot of times the small guy doesn't have the financial wherewithal to put so much engineering design into the development of a seal.

And as much as we can get from MSHA in designing some off-the-shelf seals, that would be very helpful, especially for the small operator. And I'll tell you, those guys are getting fewer and fewer, like it or not, but we're no different from any other business.

The Wal-Mart's and McDonald's are replacing the family restaurants and the local

department stores.

It's just a fact of life in this country and we're seeing it in our industry.

MS. SILVEY: Anybody else? Okay, Mr. Caylor, thank you very much.

MR. CAYLOR: Thank you very much.

MS. SILVEY: We next have John Salley with James River Coal Company.

MR. SALLEY: My name is Jonathan Salley, j-o-n-a-t-h-a-n, s-a-l-l-e-y. I'm born and raised in Hazard, Kentucky. I'm from the coal fields, third generation coal miner. I work for James River Coal as an engineer for a couple of its subsidiaries. And a lot of my questions were more technical in nature.

I'll just kind of touch on a couple of those in generality and then give you more detailed questions to tech support to address. A lot of our coal mines will have a problem with a note in the ETS in regards to cutting and welding within 150 feet of existing seals.

A lot of our mines are developed with very narrow main lines that by it's very nature, the center of those main lines have our belt lines installed in them. And to maintain head drives and

such, they're pretty close to those seals that are already in existence.

That being said, they're on a separate split of air, so when tech support starts looking at this issue, it would be nice if you could just take that into consideration knowing that there's substantial air quantity passing by those seals.

That they are in a separate air course in its entirety and there probably isn't the same kind of situation as if you were cutting and welding on a return close to a set of seals, as is stated in the ETS.

Another thing that I wanted to make sure and mention was Sago -- cite as a possible cause for that explosion was a lightening strike. And in the ETS, it's been noted that all abandoned cables in sealed areas should be removed by the operator to help eliminate any cause for future explosion as a result of a lightening strike.

My question is, in a lot of these sealed areas, we have gas wells from the oil and gas industry that have drilled wells all around our sealed works in these abandoned areas. It just seems from an engineering standpoint, and a practical standpoint, that the most direct route for a

lightening strike to enter the coal mine would be down the casing of a gas well or an oil well.

I think it's pretty much a requirement that there are multiple casings there that could transmit a lightening strike in to the coal mine area. Most of the time these wells are in barrier blocks in between worked out areas of the coal mine, but the coal companies can't really certify how much the steel has wandered and how close that gas well is to the actual mine works underground.

And neither will the oil and gas industry give you any guarantee on how much that steel has wandered. If the well has been drilled several hundred feet, it could be dramatically different from a surveyed location on the surface.

So I would just ask that tech support look at that issue and maybe give us some kind of additional protection for the miners because, you know, I am from the coal industry. I have family and friends that work in the coal mines, and I want to make sure that they are safe.

And I go underground as an engineer. So it's important for me to know that you guys look at that issue and it's taken into consideration. I'm no professional guy that's been in the industry for 30

years, and the people at tech support probably know a lot more than I do, but just from a practical standpoint, a piece of cable that's laying in a worked out area that's separate from the outside atmosphere, just doesn't seem like it's as likely a cause for a spark as maybe a gas well steel casing that comes from the surface to ground all the way through that coal seam and below.

We've talked about how NIOSH and tech support is interested in getting more comments from industry, and I applaud that because really it just seems like from my short career in mining, we have dictated to the coal industry what we're supposed to do a lot of times when you have these guys that have 30 years in the coal mines, that have all this practical experience that can really help people at tech support or NIOSH understand what they can do and what they can't do it in a coal mine.

You know, we see designs that are posted that really look more like civil engineering projects than something of what we're used to doing in a coal mine.

And I just think that a greater industry participation and a better communication with NIOSH and tech support may give us better designs that are

more practical and easier to construct, easier to comply with that our coal miners won't have such a hard time making sure that they do it correctly.

There's some questions that I will note on a card or a questionnaire to tech support on the pressure piling. It's mentioned in the ETS, and I'm not so sure how that's calculated, but any of those calculations, as well as some of the basis for the designs that are posted, would be nice to see just so that we can see how you arrived at those designs.

And the certification for the engineers on the design and the construction process of the seals, I think Bill kind of mentioned something that I myself am personally a little bit afraid of. If I'm involved in the certification of some seals at one of my mines, and I do go somewhere else, or something changes in that coal mine, because coal mines, they're not static.

They are dynamic animals. Seals require maintenance, and as we mine more and more coal in East Kentucky, you have multi seam interactions to where the conditions for that coal mine, when the seal is constructed today, may not be the same five years from now and who's going to be held liable.

Is it going to be me? Especially when I

have no control over Mother Nature or whatever you want to call it. I have additional questions, but like I said, I'll leave the more technical in nature to a letter or a request to tech support, but that's all I have today.

MR. UROSEK: I guess the only comment I would like to put out there for you is in the overall design and the ones that you see on the Web -- of course, when any is submitted to MSHA, that design will go on to the Web, and it can be used by others that have that same type of ground or same type of conditions.

So in any design that's up there, it is designed for the 50 or the 120 psi. So for example, if at your mine you have a design using concrete blocks or any other type of material that you believe will exceed the 50 psi using common mining construction techniques, and you provide the calculations to technical support and certify those calculations, that that design will meet 50 psi.

That's something we will look at to approve, and as long as it has all the requirements of the information necessary in the ETS, and it is certified by a registered professional engineer, it's most likely that design will be approved.

So it is open for that. Some of the designs are going to be more robust than others, but it depends on what someone submits and to whether they meet that requirement. That's something that is certified by the professional engineer that submits it to us.

MS. SILVEY: One of the reasons we are putting them up on the Web is so this information will be available to all who have an interest in even maybe taking one particular design we put up there, and then use different materials or different things in conjunction with that material.

And maybe they might come up with another design. So to that extent, I think that is useful to the mining industry.

MR. SHERER: I have a comment about the gas wells.

MS. SILVEY: Okay.

MR. SHERER: First of all, I appreciate you coming down and I especially appreciate your comments about oil and gas wells. We do realize that they are a problem, and in fact MSHA met with the State of Kentucky last week to try to coordinate between the oil and gas permitting process in the coal mine locations and such.

So we are working on that. There are some differences of jurisdiction and such that we've got to work through, though.

MS. SILVEY: Okay. Thank you very much.

Next we have Mike Amick. Mike Amick.

MR. AMICK: My name is Mike Amick. It's a-m-i-c-k. I want to thank you for allowing me to speak this morning. I would like to offer some of my opinions from working with seals since 1991, everything from installing the seals to research and development of seals.

I would like to make it clear that these views are my own and they're not of my current employer, or previous employers, or any currant or prior clients. I view myself as an interested party, independent, that can offer some points of information that might make the nation's mines a little safer.

I'd like to spend a lot of time on some of these issues, but I'm going to keep it as concise as I can, and please ask me any questions to clarify. The first thing I'll touch on is the professional engineer issue that you've already heard from. So I'll keep that brief.

Some of the issues that I see, one is the

professional engineer and the certified person responsible for the area, can often be in conflict and it should be clear that in the narrow definition of the seal design, that the PE be responsible for the design and as an as built and not necessarily as some of the wording is in the explanation text as accompanied with these proposed regs.

I see that the best solution is that the professional engineer certify the seals on an as built basis, including the design and maybe some of the key building points. For example, that the rebar was such and such facing, and it was such and such diameter, and the seal form was so thick, et cetera.

In fact, we have to ask ourselves, listening to people this morning, if these designs are so complicated and complex that we need professional engineers, certified persons, and other experts to watch every moment of the design, are we being unreasonable.

One thing I would like to offer is that the proposed 75336 (b) (2) should have the words stricken, conduct or have oversight of seal installation in order to make that section more workable. And I'll also admit these written, also before the August 17th deadline.

I also think that because the actual work of installing the seals is done by miners or the contractors, and because of the importance of the seals, that not only should you have the PE certify the design and as an as built, and it should have your certified person sign the construction book. You should also have the members of the construction crew sign this book.

They are just as important as everyone else on this team and they need to signify that they had performed these tasks as they were trained to do. It's no different than a roof bolter operator installing roof bolts correctly or the rock dusters putting on rock dust correctly.

And also I think it's important to keep in mind that the professional engineer and certified persons cannot be expected to be experts in all fields.

And what I'm saying there is on concrete, steel, different materials used, you can't expect them to certify them per se, but the regulations should allow them to accept certification from the manufacturer or whomever these materials were received from.

On some small mine costs, I was in a mine

last week at East Kentucky, 25 inches high, that if he put in seals as proposed on the Internet now, the cost would be approximately 25 percent of his total profits last year.

If you took it on a revenue basis, it would be somewhere between 10 and 15 percent. So it's far more than what's on Pages 28812 and 28813. And I'll try to get some more detail and submit that at a later time.

I also think that mines that are above the water table, which are generally small by nature, both in number of employees and in arial extent, still be allowed to use the 20 psi standard. When it's been shown historically that there's no methane and that the area could be monitored and the methane is below two and a half percent, and the oxygen remains below 17 percent.

If these areas should ever approach these two and a half or 17 percent ranges, then either the 50 or 120 psi seals should be installed. There's a lot of these seals out there that have not failed, and I don't know that it's right to all of a sudden crucify them all.

On Pages 28799 in column one, it discusses the development of alternative seal

designs. I believe this section is incomplete and it's more like what I've seen in the media that it's just inaccurate on how these standards were developed.

It's always stated that the seal standards were weakened, and that's not the case. One of the goals of that program, if not the goal of the program, was to find an alternative to the standard block seal because they were failing and under certain conditions.

The Mitchell seals were failing in mines that had higher rates of convergence. Now it's difficult to tell, but probably in that video what you saw was those seals failing due to convergence, and an alternative design would probably have been more effective in that situation, but again, it was a video in the dark and it's kind of hard to say.

But my point is that having been there and lived through all of those testing programs, there was never any intent to weaken designs. It was the sole intent that I was aware of was to allow designs that could be installed in difficult conditions.

The failure of the seals at either Sago or Darby is not ironclad evidence that all

alternative seal designs are bad. Only in these two specific instances they failed whether they were improperly built, they were built properly but in the wrong application, or they were built properly and the explosion was simply higher than the design. I don't know.

I've only read what I've read in the media and I know that the media is typically inaccurate.

Mitchell seals have been blown out several times where in the same set of seals, alternative seals survived, and therefore you might call them superior.

I've seen it with my own eyes, and like at Sago, they were caused by lightening strikes. The MSHA report dealing with Oak Grove explosions back in the '90s goes into these events in great detail. I also think it's important that there is an atmosphere of cooperation.

Many of these mines, they have unique situations that need to be addressed and trying to come up with an iron clad, bulletproof set of regulations to cover every situation is just impractical. A mine with soft ribs or floor, for example, they need a design that has a much greater

plug than anchoring it to the rock because of the rock's weak nature.

This gets back to my earlier point of professional engineers being allowed to have more of a role in the design and not having some flexibility.

I've seen seals that were blown out that the ribs failed first.

Since the entry was six feet wider than when we put the seals in, there was no doubt that the ribs failed. Now, whether the seal failed first or the ribs failed, I couldn't tell you, but the pieces laying down in the entry that were larger than this table would indicate to me that the ribs failed and that when the seals started to move, it broke apart.

Another thing I think I've seen over the years is that MSHA needs to improve their communication to the district offices. One of the experiences that I had is we installed seals in different districts. We had different standards, depending on the district, and it really had nothing to do with how we were tested or oftentimes even with any specific condition.

I have seen some seal designs used in situations that were specifically mentioned by tech support to not be used in. The inspection force

somehow needs some kind of a rapid access to what was approved, along with some key points.

And that may be what you had in mind in the proposed regs where now a design is submitted to tech support and then to the district manager. Because many seal designs are easy to build in a manner that looks like they are properly installed, but if you do not know what you're looking for, they're not properly installed and shouldn't be used in those situations.

So again, the inspector force needs to be thoroughly trained in all of these new designs that are coming out. This is my first experience with this kind of a meeting, and one thing I would like to state is that I hope that when all of the regs and rules come out that the discussion section is clearly left out.

Because when you read the regs and you read the discussion, you can get two different interpretations, and that's the last thing we need if something happens is, well, which -- what are we following, on the reg or are we going to follow what the interpretation of the reg says.

One of the things I noticed is that it says that the -- 75335 now, it says seals shall be

designed, constructed and maintained to protect miners from hazards related to sealed areas. In the past, the seals were always designed to protect not only the active area but the sealed area.

As it began years ago, there was a lot more explosions in the active area of the mine, and one of the fears were that the active area explosions would blow out the seal and get into the gob, and now either cause a further explosion or release further gases into the ventilation system.

I think this is important because up until this time, engineers could not use shapes to help increase the strengths of their designs. Take the Grand Cooley Dam. It's shaped in an arch because the water is on one side of it.

What these guys are forced to do is build a dam, if you will, but they don't know if the water is going to be on this side or the other side. So with the new reg, this is an improvement, and I hope that the tech support people that are reviewing these designs are thinking that now we can use shapes, if that was the intent of this proposed 75335 section.

And then finally, on the question that was brought up about existing seals, I really don't think that's a good idea to go around and replacing

the existing seals unless there's evidence that they are improperly installed, used in the wrong situation, that there is a compelling reason. Because for every non compelling reason to change a seal out, I can think of the great dangers and hazards that you are going to expose the crews to that have to go in and replace these seals, if it's in a situation where they have to knock the seals out.

So I would use caution there and only exercise that profound action in an event that the seals are suspect anyway. So to close, I think we all have in mind that we have to mine coal safely. The safest thing to do, strictly speaking, is just not mine the coal.

The most dangerous thing is to mine the coal and just walk away. What we have to do is provide a level of safety that is practical and addresses all but the most unlikely events. The worst thing we can do is just try to solve the political questions, and the popular perceptions.

And the only thing that has changed really is that now it's easier to blame somebody. Thanks for your time. If there's anything I can clarify, please ask.

MS. SILVEY: Thank you, Mr. Amick. I'll start

with my last comment first that I had in the order that I had them written down here. You said that you hope that in the future, the discussion section is left out, and I probably would even ask my attorney for some help here, but -- because you said sometimes you can get two different interpretations.

And clearly, that's not our intent that one who reads the preamble and the rule itself get two different interpretations. In point of fact, the intent is just the opposite, that the discussion in the preamble clarifies and provides a rationale for what the Agency did in the rule.

So in the event that you indeed have gotten two different interpretations from some of the five standards, 335, six, seven, eight, four, I guess, four standards in the ETS, and the provisions under the four standards, then I would really like you to let us know that.

You said you were going to be providing additional written comments, so I would like you to let us know that because I foresee that, as we do this final rule, it indeed will have the rule part of it, the language part, 33567 and eight, and it will also have a discussion part in the preamble.

With respect to your statement on the

cost, you did say, and I think you anticipated what I was going to ask you, you did say that you were going to get more specific numbers, and you would get that to us.

But you said the cost had been 25 percent of total profits and maybe 15 -- 10 or 15 percent of revenue. If you would, in terms of making a statement that it -- if you would get us specific amounts. You disagree with the amount that we had in our estimate because we put in the best good faith estimate that we had in terms of getting the experience of our people and many times called in the mining industry itself, both manufacturers and operators.

So if you could indeed, if you have different numbers, get those numbers to us. With respect to the professional engineer and the certification of the professional engineer, and I know that our attorneys will be looking at this very closely also.

I guess I'm speaking for them, but on that issue, and a number of people have raised that. I mentioned earlier, we have an additional set of questions coming out, answers coming out, and they are -- we got a lot of comment about, well, what do

you want. The PE, professional engineer there, looking over the construction 24/7, and I don't think -- I mean I think I can say to you here, we didn't anticipate that the professional engineer would be looking at the construction 24/7, even in the ETS that we put out, but we will be getting some clarification on that issue out to everybody. Did you want to add anything?

MS. GREEN: No, just to say, Erik Sherer actually from Coal Mine Safety and Health has been working on another set of Q's and A's, and actually there's a question related to this issue where MSHA makes that clarification.

MS. SILVEY: Does anybody else want to add anything? Anybody else? Okay, Mr. Amick. Thank you very much, but we do look forward to you following up with specific comments and specific rationale for suggestions you make before the record closes on August 17th.

MR. AMICK: Thank you.

MS. SILVEY: Is there anybody else who wishes to make a comment? Anybody else in the audience who wishes -- yes, sir.

MR. BARKER: I'd like to make a comment. You want me up here?

MS. SILVEY: Okay. Yes. Yeah.

MR. BARKER: My name is Gary Barker, b-a-r-k-e-r and I'm a private consultant. I just have a real quick comment that is basically in the form of a question. It doesn't have to be answered here, but I think the question needs to be answered at some point in time.

My question is, after a PE submits a seal to MSHA, and MSHA approves the design and assigns it a number, is or is not MSHA agreeing with that design?

That's it.

MS. SILVEY: Okay. Thank you. Are there any more comments?

MR. BELL: I've got one. Donald Bell, d-o-n-a-l-d, b-e-l-l. I'm from West Kentucky. I'm a professional engineer for the local mine there. I've heard a lot of comments today about seal design and certifications and things of this nature, and I've also heard a lot of comments about how we can make seals safer, perhaps through making them stronger through the 120 psi or the 50 psi pipe designs and construction.

At my particular mine, back in 2000, due to an unfortunate incident, we had an inundation of

water.

To save the majority of the mine, we constructed through MSHA's approval a set of bulkhead seals. These seals are some 120 feet thick.

I don't recall the exact number of yards that we put in this set of seals, but obviously these seals will not blow out. And the reason I'm bringing this up, I've heard comments about the atmosphere migrating out from behind a set of seals if we use these new type that are proposed.

I can assure you, because I have been there personally, the atmosphere behind these seals 120 feet thick, and by the way, these seals were hitched into the roof, ribs and floor five feet each direction. I personally looked at that and assured that this was done correctly.

These seals still would leak atmosphere because now they have approximately 55 psi of water behind them. They are completely inundated which they were designed to be done. Water leaks out of the strata around the seals.

So regardless of how strong we build the seal, to say that we can build it 100 percent safe to where anything could be done outside that seal, is not accurate. I don't think that can be done. I

just wanted to bring that up so that MSHA would take that into consideration when you're looking at these seal designs.

Also, as we speak right now, we have a set of Mitchell Barrett seals which are being inerted with nitrogen gas to render the atmosphere there harmless.

To do so, I had to go and drill down into a sealed area. Again, I went through my local office.

So now in a sealed area, which I'm inerting, I have a two inch lightening rod, 331 feet in the ground. According to some of the speculation around the Sago disaster, lightening was transmitted down a borehole. Now, I don't want Mr. -- I forgot. One of the previous speakers mentioned oil wells.

We have several oil and gas wells in our mining field as well, which the casing is still intact from surface to below the coal seam. In this particular case, my casing dead ends at the coal seam itself.

Anyone familiar with electricity knows lightening or electricity is going to the easiest point of ground. So I would kind of like you to think about those issues as well. No one can replace

any of the tragedies that's happened.

No one can replace any of these loved ones.

I've had friends that I have lost myself, in particularly 1989, Pyro Mine disaster. Some of you may know that one as well. So I live with it daily, as many of the people in this room.

Unfortunately some of the ladies that have lost husbands, no one can replace what they've lost.

No amount of money can make them feel better. My heart goes out to them personally. I have friends that are at my operation right now that I see daily.

Nothing could replace their loss, but just like some of the other speakers that have presented testimony here today, we need to be realistic in what we are doing, and we don't need to do something that is unrealistic from the standpoint that it's just unachievable to meet the goals that we would all like to achieve, which is better safety for everyone. And that's my only comment.

MS. SILVEY: Thank you.

MR. SHERER: I've got a question, if you don't mind.

MR. BELL: All right.

MR. SHERER: Did you inject liquid nitrogen or gaseous nitrogen?

MR. BELL: Gas nitrogen.

MR. SHERER: Gaseous nitrogen. May I suggest in the future maybe a bigger diameter hole in a nonmetallic casing.

MR. BELL: You can. However, sir, the company that supplies the nitrogen specified to us if we used any type of a plastic casing, it would shatter.

MR. SHERER: So it was a pressure issue?

MR. BELL: It was the fact that the gas -- as the coal, it would just change the properties.

MR. SHERER: Yeah, the temperature. There are fiberglass casings available, but that may be an alternative. We can discuss this further in the rulemaking process. If you have any specific information, could you please submit it for the record?

MR. BELL: Certainly.

MR. SHERER: Thank you.

MR. BELL: Thank you.

MS. SILVEY: Is there anybody else? Anybody else here who wishes to comment? Having not seeing anybody else who wishes to make a comment or

presentation at this second Mine Safety and Health Administration public hearing, I will now tentatively draw this hearing to a close.

Now, you ask why do I say tentatively.

Because as I close it, we will remain here until 1:00 o'clock. And if anybody -- a little after one, and if anybody shows up after one, then we will hear whatever testimony they have, but I'm going to officially close it now, but before I close it, I'm going to make one final comment again, and that is to thank all of you for your time and attendance, and quite honestly, for your attention.

For those of you who gave us input, who made a presentation, and for those of us who did not make presentations, but just the fact that you were here and you showed that you have an interest in this matter.

We will take your information with us as we -- for the remainder of the public hearings and back to Arlington as we develop the final rule.

And we will do so in the manner we've heard, as I said in my opening statement, try to develop a rule that's safe, effective and can be appropriately implemented. And so with that in mind, thanks to everybody again, and the hearing is now

closed.

(Whereupon the meeting adjourned at 1:02 p.m., it having been determined that no additional speakers were present.)

CERTIFICATE OF REPORTER

COMMONWEALTH OF KENTUCKY AT LARGE

I do hereby certify that I reported the public hearing of the Mine Safety and Health Administration on July 12, 2007, and that this transcript is a true record of those proceedings. As witness my hand and Notarial Seal this 24th day of July, 2007.

BARBARA J. ENNEKING, CERTIFIED VERBATIM

REPORTER/NOTARY

SUBMITTED ON: 07/25/2007

B

D

F

N

S