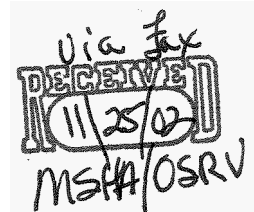




November 25, 2002

VIA FACSIMILE (202) 693-9441

Marvin W. Nichols, Director  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Room 2313  
Arlington, Virginia 22209-3939



Re: COMMENTS OF NEWMONT MINING CORPORATION TO THE  
MINE SAFETY AND HEALTH ADMINISTRATION'S ADVANCE  
NOTICE OF PROPOSED RULEMAKING ON DIESEL PARTICULATE MATTER  
EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS,  
67 FEDERAL REGISTER 60199 (SEPTEMBER 25, 2002)

Dear **Mr.** Nichols:

Newmont Mining Corporation ("Newmont") is pleased to submit the following comments to the Mine Safety and Health Administration's ("MSHA") Advanced Notice of Proposed Rulemaking ("ANPRM") regarding Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners. See 67 Fed. Reg. 60199-202 (September 25, 2002). Newmont appreciates the opportunity to comment on the ANPRM and to contribute to MSHA's work toward the development of a proposed rule for notice and comment in 2003. Newmont particularly welcomes the chance to respond to MSHA's request for information regarding the "cost implications of compliance with the current DPM standard" and commends MSHA for its emphasis on the "significance of obtaining this information from mine operators." *Id.*

Newmont is an international company engaged in metals production. Newmont's operations are primarily focused on gold production, including the exploration and acquisition of gold properties. Newmont's Nevada operations produce several million ounces of gold annually. Newmont is the largest private landholder in Nevada and is one of the largest employers in the state. As with many of its operations, Newmont's underground and surface gold mine in Carlin, Nevada employs a range of diesel equipment in the extraction process. In the United States, Newmont's mining operations are subject to MSHA jurisdiction. Thus, Newmont has a significant interest in the ANPRM.

NEWMONT ENDORSES THE MARG COMMENTS: To begin, Newmont joins and fully endorses the MARG Diesel Coalition's ("MARG") comments on the ANPRM. Newmont urges MSHA to reconsider its position on the science underlying the proposed Threshold Limit Value ("TLV") for diesel. Newmont agrees with MARG that there are numerous, serious issues

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concerning the scientific integrity of the proposed rule. MSHA is obligated to employ only credible science, and Newmont agrees with MARG that a more careful review of the science underlying the proposed rule is in order.

THERE IS INSUFFICIENT EVIDENCE AT THIS TIME FOR MSHA TO CONDUCT A PROPER TECHNOLOGICAL FEASIBILITY ANALYSIS: Newmont also joins MARG in urging MSHA to suspend enforcement of all exposure limits pending the development and consideration of the necessary feasibility data. Newmont is now evaluating the technological feasibility of compliance with the proposed rule at several of its large underground mining operations in the western United States. Newmont's on-going evaluation, though incomplete and limited by the availability of equipment (including sampling equipment), suggests that compliance with the proposed rule is not technologically feasible. At a minimum, Newmont's evaluation demonstrates that numerous issues of technological feasibility remain and must be addressed. **Unless and until** those issues are addressed and resolved, compliance with exposure limits is simply not feasible, and a stay of enforcement is warranted.

THE EVIDENCE TO DATE INDICATES THAT THE DPM RULE IS NOT ECONOMICALLY FEASIBLE: Newmont is also currently in the process of evaluating the economic feasibility of compliance with the proposed rule, and Newmont was compelled by the **early** results of **this** evaluation to answer MSHA's request for information on the "cost implications of Compliance with the current DPM standard." See ANPRM at 60199. In the Final Rule on Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners, 66 Fed. Reg. 5706 (January 19, 2001) ("Final DPM Rule"), MSHA estimated the per mine annual cost to comply with the **Final DPM Rule** at \$158,437 where the **mine** employs 20-500 workers. **See id.** at **5892** (Table VI-1). Pegging the yearly cost of the Final DPM Rule at **0.67%** of the yearly industry income and using a "one-percent 'screen' of costs relative to revenues as a presumptive benchmark of economic feasibility," MSHA concluded **that**, "subject to contrary evidence," the rule was economically feasible. *Id.* at **5889**.

Newmont can now offer such "contrary evidence," demonstrating that the rule is not economically feasible. Newmont's early estimates, though quite conservative, readily illustrate the radical difference between MSHA's estimate and the true, real-world costs of compliance. Newmont has estimated that the capital costs alone of modifying ventilation systems to comply with the proposed rule, at just **two** of its underground operations, approach \$400,000,<sup>1</sup> as

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<sup>1</sup> At Newmont's Deep **Post** operation, Newmont estimates that the engineering **and design** costs associated with the requisite ventilation modifications **will** run over \$260,000 in capital required for the purchase of a **scissor** lift necessary for maintenance access to the new ventilation **system** at **this one** mine. In addition, Newmont expect to purchase eight additional main **and** secondary mine **fans for its Carlin** East operation, **including** four 100 hp fans and four 125 hp fans, at a **cost** exceeding \$120,000.

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compared with MSHA's economic analysis in the Joint MSHA-Industry *Study* which estimated that Newmont (**Mine X**) would bear **only** \$158,000. These initial capital costs are, however, modest compared **with** the annual maintenance costs attributable to the modified ventilation systems. Newmont expects to spend close to \$2,000,000 each year to maintain these modified ventilation systems?

The costs do not end there. Without knowing whether Newmont **will** achieve compliance with the interim DPM standard, Newmont currently estimates that it **will** spend approximately \$600,000 to install soot traps on diesel equipment at its **four** largest underground operations.<sup>3</sup> Newmont expects to spend at least \$30,000 a year on trap maintenance. Newmont has also considered the costs associated with the use of positive pressure respirators **and** negative pressure respirators. For positive pressure respirators, Newmont expects it **would have** to spend close to \$208,000 every **year** at just two of its largest underground mines.<sup>4</sup> By comparison, the cost of negative **pressure**

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<sup>2</sup> Though very conservative, this number includes **an** annual expense at the Carlin East operation of \$142,000 for additional fan power, \$400,000 for the labor costs of miners, \$100,000 in salary for a full-time ventilation engineer, \$200,000 for materials expenses and \$390,000 for expense development. It **also** includes the annual costs of Deep Post's compliance. At Deep Post, the annual costs **will** include \$400,000 for the labor costs of miners, \$200,000 in materials expenses and \$100,000 in salary for full-time ventilation engineering services.

<sup>3</sup> For example, at Carlin East, Newmont expects to install 19 soot trap filters on its 31 and 26 ton trucks at \$13,100 each for a total of \$117,900, 4 filters on its 6 ton CY loader at \$8,500 each for a total of \$34,000 **and** 7 filters on its 3 ½ ton CY loader at \$8,000 a piece for a total of \$56,000. Thus, at Carlin ~~East~~ the total costs to fit passive soot trap filters on ~~the~~ diesel equipment there would run to \$207,900. Deep ~~Post~~ **also** has 31 and 26 ton trucks which will require 10 filters at a total **cost** of \$131,000. The total cost of 4 filters for Deep ~~Post's~~ 6 ton CY loader is estimated at \$34,000, while the total **cost** of the 9 filters required for Deep ~~Post's~~ 3 ½ ton CY loader will be at least \$72,000. Overall, the total costs **at** Deep Post **are** estimated at \$237,000. At Newmont's Chucker operation, it expects to spend a total of \$25,500 for 3 filters on the 31 and 26 ton trucks there, \$42,500 to fit 5 filters on the operation's 20 ton truck and \$8,000 for 1 filter on a 3 ½ ton CY loader. Finally, at its Leeville operation, Newmont estimates the total **cost** to fit passive soot trap filters at \$85,000. **This** includes \$25,500 for 3 filters on 31 and 26 ton trucks, 5 filters on a 20 ton truck and 2 filters on a 6 ton CY loader.

<sup>4</sup> At Deep Post, Newmont has 225 employees--150 miners, 35 mechanics **and** 40 support personnel. Each would be fitted with one respirator annually at a **unit** cost of \$487.81 and cartridge cost of \$3.56. Miscellaneous costs per miner would run \$387.68, for a mechanic costs run to \$194.00 and for support personnel the costs would be \$43.30. Miners would each use approximately 34 cartridges a year, mechanics would use 15 and support personnel **would** use 8. Thus, the total annual **cost** of positive pressure respirators at Deep Post would be \$130,707. The estimated costs at Carlin East are the same, though the total annual cost is less due to the fact that there are fewer employees working there. Newmont employs 104 miners, 2 mechanics and 25 support personnel at Carlin East. Thus, Newmont estimates the total annual cost for positive pressure filters at Carlin East at approximately \$77,162.

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respirators at those same two operations is a little more manageable, right at \$50,000.<sup>5</sup>

Put simply, it is clear that MSHA has grossly underestimated the costs to comply with the Final DPM Rule. Newmont therefore urges MSHA to revisit its analysis of economic feasibility and use the now readily available real-world cost data to estimate the true costs of compliance.

Newmont has appreciated this opportunity to comment on the ANPRM. It is readily apparent that serious technological and economic feasibility issues remain to be addressed and resolved. Even more troubling, however, are the lingering questions concerning the integrity of the science underlying many of MSHA's key assumptions in the Final DPM Rule. Thus, Newmont truly hopes that the information it has provided here will assist MSHA to adequately address these issues and promulgate a proposed rule for notice and comment in 2003.

Sincerely,



Wes Leavitt  
Underground Health & Safety Manager

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<sup>5</sup> At both Deep Post and Carlin East, Newmont estimates the cost of a single respirator at \$7.58 and the cost of a single filter at \$0.82. Newmont expects miners to use 17 respirators each year and 67 filters. It expects mechanics to use 4 respirators and 17 filters and support personnel to use 2 respirators and 12 filters per year. Newmont estimates the total annual miscellaneous per mine costs associated with negative pressure respirators at \$500.00. With 150 miners, 50 mechanics and 40 support personnel employed at Deep Post, Newmont thus estimates the total annual cost of negative pressure respirators at \$30,119.10. At Carlin East, where there are 104 miners, 2 mechanics and 25 support personnel employed, Newmont expects the total cost to exceed \$19,828.72.



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MSHA  
U.S. Dept of Labor

**Newmont Mining Corporation**  
**Eastern Nevada Operations**  
**PO Box 669**  
**Carlin, NV 89822**  
**Phone 775.778.2667**  
**Facsimile 775.778.2666**  
**www.newmont.com**

### Facsimile Cover

Date: 11.25.02

To: Marvin W. Nichols Pages: 5

fax Number: 202.693.9441

From: Wes Leavitt

Fax Number: 775.778.2666

- Urgent
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- Please Comment
- Please Reply
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Re: Newmont Comments on ANPRM for DPM

Message:

Mr. Nichols,

Attached for your review are Newmont's comments on the ANPRM regarding Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners.

#### Confidential

This Message is intended only for the use of the addressee and may contain information that is privileged and confidential, If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone to arrange for return of the materials. Thank you.

AB29-Comm-20

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