TRANSCRIPT OF PROCEEDINGS

UNITED STATES DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

In the Matter of:	)
	)
OCCUPATIONAL NOISE EXPOSURE	)
PUBLIC HEARING	)

Pages: 1 through 139

Place: Atlanta, Georgia

Date: May 28, 1997

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

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Wednesday,
May 28, 1997

Meeting Room
Holiday Inn Airport South
5010 Old National Highway
Atlanta, Georgia

The above entitled matter came on for hearing, pursuant to notice, at 9:05 a.m.

BEFORE:

KENNETH HOWARD, Director,
MSHA Office of Technical Support

MICHAEL VALOSKI, Presiding
Office of Technical Support

ROSLYN FONTAINE
Office of Standards, Regulations and Variances

JAMES CUSTER
Office of Metal and nonmetal Mine Safety

ROBERT A. THAXTON
Office of Coal Mine Health

SANDRA WESDOCK
Office of the Solicitor

VICTORIA PILATE
Office of Standards, Regulations and Variances

I N D E X

P R O C E E D I N G S

MR. HOWARD: My name is Kenneth Howard. I am the Director of MSHA's Office of Technical Support and I'd to welcome you MSHA's public hearing on the proposed standards for occupational noise exposure in coal and metal and nonmetal mines.

Let me first introduce the members of today's panel. Starting on my far right is Roslyn Fontaine of the Office of Standards, Regulations and Variances. Next to her is James Custer, from the Office of Metal and Nonmetal Mine Safety. Immediately to my right is Robert Thaxton, from the Office of Coal Mine Health. On my far left is Victoria Pilate from the Office of Standards, Regulations and Variances. Next to her is Sandra Wesdock, from the Office of the Solicitor, and immediately to my left is the moderator for today's hearing who will be Mike Valoski from the Office of Technical Support at MSHA.

Let me apologize first for my head cold and hope that I can get through this and you still understand what I'm saying.

We are here to listen to your comments on the

December 17, 1996 proposed rule revising certain portions of the existing health standards for occupational noise exposures in coal and metal and nonmetal mines. The hearings are being held in accordance with section 101 of the Federal Mine Safety and Health Act of 1977 and as is the practice of our Agency, formal rules of evidence will not apply.

First of all let me give you a little background on the proposed rule. MSHA published an Advance Notice of Proposed Rule making on December 4, 1989, as part of the Agency's ongoing review of its safety and health standards. The Agency's existing noise standards, which were promulgated more than 20 years ago, are inadequate to prevent the occurrence of occupational noise-induced hearing loss among miners. In the Advance Notice of Proposed Rule making, the Agency solicited information for revision of noise standards for coal and metal and nonmetal mines. The comment period for that proposal was closed on July 15, 1990.

On December 17, 1996, in response to information received on the Advance Notice of Proposed Rulemaking, MSHA

published the proposed standard. The Agency has developed a proposal that it estimates can reduce by two-thirds the number of miners currently projected to suffer material impairment of their hearing but which it estimates can be implemented at a cost of less than $9 million to the mining industry as a whole.

The focus of the proposal is on the use of the most effective means of control -- to control noise, engineering controls to eliminate the noise, or administrative controls, for example rotating miners duties, to minimize noise exposure whenever feasible.

The proposed standard would retain the existing permissible exposure level, the PEL. It would also establish a new action level of an 8-hour time-weighted average of 85 dBA. If a miner's exposure exceeds the PEL, the proposal would require that the mine operator use feasible engineering and administrative controls to reduce noise exposure to the PEL. If engineering and administrative controls do not reduce the miner's exposure -- noise exposure to the PEL, the operator must use controls to lower exposure to as close to the PEL as is feasible or

achievable. In addition, the operator would have to provide any exposed miner annual audiometric examinations, properly fitted hearing protection, and ensure that the miner takes the annual audiometric examination and uses such protection.

The comment period was extended from February 18, 1997 to April 21, 1997, due to requests from the mining community. MSHA has received a broad range of comments from over 60 different interests, which include mine operators, industry trade associations, organized labor, colleges and universities, and noise equipment manufacturers. The comments addressed the primary provisions of the proposed rule, such as the action level, the PEL, methods of compliance, exposure monitoring and audiometric testing.

Now, let me discuss a few of the specific provisions of the proposed rule. Exposure to noise is measured under proposed section 62.120. The proposed section would require that a miner's noise exposure not be adjusted for the use of hearing protectors, that a miner's noise exposure measurement integrate all sound levels from 80 dBA to at least 130 dBA during the miner's full work shift, and that the current 5 dB exchange rate to measure

the level of a miner's noise exposure would continue to be used.

An action level of 85 dBA during any work shift, or equivalently a dose of 50 percent, would also be established under the proposed rule. For miner's who are exposed to the 85 dBA action level, the proposed rule does not require the use of engineering and administrative controls. Rather, operators would be required to provide personal hearing protection upon a miner's request, annual employee training, and enrollment in a hearing conservation program.

The proposed rule would also retain the existing PEL of 90 dBA, requiring that no miner be exposed to noise exceeding a TWA-8 or 90 dBA during any work shift, or equivalently a dose of 100 percent. While the PEL would not change, the actions required if noise exposure exceeds the PEL are different from the current requirements.

MSHA's existing metal and nonmetal noise standards, for example, already require the use of feasible engineering or administrative controls when a miner's noise exposure exceeds the PEL. The existing standards, however,

do not require the mine operator to post the procedures for any administrative controls used, to conduct specific training, or, to enroll miners in a hearing conservation program.

Under MSHA's current coal mining standard, a citation is not issued when a miner's exposure exceeds the PEL if appropriate hearing protection is used by the miners. In the event of a violation of the coal mining standard, operators are required to promptly institute engineering or administrative controls and to submit to MSHA a plan for the administration of a continuing, effective hearing conservation program.

The proposed rule however, would establish a hierarchy of controls for all miners when exposure exceeds the PEL. In addition, other aspects of the rule increase protection of miners and further reduce the potential for hearing loss. Under the proposal, mine operators must first utilize all feasible engineering and administrative controls to reduce sound levels to the PEL before relying on any other controls to protect against hearing loss. Furthermore, an operator would be required to ensure that a

miner whose exposure exceeds the PEL takes the hearing examination offered through enrollment in the hearing conservation program.

Under proposed section 62.120(f), MSHA would require operators to establish a system of monitoring which effectively evaluates each miner's noise exposure. The proposal would also require that within 15-calendar days of determining that a miner's exposure exceeds the action level, the PEL, the dual-hearing protection level, or the ceiling level, the mine operator notify the miner in writing of the overexposure and the corrective action being taking pursuant to section 103(c) of the Mine Act.

The proposed rule also provides for hearing protection and training. Under proposed section 62.125, miners would be given a choice from at least one muff type and one plug type hearing protector. Under section 62.130, miners would be given required training.

Additionally, under proposed section 62.140, operators would be required to offer baseline audiograms to miners enrolled in a hearing conservation program, that is, when a miner's exposure exceeds the action level. Prior to

conducting the baseline audiogram, operators would be required to make certain that miners have at least a 14-hour period where they are not exposed to workplace noise. Use of hearing protectors as a substitute for this quite period would be prohibited. The proposed rule would also require mine operators to offer a valid audiogram at intervals not exceeding 12 months for as long as the miner remains in the hearing conservation program.

Proposed section 62.150, would required the operator to assure that all audiometric testing is conducted in accordance with scientifically validated procedures. MSHA would also require that audiometric test records be maintained at the mine site for the duration of the affected miner's employment plus at least 6 months thereafter.

Under proposed 62.160, operators would have a 30 day -- have 30 days in which to obtain audiometric test results and interpretations. Additionally, under proposed section 62.180, MSHA would require that unless a physician or audiologist determines that a Standard Threshold Shift is neither work related nor aggravated by occupational noise exposure, within 30 calendar days of receiving evidence of a

Standard Threshold Shift, or results of a retest confirming a Standard Threshold Shift, the operator must do the following:

(1) retrain the miner;

(2) allow the miner to select a hearing protector, or a different hearing protector; and,

(3) review the effectiveness of any engineering and administrative controls to identify and correct any deficiencies.

Proposed section 62.190 would require that within 10 working days of receiving the results of an audiogram, or receiving the results of a follow-up evaluation, the operator notify the miner in writing of the results and interpretation of the audiometric test, including: (1) any finding of a Standard Threshold Shift or reported hearing loss; and, (2) if applicable, the need and reasons for any further testing or evaluation.

Finally, the proposed rule would require that the operator provide the miner, upon terminate -- on termination of employment, with a copy of all records that the operator is required to maintain under this part, without cost to the

miner.

Now, this is the fifth of six hearings that we are holding. We will also be receiving comments and testimony on the proposed rule in Washington, D.C., on May 30. The hearing will begin at 9:00 a.m and end at 5:00 p.m. If necessary, however, MSHA will continue the hearing into the evening hours.

A verbatim transcript of the hearing is being taken. It will be made an official part of the rulemaking record. The hearing transcript, along with all the comments that MSHA has received to date on the proposed rule, will be made available to the public. If you wish a personal copy of the hearing transcript, however, you can make your own arrangements with the reporter. I will now turn the hearing over to Mike Valoski, from the Office of Technical Support.

MR. VALOSKI: Good Morning. I am Mike Valoski, and I will be the moderator for this public hearing. The Mine Safety and Health Administration view these rulemaking activities as extremely important and knows that your participation is also a reflection of the importance that you attach to the rulemaking.

To ensure that an adequate record is made during this proceeding, when you present your oral statements or otherwise address the panel, I ask that you come to the podium, clearly state your name, spell your name, and state the name of the organization that you represent.

The order of presentations of public statements will be in the order in which the requests were received and will be as follows. Lee Lemke, Len Eldridge -- I'm sorry. Len Etheridge, Billy Yarbrough from the Georgia Mining Association, Steve Minshall from the American Portland Cement Alliance, Greg Frazier from Thieley (sic) Kaolin, Pete Martinez from Texas Utilities Mining, Charles Machemehl and Ken Stockton from the Georgia Crushed Stone Associates, Dr. John Gibbs from Care-McGhee, Dewey McCabe from Oil Dry, Maurice Gibson from A & M Products, and William Wolfe.

It is my intent that during this hearing, anyone who wishes to speak will be given an opportunity to do so. Anyone who has not previously requested to speak should indicate their intentions to do so by signing a list of speakers which is located at the far right of my table in front of Roz Fontaine. Time will be allotted for all who

wish to speak after the scheduled speakers. The chair will attempt to recognize all speakers in the order in which they requested to speak. If necessary, however, the moderator reserves the right to modify the order of presentation in the interest of fairness.

Also, as the moderator, I may exercise discretion to exclude irrelevant or unduly repetitious material. And in order to clarify certain points the panel may ask questions of the speaker.

All comments are important to the agency. MSHA will accept written comment and other appropriate data on a proposal from any interested party including those who will not present an oral statement. Written comments may be submitted to Roslyn Fontaine at the far right of the table during this hearing or sent to Patricia Silvey, Director of MSHA's Office of Standards, at the address listed in the Public Hearing Notice. All written comments and data submitted to MSHA will be included in the rulemaking record. Should anyone desire to modify their comments or submit additional comments following the hearing, the record will remain open as stated in the Public Hearing Notice until

June 20, 1997, to allow for post-hearing comments and data. If possible, the agency would appreciate receiving a copy of your comments on computer disk and also tell us what language you use to type in your comments.

The comments are essential in helping MSHA develop the most appropriate rule that fosters safety and health in our nation's minds. We appreciate the constructive criticism and the hard work and careful thought which your comments represent. Personally and on behalf of the Assistant Secretary, J. Davitt McAteer, I would like to take this opportunity to express our appreciation to each of you for your being here today and for your input. We look forward to your continued participation in the Agency's rulemaking activity.

Before we begin with our first speaker, I would remind you to sign the attendance sheet that we have on the table whether you choose to speak or not. The attendance sheet is back by the water. We look forward -- I'm sorry. Also, once again, if your name does not appear on our list of speakers you will still have an opportunity to present your testimony.

For each speaker as you begin your statement please state your name and organization and spell your last name for the reporter. If you have copies of your prepared testimony please present your copies to the Agency panel as you begin.

Our first speaker of the morning is Mr. Lee Lemke.

MR. LEMKE: I guess you can hear me. Good morning. My name is Lee Lemke. It's spelled L-e-m-k-e. We welcome y'all to Georgia and wish we had better weather. I'm the Executive Vice President with the Georgia Mining Association. We are very pleased that you would take the -- take this time to come to Atlanta and let us make the following comments on MSHA's Proposed Noise Exposure Standard.

The Georgia Mining Association is a non-profit trade association representing some 200 mining and associate members. Actually we have about 49 mining companies that we represent and about 160 other associate member companies that have people that work directly in the mining industry providing goods and services as well as contract labor. Our

association has approximately represents about eight -- eight thousand actual miners and probably an extra two to three thousand people that work in the mining -- directly in the mining industry. Our members produce products which include crushed and dimensional stone, kaolin, barite, mica, feldspar, mulite and sand. We are actually the second largest mining state in terms of industrial minerals. It's a production value of about 1.7 billion dollars a year.

The Georgia Mining Association supports MSHA's efforts in developing a comprehensive noise exposure standard. We have identified several items in the proposed rule that we believe needs to be addressed and Len Etheridge will make our comments to these. We ask MSHA give consideration to these comments and to continue to focus on performance and goal based rulemaking which we believe has been the key element in the reduction of in -- indus -- injuries and illnesses in the mining industry.

I should mention, Billy Yarbrough is our chairman of our safety committee. He will speak following Len. The written comments we have. I do want to tell you we have a -- a variety of miners in Georgia in terms of mining

companies large and small. And we sent out a survey to ask them how many had extensive hearing conservation programs and generally we found that the large ones have already instituted very extensive hearing conservation programs. It's the small miners that we are very concerned about and the cost to them, and Billy will address that. We are concerned particularly for those ones but we all have a large concern for the health and welfare of all of our employees.

At this time I would like to have Len come forward and give the rest of our comments.

MR. ETHERIDGE: Good Morning. My name is Len Etheridge. That's spelled L-e-n and Etheridge, E-t-h-e-r-i-d-g-e. And on behalf of the Georgia Mining Association I am pleased to present the following summary of GMA's comments of which you've just received.

While the Georgia Mining Association supports MSHA's efforts in developing this comprehensive exposure standard we have identified several items in the proposed rule that we feel needs to be addressed. We ask that MSHA give consideration to these comments and continue to focus

on performance or goal oriented rulemaking,which we do believe has been a key element in MSHA's success in contributing to prevent prevention of the injuries and illness to miners.

The first topic I'd like to discuss is MSHA's hierarchy of controls. The Georgia Mining Association request that MSHA modify the section in your proposed rule 62.120 (c)(1) to the following language.

If a miner's noise exposure exceeds the PEL for more than 30 days per year the operator shall, in addition to taking the actions under paragraph (b) of this section, use all feasible engineering and administrative controls to reduce the miner's exposure to the PEL. Personal protective equipment may be used to reduce the miners exposure to the PEL for noise levels up to 100 dBA 8-hour time weighted average.

We believe that MSHA should allow mine operators the flexibility to use protective equipment up to 100 dBA 8-hour time weighted average in addition to the use of engineering and administrative controls to reduce mine -- miners noise dose to below the PEL. This would be

consistent with OSHA's current policy which allows hearing protection up to 100 dBA and MSHA's current policy in coal mining.

GMA believes that properly selected personal protective equipment that's used in conjunction with other aspects of MSHA's Proposed Noise Standard. These a -- these aspects include exposure monitoring, training, audiograms, communication of results to employees, reporting of threshold shifts to MSHA and MSHA's existing semi-annual regulatory inspection program can be an effective control in achieving the goal of protecting a miner's hearing. When needed this option can be implemented in a very short period of time as opposed to attempting to redesign a system which is both a lengthy and costly process and one that may also not be successful in reaching the desired noise levels.

MSHA should also allow personal protective equipment as a solution for controlling exposures above 90 dBA 8-hour time weighted average without the requirement for engineering controls for exposures for individuals when that exposure is less than 30 days per year. This flexibility will address maintenance operations and other non-routine

tasks and is also consistent with recent engineering and administrative control requirements that OSHA has finalized in their recent 6B rulemaking activities for cadmium, formaldehyde, methylene chlorine.

By allowing these proposed change -- changes the Georgia Mining Association believes that we can achieve the desired goal of protecting miners' hearing while providing the flexibility to miner operators to implement solutions that work best at their individual mine site.

The second topic I'd like to discuss is notification of noise exposure assessment results to employees. In our proposed changes to 62.120 in section (f)(2) are as follows. Whenever a miner's exposure is determined to exceed the action level, according to exposure evaluations conducted either by an operator or a representative of the Secretary of Labor, and the miner has not received notification of exposure at such level within the last -- within the prior 12 months, the operator, shall within 30 calendar days of receiving the final written results of the evaluation notify the miner in writing of the exposure determination and the corrective action being

taken. The operator shall maintain a copy of such miner notification or a list on which the relevant information about a miner's notice is recorded, for the duration of the affected miner's exposure above the action level and for 6 months after.

If MSHA establishes these communication requirements using the action level as a trigger, then specifying the PEL, the dual hearing protection level, and the ceiling level in the proposed rule is redundant and does not need to be listed in the standard. While specific actions will be taken -- that will be taken will differ depending on the specific noise level, the same basic communication requirement will exist for all situations above the action level.

Georgia Mining Association believes that notification should be required within 30 days as opposed to 15 calendar days as well. This added flexibility will allow mine operators to handle communication results to employees who take extended vacations, personal business, or sick leave. This time does not affect an operator's response requirement to address a noise exposure issue through the

use of hearing protection equipment, engineering, administrative controls, or training. In addition, this time period for communicating the results should begin from the time the mine operator receives the final results of the evaluation in writing and not from the date of the evaluation. Many mine operators, especially small sites, may use consultants to conduct noise exposure assessments and the final results may not be available on the day of conducting the noise exposure measurement.

Finally, GMA believes that the storage of the industrial hygiene and employee notification records at the mine site will be a significant burden to some member companies. The Georgia Mining Association request that mine operators be allowed to provide this information to MSHA in a timely manner during regulatory inspections but not be required to maintain those specific records at the mine site.

Our next comment focuses on the requirement to maintain records at the mine site for training requirements as identified in 62.130(b). The Georgia Mine Association recommends striking this part of the requirement since we

believe, again, that storage of these training records at the mine site may create a significant burden to some member companies. Again, GMA requests that mine operators be allowed to provide this information to MSHA in a timely manner during regulatory inspections but not be required to maintain those records at the mine site.

The next item is audiometric exams. The use of hearing protection for the 14 hour quiet period for baseline. The proposed rule in 62.140 requires that -- will not allow hearing protection to be used as a substitute for the quiet period prior to the initial baseline examination and the Georgia Mining Association believes that this is not practical in all cases to be able to conduct baseline audiograms without this requirement to use hearing protection prior to that audiogram. We recommend that MSHA strike that statement in 62.140.

Our next item audiometric exams and notification of results. Georgia Mining Association supports the notification and communication of those audio -- audiometric exam results to miners. However, we recommend that MSHA allow this requirement -- this notification requirement to

be completed within 30 calendar days as opposed to 10 working days as specified in 62.190. The added flexibility, as I mentioned before, will allow mine operators to handle communication of employees who take extended vacations, personal business, or sick leave.

In the area of reportable hearing loss, the Georgia Mining Association supports reporting of hearing loss information to MSHA. However, GMA believes it should be considered a report of a standard threshold shift rather than a diagnosis of an occupational hearing loss. Although the rule allows for review by a physician or audiologist, the assumption by MSHA is that if the physician or audio -- audiologist can not make the determination that the STS, Standard Threshold Shift, was not work related, then it must be work related and must be reported. While the physician or audiologist may not be able to determine that the STS was non-work related, they also may not be able to determine that it was. Therefore we -- GMA recommends that reporting of a Standard Threshold Shift -- reporting that a Standard Threshold Shift has occurred will provide MSHA with the appropriate oversight information without making those

initial judgements regarding the cause.

Finally, GMA supports miner's access to records as identified in 62.200, which is, upon termination of a miner's employment, the operator shall provide the miner, without cost, a copy of the records that the operator is required to maintain for that individual miner under this point. GMA supports the miner's access to these records; however, we recommend that this be provided upon written request from an employee.

Although the Georgia Mining Association has recommended several modifications to sections of the proposed standards that I've just listed, GMA supports the following sections of MSHA's noise proposed standards.

Regarding the exposure monitoring requirements where the operator shall establish a system of monitoring which effectively evaluates each miner's exposure, the Georgia Mining Association believes that this is -- this establishes the kind of performance oriented rule that we believe has been a success in reducing injuries and illnesses for miners. In addition to the exposure monitoring requirements, GMA also supports MSHA's use of the

action level and its requirements and the 5dB exchange rate.

In summary, the Georgia Mining Association has been pleased to provide these comments to MSHA on your Proposed Noise Exposure Standard and we look forward to continuing our relationship with MSHA to assure that we can develop goal oriented rules that can protect our miners while providing the flexibility of mine operators to develop solutions that work at their specific mine site.

With that I'll close and say thank you.

MR. VALOSKI: Any questions?

MS. WESDOCK: You said at the beginning of your testimony I think Mr. Lemke indicated that Georgia Mining Association had conducted a survey. Was the survey that was conducted regarding the cost for small mines to comply with the hearing conservation program?

MR. ETHERIDGE: Yes, and I think we'll have the following speaker that's going to talk a little bit about that.

MS. WESDOCK: Okay, did you ask them what it would cost?

MR. ETHERIDGE: I may have to defer --

MR. LEMKE: Yes, we asked them what they thought it would cost, how many had an active program and the majority of people that were below, say, 100 employees did not have active programs. Their -- their initiation basically was having MSHA inspectors come out and do the testing, checking equipment and things like that. They did not have an ongoing hearing conservation program also. And so the cost varied considerably, I mean, for a small miner you know that had costs -- let's say 15 people the cost would be close to, you know, 10 to 15 -- 10 to 15 thousand dollars for that company to implement. So, there were wide variances of what they thought because you must remember that -- that many of these companies are going to have to go out and have a mobile unit come in and the cost of that is incrementally much higher for a small miner and -- substantially higher.

MS. WESDOCK: Would you be able to maybe supplement that information as far as the cost comment?

MR. LEMKE: Well, I'd like to but -- but I'll be very candid about it. I didn't bring that information and I didn't tabulate it because it was very speculative. It was

asking these companies what they -- what they thought that they were going to incur but I have no hard -- I felt like a lot of theirs were estimates of what -- what they thought it was going to cost them to implement the program.

MS. WESDOCK: Thank you.

MR. VALOSKI: Mr. Etheridge you said 30 days if you have less than 30 days exposure to noise above the PEL then you can use HPDs and if you exceed 30 days then you have, like, the OSHA policy.

MR. ETHERIDGE: Correct.

MR. VALOSKI: How would MSHA as a regulatory agency determine those 30 days? We don't have inspectors at a mine for 30 days.

MR. ETHERIDGE: That as with the OSHA standard would be a burden that the operator would have to show. So that is one that we would have to show that based on our work records or our exposure monitoring. As we mentioned, the operator has the flexibility in the exposure monitoring standard, piece of the standard that you provide it to conduct that type of monitoring program which eval -- which effectively evaluates all their employees. So that would be

-- that would fall back on monitoring records and work records of the individual operator.

MR. THAXTON: Okay. To follow up on that too, Mr. Etheridge, would you anticipate then that if you came across a miner that was exposed to greater than 90 then the mine operator would have to take on the burden of collecting a lot more monitoring results in order to substantiate either an exposure of 30 days or less?

MR. ETHERIDGE: It probably would depend on the specific job. The situations I'm thinking -- I have referred to are short term kinds of maintenance activities many of which can be -- which exposure can be defined based on site-wide noise surveys as well as work records. So again the -- the -- the efforts to show that 30 days will fall upon the -- the operator and that's -- that is still consistent with what OSHA uses in their -- in their 30 day rule.

MR. THAXTON: In relation to that though you were indicating concern for contract type workers that may be there less than 30 days. If you have contractors that are actually on site for only five days, they move on to another

site --

MR. ETHERIDGE: No, I --

MR. THAXTON: -- you --

MR. ETHERIDGE: -- excuse me, I'm sorry. I was more thinking about a miner's employees themselves in addition -- as well as contractors. Especially with maintenance kind of activities. You can have a mechanic that has responsibilities for an entire plant but only part of a plant or only certain number of tasks that that person may do involving the noisy part of the operation. That would be part of that exposure assessment that we have to do up front to ensure that that employee's exposure is less than 30 days per year. So, that is -- that is for mine operator employees as well as -- it would apply as well as contract.

MR. THAXTON: Thank you.

MR. VALOSKI: I believe we've got no further questions of you, Mr. Etheridge.

MR. ETHERIDGE: Thank you.

MR. YARBROUGH: Good Morning. I'm Bill Yarbrough. That's Y-a-r-b-r-o-u-g-h. I am Director of Safety and

Health for Dry Branch Kaolin Company. I'll be addressing you this morning as the Chairman of the Safety and Health Committee for the Georgia Mining Association.

I'd like to address two issues, the first of which is cost of compliance. We touched on that briefly and I believe Lee made it very clear that some of the data that we have accumulated is sketchy at best, so I'll get on to some other issues that I was going to -- going to talk about.

We believe MSHA has understated the potential cost to industry of this standard. We are proposing that there be a gradual phase in over an extending period of time of this standard. This will allow us to approach suppliers of processing equipment to reduce decibel levels at the source, which is our equipment. We believe this is absolutely critical as part of the solution to this problem.

As all of you know, in the mining industry, a lot of our equipment and buildings are older equipment and older buildings. At the time of design they were not conscious of or cared at all about decibel levels, to be honest with you. Today it is -- it is quite a -- a relevant issue in the -- in the mining industry. The problem we have is that a lot

of this equipment is older and we're going to have to deal with that issue at the point or the source of the noise which is -- is the equipment. So hopefully if we can have time to address the problem at the source, which is the supplies of this equipment, I think we can really get a -- a relevant lowering of noise levels, but I think this is critical to all the mining industry. As I said earlier this basically would just take time.

The second issue that I would like to address is MSHA Funding of the State Grants Program. Currently, MSHA has about 5.6 million dollars allocated to this program. Under the Act MSHA has the right to ask for about 10 million dollars. We propose that additional funds be used by the State Grants Program to work with mining industry in identifying problem noise areas at the mine sites and working with the producers or the mining companies to develop reasonable solutions to these problems. This is to include hearing conservation programs.

As was mentioned earlier, a lot of the companies in the mining industry are smaller companies. We, in the larger companies, have these programs in place for the most

part. The smaller companies, however, do not. And they do not have the resources to do this. We believe that the additional funds that could be available to MSHA through the State's Grant Program are critical to the medium and smaller size companies in trying to address this problem. We believe that -- that you could incorporate training sessions, problem targeting sessions all into one and the State's Grant Program could be used more as a problem solving group when it comes to the noise standard than -- than just simply a training arm.

I have tried to keep my comments as brief as I could because I know this morning -- it's going to be a long morning, so I will leave you with that.

MR. VALOSKI: Thank you. I'd like to make a comment. You're saying state grants to help, you know tech support is willing and available to go to mines and help them with noise control pieces of equipment.

MR. YARBROUGH: That's right. They are. They would be willing, they are willing, in Georgia. I know that.

MR. VALOSKI: Okay.

MR. CUSTER: Sir, what length of a phase-in period would the Association have in mind?

MR. YARBROUGH: We're asking for three to five years.

MR. CUSTER: Are you aware that essentially the regulation in regard to engineering and administrative controls really has not changed -- the proposal does not change the current metal, non-metal regulation.

MR. YARBROUGH: We understand that.

MR. CUSTER: And you feel that there has not been much success in enticing manufacturers to -- to provide for treating equipment for noise generation.

MR. YARBROUGH: To date, I do not believe there has. In fact, I have had some conversations with some MSHA -- some groups from MSHA and have proposed that industry and MSHA join together to act as a spear against -- against our suppliers, that is, we need a common front here. We need MSHA to back up what we are going to our suppliers with. If we request noise decibel of -- if we request decibel lowerings to certain levels, our equipment suppliers certainly will require some type of documentation from our

federal regulatory group. MSHA is, by the comments made to me, more than agreeable to do that. This however is going to take a period of time. It's not something we can do overnight. I hope that -- that if we can work well with MSHA through the -- through the coming years that we can achieve this at the source, which is the machinery itself. And I think that's critical of what's trying to be done here.

MR. VALOSKI: Since there's no more questions, thank you very much, Mr. Yarbrough.

Our next speaker will be Mr. Steve Minshall representing the American Portland Cement Alliance.

MR. MINSHALL: Good morning. I guess it's a good thing he was brief because I guess I probably won't be quite as brief.

(Laughter)

MR. MINSHALL: I'm Steve Minshall. I'm the Corporate Health and Safety Manager for Ash Grove Cement Company and I'm pleased to be here today --

MR. VALOSKI: Mr. Minshall, could you spell your name for the court reporter?

MR. MINSHALL; I'm sorry, it's M-i-n-s-h-a-l-l. First name is Steve. Is that all you need?

MR. VALOSKI: Yes, thank you.

MR. MINSHALL: I'm pleased to be here today on behalf of the American Portland Cement Alliance, which represents virtually all of the domestic cement manufacturing industry. We have a written statement but we found an error in it that they wanted to make a change in which we'll submit in Washington, I guess, on the 30th so, y'all will receive a copy of that. I do have copies of my oral statement if you care to have that.

MR. VALOSKI: Yes, we would and would you please give it to Roz Fontaine at the far right-hand of the table.

MR. MINSHALL: Sure. Are you sure you don't want more I've got a lot of paper --

(Laughter)

MR. VALOSKI: Give them to us, we'll take them. That will save us from duplicating some of these, thank you.

MR. MINSHALL: Anybody else? If nothing else, it'll help put you to sleep.

So, we're going to submit our written statement,

which will be essentially the same as the one that I'm going to speak to today at the meeting, in Washington on the 30th.

I'd like to state at the beginning that the health and safety of our employees are of the utmost concern for Ash Grove Cement and that I speak for all APCA member companies in saying that conserving the hearing of our workers is an important issue for all of us. In fact, many of us have implemented hearing conservation programs years ago, modeled after the OSHA Hearing Conservation Amendment.

We believe it's important to have commonality between the OSHA noise standard and MSHA's proposed rule, in large part because the OSHA rule does protect the hearing of employees, and because the industry's operations are regulated by both agencies. Our specific comments on the proposed rule are -- are as follows:

On the 5dB exchange rate. First, the cement industry supports retaining the 5-dB exchange rate. MSHA has stated that it might be infeasible at this time to change to the 3 dB exchange rate and we agree. The rest of American industry is under the 5 dB exchange rate and current engineering controls are geared to meet that

standard. It is impractical to expect the mining industry to jump from essentially no noise standard to one that would exceed what other American companies are following.

There was a request for a discussion about difficult noise control areas and that's what these following comments will address. MSHA requested comments on areas within our operations in which noise control would be difficult. A listing in the cement industry would include: ball mills, crushers, rock screening, material unloading, and compressor and blower areas. It is important to note that rarely are employees permanently stationed in high noise areas but experienced transient exposures -- transient exposure during execution of their work assignments.

Various noise control efforts have been attempted in these areas, many have had costs that fail to justify the results. For example, rubber liners in raw mills have been used. They produce some noise reduction but still noise levels are far above the permissible exposure limit. Installation of rubber liners translates into hundreds of thousands of dollars in lost production and material costs. Alternative methods of milling raw feed may be quieter but

constitute a major equipment replacement and may not be technically or economically feasible for some plants. Equipment manufacturers have estimated that replacement mills could cost from 3 to 4 million on the low end to 9 to 10 million on the high end. And that's the cost per mill. There are up to three raw mills per plant. Expenditures of this magnitude are just simply not justified for noise reduction alone.

Crushers, rock screens and material unloading stations are also areas that do not lend themselves well to engineering noise controls. The nature of these tasks is inherently noisy; rocks being dumped and striking against metal, metal equipment is striking the rock to crush it or screen it, and powerful, noisy motors are used to drive the machinery. In many instances, control booths are feasible and do significantly reduce operator noise exposure. Other tasks, however, required more worker mobility and potential exposure to these noise sources. Enclosures and noise vamping materials are either not feasible or will produce minimal effect at high cost; the potential for over-exposure therefore remains.

Compressor and blower areas in existing plants are also difficult areas in which to control noise. Often these are high energy, highly congested areas with minimal free space for sound enclosures. Where enclosures are possible, controlling heat build up becomes a major issue in order to prevent equipment damage.

Often engineering controls in the cement industry, where they are feasible, are very expensive for the amount of noise reduction they provide. The cement industry strongly believes in the viability of using personal hearing protection devices to protect the hearing of its employees working in these areas.

I'd like to talk a little bit about administrative controls. In the hierarchy of controls, administrative controls are likely to be ineffective. Posting signs stating "High Noise: Remain in the area only for X amount of time" has been of limited effectiveness. Many cement plant employees, for example maintenance workers, are highly mobile, moving from one area to another as their jobs require. It would be next to impossible for an employee or a supervisor to accurately assess and respond to the length

of time an employee had been in a noisy area, especially since employees can work in several, non-contiguous noisy areas.

Administrative controls also have the potential to disrupt normal work flow. Some mine operators have reported that they have tried administrative controls, and given the opportunity, would not choose to do so again. Changing workers in the middle of performing a task presented logistical problems and miscommunication about the status and requirements of the job. For people concerned about employee safety, this presents potentially multiple opportunities for something to go wrong, an injury to occur or for job quality to suffer.

Another practical consideration about administrative controls is how to deal with work rules by which workers are not allowed to perform duties other than those which fall under their official job title. In other words, if an unprotected laborer is assigned to clean up in a noisy area, and no other laborers are available when that employee's noise exposure time has expired, a mechanic or repairman often cannot be assigned to complete the job.

Such a situation often -- certainly limits the benefits of administrative controls.

Again, the point is that the use of personal hearing protection often will be the more effective and efficient means of protecting employees' hearing ability.

Next section is on discerning miners in the hearing conservation program. The Agency requested comment on how to discern which miners are required to use hearing protection or take hearing tests. The cement industry believes that MSHA should request such determinations on a case-by-case basis. Such requests should be based on accurate noise monitoring data collected by an inspector. If an inspector cannot document exposure at or above the action level at the miner's work station, mine operators should not be required to produce information regarding incumbent miner's status in the program.

Paperwork and administrative requirements as compared to the OSHA noise standard, next section. Posting of Administrative Control Procedures at 62.120(c)(1). Individual mine operators need to be allowed to determine how to communicate administrative control procedures to

employees. The OSHA noise standard does not have a posting requirement for administrative controls; therefore, the posting requirement should be deleted from MSHA's proposed rule.

Employee notification of overexposure at the permissible exposure limit, the action level, dual hearing protection exposure level, ceiling level at 62.120(f)(2). This section of the proposed rule requires written notification to miners for every conceivable condition of noise overexposure and establishes a 15 day time limit to make the notification. The corresponding section in 29 CFR 1910.95(e) simply requires: The employer shall notify each employee exposed at or above an 8-hour time weighted average of 85 decibels of the results of the monitoring.

The APCA believes MSHA's time limitations and written notification requirements are excessive and will not enhance the hearing protection of miners. The APCA believes that MSHA should delete its time limitations and written notification requirements from the proposed standard.

Written actions being taken to correct overexposure situations at 62.120(f)(2). Again, the OSHA

noise standard has no requirement for written notification of corrective actions. The cement industry believes it should be left to the mine operator to determine how to communicate such information.

Training certification at 62.130(b). The corresponding OSHA Standard in 29 CFR 1910.95(k) does not have a training certification requirement. The cement industry does not see how such a requirement enhances the safety and health of miners, and believes it boils down to an enforcement tool. The cement industry sees this as an unnecessary burden and believes the training certification requirement should be removed from the rule.

Additionally, it would appear more logical for MSHA to place the initial and annual training requirements, now found in 62.120(b)(1), in paragraph 62.130.

Audiogram certification at 62.150(c)(1-5). The cement industry believes that it is unnecessary to certify each individual audiogram, but believes that a statement by the physician, audiologist or qualified technician that all testing was done in accordance with the requirement of 62.150(a) would be sufficient.

Miner notification of results at 62.190. The OSHA noise standard requires informing employees within 21 days after the determination of a Standard Threshold Shift. That's at 29 CFR 1910.95(g)(8)(i). The proposed MSHA requirements for reporting all results within ten days is unnecessarily stringent. The cement industry believes the mine operator should only be required to communicate results indicating STS or reportable loss and the time frame ought to be extended to 21 days.

Employee access to records at 62.200. The cement industry strongly opposes MSHA's proposal in 62.200(b) to provide miners with copies of all records upon termination of the miner. No precedent exists within OSHA standards 1910.20, Access to Records, and 1910.95, Occupational Noise Exposure, for this requirement. This requirement is unnecessary and places an undue burden on the employer. The requirement in 62.200(a) adequately addresses this issue. The cement industry requests deletion of 62.200(b) in its entirety.

Employees and employers tend to view hearing test results as confidential medical records and often object to

the review of these records by others without their prior written permission. The industry encourages MSHA to adopt wording similar to that found in 29 CFR 1910.20(e)(3)(ii), which states, "Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least 15 working days." The cement industry believes this language will afford employers some protection against claims of releasing confidential medical information to government agencies and, by posting access orders, employees shall be informed when the federal government has chosen to view private medical files.

Definition of the hearing protector. The cement industry accepts MSHA's definition of a hearing protector and asks that the Agency include the noise reduction rating, or NRR, in the remainder of the definition as an example of a scientifically accepted indicator of noise reduction value.

Providing multiple types of hearing protectors.

The cement industry does not endorse the requirement to use or exclude any specific types of hearing protectors for employees with hearing impairment. Such requirements would overly complicate the hearing conservation program and make it less likely that employees will use appropriate hearing protection. We believe employees are more likely to use hearing protectors that are readily available to them and would not be inclined to go find a specific type if it were not available in the immediate work area. In such a case, the miner might choose to work unprotected or to use a so-called unapproved type; neither choice would be acceptable to the employer or to MSHA. As MSHA has stated, factors of comfort, fit and consistent use are also important in protecting a miner from a noise induced hearing loss.

Hearing protector effectiveness, derating and allowance for protector attenuation. MSHA requested comments on a scientific and practical means for determining hearing protector effectiveness under mining conditions. The cement industry is not well-suited to making this determination but the recent literature, notably the January, 1997 issue of "Applied Occupational and

Environmental Hygiene," has articles on such methods.

However, the cement industry does believe that MSHA should take the same approach OSHA has taken in determining hearing protector attenuation. By that method, OSHA subtracts 7 dB from the hearing protector's noise reduction rating and then divides the result by 2. If the resulting number is then subtracted from the 8-weighted time weighted average noise reading and indicates a result less than the permissible exposure limit, the employer is not cited for an overexposure. MSHA should use this method and make allowance for attenuating the noise exposure below the PEL.

The industry believes the allowance of a hearing protector if the noise is attenuated below 90 dBA is a key issue. Without this allowance, and with the wording in the proposed standard, MSHA has effectively lowered the action level to 80 dBA for any miner who is required to wear hearing protection. See paragraph 62.125(b).

This requirement goes far beyond the comparable OSHA standard, and the industry objects strongly to it. Paragraph 62.125(b) should be omitted.

The cement industry further requests that MSHA restate 62.120(a)(3)(i) to read as follows. I don't know how you state those little periods in front of the quote, but "...be adjusted on account of the use of any authorized hearing protector that attenuates the noise level at the ear to less than 90 dBA."

The industry believes that MSHA is imposing much stricter requirements on the mining industry than on general industry by requiring hearing protection to be worn when exposures are as low as 80 dBA. The industry believes that MSHA has not sufficiently proven the necessity or cost effectiveness of such a requirement. MSHA should incorporate OSHA's standard and require hearing protectors to attenuate employee exposure to an 8-hour time-weighted average of 85 dBA, or below, for employees who have experienced a Standard Threshold Shift. If no STS is present, attenuation should only be required to be 90 dBA or below.

Baseline audiogram definition. Regarding the definition of baseline audiogram in 62.110, the cement industry requests that MSHA clarify that these baseline

tests are to be established after the effective date of the regulation. To that end, the cement industry suggests the following wording. "The audiogram pursuant to 62.140, and after the effective date of this regulation, against which subsequent audiograms are compared to determine the extent of hearing loss", et cetera.

Ceiling level. The proposed standard establishes a ceiling level of 115 dBA. However, the proposal is unclear whether this is an instantaneous level, or as Table 62-1 suggests, an exposure level allowed for 15 minutes. Because loud coughing, whistling, or yelling into a microphone as well as striking it against a hard surface can produce a peak reading of greater than or equal to 115 dBA, false indications of exposure could be provided that could result in citations to employers. Therefore, the industry believes that peak measurements from noise dosimeters should not be used to determine compliance with this proposed rule.

MSHA should more clearly define the proposed ceiling level and apply a reasonable time limit of 15 minutes. The cement industry believes that a ceiling level is impractical if it makes no allowance for duration of

exposure, the dose, or for impact or impulsive noise. Notably, again OSHA does not have a similar ceiling level requirement in 29 CFR 1910.95.

Operator exposure evaluation. Section 62.120(f) seems to indicate that each employee must have his or her exposure monitored. The corresponding section in the OSHA standard at 29 CFR 1910.95(d)(1) states: "The sampling strategy shall be designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protectors."

The cement industry believes the OSHA standard makes an allowance for not having to sample each employee. Accordingly, the cement industry believes that a mine operator should conduct representative sampling to determine which employee should be in the hearing conservation program without having to sample each employee. Further, the industry believes that requiring noise monitoring on every employee would be unnecessary, time consuming and costly. Clearly, there are some employees not potentially exposed to high noise levels.

The cement industry encourages MSHA to adopt

wording similar to that found in 29 CFR 1910.95(d)(1).

14-Hour quiet period. In 62.140(b)(2) MSHA disallows the use of hearing protection to help achieve the 14-hour quiet period prior to the baseline audiogram. This directly contradicts the OSHA standard in 29 CFR 1910.95(g)(5)(iii), which states, "Hearing protectors may be used as a substitute for the requirement that baseline audiograms be preceded by 14 hours without exposure to workplace noise."

We believe that MSHA should allow the use of hearing protectors to achieve this quiet period. Without this option, the time to conduct the baseline tests will necessarily have to be extended over several days. Because many locations use mobile test vans, this will at least double or even triple the cost of doing the test and will also complicate the process of scheduling with the outside vendor. Therefore, the cement industry urges MSHA to restate 62.140(b)(2) as follows, "Authorized hearing protectors may be used as a substitute for this quiet period."

And now to my summary. The Occupational Safety

and Health Administration, OSHA, has had a noise exposure standard in effect for over a decade. This standard has been a guide to cement companies who voluntarily established hearing conservation programs. OSHA's noise rule has been effective in protecting the hearing of American workers. The cement industry believes the proposed MSHA standard should more closely mirror the OSHA standard and not impose stricter standards than apply to general industry.

The use of personal hearing protection devices is an issue of particular concern to the cement industry. We firmly believe that no hearing conservation program can be effective without the continued use of hearing protectors. Retrofitted engineering controls that cannot reduce equipment noise levels below the permissible exposure limit and unmanageable administrative controls will never replace the need for hearing protectors. If improvements in hearing protection devices are needed, then safety equipment manufactures should pursue those improvements.

One of the major determinants of the success of a hearing conservation program is the prevention of Standard Threshold Shifts. If employers can demonstrate they are

preventing or eliminating STS's and/or that a noise-induced a permanent -- noise-induced permanent threshold shifts are not occurring, they should not be required to make expensive changes to equipment or procedures that may have little or no impact on the success of the program.

The cement industry strongly supports many measures that will protect the hearing of miners. Such measures include training, noise monitoring, audiometric testing, the application of economically feasible engineering controls, and the use of personal hearing protection devices. Such measures do not include unnecessary paperwork, administrative controls that merely increase operating costs, and regulations that increase the likelihood of citations and penalties without improving the industry's ability to protect the hearing of the workforce.

In closing, I would like to express my appreciation for the opportunity to express the view of the American Portland Cement Alliance on this important issue. I would be happy to answer any questions you might have.

MR. VALOSKI: On several places you stated a authorized hearing protector. What would that be?

MR. MINSHALL: One that meets the definition of a hearing protector as defined by the proposed rule.

MR. VALOSKI: Thank you.

MS. PILATE: I only have a few questions. How many companies are in the APCA?

MR. MINSHALL: I don't know if I can tell you the number of companies. There are approximately 110 plants.

MS. PILATE: And how many of them have voluntary HCP programs?

MR. MINSHALL: How many of them have what?

MS. PILATE: Have HCP?

MR. MINSHALL: I don't have a number of how many have a voluntary program. Our company does, I know numerous of them do.

MS. PILATE: On page two of your comments you spoke of the cost of the rubber liners for engineering. You estimated that would be in the hundreds of thousands of dollars in lost production and material costs.

MR. MINSHALL: Right.

MS. PILATE: How much of that hundreds of thousands of dollars is lost production, what percentage?

MR. MINSHALL: I don't know how much we make per day, but it's approximately a 10 day outage. If I knew the figure for what we were making profit-wise over 10 days I could provide that figure, but I don't have the figure.

MS. PILATE: Do you know exactly -- hundreds of thousands of dollars is a little unspecific. Do you know about how much?

MR. MINSHALL: I think the estimate was between 300 and 500 thousand dollars.

MS. PILATE: And for what size plant is that?

MR. MINSHALL: That's for a plant of 100 to 150 employees.

MR. VALOSKI: Next?

MR. THAXTON: Mr. Minshall --

MR. MINSHALL: Yes.

MR. THAXTON: -- let's go back to your page two and start at the beginning.

MR. MINSHALL: Okay.

MR. THAXTON: The 5 dB exchange rate, you indicate here that it's difficult for the industry to accept going from essentially no standard going to one which would exceed

other requirements. Do you not already comply with the current MSHA standard of 90 dB with the 5 dB exchange rate?

MR. MINSHALL: To the extent that it's feasible I think that all companies attempt to comply with that 90 dBA standard. I think what I'm referring to there is the additional costs that are associated with -- with the -- if you lowered the dBA -- the exchange rate, other costs that we don't particularly talk about -- and those would be like workers' compensation costs and things like that -- that since people are not required to do audiometric testing now formally you can increase the cost significantly of implementing hearing conservation program, at least with the initial cost of workers' compensation claims.

MR. THAXTON: The requirement for audiograms is not a requirement under the metal, non-metal regulations but it is part of the coal regulations currently for certain instances. So the cost that you're relating to are only those cost then related to the cement industry?

MR. MINSHALL: Yes.

MR. THAXTON: Can you provide us with information as related to what type of cost you think this is going to

generate?

MR. MINSHALL: I'd have to do a little more homework in order to provide you the actual cost values. If that's what you want though -- It would take additional time. We were kind of under the gun and couldn't produce all the numbers that we wanted to produce here.

MR. THAXTON: Any numbers that you could provide to us though by the closing date would be appreciated.

MR. MINSHALL: Okay.

MR. THAXTON: Your next item was your reference to, on your page 6, discerning miners in the hearing conservation program. You indicate that there should be no requirement to let MSHA inspection people know who is in the program if MSHA could not show an overexposure. What is the purpose of not allowing inspection personnel to assess your compliance with the regulation in relation to putting people in a hearing conservation program when appropriate?

MR. MINSHALL: I guess we were thinking that part of the burden there rests on the MSHA inspector to show that there is a need to see the records. Our experience has been you show records to MSHA inspectors and from that point you

have no idea how the records are going to be used for you or more likely against you. I guess this is our attempt to not give you anything more than we absolutely have to.

MR. THAXTON: Do you not agree though as the enforcement agency that we are there to discern whether you are in fact complying with the requirements of the regs which includes if you've reduced the exposure to some people by including them in a hearing conservation program that we should be able to follow up on that to discern -- to determine that that is being complied with in the regs?

MR. MINSHALL: I think that you would have the opportunity to discern that if you had conducted sampling that showed that the employee was overexposed to noise and at that point if your results showed that, then you would have access to the information.

MR. THAXTON: Whether it's our survey or your survey, should that make any difference?

MR. MINSHALL: Well, in a perfect world I guess it wouldn't, but in a world where enforcement is the issue I guess it -- it does make a difference.

MR. VALOSKI: Is that it?

MR. THAXTON: I have one more here. On your final summary you were talking -- indicated that if we -- the only thing that should be reported to MSHA were STS's.

MR. MINSHALL: For reportable loses.

MR. THAXTON: As a reportable loss. Do you have data then that reflects on your agent -- on your industry the amount of STS that you've seen from prior testing?

MR. MINSHALL: The industry hasn't collected the data, no.

MR. THAXTON: So you have nothing to base this on as to what -- that your agent -- that your group has essentially no STS's?

MR. MINSHALL: I don't think I'm saying that we have no STS's -- I don't -- if I said that somewhere I --

MR. THAXTON: I may have misunderstood. I thought -- the way you were indicating I thought you were saying that because your industry basically does not have a lot of STS's you should not be required to go through a lot of engineering or other types of changes to the rules.

MR. MINSHALL: No, no. What I'm saying is, as companies implement a hearing conservation program -- and

frankly I think for companies who don't have it will take a while for them to get up to speed. It will take a while for them to start enforcing more effectively the use of hearing protection, trying engineering controls where feasible and using administrative controls where those are appropriate to start reducing STS's that some companies may have and you'll see STS's for a while, while a company goes through the start up phase. But after they start showing through the efforts that -- that they're implementing that they don't have any additional Standard Threshold Shifts or Standard Threshold Shift isn't occurring in an area where there's a noisy piece of equipment, why should a company be required to do anything additional in that area?

MR. THAXTON: Okay, but then to show STS's you agree then that we would have to require audiometric examination?

MR. MINSHALL: Oh, we have no -- we don't have any problem with that.

MR. THAXTON: Thanks.

MR. CUSTER: Sir, in the testimony you offered you obviously like OSHA compared to what we've proposed and one

of the things you noted in your testimony is the derating system that OSHA uses where they take the published NRR values and subtract 7 divided by 2 to arrive at a figure. You are aware that MSHA does not use that same derating system currently. We merely take the published NRR value and subtract 7 and that gives you your assumed attenuation. Am I correct in assuming you would rather see the more stringent derating system?

MR. MINSHALL: Actually, I don't think that we would like to see the more stringent one, but I think that's probably -- we were thinking that's what coming. The OSHA standard doesn't actually say that they will cut that noise reduction rating in half, that's a policy I guess that they allow.

MR. CUSTER: That's a non-mandatory appendix.

MR. MINSHALL: Right. I think we were envisioning that that's probably the way things were going to head.

MR. CUSTER: And we were smiling up here and some of you folks probably wondered why. It had to do with our records access and the records access order or request being issued by an inspector. OSHA's act is -- is quit a bit

different than what the Mine Safety and Health Administration operates under and essentially our inspectors have the right of entry, obviously, without a search warrant and our regulations generally -- generally reflect that in the record keeping requirement areas. If any record is required to be kept by the operator under the Mine Act or a regulation is therefore a record that must be made available to the authorized representative. Just to clarify that.

MR. MINSHALL: And I know you have. We are just basically stating an opinion there that many people tend to view those as personal medical records and just having anybody having access to them is not necessarily what everybody wants.

MR. CUSTER: Well, I think we would agree on the -- on the -- on the health records themselves, but I don't think we would agree on the exposure record.

MR. MINSHALL: I don't know that we would necessarily challenge that issue either.

MR. CUSTER: Thank you.

MR. VALOSKI: Our next speaker will be Mr. Greg Frazier from Thiele Kaolin.

MR. FRAZIER: I'm glad you pronounced it Thiele this time. I think the original pronunciation was Thieley Kaolin Company, but the name is Greg Frazier.

MR. VALOSKI: Sorry, if I --

MR. FRAZIER: I'm just teasing.

MR. VALOSKI: In fact, I apologize to everybody here if I mispronounce their names.

(Laughter)

MR. FRAZIER: My name is Greg Frazier, F-r-a-z-i-e-r. I represent Thiele Kaoline Company and I also represent the China Clay Producers Association and I will try to be brief and I just want to address the issue a little bit about the administration in the engineering part of this proposed ruling.

In the company that I work for we are probably just a little unique in the way that we do things. We already have a hearing program established. We have a mandatory physical policy within our company. Every employee must take a physical every year, included in that physical is an audiogram testing by a physician. I have documentation back in my office, if anybody would like to

look at that any time, if we have an employee that has suffered a hearing loss over the past 12 months of any extent -- or whatsoever, really, I receive a written letter from the physician of this employee's hearing loss, plus I also get a phone call. Our procedure there would be and my procedure is, I call in that employee and tell him what his problem is and what the doctor has found and inform him that he is required under all conditions that he wear hearing protection while he is at work, no matter where he is working.

Another thing I would like to address as far as the administration part is concerned, I know this deals with the eight hour exposure while on the job, but in most cases in the kaolin industry, speaking for China Clay, the way the plants are set up and the shifts are set up, there are very rare instances where a person would be exposed to an area that the limit is above what the regs call for for eight hours. The reason I say that is, most of our people work out of control rooms. Now, in the process of an eight hour shift, they will be required two or three times to go out and take a sample and check the equipment. I would

guesstimate that they would be in that environment approximately three hours per shift, which is well into eight hours. Now, in the kaolin industry, in the company that I work for, the only people that would probably be eight hours that would be in the mines are the people who run the heavy equipment such as the dozers, the drag lines, the Euclids and things of that nature. We have cabs on those pieces of equipment. I'm not telling you that the cabs supply sufficient noise reduction levels to stay under the limit, but I can tell you that personally as manager of safety for that company I have been out and run tests myself, the dosimeter, along with MSHA inspectors, to see what those levels are, and we have had some levels that was above what the law calls for, but we would require all personnel to wear hearing protection in that environment.

Now, if we are required to engineer that equipment to where the cab itself supplies sufficient hearing protection, just doing some rough figuring, now -- don't quote me as being the exact figure -- it's going to cost my company in the neighborhood of $200,000 to probably replace cabs, or either maybe try to come up with a cheaper figure

by maybe insulating those cabs where it might work. Right now, you know, that'd be a lot of money, but the China Clay Producers Association, I can assure you, does everything possible in their power to provide adequate health and protection for their employees.

I will be glad for anybody any -- who would love to come down and, you know, look at our safety programs to see what we implement as far as taking care of our people.

I have a letter here from another gentleman, just a letter I received by happen (sic), that said that they had tried it in places where engineering had worked and it had not worked. And I've got the same situation, and I'd like to give you that scenario.

We have within our company a blower that blows powder clay to a silo facility. It's called a Fuller-Kenyon blower. If you are around that blower with no hearing protection or no engineering has been done around that blower, it's going to register 135 decibels, dBA. That's what it is going to register. What I have done and what we are doing at our facility -- and I know of other clay companies that are doing the same thing -- ours that

registers that -- I had asked engineering and got approval to put soundproof rooms around those blowers, which may be a 6 X 8 building that's well insulated, and when you shut the door to that blower's room and you're standing outside, you barely can hear the blower running, you are well under what the regs call for. But we have had instances where we tried to engineer and it didn't work. The point I want to make to that is this. Those instances where it didn't work and we put hearing protection on those employees also, it did work. The PPE, personal protective equipment, did the job. As far as we know -- the only thing we are assuming, I don't know of any way you can actually measure the decibels when somebody's got on hearing protection as to what it would be, but I know in every location, which is two in our company, we've got buildings with loud equipment in it that is above the regs. We have hearing protection in that building at all times. They do not have to go back to their shop or they do not have to go back to their workplace where they originate from to get it. It's there and we keep it there and we require them to wear it. We've got, "Hearing Protection Must Be Worn In This Area At All Times" posted

everywhere.

As I mentioned at the beginning, we also -- on those mandatory physicals, I have had two in four years since I have been manager of safety -- I have had two people that I got letters from doctors back that said their hearing loss had declined somewhat over the past year. I did a thorough investigation of those people and come to find out that both of those young men were playing in rock-and-roll bands. Now, I'm not --

(Laughter)

MR. FRAZIER: Now, I'm not saying their hearing loss came from that, but I am saying that it is going to be hard to prove which one it did come from, whether it was from loud music or whether it was from work. So, the point I want to end up with is simply this. We provide hearing protection where it is needed. In my four years it's always done the job for us. You know how MSHA comes in and does noise and dust level tests, well, I have not received -- in four years I have not received back a test yet of an employee that they did that on where the hearing was out of limits and we had to address it with MSHA or pay any kind of

citation or things of that nature.

That's basically what I wanted to mention -- Let me look at my notes and make sure.

And in this proposal -- and I'm not trying to sound negative about this because I definitely want to approach it from a positive manner, but we are dealing strictly with hearing protection on this, but if we are saying that hearing protection is just not enough, that's what -- when I read the proposed regs that's what I got out of it, that hearing protection is just not enough to do the job -- well, then how do we know that safety glasses and safety goggles and that respirators are doing the job? I mean, it is kind of the same nature -- You know, MSHA tells us, you must provide personal protection equipment for all miners. We do that. I've had people wearing goggles to still get something in their eye, you know. How do you explain that? And I do -- I'm rather strict on my people about making them wear personal protective equipment. If they do not wear it they're called in and we take action on them.

I do appreciate the concern that MSHA has shown

toward this. I appreciate the opportunity I've been given just to make this brief comment, but I will say for a company as large as Thiele Kaolin Company, you know, we're going to stay within the regs, whatever you tell us to do. Whatever the final promulgation is, whatever the final law is, we're going to do it. I promise you that. It may cost us some money, but my concern caters more to the smaller company than it does the company the size I work for because I've got 560 employees. A company with 25, 30, 40 employees, it's going to be rougher on them probably than it would be me.

I thank you for the opportunity of making these comments. If you have any questions, I'll try to answer them for you.

MS. PILATE: You spoke of having a mandatory annual physical which includes an audiogram?

MR. FRAZIER: Yes, ma'am.

MS. PILATE: Is that performed by a staff or contracted audiologist?

MR. FRAZIER: It is performed by our panel of physicians.

MS. PILATE: Is that an on-site physician?

MR. FRAZIER: Pardon? Is it on-site?

MS. PILATE: Yes.

MR. FRAZIER: No, ma'am, it's performed at the doctor's office and I since -- since I first got this proposal I called my panel of physicians and told them what we was looking at, and they assured me that any changes that they needed to make to stay in compliance to make the audiogram test legal, they'd do anything we needed to do. They said, if you want me to send staff members off and certify them or something, I'll do it. If you want us to set up something to come on site and do it, we'll do it. You know, we're going to do whatever it takes.

But we do it every year, every employee. It's mandatory. We do it every year.

MS. PILATE: For the panel of physician, does your company pay per employee or do you pay a contracted fee?

MR. FRAZIER: Per employee.

MS. PILATE: And how much do you pay?

MR. FRAZIER: I think it is $150.

MS. PILATE: That's for the physical?

MR. FRAZIER: Yes, ma'am. The audiogram is part of the physical.

MS. PILATE: You spoke of an estimate for replacement of cabs as being $200,000. For how many cabs is that?

MR. FRAZIER: Oh, let's see. Let me think. How many mines have we got -- probably in the neighborhood of 12 to 15.

MS. PILATE: Is that $200,000 figure only the cost of equipment or did you include the cost of loss production?

MR. FRAZIER: That's just equipment. That's not including lost production.

MS. PILATE: Does your company have the annual training program for hearing?

MR. FRAZIER: Oh, yes, ma'am.

MS. PILATE: How long on average do you send per employee on hearing training?

MR. FRAZIER: Well, we include that in our annual refresher training and that's an eight hour course and probably two hours of that eight hour course is spent on that.

MS. PILATE: You spoke of testing engineering controls and some of them did not work. What were the circumstances behind them not working and did you contact the manufacturers of the engineering controls before you actually installed them?

MR. FRAZIER: No, ma'am, I didn't call them before I installed them because I didn't know then it wouldn't work, but I did -- no, they have not -- I am referring to the Elliott Mills, which you might know where that is, but it is a very loud pulverizer, is what it is. And when they are out of compliance, what I merely done was put ear muffs over there and put ear protection must be worn in this facility at all times, under no circumstances will you not wear them, and we have not called the Elliott Mill Company and told them that their machine running is above the level.

MR. VALOSKI: Thank you.

MR. FRAZIER: Thank you, sir.

MR. LEMKE: Could I make a follow-up comment to Greg's --

MR. VALOSKI: He wants to make a comment first. Go ahead.

MR. CUSTER: I think we need to make a clarification and I think we have run into this in previous hearings. The regulation is crafted, or we think it is, to reduce miner's exposure. It's not necessarily to control source noise at all times. Obviously you may have a source, but if there is no exposure as was alluded to by the previous speaker, then there is certainly no need to control. I think we need to make that point clear. Obviously in the case of mobile equipment, cabs or acoustic materials, things like that, yes, we would be looking into the control of the machine, but for pulverizers or such where the exposure of a person working in that area is at or below the PEL, there would be no need to actually apply engineering controls to those devices. Thank you.

MR. VALOSKI: Mr. Lemke, you wanted to address the panel again?

MR. LEMKE: Yes, just for one minute.

MR. VALOSKI: Okay. You can address us. We're not getting into any debate between --

MR. LEMKE: I understand.

MR. VALOSKI: -- peoples' given testimony.

MR. LEMKE: I just wanted to tell you that Greg Frazier represents Thiele Kaolin, and as we have a large spectrum of companies involved in noise programs, you are looking at --Greg's testimony is one of the very best. He won our presidential award, that company did for safety in its safety performance. DBK won it the year previous. But what you are talking about, when he is giving his testimony, please understand you are talking about a company that has a vision of safety that is of highest excellence and please understand that. The cost factors this company puts in in their safety training is quite significant. So we have a large spectrum and I just wanted to make sure you understood. Greg is very proud of his program, but it is an exemplary program, one that is very suitable because of that community in which they live, they work very closely with the medical community and a lot of miners don't have the resources nor the vision that his particular company does.

MR. VALOSKI: Thank you.

Okay. Our next speaker this morning is Mr. Pete Martinez of Texas Utility Mining.

MR. MARTINEZ: My name is Pete Martinez, spelled

M-a-r-t-i-n-e-z. I am the Industrial Health Manager for TU Services, which is a subsidiary of the Texas Utilities System, and included in our Texas Utilities System is our Texas Utilities Mining Company. We refer to them as TUMCO. TUMCO is an operator of three surface lignite mines in East and Central Texas. These three mining operations produced over 29 million tons of lignite annually. TUMCO would like to submit these following public comments which we believe to be relevant information with respect to MSHA's proposed regulation on occupation noise exposure.

At TUMCO we have had a comprehensive hearing conservation program in place for over 15 years. Our program has been effective because we have addressed the subject of noise exposure for employees both on and off the job. Our program basically consists of three key elements which involve, number one, employee education and training; number two, providing hearing protection; and number three, voluntary audiometric testing of employees.

TUMCO does not believe that all noise induced hearing loss is caused by on the job exposure. Some hearing loss is also directly attributable to what employees do off

the job; examples: music, chain saws, lawnmowers, motorcycles, guns, rifles. We believe that MSHA has not addressed the issues with off the job exposure which also contributes to hearing impairment of employees. At TUMCO we have tried to educate our employees on the hazards of all noise exposures which include noise exposures at our mines as well as noise off the job. Our employees are also instructed on the benefits of hearing protection devices, ear plugs, ear muffs, to safeguard against high noise exposure and we give these hearing protective devices for use on the job. Also, employees are encouraged to use the hearing protective devices off the job.

Our program is complemented by our voluntary audiometric testing program for our employees. Even though our program is totally voluntary, we still have about 75 percent of our employees participating in the audiometric testing program, when it is offered. We feel that our employees participate in these programs because they are generally concerned about the hazards of noise exposure, and they want to know the status of their hearing level. This information then provides them direct feedback and

encouragement to continue to wear hearing protectors when exposed to any high noise environments.

In reviewing the last 15 years of audiometric test data on our TUMCO employees, we can conclude that our hearing conservation programs has been successful. The specific results indicate that only about 0.4 percent of our employees are considered as being hearing impaired -- that's after applying the age correction factor which is included in MSHA's proposed regulation. This is by using MSHA's proposed definition for hearing loss which is defined as a loss or change in hearing of an average of 25 dB or more at the 2000, 3000 and 4000 hertz frequencies in either ear.

A study of the combined results of all audiometric tests performed at our three mine sites in TUMCO revealed that only five employees out of approximately 1200 employees had a hearing impairment using the definition of the average 25 dB change, again at the 2000, 3000, 4000 hertz. This is with results of test data on employees as last measured in 1994 at two of our mine locations and as recent as 1996 in our other mine location. A few of these hearing losses could also be further challenged as not being directly

attributable to on the job exposure since the loss was only significant in one ear. Our noise exposure in our surface mines is generally considered to be all around. Therefore, any on the job exposure should be symmetrical to both ears with resultant hearing loss to both ears. In some of our cases the employee's hearing loss is only significant in one ear. This impairment could have been just as likely caused by the employee's off the job hobbies such as shooting rifles or shotguns or caused by a medical problem.

When we factor the above points we realize that our programs at TUMCO have been successful in protecting employees from noise. Again, the basic premise of our program has been to educate the employees on all noise exposure hazards and encourage employees to use hearing protective devices both on and off the job.

MSHA's proposed regulation for occupational noise exposure in coal, metal and nonmetal mines will require the operator to use all feasible engineering and administrative controls to reduce the miner's exposure to the PEL. The proposed rule as written would require that engineering and administrative controls, not hearing protectors, become the

first line of protection throughout the mining industry. This is because, as MSHA has stated, it does not believe hearing protection devices to be effective in preventing miner hearing impairment.

Also in MSHA's preamble of the new regulation it states that this new regulation will save hearing to approximately 15 percent of U.S. coal miners and that the change alone to feasible engineering and administrative controls will prevent 3 out of every 5 impairments projected to occur due to occupational noise exposure in the coal mining industry. We believe our experience in TUMCO refutes this argument because we have demonstrated that hearing protection can be very effective in protecting employees from noise exposure without relying on more costly engineering controls.

MSHA's new proposed regulation on noise will require that mine operators go through some exhaustive and costly efforts on trying to engineer out noise exposure above 90 dB or the PEL. TUMCO would argue that this approach will greatly add to the mining industry costs and very well may be less effective in hearing preservation. As

we have said before, our employees are exposed to noise both on and off the job. You would not expect employees to use engineering controls to protect them from their exposure off the job from chain saws, motorcycles, lawnmowers. However, you would expect and encourage employees to use adequate hearing protection when exposed to all high levels of noise. This is a common sense approach that we feel MSHA should use -- should also allow in the workplace.

It is TUMCO's belief that a basic hearing conservation program which educates employees on the hazards of noise, provide adequate hearing protectors, and provide audiometric testing of employees is all that is basically needed to protect employees from noise. Our experience and audiometric test results support evidence that this approach will work.

Based on this evidence on the effectiveness of a hearing conservation program, which involves hearing protection as one of the key elements, we urge MSHA to reconsider its position of requiring that the mining industry initiate all feasible engineering and administrative controls to reduce the miner's exposure to

the PEL. TUMCO believes that MSHA should take a more common sense approach to protect employees from noise exposure by allowing the use of hearing protection devices as a primary defense against noise exposure.

As workable and practicable solution on the use of hearing protection, we suggest that MSHA adopt OSHA's current enforcement policy regarding 29 CFR 1910.95 which allows employers to rely on personal protective equipment and a hearing conservation program rather than on costly engineering and/or administrative controls where ambient levels are below 100 dBA on the 8-hour time weighted average.

Thank you for allowing me to make these comments.

MR. VALOSKI: I have a couple of questions.

MR. MARTINEZ: Sure.

MR. VALOSKI: The first one is, you said 75 percent of the employees who are offered voluntary audiometric testing participate.

MR. MARTINEZ: Right.

MR. VALOSKI: Are those employees exposed above the PEL or --

MR. MARTINEZ: I would say 50 percent of those employees, of all of our 1600 employees, are above -- in some conditions above the PEL, not day in and day out, but in some of the work environments they would be exposed above the PEL, right.

MR. VALOSKI: So you actually monitor the employees and you've got --

MR. MARTINEZ: We've got noise surveys that also shows that our equipment is noisy, or whatever, and that exposure is, you know, above the 100 percent exposure.

MR. THAXTON: How many years of exposure on an average do your employees have?

MR. MARTINEZ: Let's see, we started our mines -- Glen?

MR. HOOD: About '71.

MR. MARTINEZ: '71 is when we started our mining operations in Texas Utilities.

MR. THAXTON: So most of the people are long term employees?

MR. MARTINEZ: Right.

MR. THAXTON: Is it possible to have you submit

the data that you referenced, that is audiometric data, along with the exposure data that you've collected in relation to its -- if not all employees that you've looked at, at least on the ones where you have shown that there is a hearing loss -- reportable hearing loss.

MR. MARTINEZ: I don't have that data with me. We'd have to go back to our mining company since that is confidential information. We can ask for it and submit that. By what date?

MR. VALOSKI: We'd have to have it by June 20th, but the thing is, we do not need to know the social security number or the name or anything like that. You know, miner number one, two, three, four, five would be sufficient.

MR. THAXTON: As long as you think both types of data, that is, your exposure data and your audiometric data the same way so that miner number one is miner number one on both types of data.

MR. MARTINEZ: Sure.

MR. VALOSKI: We don't need to know the identity of any of the miners.

MR. MARTINEZ: Okay.

MR. CUSTER: Sir, your company's facilities are inspected under 30 CFR 7071.75?

MR. MARTINEZ: Our mines are, yes.

MR. CUSTER: Okay. I would assume, that being the case then, that you normally would conduct two surveys on each miner at those facilities during the year, is that correct?

MR. MARTINEZ: I'm assuming the six month surveys have been performed per the regulations.

MR. CUSTER: Thank you.

MS. PILATE: I have two questions. You mentioned that your company normally has annual employee training on hearing.

MR. MARTINEZ: Yes.

MS. PILATE: How long does that last?

MR. MARTINEZ: I'm not sure. It's part of the eight hour refresher. Is that right, Glen?

MR. HOOD: Probably. That particular training will last about an hour on hearing conservation and hearing protection -- about an hour.

MR. THAXTON: It is part of your Part 48 training?

MR. HOOD: Part 48 training. That is correct.

MS. PILATE: For the audiometric testing do you have a contract audiologist or do you have one on staff?

MR. MARTINEZ: No, we have a -- We send all our audiograms to an audiologist for validation.

MR. VALOSKI: Who conducts your testing?

MR. MARTINEZ: Our testing is performed by trained safety professionals or a contract. We have used both methods in the past.

MS. PILATE: For the contractor that is performing the audiometric testing, do you pay per employee or do you pay a contractor's fee?

MR. MARTINEZ: We pay a contractor fee.

MS. PILATE: Do you know how much?

MR. MARTINEZ: I think it is about $30 per hour.

MR. CUSTER: Your operations have been ongoing since about 1971 or '72?

MR. MARTINEZ: That's right.

MR. CUSTER: In the earlier years how successful were you folks in the use of engineering and administrative controls in reducing miner noise exposures? Because that is

one of the bases for the coal regulation as it currently stands.

MR. MARTINEZ: I'm afraid I can't answer. I don't know that history that well.

I brought another gentleman with me that would like to do some follow-up comments if we can.

MR. VALOSKI: Sure.

MR. MARTINEZ: Glen Hood.

MR. HOOD: Yes, my name is Glen Hood. I also work in the TU Services organization for Texas Utilities Mining Company. One comment I wanted to --

MR. VALOSKI: Spell your name.

MR. HOOD: Hood, H-o-o-d.

One comment that I wanted to make was, the data that you requested as far as the audiograms and surveys that you were asking about, we have compiled that information as part of a member of the National Mining Association. So some of that data may be presented to you, I guess, in Washington that's coming up shortly. So we have supplied that information as a member company to the National Mining Association. So, I don't know if you want duplicate

information, but I just wanted you to know that that information has been provided to the National Mining Association.

MR. THAXTON: What you provided to the National Mining Association, was it by any chance on a computer disk or hard copies?

MR. HOOD: It was hard copies.

MR. THAXTON: Oh.

MR. HOOD: You were afraid of that, right?

MR. THAXTON: I was afraid of that.

MR. HOOD: I just wanted to make that comment. Thank you.

MR. VALOSKI: All right. At this time we would like to take a short 15 minute break and give everybody a chance to stretch their legs and we will reconvene at 11:30.

(A short recess was taken.)

MR. VALOSKI: It is now 11:30. I would like to reconvene the public hearing.

Our next speaker is Mr. Charles Machemehl from the Georgia Crushed Stone Associates. When you come up to the podium please state your name, spell it and who you

represent.

Also, for anybody who has come in. We have a sign-in sheet at the rear of the auditorium here for anybody to sign the attendance sheet, and if anybody who has just shown up would like to speak, please sign the listing in front of Ms. Roz Fontaine at the far right of the table.

Sir, you have the floor.

MR. MACHEMEHL: Thank you, sir. I am Charles Machemehl. I'll spell it if I can.

(Laughter)

MR. MACHEMEHL: I used to say Charles M. when I was in the second grade. Everybody else could spell theirs. M-a-c-h-e-m-e-h-l. I am Executive Director of the Georgia Crushed Stone Association. We have about 70 members. We do a little under a billion dollars' worth of business. Georgia is number five in crushed stone. Crushed stone is the most economic building material in the world. It goes into concrete, asphalt and everything we use. So it is very important and y'all do a good job with our industry and we're highly appreciative of MSHA.

I was going to start my speech off by saying your

lady gave us 20 minutes and we don't need but probably -- Ken Stockton and I -- maybe ten. So I was going to extend southern hospitality to you and have ten minutes of my presentation a break.

(Laughter)

MR. MACHEMEHL: What I will do, I'll say you'll get to eat ten minutes early because we'll move right along. I gave you a copy of it, Mr. Chairman, and there's one just like that in the folder and I left the folder open, if you want to pull it out, the signed copy.

We'll move through this pretty fast. Some of these things have already been covered. Item 1, monitoring. Most of our big members have a system of monitoring. Item 2, we talk a little bit about notification of exposure level. You've got 10 days. Some of your other speakers have suggested that to be extended. I think the Mining Association said 30. We're saying 60, but it's going to take us more time to do that than the 10 days.

On threshold sound level counted, we have no problem with, of course, the 90 we're under now or we have no problem with the 80 that you propose. However, we do

suggest that you, like the other speaker, the cement person -- he did a great job -- use OSHA in those cases like that. We would suggest that.

The exchange rate, the 5 decibel exchange rate, we have no problem, or the ceiling level of 115. The testing on hearing protector selection and use, we are of course in agreement with the annual requirement, which is present in the OSHA requirement. However, it would be suggested that MSHA adopt the OSHA standard of requiring this when the weighted 8-hour average exceeds 85 decibels.

On training on audiological and employment program, that seems to be adequate. We are in complete agreement with what you are proposing. On the quiet period, you've had several comments about the use of hearing protection during the quiet period. I think you've got to look at that in great detail because as a military person I can assure you that if I had a person working for me that I was going to test and there were fourteen hours in there and I don't have any control, he could be a flight line person and he could -- or as somebody said, a rock-and-roll band, you've got some problems in there on that the way you've got

it stated and you need to really staff that out.

On the standard -- the next item, standard threshold level, we concur with what you are proposing there. On your reportable hearing loss, we are in agreement there. However, there should be included a means of acknowledging both for MSHA and the producer that an employee's shift in threshold could be caused by occupational noises, just as I've said on the military side or a rock-and-roll band or something like that.

Employee access to records, that's the way it should be. They should have access, just as we do in the military -- or did in the military. Don't -- I'm not really -- My military was all guard -- most of it was guard and reserves, so I really come out of the industry. So I just use that as a reference because I love the military.

The 85 decibel exposure trigger, we concur in that as we say in the written part and the 90 decibel exposure dose trigger, we strongly urge MSHA to allow the use of hearing protection as well as engineering and administrative controls to get below the 90 decibel level. Hearing protection should be the primary method used.

Now -- and of course, the 105 decibel exposure dose trigger, the Georgia Crushed Stone agrees on the use of hearing protection as proposed in the standard there.

Now, there are about one, two, three, four, five, six comments I'd like to make that get into some of the problems that have been discussed, and I would like to go into those a little deeper.

On your engineering out the sound, I think that's the biggest problem with the proposed regulation the way I see it -- I'm an engineer and the way I see it, it's just like a doctor. An MSHA engineer may say, here's how to do it. I may go off and try to do it. He may come back and say, you didn't quite do what I had in mind. I may say something else. So you can get very subjective in this problem. What we've got to do, work toward, I think together, as an industry, is we've got to be able to buy equipment that has certified decibel levels. In order to do this we probably need to get in legislation, just as we do when we work on highway legislation. For example, if you go back and read IST on the highway legislation you'll find there are a lot of people that put things in there that

require research, and I think it has to be required by legislation. I don't think it can be voluntary on the part of industry, manufacturer or MSHA. I think in the legislation it has to state there will be research that will accomplish a means of MSHA's certifying decibel levels so that if we go out as manufacturers (sic) to buy equipment, we'll know that if we spend X number of dollars that we'll wind up with that of equipment.

We had the pleasure of meeting with Ed Hugler at the Mining Association's Safety Conference, which was excellent, outstanding. He did an outstanding job with us. We talked about this and I think he agrees with us in the industry that we need to go in that direction. I think that's a very important thing that should be done. I think it will help everybody, help the individual, help everybody and we'll move forward on that point.

Now, the second point I've already alluded to and that's the one on how we're going to determine whether the occupational or the job that the person has caused the noise or whether he -- the threshold change or whether it was caused by a rock concert or serving in the military on the

flight line in guard or reserve duty. I think that's one that needs to be staffed out again by MSHA because that's one that's going to cause a lot of argument, a lot of talk and that's not really the objective of the regulation. So we see that as a potential problem.

Also on the cost, we say -- we make the statement that MSHA has not done a thorough study of cost and this should be accomplished prior to implementation. I think the problem here is until -- you know, y'all ask people what it costs. Well, there's no way for us to answer that until we know what the rule is, what the regulation is, what the law is. So it is sort of like the chicken or the egg. It's like working a calculus problem, if you will. You may not know what the answer is or the question is, but you try to come up with the best fit, and that's the problem we've got on the cost. I don't think -- I think it is going to cost a lot more than y'all think it is, but I don't know how to get a handle on that until you get on down the road and we can come up with the cost. I think anything that anybody is telling you is just their best guess and I don't think -- you know, the big companies don't think they've got a

problem, but unless we solve the engineering part of it, I think we've all got a problem. And, of course, the little companies that don't have any program going on right now, they certainly do have a problem. We represent all the companies.

Now, this is a very important point right here. When you decide what you are going to do, then what we want to do is work with you very closely on seminars and schools so that we train and teach our people the same thing you are teaching your inspectors. We had the pleasure of -- Martin Rosta was at the meeting. We had the pleasure of talking to Martin about this, and I think the way y'all have worked with us in the past on things has been outstanding. We'd like to work with you that way in the future and we need to work together. That takes a lot of the subjectivity out of it. If we know what we're going to do and y'all know how you're going to enforce it on us, then we can comply and we'll get where we are trying to get.

I've already covered the time point on the 60 days. You've got 10 days in there. It may take 60. You've heard a lot of reasons why. People could be gone. They

could be on vacation. As far as that goes, I'm not sure I could get the word out myself. I'm not sure in the military we could get the word out to somebody in ten days. I'm not sure right now if you tell me we've got to do something in 10 days -- Ten days is just pretty fast right now. It's just hard. You can put it in the law, but I'm not sure we can comply with the 10 days. I'm not sure anybody can. I'm not sure MSHA could with their own employees.

The Georgia Crushed Stone Association believes very strongly that noise protection should be part of an employee's safety requirements, along with safety glasses, steel toed shoes and hard hats. Although every effort should be made to keep the noise down through engineering and administrative, noise protection should be the primary responsibility of the employee as well as management to ensure it is accomplished. So we would see that -- If we had people in the military that went on a flight line, they wore hearing protection. If they didn't and they busted the rule two or three times, they might get busted. So the point is, we ought to look at noise protection that way and ought to look at it as the primary element of protection and

not as we interpret the rule that y'all wrote that you're making engineering number one, administrative number two and then we'll use the protection if all else fails. I think you ought to turn it around and make hearing protection number one. You ought to make administrative control number two and make engineering number three because I believe it is going to take you a long time to get to the point where a manufacturer can tell me what the decibel level is going to be on that equipment if we go out and purchase that equipment. And that's what it is going to take to really become effective, whether you're MSHA, OSHA or what-have-you.

So that's kind of our presentation and I'll be glad to answer any questions I can, but I've got enough people I know in the audience that can answer it for me if I can't, Mr. Chairman.

MR. VALOSKI: Thank you.

MR. MACHEMEHL: And Ken Stockton will follow me. You won't -- you might want to hear Ken before you ask the questions. He's head of our safety committee. Your pleasure, you're the boss. You're in command.

MR. VALOSKI: I understand you have a meeting to go to this afternoon.

MR. MACHEMEHL: I've got plenty of time. I can be here as long as you need me. This is my number one thing for today.

MR. VALOSKI: And Mr. Stockton's going to supplement your testimony?

MR. MACHEMEHL: To whatever extent he wants to. He's my committee chairman, so he's my boss.

MR. VALOSKI: Okay. Why don't we save the questions until you're both done and we'll address the questions then.

MR. MACHEMEHL: That suits me because he can probably answer them a lot better than I can. Thank you, sir.

MR. VALOSKI: Mr. Stockton.

MR. STOCKTON: I'm Ken Stockton. I am Director of Safety and Health for Davis and Mineral Properties and I'm here today as Chairman of the Safety Committee for Georgia Crushed Stone Association --

MR. VALOSKI: Spell your name.

MR. STOCKTON: Stockton is S-t-o-c-k-t-o-n. First of all, it's my understanding and I believe it is with MSHA that the number one priority here is to protect the miner, the mining employee from noise overexposure. The key there being, overexposure. If we in the mining industry have our employees in hearing protection that reduces the noise level to below the PEL, there is not an overexposure to that miner. If there is not an overexposure according to MSHA standard there should be no hearing loss. So my comment is in reference to that and that hearing protection be allowed to reduce that miner's overexposure to below the PEL, first and foremost. If it can not do that, then other controls, as Mr. Machemehl has eluded to and other people in this room, would be the next thing in line to be targeted after that. But, the way the MSHA standard is written now, even now and would be later, if there's an overexposure -- if there is an exposure to the miner above the PEL it's a citation even though he may be wearing protection. Now if there is a problem with your study of hearing protection and you don't agree with the NRR ratings, then maybe what should happen is that MSHA get with ANSI or NIOSH and develop

criteria to say this is approved or adequate hearing protection that can be used in the mining industry to reduce the noise exposure to that miner.

We already use personal protective equipment such as hard hats, safety glasses, steel toed boots which removes the miner, supposedly, from the hazard that's out there. Noise is no different. If it is considered a hazard, then personal protective equipment should be allowed to be used to remove that miner from the overexposure. That's my comment.

MR. VALOSKI: Thank you. Questions?

MR. CUSTER: Mr. Machemehl, when you started your testimony you had mentioned that a number of companies do indeed currently conduct exposure monitoring of a lot of their miners. Would you have any idea, or maybe Mr. Stockton would have an idea, what frequency of monitoring is generally performed? Do you sample each miner once a year or twice a year or just those that you feel might be exposed at certain decibel or a time weighted average levels?

MR. MACHEMEHL: I think it varies by company. At least once a year, but it varies by company, and when I said

all of them, I didn't mean to imply all of them do. I'd say out of the -- we produced 65 million tons last year and probably that was produced by, I would say, 95 percent of our members and I would say that most of those -- most of the big companies have programs right now where they're monitoring the individual and like these people have said, most of them -- most of them do this on a continual basis. I mean, they're -- it's voluntary, a lot of it, but they do it on a continual basis. Whether you need to do it, if you're getting to the point whether you need to do it, twice a year or whether you need to do it once a year, I would think -- I would think myself -- and this is based not just out of this industry, but on some other, on the military side too -- it depends on the job as you alluded to. In other words, if a person has a job that where he's at the primary crusher continually and somebody's used administrative controls and protective equipment, as Ken talked about, you need to really monitor that person close, just like we do if you've got a person that's working out on the flight line because you may have -- you may find a problem. If you've got another person that's, say he's a

geologist or something like that, that is not exposed to the equipment continually, maybe a once a year physical and a check like most -- like you and I probably get, is probably all you need. So that would be my answer, but it varies by company. I don't think you'd -- you'll probably hear the National Crushed Stone Association on the 30th and they're -- the person that's going to give the testimony is here today. I won't divulge who he is because I told him I was going to say if we got a question I'd let my chauffeur answer the question in the back of the room --

(Laughter)

MR. MACHEMEHL: -- but I'm not going to divulge who my chauffeur is, so -- but I think they'll probably tell you the same thing. It varies by company and I'm not going to say the biggest company has the best program. I don't know that that's true, but I know the big companies all have programs and I think it varies. Now Ken may want to talk specifically about Hanson & Benchmark.

MR. STOCKTON: I can tell you what we do. We have a hearing conservation program that all the people, every person at the quarry even in the office, are tested, go

through an audiometric testing every year. All the people there when they're in posted areas are required to wear hearing protection. We go through and monitor twice a year for all the areas. In the areas that are posted for hearing protection we monitor more frequently than that. If we have a miner who works -- we have -- in our company everyone's trained to do just about everything, so they're switched on and off in different areas. But if we have one that stays in areas of exposure longer than others, then those are the ones that get tested more often.

MR. CUSTER: Does the company -- I have two questions to follow up on what you just said. Does the company practice the use of administrative controls, that is, the rotation of people as a result of the fact that most of the workers there can do a multitude of tasks?

MR. STOCKTON: We have if it has been possible.

MR. CUSTER: And then, in regard to the monitoring, does the company conduct that using sound level meters where they come in and look at specific elements of the job especially where the exposures or the noise levels may be high or do they generally use full shift dosimeter

sampling?

MR. STOCKTON: We do both.

MR. CUSTER: I suppose you maintain exposure records of some kind?

MR. STOCKTON: Yes, sir.

MR. THAXTON: Mr. Stockton, while you're up at the podium, you mentioned that the wearing of PHP if it results in an exposure being less than the PEL that that should be sufficient. What are you basing that statement on that PHP actually provides and maintains a miner's exposure below the PEL?

MR. STOCKTON: State that again, please.

MR. THAXTON: What are you basing your statement that personal hearing protection if a miner is provided that that it will maintain their exposure below the PEL?

MR. STOCKTON: I believe what I said was is that if the hearing protection is adequate hearing protection as stated in the MSHA standard, I think what I was saying was, if that hearing protection reduces the noise below the PEL, then there is no overexposure to that miner.

MR. THAXTON: Based on what criteria though as far

as looking at the personal hearing --

MR. STOCKTON: Just based on the NRR rating. The only way to really know if it's ever going to do a job is for the MSHA inspector to stand there and watch the guy all day to make sure he wears it or we stand there and make sure he wears it all day to know whether the NRR rating is affective because he's wearing it all day.

MR. THAXTON: So you're saying to assume and use the current NRR rating of a personal hearing protector as a measure of its efficiency and then also assuring that the miner wears the hearing protection at all times?

MR. STOCKTON: Correct. It's always going to be up to us to make sure that he wears it all day.

MS. PILATE: I have questions for both speakers. For Charles Machemehl.

MR. MACHEMEHL: Yes, ma'am.

MS. PILATE: You spoke of your association producing one billion dollars in crushed stone and also of the producing 65 million tons --

MR. MACHEMEHL: I understand the question. I mean, I know we had interference, but I understand your

question. How do you get to that point?

MS. PILATE: No. My question is, how many companies are in this GCSA and how many are represented by those numbers?

MR. MACHEMEHL: Okay. We have about 70 total members, nine producer members -- about nine producer members and about 60 associate members. The 65 million tons that was produced last year, that was material just -- that wasn't Georgia's total, that was our total, our association total and it was produced by the nine producer members. Now I can give you a copy of the -- our directory and that has who they are in there if you'd like that. I don't -- you know, I've got one with me and I'll be glad to give it to you. So I'll get it out of my briefcase and hand it to you as soon as I go back to my seat.

MS. PILATE: All right. For the 70 members and the nine producing members, how many of those are small mines?

MR. MACHEMEHL: Out of the nine producers, they're the people that produce the crushed stone, we've got two that I would say are small producers and I would think the -

- I would classify the others as medium to large.

MS. PILATE: You spoke of some of your associate members having HCP programs. How many of those -- exactly how many have HCP's?

MR. MACHEMEHL: How many have programs?

MS. PILATE: Yes.

MR. MACHEMEHL: I would say that -- I know for sure that out of the nine producers that five have programs and there may be -- I don't know for certain about the other four, but I would guess that out of the other four that there might be one or two that have programs, but I wouldn't -- I couldn't look a judge in the eye and swear that they all do, but five of them do, yes, ma'am.

MS. PILATE: Do you know how many of them have noise training programs now?

MR. MACHEMEHL: Have noise training?

MS. PILATE: Yes.

MR. MACHEMEHL: I would think everybody has some type of noise training because we're very much involved with MSHA training and we've got a management development course that we've just started up and we'll be going into the third

phase of that, and everybody has to have MSHA refresher training and we're blessed with a person here, Glenn Roscoe, at Pickens Tech that goes around -- he works also with the mining industry with Lee's people that you heard testify this morning, Mining Association of Georgia. We're very active in that area and I think -- in fact, I'll quote back to you what Ed Hugler told all of us. We had a joint safety conference down there and he said that Georgia had the best safety program of any state in the union. I'll get that on record and I'll knock on wood, we haven't had any of the fatalities that y'all are worried about right now and, of course, we could have one today, so I don't want to act -- knock on wood -- but I would say -- I would say all of them get the training, but I don't think all -- they don't all have the programs.

MS. PILATE: You made a rather empty statement that MSHA has overestimated the -- underestimated the cost of rule.

MR. MACHEMEHL: Right.

MS. PILATE: I'm curious to know if GCSA has reviewed the RIA, Regulatory Impact Analysis.

MR. MACHEMEHL: No, ma'am. I've looked at -- I've looked at it. I mean, I've read and that's just one person looking at. I've looked at your numbers, but my -- that's not my basis. I'm not criticizing whoever did it and I'm not sure if I did it I could have done it myself any better. What I -- to -- what I was trying to explain and I probably did a poor job explaining it, but what I was trying to say is that without knowing what the rules are going to be, what the criteria is going to be, it was very, very hard for anyone to come up with a cost estimate that I felt like you could say, this will be the cost, and if you knew what that was, if you knew what the rules were, I think you could come up with accurate costs. Your cost probably -- we probably should say you did the best you could do under the circumstances, but I don't think it's -- I don't think it's -- I think it's going to cost us more by the time this program is implemented. There's big -- there's a big unknown out there and that's this -- that all the industry, I think, is afraid of, not just Crushed Stone, but that's just engineering the sound out. If I was on your team, if I was wearing your hat in MSHA and you told me to go out there

and really get industry and make these guys engineer the sound out, you could go out there and the cost of this could be unlimited and that's what -- that's what's a little bit scary about it. That's why we've got to come to some meeting of the minds, if you will, some -- we've got to take as much subjectivity out of it as we can.

MS. PILATE: For Ken Stockton, I have some questions. You mentioned that all of your employees are tested. Are they tested on site?

MR. STOCKTON: Yes. Would have a mobile van that comes around and does the testing. It's contracted. It's not tested on site by our people if that's what you're asking.

MS. PILATE: Offhand, do you know the cost of doing that?

MR. STOCKTON: The cost is I think about $15 per employee. That's not counting the time that they take away from work or anything, that's just direct cost to the van.

MR. VALOSKI: Mr. Machemehl, in your draft statement you gave us under Part (f), you said that the noise protection should be the primary responsibility of the

employee. How would you want MSHA to regulate that or what suggestions would you have for us to regulate that?

MR. MACHEMEHL: Well, I think very -- I think very simply put, if you -- if I've got somebody that doesn't have a hard hat on or safety glasses on or steel toed shoes, you're going to write me up, and I would see you doing the same thing if we use noise protection as a primary factor. In other words, I'm violating the requirement. That's exactly what we do in the military. I mean, I don't see -- I don't see -- the idea that a miner, if you will, won't wear hearing protection, I don't think that should be -- I don't think that should be a factor. I think if the rule -- if that's the rule, then that's what he should wear, period, and that's the way I do it. I mean, discipline, if you will.

MR. VALOSKI: The company would discipline the individual miner?

MR. MACHEMEHL: Well, sure, and you'd write me up if you came in if I was -- if I was the inspector and I came in and the person didn't have the equipment on, then certainly I would be written up. My company would be -- or

if it was my company, I'd be written up. Sir, I don't see that as a problem as far as the -- I don't think the discipline's a problem. If you'd been down in our safety conference you'd probably agree with me because one speaker -- and I'll quote him so you won't think I'm making this up -- but he was given all these facts about the fact that he didn't have any problem getting the miners motivated because there's been studies done that noise -- if you improve your noise protection you improve your sex life.

(Laughter)

MR. MACHEMEHL: Now, that came right out of the mining conference. So my point is, if we're worried -- if we're worried about discipline, I don't think -- I don't think that's a problem. I think if you tell me, we're coming in there to check to see if you've got your noise protection, your hard hat, your steel toed shoes, your safety glasses and you're checking me and I'm a miner, I know I've got to have that on or I'm going to get in trouble and if I -- if I violate it enough I'm going to lose my job and that's just -- so you -- I don't see this as a problem. I mean, when people tell me it's a problem, they won't wear

this or won't wear that, I have zero sympathy.

MR. VALOSKI: My only point was that MSHA would be on the -- the MSHA inspector would look to the operator rather than to the miner.

MR. MACHEMEHL: Oh, certainly. Certainly. Well, the MSHA inspector should on anything. I mean, I'm the commander and you're coming in, you're the IG. You're inspecting me.

MR. VALOSKI: All right. Thank you.

MR. THAXTON: I have one follow-up with -- and I'm not going to argue with you over the sex life thing.

(Laughter)

MR. THAXTON: Personally it sounds pretty good.

MR. MACHEMEHL: Let me hand this to this lady.

MR. THAXTON: Just to follow up on a statement you made to the lady on the end about the cost, you divided up your producers by size, small, medium and large. What is your basis for determining who's small, medium and large? Is it production or number of employees?

MR. MACHEMEHL: Oh, it would be production.

MR. THAXTON: If you were to break that down by

number of employees using MSHA's criteria of 19 or less employees being a small operator, can you tell us what the breakdown would be?

MR. MACHEMEHL: It would be the same. It would be the same. We've got two -- out of the nine producers -- it's easy in Georgia because we've just got nine producer members and out of those nine you've got two that would be less than 19 and the other seven would be greater than 19, yes, sir.

MR. THAXTON: Okay. Thank you.

MR. CUSTER: Sir, does Georgia Crushed Stone Association represent any sand and gravel operations?

MR. MACHEMEHL: No, sir.

MR. CUSTER: None at all?

MR. MACHEMEHL: None at all, but there's only -- to -- so you won't think we're leaving that out, there's only about five million tons of sand gravel produced in Georgia. It's predominately crushed stone, so there's little sand and gravel. It's not like it is nationally. Nationally it'll be, oh, I'd say 60 percent crushed stone, 40 percent sand and gravel now. It used to be about equal,

but it's about 60/40 right now. But in Georgia it's just almost all crushed stone, yes, sir.

MR. CUSTER: Well, being with Georgia Crushed Stone Association and obviously being in communication with other similar associations across the country, has there been any feedback from sand and gravel operations in regard to the training requirements that would be specified in this proposed rule and I'm asking that from the standpoint that currently under Part 48 training requirements, you know, there's an exemption rider on different appropriations bills and that sand and gravel does not need to train under Part 48. Has there been any feedback that you're aware of from these S & G people relative to those training requirements?

MR. MACHEMEHL: Are you talking about MSHA training or specifically about noise?

MR. CUSTER: I'm talking about the training in this proposed regulation.

MR. MACHEMEHL: The noise training?

MR. CUSTER: Yes.

MR. MACHEMEHL: No, I don't think there's been -- I get all the publications from the national, from the NAA,

National Aggregate Association, and certainly they're aware of it and they communicate it, but as far as there are very -- and I'm sure North Carolina has a pretty active association -- Fred Allen -- they're crushed stone and sand and gravel because there's more sand and gravel there, and they're aware of it, and they, you know, they comment on it, but generally speaking to answer your question would probably be no. You've got a lot of small producers in sand and gravel and the only comment I'd make to you on that which may seem hard to some people, but I wouldn't relax any of the standards that y'all are proposing because a producer is small. What I would do is do the same thing that the -- most of the highway departments do with small producers. They work with them until they can bring the quality of their material up to whatever the highway departments specify. In other words, I think what you've got to do is bring the small person up to that level, but you've got to give that person enough time to do that and that's been -- some of the other people that testified before us has said the same thing to you. You've got to give them time to bring them up -- you've got to help them, in fact, get them

up -- get them up to the level, but I wouldn't -- I wouldn't cut the level or anything, but you've got a lot of small people out there with sand and gravel and you may have to furnish them help. I'm not sure some of them know there's even a noise standard coming out. They may not know there's one now, but -- so y'all have got your work cut out for you as far as to help the -- a lot of those small sand and gravel people.

MR. LEMKE: I should mention, under Georgia Mining, we represent 12 small sand producers all classified under the 19 employees and there's 12 of them in our association.

MR. CUSTER: Well, I wasn't looking at it from a standpoint of small versus large in a 19 and less or 20 and more. I was just looking at from the current Part 48 training exemption and the fact that some of this training can be incorporated in the Part 48 where it's applicable and there's probably not a lot of other training going on in sand and gravel. At this point I just wondered if there was a negative feedback.

MR. MACHEMEHL: I don't think any of those people

are really negative on anything. I think it's a matter of just getting them up to date and getting them up to speed and I think that -- we've got to all do that in the industry because, you know, the outside world, the guys that I don't like, the Sierra Club, that I'll fight any where, any time, any place. Let that be a record -- on record.

(Laughter)

MR. MACHEMEHL: But we're -- what we've got to do is work together in the industry and bring the small fellow up to the standard so that we protect the hearing of every individual. That's what we're here for. That's why we're -- you know, that's what America is all about.

MS. WESDOCK: On page three of your testimony comments, you have here that Georgia Crushed Stone Association is extremely concerned about how MSHA will handle the noise hazard that employees are exposed to on a non-occupational basis. Since we are only -- or we only have the statutory right to regulate hazards that occur -- that are occupational hazards, I was just wondering, you know, we'll probably face the same issue as OSHA faced when they originally promulgated their noise standard.

MR. MACHEMEHL: Right.

MS. WESDOCK: Now with that said, do you have any suggestions?

MR. MACHEMEHL: The only suggestion -- the only thing I could think of and this is what I'd look at if I was MSHA, I would look at the -- I would look to a person to -- to fill out a form, if you will, and we've got -- that person can not be forced to divulge information if he won't divulge it, but I would look to that person to fill out a form, if you will, on what he does, what his -- what he does and make that form not be like we might do right now and fill out a form and say, well, go stick it in a file and that's it. If a person -- I would say if a person has a job where they're exposed to a lot of noise, they drive a piece of equipment, they run a crusher, what have you, or cement mill, you just pick whatever you want to. If they've got that job, then part of their record should be a sworn statement and when I have to go get things notarized it makes me think -- it makes me do it right. So I think what you ought to look at is requiring that person on some periodic basis, not -- I shouldn't say periodic -- We'll say

every three months that person has to set down and he has to fill this form out, an MSHA form, and that form has to be notarized and put in that person's record. At least that person then, if he does have a part time job where he's exposed to sound or he works or he's part of a band or something like that, in other words, the form could say -- I don't want to take up all the time here because you'll miss your lunch -- but the form could say that you have to put down any jobs or anything that you're in -- say you're in the reserve or guard -- anything that you're in where you're exposed to noise or you believe you're exposed to noise and this has to be certified. This has to be signed by -- it's just like giving testimony or giving a deposition in a court case. That's what ought to be part of this person's record. If you do that then when Ken comes along and sees a threshold change he'll say, well, part of that threshold change was due to so and so and so and so.

Now that may protect the company, but it also may save this person's hearing because it makes him start thinking about what he's doing and if he realizes that he's -- that the he's ruining his ears or his sound, well then he

might not do it. So we'd be getting where we're trying to get. We're trying to get back to the individual and help that individual person. So that's the way I'd do it if I was sitting on your side and I was doing for MSHA. But in turn, if you do that it'll help us too. So that's the way I'd handle it. There's probably a better way, but that's the best way I could think of quickly.

MR. CUSTER: I don't know if a response to that is in order, but I think it should be pointed out that that's probably some power that you already have now as an employer or your member companies have as employers, and it has been especially effective in some industries relative to drug usage and urine testing and all this type of thing. I don't think it is within the authority of the Mine Safety and Health Administration to place that type of requirement on a miner to report to his or her employer off-site activities, but certainly I think you have that power already as employers.

MR. MACHEMEHL: Well, let me just debate you just a little bit on that. I agree with you. I agree with you that we could do that -- we can require anybody to do

anything for any job. However, if you require it as part of this regulation, this implementation, that Ken was going to show you that when you came, then it would motivate Ken to do that so that he could show it to the inspector. So I think we are both in this together. I mean, I know you're saying we could do it why don't we go ahead and do it now. The fact is, we probably -- we probably should be doing a lot of things that we don't do, but if you require us to show you some things it motivates us to do things that we might not be doing now. Now, that's as honest as I can get. So together, I think, we're in this.

MR. CUSTER: My point was I think you've got that authority and the other point is --

MR. MACHEMEHL: Oh, I'm not arguing that.

MR. CUSTER: -- we don't have that authority.

MR. MACHEMEHL: I think you have the authority to ask me though to see that person's record. If he is running the primary -- and if you say, if you say, if you've got that in the record it's going to help me, then it's going to be in the record. So I think you are into it a little bit too. I mean, it's primarily us, but whatever you do would

probably help us.

MR. STOCKTON: May I make one closing comment?

MR. VALOSKI: Sure.

MR. STOCKTON: Since I am supposedly still on the podium I guess. In reference to your question, OSHA went through the same process on their noise standard and they were going to try to, if I remember correctly, accuse the industry of automatically causing hearing loss through occupational noises exposure, and that was thrown out, I believe, and they had to go back and say, okay, there are cases of non-occupational that has to be considered. In the MSHA proposed standard you have similar wording that says, noise overexposure will automatically be considered, I believe, if it's a standard threshold shift of so much to cause hearing loss, without consideration of the non-occupational noise exposure. And I think you are going to have to go back and rethink that also. Is that -- Like Mach has been alluding to in your questions, it is not possible to keep up with what employees do on their personal time. We are not allowed to do that. You are not allowed to do that. So, we can't -- even in the 14 hour quiet

period before audiometric tests that OSHA requires and that you are requiring in the proposed standard, we can not follow them around for 14 hours and make sure they stay in a quiet place before the audiometric test. We can't -- That's their personal time. So, somehow you're going to have to consider that non-occupational noise is going to be part of their audiometric test, and even aging -- the aging factor has to be considered in there, but they accuse us, and you can't accuse us of causing all the hearing loss as I infer from what your standard says right now. So you need to consider that when you go back.

Anything else?

MS. WESDOCK: I didn't want to imply that I was accusing anyone of --

MR. STOCKTON: No, no. I -- the language in the standard, not you.

MS. WESDOCK: The only point I wanted to make is that as far as regulating noise, we're only allowed to regulate noise at the mines, and we are aware that there are situations where miners might be exposed to high level noise, you know, outside the mine. God knows I have a

daughter who probably can scream higher than, you know, the standard. What I am saying is that we are only allowed by law to regulate, you know, the exposure level at the mines. That's the only point I wanted to make.

MR. STOCKTON: And you're exactly right, but the wording in the standard was what I was talking about.

MR. VALOSKI: Okay. At this time I would like to call a lunch break. Right now it is 12:22. We'll meet back here at 1:30 and we will resume. We have several more presenters scheduled.

(Whereupon, a luncheon recess was taken.)

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A F T E R N O O N S E S S I O N

MR. VALOSKI: It is now 1:30. We would like to reconvene the public hearing on MSHA's proposed noise regulations.

Before we get started I would like to remind the people in the audience that there is a sign-in sheet at the back of the room. It is an attendance sheet, just please sign. And if anybody in the audience would like to testify and has not signed up yet on the speaker's list, please do so. This list is being handled by Roz Fontaine on my far right. For each speaker, please state your name, spell your name and the organization that you belong to for our court reporter.

Our first speaker this afternoon is Dr. John Gibbs.

(No response)

MR. VALOSKI: Well, Dr. Gibbs does not appear to be in the audience. So the next speaker on our list is Mr. Dewey McCabe from Oil Dry.

(No response)

MR. VALOSKI: Well, we'll go down to the next

speaker, scheduled speaker, is Mr. Maurice Gibson from A&M Products.

(No response)

VOICE: Did these people sign in?

MR. VALOSKI: Yes. The last person that asked to testify was William Wolfe.

(No response)

MR. VALOSKI: This is going to be a real short afternoon here. I'd like to read these four names again, Dr. Gibbs, Mr. McCabe, Mr. Gibson, Mr. Wolfe.

(No response)

VOICE: You think maybe they got hung up in their lunch?

MR. VALOSKI: May be. Why don't we take ten minutes and hopefully they will appear.

(A short recess was taken.)

MR. VALOSKI: I would like to reconvene the public hearing now on MSHA's proposed noise regulations.

Has Dr. Gibbs arrived?

(No response)

MR. VALOSKI: If not, we'll go to our next

speaker, Mr. Dewey McCabe from Oil Dry.

MR. MCCABE: My name is Dewey McCabe. D-e-w-e-y, M-c-c-a-b-e. I am the Corporate Health and Safety Director for Oil Dry Corporation of America, a Chicago, Illinois based company. I live in Thomasville, Georgia, which I enjoy the winters in Thomasville much more than Chicago.

(Laughter)

MR. MCCABE: I am here on behalf of my company to express to you our feelings towards the MSHA proposed standard and you've heard a wide range of comments. I'm not going to address the whole standard. I think that has been adequately done. I would just like to call your attention to two specific parts of the standard. They are found in 162, 120(f)(2) where it states that the operate shall maintain at the mine site a copy of any such matters notification or list on which the relevant information about the miner's notice is recorded for the duration of the affected miner's exposure above the action level and at least for six months thereafter. My comments there are, we live in an entirely different society and age than we used to live in ten years ago even. I work for a Chicago-based,

Illinois company. I live in Thomasville, Georgia. I am paid through a Chicago bank. My point there is that I think the record keeping responsibilities of the mine operators are best done by its health and safety professionals and what you're going to see in the mining industry across America is that many companies are going to have multiple sites of 19 or less. These people are going to be focused on production quality and safety of the employees and we believe that the record keeping would be much better done by the health and safety professionals that may be a regional sites and that we could make those documents available to MSHA or to a MSHA regional office, you know, within a reasonable amount of time. So I think that's the first thing I'd like to address in the proposal.

A lot of small operators are not going to have the personnel to deal with this. We think it can be done very efficiently and effectively by the health and safety professionals of these mine operators at a regional site and we will -- Oil Dry will be glad to provide you with this documentation should you need it.

Same thing on 62-130(b), when it talks about

training. We would prefer to keep those training records at a regional site where health and safety professionals resided.

And then my last comments -- I will be very brief -- are on 62-140(b)(2). It has to deal with hearing protectors being unacceptable during the 14 quiet period. You have heard very extensively about that from the mining industry, and let me explain to you one of the reasons I'm here today. I met Ed Hugler last week on two occasions. Had an opportunity to spend 45 minutes with him, and one thing that struck me about the man is that he is a good listener. He asked me to come and present my thoughts I'm coming to present. I hope that you are good listeners as well because I believe you are hearing this throughout the industry that this 14 hour quiet period provision is impractical and will have adverse financial impacts on mine operators without producing the desired results. As mine operators, we do not have control over non-occupational noise exposures prior to the employees' arrival at work. These exposures include -- and somebody must have been on the same page because I have lawnmowers, chain saws,

woodworking equipment, late at night people are doing hobbies, saws, drills, planers and music of various types and decibel levels. We can not control the decibel levels of our employees as they ride to the mine property. What we can control is the exposure and the actions of the employee once they arrive on site. And we think that the use of hearing protectors during the period prior to their base line audiometric testing is both practical and technically correct and it basically for many operators is the only viable and economical way for mine operators to successfully implement the things you are asking us to do. And so we would ask you to hear that very, very clearly. We think that hearing protection does provide for the protection and would result in audiometric testing that would be both beneficial to the mine operator and MSHA.

My final comments are that -- and I could have addressed many more issues. I don't want to do that. You've heard them and they've been adequately presented, but the final comments is, I think many people in the mining industry, the mine operators, feel uneasy about the engineering controlled language, and I think you addressed

it, you said you've heard it all over the country as you've held these things. We already have in place many engineering controls, but I would like to draw an analogy to you -- for you, as Billy Yarbrough mentioned, there are aspects about our processes that are 20 to 30 years old. Rotary kilns are not going to be made silent or with less noise in many cases, and there is other equipment that we could mention to you, and the analogy I would like to draw is that many of you flew in for this meeting and if you looked on the landing pad, you would have seen an employee there with hearing protection. Now, let's take that same analogy and let's engineer the noise out of jet engines. Well, I would submit to you that we could do it, but you would not have been able to afford to fly here. That's the thing. We recognize hearing protection for those individuals involved in that activity. It's very suitable for protecting their hearing. It's recognized by the government as a suitable means and so I think that's where our nervousness is coming. What is an engineering control. How effective will it be or are we going to pump money into a black hole when we could effectively treat that with

hearing protection and provide for the employee's protection. So I would ask you to look at that as -- there are certain tasks in the mining industry where we think there are black holes. We would pour thousands and thousands of dollars and not produce the desired result. An I think the analogy maybe of a person working around the airplanes that you flew in on and having adequate hearing protection may be a valid one.

And then the last comment I would make is, I represent a fairly large company in the mining industry and most of the people you've heard before. The vision I'd like for you guys to carry back as you write this regulation is for those that can't be here because they lacked the financial resources to send someone, and there are many, many operators out there with 25 to 30 employees that are both very safe and very respected in the mining community, yet if there is a burdensome task put on them that may affect their ability to operate. So those are my comments.

MR. THAXTON: I have a question in regards to your statement about the records availability.

MR. MCCABE: Uh-huh.

MR. THAXTON: You suggest that they should be better kept in central or regional type facilities and be made available when MSHA inspection people come on site. Given the fact that we are an enforcement agency and we can't tell you in advance when we are coming --

MR. MCCABE: Right.

MR. THAXTON: -- and part of that is that we are to inspect the records at the time that we do the unannounced inspection, do you foresee these regional facilities being able to produce and have those records at the mine site, say, within an hour of the inspectors request for such records?

MR. MCCABE: I think an hour would be too optimistic because if you're looking at 19 or 20 employees and you want to look at all their records, I think what you are seeing in the mining community is a willingness to -- that if there was a valid concern, that we would be able to -- we deal with your inspectors at least twice a year. They come to all of our facilities. We're willing to sit down with them, talk with them about any particular facility. I'm not so sure what -- what information and the speed of

that information having it here on this site today has any protection of the worker, as far as hearing protection, that you could not receive within a week or ten days and still --

MR. THAXTON: Well, the purpose of being able to look at their records during our inspection is, one, it's unannounced inspection and that those records can't be changed to accommodate the fact that they are going to be looked at. So it's an unannounced inspection and that would have to be accommodated --

MR. MCCABE: Right.

MR. THAXTON: -- in any record keeping scenario that we would come up with.

MR. MCCABE: Well, what I would ask you to do is look beyond what we do right now. We're talking about writing a new regulation and we're talking about the world is changing before us every day. We are talking about the electronic media. And what I am saying is, let's don't think of how we do things today. Let's think of how this thing will work because when we write it, we want to write it the correct way and we want to write it not from where we are today but where we are moving in the future and the

future is electronic media, it's faxing, it providing to you next day air or whatever the information you need. We certainly know where in Georgia the Macon local office is and they know where we are. So I'm saying just don't think in obsolete ways. I think -- I don't think there is any need for an MSHA inspector to come and say let me look at all your noise studies. Let me look at your threshold shifts. If they want to look at them, let them come to my office. We are strategically located or request that I go there or mail to me.

MR. THAXTON: That's why I am asking if our inspector shows up on the site and he makes that request with the electronic age and computers and everything, would you conceive that there would be a terminal available that you would pull that information and have it available for them during that inspection?

MR. MCCABE: No, I would not. I would not conceive of that. I would conceive that this information as being low priority and that this information would be -- if I were MSHA I would want to address this as a total picture and not just a little peek. So if I wanted to find out what

my company was doing, I'd want to do a little more thorough investigation of that inspection dealing with a health and safety professional. You're going to be looking at records and the person that's providing you is production oriented, he might not even know what he is showing you. I think if you really want to find out what's going on in our companies, then you deal with the health and safety professionals. Most of those people are located regionally in the area and will be glad to work with at least the people in Georgia that I know of.

MR. THAXTON: Thanks.

MR. CUSTER: That was one of the areas that we requested additional input from the mining community was the record keeping, especially electronic record keeping. So obviously you're in favor of electronic record keeping. Let me ask you this. Would you be in favor of submitting those electronic records to MSHA to some central database where we would maintain copies of those records, since they are in electronic form and certainly easily transferable through phone lines.

MR. MCCABE: Right. You know what, I don't want

to speak for any industry. I don't even know if I want to speak for my company --

(Laughter)

MR. CUSTER: I was just asking for your opinion.

MR. MCCABE: -- No, but let me give you my opinion. I'd much rather sit down with an MSHA inspector and review that data in its totality rather -- because I would imagine that you guys get things every day that you really don't look at. So if you want to find out what's going on in the industry, if you want to find out what's going on in my company, let me sit down with the inspector. Let's look at the records and look at any shift that may take place. Let's look at our occupational health and safety programs related to noise exposure and hearing conservation and that's what I see, you will get a better picture by dealing with me and if you want to meet me at a specific mine site, we'll arrange that.

MR. CUSTER: I can appreciate what you are saying but you need to temper what you see your need as being -- you need to temper that with our need to review those records in a rapid manner because you understand some

installations an inspector can duly complete inspection in a day or less.

MR. MCCABE: Right.

MR. CUSTER: And that presents a problem for MSHA relative to enforcement. So we would need to find similar ground.

MR. MCCABE: Okay. I think you're going to find that going to an individual mine site and looking at records, I think it is going to be very difficult for the industry to give you the type of records you want because you are dealing with people again who are production quality and safety oriented, and they're not going to have the expertise or the desire, quite frankly, to talk with you about medical records of employees. And, again, it touches on this issue of confidentiality. I don't know what you want to see, and I know you have a right to see it, but I would prefer rather than us just blindly, electronically giving you information that you come and ask what you want to see and we'll be glad to show it to you.

MR. CUSTER: Let me follow-up with one or two other questions. You had mentioned about the difficulty of

maintaining the training records, for example --

MR. MCCABE: Uh-huh.

MR. CUSTER: -- on site. What do you do now for Part 48 records? Because that is a site retainment requirement for a two year period.

MR. MCCABE: Right. As I said before, I'm not speaking for my company. I'm speaking for people -- and as the rule is written, and I think the rule ought to be written correctly to deal with all of the mining industry. I employ 230 people at one site, 200 at a site in Mississippi, 200 at a site here, there. It's not a problem for us, but what I think is going to be a burdensome problem is for those operators of 19 and 20 people. Now we've moved beyond just training, we touching on medical documents and I think we need to preserve the confidentiality of those, and they are not going to be readily available at these sites anyway. What we do as far as Part 48, we do the training document, we do the training and keep it in an employee training record. All medical information, whether it be chest x-ray, pulmonary x-ray, function tests or audiometric test, it's kept in a confidential medical file.

MR. CUSTER: Let me just ask one more question.

MR. MCCABE: Okay.

MR. CUSTER: We beat the 14 hour quiet period to death.

MR. MCCABE: Right. Well, let me say this. I don't think we've beat it to death. We want you to hear -- We want you to hear how troublesome and how impractical and how we don't think it's going to produce the results you want here. That's why you are hearing it time and time again. Okay. Excuse me.

MR. CUSTER: My question then would be that there are those companies that are under the jurisdiction of both MSHA and OSHA and I just wondered how these companies that have been dual -- the dual responsibility to comply with various health and safety acts, how do they handle the OSHA 14 hour quiet period?

MR. MCCABE: I am of the opinion that the OSHA 14 hour quiet period can be handled with hearing protection and so that's the way they hear it, and that's what this industry is asking for. Don't supersede that. Don't go beyond that. Duplicate it. I mean, am I --

VOICE: That's correct.

VOICE: Correct.

MR. MCCABE: We're saying duplicate it. We feel that hearing protection prior to an audiometric exam and us observing the employee and ensuring that they have it on is the best way to go. We think OSHA has the better idea. And let me say this. Your allusion to MSHA/OSHA. We are totally under MSHA, and I'm glad we are totally under MSHA. We know the rules. We don't have any conflict between OSHA/MSHA, and I think we work very well with MSHA.

MR. CUSTER: I'm glad you're there too.

(Laughter)

MR. MCCABE: I think the tone of this meeting has -- there's not been any adversarial remarks made. The tone of this meeting is -- There are certain things within the provision we think you can do a better job of, and some of it has been asked for you to duplicate what OSHA is doing and we're all in the business of protecting the employee and the employee's health. So I would ask that you take -- just kind of get a visual feeling for the small operators that are doing a good job out there, how these regulations might

adversely impact them and we need to all look for the practical solution, and I alluded to the person who works around the jet airplanes. That is a very, very viable source of hearing protection recognized by the government. It would be very difficult, probably cost prohibitive, to engineer out the noise from commercial airline travel. So that's the kind of things we're a little bit concerned about. We've got some 20 and 30 year old processes out there and you say that your engineering control language may not be what we think it is, but that's our fear is that they don't make the rotary kilns anymore, and you're using a 20 or 30 year kiln, and they are noisy and we think that we can adequately protect employees hearing by using hearing protectors.

Any other comments?

MS. PILATE: You mentioned that you have 230 employees in Birmingham, 200 at other sites in the south. I'm curious to know in any of those plants do you have existing HPP programs?

MR. MCCABE: Yes, we do. And that's 230 employees in Georgia, 230 employees in Mississippi. We have

approximately 40 employees in Oregon headquartered out of Chicago, Illinois. Yes, we do. In each one of those we have hearing conservation programs with audiometric testing and we do that with mobile health testing units. I think that is one point I did not make. I think if you were to really write into law a 14 hour quiet period, you're going to take mobile health testing out of the picture, and we in the mining industry, we use mobile health testing for a lot more than occupational exposure. We use it for cholesterol screening, blood pressure and I think speaking to you from a professional standpoint where I line up these mobile testing units, you're going to take them out of the picture and you're going to adversely impact mining.

And the second part of your question? I'm sorry, I was a little lengthy.

MS. PILATE: I'm curious to know how much you pay for your tests with your mobile testing unit.

MR. MCCABE: Basically just for hearing aspect, anywhere from 12 to 20 dollars, based on the number of employees. The more employees, the cheaper you get the service. But right now we're averaging about $63 an

employee for a chest x-ray, pulmonary function test, audiometric test, height, weight and blood pressure.

MS. PILATE: Do you also have a separate noise training program?

MR. MCCABE: Yes. We do the eight hour MSHA training program annually, refresher training and of that eight hours approximately 45 minutes to an hour is spent on our hearing conservation program. In addition to that we also do monthly training beyond that and one of our topics each year is hearing conservation.

MS. PILATE: You mentioned that you see engineering controls that are difficult to control financially as being black holes. What in your mind constitutes a black hole and what measures are taken?

MR. MCCABE: Black holes could be anything that you put enough money into that was not successful, that put you out of business, or put you at an unfavorable competitive edge with other international companies.

MS. PILATE: What are some of the controls you have in mind?

MR. MCCABE: What are some of the things that I

think would be very difficult to do? The analogy that -- Well, the example that's been used by other mining companies are ball mills, rotary kilns that have been installed in buildings over 20 to 30 years ago. Personally I don't know how you could make a jackhammer less noisy. I would say that -- and I think it's been mentioned before here is things like bulldozers. Those things are very difficult, and I think a lot of good players in this industry have done a lot of work in that area and are still requiring the employees to wear hearing protection.

MR. VALOSKI: Any other questions?

(No response)

MR. VALOSKI: I think we have exhausted our questions for you, Mr. McCabe.

MR. MCCABE: Okay. Thank you very much.

MR. CUSTER: I need to make a clarification to a morning statement. Mr. Howard pointed it out. Sand and gravel operations are not exempt from Part 48 training. They are only exempt from the MSHA enforcement of it. Thank you, Ken.

MR. VALOSKI: Okay. Our next speaker will be Mr.

Maurice Gibson from A&M Products.

MR. GIBSON: Good afternoon. My name is Maurice Gibson. I am HR Manager at A&M Products. That's G-i-b-s-o-n. And I promise to be real brief since I think I am one of the last speakers.

We have beat a lot of issues around, some of them too death, I would agree with that, so I won't rehash a lot of them, except for going on the record and saying that we at A&M Products and as part of the Georgia Mining Association also feel that the 14 hour quiet period without hearing protection poses a challenge for us as far as compliance. I would say that we feel that hearing conservation program is important, not only for miners but all employees within our organization, and we fully support the direction that MSHA's taking in this area.

The only other point that I want to make before I sit down this afternoon is, we have a concern that your audiometric testing devices and the means for it collecting data does not have any standards set and I do not love OSHA over MSHA, but OSHA does have ANSI standards that they go by. One of the concerns that we have here is, as some of my

other colleagues have mentioned, smaller operators. As you are establishing your hearing conservation programs, everybody should have the same playing field as far as calibration of equipment as far as standard procedures for collecting that data. I think you'll find a lot in the smaller communities that standards as far as calibration of equipment, they are not well established. It also opens up an arena in another area when you do have an STS or a reportable hearing loss as to validation of data, when you get into the workers' comp arena.

So to be very brief, you know, there are a couple of ANSI standards that I would like to go on record as saying that we'd like to see as a part of the noise standard. One is considering audiometric test rooms is ANSI standard 1.4-1971 and S1.11-1971 and for calibration of audiometric equipment is ANSI standard 3.6-1969. Once again I do want to reiterate that we do have an annual program of audiometric testing that we do adhere to these ANSI standards as far as calibrations on site. We have approximately 100 employees on site, but we are part of a bigger company, First Brands Corporation, that has 3000

employees worldwide and throughout the corporation is a part of the Occupation Health Manual that we do provide a hearing conservation program for employees, and we do fully support what you are trying to do here because we have been under OSHA reign. Mining is a new industry to us, about three or four years now as A&M Products. So we brought OSHA standards over. What we'd like to see is that you listen to our comments here this afternoon and try to make the regulations something we call all comply with and make the work environment better for our employees. Thank you.

Any questions.

MR. CUSTER: I've got a question. You mentioned that you are international in scope and the question I would have is, are you familiar with some of the ISO standards that would be similar to what we are proposing here or what OSHA has?

MR. GIBSON: No, me personally, I am not, no. No, sir. So I won't even sit here and do a dance for you.

MR. CUSTER: Okay. I was going to ask you to comment on how you felt about it.

MR. GIBSON: First Brands, as a corporation, any

time -- we've been growing over the last five years. It used to be Union Carbide before we became First Brands. We make products such as Glad, Glad-Lock, Johnny Cat, some other consumer brands and we are growing through diversification and actually purchasing other businesses and what we've done as a corporation is take our Occupational Health Manual regardless of other standards and make sure that it applies to whatever standards are in the industry and we just take that throughout the corporation and make that a standard practice whether it is required or not. For instance, the annual hearing tests that we do on site and the record keeping that we do has not been something that has necessarily been a compliance issue with MSHA, okay, but we decided to do that when we bought this business, and I'm sure that someone at Corporate is looking at ISO regulations to make sure that the Occupational Health Manual that we have in place meets those standards and if they exceed the standards, fine.

MS. PILATE: For A&M Products, is that coal, metal or nonmetal?

MR. GIBSON: It's non-metal. Surface mining.

MS. PILATE: Surface mining.

MR. GIBSON: Uh-huh.

MS. PILATE: How many employees do you have there?

MR. GIBSON: At my particular site we range between 75 and 100 employees annually.

MS. PILATE: You mentioned that you have an existing on site HPP Program. Do you have a contract audiologist or do you have a staff audiologist?

MR. GIBSON: No. We do have a contract. We deal with TK Group out of Illinois, Rockford, Illinois. As Dewey mentioned before, Mr. McCabe, they are a mobile test unit that comes on site. One of the challenges I've had in the community itself is with new hires and getting a baseline and I've had to search very hard to find someone in my community that meets the ANSI standards as far as test equipment calibration. So we found an office. We actually had to work with that physician's group to bring their standards up to meet those ANSI standards. So that's the way we perform. We come in once a year with a mobile unit that completes all of our audiometric testing as well as our pulmonary functions testing on site.

MS. PILATE: Do you know offhand how much you pay for the audiometric testing component?

MR. GIBSON: Yeah, we're in the same range as what you have heard here this afternoon and this morning. Twenty for the hearing and 55 for pulmonary. During that training -- I think if I am being astute with your line of questioning previously -- during that testing we do do training as well. The employees get 30 minutes worth of hearing conservation training as far as how to wear hearing protection, the benefits from hearing protection, their rights as far as the hearing conservation program is concerned in the plant.

MS. PILATE: For the TK Group, besides paying the $20 per employee for the audiometric test, do you also have to pay an annual contract fee?

MR. GIBSON: No, we do not. The only other service fee that we pay for them would be when they -- as far as travel expense and that kind of thing and if we were to ask them to come back again some other time during the year, that would be an added cost to the business.

MR. VALOSKI: I have two questions for you. One

you said you had a problem getting baselines. Where are you located?

MR. GIBSON: We are in Wrens, Georgia. And when I said I had a problem, a challenge -- I like that word better than I like problem.

(Laughter)

MR. GIBSON: A challenge.

MR. VALOSKI: Well, using your word challenge.

MR. GIBSON: Okay. Yeah. In Wrens, Georgia, Jefferson County, there is a lot of industry in surrounding counties. You've heard from Thiele. They are in Sandersville, Georgia, which is about 30 or 45 miles from us, but I think -- well, maybe you wouldn't, you guys have probably been at this a lot longer than I have, but community to community there are different occupational services available to people who are trying to meet standards. In my particular community in all areas, not only auditory but also pulmonary to stay local in Jefferson County has been a challenge because a lot of local physicians is just not set up, even the hospitals are not set up to meet those strict requirements that we have as far

as getting valid data. Because the last thing you want to do is get invalid data on somebody's baseline. So...

MR. VALOSKI: So the physician you found is close to where you are located?

MR. GIBSON: Right. Which is another thing I have to look at as far as my employees. I do send them to August, which is probably another 20 miles away from where this physician's office is located, for other things, but I wanted to find somebody as close to my service area as possible.

MR. VALOSKI: And my last question is, you talked about having the TK Group come in --

MR. GIBSON: Yes.

MR. VALOSKI: -- and do the testing. What happens when you find STS? Do you refer them to somebody else for a follow-up examination to see if the STS is persistent?

MR. GIBSON: Yes. Whoa, what I immediately do is set them up with that physician I talked to you about for a follow-up exam to make sure that that wasn't due to -- For instance, I had a case of a young man that had been at the lake -- fortunately, he was a very honest individual -- and

gotten an ear infection the day before the exam. His STS was above 25 dB. Of course TK Group sent back to me within the week, you know, that I had a STS possibility of recordable hearing loss with this particular individual and that I needed to -- advising me to seek further occupational health services to find out whether this was a STS or not. So I sent him to the physician. He also told the physician at that time that he had a hearing infection during the test. I got medical certification on that, but his follow-up exam, which I had to send back to TK Group because they deal with our record keeping showed in fact that his hearing had not suffered a STS.

MS. WESDOCK: How soon was that between, you know, your finding out of the STS and the notification of the miner? How soon was the notification?

MR. GIBSON: Well, with me in my operation, we're talking -- you've got to remember, gosh, I know everyone on a first name basis, you know. Seventy-five to 100 people is not a lot of people. So as soon as I got the notification from the TK Group, probably two or three days because at the time this guy was out of work on vacation and when he got

back to work I was able to give him proper notification.

MS. WESDOCK: And how soon was the follow-up done?

MR. GIBSON: Examination? That same week. So all total you're probably talking about -- between TK Group actually getting the information processed, probably about 15 to 20 days after the initial exam before I had information and had him re-checked. One thing I want to make sure is clear for the record, you know, it's a lot different when you're talking about two to three hundred, four hundred, five hundred, six hundred people facilities. A lot of times I can turn things around quicker than a lot of the larger operators can. That probably wouldn't happen in, say, a facility that we have in First Brands. There's not even a miner facility that has five or six hundred employees. Just from a logistics standpoint. So I do go back and support what you've heard today about, you know, the 10 day period being a little bit restrictive and the fact, you know, to be effective, you know, I think we should get 20 to 30 days to notify and to have results.

MR. GIBSON: If you don't want to go much further than that, you know, you don't want to be at risk, you want

to get that problem taken care of.

MS. WESDOCK: Was the authorization in writing or just oral?

MR. GIBSON: Oh, no. What I did, I actually -- the TK Group spits out a form for us, a place for my signature as well as the employee's signature. So I sat down with that person and covered it verbally and in writing and he got a copy of the notification and I retained a copy for my records to go in his file that we had talked to him about that.

MS. WESDOCK: Thank you.

MS. PILATE: I have some more questions. For the follow-up exam that you mentioned, was that a follow-up audiogram or was it an audiological exam?

MR. GIBSON: It was an audiogram because we wanted to validate the results. Now, if that had turned out to present the same information that was received during the initial testing, then we'd went to further -- provided further care or at least advised him of the need.

MS. PILATE: Have you ever had employees to refuse an audiometric exam?

MR. GIBSON: No. No, I haven't. It's really because when they come in the door there are a couple of things that we make clear up front as far as safety and health. You know, you're going to have pulmonary, you're going to have auditory tests and you are also going to be drug tested once a year -- at least once a year. We don't say it is a condition of employment, but we do -- pretty much have established that as a practice. So it's not really a big deal in our plant.

MS. PILATE: And have you ever had an employee refuse to use the hearing protection?

MR. GIBSON: Sure we have. Do you want to know --

MS. PILATE: Yes.

MR. GIBSON: In our plant, okay, in our corporation, as long as it is clearly identified in the employee's policy manual, as far as our safety program, what we consider required personal protective equipment, which is hearing protection in certain areas, we say up front that we can mandate that you wear hearing protection, and much like the gentleman from the cement association said, it's not an option. There's no difference between that, safety glasses,

steel toes and hard hats. If we have hearing protection required, we've covered that policy with you in this area and you're not wearing it, it's a safety violation and we take them through the progressive disciplinary process. Because you just don't want to get into the arena of, you know, there's a certain liability that goes along with people, you know, not wearing protection and you being knowledgeable of that as an operator. I guess it goes into your citation about being negligible, and we don't want that, right?

(Laughter)

MS. PILATE: Thank you.

MR. VALOSKI: Thank you very much, Mr. Gibson.

We've got two more people signed up, but I don't believe they've shown up yet, Dr. Gibbs or William Wolfe?

(No response)

MR. VALOSKI: Is there anybody else in the audience that would like to give a statement to the panel?

(No response)

MR. VALOSKI: Since nobody would like to give us a statement and these gentlemen have not shown up, why don't

we take a recess until 3:30 and we will reconvene the public hearing at that time. Thank you.

(A short recess was taken.)

MR. VALOSKI: It is now 3:30. We have nobody in the audience and nobody has signed up, therefore we're going to call another recess until 4:30. Thank you.

(A short recess was taken.)

MR. VALOSKI: It is now 4:30. We still do not have anybody in the audience and nobody else has come to testify, therefore we are going to take another brief recess until 5:00 p.m. Thank you.

(A short recess was taken.)

MR. VALOSKI: It is now 5:00. There is nobody in the audience and we have no more speakers. This meeting is adjourned for today. Thank you very much.

(Whereupon, the public hearing was adjourned at 5:01 p.m., May 28, 1997.)

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C E R T I F I C A T E

Case Name: MSHA Public Hearing

Date: May 28, 1997

Location: Atlanta, Georgia

I, Susan M. Breedlove, do hereby certify that the foregoing pages represents a true and correct transcription of the events which transpired at the same time and place as set out in the caption, to the best of my ability.

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