

# TRANSCRIPT OF PROCEEDINGS

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IN THE MATTER OF: )  
 )  
SAFETY AND HEALTH MANAGEMENT )  
PROGRAMS FOR MINES )

Pages: 1 through 194  
Place: Arlington, Virginia  
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## HERITAGE REPORTING CORPORATION

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UNITED STATES DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF: )  
 )  
SAFETY AND HEALTH MANAGEMENT )  
PROGRAMS FOR MINES )

25th Floor Conference Room  
1100 Wilson Boulevard  
Arlington, Virginia

Friday,  
October 8, 2010

The parties met, pursuant to the notice, at  
9:01 a.m.

BEFORE: GREGORY R. WAGNER, M.D.

MSHA PANEL MEMBERS:

GREGORY R. WAGNER  
JOSEPH A. MAIN  
MARIO DISTASIO  
KEVIN BURNS  
ALFRED DUCHARME  
RICHARD FEEHAN  
GREGORY FETTY  
HARVEY KIRK

Q&A SPEAKERS:

JIM SHARP  
MANUEL GOMEZ  
PATRICIA W. SILVEY  
KATHY SNIDER  
SHANNA DEVINE

PRESENTERS:

JEFFREY L. KOHLER  
Director, Office Mine Safety and Health Research  
NIOSH

DENNIS O'DELL  
Administrator, Health and Safety  
United Mine Workers of America

ANDY O'BRIEN  
General Manager, Safety and Health,  
Unimin Corporation

MARK ELLIS  
President, Industrial Minerals Association, N.A.

ED ELLIOTT  
Director, Safety  
Rogers Group, Inc.

FRANK MIGLIACCIO  
Executive Director of Safety and Health  
International Association of Bridge, Structural,  
Ornamental, and Reinforcing Iron Workers

MARK PREMO  
Senior Vice President, Chevron Mining, Inc.

DAVE PARTRIDGE  
Vice President of Technology, Chevron Mining, Inc.

ADELE ABRAMS  
Representative, American Society of Safety  
Engineers

R. LARRY GRAYSON  
Professor of Energy and Mineral Engineering,  
Pennsylvania State University

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

2 (9:01 a.m.)

3 DR. WAGNER: Good morning. I would like to  
4 first introduce Assistant Secretary of Labor, Joe  
5 Main, who is going to give opening remarks.

6 MR. MAIN: Well, good morning and welcome to  
7 the first of three public meetings to collect  
8 information on safety and health management plans in  
9 the mining industry. The purpose of these meetings is  
10 to gather information about effective comprehensive  
11 safety and health management programs so we can learn  
12 about programs that are success stories.

13 We will use this information from these  
14 meetings to help find ways to encourage operators with  
15 the assistance of miners to be proactive in their  
16 approach to mine health and safety. And as you all  
17 know, the Federal Mine Health and Safety Act -- excuse  
18 me, I'm from the old days, I always say Health and  
19 Safety so you can date me back to the -- the Federal  
20 Mine Safety Act of 1977 clearly replaces  
21 responsibility on mine owners for preventing and  
22 promptly correcting hazardous conditions and unsafe  
23 work practices when they occur.

24 Despite requirements of the Mine Act,  
25 statistics on health and safety violations indicate

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1 that more mine operators are not being proactive in  
2 this regard, and are acceding responsibility in  
3 defining hazardous conditions and unsafe work  
4 practices to MSHA. More than 102,000 citations and  
5 orders were issued in coal mines in 2009, 35,500 for  
6 2005. Similarly, in metal mines more than 72,000  
7 citations and orders were issued in metal mines in  
8 2009, up about 13,500 from 2005, and we believe this  
9 trend is going in the wrong direction which tells us  
10 that some companies are failing to implement the  
11 systems that are necessary to comply with the Mine  
12 Act.

13           Mine operators must implement effective  
14 health and safety management programs. It's our  
15 belief that if an MSHA inspector can travel through a  
16 mine, identify health and safety violations and cause  
17 the conditions to be corrected, so can mine operators.  
18 If mine operators leave that important task to MSHA  
19 inspectors, they can expect to pay a penalty under the  
20 current rules.

21           Owners' accountability, as all of us, MSHA  
22 and the industry, and for the industry accountability  
23 means that each operator taking ownership of safety  
24 and health conditions in its mines. When mine  
25 operators take real ownership of health and safety

1 programs at the mines they operate, it reduces health  
2 and safety violations, improve safety and health  
3 conditions in the mines, reduce penalties it may pay,  
4 and provide themselves with more capital to re-invest  
5 in their mines and the people that work there.

6           Both the causes and means of preventing  
7 accidents are well known. It's a matter of applying  
8 lessons systematically and pragmatically. Effective  
9 health and safety management programs and lessons and  
10 best practices make them a standard part of the  
11 workday are key to eliminating fatalities.

12           For example, workplace examinations for  
13 hazardous pre-shift and on-shift, every shift can  
14 identify and eliminate hazards that kill and injure  
15 miners. An effective and appropriate training will  
16 ensure that miners recognize and understand hazards  
17 and how to control and eliminate them. With effective  
18 and committed management, safety measures should  
19 become second nature to miners and supervisors and  
20 trainers.

21           The next public meetings will be held on  
22 October 12th in Sacramento, California, and on October  
23 14th in Pittsburgh, Pennsylvania. Our website has  
24 more information about these venues.

25           We welcome everyone's participation and

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1 input to these meetings. It is important that we hear  
2 from you. We are interested in reviewing the  
3 information we collect from these meetings and plans  
4 and programs that successful and safe operators will  
5 bring to the attention of the mining community. We  
6 think those are important to share throughout the  
7 mining community for us to improve health and safety  
8 within our mines.

9 I want to thank you again for coming here to  
10 Arlington, and I want to thank you for taking the time  
11 out to make the presentations that you will make here  
12 today, and those that will be making the presentations  
13 in California and Pittsburgh in the coming days. This  
14 will be important to improvement of the health and  
15 safety in the nation's mines. I thank you very much.

16 DR. WAGNER: Thanks, Joe.

17 Good morning again. My name is Gregory  
18 Wagner. I am the Deputy Assistant Secretary for Mine  
19 Safety and Health, and I will be moderating this  
20 public meeting to gather information about safety and  
21 health management programs.

22 I would like to reiterate the Assistant  
23 Secretary's welcome and thanks for your being here,  
24 your willingness to participate in this meeting.

25 I want to first ask our panel to introduce

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1 themselves, starting with Greg.

2 MR. FETTY: Gregory Fetty. I am staff  
3 assistant to the coal district of Morgantown, West  
4 Virginia.

5 MR. DUCHARME: And I'm Alfred Ducharme,  
6 attorney with SOL. I'm helping out this group.

7 MR. BURNS: I'm Kevin Burns, Small Mines  
8 Office.

9 MR. DISTASIO: Mario Distasio, Office of  
10 Standards.

11 MR. FEEHAN: Richard Feehan. I'm with the  
12 Office of Standards.

13 MR. KIRK: And Harvey Kirk. I'm with the  
14 Metal and Non Metal Mine Safety and Health, Safety  
15 Division.

16 DR. WAGNER: So as Joe said, this is the  
17 first of three public meetings that MSHA is holding to  
18 gather information today, October 12th in Sacramento,  
19 California, and October 14th in Pittsburgh.

20 We are really excited about this meeting and  
21 the ones that follow, and view them as an important  
22 step to help us focus on prevention in addition to  
23 compliance. This is our opportunity to find out what  
24 programs work and what results have been achieved. I  
25 hope in this meeting and in submitted comments we also

1 learn what's been tried but hasn't produced results.  
2 We expect to learn the experience of the mining  
3 companies that have implemented effective programs,  
4 and also learn what's worked outside the mining  
5 industry.

6           As someone who has worked in public health  
7 for many years, this is an opportunity to focus on  
8 prevention, efforts to anticipate and recognize  
9 potential hazards, and control them before they cause  
10 injuries, illnesses and deaths. Some companies have  
11 implemented programs to monitor their work  
12 environment, whether or not there are specific  
13 regulations requiring this. They compile information  
14 about employee injuries and near misses, or probably  
15 more accurately, near hits, and respond to the  
16 information that they're gathering with prevention  
17 focus.

18           As you know, MSHA published a notice in the  
19 Federal Register announcing the meetings, requesting  
20 the mining community to provide information which the  
21 agency could use to develop a proposed rule. The  
22 agency has also invited representatives from academia,  
23 safety and health professions, industry and worker  
24 organizations, and other government agencies to share  
25 their experiences and views on the effective safety

1 and health management programs.

2           This rulemaking supports Secretary of Labor  
3 Hilda Solis's vision of good jobs for everyone. Her  
4 vision of achieving good jobs is through a strategy of  
5 creating workplaces where employers plan, prevent, and  
6 protect the safety and health of employees. Plan,  
7 prevent, protect is based on the principle that  
8 employers must find and fix threats to health and  
9 safety and assure compliance with regulations before  
10 inspectors arrive at the workplace.

11           The plan, prevent, and protect strategy  
12 begins with the premise that Congress directed mine  
13 operators to achieve and sustain compliance with the  
14 law, but it doesn't end there. It also embodies a  
15 continuing attention to the recognition and control or  
16 elimination of threats to safety and health. An  
17 injured worker is injured whether or not a mandatory  
18 safety standard was violated.

19           Some mining companies experience low injury  
20 and illness rates and low violation rates year after  
21 year. For these companies, preventing harm to their  
22 workers is more than compliance with safety and health  
23 requirements, it reflects the embodiment of a culture  
24 of safety from the CEO to the worker to the  
25 contractor. This culture of safety derives from a

1 commitment to a systematic, effective, comprehensive  
2 safety and health management program implemented with  
3 the full participation of all workers.

4           Several consensus standards have been  
5 developed, both here and abroad, that address the  
6 safety and health management systems, including one  
7 from the American National Standard Institute's --  
8 ANSI's, and the American Industrial Hygiene  
9 Association's combined Z10-2005, Occupational Health  
10 and Safety Management Systems.

11           There is also the ISO, the International  
12 Standards Organizations ISO 9001:2008(E), Quality  
13 Management Systems Requirements; and the British  
14 Standard Institution's -- BSI's Occupational Safety  
15 and Health No. 1801 from 2007. It's the Occupational  
16 Health and Safety Management Series, the Occupational  
17 Health and Safety Management Systems Requirements. So  
18 there is plenty of models to be looking at.

19           As many of you know, our sister agency in  
20 the Department of Labor, the Occupational Safety and  
21 Health Administration, earlier this year held  
22 stakeholder meetings as part of their rulemaking on  
23 what they are calling I2P2, Injury and Illness  
24 Prevention Programs. The I2P2 rulemaking is OSHA's  
25 version of safety and health management programs, and

1 I can assure that MSHA and OSHA are communicating and  
2 collaborating frequently during the development of the  
3 proposed rule and we will learn from each other and  
4 from each other's stakeholders.

5           As we said in the Federal Register notice,  
6 effective safety and health management programs  
7 generally include management commitment; worker  
8 involvement; a process for hazard identification;  
9 hazard prevention and control; safety and health  
10 training; and program evaluation.

11           The general principles are widely accepted  
12 but the devil, as usual, is in the details. We hope  
13 to hear some of those details today and in future  
14 meetings, and after all these presentations you will  
15 have an opportunity to ask questions or present  
16 further views, but at this time I'd like to hear from  
17 our first presenter. So Jeffery Kohler from the  
18 National Institute of Safety and Health will be our  
19 first presenter.

20           MR. KOHLER: Good morning. I appreciate the  
21 opportunity to share with you some perspectives that  
22 we have in NIOSH on this. We have become interested  
23 in this, particularly in light of some of the events  
24 that occurred over the past five or six years.  
25 Researchers in our organization have been looking at

1 safety culture and some of the related occupational,  
2 safety and health management issues for some number of  
3 years, so I do appreciate the chance to come and speak  
4 with you.

5           My remarks are brief. I'm going to talk a  
6 little bit about the research, but mostly I want to  
7 share some things that we've learned. You know, I  
8 think there are two questions as we go into this, and  
9 there has been a lot of discussion in the trade press  
10 in recent weeks on these initiatives.

11           First, is there a health and safety  
12 management system, is this approach a significant  
13 value-added approach? And I think the evidence is out  
14 there and the record is clear that indeed it certainly  
15 is, and I want to share a few thoughts on lessons  
16 learned, why this is such a compelling idea at this  
17 point in time and why it needs to go forward; talk a  
18 little bit about some of the benefits; and then tell  
19 you about the experience that we have in NIOSH when we  
20 did a study in 2006, after the mine disasters in that  
21 time period.

22           And then the second and separate question  
23 is, you know, can this approach be realized here? And  
24 I'd like to share at the end of my presentation a few  
25 thoughts on moving forward to ensure that such a

1 system can be successfully implemented here.

2           You know, if we look back five or six years,  
3 you know, it's really very clear that mining  
4 conditions do change and evolve, methods of extraction  
5 and production change and evolve. In fact, they  
6 probably change faster, the scenarios confronted in  
7 the mines probably change faster than any regulatory  
8 system can keep pace with.

9           So, reactive responses to the last mine  
10 disaster, the last multiple incident, you know, event  
11 is probably not, you know, the best answer. You know,  
12 an expectation that compliance with regulations alone  
13 will result in zero harm is unrealistic. You know,  
14 there are those who believe if we comply with existing  
15 regulations then we are home free. We have done it  
16 all. There is nothing else to do. We have safe  
17 mines. We have a healthy environment for miners, and  
18 this is, you know, just completely unrealistic as the  
19 record has shown.

20           Also, a belief that MSHA or government, you  
21 know, somehow is responsible for the safety outcomes  
22 in the mines is unrealistic as well. You know, the  
23 government or MSHA doesn't operate the mines. It is  
24 not there every day, doesn't understand all the  
25 nuances of that particular operation from shift to

1 shift, so they are ill positioned, you know, to assume  
2 such a responsibility which they don't have.

3           You know, in fact, we do need a different  
4 approach, and that's being proposed. You know, mine  
5 operators must take full responsibility for the safety  
6 and health outcomes at their operation, and in fact  
7 many do. Prescriptive regulation, you know, in our  
8 view, should only serve as a minimum expectation when  
9 performance alternatives are impractical. You know,  
10 that is to say that compliance-based prescriptive  
11 regulations are, of course, essential, but that there  
12 are alternatives to go above and beyond that when we  
13 can set performance alternatives.

14           Operators should drive changes in industry  
15 health and safety through actions by going above and  
16 beyond minimum expectations, and I'm going to present  
17 a brief list in a little while, but in fact there are  
18 many operators out there who have for years now gone  
19 above and beyond and instituted innovative programs  
20 that have resulted in health and safety records at  
21 their operations that are significantly better than  
22 industry averages, so we know this is something that  
23 can happen.

24           You know, we need an adaptive responsive  
25 model that builds on a systematic approach to

1 assessing hazards and then managing risk, and that's  
2 the health and safety management system, you know,  
3 concept. You know, in the mines, all mine operators  
4 are supposed to incorporate to some degree different  
5 safety tools, practices, and processes to ensure  
6 safety and health for their workers.

7           A management system provides the opportunity  
8 to put all of those together into a clear and  
9 executable plan to ensure that none of the pieces are  
10 being overlooked. It integrates the responsibility  
11 and the accountability of working safe across all  
12 organizational levels. It no longer becomes just the  
13 responsibility of one person with a certain title to  
14 ensure that safe conditions are met. In fact, it  
15 becomes everybody's job because it's part of the  
16 business model everyone is responsible for and has a  
17 vested interest in operating the safest and healthiest  
18 environment for the workers.

19           It also builds shared leadership and  
20 participation in the decision making which will ensure  
21 that we make those improvements in safety and health.

22           Now, in the safety and health management  
23 system there are a number of components and those are  
24 outlined in the public notice in the Federal Register.  
25 I wanted to just speak to what I consider to be a

1 core component, fundamental aspect of why these health  
2 and safety management systems can be so compelling and  
3 so successful.

4           In the July hearing on the mine and safety  
5 bill, as I recall Assistant Secretary David Michaels,  
6 you know, referred to the same concept that Mr. Main  
7 did a few minutes ago about find it and fix it, and I  
8 think that, you know, really boils down to the issue  
9 here, but I especially like that Assistant Secretary  
10 Michaels referred to as the common sense approach of  
11 find it and fix it, because we're not talking about  
12 the need for high faluting, extravagant, expensive  
13 systems. We're really delegating a very simple common  
14 sense principle, find it and fix it.

15           Now, how do we do that? Well, you know, in  
16 all of these systems hazard identification is key,  
17 followed by risk assessment, and then risk management,  
18 and risk management, you know, in our view really  
19 means that you work to eliminate the hazard. It  
20 doesn't mean that you tolerate the hazard and then  
21 look for ways to minimize the damages that will accrue  
22 if you're not successful. So through design and other  
23 interventions illuminating the hazard is the fix it,  
24 you know, part of it.

25           Now, admittedly, particularly in occupations

1 like mining, it's not always possible to eliminate  
2 every hazard and not only taken all reasonable steps.  
3 Then we need to mitigate the hazard. You know, that  
4 is to take steps through engineering, engineering  
5 design and control, through training, through  
6 administrative actions, and perhaps others, we need to  
7 take steps that will ensure that even though the  
8 hazard itself may not be completely eliminated we've  
9 done everything we can to ensure that no workers will  
10 be adversely impacted by the hazard.

11           You know, this need for this different  
12 approach is something that is being acted upon. In  
13 2006, for example, the National Mine Safety and  
14 Technology Commission, you know, emphasized the need  
15 to go beyond regulations to advance safety and health.  
16 As many other groups have done, that commission in  
17 2006 took a broad look and said, if we want to get to  
18 a goal of zero harm, we need to go above and beyond  
19 simply complying with regulations, and this health and  
20 safety management system represents that.

21           Indeed, you know, the Australian mining  
22 industry crossed this bridge nearly two decades ago.  
23 You know, after the Mara Mine disaster, for example,  
24 you know, taking a look, they realized that they  
25 needed to do more than simply prescribe a series of

1 regulations to ensure the safety of their mine  
2 workers, and over a couple of decades they evolved  
3 into, you know, approaches that are now codified in  
4 things like the OSAS-18,001 consensus standard.

5           You know, if you look at U.S. mining  
6 companies, and in fact, you know, companies that are  
7 representative in one form or another by many people  
8 in this room today, you can find great examples that  
9 we in NIOSH have had the opportunity to become aware  
10 of and to learn a little more about, but we can go to  
11 numerous underground and surface coal operations and  
12 we can find good examples of programs in place that  
13 are going significantly above and beyond regulatory  
14 requirements. We can go to underground and surface  
15 metal and find examples in the United States. We can  
16 go to underground and surface non-metal and we can go  
17 to sediment operations both underground and surface.

18           So, we're not talking about pushing the  
19 envelope into some, you know, brave new world here  
20 with these Occupational Safety and Health Management  
21 Systems. I think that we're talking about learning  
22 from the successful experiences elsewhere in this  
23 country and in the world, and applying it so that all  
24 mines and all mine workers have the benefit of it.

25           After the disasters in 2006, you know, as we

1 looked at this we understood that this core component  
2 of find it and fix it really represented something  
3 that we wanted to advocate for and make possible. We  
4 also recognized that for a lot of mine operators it  
5 was a daunting challenge, particularly smaller  
6 operators that didn't have the engineering, the  
7 professional occupational safety and health  
8 professionals working for them, it was daunting. How  
9 do you do this? How do you set out?

10           So, our goal was to do a series of case  
11 studies and to go throughout, you know, the different  
12 commodities, big and small, underground and surface,  
13 and develop a series of case studies to first  
14 understand how it would work in a number of different  
15 operations, and secondly, to set out some templates so  
16 that others would not be intimidated and hopefully  
17 would follow and apply those templates.

18           You know, we did that at 10 different sites.  
19 It's available in a published, you know, report, and  
20 the participants, you know, who were involved in that  
21 produced specific and adaptive prevention practices  
22 that reduced the risks at their operations. In all  
23 cases the investment that the operator made, whether  
24 it was a large, you know, multi-national company, or a  
25 very, very small independently-owned mine, was about a

1 week of training and working with us.

2           We sent in a couple of experts in this area.  
3 They worked with the company for three or four days on  
4 the process. They went through the process to  
5 identify major hazards at their particular operation.  
6 So, we're not talking about, you know, man months of  
7 effort and tens of thousands of dollars in any of  
8 these examples. We found a number of interesting  
9 things. There were just a couple that I wanted to  
10 highlight here.

11           First, a few of the operations that we went  
12 to already had some form of this program in place.  
13 They really felt that they had it nailed, they were  
14 doing it well. In fact, they thought they were doing  
15 it so well they wanted us to come in so perhaps we  
16 could even learn about an improved approach, too. We  
17 appreciated that opportunity.

18           But we found that even the most prepared  
19 participants when they went through, you know, this  
20 sort of structured systematic approach found a few  
21 areas where they needed to make improvement. That is  
22 to say they identified some hazards that they didn't  
23 realize they had even after they had gone through some  
24 of their own processes.

25           There were a few participants, you know, who

1 wanted to sort of back slide into some old thinking,  
2 and that was to say, look, you know, sure, there is  
3 this issue, but we're in compliance with the  
4 regulation, you know, we don't really need to fix it,  
5 we don't need to design around it. Well, we'll just  
6 put up a danger sign, or you know, whatever, and we'll  
7 be in compliance with the law.

8           So there is no question that there is a  
9 cultural issue that has to be addressed, but you know,  
10 most of the participants in fact became disciples of  
11 the process after going through it.

12           A positive approach by company leadership is  
13 key in doing this comprehensive system. You know, the  
14 leadership in sending a message is key and in part the  
15 leadership needs to embrace the fact that all workers,  
16 all employees need to be involved in the process. For  
17 this to work, this is not a process that only involves  
18 supervisors or people with college degrees, it  
19 involves everyone, first and foremost the people  
20 working the jobs who are perhaps most expert about  
21 some of the situations that they have to contend with.

22           All right. So to sort of finish up my  
23 presentation I wanted to, you know, just make a couple  
24 of very general observations about, you know, moving  
25 forward and, you know, clearly MSHA has already done a

1 lot of work to understand the international  
2 experience, the international consensus standards, the  
3 Australian experience. I mean, I think that's great  
4 because, you know, we need to learn about what has  
5 worked and what hasn't work. And as, you know,  
6 someone mentioned this morning, sharing the failures  
7 as well as sharing the successes is certainly very  
8 important, and such an approach is not without its  
9 short falls or its problem, just like a compliance-  
10 based on regulatory approach is not without its  
11 limitations, so it's good to understand the strengths  
12 and the weaknesses.

13           We think it's very important to support  
14 implementation across all mine sizes. You know, that  
15 is to say those who will surely benefit from this will  
16 be small operations, and yes, it will present special  
17 challenges to them, but I think that needs to be  
18 supported. We think that resources can be developed,  
19 templates and other things that NIOSH could work with  
20 MSHA on to ensure that small mines are every bit as  
21 successful in applying this as larger mines with more  
22 resources.

23           Yeah, we believe that it is important to  
24 address early the challenges that will arise from  
25 employing a proactive risk-based approach within a

1 compliance-based regulatory framework. I mean, you  
2 know, it's no secret the two are not going to co-exist  
3 peacefully under the same roof unless people sit down  
4 and talk about what does this mean in terms of moving  
5 forward, you know; how do we adapt; you know, what do  
6 we need to do?

7 I don't have an answer to that. I don't  
8 know if anybody does, but certainly it has to be  
9 talked about and worked through.

10 You know, I think that success requires  
11 facilitating collaboration between management and  
12 labor. Some of the operations that we went to, for  
13 example, only a couple, in fact, I think we ended up  
14 not even including them in our study, but they had a  
15 view that this was really a management prerogative and  
16 a management exercise, and they balked at having labor  
17 involved in this risk assessment and management, which  
18 is, you know, just a complete -- you know, completely  
19 ineffective way to look at it. So, you know, we need  
20 to facilitate that. We need to provide training,  
21 education to make that shift.

22 You know, recognizing and expecting that the  
23 cultural shift will be a lagging indicator of success.  
24 You know, that is to say a lot of cultures have to  
25 change. The cultural within MSHA will have to change,

1 the culture of the inspectors, the culture of  
2 management, the mine operators, even labor itself, all  
3 that culture will change and it will have to over some  
4 period of time, and the good news is that once we see  
5 that cultural change that will be an important  
6 indicator that we have made significant success to  
7 that point in time.

8           You know, finally, recognizing that this  
9 will be a journey, and this is a point that's always  
10 emphasized to me by some of my research colleagues in  
11 Australia, you know, who have worked for years and  
12 years to incorporate these principles into the  
13 workplace there, and they have said you have to  
14 understand. This isn't something that you do today  
15 and you have it tomorrow. Instead, it's something  
16 that you work at for years and years, and each year  
17 you accomplish more, and you move forward, you know,  
18 with those accomplishments, and I think we need to  
19 recognize that here regardless of whatever approach  
20 MSHA and OSHA decide to take from a regulatory point  
21 of view, you know, just simply passing a regulation or  
22 a law is not going to make it so overnight.

23           You know, there are many important  
24 challenges that need to be faced, but it's a journey  
25 that we need to take, a journey of steady gains along

1 with steady challenges lasting many years, but if we  
2 look around at the companies who are successfully  
3 doing it here in the states, if we look at the  
4 companies who have done it in places like Australia,  
5 you know, then we know that it's a journey worth the  
6 effort.

7           So, I appreciate the opportunity to speak  
8 today. Thank you.

9           DR. WAGNER: Thank you very much. Is there  
10 anyone on the panel who has a question now?

11           MR. FEEHAN: I have a question, Dr. Kohler.  
12 You said that small mines, the question is really how  
13 did they do it, how did they put it together, but you  
14 said there were even the most prepared mines  
15 identified ways to mitigate hazards.

16           Could you talk a little bit more about that,  
17 about some of the things that were identified and how  
18 it worked at these operations?

19           MR. KOHLER: Sure, and I can talk about one  
20 specific example that I have knowledge, and it was a  
21 mine that has in place not what you would call perhaps  
22 an occupational safety health and management system,  
23 but it has an enlightened management approach to  
24 proactively identify risk and try and correct them,  
25 and the mine has a good record. But the mine was not

1 familiar with some of the tools that one can bring to  
2 bear to do risk assessments, you know, bow-tie  
3 analysis and other kinds of tools that are not really  
4 complex, but they are useful.

5           And when the mine had the opportunity to go  
6 through those analyses using some of those tools which  
7 are part and parcel to the trade of people who do  
8 they, they were able to uncover a hazard that they had  
9 been unaware of, and they sent a very nice e-mail, you  
10 know, explaining how appreciative they were and now  
11 how they realized there was even more they could do  
12 despite their past successful.

13           MR. FEEHAN: Thank you.

14           DR. WAGNER: I think we will take one or two  
15 questions if anybody has them of Dr. Kohler at this  
16 point. Jim.

17           MR. SHARP: We are in a situation right now  
18 where there is a lot of conflict between operators and  
19 MSHA. We also see a system where you're trying to  
20 promote or MSHA wants to promote a proactive approach  
21 whereas the current regulatory system is a reactive  
22 approach.

23           How do you see all of these factors that are  
24 built into the current system of mine health and  
25 safety being put aside in order for this to succeed?

1 How is that going to happen?

2 MR. KOHLER: If I had the answer to that,  
3 I'd be pretty rich and famous, I think. What I do  
4 know, as I said, this is far too important to fail. I  
5 mean, for the mining industry in this country this  
6 approach has to be an approach that we move forward  
7 with, and yes, there are aspects of the current  
8 regulatory system which will make it challenging, but  
9 we have operators here in the United States today who  
10 within the current regulatory structure are being, you  
11 know, I think successful with such an approach.

12 So that's why I say I think this needs to be  
13 addressed early on. I think it's probably best  
14 addressed in, you know, meetings where people roll up  
15 their sleeves, and meetings that include MSHA and  
16 operators and labor, and others with expertise to sit  
17 down and talk about, well, what is this big barrier in  
18 the current system that would prevent us from being  
19 successful with this proactive approach, and then what  
20 can we do to eliminate that barrier.

21 DR. WAGNER: Thank you. One more. Yes,  
22 please.

23 MR. GOMEZ: Quantitative data, this appears  
24 to be more a case study approach or than anything else  
25 NIOSH has done that you're aware of that could

1 demonstrably say management systems work. There has  
2 been a lot of work in the environmental arena, as you  
3 are probably aware, in the housing world, and some of  
4 that evidence is a little fuzzy, but you know, where  
5 is the beef?

6 MR. KOHLER: Yes, certainly intervention  
7 effectiveness assessment is always important and it's  
8 always a challenge to get hard data. Our study does  
9 not have that kind of hard data. There were case  
10 studies to illustrate the process and the advantages  
11 and disadvantages. I think that if you address the  
12 question to perhaps some of the people in Australia  
13 where they have tracked this for some period of years,  
14 they report that there have been significant gains in  
15 safety. I have not analyzed that data.

16 DR. WAGNER: If I could ask the first two  
17 questioners to each identify themselves for the  
18 record. So the first questioner?

19 MR. SHARP: Jim Sharp with Sharp Media.

20 DR. WAGNER: Second questioner?

21 MR. GOMEZ: Manuel Gomez with the U.S.  
22 Chemical Safety Board.

23 DR. WAGNER: Great, and the other  
24 housekeeping thing I wanted to mention is that anybody  
25 who did not sign in if you would please sign in when

1 we take a break. I want to make sure that everybody  
2 who is here then we know who has come.

3           So thank you very much, Dr. Kohler, and  
4 while he is unleashing himself, I'm going to ask  
5 Dennis O'Dell, Administrator of Health and Safety for  
6 the United Mine Workers of America to come up.

7           I am also going to mention that there is a  
8 list of people who have requested the opportunity to  
9 speak in advance. I have got their list and we are  
10 going through them, but anyone else who wishes to  
11 speak will be given an opportunity after the nine  
12 speakers who have signed up are done.

13           MR. O'DELL: Good morning. Is this okay?

14           DR. WAGNER: Yes.

15           MR. O'DELL: I thank you for the opportunity  
16 to be here this morning to hopefully share some things  
17 that we feel have been successful on behalf of the  
18 United Mine Workers of America.

19           Again, my name is Dennis O'Dell. I am  
20 currently the Administrator of Occupational Health and  
21 Safety for the United Mine Workers of America which  
22 cover the United States and Canada. I spent 20 years  
23 as an underground coal miner, eight years as a field  
24 safety rep for the union, and under the direction of  
25 Joe Main, eight years and five years currently as the

1 Administrator.

2 I was asked to share with you today some of  
3 the things that we as a union do that help to enhance  
4 health and safety at our representative mines.

5 UMW has always placed an emphasis on the  
6 importance of maintaining a self safe and health  
7 workplace, and some of the things we do are: we've  
8 established a joint committee between UMWA and the  
9 BCOA, Bituminous Coal Operators Association. This  
10 group consists of top management safety personnel from  
11 several operators and our international health and  
12 safety department. We meet periodically to deal with  
13 problem issues on a national level, issues such as  
14 dust, noise, ergonomics, new equipment design, new  
15 mining plans and so on. We also involve MSHA and  
16 NIOSH on these projects, looking toward review and  
17 appropriate development and revision of improved  
18 mandatory health and safety standards as well as any  
19 other health and safety matters of importance to the  
20 coal industry.

21 Some of our past successes achieved by this  
22 joint work covers ways to reduce noise on equipment,  
23 reduce dust exposures among our monitors, safer roof  
24 control methods, and just recently our efforts on  
25 developing and testing the personal dust monitor. We

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1 have also jointly addressed the agency on proposed  
2 rules with our thoughts on how to make these new  
3 regulations better fit and protect the needs of miners  
4 and the industry.

5           Another thing that the United Mine Workers  
6 has are trained safety committeemen in our operations.  
7 These individuals are elected by their peers, and  
8 these individuals are provided with 40 hours of  
9 training at the National Mine Academy in Beckley, West  
10 Virginia, twice a year. During this time they are  
11 provided with classes much the same as an MSHA  
12 inspector receives. They are also put through a mine  
13 exercise to help develop their skills in the event an  
14 emergency situation would arise at the mine.

15           We encourage our committee to take this  
16 knowledge back to the mines and apply it, as well as  
17 educate the workforce on what they have learned.  
18 These committees also do inspections where they travel  
19 the mine in its entirety to identify any health or  
20 safety problems that need to be addressed.

21           Our committees share their findings with the  
22 operator and work towards getting them corrected. If  
23 done correctly and cooperatively, many hazards are  
24 eliminated way before the agency has to cite the  
25 company. If we get them corrected by these joint

1 inspections, everybody wins because it helps to reduce  
2 violations that may have caused an accident or an  
3 injury.

4           We also have in place a joint industry  
5 training program that puts mine managers, safety  
6 supervisors, superintendents, and local union safety  
7 committeemen together for one week during the training  
8 session. These sessions where management and hourly  
9 employees get together they share classes and they  
10 learn together on many new subjects that enhance  
11 safety at the mine.

12           One of the highlights of the training  
13 session is it allows management and our employees to  
14 have an open session to bounce ideas off of each other  
15 on how to improve mine safety and performance, how to  
16 reduce accidents, and how to encourage education and  
17 practice on safe mining practices. They do this in a  
18 setting away from the mine where they can be relaxed  
19 and have open, honest discussions among each other.

20           Currently, we have many committeemen doing  
21 inspections on a more frequent basis at several mines,  
22 engaging in what we call "walk and talks" where we  
23 question miners on the sections with what their  
24 thoughts are in and on ways to improve safety. This  
25 is a joint labor-management effort with some of our

1 companies as well as a way to show that safety really  
2 is a priority.

3           Our goals are to eliminate or reduce  
4 injuries, eliminate fatalities, and reduce and/or  
5 eliminate hazards that we can control. With the  
6 increase of younger, new, inexperienced miners in the  
7 mine today, this gives us a chance to educate and  
8 share experiences from our older, more experienced  
9 miners.

10           We have other tools in place that deal with  
11 special safety programs that provides solutions to  
12 safety provisions which regularly occur, and to ensure  
13 uniform health and safety practices such as program  
14 for operation and maintenance of all hoisting  
15 facilities, and emergency escapeways, arrangements for  
16 thoroughly equipped first aid station, arrangements  
17 for a doctor or nurse to be on call on short notice,  
18 arrangements for safe and quick and efficient means of  
19 transportation sick or injured miners out of the mine.  
20 These are just a few but the list goes on.

21           We also have a tool in place for settlement  
22 of health or safety disputes so when a dispute arises  
23 at the mine involving a health and safety issue an  
24 immediate earnest and sincere effort is made to resolve  
25 the matter. Many times this is eliminated or has

1 prevented an accident at the mine.

2           Many of these programs are successful and  
3 continue to grow but in reality the reason for the  
4 success of these programs, besides the commitment of  
5 all parties involved, is the fact that we have a  
6 collective bargaining agreement between the companies  
7 and the employees that we represent. If it weren't  
8 for the contract agreement many of these successes may  
9 have fallen by the side, but I am pleased that the  
10 attitudes of making safety a priority has increased  
11 tremendously among our employers, but I often wonder  
12 and believe that if we didn't have a contract, if it  
13 would succeed.

14           This is the one thing that separates us from  
15 the rest of the industry. Since 2009, there has been  
16 62 fatalities in the industry, 62 miners have died.  
17 Only two of those miners were UMWA miners. Two is  
18 still too many but it clearly shows that our mines are  
19 safer in that respect. You can lie about accidents  
20 and injuries. You can lie with figures, but the one  
21 number you can't hide are fatalities.

22           The other thing I need to point out is that  
23 none of these replace enforcement of the law, and we  
24 still believe in strict enforcement of the  
25 regulations. Dr. Kohler gave a presentation on risk

1 management and risk assessment which is something that  
2 we really haven't supported up to this point.

3           I have been able over the past five years in  
4 the position I'm in to spend a lot of time with the  
5 Australian miners, the workers in Australia, and they  
6 told me they have had some successes initially with  
7 this program, but now they are starting to re-think  
8 the way that they approached this because there they  
9 actually manage risk and in doing so still can end up  
10 in an accident or a fatality, and it has. So they are  
11 re-thinking the whole way of taking an approach to  
12 this.

13           Reality is that we should not be in the  
14 business of risk management. We should be in the  
15 business of eliminating risk. We have to have the  
16 attitude that all fatalities are preventable.  
17 Hopefully in the future we will be able to address  
18 those issues in ways that a risk management or risk  
19 assessment style approach is exactly what Dr. Kohler  
20 said in that it eliminates the hazard. It eliminates  
21 the risk.

22           I also have to say that one of the most  
23 important necessities to make any of this work is to  
24 have open communications between all parties, and I  
25 mean the workers, company personnel, and inspectors.

1 We need to be talking openly about safety. You can  
2 offer any kind of program you want under the sun but  
3 it's not going to be worth the paper it's written on  
4 until everyone is 100 percent committed, and everyone  
5 is openly communicating, and talking about safety as a  
6 priority and in practicing what has been preached.

7           But this is really a simple task. People  
8 have to realize that miners weren't hired just simply  
9 from their neck down, and that's been the attitude for  
10 years and years and years. Miners have a brain.  
11 Miners have experience. Miners do the work on a day-  
12 to-day basis. Miners need to be heard. Listen to the  
13 ones that do the tasks on a day-to-day basis and you  
14 will be surprised at what you may learn. Thank you.

15           DR. WAGNER: Thank you very much.

16           Are there questions from the panel? Time  
17 for one or two questions from people in the audience?  
18 Thank you.

19           Our next speaker is Andy O'Brien from the  
20 Unimin Corporation. He's the general manager for  
21 safety and health. He is accompanied by Mark Ellis,  
22 President of the Industrial Minerals Association  
23 North America.

24           MR. ELLIS: Good morning, Mr. Wagner and  
25 members of the committee. I am Mark Ellis, President

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1 of the Industrial Minerals Association North America,  
2 and the National Industrial Sand Association. IMANA  
3 and ISA are pleased to participate in this public  
4 meeting of the Mine Safety and Health Administration  
5 regarding mine safety and health management programs.

6           IMANA is a Washington, D.C.-based trade  
7 association created to advance the interests of North  
8 American companies that mine or process minerals used  
9 throughout the manufacturing and agricultural  
10 industries. Its producer membership is composed of  
11 companies that are leaders in the ball clay, barite,  
12 bentonite, borates, calcium carbonate, diatomite,  
13 felspar, industrial sand, kaolin, magnesia, mica, soda  
14 ash, talc, alastonite, and other industrial minerals.  
15 In addition, IMA represents associate member  
16 companies that provide equipment and services to the  
17 industrial minerals industry. Additional information  
18 on IMANA can be accessed through our website at  
19 [www.IM-NA.org](http://www.IM-NA.org).

20           Since its inception in 2002, IMANA has  
21 worked cooperatively with MSHA. IMANA recognizes that  
22 the first priority and concern of all in the mining  
23 industry must be the health and safety of its most  
24 precious resource, the miner. To that end, IMANA's  
25 oldest and most active mineral producer section, the

1 National Industrial Sand Association, which was  
2 established in 1936, would like to present information  
3 on its occupational health program.

4           The presentation will be made by Mr. Andrew  
5 D. O'Brien, which is a certified safety professional  
6 and is general manager of safety and health for Unimin  
7 Corporation. He also serves as chairman of the Silica  
8 Health Effects Committee which just last week received  
9 NISA's 2010 recognition of excellence award. Andy.

10           MR. O'BRIEN: Thanks, Mark.

11           Thank you very much for the opportunity to  
12 give you a brief overview of the NISA Occupational  
13 Health Program as well as the NISA Silicosis  
14 Prevention Program. We feel these are two programs  
15 that are gold standards that, if fully implemented,  
16 can and do lead to the elimination of silicosis within  
17 our industry.

18           A brief overview: The OHP, the current OHP  
19 is dated 2010 and is a revision to the 1997  
20 Occupational Health Program Manual. The purpose of the  
21 manual is conducting a surveillance program as  
22 outlined in the manual and is crucial to our industry  
23 in reaching our goal of preventing the development of  
24 new cases of silicosis in member company employees.  
25 There are four specific sections within the

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1 Occupational Health Program. There is an  
2 introduction, a respiratory health effects of exposure  
3 to crystalline silica section, a section of workplace  
4 dust surveys, and a section on respiratory medical  
5 surveillance for silicosis.

6           The introduction addresses respiratory  
7 health effects of crystalline silica, workplace dust  
8 surveys, respiratory medical surveillance.

9           The respiratory health effects of exposure  
10 to crystalline silica section provides an overview  
11 description of the respiratory system, discusses what  
12 pneumoconiosis is, what silicosis is with respect to  
13 chronic accelerated and acute forms of silicosis, the  
14 relationship between silica and lung cancer, medical  
15 surveillance, and epidemiology as well as exposure  
16 limits, and we talk about how to determine exposure  
17 limits via the PEL calculation.

18           In our workplace dust survey section we  
19 discuss the purpose of workplace dust surveys, which  
20 is to evaluate workplace exposure to silica dust, and  
21 we talk about respirable silica dust sampling,  
22 specifically the equipment that's involved in the  
23 sampling of respirable dust, calibration of the  
24 sampling train, burette and electronic calibration  
25 methods, as well as sampling procedures, personal

1 sampling and general work or area sampling.

2           We also address direct reading instruments  
3 within the manual, which we have found to be key to  
4 very quickly identifying root causes for elevated  
5 exposures. This is particularly from Unimin's  
6 perspective has been a god send to us in saving time  
7 and money. You have an elevated exposure, you slap a  
8 PDR on an employee, the employee tracks what they are  
9 doing over the course of the day, and within one day  
10 sampling you can immediately tell where your problem  
11 may be and focus on that area.

12           We discuss analytical procedures as far as  
13 gravimetric and x-ray diffraction, discuss NIOSH 7500  
14 as the analytical method, sampling records with pump  
15 calibrations, data sheets, sampling results and  
16 activity logs. We also strongly stress the discussion  
17 and review of results, exposure results with employees  
18 and incorporate a mandatory requirement to discuss and  
19 present the results to each individual miner within 15  
20 days of receipt of the results; essentially making the  
21 process quick as possible.

22           We discuss sampling frequency and provide  
23 guidelines on how many workers to sample based on your  
24 population as well as your exposure; again, discussion  
25 of the results, what do the numbers mean to the miner,

1 as well as sampling strategy to determine sampling  
2 frequency based on exposures.

3           The respiratory medical surveillance for  
4 silicosis section discusses the primary purpose of  
5 establishing baselines, also to detect abnormalities  
6 at the earliest stage, and to prevent the development  
7 of silicosis, disclose occupational and  
8 nonoccupationally-related abnormalities to worker for  
9 clinical follow up. One of the benefits that a number  
10 of our miners have realized by participating in this  
11 program is that nonoccupational diseases or potential  
12 issues are identified through this process much sooner  
13 than they might otherwise be, sometimes life saving.  
14 Also identified potentially hazardous working  
15 conditions and develop data on which epidemiological  
16 studies can be based.

17           The respiratory medical surveillance  
18 addresses medical and occupational history as far as  
19 respiratory history, smoking history, prior exposure  
20 to potentially harmful dust chemicals or other  
21 physical agents, and any adverse effects related to  
22 those exposures.

23           Medical examination via the OHP consists of  
24 exam of the thorax to assess workers' respiratory  
25 fitness, a 14 by 17 inch PA chest x-ray, although we

1 have not gone to or recommended digital imaging;  
2 evaluated all images should be -- I should say all  
3 images both pre-employment and post-employment as part  
4 of the surveillance program should be or are required  
5 to be evaluated by an NIOSH certified B reader. You  
6 can find the list of current B readers at that URL,  
7 and radiographic interpretation. We talk about  
8 whether it's an art or a science, particularly at the  
9 earliest stages of disease. Even with the best of B  
10 readers, that can be a challenge.

11           Pulmonary function tests are also a  
12 mandatory element of the program, and this most  
13 current iteration also makes mandatory TB tests for  
14 employees with more than 25 years of exposure.

15           We also have a consensus x-ray  
16 interpretation which essentially ensures that there is  
17 consensus when there is an abnormal reading found. If  
18 there is an abnormal reading found that's  
19 nonoccupationally related, the employee is directed to  
20 seek medical treatment or clinical follow up from  
21 their personal physician or company physician. An  
22 abnormal x-ray occupationally related requires a  
23 second reading. If the first and second readings  
24 agree, then that's the end of the game, and whatever  
25 the consensus is that's the diagnosis. If the first

1 and second readings disagree, then there is a third  
2 reading, essentially tie breaker, and the median  
3 reading of all three is used as the determination of  
4 what the level of disease is or even what the disease  
5 may be.

6           We discuss x-ray retention and storage and  
7 apply ANSI standards for storage. The spirometry is,  
8 in the 2000 versions, a mandatory element of the  
9 program. It was optional up to this point. There is  
10 also an assessment with respect to the ability to wear  
11 a respirator performed by a physician considering the  
12 worker's health, the type of respirator, and the type  
13 of working conditions that the worker may be exposed  
14 to.

15           We also address recordkeeping and worker  
16 notification, records kept past 30 years of  
17 employment, and worker provided with results and  
18 evidence of this exchange should also be kept on file  
19 for obvious reasons.

20           Frequency of examinations are x-rays bi-  
21 annually, and x-ray frequency is based on the number  
22 of years since first exposure to silica dust as well  
23 as the age of the worker, and whether any signs or  
24 symptoms are present.

25           That's an overview of the OHP. The second

1 element is the Silicosis Prevention Program. That  
2 consists of six elements: OHP implementation, medical  
3 assessment, dust exposure assessment, dust control,  
4 employee involvement, and smoking cessation.

5           The NISA Silicosis Prevention Program is a  
6 great program. We believe strongly in it. We think  
7 Unimin is a good example of how effective the NISA OHP  
8 and Silicosis Prevention Programs can be if fully  
9 implemented. There are 24 members within the NISA  
10 membership. Only nine have fully committed to the  
11 Silicosis Prevention Program which constitutes 37.5  
12 percent of the membership.

13           The commitment levels vary between  
14 participating companies, and some of the roadblocks to  
15 commitment which we explored recently surprised us.  
16 One was concern for the creation of enforceable data.  
17 Some operators are just not interested in taking dust  
18 samples on their own workers because they have a  
19 perception that that data can then be used against  
20 them either by the regulator or nonregulatory-based  
21 application.

22           Cost is always a concern, although we have  
23 tried to reiterate that at some of our smaller  
24 facilities you may only be talking about half a dozen  
25 to a dozen samples a year which, even if you're

1 running x-ray diffraction of every sample, is less  
2 than a thousand dollars a year. Some of our members  
3 still don't fully understand the program even after  
4 all these years and after all of our efforts to  
5 educate them.

6 DR. WAGNER: I am just wondering. Do you  
7 know how much longer you will be going?

8 MR. O'BRIEN: Basically done.

9 DR. WAGNER: Good.

10 MR. O'BRIEN: The NISA OHP is state-of-the-  
11 art. It will prevent new disease. The membership  
12 understands this but even with no cost mentoring the  
13 majority of members are hesitant to fully commit.

14 And so I guess the message that we're  
15 bringing, much like the prior presenter said, is a  
16 program is only worth the paper that it's written on  
17 unless there is full commitment to it, and there are  
18 many obstacles to commitment. We firmly believe in  
19 management systems. I think our involvement with Dr.  
20 Kohler's group over the years, with their dust group  
21 and their ergonomics group, demonstrates our  
22 commitment to this. From our perspective the key is  
23 hazard assessment, and that's what we are focusing on  
24 is hazard assessment through our systems and the  
25 reduction in individual risk tolerance.

1 DR. WAGNER: Very good. Thank you very  
2 much. Questions?

3 MR. DISTASIO: I have a few.

4 DR. WAGNER: Please.

5 MR. DISTASIO: You were talking about the  
6 cost as being one of the possible roadblocks. Since  
7 this is all voluntary, why are the companies doing it  
8 in the first place?

9 MR. O'BRIEN: It's the right thing to do.

10 MR. DISTASIO: But are they finding some  
11 benefit to sort of offset those costs in terms of  
12 productivity or just lower workers' comp., something  
13 along the lines to try to make the business case, or  
14 is it just for their own goodwill or so to their  
15 employees?

16 MR. O'BRIEN: I can't speak to what other  
17 member companies are doing, only to Unimin's  
18 perspective on this, and we do it because it's the  
19 right thing to do. We don't want to see people  
20 injured or ill. We have never made a business case to  
21 our executive management on why this should be done.  
22 It's just understood that it's the right thing to do.  
23 The benefits are that Unimin's experience in  
24 employing this program is that, although we currently  
25 have two silicotics working for us, actively working,

1 both came through acquisition, and although Unimin has  
2 grown through acquisition primarily, we have not  
3 created a new case of silicosis in any employee that's  
4 ever come on board through acquisition, and this goes  
5 back 30 years. The program works and does prevent  
6 disease if it's fully implemented.

7 MR. ELLIS: Just to add to that, I think  
8 that, you know, you mentioned reduced workers' comp.  
9 cost. That's obviously a residual benefit, and I  
10 think that the insurance carriers, to the extent that  
11 there are insurance carriers that are covering these  
12 operations, they look favorably on the program. It is  
13 a proactive thing that they're doing.

14 MR. BURNS: I have one.

15 DR. WAGNER: Please.

16 MR. BURNS: I guess I could ask from the  
17 same viewpoint of the workers, but what have you done  
18 or what have you found that's really successful to  
19 impress upon new miners the real danger of these  
20 health hazards? Because I can remember when I was  
21 young, I mean, nobody thinks any of this stuff is  
22 going to affect them.

23 MR. O'BRIEN: Right.

24 MR. BURNS: I mean, what sort of training or  
25 anything, demonstrations, anything that you're doing

1 that you found that really impressed upon particularly  
2 younger workers that the dust is really hazardous,  
3 it's a hazard all the time, you have to buy-in to  
4 protecting yourself, and making sure you use your  
5 respirators and all that sort of stuff?

6 MR. O'BRIEN: We think the key is twofold.  
7 One is education. We have a very robust education  
8 process for any new miner regardless of age, whether  
9 they are 18 or 48. If they come into the industry and  
10 new into our company, they are going to get the same  
11 training program.

12 The second element to that is enforcement.  
13 We have requirements for the use of respirators. We  
14 have requirements for participating in our sampling  
15 program, and if you're going to be employed by us  
16 you're going to comply with those requirements because  
17 it's for your benefit.

18 DR. WAGNER: Have you applied some of the  
19 same principles that you've used and structured in the  
20 Silicosis Prevention Program to an injury prevention  
21 approach?

22 MR. O'BRIEN: I would say we have, Dr.  
23 Wagner. We do not take a reactive approach. We try  
24 and look at the numbers, see in what direction the  
25 numbers suggest we do in, and get ahead of the

1 injuries and illnesses. So it is a structured process  
2 whereby we set objectives from the executive  
3 management level down and filter that down throughout  
4 the workforce.

5 DR. WAGNER: We have heard about employee  
6 engagement. Do you have employee engagement in your  
7 injury prevention efforts?

8 MR. O'BRIEN: We do, absolutely. In fact,  
9 as an example, we wholeheartedly subscribe to the MSHA  
10 slam risk process, and on October 25th it was declared  
11 Unimin's-MSHA Slam Risks Day, and so all of our  
12 facilities, each miner at everyone of our facilities  
13 was wearing the same shirt, all of the plants had  
14 activities that they were running with barbecues and  
15 different things to promote the process, and then we  
16 also have continuous improvement teams that are  
17 currently functioning with respect to slam risks, but  
18 also working towards identifying ergonomic  
19 interventions which stem from some of the auditing  
20 tools that have been developed by NIOSH.

21 DR. WAGNER: Thank you. Time for a couple  
22 of questions from the audience. Please.

23 MR. GOMEZ: Manual Gomez from the Chemical  
24 Safety Board.

25 The American Chemistry Council, the major

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1 trade group for the chemical industry, has a condition  
2 of membership, participation in demonstrable  
3 conformance with their responsible care program, which  
4 is a broad management system, health and safety  
5 management system. This is a program, a segment of  
6 your hazards. Has your association considered that  
7 approach; that is, a condition of participation for  
8 membership, and if not, why not?

9 MR. ELLIS: Well, I think I would say that  
10 the responsible care program is a mature program.  
11 It's been in existence for several decades, and I  
12 think that the mining industry is not yet at the place  
13 that the chemical industry was 20 years ago, let's  
14 say, but conditions have caused that question to be  
15 asked, and we don't yet have a program that's unified  
16 across safety and health parameters that we would ask  
17 our members to subscribe to. That's an aspirational  
18 thing, but we're not there yet.

19 MR. GOMEZ: Thank you.

20 MR. ELLIS: If I could, Dr. Wagner, I would  
21 just like to get into the record a copy of the NISA  
22 Occupational Health Program, and also a Practical  
23 Guide to Silicosis Prevention that we've worked with  
24 MSHA on in our alliance program.

25 DR. WAGNER: Thank you very much and thanks

1 for your time here.

2           The next speaker will be Ed Elliott who is  
3 Director of Safety for the Rogers Group.

4           MR. ELLIOTT: My name is Ed Elliott. I am  
5 the Safety and Health Director for Rogers Group,  
6 Incorporated. I have been employed with them since  
7 1985.

8           Just to kind of give you a little bit of an  
9 overview, I'm going to talk today about kind of the  
10 real world application of what you're considering, and  
11 the Rogers Group was founded in 1908 by Ralph Rogers  
12 in Bloomington, Indiana, and it's grown with the  
13 nation's interstate system and infrastructure growth  
14 and it's still privately held by the Ralph Rogers'  
15 descendants. We rank eighth out of 5,400 aggregate  
16 producers in the U.S. This is according to the U.S.  
17 Geological Survey. We are the seventh largest crushed  
18 stone producer in the U.S. We have operations in five  
19 states: Indiana, Kentucky, Tennessee, Alabama and  
20 Arkansas. We have 1,300 total employees. Six hundred  
21 of those are in the aggregate operations, and our core  
22 business, of course, is crushed stone and then asphalt  
23 and asphalt construction. Our other business, we're  
24 in the concrete block production.

25           And just to give you a little bit about the

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1 scope, we have 55 MSHA-regulated operations, and  
2 within the safety and health department there is  
3 myself and two other safety managers for the entire  
4 company.

5           Talking a little bit about our system, we  
6 established the current system we're using in 2001,  
7 and we needed to find a way to reduce injuries beyond  
8 more rules. I mean, MSHA has got rules, I mean, our  
9 company had rules, and it's just -- it's a book that  
10 sometimes it sits on the shelf, and it just didn't get  
11 us to the level that we wanted to move to.

12           And this whole approach was driven by our  
13 owners, the family, and the CEO of the company. They  
14 said we need to do something to break through the  
15 barrier to achieve lower numbers of injuries, and one  
16 of the things that I think when we looked this process  
17 and moving in this direction, we had to recognize that  
18 90 percent of the injuries are the result of unsafe  
19 acts. There are a lot of people when they hear that  
20 they say it's blame the worker. I mean, that's really  
21 a very antiquated way of looking at him.

22           Initially, a lot of time you may approach,  
23 but what we realized these unsafe acts may be caused  
24 by any number of things. In many instances,  
25 management would throw up barriers to doing things

1 safely. So when we look at unsafe acts, we talk about  
2 what is the root cause of that unsafe act, not just to  
3 blame someone.

4           This is our safety policy statement. This  
5 drives everything we do in Rogers Group. We are  
6 committed to achieving a zero injury safety culture by  
7 implementing all of Rogers' safety principles without  
8 compromise. We don't say zero injuries. We say a  
9 zero injury culture. People have to strive and have  
10 to believe that you can prevent all injuries, and we  
11 don't call them accidents. They are not accidents.  
12 We know what causes the things that occur in the  
13 mining industry. We look at this as an injury. We  
14 can find out and prevent that injury from occurring.

15           We use what we have, as I mentioned, by  
16 being committed to our safety principles without  
17 compromise, and I am just going to touch on -- this is  
18 the process of how we manage safety, and I think  
19 what's important we don't manage our safety with  
20 respect to construction or block safety or aggregate  
21 safety. It's the safety system that functions  
22 throughout our company.

23           If you have a person that's working in a  
24 construction unit in northern Alabama, they could go  
25 to an aggregate operation in northern Indiana, the

1 safety is no different. It's the very same.

2           First is management commitment, and we've  
3 evolved this a little bit. It needs to be not just  
4 management but leadership commitment. There are  
5 people that at times that are senior workers, that  
6 they have to demonstrate commitment to what goes on in  
7 the process every day, and we evaluate this, and I'll  
8 talk about that a little bit later. But I will  
9 include the details of the safety principles in the  
10 official record. I'm not going to go into the detail  
11 because of time.

12           Line responsibility for safety. If you go  
13 and ask every person, and any of you could walk out of  
14 this room and go to any of the Rogers Group  
15 operations, and ask them, any employee, supervisors,  
16 hourly employees, who is responsible for safety, and  
17 they will say, "I am." They are responsible for  
18 safety, and that's an important part of it. It can't  
19 be -- the regulators can't make places safe. Safety  
20 directors and safety managers can't make places safe.  
21 The people that do the work have to be committed to  
22 making it safe.

23           Safety training and education, critical in  
24 all aspects of the business. You have got to do task  
25 training, you've got to do occupational health

1 training, you've going to do just new hire training.  
2 We have a training program now where we put employees  
3 in our aggregate operations through 40 hours of  
4 training before they begin doing their MSHA-required  
5 training. The MSHA-required training is so limited  
6 and somewhat -- I think the Part 46 is good, the Part  
7 48 is so antiquated that there are a lot of things  
8 that we feel we need to do in addition to that, so  
9 that's what we try to implement.

10           Also, the audit process. Now, the auditing  
11 a lot of people think about the IRS may audit you, but  
12 in fact what we're talking about is observing  
13 behavior. Most people that would perform an unsafe  
14 act have no intent to do that in the manner that's  
15 going to cause injury. So what we're trying to do is  
16 observe the day-to-day auditing of the day-to-day  
17 process of what employees are doing in their jobs. We  
18 require every manager, every supervisor, every  
19 location to do a minimum of one formal audit per  
20 month. Well, that's done by a team, it could be  
21 hourly employees, it could be a visitor that assigns  
22 it. Our president and CEO requires himself and  
23 everyone of his direct reports to go out into the  
24 field and do a formal audit at a location. We are  
25 also doing formal audits and that's something were

1 supervisors doing it at all times as well as hourly  
2 employees. We do report. We keep up with this. We  
3 have a metric that we follow.

4           Safety committees, we have a corporate  
5 safety committee that's made up of 12 people in our  
6 corporation, and when we first started this in 2001,  
7 we said what's the make-up of the committee? Well,  
8 typically as the old kind of antiquated way that  
9 management has all the answers, who was on the  
10 committee? All management people. Today we have five  
11 and at times we will invite six hourly employees to be  
12 members of that committee. Right now there are five  
13 hourly employees, and seven other operational people,  
14 and we found, and our president and CEO feels like  
15 that our corporate safety committee gets feedback on  
16 what works at the grass roots level, and that is  
17 critical as other people have said here.

18           JSA implementation, the job safety analysis,  
19 project hazardous analysis, job task analysis, you can  
20 call it any way you want, but you have to look at the  
21 job, analyze the hazards, and then do something about  
22 it.

23           Now, a lot of people say, well, mining is  
24 dangerous. I have worked in coal mining for five  
25 years and I've been in aggregate operations now with

1 Rogers Group for 25 years, and people say, well, this  
2 is dangerous work. No, it's not. It is hazardous  
3 work. There is no question about it. The danger is  
4 where you don't know the hazard. If we walk out this  
5 door and go into a dark room and run across that room  
6 and no lights on, that's dangerous. We don't know  
7 what's there.

8           But in our business we know what the hazards  
9 are, and we say with the JSA you cannot eliminate  
10 every hazard in this business. You can't do it. You  
11 can't do it in anything that you do. But what you  
12 have to do through the JSA process is reduce that  
13 hazard to a level where no one will get hurt, and you  
14 can do that in every single situation.

15           Incident investigation, this is critical.  
16 We also look at near misses, and near misses are  
17 anytime where an employee may have been injured and it  
18 was just sheer luck that they didn't. And these near  
19 miss investigations are done with a team that will be  
20 hourly employees, the safety department may be  
21 involved or not be involved, and we share these and  
22 all e-mail throughout our entire company, and  
23 depending on the degree of seriousness of it, it may  
24 take two or three days to get the investigation done,  
25 but it's shared with everybody on e-mail in our

1 company, and it's required to be shared in our safety  
2 meeting with every employee at every operation because  
3 whether that's a near miss in an aggregate operation,  
4 there are fundamental things that went wrong in the  
5 breakdown in the process that other people can learn  
6 about.

7           We also do, anytime there is an injury in  
8 the company, that is reviewed by the president and the  
9 CEO, myself as the safety director, and then the  
10 investigation is presented to the CEO and he reviews  
11 each one of those, and he has to be informed  
12 immediately anytime there is an injury that occurs.  
13 And when I say injury I'm talking about reportable or  
14 recordable.

15           And full involvement, this is all bookends.  
16 You've got the management commitment, you've got to  
17 have the company that's committed and willing to do  
18 these things, but if you don't have employee  
19 involvement in the process it will fail miserably. I  
20 think a lot of time with rules, we can put all the  
21 rules we want to out there, but if people don't  
22 believe in them, that they are going to be safer and  
23 avoid injury, they are going to ignore it. It's not  
24 going to mean anything.

25           Now, some of the support elements that I

1 think are important to remember, there has got to be  
2 accountability to the process. People have to clearly  
3 understand the process at all levels. Whether they  
4 are management or hourly employees through training,  
5 there has to be accountability to the process.

6           Second, I think in our situation we have  
7 learned that there has to be some form of a substance  
8 abuse policy. Now, is it something that somebody is  
9 using illegal drugs or improperly using prescription  
10 drugs that we just fire them. No. We have evolved  
11 from that, and they get an opportunity to go through a  
12 process and to retain their job, but in our aspect of  
13 the business we know that the hazards are significant  
14 enough that substance abuse can be a factor, and we  
15 want to make sure we eliminate that.

16           Regulatory compliance, that's an important  
17 part of anything that we do, and we look at this as --  
18 and most of our operators will say that MSHA provides  
19 a service with another set of eyes. Now, I won't say  
20 that we think that everything, how inspections are  
21 done, that we agree with them. As a matter of fact, I  
22 think some of them are not intended whatsoever to  
23 improve safety, but the fact is regulatory compliance  
24 is something that we think is a positive part of what  
25 we do.

1           Also, too, you need to recognize excellence,  
2 whether it's individual excellence in doing things and  
3 promoting safety and following the process, but those  
4 are all important.

5           Also, having clear metrics, you've got to  
6 measure it, what gets measured gets done. I'm going  
7 to talk about our metrics. I'm not going to go into  
8 them because we don't have time to go into a lot of  
9 detail, but we have leading indicators that measure  
10 implementation of our safety principles. Are they  
11 doing the safety principles that I mentioned before?  
12 Do they have them in place, and are they functioning?

13           And we also evaluate the current indicators.  
14 We look at the quality of the performance to those  
15 safety principles. If I look at a supervisor and I  
16 ask them, well, do you have your safety contact every  
17 day that's required? Yeah, I go by and wave at them.  
18 Well, is he showing management commitment? Well,  
19 yes, he's waving at them. But is the quality of it  
20 what it should be? No.

21           So, you've got to measure whether they are  
22 in place and also the current indicators with the  
23 quality. Then we look at training indicators because  
24 they are a measure of the results to those safety  
25 principles, and when we look at training indicators,

1 I'm just going to show you three. We have a number of  
2 others that we use but first is the recordable and  
3 reportable injuries. I'm going to show you a chart  
4 here in a moment that gives you the result of our  
5 company as a whole, all of our operations, and then  
6 I'll get a little more specific.

7           Then the second thing is look at the  
8 workers' comp. claims. This is something that we've  
9 been able to see that tells us a little bit of what  
10 are we doing. Are we trying to be eliminating these  
11 things that people feel like they have to go to the  
12 doctor for, whether they are serious or not?

13           And that's also looking at the business case.

14           And let's face it, realistically if you can  
15 make the case that it's right and you make the  
16 business case also, almost any industry is saying,  
17 man, let me at it, let's do what we have to do, so  
18 this is a part of it.

19           Also, the injury rates, I'm going to show  
20 you for the aggregate operation. This is -- I'm going  
21 to tell you the recordable/reportable injuries, and  
22 you can see we were running on average somewhere in  
23 the '90s anywhere from 70 to as many as 100  
24 recordable/reportable injuries, and our company has  
25 fluctuated in size, but basically it's been in that 12

1 to 1500 employee range. Then we look, you can see  
2 that it went back up in '06 and '07. Part of that was  
3 acquisitions. We found that approximately 30 percent  
4 of all our injuries are people with a year or less of  
5 service with Rogers Group. It has nothing to do with  
6 experience in mining whatsoever, or any other aspect  
7 of our business, but that one year seems to be the  
8 point. It takes that long for them to understand  
9 we're not just talking about it, we mean it.

10           Also, we had a changeover in CEOs right  
11 about that time, and I think it takes time for the CEO  
12 to kind of get a grasp on what has to be emphasized,  
13 but you can see that the process, and it takes --  
14 somebody else mentioned, I think, it takes years to  
15 change the culture. The culture is a group of people  
16 with shared beliefs. You don't change beliefs because  
17 you put a rule out, and we've used them in the past,  
18 too, but don't do this anymore. Well, I would think  
19 like everybody gets the e-mail they are immediately  
20 going to change, but that doesn't happen.

21           But you can see we have set records. The  
22 last two years are the lowest number of  
23 recordable/reportable injuries that we've had in our  
24 company, and we are on track this year to be slightly  
25 better than we were last year; not significantly, but

1 slightly better.

2           These are the workers' comp. claims, and we  
3 have found that our workers' comp. insurance rates  
4 have dramatically improved as a result of what we've  
5 been doing, and these are claims for the entire  
6 company, not just in aggregates, I want to make that  
7 clear. But you can see, and we focus on these, and  
8 talk about these at a management level.

9           These are the reportable injury rates for  
10 our aggregate operations. These would be the things  
11 that pertain to MSHA, and you can see that we were  
12 averaging about in the middle three to four, the rates  
13 back in the nineties, and probably even higher than  
14 that but we didn't follow them as closely. But you  
15 can see that the rates have gone down significantly,  
16 and in fiscal year '09 -- each of these represents 12  
17 months also -- that we set a record for our company in  
18 the aggregate operation to .08, and we try to go out  
19 and we make acquisitions and we find that will bump it  
20 up, and we take this very seriously.

21           If these rates are right, we reconcile every  
22 month, we go to the workers' comp. claims, we verify  
23 what the treatments are, and we make sure that they  
24 are reported as they are supposed to be reported  
25 because this gives us a metric of what's going on.

1           Some of the real things that I think are  
2 important to consider, I recognize that this is a  
3 radical change, an oversight approach. We can't go  
4 out and have inspectors approach it the same way as  
5 they do looking for a guard off. The size of the mine  
6 has to be considered. You have a small mine. They  
7 are going to need help with this. They don't have the  
8 resources.

9           Time has to be allowed to change the  
10 culture. In many instances a rule comes out and then  
11 30 days later you've got to comply. This is a rule  
12 that in my estimation you're going to have to leave  
13 time periods of one, two and even three years to have  
14 it fully implemented for people to buy into it, or  
15 they're just going to go out and buy something off the  
16 shelf and say, here it is. This is something that  
17 needs to be gradually rolled in.

18           Some of the recommendations that I have --  
19 what Rogers Groups does works with us in our culture.  
20 I think what's important to realize that Australia  
21 may do something one way, Great Britain does something  
22 one way. The EU as a whole may do something, and they  
23 all have good qualities, but our culture in the United  
24 States is not the same as the culture in those  
25 countries, and I think we have to recognize that.

1           It must be simple and measurable. You don't  
2 want to get -- everybody would like to have what's the  
3 best program out there, but there is not a best  
4 program. It's not what you do but how well you do it  
5 as long as it's based on sound principle, and every  
6 company, if given some broad guidelines and elements,  
7 they can fulfill what needs to be within those.

8           And I think consideration to giving credit  
9 to operations that are implemented in a safety  
10 management system, such as reduced penalties for other  
11 violations. If you require them to do this, there are  
12 going to be some people who do an outstanding job and  
13 are really trying. Then an inspector comes in and  
14 writes them up for a guard that's off. They are going  
15 to wonder what's going on. Are you trying to help me  
16 or are you just trying to write paper? So that needs  
17 to be a consideration.

18           Inspections have to proportionally focus on  
19 implementation of the safety system. An inspector  
20 can't go in and say, let's go to your plant, let me  
21 look at your guards, or let's go to the equipment,  
22 let's inspect the equipment. That's a part of it, but  
23 it needs to be where that inspector would come in and  
24 say, let's talk for awhile about what kind of safety  
25 management system you've got in place, and what kind

1 of success are you having, and how are you  
2 implementing this part of the safety management  
3 system.

4           Don't rush the rule. This is too important  
5 to not get consensus with all constituents. More  
6 public meetings should be held on the district level  
7 to gain input from more stakeholders. There are a lot  
8 of small operators out there that probably don't have  
9 a clue this is even going on or being considered. I  
10 believe if you did some things on the district level  
11 closer to the people and get more input from them,  
12 they would understand what you're trying to  
13 accomplish.

14           Just in closing remarks, we all seek to  
15 develop a culture of safety within the industry, but  
16 MSHA must also develop a culture, and Dr. Kohler  
17 talked about this, which diminishes the enforcement  
18 first approach to safety. We did that within our  
19 company to where if they weren't following the rules  
20 we were saying you're bad. Well, there are a lot of  
21 factors that have to be considered.

22           Now, enforcement is an important part of the  
23 responsibility for MSHA. That is what Congress  
24 requires you to do, but there are other aspects of  
25 this that have to be considered. I want to say that

1 the MSHA-NSSGA alliance, which Assistant Secretary  
2 Main has just, I think, recently signed with the NSSGA  
3 to renew that, had an excellent program that I will be  
4 sending an electronic copy and I will ask to be  
5 included in the official record that the core  
6 principles of the safety program, and I believe those  
7 principles that were developed back as early start in  
8 2003 and worked cooperatively with many, and there are  
9 people here today in MSHA that were involved with that  
10 process. That is an excellent, excellent program that  
11 can be used already as a framework for a rule.

12           And I want to thank you as an agency for  
13 taking the first step in loving mine safety into the  
14 twenty-first century. We have got to get past just  
15 trying to meet all of the rules and thinking that's  
16 going to make us safe. We can achieve zero. We are  
17 committed to achieving zero in our company, but we  
18 have got to do it all working together in looking  
19 beyond just rules. So thank you.

20           DR. WAGNER: Thank you very much.  
21 Appreciate your bringing data to the table here so we  
22 can see what the results of your program have been as  
23 you see it. Any questions from the panel?

24           MR. DISTASIO: Yes. First of all, I want to  
25 say those are very impressive statistics. Amazing

1 turnaround once management got involved and decided to  
2 make the changeover. I assume you have some  
3 information on the business case. I don't know what  
4 you can share with us but anything you can would be  
5 appreciated.

6 MR. ELLIOTT: Okay, I would say --

7 MR. DISTASIO: We think like lowering the  
8 workers' comp. and this sort of stuff that you're  
9 tracking obviously would be helpful.

10 MR. ELLIOTT: Okay, I'll send you some  
11 additional information on that.

12 MR. DISTASIO: And then just basically, you  
13 know, what did it cost you to put a program like this  
14 in? I mean, obviously it's more commitment than  
15 anything else is what it seems like from my  
16 perspective.

17 MR. ELLIOTT: Well, initially, if I can  
18 answer that. Initially, when we had to put all our  
19 people through training the corporation expended about  
20 300 to 350 thousand dollars. But once they decided  
21 they were going to do it the owner said, let's do  
22 this, but that has been paid back so many times, and I  
23 think the hourly employees realize that it's made a  
24 difference, and today we have supervisors -- anytime  
25 we hire somebody they have to go through supervisory

1 training, but it pays off. It's not going to pay off  
2 in six months or a year, but any process -- what I  
3 told them -- this is no different than crushing rock  
4 and making coal.

5           When was in the surface coal mine, we had  
6 certain processes. You uncover the material, you  
7 removed it. If you've got a process that functions,  
8 anything that screws that up you've got to correct it.  
9 Safety is an equal part of our business. It can save  
10 you money, it can be more efficient, and I have found  
11 as a supervisor that when you make an operation safe  
12 you're going to get more production.

13           MR. DISTASIO: That's what I like to hear.

14           MR. ELLIOTT: It is. I mean, when I was a  
15 surface coal mine supervisor, I had 35 people work for  
16 me. On the day shift, I just -- quick story. The day  
17 shift superintendent, he didn't like berms up and  
18 everything. He would push the things off. Well, at  
19 night when I came in, I told our people, before you  
20 start dumping those truck, you put the berm up, and  
21 invariably we would get equivalent number of loads per  
22 hour or more because we did those things, and people  
23 believed in it. So I think that's important.

24           DR. WAGNER: You want to identify yourself,  
25 please?

1 MS. SILVEY: Pat Silvey. I'm sorry.

2 MR. ELLIOTT: I knew you by that time,  
3 right>

4 MS. SILVEY: I have a question on your  
5 statistics, and I echo what Greg said. Thank you very  
6 much for bringing that to the record, and I know the  
7 program hadn't been in place but a few years. In  
8 2003, I believe, the statistics went down below -- you  
9 can show them again -- went down below one, and then -  
10 -

11 MR. ELLIOTT: They jumped back up.

12 MS. SILVEY: Right. Went to about one, so I  
13 thought almost now -- even though, granted, much  
14 better than where you started, I would say that, well,  
15 now, I'm looking at '09. Are there particular -- I  
16 was focusing on '03, but '09, too. Are there  
17 particular things that happened with respect -- do you  
18 think, is there anything that you can gather from  
19 that?

20 MR. ELLIOTT: There are times where you have  
21 a workers' comp. claim, let's say a person gets dust  
22 in their eye. They can go to the doctor and the  
23 doctor checks them out and just washes it out with an  
24 eye wash, and it's not reportable, but that doctor  
25 might say, well, look, there is a scratch there.

1 We're going to prescribe eye drop, prescription eye  
2 drops, which make it reportable.

3           So I think what we've found and there are  
4 times that when you start dropping your numbers down  
5 and you're getting better, you're going to find that  
6 there are circumstances where people will go over that  
7 level a little bit where it's prescription eye drops  
8 and where it's not.

9           What we are also finding a little bit is  
10 that we've seen, and this is something that's been in  
11 MSHA for awhile, you will recall this, about age-  
12 related things. We have had a couple of injuries in  
13 fiscal year '10 where we had employees doing a job  
14 that was a normal job, nothing hazardous, and then  
15 they would say, well, man, my arm hurts. Well, they  
16 go into the physician, the physician said, well,  
17 you've got a strained muscle there. Part of that may  
18 be from the fact that this person is late fifties,  
19 early sixties, maybe he wasn't really used to that,  
20 now he's got a condition.

21           So, I think we're going to see as the baby  
22 boom generation moves through our industry that we're  
23 going to have a little bit of that, and I think that's  
24 what -- we know that's what happened in fiscal year  
25 '10. We had at least four injuries of those 23 that

1 there was nothing unsafe done. They weren't put in a  
2 situation where there was an unsafe act, but they  
3 developed a soft tissue injury.

4 DR. WAGNER: So this actually raises the  
5 question of whether you adjust your approach,  
6 depending upon the specific demographics of the  
7 workforce of any particular plant.

8 MR. ELLIOTT: We have not looked at that as  
9 much. In the last two years, we're doing more  
10 analysis of our workers' comp. claims to see if we  
11 have these kind of associated problems, and we think  
12 we're going to have to look at approaching it  
13 differently even to the effect of having people to  
14 learn to do some stretching exercises or something  
15 before they undertake -- all of us when we were 20  
16 years old were bullet proof and do anything, and a lot  
17 of times a person that is later in their career still  
18 approaches it the same way.

19 So, we're trying to look at maybe developing  
20 a program to start targeting people to think not only  
21 about the hazards but think about the physical  
22 attributes of what's going to be required to perform  
23 that task, and that's the thing with a safety system.  
24 You don't look to make quick decisions and quick  
25 answers about things. You want to make sure you look

1 and find what the root problem is, so that's something  
2 we're looking at now.

3 MR. KIRK: I have two questions. One, did  
4 you say that acquisitions were part of the  
5 fluctuations here?

6 MR. ELLIOTT: Yes, we have had issues with  
7 that and I think back in -- I want to say '06 -- we  
8 made an acquisition and then it jumped up. We find  
9 the more stability you have the more the leadership is  
10 able to treat, understand the qualities of each of the  
11 workers and their ability to perform the task, and put  
12 people in the right place, and we've had supervisors,  
13 too, that you get a new employee, they come in, they  
14 are willing to do anything. So, sometimes a  
15 supervisor doesn't think about, wait a minute, I need  
16 to have an experienced person do this task versus a  
17 new person.

18 So, educating our supervisors and how to  
19 recognize the limitations of workers, that's another  
20 part of it that I think is gradually helping us, and  
21 with an acquisition we know it's going to be problems.  
22 It historically is.

23 MR. KIRK: And the second question is, did  
24 you also track severity, or do you just use your  
25 worker's compensation cost to look at that?

1           MR. ELLIOTT: No, we do track severity, and  
2 I could have brought that. I just didn't bring that  
3 chart, but we look at lost time injuries. But what we  
4 also look at is we take the workers' comp. claims as  
5 an indicator, which I didn't talk about, but we look  
6 at severity of the workers' comp. claim. There are  
7 times that you can look at that and it will tell you  
8 whether -- whether there is an injury or not -- we can  
9 look at did that have potential to be a very serious  
10 injury, and so we look at potential factors in our  
11 workers' comp. claims that helps us target things that  
12 we need to be looking at.

13           MR. KIRK: And do you find severity has been  
14 driven down, too?

15           MR. ELLIOTT: Yes.

16           MR. KIRK: Thank you.

17           MR. FEEHAN: Yes. Thank you very much for  
18 your presentation.

19           I was wondering about your safety audits.  
20 What kind of -- when you're doing safety audits, what  
21 kind of rules do you set for the auditor? I mean, do  
22 you set up the tasks? What's that look like?

23           MR. ELLIOTT: We notify the operation that  
24 we're going to do an audit. It's a maximum of one  
25 hour in length. What you're objective is is to

1 observe the people doing the work. Then when you  
2 observe them you will go to the person and then you  
3 will talk with them, discuss with them about safety,  
4 what was your safety meeting about this morning, what  
5 was your JSA, what went into the JSA on the task  
6 you're doing.

7           And if we find that they are doing something  
8 that's unsafe, you bring that to their attention. You  
9 discuss it with them. Maybe they are using the wrong  
10 tool. Well, why are you using this particular tool?  
11 Well, we didn't have the one we needed. And then we  
12 will put that down, and at the end of the audit  
13 process we will go back and sit down and do our  
14 findings, and we'll say, well, Richard and Harvey were  
15 out there doing that job, and they were using the  
16 wrong tool. What do we need to do?

17           And then we will assign someone the  
18 responsibility the next time we do that task we will  
19 put it in the JSA, we will get the right tool for  
20 them, and that's a -- and what's interesting there,  
21 people in our company they initially said, well, you  
22 shouldn't tell them that you are coming in to observe  
23 them doing their work, but in fact when they do their  
24 work we know if they do it safe, and they tell us,  
25 well, we can't do that safe. No, we saw you do it

1 safe. We know you can do it safe. So you try to  
2 raise the standards of performance, and you try to  
3 recognize people for doing a good job, and telling  
4 them, I appreciate your doing that safely and wearing  
5 your safety glasses. We had slips and falls was a  
6 major problem, and then when we started attacking  
7 three points of contact, and now that was something we  
8 will do in our audits. We will say throughout the  
9 corporation look for this as you go around auditing  
10 our operations, and it helped us get today where you  
11 won't find anybody mounting or dismounting equipment  
12 and not using three points of contact, so it's just  
13 part of how it works.

14 MR. FEEHAN: Do you choose certain tasks?

15 MR. ELLIOTT: No, just whatever the work is  
16 going on that day.

17 MR. FEEHAN: Do you make sure that it's  
18 comprehensive, that you get the truck drivers as well  
19 as the --

20 MR. ELLIOTT: Crane operators.

21 MR. FEEHAN: -- crane operator?

22 MR. ELLIOTT: Yes. We do the people in the  
23 office as well.

24 DR. WAGNER: Greg.

25 MR. FETTY: Yes, I was going to ask have you

1 seen any correlation with your violations in terms of  
2 reduction with the implementation of your program?

3 MR. ELLIOTT: Zero. There is not a -- and I  
4 think it's something that people -- it's just like  
5 rules. Somebody may say they're following the rules,  
6 you know what I mean? And maybe they are not  
7 following the rule because sometimes it may be an  
8 interpretation about a guard whether it's right or  
9 not. But they feel like when an inspector comes in,  
10 it's like that police officer we see always parked on  
11 the side of the road. Everyone of us eases off a  
12 little bit, right? Whether you're over speeding or  
13 not, and I think that's a little bit what happens when  
14 MSHA comes into a mine, you know, for that twos and  
15 fours.

16 So, we try to de-emphasize that, but we have  
17 not seen a correlation. Now, we do see sometimes  
18 there are problems with the -- when we see a lot of  
19 citations, we feel like there is a problem at the  
20 operation with the compliance side of their business,  
21 but we really focus on people not doing things -- as a  
22 matter of fact if they do things that are unsafe, if a  
23 supervisor were to allow somebody to say work on a  
24 conveyor without it locked out, then the changes are  
25 the supervisor is either going to be suspended without

1 pay for a significant period of time, or terminated if  
2 they allow those things to happen.

3           So, we are just not focused as much -- we  
4 see improvement in our overall citations for  
5 inspection when we focused upon it. We were about  
6 five and a half average. Now we're down to about  
7 three and a half average per inspection.

8           MR. FETTY: So there has been a reduction  
9 with the implementation of your program?

10           MR. ELLIOTT: The basic concept is the same,  
11 yes.

12           MR. FETTY: Okay.

13           MR. ELLIOTT: Yes, right. But I meant as  
14 far as injuries or anything, there is no correlation  
15 between injuries and citations.

16           MR. BURNS: You mentioned that you think  
17 there is a correlation in the up tick in injuries with  
18 your change in leadership, and that's not unusual, and  
19 it's not unique, but what lessons have you learned  
20 from that? I don't know if you have the answers right  
21 now but you can let us know what as a company you  
22 would recommend be done differently based on what you  
23 learned from that change.

24           MR. ELLIOTT: What we've learned is that the  
25 CEO that we had come into the corporation did not have

1 tenure with us other than on the board of directors  
2 prior to coming in as CEO. I think he didn't  
3 understand the process. Once he understood how  
4 critical it was for his involvement, then he really  
5 engaged, and you mention about the business case that  
6 in every one of the performance metrics for his direct  
7 reports is a safety component, so they are very  
8 attuned to it and he didn't do that the first year he  
9 came in. So it kind of sent a message that it wasn't  
10 as important as it had been, but once he realized and  
11 he became aggressively engaged, then you saw we set  
12 those two records for 23 the last two years, so it  
13 shows. We just have to do a better job of educating  
14 the CEOs, but sometimes you can't educate the people  
15 at the top. They kind of think -- you know how that  
16 works.

17 (Laughter.)

18 MR. ELLIOTT: I couldn't resist that. We  
19 didn't talk about --

20 (Laughter.)

21 DR. WAGNER: A good time for one or two  
22 questions. Identify yourself, please.

23 MR. SHARPE: Oh, I'm sorry. Jim Sharpe from  
24 Sharpe Media.

25 Ed, you know, you're the largest crush stone

1 operator, you've got six or seven hundred people  
2 involved in the aggregate, you've got three people  
3 involved in your safety unit, and it's a fairly  
4 sophisticated system that you outlined here. Let's  
5 take that down to a company that has the size of 20  
6 employees maximum, no full-time safety director.

7           Are you optimistic that a company like this  
8 can be put in place for an operator of that size?

9           MR. ELLIOTT: Eventually an operator of any  
10 size could put in something like this, but I think  
11 that's why I said about the core principles of the  
12 safety program that the MSHA-NSSJ Alliance put  
13 together. It is much simpler, and I said at the  
14 beginning it needs to be simple, and measurable, and  
15 you need something to where some broad concepts that  
16 are proven concepts.

17           If you ask every successful company in  
18 safety, they will tell you there are certain things --  
19 the management commitment, the training, accident  
20 investigation. This isn't rocket science. And so a  
21 small operator could put those things in. How  
22 sophisticated their investigation process was, or how  
23 sophisticated their training process is, it's going to  
24 differ, but they can still start down that path of  
25 those leading indicators that we know make a

1 difference.

2 DR. WAGNER: Thank you very much. I think  
3 this is a good time to take a break. We will start  
4 back again in exactly five past 11 on the first clock  
5 up here.

6 (Whereupon, a short recess was taken.)

7 DR. WAGNER: Our next speaker is Frank  
8 Migliaccio, Executive Director of Safety and Health  
9 for the International Association of Bridge,  
10 Structural, Ornamental, and Reinforcing Iron Workers.

11 MR. MIGLIACCIO: Before I begin, I'd like to  
12 thank you for giving my organization the opportunity  
13 to come here and speak today. I want to give you a  
14 background of what the iron workers do first because  
15 people say, what is iron workers doing on mine sites,  
16 and once we are on a mine site we are considered  
17 miners.

18 All right, when we talk about from the top  
19 down the involvement, Walter Wise is our general  
20 secretary and is second in command of our  
21 organization. So he worked in the field, he's also a  
22 trustee on our national training fund, he's chairman  
23 of the Iron Worker MSHA committee. He served  
24 apprenticeship in 1974 to 1976. He's worked  
25 throughout the coal fields from 1981 to 1989. There

1 is a picture of him. A lot thinner back then, and the  
2 one thing about Walt, and he will become our general  
3 president within the next say five to seven years,  
4 Walt still is involved in the training of the iron  
5 workers in MSHA. When we do the train the trainer  
6 classes he's in there with me teaching the classes.  
7 So we have the involvement of our labor right off the  
8 bat.

9           International Association of Bridge,  
10 Structural, Ornamental, and Reinforcing Iron Workers  
11 is a member with the AFL-CIO. We were formed in  
12 February 4, 1896, in Pittsburgh, Pennsylvania,  
13 comprised of six local unions total 3,650 members at  
14 that time. Safety was the number one issue then, and  
15 our general president today, Joseph Hunt, still  
16 considers it our number one issue today.

17           In 1911, our organization was losing 1  
18 percent of its membership a year in job site  
19 fatalities. One hundred and seventy-four local unions  
20 in the United States totaling 95,500 active members  
21 today safety still is the number one issue. In 2009,  
22 we had 12 fatalities or .0125 percent of our  
23 membership. Employed by thousands of contractors  
24 under collective bargaining agreements throughout the  
25 local union hiring halls. We erect structural steel.

1 This is just one of the jobs out there in Greenbank,  
2 West Virginia. Bridges, columns, reinforced columns,  
3 we install and move heavy machinery, we install metal  
4 siding and glass curtainwall, same thing, metal  
5 siding, glass curtainwall, erect metal buildings.  
6 I.M.P.A.C.T. is our labor/management group, Iron  
7 Workers Management Progressive Action Cooperative  
8 Trust, and we have a membership on the board of both  
9 the labor and management, so we are very oriented with  
10 the labor/management groups.

11 We have the one main body and we have 10  
12 units around the country and in Canada. It drops down  
13 to National Training Fund. They send their  
14 information, or the National Training Fund works under  
15 that umbrella. From there it goes to the  
16 apprenticeship, JIW upgrading, Journeyman Iron Worker  
17 upgrading, certifications.

18 The instructor training standard curriculum  
19 materials, recordkeeping program is off under this.  
20 That goes to the local union, J.A.T.C., and that goes  
21 to the local union membership.

22 Everybody is wondering why I'm going through  
23 all this right here. When we talk about membership  
24 buy-in everything our organization does has to be  
25 voted all through a collective bargaining. Our

1 membership has to agree on every bit of training that  
2 goes out the door. That's part of why we all belong  
3 to what we do.

4           The national training function, the trainer  
5 classes at three regional training centers: St.  
6 Louis, Missouri; Oakland, California; Northern New  
7 Jersey. We also have an annual instructor seminar,  
8 and this year it was held at Eastern Michigan  
9 University and Waghtenaw Community College. When I  
10 bring this up, this is where we actually do the MSHA  
11 train the trainers, where we train the instructors to  
12 go back to their locals and do the training to the  
13 membership, both the apprenticeships and journeymen  
14 that's going to go out and work on mine sites.

15           Prior to this, for 26 years we were out in  
16 California, the first year was in Berkeley, second  
17 year was in La Jolla, and all the rest of the years it  
18 was in San Diego. Somebody said why did we move from  
19 there, we outgrew it. We went from 28 students the  
20 first year to over 750 students the last year before  
21 we moved to Michigan. We outgrew the facility.

22           This is the training. You can see some of  
23 the instructors, just the general members -- the  
24 general president and everybody is right up front  
25 there.

1           In addition to the three-year and four-year  
2 apprenticeship program requires 204 hours of classroom  
3 instruction, and during the skill upgrading the  
4 National Fund offers the following certifications.  
5 Various American welding societies certifications for  
6 accredited facilities and local unions. We have 40  
7 hours of hazardous material, OSHA 10 hour, OSHA 30  
8 hour safety courses, CPR and first aid. We have  
9 scaffold user records, post-tensioning, installation,  
10 subpart R steel erection, arrow lift and MSHA safety  
11 training. We do the new miner safety training for our  
12 members before they even go to the contractors, so we  
13 offer our contractors benefit that is not costing the  
14 contractors anything to have the members trained.

15           We also do the refresher classes at our  
16 facilities for the mining contractors, and if they are  
17 still working they get paid, and if they are not they  
18 do it on their own. They don't get paid for it. We  
19 do the task training which goes up in that 204 hours  
20 of three or four years of training as an iron worker.

21           This is the local facility in Upper  
22 Marlboro, Maryland. This is a training facility  
23 classroom, hands-on welding, rigging, instruments,  
24 reinforcing, and it's just an arrow lift in the back.  
25 We do all sorts of training at these facilities, and

1 that's an apprentice preparing for a contest that's  
2 held every two years throughout the United States for  
3 the outstanding apprentice for the United States and  
4 Canada. So the journeymen iron workers have a  
5 professional attitude and skills.

6           Now, this is the important part. The  
7 international dedicates nearly \$50 million a year,  
8 that's 50 million, that's not 50,000, that's \$50  
9 million a year to the membership training. That money  
10 is negotiated through collective bargaining, and that  
11 means every member votes on how much money is going to  
12 go out of their local that goes into their training  
13 fund to train their journeymen who have already gone  
14 through an apprenticeship, and our apprenticeship.

15           Now we're going to what we do on mine sites.  
16 Layers, sheeting, shafting cable change-outs,  
17 maintenance, installation. A little bit of everything  
18 is what we do on the mine site. A mine site is made  
19 for us, for construction that we do because we do the  
20 construction on a construction site every single day  
21 of the year. We just take that same training, we  
22 moved it over to this along with the MSHA required,  
23 and we've got it.

24           Approved training plans, the iron worker, 30  
25 CFR Part 48B plans have been expanded to also meet the

1 requirements of 30 CFR Part 46. Most of our work is  
2 done above ground. We have one local in Utah that we  
3 have underground instructors, but most of our  
4 instructors are surface instructors. We have 83 local  
5 unions have approved training plans, approved  
6 instructor's card. We actually give our members a  
7 photograph card. They get their Form 3000M. They get  
8 that, but this also takes its place. The form if it's  
9 in anybody's pocket gets wet, you can't read it. This  
10 is laminated with their photograph and nobody can lie  
11 who it is.

12           With 290 iron worker instructors have been  
13 trained and certified and approved by MSHA to be  
14 trainers. They incorporate in the local union  
15 apprenticeship classes, we have 7,745 iron workers who  
16 completed new miner training and refresher classes and  
17 that number is wrong because yesterday we just did the  
18 upgrade, we have 8,081 now, and they get a new miner's  
19 card the same way, laminated with a photograph on it  
20 of what training they have gone.

21           Since 2000, union iron workers have worked  
22 over 13.5 million man hours on a mine site. Now that  
23 might not seem like a lot, but eight years ago when we  
24 started we weren't doing anything. Excuse me. Ten  
25 years ago we saw we weren't doing anything. Now you

1 see what we have come to.\

2           Now, with that we have only suffered one  
3 fatality. Now on a regular job site we go through the  
4 years where we have had an average of 28 fatalities  
5 working with a regular construction site and as many  
6 as 32 fatalities in a year. But on a mine site, we've  
7 had one in all these years. There is the webpage for  
8 the iron workers organization, and I.M.P.A.C.T.'s  
9 website also.

10           So what's so hard about preventing worker  
11 accidents? Does the worker want to be hurt? I don't  
12 think so. Does the employer want anyone hurt on the  
13 job? I don't think so either. And we definitely know  
14 the owner doesn't want anybody hurt.

15           These are job sites. This is just regular  
16 job sites and we do this same work on the mine site.  
17 This is a collapse right here at the Convention Center  
18 here in Washington, D.C. Nobody was hurt. Nobody was  
19 there. It happened the first thing in the morning.  
20 Crane tipped over, this job here a fall from the  
21 scaffold. This iron worker here was lucky. I call  
22 that a near miss. A stud dropped seven floors, hit  
23 this iron worker in the arm, and I'm not going to say  
24 where it fell, but this boy was tough because we went  
25 right back to work after he got stitches.

1           Now here this is sooner or later, the  
2 Henrich Triangle. You've got 600 near misses, 30 of  
3 them are minor, 10 are serious, but sooner or later  
4 you're going to get that fatality. Now everybody say,  
5 you know, fatalities, they do occur and fatalities  
6 they do happen. I do a lot of training around the  
7 country talking about classes and so forth of what we  
8 train, and I tell them everybody would like to see  
9 everybody go home every single night the way they went  
10 to work that day, but we know that doesn't happen.  
11 And what I call that is the fantasy world. What I  
12 call as the real life world is that one fatality. It  
13 happens. Whether they're driving to work, driving  
14 home, it happens.

15           If no one wishes an accident to happen, who  
16 do we blame? Human behavior, and I heard one  
17 gentleman say this morning everybody blames the hourly  
18 worker, it's always the hourly worker's fault.  
19 Sometimes it may be, but it's the company's  
20 responsibility to make sure their foremen go out there  
21 every day and make sure these people work safe. If  
22 they see them doing something unsafe, they should send  
23 them home.

24           When I worked in the field, I've been an  
25 iron worker for 40 years, I had two things. If you

1 can't do what I tell you, you can't work for me, and  
2 that's the kind of mentality we are getting across  
3 now. I want to show you why.

4           This is some more work we do out there.  
5 Modify human behavior. Define the correct behaviors,  
6 train to those behaviors, and punish or reward the  
7 behavior. That's how it works.

8           Transition mine facilities: worker  
9 attitude, OSHA contradictions. What I mean by OSHA  
10 contradictions there, we train -- every instructor  
11 that trains our MSHA members have to have the OSHA 500  
12 train to trainer card in their pocket. They also have  
13 to have the first aid CPR. All our instructors that  
14 go and take our classes, the train to trainer classes,  
15 have to have the same thing.

16           The problem that we train is we train so  
17 much OSHA 500 that the standards don't coincide a lot  
18 of time, and one that comes to mind is the fall  
19 protection. Fall protection standards in OSHA, there  
20 are three. You've got subpart L, which is  
21 scaffolding, it's 10 feet. You've got subpart M,  
22 which is general fall protection, it's six feet; and  
23 you've got subpart R which involves my organization,  
24 steel erection is 15 and 30 feet. We have a definite  
25 area and distance that we know that we have to be

1 protected with fall protection, and we require a full  
2 body harness.

3 MSHA, on the other hand, if you read it,  
4 it's very vague. It actually says if you have the  
5 capability of falling, you have to be protected by  
6 fall protection. Does that mean if I fall off a curb,  
7 fall off a table, fall off a ladder? It's really up  
8 to the compliance officer out there on the job. There  
9 is good and there is bad to that. Sometimes they can  
10 say, well, you know, we know what you're trying to do,  
11 we'll go over here. Then sometimes somebody you get  
12 somebody who has a bad day, they throw you off the  
13 site. So the contradictions between OSHA and MSHA  
14 standards is a problem.

15 Now, it's a new environment for our people  
16 to go out on a mine site and work. It's the same work  
17 they do on a regular construction site, but it's a  
18 different environment. A lot of machinery, a lot of  
19 big trucks, lot more conveyor belts, lot of dust, lot  
20 of problems out there, and like I said, most of our  
21 work is done above ground. We're all familiar with  
22 the equipment but through the time getting out there  
23 we get very familiar with that equipment, and some  
24 knowledge.

25 Now, my transition to construction, same

1 thing. MSHA's contradictions I always think about.  
2 It's a new environment for people who work here, come  
3 back out, unfamiliar equipment, summation and  
4 knowledge. So it's back and forth.

5 MSHA signed a alliance with the iron workers  
6 on July 18, 2004. At the time we were the second  
7 organization they signed with the Operating Engineers  
8 were the first, a couple months later we signed with  
9 them. We have been working with them very close, as  
10 close as possible with them ever since then.

11 Here is the signing. It was done out in San  
12 Diego, several MSHA members in there, some are retired  
13 now. Jeff is still here, but then our general  
14 president, Joe Hunt, he sided with them.

15 Now, the MSHA-Iron Work Alliance shares best  
16 practices and technical knowledge back and forth. We  
17 get what they have. We give them what we do, and it's  
18 been working out for years. Develops and disseminates  
19 safety and health information. It fosters a culture  
20 of prevention. Master instructors for 2010 was Jack  
21 Gavett from Local 229 in San Diego, and myself, and  
22 I'm out of a local here, 201, but I've been working at  
23 headquarters for 20 years. David Weaver, Jeff Hoblick  
24 and Pat Hurley, Pat works in this building, David and  
25 Jeff work for MSHA around the country. We do a 20-

1 hour MSHA classroom, we do 20 hours of PDC classroom,  
2 professional development classes, and they are  
3 actually taught by college professors who to train.

4           Local union instructor become an MSHA  
5 instructor. They have to have a minimum of five years  
6 instructor at the local union. They have to be  
7 recommended by their joint apprenticeship committee  
8 from the local union to actually take the class. They  
9 have to have worked at the trade for a minimum of five  
10 years, and like I say, they have to have the OSHA 500  
11 instructor card, and the first aid CPR card.

12           I know MSHA requires the first aid training,  
13 we go a little step further, we have the CPR training  
14 also, and this is to ensure that everyone returns home  
15 every day from work. That's it.

16           DR. WAGNER: Thank you very much.

17           MR. MIGLIACCIO: Thank you.

18           DR. WAGNER: Let me turn first to the panel.

19           MR. KIRK: Yes, I have a question. MSHA  
20 doesn't count the contractor hours, so you have a  
21 tough time with injury rates. Do you track injury  
22 rates among your union members and do you  
23 differentiate between general construction and mining  
24 at all?

25           MR. MIGLIACCIO: No. Every district counsel

1 tracks their injuries and they do that four times a  
2 year through their meetings for the district council.  
3 The only thing that actually comes into my office is  
4 the executive director safety note is fatalities.

5 MR. KIRK: Yes.

6 MR. MIGLIACCIO: I get all fatalities and I  
7 have a report card that has to come back to me within  
8 five working days of the fatality with what happened.  
9 They have to tell me a lot about the person and then  
10 I'll do an investigation.

11 MR. KIRK: So you don't have any hard  
12 numbers that indicate how trends may be going as far  
13 as injuries and how that works in the success of your  
14 training program?

15 MR. MIGLIACCIO: No, just the fatalities  
16 have been drastically reduced, but no, not injury  
17 count.

18 DR. WAGNER: I have a couple of questions.

19 MR. MIGLIACCIO: Yes, sir.

20 DR. WAGNER: Have you had experience with  
21 your members working on sites that have health and  
22 safety management programs that are in place,  
23 committed to, versus those that aren't?

24 MR. MIGLIACCIO: Are you talking about mine  
25 sites?

1 DR. WAGNER: On any industry.

2 MR. MIGLIACCIO: On mine sites, we have the  
3 safety meetings and they are attended to by everybody  
4 there once a week. Anything goes on that comes across  
5 there and that's the actual people doing the work are  
6 a part of that committee. Our regular construction  
7 sites do the same thing, so there is -- I mean, we  
8 always have -- now if there is an accident on the job,  
9 whether it's our trade or not, then that just upgrades  
10 another meeting that week. Our management, they know  
11 how important it is so that's all on company time when  
12 they do this. This isn't something they do on the  
13 outside time. The management wants to make sure  
14 things are safe, too.

15 Like I said, just having our fatalities  
16 rates have been dropping for the last I'd say seven  
17 years they have been coming down, and I put that all  
18 to -- our number one kill is falls. I mean, if you  
19 look at the sites we work it it's the number one  
20 killer.

21 Since subpart R came into effect, we have to  
22 be tied off at 15 -- at 15 feet if you're doing  
23 anything, but if you're a connector they have a  
24 variance of 30 feet. When I worked in the field, that  
25 was my tie-off right there. That was my hand was my

1 tie-off, I trusted my hand.

2           The difference is is with the new standards  
3 come out with OSHA you're starting to see that this  
4 new -- everybody has to be tied off. We have trouble  
5 with the older members because they are like me and  
6 they're used to using nets, and we have a hard time  
7 getting them to use the harnesses. Here, again, if  
8 they don't use them, they should be put off the job.  
9 The company is going to get cited for it. The foreman  
10 works for the company and it's their job to make sure  
11 they do it.

12           So you can see it's been coming down. Last  
13 year was our best year until this year. We had nine  
14 fatalities. This is the first time we have had single  
15 digit fatalities since, and we have been 100 years  
16 old. This year we have got three fatalities. Now  
17 don't think that's all due to training, the economy is  
18 terrible, so our work hours are terrible, too.

19           What I do is I look at man hours for working  
20 out in the field, and I look at the fatalities we have  
21 that year and I make my adjustments, and I make my  
22 reports that way. This year is terrible.

23           DR. WAGNER: Do you feel that all hazards  
24 can be eliminated from the workplace?

25           MR. MIGLIACCIO: Manmade hazards, yes.

1 Natural hazards, no. And the reason I say that we've  
2 had membership working out there, a storm jumps up,  
3 they get electrocuted by lightening. There is no way,  
4 that's what I was saying about you can't control every  
5 aspect. Manmade, yes, I think they can. Look at our  
6 fall rates. They have come down drastically.

7 DR. WAGNER: Any questions from the  
8 audience? Please, and I'm sorry, to capture you if  
9 you would come closer to the microphone on the table  
10 to ask a question, identify yourself and then ask him.

11 MS. SNYDER: Kathy Snyder, Mine Safety and  
12 Health News.

13 Just curious, in addition to safety training  
14 are there elements of safety that are part of your  
15 collective bargaining agreement with your employers?

16 MR. MIGLIACCIO: Okay, I think I know what  
17 you mean.

18 MS. SNYDER: Safety programs, following  
19 certain rules.

20 MR. MIGLIACCIO: Oh, yeah. I mean, the  
21 companies have -- a lot of companies have rules, our  
22 safety programs have to be written. The company has  
23 to have a written safety plan. Some of the things  
24 that the companies have to do now, which just came  
25 across from OSHA, was safety equipment has to be

1 purchased by the company, so the collective  
2 bargaining, the unions, we know it's going to happen  
3 that way. Right now we have an organizing campaign  
4 with a company in Maryland and Virginia that they're  
5 making their workers buy their own safety equipment.  
6 That's against the law.

7           Now, the two things that the person has to  
8 buy themselves, the worker has to buy themselves are  
9 personal items. If you wear prescription lens glasses  
10 for your safety glasses and you require a  
11 prescription, they have to purchase that themselves  
12 because they can take that with them. The other thing  
13 is safety boots, the steel toe boots, I should say.

14           On the mine sites we know, all our members  
15 know before they get there they have to have steel toe  
16 shoes to get out on the job site, but the one thing  
17 through the collective bargaining agreement what we do  
18 is we work it out with the contractors that they will  
19 give them so much money towards those safety shoes  
20 because, believe me, they get cold in the winter and  
21 nobody is going to wear them off the job unless they  
22 have to but nobody else is going to want to wear them  
23 on the job if somebody else has their feet in them. I  
24 hope that answers your question.

25           DR. WAGNER: Thank you very much.

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1 MR. KIRK: I do have one more question if I  
2 can.

3 DR. WAGNER: Okay.

4 MR. KIRK: You didn't really call it out but  
5 I see some of the principles of the safety and health  
6 management programs in here as far as management  
7 leadership commitment as far as your headquarters  
8 people and also in the field, the supervising foreman  
9 and training accountability, working through the  
10 lines. Were these principles, are they written into  
11 your program and were they done on purpose, or do we  
12 find that they just sort of evolve?

13 MR. MIGLIACCIO: Well, they are written, any  
14 of our written programs or contractors, like I said,  
15 have to have a written program, a safety program.  
16 They have to have it on the job, and they have to keep  
17 it back at their headquarters, and through the years a  
18 lot of thing has just evolved, but with the new  
19 regulations coming out there is new stuff being put  
20 in. It's a living document, so there is constantly  
21 things changing there.

22 MR. KIRK: Do the iron workers -- have you  
23 guys purposely instituted this or do you depend on the  
24 contractors?

25 MR. MIGLIACCIO: No, no, we have instituted

1 a lot of it. Now, we've got good contractors, don't  
2 get me wrong. A lot of contractors sit at our table.  
3 They spend their money to come to our table and work  
4 with us. They helped put this together. Just like  
5 every other industry out there, not every contractor  
6 is forthcoming like that. You have got to drag them  
7 tooth and nail to get them to come to the table, but  
8 once an organization agrees on it, and they sign a  
9 collective bargaining agreement with a local union,  
10 then that means they are under that agreement and they  
11 have to do everything that's in the agreement.

12           One of the things we have in New York City  
13 fall protection, subpart R, like I said, 15 feet and  
14 30 feet. In New York City, a contractor up there  
15 signed a collective bargaining, knew that that was the  
16 agreement, and we all know that the state or the  
17 contractor can meet or exceed the standard.

18           Well, one of the contractors wanted 100  
19 percent tie-off for all the iron workers working in  
20 the city. And they said you signed the collective  
21 bargaining agreement and that's what we live by, and  
22 if the iron workers didn't want to tie off and 100  
23 percent, they didn't have to. I'm not saying that's  
24 right, I'm not saying it's wrong, but the contract  
25 knew they signed the agreement. They just don't think

1 they can enforce the issue.

2 DR. WAGNER: Thank you very much.

3 MR. MIGLIACCIO: Thank you.

4 DR. WAGNER: We are having two speakers from  
5 Chevron Mining, Inc. next. Mark Premo, Senior Vice  
6 President and Dave Partridge, Vice President of  
7 Technology.

8 MR. PREMO: Thank you, Dr. Wagner and the  
9 panel. On behalf of Chevron Mining and Chevron, it is  
10 a pleasure for us to be here this morning to talk  
11 about our processes and program. Dave Partridge and I  
12 are with Chevron Mining, the mining division of  
13 Chevron Corporation, and we are headquartered in  
14 Denver, and we're a fairly small company, a little  
15 over a thousand employees, and three mines, and  
16 actually four operations: one in reclamation mode,  
17 but the mines are surface coal, hardrock underground  
18 and underground coal.

19 A lot of what we talk about here today, and  
20 Dave and I are going to kind of tag team, but a lot of  
21 what we talk about here today are the management  
22 system processes that are from Chevron adapted to the  
23 mining business. We have certain governance from the  
24 corporation that we adapted to mining.

25 Most specifically, as we dig a little deeper

1 in our discussion, we're going to focus on underground  
2 coal. We think that's probably the focus area for  
3 this today. Just a couple of lead-in comments and  
4 then Dave will take over awhile on the management  
5 system process.

6           We do believe, first of all, that all  
7 incidents, all accidents are preventable. We firmly  
8 believe that in the corporation. There is no one  
9 answer to this question that's before us today, what  
10 do we do about safety; no one answer. We think it's  
11 all the way between culture, consistent processes,  
12 consistent use of the processes, compliance. We think  
13 it's a lot of things that contribute to the right  
14 answer, but no one answer.

15           The mine that we'll focus on a little bit  
16 later in the discussion is underground coal mine with  
17 two continuous miner units, around 3 million tons per  
18 year, around 380 employees in total, so that we can  
19 kind of get more into those details as we go forward.

20           So at this time Dave Partridge, Vice  
21 President of Technical Services, will talk and Dave  
22 has got around 35 years in the industry, both surface  
23 and underground, both coal and hardrock, so Dave.

24           MR. PARTRIDGE: Thanks, Mark, and again  
25 thank you for the opportunity to speak today.

1 I'm going to talk a little bit about the  
2 safety management system that we use in Chevron Mining  
3 and apologize if I use a few acronyms as I go but that  
4 seems to be part of our culture. The Operational  
5 Excellence Management System is Chevron's integrated  
6 approach to a management system, and so it not only  
7 covers safety and health, but it covers the  
8 environment, reliability and efficiency, so those five  
9 components which really dictate the whole operating  
10 environment for a mine are what we manage in one  
11 comprehensive safety system or management system, and  
12 I think that in itself may be somewhat unique and  
13 somewhat beneficial and you have a holistic management  
14 system that everybody is familiar with across the  
15 organization in every different part of the operation.

16 What we do initially is establish a vision  
17 and I'll refer to the Operational Excellence  
18 Management System as OE, Operational Excellence, and  
19 we established an OE vision and that vision that we  
20 have is recognized and admired by industry and the  
21 communities in which we operate is world class in  
22 safety, health, environment, reliability and  
23 efficiency, and sometimes we struggle with what that  
24 definition of world class, but we've tried to set some  
25 metrics or objectives for Chevron Mining and make sort

1 of a quick metric 0-100-0, so we strive to have zero  
2 incidents and injuries. We want to have 100 percent  
3 of our planned production, and we want to have zero  
4 citations, violations and spills, so that's the  
5 ultimate objective for our organization.

6           When we take a look at the Operational  
7 Excellence Management System, it was built with three  
8 distinct areas: leadership accountability, management  
9 system process, or again MSP, another acronym, and the  
10 early expectations. And Chevron guides this with a --  
11 it's about a 10-page brochures that sort of outlines  
12 at a very high level what operational excellence is  
13 and how the systems should function.

14           In the leadership accountability portion is,  
15 again as other speakers have mentioned, you probably,  
16 probably that most important key element. If  
17 leadership isn't on board with the management system  
18 from top to bottom, it's not going to work for you,  
19 and Chevron is very committed from the CEO of the  
20 corporation on down, our President Fred Nelson, very  
21 committed to operational excellence, and that  
22 leadership role runs all the way down through the  
23 organization, even down to the natural leaders in your  
24 workforce that aren't necessarily having the titles of  
25 manager or superintendent, but the safety committee

1 leaders and just natural leaders, and very key that  
2 those folks are on board, understand the program, and  
3 want to move forward with it.

4           Then the second area is the management  
5 system process and that's really the governance around  
6 how we manage, and we have five steps in the graphic  
7 that surround leadership accountability, and first we  
8 want to set the vision objective. Then we want to  
9 assess how do we stand against what we define as world  
10 class performance, what are the gaps? After that we  
11 put together a plan, what's our plan for the year to  
12 try and close those gaps? Then we implement that  
13 plan, and then towards the end of the year we do a  
14 review, how did we do on the actions that we set forth  
15 to close that gap?

16           And then every year we go around that cycle.  
17 We revalidate our vision and objectives, and then run  
18 through that cycle on an annual basis, so it really  
19 helps to drive towards world class performance and  
20 make a continuing improvement in the management  
21 system.

22           And this MSP is operated at the mine level,  
23 it's operated in our corporate mining office level,  
24 and then it's operated at the corporation level, so we  
25 take inputs from the MSP from the mine levels, feeds

1 up to my level, I feed it up to the corporate level,  
2 so we're all looking to continually improve our  
3 management system that way.

4           And then the real basis for how we do work  
5 within the management system is what we call our OE  
6 expectations, and there is 13 elements that are listed  
7 in the book here, and I'll walk you through those real  
8 quickly. It's really the basis for how we're going to  
9 perform work in the workplace.

10           Seven of the 13 elements really have a  
11 safety and health focus, and you can see there are  
12 things from security personnel and assets to safe  
13 operations, which is the one we'll zero down on today  
14 and get into more detail; management change;  
15 contractor health and safety management; incident  
16 investigation; emergency management; compliance  
17 assurance. So those are really the core elements that  
18 focus on safety.

19           Then we have six additional elements that  
20 certainly touch on safety but they are more focused on  
21 the reliability, efficiency, and environmental area,  
22 and those include facility's design and construction;  
23 reliability and efficiency environmental stewardship;  
24 product stewardship; community awareness and outreach;  
25 and legislative and regulatory advocacy.

1           So, those 13 elements, we feel, really  
2 encompass the whole business and the way we operate  
3 our business. So just to do a quick drill down to  
4 give you a feel under element three, safe operations,  
5 we have, I think, 11 OE processes, we call them, in  
6 place which now start to detail out how we're going to  
7 safely manage our work, and things such as safe work  
8 practices, risk management, JAs, this was talked  
9 about, Haz. Comm., motor vehicle safety, repetitive  
10 stress injury prevention, behavioral-based safety or  
11 workplace observations, occupational hygiene, fitness  
12 for duty, training, and then documents and records  
13 management.

14           And I'm going to do one more drill down here  
15 just on safe work practices to kind of show you the  
16 level of detail that we get into, and the safe work  
17 practice is really how we control the work out in the  
18 field. They define how we want our employees to do  
19 work. Through following those safe work practices, we  
20 think we can perform incident and injury free.

21           And Mark is going to talk in a little more  
22 detail about a few of these but think incident free,  
23 self-performed safety assessment is a pre-task process  
24 that employees use to make sure that they assess the  
25 risk and perform the task safely. Of course, lock-

1 out, tag-out, working at heights, lifting and rigging,  
2 manual material handling, excavation trenching,  
3 confined space entry, hot work, electrical safe work,  
4 and permit to work simultaneous operations. So those  
5 are really the nuts and bolts that we train our  
6 employees on so that they know how to properly manage  
7 the work safely.

8 I think with that I'll turn it back over to  
9 Mark here and he'll dive into a little more detail on  
10 a few of these areas.

11 MR. PREMO: Thanks, Dave.

12 We really have a lot to talk about. I'll  
13 try to go fairly fast and again, as Dave mentioned, we  
14 are really just hitting the highlights here, the top  
15 kind of level of the things we do. This topic is so  
16 involved, so integrated and so near and dear to our  
17 hearts we can talk for two days steady, straight.

18 So moving forward here, critical safety  
19 tools, we have got, and I want to really highlight a  
20 couple of things we have heard already today. We're  
21 going to talk about a lot of things here that are  
22 tools. They are in the toolbox. If I, management, or  
23 if I, an employee, a worker on the face, if I'm not  
24 committed to it, if I'm not committed to use those  
25 tools, use the right tools at the right time, they are

1 going to stay in that toolbox.

2           So underscoring all of what we talk about  
3 here in terms of regulatory control, policies, and  
4 these tools, these processes, it has to be a personal  
5 and strong value commitment from each and every  
6 employee, including, as Fred mentioned, our CEO, and  
7 that goes to the CEO of Chevron Corporation who we  
8 talk to regularly about this topic, to supervisors, to  
9 workers, each and every person. It only takes on  
10 lapse on one shift on one day and the worst can  
11 happen, so that's why it's so important that this is  
12 absolutely comprehensive, absolutely every task the  
13 right way every time.

14           So the tenets of operation, we will have  
15 those in a minute here, and stop work authority are  
16 two of those tools, and I want to really highlight and  
17 talk about those. Everything we do comes as well with  
18 training. There is training packages that the mines  
19 use. They adapt to their own operations, but the core  
20 fundamentals are consistent among all the operations.

21           So our tenets of operation are guided by two  
22 key principles. Do it safely or not at all, and there  
23 is always time to do it right. And I'll say that  
24 these slogans are good, but if that's on a wall in a  
25 poster or if it's on a bookshelf and we don't do it

1 right, then it's going to be the same as a lot of what  
2 we may have seen in the past, that it will just sit  
3 there.

4           So when we're in the operations, I expect  
5 that general managers, I expect myself to live by  
6 that, and that may mean -- I caution someone taking,  
7 stop a project, stop a job, and get more tools, get  
8 more people, and not production over safety. Safety  
9 is preeminent. Safety is the core value. Safety is  
10 the foundation. Production will come later. We make  
11 it a habit out of addressing, talking with employees  
12 on a ratio of five to one, safety comments and well  
13 being comments related to -- as compared to production  
14 comments.

15           I have learned, I have learned talking to  
16 folks in the workforce that I don't really even need  
17 to talk about production. They know that's why we are  
18 there. They know that's why they are there. When I  
19 go into the mines I talk about safety, talk about the  
20 person, talk about safety, talk about what we are  
21 doing, how we are going to do it safely, talk about  
22 incidence and injury, what can I do, what can I do  
23 from my position to bring more to you for this  
24 operation to be safe, for you to be safe in what  
25 you're going to do. And if we get around to the

1 production toward the end of that discussion, fine,  
2 and most times we don't, we don't need to. Production  
3 will follow.

4           So an example of we do it safely or not at  
5 all, and there is always time to do it right. An  
6 example of some of the tenets of the operation, always  
7 operate within the design of the environmental limits.  
8 I mean we are all guilty of pushing everything to the  
9 max, and unfortunately sometimes cross the max, but we  
10 have a tenet that guides our decisions, that guides  
11 our actions, that guides what we do.

12           A favorite of mine, number two, always  
13 operate in a safe and controlled condition.  
14 Absolutely table stakes must be done, and number four,  
15 follow safe work practices and procedures. We talk  
16 about these tenets in every safety meeting, every  
17 conversation, every root cause analysis refers back to  
18 the tenets to find out which tenets were in play, and  
19 I can guarantee you that it's usually a combination.  
20 Every accident is a combination of several of these  
21 tenets, or a bridge, or weren't taken into  
22 consideration with what we were doing. The swiss  
23 cheese kind of example that you hear about.

24           Number eight, address abnormal conditions.  
25 If we get all set for what we're going to do, we plan

1 it all out, and a good question is how many days go  
2 exactly as planned? How many things go exactly as  
3 planned? Not very often, hardly ever. So we've got  
4 to address abnormal conditions or changes.

5           So that's kind of one of the bases. Every  
6 employee in the organization, people working on the  
7 face, equipment operators, supervisors know these  
8 tenets. They know that they are to be a guide for our  
9 decisions.

10           Stop work authority, this is another  
11 fundamental and basic foundation principle within the  
12 mining operation. Every employee in the mining  
13 operation, myself included, and this is consistent  
14 across all of Chevron, 65,000 employees, have stop  
15 work authority, and that stop work authority is you  
16 can immediately stop any unsafe activity or behavior  
17 that threatens the safety, establishes the  
18 responsibility and authority, so here comes when you  
19 have authority you have responsibility. We all do.  
20 We know that. Stop, notify, evaluation, correct, and  
21 resume. Every employee has a card in their pocket or  
22 they have one in their lunch pail or they have two or  
23 three or they have lost a few and they have a few  
24 more. I mean, they are all over the place. So you  
25 have stop work authority card.

1           And one thing I'd like to note about this.  
2 Years before we started stop work authority we would  
3 always tell people, remember, do it safely or not at  
4 all. That was all good. But I was a little bit  
5 assuming that that would work that that did it, and I  
6 learned later, this is a really key learning for me.  
7 I learned later that the card actually, that the  
8 general manager's signature, my signature, the CEO's  
9 signature, it means something to people. It means  
10 something to employees. So actually having that, not  
11 that they have to physically show it, they don't have  
12 to show it, but they have it, and it reminds them. It  
13 reminds them of that authority and that responsibility  
14 they have to have.

15           So, so many employees I've talked to and  
16 they said, you know, I really did not recognize my  
17 full authority or my full responsibility until I was  
18 reminded of a day after day shift after shift. So I  
19 really believe the card did well.

20           The other key thing about stop work  
21 authority to me, and I've seen it personally, I have  
22 exercised stop work authority myself, but stop work  
23 authority comes in all shapes and sizes. It doesn't  
24 need to be -- it can be but not always it won't show  
25 up as shutting down the whole production run. It

1 might be shutting down a maintenance project to get a  
2 piece of equipment properly equipped.

3           If I am an individual employee working  
4 generally by myself on a repair, and I'm getting ready  
5 to use a tool that's not intended for the job, and I  
6 heard that earlier today, I can either stop work  
7 authority right there, me, myself and I, and take the  
8 one minute, five minutes or 10 minutes, whatever it  
9 takes to go get the right tool, or I can try to adapt  
10 and do something that might slip up and bust my  
11 knuckles or get stitches or whatever. So that stop  
12 work authority comes really in small packages. It may  
13 come in big packages. It may mean that we've got to  
14 shutdown a whole operation for a day or two until we  
15 get things straightened out.

16           It doesn't happen that often but certainly  
17 every employee in the operation has the authority. I  
18 have asked employees when things were getting a little  
19 bit out of whack and didn't feel right, didn't look  
20 right, didn't seem right, I would ask them did you  
21 stop the work? Well, no, I didn't. I said, well, why  
22 not? You should have. I'm depending on you. I'm not  
23 there. I'm not there on that continuous miner section  
24 on a shift on a certain day of the week, I'm just not,  
25 and so everyone has that authority. It really a

1 valuable tool, really important to me. It's important  
2 to me that the employees have this. It's important to  
3 me that they know that they are comfortable with it so  
4 we continue in our employee surveys to ask are you  
5 comfortable with stop work authority? If not, why  
6 not? Then we assess our gaps and fix that.

7           There is a view on the screen there what  
8 stop work authority covered. An employee or  
9 contractor for the McKinley Mines, this happens to be  
10 in New Mexico, we've got one for the entire company as  
11 well. You are responsible and authorized to stop any  
12 work that is unsafe, does not comply with the law, or  
13 comply with this tenet shown on the reverse side of  
14 the card. There will be no repercussions to you.  
15 Your ideas and concerns are important. This is our  
16 commitment to you.

17           This one happened to be signed by the  
18 general manager of a service coal mine in New Mexico.

19           Moving on, we have, as Dave mentioned, one  
20 other process, think incident free or self-perform  
21 safety assessment. This is a process, and again I've  
22 really have to reiterate, these processes are out  
23 there to check the box. They are not out there to  
24 make more paper. They are not out there to be a block  
25 for what you do. They are a tool for what we do.

1           So the self-perform safety assessment covers  
2 four areas. It covers state of mind, training,  
3 planning, and proper tools and equipment. Every  
4 employee has -- they've got cards for this as well,  
5 but most people have it memorized, and there is a  
6 written sheet shown on the right here, and the  
7 employees do go through this process with their crew  
8 or themselves, it could be an individual, it could be  
9 crew-wise, and they go through these four components  
10 before starting a job or a shift, so they will look at  
11 it and say, do I have what I need, do I have the  
12 planning done, do I have the tools, do I have the  
13 right state of mind, and we have state of mine  
14 covered, yellow on some of the cards, that's the most  
15 important; training, training, am I missing anything?  
16 And really some steps to go through to really think  
17 about what's going to happen.

18           What we did originally we were saying we  
19 want you to do this before every job, read it before  
20 every job, and then during the shift if something  
21 changes, we finish this job and I'm going to move onto  
22 something else. I'm going to move to a new area of  
23 the mine, I'm going to change the hall around or go do  
24 something different, and you may do that again. I've  
25 got enough for repair and I'm going to move on to the

1 next and do it again. It could take five minutes if  
2 it's a complex job, it may take 30 minutes of a crew  
3 meeting to go through this. Whatever it takes it  
4 takes. That's all good.

5           So we had the card and we were going through  
6 this and we probably weren't getting the results we  
7 wanted, I don't think we were, so we implemented kind  
8 of a phase 2 or another component. On the right side  
9 of that screen you see it's the written card. They  
10 actually go through it and write down the things that  
11 could be a potential hazard with what we're going to  
12 do today, the tools, equipment, what could get me  
13 hurt, any changes, and I'm willing to make changes if  
14 I get into this and something -- a condition changed,  
15 so it's a commitment. Most employees sign them.

16           If I'm in a mine visiting one of our mines,  
17 I'll go to an employee and say, how is your SPSA or  
18 TIF before the shift, or during the shift? They will  
19 tell me. I'll ask them, I'll look at that card, and  
20 by the way, they want to see mine, and I'll have mine  
21 in my pocket. Mine won't be really fixing anything or  
22 carrying anything because I don't really know how. I  
23 could try and then they would have to redo it, but  
24 what I have is -- my TIF usually is I'm here for my  
25 tour, and underground, of course, I've got to keep an

1 eye on slips and trips, I've got to know where the car  
2 rats are on the section. I've got to know what's  
3 happening in the haulage so I know where to go, where  
4 not to go. I've got to watch out for overhead. State  
5 of mind, sometimes I let folks know when I'm going  
6 underground, I say, look, I'm going underground 16  
7 hours today, 12 hours -- I'm not whining by the way.  
8 I've been all over the place and I'm a little fatigued  
9 right now, so help me, keep an eye on me. I'll watch  
10 where I walk. I'll watch where I step so I won't  
11 slip, trip, or fall. So it's for everybody in the  
12 organization.

13           It's really fun to be able to say let me see  
14 your TIF. We trade them. We look at each other's,  
15 and sometimes I will have an employee sign mine, has a  
16 countersign to say they acknowledge it's very good.

17           Hazard identification tool. We have a  
18 hazard identification tool that supports the TIF,  
19 SPSA. It's a visual tool. It focuses on hazard ID,  
20 and again, it's another -- it could be a pocket card.  
21 These are for learning to help us memorize. We have  
22 them around. We can refer to them. They are all over  
23 the place, but it talks about the hazards, a method to  
24 unduly tasks, to do them reliably. It's control  
25 hierarchy. Remove the energy source. Prevent energy

1 release, protect and use stop work authority when you  
2 need to. You can see a lot of these processes they  
3 integrate. As Dave mentioned earlier, these aren't  
4 single one-stop things that we put out there. They  
5 are things that we really -- that all tie together.  
6 They all integrate in the management system process,  
7 so that's how we keep track of what we're doing.

8           So this addresses gravity motion,  
9 mechanical-electrical pressure, temperature, chemical,  
10 biological, radiation and sound. I will say that if  
11 you ask someone about -- in this case we're removing  
12 the energy source. If you ask someone lock-up tag-up,  
13 90 something percent of people immediately think about  
14 electrical. That's where our mind goes. That's what  
15 we're trained to do. That's what we think, and then  
16 we've got to remember there is motion, there is  
17 kinetic potential, there is all sorts of energy out  
18 there that we may not have addressed. It's to help us  
19 do that. Hazard identification, too, those hazards  
20 have been mitigated, and work proceeds.

21           Manual material handling, we tracked our  
22 accident and incident rates and as always, and  
23 particularly in the underground mines and on surface  
24 mines as well occasionally, but a lot of our accidents  
25 were in manual material handling. Lifting, carrying

1 too much, twisting ergonomics, rotator cuff, knees,  
2 you name it, we're used to that. Smashing your hands,  
3 whatever. So we look constantly for better ways,  
4 mechanical ways, leverage, get some leverage. So we  
5 introduced some mechanical material handling safe work  
6 practice, a tool, and we talk about lifting, pushing,  
7 pulling, reaching, grasping, slipping, struck by and  
8 caught between. So it's the guide that guides the  
9 manual material handling. That process has a bunch of  
10 things in there to do, not to do, so it helps guide  
11 that work. Our goal is to eliminate and avoid the  
12 hazards, reduce and control.

13 Compliance assurance, I really do want to  
14 spend some time talking about this one. We have all  
15 these processes in place, and a lot of the audits that  
16 take place after that will tell us how we're doing.  
17 Are we doing what we say we're going to do? Do we  
18 know, are our people aware of how the tenets of  
19 operation guide their decisions. Are they aware of  
20 the things that are un manual material handling?  
21 There are safe work practices that Dave mentioned.

22 So, we have five levels of audits that we do  
23 at the mines as part of our compliance assurance  
24 process. A level one audit is the largest audit.  
25 It's a corporate, corporate team. There is a

1 significant amount of governance around these audits.  
2 There is legal oversight as well. The level one  
3 audit is Chevron-sponsored, corporate-sponsored and  
4 it's a week long audit. The audit team can be anywhere  
5 from probably five to 10 people. Subject matter  
6 experts in certain areas.

7           The nice thing about our mines is that we  
8 will have folks at our -- one of our coal mines will  
9 maybe on an audit team for Chevron offshore oil  
10 platform or a midcontinental oil production unit, or  
11 shipping. The value there is that we learn best  
12 practice sharing and things across the organization,  
13 across the broader Chevron organization, best practice  
14 things. There are plans that we can put to work in a  
15 coal mine that might be a best practice from an oil  
16 field, so there is good sharing that way. So that's  
17 the level one audit on a three-year cycle.

18           The level two audit is annual self-  
19 assessment of our OE performance. I do want to make a  
20 comment about this. At the annual self-assessment, we  
21 take those processes that Dave talked about, and there  
22 are pages thick, everyone of them, several things that  
23 we do in those processes. We do a self-assessment to  
24 see if we have followed our process, and this is where  
25 everyone is involved. Every person in our entire

1 organization is a safety person. Every person is an  
2 EO person. It doesn't fall into somebody's  
3 department. Everyone is involved. I am sponsor of  
4 several processes as well as Dave, and line managers  
5 are, supervisors are. A supervisor, that's a second  
6 supervision, may be a sponsor of a certain process in  
7 that mine. They are the ones that make sure we have  
8 the right documents, the meetings, the people at the  
9 audits, so on and so forth.

10           So the level two audit self-assessment. We  
11 also include in that at the mine level, and also at  
12 the Chevron Mining level representative employees, so  
13 there will be a fire boss or a ram car operator, or a  
14 shear operator that will be on that team to assess how  
15 we did in a given element, a given process of OE, and  
16 so those folks that are on that team will come to  
17 Denver and we will have a review for the corporation,  
18 so there will be a shear operator in our office in  
19 Denver for a couple of days to go through the process.

20           What we've learned is it's not altogether  
21 that revealing for the senior leaders to sit around a  
22 room and talk about how the senior leader is doing.  
23 You probably know what the answer might be.

24           (Laughter.)

25           So, it's so important to go out and get

1 other peoples' view, other peoples' idea, and that's  
2 how we involve people.

3           Level three audit is the next level down and  
4 that's Chevron Mining sponsored. It doesn't involve  
5 the corporation, doesn't involve others, but Chevron  
6 Mining, our own, our four mines. We have an annual  
7 cycle for each of the operations. It's a week long  
8 and the team might be six or eight people. We do  
9 include other subject matter experts out there. As a  
10 matter of fact, we have included several retired MSHA  
11 inspectors on these teams that are consultants now.  
12 They are on these teams. They come in and help us  
13 with a new set of eyes looking at it, what's your  
14 process, how do you track your weekly inspections and  
15 fix things, so they do help us a lot. They bring a  
16 lot of experience.

17           The level four and five audits, this is  
18 really important as well. These are mine audits, so  
19 Dave and I in Denver we're not directly involved. We  
20 do hear about them, we do kind of track them, we have  
21 a process to track these. But a level four and five  
22 audit will include the mine safety committee, and the  
23 safety committee chairman and other subject matter  
24 experts in the mine, other informal leaders in the  
25 mine, workers, they are on the audit team, and they

1 will go through the mine and look at everything and  
2 you can kind of consider it your bi-monthly or weekly  
3 inspection.

4           A point that I want to make here that I  
5 think is really interesting in terms of gaining mutual  
6 trust, communication, mutual respect and alignment for  
7 all of what we do is to include everyone. This isn't  
8 management stuff. It's not a worker thing. It's all  
9 of us. So on these level four and five audit teams,  
10 of course the safety committee and a lot of folks are  
11 very involved, and I'll say one more thing. This is  
12 important. At one of our mines the local union safety  
13 committee chairman, and Dennis knows all this by  
14 heart, we all do, but in the contract it's elected and  
15 they do the inspections every other month and other  
16 things, we have asked that person at one of our  
17 operations to back away from the job they are doing  
18 and be a full-time safety person, be a safety  
19 department as a committee person. So now our weekly  
20 inspections, the chairman of the safety committee is  
21 really handling a lot of that work, and really  
22 instrumental with striving for incident and injury  
23 free, and that's their full-time job at the mine.  
24 That's what they do, so that's very important.

25           The audits are documented, actions are

1 developed and tracked, so a tracking system is so  
2 important. It won't do any good to write a bunch of  
3 things on a list and never get back to it, so we're  
4 continuously and constantly tracking through systems.

5           The historical mining culture, we heard this  
6 today, our historical culture is this is mining so,  
7 you know, there are going to be accidents and people  
8 are going to get hurt, and I've been in this about 30  
9 something years now. As I said, between the two of us  
10 we have 70 years, so when we're together we're pretty  
11 old. But that's the old paradigm. This is mining so  
12 people are going to get hurt.

13           Go around a mine. Look at how many fingers  
14 are missing. Look at how many people aren't walking  
15 straight. It's sad. It's not right and we can do  
16 better and we're going to do better. Our belief, as I  
17 mentioned, is that we are and can be -- we believe we  
18 can be incident and injury free. So the processes and  
19 safe work practices, they won't yield the results,  
20 along with regulatory effort, won't yield the results  
21 unless everyone takes ownership, everyone takes  
22 ownership.

23           So, for instance, at one of the mines when  
24 we put in behavioral-based safety we didn't buy a  
25 program and go put it in. We asked six people from

1 the workforce and a couple of supervisors, a team of  
2 eight to back out of their normal jobs for about six  
3 months or a year, and develop a BBS program.

4           They took the best that was out there. They  
5 went to review BST, DuPont, all the ones that are out  
6 there that we all know about. They took pieces from  
7 those and combined them and put them into what worked  
8 for us, but they designed it. That was the beauty of  
9 it. They designed it, it's their program, so that's  
10 one way that we said ownership, you have to have  
11 ownership.

12           A concerned effort is underway to develop an  
13 IIF, incident and injury free culture, and care and  
14 concern for employees. One of the ways that comes out  
15 is that until we have a care and concern for our  
16 people, for our folks we work with, we can't truly  
17 stand in the gap and be there for them to help them be  
18 incident and injury free, and that includes directing  
19 less safe behaviors. If I don't have a relationship  
20 with someone, trust, or some communication type  
21 relationship, I will be reluctant to stop them. We  
22 recognize that, so we have a component in our training  
23 that builds that relationship from all levels of the  
24 organization.

25           It starts at the top of the organization,

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1 cuts across traditional boundaries. We do everything  
2 we can do to have it not be us and them. As I  
3 mentioned, we have some full-time roles for safety  
4 committee folks. It goes all the way from the CEO of  
5 the company to the people on the face, the BBS team I  
6 mentioned that was designed by a representative  
7 workforce, the whole BBS process in the mine. So it's  
8 a cultural change.

9           We have made significant progress but there  
10 is much work to be done. I'm not saying today that we  
11 are there. I'm just saying that I think we found out  
12 that -- we came onto some things that we think is  
13 working. I'll show some metrics in a little while.

14           DR. WAGNER: I wonder if we could move  
15 towards metrics pretty soon.

16           MR. PREMO: I'll do that. I'll move along.  
17 As a matter of fact, the next slide.

18           DR. WAGNER: Thank you.

19           MR. PREMO: Leading indicators, we have got  
20 BBS observations, near miss reports and stop work  
21 authority. We talked about those processes, but we do  
22 record the numbers. We do record those and review  
23 them on a monthly basis with all the operations. For  
24 instance, so far year to date there has been 18,000  
25 BBS observations at the underground coal mine in

1 Alabama. There has been 1,700 stop work authority  
2 events, so that will tell you that they do use that.  
3 We use these as leading indicators. If these drop  
4 off, it's tip off that we've got to get on it, we've  
5 got to be looking at it. We think leading indicators  
6 have much more leverage than lagging indicators.

7 Injury rates, this chart will show some  
8 difficulty after 2000 where our rates were -- for TIR,  
9 our reportable rates were fluctuating. We had a bad  
10 year in 2005. You can see both of those. We started  
11 getting better in '06, then it leveled and now we're  
12 on the end of 2010 on a decline. Our current  
13 recordable rate is 1.49 at the underground mine in  
14 North River. That's 3 million tons, 300 employees, and  
15 our days away from work rate is .3 at that mine.  
16 That's one incident so far this year for days away  
17 from work and five incidents for recordable at that  
18 mine, so that's -- as Dave mentioned, I don't know if  
19 you can see the pointer -- OEMS development started  
20 and it's fully deployed. You can see it's a journey.  
21 It doesn't happen overnight, so the trajectory in the  
22 end is to head to our target.

23 I would mention the coal mining industry is,  
24 as you see those targets right there, they are  
25 tenfold, they're times 10 what major oil companies

1 will experience. So if you look at all the major oil  
2 companies, their numbers are a tenth of those, so we  
3 are targeting those targets in mining.

4 I want to take a look at citations. We put  
5 in a citation reduction process at the mine as part of  
6 our compliance assurance. We have 143 citations at  
7 the underground coal mine in Alabama this year. So  
8 far our rate is three or so, and we have reductions  
9 that range from 11 percent to 35 and 35 percent year  
10 on year. I think that the way we got there on this is  
11 using the audits, using the tools we talked about, but  
12 also supervisors and employees are -- they are in  
13 control of their domain. They know that work, they  
14 know the equipment, and the employees in the coal mine  
15 did step up and say, I can make this compliance  
16 happen.

17 We have many, many inspection shifts after  
18 inspection shifts with no citations, and the  
19 inspectors are inspecting us hard. They are looking  
20 at everything, I mean everything. We are very  
21 comprehensively inspected. The way I address the  
22 employees is it's our goal to eliminate citeable  
23 conditions, citeable conditions.

24 So to wrap up, our safety management systems  
25 are yielding results. All levels of the organization

1 must have commitment, senior management, my  
2 management, employees, and that commitment, there are  
3 ways to demonstrate that. It's not just commitment  
4 that I haven't told anybody about or no one can tell,  
5 but people have got to see it, so there is ways to  
6 demonstrate it.

7           The overall management system integrates  
8 safety in managing the business. Safety is how we  
9 manage the business, not the other way around. It's  
10 part and parcel of everything. Seeing results takes  
11 times. It's a journey. It isn't going to be  
12 overnight, and the organization has got to stay the  
13 course. We have got to make commitments and stay with  
14 them. We can't flip-flop around with all different  
15 things year on year. There has to be consistency.  
16 That's what we have learned.

17           The processes of regulations and policies by  
18 themselves don't -- we won't get the benefit or get  
19 incident or injury free until we make that step to say  
20 that safety is a value, foundation of value each and  
21 every employee of the organization.

22           We would be happy to answer any questions.

23           DR. WAGNER: Thank you very much.

24           MR. FETTY: I have a question. How long has  
25 your program been in place? And then to follow up

1 with that, after you initially implemented it, how  
2 long was it before you started seeing some benefits?

3 MR. PREMO: I think we are pretty well four  
4 or five years now, about five years on implementation,  
5 but implementation is even a journey. We developed it  
6 year after year, make it stronger, so all these  
7 processes have shaping plans, so we implement it with  
8 the core and we shape it as we go. So I would say in  
9 the first couple of years it's sort of up and down.  
10 You're not sure. You're feeling your way along, and  
11 then maybe in years three to five you start seeing the  
12 results.

13 Dave, any comments?

14 MR. PARTRIDGE: I think that's right.

15 MR. PREMO: Any other questions?

16 MR. KIRK: Can you say something about the  
17 management change and how it affects safety?

18 MR. PREMO: Absolutely. Management change  
19 is another -- it maybe wasn't highlighted in here.  
20 Dave mentioned it. It absolutely affects safety  
21 because when we go do something, whether it's a  
22 mechanical process or a repair, if it's parts were  
23 putting on or a process, we have a process we go  
24 through to address every other effect that it might  
25 have, and we have caught several things that may have

1 led to a condition, a situation or an incident, but  
2 the MOC process did uncover something that was haywire  
3 with what we were trying to do because of the process.

4 I don't have stats with me, we do have them.  
5 Management change is something that in the RCA and  
6 root cause analysis is also addressed. Did we do,  
7 what did we do, so yes.

8 MR. DISTASIO: I see you spent a tremendous  
9 amount of time with this, I was in fact shocked when  
10 you shutdown card, and even more shocked when I saw  
11 the 1,700 shutdowns in a year for just one facility,  
12 and how did your upper management deal with this, I  
13 guess, when someone came up with this idea to give  
14 that authority and it's got to have an effect on what  
15 we normally perceive as productivity? And we normally  
16 think that with all this stuff being shutdown, people  
17 taking time to do TIFs, do the audits, and all this.  
18 I'm losing time here, and yet you must obviously feel  
19 that this is a benefit.

20 MR. PREMO: Very good question, and those  
21 are the components that are strongly endorsed by  
22 management, so management is already behind them when  
23 we implement them. Initially there is a reduction in  
24 everything we do, but we've got to stay the course and  
25 say, hey, that's part of life. We're not going to

1 have accidents.

2           So eventually as people get good at this and  
3 can do these things it's not altogether a matter of  
4 how long we run, but how efficiently we run, so we're  
5 doing these processes and doing things that uncover  
6 inefficiencies inherently in our process, the TIF, I  
7 might figure out something that I'm going to need done  
8 on the face mid-shift, I'll take it with me, so then  
9 if something happens down on the face that would have  
10 -- what I said before, I just didn't think about it,  
11 just took off, I didn't have to stop that 20 minutes  
12 down the shift and go get it or whatever. So there  
13 are inherent inefficiencies. But the stop work  
14 authority, I'll say in total, are running higher  
15 tonnage and higher efficiency, higher productivity  
16 with all this in place than we were previous. That's  
17 all there is to it.

18           DR. WAGNER: You mentioned the results from  
19 your underground coal. Do you have comparable results  
20 from the underground hardrock and surface coal?

21           MR. PREMO: We do. Right now I think the  
22 coal is showing -- the underground coal is showing the  
23 best results maybe because the databases were bigger  
24 in terms of incidents to work with, so we've made a  
25 larger percentage change, but we're seeing results at

1 all the operations, similar.

2           One thing I will say some of the places are  
3 quite small. We become statistically challenged. One  
4 accident throws us out of the range for the metric for  
5 the year. So we're a little bit challenged there, but  
6 we're seeing results across the board here.

7           DR. WAGNER: You have one more?

8           MR. FEEHAN: I do. Thanks for your  
9 presentation, Mark. Tell me a bit about how you  
10 prepare your first line supervisors and your managers  
11 and your employees for this program. Did you take  
12 your first line supervisors and put them through a  
13 week of training of what you're expecting, or was it  
14 an hour a month or an hour a week? What went into  
15 that.

16           MR. PREMO: Good question. It varies from  
17 mine to mine. There is a significant amount of  
18 training behind everyone of these processes, but we do  
19 have standardized OE training that takes place. For  
20 instance, at one of the mines the target training for  
21 every employee is a day per month for the year, so 12  
22 days of training for each employee for the year to go  
23 through the session. The surface mining in Wyoming  
24 was on a fault protection most recently, that's as an  
25 example. The folks will spend a shift in fault

1 protection training, that sort of thing. So each  
2 process has its training.

3 Overall OE has two-three days of training.  
4 The mine in New Mexico has OE training for an hour  
5 every Thursday of every week for the entire year, so  
6 that's kind of how they handle it.

7 DR. WAGNER: Time for one or two questions  
8 from the audience if there are any. Larry, and please  
9 come forward and identify yourself.

10 MR. GRAYSON: Larry Grayson, Penn State.

11 DR. WAGNER: No, they don't project. It's  
12 just for the court reporter.

13 MR. GRAYSON: Penn State University.

14 Following up on Richard's question, what was  
15 the implementation process like from early commitment  
16 to all the way down through the organization until you  
17 finally kicked this into gear?

18 MR. PREMO: Good question, Larry.

19 The implementation process had its ups and  
20 down, so basically what we would do is -- in designing  
21 the process get a lot of input from the teams at the  
22 mines so they wouldn't get something in a mining  
23 operation from our Denver office, got a lot of buy-in,  
24 fit the purposes. There are a lot of processes, even  
25 in the OEMS, Dave mentioned that worked real well in

1 an oil field for Chevron, but may not work so well in  
2 our coal mine, so we designed those fit for purposes.

3           The implementation at the mine is training  
4 for all employees, and I think the hardest hurdle and  
5 one that we are starting to get a handle on is  
6 supervisor commitment because -- just because vice  
7 presidents or managers or department heads think  
8 something is good, it still is not going to work every  
9 day, every shift out there unless the supervisor says  
10 that's my process. So there were challenges in that  
11 area, so special training for supervisors and  
12 accountability piece, I didn't mention it, but there  
13 is an accountability piece as well.

14           DR. WAGNER: Thank you very much. Mr.  
15 Gomez?

16           MR. PREMO: We are also going to submit a  
17 couple of books too, Dr. Wagner, for your information.

18           MR. GOMEZ: Manuel Gomez, U.S. Chemical  
19 Safety Board.

20           A number of the speakers in your  
21 presentation of the issue of behavioral safety and  
22 observation of safe behavior appeared, and not  
23 directly in yours but in earlier one; not only that  
24 but the issue of behavioral safety assumptions arising  
25 from such observations.

1           As an aside, in a number of the catastrophic  
2 incidents that we investigate, although the immediate  
3 cause of some of those incidents may appear to be --  
4 may actually be an unsafe, a so-called unsafe act.  
5 Note for the record that I used hand quotation marks.  
6 In fact, a good cause is often much more complicated  
7 and it's related to production pressures. Often  
8 standard operating procedures that have historically  
9 been shortcut to meet those production pressures, et  
10 cetera, et cetera. I won't belabor the point.

11           But my question is do you do behavioral  
12 safety observations -- and I suppose I should add  
13 sanctions -- for foremen, for line supervisors, upper  
14 supervisors, perhaps the plant manager and I suppose  
15 somewhat jokingly I could say for members of the board  
16 of directors, but I don't quite mean that, but I  
17 really am asking because those production pressures,  
18 another perverse incentives that sometimes drive the  
19 so-called unsafe acts at the trenches, so to speak, we  
20 have found in our investigations are often driven by  
21 pressures from above.

22           So do you do those observations, and are  
23 there sanctions? How do you make sure people do what  
24 they are supposed to do in the management system that  
25 are not the front line workers?

1           MR. PREMO: Good question and I'll address  
2 that. We do the behavioral-based observations  
3 primarily when the work is being done, but that can  
4 and does include supervisors' direct oversight of that  
5 work. The accountability for supervisors is that  
6 implementation of these processes to achieve incident  
7 and injury free is part of their employment  
8 performance evaluation. There are supervisors that  
9 have been asked to leave their employment due to not  
10 getting the work done the right way, and we try  
11 everything we can do to not only let that be  
12 indicators, but other indicators.

13           We stress from the CEO of the company,  
14 myself, Dave, is that this is safe work, safe  
15 behaviors and safety over production. One of the  
16 general managers shut down a truck fleet for a few  
17 days, most of the trucks, some of them got back in the  
18 run for weeks, because it was a chronic problem, and  
19 we couldn't get them fixed, we couldn't get them  
20 fixed, so he just put his foot down. My advice or my  
21 comments back to that general manager in his  
22 performance review was plus, plus, plus, good job.  
23 Good job shutting that down. I know we missed yardage  
24 that week, the month. I know we didn't hit our  
25 monthly targets, but that's not important to me.

1 What's important to me is getting the equipment so  
2 it's in absolute operating condition.

3           So we manage it through what we call PMP  
4 process, performance management process for salary  
5 people, and these metrics are in there for every  
6 supervisor, including myself.

7           DR. WAGNER: Thank you very much, Mark and  
8 Dave, for all the information you brought us today.

9           Adele Abrams is here representing the  
10 American Society of Safety Engineers. Thank you.

11           MS. ABRAMS: Thank you and good morning or  
12 good afternoon I guess now. I'm pleased to be here on  
13 behalf of the American Society of Safety Engineers to  
14 comment on the proposed safety and health management  
15 program initiative.

16           My name is Adele Abrams. I am the Assistant  
17 Administrator of the ASSE mining practice specialty.  
18 I'm also President of the law office of Adele Abrams  
19 in Beltsville, Maryland, and I am a certified mine  
20 safety professional as well as an attorney.

21           ASSE is a nonpartisan individual membership  
22 society that next year we will celebrate its hundredth  
23 anniversary. So I think it's the oldest safety  
24 organization in the U.S. as well, and it has over a  
25 dozen practice specialties, including mining, which

1 has I think about four or five hundred members at this  
2 point.

3           Our membership includes industry, persons  
4 employed by industry, by labor, by the federal and  
5 state governments and some municipalities, and it's  
6 also important to note that ASSE has been quite active  
7 in the companion rulemaking that the Occupational  
8 Safety and Health Administration is doing, which they  
9 call I2P2, an injury and illness prevention program.

10           I'm going to give you some overview of  
11 ASSE's positions on this issue and then time  
12 permitting just go through a little bit about the  
13 components that we see is essentially in a safety and  
14 health management program, and I have given Dr. Wagner  
15 a power point, which I am not going to be showing up  
16 here because I didn't realize you were going to have  
17 the technology available, but I do ask that that be  
18 included in the record.

19           ASSE, first of all, has a central concern  
20 that any regulatory approach for this standard has to  
21 be encouraging as much as possible employer ownership  
22 risk-based integrated safety and health management  
23 systems within the existing regulatory framework, and  
24 by risk-based ASSE supports the establishment of a  
25 system that not only requires employers to identify

1 the risks in their workplace, but also gives them the  
2 necessary latitude under a performance-based approach  
3 to address those risks in ways that take into account  
4 the risks that are unique to every workplace.

5           Our members do implement many of these  
6 programs within their individual companies, and I'd  
7 like to add that some ASSE members will be testifying  
8 at subsequent hearings on behalf of their own  
9 companies, and talking about the programs that they  
10 have in place.

11           But given the current reliance on very  
12 prescriptive standards, how much latitude employers  
13 are given to address risks is an important question  
14 that we hope MSHA will address in its proposed  
15 standard. We are hoping that this will not turn into  
16 some kind of "gotcha" enforcement action, or something  
17 that will be used to double-dip on citations where,  
18 for example, a guard is found missing and an employer  
19 is cited under the guard standard, and then is cited  
20 again under a safety and health management program  
21 standard for not having already corrected that before  
22 it is found by an inspector.

23           The mining environment is a very dynamic  
24 one, and even the daily workplace examinations by the  
25 time you get from one end of the mine to the other

1 conditions have changed where you started out, and  
2 that has to be understood by MSHA as well.

3 ASSE notes that in 2007 the U.S. workplace  
4 fatality, and this is for all industry, not specific  
5 to mining, was 3.8 per 100,000 workers, and in the  
6 United Kingdom that rate is 0.8 or more than four  
7 times less than what we have in the United States, and  
8 this is a significant number because the U.K. does  
9 rely on risk-based safety and health management of its  
10 workplaces.

11 We believe that this rulemaking is an  
12 unprecedented opportunity for MSHA to begin to move  
13 toward more successful model of encouraging employers  
14 to manage risk than what the current prescriptive  
15 system has in place. But without a vision for a new  
16 approach to managing safety and health risk, the  
17 results of this won't really contribute to improve  
18 workplace safety, and the worst outcome would be  
19 simply a new standard that serves as some kind of  
20 stow-away charge, general duty clause for the mining  
21 industry and just adds another enforcement opportunity  
22 to drive adherence to existing standards and then  
23 piling on under the safety and health standard.

24 We also have concern that this rulemaking  
25 not evolve into something that simply results in a

1 written program that sits on a shelf someplace. As  
2 another witness mentioned earlier, this should be a  
3 living document and it's one that should be  
4 implemented in the workplace on a daily basis at all  
5 levels within the company.

6           So, moving on from the enforcement issues,  
7 we also want to note that there are, as mentioned  
8 earlier by other witnesses, national consensus  
9 standards out there that deal with safety and health  
10 management systems, and in particular we want to draw  
11 your attention to the ANSI-Z10 2005 edition standard  
12 which is for safety and health management systems.

13           This is a voluntary consensus standard and  
14 under the OMB Circular A-119, which implements the  
15 Technology Transfer Act of 1995, an agency that is  
16 going to engage in a rulemaking is to consider  
17 existing national consensus standards that are  
18 prepared by agencies such as ANSI, and to utilize  
19 those within a rulemaking or to explain in the  
20 preamble why they have chosen to depart from that.

21           So of the standards that are out there, the  
22 ANSI-Z10 is probably most on point to this rulemaking.  
23 However, there are others that should be looked at as  
24 well in determining the elements of a program, and  
25 these would include the ANSI-A10.33, which is a

1 construction standard, but it deals with safety and  
2 health program requirements for multi-employer  
3 projects, and as you know there are many, many  
4 contractors who perform work on mine sites, and it is  
5 integral to any safety and health program that there  
6 be coordination and provisions that deal with  
7 contractor safety.

8           There is also the ANSI-A10.38, 2000, and  
9 there is a revision that occurred in 2007, which deals  
10 with basic elements of an employer's program to  
11 provide a safe and healthy work environment, and  
12 again, while this is an ANSI construction standard,  
13 there are many commonalities between the construction  
14 field and mining in terms of the work performed, and  
15 the equipment used, especially between construction  
16 and the aggregates industry, for example.

17           And then there is also the ANSI-A10.39  
18 standard which deals with safety and health audit  
19 programs, and once again, although this is geared  
20 toward construction and demolition operations, there  
21 is no reason why it would not be germane to an MSHA  
22 rulemaking for safety and health management programs  
23 for the mining sector.

24           In terms of the scope and application of a  
25 rule, ASSE does not recommend exempting small mines

1 generally. We think that a flexible program is  
2 something that could be utilized at all levels.  
3 However, MSHA should recognize that there is going to  
4 need to be some kind of phase-in for small operations,  
5 and I personally deal with an awful lot of mom and pop  
6 mines, some of which have as few as, you know, three  
7 or four employees. They don't have a safety director.  
8 Everything that has been talked about in here today  
9 already is going to be something of a foreign language  
10 to them, and there is going to be need for them to  
11 ramp up. There is going to be a critical need for  
12 MSHA to provide some really good templates, some  
13 appendices to the rule model programs that are going  
14 to be able to be adopted at small operations  
15 relatively easily, written in plain English, and  
16 hopefully compliance assistance on this that will be  
17 separate and apart from any enforcement role because  
18 right now there is a lot of fear and trepidation out  
19 there about what happens when you ask for technical  
20 support, and a supervisory inspector with an expertise  
21 in the area is sent instead of somebody from a tech  
22 support department.

23           And if the small mines office does meet its  
24 demise, as rumored, it's going to be very critical  
25 that something come up in its place to help in the

1 implementation of this standard for small operations.

2           Also, it may be worth considering some sort  
3 of audit safe harbor because to evaluate these  
4 programs you're going to have to do audits, and  
5 because of the strict liability nature of the Mine  
6 Act, as well as there being no statute of limitations,  
7 there is a certain amount of concern about having  
8 audit documents around. With OSHA, they have a policy  
9 right on their website that says if you audit and you  
10 fix the things that you have identified before OSHA  
11 does an inspection, they are not going to use that to  
12 cite you.

13           With MSHA and the strict liability, simply  
14 having a record that says that someone was observed  
15 working without fall protection or a moving part was  
16 noted without a guard on it, that documentation alone  
17 could be used to support a citation. Of course, the  
18 longer something exists the more likelihood that it  
19 could also trigger a willful violation, a failure, or  
20 even criminal prosecution, and there is concern that  
21 those who do the audits, which are going to be in  
22 large measure the safety and health professionals, not  
23 become the designated felons for purpose of  
24 implementing these programs.

25           Finally, in terms of the appendices, as I

1 noted, it's going to be very critical to have some  
2 programs that can be put in place as templates and  
3 modify this. MSHA did this quite well with the Part  
4 46 training programs where there were things you could  
5 take from the website. Similarly they did it for the  
6 hazard communication standard so that small operators  
7 would have something to work off of, and I think that  
8 is going to be very critical.

9           And lastly in terms of our position, ASSE  
10 would like to encourage MSHA to engage NIOSH in  
11 helping it come to a better understanding of how these  
12 programs can work in the mining industry, and also in  
13 helping it gauge the economic impact. Quite frankly,  
14 there aren't that many operations out there that have  
15 long-term experience with formalized safety and health  
16 management programs, and so there is not a lot of data  
17 out there about the cost benefits. Clearly, that's  
18 something MSHA is going to need in putting a rule out  
19 and NIOSH may be able to be of assistance in that.

20           Now, I've mentioned the ANSI-Z10 standard  
21 quite a bit, and I just want to note a few of the  
22 program elements very quickly here, and then I'll be  
23 happy to respond to questions.

24           The basic elements, and there are five of  
25 them, are management leadership and employee

1 participation, planning, implementation and operation,  
2 evaluation and corrective action, and then management  
3 review.

4           And in terms of taking these one at a time,  
5 and I'll give the Reader's Digest version of these,  
6 for management leadership, that includes protection  
7 and continual improvement of employee safety and  
8 health, effective employee participation, conformance  
9 with the organization's health and safety  
10 requirements, and compliance with all applicable laws  
11 and regulations.

12           For employee participation, there should be  
13 recognition that employees do have a personal  
14 responsibility to comply with all safety and health  
15 rules established by the company, but they must also  
16 have the opportunity to participate in safety-related  
17 planning and provide input into implementation,  
18 evaluation, and corrective or preventive actions that  
19 are geared toward addressing the identified hazards in  
20 the workplace, and this can be accomplished by safety  
21 and health committees, but nonunion companies have to  
22 be mindful that there had been decisions that bind  
23 some safety committees to be employer-dominated labor  
24 organizations. And so legal advice would need to be  
25 taken into consideration when forming one of those,

1 and similarly in a union environment any proscriptions  
2 that are in the collective bargaining agreements would  
3 have to be recognized and adhered to.

4           On the planning front, proper planning  
5 involves thoroughly documenting and reviewing all  
6 equipment and processes to determine risk factors,  
7 conducting a hazard analysis to identify potential and  
8 existing hazards and exposures, and to evaluate the  
9 frequency that employees will be exposed to the  
10 hazards, and then identifying the hazard control  
11 methodologies to evaluate the potential severity of  
12 the hazards.

13           Implementation and operation includes  
14 training programs and those would include training on  
15 company policies and procedures. The use of  
16 appropriate personal protective equipment, a review or  
17 development and modification of job safety analyses or  
18 job hazard analyses forms, maintenance and  
19 housekeeping, site-specific emergency and security  
20 procedures, work site evaluation, incident  
21 investigation, and all the procedures, and then  
22 applicable MSHA standards and consensus standards.

23           In addition, the steps involved with  
24 implementing these programs include elimination of the  
25 hazards to the extent possible, substitution of less

1 hazardous materials processes or equipment utilization  
2 of engineering controls, warnings, administrative  
3 controls, and then last on the hierarchy, of course,  
4 would be personal protective equipment. After all,  
5 engineering and administrative controls have been  
6 utilized to the extent feasible.

7           There should be regular and frequent  
8 evaluations of the program conducted by management,  
9 audits, as well as corrective actions and follow ups  
10 need to be documented, and if any audit reveals an  
11 issue of noncompliance with a mandatory standard or a  
12 company requirement, conditions must be abated  
13 immediately.

14           And then finally, management review should  
15 include an annual review of applicable standards,  
16 policies that MSHA might put out, as well as internal  
17 safety programs to help identify and correct any weak  
18 areas, and this review ultimately should provide a  
19 clear picture of the effectiveness of the Occupational  
20 Safety and Health Management System, as well as its  
21 impact on the business needs of the organization.

22           I have included in my material that I handed  
23 in but I will not go through now some annual direct  
24 costs for various types of accidents, and those are  
25 compiled by Liberty Mutual from their workplace safety

1 index. But just from the high view of this for all  
2 industry workplace injuries and illnesses total direct  
3 an indirect costs are estimated to be \$155.5 billion  
4 which is nearly 3 percent of the gross domestic  
5 product, so this is not an insignificant number, and  
6 indirect costs are about 20 times the direct cost  
7 because that includes training and hiring and  
8 compensating replacement workers, repairing damaged  
9 property, conducting the accident investigations,  
10 shutdowns due to accidents, and the accompanying lost  
11 productivity, the administrative expense, and not to  
12 be ignored employee morale and increased absenteeism  
13 which naturally follow up safe operations or  
14 operations that have suffered some kind of  
15 catastrophic event.

16           It is also critical that near miss incidents  
17 be investigated as seriously as others, as other  
18 speakers have mentioned, because they reveal the true  
19 accident potential for the workplace, and also can  
20 identify common and dangerous shortcuts that may have  
21 inadvertently become a standard operating procedure.

22           If job hazard analysis is used, those need  
23 to be periodically reviewed to make sure that they are  
24 still applicable to current processes and equipment,  
25 and any processes that are related to a high number of

1 non-fatal but lost time injuries need to be carefully  
2 reviewed to see if they require re-engineering.

3           So that basically is what I have to say  
4 here. My handout also mentions, in addition to the  
5 consensus standards I have already indicated, that  
6 there is the ILO OSH-2001 guidelines on Occupational  
7 Health and Safety Management Systems. That should be  
8 taken into consideration. The OSHA 1989 Safety and  
9 Health Program Guidelines, which are still available  
10 on OSHA's website, and then some of the other  
11 standards, like the 18001 Occupational Safety and  
12 Health Management's specifications, and the 18002  
13 guidelines, and these can be designed to integrate  
14 with the ISO-9001 quality management systems, and the  
15 ISO-14001 environmental management systems.

16           Lastly, if companies in the mining industry  
17 do have effective programs in place already, we hope  
18 that that will be taken into consideration so that  
19 these will not be thrown overboard and force the  
20 companies to start from scratch, taking it a different  
21 direction. OSHA at stakeholder meetings talked about,  
22 well, the program needs to be tweaked.

23           But if a program is demonstrated to be  
24 effective and there is a lot of time and money that  
25 has been put into place, it's got the union

1 environment, it's got the promoter of the union, you  
2 know, as the saying goes, if it ain't broke don't fix  
3 it, and we hope you will take that to heart.

4           Thank you very much for your consideration  
5 of ASSE's position and I'm happy to respond to any  
6 questions.

7           DR. WAGNER: Thank you, Ms. Abrams.

8           As a safety professional, if you went down  
9 to a mine site, you and others have said these  
10 programs, these plans shouldn't just be paper and go  
11 on. How would you go on a mine site and evaluate or  
12 audit whether or not there is a program that's  
13 actually being implemented? And the second part of  
14 that since you ended by saying that you thought that  
15 effective programs shouldn't need to be modified, what  
16 are your measurements of effectiveness?

17           MS. ABRAMS: Well, there is a couple of  
18 questions in there, obviously. I do safety audits at  
19 mines. I'm not a health professional, but I do do  
20 safety audits sometimes with others from my company  
21 who are not attorneys, and part of the audits that I  
22 do I asked to see what programs does the company have  
23 in place, and a very simple indicator for me is I'll  
24 go around and I'll talk to employees, and I'll ask  
25 them, you know, what programs do you have. And if I

1 get the view and the headlights look, I know that that  
2 program is not having that trickle down effect where  
3 the employees are aware and are a vibrant part of the  
4 programs.

5           If I ask them do you have JSA, and they  
6 don't know what the heck JSA is, and the company has  
7 told me, well, we've got this great book of job safety  
8 analyses, I know that those aren't really being  
9 followed because the people who are doing the actual  
10 work are unaware of it, and to me, that is not a  
11 living document.

12           You know, safety committees, do they meet,  
13 if they meet, you know, what are they doing? Are they  
14 participating in some of the internal audits. To me,  
15 that is part of a vibrant program. You know, if you  
16 just have an outside hired gun, and I hate to use that  
17 phrase, but you know if I come in once a year and do  
18 an audit and I give a report to management, you know,  
19 it's out of my hands at that point. I don't know  
20 whether that document is then discussed within a group  
21 of rank and file employees as well as managers to see  
22 what corrections need to be made.

23           This is not something that by nature can be  
24 effective if it's solely within the control of  
25 management, you know, and it may sound like hierarchy

1 for a mining attorney to be saying this, but, you  
2 know, I do believe that employee empowerment and  
3 participation is a vital part of this. It does not  
4 mean it has to be a union workplace, but the people  
5 who actually do the job are the ones who are going to  
6 best identify the hazards and be able to give valuable  
7 feedback to management.

8 I really liked what Chevron was doing in  
9 terms of the self-assessments, coupled with the  
10 corporate periodic audits. I think that those can be  
11 very effective methodologies.

12 DR. WAGNER: Do you think there should be  
13 any documentation of the actions that are taken under  
14 a program umbrella?

15 MS. ABRAMS: Well, you know, I always tell  
16 clients when I do training on safety matters that, you  
17 know, undocumented things never happened. You know,  
18 not to mean that you should be pencil whipping  
19 something, but you know, how are you going to know  
20 that it was accomplished if there is no record of it?  
21 How are you going to know what problems were  
22 identified and need to be corrected if there is no  
23 record of it?

24 But that is why ASSE has long been an  
25 advocate of some type of audit privilege where if

1 you're trying to do this in good faith, that those  
2 should not then become basically the sword to spear  
3 you with, and there was legislation a number of years  
4 back that would have implemented that, but as I  
5 mentioned, OSHA does have a safe harbor policy on its  
6 website, and that is something that MSHA should  
7 consider, I believe.

8 DR. WAGNER: And that's certainly back to  
9 the end of your discussion about don't mess with  
10 effective programs, what are your measures of an  
11 effective program that shouldn't be messed with?

12 MS. ABRAMS: Well, first of all, you know,  
13 is it a paper program or is it a living program.  
14 That's the first thing, and that can easily be  
15 determined by interviewing people and finding out what  
16 level of awareness there is.

17 The second thing are the metrics that some  
18 of the companies have discussed, and effective program  
19 is going to have an effect. That may be simplistic,  
20 and bad things can happen to good companies. I know  
21 that firsthand. You know, many of the companies I  
22 work with I think have top-notch programs. It does  
23 not mean that that an accident cannot happen. Simply  
24 having an accident should not disqualify a program  
25 from being considered effective, but you have to look

1 at the overview, what kind of trends are you seeing,  
2 and this may take time, but the programs that I'm  
3 talking about, you know, if it ain't broke don't fix  
4 it, they should have some record by the time this rule  
5 comes to fruition, and the very fact that the agency  
6 is embarking on this rulemaking now should be sending  
7 a signal to companies that this on the road to  
8 becoming law, and you know, you can get started now  
9 and utilize things like ISO or the ANSI-Z10 as models.

10           You know, I can't think of any components  
11 that MSHA should put in a program that are not  
12 included under those standards, the consensus  
13 standards, that is. And if you have all of those main  
14 components, let the program work. You know, certainly  
15 if MSHA comes on site and are repeatedly seeing a lot  
16 of noncompliant conditions, that could also be an  
17 indicator that perhaps the program is being given lip  
18 service but is not actually being implemented at the  
19 ground level.

20           DR. WAGNER: Thank you very much. Time for  
21 one or two questions from the audience if anyone has  
22 one. Thank, Adele.

23           MS. ABRAMS: Thanks.

24           DR. WAGNER: And the last scheduled speaker,  
25 although again I'll say anybody who would like to

1 speak after the scheduled speakers certainly the  
2 microphone will be open. We have Professor Larry  
3 Grayson, Professor of Energy and Mineral Engineering  
4 at Pennsylvania State University.

5 MR. GRAYSON: Okay, thank you for the  
6 opportunity. I'm going to try to not be redundant here  
7 from what I heard from Chevron and what Adele has  
8 talked about, and instead try to focus on the things  
9 that I think are at the heart of making this work, and  
10 some of that has already been said. I'm going to skip  
11 my background. You have got all of this on these  
12 slides, so I'll skip all of that.

13 But right here, when we worked in the old  
14 days, and I'm giving you a context from when I start  
15 off as a UMWA miner, and we worked for a steel  
16 company, captive mines, and there were a number of  
17 steel companies as you remember, and they had some  
18 fairly elaborate safety programs. Much of that was  
19 documented. So production and safety were both  
20 important. Corporate safety inspections occurred,  
21 sometimes twice a year, and they would go through the  
22 mine just like our mine health and safety committee  
23 would, and they would come back with another report,  
24 and things to do and take care of as quickly as  
25 possible and prioritize it, try to assign people to

1 take care of those conditions and issue that had come  
2 up.

3           Then we had the redundancy with the safety  
4 committee, which is good. The more we do this the  
5 better off we are. The same thing with MSHA and the  
6 safety inspectors. So all of that works together.

7           But having a corporate safety group that  
8 comes through and does exactly the same thing, and  
9 forms these systems, and implementations of these  
10 systems in a way where you actually build a culture is  
11 indeed the way to make sure that things are running  
12 right.

13           So we would have meetings. So it doesn't  
14 have to be a union mine to have a workforce/management  
15 joint meeting looking forward and trying to have  
16 continuous improvement on the operational side and the  
17 safety side, anything else we address at an operation.  
18 So that I think is a critical point, too, that we have  
19 regularly scheduled meetings with the workforces, so  
20 they have been empowered, and from that point they are  
21 empowered again out at the work sites. State and  
22 federal inspections are intense, really as they should  
23 be, although clearly we double those efforts  
24 ourselves.

25           Important features from '75 to '81, and this

1 is kind of talking about how things have transpired  
2 historically, but a superintendent where I worked was  
3 allowed to make the safety decisions. I was a  
4 superintendent for awhile. So when we wanted to sit  
5 down with the safety committee and do things, we  
6 actually had the authority to get that done, and I  
7 would come to a safety committee, just like the union  
8 would, and we would both have our list of things that  
9 we thought should be addressed.

10           We certainly had to prioritize those from  
11 time to time, but at least the effort was made to  
12 correct all of those things, and very rarely did we  
13 disagree. Interestingly enough, we would find things  
14 that had occurred in the past that were never  
15 addressed, and then we addressed them. So when you  
16 set up that type of a system you've made your  
17 commitment that you're going to address things that  
18 really need to be addressed, even if they hadn't been  
19 addressed in the past. So when that change occurs to  
20 the safety system's approach, that's when all those  
21 would be identified.

22           We got regular feedback one to another. We  
23 all had accountability from top to bottom. That's part  
24 of the job of someone who is in charge of an  
25 operation. They can't be so decentralized that you

1 can do what you want. There is a system that guides  
2 it all. So day to day, every single day there is an  
3 accountability for all this from the superintendent  
4 level all the way down to the miner to be able to  
5 accomplish all those critical tasks the way they  
6 should be to keep us all safe and running well, but  
7 that takes regular feedback as well.

8           At that time we had enough employees to do  
9 the job. There comes the transition. So that  
10 transition from '82 to '84, when the last deep  
11 recession hit, was the steel industry was pretty well  
12 devastated as you well know. Immediately, within a  
13 couple of years, we had reduced our workforce by about  
14 50 percent at the mine where I was, and it was pretty  
15 standard all the way around.

16           So, cost-cutting measures were pretty  
17 intense. We did more with less and not better, so  
18 sort of against the quality control concept, the  
19 quality management process. The other production work  
20 actually did suffer, the nonproduction work, and  
21 that's where we fall behind. That all of a sudden  
22 then is where we get more citations and we're not able  
23 to take care of them. Everybody is hurrying and  
24 rushing a little bit more, and that's where we start  
25 to see some more injuries. So not tenable.

1           So much higher productivity tons per shift.  
2    As you know, since 2003, our productivity in the  
3    underground part of the industry in general has gone  
4    down fairly dramatically, but including until the last  
5    year or so. So there was a reduced cost per ton, a  
6    fairly dramatic reduction reflective of the situation,  
7    the economy.

8           A large percentage of miners worked a lot of  
9    overtime. It became a joke a little bit. You know,  
10   we had a target, we had to go from 500 to 250,  
11   supervisors from 80 to 40, and some people were  
12   doubling out, doing double shift in maintenance, fire  
13   bosses, everybody, and a lot of them don't like that.  
14   Of course, they were making more money, but many  
15   didn't want to do it, obviously,

16           We fought basically for our survival at that  
17   point in time. Okay, now I'm not going to cover this  
18   too much because I think everyone else that I've heard  
19   at least have already covered a good bit of this, and  
20   there are different ones available. Some countries  
21   have to do it, and it's a very thorough process. I've  
22   been involved with some Australians who came over here  
23   to do some bit testing, actually in a mine back a few  
24   years ago, and it was very rigorous.

25           The day before we were going to go in and do

1 dust sampling and also testing how well the bits  
2 functioned. We spent four hours in a risk assessment  
3 process. I'm not saying that's the way it needs to be  
4 done, but that was how it's done, so everybody in the  
5 mine and the team that was going to go underground sat  
6 there and says, well, what if this happens, what if  
7 this happens, et cetera, and we agreed, we covered it  
8 like a blanket, so they have to do it. It's part of  
9 their business there.

10           Common elements. Really you could break  
11 this down to the elements as were discussed by  
12 Chevron. You can add more elements in, and this is  
13 the ILO document that I've referred to in the previous  
14 slide. So all of this is important. I won't go over  
15 details. You can read them later. You've heard some  
16 of that already, and there is more. I'll let you see  
17 those. Again, you've heard these, and this will be  
18 part of the record, I guess, the power point, so I  
19 won't need to go over it again.

20           But to continue improvement of the  
21 management review, prevention action, all of the  
22 audits, all of this is extremely important to a  
23 program. It's part of the evidence you're going to be  
24 looking for.

25           Associated with this there will need to be a

1 plan, so it's good to have systems in place, but we  
2 certainly have to have the plans in place, too, and  
3 there are ways to put plans together. Here is the New  
4 South Wales guidance document, February 2008. It  
5 describes step by step how they put the plan together,  
6 and I think Adele was talking about that. I think  
7 it's especially important for smaller operators.

8           So the elements of the plan is sort of  
9 management structure, how the risks are to be managed,  
10 arrangement for the safety use mine plan, electricity,  
11 other energy sources, contractor management plan.  
12 Well, that's not required in 39 states as far as  
13 management and the way it's done over in Australia,  
14 they actually tie the contractors and the management  
15 together, so that's something that's a little bit  
16 different, not necessarily all bad, but we have the  
17 situation, and finally the emergency plan, and we do  
18 have the emergency response plan. It might be more  
19 robust in many cases than what we're looking at.

20           So they have excellent results in Australia,  
21 NIOSH, I think Jeff Kohler was scheduled before. He  
22 was here?

23           DR. WAGNER: He didn't present any data.

24           MR. GRAYSON: Okay. Well, I chaired the  
25 commission report as you remember, NMA sponsored it as

1 far as paying for travel expenses and everything, but  
2 it was tri-partite, and a lot of neutral folks on it,  
3 too, and in there we had recommended the major hazard  
4 risk assessment approach, although we thought that it  
5 probably should be modified from the Australian model  
6 being used. But in there they -- in that report that  
7 NIOSH did that followed up on their recommendations  
8 they saw what Australia had done, and began the  
9 implementation basically in 1997 and 1998, and results  
10 are pretty clear on what had happened, and again these  
11 are formal effective Mine Health and Safety Management  
12 programs and systems, and you see from the bottom  
13 curve there on the far right side and trace that back  
14 what the dramatic improvement was beginning right  
15 around the 1996 and downward, and this is the  
16 fatalities. They are looking at millions of tons --  
17 no, millions of hours works. They wouldn't use tons,  
18 obviously, but anyway that's what they were using.

19           And then you see the U.S., so the U.S. is  
20 the top most point up there in the 2005 record, and we  
21 know what happened in 2006. We know again what  
22 happened in 2007 and now in 2010. So that's our  
23 challenge, to become premier in the world and getting  
24 our injury rates and fatality rates down. We are  
25 doing a good job but not quite good enough. Zero is

1 the number as we well know, and many of our large  
2 companies and small companies get zero on both the  
3 non-fatal loss, accidents and also fatalities as you  
4 well know. Many of them don't get orders. Maybe some  
5 has, in essence, but many of them perform extremely  
6 well.

7           So this is a very formal and significant  
8 documentation approach that we have been listening to,  
9 and basically they require commitment from the top and  
10 this an absolute must just as expressed earlier by  
11 Chevron, absolutely commitment. You know, living and  
12 breathing with everybody during that process of  
13 implementation.

14           And I'll show you very formal systems, very  
15 high level of documentation. It might not be exactly  
16 right for us. You know, we're going to have to, I  
17 think, in order to make especially the in-roads that  
18 we need to have in the small operations enormous  
19 documentation is not going to be feasible, I don't  
20 believe, so we're going to have to be careful about  
21 that.

22           Although not as formal, several companies in  
23 the U.S. have shown the results. I've shown some of  
24 them there, and there is some on the metal side, too,  
25 You see Rio Tinto and others are very good, Arch, BHP,

1 et cetera, all the way down the line.

2 Well managed companies have dramatically  
3 reduced their lost time from of accidents, as you will  
4 know, or if you haven't seen them yet you will on how  
5 well they have actually done. I think we should not  
6 be leaving disabilities out, neither full nor partial.  
7 We probably really ought to be looking after that  
8 statistic as well somehow.

9 And then finally withdrawal of imminent  
10 danger orders, so they have dramatically reduced those  
11 as well. One study I had done recently on 40 long-  
12 well mines which are all pretty much large mines, 10  
13 of them had no orders, no withdrawal orders of  
14 imminent dangers nor training ones, training orders.  
15 So it can be done well.

16 In general, there are approaches to safety  
17 and health management are much more systematic and  
18 well documented than the vast majority of our  
19 operations, but of course the vast majority tend to be  
20 90 percent small mines, and on the coal side, and  
21 maybe 70-75 percent, and that's somewhere we deviate  
22 from Australia, by the way, I did mention earlier.  
23 It's just the opposite over there. They have 75  
24 percent large companies, 25 percent small companies,  
25 small amount of employees whereas the United States

1 it's the other way around, 75 percent in coal, 85 or  
2 90 percent in some of the other sectors, and so it's  
3 really quite a different matrices look at what was done  
4 there with largely large companies versus over here  
5 largely smaller companies.

6           Okay, the problems to be overcome in making  
7 a rule, and in my opinion, unlike in Australia, we  
8 have those small mines, and I think you have already  
9 gotten that point from Adele and I think probably  
10 would take it seriously.

11           U.S. operations, this is just state of the  
12 art here, what's going on. The operations, compared  
13 to what it was before 2006, and the way it is today.  
14 They field a battling, and battling very hard in their  
15 mines to simply comply with the regulations now what  
16 appeared to be somewhat easier before. But they have  
17 developed this combative mindset, as we all know, and  
18 this mindset is going to preclude cultivation of these  
19 best practices and we do it in a systematic way.

20           So, something that everybody can understand.  
21 Guidelines to follow, and stuff like that. And then  
22 with that, I think, as you saw from Chevron, as you  
23 implement, no matter how it affects production early  
24 on, and the small mines would be out of business if  
25 they do that right away, they would be out of business

1 if they did it the way Chevron did it, so somehow  
2 we've got to work that in, and phase it in as was  
3 suggested before.

4           Then when we phase it in and we build those  
5 best practices, they are going to see a realization in  
6 their productivity, their total production, a lower  
7 cost as well as the health and safety side, the  
8 compliance side.

9           Well, most of the companies as you will  
10 know, you know, progressed since 2006-2007, and, you  
11 know, just honestly speaking they feel they are  
12 unfairly penalized. I'm not saying they are, but they  
13 feel that way so we have that hurdle that has to be  
14 overcome as well. Their workforces are kept busy in  
15 abating citations, and they believe that prevents them  
16 from being more active, proactive. You've heard that  
17 testimony before up in Congress, too.

18           It doesn't necessarily mean it's so but  
19 that's the situation, so we have to be mindful of the  
20 situation we're trying to deal with. So the way  
21 forward, in my humble opinion, is that our emphasis is  
22 going to be on the compliance with myriad of complex  
23 regulations. It's not going to change. It's very  
24 prescriptive and we have to do that. We have to do  
25 well. I think everybody realizes that. It's not good

1 to gripe about it, we just have to take it to heart.

2           So, my management of health and safety  
3 management systems I think will help us do that  
4 although it should be less formal than it has been  
5 over in those other countries where it has been, I've  
6 seen how that one works. So, it's not just a culture  
7 of safety. I think just about everybody has a culture  
8 of safety. Everybody is going to look out for  
9 everybody else, and they are doing the training and  
10 they are following the work practices. It may not be  
11 the best work practices, that might be the gap, but  
12 they are following the work practices that have been  
13 done traditionally. So we have that change in the  
14 culture from the culture of just safety to one of  
15 absolute prevention, so everybody now has built that  
16 system to where the commitment starts from the top and  
17 they build it all the way down where everybody  
18 performs their jobs the way it's supposed to be done.

19           We can run and do an inspection, you know,  
20 we can find people doing things they shouldn't be  
21 doing. It's just the way it is, and that's part of  
22 the culture. It can't be done. So the commission  
23 recommended that a culture of prevention is what's  
24 first and foremost. That has to be the focus and we  
25 need the systems basically to get there, a whole

1 different kind of a culture.

2           Solid risk analysis is important. The  
3 hazards we focused on in some of the other  
4 presentation with significant hazards that they've  
5 identified, and then analyze for what the best  
6 solutions could be. There may be multiple solutions  
7 in some cases, and then implement, and then evaluate  
8 and see if they work in the way they intended it to  
9 work.

10           Simple regulatory compliance alone may not  
11 be sufficient. You've got to go beyond compliance.  
12 That was stated very clearly in the commission report  
13 as well. Some industry leaders stepped forward on  
14 that and did a really good job expressing that  
15 important fact.

16           So, the process must first commit to  
17 building corporatewide safety culture prevention even  
18 in a small -- I mean, in a large company with a lot of  
19 small mines. Sometimes they are just small mines.  
20 They too have to have that commitment, so somehow an  
21 embodiment of the commitment and a process to get that  
22 done has to be part of this whole thing if we are  
23 going to change the culture. So as an example Consult  
24 Energy, they just as easily picked someone else, but  
25 they made a presentation at our university and it was

1 quite an extensive process they went through to get  
2 there, and so the "Path is Zero" is what they called  
3 it, and you have already seen Brett Harvey's comments  
4 before about we don't accept accidents, and that is  
5 not just lost time accidents or anything else. It's  
6 anything that wasn't planned that happens in the  
7 general sense of the word is an accident. And really  
8 they don't sanction any of that, and especially want  
9 zero fatalities and zero lost time injuries.

10           Now, this is the process that they use.  
11 They've got the 48 percent of all its employees. You  
12 will probably see this in Pittsburgh with a little  
13 more fervor, I believe. That is an immense process  
14 that they went through as you can see there. So they  
15 got the buy-in and the empowerment, and the first line  
16 supervisors, the front-line supervisors know  
17 absolutely that is the way the job is going to be  
18 performed the way it's supposed to have been.

19           Second, each operations management must  
20 specify and adopt and implement the techniques that it  
21 believes will attain that high level of safety goals  
22 and objectives, so no withdrawal orders, no danger  
23 orders, less than 10 percent S&S. They have got to  
24 set goals. They have got to put a little reach in  
25 your goals. That's what we always do in our

1 businesses, put a little reach in our goals, achieve  
2 it again, we set the goals, obtain those goals, and  
3 this means that mine safety management plan is needed  
4 to drive accomplishment of those goals.

5 All of us in the industry know that we had a  
6 production level that we had to meet and we had a cost  
7 level that we had to meet. We also had citations that  
8 we didn't want to get, and there is a lot of pressure.  
9 I understand that. We all understand that. But you  
10 get there by being systematically building that  
11 culture, and the culture implements the systems and  
12 they may analyze those and the feedback is regular and  
13 everything is done the way it's supposed to be done.

14 So, risk management's role. There is  
15 different ways of doing that. I won't belabor the  
16 point but it basically gets to this point here where  
17 there is the corporation, the mine plant, the mine end  
18 of plant, the supervisors, the workers, and everybody  
19 has to have a clear policy, they endorse the policy,  
20 commit to the policy, and follow the policy,  
21 supervisors as well. Consider the risk all the way  
22 down the line. Understand and treat the risk down at  
23 this lower level where we are actually doing the work.  
24 Enable the people so that they can do what they were  
25 planning to be done.

1           The same thing here at the mine plant level,  
2 and the same thing at the supervisors, and then the  
3 faithful task is execution by everyone. Every single  
4 pre-shift examination on-shift examination,  
5 everything, maintenance, et cetera, reenforcement,  
6 communication, all the way down, reenforcement and  
7 communication. It's got to go over and over again.

8           Now, there are different ways to do this.  
9 We can do plots of trends and stuff like that. We can  
10 use table data. We can prioritize from a metrics  
11 approach. We can do quantitative risk analysis. This  
12 right here is just one that was recently done on  
13 serious violations as exemptions to the plan, and this  
14 is on ventilation, specifically a 75.370(a)(1)  
15 ventilation plan. This is just one example of what  
16 you can do.

17           You can put the citations the S&S right  
18 there, plot them over time quarter by quarter, and see  
19 what we have done. You can see from here first  
20 quarter 2008, steadily down, a concerted effort with a  
21 little blip in a couple of places, but generally  
22 concerted effort with inspectors changing quarter by  
23 quarter, and you know no orders on this particular  
24 one, there is one there. So we can look at those  
25 trends for every citation in my opinion that's a major

1 hazard-related citation because those are the ones  
2 that are going to paint the industry, the coal  
3 industry and everyone else because of it with the same  
4 wide brush, so we've got to be faithful in managing  
5 that.

6           We can do it this way. Australia will do  
7 some things this way with risk measures. Not  
8 everything is quantitative, and they can be  
9 qualitative, but at least you're looking at it,  
10 thinking about it, and say I've got some stuff that's  
11 appearing here that I just can't have, and we have to  
12 take care of those problems and move them off that  
13 chart basically.

14           We talked about material handling earlier at  
15 Chevron. That plagues us as you well know in the  
16 industry, time in memorial, persistent, persistent,  
17 and then right here is one case study, lost time  
18 accident record from one of the mines within the  
19 database we were analyzing, and there is the one, 79  
20 percent by those five. Here, if you look at the days  
21 lost, you might prioritize it that way, and 2,213 for  
22 material handling in that one mine per year. It's  
23 amazing.

24           Another, you can do quantitative analysis  
25 this way, 54 nonfatal days lost accidents in a year

1 with this many hours, loss and restricted days added  
2 up to this, total miners employed 313. All I can say  
3 the probability of any miner getting hurt that year is  
4 15 percent, totally unacceptable, and that also  
5 happens to be the nonfatal responses.

6 I can do it by risk. So if I know on  
7 average what the -- if I got the details like someone  
8 showed earlier on exactly how those breakdown by the  
9 number of lost days and per incident, then I can get  
10 an even better calculation, but here, you know, I've  
11 got 15 percent probability here times 20,000 on  
12 average, get better data, but there is \$3,034 per  
13 miner and that's \$946,000 in one year. Certainly  
14 serious considerations for improving that rate. And  
15 we can say the same thing, do the same kind of  
16 analysis with elevated citations. So then we begin to  
17 manage with high incentives.

18 Now, we can look at this as average days  
19 lost per miner, et cetera, but the bottom line each  
20 person plays a critical role really in this safe,  
21 efficient, cost-effective -- H.L. Boulding, you  
22 recognize that, I'm sure., it's a good statement,  
23 whether a corporate or division manager, plant  
24 manager, supervisor, all the way down. So it's a  
25 critical role for management. Serious transfer of

1 accountability at all levels, and ways to understand  
2 that we're doing the things that we're supposed to do.  
3 Tracking, if you will, of the desired performances.  
4           And then here, again when you get down to  
5 the mine manager, again it can't be hands off. It's  
6 got to be adoption, and you've got to build that  
7 culture. They are involved in the process too, and we  
8 see evidence that indeed everybody is speaking the  
9 same language and we're dedicated to that plan, to the  
10 system. So there has to be some kind of evidence.  
11 Supervisors, again, play a critical role. They and  
12 their workers have got to work together to do things  
13 faithfully. No short cuts. Examining the workplace  
14 as well, 'fess up when we see a problem that needs to  
15 be taken care of, and take care of it. Make sure it  
16 gets done right away.

17           The thing that was most frustrating for me  
18 giving a list, I have a worker on the roof bolting  
19 machine that would say this is jumpy, and jerky, and  
20 we've got to get the hydraulics fixed on this machine,  
21 and you know, they're not complaining yet about  
22 safety, but you know, you've got to get this fixed.  
23 You go to maintenance, and they said, okay, we'll put  
24 it on the list. All right. Sure. There is other  
25 priorities, but the thing is the next shift when I

1 came in there is kind of like bad faith because it  
2 wasn't done. Now they are saying, okay, this is  
3 really getting dangerous at this point in time, and  
4 pretty soon this thing is going to go crazy on us, and  
5 we're going to get hurt.

6           So I go back again, say we've got to have  
7 this done. They finally get it done, right? So I  
8 mean when we see things we have to take care of it  
9 because we don't know when that critical event is  
10 going to occur.

11           So day in and day out basically the  
12 commitment to executing it systematically. The  
13 majority of exertions from plan, excuse me, are going  
14 to be eliminated, all of these right here. So it will  
15 help across the board in our operations, and  
16 continuous improvement, and we want excellent  
17 performances. We even want to be able to hold our  
18 industry in general as the premier performer across  
19 the world like we once were, and I think we can get  
20 there personally. That's it.

21           DR. WAGNER: Thank you very much. Let me  
22 first turn to the panel for any questions?

23           I probably prewarned with my question to  
24 Adele. You know, people can download the ISO  
25 standards, the ANSI standards, and put it on their

1 shelf and say, oh, we have a problem, we subscribe to  
2 that. You walk onto a mine site, first of all, you  
3 said that commitment from the top is critical. You  
4 walk onto a mine site that you don't know who the  
5 corporate owner is but you're on the specific mine  
6 site with 100 miners there. How are you going to tell  
7 whether or not there is commitment from the top?

8           MR. GRAYSON: I think actually Adele said it  
9 pretty well. Getting into the conversation with the  
10 workers and as you do your audit and everything, and  
11 the same thing works with, by the way, environmental  
12 management systems for 4001. When I was at the  
13 University of Missouri, we implemented 4001, and the  
14 auditors would come in, and they would talk to the  
15 individuals. Do a random selection of laboratories,  
16 for instance, and then people associated with those  
17 laboratories, the graduate students, and faculty  
18 members. The chancellor had made it absolutely clear  
19 we don't want any aspersions on the aspects and the  
20 possible aspects.

21           So the auditor would come in. We all went  
22 through our regular training every year just like, you  
23 know, for the systems too, so we understood the entire  
24 system, what everything meant within the system. The  
25 auditor came, we would give the feedback, but they

1 would also go in and check and see if what we said was  
2 actually manifested in that site, the work site.

3           So, the workers know exactly what's going  
4 on. Supervisors, et cetera, will know, but it's a  
5 consistency check throughout the organization that  
6 will end up showing you exactly because later on they  
7 will have to trace it going out, not just at that  
8 site. They will trace it back up again and see from  
9 them, too.

10           DR. WAGNER: You mentioned that you felt  
11 that we might need the level of documentation, the  
12 voluminous documentation, and thick plans that they  
13 have in Australia. What would you consider adequate  
14 documentation that a good program is in place? If  
15 again you were to walk onto a mine property and you're  
16 asking the question do they have a good enough program  
17 here, what would you look for?

18           MR. GRAYSON: I think primarily it kind of  
19 comes down more like, well, maybe what's in South  
20 Africa where there is a hazard identification and risk  
21 assessment approach, and they are seeing evidence that  
22 hazards were identified, and those hazards were indeed  
23 addressed, and some documentation along those lines.

24           Now, the hazards can be indicated like on an  
25 ongoing basis by citations, too, and I think Adele

1 mentioned that as well, but that ends up showing you  
2 and you can prioritize those hazards. Certainly it  
3 would take care of the more important ones first, make  
4 sure you're really safe from a major hazard then, but  
5 then also from all the others in the process have to  
6 be taken care of.

7           So, within a plan like this it's just a  
8 reporting of data especially on hazards, what actions  
9 were taken to take care of those hazards, right, and  
10 then whether or not those hazards were eliminated or  
11 if the work practices were changed, and whether or not  
12 they were reoccurring after they had been taken care  
13 of because that's a clear indication of whether it  
14 took within the culture or not, and realizing that  
15 some things are going to happen that are really tough  
16 to deal with like a major reform or something like  
17 that. But there are things we do in that situation,  
18 too, like additional support systems and things like  
19 that.

20           For instance, one good example was we were  
21 using conventional bolts in a fairly wet, very  
22 laminated shale type section, and we had a fall on the  
23 roof machine, it was out between shifts. It took  
24 awhile to fix, get it uncovered, get it back into  
25 operation. A week later it happened again. Well,

1 that's a clear indication that something had to  
2 change, and most operations are doing this on a  
3 regular basis. They are looking at their roof  
4 conditions and stuff like that, and they know when  
5 additional support is going to be necessary, or if  
6 they are just ignoring it, then they are asking --  
7 that's a real recipe for danger.

8           So identifying that risk and then what  
9 action was taken. Our action was to switch resin  
10 bolts at that point in time. Never had another fall  
11 in that same section the rest of the life of that  
12 section after we switched resin bolts. Additional  
13 supports may be needed in some cases in some mines but  
14 they have to deal with those, identify hazards, and  
15 hopefully take care of it.

16           DR. WAGNER: Last question from me for now.  
17 Adele suggests that we should not mess with success.  
18 How would you evaluate whether or not a program is  
19 sufficiently successful that it should be left to  
20 stand?

21           MR. GRAYSON: I also think that the data day  
22 in and day out will end up showing that. You will see  
23 what's happened over the years, and like that one  
24 trend I was showing there. Even though there were a  
25 couple of blips that went out, overall it went down.

1 DR. WAGNER: So if I said I like my program  
2 and I want to keep it, what would you say?

3 MR. GRAYSON: As long as they are meeting  
4 the minimum requirement of the regulation, fine. We  
5 would love you to go beyond that. Compliance is not  
6 enough, let's go beyond compliance.

7 DR. WAGNER: Any questions from the rest of  
8 the room. Mr. O'Dell, do you want to come closer to  
9 the microphone so that we can get you, so that you can  
10 get on the record.

11 MR. O'DELL: Dennis O'Dell, United Mine  
12 Workers. I have a comment and a question.

13 2005, after the tragedies that took place we  
14 started looking into risk assessment, risk management,  
15 approach to safety, and I know we were involved with  
16 you somewhat on that report that came out then. Since  
17 that time we've had the opportunity -- I have been  
18 fortunate enough to develop very close friendships  
19 with the CFMU union in Queensland and in South Wales,  
20 and have been able to spend some time with them and  
21 travel across the country and talk with them, talk to  
22 their workers, and I found out, and trust me, whatever  
23 works I want it to work here, and they do some things  
24 better than us, and we do some things better than they  
25 do. There is a back and forth on this.

1           But the thing that troubles me on the risk  
2 management, risk assessment is now I'm finding out  
3 that as they look at it, as they look into this  
4 mirror, because as they are educating us we are  
5 educating them, so you know, they tell me ideas. I  
6 exchange what is going on with the MSHA regulations,  
7 and say, oh, this would probably apply better if we  
8 used the regulations that you have in the United  
9 States versus how we try to approach our risk  
10 management because the bottom line is in a risk  
11 management you still are managing the risk. At the  
12 end of the day there is a possibility that somebody  
13 can get hurt or a fatality will occur or equipment  
14 malfunction. And so in some cases regulations  
15 actually apply in cases better, and we are starting to  
16 see that now.

17           I am just curious, the information that you  
18 referred to and others have referred to and the  
19 reports, you know, where they get that from because  
20 what I have found is -- in my travels I get to talk,  
21 and I'll tell you sort of what the red flag up to me  
22 is Australia claims they have no cases of occupational  
23 pneumoconiosis, no black lung cases in over 50 years  
24 or whatever it is, but I have visited miners while I  
25 was there who was on oxygen bottles and clearly have

1 black lung. They just kind of disappear. They don't  
2 record that. They sweep it under the rug, and that's  
3 the truth of the reality.

4           And so I'm curious, the information that you  
5 and others have got about Australia is it information  
6 from the operators, is it government records, is it a  
7 combination of everything? I mean, I'm just curious  
8 where all that data that everybody refers to about  
9 Australia being so good in this, where that actually  
10 comes from.

11           MR. GRAYSON: Well, that's how each of the  
12 states or territories, I guess, they call them, so  
13 Queensland has its own database, South Wales has its  
14 own database. I do believe they are accessible.

15           MR. O'DELL: Coal Party Services, is that  
16 the group --

17           MR. GRAYSON: Which one?

18           MR. O'DELL: Coal Party Services, is that  
19 one of the groups, part of the government that you got  
20 the information from?

21           MR. GRAYSON: No.

22           MR. O'DELL: We can talk about it.

23           MR. GRAYSON: That was the chart that Tony  
24 had put together, Dr. Gilney and his group, but there  
25 is still quite a difference here as compared to their

1 operations, and you're right. On the risk management  
2 side we can't lose sight of what it really takes to  
3 build a culture, and that is the fear, I think for all  
4 of us, that we get a regulation that's going to give  
5 us paperwork to do but we really don't get down to the  
6 bottom where we are going to have some evidence  
7 development and stuff like that. That's going to be  
8 important, too.

9 MR. O'DELL: And there is still trust  
10 issues. I worked in the mine from the late seventies  
11 to the late nineties. They tried risk management,  
12 risk assessment, and at the end of the day they always  
13 blamed the workers. That was the old -- I mean,  
14 seriously, that's the way it worked back then, and I  
15 know that's not the case now, but there is a trust  
16 issue that needs to be overcome by this, and I hope  
17 people take heed to that.

18 And the other thing that I've learned from  
19 the Australians is they move forward in Australia,  
20 whether -- labor and management work together on the  
21 risk assessments, and they are supposed to agree at  
22 the end of the day. Sometimes they don't. Sometimes  
23 management will move forward. If they were stuck and  
24 won't move forward, they go ahead and move anyway, and  
25 that's what we are seeing that sometimes accidents and

1 injuries occur, so I think we need to take all those  
2 things into consideration.

3 MR. GRAYSON: Yes, that's how they  
4 originally got to the risk assessment and care  
5 approach is that they agreed to agree right after the  
6 Moore accident and tried to do something, and it isn't  
7 necessarily the same relationship the whole time.

8 DR. WAGNER: Any other questions or comments  
9 from the room? And are there any other people who  
10 didn't sign up? Thank you very much, Larry. Any  
11 other people who didn't sign up in advance who would  
12 want to make a statement at this point?

13 MR. ELLIOTT: Could I answer your question  
14 about how you determine, you know, whether it's  
15 working or not?

16 DR. WAGNER: Sure. Ed Elliott again with  
17 Rogers Group.

18 What I wanted to tell you is we do that, we  
19 have a -- if we found training indicators or some  
20 current indicators go negative, what we will do is go  
21 on and first evaluate what the management at that  
22 operation is doing according to the safety principles.  
23 For instance, if you have five or six key elements,  
24 you may go in or an inspector let's say could go in  
25 and say, all right, what is your process of

1 demonstrating management commitment. Then the  
2 operator would say, we do this, this and this.

3           Then you might go down, how do you do the  
4 risk assessment or JSAs. Then they would tell you how  
5 they do it, and how the plan is. Then I believe an  
6 inspector would go out, talk to the miners, observe  
7 the work that's being done to those metrics that the  
8 operators says that they have implemented to have in  
9 their safety management system.

10           So that's what I talked about in my  
11 presentation about having an inspector having to take  
12 time.

13           DR. WAGNER: Thank you very much. That's  
14 quite helpful.

15           Anyone else? Please, come all the way  
16 forward. Identify yourself first, please.

17           MS. DEVINE: I'm Shanna Devine with the  
18 Government Accountability Project.

19           We are a nonprofit, nonpartisan advocacy  
20 organization, and I would like to thank you for this  
21 opportunity to provide public comments to help ensure  
22 an effective safety and health management program at  
23 mines. From our organization's perspective,  
24 accountability and employee and management  
25 participation are absolutely integral to an effective

1 mine safety program.

2                   And I would also like to thank the  
3 presenters throughout today's presentation. I would  
4 like to thank Professor Grayson who is particularly on  
5 point. I would like to know what concrete actions  
6 this board is taking to make accountability and  
7 transparency the cornerstone of the safety and health  
8 management programs, and specifically is there a  
9 whistle blower policy being considered?

10                   DR. WAGNER: I'm sorry?

11                   MS. DEVINE: Specifically is there a whistle  
12 blower policy being considered, and if so, what policy  
13 is it modeled after?

14                   I understand that these programs are  
15 intended to maintain compliance with the Federal Mine  
16 Safety and Health Act. The Mine Safety and Health Act  
17 of 2010, that is in the House of Representatives and  
18 is in conference in the House at the moment, it does  
19 include robust whistle blower protections. It's the  
20 cornerstone of the act, and I would strongly encourage  
21 this board to consider that language in proceeding  
22 with forming these model programs.

23                   And lastly, I hope there will be a greater  
24 commitment to transparency and openness in these  
25 programs than we have seen in the proceedings for the

1 investigations and hearings in the Upper Big Branch  
2 incident.

3           Thanks all. Thank you.

4           DR. WAGNER: Thank you very much. Any  
5 questions? Any questions from the audience? Thank  
6 you. Any additional speakers?

7           MR. SHARP: Jim Sharp. Sharp Media.

8           I have been listening to this this morning  
9 and I have been five years reporting on mine safety  
10 and health affairs, and I just have some serious  
11 reservations about what you're trying to do. First of  
12 all, I don't think that you can simply come up with a  
13 rule and impose it on mine operators without first  
14 changing yourself.

15           You've heard Dr. Kohler this morning talk  
16 about MSHA has got to change as well as operators got  
17 to change if there is going to be a culture of safety.  
18 I'd like to see how MSHA plans to do that before you  
19 impose a rule on the mining community. That's a big  
20 job. It's going to take several years, and I just  
21 don't see it happening quickly.

22           I also don't understand how you plan to  
23 impose a proactive system, and this was touched upon  
24 this morning, a proactive system on a mining community  
25 that has been subject to a reactive command and

1 control, compliance-oriented system since the Mine Act  
2 was instituted, in fact, the Coal Mine Safety and  
3 Health Act of 1969. I mean, that's what you have got  
4 to deal with out there. That's the culture. That's a  
5 big switch that you are going to have to deal with and  
6 come up with a plan to address.

7           In the last couple of years the level of  
8 hostility that has arisen between the mining community  
9 and MSHA has reached what I -- in my experience -- an  
10 unprecedented level. Now what you want to do with the  
11 backdrop of that hostility is to impose even more  
12 regulations on a mining community that feels like it's  
13 already been beat up beyond recognition.

14           You're going to have to overcome that  
15 hostility if you're going to get cooperation from the  
16 mining community. You're going to have to take  
17 concrete steps in order to do that.

18           The other thing that has not been mentioned  
19 and I think all of this has sort of been touched on  
20 this morning, but the one thing that hasn't been  
21 touched on is the politics of this. Safety has been  
22 politicized in the last couple of years. Now we are  
23 about to go through an election in the fall, and if it  
24 goes as the pundits have been saying at least one  
25 house of Congress is going to the Republicans. That's

1 going to be the House. If any goes, it's going to be  
2 the House. That's where the money is. That's where  
3 the budget starts.

4 I think you're going to see a vindictiveness  
5 expressed by a number of lawmakers toward this agency  
6 and its budget as a result of what's happened in the  
7 last couple of years, and how you're going to get  
8 through that is another issue that you're going to  
9 have to face if you want to get this thing through.

10 My prediction is that with the formidable  
11 forces that you are facing right now, many of which  
12 are of your own making, there is far less of a 50/50  
13 chance that this is going to go through, and if it  
14 does go through, it will be nothing more than a paper  
15 exercise that will really not accomplish much.

16 That's all I have to say.

17 DR. WAGNER: Thank you very much.

18 DR. WAGNER: Any questions from the panel?  
19 Any questions from the people in the room? Any others  
20 who would like to make a statement for the record?

21 Well, if no one wants to make a  
22 presentation, I am again going to say that we  
23 appreciate everybody's participation today, those who  
24 spoke, those who didn't, and want to remind you that  
25 even if you didn't speak today there will be further

1 opportunities in California and in Pittsburgh next  
2 week, and also if anybody said anything here that  
3 stimulates you that you would like to provide written  
4 comments, or any other information that you feel that  
5 the agency should be taking into consideration in the  
6 course of our exploration of this area, I'd like you  
7 to submit it. We have a docket open until midnight  
8 Eastern Standard Time on December 17th, and we will  
9 take every comment and concern into consideration in  
10 developing the agency's proposed rule on safety and  
11 health management programs.

12           And throughout this process there are a  
13 number of opportunities for ongoing engagement  
14 participation, and I would encourage you to take  
15 advantage of them.

16           Once again, thanks to all of you for coming  
17 here and for sharing your thoughts.

18           (Whereupon, at 1:38 p.m., the hearing in the  
19 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: None  
CASE TITLE: Safety and Health Management Programs  
HEARING DATE: October 8, 2010  
LOCATION: Arlington, Virginia

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Mine Safety and Health Administration.

Date: October 8, 2010

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