UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

MINE SAFETY AND HEALTH ADMINISTRATION

PUBLIC HEARING RE:
INTERIM FINAL RULE FOR HAZARD COMMUNICATION
IN THE MINING INDUSTRY

THURSDAY, OCTOBER 4, 2001

The Public Hearing was held at the Radisson Hotel, Heritage Room II, 808 20th Street, South
Birmingham, Alabama, at 9:08 a.m. Marvin Nichols, Moderator, presiding.

PANELISTS:

MARVIN NICHOLS, Administrator for Coal Mine Safety and Health
ROBERT A. THAXTON, Coal Mine Safety and Health Group
RICHARD FEEHAN, Education Policy and Development Group
LARRY REYNOLDS, Solicitor's Office
ROBERT STONE, Office of Standards, Regulations and Variances
Mork Klinepeter, Safety Director, Aggregiates Group of Florida Rock Industries, Incorporated

Ron Millican, Safety and Training Coordinator, Aggregiates Group of Florida Rock Industries, Incorporated

Kelly Bailey, Manager of Occupational Health for Construction Materials Group Operations, Vulcan Materials Company
(9:08 a.m.)

MODERATOR NICHOLS: Good morning, I'm Marvin Nichols. I'm the Administrator for Coal Mine Safety and Health. Welcome to MSHA's public hearing on our interim final rule for hazard communication.

Before we -- before we start the hearing, I would like to observe a moment of silence for those 13 heroic miners that lost their lives last week at Jim Walters Number 5 Mine.

(A moment of silence observed.)

MODERATOR NICHOLS: Thank you very much.

Let me introduce the panel, then I have a fairly lengthy opening statement to read into the record, so bear with me. Down at the end is Bob Thaxton. Bob is with the Coal Mine Safety and Health Group in Arlington, Virginia. Richard Feehan, Richard is with the Educational Policy and Development Group in Arlington headquarters. Larry Reynolds with the Solicitor's Office, to my left here, in headquarters. And Robert Stone with the Office of Standards, Regulations and Variances in our headquarters office.

Today we're here to listen to your comments on the hazard communication interim final rule which we published on October the 3rd last year.
We're holding this hearing in accordance with Section 101 of the Federal Mine Safety and Health Act of 1977. As is our practice, we will conduct the hearing in an informal manner and during the proceeding panel members may ask questions of the presenter.

Although formal rules of evidence will not apply, we will be taking a verbatim transcript of the hearing and will make it part of the official rulemaking record. The hearing transcript will be available for review by the public, along with all comments and data that MSHA has received to date. The entire rulemaking record, of course, is available at our office in Arlington, Virginia. If you wish a personal copy of the hearing transcript, you need to make your own arrangements with our court reporter.

Now let me briefly give you some background on the interim final rule and highlight some of its major provisions. Following that, I will share with you our reaction to some of the comments we've received thus far.

Background. On November the 2nd, 1987, the United Mineworkers of America and the United Steelworkers of America jointly petitioned MSHA to adopt OSHA's hazard communication standard to both coal and metal and nonmetal mines and propose it for
the mining industry. They based their petition on the need for miners to be better informed about chemical hazards and that miners working at both surface and underground coal and metal and nonmetal mines are exposed to a variety of hazardous chemicals.

On March the 30th, 1988, in response to this petition, MSHA published an advanced notice of proposed rulemaking on hazard communications for the mining industry. In this notice, we indicated that we would use the OSHA hazard communication standard as the basis for our standard and requested specific comments on a number of related issues.

We published a notice of proposed rulemaking on hazard communication on November the 2nd, 1990 and held three public hearings in October of 1991. The record closed January the 31st, 1992.

In their comments on our advanced notice of proposed rulemaking and proposed rule, commenters represented both small and large mining companies, individual miners, a variety of trade associations, state mining associations, chemical and equipment manufacturers, national and local unions, members of Congress and federal agencies.

We re-opened the rulemaking record on March 30, 1999, requesting comments on the impact of
the proposed rule on:

1. the environment;
2. small mines;
3. state, local, and tribal governments,
and 4. the health and safety of children.

The National Environmental Policy Act and
more recent statutes and executive orders included
requirements for us to evaluate the impact of a
regulatory action in these areas.

At that time, we also requested comments
on the information and collection and paperwork
requirements of certain provisions of the proposal now
considered as an information collection burden under
the expanded definition of "information" under the

We received seven comments to the limited
re-opening of the rulemaking record, primarily from
trade associations and labor organizations. The
rulemaking record closed June 1, 1999.

On October 3, 2000, we published an
interim final rule on hazard communication with an
effective date of October 3, 2001. We gave commenters
until November 17, 2000, to submit comments. The
interim final rule specifically requested comments on:

1. the plain language format and the
content of the interim final rule.

2, mine operators’ experience under the
Occupational Safety and Health Administration's Hazard
Communication Standard.

3, any changes in the mining industry
since the publication of the proposed rule.

On December 7, 2000, we personally spoke
with or e-mailed all commenters and other interested
persons telling them of our decision to hold a public
hearing in Washington, DC on December 14, 2000. The
public notice of the hearing appeared in the Federal
Register on December 11, 2000.

We received 22 written comments on the
interim final rule and heard testimony from six
persons at the public hearing on December 14, 2000.

Commenters objected to what they
considered to be an inadequate comment period and an
inadequate notice of the hearing. These commenters
stated that they did not have sufficient time to fully
analyze the impact of the interim final rule which
affected their ability to develop and submit
meaningful comments. They also stated that many
operators were unable to testify at the hearing
because they did not have enough time to prepare
testimony and make plans to attend the hearing.
Members of the mining community have also stated that, because this is the first time MSHA promulgated an interim final rule, there is some confusion about their compliance obligations. The National Mining Association and the National Stone, Sand and Gravel Association have asked for a delay in the effective date of the interim final rule until we respond to their previous comments on it.

A number of mine operators and trade associations challenged the hazard communication interim final rule in the U.S. Court of Appeals and the United Mine Workers of America and the United Steelworkers of America have intervened in the litigation.

Now let me briefly highlight the six major provisions of the rule.

1. **HAZARD DETERMINATION.**

   The hazard communication interim final rule requires mine operators to identify the chemicals at their mine and determine if they present a physical or health hazard to miners based on the chemical's label and material safety data sheet (MSDS) or on a review of the scientific evidence.

   Under the interim final rule, for the purposes of hazard communication, MSHA considers a
chemical hazardous and subject to the hazard communication rule if it is listed in any one of the following four recognized authorities or sources:

2. the American Conference of Governmental Industrial Hygienists (ACGIH), the Threshold Limit Values (TLVs) and Biological Exposure Indices (latest edition).
3. the National Toxicology Program, the (NTP), Annual Report On Carcinogens, the latest edition.

2. THE HAZARD COMMUNICATION PROGRAM.

The hazard communication interim final rule requires mine operators to develop, implement and maintain a written plan to establish a hazard communication program. The program must include:

1. procedures for implementing hazard communication through labeling, MSDSs, and training of miners;
2. a list of the hazardous chemicals known to be present at the mine;
3. a description of how mine operators
will inform miners of the chemical hazards present in non-routine tasks and of chemicals in unlabeled pipes and containers.

If the mine has more than one operator, or has an independent contractor on-site, the hazard communication program also would have to describe how the mine operator will inform the other operators about the chemical hazards and protective measures needed.

3. CONTAINER LABELING.

A label is an immediate warning about a chemical's most serious hazards. The hazard communication interim final rule requires mine operators to ensure that containers of hazardous chemicals are marked, tagged, or labeled with the identity of the hazardous chemical and appropriate hazard warnings. The label must be in English and prominently displayed.

I would like to clarify one point about the labeling requirements. Practically speaking, very little labeling is required. You only have to label stationary process containers and temporary portable containers and then only under some circumstances.

Chemicals coming onto mine property are almost always labeled. You should not have to re-
label them unless the existing label becomes unreadable.

You would not have to label containers of raw material being mined or milled while they are on mine property.

You would not have to label mine products that go off mine property. You would have to provide the labeling information to downstream users upon request.

4. MATERIAL SAFETY DATA SHEET.

A chemical's material safety data sheet (the MSDS) provides comprehensive technical and emergency information. It is a reference document for mine operators, exposed miners, health professionals, and firefighters or other public safety workers. The hazard communication interim final rule requires mine operators to have an MSDS for each hazardous chemical at the mine.

Mine operators should already have MSDSs provided by the supplier for those chemicals brought to the mine. The MSDS must be accessible in the work area where the chemical is present or in a central location immediately accessible to miners in an emergency.
5. HAZCOM TRAINING.

The hazard communication interim final rule requires mine operators to establish a training program to ensure that miners understand the hazards of each chemical in their work area, the information on the MSDSs and labels, how to access this information when needed, and what measures they can take to protect themselves from harmful exposure.

Under the interim final rule, mine operators have the flexibility of combining the training requirements for hazard communication with the existing Part 46 and Part 48 training. The interim final rule does not require mine operators to have an independent training program separate from Part 46 and Part 48 training.

Many operators already cover some of the above information in their current training program. If so, they DO NOT have to re-train miners about the same information. We designed the hazard communication training requirements to be integrated into existing training programs for miners.

6. MAKING HAZCOM INFORMATION AVAILABLE.

The hazard communication interim final rule requires mine operators to provide miners, their designated representatives, MSHA, and NIOSH with
access to materials that are part of the hazard communication program. These include the program itself, the list of hazardous chemicals, labeling information, MSDSs, training materials, and any other material associated with the program.

Mine operators DO NOT have to provide copies of training materials purchased for use in training sessions, such as videos.

Also, mine operators DO NOT have to disclose the identity of a trade secret chemical except when there is a compelling medical or occupational health need.

Comments

Now let me share with you our thoughts on some of the comments we've received on the interim final rule.

Commenters representing the aggregate industry argued strenuously that the hazard communication rule is unnecessary and that the aggregate industry should be exempt from the rule.

The HazCom rule does not duplicate other MSHA standards as claimed by some commenters representing the aggregate industry. It augments, supplements, and complements these existing standards.

The rule specifically deals with chemicals
and chemical exposures. Chemicals may be used in any mine, including those in the aggregate industry. There have been hundreds of chemical burns in the aggregate industry. Chemical burns can occur on any part of the body. Skin burns may require multiple skin grafts and require repeated hospitalization. Eye burns can be serious and result in permanent loss of eyesight.

We believe the burden on small mines is less than some commenters stated. First, small mines typically use fewer chemicals than large mines, and in many cases, no new chemicals.

Second, small mines typically use chemicals in small quantities and for shorter periods of time, similar to household use.

Third, many of the chemicals used at small mines are not covered by the rule. For example, soaps used for washing hands are cosmetics and are exempt. A can of spray paint is a consumer product and is exempt when used in small quantities intermittently. The length of exposure, as well as the amount, is really the determining factor -- a can of paint only lasts a short time. Glue or adhesives, when used intermittently in small quantities, are exempt. Again, the length of exposure, as well as the amount,
is the determining factor in whether or not a consumer product is exempt.

We recognize, however, that not all mines are likely to use a wide range of chemicals. Although we cannot exempt the aggregates industry from hazard communication, as we said, there are steps we can take to minimize the burden of the rule. For example, we intend to make extensive Compliance Assistance Visits and conduct extensive outreach.

We also will be publishing a compliance guide to help operators and miners understand the application of the HazCom final rule. We are developing a variety of compliance aids, such as model HazCom programs, a training video for mine operators about determining chemical hazards, and a training video for miners about chemical hazards and reading an MSDS.

A draft of the MSHA compliance guide has been on the MSHA web site for months. If you refer to the compliance guide, many of these issues are explained. If you have any questions in these areas, send them by e-mail to comments@MSHA.gov or to the Office of Standards at the address listed in the hearing notice. We will use these questions to clarify your responsibilities and include additional
or better examples in the compliance guide.

In the same vein, mine operators may obtain help from organizations that have developed generic guides to meet OSHA's hazard communication standard because HazCom contains the same basic requirements. We will provide links on our website to some organizations which have developed a variety of generic HazCom materials.

While it will remain the responsibility of each mine operator to develop and implement a HazCom program and to have MSDSs, to the extent possible, we will help you establish a hazard communication program if requested. We have already taken other steps in revising our interim final rule to make it easier for mine operators to comply without reducing the protections offered by the rule.

We are considering the following substantive changes to the interim final rule in response to commenters' concerns. We also are considering several non-substantive changes to clarify our intent and correct errors based on commenters' perspectives and questions.

Under Hazard Determination, we may revise the reference to ACGIH, NTP, and IARC from those considered in determining if a chemical is a hazard.
and if the chemical is carcinogenic. One option we are considering in determining whether a chemical is a hazard is to refer to the 2001 editions of the ACGIH TLV booklet, IARC, and NTP. In determining whether a chemical is a carcinogen, we are considering referring only to the 2001 editions of NTP and IARC.

We had expected the use of the ACGIH, NTP, and IARC lists to reduce the burden on mine operators because mines use relatively few hazardous chemicals for which they would have to develop an MSDS and label. Commenters objected to the use of these lists stating that the organizations which compile them offer no opportunity for public comment; they impose unknown future requirements by citing the latest edition; and they violate regulations governing incorporation-by-reference. We are open to considering alternatives where the impact of the alternative would not reduce protection afforded miners by the interim final rule.

Concerning labels and MSDSs, commenters requested additional language to clarify that the designated responsible person mentioned on the labels and MSDSs can be the mine operator. Accordingly, we are considering changing the provisions to read the name, address, and telephone number of the operator or
a responsible person who can provide the information.

Concerning the availability of MSDSs, commenters asked that we increase compliance flexibility and recognize that MSDSs may be stored in a computer. In response, we are considering modifying the requirement to have an MSDS available for each hazardous chemical before using it to one, requiring the operator to have an MSDS available for each hazardous chemical which they use.

MSHA is also considering accepting a listing of the OSHA PEL on an MSDS as an alternative to a listing of the MSHA PEL. This would facilitate the use of widespread existing MSDSs and reduce costs by eliminating the need to develop additional MSDSs.

In response to comments concerning hazard communication training, we are considering changing the language from requiring the operator to train the miner whenever introducing a new hazardous chemical into the miners' work area, to requiring training when the operator introduces a new chemical hazard into the miners' work area. This change would clarify MSHA's intent that when a new chemical is introduced additional training is required only if the hazard changes. This is the intent as discussed in the preamble to the interim final rule.
Also, in response to comments, we are considering revising the definition of health hazard. The interim final rule defines health hazard to include chemicals that damage the nervous system including psychological or behavioral problems. We are considering deleting the phrase psychological or behavioral problems. We are also considering adding the criteria toxic or highly toxic to more closely conform the language to that in OSHA's Hazard Communication Standard.

The hazard communication interim final rule is an information and training standard that requires mine operators to know about the chemicals at their mines and to inform miners about—

1, the risks associated with exposure to hazardous chemicals.

2, the safety measures implemented at the mine to control exposures.

3, safe work practices.

The hazard communication interim final rule DOES NOT restrict chemical use, require controls, or set exposure limits.

We will publish our response to the written comments, including those comments received today at this hearing, in the preamble to the hazard
communication final rule. We will consider all
comments contained in the rulemaking record, from the
publication of the advanced notice of proposed
rulemaking on March 30, 1988, through the close of the
record on October 17, 2001, in the development of the
final rule.

You may submit written comments to me
during the hearing or send them to the address listed
in the hearing notice. We will also accept additional
written comments and other appropriate data on this
final rulemaking from any interested party, including
those who do not present oral statements. All
comments and data submitted to MSHA, including that
submitted to me today, will be included in the
rulemaking record. The record will remain open until
October 17, 2001, for the submission of post-hearing
comments.

Okay, we have an attendance sheet in the
back where Cindy is. Be sure and sign that. If you
want to speak, we have a speaker's sheet to be signed.
We are scheduled to go until five o'clock. Unless we
get a big inrush here, I don't think we'll be here
that long, but why don't would get started.

Our first presenter is Mark Klinepeter
with Florida Rock Industries.
MR. KLINEPETER: Good morning. My name is Mark Klinepeter and I'm a certified mine safety professional and safety director for the Aggregates Group of Florida Rock Industries, Incorporated, which is based in Jacksonville, Florida. Accompanying me today is Ron Millican who is our safety and training coordinator out of our Georgia Aggregates Division.

I too would also like to express my condolences to the families, friends and coworkers of the hard working miners who recently lost their lives in the mine explosion here in Alabama.

Yesterday, I read with interest the testimonies that were provided at the public hearing in Beckley, West Virginia. I was amazed and saddened to read of the purported illnesses and injuries that in many cases were caused by by prolonged contact with hazardous chemicals.

I found myself wondering where the value of safety existed in these organizations and in the regulatory agencies who choose a path of promulgating bureaucratic overkill instead of using the many enforcement tools currently at their disposal. Values of safety need to become the values of the organization and the work force. The safety professional needs to recognize that their job is to
develop commitment from upper management, middle
managers, the staff and individual workers. Commitment is useless unless it turns into action.

Florida Rock has had a hazard communication program in place for their Aggregates operation since 1989. Each mining location maintains an MSDS book readily available to all of its employees. An alphabetical list of all hazardous substances is kept in front of the MSDS book showing the common name, the chemical name, the chemical abstract system number and percentage of concentration, along with quantity regularly on hand and the general location of the substance in the mine. Miners do need and have the right to know -- have the right to be made aware of the presence of chemicals at the mine regardless of the frequency of use. In addition, training is provided to the miners on right-to-know MSDS sheets and hazardous substances via new-miner task and annual fresher training. Location managers are responsible for making sure that containers of hazardous substances are properly labeled.

Finally, our safety staff is tasked to perform an annual audit at each location to ensure compliance with company policy. Let me repeat,
company policy, which is augmented, supplemented and
complemented by existing MSHA regulations and right-
to-know laws which are on the books in 43 states.

Can we make it work without government
adding another layer of bureaucratic enforcement?

Just yesterday, I received a supervisor's report on an
incident that occurred earlier in the morning. A
young employee of a distribution terminal in Florida
had splashed a mixture of phosphoric acid and water
into his face and eyes when he attempted to clean a
haul truck with a pressure washer in preparation for
painting. The haul truck was recently transferred to
this location from another site, so this was not a
common practice utilized by the location or condoned
by our safety trainer. Fortunately the employee
escaped injury due to the quick thinking of his fellow
employees, who immediately pulled the MSDS and
followed the recommended first aid procedures.

In the report, the supervisor noted that
the employee was wearing safety glasses but had not
thought of using a face shield together with those
glasses. Guess what the supervisor recommended to
prevent reoccurrence? I'll give you a hint. The
standard -- or the enforceable standard can be found
in CFR 30, Part 56.
MSHA's interim final rule is characterized by the agency as both a safety standard and a health standard promulgated under the authority of Section 101 of the Mine Act. But MSHA has clearly failed to demonstrate the need for a HazCom standard by purposeful omission of relevant statistical trends which actually show decreasing injuries and illnesses due to chemical hazards in mining. MSHA has sidestepped the benefit question.

MSHA has also failed to distinguish those illnesses and injuries which would have been prevented if existing MSHA regulations such as Part 46 training, labeling or other use of appropriate personal protective equipment had not been violated. Both of the MSHA examples used in the interim final rule do, in fact, relate to violations of existing standards.

In addition, it appears that MSHA is unable to provide accurate data on how many mines already have an effective HazCom program in place, not how many injuries or illnesses have actually been prevented by such programs alone. In 1986 MSHA said a HazCom rule was unnecessary because it's existing regulations offered sufficient protection to miners on chemical safety and health. Those same regulations remain in force in effect today.
So you ask where's the burden? By your opening comments you are in fact setting a precedent for inconsistent enforcement. For example, you state that a can of spray paint is a consumer product and is exempt when used in small quantities intermittently. What will small quantities intermittently mean to an inspector from the Northeast District versus an inspector from the Southeast District? Can we expect that the agency will allocate the training resources necessary for its inspectors to ensure consistent interpretations unlike the orientation that was afforded for Part 46 CAB inspections? The catch phrase is small quantities, length of exposure and used intermittently is by design fraught with ambiguity.

Safety is the control of recognized hazards to obtain acceptable levels of risk. It requires that we recognize hazards, understand their risk, control them and enforce safety solutions. Safety is not only a moral obligation, but is part of the operations commitment to make a profit. Accidents are expensive. The preamble to the interim final rule has failed to quantify a controllable action that justifies the risk.

Why do we need another standard to tell us
what to do when there are laws that already do that? MSHA can and should target its energies towards quantifying the real hazards which cause the greatest amount of risk. You know what they are, but you choose to push your inspectors more and more towards the office file cabinet instead of having them observe unsafe work practices which directly leads to accidents and illnesses. Make no mistake, this is an administrative standard that actually has very little to do with whether or not people are working safely. It is redundant, unnecessary, a classic example of command and control management. The surprise is that the agency still believes that situational leadership is something that you do to people instead of something that you do with people.

Total quality management is about changing thought processes. Mr. Zurinsky (ph) has given industry a much needed perspective of measureable and specific targets. Do we now really need a standard where a deviation in record keeping would be a violation of the law? Is that a measureable result to achieve the Assistant Secretary's fatality and accident reduction targets? If you believe that safety is first, I submit that you're wrong. People are first. Safety is a value. If you walk by someone
who is not wearing eye protection and handling a hazardous substance, you have just witnessed an incident. Wouldn't it be a shame if you missed the opportunity to correct the unsafe act? Put your resources where they will really have an impact.

You claim that the hazard communication interim final rule is an information and training standard. I believe that OSHA's enforcement history demonstrates otherwise. It is an overwhelming administrative burden and an easy target for paperwork violations. Why should we believe that history won't repeat itself on the MSHA side of the fence? It seems like this rule is just putting forth an opportunity to write dual citations perhaps for the same performance violation.

In closing, I would like to remind the audience that the Assistant Secretary of Labor for Mine Safety and Health said in his remarks to the annual meeting of the Kentucky Mining Institute on August 24th of this year, I quote, "On the health side, the side we often forget, we set specific performance goals as well.

Our objectives are" -- and I'm paraphrasing -- number 1, to reduce the percentage of respirable dust samples. Number 2, to reduce the
percentage of silica samples and number 3, to reduce
the percentage of noise exposures, all at a five
percent reduction per year. It is curious that he
does not set a target for reducing chemical exposures;
however, we believe that these are targets that we can
all embrace and measures for a quantifiable return on
investment.

Thank you.

MODERATOR NICHOLS: Thank you. Under your
current training program, do miners have the right to
copies of the MSDS sheets?

MR. KLINEPETER: Yes, they do. We combine
a system both using -- and more and more as technology
allows us to, a system of using computers to store our
MSDS information, along with bound notebooks that are
available and readily accessable to all of our
employees.

MODERATOR NICHOLS: Anybody else got any
questions?

MR. REYNOLDS: I have one question.

MODERATOR NICHOLS: Go ahead.

MR. REYNOLDS: Mark, would your program
comply with what we have in the standard here? I mean
is there anything you have to do to comply with the
standard? It sounds like you already do everything.
MR. KLINEPETER: I do not believe that at the current time our program is probably 100 percent compliant. I believe that's going to take additional research and time on my part, and Ron's part, to determine if we are in fact completely compliant. I'd like to point out -- and I think it's very relevant to point out again what an inspector in one district says from another inspector in another district can be two different interpretations. We saw that to be true under the CAB inspection program for Part 46. So if it -- and we cover three different districts, Florida Rock Industries. So we may well see an inspector who believes that we have an element missing in that program, whereas an inspector in another district says its very good.

MODERATOR NICHOLS: Now how did you determine this is a health and safety standard rather than an information standard?

MR. KLINEPETER: How did I determine?

MODERATOR NICHOLS: Yeah. I think you said you...

MR. KLINEPETER: I believe I stated that MSHA claims that it's a health and safety standard.

MODERATOR NICHOLS: I believe we claim it's an information standard.
MR. KLINEPETER: We believe that it's an administrative standard.

MODERATOR NICHOLS: Anybody else?

MR. FEEHAN: I have a question. I realize, Mark -- thank you, number one, for your comments.

MR. KLINEPETER: Thank you.

MR. FEEHAN: You had an accident yesterday. You mentioned an employee who was -- could you tell us a little bit more about what was happening? What was he using for the solution? He was using some solvent to try to dissolve--

MR. KLINEPETER: Yes, he was using a mixture of -- let me refer back to my notes here very quickly. A mixture of phosphoric acid and water utilizing a pressure washer to clean a haul truck. This was a 20-year-old employee.

MR. FEEHAN: He had been there 20 years?

MR. KLINEPETER: Twenty years old. Twenty years of age. He had been with the company approximate two and a half years, two to two and a half years. This is not a standard practice that we recommend. Certainly using a pressure washer, as you can imagine, and mixing that type of solution is absolutely a recipe for disaster. What happened was,
they had transferred a haul-truck -- which normally
they have not used a haul truck at that location
previously. This is a distribution terminal versus an
actual mine site. So they brought an old haul-truck
in from another location and they had the idea they
were going to clean the truck up and paint it.

MR. FEEHAN: Who was that, the person --
just the employee took it on himself to clean it up
and paint it?

MR. KLINEPETER: I can't -- I can't
factually answer that without -- without additional
investigation. I just received this report yesterday
afternoon. But I would assume, to some degree, he was
under the direction of his supervisor to clean that
haul-truck and his supervisor, in all likelihood, was
probably not aware of the methodology that he set
about to clean it.

MR. FEEHAN: But you have phosphoric acid
at the property to use as a solvent on this?

MR. KLINEPETER: At that location, I would
-- and again, I'm assuming, so I'm not speaking in
factual tones.

MR. FEEHAN: No, I'm -- I'm sorry to
really kind of press you on it, because I realize --

MR. KLINEPETER: I appreciate that. I
would assume that they probably had recently purchased it, if not that day, because running a haul-truck at that location is not a standard practice.

MR. FEEHAN: I guess what I'm trying to figure out is why wasn't the employee trained in the hazards of the thing if your program is covering chemical hazards? You know, if you feel that you have a program that's mainly in compliance?

MR. KLINEPETER: I think the employee was, in fact, trained in the hazards of using chemicals. If he was trained specifically in the hazard of that given chemical, I do not know again without investigating. But we have a regular schedule of training via new-miner tasks and annual fresher training where we regularly teach our employees methods of interpreting MSDS sheets. We also task our supervisors to train their employees on the chemicals that they use on their site. That they had the wherewithal to know where to go to consult when the incident occurred and they knew how to read the MSDS and they knew the proper actions to take to avoid an incident becoming a serious injury.

MR. FEEHAN: Let me ask you -- you and Ron. There's a fairly -- there's a very common maintenance task of changing oil in equipment. There
are lots of haul-trucks and front end loaders and equipment that needs to have its oil changed. Your mechanics do that work or your lub people do that work?

MR. KLINEPETER: Both.

MR. FEEHAN: Both. Now the MSDSs for used oil indicate that there are studies that have shown carcinogenic effects from used oil in the -- there have been animal studies showing a carcinogenic effect, that it can cause cancer, or there's a potential to cause cancer. Is that something that you train your lub people on, or your mechanics on, the people who do that oil change?

MR. KLINEPETER: In terms of handling the specific chemical, yes, we train our people on how to handle chemicals or lubricants in a safe -- in a safe manner.

MR. FEEHAN: Are they warned about the -- that's there's a potential?

MR. KLINEPETER: That there's a -- I wouldn't go--

MR. FEEHAN: A carcinogenic potential.

MR. KLINEPETER: I wouldn't go as far as to say they are -- they are directly warned that there's a carcinogenic potential. They are warned
that there's always a risk associated with handling anything that contains a hazardous substance.

MR. MILLICAN: If that risk is contained in the MSDS -- if it's identified in the MSDS, yes, they've been trained on that. If it isn't identified and they don't have some outside source of information in regard to that, then they would not be trained on that particular issue.

MR. FEEHAN: How do they go about -- how are your MSDSs reviewed? Has someone actually reviewed the MSDS for oil -- for motor oil?

MR. KLINEPETER: Yes. We annually audit our MSDS files at each of our locations. That is one of the functions that Ron is tasked with, being a direct safety contact for our Georgia aggregates operations. We also have staff in Florida and Virginia and Maryland where we also operate. So it is an annual -- it is an annual target. It's part of our annual business plan and our annual operations to audit the materials that are on site and to ensure that we have a current MSDS sheet on file.

MR. MILLICAN: All supervisors are also responsible for any new chemical that comes on the site for taking the MSDS and covering it with anyone who'll be using that particular chemical.
MODERATOR NICHOLS: Would you know how many chemicals you've identified at one of your typical operations that may be hazardous to employees and require training?

MR. MILLICAN: Under our particular plan now, I would say there are probably -- we have -- and I'm not sure they would be identified as hazardous under your standard today. But using the OSHA standard, we probably have in excess of 200 different chemicals that are there in one amount or another. We didn't try to determine whether it was a small amount or a large amount. We just -- if it was a chemical and we thought that it could be hazardous to an employee -- if it was in a small spray can, then we put it in the MSDS book, put it on the list in the front and the index for employees to be able to reference if a need arose, and as well as cover that with the employees that were using that particular chemical.

MR. KLINEPETER: Now our supervisors do understand through our training efforts that if we bring a new substance onto the mine site, we don't have an MSDS available for that substance, then we need to -- we need to obtain one. Now I would tell you by and large we are very compliant with that
training. Are we 100 percent on target in each and every instance, probably not.

MODERATOR NICHOLS: Do you have any idea that the fact that you're trying to train on everything that comes on mine property versus those that may be a true hazard to the employee in any way confuses your training?

MR. KLINEPETER: No, I don't believe so. I think we generally take the approach, number one, that our employees have a right to know what substances they are using and if they inherently have any hazardous qualities. I think it's part of the safety culture that we try to maintain within our company. And even if it is a can of WD40, for example, it has a warning label on the back, we want to ensure that we at least have the availability of all information possible. And again, if we -- if we got ourselves twisted up in trying to determine intermittent uses or small quantities, then I think in a lot of cases we may not be doing a service to our employees in terms of letting them know exactly what they're using.

MODERATOR NICHOLS: It sounds like this fellow yesterday didn't get it.

MR. KLINEPETER: Well he may not have
gotten it, but in his exuberance he wanted to complete
a job that perhaps his supervisor asked him to do. He
didn't think his steps through. He didn't stop and
say what's the worst that could happen.

MODERATOR NICHOLS: If I'm a miner, I'd
rather be trained on a serious chemical and really
focused on that rather than a can of WD40. You know,
if I'm trying to process 200 chemicals versus those --
that number that's really hazardous. I think that's
better quality training.

MR. KLINEPETER: Well if I'm a miner, I'd
rather be trained on the safe use of that product. I
had rather know what personal protection equipment I
should use when I'm using that product.

MR. MILLCAN: You also assume that
training and information will change the action of
people. That's not necessarily true. Look at a
cigarette pack and then look at the number of people
in this room who smoke cigarettes. So information is
not necessarily going to change the action of people.
That's our responsibility through supervision.

MR. STONE: You had indicated in your
comments that you felt the -- that the interim file
rule was unnecessary, that it was overkill and
duplicative. I wonder if you could expand a little
bit about why you think -- what's in place that makes this rule unnecessary.

MR. KLINEPETER: What is in place is a historical perspective that has been provided by OSHA in terms of the citations that are written year in and year out in their enforcement activities. I don't remember the exact facts and figures, but regularly record keeping standards related to their HazCom standard is amongst their top 10 written violations year after year after year. Now, I may sound somewhat cynical, but I have a hard time believing that MSHA's approach is going to be significantly different than what history has shown us through OSHA.

MODERATOR NICHOLS: Do you have any idea how many chemically related injuries Florida Rock Company would experience in a year?

MR. KLINEPETER: Yes, I do as a matter of fact. I took the opportunity to print out -- we do keep track of all of our accident incident data, and I took the opportunity just for -- just to pick one. All of the accident injuries that we've recorded during our fiscal 1998 business year, which our fiscal year coincides with the federal government, October 1. In fiscal year 1998, we had a total of 309 reportable accident incidents and near misses, and out of that
total we had three that could be directly related to exposure to hazardous substances.

One was contact with dust. As you can imagine, it resulted in an eye obstruction. A second was contact with acid when a battery box exploded. And the third was contact with Liquid Wrench while performing maintenance in the plant. One employee accidently sprayed another employee in the face with Liquid Wrench.

MR. THAXTON: I would like to ask you a question, Mark, to follow up on some comments that you made in relation to your training that you provide to your employees. I'm a little confused by the way you said it.

MR. KLINEPETER: Okay.

MR. THAXTON: You have identified approximately 200 chemicals that are possibly present on your properties. Do you actually train each of your miners on each of the chemicals or are you only training generically in groups or the hazards associated with chemicals since you're only covering it, it seems like, in your 48, part 46 annual training or new miner training or experienced miner training?

MR. KLINEPETER: Would you like to answer that?
MR. MILLICAN: Sure.

Each supervisor is responsible for covering the MSDSs on the chemicals that are used in his department. So if he's not using those, or his men are not using those, then they're not trained on each of the 200, only the ones that are in use. What you have to understand is, a number of the things that are on there, we've got on there, such as welding rods and different types of metals, in that they are changed with heat chemically and we've got them on there because of the metals and so forth that are in those particular units. So it's not just chemicals like something you would pour out of a bottle. We've tried to cover everything that we felt like could be hazardous to the employee. If a guy is welding or cutting, he needs to understand what metals that are there and what hazards that they present and be able to protect himself from those. So basically it's the supervisor's job.

Once a year, I cover this is in an annual refresher. I address HazCom in an annual refresher from the standpoint of a general what is our policy, what each supervisor is supposed to be doing. Each supervisor then covers this with his department and he on his safety monthly -- his weekly safety meetings
then identifies the particular MSDSs that he's covered in that particular safety meeting. So we cover those each year.

MR. THAXTON: So you actually are doing like ongoing training?

MR. MILLICAN: Yes. Now obviously the majority of the chemicals that are on our site are on there year after year after year, but you have an influx of new people, so you have to continuously cover these things so that the new people will be oriented toward safety also.

MR. THAXTON: Since you bring up the new people, do your supervisors then cover the chemicals that these people would be associated with before they actually start to work?

MR. MILLICAN: In new-miner training they are -- that subject is covered, yes.

MR. KLINEPETER: Our supervisors are the primary delivery mechanism for new-miner training.

MR. THAXTON: And you don't have any problem with your supervisors understanding enough to present the training that would be necessary to cover the hazards associated with the chemicals that are in use?

MR. KLINEPETER: No, I do not, because as
Ron mentioned, they are on an annual basis. We reaffirm and teach on how to interpret an MSDS, and the supervisors are part of those classes, just as the general work force are as well.

MR. MILLICAN: We conduct train-the-trainer programs within our company to train the supervisors on how to do the training and what subjects that we feel like are appropriate for them to train on.

MR. THAXTON: So you actually don't have to bring outside people in? You don't have to wait for somebody to come in on the property to present the training? You're actually -- your supervisors are prepared -- if a new person's assigned to them today, they could go over the chemicals that they would be exposed to?

MR. KLINEPETER: That is correct. Again, this is all -- this is all internal company policy. It's policy that was formulated by the foresight that number one, we had the obligation to protect our people, but secondly, is to maintain the company's profitability. Florida Rock is a company that's a self-insured company, so accidents -- when accidents occur, you know, we all know accidents cost a lot of money. They cost a lot of money in terms of medical
bills and they cost a lot of money in terms of down
time. They cost a lot of money in terms of potential
turnover, putting someone else in that place and then
ramping them up to a high level of productivity. So
it benefits the company for us to do this type of
training. It benefits the company to eliminate all
accidents and incidents related to chemical exposures
because it takes money off the bottom line if we
don't.

MR. THAXTON: Thank you.

MR. REYNOLDS: I have a couple of
questions. I'm curious, in your program, how do you
label hazardous chemicals? Do you have a system for
labeling chemicals that you've identified as a hazard
in the workplace?

MR. MILLICAN: We simply label whatever --
if we take it from whatever the chemical came in and
put it in some other type of container, then we label
that container and identify what the chemical is. As
far as to labeling a particular hazard of that
chemical, that isn't being done at this particular
moment. We simply refer back to the MSDSs and the
previous training for that information.

MR. REYNOLD: Okay.

MR. MILLICAN: But we identify the
chemical, whatever the chemical is, on the container anywhere within the mine site.

MR. REYNOLDS: The other question I have is, what kind of records do you keep of all the training you do now and how long do you keep the records? Do you have any idea?

MR. MILLICAN: We keep our records for five years. We keep annual refresher training, we keep safety meeting training because safety meetings, as you well know, now can be used as a part of Part 46. So we're keeping them all for five years at this moment.

MR. REYNOLDS: And for -- how long do you maintain your MSDSs? Do you maintain them for 30 years?

MR. MILLICAN: We maintain at the site as long as the chemical is on site. When a chemical is no longer used, then that is mailed to our corporate safety department where it's kept for 30 years.

MR. REYNOLDS: How do you treat substances that you might have miners encounter during the course of mining, such as silica? Are you treating them as a -- for example, do you have an MSDS for that?

MR. MILLICAN: Yes.

MR. KLINEPETER: Yes, we do.
MR. REYNOLDS: Are there any unusual things that you encounter in the course of mining that are hazardous that are -- that you might think would be subject to the standard?

MR. KLINEPETER: In terms of silica exposure?

MR. REYNOLDS: Or something -- other -- other things you might encounter during the mining process from the material that you're mining that you may think of that might be covered by the standard.

MR. MILLLICAN: Basically in -- and Georgia is the area where I do most of our work. Basically in that area you're using diesel fuel, gasoline, various types of oils and solvents and that's basically all that you have, in addition to welding rods and those types of things. And, of course, you've got battery acid. There are a number of things when you begin to look at MSDSs that have some type of hazard. Now it may be as simple as it causes redness to the eyes for 15 minutes. We don't want employees encumbered by that, so we cover that in our training process also with MSDS. But there's not any unusual particular hazards. As I was telling Bob this morning, there's not anything unusual this morning in the things that we use. It's -- and we don't create anything other
than by the crushing action we do create silica dust. But we do -- we do constant monitoring -- I do constant monitoring of quantities of silica dust at all the locations. Most of our locations today, and equipment, is completely covered. It has air climate control in the control booths as well as at all of the equipment out there. So very few people -- when I first came into the mining business in '76, you had a lot of people that were exposed because a lot of the equipment didn't have climate control systems. You had control booths that didn't have climate control systems, and you had a lot of people that worked on the ground.

Even our maintenance is being done at times when the plant is not running to avoid high exposures of silica dust. So we've changed -- once we understood the danger of silica dust, we've changed the way we do things in order to protect our miners better.

MR. REYOLDS: I have a theoretical question. If we didn't have to worry about Mark's concern with getting citations for somebody interpreting the standard in different ways, just from your role as Safety Director for Florida Rock, is there anything in this standard or the interim final
rule that you would be required to do that you're not
already doing? I think you've exceeded the standard
in everything we've talked about.

MR. MILLICAN: The only thing I can think
of is the labeling of the particular hazard out there.
The standard is more strict in regard to that. But
that's the only thing that I can see.

MR. KLINEPETER: Well as I stated earlier,
I think the greatest discomfort for me is interpreting
some of the ambiguous phrases such as small quantities
used intermittently and so on. Again, that's a highly
subjective terminology. What one inspector sees very
possibly can be extremely different from what another
inspector interprets.

MR. REYNOLDS: Just to focus on what Ron
said as to the labeling, if I understand what you're
doing now, you have your MSDS and you put a label on
the substance all the way down to smaller containers?

MR. MILLICAN: Yes. Each container is
labeled, but it's simply the name of the chemical --
the common name of the chemical is what is on the
label and there's nothing that identifies it as a fire
hazard or toxic or anything like that. That training
is done in the orientation when the chemical is
brought on site with the people that'll be using it.
MR. KLINEPETER: And I would scarcely -- and I would like to add, I would scarcely say that Florida Rock is highly unique in the regard that we have approached our own internal hazard communications. I think you could go across the board of all the major producers in this industry and probably find an extremely high degree of internal compliance, if you will, with protecting workers from chemical exposures. And I made the comment in a statement that we haven't really quantified. I don't think the agency through their -- through the comments provided in the preamble have really gone out there and quantified how many folks really do have a problem and how many people really have a hazard -- or elements of an effective hazard communications program already in place.

MR. REYNOLDS: Ron, if you had to guess, how difficult would it -- if I understood, you said there's probably six things that you would have to label. How difficult would that be to expand the label that you're now using?

MR. MILLICAN: The difficulty would not be in the -- in labeling things, the difficulty would be in maintaining the labeling in that atmosphere out there. Because if you've got -- if you've got a
container that has oil in it, you're going to get oil on the outside and things that stick on are not going to stay on. So it would be easy for an inspector coming around who found something -- where a label had fallen off -- to write that because it wasn't labeled properly. And so basically he's dealing with a paperwork type of thing and not a real hazard. The hazard has been covered in an orientation with the MSDS and with the chemical at the mine. The particular agent had been labeled at one time but it had fallen off because of oil and so forth or whatever, and being out in the rain and the wind and everything else out there, you're going to have those fall off. So then you're going to have inspectors who see that as an opportunity to write a citation.

MR. FEEHAN: Just a comment on that. OSHA has that requirement at construction sites, which are also very similar kinds of environments. They are open to the weather, they are subjected to oils. I don't think their citations for labeling are what is really causing problems in the construction industry.

MR. MILLICAN: That may be true, and maybe I'm a bit paranoid, but I have seen in -- with Part 46 and with the CAVs as the different inspectors came around and was enforcing that, almost to a man, each
one had a different idea of how that was to be done. So it tells us how the training is being done by MSHA for their inspectors, to allow them to come out with such a diversity of understanding, and we can see this same horror story coming with HazCom.

MR. KLINEPETER: Can I ask you a question?

MR. REYNOLDS: Sure.

MR. KLINEPETER: Okay. Just to turn it around. How would this standard -- or what process would this standard have to be revised once, you know, some of the initiatives concerning global harmonization and international symbols in terms of labeling will obviously -- you know, there's going to have to be something that changes, at least perhaps in the wording of the interim final standard once that's adopted, you know, in the worldwide market. From your perspective, how is that going -- how is that going to change the regulation as it's now written?

MR. REYNOLDS: I'll defer to Richard on that one.

MR. FEEHAN: I don't know, but talking about, you know, global harmonization is -- I don't know when that'll be coming out. I mean we're having enough trouble getting HazCom out. I don't when -- I'll be anxious to hear your testimony on the global
harmonization standard when it comes along, Mark.

(Laughter.)

MR. KLINEPETER: I thought it was a
singing group. I don't know.

(Laughter.)

MR. FEEHAN: Are you done? You had some
more, Larry?

MR. REYNOLDS: I did have one more
question. Could you break down how much you spend on
your HazCom program? Would you have any idea of what
it costs you to set this all up and run it for a year?

MR. KLINEPETER: No. I wouldn't even
venture to put a dollar figure on it at this time
without really stepping back and doing some
quantifiable analysis. Obviously most of the cost --
and I know there's a lot of discomfort amongst the
industry and what the preamble has stated in terms of
an annual cost. But I think probably we're missing
the real cost that's associated with the standard
perhaps for those producers who have to put a lot of
money up front to get a program under way and to
initially obtain MSDSs and do the type of research
that's necessary to put a -- to put inventory lists
together and obtain the MSDSs and perhaps put extra
efforts in terms of the training that they deploy to
their miners. I mean that's where the real cost is going to come from. I think for us in terms of a routine annual expense, yeah, there's annual expenses associated with that, and I would venture to say that it far exceeds the number that's written into the preamble. I mean, Ron's time, for example, in going out there and doing training, going out and auditing the files once a year, the technology that's necessary to put MSDSs on computers, for example, I mean $267 or 87 -- I don't remember exactly what the figure is, but that's not going to go very far in terms of annual maintenance costs that are associated with maintaining this program. Real dollar figures, I would have to work on that. But I feel pretty confident that it would far exceed the number that's stated in the preamble.

MR. REYNOLDS: Could you say how far?

MR. KLINEPETER: I'd say substantially.

MR. REYNOLDS: Substantially. Could you put a number on that?

MR. KLINEPETER: And I'll defer to Ron on putting a number on that.

MR. MILLICAN: When you consider the amount of hours that are spent with this particular subject, with supervisors, even with office personnel,
because we have -- in addition to the MSDS book and
the list in front of that, we have this on all of the
computers. As the MSDS sheets come in, they have to
re-enter that into the computer. If something goes
out, that has to come off. The supervisor is covered
in new-miner training. We cover it in annual
refresher training and it's covered individually in
the department meetings. When you take all the time
of all of the people that are involved -- and that
adds up -- you're talking about hundreds maybe of
thousands of dollars in a year's time. So there's a
lot of money and it's hard to quantify it unless you
do a study to -- specifically to figure out how much
time is associated with that. If you take a
department with eight people and you spend 30 minutes
talking about MSDS, you've got a supervisor and eight
people, that's nine people times X number of dollars
per hour for that period of time, and you do this
repetitively over the year, it gets expensive.

MR. KLINEPETER: My mail is full, day in
and day out, of software products that are available
out there in the market, everything from -- everything
conceivable in terms of OSHA and MSHA training, along
with what seems to be recently a lot of software
programs of MSDS. And if you look at that in terms of
maybe a small producer trying to ramp themselves up to
compliance, the easiest thing for me to do would be to
go out there and purchase one of this software
programs and just fill in the blanks. Well I can tell
you that the cost of that software program -- you
know, if you're going to get yourself a program that
does everything you need, it's going to cost you well
in excess of $267.

MR. FEEHAN: I have --

MR. STONE: One question. How many miners
work in your...

MR. KLINEPETER: Between 900 and 1,000.

MR. FEEHAN: That's total employment for
Florida Rock?

MR. KLINEPETER: No, that's total
employment for the Aggregates group of Florida Rock
Industries. We're currently spread out over five
states, Florida, Georgia, Tennessee, Virginia and
Maryland.

MR. FEEHAN: How many of those states have
state right-to-know laws?

MR. KLINEPETER: Now I'm new to Tennessee.
We just acquired an operation in the Chattanooga area
here within the last couple of weeks, so I'm not sure
about the state of Tennessee at this point. But I do
believe that the remaining four states that we operate
in do have right-to-know laws.

MR. FEEHAN: Do you know how many of those
apply to mining? My understanding is that there's
only six states that actually have --

MR. KLINEPETER: Oh, really.

MR. FEEHAN: -- state right-to-know laws
that apply to mining, otherwise it's always in general
industry and specifically excludes mining. Do you
know about Florida? Does it exclude mining in state
right-to-know?

MR. KLINEPETER: No, it does not.

MR. FEEHAN: It includes mining?

MR. KLINEPETER: It includes mining.

MR. FEEHAN: How about Georgia?

MR. MILLICAN: No, Georgia does not.

Georgia does not have a HazCom rule. But we have had
Georgia -- what we decided years ago when we had to --
when Florida adopted their HazCom rule, we decided --
and we had to do it in Florida. We decided that we
would be consistent across the board. If we were
going to protect the employees in Florida, we needed
to protect them in Georgia. So we established the
same type of policy for each location, each state.

MR. FEEHAN: But does the state require --
the state does not require it in Georgia?

MR. MILLCAN: It does not require it.

MR. FEEHAN: Okay, thank you.

MODERATOR NICHOLS: I sense that a lot of your concern is consistent MSHA enforcement. If those fears could be allayed in any way you would be a lot more comfortable with this rule I think, right?

MR. KLINEPETER: No, I wouldn't say that's true. I'd say that we have a pretty good program in place that is self-administered internally and that we really don't need, you know, the spector of additional government enforcement, you know, to make sure that we're doing the right things. We can handle it just fine, thank you.

(Laughter.)

MODERATOR NICHOLS: That translates into we've got something better than you're offering and we don't want to open ourself up for tickets.

MR. KLINEPETER: Well it's -- from our perspective it's better, it's easier, it's more feasible for us to monitor and maintain our own internal program. I believe we set a high standard for ourselves. I believe our accident and incident history of Florida Rock Industries as a whole will bear that out. We believe that we're the best -- that
we are the best individuals internally to protect our
miners. We know -- you know, we know our job sites,
we know our people, we know how to approach them. A
lot of operations, you know, as an aside and I'm --
and I'm extremely proud to say, I came into the
Aggregates group as safety director five years ago and
I grew up in Florida Rock Industries through the
finance department, which, you know, as you imagine is
a little bit of a -- a little bit of a left-hand turn.
But one of the things I'm very proud -- proud to say
is, I walked into an extremely well established
program and hopefully we have maintained and enhanced
that.

We're probably one of the few major
producers around that still institutes our own annual
refresher training. Ron Millican goes out and does
training himself four times a year. Our policy is
that we do annual refresher training quarterly in two-
hour segments because we want to have a regular
contact with our people. We don't believe that doing
an annual refresher class eight hours once a year is
really going to achieve the objectives that we set out
for maximum safety performance. So we're very much in
touch with our people. I even go out and do annual
refreshers because I sincerely enjoy doing it. I
enjoy making contact with the hourly work force. So visibility is something and accessibility is something that we really, really emphasize through our safety programs and we don't think the government can tell us how to do it any better.

MR. MILLICAN: To add to Mark's comments, we're in compliance, we're over and beyond compliance at this particular moment. We protect our employees, so what do we need it for?

MR. STONE: Well if I could respond, it sounds like you have a laudable program, an excellent program. In fact, this rule may be unnecessary for you, but I wonder whether all the other operations, particularly many of the smaller operations have the same experience and commitment that you have had. Some of these provisions may well be appropriate for operations that have not engaged in the HazCom training that you have done.

MR. MILLICAN: When you separate your training requirements for different needs in the mining industry, 4846, maybe you should consider separating the HazCom so that the people that need this training get this training -- people who have shown that they need the training by the number of incidents get this type of training. Maybe you need
to look at it from that -- from that perspective.

MR. STONE: Well I think the hope is that for an operation such as yours, if you are in full compliance or virtual compliance with the interim final or what becomes the final but is different, that your expenses would be negligible in relation to this additional rule for you. But that wouldn't necessarily be the case for other operations which would probably incur more substantial cost and would also provide much greater benefit to the miners.

MR. MILLCAN: I think that's an accurate statement as long as you make sure that when you send inspectors out that they're well trained and that they all interpret the standard the same way.

MR. STONE: Okay, but that gets back to Marvin's point.

MR. KLINEPETER: Well, I would like to suggest that you talk about your intention to put together extensive outreach efforts to assist essentially the small operator to become compliant with the standard. Why not extend those outreach efforts to insist -- to assist the small operator to become compliant with the current standards that you already have on the books? You made that attempt under Part 46, why not make that attempt under the
applicable Part 56 standards instead of relying on a whole new set of standards and a whole new game plan in terms of outreach efforts? I mean go with the program that you currently have in place.

MR. FEEHAN: Well I can answer that to some extent anyway, Mark, and that is because the program -- we believe that the program we currently have and the regulations we currently have in place have voids in them. They have gaps in them. You know, for example, access to information that small operators, other operators, less -- you know, less feeling about their employees perhaps would not be willing to do. There may actually be intimidation or, you know, indifference.

MR. KLINEPETER: As I mentioned early in my comments, when I read the testimonies from Beckley and I saw case after case of stories that they related of miners and close friends who had contracted terminal illnesses and injuries as a result of these chemical exposures, the thought that came to my mind is somebody ought to be -- somebody being a federal agency, ought to be reminding those operators and those supervisors exactly what their responsibilities are under the Mine Act and what their liabilities are to adhere to the rules and regulations under the Mine
Act. In short order, help those operators build a safety culture.

MR. REYNOLDS: Mark, I just have one more question. During -- you mentioned secretary -- Assistant Secretary Zurinsky's (ph) challenge to the industry to reduce various things by five percent. What if he did challenge you to reduce your accidents and injuries associated with chemical hazards by five percent? What would you -- what part of your program would you look to first to improve in order to do that?

MR. KLINEPETER: What part of the program would I look to first?

MR. REYNOLDS: Yes.

MR. KLINEPETER: Well, as I stated earlier, we had -- we had three exposures out of 309 accidents and illnesses. What I would address first -- if I had to, what I would address first would be the miners' work habits. How they're handling the materials and are they handling them in the safest possible manner. As accident records will indicate, I think a large majority of those injuries could have been avoided if they had used proper protective equipment -- personal protective equipment.

MR. REYNOLDS: So what I heard you saying
is task training?

MR. KLINEPETER: As an element of task training, yes. But safe work habits would be -- would obviously be the thing.

MODERATOR NICHOLS: Okay, thanks for your testimony.

MR. KLINEPETER: Thank you.

MODERATOR NICHOLS: Is there anyone else in the audience that wants to present testimony right now?

(No response.)

MODERATOR NICHOLS: Okay, we'll go off the record.

(Whereupon, a recess was taken at 10:29 a.m.)

MODERATOR NICHOLS: This is Marvin Nichols and we're back on the record at eleven o'clock. There's still no one available to present testimony, so we'll go off the record. We'll be here until five o'clock.

(Whereupon, a recess was taken until twelve o'clock.)

MODERATOR NICHOLS: This is Marvin Nichols. It's twelve o'clock noon and there's no one available to give testimony. We're going to break for
lunch, from twelve o'clock noon until one o'clock. At that time Bob Thaxton will be here until five o'clock to chair the hearing should someone show up to testify. Bob is the Acting Health Division Chief with Coal Mine Safety and Health.

(Whereupon, a recess was taken at 12:00 p.m., the public hearing to resume at 1:00 p.m.)
Afternoon Session

MR. THAXTON: This is Bob Thaxton. It's now one o'clock and still no additional persons have shown up to testify. So we'll break again until two o'clock.

(Whereupon, a recess was taken until 2:08 p.m.)

MR. THAXTON: We're back on the record now and Mr. Kelly Bailey is our next speaker.

Mr. Bailey.

MR. BAILEY: Good afternoon. My name is Kelly Bailey, and I'm here today to offer testimony to MSHA on its interim hazard communication rule. I'm employed by Vulcan Materials Company as its manager of occupational health for its Construction Materials Group operations. I would like to state up front that Vulcan and the aggregates industry appreciates the decision by MSHA to re-open this rulemaking record and stay the rule until next June and possibly longer.

Vulcan Materials Company, based here in Birmingham is the nation's largest producer of construction aggregates, a leader in the production of other construction materials and a major manufacturer of chemicals.

Vulcan's chemicals group is composed of
two businesses. Vulcan Chemicals manufactures chlorine, caustic soda, hydrochloric acid, potassium chemicals and chlorinated organic chemicals. Vulcan Performance Chemicals offers a unique blend of products with emphasis on pulp and paper and water management. Vulcan is a S&P 500 company that is listed and traded on the New York Stock Exchange under the symbol VMC. Vulcan has approximately 10,000 employees nationwide.

Vulcan's construction materials group operates 300 aggregate production and distribution facilities, 47 asphalt plants and 28 ready-mix concrete facilities. These operations provide a diversified line of aggregates and other construction materials and related services to all parts of the construction industry in 21 states and the District of Columbia. Last year Vulcan produced and shipped approximately 222 million tons of aggregates.

Vulcan's Construction Materials operations are second-to-none in the industry with respect to safety, health, environmental stewardship and community relations. Vulcan's programs have set the standard for the industry in all of these areas. Vulcan firmly believes that the future success in the aggregate industry will be increasingly dependent upon
strong performance as a good corporate citizen. Each of Vulcan's divisions has implemented programs designed to monitor conditions at company facilities, assure compliance with relevant laws and regulations and develop practices and procedures for the protection of the environmental resources.

Now I am a chemist, human biologist and certified industrial hygienist by education, training and experience. I began my career with Vulcan 22 years ago as the industrial hygienist for our Chemicals Division. In that position, I experienced first hand the efforts to meet the requirements of the OSHA hazard communication standard in the chemical manufacturing industry since I was charged with designing and implementing the Company's program at that time.

Communication of potential health hazards within the chemical industry, where many chemicals are used, produced as by-products and manufactured in large quantities is a necessary part of any comprehensive occupational health program. Vulcan performed this training and communication for its workforce long before there was an OSHA or an OSHA HazCom standard. Material Safety Data Sheets for our chemical products have been sent to our customers for
over 30 years. With the passage of the OSHA HazCom standard in 1983, the first MSDSs for our aggregate products were produced and made available to customers and our construction material facilities regulated by OSHA, such as ready-mix and asphalt.

OSHA's original standard was targeted at the chemical and petrochemical industries where the communication of chemical hazards to employees was indeed needed. The reason it was needed was unlike MSHA, OSHA did not have any broad-scope regulations other than the general duty clause to address the potential health hazards presence. In many ways, MSHA's existing regulations dealing with the communication of health hazards are more comprehensive than what OSHA had at that time and are most likely equally or more effective that what OSHA has now.

The OSHA HazCom standard was conceived with good intentions but it was designed and promulgated as one of the most burdensome, paper intensive and ineffective rules ever to be promulgated by the Department of Labor. The use and value to our employees of the massive number of MSDSs collected in our chemical plants and maintained in volumes and volumes of three-ring binders is nil. We have had very, very few employee requests for MSDSs in the past.
five years. As an occupational health and safety professional, I am greatly disturbed and discouraged that MSHA would even consider duplicating OSHA's massive misuse of precious safety and health resources.

My comments today are from the perspective of an aggregate producer and not all mining. In 1999, Vulcan acquired CalMat Company with approximately 90 operations in California, Arizona and New Mexico. In California, CalOSHA regulates mining under OSHA rules alongside the federal MSHA; therefore, the OSHA HazCom Standard was not only in effect at the numerous traditional OSHA-regulated facilities that we acquired, but also at our newly acquired mine sites. In an evaluation of our HazCom compliance status in California and elsewhere across the nation, and the possibility that MSHA would promulgate its proposal, Vulcan decided to outsource the compilation of MSDSs, maintenance of these files and MSDS access for employees. The contractor for this effort was selected in late 1999 and the program was initiated across all Construction Material Group facilities nationwide last year.

To implement this program, an initial inventory of all liquids, gases, pastes, burn-use
metals, insulation materials, et cetera was conducted at nearly 400 operations during the first half of last year. The inventory listings were compiled by Vulcan employees or summer co-op students going through each facility writing down the product information from labels. The lists of each facility were then sent to my department to identify product duplicates and to produce a comprehensive computerized spreadsheet that lists all the identified products used within the company by site. There were nearly 16,000 products to sort through, of which approximately one-half were found to be duplicates. It took one person one and a half months full time to compile the spreadsheet. I should add here that the inventories compiled varied in quality and completeness, since this is the first time out for many folks. So I am sure that these numbers are on the low side of reality.

Once the spreadsheet was completed, the company-wide product list was sent to our contractor for MSDS acquisition, comparison to the contractor's existing database, computerization, file maintenance and fulfilling employee MSDS requests. Inventory items that could not be reconciled by the contractor based on the list that we sent are currently being reviewed at numerous facilities and a new inventory
update is currently being obtained. Thus far, we have spent nearly $120,000 just on contractor services. These costs do not include the legwork of many, many Vulcan employees or the efforts expended in my corporate office.

There was also a program to roll out the program throughout the company to explain the system to employees. We estimate that to maintain this program, the inventory database and provide access to MSDSs for our employees, that we're going to be spending $50,000 a year to do that, just to keep the MSDSs available to employees.

So how MSDS requests have we had since we implemented this $120,000 program? 172, of which 107 occurred because several plants wanted to have MSDS paper copies of their inventory. This program is a fax on demand program. How many requests were initiated due to concern of exposure to the product being handled? Less than five. What is even more disturbing is that the MSDS inventory was probably out of date the day after the inventory was collected at the plant. This is no way to spend the safety and health dollars -- no way.

Once an employee has the MSDS, it is practically useless because it is not written as an
educational tool. It was written primarily for product liability concerns and OSHA compliance, then as a communication tool to medical and industrial hygiene professionals. It rarely accomplishes the objective of employee hazard communication. Unfortunately, in the United States, approximately 13 percent of the U.S. adult population are functionally illiterate. In the mining population, this percentage is probably higher. Even if we can get the MSDS to the miner, many will be incapable of reading it. MSHA must accept that reality and adjust to it if they truly are interested in the objective of hazard communication for miners.

In my opinion, it is absolutely unforgivable for MSHA to not examine in detail its own database and identify where specific hazard communication efforts are needed. The National Stone, Sand and Gravel Association has identified that nearly two-thirds of the chemical-related injuries dealt with lime dust in the eye, acid from batteries blowing up and fueling mishaps. Not all chemicals should be treated equally with respect to hazard communication, but they all will be in the MSHA rule.

If you examine the typical aggregate quarry, there are basically five major chemical types
that are brought onto the property in significant quantities that are handled frequently: fuels and their exhausts, lubricating oils and greases, welding fumes, degreasing solvents and acid in batteries. The other key health hazards deal with the minerals in the mine deposit and the noise created in processing. Why doesn't the agency work with the industry and labor to develop high quality, premium training programs that address these key chemical products in the aggregate mining and mandate that the training be conducted? The just passed Part 46 training rule which requires training on health aspects of tasks, is an ideal mechanism for this effort. Why are we spending time chasing sheets of paper that many cannot read and if they could, wouldn't understand them anyhow?

It is essential that MSHA look at the experience of others and the results of its own Part 46 training rule before placing the mining industry under the same monstrous rules that OSHA has had in place for over a decade. Has the chemical injury experience at mining sites in California and Tennessee been dramatically improved when compared to the rest of the mining industry? These two states have regulated mines under the OSHA HazCom regulation for years. What has OSHA's experience been in
manufacturing and in non-manufacturing industries before and after their rule was put in place?

When I look at what MSHA is proposing and then look at what we all want to accomplish -- a safer and healthier work environment for miners, I come away shaking my head at the continuous failure of the agency to examine the data that it requires mine operators to regularly submit. Priorities for improving safety and health in mind exists in MSHA's own database. Based on Vulcan's analysis of MSHA's database and with work done with MSHA and NIOSH and Vulcan, the most promising area for dramatic improvement in health and safety is controlling accidents during maintenance, construction and repair activities. Nearly 40 to 60 percent of the industry's injuries occur during these tasks. In the aggregate industry, approximately 40 percent of the fatalities occur during these same activities. If MSHA wants to promulgate a rule that will make a difference, it needs to focus on this critical area and work with industry and labor to make it happen. Paperwork rules only distract and tie the hands of folks who are trying to make a difference in reducing real hazards.

I wish to state that Vulcan has totally supported the numerous comments submitted by the
National Stone, Sand and Gravel Association and its predecessor associations over the entire rulemaking period of this standard.

Thank you for coming to Birmingham and allowing me the opportunity to testify on this very important concern. I'll gladly answer any questions that I can. And I have copies of this for you, without my ad-libbing.

MR. THAXTON: Any questions?

(No response.)

MR. THAXTON: One thing, Kelly, that I wanted to ask about and follow up on a little bit is where you said that you thought that MSHA should only address those areas where we think or our data shows that there is truly a problem, your example was the maintenance functions, construction, that type of work.

Are you looking at it only from the aggregate group in that light or were you looking at all mining?

MR. BAILEY: I really don't have the information for all mining. I believe most of those numbers are from the aggregate industry, that's the business that we're in. If we ever get in the coal business, I'm leaving Vulcan.
(Laughter.)

MR. THAXTON: I was just confused whether
you were speaking just from the aggregate's stance or
had you actually looked at the data overall and that
held true for all industries, all mining industries.
And if not, then would you be agreeable then if MSHA
was to look at something in that light, that we should
look at it from all of mining, not just one segment?

MR. BAILEY: I think that the data is
there, I think the data to look at and analyze and
there's been research on it with NIOSH -- you know,
Richard Feehan has been involved with it, with Dick
Seago, in how to look at the descriptions of the
accidents that happen and see, you know, where they
occur. They occur when the plant is shut down, you're
in repair, you're got tired people, you've got after
hours, you've got things that happen that are not
routine, that you have to fix. A lot of it occurs on
weekends, a lot of it occurs when safety and health
people in the companies and safety and health
inspectors at MSHA are not there -- you get injuries
and you get fatalities. And I would venture to say
that if you looked at it from the other mining side of
the business, that you would see similar things, but
that's speculation on my part right now. It's
certainly true in the aggregate industry.

And you know that's really where we need to spend our time. I know that the new Assistant Secretary for MSHA is very interested in reducing the injuries and fatalities in the mining sector and HazCom is not going to do that. HazCom is going to slow it down. We really need to focus on where we get the biggest bang for our bucks. And I'll tell you, I've lived HazCom for all my professional career it seems like, and it consumes people, moving paper around and you've got the wrong paper in the wrong place or -- it's the largest cause of citations with OSHA. You know OSHA facilities may get inspected once in a blue moon, they've got a lot of places to cover. Mines get inspected at least twice a year, sometimes four, sometimes more and this kind of paper standard is going to create lots of citations because there's all kinds of places -- if you're trying as hard as you can try, you're going to miss an SDS here and there, it's going to be in the wrong place, someone didn't put it in after a safety meeting, someone just bought something at K-mart -- that happens and you're going to get all kinds of contested citations and it's just going to bog down the whole system -- going to bog down the whole system.
MR. THAXTON: To follow up on that then, if the agency was in a position to where the standard was put in place as a means of communicating to miners the hazards associated with chemicals but there was no specific requirement that if one MSDS sheet is missing, but 98 percent of the other MSDSs required for that site are present, that citations may not be issued, but time given for obtaining that information and getting it in the system rather than writing paper citations for that; is that more palatable to you?

MR. BAILEY: Well, I mean anything can be better, but I still think we're relying on the wrong piece of paper -- the wrong thing. We're saying that a piece of paper makes it all better. The piece of paper doesn't get read -- the material safety data sheet is not read. We have 42 volumes in a chemical plant and we have people who spend all day, you know, gathering MSDSs of this -- is this a new one, is that an old one -- it's a ridiculous waste of time. This is an age of instant communication, we have labels, if we want to improve the situation, make the labels where they really mean something, legible, these are our first aid cases, this is what you do if you get this stuff in your eyes, on your skin, make it clear to where it's not all fine print and make it symbolic.
You know, make it where people who don't read English can understand it if you really, really want to talk about hazard communication.

If you want to talk about having a piece of paper that no one is going to read, no one understands, then we're not talking about hazard communication, we're talking about compliance with I don't know what.

MR. THAXTON: So you would propose then that a good labeling of containers or chemicals would be a better way of handling hazard communication for the industry as opposed to MSDS tracking plus the training that would be required?

MR. BAILEY: I think that the simpler you can make the communication to the employee, the better. And MSDS is not that, it's not made for that, it is made to protect people from this litigious society that we're in -- that's what it's made for. And then also OSHA compliance. I mean that's what it's made for, it's not a communication took for employee education, it's really not, but it does, in the OSHA hazard communication standard, consume an unbelievable amount of time just keeping track of that. You know, it's a huge waste of resources, particularly when you can say if you get it in your
eye, no matter what it is, wash it out, flush it out. I mean you look at 99.99 percent of the material safety data sheets that are there, it'll say that. And basic first aid will tell you that. If you get it on your skin, wash it off. If you drink it, it's a little more complex, depending on what it is.

But you know, then we would look at how many times we're drinking toxic chemicals in the mining industry and we're going to build this entire standard to cover that. You have to remember that these same people that are going to be charged with implementing this program and maintaining that program are the same people doing those safety inspections during the construction, maintenance and repair activities. And these same people are training people to watch out for those hazards. You take it away from there and here we have a part of activities going on in mining that's 40 percent of the fatalities -- 40 percent of the fatalities, 40 to 60 percent of the injuries that are reported -- probably a lot more not reported.

Where are we shooting our gun -- where are we shooting our gun? I just shake my head -- don't do this.

Now, are there chemical injuries? I think
that Jim Sharp of the NSSGA was -- did a great
service, I think he did MSHA's job in a lot of ways.
You know, where are these things happening. And you
know, if we've got a problem with people not knowing
how to jump a battery or charge a battery, you know,
I would venture to say that we could get together as
an industry, labor, government and the manufacturer
and put together the best training program on that
particular hazard that exists. The problem is one
doesn't really exist right now. And then you have
that -- you can make it a mandatory training, if you
charge batteries at this plant, you've got to show
this.

Lime in the eye, I was amazed -- lime in
the eye -- lime dust in the eyes. We have a few lime
plants and we have -- in our chemical industry, we
have a great training program on caustic in the eye
which is even more dangerous, and a high quality
program that really come home to the workers. You
won't find anybody walking around without goggles in
a caustic plant.

Why don't we do that? I mean here we have
injuries of the eye which we have a standard that's
supposed to protect that, but they don't appreciate it
because we still have injuries of the eye. So how do
we make them appreciate it? Well, we have a good quality training program on what lime in the eye does. Not one out there. That's what we could do together with industry, and watch that thing go down.

Now a lot of people say that's reactionary. Well, so is the Mine Act, so was OSHA's Hazard Communication Standard; you know, so was the benzene standard. I mean that's just the unfortunate way it is in life, is that we are reactionary, particularly in health and safety regulation, but to not react would be even worse, not being reactionary. We should react to that because it says these are true hazards that are happening to folks and we say find the lime dust hazard MSDS in this two volume set of MSDSs and, you know, that's the one we want to focus on, along with the white out and whatever that is there. It's not helping the industry, not helping the miner, it's really hurting the miner.

I mean I can see if this thing that happened on October 3, even after spending $120,000 and spending $50,000 more and having armies out there gathering these things, we would not be ready to be 100 percent compliant, and I don't think anybody ever will. And the amount of energy to spend to try is such a waste -- such a waste.
You know, I've been trying to find, and I'm going to make it myself, a health hazard training program on welding fumes. There's all kinds of programs on safety in welding but there's not on welding fumes and toxicity of manganese fumes, of nickel and chromium. Why doesn't industry, labor, government, the American Welding Society come together, make a high quality, first rate, premium program that we can mandate that welders, you've got to show this, Part 46, Part 48 -- talk about a benefit, talk about focused, you know, hazard communication, effective. I mean it's in the morass of all this other MSDS stuff now and it's one of the key health hazards in mining, is welding, because it takes place during construction, maintenance and repair.

You know, I just see a misuse of resources, a huge misuse of resources. If MSHA does it and promulgates it, you know, we'll comply with it, but the record is going to suffer and that's not what we're after. We're after protecting the safety and health of miners. And you know, having a bunch of paper that they can't read and understand is not going to do that -- it's not going to do that. Having high quality programs that directly focus on the injuries
that you see in your own database, the things that we
already know -- you know, construction, maintenance
and repair -- and I think we're going to make a big
difference in the health and safety of miners. But
it's got to be focused, it's got to be focused, can't
be the shotgun.

You know, when you look at OSHA when it
wrote its hazard communication standard, it needed
one. I mean they're dealing with all kinds of
chemical byproducts, that's just the nature of the
business. They're focused on the chemical industry.
You just don't have that in mining.

And also, OSHA didn't have any regulations
that would even allow them to cover that aspect of
health and safety, so they had to come up with a
hazard communication standard.

Here we are and I think MSHA was a lot
more progressive, even back then with the Part 48
health and safety tasks of the job -- I mean how do we
interpret that. If you've got a hazardous chemical
you're going to deal with, you're going to know what
the hazard is, you're going to have the proper
protective equipment and you're going to know how to
handle it. That's part of the rule that exists right
now. And if we've got people slopping benzene around
with no protection, you're going to get a citation for it. And he can write us one right now with the rules you've got right now. You don't need all this hazard communication and MSDS books and, you know, 24 hour immediate access and fax machines in shops that are not going to work in three weeks. It's not a good way to go.

I mean I believe the concept -- you know, chemicals can hurt you, you've got to respect them. Labeling goes a long way in that. I don't think labeling is good enough but that's a bigger issue than all of us here. And then you have the language aspect of the whole thing.

But I think what's missing -- what's missing in really quality hazard communication is there's no programs out there that can speak to our miners about the things that we already know they're getting hurt with or the things we already know they're handling that are one of those five key hazardous chemicals.

The other thing we don't know is how effective Part 46 in the aggregate industry is. I mean it hasn't really fully come into effect until this month. What is it going to be, the experience a year from now with these chemical when you have
enforcement of Part 46 on the health and safety aspects of the job that should cover handling these solvents and degreasers and welding rods and all that sort of thing. It would be logical to see what the impact of that rule, which is pretty much acceptable by everybody and was done in a quality way, to see has it really affected what we see in the injury database from a chemical standpoint. And even if you wanted to say let's emphasize in Part 46 training the chemical aspect of the job task, they need to be covered if the employee is going to be trained on the hazards of the task. If there's any chemicals involved with it, they've got to be identified and the hazards communicated. No problem with that. It's all that bureaucracy and nightmare of paper and guaranteed non-compliance even if you're trying the best you can do.

You know, I had to start this last year -- well, in '99, because there's no way I could -- I knew, based on my chemical division experience, that there's no way I could do it 400 places, it'd take me five years to get there and I'm never going to get there. Because the guys are going to go down and say you know, I need a can of this, can of that and it's not going to be in the book. And you ask the hardware guy, make sure you get an MSDS when you come back with
that. The hardware guy is going to look at him, what
is that? That's reality -- that's reality.

We've just got to step back and say what
is it that we're trying to accomplish -- what is it?
And it's the communication of health hazards to that
employee. And MSDS doesn't do that. The label is
iffy on that. And there is a void of quality training
programs on that. You'll have Part A solvents in the
chemical industry, but they're all in chemical plants
and they don't relate to the -- he's dealing with a
parts cleaner, that's what he's dealing with. He's
not dealing with tank farms of chlorinated solvents,
it just doesn't compute.

We owe it to the miners if we're really
interested in hazard communication, of giving them
that, not another regulation like this.

MR. THAXTON: Number one, Kelly, thank you
for your comments. They're very good, as I expected
they would be and to the point, and we really
appreciate you taking the time to come down and give
them to us.

I also share your concern about the
specificity that is in training programs for miners
and for welders, for mechanics, which I think we've
had -- I think there's evidence that there is higher
mortality rates among mechanics. I mean I worry about some of the solvents that mechanics are exposed to over the course of their careers and I think that -- you know, I think that you identified the same group of chemicals that I did when I was talking to Jeff Duncan last week, about creating, trying to create specific training programs for groups of occupations in mining -- you know, something for mechanics, something for lube men, something for welders -- and identify what we would consider high risk kinds of occupations and try to create some programs.

I was very pleased to hear you talk about your interest in creating some of these training programs and how they would go about it, because it's right in track with ours and I hope that maybe we can get together at some point on doing that.

MR. BAILEY: I think so. As long as all the paper doesn't get in the way of doing it. That's what I worry about. You know, hazard communication is the objective and anything in the way of that, if it's not helping that, it's in the way of that.

MR. THAXTON: We've also had testimony of people who have taught -- if this is testimony, it may just be information that we've gathered at public hearings -- people who have had employees take some
product home to work to clean the rug with, you know, out of the shop, and bring a milk jug of it home and the person would go next door and the nephew would stop by and drink out of the milk jug and then we would have the person -- the kid would be taken to the emergency room and then an emergency room wouldn't treat the person until they had had someone talk to them about the MSDS and what that MSDS directed them to do.

Now to me, it seems like you don't need very many instances of that to justify just in itself, other justifications notwithstanding, to justify the needs for MSDSs and for mine operators to know precisely. You know, I think they have a responsibility to know precisely what chemicals are on their property and what the effects of those chemicals are. I mean, you have no instances of where you've actually thought the MSDS was worth having?

MR. BAILEY: Oh, that's not true. We've had them for -- when we do exposure monitoring for welding fumes, we determine what metals we're going to analyze for -- you know, the rod and the MSDS on that rod has to be known. You can't tell the lab to analyze what metals.

MSDSs are, you know, in the hands of a
safety professional, industrial hygienist that can
take the mumbo jumbo and turn it into layman language
and make a safety meeting out of it, is totally fine.
And they're readily available -- they're readily
available.

You know, the instance that -- your
scenario there is -- you know, I doubt that the
individual who took the stuff home in the unlabeled
jug that got it to the neighbor's son who drank it,
you know, if you had an MSDS there would have carried
it home anyhow. I mean, I don't think you need all
this heavy, heavy regulation to solve that particular
problem.

MR. THAXTON: Our concern wasn't that he
bring the MSDS home, because they do get the
information from the property about what was in the
jug. The concern to me is what was the quality of the
training of that person, did that person actually
understand enough about the hazards of what he was
bringing that he would take it back into the house,
you know, and not recognize that there was a potential
for confusion for someone who was 10 or 12 years old.

MR. BAILEY: Right.

MR. THAXTON: I mean what's the quality of
that training if there isn't some kind of -- you know,
either an incentive or some kind of a driving force to
create -- to generate better information and to
generate more interest on mine property for what kind
of hazards there are, and to promote real
understanding about what those hazards are. You know,
to me that's really what's at essence, and I think you
agree with that, I think that's what you're saying,
that there has to be an understanding of these
hazards.

MR. BAILEY: Well, certainly I think that
people who handle chemicals on the job, that just as
Part 46 totally expects that the hazards associated
with the chemicals, if they are hazardous, they should
be communicated and the proper protective equipment,
proper way to respect that chemical has got to be
communicated.

You know, I think that that regulation
already exists for MSHA to use, they need to use it.
The generic type of training program that is in the
miners' realm is needed, it doesn't exist. Training
firms out there do not understand mining and, you
know, solvents, degreasers in mining are -- you know,
you still see that kind of thing.

MR. THAXTON: Uh-huh.

MR. BAILEY: Welding fumes. It's mostly
safety hazards. There's a huge need. I mean I've
been looking for programs like that for a long time
and we've developed them in an ad hoc sense, but they
really need to be first rate.

MR. THAXTON: Yes, they do.

MR. BAILEY: And I think looking at the
injury database and the illness database and
monitoring that -- you know, if we have a good program
on lime dust in the eye and blowing up batteries and
fueling mishaps and we put together programs that
address those specifically for the types of
environment that your miners are in and we monitor
that, that should go down, if training makes any
difference. If we know in our heart of hearts that
what we put together is high quality and that it is
being given to the employees, then education should
make a difference.

And then on some periodic basis, some
interval, that trend needs to be looked at. And if
degreasing solvents are the top cause of chemical
dermatitis in the mining industry, we need to make a
program for it. That's real focus, that's taking
something home to the bank and really hitting the
target on the bullseye versus aiming the gun that way
and maybe you hit the target and maybe you don't.
MR. THAXTON: Okay, Kelly, we appreciate it. Thank you.

(Whereupon, a recess was taken at 2:52 p.m.)

MR. THAXTON: It's now 5:00, there are no additional people to make statements or testify before this group, so therefore, we're going to adjourn this particular meeting.

(Whereupon, the public meeting was adjourned at 5:00 p.m.)