The Public Hearing was held at the Best Western Airport Plaza Hotel, Columbia Enterprise Room, 1981 Terminal Way, Reno, Nevada at 9:00 a.m., Ernest Teaster, Moderator, presiding.

PANELISTS:

ERNIE TEASTER, Administrator, Metal and Nonmetal Mine Safety and Health
DOUG ALTIZER, Office of Education Policy Development
PHAN PHUC, Office of Standard, Regulations and Variances
CHERI HUTCHISON, Office of Standard, Regulations and Variances
SANDRA WESDOCK, Attorney's Office
CAROL JONES, Metal and Nonmetal Mine Safety and Health
Opening Statement - Moderator Teaster

Testimony of Jack Cottrell, Safety Superintendent, Getchell Gold Corporation

Testimony of Dayne Heese, Echo Bay Minerals Company

Testimony of Jonathan Hill, Safety Engineer, TCB Industrial, Inc.
P-R-O-C-E-E-D-I-N-G-S

9:05 a.m.


I'm Ernie Teaster, Administrator for Metal and Nonmetal Mine Safety and Health.

The members of today's panel are, to my extreme right, is Doug Altizer from the Office of Education Policy Development. Phan Phuc from the Office of Standard, Regulations and Variances. Cherie Hutchison from the same office. To my immediate left is Sandra Wesdock from the Attorney's Office. And on her left is Carol Jones, from Metal and Nonmetal Mine Safety and Health.

We are here to listen to your comments on the Hazard Communication Interim Final Rule, which we published on October 3rd last year. We are holding this hearing in accordance with Section 101 of the Federal Mine Health and Safety Act of 1977.

As is our practice, we will conduct the hearing in an informal manner. During the proceeding panel members may ask questions of the presenters. Although formal rules of evidence will not apply, we will taking a verbatim transcript of the hearing and
will make it a part of the official rulemaking record. The hearing transcript will be available for review by the public along with all comments and data 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, please make your own arrangements with the court reporter.

We'll also advise you that we hope to have it on the Internet on MSHA's webpage within 48 hours at the close of the hearing.

Now, let me briefly give you some background on the Interim Final Rule and highlight its major provisions. Following that I will share with you our reaction to some of the comments received thus far.

On November 2, 1987, the United Mine Workers of America and the United Steel Workers of America jointly petitioned MSHA to adapt OSHA's health communication standard to both coal and metal and non-metal 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 non-metal mines are exposed to a variety of hazardous chemicals.

On March 30, 1988, in response to this petition, MSHA published an advanced notice of proposed rulemaking on hazard communication for the mining industry. In this notice we indicated that we would use the OSHA hazard communication standard as a 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 2, 1990, and held three public hearings in October 1991. The record closed January 31, 1992.

In their comments on the 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 reopened the rulemaking record on March 30, 1999, requesting comments on the impacts of the proposed rule on the environment, small mines, state, local and tribal governments, and the health and safety of children.
The National Environmental Policy Act, and most 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 information, 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 Paperwork Reduction Act of 1995. We received seven comments to the limited reopening of the rulemaking record, primarily from trade associations and labor organizations.

The rulemaking record closed June 1, 1999.

On June 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 the plain language format and the content of the Interim Final Rule. Non-operators experienced under Occupational Safety and Health Administration's hazard communications standards, and any changes in the mining industry since the publication of the proposed rule.

On December 7, 2000, we personally spoke...
with or emailed all commenters and other interested persons telling them of our decision to hold a public hearing in Washington, D.C., 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. The commenters stated that they did not have sufficient time to fully analyze the impacts 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 Steel Workers of America have intervened in that litigation.

Now I will briefly highlight the six major provisions of the rule.

Hazard determination. The Hazard Communication Interim Final Rule requires mine operators to identify the chemicals at their mines and determine if they present a physical or a health hazard to the miners, based on the chemical's label and material safety datasheet referred (MSDS), or on a review of the scientific evidence.

Under the Interim Final Rule for the purpose of hazard communication, MSHA considers a chemical hazard and subject to the hazard communication rule, if it is listed at any one of the following four recognized authorities or sources:

Title 30, Code of Federal Regulations, chapter 1; the American Conference of Governmental Industrial Hygienist's Threshold Limit Values and the Biological Exposure Indices, that's the latest edition. The National Toxicology Program Annual Report
On Carcinogens, latest editions; International Agency for Research on Cancer, mammograms, or supplements.

The hazard communications program. The Hazard Communication Interim Final Rule requires mine operators to develop, implement, and maintain a written program to establish a hazard communication program. The program must include the procedures for implementing hazard communication through labeling, MSDSs, and training of miners. A list of hazardous chemicals known to be present at the mine, and 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 other operators about the chemical hazards and protective measures needed.

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 warning. The label must be in English and
I would like to clarify one point about the labeling requirements. Practically speaking very little labeling is required. You only have to label stationery process containers and temporary portable containers, and then only under some circumstances. Chemicals coming onto mine property are almost always labeled. You would not have to relabel them unless the existing label becomes unreadable. You would not have to label containers of raw materials being mined or milled by their own mine property. You would not have to label mine products that go off of mine property. You would have to provide the labeling information to downstream users upon request.

Material safety data sheet. The chemical's material safety data sheet 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 MSDSs should be accessible in the work area where the chemical is
present or in a central location immediately accessible to the miners in an emergency.

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 their hazard communication with 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 retrain miners about the same information. We designed the hazard communication training requirements to be integrated into existing training program for miners.

Making HazCom information available. The Hazard Communication Interim Final Rule requires mine operators to provide miners, their designated
representative, 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 the training materials purchased for
the use in training sessions, such as videos.

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

I will now share with you our thoughts on
some of the comments 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; it augments, supplements, and
complements these existing standards. The Rule
specifically deals with chemicals and chemical
exposure. 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 of small mines is less than some commenters stated. First, small mines typically use far 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 aggregate industry from hazard communication, as we've 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 finalizing a compliance guide to help operators and miners understand the application of the HazCom final rule. We are developing a variety of compliance aides, such as a model HazCom program, a training video for mine operators about determining chemical hazards, and a training video for miners about chemical hazards in reading the MSDS.

A draft of MSHA's Compliance Guide has been on the MSHA website for months. If you refer to the Compliance Guide, many of these issues are explained. If you have any question in these areas, send them by email to comments@msha.gov or 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.

As a rule of thumb, however, if you are in compliance with OSHA's Rule, you will be in compliance with MSHA's. In the same vein, mine operators may
obtain help from organizations that have developed
generic rules to meet OSHA's HazCom 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 the 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
projections offered by the Rule.

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

Under HazCom determination we may revise
the reference to the American Conference of
Governmental Industrial Hygienist or the National
Toxicology Program, and the International Agency for Research on Cancer, from those considered in determining if a chemical is a hazard and if a 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 American Conference of Governmental Industrial Hygienists, TLV Booklet, International Agency for Research of Cancer, National Toxicology Program.

In determining whether a chemical is carcinogen, we are considering referring only to the 2001 editions of the National Toxicology Program and the International Agency for Research of Cancer.

We had expected the use of the American Conference of Governmental Industrial Hygienist, National Toxicology Program, International Agency for Research on Cancer list to reduce the burden on the 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 compiled them, offer no opportunity for public comment. They impose unknown future requirements by citing the latest editions, and they violate
regulations governing incorporation by reference.

We are hoping to consider 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 the MSDSs can be the mine operator. Accordingly,
we are considering changing these provisions to read
the name, address, and telephone number of the
operator or a responsible person who can provide that
information.

Concerning the availability of the 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: (1) requiring
the operator have an MSDS available for each hazardous
chemical which they use.

MSHA is also considering accepting a list
of OSHA PEL on an MSDS as an alternative to the
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 commenters' concern 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 miner's work area, to requiring training when the operator introduces a new chemical hazard into the miner's area. This change would clarify MSHA's intent that when a new chemical is introduced, additional training is required only if the hazards change. This is the intent, as discussed in the preamble of the Interim Final Rule.

Also, in response to commenters, we are considering revising the definition of health hazard. The Interim Final Rule defines health hazards 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 to the language to that in OSHA's HazCom 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 the miners about the risk associated with exposure to these hazardous chemicals, the safety measures implemented at the mine to control exposures and safe work practice.

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, 1998, through the close of the record on October 17, 2001, in the development of this final rule.

You may submit written comments to me during the hearing, or send them to the address listed in the public 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.

And if you've not signed the attendance sheet when you entered the door, we ask that you'd please do that. And if there's anyone that would like to speak, we would also request that you sign up to speak.

We will begin with the folks that have signed up in advance to speak. If there is time at the end of that, which I can assure you there'll be adequate time, anyone in the audience who would like to come up and make a statement will be able to do so.

We will continue the hearing until all speakers have had an opportunity to address the panel.

This concludes my opening statement. And we've had one person to sign up to speak, and that's Jack Cottrell, and he's with the Getchell Corporation.

MR. COTTRELL: Good morning. My name is Jack Cottrell, and I'm the Safety Superintendent for Getchell Gold Corporation. Getchell Gold is an underground gold mine with the associated surface mill, concentrator and refinery. The Corporation is part of the Placer Dome Group.

We appreciate the opportunity to comment on the Interim Final Hazard Communication Rule
published by the Agency on October 3, 2000, which has been delayed until June 30, 2002.

After reviewing the regulation, we find it contains requirements which will be burdensome and onerous and does not increase miners' safety and health or their knowledge of hazardous chemicals.

The regulation duplicates standards already in place.

The rule strays from hazard communications to hazardous waste regulations.

They treat the mining industry as if they were in the chemical manufacturing industry and not the mining industry.

And the regulations do not appear to be well thought out for the mining industry.

Getchell Gold supports in principle the implementation of those sections of the regulation which will require labeling, training miners and the potential risks and providing MSDSs when they work with or around hazardous chemicals. In fact, we do this now.

The Corporation does not support the provisions which require: The development of MSDSs when new chemicals are formulated in the process or the duplication of regulations now in force.
We ask the Agency to consider the following comments.

In general, the regulations meet the purpose of the HazCom standard. However, there are sections of the regulation that are confusing and, in Getchell's opinion, will be burdensome and create managerial problems.

Getchell Gold is concerned that the definition of the word "produced" will require mining companies to produce meaningless and expensive MSDSs which will not increase the safety of miners.

An example of this is as follows: When our gold bearing ore is milled to the proper size, a cationic floc is added and we would have to develop an MSDS.

Then as the solution is processed, sulfuric acid is added; we would have to develop another MSDS.

As it enters the autoclave an anionic floc is added; and another MSDS would be required.

And then as the acid is stripped with lime; another MSDS would be required.

Slake lime is then added; another MSDS would be required.

Cyanide is added; an MSDS would be
required.

The material is then sent to the carbon leach where activated carbon is added; another MSDS would be required.

Small quantities of ethylene glycol are added; another MSDS would be required.

Then caustic soda is added; another MSDS would be required.

And then the solution goes to the refinery where zinc is added; another MSDS would be required.

So, nine or ten MSDSs would have to be developed for one process stream. The true value of that MSDS could be measured in feet before another chemical is added, so an operator would have to mark the section of the process where a particular MSDS would be valid.

If a mining company were to have an MSDS on the chemicals in that process stream and the miners were trained in the hazards of the chemicals, a greater level of safety could be achieved.

The other complicating aspect is that as the ore body changes, different reagents could be used on the next shift to maintain the recoverability of the gold. This makes it extremely burdensome and expensive to meet this requirement, and a managerial
nightmare trying to advise miners which solution is in use and which MSDS they should refer.

This example is just for one process stream and does not account for re-circulation, refinery processes, oxygen injection systems, autoclave systems, discharge systems, thickening, conditioning, etcetera. The scenario does not fully address natural occurring metals such as mercury, thallium, selenium, arsenic, silver, etcetera which could be considered hazardous and would complicate greatly the development of MSDSs.

It should be noted that these solutions are not sold or transferred off the property. They are not used in other commercial ventures. They are treated and disposed on the property under the guidance of numerous EPA and state regulations.

As Getchell addressed the regulation the following sections generated no comments: Subpart A-Purpose and Scope of HazCom; Subpart C-HazCom Programs, and; Subpart H-Trade Secrets Hazardous Chemical.

The sections which were confusing and generated several comments are: Subpart F-HazCom Training and Subpart G-Making HazCom information Available.
We found Subpart B-Hazard Identification, Subpart D-Container Labels and Other Forms of Warnings, Subpart E-Material Safety Data Sheet, Subpart I-Exemptions and Subpart J-Definitions to be confusing and often appearing to contradict other sections of the regulation.

The following are specific comments and questions regarding these sections.

Subpart B-Hazard Determination. Table 47.11-Identifying Hazardous Chemicals: would subsection (b) include mine drainage, tailings ponds, mine dumps, etcetera? If so, this will prove to be unduly burdensome and the potential hazardous nature of such material is well known to the mining industry.

Subpart D-Containers, Labels and Other Forms of Warning. 47.31(2)(C). Does this require re-labeling inventory and containers in use?

Subpart E-Material Safety Data Sheet. 47.41 requirements for MSDS. Does this include tailings discharge, water stored on tailings ponds, water in treatment plants, etcetera?

The definition of the word "produce" in Table 47.31-Definition seems to make this section more stringent than MSHA intended.

As ore moves through the process, reagents
and chemicals are added to suppress natural elements such as iron and lead, or to collect them for settling. These additions "produce" new "chemicals" and would require MSDSs. Again, this too will be unduly complicated and burdensome, and we suggest that the Agency should delete this section.

47.43 MSDS For Hazardous Wastes: The entire section should be deleted because hazardous wastes are thoroughly regulated by Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

47.45 Retaining MSDS, paragraph (b). This is impractical and unnecessary. If a chemical is no longer on the property, why should an operator have to wait 3 months before disposing of the MSDS?

Subpart F-HazCom Training. 47.51 Requirements for Hazard Training. This section is not practicable or necessary for laboratories. The volume of laboratory chemicals, the training of the people conducting assays and other analysis all indicate that these people are trained in the use of chemicals. They are covered by established training regulations such as new miner training and site specific training now in effect.

Subpart F-HazCom Training. 47.52 HazCom
Training, paragraph (a). This paragraph should be deleted, as it would appear to require training for all chemicals, not hazardous chemicals, and is outside the intent and purpose of these regulations. Sugar and salt are chemicals, but can be safely eaten. Although water contains hydrogen and oxygen, it's not dangerous to drink or to smoke around. There are hazards associated with these types of chemicals, but not in the context of HazCom regulations.

Paragraph (e), this paragraph contradicts Table 47.91 Definitions-Containers. It also adds confusion to the standard. First, the operator must mark all containers containing hazardous materials, then the Agency exempts certain "containers," but requires training on these exempt "containers." The Agency should remove all training requirements on exempt containers.

Additionally, cleaning tanks, rod and ball mills would fall under Confined Space entry and miners would be trained based on the hazards of those containers.

Paragraph (f), the concepts are taught in Emergency Response Procedures already mandated by the Agency.

Paragraph (g), these concepts are already
taught in Emergency Response Procedures and are
duplicative of other regulations. Thus, the Agency
should clarify that operators can rely on present
Confined Space and Emergency Response training that
addresses these areas.

In Subpart J-Definitions, 47.91-
Definitions for terms used in this part the word
"produce," the way the term is defined to include
"process," "formulate" and "generate" makes all ore
treated or untreated subject to creating MSDSs.

And regarding MSHA's proposed substantive
changes in their opening comments on pages 5 of 6,
instead of referencing ACGIH and NTP and IARC, MSHA
should consider placing the definitions of "Hazard
Determination" into the regulation versus referencing
the organizations' reports or latest editions.

Getchell agrees that by referencing these
organizations the mining community is shutout of the
rulemaking process.

Also by referencing 2001 editions of NTP
and IARC, MSHA will be stuck in the past while NTP and
IARC update their policies, the mining community will
be dealing with 2001 policy. By placing the
definitions in the regulations the Agency can always
update new information through the regulatory process
where the mining community can have input into the changes.

MSHA proposes to change Subpart F 47.51(a) to read "Introduces a new chemical hazard into the miner's work area...from...introducing a new hazardous chemical into the miner's work area." Getchell would urge MSHA not to make that change as the definition changes the concept of training on hazardous chemicals to training on the hazards of all chemicals, which again would be outside the intended scope of the regulation.

Again, Getchell Gold would like to thank the Agency for staying the regulation, and requesting additional comments. We would like to thank the Agency for the opportunity to address the strengths and weakness of the HazCom regulation.

This concludes our comments and if you have any questions, we'd be happy to answer them.

MODERATOR TEASTER: Thank you, Jack. We appreciate you sharing those comments.

How much training does each miner receive approximately involving the chemicals that's used at your operation?

MR. COTTRELL: In the new miner training, it's about 45 minutes to an hour on hazard
communication. Once they get into the area, they go
through their site specific, and then they go into
their regular training. And if they're dealing with
any of these chemicals, they get probably an hour, two
hours on every chemical before they're signed off to
even work with them.

So total, I would say somewhere between
eight to 32 hours, depending upon on they're
responding and they're observed to be handling the
chemicals before we sign them off as being task
trained on the chemical.

MODERATOR TEASTER: So you'll cover them
in general, and then if you got a task that requires
that, there's more in depth training?

MR. COTTRELL: Yes, that's right.

MODERATOR TEASTER: How do you currently
inform the miners about the chemicals? You indicated
that there were several chemicals that's created by
the processes that you use. How are miners trained in
those?

MR. COTTRELL: We don't train on that. We
train on the hazardous chemicals that are identified
when they come in, and we train on that specific
chemical.

If there's a chemical reaction between,
say, cyanide and lime, we don't train on what that new chemical produces; we train on both cyanide and the lime.

MODERATOR TEASTER: Okay. What's been the experience, say, in the last 3 years or to the extent you have knowledge if it's less than that at Getchell with injuries that's been caused by some exposure to chemical hazards?

MR. COTTRELL: I've only been at Getchell for about 3 months, and we've had two incidents with hazardous chemical and it was an anti-scalent. People got some on their skin, and one got it on their cheek. First-aide requirement was required. There was no medical requirement or we didn't even have to take them to a doctor. But we took them down to DMT and they treated them for that.

MODERATOR TEASTER: And had these miners been trained in accordance with Getchell's training?

MR. COTTRELL: Yes and no. The training program could have been stronger than what it was, and we're in the process of fixing those things now. But there was a process, there was an attached training sheet for that chemical.

MODERATOR TEASTER: Jack, do you feel for approximately how many chemicals that you have on the
property?

MR. COTTRELL: Processed chemicals or --

MODERATOR TEASTER: Chemicals that would be chemical hazards under Interim Final Rule?

MR. COTTRELL: No, I don't. I know that, you know, we'll have cyanide, we'll have the lime, we'll have reagents. I'm not even sure what agents. We're shut down right now. I don't even know what reagents we're going to have when we come up, but there will be several reagents. There may be MIBC and those type of things out there.

Rough guess, maybe 15/20 in the mill process.

MODERATOR TEASTER: And in the milling process you have MSDSs. Would those only deal with the chemicals that you have that the miners are currently exposed to?

MR. COTTRELL: No, our MSDS is on any product that comes on the property, we have an MSDS for it whether it be WD40, anything that -- any MSDS is produced for a chemical that comes on our property, we have an MSDS for it.

MODERATOR TEASTER: Do the miners at your operation refer to those MSDSs?

MR. COTTRELL: Yes. Yes.
MODERATOR TEASTER: Do you have a feel how often a miner may --

MR. COTTRELL: Oh, a couple of times a week we get calls for MSDSs.

MODERATOR TEASTER: Are those MSDSs, are they catalogued in anyway where you can go to try to find one with some kind of a systematic approach, whether they're alphabetical or sequential?

MR. COTTRELL: We try and keep the MSDSs that are applicable to that department in that department. And then we keep a list of all of the MSDSs at our security so that if they can't find one.

The paper method is extremely hard to manage and we're in the process of looking at an electronic system to go electronically, which it's going to make it easier for the miners on midnight shift when they're done at 1:00 or 2:00 in the morning, they want to pull up an MSDS; they can go to a computer and pull it up. And we're in the process of making that transition now.

We're in the process of finding the company and the system that will aid us doing that.

MODERATOR TEASTER: Jack, you indicated that you thought as soon as a chemical is no longer used at the mine that we should be able to get rid of
the MSDSs. Is that what you currently do when it's no
longer --

MR. COTTRELL: No, we never throw away an
MSDS. It's just the concept that if we want to get
rid of one, we shouldn't have to wait three months.

Typically, any mine I've been in we've
never thrown away an MSDS. We've always kept them.

MODERATOR TEASTER: We've had some
commenters to raise concerns that when you have
exposures to some chemicals, you don't know what the
long term effect may be from that exposure. And
they've suggested that we require that these MSDSs be
kept for 30 years because 20 years down the road, 10
years something. Do yo have any thoughts about that?

MR. COTTRELL: Yes. Record keeping
nightmare, probably. But I don't have any objection
to that if you can keep them electronically, you can
keep them.

MODERATOR TEASTER: Okay. Assuming that
this Interim Final Rule would ultimately end up in a
final rule, do you have any thoughts of how the Agency
can work best with the industry, and particularly the
small operators in the industry?

MR. COTTRELL: Let me address our own
needs first. Our own needs is clarification of the
rules.

The outline that you read in your opening statements, the first six items, to me covers hazard communication. If that whole rule was set on those six principles, I don't think you'd have much argument from the industry, at least you wouldn't have from us. It's when you going over to hazard waste and producing these MSDSs in the process stream that it causes us problems from a managerial and also a common sense standpoint.

MODERATOR TEASTER: I mean, I think we can all agree, and you disagree if you like, but I think most of the industry is in agreement that miners should be made aware of any chemicals to which they're going to be exposed and how to protect themselves if they do have that exposure, and have that information available if they need some medical attention later. And what we're trying to do is craft a rule that provides those protections and at the same time do that in the least burdensome way. And any information we can get to help us accomplish that; I mean it is the goal is to make the miners aware, make sure that they know the protective means of protecting themselves. And also, that they have some information that they can refer to. Because those things become
very critical when you have exposures and the doctors
don't know what chemicals you've been exposed to
that's causing this problem.

MR. COTTRELL: No, I don't disagree with
that at all.

If I may relate a story of about why I
feel as strong as hazard communication as I do, is
early in my career before I was even in safety, I had
a friend who was working in a mill and happened to be
going home one night and walked past a tank that
overspilled, and he happened to look up at it. And it
was -- had cyanide and lime in it, and he lost both of
his eyes over it.

I was probably 18/19 when that happened,
and I've never forgot it. And I think that back then
if we had trained miners and had safe walkways around
these things, that that wouldn't have had to happen.

And so I believe that miners need to know,
and that's why we say in our statements that in
principle we support what you're doing here. We're
training our miners now they need to know this stuff;
it's going to effect their lives if they get tangled
up in this stuff in the wrong way.

It's the other parts of the regulation
which gets into program that are already established,
regulations already established, getting into things that are already covered by EPA and other agencies that we'll have to comply with in this, and it's duplicative in that sense.

And overall, the whole tone of the thing makes us look more like we're in the chemical manufacturing system versus in the mining system. And if we can take those parts out and keep a true training aspect for hazardous chemicals, I think it'll work better.

MS. JONES: I just have had one clarification of a comment that you made earlier. You said that you objected to our using ACGIH, NTP and IARC --

MR. COTTRELL: No, not using the latest edition.

MS. JONES: Right.

MR. COTTRELL: Or the 2001 edition.

MS. JONES: Okay. So what is it that you would like us to --

MR. COTTRELL: I'd like you to take and define what a hazardous chemical is, even if you have to base it upon their definitions and put that in the regulation. And then if you find out later on that you need to make a change, that can be done through
the regulatory process.

In our draft HazCom program that we're getting ready to implement once the final rule comes out and if there's any changes in it, we'll have about two or three pages of what constitutes a hazardous chemical, and it identifies a lot of things that are in IARC, NTP and ACGIH. And if we can do that for our own program, MSHA should be able to come up with a list of criteria so that we don't have any doubts of what you're talking about.

MS. JONES: So you would like a list of criterion, but not a list of chemicals?

MR. COTTRELL: A list of criteria, yes.

MS. JONES: I see.

MR. COTTRELL: For example, if a hemotoxin is a hazardous chemical, it should be identified as a hemotoxin. If it meets that criteria, then we can look at the MSDS, see if it's a hemotoxin and be able to set up our program based on that.

I think if you get into chemicals, it's going to be too hard to manage.

The other thing is if you leave it according to these other agencies, we really don't know what we're supposed to be doing unless we go in and we become experts on these other agencies. And,
frankly, we're not going to do that. We're going to wait until probably a fight starts between us and MSHA and try to correct it then. And if we can do it this other way, we can avoid the problem and manage the thing correctly up front than versus from the backside of it.

MS. JONES: Do you plan to submit written comments?

MR. COTTRELL: Yes, I --

MS. JONES: I was just wondering if you would outline that part in more detail as to what you--

MR. COTTRELL: No, I will submit what I read today today.

MS. JONES: Thank you.

MS. HUTCHISON: Could you also send us a copy of your HazCom program?

MR. COTTRELL: It isn't final yet because we don't know what the rules are going to be, but I wouldn't have a problem with that.

MS. HUTCHISON: But you have already defined hazard chemical?

MR. COTTRELL: Yes. Well, I've got that program with me today if you want copies of that, I can do that.
MS. HUTCHISON: That would be helpful.

MR. COTTRELL: Okay.

MS. HUTCHISON: Also I had another question about your comments concerning hazardous waste that MSHA is duplicating EPA requirements?

MR. COTTRELL: Yes.

MS. HUTCHISON: In what way are we duplicating EPA requirements?

MR. COTTRELL: Right now we're required for our hazardous waste, we have a hazardous waste area designated, it's fenced off, has a key on it. Everything is kept in a certain area. Everything is marked. There's a date on it when it went into storage. There's a date when it has to come out of storage. And that whole system is managed.

Now, the one problem that comes in is that if we have a bunch of liquids of hydraulic fluids, glycol, you know, all this other stuff, we're going to mix all that stuff together because it's going to go out to a hazardous waste storage place. According to your regulations we would have to have an MSDS on that when we started mixing these chemicals together because we've created a new chemical.

MS. HUTCHISON: The Interim Final Rule, although it says MSDS for hazardous waste, it doesn't
require you to create one. It requires that if you
have one, that you have to make it available to
miners and any information about that hazardous waste
that is about the hazards of that waste, that you have
to inform miners and give them access to any
information you have about it.

    MR. COTTRELL: Right.

    MS. HUTCHISON: But it doesn't require you
to create anything else.

    MR. COTTRELL: But the other part of the
regulation does; it says that if we produce, we
formulate new chemicals, then we have to produce one.
And the way we interpret that is we would have to
exactly do that. That's why we object so strongly to
that whole process of when chemicals are added into
the solution as it goes through the mining process or
the milling process.

    Every time we add two chemicals together,
we generally create a new chemical. And the
regulation as it stands now is we have to produce an
MSDS on that.

    MS. HUTCHISON: Okay. So this all goes
back to your comments on the definition of "produce?"

    MR. COTTRELL: Produce, yes.

    MS. HUTCHISON: Thank you.
MR. COTTRELL: See, we don't object to having an MSDS for each of those chemicals in the stream. We just don't want to formulate new MSDSs as it progresses through the stream in our own process.

MS. HUTCHISON: Why not?

MR. COTTRELL: Well, it's expensive. By the time you add cyanide and you add lime maybe two or three feet before you have a totally new compound.

MS. HUTCHISON: Is this an enclosed system?

MR. COTTRELL: It all goes into an enclosed system.

MS. HUTCHISON: Well, I meant --

MR. COTTRELL: The tanks are open, but it goes into a piping system.

MS. HUTCHISON: So there is potential for your mill workers to be exposed to this chemical that's produced for two feet?

MR. COTTRELL: Yes. Yes. Line ruptures, yes. If a line was to rapture at that point, yes, they could be exposed to it.

Now, understand we have alarms and everything set up for cyanide so that if, you know, we started getting high cyanide levels or something in the area, we evacuate it. But, I mean, we have all
those other processes set up to handle these things.

MS. HUTCHISON: Are you aware that we allow MSDSs to cover a process stream?

MR. COTTRELL: You know, I don't know how we would write one on the process stream, though. And you know, then I like I say, you know, our ore has arsenic, has other heavy metals in it that we take out in the process; how do we incorporate all that into MSDSs, too? I just don't know how we could comply with that.

MS. HUTCHISON: Are the hazards of the chemicals that you produce in your process stream, are they different from the hazards of the individual components?

MR. COTTRELL: Yes. They can be. Take cyanide and lime, for example. We put the lime into the cyanide to raise the ph up. And so the initial hazard really becomes if somebody gets exposed to it and gets it on their skin, it's from the lime, not from the cyanide.

If the material sits for a while and the ph drops down, then the cyanide comes out and you have another hazard off of that.

And so initially I would treat somebody for a burn from the lime because the ph is up around...
14. But if that material was to spray and the ph drop
on it, then you've got a totally different hazard and
you've got to look at the cyanide side of it.

MS. HUTCHISON: And do you train your
miners about this?

MR. COTTRELL: Oh, yes. Yes. The state
of Nevada has an excellent cyanide training program
that they train. I've used them many times on
cyanide.

DuPont and all the other companies that
produce cyanide come in and train for us also.

MS. HUTCHISON: I don't have anymore
questions. Thank you.

MR. PHAN: One question. How big is your
operation?

MR. COTTRELL: In the world of mining it
isn't really all that big. We're down right now.
When the mine was running, the mill and the refineries
running, we had about 600 employees there.

MR. PHAN: And who usually conducts the
chemical hazard training?

MR. COTTRELL: The safety department does.
We conduct the initial one and then there's a process
where the supervisors when they introduce the
employees into the area, they train them on the
MR. PHAN: Thank you.

MODERATOR TEASTER: Jack, as I understand it, you're in the process of reopening your mill?

MR. COTTRELL: Yes.

MODERATOR TEASTER: Do you have any knowledge about the underground operation there that concerns with chemicals?

MR. COTTRELL: The only chemical that they use underground right now is an anti-scalant, and that they just pump it down and they put it in the ditch so that when the water is pumped out for treatment, that it doesn't scale up the lines.

They use some resins in the bolts. We use resin bolts and there's some chemicals in that. And if that breaks, if a resin tube breaks and they get that on their skin, it's something else we have to look at. So, we would train them on the anti-scalant. We'd train them on the resins.

And then we have the hydraulics and the oils, and things like that underground.

MS. JONES: Do you also include in your training the training on the hazardous waste that's produced, do you tell them --

MR. COTTRELL: We do, but the
environmental department generally conducts that because they have certain criteria they have to meet for EPA.

MS. JONES: You were saying that you would need to put together nine or ten MSDSs on the process if this were --

MR. COTTRELL: On just the one process stream, yes.

MS. JONES: Right. Now is that a constantly ever changing process or is that something that you've been doing and you just --

MR. COTTRELL: No, it can --

MS. JONES: Once you have those MSDSs that you would be unlikely to have to change them very frequently?

MR. COTTRELL: No, it can change. It could run that way, you know, for a month but if the ore changes and you get into more oxides, more sulfides, you find other chemicals that will separate things out, we would switch to those things.

We do a lot of testing on that. Up front we have a met lab that tests on that so that as we see the stuff coming down from the mine, the mill can get switched over to maximize the recoverability of the gold.
MS. JONES: Thank you.

MR. COTTRELL: But that may happen, mid-shift sometimes it'll happen.

MODERATOR TEASTER: Jack, thank you very much. I appreciate you sharing your comments with us.

MR. COTTRELL: Thank you.

MODERATOR TEASTER: As I said earlier, we only had the one speaker that had signed up to speak. If there's anyone in the audience that would like to have some discussion, we'd ask that you'd come forward now and identify yourself.

MR. HEESE: Good morning.

MODERATOR TEASTER: Good morning.

MR. HEESE: I'm Dayne Heese with Echo Bay Minerals Company at the MaCoy Mine located south of Battle Mountain, Nevada.

And I just wanted to concur with Jack on one of the concerns that I've had in the mining process. We have a team of metallurgists that work with our ore daily and the process flow changes everyday. They mix different chemicals with the ore process to get desired results.

We have a flotation system that we use to float off certain metals. Our ore changes so drastically between -- we are running ore from two
different pits. We have a process flow coming in off
of leach pads and things, and we may get a high copper
ore coming through, we may have ore that has high
silver/low gold and then we'll have high gold/low
silver with copper. We're have realgar mixed in with.
We have sulfides and oxides, and all these things and
they change drastically.

And then we have high pyrites. And we
have another material called carbon. And carbon is an
element that's used to take gold back out of cyanide
solution, but we have this as a natural process in our
ore.

So they have to change their chemical
compositions of the ore process going through the mill
everyday. And we check our head grade, our ore grade
coming in, our tail grade going out and all these
things. And everything has to be neutralized before
it goes to tailings impounded and everything, so that
it's okay environmentally with birds and everything
else. So it's a huge process and it changes all the
time; it's a daily thing.

So, the burden of developing MSDS sheets
and things to be specifically for ore for processes it
would be immense and there's no way we could keep up
with it. There's no possible way.
And we have open tanks, too. And frequently we'll have a line that may break in an area. We have areas that are protected that we have frequent ruptures in and things of that nature.

So what we do with our employees when they come on is we have the Part 48 training that we do. And we spend at least an hour on chemical use with the miners, on health exposures. There's probably another hour spent on proper personal protective equipment for areas that they work in.

Then when they go to the area that they're going to work in, after the miners went through that, and he needs to go through his task training, we have a system called standard operating procedures. So we take a miner like into a mill area and he's into a specific flow process of that mill. He is trained on all the chemicals that are used in that flow process, the hazards that are associated with those chemicals and the proper PPE that's supposed to be worn in that area.

Now, typically a miner for one process goes through probably 80 hours of training the way we have it right now. At least two weeks before he's ever turned loose on his own.

Now, if he goes to a new process in the
mill area, he has to undergo the next process in that
mill area.

But for a laborer coming in, he has to spend several weeks going through all this because he could be in any area at anytime cleaning up or doing anything like that.

So as we see it, we would like to be able to generalize the training for the hazards that are in the area and not the possible hazards that could be generated. But we do have caustics. We have things that could be acids and burns, and different things of that nature, you know.

And then all the airborne exposures are addressed.

MODERATOR TEASTER: Thank you, Dayne.

First of all, I want to congratulate you for the extent of your training program that you have there for your miners. It sounds quite impressive.

I think that the intent of the Interim Final Rule was that if you trained the miners in the chemicals to which they'll be exposed, it wouldn't involve to any chemical changes as a result of the processes. We'll take a look at that and we'll certainly clarify that in the final rule. But I think the intent was, and there are some folks here that
maybe could speak to it a little more, that if you train the miners in all the hazards, the chemical hazards, chemicals they'll be exposed to that in the process, even though they're mixing it would create something different, that that training would suffice and you would not have to develop MSDS sheets on it.

But, Cherie, would you address that a little bit?

MS. HUTCHISON: Yes. Under the Table 47.11 Identifying Hazardous Chemicals under mixtures produced at the mine, that is what you're talking about, mixtures produced at the mine. That this allows you to use whatever scientifically valid evidence that you have available for the physical hazards to assume that it presents the same health hazards as the individual components. It does not require that you create -- well, our intent was not that you create an additional MSDS.

And when you train on the individual chemicals, part of that training on the MSDS for each of the individual chemicals is hazardous chemical reactions. And so if there a hazardous chemical reaction that occurs and a different hazard for mixing cyanide and lime, we would expect you to train your miners, to tell your miners about that this could
happen if you do this wrong or if you add too much of this or too much of that that you would get something different and you don't want that. But we wouldn't require a separate MSDS.

MR. HEESE: Initially when the miners come in and they come through my area, I'm in safety, I teach them how to read an MSDS sheet, where to find the things that they need that's going to concern them, you know. How to read the MSDS sheet.

And we have three locations that we have master files of every MSDS we have ever used out there or in these areas. And that that's pretty hard to manage, like everyone would agree.

We also have a system that it's a 1-800 number that we have sent every one of our MSDSs to this company and they have it in our database. And we have the 1-800 number on every telephone out there. So that if an employee wants to know about anything, he goes to the phone and they'll give him an answer in just a few minutes.

And so I don't know. If you really look at a mining process or you look at any industry and there's inherent hazards everywhere you look. We use diesel fuel, we use different oils, and everything else like that. It just looks to me from the outside
looking in that this is going to be very burdensome
extra cost above and beyond what we are doing already
quite a bit.

At Echo Bay Minerals we feel that we're
training our employees very well. I'm sure we can
improve. There's always room for improvement, you
know. But the cost is immense and cost in the mining
industry is hitting us pretty hard right now.

Basically, that's all I have.

MS. WESDOCK: Well maybe, perhaps, in the
final we should clarify then this provision and our
intent behind it. It seems like there's a little bit
a disconnect, and we will clarify that.

MR. HEESE: I think from the mining
industry from talking to other people, that it looked
like we had to train for each specific chemical
individually as it came in instead of listing all
these under a caustic element and all these underneath
a fire hazard, and all these under a respiratory
elements and things of that nature, which is --

MS. HUTCHISON: You have --

MR. HEESE: Go ahead.

MS. HUTCHISON: You do have that option.

MR. HEESE: Oh, we do?

MS. HUTCHISON: Yes. You can train by
these are caustics, these are acids or you can train
by each one individually. It depends upon the needs
of the miner.

MS. WESDOCK: And the operation.

MS. HUTCHISON: And the operation, yes.

MR. HEESE: Okay.

MODERATOR TEASTER: Thank you very much.

Is there anyone else that would like to
come forward and make a statement?

What I'm going to do, we'll take a break
for 30 minutes. I want to keep the record open and
see if there's anyone else that shows up. We'll now
go off the record.

(Whereupon, at 10:10 a.m. off the record
until 10:40 a.m.)

MODERATOR TEASTER: We have another person
who would like to speak, it's Jonathan Hill. And
Jonathan's a Safety Engineer from TCB Industrial.

MR. HILL: Thank you. We're grateful that
we have the opportunity to speak like this.

I'd like to concur with my colleagues'
statements, in that there are some duplication of
efforts in documentation in this new document that
you're considering. And I would urge that we consider
CAL OSHA or OSHA if we're in compliance with OSHA or
CAL OSHA, or any other OSHA standards that that be
accepted as complying with the plan that your
particular rule would cover. In other words, please
don't duplicate that.

I also would like to urge that you
consider the timely flow of information to independent
contractors with regard to hazard communication
documents such as material safety data sheets. As my
colleagues mentioned earlier, sometimes that equipment
breaks down. When that equipment breaks down, they
frequently call folks such as my employer. My
employer is a AB general industrial contractor.
They're involved in the installation, removal,
maintenance, repair and service of mining equipment
and facilities. When there is a need on a regulated
site to have an outside independent contractor and the
need to have it done in a timely fashion, sometimes we
have lots of lead time. Sometimes we don't have lots
of lead time. Sometimes it's a middle of the night
call.

And when those teams go out to the mine
they need to have information, just the same as your
employees do. So we would urge that you please
consider writing something in that new rule that
specifically addresses providing the timely flow of
material safety data sheets to independent contractors
who may have the potential of exposure while working
on your equipment.

That's all. Thank you.

MODERATOR TEASTER: John, under the
Interim Final Rule the program would require in that
HazCom program that they identify how they're going to
provide that information to independent contractors.
If I understand what you've said, you'd like to see in
that program that it would specify that that would be
provided in a timely manner.

MR. HILL: Yes, sir.

MODERATOR TEASTER: Have you had any
experiences on any of the operations outside of mining
particularly or with mining where you have shown up to
respond to some chemical spill or some accidents where
there is some exposures or will be some exposures from
these chemicals?

MR. HILL: Or potential exposure?

MODERATOR TEASTER: Potential exposures
where this information has not been provided in a
timely manner?

MR. HILL: Unfortunately, yes, sir.

MODERATOR TEASTER: Do you know why it
wasn't? Was it available, it just didn't get to you?
MR. HILL: In the particular incident that I'm thinking of it was the client's management just didn't think far enough ahead to provide that information to an independent contractor. They provided terrific training to their own people. They didn't give any consideration whatsoever to either an emergency response crew, an emergency repair or maintenance or service crew. It never dawned on the management that, oh, these people will also need that information. And that's how that occurred.

Nor were there apparently training for supervision in management to make him cognizant of that need.

MODERATOR TEASTER: This is just my understand, that when you call someone out, let's say an expert or somebody that had some expertise in responding to a situation where he's going to have such exposures, that they would have training in those particular areas. But what a person responding to that would need would know just exactly what chemicals he had.

MR. HILL: Exactly.

MODERATOR TEASTER: And he'd probably have knowledge in those chemicals, but he wouldn't know what he had been exposed to if it wasn't provided?
MR. HILL: That's correct. In other words, what is the potential? Is there a potential for that exposure to occur? And if there's a potential; we're not saying it's going to occur, we're not going to say it has occurred, but is there a potential that that employee might during the course of his operation, repair procedure, dismantling, whatever, is there a potential that he may be exposed to that? And I would urge that simply be written in the Interim Rule to protect that miner, that employee.

MODERATOR TEASTER: Any questions?

Okay, John. Thank you very much.

Is there anyone else in the audience that'd like to come forward and make a statement?

MR. COTTRELL: Ernie?

MODERATOR TEASTER: Yes.

MR. COTTRELL: Can I make a statement to what John just said?

MODERATOR TEASTER: Yes.

MR. COTTRELL: The way we handle a situation like that -- pardon?

MODERATOR TEASTER: Identify yourself for the record.

MR. COTTRELL: Oh, Jack Cottrell, Getchell Gold Corporation.
We have a system set up, what we call a contractor safety program. And if anybody on our property is going to let a contract for somebody to come on to do services on our property, they have to either submit to us their safety program which we review and approve or if they don't have a formal safety program, we sit down with them at our pre-bid meeting and go through all the policies and procedures that they're going to have to comply with. Part of that is the HazCom rules.

If they don't have their MSDSs with them on the chemicals that they use, we require them to have those. And then we show them where they can get them on our property, if they need them on our property.

Now, if they're going to go into a process, you know when you use a refiner I guess that's probably has the most dramatic effects because of exposure of mercury, they have to be trained in mercury before they go in there. They have to be respiratory fit tested. They have to go through everything that our employees go through before they go in there. If we can't get a respiratory fit test on them and we can't get a good fit on them, well we don't allow them in there.
And so there are systems at various mines, and I'm sure the other mines here will probably have the same type of program to manage contractors when they come on the property.

MODERATOR TEASTER: Thank you, Jack. That's a good program that you folks have there. And contractors not specific to HazCom, but contractors in general have had a high number -- I want to say a disproportionate number of fatal accidents in the mining industry. In the last 10/15 years there's probably been 30 to 35 percent of fatal accidents in metal and nonmetal operations have been contractors. So contractors is a concern, and certainly it's a concern of the Agency that they get trained. And, obviously, it's a concern of yours that they train when they get on the property.

But I think what you identified was a fixed procedure when you've got some work and they come on property to do that. And I think one of the things that the previous speaker had addressed was if he's called out in an emergency situation, if there's a ruptured line that's spilling out some chemicals, that he would want that information exactly what exposures his employees would be.

MR. COTTRELL: Right.
MODERATOR TEASTER: And how would you address that at your operation?

MR. COTTRELL: The way our system is set up is we identify three different levels of training that people have to have when they come on the property. If they're a vendor and they're just coming on delivering goods from point A to point B, they receive their hazard training. If it's a contractor that's coming in to fix a problem, we review with them the policies and procedures they're going to need in order to do that job safely. That may be lock out/tag out, that may be HazCom, that may be scaling, that may be whatever it is that they're going to be doing. And these people are only on the property from one to five days.

If they come on the property six or more days, we require them to have the full either 24 or 40 hour training.

MODERATOR TEASTER: Very good.

MR. COTTRELL: And so we would pick them up at the gate. We would have a system set up to give them that information.

MODERATOR TEASTER: Very good.

Thank you, Jack.

Is there anyone else who would like to
come forward and share their comments with us?

    We're going to break and --

    MS. HUTCHISON: I'd like to say something.

    The Interim Final Rule does allow that any
compliance efforts that you have made for compliance
with OSHA or CAL OSHA or other, or EPA or anyone else,
that you can use that training and those MSDSs and
labeling as compliance with MSHA's rule. The Interim
Final Rule already addresses that.

    MODERATOR TEASTER: Yes. We mentioned in
the opening statement that as a rule of thumb if
you're in compliance with OSHA, you'll be in
compliance with MSHA.

    As I was saying, we're going to go off the
record here shortly and reconvene at 1:00. There's
some of you that may not reconvene with us, but we
want to give everyone an opportunity that wishes to
speak, we want to make sure they have that
opportunity. But for those of you that may depart in
the interim, we will remind you that the record to
receive comments will remain open until October 17th
of this year. And I encourage you if you have any
concerns about any parts of the regulations, that you
submit them to the Agency for consideration.

    If you have thoughts and they're not
brought forward, we can't consider them. Not that we will adopt all of them but certainly if they're in the record, they will be considered. And I think it's important that we get input from all segments of the industry so that we can consider it. If it's not brought forward, it's not considered. A rule goes into place and then it's brought forward, it's much tougher to deal with. So it is important that we participate in this process, and that if we've got some concerns that we bring them forward so they're considered in the rulemaking record.

And with that --

MR. COTTRELL: Well, after you --

MODERATOR TEASTER: Yes, Jack?


After you close the record on the 17th will the next phase then, the next time we see HazCom will be a final rule? There wouldn't be anymore input. You won't put out another draft or anything like that?

MODERATOR TEASTER: No, that's correct. The next rule you'll see will be a final rule.

MR. COTTRELL: It'll be what we live with?

MODERATOR TEASTER: That's correct.

MR. COTTRELL: Okay. Thank you.
MODERATOR TEASTER: Okay. Thank you.

We'll go off the record now.

(Whereupon, at 10:56 a.m. off the record until 1:00 p.m.)

MODERATOR TEASTER: It's now approximately 1:00 p.m. No one else has shown up to speak or to sit in the audience.

We'll terminate the record at this time.

(Whereupon, at 1:00 p.m. the public hearing was adjourned.)