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
TUESDAY,
OCTOBER 2, 2001
COMFORT SUITES, CONFERENCE ROOM
271 NORTH 2100 WEST
SALT LAKE CITY, UTAH
9:00 A.M.

PANEL MEMBERS:
MARV NICHOLS, Moderator
BOB THAXTON, Acting Health Division Chief in Coal Mine Safety and Health
DOUG ALTIZER, Chief, Division of Policy and Program Evaluation, Educational Policy and Development Group
LARRY REYNOLDS, Solicitor's Office
CHERIE HUTCHISON, Office of Standards, Regulations, and Variances
PHAN PHUC, Office of Standards, Regulations, and Variances
<table>
<thead>
<tr>
<th>Index</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening Statement</td>
<td>3</td>
</tr>
<tr>
<td>Doug Dunaway, AngloGold North America</td>
<td>22</td>
</tr>
<tr>
<td>Wes Leavitt, Newmont Mining</td>
<td>34</td>
</tr>
<tr>
<td>Kent Adamson, Safety and Training Supervisor, Solvay Minerals</td>
<td>45</td>
</tr>
<tr>
<td>Tain Curtis, Local 1769, Deer Creek Mine</td>
<td>56</td>
</tr>
<tr>
<td>Jim Stevenson, International Health and Safety Representative, United Mine Workers of America</td>
<td>60</td>
</tr>
<tr>
<td>Link Derick, Twenty Mile Coal Company</td>
<td>78</td>
</tr>
</tbody>
</table>
MR. NICHOLS: Let's go on the record with our public hearing on our interim final rule for hazard communication in the mining industry.

Let me start by introducing the panel. To my far right is Phuc Phan and Cherie Hutchison. Cherie and Phuc are both with our Office of Standards, Regulations, and Variances back in our headquarters office. Down at the end of the table on my left is Bob Thaxton. Bob is the acting Health Division chief in Coal Mine Safety and Health. Next to Bob is Doug Altizer, and Doug is the chief of the Division of Policy and Program Evaluation with our Educational Policy and Development group. And to my immediate left is Larry Reynolds. Larry is with the solicitor's office and headquarters.

We are here today to listen to your comments on the hazard communication interim final rule which we published on October the 3rd of 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. During the proceeding, panel
members may ask questions of the presenter.

Although former rules of evidence will not apply, we will be taking a verbatim transcript of the hearing and will make it a part of the official rule making record. The hearing transcript will be available for review by the public, along with all the comments and data that MSHA has received to date. The entire rule making record 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.

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 following some of the comments we have 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 30th, 1988, in response to
this petition, MSHA published an advanced notice
of proposed rule making on hazard communication
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 rule making on hazard communication
on November the 2nd, 1990 and held three public
hearings in October of 1991. The record closed

In their comments on our advanced
rule making 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 rule making record on
March 30th, 1999, requesting comments on the
impact 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 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 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 rule making record, primarily from trade associations and labor organizations. The rule making record closed June 1st, 1999.

On October 3rd, 2000, we published an interim final rule on hazard communication with an effective date of October the 3rd, 2001. We gave commenters until November the 17th, 2000 to submit comments. The interim final rule specifically requested comments on, one, the plain language format and the content of the
interim final rule, mine operators' experience
under the Occupational Safety and Health Hazard
Communication Standard, and any changes in the
mining industry since the publication of the
proposed rule.

On December the 7th, 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, D.C. on December the 14th, 2000. The public
notice of the hearing appeared in the Federal
Register on December the 11th, 2000. We received
22 written comments on the interim final rule and
heard testimony from six persons at the public
hearing on December the 14th, 2000.

Commenters objected to what they
considered to be an inadequate comment period and
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
weren't able 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's
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. District Court of
Appeals, and the Utah Mineworkers of America and
the United Steelworkers of America have
intervened in that litigation.

Let me cover some of the major
provisions of the rule. There's six major
provisions to the rule. First is 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 a health hazard to miners
based on the chemical's label and material safety
data sheet 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 for sources: Title 30 Code of Federal Regulations (30 CFR) Chapter 1; the American Conference of Governmental Industrial Hygienists threshold limit values and Biological Exposure Indices, the latest edition; the National Toxicology Program (MTP) annual report on carcinogens, the latest edition; and the International Agency for Research on Cancer (IARC) Monographs or Supplements.

The second major provision is 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, one, procedures for implementing hazard communication through labeling, MSDSs, and training of miners; two, a list of the hazardous chemicals known to
be present at the mine; and, three, 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 would also
have to describe how the mine operators will
inform the other operators about the chemical
hazards and protective measures taken.

Three, 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 off the mine property are almost labeled. You would not have to relabel them unless the existing label becomes unreadable. You would not have to label containers or raw material being mined or milled while they are on mine property. You would not have to label products that go off mine property. You would have to provide the labeling information to downstream users upon request.

Four, Material Safety Data Sheet: A chemical's materials 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. An 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.

Five, Hazard Communication Training:
The hazard communication interim final rule requires mine operators to establish a training program to ensure that miners understand the hazards of these chemicals in their work area, the information of 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 training requirements for hazard communication with 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 programs for miners.

Making HazCom information available. That's the sixth measured provision. 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 and training sessions, such as videos. Also, mine operators do not have to disclose the identity of a trade secret chemical except when there is compelling medical or occupational health need.

Let me now share with you some of our thoughts on comments we have received on the interim final rule today.

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 compliments these
existing standards. The rule specifically deals with chemicals and chemical exposure. Chemicals may be used at 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 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 in small mines are not covered by the rule. For example, soap used for washing hands are cosmetics and are exempt. A can of spray paint is a consumer product and 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 the exposure, as well as the
amount, is the determining factor in determining
whether or not a consumer product is exempt.

We recognize, however, that not all
small mines are likely to use a wide range of
chemicals. Although we cannot exempt the
aggregates industry from hazard communication,
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're 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 MSDSs.

A draft of the MSHA compliance guide
has been on the web site for months. If you
refer to the compliance guide, many of the 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 public hearing
notice. We'll use these questions to clarify
your responsibility and include additional or
better examples in the compliance guide. As a
rule of thumb, if you're in compliance with
OSHA's rule, you'll be in compliance with MSHA's.

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 web site 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 you
request. 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 are also 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 IRAC 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 edition 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 ACGIH, NTP, and IARC list to reduce the burden on mine operators because mines used 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
edition, and they violate regulations governing incorporation-by-reference. We're opening 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 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 party who can provide the information.

Concerning the availability of MSDSs, commenters requested that we increase compliance flexibility and recognize that MSDSs may be stored in a computer. In response, we are considered modifying the requirements 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 use of widespread existing MSDSs and reduce cost by eliminating the need to develop additional MSDSs.

In response to comments concerning hazardous communication training, we are considering changing the language from requiring the operator to train the miner whenever introducing new chemical hazards into the miner's work area to requiring training when the operator introduces a new chemical hazard into the miner's work area, which 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 considered 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're 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 mine and to inform miners about the risk associated with exposure to 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 rule making record, from the publication of the advanced notice of proposed rule making on March 30th, 1988, through the close of the record on October 17th, 2001 in the development of the final rule.

You may submit written comments to me during the hearing or send them to the address in
the public hearing notice. We will also accept
additional written comments and other appropriate
data on this final rule making 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 rule making
record. The record will remain open until
October 17th, 2001, for the submission of
post-hearing comments.

We need you to sign the attendance
sheet in the back of the room, and if you wish to
speak there is a separate sign-in sheet. We're
going to begin with the folks that signed up
first and work our way through the list, and at
some point during the day if you want to make a
comment not signed up, that will be okay too.
We're scheduled to go until 5:00. We could go
beyond that if we need to, but it looks like with
this size crowd we could probably do it before
5:00.

My able lawyer here has something to
clarify.

MR. REYNOLDS: I just wanted to
mention we had some people comment in the earlier
hearing that there's a statement in here that
says that if you're in compliance with OSHA's
hazard communication standard you're in
compliance with MSHA's, and there are two
distinct things here. One is OSHA has a separate
standard for hazardous weight, and we included
hazardous weight within our HazCom standard; and
the other is the retention of the training
records. OSHA doesn't have tht. What the
statement said as a rule of thumb is you would be
in compliance with MSHA's if you were in
compliance with OSHA's. Generally you would be
with the exception of those two differences.

MR. NICHOLS: Okay. Our first
presenter will be Doug Dunaway with AngloGold
North America.

That's a good point. For all of the
presenters, if you would please spell your name
for the court reporter.

DOUG DUNAWAY: First off I'd like to
be saying that the progress we're making from the
initial HazCom rule is tremendous. Thank you.
The purpose of this statement from
AngloGold North America is to provide comments on
the implementation of Mine Safety and Health

Introduction: AngloGold does not argue the fact that chemical safety is an important factor for the protection of employees. However, AngloGold does not see the benefit of implementing another rule mainly because MSHA does not provide any future statistical analysis of reduction of injury and illness. Moreover, Part 47 is redundant to the already implemented regulations that include 30 CFR Part 46 and Part 48; and the metal/nonmetal mining standards published at 30 CFR 56/57, specifically 16004, containers for hazardous materials; 56/57.20011, barricades and warning signs; 56/57.20012, labeling of toxic materials. Part 47 is ambiguous in the interpretation of exposure assessments of chemicals as well as the interpretation of exposure levels, specifically threshold limit values. Part 47 is costly to the industry as a whole and creates an additional burden on an already heavily regulated industry.

Discussion: Evidence of reduction of injuries and illnesses: MSHA has decided to
implement a HazCom rule without notifying the
general public of scientific evidence
demonstrating the benefits of regulation and the
anticipated reduction to injury and illnesses
within the industry. In 1987 when the Occupation
Safety and Health Administration (OSHA)
implemented their HazCom 29.1910.1200 rule, they
issued a statement that supported their rule with
an anticipated 50 percent reduction in
industry-related injuries and illnesses from 8200
to 4100 in 20 years. MSHA has not released any
scientific evidence that supports Part 47 or that
the industry is negligent towards employees and
chemical exposures, nor have they provided the
mining industry of the results of the OSHA
findings that could demonstrate the effectiveness
of a HazCom rule.

Redundancy of regulations: 30 CFR
56/57 clearly defines the regulatory requirements
for flammable and toxic materials. The mining
industry is already required to protect miners
from hazardous and toxic materials. AngloGold
requests MSHA provide some clarity to why we
would need two rules for personal exposures to
hazardous materials. Furthermore, does one rule
take precedence over the other?

Hazardous materials exposure assessment: Many federal agencies have unified under the stewardship of the Occupational Safety and Health Administration with participation of the Environmental Protection Agency, Food and Drug Agency, and the Department of Transportation. AngloGold recommends, as did the American Society of Safety Engineers in a letter to Dr. Carol Jones dated November 17th, 2000, that MSHA join this coalition so that the new regulations that are about to be implemented do not have the potential of being inappropriate and outdated.

Referencing the HazCom Compliance Guide Draft dated October 3rd, 2000, states that an employee need not be trained on a hazardous chemical if it is not reasonably anticipated that the employee will be exposed. AngloGold finds this to be ambiguous in the definition of hazardous chemicals, the potential for exposure, and determining compliance. Part 47 does not comply uniformity in that determining of occupational exposures. It is unclear where the
1972 coal and the 1973 metal/non-metal threshold limit values or current at ACGIH threshold limit values are appropriate for determination. AngloGold references the recent lawsuit settlement between the ACGIH and the trona mining industry. The settlement states that the ACGIH TLV are only recommended and not to be automatically adopted as a regulation because they have not gone through the rule making process.

In addition, Part 47 recommends the use of IARC and the NTP, MSHA standards, and ACGIH for the assessment of hazardous chemicals. AngloGold does not understand why MSHA recommend -- does not recommend, recognized, or cite the GHS, the International Safety Organization, or the American National Standards Committee, OSHA, or the National Institute of Occupation Safety and Health. AngloGold again requests that the OSHA coalition be the standard referred to in this matter.

In consideration of assessing hazardous chemicals, AngloGold is confused when adapting the TLV from the various MSHA recommended organizations, for example,
CINNASORB, Elemental Mercury Absorbent Base, manufactured by Mallinckrodt Baker (J.T. Baker) MSDS effective date 11/6/97 is a zinc base powder, non-pyrophoric with chemical constituents of zinc oxide and lead. For example, we should look at zinc oxide because it is 1.5 percent of the chemical meeting the criteria of Part 47.

OSHA recommends 15 milligrams per cubic meter total and 5 milligrams per cubic meter respirable. NIOSH recommends 10 milligrams per meters cubed total and 5 milligrams per meter cubed respirable. ACGIH does not recognize zinc oxide in the 2001 TLV and BEI; however, in the 1973 TLV it does list zinc oxide fume as 5 milligrams per cubic meter. IRAC and MTP are not involved because it is not carcinogenic, and the MSDS again states it is 1.5 percent by volume and it is hazardous.

The MSHA recommended resources do not provide AngloGold with the necessary information to properly meet compliance of Part 47.22 that includes chemical identity, which permits cross-referencing, and hazard assessment. Moreover, could the MSHA inspector extrapolate the data to provide AngloGold with the necessary
information for hazard assessment, training, and/or compliance?

AngloGold recommends that MSHA develop a TLV/BEI reference guide to reduce the ambiguity of compliance; furthermore, under this part MSHA requires the mining industry to use the current TLV of the recommended organizations that annually review and publish new recommended TLVs for exposure. AngloGold believes that this increases the cost of maintaining the MSHA HazCom program, conflicts with the MSDS data, and makes enforcement impractical, and as previous pointed out, the settlement in trona, ACGIH litigation makes reference to the most current ACGIH as inappropriate.

Cost of implementation or compliance:

In the MSHA Federal Register dated March 19, 1999, Volume 64, No. 60, Page 15144 through 15148 provided a cost analysis for the implementation of the HazCom rule. MSHA stated the belief that the impact on the industry would decrease because the number of miners has decreased and independent contractors have increased. AngloGold contends that the cost of implementation or compliance is still the same
because requirements of monitoring the chemicals
brought on site, evaluating of MSDSs, and
training of both miners and contractors. MSHA
believes the start-up cost would be $900 to $1200
dollars per operation and a cost of $24 per miner
for compliance. These numbers are grossly
underestimated because of the logistical need of
professional qualifications required in meeting
the requirements of Part 47.

In anticipation of the implementation
of Part 47, AngloGold has researched the cost for
the implementation and found the cost in excess
of $35,000 for a small mine operation such as
AngloGold. This would include the chemical list,
contracting of hiring of an employee to audit,
maintain, evaluate MSDSs, and train employees
within our mine. This does not include the
independent contractor compliance.

In conclusion, AngloGold would like
to express their appreciation for the time MSHA
has given to address these concerns and hope that
industry and agency can come together with
regulations that make sense, is affordable, and
justified.

MR. NICHOLS: Thanks, Doug.
Any of the panel members have a question for Doug?

MR. PHAN: Do you have the data that states the research that you stated in excess of $35,000 for a small mine operation?

DOUG DUNAWAY: I can provide that to you, yes.

MR. NICHOLS: Anything else?

MS. HUTCHISON: Do you consider cinnasorb a hazardous chemical?

DOUG DUNAWAY: By Part 47 MSHA does because it's greater than 1 percent, and it is a hazardous chemical from what the MSDS tells me.

MS. HUTCHISON: What difference does it make whether OSHA recommends 15 milligrams and NIOSH recommends 10 as far as your hazard communication program goes?

DOUG DUNAWAY: What are we going to classify it as within the hazardous group? Are we going to put it at a high hazard, a low hazard? It's going to make a difference. It's not even covered under Part 47 because you're not recognizing the -- the whole point of that is you're not recognizing other agencies that do help us out here, such as OSHA, NIOSH, GHS and so
forth. We need to come together as an entire agency, all your sister agencies and industries come together and reduce the ambiguity, the obvious things that are wrong with this, and move forward.

MS. HUTCHISON: It seems to me that OSHA, ACGIH, and NIOSH have already considered this hazardous.

DOUG DUNAWAY: That's correct. Has MSHA HazCom, though?

MS. HUTCHISON: Yes.

DOUG DUNAWAY: It's not within the guidelines recommended agencies per interpreting whether it is a hazardous chemical or not from what I'm understanding of the HazCom Part 47.

MS. HUTCHISON: The HazCom Part 47 as it stands now does say if it is recognized as a hazardous chemical by ACGIH, and you not only have zinc oxide here, you also have lead.

DOUG DUNAWAY: Right. But in 2001 ACGIH did not recognize it, and lead was below the 1 percent. So ACGIH did not recognize it in the 2001 TLVs, but it was recognized in the 1973 adopted TLVs.

MS. HUTCHISON: What do you think
your obligations would be regarding zinc oxide or the Cinnasorb under Part 47?

DOUG DUNAWAY: Under Part 47?

MS. HUTCHISON: Mm-hmm.

DOUG DUNAWAY: I'm rather confused by looking at Part 47, but as a conscious health and safety professional I take the utmost protection for my employee without Part 47. I can make that judgment call myself.

MS. HUTCHISON: Part 47 requires only that you inform the employee of what he's being exposed to, zinc oxide and lead.

DOUG DUNAWAY: I don't understand where you're going with this.

MS. HUTCHISON: It doesn't matter what the exposure limit is or even if it has an exposure limit. There are lots of toxic substances out there that don't have exposure limits. That's where I'm going with this.

DOUG DUNAWAY: And I agree with that statement, and that's already being taken care of in most instances throughout the industry.

MS. HUTCHISON: How?

DOUG DUNAWAY: Through training within the mining industry as far as hazardous
chemical associations, you know, Part 46 and Part 48 do cover a lot of that. Silica's exposure, if you're around a hazardous chemical such as working in labs or working around the milling area, MSDS books are already provided in the majority of the incidents, and their workers are well trained within that area.

MS. HUTCHISON: Okay. Well, using your example, can you send me a copy of your training program on cinnasorb, what you tell your employees about it?

DOUG DUNAWAY: About cinnasorb?

MS. HUTCHISON: Yes.

DOUG DUNAWAY: I do not have cinnasorb. I just took a reference out of the NIOSH guide book, pointed the finger, and that's what I came up with.

MS. HUTCHISON: What chemicals do you train your employees about in their Part 48 training?

DOUG DUNAWAY: We basically cover all the re-agents and the silica obviously when it's reduced down to proper size. Paints and so forth already have the MSDS and the labeling on the can because there are several manufacturers that we
use right now, such as CRC, that put the MSDS right on the back of the can. We let our people know what is on the back there and the health hazards associated with them.

MS. HUTCHISON: And you go over these with all potentially exposed employees?

DOUG DUNAWAY: If there's a need to right now, yes.

MS. HUTCHISON: Thank you.

MR. NICHOLS: Okay. Doug, thanks.

The next presenter will be Wes Leavitt from Newmont Mining.

WES LEAVITT: Wes Leavitt, W-e-s L-e-a-v-i-t-t.

Mr. Chairman, members of the panel, my name is Wes Leavitt and I am an industrial hygienist at Newmont Mining Corporation. Newmont Mining is a US-based, publicly held corporation with mining properties located throughout the world. Our properties in Nevada employee approximately 2500 workers. As a representative of Newmont, I am pleased to submit our comments to the Mine Safety and Health Administration on its Interim Final Rule concerning hazardous communication.
Newmont recognizes our responsibility to safety, the environment, and to our communities. Our employees develop and promote innovative programs in each of these important areas.

Newmont agrees with most of the provisions of the final rule. We endorse the concept of hazard training and communication for chemical hazards on our mining site. However, we believe that implementation of the following recommendations would make the rule more manageable and effective.

With regard to exemptions, the rule should allow for additional exemptions as listed in table 47.81. Please consider this example: If we move waste rock from its original location where it's not considered hazardous, to a new location 500 yards away, the new rule would require us to consider this material hazardous.

Table 47.82 exempts raw material from being mined or processed from labeling requirements. Still, we would be required to prepare an MSDS for waste rock because it may contain silica. We must also prepare additional HazCom training documentation.

This waste rock will never leave our
mine site, and our miners are trained to recognize and mitigate potential hazards as required in the existing Part 48 requirements. In addition, the primary purpose of the MSDS is to provide information to the general public. An MSDS for substances such as waste rock is meaningless and will not contribute to our common public health and safety efforts. Raw material being mined or processed with the same conditions as listed in table 47.82 should also be listed in table 47.81, exempting them from regulation under the HazCom standard.

With regard to hazard determining, as written the regulation would also require Newmont to prepare an MSDS and train miners on the health hazards associated with the gold bar because it contains a small amount of silver. In this physical state, silver poses virtually no health risk, yet we must spend valuable time and resources addressing this alleged hazard. We suggest that the actual hazard should be considered in determining if a particular substance is exempted from the regulation. The simple fact that a substance is present should not require compliance with this rule.
With regard to training, proper training of Newmont's workforce is not only the right thing to do, it is also cost effective. We believe that effective training is essential to ensuring a safe and healthy working environment, and we make every effort possible to ensure miners are aware of workplace hazards and are adequately protected. We agree with most of Subpart F that addresses training, with the exception of 47.53 that requires the operator to make a record of each miner's HazCom training and keep the record for two years. This documentation is covered by existing training regulations. 30 CFR 48.9 and 48.29 require the operator to documents the training received as part annual refresher training and new hire training. MSHA has already stated that HazCom training can be included as part of the annual refresher training and the requirements in Part 48 provide an adequate means for recording training received under the HazCom rule. This additional documentation will not improve the effectiveness of the rule. We suggest that Section 47.53 should be deleted, or at least clarified, that additional separate documentation
is not required.

As a company, Newmont strives to maintain compliance with state and federal regulations. Duplicate requirements such as these only complicate the issues and make compliance more difficult.

With regards to a definition, what is the definition of empty? 30 CFR 47.34 reads, "The operator does not have to label a temporary, portable container into which a hazardous chemical is transferred from a labeled container provided that (a) the operator ensures the miner using the portable container knows the identity of the chemical, its hazards, and protective measure needed; and (b) the portable container is left empty at the end of the shift."

Here's an example: A miner empties motor oil from a temporary container and then places the container back on the shelf. A small amount of oil will re-collect in the bottom of the container. We suggest that the agency define empty similar to the way the EPA has in the RCRA rule.

Incorporation by reference: Newmont is opposed to any incorporation by reference of
lists that have not gone through the rule making process. The determination of a hazardous chemical as defined in table 47.11(b) should be reevaluated. The recent settlement between the American Conference of Governmental Industrial Hygienists and the trona industry regarding the TLV process suggests that there are problems with how the ACGIH determines the contents of its list. This list should not be used rule making to determine whether or not a chemical is hazardous.

In addition, the International Agency for Research on Cancer is composed of representatives from governments around the world. We should not be relying on the views of other governments to provide us with information for which they are not held accountable.

In addition, limiting the incorporation by reference to 2001 publications does not change the fact that these organizations do not comply with federal notice and comment procedures or due process in making their determinations. We suggest that the agency explore other lists that have gone through rule making to determine if a chemical is hazardous,
such as those used again by the EPA.

As mentioned earlier, Newmont incorporates a proactive safety program into our business and site management plans. Our employees are our most valuable resource, and protecting their health and safety is our top priority.

Again, we thank you for the opportunity to comment on the HazCom rule and hope that our comments can be incorporated into the final rule.

MR. NICHOLS: Maybe I'll ask the panel this: What's this business of moving this waste rock around? It says if you move waste rock from its original location where it's not considered hazardous to a new location 500 yards away the new rule would require us to consider this material hazardous. I don't understand that.

WES LEAVITT: Okay. What I'm referring to there is it talks -- in the rule it talks about rock products on the mine site, but the only time -- if your mining product contains something hazardous in the ground, the rule doesn't address anything like that until you
start moving it to, say, a stockpile, et cetera, and then the rule exempts it from labeling requirements, but we still have to provide this additional training and documentation under the HazCom rule and then prepare an MSDS. Currently we already train these miners on the hazards associated with the waste rock because it contains silica. That's documented under our annual refresher training, and the additional documentation is essentially not gaining us anything.

MR. NICHOLS: What's the waste rock? Overburden?

WES LEAVITT: Yes. Well, anything that doesn't have gold in it is waste according to us.

MR. NICHOLS: I don't think that's right.

MS. HUTCHISON: I don't either.

MR. REYNOLDS: I think what MSHA is saying is if you create a hazard during the process of moving the material from one place to another then it would be subject to the standard, but if it doesn't it wouldn't be.

You're saying that you already have
MSDSs for any hazard that might be in the material.

WES LEAVITT: We don't have an MSDS for waste rock because --

MS. HUTCHISON: Do you have one for silica?

WES LEAVITT: For silica itself?

Well, we would have an MSDS for a product that contains silica.

MR. REYNOLDS: If the waste rock doesn't contain a hazard --

WES LEAVITT: Well, it contains silica.

MR. NICHOLS: What does it contain additionally that it did not contain when you mined it? That's my point, I think.

WES LEAVITT: But the rule addresses the fact that it does contain a substance that's on one of those lists.

MR. NICHOLS: But it did when you mined it.

WES LEAVITT: Right.

MR. NICHOLS: So you've already taken care of that. Moving it around is no problem unless you --
WES LEAVITT: We're only going to move it once.

MR. NICHOLS: You say you're going to move it 500 yards here.

WES LEAVITT: That was an example. If we take it from this pit over to this waste dump, it might be 500 yards or it might be 2000 yards. But if it's in the ground we don't have to prepare an MSDS. We don't have to train people on it until we start working with it, which is required already. We're required to train the miners on the health hazards in the work environment, silica being the health hazard. The rule as I read it would require us to prepare additional documentation -- and this is just one example -- but additional documentation that we have trained the miner on the hazards associated with waste rock and keep that viewing at 5,023 for 2,500 people, an additional 5,023 that could already be covered.

MR. NICHOLS: I understood your other comments, but this one I just want to be sure we're not doing something that defies common sense here, and I don't think we are. I don't think, unless you do some further processing to
that waste material, that you'd have to do
anything different than when you mined it.

WES LEAVITT: The only exemption it
gives is per labeling as far as raw materials,
raw material being mined or processed. Under
table 47.82 it lists raw material being mined or
processed as an exemption from the labeling
requirement, and what I guess I'm asking you is
that type of thing also be exempted from
additional documentation, et cetera.

MR. NICHOLS: Okay.

MS. HUTCHISON: I was going to say we
try to use common sense too.

WES LEAVITT: Right.

MS. HUTCHISON: But we do intend that
you have an MSDS for silica, not waste rock.

WES LEAVITT: We do have an MSDS for
our products that contain silica as currently
required.

MS. HUTCHISON: You can use that.

MR. NICHOLS: What about the training
documentations?

MS. HUTCHISON: Oh, yes, you can use
that too. OSHA does not have training records in
their hazard communications standard. We put
these training records in our standard because we fully intend that you do your HazCom training in conjunction with your Part 46 and Part 48 training. You already have the form. It would just require us to put another box there that says "HazCom." And you already keep them for two years. We just intended that it just be routine, nothing extra. That was our intent.

WES LEAVITT: We just didn't read it that way. There was some question as to whether that was the intent or not.

MR. NICHOLS: You got us on record here.

WES LEAVITT: Cool.

MR. NICHOLS: Thanks.

The next presenter will be Kent Adamson with the Wyoming trona district.

KENT ADAMSON: Good morning. My name is Kent Adamson. I'm the safety and training supervisor for Solvay (phonetic) Minerals in southwest Wyoming. I am both a certified industrial hygienist and a certified safety professional, and I'm here today representing the soda ash industry of southwest Wyoming who mine and utilize the mineral trona in the production
On behalf of the trona patch, I am pleased to submit the following comments concerning MSHA's interim final rule establishing a HazCom standard for coal and metal and nonmetal mining.

We support all efforts towards the reduction of accidents, injuries, and illnesses at mines through proactive safety and health programs and compliance withstand standards that are supported by sound science. We commend MSHA for reopening their record for further comments and support the changes suggested by MSHA at the public hearings held to date.

We endorse the concept of hazard training and for chemical hazards. However, we oppose the potential proliferation of citations for paperwork or technical violations of a mandatory plan and document retention program. This problem has been experienced repeatedly under the OSHA program and should be avoided by MSHA. Thus, we propose an mandatory HazCom program that could only be a citable violation if generic training for chemical hazards is inadequate.
We fully endorse the proposal to require training only when the operator introduces a new chemical hazard into the miner's work area. We believe that the focus of this rule should be protecting miners from the hazards posed by chemicals instead of focusing on each individual chemical, even if that chemical does not pose a new hazard. This proposal recognizes this common sense approach and should be adopted.

A single training program that addresses all the safety and health concerns at the facility makes the most sense and will eliminate redundant paperwork requirements. However, MSHA must be realistic and understand that no amount of training will be sufficient to ensure that all miners can fully comprehend a highly technical MSDS. It should be sufficient that a miner can express in layman's term what he or she understands to be the basic hazards with a product or process and the appropriate method of eliminating or controlling these hazards.

We support MSHA's attempt to clarify that the designated, quote, "responsible person" mentioned on labels and MSDSs can in fact be the mine operator.
We strongly urge MSHA so select the listing of the OSHA PEL as an alternative to the MSHA PEL on the operator's product MSDSs. Doing so will decrease the cost of compliance by allowing existing MSDSs which contain the OSHA PEL to be used rather than generating new MSDSs.

We support revying the definition of "health hazard" by deleting the phrase "psychological or behavioral problems." We believe this phrase is unnecessary and should be eliminated.

We support the use of performance-oriented language rather than prescriptive requirements with respect to how information would be exchanged among multiple operators at a site.

We applaud MSHA's attempt at reducing the burden on mine operators in the identification of hazardous chemicals and the development of their internal and product MSDSs and labels. However, today's litigious society has already forced operators to spend a considerable amount of time, money, and resources in developing MSDSs and labels that hold up to intense legal scrutiny. To this end, operators
need the flexibility to use any resource that is scientifically valid and credible in determining if a chemical is hazardous or not. We strongly oppose MSHA's use of non-governmental sources, such as ACGIH and IARC, to determine whether particular chemicals are hazardous and what the level of hazard is.

As MSHA recognizes in the preamble, these organizations do not use the equivalent of federal notice and comment rule making to make their determinations, and a number of their determinations is directly applicable to the mining industry, remain highly controversial, and have been negated by more recent scientific findings, for example, IARC's findings on chrystaline and silica. In the past year alone ACGIH was involved in three lawsuits and an OSHA House of Representative Oversight Committee regarding their TLV process.

Incorporation by reference of ACGIH's TLVs may be the most serious flaw of the HazCom rule. MSHA states in the preamble that it will enforce exposure limits for chemicals listed by ACGIH in their list of TLVs. The U.S. Department of Labor has already been prohibited by the
Eleventh Circuit Court of Appeals from using recommended but not scientifically validated limits on various chemicals set by ACGIH and other unknown associations. Thus, this requirement, even if limited to the 2001 TLV booklet, must be eliminated.

MSHA admits that there are conflicting statements with respect to the values adopted by these quasi-governmental organizations and lists by these other associations that reportedly contained, quote, "known hazardous chemicals," when in fact there is no scientific justification supporting these claims.

If MSHA is going to rely on the advice and recommendation of these bodies, whose participants include MSHA personnel and other governmental officials as well as private sector representatives, then it should acknowledge their role as federal advisory committees and comply fully with the Federal Advisory Committee Act and other applicable statutes and regulations. Doing so not only allows the input of industry but allows the input of the individuals this standard is supposed to protect, that being the miner.

In conclusion, the soda ash producers
of southwest Wyoming want to commend MSHA for reopening the record. As publicly stated here today in our comments, we fully endorse the concept of providing the necessary information to our employees regarding the hazards of the chemicals they use or may come in contact with. We firmly believe that a workforce educated in the hazards of their workplace tend to develop safe work habits that enable us to safely produce our products.

We encourage MSHA to promulgate a rule that 1) does not illegally incorporate by reference hazard determinations by non-governmental bodies; 2) does not cause the proliferation of needless paperwork citations; and 3) recognizes the importance of hazard communication in the training of miners about general chemical hazards and not specific chemicals. Thank you.

MR. NICHOLS: Thank you. Is it your point that we adopt the OSHA TLVs and drop everything else?

KENT ADAMSON: If you're going to incorporate by reference, I think you would need something that has gone through the rule making
process, but I think you ought to allow industry
the opportunity to use whatever references are
available to them to conform with this standard.
Stipulating in the rule making, I think, really
limits what companies can do. Now, most
companies will probably go beyond that, and
they'll learn and study and get all the
information that they can, but by incorporating
it in the documents by reference organizations
such as ACGIH have a lot of internal problems.

In our opinion, the trona patch,
having recently one a lawsuit against them, do
not have a lot of confidence in their ability to
provide sound science. They go through no
outside peer review, their meetings are held in
secret, very little input from industry, and I
don't know if that's something that the industry
feels comfortable on, that MSHA will rely on for
enforcement activities.

MR. NICHOLS: Any questions of Kent?

MS. HUTCHISON: Part of the purpose
of the lists in the hazard communication rule is
coordination of identifying hazards, and there
are, as you know, a lot of different information
out there, and right now there's a great effort
at global harmonization trying to determine
different categories for hazards, you know,
what's toxic, what's highly toxic, what's
carcinogenic, what's probably carcinogenic or may
be carcinogenic, so there is a lot of information
out there. How would allowing each individual
mine operator to do his own research and come up
with whatever he felt enhance communication of
hazards.

KENT ADAMSON: Well, as I mentioned
in our comments, most of the people in the mining
industry, their downstream users are folks that
are covered under OSHA, and as such their
required already to provide MSDSs.

And from a legal standpoint, MSDSs
were great when they first started. They were
simple and had the intent of providing what
you're trying to get, until the lawyers got
involved and required boilerplate statements and
everything, and they became a very technical,
legal document. So for a company to provide this
document to downstream users, who in turn are
going to use it to protect the safety and health
of their workers and there's a potential for
backlash of litigation, I guarantee you that most
companies are going to spend their resources and
use the most credible and scientific evidence
there is to produce these MSDSs. I don't think
they're going to arbitrarily say, Well, we don't
think it's hazardous, or not. The legal risks
are far too great.

I think your intent of incorporating
ACGIH by reference was to simplify, and I
understand and we do appreciate that. However,
the organizations that you picked we don't feel
have the credibility anymore to just
automatically say that because it's on their list
that it's hazardous.

Case in point, trona. Had we not
gone to the expense of defending our product,
defending our workers against unscientifically
founded rule making from -- or not rule making
but from ACGIH passing their TLV, our product
would be deemed hazardous, and it's not, and
ACGIH clearly stated in their settlement letter
that they did it prematurely and it was not based
on sound science. So there you have a chance
where we would have to do all this based on an
error from these agencies, and that's why we
propose that you will allow companies to use
If you do an investigation and come in and say, What were the basis that you used to develop your MSDS, then you could use your enforcement if a company said, Well, just because Joe Smith down the street said it was or wasn't. Then is when they can demonstrate, Hey, we used OSHA PELs, we used other evidence, we used a study by so and so at the University of Alabama, or whatever. If they can prove to you what their decision logic was, that's what you should use, not just saying, Hey, use ACGIH or these folks. To me, by allowing companies to do more research on it actually ensures a greater accuracy and provides more information than just saying it's hazardous because it's on this list.

MS. HUTCHISON: The current Part 47 interim final rule does allow operators to do their own research.

KENT ADAMSON: It does, but by incorporating by reference, again, ACGIH and IARC, that have a lot of inherent and intrinsic problems in their organizations right now, I think there's a mistake for MSHA to rely on them when their information that they are providing is
suspect; and for MSHA to rely on that as part of enforcement activity clearly opens the gate for questions there when you don't need to, when MSHA can say, Hey, use the best available credible scientific information that is out there to make this determination, but don't have to incorporate anything by reference, I think is best for industry and surely for your agency.

MR. NICHOLS: Okay. Kent, I think we understand your comments. Anybody else have a question?

KENT ADAMSON: Thank you.

MR. NICHOLS: Thank you.

MR. NICHOLS: I don't want to miss any of the testimony, but I need to take a ten-minute break, so why don't we come back at ten minutes to 11:00.

(Recess, 10:40 to 10:50 a.m.)

MR. NICHOLS: Let's get started back. Our next presenter will be Tain Curtis with the United Mine Workers.

TAIN CURTIS: My name is Tain Curtis, T-a-i-n C-u-r-t-i-s, and I represent the members of Local 1769 at the Deer Creek mine. We have 280 active members now. I'm not an industrial
hygienist and I'm not an attorney. I'm a coal
miner, so my views will be a little bit different
from those expressed.

We feel that OSHA has had this rule
in effect for several years and that we would
like to have that same opportunity and same
protections offered by that rule to the miners.

In the mining industry in today's economy,
technology and the use of solvents and chemical
agents is on the rise in the mining industry to
help save time, money, and increase productivity.

Underground coal mining is different
from a lot of other industries in that whatever
is introduced into the air upwind, or out-pike,
goes to where the miners are exposed and they
breathe this air in. If anything is introduced
to that air, we need to know about it and have
the means in the form of an MSDS on how to handle
the adverse effects on us.

Several times equipment is sent out
for repair, and cooling jets and other means are
put in it to keep the equipment from freezing up,
and caustic things are used to help clean them
out. When they're brought back to the mine,
there's no labeling or we're unaware of the
substances inside this equipment. We don't know about it until it's hooked up to water and ejected into the atmosphere that we breathe. Those instances need to be addressed. Miners need to be more educated on the chemicals that are used. We have seen chemicals brought up in the form of spray cans that pose a hazard to individuals with heart problems. Without any knowledge to that, it could be used and complicate the problems.

Supplies are brought up in bulk and then put into smaller containers for use. There's no follow-up on identifying it, and if the containers are left they'll be unidentified and the hazards will be unknown to the miners.

The education of miners and what they are exposed to would be a must for the first aid, if anything else. If the exposure is done, we don't know what first aid is needed without an MSDS.

As we enter the new millennium, mining has to update and protect the best assets they have, and that is that of the miners. The best way we can do to protect the environment would be to educate miners on these substances.
and how and what should be done with them and how they should be handled and how they should be disposed of.

The best way to increase this for children, to protect the children, would be with this rule to protect the miners at work, to guarantee them a safe place to work so they can return home to their children.

We would not have these proceedings today if this rule was already implemented.

Finally, I'm a coal miner and don't understand or have the time to understand all the legalities of rules, but the bottom line is the protection of miners and a recourse of action to any inefficiencies that the operators may -- that exist are important to me and those miners that I represent. I appreciate the opportunity of having these comments with you today. Thank you.

MR. NICHOLS: Thank you, Tain. Wait. We may have a question for you.

THE WITNESS: I'm not prepared for an answer.

MR. NICHOLS: We could hire you, then.

I guess not. Thank you.
The next presenter will be Jim Stevenson, also with the UMWA.

JIM STEVENSON: Thank you. Good morning. My name is Jim Stevenson, S-t-e-v-e-n-s-o-n. I'm an international health and safety representative for the United Mine Workers of America.

I don't have copies of the comments I'm going to make now. Our final copies will come out of my office in Fairfax, Virginia.

For many years miners have demanded that the Federal Government, through their rule making responsibilities under the Mine Act, implement a basic human rights standard which would prevent mine operators from dumping chemical and hazardous agents in their workplace, many of which are confined spaces, without identifying the chemical or harmful agent, without notice to the miners of the hazards, without training miners to protect them from the hazards, and without applying and providing proper protection to prevent injury, illness or death. Although such human right protections have been given to most of the workers in the United States, miners have been neglected.
Through botched and/or inept rule making and administrations of the Mine Act, MSHA has for years denied miners of these basic protections. Miners' demands for these federal standards has stretched back over two decades. After considerable debate and discussion, the Federal Government finally proceeded through the rule making process concluding with public comments and hearings on a hazard communication rule on January 31st, 1992. Instead of issuing a final rule in '92 as prescribed by the Mine Act, the agency just let in languish, leaving miners exposed to hazardous chemicals.

Following years of inaction and delay, miners thought they had achieved such protection when MSHA, on October 3, 2000, finally issued such a rule as an interim final rule that was to be in full force on October 3rd, 2001. Although it fell short of the protections needed, it nonetheless provided safeguards for miners against harmful chemicals in their workplace.

This was, however, short lived. On October 28th, 2001, nearly a yearly following implementation of the rule and on the eve of its effective date, MSHA again thwartd that
protection for miners. In a Federal Register notice of the Agency, the MSHA notice solicited comments on any issue relevant to the rule making. By doing so it broadened the debate to allow change in the entire rule. Given the fact that this rule has been deliberated and debated for 14 years and was reopened for public comment and hearings twice since a full public hearing and comment period in 1992, it was outrageous to haul the rule developed, over 14 years old, and reopen the rule making to unlimited comment and debate again before any rule goes into effect.

While there are issues that could be clarified that may not adversely effect miners' health and safety, blocking the rule's implementation and throwing the entire rule open to change is not the right course. Announced plans to address a list of mine operator objections, some of which would weaken protections miners had in October 2000 HazCom rule, while ignoring many increased safeguards called for to protect miners.

During the last comment period on the HazCom rule, miners' representatives identified several improvements that should be made in any
changes to HazCom rule should they be made. While MSHA announced they were reopening the comments on HazCom rule and extensively addressed specific issues raised by mine operators, the agency virtually ignored recommended changes made on behalf of the miners. Those improvements recommended included, but not limited to, the following: Enhance the rules' effectiveness by making it less performance base and more enforcement oriented; requiring regulations of chemical use at the mine (the rule does not currently do that); prohibit the use of certain chemicals at the mine when practical, including substitutes where possible; redefine hazardous chemicals in the rule to be less confusing -- current definition is circular logic: "A hazardous chemical is one that is a physical or health hazard." This definition allows too much latitude to the operators when determining what is or is not hazardous. There must be some plausible way to determine the hazardous (non-hazardous/hazardous is based on what scientific determination); recognize that chemicals by their very nature are hazardous, that the dose of the substance determines its
professional to cure or cause death; remove any
language that allows operators to make
determinations on what is or is not hazardous;
require operators to receive training on
hazardous chemicals present before allowing them
to train miners. They are no aware aware of the
problems that exist at this point than the miners
are; remove the language that allows operators to
classify only those chemicals used under normal
circumstances or foreseeable emergencies as
hazardous; hold the operator or chemical
manufacturer/supplier responsible for inaccurate
labeling of chemicals; hold the operator or
chemical manufacturer/supplier responsible for
inaccurate MSDS's; place prescriptive training
requirements on the rule; require standardized
language be used on all labels in MSDS's;
eliminate reference to non-routine tasks in the
rule. Miners need to be aware of presence of
chemicals at the mine regardless of the frequency
of their use; require labeling and training on
consumer products regardless of determinations
made by the Consumer Products Safety Council.
Those are currently exempt under the rule,
despite the fact the product may be used more
frequently and in greater concentrations than
approved by the CPSC; remove any obstacles in the
rule that access to trade secrets. Rule would
require extraordinary measures be taken by
miners, physicians, health care professionals to
access necessary information to treat exposed
miners. This may be as many as 14 different
processes and include the FMSHRC; include the
biohazards under the scope of the rule.
Reclamation workers currently work with these
hazards and need to be protected.

Training should include an
explanation of where and how a chemical is being
used and what precautions the employer has
adapted to limited exposure; eliminate all
references to label alternatives. All chemicals
should be labeled; require labeling of all
chemical containers, including temporary portable
containers; require all chemicals existing at the
mine be labeled and accurate and MSDSs be
provided to downstream customers; labels and
MSDSs for chemicals produced at the mine should
be updated immediately when the contents change.
The current rule allows a three-month delay from
the time the operator becomes aware; require
specific chemical information be included on any label or MSDS. Currently generic information such as petroleum distillates is acceptable. This is too broad and could include thousands of chemicals.

Require mine operators to be aware of all chemicals on their mine property; require mine operators to keep MSDSs from the time a chemical first enters mine property and for a period of 30 years. This would mirror OSHA requirements. Require the burden of maintaining and making MSDSs available to miners the sole responsibility of the operator; require the operator to be listed as a responsible party for training and compliance with the rule.

The Union intends to address the need to have a comprehensive and meaningful HazCom standard for miners and will address the pitfalls in the current interim final rule and our final comments which will be solicited by our office in Washington, or in Fairfax, Virginia now.

The agency's decision to block implementation of the interim final HazCom rule while they reopen the rule to more debate demonstrates lack of concern for the dangers
facing miners to date. MSHA has for far too long
turned a blind eye to its congressional mandate
to protect miners and has become an advocate for
mine operators.

MSHA's own admission stated by Marvin
Nichols, administrator for Coal Mine Safety and
Health that in the period 1990 through 1999 there
was an excess of 2,000 chemical burns, about half
of those were lost-time injuries, and in the same
data there were over 400 poisonings. Despite
this alarming reality, MSHA has decided this
unchecked source of injuries and illness can
continue, at least until June 2002. This is not
in the best interest of the nation's miners.

MSHA's attempts to justify their
action by claiming, "This decision will assure
that operators have sufficient time to determine
what is necessary for compliance." What have
they been doing since the record closed in
October 2000 the agency has had a draft
compliance manual available on its web page and
invited the regulated community to comment on it.
Finally, what other efforts has the agency made
to ensure compliance since November 2000?
It is incomprehensible to believe mine operators are confused about compliance at this point. Rather, faced with the implementation of the rule they have resisted at every turn they have successfully leveraged the agency for further delay. There is an apprehension that the current administration caved into the industry's lobbying pressures at the expense of the miners' health and safety. MSHA has not offered a single compelling reason why the agency did this. Miners have waited long enough. It's time they received the benefits of HazCom.

By its own admission, there is no intention by the agency to regulate chemical use or prohibit or limit chemical use. Further, HazCom's effectiveness is dependent on operators' and miners' knowledge and awareness of hazards. It is therefore unclear what the rule will regulate or control. Because of this ambiguous language, enforcement action necessary to protect miners is not available.

The Union recommends its changes be made to the interim final rule which recognize significant hazards chemicals posed in the
workplace. MSHA must also realize the use of certain chemicals needs to be restricted or prohibited. Considering the history of the industry, self-regulation on such an important matter is not advisable. The agency must take a proactive stance in this instance and issue chemical use guidelines.

The HazCom rule defines hazardous chemical as "any chemical that is a physical or health hazard." This type of circular logic is not beneficial in understanding or enforcing the standard. Chemicals by their very nature are hazardous substances and must be classified as such. Basic understanding of toxicology forces one to recognize that dose alone determines whether a compound facilitates a cure or causes death. Stated plainly, all chemicals are hazardous at a sufficient dose; therefore, all chemicals purchased for use at the mine must be classified as a hazard for the purpose of the rule.

Consequently, the Union recommends all chemicals be listed as a hazardous substance for the purpose of this rule and that mine operators be required to make MSDS available to
all miners upon request. Finally, we recommend 
that the HazCom program implemented by operators 
inform miners of how and where chemicals are used 
and what plan the operator has in place to limit 
exposure.

Operators have historically 
demonstrated their lack of cooperation when 
compliance is voluntary or performance oriented. 
The current rule, based on lack of program 
requirements, offers no guarantee of any 
protection. The Agency asserts that the rule 
requires specific measures be taken regarding 
labeling, MSDSs, and training of miners. While 
the Union will elaborate on these issues 
specifically in our final comments, it must be 
said at this particular time that there is no 
language included under the program requirements 
section that forces operators to comply in a 
meaningful or standardized manner. Again 
different operators will supply conflicting data 
on identical materials. The lack of prescriptive 
language will allow operators to avoid notifying 
workers of the presence of a hazard and still be 
in compliance.

There is also a need for the UMWA to
address the exemption in the rule afforded for
the use of temporary portable containers. The
agency fails to define what is meant by temporary
in the rule. The preamble would appear to allow
miners using such a container to give it to
another worker, even at the end of the shift and
on subsequent shifts, and still have it
considered a temporary container. These
parameters are overly broad. Containers of any
size used shift after shift must at some point be
considered a permanent storage unit for the
chemical. It is also necessary to look at the
reality of the mining industry. Allowing this
activity will result in unlabeled, potentially
hazardous chemical containers to be left
unattended in the mining environment.

MSHA's attempt to limit this
possibility by suggesting chemicals transferred
to an unlabeled, temporary portable container be
utilized by that miner and left empty at the end
of the shift does not adequately address the
problem. The previous comments submitted by the
Union regarding this matter still apply and are
restated here. To assume that a miner who has
transferred a chemical from a labeled drum into a
non-labeled, portable container will be able to guarantee it will remain with them at all times is ridiculous. Clearly there is a misunderstanding of the normal work routine of miners on the part of MSHA. Miners are frequently called away from assignment to perform more pressing tasks. The Agency needs to offer the simplest solution to this problem. For the safety of miners, containers of any size, including those used to transport hazardous chemicals, shall be labeled appropriately.

The UMWA would suggest regulatory enforcement be extended by the agency to the chemical manufacturer or supplier to ensure accurate labeling. Absent that authority, MSHA must hold the operator responsible for labeling accuracy. The operator at that point could then deal with this matter through the manufacturer or supplier. Failure to include an adequate level of accountability in this process will lead to inaccurate labels and misinformed miners. Ultimately, it will result in the very integrity of the rule being compromised.

The Union has stressed previously that a persistent problem with MSDSs is that the
information included is insufficiently specific. Literally thousands of chemicals fall under general categories, such as petroleum distillates. Providing this kind of generic or catch-all language may be accurate in a general sense but may be useless in a specific case at the mine. Since MSHA stated its intent to protect miners from hazards of chemical exposure, the union expects that protection to be specific in description and enforcement. The union recommends the agency rejects references to all general categories and requires specific chemical information be included on all MSDSs.

The union must also take exception to the agency's position on the accuracy of MSDSs. Just as noted previously regarding labeling, MSHA holds no one accountable for the accuracy of data contained on the MSDSs. Based on the current format of the rule, inaccurate MSDSs carry no automatic penalty for either chemical supplier or operator. This fact is true even if the parties are aware the information is inaccurate. This is unacceptable. One of these two entities must be required to ensure miners are informed of what they are working with. The UMWA would suggest
regulatory enforcement be extended by the agency to the chemical manufacturer or supplier to ensure accurate MSDSs. Absent that authority, MSHA must hold the operator responsible for MSDS inaccuracies.

The operator must retain MSDSs for as long as the chemical is known to be at the mine. The language of these requirements shows the agency has not given proper consideration to the latent health effects some of these chemicals might cause. Operators are currently bringing new, sometimes untested chemical, compounds, and materials out to the mine site at a rate never before experienced. Some of the materials are at the operation for just a few weeks, while others are integrated into a daily mining operation and used for years. This infusion of new potential hazards requires a policy where operators are directed to retain information for the long term so that miners exposed to these chemicals have future access to this information. MSHA should conform its regulations to the applicable section of OSHA HCS.

The Union strongly objects to the current structure of the rule as written under
Section 47.45, subsection (a) that requires the operator to notify the miner at least three months before disposing of MSDSs. This language coupled with its explanation, which states the intent of the requirement to notify miners prior to the disposing of MSDS, is to ensure the miner had an opportunity to request a copy. The miner could then retain this information for future reference, and you would not have to maintain the MSDS for an extended period of time. This is absolutely unacceptable. The miner should not be responsible for retaining information regarding any chemical their employer purchased for use at the operation. It is fundamentally wrong to require the miner, who may have been exposed to hundred of chemicals during the course of their career, to be responsible for retention of this information.

The UMWA is disappointed that the agency has, under the guise of performance-based, plain English format, shifted a responsibility of this magnitude from the operator, where it truly belongs, to the individual miner. The union must demand that the party who exercised its authority to purchase substance for use at the operation
assume the responsibility for their action and be required to maintain adequate and complete records of all chemicals for an appropriate length of time. The union would recommend operations be required to list all chemicals when they arrive on mine property and they obtain an accurate MSDS before any hazardous substance is used at the mine.

As a result of MSHA's recent actions on the HazCom rule miners' interest were adversely affected in three important ways. First, miners lost the benefit of a rule to protect them from harmful chemicals that was to be in effect October 3rd, 2001.

Second, MSHA's renewed rule making effort appears to singularly focus on mine operator criticisms of the October 3rd, 2000 rule and may undercut the protection miners would expect in the final HazCom rule.

Third, the agency, in the current rule making process, ignored concerns and recommendations miners' representatives filed as part of the same record the operator concerns and recommendations were contained in. The agency actions has left the entire process suspect.
If MSHA moves forward with the
current reopening of the record on October 2000
HazCom rule which they have sought comment on,
any issue relevant to rule making as announced in
the August 28th, 2001 Federal Register, they must
consider the comments filed by miners'
representatives during the October through
December 2000 comment on the final interim rule
as they did for mining operators and mining
association. To do otherwise would destroy the
public integrity and credibility of the federal
rule making process. After all the HazCom rule
is about protecting miners from the hazard of
harmful chemicals in the workplace, not the
convenience of the mine operators.

We ask that the comments we filed
during the October through December 2000 public
commenting period on the HazCom rule be included
in this rule making record too. In order for
rule making to pass the test of credibility it
must be anchored in the premise that legitimate
views were not restricted in the process.

Miners in this country have been
deprived of this necessary protection from the
introduction and proper use of hazardous
chemicals and compounds in their workplace longer than any other workers. The Federal Government should not have blocked the implementation of the October 3, 2001 rule as they did August 28th, 2001 Federal Register notice. The UMWA officially opposes this action.

That's all I have.

MR. NICHOLS: Jim, I think we said that all the comments dating back to 1988 would be included in the record.

Is that right?

MS. HUTCHISON: Yes.

MR. NICHOLS: Any questions for Jim?

Thanks Jim.

JIM STEVENSON: Thank you.

Our next presenter will be Link Derick with Twenty Mile Coal Company.

LINK DERICK: My name is Link, L-i-n-k, Derick, D-e-r-i-c-k. I'm a safety manager at Twenty Mile Coal Company, an affiliate of RAG American Coal.

The comments I got are more on just implementation of the current regs as they were written, and some of the questions have already been answered through some discussions and in
your introduction.

One of the main concerns is the hazard analysis as an operator. If we do that hazard analysis, declare a chemical as nonhazardous, and then all of a sudden there's an accident or there's an inspector who disagrees with that, the process has got to be known what happens then. Just by that determination it could be you have dozens to maybe a hundred people that would be considered untrained on that chemical. I think that process has been a little bit cleared up today of this model program that's going to come out. That was not available before the October implementation that we were working under. So I think that model program will be really helpful as far as knowing even that process of declaring those chemicals, because there could be quite a dispute between parties of that declaration of each chemical. It's kind of unlike most rules where a chemical would be labeled as it is hazardous, it isn't hazardous. That's left up to the operator to make that determination.

The other one is the Colorado School Mines Joint Industry Labor Academic Seminar just
recently is looking at training. That's all that was there, is the side that labor had of the -- they should have immediate access to all rules and regulations. That is something we fully agree with, and I think that committee or that outcome of that was making web-based programs, some that's very critical that we train all miners who know how to use the material that's on the web bases.

When you look at that, how that comes to these rules, is the MSDS sheets we keep hearing about, it's pretty much our feeling that in the different uses of those that MSHA should be the keeper of that database for several reasons. One, there has been some comments at earlier meetings -- and I think it was kind of said by the previous speaker -- that the long-term effects of who is going to keep these. In one of the previous meetings I know it's been told about 30 years retention, and I think if you went back in our industry 30 years ago and looked at what companies, operators, mines were in existence, to say would those be available from those operators or even entities, that I think because of that long-term potential that MSHA
could be a reasonable source and a good aid to
every party involved in mining to be the
retention of the MSDS sheets.

    Further on that, there's comments in
the preamble, and what we're facing in training
is really getting a right message, the most
important message, and not just say we're doing
training. There's comments in there about clear
and concise interpretation of those MSDS sheets,
and I think an operator would be quite advised
against making their own summary and picking the
key points out, that possibly MSHA and NIOSH
would have a little more freedom to get right to
the critical points a miner or operator would
need in interpreting the complicated MSDS sheets,
like it was said that they're more of a legal
term now. I think as a group we could all
benefit by having it be the government agency
that would make those clear and concise, useful
wordages out of the MSDS sheets.

    The other concern we have of the
compliance side is the definition of "work area."
You can read work area as being any chemical in
where a person is going to work or about. I'm
reading it right out of the register. It's
"anyplace in or about a mine where a miner works." If you determine hazardous chemicals that are being used in a certain part of the mine -- and there's a simpler thing to us as a work area in an underground mine. We would take like a working section, anything by the cross-cut. If you took the chemicals that were on there -- and I'll use an example of polyurethane foam -- a certain select group would be spraying in a controlled area, and technically that chemical is in the work area of every miner that may come into that section, so you could be talking about a chemical that maybe only six people use total and have to train an entire mine on that chemical, so some wording could be added in there that right at the site application or, as it was said, people down wind. But the people that are applying chemicals can also be held responsible for their area of responsibility, and even though they may be using a hazardous chemical they can so be trained to stop or caution people that would enter their specific work area.

The other comment I would like to say is just on training in general right now, is the
thorough training to get each person to understand the hazards of hazardous chemicals, to try to train each miner on each product that could possibly be in their work area on a one-time basis and then doing it yearly, the retention is very questionable. I think putting together a good training program, an in-depth training program that teaches every miner how to use an MSDS sheet, I mean in a thorough way so that as the exposure or as the task came up they would be very knowledgeable in knowing what they should get out of an MSDS sheet.

I'm afraid with all the training we have going on right now, just what we're faced with at an individual mine -- we have diesel particulate matter training, hazard communication training, then we have noise hearing conservation training, annual retraining. Plus I know some of the mines speaking here today are very proactive. We have mine rescue fire brigades, EMTs. When we look at all the training that's going on, the biggest thing is making it effective any more in getting the critical facts the person needs out of that training. It's not just doing it. If we could look as a general of taking training in a
more proactive approach of combining it to once
each calendar year after it's done, we won't get
into all the massive training requirements we
have right now. As far as administration, we
could do effective training.

All this training that is being
proposed by the regs, and the new regs that are
in effect right now, have not even hit the most
critical concern at our operation, and that is
total influx of new miners. We've had 350 new
miners trained that have only increased our
employment approximately 25 to 40 in the last
year and a half. It is a serious crisis to where
we've had to extend another 10-hour revision to
retraining just in accident prevention, and when
the problems of all this training are coming up
we completely miss doing effective training, and
I think that whole issue needs to be looked at as
far as are we going to get effective training to
the miner that is going to help with his job, not
just comply with every regulation that comes out
we throw a training segment to it, and half of
them don't even coincide with the right dates.

The last comment I would like to do
is look at -- this opportunity to comment on
these regulations are looking at the implications
of how they could affect our business and how we
can comply before they even went in effect. With
the quantity of regulations the mining industry
is receiving, I don't believe there's any way in
the system where all new regulations are under an
automatic, open review of all parties in one or
two years after they're promulgated. We are
still in the petition process of the first set of
diesel regs and are in the massive process on the
latest diesel particulate rates, that it appears
having an opportunity maybe to reopen the record
after a one-or two-year period because of the
significant impact all these regulations have on
us. We have regulation upon regulation that have
been promulgated on us, and as I think everybody
in this room are highly professional in their
job, that it is stopping from good, professional
implementation of all those regulations, that
some of the burdens that you run into everybody
says, Well, it's just how the regulations are
written. There's nothing we can do about it.
Now, maybe if we can fix the system and all work
together and keep opening these regulations up to
improve them, because I'm sure my opinions of how
I think we're going to comply with the HazCom are
going to be a lot different one year after
they've been in effect than they are today.

I appreciate the opportunity to
comment.

MR. NICHOLS: Good. Thanks.

Any questions for Link?

Thank you.

That's all the people we had signed
up to speak. Is there anyone else that would
like to offer any comments?

Okay. We'll be around here for the
rest of the day. Let's break for lunch, and
we'll come back at 1:00. If anybody has a change
of heart and wants to say anything else, you're
welcome to do that. Thank you.

(Lunch, 11:30 a.m. to 1:00 p.m.)

MR. NICHOLS: The time is 1:00. No
one has shown up to present further comments. We
will go off the record.

(Record closed at 2:00 p.m.)