IN THE MINE SAFETY HEALTH ADMINISTRATION

MINE SAFETY HEALTH ADMINISTRATION

PUBLIC HEARING

Room 400N
800 K Street, N.W.
Washington, D.C.

Thursday, December 14, 2000

The parties met, pursuant to the notice, at 9:00 a.m.

BEFORE: MARVIN W. NICHOLS
Chairman

APPEARANCES:

MARVIN W. NICHOLS, Administrator
Coal Mine Safety and Health
EARNEST C. TEASTER, Administrator
Metal and Non-Metal Mine Safety and Health
RICHARD FEEHAN
Office of Education, Policy and Development
CHERIE HUTCHISON
Office of Standards, Regulations and Variances
DEBRAH GREEN
Office to the Solicitor
ROBERT SNASHALL
Office to the Solicitor
BRUCE WATZMAN
STEVE SANDBROOK

SPEAKERS:

ADDE ABRAMS
MARG Diesel
MICHALE SPRINKER
ICWUC Health and Safety Department
JOSEPH MAIN, UMWA
JIM SHARP, NAA-NSA

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MR. NICHOLS: Good morning. Can you hear me in the back? Can you hear, Bob. I'm Marvin Nichols, the administrator for Coal Mine Safety and Health. Welcome to MSHA's public hearing on development of its final standard for hazard communication. The members of today's panel are Ernie Teaster on my left. On my far left is Robert Stone with the Standards Office. Ernie is the administrator for metal and nonmetal. On my right is Deborah Green and Bob Snashall. They're with the Office of the Solicitor. And Cherie Hutchinson is with the Office of Standards. And Richard Feehan is with the Office of Education Development and Policy.

We're here to listen to your comments on the requirements contained in the hazard communication interim final rule which MSHA published on October 3, 2000. The hearing is being held in accordance with Section 101 of the Federal Mine Safety and Health Act of 1977. As is the practice of MSHA, formal rules of evidence will not apply. Therefore, today's proceedings will be conducted in an informal manner.

Let me briefly give you some background on the rule and highlight its major provisions. On November 2,
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. They based their petition on the need for miners to be better informed about chemical hazards. In their petition, the union stated that miners are frequently exposed to toxic and hazardous chemicals, both underground and on the surface.

To support their petition -- to support their position, the petition cited an incident in northern Michigan in which miners were hospitalized after being exposed to unknown flotation reagents. The petition also specifically noted that work at both surface and underground coal and metal and nonmetal mine exposed miners to a variety of hazardous chemicals.

For example, the petition stated that explosives contain organic nitrates that produce nitrogen oxides and ammonia when detonated. Roof building systems contain plastic resins and reactants. Solvents used in equipment and maintenance are both toxic and flammable. And mill reagents can realize hydrogen sulfide, cyanide, or other dangerous chemicals.

In response to this petition, MSHA published an advanced notice of proposed rulemaking on hazard
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communication on March 30, 1998. In addition, in the advanced notice of proposed rulemaking, we indicated that we would use the OSHA hazard communication standard as the basis for our standard and request the specific comments on a number of related issues. We published a notice of proposed rulemaking on hazard communication for the mining industry on November 2, 1990. We also held three public hearings in October in 1991, one each in Washington, D.C., Atlanta, Georgia, and Denver, Colorado. The record closed on January 31, 1992.

We received a wide variety of comments on our advanced notice of proposed rulemaking and proposed rule. Commenters included both small and large mining companies, a variety of trade associations, including those representing specific minerals, state mining associations, chemical and equipment manufacturers, national and local unions, a member of Congress, and two federal agencies.

We reopened the rulemaking record on March 30, 1999, to receive comments on the impact of certain statutes and executive orders affecting the proposed rule, including ones to evaluate the impact of a regulatory action on small mines; state, local, and tribal governments; and the health and safety of children.

In addition, we 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.

Most MSHA regulations do not require an evaluation of their impact on the environment. However, health standards do. This was brought to our attention, and we took the opportunity to remedy the oversight by also requesting comments on the effect of the proposed rule on the environment. We received seven comments to the limited reopening of the rulemaking record, primarily from trade associations and labor organizations. The rulemaking record closed on June 1, 1999.

On October 3, 2000, we published in the Federal Register an interim final rule on hazard communication. We provided the mining community with an additional opportunity to comment on the new plain English format of the rule and their most recent experience under OSHA's hazard communication standard. We received 15 comments on our interim final rule. Commenters included both small and large mining companies, trade associations, labor unions, miners, and a federal agency.

The comment period on the interim final rule closed on November 17, 2000. We published our response to
the written comments, as well as those comments received
today -- excuse me. We will publish our response to the
written comments, as well as those comments received today
at this hearing and during the posthearing comment period in
the preamble to the permanent HazCom final rule. We will
consider all comments contained in the rulemaking record,
from the publication of the advanced notice of proposed
rulemaking on March 30, 1988, through the close of the
record on December 19, 2000, in the development of a
permanent final standard.

Our HazCom interim final rule is based primarily
on comments received in responses to the advanced notice of
proposed rulemaking, the notice of proposed rulemaking, and
the 1991 public hearings. We also considered the comments
received in response to our limited reopening of the record,
our experience in the mining industry, and the related
standards of other federal agencies.

To the extent practical, the requirements of the
HazCom interim final rule are the same as that in OSHA's
hazard communication standard. We developed some provisions
to be consistent with other MSHA standards, such as the
retention period for training records. Two areas where our
standard differs from OSHA's are in the inclusion of
hazardous waste among the chemicals of concern and the
omission of a requirement to label products going off mine property. OSHA's hazard communication standard exempts certain hazardous wastes and hazardous waste operations because they have employee protections to address these situations in other OSHA rules. Because we do not have standards that address these situations, we needed to ensure that miners working with hazardous waste understand the associated hazards and know to take precautions.

The HazCom interim final rule is an information and training standard. It requires mine operators to know about the chemicals at their mines and to inform miners about the risks associated with exposure to hazardous chemicals, the methods implemented at the mine to control exposures, and safety measures. The HazCom interim final rule does not restrict chemical use, require controls, or set exposure limits. Also, the standard does not require operators to label products that go to downstream users off mine property.

Finally, the HazCom interim final rule does not require mine operators to have an independent training program separate from Parts 46 and 48 training. Under the HazCom interim final rule, mine operators have the flexibility of combining the training requirements with existing Part 46 and Part 48 training, as well as OSHA's
hazard communication standard.

In the near future, MSHA will be publishing a compliance guide to help operators and miners understand the application of the permanent HazCom final regulation. MSHA is also planning to develop a variety of compliance aids, including a HazCom toolbox, with several examples of a written HazCom program. Mine operators can adapt the program developed to meet OSHA's hazard communication standard because the two standards have very similar requirements. Mine operators may also obtain assistance from organizations that have developed generic guides to meet OSHA's hazard communication standard. MSHA will also make available the names, mailing addresses, and web site addresses of several organizations which have developed a variety of generic HazCom materials.

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

1. Hazard determination. The HazCom interim final rule requires mine operators to identify the chemicals at their mine and determine if they present a physical or health hazard to miners based on the chemical's label and material safety data sheet. Mine operators must review scientific evidence to determine if the chemical is hazardous.
2. The HazCom program. The HazCom interim final rule requires mine operators to develop, implement, and maintain a written comprehensive plan to formalize a HazCom program. The program must include provisions for container labeling, collection, and availability of MSDSs, and training of miners. It also must contain a list of the hazardous chemicals known to be present at the mine and how mine operators will inform miners of the hazards of nonroutine tasks and of chemicals in unlabeled pipes and containers. If the mine has more than one operator, or has an independent contractor onsite, the HazCom program must also describe how the mine operator will inform the other operators about the chemical hazards and protective measures needed.

3. Container labeling. A label is an immediate warning about a chemical's most serious hazards. The HazCom 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. The standard does not require mine operators to label mine products that go off mine property. However, operators must provide the information if a customer asks for it.
4. Material safety data sheet. A chemical's MSDS provides comprehensive technical and emergency information. It serves as a reference document for operators, exposed miners, health professionals providing services to those miners, and firefighters or other public safety workers. The HazCom interim final rule requires mine operators to have an MSDS for each hazardous chemical at the mine. The MSDS must be accessible in the work area where the chemical is present or in a central location immediately accessible to miners in an emergency. Mine operators should already have MSDS sheets that were provided by the supplier of those chemicals brought onto mine property.

5. HazCom training. The HazCom 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. Mine operators may already cover some of the above information in their current training program. If so, they do not have to retrain miners in topics they have already been trained in. Consequently, the mine operator should have no problem incorporating any additional training.
6. Making HazCom information available. The HazCom interim final rule requires mine operators to provide miners, their designated representatives, MSHA, and NIOSH with access to materials that are part of the HazCom program. These include the HazCom program, the list of hazardous chemicals, labeling information, MSDSs, training materials, and any other material associated with the HazCom program. Mine operators do not have to disclose the identity of a trade secret chemical except when there is a compelling medical or occupational health need.

In closing, two commenters requested a public hearing on the interim final rule. The purpose of this hearing, as the public hearing notice stated, is to receive additional comments on the recently published HazCom interim final rule. The hearing is scheduled to end at 5 o'clock today. But if need be, we could go longer. It all depends on how long Adele will speak.

(Laughter)

MR. NICHOLS: During the proceeding, panel members may ask questions of the presenter. And a verbatim transcript of the hearing is being taken, and it will be made part of the official rulemaking record. The hearing transcript, along with all of the comments and data that MSHA has received to date, will be available for review by
the public. And, of course, the entire rulemaking 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.

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. Written comments may be submitted to me during the hearing or sent to the address listed in the hearing notice. All written 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 December 19, 2000, for the submission of posthearing comments. And we also have an attendance sheet that is available here today for presenters to sign in.

Again, to allow for the submission of posthearing comments, the record will remain open until December 19, 2000.

We will begin with the folks that have signed up to do presentations. But at the end of that, anyone in the audience that wants to come up and make a statement will be able to do that.

So the first person on the signup sheet is Adele
Abrams with MARG Diesel. So, Adele, come on up.

MS. ABRAMS: Good morning. I'm pleased to be here this morning on behalf of the MARG Diesel Coalition to submit additional comments and testimony concerning MSHA's interim final rule establishing a hazard communications standard for coal and metal/nonmetal mining. And as noted by our moderator, this rule was published on October 3, 2000.

MARG previously submitted written comments in response on November 17, 2000. And those comments, MARG requested a public hearing. However, we were deeply disappointed that MSHA chose to provide less than one week of official notice for this hearing, which prevented the members of the MARG coalition, who live largely in the western states, from participating at this hearing. And it also prevented a meaningful time to prepare for the hearing. Moreover, we're stunned to learn that MSHA is providing only three working days for preparation of written posthearing comments, with the comment period closing just days before Christmas.

It is unfortunate that MSHA is not truly interested in providing the opportunity for a full and fair hearing on this critical rulemaking initiative, but it appears motivated by a desire to rush this to final
publication before the change in agency administration. It is also curious why the agency feels compelled to shortchange the rulemaking comment process when it waited a full decade between publication of the proposed rule and publication of the so-called interim final rule in October 2000. If the need for the standard is so urgent as to require this unprecedented short notice, then why did the agency wait ten years to bring it to a culmination?

As we noted in our written comments, MARG is a coalition of mining companies involved with metal and nonmetal mining, and its operations are under MSHA's jurisdiction. MARG is particularly interested in this rule because of its requirements concerning diesel equipment and its incorporation by reference of standards established by the American Conference of Governmental Industrial Hygienists, ACGIH, and the findings of the International Agency for Research on Cancer, or IARC.

Several members of MARG and other organizations have recently filed suit challenging the interim final rule because of its procedural deficiencies, in appropriate and unjustified content, and its improper delegation of rulemaking authority. And MARG does agree with those positions, as I'll be explaining further.

MARG members do support the reduction of
accidents, injuries, and illnesses at mines through proactive safety and health programs and compliance with standards that are supported by sound science. However, after careful review, we have concluded that MSHA's interim final rule establishing a HazCom standard for the mining industry is procedurally and substantively flawed, and it must be withdrawn.

MSHA's interim final rule is characterized by the agency as both a safety standard and a health standard, promulgated under the authority of Section 101 of the Mine Act. But MSHA has clearly failed to demonstrate the need for a HazCom standard. By purposeful omission of relevant statistical trends, which actually show decreasing injuries and illnesses due to chemical hazards in mining, MSHA has sidestepped the benefit question and simply provides misleading total chemical hazard related illnesses and injuries for two periods of time: 1983-1999 and 1990-1999. MSHA has also failed to distinguish those illnesses and injuries which would have been prevented if existing MSHA regulations, such as Part 46 or Part 48 training, labeling, or the use of appropriate personal protective equipment, had not been violated. Both of the MSHA examples used in the interim final rule do, in fact, relate to violations of existing standards.
Ironically, MSHA emphasizes the agency's frequent presence on mine properties and admits that all operations comply at present with some of the proposed HazCom rule's requirements. Yet MSHA appears unable to provide accurate data on how many mines already have an effective HazCom program in place, nor how many injuries or illnesses have actually been prevented by such programs alone, as distinguished from the benefits provided by Part 46 and Part 48 training. Significantly, MSHA's projections of future accidents and illnesses cannot be evaluated or verified because MSHA has not provided the necessary contextual data or accurate incidence trends.

MARG believes that a separate HazCom standard is not needed for the mining industry because current MSHA standards provide adequately for employee training on hazards, as well as container labeling and product safety information. MSHA has failed to adequately articulate a significant risk that exists in the absence of a separate HazCom standard, a risk that could not be reduced or eliminated by full enforcement of their existing standards.

The interim final rule will impose unnecessary costs on the mining industry without any commensurate safety enhancement. MSHA has dramatically underestimated the economic impact on mining from this rule, and its regulatory
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economic analysis is fatally flawed, and it is in violation of the Regulatory Flexibility Act and its SBREFA amendments. MSHA states that mine operators will be able to use off-the-shelf materials and programs developed for the OSHA HazCom programs, but the MSHA standard differs significantly from the analogous OSHA rule, and it differs to such an extent that utilization of general industry HazCom materials will not satisfy the rule's requirements. Thus additional costs will be imposed on the mining industry to develop mining specific programs. And MSHA has failed to accurately include such costs in its REA.

The rule itself is stale. It was published initially in 1990, and it has been substantially altered from the proposal. Thus it cannot take effect without further comment, in accordance with the Mine Act and the Administrative Procedure Act. MSHA has also improperly relied upon the advice and recommendations of nongovernmental sources, in violation of the Federal Advisory Committee Act. Moreover, it improperly incorporates by reference exposure limits set by private sector organizations, which present mine operators with a moving target for compliance and violate traditional due process principles and constitutional delegation of power restraints.
An entirely different version of the HazCom rule was originally proposed in 1990. Not only was the format of the rule altered, but there have also been substantive changes from the proposed rule. Moreover, in the intervening decade between the proposed rule and this interim final rule, MSHA has promulgated additional regulations, and the mining industry itself has changed. Ten years is simply too long for a rule to remain unpromulgated in such a rapidly changing regulatory and economic environment. MSHA must offer this modified rule for additional comment and review and a de novo discussion of whether a HazCom rule is even needed.

MSHA has failed to encourage or entertain true dialogue on the proposal's substantive requirements. It rejected industry's request to reopen the rulemaking last year. And as part of its lip service to reg flex, SBREFA, and the Paperwork Reduction Act, MSHA failed to obtain the necessary information concerning feasibility and economic impact. It unreasonably and impermissibly minimized the economic impacts on the nearly 100,000 mine sites that are deemed small business entities under the definitions of the U.S. Small Business Administration and its implementing regulations.

MSHA has falsely certified that this rule is not
an economically significant regulatory action, and not
pursuant to Executive Order 12866. And MSHA has falsely
certified that it will not have a significant economic
impact on a substantial number of small mining entities. It
masks the true impact by ignoring whole categories of
expenses and by amortizing the startup costs to avoid
confronting the first year impact on thousands of small
businesses.

MSHA claims that the use of existing OSHA training
and program materials will reduce compliance costs. But as
noted earlier, the agency has deviated significantly from
OSHA's HazCom requirements, thereby rendering impossible the
use of such off-the-shelf materials designed for OSHA
operations.

MSHA has estimated the annual economic impact on
mines at an incredibly low $270 per year per mine. The cost
to maintain MSDSs alone will be significantly higher than
that, and the labeling, training, and recordkeeping
requirements will add more costs, especially if MSHA does
not better integrate the requirements of HazCom with those
of Parts 46 and 48. Compliance will be a significant
challenge for many mines, especially small mines, and
especially mines where contractors perform significant
portions of work.
The interim final rule is procedurally deficient because MSHA either failed to give notice of and an opportunity to comment on the provisions actually adopted or because the agency failed to take into consideration comments submitted in response to the proposed rule. The secretary blatantly failed to consider these comments, in violation of the APA. MSHA's adoption of entirely new proposals, and even old proposals in a different format, defeats attempts at comparison with the proposal and it negates the ability of the interim final rule to be a logical outgrowth of the proposed rule. Thus, it should have properly been issued as a proposed rule for a second round of comments.

MSHA fails to articulate a significant risk resulting from current policy, nor a benefit to be derived from the proposed addition of this standard to the secretary's existing arsenal of enforcement weapons. Under the Mine Act, the secretary has authority to develop, promulgate, and revise as may be appropriate improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. However, the data upon which this rule's purported risk assessment is based spans 16 years ending in June 1999, and this ignores completely any preventive effect of MSHA's new
Part 46 training standard, which covers 10,000 surface nonmetal mines, and which only took effect on October 2nd, the day before this interim final rule was published.

Section 101(a) of the Mine Act requires the secretary to demonstrate that the old standard or current conditions present significant risks and that the new standard will produce substantial benefit and be feasible. The secretary has simply failed to satisfy this burden.

Although MARG will not repeat in its entirety the specific concerns articulated in our written comments, I do wish to stress a few fatal flaws in this rule. First of all, MARG opposes MSHA's inclusion of hazardous wastes regulated by EPA in the HazCom rule. This is a significant departure from the OSHA HazCom standard that will make it impossible for mine operators to use off-the-shelf materials. Moreover, such coverage is wholly unwarranted because hazardous wastes are already subject to extensive regulations at mines imposed by the EPA, including manifesting requirements, handling, labeling, training, and disposal requirements. There is simply no justification for adding a second layer of duplicative regulation enforceable by MSHA.

Second, MSHA should reverse its decision not to exempt basic minerals and dusts from the HazCom rule. These
materials are not chemicals in the normal sense of the word, but they are natural ore bodies, and they are fully addressed in MSHA's mandatory training requirements under Part 46 and Part 48. It is absurd to imagine miners consulting in MSDS for the natural minerals that they are extracting, such as salt, stone, and trona. Extension of the MSDS requirements to such basic mining minerals represents a superfluous, unjustified regulatory requirement, and it must be eliminated from the final rule.

Third, MARG strongly objects to MSHA's use of nongovernmental sources, particularly ACGIH and IARC, to determine whether particular chemicals are hazardous and what the level of hazard is. As MSHA recognizes in its preamble, these organizations do not use the equivalent of federal notice and comment rulemaking to make their determinations. And a number of their determinations directly applicable to the mining industry remain highly controversial or have been negated by more recent scientific findings, such as the IARC finding for crystalline silica.

Moreover, since MSHA will require mine operators to train their employees using MSDSs that list the "latest" ACGIH findings, MSHA is effectively doing a back door air contaminants rulemaking. They are implementing ACGIH threshold limit values that have never been subject to any
MSHA notice and comment rulemaking. And these are the very same TLVs that the U.S. Court of Appeals prohibited OSHA from adopting en masse without engaging in substance-specific risk analysis, in the AFL-CIO v. OSHA case, 1992.

Thus, both the listing and the training requirements associated with the ACGIH TLVs are an invalid delegation of rulemaking authority to a nongovernmental agency. And I might add that MSHA is also relying upon this in the role of a federal advisory committee without complying with the backup requirements. MSHA cannot legally present mine operators with such a moving target for compliance, nor can it delegate its rulemaking authority. Such incorporation by reference is simply not permissible under the Mine Act, the APA, and basic constitutional principles.

In conclusion, promulgation of this rule as an interim final is procedurally improper, arbitrary, and capricious, and it must be withdrawn. If MSHA is determined to proceed with this rulemaking, then additional time must be provided for hearings in other parts of the country and also supplemental comments, more than a three day posthearing comment period, so that members of the mining community will have a meaningful opportunity to testify. MARG urges MSHA to withdraw this flawed standard and to
consider the Mine Act's mandates over political expediency.

Thank you.

MR. NICHOLS: Thank you, Adele. You talk about this short post-comment period. If you look at the history of the rule, this has been a topic of discussion and consideration with MSHA and the mining community for about 12 years. We had proposed rules, public hearings, a reopening of the record for limited purposes, and now this proposed rule, proposed final interim rule. Can you imagine any new issues that could be addressed after this long record of rulemaking and comments we have already had?

MS. ABRAMS: Well, yes, sir, I can. For starters, the benefits of the newly enacted Part 46 training. At the time that I testified before you all back in 1991, in Atlanta if I recall, one of the perceived benefits of this rule was to bring training to the many stone, sand, and gravel operations at which MSHA was prohibited from enforcing training. That landscape has changed today, and all of those miners are already provided with thorough hazard recognition training, which includes, as I think OSHA recognizes, many of the elements that would be codified separately here.

It seems like this rule is just putting forth an opportunity to write dual citations for perhaps the same
training violation. Another thing that has changed -- and this is critical. It is not brought up in MARG's testimony, but it is noted in the testimony of the American Society of Safety Engineers. The federal government is now involved in a total review of its hazardous communication requirements as part of a global harmonization program. Jennifer Silk (phonetic) at OSHA is leading the effort on this, along with Mary Frances Lowe (phonetic) at the EPA. And as a result, it is totally inappropriate for MSHA to be going off in its direction now promulgating a HazCom which may, if it is in fact going to mirror OSHA's, may be subject to change within the next two or three years as OSHA agrees to get into a global harmonization system along with the rest of the world.

You know, we live in a global economy. And MSDSs and labeling requirements will have to be changed. Training will have to be changed. All of that should have been considered and could not possibly have been considered during the original comment period back in 1990 and '91.

And finally, with respect to the incorporation by reference of the ACGIH TLVs, at the time this rule was proposed, and at the time the original hearings were held on this, that decision of the Eleventh Circuit in the AFL-CIO v. OSHA case had not yet been rendered. Personally, I
believe that if OSHA had proposed its HazCom standard after that decision, it itself would not have been able to incorporate use of the ACGIH references on MSDSs. But MSHA now is not starting with a clean slate, and it must operate within the existing legal environment.

It is inappropriate to delegate authority to these nongovernmental bodies. And the participation of MSHA and OSHA personnel on those so-called consensus organizations turns that into something akin to a federal advisory committee.

These are all things that the agency needs to look at, should have looked at. And these are things which warrant opening this up for a republication as a proposed rule with not a truncated comment period such as has been offered here.

MR. NICHOLS: Well, we have looked at a number of those issues. You talk about Part 46 training. In the preamble, we talk about, well, the period 1990 through 1999. There was in excess of 2,000 chemical burns. I think about half of those were lost time injuries. And in that same data, there was over 400 poisonings. Now if you set -- and the leading area was bituminous coal operators.

Now coal mine safety and health has had Part 48 training since 1978. And the metal industry has had Part 48
training since 1978. That training alone is not getting the
job done, as evidenced by those more than 2,500 chemical
accidents. So the agency believes we need a regulation that
focuses on chemical hazards.

MS. ABRAMS: If I might, though, you noted in your
opening remarks that a separate training program would not
be necessary, and that the training under HazCom can be
provided as part of Part 46 and 48.

MR. NICHOLS: They can.

MS. ABRAMS: I would suggest that if chemical
burns are happening because of inadequate hazard recognition
training under Part 48, that that is a citable condition now
under Part 48, and that an additional rule is not needed.
There are extensive training requirements, and they are
supposed to cover this. Personal protective equipment is
supposed to be provided to workers where there is an
opportunity for exposure to things like chemical substances
or poisons.

There are labeling requirements already in effect
under other MSHA standards. If there are no labels that
warn of the hazards, that is a citable offense. If the PPE
is not provided or if it is provided and not worn under the
strict liability nature of the Mine Act, that is a citable
offense.
Again, it seems like this is superfluous. And I know MSHA's original -- and I don't have the exact reference, but it was in our earlier comments. There was a memorandum MSHA put out around the time that OSHA promulgated its HazCom standard where the agency itself recited that a HazCom standard for the mining industry was not needed because of the litany of existing standards. And these include the ones I have just enumerated.

Nothing has changed. None of those standards have been rescinded. All of those are still on the books and can be implemented. And you had a new tool added, namely the Part 46 training, to cover the remaining sectors of the mining industry, including construction workers. There is not a single person at a mine site today who is not required to have hazard training.

MS. GREEN: Adele, I need to respond to one point that you made that is incorrect, and that is that the agency did not go on record as saying that an MSHA hazard communication standard was not needed. The agency stated that the OSHA standard did not apply to the MSHA operations. It was a 4B1 issue under the OSHA Act. The agency went on to say subsequently in its advanced notice of proposed rulemaking that the MSHA needed a comprehensive hazard communications standard comparable to that of MSHA.
We realize that we have the generic MSHA comparable to OSHA. We realize that we have the generic training regulations. But those regulations do not require mine operators to specifically cover areas as the hazard communication standard does in the training program. And those are areas we feel are very significant and will help inform miners and help mine operators to be aware of some chemical hazards or chemical hazards that are associated with the products that they use and could possibly prevent that.

We realize we have substantive regulations. But when it comes to training, this standard offers specific training requirements that do not currently now exist, or you are not required to do presently, but you could incorporate those into those Parts 46 and Part 48 programs.

MS. ABRAMS: If that is the case, then I would suggest once again that the cost estimate for this rule is substantially flawed. I know of no person who can come in and train at a mine on the supplemental issues that Ms. Green just referenced for $270 a year. And as a practical matter, the information that appears MSHA would like covered is so technically complex that inhouse people at a mine are not going to be capable of providing that level of instruction. It is going to require the use of safety
professionals or industrial hygienists who are hired in as consultants to the mines.

MR. NICHOLS: Well, I don't think we agree with that as a broad brush for the whole mining industry. But try to help us understand a bit more of the burden of this rule. To me, it requires mine operators to pull together information that they already have. They should already have these material safety data sheets. So that information is available to them. Pull that together in a written program. Be sure that the labels that were provided for chemicals brought on mine property are still maintained, maybe develop a few new ones if that is needed. But then train the miners on the potential hazard for chemicals that are on mine property. And as we have already said, that can be incorporated into the training you already do, and with the delayed implementation that you would probably get it right into the first cycle.

So some of the burden escapes me, unless there is something I'm missing here.

MS. ABRAMS: Well, you know, frankly the training in some ways is the easiest part of this to deal with because most mines do have some sort of -- or they should have some training infrastructure in place. The paperwork burden is going to be the real bear of this. As you know,
I'm sure, the HazCom standard is OSHA's most often cited standard because of paperwork. You say that this should be stuff that the mines already have on site. But that isn't necessarily the case, simply because there has been no HazCom standard, so there has not been perhaps the MSDS retention or the focus on it that there would be at OSHA regulated sites.

MSHA makes something of an assumption in its proposed rule that many of the companies are already doing this because they also have OSHA regulated enterprises. But that is not the case for thousands of small mining companies around the country. The larger companies certainly have these programs in place, but the small mine operators, the ones that I deal with on a regular basis, do not. Keeping these systems up-to-date is certainly a burden.

Again, MSHA notes that a lot of this can be done on computers. But if you think about it, you know, I go to mines where they don't have running water, much less computer systems. They don't have fax machines.

MR. NICHOLS: Okay. What kind of mines are those?

MS. ABRAMS: I can think of right in Maryland, the Dimension Stone Mine. You know, if you get into the outskirts of some areas, portable plants are another that would not have computers onsite. You are asking for some
examples of problems. If you do maintain this on a computer, you are going to have to allow all of the contractors at your site to have access to your computer systems.

I know that wouldn't fly where I work, and I suspect that it wouldn't fly at many of these companies. Just doing the inventory of chemicals is an extremely burdensome job.

MR. NICHOLS: Well, yeah, but let --

MS. ABRAMS: If I need to change this every time you buy a new brand of paint, and going through to examine whether it differs in any substantive way so that supplemental training would have to be done -- and finally, MSHA appears to be requiring that every MSDS not only bear the normal information that is required under the OSHA HazCom standard, but that it also reflect the appropriate and currently enforceable MSHA PEL, which in this case would mean having to go through and by hand for each chemical substance listed on there write in the 1973 ACGIH TLV for metal/nonmetal and/or the 1972 ACGIH TLV if it is at a coal operation because otherwise that MSDS will be incomplete, which means that you cannot use one of these 800, you know, fax back MSDS services because those MSDSs will not contain the mandatory information as stated in your interim final
rule.

This may sound like nitpicking, but it is all incremental costs that have to be considered. And, you know, I'm leaving aside the whole issue of having to maintain bilingual materials. There are many mines in this country that have heavily Hispanic workforces. If you get up into New England, you have a lot of French workforces. In other parts of the country, you have Cambodians. You have Chinese. There simply are not off-the-shelf training materials in all of these languages.

So that is going to require bringing in translators, or at a minimum consultants who could train in the native languages of these workers. And they do see this happening on the OSHA side of things as well. It is very cost expensive.

MR. NICHOLS: Okay. Let's go back to that small rock quarry you represent. And the makeup of the mining industry, especially metal and nonmetal, probably 75 or 80 percent operations with five employees or less, and then you'll have another 10 or 15 percent with 30 employees or so, and then you'll have a few of the bigger operations. And you said that the burden, you know, is quite a bit less for the large operators.

Now let's look at that quarry. You have got,
what, a shop? And probably all of them do not have labs. So you start with a pretty basic list of chemicals at the mine site. You have got cleaning solvents, fuel, lubrication, and maybe a few others. But that doesn't seem to me like a burdensome, complicated thing to look at now. Am I missing something from this rock quarry?

MS. ABRAMS: I haven't gone in and done an inventory. But not only are they responsible for the products that they have on site. They would also be responsible for knowing what contractors, blasters and the like, might be bringing on site and ensuring that those contractors have programs in place. You know, the interaction between the mine operators and contractors is another dimension here that I think MSHA has largely ignored in terms of its time cost and its actual costs. It is going to be something of a coordination nightmare.

Especially at the smaller mines, you do tend to have contractors coming in more for specific functions who could well be bringing substances onsite. And all of their workers are going to have to have HazCom training, which is going to raise the cost of contracting because you are going to have to require anyone coming on your site to be in full compliance, not with OSHA's HazCom standard, but with MSHA's HazCom standard, which does differ in substance.
MR. NICHOLS: Well, I mean, they are required to be in compliance with other MSHA regulations now. I mean, I fail to see the extra added burden here for, you know, the blasting contractors you are talking about. They are going to be handling explosives. There is MSDS sheets for explosives. What else are they going to be --

MS. ABRAMS: Well, they are going to have to carry an MSHA plan around with them. That's burdensome. I mean, I'm not here representing the contractors, but I do represent some contractors in my other practice. You know, it is burdensome for them now carrying MSHA training plans around with them. And this is another layer of things that they have to keep in their truck, you know, and try to keep things up-to-date.

You are going to have to be training contractors. Right now, under Part 46 or 48, if a contractor is coming in and they are doing a minimal amount of work there, they get site specific hazard training.

MR. NICHOLS: And why could you not incorporate HazCom training in with that?

MS. ABRAMS: Well, because the contractor is supposed to do the HazCom training for their workers. The mine operators should not be training other people's workers, other than the minimal site specific hazard
training that is required. The contractor has the primary responsibility for training his or her own employees, which means those contractors have to come to that mine site already in compliance with the MSHA HazCom training requirements because that is a responsibility distinct from the site specific hazard training under Part 48 or Part 46.

MR. TEASTER: But if a contractor was coming onto the mine property and was going to be exposed to hazards, hazardous chemicals, that was produced or used by the mine operator, I believe the mine operator would be responsible for providing that site specific training related to any hazard, be it chemical or other.

MS. ABRAMS: Absolutely. I agree with you. And, you know, that goes back to my point that this is already covered under existing rules, so no further rule is necessary. But what the mine operator is not going to be covering are the hazards of the chemicals that the contractor himself is bringing on. You know, if you have a plumber coming on site, he may be -- or she may be bringing, you know, super Drano type of products that are being used not in a way that they are used by the consumer, you know, or Harry Homeowner. So therefore, they require training.

That contractor is going to have to do MSHA approved HazCom training. That means his MSDSs that he
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brings onsite have to bear the legend of what the MSHA TLVs are for the various substances or chemicals that are emitted by the super strength Drano.

MR. FEEHAN: Let me correct something, Adele. The only time that they are required to put the MSHA PEL, or the MSHA permissible exposure limit, on an MSDS is when they are producing a chemical. That is what the requirement is. Any chemicals that are brought onto the property, however that MSDS comes, that is what it is. It doesn't have to be corrected.

MS. ABRAMS: Well, that needs to be clarified in the final rule because I know there seems to be a lot of confusion in the mining industry. And I might add, you are then creating another issue, which is you are supposed to make your miners aware of the air contaminant requirements that are in the 1973 PELs under 5001, 56-5001, and the analogous coal standard. And yet you are also supposed to train them on the information contained on the MSDS, correct? Which means that you are going to be training your workers on two conflicting sets of PELs because, as you know, current PELs for most substances differ significantly from those that are currently codified in 30 CFR by the incorporation of the 1973 ACGIH TLVs.

MR. FEEHAN: Well, but again --
MS. ABRAMS: These are just some of the issues. And I can't sit here and resolve them for you today. But what I am trying to do is point out some of the inherent problems in this rule and where clarification is necessary, and why additional reopening for comment is probably warranted. If there is confusion among the lawyers as to what is required on these MSDSs, I can guarantee you that some small mine operator, you know, in Nebraska or Wyoming is going to have a lot of trouble figuring out what they need to do under the standard.

MR. NICHOLS: Well, I think we got it here. And the panel can correct me if I'm wrong. But anything that is brought on is going to have an MSDS sheet.

MS. ABRAMS: Yes.

MR. NICHOLS: The only thing that people are going to have to go to the incorporations you are talking about, the ACGIH and the other document, is if they produce a new chemical at the mine site. Now I have tried to think of how the majority of our operators would produce a new chemical, and I can't come up with much. I can't come up with much for a stone operator or a sand and gravel operator, large and small service and underground coal operators. There may be some really sophisticated mining operation out there somewhere that they do produce new chemicals. But I just
can't bring it up in my memory.

So I would say it is almost nonexistent, that they are going to have to go to these new documents to determine an MSDS sheet for this new chemical that is being produced because 99.99 percent of the time, the product being brought on is going to be accompanied with an MSDS sheet.

    MS. ABRAMS: Well, I think your assumption is incorrect, that 99.9 percent of the time the products will have those. At mines many times, at least in my experience, people are running down to the Kmart to buy primer or, you know, they are going to some auto repair shop or, you know, auto parts, Trak Auto type of place, buying the solvents, and the various lubricants that are used on the equipment. But these are not being used in the same manner again as Harry Homeowner would, so they would fall within the HazCom requirements. And most of those stores -- I have never been given an MSDS at Kmart when I have been buying paint for my house. And I suspect that most of the guys who are sent at the mines down to pick up something because they have run out are not going to be given an MSDS either.

    This is how a lot of the OSHA HazCom citations end up being written, are products being brought in piecemeal to the property and not the stuff that is ordered through some kind of purchasing office. That's where you end up losing
some of the controls, and that's where you end up with the paperwork deficiencies.

MR. FEEHAN: Let me ask a question about consumer products, Adele. Don't the labels that come on even the paint cans at Kmart -- don't those labels come with a telephone number that you can call to get an MSDS, an 800 number typically?

MS. ABRAMS: Some do, some don't. I have done a little bit of work on product labeling, but not that much. But I can tell you the standard would prohibit you from using that product until you obtain the MSDS. And, you know, where the rubber meets the road, if you have gone down to get an extra can of primer because you have run out, it is because you need to finish the paint job, and you can't necessarily stop everything and wait for three days to obtain that.

MS. HUTCHISON: So what you are saying is they already have some cans there, and they are going to get another one.

MS. ABRAMS: And maybe a different brand, you know. And that's where you run into the problems. Obviously, if you have got an MSDS already, you don't need to have one every time your purchase the product. But there are, just because of the chemical makeup of substances,
differences -- I mean, to use something I'm more familiar with, even between different brands of shampoo you can't compare the labels and say that they have the same hazards. They don't have the same chemicals. I might be sensitive to a substance that is one but not in another. And this is the level of scrutiny that I think you are going to be requiring of mine operators that is going to impose a great burden. And if it is going to impose a burden and it is necessary, fine, but at least be upfront about what the burden is in terms of the economic impact.

MR. NICHOLS: Okay, Adele. Thanks.

The next presenter will be Michael Sprinker, ICWUC Health and Safety Department. Is Sprinker here?

(No audible response)

MR. NICHOLS: Okay. Joe Main is next on the list, but I would imagine Jim Weeks (phonetic) is going to fill in for Joe.

MR. WEEKS: Good morning. My name is Jim Weeks. I'm an industrial hygienist consultant to the United Mineworkers and I'm speaking on the mineworkers' behalf this morning.

It was October 20, 1987, that the mineworkers sent a letter to -- along with the steelworkers -- a letter signed by Rich Trunka (phonetic), the president of the
mineworkers, and Lynn Williams (phonetic), the president of the steelworkers, that wrote a letter to Bill Brockton (phonetic), the secretary of Labor, and asked for this standard to -- asked to write this standard. That was some 13 years ago.

Ms. Abrams raised the question, given the past ten years, why the rush? The question I raise, why the ten years? At the time, it seemed to us a very straightforward problem. OSHA had adopted a rule. It had gone through a lengthy rulemaking process. People had had experience with it at that time. Employers were familiar with the rule. People were getting familiar with the material safety data sheets. Many of those employers also had mine operations. And to us, it seemed very straightforward to just take that rule and put it in MSHA, make a few adjustments here and there that would be appropriate. And so it is a mystery why it is has taken 13 years to get here.

We're not so concerned with the rush. We would like you to get on with it. We think this is a very important rule. In many respects -- I mean, there an extraordinary number of details involving this rule that are important and which we respect, but they should not be used to obscure some very basic fundamental rights, human rights, in a way, common sense rites. And that is that workers need...
to know what it is that they work with. If they are going
to work in a safe and responsible manner, they need to know
what those materials are, what their hazards are, what
appropriate controls to put into place. They need to know
what operators are doing to control exposure to those
chemicals. And if workers are going to be partners in
making mines safe, they need to have this information.

It is a very fundamental issue. And as we looked
at the OSHA rule, we thought here is the rule. There are
many aspects of that, the OSHA rule, that we didn't
particularly like. But we felt that it had gone through all
of that debate. We could live with it. Let's do it.

So one comment that I want to make clear about it
is that we want you to get on with this rule. We support
the basic concept of this rule, the need for education for
material safety data sheets, and so on. I think that there
are things that can be done to streamline it to make it less
burdensome on everyone involved. But we support the basic
concept.

I particularly the idea that contractors are also
covered by this rule because a lot of the problems that
occur with handling chemicals come on miscommunication
between different employers and different workers with
different expectations and orientations. So I think it is
important that contractors be covered.

Now having said that, there are a number of our comments that I would like to highlight here. First of all, the threshold issue is what is a hazardous chemical. The way the rule is written, it is frankly not clear. At one point, it seems to put this responsibility on the mine operator to identify what a hazardous chemical is. I think this is unsatisfactory. I don't think mine operators are appropriately trained. I think if I were an operator, I would experience this as a burden for them to make that particular determination.

What we would suggest is something along the lines of what you put in there, a very simple and unambiguous rule. If this is a chemical that is regulated by MSHA, it is on the list, it is a hazardous chemical, it counts. I would go a little bit beyond that. I think the reference to the ACGIH TLV list is appropriate because those TLVs were incorporated by reference in 1970 -- whenever it was, three or two. I think they are obsolete in many respects. And they were adopted as interim exposure limits so that they fall within the realm of MSHA regulated substances.

I think the inclusion of IARC and the National Toxicology Program list is also appropriate. What I would add, however, is NIOSH. NIOSH puts out a rather odd book.
It is called a pocketbook. I have never seen anyone carry
it in their pocket. It is much too big. But it lists all
chemicals for which NIOSH has proposed or recommended
exposure limit. And the RELs come from a governmental body.
They have gone through review and rulemaking, more so than
the TLVs.

Again, if you look throughout the Mine Act,
everywhere where there is a recommendation that MSHA should
turn for advice on toxic chemicals, it names NIOSH. And so
I think that the NIOSH RELs and that pocketbook should be
included. If it is on that list, it should be covered under
this rule.

Now ignoring the REL list is such a consistent
MSHA policy, it does not appear in MSHA databases. It does
if you dig, but you have to dig. It does not appear in
other MSHA rules. I think it is no accident that it is not
on this list. I think that is mistake. I think that the
RELs should be included, and the REL list should be
included.

I'm not necessarily endorsing the RELs. I am
simply saying that if it is on that list, it should be
covered. And that, I think, is a fairly simple and
straightforward way of saying what are the chemicals that
are subject to this rule.
The second issue is that there are several places in the rule where operator responsibility appears to be contingent upon operator knowledge of what is going on. If a chemical is not known to be in the mine, he is not allowed to have -- then he is not responsible for material safety data sheets. There are several places in the rule where this is the case, where operator responsibility is contingent on operator knowledge.

This is a problem in several respects. First of all, it is a loophole that a less than responsible operator could exploit and say, well, I simply didn't know that that was there. I'm not responsible for it. And it is a loophole that is created.

Now there are circumstances where it is reasonable where operators in good faith saying I don't know, I didn't know that that was there, et cetera. And if that is the case, then the operators should be expected to raise that issue. It shouldn't be handed to them in this rule, saying that whether you know about it or not determines what you do.

The second problem with this condition is that it sends a message to mine operators, and in fact to miners as well, that ignorance is an acceptable mining practice. Ignorance of the chemicals that are in your mine is an
acceptable mining practice. It is not. In fact, this rule is -- the purpose of this rule is to counteract that ignorance. And so to put it in the rule in the way in which it is put in -- it is in our comments -- I think is a bad idea, and it would be fairly simple to take it out. And the issues could be handled -- issues of people in good faith not knowing -- and it could be handled later on a case by case basis on their merits.

Another comment. And this pervades the whole hazardous communication problem for OSHA and for MSHA, and it comes up with MSHA. The assumption is that miners have a right to know and need to know information about hazardous chemicals. To go -- the next step is that the assumption is that the people that are going to provide that information are the mine operators. This assumption -- and then behind that is the assumption that mine operators in fact know what chemicals are in their mines, that they know what the hazards are of those chemicals, and they know what to do about them.

I think this is a false assumption. The question that we raise is, who is going to train the trainers? I think mine operators need to have some training program as well because, I mean, miners have no corner on lack of knowledge or of ignorance. I think there is plenty of it to
go around. And I think that there needs to be some explicit attempt or effort in this rule so that mine operators can get the training and the information that is appropriate to manage chemicals in their mines in a responsible manner.

Now there are certain imbalances in this rule that go to the issue of trade secrets. One of them is that there are no criteria for identifying what in fact is a trade secret. There is no, in fact, any test or determination or evaluation of a claim of trade secrecy. I'm not saying a test would be easy. But there is no attempt to acknowledge that problem. In fact, a mine operator could say it is a trade secret; I'm not going to tell you, and that's that. I mean, who is going to question that?

So I think there should be some attempt made to identify and evaluate claims of trade secrecy, more than what is in the rule already. There are provisions in the rule for operators and recipients of trade secret information to reach some sort of an agreement over how to handle that information. I think that is appropriate. I don't think there is any real problem with that.

But then there is a portion of the rule that I find very curious. And it is 47-77, paragraph C. And I'll just read it to you. "If MSHA determines that the confidentiality agreement would not sufficiently protect
against unauthorized disclosure of the trade secret, MSHA may impose additional conditions to ensure that he Occupational health services are provided without undue risk of harm to the operator."

This is a very curious paragraph in a couple of respects. First of all, a confidentiality agreement, even though it is overseen by this rule, and this rule provides for that sort of agreement, that is an agreement reached by the recipient of the information and the mine operator. In many respects, this is a private agreement. And one would think that in order to reach agreement, the parties would adequately protect their own interests so that they are capable of reaching an agreement that would be satisfactory to them.

So I don't see why the government should intervene at all in that. I think you can oversee it. You can provide for it and so on. But I think to intervene, if you think it is inadequate, it seems curious. Even more curious, however, is that you intervene on behalf of the operator. As it says, "MSHA may impose additional conditions to ensure that occupational health services are provided without an undue risk of harm to the operator." The purpose of this rule, indeed the purpose of the agency, is to protect miners, not to -- you know, you
shouldn't run roughshod over operators. But the purpose of
the rule and the agency is to protect miners so that I don't
see why this particular provision is in there, why you would
intervene in the first place, and why you would intervene on
behalf of mine operators.

Okay. Let me go on. Another -- one of the
problems in the OSHA HazCom rule, and it is a persistent
problem, is that there is very little quality control over
information that is on material safety data sheets. I have
seen valid material safety data sheets that would say what
are the ingredients, and they all say petroleum distillates.
Well, that narrows it down to only a couple thousand
compounds. You know, it is better than saying it was water.
But, you know, I have seen data sheets like that. I have
seen data sheets that say there is a halogenated organic
compound, period. There are a couple thousand of those as
well.

Now those data sheets are not inaccurate, but they
are simply lacking in fundamental specificity. And there
needs to be some way of ensuring that the information on a
material safety data sheet is accurate and that it is
genuinely informative and not simply this kind of a cynical
display of whatever, or display of cynicism, I guess, is
what it is. And it is a little tedious, but there are
sections within the rule, and they are in our written comments, in which it ends up that nobody ends up being responsible for the quality of information on material safety data sheets.

I think as a practical matter, the people that ought to be held responsible are the people that produce them, obviously, the suppliers that supply the solvents, the paint, the whatever. Those are the ones that write the sheets data, the ones that ought to be responsible for them. And I don't know whether MSHA or MSHA and OSHA or some -- I don't know whether your regulatory reach could extend to suppliers, whether you could do that.

But what you could do is put some sort of responsibility on mine operators to ensure that they get accurate data sheets. And then if the mine operator -- the mine operator could reach to their suppliers and say as part of our condition of purchasing this stuff, we want accurate data sheets. I think that would be a reasonable thing to expect mine operators to do to get that.

Now while we are on data sheets, the provision in the rule -- and I may not understand it accurately -- that relieves operators of producing material safety data sheets for their products I think is a problem in certain respects. For example, lead is a toxic substance. Nickel is a toxic
substance. Chromium is a toxic substance. Those are all products of the mining industry. And --

MS. HUTCHISON: The mining industry under the interim final rule is not exempt from producing MSDSs for their products.

MR. WEEKS: I thought I misunderstood it. I guess I did. Okay. I'll forget that. Well, I think it is appropriate because, you know, there are toxic materials that are produced by the mining industry.

Okay. One final comment, and that is that there has been -- there are many comments on the burden on small mine operators. I think these are realistic problems. But I think the way that they are talked about is incomplete. They are realistic in the sense that you have got probably one guy who runs the mine. He is the owner, he is the foreman, he is the accountant, he is the payroll chief, he is the safety officer, he is the purchasing agent, he is the salesman. He is all of that. And to put on top of him -- maybe her in some cases -- to make that person a toxicologist is just -- you know, it is another burden.

Nevertheless, all of those are important tasks. If one is going to operate a mine in this country, especially a small mine, I think that mine has to be operated in a safe manner. And when we look at small mines,
we look at small mines in the coal industry, they continue
to have the highest fatality rate of any other mines. They
have a poor record when it comes to monitoring exposure to
dust, so that there is a burden here. And I think there is
a burden on miners who work in small mines. And I think one
needs to look at lessening the burden on miners who work in
small mines, at the same time that one could -- that you
could provide some more technical assistance to small mine
operators.

You know, I'm just looking for some balance here.
I'm trying to remind you what -- and to emphasize that the
mission of the agency is to protect miners. And to do that,
I think one needs to do that in a way that doesn't impose
undue burdens. But one needs to look at protecting the
miner. That is the mission, and that is what I think this
rule is about, and I think that is what the agency is about.

So that concludes my comments.

MR. NICHOLS: Okay. Thanks, Jim. I don't think
you can make the case that this rule is an undue burden on
small operators, given the fact that, as we said before, you
pull information together that is readily available. And
the fact that MSHA is to do outreach with developing generic
HazCom programs -- we'll even help write MSDS sheets -- and
try to incorporate that into training that is already

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required by the small operators.

In fact, metal and nonmetal, with the new Part 48
regs, are right now in the process of doing compliance
assistance visits for the first inspection under Part 46.
Now MSHA has got a history of doing a lot of outreach with
regulations like from diesel to noise to training, and we're
going to do the same thing with the final HazCom rules.

So it is really hard to make that case that it is
a burden for small operators.

MR. WEEKS: Believe me, I'm not trying to make
that case. I'm trying to --

MR. NICHOLS: I'm speaking more to Jim Sharp and
Adele Abrams.

(Laughter)

MR. NICHOLS: As I look past you.

MR. WEEKS: No. I'm not trying -- I mean, I think
people make -- you know, I mean, I know some small mine
operators and so on. They have complained to me about these
things. I simply want to focus -- when we talk about
burden, let's talk about the burden on the miner. Those are
the people we need to pay attention to. I want to
acknowledge the small mine operators have a challenge that
they have to deal with, and I think a lot can be done to
help them out, but I don't want to let them off the hook.
MR. NICHOLS: Okay. I wouldn't disagree that it's probably not a burden to operate a mine, but this one other piece is not going to add to that burden.

MR. MAIN: I'm going to object to that.

MR. NICHOLS: Anybody got any comments or questions for Jim?

MR. TEASTER: I just wanted to just reinforce some of the things you just said in regard to that. The agency recently has gone to great lengths in outreach with seminars, with going to the mines to try to make this as least burdensome as we possibly can and still obtain the objective, which is to provide the health and safety that we need for our miners, and we'll continue to do that with this rule. I see no difference.

MR. NICHOLS: Why don't we take a ten minute break and be back -- oh, let's be back at 20 until 11:00. (Whereupon, a short recess was taken.)

MR. NICHOLS: Okay. Why don't we get started back.

Is Michael Sprinker here?

Okay. Jim, are you ready to come up? Jim Sharp?

MR. SHARP: The paperwork burden of this rule is beginning to mount.

MR. NICHOLS: Don't start that stuff.
MR. SHARP: Good morning, ladies and gentlemen.

My name is Jim Sharp with the National Aggregates Association - National Stone Association. I am director of health and safety services for that organization, and with me today is Steve Sandbrook, a safety and health professional with Eastern Industries in --

MR. SANDBROOK: Center Valley, Pennsylvania.

MR. SHARP: -- Center Valley, Pennsylvania. I would like to make a short opening statement and then turn over the podium to Steve for his remarks.

I'd like to read to the panel a letter written by Joy Wilson, who is president and chief executive officer of the National Aggregates Association - National Stone Association dated December 13 written to Assistant Secretary Davitt McAteer. We'll put this in. I'll give it to the stenographer in a moment.

"Dear Davitt: NAA-NSA is disappointed that MSHA has allowed so little time for interested persons to prepare remarks for the public hearing on the HazCom rule, which is set for tomorrow." Again, this is dated December 13.

"This regulation deserves the most serious deliberations since it will have a significant impact on our industry, particularly the small business sector. Since the notice was officially announced December 11, interested
parties have just three days to prepare. This limited time period will prevent many commenters from participating at all, and for those who do it minimizes the possibility the agency will receive the benefit of the well prepared views of affected parties that will assist the agency in crafting an effective final rule responsive to stakeholder concerns.

"We have previously expressed concern that MSHA has not reproposed the rule after a ten year hiatus. MSHA's decision to call HazCom an "interim final" rule was unfortunate because it discouraged any comment at all from some operators who took the designation to mean MSHA had made up its mind on the regulations.

"In addition, two NAA-NSA requests to extend the 45 day period for comments on the interim final rule were denied by the agency. The result was a rush to meet your November 17 comment deadline, followed by yet another dash to respond to a December 4 deadline for comment to the Office of Management and Budget on the paperwork burden of HazCom, which, as you know, is substantial. These requests were made in part because we have still not received important information from MSHA that we need in order to make fully informed comments.

"Other affected parties share our view that the agency has failed to provide adequate notice of and an
opportunity for comment on this rule making, as evidenced by the numerous protests from others on the fast track HazCom rule process. This situation is as regrettable as it is unnecessary. We hope that MSHA will reconsider. Sincerely, Jennifer Joy Wilson."

MR. SANDBROOK: Good morning, ladies and gentlemen. My name is Steve Sandbrook. I'm a certified mine safety professional and the safety manager for Eastern Industries, Inc., located in Center Valley. That's just about an hour north of Philadelphia in Pennsylvania.

I'm here today representing NAA and NSA. I'm not a lawyer. I'm not an owner or an operator. I'm not a union leader. I am just but one of hundreds of mine safety and health professionals that will be adversely impacted by the current pace and nature of the interim HazCom rule put forth by your agency. Please understand my commitment and the commitment of my fellow safety professionals in providing a safe and healthful work environment for the employees of our respective companies is paramount.

Compliance of the law is not a casual convenience. It is our guide from which we must analyze, create, train, implement, monitor, measure and adjust as needed not on a one time basis, but rather daily, to assure successes in our efforts. To this end, please listen and understand what I
have to say.

The fundamental problems as I see it are as follows. First, this aggressive rule making procedure has cast a shadow over MSHA's intent on why the rule must be enacted so rapidly. The past history of this rule goes back to April 7, 1986, when MSHA itself opposed promulgating a standard of this nature, and I quote from the program information bulletin 86-2M:

"...MSHA has promulgated standards requiring miners to be trained in hazard recognition and avoidance, including the hazards of handling chemical products. Moreover, warning and labeling requirements for metal and non-metal mines specifically require that hazardous areas be posted in order to warn miners that toxic substances be labeled both in a manner which identifies the hazards involved."

Additionally, an attachment to the PIB cited several MSHA regulations which would cover the intent of HazCom that would eliminate the need for additional regulation that is duplicative by nature as follows:

30 CFR 56 and 57.16004, Containers for Hazardous Materials. "Hazardous materials shall be stored in containers of a type approved for such use by recognized agencies. Such containers shall be labeled appropriately."
30 CFR 56/57.20011, Barricades and Warning Signs.

"Areas where health and safety hazards exist that are not immediately obviously to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible and display the nature of the hazard and any protective action that is required."

The third is 30 CFR 56 and 57.20012, Labeling of Toxic Materials. "Toxic materials used in conjunction with or discarded from mining or milling of a product shall be clearly marked or labeled so as to positively identify the nature of the hazard and the protective action required."

I understand that times change, along with people. However, change of this magnitude that affects my or our ability to effectively manage safety programs will hinder and seriously compromise my effectiveness for real time safety. Currently I use an 80/10/10 split for my efforts. That's 80 percent of my time is doing the walk and talk. I'm out there walking. I'm out there talking to my people. I'm listening to what they have to say. Ten percent of my time is spent pushing paper. The remaining ten percent of the time is spent on training.

If this HazCom rule goes into effect, I'm afraid not only for myself, but for my fellow mine safety
professionals, that split will now turn into a 10/80/10 with
ten percent walk and talk, 80 percent pushing paper and ten
percent training.

While MSHA molded their program after OSHA's, the
image I see in the mirror in one of enforcement. I have no
doubt that this rule will be the number one cited violation
and continue to be, as OSHA has proven since their rule was
enacted. I believe there's a lesson here that we should
investigate together. Together.

Together we, MSHA and industry, worked towards a
common goal in creating Part 46. Congress praised us. The
non-mining sector envied us. Mr. McAteer shared in the
accolades and vowed to continue to work with the industry in
the future in creating a safer work atmosphere. We are
doing this currently with programs with the high wall safety
program, with surface haulage, with the noise and dust
workshop, and that's all great. That's where the rubber
meets the road when we're out there creating these programs.

What happened? This was a perfect opportunity to
once again join together in the spirit of not only the Act,
but also in the spirit of common sense. Where else can you
get better input from those than who are to be regulated
when in the end we can all agree on sound safety management
practices for the good of the industry and the thousands of
men and women who are its foundation?

Yes, we have this period to comment and become part of the record. However, I again must question MSHA's motive. I believe any comments at this time are moot and that MSHA has already made up their mind and that this is a shame.

The integrity of the agency, which was on the upswing after Part 46, I feel will all be but eliminated. Micromanagement breeds contempt. Contempt breeds poor attitudes. Poor attitudes breeds unsafe behaviors, and unsafe behaviors get people hurt. We need to work together for a safer future, and that includes developing the regulation.

I'm not an accountant. I'm definitely not an accountant. However, in reviewing the cost analysis for the metal and non-metal annual compliance costs, I believe the figures presented are grossly inaccurate. $230 to $270 estimated annual cost for compliance. This equates into approximately eight to ten hours of a safety professional's salary if they make $60,000 per year.

Now, what about the other costs, such as labeling of material, administrative costs to manage the MSDSs, training, internal enforcement, inventory control, research? I know my costs are a couple of thousand dollars annually.
currently to comply with my state right to know laws. I have little confidence in the figures, and I believe they need further review and cross check back to real life applications.

Finally, the aggressive nature of the rule making that has occurred in the agency is puzzling. I understand that I can expect five proposed new regulations within the first six months of 2001. I cannot for the life of me figure out why such a comprehensive agenda that will reduce the effectiveness of the safety and health professionals in their industry is going at supersonic speed.

I'm not a cynical person. However, this action is viewed as political in nature due to potential changes within the Department of Labor. I hope I'm wrong, but that is the prevailing word in the pits.

I hope you didn't just hear me today. I hope you were listening. Thank you very much.

MR. NICHOLS: I don't think you would agree, Steve, that working on a rule for 12 years is going at exactly the speed of light. I think this addresses the rule making procedure you laid out here.

MR. SHARP: If I could interject there?

MR. NICHOLS: Go ahead, Jim.

MR. SHARP: We actually think you were considering
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a rule for 14 years. Otherwise -- because the PIB was dated
in 1986, which, incidentally, is not mentioned at all
anywhere in your preamble as part of the history of this
rule making, which we consider to be a very real part of the
history of the rule making.

We also wonder why it took you ten years.
Obviously when you write rules it's a matter of resource
application. Somebody in the agency decided that there
wasn't obviously enough interest in this rule to push it
through in the early 1990s or it would have been pushed
through in the early 1990s. I mean, obviously there was not
an emphasis on this from top management. I mean, it's
evident.

Now, is that because of the indifference? Was
that because of a difference of opinion within the agency?
I'm asking you that question. I'd like to have an answer to
it.

MR. NICHOLS: Well, let me answer that.
MR. SHARP: Then I want to finish with my
statement.

MR. NICHOLS: Okay. The Assistant Secretary had
at least a half a dozen priority issues he wanted to deal
with. Part 46 was one. Diesel safety rules was another.
Noise was another. Coal mine respirable deaths was another,
and HazCom was included in that list of priorities. Okay. And diesel particulates.

You can see we've had an aggressive agenda, and some of these rule makings have come to completion, and so this is one that's coming to completion out of his mix of a half a dozen priorities.

MR. SHARP: You're talking about Mr. McAteer?
MR. NICHOLS: Yes.
MR. SHARP: Well, Mr. McAteer took office in 1994. This rule was proposed in 1990. What happened before 1990 and 1994.

MR. SHARP: What Cherie?
MR. SHARP: No, ma'am. I don't think so. The rule was proposed in 1990.
MS. HUTCHISON: Yes, but Davitt came in 1992?
MR. NICHOLS: I guess it really doesn't matter. I mean, did you ever change bosses and get different priorities, Jim?
MR. SHARP: Do you not agree that ten years is a
long time for a rule making?

MR. NICHOLS: Not by MSHA standards, I mean.

MR. SHARP: If you think ten years is a long time, how do you assess the rule making speed with regard to Part 46 then?

MR. NICHOLS: Well, you're looking at a one year snapshot. We worked on the idea of promulgating Part 46 from the day the training rider went on, so that discussion was in process for 20 years before that rule was ever completed.

MR. SHARP: Okay.

MR. NICHOLS: We were petitioned in the mid 1980s to revise the noise regs, and here it is -- you know, we got it out last year, 1999.

We had a Secretary's Advisory Committee on diesels sometime in the 1980s. Finally, you know, we got the diesel safety rule out. We have done a lot of work on the diesel particulate rule.

But for the reasons, you know, that we're here today, you know, you have strong opinions on all sides of it. It takes some number of years to produce a rule.

MR. SHARP: All right. Well, I guess what I'm talking about is let's talk about the different period of time between the proposed rule --
MR. FEEHAN: I'd like to add --

MR. SHARP: The proposed rule and the final rule. Ten years for HazCom. The proposed rule on 46 was 199, and it was promulgated a year later. The proposed rule on noise was 1996. It was promulgated in 1999.

You know, I kind of disagree with you a little bit on the priorities here. I do think the agency put HazCom on a back burner, and there was a reason for it. You've told me what one reason is, but I'm saying I'm not sure that that is the entire reason.

MR. FEEHAN: There is some more to the history of this, Jim.

MR. SHARP: There's some what?

MR. FEEHAN: There is more to the history of this, too. Some of the comments that we received to the 1990 proposal asked us to hold off and to use OSHA's experience in our rule making.

Now, OSHA didn't promulgate -- you know, they were going through a rule making process until what, 1995 when they came out with their HazCom for general industry? 1994?

MR. SHARP: Well, they proposed HazCom in 1983 for SIC codes 20 to 39.

MR. FEEHAN: Right.

MR. SHARP: That went into effect that year. Then
in 1987 there was a Court decision which reconciled a lot of issues that were floating around, one of which was discontinuity on labeling with regard to OSHA, states that were not under the OSHA state plan. They needed to have some sort of preemption, so there was a deal struck to make sure that OSHA's rule would be predominant with regard to labeling, and it would be extended to 3,500,000 employers and 35,000,000 workers. That was in 1987, so that rule really went into effect in 1987.

I can tell you for a fact that whenever I took my job in an OSHA regulated industry in 1990, one of my first undertakings was to get them to comply with the OSHA HazCom rules.

MR. FEEHAN: Wasn't there a change in OSHA, though? Didn't they promulgate for general industry in 1994?

MR. SHARP: They issued a rule in 1994, which I happen to have here actually, that basically clarified some minor issues that had arisen since the rule was promulgated, but it was essentially the same rule, and employers -- all of general industry had to be in compliance with that as of 1987.

MR. FEEHAN: Well, what I understand about the history of the regulation is that we had comments that asked

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us to take into consideration OSHA's experience with its HCS. There was a change in the regulation for general industry back, you know, three or four years after we did our proposed rule. Then there was also at that time a request of OSHA that they have their advisory committee on occupational safety and health standards look into whether the HCS was effective or not.

The measure of that effectiveness didn't become known until I think it was 1996, so really I think, you know, that was some part of the history of the regulation and what was going on in extending it, extending the time that it took.

MR. SHARP: All right. So you're really acknowledging that there were developments between 1990 and 2000 that took place that really should have resulted in, and this is industry's argument, a reproposal of this rule. You've just stated some of them.

Adele mentioned the global harmonization initiative. Let me ask you this question, and I have not finished the statement I was going to make earlier, but I'll get to that. Let me ask you this. Has any federal agency officially or unofficially asked you to repropose this rule?

MR. FEEHAN: I don't know that. Does anybody know that?
MR. NICHOLS: I'm not aware of any.

MR. FEEHAN: I don't think we --

MR. SHARP: You don't have that knowledge?

MR. FEEHAN: I don't.

MR. TEASTER: Do you remember his comment on the earlier statement you said about Part 46? Part 46 was a rule that there was a lot of work up front before the rule making process officially began. There was a consensus by most of the concerned parties that there was a need for this rule.

The rule, when it went out, didn't have a lot of opposition to it, plus through the negotiating process of getting this rule making there was a deadline that was set that we tried to meet, so I don't think when you're talking about numbers just for a certain portion of the industry, and most of the people in that industry recognized that there was a strong need for training of the miners, so we got that one through with very little opposition. Not that we didn't have some differences, but for the most part.

I don't think that would necessarily be related to this type of rule making where you have varying opinion of what the rule should look like.

MR. SHARP: But you will not deny my timing, if you look at opposed versus final, that HazCom took ten, Part
46 took one, the noise rule took three. You proposed the
diesel particulate rule in when, 1997-1998? It's about to
be finalized in 2000. That's three. If you look at it from
that perspective, we're talking about an extended period of
time.

You've also acknowledged from the panel here just
a few minutes ago that there have been changes that have
taken place in the last ten years that bear on this rule
making. Why then didn't you -- and you cannot answer the
question whether or not another federal agency has asked you
to repropose, yet you did not repropose the rule. With all
of this going on, you did not repropose the rule.

MR. NICHOLS: You know, we may have to agree to
disagree on the need to. I mean, it's our position that we
have had a long history of back and forth in public hearings
and proposals on this issue and that we have developed a
good, common sense, straightforward rule.

If you have additional comments, that's what this
hearing is for. I mean, you know, give them to us today.

MR. SHARP: Well, I'm commenting.
MR. NICHOLS: All right.
MR. SHARP: You're hearing it.
MR. NICHOLS: But to say this rule has not been --
you mentioned noise. I mean, we worked on that rule for 12
or 15 years. It probably tracks the same time frame as HazCom does.

If my memory serves me, the diesel advisory committee probably tracks the same time period. It was during a previous -- I'm not sure if it was during the previous Administration, but it's got some age on it. All our stuff has got some age on it.

MR. SHARP: But this rule has some real age on it when it comes to proposing it and finalizing it. That is not the case with the other rules that I have cited. It's just not.

Look at it from my perspective. That raises a question. That raises a question of what the agency's real intent was and were they unified on this and what was your emphasis. If you had wanted that rule to come out in 1992, it would have come out in 1992. If you had wanted that rule to come out in 1994, it would have come out in 1994.

Now, let me just go on with the rest of my comment about the timing of this. Now the rule is out. You issued an interim final rule form, which is a strange duck in terms of MSHA rule making. I mean, that's not a common practice of the agency -- I think you'll agree with that -- to issue it in the interim final as opposed to final.

Then you give us a mere 45 days to respond to a
rule, a month and a half to respond to a rule that took you
119 months to issue in final form. Do you really think that
we could in 45 days get all the information, for example,
that we needed on the economic analysis impact of this,
study what you have done, prepare our own analysis and then
distill that analysis in such a way as to put that into a
proper context for comment in 45 days? Do you think that we
could have done exactly the same thing with regard to
significant risk?

You yourself have admitted you've got a database
of 50,000 of which 410 are for poisonings. We asked under a
FOIA to get that database on September 29. We got an
impressive and fairly rapid response to it, but we still did
not have all the information that we needed even to analyze
that database by November 17. We did not have that. We
don't think we still have that.

You asked for comment from the industry. We can't
give you comment when you rush us, and we don't understand
why you rush us when it takes you 119 months and you only
want to give us 45 days. Now you keep this pace going with
this hearing.

If you really want to know the impact of this on
small businesses, if you really want to know that, you
should do what you did with Part 46. You should have
hearings all over the country, and you should allow enough
time for associations like NAA-NSA to explain the rule to
small business because I assure you the small business
operator is not going to get this thing and read through it.
He won't read through the whole thing, and he won't even
read through the last seven pages, which is the rule itself.
He won't do that. It has to be explained to him.

You did that with 46. You had outreach all over
the country. It has to be explained to him, and then he has
to see the impact of it on his business, and then he has to
put that in terms that can be presented to you. That takes
time. You can't do that in three days.

MR. NICHOLS: We're going to do that.

Now, what part of this rule is so complicated that
you don't understand?

MR. SHARP: Marvin, it's not that I don't
understand this rule. I'm not the one that has to implement
it. I work for a trade association that falls under OSHA.

MR. NICHOLS: Okay. Let's follow this line of
thinking.

We're going to eliminate the mystery of this rule.
First of all, the rule requires that you pull together
information you probably already have. If you don't have
it, you should have it. That's the MSDS sheet for chemicals
that are being brought on the mine property.

You're going to have to write up a HazCom program.

Now, if you can't do that, we're going to assist in doing that. We're going to put together some generic ones, and then we're going to have -- we'll have a tool box. We'll have a compliance guide. Then, as with every other regulation we promulgate, we'll have a series of seminars out in the mining community.

You're already required to do the training for Part 46. There's no reason why this can't be incorporated right into Part 46. You talk about you're already doing some things with right to know. That's got to include having these MSDS sheets already, so I just don't see the complication and the burden.

You may not agree with it. I don't see how you can make a rule that this is a mystery and it's burdensome.

MR. SANDBROOK: That's under my OSHA HCS where I have my hot mix asphalt plants and block plants and shops, associated shops. Now I have to come up with another plan, okay, to meet my mining facilities.

Some of those you are talking about, the small facilities. I've got two facilities right now with no running water.

MR. NICHOLS: All right. What kind of mining
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MR. SANDBROOK: Sand and gravel those were.

MR. NICHOLS: Okay.

MR. SANDBROOK: They're the smaller ones I'm talking about.

MR. NICHOLS: All right. Now, what kind of chemicals are we likely to have on the property? We're going to have probably some gasoline and diesel fuel and motor oil. Tell me what else beyond that.

MR. SANDBROOK: To give you a comprehensive list right now --

MR. SHARP: Solvents, battery acid, paints, varnishes.

MR. NICHOLS: Okay. We're probably up to a dozen.

MR. STONE: Okay.

MR. SHARP: Marvin, let me ask you something. When was the last time you did an inventory of the chemicals in your home? I would urge you to do that. You're going to get a rude awakening of just how much you have there.

MR. NICHOLS: For them that pose a hazard, I've done all of them. You know, NIOSH done a survey back a long time ago and identified many, many chemicals on my property. That's not what this rule is dealing with. This rule is dealing with those that may pose a problem to a
MR. SHARP: It's dealing with hazardous chemicals, those that are a physical and a health hazard. Hazardous chemicals. OSHA says there are oh, let's see, 650,000 of those.

MR. NICHOLS: Okay.

MR. SHARP: Six hundred and fifty thousand hazardous chemicals in the inventory that they know about.

MS. HUTCHISON: Not a small sand and gravel operation.

MR. NICHOLS: Yes. Let's talk about --

MR. SHARP: No. In the universe, in this country, there are 650,000 hazardous chemicals.

You're making a point, Marvin, that it's just those chemicals that pose a risk. I'm saying no, it's not. It's hazardous chemicals. What is that universe? Six hundred and fifty-thousand potential chemicals we're talking about.

MR. NICHOLS: Okay. How many of these 650,000 are you going to have at this sand and gravel operation?

MR. SHARP: Marvin, that's what I'd like them to come tell you if you'll just give them an opportunity through public hearings to do that.

MR. NICHOLS: But common sense will tell us right
here at this table. We've mentioned a dozen.

    MS. HUTCHISON: Our experience.

    MR. SHARP: Now, wait a minute. Wait a minute. We need to be talking to the people who are going to be regulated. Let's hear what they think common sense is.

    MR. NICHOLS: We've been --

    MR. SHARP: Let me just say this, too. You have said that this is not a burden to small operators, yet on page 59052 of your preamble you admit under the Paperwork Reduction Act that there are 24 provisions of this rule, which there probably are only 30 to 35, that have paperwork requirements and responsibilities. Twenty-four of them. You've just heard Steve say he's 8/1/1. He's going to have to reverse his ten percent on paperwork to make it 80 percent of paperwork.

    If you looked at the NACOSH working group, if you heard the American Dental Association, for example, begging for an exemption to this rule because of the paperwork burden, if you read books called common sense where this is nothing but a paperwork blizzard where books of MSDSs are out in the operators' areas and are gathering dust because nobody looks at them.

    The only time MSDSs are looked at, and this isn't in our testimony, is when somebody has a beef against the
company and wants to raise holy heck or after there is an
crash, but they never ask for them or rarely ask for them
in advance.

Tell me this is not a -- I'm not a safety and
health person in the mining industry. I'm not at a mine.
I'm not Mr. Sandbrook. I want you to hear those people tell
you what this rule is going to do, and you cut off the
opportunity to have that occur.

MR. NICHOLS: I don't think we have.

MR. SHARP: That I think is shameful.

MR. NICHOLS: We haven't done that.

MR. SHARP: How can you say that, Marvin, when you
give 45 days for a rule that took you 119 months to
promulgate? You give three days for a public hearing.
Three days' notice for a public hearing. Three days.

MR. NICHOLS: I dare to say that in the ten year
history of public hearings and rule making proposals that
many of the comments you have made today have been in those
previous exercises.

MR. SHARP: Wait a minute. Wait a minute. This
rule is new. This is a brand new rule. Yes, there are
similarities to the proposed rule, but this is a rule that
requires careful deliberation because it has provisions and
changes in it that the proposed rule does not have.
MS. HUTCHISON: Like what?

MR. SHARP: And there is certainly a new environment now than what there was ten years ago, and that needs to be factored into it, the most obvious of which, perhaps the most profound of which, is this paperwork requirement --

MS. HUTCHISON: That --

MR. SHARP: -- and all the requirements that you have here for that.

You've heard Adele talk about global harmonization. You've heard Richard himself talking about the NACOSH working group. You've heard him also talking about OSHA wanting to take a look at this rule and having to do something about it in 1994-1995 to clarify minor issues that were a carry over from the 1980s. This is just some of the issues, yet you turn around, and you don't repropose it. You don't give us an opportunity for meaningful comment. It just exasperates us.

We just came through a rule making on Part 46 where we all sat around the table with labor, and I would strongly urge that we have the same kind of dialogue again on HazCom. We sat around a table and crafted in 18 months a final rule on Part 46 that you couldn't get done in 20 years.
Cherie, you laugh, but it's true. It's true.

MS. HUTCHISON: You father it for 20 years.

Have you sat down and done a comparison between the proposal, OSHA and the interim final?

MR. SHARP: No, because I haven't had -- for the OSHA rule and the interim final? The OSHA rule and the interim final?

MS. HUTCHISON: Well, between the states.

MR. SHARP: Pardon?

MS. HUTCHISON: Between the states.

MR. SHARP: No, because I haven't had enough time to do that. You haven't given me the opportunity.

MR. NICHOLS: He needs more time.

MS. HUTCHISON: What?

MR. NICHOLS: He needs more time.

MS. HUTCHISON: Exactly.

MR. SHARP: I haven't had enough time. I haven't had enough time. No, I haven't, but I certainly know a lot about the OSHA HazCom rule because that had to be implemented in my previous job. I know a heck of a lot about it.

MS. HUTCHISON: Well, what is new and different about the interim final rule that you think is significant in terms of the proposal and the OSHA rule?
MR. SHARP: Small mining business have not had to comply with the OSHA HCS, so that part of your comment is irrelevant.

My interest is in trying to determine how they're going to be able to comply with this easily and not do so in a manner that detracts from other vital health and safety issues that they have to address that are more vital than this.

I can tell you what my experience has been under OSHA HCS as a health and safety professional in charge of a company that had to put this into 135 sites. We developed a program which we purloined, very frankly, from an existing boilerplate, tailored it to our operations the best we could, sent that to all 135 sites along with a sample inventory form.

Told those sites they had to do the chemical inventory. They had to keep that chemical inventory on file. They had to keep it up to date. Told them that they had to gather MSDSs. They did that. Told them that they had to do training. They did that.

We had a policy statement written right from the top of our organization which said this is important, and you need to do it. I can tell you that I got nothing but resentment out there from the get go, and the resentment was
you have imposed a massive paperwork burden on us, and we
simply cannot see the benefit of it. You are taking away
precious time and resources that we need to address other
safety and health issues.

The position of the National Aggregates
Association - National Stone Association on this rule is
that that is what this does; that you have in place
sufficient resources to account for most -- most -- of what
you're covering under this rule. Now, I will grant you
there are probably some things that we need to talk about,
but we do not need a rule of this extent in order to make
that happen. We simply do not.

We are asking you to please remand this rule,
convene a special group, if you will, a working group such
as OSHA, did that consists of labor, industry and you folks,
and let's sit down and work this thing through. I can
guarantee you you'll have it, what you want, probably not in
2001, but you'll probably have it in 2002, and everybody
will be happy, and you won't have this screaming that's
going on now.

MS. HUTCHISON: Jim?

MR. NICHOLS: Here's how we would plan to
implement the rule, and this would be totally for small
operators, intermediate operators, anybody that wants to
help.

The rule has a delayed implementation date of October, 2001. That gives us a period to go in and work with small operators to try to help them develop or help them develop a HazCom program and incorporate that into the training that you're going to be doing. Now, that doesn't seem to me to need a lot of -- there's not a lot of mystery there, I don't think.

MR. SHARP: Marvin, if the agency will please allow the small operator to give you its opinion on that, we can arrange for that to happen, but you have got to allow the mechanism for that to happen, which you have not done here.

I can tell you that it is not nearly as simple as you think. Of course, the question that keeps popping up into my mind is that there are so few chemicals out there at these small businesses. Why don't you just exempt them? If this is such a small deal for small businesses as you claim, there are so few chemicals there, why are they not exempt?

Why does a small business, one operation, have to have a written plan at all? They may not even have any chemicals. They still have to have a written plan. What sense does that make if I were a small operator and I had no chemicals?
The other thing is you deincentivize them from
getting rid of their hazardous chemicals so they don't fall
under this rule. If you have an incentive there that says
well, I have to have this rule so I'll get rid of all my
hazardous chemicals and I'll be exempt. You don't have that
mechanism. You don't even have that there. There's no
incentive for anybody here. That's just one of the
problems.

I want the small business community to come and
talk to you. You allowed that to happen with Part 46. You
were very, very good about it. You had six hearings all
over the country two or three times removed, and they came,
and they talked to you. I read every one of those
transcripts. I know they talked to you, and you listened.
You put together a very good rule.

I'm here to tell you this is not a good rule for
the small business community. I just know it by instinct,
but I want them to come and tell you the horror stories that
are going to be created. I've already told you one of them,
MSDSs stacked up gathering dust. Nobody makes reference one
to an MSDS. They just won't even look at them.

MR. SANDBROOK: Personally, I have two three-ring
binders that are four and a half inches, and --

MS. HUTCHISON: You have that many chemicals at
MR. SANDBROOK: No. I have to do that. The way our program is set up is through our entire corporation. It's easier for me to go ahead and boilerplate all the chemicals rather than customize for each location. I have 46 different operations, 17 quarries, I think it's 15 HMA plants, block plants, trucking.

MS. HUTCHISON: Do you consider yourself a small business?

MR. SANDBROOK: From the quarry aspect, I don't know what the definition is honestly. Under 20?

MR. SHARP: Under 20 or under 500? Which definition are we taking? The Small Business Administration?

MR. NICHOLS: Historically we've said less than 20. The Small Business --

MR. SANDBROOK: Less than 20? That would be --

MR. SHARP: At a site or at a company?

MS. HUTCHISON: That's why we go with less than 20 because we --

MR. SHARP: Per site?

MR. SANDBROOK: Per site? Then I'd be a small operator.

MR. SHARP: Is it a site or a company?
MR. NICHOLS: I mean, what difference does it make? We're talking about --

MR. SHARP: We're trying to answer her question.

We're just trying to answer her question.

MR. STONE: We use the establishment, which would be fewer than 500. We also use 20, under 20. We use both. We evaluate both when we do our analysis.

MR. SHARP: And that is at a site?

MR. STONE: At a site.

MR. SHARP: So, now what's your answer?

MR. SANDBROOK: My answer is at a site I have 75 percent of my operations, fewer than 20 people.

Overall in my entire corporation where I'm regulated by OSHA, MSHA, DOT, okay, and creating -- and the Pennsylvania right to know laws, putting all of that program together, that's how many MSDSs I have because I don't have the time to customize for each location.

That would be a waste of resources, so I make one program that covers everything to the best of my ability that's above and beyond. For example, you say a two year retention on MSDSs, whereas you're looking at what, 30 years for OSHA.

MR. FEEHAN: So you have to maintain MSDSs for the longest group that you're --
MR. SANDBROOK: Absolutely.

MR. FEEHAN: So your asphalt operations --

MR. SANDBROOK: Right.

MR. FEEHAN: -- you're having to keep MSDSs for 30 years?

MR. SANDBROOK: Right. Right. The thing is, from a management standpoint with my time and effectively using my time, okay, I'm going to apply that same standard to my mining facilities, so I'm not -- you know, I'd rather have to just hold that paper rather than waste time, go over there, cull this out after two years, you know, and do this if we don't have it and do the notice, so I do it the strictest possible, which is --

MR. NICHOLS: So you've already got a program? I man, you've already got a HazCom program?

MR. SANDBROOK: I'm one person, one company, that has a program.

Do you know how that program came into effect?

When I first started there five years ago, okay, our incident rate was horrible. It was well above the national average, and I mean well above the national average. Now we are well below. Five years.

Because I came in there, and I'm going to say I came in there, okay, and I opened the doors. I stopped the
micro management. I formed work teams. I don't make a
decision. That's not my job. My job is to bring people
together, because who better knows the materials out there
than the people who have to work with them and what they do
with them, so I bring them in together.

There are no bad ideas. Everybody has great
ideas. There are just some ideas that are better than
others, and by getting these people to buy into this, those
people and myself, we work together. We develop our policy
and procedure. I don't do that. We do that as a team.

MR. NICHOLS: Okay. You've already got a HazCom
program. Now, how is MSHA's HazCom rule going to add an
additional burden to you?

MR. SHARP: Well, I can answer that.

MR. SANDBROOK: I just had done that. I just said
that. I'm now going above and beyond. Do I really have to
do that?

What I'm saying is if in fact you are mirroring
the OSHA HazCom, I see the differences. With the global
harmonization system coming on, I'm going to have to change
again.

MR. NICHOLS: Wait a minute. I mean, if you have
an OSHA HazCom program, I mean, I can't imagine what small
tweaking you're going to have to do to make that fit MSHA.
You're already required to do Part 46 or Part 48 training. I can't imagine what burden it's going to add to include the --

MR. SHARP: Well, let's see.

MR. NICHOLS: Let me talk to him, Jim.

MR. SHARP: Okay, Marvin.

MR. NICHOLS: That you're going to add in the training you already have to do. Now, tell me where this additional burden is going to come.

MR. SANDBROOK: Because I now have a program designed for MSHA, okay, I now have to stop and take a look. Okay. Here's a regulation that has come down the pike.

MR. NICHOLS: Right.

MR. SANDBROOK: Now I've got to take a look at it. I've got to pull out my OSHA, okay? I've got to pull it over here to the side, and now I have to start comparing the two, okay? I now have to reconvene those people again because a change has occurred. I can't ignore it, and I have to open it up to the people again to say look, here's a new rule from MSHA.

Maybe my case is different than another company that's located just several, you know, miles down the road, but this is how it affects me and my operations and the way I manage my people, and it might be different from other --
MR. NICHOLS: Why do you have to open it up again? I can't imagine if you --

MR. SANDBROOK: Because if I don't that would be micromanaging my people, and I don't do that.

MR. NICHOLS: If you have it covered in your OSHA HazCom program, I can't imagine some substance being out here in one of these rock quarries that you haven't already covered and that your own experience and understanding of your operation should not require you to change.

I mean, you adjust your training as you go. I mean, you don't need to teach these mining people about something they're not exposed to. I mean, that sounds like part of your confusion on this.

MR. SANDBROOK: No. They're taught what their exposures are. They're also taught how to read material safety data sheets. You're right. There's not much difference, what you're saying, going through here.

As far as the burden, again I now have -- there's one more vehicle for an inspector to come in and take a look and say okay and start asking and talking to my people, double checking the training records with Part 46, was this covered in the Part 46, double checking the inventory of the hazardous materials to the number of material safety data sheets and do the material safety data sheets meet up with

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the hazardous -- it's going to be a nightmare. It's going
to be a nightmare.

MR. FEEHAN: Steve, I can almost guarantee that if you're in compliance with OSHA, you're in compliance with our standards.

MR. SHARP: Except for hazardous waste, which is not covered in OSHA's HazCom?

MR. FEEHAN: You have hazardous waste?

MR. SHARP: Except for MSHA PELs on MSDSs, which are not required by OSHA, for example. Except for the fact that you may have to change the training plan under Part 46.

MR. FEEHAN: Let me correct something. First of all, you're only required to put MSHA's PEL on MSDSs that are your product.

MR. SHARP: We understand that.

MR. FEEHAN: Okay.

MR. SHARP: We understand that.

MS. HUTCHISON: And we already got a comment you said --

MR. FEEHAN: Yes.

MS. HUTCHISON: -- that explained that you needed to have the OSHA PEL for OSHA downstream users.

MR. SHARP: Right. Right, but I'm telling you that if we have to develop material safety data sheets, and
it sounds like we're going to have to if we have crystalline silica in our product. We've got to put an MSHA PEL on it, and if we already have an MSDS instead of the OSHA PEL we've got to make a change.

MR. FEEHAN: We're going to develop a generic MSDS for silica. We'll give you that one, Jim.

MR. NICHOLS: No, we're not.

MS. HUTCHISON: No, we're not.

MR. FEEHAN: We're not?

MR. NICHOLS: No, we're not.

MR. FEEHAN: Let me ask. Doesn't NSA already have a generic MSDS for crushed stone?

MR. SHARP: Yes, we do that we need to update now based upon this standard --

MS. HUTCHISON: Why?

MR. SHARP: -- for paperwork purposes.

MS. HUTCHISON: What about it has to change?

MR. SHARP: I'm sorry?

MS. HUTCHISON: What about it has to change?

MR. SHARP: Well, you're saying that we have to take the most recent IARC ruling, the most recent NTP. NTP, as you not, just declared this a most likely carcinogen this May 15. NTP. So there's a change.

MS. HUTCHISON: Well, what --
MR. SHARP: I'm answering your question, Cherie.
MS. HUCHISON: Okay.
MR. SHARP: ACGIH has just lowered the PEL to .05 and called it a suspect carcinogen. We've got to make that change. We've got to put your PEL on it.

MR. FEEHAN: Wouldn't you have to do that for OSHA anyway?
MR. SHARP: Yes, but we've got to put your PEL on it. That's a change. That's one of the reasons that this standard is not the same as OSHA.

MS. HUCHISON: But if you didn't have to put the MSHA limit on the MSDS, you wouldn't have to change it?
MR. SHARP: No. That's not so. That's not so because you're saying that we have to keep the reference levels for ACGIH, NTP and IARC. Every time they make a change, we've got to change our MSDS.

MS. HUCHISON: No. That's not what we say.
MR. SHARP: That is what you say.
MS. HUCHISON: No, that's not what we say.
MR. FEEHAN: What do we say?
MR. SHARP: Yes. What do you say? This is enlightening.

MS. HUCHISON: Okay. We say that if ACGIH, NTP or IARC list it as a hazardous chemical, you have to
consider it to be hazardous. We also say that if they
classify it as suspected, probable or whatever terms they
use human carcinogen, you have to identify it as such.

MR. SHARP: Right, and as Table --
MS. HUTCHISON: That's it.
MR. SHARP: Table 4711, page 59097. It says
ACGIH, NTP and IARC latest edition.
MR. FEEHAN: Right.
MS. HUTCHISON: That's what you have to check, to
find out if it says it.
MR. SHARP: A small line operator has got to buy
the ACGIH TLV book for $30, read it and understand it?
MS. HUTCHISON: Well, what chemicals --
MR. SHARP: He's got to buy the IARC, and he's got
to buy the NTP?
MS. HUTCHISON: What chemicals is he producing
that he would have to look up?
MR. SHARP: Crystalline silica.
MS. HUTCHISON: He already knows that that's
hazardous.
MR. SHARP: But he's got to check the book to see
if it changes because I just got done telling you that ACGIH
recently made a change, and so did NTP. He's got to keep
monitoring that.
Let me change the discussion to this. Let me put something on the table.

MR. FEEHAN: Yes, but let me bring up --

MR. SHARP: Let me put something on the table for you.

MR. FEEHAN: Wait a minute. Let's give you all that. You're only talking about one MSDS sheet here.

MR. SHARP: Well, there could be more. I need the small operators to come tell you that. There could be more. I told you. I'm not a safety and health professional who has to implement this program. Let the small operators come and tell you. I asked 11 to come. Only one could make it. The other ten, on such short notice, were unable to do so.

Let me make a suggestion to you where we could have a basis for discussion of this rule. Number one, exempt office employees from this rule. If you can show through your significant risk table and charts that office employees -- that there's a significant risk other than a de minimis risk to office employees, then we will consider having them included in a HazCom rule. Right now we just don't believe there is that risk. I doubt anybody has suffocated, choked, strangled on toner from an office copier machine or white out. I just doubt it. That's number one.

Number two, operators with some sort of reference
benchmark, either number of chemicals, not needing to produce an MSDS or whatever, should be exempt from this rule. If they have a small number of chemicals, for example, as you have. Marvin, in your example, if they have a small number of chemicals or something, some kind of a reference, you need to think about exempting small businesses from this rule if they show that they don't have enough hazardous chemicals to really constitute a problem. That's the second thing I think you need to consider. Those two things.

Third, you need to think about no written program for some. If there is no need for HazCom at a site, there should be nothing required at all. No written program. Nothing at all.

MS. HUTCHISON: Do you have any sites that do not have any hazardous chemicals?

MR. SHARP: I want my small operators -- I haven't had a chance to poll them, Cherie. You haven't given me the time.

MR. FEEHAN: What was the third --

MS. HUTCHISON: Suggestion?

MR. FEEHAN: What was the third comment?

MS. HUTCHISON: No written program if there are no hazardous chemicals.
MR. SHARP: The third thing is that I'm bothered
by the fact that you require something even from a site that
may have no hazardous chemicals. You're still requiring
them to have a written program. I can tell you that that's
a useless exercise. That's just useful. That's of no
benefit at all. It just makes people angry with you.

Those are the three things, and the fourth thing I
would ask you is if you're going to have this, have it
totally in compliance with OSHA. Have it mirror OSHA. As
the record shows, your own research, and as Steve had
pointed out, there are a lot of organizations now that have
already got an OSHA HCS.

Now, OSHA -- I will tell you that OSHA's HCS did
not go through notice and comment, not for the entire
general industry. It did not go through notice and comment.
It only went through notice and comment for CIP codes 20 to
39, but I would say that would be a basis for discussion in
this labor/management/government work group that I think you
should convene to hash through all this.

MR. SANDBROOK: Like Jim said, you already have
facilities that may be in compliance with an OSHA HCS like
myself. Now I have to go take and look at my liabilities,
if there are any. I have to look. It takes time and
effort.
I think the industry -- I would be more receptive to a mirror, a true mirror image OSHA HCS.

MR. SHARP: And then the last thing I'd like to add is we need to burrow into this harmonization, this system harmonization initiative here, because if go through to put out a rule that two years from now has got to be changed, you're just irritating people, especially when the record clearly shows that that initiative is going on now.

They are going to harmonize the material safety data sheets probably according to ANSI, I mean, and the labeling is going to be harmonized. I think you're shooting yourself in the foot if you put out a rule and two years later have to readopt it. I think we need to get from OSHA, which is the lead agency on that internationally or representing the United States. We need to find out where this stands and try to bring all this together.

MS. HUTCHISON: We've already done that.

MR. SANDBROOK: You have talked to them?

MS. HUTCHISON: Yes, we have.

MR. SANDBROOK: And may I ask their response if you were to become part of the globalization?

MS. HUTCHISON: A long time in the coming.

MR. SANDBROOK: I'm sorry. I don't understand.

MR. SHARP: A long time coming. How long? Did
they give you -- five years? Ten years?

MS. HUTCHISON: No. I don't remember.

MR. SHARP: They can't give you that estimate?

MS. HUTCHISON: I don't remember.

MR. SANDBROOK: To allow you to work with them on this project?

MR. SHARP: Well, no. OSHA is doing that now.

MR. SANDBROOK: Right.

MR. SHARP: It's just that it takes time to work out. You've got the United Nations, basically 200 countries that you've got to work with. It's just like the global warming thing. I mean, it's going to take a lot of hashing through to get something worked out.

MS. HUTCHISON: They are --

MR. FEEHAN: I wouldn't mind --

MS. HUTCHISON: They are arguing about the like terminology --

MR. SHARP: Right.

MS. HUTCHISON: -- for hazardous chemicals, toxic, highly toxic, most highly toxic, even more highly toxic --

MR. SHARP: Right.

MS. HUTCHISON: -- and probable or possible or potential.

MR. SHARP: Well, you know, I think we ought to at
least get a status report on where they are.

MR. NICHOLS: I think what we ought to deal with is --

MS. HUTCHISON: We addressed this in the preamble to the interim final rule.

MR. NICHOLS: What we need to deal with is what we've got in front of us. MSHA has a rule here that can still be adjusted. We think it's a good rule. We think it's simple, straightforward. We don't think it's overly burdensome to the industry just for the simple fact that miners do have the right to know about a chemical hazard that they may be exposed to.

MR. SHARP: We don't dispute that.

MR. NICHOLS: It's not that you have to go out and reinvent the wheel either.

MR. SHARP: We don't dispute that principle either.

MR. NICHOLS: What?

MR. SHARP: We don't dispute that principle either.

MR. NICHOLS: Okay. Maybe we're going to get somewhere here.

MR. SHARP: That's right. That's why we've got to get this work group sitting around a table and talking.
There's a lot of common basis for consensus now.

MR. NICHOLS: Jim, I don't disagree with any of that, but what you're saying to us is that our 25 years of inspecting these small sand and gravel quarries leave us with no idea what's out there.

I don't think that there's any mystery as to what's on these mine properties that some group of small mine operators are going to come in and tell us about. I mean, we've named a dozen, and I'll bet you the list don't go much farther than that.

MR. SHARP: Well, you know, I guess if I were doing this rule I would have found that out for myself.

MR. NICHOLS: I think we have. I think we --

MR. SHARP: Well, where is that evidence, and why hasn't it been put into the record then and shared with us?

MR. NICHOLS: I think our evidence is just what I said; that we've been inspecting these places twice a year for 25 years, and --

MR. SHARP: And you did an inventory of their hazardous chemicals?

MR. NICHOLS: Well, you do a mental inventory of the whole place. You've got a few dump trucks. You've got a few crushers. You've got a shop. You've got a few labs here strung around here.
MR. SANDBROOK: Would you know the citation rates on the issuance of 56 or 57.16004, 20011 or 20012? The citation rates?

MR. NICHOLS: Can you say that again? I was --

MR. SANDBROOK: The citation rates, okay, issued across the country for say just the past even five to six years or longer to 12 years of the Part 56 --

MS. HUTCHISON: The labeling requirements?

MR. SANDBROOK: The labeling of the containers of hazardous materials, barricades and warning signs and labeling of toxic materials relevant to this. Do we have those citation rates to see is there a problem out there?

MR. NICHOLS: It's pretty easy to retrieve it. I don't know if it's in the record or not.

MR. SHARP: Marvin, I hear what you're saying. You have a point of view, and obviously we spent 18 pages giving you our point of view. That was a point of view that was a rush that we never really had a chance to poll our small people, and that's what we would like to have the opportunity to do in order for this to be the kind of thoughtful rule making we know MSHA wants to promulgate here and that we want you to promulgate. It's in our best interest, too.

You know, we have a lot more in common here than
you think, but this rule is not -- I'm telling you it's another Part 48 safety training. It does not work. I'm convinced of it based on what I'm reading. There's too much paper, for instance. It does not work.

Now, please, let's not have another 20 year or 22 year mess like we had with Part 48. All we have to do is sit around and talk and work this thing through.

MS. HUTCHISON: If our rule mirrored OSHA, how would that help?

MR. SHARP: It would help.

MS. HUTCHISON: How?

MR. SHARP: Because these people like Steve wouldn't have to do anything except extend the OSHA HCS to his mining operation, which he may have already done.

MR. NICHOLS: That's all he has to do with this rule.

MR. SHARP: That would help. That would help, Cherie. I'm not telling you that that's the end of it because you're asking me to speak for people that I haven't had a chance to get their message from, the small operator, because you haven't given me the time to do that.

MR. TEASTER: Steve, some of regulations you referenced, 56.20011, for example, which requires posting or barricading off the area where you have a hazardous material
and you'd have to put a sign up posting that and also
notifying them of any personal protective equipment. Do you
have a lot of those signs posted on your mine property today
that you're familiar with?

MR. SANDBROOK: Not in this industry, but when I
was in the cement industry, yes, and the thing with the
asbestos, which was --

MR. TEASTER: You know, we say this takes care of
a lot of stuff. If we go to a quarry today and apply the
rule as we proposed having an interim final rule, how many
of those areas today would be identified with this warning
or be barricaded off?

I mean, I'm just referring to going to the mine
site. I have not seen a lot of those posted on the mine
sites. I think if you go back to this chemical here,
there's at least some areas. The number we don't know
exactly. There's talk about six, 12 or whatever, but I've
never been on a mine site where I've seen anything close to
that many areas being dangered off as being hazardous
material and specifies what personal protective equipment.

MR. SANDBROOK: Again, in my industry, in the sand
and gravel and crushed and broken stone, you're right.
You're not going to find much of that. It's fairly inert.

If you start going to a lime plant or maybe a
cement plant where they're dealing with CKD, then you may
have another issue because of the high chrome levels.

MR. TEASTER: I recognize there are going to be
different, --

MR. SANDBROOK: Right.

MR. TEASTER: -- you know, chemicals at the mine.
For example, if you go to a processing plant or to a gold
operation it will be much different than going to --

MR. SANDBROOK: That's right.

MR. TEASTER: Thank you.

MR. SANDBROOK: So it's not just the crushed. I
mean, we're talking the whole mining community itself.

MR. NICHOLS: Jim, I don't get your point about
all this confusion between OSHA's rule and what we're doing
here. If you have an OSHA HazCom program, you ought to be
in compliance with MSHA with the exception of maybe where
they burn this hazardous waste, and that's only at cement
plants so I don't see that it's going to confuse the whole
industry.

MR. SHARP: If you want me to do a detailed
comparison of these two rules, you must give me the time to
do it. I had thought to do that. I simply had no time. I
mean, I thought to do it for the hearing, for the submittal
of comments on the 17th. I had no time to do it.
MS. HUTCHISON: If you had one, would it be helpful?

MR. SHARP: If what?

MS. HUTCHISON: If you had one --

MR. SHARP: Yes, because I'm sure you've already done it. Yes, it would be helpful, but I can tell you that we would have objection to the written program requirement under HazCom, OSHA HazCom, based upon experience.

It is a three or four page document that ends up in a file that nobody ever refers to. Never refers to. We would have trouble with that paperwork burden as we would classify it simply because we do not see that it brings anything to the table in terms of improving safety and health, and it does give you a wonderful opportunity to cite us, as OSHA took ready advantage of in its HCS, as you well know.

Secondly, OSHA's HCS -- the difference between the general industry, and there are numerous difference between the general industry and the mining industry, but one of them is in the requirement for training we have had that requirement on the industry from day one, most appropriate, and we agree with it. We have it to this day. We would want to have some kind of a change from the OSHA training requirement because we already are under a separate training
requirement.

Now, maybe there needs to be some tweaking there. You say you think it's essential to emphasize chemicals in safety training. My initial reaction to that is I doubt really whether you need to do that. You have it covered under new miner training. You have it covered under newly hired experienced miner training. You have it covered under refresher training. You have it covered under task training. It's all health and safety issues, and that includes chemical. I just don't see that point. That's a matter for discussion. It's truly a matter for discussion.

The third issue is the labeling issue. You've got labeling requirements now. We would wonder why you would need to change the labeling requirements that you have now, but we would like to hear your point of view, and I'd like you to hear the point of view of small business, large business and labor, so there's your areas that I think we can talk about.

MR. FEEHAN: So, Jim, you'd like us to mirror OSHA's HCS exactly except you don't want to have a written program, and you want to have different training?

MR. SHARP: And the labeling.

MR. FEEHAN: And the labeling.

MR. SHARP: And the labeling.
MR. FEEHAN: I'd say we're a lot closer to OSHA
with what we got than what you want to do.

MR. SHARP: Richard, you're hearing Jim Sharp
talk. Jim Sharp has not heard from his small businesses.

MS. HUTCHISON: You haven't heard from any?

MR. NICHOLS: Did you hear from any of them when
we were back in the early stages working on this?

MR. SHARP: I wasn't around in the early stages.
I've only been here since 1998.

MR. NICHOLS: What we tried to do with the rule is
develop a minimum rule that would give miners the
opportunity to know a chemical that they may be exposed to,
and we've tried to structure it in a way that can be fit
into already existing requirements in MSHA, like the
training.

It's going to take a little bit of work for all
these MSDSs to get together, write a program, and I said up
front a couple times that MSHA is going to be ready and
willing to assist in doing this, and it can be -- your
training can be in your training cycle during the year. I
just don't get the burden argument, Jim.

MR. SHARP: Marvin, I don't know how I can state
more than I've spent the last hour stating it.

MS. HUTCHISON: Is it the burden --
MR. SHARP: What I have said to you is that I hear your point of view. You have heard our point of view as we expressed it in the 18 page response. You've heard it in the one we submitted in 1999, but what I'm telling you is I want you to hear from the little guy.

I want you to hear from the same little guy you heard from when you did Part 46. I want you to have his perspective because, Marvin, I'm sorry. I really don't think you have it because I don't even have it, and I'm closer to them than you are.

MR. NICHOLS: Well, you've been to one of those places.

MR. SHARP: Of course I've been to them, but I haven't been to them to say all right, let's talk about HazCom. Let's do an inventory. Let's talk about a written program. I haven't done any of that. I haven't had time.

MR. NICHOLS: Okay. We've got your comments, and we'll review --

MR. SHARP: One final statement.

MR. NICHOLS: Okay. Please.

MR. SHARP: You're not the bad guy. We're not the bad guy. Labor is not the bad guy. We all have one thing in common here. We want to assure a safe and healthful workplace. Chemicals, many of them are hazardous. There
needs to be an information and dissemination requirement out there for miners, just as there is for general industry.

We want to work with you and labor to craft such a regulation, if you will, but I would rather call it an alternative. I can tell you that the mining industry cannot at this juncture stomach your interim final rule in its current form.

MR. NICHOLS: Okay. Thanks.

MR. SANDBROOK: Thank you very much.

MR. NICHOLS: Has Michael Sprinker shown up yet?

MR. SPRINKER: Yes, I have.

MR. NICHOLS: Are you going to be available after lunch, or do we need to go ahead?

MR. SPRINKER: I need to go to another meeting. I didn't realize that the Stone Association was going to have an hour to speak.

MR. NICHOLS: We'll give you all the time you want.

MR. SPRINKER: I don't need more than about ten minutes.

MR. NICHOLS: Have a seat. You're just the kind of guy we're looking for.

MR. SPRINKER: Thank you. My name is Michael Sprinker. I'm the health and safety director of the Heritage Reporting Corporation (202) 628-4888
International Chemical Workers Union Council of the United Food and Commercial Workers Union. I'm a certified industrial hygienist. I've been at my job just about seven years there.

Before that time, I had close to ten years as an OSHA compliance officer in the Oregon state plan as an industrial hygienist throughout all the years of the HazCom program, in fact, and also spent a couple of years in the former Yugoslavia doing some research and such and talking to companies and workers and so on on some of these very similar areas.

Anyway, we just have a few comments today. Actually, I'm very happy to hear that maybe we can expect some help getting increased funding for MSHA to write new rules it sounds like from industry since they're concerned you don't have enough staffing time, so I do expect that in the next Congress, some help that way. I'll be sure to be calling on them to come up with their words.

One of the issues with Part 46, which I think since that was the subject of extensive comments here, was that for a long time miners in those industries were prevented by a rider in Congress, which certainly didn't have the support of the Chemical Workers Union, from getting training. It was always so interesting to see on some of
those fatality reports people were -- you know, those people had to be trained.

Truthfully, I'm happy MSHA took time and got through Part 46 quickly because who knows what the next Congress would have done. I expected that rider to go back on at some point.

We do feel this rule was long overdue, too, for a lot of reasons. I mean, you had 12 years there between 1981, January 20, 1981, and January 19, 1983, when basically you, OSHA and so on were agencies that were not wanted, not supported except very minimally when things would blow up by two Administrations, two Administrations that didn't want to see you change and so on, so we understand why this has taken a long time, but we do believe it is overdue.

I only hope for the sake of my members that this rule will not be held up by hostile members of Congress, and I realize this isn't so much an issue for MSHA, but I'd like to have this on the record, as the OSHA ergonomic standard has been and as so many other standards have been; for example, training for miners in those "exempt" industries.

We believe that any employer who cares in the least about his or her employees should have no objection to the goals of this rule and even to much of this rule. In fact, we feel the rule doesn't quite go far enough in some
cases.

Those who believe they shouldn't have to train employees, maintain MSDSs, label containers properly, make MSDSs available to miners and miners' representatives and health care providers and not improperly employ trade secrecy don't deserve the privilege, and you note I said privilege and not right, to employ anybody for any purpose. Those that don't want to deal with health and safety, protect the health and safety of their work force, truthfully we feel shouldn't be in business.

Now for some comments about the rule. Some of these comments will mirror some of what the mine workers have said earlier. Some don't, and I'll make some things in a little bit further detail by the 19th. Certainly the requirement for a HazCom program.

We do feel that mine operators -- in fact, I doubt there would be very many mine operators that do not have some hazardous chemicals on site. I've seen hazard communication programs which met the requirements of OSHA which were one page long, and we're not talking fine print either. We're talking 14 point with a lot of white spaces there.

In here a lot you have a lot of the comments about known to be, when hazardous chemicals are known to be at the
mine, and we think those words are quite redundant andeally give a way for some employers who don't want to
provide that to say I didn't know that was there. I didn't
know that those ten 55 gallon drums of trichlorethylene were
there. I forgot all about them. No one told me. In some
cases, for example, maintain the written program for as long
as the hazardous chemical is at the mine. It doesn't mean
known to be at the mine.

With the HazCom program contents, we believe there
should be some statement from the company as to who the heck
is in charge of the program. That's one of the problems we
see in a number of sites where it appears nobody is in
charge of anything when it comes to health and safety or
when it comes to maintaining MSDSs and so on. It doesn't
necessarily have to have a title of the position.

Label containers. We believe that the three month
time span for an employer to update a label may be a bit too
long. Sometimes there might be reasons why it might take
that long, but we think that should be the real exception.

With label contents or label alternatives, I'm not
too happy with the label alternatives. If you were to have
wording in there which said that that information was as
accessible as a label on the container would be, then that
might be more acceptable to us. I've just seen too many
cases where label alternatives were used as a way to keep information away from employees.

I've seen a lot of places where MSDSs are routinely looked for. The places where you find they're not looked through is when they're in such a rambled order that you can't find anything in those books, in those lists of MSDSs that employers have.

With the issue on temporary portable containers, I'm very uncomfortable with this. We certainly in general industry have seen cases where it's very hard to insure that one person is using that container all shift and that's it.

I've seen cases where someone inadvertently pours the wrong thing into a container. Think of the situation where someone has ammonium nitrate in a small container for some reason. They're just going to use it for a little while. The next day someone comes and says I've got to pour this solvent into something. Then what do you have happen?

I think this could create some hazards, and a lot of places I know of don't even -- they'd just as soon have if you've got something you're going to put xylene in and maybe use it for the shift or some other solvent, it's labeled as that. For one thing, you don't often want many things mixed anyway just for quality purposes. Again, with the three month requirements for updating MSDSs, we believe
that when the employer receives or the operator receives a
new MSDS it should go into the book.

Also, even maintaining those MSDSs. Products
change a lot over time. Manufacturers are always changing
or I shouldn't say always, but often changing their
products. We've had products that used to have, for
example, silica in it. Now they don't have it. All of a
sudden the record that a person maybe ever was exposed to
something that had it, that Compound XYZ once was 30 percent
silica and now it's 30 percent talc, you know, or some other
compound or some much more amorphous compound. That
information may be totally lost. We like the OSHA language
better on this rule on maintaining MSDSs.

We're happy to see the MSDS requirement for
hazardous waste. We wish OSHA had that. We think one is a
long time coming, and it's a particular problem in minds
where, let's face it, either things are burned or they're
used for other purposes.

I think, too, to a large degree there's going to
be a protection for the operator, too, because if someone is
going to send some, if you would, hazardous waste over and
they've got to provide an MSDS, are they as likely to be
sending, you know, just some junk that they've got piled up
in the back, or are they actually going to -- it's more
likely you're going to end up with something from a
reputable company if they've got to provide an MSDS.

With HazCom training, here, too, we see and
certainly under OSHA if someone already has the HazCom
training, they're getting it through other means or
whatever, it doesn't add a great burden on. If someone
already has that training, there's not a need to repeat it.

The question I have, and maybe a little
clarification here, in the situation when training is needed
you may be wanting I think some language that says whenever
a miner's duties or job assignment changes. Here it talks
about work area. That could be interpreted maybe too many
ways.

One of the things I found dealing with a lot of
small businesses when I was with Oregon OSHA was that people
actually liked rules that explained things to them, that
gave them the -- that they didn't have to do a whole lot of
interpretation on. You'd get times where why doesn't it
just say that? You know, work assignment? Work area? Why
didn't you just say when job assignment changes?

The other thing, too, is I think training -- you
don't have anything in here which really talks about the
need so much for repeat training, which really comes about
when an operator becomes aware that a miner or other worker
appears to be unaware of the hazards, and that is, I think, an important point in there unless you go to yearly training and so on.

You may want to put in some words of explanation here that look, if this is covered already under Part 46 training or so, then, you know, as long as you're covering these elements you don't have to go about and repeat it. It already counts.

MR. FEEHAN: I think that's in there.

MR. SPRINKER: Okay. I may have missed that in there. Good.

47.52, HazCom Training Contents. One of the things I'd like to see under (h) where they talk about specific procedures, work practices and so on that are at the mine something about how -- some training on how those things are maintained or how the employer is assuring that those are working properly. A lot of times people don't understand if you close a blast gate slightly you make throw off the entire system, the entire dust collection system for a number of operations, or certainly for the one you're at.

We agree, too, that providing labels and MSDSs for customers shouldn't be on request. It should just automatically go out with things. Truthfully, I think it's going to be it's one less piece of paperwork for someone to
have to get a request from someone and then fill it. You just put it on there and send it out. It's done with.

The OSHA language there which says that, for example, you only have to provide one every time when you have a change in that MSDS rather than sending it out each time, although again a lot of manufacturers, even small ones, have found it so much easier just to send the darn thing out with each one.

Let's see. Under the hazardous chemical trade secrets, we're somewhat -- Part 4(c) where it says they don't have to disclose process or percentage of mixture information which is a trade secret. That can cause some problems. For example, if you look at sulfuric acid, there are different PPE requirements, personal protective equipment requirements, for different concentrations. Some things just don't work well.

It's also an issue, too, even for people installing piping and other things. If you don't know what mixture you've got, what may last a long time with some concentrations may last only months with other concentrations, could create a significant problem.

Disclosure in a medical emergency. We hope by written, and this may need some clarification probably in the rule. What about faxes and e-mails? I mean,
emergencies. You don't have time to send a letter. You want to make it clear that, you know, a valid request from someone shouldn't have to wait until they get a letter from someone to fulfill it.

I was somewhat confused on the request, too, for non-emergency disclosure, and I think this may provide some confusion to some folks, when they talk about what you need -- what the request needs to describe. You list a number of different things. I wouldn't think that one would have to address each and every one of the things if all you're wanting is one particular area, but I think some wording clarification in there could help.

Other than that, that is pretty much all of our comments. While we in the Chemical Workers don't mind meeting and such over rules and discussing rules and so on, let's face it. Labor is a small business, too, and we don't always have the time to go to a lot of meetings.

We don't feel that MSHA needs to remand the standard back to look over it again. Some of the things that were brought up can clearly be dealt with even through interpretation or the information be provided employers.

Truthfully, too, there's always a lot of talk about the burden on management. At times there are burdens on management. That's true, but there's also the burden on
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miners and their families who are hurt on the job, who come
down with silicosis, who maybe are dealing with multi
national employers who don't see the need to even monitor
and, you know, won't provide information to workers now when
they request it. You know, who pays the burden for that?
Often times it's not even workers' comp. Often times it's
maybe welfare, maybe unemployment, maybe private charities
and so on.

I think one of the most wonderful things about the
Mine Act is that it does talk about that there is a --
truthfully, that this country owes it to the people that are
mining materials to help them to survive each day so that
they come home in as good a shape as when they left home
that morning to go to work or before shift.

Thank you. If there are any questions, I'd be
very glad to answer any of them.

MR. NICHOLS: Are you going to leave anything with
us?

MR. SPRINKER: I'll have to send that in to you.

I've been on the road so much. Too many fatalities to deal
with, unfortunately.

MR. NICHOLS: You can do that. I think we've
probably captured all the comments.

MR. SPRINKER: Okay.
MR. NICHOLS: Does anybody have a question of Michael?

Okay. Thanks.

MR. SPRINKER: Great. Thank you very much.

Again, I apologize. The weather in Cleveland was not conducive to air travel too much this morning.

MR. NICHOLS: That's okay.

MR. SPRINKER: Thank you.

MR. NICHOLS: That's all the people we had signed up. Are there other people that would like to -- Bruce? Are you going to be here after lunch, or do you want to do it now?

MR. WATZMAN: Well, If Michael said ten minutes, I'll take five.

MR. NICHOLS: We may have some questions for you.

MR. WATZMAN: No, you won't have any questions of me.

MR. NICHOLS: Come on up.

MR. SHARP: I'd like to come back again.

MR. WATZMAN: Wait a minute. If Jim is coming back again, I want to be after him. He makes me look moderate.

Thanks, Marvin. I'm Bruce Watzman with the National Mining Association, and I just want to touch on two
things very briefly or three.  

First, we were part of an industry coalition that filed comments with National Stone - National Aggregates and others. The comments on the substance of the rule are on the record, and we'll let them stand as they do.

My first comment is that we sit here on December 14 approximately one month before a new Administration takes office, and there's a certain irony in this hearing. It wasn't long after the current Assistant Secretary took office that he talked about going out into the field, talking to the people in the field, talking to the miners and the operators. He followed that trend up until this point.

You held repeated hearings in the coal fields and the hard rock mining fields. You heard from the operators, you heard from the miners, and you chose not to do it in this case. I think that's a disservice, and I really question why you've chosen to conduct this hearing under such short notice, why you felt it was necessary so you avoid challenges under the Administrative Procedures Act. Is this just merely punching a ticket so that you avoid that issue in litigation?

The second issue that I need to talk about is the economic impact of this rule on the industry, and I have to
preface this by putting it in the context of all the rules that have come out in recent times and those that will come out in the not too distant future, we think.

Several years ago you issued a diesel safety rule for underground coal. One of the things we did a year after that rule came into place, because we believe that the agency underestimates the cost of rules on the industry, is we conducted a survey among our members to see what their actual experience was in the costs that they had incurred under that rule as contrasted to the costs that were reflected in your final economic analysis documents.

I will tell you that the costs incurred by six coal companies exceeded the total cost projected in your rule. Now, these were not small companies. I will tell you that. They were some of the largest coal companies operating in this country, but they by no means reflected 100 percent of the costs incurred by the industry. They did not account for all of the diesel equipment usage in underground coal. I want to set that as an example of how we've reviewed this rule.

We find that in looking at the economic analysis that there was a lack of factual basis for representations in the preamble to accompany the rule. The agency assumed, if my memory serves me correct, that approximately 50
percent of mining companies complied with this standard either by virtue of them coming under state right to know laws where they operated or by virtue of their parent companies coming under OSHA's hazardous communication standard, yet we saw no basis for that. We feel that that grossly overstates the degree of compliance that exists currently in the mining industry, but that doesn't mean that more shouldn't be done by mining companies. Clearly there should.

To carry that forward, when you look at the annual compliance costs that the agency assumes of $5.7 million annually across the entire mining industry, that works out to $270 per mining company. Now, it's difficult to do anything for $270 in this day and age. If you look at the salaries that are paid in the industry, two hours of a supervisor's time exceeds what you estimate will be the costs incurred by mining companies. We think you have grossly underestimated the cost.

Does this reach some magical number that will trigger additional analysis? No, it probably doesn't, but each one of these regulatory proceedings that have come out, and they're all important, are imposing more and more costs on the industry.

Regrettably, we look at each of these with
blinders on. We looked at noise. We're looking at HazCom. We look at diesel particulate. We look at respirable coal mine dust. Are each of these important? Yes, but in the total sense they're imposing dramatic and great costs both in terms of economic costs and time burdens on those in the industry whose job it is to protect the safety and health of miners.

The previous witness was exactly right. It's becoming more and more difficult in the industry for the safety and health professionals to determine where they should put their needs, where they should commit company resources and time allocation resources.

Something is getting cheated, given the current array of issues that safety and health professionals are facing, you know, and that's something that we as an association, that our members and the safety and health professionals struggle with every day. We don't adequately account for the total picture, and that's something that we need to do as we proceed down the road.

It's a disservice to everybody. It's a disservice to the professionals that work in the safety and health field. It's a disservice to the miners, and it's a disservice to those who spend a lot of time and hard effort in working on the proposals that you put forward. It just
in our estimation does not fairly and adequately reflect the
costs we incur both in terms of dollars spent and time
requirements to comply with the rules, in five minutes or
less.

Questions? Stunned silence? This is not like
you, Marvin, not to question me.

MR. NICHOLS: I don't think we're here to talk
about the totality of the regulatory process. I still miss
seeing the extra burden for the simple informational
standard that can be incorporated into your current
training.

MR. WATZMAN: You know, Marvin, I've sat in a lot
of public hearings with you, and, you know, you are a great
guy. You sit up there, and you present this in a very
innocuous way. This isn't that big a deal. On paper it may
not be, but for those who actually implement these programs
in the mines, which you don't do and which I don't do, all I
can do, as Jim does, is convey to you the message that they
relate to us. All we are is we are spokesmen for them.

I take it on good faith when they say that this
will impose significant time requirements and economic
burdens on the company. There are many companies who are
going to be starting from ground zero in putting these
programs in place.
During the limited reopening period, for example, we, under National Mining -- I think it was National Mining at that time. It may have been National Coal. I forget what the timing was in relation to our merger. We filed with the agency information we had received from a mining company on the actual cost they are experiencing to comply with a program.

Now, they have a program by virtue of the fact that their parent company comes under OSHA, so the parent company extended it to all of their operating subsidiaries, so they're operating under a program. They're one of the ones that won't incur additional cost, that have a program up and running, but the costs were so dramatically different from a $270 annual cost, if that's the average it costs the industry, that it belies comprehensive. It really does. We're talking about ten to 20 to 30 times higher for a program that they have up and running today.

You know, this is a company that's a large company with a lot of resources to commit out of with a real commitment to do the right thing, yet, you know, they look at $270 and say we wouldn't even begin to know what to do if we were limited to a $270 a year expenditure to update our current program.

MR. NICHOLS: I'll bet you most of your members
already have a HazCom program that are just going to have to spend some small amount of time in the training they already do to cover potential chemical hazards at the mine sites.

Now, have you ever seen one of these rock quarries that Jim and the guys are talking about?

MR. WATZMAN: There's one of those that's in close proximity to where I live, so, yes, I've seen one of those. Yes, I have.

MR. NICHOLS: It's not real complicated, those shops. I don't know how many of these quarries will have labs. I mean, that's the other place that you'd need to probably deal with in your HazCom program, but they were going to do the Part 46 training anyway.

MR. WATZMAN: Well, you know, I'll let Jim speak to that because Jim represents that segment of the industry. I don't. We were not participants in the discussion on Part 46 because by and large, and I won't say it's completely exclusive, but, you know, very few, if any, of our members fall into that category.

You know who ours are. Ours are the larger mining companies in the country that produce gold and cooper and silver and lead and coal, and they are large operations both in terms of the magnitude of the mining operation itself and the support facilities that are used at the mines, be they
smelters or coal preparation plants.

I will tell you, Marvin, that you would be surprised that some of the large companies are starting from square one in putting a program in place. They do not have hazard communication programs in place. They do not have -- in some instances do not have operations in states where they are required to do so currently.

They do not fall under OSHA, and this is going to be -- they are going to be treading on new ground. For those companies, the costs are going to be dramatic.

MR. NICHOLS: Just to pull together the information and incorporate it into the training program? That's going to be dramatic?

MS. HUTCHISON: They already have it.

MR. WATZMAN: They don't have it in their training program in the manner in which this rule lays out. Yes, they do hazard training. Yes, they do task training. That's an ongoing activity in every mining operation out there, but does it cover every aspect of what's proposed and the manner in which this rule lays it out? Absolutely not.

MS. HUTCHISON: How long do you think it would take to cover the information that they don't cover already?

MR. WATZMAN: I don't know the answer. Should I
give you Jim Sharp's answer and tell you let's get out into
the field and meet with those companies and not hold a
hearing in Washington, D.C., on three days' notice? You
know, I don't know the answer to that, and I apologize for
being flippant, but I don't.

Jim is exactly right. You know, holding a hearing
here on three days' notice and going out into the field is
just wrong. It's just a disservice to those who need this
information and who you seek the information from.

MR. NICHOLS: Okay. Once you get this thing
developed and get it implemented it's pretty static, right?
I mean, you don't have a lot of changes in the process?

MR. WATZMAN: You may not have a lot of changes in
the process, but you're always looking around at new
solvents.

MR. NICHOLS: Yes.

MR. WATZMAN: I mean, there's a multitude of
those. Every vendor -- there are hundreds of vendors, and
they always want you to use their best and their latest and
their greatest and their favorite, and in the competitive
nature of this mining industry today if you can save a buck
a gallon, you're going to save a buck a gallon and make a
change.

MR. NICHOLS: Okay, but once you do that then
coming with that new product or a different product comes
the MSDS sheet.

MR. WATZMAN: Uh-huh.

MR. NICHOLS: The fact is that the process doesn't
change to the point that you're going to be producing new
chemicals, that you'd have to go research and develop your
own MSDS sheets. I mean, this is going to be a service
that's supplied. You know, the supplier is going to --

MR. WATZMAN: Well, I would agree with you in most
instances, but there will be instances where you will have
to go out and do research and be preparing your own MSDS.
You know, that's reflected in your rule. That's one of the
areas that we're concerned about, you know, when you're
talking about tailing ponds or waste, just the rock, the
waste, you know.

We're going to have to now produce MSDSs for our
workers who have worked around those materials from day one
when they came into the mine. They've been trained about it
continually, yet, you know, Jim Weeks talked about the
nature and that mine operators are now going to have to
identify what's a hazardous chemical, so there's going to be
a cost that they're going to have to incur in terms of going
out and preparing that information.

MR. NICHOLS: But in the tailing ponds, I mean,
it's just an aggregate of what you've used during the process.

I mean, for the coal spill down in Kentucky we didn't take very long to just --

MR. WATZMAN: What coal spill?

MR. NICHOLS: The sludge. It took no time to put together the analysis of that sludge.

MR. WATZMAN: I think some are still analyzing that today.

MR. NICHOLS: Okay.

MR. WATZMAN: Thanks a lot.

MR. NICHOLS: Thank you.

MR. WATZMAN: Thank you.

MR. NICHOLS: Jim, you're going to have to wait until after lunch.

MR. SHARP: If that's the case -- am I the only one?

MR. NICHOLS: How long are you going to be?

MR. SHARP: I'll waive my opportunity to speak if the hearing is going to come to an end.

MR. NICHOLS: No, no. We'll be here until 5:00.

MR. SHARP: Oh, okay.

MR. NICHOLS: But we need to have lunch sometime.

MR. SHARP: Okay. I'll come back then.
MR. NICHOLS: Okay. You'll be first on after we get back.

(Whereupon, the hearing in the above-entitled matter was recessed, to reconvene this same day, Thursday, December 14, 2000.)
AFTERNOON SESSION

MR. NICHOLS: Let's get started back.

Now, Jim Sharp has waived his testimony. Is that right?

MR. SHARP: Right.

MR. NICHOLS: Okay. Is there anyone else that would like to have any comments or further comments?

If not, some of us will be here until 5:00. We'll go back on the record from time to time. If anybody comes in we'll take their testimony and close up at 5:00.

Any of the MSHA folks that want to or need to go back, why that will be fine.

(Whereupon, a recess was taken.)

MR. NICHOLS: It's 5:00 on December 14. We haven't had anyone testify since before lunch and so we're going to close the hearing.

(Whereupon, at 5:00 p.m. the hearing in the above-entitled matter was concluded.)
REPORTER'S CERTIFICATE

DOCKET NO.: --

CASE TITLE: Mine Safety Health Administration
Public Hearing

HEARING DATE: December 14, 2000

LOCATION: Washington, D.C.

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

Date: December 14, 2000

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