UNITED STATES OF AMERICA

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DEPARTMENT OF LABOR

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MINE SAFETY AND HEALTH ADMINISTRATION

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

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WEDNESDAY
OCTOBER 10, 2001

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BANQUET ROOMS A & B
DAYS INN EVANSVILLE AIRPORT
5701 HIGHWAY 41 NORTH
EVANSVILLE, INDIANA

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PANELISTS:

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Coal Mine Safety and Health, MSHA
MICHELLE SCHAPER, Toxicologist, Educational
Policy and Development Group
RICHARD FEEHAN, Educational Policy and
Development Group
ROSCOE BRYANT, Solicitor's Office, MSHA

PHUC PHAN, Office of Standards, Variances
And Regulations at Headquarters
BOB THAXTON, Acting Health Division Chief for
Coal Mine Safety and Health

I-N-D-E-X

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

MODERATOR NICHOLS: Good morning everybody. Can you hear me in the back?

Okay. Welcome to MSHA's public hearing on our interim final rule for hazard communication in the mining industry.

My name is Marvin Nichols. I am the Administrator for Coal Mine Safety and Health with MSHA.

Before we begin the public hearing I would like to ask that we observe a moment of silence for those thirteen miners that lost their lives in Alabama on September the 23rd.

(A moment of silence was observed.)

MODERATOR NICHOLS: Thank you very much.

Let me begin by introducing our Panel. Then I have a fairly lengthy opening statement I need to read in the record, so bear with me.

On my right is Michelle SCHAPER. Michelle is a Toxicologist with our Educational Policy and Development Group in Arlington, Virginia.

Also on my right is Richard Feehan. Richard is with the Educational Policy and Development Group also.

On my far left is Bob Thaxton. Bob is the

Acting Health Division Chief for Coal Mine Safety and Health in Arlington, Virginia.

Next to Bob is Phuc Phan, who is with the Office of Standards, Variances and Regulations at Headquarters.

And to my immediate left is Roscoe Bryant. Roscoe is with the Solicitor's Office with MSHA.

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

Although formal rules of evidence will not apply, we will be taking a verbatim transcript of the hearing and will make it a part of the official rulemaking record.

The hearing transcript will be available for review by the public, along with all of the comments and data that MSHA has received to date. 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 our court reporter.

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

The Background:

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

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

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

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

We re-opened the rulemaking record on March the 30th, 1999, requesting comments on the impact of the proposed rule on: (1), the environment; (2), small mines; (3), state, local and tribal governments; and, (4) the health and safety of children.

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

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

the expanded definition of "information" under the Paperwork Reduction Act of 1995.

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

On October the 3rd, 2000, we published an interim final rule on hazard communication with an affective date of October the 3rd, 2001. We gave commenters until November the 17th, 2000, to submit comments. The interim final rule specifically requested comments on: (1), the plain language format and the content of the interim final rule; (2), mine operators' experience under the Occupational Safety and Health Administration's Hazard Communication Standard; and, (3), any change in the mining industry since the publication of the proposed rule.

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

We received twenty-two (22) written

comments on the interim final rule and heard testimony from six persons at the public hearing of December the 14th, 2000.

Commenters objected to what they considered to be an inadequate comment period and an inadequate notice of the hearing. These commenters stated that they did not have sufficient time to fully analyze the impact of the interim final rule which affected their ability to develop and submit meaningful comments. They also stated that many operators were unable to testify at the hearing because they did not have enough time to prepare testimony and make plans to attend the hearing.

Member of the mining community have also stated that, because this is the first MSHA promulgated an interim final rule, there is some confusion about their compliance obligations. The National Mining Association and the National Stone, Sand and Gravel Association have asked for a delay in the effective date of the interim final rule until we respond to their previous comments on it.

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

Steelworkers of America have intervened in the litigation.

Now let me cover the major provisions of the rule. There are six major provisions to it.

1. HAZARD DETERMINATION:

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

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

1. Title 30 of the Code of Federal Regulations (30 CFR) Chapter I.

2. American Conference of Governmental Industrial Hygienists, the ACGIH, Threshold Limit Values (TLV's) and Biological Exposure Indices (latest edition).

3. National Toxicology Program, the NTP, Annual Report on Carcinogens, the last edition -- latest edition.

4. International Agency for Research on Cancer (IARC) Monographs or Supplements.

2. THE HAZARD COMMUNICATION PROGRAM:

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

1. Procedures for implementing hazard communication through labeling, MSDSs, and training of miners;

2. A list of the hazardous chemicals known to be present at the mine; and,

3. A description of how mine operators will inform miners of the chemical hazards present in non-routine tasks and of chemicals in unlabeled pipes and containers.

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

3. CONTAINER LABELING:

A label is an immediate warning about a chemical's most serious hazards. The hazard

communication interim final rule requires mine operators to ensure that containers of hazardous chemicals are marked, tagged, or labeled with the identity of the hazardous chemical and appropriate hazard warnings. The label must be in English and prominently displayed.

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

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

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

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

4. MATERIAL SAFETY DATA SHEET:

A chemical's material safety data sheet, or the MSDS, provides comprehensive technical and

emergency information. It is a reference document for mine operators, exposed miners, health professionals, and firefighters or other public safety workers. The hazard communication interim final rule requires mine operators to have an MSDS for each hazardous chemical at the mine.

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

5. HAZCOM TRAINING:

The hazard communication interim final rule requires mine operators to establish a training program to ensure that miners understand the hazards of each chemical in their work area, the information on the MSDSs and labels, how to access this information when needed, and what measures they can take to protect themselves from harmful exposure. Under the interim final rule, mine operators have the flexibility of combining the training requirements for hazard communication with existing Part 46 and Part 58 training. The interim final rule does not require mine operators to have an independent training program

separate from Part 46 and Part 48 training.

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

6. MAKING HAZCOM INFORMATION AVAILABLE:

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

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

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

Okay. Let me cover some of the previous

comments and our thoughts and reactions to those.

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

The HazCom rule does not duplicate other MSHA standards, as claimed by some commenters representing the aggregates industry. It augments, supplements, and complements these existing standards. The rule specifically deals with chemicals and chemical exposures. Chemicals may be used in any mine, including those in the aggregates industry. There have been hundreds of chemical burns in the aggregates industry. Chemical burns can occur on any part of the body. Skin burns may require multiple skin grafts and require repeated hospitalization. Eye burns can be serious and result in permanent loss of eyesight.

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

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

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

We recognize, however, that not all mines are likely to use a wide range of chemicals. Although we cannot exempt the aggregates industry from hazard communication, there are steps we can take to minimize the burden of the rule. For example, we intend to make extensive Compliance Assistance Visits and conduct extensive outreach. We also will be publishing a compliance guide to help operators and miners understand the application of the HazCom rule. We are developing a wide variety of compliance aids, such as model HazCom programs, a training video for mine operators about determining chemical hazards, and a training video for miners about chemical hazards

and reading MSDSs.

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

In the same vein, mine operators may obtain help from organizations that have developed generic guides to meet OSHA's hazard communication standard because HazCom contains the same basic requirements. We will provide links on our website to some organizations which have developed a variety of generic HazCom materials. While it will remain the responsibility of each mine operator to develop and implement a HazCom program and to have MSDSs, to the extent possible, we will help you establish a hazard communication program if requested. We have already taken other steps in revising our interim final rule to make it easier for mine operators to comply, without reducing the protections offered by the rule.

We are considering the following

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

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

We had expected the use of the ACGIH, NTP, and IARC lists to reduce the burden on mine operators because mines use relatively few hazardous chemicals for which they would have to develop an MSDS and label. Commenters objected to the use of these listings, stating that the organizations which compile them offer no opportunity for public comment; they impose unknown future requirements by citing the "latest edition;" and they violate regulations governing incorporation-by-reference. We are open to

considering alternatives where the impact of the alternative would not reduce protection afforded miners by the interim final rule.

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

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

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

In response to comments concerning hazard

communication training, we are considering changing the language from requiring the operator to train the miner whenever introducing "... a new hazardous chemical into the miner's work area ..." to requiring training when the operator "... introduces a new chemical hazard into the miner's work area..." This change would clarify MSHA's intent that when a new chemical is introduced additional training is required only if the hazard changes. This is the intent as discussed in the preamble of the interim final rule.

Also, in response to comments, we are considering revising the definition of health hazard. The interim final rule defines health hazard to include chemicals that "damage the nervous system including psychological or behavioral problems." We are considering deleting the phrase "psychological or behavioral problems." We are also considering adding the criteria "toxic or highly toxic" to more closely conform the language to that in OSHA's Hazard Communication Standard.

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

1. The risks associated with exposure to

hazardous chemicals;

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

3. Safe work practices.

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

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

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

October 17th, 2001, for the submission of post-hearing comments.

We need you to sign the sign-up sheet and also, if you wish to speak, the sign-up separate sheet. And we plan to be here until five o'clock today. We could go longer if we needed to. By the size of the crowd, I don't think we will need to do that. So why don't we go ahead and get started with your presentations.

The first person we have signed up, I believe is Jim Sharpe. Is Jim here?

UNIDENTIFIED FROM THE FLOOR: Jim is not here. His plane was delayed in Pittsburgh.

MODERATOR NICHOLS: Okay.

UNIDENTIFIED FROM THE FLOOR: He is coming. He is just not here.

MODERATOR NICHOLS: Okay. Well, we are --

UNIDENTIFIED FROM THE FLOOR: He is going to contact me when he gets a little bit closer.

MODERATOR NICHOLS: Okay. We will work him in later today then.

Ed Elliott, with the Rogers Group.

MR. ELLIOTT: My apologies. I should have asked sooner. Could I wait until a later time?

MODERATOR NICHOLS: Yes.

MR. ELLIOTT: Thank you.

MODERATOR NICHOLS: Jim Papenhausen, with RiverStone Group.

MR. PAPENHAUSEN: I would like to thank you for the opportunity to comment on the HazCom. My name is Jim Papenhausen. I am the Corporate Safety Director for the RiverStone Group. We are a small business. We operate about two dozen mines in Iowa and Illinois and Missouri. We employ approximately two hundred and fifty people.

We feel that this piece of legislation or regulation is unnecessary for our industry. We feel that all of the elements that are in the HazCom are covered both in Part 56 and in Part 46.

We have the standards in Part 56 that cover labeling, the training of new miners. And again in Part 46 it requires that each -- all of our new miners, and current miners in the off-areas, annual refreshers on all of the changes that the inspectors thinks about are already there. The people that are responsible are already there in the training program, training plan. Ultimately, this reverts back to the operator and the people that are responsible on the plant.

We are not in the business to hurt people.

We feel that a safe workplace is a good workplace. It costs money when employees are injured, in lost time and lost wages, and lost production.

The burden of this standard, we feel, is great. We are still trying to climb out from under Part 46, and now Part 52 also we are familiar with.

We feel that this detracts from our goals of providing a safe workplace. We are trying to focus on items where miners are getting injured, which typically are unsafe acts and practices.

We have been involved in state board's meetings that are being held around in this effort to reduce accidents and fatalities. We all want to do that. We don't want to see anybody hurt. But we feel that more legislation along these lines, with basically more paperwork that duplicates what we are already doing will not be in our best interests nor in the best interests of the miners in our group.

I would note that (inaudible) is now in a letter that was sent to the Office of Management of Labor, December 4, 2000, with like several of the state aggregate associations and (inaudible) joint metal associations. We feel this is worthy of comment to our cause.

I guess to wrap up, we do not feel that

this regulation will reduce any injuries to our aggregate miners that aren't already covered. I think we should let Part 46 take its turn to work a while, and everything that you do has balance if you accomplish here Part 46. We would like to see it go that route than more regulations. We feel that this ain't nothing but more citations being written.

That is all I have to say.

MODERATOR NICHOLS: Okay. Do you include HazCom training in your current Part 46 training?

MR. PAPENHAUSEN: Yes, we do.

MODERATOR NICHOLS: And do you provide the MSDSs to your miners?

MR. PAPENHAUSEN: Yes, we do. Every mine has a book of MSDS sheets, and it is all included under new miner training and the annual refresher training. That is part of the Part 46. You know, the miners are also eligible to request other copies. I mean, this is one of the recommended copies for the health and safety standards.

MODERATOR NICHOLS: Have you had any chemical burns in the last two or three years?

MR. PAPENHAUSEN: We have not. I have served on the state association for the Illinois Aggregate Association and the Iowa non-metal

producers, on the state committee there, and I have been on it for fourteen years and I have not been aware of any accidents (inaudible) at the mines (inaudible).

MODERATOR NICHOLS: Okay. Anybody else?

(Panel members indicated no further questions.)

MODERATOR NICHOLS: Thanks, Jim.

MR. PAPENHAUSEN: Thank you.

MODERATOR NICHOLS: Walt Tharp, also with the RiverStone Group.

MR. THARP: Good morning. My name is Walt Tharp. I work for Irving Materials, Incorporated. I am the Safety Director for the corporation, and I am also the Chairman for the Safety Committee of the Indiana Mineral Aggregates Association, so I guess I am speaking here relaying some of my personal thoughts, but I am also here speaking for the Indiana Mineral Aggregates Association that represents a hundred and sixty-plus locations in Indiana mining operations and in excess of three thousand miners.

Let me start by saying that I don't think there is anything that we do in the mining industry that is worth somebody getting injured over. And I speak not only for my company, but I think for the

Indiana Mineral Aggregates Association members.

At the mines that I am familiar with, the people that work there are not just employees, they are family, not only figuratively, but actually. So if there is an injury, or heaven forbid a fatality, it is not just an economic loss, it is actually a personal loss.

Having reviewed part of the testimony in some of these hearings in the past, it appears to me that the answer to some of our differences may rest on the issue of separating the aggregates industry from other types of mining. Let me see if I can't address that.

We in the aggregates mining industry do not use hazardous chemicals -- do not use a lot of hazardous chemicals. And if you would come back and say, `Well, you don't use a lot and this is not going to affect you particularly,' I guess I would respond, `Why do I have to spend time and money on something that is not really a concern to the health and safety of my employees?'

I would like to ask what has changed in the last ten years that now makes HazCom so vital. We are not using hazardous chemicals now any more than we were ten years ago. Although, I do believe we have

somewhat better knowledge about actually occurring minerals that are present in our mines and even about some of the products that we use at our mines. But that knowledge is passed along through existing channels, and particularly within Part 46 training.

I feel that it could be argued that the OSHA Hazard Communication Standard has been carried far beyond its original intent. Many of the mining companies are involved in not only mining operations but non-mining operations that fall under the OSHA regulations. And they have been dealing with this compliance issue for as long as the OSHA standards have had the HazCom Standard.

I believe anyone falling into this category could honestly tell you that "reduction in paperwork" does not apply here. And for all of the efforts that have been made over this length of time that the OSHA HazCom Standard has been in place and all that has been involved there, various parts of the OSHA Hazard Communication Standard, in particular the paperwork maintenance parts of that standard still continue to be one of the most frequently cited violations by OSHA inspectors.

I would ask, has the result been a significant reduction in OSHA reportable injuries as

related to Hazard Communication? I don't have that answer. Maybe you could address that, whether that has made a difference in the reduction of injuries.

Talking from my own experience with our company and the other members of the Indiana Mineral Aggregates Association, I have not seen anything obvious in the way of a reduction of injuries as related to Hazard Communication. We had very few injuries before OSHA Hazard Communication that related, and we still have very few injuries related to hazard communication issues.

Being the safety director of our company, I have occasion to visit all of our facilities from time to time, including OSHA plants, OSHA regulated plants, and we have our "Policies Manual" that is a bright-colored yellow folder that has HazCom Material Safety Data Sheets, and this manual is conspicuously displayed for the benefit of our employees, but also for the benefit of compliance personnel that would visit the site.

Whenever I am visiting a location I try to make it a point to check this manual. Without exception, it is covered with a layer of dust that has accumulated since the last time I was there and dusted it off.

The point is, our employees do not perceive that the workplace is dangerous because of the hazardous chemicals that are present. I guess I would like to think that that is because we are doing a good job in training our employees about the true hazards of their job.

Incidentally, it could be argued that the majority of the products used in our operations are not hazardous, but we have been forced into having MSDSs by OSHA enforcement. The ferocity with which OSHA enforced Hazard Communication mandated that the business community take a shotgun approach to supplying Material Safety Data Sheets.

I was involved in the National Stone, Sand and Gravel review of the employee injuries that MSHA has used as a database for an indication that a HazCom rule is needed, so I think I can tell you firsthand that many of these incidents were not -- were only mildly related to chemicals, handling chemicals. Many were for suffering lime dust in the eyes. I believe Joy Wilson made the comment that fifty percent of the injuries could be put into this category. I was wondering if you could tell me how the proposed HazCom Regulation is going to prevent this.

You may think that since many companies

have been involved with the OSHA Hazard Communication Standard for so long that it is no big deal to implement a similar rule for our mining operations. And to a certain extent that may be true. But I can tell you, and I think that most any other company can that has been involved with OSHA's Hazard Communication Standard, that honestly maintaining the program is a paperwork and time burden. We feel that we ought to be spending our time on safety and health issues that are of a greater concern.

My fear is that the HazCom rule will on be an opportunity for compliance personnel to write more paper. And I use OSHA as a basis for this.

If you don't have the "program" where it is and in the manner that the inspector thinks is appropriate, a citation may be written. If the MSDS are not located where and in the manner that the inspector thinks is appropriate, a citation may be written. If the training has not been documented in the manner that the inspector thinks is appropriate, a citation may be written. If an employee cannot answer the questions that the inspector poses about the "program", at a minimum additional questions will have to be answered about the shortcomings of the "program", and a citation may be written. If a

container of something is found on the premises and the MSDS is not available, a citation may be written.

These statements have all been made from my experience with OSHA. Are our OSHA regulated locations better off for these citations? I don't think so.

And are our employees better informed as a result of these citations? I don't think so.

If you could assure me that the MSHA inspectors will be thoroughly trained in the nuances of the proposed HazCom Standard and they will uniformly enforce the standard, a new standard would be easier to swallow, so to speak. But the years of dealing with MSHA inspectors has shown that you cannot assure this. You cannot assure consistency in one inspection to the next on the rules that have been in place for years. I, for one, fear any new regulation for this very reason.

I am not convinced that the aggregates industry needs a HazCom standard. I don't see that it will make an impact on the health and safety of our miners, because we don't have a problem in this area.

That concludes my comments. I thank you for your attention and this honored high opportunity to make my thoughts a part of this public hearing.

MODERATOR NICHOLS: Thank you, Walt.

Our records indicate that since 1983 to the year 2000 there have been fourteen thousand, five hundred injuries or ill -- or injuries.

PANEL MEMBER FEEHAN: It is all injuries.

MODERATOR NICHOLS: Say that again?

PANEL MEMBER FEEHAN: It is all injuries.

MODERATOR NICHOLS: It is all injuries? Okay. Forty-six hundred of them are chemical burns, and nine hundred and eighty-eight of those with the aggregates industry. I think we could both agree that that ought to be zero.

Are you saying that this HazCom rule, as written, would do nothing to reduce or eliminate those?

MR. THARP: No, I wouldn't say that. But at that, what margin was caused by chemicals? We have, since 1983 --

MODERATOR NICHOLS: Well, what number is acceptable to you?

MR. THARP: Zero.

MODERATOR NICHOLS: Well, that is what I am talking about, too. Are you saying you can do it through Part 46?

MR. THARP: Yes.

MODERATOR NICHOLS: Are you saying the biggest problem the aggregates industry has with this rule is inspector consistency? Did you say that at the end of your --

MR. THARP: Well, that is one of my biggest concerns.

MODERATOR NICHOLS: If we could improve that, then you would have less problem with the rule?

MR. THARP: I don't have any problem with the intent of the regulation; although, I think you are accomplishing it without a reasonable layer of regulations.

MODERATOR NICHOLS: We have indicated we are going to do a lot of outreach with a compliance guide, compliance assistance visits. Would that do anything to lessen your concerns about consistency?

MR. THARP: No.

MODERATOR NICHOLS: Okay. Anybody else?

PANEL MEMBER FEEHAN: I guess I have a question, Marvin.

You are doing Part 46 training now, Walt?

MR. THARP: Yes.

PANEL MEMBER FEEHAN: And you think -- did I hear you correctly that you are covering hazard communication as a part of that already at your

company?

MR. THARP: Yes.

PANEL MEMBER FEEHAN: What exactly does that training amount to; what are you doing to make people aware of chemical hazards?

MR. THARP: Trying to review the data on the data sheets and the labels, make them aware of what they are working with, make them aware of what safety precautions they need to be taking, providing appropriate protective equipment for handling whatever they might be using.

PANEL MEMBER FEEHAN: All right. Well, take a fairly common maintenance chore around aggregate operations, like changing the oil in the equipment. If you look at the MSDS on motor oil, you know, for Exxon motor oil, for example, it will tell you that there are animal studies indicating that there are -- that there is a high risk of getting cancer as a result of exposure to used motor oil.

Do you train your mechanics, the people who do the lube work on your equipment, about that?

MR. THARP: Yes.

PANEL MEMBER FEEHAN: You do. Okay.

PANEL MEMBER SCHAPER: In the training that you conduct, how much time would you say or estimate

is spent on discussion of chemicals and chemical specific exposures?

MR. THARP: In the scope of our training it would be very little. Again, we don't, you know, perceive that as one of our biggest concerns.

PANEL MEMBER SCHAPER: Thank you.

PANEL MEMBER PHAN: Could we get a copy of the HazCom Training Program that you have in practice?

MR. THARP: Sure.

PANEL MEMBER PHAN: Okay. That would be great.

MR. THARP: I don't have it with me today.

PANEL MEMBER PHAN: Yeah. If you can please send one in, that would be great. Thanks.

MODERATOR NICHOLS: Okay, Walt. Thanks.

Bruce Mason? I have you down as RiverStone Group. That may or may not be right.

MR. MASON: That is all right.

MODERATOR NICHOLS: Okay.

MR. MASON: The RiverStone Group must be rather widening.

MODERATOR NICHOLS: I guess.

MR. MASON: I am Bruce Mason, the Executive Director -- is there a problem?

MODERATOR NICHOLS: We can hear you okay.

MR. MASON: I am Bruce Mason, Executive Director of the Indiana Mineral Aggregates Association, which is a great association that represents, by your records, about ninety-two percent of the man-hours reported annually. It is my intention as administration in Indiana, I want to expand upon Walt's remarks from a couple of aspects.

We have a membership that represents fifty-four companies and a number of aggregate (inaudible) plants, around a hundred and seventy-four. A number of those do not come under the purview of the regulatory aspects of MSHA. They are slight producing plants and those plants are under the auspices of OSHA, so we have kind of an intervenor base.

Our industry is also integrated so that the number of our member companies are also integrated into construction activities, pavers or suppliers of ready-mix concrete, so we have, you might say, an ongoing relationship with OSHA Standards.

Also, I want to point out that I am a member of the board of directors of ACE, the Aggregate Concrete Executives, which are a formal group composed of state aggregates association directors. And I am not here necessarily to represent their point of view, but to represent the view of the Indiana Mineral

Aggregates Association with a number of companies.

Of the fifty-four companies, four of those could be characterized as large, multi-national companies. The bulk of our membership are close family operated companies. A few of those are large, large in the scope of our membership in Indiana, but the bulk of them represent family-owned companies with five to ten employees.

Our approach to safety, we think, is probably better than most because for over twelve years we have had a recognition program, recognizing those plants and plant managers who go through a year -- not a calendar year, but a fiscal year -- with zero reports. So I stand here, I think, better informed as to this issue and how it affects our industry in Indiana than the average presenter.

And we have annually that recognition program, and it is in partnership with IMAA. And we are always able to have a district manager, in this case Felix, where in the past employ we didn't have this, district secretary to present these awards annually.

So reviewing your records as the approach, as they concern Indiana, we find practically no incidents of chemical burns in our industry in the

last eleven years. A lot of (inaudible) say the records aren't always available.

We have a significant number of companies annually, eighty-five to ninety, who receive an annual plaque for zero reports. So I want to focus on the fact that we are for safety.

But on the other hand, we represent a lot of companies who are burdened with paper requirements that don't really contribute to safety. And we are also burdened with paper requirements, paper-people requirements, on other regulatory issues. And it is probably one of the number one items facing the small aggregate producer, `How do we cope with that?'

Safety is not in issue. We believe there is nothing that this industry does that justifies putting our worker at risk.

But I would echo what Walt has said, is we think that what you are asking us to do is already covered and that we can handle it under the present rules.

I don't want to hand fight the care crisis. It is like saying you mean anti-safety. We think we are ahead of the curve on promoting safety. We work annually with our members, direct members on the work sites to work at zero. That is acceptable.

But having reviewed what we think are records that are viable as they come to you, we don't see that this is a problem in Indiana.

Now as an ACE director, we meet periodically and gather and talk about subjects and problems that are of a concern to MSHA. I can tell you, based on past meetings I have attended with my fellow executives, hazard communication is viewed by most aggregates organizations -- I speak only for them -- as being another layer of paper for them to produce on safety.

We are not against safety. We will work, and you can check with your own people to know that we try to be ahead of the curve and not behind it. We are concerned about the paperwork requirements for this and the inconsistency on it.

We don't believe that writing citations really gets to the meat of the problem. We feel like we need to educate the workers. We need to educate our members and those who are exposed to the hazards, and we work hard to do that. But we really feel like what you are asking us to do is already covered and we would just rather maybe improve some of those aspects rather than look at another layer of paperwork.

Those are all of my comments.

MODERATOR NICHOLS: Okay. Thanks, Bruce. Anybody have a question of Bruce?

PANEL MEMBER PHAN: I do.

MODERATOR NICHOLS: Go ahead.

PANEL MEMBER PHAN: Can you please define what you call a large entity?

MR. MASON: Well, I would say we have one or two companies that have eleven or twelve plants. In Indiana, that is significant.

PANEL MEMBER PHAN: You don't label them according to the number of employees?

MR. MASON: We track the number of employees from the records just so we have that information available when we deal with agencies. We think within our membership there are probably right around between twenty-eight hundred and three thousand employees.

The industry as a whole, based upon real (inaudible), our records are about a year old, it would probably run about thirty-eight hundred, and we get that from your sheets. We just -- when we put this in our data we just total it. And now not all of those are members, because we do have twenty to thirty smaller companies in there, something like the dimension stone industry, that are not really members

of our industry, so that number kind of pops out. But if you are interested I could probably get it. I don't have it here today, but I can provide those numbers to you.

PANEL MEMBER PHAN: That would be great. Thanks.

PANEL MEMBER FEEHAN: I have a question. How about the concrete people? You work with the aggregates and concrete executives. Are the concrete people having chemical burns at all?

MR. MASON: Nothing in our discussions I have had come to the surface. Now some of those associations represent both industries. In Indiana we just represent aggregates. But the ACE organization represents those aggregate industries that have both sides in there for their base history.

PANEL MEMBER FEEHAN: In the preamble we kind of -- for the interim final rule we provided information about chemical hazards, primarily chemical burns, because they were the most easy to identify. They are acute injuries, you know. But there is still a, I think, a certain amount of concern about long-term effects, which, you know, which are more difficult to associate because of all of the different factors that have to be considered.

Do you have concerns about long-term exposures also, or are you -- you know, are your members doing training to deal with the long-term, or analyzing the injuries for long term injuries?

MR. MASON: Well, I think from my point of view, and I can't talk about specific companies. I can only really relate what takes place when I am like on a safety committee. I need them to explain how that is composed of.

We have no limit on membership of our committee, so any person who is an employee of one of our member companies says I want to serve on a safety committee, that is kind of automatic. About the only thing we are rigid about is that you want a company, you can only have one vote if it comes to a vote.

But we meet periodically to discuss issues of interest and to design workshops and to cover this reg a little bit here. We have actually worked with MSHA to take workshops out to some of our customers that enter on our property, focus on a hazard rate committee, making sure that those who enter onto our property are aware of what they need be. And I think we are probably one of the first organizations to do that.

We have developed subject matter for

workshops based upon what is the overall problem need? If it is colleagues, then we focus on the -- ask for proper speakers from MSHA, and that is a good partnership, because we feel like we are informing people where they need to be informed, how to address issues.

Hazard communication just doesn't fit the rate in any way, shape or form, and I think that is because we don't see it as something that is really flagging our industry.

Now if we have to do more to educate people to prevent things, we are more than willing to do that. I mean, we are probably one of the biggest distributors of your materials.

What I want to reiterate is that because of the high number of small companies, their struggle is this: is how do they handle the paperwork.

And another thing is the consistency in inspectors. If there is a pressure point between our industry and your agency is that yesterday somebody comes in and examined something, the next day somebody else comes in, it is a different person and you get a different opinion, and those opinions lead to citations. They don't lead to safety. They really don't.

So we are not so much interested in citations. We are interested in focusing on how we get at zero, because we are with you on that. There is nothing we do that justifies hurting our workers.

PANEL MEMBER FEEHAN: One part of the justification of the -- in our preamble, for the paperwork, because we recognize that this is a -- this is in -- it is an information and training standard, and that translates into paper in a lot of respects.

But a lot of the costs for developing the rule, for having the rule, we relied on -- and we have heard recent testimony just in these public hearings that people already are in compliance and they are doing, you know, they are sharing the information with employees, and that is because they have labels and they have MSDSs. And how is it that this is more of a burden to you? It sounds like people are doing it already.

MR. MASON: Well, we think -- we think we are, so that is why we are paving the same roads. Really it is nothing that affects us, but we are -- I won't say that our record coast-to-coast and border-to-border is stellar. But in the Midwest, which I am more familiar with because of my interaction with the ACE Group and with the members who have plans in other

states, we just don't really see it as an issue.

I guess if there is, and I kind of look at the bottom line, if there is going to be HazCom communications, we think that maybe the way to approach it is to get more people -- not another load of paper, not another regulatory requirement, and let's not provide another friction point with your inspectors.

We don't argue the fact that they keep coming in and pointing out deficiencies, and we need to address them. But we really don't need them providing another friction point if it is not going to address our goal and your goal, which is zero.

PANEL MEMBER FEEHAN: Yes. Thank you.

MODERATOR NICHOLS: Thanks, Bruce.

MODERATOR NICHOLS: Okay. The next presenter will be Chuck Burggraf, RAG American Coal Holding.

MR. BURGGRAF: Good morning. I am Chuck Burggraf, and I am the Safety Director of RAG American Coal, Incorporated. Talk a little bit about MSDS sheets.

I would recommend that MSHA maintain the MSDS sheets. I have several reasons for that.

In some of the other hearings it was

stated that miners are reluctant to request MSDS sheets. They feel intimidated or threatened by that. I don't know if this is a fact, but if it is a concern then let's take a different approach.

MSHA could maintain the MSDS database. Miners could us a designated phone or a designated phone number to call in to MSHA, to a central location. They could get information on MSDS sheets. They could request MSDS sheets. Or there could be a computer setup where miners could access the MSHA home page, which is already available, and go into a section of that and access the MSDS sheets there. And then if they have questions they could call this number that would have to be maintained seven days a week, twenty-four hours a day, so these people could get their questions answered.

They could call in from their work location. If they didn't want to do that, they could call in from home. People have computers in a lot of homes now. They have fax machines in a lot of homes, or they could use a fax machine at their work location. I think the companies would be responsible to maintain a computer, a phone and a fax machine that they could use at their disposal to get this, the MSDS sheets from.

Labor has expressed that the MSDS sheets should be maintained for a longer period of time, and if MSHA would maintain the database that would make it easier to do that. The people maintaining the MSDS sheets, like I just said, they could answer questions, a miner's questions. The cost to do this should be acceptable to MSHA, since that is an expectation you have for hundreds of mine companies.

This method would also help the concern that smaller mining companies would not be able to maintain MSDS files. Let's make this a process to provide the information to the miner and not a law that results in multiple violations.

Concerning hazard analysis, we may determine that a chemical is non-hazardous and an inspector may determine that it is hazardous. What is the process in place to make a determination?

Then that leads to training concerns. MSHA is asking miners to remember many things about many chemicals, and this is not realistic. If an inspector asks someone for details on a chemical they are using and they don't remember, even though they have been trained, what happens then?

According to the draft compliance guide, miners can be trained by categories of hazards from

chemicals. Is this compliance guide still a draft and is that still a true statement, and would you give more explanation of what you mean?

In Table 47.91, MSHA defines the health professional, has a definition for a health professional. I think the definition should only include the professionals that can legally diagnose and treat illnesses and injuries, because it refers to this in some sections in a case of emergency, a health professional. Well, people don't need to be confused about who they should go to to get treatment.

We will all need compliance assistance and extensive outreach programs that you speak of. I am anxious to see the model of the HazCom program, compliance aids, the final compliance guide. Will MSHA help us establish a hazard communication program? Do you have a model of that, is what I am asking.

I am concerned that the rule will result in a huge paperwork burden, result in many citations, and do little to protect the health and safety of the miner, and that is what we are all after in the end thing.

I thank you for the opportunity to comment.

MODERATOR NICHOLS: Thank you, Chuck. The

answer is yes on outreach and model programs. As Strom Thurmond would say, speak into the machine.

PANEL MEMBER FEEHAN: You can take a look at the model HazCom Program in our website, MSHA.gov. There is a -- right on the web page there is a button for HazCom and you can go in there. It is in the compliance guide. You can also see the draft of the compliance guide for the standard in there.

MR. BURGGRAF: Yeah. Right. I looked at that. That is why I said is that still a draft or is that --

PANEL MEMBER FEEHAN: That is still a draft.

MR. BURGGRAF: That is still a draft.

PANEL MEMBER FEEHAN: Yes. And it will be until there is a -- until this is finalized.

MR. BURGGRAF: You do have a -- you have one other thing in there that it is telling to the miners that I think you need to have your people work on that. You know, that is what we are looking for, is guidance like that. I do think we need a model communication plan, too, what is your expectation.

PANEL MEMBER FEEHAN: Yeah.

MR. BURGGRAF: I think if you put out the model program that gives an expectation for what the

inspectors need to be enforcing and what we need to comply with, then that would clear up a lot of argument.

PANEL MEMBER FEEHAN: Yeah. Yeah.

MODERATOR NICHOLS: Yeah, we had planned on doing an extensive outreach. In fact, when we did the outreach on the coal diesel rule, we had planned on coupling HazCom with that. And we, in coal, had gone and worked up four model programs. And I will let Bob Thaxton mention what those were. There were different sized operations. So, Bob, you want to talk a little about that?

PANEL MEMBER THAXTON: In preparation for the HazCom Program that we thought would be in place earlier this year, coal did go through and prepare a draft document that was actually a HazCom Program. We went out to a small surface mine, small underground operation, a preparation plant and a shop area, and we wrote up the plan for the mine operators at those four locations, including going through and doing the chemical inventory, the hazard determination, and then putting that in writing for them and gave them a copy of that program, with the understanding then that we took those programs, cleaned out the identifying information and tried to draw those programs up then

into where they were generic so that anybody could take that program and then insert their individual information, their inventories.

And, at the same token, as part of our outreach that we were going to go through, coal was going to offer that any coal operator that asked we would send somebody to the mine property to make the hazard determination for you, in concert with the mine operator so that your people then would learn what we were looking for as far as making a hazard determination on the chemicals that were used at the mine properties.

Then based on that, we would work with you then to draft out that program to make sure that it was covering all the areas so that there wasn't a disagreement as to what the program at that particular mine site should involve.

And then as time went on and you added new things to your listing, if you needed additional help in determining whether that particular chemical resulted in changes in hazards that would need additional training, then we would have specific people in each district that you would be able to go to to ask those types of questions.

MR. BURGGRAF: I think one of those things

throughout the plant site it talks about is categories of chemicals, or categories of hazards. You can train by categories of hazards.

PANEL MEMBER FEEHAN: Right.

MR. BURGGRAF: We would like more detail on what you mean. You don't have to train miners that they are exposed to many hazards.

PANEL MEMBER FEEHAN: But what we were talking about was how you go about addressing your training so that if, for example, in your shop you can train people -- one of the ways to make your program more understandable to the people affected is to say -- take the mechanics and say, `Well, here are your exposures. You know, you are going to be looking at a lot of the solvents or the things that dissolve gaskets and adhesives that you are using to, you know, when you are doing engine work. Or, you know, you are going to be -- you are going to have certain kinds of exposures.'

To me there is a way to break that down and make it sort of integrated so that you can talk to mechanics and do it that way.

Their exposures are probably going to -- they are going to have a lot of similarities to them. And where you can you should probably try to work --

MR. BURGGRAF: So you can group them.

PANEL MEMBER FEEHAN: -- so you can group them and make it a kind of more efficient way of explaining to people so that you are not having to say chlorinated solvent fourteen thousand times. You know, you want to say it once and explain to people what those problems are.

So, you know, yeah, we are looking for -- you know, it makes good training sense as well as good efficiency sense for you to, you know, as an operator, that these -- you know, that there not be a lot of repetition and -- I mean, it could be a boring subject, you know.

Now, let's face it. But, you know, I think that also it can -- you know, there should be ways to make it -- it is also an interesting subject. I think that we have had a lot of testimony from people that there is a lot of concern about what people are being exposed to out there in those shops, you know, what goes into those solvents and what the long-term effects are on people. So --

MR. BURGGRAF: And that is part of our concern. We don't know how to train so that they get the people to understand how to react to different situations. We want people that walk into those to be

able to react in the proper manner if something does happen so that they get the proper treatment, the proper care. And if we add a lot of paperwork to this and everything, we are going to make -- and we have to train everybody on every chemical, every product, we are going to have a lot of confusion and no one will know how to treat in case of an emergency. And that is one of my big concerns, because we want to give people the right treatment if something does happen.

PANEL MEMBER FEEHAN: Sure.

MODERATOR NICHOLS: Okay, Chuck. Thanks.

Now these model programs could also be developed for the aggregates industry and the rest, the metal and non-metal.

The next two presenters will be Greg Mahan and Dave Yard with UMWA. Do you guys need to -- do we need to keep going, or have we got time to take a ten-minute break?

Greg and Dave?

GREG OR DAVE: Ten-minute break.

MODERATOR NICHOLS: Ten-minute break? Okay. Let's come back at ten thirty-five.

(Whereupon, a short recess was had until 10:35 a.m.)

MODERATOR NICHOLS: Let's get started back. I should have asked you before, but those of you that

have written statements, it would help us if you could give the court reporter a copy of that. Any of you that have already presented and have a copy of your statement, if you would, give it to the court reporter.

Okay. Greg Mahan.

MR. MAHAN: Mahan.

MODERATOR NICHOLS: Mahan. Greg is with the United Mine Workers.

MR. MAHAN: I am the local union president and also have been a state committeeman for approximately eighteen years in the past.

Today I would like to point out that this is not just for miners, but it is for all workers. Well, I believe that all workers have a right to know, in a place with chemicals, material, to know how affect people.

But I work for a small company, coal company in Indiana, and everything that we use in that mine is just -- it has got chemicals.

A few years ago we used a drying agent. If we got in some water, we would cut the old cast of the bottoms out, put another cast in, and there's no MSDS sheets available to us, and the only reason -- the only way we found out was I opened up a bag. The

company did not give us any knowledge of what was in it, and we read the -- I read the package, the bag, and it says "Must wear respirator." And it said that anybody downwind could have respiratory problems, and the ingredients in this drying agent could cause cancer.

I believe that, you know, farmers are regulated by the types of chemicals, of gasoline. I believe that not just the coal miners but every worker has the right to know what they are working with. And labeling, it must be regulated by your agencies.

I live in a little community of around fifteen thousand people, and I don't know whether you even heard about the Scott Gas, the neuroblastoma, that oil was spewed around, and years later come back and find out that you had about seven children, and we tried to find out where that was -- it is like you bring a chemical into the plant. It is like you go home and use your five gallons of gas to go clean this one fence. You are not to use -- you don't want to carry any secrets to any of that.

I believe this has happened, will happen, and will continue to happen, and it must be labeled even when it leaves the property. I mean, we stick -- our company takes stuff and they give it to the

miners, and they don't say (inaudible). And nobody knows what it is. We don't know what is in that stuff we use now unless we, ourself, go and nag with the company, and it is like pulling teeth.

We just had a fire on the surface of our mine, and I believe it was oscillation, and with the -- some kind of coating on the outside that caused this chemical reaction. And luckily, and like the air goes out our mine now, we are lucky we didn't have anybody hurt or injured, or even worse yet killed.

We asked for the data sheet on that. We did not get it. They said this was done by an outside contractor.

I believe that labeling containers is a must. We must know, no matter how minimal the chemical, whether it is an irritant to the skin.

The hydraulic oil that we use now, you have to read it really far in fine print on there, "May cause skin cancer."

The plant, the gentleman, the first gentleman said they are a small company. We are a very small company. We treat our water, we treat the plant, treat our pumps, sewer pump, we treat it to treat the water that goes into the ground. We treat with the hole brace with chemicals. We use chemicals

on a daily basis there, and we are a small company. And we don't know ninety-nine percent of the stuff that we -- that is used by the company. We have no knowledge of what it is.

The first gentleman said that accidents is caused by an unsafe act. I believe maybe the words in that training in the use of chemicals.

And we have talked a lot of talk about safety. Safety and health go together on this. We breathe it. It gets on your skin. And I believe that, you know, we have a right to know. We have a right to know what comes into that mine and what goes out of that mine, for our safety of the miners and for the public.

You know, we have tried to work with the company on these sheets to tell us what it is, and they refuse to give it to us. And the only reason they looked it up this last time was because we had, you know, we had a fire, and it could have been very serious.

You know, I am out here representing the mine workers but also other workers, and I believe we have a right to know that we -- we are breathing the diesel fumes now, the chemical reaction to eliminate smoke and all that on the ground. You know, we are

there every day. I mean, I am not trying to make anything like that, that the people here say. You are going to have to breathe this. You are going to have to be around it. We have to be around chemicals almost, you know, at least five days a week.

And if we go back in history, your agency has been brought in for, like John L. Lewis, from the ground up. That is why we have got mine representatives here to take care of this. It was a priority back then, and it should be now to protect the miners and to live to make this, and your agency could be a very great help to us.

And the only thing I have against chemicals is that they are hazardous. And that is -- they never teach us about those (inaudible), and they do every day.

That is all I have.

MODERATOR NICHOLS: Okay. Anybody got any question of Greg? You have got to what?

(Laughter.)

MODERATOR NICHOLS: Anybody have any questions?

PANEL MEMBER PHAN: Yes. Were there any chemical injuries?

MR. MAHAN: Have I had any at the mine?

PANEL MEMBER PHAN: Yes.

MR. MAHAN: There has basically been two over the past ten, eleven years.

PANEL MEMBER PHAN: And were they reported?

MR. MAHAN: I think maybe one was. But a lot of it is that we breathe it. You know, it is not just -- you know, a lot of the gentlemen talked about burns. I mean, it is breathing it, getting it on your skin. It is just not burns. There is a whole rank of stuff in here that is -- it is not just burns. And that is the -- the burns, I think, it is a problem. It can be a problem. But my concern is what we have to breathe, we have to live with it, we have to touch it, we have to -- and there is no protection for what -- they don't tell us anything about it, just like the drying agent. And finally we made -- the safety committee and myself made such a stink about it, they took it out of the mine.

You can read it on the sheet, but they should be trained, the people that handle this stuff, and you must wear respirators and goggles, and they were working in -- we -- after I found out that this stuff was in the mine we got it out of the mine.

PANEL MEMBER PHAN: Thank you.

MR. MAHAN: You are welcome.

MODERATOR NICHOLS: Okay, Greg.

MR. MAHAN: Thank you.

MODERATOR NICHOLS: The next presenter will be Dave Yard with the United Mine Workers.

MR. YARD: Well, I am going to decline. My name was inadvertently put on the speaker's list.

MODERATOR NICHOLS: Somebody messing with you?

(Laughter.)

MODERATOR NICHOLS: Okay. Brian Peters with M-u-l-z-e-r Crushed Stone, Incorporated.

MR. PETERS: Mulzer.

MODERATOR NICHOLS: Mulzer.

MR. PETERS: Okay. My name is Brian Peters. I am the Environmental Health and Safety Manager from Mulzer Crushed Stone. We are a family owned, small aggregates industry. We have limestone plants as well sand and gravel, and we employ about five hundred miners, what we call small mines, mostly in the Southern Indiana area.

And I am here today I guess in opposition of the rule as it stands. I agree with some parts of the rule. I agree with the intent of the rule. I agree with a lot of the comments the last gentleman made on miners having rights to know, to have

information. I feel that is vital.

But some of the things in the rule as it stands I am opposed to, as some of the other gentlemen talked already about the OSHA Standard and how this mimics it, and I have had some experience in the plating industry, in the finishing industry. On the environmental side I am an emergency responder to hazardous chemicals and spills; used to do that for the State of Indiana. Had a lot of experience with the EPA definition of RCRA, Resource Conversation Recovery Act, to hazards, you know, things that truly are immediately dangerous to life and health. We talked about the ideal labels for these chemicals.

And I can tell you from our concrete plants and our asphalt plants and things that that rule does not work. The intent looks good on that rule on the OSHA side, but in practice, the paperwork burden and doing it on a daily basis is very tough.

Of the five hundred miners, I am the safety director. That means I do the safety training. I go out and teach the labeling. I go out and instruct how to read an MSDS sheet. That is my job. And this will significantly add to the workload that I have. And the thought that the mine would add extra resources for me will -- won't happen.

You know, the burden of the paperwork driving will go on someone else's plate, and for me to give more effort and more time to that paperwork end of it will mean less time that I can spend training, less time that I can spend auditing facilities, investigating other accidents and actually getting to the root of resolving and lowering the accident rates at our facilities, because it is more time for me to spend on the paperwork end.

In addition to that, we do a lot of things already that are required in this standard. I will admit to that. You guys have mentioned that already.

Number one on that issue is training, and I think that has been heard on earlier today, Part 46 training in these standards. We came out on that. We do new miner training for every miner. Part of that miner training is training on MSDS sheets, HazCom, labeling. We use the HMIS system of labeling. We have a standardized system for red and yellow codes so that everyone can understand it in English. It meets those requirements of your training standards.

And we pass out an MSDS sheet. I do a half-an-hour presentation on how to read parts of an MSDS sheet. And then we do a test on MSDS sheets to make sure you understand the hazards that you are

being dealing with and how to read those when you get them. I feel that training is very important.

But the burden lies in trying to do this on a daily basis. You mentioned that you don't have a lot of labeling. You shouldn't have a lot of new products. That is not true. You know, even a small mine, like the last gentleman mentioned, there is an endless list of new products that come in that you try, and make a hazard determination on every one of them. Is this inherently household-like, or is it not? Do I need to do a today, go out and do a training for that miner for that new product? That is a tough question.

First I have to make the determination. If so, then I have to go out to that remote mine site, which may be an hour drive away or maybe ten minutes away -- it depends on where I am at -- and do a specific training on that particular product, because it may be a little different. And who is going to make that determination? And when the MSHA inspector comes out, is he going to have the same interpretation that I have?

In order to be completely safe with this regulation, I have to take it to the inth degree and do the training on every chemical. And that gets very

tough.

Beyond the new miner training we have task training. Part of the Part 46 was the new task training. Any time a miner is new from one task to another, he must receive training for his new task. Training is new chemicals in your new task. You are going to be performing a new task. When you move from a loader operator to a shop you have to have training on the new chemicals in your workplace. That is done already.

Annual training. Every year we must have a certain amount of annual training. We do that on a monthly as well as an annual basis, and every year we teach HazCom. We go over what is required in your workplace. What are some of the new chemicals that may be coming out there? How do you read an MSDS sheet? And you reiterate on that over and over again. And MSDS sheets, for the most part, on the chemicals that we feel are most hazardous and are used frequently are available. Maybe that is not the case in everywhere, but our books are on stands out in the shops.

But, coming back to the point of the OSHA standpoint, it is very burdensome to keep those up to date on a daily and on an hourly basis. When you have

one end with your purchasing group bringing in things, salesmen bringing in things, keeping those completely one hundred percent accurate is very tough.

The training portion of it, I feel like I meet your requirements today with what I am doing, except on the new chemicals coming into the workplace. That would require me to almost full-time be out there moving and running and running all day long to try to meet the new trainings for new products, because they have individual and distinct things on the chemicals.

The last gentleman mentioned a respirable problem. We have a respirator program. Any chemical that comes in that requires a respirator you have to go through certain steps to be certified to wear a respirator. You have to have skin testing, and you have to have pulmonary function testing. There's all sorts of -- a whole list of things that go with that. So if a chemical comes in with that, we don't allow them to use it. That is already covered. And a lot of the health aspects are already covered.

Long-term exposure. We have a respirable dust standard. We already know that our employees are kept under the respirable dust standards, and we do monitor. So that is already covered.

Most of these issues are already covered

by other programs. The training is covered by the Part 46, and a lot of the exposure hazards are covered by some of the other programs.

So, I guess to wrap it up, I would like to say it is a very good intent. OSHA had a very good intent with the program. I feel miners have the right to know what they are dealing with. I think training is very important.

But when it comes down to where the rubber meets the road in the enforcement and the paperwork end of it, it will turn into an OSHA program where it could be the topsided thing that we have and it will not reduce accidents.

We have had zero accidents in the last three years that I have worked with this company related to chemicals, related to the HazCom issues.

We have had some dust in the eyes that probably comes back to your standard as chemical burns. But we have had none related to chemical exposure, save that, and one for water. We had an employee that was exposed to water high pressure. That probably could have become intimately chemical burns.

So we are going to keep MSDSs for water on our sites. I do. I keep them for (inaudible) docks.

I keep them for carbon monoxide, because they are by-products of dust.

So it comes down to how far we take this program. Do we want to make it work? Let's do this in training. Let's tell people with what we are using. But the paperwork end of it becomes a nightmare for me personally.

Questions?

MODERATOR NICHOLS: Do you have a written statement there, or do you --

MR. PETERS: No.

MODERATOR NICHOLS: Okay. Anybody got a question?

PANEL MEMBER THAXTON: I have one.

MODERATOR NICHOLS: Bob.

PANEL MEMBER THAXTON: I heard you mention that you currently cover most of the HazCom material by your current Part 46 training?

MR. PETERS: Yes.

PANEL MEMBER THAXTON: And that is, you are conducting Part 46 training on a monthly basis as well as annual, is that correct?

MR. PETERS: Yes.

PANEL MEMBER THAXTON: And you said the only thing that you would have to do is address new

chemicals coming on, on like today, because you are not conducting that type of training right now, is that correct?

MR. PETERS: That is correct. Or has -- now let me clarify. We don't do HazCom training every month. It may be a monthly topic; it may be an annual topic, but it is covered one time per year.

PANEL MEMBER THAXTON: Okay. So now that creates two questions, the one I had originally plus this one now.

Since you are only doing HazCom maybe once a year, and you have chemicals come on property that are different than what you -- the hazards are different, not necessarily the chemical is different, how do you get that information to your employees if their task is not changed; the only thing that is changed is the -- maybe the manufacturer of the chemical is changed, so you have got a new manufacturer who wants you to try his product and it has got some different hazards to it. Do you actually sit down with those people and discuss that hazard change, or do you wait until your next training session?

MR. PETERS: If we deem it as a significant hazard, it will be covered. Now what does that come

back to, is that we don't deem many products in our industry have very serious hazards.

You know, if it is another type of oil, they have been trained on the hazards of oil. We would see that as your grouping that you mentioned earlier.

If it is a cleaner, we group that in with most of the cleaners.

If it is a totally different type of product that has a significant hazard, it would be covered.

PANEL MEMBER THAXTON: The information as far as what you are saying, as far as covering all this under Part 46, Part 46 or Part 48 for the coal industry, would you be amenable to Part 46 and Part 48 having some modifications made to it that would incorporate more of the HazCom specifics into that type of training program as opposed to having a separate HazCom program?

MR. PETERS: I would much rather see it there, in that circumstance, yes.

PANEL MEMBER THAXTON: Okay. Thanks.

MODERATOR NICHOLS: Anybody else?

Okay. Thanks, Brian.

MODERATOR NICHOLS: Next presenter will be

Butch Oldham with the UMWA.

MR. OLDHAM: Okay. First of all, I would like to take this opportunity to thank the committee for the chance to come before you today and speak on this subject.

You know, I have heard a lot of talk here about family-oriented job places, family this. I know myself, I have got three grandchildren and, you know, I consider them family, and if I think they are going to be exposed to something I am going -- you bet I am going to want to know what it is. So, you know, we talk about family, but do we practice it. So that is a point that I would like to be explained.

You know, just as the Methane explosion that killed the thirteen miners in Alabama, other miners in the industry are dying each year. The only difference is that these miners are suffering longer because these miners are being exposed to hazardous chemicals daily. And the longer we wait the more coal miners and their familiar are going to suffer.

I know that just the few chemicals that I personally have been exposed to over the years, such as the Perk Chlorethylene in the prep vats; the Norbad, the ceramic bead liner used to repair the hydra cyclones; and the various glues to cement the

ceramic tile that is used to line chutes, and the list just goes on and on.

You know, people don't think we use very many chemicals in and around the industry, but when we really look at the situation there is a whole lot more there. You know, and I know personally that when we used these chemicals we were never told of the hazards that was involved in using them, until we read about them ourselves.

For example, the Norbad, the ceramic bead liner, you know, it looks relatively harmless. Get a spatula or a trowel and get it out of a can, spread it on. But then when we read the precautions it says if you get it on your clothing or you, or even on your boots, you throw them away. Discard them. Don't use them any more. So we wouldn't know that, that it could be absorbed through your boots or your clothing, so we weren't trained on it.

You know, another example that has just been recently is at the Squaw Creek Mine in Indiana here. They have been exposed to a type of by-product that was hauled in to the mine from Alcoa for years, twenty-something years, only to find out that this by-product may be linked to a type of cancer found primarily in the aluminum industry.

When doctors tried to determine how individuals at the coal mine contracted a disease that seemed to be linked only to the aluminum industry, it became apparent where the problem was.

If the HazCom rule had been in place years ago, when it was first discussed, maybe things would be different for some of those miners. Instead, there have been several miners that worked at the Squaw Creek Mine that have died of cancer. And we just had an individual that had a liver transplant because of the cancer that he may have been exposed to at that mine.

Chemicals that are being introduced underground, in a mining such as rockloc, the Polyurethane foam sealants for ventilation control and other chemicals where miners are exposed to in oftentimes areas of limited ventilation and inadequate personal protection, are showing signs of illnesses in the workplace which are linked to these chemicals. If miners had been provided adequate information at the time of exposure, they would have used proper equipment.

I think one point that a lot of are missing, we don't see that physicals acts of being a broken leg or a broken arm or something immediate.

You know, it is the long-term illnesses that is associated with handling these chemicals.

It is not the accidents and injuries. It is the things that we don't see when that individual gets cancer, and all of us say, `Well, Old Joe Blow here, he died of cancer the other day.' But nobody ever checked to see why. It may have been one of the chemicals he was handling. But if it had been one of your family, wouldn't you have liked to set back and say, `Hey, let's look at this. Let's look at the sprays. Let's think about what we are exposing our families to.'

You know, I know, in the twenty-six years that I have been in the mining industry, and from Kentucky, we have sixteen hours of daily re-training. It starts at eight on most days. And hazardous chemicals hasn't been ever thought of. I have never been trained on hazardous chemicals in sixteen hours of daily re-training, or in any safety talks. So it has just not been an issue.

And people say, `Well, why do you all bring it up now? Why is it important today?' Well, it has been important to the labor union that I work for. For the last fourteen years it has been struggling, trying to get a rule in place where people

know what they are exposed to.

Also, you should remove any of the language that allows the mine operators to make the determinations on what is or is not a hazard. This should be clearly defined in the regulations and also in the final rule.

Require the operators to receive training on the hazardous chemicals present before allowing them to train miners on what is or is not hazardous. And I think that if we are all honest in this, they are no more aware of the hazards that exist in these chemicals than the miners are, your everyday safety directors at most of the mining operations that usually does the site training.

The training should include an explanation of where and how a chemical is being used and what precautions the employer has adapted to limit miners' exposure.

Require that specific chemical information be included on any label or MSDS sheet, and update the labels and MSDS sheets immediately when the contents change, and require that the burden for maintaining and making MSDS sheets available to miners be the sole responsibility of the operator.

Now these are just a few of the things

that I believe should be in the final rule. And lastly, I hope it doesn't take another fourteen years to develop and finalize this rule, because truthfully the miners need it now.

We thank you.

MODERATOR NICHOLS: Thanks, Butch. Anybody got a question for Butch?

(No questions indicated.)

MODERATOR NICHOLS: Okay. Thanks.

Dan Spinnie. Dan is also with the United Mine Workers, Local 2161.

MR. SPINNIE: Dan Spinnie, Local 2161 United Mine Workers, Coulterville, Illinois.

As a miner and a miner representative, I think that every miner and every worker should be made aware of anything he is working with, especially hazardous chemicals.

Now I can tell you that, from working in mines for better than twenty-six years, as Butch was talking about annual re-training, I have never had anything to do with chemicals explained in any way or any training in the coal mines in twenty-six years.

And I think that all chemicals should be labeled, and a determination be made by MSHA, and these data sheets on there, that they be -- I don't

know how to say this -- made legible in, I call it the King's English, where you can understand it. Most coal miners, working people, they are not chemists or they are not biologists. It needs to be explained to them in a way in which they can understand it.

These labels, as I was saying, should be in language that we can understand them. I have seen them, you know, these chemicals and these data sheets, and after I read it I didn't, you know, even understand what it said. I mean, I knew that it was hazardous, but I didn't know why.

One other thing I would like to point out, this gentleman over here was talking about the citations. I have been a safety committeeman for just over twenty years, and I -- one thing that the coal company understands is when they get a citation they have got to do it. And I can tell you from past experience, and these guys will agree with me, that coal companies ain't going to do nothing they don't have to do.

If it wasn't for the law, our belts wouldn't get cleaned. If it wasn't for the law we wouldn't have the ventilations we have, and you have to have that safeguard.

Thank you.

MODERATOR NICHOLS: Thank you, Dan. Anybody got a question for Dan?

(No questions indicated.)

MODERATOR NICHOLS: Okay. That is all the people present that had signed up. We have a couple of more coming in late.

Is there anybody else in the audience that would want to come up and make a statement?

(None indicated.)

MODERATOR NICHOLS: Okay. We will break and come back at twelve-thirty for at least two more presenters and anybody else that might come in late.

Thanks.

(THE TIME BEING APPROXIMATELY 11:15 A.M., A LUNCH BREAK WAS HAD UNTIL 12:30 P.M.)

MODERATOR NICHOLS: Okay. Our next presenter will be Ed Elliott with the Rogers Group.

MR. ELLIOTT: Thank you. My name is Ed Elliott. I am a Corporate Director of Safety for Rogers Group, Incorporated. We are a company of approximately two thousand employees and we have operations in six states. We are the eighth largest stone producer in the United States and we are the largest privately held stone producer in the United States.

I personally have about twenty-one years experience in mining, and seven of those years have been in surface coal mining.

I want to thank you for the opportunity to make comments concerning the interim final HazCom rule. And first let me say that this rule is unnecessary.

As you state in the Federal Register, there are existing standards that address the hazards of chemicals in the workplace. And I would like to take just a moment to quote a section out of the Federal Register dated Tuesday, October the 3rd of 2000, that talks about the need for HazCom, and it says:

"Our existing standards already require you to train miners in occupational health, hazard recognition, and the safety and health aspects of tasks, among other subjects, except in underground coal mines you must also label hazardous materials."

For years there has existed regulations that could be used to address every concern that I have read in the transcript of public comments at all of the hearings for this interim rule.

Could it be that the agency, itself, has not educated or trained inspectors in the area of

occupational health and how it applies to the mining environment, including chemicals. And I would like to ask a question, I think maybe more directly at you, Mr. Nichols, not to answered at this moment, but after I conclude my comments. Exactly how much training do inspectors receive on occupational health other than for dust and noise sampling?

If there are situations where miners are being exposed improperly to unsafe chemicals, then the mine operator should be held accountable. And MSHA should aggressively do just that under existing regulations.

You cannot legislate safety. You cannot ensure safety through regulation. Safety can only be present when miners, operators and regulatory agencies want. Each of us is responsible for their part.

I read where the representatives of the UMWA feel that all operators are denying miners their right to safety in the workplace. And I was very concerned about the adversarial tone of the UMWA representatives and comments in the most previous meeting that was held.

I have never worked with UMWA, but I am sure they have the same objectives that we do of providing a safe and healthy workplace. My experience

of working with other labor organizations in development of the Part 46 training regulation was very positive and constructive. And the labor organizations that I am familiar with provide training for their members, and training on chemical hazards in the workplace is an important contribution that can be made by these groups.

Yes, there may be some operators out there that are living in the past with respect to safety and health. But the vast majority have done a tremendous job of promoting safety and health in the workplace, and their statistics show that.

To add another rule to the Code of Federal Regulations would only make compliance more complicated and require inspectors to focus in an area of massive paper trails and take precious time away from other more important duties.

As I mentioned earlier, we have the means to better manage the safety and health of miners when it comes to chemical use, but no one has been the champion to do so. For years the training regulations in the metal, non-metal industry were not enforceable. But now, with the new regulation, Part 46, they are. And education on chemical hazards should be a part, and the industry fully supports that.

Rogers Group fully supports the education and training of all our employees on hazards in the workplace and the safe way to do their job. We do many hours of training.

For example, every day we have a five-minute safety contact at the start of each shift. Once per week we have a twenty- to thirty-minute formal safety meeting. And annually we have an eight-hour refresher training course. Communicating about chemical hazards in the workplace is a part of the refresher training and, when necessary, a part of safety meeting information.

In addition, we do task training, which would include training and education on chemical hazards, if necessary. And any non-routine tasks require a job safety analysis prior to work activity.

Our company goal is zero injuries, and that includes any chemical exposure that would harm employees.

We feel that what we do is in support of what is the spirit and the letter of the current law. Rogers Group is no different than any other company in that we sometimes fall short of our goal. But with industry, labor and MSHA working as a team, we can improve the health of the miner without a new

regulation.

And what I would like to do is talk also for a moment about, and comment on a couple of things that were mentioned earlier.

As far as the burden, you -- I think you asked the question of one of the presenters, `How would this add a burden to you?'

I would say that the burden would come from having to comply with some technical aspects of the rule that may have no direct reporting benefit.

For example, let's say the inspector comes on site, goes to the shop, sees a mechanic changing oil in a piece of equipment, as Mr. Feehan brought out earlier. Potentially there could be something there that would indicate that there may be a negative health effect.

And let's say through activity of the operator that they have developed a method where the employee that is doing the changing of the oil does not have to come in contact with the oil whatsoever. But the inspector says, `I want to see your material safety data sheet on that.'

He is taking and changing Texaco oil out of the machine. We go to the office, pull out the latest material safety data sheet for 10W40 oil, but

it is BP oil. Then the inspector says, `Okay. You don't have a material safety data sheet. I am going to leave you my autograph.'

Has no bearing whatsoever on the safety of that employee, but that technical aspect, that is where the burden could come from, and that is from the practical perspective.

Also, chemical exposure without training. This is something that I heard Mr. Mahan -- I don't think he is here -- when he mentioned about -- they wanted to know about what they were using and they couldn't get the information or weren't told, or wouldn't be -- you know, the supervisor wouldn't tell them. I think that is appalling.

And I also say that I think MSHA has a responsibility that they should have been enforcing some of the existing regulations to require that operator to educate them on the task that they are undertaking. That is there.

Now let me throw out one suggestion. There is n o question that once you start down the slippery slope and you have a regulation out there, and here is something that appears as though it is the magic bullet and it is going to make it better for everybody with this HazCom rule, I say in -- from my

perspective, Part 46 is available for us.

There are regulations already out there that say we have to do the training. The MSHA inspector comes in the operation and says, `Okay. Look. I see Sue Smith using this particular chemical. How are you training her on those hazards?'

It is the responsibility of the operator to demonstrate clearly how they are doing that. If they are not doing that, they are in violation of the regulation and they should be cited for that.

But Part 46 is there. That operator can say, `Okay. Clearly this is an issue I should address. I will. I am doing this. Here is my Part 46. Here is my training plan. Here is how I am addressing that on a task training basis. Here is how I am addressing this in annual refresher training.'

Then, on the other side, people would say, `Well, Part 48 doesn't have anything that addresses that.' I think it is probably time that Part 48 be looked at and open up -- reopen that regulation, and then have the opportunity to clearly put in Part 48, if it follows a similar format to its current state, for hazard communication, the use of chemicals would have to be covered as a section in Part 48. It could be covered in task training.

I think there is the flexibility there. And clearly in 46, with the current regulations, it could be easily done in Part 48 without trying to develop an entire new regulation that is going to take years of training with the inspectors, with the operators, to learn about the technical aspects of it.

This isn't rocket science, what we are dealing with in our industry. If I was working for DuPont or 3-M in a chemical manufacturing plant, you are doggoned right it is potentially life and death every day. I don't think we face that.

We clearly need to get operators to provide information to the miners so they don't get sick, long-term or short-term, from what they are working in. That is a moral obligation.

And one gentleman said, "I look at a place where I go about safety and I give it my daughter test." I have a daughter that is going to University of Evansville. She is nineteen years old. And the way I judge the place, I will go in and say, `Would I have a problem with my daughter working in this operation? If I would not want her to work there, it is unsafe or it is unhealthy.' And I think if more of us use that standard as operators, we wouldn't have some of the problems like we have mentioned this

morning.

But those are my comments. I want to thank you for the opportunity. I would like to refer back to my question to Mr. Nichols, if you could tell me about the amount of training that inspectors receive.

MODERATOR NICHOLS: I don't know that, but I have got somebody that should know it. Bob?

I know that we have made an effort to hire industrial hygienists in each of the districts. I don't know how much of that training and expertise has been passed on down to the inspectors.

PANEL MEMBER THAXTON: I can speak specifically on the coal side, as we have talked earlier about coal was preparing for the implementation of the HazCom rule back earlier this year.

In preparation of that, we brought in two to four people per district into our academy in Beckley, and provided specific training on HazCom hazard determination and what we were going to be doing with the hazard communication rule. That was to be taught to those people as train-the-trainers, and then they were to go back to the districts and put on the same type of training then for all inspection

personnel at their respective district.

That did not go through at that time because we did not pursue the implementation of HazCom at that point.

Right now we are holding those people in abeyance until the final work is done on the HazCom. And, if need be, we will pull those people back in and update their training, and we still would intend that those people would go back to their district, to those people at the mine site.

But there are specific people, though, that we had identified in each district that were going to be available to assist mine operators with their specific programs, with the determination of the hazard of specific chemicals, and to assist them in developing a program that they felt then would cover what needed to be, and everybody understood pretty much what that was, so that we would have those key people in each district that would work with people, as well as the industrial hygienist that we have on staff in the different districts.

Metal and non-metal, since we don't have anybody from metal and non-metal, I know that metal has been conducting several training courses at the academy on working with hazardous chemicals,

recognition of those chemicals in specific industries, such as cement kilns, working with biological waste being burned as a fuel, asbestos and a few other things.

So the training has been going on within the agency on different areas. As to whether we have trained everybody, I don't think we will ever get to the point where we have said we have gotten to everyone.

MR. ELLIOTT: Thank you.

PANEL MEMBER SCHAPER: I would also like to respond.

MR. ELLIOTT: Yes, ma'am.

PANEL MEMBER SCHAPER: I am also teaching at our academy as well. I am teaching basic toxicology for a day to our new inspectors, and I am also teaching an intermediate toxicology course for three days to whomever wishes to attend, inspectors, industrial hygienists, et cetera, and covering a lot of different things from basic principles of toxicology, specific classes of toxicants and their health effects.

So you asked about beyond dust and noise. Absolutely.

MR. ELLIOTT: And I think those are all

very positive things that are going on.

PANEL MEMBER SCHAPER: Uh-huh.

MR. ELLIOTT: But I think that what has happened over the years is I believe a lot of the inspectors -- it is new to them also. And I think understanding what is going on out there and the inspector being able to take a more active role in the broad spectrum of occupational health is important.

And I know I heard Mr. Lauriski speak in Denver and how he envisioned the inspector as looking at the entire operation in a broader perspective, and I think that would include standards dealing with chemicals.

And I don't think there is any question, if I put myself in the position of a district manager or a field office supervisor and I heard some of the things that were mentioned this morning, how people are being put in positions of using things that could definitely make them sick, I would send somebody out there and say, `Hey. We have got some regulations already. We are going to make this happen.' Because I think that is -- that is just not right that they would have to deal with that.

But I understand that there are so many things for inspectors to know that they can't know

everything as well as, you know, each and every thing.

MODERATOR NICHOLS: Well, we have said we are going to do a compliance guide, we are going to do a model program, and we are going to do extensive outreach that would help with the consistency concern that you folks have, I think.

MR. ELLIOTT: Right. I agree, and I don't know that it will ever be solved, the inconsistency issue. I bet you have heard that. If you have heard it once you have probably heard it ten thousand times. And I think the effort is there to try to do that.

I am just concerned, under the regulation as it appears right now, that those technical aspects of it can be used and in a way that it is going to take away from what we really want to do most.

MODERATOR NICHOLS: Okay, Ed. Thanks.

MR. ELLIOTT: Thank you.

MODERATOR NICHOLS: The next presenter will be Jim Sharpe, with the National Stone, Sand and Gravel Association.

MR. SHARPE: Good afternoon. Thank you very much for the opportunity to be heard.

My name is Jim Sharpe. I am here today to offer testimony on MSHA's interim final Hazard Communication rule.

I am employed by the National Stone, Sand and Gravel Association as Vice President of Safety and Health Services. NSSGA is the world's largest mining association with more than nine hundred member companies, mostly small businesses operating in over thirty-five hundred locations across America. Our membership represents about ninety percent of the crushed stone and seventy percent of the sand and gravel produced annually.

Before I go on, I want to say that I have a lengthy set of remarks. In the interest of time and my present download somewhat, I will be pleased to submit it in written form in its entirety before the close of the comment period on October 17th.

NSSGA appreciates the opportunity to comment afforded by MSHA"s decision to reopen the rulemaking record until October 17, 2001, and to hold public hearings across the country. We further appreciate MSHA's decision to stay the effective date of the regulation until at least June 30th, 2002. When the Agency promulgated the interim final rule on October 3rd, 2000, it allowed just forty-five days for stakeholders to comment on a rulemaking record that spans more than a decade.

NSSGA and its predecessors, NAA-NSA and

NSA, have offered an extensive body of testimony on the HazCom rule to the record since it was first proposed in 1990, as follows:

There was an NSA submittal dated April 5th, 1991. There was another NSA submittal dated June 1st, 1999. And there was a submittal dated November 17th, 2000. This document was signed by NAA-NSA and twelve other mining industry trade associations.

For the record, the microphone started screaming.

Testimony of NAA-NSA at MSHA public hearing held on December 14th, 2000; an NSSGA submittal of May 11th, 2001, to Secretary Chao and entered into the rulemaking record after August 28th, 2001. This submittal included a cover letter from NSSGA President and CEO Joy Wilson to MSHA Assistant Secretary Dave Lauriski dated August 16th, 2001.

An Article in *Stone, Sand & Gravel Review*, July/August 2001, and entered into the rulemaking record after August 28th, 2001. NSSGA testimony by Joy Wilson on September 25th, 2001.

On the off chance that the submittal to Secretary Chao and the magazine article from July/August 2001, have not made it into the record, I am resubmitting them today. Additionally, I offer yet

another submittal, an article from the former MSA's *Stone Review* magazine, the January/February 2000 issue, entitled "NSA's Message to MSHA on HazCom: Just Say No." We also enter into the record MSHA Program Information Bulletin 86-2M dated April 7th, 1986.

I have all of these with me. You know, what do I do with them?

MODERATOR NICHOLS: Just give them to us.

MR. SHARPE: Let me do it before I forget.

MODERATOR NICHOLS: Also, Ed, could we have your statement, your written statement?

MR. ELLIOTT: Well, I don't think it is in the format. If you agree with me, what I can do is go back and retype it and send it.

(Mr. Sharpe hands documents to Moderator Nichols.)

MODERATOR NICHOLS: Thank you.

MR. ELLIOTT: If that would be appropriate. I mean, I can give it to you --

MODERATOR NICHOLS: Well, I think all we need it for is for a convenience of the court reporter. Are you okay without it?

REPORTER: He is the best speaker we have had yet, but I would still like to have it.

MR. ELLIOTT: Do I work for you? Could you

send a letter to my supervisor?

(Laughter.)

MODERATOR NICHOLS: Them UMWA guys aren't smiling.

Okay. Go ahead, Jim.

MR. SHARPE: NSSGA'S POSITION. The Association and its member firms have been active participants in this rule-making process since it first began more than a decade ago. When the Agency issued its interim final rule last September, we requested copies of the data used to support MSHA's position. After some delay, the data was provided and we have now completed an analysis of that information. These results have been submitted, and a comprehensive summary makes up part of the attachment submitted to Secretary Chao and Mr. Lauriski this past summer. We summarize these findings later in this testimony.

We agree with the principle that miners have a right to know about the chemical hazards they face on the job and of the means to protect themselves from harm. But the standard under consideration does not achieve that laudable purpose, and hence should be set aside. The rule duplicates existing regulations, is unsupported by any finding of significant risk in the aggregates industry, will not appreciably reduce

injuries and illnesses associated with hazardous substances, and, due to the burdensome paperwork requirements, will distract safety and health personnel from effectively addressing genuine safety and health issues.

As we have repeatedly stated, the duplicative nature of HazCom is a position MSHA itself took in 1986, when it issued Program Information Bulletin 86-2M, entitled "Hazard Communication," which is referenced above. In this document, the Agency stated that the intent in issuing it is to provide, quote, "guidance concerning the impact of the OSHA hazard communication standard...and various State right-to-know laws on the mining industry," end of quote.

After summarizing OSHA's HazCom, Hazard Communication Standard, MSHA discusses its responsibilities under the Mine Act and then turns to a discussion of the OSHA/MSHA interagency agreement:

And I quote again from the Program Information Bulletin: "This agreement states the general principle that MSHA will exercise jurisdiction over unsafe and unhealthful working conditions on mine site and milling operations. Accordingly, 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 and that toxic substances be labeled, both in a manner which identifies the hazards involved. In advising operators, applicable MSHA standards are attached for your information." That is the end of the quote.

MSHA goes on to discuss the effect of state right-to-know laws, noting that they would apply to mining if they did not conflict with MSHA requirements. MSHA writes, quote, "State laws that are more stringent than MSHA requirements, or cover health and safety in mines where MSHA has no such standards, are still applicable in mines -- still applicable to mines." Excuse me. End of quote.

The attachment to the Program information Bulletin lists 11 MSHA standards that accomplish in mining what OSHA's Hazard Communication Standards accomplishes outside that industry. Before promulgation of MSHA's HazCom rule, every one of those eleven regulations still apply to the aggregates industry, except that the eight references to Part 48 in the Program Information Bulletin are now applicable

instead to Part 46.

The Agency further states in MSHA's Final Regulatory Economic Analysis, that was done for this interim final rule, is that, quote, "Some operators comply with most or all of the provisions of this interim final rule and many comply with some of them. Few operators, if any, comply with none of HazCom's provisions because existing regulations require them to train miners about the health and safety hazards of their tasks." End of quote.

I might also add that MSHA has an initiative at the moment to reduce and streamline its rules. It is called Improving and Eliminating Regulations, and its goal is, quote, "to reduce burden or duplication, and streamline requirements." End of quote. The current promulgation of a HazCom Standard runs directly counter to that initiative.

THE LEGAL UNDERPINNINGS OF THE RULE ARE UNCLEAR:

We note initially that while we support HazCom's general goals, it is not at all clear if MSHA has authority to proceed with such a broad hazard communication rule. It is unlikely that HazCom is the type of standard that Congress intended to fall within the scope of Section 101(a)(6)(A) of the Mine Act.

The legislative history of that provision reveals that Congress intended it to authorize standards that would address specific exposure limits for individual or classes of hazardous chemicals. S. Rep. No. 95-181, 95th Congress, 1st Session.

Quote: "The Secretary's authority under this section includes not only the promulgation of standards covering individual substances but also standards covering classes or groups of substances." End of quote.

This conclusion finds support in Section 101(a)(6)(B) of the Mine Act, which establishes a related procedure by which MSHA receives input on whether specific materials or agents are potentially toxic at the concentrations in which they are found in mines. That cite is 30 U.S.C. 811(a)(6)(B).

The Mine Act, in Section 101(a)(7) of this does provide MSHA with authority to require labeling. Section 101(a)(7) of the Mine Act provides that mandatory health and safety standards, quote, "shall prescribe the use of labels or other appropriate forms of warning as are necessary," end of quote, to ensure miner safety. That citation is 30 U.S.C. 811(a)(7).

The legislative history of that provision indicates that Congress envisioned that labeling was

the extent of MSHA's authority to address hazard communications. Congress cautioned that MSHA should not use this provision to, quote, "over warn," end of quote, miners of potential hazards, a strategy that is often counterproductive:

And we quote: "While labels are useful in apprising miners of the hazards to which they are exposed, in many circumstances other forms of warning may be equally or more effective. It is not intended that labels be prescribed indiscriminately, because as labels proliferate, their effectiveness will be diminished. The Secretary, that is the Secretary of Labor, in determining the most effective means of apprising miners of hazards, *should bear in mind the diminished effectiveness that may result from excess labeling*, and should consider other means of informing miners of hazards, such as safety and health training or requiring periodic briefings of miners." That citation is *S. Rep. No. 95-181, 95th Congress, 1st Session.*

As discussed further below, it seems that the HazCom rule runs afoul of some of the, quote, "excess" warnings that -- or, quote, "excess" end of quote, warnings that concerned Congress.

On to a new section now called SIGNIFICANT

RISK IS NOT DEMONSTRATED BY DATABASES; HAZCOM WILL HAVE NO APPRECIABLE IMPACT:

As reported, NSSGA has analyzed the chemical burns and chemical poisonings databases MSHA has advanced in support of the need for HazCom in the aggregates industry. These databases were available to the former NAA-NSA during the comment period last fall, but we did not have sufficient time to complete our analysis of them before the close of the 45-day comment period on November 17th, 2000. The databases, which cover the period 1983 through 1999, do not support findings of significant risk that would be reduced through implementation of the regulation. They fail because:

One: The databases include entries that fall outside the scope of the interim final rule.

Two: An overwhelming number of entries would most likely not have been prevented if HazCom were in place.

Three: In nearly all cases, regulations already in place apply and would have prevented the incidents from occurring in the first place.

To summarize the data, we included in our May 11th, 2000, submittal to Secretary Chao, in the two databases a total of five thousand, five hundred

and fifteen (5,515) entries appear. Of these, eight hundred and twelve (812) make up the poisonings database. Of these eight-twelve, a hundred and fifty-three, or 18.9 percent, apply to aggregates. Twenty-five of the hundred and fifty-three incidents, or 16.3 percent, are cases that would not be covered under the interim final rule:

They are snake and insect bites, suicide, cuts and punctures, carpal tunnel syndrome, and apparently unrelated illnesses and unconsciousness.

And addition ten entries are unverified complaints by employees, and another two cases represent unauthorized employee work practices. A total of fifteen other entries could not be evaluated due to insufficient information. This results in an average of six or seven injuries per year over the seventeen-year-period, depending upon whether or not the fifteen entries lacking information are included or not.

There were forty-seven hundred and three entries in the burns database, of which eight hundred and ninety-two, again 18.9 percent, involve aggregates employees. Seventeen of the aggregates entries appear to be incidents that fall beyond the scope of HazCom, two are unauthorized work practices and sixteen fall

into the category of too little information available to evaluate.

The most telling finding from the burns database is the overwhelming number of miners who suffer eye injuries; specifically, five hundred and sixty-six of the eight hundred and ninety-two incidents, that is 63.5 percent, involve a solid or liquid substance affecting the eye. The majority of these five hundred and sixty-six cases involve a solid, predominantly lime dust. Additionally, another eighty-six incidents, and that is 9.6 percent, involve injuries, overwhelmingly, to the eye from battery explosions or similar occurrences related to working with batteries.

Several other eye injuries were due to exposure to fumes and vapors, some of these during fueling operations. Thus, about three-quarters of the injuries in this database are eye injuries. NSSGA believes this is a valuable finding that points the way to a focused solution, not an unfocused one, which is what HazCom represents. More will be said about our suggested solution later.

We would also note that MSHA's regulation at 56/57.15004 requires that employees be protected against such injuries through the use of appropriate

personal protective equipment. The fact that an MSHA regulation already exists that, if properly complied with and enforced, would reduce about seventy-five percent of all chemical burns incidents reinforces our argument about the duplicative nature of this rulemaking.

We further conclude that, when entries to both databases are excluded that don't belong there for one reason or another, as we have noted, and separating out the eye injuries, we are left with an average injury occurrence of about twenty cases per year over the seventeen-year-period in a universe of some one hundred and ninety-five thousand employees. This finding comports with testimony offered in other recent hearings that very few chemical injuries are being seen in aggregates.

This testimony was offered by the following safety and health professionals: Vic Goulet of Brox Industries, Chris Hipes of Luck Stone Corporation, Dave Pfile of Hanson Building Materials America and Mark Klinepeter of Florida Rock Industries.

While any injury is one too many, this hardly seems to us to justify imposition of a multi-million dollar regulation. Rather, we recommend a

focused approach that studies each incident individually with the aim of determining the root cause and then developing an effective solution.

We note with surprise and disappointment that, unlike us, MSHA apparently did not review these databases. In its Final Regulatory Economic Analysis, on Page 33 the Agency writes:

Quote: "There are two primary reasons why *we did not review each chemically-related miner acute injury and illness individually* to determine whether compliance with this rule would have prevented such injuries or illnesses." That is the end of the quote.

MSHA's mandate under Section 101(a)(6)(A) of the Mine Act, which requires that mandatory health and safety standards be based on, quote, "research, demonstrations, experiments, and such other information as may be appropriate...the latest scientific data in the field, the feasibility of the standards, and the experience gained under this and other health and safety laws," end of quote. This may not have been complied with due to this failure to review the supporting data. In fact, failure to do so may be construed as arbitrary and capricious.

One reason the Agency provides for not reviewing these data is:

Quote: "The first reason is that significantly less information is available for a non-fatal injury or illness than for a fatality. Whereas MSHA' investigation of every fatality for a fatality report includes a mine visit by MSHA personnel, the description of an injury or illness is generally based only on the mine operator's report. Because the mine operator's report is generally less complete than is a fatality report done by MSHA personnel, determining the potential preventability of each illness or injury is more subjective and speculative than is the case for a fatality." End of quote.

MSHA uses these two databases to buttress its position that significant risk exists to justify a major new health and safety regulation, while arguing that they cannot be used in prevention efforts. But if these data are that unreliable, how can MSHA use them as the basis for a new regulation?

In the OSHA benzene case two decades ago, the court held that a regulatory authority must both establish that sufficient risk exists to justify a regulation and that the regulation proposed will substantially reduce that risk. We don't believe MSHA has met that two-fold test.

In the Final Regulatory Economic Analysis

the Agency further states:

"The second reason is that the information garnered by OSHA during the public rulemaking on its rule is available for us to use. OSHA estimated that its rulemaking would reduce chemically-related acute injuries and illnesses by twenty percent. We agree with OSHA's methodology and assumptions and have therefore assumed that the OSHA estimate can be used, with modifications described below, as the basis for the MSHA estimate." End of quote.

Once again, MSHA fails to satisfy its statutory responsibility to determine how effective OSHA's Hazard Communication Standard has been in reducing chemically-related illnesses and injuries. Section 101(a)(6)(A) of the Mine Act requires MSHA to consider, quote, "experience gained under...other health and safety laws," end of quote, before it issues standards such as HazCom. But because it had no data at the time, OSHA had to make an educated guess about what impact its Hazard Communication Regulation would have in reducing injuries and illnesses.

MSHA's interim final rule was released in September of 2000, allowing a full thirteen years to evaluate its impact after OSHA expanded HCS to the

non-manufacturing sector in 1987.

Also available to MSHA is the experience of thirty-nine states that passed Right-to-Know laws during this period, some promulgated before OSHA's expansion of its HCS rule. Again, we believe this is clear evidence of MSHA's failure to satisfy its statutory mandate under the Mine Act.

It is also insufficient for MSHA to base its rule on a general, unsupported "finding" of risk reduction. MSHA has stated that, quote, "Because our HazCom rule was modeled on OSHA's HCS, and the Mine Act and OSHA Act are similar with respect to regulatory requirements for the promulgation of mandatory health and safety standards, *we believe that we have satisfied our statutory threshold of significant risk with our general finding of risk* ...." This is a quote from the preamble for the HazCom rule.

The finding of risk reduction that supports the HazCom rule is that the, quote, "lack of knowledge regarding chemical hazards increases a miner's risk of suffering a chemically-related occupational injury or illness ... because precautions and appropriate protective measures are used only when the presence of a chemical hazard is known." End of

quote.

That finding is unsupported because nothing in the rulemaking record or in the preamble to the interim final rule documents the relationship, if any, between (one) HazCom's information collection and dissemination requirements, and (two) reducing the alleged occupational risks that miners face through exposures to hazardous chemicals.

I will now move to another section, ALTERNATIVES TO HAZCOM:

NSSGA offers the following alternatives to HazCom. Although they are offered separately, there is no intent by doing so to infer they are mutually exclusive.

Option 1: The Part 46/Diesel Particulate Matter Alternative.

MSHA state in 1986 that a HazCom rule was not needed because sufficient rules were on the books to prevent chemical injuries and illnesses. At the time, eight of the rules it cited pertained to Part 48, the predecessor to Part 46. Now fifteen years later, the aggregates industry remains regulated by all these same provisions, or, in the case of Part 46, the new and improved successor to Part 48. During the decade, training was also expanded to include

supervisors.

Why MSHA does not see Part 46 as a solution to aggregates is mystifying -- as a solution in aggregates is mystifying. Excuse me. The rule requires twenty-four hours of new miner training and eight hours of refresher training every twelve months, as well as newly hired experienced miner training. Operators and contractors must also exchange information on site-specific hazards, and that would include chemical hazards. Perhaps more importantly it also requires task training; that is, a miner must be trained in the health and safety aspects of assigned tasks, and demonstrate proficiency to the satisfaction of a competent person, before the miner may undertake the task unsupervised. By the Agency's own estimates, Part 46 should prevent ten fewer fatalities per year and five hundred and fifty-seven fewer injuries.

In 2001, a rule specifically devoted to a chemical hazard, diesel particulate matter, went into effect for all underground miners -- or went into partial effect, I guess would be more accurate.

MSHA's estimates of its health benefit are that, over time, a minimum of eight-and-a-half lung cancer deaths would be avoided per year. This is under the DPM Standard. Unquantified health benefits

of the DPM Rule also include reductions in the risk of miner death from cardiopulmonary, cardiovascular and respiratory causes. Also, there will be reductions in miner sensory irritation and respiratory symptoms.

In its preamble to the DPM Rule, MSHA said, quote: "MSHA expects the reductions in the risk of cardiopulmonary, cardiovascular and respiratory causes to be significant, and expects reductions in irritation and respiratory symptoms to be large." End of quote.

Surely some of this case-avoidance will be among the twenty incidents per year allegedly now occurring in the aggregates industry. The first alternative to HazCom then is Part 46 and the DPM Rules.

Option Number 2, under alternatives to HazCom, Increased Emphasis on Preventing Eye Injuries Under 56/57.15004:

A second alternative is increased emphasis on compliance with 56/57.15004, which, as we have seen, already mandates eye protection if a miner risks injury to that vital organ. The results of a recent study by the International Safety Equipment Association of road construction workers suggests greater emphasis is warranted on eye injury prevention

through personal protective equipment use. As noted, three-quarters of the injuries in the burns database could be affected through improved compliance with this provision.

This emphasis could take the form of providing additional compliance training materials. We propose to develop, in concert with MSHA and organized labor, effective, targeted instructional tools for both operators and miners alike that address the prevalence of eye injuries and of the necessity for wearing appropriate PPE to minimize the risk. This collaborative effort should begin immediately and that once developed, these instructional tools would be available at all operations, with operators strongly encouraged to use them.

We also recommend that a standing task force be created from among industry, labor and government to examine the databases periodically for trends, and to develop training tools that address the kinds of injuries reflected in them. We believe such focused attention will be far more effective in reducing accidents and injuries than HazCom, which wastes resources by failing to differentiate between real workplace risks and only remotely possible ones.

Option Number 3: Revise HazCom.

While we want the interim final rule to be set aside, we do not oppose portions of it. Our Revised HazCom Rule would consist of the following:

Incorporate two changes MSHA has proposed to the interim final rule that pertain to MSDSs; namely, (one) eliminate the incorporation by reference provision in the existing interim final rule, without change.

What we mean by that is, MSDSs that are written right now, there would be no changes made to them.

And, (two) remove from the definition of, quote, "health hazards" end of quote, the reference to behavioral or psychological problems and add the criteria, quote, "toxic, or highly toxic," end of quote.

Labeling requirements would conform to those in OSHA's HCS.

The portable container exemption would be retained.

MSDSs would be made available to miners who ask for them; labels, or copies thereof, and mine-generated MSDSs would be made available to customers who ask for them.

Generic instructions on how to work with

hazardous chemicals and what to do in an emergency would be posted in all areas where a significant potential exists for a HAZMAT incident. A suggested set of such instructions has been offered in a previous submittal. What we offer here again today is a slightly modified form. I won't burden you with reading it.

Office workers, whose risk is de minimus, would be exempt.

Operators would be exempt who neither use hazardous chemicals beyond how they would be used by ordinary consumers nor produce hazardous chemicals at the mine site.

New section: HAZCOM IS BURDENSOME.

The sub-title under this section: One NSSGA Member's Dilemma.

At the hearing held December 14th, 2000, we were repeatedly asked to characterize the burden of this rule. Steve Sandbrook of Eastern Industries, Incorporated, responded by explaining that he maintained two three-ring binders of MSDSs, each four-and-a-half inches thick, on *all* chemicals used throughout his company. His company is covered both by OSHA and MSHA at forty-six different operations, seventeen quarries and so forth.

He said it is easier for him simply to copy all of the MSDSs in the file at all of these operations and make them available at all of his operations.

As he said it is easier for him -- and I am repeating myself now -- simply to maintain a copy at each location of every single MSDS used anywhere throughout his company, regardless of whether or not the product the MSDS was for existed at any particular site.

We think MSDSs in binders totaling nine inches in thickness is a burden, especially since each must be constantly updated as new MSDSs are added and updated ones replace others that have become obsolete.

Other aggregates industry safety and health professionals have made similar statements during the current round of hearings. We see no safety and health benefit to this exercise.

Another Sub-Section under the larger section of HAZCOM IS BURDENSOME is entitled Our Experience with Setting Up a HazCom Program.

NSSGA also attempted to answer MSHA's burden question by setting up a partial HazCom program of our own that strictly followed the relevant provisions of the interim final rule. We selected a

fifty-three-person stone operation, and focused on those HazCom provisions dealing with preparing a chemical inventory, obtaining MSDSs and producing a written program.

Here is what we found, and I will summarize it:

Preparing the inventory consumed eight hours. In all, fifty-seven products were catalogued. All but one, trap rock, came from off-site suppliers. These products fell into the following general categories: lubricants, coolants, fuels and oils, solvents, cleaners, acids, paints, welding products, insecticides, conditioners, batteries, as well as the specific rock product mined at the facility.

As of this writing, forty-two MSDSs have been collected, or seventy-four percent of the total. That is a hundred and seventy-three sheets of paper. The size of the MSDSs range from a single page for Dry Graphite Lubricant and Parting Compound to eleven pages for Extended Life Antifreeze; the average length of the MSDS is four pages.

Information on some of the MSDSs appeared on the front and back of the pages, while the vast majority, having been faxed, occupied only one side of the document. If only a single side were used, the

volume of MSDS paperwork would expand from a hundred and seventy-three sheets to a hundred and eighty-seven sheets. Using the lower number and adding the fourteen-page chemical inventory brings the total amount of paperwork to a hundred and eighty-seven pages.

Since only about three of every four MSDSs were collected, we assume that the remaining as-yet uncollected MSDSs would add another forty-three sheets, bringing the estimated paperwork burden for the MSDSs and chemical inventory to two hundred and thirty pages. I have a list of everything that was inventoried as part of your testimony.

We also learned that MSDSs in a timely fashion -- that obtaining MSDSs in a timely fashion can be an exercise in frustration, and may require technical resources beyond those available to small producers. One local supplier referred us to their fax-on-demand long-distance number. But after four unsuccessful attempts to reach them, we decided instead to use the website address the local supplier suggested. At that site, we were introduced to a catalog containing two hundred and sixty-five products. Two hundred and sixty-five products. It was necessary, therefore, to skim the catalog to find

what we wanted, and then print the associated MSDS. Some small producers will not have ready access to the Internet or a printer.

Our experience from this undertaking tells us that a number of producers, especially smaller ones, will be overwhelmed by the three most burdensome requirements of this rule: to do the inventory and keep it current, obtain MSDSs and develop a written plan. They will be overwhelmed because they do not have the time to comply with these requirements, they will grow frustrated with the enormous paperwork burden, and they will likely encounter technical problems, especially if they lack a fax machine or personal computer, as we know some do.

So this lack of availability of this hardware may retard MSHA's efforts at compliance assistance, especially if it involves accessing MSHA's website, which we note from your Final Regulatory Economic Analysis on Page 70, that you plan to use for that purpose.

Another category under the BURDEN OF HAZCOM:

The Experience of Others with OSHA's HCS Rule.

I submit as part of NSSGA's testimony,

comments on OSHA's Hazard Communication burden a number of weeks before the U.S. Senate Small Business Committee and before a task force commissioned by OSHA under former President Clinton's government reinvention initiative. Only selected comments made at the Senate hearing appear below. In other words, I am only going to read selected comments.

Other Senate hearing comments and those made before the OSHA panel appear in Appendix A of my written testimony. All of this is out of this for the record, filled full of comments about the burden on small operators of OSHA's HCS Rule.

There is another one of similar size that was produced about nine months before at another hearing. I didn't bring it along as a visual today, but I did bring this one. I especially like the red cover on the book. I had nothing to do with it.

PANEL MEMBER FEEHAN: Is that the small --

MR. SHARPE: The U.S. Senate Small Business Committee hearing.

PANEL MEMBER FEEHAN: Small Business Committee hearing.

MR. SHARPE: Because the MSHA rule is so closely patterned after the OSHA rule, we believe these remarks are relevant for your consideration

today. And here are some of the remarks:

Senator Dale Bumpers, Chairman: I favor the goals of this regulation, too. But I am absolutely convinced it is unworkable in its present form.

And what I thought when I came here today was a rule gone awry, I am now convinced has become an absolute monster. The rules are unnecessarily burdensome, unnecessarily expensive, and simply must be revisited.

Comment from Don Flowers, a Baltimore florist, and I didn't give him his name Flowers and I didn't put him in the florist industry. It just worked out that way.

But OSHA's current standard is not working because it requires a technical sophistication not enjoyed by many small business owners. It is ambiguous and subjects businesses to paperwork and worry all out of proportion to the benefits gained.

Representative Norman Sisisky said: Everyone, and I must emphasize this, everyone agrees that informing employees of potential workplace hazards is a matter of paramount importance. However, I do not see how this standard efficiently and effectively achieves that goal. In fact, it seems to

me as if the regulators created a complex, expensive, and unruly system wherein worker education is not as important as the paperwork burden.

And this is a quote from Representative Sisisky, and that is particularly dear to my heart. I am quoting: "*According to the Office of Management and Budget, the Hazard Communication Standard ranks as the sixth greatest paperwork-intensive requirement ever developed in this Nation.*"

The Burden on MSHA of your HazCom Rule:

While we have attempted to document the burden of HazCom to our industry, we believe MSHA needs to consider the additional burden it will also place on the Agency. MSHA's inspector staff already cannot meet its required twos-and-fours inspections; enforcement of HazCom will make realization of mandate even more difficult.

In fact, a high-ranking MSHA individual himself admitted as much at the hearing in Pittsburgh. In response to a comment from presenter Vic Goulet, who pointed out that his company had never received a compliance assistance visit for Part 46, and that MSHA's enforcement and Educational Field Services personnel seemed to be stretched thin.

Earnest C. Teaster, Jr., Metal/Non-metal

Administrator, replied, "Yes. I agree that we are short on resources ..." End of quote.

If MSHA chooses to enforce HazCom in the manner suggested by the Agency's draft *Compliance Guide,* MSHA may expect many citations to be conferenced and contested, tying up MSHA's resources still further. OSHA has expended considerable resources in outreach and compliance assistance, and has been required over the years to provide so many interpretations of its own HCS rule, it has published a book on the subject. It is reasonable to expect MSHA's experience will be similar.

ENFORCEMENT OF HAZCOM -- a new section now. ENFORCEMENT OF HAZCOM MAY STRAIN INDUSTRY'S RELATIONS WITH MSHA.

Under the new Administration, that is the Bush Administration, the relationship between MSHA and the aggregates industry is off to a positive start, with both sides calling for better communications and more joint collaborative efforts, including cooperation in rulemaking. If HazCom is trivialized through nit-picking enforcement practices with no relationship to improved safety and health, this auspicious beginning may be jeopardized.

A statement about enforcement in MSHA's

draft *Compliance Guide*, on Page 7, evokes concern. In response to the hypothetical question of, quote, "Will I get a citation if I don't follow my HazCom Program exactly?"

MSHA states, quote: "The inspector will issue you a citation if you fail to follow your program, such as if you keep MSDSs in the work area and your program says they'll be in the mine office, or if you inform workers about a new chemical hazard in a written notice rather than verbally, as you have said in your Program."

In other words, an operator will be penalized for doing the *right* thing the *wrong* way.

Aggregates producers have reason to be concerned if MSHA enforces HazCom with the same zeal as OSHA inspectors have enforced the HCS rule. The HCS has consistently been among the top ten most cited of all OSHA regulations.

Take Fiscal Year 1999: Four of OSHA's top ten violations that year were for HCS deficiencies. HCS is the Hazard Communication Standard. In the Number One position were violations associated with OSHA's written program requirement; Number Four, labeling and other forms of warning; and Number Five in OSHA's top-ten discipline rate for that years --

Numbers Five and Eight were employee information and training.

Since 1986, OSHA has written three hundred seventy-eight thousand, two hundred fifty-four (378,254) citations for violations of its Hazard Communication Standard, and has levied almost forty-seven million dollars in penalties.

The biggest moneymaker for OSHA has been deficiencies in the written HCS program, a shortcoming that has led to a hundred thirty-six thousand, forty (136,040) citations and a penalty total of nineteen-point-one million.

We fear a similar situation will occur in the aggregates industry once enforcement begins, especially in light of information supplied by MSHA from its CAV inspections about apparent deficiencies in written training plans under Part 46.

Violations of OSHA HCS provisions dealing with information and training garnered the second highest number of citations and penalties, a hundred and two thousand, three-forty-three (102,343), and fifteen-point-four million dollars; with violations of labeling, sixty-eight thousand, one hundred and fifty-seven (68,157) citations, and six-point-five-six million, and MSDS provisions seventy-one thousand,

seven hundred and fourteen (71,714) citations, five-point-seven million in the third and fourth monetary positions, respectively.

That concludes my testimony. If you have questions for me I would caution you that on advice of counsel I may not answer, unless they are real soft questions.

MODERATOR NICHOLS: Do you think it is fair to compare an economic analysis of the OSHA rule with OSHA having a hundred million work sites as compared to MSHA with four or five thousand?

MR. SHARPE: Yeah, because you have at least as many inspectors as they do, and you are going to be at every work site at least twice a year, sometimes more. I absolutely, positively think it is fair. Absolutely, positively. Why would you not think so?

I mean, I don't understand the question. There is no question in my mind I think it is appropriate.

Let me tell you something, Marvin. I have told you this before. I had to install an OSHA Hazard Communication Program at the employer I formerly worked with. It was a building services company in the Washington, D.C. area that had about two hundred

and fifty residential and commercial office buildings, and residential -- residential buildings and commercial high-rise offices.

When I joined the company in 1989, I hadn't even heard of an OSHA HCS, even though OSHA HCS was in effect at the time. I hadn't even heard of it. And this is, I can tell you, a very sad building services development and real estate property management company.

I put OSHA's HCS into effect. It required a written inventory at every single commercial highrise office building, every single residential building, a written plan at every one of those locations, and MSDSs in eighteen sites at every one of those locations.

And then I enforced it. And what an experience that turned out to be. After doing it for about six months, six months, I was actually fearful for my physical safety, because every time I went to a site -- every time I went to a site, from the best all the way through to the worst, I found a violation of the OSHA HCS rule, I found a violation.

All you have to do is be guilty. You will find it. Written programs not on the table, MSDSs out of date, chemical inventories not up-to-date, and on

and on and on. Every single time I inspected, every single operation, good, bad or indifferent, I could have written paper. And that is what you are going to find there. I know that that is what you are going to find.

And whenever they asked me, "Why are you doing this?" I said, "The government made me do it." All that grim cynicism I got for it; and frankly, it kicked that cynicism right back on me, because they were cynical because they were saying, "We don't see any relationship to health and safety here." And I was saying, "You know, you are right, folks. There is none."

MODERATOR NICHOLS: Anybody have any questions?

MR. SHARPE: I have some for you guys. I missed your opening statement, but I did read it. You say you, quote, "cannot," end of quote, and that to exempting the aggregates industry from HazCom. Why did you make that statement?

MODERATOR NICHOLS: Well, that is the --

MR. SHARPE: Cannot. You used the word cannot. I assume that is a carefully chosen word.

MODERATOR NICHOLS: Well, that is the position of the Agency, Jim.

MR. SHARPE: Can you explain it?

MODERATOR NICHOLS: I don't think I have to.

MR. SHARPE: What does the word cannot mean? Why can you not do that? Why can you not? Is there some legal imperative here? I don't understand the reasoning. I just -- that has to be a carefully chosen word that I assume has a basis in law. What is it?

PANEL MEMBER FEEHAN: Where is that from? I guess that is out of that guide they gave us from somewhere, but I --

MR. SHARPE: There will be another speaker. After him, I will come back up and I will read it to you.

PANEL MEMBER FEEHAN: Yeah. Well, I will tell you part of what I would consider my rationale for it, for that, and that is that the most common hazardous chemicals in the mining industry in this country are common to the operations, irrespective of whether they are aggregate or metal. We are talking about diesel fuel. Okay?

It doesn't matter if you are an aggregate operation or if you are in a gold operation. That is the most common -- that is the single -- I believe

that that is the most common hazardous chemical that there is. Okay. It has the most exposures, and it doesn't have it with any regard to whether it is an aggregate or whether it is a metal or a coal. Okay.

That is also true of gasoline. It is true of brake fluid. It is true of antifreeze. The most common hazardous chemicals are at aggregate operations, and I don't think we could, in good conscience, exempt them.

MR. SHARPE: Okay. So that is your reason. So it is not a legal one; it is a --

PANEL MEMBER FEEHAN: Well, it is -- I would say that it is a factual one. I mean, how could you exempt when you know that the exposures are the same or that the same chemicals are the same? How would you go about exempting one group?

MR. SHARPE: Well, I will let my testimony stand and allow that to be the answer to that question.

The second question that I have for you is in Pittsburgh -- this types of what Stone asked you a question about, whether or not Windex, which he used an example of being used two or three times a day by a truck driver cleaning the windshield of his truck, as opposed to a janitor who uses it in part of

cleaning the shops. Obviously that, HazCom has proved Windex, which is assuming that it has hazardous ingredients in it. I suppose it has got chlorine and --

PANEL MEMBER FEEHAN: Ammonia.

MR. SHARPE: Ammonia. Excuse me.

PANEL MEMBER FEEHAN: Yeah.

MR. SHARPE: That would make it relevant for the janitor. He asked the question about the truck driver, and that question was thrown back at him. But I would like to throw it back to you. What is your position on him?

PANEL MEMBER FEEHAN: Our position is that if a truck driver is using Windex -- and this is in the compliance guide, Jim, and actually I thought that --

MR. SHARPE: I know it is in the compliance guide. But you see, you kicked the question back to him, and I didn't understand why you would do that when it was in the compliance guide. So now I am asking for clarification.

PANEL MEMBER FEEHAN: Well, all we are doing is restating what is in the compliance guide. And there was something I -- well, never mind.

There was a problem about the way he

phrased it that was of concern, you know. I think that there was a twist on the fact. Not that he was intentionally trying to distort something, but there was a problem in the way the information was presented.

The case is: If someone is using Windex two or three times a day to wipe the windshield on a truck, okay, that is not so much of an exposure, to our thinking, and this is the guidance that we are given to -- it is in the compliance guide, so it is the guidance of the inspector of that, too.

It is not so much exposure that it would exceed what a consumer would ordinarily have. Okay? It is not so much of an exposure that it is going to be of greater duration or of frequency or of amount as a consumer would have, so it would be exempt from hazard communication.

MR. SHARPE: Okay. You have to recognize now that that is a real judgment call. The amount -- I use Windex, for example, and the amount that that truck driver uses, he uses a lot more than I do at home, I can tell you that. So, you see, you are into a judgment call here. And I fear, going -- getting back to the MSHA burden, which is what afflicted OSHA in its HCS rule, you are going to have to write a book

to explain all these things.

Almost every single one of these you are going to have to come up with something, guidance. And I submit you don't want to go there. That is just my opinion. You don't want to go there.

PANEL MEMBER FEEHAN: Well, actually, I think we already did. I mean, I use Windex once a week, okay, at home. But the idea was to provide an example that would allow you to exercise judgment. I mean, that is why we gave that Windex three times or four times a day as the example in there.

Now that is -- you know, that should provide you the guidance that you need. That was the thought. Now if it fails to do that, we will look --

MR. SHARPE: Well, you know what I think, Richard? I think people are going to be so worried whether the Windex is an isolated example, and they are going to have other examples that aren't going to be quite the same. There is going to be a little bit of difference or twist to take on, that they are going to be constantly asking you that question. Please clarify mine unique individual examples. And unless you can come up with some generic --

PANEL MEMBER FEEHAN: Well, give me another --

MR. SHARPE: -- definition, it is going to be tough.

PANEL MEMBER FEEHAN: Would you submit five examples, you know, ten, however many you want to have addressed in the compliance guide, we would be glad to see them.

MR. SHARPE: Richard, I would love to take you up on it, but I am telling you my -- after today, my participation with this ruling, and it is over on the 17th essentially. For me it is over today. I have planned no more submittals unless some revelation strikes me. And what you will get, I promise you, if you put this rule in effect, you will get so many of those examples that you will be plenty busy trying to answer them.

Question number three, and I may know the answer to this, but let me ask it anyway. Will a HazCom training trainer have to be a competent person?

PANEL MEMBER FEEHAN: Have to be a competent person?

MR. SHARPE: The ones that we know --

PANEL MEMBER FEEHAN: Yes. He has to be, I think, according to --

PANEL MEMBER SCHAPER: Or she.

PANEL MEMBER FEEHAN: Huh?

PANEL MEMBER SCHAPER: He or she.

PANEL MEMBER FEEHAN: Okay. He or she.

MR. SHARPE: Oops. Sorry. My apologies. He or she. That is correct. That is correct. Thank you.

PANEL MEMBER FEEHAN: I think the regulation, I think it says qualified, doesn't it?

MR. SHARPE: Well, I think it does try to address it, but I am not sure, Richard. And my concern is that are you going to then make a different standard for somebody who teaches HazCom as opposed to somebody who doesn't? How is that all going to work?

PANEL MEMBER FEEHAN: Well, it is the -- we are talking about the trainer?

MR. SHARPE: Yeah.

PANEL MEMBER FEEHAN: It is the same standard, I think, that is in Part 48. And I think that you can --

MR. SHARPE: Oh, you mean it is somebody who has to have MSHA -- has to be an MSHA trainer?

PANEL MEMBER FEEHAN: No. No, I think that they -- let me look at what the requirement is first.

MR. SHARPE: Okay. And I do understand, I think, from previous testimony that the Part 46 training plans will have to be modified to accommodate

HazCom. Is that not your case, Panelists?

Robert, my last question was: Will Part 46 training plans have to be modified to accommodate HazCom.

MODERATOR NICHOLS: Restate that. Ask it again.

MR. SHARPE: Will the Part 46 training plans have to be modified to accommodate training under HazCom?

MODERATOR NICHOLS: I don't know.

MR. SHARPE: It will not have to be?

MODERATOR NICHOLS: No, I said I don't know.

MR. SHARPE: Oh, you don't?

PANEL MEMBER FEEHAN: Although -- and I think that this is also in the compliance guide, Jim. If your -- it depends on what your training plan looks like. If you are so specific in how you tie yourself down in your training plan that there is no room to interpret it as accommodating hazard communication or chemical hazard training, then yes, it will have to be modified.

Typically it should not have to be modified. There are places the rule -- the language of the standard was written so that it could be

integrated into Part 46 and Part 48. Okay?

MR. SHARPE: Do I want to get off the record here and have somebody else speak while Richard looks for that, in the interest of saving time, and come back up, or --

MODERATOR NICHOLS: Go ahead.

PANEL MEMBER FEEHAN: Well, actually, I think Michelle has a couple of questions.

PANEL MEMBER SCHAPER: My questions, a couple of them, concern -- you discussed the reasons or some of the thoughts behind why HazCom would be burdensome, particularly related to material safety data sheets.

The first one, you talked about, you know, notebooks of material safety data sheets, or keeping up the material safety data sheets.

Did I understand you to say that there was no safety and health benefit to this?

MR. SHARPE: That is my read on it.

PANEL MEMBER SCHAPER: Do you believe that?

MR. SHARPE: Yeah. Right.

PANEL MEMBER SCHAPER: So you don't think that it is important to maintain a current version of the material safety data sheets?

MR. SHARPE: For the miners, no. Because

thirteen percent of the American public is functionally illiterate, and probably more miners who are illiterate than that. That is not a document that was designed for them at all. A document for OSHA compliance and product liability is written for lawyers. It is written by lawyers. It is written secondarily for industrial hygiene people, toxicology people. It will not serve to benefit for the miner, to the miner, that it is intended. It is not a useful safety and health communication tool to the miner.

First of all, you can -- you have heard the testimony over and over again, they didn't want to ask for it. They don't ask for it. They don't look at them. And I can see why, because they are hard to read.

PANEL MEMBER SCHAPER: But that is not the only application or use of a material safety data sheet, is that not true?

MR. SHARPE: That is true.

PANEL MEMBER SCHAPER: And if there was a -- let's say if there was an emergency situation, wouldn't you want to have the most current MSDS available?

MR. SHARPE: I am not arguing. If you have read my testimony, I was not arguing with MSDSs should

not be in the workplace. What I object to is having these massive amounts of documents available to workers who aren't going to use them.

MODERATOR NICHOLS: So how are you going to get this information to the workers?

MR. SHARPE: Through instructors and through labels. Through instructors on task training in Part 46, and through my suggestion and the association's suggestion about generic labeling, and also labels on containers.

PANEL MEMBER FEEHAN: And how would we go about changing generic labels when ninety-nine percent of the products that need labeling on mine property come from non-mine operators?

MR. SHARPE: But they are OSHA labels, right?

PANEL MEMBER FEEHAN: They are OSHA labels.

MR. SHARPE: Well, that -- you might require a suggestion to HazCom, saying that you should have used the OSHA label. Whatever OSHA's labeling standards are, are what your labeling standards should be. Am I --

PANEL MEMBER FEEHAN: I those that our standard is substantially the same as OSHA's.

MR. SHARPE: Well, I am making it clear

that we favor that particular aspect of this, that what we want are labels that are common to America. OSHA requires a certain standard for labeling, then we would hope that MSHA would be as well, exactly the same kind of labeling, rather than different labeling considerations. That was actually one of the reasons why the OSHA HCS extended to the non-manufacturing sector, because of those different labeling requirements being posted by the different states as well as the (inaudible).

MODERATOR NICHOLS: So you don't think these miners are smart enough to understand the MSDS sheets?

MR. SHARPE: No, that is what you are saying.

MODERATOR NICHOLS: Well, that is what I thought I heard you say.

MR. SHARPE: No. I am telling you that they are not a -- they are not a useful safety and health tool to the miner because they are too difficult -- they are not -- they are not written by the miner or for the miner.

Your statement that they are not smart enough is your statement, Marvin; not mine.

MODERATOR NICHOLS: That is what I heard

you say.

MR. SHARPE: No, I did not say that. I did say that thirteen-point-four percent of the American public is functionally illiterate and that there are probably a higher percentage of miners who are functionally illiterate. That is what I said. And that is the information that is in search pockets. That is not -- I am just quoting.

MODERATOR NICHOLS: So how big was -- was this a rock quarry where you --

MR. SHARPE: Fifty-three workers.

MODERATOR NICHOLS: Fifty-three workers. How many MSDSs?

MR. SHARPE: Let's see now. What did I say? Fifty-seven chemicals, so fifty-seven MSDSs.

MODERATOR NICHOLS: And how many workers?

MR. SHARPE: Fifty-three.

MODERATOR NICHOLS: Fifty-three. So how many of these chemicals did you determine were hazardous to the employees that they needed to know about?

MR. SHARPE: Every one of the fifty-seven chemicals that was listed on the inventory had a hazardous ingredient associated with it, either by reading the MSDS or the label. We screened the ones

out that weren't, with the -- either did not have hazardous chemicals or would not fall under the consumer product exemption or any of the other exemptions.

Is there a -- Oh, I am sorry.

MODERATOR NICHOLS: Go ahead.

PANEL MEMBER SCHAPER: Wed heard a little bit earlier, I think before your arrival, from a Mr. Peters about his efforts to actually teach miners to read a material safety data sheet, work with examples, and actually give a short exam to go over the elements of a material safety date sheet and to make sure they understand.

Don't you think this could work?

MR. SHARPE: I don't know. I would have to either hear the testimony or don't -- I haven't a clue of what he is talking -- the gentleman, Mr. Peters, wouldn't have a clue to what he is talking about. So I cannot answer your question without having -- knowing something about it.

PANEL MEMBER SCHAPER: I have one more question for you, also returning to the material safety date sheets.

You talked about trying to collect them, I believe, in what were the same mines that we are

talking about, and you said you were able to get maybe seventy-four to seventy-five percent of them.

MR. SHARPE: About three-quarters of them before I had put this down on a piece of paper and probably didn't tell you about it.

PANEL MEMBER SCHAPER: Okay.

MR. SHARPE: I mean, we will obviously -- we would get them all, I --

PANEL MEMBER SCHAPER: Right. But, well, I guess what I wanted to ask you is if you were in a situation like that and you were having difficulties in getting a material safety data sheet for a particular product, would you want to use that product without having it?

MR. SHARPE: I guess it would depend. If it were a common lubricant, like (inaudible) WE40, for example, I probably wouldn't be too shaken up by using it without a MSDS.

PANEL MEMBER SCHAPER: But if you have a product that has just some kind of a trade name that you are not really sure what is in it, would you feel comfortable using it without taking a look at the material safety data sheet?

MR. SHARPE: I would want to know more about it.

PANEL MEMBER SCHAPER: Thank you.

MR. SHARPE: And if the label -- if the label didn't provide that information, I might look further.

PANEL MEMBER SCHAPER: Thank you.

PANEL MEMBER FEEHAN: Through some help, Jim, I do have the section here that talks about the instructor qualifications, and it does not specify that the person be qualified or competent. Now we assume that, and the rationale is: If people are doing the training for, under Part 46 or Part 48, we expect that those same people will be doing the training under HazCom, because we expect that HazCom will be integrated into the Parts 46 and 48 training.

So however the person is qualified to train about electrical hazards, or however you go about setting for any technical issue you have about your training, the same will apply to training about hazardous chemicals.

MR. SHARPE: Okay. So he will have to be a competent person?

PANEL MEMBER FEEHAN: Well, he will have to be able to speak competently about chemicals.

MR. SHARPE: Yeah. And I guess where I am going with that question, Richard, is that there are

-- it is going to take people, probably some effort to get them to speak, now I would think. And that may mean that they will have to go to a class, go to like a school, maybe to clarify the record, and I am not sure that that is covered under Part 48. I am not sure those considerations were calculated.

PANEL MEMBER FEEHAN: I believe it was. I believe it was calculated in.

MR. SHARPE: No, I don't think, outside what -- you said that you thought that possibility was (inaudible).

PANEL MEMBER FEEHAN: Well, we are --

MR. SHARPE: Do I stand corrected? I mean, I could be. I had to do a lot of reading and so I could be quite wrong.

PANEL MEMBER FEEHAN: The other thing is that we do -- we are developing training materials so that people can speak about it.

MR. SHARPE: Yes, I understand that. I understand that. And OSHA's experience is that you have better bring -- have a lot of them and had better be quick, as OSHA did not have that at the outset, and got severely reprimanded and criticized for it in these hearings that I have read about.

Let me make a clarification on the MSDSs.

We believe that it is going to be -- what we would like to see is, we would like to see it up to the individual training person to decide what kind of materials they need in order to apply appropriate chemical -- hazardous chemical training under the existing Part 46.

If they feel that they need an MSDS in order to do that, that is fine. If they don't think they need an MSDS for that purpose, then that is their business.

We think they should give performance -- that performance orientation should be the watchword here. Allow it -- you know, leave it up to the individual site to decide how they want to make sure that their employees are properly trained on hazardous chemicals.

But for you to go and say, `Ach, you don't have an MSDS. Gotcha.' That is not what we are looking for. That is -- that is simply not what we feel is an appropriate use of your resources.

So I wanted to make that clear. I don't think that I did before.

PANEL MEMBER SCHAPER: Should they be available on site? Do I understand you to say that?

MR. SHARPE: No. I am saying that it is up

to the individual site to make that determination. Now in the revised one of -- Option 3, Revised HCS, aid to revise HazCom, I am saying that if a miner wants an MSDS, he asks for an MSDS, the -- we would expect the mine site to provide him with an MSDS. But he doesn't have to have it on site. He can call the supplier and have it sent to the -- or have it sent to the mine site and given to him.

So the answer to your question is, we are not saying that we expect a full complement of MSDSs on all hazardous chemicals to be at any one mine site. What we do expect is that the person responsible to provide -- that person or persons responsible to provide Part 46 training, that includes hazardous chemicals and task training be up to speed on how to do that and do that type performance.

MODERATOR NICHOLS: Anybody else?

(No further questions indicated.)

MODERATOR NICHOLS: Thank you.

MR. SHARPE: Thank you.

MODERATOR NICHOLS: Okay. Robert Stone?

MR. STONE: First, I want to take this opportunity to thank this group for allowing me the opportunity to address you and make some comments. I don't know that my comments will be as lengthy or as

detailed. I came actually quite unprepared and hadn't intended to address this group, but felt compelled to make some comments based on some of the presentations that I have heard so far today, and there have been some good presentations.

I know that Mr. Sharpe had a rather lengthy presentation and there is a lot of information contained. I will try to be brief, and would invite everyone, if you have been sitting for a while and would like to stand and let your blood circulate, do so.

(Laughter.)

MR. STONE: While I compose myself.

My name is Robert Stone, and I am employed by Irvin Materials, Incorporated, as an area manager, and I manage the Delta Division, which is the sole aggregates producer for IMI South.

I am, I think, qualified to make some statements here today. I am the fourth in -- fourth generation in my family involved in the mining industry. I am the fourth consecutive generation. My grandfather died at the age of 49, of what was diagnosed as silicosis as a result of Product 1. I am 49 years old, and I am told that we die as a much older man than quite a few years before you today.

The oldest cliche in the mining industry possibly is the picture of women, children, other individuals standing around the heart of a shaft waiting to know if a loved one is dead or alive in an underground operation.

I have stood in that number. I have stood in that group of people. It happened at a place called Barnett Mine in 1971, just prior to the calamity at Sunshine Mine which brought about the Mine Act. So just previous to the disaster at Sunshine, I had the opportunity to participate in that cliche, so I know the importance of the rules. I know the importance of the regulations and the impact that they have on our industry.

I felt compelled to make some comments on some things that possibly were said by Mr. Tharp or by Mr. Mason concerning family operations, family-sized operations, and I heard comments of organizations that may have had five hundred to as many as twenty-eight million employees.

These organizations were described to you as family-size organizations, and I am sitting there thinking `How can that possibly be?' And I wanted to just elaborate, Irving Materials is a family operation truly. But I wanted to explain just a little bit more

in depth into that structure.

My division employs about forty employees, scattered out over about four locations. There is a manager at each location.

I would say to you that each of the managers knows very, very well each of the employees at their locations. Often they will socialize. We know our employees wive's names, their children's names, in some cases the names of their dogs. And in that there is a camaraderie, if you will.

I am making these statements basically because I too was appalled by some of the things that I have heard from individuals from UMWA today. I think that is shocking, and I was truly surprised that those situations exist.

But how is it possible that an organization with forty-eight hundred employees would be a family operation, simply that we are scattered out and the groups are typically small, and often they are composed of people in family units.

I have mothers working for us, for example, and have people who are uncles and in-laws, et cetera. They are fairly tight organizations, and when they make this statement it is a true statement.

I would also say that I would hope to give

you just a bit of insight into how our organizations function. I am not a hygienist. I am not a -- basically a chemist or a scientist. I am thirty years in this business. I completed thirty years in this mining industry this year.

I started in management twenty-one years ago, and has the responsibility for some of the training and have responsibility yet for training in our organization.

Our organization maybe is a little bit different than some that have testified here today. We are regulated not only by MSHA, but we are also regulated by OSHA, so we have a hazards communication program already in place. And our company purchased this aggregates operation three years ago, and we went in three years ago and the program was in place. It was written. The dusty manuals Greg talked about were present.

When the first year rolled around, coincidentally we had first heard about the incidence of MSHA plans to go ahead and incorporate HazCom, we did a training session on HazCom in our organization.

The program under OSHA had been in place for a number of years. I couldn't find an individual in our organization who had even seen the MSDS book.

It has been there in the office on the counter and people walk by it regularly, but I couldn't find a person who had ever picked it up and looked at it.

I asked them about terms, and actually we did give a lecture. And, as often the case, in our safety meetings we will do a quiz, as the gentleman from Mulzer had indicated they do, and it is a -- it is a simple loaded question. I asked them to define what is MSDS. And, you know, my people couldn't even tell me what MSDS stood for.

After having lectured on it in these safety meetings, that may translate to you I am a poor instructor, or it may translate to you that it is a fly subject and basically have people opted to do that. But I wonder if you could just add a little bit of insight.

In addition to training for OSHA, training for MSHA. Our organization is also regulated by the Coast Guard, and there are rules and regulations being handed presently for fire prevention on boats. So I am also training my people. And our boat captains, for example, I am also putting them in the position now for them becoming teachers and must teach crew members how to react in situations of emergency relating to a fire.

We are also regulated by the Corps of Engineers, so actually we have at least those four. And not including also the Environmental Protection Agency or our Department of Land, or other state and federal organizations.

And the three organizations, OSHA, the Coast Guard and MSHA are active as far as instituting the regulations.

As I stated earlier, we are still in organization. It takes an undue amount of manpower, an undue amount of resources in order to comply with these regulations and stay abreast of these regulations.

We are -- I think I could aggravate this problem. Us, in the scheme of things with IMI South, we are Fort Apache. And it is -- sometimes information doesn't dissimilate well out here to us because there are so many other locations in order to reach. And we are in that somewhat not alone, and we work very hard reaching resources that we have to make sure that we are current and to make sure that we are in compliance. That is what we are required to do.

But I say, gentlemen, I think we mirror a lot of organizations that are represented here today. And we want to do it with just a little bit of insight

into our perspective (inaudible) with the amount.

I thank you for the opportunity to address this group. I promised to be brief, and will do so.

Are there any questions?

PANEL MEMBER THAXTON: I just have one, if you don't mind. You did state that you, while you have an MSDS book on the counter, that nobody --

MR. STONE: At each of the locations, yes, sir.

PANEL MEMBER THAXTON: But nobody really knew that it was there and made use of it?

MR. STONE: I picked it up and used it to do the first training session, and people weren't aware of its existence.

PANEL MEMBER THAXTON: Even though they may not be aware of its existence or made use of it, do you still consider that you should have those sheets with that type of information available in case something did come up that you would be interested in obtaining information fast?

MR. STONE: A situation, as was described to us this morning by people of UMWA, a situation where something is introduced into the mine site and there is no instruction or no information provided for what they believe is a hazardous material, it is

wrong. It is inappropriate and it is wrong. The information should be available.

PANEL MEMBER THAXTON: So even though miners have not made use of it, you don't mind still having that information available to --

MR. STONE: I think that there should have been more emphasis made on training those miners. I think that the spirit of OSHA's requirements were carried out. They made the nice yellow folders and put them in place, but no one took the time to go out and disseminate this information to the people who worked on the job site.

While we complied with the standard because it was there and it was updated, and regularly MSDSs came in and people who work in our clerical department dutifully took old ones out, put new ones in, the information simply wasn't worth coming to the individuals most directly affected by the information contained therein.

Yes, the information should be available. But I think the information, as it is available, is fairly valueless if you don't get to the individuals to explain to them how these MSDSs are made up, what is contained on them, and how they could help the individuals on the job.

MODERATOR NICHOLS: Have you had any chemically related injuries, say in the last four or five years?

MR. STONE: No, sir. Now the last three years I have spent in the aggregates division, and then prior to that I was employed with a minerals company.

This minerals company actually participated in one of the surveys done by NIOSH in 1983, and they came in and identified, if memory serves me -- it has been some years ago, but I think they identified five hundred and some-odd compounds on that particular job site that may be considered to be hazardous.

Now at that mineral site, basically a lot of the ores were included on the surveys. And I can't recall at either location where we had an incidence where a person was injured or where we had a reportable injury based on chemicals.

MODERATOR NICHOLS: Okay. Thanks.

Well, that completes the list of people we had signed up to do presentations. Is there anyone else that would like to make any comment?

Yes, go ahead.

MR. ELLIOTT (From the Floor): This is Ed

Elliott. I would -- I just wanted to have a maybe a question or a clarification on one Mr. Feehan said about instructors.

One of the things that I think is the most onerous about what (inaudible) is the requirement in all cases to have a certified instructor. And if a regulation were to come out that wasn't clear on this point with respect to training on hazardous chemicals, then I think it could almost make it impossible.

And the reason I say that, in our company, when we have these maybe five-minute safety contact, or one a week safety meeting, those people may or may not be certified, but they certainly can be very qualified and knowledgeable and be able to give that information.

Or, if they are actually in a work environment and something is brought in that has a label on it, you know, do I have to go get a certified person before I can talk to them about it?

So that would just be an issue that I am -- in just my reading, it wasn't exactly clear on that.

PANEL MEMBER FEEHAN: Well, I know that it was our intent to make it compatible with Part 48. So when it comes time for doing the task training, we

expect that the supervisor would be knowledgeable enough about the hazards where he is supervising, you know, let's say some little section of the plant, that he would be knowledgeable enough about those hazards to be able to talk to the employees under him about them.

And the same with conducting training. It is intended to be compatible with Parts 46 and 48, and we were not going to put extra requirements for instructors about chemicals.

MR. SHARPE (From the Floor): But we all know that -- how can a person who is required to know everything else be a competent person who will be required to do training?

PANEL MEMBER FEEHAN: Right. Now we have very special definitions of competent person.

MR. SHARPE (From the Floor): Right. I am using the Part 46 definition.

PANEL MEMBER FEEHAN: I would have to look at Part 46.

MR. SHARPE (From the Floor): The experience stream and skills necessary to provide the instructor with the ability to review, to evaluate the effectiveness of the starting rule. You know, that is a rough definition.

PANEL MEMBER FEEHAN: Yeah.

MR. SHARPE (From the Floor): But that is what it is.

PANEL MEMBER FEEHAN: Well, I think that it was intended that the person who does the training for Part 46 ordinarily would be the person who does the training for this.

MR. ELLIOTT (From the Floor): I would just point out about the Part 48, because we do not want to have inference that could be misinterpreted that an inspector might say, you know, `Well, are you certified to do this?' And that is what I was going to.

PANEL MEMBER FEEHAN: Okay.

MR. ELLIOTT (From the Floor): Because it could be misinterpret it if we are not very careful. That is all.

PANEL MEMBER THAXTON: And actually in the training that we have conducted already with our inspection personnel, we have indicated that section bosses, surface foremen, prep plant supervisors, anybody that is actually at the mine site, can conduct any of the training under HazCom. It is only if you roll it in as part of your Part 48 training program, then it comes under specific requirements for training

instructors.

MODERATOR NICHOLS: Okay. Anybody else?

(Nothing further indicated.)

MODERATOR NICHOLS: It is two-thirty. We will adjourn, but we will be around the rest of the afternoon in case people show up to present testimony.

(AT THIS POINT THE PUBLIC HEARING WAS ADJOURNED. PANEL MEMBERS AND THE REPORTER REMAINED AVAILABLE UNTIL 5:00 P.M., BUT NO FURTHER PRESENTERS APPEARED.)

1