

UNITED STATES OF AMERICA

+ + + + +

DEPARTMENT OF LABOR

+ + + + +

MINE SAFETY AND HEALTH ADMINISTRATION

+ + + + +

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

+ + + + +

TUESDAY,  
OCTOBER 2, 2001

+ + + + +

COMFORT SUITES, CONFERENCE ROOM  
271 NORTH 2100 WEST  
SALT LAKE CITY, UTAH

9:00 A.M.

PANEL MEMBERS:

MARV NICHOLS, Moderator  
BOB THAXTON, Acting Health Division Chief in  
Coal Mine Safety and Health  
DOUG ALTIZER, Chief, Division of Policy  
and Program Evaluation, Educational  
Policy and Development Group  
LARRY REYNOLDS, Solicitor's Office  
CHERIE HUTCHISON, Office of Standards,  
Regulations, and Variances  
PHAN PHUC, Office of Standards, Regulations, and  
Variances

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

I-N-D-E-X

Opening Statement . . . . . 3

Doug Dunaway, AngloGold North America . . . . . 22

Wes Leavitt, Newmont Mining . . . . . 34

Kent Adamson, Safety and Training Supervisor,  
Solvay Minerals . . . . . 45

Tain Curtis, Local 1769, Deer Creek Mine . . . . . 56

Jim Stevenson, International Health and Safety  
Representative, United Mine Workers of  
America . . . . . 60

Link Derick, Twenty Mile Coal Company . . . . . 78

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

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

1  
2 MR. NICHOLS: Let's go on the record  
3 with our public hearing on our interim final rule  
4 for hazard communication in the mining industry.

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

18 We are here today to listen to your  
19 comments on the hazard communication interim  
20 final rule which we published on October the 3rd  
21 of last year. We're holding this hearing in  
22 accordance with Section 101 of the Federal Mine  
23 Safety and Health Act of 1977. As is our  
24 practice, we will conduct the hearing in an  
25 informal manner. During the proceeding, panel

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 members may ask questions of the presenter.

2           Although former rules of evidence  
3 will not apply, we will be taking a verbatim  
4 transcript of the hearing and will make it a part  
5 of the official rule making record. The hearing  
6 transcript will be available for review by the  
7 public, along with all the comments and data that  
8 MSHA has received to date. The entire rule  
9 making record is available at our office in  
10 Arlington, Virginia. If you wish a personal copy  
11 of the hearing transcript, please make your own  
12 arrangements with the court reporter.

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

18           Background: On November the 2nd,  
19 1987, the United Mineworkers of America and the  
20 United Steelworkers of America jointly petitioned  
21 MSHA to adopt OSHA's hazard communication  
22 standard to both coal and metal and nonmetal  
23 mines and propose it for the mining industry.  
24 They based their petition on the need for miners  
25 to be better informed about chemical hazards and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that miners working at both surface and  
2 underground coal and metal and nonmetal mines are  
3 exposed to a variety of hazardous chemicals.

4 On March 30th, 1988, in response to  
5 this petition, MSHA published an advanced notice  
6 of proposed rule making on hazard communication  
7 for the mining industry. In this notice we  
8 indicated that we would use the OSHA hazard  
9 communication standard as the basis for our  
10 standard and requested specific comments on a  
11 number of related issues. We published a notice  
12 of proposed rule making on hazard communication  
13 on November the 2nd, 1990 and held three public  
14 hearings in October of 1991. The record closed  
15 January 31st, 1992.

16 In their comments on our advanced  
17 rule making and proposed rule, commenters  
18 represented both small and large mining  
19 companies, individual miners, a variety of trade  
20 associations, state mining associations, chemical  
21 and equipment manufacturers, national and local  
22 unions, members of Congress, and federal  
23 agencies.

24 We reopened the rule making record on  
25 March 30th, 1999, requesting comments on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 impact of the proposed rule on the environment,  
2 small mines, state, local and tribal governments,  
3 and the health and safety of children.

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

8 At that time we also requested  
9 comments on the information collection and  
10 paperwork requirements of certain provisions of  
11 the proposal now considered as an information  
12 collection burden under the expanded definition  
13 of information under the Paperwork Reduction Act  
14 of 1995. We received seven comments to the  
15 limited reopening of the rule making record,  
16 primarily from trade associations and labor  
17 organizations. The rule making record closed  
18 June 1st, 1999.

19 On October 3rd, 2000, we published an  
20 interim final rule on hazard communication with  
21 an effective date of October the 3rd, 2001. We  
22 gave commenters until November the 17th, 2000 to  
23 submit comments. The interim final rule  
24 specifically requested comments on, one, the  
25 plain language format and the content of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 interim final rule, mine operators' experience  
2 under the Occupational Safety and Health Hazard  
3 Communication Standard, and any changes in the  
4 mining industry since the publication of the  
5 proposed rule.

6 On December the 7th, 2000, we  
7 personally spoke with or e-mailed all commenters  
8 and other interested persons telling them of our  
9 decision to hold a public hearing in Washington,  
10 D.C. on December the 14th, 2000. The public  
11 notice of the hearing appeared in the Federal  
12 Register on December the 11th, 2000. We received  
13 22 written comments on the interim final rule and  
14 heard testimony from six persons at the public  
15 hearing on December the 14th, 2000.

16 Commenters objected to what they  
17 considered to be an inadequate comment period and  
18 inadequate notice of the hearing. These  
19 commenters stated that they did not have  
20 sufficient time to fully analyze the impact of  
21 the interim final rule which affected their  
22 ability to develop and submit meaningful  
23 comments. They also stated that many operators  
24 weren't able to testify at the hearing because  
25 they did not have enough time to prepare

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 testimony and make plans to attend the hearing.

2 Members of the mining community have  
3 also stated that because this is the first time  
4 MSHA promulgated an interim final rule there's  
5 some confusion about their compliance  
6 obligations. The National Mining Association and  
7 the National Stone, Sand, and Gravel Association  
8 have asked for a delay in the effective date of  
9 the interim final rule until we respond to their  
10 previous comments on it.

11 A number of mine operators and trade  
12 associations challenged the hazard communication  
13 interim final rule in the U.S. District Court of  
14 Appeals, and the Utah Mineworkers of America and  
15 the United Steelworkers of America have  
16 intervened in that litigation.

17 Let me cover some of the major  
18 provisions of the rule. There's six major  
19 provisions to the rule. First is hazard  
20 determination. The hazard communication interim  
21 final rule requires mine operators to identify  
22 the chemicals at their mine and determine if they  
23 present a physical or a health hazard to miners  
24 based on the chemical's label and material safety  
25 data sheet or on a review of the scientific

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 evidence.

2 Under the interim final rule for the  
3 purposes of hazard communication, MSHA considers  
4 a chemical hazardous and subject to the hazard  
5 communication rule if it is listed in any one of  
6 the following four recognized authorities for  
7 sources: Title 30 Code of Federal Regulations  
8 (30 CFR) Chapter 1; the American Conference of  
9 Governmental Industrial Hygienists threshold  
10 limit values and Biological Exposure Indices, the  
11 latest edition; the National Toxicology Program  
12 (MTP) annual report on carcinogens, the latest  
13 edition; and the International Agency for  
14 Research on Cancer (IARC) Monographs or  
15 Supplements.

16 The second major provision is the  
17 hazard communication program. The hazard  
18 communication interim final rule requires mine  
19 operators to develop, implement, and maintain a  
20 written plan to establish a hazard communication  
21 program.

22 The program must include, one,  
23 procedures for implementing hazard communication  
24 through labeling, MSDSs, and training of miners;  
25 two, a list of the hazardous chemicals known to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 be present at the mine; and, three, a description  
2 of how mine operators will inform miners of the  
3 chemical hazards present in non-routine tasks and  
4 of chemicals in unlabeled pipes and containers.

5 If the mine has more than one  
6 operator, or has an independent contractor on  
7 site, the hazard communication program would also  
8 have to describe how the mine operators will  
9 inform the other operators about the chemical  
10 hazards and protective measures taken.

11 Three, Container Labeling: A label  
12 is an immediate warning about a chemical's most  
13 serious hazards. The hazard communication  
14 interim final rule requires mine operators to  
15 ensure that containers of hazardous chemicals are  
16 marked, tagged, or labeled with the identity of  
17 the hazardous chemical and appropriate hazard  
18 warnings. The label must be in English and  
19 prominently displayed.

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

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   Chemicals coming off the mine  
2                   property are almost labeled. You would not have  
3                   to relabel them unless the existing label becomes  
4                   unreadable. You would not have to label  
5                   containers or raw material being mined or milled  
6                   while they are on mine property. You would not  
7                   have to label products that go off mine property.  
8                   You would have to provide the labeling  
9                   information to downstream users upon request.

10                   Four, Material Safety Data Sheet: A  
11                   chemical's materials safety data sheet provides  
12                   comprehensive technical and emergency  
13                   information. It is a reference document for mine  
14                   operators, exposed miners, health professionals,  
15                   and firefighters or other public safety workers.  
16                   The hazard communication interim final rule  
17                   requires mine operators to have an MSDS for each  
18                   hazardous chemical at the mine.

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

25                   Five, Hazard Communication Training:

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 The hazard communication interim final rule  
2 requires mine operators to establish a training  
3 program to ensure that miners understand the  
4 hazards of these chemicals in their work area,  
5 the information of the MSDSs and labels, how to  
6 access this information when needed, and what  
7 measures they can take to protect themselves from  
8 harmful exposure. Under the interim final rule  
9 mine operators have the flexibility of combining  
10 training requirements for hazard communication  
11 with Part 46 and Part 48 training. The interim  
12 final rule does not require mine operators to  
13 have an independent training program separate  
14 from Part 46 and Part 48 training.

15 Many operators already cover some of  
16 the above information in their current training  
17 program. If so, they do not have to retrain  
18 miners about the same information. We designed  
19 the hazard communication training requirements to  
20 be integrated into existing training programs for  
21 miners.

22 Making HazCom information available.  
23 That's the sixth measured provision. The hazard  
24 communication interim final rule requires mine  
25 operators to provide miners, their designated

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 representatives, MSHA, and NIOSH with access to  
2 materials that are part of the hazard  
3 communication program. These include the program  
4 itself, the list of hazardous chemicals, labeling  
5 information, MSDSs, training materials, and any  
6 other material associated with the program.

7 Mine operators do not have to provide  
8 copies of training materials purchased for use  
9 and training sessions, such as videos. Also,  
10 mine operators do not have to disclose the  
11 identity of a trade secret chemical except when  
12 there is compelling medical or occupational  
13 health need.

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

17 Commenters representing the aggregate  
18 industry argued strenuously that the hazard  
19 communication rule is unnecessary and that the  
20 aggregate industry should be exempt from the  
21 rule.

22 The HazCom rule does not duplicate  
23 other MSHA standards, as claimed by some  
24 commenters representing the aggregate industry.  
25 It augments, supplements, and compliments these

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 existing standards. The rule specifically deals  
2 with chemicals and chemical exposure. Chemicals  
3 may be used at any mine, including those in the  
4 aggregate industry. There have been hundreds of  
5 chemical burns in the aggregate industry.  
6 Chemical burns can occur on any part of the body.  
7 Skin burns may require multiple skin grafts and  
8 require repeated hospitalization. Eye burns can  
9 be serious and result in permanent loss of  
10 eyesight.

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

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

19 Third, many of the chemicals used in  
20 small mines are not covered by the rule. For  
21 example, soap used for washing hands are  
22 cosmetics and are exempt. A can of spray paint  
23 is a consumer product and exempt when used in  
24 small quantities intermittently. The length of  
25 exposure, as well as the amount, is really the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 determining factor. A can of paint only lasts a  
2 short time. Glue or adhesives, when used  
3 intermittently in small quantities, are exempt.  
4 Again, the length of the exposure, as well as the  
5 amount, is the determining factor in determining  
6 whether or not a consumer product is exempt.

7 We recognize, however, that not all  
8 small mines are likely to use a wide range of  
9 chemicals. Although we cannot exempt the  
10 aggregates industry from hazard communication,  
11 there are steps we can take to minimize the  
12 burden of the rule. For example, we intend to  
13 make extensive compliance assistance visits and  
14 conduct extensive outreach. We also will be  
15 publishing a compliance guide to help operators  
16 and miners understand the application of the  
17 HazCom final rule. We're developing a variety of  
18 compliance aids, such as model HazCom programs, a  
19 training video for mine operators about  
20 determining chemical hazards, and a training  
21 video for miners about chemical hazards and  
22 reading MSDSs.

23 A draft of the MSHA compliance guide  
24 has been on the web site for months. If you  
25 refer to the compliance guide, many of the issues

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 are explained. If you have any questions in  
2 these areas, send them by e-mail to  
3 comments@MSHA.gov or to the Office of Standards  
4 at the address listed in the public hearing  
5 notice. We'll use these questions to clarify  
6 your responsibility and include additional or  
7 better examples in the compliance guide. As a  
8 rule of thumb, if you're in compliance with  
9 OSHA's rule, you'll be in compliance with MSHA's.

10 In the same vein, mine operators may  
11 obtain help from organizations that have  
12 developed generic guides to meet OSHA's hazard  
13 communication standard because HazCom contains  
14 the same basic requirements. We will provide  
15 links on our web site to some organizations which  
16 have developed a variety of generic HazCom  
17 materials. While it will remain the  
18 responsibility of each mine operator to develop  
19 and implement a HazCom program and to have MSDSs,  
20 to the extent possible, we will help you  
21 establish a hazard communication program if you  
22 request. We have already taken other steps in  
23 revising our interim final rule to make it easier  
24 for mine operators to comply without reducing the  
25 protections offered by the rule.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

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

7                   Under "Hazard Determination," we may  
8 revise the reference to ACGIH, NTP, and IRAC from  
9 those considered in determining if a chemical is  
10 a hazard and if the chemical is carcinogenic.  
11 One option we are considering in determining  
12 whether a chemical is a hazard is to refer to the  
13 2001 edition of the ACGIH TLV booklet, IARC, and  
14 NTP. In determining whether a chemical is a  
15 carcinogen, we are considering referring only to  
16 the 2001 editions of NTP and IARC.

17                   We had expected the use of ACGIH,  
18 NTP, and IARC list to reduce the burden on mine  
19 operators because mines used relatively few  
20 hazardous chemicals for which they would have to  
21 develop an MSDS and label. Commenters objected  
22 to the use of these lists stating that the  
23 organizations which compiled them offer no  
24 opportunity for public comment; they impose  
25 unknown future requirements by citing the latest

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 edition, and they violate regulations governing  
2 incorporation-by-reference. We're opening to  
3 considering alternatives where the impact of the  
4 alternative would not reduce protection afforded  
5 miners by the interim final rule.

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

15           Concerning the availability of MSDSs,  
16 commenters requested that we increase compliance  
17 flexibility and recognize that MSDSs may be  
18 stored in a computer. In response, we are  
19 considered modifying the requirements to have an  
20 MSDS available for each hazardous chemical before  
21 using it to one requiring the operator to have an  
22 MSDS available for each hazardous chemical which  
23 they use.

24           MSHA is also considering accepting a  
25 listing of the OSHA PEL on an MSDS as an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 alternative to a listing of the MSHA PEL. This  
2 would facilitate use of widespread existing MSDSs  
3 and reduce cost by eliminating the need to  
4 develop additional MSDSs.

5 In response to comments concerning  
6 hazardous communication training, we are  
7 considering changing the language from requiring  
8 the operator to train the miner whenever  
9 introducing new chemical hazards into the miner's  
10 work area to requiring training when the operator  
11 introduces a new chemical hazard into the miner's  
12 work area, which change would clarify MSHA's  
13 intent that when a new chemical is introduced  
14 additional training is required only if the  
15 hazard changes. This is the intent as discussed  
16 in the preamble to the interim final rule.

17 Also, in response to comments we are  
18 considered revising the definition of health  
19 hazard. The interim final rule defines health  
20 hazard to include chemicals that damage the  
21 nervous system, including psychological or  
22 behavioral problems. We are considering deleting  
23 the phrase "psychological or behavioral  
24 problems." we're also considering adding the  
25 criteria "toxic" or "highly toxic" to more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 closely conform the language to that in OSHA's  
2 Hazard Communication Standard.

3 The hazard communication interim  
4 final rule is an information and training  
5 standard that requires mine operators to know  
6 about the chemicals at their mine and to inform  
7 miners about the risk associated with exposure to  
8 hazardous chemicals, the safety measures  
9 implemented at the mine to control exposures and  
10 safe work practice.

11 The hazard communication interim  
12 final rule does not restrict chemical use,  
13 require controls, or set exposure limits.

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

24 You may submit written comments to me  
25 during the hearing or send them to the address in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the public hearing notice. We will also accept  
2 additional written comments and other appropriate  
3 data on this final rule making from any  
4 interested party, including those who do not  
5 present oral statements. All comments and data  
6 submitted to MSHA, including that submitted to me  
7 today, will be included in the rule making  
8 record. The record will remain open until  
9 October 17th, 2001, for the submission of  
10 post-hearing comments.

11 We need you to sign the attendance  
12 sheet in the back of the room, and if you wish to  
13 speak there is a separate sign-in sheet. We're  
14 going to begin with the folks that signed up  
15 first and work our way through the list, and at  
16 some point during the day if you want to make a  
17 comment not signed up, that will be okay too.  
18 We're scheduled to go until 5:00. We could go  
19 beyond that if we need to, but it looks like with  
20 this size crowd we could probably do it before  
21 5:00.

22 My able lawyer here has something to  
23 clarify.

24 MR. REYNOLDS: I just wanted to  
25 mention we had some people comment in the earlier

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 hearing that there's a statement in here that  
2 says that if you're in compliance with OSHA's  
3 hazard communication standard you're in  
4 compliance with MSHA's, and there are two  
5 distinct things here. One is OSHA has a separate  
6 standard for hazardous weight, and we included  
7 hazardous weight within our HazCom standard; and  
8 the other is the retention of the training  
9 records. OSHA doesn't have that. What the  
10 statement said as a rule of thumb is you would be  
11 in compliance with MSHA's if you were in  
12 compliance with OSHA's. Generally you would be  
13 with the exception of those two differences.

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

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

20 DOUG DUNAWAY: First off I'd like to  
21 be saying that the progress we're making from the  
22 initial HazCom rule is tremendous. Thank you.

23 The purpose of this statement from  
24 AngloGold North America is to provide comments on  
25 the implementation of Mine Safety and Health

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Administration (MSHA) HazCom published in the  
2 Federal Register on October 3rd, 2000, 65 Federal  
3 Regulation 59048 effective June 30th, 2002.

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

24 Discussion: Evidence of reduction of  
25 injuries and illnesses: MSHA has decided to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 implement a HazCom rule without notifying the  
2 general public of scientific evidence  
3 demonstrating the benefits of regulation and the  
4 anticipated reduction to injury and illnesses  
5 within the industry. In 1987 when the Occupation  
6 Safety and Health Administration (OSHA)  
7 implemented their HazCom 29.1910.1200 rule, they  
8 issued a statement that supported their rule with  
9 an anticipated 50 percent reduction in  
10 industry-related injuries and illnesses from 8200  
11 to 4100 in 20 years. MSHA has not released any  
12 scientific evidence that supports Part 47 or that  
13 the industry is negligent towards employees and  
14 chemical exposures, nor have they provided the  
15 mining industry of the results of the OSHA  
16 findings that could demonstrate the effectiveness  
17 of a HazCom rule.

18 Redundancy of regulations: 30 CFR  
19 56/57 clearly defines the regulatory requirements  
20 for flammable and toxic materials. The mining  
21 industry is already required to protect miners  
22 from hazardous and toxic materials. AngloGold  
23 requests MSHA provide some clarity to why we  
24 would need two rules for personal exposures to  
25 hazardous materials. Furthermore, does one rule

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 take precedence over the other?

2 Hazardous materials exposure  
3 assessment: Many federal agencies have unified  
4 within the Global Harmonization System (GHS)  
5 under the stewardship of the Occupational Safety  
6 and Health Administration with participation of  
7 the Environmental Protection Agency, Food and  
8 Drug Agency, and the Department of  
9 Transportation. AngloGold recommends, as did the  
10 American Society of Safety Engineers in a letter  
11 to Dr. Carol Jones dated November 17th, 2000,  
12 that MSHA join this coalition so that the new  
13 regulations that are about to be implemented do  
14 not have the potential of being inappropriate and  
15 outdated.

16 Referencing the HazCom Compliance  
17 Guide Draft dated October 3rd, 2000, states that  
18 an employee need not be trained on a hazardous  
19 chemical if it is not reasonably anticipated that  
20 the employee will be exposed. AngloGold finds  
21 this to be ambiguous in the definition of  
22 hazardous chemicals, the potential for exposure,  
23 and determining compliance. Part 47 does not  
24 comply uniformly in that determining of  
25 occupational exposures. It is unclear where the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 1972 coal and the 1973 metal/non-metal threshold  
2 limit values or current at ACGIH threshold limit  
3 values are appropriate for determination.  
4 AngloGold references the recent lawsuit  
5 settlement between the ACGIH and the trona mining  
6 industry. The settlement states that the ACGIH  
7 TLV are only recommended and not to be  
8 automatically adopted as a regulation because  
9 they have not gone through the rule making  
10 process.

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

22 In consideration of assessing  
23 hazardous chemicals, AngloGold is confused when  
24 adapting the TLV from the various MSHA  
25 recommended organizations, for example,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CINNASORB, Elemental Mercury Absorbent Base,  
2 manufactured by Mallinckrodt Baker (J.T. Baker)  
3 MSDS effective date 11/6/97 is a zinc base  
4 powder, non-pyrophoric with chemical constituents  
5 of zinc oxide and lead. For example, we should  
6 look at zinc oxide because it is 1.5 percent of  
7 the chemical meeting the criteria of Part 47.

8 OSHA recommends 15 milligrams per  
9 cubic meter total and 5 milligrams per cubic  
10 meter respirable. NIOSH recommends 10 milligrams  
11 per meters cubed total and 5 milligrams per meter  
12 cubed respirable. ACGIH does not recognize zinc  
13 oxide in the 2001 TLV and BEI; however, in the  
14 1973 TLV it does list zinc oxide fume as  
15 5 milligrams per cubic meter. IRAC and MTP are  
16 not involved because it is not carcinogenic, and  
17 the MSDS again states it is 1.5 percent by volume  
18 and it is hazardous.

19 The MSHA recommended resources do not  
20 provide AngloGold with the necessary information  
21 to properly meet compliance of Part 47.22 that  
22 includes chemical identity, which permits  
23 cross-referencing, and hazard assessment.  
24 Moreover, could the MSHA inspector extrapolate  
25 the data to provide AngloGold with the necessary

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 information for hazard assessment, training,  
2 and/or compliance?

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

16 Cost of implementation or compliance:  
17 In the MSHA Federal Register dated March 19,  
18 1999, Volume 64, No. 60, Page 15144 through 15148  
19 provided a cost analysis for the implementation  
20 of the HazCom rule. MSHA stated the belief that  
21 the impact on the industry would decrease because  
22 the number of miners has decreased and  
23 independent contractors have increased.  
24 AngloGold contends that the cost of  
25 implementation or compliance is still the same

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 because requirements of monitoring the chemicals  
2 brought on site, evaluating of MSDSs, and  
3 training of both miners and contractors. MSHA  
4 believes the start-up cost would be \$900 to \$1200  
5 dollars per operation and a cost of \$24 per miner  
6 for compliance. These numbers are grossly  
7 underestimated because of the logistical need of  
8 professional qualifications required in meeting  
9 the requirements of Part 47.

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

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

25 MR. NICHOLS: Thanks, Doug.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Any of the panel members have a  
2 question for Doug?

3 MR. PHAN: Do you have the data that  
4 states the research that you stated in excess of  
5 \$35,000 for a small mine operation?

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

8 MR. NICHOLS: Anything else?

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

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

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

18 DOUG DUNAWAY: What are we going to  
19 classify it as within the hazardous group? Are  
20 we going to put it at a high hazard, a low  
21 hazard? It's going to make a difference. It's  
22 not even covered under Part 47 because you're not  
23 recognizing the -- the whole point of that is  
24 you're not recognizing other agencies that do  
25 help us out here, such as OSHA, NIOSH, GHS and so

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       forth. We need to come together as an entire  
2       agency, all your sister agencies and industries  
3       come together and reduce the ambiguity, the  
4       obvious things that are wrong with this, and move  
5       forward.

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

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

11                  MS. HUTCHISON: Yes.

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

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

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

25                  MS. HUTCHISON: What do you think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 your obligations would be regarding zinc oxide or  
2 the Cinnasorb under Part 47?

3 DOUG DUNAWAY: Under Part 47?

4 MS. HUTCHISON: Mm-hmm.

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

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

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

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

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

23 MS. HUTCHISON: How?

24 DOUG DUNAWAY: Through training  
25 within the mining industry as far as hazardous

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 chemical associations, you know, Part 46 and  
2 Part 48 do cover a lot of that. Silica's  
3 exposure, if you're around a hazardous chemical  
4 such as working in labs or working around the  
5 milling area, MSDS books are already provided in  
6 the majority of the incidents, and their workers  
7 are well trained within that area.

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

12 DOUG DUNAWAY: About cinnasorb?

13 MS. HUTCHISON: Yes.

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

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

21 DOUG DUNAWAY: We basically cover all  
22 the re-agents and the silica obviously when it's  
23 reduced down to proper size. Paints and so forth  
24 already have the MSDS and the labeling on the can  
25 because there are several manufacturers that we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 use right now, such as CRC, that put the MSDS  
2 right on the back of the can. We let our people  
3 know what is on the back there and the health  
4 hazards associated with them.

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

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

9 MS. HUTCHISON: Thank you.

10 MR. NICHOLS: Okay. Doug, thanks.

11 The next presenter will be Wes  
12 Leavitt from Newmont Mining.

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

15 Mr. Chairman, members of the panel,  
16 my name is Wes Leavitt and I am an industrial  
17 hygienist at Newmont Mining Corporation. Newmont  
18 Mining is a US-based, publicly held corporation  
19 with mining properties located throughout the  
20 world. Our properties in Nevada employ  
21 approximately 2500 workers. As a representative  
22 of Newmont, I am pleased to submit our comments  
23 to the Mine Safety and Health Administration on  
24 its Interim Final Rule concerning hazardous  
25 communication.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   Newmont recognizes our responsibility  
2 to safety, the environment, and to our  
3 communities. Our employees develop and promote  
4 innovative programs in each of thee important  
5 areas.

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

13                   With regard to exemptions, the rule  
14 should allow for additional exemptions as listed  
15 in table 47.81. Please consider this example:  
16 If we move waste rock from its original location  
17 where it's not considered hazardous, to a new  
18 location 500 yards away, the new rule would  
19 require us to consider this material hazardous.  
20 Table 47.82 exempts raw material from being mined  
21 or processed from labeling requirements. Still,  
22 we would be required to prepare an MSDS for waste  
23 rock because it may contain silica. We must also  
24 prepare additional HazCom training documentation.

25                   This waste rock will never leave our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 mine site, and our miners are trained to  
2 recognize and mitigate potential hazards as  
3 required in the existing Part 48 requirements.  
4 In addition, the primary purpose of the MSDS is  
5 to provide information to the general public. An  
6 MSDS for substances such as waste rock is  
7 meaningless and will not contribute to our common  
8 public health and safety efforts. Raw material  
9 being mined or processed with the same conditions  
10 as listed in table 47.82 should also be listed in  
11 table 47.81, exempting them from regulation under  
12 the HazCom standard.

13 With regard to hazard determining, as  
14 written the regulation would also require Newmont  
15 to prepare an MSDS and train miners on the health  
16 hazards associated with the gold bar because it  
17 contains a small amount of silver. In this  
18 physical state, silver poses virtually no health  
19 risk, yet we must spend valuable time and  
20 resources addressing this alleged hazard. We  
21 suggest that the actual hazard should be  
22 considered in determining if a particular  
23 substance is exempted from the regulation. The  
24 simple fact that a substance is present should  
25 not require compliance with this rule.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   With regard to training, proper  
2                   training of Newmont's workforce is not only the  
3                   right thing to do, it is also cost effective. We  
4                   believe that effective training is essential to  
5                   ensuring a safe and healthy working environment,  
6                   and we make every effort possible to ensure  
7                   miners are aware of workplace hazards and are  
8                   adequately protected. We agree with most of  
9                   Subpart F that addresses training, with the  
10                  exception of 47.53 that requires the operator to  
11                  make a record of each miner's HazCom training and  
12                  keep the record for two years. This  
13                  documentation is covered by existing training  
14                  regulations. 30 CFR 48.9 and 48.29 require the  
15                  operator to documents the training received as  
16                  part annual refresher training and new hire  
17                  training. MSHA has already stated that HazCom  
18                  training can be included as part of the annual  
19                  refresher training and the requirements in  
20                  Part 48 provide an adequate means for recording  
21                  training received under the HazCom rule. This  
22                  additional documentation will not improve the  
23                  effectiveness of the rule. We suggest that  
24                  Section 47.53 should be deleted, or at least  
25                  clarified, that additional separate documentation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 is not required.

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

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

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

24 Incorporation by reference: Newmont  
25 is opposed to any incorporation by reference of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 lists that have not gone through the rule making  
2 process. The determination of a hazardous  
3 chemical as defined in table 47.11(b) should be  
4 reevaluated. The recent settlement between the  
5 American Conference of Governmental Industrial  
6 Hygienists and the trona industry regarding the  
7 TLV process suggests that there are problems with  
8 how the ACGIH determines the contents of its  
9 list. This list should not be used rule making  
10 to determine whether or not a chemical is  
11 hazardous.

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

18 In addition, limiting the  
19 incorporation by reference to 2001 publications  
20 does not change the fact that these organizations  
21 do not comply with federal notice and comment  
22 procedures or due process in making their  
23 determinations. We suggest that the agency  
24 explore other lists that have gone through rule  
25 making to determine if a chemical is hazardous,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 such as those used again by the EPA.

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

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

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

20 WES LEAVITT: Okay. What I'm  
21 referring to there is it talks -- in the rule it  
22 talks about rock products on the mine site, but  
23 the only time -- if your mining product contains  
24 something hazardous in the ground, the rule  
25 doesn't address anything like that until you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 start moving it to, say, a stockpile, et cetera,  
2 and then the rule exempts it from labeling  
3 requirements, but we still have to provide this  
4 additional training and documentation under the  
5 HazCom rule and then prepare an MSDS. Currently  
6 we already train these miners on the hazards  
7 associated with the waste rock because it  
8 contains silica. That's documented under our  
9 annual refresher training, and the additional  
10 documentation is essentially not gaining us  
11 anything.

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

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

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

19 MS. HUTCHISON: I don't either.

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

25 You're saying that you already have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MSDSs for any hazard that might be in the  
2 material.

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

5 MS. HUTCHISON: Do you have one for  
6 silica?

7 WES LEAVITT: For silica itself?  
8 Well, we would have an MSDS for a product that  
9 contains silica.

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

12 WES LEAVITT: Well, it contains  
13 silica.

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

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

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

22 WES LEAVITT: Right.

23 MR. NICHOLS: So you've already taken  
24 care of that. Moving it around is no problem  
25 unless you --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   WES LEAVITT: We're only going to  
2 move it once.

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

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

21                  MR. NICHOLS: I understood your other  
22 comments, but this one I just want to be sure  
23 we're not doing something that defies common  
24 sense here, and I don't think we are. I don't  
25 think, unless you do some further processing to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that waste material, that you'd have to do  
2 anything different than when you mined it.

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

11 MR. NICHOLS: Okay.

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

14 WES LEAVITT: Right.

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

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

20 MS. HUTCHISON: You can use that.

21 MR. NICHOLS: What about the training  
22 documentations?

23 MS. HUTCHISON: Oh, yes, you can use  
24 that too. OSHA does not have training records in  
25 their hazard communications standard. We put

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 these training records in our standard because we  
2 fully intend that you do your HazCom training in  
3 conjunction with your Part 46 and Part 48  
4 training. You already have the form. It would  
5 just require us to put another box there that  
6 says "HazCom." And you already keep them for two  
7 years. We just intended that it just be routine,  
8 nothing extra. That was our intent.

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

12 MR. NICHOLS: You got us on record  
13 here.

14 WES LEAVITT: Cool.

15 MR. NICHOLS: Thanks.

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

18 KENT ADAMSON: Good morning. My name  
19 is Kent Adamson. I'm the safety and training  
20 supervisor for Solvay (phonetic) Minerals in  
21 southwest Wyoming. I am both a certified  
22 industrial hygienist and a certified safety  
23 professional, and I'm here today representing the  
24 soda ash industry of southwest Wyoming who mine  
25 and utilize the mineral trona in the production

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 process.

2 On behalf of the trona patch, I am  
3 pleased to submit the following comments  
4 concerning MSHA's interim final rule establishing  
5 a HazCom standard for coal and metal and nonmetal  
6 mining.

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

15 We endorse the concept of hazard  
16 training and for chemical hazards. However, we  
17 oppose the potential proliferation of citations  
18 for paperwork or technical violations of a  
19 mandatory plan and document retention program.  
20 This problem has been experienced repeatedly  
21 under the OSHA program and should be avoided by  
22 MSHA. Thus, we propose an mandatory HazCom  
23 program that could only be a citable violation if  
24 generic training for chemical hazards is  
25 inadequate.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   We fully endorse the proposal to  
2                   require training only when the operator  
3                   introduces a new chemical hazard into the miner's  
4                   work area. We believe that the focus of this  
5                   rule should be protecting miners from the hazards  
6                   posed by chemicals instead of focussing on each  
7                   individual chemical, even if that chemical does  
8                   not pose a new hazard. This proposal recognizes  
9                   this common sense approach and should be adopted.

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

22                   We support MSHA's attempt to clarify  
23                   that the designated, quote, "responsible person"  
24                   mentioned on labels and MSDSs can in fact be the  
25                   mine operator.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   We strongly urge MSHA so select the  
2 listing of the OSHA PEL as an alternative to the  
3 MSHA PEL on the operator's product MSDSs. Doing  
4 so will decrease the cost of compliance by  
5 allowing existing MSDSs which contain the OSHA  
6 PEL to be used rather than generating new MSDSs.

7                   We support reviving the definition of  
8 "health hazard" by deleting the phrase  
9 "psychological or behavioral problems." We  
10 believe this phrase is unnecessary and should be  
11 eliminated.

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

17                   We applaud MSHA's attempt at reducing  
18 the burden on mine operators in the  
19 identification of hazardous chemicals and the  
20 development of their internal and product MSDSs  
21 and labels. However, today's litigious society  
22 has already forced operators to spend a  
23 considerable amount of time, money, and resources  
24 in developing MSDSs and labels that hold up to  
25 intense legal scrutiny. To this end, operators

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 need the flexibility to use any resource that is  
2 scientifically valid and credible in determining  
3 if a chemical is hazardous or not. We strongly  
4 oppose MSHA's use of non-governmental sources,  
5 such as ACGIH and IARC, to determine whether  
6 particular chemicals are hazardous and what the  
7 level of hazard is.

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

20 Incorporation by reference of ACGIH's  
21 TLVs may be the most serious flaw of the HazCom  
22 rule. MSHA states in the preamble that it will  
23 enforce exposure limits for chemicals listed by  
24 ACGIH in their list of TLVs. The U.S. Department  
25 of Labor has already been prohibited by the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Eleventh Circuit Court of Appeals from using  
2 recommended but not scientifically validated  
3 limits on various chemicals set by ACGIH and  
4 other unknown associations. Thus, this  
5 requirement, even if limited to the 2001 TLV  
6 booklet, must be eliminated.

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

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

25 In conclusion, the soda ash producers

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of southwest Wyoming want to commend MSHA for  
2 reopening the record. As publicly stated here  
3 today in our comments, we fully endorse the  
4 concept of providing the necessary information to  
5 our employees regarding the hazards of the  
6 chemicals they use or may come in contact with.  
7 We firmly believe that a workforce educated in  
8 the hazards of their workplace tend to develop  
9 safe work habits that enable us to safely produce  
10 our products.

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

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

23 KENT ADAMSON: If you're going to  
24 incorporate by reference, I think you would need  
25 something that has gone through the rule making

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 process, but I think you ought to allow industry  
2 the opportunity to use whatever references are  
3 available to them to conform with this standard.  
4 Stipulating in the rule making, I think, really  
5 limits what companies can do. Now, most  
6 companies will probably go beyond that, and  
7 they'll learn and study and get all the  
8 information that they can, but by incorporating  
9 it in the documents by reference organizations  
10 such as ACGIH have a lot of internal problems.

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

20 MR. NICHOLS: Any questions of Kent?

21 MS. HUTCHISON: Part of the purpose  
22 of the lists in the hazard communication rule is  
23 coordination of identifying hazards, and there  
24 are, as you know, a lot of different information  
25 out there, and right now there's a great effort

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 at global harmonization trying to determine  
2 different categories for hazards, you know,  
3 what's toxic, what's highly toxic, what's  
4 carcinogenic, what's probably carcinogenic or may  
5 be carcinogenic, so there is a lot of information  
6 out there. How would allowing each individual  
7 mine operator to do his own research and come up  
8 with whatever he felt enhance communication of  
9 hazards.

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

15 And from a legal standpoint, MSDSs  
16 were great when they first started. They were  
17 simple and had the intent of providing what  
18 you're trying to get, until the lawyers got  
19 involved and required boilerplate statements and  
20 everything, and they became a very technical,  
21 legal document. So for a company to provide this  
22 document to downstream users, who in turn are  
23 going to use it to protect the safety and health  
24 of their workers and there's a potential for  
25 backlash of litigation, I guarantee you that most

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 companies are going to spend their resources and  
2 use the most credible and scientific evidence  
3 there is to produce these MSDSs. I don't think  
4 they're going to arbitrarily say, Well, we don't  
5 think it's hazardous, or not. The legal risks  
6 are far too great.

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

14 Case in point, trona. Had we not  
15 gone to the expense of defending our product,  
16 defending our workers against unscientifically  
17 founded rule making from -- or not rule making  
18 but from ACGIH passing their TLV, our product  
19 would be deemed hazardous, and it's not, and  
20 ACGIH clearly stated in their settlement letter  
21 that they did it prematurely and it was not based  
22 on sound science. So there you have a chance  
23 where we would have to do all this based on an  
24 error from these agencies, and that's why we  
25 propose that you will allow companies to use

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that.

2 If you do an investigation and come  
3 in and say, What were the basis that you used to  
4 develop your MSDS, then you could use your  
5 enforcement if a company said, Well, just because  
6 Joe Smith down the street said it was or wasn't.  
7 Then is when they can demonstrate, Hey, we used  
8 OSHA PELs, we used other evidence, we used a  
9 study by so and so at the University of Alabama,  
10 or whatever. If they can prove to you what their  
11 decision logic was, that's what you should use,  
12 not just saying, Hey, use ACGIH or these folks.  
13 To me, by allowing companies to do more research  
14 on it actually ensures a greater accuracy and  
15 provides more information than just saying it's  
16 hazardous because it's on this list.

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

20 KENT ADAMSON: It does, but by  
21 incorporating by reference, again, ACGIH and  
22 IARC, that have a lot of inherent and intrinsic  
23 problems in their organizations right now, I  
24 think there's a mistake for MSHA to rely on them  
25 when their information that they are providing is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 suspect; and for MSHA to rely on that as part of  
2 enforcement activity clearly opens the gate for  
3 questions there when you don't need to, when MSHA  
4 can say, Hey, use the best available credible  
5 scientific information that is out there to make  
6 this determination, but don't have to incorporate  
7 anything by reference, I think is best for  
8 industry and surely for your agency.

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

12 KENT ADAMSON: Thank you.

13 MR. NICHOLS: Thank you.

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

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

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

22 TAIN CURTIS: My name is Tain Curtis,  
23 T-a-i-n C-u-r-t-i-s, and I represent the members  
24 of Local 1769 at the Deer Creek mine. We have  
25 280 active members now. I'm not an industrial

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       hygienist and I'm not an attorney. I'm a coal  
2       miner, so my views will be a little bit different  
3       from those expressed.

4               We feel that OSHA has had this rule  
5       in effect for several years and that we would  
6       like to have that same opportunity and same  
7       protections offered by that rule to the miners.  
8       In the mining industry in today's economy,  
9       technology and the use of solvents and chemical  
10      agents is on the rise in the mining industry to  
11      help save time, money, and increase productivity.

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

20             Several times equipment is sent out  
21      for repair, and cooling jets and other means are  
22      put in it to keep the equipment from freezing up,  
23      and caustic things are used to help clean them  
24      out. When they're brought back to the mine,  
25      there's no labeling or we're unaware of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 substances inside this equipment. We don't know  
2 about it until it's hooked up to water and  
3 ejected into the atmosphere that we breathe.  
4 Those instances need to be addressed. Miners  
5 need to be more educated on the chemicals that  
6 are used. We have seen chemicals brought up in  
7 the form of spray cans that pose a hazard to  
8 individuals with heart problems. Without any  
9 knowledge to that, it could be used and  
10 complicate the problems.

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

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

21 As we enter the new millennium,  
22 mining has to update and protect the best assets  
23 they have, and that is that of the miners. The  
24 best way we can do to protect the environment  
25 would be to educate miners on these substances

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 and how and what should be done with them and how  
2 they should be handled and how they should be  
3 disposed of.

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

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

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

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

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

23 MR. NICHOLS: We could hire you,  
24 then.

25 I guess not. Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   The next presenter will be Jim  
2 Stevenson, also with the UMWA.

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

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

11                  For many years miners have demanded  
12 that the Federal Government, through their rule  
13 making responsibilities under the Mine Act,  
14 implement a basic human rights standard which  
15 would prevent mine operators from dumping  
16 chemical and hazardous agents in their workplace,  
17 many of which are confined spaces, without  
18 identifying the chemical or harmful agent,  
19 without notice to the miners of the hazards,  
20 without training miners to protect them from the  
21 hazards, and without applying and providing  
22 proper protection to prevent injury, illness or  
23 death. Although such human right protections  
24 have been given to most of the workers in the  
25 United States, miners have been neglected.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Through botched and/or inept rule making and  
2 administrations of the Mine Act, MSHA has for  
3 years denied miners of these basic protections.

4 Miners' demands for these federal  
5 standards has stretched back over two decades.  
6 After considerable debate and discussion, the  
7 Federal Government finally proceeded through the  
8 rule making process concluding with public  
9 comments and hearings on a hazard communication  
10 rule on January 31st, 1992. Instead of issuing a  
11 final rule in '92 as prescribed by the Mine Act,  
12 the agency just let in languish, leaving miners  
13 exposed to hazardous chemicals.

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

22 This was, however, short lived. On  
23 October 28th, 2001, nearly a year following  
24 implementation of the rule and on the eve of its  
25 effective date, MSHA again thwarted that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 protection for miners. In a Federal Register  
2 notice of the Agency, the MSHA notice solicited  
3 comments on any issue relevant to the rule  
4 making. By doing so it broadened the debate to  
5 allow change in the entire rule. Given the fact  
6 that this rule has been deliberated and debated  
7 for 14 years and was reopened for public comment  
8 and hearings twice since a full public hearing  
9 and comment period in 1992, it was outrageous to  
10 halt the rule developed, over 14 years old, and  
11 reopen the rule making to unlimited comment and  
12 debate again before any rule goes into effect.

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

23 During the last comment period on the  
24 HazCom rule, miners' representatives identified  
25 several improvements that should be made in any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 changes to HazCom rule should they be made.  
2 While MSHA announced they were reopening the  
3 comments on HazCom rule and extensively addressed  
4 specific issues raised by mine operators, the  
5 agency virtually ignored recommended changes made  
6 on behalf of the miners. Those improvements  
7 recommended included, but not limited to, the  
8 following: Enhance the rules' effectiveness by  
9 making it less performance base and more  
10 enforcement oriented; requiring regulations of  
11 chemical use at the mine (the rule does not  
12 currently do that); prohibit the use of certain  
13 chemicals at the mine when practical, including  
14 substitutes where possible; redefine hazardous  
15 chemicals in the rule to be less confusing --  
16 current definition is circular logic: "A  
17 hazardous chemical is one that is a physical or  
18 health hazard." This definition allows too much  
19 latitude to the operators when determining what  
20 is or is not hazardous. There must be some  
21 plausible way to determine the hazardous  
22 (non-hazardous/hazardous is based on what  
23 scientific determination); recognize that  
24 chemicals by their very nature are hazardous,  
25 that the dose of the substance determines its

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 professional to cure or cause death; remove any  
2 language that allows operators to make  
3 determinations on what is or is not hazardous;  
4 require operators to receive training on  
5 hazardous chemicals present before allowing them  
6 to train miners. They are no aware aware of the  
7 problems that exist at this point than the miners  
8 are; remove the language that allows operators to  
9 classify only those chemicals used under normal  
10 circumstances or foreseeable emergencies as  
11 hazardous; hold the operator or chemical  
12 manufacturer/supplier responsible for inaccurate  
13 labeling of chemicals; hold the operator or  
14 chemical manufacturer/supplier responsible for  
15 inaccurate MSDS's; place prescriptive training  
16 requirements on the rule; require standardized  
17 language be used on all labels in MSDS's;  
18 eliminate reference to non-routine tasks in the  
19 rule. Miners need to be aware of presence of  
20 chemicals at the mine regardless of the frequency  
21 of their use; require labeling and training on  
22 consumer products regardless of determinations  
23 made by the Consumer Products Safety Council.  
24 Those are currently exempt under the rule,  
25 despite the fact the product may be used more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 frequently and in greater concentrations than  
2 approved by the CPSC; remove any obstacles in the  
3 rule that access to trade secrets. Rule would  
4 require extraordinary measures be taken by  
5 miners, physicians, health care professionals to  
6 access necessary information to treat exposed  
7 miners. This may be as many as 14 different  
8 processes and include the FMSHRC; include the  
9 biohazards under the scope of the rule.  
10 Reclamation workers currently work with these  
11 hazards and need to be protected.

12 Training should include an  
13 explanation of where and how a chemical is being  
14 used and what precautions the employer has  
15 adapted to limited exposure; eliminate all  
16 references to label alternatives. All chemicals  
17 should be labeled; require labeling of all  
18 chemical containers, including temporary portable  
19 containers; require all chemicals existing at the  
20 mine be labeled and accurate and MSDSs be  
21 provided to downstream customers; labels and  
22 MSDSs for chemicals produced at the mine should  
23 be updated immediately when the contents change.  
24 The current rule allows a three-month delay from  
25 the time the operator becomes aware; require

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 specific chemical information be included on any  
2 label or MSDS. Currently generic information  
3 such as petroleum distillates is acceptable.  
4 This is too broad and could include thousands of  
5 chemicals.

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

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

22           The agency's decision to block  
23 implementation of the interim final HazCom rule  
24 while they reopen the rule to more debate  
25 demonstrates lack of concern for the dangers

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 facing miners to date. MSHA has for far too long  
2 turned a blind eye to its congressional mandate  
3 to protect miners and has become an advocate for  
4 mine operators.

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

15 MSHA's attempts to justify their  
16 action by claiming, "This decision will assure  
17 that operators have sufficient time to determine  
18 what is necessary for compliance." What have  
19 they been doing since the record closed in  
20 January of 1992 and again in June of 1999? Since  
21 October 2000 the agency has had a draft  
22 compliance manual available on its web page and  
23 invited the regulated community to comment on it.  
24 Finally, what other efforts has the agency made  
25 to ensure compliance since November 2000?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           It is incomprehensible to believe  
2 mine operators are confused about compliance at  
3 this point. Rather, faced with the  
4 implementation of the rule they have resisted at  
5 every turn they have successfully leveraged the  
6 agency for further delay. There is an  
7 apprehension that the current administration  
8 caved into the industry's lobbying pressures at  
9 the expense of the miners' health and safety.  
10 MSHA has not offered a single compelling reason  
11 why the agency did this. Miners have waited long  
12 enough. It's time they received the benefits of  
13 HazCom.

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

23           The Union recommends its changes be  
24 made to the interim final rule which recognize  
25 significant hazards chemicals posed in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 workplace. MSHA must also realize the use of  
2 certain chemicals needs to be restricted or  
3 prohibited. Considering the history of the  
4 industry, self-regulation on such an important  
5 matter is not advisable. The agency must take a  
6 proactive stance in this instance and issue  
7 chemical use guidelines.

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

22           Consequently, the Union recommends  
23 all chemicals be listed as a hazardous substance  
24 for the purpose of this rule and that mine  
25 operators be required to make MSDS available to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 all miners upon request. Finally, we recommend  
2 that the HazCom program implemented by operators  
3 inform miners of how and where chemicals are used  
4 and what plan the operator has in place to limit  
5 exposure.

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

25 There is also a need for the UMWA to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

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

17 MSHA's attempt to limit this  
18 possibility by suggesting chemicals transferred  
19 to an unlabeled, temporary portable container be  
20 utilized by that miner and left empty at the end  
21 of the shift does not adequately address the  
22 problem. The previous comments submitted by the  
23 Union regarding this matter still apply and are  
24 restated here. To assume that a miner who has  
25 transferred a chemical from a labeled drum into a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 non-labeled, portable container will be able to  
2 guarantee it will remain with them at all times  
3 is ridiculous. Clearly there is a  
4 misunderstanding of the normal work routine of  
5 miners on the part of MSHA. Miners are  
6 frequently called away from assignment to perform  
7 more pressing tasks. The Agency needs to offer  
8 the simplest solution to this problem. For the  
9 safety of miners, containers of any size,  
10 including those used to transport hazardous  
11 chemicals, shall be labeled appropriately.

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

24           The Union has stressed previously  
25 that a persistent problem with MSDSs is that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 information included is insufficiently specific.  
2 Literally thousands of chemicals fall under  
3 general categories, such as petroleum  
4 distillates. Providing this kind of generic or  
5 catch-all language may be accurate in a general  
6 sense but may be useless in a specific case at  
7 the mine. Since MSHA stated its intent to  
8 protect miners from hazards of chemical exposure,  
9 the union expects that protection to be specific  
10 in description and enforcement. The union  
11 recommends the agency rejects references to all  
12 general categories and requires specific chemical  
13 information be included on all MSDSs.

14 The union must also take exception to  
15 the agency's position on the accuracy of MSDSs.  
16 Just as noted previously regarding labeling, MSHA  
17 holds no one accountable for the accuracy of data  
18 contained on the MSDSs. Based on the current  
19 format of the rule, inaccurate MSDSs carry no  
20 automatic penalty for either chemical supplier or  
21 operator. This fact is true even if the parties  
22 are aware the information is inaccurate. This is  
23 unacceptable. One of these two entities must be  
24 required to ensure miners are informed of what  
25 they are working with. The UMWA would suggest

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 regulatory enforcement be extended by the agency  
2 to the chemical manufacturer or supplier to  
3 ensure accurate MSDSs. Absent that authority,  
4 MSHA must hold the operator responsible for MSDS  
5 inaccuracies.

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

24 The Union strongly objects to the  
25 current structure of the rule as written under

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Section 47.45, subsection (a) that requires the  
2 operator to notify the miner at least three  
3 months before disposing of MSDSs. This language  
4 coupled with its explanation, which states the  
5 intent of the requirement to notify miners prior  
6 to the disposing of MSDS, is to ensure the miner  
7 had an opportunity to request a copy. The miner  
8 could then retain this information for future  
9 reference, and you would not have to maintain the  
10 MSDS for an extended period of time. This is  
11 absolutely unacceptable. The miner should not be  
12 responsible for retaining information regarding  
13 any chemical their employer purchased for use at  
14 the operation. It is fundamentally wrong to  
15 require the miner, who may have been exposed to  
16 hundred of chemicals during the course of their  
17 career, to be responsible for retention of this  
18 information.

19 The UMWA is disappointed that the  
20 agency has, under the guise of performance-based,  
21 plain English format, shifted a responsibility of  
22 this magnitude from the operator, where it truly  
23 belongs, to the individual miner. The union must  
24 demand that the party who exercised its authority  
25 to purchase substance for use at the operation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 assume the responsibility for their action and be  
2 required to maintain adequate and complete  
3 records of all chemicals for an appropriate  
4 length of time. The union would recommend  
5 operations be required to list all chemicals when  
6 they arrive on mine property and they obtain an  
7 accurate MSDS before any hazardous substance is  
8 used at the mine.

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

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

20 Third, the agency, in the current  
21 rule making process, ignored concerns and  
22 recommendations miners' representatives filed as  
23 part of the same record the operator concerns and  
24 recommendations were contained in. The agency  
25 actions has left the entire process suspect.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   If MSHA moves forward with the  
2                   current reopening of the record on October 2000  
3                   HazCom rule which they have sought comment on,  
4                   any issue relevant to rule making as announced in  
5                   the August 28th, 2001 Federal Register, they must  
6                   consider the comments filed by miners'  
7                   representatives during the October through  
8                   December 2000 comment on the final interim rule  
9                   as they did for mining operators and mining  
10                  association. To do otherwise would destroy the  
11                  public integrity and credibility of the federal  
12                  rule making process. After all the HazCom rule  
13                  is about protecting miners from the hazard of  
14                  harmful chemicals in the workplace, not the  
15                  convenience of the mine operators.

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

23                  Miners in this country have been  
24                  deprived of this necessary protection from the  
25                  introduction and proper use of hazardous

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 chemicals and compounds in their workplace longer  
2 than any other workers. The Federal Government  
3 should not have blocked the implementation of the  
4 October 3, 2001 rule as they did August 28th,  
5 2001 Federal Register notice. The UMWA  
6 officially opposes this action.

7 That's all I have.

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

11 Is that right?

12 MS. HUTCHISON: Yes.

13 MR. NICHOLS: Any questions for Jim?

14 Thanks Jim.

15 JIM STEVENSON: Thank you.

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

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

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

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 your introduction.

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

24 The other one is the Colorado School  
25 Mines Joint Industry Labor Academic Seminar just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 recently is looking at training. That's all that  
2 was there, is the side that labor had of the --  
3 they should have immediate access to all rules  
4 and regulations. That is something we fully  
5 agree with, and I think that committee or that  
6 outcome of that was making web-based programs,  
7 some that's very critical that we train all  
8 miners who know how to use the material that's on  
9 the web bases.

10 When you look at that, how that comes  
11 to these rules, is the MSDS sheets we keep  
12 hearing about, it's pretty much our feeling that  
13 in the different uses of those that MSHA should  
14 be the keeper of that database for several  
15 reasons. One, there has been some comments at  
16 earlier meetings -- and I think it was kind of  
17 said by the previous speaker -- that the  
18 long-term effects of who is going to keep these.  
19 In one of the previous meetings I know it's been  
20 told about 30 years retention, and I think if you  
21 went back in our industry 30 years ago and looked  
22 at what companies, operators, mines were in  
23 existence, to say would those be available from  
24 those operators or even entities, that I think  
25 because of that long-term potential that MSHA

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 could be a reasonable source and a good aid to  
2 every party involved in mining to be the  
3 retention of the MSDS sheets.

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

21 The other concern we have of the  
22 compliance side is the definition of "work area."  
23 You can read work area as being any chemical in  
24 where a person is going to work or about. I'm  
25 reading it right out of the register. It's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 "anyplace in or about a mine where a miner  
2 works." If you determine hazardous chemicals  
3 that are being used in a certain part of the  
4 mine -- and there's a simpler thing to us as a  
5 work area in an underground mine. We would take  
6 like a working section, anything by the  
7 cross-cut. If you took the chemicals that were  
8 on there -- and I'll use an example of  
9 polyurethane foam -- a certain select group would  
10 be spraying in a controlled area, and technically  
11 that chemical is in the work area of every miner  
12 that may come into that section, so you could be  
13 talking about a chemical that maybe only six  
14 people use total and have to train an entire mine  
15 on that chemical, so some wording could be added  
16 in there that right at the site application or,  
17 as it was said, people down wind. But the people  
18 that are applying chemicals can also be held  
19 responsible for their area of responsibility, and  
20 even though they may be using a hazardous  
21 chemical they can so be trained to stop or  
22 caution people that would enter their specific  
23 work area.

24 The other comment I would like to say  
25 is just on training in general right now, is the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 thorough training to get each person to  
2 understand the hazards of hazardous chemicals, to  
3 try to train each miner on each product that  
4 could possibly be in their work area on a  
5 one-time basis and then doing it yearly, the  
6 retention is very questionable. I think putting  
7 together a good training program, an in-depth  
8 training program that teaches every miner how to  
9 use an MSDS sheet, I mean in a thorough way so  
10 that as the exposure or as the task came up they  
11 would be very knowledgeable in knowing what they  
12 should get out of an MSDS sheet.

13 I'm afraid with all the training we  
14 have going on right now, just what we're faced  
15 with at an individual mine -- we have diesel  
16 particulate matter training, hazard communication  
17 training, then we have noise hearing conservation  
18 training, annual retraining. Plus I know some of  
19 the mines speaking here today are very proactive.  
20 We have mine rescue fire brigades, EMTs. When we  
21 look at all the training that's going on, the  
22 biggest thing is making it effective any more in  
23 getting the critical facts the person needs out  
24 of that training. It's not just doing it. If we  
25 could look as a general of taking training in a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 more proactive approach of combining it to once  
2 each calendar year after it's done, we won't get  
3 into all the massive training requirements we  
4 have right now. As far as administration, we  
5 could do effective training.

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

24 The last comment I would like to do  
25 is look at -- this opportunity to comment on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 these regulations are looking at the implications  
2 of how they could affect our business and how we  
3 can comply before they even went in effect. With  
4 the quantity of regulations the mining industry  
5 is receiving, I don't believe there's any way in  
6 the system where all new regulations are under an  
7 automatic, open review of all parties in one or  
8 two years after they're promulgated. We are  
9 still in the petition process of the first set of  
10 diesel regs and are in the massive process on the  
11 latest diesel particulate rates, that it appears  
12 having an opportunity maybe to reopen the record  
13 after a one-or two-year period because of the  
14 significant impact all these regulations have on  
15 us. We have regulation upon regulation that have  
16 been promulgated on us, and as I think everybody  
17 in this room are highly professional in their  
18 job, that it is stopping from good, professional  
19 implementation of all those regulations, that  
20 some of the burdens that you run into everybody  
21 says, Well, it's just how the regulations are  
22 written. There's nothing we can do about it.  
23 Now, maybe if we can fix the system and all work  
24 together and keep opening these regulations up to  
25 improve them, because I'm sure my opinions of how

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I think we're going to comply with the HazCom are  
2 going to be a lot different one year after  
3 they've been in effect than they are today.

4 I appreciate the opportunity to  
5 comment.

6 MR. NICHOLS: Good. Thanks.

7 Any questions for Link?

8 Thank you.

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

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

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

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

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

22

23

24

25