

UNITED STATES OF AMERICA

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DEPARTMENT OF LABOR

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MINE SAFETY AND HEALTH ADMINISTRATION

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

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THURSDAY, OCTOBER 4, 2001

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The Public Hearing was held at the Radisson Hotel, Heritage Room II, 808 20th Street, South Birmingham, Alabama, at 9:08 a.m. Marvin Nichols, Moderator, presiding.

PANELISTS:

MARVIN NICHOLS, Administrator for
Coal Mine Safety and Health
ROBERT A. THAXTON, Coal Mine Safety and Health
Group
RICHARD FEEHAN, Education Policy and Development
Group
LARRY REYNOLDS, Solicitor's Office
ROBERT STONE, Office of Standards, Regulations
a n d V a r i a n c e s

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I-N-D-E-X

Mork Klinepeter, Safety Director, 21
 A g g r e g i a t e s G r o u p o f
 Florida
 Rock Industries, Incorporated

Ron Millican, Safety and Training 21
 Coordinator, Aggregiates Group of
 Florida Rock Industries, Incorporated

Kelly Bailey, Manager of Occupational 64
 Health for Construction Materials
 Group Operations,
 Vulcan Materials Company

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

(9:08 a.m.)

1
2
3 MODERATOR NICHOLS: Good morning, I'm
4 Marvin Nichols. I'm the Administrator for Coal Mine
5 Safety and Health. Welcome to MSHA's public hearing
6 on our interim final rule for hazard communication.

7 Before we -- before we start the hearing,
8 I would like to observe a moment of silence for those
9 13 heroic miners that lost their lives last week at
10 Jim Walters Number 5 Mine.

11 (A moment of silence observed.)

12 MODERATOR NICHOLS: Thank you very much.

13 Let me introduce the panel, then I have a
14 fairly lengthy opening statement to read into the
15 record, so bear with me. Down at the end is Bob
16 Thaxton. Bob is with the Coal Mine Safety and Health
17 Group in Arlington, Virginia. Richard Feehan, Richard
18 is with the Educational Policy and Development Group
19 in Arlington headquarters. Larry Reynolds with the
20 Solicitor's Office, to my left here, in headquarters.
21 And Robert Stone with the Office of Standards,
22 Regulations and Variances in our headquarters office.

23 Today we're here to listen to your
24 comments on the hazard communication interim final
25 rule which we published on October the 3rd last year.

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1 We're holding this hearing in accordance with Section
2 101 of the Federal Mine Safety and Health Act of 1977.
3 As is our practice, we will conduct the hearing in an
4 informal manner and during the proceeding panel
5 members may ask questions of the presenter.

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

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

21 Background. On November the 2nd, 1987,
22 the United Mineworkers of America and the United
23 Steelworkers of America jointly petitioned MSHA to
24 adopt OSHA's hazard communication standard to both
25 coal and metal and nonmetal mines and propose it for

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1 the mining industry. They based their petition on the
2 need for miners to be better informed about chemical
3 hazards and that miners working at both surface and
4 underground coal and metal and nonmetal mines are
5 exposed to a variety of hazardous chemicals.

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

13 We published a notice of proposed
14 rulemaking on hazard communication on November the
15 2nd, 1990 and held three public hearings in October of
16 1991. The record closed January the 31st, 1992.

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

24 We re-opened the rulemaking record on
25 March 30, 1999, requesting comments on the impact of

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1 the proposed rule on:

2 1, the environment;

3 2, small mines;

4 3, state, local, and tribal governments,

5 and 4, the health and safety of children.

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

10 At that time, we also requested comments
11 on the information and collection and paperwork
12 requirements of certain provisions of the proposal now
13 considered as an information collection burden under
14 the expanded definition of "information" under the
15 Paperwork Reduction Act of 1995.

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

20 On October 3, 2000, we published an
21 interim final rule on hazard communication with an
22 effective date of October 3, 2001. We gave commenters
23 until November 17, 2000, to submit comments. The
24 interim final rule specifically requested comments on:

25 1, the plain language format and the

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1 content of the interim final rule.

2 2, mine operators' experience under the
3 Occupational Safety and Health Administration's Hazard
4 Communication Standard.

5 3, any changes in the mining industry
6 since the publication of the proposed rule.

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

13 We received 22 written comments on the
14 interim final rule and heard testimony from six
15 persons at the public hearing on December 14, 2000.

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

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

9 A number of mine operators and trade
10 associations challenged the hazard communication
11 interim final rule in the U.S. Court of Appeals and
12 the United Mine Workers of America and the United
13 Steelworkers of America have intervened in the
14 litigation.

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

17 1. HAZARD DETERMINATION.

18 The hazard communication interim final
19 rule requires mine operators to identify the chemicals
20 at their mine and determine if they present a physical
21 or health hazard to miners based on the chemical's
22 label and material safety data sheet (MSDS) or on a
23 review of the scientific evidence.

24 Under the interim final rule, for the
25 purposes of hazard communication, MSHA considers a

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1 chemical hazardous and subject to the hazard
2 communication rule if it is listed in any one of the
3 following four recognized authorities or sources:

4 1, Title 30 Code of Federal Regulations
5 (30 CFR) chapter I.

6 2, the American Conference of Governmental
7 Industrial Hygienists (ACGIH), the Threshold Limit
8 Values (TLVs) and Biological Exposure Indices (latest
9 edition).

10 3, the National Toxicology Program, the
11 (NTP), Annual Report On Carcinogens, the latest
12 edition.

13 4, International Agency for Research on
14 Cancer (IARC) Monographs or Supplements.

15 2. THE HAZARD COMMUNICATION PROGRAM.

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

20 1, procedures for implementing hazard
21 communication through labeling, MSDSs, and training of
22 miners;

23 2, a list of the hazardous chemicals known
24 to be present at the mine;

25 3, a description of how mine operators

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1 will inform miners of the chemical hazards present in
2 non-routine tasks and of chemicals in unlabeled pipes
3 and containers.

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

10 3. CONTAINER LABELING.

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

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

24 Chemicals coming onto mine property are
25 almost always labeled. You should not have to re-

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1 label them unless the existing label becomes
2 unreadable.

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

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

10 4. MATERIAL SAFETY DATA SHEET.

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

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

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1 5. HAZCOM TRAINING.

2 The hazard communication interim final
3 rule requires mine operators to establish a training
4 program to ensure that miners understand the hazards
5 of each chemical in their work area, the information
6 on the MSDSs and labels, how to access this
7 information when needed, and what measures they can
8 take to protect themselves from harmful exposure.

9 Under the interim final rule, mine
10 operators have the flexibility of combining the
11 training requirements for hazard communication with
12 the existing Part 46 and Part 48 training. The
13 interim final rule does not require mine operators to
14 have an independent training program separate from
15 Part 46 and Part 48 training.

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

22 6. MAKING HAZCOM INFORMATION AVAILABLE.

23 The hazard communication interim final
24 rule requires mine operators to provide miners, their
25 designated representatives, MSHA, and NIOSH with

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

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

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

13 Comments

14 Now let me share with you our thoughts on
15 some of the comments we've received on the interim
16 final rule.

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 rule.

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

25 The rule specifically deals with chemicals

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1 and chemical exposures. Chemicals may be used in any
2 mine, including those in the aggregate industry.
3 There have been hundreds of chemical burns in the
4 aggregate industry. Chemical burns can occur on any
5 part of the body. Skin burns may require multiple
6 skin grafts and require repeated hospitalization. Eye
7 burns can be serious and result in permanent loss of
8 eyesight.

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

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

16 Third, many of the chemicals used at small
17 mines are not covered by the rule. For example, soaps
18 used for washing hands are cosmetics and are exempt.
19 A can of spray paint is a consumer product and is
20 exempt when used in small quantities intermittently.
21 The length of exposure, as well as the amount, is
22 really the determining factor -- a can of paint only
23 lasts a short time. Glue or adhesives, when used
24 intermittently in small quantities, are exempt.
25 Again, the length of exposure, as well as the amount,

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1 is the determining factor in whether or not a consumer
2 product is exempt.

3 We recognize, however, that not all mines
4 are likely to use a wide range of chemicals. Although
5 we cannot exempt the aggregates industry from hazard
6 communication, as we said, there are steps we can take
7 to minimize the burden of the rule. For example, we
8 intend to make extensive Compliance Assistance Visits
9 and conduct extensive outreach.

10 We also will be publishing a compliance
11 guide to help operators and miners understand the
12 application of the HazCom final rule. We are
13 developing a variety of compliance aids, such as model
14 HazCom programs, a training video for mine operators
15 about determining chemical hazards, and a training
16 video for miners about chemical hazards and reading an
17 MSDS.

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

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1 or better examples in the compliance guide.

2 In the same vein, mine operators may
3 obtain help from organizations that have developed
4 generic guides to meet OSHA's hazard communication
5 standard because HazCom contains the same basic
6 requirements. We will provide links on our website to
7 some organizations which have developed a variety of
8 generic HazCom materials.

9 While it will remain the responsibility of
10 each mine operator to develop and implement a HazCom
11 program and to have MSDSs, to the extent possible, we
12 will help you establish a hazard communication program
13 if requested. We have already taken other steps in
14 revising our interim final rule to make it easier for
15 mine operators to comply without reducing the
16 protections offered by the rule.

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

23 Under Hazard Determination, we may revise
24 the reference to ACGIH, NTP, and IARC from those
25 considered in determining if a chemical is a hazard

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1 and if the chemical is carcinogenic. One option we
2 are considering in determining whether a chemical is
3 a hazard is to refer to the 2001 editions of the ACGIH
4 TLV booklet, IARC, and NTP. In determining whether a
5 chemical is a carcinogen, we are considering referring
6 only to the 2001 editions of NTP and IARC.

7 We had expected the use of the ACGIH, NTP,
8 and IARC lists to reduce the burden on mine operators
9 because mines use relatively few hazardous chemicals
10 for which they would have to develop an MSDS and
11 label. Commenters objected to the use of these lists
12 stating that the organizations which compile them
13 offer no opportunity for public comment; they impose
14 unknown future requirements by citing the latest
15 edition; and they violate regulations governing
16 incorporation-by-reference. We are open to
17 considering alternatives where the impact of the
18 alternative would not reduce protection afforded
19 miners by the interim final rule.

20 Concerning labels and MSDSs, commenters
21 requested additional language to clarify that the
22 designated responsible person mentioned on the labels
23 and MSDSs can be the mine operator. Accordingly, we
24 are considering changing the provisions to read the
25 name, address, and telephone number of the operator or

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1 a responsible person who can provide the information.

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

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

15 In response to comments concerning hazard
16 communication training, we are considering changing
17 the language from requiring the operator to train the
18 miner whenever introducing a new hazardous chemical
19 into the miners' work area, to requiring training when
20 the operator introduces a new chemical hazard into the
21 miners' work area. This change would clarify MSHA's
22 intent that when a new chemical is introduced
23 additional training is required only if the hazard
24 changes. This is the intent as discussed in the
25 preamble to the interim final rule.

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

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

15 1, the risks associated with exposure to
16 hazardous chemicals.

17 2, the safety measures implemented at the
18 mine to control exposures.

19 3, safe work practices.

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

23 We will publish our response to the
24 written comments, including those comments received
25 today at this hearing, in the preamble to the hazard

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1 communication final rule. We will consider all
2 comments contained in the rulemaking record, from the
3 publication of the advanced notice of proposed
4 rulemaking on March 30, 1988, through the close of the
5 record on October 17, 2001, in the development of the
6 final rule.

7 You may submit written comments to me
8 during the hearing or send them to the address listed
9 in the hearing notice. We will also accept additional
10 written comments and other appropriate data on this
11 final rulemaking from any interested party, including
12 those who do not present oral statements. All
13 comments and data submitted to MSHA, including that
14 submitted to me today, will be included in the
15 rulemaking record. The record will remain open until
16 October 17, 2001, for the submission of post-hearing
17 comments.

18 Okay, we have an attendance sheet in the
19 back where Cindy is. Be sure and sign that. If you
20 want to speak, we have a speaker's sheet to be signed.
21 We are scheduled to go until five o'clock. Unless we
22 get a big inrush here, I don't think we'll be here
23 that long, but why don't would get started.

24 Our first presenter is Mark Klinepeter
25 with Florida Rock Industries.

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1 MR. KLINEPETER: Good morning. My name is
2 Mark Klinepeter and I'm a certified mine safety
3 professional and safety director for the Aggregiates
4 Group of Florida Rock Industries, Incorporated, which
5 is based in Jacksonville, Florida. Accompanying me
6 today is Ron Millican who is our safety and training
7 coordinator out of our Georgia Aggregiates Division.

8 I too would also like to express my
9 condolences to the families, friends and coworkers of
10 the hard working miners who recently lost their lives
11 in the mine explosion here in Alabama.

12 Yesterday, I read with interest the
13 testimonies that were provided at the public hearing
14 in Beckley, West Virginia. I was amazed and saddened
15 to read of the purported illnesses and injuries that
16 in many cases were caused by by prolonged contact with
17 hazardous chemicals.

18 I found myself wondering where the value
19 of safety existed in these organizations and in the
20 regulatory agencies who choose a path of promulgating
21 bureaucratic overkill instead of using the many
22 enforcement tools currently at their disposal. Values
23 of safety need to become the values of the
24 organization and the work force. The safety
25 professional needs to recognize that their job is to

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1 develop commitment from upper management, middle
2 managers, the staff and individual workers.
3 Commitment is useless unless it turns into action.

4 Florida Rock has had a hazard
5 communication program in place for their Aggregates
6 operation since 1989. Each mining location maintains
7 an MSDS book readily available to all of its
8 employees. An alphabetical list of all hazardous
9 substances is kept in front of the MSDS book showing
10 the common name, the chemical name, the chemical
11 abstract system number and percentage of
12 concentration, along with quantity regularly on hand
13 and the general location of the substance in the mine.
14 Miners do need and have the right to know -- have the
15 right to be made aware of the presence of chemicals at
16 the mine regardless of the frequency of use. In
17 addition, training is provided to the miners on
18 right-to-know MSDS sheets and hazardous substances via
19 new-miner task and annual fresher training. Location
20 managers are responsible for making sure that
21 containers of hazardous substances are properly
22 labeled.

23 Finally, our safety staff is tasked to
24 perform an annual audit at each location to ensure
25 compliance with company policy. Let me repeat,

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1 company policy, which is augmented, supplemented and
2 complimented by existing MSHA regulations and right-
3 to-know laws which are on the books in 43 states.

4 Can we make it work without government
5 adding another layer of bureaucratic enforcement?
6 Just yesterday, I received a supervisor's report on an
7 incident that occurred earlier in the morning. A
8 young employee of a distribution terminal in Florida
9 had splashed a mixture of phosphoric acid and water
10 into his face and eyes when he attempted to clean a
11 haul truck with a pressure washer in preparation for
12 painting. The haul truck was recently transferred to
13 this location from another site, so this was not a
14 common practice utilized by the location or condoned
15 by our safety trainer. Fortunately the employee
16 escaped injury due to the quick thinking of his fellow
17 employees, who immediately pulled the MSDS and
18 followed the recommended first aid procedures.

19 In the report, the supervisor noted that
20 the employee was wearing safety glasses but had not
21 thought of using a face shield together with those
22 glasses. Guess what the supervisor recommended to
23 prevent reoccurrence? I'll give you a hint. The
24 standard -- or the enforceable standard can be found
25 in CFR 30, Part 56.

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1 MSHA's interim final rule is characterized
2 by the agency as both a safety standard and a health
3 standard promulgated under the authority of Section
4 101 of the Mine Act. But MSHA has clearly failed to
5 demonstrate the need for a HazCom standard by
6 purposeful omission of relevant statistical trends
7 which actually show decreasing injuries and illnesses
8 due to chemical hazards in mining. MSHA has
9 sidestepped the benefit question.

10 MSHA has also failed to distinguish those
11 illnesses and injuries which would have been prevented
12 if existing MSHA regulations such as Part 46 training,
13 labeling or other use of appropriate personal
14 protective equipment had not been violated. Both of
15 the MSHA examples used in the interim final rule do,
16 in fact, relate to violations of existing standards.

17 In addition, it appears that MSHA is
18 unable to provide accurate data on how many mines
19 already have an effective HazCom program in place, not
20 how many injuries or illnesses have actually been
21 prevented by such programs alone. In 1986 MSHA said
22 a HazCom rule was unnecessary because it's existing
23 regulations offered sufficient protection to miners on
24 chemical safety and health. Those same regulations
25 remain in force in effect today.

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1 So you ask where's the burden? By your
2 opening comments you are in fact setting a precedent
3 for inconsistent enforcement. For example, you state
4 that a can of spray paint is a consumer product and is
5 exempt when used in small quantities intermittently.
6 What will small quantities intermittently mean to an
7 inspector from the Northeast District versus an
8 inspector from the Southeast District? Can we expect
9 that the agency will allocate the training resources
10 necessary for its inspectors to ensure consistent
11 interpretations unlike the orientation that was
12 afforded for Part 46 CAB inspections? The catch
13 phrase is small quantities, length of exposure and
14 used intermittently is by design fraught with
15 ambiguity.

16 Safety is the control of recognized
17 hazards to obtain acceptable levels of risk. It
18 requires that we recognize hazards, understand their
19 risk, control them and enforce safety solutions.
20 Safety is not only a moral obligation, but is part of
21 the operations commitment to make a profit. Accidents
22 are expensive. The preamble to the interim final rule
23 has failed to quantify a controllable action that
24 justifies the risk.

25 Why do we need another standard to tell us

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1 what to do when there are laws that already do that?
2 MSHA can and should target its energies towards
3 quantifying the real hazards which cause the greatest
4 amount of risk. You know what they are, but you
5 choose to push your inspectors more and more towards
6 the office file cabinet instead of having them observe
7 unsafe work practices which directly leads to
8 accidents and illnesses. Make no mistake, this is an
9 administrative standard that actually has very little
10 to do with whether or not people are working safely.
11 It is redundant, unnecessary, a classic example of
12 command and control management. The surprise is that
13 the agency still believes that situational leadership
14 is something that you do to people instead of
15 something that you do with people.

16 Total quality management is about changing
17 thought processes. Mr. Zurinsky (ph) has given
18 industry a much needed perspective of measureable and
19 specific targets. Do we now really need a standard
20 where a deviation in record keeping would be a
21 violation of the law? Is that a measureable result to
22 achieve the Assistant Secretary's fatality and
23 accident reduction targets? If you believe that
24 safety is first, I submit that you're wrong. People
25 are first. Safety is a value. If you walk by someone

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1 who is not wearing eye protection and handling a
2 hazardous substance, you have just witnessed an
3 incident. Wouldn't it be a shame if you missed the
4 opportunity to correct the unsafe act? Put your
5 resources where they will really have an impact.

6 You claim that the hazard communication
7 interim final rule is an information and training
8 standard. I believe that OSHA's enforcement history
9 demonstrates otherwise. It is an overwhelming
10 administrative burden and an easy target for paperwork
11 violations. Why should we believe that history won't
12 repeat itself on the MSHA side of the fence? It seems
13 like this rule is just putting forth an opportunity to
14 write dual citations perhaps for the same performance
15 violation.

16 In closing, I would like to remind the
17 audience that the Assistant Secretary of Labor for
18 Mine Safety and Health said in his remarks to the
19 annual meeting of the Kentucky Mining Institute on
20 August 24th of this year, I quote, "On the health
21 side, the side we often forget, we set specific
22 performance goals as well.

23 Our objectives are" -- and I'm
24 paraphrasing -- number 1, to reduce the percentage of
25 respirable dust samples. Number 2, to reduce the

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1 percentage of silica samples and number 3, to reduce
2 the percentage of noise exposures, all at a five
3 percent reduction per year. It is curious that he
4 does not set a target for reducing chemical exposures;
5 however, we believe that these are targets that we can
6 all embrace and measures for a quantifiable return on
7 investment.

8 Thank you.

9 MODERATOR NICHOLS: Thank you. Under your
10 current training program, do miners have the right to
11 copies of the MSDS sheets?

12 MR. KLINEPETER: Yes, they do. We combine
13 a system both using -- and more and more as technology
14 allows us to, a system of using computers to store our
15 MSDS information, along with bound notebooks that are
16 available and readily accessible to all of our
17 employees.

18 MODERATOR NICHOLS: Anybody else got any
19 questions?

20 MR. REYNOLDS: I have one question.

21 MODERATOR NICHOLS: Go ahead.

22 MR. REYNOLDS: Mark, would your program
23 comply with what we have in the standard here? I mean
24 is there anything you have to do to comply with the
25 standard? It sounds like you already do everything.

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1 MR. KLINEPETER: I do not believe that at
2 the current time our program is probably 100 percent
3 compliant. I believe that's going to take additional
4 research and time on my part, and Ron's part, to
5 determine if we are in fact completely compliant. I'd
6 like to point out -- and I think it's very relevant to
7 point out again what an inspector in one district says
8 from another inspector in another district can be two
9 different interpretations. We saw that to be true
10 under the CAB inspection program for Part 46. So if
11 it -- and we cover three different districts, Florida
12 Rock Industries. So we may well see an inspector who
13 believes that we have an element missing in that
14 program, whereas an inspector in another district says
15 its very good.

16 MODERATOR NICHOLS: Now how did you
17 determine this is a health and safety standard rather
18 than an information standard?

19 MR. KLINEPETER: How did I determine?

20 MODERATOR NICHOLS: Yeah. I think you
21 said you...

22 MR. KLINEPETER: I believe I stated that
23 MSHA claims that it's a health and safety standard.

24 MODERATOR NICHOLS: I believe we claim
25 it's an information standard.

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1 MR. KLINEPETER: We believe that it's an
2 administrative standard.

3 MODERATOR NICHOLS: Anybody else?

4 MR. FEEHAN: I have a question. I
5 realize, Mark -- thank you, number one, for your
6 comments.

7 MR. KLINEPETER: Thank you.

8 MR. FEEHAN: You had an accident
9 yesterday. You mentioned an employee who was -- could
10 you tell us a little bit more about what was
11 happening? What was he using for the solution? He
12 was using some solvent to try to dissolve--

13 MR. KLINEPETER: Yes, he was using a
14 mixture of -- let me refer back to my notes here very
15 quickly. A mixture of phosphoric acid and water
16 utilizing a pressure washer to clean a haul truck.
17 This was a 20-year-old employee.

18 MR. FEEHAN: He had been there 20 years?

19 MR. KLINEPETER: Twenty years old. Twenty
20 years of age. He had been with the company
21 approximate two and a half years, two to two and a
22 half years. This is not a standard practice that we
23 recommend. Certainly using a pressure washer, as you
24 can imagine, and mixing that type of solution is
25 absolutely a recipe for disaster. What happened was,

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1 they had transferred a haul-truck -- which normally
2 they have not used a haul truck at that location
3 previously. This is a distribution terminal versus an
4 actual mine site. So they brought an old haul-truck
5 in from another location and they had the idea they
6 were going to clean the truck up and paint it.

7 MR. FEEHAN: Who was that, the person --
8 just the employee took it on himself to clean it up
9 and paint it?

10 MR. KLINEPETER: I can't -- I can't
11 factually answer that without -- without additional
12 investigation. I just received this report yesterday
13 afternoon. But I would assume, to some degree, he was
14 under the direction of his supervisor to clean that
15 haul-truck and his supervisor, in all likihood, was
16 probably not aware of the methodology that he set
17 about to clean it.

18 MR. FEEHAN: But you have phosphoric acid
19 at the property to use as a solvent on this?

20 MR. KLINEPETER: At that location, I would
21 -- and again, I'm assuming, so I'm not speaking in
22 factual tones.

23 MR. FEEHAN: No, I'm -- I'm sorry to
24 really kind of press you on it, because I realize --

25 MR. KLINEPETER: I appreciate that. I

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1 would assume that they probably had recently purchased
2 it, if not that day, because running a haul-truck at
3 that location is not a standard practice.

4 MR. FEEHAN: I guess what I'm trying to
5 figure out is why wasn't the employee trained in the
6 hazards of the thing if your program is covering
7 chemical hazards? You know, if you feel that you have
8 a program that's mainly in compliance?

9 MR. KLINEPETER: I think the employee was,
10 in fact, trained in the hazards of using chemicals.
11 If he was trained specifically in the hazard of that
12 given chemical, I do not know again without
13 investigating. But we have a regular schedule of
14 training via new-miner tasks and annual fresher
15 training where we regularly teach our employees
16 methods of interpreting MSDS sheets. We also task our
17 supervisors to train their employees on the chemicals
18 that they use on their site. That they had the
19 wherewithal to know where to go to consult when the
20 incident occurred and they knew how to read the MSDS
21 and they knew the proper actions to take to avoid an
22 incident becoming a serious injury.

23 MR. FEEHAN: Let me ask you -- you and
24 Ron. There's a fairly -- there's a very common
25 maintenance task of changing oil in equipment. There

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1 are lots of haul-trucks and front end loaders and
2 equipment that needs to have its oil changed. Your
3 mechanics do that work or your lub people do that
4 work?

5 MR. KLINEPETER: Both.

6 MR. FEEHAN: Both. Now the MSDSs for used
7 oil indicate that there are studies that have shown
8 carcinogenic effects from used oil in the -- there
9 have been animal studies showing a carcinogenic
10 effect, that it can cause cancer, or there's a
11 potential to cause cancer. Is that something that you
12 train your lub people on, or your mechanics on, the
13 people who do that oil change?

14 MR. KLINEPETER: In terms of handling the
15 specific chemical, yes, we train our people on how to
16 handle chemicals or lubricants in a safe -- in a safe
17 manner.

18 MR. FEEHAN: Are they warned about the --
19 that's there's a potential?

20 MR. KLINEPETER: That there's a -- I
21 wouldn't go--

22 MR. FEEHAN: A carcinogenic potential.

23 MR. KLINEPETER: I wouldn't go as far as
24 to say they are -- they are directly warned that
25 there's a carcinogenic potential. They are warned

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1 that there's always a risk associated with handling
2 anything that contains a hazardous substance.

3 MR. MILLICAN: If that risk is contained
4 in the MSDS -- if it's identified in the MSDS, yes,
5 they've been trained on that. If it isn't identified
6 and they don't have some outside source of information
7 in regard to that, then they would not be trained on
8 that particular issue.

9 MR. FEEHAN: How do they go about -- how
10 are your MSDSs reviewed? Has someone actually
11 reviewed the MSDS for oil -- for motor oil?

12 MR. KLINEPETER: Yes. We annually audit
13 our MSDS files at each of our locations. That is one
14 of the functions that Ron is tasked with, being a
15 direct safety contact for our Georgia aggregates
16 operations. We also have staff in Florida and
17 Virginia and Maryland where we also operate. So it is
18 an annual -- it is an annual target. It's part of our
19 annual business plan and our annual operations to
20 audit the materials that are on site and to ensure
21 that we have a current MSDS sheet on file.

22 MR. MILLICAN: All supervisors are also
23 responsible for any new chemical that comes on the
24 site for taking the MSDS and covering it with anyone
25 who'll be using that particular chemical.

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1 MODERATOR NICHOLS: Would you know how
2 many chemicals you've identified at one of your
3 typical operations that may be hazardous to employees
4 and require training?

5 MR. MILLICAN: Under our particular plan
6 now, I would say there are probably -- we have -- and
7 I'm not sure they would be identified as hazardous
8 under your standard today. But using the OSHA
9 standard, we probably have in excess of 200 different
10 chemicals that are there in one amount or another. We
11 didn't try to determine whether it was a small amount
12 or a large amount. We just -- if it was a chemical
13 and we thought that it could be hazardous to an
14 employee -- if it was in a small spray can, then we
15 put it in the MSDS book, put it on the list in the
16 front and the index for employees to be able to
17 reference if a need arose, and as well as cover that
18 with the employees that were using that particular
19 chemical.

20 MR. KLINEPETER: Now our supervisors do
21 understand through our training efforts that if we
22 bring a new substance onto the mine site, we don't
23 have an MSDS available for that substance, then we
24 need to -- we need to obtain one. Now I would tell
25 you by and large we are very compliant with that

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1 training. Are we 100 percent on target in each and
2 every instance, probably not.

3 MODERATOR NICHOLS: Do you have any idea
4 that the fact that you're trying to train on
5 everything that comes on mine property versus those
6 that may be a true hazard to the employee in any way
7 confuses your training?

8 MR. KLINEPETER: No, I don't believe so.
9 I think we generally take the approach, number one,
10 that our employees have a right to know what
11 substances they are using and if they inherently have
12 any hazardous qualities. I think it's part of the
13 safety culture that we try to maintain within our
14 company. And even if it is a can of WD40, for
15 example, it has a warning label on the back, we want
16 to ensure that we at least have the availability of
17 all information possible. And again, if we -- if we
18 got ourselves twisted up in trying to determine
19 intermittent uses or small quantities, then I think in
20 a lot of cases we may not be doing a service to our
21 employees in terms of letting them know exactly what
22 they're using.

23 MODERATOR NICHOLS: It sounds like this
24 fellow yesterday didn't get it.

25 MR. KLINEPETER: Well he may not have

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1 gotten it, but in his exuberance he wanted to complete
2 a job that perhaps his supervisor asked him to do. He
3 didn't think his steps through. He didn't stop and
4 say what's the worst that could happen.

5 MODERATOR NICHOLS: If I'm a miner, I'd
6 rather be trained on a serious chemical and really
7 focused on that rather than a can of WD40. You know,
8 if I'm trying to process 200 chemicals versus those --
9 that number that's really hazardous. I think that's
10 better quality training.

11 MR. KLINEPETER: Well if I'm a miner, I'd
12 rather be trained on the safe use of that product. I
13 had rather know what personal protection equipment I
14 should use when I'm using that product.

15 MR. MILLICAN: You also assume that
16 training and information will change the action of
17 people. That's not necessarily true. Look at a
18 cigarette pack and then look at the number of people
19 in this room who smoke cigarettes. So information is
20 not necessarily going to change the action of people.
21 That's our responsibility through supervision.

22 MR. STONE: You had indicated in your
23 comments that you felt the -- that the interim file
24 rule was unnecessary, that it was overkill and
25 duplicative. I wonder if you could expand a little

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1 bit about why you think -- what's in place that makes
2 this rule unnecessary.

3 MR. KLINEPETER: What is in place is a
4 historical perspective that has been provided by OSHA
5 in terms of the citations that are written year in and
6 year out in their enforcement activities. I don't
7 remember the exact facts and figures, but regularly
8 record keeping standards related to their HazCom
9 standard is amongst their top 10 written violations
10 year after year after year. Now, I may sound somewhat
11 cynical, but I have a hard time believing that MSHA's
12 approach is going to be significantly different than
13 what history has shown us through OSHA.

14 MODERATOR NICHOLS: Do you have any idea
15 how many chemically related injuries Florida Rock
16 Company would experience in a year?

17 MR. KLINEPETER: Yes, I do as a matter of
18 fact. I took the opportunity to print out -- we do
19 keep track of all of our accident incident data, and
20 I took the opportunity just for -- just to pick one.
21 All of the accident injuries that we've recorded
22 during our fiscal 1998 business year, which our fiscal
23 year coincides with the federal government, October 1.
24 In fiscal year 1998, we had a total of 309 reportable
25 accident incidents and near misses, and out of that

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1 total we had three that could be directly related to
2 exposure to hazardous substances.

3 One was contact with dust. As you can
4 imagine, it resulted in an eye obstruction. A second
5 was contact with acid when a battery box exploded.
6 And the third was contact with Liquid Wrench while
7 performing maintenance in the plant. One employee
8 accidentally sprayed another employee in the face with
9 Liquid Wrench.

10 MR. THAXTON: I would like to ask you a
11 question, Mark, to follow up on some comments that you
12 made in relation to your training that you provide to
13 your employees. I'm a little confused by the way you
14 said it.

15 MR. KLINEPETER: Okay.

16 MR. THAXTON: You have identified
17 approximately 200 chemicals that are possibly present
18 on your properties. Do you actually train each of
19 your miners on each of the chemicals or are you only
20 training generically in groups or the hazards
21 associated with chemicals since you're only covering
22 it, it seems like, in your 48, part 46 annual training
23 or new miner training or experienced miner training?

24 MR. KLINEPETER: Would you like to answer
25 that?

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1 MR. MILLICAN: Sure.

2 Each supervisor is responsible for
3 covering the MSDSs on the chemicals that are used in
4 his department. So if he's not using those, or his
5 men are not using those, then they're not trained on
6 each of the 200, only the ones that are in use. What
7 you have to understand is, a number of the things that
8 are on there, we've got on there, such as welding rods
9 and different types of metals, in that they are
10 changed with heat chemically and we've got them on
11 there because of the metals and so forth that are in
12 those particular units. So it's not just chemicals
13 like something you would pour out of a bottle. We've
14 tried to cover everything that we felt like could be
15 hazardous to the employee. If a guy is welding or
16 cutting, he needs to understand what metals that are
17 there and what hazards that they present and be able
18 to protect himself from those. So basically it's the
19 supervisor's job.

20 Once a year, I cover this is in an annual
21 refresher. I address HazCom in an annual refresher
22 from the standpoint of a general what is our policy,
23 what each supervisor is supposed to be doing. Each
24 supervisor then covers this with his department and he
25 on his safety monthly -- his weekly safety meetings

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1 then identifies the particular MSDSs that he's covered
2 in that particular safety meeting. So we cover those
3 each year.

4 MR. THAXTON: So you actually are doing
5 like ongoing training?

6 MR. MILLICAN: Yes. Now obviously the
7 majority of the chemicals that are on our site are on
8 there year after year after year, but you have an
9 influx of new people, so you have to continuously
10 cover these things so that the new people will be
11 oriented toward safety also.

12 MR. THAXTON: Since you bring up the new
13 people, do your supervisors then cover the chemicals
14 that these people would be associated with before they
15 actually start to work?

16 MR. MILLICAN: In new-miner training they
17 are -- that subject is covered, yes.

18 MR. KLINEPETER: Our supervisors are the
19 primary delivery mechanism for new-miner training.

20 MR. THAXTON: And you don't have any
21 problem with your supervisors understanding enough to
22 present the training that would be necessary to cover
23 the hazards associated with the chemicals that are in
24 use?

25 MR. KLINEPETER: No, I do not, because as

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1 Ron mentioned, they are on an annual basis. We
2 reaffirm and teach on how to interpret an MSDS, and
3 the supervisors are part of those classes, just as the
4 general work force are as well.

5 MR. MILLICAN: We conduct train-the-
6 trainer programs within our company to train the
7 supervisors on how to do the training and what
8 subjects that we feel like are appropriate for them to
9 train on.

10 MR. THAXTON: So you actually don't have
11 to bring outside people in? You don't have to wait
12 for somebody to come in on the property to present the
13 training? You're actually -- your supervisors are
14 prepared -- if a new person's assigned to them today,
15 they could go over the chemicals that they would be
16 exposed to?

17 MR. KLINEPETER: That is correct. Again,
18 this is all -- this is all internal company policy.
19 It's policy that was formulated by the foresight that
20 number one, we had the obligation to protect our
21 people, but secondly, is to maintain the company's
22 profitability. Florida Rock is a company that's a
23 self-insured company, so accidents -- when accidents
24 occur, you know, we all know accidents cost a lot of
25 money. They cost a lot of money in terms of medical

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1 bills and they cost a lot of money in terms of down
2 time. They cost a lot of money in terms of potential
3 turnover, putting someone else in that place and then
4 ramping them up to a high level of productivity. So
5 it benefits the company for us to do this type of
6 training. It benefits the company to eliminate all
7 accidents and incidents related to chemical exposures
8 because it takes money off the bottom line if we
9 don't.

10 MR. THAXTON: Thank you.

11 MR. REYNOLDS: I have a couple of
12 questions. I'm curious, in your program, how do you
13 label hazardous chemicals? Do you have a system for
14 labeling chemicals that you've identified as a hazard
15 in the workplace?

16 MR. MILLICAN: We simply label whatever --
17 if we take it from whatever the chemical came in and
18 put it in some other type of container, then we label
19 that container and identify what the chemical is. As
20 far as to labeling a particular hazard of that
21 chemical, that isn't being done at this particular
22 moment. We simply refer back to the MSDSs and the
23 previous training for that information.

24 MR. REYNOLD: Okay.

25 MR. MILLICAN: But we identify the

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1 chemical, whatever the chemical is, on the container
2 anywhere within the mine site.

3 MR. REYNOLDS: The other question I have
4 is, what kind of records do you keep of all the
5 training you do now and how long do you keep the
6 records? Do you have any idea?

7 MR. MILLICAN: We keep our records for
8 five years. We keep annual refresher training, we
9 keep safety meeting training because safety meetings,
10 as you well know, now can be used as a part of Part
11 46. So we're keeping them all for five years at this
12 moment.

13 MR. REYNOLDS: And for -- how long do you
14 maintain your MSDSs? Do you maintain them for 30
15 years?

16 MR. MILLICAN: We maintain at the site as
17 long as the chemical is on site. When a chemical is
18 no longer used, then that is mailed to our corporate
19 safety department where it's kept for 30 years.

20 MR. REYNOLDS: How do you treat substances
21 that you might have miners encounter during the course
22 of mining, such as silica? Are you treating them as
23 a -- for example, do you have an MSDS for that?

24 MR. MILLICAN: Yes.

25 MR. KLINEPETER: Yes, we do.

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1 MR. REYNOLDS: Are there any unusual
2 things that you encounter in the course of mining that
3 are hazardous that are -- that you might think would
4 be subject to the standard?

5 MR. KLINEPETER: In terms of silica
6 exposure?

7 MR. REYNOLDS: Or something -- other --
8 other things you might encounter during the mining
9 process from the material that you're mining that you
10 may think of that might be covered by the standard.

11 MR. MILLICAN: Basically in -- and Georgia
12 is the area where I do most of our work. Basically in
13 that area you're using diesel fuel, gasoline, various
14 types of oils and solvents and that's basically all
15 that you have, in addition to welding rods and those
16 types of things. And, of course, you've got battery
17 acid. There are a number of things when you begin to
18 look at MSDSs that have some type of hazard. Now it
19 may be as simple as it causes redness to the eyes for
20 15 minutes. We don't want employees encumbered by
21 that, so we cover that in our training process also
22 with MSDS. But there's not any unusual particular
23 hazards. As I was telling Bob this morning, there's
24 not anything unusual this morning in the things that
25 we use. It's -- and we don't create anything other

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1 than by the crushing action we do create silica dust.
2 But we do -- we do constant monitoring -- I do
3 constant monitoring of quantities of silica dust at
4 all the locations. Most of our locations today, and
5 equipment, is completely covered. It has air climate
6 control in the control booths as well as at all of the
7 equipment out there. So very few people -- when I
8 first came into the mining business in '76, you had a
9 lot of people that were exposed because a lot of the
10 equipment didn't have climate control systems. You
11 had control booths that didn't have climate control
12 systems, and you had a lot of people that worked on
13 the ground.

14 Even our maintenance is being done at
15 times when the plant is not running to avoid high
16 exposures of silica dust. So we've changed -- once we
17 understood the danger of silica dust, we've changed
18 the way we do things in order to protect our miners
19 better.

20 MR. REYOLDS: I have a theoretical
21 question. If we didn't have to worry about Mark's
22 concern with getting citations for somebody
23 interpreting the standard in different ways, just from
24 your role as Safety Director for Florida Rock, is
25 there anything in this standard or the interim final

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1 rule that you would be required to do that you're not
2 already doing? I think you've exceeded the standard
3 in everything we've talked about.

4 MR. MILLICAN: The only thing I can think
5 of is the labeling of the particular hazard out there.
6 The standard is more strict in regard to that. But
7 that's the only thing that I can see.

8 MR. KLINEPETER: Well as I stated earlier,
9 I think the greatest discomfort for me is interpreting
10 some of the ambiguous phrases such as small quantities
11 used intermittently and so on. Again, that's a highly
12 subjective terminology. What one inspector sees very
13 possibly can be extremely different from what another
14 inspector interprets.

15 MR. REYNOLDS: Just to focus on what Ron
16 said as to the labeling, if I understand what you're
17 doing now, you have your MSDS and you put a label on
18 the substance all the way down to smaller containers?

19 MR. MILLICAN: Yes. Each container is
20 labeled, but it's simply the name of the chemical --
21 the common name of the chemical is what is on the
22 label and there's nothing that identifies it as a fire
23 hazard or toxic or anything like that. That training
24 is done in the orientation when the chemical is
25 brought on site with the people that'll be using it.

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1 MR. KLINEPETER: And I would scarcely --
2 and I would like to add, I would scarcely say that
3 Florida Rock is highly unique in the regard that we
4 have approached our own internal hazard
5 communications. I think you could go across the board
6 of all the major producers in this industry and
7 probably find an extremely high degree of internal
8 compliance, if you will, with protecting workers from
9 chemical exposures. And I made the comment in a
10 statement that we haven't really quantified. I don't
11 think the agency through their -- through the comments
12 provided in the preamble have really gone out there
13 and quantified how many folks really do have a problem
14 and how many people really have a hazard -- or
15 elements of an effective hazard communications program
16 already in place.

17 MR. REYNOLDS: Ron, if you had to guess,
18 how difficult would it -- if I understood, you said
19 there's probably six things that you would have to
20 label. How difficult would that be to expand the
21 label that you're now using?

22 MR. MILLICAN: The difficulty would not be
23 in the -- in labeling things, the difficulty would be
24 in maintaining the labeling in that atmosphere out
25 there. Because if you've got -- if you've got a

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1 container that has oil in it, you're going to get oil
2 on the outside and things that stick on are not going
3 to stay on. So it would be easy for an inspector
4 coming around who found something -- where a label had
5 fallen off -- to write that because it wasn't labeled
6 properly. And so basically he's dealing with a
7 paperwork type of thing and not a real hazard. The
8 hazard has been covered in an orientation with the
9 MSDS and with the chemical at the mine. The
10 particular agent had been labeled at one time but it
11 had fallen off because of oil and so forth or
12 whatever, and being out in the rain and the wind and
13 everything else out there, you're going to have those
14 fall off. So then you're going to have inspectors who
15 see that as an opportunity to write a citation.

16 MR. FEEHAN: Just a comment on that. OSHA
17 has that requirement at construction sites, which are
18 also very similar kinds of environments. They are
19 open to the weather, they are subjected to oils. I
20 don't think their citations for labeling are what is
21 really causing problems in the construction industry.

22 MR. MILLICAN: That may be true, and maybe
23 I'm a bit paranoid, but I have seen in -- with Part 46
24 and with the CAVs as the different inspectors came
25 around and was enforcing that, almost to a man, each

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1 one had a different idea of how that was to be done.
2 So it tells us how the training is being done by MSHA
3 for their inspectors, to allow them to come out with
4 such a diversity of understanding, and we can see this
5 same horror story coming with HazCom.

6 MR. KLINEPETER: Can I ask you a question?

7 MR. REYNOLDS: Sure.

8 MR. KLINEPETER: Okay. Just to turn it
9 around. How would this standard -- or what process
10 would this standard have to be revised once, you know,
11 some of the initiatives concerning global
12 harmonization and international symbols in terms of
13 labeling will obviously -- you know, there's going to
14 have to be something that changes, at least perhaps in
15 the wording of the interim final standard once that's
16 adopted, you know, in the worldwide market. From your
17 perspective, how is that going -- how is that going to
18 change the regulation as it's now written?

19 MR. REYNOLDS: I'll defer to Richard on
20 that one.

21 MR. FEEHAN: I don't know, but talking
22 about, you know, global harmonization is -- I don't
23 know when that'll be coming out. I mean we're having
24 enough trouble getting HazCom out. I don't when --
25 I'll be anxious to hear your testimony on the global

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1 harmonization standard when it comes along, Mark.

2 (Laughter.)

3 MR. KLINEPETER: I thought it was a
4 singing group. I don't know.

5 (Laughter.)

6 MR. FEEHAN: Are you done? You had some
7 more, Larry?

8 MR. REYNOLDS: I did have one more
9 question. Could you break down how much you spend on
10 your HazCom program? Would you have any idea of what
11 it costs you to set this all up and run it for a year?

12 MR. KLINEPETER: No. I wouldn't even
13 venture to put a dollar figure on it at this time
14 without really stepping back and doing some
15 quantifiable analysis. Obviously most of the cost --
16 and I know there's a lot of discomfort amongst the
17 industry and what the preamble has stated in terms of
18 an annual cost. But I think probably we're missing
19 the real cost that's associated with the standard
20 perhaps for those producers who have to put a lot of
21 money up front to get a program under way and to
22 initially obtain MSDSs and do the type of research
23 that's necessary to put a -- to put inventory lists
24 together and obtain the MSDSs and perhaps put extra
25 efforts in terms of the training that they deploy to

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1 their miners. I mean that's where the real cost is
2 going to come from. I think for us in terms of a
3 routine annual expense, yeah, there's annual expenses
4 associated with that, and I would venture to say that
5 it far exceeds the number that's written into the
6 preamble. I mean, Ron's time, for example, in going
7 out there and doing training, going out and auditing
8 the files once a year, the technology that's necessary
9 to put MSDSs on computers, for example, I mean \$267 or
10 87 -- I don't remember exactly what the figure is, but
11 that's not going to go very far in terms of annual
12 maintenance costs that are associated with maintaining
13 this program. Real dollar figures, I would have to
14 work on that. But I feel pretty confident that it
15 would far exceed the number that's stated in the
16 preamble.

17 MR. REYNOLDS: Could you say how far?

18 MR. KLINEPETER: I'd say substantially.

19 MR. REYNOLDS: Substantially. Could you
20 put a number on that?

21 MR. KLINEPETER: And I'll defer to Ron on
22 putting a number on that.

23 MR. MILLICAN: When you consider the
24 amount of hours that are spent with this particular
25 subject, with supervisors, even with office personnel,

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1 because we have -- in addition to the MSDS book and
2 the list in front of that, we have this on all of the
3 computers. As the MSDS sheets come in, they have to
4 re-enter that into the computer. If something goes
5 out, that has to come off. The supervisor is covered
6 in new-miner training. We cover it in annual
7 refresher training and it's covered individually in
8 the department meetings. When you take all the time
9 of all of the people that are involved -- and that
10 adds up -- you're talking about hundreds maybe of
11 thousands of dollars in a year's time. So there's a
12 lot of money and it's hard to quantify it unless you
13 do a study to -- specifically to figure out how much
14 time is associated with that. If you take a
15 department with eight people and you spend 30 minutes
16 talking about MSDS, you've got a supervisor and eight
17 people, that's nine people times X number of dollars
18 per hour for that period of time, and you do this
19 repetitively over the year, it gets expensive.

20 MR. KLINEPETER: My mail is full, day in
21 and day out, of software products that are available
22 out there in the market, everything from -- everything
23 conceivable in terms of OSHA and MSHA training, along
24 with what seems to be recently a lot of software
25 programs of MSDS. And if you look at that in terms of

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1 maybe a small producer trying to ramp themselves up to
2 compliance, the easiest thing for me to do would be to
3 go out there and purchase one of this software
4 programs and just fill in the blanks. Well I can tell
5 you that the cost of that software program -- you
6 know, if you're going to get yourself a program that
7 does everything you need, it's going to cost you well
8 in excess of \$267.

9 MR. FEEHAN: I have --

10 MR. STONE: One question. How many miners
11 work in your...

12 MR. KLINEPETER: Between 900 and 1,000.

13 MR. FEEHAN: That's total employment for
14 Florida Rock?

15 MR. KLINEPETER: No, that's total
16 employment for the Aggregates group of Florida Rock
17 Industries. We're currently spread out over five
18 states, Florida, Georgia, Tennessee, Virginia and
19 Maryland.

20 MR. FEEHAN: How many of those states have
21 state right-to-know laws?

22 MR. KLINEPETER: Now I'm new to Tennessee.
23 We just acquired an operation in the Chattanooga area
24 here within the last couple of weeks, so I'm not sure
25 about the state of Tennessee at this point. But I do

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1 believe that the remaining four states that we operate
2 in do have right-to-know laws.

3 MR. FEEHAN: Do you know how many of those
4 apply to mining? My understanding is that there's
5 only six states that actually have --

6 MR. KLINEPETER: Oh, really.

7 MR. FEEHAN: -- state right-to-know laws
8 that apply to mining, otherwise it's always in general
9 industry and specifically excludes mining. Do you
10 know about Florida? Does it exclude mining in state
11 right-to-know?

12 MR. KLINEPETER: No, it does not.

13 MR. FEEHAN: It includes mining?

14 MR. KLINEPETER: It includes mining.

15 MR. FEEHAN: How about Georgia?

16 MR. MILLICAN: No, Georgia does not.
17 Georgia does not have a HazCom rule. But we have had
18 Georgia -- what we decided years ago when we had to --
19 when Florida adopted their HazCom rule, we decided --
20 and we had to do it in Florida. We decided that we
21 would be consistent across the board. If we were
22 going to protect the employees in Florida, we needed
23 to protect them in Georgia. So we established the
24 same type of policy for each location, each state.

25 MR. FEEHAN: But does the state require --

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1 the state does not require it in Georgia?

2 MR. MILLICAN: It does not require it.

3 MR. FEEHAN: Okay, thank you.

4 MODERATOR NICHOLS: I sense that a lot of
5 your concern is consistent MSHA enforcement. If those
6 fears could be allayed in any way you would be a lot
7 more comfortable with this rule I think, right?

8 MR. KLINEPETER: No, I wouldn't say that's
9 true. I'd say that we have a pretty good program in
10 place that is self-administered internally and that we
11 really don't need, you know, the specter of additional
12 government enforcement, you know, to make sure that
13 we're doing the right things. We can handle it just
14 fine, thank you.

15 (Laughter.)

16 MODERATOR NICHOLS: That translates into
17 we've got something better than you're offering and we
18 don't want to open ourself up for tickets.

19 MR. KLINEPETER: Well it's -- from our
20 perspective it's better, it's easier, it's more
21 feasible for us to monitor and maintain our own
22 internal program. I believe we set a high standard
23 for ourselves. I believe our accident and incident
24 history of Florida Rock Industries as a whole will
25 bear that out. We believe that we're the best -- that

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1 we are the best individuals internally to protect our
2 miners. We know -- you know, we know our job sites,
3 we know our people, we know how to approach them. A
4 lot of operations, you know, as an aside and I'm --
5 and I'm extremely proud to say, I came into the
6 Aggregates group as safety director five years ago and
7 I grew up in Florida Rock Industries through the
8 finance department, which, you know, as you imagine is
9 a little bit of a -- a little bit of a left-hand turn.
10 But one of the things I'm very proud -- proud to say
11 is, I walked into an extremely well established
12 program and hopefully we have maintained and enhanced
13 that.

14 We're probably one of the few major
15 producers around that still institutes our own annual
16 refresher training. Ron Millican goes out and does
17 training himself four times a year. Our policy is
18 that we do annual refresher training quarterly in two-
19 hour segments because we want to have a regular
20 contact with our people. We don't believe that doing
21 an annual refresher class eight hours once a year is
22 really going to achieve the objectives that we set out
23 for maximum safety performance. So we're very much in
24 touch with our people. I even go out and do annual
25 refreshers because I sincerely enjoy doing it. I

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1 enjoy making contact with the hourly work force. So
2 visibility is something and accessibility is something
3 that we really, really emphasize through our safety
4 programs and we don't think the government can tell us
5 how to do it any better.

6 MR. MILLICAN: To add to Mark's comments,
7 we're in compliance, we're over and beyond compliance
8 at this particular moment. We protect our employees,
9 so what do we need it for?

10 MR. STONE: Well if I could respond, it
11 sounds like you have a laudable program, an excellent
12 program. In fact, this rule may be unnecessary for
13 you, but I wonder whether all the other operations,
14 particularly many of the smaller operations have the
15 same experience and commitment that you have had.
16 Some of these provisions may well be appropriate for
17 operations that have not engaged in the HazCom
18 training that you have done.

19 MR. MILLICAN: When you separate your
20 training requirements for different needs in the
21 mining industry, 4846, maybe you should consider
22 separating the HazCom so that the people that need
23 this training get this training -- people who have
24 shown that they need the training by the number of
25 incidents get this type of training. Maybe you need

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1 to look at it from that -- from that perspective.

2 MR. STONE: Well I think the hope is that
3 for an operation such as yours, if you are in full
4 compliance or virtual compliance with the interim
5 final or what becomes the final but is different, that
6 your expenses would be negligible in relation to this
7 additional rule for you. But that wouldn't
8 necessarily be the case for other operations which
9 would probably incur more substantial cost and would
10 also provide much greater benefit to the miners.

11 MR. MILLICAN: I think that's an accurate
12 statement as long as you make sure that when you send
13 inspectors out that they're well trained and that they
14 all interpret the standard the same way.

15 MR. STONE: Okay, but that gets back to
16 Marvin's point.

17 MR. KLINEPETER: Well, I would like to
18 suggest that you talk about your intention to put
19 together extensive outreach efforts to assist
20 essentially the small operator to become compliant
21 with the standard. Why not extend those outreach
22 efforts to insist -- to assist the small operator to
23 become compliant with the current standards that you
24 already have on the books? You made that attempt
25 under Part 46, why not make that attempt under the

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1 applicable Part 56 standards instead of relying on a
2 whole new set of standards and a whole new game plan
3 in terms of outreach efforts? I mean go with the
4 program that you currently have in place.

5 MR. FEEHAN: Well I can answer that to
6 some extent anyway, Mark, and that is because the
7 program -- we believe that the program we currently
8 have and the regulations we currently have in place
9 have voids in them. They have gaps in them. You
10 know, for example, access to information that small
11 operators, other operators, less -- you know, less
12 feeling about their employees perhaps would not be
13 willing to do. There may actually be intimidation or,
14 you know, indifference.

15 MR. KLINEPETER: As I mentioned early in
16 my comments, when I read the testimonies from Beckley
17 and I saw case after case of stories that they related
18 of miners and close friends who had contracted
19 terminal illnesses and injuries as a result of these
20 chemical exposures, the thought that came to my mind
21 is somebody ought to be -- somebody being a federal
22 agency, ought to be reminding those operators and
23 those supervisors exactly what their responsibilities
24 are under the Mine Act and what their liabilities are
25 to adhere to the rules and regulations under the Mine

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1 Act. In short order, help those operators build a
2 safety culture.

3 MR. REYNOLDS: Mark, I just have one more
4 question. During -- you mentioned secretary --
5 Assistant Secretary Zurinsky's (ph) challenge to the
6 industry to reduce various things by five percent.
7 What if he did challenge you to reduce your accidents
8 and injuries associated with chemical hazards by five
9 percent? What would you -- what part of your program
10 would you look to first to improve in order to do
11 that?

12 MR. KLINEPETER: What part of the program
13 would I look to first?

14 MR. REYNOLDS: Yes.

15 MR. KLINEPETER: Well, as I stated
16 earlier, we had -- we had three exposures out of 309
17 accidents and illnesses. What I would address first
18 -- if I had to, what I would address first would be
19 the miners' work habits. How they're handling the
20 materials and are they handling them in the safest
21 possible manner. As accident records will indicate,
22 I think a large majority of those injuries could have
23 been avoided if they had used proper protective
24 equipment -- personal protective equipment.

25 MR. REYNOLDS: So what I heard you saying

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1 is task training?

2 MR. KLINEPETER: As an element of task
3 training, yes. But safe work habits would be -- would
4 obviously be the thing.

5 MODERATOR NICHOLS: Okay, thanks for your
6 testimony.

7 MR. KLINEPETER: Thank you.

8 MODERATOR NICHOLS: Is there anyone else
9 in the audience that wants to present testimony right
10 now?

11 (No response.)

12 MODERATOR NICHOLS: Okay, we'll go off the
13 record.

14 (Whereupon, a recess was taken at 10:29
15 a.m.)

16 MODERATOR NICHOLS: This is Marvin Nichols
17 and we're back on the record at eleven o'clock.
18 There's still no one available to present testimony,
19 so we'll go off the record. We'll be here until five
20 o'clock.

21 (Whereupon, a recess was taken until
22 twelve o'clock.)

23 MODERATOR NICHOLS: This is Marvin
24 Nichols. It's twelve o'clock noon and there's no one
25 available to give testimony. We're going to break for

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1 lunch, from twelve o'clock noon until one o'clock. At
2 that time Bob Thaxton will be here until five o'clock
3 to chair the hearing should someone show up to
4 testify. Bob is the Acting Health Division Chief with
5 Coal Mine Safety and Health.

6 (Whereupon, a recess was taken at 12:00
7 p.m., the public hearing to resume at 1:00 p.m.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 MR. THAXTON: This is Bob Thaxton. It's
3 now one o'clock and still no additional persons have
4 shown up to testify. So we'll break again until two
5 o'clock.

6 (Whereupon, a recess was taken until 2:08
7 p.m.)

8 MR. THAXTON: We're back on the record now
9 and Mr. Kelly Bailey is our next speaker.

10 Mr. Bailey.

11 MR. BAILEY: Good afternoon. My name is
12 Kelly Bailey, and I'm here today to offer testimony to
13 MSHA on it's interim hazard communication rule. I'm
14 employed by Vulcan Materials Company as it's manager
15 of occupational health for its Construction Materials
16 Group operations. I would like to state up front that
17 Vulcan and the aggregates industry appreciates the
18 decision by MSHA to re-open this rulemaking record and
19 stay the rule until next June and possibly longer.

20 Vulcan Materials Company, based here in
21 Birmingham is the nation's largest producer of
22 construction aggregates, a leader in the production of
23 other construction materials and a major manufacturer
24 of chemicals.

25 Vulcan's chemicals group is composed of

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1 two businesses. Vulcan Chemicals manufactures
2 chlorine, caustic soda, hydrochloric acid, potassium
3 chemicals and chlorinated organic chemicals. Vulcan
4 Performance Chemicals offers a unique blend of
5 products with emphasis on pulp and paper and water
6 management. Vulcan is a S&P 500 company that is
7 listed and traded on the New York Stock Exchange under
8 the symbol VMC. Vulcan has approximately 10,000
9 employees nationwide.

10 Vulcan's construction materials group
11 operates 300 aggregate production and distribution
12 facilities, 47 asphalt plants and 28 ready-mix
13 concrete facilities. These operations provide a
14 diversified line of aggregates and other construction
15 materials and related services to all parts of the
16 construction industry in 21 states and the District of
17 Columbia. Last year Vulcan produced and shipped
18 approximately 222 million tons of aggregates.

19 Vulcan's Construction Materials operations
20 are second-to-none in the industry with respect to
21 safety, health, environmental stewardship and
22 community relations. Vulcan's programs have set the
23 standard for the industry in all of these areas.
24 Vulcan firmly believes that the future success in the
25 aggregate industry will be increasingly dependent upon

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1 strong performance as a good corporate citizen. Each
2 of Vulcan's divisions has implemented programs
3 designed to monitor conditions at company facilities,
4 assure compliance with relevant laws and regulations
5 and develop practices and procedures for the
6 protection of the environmental resources.

7 Now I am a chemist, human biologist and
8 certified industrial hygienist by education, training
9 and experience. I began my career with Vulcan 22
10 years ago as the industrial hygienist for our
11 Chemicals Division. In that position, I experienced
12 first hand the efforts to meet the requirements of the
13 OSHA hazard communication standard in the chemical
14 manufacturing industry since I was charged with
15 designing and implementing the Company's program at
16 that time.

17 Communication of potential health hazards
18 within the chemical industry, where many chemicals are
19 used, produced as by-products and manufactured in
20 large quantities is a necessary part of any
21 comprehensive occupational health program. Vulcan
22 performed this training and communication for its
23 workforce long before there was an OSHA or an OSHA
24 HazCom standard. Material Safety Data Sheets for our
25 chemical products have been sent to our customers for

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1 over 30 years. With the passage of the OSHA HazCom
2 standard in 1983, the first MSDSs for our aggregate
3 products were produced and made available to customers
4 and our construction material facilities regulated by
5 OSHA, such as ready-mix and asphalt.

6 OSHA's original standard was targeted at
7 the chemical and petrochemical industries where the
8 communication of chemical hazards to employees was
9 indeed needed. The reason it was needed was unlike
10 MSHA, OSHA did not have any broad-scope regulations
11 other than the general duty clause to address the
12 potential health hazards presence. In many ways,
13 MSHA's existing regulations dealing with the
14 communication of health hazards are more comprehensive
15 than what OSHA had at that time and are most likely
16 equally or more effective that what OSHA has now.

17 The OSHA HazCom standard was conceived
18 with good intentions but it was designed and
19 promulgated as one of the most burdensome, paper
20 intensive and ineffective rules ever to be promulgated
21 by the Department of Labor. The use and value to our
22 employees of the massive number of MSDSs collected in
23 our chemical plants and maintained in volumes and
24 volumes of three-ring binders is nil. We have had
25 very, very few employee requests for MSDSs in the past

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1 five years. As an occupational health and safety
2 professional, I am greatly disturbed and discouraged
3 that MSHA would even consider duplicating OSHA's
4 massive misuse of precious safety and health
5 resources.

6 My comments today are from the perspective
7 of an aggregate producer and not all mining. In 1999,
8 Vulcan acquired CalMat Company with approximately 90
9 operations in California, Arizona and New Mexico. In
10 California, CalOSHA regulates mining under OSHA rules
11 alongside the federal MSHA; therefore, the OSHA HazCom
12 Standard was not only in effect at the numerous
13 traditional OSHA-regulated facilities that we
14 acquired, but also at our newly acquired mine sites.
15 In an evaluation of our HazCom compliance status in
16 California and elsewhere across the nation, and the
17 possibility that MSHA would promulgate its proposal.
18 Vulcan decided to outsource the compilation of MSDSs,
19 maintenance of these files and MSDS access for
20 employees. The contractor for this effort was
21 selected in late 1999 and the program was initiated
22 across all Construction Material Group facilities
23 nationwide last year.

24 To implement this program, an initial
25 inventory of all liquids, gases, pastes, burn-use

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1 metals, insulation materials, et cetera was conducted
2 at nearly 400 operations during the first half of last
3 year. The inventory listings were compiled by Vulcan
4 employees or summer co-op students going through each
5 facility writing down the product information from
6 labels. The lists of each facility were then sent to
7 my department to identify product duplicates and to
8 produce a comprehensive computerized spreadsheet that
9 lists all the identified products used within the
10 company by site. There were nearly 16,000 products to
11 sort through, of which approximately one-half were
12 found to be duplicates. It took one person one and a
13 half months full time to compile the spreadsheet. I
14 should add here that the inventories compiled varied
15 in quality and completeness, since this is the first
16 time out for many folks. So I am sure that these
17 numbers are on the low side of reality.

18 Once the spreadsheet was completed, the
19 company-wide product list was sent to our contractor
20 for MSDS acquisition, comparison to the contractor's
21 existing database, computerization, file maintenance
22 and fulfilling employee MSDS requests. Inventory
23 items that could not be reconciled by the contractor
24 based on the list that we sent are currently being
25 reviewed at numerous facilities and a new inventory

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1 update is currently being obtained. Thus far, we have
2 spent nearly \$120,000 just on contractor services.
3 These costs do not include the legwork of many, many
4 Vulcan employees or the efforts expended in my
5 corporate office.

6 There was also a program to roll out the
7 program throughout the company to explain the system
8 to employees. We estimate that to maintain this
9 program, the inventory database and provide access to
10 MSDSs for our employees, that we're going to be
11 spending \$50,000 a year to do that, just to keep the
12 MSDSs available to employees.

13 So how MSDS requests have we had since we
14 implemented this \$120,000 program? 172, of which 107
15 occurred because several plants wanted to have MSDS
16 paper copies of their inventory. This program is a
17 fax on demand program. How many requests were
18 initiated due to concern of exposure to the product
19 being handled? Less than five. What is even more
20 disturbing is that the MSDS inventory was probably out
21 of date the day after the inventory was collected at
22 the plant. This is no way to spend the safety and
23 health dollars -- no way.

24 Once an employee has the MSDS, it is
25 practically useless because it is not written as an

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1 educational tool. It was written primarily for
2 product liability concerns and OSHA compliance, then
3 as a communication tool to medical and industrial
4 hygiene professionals. It rarely accomplishes the
5 objective of employee hazard communication.
6 Unfortunately, in the United States, approximately 13
7 percent of the U.S. adult population are functionally
8 illiterate. In the mining population, this percentage
9 is probably higher. Even if we can get the MSDS to
10 the miner, many will be incapable of reading it. MSHA
11 must accept that reality and adjust to it if they
12 truly are interested in the objective of hazard
13 communication for miners.

14 In my opinion, it is absolutely
15 unforgivable for MSHA to not examine in detail its own
16 database and identify where specific hazard
17 communication efforts are needed. The National
18 Stone, Sand and Gravel Association has identified that
19 nearly two-thirds of the chemical-related injuries
20 dealt with lime dust in the eye, acid from batteries
21 blowing up and fueling mishaps. Not all chemicals
22 should be treated equally with respect to hazard
23 communication, but they all will be in the MSHA rule.

24 If you examine the typical aggregate
25 quarry, there are basically five major chemical types

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1 that are brought onto the property in significant
2 quantities that are handled frequently: fuels and
3 their exhausts, lubricating oils and greases, welding
4 fumes, degreasing solvents and acid in batteries. The
5 other key health hazards deal with the minerals in the
6 mine deposit and the noise created in processing. Why
7 doesn't the agency work with the industry and labor to
8 develop high quality, premium training programs that
9 address these key chemical products in the aggregate
10 mining and mandate that the training be conducted?
11 The just passed Part 46 training rule which requires
12 training on health aspects of tasks, is an ideal
13 mechanism for this effort. Why are we spending time
14 chasing sheets of paper that many cannot read and if
15 they could, wouldn't understand them anyhow?

16 It is essential that MSHA look at the
17 experience of others and the results of its own Part
18 46 training rule before placing the mining industry
19 under the same monstrous rules that OSHA has had in
20 place for over a decade. Has the chemical injury
21 experience at mining sites in California and Tennessee
22 been dramatically improved when compared to the rest
23 of the mining industry? These two states have
24 regulated mines under the OSHA HazCom regulation for
25 years. What has OSHA's experience been in

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1 manufacturing and in non-manufacturing industries
2 before and after their rule was put in place?

3 When I look at what MSHA is proposing and
4 then look at what we all want to accomplish -- a safer
5 and healthier work environment for miners, I come away
6 shaking my head at the continuous failure of the
7 agency to examine the data that it requires mine
8 operators to regularly submit. Priorities for
9 improving safety and health in mind exists in MSHA's
10 own database. Based on Vulcan's analysis of MSHA's
11 database and with work done with MSHA and NIOSH and
12 Vulcan, the most promising area for dramatic
13 improvement in health and safety is controlling
14 accidents during maintenance, construction and repair
15 activities. Nearly 40 to 60 percent of the industry's
16 injuries occur during these tasks. In the aggregate
17 industry, approximately 40 percent of the fatalities
18 occur during these same activities. If MSHA wants to
19 promulgate a rule that will make a difference, it
20 needs to focus on this critical area and work with
21 industry and labor to make it happen. Paperwork rules
22 only distract and tie the hands of folks who are
23 trying to make a difference in reducing real hazards.

24 I wish to state that Vulcan has totally
25 supported the numerous comments submitted by the

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1 National Stone, Sand and Gravel Association and its
2 predecessor associations over the entire rulemaking
3 period of this standard.

4 Thank you for coming to Birmingham and
5 allowing me the opportunity to testify on this very
6 important concern. I'll gladly answer any questions
7 that I can. And I have copies of this for you,
8 without my ad-libbing.

9 MR. THAXTON: Any questions?

10 (No response.)

11 MR. THAXTON: One thing, Kelly, that I
12 wanted to ask about and follow up on a little bit is
13 where you said that you thought that MSHA should only
14 address those areas where we think or our data shows
15 that there is truly a problem, your example was the
16 maintenance functions, construction, that type of
17 work.

18 Are you looking at it only from the
19 aggregate group in that light or were you looking at
20 all mining?

21 MR. BAILEY: I really don't have the
22 information for all mining. I believe most of those
23 numbers are from the aggregate industry, that's the
24 business that we're in. If we ever get in the coal
25 business, I'm leaving Vulcan.

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1 (Laughter.)

2 MR. THAXTON: I was just confused whether
3 you were speaking just from the aggregate's stance or
4 had you actually looked at the data overall and that
5 held true for all industries, all mining industries.
6 And if not, then would you be agreeable then if MSHA
7 was to look at something in that light, that we should
8 look at it from all of mining, not just one segment?

9 MR. BAILEY: I think that the data is
10 there, I think the data to look at and analyze and
11 there's been research on it with NIOSH -- you know,
12 Richard Feehan has been involved with it, with Dick
13 Seago, in how to look at the descriptions of the
14 accidents that happen and see, you know, where they
15 occur. They occur when the plant is shut down, you're
16 in repair, you're got tired people, you've got after
17 hours, you've got things that happen that are not
18 routine, that you have to fix. A lot of it occurs on
19 weekends, a lot of it occurs when safety and health
20 people in the companies and safety and health
21 inspectors at MSHA are not there -- you get injuries
22 and you get fatalities. And I would venture to say
23 that if you looked at it from the other mining side of
24 the business, that you would see similar things, but
25 that's speculation on my part right now. It's

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1 certainly true in the aggregate industry.

2 And you know that's really where we need
3 to spend our time. I know that the new Assistant
4 Secretary for MSHA is very interested in reducing the
5 injuries and fatalities in the mining sector and
6 HazCom is not going to do that. HazCom is going to
7 slow it down. We really need to focus on where we get
8 the biggest bang for our bucks. And I'll tell you,
9 I've lived HazCom for all my professional career it
10 seems like, and it consumes people, moving paper
11 around and you've got the wrong paper in the wrong
12 place or -- it's the largest cause of citations with
13 OSHA. You know OSHA facilities may get inspected once
14 in a blue moon, they've got a lot of places to cover.
15 Mines get inspected at least twice a year, sometimes
16 four, sometimes more and this kind of paper standard
17 is going to create lots of citations because there's
18 all kinds of places -- if you're trying as hard as you
19 can try, you're going to miss an MSDS here and there,
20 it's going to be in the wrong place, someone didn't
21 put it in after a safety meeting, someone just bought
22 something at K-mart -- that happens and you're going
23 to get all kinds of contested citations and it's just
24 going to bog down the whole system -- going to bog
25 down the whole system.

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1 MR. THAXTON: To follow up on that then,
2 if the agency was in a position to where the standard
3 was put in place as a means of communicating to miners
4 the hazards associated with chemicals but there was no
5 specific requirement that if one MSDS sheet is
6 missing, but 98 percent of the other MSDSs required
7 for that site are present, that citations may not be
8 issued, but time given for obtaining that information
9 and getting it in the system rather than writing paper
10 citations for that; is that more palatable to you?

11 MR. BAILEY: Well, I mean anything can be
12 better, but I still think we're relying on the wrong
13 piece of paper -- the wrong thing. We're saying that
14 a piece of paper makes it all better. The piece of
15 paper doesn't get read -- the material safety data
16 sheet is not read. We have 42 volumes in a chemical
17 plant and we have people who spend all day, you know,
18 gathering MSDSs of this -- is this a new one, is that
19 an old one -- it's a ridiculous waste of time. This
20 is an age of instant communication, we have labels, if
21 we want to improve the situation, make the labels
22 where they really mean something, legible, these are
23 our first aid cases, this is what you do if you get
24 this stuff in your eyes, on your skin, make it clear
25 to where it's not all fine print and make it symbolic.

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1 You know, make it where people who don't read English
2 can understand it if you really, really want to talk
3 about hazard communication.

4 If you want to talk about having a piece
5 of paper that no one is going to read, no one
6 understands, then we're not talking about hazard
7 communication, we're talking about compliance with I
8 don't know what.

9 MR. THAXTON: So you would propose then
10 that a good labeling of containers or chemicals would
11 be a better way of handling hazard communication for
12 the industry as opposed to MSDS tracking plus the
13 training that would be required?

14 MR. BAILEY: I think that the simpler you
15 can make the communication to the employee, the
16 better. And MSDS is not that, it's not made for that,
17 it is made to protect people from this litigious
18 society that we're in -- that's what it's made for.
19 And then also OSHA compliance. I mean that's what
20 it's made for, it's not a communication tool for
21 employee education, it's really not, but it does, in
22 the OSHA hazard communication standard, consume an
23 unbelievable amount of time just keeping track of
24 that. You know, it's a huge waste of resources,
25 particularly when you can say if you get it in your

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1 eye, no matter what it is, wash it out, flush it out.
2 I mean you look at 99.99 percent of the material
3 safety data sheets that are there, it'll say that.
4 And basic first aid will tell you that. If you get it
5 on your skin, wash it off. If you drink it, it's a
6 little more complex, depending on what it is.

7 But you know, then we would look at how
8 many times we're drinking toxic chemicals in the
9 mining industry and we're going to build this entire
10 standard to cover that. You have to remember that
11 these same people that are going to be charged with
12 implementing this program and maintaining that program
13 are the same people doing those safety inspections
14 during the construction, maintenance and repair
15 activities. And these same people are training people
16 to watch out for those hazards. You take it away from
17 there and here we have a part of activities going on
18 in mining that's 40 percent of the fatalities -- 40
19 percent of the fatalities, 40 to 60 percent of the
20 injuries that are reported -- probably a lot more not
21 reported.

22 Where are we shooting our gun -- where are
23 we shooting our gun? I just shake my head -- don't do
24 this.

25 Now, are there chemical injuries? I think

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1 that Jim Sharp of the NSSGA was -- did a great
2 service, I think he did MSHA's job in a lot of ways.
3 You know, where are these things happening. And you
4 know, if we've got a problem with people not knowing
5 how to jump a battery or charge a battery, you know,
6 I would venture to say that we could get together as
7 an industry, labor, government and the manufacturer
8 and put together the best training program on that
9 particular hazard that exists. The problem is one
10 doesn't really exist right now. And then you have
11 that -- you can make it a mandatory training, if you
12 charge batteries at this plant, you've got to show
13 this.

14 Lime in the eye, I was amazed -- lime in
15 the eye -- lime dust in the eyes. We have a few lime
16 plants and we have -- in our chemical industry, we
17 have a great training program on caustic in the eye
18 which is even more dangerous, and a high quality
19 program that really come home to the workers. You
20 won't find anybody walking around without goggles in
21 a caustic plant.

22 Why don't we do that? I mean here we have
23 injuries of the eye which we have a standard that's
24 supposed to protect that, but they don't appreciate it
25 because we still have injuries of the eye. So how do

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1 we make them appreciate it? Well, we have a good
2 quality training program on what lime in the eye does.
3 Not one out there. That's what we could do together
4 with industry, and watch that thing go down.

5 Now a lot of people say that's
6 reactionary. Well, so is the Mine Act, so was OSHA's
7 Hazard Communication Standard; you know, so was the
8 benzene standard. I mean that's just the unfortunate
9 way it is in life, is that we are reactionary,
10 particularly in health and safety regulation, but to
11 not react would be even worse, not being reactionary.
12 We should react to that because it says these are true
13 hazards that are happening to folks and we say find
14 the lime dust hazard MSDS in this two volume set of
15 MSDSs and, you know, that's the one we want to focus
16 on, along with the white out and whatever that is
17 there. It's not helping the industry, not helping the
18 miner, it's really hurting the miner.

19 I mean I can see if this thing that
20 happened on October 3, even after spending \$120,000
21 and spending \$50,000 more and having armies out there
22 gathering these things, we would not be ready to be
23 100 percent compliant, and I don't think anybody ever
24 will. And the amount of energy to spend to try is
25 such a waste -- such a waste.

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1 You know, I've been trying to find, and
2 I'm going to make it myself, a health hazard training
3 program on welding fumes. There's all kinds of
4 programs on safety in welding but there's not on
5 welding fumes and toxicity of manganese fumes, of
6 nickel and chromium. Why doesn't industry, labor,
7 government, the American Welding Society come
8 together, make a high quality, first rate, premium
9 program that we can mandate that welders, you've got
10 to show this, Part 46, Part 48 -- talk about a
11 benefit, talk about focused, you know, hazard
12 communication, effective. I mean it's in the morass
13 of all this other MSDS stuff now and it's one of the
14 key health hazards in mining, is welding, because it
15 takes place during construction, maintenance and
16 repair.

17 You know, I just see a misuse of
18 resources, a huge misuse of resources. If MSHA does
19 it and promulgates it, you know, we'll comply with it,
20 but the record is going to suffer and that's not what
21 we're after. We're after protecting the safety and
22 health of miners. And you know, having a bunch of
23 paper that they can't read and understand is not going
24 to do that -- it's not going to do that. Having high
25 quality programs that directly focus on the injuries

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1 that you see in your own database, the things that we
2 already know -- you know, construction, maintenance
3 and repair -- and I think we're going to make a big
4 difference in the health and safety of miners. But
5 it's got to be focused, it's got to be focused, can't
6 be the shotgun.

7 You know, when you look at OSHA when it
8 wrote its hazard communication standard, it needed
9 one. I mean they're dealing with all kinds of
10 chemical byproducts, that's just the nature of the
11 business. They're focused on the chemical industry.
12 You just don't have that in mining.

13 And also, OSHA didn't have any regulations
14 that would even allow them to cover that aspect of
15 health and safety, so they had to come up with a
16 hazard communication standard.

17 Here we are and I think MSHA was a lot
18 more progressive, even back then with the Part 48
19 health and safety tasks of the job -- I mean how do we
20 interpret that. If you've got a hazardous chemical
21 you're going to deal with, you're going to know what
22 the hazard is, you're going to have the proper
23 protective equipment and you're going to know how to
24 handle it. That's part of the rule that exists right
25 now. And if we've got people slopping benzene around

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1 with no protection, you're going to get a citation for
2 it. And he can write us one right now with the rules
3 you've got right now. You don't need all this hazard
4 communication and MSDS books and, you know, 24 hour
5 immediate access and fax machines in shops that are
6 not going to work in three weeks. It's not a good way
7 to go.

8 I mean I believe the concept -- you know,
9 chemicals can hurt you, you've got to respect them.
10 Labeling goes a long way in that. I don't think
11 labeling is good enough but that's a bigger issue than
12 all of us here. And then you have the language aspect
13 of the whole thing.

14 But I think what's missing -- what's
15 missing in really quality hazard communication is
16 there's no programs out there that can speak to our
17 miners about the things that we already know they're
18 getting hurt with or the things we already know
19 they're handling that are one of those five key
20 hazardous chemicals.

21 The other thing we don't know is how
22 effective Part 46 in the aggregate industry is. I
23 mean it hasn't really fully come into effect until
24 this month. What is it going to be, the experience a
25 year from now with these chemical when you have

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1 enforcement of Part 46 on the health and safety
2 aspects of the job that should cover handling these
3 solvents and degreasers and welding rods and all that
4 sort of thing. It would be logical to see what the
5 impact of that rule, which is pretty much acceptable
6 by everybody and was done in a quality way, to see has
7 it really affected what we see in the injury database
8 from a chemical standpoint. And even if you wanted to
9 say let's emphasize in Part 46 training the chemical
10 aspect of the job task, they need to be covered if the
11 employee is going to be trained on the hazards of the
12 task. If there's any chemicals involved with it,
13 they've got to be identified and the hazards
14 communicated. No problem with that. It's all that
15 bureaucracy and nightmare of paper and guaranteed non-
16 compliance even if you're trying the best you can do.

17 You know, I had to start this last year --
18 well, in '99, because there's no way I could -- I
19 knew, based on my chemical division experience, that
20 there's no way I could do it 400 places, it'd take me
21 five years to get there and I'm never going to get
22 there. Because the guys are going to go down and say
23 you know, I need a can of this, can of that and it's
24 not going to be in the book. And you ask the hardware
25 guy, make sure you get an MSDS when you come back with

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1 that. The hardware guy is going to look at him, what
2 is that? That's reality -- that's reality.

3 We've just got to step back and say what
4 is it that we're trying to accomplish -- what is it?
5 And it's the communication of health hazards to that
6 employee. And MSDS doesn't do that. The label is
7 iffy on that. And there is a void of quality training
8 programs on that. You'll have Part A solvents in the
9 chemical industry, but they're all in chemical plants
10 and they don't relate to the -- he's dealing with a
11 parts cleaner, that's what he's dealing with. He's
12 not dealing with tank farms of chlorinated solvents,
13 it just doesn't compute.

14 We owe it to the miners if we're really
15 interested in hazard communication, of giving them
16 that, not another regulation like this.

17 MR. THAXTON: Number one, Kelly, thank you
18 for your comments. They're very good, as I expected
19 they would be and to the point, and we really
20 appreciate you taking the time to come down and give
21 them to us.

22 I also share your concern about the
23 specificity that is in training programs for miners
24 and for welders, for mechanics, which I think we've
25 had -- I think there's evidence that there is higher

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1 mortality rates among mechanics. I mean I worry about
2 some of the solvents that mechanics are exposed to
3 over the course of their careers and I think that --
4 you know, I think that you identified the same group
5 of chemicals that I did when I was talking to Jeff
6 Duncan last week, about creating, trying to create
7 specific training programs for groups of occupations
8 in mining -- you know, something for mechanics,
9 something for lube men, something for welders -- and
10 identify what we would consider high risk kinds of
11 occupations and try to create some programs.

12 I was very pleased to hear you talk about
13 your interest in creating some of these training
14 programs and how they would go about it, because it's
15 right in track with ours and I hope that maybe we can
16 get together at some point on doing that.

17 MR. BAILEY: I think so. As long as all
18 the paper doesn't get in the way of doing it. That's
19 what I worry about. You know, hazard communication is
20 the objective and anything in the way of that, if it's
21 not helping that, it's in the way of that.

22 MR. THAXTON: We've also had testimony of
23 people who have taught -- if this is testimony, it may
24 just be information that we've gathered at public
25 hearings -- people who have had employees take some

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1 product home to work to clean the rug with, you know,
2 out of the shop, and bring a milk jug of it home and
3 the person would go next door and the nephew would
4 stop by and drink out of the milk jug and then we
5 would have the person -- the kid would be taken to the
6 emergency room and then an emergency room wouldn't
7 treat the person until they had had someone talk to
8 them about the MSDS and what that MSDS directed them
9 to do.

10 Now to me, it seems like you don't need
11 very many instances of that to justify just in itself,
12 other justifications notwithstanding, to justify the
13 needs for MSDSs and for mine operators to know
14 precisely. You know, I think they have a
15 responsibility to know precisely what chemicals are on
16 their property and what the effects of those chemicals
17 are. I mean, you have no instances of where you've
18 actually thought the MSDS was worth having?

19 MR. BAILEY: Oh, that's not true. We've
20 had them for -- when we do exposure monitoring for
21 welding fumes, we determine what metals we're going to
22 analyze for -- you know, the rod and the MSDS on that
23 rod has to be known. You can't tell the lab to
24 analyze what metals.

25 MSDSs are, you know, in the hands of a

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1 safety professional, industrial hygienist that can
2 take the mumbo jumbo and turn it into layman language
3 and make a safety meeting out of it, is totally fine.
4 And they're readily available -- they're readily
5 available.

6 You know, the instance that -- your
7 scenario there is -- you know, I doubt that the
8 individual who took the stuff home in the unlabeled
9 jug that got it to the neighbor's son who drank it,
10 you know, if you had an MSDS there would have carried
11 it home anyhow. I mean, I don't think you need all
12 this heavy, heavy regulation to solve that particular
13 problem.

14 MR. THAXTON: Our concern wasn't that he
15 bring the MSDS home, because they do get the
16 information from the property about what was in the
17 jug. The concern to me is what was the quality of the
18 training of that person, did that person actually
19 understand enough about the hazards of what he was
20 bringing that he would take it back into the house,
21 you know, and not recognize that there was a potential
22 for confusion for someone who was 10 or 12 years old.

23 MR. BAILEY: Right.

24 MR. THAXTON: I mean what's the quality of
25 that training if there isn't some kind of -- you know,

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1 either an incentive or some kind of a driving force to
2 create -- to generate better information and to
3 generate more interest on mine property for what kind
4 of hazards there are, and to promote real
5 understanding about what those hazards are. You know,
6 to me that's really what's at essence, and I think you
7 agree with that, I think that's what you're saying,
8 that there has to be an understanding of these
9 hazards.

10 MR. BAILEY: Well, certainly I think that
11 people who handle chemicals on the job, that just as
12 Part 46 totally expects that the hazards associated
13 with the chemicals, if they are hazardous, they should
14 be communicated and the proper protective equipment,
15 proper way to respect that chemical has got to be
16 communicated.

17 You know, I think that that regulation
18 already exists for MSHA to use, they need to use it.
19 The generic type of training program that is in the
20 miners' realm is needed, it doesn't exist. Training
21 firms out there do not understand mining and, you
22 know, solvents, degreasers in mining are -- you know,
23 you still see that kind of thing.

24 MR. THAXTON: Uh-huh.

25 MR. BAILEY: Welding fumes. It's mostly

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1 safety hazards. There's a huge need. I mean I've
2 been looking for programs like that for a long time
3 and we've developed them in an ad hoc sense, but they
4 really need to be first rate.

5 MR. THAXTON: Yes, they do.

6 MR. BAILEY: And I think looking at the
7 injury database and the illness database and
8 monitoring that -- you know, if we have a good program
9 on lime dust in the eye and blowing up batteries and
10 fueling mishaps and we put together programs that
11 address those specifically for the types of
12 environment that your miners are in and we monitor
13 that, that should go down, if training makes any
14 difference. If we know in our heart of hearts that
15 what we put together is high quality and that it is
16 being given to the employees, then education should
17 make a difference.

18 And then on some periodic basis, some
19 interval, that trend needs to be looked at. And if
20 degreasing solvents are the top cause of chemical
21 dermatitis in the mining industry, we need to make a
22 program for it. That's real focus, that's taking
23 something home to the bank and really hitting the
24 target on the bullseye versus aiming the gun that way
25 and maybe you hit the target and maybe you don't.

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1 MR. THAXTON: Okay, Kelly, we appreciate
2 it. Thank you.

3 (Whereupon, a recess was taken at 2: 52
4 p.m.)

5 MR. THAXTON: It's now 5:00, there are no
6 additional people to make statements or testify before
7 this group, so therefore, we're going to adjourn this
8 particular meeting.

9 (Whereupon, the public meeting was
10 adjourned at 5:00 p.m.)

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