

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 Best Western Airport Plaza Hotel, Columbia Enterprise Room, 1981 Terminal Way, Reno, Nevada at 9:00 a.m., Ernest Teaster, Moderator, presiding.

PANELISTS:

ERNIE TEASTER, Administrator, Metal and Nonmetal  
Mine Safety and Health  
DOUG ALTIZER, Office of Education Policy  
Development  
PHAN PHUC, Office of Standard, Regulations and  
Variances  
CHERI HUTCHISON, Office of Standard, Regulations  
and Variances  
SANDRA WESDOCK, Attorney's Office  
CAROL JONES, Metal and Nonmetal Mine Safety and  
Health

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Echo Bay Minerals Company

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Safety Engineer, TCB Industrial, Inc.

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

9:05 a.m.

MODERATOR TEASTER: Welcome to MSHA's Public Hearing on the Interim Final Rule for Hazard Communication in the Mining Industry.

I'm Ernie Teaster, Administrator for Metal and Nonmetal Mine Safety and Health.

The members of today's panel are, to my extreme right, is Doug Altizer from the Office of Education Policy Development. Phan Phuc from the Office of Standard, Regulations and Variances. Cherie Hutchison from the same office. To my immediate left is Sandra Wesdock from the Attorney's Office. And on her left is Carol Jones, from Metal and Nonmetal Mine Safety and Health.

We are here to listen to your comments on the Hazard Communication Interim Final Rule, which we published on October 3<sup>rd</sup> last year. We are holding this hearing in accordance with Section 101 of the Federal Mine Health and Safety Act of 1977.

As is our practice, we will conduct the hearing in an informal manner. During the proceeding panel members may ask questions of the presenters. Although formal rules of evidence will not apply, we will taking a verbatim transcript of the hearing and

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1 will make it a part of the official rulemaking record.

2 The hearing transcript will be available for review  
3 by the public along with all comments and data MSHA  
4 has received to date. The entire rulemaking record,  
5 of course, is available at our office in Arlington,  
6 Virginia.

7 If you wish a personal copy of the hearing  
8 transcript, please make your own arrangements with the  
9 court reporter.

10 We'll also advise you that we hope to have  
11 it on the Internet on MSHA's webpage within 48 hours  
12 at the close of the hearing.

13 Now, let me briefly give you some  
14 background on the Interim Final Rule and highlight its  
15 major provisions. Following that I will share with  
16 you our reaction to some of the comments received thus  
17 far.

18 On November 2, 1987, the United Mine  
19 Workers of America and the United Steel Workers of  
20 America jointly petitioned MSHA to adapt OSHA's health  
21 communication standard to both coal and metal and non-  
22 metal mines, and propose it for the mining industry.  
23 They based their petition on the need for miners to be  
24 better informed about chemical hazards, and that  
25 miners working at both surface and underground coal

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1 and metal and non-metal mines are exposed to a variety  
2 of hazardous chemicals.

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

10 We published a notice of proposed  
11 rulemaking on hazard communication on November 2,  
12 1990, and held three public hearings in October 1991.  
13 The record closed January 31, 1992.

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

21 We reopened the rulemaking record on March  
22 30, 1999, requesting comments on the impacts of the  
23 proposed rule on the environment, small mines, state,  
24 local and tribal governments, and the health and  
25 safety of children.

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1           The National Environmental Policy Act, and  
2 most recent statutes and Executive Orders, included  
3 requirements for us to evaluate the impact of a  
4 regulatory action in these areas. At that time we  
5 also requested comments on information, collection and  
6 paperwork requirements of certain provisions of the  
7 proposal now considered as an information collection  
8 burden under the expanded definition of information  
9 under the Paperwork Reduction Act of 1995. We received  
10 seven comments to the limited reopening of the  
11 rulemaking record, primarily from trade associations  
12 a n d       l a b o r       o r g a n i z a t i o n s .

13           The rulemaking record closed June 1, 1999.

14           On June 3, 2000, we published an Interim  
15 Final Rule on hazard communication, with an effective  
16 date of October 3, 2001. We gave commenters until  
17 November 17, 2000, to submit comments. The Interim  
18 Final Rule specifically requested comments on the  
19 plain language format and the content of the Interim  
20 Final Rule. Non-operators experienced under  
21 Occupational Safety and Health Administration's hazard  
22 communications standards, and any changes in the  
23 mining industry since the publication of the proposed  
24 rule.

25           On December 7, 2000, we personally spoke

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1 with or emailed all commenters and other interested  
2 persons telling them of our decision to hold a public  
3 hearing in Washington, D.C., on December 14, 2000. The  
4 Public notice of the hearing appeared in the *Federal*  
5 *Register* on December 11, 2000.

6 We received 22 written comments on the  
7 Interim Final Rule and heard testimony from six  
8 persons at the public hearing on December 14, 2000.  
9 Commenters objected to what they considered to be an  
10 inadequate comment period, and an inadequate notice of  
11 the hearing. The commenters stated that they did not  
12 have sufficient time to fully analyze the impacts of  
13 the Interim Final Rule, which affected their ability  
14 to develop and submit meaningful comments. They also  
15 stated that many operators were unable to testify at  
16 the hearing, because they did not have enough time to  
17 prepare testimony and make plans to attend the  
18 hearing.

19 Members of the mining community have also  
20 stated that because this is the first time MSHA  
21 promulgated an Interim Final Rule, there is some  
22 confusion about their compliance obligations. The  
23 National Mining Association and the National Stone,  
24 Sand, and Gravel Association have asked for a delay in  
25 the effective date of the Interim Final Rule until we

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1 respond to their previous comments on it. A number of  
2 mine operators and trade associations challenged the  
3 Hazard Communication Interim Final Rule in the U.S.  
4 Court of Appeals, and the United Mine Workers of  
5 America, and the United Steel Workers of America have  
6 intervened in that litigation.

7 Now I will briefly highlight the six major  
8 provisions of the rule.

9 Hazard determination. The Hazard  
10 Communication Interim Final Rule requires mine  
11 operators to identify the chemicals at their mines and  
12 determine if they present a physical or a health  
13 hazard to the miners, based on the chemical's label  
14 and material safety datasheet referred (MSDS), or on  
15 a review of the scientific evidence.

16 Under the Interim Final Rule for the  
17 purpose of hazard communication, MSHA considers a  
18 chemical hazard and subject to the hazard  
19 communication rule, if it is listed at any one of the  
20 following four recognized authorities or sources:

21 Title 30, Code of Federal Regulations,  
22 chapter 1; the American Conference of Governmental  
23 Industrial Hygienist's *Threshold Limit Values and the*  
24 *Biological Exposure Indices*, that's the latest  
25 edition. The National Toxicology Program *Annual Report*

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1       *On Carcinogens*, latest editions; International Agency  
2       for Research on Cancer, mammograms, or supplements.

3               The hazard communications program. The  
4       Hazard Communication Interim Final Rule requires mine  
5       operators to develop, implement, and maintain a  
6       written program to establish a hazard communication  
7       program. The program must include the procedures for  
8       implementing hazard communication through labeling,  
9       MSDSs, and training of miners. A list of hazardous  
10      chemicals known to be present at the mine, and a  
11      description of how mine operators will inform miners  
12      of the chemical hazards present in non-routine tasks,  
13      and of chemicals in unlabeled pipes and containers. If  
14      the mine has more than one operator, or has an  
15      independent contractor on-site, the hazard  
16      communication program also would have to describe how  
17      the mine operator will inform other operators about  
18      the chemical hazards and protective measures needed.

19              Container labeling. A label is an  
20      immediate warning about a chemical's most serious  
21      hazards. The Hazard Communication Interim Final Rule  
22      requires mine operators to ensure that containers of  
23      hazardous chemicals are marked, tagged or labeled with  
24      the identity of the hazardous chemical and appropriate  
25      hazard warning. The label must be in English and

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1 prominently displayed.

2 I would like to clarify one point about  
3 the labeling requirements. Practically speaking very  
4 little labeling is required. You only have to label  
5 stationery process containers and temporary portable  
6 containers, and then only under some circumstances.  
7 Chemicals coming onto mine property are almost always  
8 labeled. You would not have to relabel them unless the  
9 existing label becomes unreadable. You would not have  
10 to label containers of raw materials being mined or  
11 milled by their own mine property. You would not have  
12 to label mine products that go off of mine property.  
13 You would have to provide the labeling information to  
14 downstream users upon request.

15 Material safety data sheet. The chemical's  
16 material safety data sheet provides comprehensive  
17 technical and emergency information. It is a reference  
18 document for mine operators, exposed miners, health  
19 professionals, and firefighters or other public safety  
20 workers. The Hazard Communication Interim Final Rule  
21 requires mine operators to have an MSDS for each  
22 hazardous chemical at the mine. Mine operators should  
23 already have MSDSs provided by the supplier for those  
24 chemicals brought to the mine. The MSDSs should be  
25 accessible in the work area where the chemical is

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1 present or in a central location immediately  
2 accessible to the miners in an emergency.

3 HazCom training. The Hazard Communication  
4 Interim Final Rule requires mine operators to  
5 establish a training program to ensure that miners  
6 understand the hazards of each chemical in their work  
7 area, the information on the MSDSs and labels, how to  
8 access this information when needed, and what measures  
9 they can take to protect themselves from harmful  
10 exposure. Under the Interim Final Rule mine operators  
11 have the flexibility of combining the training  
12 requirements for their hazard communication with  
13 existing Part 46 and Part 48 training. The Interim  
14 Final Rule does not require mine operators to have an  
15 independent training program separate from Part 46 and  
16 Part 48 training.

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

23 Making HazCom information available. The  
24 Hazard Communication Interim Final Rule requires mine  
25 operators to provide miners, their designated

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1 representative, MSHA and NIOSH, with access to  
2 materials that are part of the hazard communication  
3 program. These include the program itself, the list of  
4 hazardous chemicals, labeling information, MSDSs,  
5 training materials and any other material associated  
6 with the program. Mine operators do not have to  
7 provide copies of the training materials purchased for  
8 the use in training sessions, such as videos.

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

13 I will now share with you our thoughts on  
14 some of the comments received on the Interim Final  
15 Rule.

16 Commenters representing the aggregate  
17 industry argued strenuously that the Hazard  
18 Communication Rule is unnecessary and that the  
19 aggregate industry should be exempt from the Rule.

20 The HazCom Rule does not duplicate other  
21 MSHA standards; it augments, supplements, and  
22 complements these existing standards. The Rule  
23 specifically deals with chemicals and chemical  
24 exposure. Chemicals may be used in any mine, including  
25 those in the aggregate industry. There have been

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1 hundreds of chemical burns in the aggregate industry.  
2 Chemical burns can occur on any part of the body. Skin  
3 burns may require multiple skin grafts and require  
4 repeated hospitalization. Eye burns can be serious and  
5 result in permanent loss of eyesight.

6 We believe the burden of small mines is  
7 less than some commenters stated. First, small mines  
8 typically use far fewer chemicals than large mines  
9 and, in many cases, no new chemicals.

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

13 Third, many of the chemicals used at small  
14 mines are not covered by the Rule. For example, soaps  
15 used for washing hands are cosmetics and are exempt.  
16 A can of spray paint is a consumer product and is  
17 exempt when used in small quantities, intermittently.

18 The length of exposure, as well as the  
19 amount, is really the determining factor. A can of  
20 paint only lasts a short time. Glue or adhesives, when  
21 used intermittently in small quantities, are exempt.  
22 Again, the length of exposure, as well as the amount,  
23 is the determining factor in whether or not a consumer  
24 product is exempt.

25 We recognize, however, that not all mines

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1 are likely to use a wide range of chemicals. Although  
2 we cannot exempt the aggregate industry from hazard  
3 communication, as we've said, there are steps we can  
4 take to minimize the burden of the Rule. For example,  
5 we intend to make extensive compliance assistance  
6 visits and conduct extensive outreach. We also will be  
7 finalizing a compliance guide to help operators and  
8 miners understand the application of the HazCom final  
9 rule. We are developing a variety of compliance aides,  
10 such as a model HazCom program, a training video for  
11 mine operators about determining chemical hazards, and  
12 a training video for miners about chemical hazards in  
13 reading the MSDS.

14 A draft of MSHA's Compliance Guide has  
15 been on the MSHA website for months. If you refer to  
16 the Compliance Guide, many of these issues are  
17 explained. If you have any question in these areas,  
18 send them by email to [comments@msha.gov](mailto:comments@msha.gov) or the Office  
19 of Standards at the address listed in the hearing  
20 notice. We will use these questions to clarify your  
21 responsibilities and include additional or better  
22 examples in the compliance guide.

23 As a rule of thumb, however, if you are in  
24 compliance with OSHA's Rule, you will be in compliance  
25 with MSHA's. In the same vein, mine operators may

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1 obtain help from organizations that have developed  
2 generic rules to meet OSHA's HazCom communication  
3 standard, because HazCom contains the same basic  
4 requirements.

5 We will provide links on our website to  
6 some organizations which have developed a variety of  
7 generic HazCom materials.

8 While it will remain the responsibility of  
9 each mine operator to develop and implement a HazCom  
10 program and to have MSDSs, to the extent possible we  
11 will help you establish the hazard communication  
12 program, if requested.

13 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 projections offered by the Rule.

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

23 Under HazCom determination we may revise  
24 the reference to the American Conference of  
25 Governmental Industrial Hygienist or the National

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1 Toxicology Program, and the International Agency for  
2 Research on Cancer, from those considered in  
3 determining if a chemical is a hazard and if a  
4 chemical is carcinogenic.

5 One option we are considering in  
6 determining whether a chemical is a hazard is to refer  
7 to the 2001 editions of the American Conference of  
8 Governmental Industrial Hygienists, *TLV Booklet*,  
9 International Agency for Research of Cancer, National  
10 Toxicology Program.

11 In determining whether a chemical is  
12 carcinogen, we are considering referring only to the  
13 2001 editions of the *National Toxicology Program* and  
14 the *International Agency for Research of Cancer*.

15 We had expected the use of the *American*  
16 *Conference of Governmental Industrial Hygienist*,  
17 *National Toxicology Program*, *International Agency for*  
18 *Research on Cancer* list to reduce the burden on the  
19 mine operators, because mines use relatively few  
20 hazardous chemicals for which they would have to  
21 develop an MSDS and label. Commenters objected to the  
22 use of these lists, stating that the organizations  
23 which compiled them, offer no opportunity for public  
24 comment. They impose unknown future requirements by  
25 citing the latest editions, and they violate

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1 regulations governing incorporation by reference.

2 We are hoping to consider alternatives,  
3 where the impact of the alternative would not reduce  
4 protection afforded miners by the Interim Final Rule.

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

13 Concerning the availability of the MSDSs,  
14 commenters asked that we increase compliance  
15 flexibility and recognize that MSDSs may be stored in  
16 a computer. In response, we are considering modifying  
17 the requirement to have an MSDS available for each  
18 hazardous chemical before using it to: (1) requiring  
19 the operator have an MSDS available for each hazardous  
20 chemical which they use.

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

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1           In response to commenters' concern  
2 concerning hazard communication training, we are  
3 considering changing the language from requiring the  
4 operator to train the miner whenever introducing a new  
5 hazardous chemical into the miner's work area, to  
6 requiring training when the operator introduces a new  
7 chemical hazard into the miner's area. This change  
8 would clarify MSHA's intent that when a new chemical  
9 is introduced, additional training is required only if  
10 the hazards change. This is the intent, as discussed  
11 in the preamble of the Interim Final Rule.

12           Also, in response to commenters, we are  
13 considering revising the definition of health hazard.  
14 The Interim Final Rule defines health hazards to  
15 include chemicals that damage the nervous system,  
16 including psychological or behavioral problems. We are  
17 considering deleting the phrase "psychological or  
18 behavioral problems."

19           We are also considering adding the  
20 criteria toxic or highly toxic to more closely conform  
21 to the language to that in OSHA's HazCom communication  
22 standard.

23           The Hazard Communication Interim Final  
24 Rule is an information and training standard that  
25 requires mine operators to know about the chemicals at

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1 their mines and to inform the miners about the risk  
2 associated with exposure to these hazardous chemicals,  
3 the safety measures implemented at the mine to control  
4 exposures and safe work practice.

5 The Hazard Communication Interim Final  
6 Rule does not restrict chemical use, require controls  
7 or set exposure limits.

8 We will publish our response to the  
9 written comments, including those comments received  
10 today at this hearing, in the preamble to the Hazard  
11 Communication Final Rule. We will consider all  
12 comments contained in the rulemaking record from the  
13 publication of the advanced notice of proposed  
14 rulemaking on March 30, 1998, through the close of the  
15 record on October 17, 2001, in the development of this  
16 final rule.

17 You may submit written comments to me  
18 during the hearing, or send them to the address listed  
19 in the public notice. We will also accept additional  
20 written comments, and other appropriate data, on this  
21 final rulemaking from any interested party, including  
22 those who do not present oral statements.

23 All comments and data submitted to MSHA,  
24 including that submitted to me today, will be included  
25 in the rulemaking record.

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1           The record will remain open until October  
2           17, 2001, for the submission of post-hearing comments.

3           And if you've not signed the attendance  
4           sheet when you entered the door, we ask that you'd  
5           please do that.    And if there's anyone that would  
6           like to speak, we would also request that you sign up  
7           to speak.

8           We will begin with the folks that have  
9           signed up in advance to speak. If there is time at the  
10          end of that, which I can assure you there'll be  
11          adequate time, anyone in the audience who would like  
12          to come up and make a statement will be able to do so.  
13          We will continue the hearing until all speakers have  
14          had an opportunity to address the panel.

15          This concludes my opening statement. And  
16          we've had one person to sign up to speak, and that's  
17          Jack Cottrell, and he's with the Getchell Corporation.

18          MR. COTTRELL: Good morning. My name is  
19          Jack Cottrell, and I'm the Safety Superintendent for  
20          Getchell Gold Corporation.    Getchell Gold is an  
21          underground gold mine with the associated surface  
22          mill, concentrator and refinery. The Corporation is  
23          part of the Placer Dome Group.

24          We appreciate the opportunity to comment  
25          on the Interim Final Hazard Communication Rule

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1 published by the Agency on October 3, 2000, which has  
2 been delayed until June 30, 2002.

3 After reviewing the regulation, we find it  
4 contains requirements which will be burdensome and  
5 onerous and does not increase miners' safety and  
6 health or their knowledge of hazardous chemicals.

7 The regulation duplicates standards  
8 already in place.

9 The rule strays from hazard communications  
10 to hazardous waste regulations.

11 They treat the mining industry as if they  
12 were in the chemical manufacturing industry and not  
13 the mining industry.

14 And the regulations do not appear to be  
15 well thought out for the mining industry.

16 Getchell Gold supports in principle the  
17 implementation of those sections of the regulation  
18 which will require labeling, training miners and the  
19 potential risks and providing MSDSs when they work  
20 with or around hazardous chemicals. In fact, we do  
21 this now.

22 The Corporation does not support the  
23 provisions which require: The development of MSDSs  
24 when new chemicals are formulated in the process or  
25 the duplication of regulations now in force.

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1           We ask the Agency to consider the  
2 following comments.

3           In general, the regulations meet the  
4 purpose of the HazCom standard. However, there are  
5 sections of the regulation that are confusing and, in  
6 Getchell's opinion, will be burdensome and create  
7 managerial problems.

8           Getchell Gold is concerned that the  
9 definition of the word "produced" will require mining  
10 companies to produce meaningless and expensive MSDSs  
11 which will not increase the safety of miners.

12           An example of this is as follows: When  
13 our gold bearing ore is milled to the proper size, a  
14 cationic floc is added and we would have to develop an  
15 MSDS.

16           Then as the solution is processed,  
17 sulfuric acid is added; we would have to develop  
18 another MSDS.

19           As it enters the autoclave an anionic floc  
20 is added; and another MSDS would be required.

21           And then as the acid is stripped with  
22 lime; another MSDS would be required.

23           Slake lime is then added; another MSDS  
24 would be required.

25           Cyanide is added; an MSDS would be

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1 required.

2 The material is then sent to the carbon  
3 leach where activated carbon is added; another MSDS  
4 would be required.

5 Small quantities of ethylene glycol are  
6 added; another MSDS would be required.

7 Then caustic soda is added; another MSDS  
8 would be required.

9 And then the solution goes to the refinery  
10 where zinc is added; another MSDS would be required.

11 So, nine or ten MSDSs would have to be  
12 developed for one process stream. The true value of  
13 that MSDS could be measured in feet before another  
14 chemical is added, so an operator would have to mark  
15 the section of the process where a particular MSDS  
16 would be valid.

17 If a mining company were to have an MSDS  
18 on the chemicals in that process stream and the miners  
19 were trained in the hazards of the chemicals, a  
20 greater level of safety could be achieved.

21 The other complicating aspect is that as  
22 the ore body changes, different reagents could be used  
23 on the next shift to maintain the recoverability of  
24 the gold. This makes it extremely burdensome and  
25 expensive to meet this requirement, and a managerial

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1 nightmare trying to advise miners which solution is in  
2 use and which MSDS they should refer.

3 This example is just for one process  
4 stream and does not account for re-circulation,  
5 refinery processes, oxygen injection systems,  
6 autoclave systems, discharge systems, thickening,  
7 conditioning, etcetera. The scenario does not fully  
8 address natural occurring metals such as mercury,  
9 thallium, selenium, arsenic, silver, etcetera which  
10 could be considered hazardous and would complicate  
11 greatly the development of MSDSs.

12 It should be noted that these solutions  
13 are not sold or transferred off the property. They  
14 are not used in other commercial ventures. They are  
15 treated and disposed on the property under the  
16 guidance of numerous EPA and state regulations.

17 As Getchell addressed the regulation the  
18 following sections generated no comments: Subpart A-  
19 Purpose and Scope of HazCom; Subpart C-HazCom  
20 Programs, and; Subpart H-Trade Secrets Hazardous  
21 Chemical.

22 The sections which were confusing and  
23 generated several comments are: Subpart F-HazCom  
24 Training and Subpart G-Making HazCom information  
25 Available.

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1                   We found Subpart B-Hazard Identification,  
2                   Subpart D-Container Labels and Other Forms of  
3                   Warnings, Subpart E-Material Safety Data Sheet,  
4                   Subpart I-Exemptions and Subpart J-Definitions to be  
5                   confusing and often appearing to contradict other  
6                   sections of the regulation.

7                   The following are specific comments and  
8                   questions regarding these sections.

9                   Subpart B-Hazard Determination. Table  
10                  47.11-Identifying Hazardous Chemicals: would  
11                  subsection (b) include mine drainage, tailings ponds  
12                  mine dumps, etcetera? If so, this will prove to be  
13                  unduly burdensome and the potential hazardous nature  
14                  of such material is well known to the mining industry.

15                  Subpart D-Containers, Labels and Other  
16                  Forms of Warning. 47.31(2)(C). Does this require re-  
17                  labeling inventory and containers in use?

18                  Subpart E-Material Safety Data Sheet.  
19                  47.41 requirements for MSDS. Does this include  
20                  tailings discharge, water stored on tailings ponds,  
21                  water in treatment plants, etcetera?

22                  The definition of the word "produce" in  
23                  Table 47.31-Definition seems to make this section more  
24                  stringent than MSHA intended.

25                  As ore moves through the process, reagents

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1 and chemicals are added to suppress natural elements  
2 such as iron and lead, or to collect them for  
3 settling. These additions "produce" new "chemicals"  
4 and would require MSDSs. Again, this too will be  
5 unduly complicated and burdensome, and we suggest that  
6 the Agency should delete this section.

7 47.43 MSDS For Hazardous Wastes: The  
8 entire section should be deleted because hazardous  
9 wastes are thoroughly regulated by Solid Waste Disposal  
10 Act, as amended by the Resource Conservation and  
11 Recovery Act.

12 47.45 Retaining MSDS, paragraph (b). This  
13 is impractical and unnecessary. If a chemical is no  
14 longer on the property, why should an operator have to  
15 wait 3 months before disposing of the MSDS?

16 Subpart F-HazCom Training. 47.51  
17 Requirements for Hazard Training. This section is not  
18 practicable or necessary for laboratories. The volume  
19 of laboratory chemicals, the training of the people  
20 conducting assays and other analysis all indicate that  
21 these people are trained in the use of chemicals.  
22 They are covered by established training regulations  
23 such as new miner training and site specific training  
24 now in effect.

25 Subpart F-HazCom Training. 47.52 HazCom

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1 Training, paragraph (a). This paragraph should be  
2 deleted, as it would appear to require training for  
3 all chemicals, not hazardous chemicals, and is outside  
4 the intent and purpose of these regulations. Sugar  
5 and salt are chemicals, but can be safely eaten.  
6 Although water contains hydrogen and oxygen, it's not  
7 dangerous to drink or to smoke around. There are  
8 hazards associated with these types of chemicals, but  
9 not in the context of HazCom regulations.

10 Paragraph (e), this paragraph contradicts  
11 Table 47.91 Definitions-Containers. It also adds  
12 confusion to the standard. First, the operator must  
13 mark all containers containing hazardous materials,  
14 then the Agency exempts certain "containers," but  
15 requires training on these exempt "containers." The  
16 Agency should remove all training requirements on  
17 exempt containers.

18 Additionally, cleaning tanks, rod and ball  
19 mills would fall under Confined Space entry and miners  
20 would be trained based on the hazards of those  
21 containers.

22 Paragraph (f), the concepts are taught in  
23 Emergency Response Procedures already mandated by the  
24 Agency.

25 Paragraph (g), these concepts are already

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1 taught in Emergency Response Procedures and are  
2 duplicative of other regulations. Thus, the Agency  
3 should clarify that operators can rely on present  
4 Confined Space and Emergency Response training that  
5 addresses these areas.

6 In Subpart J-Definitions, 47.91-  
7 Definitions for terms used in this part the word  
8 "produce," the way the term is defined to include  
9 "process," "formulate" and "generate" makes all ore  
10 treated or untreated subject to creating MSDSs.

11 And regarding MSHA's proposed substantive  
12 changes in their opening comments on pages 5 of 6,  
13 instead of referencing ACGIH and NTP and IARC, MSHA  
14 should consider placing the definitions of "Hazard  
15 Determination" into the regulation versus referencing  
16 the organizations' reports or latest editions.

17 Getchell agrees that by referencing these  
18 organizations the mining community is shutout of the  
19 rulemaking process.

20 Also by referencing 2001 editions of NTP  
21 and IARC, MSHA will be stuck in the past while NTP and  
22 IARC update their policies, the mining community will  
23 be dealing with 2001 policy. By placing the  
24 definitions in the regulations the Agency can always  
25 update new information through the regulatory process

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1 where the mining community can have input into the  
2 changes.

3 MSHA proposes to change Subpart F 47.51(a)  
4 to read "Introduces a new chemical hazard into the  
5 miner's work area...from...introducing a new hazardous  
6 chemical into the miner's work area." Getchell would  
7 urge MSHA not to make that change as the definition  
8 changes the concept of training on hazardous chemicals  
9 to training on the hazards of all chemicals, which  
10 again would be outside the intended scope of the  
11 regulation.

12 Again, Getchell Gold would like to thank  
13 the Agency for staying the regulation, and requesting  
14 additional comments. We would like to thank the  
15 Agency for the opportunity to address the strengths  
16 and weakness of the HazCom regulation.

17 This concludes our comments and if you  
18 have any questions, we'd be happy to answer them.

19 MODERATOR TEASTER: Thank you, Jack. We  
20 appreciate you sharing those comments.

21 How much training does each miner receive  
22 approximately involving the chemicals that's used at  
23 your operation?

24 MR. COTTRELL: In the new miner training,  
25 it's about 45 minutes to an hour on hazard

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1 communication. Once they get into the area, they go  
2 through their site specific, and then they go into  
3 their regular training. And if they're dealing with  
4 any of these chemicals, they get probably an hour, two  
5 hours on every chemical before they're signed off to  
6 even work with them.

7 So total, I would say somewhere between  
8 eight to 32 hours, depending upon on they're  
9 responding and they're observed to be handling the  
10 chemicals before we sign them off as being task  
11 trained on the chemical.

12 MODERATOR TEASTER: So you'll cover them  
13 in general, and then if you got a task that requires  
14 that, there's more in depth training?

15 MR. COTTRELL: Yes, that's right.

16 MODERATOR TEASTER: How do you currently  
17 inform the miners about the chemicals? You indicated  
18 that there were several chemicals that's created by  
19 the processes that you use. How are miners trained in  
20 those?

21 MR. COTTRELL: We don't train on that. We  
22 train on the hazardous chemicals that are identified  
23 when they come in, and we train on that specific  
24 chemical.

25 If there's a chemical reaction between,

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1 say, cyanide and lime, we don't train on what that new  
2 chemical produces; we train on both cyanide and the  
3 lime.

4 MODERATOR TEASTER: Okay. What's been the  
5 experience, say, in the last 3 years or to the extent  
6 you have knowledge if it's less than that at Getchell  
7 with injuries that's been caused by some exposure to  
8 chemical hazards?

9 MR. COTTRELL: I've only been at Getchell  
10 for about 3 months, and we've had two incidents with  
11 hazardous chemical and it was an anti-scalent. People  
12 got some on their skin, and one got it on their cheek.  
13 First-aide requirement was required. There was no  
14 medical requirement or we didn't even have to take  
15 them to a doctor. But we took them down to DMT and  
16 they treated them for that.

17 MODERATOR TEASTER: And had these miners  
18 been trained in accordance with Getchell's training?

19 MR. COTTRELL: Yes and no. The training  
20 program could have been stronger than what it was, and  
21 we're in the process of fixing those things now. But  
22 there was a process, there was an attached training  
23 sheet for that chemical.

24 MODERATOR TEASTER: Jack, do you feel for  
25 approximately how many chemicals that you have on the

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1 property?

2 MR. COTTRELL: Processed chemicals or --

3 MODERATOR TEASTER: Chemicals that would  
4 be chemical hazards under Interim Final Rule?

5 MR. COTTRELL: No, I don't. I know that,  
6 you know, we'll have cyanide, we'll have the lime,  
7 we'll have reagents. I'm not even sure what agents.  
8 We're shut down right now. I don't even know what  
9 reagents we're going to have when we come up, but  
10 there will be several reagents. There may be MIBC and  
11 those type of things out there.

12 Rough guess, maybe 15/20 in the mill  
13 process.

14 MODERATOR TEASTER: And in the milling  
15 process you have MSDSs. Would those only deal with  
16 the chemicals that you have that the miners are  
17 currently exposed to?

18 MR. COTTRELL: No, our MSDS is on any  
19 product that comes on the property, we have an MSDS  
20 for it whether it be WD40, anything that -- any MSDS  
21 is produced for a chemical that comes on our property,  
22 we have an MSDS for it.

23 MODERATOR TEASTER: Do the miners at your  
24 operation refer to those MSDSs?

25 MR. COTTRELL: Yes. Yes.

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1                   MODERATOR TEASTER: Do you have a feel how  
2 often a miner may --

3                   MR. COTTRELL: Oh, a couple of times a  
4 week we get calls for MSDSs.

5                   MODERATOR TEASTER: Are those MSDSs, are  
6 they catalogued in anyway where you can go to try to  
7 find one with some kind of a systematic approach,  
8 whether they're alphabetical or sequential?

9                   MR. COTTRELL: We try and keep the MSDSs  
10 that are applicable to that department in that  
11 department. And then we keep a list of all of the  
12 MSDSs at our security so that if they can't find one.

13                   The paper method is extremely hard to  
14 manage and we're in the process of looking at an  
15 electronic system to go electronically, which it's  
16 going to make it easier for the miners on midnight  
17 shift when they're done at 1:00 or 2:00 in the  
18 morning, they want to pull up an MSDS; they can go to  
19 a computer and pull it up. And we're in the process  
20 of making that transition now.

21                   We're in the process of finding the  
22 company and the system that will aid us doing that.

23                   MODERATOR TEASTER: Jack, you indicated  
24 that you thought as soon as a chemical is no longer  
25 used at the mine that we should be able to get rid of

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1 the MSDSs. Is that what you currently do when it's no  
2 longer --

3 MR. COTTRELL: No, we never throw away an  
4 MSDS. It's just the concept that if we want to get  
5 rid of one, we shouldn't have to wait three months.

6 Typically, any mine I've been in we've  
7 never thrown away an MSDS. We've always kept them.

8 MODERATOR TEASTER: We've had some  
9 commenters to raise concerns that when you have  
10 exposures to some chemicals, you don't know what the  
11 long term effect may be from that exposure. And  
12 they've suggested that we require that these MSDSs be  
13 kept for 30 years because 20 years down the road, 10  
14 years something. Do you have any thoughts about that?

15 MR. COTTRELL: Yes. Record keeping  
16 nightmare, probably. But I don't have any objection  
17 to that if you can keep them electronically, you can  
18 keep them.

19 MODERATOR TEASTER: Okay. Assuming that  
20 this Interim Final Rule would ultimately end up in a  
21 final rule, do you have any thoughts of how the Agency  
22 can work best with the industry, and particularly the  
23 small operators in the industry?

24 MR. COTTRELL: Let me address our own  
25 needs first. Our own needs is clarification of the

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1 rules.

2 The outline that you read in your opening  
3 statements, the first six items, to me covers hazard  
4 communication. If that whole rule was set on those  
5 six principles, I don't think you'd have much argument  
6 from the industry, at least you wouldn't have from us.  
7 It's when you going over to hazard waste and producing  
8 these MSDSs in the process stream that it causes us  
9 problems from a managerial and also a common sense  
10 standpoint.

11 MODERATOR TEASTER: I mean, I think we can  
12 all agree, and you disagree if you like, but I think  
13 most of the industry is in agreement that miners  
14 should be made aware of any chemicals to which they're  
15 going to be exposed and how to protect themselves if  
16 they do have that exposure, and have that information  
17 available if they need some medical attention later.  
18 And what we're trying to do is craft a rule that  
19 provides those protections and at the same time do  
20 that in the least burdensome way. And any information  
21 we can get to help us accomplish that; I mean it is  
22 the goal is to make the miners aware, make sure that  
23 they know the protective means of protecting  
24 themselves. And also, that they have some information  
25 that they can refer to. Because those things become

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1 very critical when you have exposures and the doctors  
2 don't know what chemicals you've been exposed to  
3 that's causing this problem.

4 MR. COTTRELL: No, I don't disagree with  
5 that at all.

6 If I may relate a story of about why I  
7 feel as strong as hazard communication as I do, is  
8 early in my career before I was even in safety, I had  
9 a friend who was working in a mill and happened to be  
10 going home one night and walked past a tank that  
11 overspilled, and he happened to look up at it. And it  
12 was -- had cyanide and lime in it, and he lost both of  
13 his eyes over it.

14 I was probably 18/19 when that happened,  
15 and I've never forgot it. And I think that back then  
16 if we had trained miners and had safe walkways around  
17 these things, that that wouldn't have had to happen.

18 And so I believe that miners need to know,  
19 and that's why we say in our statements that in  
20 principle we support what you're doing here. We're  
21 training our miners now they need to know this stuff;  
22 it's going to effect their lives if they get tangled  
23 up in this stuff in the wrong way.

24 It's the other parts of the regulation  
25 which gets into program that are already established,

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1 regulations already established, getting into things  
2 that are already covered by EPA and other agencies  
3 that we'll have to comply with in this, and it's  
4 duplicative in that sense.

5 And overall, the whole tone of the thing  
6 makes us look more like we're in the chemical  
7 manufacturing system versus in the mining system. And  
8 if we can take those parts out and keep a true  
9 training aspect for hazardous chemicals, I think it'll  
10 work better.

11 MS. JONES: I just have had one  
12 clarification of a comment that you made earlier. You  
13 said that you objected to our using ACGIH, NTP and  
14 IARC --

15 MR. COTTRELL: No, not using the latest  
16 edition.

17 MS. JONES: Right.

18 MR. COTTRELL: Or the 2001 edition.

19 MS. JONES: Okay. So what is it that you  
20 would like us to --

21 MR. COTTRELL: I'd like you to take and  
22 define what a hazardous chemical is, even if you have  
23 to base it upon their definitions and put that in the  
24 regulation. And then if you find out later on that  
25 you need to make a change, that can be done through

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1 the regulatory process.

2 In our draft HazCom program that we're  
3 getting ready to implement once the final rule comes  
4 out and if there's any changes in it, we'll have about  
5 two or three pages of what constitutes a hazardous  
6 chemical, and it identifies a lot of things that are  
7 in IARC, NTP and ACGIH. And if we can do that for our  
8 own program, MSHA should be able to come up with a  
9 list of criteria so that we don't have any doubts of  
10 what you're talking about.

11 MS. JONES: So you would like a list of  
12 criterion, but not a list of chemicals?

13 MR. COTTRELL: A list of criteria, yes.

14 MS. JONES: I see.

15 MR. COTTRELL: For example, if a hemotoxin  
16 is a hazardous chemical, it should be identified as a  
17 hemotoxin. If it meets that criteria, then we can  
18 look at the MSDS, see if it's a hemotoxin and be able  
19 to set up our program based on that.

20 I think if you get into chemicals, it's  
21 going to be too hard to manage.

22 The other thing is if you leave it  
23 according to these other agencies, we really don't  
24 know what we're supposed to be doing unless we go in  
25 and we become experts on these other agencies. And,

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1 frankly, we're not going to do that. We're going to  
2 wait until probably a fight starts between us and MSHA  
3 and try to correct it then. And if we can do it this  
4 other way, we can avoid the problem and manage the  
5 thing correctly up front than versus from the backside  
6 of it.

7 MS. JONES: Do you plan to submit written  
8 comments?

9 MR. COTTRELL: Yes, I --

10 MS. JONES: I was just wondering if you  
11 would outline that part in more detail as to what you-  
12 -

13 MR. COTTRELL: No, I will submit what I  
14 read today today.

15 MS. JONES: Thank you.

16 MS. HUTCHISON: Could you also send us a  
17 copy of your HazCom program?

18 MR. COTTRELL: It isn't final yet because  
19 we don't know what the rules are going to be, but I  
20 wouldn't have a problem with that.

21 MS. HUTCHISON: But you have already  
22 defined hazard chemical?

23 MR. COTTRELL: Yes. Well, I've got that  
24 program with me today if you want copies of that, I  
25 can do that.

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1 MS. HUTCHISON: That would be helpful.

2 MR. COTTRELL: Okay.

3 MS. HUTCHISON: Also I had another  
4 question about your comments concerning hazardous  
5 waste that MSHA is duplicating EPA requirements?

6 MR. COTTRELL: Yes.

7 MS. HUTCHISON: In what way are we  
8 duplicating EPA requirements?

9 MR. COTTRELL: Right now we're required  
10 for our hazardous waste, we have a hazardous waste  
11 area designated, it's fenced off, has a key on it.  
12 Everything is kept in a certain area. Everything is  
13 marked. There's a date on it when it went into  
14 storage. There's a date when it has to come out of  
15 storage. And that whole system is managed.

16 Now, the one problem that comes in is that  
17 if we have a bunch of liquids of hydraulic fluids,  
18 glycol, you know, all this other stuff, we're going to  
19 mix all that stuff together because it's going to go  
20 out to a hazardous waste storage place. According to  
21 your regulations we would have to have an MSDS on that  
22 when we started mixing these chemicals together  
23 because we've created a new chemical.

24 MS. HUTCHISON: The Interim Final Rule,  
25 although it says MSDS for hazardous waste, it doesn't

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1 require you to create one. It requires that if you  
2 have one, that you have to make it available to  
3 miners and any information about that hazardous waste  
4 that is about the hazards of that waste, that you have  
5 to inform miners and give them access to any  
6 information you have about it.

7 MR. COTTRELL: Right.

8 MS. HUTCHISON: But it doesn't require you  
9 to create anything else.

10 MR. COTTRELL: But the other part of the  
11 regulation does; it says that if we produce, we  
12 formulate new chemicals, then we have to produce one.  
13 And the way we interpret that is we would have to  
14 exactly do that. That's why we object so strongly to  
15 that whole process of when chemicals are added into  
16 the solution as it goes through the mining process or  
17 the milling process.

18 Every time we add two chemicals together,  
19 we generally create a new chemical. And the  
20 regulation as it stands now is we have to produce an  
21 MSDS on that.

22 MS. HUTCHISON: Okay. So this all goes  
23 back to your comments on the definition of "produce?"

24 MR. COTTRELL: Produce, yes.

25 MS. HUTCHISON: Thank you.

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1 MR. COTTRELL: See, we don't object to  
2 having an MSDS for each of those chemicals in the  
3 stream. We just don't want to formulate new MSDSs as  
4 it progresses through the stream in our own process.

5 MS. HUTCHISON: Why not?

6 MR. COTTRELL: Well, it's expensive. By  
7 the time you add cyanide and you add lime maybe two or  
8 three feet before you have a totally new compound.

9 MS. HUTCHISON: Is this an enclosed  
10 system?

11 MR. COTTRELL: It all goes into an  
12 enclosed system.

13 MS. HUTCHISON: Well, I meant --

14 MR. COTTRELL: The tanks are open, but it  
15 goes into a piping system.

16 MS. HUTCHISON: So there is potential for  
17 your mill workers to be exposed to this chemical  
18 that's produced for two feet?

19 MR. COTTRELL: Yes. Yes. Line ruptures,  
20 yes. If a line was to rupture at that point, yes,  
21 they could be exposed to it.

22 Now, understand we have alarms and  
23 everything set up for cyanide so that if, you know, we  
24 started getting high cyanide levels or something in  
25 the area, we evacuate it. But, I mean, we have all

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1 those other processes set up to handle these things.

2 MS. HUTCHISON: Are you aware that we  
3 allow MSDSs to cover a process stream?

4 MR. COTTRELL: You know, I don't know how  
5 we would write one on the process stream, though. And  
6 you know, then I like I say, you know, our ore has  
7 arsenic, has other heavy metals in it that we take out  
8 in the process; how do we incorporate all that into  
9 MSDSs, too? I just don't know how we could comply  
10 with that.

11 MS. HUTCHISON: Are the hazards of the  
12 chemicals that you produce in your process stream, are  
13 they different from the hazards of the individual  
14 components?

15 MR. COTTRELL: Yes. They can be. Take  
16 cyanide and lime, for example. We put the lime into  
17 the cyanide to raise the ph up. And so the initial  
18 hazard really becomes if somebody gets exposed to it  
19 and gets it on their skin, it's from the lime, not  
20 from the cyanide.

21 If the material sits for a while and the  
22 ph drops down, then the cyanide comes out and you have  
23 another hazard off of that.

24 And so initially I would treat somebody  
25 for a burn from the lime because the ph is up around

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1 14. But if that material was to spray and the ph drop  
2 on it, then you've got a totally different hazard and  
3 you've got to look at the cyanide side of it.

4 MS. HUTCHISON: And do you train your  
5 miners about this?

6 MR. COTTRELL: Oh, yes. Yes. The state  
7 of Nevada has an excellent cyanide training program  
8 that they train. I've used them many times on  
9 cyanide.

10 DuPont and all the other companies that  
11 produce cyanide come in and train for us also.

12 MS. HUTCHISON: I don't have anymore  
13 questions. Thank you.

14 MR. PHAN: One question. How big is your  
15 operation?

16 MR. COTTRELL: In the world of mining it  
17 isn't really all that big. We're down right now.  
18 When the mine was running, the mill and the refineries  
19 running, we had about 600 employees there.

20 MR. PHAN: And who usually conducts the  
21 chemical hazard training?

22 MR. COTTRELL: The safety department does.  
23 We conduct the initial one and then there's a process  
24 where the supervisors when they introduce the  
25 employees into the area, they train them on the

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1 chemicals in that area also.

2 MR. PHAN: Thank you.

3 MODERATOR TEASTER: Jack, as I understand  
4 it, you're in the process of reopening your mill?

5 MR. COTTRELL: Yes.

6 MODERATOR TEASTER: Do you have any  
7 knowledge about the underground operation there that  
8 concerns with chemicals?

9 MR. COTTRELL: The only chemical that they  
10 use underground right now is an anti-scalant, and that  
11 they just pump it down and they put it in the ditch so  
12 that when the water is pumped out for treatment, that  
13 it doesn't scale up the lines.

14 They use some resins in the bolts. We use  
15 resin bolts and there's some chemicals in that. And  
16 if that breaks, if a resin tube breaks and they get  
17 that on their skin, it's something else we have to  
18 look at. So, we would train them on the anti-scalant.  
19 We'd train them on the resins.

20 And then we have the hydraulics and the  
21 oils, and things like that underground.

22 MS. JONES: Do you also include in your  
23 training the training on the hazardous waste that's  
24 produced, do you tell them --

25 MR. COTTRELL: We do, but the

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1 environmental department generally conducts that  
2 because they have certain criteria they have to meet  
3 for EPA.

4 MS. JONES: You were saying that you would  
5 need to put together nine or ten MSDSs on the process  
6 if this were --

7 MR. COTTRELL: On just the one process  
8 stream, yes.

9 MS. JONES: Right. Now is that a  
10 constantly ever changing process or is that something  
11 that you've been doing and you just --

12 MR. COTTRELL: No, it can --

13 MS. JONES: Once you have those MSDSs that  
14 you would be unlikely to have to change them very  
15 frequently?

16 MR. COTTRELL: No, it can change. It  
17 could run that way, you know, for a month but if the  
18 ore changes and you get into more oxides, more  
19 sulfides, you find other chemicals that will separate  
20 things out, we would switch to those things.

21 We do a lot of testing on that. Up front  
22 we have a met lab that tests on that so that as we see  
23 the stuff coming down from the mine, the mill can get  
24 switched over to maximize the recoverability of the  
25 gold.

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1 MS. JONES: Thank you.

2 MR. COTTRELL: But that may happen, mid-  
3 shift sometimes it'll happen.

4 MODERATOR TEASTER: Jack, thank you very  
5 much. I appreciate you sharing your comments with us.

6 MR. COTTRELL: Thank you.

7 MODERATOR TEASTER: As I said earlier, we  
8 only had the one speaker that had signed up to speak.  
9 If there's anyone in the audience that would like to  
10 have some discussion, we'd ask that you'd come forward  
11 now and identify yourself.

12 MR. HEESE: Good morning.

13 MODERATOR TEASTER: Good morning.

14 MR. HEESE: I'm Dayne Heese with Echo Bay  
15 Minerals Company at the MaCoy Mine located south of  
16 Battle Mountain, Nevada.

17 And I just wanted to concur with Jack on  
18 one of the concerns that I've had in the mining  
19 process. We have a team of metallurgists that work  
20 with our ore daily and the process flow changes  
21 everyday. They mix different chemicals with the ore  
22 process to get desired results.

23 We have a flotation system that we use to  
24 float off certain metals. Our ore changes so  
25 drastically between -- we are running ore from two

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1 different pits. We have a process flow coming in off  
2 of leach pads and things, and we may get a high copper  
3 ore coming through, we may have ore that has high  
4 silver/low gold and then we'll have high gold/low  
5 silver with copper. We're have realgar mixed in with.  
6 We have sulfides and oxides, and all these things and  
7 they change drastically.

8           And then we have high pyrites. And we  
9 have another material called carbon. And carbon is an  
10 element that's used to take gold back out of cyanide  
11 solution, but we have this as a natural process in our  
12 ore.

13           So they have to change their chemical  
14 compositions of the ore process going through the mill  
15 everyday. And we check our head grade, our ore grade  
16 coming in, our tail grade going out and all these  
17 things. And everything has to be neutralized before  
18 it goes to tailings impounded and everything, so that  
19 it's okay environmentally with birds and everything  
20 else. So it's a huge process and it changes all the  
21 time; it's a daily thing.

22           So, the burden of developing MSDS sheets  
23 and things to be specifically for ore for processes it  
24 would be immense and there's no way we could keep up  
25 with it. There's no possible way.

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1           And we have open tanks, too. And  
2 frequently we'll have a line that may break in an  
3 area. We have areas that are protected that we have  
4 frequent ruptures in and things of that nature.

5           So what we do with our employees when they  
6 come on is we have the Part 48 training that we do.  
7 And we spend at least an hour on chemical use with the  
8 miners, on health exposures. There's probably another  
9 hour spent on proper personal protective equipment for  
10 areas that they work in.

11           Then when they go to the area that they're  
12 going to work in, after the miners went through that,  
13 and he needs to go through his task training, we have  
14 a system called standard operating procedures. So we  
15 take a miner like into a mill area and he's into a  
16 specific flow process of that mill. He is trained on  
17 all the chemicals that are used in that flow process,  
18 the hazards that are associated with those chemicals  
19 and the proper PPE that's supposed to be worn in that  
20 area.

21           Now, typically a miner for one process  
22 goes through probably 80 hours of training the way we  
23 have it right now. At least two weeks before he's  
24 ever turned loose on his own.

25           Now, if he goes to a new process in the

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1 mill area, he has to undergo the next process in that  
2 mill area.

3 But for a laborer coming in, he has to  
4 spend several weeks going through all this because he  
5 could be in any area at anytime cleaning up or doing  
6 anything like that.

7 So as we see it, we would like to be able  
8 to generalize the training for the hazards that are in  
9 the area and not the possible hazards that could be  
10 generated. But we do have caustics. We have things  
11 that could be acids and burns, and different things of  
12 that nature, you know.

13 And then all the airborne exposures are  
14 addressed.

15 MODERATOR TEASTER: Thank you, Dayne.

16 First of all, I want to congratulate you  
17 for the extent of your training program that you have  
18 there for your miners. It sounds quite impressive.

19 I think that the intent of the Interim  
20 Final Rule was that if you trained the miners in the  
21 chemicals to which they'll be exposed, it wouldn't  
22 involve to any chemical changes as a result of the  
23 processes. We'll take a look at that and we'll  
24 certainly clarify that in the final rule. But I think  
25 the intent was, and there are some folks here that

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1 maybe could speak to it a little more, that if you  
2 train the miners in all the hazards, the chemical  
3 hazards, chemicals they'll be exposed to that in the  
4 process, even though they're mixing it would create  
5 something different, that that training would suffice  
6 and you would not have to develop MSDS sheets on it.

7 But, Cherie, would you address that a  
8 little bit?

9 MS. HUTCHISON: Yes. Under the Table  
10 47.11 Identifying Hazardous Chemicals under mixtures  
11 produced at the mine, that is what you're talking  
12 about, mixtures produced at the mine. That this  
13 allows you to use whatever scientifically valid  
14 evidence that you have available for the physical  
15 hazards to assume that it presents the same health  
16 hazards as the individual components. It does not  
17 require that you create -- well, our intent was not  
18 that you create an additional MSDS.

19 And when you train on the individual  
20 chemicals, part of that training on the MSDS for each  
21 of the individual chemicals is hazardous chemical  
22 reactions. And so if there a hazardous chemical  
23 reaction that occurs and a different hazard for mixing  
24 cyanide and lime, we would expect you to train your  
25 miners, to tell your miners about that this could

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1 happen if you do this wrong or if you add too much of  
2 this or too much of that that you would get something  
3 different and you don't want that. But we wouldn't  
4 require a separate MSDS.

5 MR. HEESE: Initially when the miners come  
6 in and they come through my area, I'm in safety, I  
7 teach them how to read an MSDS sheet, where to find  
8 the things that they need that's going to concern  
9 them, you know. How to read the MSDS sheet.

10 And we have three locations that we have  
11 master files of every MSDS we have ever used out there  
12 or in these areas. And that that's pretty hard to  
13 manage, like everyone would agree.

14 We also have a system that it's a 1-800  
15 number that we have sent every one of our MSDSs to  
16 this company and they have it in our database. And we  
17 have the 1-800 number on every telephone out there.  
18 So that if an employee wants to know about anything,  
19 he goes to the phone and they'll give him an answer in  
20 just a few minutes.

21 And so I don't know. If you really look  
22 at a mining process or you look at any industry and  
23 there's inherent hazards everywhere you look. We use  
24 diesel fuel, we use different oils, and everything  
25 else like that. It just looks to me from the outside

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1 looking in that this is going to be very burdensome  
2 extra cost above and beyond what we are doing already  
3 quite a bit.

4 At Echo Bay Minerals we feel that we're  
5 training our employees very well. I'm sure we can  
6 improve. There's always room for improvement, you  
7 know. But the cost is immense and cost in the mining  
8 industry is hitting us pretty hard right now.

9 Basically, that's all I have.

10 MS. WESDOCK: Well maybe, perhaps, in the  
11 final we should clarify then this provision and our  
12 intent behind it. It seems like there's a little bit  
13 a disconnect, and we will clarify that.

14 MR. HEESE: I think from the mining  
15 industry from talking to other people, that it looked  
16 like we had to train for each specific chemical  
17 individually as it came in instead of listing all  
18 these under a caustic element and all these underneath  
19 a fire hazard, and all these under a respiratory  
20 elements and things of that nature, which is --

21 MS. HUTCHISON: You have --

22 MR. HEESE: Go ahead.

23 MS. HUTCHISON: You do have that option.

24 MR. HEESE: Oh, we do?

25 MS. HUTCHISON: Yes. You can train by

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1 these are caustics, these are acids or you can train  
2 by each one individually. It depends upon the needs  
3 of the miner.

4 MS. WESDOCK: And the operation.

5 MS. HUTCHISON: And the operation, yes.

6 MR. HEESE: Okay.

7 MODERATOR TEASTER: Thank you very much.

8 Is there anyone else that would like to  
9 come forward and make a statement?

10 What I'm going to do, we'll take a break  
11 for 30 minutes. I want to keep the record open and  
12 see if there's anyone else that shows up. We'll now  
13 go off the record.

14 (Whereupon, at 10:10 a.m. off the record  
15 until 10:40 a.m.)

16 MODERATOR TEASTER: We have another person  
17 who would like to speak, it's Jonathan Hill. And  
18 Jonathan's a Safety Engineer from TCB Industrial.

19 MR. HILL: Thank you. We're grateful that  
20 we have the opportunity to speak like this.

21 I'd like to concur with my colleagues'  
22 statements, in that there are some duplication of  
23 efforts in documentation in this new document that  
24 you're considering. And I would urge that we consider  
25 CAL OSHA or OSHA if we're in compliance with OSHA or

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1 CAL OSHA, or any other OSHA standards that that be  
2 accepted as complying with the plan that your  
3 particular rule would cover. In other words, please  
4 don't duplicate that.

5 I also would like to urge that you  
6 consider the timely flow of information to independent  
7 contractors with regard to hazard communication  
8 documents such as material safety data sheets. As my  
9 colleagues mentioned earlier, sometimes that equipment  
10 breaks down. When that equipment breaks down, they  
11 frequently call folks such as my employer. My  
12 employer is a AB general industrial contractor.  
13 They're involved in the installation, removal,  
14 maintenance, repair and service of mining equipment  
15 and facilities. When there is a need on a regulated  
16 site to have an outside independent contractor and the  
17 need to have it done in a timely fashion, sometimes we  
18 have lots of lead time. Sometimes we don't have lots  
19 of lead time. Sometimes it's a middle of the night  
20 call.

21 And when those teams go out to the mine  
22 they need to have information, just the same as your  
23 employees do. So we would urge that you please  
24 consider writing something in that new rule that  
25 specifically addresses providing the timely flow of

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1 material safety data sheets to independent contractors  
2 who may have the potential of exposure while working  
3 on your equipment.

4 That's all. Thank you.

5 MODERATOR TEASTER: John, under the  
6 Interim Final Rule the program would require in that  
7 HazCom program that they identify how they're going to  
8 provide that information to independent contractors.  
9 If I understand what you've said, you'd like to see in  
10 that program that it would specify that that would be  
11 provided in a timely manner.

12 MR. HILL: Yes, sir.

13 MODERATOR TEASTER: Have you had any  
14 experiences on any of the operations outside of mining  
15 particularly or with mining where you have shown up to  
16 respond to some chemical spill or some accidents where  
17 there is some exposures or will be some exposures from  
18 these chemicals?

19 MR. HILL: Or potential exposure?

20 MODERATOR TEASTER: Potential exposures  
21 where this information has not been provided in a  
22 timely manner?

23 MR. HILL: Unfortunately, yes, sir.

24 MODERATOR TEASTER: Do you know why it  
25 wasn't? Was it available, it just didn't get to you?

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1 MR. HILL: In the particular incident that  
2 I'm thinking of it was the client's management just  
3 didn't think far enough ahead to provide that  
4 information to an independent contractor. They  
5 provided terrific training to their own people. They  
6 didn't give any consideration whatsoever to either an  
7 emergency response crew, an emergency repair or  
8 maintenance or service crew. It never dawned on the  
9 management that, oh, these people will also need that  
10 information. And that's how that occurred.

11 Nor were there apparently training for  
12 supervision in management to make him cognizant of  
13 that need.

14 MODERATOR TEASTER: This is just my  
15 understand, that when you call someone out, let's say  
16 an expert or somebody that had some expertise in  
17 responding to a situation where he's going to have  
18 such exposures, that they would have training in those  
19 particular areas. But what a person responding to  
20 that would need would know just exactly what chemicals  
21 he had.

22 MR. HILL: Exactly.

23 MODERATOR TEASTER: And he'd probably have  
24 knowledge in those chemicals, but he wouldn't know  
25 what he had been exposed to if it wasn't provided?

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1 MR. HILL: That's correct. In other  
2 words, what is the potential? Is there a potential  
3 for that exposure to occur? And if there's a  
4 potential; we're not saying it's going to occur, we're  
5 not going to say it has occurred, but is there a  
6 potential that that employee might during the course  
7 of his operation, repair procedure, dismantling,  
8 whatever, is there a potential that he may be exposed  
9 to that? And I would urge that simply be written in  
10 the Interim Rule to protect that miner, that employee.

11 MODERATOR TEASTER: Any questions?

12 Okay, John. Thank you very much.

13 Is there anyone else in the audience  
14 that'd like to come forward and make a statement?

15 MR. COTTRELL: Ernie?

16 MODERATOR TEASTER: Yes.

17 MR. COTTRELL: Can I make a statement to  
18 what John just said?

19 MODERATOR TEASTER: Yes.

20 MR. COTTRELL: The way we handle a  
21 situation like that -- pardon?

22 MODERATOR TEASTER: Identify yourself for  
23 the record.

24 MR. COTTRELL: Oh, Jack Cottrell, Getchell  
25 Gold Corporation.

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1           We have a system set up, what we call a  
2 contractor safety program. And if anybody on our  
3 property is going to let a contract for somebody to  
4 come on to do services on our property, they have to  
5 either submit to us their safety program which we  
6 review and approve or if they don't have a formal  
7 safety program, we sit down with them at our pre-bid  
8 meeting and go through all the policies and procedures  
9 that they're going to have to comply with. Part of  
10 that is the HazCom rules.

11           If they don't have their MSDSs with them  
12 on the chemicals that they use, we require them to  
13 have those. And then we show them where they can get  
14 them on our property, if they need them on our  
15 property.

16           Now, if they're going to go into a  
17 process, you know when you use a refiner I guess  
18 that's probably has the most dramatic effects because  
19 of exposure of mercury, they have to be trained in  
20 mercury before they go in there. They have to be  
21 respiratory fit tested. They have to go through  
22 everything that our employees go through before they  
23 go in there. If we can't get a respiratory fit test  
24 on them and we can't get a good fit on them, well we  
25 don't allow them in there.

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1           And so there are systems at various mines,  
2           and I'm sure the other mines here will probably have  
3           the same type of program to manage contractors when  
4           they come on the property.

5           MODERATOR TEASTER:     Thank you, Jack.  
6           That's a good program that you folks have there. And  
7           contractors not specific to HazCom, but contractors in  
8           general have had a high number -- I want to say a  
9           disproportionate number of fatal accidents in the  
10          mining industry. In the last 10/15 years there's  
11          probably been 30 to 35 percent of fatal accidents in  
12          metal and nonmetal operations have been contractors.  
13          So contractors is a concern, and certainly it's a  
14          concern of the Agency that they get trained. And,  
15          obviously, it's a concern of yours that they train  
16          when they get on the property.

17          But I think what you identified was a  
18          fixed procedure when you've got some work and they  
19          come on property to do that. And I think one of the  
20          things that the previous speaker had addressed was if  
21          he's called out in an emergency situation, if there's  
22          a ruptured line that's spilling out some chemicals,  
23          that he would want that information exactly what  
24          exposures his employees would be.

25          MR. COTTRELL:     Right.

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1                   MODERATOR TEASTER:   And how would you  
2 address that at your operation?

3                   MR. COTTRELL:   The way our system is set  
4 up is we identify three different levels of training  
5 that people have to have when they come on the  
6 property.  If they're a vendor and they're just coming  
7 on delivering goods from point A to point B, they  
8 receive their hazard training.  If it's a contractor  
9 that's coming in to fix a problem, we review with them  
10 the policies and procedures they're going to need in  
11 order to do that job safely.  That may be lock out/tag  
12 out, that may be HazCom, that may be scaling, that may  
13 be whatever it is that they're going to be doing.  And  
14 these people are only on the property from one to five  
15 days.

16                   If they come on the property six or more  
17 days, we require them to have the full either 24 or 40  
18 hour training.

19                   MODERATOR TEASTER:   Very good.

20                   MR. COTTRELL:   And so we would pick them  
21 up at the gate.  We would have a system set up to give  
22 them that information.

23                   MODERATOR TEASTER:   Very good.

24                   Thank you, Jack.

25                   Is there anyone else who would like to

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1 come forward and share their comments with us?

2 We're going to break and --

3 MS. HUTCHISON: I'd like to say something.

4 The Interim Final Rule does allow that any  
5 compliance efforts that you have made for compliance  
6 with OSHA or CAL OSHA or other, or EPA or anyone else,  
7 that you can use that training and those MSDSs and  
8 labeling as compliance with MSHA's rule. The Interim  
9 Final Rule already addresses that.

10 MODERATOR TEASTER: Yes. We mentioned in  
11 the opening statement that as a rule of thumb if  
12 you're in compliance with OSHA, you'll be in  
13 compliance with MSHA.

14 As I was saying, we're going to go off the  
15 record here shortly and reconvene at 1:00. There's  
16 some of you that may not reconvene with us, but we  
17 want to give everyone an opportunity that wishes to  
18 speak, we want to make sure they have that  
19 opportunity. But for those of you that may depart in  
20 the interim, we will remind you that the record to  
21 receive comments will remain open until October 17<sup>th</sup>  
22 of this year. And I encourage you if you have any  
23 concerns about any parts of the regulations, that you  
24 submit them to the Agency for consideration.

25 If you have thoughts and they're not

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1 brought forward, we can't consider them. Not that we  
2 will adopt all of them but certainly if they're in the  
3 record, they will be considered. And I think it's  
4 important that we get input from all segments of the  
5 industry so that we can consider it. If it's not  
6 brought forward, it's not considered. A rule goes  
7 into place and then it's brought forward, it's much  
8 tougher to deal with. So it is important that we  
9 participate in this process, and that if we've got  
10 some concerns that we bring them forward so they're  
11 considered in the rulemaking record.

12 And with that --

13 MR. COTTRELL: Well, after you --

14 MODERATOR TEASTER: Yes, Jack?

15 MR. COTTRELL: Excuse me. Jack Cottrell,  
16 Getchell Gold Corporation.

17 After you close the record on the 17<sup>th</sup>  
18 will the next phase then, the next time we see HazCom  
19 will be a final rule? There wouldn't be anymore input.  
20 You won't put out another draft or anything like that?

21 MODERATOR TEASTER: No, that's correct.  
22 The next rule you'll see will be a final rule.

23 MR. COTTRELL: It'll be what we live with?

24 MODERATOR TEASTER: That's correct.

25 MR. COTTRELL: Okay. Thank you.

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1 MODERATOR TEASTER: Okay. Thank you.

2 We'll go off the record now.

3 (Whereupon, at 10:56 a.m. off the record  
4 until 1:00 p.m.)

5 MODERATOR TEASTER: It's now approximately  
6 1:00 p.m. No one else has shown up to speak or to sit  
7 in the audience.

8 We'll terminate the record at this time.

9 (Whereupon, at 1:00 p.m. the public  
10 hearing was adjourned.)

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