

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,
SEPTEMBER 27, 2001

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The Public Hearing was held at the National Mine Health and Safety Academy Auditorium, 1301 Airport Road, Beaver, West Virginia, at 9:00 a.m., Ernest Teaster, Moderator, presiding.

PANELISTS:

ERNIE TEASTER, MODERATOR, Administrator, Metal and Nonmetal Mine Safety and Health
 RICHARD FEEHAN, Educational Policy Development
 DEBORAH GREEN, Solicitor's Office
 CAROL JONES, Metal and Nonmetal Mine Safety
 and
 Health
 ROBERT SNASHALL, Solicitor's Office
 CHERIE HUTCHISON, Office of Standards, Regulations, and Variances
 PHAN PHUC, Office of Standards, Regulations,
 and
 Variances

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

(8:44 a.m.)

1
2
3 MODERATOR TEASTER: Good morning, and
4 welcome to MSHA's public hearing on the Interim Final
5 Rule for hazard communications in the mining industry.

6 I'm Ernie Teaster, administrator for metal
7 and non-metal, and I will be your moderator here
8 today. The members of today's panel are Bob Snashall
9 from the Solicitor's Office, Richard Feehan, from our
10 office of standards, regulations, and variances,
11 Cherie Hutchison, who is from our office of standards,
12 regulations, and variances; Carol Jones from metal,
13 non-metal, and Phan Phuc, from the office of
14 standards, regulations, and variances.

15 We are here to listen to your comments on
16 the hazard communications Interim Final Rule, which we
17 published on October 3rd last year. We are holding
18 this Hearing in accordance with section 101 of the
19 Federal Mine Safety and Health Act of 1977.

20 As is our practice, we will conduct the
21 Hearing in an informal manner. During the proceeding
22 panel members may ask questions of the presenters.

23 Although formal rules of evidence will not
24 apply, we will be taking a verbatim transcript of the
25 Hearing, and we will make it a part of the official

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1 rulemaking record.

2 The Hearing transcript will be made
3 available for public, review by the public, along with
4 all comments and data that MSHA has received to date.

5 The entire rulemaking record, of course,
6 is available at our office in Arlington, Virginia. If
7 you wish a personal copy of the Hearing transcript,
8 please make your own arrangements with the Court
9 Reporter.

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

15 On November 2nd, 1987, the United Mine
16 Workers of America, and the United Steel Workers of
17 America jointly petitioned MSHA to adapt OSHA's health
18 communication standard, hazard communication standard
19 to both coal and metal, and non-metal mines, and
20 propose it for the mining industry.

21 They based their petition on the need for
22 miners to be better informed about chemical hazards,
23 and that miners working at both surface and
24 underground coal and metal, and non-metal mines, are
25 exposed to a variety of hazardous chemicals.

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1 On March 30, 1988, in response to this
2 petition, MSHA published an advance notice to proposed
3 rulemaking on hazard communication for the mining
4 industry.

5 In this notice we indicated that we would
6 use the OSHA hazard communication standard as a basis
7 for our standard, and requested specific comments on
8 a number of related issues.

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

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

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

25 The National Environmental Policy Act, and

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1 most recent statutes, and Executive Orders, included
2 requirements for us to evaluate the impact of a
3 regulatory action in these areas.

4 At that time we also requested comments on
5 the information collection, and paperwork requirements
6 of certain provisions of the proposal, now considered
7 as an informational collection burden under the
8 expanded definition of information under the Paperwork
9 Reduction Act of 1995.

10 We received seven comments to the limited
11 reopening of the rulemaking record, primarily from
12 trade associations, and labor organizations. The
13 rulemaking record closed June 1, 1999.

14 On June 3rd, 2000, we published an Interim
15 Final Rule on hazard communication, with an effective
16 date of October 3, 2001. October 3rd, 2001.

17 We gave commenters until November the
18 17th, 2000, to submit comments. The Interim Final
19 Rule specifically requested comments on the plain
20 language format, and the content of the Interim Final
21 Rule.

22 Non-operators experience under OSHA's
23 hazard communications standards, and any changes in
24 the mining industry since the publication of the
25 proposed rule.

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1 On December 7th, 2000, we personally spoke
2 with, or emailed all commenters, and other interested
3 persons, telling them of our decision to hold a public
4 Hearing in Washington, D.C., on December 14th, 2000.

5 The Public Notice of the Hearing appeared
6 in the Federal Register on December 11th, 2000. We
7 received 22 written comments on the Interim Final Rule
8 and heard testimony from six persons at the Public
9 Hearing on December 14th, 2000.

10 Commenters objected to what they
11 considered to be an inadequate comment period, and an
12 inadequate notice of a Hearing. These commenters
13 stated that they did not have sufficient time to fully
14 analyze the impact of the Interim Final Rule, which
15 affected their ability to develop and submit
16 meaningful comments.

17 They also stated that many operators were
18 unable to testify at the Hearing, because they did not
19 have enough time to prepare testimony, and make plans
20 to attend the Hearing.

21 Members of the mining community have also
22 stated that because this is the first time MSHA
23 promulgated an Interim Final Rule, there is some
24 confusion about their compliance obligations.

25 The National Miners Association, and the

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1 National Stone, Sand, and Gravel Association, have
2 asked for a delay in the effective date of the Interim
3 Final Rule until we respond to their previous comments
4 submitted on it.

5 A number of mine operators and trade
6 associations challenged the hazard communication
7 Interim Final Rule in the US Court of Appeals, and the
8 United Mine Workers of America, and the United Steel
9 Workers of America have intervened in that litigation.

10 Now I will briefly highlight the six major
11 provisions of the Rule. Hazard determination. The
12 hazard communication Interim Final Rule requires mine
13 operators to identify the chemicals at their mines,
14 and determine if they present a physical, or a health
15 hazard to the miners, based on the chemical's label
16 and material safety data sheet referred to as MSDS
17 sheet, or on a review of the scientific evidence.

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

23 Title 30, Code of Federal Regulations,
24 chapter 1. The American Conference on Government and
25 Industrial Hygienist, threshold limit values, and

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1 biological exposure indices.

2 The National Toxicology program annual
3 report on carcinogens, and both of those would have
4 been the latest edition under the Interim Final Rule.
5 The International Agency for Research on Cancer,
6 mammograms, or supplements.

7 The hazard communications program. The
8 hazard communication Interim Final Rule requires mine
9 operators to develop, implement, and maintain a
10 written program to establish a hazard communication
11 program.

12 The program must include procedures for
13 implementing hazard communication through labeling,
14 MSDSs, and training of miners. A list of hazardous
15 chemicals known to be present at the mine, and a
16 description of how mine operators will inform miners
17 of the chemical hazards present in non-routine tasks,
18 or of chemicals in unlabeled pipes and containers.

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

24 Container labeling. A label is an
25 immediate warning about a chemical's most serious

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1 hazards. The hazard communication Interim Final Rule
2 requires mine operators to ensure that containers of
3 hazardous chemicals are marked, tagged, or labeled
4 with the identity of the hazardous chemical, and
5 appropriate hazard warning. The label must be in
6 english and prominently displayed.

7 I would like to clarify one point about
8 the labeling requirements. Practically speaking very
9 little labeling is required. You only have to label
10 stationery process containers, and temporary portable
11 containers, and then only under some circumstances.

12 Chemicals coming onto mine property are
13 almost always labeled. They would not have to relabel
14 them unless the existing label becomes unreadable.

15 You would not have to label containers of
16 raw material being mined or milled by their own mine
17 property. You would not have to label mine products
18 that go off a mine property.

19 You would have to provide the labeling
20 information to downstream users upon request.

21 Material safety data sheets. A chemical's
22 material safety data sheet provides comprehensive
23 technical and emergency information. It is a
24 reference document for mine operators, exposed miners,
25 health professionals, and firefighters, or other

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1 public safety workers.

2 The Hazard Communication Interim Final
3 Rule requires mine operators to have an MSDS for each
4 hazardous chemical at the mine. Mine operators should
5 already have MSDSs provided by the supplier for those
6 chemicals brought to the mine.

7 The MSDSs must be accessible in the work
8 area where the chemical is present or in a central
9 location immediately accessible to miners in an
10 emergency.

11 HAZCOM training. The Hazard Communication
12 Interim Final Rule requires mine operators to
13 establish a training program to ensure that miners
14 understand the hazards of each chemical in their work
15 area, the information on MSDSs, and labels, and how to
16 access this information when needed, and what measures
17 they can take to protect themselves from harmful
18 exposure.

19 Under the Interim Final Rule mine
20 operators have the flexibility of combining the
21 training requirements for the hazard communication
22 with existing part 46 and part 48 training.

23 The Interim Final Rule does not require
24 mine operators to have an independent training program
25 separate from part 46 and part 48 training.

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1 Mine operators already cover some of the
2 above information in their current training program.
3 If so they do not have to retrain miners about the
4 same information.

5 We designed the hazard communication
6 training requirements to be integrated into the
7 existing training program for miners.

8 Making HAZCOM information available. The
9 HAZCOM, the Hazard Communication Interim Final Rule
10 requires mine operators to provide miners, their
11 designated representative, MSHA, and NIOSH, with
12 access to the materials that are part of the hazard
13 communication program.

14 These include the program itself, the list
15 of hazardous chemicals, labeling information, MSDSs,
16 training materials, and any other material associated
17 with the program.

18 Mine operators do not have to provide
19 copies of the training materials purchased for use in
20 training sessions, such as videos. Also mine
21 operators do not have to disclose the identity of a
22 trade secret chemical, except where there is a
23 compelling medical or occupational health need.

24 I will now share with you our thoughts on
25 some of the comments we've received on the Interim

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1 Final Rule.

2 Commenters representing the aggregate
3 industry argued strenuously that the Hazard
4 Communication Rule is unnecessary, and that the
5 aggregate industry should be exempt from the Rule.

6 The HAZCOM Rule does not duplicate other
7 MSHA standards, it augments, supplements, and
8 complements these existing standards. The Rule
9 specifically deals with chemicals and chemical
10 exposure.

11 Chemicals may be used in any mine,
12 including those in the aggregate industry. There have
13 been hundreds of chemical burns in the aggregate
14 industry. Chemical burns can occur on any part of the
15 body.

16 Skin burns may require multiple skin
17 grafts, and require repeated hospitalization. Eye
18 burns can be serious and result in permanent loss of
19 eyesight.

20 We believe the burden of small mines is
21 less than some commenters stated. First, small mines
22 typically use far fewer chemicals than large mines.
23 And in many cases no new chemicals.

24 Second, small mines typically use
25 chemicals in small quantities, and for shorter periods

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1 of time, similar to household use.

2 Third, many of the chemicals used at small
3 mines are not covered by the Rule. For example, soaps
4 used for washing hands are cosmetic, and are exempt.
5 A can of spray paint is a consumer product, and exempt
6 when used in small quantities, intermittently.

7 The length of exposure, as well as the
8 amount, is really the determining factor. A can of
9 spray paint only lasts a short time. Glue, or
10 adhesive, when used intermittently in small
11 quantities, are exempt.

12 Again, the length of exposure, as well as
13 the amount, is the determining factor in whether or
14 not a consumer product is exempt. We recognize,
15 however, that not all mines are likely to use a wide
16 range of chemicals.

17 Although we cannot exempt the aggregate
18 industry from hazard communication, as we said, there
19 are steps we can take to minimize the burden of the
20 Rule.

21 For example, we intend to make extensive
22 compliance assistance visits, and conduct extensive
23 outreach. We also will be finalizing a compliance
24 guide to help operators and miners understand the
25 application of the HAZCOM final rule.

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1 We are developing a variety of compliance
2 aides, such as a model HAZCOM program, a training
3 video for mine operators about determining chemical
4 hazards, and a training video for miners about
5 chemical hazards reading the MSDS.

6 A draft of MSHA's Compliance Guide has
7 been on the MSHA website for months. If you refer to
8 the Compliance Guide, many of these issues are
9 explained.

10 If you have any question in these areas,
11 send them by email to comments@msha.gov, or the Office
12 of Standards at the address listed in the Hearing
13 Notice.

14 We will use these questions to clarify
15 your responsibilities and include additional or better
16 examples in the compliance guide.

17 As a rule of thumb, however, if you are in
18 compliance with OSHA's Rule, you will be in compliance
19 with MSHA's Rule.

20 In the same vein, mine operators may
21 obtain help from organizations that have developed
22 generic guides to help OSHA's health communication
23 standard, because HAZCOM contains the same basic
24 requirements.

25 We will provide links, on our website, to

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1 some organizations which have developed a variety of
2 generic HAZCOM material. While it will remain the
3 responsibility of each operator to develop and
4 implement a HAZCOM program, and to have MSDSs, to the
5 extent possible we will help you establish a hazard
6 communication program, if requested.

7 We have already taken other steps in
8 revising our Interim Final Rule to make it easier for
9 mine operators to comply, without reducing the
10 projections afforded by the Rule.

11 We are considering the final substantive
12 changes to the Interim Final Rule in response to
13 commenters concerns. We are also considering several
14 non-substantive changes to clarify our intent and
15 correct errors based on the commenters perspectives
16 and questions.

17 Under hazard determination we may revise
18 a reference to the American Conference of
19 Government/Industrial Hygienist, the National
20 Toxicology Program, and the International Agency of
21 Research on Cancer, from those considered in
22 determining if a chemical is a hazard, and if a
23 chemical is carcinogenic.

24 One option we are considering, in
25 determining whether a chemical is a hazard, is to

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1 refer to the 2001 editions of the American Conference
2 of Governmental/Industrial Hygienists, TLV booklet,
3 and the International Agency for Research of Cancer,
4 and the National Toxicology Program.

5 In determining whether a chemical is
6 carcinogenic, we are considering referring only to the
7 2001 editions of the National Toxicology Program and
8 the International Agency for Research of Cancer.

9 We had expected the use of the American
10 Conference of Government/Industrial Hygienist, the
11 National Toxicology Program, and the International
12 Agency for Research on Cancer list, to reduce the
13 burden on the mine operator, because the miners use
14 relatively few hazardous chemicals for which they
15 would have to develop an MSDS and label.

16 Commenters objected to the use of these
17 listings, stating that the organizations which
18 compiled them, offer no opportunity for public
19 comment. They impose unknown future requirements by
20 citing the latest edition, and they violate
21 regulations governing incorporation by reference.

22 We are hoping to consider alternatives,
23 where the impact of the alternative would not reduce
24 protection afforded miners by the Interim Final Rule.

25 Concerning labels and MSDSs, commenters

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1 requested additional language to clarify that the
2 designated responsible person mentioned on the labels
3 and MSDSs, can be the mine operator.

4 Accordingly we are considering changing
5 these provisions to read the name, address, and
6 telephone number of the operator, or a responsible
7 person who can provide that information.

8 Concerning the availability of the MSDSs,
9 commenters asked that we increase compliance
10 flexibility, and recognize that MSDSs may be stored in
11 a computer.

12 In response we are considering modifying
13 the requirement to have MSDSs available for each
14 hazardous chemical before using it, requiring the
15 operator have an MSDS available for each hazardous
16 chemical which they use.

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

22 In response to comments concerning hazard
23 communication training, we are considering changing
24 the language from requiring the operator to train the
25 miner whenever introducing a new hazardous chemical

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1 into the miner's work area, to requiring training when
2 the operator introduces a new chemical hazard into the
3 miner's work area.

4 This change would clarify MSHA's intent
5 that when a new chemical is introduced, additional
6 training is required, only if the hazards change.
7 This is the intent, as discussed in the preamble of
8 the Interim Final Rule.

9 Also, in response to comments, we are
10 considering revising the definition of health hazards.
11 The Interim Final Rule defines health hazard to
12 include chemicals that damage the nervous system,
13 including psychological, or behavioral problems.

14 We are considering deleting the phrase
15 psychological or behavioral problems. We are also
16 considering adding the criteria toxic, or highly
17 toxic, to more closely conform to the language to that
18 in OSHA's hazard communication standard.

19 The Hazard Communication Interim Final
20 Rule is an information and training standard that
21 requires mine operators to know about the chemicals at
22 their mines, and to inform miners about the risk
23 associated with exposure to hazardous chemicals, the
24 safety measures implemented at the mine to control
25 exposures, and safe work practice.

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1 The Hazard Communication Interim Final Rule does
2 not restrict chemical use, require control, or set
3 exposure limits.

4 We will publish our response to the
5 written comments, including those comments received
6 today at this Hearing, in the preamble to the Hazard
7 Communication Final Rule.

8 We will consider all comments contained in
9 the rulemaking record from the publication of the
10 advanced notice of proposed rulemaking on March 30th,
11 1998, through the close of the record on October 17th,
12 2001, in a development of this final rule.

13 You may submit written comments to me
14 during the Hearing, or send them to the address listed
15 in the Hearing Notice. We will also accept additional
16 written comments, and other appropriate data, on this
17 Final Rulemaking from any interested parties,
18 including those who do not present oral statements.

19 All comments and data submitted to MSHA,
20 including that submitted to me, today, will be
21 included in the rulemaking record. The record will
22 remain open until October 17th, 2001, for the
23 submission of post-hearing comments.

24 We ask that you please sign the attendance
25 sheet at the back, where you enter the room. If you

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1 have not done so, we ask you to do that during the
2 first break.

3 And if there is anyone that wants to speak
4 we have our sign-up sheet at the back of the room, we
5 would ask you to please sign up.

6 We will begin with the folks that have
7 signed up in advance, to speak. If there is time, and
8 we will make time, at the end of that any one in the
9 audience who wants to come up and make a statement
10 will be able to do so.

11 We will ask that anyone that has a
12 statement, or a comment, that they come to the podium
13 to speak. We will continue the Hearing until all
14 speakers have the opportunity to address the panel.

15 Should it be necessary to be extended
16 beyond 5 o'clock we will stay as long as we need to,
17 so that all that choose to do so, will have an
18 opportunity to speak.

19 This concludes my opening statement. We
20 will now start with the speakers. Our first speaker
21 of the day is Gary Trout, from the United Mine Workers
22 District 29.

23 MR. TROUT: Good morning. My name is
24 Gary Trout, I'm from the United Mine Workers of
25 America Local Union 1335.

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1 On October 3rd of 2000, after years of
2 delay, MSHA finally issued an Interim Final Rule,
3 which would provide safeguards for miners against
4 harmful chemicals in the workplace.

5 This rule would have went into effect
6 October of 2001. On August 28th, 2001 MSHA stopped
7 this HAZCOM rule from going into effect. By doing
8 this MSHA has thrown the entire HAZCOM Rule wide open
9 for comments, and to date, soliciting comments on any
10 issue relevant to the rulemaking.

11 In our opinion, or in my opinion I should
12 say, this severely weakens the rule that was out there
13 for adoption, that should have went into effect.

14 You know, as I looked at the Rule, and
15 looked at what OSHA already has, and OSHA has had a
16 HAZCOM Rule for years, I think it is a shame that our
17 miners, myself, my brothers and sisters, have to work
18 in chemicals, or around chemicals that could cause
19 various health effects.

20 Joe Carter and I just recently was asked
21 to come down to a doctor's office and visit some of
22 our miners that are his patients. And those folks had
23 worked at preparation plants, and those folks had
24 severe health, damage to their health.

25 They had anything from Parkinson's-like

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1 disease, to various other nerve disorders. And it was
2 real -- an awakening experience for myself, and Joe,
3 to see these folks in that condition.

4 And, you know, some folks would make the
5 argument that these folks might have gotten these
6 diseases from elsewhere, but two of those folks, one
7 individual had worked at a preparation plant handling
8 various chemicals.

9 And when he got disabled to where he
10 couldn't work any more, another individual took his
11 place, and both of those individuals have the same
12 symptoms now, after working at the same job
13 occupation.

14 And, you know, it is just a shame that we
15 can't provide the miners, I should say our miners,
16 with the same protection that OSHA has for their
17 workers.

18 It is my understanding that MSHA, in their
19 opening statement, announced that they were going to
20 look really hard at a lot of the objections posed by
21 the mine operators.

22 Myself, my brothers and my sisters, you
23 know, we have objections too. And those objections
24 are that every day we are exposed to various types of
25 chemicals. And some of those chemicals could cause

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1 cancer.

2 And, ladies and gentlemen of the panel, I
3 don't know whether any of you all have ever seen
4 anyone who has died from cancer, but it is not a real
5 pretty sight.

6 My father in law, who has over 35 years'
7 experience around the mines, and around preparation
8 plants, just recently, about a year and a half ago,
9 died of cancer. And that was very long suffering, and
10 it just wasn't a very pretty sight.

11 And, you know, we've got a lot of miners
12 up there that are exposed to these chemicals. And,
13 you know, I would just ask that each one of you look
14 around and consider some of these individuals who have
15 had serious injuries, and some who have possibly even
16 died from chemical exposures.

17 And here today you are going to hear other
18 testimony from individuals who has actually gotten
19 burnt by chemicals working around preparation plants.

20 And if you could just put yourself in
21 their place, would you like to give up the job that
22 you have and trade places with those folks, and be
23 exposed to those chemicals that you know, that there
24 is data out there, that some of these chemicals can
25 cause cancer, and would expose your own self to

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1 cancer.

2 You know, it is my opinion that the HAZCOM
3 rule should be put into effect, should have been put
4 into effect on October 3rd of 2001, and I think that
5 this rule, even though it is not perfect, it might
6 very well have protected, and give our members
7 protection from various types of chemicals.

8 You know, I think that the access, that
9 MSHA is there to protect miners, I think that MSHA
10 should be enforcing the laws, and not delaying the
11 implementation of these rules so that it could protect
12 our miners.

13 In closing I would just ask each one of
14 you, I would like to leave you with this question in
15 mind. As you contemplate this rule, how many miners
16 must be injured or die before we can get a chemical
17 exposure, of chemical exposure, before we can get a
18 HAZMAT rule implemented. Thank you.

19 MODERATOR TEASTER: Gary, if I might, when
20 you and Mr. Carter visited the doctor, do you know
21 what chemicals that these miners were supposedly
22 exposed to?

23 MR. TROUT: I can have Dr. Kasincko
24 probably get that information to you, Ernie.

25 MODERATOR TEASTER: Okay.

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1 MR. TROUT: It was flocculent, but I don't
2 know the specific chemicals.

3 MODERATOR TEASTER: Gary you, I know, get
4 around to a lot of different mines. Are you familiar
5 with to what extent Part 48 training is provided to
6 the miners under the annual refresher training that
7 deal specifically with hazards, chemical hazards at
8 their operations?

9 MR. TROUT: I know the retraining that I
10 attend at various operations, you know, normally there
11 is very little, if any, given. At the ones that I
12 have attended.

13 You know, it is kind of a hush hush
14 situation that, you know, nobody wants to get into.
15 The only way that any of our members can get any
16 information is basically trying to force the issue to
17 get any type of MSDS sheets, or anything of that
18 nature. It is real hard to do, Ernie, real hard.

19 MODERATOR TEASTER: Okay, thanks. Some of
20 the mine operators currently get MSDSs. Are you aware
21 of that?

22 MR. TROUT: Yes.

23 MODERATOR TEASTER: And do you know if
24 there is a request, do the miners normally request to
25 see those, and whether or not those are made available

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1 to the miners?

2 MR. TROUT: I don't think it is made
3 available to the miners, straightforward. I think
4 that normally they have to make a request. And my
5 experience has been, when they make a request, a lot
6 of times they don't get a sufficient MSDS sheet.

7 A lot of times they will have like maybe
8 half of it there, and some of it be gone, it doesn't
9 go into any details toward the chemicals that might be
10 involved in there, about the reactions that may occur
11 if you are overexposed to it.

12 Any type of treatment that might be
13 necessary if you are overexposed, it doesn't go into
14 any of that kind of detail.

15 MODERATOR TEASTER: Okay, thank you. Our
16 next speaker will be Timothy Miller, United Mine
17 Workers Local 9177.

18 MR. MILLER: Good morning, Panel. I am
19 Timothy Miller, I have worked in the mines for 26
20 years, I'm presently employed with Peabody Coal at
21 their Rocklake preparation plant.

22 And at our plant alone there is probably
23 in excess of 12 chemicals that not everyone comes in
24 contact, but is used on the job site, each and every
25 day. Sheets are available on some, but they are not

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1 very extensive into what we can do after we've been
2 exposed, or anything of that nature.

3 I would like to read some notes, or
4 something I wrote down. We need to have the right to
5 know what we are working with, at all times. We need
6 to be able to force our employers to use a chemical
7 that is after if it is available, even if our employer
8 has to pay more for it.

9 We need more training on each chemical,
10 and all dangers involved with using it. I would like
11 to see a law put into effect that would force
12 employers to have a data sheet that would be sent with
13 an employee to the emergency room, or doctor's office,
14 in the event one comes in contact with the hazardous
15 chemical.

16 We need some training for our employees to
17 be able to administer proper first aid to coworkers
18 who have been exposed to hazardous chemicals before
19 being sent for medical assistance.

20 MODERATOR TEASTER: Tim, are the
21 chemicals, you said there are probably 12 used at your
22 operation?

23 MR. MILLER: Yes, sir.

24 MODERATOR TEASTER: Has the company made
25 the miners aware of what those 12 chemicals are?

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1 MR. MILLER: Only if you ask, and then
2 what we are given out is like the chemical makeup, not
3 exactly what it is, what the long-term effect is, to
4 look out for signs, like if a skin irritation starts,
5 that it is an exposure, and that you need medical
6 attention, or something.

7 And even our employers, I don't really
8 feel that they are aware of what dangers are involved
9 with each of the chemicals.

10 MODERATOR TEASTER: The information that
11 you get related to the hazards associated with these
12 chemicals, and the type of chemicals, does that come
13 as part of your part 48 training, or is that something
14 that is passed on to you as you perform various tasks?

15 MR. MILLER: It is passed on to you, if
16 you ask. It is not automatically, before you start a
17 new task, or a new job, you are not enlightened as to,
18 you know, they just say this is what you use this for,
19 they don't inform you, unless you ask, or you research
20 it yourself, as to what that it can do to you, and
21 what that it can do if it is mixed with something else
22 incorrectly.

23 Or what the long term effect is if you are
24 exposed to it on a daily basis. Or when we change
25 from one chemical company to the other, you know, you

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1 might be getting basically the same thing, but they
2 make it up in a different process, and use some other
3 chemical in making that.

4 And that if we change our data sheets, are
5 sort of slow about getting revitalized, and stuff.

6 MODERATOR TEASTER: Do you have any
7 knowledge of any injuries that has occurred at the
8 preparation plant where you work?

9 MR. MILLER: Yes, sir. I've seen chemical
10 burns on skin, I've seen people suffer with watery
11 eyes, or burn in their throat from being around
12 different things, and cleaning.

13 MODERATOR TEASTER: Do you think these
14 injuries were a result of the lack of knowledge of
15 what exposures they were --

16 MR. MILLER: Yes, sir. And I think that
17 the employers have a lack of knowledge, too. I feel
18 that they really need to research what they are
19 bringing on the job, prior to bringing it.

20 And if there is something out there,
21 better and cheaper, for the employer, even though that
22 it is not as available as what they are getting, or
23 maybe not from the supplier they have a contract with,
24 we need to try to get a hold of that, and put that
25 into effect.

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1 MR. SNASHALL: In your experience do
2 miners commonly use MSDSs?

3 MR. MILLER: Yes, sir. Some do, some
4 don't. Where I'm at we have quite a bit of people
5 that have worked underground, went into the
6 preparation plant, they are not familiar with a lot of
7 things.

8 And a lot of people are proud and are
9 ashamed to ask. And, you know, unless someone forces
10 the employer to sort of school them in this, even
11 though they might not come in contact with it but once
12 a week, or something, at least give them some
13 knowledge and be more informative about what they are
14 using.

15 I've got a buddy that is a doctor. A lot
16 of times he gets people in, they tell him, I've been
17 exposed to this. Well, he doesn't know what that is.
18 And then it is a big bunch of red tape to try to find
19 out what exactly that is, that he was exposed to.

20 MODERATOR TEASTER: Thank you, Tim.

21 MR. MILLER: Thank you.

22 MODERATOR TEASTER: Our next speaker is
23 Larry Lee of United Mine Workers Local 1332.

24 MR. LEE: Hello, good morning. My name is
25 Larry Lee, I work for Pittsburgh and Midway, out in

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1 New Mexico and Arizona, we are on the Navajo
2 reservation, and we are a surface mine.

3 Out there we deal with a lot of dust, we
4 have haul roads, and we have dump trucks and haul
5 trucks that haul coal, and there is a lot of dust out
6 there, and that is what we deal with every day.

7 And our Local is 1332, and the reason I
8 came up before you guys, is we should make this HAZCOM
9 a rule, a policy, let's make it a policy for the
10 mines, either underground, surface, or aggregate.

11 And after all these years I think it
12 should be made a policy. So miners will know what
13 they are dealing with, and mine operators, they will
14 give us information on what we use out there, as
15 HAZCOM.

16 And I know we deal with a lot of hazmat
17 products out there, and some of these products we
18 don't know what it is, but we use them every day, and
19 we ask the management what it is, but they don't tell
20 us, because it is not a rule, and we don't go through
21 training for that.

22 We go through training but they just give
23 us a little overview of what it is, and I would like
24 them to make it a full training process, that way we
25 know what is in there, what the contents are in the

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1 MSDS sheets, and all that stuff.

2 Because the other places where I worked
3 before they have a training program that they give
4 these chemicals about, and all that, because they have
5 a rule. But in the mining area they don't have that
6 rule.

7 So I guess it is up to you guys to make it
8 a rule, and all that. That is why we came up here
9 testifying before here, and giving an overview of what
10 we think it is, and what we think should be done.

11 And over there at the mine, where I work,
12 we have a chemical that is called penzzupress, we use
13 it to mix it with water, and spray it on the haul
14 road. And we don't know what is in there, they don't
15 tell us, there is no MSDS sheet about what the
16 chemical is.

17 We tried talking to the management for the
18 full page on there, or a full chart, but they don't do
19 that, because they say it is not harmful, they won't
20 do anything. But we use it anyway. Our people are
21 exposed to it, our truck drivers.

22 They get it on their skin, and their
23 clothes, and they come up to me and say, how come you
24 are not doing anything about that? Because over there
25 I'm the safety chairman, so I try to work with the

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1 management.

2 I ask them and it seems like they don't
3 know, either, it is not a rule, and they don't have to
4 worry about it. And we use that stuff like three
5 times a night for our haul roads. We spray it on the
6 haul road, and we mix it with water like 20 to 1, or
7 whatever they tell us.

8 They might say 5 to 1 or 10 to 1. We try
9 to mix it that way, and that stuff is dirty, it is
10 sticky, it looks like tar. And these guys are exposed
11 to it almost daily.

12 And we don't know what is in that stuff.
13 All they tell us is that it is safe, and unharful,
14 and all that. But then we put it on the road and the
15 dust comes around, it blows it off, and we have people
16 around the area, and they don't know what it is.

17 And we have people that have livestock
18 around the area, and I think they should be made aware
19 of what we use out there, what kind of harmful or harm
20 that that stuff we use out there, I think they should
21 be made aware of.

22 Because we have had people around there
23 that live, that have animals, and livestock. So I
24 think this should be made a rule, and I think the mine
25 operators should be aware of what they use out there,

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1 and let their miners know what is harmful, and what
2 can kill them, or what can -- all the stuff that goes
3 on.

4 I've heard miners that are commenting
5 about that, and I think it should be made into a
6 policy, and all that. That is why we are up here, in
7 front of you guys, trying to testify and after all
8 these years, and also the chemicals we use, solvents,
9 whatever we use out there, hazmat, that they should
10 all be labeled, instead of just saying chemical
11 distillants.

12 We don't know what it is. It can be
13 anything. I think it should be labeled, this is what
14 it can do to you, or if you get it on yourself, or on
15 your clothes.

16 So I guess all I'm saying is let's make it
17 a rule and go from there.

18 MODERATOR TEASTER: Larry, you said that
19 you asked for the information on this chemical that
20 you used to spray the water, and the company wouldn't
21 share any information with you, or they didn't have
22 any information?

23 MR. LEE: They had the information, but
24 they don't want to go deep into it and say, this is
25 what it will do to you, or what --

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1 MODERATOR TEASTER: So they do have the
2 information, but don't share it with you. Do you know
3 if there is any other incidents where that type of
4 chemical, or other types of chemicals that they had
5 the information, and the miners requested it, and were
6 not allowed to get that information?

7 MR. LEE: I tried to talk to the
8 management, put MSDS sheets out there where people can
9 read it, they don't do it. And all they say is it is
10 down in the warehouse, but we don't have time to go
11 down there and read it.

12 MODERATOR TEASTER: You also mentioned
13 some other close by workers that maybe were covered
14 under OSHA, where they had this information.

15 Do you know if the miners regularly
16 requested to review that information?

17 MR. LEE: I don't think so, not to my
18 knowledge.

19 MODERATOR TEASTER: Okay.

20 MR. LEE: And that penzzupress, we will
21 use that on the haul roads, and then there is another
22 chemical, mat chloride, we use that too. And that
23 stuff we don't have information on it too. All they
24 have is MSDS sheets, and that is all they can tell us.

25 MS. HUTCHISON: The dust suppressant that

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1 you mix with water, to use on the haul roads, does it
2 come from a container that is labeled?

3 MR. LEE: No, that stuff is like a big
4 water tank, the truck comes in and just pumps it in
5 there. There is no label or anything on it. The only
6 thing it says on there is penzzupress, that is all.

7 MS. HUTCHISON: It says what?

8 MR. LEE: Penzzupress, P-E-N-Z-Z-U-P-R-E-
9 S-S.

10 MS. HUTCHISON: And so there is no -- you
11 have no information as to what this stuff contains?

12 MR. LEE: No, as miners working there, we
13 don't have any information.

14 MS. HUTCHISON: It is brought in, in bulk,
15 pumped -- just verifying. It is brought in, in bulk,
16 pumped into a tank. The only thing the tank says is
17 the name of the product?

18 MR. LEE: Uh hum.

19 MS. HUTCHISON: And you use the
20 suppressant out at the tank, and mix it with water,
21 and --

22 MR. LEE: Yes.

23 MS. HUTCHISON: -- spray it --

24 MR. LEE: Spray it on the haul roads.

25 MS. HUTCHISON: -- on the roads?

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1 MR. SNASHALL: Larry, you said that you
2 don't get much training except a little review of what
3 it is. That little review you get, could you say
4 something more about that, what little do they give
5 you?

6 MR. LEE: We have an annual retraining, we
7 call that. That is the only place they give it to us.

8 MR. SNASHALL: Not on task, when you are
9 assigned a new job?

10 MR. LEE: During that retraining we might
11 not even have that stuff, and we don't know it,
12 because the retraining is usually in the winter, and
13 we don't use that in the winter.

14 MR. SNASHALL: And in your retraining what
15 is the nature of the training, what is the information
16 that they give you?

17 MR. LEE: It is like first aid, then
18 annual retraining, like haul roads, and equipment
19 operation.

20 MR. SNASHALL: On the chemicals, on your
21 annual retraining, do they get into chemical hazards
22 in your annual retraining?

23 MR. LEE: Not that much.

24 MR. SNASHALL: Okay, thank you.

25 MODERATOR TEASTER: Larry, could you come

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1 back? We have one other question.

2 MR. PHUC: How much time do the operator
3 take to do annual refresher training?

4 MR. LEE: Usually it is a full shift.

5 MR. PHUC: Full shift is 8 hours?

6 MR. LEE: Yes.

7 MR. PHUC: And HAZCOM is not part of the
8 training?

9 MR. LEE: It is part of the training, but
10 it is just a little bit.

11 MS. HUTCHISON: About how much?

12 MR. LEE: Maybe half an hour.

13 MODERATOR TEASTER: Sorry, Larry, thanks.

14 Our next speaker is Donald Keith, from
15 United Mine Workers Local 1620.

16 MR. KEITH: Hello. My name is Donald
17 Keith, and I'm from the Arizona Navajo Reservation,
18 and as you can see I'm a Native American, just like
19 Larry is.

20 And there is four or five of us that is
21 here today, and we are all gone into mining business,
22 and I work for Peabody Coal Energy, Local 1620, in
23 Arizona.

24 The way I'm concerned about this is if I
25 may elaborate a little bit into the things that my

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1 Native American people are experiencing out there in
2 the West.

3 As we all know that Native American people
4 has been neglected quite a bit, going into anything
5 that has been brought into the United States, what we
6 consider United States, and we call it our Native
7 American States.

8 Going back to the time of the wars, of the
9 big wars, World War II in that sense, you know, people
10 were -- a lot of my people were in need of jobs, so
11 they went underground to become uranium miners.

12 And we all found out about, what, 20, 30
13 years how harmful, how dangerous this is to human
14 body, and because the nature that these people were
15 illiterate in english, and not knowing what was all in
16 those chemicals at the time, now people are out there
17 suffering with cancer, and the dangerous amount of
18 things that they've experienced.

19 And a lot of my people are, again, without
20 medical facilities, or diagnosed with cancer. And to
21 continue with that, during the Vietnam War a lot of us
22 had gone into Vietnam, and exposed to Agent Orange.

23 Here, again, no knowledge of what was we
24 were involved in. I have a brother in law, my nieces,
25 they have been exposed to this, because their father

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1 was in contact with agent orange. Now my niece, I see
2 her hands and they are all swollen up, sores, because
3 people that supposed to have this knowledge, they are
4 not bringing out to the people the amount of dangers
5 they are being exposed to.

6 I've seen some of my people, again, like
7 Larry and me, safety committee chairman, and I have
8 some rank and file members come up to me and ask me
9 the things that they are exposed to.

10 You know, I have some people that are
11 doing blastings, and shootings, and we call them
12 shooters, and they have been in contact with different
13 type of chemicals, and you can see that their hands
14 have gotten sores, and they have been given time out
15 to have their hands heal.

16 They have been to, again, bad medical
17 facilities, and they don't know what is causing it.
18 But they say they have handled those shooters, and
19 things that they use to explode, for explosive.

20 They have been in contact, they are given
21 a different type of gloves. But here, again, we don't
22 know that the gloves is doing them any good. But I
23 know of three or four different cases now that a lot
24 of these old miners because, here again, they didn't
25 have the opportunity to have gone to school, and they

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1 don't know what they were in contact with, with
2 management bringing all these type of different types
3 of chemicals onto the mine property, and people are
4 getting into it, being exposed to it.

5 And now they are suffering from hands they
6 can hardly use any more. And without the knowledge,
7 you know, had this chemical that is being brought on
8 to the mine site, had they been labeled, and having a
9 history of what it could cause, what it could do
10 further down the road, and had these guys been taught,
11 even if the management, I don't think the management
12 -- I don't think they even have the knowledge of what
13 these things are, when they bring these chemicals on
14 to the mine site.

15 So that the management doesn't have the
16 knowledge, how are they going to relate to their, to
17 us miners about what dangerous effect it can cause us.

18 Yes, we do have these training courses,
19 but all it is, is just numbers, statistics about
20 things, and an 8 hour annual retraining, you don't
21 have the time to get these out to people.

22 You have so many other things that is
23 involved in your 8 hour annual retraining, so that
24 stuff usually doesn't come up to surface.

25 So, you know, I'm thinking about, my mouth

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1 is getting dry. But I don't know why these people are
2 giving these type of things, and it is not required to
3 have these people given the knowledge to -- thank you,
4 I appreciate that.

5 But we should be informed of these things,
6 and you know, we have a history where we have to get
7 our people educated and into a society. Back then, a
8 long time ago, our people were taken off the
9 reservation to be educated into a society where we all
10 could speak a common language.

11 And now that some of us have been
12 educated, now there is this type of chemicals that has
13 been brought out, and they don't even have it labeled
14 to let us know what it can do to us.

15 I don't know where the problem is, but had
16 MSHA brought this on long before, I think we could
17 have been, us educated people could have in turn told
18 -- we would have had the knowledge to tell our people
19 what is going on, and they would have a different
20 point of view about things right now.

21 Things are just so much into just making
22 production, making more money for everybody, and the
23 Native Americans are getting kicked around and without
24 knowledge of these type of things, I don't know how it
25 is going to affect us down the road.

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1 I spent, all these excuses, we have heard
2 all different kinds of excuses, just to procrastinate
3 things, instead of preventing of these types of
4 things, which has been prolonged.

5 And the economic factor there, that is the
6 total loss, and so to be trained, and to have the
7 knowledge, and also the management to have the
8 knowledge to make these things available to us to help
9 us with our health more effective.

10 I don't understand why this is being
11 brought up and then shut down, and continue to let it
12 sit there without any kind of effort being made to a
13 law.

14 I think that we really do need to bring
15 these concerns out to the people. And not only am I
16 talk about the miners, I'm also talking about people,
17 like Larry said, we use these different types of
18 chemicals on our roads.

19 And when we have all these different types
20 of miners being exposed to, say on these big drag
21 lines machines, the welders are -- when they heat up
22 different type of toxic, and they are being exposed to
23 different types of toxins, and they don't know what
24 that is. Some of these people get nauseated so they
25 have to be relieved of their job for three or four

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1 hours before they can continue again.

2 And, here again, there is no knowledge of
3 what we are all involved in, here. So I've always --
4 I went up to my management and asked them what they
5 are going to do about that? Again, they don't have
6 the knowledge either.

7 And the people that are building these
8 different type of chemicals and bringing them on the
9 mine sites, I think they should be made aware to what
10 they are doing, what they are bringing out.

11 So in terms, they, my management can have
12 the knowledge to where they can let us know what we
13 are involved in.

14 So basically I guess what we are saying
15 is, why is it taking this long of a time to put a
16 label on a barrel. You know, it is simple, people
17 make these things, they know what they are putting in
18 all that stuff.

19 All they've got to do is write down what
20 is in there, what the long-term effects are going to
21 be, how it is going to hurt you. You know, us Native
22 Americans, we don't have the very thing -- we don't
23 have the basic things, like running waters, stuff like
24 that.

25 And so all these chemicals that are left

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1 on-site, you know, we have a rain, and it gets on to
2 different atmospheric, it is airborne, some of them
3 are run into different type of water that is being
4 where our livestocks are using up, drinking this
5 water, eating these plants.

6 So in an essence what I'm saying here is
7 that whether it is the miners, or the people that are
8 living around there, that are exposed to it. Because
9 they use their livestocks for food, and those
10 livestocks drink out of that same water that is
11 contaminated from these different type of chemicals,
12 you know?

13 And we have no knowledge of what is all
14 out there. A long time ago we were -- you know,
15 people took our land and our water away from us, and
16 they took our mountains away. Now they are coming
17 back and taking our rocks, and using all this kind of
18 different type of chemicals.

19 I don't know whether there is an excuse
20 for it, not label these things, or why we have to go
21 through this type of course again. And, you know, I'm
22 very concerned about it, and my people are concerned
23 about it.

24 And I think that this stuff needs to be
25 labeled, it needs to be brought up, and it needs to be

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1 informed all the people what it is about. And I think
2 as long as we are -- have an excuse to procrastinate,
3 and to prolong these type of accidents, it needs to be
4 stopped, simple as that.

5 You know, all you have to do is people
6 that make these things, they just need to put it in
7 writing and say, these are the dangerous effects. It
8 could help a lot of people's lives later on down the
9 road.

10 And I am concerned about this thing. And,
11 again, I say that yes, we do need to have these things
12 labeled so we have an understanding of what we are all
13 doing. And I thank you.

14 MODERATOR TEASTER: One thing, Donald, on
15 the -- you mentioned the miners that were exposed to
16 the chemicals associated with the explosives.

17 Did you say that the operator did not have
18 the knowledge as to what chemicals were in there that
19 may --

20 MR. KEITH: No, they do not have the
21 knowledge, because we did ask what is in that. The
22 guys that have these sores in their hands, are asking
23 me to talk to them, and I ask why are these people
24 getting those sores on their hand? And they had no
25 knowledge.

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1 And with poor medical facilities out
2 there, and these people are, they don't have the
3 education, so they are just living with it now.

4 MODERATOR TEASTER: So prior to this
5 occurring, did the company require gloves to be worn?

6 MR. KEITH: No, no.

7 MODERATOR TEASTER: Just after this?

8 MR. KEITH: Yes, people started getting
9 sores, so then they started providing different type
10 of gloves. But we don't know if that glove is going
11 to protect their hands, because they already got sores
12 in their hands, it is probably entered their immune
13 system, and it is probably too late, you know?

14 So whether you provide them with gloves
15 after the fact, what good is it, you know?

16 MODERATOR TEASTER: Did they, did the
17 company -- do you have knowledge of whether the
18 company had changed types of explosives that they
19 used?

20 MR. KEITH: The company is always trying
21 to change different things to make it more efficient
22 for their means of production. It is not -- they are
23 not looking at the health and the welfare of the
24 people, they are looking at production.

25 MODERATOR TEASTER: The OSHA rule which

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1 applies to most of the, other than mining, and they
2 are required to provide labels. So we have
3 anticipated, under the drafting of our rule, that most
4 of the labeling will be done by the manufacturer, and
5 it will be there, in place, when it arrives on mine
6 property.

7 Are you telling me that this is coming to
8 the property with no labels, most of this stuff?

9 MR. KEITH: Probably, because we have no
10 knowledge of, and the mine managers don't even know
11 what they are bringing in. But my problem here, my --
12 I don't understand why it is taking this long.

13 I mean, if OSHA had this into law 12 years
14 ago, and here we are still trying to implement
15 something that has been out there for years and years,
16 and here we are just having prolonging.

17 I don't know what type of excuse it is,
18 but it is not on the law yet.

19 MODERATOR TEASTER: Thank you, Donald.

20 MR. KEITH: I think you guys.

21 MODERATOR TEASTER: Our next speaker is
22 Larry Huestis, the United Mine Workers.

23 MR. HUESTIS: Good morning panel. I'm
24 Larry Huestis, I do the surface inspections for the
25 United Mine Workers International in the western

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1 United States. I'm also a past member, or current
2 member of Local 1972 out of Sheridan, Wyoming, that is
3 my home.

4 I have some personal experiences with some
5 different chemicals that I was going to talk to you
6 about. But I have heard quite a few different
7 questions, and I guess I would like to get into some
8 of your questions you've asked some of the other
9 speakers, from my experience going down to the Navajo
10 Nation, for instance, doing safety inspections.

11 Also, I guess maybe the Panel, I would ask
12 them to really try to put themselves in a miner's
13 shoes. And I'm going to ask you to think about, for
14 instance, I was hired at Decker Coal as a mechanic in
15 1978.

16 And about 1983, '84, in that time frame,
17 as a mechanic I was asked to, you know, repair things
18 like brakes on Euclid 170s. so I would take the wheel
19 motors off the 170s.

20 And it became a very common practice. The
21 electricians, we seen they had some chemicals that
22 really worked good for electrical cleaning. Boy, that
23 took the grease off, it evaporated, so they didn't
24 have dirt, grease, and stuff on their contacts.

25 Well, the mechanics, and with the

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1 knowledge and the blessing of management, we started
2 getting this stuff in, in 55 gallon barrels. So if
3 you were working on a brake system, you would go get
4 a five gallon bucket, you would get your air hose
5 hooked up, you had to basically a suction device set
6 up in -- and it wasn't good enough, the ones you could
7 buy, you had to use the three quarter inch pipe, so
8 you could suck that five gallon bucket out in about
9 three minutes, and you could put a lot of this
10 chemical to get the grease off the brakes if you had
11 a bad wheel seal, or if you were trying to get to even
12 the nuts and the bolts to take something apart.

13 And there was enough of this chemical in
14 the air that if you used it for a minute and a half,
15 you wouldn't be able to see the other end of this
16 auditorium. And we didn't know what this stuff was.
17 It was nice and cool, you could put your hands in it,
18 but boy it would clean things.

19 And I guess my point being, there is a
20 chemical, and if that chemical is produced, or brought
21 on to the mine site for a situation, that may not be
22 what it is only used for. That, if I remember right,
23 was carbon tetrachloride.

24 I have used that in six by six areas,
25 contained area, in the back of these trucks, that

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1 today if I had to try to even get in that hole I
2 couldn't make it. But to get in there, and then take
3 a five gallon bucket of this stuff and clean the
4 contacts, clean out the brake areas, to get those
5 wheel motors off so that you could get in and take the
6 pinion and the sun gear out of there, so you could
7 take the rest of the wheel motor apart, that was a
8 common practice.

9 I rolled out of that hole too many times
10 and getting sick to my stomach, light-headed, and I
11 just decided, myself, I have to find out more about
12 it. So I went and started asking the electricians,
13 what really is this stuff? It is good stuff, but what
14 the heck is it?

15 Well, we start digging. And yes, it is a
16 cancer causer. They no longer have it out there. But
17 what my point being is, again, it was not put out on
18 that mine site to be used to the type of a situation
19 we were using it.

20 So when there is a chemical brought out to
21 a property, there is going to be, and I'm sure in a
22 lot of cases it is definitely abused. So the
23 warnings, and the labels for a can of what we would
24 call, and you could probably go to Wal-Mart and buy
25 contact cleaner. Well, that is a little spray can,

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1 but I have seen it being used and put in the air over
2 20 gallons of it, in probably less than 15, 20
3 minutes.

4 And not just exposing the person that was
5 using it, but 25 other people working in the area. It
6 was a very big-time practice. I don't know the long
7 term effects of this. I know it is -- it wasn't very
8 smart on my part, and it definitely wasn't very smart
9 on Decker Coal's management part to see this practice
10 and to continue to let it go.

11 So there are a couple of points here. Is
12 there going to be abuse, or a possibility of abuse of
13 chemicals? Yes. If somebody can find some chemical
14 that will do something, and they don't really have the
15 knowledge of how harmful this can be.

16 At the same time we, as workers, a lot of
17 time depend on our management people to know what is
18 good or bad for us, or they should have been told from
19 their supervisor, or whoever purchased this, that it
20 should be safe.

21 So there is a sort of a blind trust put in
22 here to the system. Now, I guess since I grew up a
23 little bit, and hopefully got a little smarter, I find
24 out from digging into this, there is sometimes people
25 out there, that are in management, that do know these

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1 things.

2 But then it becomes a portion of what is
3 best for the bottom line, do they always look out for
4 the betterment and the health and safety of their
5 employees?

6 (Whereupon, the above-entitled matter
7 went off the record at 10:20 a.m. and
8 went back on the record at 11:40 a.m.)

9 MODERATOR TEASTER: We are now set up to
10 continue the Hearing on HAZCOM. For those that are
11 here, who would like to sit in on it, we would like to
12 start back. We have everything set up on a temporary
13 basis.

14 We will go back on the record now. We
15 have had a power failure, we will try to get through
16 with the speaker that was speaking at the time of the
17 power failure.

18 And if that works we will continue to take
19 testimony, if not we will delay, after this speaker,
20 we will return to the auditorium.

21 But we do want to try this and see how it
22 works. Larry Huestis will continue on with his
23 testimony. He was testifying at the time of the power
24 failure.

25 MR. HUESTIS: I was testifying on using

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1 the carbon tetrachloride as a solvent degreaser.

2 One of the points I wanted to make sure
3 that the Panel understood is that once the company, or
4 once somebody came to have the knowledge that this
5 isn't good stuff, that we had been abusing it, and to
6 even take it out in a bulk form, you know, there is no
7 more MSDS sheets left at Decker Coal.

8 Once the chemical is gone, the MSDS sheets
9 are gone. And another thing on the use of, and I
10 guess I would say some possibilities of abuse of,
11 these different chemicals, is that the management
12 people at Decker Coal, the foremen, and even the
13 safety people that, and purchasing agents, I think it
14 was very well known what kind of abuse was being used
15 with this chemical.

16 And, you know, they didn't have the
17 training to recognize that hazard. I don't blame
18 them, I believe they were lacking the knowledge that
19 it could be that hazardous and cancerous.

20 But that is my own personal experience
21 with, I guess I would say, the chemicals, the lack of
22 knowledge on them, the abuse of them, and those --
23 that chemical was used like that. It was mixed with
24 solvents at the same time.

25 So when you get solvents mixed with that,

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1 you know, what other kind of forms of hazards have you
2 created?

3 The other things I would like to testify
4 on, and I maybe ask the Panel to ask some of the
5 questions to me that were asked of other members that
6 were up here.

7 Because, again, I work for the Mine
8 Workers, I do safety inspections to the surface mines
9 in the west. And I just wanted to go over a couple of
10 things that I've experienced doing those types of
11 inspections.

12 There was a question asked about how
13 available MSDS sheets are. And I will give you a
14 couple of examples. Peabody Coal, the Big Sky mine,
15 I was doing an inspection there.

16 And as I was inspecting the shop, they had
17 just received a 55 gallon barrel of antifreeze. And
18 it was marked caterpillar. And then it had the, it
19 was called coolant, and then it had the trade, or the
20 numbers, Caterpillar numbers.

21 They just received it in, and they told me
22 that Caterpillar went to their own type coolants, a
23 new coolant. And I said, do you have the MSDS sheets
24 on it? And they said yes.

25 I said, I would like to look at it. So we

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1 had to leave the shop, go over to the safety
2 supervisor's office. He had about four books of MSDS
3 sheets, three ring binders, some of them up to six
4 inches thick. And he said, it should be in here
5 somewhere.

6 So we start looking. We can't find it.
7 We can find some antifreeze, but it wasn't, the
8 numbers didn't match, it wasn't Caterpillar
9 antifreeze, it might have been Prestone.

10 So he says, well, let's just forget about
11 looking in the books. I will get on my computer. So
12 he gets on his computer, he gets into the Peabody data
13 base. He can't seem to find it.

14 So we go to a different place on the
15 internet, looking for the information, Caterpillar.
16 Finally he says, well, if we don't have it here, we
17 should have it in the warehouse.

18 We go to the warehouse, we can't find it.
19 So we end up calling a Caterpillar dealership, and
20 they faxed it to us. So I started asking questions
21 and concerns for our members, come on company, this is
22 a little bit ridiculous.

23 If we just had somebody get a bunch of
24 this splashed in their face, their eyes, how are they
25 going to get to your office way over here, another

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1 building up two flights of steps?

2 And I said, when we were talking, you
3 mentioned this room gets locked up at 4:30 in the
4 afternoon. And he says, yes, I guess I never thought
5 about the other shifts not being able to get that.
6 But he says, they do have that access, or the
7 information in the warehouse.

8 I says, we didn't find it. And so I said,
9 are they going to be able to get a hold of
10 Caterpillar, run through the same process as we did,
11 and if Caterpillar is closed, what are these people
12 supposed to do?

13 You know, it is -- I think there is a
14 misconception out there that when you say the
15 companies have the MSDS sheets, they do? In probably
16 most cases try to find that information, there is not
17 a company that sets their books up the same, whether
18 it is getting alphabetized by the trade name, the
19 chemical names, that is not the total answer on how
20 these chemicals are being treated at the job site.

21 So once you go out and really ask, and
22 push, you have to push to get this information from
23 the company. You have to be consistent. That we got
24 faxed to us, and it probably took two and a half
25 hours.

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1 Another incident was with PNM Coal. We
2 heard, my union brother Larry Lee talking about, and
3 I can't remember the chemical name, but the dust
4 control chemical.

5 He was -- I can't remember on their bulk
6 tank if it just said danger, or if it had the actual
7 chemical in it. But it is, that tank was probably at
8 least a 3,000 gallon tank that they brought in from
9 the bulk trucks, pumped into the tank, put into the
10 water trucks, mixed with the water.

11 Well, as I started asking questions about
12 that, and some of our members, that they had been
13 using these chemicals for a couple of years. They had
14 a favorite little fishing pond. All the fish are
15 dead.

16 And they are telling our members this
17 stuff is safe. So I started pushing again. Well,
18 let's see the MSDS sheets on these different
19 chemicals. We left that place four hours later, I
20 still did not get that information.

21 So when you think, and when you are asking
22 our members, have you asked for MSDS sheet, a lot of
23 times they ask and then they will get it for you, and
24 we went all the way around to four different offices
25 that day at PNM, and still did not receive that

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1 information.

2 And I have a lot of papers thrown at me
3 and says, I think this is it. I says, why doesn't it
4 say exactly the chemical? You know, are we talking
5 the same thing, or is it one that you used three weeks
6 ago?

7 Nobody could answer those questions. So
8 it is -- the system that is in place right now, it is
9 not working very well. So don't hinge your decisions
10 on that we've got a good system.

11 You've got a system, to me, that is not
12 enforced. It is a system that does not work. And I
13 think that you hear from industry, as we've got them
14 here, all they have to do is ask.

15 I have been with members when they have
16 asked. And I have heard foremen say, it is around
17 here somewhere, you are just trying to screw around
18 and not go to work, you are trying to use this
19 information, to know if it is safe, so you don't do
20 it.

21 And then at the same time the other
22 response is, damn it, it has been safe, we have been
23 using this stuff for the last two years. Well, you
24 have new people coming in that may be from a truck
25 driver into the shop as a laborer, and then he is

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1 being exposed to these chemicals that he doesn't know
2 what has been there for two years, what came in last
3 week, what is good, what is bad, how much stuff,
4 protective clothing he has to use.

5 I mean, I've seen it from battery acid.
6 And then do a safety inspection, seeing the way
7 different people use bulk battery acid to fill
8 batteries. No eye protection, no clothing protection,
9 nothing.

10 And doing the safety inspection, with the
11 safety company people, maybe the shop foreman will
12 come around the corner see this. I say, hey buddy,
13 we've got to have some better protection gear. Don't
14 you understand how you should be handling this stuff?

15 Then right away the foreman will say,
16 we've told them. And I've got the individual and I
17 say, what kind of training you've got? Well, I've
18 just been in here for two weeks, I didn't know that
19 this wasn't anything more than water.

20 So there is the loopholes in the training.
21 When you get hazardous training in your annual
22 refresher course, they show you some films on chemical
23 burns, different things like that, what kind of, what
24 can your lungs look like.

25 But what is taking place here, they are

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1 not saying this chemical that we use at this mine can
2 do this. They give the chemical name, people don't
3 connect it. Whether it is this cleaning solvent, or
4 anything.

5 So there is a big gap in the annual
6 refresher. These are the things you've got on the
7 books now. They are not working the way I believe a
8 lot of people in MSHA, I mean, it is different from
9 what you guys are believing in the action, and what is
10 taking place in the field.

11 Everybody knows what starting fluid is,
12 what its purpose is. But I don't know how many cans
13 of starting fluid I found in vehicles in the
14 summertime, in the cab, on the back of a truck, by the
15 cases.

16 Well, it doesn't take a genius to figure
17 out they are not using this starting fluid to start a
18 piece of equipment in July. You ask the foreman, you
19 ask the company safety person, why are you guys even
20 letting this out of the warehouse? You know it is
21 being abused for a cleaner.

22 And I get the response, oh no, it isn't.
23 Well, before I leave there I found two or three
24 mechanics using it for a cleaner. It is things that
25 are, I think, some companies will tell you we are

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1 doing our best to get that under control.

2 I tell you what, if a company wants that
3 under control they can control it. They don't need to
4 check that stuff out. They can give training.

5 I go to the mechanics and say, have you
6 ever seen this stuff blow up? Do you know what is
7 going to happen if this is in your cab and it blows?
8 You are going to die. Didn't know that.

9 So there is a -- even now it is training,
10 training, training, and the companies will hide behind
11 that. That true message is not getting out because
12 the company doesn't feel that it is to their best
13 betterment to get it out.

14 So that in the Navajo Nation, Peabody
15 Coal, Black Mesa, not Black Mesa, I'm sorry, the
16 Consol Mine, we talk about these chemicals being used
17 on the roads.

18 Now, if you go to Cante Mine, it is a
19 total different situation because this is the only
20 mine I've ever been out where the haul road is a
21 county road. You can be going down the haul road,
22 following a 200 ton truck, and it is following a one
23 ton pickup with a bunch of hay on it, and four kids
24 riding on top of the haystack.

25 And here is the dust coming off of these

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1 trucks. If they just watered it now we've got a
2 liquid mud that is splashing upside the truck, the
3 hay, and the kids.

4 I mean, we don't know what is in all these
5 chemicals. But I know it killed fish over in, and
6 even management said yes, it killed the fish over at
7 PNM, outside of Window Rock, Arizona.

8 So there is chemicals out there that are
9 being abused, the companies are not furnishing the
10 MSDS sheets so that they do what the law is intended
11 it.

12 So if I get some of this stuff in my eyes
13 I can turn around and find a quick remedy of how I'm
14 supposed to take care of it. If I've got to look for
15 three hours, whatever damage is done, is done.

16 And if my co-workers, and this is not --
17 really, I think you need to talk to some of your
18 agents, and I think they will tell you that when they
19 go to look for the MSDS sheets, look and see how much
20 dust are on the cover of those. They are not being
21 used.

22 The foreman, the company people, and this
23 is who our members rely on, is this stuff safe? And
24 if you push it then you are labeled as a troublemaker.
25 And these are union mines, guys.

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1 Now, I know what kind of intimidation is
2 used in the non-union operations. You can just
3 multiply it by a lot of numbers.

4 And this is, again, you are doing laws for
5 union, non-union people. We want the non-union people
6 protected. But I know that the fear and intimidation
7 for standing up for your safety rights, I've talked to
8 too many non-union people.

9 They are told, I open my mouth, I can look
10 for a job. That intimidation, even though there is
11 laws against it, it takes place day, after day, after
12 day.

13 In the big city of Gillette, Wyoming,
14 where there is a lot of them. And a lot of big name
15 companies. These companies know how to run a safe
16 operation. I'm telling you, they have chose not to,
17 in a lot of cases. They will cut the corners.

18 And I guess I will stop my testimony
19 there, and be more than glad to answer any questions.

20 MODERATOR TEASTER: Larry, just to
21 clarify, it is not our intent, and hopefully we are
22 not doing that, that what we have out there in place
23 is acceptable.

24 What we are trying, to get some
25 information from those that have had some experience,

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1 some commenters are making the statements that miners
2 would not use these MSDSs, if they were available.

3 And what we are trying to do is to get
4 some information as to whether or not that is the
5 case. It may be accurate in some cases, it may not be
6 in others. But that is why we are asking the
7 question, is that in the fact the way it is, or is it
8 partially right, or never right? That kind of stuff.

9 It is not in any way justify what we are
10 doing as being acceptable. Now, these voluminous
11 MSDSs that you identified, and couldn't locate the one
12 you were looking for, do you know if there was more
13 MSDSs for chemicals that were not at the mine, or was
14 all of those chemicals at that mine?

15 MR. HUESTIS: No, at the particular one
16 that I'm thinking about, the Peabody Mine at Big Sky,
17 in that incident we found, and I even asked that
18 question, how many of these MSDS sheets are
19 representing chemicals that are no longer even on the
20 mine site?

21 He said, they are scattered in and out of
22 here. So this particular safety department they said,
23 we will go through this every once in a while and
24 clean them out. But to my knowledge, and from how he
25 answered that question to me is, yes, there were MSDS

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1 sheets that were there, that were chemicals that were
2 probably more likely not on the mine site.

3 And I guess my point being, in talking to
4 you about the MSDS sheets, and the members, our
5 members trying to get those MSDS sheets, again you
6 know, I think with the Rule coming, if we can get the
7 Rule in, I think we can finally get some -- a little
8 bit more serious to the coal companies, and treat this
9 better, and the training that will be available, that
10 our members and other miners will turn around and not
11 be intimidated, but to really understand the true
12 dangers of misusing, abusing, or grabbing a spray can
13 of something that they don't know what it is, and
14 spraying it on a piece of hot metal to cool it down,
15 instead of a glass of water.

16 It is -- their training, hopefully the
17 training will raise in quality so that they will bring
18 it to what these chemicals really, and the harm that
19 are being used today, but the training will start to
20 connect the dots, connecting it with this can can
21 produce this.

22 And at the same time, hopefully, we will
23 bring up the knowledge of the safety departments
24 within the coal companies, and their purchasing
25 agents, that they will get safer chemicals, and what

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1 their knowledge, it will come down so that everybody
2 starts paying a lot closer attention to it.

3 So I'm hoping that my testimony here
4 pertains to some of the things that are wrong in the
5 past, and where decisions to try to improve things, is
6 that we've got some problems over here that still
7 have, need a lot of improvement.

8 But the Rule, itself, will hopefully cure
9 some of that, and the need for the Rule. You know, it
10 is way past due, way past due.

11 MODERATOR TEASTER: Larry, in your
12 experience and training with Part 48, are you aware of
13 any training that took place where the MSDSs were used
14 as part of the training?

15 MR. HUESTIS: Yes, personally for me I
16 can't remember years ago at Decker they did. And they
17 said you can find them at the warehouse. That is
18 about the training, right there. Here they are, this
19 is what they look like, you can find them in the
20 triple ring binder, and they should be over in the
21 north corner. That is your training.

22 MODERATOR TEASTER: No discussion on the
23 specific hazards?

24 MR. HUESTIS: No, no discussion from this
25 is an MSDS sheet of a can of WD40, her is what you can

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1 experience if you abuse it, if you are using it too
2 much. You should not use it for this, this is what it
3 is bought for, intended to use as.

4 That sort of training for this type of
5 chemical, no. It is, here is the MSDS sheet for a can
6 of WD-40. It just happened to be the one the safety
7 guy brought out of a book.

8 But they didn't get into the hazards of
9 it. You know, that particular sheet they probably
10 read it over, said, this is what it can do.

11 MS. JONES: And you feel that they were
12 meeting the requirements of Part 48 by what they were
13 doing?

14 MR. HUESTIS: I think they were meeting
15 the minimum requirements.

16 MS. JONES: And it was too general, is
17 that what you are saying?

18 MR. HUESTIS: Very much too general. And
19 at the same time, like I mentioned, showing a video.
20 That is a generic video. And it didn't tie it to the
21 particular different chemicals that were used at that
22 mine site.

23 So, yes, it is a general meeting the
24 minimum requirement of the law. And at the same time
25 I think part of the problem is, and has been, that the

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1 safety people of these companies are not educated
2 about the seriousness of these chemicals.

3 MS. JONES: We heard a number of
4 arguments, primarily earlier this week, that this was
5 just redundant to what was already on the books, as
6 far as regulations.

7 Would you care to comment on that?

8 MR. HUESTIS: I don't think it is
9 redundant at all. It is -- I think it needs to be
10 done. There is, I'm thinking with the HAZCOM Rule,
11 and how to communicate these hazards as a part of
12 itself, will get these coal companies, and the
13 industry as a whole, to understand how serious it is.

14 Until that gets through, they are going to
15 skirt by the minimum, the very bottom minimum, on your
16 training. So part of the whole rulemaking process,
17 the content of the process, you know, and I'm not
18 pleased with everything I read in it, because I don't
19 believe it has enough penalties to it for these
20 companies.

21 They can skate by too easy, yet. But at
22 least by the Rule itself, will bring up the
23 seriousness of the chemicals for everybody.

24 MR. SNASHALL: Larry, you mentioned that,
25 about annual refresher training, and deficiencies, in

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1 your view, of annual refresher training.

2 Would those remarks also extend to task
3 training when miners get task training in particular
4 jobs, they are supposed to be trained on the health
5 and safety aspects of those jobs; have the companies
6 included, in relation to the health and safety aspect
7 training, have they included hazard chemical training
8 as well?

9 MR. HUESTIS: From my own personal
10 experience, and again working at Decker Coal for ten
11 years as a mechanic, I have never been given a task
12 training on how to use solvent, or when I'm working on
13 something, how to use starting fluids, what to do with
14 these cans of things that you could probably buy at
15 Wal-Mart at the job site.

16 Any other -- I cannot think of any
17 chemical that we had come in there that I was told
18 this is how you use this chemical. Now, Caterpillar
19 uses a lot of different types of epoxies for seals,
20 and stuff like that. I have never received training
21 on that.

22 And those, you know, all I can say,
23 speaking from my experience, as far as my own personal
24 task training, the answer is if there has been, it has
25 been so very little, I can't remember it.

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1 MR. SNASHALL: Thank you.

2 MODERATOR TEASTER: Thank you, Larry.

3 MR. HUESTIS: Thank you.

4 MODERATOR TEASTER: Can we go off for just
5 a minute?

6 (Whereupon, the above-entitled matter
7 went off the record at 12:06 p.m. and
8 went back on the record at 12:07 p.m.)

9 MODERATOR TEASTER: Back on. Our next
10 speaker is going to be Andrew Laferty.

11 MR. LAFERTY: My name is Andrew Laferty,
12 I work for Bluestone Industries at a prep plant in
13 Keystone, West Virginia. I'm a union safety
14 committeeman. I have 33 years of experience of being
15 underground, the rest at the plant.

16 I've been, since I've been at the plant I
17 have worked with every chemical that is around the
18 plant. I was a filter operator for roughly seven
19 years. When I first started, nobody told me these
20 chemicals are going to hurt you. All I was told was
21 how to mix them into the system.

22 I asked one of my foremen one time, I
23 said, well this hurt you if you get it on you? He
24 said, it is not supposed to. We had another chemical
25 there that we used, you mixed with water, it had an

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1 odor to it, or it would burn you, burn your eyes if
2 you breathe it very long.

3 He said it was basically potato starch, it
4 shouldn't hurt you. We have absolutely no training on
5 these chemicals, at all. They just -- anybody that
6 goes into these jobs, all you are told is how to mix
7 them.

8 We run different grades of coal, sometimes
9 two or three times each shift. The man that is in
10 charge of this has to go change these chemicals back
11 and forth, add or subtract whatever he needs.

12 They never trained, and the eight hour
13 refresher we have each year, they show you a little
14 bit about chemical burns, but most of it is nothing
15 that we actually work with. They just -- nobody is
16 told what is going to happen if you put too much of
17 this in.

18 They just say if you don't put enough our
19 coal is not going to be right. Don't worry if you put
20 too much, if it spills, because we have -- below our
21 cleaning plant that catch all of our water, our
22 runoff.

23 Sometimes there is a lot of rainwater, and
24 this goes into a stream, a public stream. They don't
25 -- one time we had a -- we had this large coal pile,

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1 and the dust went right in this little town. The coal
2 dust was bad, so they brought a chemical in, in a
3 black barrel. It had a corrosive sticker on it, it
4 had some numbers stamped on it.

5 They said put four, put 20 gallons of this
6 into 2,400 gallons of water, and we will spray it on
7 the coal pile. The machine we used was broken, it
8 didn't work right. Nobody said it would hurt you, or
9 wouldn't hurt you.

10 We had to wear, well all we had were rags,
11 we didn't even have a mask, we had to wear this over
12 our face. And when we finished we were all,
13 everybody, anybody that used this machine was soaking
14 wet. You had to go change your clothes.

15 It would dry and it would become very
16 sticky. We had people, right now, that on these jobs,
17 they don't know -- well, they abuse it, I guess would
18 be the word. They put too many chemicals in.

19 Sometimes, I've moved now, I'm a dryer
20 attendant, and supposedly we have been told this is an
21 alcohol diesel fuel mixture that we use to float our
22 coal.

23 Sometimes when I do my dryer checks, we
24 have a heat dryer, I'm afraid to open the little
25 inspection door for fear that there might be an

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1 explosion, because there are so many of these
2 chemicals in the system.

3 You can smell them just out walking around
4 anywhere. We definitely need some kind of a law, or
5 something, that would enforce some training. None of
6 us are trained, we have never been trained on any of
7 these.

8 I'm really surprised that somebody hasn't
9 gotten seriously hurt with it. I, one time myself,
10 got something on me at work. I don't know what it
11 was, it caused a rash on the upper part of my body.
12 I was in -- I have been in two different states to
13 three different skin specialists, and they just give
14 me whatever they've got. Sometimes it takes care of
15 it, sometimes it doesn't. It goes away, it comes
16 back.

17 But a couple of years ago we have two
18 large storage containers. Well, we actually have
19 three. But sometimes somebody fails to keep records,
20 and they run out.

21 So the chemical company will bring in two
22 or three barrels, whatever is needed, probably, to do
23 until the next day. We get chemicals in chlorine
24 buckets. They are not chlorine, it is some form of a
25 liquid.

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1 The barrels come in and they have a
2 flammable sticker on them, or a corrosive sticker on
3 them. You open the barrel, if it smells like what you
4 used yesterday, go ahead and put some in the system.

5 Another guy and myself had to move a
6 couple of these barrels one evening. And somebody had
7 opened one, and hadn't closed it, which we were at
8 fault for not checking it. But when we moved it some
9 of this liquid came out and got on us.

10 Well, it had a terrible odor, and both of
11 us got it on our hands, and we got rash, and burning.
12 The other guy asked the superintendent for a data
13 sheet, and he says, it is around here somewhere, I
14 will find it for you.

15 Well, the next day he gave me this data
16 sheet, he gave me four papers supposedly on this
17 particular chemical that we got on us. And it was
18 four pages of the same page. And it told us nothing
19 about what to do about it. If we were chemists or
20 something we could have probably understood what that
21 paper read.

22 But we had no idea of what we were even
23 looking at. And if the laws don't pass, they need to
24 be enforced real well. I don't know, but as far as
25 I've been told, you know, you can request these sheets

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1 from where we work.

2 But like the one I requested, I got it the
3 next day, and it still didn't tell me anything we
4 needed to know about it. And we need a good law, and
5 we need to get enforcement of that law to keep people,
6 make things a little bit safer for people.

7 Because I, myself, have had chemicals on
8 just about every part of my body. And some of them
9 are okay, some of them cause problems, some of them
10 don't.

11 But we just do our jobs, and I've had
12 comments made to me, personally, that I brought it to
13 the attention of some of our inspectors, and a couple
14 of days later I have had comments made to me, you need
15 to learn to appreciate your job a little more.

16 So most people that we work with don't say
17 much, you just go on and do what you are doing, and
18 not worry about it. There is no enforcement at all
19 with our chemicals at the place that I work, at all.

20 MODERATOR TEASTER: Some of the barrels
21 were identified as flammable. Was there not any label
22 identifying what the --

23 MR. LAFERTY: It had something stamped on
24 it, but --

25 MODERATOR TEASTER: But I'm talking about

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1 information that would identify what the chemicals
2 were.

3 MR. LAFERTY: When they bring us chemicals
4 they have, I think some of them Saturday, as a matter
5 of fact, they have some ten gallon plastic buckets,
6 and the only thing on the outside of this buckets is
7 chlorine tablets.

8 Well, I took the top off of one of these,
9 and it has this chemical in it. I assume it was what
10 we call flocculent, but as far --

11 MODERATOR TEASTER: It was different than
12 what was identified on the label?

13 MR. LAFERTY: Oh, yes, it said chlorine
14 tablets, but it was a liquid, a white thick looking
15 liquid. We also -- we use muriatic acid to clean some
16 cables on our aerial tram that we have.

17 Well, when we get ready to do this, if you
18 -- I guess if you wanted a pair of safety glasses they
19 would probably give you those. But nobody says, they
20 just say be careful.

21 We put this acid in a five gallon bucket,
22 we put this cable down in the acid, the end of the
23 cable that we are going to use, and we take a cutting
24 torch and stick down in this acid, and aerate it to
25 clean this steel cable.

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1 Well, when we are done with that one we
2 put it in another bucket with vinegar and soda to
3 neutralize the acid. And nobody really says, they
4 just say be careful. I guess that is enough. So far
5 it has been.

6 But we take -- when they finish with them,
7 they carry them back in this one little location that
8 they store, and just stick the lid on them, and they
9 are probably there today. We used them three or four
10 weeks ago. Next time we need them they will still be
11 there. It is just a plain white bucket. And muriatic
12 acid is really dangerous.

13 MODERATOR TEASTER: How many miners --

14 MR. LAFERTY: There were 31. Two weeks
15 ago they had a small cut-off, laid off six of us, six
16 of the younger men. I had -- when I signed off of
17 that job, and took a new one, the boy that got the
18 floater job was 24 years old.

19 A week or two into the job he came to me
20 one night, in the bathhouse, and he said I got that,
21 he said I got that alcohol on my face and hands
22 tonight, it burnt me. But will it hurt me? And I had
23 to look at him and say, Scott, I don't know. They
24 told me it wouldn't hurt me. That is all I could tell
25 him.

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1 MODERATOR TEASTER: You have any idea of
2 how many injuries that have occurred at the mine, say,
3 in the last two or three years, as far as reportable
4 injuries?

5 MR. LAFERTY: Most people it is usually
6 their hands or their face. Most people put something
7 on it, go on about your business. Nothing is ever
8 really said about it.

9 We've -- I can't really -- we have several
10 men that have to wear gloves when they work, latex
11 gloves. As a matter of fact I used to wear them
12 myself when I done this job, because there is so much
13 that we are around, your hands stay irritated.

14 Some of the guys their hands bleed, they
15 peel, and they are just -- they are in really bad
16 shape. But it is just that nobody really says it is
17 an accident on the job, they just don't -- I've got
18 severe dermatitis, or something, you know?

19 Nobody really ever tried to collect any,
20 to my knowledge, the safety committee job, I've only
21 been on it a couple of years. Prior to that I just
22 done my job and don't make waves, do your thing.

23 MR. PHUC: You mentioned intimidation by
24 the mine operators. Can you comment on the number of
25 injuries that went unreported, that people just didn't

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1 report it because of the fear of their --

2 MR. LAFERTY: I would imagine every man
3 that has done that job has had a chemical on his
4 person. And these guys, you just -- you know, you
5 just do your job and go on. I mean, that is it. You
6 might talk about it in the bathhouse to some of your
7 buddies, or something. I got something on me today,
8 my hands are all itchy and burning.

9 We, you know, we are a union job, but we
10 are still really restricted, I guess you would call
11 it, to what we can speak out about. I'm sure I will
12 be in trouble over this when I get home. That is
13 okay, that is fine with me.

14 MODERATOR TEASTER: Okay, Andrew, thank
15 you very much.

16 MR. LAFERTY: You are welcome.

17 MODERATOR TEASTER: Our next speaker is
18 Wayne Conaway, from United Mine Workers.

19 (Whereupon, the above-entitled matter
20 went off the record at 12:22 and went
21 back on the record at 1:00 p.m.)

22 MODERATOR TEASTER: We will now continue
23 with the afternoon session.

24 Our first speaker is Wayne Conaway, with
25 United Mine Workers.

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1 MR. CONAWAY: My name is Wayne Conaway,
2 I've been an underground miner for 25 years, local
3 9909, safety committee person, Consol employee.

4 Half of my working career, so far, has
5 been trying to get something on this hazard
6 communication. And that is a long time. Congress
7 required MSHA that our health and safety be first
8 priority. They said that 25 years ago.

9 So I think 14 years doesn't, in my mind,
10 constitute first priority. I've had a friend pass
11 away, just as recently as six months ago, 46 years
12 old, he told me within a couple weeks of his passing
13 away, he said there is no question in my mind what is
14 killing me.

15 He says, from all the times I had to work
16 on the long wall in that emulsion. He said, of course
17 it is not there now, because they did finally find out
18 it was bad. 46 years old, it is a little bit too
19 late.

20 And I'm kind of glad that I was able to
21 hear a few other testimonies before I was able to
22 speak, because after listening to some of the
23 questions you've been asking, as far as Part 48, and
24 after viewing the video yesterday, it seems to me that
25 you've already pretty much come up with something that

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1 all mine operators can do as a minimum is show this
2 video, in your Part 48, and that is going to apply
3 with the law.

4 Gentlemen, ladies, that is not going to be
5 enough. There are way too many things that we have to
6 look at when it comes to hazard communication.

7 You have disposals, clean-up, spill
8 containment, evacuations. The MSDS, first aid
9 handling that type of thing, PPE, and there is just
10 not enough time in the Part 48s.

11 And I don't know if you really know for
12 sure, or not, because I -- ever since I've been in
13 Part 48 classes I've never, ever seen an MSHA
14 inspector monitoring it to see if everything is
15 actually in that criteria, in general.

16 Because I think if you had actually had
17 anyone -- and I've talked to a few people, and no one
18 has ever seen an inspector at a Part 48 course. And
19 that would probably also be changed, you know, if it
20 was really looked at hard, let alone trying to put
21 this in on top of it.

22 The people that are, that you are relying
23 on to feed us information and training, they do not
24 have it. Just to give you a good example, last
25 February we got a new safety supervisor.

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1 He was 25 years old, he had worked two
2 years underground with the engineering department as
3 a surveyor. In February they contacted him and said
4 you are the new safety supervisor. He has absolutely
5 no idea about general safety, let alone hazard
6 communication.

7 Just on general safety matters he has to
8 come to me, or to someone else. So I can only imagine
9 what it is going to be like when he has to deal with
10 any type of chemicals.

11 We've talked a lot about MSDS sheets.
12 They are on the mine site, usually inaccessible. Day
13 shift people, you know, if you want to go in and find
14 them yes, they are there, but you are going to have to
15 find them on your own.

16 The door is locked on the other two
17 shifts. The majority, and I strongly say majority of
18 the people, have no idea what an MSDS sheet is, or how
19 to actually obtain the information that is on it.
20 They have to regurgitate it, it is just not there.

21 Luckily I have an education in that, to
22 where I kind of oversee some things, you know, that
23 are top priority. Because this has been kind of a
24 passion with me for quite a few years. Because I
25 actually worked underground for 20 years before I went

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1 to get a degree in safety and environmental
2 engineering.

3 So I know that this is a problem. We have
4 people, another very good example that upset me
5 greatly, I was laid off for a period of about a year.
6 I come back, I notice these small containers of foam
7 sealant that they use to seal stoppings, and what not.

8
9 Well, if you've all read the back of the
10 box, it told you right then and there exactly, you
11 must use a respirator, without question. Because all
12 the cancer causing agents in it.

13 I asked the company, I said, do you have
14 respirators for these people that have been using
15 these things? Well, no. I said, I suggest you get
16 some before anything else has been used. They said,
17 okay, we will get some.

18 About three days later they said we got
19 the respirators, we are going to start using that
20 again. I said, I would like to see the respirator.
21 They brought out charcoal filters for respirable dust,
22 instead of an organic filter for that mask.

23 If they can't handle something that small,
24 and you guys don't enforce it, do the job that they
25 actually required you to do, the companies are going

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1 to do just as normal, very minimal.

2 Because what really upsets me is Wal-Mart
3 employees understand HAZCOM much more than coal
4 miners. And it is embarrassing to me, and it should
5 be embarrassing to you.

6 It seems like every year things keep
7 getting easier for the coal companies, by regulations,
8 but it is always at our expense. We need to get back
9 to basics. Treat us as your first priority.

10 And I think if you do that you will find
11 out that we have to get this thing through, because
12 there is too many people dying and we don't need it.

13 Are there any questions?

14 MODERATOR TEASTER: What kind of
15 background and/or training do you think an individual
16 would need to present chemical hazard training at a
17 mine?

18 MR. CONAWAY: As far as overall
19 background, each person, as a rule, will have to work
20 with a specific chemical or maybe chemicals in one
21 area. Because it is usually not that diversified
22 where your chemicals are spread all over.

23 You know, you use one chemical for one
24 application. The people that is using those
25 applicated chemicals for that area, they need to know,

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1 like I said, as far as if they spill it how to clean
2 it up, how it should be disposed of. There is going
3 to be first aid which will be accountable for
4 different types of situations.

5 You know, you just can't treat each
6 chemical burn, or whatever, the same way. Putting a
7 fire out with a chemical spill, you cannot put it out
8 the same way. You are going to have a certain way of
9 emergency response, do we have to get fire trucks.

10 You know, just a general program. You
11 need to enforce an actual program, not just say I want
12 you guys to be able to do -- each operator to do this,
13 or do that. They need to come up with a specific
14 program.

15 Because, like I said, just a few odds and
16 ends is not going to work, not going to get it. And
17 we really need to make the coal companies be
18 accountable.

19 Because it seems like, to me, every time
20 we are giving them such a minimal obligation to do
21 anything, that that is exactly what they are sliding
22 by on. And no one is really backing it up, and
23 checking on it, to see if they are actually doing what
24 they say they are doing.

25 MODERATOR TEASTER: Do you have a feel for

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1 the number of chemicals that is used at your
2 operation?

3 MR. CONAWAY: Being as I work underground,
4 no. Because the bulk of the chemicals are at the prep
5 plant. But I have a person that will be speaking,
6 that works at my mine, that does work outside, and he
7 may be able to give you more information on that.

8 MODERATOR TEASTER: Do you have a feel for
9 the number of, and kinds of injuries that is occurring
10 at your operation?

11 MR. CONAWAY: Sadly to say more so tumors,
12 cancers, than injuries. A gentleman, probably, could
13 have passed away today, I'm not sure. I spoke to him
14 a week ago, he cannot even get out of his bed now.

15 They all seem to be in a field
16 mechanically, as a rule, where they are around
17 petroleum products.

18 MODERATOR TEASTER: Thank you, Wayne.

19 Our next speaker is Terry Richardson, from
20 United Mine Workers.

21 MR. RICHARDSON: Good afternoon. I'm a
22 representative from District 2, local 1998, do mostly
23 surface construction.

24 I'm here on behalf of my union brothers
25 and sisters to recommend the removal of the language

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1 that allows operators to classify only those chemicals
2 used under normal circumstances, or foreseeable
3 emergencies, as hazardous.

4 The fact is most situations could be
5 construed to fall under two categories, abnormal
6 conditions, and unforeseen emergencies.

7 Understanding that basic premise operators
8 could effectively claim the Rule did not apply to any
9 given situation. Taking this necessary action will
10 greatly enhance the Rule's ability to effectively
11 protect miners.

12 The lack of prescriptive language will
13 allow operators to avoid notifying workers of the
14 presence of a hazard, and still be in compliance.
15 Also the reference to non-routine tasks must be
16 eliminated in the Rule.

17 Miners need, and have the right to be made
18 more aware of the presence of chemicals at the mine,
19 regardless of the frequency of their use. I'm
20 currently serving as safety committeeman for our local
21 union, and for the employees of the company that I
22 work for.

23 I'm also grievance man for these men.
24 Frankly I feel we as minors have been grieved. Ladies
25 and gentlemen, I have been working around chemicals,

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1 and chemical plants for quite a while, and dealt with
2 OSHA's HAZCOM standards.

3 And I can't understand why in 14 years you
4 haven't implemented a plan of your own. We all have
5 a responsibility to these miners to ensure a safe and
6 healthy environment for them to work in.

7 So I think we ought to quit with the
8 bureaucratic bias, and get this Rule into effect now.

9 MODERATOR TEASTER: Thank you, Terry.

10 MR. RICHARDSON: Thank you.

11 MODERATOR TEASTER: Our next speaker is
12 Bob Morris, United Mine Workers.

13 MR. MORRIS: Good afternoon, Mr.
14 Moderator, and Panel members. My name is Bob Morris,
15 I'm currently serving as a mine safety committeeman at
16 Leverage Mine, District 31, Consolidation Coal
17 Company.

18 I have 27 years working in the mine. The
19 last 12 years I've been employed in the surface in the
20 leverage preparation plant. Wayne Conaway alluded to
21 me speaking about certain chemicals, and I will do
22 that later on in the presentation.

23 Since 1989, I will just preface my remarks
24 with some background, we have been debating the Rule
25 based upon the standard that OSHA currently uses.

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1 On October 3rd, 2000, MSHA was supposed to
2 issue their Interim Final Rule, and it was supposed to
3 go into force by October 3rd, 2001. On August 28th,
4 2001, MSHA stayed the issuance of the Rule, this would
5 have implemented the Final Rule effective June 2002.

6 By staying this Interim Final Rule MSHA
7 has opened the door to more needless comment and
8 debate. We have had 14 years to debate this issue.
9 And it seems like they've opened the door strictly to
10 hear the operator's side of the question, to talk
11 about a Rule to protect the working miner.

12 If in the past 14 years the operators
13 couldn't have come up with questions, and presented
14 their side, there is something really wrong, they
15 don't have a side, here.

16 MSHA failed to implement the Rule to
17 provide the miners with basic protection. The Interim
18 Final Rule was scheduled to be placed into full force
19 by August 3rd, 2001, it did not go far enough in my
20 opinion, to protect the working miners, but at least
21 it was a step in the right direction.

22 It had several shortcomings, and I'm going
23 to try to outline them, briefly. First, it failed to
24 notify and identify miners exposed to carcinogenic
25 chemicals.

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1 Operators were not required, secondly, to
2 satisfy the miners that they were being exposed to
3 certain hazards, they did not have to notify them.

4 MSDS labels are available on some
5 chemicals, some chemicals are not. We use a myriad of
6 chemicals on the preparation plant, and you can ask me
7 about each one, I will go over some of them, the major
8 ones used.

9 We've -- the new Rule did not require the
10 mine operator to be the responsible party for training
11 and compliance with the Rule. By reopening the Rule
12 to debate, it is my opinion that the Agency announced
13 plans to address a list of the mine operator's
14 objections.

15 The mine operators have had 14 years to
16 list their objections, and if they haven't done so,
17 that is their problem. Mine operators, fourth,
18 another point I wanted to make, the mine operators
19 cannot be the party allowed to make the determination
20 on what is or is not a hazard. That is the same as
21 asking the fox to guard the henhouse.

22 Because most of the people that I have
23 worked for in the 27 years, especially on the last 12
24 years on the preparation plant, have no more idea how
25 to read an MSDS label, or how to interpret it, or how

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1 to train anybody in the proper use of the chemical
2 that they are using.

3 MSHA was mandated by Congress, under the
4 Act, as a regulatory agency, and in my opinion we are
5 becoming an advisory agency to the mining industry.

6 MSHA's has abdicated its primary role, and
7 that was protecting the most precious resource in the
8 mining industry, and that being the miner.

9 I will give you several examples. Wayne
10 alluded to some individuals that had become sick as a
11 result of working with chemicals, I'm going to give
12 you specific names.

13 First was Mike Renick. Mike passed away
14 about six months ago. He left a wife and two
15 children. Mike worked on the long wall system back
16 when the long walls were first being brought on the
17 site by Consolidation Coal Company at Four States
18 Mine.

19 They used an oil that was called solcenic
20 oil. I don't know if any of you are familiar with it.
21 Initially when we started using solcenic oil on the
22 long wall sections, there was no warning labels on the
23 cans, they came in five gallon cans, it had an ID
24 number on the can, and the people that worked
25 maintenance routinely would use it to wash grease off

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1 their hands at the end of the shift.

2 And after five or six years of using this
3 chemical on the property, the warning labels appeared
4 on it that it was a cancer causing agent, and it was
5 absorbed through the skin.

6 Mike died approximately six months ago
7 from a brain tumor. His oncologist stated,
8 categorically, that Mike was exposed to some chemical
9 that was commonly used in the oil fields. And I don't
10 know what the exact use in the oil fields would be.

11 Secondly, the other individual, he is
12 currently, he is a real good friend of mine, his name
13 is Chuck Sommers. Chuck got sick approximately 18
14 months ago, he had a brain tumor, exactly the same
15 type of tumor that Mike had.

16 His doctor, he had the same oncologist,
17 and he told Chuck that it was highly unusual to see
18 this type of tumor. He said, again, he cited that
19 this was a tumor that they only see among people who
20 work in oil fields.

21 And Chuck has worked for the past 15 years
22 on the preparation plant. And I will cite three other
23 instances. One was Leonard Myers. Leonard was
24 working one day, we use a, it is called stone hard.
25 It is a powder chemical that you mix, and it is used

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1 as a liner in chutes, and various other things on the
2 preparation plants.

3 Leonard had to get down inside of what is
4 called a three way jig distributor. It is a small
5 type vessel, to do the work that he was doing. He was
6 in there approximately 8 hours. When he came out his
7 eyes were almost swollen completely shut from the
8 fumes off of it.

9 A lot of the work that we do in the plant
10 is typically in confined spaces, and where you can't
11 get away from the fumes, specially the chemical that
12 you are using is producing any kind of fumes, you
13 cannot get away from it, you can't escape it.

14 Another friend of mine worked underground,
15 John Sliger. We had -- he passed away in 1986. John
16 was a bigger man than me, weighed probably 260. When
17 he died he weighed 89 pounds.

18 He was exposed to a chemical that we used
19 on the coarse coal slurry system that we had
20 underground at Leverage at the time, it was called
21 chromate. Chromate was used to increase the wearing
22 properties of the inside, on the inside of the pipes
23 in the slurry system.

24 This chromate came in 55 gallon drums, and
25 what you had to do, you had to add it into a hopper

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1 that fed into the piping, into the slurry. And you
2 always end up getting it on you.

3 The big barrels never carried a warning
4 label on them anywhere. After about four or five
5 years of using it, then the labels started to appear,
6 that it was absorbed, it was a chemical that was, that
7 you could not have on your skin, you were supposed to
8 wear protective clothing to even handle it. John died
9 in 1986, like I said, he was down to 89 pounds.

10 Last I will refer to my own self. I have
11 worked as an electrician on the plant for the last
12 almost 12 years now. And just before we shut down
13 here recently, I was working as a plant operator.

14 Well, I had several occasions, one as an
15 electrician, my electrical foreman had sent me, we had
16 a train load-out station, and where the conduit came
17 down through the metal floor of the building, it was
18 rusting and deteriorating. And to try to buy us some
19 more time for having to completely redo it, one
20 morning I went to work, he gave me a gallon can of
21 paint, and a paintbrush, and he said, I want you to go
22 down and sand, brush that off as good as you can, to
23 get the dirt from around it, and then I want you to
24 paint this on it.

25 Well, this building was approximately 20

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1 feet by 20 feet. And there was no way, there was one
2 door that you could open on it, that was the only
3 ventilation I could get in the building.

4 I used it for about two hours, to complete
5 the job that I was supposed to do. By the time that
6 I finished, I started getting real light-headed,
7 dizzy, went outside to sit down in the fresh air, it
8 was wintertime.

9 I got back up to the plant, and for a week
10 after that it was just like I had a chemical cold.
11 And so the foreman, I asked him, what was that stuff
12 that I was using, Barry? And he said it is PVC paint.
13 He said there is nothing wrong with using it.

14 I said, you know, I told him what had
15 happened to me, and everything, and he said there is
16 another can of it. This can had no warning label on
17 it, brand new can. They had another can in our
18 storage area. I went and got it, and it said minimal
19 exposure to this chemical, to only be used in well
20 ventilated areas, minimal exposure could cause severe
21 brain damage.

22 And this, like I said, this is just one
23 other example. Then another time they had, I don't
24 know if any of you have any prep plant background. We
25 had what they call a densitometer. And they are

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1 mounted on the outside of the pipes, in the plant,
2 coming off the heavy media pumps, which in turn pump
3 to heavy media vessels.

4 And essentially what it does, it measures
5 the density of the material going through the pipe.
6 There are signs up that say, caution radioactive
7 material.

8 The foreman sent me and another mechanic
9 to help two gentlemen who came down there from a firm
10 in Pittsburgh, to work on this pipe. And there were
11 chemical, and it says radioactive element.

12 Here I am, I am wearing a t-shirt, and a
13 pair of bib overalls, my buddy is dressed just about
14 like me. These two guys, I noticed they didn't have
15 any tools, and I asked the foreman, don't they need
16 any tools to work with? Well, he told us what we
17 needed to get.

18 He said, meet them up on the second floor,
19 and you will have to give them a hand for a couple of
20 hours. And the guy, when they come walking in, they
21 had on suits with hoods on them, and it looked like a
22 visor that they could see through.

23 And I asked the guy, I said, what are
24 those suits for? He said, because we are working
25 around this material. And I said, those aren't lead

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1 lined suits, are they? And he said, yes, they are.
2 And I said, me and my buddy, are we at any risk here?
3 And I said, he told me, he said, no we do it every
4 day. This is not that much exposure for you.

5 And I asked him, I said, how do you
6 measure what amount of exposure level we have here?
7 I said, do you have a geiger counter? He said, yes.
8 He pulled out, it pegged the geiger counter. And so
9 this is another example, this is a chemical, a
10 radioactive chemical.

11 Then just mechanics routinely used, like
12 I used the PVC paint as an electrician. I will go
13 over some of the chemicals that we use in the plant.

14 We use an antifreeze at the train load out
15 station. And what they do, they put it in suspension,
16 spray it into the rail cars before they load the coal
17 in the wintertime, and they call that freeze release
18 treating the cars.

19 And this chemical, I mean, it is an
20 antifreeze, probably a methyl alcohol based, and I'm
21 not sure what it is. I've never seen a data sheet on
22 it.

23 We use a reagent in the fine coal
24 processing part of our plant. It is called a frother,
25 it is used in conjunction with diesel fuel, and pumped

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1 in by pumps, into large tanks. And what it basically
2 does, it recovers the fine coal particles, puts them
3 in a suspension, and then goes through a filtering
4 system, and on to the belt line. It is also toxic.

5 We no longer use the chromate, but it was
6 used at our mine in times past. We use an agent
7 called flocculent. And it is used in the water
8 system, it goes to our thickener. And I don't even
9 know what the properties are on it, I've never seen a
10 data sheet on it.

11 Then underground, from time to time, they
12 use a substance called rock lock. And they drill in
13 the top, and inject this to bind the coal strata
14 together when they are having problems with the coal
15 at the top.

16 It is called a methyl sico cyanate. I'm
17 sure most of you have heard of it. And I've never,
18 ever heard anybody tell the people when it was being
19 used in a section, or long wall panel, that they
20 shouldn't be downwind from this. It does go into a
21 suspension in the air.

22 Wayne spoke about the foam sealant that we
23 use. Leverage mine had a fire in 1999, and we went
24 back into the mine, we did a lot of temporary
25 stoppings, where we sprayed this foam material on the

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1 stoppings as a sealant.

2 And, like he said, they did not provide
3 the people with the proper respirators, they used it
4 with open faced, with nothing on.

5 And Wayne spoke about the Part 48. I have
6 been through Part 48 training approximately, due to
7 the number of layoffs that we have had at Leverage
8 Mine, probably 32 times.

9 I have never yet heard any mention of
10 hazardous materials, or hazardous chemicals in the
11 workplace, not one time.

12 Another problem too, that you encounter,
13 is that chemical suppliers, even if you had an MSDS
14 sheet on the chemical. Consol is just like any other
15 company, the bottom line is what drives this country,
16 and everybody knows that.

17 They have to try to stay as competitive as
18 possible. So from time to time they shift suppliers.
19 The chemicals may be similar, but not the same.

20 So you couldn't go by what the data sheet
21 that you had on that particular chemical when they
22 changed it to another supplier.

23 Leverage Mine, we have a thermal dryer.
24 We use a number of chemicals there, that aren't
25 common. We use a caustic system. I don't know if --

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1 if any of you have any knowledge of this, what I'm
2 talking about.

3 And it is to dry, we had a problem with
4 the Clean Air Act, with the quality of what was coming
5 out of the thermal dryer. It is a coal-fired dryer.
6 And they went to a caustic system there, and they use
7 another chemical that they spray on the coal once it
8 comes through the dryer, and goes onto the belt line.

9 And there is a data sheet, it is on a tank
10 about 60 feet tall, and it is about 20 feet up. I
11 can't see it, I can barely see the paper here, without
12 glasses.

13 Lastly we routinely use a substance called
14 Electro Clean. And it is used, mostly it is the
15 electricians are the ones that use it. A lot of
16 mechanics will get a hold of it, and they will use it
17 as a degreaser.

18 And for a year, at Leverage Mine it was
19 banned, it wasn't allowed on the property. And when
20 we came back to work this time, we came back July 21st
21 of 1990, I take that back, July 21st of the year 2000,
22 we came back, it was back again and being used on a
23 regular basis.

24 And it clearly states on the can that it
25 is a carcinogenic. I will conclude with that, I will

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1 answer any questions that you have.

2 MODERATOR TEASTER: Thank you, Bob. Bob,
3 this PVC paint that you used, how long ago was that?

4 MR. MORRIS: Two years.

5 MODERATOR TEASTER: Two years. And that
6 container had no label identify any --

7 MR. MORRIS: The first one that they gave
8 me had no label at all on it.

9 MODERATOR TEASTER: The --

10 MR. MORRIS: They just buy it in bulk.
11 They might ship in 20 gallons of it, if they are
12 anticipating a lot of work.

13 MODERATOR TEASTER: So they took that from
14 a bigger container and put it in a small one?

15 MR. MORRIS: No, it comes in a gallon can.
16 That particular can had no label on it, that is what
17 I'm saying.

18 MODERATOR TEASTER: The miners that you
19 referenced, the one that passed away in '86, was he
20 actively employed at the time of his death?

21 MR. MORRIS: Yes.

22 MODERATOR TEASTER: Do you know whether
23 that was reported as a --

24 MR. MORRIS: There was a lawsuit filed.
25 I don't know what the disposition of the litigation

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1 was. It was filed by his wife against Consolidation
2 Coal Company, against the manufacturer that made the
3 chromate.

4 MODERATOR TEASTER: What I'm trying to get
5 at here is, the operator is required to file a Part 50
6 report of an occupational illness, or injury, if they
7 were employed at the time, in case of an occupational
8 illness, if it was diagnosed, or an award or
9 compensation was made, they have to file a report
10 under Part 50, to the Agency.

11 And I was just wanting to know if there is
12 any way that maybe, if they did file that information,
13 that information would be available to us, and would
14 be quite useful for us if we could back and review it.

15 MR. MORRIS: I don't know if there was a
16 Part 50 form filed. John's wife filed the lawsuit
17 following his death. I don't think they had started
18 anything on it prior to that.

19 MODERATOR TEASTER: The other two miners
20 that you referenced, were they actively employed just
21 immediately prior to the --

22 MR. MORRIS: Mike Renick had been off
23 approximately two years, after he became ill. And I
24 think he lived maybe two and a half years total. And
25 it was -- I have never talked to his wife.

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1 Mike came by my home one morning, we were
2 close friends, we worked together as electricians,
3 underground, before I went outside. He came by my
4 home one morning, rang the doorbell, I just go out of
5 bed.

6 I went to answer the door, and I heard a
7 voice, I didn't even know who it was. His head was
8 swollen so large, you know, from the -- he had
9 undergone chemotherapy three or four times. And he
10 needed me to fill out some paperwork so that he could
11 try to get his pension.

12 And Chuck Summers, I saw Chuck about three
13 weeks ago, he has been sick probably close to two
14 years right now. And he has no use of the left side
15 of his body. He is blind on the left side, he lost
16 his sight on the left side.

17 And then, let me see, who else was it?
18 There is another one in there, I think that I missed,
19 John Vincent. John is off, John was a person that
20 never drank alcohol in his life. Right now he is on
21 a liver transplant list.

22 John was a mechanic, worked on the long
23 wall, was one of these guys that worked with solcenic
24 oil. And I'm sure there are others out there that we
25 don't even know about.

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1 I know that Robinson Ruaon Mine, I think
2 they had 20 plus people off, right now, that are dying
3 with cancer. In fact we had asked NIOSH to do a study
4 at our mine and at Robinson Roan.

5 Dennis O'Dell, the international safety
6 rep in district 31 was taking care of that. I don't
7 know where that ended up at. And I know several of
8 those people have passed away.

9 I don't know any of these individuals by
10 name, they work at a different mine. It is
11 Consolidation Coal Company, also. And I'm not citing
12 Consol, you know, any more than any other operator.

13 I mean, it is a business. And, you know,
14 and I'm not -- I would be the last one to say that I
15 want to do something punitive to the employer that I
16 work for, because that is my livelihood.

17 But what I'm saying is that MSHA needs to
18 take a hard look, you know, before they promulgate
19 another Act, here, this is a serious issue, and it has
20 been for a long time.

21 And the sad part is, you know, from the
22 time that somebody might be exposed to the chemical
23 hazard, and to the time the symptoms show up, it might
24 be ten years, you know?

25 A cancer doesn't just form and grow in a

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1 matter of a couple of days after an exposure to a
2 chemical agent. And these people, I would say that
3 there are a lot of people that have died, through the
4 years, that have been exposed to chemicals, and we've
5 basically had no protection in the workplace.

6 For some odd reason the coal industry in
7 West Virginia, I will cite West Virginia because I'm
8 from here. The coal industry in West Virginia was
9 exempt from the standards. All the other industries
10 in the states were covered but us.

11 And all we are asking MSHA to do is to
12 give us some protection. Give us at least what OSHA
13 does for the rest of the workers in this country.

14 MS. JONES: I would like to ask just one
15 more little detail. You were talking about the use of
16 methyl iso cyanate. Could you describe, in a little
17 more detail, how that is used, and how the exposures
18 happen there, with that?

19 MR. MORRIS: It is injected, they drill
20 into the top, the top strata, inject it under
21 pressure. It is almost like a resin, and it is
22 injected under pressure. And what it does, it goes
23 out into the various layers of the strata, they will
24 all come together.

25 Hence, I guess, that is where they got the

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1 name rock lock. But in doing that it also, I don't
2 know what the word is that I'm looking for here, it
3 becomes airborne. The fumes off of it.

4 Alabama had a severe problem with it
5 several years back, where they had some miners -- one
6 exposure, they had to cease working, their lungs were
7 gone. And I'm saying if we are using chemicals like
8 this, then we need to make the people that are doing
9 the work aware of it.

10 You can't, you know, most miners aren't
11 going to go into the superintendent's office, that is
12 where they keep all the things at the prep plant, and
13 say, I want to see an MSDS data sheet, I want to know
14 what I'm working with here. They are just not going
15 to do it.

16 The mine operator is going to have to make
17 it a part of our training that we have a right to know
18 what we are using, and we have a right to ask to be
19 protected.

20 MODERATOR TEASTER: I think you may have
21 alluded to this earlier, and just didn't by name. But
22 is West Virginia miners covered under Right to Know?

23 MR. MORRIS: We are not covered like the
24 other industries in the state. I mean, I worked on a
25 plant for two or three years, and I handled various

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1 chemicals, you know, even diesel fuel is dangerous
2 when it is absorbed through the skin into the blood
3 stream.

4 MR. SNASHALL: We have had some comment to
5 the effect that miners, if they are working with
6 chemical solvents, they should wear gloves, and if
7 something has fumes, that they should have
8 ventilation, and there is a generic instruction, based
9 on common sense, that people should operate on.

10 Do you have any reaction to that?

11 MR. MORRIS: You are saying that --

12 MR. SNASHALL: In other words that --

13 MR. MORRIS: -- the miners should --

14 MR. SNASHALL: -- there is common sense.

15 MR. MORRIS: Just common sense that I
16 should know that I'm working with a chemical, and I
17 should -- I don't know, that is putting it back on the
18 miner to provide his own protection.

19 You know, I mean, that is not something
20 that we have the leeway to do.

21 MR. SNASHALL: Do you have any sense that
22 people, if they are, for example if you are painting,
23 and I was a painter at one point, okay?

24 MR. MORRIS: Okay.

25 MR. SNASHALL: So you, one of the things

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1 is you have, you don't paint in a confined space,
2 generally. Or you look for some ventilation.

3 The point of the, I guess of the comment
4 we've had before, is that a lot of this stuff can be
5 picked up by common sense precautions, it doesn't need
6 a lot of detail.

7 Do you have any reaction to that? Or is
8 a significant amount of exposure subtle, and really is
9 beyond what people can reasonably expect to know
10 quickly, that something may be wrong, or could happen
11 to them?

12 MR. MORRIS: Well, I think a lot of the
13 time, you know, just like a mechanic on a plant may
14 use that PVC paint. He may use it today, and may
15 never use it again for a year. Then somebody like an
16 electrician may use it every day.

17 I mean, I've painted for years, and I
18 would have never dreamed, I've never used a paint that
19 would have done what that did to me. I would have had
20 no reason.

21 You know, there is an implied feeling on
22 the part of the workers that, you know, my employers
23 shouldn't be exposing me to something that is going to
24 kill me. I think that is a reasonable assumption.

25 Maybe not in the legal sense, but in a

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1 moral sense. You know, I should reasonably be able to
2 expect to go home at the end of the day, to my family,
3 and not have to worry about what I may have been
4 exposed to, either through my skin, through breathing
5 it.

6 You know, we deal in an atmosphere where
7 we deal with a lot of dust, anyway. A miner is
8 exposed, at best, to a dust hazard, and to silica
9 hazard. And why should you have to assume that when
10 you go on a job site, that something that is done
11 maybe two or three times in your whole mining career,
12 could potentially cause, you know, fatal consequence
13 20 years down the road.

14 I mean, I never -- I think I have an
15 obligation, I'm not bashful when it comes to using
16 something now. But I learned the hard way.

17 MR. FEEHAN: Do you know of, or can you
18 tell us, the percentage of unreported injuries that
19 are chemically related, do you have a sense of that,
20 Bob?

21 MR. MORRIS: No. And I will tell you for
22 one reason why. At our mine, and I'm sure it is the
23 same at other Consol operations, at Peabody, or PNM,
24 or wherever, they do not want -- they discourage you
25 even turning in a normal accident. I mean browbeat

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1 you.

2 If somebody gets hurt at our mine, the
3 superintendent will be calling them in the next hour.
4 You know, it is your fault, you were the employee, you
5 were doing something wrong, or you wouldn't have been
6 hurt. It is no different with a chemical.

7 I think just about anybody in the room
8 here, I can't speak for every company, and I wouldn't
9 try to, but I would say that, you know, they are
10 basically the same, they operate the same.

11 MODERATOR TEASTER: Bob, we appreciate you
12 sharing your testimony, and your story. And we do
13 sympathize with the families that lost their loved
14 ones, and we appreciate you coming forward.

15 MR. MORRIS: All right, thank you.

16 MODERATOR TEASTER: Our next speaker is
17 Charles Miller, United Mine Workers.

18 MR. MILLER: I'm Charles Miller, I work
19 for Consol, I'm a union member, and I have been for 32
20 years, and I'm a safety committeeman at that local.

21 There are a few comments I would like to
22 make, and then if you have any questions, you could
23 ask me.

24 I would like to see MSHA make a rule on
25 this HAZCOM, so that it is actually made for

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1 everybody. The people who work there, the people who
2 know what is going on, and no grey areas.

3 I find that through all these years of
4 seeing what happened to people, and hearing all these
5 things, that something has to be done, and not ten
6 years from now, because of all these exposures we've
7 had now.

8 And I think to eliminate these operators
9 from making all these determinations, this rule has to
10 be done now, as soon as possible. It is a shame that
11 it has taken so many years now to resolve this
12 problem.

13 And I don't think we should have to wait
14 any longer for other people to get sick and say, I
15 can't work today, or I can't go tomorrow, because I've
16 got cancer now, or I got burnt too bad.

17 I don't think any of this should happen to
18 us, or you, or anybody else, just from the chemicals
19 that actually I don't think, in my opinion, should
20 even be there.

21 If that stuff is going to hurt our people,
22 we shouldn't be using it. They should find some way
23 to train, or whatever, to eliminate all that kind of
24 stuff.

25 I mean, they were trying to do that with

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1 dust control, and with noise, things like that, that
2 people are trying to get control of. I mean, it
3 shouldn't take all these years, back in the '40s and
4 killed a lot of people, well I think we should have
5 done this, I think we should have made some changes in
6 this law.

7 I mean, I don't want to go home and tell
8 my kids, I'm so sick I can't work no more. You know,
9 I don't want to do that. And I don't want other
10 people to have to go through that, or some of the
11 stories you hear.

12 As MSHA has, for a long time now, turned
13 its back on us, through Congressional mandates to
14 protect all these miners, I think that MSHA is on the
15 back road for that. I think you should have been out
16 on a bandwagon and told these companies, this is what
17 we are going to do, and this is the law, and this is
18 how it has to be. No loopholes, no grey areas,
19 nothing.

20 Then I have a few other things I want to
21 talk about. The reasons why I'm talking about this
22 for our miners' sake, is that under your Federal
23 Register you had stated, and expressed concern that
24 you had not had sufficient time to fully analyze the
25 Interim Final Rule, to develop and submit meaningful

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1 comments, and you cannot -- and it cannot compare to
2 the thousands of miners who continue to suffer the
3 effects of exposure to hazardous substances.

4 And then by your own admission there have
5 been, from 1990, through 1999, there have been an
6 excess of 2,000 chemical burns, about half of which
7 were lost time injuries.

8 And in some other things, there were 400
9 poisonings among this all these chemicals. And then
10 MSHA has decided to turn a deaf ear on the miners of
11 the nation. I believe that MSHA has given the
12 operators plenty of time to ensure compliance with
13 these rules.

14 The miners believe that MSHA has caved in
15 to the pressures of the operators involving the
16 administration at the expense of these miners. It is
17 time that MSHA has given the miners the benefits of
18 HAZCOM.

19 And I personally think that when all this
20 is done, and you try to do the right thing, that you
21 --

22 MODERATOR TEASTER: Charles, just for a
23 point of clarification, in my opening statement I said
24 that the industry had made allegations that they had
25 not had time to analyze the Interim Final Rule, and

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1 have enough time to analyze it so they could submit
2 meaningful comments.

3 It wasn't that we said that, that they
4 didn't have time to do it. That was something that
5 the operators had submitted in their comments, as far
6 as going forward with --

7 MR. MILLER: But they are the ones that
8 use the chemicals, not you or I.

9 MODERATOR TEASTER: Right.

10 MR. MILLER: I mean, they know what they
11 are using, and what they want to use.

12 Then I heard other comments about, people
13 are saying that these companies know what is in these
14 chemicals, and they are not affording the information.
15 Then I heard you brought up Part 48.

16 If you sat through one of those classes,
17 in an 8 hour period, for all the things that is in
18 that mandate now, under Part 48, you don't get to all
19 the things that could hurt you.

20 They will give you some warnings and tell
21 you, or give you a little short film, and tell you
22 that is what that is.

23 In the 32 years of all these trainings
24 that I've had, on different things, they never ever
25 hit at all these different things that can happen to

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1 you, that don't go under an unsupported roof, or if it
2 gets too dusty, get some water, things like that.

3 But you are talking about something else
4 that you can get through your skin, you know, what is
5 the proper stuff, what do you use to make this stuff
6 not hurt you.

7 MODERATOR TEASTER: Well, the intent of
8 the Interim Final Rule is so the operator can identify
9 what hazards that you could potentially be exposed to,
10 and then share that information to you, through some
11 training program, and make this information available
12 through labeling, and through the MSDSs, as well as
13 the training.

14 So the whole thing, that is the purpose so
15 they would be able to do that.

16 MR. PHUC: Would you be able to provide a
17 data, the injury data that you just mentioned?

18 MR. MILLER: On the accidents?

19 MR. PHUC: Yes.

20 MR. MILLER: I didn't write that down, I
21 think --

22 MODERATOR TEASTER: I think he just took
23 their own data.

24 MR. PHUC: Okay.

25 MR. MILLER: I read that through the MSHA

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1 register, it had that.

2 MR. PHUC: Okay, I was just wondering
3 where you got that data from.

4 MR. FEEHAN: Do you have an idea of how
5 many injuries are unreported?

6 MR. MILLER: At my mine?

7 MR. FEEHAN: Chemically related injuries.

8 MR. MILLER: I had one.

9 MR. FEEHAN: Did you?

10 MR. MILLER: Yes. I have a burn on my
11 back. Actually it looks like a skin rash, but it is
12 a burn. And it burnt for a while, now it is just a
13 big scar.

14 I know a person that hasn't been working,
15 he got solcenic oil in his blood system, and he is
16 ruined, he hasn't worked for two years now.

17 MR. FEEHAN: That has not been reported?

18 MR. MILLER: I don't think it has.

19 MODERATOR TEASTER: Why would you not
20 report that, if it was an injury that --

21 MR. MILLER: Well, it didn't come on until
22 like four or five days afterwards, this rash that I
23 have. I mean I couldn't say that happened at work.
24 Do you know what I mean? Because they wouldn't accept
25 that as an accident, then. But it come on me

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1 afterwards.

2 MODERATOR TEASTER: Okay. Would you come
3 to the podium and identify yourself for the record,
4 and we can get you in?

5 MR. MORRIS: I am Bob Morris, I was up
6 here previously. Probably one of the reasons why, you
7 know you asked him why he wouldn't report an accident
8 like that, you only have like 24 hours to report an
9 accident before you leave mine property.

10 So a lot of people they will get hurt,
11 burned or whatever, and they will say, it is not going
12 to amount to anything. Two or three days later it may
13 come as a problem, but you can't go back and back date
14 it, and claim that it is a loss time injury, or
15 whatever.

16 It happens constantly, believe me.

17 MR. MILLER: We have a lot of people
18 complain about itching, and they will use rubber
19 gloves, and some of the things that they have, and
20 still get the stuff on their skin, they itch and
21 everything else.

22 MS. JONES: I just wanted to go back to a
23 point that you made early on about trying to eliminate
24 hazards in mining, and perhaps substituting less
25 hazardous chemicals for -- making a substitution.

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1 Do you feel, or are you of the opinion
2 that the hazard communication standard, which would
3 provide the knowledge to both the mine operator, and
4 the miner, might lead to substitutions like that?

5 MR. MILLER: I think if they could find
6 something else that would be better, that would be
7 less harmful to you, yes I think it would be a good
8 idea.

9 MR. SNASHALL: You mentioned annual
10 refresher, and this I've asked before, with another
11 speaker. Have you been task trained in the health
12 aspects of the task which would include exposure to
13 chemicals?

14 MR. MILLER: The only thing that they
15 showed us in the last few years was a little film for
16 about eight minutes, ten minutes, on some of the
17 things you do.

18 But, you know, it is not like if you
19 looked at the film, and you didn't know anything about
20 it, you wouldn't know what to do. That is the kind of
21 films that they show you, because they don't have
22 enough time in an 8 hour period to teach all the
23 things they have to teach.

24 MR. SNASHALL: But before, if you were to
25 be assigned a new task, there is, separate from the

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1 eight hours?

2 MR. MILLER: I've already asked questions,
3 and they don't know, they don't know what to tell you.
4 That is the kind of answer they will tell you, I don't
5 know. Then they will make a call and try to find out
6 from somebody else. That is what happens.

7 MODERATOR TEASTER: Charles, do you know
8 what kind of chemical you got on your back? Did you
9 know when you got a chemical?

10 MR. MILLER: I didn't realize anything
11 that it was, until afterward. It was, like I said, a
12 week.

13 MODERATOR TEASTER: And you have no idea
14 what chemical you were working with?

15 MR. MILLER: They have this milk oil, they
16 call it. It is fire resistant oil, it is a white oil
17 that I think is 80 or 90 percent water, and ten
18 percent some kind of petroleum product.

19 MODERATOR TEASTER: Water emulsion?

20 MR. MILLER: Yes.

21 MODERATOR TEASTER: Thank you Charles,
22 appreciate it.

23 Our next speaker is Craig Irwin from
24 United Mine Workers, Local 93.

25 MR. IRWIN: How are you doing, my name is

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1 Scott Irwin, Local 93, I'm on development of mining.
2 I have been working in the mining industry for 21
3 years, started out with a truck dump operator, grease
4 truck, grader, dozers, went up to the slate for 13
5 years, now I'm back on the strip on a dozer.

6 I have various experience with all these
7 things, with the chemicals that we have, when I was at
8 the Temple, not very much, but the men that we work
9 with, my buddy back there gave me a few notes on a few
10 of the chemicals, I didn't know what they was.

11 You say you take the common sense approach
12 to these things. All of us have common sense. But
13 when we are being led to believe that there is no
14 danger, we believe there is no danger.

15 When we are told by the authority, or the
16 people that we work for, that there is no danger, we
17 assume there is no danger. I am here today to say
18 this HAZCOM rule needs to be effective, it needs to be
19 implemented immediately, and enforced just as
20 rigorously as you possibly can.

21 The film we seen yesterday, my experience
22 since we've been union, we went union in '93, I never
23 had any of this training. You talk about Part 48
24 training, I see in the Code where it doesn't have any
25 hazmat training in it.

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1 You've got four hours of first aid, you've
2 got ground control plans, you've got the safe
3 operation of trucks and haulage. You get your
4 definition of where you are going in the mine, and
5 stuff.

6 And I notice this year we had a fatality,
7 one of our foremen, and that took up most of our
8 annual retraining. I think training is an important
9 part.

10 Before I ever came up here to the Academy,
11 there is a lot of things that I did, that I didn't
12 know that I was supposed to not do. The Academy has
13 helped me really well, and I think training is a
14 continuous thing that we need to learn, and to improve
15 upon.

16 Because, as you said, your experience with
17 your painting career, yes, you are aware of these
18 things. But I'm not aware of that. I buy something
19 at the store I assume that it is safe for me to use.

20 Sometimes I read the thing, sometimes I
21 don't. But we've had four, three people that has died
22 in our plant, and as far as I know it has not been
23 reported as job related.

24 I think that some of our widows are trying
25 to prove that it was job related. But we've had two

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1 with cancer, they are dead, one with leukemia, dead.
2 We have another one that is not working out with a
3 brain tumor.

4 That is four people out of approximately
5 42 people that has got these things. The 13 years
6 experience I had up on the slate dump, they call it
7 magnetite, the slurry impoundment.

8 And these are some of the things that go
9 into the slurry impoundment. The perk, the ionic,
10 ammonia, caustic soda, soda ashes, and cationic. What
11 kind of chemical is in there mixed together, is
12 creating in that sediment pond?

13 And that sediment pond, we pump it into
14 the front, the slurry drop out, the water go back to
15 the back, they pump it off, it goes into the other
16 sediment ponds, then they treat it with something. I
17 don't know what it is, it is another chemical.

18 And also when it come back down, they pump
19 it back to the temple to reuse that water, they
20 rehandle that water. We are washing floors down, we
21 are washing the ceilings down, and also it is treated
22 for us to take our showers in.

23 A lot of the guys down at work, another
24 man that is retired experienced great rashes on his
25 body. And several times the health department has

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1 came and give us a water advisory when they came to
2 check the water, that it was not up to standard.

3 So we has to stay on top of these things.
4 If you don't have a law, or a rule in effect, that
5 says specifically that you are going to train your
6 men, my company is not going to train me.

7 And I am a firm believer, and I am so glad
8 that I have had opportunity with the UMWA, to be in
9 classes, to be trained. And when you go back to your
10 men, and you try to explain the things that we learn
11 here at the Academy, they think that you are just
12 carrying on.

13 I don't know what it is, I guess it is the
14 human factor. That they think, well you just think
15 you've got a little knowledge, and we don't need to do
16 this.

17 A lot of people go in with masks. I know
18 one incident one time, we had an ammonia tank to
19 burst, rupture, whatever it was. Some of our men
20 almost didn't get out of the tipple.

21 And my understanding of this, right now,
22 this is second-hand, I don't know if you are going to
23 take it or not, but I'm going to tell it to you
24 anyway, the two masks we got is our floc man, is our
25 chemical men, the ones that mixes stuff up to put it

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1 out to the tanks to do the sediment, this, that, and
2 the other.

3 Well, you have two masks. When the
4 ammonia came in, they provided two masks, and then two
5 guys got it locked up in their locker. I mean, what
6 good is that going to do me if something or another,
7 if my piece of equipment tore up, they have the right
8 to temporary assignment to do any job that I'm capable
9 of doing.

10 But do they give me everything? They
11 said, yes, this control puts it up, this control puts
12 it down. But what else -- sometimes we don't look
13 beyond ourselves, we look for something down the road
14 that is going to hurt us.

15 But that thing is right beside of us is
16 going to hurt. I heard one testimony talked about the
17 starting fluid. That is bad stuff. And when I get in
18 my cab I make sure it is out of my cab. But it is
19 back in the next day.

20 You tell the men but somehow or another it
21 is not getting done. Me, personally, I don't direct
22 that workforce. If you give a regulation and a rule
23 for the company to enforce these things, I think it
24 would go a whole lot better.

25 And this is human. I had a lot of

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1 inspectors tell me, and I find it to be true, I am my
2 own worst enemy. I say, well, I can get in there and
3 I can paint that in a couple of minutes, and I won't
4 be exposed long.

5 Well, I can make one more trip, I have a
6 hydraulic leak, but I can make one trip, it would be
7 good enough to do another. So that is where we need
8 continuous training, eight hour annual refresher is
9 not enough, my friend.

10 Because it is short, it is sweet, and
11 sometimes, like I said, with the seriousness of the
12 accident, we had a foreman killed, sometimes a topic
13 like that will take over the annual retraining.

14 And I'm sure they try to do the best they
15 can, but I think that the thing is continuous
16 education is what we need, and I sort of like one of
17 the things that MSHA did a few years ago, it was
18 called CAPs, compliance assistance program.

19 He showed our operators a lot of things
20 they were doing wrong. They was filling out books
21 wrong, they was doing a lot of things that they wasn't
22 supposed to be doing, a lot of things was corrected.

23 But somehow or another it don't trickle
24 down to the workforce, some way or another. And like
25 I said, I'm finished, I don't know what else to say.

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1 I say let's implement the Rule, let's get it on there.

2 You are protecting other people, other
3 industry, protect me, I'm my own worst enemy. Help
4 me, I need help.

5 MODERATOR TEASTER: Thank you, Craig.
6 Just a clarification. The existing Part 46 and Part
7 48, part 46 for those of you that may not know, is a
8 training requirement for the aggregate industry. It
9 is a separate training regulation just for that
10 segment of the industry.

11 But both of them have a requirement that
12 just says that they will train the miners in the
13 hazards to which they are exposed. And we get some
14 comments that says that that training is where they
15 cover this chemical hazards training, is where the
16 hazards that the miners are exposed to.

17 I just say that to clarify, because there
18 is no specific requirement in there that says that you
19 have to do this or that. But just the general
20 subject of hazards. At least that is my understanding
21 of it.

22 MR. IRWIN: It is not happening.

23 MODERATOR TEASTER: I think we are
24 starting to get that picture.

25 MS. JONES: I just want to clarify one

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1 thing. When you were going through the components of
2 the material that is used in your settlement ponds,
3 what was the first component that you mentioned?

4 MR. IRWIN: Perk, P-E-R-K, perk.
5 Magnetite was what -- I tell you, that is another
6 little story, too.

7 Three of us worked up there 13 year. I'm
8 glad you reminded me of that. Phil Opana has had
9 about 18 inches of his guts took out because he had
10 chrones disease, and colitis. Gary Munsy is busted.
11 These are all the guys I worked with for 13 years. I
12 have been diagnosed with arthritis colitis.

13 And I don't know if that is industry or
14 not, but three out of four working in the same area,
15 I don't know what that is. And, like I said, all that
16 stuff is gathered together at one time.

17 And when I was at the tipple, it wasn't
18 nothing, if a vessel got stopped up the boss said get
19 it cleaned out, it wasn't nothing for me to jump in,
20 up to my waist, getting that cleaned out.

21 Did I asses all the hazard? Maybe I
22 didn't, maybe I don't have common sense like a regular
23 man does. But I assumed there was no danger there.
24 And I guess you know what that made me, when I
25 assumed, don't you?

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1 I'm finished. You get me started on
2 something else I will talk all day.

3 MR. FEEHAN: The perk, do you know what
4 the, what that actually is, is it perchlorethylene, is
5 that what you are --

6 MS. JONES: That is what I was wondering,
7 is that what it is?

8 MR. IRWIN: Yes.

9 MR. FEEHAN: Yes. Do you know of
10 unreported injuries, chemically related injuries?

11 MR. IRWIN: Myself personally, no. That
12 is why I tell my people to report everything that
13 comes to. I even instruct them to go out if they have
14 to. That way you have a record.

15 Because these guys going home, like they
16 said earlier, we think we are doing the company a
17 favor, but we are just hurting ourselves. And we need
18 MSHA to help us, we need training.

19 MODERATOR TEASTER: Craig, we thank you.

20 Our next speaker is John, and I can't make
21 this out real clearly, but it looks like Early, it is
22 from UMAW local 2300.

23 MR. ELY: My name is John Ely, United Mine
24 Workers of America, health and safety committee, Local
25 2,300, Cumberland Mine, Pennsylvania.

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1 I have 25 years working underground. I
2 guess I will just start out reading what I've written
3 here, and then I will take some questions, and maybe
4 elaborate a little bit.

5 Common sense is something that is
6 important, and should have already been put into
7 place. Many people are currently being exposed to,
8 due to the lack of urgency to get this Rule into
9 place.

10 To me a hazardous chemical is a hazardous
11 chemical. They are dangerous by their very nature.
12 The dose is very important, just as a drug is
13 important to be taken in its proper dose.

14 As we all know, an overdose of anything
15 can be fatal. In our particular mine we use a
16 particular chemical which contains carcinogenics,
17 which they spoke about earlier, which is the glue into
18 the roof.

19 I think that is a common thing in the mine
20 industry today. Our employees are exposed to this on
21 a regular basis, not only when pumping it into the
22 roof, but during the handling of the 55 gallon drums,
23 that could be from the folks outside when they are
24 loaded, to the men underground, as it is taken to the
25 section.

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1 We requested MSHA to come in and do a test
2 in an airborne state. They used dust pumps, they
3 didn't really even have the proper equipment to test
4 that for us. And that is one other issue, I think,
5 that MSHA needs to beef up on, is maybe some testing
6 equipment. So they really couldn't give us an
7 accurate statement as to what was in the air.

8 On this training issue, I say training is
9 done only to appease the law. If additional training
10 is needed, let's force the operator to do so. Very
11 little, if any, hazard training is done in our annual
12 retraining.

13 One of my suggestions would be to
14 standardize the MSDS sheets. I don't think that was
15 in your film that you had, that actually mentioned
16 that the MSDS sheets were not a standardized type of
17 a format, you know?

18 And much like the papers we fill out, like
19 if we fire a boss, or whatever type sheets you might
20 have, it would make it much easier to look down there
21 and see exactly what the hazards were, maybe what the
22 treatment for a burn, or something like that.

23 I think that is very important to
24 standardize those sheets. And like I talked to a
25 gentleman, in one of our many breaks, we were talking

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1 about as far as the training, we didn't even know what
2 these gentlemen were talking about.

3 It has become so redundant over the years,
4 I've had like probably 25 to 26 classes of this
5 retraining, and I really believe in my own heart that
6 the company does the minimum to say that they've done
7 it.

8 And there are some cases where you
9 actually need more. Right now we've got the diesel
10 regulations in Pennsylvania, which are the best in the
11 country. And even at that, we don't like them.

12 We are forcing our people, we have to
13 actually force the company to train people to run the
14 diesels. I mean, we can't even get them to do it.

15 And everything is done to the minimum.
16 And I have oftentimes thought that. And training,
17 I've often time used our mind at work, we are not the
18 dummer work force, but we are more ignorant than we
19 were in the past, because we are not being exposed to
20 training.

21 New equipment coming in, hazards, this
22 type of thing. I mean, it kind of give you a blanket
23 statement, yes you have hazards in the mine. But we
24 need to have more specifics. We are not really as
25 dumb as some people might think we are.

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1 Actually the mining industry is a proud
2 industry, and United Mine Workers is a proud group of
3 men that really just want what is fair for all of us.

4 And someone mentioned earlier, I mean,
5 what we do directly affects the non-union miners, too.
6 I mean, they are still human. We still have to look
7 out for everyone's best interest.

8 So actually we are kind of like the sacred
9 lamb, I think, for a lot of them at times, to bring
10 these issues to light.

11 As Mr. Trout asked you earlier, please put
12 yourselves in our shoes, and make a decision based on
13 the facts, they are very evident. I'm sure some of
14 these things are maybe new to you folks, that you've
15 heard today, and I would hope that you would take
16 those in consideration.

17 And one last comment, as I heard you say
18 in the opening remarks, several times, that the Rule
19 could put a burden on the operator, at some point in
20 time. You did say that, right?

21 MODERATOR TEASTER: That is what the
22 operators are saying.

23 MR. ELY: Right. I know you didn't say
24 it, but you are saying what the operator said.

25 MODERATOR TEASTER: Correct.

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1 MR. ELY: Well, I would like to go on the
2 record and make the comment that I will guarantee you,
3 without a good rule put in place, our miners and our
4 families will have a greater burden than the operator
5 ever dreamed of. Thank you.

6 MODERATOR TEASTER: Any questions?

7 MR. PHUC: You mentioned that we should
8 standardize the MSDS sheets?

9 MR. ELY: Yes, sir.

10 MR. PHUC: And what is the reasoning
11 behind that?

12 MR. ELY: Well, you know, usually when
13 someone gets hurt, or they are exposed, it is like an
14 emergency type situation. And I could add that maybe
15 making them readily available.

16 Because someone mentioned before, maybe
17 after the midnight shift the doors might be locked,
18 that type of thing.

19 You need to go in where you can open up,
20 and on the first line it is going to say the chemical,
21 the second line is going to say the reaction, the
22 third line is going to say the treatment, maybe the
23 emergency phone numbers.

24 I'm sure you've dealt with a lot of
25 paperwork, and it is much easier to be able to go down

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1 and read, and have an idea of what is on the first
2 page, second page, or third page.

3 I have read a lot of them, and every one
4 of them is different.

5 MR. PHUC: Right.

6 MR. ELY: I mean, it is just a suggestion.
7 But I think that anything is standardized that is that
8 important.

9 MR. PHUC: But the few that you have seen,
10 are they -- I mean, how is the language, is it easily
11 understandable?

12 MR. ELY: Yes, you can read it, but you
13 have to search through it to find out what exactly you
14 are looking for, and was it easily understandable. I
15 would say yes, but at the same time I think it needs
16 to be put in layman's terms.

17 I mean, I'm not a chemist, I'm pretty
18 impressed with some of these guys the way they can say
19 these things. I don't even attempt to do that.

20 But, you know, I need to know exactly what
21 it is going to do to me, you know? But I think, when
22 I say standardized, I basically mean the format, you
23 know, one through ten, this, this, and this type of a
24 thing. That way you can look at it and -- do you know
25 what I'm saying?

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1 MR. PHUC: Okay.

2 MODERATOR TEASTER: John, does the mine
3 operator has MSDSs at the mine?

4 MR. ELY: Yes, sir, they do, for the
5 biggest part.

6 MODERATOR TEASTER: And have you reviewed
7 any of those?

8 MR. ELY: Yes, we have.

9 MODERATOR TEASTER: Are they in a
10 relatively sequential order of some kind, that you can
11 go find what you want with relative ease?

12 MR. ELY: I don't know if they would be in
13 a sequential order. However, they are available in a
14 binder type book, it is in the safety department.

15 But, once again, they are primarily going
16 to be locked up in the afternoon to midnight shift.
17 I think they do need to be made really accessible,
18 more so.

19 And, like I said, when you look through
20 it, it is not like a Cabellos book, where you have the
21 bows, and the rifles, and the clothing in the back.
22 Do you know what I'm saying? It is like, you've got
23 everything all over the place.

24 Like you might have one chemical here for
25 the prep plant, and you might have one over here for

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1 aerosol cans. It is just real unorganized. And, like
2 you said, if someone got burnt, and you are trying to
3 find something real quick, it is going to add to the
4 mess, you know, trying to find it.

5 I think you know what I'm trying to say.
6 I'm not exactly sure how to do it.

7 MODERATOR TEASTER: Under what
8 circumstances do you go look at the MSDSs?

9 MR. ELY: We had a situation a while back
10 where they are adding a chemical to our water supply,
11 I believe it is called Polo, it smells like orange.
12 It is a wetting agent that they put in our water.

13 We looked over it for that. And, once
14 again, the information was sketchy, at best. And we
15 have been trying to get more information on that.
16 That was the last instance I can remember looking at
17 it.

18 And we do use the foam to spray over
19 casks, and seals underground. And we are constantly
20 fighting for respirators for the folks for that, and
21 the right type of respirator.

22 Once again we have the same problem, they
23 want to buy the cheapest thing on the market. Once
24 again, they are going to appease the law and say yes,
25 we have respirators. It is an age old fight.

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1 But that is the last time I can recall
2 looking at them.

3 MODERATOR TEASTER: The chemicals that you
4 use, and this goes specifically to this chemical that
5 has this orange, or citric type ingredient, does it
6 have a label on it?

7 MR. ELY: Yes, it does. But it is hard to
8 get, because they put that in outside, up above our
9 prep plant, in our yard. And it comes in huge
10 barrels. And it is very --

11 MODERATOR TEASTER: So it just goes into
12 the water system, as it goes underground?

13 MR. ELY: The entire water system, yes.
14 Not directly handled. And it is diluted drastically.
15 I don't know what it is. It is a very, very small
16 amount. But you can smell it.

17 And we've looked at it, and it does --
18 like I said, it is sketchy, at best. And, once again,
19 you are not dealing with a brain surgeon here, you
20 know?

21 I mean, I try to do my best, but I can't
22 read some of that stuff. And that is another thing.
23 I think it needs to be written so the average guy can
24 read it. I'm doing my best but sometimes it is hard.

25 We are doing it in our best interest, you

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1 know, but it is hard to keep up with.

2 MODERATOR TEASTER: Based on your
3 knowledge does the miners themselves request to look
4 at those MSDSs?

5 MR. ELY: Yes, they do. In this
6 particular case they have, and they continue to do so.
7 I have yet to convince them that it is not going to
8 kill them somewhere down the line, to be honest with
9 you.

10 I mean, it is still a concern in our mind.
11 And we have to get that under control. I mean, it is
12 still an issue, I will put it that way.

13 MR. FEEHAN: I am going to ask the same
14 question.

15 MR. ELY: Okay, I will give you the same
16 answer.

17 MR. FEEHAN: Do you know of unreported
18 chemically reported injuries, and can you quantify it?

19 MR. ELY: I can't really say of any
20 unreported chemically related injuries, I can't. I
21 would like to think that we have none, because I just
22 don't think we do at this point.

23 MODERATOR TEASTER: John, we appreciate
24 it.

25 MR. ELY: Sure, thank you for your time.

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1 MODERATOR TEASTER: Let's go off the
2 record, Ed.

3 (Whereupon, the above-entitled matter
4 went off the record at 2:14 p.m. and
5 went back on the record at 2:38 p.m.)

6 MODERATOR TEASTER: Our next speaker is
7 Dwayne Barton, he is a coal miner.

8 MR. BARTON: Thank you. In opening I
9 would like to thank the Panel for allowing me the time
10 to speak here to you today.

11 My name is Dwayne Barton, and I work for
12 New Brunswick Coal Limited. I come from the East
13 Coast of Canada. There I serve on the safety
14 committee, and I'm a recording secretary for the local
15 union. I've been a mine worker for 24 years.

16 I've just recently been reelected to my
17 second term on Village Council. I've had the
18 opportunity and the honor to come down here for the
19 past ten years, to learn in this great facility that
20 you have here in the United States of America.

21 And behind me all these Americans are my
22 friends, they have been my friends for a long time.

23 The other night at supper there was a
24 discussion going on about a Hearing here today, the
25 one that you are having here today. And I said to

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1 someone, what is the Hearing about? They said,
2 hazmat.

3 I said, what is hazmat? They said, that
4 is a system that they are trying to put into place for
5 -- to deal with hazardous chemicals in the worksite.
6 I said, you are pulling my leg. They said, no, no.
7 I said, you don't have that in place yet?

8 In Canada we have been under the WHMIS
9 program for the past 20 years. WHMIS, which is
10 spelled W-H-M-I-S, is the workplace hazardous
11 materials information system.

12 It is a system that deals with everything
13 that is made in Canada, and shipped out to companies.
14 The company is responsible for providing -- the
15 manufacturer is responsible for providing the
16 companies with the information on everything they ship
17 us.

18 They have to tell us, first of all, what
19 is in the product, what the name of the product is;
20 what are the possible harmful effects from the
21 product; what protective safety equipment do we need
22 to use this product, and what could we do if an
23 accident happens while using this product. Plus a 1-
24 800 number that we can get information that we are not
25 sure of.

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1 I hope what I'm saying here this afternoon
2 will help you in making your decision to protect the
3 coal miners of the United States. And I hope the
4 United States government does catch up to Canada in
5 their program to protect them from chemicals.

6 I don't know what kind of a cost you can
7 put on human life. I would like to say this, I hope
8 I don't offend anybody. But on September 11th you
9 guys suffered a terrible, terrible thing here in the
10 United States. Six thousand people lost their lives
11 in the blink of an eye.

12 That is a terrible thing. And because it
13 all happened at once it received world-wide news, and
14 should have. We should be aware that there are
15 terrorists out there.

16 But in the 20 years that the Canadians
17 have been protected by WHMIS, there is a good
18 possibility that 6,000 Americans died from using
19 chemicals on the work site. And I think it is time
20 that the United States government put their program
21 into place, and protected the lives of the miners here
22 in the United States of America. Thank you.

23 (Applause.)

24 MODERATOR TEASTER: No questions.

25 MR. BARTON: Thank you.

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1 MODERATOR TEASTER: Our next speaker is
2 Danny Smith, United Mine Workers of America.

3 MR. SMITH: My name is Danny Smith, I've
4 been a United Mine Workers of America member as an
5 employee of U.S. Steel, number 50 mine, for 25 years.

6 I have seen much new technology come to
7 the coal mines during those years, including the
8 widespread use of chemicals. Today I'm here to speak
9 on the hazard communication rule that we so
10 desperately need in our industry today.

11 In today's business world the right to
12 information is at a premium. However, in our
13 industry, this obviously does not apply.

14 We, as a workforce, have been trying to
15 obtain a fair hazard communication rule since November
16 2nd, 1987. Thus far this struggle has been very one-
17 sided.

18 MSHA has had numerous opportunities to put
19 this rule into effect. I would very much like to
20 express my concern about just some of the language in
21 our proposed rule, such as operator, or chemical
22 manufacturers not being held responsible for
23 inaccurate labeling and material safety data sheets.

24 We are being exposed to chemicals that we
25 are not familiar with, nor do we know what toxic

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1 effects they may have on our health, or on the
2 environment.

3 We also need to know specifically what
4 first aid treatment to administer to ourselves, or our
5 coworkers, in case of exposure to these chemicals.

6 This problem of not knowing these
7 chemicals, or their ill effects, will only grow as
8 technology advances, and we are introduced to new
9 chemicals regularly in our workplace.

10 I have been in two information gathering
11 type meetings with MSHA in the past three months. I
12 have been quoted some of Mr. Lorenski's, the assistant
13 secretary's goals for our industry for the next four
14 years.

15 He would like to have a 15 percent
16 decrease in accidents and fatalities in each year,
17 during this time frame. We need this rule in order to
18 eliminate, or greatly reduce, the risk of injuries or
19 deaths relating to chemical exposure.

20 I have seen my employer apply for, and
21 receive, changes to MSHA regulations and plans, very
22 routinely. MSHA representatives always seem very
23 receptive to the employer's ideas.

24 It concerns me greatly that employees
25 cannot receive needed information about the hazards

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1 that we are exposed to daily.

2 In closing, I would like to say that ours
3 is the only industry in West Virginia that this
4 crucial information is being withheld from. This has
5 been a hot and cold issue for almost 14 years, and
6 continues to be so.

7 If we aren't truly working to prevent
8 injuries and deaths, by enacting this rule, once and
9 for all, then I feel the matter should be completely
10 dropped, without the pretense of later consideration,
11 and being shoved back on a back shelf, as has been the
12 practice thus far.

13 Thank you for your time and patience in
14 hearing my concerns.

15 MODERATOR TEASTER: Thank you, Danny.
16 Danny, are you aware of any injuries that resulted
17 from chemical --

18 MR. BARTON: No, sir, honestly I can't say
19 I've -- I can't honestly say that I have ever heard of
20 any at our mines.

21 MODERATOR TEASTER: How many miners do you
22 have?

23 MR. BARTON: Close to 500.

24 MODERATOR TEASTER: 500.

25 MR. BARTON: I'm an underground employee

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1 and I've considered for years moving into our
2 preparation plant. But after hearing what my union
3 brothers and sisters are telling me about the
4 chemicals there, you know, I'm kind of hesitant to go
5 there now.

6 And I've been a safety committeeman for
7 only three months, and I've already experienced one
8 opportunity to deal with hazardous chemicals in that
9 we were at our plant, on a different problem one day,
10 and one of the mechanics come up to me and ask me
11 about a particular chemical that they used. And I
12 think it was the one that somebody said it was Floc,
13 and he said he had asked for an MSDS sheet for it.

14 And it had been three days and the
15 employee had not afforded him that sheet. So myself
16 as a safety committeeman, and another safety
17 committeeman, went to the company's safety person and
18 asked for this. And they said they did not have it on
19 the premises, but they would afford him one.

20 So two days later they came up with the
21 sheet, the fellow called us and told us he had
22 received the sheet on it. But, you know, I can relate
23 to a lot of the chemicals that they are talking about
24 using underground, as I don't know the exact name of
25 the chemicals, but the type that they glue the top

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1 with.

2 And we have sealed part of our mines off,
3 and they use a chemical similar to this when they
4 build the seals to put around it, to stop any leakage
5 through our seals, when we seal part of the mines off.

6 And as far as the Part 48 training, I've
7 had it for 24 years, and I can't remember any
8 relations, you know, referring to the hazardous
9 chemicals.

10 MODERATOR TEASTER: Thank you, Danny.

11 MR. BARTON: Thank you.

12 MODERATOR TEASTER: Our next speaker is
13 Daniel Bradley, United Mine Workers.

14 MR. BRADLEY: That is David Bradley. My
15 name is David Bradley, and I work for Peabody Coal
16 Company in Boone County, West Virginia, and I'm a prep
17 plant utility man on the day shift.

18 In our prep plant we have stationary tanks
19 that we have floc, frother, kerosene, and other
20 chemicals I'm really not sure of, to be honest.

21 These are marked as hazardous chemicals,
22 but as far as any kind of data sheets, the data sheets
23 and MSDS sheets are over our heads to really get
24 anything out of.

25 I mean, you can look at it, and I'm not a

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1 chemist like everybody else. They will use big words
2 that we don't know what they are. Most of the people
3 that use it, the fine coal circuit operators, know
4 what they do, and what they are used for.

5 But to me they are not labeled right, and
6 they need to be labeled in a safer manner. And I
7 think everybody should be trained on exactly what we
8 have, and what it will do.

9 Besides that I have a little story to tell
10 about our supervisor asked me, like I said I'm a
11 utility man, which I'm all over the plant, do
12 different things. And he asked me to take the bobcat
13 with the forks and go up and remove a 55 gallon drum,
14 he said it is the only drum sitting there, behind the
15 coal lab, and take it up to an old haul road that we
16 use, where we have abandoned equipment, a junkyard
17 basically.

18 So I got the bobcat and took it up there,
19 and he said be real careful with it. It had never
20 been opened, it wasn't labeled, nothing on it. And I
21 noticed the bottom of the drum, it was on a wooden
22 pallet, I noticed the bottom of the drum was rusted,
23 it wasn't leaking, I made sure of that, because I
24 didn't know what it was.

25 And I took it up to the haul road, and set

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1 it out in the middle of a field, and I brought it
2 back. And when I came back I was curious, it was
3 quite a trip. So I went up and asked the coal lab man
4 what it was, and he said he thought it was perc, which
5 I didn't have any idea at the time what perc was.

6 So he started explaining to me exactly
7 what perc was. And I went to my supervisor and asked
8 him for MSDS sheet on it, and he pulled it out, which
9 I didn't look at it, he didn't hand it to me to look
10 at. He pulled it out, and he pronounced a name this
11 long, you know?

12 And he said it is used to float coal. But
13 after today, and I've talked to several people that is
14 more knowledgeable on this than what I am, it is
15 pretty bad stuff. And I've handled it several times
16 like that.

17 And about a week or two after I had moved
18 that we had a state mine inspector come on the
19 property. So somehow he found out about the 55 gallon
20 drum. I can't tell you where from.

21 But he managed to go up there and look at
22 it, and ordered it to be taken to the warehouse, in a
23 fenced off area that we have there, that we store
24 different things.

25 So it was there, never was labeled, and

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1 probably a week later, I'm in the warehouse various
2 times during the day, and about a week later it
3 disappeared, never saw it again. I don't know where
4 it went.

5 But something like that needs to be, you
6 know, taken care of. If there is a hazardous chemical
7 on the property I think everybody should be aware of
8 what it does, aware of what chemicals are involved in
9 all the processes of the plants.

10 Not one person, not the person that is
11 handling the chemicals, per se, is the fine coal
12 circuit man. But I have to handle the chemicals
13 because of my job as a utility man. And everyone
14 should know about them, because they are all around
15 it, every day, 24 hours a day.

16 And that is pretty much it.

17 MODERATOR TEASTER: David, how long ago
18 was this?

19 MR. BRADLEY: This was, I would say,
20 probably six months ago, six to eight months ago.

21 MODERATOR TEASTER: And there was no label
22 on that drum?

23 MR. BRADLEY: No, no label. There was a
24 label that was on the drum, and it was probably four
25 inches square, that was paper, that was stuck on

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1 there. And through the weather it had deteriorated,
2 and you couldn't read it to see what it was, or
3 whatever.

4 MODERATOR TEASTER: And do you have any
5 idea how long it had been there?

6 MR. BRADLEY: No, not exactly. The man at
7 the coal lab that actually uses it, after I spoke with
8 him, he told me it had been there a while. And he
9 doesn't use it on a regular basis. But it was there.
10 And, of course, the bottom was rusted, it wasn't
11 leaking, but it showed signs of deterioration on the
12 metal.

13 And he explained to me that since he used
14 it, and he was probably the most knowledgeable person
15 of it, I asked him what he did with it, and he said it
16 was used to float coal.

17 And he said whenever he used it, he would
18 use an apron that was made out of a rubber material
19 with the arms, and they were just like a doctor's
20 jacket, or whatever, that you slip your arms through,
21 and ties up behind the neck, rubber gloves, and the
22 apron comes down here to cover him there.

23 And he handles the material. And he said
24 at one time, and it didn't happen at that particular
25 site, that he had spilled some on his boot. And he

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1 said he immediately went and washed it off of his work
2 boot. And through the day, as he went on, he didn't
3 change shoes, and didn't change socks. And when he
4 got home in the evening, that the top layer of skin
5 had been burned off of his foot like a blister, and he
6 had ended up missing work.

7 But our coal samplers, our contractors,
8 which I'm sure that, you know, like it didn't happen
9 on that site, but it was just something that happened,
10 and it was something I thought that should have been,
11 you know, if it happened any time it is a terrible
12 thing. And a chemical like that is -- it doesn't need
13 to be around the mines and not labeled.

14 And set aside, you know, out beside a road
15 where if you get it in the water table, it could get
16 on anyone, and especially with the drum in that
17 condition.

18 MS. JONES: Excuse me, did the fellow who
19 had the rubber apron on, also have a respirator on?

20 MR. BRADLEY: Yes, yes, ma'am, he did.
21 And in our 8 hour retraining classes that we have, we
22 always take, they try to break it up to accommodate
23 everyone on the job.

24 We have deep mines, prep plant, and we
25 have a small strip job. And they try to cover

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1 everything. The safety department does a real fine
2 job there. And if you need any information they will
3 give it to you.

4 And, to be honest with you, I didn't
5 really know that the situation with the chemical, the
6 laws and stuff, wasn't in effect, and wasn't covered
7 by MSHA.

8 But I'm sure that anything that I need,
9 that would be in a reasonable manner, they would
10 probably do to help, you know?

11 But it is just like any other thing,
12 companies aren't going to, and my company included,
13 they are not going to do anything to spend a whole lot
14 of money, I mean, in great amounts of money, to do
15 anything unless there is a real hazard, which there is
16 a long-term hazard, I'm sure, after listening to
17 everyone today, there is a long-term hazard.

18 And the way we look at MSHA is when we see
19 an MSHA mine inspector pull on-site it is like a
20 knight in shining armor coming up. I mean, we really
21 look up to MSHA. And if we have a problem that we
22 can't get fixed, we can always go to that man, and if
23 he writes it up, if it is a violation, or
24 recommendation, that is one thing we can count on.

25 They are mostly stand-up people, and we

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1 are hoping you all are going to be stand-up people on
2 this. You know, we hope you are.

3 MR. PHUC: Excuse me, I have a question.
4 Who usually conducts the part 48 training in your
5 mine?

6 MR. BRADLEY: The safety department.

7 MR. PHUC: The safety department. So
8 there is not like a contractor coming in?

9 MR. BRADLEY: No. As a matter of fact all
10 the safety, the department, in our division they
11 usually get together, and they have a real, it is a
12 real informative 8 hour retraining. Like I said,
13 they try to break it down, and try to cover the
14 things.

15 But we usually on the hazard materials, it
16 is usually a 45 minute to an hour, to each class, and
17 it is covered, like for truck haulages an hour, hazard
18 materials is an hour.

19 But as far as the hazard materials go, I
20 have been there for 25 years, and the only thing that
21 I can remember covered in an hour's time, is always
22 wear rubber gloves, glasses, respirators.

23 And a lot of times, you know, just like
24 everybody else, you can go to the supply house and
25 they say, well, we don't have that kind of respirator,

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1 you are going to have to use this one.

2 And I know it is not, you might not be
3 exposed to it for about 15 or 20 minutes, but it is 15
4 or 20 minutes I don't want to be exposed to it. And
5 I will remove myself from the job if it comes to that,
6 now.

7 And I'm sure that anybody with a little
8 bit of common sense, I'm sure they will too, now. And
9 should before.

10 MR. PHUC: And how big is your mine?

11 MR. BRADLEY: At the prep plant we
12 probably have 30 people. And I know at the deep
13 mines, altogether, probably over 100.

14 MR. PHUC: Okay, thanks.

15 MS. HUTCHISON: In your annual refresher
16 training do they cover dust and noise?

17 MR. BRADLEY: Yes, ma'am.

18 MS. HUTCHISON: Okay, so they do cover
19 that?

20 MR. BRADLEY: Yes, ma'am.

21 MS. HUTCHISON: And they cover hazardous
22 materials in general, just not specific ones?

23 MR. BRADLEY: Right. They will cover
24 stuff like WD-40, stuff that, you know, that people
25 use every day, spray cans of paint, minor stuff like

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1 that. And most of the people that are teaching the
2 class, and this is one thing that concerns me more
3 than anything, is the instructors at the class, I
4 mean, are college educated people, they are well
5 informed people.

6 But they don't have any idea what the
7 chemicals at our prep plant are, and what they are
8 used for. And to be honest, the people that actually
9 use it, don't really know what it is, and what it is
10 used for.

11 They know the names, and they have a, just
12 a real small idea of what it is. But as far as being
13 in-depth, they are just like everyone else. I think
14 that is one of the reasons that the company, I think
15 it is -- I don't want to say they are stupid.

16 But ignorance is the type of thing where
17 you are not informed about it, and if it doesn't
18 concern you, you don't worry about it. So nobody has
19 ever brought it up.

20 MS. HUTCHISON: How do you train new
21 miners about the chemical hazards, say you have a new
22 employee come to your prep plant?

23 MR. BRADLEY: We haven't had a new
24 employee there forever.

25 MS. HUTCHISON: Really?

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1 MR. BRADLEY: Yes, as a matter of fact we
2 have lost several. It is like everywhere else, there
3 has been reduction in work force, and cut back. And
4 unless they are actually put specifically on that job,
5 as far as being task trained on hazardous materials,
6 they are done a general task training job on the job
7 itself.

8 But as far as the chemicals go, like I
9 said, I don't think the supervisors even know, you
10 know, exactly what is going on. And it is a sad thing
11 that they don't.

12 I mean, if I was on a job like that, I
13 would want to know. And now that I know what I know
14 now, I will find out. I'll find out what it is. If
15 I do have to go the manufacturer, because I will go to
16 the safety department and get a list to find out.

17 MODERATOR TEASTER: Thank you, David.

18 MR. BRADLEY: You are welcome.

19 MODERATOR TEASTER: Our next speaker is
20 Samuel Johnson, United Mine Workers.

21 MR. JOHNSON: Hello. My name is Samuel
22 Johnson, I'm with the 1332 local, and I'm employed
23 with the United Mine Workers. I'm with Peabody Coal
24 in New Mexico.

25 What I understand, I like to bring up,

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1 this about what we are talking about everything, you
2 know, the point of view how I see this whole thing.
3 We can be talking, and talking, and even trying to beg
4 you guys to, ask you guys to make a change.

5 But, you know, it is up to you as a panel
6 to decide what is good for us or not. I'm not well
7 educated, or I'm not a good speaker, or anything like
8 that. But just by reading what I've read, I feel I
9 understand, and I would like to bring it to a point
10 that what are we waiting for?

11 Like our senators and congressmen are
12 saying, what is -- we are going to have start thinking
13 the unthinkable, and start doing the unthinkable.

14 And our nation knows, it was brought up
15 that some unlabeled chemicals were going to be used in
16 these air crop spraying machines. It is -- this issue
17 is a big problem, which what do we, what does it take
18 to happen, to make us wonder? These things could
19 happen, a disaster. Are we waiting for a disaster to
20 happen?

21 I feel if we don't do anything today, or
22 in our time, I wouldn't be able to forgive myself
23 saying that I never did try to make a change. And all
24 I'm asking is we would like to make this change, to
25 prevent any type of disaster from happening, before it

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1 is too late.

2 Let's not have this incident happen in our
3 time, that is what I'm asking. That is all. I'm not
4 asking for much of your time, that is just my concern,
5 from my point of view, where this whole thing is a
6 bigger issue than we are asking, unlabeled chemicals
7 coming to our nation from overseas, you know?

8 By the time we find out what it is, it is
9 too late. That is all.

10 MODERATOR TEASTER: Thank you, Sam.

11 Our next speaker is Tom Baker, United Mine
12 Workers.

13 MR. BAKER: My name is Tom Baker, I'm --
14 I worked 33 years in a surface mine in southeastern
15 Ohio. I'm on the safety committee, also the mine
16 committee.

17 A few things I wanted to touch on have
18 already been covered, so I will make it a little short
19 here, to keep things moving.

20 Under the current writing of the Rule mine
21 operators are required to prepare labels for any
22 hazardous chemical produced at the mine. However, the
23 Rule should also require the operator to place the
24 label on all containers that are used to store or
25 transport such material.

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1 The UMWA is also very concerned with the
2 Agency's decision to allow a three month delay in
3 updating these labels. Operators must be aware of
4 what substances that they are creating at the time of
5 production. Delaying any labels, delaying any
6 labeling update simply places miners at risk.

7 A few things. One thing in particular I
8 want to talk about is the AMFO. AMFO was, a man by
9 the name of the late Timothy McVeigh's weapon of
10 choice in Oklahoma City. Most of the surface
11 operations use this product. It is ammonium nitrate
12 and fuel oil.

13 When detonated, or fired in anything but
14 a perfect explosion, AMFO creates a hazardous gas, it
15 is an orange cloud of smoke. It spread out wide, no
16 matter where you are at. Where we work at we are
17 surrounding by thousands of acres of reclaimed land.

18 This hazardous gas spreads out, it will
19 stop engines from running in vehicles. You just can't
20 hardly breathe it. We have MSDS on fuel oil, and
21 ammonium nitrate, but there has been a lot of talk,
22 even some talk of research on the gas that is
23 produced. We have nothing, there is nothing yet.

24 I've been involved, I was involved with it
25 for 22 years of my 33 that I worked out there. I

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1 have a lung fungus myself, I can't directly attribute
2 that to working around ammonium nitrate.

3 People I have worked with have had
4 chemical burns from handling the nitrate, especially
5 in the summertime when it is hot, their hands and arms
6 burned, have gotten burnt. In some cases they've had
7 to take time off.

8 I guess talking about the poisonous gas,
9 we have created a chemical, or a chemical reaction.
10 I wanted to talk some about the prep plant, it has
11 been pretty well covered.

12 In my workplace we have three cancer
13 cases. One has passed away, one is on medical leave,
14 will never return, and one is now working with daily
15 medication.

16 The recycling of the water, the process of
17 cleaning the sludge, the byproduct of the clean coal,
18 those are the different phases, is treated, pumped up
19 on the hill to the impoundment, floats down to our
20 clean pond, so to speak, back to the prep plant, and
21 the water is reused.

22 The only thing we don't do with that
23 water, we don't drink it. That has already been
24 covered. But the solvents we use for cleaning, we mix
25 with oil and grease, we've created a chemical,

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1 chemical reaction.

2 Used grease is stored in barrels, some of
3 them are marked hazardous material, some are not
4 marked at all, they are picked up by an outside
5 contractor. There is nothing on the truck, any
6 labeling or anything on the truck that hauls the
7 grease away.

8 So short and sweet, that is what I want to
9 talk about today. And I hope we can come up with
10 something that everybody can live with. Help us
11 miners working now, help our children, and the people
12 that work in the mines later, if there is mines to
13 work at in years to come. Thank you.

14 MODERATOR TEASTER: Thank you, Tom.

15 Tom, the three miners that you mentioned,
16 that had contracted cancer, was there any connection
17 back with those diseases, back to their occupation?

18 MR. BAKER: No, there wasn't. But they
19 were all three --

20 MODERATOR TEASTER: Were they working at
21 the time they were diagnosed with cancer?

22 MR. BAKER: Yes, they were. One is still
23 working, one has passed away, and one --

24 MODERATOR TEASTER: One of the speakers
25 earlier made a reference back that the doctor had said

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1 that it was as a result of some handling of chemicals.
2 Do you know if that was the case here?

3 MR. BAKER: That has never, I've never
4 heard that with our people. It is the same as the
5 floc, it is a magnetite. But I've never heard that it
6 was directly connected with the chemical.

7 MODERATOR TEASTER: And were these three
8 miners exposed to essentially the same type of
9 chemical?

10 MR. BAKER: Exactly.

11 MODERATOR TEASTER: Over a prolonged
12 period?

13 MR. BAKER: Ten to twenty years.

14 MS. HUTCHISON: The Interim Final Rule
15 required that portable temporary transport containers
16 for hazardous chemicals did not, or it stated that
17 they did not have to be labeled if the person knew
18 what was in them.

19 And I was just wondering, when you were
20 talking about storage and transport containers, if you
21 were talking about these single use, or the small
22 transport containers that miners use when they take
23 chemicals as part of their job, to use?

24 MR. BAKER: Are you talking about the used
25 grease that I was referring to, that was picked up by

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1 --

2 MS. HUTCHISON: No, I'm not, I'm talking
3 about -- well, when you were speaking earlier, you
4 were talking about labels, and that storage and
5 transport containers need labels too, any labels that
6 were produced at the mine.

7 And I was wondering about, say, the grease
8 before it is used, unused grease, unlabeled hydraulic
9 fluid, lubricants.

10 MR. BAKER: They are labeled what they
11 are. As far as the hazards, no.

12 MS. HUTCHISON: So in your experience
13 these chemicals are already labeled when they are
14 taken to be used by the individual miner?

15 MR. BAKER: No. On the hazards? They are
16 labeled hydraulic oil, bearing grease, motor oil. But
17 they are not -- the information on the hazards of the
18 material, no.

19 MS. HUTCHISON: Okay. So would it be
20 sufficient, or adequate in your estimation, or
21 experience, that if the container said -- I don't
22 know, grease, or hydraulic fluid, that the miners
23 would know the hazards without them being listed on
24 the container?

25 MR. BAKER: Not really. It is something

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1 you don't drink, or put on your face for makeup. No,
2 as far as the -- and we do have MSDS sheets on these
3 things.

4 But, like I said, you use a solvent to
5 clean grease, or hydraulic oil, or something like
6 that. Have we created another chemical, have we
7 created a chemical reaction once we've cleaned this,
8 the hydraulic oil or the grease, have we created
9 something new here? That is what I was saying, more.

10 MS. HUTCHISON: Okay. Another question
11 about storage and transport. The Interim Final Rule
12 also does not require the labeling of storage
13 containers for the mineral being mined, or milled,
14 while it is on mine property.

15 Were you intending that those be labeled
16 as well?

17 MR. BAKER: Yes.

18 MS. HUTCHISON: Like coal, or sand, or --

19 MR. BAKER: No, not -- I was thinking
20 more, the fellow referred earlier to say that water
21 treatments on the road coming in, stuff like that.
22 What was put on the road, and it is worked into the
23 air, it is airborne.

24 MS. HUTCHISON: So you weren't referring
25 to the raw materials, you were referring to chemicals

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1 that are produced by mixing other materials, or
2 reactions?

3 MR. BAKER: Reactions, yes.

4 MS. HUTCHISON: Thank you.

5 MR. BAKER: Thank you.

6 MODERATOR TEASTER: Thank you, Tom.

7 Our next speaker is Mike Browning, United
8 Mine Workers.

9 MR. BROWNING: Hello, I'm Mike Browning,
10 I'm from Local 9177.

11 You stand around and think about some of
12 these things these people said. I have sat here and
13 listened to this today. If we reflect back every one
14 of us knows people that has had cancer.

15 A number of us have known people that have
16 had several different diseases. And I have heard
17 questions up here today that several times, how come
18 you have not filled out an accident report out on
19 this?

20 Well, myself, I've experienced this
21 myself. I had an eye problem. Both of my eyes were
22 covering over. It looked like I had pink eye in both
23 eyes. I went to my doctor and he told me, he said,
24 one of his first questions to me were, what work
25 environment are you in?

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1 So, to me, that tells me he suspects that
2 some kind of chemical is causing my problem. This
3 went on for a three or four month period. I didn't
4 know what was causing my problem.

5 He finally sent me to a specialist, and he
6 checked my eyes, and he couldn't figure out what was
7 causing the problem. So he sent me back to my doctor,
8 and through time and effort I finally figured out what
9 was causing my eye problem. It was a cleaner in an
10 aerosol can.

11 It was a citrus orange all purpose
12 cleaner. I quit using that cleaner. I'm a mobile
13 equipment operator, and I was using it to clean the
14 inside of my vehicle, my truck. When I quit using t
15 product my eye problem went away.

16 And I've had another problem. I used to
17 shower at the bathhouse. I broke out in a rash. They
18 treat the water there. I can no longer shower at that
19 bathhouse because the water breaks me out, because it
20 is treated with chemicals.

21 I've heard all my union brothers and
22 sisters say today, they have poured their hearts out
23 here, these are things that -- it is tough teaching
24 every one of us, and it has made us more aware of our
25 environment around us.

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1 We have been led into a false sense of
2 security at our workplaces, that these chemicals will
3 not hurt us. And when we don't fill out accident
4 reports it was because we don't know what has caused
5 the accident.

6 And by the time we figure it out, or find
7 out what is causing it, it is too late, we have been
8 exposed to these chemicals. I feel that is why we
9 need these stiff regulations.

10 I have a friend right now that is dying of
11 cancer. He has probably got three or four months to
12 live. And he is one of my coworkers. All these
13 chemicals that these guys have talked about today, I
14 have been exposed to.

15 What is this going to do to me? When it
16 shows up, what am I going to be able to do about it?
17 If I would have had information on these chemicals,
18 and knew the hazards of these chemicals, I could have
19 protected myself.

20 But I didn't know the hazards, I don't
21 know what is going on. That is why we need a new,
22 stiff regulation to stop these chemicals.

23 I do mobile equipment work. Our plant is
24 idle on Mondays, I do maintenance work on Mondays. I
25 go in, I can't shower at the bathhouse. I go home, my

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1 clothes are filthy.

2 My grandbabies come up to me. What am I
3 doing to my babies? We are asking you all for help,
4 and we want you to please help us in this, and get
5 something done. Thank you.

6 MODERATOR TEASTER: Thank you, Mike.
7 Mike, if we could, the chemical that you was using,
8 the orange spray that cleaned the inside of your
9 vehicle, did that have any type of label on it?

10 MR. BROWNING: It has labeling. I'm a
11 coal miner, I don't understand the labeling on it.
12 And even if I read it, it has a caution on it. I have
13 a false sense of security, they are not going to hurt
14 me, they are not going to give me something that is
15 going to hurt me. But they are.

16 MODERATOR TEASTER: It only affected your
17 eyes?

18 MR. BROWNING: They thought that I had
19 glaucoma, they thought I was going blind, and it was
20 the chemical.

21 MODERATOR TEASTER: But it only affected
22 your eyes?

23 MR. BROWNING: Just my eyes.

24 MODERATOR TEASTER: Was there anything on
25 there that mentioned about the potential damage or

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1 irritation to the eyes?

2 MR. BROWNING: It is the same as all
3 aerosol cans, use in a well ventilated area. You can
4 open your doors on your truck, you clean your truck
5 when you have time to clean it. If you are waiting on
6 a load, you may be able to clean that truck.

7 That is part of our work order every day,
8 clean your equipment. We will provide you with stuff
9 to clean your equipment. Since then I've went to a
10 furniture polish for mine, I won't use that stuff any
11 more.

12 We use ammonia-based window cleaners in
13 cabs of trucks, enclosed cabs. These cabs are to be
14 sealed and kept sealed because of dust protection.
15 But yet they are still telling us use this product to
16 clean this. They don't care if they put us in a
17 hazardous position, for the simple reason that there
18 is nothing to make them to.

19 If we don't get a law, or something, we
20 are going to kill ourselves slowly. We've got an
21 opportunity here to do something, to change this. And
22 if we don't change it, like some of the other guys
23 said, we have failed.

24 I know you all are here working for us.
25 Every one of us are safety committeeman, or mine

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1 committeeman. Everyone of us have got people that we
2 are working for. We are here for basically the same
3 goal, to help protect our coworkers, and fellow
4 americans, and anybody else that it might help.

5 And I love my family as much as anybody
6 does. And I hate to think that I was the cause of one
7 of them getting a disease because I carried it home
8 from work.

9 MODERATOR TEASTER: Yes, I appreciate
10 that, and understand that, Mike. And we are trying to
11 get as much information as we can to draft this rule,
12 and draft something that is going to be helpful and
13 meaningful.

14 And any questions that we ask is to
15 clarify and to expand on. Just like I ask about the
16 reading of this label, not to say it was your fault,
17 I was just trying to find out, are these labels giving
18 us the information that we need to protect ourselves?

19 MR. BROWNING: No.

20 MODERATOR TEASTER: I think it may be in
21 concert with the labels, with the MSDS sheets, and the
22 training, collectively, that we can get the
23 information that we need.

24 MR. BROWNING: It is so bad that it's got
25 to where if they got an empty container, and they need

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1 a chemical, antifreeze is a common thing where we
2 work, they will take a blue ink pen and write
3 antifreeze on top of a can.

4 They will fill those cans up and store it,
5 sometimes on the top of, over our bathhouse, or over
6 the mine office. You go up those steps when you need
7 antifreeze. If there is none, if somebody has used
8 all the antifreeze in that area, they will grab one of
9 the white buckets, write in there antifreeze on top of
10 it, that is what you get.

11 It is -- it may be our fault because we
12 have let it go for so long. And we are there trying
13 to make a living. We are going to do what we can to
14 support and feed our families.

15 But I don't want to be put in a hazardous
16 situation to support my family, if I can keep from it.

17 MR. PHUC: Was your injury reported?

18 MR. BROWNING: No. That is what I thought
19 I just explained. Instead of the company having to
20 pay compensation, which I didn't miss any work with
21 this, but it cost me a lot of my time, and it cost me
22 a lot of my money, and a lot of travel expenses, that
23 I had to pay for a chemical or a situation that they
24 put me in.

25 And if we had a stringent law that would

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1 tell me, and I've heard some stuff on these training
2 classes, they try to cram so much into an 8 hour
3 training class, there is no way we can go over this.

4 As I hear these other guys talk about
5 they've not had any hazard training, we just hired a
6 new guy where I work. I done the task training for
7 some of the equipment he was running. And other
8 employees, coworkers, done some more of his task
9 training.

10 What was done was what I knew. I didn't
11 know that I needed to task train him on hazardous
12 conditions, because I wasn't aware of it. This trip
13 to the Mine Academy, if I don't get nothing else out
14 of it, has been worth it, because I have learned a
15 little bit about hazardous materials, and their
16 effects.

17 And I hope that there is no more delay on
18 this, that we can get this law into effect, and get it
19 settled, not only for our sakes, but for our kids'
20 sakes, and our family, and our coworkers.

21 MODERATOR TEASTER: Thank you Mike.

22 MS. HUTCHISON: The hazard communication
23 standard, for the most part, would not cover consumer
24 products such as you described, a window cleaner,
25 citrus orange, things like that that are used, just

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1 like you would, in a normal household.

2 Our supposition was that the label on the
3 container, as required by the consumer product safety
4 commission, would contain enough information to help
5 you protect yourself.

6 And since that does not seem to be the
7 case, how would you suggest that we remedy that
8 situation? I want to, first of all, affirm that it is
9 very true that many people think that a consumer
10 product is safe just because they sell it in little
11 cans, and it has a label.

12 There are some extremely toxic chemicals
13 in these little consumer products that are all around
14 the mines. And -- but this hazard communication
15 standard does not address them unless they are used in
16 greater quantity, or more frequently than a normal
17 household use.

18 MR. BROWNING: We work in a dusty
19 environment, and these containers are used every
20 shift, by each individual employee that drives that
21 truck. That is a whole lot more than what you do in
22 a house.

23 And as far as these chemicals, I think
24 anything that may harm me, or anyone else, should be
25 listed as hazardous. We talked about glue earlier, I

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1 think you said that was exempt from this policy.

2 They had made, a couple of Mondays ago,
3 they glued ceramic in ceramic chutes for the coal to
4 keep from wearing the chutes out. We was having a
5 problem at our plant with those chutes stopping up.

6 They had me take a hammer and break the
7 ceramic out of there. Then I had to take a cutting
8 torch and cut through the glue, with the torch, and
9 the metal. What kind of gas did I create? I don't
10 know, because we have no sheets on it.

11 And I've heard you say that you want to
12 exempt certain things from this. This is where I say
13 that any chemical that is a potential hazard should be
14 covered under this agreement.

15 This is a common practice, I'm sure many
16 of my coworkers have done the same thing. We are
17 creating gases, we have no idea. Then after I cut it
18 out, I took a welding rod, and welded over the rest of
19 the area, and it heated the rest of the glue up around
20 that area.

21 And this was all on a 12 hour shift. I
22 probably spent 10 hours in that chute, welding in
23 that, whatever fumes may have come off of there. I
24 want to be able to see what that is going to do to me
25 before I'm put in that environment.

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1 That is why I think any hazardous chemical
2 that is used in a mining operation, or anywhere,
3 should be listed as hazard, not exempt anything from
4 it.

5 MODERATOR TEASTER: Thank you, Mike.

6 MR. BROWNING: Thank you all for your
7 patience.

8 MODERATOR TEASTER: Our next speaker is
9 Edward Yevincy of the UMWA.

10 MR. YEVINCY: Good afternoon. My name is
11 Edward Yevincy, local 2470. I have been employed in
12 the mining industry for 22 years. My employer is
13 Peabody Coal Company. The operation is Canton 9
14 preparation plant.

15 My concerns are dealing with MSDS sheets.
16 The company keeps the MSDS sheets on some of the
17 chemicals they use. I'm not sure about all the
18 chemicals they use.

19 This information is kept in the safety
20 supervisor's office, and that is not made readily
21 available to us at certain times of the day. I was
22 informed of this because I'm the chairman of the
23 safety committee.

24 They told me they keep this information
25 here, so they informed me, because I'm the chairman.

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1 I don't know if the rest of the employees are aware of
2 where the MSDS sheets are located.

3 The company also changes distributors of
4 the chemicals. Sometimes they can get it through a
5 different company at a cheaper price, so they change
6 distributors. I don't know if the chemical
7 composition is made up the same as the previous
8 chemical we had.

9 And they also use the same MSDS sheets
10 with the new chemical that came with the old
11 chemicals.

12 Another problem is that some of the
13 employees I work with can't read. And the company has
14 made no effort to read these MSDS sheets to these
15 people that can't read, that have to use them.

16 Myself I think that every new chemical in
17 the preparation plant, and every existing chemical
18 that has an MSDS sheet, should be read to the
19 employees, and made readily available to all
20 employees.

21 Thank you.

22 MODERATOR TEASTER: Ed, you said that the
23 operators should read these MSDSs to folks that can't
24 read.

25 MR. YEVINCY: Yes.

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1 MODERATOR TEASTER: Are the other folks,
2 are the other miners reading them?

3 MR. YEVINCY: Some may be, not to my
4 knowledge, very few has. The only reason I'm aware of
5 them, like I said, is because I'm chairman of the
6 safety committee. But I don't know that all of them
7 are reading them.

8 And I know some of them have been set to
9 use these chemicals, or products, and they can't read.
10 So I know that the company people haven't went down
11 there and read these off to them, what this contains,
12 what cautions you are supposed to use.

13 MS. HUTCHISON: Have you personally read
14 any MSDS sheets?

15 MR. YEVINCY: Yes.

16 MS. HUTCHISON: Do you find them difficult
17 to understand?

18 MR. YEVINCY: Yes. Certain chemicals are
19 difficult to understand, terminology I'm not familiar
20 with, certain aspects of them, I don't understand
21 them, you know? I pretty much can.

22 MS. HUTCHISON: Did you see the video that
23 Richard showed yesterday?

24 MR. YEVINCY: No, I did not.

25 (Unmiked participant.)

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1 MS. HUTCHISON: I was just wondering if
2 that helped you understand what the terms on the MSDS
3 meant.

4 MR. SNASHALL: Have you received, under
5 part 48, training in hazardous chemicals?

6 MR. YEVINCY: I have been employed 22
7 years with Peabody and to my knowledge never in annual
8 retraining have we went over anything to do with
9 chemical hazards, other than radioactive material that
10 we have located in our preparation plant.

11 MR. SNASHALL: And what about task
12 training, has there been anything in the health
13 aspects?

14 MR. YEVINCY: No, not on hazardous
15 materials, no.

16 MODERATOR TEASTER: Just broaden that to
17 any training. Have you had training in hazards
18 associated with chemicals?

19 MR. YEVINCY: If it is any at all, it was
20 very brief, and I can't recall any myself.

21 MODERATOR TEASTER: Okay. Thank you, Ed.

22 Our next speaker, and the last one that is
23 signed up is Tim Baker, from United Mine Workers.

24 MR. BAKER: I would like to thank you for
25 having the hearing, and allowing the concerns of a

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1 whole lot of miners be heard.

2 I think there are some misconceptions
3 here. And before I get into any major comments I
4 would like to make a few brief comments on what I've
5 heard.

6 You know, we have continued, or you've
7 continued to say how many times have you become aware
8 of a chemical accident, and we have heard a few of
9 those.

10 But I think we are missing the point here.
11 We will deal with a chemical accident, whether it is
12 a spill, or whatever it is, and somebody is burnt, is
13 one thing. The major point here also is that after
14 working with this stuff for 20 years, what do I have.

15 Latent effects are not an accident that
16 happened today, they are not an accident that happened
17 three times over the course of a career. They are
18 what I breathe for 20 years.

19 They are what my employer brought into a
20 plant, told me I was going to use, and have to use to
21 get a job done. And I have no idea what it is, I
22 really have no idea what it is.

23 So we need to look past this particular
24 incident that occurred today, I need to know what
25 happened from the careers of these guys, and for

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1 myself.

2 And I guess before I get too far along, I
3 should introduce myself. I am Tim Baker, I'm the
4 Deputy Administrator of Occupational Health and Safety
5 for the United Mine Workers.

6 Joe Main sends his apologies, he would
7 have liked to have been here, but obviously other
8 matters took him away.

9 The other thing I think that we miss is,
10 we talk a lot about common sense. For any of you who
11 have worked in the mining industry, miners generally
12 speaking aren't allowed to have a whole lot of common
13 sense on the job site. Like it or not, it is a fact.

14 You are told what to do, and when to do
15 it, and how to do it, and there is not a whole lot of
16 leeway here to say, gee, I wonder what effect that is
17 going to have.

18 You know, a lot of things happen in an 8,
19 or 10, or 12 hour shift that you have to keep that
20 production going. And, you know, we have tried for
21 years to convince operators that they need to hire us
22 from the neck up, as well as the neck down, but a lot
23 of them still don't believe it. And that is a matter
24 of fact.

25 And I'm glad that we are finally seeing,

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1 after 14 years, I'm glad somebody is finally seeing
2 that we are not getting hazard training, and haven't
3 been getting hazard training. And I have been in the
4 industry 25 years, and I can say, without a doubt, I
5 have never been trained.

6 In the 16 years I spent underground, I
7 was never trained on the hazards of any chemical. So
8 I don't think it should be a surprise. I don't think
9 it should be a surprise at all.

10 What I think I want to focus on now, I
11 want to read some comments that I have already
12 prepared, and I will try to make it brief. But I
13 think the issue is extremely important, and I think
14 that when you look at where we are at, from 1987, we
15 are no closer to a rule right now, than we were in
16 1987.

17 Because while we have this magic data out
18 there, of June of 2002, something tells me we had a
19 magic date of October 3rd, 2001. And I have to be
20 honest with you. I'm disgusted with this whole
21 process.

22 This process has been one of delay, and in
23 my opinion, one of some deceit. We were told what we
24 were going to get. We have never hidden the fact that
25 we weren't necessarily happy with the whole package.

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1 That we believed that it needed to be stronger. That
2 we building that the Interim Final Rule needed to have
3 more projections.

4 We have never made that a secret. But we
5 are also kind of realist. We said, you know, we will
6 take what we can get at this point, and work for
7 something better.

8 And now you jerked the rug out from under
9 us again. Frankly I don't believe MSHA when they tell
10 me that in June 2002 there is going to be a rule, I
11 don't believe you.

12 And until that rule is in effect, I find
13 it hard to establish any faith along those lines. We
14 have guys out here, and if you look, this may be
15 enough guys to run a typical prep plant in a 24 hour
16 period.

17 These guys are handling chemicals day in
18 and day out. With that number, with what we've seen,
19 out of those 40 people you are going to have some
20 anomalies that just don't occur in nature.

21 You are going to have people that have
22 neurological damage that we can't explain. You are
23 going to have an incident rate in Parkinson's disease,
24 or Parkinson's syndrome, that is way past the national
25 average.

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1 You are going to have cancers that you
2 don't normally see from prep plant workers. That is
3 the only thing they have in common, they don't golf at
4 the same golf course, and drink the same water all the
5 time.

6 The commonality is where they work. And
7 I think that we have procrastinated long enough, we
8 have played the game long enough. And we, frankly,
9 have appeased the operators long enough. It is time
10 to get a Rule.

11 The history of HAZCOM does date back to
12 November of 1987 when the President of the UMWA, and
13 the United Steel Workers of America requested MSHA to
14 promulgate a rule to protect miners from hazardous
15 chemicals and compounds.

16 Presidents Trumka and Williams cited
17 specific instances where miners were exposed to
18 chemical compounds resulting in serious injuries and
19 health effects. And highlighted a series of chemicals
20 found at the mine site that could seriously impact
21 miners health and safety.

22 In almost every instance miners were never
23 aware of the substances they were handling, or the
24 risk that those substances presented. The Agency did
25 respond four years later -- I'm sorry, three years

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1 later, in 1990, when it published a notice of proposed
2 rulemaking.

3 Public hearings were subsequently held at
4 three locations, miners, representatives and miners,
5 operators and interested parties expressed their
6 respective opinion on the need for the rule, and the
7 scope.

8 The Agency officially closed the Rule
9 January 31st, 1992. Efforts to promulgate this much
10 needed rule remained dormant until 1999, when the
11 Agency reopened.

12 The Agency sought input to the effect that
13 regulatory mandates and executive orders. And I think
14 that it is important to note that that is exactly what
15 you asked for. That is all you asked for in 1999,
16 what impact did these things have in the rule we are
17 going to propose.

18 The record closed again, and the record
19 closed in December 19th, 2000. We anticipated a rule
20 in October of 2001. Nearly 14 years after the Agency
21 had been petitioned by the Mine Workers, and the Steel
22 Workers, they anticipated a rule would be designed to
23 reduce exposure to hazardous chemicals and compounds.

24 Since that time the union has made efforts
25 to prepare its membership for the application of this

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1 rule. The UMWA was under the impression that while
2 some operators were unhappy with the scope of the
3 rule, they too were preparing to implement it.

4 Unfortunately that was not the case.
5 Instead of addressing the issues contained in the
6 standard, and adopting plans to protect miners from
7 unnecessary exposures, some operators worked to delay
8 the much needed safeguards.

9 Sadly MSHA mad no real effort to resolve
10 the issues through litigation. Their failure to make
11 necessary efforts to implement a rule have once again
12 left miners the victim.

13 Despite the objections of the original
14 petitioning parties, and other interested groups, the
15 Agency has given mine operators what they were
16 unsuccessful in attaining in March of 1999, blocking
17 projections from miners, and reopening the Rule for
18 continued debate.

19 The Agency's granting of this request is
20 totally contrary to the previous statement of October
21 3rd, 2000, when the Agency stated, substantive
22 rulemaking issues, and regulatory alternatives have
23 not changed since the close of the record in 1992.
24 And the evidence in the rulemaking record is current.
25 And those were the statements of Marvin Nichols.

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1 Despite that fact the Agency has decided
2 to continue this rulemaking history, instead of making
3 history with a HAZCOM rule. The UMWA has, out of
4 necessity, participated in every aspect of this
5 process to date.

6 The union will continue to strongly
7 express the need to protect workers from chemical
8 exposures, and at the same time raise our objections
9 to delaying tactics.

10 The UMWA will continue to seek, through
11 whatever legal means available, to end this history of
12 operator denial. The procrastination concerning this
13 rule, on behalf of the nation's miners, and their
14 health and safety, is intolerable.

15 We have talked, for some time, and you
16 have heard a lot of people talk about the delays. And
17 I think that there is a lot of frustration in this
18 room. And maybe there is frustration on the Panel, I
19 don't know the feeling of how that works.

20 But there were two reasons, the Agency
21 gave two reasons for reopening this rule. And I have
22 to be honest with you, they are disingenuous, at best,
23 to suggest that one of the reasons being that
24 operators had not had sufficient time to prepare
25 comments, and review the Interim Final Rule before

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1 comments were submitted in 1999, is absolutely
2 ridiculous.

3 I would have thought, and I would have
4 hoped it would have been a little bit more creative
5 than that. But to suggest that they were not
6 prepared? This thing started in 1987. They had
7 plenty of time to get their act together.

8 Then to also suggest that the other reason
9 for reopening the Rule was to make more clear to the
10 operators what they had to do for compliance purposes.
11 Again, what have they been doing, where have they been
12 at?

13 They know what chemicals they are buying.
14 They know what substances they are bringing to that
15 property. This is a basic a right to know as anything
16 else.

17 These individuals behind me work every day
18 with these substances, and have no clue as to what
19 they are. I mean, we've delayed it long enough.

20 And to open it on those two basis is
21 really something that I look at and I think, you know
22 what? Sometimes I can't read an MSDS sheet, and I
23 will be honest with you, sometimes I don't understand
24 that. But that struck me as we are being played off
25 as stupid.

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1 Do you honestly expect us to stand here
2 and believe that that is a rational reason for
3 reopening this rule, they didn't know what to do for
4 compliance? Well, in my estimation, if they don't
5 know what to do with compliance, you put the Rule in
6 effect, and you send an inspector out, and you write
7 them enough tickets, they will figure out what to do
8 with compliance in a big hurry.

9 That is a reality, that is how the system
10 works. I have said it before at hearings, and I will
11 say it again. The reason this industry is not back in
12 1945, is because MSHA has promulgated rules that won't
13 allow that to happen.

14 If they could get along without hanging
15 curtains, if they could get along without much
16 ventilation, and if they could get along without
17 controlling methane, because there was no rule, and no
18 inspector, and nobody to write a ticket, they would be
19 doing the same thing today that they did in 1940, or
20 in 1969, when Farmington exploded. They would be
21 doing the same things.

22 My concern also about the Rule is the fact
23 that I'm afraid that there is not enough teeth in this
24 thing. I'm afraid that an operator has too many
25 loopholes, and too many ways to escape. We have heard

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1 people talk about, you know, routine and foreseen
2 emergency, routine tasks, and foreseen emergencies.

3 You know, I can honestly, with very few
4 exceptions, see how we can construe just about
5 anything to be non-routine, and we can construe
6 anything to be kind of an unforeseen emergency that
7 occurred.

8 I think that that is a major loophole, I
9 think we need to close that loop. We need to look at
10 how we are going to get correct information on MSDS
11 sheets.

12 And I think that is a pretty basic thing
13 that we need to discuss. We have MSDS sheets that
14 could arrive on mine property that are incorrect. And
15 the Rule basically alludes to the fact that that could
16 happen.

17 I mean, it says that you won't hold the
18 operator responsible if the MSDS sheet is incorrect.
19 And I just brought, you know, whatever it is onto the
20 site, and now the MSDS sheets -- who are we going to
21 hold responsible here? That is what I want to know.

22 I have 40 miners working at the prep
23 plant, I have 400 of them underground. I have an MSDS
24 sheet that is absolutely worthless. And the operator
25 is not liable. And I guess I can basically understand

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1 the logic when you say, he bought the product, he
2 didn't create it, right?

3 I can understand that logic. On the other
4 hand somebody has to be held responsible, and MSHA
5 cannot do anything about the guy that manufactured
6 this stuff, you are not going to reach that far to get
7 them.

8 What you have to do, whether it is
9 labeling, or MSDS sheets, whether the Agency likes it
10 or not, somebody is going to have to get written up.
11 And the only person that can be is the operator.

12 I guarantee you, you write a ticket, and
13 he is not going to buy chemicals from somebody that
14 gives him a bad MSDS sheet. I mean, that is pretty
15 simple logic.

16 So we need to -- we need to look at that.
17 Also when we begin to discuss what is hazardous, what
18 isn't hazardous, first of all let's cut the operator
19 out of this. I'm not so sure I want my operator,
20 where I used to work at R&P Coal and they are not in
21 business anymore, I'm not sure I want any of those
22 folks determining for me what is a hazard and what is
23 not.

24 I want somebody out there that is with a
25 little bit of objectivity, just somebody that doesn't

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1 necessarily have a pony in the race. It is just going
2 to tell me this is the hazard that you are facing.

3 So we need to eliminate that. And we need
4 to be honest about what a hazardous chemical is. And
5 when you are dealing with this stuff, any chemical is
6 a hazard. I mean, medication, like somebody said
7 before, medication is a hazard, chemicals are a
8 hazard. It just depends on the dose.

9 If you get the right dose you are cured,
10 no problem, it is great. If you get the wrong dose,
11 you are just as dead as anybody else would be.

12 So when they bring it in, if it is a
13 chemical, it is a hazard. And it goes to all those
14 things like WD-40, and Windex, and all those other
15 things. Because you know what? At the mine we don't
16 use them the same way, and we don't use them in the
17 same quantity.

18 You know, if you think about this
19 logically, when was the last time you went through
20 five gallons of WD-40 in your household? I probably
21 have a couple of cans I've had for a couple of years.
22 But you will go through five gallons in that shop, or
23 in that prep plant, or underground, in absolutely no
24 time at all.

25 It may last a week, if you are lucky. So

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1 we are using huge amounts. But Consumer Product
2 Safety Commission doesn't deal with the conditions
3 that I live with. They are not at the mine, they don't
4 understand what that product is being used for.

5 I'm dumping WD-40 on hot surfaces, I'm
6 creating vapors. We need to have some kind of
7 labeling, we need to have some kind of control over
8 what is going on.

9 And to be honest with you there is a lot
10 of folks out there that don't see a problem with doing
11 that, they've done it for years. They've never had
12 hazard training tell them not to. We need to look at
13 those things, we need to be realists about how those
14 things occur.

15 I think enough has been said, I guess,
16 about training the trainers. If I'm going to have
17 somebody train me on the hazards of chemicals, I want
18 to make sure they know what they are talking about.

19 I would imagine there may be a few health
20 and safety directors out there, for some of these
21 operations, that understand some of these things. But
22 by and large they are coal miners, too. They came
23 from the same place we came from, have a little more
24 training maybe here and there, but they are not going
25 to know what those chemicals are. They are not going

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1 to understand how to explain them to you.

2 So they need to have training before they
3 give us training. Retraining, 8 hour retraining is a
4 sensitive issue. We need 8 hour retraining,
5 absolutely. I'm thinking maybe when we get all this
6 stuff heaped on top of it, we might look at 16 hours
7 of retraining, because we are dealing with ventilation
8 plans, we are dealing with roof control plans, we are
9 dealing with ground control plans, we are dealing with
10 first aid, we are dealing with all these issues.

11 And let's be realists about this. You
12 can't fit it in, in 8 hours. So we may need to
13 address those things.

14 Labeling of any container should be
15 required. I don't care if the 55 gallon drum, or a,
16 you know, two pint bucket you are going to carry
17 things around in. And the Rule says, you know, you
18 can have a portable container that doesn't have to be
19 labeled, provided you keep it with you at all times,
20 or you use it all by the end of the shift.

21 You have to be at the mine to understand
22 that that guy is not going to necessarily be able to
23 keep track of that, for that entire shift. I mean, if
24 I'm working over here on a dozer, and I have a bucket
25 of whatever chemical it may be, sitting beside me, and

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1 I'm going to use it to wash this thing down, and that
2 drag line goes down, I know where I'm going, and I'm
3 not going to pick that bucket up to get it, because
4 the boss is going to come and get me and tell me, get
5 out there, the drag line is not running, we are not
6 loading coal, the heck with the dozer, okay?

7 I mean, and we are not going to pick it
8 up. I don't understand the -- and I don't understand
9 this, and maybe somebody can enlighten me. But I
10 don't understand what is the big deal of having a
11 label on a portable container. I don't understand
12 that. You use it for the same thing every time, and
13 instead of maybe having three portable containers that
14 you can switch out for 12 chemicals, buy 12 portable
15 containers, and put a sticker on it, folks. I mean,
16 it is not that tough.

17 We also believe that any chemicals that
18 leave the property should be labeled, should have an
19 MSDS sheet. Whatever they happen to create. And I'm
20 not talking raw coal, and I'm not talking sand. But
21 if there are chemicals in the soups that they make
22 there, that they have to get off-site, and it doesn't
23 necessarily go through a settling pond, anything that
24 they send out there that is a chemical hazard should
25 be labeled, anything downstream should have a label on

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1 it.

2 People should understand what we are
3 producing out there, and sending to them. And we
4 need, we truly need to look at that.

5 Briefly, I guess, we deal with some of the
6 regulations of the EPA because you say that things
7 that are regulated by the EPA aren't necessarily
8 regulated here. And I would, without getting into
9 great detail, I would suggest that somebody look into
10 the application of biosolids on these reclamation
11 projects.

12 And, you know, biosolids sludge is a big
13 ticket item and Pennsylvania produces, you know,
14 millions of tons, and I think New York produces
15 millions of tons. And now we have our guys spreading
16 this stuff on the fields for growing grass, growing
17 crops, growing whatever they happen to be farming at
18 the time.

19 There are heavy metals in this stuff,
20 there is bacteria in this stuff. We need to look at
21 what we are putting out there as far as a biohazard is
22 concerned.

23 I could probably go on longer, but I
24 think, to be honest with you, most of these guys have
25 just about covered every issue. I would like to try

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1 to tie things together, and let you know that while I
2 can honestly say that there is nobody on this panel
3 that I have animosity towards.

4 You are doing your job, and I think some
5 of you do it well, and the others that I don't know
6 I'm guessing you do it well. I think the Agency, as
7 a whole, has frustrated us, on numerous occasions.
8 And they frustrated us on this rule on more than one
9 occasion, and they've delayed it.

10 And, let's be honest, we wouldn't have
11 gotten the thing out in 1999 if we hadn't filed a
12 lawsuit. We are just asking for a little help here.

13 If we could do this on our own, I would be
14 honest with you, if we could do this on our own, we
15 would do it. But we don't have that ability. We need
16 something that is out there.

17 And, Lord knows, I deal mostly with coal
18 operators, and I have not had one of them come to me
19 and saying, Tim, we are the ones bitching about this.

20 Because they would tell me straight up.

21 Now, I don't know what the aggregate
22 industry is doing, but if it is not the coal industry,
23 it has to be sand and gravel, and somebody else. They
24 need just as much protection as these coal miners
25 sitting behind me, they are going to deal with the

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1 same stuff.

2 They have to get with the program at some
3 point, and they just need to do that. We just need
4 the Rule, it is as basic as that. We need the Rule.
5 We are not happy with it, I've given suggestions on
6 how to tighten it up.

7 I would ask you to take those suggestions
8 back, because I would be honest with you, in the
9 opening that you gave, Ernie, I didn't see one
10 suggestion. I did not see one suggestion that the
11 union made the last time it gave comments.

12 I have seen suggestions that the operator
13 gave, but I didn't see any of ours. And I think that
14 is a little disheartening. I think that it becomes
15 clearer and clearer why the Rule is reopened, and we
16 are disappointed with that fact.

17 And with that I will entertain any
18 questions. I hope I haven't run on too long. But the
19 issue has a life of its own in some respects.

20 MODERATOR TEASTER: Thank you, Tim. No,
21 you have not run on too long. Just to clarify, my
22 understanding of the Rule is, in the use of WD-40,
23 when you use this thing, as you indicated, that that
24 would clearly fall under the Rule, that that is
25 certainly outside the use of a normal household

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1 consumer type thing.

2 MR. BAKER: Well, and maybe I can -- and
3 if that is true, that is fine. But maybe we can look
4 at, and what you need to look at is the case for
5 solcenic at this point. And I think somebody
6 mentioned that before. You know it is an antifreeze
7 that they use in the hydraulic jacks.

8 Now, that is not going to be regulated
9 from the way I understand this rule. But I would
10 suggest that you look at those situations where I have
11 at least 20 cases of cancer, whether it is liver
12 cancer, or kidney cancer.

13 Whatever those things are, I mean, we have
14 a problem with this. And I'm not sure that it is the
15 solcenic, per se. Now they are telling me that they
16 have done a survey, they don't believe it is solcenic,
17 but they believe it is the fungicide that they put in
18 the solcenic.

19 To me, you know, you've lost me when you
20 talk about solcenic, generally. But we need to look
21 at those things. We are spilling a million and a half
22 gallons of that stuff, underground every year, at that
23 mine. And I have 20 cases of strange cancer, organ
24 cancer.

25 Those things need to be regulated, those

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1 things need to be tied up. And I could be wrong, but
2 this is an antifreeze. We are talking all they are
3 using it for is an antifreeze. The concentrations may
4 be less than what you would normally use daily in your
5 car, where you would be around if you put it in your
6 car. But we are dumping a bunch of it.

7 So, you know, I just believe there are a
8 lot of loopholes we need to tie up.

9 MODERATOR TEASTER: Tim, one other
10 question. What do you think the qualifications of the
11 person providing the training on the chemical hazards
12 should possess, background training?

13 MR. BAKER: Well, you know, I would like
14 to say I would like to have an engineer or somebody do
15 it, you know, like a Dr. Weeks, or something. But we
16 have to be realists about how we train those folks.

17
18 But I think that these companies could
19 certainly get their safety inspectors, or trainers, or
20 whoever they are going to have, because usually it is
21 the safety inspector at the mine that runs the
22 training.

23 Send them to a class with a Weeks, or a
24 PhD, or somebody that understands chemicals, and at
25 the same time, and Lord knows I'm fortunate to deal

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1 with Jim, somebody that can explain it in real basic
2 terms, and real layman's terms, so they understand it,
3 and then bring that information back.

4 And I'm not faulting the guy at the mine.
5 I mean, he is doing his best, I'm sure, to get the
6 information out. But he -- listen, maybe he does
7 understand those 26 letter words, but I sure can't.
8 And we just need to get someone that does to explain
9 it to him simply, and we can go on with training.

10 And I think that could be, you know, if
11 you have a relationship with some of these folks, and
12 you bring a new chemical in, it wouldn't be a problem
13 for you to pick up the phone, as a safety guy, and
14 call the guy over there and say, what is this stuff,
15 and what do I need to know about it? And relay that
16 to your own workers.

17

18 MODERATOR TEASTER: Yes. I think it is
19 important, a lot of us have never learned those big
20 words, or exactly what all is contained in them. I
21 think the important things we know is how to use this
22 safely, and what effect that can have on us, what we
23 need to do to protect ourselves, rather than trying to
24 -- we may all fail that test if we have to pronounce
25 all them words when we come out of the training.

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1 MR. BAKER: Yes, you know, that is
2 certainly a major part of it. And, you know,
3 understanding not only what it is, but being specific.

4 And I think somebody earlier mentioned
5 petroleum distillates. That is a thousand different
6 things. What is that? That could be any one of a
7 thousand different compounds. You know, diesel fuel,
8 what is it?

9 Having something like that on an MSDS
10 sheet is generally useless. I mean, what do I do to
11 control that? But having basic information that is
12 easy for them to understand, and what they do if there
13 is a spill, or what they do if there is an accident.

14 Basic layman's terms need to be out there,
15 you know? I mean, if it just says call the fire
16 department on the bottom, we know how to do that, you
17 know what I mean? Don't touch, call the fire
18 department. Not a long drawn out dissertation, like
19 I'm giving now.

20 MODERATOR TEASTER: Thank you Tim.

21 MR. BAKER: I thank you very much. And we
22 do very much appreciate speaking here. We appreciate
23 your indulgence, and hope that you go away with an
24 understanding of just what our level of concern is,
25 thank you.

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1 MS. HUTCHISON: Are you going to leave a
2 copy of your statement?

3 MR. BAKER: No, I will submit a copy, and
4 some of it will be contained in there, but this is the
5 working draft, and I'm not going to leave that, okay?

6 MODERATOR TEASTER: That is fine.

7 MR. BAKER: Thank you.

8 (Applause.)

9 MODERATOR TEASTER: Is there anyone else
10 that has not signed up, that would like to speak? You
11 can come forward and identify yourself, we would
12 appreciate it.

13 MR. STEMKOWSKI: Believe me, this is
14 totally -- I want to apologize to Mr. Baker. I don't
15 know anyone here but Mr. Baker, only by telephone, and
16 a fellow I came from eastern Ohio with.

17 My name is Stan Stenkowski, I'm from Local
18 1506. I have 32 years mining experience with
19 Consolidation Coal Company. I am on the safety
20 committee, probably for the last six or seven years.

21 I wasn't going to say a word here today.
22 I was asked yesterday, this week in class, if I would
23 like to speak, and I was so timid, I said no. Never
24 done this before.

25 But having sat here and listened to these

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1 people, and I have seen that they are not as
2 professional, probably as I am, at least I'm not
3 afraid to get up here. I think they've all done a
4 fantastic job.

5 But I could not go home without putting
6 two cents' worth in here. If my wife was here, which
7 she is back in the room she would probably say, oh,
8 no.

9 But Part 48, I heard you talk about that.
10 And I'm not versed at this, and believe me this is not
11 rehearsed. In my 32 years with having gone to the
12 annual retraining, and I have seen you people ask
13 several people about that Part 48.

14 That annual retraining we've gotten it
15 every year, faithfully, and I believe they've always
16 tried their best. But as far as hazmat, and hazardous
17 chemicals, I'm here to tell you we have gotten very
18 little to none. And I mean that from the bottom of my
19 heart.

20 And I can't speak for the other mines, but
21 I've got 32 years at Consol, I started as a field
22 mechanic, I worked as a regular mechanic, I've been a
23 truck driver, I've been a certified welder, used a lot
24 of chemicals, WD-40, on the shovel, I work on the
25 silver spade, we probably go through a case of WD-40

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1 a week.

2 Other spray cans of stuff I don't know the
3 chemical ingredients. There is a cutter solvent that
4 we use to wash off the nozzles of the spray guns that
5 we put dope on the gearing, and stuff, I don't know
6 what the chemical is in there. I have never been told
7 the hazards of it, I've never been told to wear a mask
8 when I use it, I've never even been told to use
9 gloves.

10 Yes, common sense tells me to use gloves
11 because it is messy, okay? Here is how strong that
12 stuff is. I was wearing a hard hat, we always wear a
13 hard hat, that is standard procedure. You don't go on
14 Consol property without a hard hat, glasses, and
15 gloves, and hard toes.

16 Those doggone, that can of stuff there is
17 so strong, it gets on your glasses, it cleans it off
18 good. Had a horrible hard hat, couldn't rub it off,
19 couldn't wash it with regular solvent. I thought it
20 cuts that grease off that nozzle, that doggone thing,
21 I'm going to use it on there.

22 So I sprayed it on my hard hat and it
23 cleaned it beautifully. I said, this is the stuff to
24 clean it with. After one week my hard hat fell
25 totally apart. I'm standing here to tell you that.

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1 Now, it had stress cracks in it, I grant
2 you. But I've cleaned it with a lot of things before,
3 other type cleaners, and I don't know what it did.
4 But after sitting and listening to those people, stuff
5 like this, and I was not forewarned how -- I grant
6 you, there is a label on the can, you know, caution
7 this, caution that. But I never dreamt that it was
8 that strong that it would do something like that.

9 And I'm thinking, if it is going to ruin
10 my hard hat, what is it going to do to me? Nobody
11 ever said, Stan be careful with that stuff. I don't
12 think I could add much more, other than what these
13 people put in.

14 Like I've said, they have done their
15 homework. Some of them are just like me, they come up
16 here out of their heart, and that is where I'm
17 speaking to you people, out of my heart. Never heard
18 of this law coming into effect, or this ruling, until
19 I come down here.

20 This is the first year I've been to the
21 Academy. Believe me, I've learned a lot this week,
22 especially about how things work here. And I will say
23 one more thing.

24 Being on the safety committee for the last
25 six or seven years, every time an MSHA man shows up,

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1 that is like the police, buddy, we are going to go in,
2 and we are going to inspect this place, and Consol
3 does respect what they have to say, and we get their
4 attention.

5 So therefore I respect if you people come
6 down and help us to get some compliance for this sort
7 of thing. I don't know what is involved in the
8 procedure, or whatever.

9 And, once again, I want to apologize to
10 Mr. Baker. What, another speaker? I was supposed to
11 finish here. But I just felt my heart, I had to come
12 up here and put my two cents' worth in.

13 If there is any questions that I could
14 answer for you, I don't know what I could, but I will
15 try.

16 MODERATOR TEASTER: We appreciate you
17 coming up. I'm sure Tim don't mind you coming up.

18 We appreciate all the comments that we
19 received here today. Hopefully they are going to be
20 all taking into consideration when we draft this final
21 rule, and we are going to come out a rule that is
22 going to do the job that it is intended to do.

23 The record, I will remind you, does close
24 on October 17th of this year. We encourage all of you
25 that would like to submit comments, to submit them to

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1 the Agency. They will be included with the comments
2 that we got on the record here today, and they will
3 all be taken into consideration in drafting the final
4 rule.

5 We have five other public Hearings that
6 will be held on this rule. Four of them will be next
7 week. One will be in Dallas on Tuesday, and on the
8 same date there will be one in Salt Lake City. And
9 then on Thursday of next week there will be two held,
10 one in Reno, Nevada, and the other one in Birmingham,
11 Alabama.

12 The following week I think it is on the
13 10th of October, it will be the seventh and final
14 Hearing on this Interim Final Rule. And we welcome
15 you to attend, to participate in any of those Hearings
16 that are remaining.

17 And, again, any comments you've got,
18 please submit them to us, and they will be given due
19 consideration.

20 And with that we will close the record.
21 And thanks, all of you, for coming.

22 (Whereupon, at 4:10 p.m. the above-
23 entitled matter was concluded.)

24

25

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