

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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TUESDAY,
OCTOBER 2, 2001

The public hearing was held in the Cherokee Room of the Wilson World Hotel, 4600 W. Airport Freeway, Irving, Texas, at 9:00 a.m., Earnest C. Teaster, Jr., Moderator, presiding.

PANELISTS:

EARNEST C. TEASTER, JR., MODERATOR,
Administrator, Metal and Nonmetal Mine
Safety & Health
RICHARD FEEHAN, Office of Educational Policy
Development
CAROL JONES, Metal and Nonmetal Health Division
ROBERT STONE, Office of Standards, Regulations,
and Variances
SANDRA WESDOCK, DOL Office of the Solicitor

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

(9:00 a.m.)

1
2
3 MR. TEASTER: Good morning. I'm Ernie
4 Teaster. I want to welcome you to MSHA's public
5 hearing on the interim final rule for hazard
6 communication in the mining industry. I will be your
7 moderator for today's hearing.

8 On my right is Sandra Wesdock; Sandra
9 represents the Solicitor's Office. On my left is
10 Richard Feehan; he's with the Office of Educational
11 Policy Development; he's done a lot of work on the
12 rule; Carol Jones, from Metal and Nonmetals Health
13 Division; and Robert Stone from the Office of
14 Standards, Regulations, and Variances.

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

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

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

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

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

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

24 On March 30, 1988, in response to this
25 petition, MSHA published an advanced notice of

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1 proposed rulemaking on hazard communication for the
2 mining industry. In this notice we indicated that we
3 would use the OSHA hazard communication standard as
4 the basis for our standard and requested specific
5 comments on a number of related issues.

6 We published a notice of proposed
7 rulemaking on the hazard communication on November 2,
8 1990, and held three public hearings in October 1991.
9 The record closed January 31, 1992.

10 In their comments on our advanced notice
11 of proposed rulemaking and proposed rule, commentators
12 represented:

- 13 • both small and large mining companies,
- 14 • individual miners,
- 15 • a variety of trade associations,
- 16 • state mining associations,
- 17 • chemical and equipment manufacturers,
- 18 • national and local unions,
- 19 • members of Congress, and
- 20 • federal agencies.

21 We re-opened the rulemaking record on
22 March 30, 1999, requesting comments on the impact of
23 the proposed rule on:

- 24 • the environment,
- 25 • small mines,

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1 • state, local, and tribal governments,
2 and

3 • the health and safety of children.

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

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

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

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

23 • the plain language format and the
24 content of the interim final rule,

25 • mine operators' experience under the

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1 Occupational Safety and Health Administration's Hazard
2 Communication Standard, and

3 • any changes in the mining industry since
4 the publication of the proposed rule.

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

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

24 Members of the mining community have also
25 stated that because this is the first time MSHA

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1 promulgated an interim final rule there is some
2 confusion about their compliance obligations. The
3 National Mining Association and the National Stone,
4 Sand and Gravel Association have asked for a delay in
5 the effective date of the interim final rule until we
6 respond to their previous comments on it.

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

13 Now I will briefly highlight the six major
14 provisions of the rule.

15 1. HAZARD DETERMINATION.

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

22 Under the interim final rule, for the
23 purposes of hazard communication, MSHA considers a
24 chemical hazardous and subject to the hazard
25 communication rule if it is listed in any of the

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1 following four recognized authorities or sources:

2 • Title 30 of the Code of Federal
3 Regulations (30 CFR) chapter I,

4 • American Conference of Governmental
5 Industrial Hygienists (ACGIH) Threshold Limit Values
6 (TLV®s) and Biological Exposure Indices (latest
7 edition),

8 • National Toxicology Program (NTP) Annual
9 Report On Carcinogens (latest edition),

10 • International Agency for Research on
11 Cancer (IARC) Monographs or Supplements.

12 2. THE HAZARD COMMUNICATION PROGRAM.

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

17 • procedures for implementing hazard
18 communication through labeling, MSDSs, and training of
19 miners,

20 • a list of the hazardous chemicals known
21 to be present at the mine, and

22 • a description of how mine operators will
23 inform miners of the chemical hazards present in non-
24 routine tasks and of chemicals in unlabeled pipes and
25 containers.

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

7 3. CONTAINER LABELING.

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

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

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

24 You would not have to label containers of
25 raw material being mined or milled while they are on

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

5 4. MATERIAL SAFETY DATA SHEET.

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

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

20 5. HAZCOM TRAINING.

21 The hazard communication interim final
22 rule requires mine operators to establish a training
23 program to ensure that miners understand the hazards
24 of each chemical in their work area, the information
25 on the MSDSs and labels, how to access this

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1 information when needed, and what measures they can
2 take to protect themselves from harmful exposure.

3 Under the interim final rule, mine
4 operators have the flexibility of combining the
5 training requirements for hazard communication with
6 existing Part 46 and Part 48 training. The interim
7 final rule does not require mine operators to have an
8 independent training program separate from Part 46 and
9 Part 48 training.

10 Many operators already cover some of the
11 above information in their current training program.
12 If so, they do not have to retrain miners about the
13 same information. We designed the hazard
14 communication training requirements to be integrated
15 into existing training programs for miners.

16 6. MAKING HAZCOM INFORMATION AVAILABLE.

17 The hazard communication interim final
18 rule requires mine operators to provide miners, their
19 designated representatives, MSHA, and NIOSH with
20 access to materials that are part of the hazard
21 communication program. These include the program
22 itself, the list of hazardous chemicals, labeling
23 information, MSDSs, training materials, and any other
24 material associated with the program. Mine operators
25 do not have to provide copies of training materials

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1 purchased for use in these training sessions such as
2 videos.

3 Also, mine operators do not have to
4 disclose the identity of a trade secret chemical
5 except when there is a compelling medical or
6 occupational health need.

7 I will now share with you our thoughts on
8 some of the comments received on the interim final
9 rule.

10 Commentors representing the aggregate
11 industry argued strenuously that the hazard
12 communication rule is unnecessary and that the
13 aggregate industry should be exempt from the rule.

14 The hazardous chemical rule does not
15 duplicate other MSHA standards. It augments,
16 supplements, and complements these existing standards.
17 The rule specifically deals with chemicals and
18 chemical exposures. Chemicals may be used in any
19 mine, including those in the aggregate industry.

20 There have been hundreds of chemical burns
21 in the aggregate industry. Chemical burns can occur
22 on any part of the body. Skin burns may require
23 multiple skin grafts and require repeated
24 hospitalization. Eye burns can be serious and result
25 in permanent loss of eyesight.

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1 We believe the burden on small mines is
2 less than some commentors stated. First, small mines
3 typically use far fewer chemicals than large mines,
4 and in many cases, no new chemicals.

5 Second, small mines typically use
6 chemicals in small quantities and for shorter periods
7 of time, similar to household use. Third, many of the
8 chemicals used at small mines are not covered by the
9 rule. For example, soaps used for washing hands are
10 cosmetics and are exempt. A can of spray paint is a
11 consumer product and is exempt when used in small
12 quantities intermittently.

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

20 We recognize, however, that not all mines
21 are likely to use a wide range of chemicals. Although
22 we cannot exempt the aggregates industry from hazard
23 communication, as we said, there are steps we can take
24 to minimize the burden of the rule. For example, we
25 intend to make extensive compliance assistance visits

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1 and conduct extensive outreach.

2 We also will be finalizing a compliance
3 guide to help operators and miners understand the
4 application of the HAZCOM final rule. We are
5 developing a variety of compliance aids, such as model
6 HAZCOM programs, a training video for mine operators
7 about determining chemical hazards, and a training
8 video for miners about chemical hazards and reading of
9 MSDSs.

10 A draft of the MSHA compliance guide has
11 been on the MSHA web site for months. If you refer to
12 the compliance guide, many of these issues are
13 explained. If you have any questions in these areas,
14 send them by e-mail to comments@MSHA.gov or to the
15 Office of Standards at the address listed in the
16 hearing notice. We will use these questions to
17 clarify your responsibilities and include additional
18 or better examples in the compliance guide. As a rule
19 of thumb, however, if you are in compliance with
20 OSHA's rule, you will be in compliance with MSHA's.

21 In the same vein, mine operators may
22 obtain help from organizations that have developed
23 generic guides to meet OSHA's hazard communication
24 standard because HAZCOM contains the same basic
25 requirements. We will provide links on our website to

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1 some organizations which have developed a variety of
2 generic HAZCOM materials.

3 While it will remain the responsibility of
4 each mine operator to develop and implement a HAZCOM
5 program and to have MSDSs, to the extent possible we
6 will help you establish the hazard communication
7 program if requested. We have already taken other
8 steps in revising our interim final rule to make it
9 easier for mine operators to comply without reducing
10 the protections offered by the rule.

11 We are considering the following
12 substantive changes to the interim final rule in
13 response to commentors' concerns. We also are
14 considering several non-substantive changes to clarify
15 our intent and correct errors based on commentors
16 perspectives and questions.

17 Under "Hazard Determination," we may
18 revise the reference to ACGIH, NTP, and IARC in
19 determining if a chemical is a hazard and if the
20 chemical is carcinogenic. One option we are
21 considering in determining whether a chemical is a
22 hazard is to refer to the 2001 editions of the ACGIH
23 TLV booklet, IARC, and NTP. In determining whether a
24 chemical is a carcinogen, we are considering referring
25 only to the 2001 editions of NTP and IARC.

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1 We had expected the use of the ACGIH, NTP,
2 and IARC lists to reduce the burden on mine operators
3 because mines use relatively few hazardous chemicals
4 for which they would have to develop an MSDS and
5 label. Commentors objected to the use of these lists
6 stating that the organizations which compile them
7 offer no opportunity for public comment, they impose
8 unknown future requirements by citing the "latest
9 edition," and they violate regulations governing
10 incorporation by reference.

11 We are open to considering alternatives
12 where the impact of the alternative would not reduce
13 protections afforded miners by the interim final rule.

14 Concerning labels and MSDSs, commentors
15 requested additional language to clarify that the
16 designated "responsible person" mentioned on the
17 labels and MSDSs can be the operator. Accordingly, we
18 are considering changing these provisions to read "...
19 the name, address, and telephone number of the
20 operator or a responsible person who can provide this
21 information...".

22 Concerning the availability of MSDSs,
23 commentors asked that we increase compliance
24 flexibility and recognize that MSDSs may be stored in
25 a computer. In response, we are considering modifying

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1 the requirement to have an MSDS available "for each
2 hazardous chemical before using it" or one requiring
3 the operator to have an MSDS available "for each
4 hazardous chemical which they use."

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

10 In response to comments concerning hazard
11 communication training, we are considering changing
12 the language from requiring the operator to train the
13 miner whenever introducing "... a new hazardous
14 chemical into the miner's work area ..." to requiring
15 training when the operator "... introduces a new
16 chemical hazard into the miner's work area ...".

17 This change would clarify MSHA's intent
18 that when a new chemical is introduced additional
19 training is required only if the hazard changes. This
20 is the intent as discussed in the preamble to the
21 interim final rule.

22 Also, in response to commentors, we are
23 considering revising the definition of health hazard.
24 The interim final rule defines health hazard to
25 include chemicals that "damage the nervous system

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1 including psychological and behavioral problems." We
2 are considering deleting the phrase "psychological and
3 behavioral problems." We are also considering adding
4 the criteria "toxic or highly toxic" to more closely
5 conform the language to that in OSHA's Hazard
6 Communication Standard.

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

- 11 • the risks associated with exposure to
12 hazardous chemicals,
- 13 • the safety measures implemented at the
14 mine to control exposures, and
- 15 • safe work practices.

16 The hazard communication interim final
17 rule does not restrict chemical use, require controls,
18 or set exposure limits.

19 We will publish our response to the
20 written comments, including those comments received
21 today at this hearing, in the preamble to the hazard
22 communication final rule. We will consider all
23 comments contained in the rulemaking record, from the
24 publication of the advanced notice of proposed
25 rulemaking on March 30, 1988, through the close of the

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1 record on October 17, 2001, in the development of the
2 final rule.

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

14 We ask that you please sign the attendance
15 sheet at the back of the room, and if you wish to
16 speak, there is a separate sign-in sheet for
17 presenters.

18 We will begin with the folks that have
19 signed up in advance to speak. If there's time, which
20 I can assure you there will be, at the end of that,
21 anyone in the audience who wants to come up and make
22 a statement will be able to do so. We will continue
23 the hearing until all speakers have had an opportunity
24 to address the panel, and we'll stay as long as
25 necessary to address all comments.

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1 We only have one speaker that has
2 previously signed up to speak, and that is David Pfile
3 from the Hanson Aggregates Association. We'll start
4 with David.

5 MR. PFILE: Ernie, first of all, before I
6 start, I appreciate the comments you just made. I had
7 not heard all those before, some of your responses to
8 commentors, and I appreciate that. I just want to let
9 you know that I didn't know that when I prepared my
10 comments. Okay?

11 Anyway, good morning, and thanks for the
12 opportunity to speak. My name is Dave Pfile. I'm the
13 safety director for Hanson Aggregates South Central
14 Region. I have been in the mining and construction
15 industries for over 30 years now.

16 I'm a member of the American Society of
17 Safety Engineers and the International Society of
18 Mining Safety Professionals, and I'm a certified mine
19 safety professional. I also serve on National Stone,
20 Sand, and Gravel Safety Committee, and several task
21 forces and subcommittees concerning safety. I'm a
22 certified OSHA and MSHA instructor, as well as a
23 certified supervisor under Part 77. I have
24 responsibility for 40 operations in six states and
25 nearly 1,000 employees.

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1 Today I just want to offer my comments on
2 the HAZCOM standard -- on the MSHA HAZCOM standard,
3 but before I get that I want to tell you little bit
4 about my company, the group I work with.

5 The philosophy of my company is that the
6 safe way to do something is the right way to do
7 something, and it is the productive way. Compliance
8 with the law is not an option. It's not optional in
9 our organization. It is a requirement and a floor or
10 minimum for operations, not a ceiling.

11 We pride ourselves on our overall safety
12 record and on our concern for our employees' safety
13 and health. We strive for constant improvement
14 through training, education, coaching, reevaluating,
15 and adjusting.

16 I ask that you would stay this regulation.
17 It's going to be confusing and burdensome to many,
18 with little effect on injuries, accidents, or worse.
19 Rather than continue to report this standard I would
20 ask that you revisit a cooperative effort with all
21 affected parties, use the exiting regulations to
22 provide the protections for employees that this new
23 standard allegedly addresses.

24 The success that was achieved in Part 46
25 should be a model for the future. I researched the

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1 access to my operations back ten years to find
2 incidents that could have been prevented by having
3 HAZCOM in place. There aren't any.

4 The nearest I can find are two accidents
5 where batteries exploded. There was no permanent
6 damage. Employees were wearing PPE, and they were
7 flushed with water immediately. There are no others
8 I can find. HAZCOM would not have prevented an
9 employee from hooking up booster cables wrong.

10 I've also checked with my two safety
11 managers, and in the last seven years between them
12 there has been one request for an MSDS. In my
13 career -- because I have OSHA operations as well -- I
14 have had two requests for MSDSs I don't know how many
15 years: one for Orange Citrus Cleaner and one for
16 argon gas used in welding.

17 The training had been done. The MSDSs
18 were available. No one ever asked for them.

19 I remember when the OSHA HAZCOM standard
20 began to affect the construction industry. After a
21 flurry of MSDSs and confusion we finally got it right,
22 we think. We now have MSDSs for all our products.
23 Subsequently, commercial product providers came on
24 board with HAZCOM programs, states go on board with
25 right to know, and MSDSs were available online.

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1 Now the agency wants to reinvent this with
2 just enough differences to make much of our previous
3 work obsolete: the TLBs and some of that ACGIH stuff
4 and the IARC things, just enough to make -- rewrite
5 all the MSDSs.

6 First, we already have regulations in
7 place that address the issues that the HCS alleges to
8 address. We have the labeling standards, warning
9 standard for hazards not immediately obvious, training
10 standards, toxic material standards. We have all
11 those.

12 Secondly, we already have MSDSs to meet
13 the requirements of OSHA. The vast majority of our
14 customers are regulated by OSHA, and we provide them
15 with MSDSs. We would have to modify these MSDSs to
16 meet the MSHA standard and provide them to all of our
17 customers.

18 Third, I believe you underestimate the
19 amount of chemicals on a mine site that could
20 potentially be required to have MSDS on it. There are
21 multiples of MSDS for various lubricants, different
22 types of oil, different greases; Lubriplate, Mobil,
23 high-temp grease, Castrol, drydene [phonetic], various
24 fuels: propane, atacees [phonetic], Lok-tite
25 products. Lok-tite alone probably has 50 or 60 MSDSs,

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1 depending on the product. Oxygen, acetylene, et
2 cetera.

3 My operations currently have MSDS books
4 ranging from about 125 chemicals in a book to a book
5 at one location that is three inches thick. Nearly
6 every substance produced in the US has an MSDS sheet.
7 More importantly, every time there's a change on an
8 MSDS a new sheet is issued by the manufacturer,
9 whether it's its phone number, zip code, area code;
10 something changes and they issue a new sheet.

11 Many manufacturers routinely ship MSDSs
12 with their product. Someone has to compare the sheets
13 to ensure that the proper sheet is being used. The
14 changes are not highlighted. One must compare the
15 sheets side by side.

16 It's my belief that the primary effect of
17 this rule will be an increase in citations.
18 Overzealous -- and I emphasize overzealous -- ARs will
19 comb through MSDSs with the sole purpose of finding a
20 citable offense. They will print an MSDS from Exxon
21 when the operator has just switched to using Mobil.
22 They may look for an MSDS book in the shop, only to
23 find it in the mine office and claim that it is not
24 immediately available. This behavior will in turn tie
25 up MSHA supervisors and conference litigation

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1 representatives as operators like myself, conference
2 citations that they considered unjust and are
3 technical violations that have no effect on safety and
4 health of miners.

5 As an example of how confusing this whole
6 issue can be of these MSDSs I offer the following. It
7 is interesting that different manufacturers of the
8 same product often have strikingly different MSDSs.
9 I have with me three MSDSs from three manufacturers
10 for the same product. One MSDS is three pages long,
11 one MSDS is four pages long, and one is five pages
12 long. The health hazards listed are different. The
13 first aid procedures are different. The firefighting
14 procedures are different, and the chemical composition
15 is different, and there are other differences on these
16 sheets as well.

17 You can look over them. I'll give them to
18 anybody that wants them. And I'm sure you want to
19 know what the product is, and what it is is air. Pure
20 air. Calibrated gas or breathing air for calibrating
21 instruments or for breathing air, and when you read
22 these you won't believe it.

23 The hazard is that the air is stored
24 compressed in a cylinder. That's the only hazard I
25 can think of. I can't think of any other. So this

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1 rule was pushed out at the end of the last
2 administration, and I'm not going to say anything else
3 about that.

4 The new administration is asking for a new
5 way of doing business. The secretary has asked the
6 stakeholders to trust him. I take him at his word.
7 I have spoken with many in the agency about this and
8 about cooperating and sharing information and working
9 together. The opportunities for trust, cooperation,
10 and good relations among all of the interested parties
11 is here. It is up to all of us to take this positive
12 spirit and have it take hold at all levels with the
13 singular goal of improving conditions in our
14 respective operations.

15 Allowing this rulemaking to go forward now
16 will probably damage some of the cooperative efforts
17 that have already begun to take root. As I have asked
18 my operations to put away our swords and extend the
19 hand of trust and cooperation, I'm asking the agency
20 to do the same. Come to the table. Let's use the
21 existing standards to allow us all to protect our
22 employees and improve things for all of us.

23 Thanks.

24 MR. TEASTER: Thank you, David. We're
25 glad that your folks put away the sword.

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1 Dave, the training that you have provided
2 for your miners under Part 46, do you feel that they
3 would satisfy the intent of this interim final rule as
4 to what information would have to be shared with the
5 miners in the training program?

6 MR. PFILE: Yes. I think we could do it
7 under Part 46 without any problem. We already do it
8 at many of our operations. We went through an
9 acquisition here in the last year, so I can't say --
10 I'm going to say 90 percent sure we do it at all of
11 them, but I can't say for sure that we do HAZCOM
12 training at all of them because I still have some new
13 operations I'm trying to integrate into our program.

14 The majority of them, yes, we do. We
15 already talk about HAZCOM. We have MSDS books. We
16 have the sheets there. It's all OSHA stuff, and the
17 ARs have never looked at them because it's OSHA stuff,
18 but we have it; we've talked about it. We talk about
19 it with our employees.

20 They have it available. We might use it
21 as recommendation on the PE they're supposed to use:
22 Hey, look on the MSDS sheet. And we provide MSDSs for
23 all of our customers. We have a huge bank of them
24 because of the different products that we provide;
25 we've got crushed stone, sand and gravel, all of the

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1 different geological compositions of some of my
2 different operations.

3 MR. TEASTER: You mentioned that you have
4 volumes of very voluminous MSDSs. Are these --
5 represent the current MSDSs?

6 MR. PFILE: We keep all the OSHA papers
7 for 30 years, and occasionally -- we can't do it ever
8 day, but occasionally we go through, cross-reference
9 things, take some out and put them in a box. We keep
10 them at the plant. We keep them for 30 years. That's
11 the --

12 MR. TEASTER: But the book that you have
13 that's available for review would reflect the
14 chemicals that you currently use and the latest MSDSs?

15 MR. PFILE: As near as I can guess. It's
16 not something that I have somebody update every week.
17 We might do it on a manual basis as stuff comes in,
18 and so it keeps -- put in the book, put in the book.
19 It gets pretty big.

20 MR. TEASTER: Is someone at the mine
21 designated to oversee these MSDSs as part of their --

22 MR. PFILE: I'm not consistent on that.
23 One of things I've talked to some of your people about
24 is consistency, and at some mines there's more
25 consistency than others, just like with some ARS

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1 there's more consistency with others. I think we all
2 have that challenge.

3 MR. TEASTER: I'm glad that MSHA is not
4 the only one that has a problem with consistency.

5 But the --

6 MR. PFILE: No. In some places we do,
7 some places we don't. It's very, very confusing. The
8 example of air -- I have MSDSs on Tide detergent,
9 because it was used -- we bought huge volumes in Tide
10 at one time at one of our paving operations. It was
11 used to clean up any hydraulic oil spills on the
12 blacktop. It's the most effective product we could
13 find to prevent deterioration in asphalt. But since
14 we buy it at a non-consumer, whatever that means,
15 fashion and sprinkle it all over the highway, you have
16 to have an MSDS for it, and I have some remarkable
17 MSDSs on everything.

18 And the problem is when you get an MSDS,
19 somebody at the plant -- you know, we're safety
20 people. Everybody practically here is a safety
21 person. We understand the language; we understand the
22 abbreviations, all the different things that we use.
23 We understand that. I can talk about CLR's to you and
24 you'll know what I'm talking about, but I can talk to
25 other people and, What are you talking about? They

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1 have no idea.

2 What happens is in the fearfulness of --
3 we've got this MSDS. We'd better put it in the books,
4 because somebody thinks it's hazardous. Something
5 thinks it's hazardous. You go on and on and keep
6 adding to the book of so-called hazardous chemicals.

7 And it might be hazardous because EPA says
8 it's hazardous, or it might be hazardous because DOT
9 says it's hazardous, or it might have to be placarded
10 when it's transported, so an MSDS is produced, and I
11 don't expect our people to reach the level of
12 sophistication to understand the variety of regulatory
13 schemes that they potentially come under and how to
14 sort these things out.

15 Well, we don't have to have that one,
16 because that's just a DOT requirement, but we have to
17 have this one because it's an OSHA requirement. Now
18 we have to have this one because it's an MSHA
19 requirement. It gets very confusing. I think -- I
20 could show you stuff out of books. You'll see it's
21 confusing.

22 And when I made that comment about the
23 Ars, again -- and it's been my experience with Part 46
24 the majority of them -- we have one program that we
25 basically adapted to all of our operations. I'm not

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1 going to write -- start from scratch at every
2 operation for a Part 46 training plan. That's crazy.
3 We wrote a good one. We used the National Stone as a
4 base, and we put it out at all our plants, and some
5 ARs come in and say, Man, that's the best thing since
6 white sliced bread, and other ones come in and say,
7 No. It's all wrong. You've got to change this and
8 that and the other thing.

9 It's the same plan. The only difference
10 is that person reviewing it, and I think we're headed
11 down that same road with HAZCOM, where for a good
12 while it will just tie up a bunch of resources and
13 cause hard feelings between the agency and the
14 regulated people.

15 MR. TEASTER: Getting back to the MSDSs,
16 is there any -- are these things catalogued where you
17 could reference a particular chemical if you wanted to
18 go to it?

19 MR. PFILE: Ernie, that's one of the
20 challenges that I've never adequately come up with the
21 best way of doing it. At some locations we're doing
22 it electronically. You just log on and do it
23 electronically, because you can cross-reference a
24 variety of ways. We've done it -- we've tried to do
25 it by lubricants, solvents, fuels. We tried to sort

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1 it out that way and put it in alphabetically, and we
2 tried to put it alphabetical by product. We've tried
3 putting it alphabetically by manufacturer.

4 I have not come up with the perfect way to
5 put paper in a book that it can be cross-referenced
6 rapidly, depending -- and then there's generic names.
7 People make up names for stuff. I haven't found a
8 real good way to catalogue this stuff. The best way
9 I've found is going online, because then you can
10 cross-reference through chemical name, CS number,
11 manufacturer, and you can find it a whole lot of
12 better ways online probably a lot faster I think.

13 MR. TEASTER: You said the miners have
14 very infrequently requested to review MSDSs.

15 MR. PFILE: Yes.

16 MR. TEASTER: Are they fully aware and
17 have been trained in these MSDSs, their locations and
18 availability?

19 MR. PFILE: Again, I can't say for all of
20 the plants. A lot of them have. In the OSHA
21 operations that I have I had OSHA -- I have had
22 specific HAZCOM training that I personally performed
23 with a group, and subsequently during an OSHA
24 inspection, as infrequent as they are, the compliance
25 officer asked one of my employees what he knew about

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1 MSDSs, and his reply was that he had watched the Jerry
2 Lewis telethon the previous weekend, and I know that
3 he was there.

4 I know he was in a class. I had his
5 signature. I went over the material safety data sheet
6 and MSDS and all the language, and he still thought it
7 was the Jerry Lewis telethon for Muscular Dystrophy,
8 or MDA, when the inspector said MSDS.

9 So are they getting it? I guess not, but
10 I don't know what else to do other than train and
11 retrain. And when I reminded him, you know, about the
12 hazardous chemicals and things -- oh. Yes. I know
13 about that stuff. Yes. That's in that book. That's
14 those sheets.

15 But again, it might have been
16 intimidation. It might have been -- I don't know --
17 fear, but that was his response. I'll never forget
18 it. I turned about -- sure, we do all this. I turned
19 about six colors of red.

20 MR. TEASTER: How often do you in the
21 performance of your job responsibilities go to the
22 MSDSs for information?

23 MR. PFILE: Rarely. We don't have the
24 incidents. In my career -- let me get it right. I
25 think it was 1986 I had an incident, and in 1988 I had

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1 an incident, and they were both involving construction
2 operations, not mining. I had mining and
3 construction. It was with my current employer,
4 probably under a different name at that time.

5 One of them -- an employee came to the
6 shop and we had just bought this -- at that time
7 Orange Citrus solve was a pretty new technology 15
8 years ago. That's when it was -- first became
9 popular, and had tracked asphalt topcoat into his
10 wife's house on her carpet, and she was not happy. So
11 he went to the shop foreman and asked -- told his
12 dilemma, and -- I've got this stuff. We've just got
13 it in to help you out. It's Orange Citrus Cleaner.

14 And he had a 55-gallon drum of it, so he
15 took a milk jug, a common milk jug, filled it up with
16 this stuff and gave it to the foreman to let him --
17 and he took off for home.

18 And where the MSDS comes into play in this
19 is that the foreman did his work and cleaned up his
20 carpet. He thought he'd be a hero with his wife. And
21 he left the milk jug sitting on his kitchen counter,
22 and his nephew came in and took a drink of it,
23 thinking it was orange juice, because it smells like
24 it and it looks like it, and if you're a kid you're
25 not immediately going to get that -- an unlabeled

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1 container -- and there was a flurry of activity, and
2 very -- almost on-fire phone lines, that ultimately we
3 got the MSDS to the hospital because the critical
4 information on it is what do you do?

5 What's the treatment? Do you cause them
6 to throw up or do you give them activated charcoal, or
7 what's the treatment? And the hospital refused to
8 treat until they had the MSDS to know what they
9 needed. And there were some breakdowns in the system
10 on labeling and getting employees stuff to take home,
11 and a variety of things that went wrong in there, but
12 ultimately the little boy was okay, and the hospital
13 treated him, and everything was fine, and it
14 heightened the awareness.

15 And the other one was an employee that --
16 and again, it's more of a work practice than it was
17 the ability to understand the MSDS. One minute the
18 Orange Citrus was a work practice issue and a training
19 issue rather than a HAZCOM issue. That HAZCOM came in
20 when we had to do the first aid or the medical
21 treatment for the young boy.

22 The other one was an employee -- and I
23 believe this was in 1987, 14 years ago -- climbed up
24 in an aluminum truck bed of an over the road truck to
25 weld, and this was a truck that hauled asphalt. Of

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1 course, some of it sticks to the bed, and he had to
2 weld on the bed, and he wanted to paint it, and he
3 took a product -- I can't remember the name of it. It
4 was Two Plus Two Brake Cleaner or some kind of brake
5 cleaner solvent that everybody thought this was the
6 best stuff in the world to dissolve asphalt.

7 And he sprayed it on there and he realized
8 he was in a truck bed -- I use this for confined space
9 training as well -- with the tailgate closed, and he's
10 welding aluminum, so he's using an argon shielding
11 gas. He's got a continuous-feed weld gun, and he's
12 using argon as the shield gas for welding.

13 So he sprays this brake cleaner on there
14 and starts to weld, and pretty soon he gets overcome
15 and weak and yells for help, and they get him out of
16 the bed and they take him to the hospital and put him
17 on oxygen. And subsequently what was discovered, two
18 things happened -- and we're not sure which affected
19 him the most. You shouldn't go into confined spaces
20 unless you have some ventilation, so he propped the
21 tailgate open so that anything in there -- so you
22 could get some airflow through there.

23 What happened is we -- we don't know for
24 sure whether he was overcome by the argon gas as it
25 filled the truck bed and displaced the oxygen, or if

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1 the ultraviolet rays and heat from the welding took
2 the 1-1-1-trichloroethane that was in the brake
3 cleaner and had it decomposed to the phosgene gas. We
4 don't know whether he was getting poison gassed or
5 whether it was oxygen-deficient atmosphere, because we
6 opened up the tailgate and got him out of there --
7 this was on the night shift.

8 I got a call in the middle of the night,
9 got over there, and we couldn't figure out what had
10 happened at first, and then subsequently the MSDSs
11 gave us at least some clue of what was going on, argon
12 being heavier than air, and the trichloroethane in the
13 brake cleaner when it's exposed to the ultraviolet
14 rays of welding and heat it decomposes into phosgene
15 gas and some other nasty stuff.

16 So that's two incidents in 30 years, and
17 that's it. In neither case there was no permanent
18 damage. It was scary. We learned something from it.
19 We use it for subsequent training. But again, I don't
20 think a welder is going to go look at an MSDS before
21 he goes and welds, and I don't think he's going to
22 look at the label of the brake cleaner to see if it
23 has something -- it's such an obscure connection.
24 They're not going to do it.

25 They don't even see the hazard, and I

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1 didn't know the hazard. I do now. I talk about it,
2 but I'm sure there's other ones out there that I don't
3 know about, and there's stories of depressed
4 housewives killing themselves by mixing Drano and
5 Clorox together in a toilet and creating chlorine gas,
6 and there's all sorts of -- you can take household
7 chemicals and whip up some terrible stuff.

8 I don't know how we -- that MSDSs actually
9 can address all those eventualities. I don't know.

10 MR. TEASTER: In your training program do
11 you have a -- or your training programs because you
12 cover multiple operations -- how much time is
13 allotted -- and let's say your eight-hour refresher
14 training -- is allotted toward training?

15 MR. PFILE: There's some employees that
16 are more sophisticated than others, and they pick up
17 on it a little quicker. There's others that we could
18 talk about it for hours and I'm not sure what effect
19 it has.

20 MR. TEASTER: This --

21 MR. PFILE: I don't know how much we
22 actually spend on it. We probably only spend a half
23 hour to an hour, depending on the group. If it's a
24 bunch of fellows in the pit group hauling out of the
25 quarry, they might not have a lot of talk about it.

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1 Welders and mechanics that are more exposed to those
2 kind of hazards we'd probably talk about it a little
3 bit more.

4 I'll tell the story about the confined
5 space and the brake cleaner and the argon, and that at
6 least gets people thinking about what they're doing
7 because it's a real story, but again, they might think
8 about and they might think about argon, and they might
9 think about brake cleaner, and they might think about
10 some of the other things, but they might not think
11 about something else that when you put it together
12 reacts in some way.

13 MR. TEASTER: Do you think under this
14 training program -- was this accident prior to Part
15 46?

16 MR. PFILE: Oh, yes. Way before Part 46.

17 MR. TEASTER: Would you --

18 MR. PFILE: And it was in a -- both of
19 those were construction operations that were -- they
20 were on my property, but they were at an asphalt plant
21 in a shop separated -- when we put up an asphalt plant
22 on our property we put up signs and go by the
23 memorandum of understanding.

24 MR. TEASTER: Would you think --

25 MR. PFILE: I won't try to sandbag you.

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1 We do that. We put up signs. OSHA starts here, MSHA
2 starts here, because what they do under OSHA is
3 different than what we do under MSHA.

4 MR. TEASTER: Would that type of incident
5 that resulted in that accident you just described, do
6 you think that's something that would be covered under
7 your training program?

8 MR. PFILE: Prior to that incident, no.
9 I would have never even -- it would have not occurred
10 to me to even train on that combination. It wouldn't
11 have occurred. And now what we do, we basically use
12 it as a confined space topic when we talk about
13 entering confined spaces, because we talk about
14 confined spaces and hazardous atmospheres, and we do
15 that with our miners as well, even though there's no
16 standard on it.

17 MR. FEEHAN: I have a question if I can?

18 MR. TEASTER: Sure.

19 MR. FEEHAN: To clarify something for me.
20 This is in the back of a 14 wheel truck or something
21 like that, that size truck?

22 MR. PFILE: Yes. An over-the-road rock-
23 truck kind of thing --

24 MR. FEEHAN: And it's open on top?

25 MR. PFILE: It's open on top.

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1 MR. FEEHAN: So --

2 MR. PFILE: It was in a shop.

3 MR. FEEHAN: It was in a shop, but that's
4 not what I consider a classic confined space.

5 MR. PFILE: Not, it isn't, but if you
6 study confined space, it certainly can become a
7 confined space quite readily. The bed is -- keep the
8 tailgates tight, because you're hauling sand as
9 well --

10 MR. FEEHAN: Yes.

11 MR. PFILE: -- and you can't have any
12 leakage, and with still air in the middle of the night
13 in a shop that's closed up, that argon just will
14 displace the oxygen right out of the top.

15 MR. FEEHAN: Yes, I can see that
16 happening.

17 MR. PFILE: And that's what happened.
18 It's amazing. Since we've done that, I collect
19 confined space stories. There's open nortanks
20 [phonetic] that have turned into confined spaces.
21 People have been killed on farms, silos, things --
22 containment dikes around tanks, which aren't typically
23 very hot. When somebody breaks the plane and gets
24 down in there, there have been confined-space
25 incidents in those.

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1 And again, I don't know how you would
2 train -- how you would make a connection between
3 HAZCOM and inside of a containment dike. I can't seem
4 to put it together.

5 MR. TEASTER: David, have your supervisors
6 been given the same type of training as the miners are
7 given as far as hazard --

8 MR. PFILE: They get the same --

9 MR. TEASTER: Communication.

10 MR. PFILE: -- they get the same kind of
11 training, but they get even more with them. We do
12 more of the supervisors. Every supervisor gets a week
13 off training program, not every year. But then we
14 have refreshers that are about anywhere from four to
15 six hours at least on an annual basis, separate from
16 the Part 46.

17 MR. TEASTER: Assuming that this interim
18 final rule would become a final rule, how do you think
19 the agency could best assist mine operators, and
20 particularly small operators, in coming into
21 compliance with this rule?

22 MR. PFILE: Well, to make it easy, there
23 are a multitude of canned OSHA programs available.
24 Every safety magazine -- there's just an absolute
25 multitude of these things. And again, I think if the

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1 intent is there the intention be recognized and not be
2 looking for technical violations.

3 A small operator can go out for a small
4 amount of money, buy a canned OSHA program, put it
5 together for his operation. The intent is there. The
6 information will get there. If he doesn't have an
7 MSHA T crossed or an MSHA I dotted, I think that the
8 agency would look kindly on him and say, You're making
9 a good effort. Now just give him some CAV help and
10 modify this a little bit, and go that way.

11 I think that will get -- it's a common
12 saying that you get more with sugar than you do with
13 vinegar, so getting with the small operators -- the
14 big operators, there's not going to be a terrible
15 problem. It's just the concern of tying up resources
16 over technicalities and technical differences. That's
17 my biggest concern.

18 We're still trying to keep people from
19 falling off of things and running into things and
20 backing over each other. We're still trying to do
21 that effectively in our industry prior to getting to
22 the more obscure types of incidents that I described
23 today. But I never would have thought that would have
24 happened.

25 I have a new war story to share with

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1 everybody about -- but HAZCOM wouldn't have helped it
2 unless you were a chemical engineer.

3 MR. STONE: Let me just ask one question.
4 You had suggested that one of your concerns was that
5 the MSHA interim final standard was just sufficiently
6 different from the OSHA HCS that that would impose
7 some substantial costs on you. I don't know if you
8 said it in those terms.

9 MR. PFILE: I didn't say it in those
10 terms, but yes, it would cause me some -- a bit of
11 work.

12 MR. STONE: Yes. Suppose it were the case
13 that compliance with OSHA's HAZCOM standard, HCS,
14 would allow you -- would put you in compliance with
15 MSHA standards.

16 MR. PFILE: That would be a whole lot less
17 of a burden.

18 MR. STONE: Okay. I know they're not
19 identical, but they could -- I don't know if we could
20 do this, install language that would say compliance
21 with one would be virtual compliance with the other.

22 MR. PFILE: Like I said, that would be a
23 whole lot less of a burden. We've got a laboratory
24 that does chemical analysis of our MSDSs so that we
25 have the right stuff for our own products, and I don't

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1 want that batch to out and have to double breast
2 everything and add ACGIH limits and IARC limits and a
3 bunch of other stuff that makes our stuff obsolete.

4 We have thousands of customers. That's a
5 big financial burden to send those things out.

6 MR. STONE: Okay.

7 MR. PFILE: And again, I want to comment
8 on the underestimating of the chemicals. When I read
9 the preamble and the other information, the
10 manufacturer, just like we do -- our MSDSs are not
11 written by safety professionals or chemical engineers.
12 They're written by attorneys, and we all know that,
13 and they cover every eventuality that they can think
14 of to avoid litigation on the MSDSs, and that's what
15 makes them confusing.

16 The best MSDS that I have ever seen in my
17 life was put out by a company called Orkin Steel, and
18 they put it out, and it had two lines: steel is
19 heavy. Do not drop on foot. That was it. No
20 attorney got involved in the production of that MSDS.
21 They told about the properties of the product and what
22 the hazard was.

23 So if there was a simple way of saying
24 this stuff is bad and it can hurt you if you drink it,
25 eat it -- but even on our own MSDSs we have warnings,

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1 Do not eat limestone. It will cause gastrointestinal
2 distress. Do not eat hot mix asphalt. It will make
3 you sick. It is beyond comprehension that we have to
4 put that stuff on there, but we do.

5 I don't know of -- I've heard of people
6 eating clay, but I've never heard of anybody eating
7 limestone or things like that, and it's absurd that we
8 have to do that, that we have to put that on there.

9 MR. TEASTER: I'm sorry, David. I was --
10 it's absurd to do what with limestone?

11 MR. PFILE: Well, we have a warning on our
12 MSDSs for our limestone that says, Do not eat
13 limestone. It will cause gastrointestinal distress.

14 Now, I've been the mining industry a long
15 time, but I don't eat the asphalt, and I don't eat
16 sand and gravel, and I don't eat limestone, you know,
17 that --

18 MR. TEASTER: So you've identified
19 limestone as a chemical hazard?

20 MR. PFILE: You bet you. We have an MSDS
21 for every one of our products: sand and gravel,
22 briolite [phonetic], granite, limestone, limestone
23 base, asphalt that we produce at one of our plants.
24 We have MSDSs on everything we -- and we ship them out
25 regularly.

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1 We send them out to people all the time.

2 MR. TEASTER: Under our standard it
3 wouldn't -- silica or some chemical contained in it
4 would need to be, but you would only -- not require
5 those raw materials to be --

6 MR. PFILE: OSHA does that. We're already
7 doing it.

8 MR. TEASTER: So you're doing that so it
9 wouldn't impact -- you're doing that anyway?

10 MR. PFILE: Again, I've got a group now
11 for analysis that all of our products -- to find out
12 if there's any flexible five to one ratio fibers in
13 any of our -- which is entirely not the issue of this
14 hearing, but I've got them on point to find out if
15 some of our softer limestones that we use for base
16 have some potential -- I hate to say it -- asbestos
17 foreign fibers.

18 I don't know if they do or not, and how
19 they're going to be identified -- and so, yes. We
20 have to put that stuff out.

21 MR. TEASTER: Carol?

22 MS. JONES: I just wanted to ask you one
23 question just for information. You had mentioned
24 earlier that you hadn't had an opportunity to see what
25 Mr. Teaster was going to discuss today as far as what

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1 the agency is considering as far as changes. I would
2 like to ask that if you're going to submit written
3 comments that perhaps you include comments on those
4 points as well.

5 MR. PFILE: Those are on the web page now,
6 your introduction and everything else?

7 MS. JONES: Yes.

8 MR. TEASTER: We did share that with ones
9 that had -- most of those that had requested to speak.
10 We certainly sent it to the Stone Association.

11 MR. PFILE: I might not have had your last
12 comments though about what you were considering
13 modifying. It seems to me that I don't remember
14 reading that. I read some of your introduction
15 before, but I don't remember reading the proposed
16 changes to the interim final rule that you are
17 considering based on commentors comments.

18 MR. TEASTER: That was included in the
19 opening statement, and we shared that with a lot of
20 folks. I'm not sure we got it to everyone.

21 MS. JONES: And also the transcript of
22 today and all the past and future hearings will be on
23 our website within a couple of days.

24 MR. PFILE: Again, you've got to realize
25 there's a pretty voluminous amount of material to read

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1 and digest, and this isn't the only thing I did, so --

2 MS. JONES: I understand.

3 MR. FEEHAN: At the properties that you've
4 had for a while, Dave, and not the ones that you
5 recently acquired and have question marks about, but
6 what's that training like on chemical hazards?

7 MR. PFILE: It's basically -- it's
8 probably a 20 minute to an hour -- again, depending on
9 how many questions come from the group, kind of like
10 this group it depends on how long you speak and then
11 you have the questions, but it's a thing that I stole
12 from the OSHA 500 course, the ten hour and 30 hour
13 courses for construction workers that OSHA does. I
14 basically got it from Georgia Tech from when I got
15 certified there. That's what it is.

16 This is an MSDS. These are labels. You
17 want to look for this, about the NFPA diamond if they
18 see -- the blue and the yellow and the red and the
19 white --

20 MR. FEEHAN: Yes.

21 MR. PFILE: -- and it's basic -- it's
22 pretty simplistic stuff. We don't get into exotics.
23 I used to do HAZWOPER work as well, hazardous waste
24 operations, and I've tried to distance myself from
25 that environmental as much as I possibly can, but I've

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1 been on several sites.

2 And HAZWOPER is another animal altogether.
3 We do not go into that kind of detail that the things
4 that -- we tell them if you find an unlabeled, old
5 rusty drum, leave it alone and stop. Don't touch it.
6 Go get an adult. You've got to go get somebody that
7 knows what they're doing and don't mess with it.

8 MR. FEEHAN: What about a fairly common
9 kind of maintenance task at the properties, like
10 changing oil?

11 MR. PFILE: Well --

12 MR. FEEHAN: Do you warn employees about
13 the carcinogen hazard, the people who do that?

14 MR. PFILE: I haven't. No. I've never
15 warned anybody about carcinogenic properties of
16 changing oil. I haven't done that, and if one of my
17 safety managers has, I'm not aware of it.

18 MR. FEEHAN: Yes. Okay.

19 MR. PFILE: I didn't know changing oil had
20 a carcinogenic --

21 MR. FEEHAN: If you look on the MSDS, it
22 will tell you that there are laboratory studies
23 indicating that used oil has a potential human
24 carcinogen.

25 MR. PFILE: One comment I'd like to make

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1 about some of the lab studies, and this is part of my
2 objection to some other obscure agencies rather than
3 OSHA and MSHA.

4 Several years ago there was a move to
5 declare hot-mix asphalt fairly dangerous and a
6 carcinogen, and I don't know if you remember this
7 deal. They were going to make hot-mix asphalt as a
8 suspected carcinogen and have all the workers on an
9 HMA paving train working on the pavers and everything
10 else wear protective clothing and respirators; wear
11 Tyvek suits and respirators.

12 And I don't know if you're ever been
13 around that stuff, but when it comes out of the paver,
14 it comes out at somewhere around 300 degrees, 275 to
15 325, somewhere on that order. If you get much hotter,
16 you start getting hydrogen sulfide gas off of it, and
17 it's dangerous to get over 400 degrees.

18 But in any event, they were going to do
19 this, and the industry of course and the associations
20 were outraged and fought it and successfully pushed it
21 back into the box some place for the time being. And
22 when it came about that the health study was done to
23 determine that asphalt -- liquid asphalt cement was
24 carcinogenic -- had those properties as a carcinogen,
25 we discovered what they did.

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1 And the way they determined this was they
2 took laboratory rats and they shaved their backs and
3 they painted them with hot asphalt. Now, I don't know
4 about you, but I think if somebody threw me down on
5 the ground and painted my back with hot asphalt,
6 cancer might be a blessing considering what else could
7 have happened to me.

8 The study didn't represent anything near
9 real life, and I don't know -- I guess they couldn't
10 get small pavers for them. I don't know.

11 MS. JONES: Could I respond to that
12 somewhat? I'm somewhat familiar with that situation,
13 and I don't think the issue was ever resolved whether
14 or not it was or was not a carcinogen, but as an
15 outgrowth of the discussions between industry, NIOSH,
16 and OSHA there was an agreement to put controls on
17 paving machines --

18 MR. PFILE: Yes.

19 MS. JONES: -- in the future to decrease
20 the exposures to that potential carcinogen --

21 MR. PFILE: Absolutely. And rather than
22 having a rule, industry and associations and labor got
23 together and said, Okay. There could be a problem
24 here. Let's put fans and suck the stuff off the
25 screed and off the screws on the paver and keep it

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1 away from the employees, and it's a great idea.

2 Why can't they do the same thing here?
3 That's -- you get the same result if we'd just sit
4 down together and do this.

5 We had a -- I want to add one more thing
6 about how this works. The International Society of
7 Mine Safety Professionals is in the process of doing
8 role delineation about what a mine safety professional
9 should do, and I'm on that committee, and last spring
10 a variety of people met in Raleigh, North Carolina,
11 and they were representatives of the agency -- Larry
12 Checca was there. Rod Breland was there.

13 There were people from the state mine
14 inspector that were there, the different state mine
15 inspectors for North Carolina and Arizona. There was
16 a fellow from NIOSH. Lynn Rathe I think was there
17 from NIOSH. There were people there from every type
18 of mining. There were people from gold and metal
19 mining. There were people there from coal mining.
20 There were people there from phosphate mining. There
21 were people there from copper mining. There were
22 people there from coal mining. There were people
23 there from aggregates mining, and in two days in a
24 room this group agreed from divergent directions --
25 and there was even an attorney there, amazingly

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1 enough -- we got agreement.

2 So in any event, we put ourselves in a
3 room together with a moderator and facilitator, and we
4 walked out of there. We had definitions and had the
5 role defined of what a mine safety professional should
6 do. And again, that should be an example of how
7 things in the future should go forward. We can sit
8 down from industry, from agency, from labor and all
9 affected parties and put a group together, and we're
10 smart enough -- I'm convinced that we're smart enough
11 that we can come out of there with an agreement of a
12 way to do things that everybody can live with.

13 I'm totally convinced of it. And that's
14 an example of how some of these things should go
15 forward. It worked.

16 MR. TEASTER: Well, I agree with you,
17 Dave, and you know that we're -- we've done an
18 extensive outreach now trying to get with the
19 stakeholders and identify a lot of this.

20 I think that in the past on some of the
21 regulatory things that have come forward that we --
22 there's very strict rules that govern rulemaking --

23 MR. PFILE: Sure.

24 MR. TEASTER: -- and once you get into the
25 regulatory arena in an official capacity it's very

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1 limited the outside involvement that you can have. If
2 we get an advanced notice of proposed rulemaking it
3 gives us a lot of leeway to sit down and work with
4 folks, and I think we need to try to get in that arena
5 so we can get more people involved in the process
6 actively working to try to come up with something
7 that's going to do the job.

8 And I met with the health and safety
9 committee on a regular basis. Every six months we
10 meet with the National Sand, Stone, and Gravel
11 Association's health and safety committee, and we talk
12 about a lot of things, and one of them involves
13 rulemaking. And they come in and we had a very
14 successful project in coming forward with Part 46:
15 industry, labor, the agency. There was other folks
16 involved in that process, and I think as the result of
17 the commitment to come up with a rule -- first it was
18 the recognition that we needed one, and we all worked
19 collectively to do that, and we worked in that arena
20 primarily before we got into the regulatory arena.

21 Once that came into rulemaking -- then we
22 can no longer communicate and work with as we had
23 prior to. So I think it's important that when we get
24 these advanced notices of proposed rulemaking that we
25 get everyone involved, because at that point we have

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1 some leeway to work more as a community than we do as
2 an agency, so I think that's a good point.

3 MR. PFILE: That's some of the issues
4 involved -- because of time and then time constraints
5 and things like that and the way it's defined now, and
6 that's part of the concern right now. You can't turn
7 back the clock.

8 MR. TEASTER: We're hopeful that we can
9 get comments through this process that we can come up
10 and fabricate a rule that's going to accomplish the
11 intent, and I think most people are in agreement that
12 miners have a right to know what exposures they're
13 being placed in.

14 We have some -- there's some horror
15 stories from their side not having the information,
16 not having the knowledge about chemicals and working
17 in them and getting injured, getting burned. There's
18 also some concerns about long-term exposure, not
19 something that will -- the exposures will show up
20 today, but maybe ten or 20 years down the road, and
21 they didn't have any information or any protections
22 afforded to them.

23 So there's I think some agreement that
24 there's a right for these miners to have the knowledge
25 and information about the exposures to which they're

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1 working under, but we need to fabricate a rule that's
2 going to afford the protections they need and at least
3 minimizes the burden that we have on the industry on
4 doing that, and that's -- the purpose of this hearing
5 today is to gather information how we can best
6 accomplish that, and hopefully we'll come out with a
7 rule that is very reflective of that very thing.

8 And no more questions --

9 MR. PFILE: Any more questions for me?

10 (No response.)

11 MR. TEASTER: We thank you very much,
12 David.

13 MR. PFILE: Thank you. Thanks for the
14 opportunity.

15 MR. TEASTER: We have no other people that
16 have signed up to speak. I will give the opportunity
17 to anyone in the audience that would like to come up
18 and make a statement. We'd welcome you to do so.

19 (No response.)

20 MR. TEASTER: If not, I think we will go
21 off the record. We're not going to adjourn. We're
22 going to go off the record, and we'll give some time
23 to see if there's any other people that come up that
24 would like to speak.

25 For those of you that may depart, I would

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1 just encourage you to submit any post-hearing comments
2 that you would like to submit to the agency for us to
3 consider in drafting this final rule. I remind you
4 that the record will remain open until October 17. I
5 think it's important that we get all segments of the
6 industry to be involved in this process so all
7 different scenarios that we can are brought forward
8 and considered.

9 Obviously you can't go in a hundred
10 different directions, but I think you can consider
11 these things, and to the extent you can, you
12 accommodate them and provide the protections that's
13 intended to be provided by the rule.

14 And with that we'll go off the record.

15 (Whereupon, a short recess was taken.)

16 MR. TEASTER: It's now approximately
17 eleven o'clock a.m. We have not had any additional
18 speakers to sign up. We will adjourn at this time
19 until 1:00 p.m., at which time we will reconvene to
20 see if there's anyone that wishes to speak. If not,
21 we will terminate the hearing at that point.

22 (Whereupon, the hearing was recessed, to
23 resume at 1:00 p.m. this same day, Tuesday, October 2,
24 2001.)

25 MR. TEASTER: Okay. Let's go back on the

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1 record.

2 It's now approximately 1:00 p.m. There's
3 no one in the audience. No one has come in to sign up
4 to speak, so therefore we will adjourn this public
5 hearing.

6 (Whereupon, at 1:00 p.m., the hearing was
7 concluded.)

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