

Before the
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Safety and Health Management
Programs for Mines

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Comment of Robert N. Wood

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**COMMENT CONCERNING MODEL SAFETY AND HEALTH PROGRAM
MANAGEMENT FOR MINES**

INTRODUCTION

I respectfully submit the following comment concerning model safety and health management programs at mines. I am commenting in response to the Notice of Public Meetings that appeared in the *Federal Register* on September 9, 2010. This notice requested comments on model safety and health management programs to help the Mine Safety and Health Administration develop a proposed rule for Safety and Health Management Programs, which will allow miners and operators to be proactive in their approach to mine health and safety. I am a third year law student at Villanova University School of Law.

I am submitting this comment because I have a strong interest in workplace safety, which I developed through my work as a workers' compensation claims case manager prior to law school. In workers' compensation insurance, a claims case manager is both a claims adjuster and a medical/disability case manager. In contrast to other types of insurance, in which an adjuster addresses losses after medical treatment has completed, a case manager seeks to minimize costs during treatment. The case manager has two primary daily functions: as soon as possible, get the claimant to return to work and reach maximum medical improvement¹. To achieve these goals, the case manager must work closely with the injured worker, employer, and medical providers to find work that accommodates the injured worker's disability and ensure the injured worker is receiving the most effective and necessary medical care. Since employment and health are two of the most important aspects of a person's life, managing disability and medical care allows the case manager to get to know the injured worker well. Also, the high costs involved in

¹ Maximum Medical Improvement is defined as: "A condition or state that is well stabilized and unlikely to change substantially in the next year, with or without medical treatment. There may be some change, but further recovery or deterioration is not anticipated. 1-1 *Lawyer's Guide to AMA Guides and CA Workers' Comp* § 1.02.

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workplace injuries force the case manager to become an expert at looking at them from a cost mitigation point of view. Through this experience, I have developed an interest in loss prevention relating to workplace injuries and become convinced that organizations need to have comprehensive safety and health management programs to protect their employees and minimize their losses due to injury and illness. Furthermore, while injuries and illnesses are a serious matter in every workplace, they are especially serious in coal mines, where the annual fatality rate is five times higher than the average private workplace.² Many of the recommendations included in this comment are based on my experience as a workers' compensation case manager, working with large and small companies, primarily in the construction and manufacturing industries.

I believe that the mining industry will benefit significantly from a rule which adds a performance component to the current regulatory scheme managed by MSHA. As Dr. Kohler discussed during the public meeting in Arlington, mere compliance with a reactive regulatory system will not achieve the goal of zero harm.³ This is because conditions in mines change too quickly for a reactive system, which is only as current as the latest significant incident, to keep up. Instead, we need "an adaptive responsive model that builds on a systematic approach to assessing hazards and then managing risk."⁴ I applaud this rulemaking effort by MSHA and appreciate the opportunity to share some of my thoughts on the subject.

RECOMMENDATIONS FOR AN EFFECTIVE SAFETY AND HEALTH MANAGEMENT PROGRAM

The *Federal Register* notice for this comment stated that MSHA has reviewed numerous safety and health guidelines prior to the public meetings, including The Occupational Safety and Health Administration's Safety and Health Program Management Guidelines ("OSHA Guidelines"). In reviewing these guidelines, MSHA has found that components generally common to effective safety and health programs are: a) management commitment, b) worker involvement, c) hazard identification, d) hazard prevention and control, e) safety and health training, and f) program evaluation. The notice also stated that "MSHA is particularly interested in information on programs which include active involvement of workers from the development of the program through implementation and evaluation." In this comment, I analyze some of the recommendations made at the public meetings and the OSHA Guidelines, and respectfully make recommendations for the proposed rule. As a former claims adjuster, I am knowledgeable of the "business case" for safety and health programs and so most of my recommendations seek to improve safety and health at minimal cost to mine operators. As a law student, I am mindful of Congress' intent in passing the Mine Act and the need for regulation that ensures mine safety and health above all else. Therefore,

² Anne Marie Lofaso, *Coal Mine Safety: A Call for Comparative Law and Interdisciplinary Studies*, 36 Admin. & Reg. L. News 1 (Fall 2010).

³ Mine Safety and Health Administration, *Transcript of Public Meeting*, Arlington, VA, October 8, 2010, Page 13, available at <http://www.msha.gov/REGS/Comments/2010-22403/hearings.asp> (last accessed on November 30, 2010).

⁴ *Id.* at 14-15.

some of my recommendations are concerned with the safety and health of our nation's miners only.

Management Commitment Measures

All of the presenters at the public meeting in Arlington shared the opinion that management commitment to a safety and health program is absolutely critical to its success. Mine operators bear the responsibility of the safety and health of their mines, not MSHA or state government. This makes sense because government inspectors do not work in the mines everyday, do not know all the nuances of each operation, and do not manage the operation. Therefore, mine operators need to live up to their full responsibility to ensure the safety and health of the miners they employ. As mentioned in the *Federal Register* notice and in many presentations, these programs are most effective when a culture of safety exists at the operation. Only management can successfully develop this culture. Since employees are focused on doing their jobs, safety and health needs to be a part of their job descriptions to make sure they devote the necessary care to working safely.

The OSHA Guidelines recommend the following measures of management commitment in safety and health management systems:

- A clearly stated worksite policy on safe and healthful work and working conditions so that all personnel at the site or working for the site understand the priority of safety and health protection;
- A clear goal for the safety and health management system and objectives for meeting that goal so that all members of the organization understand the results desired and the measures needed to achieve them;
- Top management involvement in implementing the system to demonstrate management's commitment;
- Assignment of responsibilities for all aspects of the management system, so that managers, supervisors, and employees in all parts of the organization know what they need to do;
- Provision of adequate authority and resources so that everyone can meet their assigned responsibility; and
- Holding everyone at the site, including managers, supervisors, and employee accountable for meeting their responsibility.⁵

A clearly stated worksite policy is a necessary prerequisite for full implementation of the safety and health program. It should be signed by the CEO and other top managers within the organization. Chevron Mining's Stop Work Authority Card, discussed at the public meeting in Arlington, accomplishes most of the

⁵ OSHA Fact Sheet, Voluntary Safety and Health Program Management Guidelines, *available at* http://63.234.227.130/OshDoc/data_General_Facts/vol_safetyhealth_mngt_.pdf (last accessed on November 30, 2010).

management commitment goals within the OSHA Guidelines.⁶ The card's "Tenets of Operation" provide an example of a strong organizational policy. The card bears the president's signature and states that "all incidents are preventable." It sets forth two key principles: 1) "Do it safely or not at all" and 2) "There is always time to do it right." As to safety and health, the card mandates that all Chevron employees must always do the following:

- Operate in a safe and controlled condition;
- Ensure safety devices are in place and functioning;
- Follow safe work practices and procedures;
- Comply with all applicable rules and regulations;
- Address abnormal conditions;
- Follow written procedures for high risk or unusual situations; and
- Involve the right people in decisions that affect procedures and equipment.

This card gives all Chevron employees the authority to stop work whenever one of these tenets is not being complied with, so the problem can be corrected. It also provides that there will be no repercussions to the employee for doing so. According to Mark Premo of Chevron Mining, these cards can be found all over Chevron's mines and have convinced the employees that they have both the authority to stop work and the responsibility to exercise that authority.⁷

I think MSHA should adopt the stop work authority card concept in the proposed rule because it would constantly remind miners of the safety and health policy of the mining operation, their role and responsibility in ensuring the safety and health of the operation, and management's commitment to their safety and health. In a general way, it allocates the responsibility, authority, and accountability of the program throughout the operation. As such, it serves as an ideal starting point for the program and is easily implemented and enforced through regulation. I propose that MSHA provide the minimum information required on the card for all mines and then allow mine operators to supply additional information specific to their operations. For example, three of the ten "tenets" on Chevron's card do not directly relate to safety and health. Thus, while the seven that do may be required under the proposed rule, mine operators could add "meet or exceed customer's requirements" at their discretion. This would be an innovative and effective way to communicate the priority of safety and health to everyone working at all the mines across the nation.

As a case manager, I noticed that safety and health was a priority only to a limited number of employers. When I would call after an accident, the employer was likely to blame the employee or claim the employee was committing insurance fraud, regardless of the evidence. When the employee was at fault, many times this was due to inadequate training. Unfortunately, it was usually a pleasant shock to encounter an employer who was genuinely concerned for their injured employee's condition.

⁶ Presentation of Chevron Mining Inc., Slide 11, October 8, 2010, *available at* <http://www.msha.gov/REGS/Comments/2010-22403/Transcripts/ChevronMiningInc.pdf> (last accessed on November 30, 2010).

⁷ Arlington Public Meeting Transcript, Page 112.

Much of this animosity stems from the aversion most employers have towards workers' compensation, which many use as their primary safety and health management program. Since workers' compensation is a form of no-fault insurance and the product of political compromise, it is regarded as pro-employee and subject to numerous inefficiencies. However, rather than institute and commit to a systematic program that will prevent injuries and minimize costs on the front end, they prefer to manage these losses after their workers have become injured. Since workers' compensation premiums include the risk of case management, many employers turn their claims completely over to case managers. This approach ignores many simple preventative measures that would reduce the costs associated with workplace incidents and are found in most safety and health management programs.

I recommend two of these measures under the heading of management commitment: a) finding or creating alternative work that accommodates an injured worker's disability limitations and b) remaining in contact with the injured worker throughout the disability period. Both of these measures have the same ultimate goal, to keep the employee engaged in the organization. Workplace injuries are traumatic events and being out of work has many adverse effects on a person's life. Almost all of the lost time claims that I have handled have been complicated by the employer not staying in contact with the injured worker or not accommodating the employee in an alternative duty job. The importance of these measures cannot be overstated. Injured employees need to know that getting injured does not mean they get to stay home and receive an indemnity check. Instead, it means they are back at the job site as soon as possible and working within their limitations. This may include filing papers in the company office or simply not lifting over a certain weight limit at their regular job.

Accommodating the injured worker in an alternative or "light duty" position has many cost-saving benefits. First, it allows the employer to continue to manage the employee, so there is no interruption in the employer-employee relationship. Second, it decreases the amount of time the employee spends out of work. Even though most people would probably prefer not to work, work is vital to a healthy life. If a worker is temporarily totally disabled, then the employer should call the employee once a week and check up on them. The purpose of the call is to find out how the employee is doing, get an update on their medical care, keep them informed about what is happening on the job, and remind them that the organization cares about their welfare.

When an employer fails to stay in contact with an injured employee or does not make an effort to accommodate disability limitations through alternative work, the employer allows the insurance company to manage its employee. Unfortunately, the typical case manager usually handles too many claims to give each injured employee daily or even weekly attention. Also, due to the nature of the job, the case manager is focused more on mitigating costs than promoting the employee's overall welfare. For instance, being out of work leads to depression for many workers. However, treatment for depression can greatly increase the exposure of a workers' compensation claim. Therefore, most case managers deny any and all treatment for depression as not related to the otherwise compensable injury. In many cases, this means the depression goes untreated. In others, private insurance covers treatment but the employee becomes angry that both the case manager and employer have denied responsibility for a condition that did not exist prior to the injury. The net effect of the decision to turn the process over to

the case manager is that the employee is less likely to return to work due to the adverse consequences of depression on healing and the animosity that has developed between employee and employer.

These two measures are very simple and inexpensive to implement. Alternative work requires a good faith effort to find work at the job site. This can almost always be accomplished and some employers have policies of always finding alternative work that work quite well. Staying in contact with the employee only requires making a phone call and preferably keeping a log of the conversation. Both result in keeping the employee engaged in the operation and the employer informed of changes regarding disability and medical treatment. I recommend that both of these measures be included in the management commitment component of the proposed rule as it will save money for mine operators and contribute to a healthier workforce.

Worker Involvement Measures

In the Mine Act of 1977, Congress stated that “the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner.”⁸ While miners certainly share Congress’ view, the first priority of many mining operators is profit. Therefore, miners need to be meaningfully involved in the safety and health program at mines to safeguard their health. The OSHA Guidelines recommend employee involvement in the structure and operation of these programs. In the commentary to the guidelines, OSHA notes that the most effective forms of employee participation include:

- Inspecting for hazards and recommending corrections or controls;
- Analyzing jobs to locate potential hazards and develop safe work procedures;
- Developing or revising general rules for safe work;
- Training newly hired employees in safe work procedures and rules, and/or training their co-workers in newly revised safe work procedures;
- Providing programs and presentations for safety meetings; and
- Assisting in accident investigations.⁹

These functions can be “carried out in a number of organizational contexts,” including joint management-worker safety committees and worker safety committees, with joint committees being the most commonly employed.¹⁰ I believe that the proposed rule should require mines to create miner safety committees and recommend the creation of joint management-miner safety committees.

According to the Texas Department of Insurance, workers enhance any safety committee because they are experts at the jobs they perform and understand their

⁸ Federal Mine Safety & Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164, § 2.

⁹ Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines, 54 Fed. Reg. 3904 (Jan. 26, 1989).

¹⁰ *Id.*

workplaces better than managers and safety specialists.¹¹ This affords them a specialized perspective on the hazards of their workplace. For the worker, the committee gives them a sense of involvement and responsibility for the safety program, which helps to create a culture of safety throughout the organization. For management, the committee boosts worker morale, reduces safety and health incidents, and increases information at minimal cost.

The proposed rule should require every mine, whether surface or underground and regardless of size, to form a miner safety committee. The membership of the committee should be composed of miners that do not hold management positions in the mine and who are voluntarily selected through a meeting in which all the miners take a vote. Their terms should last one year and overlap with each other to maximize the average experience on the committee. The size of the committee should be determined by the number of miners employed at the mine. Once elected, the committee members should attend a week long course at the National Mine Health and Safety Academy, where they would receive intensive training in health and safety best practices and regulations applicable to the mine in which they work. After training, the committee members would resume their regular duties and meet once a month to discuss safety and health issues. The committee would have two primary purposes: 1) to inform mine management of existing and potential safety and health issues and assist in their resolution and 2) to inform MSHA inspectors of existing and potential safety and health issues and violations. The committee would also be free, like all mine employees, to voluntarily make complaints to MSHA. In addition, MSHA inspectors should meet with the committee prior to each inspection to ascertain all safety and health issues at the mine.

The proposed rule should also recommend that every mine form a joint management-miner safety committee. The membership of this committee should include the members of the miner safety committee and representatives from management. The purpose of this committee would be to facilitate cooperation between the mine safety committee and management. This way management can proactively identify and correct health and safety issues on an ongoing basis. Furthermore, meeting as equals to discuss safety and health will open up lines of communication between miners and managers that are normally closed.¹² This would be the ideal vehicle to involve workers in important safety and health measures, such as incident investigation.

These recommendations are similar to the safety committees that Dennis O'Dell of the United Mine Workers of America discussed in the public meeting in Arlington.¹³ The UMWA program uses safety committee members at mine operations under its collective bargaining agreement. These committee members are elected by their peers in the union and undergo forty hours of training, twice a year, at the National Mine Safety and Health Academy. The training is similar to MSHA inspector training and also includes emergency situation training. After training, the committee members return to their mines and apply what they've learned. They also educate their fellow miners and conduct inspections, the results of which they share with the mine operators. Some committee members also conduct inspections at other union mines. According to Mr.

¹¹ *Safety Committees*, Texas Department of Insurance, Division of Workers' Compensation, available at <http://www.tdi.state.tx.us/pubs/videoresource/stpsafetycomm.pdf> (last accessed on November 30, 2010).

¹² *Id.*

¹³ Arlington Public Meeting Transcript, Page 31-34.

O'Dell, when this process is carried out properly and cooperatively, the mines are able to identify and eliminate hazards before MSHA inspections. Mr. O'Dell recognized that the success of this program depends on the commitment of the parties involved and the existence of a collective bargaining agreement.

My recommendation differs from the UMWA program because it would apply outside the collective bargaining context. Instead of being a collaborative effort between union mines and the union, I propose that all mines establish miner safety committees. This is why I recommend miner committees that have duties which are independent from management. If the rule only requires joint management-miner committees, then those operators who view safety and health as a management prerogative will not give miners meaningful roles on joint safety committees. One of the main problems with MSHA inspections is that the inspectors are not able to uncover every health and safety issue at every mine. Furthermore, those they do uncover may not actually impact the overall safety and health of the mines. The miner safety committees allow the inspectors to meet with representative and organized groups of miners at each mine and discover exactly what conditions are threatening their health and safety. This function of the committees helps to ensure that mines are in compliance with the current regulatory system. When the joint management-miner committees meet, their collaboration in identifying and eliminating hazards serves the proactive approach intended by the proposed rule. To ensure the joint committees work collaboratively, the miner committees need to be respected by the mine operators. This is accomplished by giving them the responsibility of reporting to MSHA inspectors. Therefore, this recommendation would ensure more complete compliance with current regulation and provide a mechanism to achieve a more proactive, worker-involved approach to mine safety and health.

MSHA should also require miner involvement in the implementation of the final rule at mines. Chevron Mining did this for a behavioral based safety program at one of its mines.¹⁴ It created a team of six workers and two supervisors who visited companies like DuPont that had designed and implemented similar systems. The group then adapted its findings to the Chevron mine and implemented the new program. Mr. Premo noted that the success of this program was due in part to the ownership the workers felt they had in it. Similarly, MSHA should require worker involvement in implementing the final rule on safety and health programs. While the rule will most likely contain standards applicable to all mine types and sizes, it should encourage operators to adapt the program to their mines by going beyond the minimum requirements. Workers should be involved in adapting the standards because they know the mines best and will increase the probability of success of the new program.

Hazard Identification Measures

The OSHA Guidelines recommend the following measures of hazard identification:

- Identification of all hazards by initially conducting comprehensive worksite surveys for safety and health, and then periodic updates/surveys;

¹⁴ Arlington Public Meeting Transcript, p. 125-26.

- Analyses of planned and new facilities, processes, materials, and equipment;
- Analysis of hazards associated with jobs, processes and/or phases of work;
- Regular site safety and health inspections to identify new or previously missed hazards and failures in hazard controls;
- A reliable system to encourage employees, without fear of reprisal, to notify management personnel about conditions that appear hazardous and to receive timely and appropriate responses.;
- Investigation of accidents and “near miss” incidents to determine their causes and to create prevention strategies; and
- Analysis, if possible, of injury and illness trends over extended periods to identify patterns and prevent problems.¹⁵

I recommend that each of these measures be required by the new rule as they are all proven to prevent workplace injuries and illnesses. I will discuss three of these measures in more depth because I have personal knowledge of their effectiveness. These include: 1) a reliable system to encourage employees to notify management of potential hazards, 2) accident and near miss incident investigations, and 3) analysis of injury and illness trends. While all of the above measures are essential, the ones I will discuss are the most effective relative to the time and cost required to implement them. They are all recommended or used by the claims and loss prevention departments of workers’ compensation insurance carriers because employers can implement them easily and they minimize losses.

Instituting a system in which employees can notify management of potential hazards, without fear of reprisal, is the easiest measure recommended by the OSHA Guidelines and goes to the heart of management commitment to safety and health. Through the system, management informs workers that hazard identification is paramount. It communicates that management is more concerned with discovering potential hazards than assigning blame. It also sends the message that safety and health cross traditional employer-employee boundaries in favor of open communication to accomplish a shared goal. Of great importance to employers, this measure costs nothing to implement. It also can and should be integrated into the policy statement and stop work authority cards recommended above. The only further implementation required is daily coaching of employees at all levels of their responsibility to report all potential and existing hazards to management as soon as possible. There is no downside to implementing this measure and it has a huge cost-saving upside.

Conducting thorough accident and near miss incident investigations are essential to preventing workplace injuries and illnesses and minimizing workers’ compensation losses. First, an accident investigation generates a wealth of information to pass along to the workers’ compensation case manager, such as the mechanism of injury, the employee’s job description and wage information, witness statements, and photographs of machinery and other fixtures. The case manager uses this information to determine exactly how the incident occurred and forecast the losses that will likely flow from it. These conclusions are necessary to accurately determine compensability of the claim, set

¹⁵ OSHA Fact Sheet, *supra* note 5.

loss reserves, and decide which specialists should be involved, such as loss prevention, subrogation, and vocational rehabilitation units. All of these decisions contribute to minimizing the overall cost of any claim. Unfortunately, many employers do not conduct accident investigations themselves but delegate the responsibility to the case managers. This choice has many obvious drawbacks as case managers generally have never visited the accident sites and are not as knowledgeable about their claimants' jobs or the employers' operation.

Accident and near miss incident investigations also provide employers with the necessary information to help ensure that incidents only happen once. For example, the investigation could discover that protective equipment is needed for a piece of machinery. Or it could reveal that all protective measures had been taken and that the employee was truly at fault in the incident. If the former, the employer purchases the protective equipment and the incident never happens again. If the latter, the employee is retrained and disciplined if necessary. Near miss incidents must be investigated because they "reveal the true accident potential for the workplace, and also can identify common and dangerous shortcuts that may have inadvertently become a standard operating procedure."¹⁶

It is also important to analyze injury and illness trends over time to identify patterns. Insurance companies routinely track injury and illness trends in workers' compensation. This information is used to analyze insurance risk and counsel customers during claims reviews and loss prevention consultations. Tracking and analyzing this information is the best way to measure the safety and health of a workplace over time.

Hazard Prevention and Control Measures

The OSHA Guidelines recommend the following measures of hazard prevention and control:

- Elimination or control of all hazards in a timely manner, including adopting the following measures: engineering controls, administrative controls that limit exposure to hazards by adjusting the work schedule, work practice controls, and personal protective equipment;
- Systems adapted to meet each workplace's particular characteristics;
- Planning and preparing for emergencies and conducting emergency training and drills; and
- A medical program that includes first aid and emergency medical care.¹⁷

As Dr. Kohler discussed in Arlington, the whole safety and health program management process boils down to the common sense approach of "find it and fix it."¹⁸ Hazard prevention and control is the "fix it" portion of the approach. The overall goal is the elimination of all hazards that can be eliminated and the control of all others so that no employee is adversely impacted by the hazard. The OSHA Guidelines recognize that systems need to be adapted to meet the particular characteristics of each workplace. In

¹⁶ Arlington Public Meeting Transcript, p. 151.

¹⁷ OSHA Fact Sheet, *supra* note 5.

¹⁸ Arlington Public Meeting Transcript, p. 16.

the proposed rule, MSHA should share the research it has done on hazard prevention and control so that mining operations can institute the standards that meet the characteristics of each mine. This will provide willing mine operators with a wealth of information to reference and incorporate into their “fix it” efforts. This would yield significant economies of scale benefits for smaller mine operators. It also provides notice to less willing operators, who will have to explain to MSHA inspectors why they did not implement a method recommended in the rule to control a particular hazard they failed to address. I am confident that MSHA has also found prevention and control methods that apply to all mines and those should be required by the proposed rule. Overall, the rule should 1) require all mines to adhere to generally applicable hazard prevention and control measures and 2) recommend other measures that have been shown to work for particular hazards and in certain conditions. Doing so would improve compliance by promulgating a set of standards that MSHA inspectors can use when assessing the overall effectiveness of safety and health management programs at mines.

Safety and Health Training Measures

The OSHA Guidelines recommend the following measures of safety and health training:

- Ensure that all employees, including contract workers, understand the hazards to which they may be exposed and how to prevent harm to themselves and others;
- Ensure that supervisors and managers understand their responsibilities and the reasons for them so that they can carry out their roles effectively;
- Ensure periodic refresher training for all employees; and
- Establish a medical programs for first aid and emergency medical care.¹⁹

The first recommendation by the OSHA Guidelines, ensuring that all employees understand the hazards they face on the job and how to prevent them, is critical to preventing those accidents that are misclassified as employee fault accidents. Simply labeling an accident “employee-fault” misunderstands that most employees are unaware of all the hazards they face on the job. Or, if they are aware of the hazard, they are unaware or unconvinced of the importance of preventing harm from that hazard. For instance, an employee working on an assembly line may be completely unaware of proper lifting technique for removing products from the conveyor belt. Or the employee may have been given cursory training in proper lifting but persistent coaching in improving productivity. This disparity in emphasis would cause the employee to neglect proper lifting technique in favor of being able to move more product on the line. Unfortunately, when the inevitable back injury occurs, the employer is likely to treat it as an employee fault accident and give little thought to preventing future lifting injuries. This approach has many negative consequences, including reinforcing traditional stereotypes between employers and employees and ignoring a wealth of diagnostic information in evaluating the safety and health program. It reinforces traditional stereotypes by convincing employers that their “careless” employees are to blame for

¹⁹ OSHA Fact Sheet, *supra* note 5.

lapses in safety and health. It also frustrates employees who feel that they are being blamed for working hard and following their supervisors' orders. It ignores diagnostic information because workplace incidents are the best way to determine the holes that exist in any safety and health management program. If an organization experiences a rise in lifting injuries, then it has either a training or management problem, both of which can be resolved with training.

All incident investigations should include an evaluation of safety and health training. When an incident occurs, the investigators should review the employee's training record and interview the employee about that training. The interview should obtain an explanation of why the employee neglected training, if applicable. This will reveal any gaps in safety and health training or countervailing pressures on the employee to neglect that training. Therefore, in addition to instituting a comprehensive training program, this recommendation ensures that the program is constantly updated to identify and prevent hazards as they arise.

Program Evaluation Measures

The OSHA Guidelines recommend "annual reviews of the [safety and health] system's operations to evaluate success in meeting the goals and objectives, so that deficiencies can be identified and the program and/or the objectives can be revised as needed."²⁰ I agree with Adele Adams of the American Society of Safety Engineers that management should conduct regular evaluations of the safety and health program through audits. Also, management should annually review the organization's internal safety and health program to "identify and correct any weak areas" as well as review applicable regulations and policies promulgated by MSHA. This review should provide management with an accurate assessment of the program's effectiveness and "impact on the business needs of the organization."²¹

CONCLUSION

Thank you the opportunity to comment on safety and health programs at mines. I support MSHA in this rulemaking effort and hope that the above recommendations will be useful. I would be happy to discuss any of these ideas in greater detail and wish everyone in the mining industry good luck in working to achieve the goal of zero harm.

²⁰ OSHA Fact Sheet, *supra* note 5.

²¹ Arlington Public Meeting Transcript, p. 150.