

TRANSCRIPT OF PROCEEDINGS

DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
PUBLIC MEETING - TRAINING

Thursday,
December 17, 1998

Doubletree Hotel
222 North Vineyard
Ontario, California

Pages: 1 through 133
Place: Ontario, California
Date: December 17, 1998

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

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BEFORE:

Chairperson Kathy Alejandro
Rodric M. Breland
Kevin Burns
Roslyn Fountain

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

2 (8:15 a.m.)

3 CHAIRPERSON ALEJANDRO: Good morning. My name is
4 Kathy Alejandro. I am with Metal and Non-Metal Mine Safety
5 and Health, Mine Safety and Health Administration, U.S.
6 Department of Labor and on behalf of the Mine Safety and
7 Health Administration I would like welcome you the fifth of
8 seven public meetings on regulations for miner safety and
9 health training.

10 These meetings are intended to give individuals
11 and organizations including miners and their representatives
12 and mine operators both large and small an opportunity to
13 present their views on the types of requirements that will
14 result in the most effective miner safety and health
15 training. These regulations would be applied at those
16 nonmetal surface mines where MSHA currently cannot enforce
17 existing training requirements.

18 I would like to take this opportunity to introduce
19 the members of the MSHA panel are here with me this morning.

20 To my left is Roslyn Fontaine who is with MSHA's
21 office of standards, regulations, and variances. To my
22 immediate right is Kevin Burns who is also with Metal and
23 Non- metal Safety and Health. And to my far right is Ron
24 Breland who is the western operations manager of the newly
25 formed Educational Field Services within MSHA.

1 Since 1979 MSHA has been guided by a rider to its
2 appropriations. The restriction currently states that:

3 . . . none of the funds appropriated . . . shall
4 be obligated or expended to carry out section 115
5 of the Federal Mine Safety and Health Act of 1977
6 or to carry out that portion of section 104(g)1 of
7 such Act relating to the enforcement of any
8 training requirements, with respect to shell
9 dredging, or with respect to any sand, gravel,
10 surface stone, surface clay, colloidal phosphate,
11 or surface limestone mine.

12 In the Omnibus Budget passed by Congress on
13 October 21, 1998, MSHA was directed to:

14 . . . work with the affected industries, mine
15 operators, workers, labor organizations, and other
16 affected and interested parties to promulgate
17 final training regulations for the affected
18 industries by September 30, 1999. It is
19 understood that these regulations are to be based
20 on a draft submitted to MSHA by the Coalition {for
21 Effective Miner Training} no later than February
22 1, 1999.

23 MSHA expects to publish a proposed regulation in
24 the Federal Register some time in early spring of 1999.

25 The regulations that MSHA will be developing must

1 include the minimum requirements in Section 115 of the
2 Federal Mine Safety and Healthy Act of 1977 (Mine Act). To
3 summarize those requirements: Section 115 provides that
4 every mine operator shall have a health and safety training
5 program that is approved by the Secretary of Labor, and that
6 complies with certain requirements. Section 115 specifies
7 that surface miners are to receive no less than 24 hours of
8 new miner training, no less than eight hours of refresher
9 training annually, and task training for new work
10 assignments. Section 115 also requires that the training
11 cover specific subject areas; provides that training is to
12 be conducted during normal work hours at normal rates of
13 pay; requires that miners be reimbursed for additional costs
14 they incur incidental to this training; and provides that
15 mine operators must maintain miners' training certificates
16 and furnish such records to the miners.

17 In addition, MSHA is looking for suggestions and
18 comments as to how best to achieve effective miner safety
19 and health training, consistent with the Mine Act, including
20 any additional requirements that should be included in the
21 proposed rule, and most importantly why.

22 Four meetings have already been held in
23 Northbrook, Illinois; Denver, Colorado; Albany, New York;
24 and Portland, Oregon. Two other public meetings will be
25 held at other locations on the week after New Year's in

1 Dallas and Atlanta, Georgia; and this is designed to give as
2 many individuals and organizations as possible an
3 opportunity to present their views.

4 This meeting will be conducted in an informal
5 manner, and a court reporter is making a transcript of the
6 proceedings. Anyone who has not signed up in advance to
7 speak at the meeting and who wishes to do so should sign up
8 on the speakers' list which is currently located on this
9 table but it will be available for you at a break. We also
10 ask that everyone who is here today, whether or not you wish
11 to speak, to sign the attendance sheet which is located on
12 the small table on as you immediately as you come into the
13 room.

14 Anyone who wishes may also submit written
15 statements and information to us either during the course of
16 this meeting or afterwards and we will include these
17 submissions as part of the record as a proposed rule is
18 developed.

19 Although there is no formal deadline for
20 submitting written comments I would strongly encourage you
21 to submit anything that you wish to be considered by no
22 later than February 1, 1999, to ensure that your comments
23 are fully considered as we develop the proposed rule. If
24 you, the comments should be sent to, if you've got a copy of
25 the meeting notice, sent to the Office of Standards,

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1 Regulations, and Variances; and the address is in the
2 meeting notice, but I can give you that address later if you
3 need it.

4 Although we are most interested in what you have
5 to say to us, we will also attempt to answer any questions
6 that you may have as the meeting proceeds to clarify the
7 process or whatever, what the purpose of this meeting is.

8 MSHA is specifically interested in comments that
9 address certain areas, although we certainly strongly
10 encourage you to comment on any issue related to miner
11 safety and health training at currently exempt mines. These
12 issues were outlined in the November 3rd Federal Register
13 notice that announced the scheduled of public meetings, and
14 I will give you a brief summary of these issues right now.

15 Should certain terms, including "new Miner" and
16 "experienced miner" be defined?

17 Which subjects should be taught before a new miner
18 is assigned work, even if the work is done under
19 close supervision?

20 Should training for inexperienced miners be given
21 all at once, or over a period of time, such as
22 several weeks or months?

23 Should supervisors be subject to the same training
24 requirements as miners?

25 Should task training be required whenever a miner

1 receives a work assignment that involves new and
2 unfamiliar tasks?

3 Should specific subject areas be covered during
4 annual refresher training? If so, what subject
5 areas should be included?

6 Can the eight hours of annual refresher training
7 required by the Mine Act be completed in segments
8 of training lasting less than 30 minutes?

9 Should the records of training be kept by the mine
10 operator at the mine site, or can they be kept at
11 other locations?

12 And then finally, should there be minimum
13 qualifications for persons who conduct miner
14 training? If so, what type of qualifications are
15 appropriate?

16 I would now like to introduce the first speaker
17 this morning. We ask that all speakers state and spell
18 their names for the court reporter before beginning their
19 presentation. And I would like to thank you all very much
20 for coming. Thank you.

21 The first speaker on our list is Duane Niesen from
22 CAL OSHA. And you can either stand at the podium if you
23 wish or sit at the table, whichever is, you are most
24 comfortable with.

25 MR. NIESEN: Better stand as to prove I can.

1 CHAIRPERSON ALEJANDRO: Okay.

2 STATEMENT OF MR. C. DUANE NIESEN

3 MR. NIESEN: My name is first initial C. Duane, D-
4 U-A-N-E, Niesen, N-I-E-S-E-N. And I have to say if I knew I
5 was going to be first I'd have called later or something
6 like that.

7 CHAIRPERSON ALEJANDRO: Okay.

8 MR. NIESEN: I work the State of California, I'm
9 in the 40th year of state employment and I work for CAL
10 OSHA. I've been with them for 25 years. I work for CAL
11 OSHA's mining and tunneling unit which includes the unit
12 that I supervise which is a mine safety unit. My unit
13 carries out a state grant assisted program for training
14 miners.

15 The people that I supervise, my trainers and
16 myself, on occasion reached about 2500 miners and
17 contractors per year which MSHA based training. Some of it
18 is the regular new miners' training, the eight hour
19 refresher; and lately MSHA instructor training, supervisor
20 training, and some specially tailored courses to fit
21 specific mine operators' requirements.

22 I've been in this particular unit for about three
23 years. I was with water resources for about 15 years,
24 bringing water to sunny southern California where we now
25 enjoy it down here.

1 I've been CAL OSHA since its inception in 1973. I
2 spent 10 years in the field as a compliance inspector in all
3 industries in California. I spent 12 years as a district
4 manager in Sacramento, California supervising a staff of
5 about 12 industrial hygienist and safety engineers making
6 inspections in that district. I've been involved in one
7 type of training or other during all that time. I was
8 especially involved in the inception of what's called
9 California's Injury and Illness Prevention Program found in
10 California Code of Regulations 3203 which includes also:
11 Training requirement for the State of California enforced by
12 CAL OSHA.

13 I'm here this morning to give the views of my unit
14 on training for miners in general and to address those
15 particular questions found in the Federal Register
16 specifically.

17 First of all CAL OSHA believes that training is
18 absolutely essential. I think that the MSHA recognized that
19 in 1977 by the Mine Act and by its promulgation in Part 48
20 by making it a specification standard.

21 California miners are also subject to CAL OSHA
22 regulation in the training area that's addressed by 3203(a)7
23 which is a performance oriented standard but it also
24 compliments MSHA's specification oriented standard in Part
25 48.

1 Because of the nature of the industry, training I
2 think is the single most important factor in preventing
3 accidents and injuries. California mining industry is its
4 second most dangerous occupation following timber falling
5 which is rather small. California has about 700 active
6 mines, 11 or 12,000 active miners and innumerable
7 contractors which we're also concerned with now.

8 California's 3203 is a performance oriented
9 standard and it is rather broad because it applies to all of
10 the California industries from logging to banking. It
11 contains a training requirement that employees must be
12 trained in the hazards specifically found in their job
13 assignments. MSHA's Part 48 is most specification oriented
14 because it is a standard aimed at a specific industry and I
15 think rightly so.

16 There's not much secret about what harms and kills
17 miners. MSHA has done quite a good job in quantifying that,
18 keeping track of it, we know the basic problems. Therefore,
19 a specification standard is applicable and Part 48
20 enumerates that.

21 I'd like to speak to a couple of the ideas that
22 I've heard. One that individual mine operators should pick
23 and choose the subject matter that applies only to their
24 mine sites. I think that is in general unwise because the
25 certificate issued by MSHA applies to all mines in the

1 United States.

2 The subject matter contained in Part 48 which is
3 pretty much on point when it comes to those things which
4 injure miners in general, is true to a certain extent in all
5 mine sites especially in California; not just sand and
6 gravel, not just underground gold, but major hazards
7 enumerated in those training requirements are pretty much
8 universally applicable.

9 If individual companies are encouraged to train
10 only in those areas that affect their particular mine sites,
11 the miners who transfer or move to other jobs will be ill
12 prepared for the hazards they run into at other mine sites.
13 And since this certificate as it stands now at least, is
14 applicable everywhere. Those miners should be basically
15 grounded in the well known and well documented hazards that
16 occur at most mine sites.

17 I've always believed and believe today that sand
18 and gravel and the other exempted industries certainly need
19 safety training as much as anybody else and I think
20 statistics will bear that out.

21 There are certain parts of part 48 which have been
22 called too restrictive. One is the approval of an
23 individual mine safety plan, training plan for each mine and
24 there may be room for some loosening of that particular
25 requirement. CAL OSHA requires in a parallel requirement

1 that it be sort of tailored to the operation that is found
2 in any place of employment and that's been successfully in
3 the mine.

4 We believe that CAL OSHA's 3203 and part 48
5 provide a basic minimum standard for mine safety training.
6 There are people that I have run into in training at mine
7 sites who believe that that is the end of the requirement
8 and I think it's something like marriage, if you think
9 that's the end of it when you go into it, you're sadly
10 mistaken and you're going to be in for a pretty rough
11 lesson.

12 I think Part 48 and basic safety training in any
13 industry is a minimum basic preparation to prepare new
14 employees to face the hazards they're going to run into on
15 any particular site.

16 Mines present certain well recognized hazards and
17 to allow a new employee to go to work in a mine site without
18 basic grounding in certain hazard recognition and hazard
19 mitigation issues both defies the intent of Part 48 but it
20 also runs afoul of CAL OSHA's 3203. It's not allowed, not
21 even in any industry at all.

22 And so some of the issues I'm going to speak to
23 are based on these basic opinion, I suppose.

24 What I'd like to do now is go down these questions
25 very briefly and give an answer and little bit of

1 explanation of why we think like we do.

2 Number one is should certain terms, new miners,
3 and experienced miner be defined, if so how should
4 these terms be defined.

5 As an enforcer of governmental regulation for 30
6 odd years, yes, those terms should be very definitely
7 defined. Without definition any regulation is practically
8 unenforceable. I've had all of these impressed upon me in
9 the last 25 years. Any regulation which uses specific terms
10 must define those terms. In fact the definitions sometimes
11 determine exactly what those regulations mean and how they
12 are applied. Without them the regulations are pretty much
13 meaningless.

14 The miner, new miner, experienced miner are pretty
15 well defined now in Part 48. I really don't see any major
16 problems there. MSHA has a program policy manual which
17 further explains some of the regulation and if there is any
18 doubt about what those terms really mean or any explanation
19 necessary it could certainly be brought out in that
20 publication, but they are pretty well defined now and they
21 should be kept.

22 Question two is which of these subjects should be
23 taught before a new miner is assigned work, even
24 if the work is done under close supervision.

25 As I said before mine hazards and things that

1 injure miners are pretty well defined. People know what
2 they are. Now I've seen any number of MSHA's charts, pie
3 charts, bar charts, statistics and all that; California runs
4 their own and what hurts miners is not a secret. Therefore,
5 I believe that certain subjects should be mandated in this
6 basic fundamental minimal training standard to prepare a new
7 person to go to work in a mine.

8 I think there's a proposal out for part 46 on this
9 subject matter and the one I saw, pretty much parallels part
10 48. Part 48 seems to address those issues that MSHA has
11 identified as being the primary ones for mine safety. Those
12 things that hurt miners.

13 Two exceptions in the proposal in part 46 that I
14 read, let me read down the list.

15 Statutory rights of miners I think that should be
16 included. Use of self rescue or respiratory devices as
17 appropriate. And we all know that we don't teach self
18 rescuer operation for above ground operations like sand and
19 gravel. I don't think that's done anywhere. I doubt that
20 MSHA enforces it out here. Certainly it's not applicable.

21 Hazard recognition, that's pretty broad. It can
22 include anything in there. Unfortunately because it is so
23 broad sometimes it's not paid attention to in enough detail.
24 Emergency procedures, that's another broad category.
25 Electrical hazards, very broad.

1 First aid, MSHA has a very specific requirement on
2 first aid for miners. I don't think it's misunderstood,
3 it's pretty plain.

4 One thing that's not mentioned in the part 46
5 proposal that I saw is powered haulies and traffic safety,
6 that's the number one killer nationwide in mines. I think
7 that should be specifically singled out, make sure it's not
8 missed because those hazards are present on almost all mine
9 sites that I'm aware of. Since it is such a prominent
10 subject as far as mine injury and fatalities concerned, it
11 should be specifically singled out.

12 Another one which I think should be singled out is
13 ground control because in California especially in sand and
14 gravel operations that's a very important subject which
15 injures a lot of miners.

16 Walk around training, mine specific, that's in
17 part 48 now and I think that's essential. You can't learn
18 all this in the classroom. I'm the last one to suggest that
19 you can. The classroom as I said before is a basic
20 grounding in basic subject matter.

21 Walk around training should be adaptable and
22 adapted to the specific hazards and operations found on a
23 mine site. This is very parallel to 3203 which requires
24 specific training for those job site hazards encountered on
25 any job.

1 The last one, number ten, that I would recommend
2 is health hazards that's a very, very broad category. But
3 in California and especially in the sand and gravel
4 industry, I think they, that should specifically include at
5 least an orientation on silica hazards. Silica is largely
6 ignored in California by CAL OSHA, wrongly so.

7 I believe that the 24-hour new miner requirement
8 and for underground people with 40-hour is a pretty good
9 basic start. I see no reason in changing that. There might
10 be a modification possible.

11 In our experience and like I said my particular
12 unit reaches about 2500 miners a year in California, a
13 certain time needs to be allotted for this basic information
14 to be gotten across to miners really before they're
15 introduced to the mine environment.

16 Hazards exist the first day they work on the job.
17 Putting it off for 90 days or six months, putting off a
18 basic training I think would do miners a disservice. They
19 are not going to be properly prepared. At least eight hours
20 initially training, I would recommend 16, two days, and the
21 other 24 hour, or a portion of the 24 hour requirement could
22 certainly be done by walk around training, first aid
23 training, specific hazard training, job orientation, or
24 whatever. But to get these basic subjects across in any
25 kind of a learnable fashion. I would that that is going to

1 take at least an eight hour block or a 16 hour block,
2 preferably before a miner goes to work.

3 There again this is a minimum standard. That
4 first block of training should not be an end, it should only
5 be a beginning.

6 Question three, should training for inexperienced
7 miners be given all at once, or over a period of
8 time.

9 I think I asked that just a minute ago. Certain
10 basic training should be given before miners are sent out to
11 work. CAL OSHA also enforces this under 3203 regardless of
12 the job. An employee, especially a new employee should be
13 oriented, taught what the hazards are, taught to learn to
14 avoid them, taught to understand the basics of the
15 regulations regarding them.

16 The most hazardous the industry, the more intense
17 and possibly the longer the training has to be. A brand new
18 logger is not going to be allowed out in the woods without
19 close supervision and also a sit-down session. None is
20 specified by length of time but prudent operators are going
21 to sit that person down and train that person in the basics
22 whether it takes an hour or three days. To turn a new
23 employee loose in a hazards environment is not prudent, it's
24 not profitable.

25 I've heard some people say that training should be

1 broken down in very small increments because the adult
2 attention span can't handle very long sessions. I think
3 it's an insult to the miner, myself.

4 I've seen a lot of them and I've seen a lot of
5 training in other situations. Adults, as any instructional
6 technologist will tell you, have longer attention span than
7 children and they learn well when they learn things that
8 they need to know. And if these training session can be
9 made value to the miner.

10 The miner is certainly smart to know that it's a
11 need to know thing and that miner is going to stay awake.
12 And running through training records and personal
13 associations with about 7,000 miners in the last three years
14 I'd say, less than one percent have fallen asleep. Almost
15 all of them have stayed awake during the whole thing whether
16 it's eight hours or 24 or sometimes 40; and over and above
17 that they made significant contributions to the training
18 sessions in the process.

19 Keeping people awake is largely a function of how
20 the training is and subject matter, and this is important
21 subject matter and if we're going to specify something that
22 we really want to tough on, let's tough on the training.
23 Let's have MSHA, state grants, EFS get in here and push some
24 good stuff and some good people. People can stay awake.

25 Should supervisor be subject to the same training

1 requirements as miners?

2 I'm not sure but in California there is no
3 requirement you have to be smart to be a supervisor. It's
4 certainly desirable but I think it will bear out in my
5 experience over 25 years of accident investigation,
6 supervisors are just as prone to injury and hazards on the
7 job as anybody else, sometimes more so.

8 In fact some supervisors, none here I'm sure, get
9 the attitude that they're bullet prove because they are
10 supervisors and they don't need training. And that's a
11 fallacy, I can speak from experience.

12 Number five, should training be required whenever
13 a miner receives a work assignment that involves
14 new and unfamiliar tasks.

15 My opinion is yes they should. It makes good
16 sense. If you're going to run into a new situation or a new
17 machine or a new hazard that you be instructed in the safe
18 operation and the safe behavior associated with that task.

19 CAL OSHA requires this. I don't think it has to
20 be hard and fast. I don't think there has to be a set time
21 involved because tasks and operations and new processes vary
22 so much, it should be up to the operator of the mine to
23 properly orient that person but again new training is
24 important.

25 Should specific subject areas be covered during

1 annual refresher training, if so what subject
2 areas should be included?

3 Well if you're going to give trainees basic
4 training in the first place with subject matter dictated
5 certainly pertinent subject matter should be also
6 incorporated in refresher training.

7 Required under part 48 now and in, probably 75
8 percent of our training that we give to miners in California
9 includes, is refresher training and it has been my
10 experience that those miners need it. They need to be
11 refreshed. Not just miners, in any industry.

12 It's a human peculiarity I suppose that when you
13 get around a job for a long time you become complacent. You
14 forget some of the basics. It's true with any profession
15 with any area of learning. You're concentrating on your
16 job, you're concentrating on a particular are and you need
17 to be refreshed in the reason that you're there, the overall
18 safety hazards, the things that you might not see in your
19 day to day tasks that may be important to your safety and
20 health. And so certain subject matters, yes, should be
21 included in the refresher training.

22 Now the argument is well we get tired of this
23 after five or six years of the same old videos, same old
24 instructor, and all that. That is not a fault of the
25 training requirement, rather a fault of the administration

1 of the training.

2 I'm sure that I've been guilty of that same thing,
3 too. We have certain subject matter that we have to cover,
4 it is a consistent struggle to try to find new ways to bring
5 it across, but then that's a training problem, not
6 necessarily a subject matter problem. Because the same
7 subject matters injure miners and kill mines day after day,
8 year after year. As soon as that stops I'd be all for
9 changing the requirements but it's not stopped and I doubt
10 if it will.

11 Can the eight hours of annual refresher training
12 required by the Mine Act be completed in segments
13 of training lasting less than 30 minutes?

14 It has been my experience over 30 years that
15 important subject matter and safety and health of miners
16 certainly is important, it's life and death, cannot really
17 be introduced or refreshed on a particular subject in a very
18 short time such as tail-gate sessions.

19 I've had a great experience in the construction
20 industry, more than 30 odd years. Tail-gate sessions are a
21 great way to meet the rather loose training requirements of
22 most of other regulatory agencies including CAL OSHA. I've
23 seen hundreds of them, they last from three minutes to ten
24 minutes and usually they are lip-service to the subject
25 matter. They don't do the employees much good. They are

1 only done to satisfy someone's record that they be done
2 every ten working days or so as CAL OSHA requires
3 construction.

4 Same is true in the mining industry. If you're
5 going to teach somebody something, you need a reasonable
6 time to explore the subject, get feedback and so forth. And
7 so I think 30 minutes which I believe now is the MSHA
8 minimum, is a good minimum. Underneath that lip service
9 will be paid, employees won't be properly prepared. A
10 record will only be created. Nothing effective will really
11 be gotten across.

12 I think tail-gate sessions are necessary for day
13 to day operations, reminders, suggestions, input, and
14 dialogue; but for basic training I don't think 30 minutes
15 any too much.

16 Should records of training be kept by the mine
17 operator at the mine site or should the
18 regulations allow records to be kept at other
19 locations?

20 You've got permanent records, pertinent records to
21 a mining operation where else should they be kept. CAL OSHA
22 had a great amount of bitter experience in this area as far
23 as training records, injury records, and so forth like that.
24 We require that they be kept at the principle place of
25 employment.

1 The reason is if they are kept somewhere else it's
2 going to waste the mine operator's time going to get them.
3 It's going to waste the regulator's time waiting for them.
4 It's going to result in a lot more citations, a lot more
5 litigation, and it is not effective.

6 These training records, and I've seen some that
7 are small and some are big, there really isn't any volume
8 requirement. Some of the bigger ones are some of the least
9 effective. If they affect the safety and the health of the
10 workers and they reflect an ongoing effort at training and
11 the well being of the employees, why should they not be kept
12 at a mine site.

13 You keep them in a binder, you can keep them in a
14 file folder, you can keep in a lock box in a pickup truck as
15 long as they are there, there are a lot of other records
16 which are required by CAL OSHA to be kept at an employment
17 site, and training records are really not that big.

18 I've heard a lot of argument for about seven years
19 now effective records need not take up a whole room or a
20 whole file cabinet or a whole briefcase for that matter.

21 So, I think it would be safe, less time consuming,
22 less expensive for the mine operator both and the regulatory
23 agency to keep them where they belong. To keep them where
24 they are permanent, pertinent, pardon me.

25 Number nine, I think is the last one. Should

1 there be minimum qualifications for persons who
2 conduct miner training, if so what kind of
3 qualifications are appropriate.

4 Wow! One of the big gripes about refresher
5 training is that it's dull. If you open it up to anybody
6 what guarantee is there that it's not continue to be dull
7 and there's also no guarantee that you're even going to
8 cover pertinent subject matter.

9 There should be some minimum qualification, again,
10 for instructors. Right now there is determined by MSHA,
11 it's determined I believe right now by the training
12 specialists as far as I know in the district office. And
13 from what I understand of the process it is a, comes out of
14 an evaluation of the trainer's mining experience and the
15 trainer's instructional experience.

16 In general I think it's a pretty good idea. A
17 certificate is issued. I could be engraved, it's kind of
18 not to fancy, maybe you could improve on that. But, it
19 tells an instructor what he or she is allowed to instruct,
20 and I think that's a reasonably good basic rule.

21 We have seen in California in general industry
22 anybody be allowed to administer training, any company
23 person, any supervisor, and there is certainly no guarantee
24 that those people are going to be qualified in the first
25 place, interesting enough to keep the trainees awake in the

1 second place, or if the adhere to the subject matter that's
2 pertinent in the third place.

3 Some minimum qualification for instructors,
4 whether they be company instructors, state grant instructors
5 like we are, MSHA instructors, or private consultants should
6 be met. That you want to change the qualifications, make
7 them more pertinent or whatever that may be applicable, I
8 don't know, but know minimum standard should be met.

9 The instructor's certificate is as good as any.
10 As I understand it here, Mr. Tobin (ph), I've worked with
11 him, we've given quite a few instructor preparatory training
12 courses in the past year and he evaluates I believe on the
13 two factors that I mentioned; mine experience or mine
14 education or mine training and instructional experience. I
15 think both are necessary.

16 I've gone through all kinds of instructional
17 experience, my people have and I've taught it myself in the
18 last three years. A certain amount of that is necessary.
19 You need a good instructor. In fact this whole thing is
20 really meaningless if you don't get people who convey the
21 message, inspire the trainees, keep them awake so that they
22 can get all that together, and get feedback. Otherwise the
23 entire requirement is, means nothing at all.

24 And so in general in closing, I'd say that we
25 believe that a structure is necessary for the fundamentals.

1 The fundamentals should be communicated, at least a certain
2 portion of them, before a new miner is allowed to work.
3 That refresher training should be exactly that. It should
4 cover the important things that a miner needs to know to
5 stay alive. And that especially the people who administer
6 this kind of training should be some how certificated or
7 judged worthy or educated or meet some minimum requirement
8 or minimum judgement that they can first of all cover the
9 subject matter, and secondly, do it in a meaningful matter.

10 Thank you.

11 CHAIRPERSON ALEJANDRO: Mr. Niesen, I have a
12 couple of follow up questions and other members of the panel
13 may also have a couple of questions.

14 Earlier in your remarks you made some reference to
15 the fact that, you know, there's this push for site specific
16 training and you indicated some concern with the idea that,
17 I mean, as miners may move from one to site to other, if you
18 get too mine specific then they may be ill prepared for the
19 hazards at their new mine site.

20 Could you expand on that a little bit and
21 particularly what impact that concern should have on any
22 requirements that we may put in, in part 46?

23 MR. NIESEN: Okay. I think in the mining industry
24 and in all industries as I said before a basic orientation
25 or training in the basic subject matter where the main

1 hazards, however you'd like to phrase it, is necessary.

2 In addition to that, as I said that's a starting
3 point. In addition to that site specific or mine specific
4 or task specific training should be given and that's an
5 ongoing thing I think.

6 It is under the administration of CAL OSHA's
7 training requirements and that has to be done mine by mine.
8 I think the basic subject matter in part 48 with which I'm
9 most familiar is a transferable knowledge. Mine specific
10 training is not going to be.

11 So that the basic building blocks that go along
12 which is a certificate are going to be generally applicable
13 in a lot of areas, a lot of mine sites. And so that should
14 be retained.

15 The mine specifics portion of it which is required
16 now by part 48 but I hope that's a very basic starting point
17 is an ongoing thing. And when a miner transfer that is
18 going to have to be started again or redone at the new mine
19 site even between companies. Every mine site is different.

20 In fact every mine site changes from one month to
21 the next as we all know. And so that is going to have to be
22 somehow addressed when a miner changes jobs, I think now
23 there is a requirement in part 48 for an experienced, a
24 person who transfers, the training requirements are less,
25 supposedly he already had his basic training done but he's

1 going to get new training at a new site. I think that's
2 perfectly good concept.

3 CHAIRPERSON ALEJANDRO: But you're not saying that
4 for the 24 hours of new miner training that's required that,
5 I mean, site specific training cannot be used in part to
6 satisfy that 24 hour requirement?

7 MR. NIESEN: No, that should be included in that
8 24 hour --

9 CHAIRPERSON ALEJANDRO: Okay.

10 MR. NIESEN: -- requirement. Yeah, I think it is
11 now and I think it is a valuable thing. Yeah.

12 CHAIRPERSON ALEJANDRO: Okay. Okay. And one
13 other thing that you said. You referenced that the approval
14 process of training plans, approval by MSHA, and you
15 indicated, I wasn't really quite sure what you were saying
16 about the, you know, the current approval process under part
17 48 and what your recommendations might be for our new
18 training regulation.

19 MR. NIESEN: Okay, as I understand it now each
20 mine has to submit a training plan to be approved by the
21 local MSHA office --

22 CHAIRPERSON ALEJANDRO: Right.

23 MR. NIESEN: -- specific office. I've not found
24 that to be, first of all carried out, and secondly, very
25 effective.

1 CAL OSHA has a performance oriented thing that you
2 have to have a training plan devised for your particular
3 operation. I think it would be a good idea maybe, well, or
4 acceptable I guess, to give a little bit more room there for
5 individual operators to develop their own training plans
6 which include the basic building blocks again but
7 necessarily have them approved specifically. They're there,
8 they should be on the site for an inspector.

9 Certainly they can be challenged or modified by,
10 by whatever it is necessary. But to check in with MSHA
11 every time you change, or change instructors and I believe
12 that's being changed now. I'm not sure.

13 I think it's superfluous. I think it's not done -
14 -

15 CHAIRPERSON ALEJANDRO: So you, I mean your
16 experience has been that MSHA approval so to speak hasn't
17 really added much value to the process?

18 MR. NIESEN: Not specific. The frame work is
19 there. If they meet the frame during an inspection I think
20 that should be adequate.

21 CHAIRPERSON ALEJANDRO: Is that because the people
22 who are doing the reviewing of the plans maybe don't have
23 the expertise or the experience to really give good feedback
24 to an operator or you think that, you know, mine operators
25 should have the ability to devise their plans and if they're

1 grossly inadequate, I mean, an inspector could make that
2 determination during a regular inspection?

3 MR. NIESEN: Yeah, I have no doubt about the
4 expertise of the people who review the plans but then you're
5 reviewing a plan, you're not reviewing the whole situation.

6 CHAIRPERSON ALEJANDRO: The implementation of the
7 plan?

8 MR. NIESEN: Probably a mine operator and I'll
9 certainly say that mine operators and mine employees know
10 their business best and if they have certain guidelines
11 which are already there, to develop a plan that fits their
12 site and be open to inspection, I wouldn't think that
13 anymore would be necessary.

14 I don't mean to imply that MSHA reviewers don't
15 know a good plan when they see it, but a plan is only a plan
16 --

17 CHAIRPERSON ALEJANDRO: Okay.

18 MR. NIESEN: -- when it's on paper.

19 CHAIRPERSON ALEJANDRO: Okay. Do you have --

20 MR. BRELAND: Mr. Niesen, just to follow up on a
21 couple things and make sure I understood what you were
22 suggesting.

23 When you talked about the basic requirements being
24 covered, some of the issues that have been brought up to us
25 before like the requirement to teach explosives for example

1 in sand and gravel, some of those things of that nature that
2 might not apply certainly to that particular mine site; are
3 you saying that you still think that should be a basic
4 requirement because they may go to a mine that could have
5 that?

6 MR. NIESEN: I'm sorry, my, explosive, did use --

7 MR. BRELAND: Well you said the minimum subjects.

8 MR. NIESEN: Okay.

9 MR. BRELAND: That are in the present Part 48, you
10 know, carrying it, I think is what I understood you to say
11 and then you talked some about the training plans being more
12 flexible and site specific. So I guess I just want to make
13 sure I understood what you were, you were suggesting.

14 MR. NIESEN: Okay, that's a good example because I
15 also regulate explosive licensing in California so I'm
16 familiar with the subject matter and it's not always used.
17 You're right.

18 It takes very little time to include that or
19 mention it at least or mention that there is such an animal.
20 What the local requirements are under general hazard
21 training. If an explosive operation becomes part of your
22 mine operation, at a mine you're working at; certainly you
23 need more.

24 There are certain subject matters which I think
25 can be minimized and I think there's room in the

1 nomenclature at least of part 48 for a lot of flexibility.
2 Hazards training may or may not included explosives. If
3 it's not used there, then not much time should be spent on
4 it. Certainly we don't teach self rescuer for service
5 operations.

6 I think, as I read it, and I'm an old bureaucrat,
7 forgive me, there's a lot of room in there for
8 interpretation so long as the enforcement doesn't get picky.
9 Now I've heard that think, too, for 25 years.

10 MR. BRELAND: Uh-huh.

11 MR. NIESEN: Against me, too. Hard to believe I
12 know, but --

13 And so the enforcement makes the rule also. But I
14 think there's enough room in there for mine operators to
15 include some of the basic things that, that kill mines and
16 tailor them to their operation. It certainly is with 3203.
17 I think there's enough room in there in part 48.

18 I don't believe, I think the subject matter should
19 be mentioned. I think there should be certain orientations,
20 I'm aware that it's communicated that these things exist
21 because the transferability of the specific. At some sand
22 and gravel mines in California do use explosives and where
23 that, the basic orientation to a new miner should include a
24 certain amount because of this universal applicability of
25 the training proof.

1 How much is going to depend I think on the
2 operators' judgment and the conditions at a particular mine.
3 But certain subject matters I believe still should be
4 covered, and maybe minimally but at least covered.

5 MR. BRELAND: Now, well to follow up on that one
6 problem could be that the person if you have certified to
7 instruct at a mine site may not have the expertise in some
8 of those, that type of subject material that would, couldn't
9 do much more than an overview of some general stuff, so that
10 might have been provided by somebody, you know. So I guess
11 again the issue is when we're looking at list of basic
12 subjects, should there be a caveats for a subject that
13 doesn't apply to a mine operator or a mine specific
14 operation?

15 MR. NIESEN: I don't see any harm in giving them
16 some room --

17 MR. BRELAND: Okay.

18 MR. NIESEN: -- if that's what you're looking for.
19 Yeah, because that's, that's going to be true all, no single
20 instructor, no single course is going to cover everything
21 anyway.

22 MR. BRELAND: Okay.

23 MR. NIESEN: That's --

24 MR. BRELAND: One other thing you talked about was
25 it sounded it you believed the minimum of eight hours and

1 preferably 16 hours was that prior to actual starting on the
2 assigned work and the other to follow up with that do you
3 have some sort of time limit you think is reasonable to
4 complete a 24 hours for a new miner?

5 MR. NIESEN: I think that, in my personal opinion,
6 16 hours for service new miner is enough, not too much. I
7 think that should be given fairly soon. I'm, I am not for
8 having it wait six months because that miner is out there
9 exposed to the entire mine site, perhaps a few days. If
10 this training is necessary at all, why wait. The miner is
11 exposed to hazard, if he's not prepared to deal with the
12 hazard then he's going to be at risk. And so really don't
13 think that a long period is wise.

14 MR. BRELAND: Okay. And I want to make sure I
15 really understood on the record keeping, you're suggesting
16 that all records of training for annual refresher, new
17 miner, and such be kept at the mine site, somewhere at the
18 mine site?

19 MR. NIESEN: That's what I believe. Maybe I'm
20 totally in the dark here, I don't see that they're big. The
21 records that I've seen for CAL OSHA, that's one of the
22 comments or one of the problems there, can be fit in a very
23 small book. They don't have to be huge.

24 From what I've seen at mine sites the records of
25 initial training and refresher training and the certificates

1 are evidence certainly for, outward evidence at least,
2 copies of those things really don't take up much room.

3 I know it's another record keeping requirement but
4 the alternative is to keep them somewhere else and an
5 inspector shows up and says okay show me the training on
6 this person who's involved in this accident, they're not
7 there, they have to be gotten somewhere, the mine operator's
8 time is wasted, the inspector's time is wasted.

9 Sometimes there are misunderstandings. The
10 citation gets issued because they're not there. It ends up
11 in some sort of litigation. I've been through literally
12 dozens of these things with CAL OSHA. It's
13 counterproductive.

14 And so if the records are there on site and
15 they're pertinent, it's over and done with right there and
16 you're on. And for that reason alone I think they should be
17 kept on the site.

18 MR. BRELAND: Okay. Thank you. And then on the
19 certification of instructors, you were suggesting that there
20 be a development of minimum standards for qualifications.
21 Would that be, you talked some about a training plan having
22 a basic outline and that it should be at mine site, mine
23 specific? Were you also proposing that there be a like a
24 list of things that would be required for minimal background
25 and experience and education for instructors?

1 MR. NIESEN: Well this is more less MSHA's
2 training requirement and MSHA has a standard of sort at
3 least now. I think and I guess it's really not codified and
4 maybe it doesn't have to be. But there should be some
5 investigation into a trainer's basic knowledge which is his
6 mining instruction or experience, and whether or not he has
7 any kind of experience or training in how to deliver that
8 knowledge.

9 And I think it's done now, perhaps what we have is
10 adequate. The certificate is issued as I understand it and
11 I have one, after an evaluation of these particular subject
12 areas, one good thing about the, I guess the broad
13 parameters of that particular thing is that anybody can
14 become an instructor.

15 If you've got a good miner who can handle it, who
16 wants to do it, and is properly grounded in experience and
17 had been given a few pointers on how to deliver
18 instructional sessions, that miner can become an instructor
19 now. I see no problem with that. I don't think that you
20 have to go to school to be an instructor, in fact that may
21 even restrict your ability. But there should be a system by
22 which you are qualified or certified or whatever word you
23 would like to put it, based on what you know and how you can
24 deliver it.

25 Now maybe the one we have, the system we've got

1 now is perfectly adequate. I'm not suggesting any new
2 parameters be put on that.

3 MR. BRELAND: Okay, thank you. I just wanted to
4 make sure I understood. Thank you.

5 CHAIRPERSON ALEJANDRO: Do you have a question?

6 MR. BURNS: Yeah, I do.

7 Did you state that OSHA or CAL OSHA has training
8 requirements, is that correct?

9 MR. NIESEN: I can only speak for CAL OSHA and
10 that's in California, that's what's enforced. Yeah, we do.

11 MR. BURNS: And do you evaluate that training or
12 do you, I mean, do you, is there an enforcement mechanism
13 that, in the statute?

14 MR. NIESEN: Yeah. California Code of Regulations
15 are what's called the California Safety Orders and section
16 3203(a)7 is a training requirement and it is a performance
17 oriented standard.

18 And this came into effect in its present form in
19 1991. That any employer must have a written training
20 program. It doesn't have to be approved by anybody in
21 advance, but it must be written and in place at anyplace of
22 employment whether or not you've got one or more employees.

23 And, that training program as we normally refer to
24 as a training program, must address the hazards encountered
25 by employees at that particular business or job site. That

1 there be certain training given at certain intervals and the
2 training is not always, training intervals of the subject
3 matter is not dictated, it's left up to the individual
4 industry because it's a very broad standard. And, that
5 records of that training must be kept.

6 Now there are certain exceptions for small
7 employers about record keeping, but in general those are the
8 requirements of the California training regulation.

9 MR. BURNS: So you would, your inspectors would be
10 in the mines and evaluating those training records, is that
11 correct?

12 MR. NIESEN: My safety unit which also inspects
13 mines as does MSHA now, does at least by policy inspect each
14 employer including mines for an adequate training policy.
15 Now if the mine operator has chosen to do MSHA's Part 48
16 training, certificated, and so forth like that; we accept
17 that as satisfying CAL OSHA's training requirement at mine
18 sites.

19 MR. BURNS: What about, what about for the
20 industries present here today?

21 MR. NIESEN: I'm sorry, I'm --

22 MR. BURNS: What about for the industries present
23 here today that may not follow Part 48 but they're doing
24 other training, how do you evaluate that?

25 MR. NIESEN: We would probably look at that as we

1 do in any other industry, however, we might look at it a
2 little bit more closely because they are in the mining
3 community, we have another standard which although it's not
4 enforced is still law.

5 Let me say this that I know quite a few, what I
6 call progressive sand and gravel operators who exceed part
7 48 but if the training program addresses the hazards to
8 which the employees are exposed is in written structured
9 form and is faithfully administered then they are in
10 compliance.

11 CHAIRPERSON ALEJANDRO: How, you indicated that,
12 you know, a paper review of a program is not going to tell
13 you very much or if anything about how good it is in its
14 implementation. Do you all do some kind of evaluation of
15 how well those training programs are administered, and if
16 so, I mean, how would you go about looking at that?

17 MR. NIESEN: The basic regulation for training
18 program which is 3203 has seven parts. Each part of that
19 thing must be in writing in general. There are a couple of
20 exceptions.

21 It addresses who is in charge of the training or
22 the safety effort by name and position, what system there is
23 for self-inspection and the uncovering of hazards on any job
24 site, a system of correction of those hazards, and in-house
25 investigation, accident investigation procedure, a way to

1 convey information to and from employees about safety and
2 health matters and, how it is enforced internally, and the
3 training requirement. I think that's seven.

4 We look for the form of any employers' IPP we call
5 it, injury and illness prevention program. We weren't
6 satisfied with safety program we had to add more syllables
7 in there.

8 In general for that structure and its
9 applicability. Normally, or a lot of times we'll get
10 involved in this with accident investigations. We will look
11 into the circumstances surrounding the accident and we will
12 go immediately to the training records to find out if that
13 employee was properly and thoroughly trained in the
14 operation. If it's not it is going to result in a citation
15 probably for the accident and for the lack of training
16 program.

17 This has been the most, single most cited safety
18 order in CAL OSHA's history, especially since 1991, its
19 inception, a lot of controversy.

20 To me, personally, and I've been around a long
21 time, it is the single or it could be the single most
22 effective regulation for the safety and health of workers
23 period, if properly administered and that's a big if. And
24 the same thing with mine training, if it's not properly
25 administered, faithfully administered, it is of no value.

1 But we do rugously enforce it. We look for
2 structure, it's only dictated by those broad seven
3 performance oriented parameters. But we look at it in
4 detail in almost every inspection we make in the mining
5 industry and out.

6 MR. BURNS: Could you, could you give me the full
7 cite for that standard? I have 3203 but --

8 MR. NIESEN: I'll give you a copy of it if you've
9 got a copy machine. It's CCR -- 8 CCR Title 8 California
10 Code of Regulations 3203.

11 MR. BURNS: I should be able to get that off the
12 Internet.

13 MR. NIESEN: I've got one. You can get it off the
14 Internet, I've got on here in my, I'll give it to you for
15 free.

16 MR. BURNS: Okay. I'll accept that.

17 MR. NIESEN: But, yeah it's been in effect since
18 July 1st, 1991, and I say it's one of the most
19 controversial, one of the most cited section, but I think
20 also one of the most effective in the long run.

21 MR. BURNS: Okay. I can get a copy out here at
22 the desk, I appreciate it.

23 Did you also indicate that, you gave the example
24 of the logging industry and they provide anywhere from one
25 hour to two days of training before they start work

1 depending upon the operation, is that correct?

2 MR. NIESEN: Yeah. Now this training requirement
3 in 3203(a)7 does not specify any particular time --

4 MR. BURNS: Okay.

5 MR. NIESEN: -- nor subject matter. But, it is
6 enforced and I've had 25 years of enforcement with CAL OSHA
7 in all industries. Logging and construction were my
8 specialties.

9 That the training length is going to vary
10 according to the hazard of the industry, the complexity of
11 the industry, and so forth. And the problem with not, a
12 non-specification standard, performance standard from an
13 enforcement perspective is that your opinion as an inspector
14 may differ from the employer's perspective, especially if it
15 comes down to a fatality or something like that.

16 It gives rise to a lot of citation which are not
17 always upheld and a lot of litigation at the Appeals level,
18 that is necessary I guess with a performance oriented
19 broadly applied standard.

20 But we look at the industry, we look at the
21 hazards, look at the situation, and then we look at the
22 amount and subject matter of training; and make a judgment
23 on whether or not the standard was complied with or not.

24 MR. BURNS: Okay. The other question I had for
25 you, this comes up a lot of the other meetings, the standard

1 gravel and aggregates industry in a lot of cases they are
2 very integrated companies. They have, they go right up
3 through the construction area. But you also have workers go
4 back and forth between construction and aggregates.

5 Does, do you take that into account, I mean, if
6 you have someone coming from the construction industry into
7 the mining industry and they have, perhaps says he's got, he
8 or she has 20 years of experience working around bulldozers,
9 all kinds of equipment; it seems that that person may not
10 need as much training as some person right out of high
11 school or college that has no experience.

12 Is that taken into account in your performance --

13 MR. NIESEN: That's a good point. If you have a
14 person who's a heavy equipment operator, and has had
15 evidence of training somewhere, experience and I hate to say
16 this because I'm old and I've got a lot of it, it's not
17 necessarily a good trainer.

18 MR. BURNS: Yeah, might not be good experience.

19 MR. NIESEN: That's right. I've talked to a lot
20 of people who had all their fingers and toes and eyes as
21 matter of luck or a lot of angels, whatever way you like to
22 go.

23 And so, some habits learned from experience are
24 bad. I've got two. I'm not even going to tell you what
25 they are. But, I don't know, that's a hard question to

1 answer.

2 If you have had certain basic training in heavy
3 equipment which is used at another site, certainly you don't
4 need to be put to sleep by starting at the bottom. I'm not
5 a good enough administrator to figure out exactly how to
6 word that in a rule.

7 But, yeah, there could be some exceptions to that
8 especially among industries that trade people or among like
9 I say large industries who have sand and gravel operations
10 and construction. I know of several, and the ones I know
11 of, Granite, Tikert (ph); a lot of those operators have a
12 pretty good internal program for taking care of that. How
13 to codify it, I'm not sure.

14 MR. BURNS: Yeah, I appreciate that. I'm trying
15 to figure out how to codify that too.

16 MR. NIESEN: Better you than me.

17 MR. BURNS: That's all the questions I have for
18 you. I don't know if Roz has anything.

19 MS. FONTAINE: No.

20 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
21 Niesen.

22 MR. NIESEN: Thank you.

23 CHAIRPERSON ALEJANDRO: The next speaker that we
24 have on our list is Tony Serpas from Granite Rock Company.

25 STATEMENT OF MR. TONY SERPAS

Heritage Reporting Corporation
(202) 628-4888

1 MR. SERPAS: Good morning. My name is Tony
2 Serpas, spelled, T-O-N-Y, S-E-R-P-A-S. I'm manager for
3 Safety and Health Services for Granite Rock Company. Our
4 main office is located in Wattsonville, California;
5 approximately 100 miles south of San Francisco.

6 We very much appreciate the opportunity to speak
7 on this very important matter.

8 Granite Rock is a medium sized business, family
9 owned, supplying building materials to the south bay region.
10 We have a crushed granite operation that's been in
11 continuance operation since before 1900. Currently owned by
12 the company since it was incorporated February 14th, 1900.

13 At this mine site we employee approximately 65 to
14 75 people throughout the year. We also have two additional
15 sand mines, one sand and gravel pit, and one portable
16 crushing operation. Each of these mines, additional mines
17 employee anywhere from two to eight people.

18 Our philosophy as defined in our nine corporate
19 objectives requires safety above all else and constant
20 improvement. Granite Rock has won the Malcolm Baldrige
21 National Quality Award and also California's equivalent the
22 Golden Award. At Granite Rock we have provided part 48
23 training for all of our miners.

24 I'd like to address the points as Mr. Niesen did
25 as were requested in the Federal Register announcement. But

1 I'd like to say first that the views that I'm going to
2 express are primarily those of myself and Granite Rock.

3 The first issue that was listed was under
4 definitions of new miner and experienced miner.

5 In our particular situation, it's my experience at
6 least as safety and health manager for Granite Rock for nine
7 years, that the majority of our people come to us either
8 from construction or another industry. So therefore all of
9 our people are new miners to us.

10 But to answer your question, yes. I think we need
11 to have definitions defined clearly so that we understand
12 how they should be applied.

13 And I would suggest that the definition of a new
14 miner is a person that has not received the required new
15 miner MSHA acceptable training as defined in section 152
16 subparagraph (a) sub-2 of the Federal Mine and Safety Health
17 Act of 1977 and mine site work experience of less than one
18 year.

19 Of course, an experienced miner would be a person
20 that has received the training as stated and has had more
21 than one year of experience.

22 In addition thought I would suggest that any
23 experienced miner that is not current with his eight hour
24 annual refresher training as required in section 115(a)3 of
25 the Federal Mine Safety and Health Act of 1977 and any

1 appropriate task training for the task to be performed that
2 he was hired for, should receive the appropriate task
3 training before performing work and receive an eight hour
4 annual refresher training within 30 days from the date the
5 individual starts work at this new mine site.

6 You also asked under new miner training, which
7 training subjects should be taught before a new
8 miner is assigned work even if the work is done
9 under close supervision.

10 And again with the exception of first aid training
11 as spoken to by Mr. Niesen, I believe that all subjects
12 listed in section 115(a)2 of the Federal Mine Safety and
13 Health Act should be taught before a new miner is assigned
14 work.

15 Currently Granite Rock trains every miner in basic
16 first aid and CPR. This training is conducted by a vendor
17 who provides a certified Red Cross instructor for basic
18 first aid and CPR.

19 Should training for inexperienced miners be given
20 all at once or over a period of time such as
21 several weeks or months.

22 Now we believe that ideally as soon as the
23 required training can be accomplished the better. However,
24 we believe that at least at a minimum a block of six to
25 eight hours should be completed before any work is started

1 with the remainder of the required training accomplished
2 within 60 days.

3 Should this decision, referring to when and how to
4 train a new miner, be left to the discretion of
5 the mine operator.

6 Well, again, we feel it's best to perform the
7 training before a person starts to work but we believe also
8 that there needs to be some type of flexibility to determine
9 the best way to accomplish this training for the individual
10 within the time limitations as listed above. That is within
11 the 60 days.

12 This is because today's technology provides many
13 forms of acceptable training platforms whether it be now in
14 the new computer/electronic age, videos, one on one
15 training, or some other form. We believe that we're in the
16 best position really to determine the most effective type of
17 training and method that would suit each of our individual
18 operations.

19 As I said we have a portable plant that has five
20 people. Their office is a pickup truck of the supervisor
21 going around to different locations. Of course, at our
22 larger mining site we have more opportunity to do other
23 things.

24 You also asked what are the advantages and
25 disadvantages of spreading training over an

1 extended period of time.

2 Well I believe first of all one advantage is to
3 allow the miner to absorb the training a little bit at a
4 time to let the individual comprehend what he's doing.

5 Also it gives flexibility to the operator to be
6 able to accomplish this training.

7 The big disadvantage to that, of course, is that a
8 new miner may encounter a hazard that he has not been
9 trained for or not completing the training as required.

10 It was asked should supervisors be subject to the
11 same training requirements as miners.

12 Of course. Supervisors should receive the
13 training as well as other safety related topics such as how
14 to conduct effective safety meetings, how to make individual
15 safety evaluations, and how to motivate people to work
16 safely among other items.

17 Should training be required whenever a miner
18 receives a work assignment that involves a new and
19 unfamiliar task.

20 I think that goes without saying. Again any new
21 task, the individual should be aware of the hazards
22 associated with that new task.

23 Task training, should specific subject areas be
24 covered during annual refresher training, if so
25 what subject areas should be included.

1 I agree with Mr. Niesen, that the required subject
2 areas should be designed to provide hazard recognition and
3 safe working procedures that are appropriate to the task to
4 be performed in individual mine sites, particular to that
5 mine site.

6 In reference to annual refresher training, can the
7 eight hours of annual refresher training required
8 by the Mine Act be complete in segments of
9 training less than 30 minutes.

10 Yes, I believe that there are some topics that in
11 fact can be trained in less than 30 minutes, but it depends
12 on the topic and the method of instruction. Again whether
13 it's a video presentation, a computer interactive media, a
14 one on one training by a trainer; but whatever the training
15 method is used it must be effective to educate and modify
16 the individual's behavior regarding health and safety.

17 In regard to the training certificates, should the
18 records of training be kept by the mine operated
19 mine site or should the regulation allow records
20 to be kept at other locations.

21 In our operation we have small operations and
22 large operations. And I personally would like to have
23 flexibility to maintain the records at our main office
24 facility.

25 I understand what Mr. Niesen was saying about

1 having them available, but particularly with our new
2 electronic age all of our locations are tied in with one
3 another. It doesn't take very long to get a, the required
4 information to an inspector at such time of the requirement.

5 Again, if the mine office is a pickup, even though
6 you might have current training records, how far and how
7 much information can you keep in the pickup. But I believe
8 that the response is that if the operator can produce the
9 records in a timely manner to an authorized representative
10 or to an associate safety engineer, really there shouldn't
11 be any reason why they can't maintained at another location
12 other than at the mine site although we do that currently.

13 The qualification of instructors, should there be
14 a minimum qualification for persons to conduct
15 miner training, if so what kind of qualifications
16 are appropriate.

17 Again, I agree with Mr. Niesen that the most
18 important part of training programs, of trainers is that
19 they need to be effective to provide all the required
20 information, to instruct and motivate the individual to
21 understand all health and safety concerns of the individual
22 task and individual mine site.

23 One of the largest factors in that of course is
24 the instructor. And again I'm not sure how you quantify or
25 regulate, what makes that instructor a competent person.

1 Whether it be experience. Whether it be going to a class.
2 I think I agree a lot with California's standpoint, that the
3 performance aspect is really more important than the paper
4 qualifications that a person may have.

5 As I stated earlier there are now many training
6 platforms available including the state funded programs,
7 contract vendors. I do my own part 48 training. I have
8 been certified as a MSHA instructor, gone through the
9 program. And I believe that the mine operator really is in,
10 probably, the best position to establish the quality of that
11 training. At least he should be in a position to make sure
12 that that's training, that's for his best interest as well
13 as the interest of his people.

14 Another point I think that needs to be addressed
15 is that even though we might have a training program with
16 certain designated people as certified instructors of
17 training, I know that even though I might have been involved
18 or I have been involved in mine training for about 12 years
19 and in safety training in different forms for over 30 years,
20 that there are some specific jobs at the mine site that I'm
21 not really an expert at.

22 I have a good basic understanding of the hazards
23 there but I do have at most of my mine sites some people
24 that have as many as 20 to 30 years doing a particular job
25 and if that individual is motivated and has a desire to

1 share some of that experience. I think it could be a lot
2 better received by the new miner than somebody like myself
3 standing up there and trying to tell them something that I'm
4 really not an expert on.

5 And that's basically my comments. And, again, we
6 appreciate the time and the ability to, to give our input.
7 We think it's very important particularly that the, since
8 the programs and the concept is going to start to be
9 enforced that we understand what is going to be required and
10 how we have to, or what we have to do to meet the
11 requirements of the law for an enforcement standpoint.

12 Thank you.

13 CHAIRPERSON ALEJANDRO: Mr. Serpas, I have a
14 couple of follow-ups and others may as well.

15 You, one of the last things that you said was the
16 fact that you've got people at your operations who have got
17 expertise and experience and, you know, specific areas and
18 although you are the MSHA approved trainer, I mean, there's
19 other people who have got much, you know, greater in depth
20 knowledge of topics that you may want to cover as part of
21 your training.

22 Do you have any recommendations or suggestions as
23 far as how we might handle that? I mean, are you saying
24 that those people should be under different kinds of
25 requirements as far as approval of instructor or do you have

1 any recommendations as to how that might be handled?

2 MR. SERPAS: Again, that's a difficult point to
3 codify. I think first of all it has to be done on an
4 individual aspect because, just because I might have an
5 electrician that has 30 years of experience if he doesn't
6 want to do the training he's not going to be an effective
7 trainer.

8 CHAIRPERSON ALEJANDRO: Right.

9 MR. SERPAS: You know, so it almost particularly
10 people that I would use incidentally in my training program
11 I think have to be taken on a case by case basis. And I
12 don't think it's necessarily important for that person to go
13 through a 40 hour instructor training course to be able to
14 impart some of that valuable knowledge and experience that
15 he's had or she has had --

16 CHAIRPERSON ALEJANDRO: Uh-huh.

17 MR. SERPAS: -- to impart that to the new miners.
18 But I think the attitude of the individual, his demonstrated
19 concern for safety performance, and safety record really
20 establish his ability to be able to do that.

21 CHAIRPERSON ALEJANDRO: Uh-huh.

22 MR. SERPAS: And I best can do that by knowing the
23 individual, by talking to the individual, and by really
24 knowing if, you know, let him do it once and see how he does
25 and then go from there.

1 And again I don't know how you codify that.

2 CHAIRPERSON ALEJANDRO: Okay. As far as record
3 keeping, you advocated some flexibility as far as where
4 those records might be kept and you indicated that, you
5 know, centralized location might work if, and that you would
6 be able to produce records --

7 MR. SERPAS: That's right.

8 CHAIRPERSON ALEJANDRO: -- fairly quickly upon
9 request. I mean, we've heard comments along these lines as
10 we've worked our way across the country that, you know, I
11 mean, a lot of people have gone to computerized record
12 keeping, et cetera.

13 If in fact we were to do something like that, I
14 mean require records to be kept centrally but require that
15 they be presented or made available within a certain minimum
16 period of time, I mean, how quickly at your operation, I
17 mean, if someone were to ask for those records could they be
18 made available?

19 MR. SERPAS: With exception of our portable
20 operation and one of our newer mine sites, all of our mine
21 sites are networked to the main office. And it would be
22 just a matter of minutes --

23 CHAIRPERSON ALEJANDRO: By computer?

24 MR. SERPAS: -- to e-mail a file.

25 CHAIRPERSON ALEJANDRO: Okay. And then finally

1 you didn't touch on this but, and if you, you know, I don't
2 want to put you on the spot, but as far as training program
3 approval, I mean as you may know section 115 requires that a
4 training program be approved by the Secretary of Labor and I
5 just wanted to get your feelings on how that might, I mean,
6 what a good approach to that approval process might be.

7 MR. SERPAS: Well, I think that there has to be a
8 starting point and that starting point could be providing a
9 written plan to the MSHA for review.

10 But, again, I think that the employer needs the
11 flexibility to be able to modify and change that plan as
12 mine site conditions change, as operation change within the
13 mine site. So I think that there has to be an ability to
14 have both.

15 CHAIRPERSON ALEJANDRO: So, you're, I mean, you're
16 saying subsequent revisions, I mean, we need to be a little
17 bit more flexibility on what process there is --

18 MR. SERPAS: That's my opinion --

19 CHAIRPERSON ALEJANDRO: -- as the training plan
20 needs to be changed?

21 MR. SERPAS: Right.

22 CHAIRPERSON ALEJANDRO: Okay. Rod?

23 MR. BRELAND: Yeah, I had a couple of things.

24 CHAIRPERSON ALEJANDRO: Or Kevin?

25 MR. BRELAND: Just a follow-up on that line of

1 thought with the training plan.

2 If you were, you talked about having the records
3 kept at a main office, would you propose the same thing with
4 the training plan? Any why I'm asking is it's an issue
5 everybody is going to need to deal with but if somebody was
6 to go to the mine site and look and see if your training
7 plan for the specific mine site was relevant for that mine
8 site, would you want to have one of those at the mine?

9 MR. SERPAS: Well, I would but again right now
10 that's almost a moot point because I am the MSHA trainer.

11 MR. BRELAND: Uh-huh.

12 MR. SERPAS: And I do our part 48 training for all
13 of our mine sites. So, of course I have that with me and I
14 have it for each, each mine site.

15 MR. BRELAND: That was another question I was
16 going to ask. It sounds like you have probably
17 approximately 100 employees all together.

18 MR. SERPAS: Well, right now we're probably
19 between all of our six actual locations, about 135.

20 MR. BRELAND: Okay. And, but you're the only
21 person certified as an instructor.

22 MR. SERPAS: At the current time.

23 MR. BRELAND: Would you envision, you mentioned
24 some people at the sites and it would be understandable that
25 it would have specific skills and abilities to teach, but

1 would be thinking that under a proposed regulation maybe you
2 should have somebody at each site certified or would that be
3 what you would want to do?

4 MR. SERPAS: We've talked about that's a
5 possibility. Again it's a determinant on the people at the
6 mine site. First of all their interest and their desire to
7 want to do this and then getting them qualified.

8 MR. BRELAND: Yeah. And then the issue on
9 competent instructors is going to be a big one, I'm sure
10 qualified however you would want to define that.

11 But also an issue of if this person is well
12 experienced and qualified at least by the background and
13 training, again people are talking about may not make them a
14 good trainer.

15 Do you have any suggestions on remedies for that
16 if it's found they can't demonstrate that they're not good
17 trainers?

18 MR. SERPAS: Well probably in that situation
19 they'd fall back to plan A and that I'd be doing it till we
20 could find somebody else.

21 MR. BRELAND: Or they would have to have to some
22 sort of follow up training or --

23 MR. SERPAS: Absolutely. I mean, again I think
24 Mr, Niesen really has the key that that could best
25 demonstrated by the performance and sitting in on their

1 classes and --

2 MR. BRELAND: Okay.

3 MR. SERPAS: -- each one our training sessions are
4 evaluated individually by the participants in our class and
5 their comments and suggestions and how they rate the
6 instructor as well.

7 MR. BRELAND: Okay, that's a good idea. And then
8 one other issue on the record keeping, you said that you
9 thought the less than 30 minutes time frame for some would
10 be good.

11 Were you talking about annual refresher or the
12 type of training that might need to be tracked for record
13 keeping purposes and if so who would you propose doing that?

14 MR. SERPAS: I think that can be established in a
15 simple database.

16 MR. BRELAND: Okay. That's all I have. Thank
17 you.

18 MR. BURNS: I guess you currently do use other
19 people that aren't necessarily qualified based on the, I
20 guess, either they're doing it with your supervision or your
21 --

22 MR. SERPAS: Right now the only other people that
23 --

24 MR. BURNS: You're familiar with their abilities I
25 guess?

1 MR. SERPAS: Not at the current time. The only
2 other people that we use to do training would be somebody
3 from CAL OSHA's Mine and Tunnelling Training Unit to do our
4 part 48 training.

5 MR. BURNS: I mean, that's been suggested at other
6 meetings that certainly there are very good people like what
7 you talked about that you're not just going to turn them
8 loose but that they certainly be able to comment and provide
9 some effective training on something they have, you know,
10 first hand --

11 MR. SERPAS: Right.

12 MR. BURNS: -- knowledge on.

13 MR. SERPAS: First aid is probably the other
14 exception that we do now, we use someone else and again we
15 train all of our people first aid and CPR.

16 MR. BURNS: Do you, does the amount of training
17 that you provide to a new miner vary from, from say your two
18 person sand and gravel to your big quarry?

19 MR. SERPAS: No.

20 MR. BURNS: It's the same --

21 MR. SERPAS: Well they all essentially receive
22 that minimum. There might be some people that need a little
23 bit extra, if they're not an experienced in their task, then
24 their task training might go longer, but all of them receive
25 the minimum of 24 hours.

1 MR. BURNS: No, but I mean, that the, you had
2 mentioned six to eight hours of training before they start
3 some type of work.

4 MR. SERPAS: No, I'm proposing that if you had a
5 regulation or standard --

6 MR. BURNS: Oh.

7 MR. SERPAS: -- that it be directed that way.
8 Normally we try to block out, to start with either an eight
9 or 16 hour to start with and then augment it with the task
10 training.

11 MR. BURNS: Okay. That's all the questions I
12 have.

13 CHAIRPERSON ALEJANDRO: I think Roz has got a
14 couple of questions.

15 MS. FONTAINE: Yes. The agency is responsible for
16 developing a regulatory flexibility analysis to determine
17 the costs and benefits of the proposed rule. Based on your
18 experience could be give me a ballpark figure of what it
19 cost to train your employees at the small mines versus your
20 larger mines?

21 MR. SERPAS: Gosh. I'm not sure I can do that now
22 off the top of my head --

23 MS. FONTAINE: Okay.

24 MR. SERPAS: -- because a lot of it goes into the
25 time that I've developed in putting my training together and

1 the resources that I use in all of our operations. Plus the
2 time, you know, the hourly figure of the individual
3 themselves or herself.

4 MS. FONTAINE: Okay. Would you be willing to
5 submit it at a later date?

6 MR. SERPAS: Sure.

7 MS. FONTAINE: Okay.

8 MR. SERPAS: Give me a card and I'll try to put
9 that together --

10 MS. FONTAINE: I will.

11 MR. SERPAS: -- and send it to you.

12 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
13 Serpas.

14 MR. SERPAS: Thank you.

15 CHAIRPERSON ALEJANDRO: We don't have anyone else
16 signed up to speak but is there anyone out there who would
17 like to -- okay, I think what we're going to do is take a
18 short break and when we come back we'll pick up.

19 One other thing that we will do before we finish
20 is give you short of a short summary of some of the other
21 comments that we've gotten at some of the other meetings
22 just to give you some idea of what, what subjects have been
23 touched on.

24 So why don't we take 15 minutes?

25 (Whereupon, a short recess was taken.)

1 CHAIRPERSON ALEJANDRO: Okay we're going to get
2 started here in a minute or two if you could take your
3 seats.

4 (Pause.)

5 CHAIRPERSON ALEJANDRO: The next speaker that we
6 have on our list is Malcome Driggs from the Operating
7 Engineers Training Trust.

8 STATEMENT OF MR. MALCOLME DRIGGS

9 MR. DRIGGS: Well, good morning, MSHA. I'd like,
10 this will be very brief but I'd like to thank you for this
11 opportunity.

12 One thing I'd like to say I'm in total and
13 complete support of every that Mr. Niesen presented but I do
14 have one, only one suggestion.

15 First of all as you said my name is Malcome Driggs
16 and I'm, have been curriculum coordinator for the
17 International Union of Operating Engineer, the Operating
18 Engineers Training Trust, and served on the CAL OSHA
19 advisory board for many years.

20 One thing seemed to be unanswered and that is how
21 to evaluate these instructors. I think, this is just a
22 small recommendation, but the local community colleges in
23 this area have issued packets for a number of years to
24 evaluate the instructors. And this is done by instructions
25 that are on the packets itself which could be issued by MSHA

1 and it outlines a proxy that is or a person in the class
2 room that is designated by the instructor.

3 And that instructor or that individual then passes
4 these evaluation forms to each individual in the classroom
5 and then that process is evaluated on each one of these
6 forms, put back in the packet and then signed by this
7 individual across the seal and then that in turn would be
8 turned back into MSHA.

9 I personally don't know any better way after my 30
10 years of experience that I've seen performed where you get a
11 more accurate sense of what is happening and of the
12 knowledge that is being imparted and/or the way that that
13 information is being imparted to the students whether they
14 be tradesmen or in any other fashion. Of course, the
15 Operating Engineers Training Trust trains both people in
16 mining, tunnelling, general construction, heavy equipment
17 operations; but we have used this process for some time and
18 find it very, very useful. And then an evaluation is done
19 by the community college and letters sent back to the
20 instructor which gives him an idea of where he can improve.

21 So, I just thought I'd bring that to, to your
22 attention and since Mr. Niesen did such a great job as he
23 usually does for the mining and tunnelling unit here in the
24 State of California, I would again say that I'm in total and
25 complete support of each and everything he said and each and

1 every element he covered.

2 Thank you very much.

3 CHAIRPERSON ALEJANDRO: Mr. Driggs, I have a
4 follow-up question. You indicated that this feedback would
5 go back to the, goes back to the instructor I guess and the
6 idea is that it lets him know areas where he might improve
7 or things that he might change as far as how he goes about
8 giving this training.

9 Do you recommend that more than that should happen
10 if appropriate? I mean, if in fact you've got an instructor
11 who, I mean, it's not a question of you need to tighten up
12 here or, you know, adjust this a little bit but someone who
13 maybe is falling way short of where he or she needs to be,
14 should that information be used for other purposes such --

15 MR. DRIGGS: Well it should also, of course, also
16 be a determining factor in whether or not this person is
17 qualified or should even be teaching at all.

18 CHAIRPERSON ALEJANDRO: Okay.

19 MR. DRIGGS: Granted that is the ultimate judgment
20 involved here but --

21 CHAIRPERSON ALEJANDRO: Does it work like that now
22 ever?

23 MR. DRIGGS: Absolutely.

24 CHAIRPERSON ALEJANDRO: Okay.

25 MR. DRIGGS: Absolutely. But I think that the

1 more often, much more often is winds up being a positive
2 thing rather than a negative thing because remember you
3 already had pre-qualifications in the present standards.

4 So I think some degree of training, like I said, I
5 was in total and complete approval of what Mr. Niesen was
6 saying and that as he said also required some judgement as
7 to whether or not the person was qualified before they ever
8 began. But, all instructors have their high points and
9 their low points.

10 Not, not excluding their high points and low
11 points as the instruction for each class is concerned but
12 also in each element of instruction.

13 So it seems to help in both ways involving that.
14 But I think a good instructor is really a main point
15 whenever teaching a subject matter. Just to have
16 instruction for instruction sake not being done well, many
17 people in this industry sat there and listened to someone
18 who had no ability in instructing and fell asleep and the
19 safety instruction had absolutely no value whatsoever.

20 So it's important and if we're going to move ahead
21 and do something in the interest of safety that's going to
22 work and we're requiring some training then it better be
23 training that works or don't do it at all. And, that can
24 only be done on an ongoing basis rather than a short term
25 basis. And this process seems to have very positive long

1 term affects on instructions and the individual improvement
2 of the instructor.

3 MR. BRELAND: The only question I'd have is on the
4 feedback that did the short term sessions like 30 minutes or
5 less, are you talking about an evaluation form every, every
6 session? Is that what you would be recommending?

7 MR. DRIGGS: Well, I'm going to commit myself on
8 this, this question but I personally think if it's less than
9 an hour why do it.

10 MR. BRELAND: That's fine.

11 MR. DRIGGS: The, the information whether it be
12 lock out, tag out, whether it be conveyer safety, classifier
13 safety; there are a lot of elements here that need to be
14 covered in the interest of safety of the employee and, and
15 if you can't give anymore than or an hour devotion to it I
16 think you're really

17 MR. BRELAND: The only question I'd have is on the
18 feedback if they did the short term sessions, like 30
19 minutes or less, are you talking about an evaluation form
20 for every session? Is that what you would be recommending?

21 MR. DRIGGS: Well, I'm going to commit myself on
22 this question, but I personally thing if it's less than an
23 hour, why do it?

24 MR. BRELAND: That's fine.

25 MR. DRIGGS: The information, whether it be lock-

1 out, tag-out, whether it be conveyor safety, classifier
2 safety, there are a lot of elements here that need to be
3 covered in the interest of safety of the employee and if you
4 can't give any more than an hour devotion to it, I think
5 you're really on the light end. It -- you need to put more
6 work into your curriculum.

7 MR. BRELAND: Okay.

8 MR. DRIGGS: That's my own viewpoint.

9 MR. BRELAND: Okay, thank you.

10 MR. DRIGGS: Thank you.

11 MR. BRELAND: I have no other questions.

12 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
13 Driggs. The next speaker on our list is Peter Ward from
14 Hanson Aggregates.

15 STATEMENT OF MR. PETER WARD

16 MR. WARD: Good morning, I'm Peter Ward. I'm with
17 Hanson Aggregates. That's P-e-t-e-r, W-a-r-d. In spite of
18 the teasing from Kevin I am in fact an American and have a
19 \$95.00 receipt to prove it. Just to let you know why I
20 think we have a voice to listen to on this subject, this
21 year we will accumulate in the region of 15 million work
22 hours. We have 200 locations and 8,000 employees.

23 We produce in excess of 100 million tons. We take
24 training seriously. Our group total case incident rate is
25 around 2.8 and our LTI, I think, is about 1.3. I haven't

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1 got prepared notes, but I wanted to address some of the
2 questions that had come up earlier. I find myself pretty
3 well in agreement with Duane Niesen. I think he had some
4 excellent points and the thing about this meeting is there
5 is no contention. Whatever we have is good and we're trying
6 to work a way to make it better.

7 I'm on the various NSA committees and clearly NSA
8 is part of SEMA, but standing outside that for a minute and
9 speaking as a larger producer, I don't care whether we have
10 Part 46 or 48, we're in compliance either way. Would I
11 prefer a more focused training? Yes, but most of the
12 larger producers are already well in excess of either
13 requirement.

14 Training is the crux of the problem. Whether it's
15 part 46 or Part 48, the same organizations will either be in
16 compliance or they'll be out of compliance. MSHA, to a
17 large extent is responsible through in fact the dual
18 standards of inspection and enforcement between the larger
19 and the smaller operators and that's a point we bring up
20 many times and it's relevant to bring it up now.

21 We typically have 30 to 40 documented hours, 5023.
22 It's appropriate training and it's documented.
23 Qualifications of the trainee is a significant point. The
24 general training, I think, needs to be done by a certified
25 instructor because typically they'll have the communication

1 skill. What I would say is if it was necessary for me to
2 take 80 hours to get my blue card, and I come away worried
3 with how little I know, I think is wrong but MSHA will
4 sanction one-day training sessions to get a blue card. I
5 mean, that's outrageous and it devalues the certification
6 process.

7 Task training may be best carried out by a
8 competent person who may or may not be a certified
9 instructor but in any event, that training should be
10 documented and it should be able to form part of a 5023.
11 Record keeping just to address one that came up, if we had
12 two or three companies it wouldn't really matter but we have
13 over 200 coast to coast. I think that the training records
14 should be on site. We can say you electronically have them
15 at a corporate office.

16 The training, the records, the information should
17 be resident on the site. I think they should be seen as a
18 water tight cohesive unit with the training records
19 available for inspection. We would -- we, in fact, submit
20 our mine training plans. East of the Mississippi they tend
21 to keep them. I understand in California they tend to send
22 them back, but we've got them. If you have a fatality,
23 you're going to have to have the documents. We just assume
24 that it's in force and in fact, we wouldn't care as a
25 corporation whether there was a process of voluntary

1 compliance that you come around and inspect.

2 Once again, it goes back to the dual standards.
3 The smaller operators will always -- not always, will be the
4 ones probably out of compliance but they know it doesn't
5 matter because they'll get cut slack in the event of an
6 inspection. The cost of training was brought up. There is
7 no cost of training. There's a high cost of not training.
8 Our labor burden has been brought down by 40 cents an hour
9 since we have had an aggressive training program.

10 When our TCI was nine, our cost per ton -- cost
11 per hour, beg your pardon, was 55 cents. It's currently
12 less than 12 cents. So we say that an aggressive training
13 plan is a competitive edge, not a cost and we have the
14 documents and we do share them at NSA meetings or anywhere
15 else. And these are four-year progressive records that
16 we're glad to share with anyone that wants to talk about the
17 cost of training.

18 In terms of definitions, close supervision needs
19 to be, I think defined. Is close constant supervision,
20 constant attendance? Duane was right, that a lot of these
21 citations are fought on technicalities and definitions, I
22 think, need to be, you know, clearly spelled out. 48
23 doesn't do a bad job anyway, but if we're going to introduce
24 new ones, I think they need to be understood.

25 I wish I had come better prepared for that but I

1 just wanted to address some questions that had been raised.
2 If I could go off on a slight tangent for one minute to
3 address Duane Niesen's comment on silica. We have in the
4 last 18 months spent \$150,000.00 testing all our locations
5 with outside certified industrial hygienist. We have only
6 found one location out of compliance and that was in a
7 testing lab in Oregon.

8 I believe our industry has a bigger problem
9 proving compliance than it has, in fact, in complying. So I
10 would urge people that haven't actually got into testing yet
11 to get in. The water isn't as cold as you think and the
12 problem isn't as severe as some people would have us
13 believe. And I'll answer any questions.

14 CHAIRPERSON ALEJANDRO: Do you have questions?

15 MR. BRELAND: Yeah. Peter on the issue of the
16 certification, I want to make sure I understood what you
17 were talking about. You said you took 80 hours to become
18 certified and you were opposed to some short circuit one-day
19 session to certify future people.

20 MR. WARD: I am. I think the one-day sessions may
21 be good if they are for refresher but people go to the one-
22 day refreshers and come away with a blue card and you know,
23 I don't claim kin to Einstein but it took me 80 hours to
24 realize how little I knew. If somebody can walk away in one
25 day with a blue card and feel competent to instruct, they're

1 a whole lot brighter than me.

2 MR. BRELAND: I think the present MSHA
3 instructor's course varies I've heard from three days to
4 five days. Does that sound right? Is that what you're
5 talking about?

6 MR. WARD: But there are one day -- Kevin, you and
7 I had this discussion. There are one-day courses where
8 people will walk away with a card.

9 MR. BRELAND: Okay.

10 MR. WARD: And if you want to stamp it out, count
11 on my vote.

12 MR. BRELAND: No, I just wanted to make sure I
13 understood what you were about because there are a lot of, I
14 believe, around the country and it was discussed earlier
15 this morning, some are submitting, you know, resume type
16 background applications for certification and some have been
17 given at least provisional approvals based on that.

18 MR. WARD: Well, the resume type doesn't let you
19 know whether the person has communication skills and I think
20 that should be part of the test.

21 MR. BRELAND: Yeah, I'm not disagreeing with you.
22 Actually, we're just trying to get it out so that it's all
23 considered.

24 MR. WARD: I just feel that if we're going to have
25 certified instructors there ought to be a clear level of

1 what constitutes and what is on that agenda and it goes
2 beyond pure product knowledge. There has to be the ability
3 to deliver that knowledge, impart that knowledge, and that's
4 not always given.

5 MR. BRELAND: Do you think there should be a
6 different level for requirement for those that might have
7 the approval authority to certify others than obviously,
8 those that are just doing some instruction?

9 MR. WARD: Well, that's a good question. Really,
10 if MSHA is going to pass the -- certify the instructors,
11 then I don't think I ought to suggest how MSHA runs its
12 house, but if that was the question.

13 MR. BRELAND: Well, presently we use a lot of --
14 in the country there's a lot of state organizations that do
15 a good job of instructor training and they do some
16 certification in some areas and there are some others
17 around. I guess if you stop and think all of a sudden if we
18 have eight or 10,000 operations that come into some training
19 requirements, there's going to be a definite need for some
20 method of certifying, if that's the requirement,
21 instructors. And I was just asking if you have some ideas
22 on that.

23 MR. WARD: I'd rather come back in writing than
24 just shoot from the hip on that but training is such a
25 serious issue, I'd rather not just give you a knee jerk. If

1 you wish I'll give you some suggestions in writing at a
2 later date.

3 MR. BRELAND: That would be good if you would do
4 that.

5 MR. WARD: And I'll, in fact, go to our 20 safety
6 directors and ask them what they would expect because they
7 are the folks that have to suffer from good or bad, you
8 know, certification levels.

9 MR. BRELAND: Okay.

10 MR. WARD: Give me 60 days, I'll have an answer
11 from our safety directors.

12 MR. BRELAND: Okay, I think Kathy is going to go
13 over our schedules a little but probably the sooner the
14 better on the comments.

15 MR. WARD: Well, I'll be at the Dallas meeting,
16 sir. I'm going to keep turning up like a bad penny, so I'll
17 have something for you then.

18 MR. BRELAND: Okay, thank you.

19 MR. BURNS: I have maybe one long question for
20 you. Your lost time injury rate went from 1.3 to 9.0. They
21 you have some costs.

22 MR. WARD: It went the other way.

23 MR. BURNS: Correct, sorry about that. Sorry
24 about that. How much of that -- because I know that you've
25 done a lot of supervisor training at the same time.

1 MR. WARD: Yeah.

2 MR. BURNS: How much of that reduction, if you
3 can, do you account to the supervisor training?

4 MR. WARD: When I was switched from engineering to
5 the safety I found that most people were blissfully unaware
6 of the laws that govern their trade and they were genuinely
7 offended when MSHA gave them a citation 30 CFR 14.100 that
8 have found that brakes have to work. So instead of sending
9 from the bottom up, we took every superintendent east of the
10 Mississippi, put them on a 40-hour course and had them
11 certified as MSHA instructors.

12 They weren't necessarily equipped with the skills
13 to impart, but at least they knew what was expected. The
14 second year we took the foremen and the next level and each
15 year we cut down through the ranks. And we used primarily
16 North Carolina Department of Labor, which is a federally
17 funded program, probably the best in the country and that's
18 borne out by the fact that 16 states were represented there
19 over the last two years and each state that came in had
20 their own state programs.

21 So North Carolina does have probably the Cadillac
22 program and I'll just run that commercial for Carolina. I
23 mean, it was a good program. It kind of spoiled us for some
24 of the others. But the certification has to be from the top
25 down. Our philosophy has been that we teach the employees

1 the laws that govern their trade and then we hold them
2 accountable. The training, when I say it cut down through
3 the ranks, that's a non-judgmental statement, but in terms
4 of skill levels and education levels, each year we go
5 deeper. We have not yet found a level where Part 5648
6 training has not been valuable. In fact, the lower we went
7 down through the ranks the more rewarding some of that
8 training has been and that has been a surprise to some.

9 You modify the training, you might break it into
10 smaller sessions. Some of those people haven't sat in a
11 classroom in 30 years, and therefore, I think you can break
12 it down into, you know, 30 minute sessions, a smoke break,
13 come back in, just modify it for the audience but there is
14 no level where it isn't valuable.

15 MR. BURNS: Would you be able to submit some of
16 those cost numbers that you talked about?

17 MR. WARD: I'm sure the board will approve it and
18 I will be glad to do that, yes.

19 MR. BURNS: Okay, thanks. That's all the
20 questions I have. I'll probably think of some more for
21 Dallas.

22 MR. WARD: I'll be there.

23 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
24 Ward.

25 MR. WARD: Thank you

1 CHAIRPERSON ALEJANDRO: The next speaker on our
2 list is Danny Lowe from Kaiser Cement.

3 STATEMENT OF MR. DANNY LOWE

4 MR. LOWE: Good morning. My name is Danny Lowe,
5 l-o-w-e, common spelling of Danny, D-a-n-n-y. I appreciate
6 the opportunity to be before this committee to have some
7 input on the proposed Part 46 regulations. Some of my
8 concerns are from my facility, my industry which is one of
9 the ones that, I hate to use the word exempt, because we
10 have never been exempt from the Part 48 regulations. MSHA,
11 however, has been prohibited from enforcing those
12 regulations.

13 Now, I've been at our site for a year and a half,
14 been in the mining industry for about 10 years. I came out
15 of the gold mining industry from Nevada over to California
16 about 18 months ago into an industry that basically took the
17 attitude if MSHA couldn't enforce the regulations, we're not
18 going to do it in its entirety. To my advantage, I have an
19 administration that is very proactive in safety and very
20 supportive from the vice president of operations or the
21 president of our company to our on-site VP of operations to
22 my boss and we set forth to be very aggressive in meeting
23 Part 48 regulations.

24 My concern is when MSHA has announced that they
25 were going to lift the budget rider on enforcement. Some of

1 my areas of concern are for our contractors that come on
2 site during major shut-downs to do maintenance work.
3 They'll be coming onto a mine site and when the budget rider
4 is lifted and MSHA has enforcement, we had these temporary
5 people to be on site for up to 30 days, during the shutdown,
6 doing work, maintenance work. If by chance an MSHA
7 inspector were to come to a site to do an inspection during
8 that time and had the authority to enforce the training
9 regulation, where do these contractors, outside contractors
10 obtain training?

11 Now granted here in the State of California, Duane
12 Niesen's group, which we use heavily to train our own
13 people, can only do so much and in certain situations we
14 have contractors from Texas, from Montana coming onto a mine
15 site to do work that are very specialized in certain types
16 of operations. Now, if they're going to have to meet Part
17 48 training regulations, where are they going to get this
18 training?

19 They don't normally work on a mine site. They're
20 very competent, very proficient and very professional at
21 what they do, but an MSHA inspector says, "Let me see your
22 5023 training form or your new miner or annual refresher
23 training", and they can't produce it, then citations are
24 going to be written.

25 Also, at our facility in Cupratino, California, we

1 probably have somewhere in the neighborhood of 6100 trucks
2 coming in and out of our facility, in our rock plant, in our
3 cement operation, picking up our product, delivering to our
4 customers. In accordance with Part 48, they are there on a
5 regular basis. They come, they go to one specific point.
6 More often than not, they never get out of their truck
7 except to go get a weigh ticket or something of that nature.
8 They're not actively involved in the mining process other
9 than the receiving of product.

10 Here again, if this rider is lifted, MSHA
11 inspectors are giving enforcement for training and stop a
12 truck driver and want to see this documentation, another
13 citation is going to be written. And I would like to see
14 some language pointed towards, you know, if we do specific
15 hazard training for these type of people coming in that only
16 have one place to go in and out of the facility, on a
17 regular basis, then they would meet the intent of the
18 regulation.

19 Now, we do a very, very good job of training our
20 own employees and we require training of our contractors
21 that are on our property on a regular basis. And we're one
22 of the very few in industry that do this and have been
23 proactive in doing it, but these are some of the other
24 concerns I have.

25 As far as the training plan, as Peter stated and

1 we are part of Hansen Aggregates, we are owned by them, when
2 Leo Hayden was in the Western District Office and I came on
3 board at Kaiser Cement, I set about to do our training plan.
4 I called Leo and I said, "I'm going to send this over here
5 for your approval". He said, "Don't bother, I'll send it
6 right back", because they couldn't expend any funds for
7 that, so it sits on my desk.

8 As far as instructors I think we have a very
9 competent team of 13 instructors certified by MSHA in our
10 facility, one of which is my boss who is an
11 instructor/trainer. And we set about getting these people
12 certified by picking competent people throughout our
13 facility that have good communication skills. We went
14 through that selection process brought an outsider from the
15 gold mining industry in to do our training. He's an
16 instructor/training, as well, and we did it in three days
17 and we used those to satisfy Part 48 regulations at our
18 facility.

19 Those were just my concerns with those kind of
20 people coming onto our facility, not necessarily our normal
21 employees in our work force but those that augment and our
22 customers that come and pick up our product.

23 CHAIRPERSON ALEJANDRO: Are you done?

24 MR. LOWE: Yes, ma'am.

25 CHAIRPERSON ALEJANDRO: Oh, okay. I've got a

1 couple questions.

2 MR. LOWE: Okay.

3 CHAIRPERSON ALEJANDRO: You talk about these
4 outside contractors who come on during down times --

5 MR. LOWE: Shutdown.

6 CHAIRPERSON ALEJANDRO: -- to do maintenance.

7 Does your company give them any kind of site specific hazard
8 training before they come on?

9 MR. LOWE: We do hazard training when they come on
10 as a group.

11 CHAIRPERSON ALEJANDRO: Okay.

12 MR. LOWE: We have a very good contractor handbook
13 that we've developed and pass out to them. They sit down in
14 my office with me for about an hour and we go over our lock-
15 out, tag-out, general hazards, our rules and our
16 expectations of them as a guest on our facility.

17 CHAIRPERSON ALEJANDRO: Uh-huh.

18 MR. LOWE: That's done with every contractor
19 during the shut-down. Then in specific areas, whether it be
20 the quarry, the pack house, wherever they are, they'll go
21 through a site specific hazard training.

22 CHAIRPERSON ALEJANDRO: Does the contract that you
23 have with these contractors, does it address responsibility
24 for safety and health training?

25 MR. LOWE: Well, what it is, is a general proviso

1 that they will stay in compliance with all federal and local
2 laws.

3 CHAIRPERSON ALEJANDRO: Okay, okay.

4 MR. LOWE: But here again, realistically, where do
5 they go to get the training?

6 CHAIRPERSON ALEJANDRO: You're talking about the
7 fact that the resources for providing training are not
8 there? Is that your concern?

9 MR. LOWE: Absolutely, other than Cal-DOSH mining
10 and tunnelling.

11 CHAIRPERSON ALEJANDRO: Okay, do these contractors
12 typically or the contractor employees typically have any
13 kind of OSHA safety training?

14 MR. LOWE: Some do, some don't, depending on what
15 they do. If we get a group -- suppose we need a group of 10
16 dump trucks in there to haul something out of the way,
17 that's all they're doing. A loader is loading them.
18 They're going up, dumping. They never get out of their
19 truck. They're never on the site. They're just driving on
20 our property.

21 CHAIRPERSON ALEJANDRO: Uh-huh.

22 MR. LOWE: And they're well-versed in the hazards
23 and they know that our equipment has the right of way and
24 that kind of stuff.

25 CHAIRPERSON ALEJANDRO: Okay. You were talking

1 about the truck drivers. Are those customers typically?

2 MR. LOWE: We consider them out customers because
3 they're coming in and picking up our product, whether it's
4 bulk cement, sand, gravel, rock, whatever.

5 CHAIRPERSON ALEJANDRO: And they're employed by
6 the company who is going to be ultimately using the product?

7 MR. LOWE: Receiving the product.

8 CHAIRPERSON ALEJANDRO: Okay, so they come no your
9 site a lot of times. I mean, they don't even bother to get
10 out of -- I mean, there's no reason for them to get out of
11 the truck.

12 MR. LOWE: The way our systems are automated with
13 the bulk cement drivers, they have to get out of the truck.
14 We have engineered, designed, developed and put in place a
15 rack system that they crawl up under, so if they fall they
16 have something to grab hold of to open their lids. They
17 drive around to a bulk loading area, drive up under, they're
18 loaded. The same thing on the way out, they go up under the
19 lid closing rack, close it, hit the scales and they're gone.
20 And we're in the process even now as we speak modifying our
21 bulk load-out to where they don't even have to get out
22 there.

23 CHAIRPERSON ALEJANDRO: Uh-huh. So those truck
24 drivers typically wouldn't be getting any kind of hazard
25 training from you. I mean, they just --

1 MR. LOWE: No.

2 CHAIRPERSON ALEJANDRO: How long typically would
3 they be on property at, you know --

4 MR. LOWE: Fifteen-minute turnaround time.

5 CHAIRPERSON ALEJANDRO: Okay. All right.

6 MR. LOWE: By what my concern is, if -- the way
7 the regulations are written now, that if they're on that
8 mine site regularly and the policy program manual I think
9 states more than five consecutive days in an annual year,
10 then an MSHA inspector can stop every one of those and write
11 them a citation for not having Part 48 training.

12 CHAIRPERSON ALEJANDRO: Well, we've been getting a
13 number of comments on the issue of categories of employees,
14 I mean, people who are on the mine site for various reasons
15 and what levels of training are appropriate for them.

16 MR. LOWE: Right.

17 CHAIRPERSON ALEJANDRO: But with respect to the
18 outside contractors, I mean, your point is that there's no
19 training available for these people.

20 MR. LOWE: There is no place that they can go get
21 training. Now, at our facility, now that we have gone
22 through and all of our people -- our normal employees have
23 met the requirements of Part 48, we are now using Cal-DOSH
24 money in tunnelling instructors, we're using our facilities,
25 our training facilities at our site and allowing contractors

1 to come in and get this training there.

2 We're not paying them to do it. They're having to
3 pay their own people but it's still at a cost to our company
4 to do this as well as the State of California and MSHA to do
5 it. I think we're one of the most proactive companies in
6 that regard in this industry, at least in this geographical
7 area because there's no other outlet for them.

8 CHAIRPERSON ALEJANDRO: Uh-huh. That's all I
9 have. Do you have --

10 MR. BRELAND: Just a couple. You said 6100 trucks
11 in what time period was that?

12 MR. LOWE: In a month.

13 MR. BRELAND: In a month?

14 MR. LOWE: That's both in our rock plant -- we
15 have a rock plant operation as well as production of cement
16 at our facility.

17 MR. BRELAND: Are they typically regular
18 customers, if you will?

19 MR. LOWE: Yes, sir.

20 MR. BRELAND: It's not like they're not familiar
21 with coming to mine sites, a good portion of them.

22 MR. LOWE: They don't even think that they're on a
23 mine site in the areas they go to.

24 MR. BRELAND: Okay, and you said you don't do
25 anything presently. I mean, do you give them -- do they

1 have to sign some sort of release when they come in? Are
2 they directed to any particular place?

3 MR. LOWE: No, sir.

4 MR. BRELAND: They don't have to go through a
5 gate, per se, then?

6 MR. LOWE: They do go through a security gate and
7 then they to go their respective load-out areas, load and
8 go.

9 MR. BRELAND: Okay, and that's about all the
10 interaction they have with anybody on site.

11 MR. LOWE: That's it. They grab a ticket and
12 they're out the gate.

13 MR. BRELAND: Okay. And then you talked about the
14 contractors that come on site for varying times of maybe
15 some significant repairs, up to 30 days or longer.

16 MR. LOWE: Yes, sir, we have an annual shut-down.

17 MR. BRELAND: But that you do a pretty formal kind
18 of introduction of hazard training or whatever it takes in
19 the areas that they're going to be going to.

20 MR. LOWE: Yes, sir.

21 MR. BRELAND: Is that formalized? Do you have it
22 written?

23 MR. LOWE: Yes, sir.

24 MR. BRELAND: And when you have them go out on
25 certain site areas and there might be some transfer of

1 instruction. Like you might do the first part and then it
2 goes to whoever they're going to be working with?

3 MR. LOWE: It usually falls to the supervisor
4 supervising that area during the shutdown.

5 MR. BRELAND: Okay. That's all I have.

6 MR. LOWE: Thank you.

7 MR. BRELAND: Thank you.

8 MR. BURNS: The three days of instructor training
9 that your competent people or competent instructors receive,
10 did that -- was that three days of how to make proper
11 presentations or did that also include subject matter
12 training?

13 MR. LOWE: It was basically a three-day class in
14 getting training across, how do I articulate to you what we
15 need you to know? It was done -- there was some segments in
16 the preparation of how to teach a subject as well. It was
17 videoed and critiqued by the class as well as the
18 instructor.

19 MR. BURNS: Okay, and then I guess just on the
20 truck issue, what kind of requirements for training do truck
21 -- do the truck operators have under construction or under
22 OSHA? Do you know?

23 MR. LOWE: No, other than what the Federal Motor
24 Carrier Safety Act provides, for a person to hold a
25 commercial driver's license, I know of no other regulations,

1 whether it's OSHA or MSHA, other than those in Part 48 and
2 regular -- coming on to a mine site on a regular occurrence.

3 MR. BURNS: Okay, that's all the questions I have.

4 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
5 Lowe.

6 MR. LOWE: Thank you.

7 CHAIRPERSON ALEJANDRO: The next speaker on the
8 list is Phil Gaynor from Kaiser Cement.

9 STATEMENT OF MR. PHIL GAYNOR

10 MR. GAYNOR: Good morning. My name is Phil
11 Gaynor. The spelling is G-a-y-n-o-r, first name is P-h-i-l,
12 or Philip, if you will, one L to be precise. Good morning.
13 I've been in this industry close to 25 years now. I've been
14 in it long enough that I still remember MESA, Mine
15 Enforcement Safety Administration which was the precursor to
16 MSHA. Prior to that we had whatever other agencies there
17 were.

18 I find it most belaboring and troublesome that
19 some 20 years after the MSHA Act comes into place we still
20 don't know what a miner is or a new miner or an experienced
21 miner or any kind of miner you'd like to discuss. That
22 bothers me and if we can't define a miner how would we ever
23 approach defining training requirements. I find it most
24 interesting that the government says, "You must have trained
25 people". Fine, what constitutes a trained person?

1 If I want to go get a college degree, I get a
2 catalog from the school and it says, "Here's the hours, the
3 classes, the whatever you must have to get this degree". I
4 have an agency enforcing requirements against me telling me
5 that I must train people but they don't tell me what I must
6 train. More importantly than that, they don't really tell
7 me the requirements of an instructor to train the people.
8 I'm a certified MSHA instructor. I have a couple of college
9 degrees and whole lots of experience.

10 That doesn't make me necessarily a great
11 instructor. It just says I might know something. It's
12 troublesome to me that I can't tell you when someone on my
13 facility is trained because I don't know the requirements.
14 So I think the agency itself should tell us what core
15 requirements are. If I get a driver's license, that's
16 honored from state to state to state because there's core
17 requirements; to know where the brake is, to know how to
18 read a speed limit sign, et cetera.

19 The most important training I think I received
20 after that is site specific. If I'm driving in the north, I
21 probably know how to drive in snow and ice. If I'm driving
22 in the southern states, I probably understand how to operate
23 a car in the heat. There are different requirements given
24 different conditions for where we are. I think it's very
25 important that we should know what training requirements

1 are. I think that's a very shortcoming of the Act. I'm
2 probably one of the few people in the industry that it
3 bothers a lot that we have a rider on Part 48. In fact, I
4 think it's an indictment against us as an agency and as an
5 industry that we don't enforce training of people within our
6 facilities.

7 There's a reason Part 48 is in there. It's
8 contrary to a lot of people's belief. Training is not a
9 cost, as you heard Peter Ward say earlier. It is a
10 competitive advantage. We meet and exceed in all cases the
11 training requirements at the facility I operate in in
12 Cupratino, California. We have 225 employees, approximately
13 15 instructors and all of the people on site have been in
14 training and we continue to train. We will continue to do
15 that. Our problem now is what do we do with contractors.

16 Contractors have no outlet for training. They
17 come on our facility, they're expected to meet training
18 requirements and we can't tell them what those requirements
19 are. I've made my case on that. I would like to see us
20 expand training through the agency, define it, so that we
21 can go to our community junior colleges and other places, so
22 that we can put our employees there if we so choose, or
23 people that we want to use in our industry have an outlet to
24 gain access to the training that's required.

25 I'll make one other -- two other points. One, it

1 bothers me that the agency that operates under the Act of
2 1977 would distinguish between what they do with an operator
3 that's big as versus what they do with an operator that's
4 small. If I have a siteable offense in my plant, why does
5 that carry a larger monetary fine for me than it does a
6 small operator? I would contend that an employee of any
7 company that is exposed to a hazard, there is no
8 differentiation in the price tag to that exposure. I find
9 that an indictment against this agency, that they would say
10 because I'm a big operator, I get to pay more because I've
11 exposed someone to a hazard. A hazard is a hazard.

12 And lastly, I would address trucks. It was spoken
13 briefly a moment ago by Danny, operators coming on and off
14 the facility. We recently expensed a large amount of money
15 to protect drivers as they climb up on the trailers of
16 vehicles to open lids, close lids, whatever. I find it most
17 interesting that your kissing cousin agency, the Department
18 of Transportation, blesses those trailers as they're
19 manufactured with the egress up and away from those hatches
20 without enclosed cages or whatever to protect drivers.

21 What difference does it make if a piece of
22 equipment is on a mine site or off of a mine site; it's
23 either safe or it's not. If MSHA says it's not safe for
24 those drivers to be up there, I would recommend our
25 government agencies talk with one another and resolve that

1 as an issue and not put it on industry in particular the
2 mining industry. Thank you.

3 CHAIRPERSON ALEJANDRO: Mr. Gaynor, I have one
4 question. You were making the point that you know, MSHA
5 needs to be, I guess specific for mine operators who are
6 going to be required to comply with these requirements as
7 far as what a trained miner is, I mean, what exactly has to
8 be done in order for someone to be considered to be trained.
9 Now, one of the challenges that we're facing in coming up
10 with a regulation for the industries where we're currently
11 not able to enforce is coming up with requirements that will
12 work for very, very small operations with very few employees
13 and maybe not a, you know, institutionalized safety program
14 but will also work for the larger operations where probably
15 training and compliance with Part 48 is already being given.
16

17 Now, in light of the fact that you think we need
18 to be specific about what these requirements are, how -- do
19 you have any suggestions for how we might approach that
20 while giving the flexibility that seems to be maybe
21 necessary given the, you know, the array of operations that
22 we're going to be regulating?

23 MR. GAYNOR: Again, I will talk generically to
24 your question if I understand it right.

25 CHAIRPERSON ALEJANDRO: All right.

1 MR. GAYNOR: Whether I'm tall, short, heavy, not
2 heavy, ugly, pretty, whatever, if I want a driver's license,
3 I have to meet a certain expectation. I think the agency
4 needs to define what they think is a core training
5 requirement and whether I'm a large operator or a small
6 operator, if that's the minimum requirement, then whoever
7 you are, you must meet it. I would be happy to submit a
8 document at some point or be part of a guiding committee to
9 work towards those qualifications, but irrespective of size,
10 I think it should apply to one and all, whatever that is.

11 CHAIRPERSON ALEJANDRO: How would you go about
12 defining what that is? I mean, are you talking in terms of,
13 you know, specific subject areas that must be covered and
14 certain minimum period of time that must be spent in those
15 subject areas or should it be more performance oriented? I
16 guess, you know, I'm just trying to -- looking for ideas as
17 far as how we might approach something like that.

18 MR. GAYNOR: Well, certainly it needs to be
19 performance driven probably as a basis for whatever we're
20 doing. I'm not so much concerned about the time as I am the
21 content and the qualifications. If I had a precise answer,
22 I'm sure the agency would have used it by now. We've got 20
23 years plus experience with MSHA and it's still not settled
24 and I find that very troublesome.

25 CHAIRPERSON ALEJANDRO: Uh-huh.

1 MR. GAYNOR: I don't have a specific answer to be
2 more pointed.

3 CHAIRPERSON ALEJANDRO: Okay, all right. Well, I
4 appreciate your remarks.

5 MR. BRELAND: Just to follow up a little bit on
6 the same issue, you had mentioned the core requirements
7 being defined but you also gave an analogy of the icy
8 conditions and the weathers and talked about some
9 differences or at least I think that's what -- were you
10 talking about the same issue of having some basic core
11 requirements that would always be the same and some other
12 possible things that ought to be considered? Is that what
13 you're proposing?

14 MR. GAYNOR: Yes. You know, if you know how to
15 operate a front end loader, it doesn't really make too much
16 difference where you are, you can run that front end loader.

17 MR. BRELAND: Right.

18 MR. GAYNOR: But now let me introduce some
19 specific conditions from one facility to the next. I'm in a
20 congested area, I'm on a hilly area. I'm loading open
21 trucks, some with single trailers, some with doubles. There
22 are several other things that become site specific in terms
23 of doing a job function. But in terms of operating a
24 loader, it's a very generic type of thing.

25 So those become your core requirements, and then

1 your site specific training is what am I going to encounter
2 in the facility that I'm in.

3 MR. BRELAND: Okay, you also referenced tying in
4 possibly with if you had good definitions of core
5 requirements with community colleges. So I would assume
6 from that you're talking about certainly more basic,
7 normally more basic type subjects than you would say
8 operating a front end loader.

9 MR. GAYNOR: Yes.

10 MR. BRELAND: Most colleges can't do that.

11 MR. GAYNOR: That's correct and we wouldn't expect
12 them to. But if we wanted to teach first aid or we wanted
13 to teach an understanding of the MSHA Act or Cal-OSHA
14 guidelines or whatever state you might find yourself
15 operating in, there are certain classroom type things that
16 could be taken care of that would meet training
17 requirements.

18 MR. BRELAND: Okay, that's all I had but I would
19 encourage you and as Kathy Alejandro would, that if you have
20 some suggestions or written comments that you should submit
21 them for those definitions.

22 MR. GAYNOR: Be happy to.

23 MR. BRELAND: Thank you.

24 MR. BURNS: Would you -- I guess just from
25 listening to you, you would distinguish between an

1 experienced miner and a trained miner.

2 MR. GAYNOR: I might. I'm not sure what you have
3 as a definition, Kevin, so it makes it hard for me to say I
4 would do that.

5 MR. BURNS: No, that's what I'm asking because I
6 mean, you could have someone that's very experienced but
7 because of, you know, the bad habits they picked up, they
8 might actually need more intensive training than somebody
9 else.

10 MR. GAYNOR: Yeah, let me give you, I guess maybe
11 a little different perspective on it, Kevin, from my view.
12 If I take someone to a driver's license clinic, they're
13 about 16 years old and if they do well on their testing,
14 they get a driver's license and they can operate a vehicle
15 anywhere in this country. And I've been operating -- let's
16 just say I've got 40 years of experience in driving a car.

17 Now, without knowing much else, would you prefer
18 to ride with me in the LA traffic or would you rather ride
19 with a 16-year old that just got that license? We're both
20 trained.

21 MR. BURNS: Okay, I mean, that's what I was asking
22 if you do -- it sounded to me that you were --

23 MR. GAYNOR: There's a tremendous difference
24 between being trained and experienced. You can be both
25 trained and experienced but you're not necessarily

1 experienced. There is a difference. The agency hasn't
2 bothered to define that for us. So I find it very
3 troublesome that if you can't define to me what a miner is,
4 how can you expect me to train them?

5 MR. BURNS: Okay, and part of the difficulty with
6 the definition of miner you see is this whole contractor
7 issue.

8 MR. GAYNOR: Yes. And as you draw on your
9 experience with the National Stone Association which I'm
10 familiar with, you have benefits of both sides of the
11 street, if you will, and you understand the dilemma and as
12 an operator I want not only trained employees, I want them
13 to be experienced.

14 I have a hard time distinguishing quite often
15 between a competent person and an instructor. I contend
16 that a competent person may not know how to tell me what he
17 knows, but he's quite capable of being a good miner.

18 MR. BURNS: Okay. That's all I have, thank you
19 very much.

20 MR. GAYNOR: Surely. Thank you.

21 CHAIRPERSON ALEJANDRO: Thank you, Mr. Gaynor.
22 The next speaker on our list is Larry Nelson from the
23 Arizona Mine Inspector.

24 STATEMENT OF MR. LARRY NELSON

25 MR. NELSON: My name is Larry Nelson and I'm with
Heritage Reporting Corporation
(202) 628-4888

1 the Arizona Mine Inspector's office and we are recipients of
2 grants under MSHA and we have a little over 500 active
3 mining operations, building operations and we train about in
4 excess of 3500 people a year.

5 I think we have a big investment in the training
6 regulations and I think we're really concerned about some of
7 the things that are going on and basically we've always felt
8 that, you know, the training regulations is an investment in
9 your employee and I don't think it is a cost. I think it's
10 actually an investment where you gain, you have better
11 production, you have better attitude of the employees.

12 So going along with Phil Gaynor, I kind of
13 agreement 100 percent with what the man was talking about.
14 He understands that the people need to be trained. MSHA
15 needs to define, in my opinion, what the requirements are
16 and what they should be. What is a miner? What are they're
17 training certification requirements? And I've heard a lot
18 of comments up here about the certification of an instructor
19 and people seem to have some problems with it.

20 Currently, everybody that instructs or teaches
21 under MSHA regulations does not have to be an MSHA
22 instructor. As long as they are under the direction and
23 the material provided is reviewed by a certified instructor
24 and under his direction, I don't see any problem with that
25 as it is now and I think that we need to have an MSHA

1 certification for an instructor. I think currently what we
2 do, we have an instructor training course and we put it on,
3 it's a three-day course.

4 We don't certify anyone. MSHA does. We make a
5 recommendation. But we won't allow a person to take that
6 course unless he gives us a resume and shows us he has a
7 mining background to begin with, has some mining
8 understanding, has some previous supervisory leadership type
9 qualities. Then we will allow him to take the course and
10 then we recommend him to MSHA as a certified instructor.

11 The areas that haven't been covered is what I
12 think -- like the eight-hour -- I think it should be a
13 minimum of eight hour instructions for a new employee. I
14 think in the aggregate business and particularly there is a
15 problem because there is a big turnover. But I do believe
16 they need that eight hours annual refresher, eight-hour
17 initial training and then give the small operator that has a
18 big turnover employment a little bit of leeway, give him 30
19 to 45 days to finish the initial training for non --
20 inexperienced miner. But again, I don't think we should go
21 60, 90 go beyond that point because, again, I believe it's
22 an investment.

23 And once you feel that that employee is going to
24 stay with you and he's going to be there more than the end
25 of the first 30 days, he should complete the rest of the

1 training. The training records, I think there should be
2 some allowance for -- if the mine operation or the
3 individual mine site has a computer with modem and is
4 connected to the main office where they have records or if
5 they have a working fax and the records could be faxed
6 immediately, should allow that, but if you don't have the
7 other -- you know, that electronic connection with your main
8 office and have it working, they should have to have the
9 records on site.

10 Again, people have brought up the fact that how is
11 the MSHA instructor or the state inspector going to know if
12 the men are trained or not, if they don't have some records
13 on site. And again, the training plan, I think it should be
14 there for review and I think on the training plan, any
15 training plan should be reviewed by MSHA to see if it has
16 the content. If you want to make changes, I don't think you
17 should have to wait for review. You can mail it to the MSHA
18 office, allow them to review it. If they have comments,
19 they'll tell you about it.

20 If they don't, you go on about your business with
21 it. That's about all -- oh, the one other item was that
22 Danny Lowe brought up about drivers and everything. In
23 Arizona -- and I was surprised what he said about operators
24 coming on site without any type of training. In Arizona,
25 the Arizona Mine Inspector's office and MSHA do not allow

1 truck drivers, vendors to go on a mine site without some
2 training. They have to have that initial hazard recognition
3 and 90 percent of them have a small card. They go over it
4 with the mine operator, the vendor, the hazard that he will
5 be exposed to when he delivers his product or he picks up a
6 load of rock.

7 And the route is laid out very specific to where
8 he can go and where he can't go. He signs the card. The
9 card file is put into the security gate and I think that's
10 100 percent because I do know that MSHA has issued several
11 citations for that at mine operators for not doing that
12 initial training and I didn't know they allowed that in
13 California. I was very surprised. That's all the comments
14 I have.

15 MR. BRELAND: Larry, I had a couple that I just
16 wanted to follow up on; one on the minimum eight hours that
17 you were saying you thought ought to be initial
18 irregardless, did you have an idea on the types of subjects
19 you would expect always before they start and the others
20 that would be allowed in that eight --

21 MR. NELSON: Any area that he's going to be
22 exposed to a hazard should be covered. I think some initial
23 hazard recognition, basic electrical if he's going to be
24 around anything electrical, basic traffic control if he's
25 going to be exposed to that, but initially the things that

1 he's going to be exposed to should be covered. And it could
2 be very generic in some respects but anything that that
3 individual is going to be exposed to a hazard.

4 If he's a front end loader, he should get some
5 general information about a front end loader. If he is a
6 mechanic or custodian, whatever he might -- I mean,
7 custodial people, whatever he might be, some of those
8 subjects should be covered and I think possibly some initial
9 first aid.

10 MR. BRELAND: Okay, thank you. And then also you
11 talked about the records and allow some flexibility of they
12 had the capability of getting a copy right away. Some of
13 the issues that have come up in other meetings in discussion
14 is what about the cross-over people that might, say
15 occasionally be a loader operator at the batch plant who,
16 all of a sudden, is now on a mine site under MSHA
17 jurisdiction and their records? Those you might say they're
18 probably going to receive the same training as others
19 because they would be with the same company.

20 But you could have the roving mechanic whose
21 records might not be with them or how would you propose to
22 handle that guy that might be visiting one of many of say 20
23 plants in an area?

24 MR. NELSON: Well, I think that that individual,
25 say if he's an experienced man, that he should have the 5023

1 in his possession, that he's had annual refresher and then
2 they want to get more specific. I mean, that would be the
3 initial thing that the inspector would want to know that at
4 least he has some training, he has his annual refresher. If
5 he's a new employee, he ought to have the 5023 saying he has
6 the 24 hours. And anything beyond that, specific task, I
7 don't think it would be difficult to get that.

8 But I do think that individuals that are roaming
9 or have been over -- and I don't think that if you're out of
10 MSHA's jurisdiction and they want to assign you into an area
11 that is, I don't think that's an excuse. You know, he has
12 to have the training just like anybody else. A new hire has
13 to have it. If he transfers from a hot plant or ready mix,
14 then he needs to have the training regardless of whether
15 he's under MSHA's jurisdiction or not at his previous
16 employment. When he goes over there, he has to have the
17 training, that's what I believe.

18 MR. BRELAND: Okay. And then just one other
19 question; on the training plan to make sure I understood
20 what you were suggesting, that if they had a training plan
21 that they submitted, that it should be assumed approved
22 unless they had some feedback that it needed additional?

23 MR. NELSON: Well, what I think would be a good
24 way to do it was they send in a training plan for approval,
25 the initial one. I think MSHA should look at it to see if

1 it has the content and that's an educational thing for both
2 parties. That individual will have known by the end of the
3 process of approval what has to be required in the plan.
4 And then if he wants to make additional changes as time goes
5 by, he mails them into the location where he has the initial
6 approval. They review that and if they have a problem with
7 it, they'll let him know.

8 If they don't, go on about his business. He don't
9 have to sit and wait to see if it's -- get a letter back
10 from MSHA to see if he can make that improvement because,
11 you know, overnight things can change your situation and if
12 you don't have your training plan, you really legally can't
13 do it. So I think you could say, "Hey, here's a letter, I'm
14 going to make this change tomorrow or next week. If you
15 have a problem with it, you let me know about it, but I'm
16 going to go ahead and make this change for this period of
17 time".

18 I think that a flexibility should be allowed and
19 then MSHA would still have the opportunity to review it and
20 if they have a problem with it, they'll tell him so.

21 MR. BURNS: All right, thank you. That's all I
22 have.

23 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
24 Nelson.

25 MR. NELSON: All right.

1 CHAIRPERSON ALEJANDRO: The next speaker we have
2 on our list and forgive me if I mispronounce it, is Richard
3 De Atley of West Coast Aggregates.

4 STATEMENT OF MR. RICHARD DE ATLEY

5 MR. DE ATLEY: Good morning. I'm happy to be here
6 and discuss something that's very important to our industry
7 and definitely I'm very much in favor of Part 46 and
8 thoughtful removal of the Part 48 rider. By the way the
9 last name is spelled D-e, capital A-t-l-e-y, De Atley, first
10 name Richard.

11 I'm going to be a little shotgun in my comments in that
12 all these other illustrious gentlemen have addressed several
13 of the things that I wanted to bring up. There are a couple
14 of them that -- by the way, we're a Bay Area operation,
15 three quarries and two sand and gravel operations.

16 Having been in the metals mining part of our, I
17 guess you'd call it this part of our industry, too, like the
18 gentleman from Kaiser, I know what Part 48 training is all
19 about and have one of those blue cards also for the
20 convenience of training our people when I was out in what
21 was gold mining operations. The problem that we had in the
22 use of Part 48 when we were -- when I was in the metals end
23 of things, was probably the time.

24 As I recall, it's been awhile, there was a certain
25 time put on each item and I felt in a lot of those cases it

1 was excessive. Particularly out there was a high turnover
2 situation and you -- as I recall underground was 48 hours
3 and surface was 24 hours. That's a lot -- it's something we
4 want to do and we did, but some of it was just killing time.
5 It wasn't effective and I'm trying to say I think I'd like
6 to see the operators, all of us operators, submit our own
7 plans and put what we think are the proper times associated
8 with it.

9 Our local -- we're actually owned by a company
10 based in Portland, Oregon, but our local operations probably
11 have manpower of up to 10 people. And it's hard to take
12 them as a group because you've got run the place. So some
13 of the ideas or some of the things that I'd like to throw
14 out here is primarily one is -- that hasn't been brought up
15 is that any safety meetings should be applied towards that
16 24 hours.

17 And that would be under -- I think the other
18 gentleman from Kaiser, we've got quite a few gentlemen from
19 Kaiser here today or Hansen and Kaiser, that the core issues
20 are probably covered in safety meetings because you're
21 talking to all the operators on the site.

22 The other thing that again, the gentleman from
23 Kaiser brought up was people coming on the site, they
24 referred to subcontractors, I have it down here in my notes
25 a big star after it as something I wanted to definitely

1 emphasize, where I call service people, such as the guy that
2 fixes the dozer, the loader, the whatever. They always
3 change. Maybe with a very large operation they have a
4 service guy dedicated to that particular company or site.
5 Otherwise, they're new, they are right on the site and how
6 do you handle them.

7 It's something that I think the hazard training
8 would cover myself, but I think it should be looked into in
9 great depth. I did read over the proposed -- the National
10 Aggregate and National Stone's proposed plan, proposed rule,
11 I guess is the right way, Part 46. It's not very specific
12 yet. I think it needs more meat to it as to how you handle
13 servicemen, subcontractors or just the occasional visitor.
14 As to the truckers, our policy is we have signs in several
15 spots that say, "Don't get out of the truck", and I've
16 always assumed this was an MSHA rule and I think it is.

17 So we consider them encapsulated so that they
18 don't require the training, but it's -- we very definitely
19 enforce the don't get out of the truck rule. A couple other
20 shotgun things; experienced as opposed to new, again, from
21 the metals mining experience, we definitely had a lot of
22 experienced people and you may have learned bad habits but
23 you were experienced and that is a big, big step forward
24 over new.

25 I advocate certainly the eight hours, six to eight

1 hours with new. Experience, though, I really have a problem
2 with, and this is maybe a bad experience, but overkill with
3 reviewing actually stuff that he knows. Site specific
4 safety hazards are to me the most important factor. If you
5 know how to operate a loader, you're experienced and you
6 know how to operate a loader, but you've got to know the
7 congestion on the site and all those sorts of things.

8 Again, I apologize if I'm kind of all over the
9 board here. And definitely, I'd say the records should be
10 on site. To me it's just -- it's probably too confusing
11 otherwise. I can see personnel records that aren't on site
12 but the training, I think is necessary to be one site,
13 certainly my recommendation. And I would hope and I think
14 as I read the proposed Part 46 that the operator can submit
15 his plan. We definitely have our own plan and it's a take-
16 off on Part 48 because of my background. So naturally, I'm
17 going to do what is familiar to me.

18 But I -- the submission of our own plan and the
19 approval by MSHA or the Department of Labor, I think you
20 mentioned the Secretary of Labor has to put his -- if that's
21 the route that MSHA goes, has to put their stamp of approval
22 on, on the operator's plan.

23 CHAIRPERSON ALEJANDRO: Yeah, I mean the Act
24 specifically says that the training plan or program has got
25 to be approved by the Secretary of Labor. Now, you know,

1 exactly what that is going to look like, I mean, I think
2 that there's a variety of different approaches that we could
3 take but you know, that is one of the minimum requirements
4 in the Act and I mean, we're trying to figure out how to
5 satisfy that minimum requirement.

6 MR. DE ATLEY: And along with that is that the
7 operator put down what he feels are the time requirements
8 for that particular aspect of training. Again, I've only
9 cursorily read the proposed Act and I think MSHA will tell
10 us what they want in the program, but again, I ask that we
11 be given the liberty of telling what we think is necessary.
12 And that's probably about the extent of my comments.

13 Again, most or not again but in areas other than
14 the very large operators, sites tend to be on the small side
15 with a 10 -- say 10 to 15 max people that need training. So
16 I just look for any comments that you have.

17 CHAIRPERSON ALEJANDRO: Actually, Mr. De Atley,
18 I've got one question. One of the issues you raised was a
19 topic that we've heard a lot about as we work our way across
20 on these meetings, you refer to them as service people but,
21 I mean, these contractor employees who may not be, you know,
22 directly involved in the extraction or processing process
23 but come on to the site for various reasons, to provide
24 services, do you have any suggestions, and this is -- I
25 mean, this is a loaded big question, and if you don't want

1 to answer, you don't have to, any suggestions for, you know,
2 how we might categorize different types of employees? I
3 mean, should it be by function and you know, after we figure
4 out what the categories are, I mean, what kind of types of
5 training would be appropriate?

6 MR. DE ATLEY: I think by area they enter. You
7 know, are they right in the pit, in the crushing area or
8 those sorts of things. If they're going to the fuel dock
9 area, that's a different area. I would say by area is how I
10 would --

11 CHAIRPERSON ALEJANDRO: And the hazards that
12 they're exposed to.

13 MR. DE ATLEY: Correct, right.

14 CHAIRPERSON ALEJANDRO: Okay.

15 MR. BRELAND: Just to follow up a little bit on
16 that same issue, I want to make sure I understood what you
17 were suggesting on the service maintenance type worker.
18 That the operator would be expected to do the hazard type
19 training specific to the area they're going but you -- were
20 you saying you didn't think that the contractor should have
21 the other training that was say core subjects maybe provided
22 by their own company or somewhere else?

23 MR. DE ATLEY: Yeah, I think that's really what I
24 am saying, that he's probably not going to be -- or he may
25 be, this could be the case, he could maybe not be operating

1 a loader and only doing welding, let's say or something of
2 that nature; the hazards of the area he's in and the type of
3 thing he's doing and that may be core. I mean, some of it
4 is core for sure but he doesn't have to go through the whole
5 thing I guess is what I'm --

6 MR. BRELAND: Well, what -- I guess I probably
7 didn't ask it very clearly but --

8 MR. DE ATLEY: Oh, okay.

9 MR. BRELAND: -- what I meant is would you expect
10 that if you contracted and hired a service organization to
11 send a maintenance person out or somebody out, that they
12 would have been trained in required subjects outside of what
13 you need to do at your own specific site that would relate
14 to the hazards they might be exposed to? Obviously you're
15 not going to train them to be equipment operator if you
16 hired them to come out and operate equipment or to do some
17 sort of maintenance. But you would expect to do hazard
18 training, I assume for the areas they're going to be in and
19 that they would be trained on their own somewhere else.

20 MR. DE ATLEY: Yeah, I think I understand what
21 you're saying. I guess I may not totally understand what
22 you're saying. The -- one of the other gentlemen said,
23 well, where can they be trained or where is the facility to
24 train them? There is none at this point other than if their
25 employer, which is a contractor who may work at mines all

1 the time, does something about it. I'm still probably not
2 registering with what you're saying.

3 MR. BRELAND: Actually, I guess there's two types;
4 those that might say service certain kinds of equipment,
5 large manufacturer of equipment, they'll have their own
6 people that go out at your request and do servicing of
7 transmissions, whatever it might be, do some sort of work at
8 the site. Those people typically are doing training, I
9 think, now in most places and they come to the mine sites.
10 They do their annual refresher and what have you and they
11 get site specific when they go to mines. In a lot of cases
12 they're doing that, maybe not so much in your areas but I
13 know they do that in operations, gold operations where they
14 go on site routinely.

15 MR. DE ATLEY: Yeah, I would say that's probably
16 more the case. I don't -- I mean, I'm thinking of like the
17 local Caterpillar or something like that where he comes to
18 work on the heavy equipment, I don't think he's been through
19 any kind of mine safety training.

20 MR. BRELAND: Okay, it probably depends on what
21 areas they are in, but considering that, what would you
22 propose if they were required to do training for the
23 operations that are now exempt, how would you propose
24 dealing with those type of routine service people?

25 MR. DE ATLEY: You'd certainly have to, I think,

1 pare it down as to time. Again, I keep coming back to this
2 time issue. I don't know whether you hand out a booklet and
3 you sit there and watch them read it, make sure they read it
4 and then they sign a form that says they acknowledge they've
5 read it or -- I don't probably have a genuine answer to
6 that.

7 MR. BRELAND: Okay, all right, thank you.

8 MR. BURNS: I guess I just wanted to ask you a
9 question along the lines with what Rod was talking about. I
10 guess from the standpoint if you bring a manufacturer in or
11 somebody to change a tire on a loader and say it's near the
12 high wall, you'd expect to train that individual to --
13 concerning the hazards of the high wall and the mine itself.
14 You wouldn't expect to have to tell them how to change the
15 tire safely.

16 MR. DE ATLEY: That's really I think where we're
17 going with this, is that that's the hazard -- to me that's
18 the hazard training, the specific site hazard training. He
19 probably knows the danger of changing tires, which the big
20 equipment tires are a very dangerous thing to change if you
21 don't know what you're doing. Yeah, I'd say that's -- I
22 still see it is just mainly specific site hazard training.

23 MR. BURNS: And then I guess we've heard a lot
24 about, you know, training as an investment today, so I guess
25 from the standpoint of say the truck drivers coming on your

1 property, your investment in training would be such so that
2 that truck driver can go through the property, go where they
3 have to get the material and leave the property and his --
4 the investment you would put in that training is to make
5 sure that that person doesn't hurt himself or any of your
6 employees but it shouldn't go beyond that.

7 MR. DE ATLEY: Yeah, that the -- to me the
8 employees, our employees are trained well enough that they
9 don't make it dangerous for him, you know, by the operation
10 of the loader for instance or truck or, you know, he's
11 looking backwards or those sorts of things. Yeah, I'd say
12 it's -- I consider, as I said before, he's encapsulated and
13 it's up to the mine operator to make sure that while he's in
14 that capsule that cab, that he's safe.

15 MR. BURNS: Okay, thank you very much.

16 CHAIRPERSON ALEJANDRO: Thank you very much, Mr. -
17 - oh, sorry, Roslyn has got a couple questions.

18 MR. DE ATLEY: Okay.

19 MR. FOUNTAIN: I was just wondering if you could
20 give me an estimate of what it costs you to train your
21 employees on an annual basis?

22 MR. DE ATLEY: The other gentleman had a per ton
23 figure. I really don't -- I really don't have an answer to
24 that. I don't think it's excessive. The training itself is
25 not to me the expense. It's the time required. It's all

1 well-spent time and necessary time but that's where the
2 dollars are at -- add up and that's of course, what I'm
3 supposed to be calculating but the -- any of the materials
4 or the -- or the instructor's time is insignificant.

5 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
6 De Atley.

7 MR. DE ATLEY: Thank you.

8 CHAIRPERSON ALEJANDRO: We have one more person
9 who is on the speaker's list, Gern Hallenbeck of California
10 Portland Cement. And again, I apologize if I have
11 mispronounced.

12 STATEMENT OF MR. GERN HALLENBECK

13 MR. HALLENBECK: No, you did a pretty good job
14 with that, thank you. I want to thank you for the
15 opportunity to come up and to speak about a few things. The
16 first thing I'm going to do is just vent a little bit in
17 that it seems that every time something comes out about
18 accidents and the high rate of accidents we're the bad guys.
19 We're the ones that are sitting out there. You can't
20 enforce the training, so we're not doing the training. And
21 I feel we're getting a bad rap over that. I don't feel that
22 that's true because a majority of us in the industry are
23 doing that training and to the extent sometimes even
24 exceeding that training and I don't think we have a problem
25 with doing the training because we can see the benefits from

1 it.

2 So it's just that sometimes every time that comes
3 out and we hear some letters and, you know, we're having
4 fatalities, now it's those guys that don't do the training.
5 And I'm not saying it's not because of not doing the
6 training but I think as a whole the industry, and I'm
7 speaking for the cement industry, is as a whole we are in
8 compliance in doing that training. Now, could we use some
9 better guidance in doing that? Yeah, probably so. Anybody
10 can use a little bit better guidance but a couple of the
11 things that were brought into this that I was concerned with
12 when we talk about contractor training and that's when a lot
13 of us have a big problem with bringing in these outside
14 contractors during major shutdowns for the biggest part, how
15 do we really control the type of training that they have
16 because in the regulations, it just says that they will
17 have, quote, "comprehensive training", and it doesn't break
18 it down any farther than that. It just says comprehensive
19 training.

20 It doesn't say how long, how much or really what
21 that content is going to be, so to what extent did we
22 require that to be done? Now, as a whole I think in our
23 particular area down in the high desert and the cement
24 plants in the area have really made a commitment to require
25 them to have that comprehensive training and show us that

1 they've had that MSHA training before they come on site or
2 all those people that you're going to be bringing in we want
3 to see proof that you have, in fact, had that training.

4 And it's been a struggle over the last five years
5 that I've been working this particular safety aspect. I've
6 been in the cement industry for over 30 years and I've been
7 an MSHA instructor since 1986. So I know some of the pains
8 that I've gone through personally and in talking with
9 others, what they have to go through to get these
10 contractors trained and to stay on top of it. It's a full
11 time job, especially when you have a major outage and you
12 may have as many as three or 400 contractors on site when
13 normally maybe your full compliment is only 100 or 150
14 people.

15 So it's really a full time job in taking care of
16 that but I think we're doing a pretty good job in that and I
17 really don't think we're getting the credit that it takes
18 when you have four, five, 600 people on a site and you walk
19 away at the end of a 15 or 20-day outage and you have zero
20 accidents. We don't get the credit for that. So that's
21 just my venting portion of it.

22 But in talking about training, we talked about who
23 can and who cannot train. Well, when we talk about task
24 training it says that a competent person is capable to task
25 train. Well, why can't we use that same competent person to

1 augment our other training as long as he comes under the
2 umbrella or the auspices of that course director or which
3 would be that head trainer because you have one person that
4 signs that 5000 form and then that's that person who is
5 actually an MSHA instructor himself. Can he watch and guide
6 what that other person is doing? Well, sure he can. He's
7 supposed to be there for the course anyway and watching
8 everything that's going on.

9 Well, why don't we use the resources we have in
10 house. Use -- like in my particular situation I have three
11 licensed blasters on site. Well, why can't I use that
12 supervisor who is a licensed blaster to come in and teach a
13 portion of that explosion portion of my MSHA class for new
14 miners or even use him as a refresher. The same way with my
15 electricians, as long as he's under my control and I'm
16 dictating exactly what he teaches and cease that, well, then
17 maybe we can use them in that respect.

18 And then I won't elaborate, we've already went
19 over quite a bit about truck drivers coming on site and
20 having to protect them from falling off their own trucks to
21 where it comes to the point on some sites they say, "You
22 know, before you come on site, you open your truck. You
23 drive on, you load up, you get off our site and close the
24 truck". That's what it's leading to. And now simply
25 because why is it legal in one place and not legal and we've

1 went through all of that.

2 So that's so much for my venting and my position
3 on task training.

4 CHAIRPERSON ALEJANDRO: Do you have --

5 MR. BRELAND: Just on the -- make sure I
6 understood on the trainers that you were talking about, some
7 people doing task training that aren't necessarily certified
8 and make sure I understood what you meant about allowing
9 additional training to be done by uncertified people but
10 that are under some supervision or guidance --

11 MR. HALLENBECK: Yes.

12 MR. BRELAND: -- by like say yourself or somebody
13 that's been certified --

14 MR. HALLENBECK: Yes.

15 MR. BRELAND: -- and would that -- did you have in
16 mind -- how would you do that monitoring? Would that be
17 that you had to be in attendance at all classes, some random
18 numbers or how would you police that yourself?

19 MR. HALLENBECK: I would think that in order for
20 you to be able to diligently monitor anybody you have to be
21 present there.

22 MR. BRELAND: Okay.

23 MR. HALLENBECK: So if you're going to have him do
24 a portion of, let's say the explosion portion of a new miner
25 training which is going to take anywhere from 30 to 45

1 minutes or an hour, within that section there, and sure,
2 you're not training them to be an explosive expert but what
3 you're doing is you're giving them an oversight of what goes
4 on, what takes place and the hazards involved in that
5 blasting situation, who better to do that than the actual
6 person that directs that.

7 But now, in order to make sure that all his points are
8 getting across, well, then you're there to monitor his
9 particular portion of that class. So, yes, you have to be
10 there for that.

11 MR. BRELAND: Okay, I just wanted to make sure I
12 understood that's what you meant.

13 MR. HALLENBECK: Okay.

14 MR. BRELAND: All right, thank you.

15 MR. BURNS: Yeah, I just had a follow-up on that.
16 I mean, under -- I don't really -- I kind of agree with you
17 on that but I was also going to say, you know, there's lots
18 of ways to learn how to do things. One of them is learning
19 by doing it. So you see at some point in time say that
20 blaster, at some point in time you shouldn't have to observe
21 him. Is that correct?

22 MR. HALLENBECK: Well, I would think that --

23 MR. BURNS: I mean, he could develop into a very
24 qualified competent trainer just by doing the training all
25 the time and learning while he's doing it.

1 MR. HALLENBECK: I would think that -- and I think
2 a point was made earlier, that I think that if you have
3 those competent people, then you have a personal obligation
4 to maybe pursue them becoming expertise in that area and
5 maybe pursuing becoming an MSHA instructor and then at that
6 time, you wouldn't have to monitor them. But as long as you
7 have someone that is not an instructor and taking those
8 courses, then I think that you have an obligation to your
9 people to make sure that the information has come across
10 correctly.

11 MR. BURNS: Okay.

12 MR. HALLENBECK: One point I would like to add, on
13 the training session though about instructors, and there's
14 no real provisions for it, is that the assumption is the
15 more you teach the better you get. Well, that's not always
16 true and there is no provisions for like instructor
17 refreshers or anything, nothing to go to that will help us
18 maybe just to sit down as instructors and to get together
19 and say, "Okay, how do you do this", or, "What's some of the
20 new things that we have to start getting information out
21 to", because sometimes the information isn't real
22 forthcoming.

23 I'm sure as hard as you try the information
24 doesn't get to mine sites as well as it should and it's
25 interesting that even this meeting today I didn't find out

1 about it unless it was through an organization that I
2 belonged had sent me some information on it. I did not
3 receive direct information to the mine site about this
4 meeting.

5 MR. BURNS: Just one more on the training, on the
6 task training do you monitor that, too?

7 MR. HALLENBECK: No, I do not monitor the task
8 training since that is basically done by a competent person.
9 Now, I'm at a site where I have 145 people. And so it's
10 really fairly easy for me to get around and make sure that
11 when I receive those task training slips from the -- usually
12 the supervisors is doing that, that I'll have in the course
13 of time the opportunity to observe those individuals doing
14 their job in a normal manner.

15 MR. BURNS: So you do some follow-up type of
16 evaluation.

17 MR. HALLENBECK: Yes.

18 MR. BRELAND: Okay, thank you.

19 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
20 Hallenbeck. We have reached the end of the list of people
21 who have signed up to speak up but I'm going to ask is there
22 anyone here who has not spoken who now wishes to get up and
23 offer their remarks? All right, is there anybody here who
24 has already spoken who would like to get up and make some
25 additional remarks? Okay.

1 Why I'm going to do is give you just a short
2 summary of the issues that have been raised at the other
3 meetings. I think probably most of them you've already
4 heard something at this meeting, and then also give you a
5 short summary of what we think our schedule is going to look
6 like in the coming months as we work to get a final rule out
7 by the deadline. We have gotten a lot of comments on the
8 whole issue of contractors and there's kind of two issues
9 sort of wrapped up in that. One of them is who should be
10 responsible for insuring that contractor employees have the
11 requisite training.

12 We've had a number of comments that the mine
13 operator should provide the site specific hazard training to
14 contractors who come onto the property but that the
15 contractors themselves should be responsible for insuring
16 that their employees have got the comprehensive training
17 that is required. Also, I mean, we've touched upon this
18 issue here today, what types of training are appropriate,
19 depending on what the individual employee may be doing at
20 the mine site.

21 There's you know, categories of employees, you
22 know, delivery people such as truck drivers or other types
23 of individuals who come onto the property for short periods
24 of time and their exposure to hazards may be limited. Those
25 -- some of the comments have been those employees clearly

1 need to be treated differently than employees who are more
2 directly exposed to mine hazards.

3 We have gotten a lot of comments on how much
4 initial miner training should be required before a miner is
5 allowed to start work. A lot of people have advocated that
6 we take the approach that's taken under Part 48 where eight
7 hours of the initial training is given before the miner can
8 work on the mine site; whereas we have had several people,
9 particularly those from very small operations who have
10 indicated that eight hours is too much for their operation.
11 That there just is not that much to their operations. There
12 aren't that many hazards. That there really is not a lot to
13 cover to warrant eight hours of the initial training.

14 We have gotten a lot of comments on the fact that
15 annual refresher training that is offered in periods shorter
16 than 30 minutes should be allowed and should be considered
17 in complying with the eight-hour annual training. We have
18 also heard and you've heard that here today that 30 minutes
19 should be the minimum. Anything shorter than 30 minutes
20 simply cannot be of very much use.

21 One of the themes that has kind of run through the
22 comments that we've gotten as we've worked our way through
23 these meetings is that encouraging that any rule that we
24 come up with allow flexibility to operators in formulating
25 their training programs and reducing the necessary

1 administrative burden as much as possible. We have gotten a
2 lot of comment advocating that flexibility be allowed in
3 where records are kept. I would say probably here more than
4 at any of the other meetings we've gotten more people
5 getting up saying that records should be kept at the mine
6 site. I would say for the meeting leading up to this, most
7 people have advocated allowing centralized record keeping
8 with the record to be provided upon request to the MSHA
9 inspector within, you know, some specified minimum period of
10 time.

11 One of the other issues that has been raised is
12 how much time after a final rule is published should be
13 allowed for the industry to come into compliance with the
14 requirements. Now, of course, the amount of time given for
15 compliance is going to depend to a large extent on exactly
16 what kind of requirements are going to be in the final rule.
17 And it's premature, obviously, for us to give anybody any
18 idea of what this rule is going to look like, but we have
19 had several people who advocated that at least a year should
20 be given past the publication date for the industry to come
21 into compliance. I believe we had one person who said that
22 six months would be appropriate.

23 That pretty much covers it. Did I miss anything?
24 Okay, and as far as the schedule I would say -- as I
25 mentioned earlier, we have got two additional meetings that

1 are set in Atlanta and in Dallas the week of January 5th.
2 We are expecting to get a final draft proposed rule from the
3 coalition for effective miner training on or before February
4 1st of 1999. After that date, we will be working very
5 vigorously on preparing a proposed rule for publication in
6 the Federal Register.

7 Once the rule goes out of MSHA, I mean, it's got
8 to the go to the main Department of Labor for review and
9 also go to the Office of Management and Budget for review,
10 but we are optimistically hoping to get the rule published
11 in the Federal Register some time in the early spring,
12 hopefully March and at the latest April. After the proposed
13 rule is in the Federal Register, we typically will have
14 public hearings similar in format to the format today to
15 allow interested people to come in and comment on what's in
16 the proposed rule.

17 It's not clear where these hearings are going to
18 be or how many but if I had to predict, I'd say we're
19 probably going to have at least two. The time factor is
20 going to determine how many and where they're going to be.
21 I mean, obviously, we're working on a very tight time
22 schedule and we want to give as many people the opportunity
23 to come in and tell us what they think about the proposed
24 rule but on the other hand, I mean, we also have got to
25 finish this process up fairly quickly.

1 So I mean, I would say a minimum of two and time
2 permitting, I mean, we would obviously like to offer more
3 than those but a notice will go in the Federal Register
4 announcing the dates and locations of those hearings. There
5 will also be -- you know, the comment period will be open, I
6 mean, if you would like to comment, but are going to be able
7 to attend one of the public hearings, you are able to submit
8 in writing your comments and you know, deadlines will be
9 established for those written comments to be submitted.

10 After the comment period is closed then we will
11 develop a final rule and we obviously would like to get that
12 done as quickly as possible while giving, you know, the
13 necessary amount of time and consideration to all of the
14 comments but we need to get that published no later than
15 September 30th of 1999 because that is the deadline that the
16 Congress has established for us.

17 So having said that, I would again encourage you
18 if there are additional things that you would like to offer,
19 to submit written comments to us. Again, I would encourage
20 you to make those submissions before February 1st of 1999.
21 If you need an address, I mean, if you don't have a copy of
22 the meeting notice, come up after we close the meeting and
23 we can give you an address. It is the Office of Standards,
24 Regulations and Variance with MSHA. So if you know what the
25 address is for that office, you know where to send those

1 comments.

2 One other thing I'd like to add; MSHA does have a
3 home page on the Internet. The address is www.MSHA.gov.
4 MSHA is obviously M-S-H-A. There's a button on the home
5 page, it's called training regulations. If you click on
6 that, we're trying to keep -- you know, keep up to date on
7 what's going on on here and, you know, relevant documents,
8 et cetera, we're going to be posting on the -- on our home
9 page. So you might want to take a look at that at regular
10 intervals to see, you know, whether there's been any new
11 developments.

12 I think that's all I have to say. If anybody --
13 oh, somebody's got their hand raised.

14 MR. DE ATLEY: (Inaudible)

15 CHAIRPERSON ALEJANDRO: Sir, could you come up to
16 the front because the Court Reporter is not going to be able
17 to -- and I don't know what happened to the -- okay, good.

18 MR. DE ATLEY: You were talking about developing a
19 final rule by September 30th of '99.

20 CHAIRPERSON ALEJANDRO: That's correct.

21 MR. DE ATLEY: Is there going to be some kind of -
22 - what's the wording I'm looking for, schedule of
23 implementation?

24 CHAIRPERSON ALEJANDRO: Well, I mean, I think I
25 touched on that earlier. Obviously, one of the big

1 decisions that we're going to have to make is how much time
2 after the final rule is published do we allow for the
3 industry to come into compliance. And so as I said, I mean,
4 some people have advocated that assuming that the final rule
5 is published in the Federal Register on September 30th of
6 1999, that we are not going to start to enforce whatever
7 requirements are in that regulation until September 30th of
8 the year 2000.

9 Now, obviously that's something that we're going
10 to have to decide how we're going to approach it, whether we
11 have a, you know, an across the board compliance deadline or
12 whether we, you know, fashion it depending on what
13 particular requirements are involved, I mean, some
14 requirements may go into effect sooner than other
15 requirements. I mean, those are all issues that need to be
16 addressed as we formulate this rule and obviously, I mean,
17 if you've got some feelings about that, you know, we would
18 like to know what your suggestions may be.

19 I mean, you can submit that in writing if you're
20 not prepared to address it today and again, I mean, that
21 will certainly be an issue in the public hearings that we
22 hold after the proposed rule is published.

23 MR. DE ATLEY: Well, particularly if the operator
24 is allowed to submit his plan for approval by the Secretary
25 of Labor or whatever --

1 CHAIRPERSON ALEJANDRO: Right, right, I mean, we
2 obviously -- whatever it is that operators are going to be
3 required to do, I mean, it behooves us to set reasonable
4 deadlines for them to meet the requirements that are
5 established. I mean, obviously we want to get this underway
6 as quickly as possible because we think miner safety and
7 health training is extremely important and although a lot of
8 people are providing training, I mean, I think there are
9 some operators out there that are providing minimum or non-
10 existent training.

11 However, I mean, this is -- you know, for some
12 people it's starting from scratch and we want to accommodate
13 the needs of the industry as we make this work.

14 MR. DE ATLEY: I agree. Thank you.

15 CHAIRPERSON ALEJANDRO: Thank you. Anything else,
16 any other comments? Okay, I would like to thank you all
17 very much for coming and I would particularly like to thank
18 the people who provided us with presentations. If you have
19 any questions after the meeting, feel free to come up here.
20 If you need addresses or other information, come and see us
21 and again, thank you very much.

22 (Whereupon, at 11:30 a.m. the above-entitled
23 matter concluded.)

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