

BEFORE THE U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

In the Matter of:)
)
SAFETY PROGRAM FOR)
SURFACE MOBILE EQUIPMENT)
)

Room 7W204 & 7W206
201 12th Street
Arlington, Virginia

Wednesday,
January 11, 2022

The parties convened, pursuant to the notice, at
10:00 a.m.

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P R O C E E D I N G S

(10:00 a.m.)

MS. MCCONNELL: Good morning. My name is Sheila McConnell. I'm with the Office of the Assistant Secretary for MSHA. On behalf of Jeanette Galanis, Acting Assistant Secretary of Labor for Mine Safety & Health, I'd like to welcome all of you here today and thank you for your participation in this virtual public hearing.

This hearing is being held to gather information about a proposed rule titled "Safety Program for Surface Mobile Equipment." I will be moderating the hearing. Before we begin, I want to inform you of the following. Your videos have been turned off. Your audios have been muted. After a brief explanation of the proposed rule, we will open the floor for comments.

First, let me begin with a little background of the safety program for surface mobile equipment proposed rule. At the surface mines and at surface areas of underground mines, a wide range of mobile and powered haulage equipment is in use. Examples of such equipment are bulldozers, front-end loaders, skid steers, and haul trucks. Accidents involving mobile and powered haulage equipment are a leading cause of

1 fatalities in the mining industry. At U.S. mines with
2 six or more miners, between 2003 and 2018, 109
3 fatalities and 1,543 non-fatal injuries were caused by
4 hazards related to working near or operating mobile
5 and powered haulage equipment. To reduce the number
6 of injuries and fatalities involving mobile and
7 powered haulage equipment, MSHA has over the years
8 launched several actions, including providing
9 guidance, technical assistance, developing training
10 materials, and gathering information from the public
11 and mine stakeholders.

12 Last July 20th, for example, MSHA hosted
13 National Stand Down for Safety Day, and this focused
14 on powered haulage accidents and vehicle rollovers to
15 help educate miners, save lives, and prevent injuries.

16 On June 22, 2018, MSHA published a Request
17 For Information titled "Safety Improvement
18 Technologies for Mobile Equipment at Surface Mines and
19 for Belt Conveyors at Surface and Underground Mines."
20 This RFI focused on technologies for reducing
21 accidents involving mobile equipment at surface mines
22 and surface areas of underground mines, as well as
23 belt conveyors at surface and underground mines.

24 Also, in August and September 2018, MSHA
25 held six stakeholder meetings and one webinar to

1 collect stakeholder input. Last year, on September
2 9th, MSHA published a proposed rule entitled "Safety
3 Program for Surface Mobile Equipment." The proposed
4 rule is based on the information gathered from the
5 stakeholders who comment on the 2018 Request For
6 Information and a review of best practices and
7 guidance on safety programs.

8 The proposed rule require that mine
9 operators employing six or more miners develop and
10 implement a written safety program for surface mobile
11 equipment used at their mines to eliminate or mitigate
12 safety hazards and reduce accidents, injuries, and
13 fatalities.

14 Since each mine has a unique environment,
15 MSHA is proposing to allow each mine operator the
16 flexibility to devise a safety program that addresses
17 its specific types of surface mobile equipment in
18 mining conditions and operations. The safety program
19 should be designed so that it promotes and supports a
20 safety culture at the mine.

21 Here are some specifics of the proposed
22 rule. The proposed rule in its entirety is available
23 at MSHA.gov or on Regulations.gov.

24 Under the proposed rule, as noted, mine
25 operators employing six or more miners would be

1 required to develop a written safety program for
2 surface mobile equipment. Although mine operators
3 with five or fewer miners would not be required to
4 have a written safety program, MSHA would encourage
5 these operators to have a safety program. For those
6 smaller miners, mines, for those smaller mines, the
7 Agency would also provide assistance in the
8 development and improvement of safety programs. MSHA
9 would also encourage its state grantees to focus on
10 providing training to address the hazards and risks
11 involving surface mobile equipment and small mining
12 operations.

13 The term "surface mobile equipment" is
14 defined as wheeled, skid-mounted, track-mounted, or
15 rail-mounted equipment capable of moving or being
16 moved and any powered equipment that transports
17 people, equipment, or materials at surface mines and
18 the surface areas of underground mines, excluding belt
19 conveyors.

20 After reviewing the comments and information
21 submitted through the Request For Information, MSHA
22 has concluded for now that the safety issues
23 surrounding the operation of belt conveyors can be
24 better addressed through best practices, guidance, and
25 training rather than through rulemaking. Therefore,

1 belt conveyors are not covered by this proposed rule.

2 A written safety program for surface mobile
3 equipment would require to include four types of
4 actions that mine operators must take to reduce
5 accidents, injuries, and fatalities and to improve
6 miner safety. The four types of actions are as
7 follow.

8 First, identify and analyzing hazards and
9 risks related to the movement and operation of surface
10 mobile equipment. Specifically, the proposal would
11 require mine operators to identify, collect, and
12 review information about hazards at their mine and
13 then to address their mining conditions and implement
14 the measures to eliminate, prevent, or mitigate
15 hazards.

16 Second, developing and maintaining
17 procedures and schedules for routine maintenance and
18 non-routine repairs for surface mobile equipment.
19 Operators must comply with MSHA's existing
20 requirements for maintenance and repair.

21 Third, evaluating currently available and
22 newly emerging technologies that enhance safety and
23 determining whether to adopt them.

24 Fourth, training miners and other persons at
25 the mine necessary to perform work to identify and

1 address hazards related to surface mobile equipment.
2 This training could be met through training provided
3 under existing requirements.

4 The proposed rule would require the
5 responsible person to evaluate and update the written
6 safety program at least annually or when accidents or
7 injuries occur or as mining conditions or practices
8 change or as surface mobile equipment changes and
9 modifications are made. This requirement is to ensure
10 that written safety programs remain relevant and up to
11 date.

12 The term "responsible person" is defined as
13 a person with the authority and the responsibility to
14 evaluate and update a written safety program for
15 surface mobile equipment. This individual should be
16 able to communicate to the miners the operator's
17 commitment to safety and the importance of miners'
18 involvement in the program.

19 MSHA believes that designating a person with
20 authority and responsibility to evaluate and update
21 the safety program as necessary and would help ensure
22 the successful development and maintenance of a safety
23 program.

24 Under the proposed rule, mine operators are
25 required to develop and implement a written safety

1 program within six months after the effective date of
2 the final rule. The proposed rule would also require
3 mine operators to designate a responsible person, as
4 described above, within six months after the effective
5 date of the final rule.

6 Finally, the proposed rule would require
7 that mine operators make available a copy of the
8 written safety program for inspection by authorized
9 representatives of the Secretary, miners and
10 representative miners, and also provide a copy upon
11 request.

12 The proposed rule is estimated to have a 10-
13 year total net benefit of \$343,000,000 at a 7 percent
14 discount rate based on estimated benefits of
15 \$471,000,000 and costs of \$128,000,000. At a 7
16 percent discount rate, the estimated annualized net
17 benefit is 4 -- 45.6 million dollars.

18 MSHA invites comments on all aspects of the
19 proposed rule, including the Regulatory Impact
20 Analysis. MSHA recognizes that mine operations
21 are diverse with varying mining methods, mining
22 conditions and operations, types of mobile equipment,
23 mine commodities, and mine sizes. MSHA seeks data,
24 information that would allow the agency to develop
25 estimates that might better reflect these differing

1 conditions and further evaluate the economic
2 feasibility of the proposal.

3 MSHA also requests comments on innovative
4 technologies and new and developing technologies that
5 would enhance the benefits of the proposal.

6 Before we move further, I would please like
7 to note that this call is being recorded. If you do
8 not wish to have your call being to be recorded, then
9 you should hang up now.

10 So now we're going to be opening up the
11 floor for comments, starting with our pre-registered
12 speakers. Once all the pre-registered speakers have
13 spoken, we will open the floor to anyone else who
14 wishes to speak.

15 A couple of points to note. If you have a
16 copy of your testimony or presentation, you may
17 submit, you may submit it to MSHA before the close of
18 the comment period on February 11th through one of the
19 methods identified in the address section of the
20 hearing notice or the proposed rule. Also, if any
21 participants here wish to submit comments on the
22 proposed rule, please do so by February 11th using one
23 of the methods just discussed.

24 Lastly, MSHA will make available a verbatim
25 transcript of this hearing in approximately two weeks

1 on our website, MSHA.gov, and at Regulations.gov. So
2 now let's get started.

3 Here are a list of pre-registered speakers
4 who will speak in the following order: (1) Chris
5 Hamilton, West Virginia Coal Association; (2) Edward
6 Massaquoi; (3) Elena Vasilyeva, Argus Media -- Argus
7 Media; Patrick Cagle, Alabama Mining Association; Brad
8 Davenport, Nyrstar; Thomas McLoughlin, Tri-State
9 Geologic & Mining Services; Chris Greissing,
10 Industrial Mineral Association, North America.

11 When my colleague, Joanna Moore, calls your
12 name, please unmute yourself. If you are joining by
13 Webex and if you wish, you may turn on your video
14 while you are speaking. If you are joining by phone,
15 please press star 6 to unmute yourself to speak.
16 Please first state and spell your name so that the
17 court reporter can have an accurate record.

18 With that, we'll open the call to Chris
19 Hamilton, West Virginia Coal Association.

20 (No response.)

21 MS. MCCONNELL: Chris Hamilton?

22 (No response.)

23 MS. MCCONNELL: Chris Hamilton, If we don't,
24 I'm going to give you a couple more seconds here, and
25 If I don't, if you don't announce yourself, then we're

1 going to move on to the next speaker.

2 (No response.)

3 MS. MCCONNELL: Okay. Moving on, Edward
4 Massaquoi, Massaquoi.

5 (No response.)

6 MS. MCCONNELL: Is Edward Massaquoi signed
7 in? No. I'll give Edward Massaquoi a few more
8 seconds. We can't see him. Okay.

9 Moving on, Elena Vasilyeva, Argus Media.

10 (No response.)

11 MS. MCCONNELL: No?

12 Patrick Cagle, Alabama Mining Association,
13 are you present?

14 MR. CAGLE: I am.

15 MS. MCCONNELL: Are you ready to speak?

16 MR. CAGLE: Yes, ma'am.

17 MS. MCCONNELL: Okay.

18 MR. CAGLE: Okay.

19 MS. MCCONNELL: Would you -- go ahead, sir.

20 MR. CAGLE: All right. I want to thank MSHA
21 for offering this opportunity for us to provide
22 comments and also for extending the deadline for
23 comments to be submitted on this. We appreciate the
24 work that MSHA's done on this and the goals of the
25 program and just want to provide a few brief comments

1 that I believe are important and probably mirror what
2 other trade associations and mining stakeholders have
3 shared.

4 First of all, you know, one of the things
5 that we believe is important is that if a mine has a
6 successful plan, you know, to avoid duplication where
7 possible where a robust safety plan exists that has
8 been successful, to incorporate that so that the focus
9 is on the goals of promoting safety with less
10 administrative burdens if a mine has a very robust
11 safety plan. This has proven to be effective.

12 Next, we believe that contractors should be
13 required to have their own written safety plan for
14 mobile surface equipment. I think that, you know,
15 this is going to be a challenging rule to comply with
16 no matter what. But, for example, a company that
17 provides, say, blasting services at mines around the
18 country, it would be unreasonable and very burdensome
19 if the schedule for their fleet of equipment had to be
20 listed in each of their customer's written mine plans.
21 It would just become logistically impossible, so I
22 think it makes sense to consider that.

23 If that's the case, we would recommend that
24 MSHA, if they decide to, you know, look at having a
25 written safety plan for contractors, to open up a

1 comment period for that to make sure that those
2 stakeholders have weighed in, you know, to consider
3 things, you know, how that would change the rule.

4 Next, we agree with the idea of looking at
5 and evaluating technology, but we believe there to be
6 unintended consequences with requiring it, you know,
7 potential liability from, you know, a perceived
8 negligence. If you, you know, if you evaluate new
9 technology and determine it's not feasible, what the
10 basis was for that, we believe that it should be
11 encouraged, but it really shouldn't be part of the
12 rule because of the unintended consequences.

13 And the responsible person provision we
14 believe is unnecessary because, you know, as we all
15 know, companies, you know, are responsible for the
16 actions of their employees. If MSHA decides to leave
17 the remaining person there, we would request that more
18 than one person be allowed to share that
19 responsibility for continuity.

20 That summarizes the comments that we've
21 already submitted, and I appreciate the opportunity to
22 share them here. Thank you.

23 MS. MCCONNELL: I don't have any further
24 questions, but thank you, Mr. Cagle, for testifying.

25 Next, Brad Davenport, Nyrstar.

1 (No response.)

2 MS. MCCONNELL: Mr. Davenport, would you
3 like to speak? You can unmute yourself by pressing
4 star 6.

5 (No response.)

6 MS. MCCONNELL: Okay. Mr. Davenport, do you
7 wish to speak?

8 MR. DAVENPORT: I do.

9 MS. MCCONNELL: Okay. Great. Good to hear
10 from you. First, could you please -- I don't think we
11 did that with our previous speaker, but could you
12 state your name and spell your name for the court
13 reporter?

14 MR. DAVENPORT: Yes. I'm Brad Davenport,
15 and I'm the safety superintendent for Nyrstar
16 Tennessee Mines. We're a zinc mine in Tennessee, and
17 we're an underground mine that has quite a few
18 programs in place already for our mobile equipment and
19 stuff. And if we are an underground mine, I'm just
20 kind of wondering why we need to go through all the
21 extra steps to have a specific plan for the surface
22 when it's basically the same equipment, the same
23 people doing the job, and it's making more
24 administrative than we already have in place to
25 handle. I just think that as we try and get more

1 technologically advanced we also make it more

2 MS. MCCONNELL: I can't hear him.

3 MR. DAVENPORT: Not so simple.

4 MS. MCCONNELL: Could you, Mr. Davenport,
5 could you speak up just a bit or speak closer to your
6 mic, because I'm having trouble hearing you.

7 MR. DAVENPORT: Okay. So let's try. Can
8 you hear me now?

9 MS. MCCONNELL: I can hear you now.

10 MR. DAVENPORT: Okay. So one of the things
11 that I was curious about is, if we're already an
12 underground metal/nonmetal mine that has all the
13 programs in place for the underground, why do we need
14 to build a special program just for our surface area,
15 which uses basically the same equipment, that uses the
16 same procedures and policies that we have underground?
17 Why have a separate procedure just for that?

18 MS. MCCONNELL: Does your --

19 MR. DAVENPORT: I mean, I think that we're
20 starting to push the limits of how many people we need
21 to keep on staff. And we're doing double work. And
22 as we get into the technological side of things, we
23 forget the KISS format in things, to keep it simple.

24 MS. MCCONNELL: Mm-hmm.

25 MR. DAVENPORT: And the more complex we make

1 it, the harder it is for our people to understand some
2 of the concepts of the technology, and it's easier to
3 break down and we're going away from the main concepts
4 of mining. And, granted, I am all for keeping people
5 safe. I've been in this business for 40-some years as
6 safety and a miner. But I think that we push too hard
7 sometimes on this, and I just wanted to make sure that
8 when we do these that we take into consideration that
9 some companies already have these type of procedures
10 and policies already in place and that we shouldn't be
11 required to recreate the wheel if those policies are
12 already in place and that there should be some
13 accommodation for the fact that we already have
14 procedures in place for all our equipment.

15 And I think that's the main things I needed
16 to say today was just don't get too far away from the
17 basics of mining, that the more complicated we become
18 the more injuries we have.

19 And I was also wanting to comment on the
20 small mines. If you look at the -- if you look at a
21 lot of the fatalgrams that we've been getting over the
22 years, most of the fatals -- and I won't say all --
23 are in these small mom-and-pop mines that are smaller
24 than what you're going to require to have the program,
25 but yet us bigger programs that have multiple trainers

1 and we have multiple procedures are being asked to
2 take and go above and beyond. But it's the smaller
3 groups that are actually the ones getting people hurt.

4 And I think that I'll stop there.

5 MS. MCCONNELL: Okay.

6 MR. DAVENPORT: I think that --

7 MS. MCCONNELL: Well, thank you for your
8 comments. I guess the first thing I want to say is
9 that if you have a safety program in place that
10 already meets the requirements of this proposed rule,
11 that would suffice. You wouldn't have to reduplicate
12 or recreate another safety program.

13 So, for example, your safety program that
14 you seem to have right now in place for your
15 underground mines, if that covers your surface areas
16 and it covers the surface mobile equipment as defined
17 under this proposed rule and meets the other kind of
18 actions that we have asked to be taken, then you
19 should be already compliant. So I would think that
20 MSHA does not want mine operators to do duplicate work
21 if they already have a safety program in place.

22 MR. DAVENPORT: And I guess too I've been
23 seeing where I looked through the standard, and are
24 you going to send out, like, an example of what you
25 want to see for a specific surface, you know?

1 MS. MCCONNELL: Yes. You know, as is MSHA's
2 practice, after we publish a final rule, we
3 communicate with the mining community through
4 stakeholder meetings, providing guidance material,
5 maybe possibly templates, and we will be working with
6 all of you, all of you to ensure that you understand
7 the requirements of the final rule when it's
8 published.

9 MR. DAVENPORT: Okay. Because I find a lot
10 of times that sometimes the rules are not understood
11 by a lot of -- the new rules especially aren't
12 understood by a lot of people, including some of the
13 MSHA inspectors. I hate to say that, but we'll get
14 two inspectors that have two different ideas as to how
15 the standard is supposed to be interpreted.

16 MS. MCCONNELL: Right. And when I speak
17 about compliance assistance, that does include
18 ensuring that our inspectors are fully trained on the
19 requirements of the final rule, so what you're talking
20 about now hopefully would not happen.

21 MR. DAVENPORT: Okay. All right. Well,
22 thank you very much.

23 MS. MCCONNELL: You're welcome, sir. Thank
24 you for testifying today.

25 Our next speaker is Thomas McLoughlin, Tri

1 State Geologic & Mining Services.

2 (No response.)

3 MS. MCCONNELL: Mr. McLoughlin?

4 (No response.)

5 MS. MCCONNELL: Okay. We don't seem to have
6 Mr. McLoughlin on the line today.

7 With that, our next speaker is Chris
8 Greissing, Industrial Minerals Association, North
9 America.

10 MR. GREISSING: Hey, good morning.

11 MS. MCCONNELL: Good morning, sir. Could
12 you -- I've been negligent to remind everyone, but
13 could you please say your name for the court reporter
14 and spell it, as well as your association?

15 MR. GREISSING: Sure. Chris Greissing,
16 C-H-R-I-S, G-R-E-I-S-S-I-N-G. And we are the
17 Industrial Minerals Association, North America.

18 MS. MCCONNELL: Thank you.

19 MR. GREISSING: Good morning. My name's
20 Chris Greissing, President of the Industrial Minerals
21 Association, North America. On behalf of our member
22 companies that extract and process a vital and
23 beneficial group of raw materials used in many of the
24 products we use in our everyday lives, I'd like to
25 thank MSHA's leadership for agreeing to hold this

1 hearing in response to multiple requests from
2 interested stakeholders, including the IMA.

3 With powered haulage fatalities again
4 climbing to about half of all mining-related deaths
5 last year, we recognize the impetus behind MSHA's
6 proposed rule to require a written safety program for
7 mobile and powered haulage equipment at surface mines
8 and surface areas of underground mines, as published
9 in the Federal Register on September 9th.

10 We also have done our part to communicate to
11 our members MSHA's targeted inspection of mines that
12 have high potential for powered haulage accidents, as
13 well as your current "Save Time, Save Lives" public
14 education campaign.

15 We very much appreciate MSHA holding this
16 hearing as, even though we submitted extensive written
17 comments on November 8th, we're continuing to hear
18 from our members about additional questions and
19 concerns that they have with the proposal, and this
20 hearing provides us the appropriate venue for raising
21 those additional concerns to you prior to the rule
22 being finalized.

23 As has already been mentioned earlier today,
24 a common issue that a number of our members have been
25 bringing up to us in the last two months has been the

1 issue of how contractors are being addressed or,
2 perhaps better stated, not being addressed in as
3 thorough a manner as they probably should be. The
4 draft rule states that the responsible person must
5 communicate the goals of the safety program to all
6 miners, including contractors. But, apart from that
7 reference, we believe the draft does not place
8 sufficient emphasis on contractors.

9 Through our producer member -- though our
10 producer members strive to hold contractors working at
11 their mine sites as accountable for safety and health
12 as they do their own employees, contractor safety is a
13 perennial challenge across the industry. As you know,
14 contractors constitute about a quarter of the mining
15 workforce in the country, yet fatalities among
16 contractors persistently exceed that percentage in
17 most years, often substantially.

18 As you know, the definition section of the
19 Mine Act unambiguously defines an operator as any
20 owner we see or other person who operates, controls,
21 or supervises in coal or other mine or any independent
22 contractor performing services or construction at such
23 mine. And through administrations representing both
24 parties, MSHA has maintained the firm position that
25 contractors must be equally accountable as the

1 operators who hire them. We believe the fix could be
2 quite simple, an explicit provision that contractors
3 must have their own safety program for surface mobile
4 equipment. Then, in the implementation of any final
5 rule, MSHA could create a contractor-specific template
6 to accommodate the fact that contractors typically
7 operate across multiple, multiple, mining sites.

8 The other issue that we would like to raise
9 is regarding the small mines exemption from the rule.
10 This exemption would provide an exemption for a
11 majority of the metal/non-metal mines in the U.S. The
12 concern that our members have raised with us is that
13 while all IMA member companies would exceed the
14 threshold of five employees, as companies have
15 reviewed the rule potential financial impact, it is
16 becoming clear that our sector of the industry would
17 be forced to absorb a disproportionate share of the
18 compliance burden when compared to other mining
19 sectors covered by this rule. This is because those
20 covered by the rule, our members, would definitely
21 fall on the smaller end of the scale, larger than the
22 exempted mines but far smaller than the large
23 operators when looking at mine size in terms of
24 tonnage value, employees, and profit margins, which
25 for some of these larger mines can be upwards of 25

1 percent or more in some instances, which allow them to
2 be able to absorb some of these new costs far easier
3 when compared to our sector.

4 By comparison, our members operate on very
5 slim margins, very often below 5 percent. Our
6 companies are still required to make significant
7 financial commitments to long-term projects. Like
8 most mining companies, in addition, our sector tends
9 to have higher post-extraction processing costs
10 relative to other sectors. Those factors have made it
11 difficult for our sector to remain competitive in a
12 global market and additional new costs are always a
13 concern.

14 We request that MSHA, when finalizing this
15 important rulemaking, recognize and is able to somehow
16 distinguish the companies like those in the industrial
17 mineral sector that exist in the space between the
18 smaller exempt mines and the much larger multinational
19 companies are currently being treated harsher under
20 the current proposal.

21 We request that MSHA look at ways to level
22 the playing field with regards to how our sector is
23 being treated. If this is something MSHA would
24 consider, I know we would be able to proactively make
25 suggestions prior to the comment period closing on how

1 to best accomplish this goal of creating a final rule
2 that is able to accomplish the true goal of keeping
3 the workforce as safe as possible while also being
4 fair and level across the entire industry.

5 We'd like to thank you again for this
6 opportunity to provide additional comments on this
7 important draft rule. We look forward to seeing the
8 final rule, and we stand ready to collaborate with
9 MSHA in reducing mobile equipment injuries and
10 fatalities as we have in the past through our alliance
11 with the agency. I'd be happy to answer any questions
12 that you might have.

13 MS. MCCONNELL: Thank you, Mr. Greissing. I
14 want, I don't have any questions. I do have a
15 request, and that is --

16 MR. GREISSING: Sure.

17 MS. MCCONNELL: -- you mentioned about
18 distinguishing between the sizes and coming up with --
19 and you have suggested ways with leveling the playing
20 field. And if you have recommendations, I would, I
21 encourage you to submit those for the record.

22 MR. GREISSING: Definitely will. Thank you
23 so much. Appreciate it.

24 MS. MCCONNELL: Thank you very much.

25 That is our last speaker who has pre-

1 registered. Now we will open the floor for those who
2 did not pre-register but wish to speak. If you are
3 participating in the Webex platform, please use the
4 Raise A Hand feature. If you are using a phone, press
5 star 6. Has anybody made a request?

6 (No response.)

7 MS. MCCONNELL: Okay.

8 MS. ABRAMS: Hello?

9 MS. MCCONNELL: Oh, hello. Okay. So. So
10 very good. So could you state your name and the
11 agency that you're with?

12 MS. ABRAMS: Sure. And sorry. That wasn't
13 me barking.

14 MS. MCCONNELL: That's fine.

15 MS. ABRAMS: This is Adele Abrams, and I'm
16 president of the Law Office of Adele L. Abrams, P.C.
17 in Beltsville, Maryland; Denver, Colorado; and
18 Charleston, West Virginia. And I'm testifying or
19 giving a statement in my own capacity and not on
20 behalf of any clients of mine.

21 I do want to say that we are members of the
22 Industrial Minerals Association, North America, and I
23 would like to endorse the comments that Chris
24 Greissing just gave on the record. I am a member of
25 their safety committee as well.

1 I just wanted to mention a couple of issues.
2 I'm a certified mine safety professional and an
3 associate safety professional, and then I became an
4 attorney, so I work on MSHA matters, and I'm also an
5 MSHA-approved trainer. So I'm looking at this really
6 from both the safety professional perspective and the
7 legal perspective.

8 And I just want to urge MSHA right out of
9 the gate, please be judicious in the use of this
10 standard and don't use it as an excuse to double-dip
11 or play, you know, (inaudible) gotcha game. We've
12 seen unfortunately some of that in the enforcement
13 under the workplace exam standard where, if multiple
14 violations are found, there's an assumption -- I'm
15 sorry about the dog -- assumption that the workplace
16 exam was inadequate and a further assumption that the
17 past training on doing the workplace exam was
18 inadequate. And so that can automatically add another
19 significant or substantial citation on top of any
20 basic ones that the company has gotten.

21 And looking into my crystal ball, I see a
22 potential for there to be a similar outcome here
23 where, if a piece of equipment or multiple pieces of
24 equipment are found to have defects or perhaps the
25 latest technology hasn't been utilized, then there

1 could be an assumption that their program or plan has
2 not been adequate, that the responsible person has not
3 done their job or the task training that's new, you
4 know, forthcoming rule was not adequate.

5 And so, you know, when you're talking about
6 nearly \$275,000 as a potential penalty, you know, in a
7 worst-case scenario potentially with an unwarrantable
8 failure and a citate, and a fatality involved, adding
9 on a task training and an inadequate program citation,
10 you know, can, can, you know, bankrupt a company.
11 Even with small operators having some exemption, a lot
12 of the companies that I work with that are middle-
13 sized that would be covered by this, you know, could
14 be put out of business very easily in that kind of
15 scenario.

16 You know, I would like to see in the rule
17 clarification that if workers are already trained on
18 mobile equipment that they don't have to have, you
19 know, additional task training under this rule or some
20 way that this could be covered under annual refresher
21 training at the next cycle rather than again, you
22 know, in a time of COVID adding additional training
23 obligations when we're already trying to deal with
24 some remote training.

25 And then I know that many of my clients will

1 be using hourly people to be the responsible person
2 for managing these programs because that's just, you
3 know, how things tend to be structured. And there are
4 concerns again that if the program is found somehow to
5 be inadequate or inadequately implemented that these
6 hourly people who could -- miners who would be
7 implementing these programs in the role of responsible
8 person could have personal exposure under Section 110
9 of the Mine Act both civilly and criminally.

10 So those are some of the main concerns, and
11 I'll echo what several others have said about the
12 inclusion or exclusion of contractors. It gives me a
13 bit of pause thinking that a host mine operator is
14 going to have to do training on mobile equipment
15 programs for an incidental contractor who might be
16 there for a couple of days and have their own fleet
17 management system.

18 So some clarification there really I think
19 is warranted as well because, again, under the
20 Twentymile coal decision of the U.S. Court of Appeals
21 from back in, I guess, 2006, MSHA has unreviewable
22 discretion to fight the host mine operator, as well as
23 or instead of the contractor for the contractor's
24 equipment violations, and that's actually what was at
25 issue in the Twentymile coal case for things like

1 leaking oil pans on a contractor's truck. So, again,
2 I see the potential for things to go sideways.

3 In terms of enforcement where host mine
4 operators would be held responsible for equipment
5 defects on contractors' equipment that they really
6 have no way to proceed, you know, and tie rods, loose
7 tie rods seem to be a popular one this season. I've
8 had multiple cases this year for the first time in
9 quite a few years involving that, so, obviously, this
10 is something inspectors are looking at.

11 So I will leave it at that. I thank you for
12 the opportunity to present my statement, and, again,
13 I'm speaking just from my own perspective as somebody
14 in, you know, 35 years in the mining industry wearing
15 a number of different hats.

16 I guess also I'll echo that the technology
17 forcing aspect of the Mine Act is something that I
18 generally support, but we have a wave of new
19 technology in the mobile equipment area that has
20 really, you know, just come to fruition in the last,
21 you know, five, maybe 10 years or less, and we've seen
22 that some of these technologies end up not being all
23 that they were cut out to be. We've seen issues, you
24 know, going back historically with airbags causing
25 injuries and having to be redesigned. Now we're

1 seeing the electric cars, you know, and the autonomous
2 operation and there being the potential for problems
3 with that.

4 So I, I, would endorse encouraging the use
5 of this technology but not mandating it. And, you
6 know, proven technology is one thing, but things that
7 are still in the optional category, you know, let's
8 give those a little bit of time on the market to play
9 out before we mandate their use and cite people for
10 lack of it.

11 So thank you again. I'm happy to respond to
12 any questions that the panel might have.

13 MS. MCCONNELL: Adele, thank you for
14 speaking today. I don't have any questions, but it's
15 good to hear from you.

16 MS. ABRAMS: And thank you for what you do
17 at MSHA.

18 MS. MCCONNELL: Thank you too. And you're
19 welcome.

20 Okay. So I don't have any additional
21 questions or comments, but I would like to open the
22 floor to anyone else who would like to speak. If
23 you're not speaking, please make sure your phones are
24 muted. Is there anyone who? If you're a part of
25 Webex, you use the Raise A Hand feature. Or, if

1 you're using a phone, just press star 6.

2 (No response.)

3 MS. MCCONNELL: Again, I'm going to ask if
4 there's anyone else who would like to speak or testify
5 today. If you're part of the Webex platform, use the
6 Raise A Hand feature or press star 6.

7 (No response.)

8 MS. MCCONNELL: Do we have any raised? No
9 one raised their hands. I'm going to do it one more
10 time. If there's anyone who would like to speak,
11 please use the Raise A Hand feature or, if you are on
12 the phone, press star 6.

13 (No response.)

14 MS. MCCONNELL: Nobody? Okay. Since we do
15 not have any more speakers at this point, I would like
16 to close the hearing. I want to thank everyone for
17 participating in this virtual public hearing. Again,
18 I remind you that your comments must be received by
19 February 11th, 2022, by 11:59 p.m. Please take into
20 consideration. We will take into consideration all of
21 your comments, even those submitted by the November 8,
22 2021, comment period close date. With that, this
23 hearing is now concluded.

24 (Whereupon, at 10:45 a.m., the hearing in
25 the above-entitled matter adjourned.)

REPORTER'S CERTIFICATE

DOCKET NO.: N/A
CASE TITLE: Safety Program for Surface Mobile
Equipment
HEARING DATE: January 11, 2022
LOCATION: Arlington, Virginia

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the U.S. Department of Labor, Mine Safety and Health Administration.

Date: January 11, 2022

A handwritten signature in black ink, appearing to read "Angela Brown", with a large, stylized flourish extending to the right.

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