

90X

UNITED STATES DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

INFORMAL PUBLIC HEARING

ON

PROPOSED RULEMAKING ON
ACCREDITATION OF
TRAINING PROGRAMS FOR HAZARDOUS WASTE OPERATIONS

Tuesday
February 12, 1991

North Hall
Omni Netherland Plaza
35 West 5th Street
Cincinnati, Ohio

BEFORE: HONORABLE ROBERT L. COX
Administrative Law Judge

PANELDirectorate of Safety Standards Programs:

MICHAEL B. MOORE
CHAPPELL PIERCE
THOMAS SEYMOUR

Office of Regulatory Analysis:

DANIEL HUTCH
HUGH CONWAY

Office of the Solicitor:

CHUCK GORDON

Division of Consumer Affairs:

TOM HALL

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THE CALIFORNIA-ARIZONA CONSORTIUM

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Marianne Parker Brown, MPH, Program
Director

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE ROBERT L. COX:

This hearing commenced in Washington, and it's a continuation that started in Washington here at the Omni Netherland in the North Room on this date of February 12, 1991.

I wish to remind the people here that as we go through the program that you must hold your questioning to 15 minutes, and ask questions. I don't want a bunch of speeches that are arguments about the answers given to your questions. Just ask questions please because our schedule is heavy and it's essential that we try to move through it.

Since I am a Cincinnati, I welcome you to Cincinnati. I think you'll enjoy your stay here. How many Cincinnatians are in the room?

Well, you got some good people to recommend Cincinnati. That's good.

I'm going to call on Mr. Gordon of the Solicitor's Office to sort of take charge here and proceed in what they would like to do next.

MR. GORDON: Thank you very much, Judge Cox.

My names is Charles Gordon, Chuck Gordon, from the Office of the Solicitor, and I welcome you

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1 on behalf of the Solicitor.

2 First, we will have Tom Seymour read the
3 statement of Roger Clark for OSHA, and then OSHA is
4 willing to respond to questions from people who
5 submitted notices of intention to appear, which is
6 provided for in the rules. Those people who have
7 asked lots of questions in Washington, we would prefer
8 they would permit any new people who are here for the
9 first time in Cincinnati to have priority.

10 After that, one of our witnesses who
11 testified in Washington several people asked for
12 further opportunity to ask him questions. That is
13 Mr. Bruce Peringer, and he will come here, and he will
14 very briefly summarize the gist of the comments he
15 made in Washington, and he will then be available to
16 answer a few questions, especially for, although I
17 don't see the gentleman who had wished to question
18 him here.

19 After that, the public participants will
20 be testifying. We have one other witness, Mr. Bunner,
21 who will be here tomorrow, and I think he did tell me
22 he was going to arrive early so we can put him on as
23 the first witness tomorrow morning. His statement is
24 available in the back.

25 With that, I would like to introduce to

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1 you Mr. Tom Seymour, who is the Deputy Director of
2 Safety Standards, who will read OSHA's statement and
3 who will also introduce the other members of the
4 panel.

5 MR. SEYMOUR: Thank you, Chuck.

6 SAFETY STANDARDS PROGRAMS, OSHA

7 Thomas Seymour, Deputy Director of Safety
8 Standards Programs for OSHA, for Roger A.
9 Clark, Director, Safety Standards
10 Programs for OSHA

11 Good morning, Judge Cox, ladies and
12 gentlemen. I am Thomas Seymour, the Deputy Director
13 of Safety Standards Programs for the Occupational
14 Safety and Health Administration. On behalf of OSHA
15 I would like to welcome you to this informal public
16 hearing on the Proposed Standard for Accreditation of
17 Training Programs for Hazardous Waste Operations.

18 With me today are on my immediate left is
19 Chappell Pierce and Michael Moore of my staff, and on
20 their left is Ernie Thompson from the OSHA's Office
21 of Training Institute in Chicago, and on Ernie's left
22 is Doctor Hugh Conway and Daniel Hutch of the OSHA's
23 Office of Regulatory Assessment, and again on my
24 right is Chuck Gordon from the Solicitor's Office.

25 OSHA considers this hearing to be an

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1 important part of its effort to develop a final rule
2 addressing the accreditation of certain training
3 programs to be presented to employees engaged in
4 hazardous waste operations. Your participation and
5 contributions through written comments and through
6 this public hearing are greatly appreciated and will
7 provide important information for the public record
8 upon which the final rule will be developed.

9 On October 17, 1986, the President signed
10 into the law the Superfund Amendments and
11 Reauthorization Act of 1986. This law is commonly
12 referred to as SARA. As part of SARA, the Secretary
13 of Labor was directed to issue certain standards
14 addressing the safety and health of workers engaged
15 in hazardous waste operations. OSHA fulfilled its
16 obligation to promulgate occupational safety and
17 health standards for workers engaged in hazardous
18 waste operations when, on March 6, 1989, the Agency
19 published its final rule on Hazardous Waste
20 Operations and Emergency Response. This final rule
21 became effective March 6, 1990.

22 In a related action, on December 22,
23 1987, as part of an Omnibus Budget Reconciliation
24 Bill the President signed several amendments to SARA.
25 One of those amendments requires OSHA to develop

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1 specific procedures for the accreditation of
2 hazardous waste operation training programs that are
3 no less comprehensive than those procedures adopted
4 by the Environmental Protection Agency in its Model
5 Accreditation Plan for Asbestos Abatement Training
6 (Model Plan) as required under the Asbestos Hazard
7 Emergency Response Act of 1986. The EPA Model Plan
8 is contained in Title II of the Toxic Substance
9 Control Act, known as TSCA.

10 The purpose of this public hearing we are
11 engaged in today is to gather through open discussion
12 additional information into the public record of this
13 rulemaking so that OSHA can proceed with the
14 development of a final rule on the accreditation of
15 training programs for hazardous waste operations.

16 OSHA has proposed, as directed by the
17 Congress, to develop and implement a training program
18 accreditation procedure that is based upon the EPA
19 Model Plan. This proposal was published in the
20 Federal Register on January 26, 1990. Accreditation
21 procedures and criteria were proposed for OSHA's 40-
22 hour initial employee training program required under
23 29 CFR 1910.120(e) and the 24-hour initial training
24 program required under paragraph (p). OSHA also
25 proposed criteria for a 16-hour training program that

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1 could be used to supplement a 24-hour initial
2 training program required in paragraph (e) for some
3 workers in order to achieve 40-hours of accredited
4 initial training.

5 These paragraphs, (e) and (p), addressing
6 training programs, are directed to workers engaged in
7 hazardous waste operations at uncontrolled hazardous
8 waste sites that have been identified for cleanup and
9 directed to workers engaged in routine operations at
10 treatment, storage, and disposal facilities, known as
11 TSDs, permitted to operate under the Resource
12 Conservation and Recovery Act of 1976, known as RCRA.

13 It was not proposed to accredit training
14 programs directed to workers engaged in emergency
15 response under paragraph (q). There are several
16 reasons for this. For example, there are already
17 many excellent accredited programs to train emergency
18 response workers, such as, fire fighters, police, and
19 emergency medical service personnel. Further, a
20 number of training accreditation organizations
21 already exist at the state and federal levels. In
22 addition, there are many emergency response training
23 programs in use today that a substantial OSHA
24 commitment of existing Agency resources would be
25 needed. The use of these resources would be a

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1 duplication of these other existing programs and take
2 resources away from other OSHA programs.

3 However, OSHA recognizes that there are
4 many other views on this issue and the Agency has not
5 made a final decision on the accreditation of
6 emergency response training programs under paragraph
7 (q). OSHA welcomes the views and evidence of the
8 participants in this hearing on the issue of training
9 accreditation for emergency responders.

10 In addition to the broad issue of
11 accrediting emergency response training programs,
12 OSHA would appreciate receiving additional comments
13 or discussion on the following specific points as
14 mentioned in the Federal Register notice of
15 September 14, 1990.

16 First, what role state emergency response
17 training accreditation agencies could play in a
18 national accreditation program? Are there other
19 federal agencies that could play a role in emergency
20 response training, and if so, who are they and what
21 role should they assume? Which levels of emergency
22 response training might be targeted for
23 accreditation? Should in-house fire and rescue
24 company or law enforcement department level training
25 be required to be accredited?

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1 OSHA also is interested in receiving
2 additional comment and discussion about the
3 submission of copyrighted training materials and the
4 economic cost of the proposal, in particular, the
5 effects of these issues as they relate to
6 accreditation of emergency response training
7 programs.

8 OSHA wishes to emphasize that this
9 proposal is directed to the accreditation of training
10 programs, not individual instructors. It is the goal
11 of the Agency to meet the Congressional mandate to
12 accredit training programs directed to employees
13 engaged in hazardous waste operations.

14 OSHA would like to discuss the issue of
15 generic training programs that could be directed to
16 large populations of workers engaged in similar
17 operations for various employers at different work
18 sites. Generic programs can be effective in giving
19 employees a general knowledge of hazardous waste
20 operations. OSHA, however, is concerned about the
21 need for employees to get site-specific and employer-
22 specific training and would like to discuss the
23 appropriate means to include these kinds of training
24 in accredited programs without the need for
25 accrediting every individual site training program.

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1 The logistics of such an accreditation program should
2 be obvious.

3 OSHA also seeks further discussion of the
4 issues identified in the Notice of Proposed
5 Rulemaking for training accreditation, and all other
6 relevant issues. For example, OSHA would like
7 comments on the criteria for certification,
8 procedures for certification, and the methods the
9 Agency may use to prevent a backlog of accreditation
10 applications.

11 In conclusion, I want to assure you that
12 all pertinent information, data, and testimony
13 offered to the public record will be evaluated and
14 considered in drafting the final rule. Thank you.

15 With the help of the OSHA panel, I will
16 answer relevant questions which participants might
17 have.

18 MR. GORDON: Your Honor, that concludes
19 the OSHA statement. The panel is willing to answer
20 questions of the participants.

21 ADMINISTRATIVE LAW JUDGE COX: Do you
22 want to put that in the record?

23 MR. GORDON: That statement is already in
24 the record. It's the statement from Roger Clark,
25 yes.

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1 ADMINISTRATIVE LAW JUDGE COX: Are there
2 any questions of this panel please?

3 If you'll come up to the podium please,
4 and please identify yourself and spell your last name
5 for our Court Reporter please.

6 MS. RICE: Carol Rice, Midwest
7 Consortium.

8 ADMINISTRATIVE LAW JUDGE COX: Thank you.

9 MS. RICE: It was noted in the OSHA
10 testimony that a large number of accredited programs
11 exist. Making that information available to those of
12 us who give training would help serve the clientele.
13 My hesitancy, however, is in acknowledging that those
14 programs actually include hazardous materials
15 training. For example, EMTs was listed as one of the
16 groups for which training programs are available. I
17 agree that that is a correct statement, but in my
18 experience in the midwest those programs as currently
19 in existence do not include emergency response for
20 hazardous materials.

21 MR. SEYMOUR: And the question is?

22 MS. RICE: Do you have documentation that
23 those programs include hazardous materials training?

24 MR. SEYMOUR: Carol, we're aware that the
25 certification procedures that are done for EMS

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1 services around the country by various state agencies
2 are in the process now of including awareness
3 training in many of the states that we've talked to,
4 and that effort will be integrated into the existing
5 training programs that people are now delivering, say
6 for first responder and for EMT and even paramedic
7 levels. It's in the process of being done at this
8 point in time.

9 MS. RICE: So they don't currently exist?

10 MR. SEYMOUR: Some do, and some are in
11 the process of doing that. I know like in the state
12 of Maryland, they are now delivering awareness
13 training for all EMS personnel. The state is
14 actually recognizing a curricula that will be part of
15 the training that will be mandated for everybody in
16 the future.

17 MS. RICE: And that's consistent with
18 paragraph (q)?

19 MR. SEYMOUR: As I understand it, they're
20 meeting the elements of the awareness training and
21 other things that they put in for the state needs.

22 MS. RICE: Have you compiled a list of
23 accredited programs for those trades that you listed
24 in your testimony?

25 MR. SEYMOUR: Say that again please.

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1 MS. RICE: You list a number of job
2 categories for which accredited programs are
3 currently available. Is a listing of those compiled
4 at OSHA that's available to the public domain?

5 MR. SEYMOUR: We have talked to a number
6 of agencies like police and so on, and they in some
7 states also have state certified or accredited
8 training programs, but I'm not aware that the Agency
9 at this point in time has actually listed each state
10 and what it has.

11 MS. RICE: Thank you.

12 ADMINISTRATIVE LAW JUDGE COX: Are there
13 any other questions?

14 MR. MORAWETZ: My name is John Morawetz.
15 I'm with the Chemical Center for Worker Health and
16 Safety Education. With the question of the training
17 for workers at RCRA sites' treatment, storage, and
18 disposal facilities, just a technical question. The
19 final proposal as it exists now still includes a
20 number of site-specific programs that have to be
21 included in that training. Is that still correct,
22 Mr. Seymour?

23 MR. SEYMOUR: John, the way the final
24 rule is written the training elements that we have
25 required is, say, take TSD facilities that you're

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1 concerned about, we want employees, the way the final
2 rule is written, to be trained in their employer
3 safety and health program, and so one of the issues
4 in the opening statement is about the validity of
5 generic training programs, and how can we go about
6 making a transition. If I could use as an example,
7 for the cleanup sites, we have the three days OJT for
8 some and many of the witnesses in Washington talked
9 about that might be the bridge training to get the
10 site-specific training. So one of the concerns that
11 we have and what we're looking for as feedback is how
12 we might do additional site-specific training if one
13 takes a generic TSD kind of training.

14 MR. MORAWETZ: But as the proposal lists
15 right now it includes I think about six site-specific
16 programs, which would basically exclude any program
17 that was off-site that did not have available to them
18 the site-specific programs.

19 MR. SEYMOUR: That's actually true for
20 what 121 said in the January proposal, and we've had
21 a lot of testimony about the validity of recognizing
22 generic programs and how we might make this bridge,
23 so that the final rule wouldn't exclude generic TSD
24 training programs.

25 MR. MORAWETZ: Continuing in the same

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1 area, if you were to include a site-specific program
2 with six programs, given that OSHA has issued
3 citations I believe in a number of areas, and
4 probably would issue citations for inadequate medical
5 surveillance or PPE programs, what is the usefulness
6 of mandating that these programs be used given that
7 they may very well be inadequate?

8 MR. SEYMOUR: Your challenging why we
9 would expect employees to be trained in their own
10 employers' programs that they're in now?

11 MR. MORAWETZ: Exclusively, exclusively.

12 MR. SEYMOUR: Oh, okay. I don't know
13 that we're saying exclusively, but our standard we
14 would view as a minimum, and so we would want the
15 employees who are going to work at, say, some
16 employer's site, that they fully understand that
17 programs that employer has, and what benefits they
18 can achieve under those programs, and how those
19 programs protect them, and we expect the programs to
20 meet the standard, and if it doesn't, obviously we'll
21 do our enforcement actions.

22 My counsel just advised that the way the
23 final rule is written we don't explicitly preclude
24 generic programs. If one was going to do a generic
25 program, say, for a TSD, as part of a needs

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1 assessment that the training provider would do, would
2 be to go and look at the programs the employer has,
3 present those as part of the program, and maybe
4 contrast that to what a good program would be.

5 MR. MORAWETZ: However, if existing
6 programs such as ours that have participants from
7 eight different sites were to exist and were to get
8 accreditation under your standard, we would have to
9 get six different programs from each site and cover
10 them in that course in order to be an accredited
11 program.

12 MR. SEYMOUR: Again, that's not the final
13 rule, and that's a lot of the discussion we have, and
14 we are, as we've said in our opening statement, we
15 certainly see the benefits of having generic
16 programs. We are concerned about the transitional
17 training that would be necessary for TSDs. Many of
18 the previous witnesses that we've listened to see the
19 benefit of having the OJT under paragraph (e), and we
20 don't have that specifically stated in paragraph (p).
21 So if we were to recognize generic programs, if
22 employers were to send their employees to generic
23 programs, there would still be a burden on the
24 employer to do the program-specific training that he
25 needs to have his people know.

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1 MR. MORAWETZ: I'm now reading between
2 the lines that you may be considering having both
3 generic training and on the job training?

4 MR. SEYMOUR: It has been suggested that
5 that should be recognized, yes, sir.

6 MR. MORAWETZ: And one other question
7 about emergency response programs that exist. Do you
8 believe the presently existing accreditation systems
9 could handle the vast numbers of people who need to
10 be trained under the four levels of paragraph (q)(6)
11 in emergency response?

12 MR. SEYMOUR: When we were doing our
13 final rule, we were looking to these various
14 organizations to help get the proper training effort
15 out to volunteer fire fighters and police officers
16 all across the country. We spent a lot of Agency
17 time and resources talking to any groups that really
18 have an interface in this area and that's our hope.
19 We know it's going to probably be some time before
20 full fruition is achieved with all those areas, but
21 we're working in that direction.

22 MR. MORAWETZ: Do you believe that those
23 programs have the capacity to train the vast numbers
24 of industrial emergency responders who presently are
25 not being trained by that system?

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1 MR. SEYMOUR: If there are programs
2 lacking, we believe that the kind of effort the
3 Congress put into the legislation for the grant
4 programs, and obviously the Congress has continued
5 those grant programs will help fill some of those
6 kinds of gaps. The handing off of those training
7 programs to other organizations who are competent to
8 deliver them will hopefully also help fill that need,
9 but the burden is still on the employers to provide
10 the proper training for their people. So if they are
11 not able to find programs to their satisfaction, and
12 we've had them call our Agency, and we then directed
13 them to Denny Dobbins and people like that for
14 further assistance.

15 MR. MORAWETZ: Where the (q)(7) presently
16 exists in terms of training accreditation for
17 emergency response training programs, do you see that
18 that language would exclude a vast number of other
19 programs from popping up and not needing to get
20 accreditation? As the standard is presently written,
21 I see that they could claim with very little review
22 process that they are as equivalent as a fire safety
23 program without any accreditation procedure.

24 MR. SEYMOUR: You say (q)(7)?

25 MR. MORAWETZ: I think it's (q)(7) that

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1 mentions -- in 120.

2 MR. SEYMOUR: In 120.

3 MR. MORAWETZ: In 120 refers to the
4 accreditation of what training programs are adequate
5 to do emergency response training. Maybe I'm
6 misquoting it, but I don't think it's rather
7 stringent. It just loosely refers to programs that
8 are similar to the U.S. Fire Service Programs. But
9 what means would exist to take the extreme situation
10 of a program that you would recognize as grossly
11 inadequate from saying, "Well, we think we're as
12 equivalent"? There's very little procedure there to
13 get the bad programs out.

14 MR. GORDON: We do have requirements that
15 emergency response training be competently done.
16 There are many existing organizations which
17 competently train fire fighters, policemen, and the
18 MS personnel. Many of those programs now include
19 emergency response modules. We think probably all of
20 them will, and the same mechanisms which would exist
21 that make them teach at high quality now, also will
22 exist to make their emergency response part of their
23 training of high quality as well.

24 MR. MORAWETZ: Do you think you can
25 effectively use (q)(7) to cite training programs that

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1 are inadequate?

2 MR. GORDON: Yes, I mean it is a citable
3 provision, and if an OSHA compliance officer where we
4 have jurisdiction or EPA where they have jurisdiction
5 finds that the training has been inadequate, it is
6 certainly permissible for OSHA to cite under that
7 section.

8 MR. SEYMOUR: I would just add that we
9 recognize as one of the models that we'd like people
10 to follow the U.S. or the National Fire Academy, and
11 essentially the courses they've handed off and the
12 way they've trained their trainers and so on, the
13 Train the Trainer Program that they've been involved
14 in for a number of years, they were of course created
15 to develop model programs and to train the nation's
16 fire service in a variety of the concerns and hazards
17 and duties that the fire service has and so their
18 role that they're playing, the interface that we've
19 had with them to try to get them to inculcate some of
20 our requirements into their training, they've done
21 that. I think it's apparent with the special and
22 added emphasis they've given to the incident command
23 training that they deliver has been real helpful from
24 our point of view to get people aware of what is
25 required in the OSHA standard.

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1 MR. MORAWETZ: Thank you.

2 ADMINISTRATIVE LAW JUDGE COX: Thank you.

3 Any other questions?

4 [No response.]

5 Thank you, Tom.

6 MR. GORDON: I see no further questions
7 of OSHA. We were requested in Washington to bring
8 back one of our witnesses who testified there, Mr.
9 Peringer. Two people asked to have the opportunity
10 to ask further questions of him. I do not see those
11 people here, but Mr. Peringer has kindly consented to
12 very briefly summarize the statement he gave in
13 Washington, and he will be available for a few
14 questions.

15 ADMINISTRATIVE LAW JUDGE COX: All right.
16 How are you this morning?

17 MR. PERINGER: Good morning, Judge Cox,
18 pretty good.

19 ADMINISTRATIVE LAW JUDGE COX: Just go
20 ahead.

21 MR. PERINGER: Thank you, sir. Don't
22 worry, that's not my brief statement.

23 UNIVERSITY OF MISSOURI
24 EXTENSION DIVISION'S FIRE AND
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Bruce Peringer, Director of the
University of Missouri Extension
Division's Fire and Rescue Training
Institute

MR. PERINGER: Good morning, Judge Cox, ladies and gentlemen. I am Bruce Peringer, Director of the University of Missouri Extension Division's Fire and Rescue Training Institute, which is the state level training agency for Missouri.

I'm an educational program administrator with some pertinent experience in designing and developing and delivering programs crafted to meet the wide variety of training needs of public agency emergency response personnel including hazardous materials training. I have nearly two decades of experience in training emergency services personnel and in administering fire and rescue training and education programs on the state and national levels. I believe that I can speak with some authority about training emergency response personnel and the subjects of evaluation, accreditation, and certification of technical training programs.

On the basis of my background and experience as a state emergency services training authority, I do have some comments to offer on OSHA's

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1 proposed changes to 29 CFR 1910.120, and the proposed
2 new rule on certification of hazardous waste
3 operation training programs. I plan to limit my
4 comments to training for emergency response personnel
5 and more specifically to training for public
6 emergency response personnel, those state and local
7 emergency services workers who may be initial
8 responders to the release of or threat of release of
9 hazardous substances.

10 OSHA asked six questions that were
11 earlier summarized by Mr. Seymour, and in this brief
12 statement I would like to summarize my responses to
13 those questions orally and allow my written testimony
14 provided in Washington, D.C., to encompass my more
15 detailed explanation on each.

16 I do not believe that OSHA accreditation
17 of public sector emergency services hazardous
18 materials training programs would provide any major
19 benefits to the training providers or the recipients.
20 Such programs are already adequately regulated by the
21 states and the state fire service training programs
22 have made a credible effort to comply with the letter
23 and spirit of 29 CFR 1910.120(q). Imposing an
24 additional accreditation or evaluation system on the
25 states would duplicate what is already being

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1 accomplished by other means. State and local fire
2 and emergency service training systems have provided
3 hazardous substance emergency response training to
4 hundreds of thousands of covered public sector
5 employees and continue to develop and improve their
6 training programs to meet changes in regulations and
7 evolving standards for such training.)

8 Quality training is being provided to
9 large numbers of emergency services personnel. I
10 question whether OSHA accreditation would in fact
11 materially improve these efforts and it could in fact
12 impede them. OSHA should recognize the adequacy of
13 state supported emergency services training programs.
14 Most state training programs already operate in a
15 regulated environment that insures compliance with
16 standards of good practice both in curriculum design
17 and program administration. Most of the state level
18 hazardous materials training courses of which I am
19 aware of having been developed in the past couple of
20 years have also been written to address the
21 competencies defined in the National Fire Protection
22 Association's standards including the 471 and 472
23 Hazardous Materials Response and Training Standards.

24 In addition, there are two systems for
25 accrediting state fire training programs

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1 specifically, and there are national and regional
2 accrediting bodies that establish general standards
3 for continuing and technical education programs that
4 many state training agencies subscribe to, and
5 National Fire Service Professional Association has
6 just announced a certification program for hazardous
7 materials response personnel and instructors. I
8 think the existence of these other accreditation
9 systems makes it less necessary that OSHA accredit
10 public sector emergency response training efforts.

11 As for what roles federal agencies might
12 play in accreditation, that situation has radically
13 changed within the past couple of months. The
14 recently enacted Hazardous Materials Transportation
15 Uniform Safety Act of 1990 has defined those federal
16 agency roles. In light of this Act OSHA should
17 consider whether the Department of Transportation
18 might be the appropriate agency to accredit public
19 sector hazardous materials emergency response
20 training if there is to be such accreditation.

21 In answer to OSHA's question on which
22 levels of public emergency response training should
23 be targeted for accreditation, my answer is not the
24 awareness and operational levels or public emergency
25 services employees. I think that area is adequately

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1 covered.

2 OSHA's final question in its request for
3 comment asked if in-house fire and rescue company or
4 law enforcement training should be required to be
5 accredited under the proposed rulemaking. My answer
6 is no. There are 34,000 fire departments in the
7 nation. If only a small percentage applied for
8 accreditation of their training programs, the review
9 process could bog down under the load. Besides, as
10 I have stated earlier, I believe that the training
11 requirements for the awareness and operational levels
12 are being adequately addressed by state fire training
13 and certification systems.

14 I urge OSHA to continue to exclude from
15 the propose accreditation rulemaking the paragraph
16 (q) public emergency response training courses
17 delivered by state and local authorities. OSHA
18 accreditation initiatives would duplicate existing
19 efforts of the states, other federal agencies,
20 professional associations, and other standards making
21 and accrediting bodies. OSHA's limited resources
22 should be applied to other means of assuring
23 compliance with regulations and creating a safer
24 working environment.

25 Ladies and gentlemen, I thank you. That

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1 summarizes my more expansive statement that is in the
2 record.

3 MR. GORDON: Thank you, Mr. Peringer.

4 Your Honor, Mr. Peringer is available to
5 answer a few questions, but he was already
6 extensively questioned in Washington.

7 ADMINISTRATIVE LAW JUDGE COX: Are there
8 any questions of Mr. Peringer?

9 Ms. Rice.

10 MS. RICE: Carol Rice, Midwest
11 Consortium. I regret that I was unable to review Mr.
12 Peringer's original written testimony, but would like
13 first to ask for the definition of public sector
14 emergency responder.

15 MR. PERINGER: I think that's pretty much
16 identified in paragraph (q) of the OSHA regulations.
17 I consider those individuals to be, and excuse me
18 while I flip through my notes, these are career or
19 volunteer members of municipal or county fire
20 departments or emergency medical services
21 organizations of other governmental entities, such as
22 fire protection districts, nonprofit fire companies
23 or associations, local, county, and state law
24 enforcement agencies, and emergency management
25 organizations, essentially public agency workers who

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1 would be initial responders to releases or threats of
2 releases of hazardous materials.

3 MS. RICE: You make in your statement
4 that these training needs are being adequately
5 covered currently through fire training sorts of
6 organizations, and I would like to know in which
7 states, for example, AFSME members or other members
8 of unions who participate in some of the public
9 sector emergency response activities are in fact
10 included in prior service training sorts of
11 academies?

12 MR. PERINGER: I can answer for my own
13 state specifically, and there are others in this room
14 who might be able to answer for their states. Within
15 the past nine months we have done some 144 training
16 programs for over 3,600 employees who are in career
17 and volunteer fire departments, law enforcement
18 agencies, the State Emergency Management Agency,
19 State Department of Natural Resources, and a number
20 of other agencies in our state. Our training
21 programs are open to any employees of public safety
22 or related organizations who respond to releases or
23 threats of releases of hazardous materials. Missouri
24 is not unique. There are state training programs in
25 49 of the 50 states. We have been collectively

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1 involved in hazardous materials training for decades.

2 MS. RICE: We were able to document as
3 part of the NIEHS Grant process that the needs of
4 workers in eight midwestern states were not being
5 met, and I wonder if your organization is just so
6 much larger than is available in our experience that
7 you are able to meet this need. Do you receive state
8 money in order to provide the training for state
9 employees?

10 MR. PERINGER: That varies by state.

11 MS. RICE: No, I'm specifically asking
12 about your program.

13 MR. PERINGER: In our state we receive
14 about 40 percent of our total budget comes from the
15 University of Missouri and state agencies. The
16 hazardous materials training specifically has been
17 accomplished with state monies, and it is provided at
18 no cost to the attendees.

19 MS. RICE: So that may be somewhat
20 different from other states?

21 MR. PERINGER: I think that our
22 experience probably parallels that of other states.
23 Missouri is somewhat unique in that our training
24 program is not fully funded. For example, Kentucky
25 I think provides all their training at no cost,

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1 mandated to provide all their training at no cost to
2 participants.

3 MS. RICE: But Kentucky is unable to meet
4 the need, which you apparently are.

5 MR. PERINGER: I did not say that we are
6 meeting, completely and totally meeting the need, but
7 we are certainly addressing the need aggressively and
8 vigorously. We offer training and I think I can say
9 have provided training for all of those who have
10 presented themselves for training. My program has
11 offered those courses not in one location, but
12 literally across our state on various schedules to
13 accommodate the needs of both career and volunteer
14 personnel, daytime, nighttime, weekends, whenever.
15 I think that experience probably parallels that of
16 other states.

17 MS. RICE: Well, I would respectfully
18 submit that that is not the case in many other
19 states, that the need is not met by current state
20 resources.

21 MR. PERINGER: I would respectfully
22 disagree with you on that point.

23 MS. RICE: Fine.

24 MR. PERINGER: I think the NIEHS as
25 grantees did not recognize the existence of existing

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1 state training programs and some of the programs that
2 have been provided under that program were not fully
3 integrated with existing agencies and systems.

4 MS. RICE: Thank you.

5 ADMINISTRATIVE LAW JUDGE COX: Any other
6 questions?

7 MR. MORAWETZ: John Morawetz from the
8 Chemical Workers. Do you have a position about
9 accreditation of programs for industrial emergency
10 responders?

11 MR. PERINGER: I was limiting my comments
12 specifically to the public sector. That's where I
13 have my experience. That's what my mission is. I
14 think we're dealing with a gray area there.

15 MR. MORAWETZ: Okay. Another question
16 would be just for your own state of Missouri, do you
17 think that what you have now available in Missouri
18 could handle training the trainers or training the
19 actual emergency responders at the four levels in
20 your state?

21 MR. PERINGER: One element of our program
22 is to train trainers. We do not purport to have the
23 capability to provide the emergency response training
24 to everyone who needs it. We completely changed our
25 hazardous materials curriculum recently and again,

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1 within the last nine months that we did those 144
2 classes for nearly 4,000 people, in one of those
3 there were a series of initiatives that trained 42
4 additional instructors, in addition to 35 of my own,
5 but 42 additional instructors from local fire
6 departments, law enforcement agencies, and other
7 state agencies. Not only did those people go through
8 a Train the Trainer Program, but my agency provides
9 the instructional materials for them to deliver the
10 courses. We are just trying to leverage our
11 resources to the largest extent, and Train the
12 Trainer is an important aspect, but those instructors
13 who were in training also have to meet certain
14 requirements for instructor training technical
15 competence in the area before we actually put them
16 through the Train the Trainer in our specific
17 courses.

18 MR. MORAWETZ: If someone just went
19 through your course and didn't go over the whole
20 procedure but just completed your course, do you
21 think they could deliver the training program at the
22 same level of competency and your training itself?

23 MR. PERINGER: No.

24 MR. MORAWETZ: Fine. Thank you very
25 much.

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1 ADMINISTRATIVE LAW JUDGE COX: Are there
2 any other questions?

3 MR. GORDON: I see no others, Your Honor.

4 ADMINISTRATIVE LAW JUDGE COX: Very well.
5 Well, we thank you.

6 MR. GORDON: Thank you very much.

7 ADMINISTRATIVE LAW JUDGE COX: I'd like
8 to call one thing to the attention of the people that
9 are here. In my order issued on December 17, 1990,
10 we provided that they would have 30 days after the
11 close of the hearing in Cincinnati for submission of
12 additional information. For those of you that were
13 not present, a motion was made by the Solicitor that
14 that be 45 days. So the order in that particular
15 spot is changed to 45 days after the Cincinnati
16 period to submit any additional information.

17 MR. HALL: That is another 30 days from
18 this?

19 ADMINISTRATIVE LAW JUDGE COX: Yes, and
20 then there's an additional 30 days thereafter for
21 briefs. That part of the order didn't change, just
22 the 30 days.

23 All right. Mr. Gordon.

24 MR. GORDON: It may be on some of your
25 schedules, but the National Institute of Occupational

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1 Safety and Health testified in Washington. I do not
2 think they intend to testify today. Does anyone say
3 anything to the contrary of that?

4 [No response.]

5 We have the National Institute of
6 Environmental Health Sciences who did testify at
7 length in Washington, but they are down to give
8 additional testimony today. Is their representative
9 from them present?

10 Yes. Please come forward.

11 Your Honor, NIEHS presented extensive
12 materials in Washington and we gave those all exhibit
13 numbers.

14 If you have any additional materials that
15 you didn't present in Washington, we'd like you to
16 introduce it. If not, just proceed.

17 NATIONAL INSTITUTE OF ENVIRONMENTAL
18 HEALTH SCIENCES

19 Joseph Hughes, Jr., Work Training Expert,
20 NIEHS, accompanied by Doctor Alan
21 Stevens, Consultant for NIEHS and former
22 Director of the Division of Training for
23 NIOSH

24 MR. HUGHES: Joseph Hughes with NIEHS.
25 Good morning. And also this is Doctor Alan Stevens

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1 who is a consultant for NIEHS and former director of
2 the Division of Training for NIOSH.

3 We just had two in terms of exhibits. I
4 had a summary tables on the NIEHS Training Program
5 that I'm going to talk about that I want to submit to
6 the record, and also I had two articles that were
7 just published in Applied Occupational Environmental
8 Hygiene this month, one by Denny Dobbins and John
9 Moran looking at quality assurance.

10 MR. GORDON: Well, why don't we just call
11 the first item Exhibit 36. We'll ask His Honor to
12 admit them after we identify them. Exhibit 36 is
13 charts of your training program?

14 MR. HUGHES: Yes.

15 MR. GORDON: Okay. And Exhibit 36A, what
16 is that please?

17 MR. HUGHES: It's an article for AOEH,
18 from the journal.

19 MR. GORDON: And who's the author?

20 MR. HUGHES: Dobbins and Moran.

21 MR. GORDON: Article by Dobbins and
22 Moran, and is there another?

23 MR. HUGHES: That's all.

24 MR. GORDON: That's all?

25 MR. HUGHES: Yes.

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1 MR. GORDON: Your Honor, we have no
2 objection.

3 ADMINISTRATIVE LAW JUDGE COX: Very well.
4 Exhibit 36 and 36A is admitted into the record.

5 (Whereupon, the above-referred
6 to documents marked as Exhibit
7 Nos. 36 and 36A were received in
8 evidence.)

9 MR. GORDON: Please make sure Mr. Hall
10 has copies.

11 MR. HUGHES: Yes, I'll give them to you.

12 MR. GORDON: Thank you.

13 MR. HUGHES: We just had a couple of
14 things that we wanted to go over today to supplement
15 what we had said in Washington. I thought that at a
16 minimum I would just go over what our main points
17 were very quickly since our written statement is
18 already in the record, and then I thought that Alan
19 would talk a little bit about our site visit process
20 and how that's operated and some of the results.

21 As we have stated at the Washington
22 hearing, NIEHS and its Grant Program has attempted to
23 be a model for the country in terms of training
24 emergency responders and hazardous waste workers at
25 surplus sites and RCRA facilities. Our major

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1 concerns with 121 include the fact that we would like
2 to see coverage of all training which is presented
3 under 1910.120 including both emergency responders
4 and hazardous waste operations.

5 Number two, we would like to see all
6 refresher training that's conducted under 120 also
7 covered by the standard.

8 Number three, we would like to see
9 minimum hours for course content with a 40-hour basic
10 course for site workers and 24-basic course for RCRA
11 facilities and for operations level emergency
12 responders.

13 Number four, we would like to see
14 specific criteria established for programs which we
15 have already submitted to the record for your
16 perusal.

17 I guess our fifth point is that we would
18 like to see a peer review process used to evaluate
19 programs to advise the Assistant Secretary, and
20 possibly to do on-site review of training as it's
21 going on.

22 Our final point was that the site visit
23 outline that NIEHS originally published in 1986 be
24 used as a yardstick to look at programs as they
25 operate.

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1 So that's sort of a summary of what our
2 positions were on the standard. I thought it would
3 be worth putting it in the record, this is actually
4 some charts on our program. Tom had mentioned our
5 program as something that's out there available to
6 people, and I want to give a little sense of where
7 we've been. Our program by our figures over the past
8 three years have touched about 120,000 workers, and
9 numerically approximately 58 percent has been to
10 emergency response personnel, but that's also further
11 broken out by awareness level, operations level,
12 specialists, about 23 percent into cleanup sites, 15
13 percent for RCRA TSDs.

14 To get at the question that's sort of
15 danced around in Washington and here about
16 penetration, what we tried to do is take the OSHA
17 estimates of the base population for 1910.120 and
18 look at the number of people that NIEHS programs had
19 touched, and just again ball park figures, we
20 estimate about four percent of the emergency
21 responders have been training in NIEHS sponsored
22 training. We estimate that approximately 15 percent
23 of RCRA TSD workers have been trained, and we
24 estimate about 30 percent of cleanup workers, for a
25 grand total of approximately six percent of the total

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1 population that we estimate is out there. That's the
2 OSHA estimate of about 1.9 million under 120. So
3 that's just a little sense of coverage.

4 We'd also looked at coverage by region,
5 and we also have it by state, but this is also in
6 there to give a sense of how many people have been
7 touched by NIEHS training in the past couple of
8 years, also the spread of the course hours, the
9 spread of the different types of courses. Then the
10 one other piece that I thought might be relevant
11 because you all asked us this in Washington, we've
12 also broken down training costs of all grant programs
13 by the cost per course presented, by the cost of per
14 worker trained, and by the cost per course hour. One
15 of the things that we've noticed is that we had an
16 average cost per course of \$14.00, and in the RFI
17 that ERG did for you all in Section 5, they use the
18 estimate of \$15.00 per contact hour as an estimate of
19 the cost for providing training. Our costs were much
20 higher in the first year. We feel basically the cost
21 of setting up training sites and equipping hands-on
22 facilities and they've continued to go down. So I
23 guess we feel like the costs of our program are very
24 much in line with what your estimates were originally
25 for providing training.

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1 That's sort of a summary of what I have
2 to say today, and I'll turn it over to Alan and have
3 him talk about site visits.

4 DOCTOR STEVENS: I'd just like to speak
5 briefly about the development of the process and how
6 it has been adapted in this particular instance for
7 reviewing and providing some sort of quality control
8 with feedback mechanism on the conduct of this kind
9 of training. It's the whole idea of the peer review
10 process and particularly through study section or
11 review committee -- initial review committee review
12 of initial proposals to insure that the basic
13 components of the criteria that had been established
14 by NIEHS for this program had been met, and to make
15 a judgment upon which proposals should be funded
16 versus other proposals, insufficient funding being
17 available to fund all of them, and following this,
18 determined that it would be useful and necessary even
19 to have a follow-up mechanism through the site visit
20 process with a smaller number of individuals, fewer
21 reviewers conducting this review to provide, along
22 with NIEHS staff, to provide information on the
23 progress of the programs as to whether they had in
24 fact been appropriately established, were adequately
25 operating, and whether they had any problems. This

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1 served it for two purposes. One was to act as a
2 feedback mechanism for NIEHS on the status of these
3 programs and their quality, if you will. The other
4 was also to provide in a sense a consultative
5 assistance to the programs themselves by pointing out
6 some ideas for improvement in various areas or
7 deficiencies which programs may not have been well
8 aware of or suggestions for their correction, not a
9 direction but a suggestion.

10 In doing this we involve persons from
11 labor education, persons from universities, who had
12 already conducted similar types of trainings, had
13 background and knowledge in toxicology, in medical
14 requirements, and all of the various factors that go
15 into the requirements for analysis of the information
16 provided within these programs. We normally
17 conducted the site visits over a two-day or three-day
18 period depending on the extent of the program and the
19 number of sites in which the training was conducted.

20 During the course of the review there are
21 three major things done. There would be a pre-
22 meeting the night before in order to determine
23 adequacy of the agenda to make sure that all the
24 points were covered. Site visitors were provided
25 with background information on the initial analysis

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1 of the program, any progress reports that the
2 programs had made, and any other background or
3 pertinent information that the programs would provide
4 about things that they had accomplished in the
5 interim.

6 Then during the course of the site visit
7 the normal procedure was to meet and visit with the
8 conductors that did the administration of the program
9 for an overview of what they had done and how they
10 were doing it. Then also to sit in on and listen on
11 and observe classroom training and also to observe
12 hands-on training to insure that appropriate
13 equipment facilities were available and to observe
14 the conduct of the training and the adequacy of the
15 presentation by the staff, and also interviews with
16 the students. In many instances those who had
17 already attended the courses and had been asked to
18 come back in by the grantees of the training programs
19 to provide information on how they had been able to
20 utilize the information obtained, whether they had
21 any problems or things that they felt would be an
22 improvement to them in regards to the work that they
23 were conducting in this area.

24 It was found through the course of these
25 reviews that were conducted on all the NIEHS

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1 grantees, some of them had multiple sites, so two or
2 three sites were visited. Others had individual
3 sites so only a single site was visited. At the end
4 of the recommendation, site visitors are given a
5 fairly formal procedure for carrying out the reviews
6 to be sure that all the areas are covered, provided
7 the NIEHS criteria for a site visit outline and
8 information that has already been submitted to the
9 record, and also provide it with a general outline of
10 how the report should be prepared to insure that all
11 of the areas were covered adequately. The final
12 thing in the report, there was a summary and
13 recommendation section or suggestion section, either
14 recommendations to NIEHS on some problem areas that
15 they in a programmatic way needed to keep oversight
16 on and feedback on and also possibly visit again with
17 their staff personnel to insure that corrections had
18 been made if they were necessary, and also
19 suggestions as I mentioned earlier to the training
20 applicant as to things that they might do to improve
21 their programs, and that is essentially it.

22 If there are any questions, I'd be glad
23 to answer any questions.

24 MR. HUGHES: I guess just another thing,
25 you all had asked us a couple of questions in

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1 Washington. The cost was one I guess, also a summary
2 of our site visits, and also a summary of our own
3 evaluations, and we just wanted to say that we
4 prepared that as a post-hearing comment that we would
5 submit in a written fashion for the record.

6 MR. GORDON: Thank you very much for your
7 illumination in these areas and providing some of the
8 materials already that we asked for. I think some of
9 the members may have some questions. Doctor Conway
10 has a few questions.

11 DOCTOR CONWAY: Mr. Hughes, I was jotting
12 down quickly to try to keep up with the cost data.
13 Now, this is new cost data? We haven't seen this
14 before, is that what I understand?

15 MR. HUGHES: Right, I'll explain what we
16 did. Basically we took the amount of the grants that
17 were awarded to the grantees, and sort of massaged
18 the data by the number of people trained, the number
19 of courses presented, the number of contact hours, so
20 that we got a sense -- I was giving you composite
21 figures for the whole program -- so that we have an
22 idea of what the costs are for providing training.

23 DOCTOR CONWAY: And this will also
24 include the cost, as I understand it, NIEHS develops
25 the course and tailors it to individual client needs.

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1 How much tailoring goes on?

2 MR. HUGHES: Well, the individual
3 grantees tailor the courses. We're just a granting
4 agency in that sense, and as I explained before, a
5 lot of the initial expense was -- well, course
6 curriculum development, you can hear from the
7 grantees what that involves, also equipping sites,
8 were the reasons why we feel like the costs on the
9 front end were higher than what we're seeing now.
10 I'm just trying to give you averages over the three-
11 year period of how it looks now.

12 DOCTOR CONWAY: No, it sounds like the
13 information is relevant and right on. I'm just
14 trying to find what our function would be here.
15 Let's assume, if the rule were modified, let's say
16 it's to cover emergency responders, how much is that
17 going to cost? It's that kind of information that
18 we're trying to get at here and document it as well
19 as possible. So you do have cost information related
20 to the emergency responder group?

21 MR. HUGHES: Yes.

22 DOCTOR CONWAY: You've got it for both
23 public and for the in-house, the industrial?

24 MR. HUGHES: I feel like what we can help
25 you with is at least give you base figures just

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1 within our program on cost that you could project to
2 the rest of the country, and that's what we're
3 prepared to do with our post-hearing comments is sort
4 of give you that information in a lot more detail
5 than just this chart.

6 DOCTOR CONWAY: By the way, I'm not
7 suggesting that the rule will be modified. I'm just
8 saying that if it were.

9 MR. HUGHES: Right.

10 DOCTOR CONWAY: This is the sort of thing
11 that you need in the hearing.

12 MR. HUGHES: Yes, I think we understand
13 what you're --

14 DOCTOR CONWAY: Is there enough? What I
15 would be concerned with is that since you're only
16 dealing with four percent of the emergency responder
17 population, that I'm not quite sure how accurate that
18 information would be. See, being a skeptic, we take
19 it from the opposite point of view. Could you
20 comment on that, how representative do you feel any
21 data that you supplied would be for that group?

22 MR. HUGHES: Well, there's a couple of
23 different ways to look at the data. That particular
24 number is just a look at market penetration, if I use
25 a private sector word, but I think one of the

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1 important things about our data is that we're
2 presenting information that is multi-regional, multi-
3 state, and multi-sectorial in the sense that we're
4 hitting people inside of plants in every region.
5 We're hitting people in fire departments in every
6 state -- well, not in every state, but in every
7 region. So in that sense it's representative I feel
8 like, even though it's not -- I mean we can't cover
9 all 1.3 million.

10 DOCTOR CONWAY: Sure.

11 And Doctor Stevens, in your presentation
12 you mentioned two or three times the fact that you
13 would look at a course content and, I'll paraphrase,
14 you needed to be sure that all of the relevant
15 provisions were being covered.

16 DOCTOR STEVENS: Yes.

17 DOCTOR CONWAY: So I take from that that
18 while there's some tailoring as modification
19 situation by situation that there's a baseline that
20 you had your eye on to be sure that at least this
21 much was being done and this was covered?

22 DOCTOR STEVENS: Yes, that's correct.

23 DOCTOR CONWAY: Is 24 hours sufficient
24 for emergency response training?

25 DOCTOR STEVENS: It's just based on the

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1 training required, the number of hours required as
2 suggested by NIEHS for 24-hour.

3 MR. HUGHES: You mean for operations.
4 It's not awareness.

5 DOCTOR CONWAY: Yes, this is a little bit
6 off the point. I was just curious.

7 DOCTOR STEVENS: Eight hours awareness or
8 in 24-hour operation.

9 DOCTOR CONWAY: I see. Thank you very
10 much.

11 MR. GORDON: I think Mike Moore has a few
12 questions.

13 MR. MOORE: Yes, good morning. Forgive
14 me if I'm asking the same question again, but I'm in
15 my fourth week of hearings, and I don't know what
16 they all did, but I'm concerned about logistics, and
17 the fact that OSHA is going to be reviewing programs.
18 Based on your experience in reviewing the various
19 applications for grants, I'd like some information if
20 you can on averages -- and this can all come post-
21 hearing, it doesn't have to be right today -- the
22 time frame that it takes from when you receive the
23 initial grant application through to the final
24 awarding of the grant, how long did that take?
25 That's one. The number of individuals that were

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1 involved in the review process? You talked about a
2 peer review. I'm interested in finding out how many
3 individuals participated in that peer review
4 committee, and how much time the peer review took
5 based on your, you know, just looking at all the
6 grants you've offered and given. If we can get an
7 idea so that when we sit down and put our heads
8 together and consider our population, what we're
9 looking at as far as logistics go. Thank you.

10 MR. PIERCE: Good morning. I guess I'd
11 like to explore a little bit the capacity that NIEHS
12 has for training employees with emphasis on emergency
13 response workers. Could you comment now, or perhaps
14 in post-hearing on the estimated rate of yearly
15 training, number of employees per year in the areas
16 of awareness, first responders, operations hazardous
17 materials technician, and hazardous materials
18 specialist, and an adjunct to that we would like to
19 know the capacity for refresher training programs?
20 I guess we have a concern whether or not a smaller
21 group of possibly accredited courses could actually
22 handle the capacity of training that would be needed.
23 So could you provide any information today or post-
24 hearing? We would appreciate that.

25 MR. HUGHES: Yes, I feel like what you're

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1 asking is exactly what we're thinking about trying to
2 provide and I think we have a good sense of what
3 you're looking for. I think the numbers could speak
4 more specifically to rate and also in terms of -- I
5 mean, most of the training that's been provided is at
6 the awareness and operations level, to a lesser
7 extent at the upper tiers. I mean we can give you
8 the specific numbers on that, but I've noted down
9 exactly what you want.

10 MR. PIERCE: Okay. Thank you very much.

11 MR. GORDON: Mr. Seymour.

12 MR. SEYMOUR: Joe, I'd like to add the
13 on-scene commander to the list, too. He didn't
14 mention that and that's one that's really a concern
15 to us.

16 MR. HUGHES: You know what? It's in my
17 revised statement.

18 MR. SEYMOUR: Okay. What Mr. Pierce was
19 asking if you might add that?

20 MR. HUGHES: Yes, definitely.

21 MR. SEYMOUR: Okay, fine. You're saying
22 that NIEHS has a 24-hour model emergency responder
23 operational level (q) program. Is that in the public
24 record yet as to what the elements are and the times
25 you use for each of the courses?

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1 MR. HUGHES: Well, as everybody noted, we
2 have submitted every grantee's courses, the entire
3 curriculum. Actually that's another thing that we've
4 done, just sort of gone through everybody's
5 operations level course to look at what is contained
6 in it and how it's timed out. I guess another thing
7 that we're thinking is that to make it easier for
8 you, we may just do that as a chart almost to show
9 how everyone is dealing with that.

10 MR. SEYMOUR: Will it actually be
11 consolidated into one?

12 MR. HUGHES: No, you guys were asking
13 about indexing, which is in the boxes, but if we know
14 what you're looking for, we can extract stuff even
15 more specifically.

16 MR. SEYMOUR: Okay. I guess as Mr.
17 Gordon had asked in the last hearing in Washington,
18 we needed a listing of all materials aid to the
19 boxes. That's the index you're speaking of?

20 MR. HUGHES: Right.

21 MR. SEYMOUR: But when you all say a 24-
22 hour operation level model program, I've had a chance
23 to look at what Mr. Duffy submitted as far as his
24 first responder training as he calls it.

25 MR. HUGHES: Right.

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1 MR. SEYMOUR: Which would be a
2 combination of awareness and operational level.

3 MR. HUGHES: Right.

4 MR. SEYMOUR: And is that what you're
5 using as a model or did other grantees develop their
6 own models for that and is there one uniform or
7 unified model that NIEHS believes is the 24-hour by
8 hour segment program?

9 DOCTOR STEVENS: There were a number of
10 different ones, for example, depending I think upon
11 if you're talking about a fire fighter or police or
12 some other roadside emergency response. There's
13 going to be a minor modification in some of the
14 operational part of it as opposed to someone in an
15 in-plant brigade response.

16 MR. SEYMOUR: We agree with that.

17 DOCTOR STEVENS: Of some other type of
18 emergency response so there's not one exact model
19 that will cover all individuals.

20 MR. SEYMOUR: Okay. That's actually what
21 my concern was. I was reading what you were saying,
22 NIEHS has a model, and I was wondering is that one
23 unified model, but you've got a number of models that
24 are actually addressing the needs as you all have
25 envisioned the needs.

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1 MR. HUGHES: Yes, just so you all
2 understand, the agency didn't tell people, "This is
3 the course." I mean, by the mandate of Congress --

4 MR. SEYMOUR: No, I understand.

5 MR. HUGHES: -- everything that we do has
6 to comply with 1910.120, and originally with the
7 interim rule, that's what everybody was shooting for
8 as the target, and as Alan said and as you probably
9 know, everybody's courses are a little different.

10 MR. SEYMOUR: I guess that was my whole
11 concern. When you said you have a model, you have a
12 number of models that you're using.

13 MR. HUGHES: Right.

14 MR. SEYMOUR: I thought maybe I had heard
15 you say there was one single model, and you did not.

16 MR. HUGHES: Right, no.

17 MR. SEYMOUR: In the peer review, and
18 this is the site visits, have you done site visits
19 where the 24-hour operation level training was done
20 and were volunteer fire fighters involved in that
21 training delivery?

22 DOCTOR STEVENS: During the course of the
23 site visit, no, we did not observe volunteer fire
24 fighters. We did observe some of the regular
25 department fire fighters.

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1 MR. SEYMOUR: Career fire fighters?

2 DOCTOR STEVENS: Career fire fighters in
3 a natural training for any course, 24-hour training
4 course.

5 MR. SEYMOUR: Your market penetration,
6 and I tried to write down some of those numbers, and
7 I'm not going to ask you to go over them again, did
8 you include in your penetration about how many
9 emergency responders are actually receiving training
10 by also including the FEMA Programs, both the EMI and
11 the National Fire Academy classes and members that
12 have gone through that? Was that included in your
13 market penetration as far as people getting training
14 to meet the OSHA standards?

15 MR. HUGHES: Well, you know, actually I
16 have all those for every year, and actually that's
17 sort of factored into our equation on looking at
18 program needs. This data doesn't include FEMA and
19 the states, but we do have that data, and we could
20 include that also. That would give you a bigger
21 picture in terms of the federal government's
22 perspective what needs is federal money meeting.

23 MR. SEYMOUR: I was understanding that
24 your description of your market penetration was --
25 were you trying to say that's the level of the number

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1 of people that actually received training to try to
2 come into compliance with the OSHA standard or what
3 was it?

4 MR. HUGHES: No, no, NIEHS training has
5 reached X percent.

6 MR. SEYMOUR: I see. Okay.

7 MR. HUGHES: But if you want we have
8 FEMA's training. We have the Fire Academy, and we
9 could add those all in.

10 MR. SEYMOUR: Okay. I just wanted to
11 understand more clearly what you were saying as far
12 as your market penetration.

13 MR. HUGHES: Okay.

14 MR. SEYMOUR: And I misunderstood you
15 trying to say that this is really the number of
16 people who have actually received training to be in
17 compliance with the OSHA standard.

18 Refresher training, and we talked a
19 little about this last hearing, the idea of a generic
20 refresher training course, we need some help as far
21 as how that's going to fit in with the local planning
22 activities. We want responders to be knowledgeable
23 about the local planning committees plans and the
24 employers' procedures and his incident command, and
25 if you have a way that can be done from the refresher

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1 training, because as we say in the final rule about
2 incidents and doing critiques of those can be used as
3 part of the refresher training, what we did right,
4 what we did wrong. If you have some way that's going
5 to be inculcated to the refresher training, we could
6 use some guides as to how that can be done. Thank
7 you.

8 MR. HUGHES: I think our individual
9 grantees can talk to that.

10 MR. SEYMOUR: Okay. Thank you.

11 MR. GORDON: Thank you very much. We
12 appreciate all this help that you're giving us.
13 Although our docket office is having trouble finding
14 room for your five boxes and we have no further
15 questions.

16 DOCTOR CONWAY: Your Honor, may I?

17 ADMINISTRATIVE LAW JUDGE COX: One
18 follow-up.

19 MR. GORDON: One follow-up?

20 DOCTOR CONWAY: Yes.

21 MR. GORDON: Go ahead, Doctor Conway.

22 DOCTOR CONWAY: I apologize, Your Honor.

23 I was giving some silent encouragement
24 there. I would like to make it explicit that there
25 were at least two or three separate areas on which

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1 you touched, and which I believed you were offering
2 additional information. All of it would be extremely
3 valuable on the amount of time on average given to
4 the particular topics within a course, very useful,
5 the data that you suggested, supplementary data, on
6 both FEMA and the state additional training coverage
7 would be extremely useful to get, and although
8 tangential to this rule, but anything that you have,
9 and you may not have started yet, but anything you
10 have on the effectiveness of these particular
11 training programs. If there's been any comparative
12 work done, the particular mix and ingredients,
13 particular emphasis, and what it's accomplished by
14 way of a better effect somehow measured, and we're
15 very open on that, but it's something that we come
16 under more and more questioning on ourselves, and the
17 development and justification of the rule. So
18 anything you have in that line would be very useful.

19 MR. GORDON: I have also been asked to
20 ask you if you could give us your estimated manpower
21 that goes into the site reviews, in terms of man-days
22 or man-weeks per training program reviewed, and with
23 that, that was our final question, and we thank you
24 very much.

25 The public participants may have

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1 questions, Your Honor.

2 ADMINISTRATIVE LAW JUDGE COX: Yes, are
3 there any that would like to ask some questions from
4 the public?

5 [No response.]

6 Well, I see none, so we do appreciate
7 your coming out and testifying and furnishing this
8 material.

9 DOCTOR STEVENS: Thank you.

10 ADMINISTRATIVE LAW JUDGE COX: Thank you
11 very much.

12 MR. GORDON: The next participant listed
13 is the Kentucky Fire Commission, Fire Marshal Martin
14 and Mr. Jordon.

15 MR. MARTIN: How are you this morning?

16 MR. GORDON: Fine. Could you please
17 introduce yourselves, and if you have a statement,
18 we'd like to have you introduce it for the record?

19 KENTUCKY FIRE COMMISSION

20 John William Martin, Kentucky State Fire
21 Marshal and member Fire Commission for
22 Commonwealth of Kentucky; accompanied by
23 R. Wayne Jordon, Administrator

24 MR. MARTIN: My name is John William
25 Martin. I'm the Kentucky State Fire Marshal, and

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1 also a member of the Fire Commission for the
2 Commonwealth of Kentucky. I do have a prepared
3 statement. However, I do not have any additional
4 copies, but it is very short, brief, and to the
5 point, and I will answer any questions you might
6 have.

7 I'd like to thank you for the opportunity
8 to provide input into what our Fire Commission
9 believes is an extremely critical issue, the
10 accreditation of training programs for hazardous
11 waste operations. We are making the assumption by
12 being here that this will cover emergency responders,
13 although we have heard otherwise.

14 First, what I would like to state is that
15 we are not specifically opposed to the development of
16 accredited training programs and the use of these
17 programs where possible in training Kentucky's fire
18 service. We are opposed to mandating of the
19 accreditation of special interest groups' training
20 programs, and the mandating that individual states
21 having to follow specific programs. Programs of this
22 nature have surfaced in the past several years and
23 more will surely come to light when accreditation of
24 programs is mandated, but at whose expense? Often
25 programs are offered by private or semi-public

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1 organizations. They're usually not within the reach
2 of the small fire departments that will make the
3 large amount of hazardous materials incidents in
4 Kentucky.

5 Our Fire Commission is responsible for
6 certifying paid and volunteer fire fighters across
7 Kentucky. The Fire Commission has been in place
8 since 1972, and presently has over 16,000 volunteer
9 fire fighters certified and 2,400 career fire
10 fighters certified. In Kentucky fire fighters are
11 certified to do three things: personal career goals,
12 job advancement, departmental requirements, or so
13 that they or their fire department will receive
14 financial assistance from the state. One hundred
15 fifty (150) hours of training are required for
16 certification as a volunteer fire fighter which
17 includes 12 hours of hazardous materials training.
18 Four hundred (400) hours of training are required for
19 certification as paid fire fighters, and this
20 includes 20 hours of hazardous materials training.
21 Both volunteer and paid personnel must have
22 continuing education hours on an annual basis to
23 remain certified. Our certification system is far
24 from perfect, but we on the commission attempt to
25 improve this on an ongoing basis.

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1 Over the years, fire departments across
2 our state have received training via many sources:
3 in-house training through Kentucky Tech., which is
4 the vocational education branch of state government;
5 state, regional, and local seminars and workshops;
6 the National Fire Academy; and others. This training
7 has included hazardous materials placarding, the
8 National Fire Association recognition and
9 identification of hazardous materials course,
10 hazardous materials incident analysis produced by the
11 National Fire Academy, and more recently introduction
12 to hazardous materials and emergency response has
13 been offered. In the last six months, this class has
14 been offered to 1,000 fire fighters across our state
15 to meet 29 CFR 1910.120 for operation level response.
16 The fire service is in the process of recovering from
17 the start-up of 29 CFR 1910.120. Some departments
18 have decided not to do anything regarding hazardous
19 materials response. Others are attempting to comply
20 at varying levels.

21 Plans are currently in process of
22 continuing the operation level training and
23 implementing the technical and specialist levels
24 based on a course developed by EPA, their
25 contractors, and the requirements of 29 CFR 1910.120.

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1 The vast majority of Kentucky fire departments have
2 indicated that they plan on going to the operational
3 level of response due to the large expense of going
4 further in either time or funds. Meetings are
5 currently being held to develop regional response
6 teams made up of state and local officials and
7 integrating the private sector.

8 The fire service realizes that training
9 is important if they are to respond to hazardous
10 materials incidents. They are, however, embarrassed
11 when they follow all of the rules only to see private
12 contractors respond in an unprofessional manner.
13 Your attention is certainly needed in this area.

14 The fire service of Kentucky needs your
15 assistance. They need your assistance by making
16 available training and funding for fire departments
17 which can be customized to fit our needs in the
18 Commonwealth of Kentucky, and not by mandating
19 specific programs which may be beyond our reach.

20 I thank you for the opportunity to be
21 present today and I'll answer any questions that you
22 may have.

23 MR. GORDON: Thank you very much, Fire
24 Marshal Martin. We do have some questions for you.
25 I have a few questions. You said that you have

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1 current programs to certify both volunteer and
2 professional fire fighters. Do you do the training
3 of them or do you certify training programs that give
4 the training to these fire fighters?

5 MR. MARTIN: They're done through a
6 number of different methods. We certify instructors
7 in individual fire departments who then are able to
8 instruct in their own department, as well as our
9 Kentucky Tech. branch of Vocational Education people
10 provide the majority of fire service training in our
11 state.

12 MR. GORDON: I see. And you said that a
13 number of fire departments have chosen to train their
14 fire fighters to the operations level as required by
15 120, but you said that some have not. In the case of
16 those departments that haven't trained their fire
17 fighters to the operations level, do they then not
18 actively respond to HAZMAT spills and call in
19 departments which have been properly trained?

20 MR. MARTIN: That is their attempt. We
21 question whether or not they will be able to do that
22 and we encourage all of them to go to operations
23 level. However, I will give you a perfect example.
24 I in my office have a hazardous materials section,
25 and we very often respond to incidents where the fire

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1 department has not responded. They offer their
2 assistance any way that it's possible to my staff and
3 other responders. However, they don't want anything
4 to do with it. That's probably good in the light
5 that they aren't trained.

6 MR. GORDON: Now, you said that you
7 didn't want us mandating special interest programs.
8 I'm not sure what you meant by that. Could you
9 expand on it?

10 MR. MARTIN: Well, I am not familiar with
11 the testimony that was presented in Washington, but
12 I am familiar with many of the courses that are being
13 offered and in many cases they're very limited in
14 their approach. We have 20,000 fire fighters across
15 the state of Kentucky. During the past six months we
16 trained 1,000 of them in operations level response.
17 Due to time requirements of the volunteers and
18 particularly in funding requirements for attending
19 some of these courses, we have a tremendous problem
20 trying to get the fire fighters trained. They are in
21 the process and most that are planning on responding
22 will do so.

23 MR. GORDON: Now, when these fire
24 fighters are trained to your level of certification,
25 to either 150 hours with 15 hours of HAZMAT, or the

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1 I think you said 420 for the professional fire
2 fighters, when they receive their training, do you
3 think they are competently trained to handle HAZMAT
4 responsibilities that they are given?

5 MR. MARTIN: No, I do not believe that
6 they are trained for all of the responsibilities.
7 You have to remember that our system was set up a
8 long time prior to the present requirements of 29 CFR
9 1910.120. Interestingly enough we have a workshop
10 the next couple of days from now where we will be
11 dealing with accreditation of particular programs.
12 The problem that we would have and I would think most
13 educators would have is we go based on hours, and
14 hours doesn't always equivocate competency. So we
15 have that problem built into our system and we're
16 going to try to address that.

17 MR. GORDON: Now, is your training for
18 first responder operations level in addition to these
19 150 or 400 hours?

20 MR. MARTIN: Yes, we require continuing
21 education. That's just to receive their initial
22 certification as either a volunteer or a career fire
23 fighter. This course is being offered as a
24 continuing effort to make available training courses
25 that are needed by the fire service.

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1 MR. GORDON: Thank you. You also said
2 you did not oppose certification of emergency
3 response training. This is an open question for
4 OSHA. So I'm just going to ask you to clarify that.
5 If we did decide to certify training programs for
6 emergency response workers, as long as we didn't
7 mandate specific special interest courses, you,
8 speaking for Kentucky, would say you would not oppose
9 that?

10 MR. MARTIN: We would probably use
11 courses developed and I will give you a perfect
12 example of that. When we were getting into the
13 operations level training last year, we looked around
14 for training programs, and we found one that we felt
15 met the needs for Kentucky at the operational level,
16 and it was a course developed by an EPA region and
17 the Union Pacific Railroad, and that's the one that
18 we used, but we customized it. We put a little bit
19 of our emergency response personnel involving their
20 local plan at the local level and also the state plan
21 to make it fit Kentucky's needs.

22 MR. GORDON: So you also have the
23 competency -- the Fire Commission itself has the
24 competency to find courses which meet OSHA's
25 requirements and adequately train workers in HAZMAT,

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1 and you have indeed found such courses and made them
2 available for you fire fighters.

3 MR. MARTIN: At the operational level.

4 MR. GORDON: I have no further questions.
5 I think the rest of the panel does.

6 Doctor Conway.

7 DOCTOR CONWAY: Mr. Martin, were you with
8 the Kentucky State Fire Department in 1973?

9 MR. MARTIN: I was with a fire department
10 in Kentucky.

11 DOCTOR CONWAY: I remember a very
12 impressive presentation given by the then Governor
13 Ford at the Old Payboard in 1973, and I just curious
14 to know if you were part of that party. They came to
15 Washington.

16 MR. MARTIN: I'd been a fire fighter for
17 two years at that time.

18 DOCTOR CONWAY: Your answer is no?

19 MR. MARTIN: No.

20 DOCTOR CONWAY: What's the evidence on
21 your statement that the private emergency response in
22 your evaluation that there's inadequate training
23 going on among the private emergency responders?
24 What's the documentation of the evidence for that?

25 MR. MARTIN: Just personal accounts from

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1 my staff who respond to emergency incidents. I'm not
2 saying that all private sector responders are like
3 that, but we still have them out there, and between
4 my staff and the staff of our disaster and emergency
5 services and I'm certain through our labor cabinet in
6 our state, we will be directed to find those problems
7 and noting them to the Department of Labor as we see
8 them. I know of incidents where we've had
9 expressways shut down for eight or ten hours and
10 we've done everything by the book waiting for the
11 expert to come and they'll walk in in their tennis
12 shoes and jeans and go up and stop a leak. That we
13 think needs to be addressed. Once again, I am not
14 suggesting that all responders are like that.

15 DOCTOR CONWAY: Is it the case that
16 there's a block of training being given to the
17 emergency response private sector teams, but it's
18 inadequate in some way or is there no training being
19 given?

20 MR. MARTIN: I really can't adequately
21 answer that.

22 DOCTOR CONWAY: Okay. Thank you very
23 much.

24 MR. GORDON: Mr. Moore.

25 MR. MOORE: Yes, just a couple.

1 In the commonwealth you said there's
2 20,000 fire fighters?

3 MR. MARTIN: Approximately.

4 MR. MOORE: Approximately how many are
5 volunteers?

6 MR. MARTIN: 16,000 to 17,000.

7 MR. MOORE: Are they considered under the
8 Kentucky state plan to be employees? They are? So
9 they're covered by the state program?

10 MR. MARTIN: They are not at this time by
11 our labor cabinet. However, we have been telling all
12 of them that we expect that will be following and
13 that they should be trying to attempt compliance.

14 MR. MOORE: A lot of your discussion, at
15 least to me, appeared that the basic fire fighter
16 population is trained to the operations level. If
17 you get a response scenario where you do need the
18 services of, say, a higher level, higher technical
19 specialist training team, what would the local fire
20 department do?

21 MR. MARTIN: In some cases the larger
22 metropolitan areas are in the process of achieving
23 technician and specialist level. For the most part
24 my staff, which is 15 individuals, that of the
25 Disaster and Emergency Services Office and our

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1 Natural Resources branch, which is our EPA section,
2 all have people that are qualified. All of my people
3 have recently completed technician level training.

4 MR. MOORE: How about industrial support?
5 If you're in a response scenario where you need a
6 fairly rapid response time for this higher level
7 technician or specialist, are there teams available
8 from industry to come help like in a mutual aid type
9 system?

10 MR. MARTIN: Yes, there are. We're
11 trying to develop those systems so that they will be
12 of larger benefit so that we know where they all are,
13 but I also serve as a member of our State Emergency
14 Response Commission, and the industry has been very
15 cooperative through that group, but we're primarily
16 looking up setting up our regional response teams
17 that we're looking at right now.

18 MR. MOORE: Do you find the level of
19 competence of the industrial individuals to be at
20 least workable with your crews?

21 MR. MARTIN: The ones that I'm familiar
22 with are.

23 MR. MOORE: Thank you.

24 MR. GORDON: Mr. Pierce.

25 MR. PIERCE: Yes, Mr. Martin, if OSHA did

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1 decide to mandate the use of accredited emergency
2 response training programs, how would that affect
3 your existing training initiatives?

4 MR. MARTIN: I would think that they
5 would have to be courses that were able to be handed
6 off in the Train the Trainer type operation so that
7 we could do it or we would never be able to reach the
8 20,000 fire fighters out there.

9 MR. PIERCE: I guess I want to follow up
10 a little bit to Mr. Gordon's questions. Are you
11 recommending that we have a, shall I say, a voluntary
12 accreditation program in the emergency response area
13 so that you could utilize accredited programs, but
14 not necessarily have to use an accredited program?
15 Is that what your testimony is saying?

16 MR. MARTIN: I think it would be nice
17 from a person -- I am not an educator, and I know
18 that when we were trying to look for the class for
19 operations level, we had to go through component by
20 component to see if all the requirements of 29 CFR
21 1910 were covered, and it would be nice if somebody's
22 stamp was on the thing and it had already said that
23 that was in the course, and then we could either pick
24 up that course or use other ones that may be
25 available.

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1 MR. PIERCE: Okay. Thank you very much.

2 MR. GORDON: Mr. Seymour.

3 MR. SEYMOUR: Yes, in the example that
4 you gave where they came in tennis shoes and blue
5 jeans, was that after the 1910.120 rule became
6 effective or was that before?

7 MR. MARTIN: That was after.

8 MR. SEYMOUR: And were those individuals
9 reported to the Labor Commissioner, because of course
10 that would be a violation of the Kentucky state
11 requirements?

12 MR. MARTIN: I think that they were,
13 however, I am not positive. I know at the time
14 everybody was so surprised that nobody knew where
15 their responsibilities started and stopped, and there
16 may have been some confusion that resulted in that,
17 but I'm sure that based on our State Emergency Plan
18 for Hazardous Materials Response, which is RNXQ of
19 our state emergency operations we will now make sure
20 that that reporting takes place.

21 MR. SEYMOUR: I think one of the
22 questioners for Mr. Peringer was saying that
23 Kentucky's program doesn't have a -- your program
24 doesn't I guess fully meet the OSHA requirements yet,
25 and you've indicated that to some degree as well.

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1 MR. MARTIN: Yes, sir.

2 MR. SEYMOUR: The thrust of the Agency
3 accrediting emergency responder training programs
4 would be, those would then -- once the program is
5 effective then only accredited programs could be
6 delivered. There wouldn't be then any other
7 flexibility and somebody, if you will, free-lancing
8 for some local need if it was going to be used to
9 meet the standard. Your position still is that there
10 should be some kind of accreditation program that
11 would --

12 MR. MARTIN: I think we have an
13 accreditation program for fire fighters in our state.
14 I would like to keep the responsibility of that
15 accreditation with our Fire Commission and use
16 programs that are recognized by the federal
17 officials.

18 MR. SEYMOUR: If you would be willing to
19 do so, I'd like you to respond to some of the
20 questions in a post-hearing comment. I don't know
21 that you need to do it right now, but we talk about
22 the level of emergency training that should be
23 targeted for accreditation, and even, as you heard
24 Mr. Peringer speak, about in-house police department
25 training, local volunteer fire department training,

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1 where those should be down to that level accredited.
2 You've heard other witnesses talk about even
3 refresher training should be accredited, and if you
4 have any opinions about that.

5 MR. MARTIN: I wasn't familiar with the
6 questions prior to today, but I can surely do that.

7 MR. SEYMOUR: It's not too late, sir, and
8 as the Judge has indicated, there will be time after
9 the hearing concludes to still get in some written
10 comments. OSHA is also interested in hearing what
11 role state emergency response training accreditation
12 agencies should play in a national accreditation
13 program. If you have some idea that there would be
14 possibly a national program that would then recognize
15 and accept state accreditation programs, say, like
16 your own, if you have some idea how that should fit
17 together, we could certainly benefit from that.

18 MR. GORDON: Let's ask him, do you have
19 an opinion on that? Could you answer that question
20 now? .

21 MR. MARTIN: I'm not sure from my past
22 experience of dealing with some federal agencies that
23 the turnaround of getting an answer on what we wanted
24 would be fast enough to comply with our needs.

25 MR. SEYMOUR: I'd like to follow up a

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1 little bit on your 150 hours and 400 hours for both
2 career and volunteer to get a better understanding.
3 You've indicated in the volunteer 150-hour training
4 that 12 hours is for HAZMAT. How much of the 150
5 hours deals with the safety and health of the fire
6 fighters, such as respiratory protection and personal
7 protective equipment? Is that all rolled up in your
8 HAZMAT training?

9 MR. MARTIN: No, look. Self-contained
10 breathing apparatus would be an entirely different
11 component of that system of getting certification.
12 So that's all assumed that you do that under a
13 separate part. The 12 hours would be specific to
14 hazardous materials training. Once again, this was
15 something that was in effect long before 1910.120
16 was, so the hours do not necessarily fit exactly with
17 what we need today and we'll look at a change in
18 that.

19 MR. SEYMOUR: No, I guess my concern is
20 that when you talk about training responders in
21 respiratory protection, you obviously are helping
22 them to meet the 120 rule as well. So besides the 12
23 hours you're teaching, there's other hours in those
24 courses that are also being utilized or could be
25 utilized to help meet the standard.

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1 MR. MARTIN: Right, we teach other
2 flammable and combustible liquid classes. We have
3 FCVA training. We have incident command training.
4 I guess one of my major problems with changing our
5 system is that fire fighters have been making these
6 kinds of responses for I guess since they've been
7 around, since they've been fire fighters, and we've
8 always been concerned about the health and safety of
9 our fire fighters. I realize that we probably have
10 hurt some fire fighters from maybe a chronic
11 condition of exposure to something just like we used
12 to go into burning buildings without FCVA, but our
13 history in Kentucky is that we have not hurt people
14 at hazardous materials incidents responding in an
15 unprofessional or unwarranted fashion. Like I said,
16 we possibly could have exposed them to things that
17 they shouldn't have been exposed to in the past and
18 I think that what we are all doing will try to
19 benefit future fire fighters.

20 MR. SEYMOUR: I would ask in your post-
21 hearing comment if you might look at your 150-hour
22 and your 400-hour program and then list the total
23 kinds of course content materials that you think is
24 appropriate to help meet the 120 rule, including the
25 PPE training. You mentioned flammable liquids in

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1 addition to the hazardous materials. We would
2 consider flammable liquids to be hazardous materials
3 or hazardous substances. If you have flammable gas
4 training, that's also additional hours that would be
5 covered by this rule, and so on.

6 MR. MARTIN: Okay. Yes, sir.

7 MR. SEYMOUR: In the case of fire
8 departments that don't do anything, you mentioned
9 that you're on the state circ. How does that fit in
10 with the LEPC requirements? Are the LEPCs relying on
11 those departments to perform certain functions when
12 in fact they're not doing that?

13 MR. MARTIN: I'm also on the Review
14 Committee for the LEPC plans. In Kentucky each
15 county has their own LEPC. We have 120 LEPCs, and I
16 would say that we're in the process of reviewing
17 those plans and in many cases someone has made the
18 assumption that the fire department will handle the
19 problem. In some cases they have actually involved
20 the fire department in that decision and in other
21 cases I'm sure that we haven't. In some cases the
22 only response that we would have in that county of a
23 particular material may be chlorine at the water
24 treatment plant. But, yes, there are those
25 assumptions that the fire department would come and

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1 respond. Our experience has been if the fire
2 department is not trained to make that response, they
3 may go and they may set up an isolation area, but
4 that's all that they will do.

5 MR. SEYMOUR: Okay. That would be almost
6 like awareness training, which would meet out
7 standard, too, at that level.

8 MR. MARTIN: Yes, sir.

9 MR. SEYMOUR: LEPC means or stands for
10 the Local Emergency Planning Committee, and where the
11 Local Emergency Planning Committee is supposedly made
12 up of fire fighter representatives, EMS, and hospital
13 personnel as well, so some of your committees at the
14 local level are not fully staffed because of some
15 disinterest?

16 MR. MARTIN: The circuit had a very
17 difficult time keeping some of our LEPCs active in
18 getting the job done, and I would say that at least
19 half of our efforts have been directed toward trying
20 to do that, and our Division of Disaster and
21 Emergency Services worked very, very hard at that and
22 provides training for the LEPCs to try to convince
23 them of that.

24 MR. SEYMOUR: Does your Fire Commission
25 have officer training for fire department officers

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1 who are going to be in charge of a possible scene or
2 incident?

3 MR. MARTIN: No, sir.

4 MR. SEYMOUR: So there's no officer
5 training at all that is available for fire department
6 officers?

7 MR. MARTIN: There is officer training.
8 There is no recognition of a certification at any
9 level.

10 MR. SEYMOUR: No, I wasn't asking about
11 that. I'm just asking about training. So you
12 mentioned in the 400 and the 150-hour there is
13 incident command training?

14 MR. MARTIN: Yes, sir.

15 MR. SEYMOUR: That's for all fire
16 fighters. So then those even officers have to go
17 through the same training before they can become an
18 officer?

19 MR. MARTIN: Yes, sir, there's a general
20 statement in our regulations that say that the
21 continuing education hours of training should be
22 directed in the area of the fire fighter's specific
23 job function. For example, if he was an inspector,
24 his training should be in the area of fire
25 prevention, building codes, and inspection. So

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1 that's the only general requirement that would fit
2 that, but, yes, there is officers' training.

3 MR. SEYMOUR: Is there certification for
4 EMS personnel?

5 MR. MARTIN: Yes, there is.

6 MR. SEYMOUR: And you have that? You
7 administer that as well?

8 MR. MARTIN: No, that's administered by
9 the Department of Human Resources and the Emergency
10 Medical Technician Program.

11 MR. SEYMOUR: Are they inculcating into
12 their programs at least awareness training to your
13 knowledge?

14 MR. MARTIN: I am aware at the local
15 level, but they are requesting training. I am not
16 sure whether or not on the state level whether they
17 are mandating it.

18 MR. SEYMOUR: Do you normally work with
19 them as far as the overall kind of response kind of
20 activities that would take place at the scenes?

21 MR. MARTIN: Yes, sir, for the most part
22 the EMS services and the incidents that I've been
23 aware of and actually been to is there in a support
24 role, would be staying outside of the hot zone, and
25 that's one of our requirements to make sure that

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1 we're adequately protected by EMS at the scene of any
2 emergency.

3 MR. SEYMOUR: Which is also one of the
4 120 requirements.

5 MR. MARTIN: Yes, sir.

6 MR. SEYMOUR: What about police officers
7 as far as state certification their training
8 programs?

9 MR. MARTIN: They're handled out of the
10 Justice Cabinet and they have a statewide training
11 program that's 400 hours for recruit policemen, and
12 40 hours of continuing education each year.

13 MR. SEYMOUR: I wonder maybe in your
14 post-hearing comments if you might speak to both the
15 Health Department and the Justice Department, or
16 whatever the name is, and about what the impact would
17 be about accreditation of their training programs if
18 in fact they would even submit them if we were to
19 require accreditation of emergency responder
20 training, and if they are in fact already doing, in
21 the case of the police officers, training? Do they
22 provide some HAZMAT or hazardous material training as
23 part of that overall orientation for the police
24 officers?

25 MR. MARTIN: Yes, sir.

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1 MR. SEYMOUR: One last question, and that
2 deals with are you familiar with the new legislation
3 that was just passed, a Hazardous Materials Uniform
4 Safety Act, which the Congress just enacted, the
5 President signed late last calendar year that's
6 providing some funding now starting probably in 1993
7 through 1998 for volunteer and career fire fighters?

8 MR. MARTIN: I am familiar that it's
9 supposed to provide money, yes, sir, I am, but that's
10 about it.

11 MR. SEYMOUR: Okay. If you get familiar,
12 or more familiar, with the legislation before you
13 submit your post-hearing comments, if you might even
14 comment about what impact that might have on your
15 program that legislation requires the monies that are
16 going to be available to be helping people to comply
17 with the standards, as well as 471 and 472 for NFPA,
18 which are consistent. Thank you.

19 MR. MARTIN: Yes.

20 MR. GORDON: Thank you.

21 MR. MOORE: Can you tell me the number of
22 the hours the EMTA -- I don't know if you call them
23 EMTAs in Kentucky, but --

24 MR. MARTIN: Yes, they are and I think
25 they're about 110 hours.

1 MR. MOORE: 110?

2 MR. MARTIN: I've heard something just
3 recently that they'll be going up to 120, but I'm not
4 familiar with that.

5 MR. GORDON: Thank you very much, Fire
6 Marshal Martin. We greatly appreciate the time you
7 spent preparing your statement and answering these
8 questions.

9 ADMINISTRATIVE LAW JUDGE COX: All right.
10 Let me ask you, are you going to put that statement
11 in the record?

12 MR. MARTIN: Yes, I can leave it. I've
13 got another copy.

14 MR. GORDON: All right. Do you want to
15 introduce that as Exhibit Number 37 then? Please
16 give it to Mr. Hall.

17 ADMINISTRATIVE LAW JUDGE COX: Are there
18 any questions of Mr. Martin?

19 MR. MORAWETZ: John Morawetz of the
20 Chemical Workers to ask very similar questions as
21 before. I take it from your response that
22 transportation related private responders are not
23 uniformly well-trained. Do you have any experience
24 with industrial emergency response at chemical or
25 industrial sites where your members have to respond?

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1 MR. MARTIN: Not specifically, no, sir.

2 MR. MORAWETZ: So you really don't know
3 what kind of training then those people have?

4 MR. MARTIN: Yes, sir.

5 MR. MORAWETZ: Okay. The other one is,
6 I take if also from your comments that you basically
7 don't have the resources to even train all the
8 members in the state of Kentucky. In the public
9 service you clearly do not have access to programs
10 that state sanctions to train industrial emergency
11 responders, if they needed training also?

12 MR. MARTIN: I think that the major point
13 there would be as I look at education being a
14 continuing dynamic function and it will continue from
15 now forward, and at what point in time we will
16 provide training for all of our emergency responders
17 in certain specific levels of response, I can't tell
18 you that.

19 MR. MORAWETZ: Then it could as a lack of
20 resources though fail to meet the need even as it
21 exists today?

22 MR. MARTIN: There's always a lack of
23 resources.

24 MR. MORAWETZ: Thank you.

25 ADMINISTRATIVE LAW JUDGE COX: Are there

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1 any other questions of Mr. Martin?

2 MS. RICE: Carol Rice. Can you give us
3 any idea of what sort of turnover rate is anticipated
4 among the fire service in Kentucky so that as you
5 train 1,000 people next year, does that attrit. to
6 100 less or 200 less or whatever?

7 MR. MARTIN: I probably cannot document
8 anything I would tell you, but I would say that the
9 normal lifetime of a volunteer fire fighter is
10 probably somewhere in the area of ten years.

11 MS. RICE: Thank you.

12 ADMINISTRATIVE LAW JUDGE COX: Are there
13 any other questions? Please.

14 MR. KING: Steven King, LHM Corporation.
15 Just one question for you. You talked about you have
16 no problem with accreditation, but would you not
17 prefer to see a system whereby we had a national exam
18 and a national syllabus accredited instead of the
19 actual content, just like the National EMT, and the
20 National Fire Inspector's Exams, so that everyone
21 studies whatever course basis will fit the criteria
22 and then sits an exam that's administered by a
23 national body? Would that not be a better system?

24 MR. MARTIN: I would say that any kind of
25 national -- any kind of exam that proves competency

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1 is good, whether or not that can reach our 20,000
2 fire fighters in the states is where I would have the
3 problem with any kind of national exam.

4 MR. KING: Just in addition to that then
5 not so much maybe with the fire fighters, what about
6 with the private sector, which is probably more a
7 problem than establishing, would that be a better
8 system from your point of view?

9 MR. MARTIN: Because I'm not aware of the
10 training that's being offered now, I don't know that
11 I could adequately answer that.

12 MR. KING: That's the only questions I
13 have. Thank you.

14 ADMINISTRATIVE LAW JUDGE COX: Any other
15 questions of Mr. Martin?

16 [No response.]

17 Well, I don't see any.

18 MR. MARTIN: Thank you.

19 ADMINISTRATIVE LAW JUDGE COX: We thank
20 you.

21 MR. GORDON: Your Honor, we've been going
22 for about an hour and 45 minutes. Would you think
23 it's time for a five-minute break?

24 ADMINISTRATIVE LAW JUDGE COX: Well, does
25 everybody want a five-minute break or do you want to

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1 go on? We can take one more and then just quit for
2 lunch.

3 MR. GORDON: That's all right, too.

4 ADMINISTRATIVE LAW JUDGE COX: Let's
5 bring up the University of Alabama.

6 MR. GORDON: All right.

7 ADMINISTRATIVE LAW JUDGE COX: Could you
8 please introduce yourself and if you have a statement
9 to enter into the record and please identify it?

10 MS. ANDREWS: Do I need to hand it to
11 someone or just hold onto it?

12 ADMINISTRATIVE LAW JUDGE COX: Yes, give
13 it to Mr. Hall.

14 MS. ANDREWS: Yes, I've got an extra copy
15 of it.

16 MR. GORDON: Ms. Andrews.

17 MS. ANDREWS: Yes, I'm Lori Andrews from
18 the University of Alabama at Birmingham.

19 MR. GORDON: And would you like to
20 introduce your statement as Exhibit 38?

21 MS. ANDREWS: Yes, please.

22 MR. GORDON: No objection, Your Honor.

23 ADMINISTRATIVE LAW JUDGE COX: All right.
24 Let the record show the exhibits 37 and 38 were
25 admitted into the record.

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1 (Whereupon, the above-referred
2 to documents marked as Exhibit
3 Nos. 37 and 38 were received in
4 evidence.)

5 UNIVERSITY OF ALABAMA AT BIRMINGHAM

6 Lori P. Andrews, P.E., Center for Labor
7 Education and Research

8 MS. ANDREWS: Good morning. I'd like to
9 begin reading my statement. My name is obviously
10 Lori Andrews. I'm Program Director of the Hazardous
11 Waste Worker Training Project for the University of
12 Alabama at Birmingham, and also am an adjunct
13 professor of environmental health for the School of
14 Public Health at the University of Alabama at
15 Birmingham.

16 The UAB Hazardous Waste Worker Program is
17 funded through an NIEHS grant in its joint project
18 for the UAB Center for Labor Education and Research
19 and the Deep South Center for Occupational Safety and
20 Health. This training center is one of 11 centers
21 funded in the original 1987 grantees to provide
22 interactive training to workers potentially exposed
23 to hazardous waste and materials.

24 CLEAR is celebrating its 20th anniversary
25 as a labor education center and in establishing the

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1 center in 1972 for labor union training, our
2 director, Doctor Higgins C. Roberts, Jr., had the
3 foresight to initiate the first health and safety
4 training center in the southeast focused towards
5 workers. The center has continued to provide
6 occupational safety and health training for workers
7 including the six years of OSHA new directions grant.

8
9 The Deep South Center is one of 13
10 designated NIOSH supported ERCs, education research
11 centers. The faculty and staff of the School of
12 Public Health, Deep South Center, provide continual
13 quality control and program evaluation/development
14 support for the CLEAR training staff for this
15 particular program. The center provides worker
16 training to the remediation site worker and the
17 emergency responder populations as addressed in 29
18 CFR 1910.120. Copies of our training curricula were
19 forwarded to the docket office specifically for this
20 hearing. Included in the package was the worker
21 protection during hazardous waste remediation written
22 by the UAB CLEAR instruction staff and published
23 through Vanuster and Reinhow. Also included were the
24 UAB site worker refresher manuals, the UAB site
25 worker manuals, and the compilation of the UAB

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1 emergency responder manuals including the first
2 responder awareness level course, the UAB first
3 responder operations level course, and the UAB
4 hazardous materials technicians course.

5 UAB provides in-house courses at the
6 CLEAR training facility in Birmingham, Alabama, and
7 throughout the southern tier of the United States
8 including Alabama, Georgia, Florida, Mississippi,
9 Louisiana, Texas, Oklahoma, New Mexico, and Arkansas.
10 The combined experiences of this group coupled with
11 the additional experiential input from the remaining
12 NIEHS grantees has provided UAB with certain insights
13 appropriate for comments to this proposed standard.
14 A summary of certain proposed training specifications
15 are illustrated in the minimum criteria for worker
16 safety and health training for hazardous waste
17 operations and emergency response prepared by the
18 NIEHS's grantees and submitted by NIEHS for this
19 particular hearing process.

20 As outlined in my cover letter attached
21 to the package sent previous to this hearing, I will
22 discuss the following areas of concern: the
23 accreditation process, specifically dealing with
24 consistency, trainer specifications, minimum required
25 equipment, refresher training programs, emergency

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1 responder programs, quality control monitoring
2 programs.

3 UAB agrees with the issue of
4 accreditation, but is concerned with the potential
5 for the workers trained to be subjected to differing
6 requirements for certification. This inconsistency
7 in requirements can potentially leave the worker
8 vulnerable to harm if not properly trained. Workers
9 in the site remediation business are required to work
10 throughout multi-state areas, and if the standard is
11 promulgated as is, it would leave them vulnerable due
12 to logistical issues of training. UAB territory
13 includes state plan and non-state plan states, and
14 this issue of obtaining certification in the various
15 states and at the federal level would be quite
16 cumbersome. Therefore, for worker protection by the
17 standard and for streamlined training process, UAB
18 recommends a federal process be established and
19 consistently adopted in each state.

20 Also, the accreditation process described
21 in the proposed standard, 29 CFR 1910.121, should be
22 modified to involve a peer review committee in place
23 of a national OSHA staff review to evaluate the
24 training program, applications for accreditation
25 under the standard. Referring the NIEHS grantees, we

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1 agree to the process of having a peer review
2 committee consisting of 12 members with three subject
3 matter experts, labor educators from each of the
4 following sectors: union, academia, government, and
5 private industry.

6 Also, an outside advisory board should be
7 established to oversee and evaluate the peer review
8 committees recommendations for final accreditation
9 for the training program's applications. This change
10 in the proposed process could minimize cost at the
11 federal level and could also minimize the time
12 involved in the accreditation process itself.

13 The trainer specifications need to be
14 developed into a guidance format for the group
15 required to complete accreditation of the training
16 programs. UAB staff in discussions with students
17 participating in our classes, who previously attended
18 other programs, have become aware of two specific
19 programs in the southeast that do not have qualified
20 instructors. Such comments as, "We knew more than
21 the instructors," and "inaccurate subject matter for
22 health effects and hazard recognition" were common
23 among these students. Other comments from our
24 students have brought some very disturbing
25 information, such as, the students were allowed very

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1 limited or no time to interact with equipment,
2 including personal protective equipment. A minimum
3 required list equipment, including personal
4 protective equipment and other applicable equipment
5 should be developed for type of course. This list
6 may be used to assist the review team in assessing
7 the training program's applications. Also, the list
8 can provide guidance to training centers in an effort
9 to maintain the necessary quality control of programs
10 required for worker protection in these potentially
11 very hazardous situations. I'll refer to the student
12 equipment ratios in the last section of my testimony.

13 Two worker populations of the 1910.120
14 worker training standard not included in the
15 accreditation process are obviously, as you've heard
16 several times, site workers requiring refresher
17 courses, and the entire spectrum of the emergency
18 responder populations. We feel that the refresher
19 should be included in the process for accreditation
20 and we agree with the Midwest Consortium in their two
21 reasons: to promote the review of certain required
22 general knowledge of such things as hazard
23 recognition, use of person protective equipment, and,
24 secondly, to review the site-specific experiences of
25 the students during the previous year and bring them

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1 up-to-date on any pertinent regulatory changes.

2 The issue of emergency responder
3 accreditation programs is quite overwhelming since it
4 is the largest population impacted by the 1910.120
5 standard. Even so, this group should be considered
6 above the other populations for accreditation
7 considering the greater degree of risk and
8 uncertainty posed to these workers. By incorporating
9 the grantee accreditation proposal, the burden could
10 be minimized. Not only does the protection of
11 workers involved in hazardous material emergencies
12 need to be a priority consideration, but the
13 protection of the affected community. Effective
14 responses by well-trained responders private or
15 public will minimize hazards to themselves, citizens
16 and their community and to the environment.

17 Last, the issue of quality control
18 program. Evaluation methods should be addressed in
19 the standard with more specificity. A good quality
20 control program is based on the quality of the data
21 collected. We use a tri-parti system at UAB to
22 evaluate our students' performances. The process
23 includes a written examination which is
24 representative of the material taught throughout the
25 course, and is weighted equally with the other two

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1 components of the students' evaluation. The exam
2 questions are field tested for validity and to
3 clarify and substantiate the exam itself. The second
4 part of the student evaluation process involves their
5 participation in classroom exercises involving
6 simulated incidents. Thirdly, this information is
7 recalled in an outdoors simulated incident involving
8 use of equipment and student equipment ratios are
9 .very important to the successful execution of this
10 incident. The students are scored based on
11 demonstration of certain skills required at the
12 particular course level. Due to the different
13 training environments required to accurately train
14 the diverse populations of workers, different
15 student/instructor ratios are necessary. UAB concurs
16 with the ratios that are outlined in the minimum
17 criteria document previously submitted.

18 In addition to the student knowledge and
19 skills evaluations, at the completion of the course
20 the workers' knowledge retention should be used to
21 determine and evaluate actual training effectiveness.
22 Several methods have been used at UAB to assess the
23 long-term retention of knowledge. These methods
24 include telephone interviews requesting yes/no
25 responses to the comfort level of the student with

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1 respect to certain hypothetical situations based on
2 training. These were developed through the New
3 York/New Jersey Consortia of the NIEHS Program.
4 Also, an 11-month anniversary questionnaire
5 requesting information such as hazards observed by
6 the student, certain medical surveillance activities,
7 personal protective equipment worn, and use of
8 certain reference material since the class. Finally,
9 the training program and the instructor evaluations
10 are completed by each student. This data is analyzed
11 for consistent comments for program modification
12 process. Based on the questionnaire completed by 51
13 percent of the workers polled, some of the following
14 responses were given in percent, specifically, and I
15 don't have it with me in this copy. Excuse me.

16 I remember some of the statistics.
17 Specifically, as far as participation in personal
18 protective equipment, eight percent of the workers
19 polled actually wore level A protection CBAs and
20 totally encapsulated suits. That type of information
21 was very valuable to us. Some of the other
22 information that was in that particular survey, which
23 I have with me, it's just not part of this package at
24 the moment, and I will submit as a part of 38, says
25 that the workers use several different reference

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1 documents, specifically the NIOSH pocket guide and
2 the emergency response guidebook developed by the
3 Department of Transportation. In addition to that,
4 the workers were exposed to numerous hazards in the
5 workplace, specifically one being trenching
6 violations, as well as confined space violations
7 without proper protection. And then lastly the
8 workers of the 51 percent that were polled as far as
9 returned surveys showed that of those 51 percent,
10 only 75 percent actually had a respirator fit test
11 done for the respirators that they were wearing.

12 In summary, UAB concurs with the issue of
13 training accreditation, and believes that a review
14 system similar to the one used as to select and
15 evaluate the grantees for the NIEHS hazardous waste
16 worker training program would be effective for this
17 process. With this in mind, we also feel that the
18 grantee should be approved for accreditation
19 automatically with the stipulation that peer review
20 is expected to verify that accuracy of the claims and
21 to substantiate the claims made by the grantee
22 programs. Thank you very much.

23 MR. GORDON: Thank you very much for your
24 statement and the statistics are very interesting.
25 I think we have some questions and if you could

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1 provide the statistics either this afternoon --

2 MS. ANDREWS: I think they're up in my
3 room. I'll have to go get them.

4 MR. GORDON: Doctor Conway, do you have
5 questions? No?

6 Mr. Tom --

7 MR. HALL: Thank you very much.

8 I think I heard you correctly to say that
9 there are 11 comparable training centers. You are
10 one of 11 training centers scattered around the
11 United States?

12 MS. ANDREWS: Eleven that were originally
13 funded in 1987. There's now 18? 16? 15? We don't
14 know how many more. Five more. So there's 17 of us
15 right now -- 16 of us, 16, we know what we're doing.

16 MR. HALL: And those are EPA funded
17 primarily?

18 MS. ANDREWS: No, they're NIEHS funded
19 monies I guess indirectly through Superfund, SARA,
20 Legislation.

21 MR. HALL: Okay. To the best of your
22 knowledge, do each of the centers have the evaluation
23 and control program? Does each one have that in
24 place or is yours more advanced?

25 MS. ANDREWS: Each one of us have that

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1 type of program in place. In fact in several of the
2 consortia, they're actually faculty members that
3 oversee that as a specific discipline within the
4 training program, and we have a subcommittee that is
5 made up of representatives of each of the grantees
6 where we work together to field test questions for
7 validity for exams, and we're trying to make our
8 programs as consistent as possible, so I would say
9 that we all are fairly consistent.

10 MR. HALL: Now, is that work, has that
11 been submitted to the record also, that liaison work
12 that you've done with other centers?

13 MS. ANDREWS: No, sir, not that I'm aware
14 of unless the New York/New Jersey Consortia submitted
15 that as a part of their testimony during the
16 Washington hearing.

17 MR. HALL: It seems a very interesting
18 area. Again, pushing it a little further, I think
19 what you're doing makes very good sense. The first
20 step is to check on what kind of response you're
21 getting on the part of students after a particular
22 block of study is given. Are they retaining it? Is
23 it making a difference in the structured training
24 situation? Has it gone beyond that to look at
25 accident data in the field? I think you touched on

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1 it when you did the follow-up and you asked questions
2 of former students about their experience.

3 MS. ANDREWS: That's right.

4 MR. HALL: And so you're getting some
5 information back related to on the job problems
6 encountered.

7 MS. ANDREWS: Right, right.

8 MR. HALL: Now, is that documentation in
9 the record?

10 MS. ANDREWS: It will be as soon as I go
11 upstairs and bring it downstairs. There's two pages
12 of summary information based on one year of the site
13 worker populations and it's based on, I'm not sure of
14 the number of surveys sent out, but 51 percent that
15 were returned, and this is the data based on that 51
16 percent.

17 MR. HALL: Thank you very much.

18 MS. ANDREWS: You're welcome.

19 MR. GORDON: Mr. Thompson.

20 MR. THOMPSON: Yes, Ernest Thompson. I
21 have some questions on the accreditation process that
22 you recommend. You mentioned that you would have a
23 12-member peer group who would review the
24 application, and their recommendation, would that go
25 to this outside advisory board?

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1 MS. ANDREWS: Yes.

2 MR. THOMPSON: You've mentioned the
3 composition. What would be the composition of the
4 advisory board?

5 MS. ANDREWS: Similar.

6 MR. THOMPSON: Similar, okay. Do you
7 have any estimates in terms of how long you might
8 expect an application to take, say, from when it's
9 submitted to when the accreditation decision is made?
10 Do you have an idea?

11 MS. ANDREWS: Thank you, Ernest. I feel
12 like that the particular process would streamline it
13 as opposed to going through the rigorous program
14 established or proposed. I feel like that that
15 number is hard to come by because of the complexities
16 of the types of training programs to be reviewed. I
17 think that there would be a site review team that
18 would actually go to the site, observe curricula.
19 There would have to be a portion of the panel that
20 would review training curricula, instructor manuals,
21 student manuals, et cetera, so that not all 12 would
22 do all things, but it would be representative and it
23 would be a collaborative effort.

24 MR. THOMPSON: You mention you feel this
25 would be quicker than the one that's outlined

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1 currently in 1910.121, is that correct?

2 MS. ANDREWS: Yes.

3 MR. THOMPSON: Okay.

4 MR. GORDON: Are you finished, Mr.
5 Thompson?

6 Mr. Moore.

7 MR. MOORE: Two questions. If I
8 understood your testimony, I believe you said that
9 one of the goals of the refresher training could be
10 to review site-specific scenarios that may have
11 occurred over the past year and to update people.

12 MS. ANDREWS: Yes, sir.

13 MR. MOORE: How often or what percentage,
14 and I know we've only been in this program now for a
15 year, how often are the refresher courses directed to
16 that specific goal in percentages? Can you do that?

17 MS. ANDREWS: Well, I can tell you that
18 every time that we teach a refresher course that an
19 hour of that particular course is directed towards a
20 discussion of site-specific hazards and evaluation of
21 incidents.

22 MR. MOORE: Here's my problem. If I have
23 to sit down supposedly and accredit those refresher
24 training programs that are going to vary year to year
25 based on what happens within a unique situation --

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1 how can I pose this as a question?

2 MR. GORDON: Wouldn't that be an
3 overwhelming administrative burden on the accrediting
4 program?

5 MR. THOMPSON: Yes.

6 MS. ANDREWS: That's good, Chuck.

7 MR. THOMPSON: That's why I bring a
8 lawyer.

9 MS. ANDREWS: Now, as far as the site-
10 specific hazards are concerned, I think that in
11 dealing with that as far as determining what to write
12 in a guidance document or something for this
13 accreditation approval that as you do in other
14 situations within your standards, you give examples
15 to clarify it, and it would have to be based on
16 something along those lines where you have guidance.
17 It's not going to be a specific issue. It's going to
18 be a performance issue.

19 MR. THOMPSON: Okay. And the last
20 question. If I understood you, you said 80 percent
21 of the people polled had worn level A?

22 MS. ANDREWS: Eight.

23 MR. THOMPSON: Okay. Then I don't have
24 a question.

25 MS. ANDREWS: Because we had projected

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1 only one to two percent of our trained students would
2 actually be involved in level A protection based on
3 a questionnaire we gave them at the beginning of
4 their program.

5 MR. THOMPSON: And that's wearing the
6 level A protection as needed for a response, not as
7 overprotection or as training?

8 MS. ANDREWS: It's worn as level A as a
9 part of their normal work duties at a remediation
10 site, not as an emergency response, because this
11 particular population were our site workers that we
12 polled this information from.

13 MR. THOMPSON: Okay. Thank you very
14 much.

15 MS. ANDREWS: You're welcome.

16 MR. GORDON: Mr. Pierce.

17 MR. PIERCE: Yes, I noted you were a
18 participant in the NIEHS workshop that put together
19 this compilation of recommendations, is that correct?

20 MS. ANDREWS: Yes, sir.

21 MR. PIERCE: I'd like to explore the
22 logistics of this panel a little bit more. We've
23 heard this several times now and we would like to get
24 as much help in processing applications as we can.
25 Was there any consideration as to how the panel would

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1 actually process the potentially hundreds or
2 thousands of applications that might be received?
3 And before you answer, we've estimated it would take
4 possibly four people working full-time to just handle
5 the cleanup workers in the TSD worker type training,
6 and so I'm trying to visualize how, if we extend the
7 emergency response, the panel would actually be able
8 to process this amount of work. Was there a
9 consideration given to that or was that discussed?

10 MS. ANDREWS: It would be a screening
11 process and it would have to be broken down. The
12 reason for the 12-member committee is that, as I've
13 mentioned earlier, you would not use all of 12
14 members on each application. So you would break it
15 down per their area of expertise.

16 MR. PIERCE: I see. Would there be need
17 to have orderly meetings or something along that
18 line?

19 MS. ANDREWS: Yes, there would be a need
20 for meetings to collaborate the findings of each of
21 the panel members and that information would then go
22 to the outside advisory committee.

23 MR. PIERCE: And would there be a
24 mechanism of appeal processes to applicants that were
25 rejected?

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1 MS. ANDREWS: Yes.

2 MR. PIERCE: Then the panel themselves,
3 I guess I would assume that many people on the panel
4 would be experts that are already participating in a
5 number of their own programs. Is there any thought
6 given to any possible conflict of interest type of
7 situations?

8 MS. ANDREWS: Let me just backtrack. In
9 the process of the peer review that occurred for the
10 NIEHS grantees, a lot of the individuals that were
11 designated are our peers in the area, subject matter
12 peers, and that did not seem to be a problem. We
13 looked toward subject matter experts and labor
14 educators in the area of those four disciplines, or
15 the four sectors of the work force to take care of
16 that and that was not an issue for us at that time.

17 MR. PIERCE: Okay. Thank you very much.

18 MS. ANDREWS: You're welcome.

19 MR. GORDON: Mr. Seymour.

20 MR. SEYMOUR: Ms. Andrews, the Alabama
21 State Fire Training School, did you have any
22 interface with them in delivery of your emergency
23 responder training? Have you worked with them as far
24 as the development of your program and so on?

25 MS. ANDREWS: Yes, we have. At present

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1 the instructor staff at CLEAR are all certified by
2 the Alabama State Fire College and Personnel
3 Standards Board as hazardous material instructors for
4 the hazardous material technician/the specialist
5 training program, which is a state accreditation
6 process.

7 MR. SEYMOUR: How do you see the state
8 accreditation process interfacing with the national
9 or the OSHA accreditation program? Would that be
10 superceded?

11 MS. ANDREWS: At the moment I'm
12 unfortunately the chairman of the committee, the
13 state certification committee, at the Fire College,
14 and I think they put me there because I was the
15 renegade. I have a lot of concern with trying to
16 group two populations together for an accreditation
17 process, the technician and specialist level. They
18 have different purposes, and to group them together
19 is a problem. So in dealing with the particular
20 logistical issue, I feel that it's definitely going
21 to be a problem in trying to make the Alabama, as it
22 sits now, program fit into the federal program, and
23 I look forward to splitting that program out.
24 Hopefully, then that way it would fit well.

25 MR. SEYMOUR: Is there a certification

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1 for EMS personnel in the state?

2 MS. ANDREWS: At this time they receive
3 CEU credits, but there is not a certification
4 program.

5 MR. SEYMOUR: Speaking of certification
6 now for like EMTs?

7 MS. ANDREWS: Oh, yes, there's a program
8 like that, but not for HAZMAT EMS.

9 MR. SEYMOUR: Okay. In the case of the
10 EMT certification or first responder certification or
11 paramedic certification, are they receiving as part
12 of that certification awareness training or other
13 training as part of that state certification?

14 MS. ANDREWS: To my knowledge it has
15 begun, but it's not prevalent.

16 MR. SEYMOUR: Okay. In the case of
17 accreditation as you envision and are recommending
18 that OSHA invoke itself into, how would we interface
19 with, say, the EMT certification that the states have
20 going on? We'd actually have to evaluate that whole
21 program?

22 MS. ANDREWS: Yes, I would think so.
23 It's fairly consistent though throughout the state.

24 MR. SEYMOUR: I'm sorry, say that again.

25 MS. ANDREWS: Their EMT program within

1 the state of Alabama is fairly consistent throughout
2 the state, and so it would be a matter of just, you
3 know, expanding that program for HAZMAT and would be
4 probably a one program evaluation.

5 MR. SEYMOUR: In the case of police
6 officers in Alabama, do they also have to be
7 certified or do they go through a state sanction
8 program?

9 MS. ANDREWS: They have their academy
10 program as well, and in the state of Alabama it's
11 fairly unique in that the fire fighters and the
12 police officers tend to work together, and are doing
13 some interchange training.

14 MR. SEYMOUR: The awareness training
15 program that you all are putting on, have any of
16 those been put on for the police and the volunteer
17 fire fighters and people like that in the state?

18 MS. ANDREWS: Yes, we have two programs.
19 First, the law enforcement program is a civic program
20 where we cosponsor with our UAB police force and
21 provide eight-hour law enforcement awareness training
22 where we have used the Birmingham, Alabama, tactical
23 unit's program as a model for our law enforcement
24 awareness level program. We trained approximately
25 300 law enforcers this past summer in that area. The

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1 second program which addressed the volunteer fire
2 department, we have a scholarship program which we
3 feel is mandated because of our NIEHS program as
4 directed by our own outside advisory board. This
5 particular scholarship program deals with financial
6 need or need of the particular population to have a
7 HAZMAT tech., hazardous material technician or
8 hazardous material specialist level trained person.

9 MR. SEYMOUR: You endorsed in your
10 statement the minimum criteria that was developed at
11 the NIEHS training grant program technical workshop
12 on training quality.

13 MS. ANDREWS: Yes, sir.

14 MR. SEYMOUR: And in attachments one and
15 two which dealt with emergency responder training,
16 your eight-hour awareness training, do you only cover
17 the items that are listed in that NIEHS grantee or
18 workshop criteria that's in the back?

19 MS. ANDREWS: We go beyond that. We
20 agree with what is there and we modify ours. Our
21 awareness level program is nine hours. It's not
22 eight hours.

23 MR. SEYMOUR: I'm sorry, say that again.

24 MS. ANDREWS: Our awareness level program
25 is nine hours.

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1 MR. SEYMOUR: Well, a moment ago I
2 thought you said eight hours. Then in the awareness
3 training are you actually teaching about an
4 employer's effective occupational health and safety
5 program?

6 MS. ANDREWS: We discuss what should be
7 in an occupational safety and health program that is
8 the requirement of the employer.

9 MR. SEYMOUR: Of course that's not a
10 requirement in the 120 standard.

11 MS. ANDREWS: No.

12 MR. SEYMOUR: Okay. So you're actually
13 training things beyond the 120 standard?

14 MS. ANDREWS: Yes, we incorporate the
15 NFPA standard, as well as the OSHA standard in our
16 training program.

17 MR. SEYMOUR: Which NFPA standards are
18 you incorporating?

19 MS. ANDREWS: 471, 472.

20 MR. SEYMOUR: Neither one of those
21 require an occupational health program either.

22 MS. ANDREWS: Right.

23 MR. SEYMOUR: You mentioned that you are
24 also teaching the DOT guidebook criteria?

25 MS. ANDREWS: The DOT guidebook criteria

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1 as well, and we do that in the awareness level
2 program.

3 MR. SEYMOUR: How much time do you spend
4 on the guidebook requirements as part of the nine-
5 hour program?

6 MS. ANDREWS: It's incorporated into a
7 hazardous material terminology section and then into
8 an exercise. So it ends up being approximately two
9 and a half hours total from the point lecture begins
10 until the end of the exercise.

11 MR. SEYMOUR: You talk about Title III in
12 the LEPC programs and the importance of the
13 employer's emergency plan how it has to interface
14 with that?

15 MS. ANDREWS: We do that at the
16 operational level.

17 MR. SEYMOUR: Okay. That is not
18 mentioned in the NIEHS criteria that's listed here.

19 MS. ANDREWS: Right.

20 MR. SEYMOUR: And I wonder maybe in your
21 post-hearing comments that you might look at that
22 again to see that in your operational level training
23 even in your technician level training whether in
24 fact you are doing all the things that they say and
25 also what additional items you're doing that they

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1 don't talk about in here in meeting the OSHA
2 standards.

3 MS. ANDREWS: Right. This particular
4 document came out in March of this past year and as
5 you know training programs do not stay stagnant, and
6 so training programs modify. A lot of these
7 modifications I'm speaking of have come since that
8 point.

9 MR. SEYMOUR: Mr. Dobbins, to paraphrase
10 what he indicated to me when I was asking questions,
11 he said this listing for emergency responder training
12 was an amalgamation of what we had put into the
13 January proposal for both paragraphs (e) and (p).

14 MS. ANDREWS: Right.

15 MR. SEYMOUR: Because we had no such
16 listing for paragraph (q).

17 MS. ANDREWS: Right.

18 MR. SEYMOUR: And so that's how this
19 evolved. My concern is you all are endorsing this
20 and it does not really comport in my estimation of
21 the standard, and I'm wondering what else are you
22 doing to really bring what you're doing in line with
23 what this is plus that standard?

24 MS. ANDREWS: Well, our particular
25 manual, which I don't know if it's available here of

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1 not, did you receive the copies of the manuals or the
2 documents?

3 MR. SEYMOUR: Yes.

4 MS. ANDREWS: Okay. But you've got them
5 for the record. The awareness level program goes
6 into all the aspects of the OSHA standard and
7 incorporates the NFPA 471, 472, and it does discuss
8 the importance of when we do a focus towards an
9 industrial fire group, we also incorporate the
10 employer's HAZMAT program, the health and safety
11 program for them as workers in the HAZMAT field.

12 MR. SEYMOUR: So you have any plans to do
13 specialist and on-scene commander training as some
14 future time?

15 MS. ANDREWS: We're at the moment
16 developing a hazardous materials specialist program
17 in conjunction with the NIOSH hazardous substances
18 grant.

19 MR. SEYMOUR: Nothing on the on-scene
20 commander?

21 MS. ANDREWS: Yes, sir, at the moment we
22 have a proposal in to do a program jointly with the
23 Jefferson County EMA on incident commander program
24 expanded to include a cameo workshop with that based
25 on the 1990, 1991 cameo program.

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1 MR. SEYMOUR: Meaning you're going to go
2 into computer training?

3 MS. ANDREWS: In addition to the incident
4 command program.

5 MR. SEYMOUR: Any idea as to how long
6 that might be?

7 MS. ANDREWS: The course itself?

8 MR. SEYMOUR: Yes.

9 MS. ANDREWS: It's proposed at 24 hours.

10 MR. SEYMOUR: For the on-scene commander
11 training?

12 MS. ANDREWS: Yes, incident commander.

13 MR. SEYMOUR: I'm sorry?

14 MS. ANDREWS: Incident commander
15 training.

16 MR. SEYMOUR: Okay. The refresher
17 training that you're advocating that we should also
18 recognize and accredit, how much refresher training
19 would you or are you actually doing now for the
20 awareness level and how much are you doing at the
21 operational level and technician level that you
22 recommend? How many hours of program are you
23 thinking of?

24 MS. ANDREWS: Well, first off, our
25 program has only done emergency responder training

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1 now for one full year. We're just now getting into
2 the mode of doing refresher training for emergency
3 responders. In several cases we are considering
4 providing a special awareness level program at a
5 four-hour review. As far as the operational level,
6 the technician level, and the specialist level, we're
7 recommending a 24-hour review.

8 MR. SEYMOUR: I'm sorry?

9 MS. ANDREWS: A 24-hour review.

10 MR. SEYMOUR: Okay. And the operational
11 level training, what's the duration of that now? Is
12 that also 24 hours initially?

13 MS. ANDREWS: The way that our hazardous
14 material technician class, awareness level class, and
15 operational level class is set up is that for a
16 matter of convenience, we have included that
17 particular class in a series of 45 hours. Actually
18 now it's 46 hours, and it's a series. So the first
19 nine hours is the awareness level, and then it builds
20 into the operations level that goes through
21 Wednesday, like at 3:00, and then at 7:00 p.m. on
22 Friday night then you have completed your hazardous
23 material technician, if you've successfully completed
24 each of the evaluation steps, milestones, within the
25 program. Because of that we feel like we have seen

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1 more HAZMAT technicians come out of program at
2 awareness level and fewer operational level. So we
3 don't see the need at this time to do an operational
4 training program, a refresher training. So it will
5 be a 24-hour HAZMAT tech. and a 24-hour HAZMAT
6 specialist.

7 MR. SEYMOUR: In the peer review and the
8 outside advisory board would you suggest that the
9 Agency should not utilize personnel on those two
10 groups if we were to create such groups that are
11 already presently involved in submitting programs
12 that would be accredited?

13 MS. ANDREWS: Which personnel are you
14 speaking of, sir?

15 MR. SEYMOUR: Say, from the NIEHS
16 grantees that are actively involved in developing and
17 delivering training programs would not then be
18 eligible people for the peer review and the outside
19 advisory board?

20 MS. ANDREWS: I think that they should be
21 considered as a part of the program.

22 MR. SEYMOUR: Thank you very much.

23 MR. GORDON: I have no questions, but a
24 comment for you and a number of people who have
25 recommended that we have peer review. It's probably

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1 legal for us to set up some program along that line,
2 but the laws for licensing, which this would be, are
3 different than those for grants. I think the
4 ultimate decision would have to be the Agency, and
5 it's possible that we would have to follow the
6 Federal Advisory Committee Act if we set up a peer
7 review board, and, therefore, there would be a
8 substantial formalities involved in terms of
9 charters, pay, and conflict of interest. So it's not
10 something that could be done perhaps as simply as
11 some of you envision it, and, therefore, you might
12 wish to consider, those of you who are lawyers, the
13 appropriate mechanism which would be legal for us to
14 carry it out. But I thank you very much for you
15 interesting information and your patience in
16 responding to these questions.

17 We have no further questions, Your Honor.

18 ADMINISTRATIVE LAW JUDGE COX: Does the
19 public have any questions of Ms. Andrews?

20 [No response.]

21 Nobody wants to speak? Everybody is
22 hungry I guess.

23 All right. Well, we appreciate your
24 time.

25 MS. ANDREWS: Thank you very much.

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1 ADMINISTRATIVE LAW JUDGE COX: From
2 beautiful Alabama, is that right?

3 MS. ANDREWS: It's blossoming.

4 ADMINISTRATIVE LAW JUDGE COX: We'll be
5 back at 1:00.

6 (Whereupon, the hearing was recessed at
7 12:00 p.m. to reconvene at 1:00 p.m. this same day.)
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A F T E R N O O N S E S S I O N

ADMINISTRATIVE LAW JUDGE COX: We're ready to resume our hearing.

MR. HALL: Judge, before we start off.

ADMINISTRATIVE LAW JUDGE COX: Yes.

MR. HALL: Lori Andrews gave me the document she mentioned she didn't have with her. Could we have that entered just as 38A?

MR. GORDON: Yes, could you identify it?

MR. HALL: It's the course evaluation follow-up survey.

MR. GORDON: We'll call it survey.

MR. HALL: Survey from the University of Alabama at Birmingham.

MR. GORDON: No objection, Your Honor, to 38A.

ADMINISTRATIVE LAW JUDGE COX: Let that be admitted as 38A.

(Whereupon, the above-referred to document marked as Exhibit No. 38A was received in evidence.)

ADMINISTRATIVE LAW JUDGE COX: I believe our next one is National Solid Wastes Management Association. Are they present today? Yes.

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1 MR. GORDON: Mr. Capuano, do you have a
2 statement which you'd like to enter into the record?

3 MR. CAPUANO: Yes, I gave Tom earlier a
4 revision of the statement we sent earlier. You got
5 a revision this morning.

6 MR. GORDON: Do you have a copy of it,
7 Tom?

8 MR. HALL: This is the one.

9 MR. GORDON: Would you like to introduce
10 the statement as Exhibit 39?

11 MR. CAPUANO: Yes.

12 MR. GORDON: Testimony of National Solid
13 Wastes Management Association. No objection, Your
14 Honor.

15 ADMINISTRATIVE LAW JUDGE COX: Very well,
16 same is admitted into the record as Exhibit 39.

17 (Whereupon, the above-referred
18 to document marked as Exhibit
19 No. 39 was received in
20 evidence.)

21 MR. GORDON: Please proceed.

22 NATIONAL SOLID WASTES MANAGEMENT

23 ASSOCIATION

24 Alfred A. Capuano, Ed.D., Chairman,
25 Hazardous Waste Safety and Health

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Committee

MR. CAPUANO: My name is Alfred A. Capuano. I am the Vice President of Safety and Human Resources for Heritage Environmental Services, Inc., a comprehensive hazardous waste management facility regulated under the Resource Conservation and Recovery Act. Today I am testifying in my capacity as Chairman of the National Wastes Management Association's Hazardous Waste Safety and Health Committee. My testimony reflects a collective opinion of NSWMA members and not necessarily that of Heritage Environmental Services.

The NSWMA represents the commercial waste service industry. Members of NSWMA are those firms who are actively engaged in the aspects of management of non-hazardous and hazardous wastes. In submitting these comments NSWMA is representing over 130 member companies that provide of commercial hazardous waste services including transport, treatment, incineration, disposal, and remedial cleanup.

The effect of this rule will be felt by all NSWMA hazardous waste member companies. Inasmuch as NSWMA represents such a large segment of the commercial hazardous waste industry, we believe the views of the Association merit attention and have

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1 chosen to participate in these hearings so that we
2 might reinforce some of the views and concepts we
3 proposed in an earlier comment dated April 26, 1990.

4 In particular I'm going to zero in on
5 five areas. Those are program accreditation,
6 copyright concerns, application costs, application
7 processing time frames, and training programs for
8 employees of transporters.

9 First, program accreditation. OSHA has
10 become skilled at performance-based regulations. To
11 capitalize on this experience and expertise, NSWMA
12 recommends a major rethinking of OSHA's proposal to
13 accredit training programs. OSHA should abandon its
14 site-specific training course content and focus on an
15 accreditation of a core of subject courses or
16 elements that are generic to all training programs.
17 You have a list of them there. I'm just going to
18 name a couple, such as, overview of 29 CFR 1910.120,
19 fire and explosion hazards, general safety hazards,
20 overview of personal protection, et cetera.

21 If the final rule does not eliminate
22 subject matter of a site-specific nature, OSHA will
23 be forced to accredit a training program for
24 literally every hazardous waste operation.

25 We think the test of whether or not the

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1 core subject matters and other site-specific
2 information has been communicated could be a
3 company's injury and illness rate. OSHA has already
4 set a president for using this kind of data to select
5 and evaluate companies participating in the
6 Administration's Voluntary Protection Programs, such
7 as STAR and Merit, and they also in the past have
8 targeted companies with low incident rates to not be
9 inspected.

10 The NSWMA has been collecting injury and
11 illness data from member companies for approximately
12 five years. Please refer to the charts at the end of
13 my printed statement that you have to see how NSWMA's
14 combined member company rates have favorably compared
15 to other industry measures. In short, we have done
16 an exceptional job.

17 For the purposes of 1910.121, companies
18 engaged in hazardous waste operations who could
19 annually demonstration, through their injury and
20 illness data, an incident rate below an industry
21 standard or one set by OSHA perhaps, they would get
22 automatic accreditation for the programs offered
23 their employees. Trucking, local/long distance
24 companies could be evaluated in relationship to the
25 SIC Code 4210, which is local and long distance

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1 haulers. There are other measures that I've pointed
2 to in my remarks that you have in front of you. From
3 OSHA's point of view, this standard of success would
4 greatly reduce the overhead to administer the
5 program, and at the same time it would be in keeping
6 with OSHA's statement of benefits that compliance
7 with accredited training programs will prevent
8 potential employee fatalities and illnesses resulting
9 from its exposures.

10 There are going to be hazardous waste
11 operation companies who do exceed established injury
12 and illness rates and there are going to be other
13 companies, both hazardous and non-hazardous, who may
14 choose to commercialize their training programs. We
15 feel these classes of companies should submit to OSHA
16 for program accreditation, and that companies who
17 commercialize their programs should also have to
18 obtain professional liability insurance. The point
19 here is that the companies who buy programs through
20 a company who's waiting for accreditation to train
21 their employees under that program, if that
22 particular program is not accredited, there would be
23 a financial liability placed upon that company.
24 They'd have to retrain all their people.

25 Program accreditation should not be

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1 transferable to another person or organization when
2 the object of the transfer is clearly a commercial
3 venture. However, you know, if a company is bought
4 and sold or there's just a name change and they do
5 have an accredited program, that would not fall under
6 that first comment.

7 The second concern is copyright concerns.
8 In the July 27, 1990, Federal Register there were
9 some comments in there by OSHA that where OSHA seemed
10 perplexed about comments concerning the required
11 submission of audio-visual aids by applicants for
12 training accreditation which could be a violation of
13 copyright law, and in my own words I'd just like to
14 say to summarize what I have here is that if you go
15 out and purchase a video program, and we all do this
16 and have several that we use, common prices for these
17 are in the \$300.00, \$400.00, and \$500.00 range. Now,
18 you can't take one of those and make a copy of it on
19 your VCR at home and send it to OSHA. That would be
20 a clear copyright violation and there are severe
21 federal penalties for this. This is what we mean by
22 copyright violations. It would not be feasible for
23 companies to go out and purchase a \$400.00 set of
24 videotapes and send them on to OSHA. The second part
25 of that, OSHA would be inundated by rooms full of

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1 various videotapes and other audio-visual materials,
2 and we were wondering where you would put them.

3 The audio-visual concern goes beyond the
4 copyright issue. OSHA should give further attention
5 to the role of that audio-visuals play in training
6 programs. First of all, they standardize
7 instruction. They're easy to use. They're mobile,
8 and they maintain student attention. We live in a
9 video world. For these reasons, the use of audio-
10 visuals should be encouraged. We believe OSHA should
11 consider instituting a procedure to review audio-
12 visual and other training aids and issuing citations
13 or certificates, whatever you want to call them, to
14 vendors and producers of video program that could be
15 used in such programs. Thereby, someone could go out
16 and purchase from this company a certified, an OSHA
17 certified, video that would be able to be used in an
18 accredited program. That way we wouldn't have to
19 send the programs into OSHA, and OSHA wouldn't have
20 to worry about where to put all of this material.

21 The third topic is application cost. As
22 mentioned earlier, OSHA estimates the cost of program
23 submission to be about \$92.50. We believe this
24 figure does not really reflect the true costs of
25 training program development. We feel, and we've

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1 done research on this in our own companies, that the
2 true cost would be in the neighborhood of \$8,000.00
3 to \$10,000.00, and on page four of my comments at the
4 bottom, the costs such as certifying instructors,
5 preparing the material for application -- I have an
6 example here that I brought along just to show you
7 something just putting things into particular covers,
8 this all costs money, putting people together in
9 rooms, salaries of people who put programs together,
10 and training the trainers, and all of those kinds of
11 things cost a lot of money. We feel that the figure
12 I just gave you more correctly reflects the financial
13 investment that industry has made to effective
14 training and that consultants would be expected to
15 match in order to put together comparable programs.

16 Training programs that would be developed
17 under monies provided by the federal government
18 should be in the public domain. These programs
19 should be available at cost to all. If any such
20 programs are available now, OSHA should announce
21 their availability to aid industry in compliance with
22 1910.120.

23 The fourth point is application
24 processing time frames. Again, in summation, once a
25 company would send in an application, there should be

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1 a minimum of 30-day acknowledgement or receipt of the
2 application. Preliminary decisions by the Secretary
3 should occur within 60 days of acknowledgement of
4 receipt. Denial of preliminary accreditation should
5 be received by the applicant within 90 days of the
6 application receipt. The applicant should have up to
7 60 days to submit and revised application. Final
8 program accreditation approval should take place
9 within 180 days of preliminary decisions, or in cases
10 where preliminary decisions are not sought, within
11 240 days of application receipt acknowledgement. We
12 feel these are workable and would speed up the
13 process of the accreditation.

14 The last point that I want to make
15 involves training programs for employees of
16 transporters. Transporters of hazardous waste bear
17 a special burden with regard to this proposal. In
18 the course of their work duties, employees of
19 transporters who operate equipment that moves
20 hazardous waste in commerce visit many different
21 sites covered by 1910.120. Recognizing the
22 impossibility of providing site-specific training to
23 these employees, OSHA has issued a written opinion
24 that "the general curriculum of (p)(7) is more
25 appropriate for these employees of transporters than

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1 the site-specific requirements of (e)(2)." There is
2 a copy of a letter from OSHA to the NSWMA in your
3 material that states that.

4 In the meantime, the Hazardous Materials
5 Transportation Uniform Safety Act, Public Law 101-
6 615, requires the Department of Transportation to
7 issue training requirements for employees of
8 hazardous materials, which includes hazardous waste,
9 transporters by May 16, 1992. These training
10 requirements are not to conflict with the training
11 requirements OSHA has issued under 29 CFR 1910.120.

12 In order to assist employers of hazardous
13 materials transportation employees to come into
14 compliance with these upcoming training requirements,
15 DOT is producing a Modular Compliance Training
16 Program. Presently there are six of 12 planned
17 modular training packages completed, and the second
18 they're working on to get completed as we speak.
19 Module 8 covers hazardous waste and substances. Each
20 module includes scripted instructor books, checklist,
21 pre and post-quizzes and answers, work projects,
22 glossary references, et cetera. There is no
23 copyright on this material.

24 We recommend that OSHA accredit the DOT
25 training modules for use by employers of employees

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1 engaged in the transportation of hazardous waste. We
2 believe these modules will satisfy the requirements
3 of 1910.120 in that employees be trained to perform
4 assigned duties and functions in a safe and healthful
5 manner so as not to endanger themselves or other
6 employees.

7 I appreciate the opportunity to convey
8 the concerns of the NSWMA and I would be happy to
9 answer any questions now. Thank you.

10 MR. GORDON: Thank you, Mr. Capuano. We
11 have some questions for you. I'll start off. Your
12 initial suggestion was that if hazardous waste
13 treatment or storage facility had a good safety
14 record that we shouldn't require accreditation of
15 their training programs. Just to clarify, are you
16 speaking principally of TSD facilities that are
17 storage facilities for hazardous waste?

18 MR. CAPUANO: Yes, TSDs, right.

19 MR. GORDON: So these come under the 24-
20 hour time requirements?

21 MR. CAPUANO: Yes.

22 MR. GORDON: Now, I gather from this some
23 of those facilities or many of them are doing their
24 training of their own workers?

25 MR. CAPUANO: Yes, they've been doing

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1 this training for several years under other aspects
2 of the law.

3 MR. GORDON: And your recommendation is
4 that if they have a good safety and health record and
5 they're only training their own workers that we
6 should not need to accredit their training program?
7 Just to clarify.

8 MR. CAPUANO: That's right.

9 MR. GORDON: That is what you're
10 recommending. But you're not recommending that if a
11 training program trains workers other than their own
12 or if they have a poor safety and health record?

13 MR. CAPUANO: Other than their own would
14 be?

15 MR. GORDON: An organization that trains
16 workers for other safety or health sites.

17 MR. CAPUANO: No, no, that would be a
18 commercial venture.

19 MR. GORDON: Okay. Secondly, this was
20 discussed in the Washington hearings. In OSHA's
21 experience organizations that prepare training films
22 are happy to send them to OSHA for free for our
23 review and we would expect that they would authorize
24 users of those films either to copy them or supply an
25 extra copy for them to submit to OSHA for our review.

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1 Now, if this experience of OSHA worked out, then
2 there wouldn't be these larger extra costs of
3 submitting the materials, would there?

4 MR. CAPUANO: I'm not sure if I
5 understand what you're saying. Are you saying that
6 the vendors would send their programs to you?

7 MR. GORDON: Or authorize --

8 MR. CAPUANO: Or authorize us to send a
9 copy?

10 MR. GORDON: Right. If that were the
11 case, you wouldn't have to buy extra copies at
12 \$400.00 or \$500.00.

13 MR. CAPUANO: That would solve our
14 problem, but it wouldn't solve your storage problem.

15 MR. GORDON: Well, that's right. If we
16 set some mechanism that people would, for example,
17 first notify us of the commercial tapes, and we could
18 say, "Well, gee, we already have this tape. You
19 don't have to send it," it would solve our storage
20 problem.

21 MR. CAPUANO: Right.

22 MR. GORDON: Finally, and I'm sure Doctor
23 Conway has more questions on this, your \$5,000.00 or
24 \$10,000.00 estimate I think is the cost of developing
25 the program, not the incremental cost of applying to

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1 OSHA for accreditation. Am I correct about that?

2 MR. CAPUANO: Well, I can speak from
3 experience, sir. When 1910.120 first came out, we
4 had been using our own program for several years in
5 our training, and we, being proactive, started out to
6 organize it to get it submitted for accreditation,
7 and in order to do that, to package it, to double
8 check your written materials, put everything
9 together, you need to bring together a lot of people,
10 and at times we had eight to ten people sitting in
11 that room organizing, getting ready for the
12 accreditation, and we're talking in terms of labor
13 costs associated with it. So I'd say eight to ten
14 people for approximately eight hours and then we also
15 looked at the time for typing and binding and those
16 kinds of costs were in that figure.

17 MR. GORDON: These were not costs then of
18 improving your training program?

19 MR. CAPUANO: No, they were not costs of
20 improving the training program, other to improve them
21 to get them ready for submittal.

22 MR. GORDON: I have no further questions.
23 Doctor Conway.

24 DOCTOR CONWAY: I have questions and then
25 my colleague, Dan Hutch, also has one or two

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1 questions. Is that \$8,000.00 to \$10,000.00, is that
2 a particular company or is that the Association?

3 MR. CAPUANO: That was a group of member
4 companies in a meeting got together. They got back
5 and studied what they had done so far to try to
6 prepare for accreditation and estimated the cost and
7 that was kind of a collective figure that most of
8 them came out with right in that range.

9 DOCTOR CONWAY: Let me see then. The
10 number of companies, let's say it's ten, would I
11 divide this number by ten in order to get a per
12 company cost or could I?

13 MR. CAPUANO: No, no, I'm saying that
14 each company back and said they estimated somewhere
15 between \$8,000.00 and \$10,000.00 just to get what
16 they had already and get it prepared to send it into
17 OSHA for accreditation.

18 DOCTOR CONWAY: These companies were
19 doing no training up to that point?

20 MR. CAPUANO: Yes, they were. They'd
21 been doing it for years. What I'm saying is, at a
22 meeting of NSWMA when we discussed this, we wanted to
23 try to find out what the true cost of submittal of
24 the programs would be. Many of those companies had
25 already started to get together and prepare their

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1 programs for submittal. What I'm saying is labor
2 cost and binding costs and the other things, they
3 came back and everybody who was in that said that
4 their cost figures were in that range. That's where
5 we came up with that number.

6 DOCTOR CONWAY: On another topic, the
7 interesting notion of using the Bureau of Labor
8 Statistics Safety and Health data as a screen and if
9 a company has a profile that is better than this
10 safety or the accident rate for their particular
11 industry segment, they would not have to apply for
12 accreditation. Is that the concept?

13 MR. CAPUANO: Yes.

14 DOCTOR CONWAY: And why do you choose the
15 Bureau of Labor Statistics' annual data when that
16 data have been criticized? In fact the Bureau itself
17 admits that particularly on the subject of
18 occupational illness, and clearly the rule is
19 designed to be -- the original training rule is
20 designed to protect workers from inhalation of
21 substances, as well as getting blown up by the
22 substances, that because the data are so limited on
23 the occupational illness side, they may be a
24 particularly inappropriate series to use. What's
25 your response to that?

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1 MR. CAPUANO: Well, that's the data that
2 we work with everyday, and that's the data that we
3 have. I also said that OSHA could set rates and say
4 you have to be below whatever those rates are.
5 That's just one way it could be done.

6 DOCTOR CONWAY: All right. I appreciate
7 it, and I think that your testimony will light a
8 gleam in the eye of some analysts I know over at OMB
9 when they read this. It's the kind of triggers that
10 they often recommend.

11 I want to get back to that \$8,000.00 to
12 \$10,000.00 because that really is a sticking point,
13 and any documentation you have in addition to what
14 you reference here -- you talk about the need for
15 repackaging and reformatting, but it seemed to us in
16 costing this provision what it would cost for
17 somebody interested in getting accreditation, what it
18 would cost that trainer, training organization,
19 group, whatever, is that the cost wouldn't approach
20 that figure, given the fact that they'd been in the
21 business of training. They've developed their
22 paperwork. They've packaged it to do training over
23 the last two years now, and that the cost would be
24 very modest, and your reaction to that as a comment
25 and then again, if you would supply documentation in

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1 support of that \$8,000.00 to \$10,000.00 figure. We
2 will take it very seriously, but I would appreciate
3 better documentation.

4 MR. CAPUANO: Well, your first question
5 is in regard to the commercial and some of the others
6 that we've heard from today, like the university
7 programs, federally funded university programs, sure,
8 they've got their act together, because they have to,
9 as vendors, send that material out. What I'm saying
10 is the companies don't have their materials in that
11 kind of a format. They've been using it internally,
12 and although it's organized to a point where they can
13 teach the training, to get it in a presentable form
14 so that you can assure that it's going to be
15 accredited, you need to get some people together and
16 go through this exercise. You're talking about
17 people from a company, from hygiene, safety,
18 environmental, different aspects. We are
19 multifaceted. Most of us are multifaceted companies.
20 We have emergency response people, transporters.
21 There are all kinds of different people involved.
22 You put all those people in a room for six or eight
23 hours, and the cost just in labor alone is in the
24 thousands.

25 DOCTOR CONWAY: But, Mr. Capuano, we sit

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1 through many of these hearings, and in testimony from
2 associations. Very often the association will come
3 to the hearing to make it clear to us and to anybody
4 listening that they have a service to provide, namely
5 a formatting job that you're outlining here. Am I
6 wrong in thinking that your association isn't already
7 thinking about the kinds of aids that it could be
8 giving to member companies by way of reformatting,
9 packaging, and emphasizing aspects of a training
10 program that are already there? By the way don't
11 forget to include this, is that not the case?

12 MR. CAPUANO: Well, if you're asking me
13 if the NSWMA has done anything to help member
14 companies package this material, the answer is, no,
15 we haven't, because all the companies have already
16 done this. They have already started this exercise
17 to do it.

18 DOCTOR CONWAY: They've already done it?

19 MR. CAPUANO: Well, they're working on
20 it, yes.

21 DOCTOR CONWAY: Thank you. My colleague,
22 Dan Hutch, has the following question.

23 MR. HUTCH: I have two questions. I'll
24 ask the first. Are your member companies typical
25 companies that are out there in your line of work in

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1 size, number of employees, what's the average?

2 MR. CAPUANO: Yes, I think the NSWMA and
3 hazardous waste companies probably represents the
4 majority of hazardous waste management companies in
5 this country. At least I know the top ten biggest
6 companies are all members, plus some other 120
7 companies.

8 MR. HUTCH: And also, in the cost
9 estimate, the \$8,000.00 to \$10,000.00 cost estimate
10 that you developed, were you careful to separate out
11 the quality control functions that might easily
12 result from a company gathering together all its
13 training materials and other kinds of related review
14 mechanisms that might result from that kind of
15 meeting to develop this application?

16 MR. CAPUANO: Yes, I think we were.

17 MR. HUTCH: Okay. Thank you.

18 MR. GORDON: Mr. Seymour.

19 MR. SEYMOUR: I wonder if you might go to
20 page 1 in your testimony. I'd like to look at the
21 elements. You're advocating that we abandon the
22 site-specific training course, this is for
23 accreditation now, and use a core training that
24 you've listed here. You did not list an occupational
25 safety and health. You didn't list as an element

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1 emergency response plan, say, including the EPA
2 contingency plan requirements, and medical
3 surveillance program. Is there some reason why
4 they're not listed or do you envision them somehow
5 being covered by something else?

6 MR. CAPUANO: Well, no, this list is not
7 intended to be all-inclusive. These are just some
8 ideas.

9 MR. SEYMOUR: I wonder maybe in your
10 post-hearing comments if you might look at what you
11 think should be the sum and substance of a core
12 program that would be the elements so that a generic
13 kind of program could then be recognize. It would be
14 helpful to us.

15 On page 4 of your testimony you talk
16 about time frames, and you talk about the processing
17 of the application. I wonder, do you have any sense
18 of about how many training programs you believe could
19 be submitted, say, just in the TSD area for
20 recognition, for accreditation?

21 MR. CAPUANO: Not right off the top of my
22 head. I could probably get an estimate of that, but
23 not off the top of my head.

24 MR. SEYMOUR: Can you get it in your
25 post-hearing comments then as to how many programs

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1 you would think might be submitted?

2 MR. CAPUANO: Sure.

3 MR. SEYMOUR: And does your organization
4 support the accreditation of refresher training, say,
5 for TSD training efforts?

6 MR. CAPUANO: Do we support the
7 accreditation of?

8 MR. SEYMOUR: Refresher training. Some
9 of our witnesses have advocated that we should also,
10 besides accredit the initial 24-hour course, which we
11 propose to do, they are advocating that we also
12 accredit the refresher training that's required under
13 paragraph (p).

14 MR. CAPUANO: That was never discussed by
15 the member companies of the NSWMA. I can say
16 personally I do not.

17 MR. SEYMOUR: I appreciate that. Would
18 you be willing in the post-hearing comments maybe to
19 survey your other members when you do that and see
20 what their position is about refresher training, and
21 if they advocate it be done, we'd like to know why,
22 and if they don't, we'd like to know why?

23 The timetable for implementation of the
24 required accreditation, you've given us some guidance
25 about the processing of the application. Do you have

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1 any sense about when the standard should say that any
2 training after this point must be then done under an
3 accredited program, meaning that any employee who
4 then needs the training would have to go to an
5 accredited program? How soon shall we make that the
6 mandatory aspects of the standard?

7 MR. CAPUANO: I'm not sure I understand
8 your question.

9 MR. SEYMOUR: Okay. The idea of the
10 standard is going to require after a certain date
11 anybody taking training would have to have that
12 training under an accredited program. If your
13 organization has any sense about what the target date
14 should be when any training after that date would
15 have to be then under an accredited program, we're
16 interested in what that date ought to be from your
17 perception. Maybe you might discuss that in your
18 post-hearing comments as well.

19 MR. CAPUANO: Yes.

20 MR. SEYMOUR: Because that's crucial as
21 when the standard would actually trigger then
22 compliance with the accredited programs.

23 Also, on page 5 of your testimony, you
24 talk about the HMTUSA, the Hazardous Materials
25 Transportation Uniform Safety Act, and you say that

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1 DOT is producing a modular compliance and enforcement
2 program, and that's being done under the HMTUSA?

3 MR. CAPUANO: That is our information,
4 yes.

5 MR. SEYMOUR: Okay. What do you
6 understand that enforcement effort is being targeted
7 toward? The training is being targeted towards what
8 to comply with what?

9 MR. CAPUANO: Transporters of hazardous
10 materials and hazardous waste.

11 MR. SEYMOUR: To be in compliance with
12 the DOT requirements?

13 MR. CAPUANO: Yes.

14 MR. SEYMOUR: Not necessarily the OSHA
15 requirements?

16 MR. CAPUANO: Right.

17 MR. SEYMOUR: And it's your Association's
18 opinion or position that we should recognize that
19 training in lieu of our training? Do I understand
20 you correctly?

21 MR. CAPUANO: Well, not in lieu of, but
22 it should recognize that that could be possibly one
23 area or one program that would be accredited under
24 OSHA.

25 MR. SEYMOUR: To be used to do what? To

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1 recognize meeting certain obligations under 120?

2 MR. CAPUANO: Under 1910.120, yes.

3 MR. SEYMOUR: Okay. If you might in your
4 post-hearing comments maybe describe for us those
5 kinds of obligations you believe the DOT course that
6 you're describing here would actually satisfy would
7 be helpful to us.

8 MR. CAPUANO: Would you say that one more
9 time?

10 MR. SEYMOUR: The DOT training program
11 components that you're advocating that we recognize,
12 what criteria in the OSHA standard would they
13 satisfy? Again, if you go back to your core elements
14 of the training program, maybe you're going to say
15 that DOT's training might satisfy two or three or
16 whatever number of those elements. I need to know
17 how you connect them.

18 When you're advocating in the case of
19 videos be certified in advance, do you envision that
20 those videos would be used in the same manner for the
21 same subject matter in every course?

22 MR. CAPUANO: Well, yes, I suppose
23 they're that specific.

24 MR. SEYMOUR: So if we were to
25 automatically recognize the video, it would be with

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1 the understanding that everybody uses it in the same
2 position in their training program, for the same
3 purposes and the same subject matters?

4 MR. CAPUANO: Yes.

5 MR. SEYMOUR: In the case of some work
6 that's been done by the NIEHS grantees, they have
7 come up with some very specific pointed suggestions
8 regarding the accreditation program, and it's title
9 "NIEHS Training Grant Program Technical Workshop on
10 Training Quality." Have you had a chance to look at
11 those criteria?

12 MR. CAPUANO: No.

13 MR. SEYMOUR: It would be helpful to us
14 if you would like take a look at those
15 recommendations. They talk about the procedures that
16 should be utilized. You may have heard other
17 witnesses talking about an advisory board and so on.
18 We would like to have feedback from your association
19 as to how you envision this working, if you support
20 it, or you see some changes you think might be
21 necessary to be made to it, again, as it pertains to
22 paragraph (p), RCRA kinds of facilities.

23 MR. CAPUANO: Okay.

24 MR. SEYMOUR: Do any of your members have
25 any responsibilities or participate in emergency

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1 response criteria under paragraph (q)?

2 MR. CAPUANO: Yes.

3 MR. SEYMOUR: What is the position of
4 your association regarding accreditation of emergency
5 response training under (q)?

6 MR. CAPUANO: Well, ours as we referred
7 to earlier in the day, is I guess private industry
8 emergency response people. There again we feel like
9 our people have been extremely well-trained. I refer
10 back to our injury and illness statistics. They are
11 very low, and we feel that the training we've given
12 our people is adequate, and very good.

13 MR. SEYMOUR: Well, if you have some
14 further comments and maybe your association may about
15 the position of accrediting paragraph (q) training
16 and the refresher training, et cetera, under that, we
17 would certainly benefit from that guidance and the
18 suggestions and the assistance you might give us in
19 your post-hearing comments.

20 MR. CAPUANO: Okay.

21 MR. SEYMOUR: Thank you very much.

22 MR. GORDON: Thank you very much.

23 We have no further questions, Your Honor.

24 ADMINISTRATIVE LAW JUDGE COX: Does the
25 public have some questions?

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1 Come right on up here.

2 MR. AHLERS: I work for the National
3 Institute for Occupation Safety and Health. Good
4 afternoon. When you evaluate the training programs
5 that your members conduct, how do you perform that
6 evaluation?

7 MR. CAPUANO: Are you talking about the
8 NSWMA as a group?

9 MR. AHLERS: Yes.

10 MR. CAPUANO: We don't evaluate the
11 programs.

12 MR. AHLERS: Okay. Now, on your personal
13 experience from your company, how do you tell if when
14 your workers have been through a training program
15 they're adequately trained?

16 MR. CAPUANO: We do exactly the same
17 things that the young lady from Alabama said earlier,
18 the three points that she covered. There are written
19 examinations, there are in class mock exercises, and
20 then there are also field exercises using equipment,
21 et cetera, et cetera.

22 MR. AHLERS: Okay. And then as an
23 employer do you follow the accident and injury rates?

24 MR. CAPUANO: Do you mean as a review?

25 MR. AHLERS: As a review.

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1 MR. CAPUANO: I don't know if I
2 understand your question about rates. We do review
3 past experiences, is that what your question is.

4 MR. AHLERS: Okay. You review past
5 experience with accidents. What I'm asking is do you
6 look at for either a group or for a given individual
7 what his on the job results are after this course?

8 MR. CAPUANO: Yes, we do. I can't say
9 that we do it specifically to evaluate his training.
10 I mean that's an indicator of how he was trained,
11 yes.

12 MR. AHLERS: Okay. But you do feel that
13 performance is an indicator of how he was trained?

14 MR. CAPUANO: Oh, sure, sure.

15 MR. AHLERS: Now, you administer a number
16 of 24-hour courses?

17 MR. CAPUANO: Yes, and 40.

18 MR. AHLERS: Okay. 24 and 40?

19 MR. CAPUANO: Yes.

20 MR. AHLERS: On the specific areas where
21 you use 24-hour courses, do you feel that those 24-
22 hour courses are adequate in those areas based on the
23 test performance and based on the later job
24 performance of those individuals?

25 MR. CAPUANO: In my own case you mean?

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1 MR. AHLERS: Yes.

2 MR. CAPUANO: Tough question. I would
3 say they're adequate.

4 MR. AHLERS: Does your organization have
5 a position on that?

6 MR. CAPUANO: On what?

7 MR. AHLERS: On whether the 24-hour
8 courses are adequate for those areas in the present
9 regulation where 24-hour courses are specified?

10 MR. CAPUANO: I would say so.

11 MR. AHLERS: Now, to switch areas here a
12 little bit. Wait a minute. Before we leave that
13 area, do you ever endeavor to evaluate a training
14 course just based on the training materials or the
15 people presenting the course?

16 MR. CAPUANO: Yes.

17 MR. AHLERS: That's without looking at
18 the final tested grades?

19 MR. CAPUANO: Right.

20 MR. AHLERS: Okay. Do you have any
21 feeling for whether that works as well as looking at
22 final test scores and later performance of the people
23 that have been trained?

24 MR. CAPUANO: We continually evaluate.
25 If you're asking about instructors and course

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1 materials that they present, we continually evaluate
2 that both through individuals and it is evaluated by
3 the people who go through the courses on a continuous
4 basis.

5 MR. AHLERS: Specifically what I'm asking
6 is if you consider it adequate just to evaluate the
7 instructors and the course material without --

8 MR. CAPUANO: Anything else?

9 MR. AHLERS: Without administering final
10 test scores or seeing what these people know once
11 they've left?

12 MR. CAPUANO: No, we do believe in
13 testing.

14 MR. AHLERS: Now, to switch areas. You
15 discussed certain of your members of your
16 organization that do in-house training, this would be
17 a good explanation to that, and suggested that you
18 didn't feel that accreditation was appropriate for
19 those that were doing in-house training.

20 MR. CAPUANO: They are either doing in-
21 house training or they're sending their people out to
22 Findlay University or Purdue University or the
23 University of Alabama, any of those program. So it's
24 both in-house and both some of the recognized
25 programs around the country.

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1 MR. AHLERS: Okay. Now, the recognized
2 programs or commercial programs would be accredited
3 even by your suggestion earlier that commercial
4 programs should be accredited?

5 MR. CAPUANO: Yes.

6 MR. AHLERS: When we're dealing with in-
7 house programs, one of the issues that came up in the
8 original hearing on hazardous waste workers and is
9 also mentioned in this proposed rule is one of
10 issuing certificates to the people after they've been
11 through the training program. If we were dealing
12 with an in-house program that was not accredited, if
13 OSHA would acquiesce and say, "Well, there may be
14 certain areas where we think this is appropriate,
15 that people should train their own people and it's
16 not going to be necessary to accredit them," would
17 you suggest that those people be given certificates
18 or not be given certificates?

19 MR. CAPUANO: Well, I did not say that
20 they would not be accredited. I said they should be
21 accredited automatically.

22 MR. AHLERS: Okay. Your suggestion was
23 for automatic accreditation?

24 MR. CAPUANO: Right.

25 MR. AHLERS: As opposed to just saying

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1 we're going to allow them to train people for their
2 own.

3 MR. CAPUANO: I'm not sure I understand
4 where you're going.

5 MR. AHLERS: Okay. I may have
6 misunderstood.

7 MR. CAPUANO: If you're referring to my
8 earlier comments in my first statement where I said
9 the suggestion was based on accident statistics or a
10 number set by OSHA, that anybody under those their
11 programs should be automatically accredited. That's
12 what I said.

13 MR. AHLERS: Should people who have been
14 trained by those in-house programs, by those
15 particular kinds of in-house programs be issued a
16 certificate that entitles them to go to some other
17 hazardous waste site and be recognized as a trained
18 and experienced employee?

19 MR. CAPUANO: That's been done. That has
20 been done over the past few years.

21 MR. AHLERS: You're saying that that's in
22 practice right now?

23 MR. CAPUANO: Yes.

24 MR. AHLERS: Is that your recommendation
25 under this? I'm just trying to get your position.

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1 Is that your recommendation under this proposed rule?

2 MR. CAPUANO: If somebody has gotten
3 their initial, say, 40-hour or 24-hour program or
4 training through an accredited program, they go to
5 another company, I think that's what you're saying.

6 MR. AHLERS: Right. I'm saying that
7 they've gotten theirs from an in-house program that
8 hasn't gone through what's been specified in here.

9 MR. CAPUANO: Yes, sure, why not?

10 MR. AHLERS: Okay. Fine. Thank you. I
11 don't have any further questions.

12 MR. SEYMOUR: We can get the testimony
13 and the requests that we've made of you for your
14 post-hearing comments to help you.

15 MR. CAPUANO: Okay.

16 MR. GORDON: And we'll mail you a copy of
17 the transcript, which will have a copy of what's been
18 requested of you.

19 MR. CAPUANO: Okay. Good. I was writing
20 frantically here, trying to keep up with them.

21 MR. GORDON: Right. You'll have 45 days
22 from February 14th.

23 MR. CAPUANO: Yes, if you could do that.

24 ADMINISTRATIVE LAW JUDGE COX: Are there
25 any other questions?

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1 MR. KING: Steven King, LHM Corporation.
2 I was listening to your submissions relating to
3 accident and incident records being used for some
4 agencies or companies to say that they're kosher, and
5 that they will operate and be automatically
6 accredited. Does that mean you believe that every
7 organization in the United States diligently and
8 honestly puts forth the correct accident and incident
9 rates in this business?

10 MR. CAPUANO: Are you asking me do I
11 believe that? No.

12 MR. KING: Do you believe that?

13 MR. CAPUANO: No.

14 MR. KING: No. Thank you.

15 ADMINISTRATIVE LAW JUDGE COX: Are there
16 any other questions please?

17 [No response.]

18 MR. GORDON: I see none, Your Honor.

19 ADMINISTRATIVE LAW JUDGE COX: I don't
20 see any. So we appreciate your testimony today.

21 MR. GORDON: Thank you very much.

22 Your Honor, it has been indicated to us
23 that the Missouri Division of Fire Safety will not be
24 making an oral presentation.

25 Is that correct? Is there anyone?

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1 [No response.]

2 I hear nobody contradicting that. We of
3 course would accept any written statement which they
4 wish to send to us.

5 Now, we understand that Monsanto will be
6 making their presentation tomorrow with the Chemical
7 Manufacturers Association. Is there anyone here to
8 contradict that?

9 [No response.]

10 I see nobody.

11 Therefore, the next participant to
12 testify is the International Society of Fire Service
13 Instructors, Mr. Carr.

14 Mr. Carr, do you have a written statement
15 which you would like to introduce into the record?

16 MR. CARR: Yes, we do have. We just
17 provided that.

18 MR. GORDON: Would you like to introduce
19 that as Exhibit 40?

20 MR. CARR: Yes, we would.

21 MR. GORDON: No objection, Your Honor.

22 ADMINISTRATIVE LAW JUDGE COX: Very well.
23 Let the record show that the International Society of
24 Fire Service statement is Exhibit 40 and so admitted.

25 (Whereupon, the above-referred

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1 to document marked as Exhibit
2 No. 40 was received in
3 evidence.)

4 MR. GORDON: Thank you.

5 Please proceed, Mr. Carr.

6 MR. CARR: Thank you.

7 INTERNATIONAL SOCIETY OF FIRE

8 SERVICE INSTRUCTORS

9 H. K. Skip Carr, Chairman, ISFSI's
10 Hazardous Materials Training and
11 Education Advisory Council

12 MR. CARR: My name is Skip Carr of
13 Englishtown, New Jersey. I appear here before you
14 today on behalf of Edward McCormack, the chief
15 executive officer of the International Society of
16 Fire Service Instructors. I currently serve as
17 Chairman of the Hazardous Materials Training and
18 Education Advisory Council of the International
19 Society of Fire Service Instructors.

20 It is not our intent to oppose the
21 accreditation of hazardous materials training
22 programs for emergency response personnel. As stated
23 in our submission of April 26, 1990, ISFSI feels
24 strongly that there needs to be a means to determine
25 the emergency responders received the highest quality

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1 training in order that they can safely respond to
2 hazardous materials incidents. While we feel that
3 the quality of the hazardous materials training
4 programs is important, we do not feel that OSHA is
5 the best place for the accreditation process to be
6 handled.

7 Before continuing, it is important that
8 some clarification take place as it relates to
9 accreditation. Many are co-mingling or mixing the
10 terms, and few understand all components of an
11 accreditation and certification system.

12 OSHA promulgates rules and regulations
13 and some would like to think these as standards.
14 While they may be called upon and interpreted as
15 standards, they are very often open-ended and non-
16 specific. They are also the federal mandate upon
17 which an entire system is expected to operate.

18 At the present time, the most
19 comprehensive and complete materials on hazardous
20 materials performance for emergency response
21 personnel are from the NFPA or National Fire
22 Protection Association. These are the NFPA 471 which
23 is recommended practices for responding to hazardous
24 materials incidents, and NFPA 472 which is a standard
25 for professional competence of responding to

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1 hazardous materials incidents. These documents
2 indicate a level of performance that an individual
3 must achieve to be certified at that specific level.
4 This, however, does not currently encompass the
5 incident commander.

6 Next comes training and education which
7 can be subdivided into materials and courses. All of
8 the educational materials should be developed to
9 prepare one to successfully achieve the performance
10 called for in the performance standards. Courses
11 should likewise be developed to prepare the student
12 to develop their knowledge, skills, and abilities as
13 specified in the standards.

14 We have now outlined two components of
15 the system, namely standards and training and
16 education.

17 Now comes accreditation. It is our
18 understanding that these hearings are to determine of
19 OSHA should accredit training and education programs,
20 and, if so, how. That leads back to our comments of
21 April 26, 1990. We do believe in the quality of
22 training and education programs, but do not believe
23 that OSHA is the vehicle for such accreditation.

24 The final component of the system is
25 certification. It is the belief of the International

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1 Society of Fire Service Instructors that individuals
2 should be certified to various levels as specified in
3 the rules and regulations and further identified in
4 the NFPA 472 Standard. Such certification should not
5 be based on a person's merely attending a 200-hour
6 training and education course. Certification should
7 recognize one's knowledge, skills, and abilities from
8 life experience or whatever sources are available to
9 him or her, and verify one's ability to perform to a
10 specified level. We do feel, however, that it is
11 unethical for one who has taught students in any
12 capacity dealing with the topic for which one is to
13 be certified to be involved in the actual evaluation,
14 which leads to the certification of the individual's
15 competency to perform to that specified level.

16 In furtherance of our beliefs, the
17 International Society of Fire Service Instructors
18 Executive Board, at the request of the Hazardous
19 Materials Training and Education Advisory Council,
20 has appointed a Hazardous Materials Certification
21 Board which will operate as a complete Hazardous
22 Materials Certification System for the International
23 Society of Fire Service Instructors. The initial
24 charge for the development of the materials and
25 procedures was delegated to the Hazardous Materials

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1 Training and Education Advisory Council.

2 At the present time, certification
3 courses or challenge examinations are available from
4 ISFSI at the hazardous materials first responders
5 awareness level, operations level, technician level,
6 and the instructor level. ISFSI is currently
7 developing educational materials for the incident
8 command level as required by OSHA. It is realized
9 this program will need updating as will all others
10 with the new version of NFPA 472 being released in
11 1992.

12 It should at this time be noted that
13 changes in standards should be expected every three
14 to five years. Each standards change will result in
15 materials changes, curriculum changes, and of course
16 changes in the evaluation instruments and
17 certification. It is doubtful that OSHA could act
18 fast enough in requiring the mandated upgrades.

19 In January of 1991, ISFSI certified its
20 first 15 hazardous materials instructor trainers.
21 Several of them in turn presented a program in late
22 January leading to the certification of the first 18
23 persons as certified hazardous materials instructors
24 at the first responder awareness and operations
25 levels.

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1 Our testimony differs in part from that
2 submitted on April 26, 1990. It was then felt that
3 the accreditation of training programs should occur
4 at the state level. It has recently been noted that
5 if this system is to be meaningful, national in
6 scope, and for all emergency response personnel, it
7 must include elements such as recertification and
8 reciprocity between states. This in the eyes of many
9 could be an impossible feat to be accomplished at the
10 state level.

11 OSHA should recognize the efforts of, and
12 seek ways to help unify, organizations such as the
13 International Association of Fire Fighters, the
14 International Association of Fire Chiefs, the
15 International Society of Fire Service Instructors,
16 the National Board on Fire Service Professional
17 Qualifications, and others currently involved in the
18 certification of fire and emergency service response
19 personnel. It would certainly seem that OSHA could
20 act better as a catalyst to bring together a national
21 system, than to try to develop and implement a system
22 within an agency of the federal bureaucracy.

23 The ISFSI system will maintain a registry
24 of all who are certified. In the future, ISFSI will
25 accredit agencies and organizations, who in turn will

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1 be accredited to evaluate those desiring to be
2 certified.

3 Thank you for the opportunity of
4 appearing here today, and I will be happy to answer
5 any questions that anyone may have.

6 MR. GORDON: Thank you very much. I
7 think we have some questions. I have a few just to
8 clarify what the International Society is starting to
9 do and planning to do. You are planning to certify
10 trainers of emergency response?

11 MR. CARR: We have a certification
12 process in place for certification of the instructor,
13 as well as the levels of emergency response required
14 under 1910.120.

15 MR. GORDON: So you're certifying the
16 trainers? You are also certifying the fire fighters
17 at various levels of competency?

18 MR. CARR: That's correct.

19 MR. GORDON: After they take one of these
20 training courses?

21 MR. CARR: That is correct.

22 MR. GORDON: And you either have started
23 or are planning to certify training programs which
24 will include a number of certified instructors, is
25 that correct?

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1 MR. CARR: What the process that has been
2 developed is a process in which an individual could
3 take a training program either provided by the
4 International Society of Fire Service Instructors or
5 anyone else's program who, through the eventual
6 process of accreditation, whoever that responsibility
7 falls upon, would complete. At the completion of
8 their training program they could then take an
9 examination in order to be certified. An individual
10 because of his past experience or life experience, as
11 it says in the testimony, could take a challenge
12 examination without attending anyone's course, and
13 upon passing that challenge examination would be
14 certified to the level that would be appropriate.

15 MR. GORDON: So you're not intending to
16 certify training programs as such, although you plan
17 on giving one yourself?

18 MR. CARR: That's correct.

19 MR. GORDON: Now, if OSHA decided to
20 certify a emergency response training programs,
21 should OSHA also certify the individual instructors
22 of those training programs, or just the training
23 program?

24 MR. CARR: Well, I can only voice my own
25 personal opinion there. The society has not

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1 established a stand on that particular position.
2 From my own background, I would like to see a uniform
3 standard to be lived up to by the instructors of
4 these training programs as well. Whether or not that
5 belongs with OSHA or another accrediting agency, I'm
6 not sure at this point.

7 MR. GORDON: But you are doing that
8 yourself at the moment?

9 MR. CARR: That is correct.

10 MR. GORDON: I see. I think some of the
11 other members of the panel have questions.

12 Doctor Conway.

13 DOCTOR CONWAY: I'd like to follow up on
14 that last question immediately. Mr. Gordon was
15 making a distinction between accrediting a program
16 and certifying that certain individuals were trained.
17 Now, my understanding of your testimony is that
18 that's a distinction without a meaning for your
19 association.

20 MR. CARR: That is correct.

21 DOCTOR CONWAY: I just wanted to be sure.
22 This is a fascinating idea of OSHA perhaps bringing
23 together the associations in your field. Is this a
24 complete list, the International Association of Fire
25 Fighters, the Association of Fire Chiefs, Fire

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1 Service Instructors, National Board of Fire Service
2 Professional Qualifications, is that inclusive?

3 MR. CARR: There are other fire service
4 related organizations that if this were to come about
5 should be included in that list I'm sure.

6 DOCTOR CONWAY: These are informal
7 hearings, so some of the questions tend in that
8 direction. Is this something sensible that we should
9 consider for the police departments as well?

10 MR. CARR: That is a difficult question
11 in the fact that there are many more fire service
12 organizations involved on a national basis than you
13 will find in most cases police organizations. The
14 instructors have their association, the fire chiefs
15 have their association, the fire fighters have a
16 union, and they have an association. There are other
17 organizations such as the International Association
18 of Arson Investigators. There are probably 25 to 30
19 fire service organizations that probably feel that
20 they should have input. With police organizations
21 you have much less of a political problem in solving
22 that difficulty because of the fact that there are a
23 lot fewer organizations to be considered. The NFPA
24 certainly would be one of the ones that would be
25 needed to be considered here. Organizations like the

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1 NFPA have several subdivisions or offspring
2 organizations that would probably also like to have
3 input in something of this sort. So there are a lot
4 more people involved in the fire service that would
5 be concerned than would be in police. So for that
6 reason it's a little bit difficult to answer that
7 question specifically.

8 DOCTOR CONWAY: I think you did certainly
9 provide much useful information, but I think in doing
10 so you've put your finger on the problem, which is
11 this very serious dimension of a coordination problem
12 exercise that would be required here, even if you had
13 complete OSHA support and endorsement. Say OSHA
14 acted as this catalyst that you encourage us to act
15 as, and please you know more about the organization
16 and who is representing whom out there among fire
17 fighters than I do, you're looking at a heck of a
18 coordination problem, true?

19 MR. CARR: There is a way in my own
20 judgment of at least remedying part of that of OSHA
21 establishing a criteria of who that particular fire
22 service organization represents as to whether or not
23 they would be a part of this process, and I don't
24 mean to elude to them in any derogatory fashion, but
25 take the International Association of Arson

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1 Investigators, which is a national organization, they
2 do not have as much interest in hazardous materials
3 regulations and training requirements as the
4 International Chiefs or the International Society of
5 Fire Service Instructors. So it would really depend
6 on what the constituency of that particular
7 organization was as to whether or not they would be
8 part of the program, which could be established in a
9 criteria put together by OSHA.

10 DOCTOR CONWAY: If the five
11 organizations, four or five that you identify here,
12 agreed to come together, would this be done
13 voluntarily? What's the structure? What's the
14 setup?

15 MR. CARR: I would say at this particular
16 point that that is a very strong possibility that
17 that could be done. There have been in the last year
18 and a half to two years a very good understanding
19 between the organizations has developed as to who
20 should respond to what types of problems on a
21 national scope for the fire service, and I believe
22 that you would have the interest of the majority of
23 the associations that should be considered, and I
24 can't speak for them, but I believe that they would
25 probably do this on a voluntary basis.

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1 DOCTOR CONWAY: Final question, what kind
2 of resistance from individual states would you
3 anticipate? Assume that this took off, that it got
4 off the ground.

5 MR. CARR: If there were a provision to
6 include several state certification programs or
7 processes that are already in existence somehow into
8 the overall picture, I don't think that you would
9 have too much of a problem. Speaking from my own
10 experience, I served on a development committee of
11 New Jersey's certification program. At the current
12 time, New Jersey accepts no one else's certification
13 process. Their process is voluntary, so it's a way
14 of attaining or achieving the goals of 1910.120 on a
15 voluntary basis, but they do not recognize anyone
16 else's training. There are no provisions for
17 challenge examinations or past experience or anything
18 of that sort in the process. I think that that is
19 something that would have to be very strongly looked
20 into before a national program would be effective.
21 I realize that reciprocity between the states is very
22 difficult to attain in many fields, and the fire
23 service is no different than that.

24 DOCTOR CONWAY: Thank you for your very
25 complete answers. I appreciate it.

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1 MR. GORDON: Mr. Moore.

2 MR. MOORE: I'm very well familiar with
3 ISFSI's programs as far as the public fire service
4 goes. Are the certifications and the training
5 programs that you offer through the organization
6 available to private industry?

7 MR. CARR: Yes, they are.

8 MR. MOORE: If an industry were to want
9 to seek out such certification or training programs,
10 I assume they'd have to join the association.

11 MR. CARR: No, that's not part of the
12 process.

13 MR. MOORE: How do they do it?

14 MR. CARR: They would contact the society
15 headquarters in Ashland, Massachusetts, and request
16 information concerning the particular area that they
17 were concerned about and that information would be
18 forwarded to them. They can in turn arrange for
19 challenge examinations or for a course to be
20 delivered, whichever is appropriate to meet their
21 needs.

22 MR. MOORE: Is there a cost for that?

23 MR. CARR: Yes, there is.

24 MR. MOORE: Okay. Can we possibly get a
25 schedule?

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1 MR. CARR: I believe that I have with me
2 a copy of the society's certification process, which
3 I will be glad to provide to you.

4 MR. MOORE: Thank you.

5 MR. GORDON: Mr. Pierce.

6 MR. PIERCE: Yes, Mr. Carr, on page 4 of
7 your testimony you talk about certification courses
8 for the various levels of training and you mention
9 the instructor level, and I guess I'm having some
10 confusion between that terminology and the
11 terminology we use in our standard dealing with
12 hazardous materials specialist. Is that the same
13 that you're talking about or are you talking about an
14 instructor certification course and you don't have a
15 program for the hazardous materials specialist?

16 MR. CARR: We do not have currently a
17 program for the hazardous materials specialist, and
18 that is because of the proposed changes in the NFPA
19 472 Standard which would possibly abolish that level
20 of training for certification.

21 MR. MOORE: So it's then your opinion
22 that the hazardous materials technician level is
23 basically the level to which people need to be
24 trained to do essentially everything at the incident?

25 MR. CARR: That's correct.

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1 MR. MOORE: Okay. Thank you very much.

2 MR. GORDON: Mr. Seymour.

3 MR. SEYMOUR: Mr. Carr, we had some
4 previous witnesses in Washington who were from New
5 Jersey and talked about some of the programs that are
6 in New Jersey. We had a police detective from the
7 state of New Jersey and he stated that there was
8 great difficulty in getting some uniform recognition
9 for the police awareness training in the state among,
10 I'm not bringing it back clearly to me, but that
11 several agencies are evidently involved, and he
12 hasn't had success in getting recognition by all of
13 the appropriate state agencies, and so he was looking
14 for OSHA to force that issue. I wonder if you might
15 describe, because you mentioned about certification
16 in New Jersey, as to how that's being done for EMS
17 and police from your perspective.

18 MR. CARR: Okay. In the state of New
19 Jersey, the process there has sort of been divided.
20 The Office of Emergency Management of New Jersey
21 State Police operates the hazardous materials
22 certification program, which as I mentioned before is
23 strictly voluntary in New Jersey. They have come up
24 with a very traditional program such as we had just
25 been describing, awareness at the operational and the

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1 technician levels. They also have come up with a
2 spinoff, if you would, for emergency medical
3 services. So they have an emergency medical basic
4 and an emergency medical advanced course that sort of
5 coincides with the operational and the technician
6 levels response for what we would normally expect of
7 a hazardous materials response team. The police
8 officers in most cases that I have seen, unless they
9 become part of a hazardous materials response team
10 through their local office of emergency management,
11 pretty much stop at the operational level and do not
12 proceed into the technician status.

13 MR. SEYMOUR: I want to just take a
14 hypothetical. The programs that you have, the
15 challenge exams and so on, are they oriented so that
16 police officers could also take those exams, an EMS
17 person ought to take those exams?

18 MR. CARR: Yes, they are.

19 MR. SEYMOUR: Is there anything special
20 that they would have a separate kind of exam for
21 police officers and EMS personnel compared to, say,
22 other emergency responders like fire fighters?

23 MR. CARR: That is a consideration at
24 this particular time, although that particular avenue
25 has not been developed to its fullest at this moment.

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1 MR. SEYMOUR: Does the challenge exam
2 include any kind of hands-on practical test?

3 MR. CARR: At this point for the
4 awareness and operational, it is strictly
5 examination. For the technician level, there is a
6 practical examination, specific competencies are
7 required of the individuals who participate in the
8 challenge examination. They are given the same set
9 of instructor checklists or the instructors are
10 provided with the same set of checklists that are
11 used in the training course and individuals who take
12 the challenge exam are expected to perform the same
13 as those taking the course.

14 MR. SEYMOUR: The pass/fail criteria for
15 passing the challenge exam, has there been some kind
16 of validation effort made to show that once one
17 passes these challenges tests and is so certified, in
18 fact has the necessary competencies that are desired?

19 MR. CARR: Yes, that has been developed.

20 MR. SEYMOUR: Okay. I wonder if you
21 might in the post-hearing comments be able to provide
22 the mechanism and how you went through doing that
23 validation.

24 MR. CARR: Okay.

25 MR. SEYMOUR: Let's take, for example, a

1 hypothetical now that we're not going to be
2 successful for a nationwide certification program.
3 Your organization has a state training directors
4 group or sector or section?

5 MR. CARR: The International Society of
6 Fire Service Instructors at one particular time had
7 several sections that were created for special
8 interests in the fire service. At this particular
9 point the bylaws and constitution have been revised
10 approximately two years ago with the abolishment of
11 the special interest sections in the society. We
12 currently are divided geographically across the
13 United States, as well as divided into specific areas
14 of interest, such as, suppression activities, and
15 public education activities, and that type of thing,
16 but we do not have specific areas, such as the state
17 training directors and college level instructors, and
18 so forth any longer.

19 MR. SEYMOUR: I wonder maybe in your
20 post-hearing comments if the nationwide program would
21 not be successful, how many states in your
22 organization's knowledge actually have state
23 certification programs now for training and
24 instructor delivery mechanisms where they actually
25 certify instructors deliver certain prescribed

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1 programs that the state has already sanctioned as
2 being what they want to see delivered in their state.

3 MR. CARR: We have done in the past an
4 informal survey of participants at the Fire
5 Department Instructors Conference, coincidentally
6 right here in Cincinnati, which will take place next
7 month, in which we have in attendance approximately
8 7,000 to 8,000 fire fighters. From the information
9 that we have gathered from those informal surveys, we
10 have determined that there are less than one-third of
11 the states currently involved in some type of
12 certification process.

13 MR. SEYMOUR: That's for fire fighter
14 training or is that for EMS?

15 MR. CARR: That's for hazardous materials
16 response training.

17 MR. SEYMOUR: Okay. But in the case of
18 fire fighter training, would you envision that if
19 there is a state program for fire fighter training
20 that with some modification they would probably
21 incorporate hazardous materials as appropriate down
22 the road?

23 MR. CARR: Yes, they probably would.

24 MR. SEYMOUR: How many actually have fire
25 fighters certification programs or instructor

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1 recognition programs?

2 MR. CARR: There again is a big
3 difference between certification programs. In, for
4 instance, New Jersey we have an interesting concept
5 in the fact that the programs that are presented for
6 volunteers are on a volunteer basis, and the programs
7 that are presented for career people are mandatory.
8 So that obviously presents some problems, as I'm sure
9 that everyone on the Board can realize. There are
10 many divisions or types of training certification
11 processes in the states that have some type of system
12 in operation, and it's very difficult to categorize
13 anyone to a specific area.

14 MR. SEYMOUR: I was trying to make a
15 distinction between if the state agency has the
16 authority to say that this is going to be the kind of
17 content training program we want to see delivered to
18 fire fighters in our state, even though that training
19 program may be voluntary, meaning that every
20 volunteer may not care to take the course, that is a
21 state sanctioned training program that is available,
22 and if you would, I would understand that they would
23 be encouraging them to take that training, as opposed
24 they can take any kind of training they want to and
25 that state doesn't have any criteria. My concern is

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1 how many states actually have established some state
2 criteria as to the kind of training that needs to be
3 taken? We listen to Kentucky this morning, and they
4 have such a criteria. I know in Maryland because we
5 heard from the Maryland State Firemen's Association
6 they also have a similar kind of program where they
7 certify instructors and they actually sanction
8 certain programs to be delivered through the Maryland
9 Fire and Rescue Institute. What I'm interested in is
10 how many other states have similar kinds of programs?
11 You say, just a third or is there more than that?

12 MR. CARR: Well, it was a third for
13 hazardous materials. For other types of fire fighter
14 training, I would say at this particular point
15 probably the majority of the states have some type of
16 criteria in process or in use.

17 MR. SEYMOUR: I wonder if you might be
18 able to in your post-hearing comments to the extent
19 that you can to document or list what states have
20 such kinds of programs and the kind, if it's a fire
21 training programs they have now, and if they have any
22 sense of when they're going to say incorporate
23 awareness training into that program and upgrade it
24 or operation level training and upgrade it. It would
25 be helpful to us.

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1 MR. CARR: Okay.

2 MR. SEYMOUR: Thank you.

3 MR. GORDON: Thank you very much. We
4 have no further questions, but I would as soon as you
5 get a copy of that document if you could bring it to
6 Mr. Hall so we could then identify it into the
7 record.

8 MR. CARR: Certainly.

9 ADMINISTRATIVE LAW JUDGE COX: All right.
10 Do we have any questions from the public?

11 MR. MORAWETZ: I'll make them brief.
12 It's John Morawetz from the Chemical Workers. Do you
13 have any position about the certification or training
14 that's available for industrial emergency response
15 personnel?

16 MR. CARR: That particular question could
17 be answered probably by someone other than myself in
18 the fact that the International Society of Fire
19 Service Instructors does have an industrial
20 certification program in existence and has been in
21 existence for approximately two years. I am not
22 affiliated with that particular group of the society,
23 so it's difficult for me to address that question.

24 MR. MORAWETZ: So it's different from
25 your testimony here today?

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1 MR. CARR: That's correct.

2 MR. MORAWETZ: Okay. Then with just what
3 you did submit, the challenge testing, how long is
4 this challenge test? What is it actually composed
5 of?

6 MR. CARR: The challenge test, the
7 original awareness challenge test is 45 questions and
8 the student is given an hour and a half in the time
9 to answer those 45 questions. The operational exam
10 is 75 questions and he's given two hours to complete
11 that. The technician level program it's difficult to
12 put a time factor on that because it depends on the
13 amount of students to be tested and what competencies
14 are being tested at a particular facility. That is
15 very site-specific in reference to the
16 responsibilities of the individual taking the test.

17 MR. MORAWETZ: And you have a challenge
18 exam for instructors?

19 MR. CARR: There is no challenge exam for
20 instructors.

21 MR. MORAWETZ: Thank you.

22 ADMINISTRATIVE LAW JUDGE COX: Are there
23 any other questions?

24 MR. KING: Steven King, LHM Corporation.
25 Your particular organization, to which at one time I

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1 belonged, and because I haven't paid my dues I don't
2 belong at the moment, but what concerns me is in all
3 these particular agencies that run these courses is
4 the cost factor, and I believe, and it's my personal
5 belief, that your organization runs extremely costly
6 ventures, and that I can go and do your courses in
7 operations and awareness and pay a couple of hundred
8 dollars, yet I can attend a state facility here and
9 pay less than \$100.00 and get equal training, or what
10 I believe to be equal training. Is accreditation
11 going to bring your cost down, or is it going to make
12 it inaccessible to certain individuals who may want
13 to pursue their career field.

14 MR. CARR: The cost factor was very
15 closely scrutinized and considered when the training
16 programs were developed for this particular criteria.
17 We can tell you that the average cost of training an
18 individual based on training 36 students, which is
19 the basic package for the purchase of the training
20 program, amounts to approximately \$20.00 for
21 awareness and \$25.00 for operational. We find that
22 that is among the most reasonable available on the
23 market today other than something that is subsidized
24 by some type of government agency such as a state
25 training association.

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1 MR. KING: I just recently reviewed your
2 material that I had sent to me. For me as an
3 individual to get certified, I'm going to have to go
4 through the programs either by the challenge or by
5 doing the classes. Now, that works out with the
6 course material in around the \$500.00 or \$600.00
7 mark, is that correct?

8 MR. CARR: The course material in order
9 for you to teach the course, which would include an
10 instructor manual, a set of slides, overhead masters,
11 and 36 student manuals, and 36 emergency response
12 guidebooks would be approximately \$495.00.

13 MR. KING: And do I have to attend the
14 class itself as well for the one that I teach?

15 MR. CARR: If you wish to have that
16 particular class certified, then you must attend a
17 certification process where an instructor attends a
18 two-day training program, which is a review of his
19 competencies as an instructor and the information is
20 provided to him on how to present the society's
21 program. If you just wish to take the challenge
22 examinations, then you do not get certified by the
23 process.

24 MR. KING: And what is the cost of a
25 challenge examination?

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1 MR. CARR: Off the top of my head I
2 believe it is \$125.00 for members and I'm not sure of
3 the figure for non-members.

4 MR. KING: So what I'm trying to get to
5 as an individual I'm better going to the State Fire
6 Academy in Ohio and paying \$20.00 and having a
7 National Fire Academy awareness class given to me by
8 an instructor of this same competency that I am.
9 Yours is really designed for an organization or
10 facility. He's going to do it en masse, in large
11 numbers.

12 MR. CARR: En masse as opposed to an
13 individual it is much more economical to do it en
14 masse than an individual, yes.

15 MR. KING: Thank you very much.

16 ADMINISTRATIVE LAW JUDGE COX: Any
17 others?

18 MS. RICE: Carol Rice, Midwest
19 Consortium. Can you tell me how long the training
20 programs are delivered for each of your three levels?

21 MR. CARR: Okay. The awareness level is
22 eight hours. The operational level is 16 hours.

23 MS. RICE: Sixteen additional hours?

24 MR. CARR: Yes, 16 additional, right.
25 The instructor component to be certified by the

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1 International Society of Fire Service Instructors to
2 teach those two levels is an additional two days or
3 16 hours. The technician level course is 40 hours.

4 MS. RICE: Additional?

5 MR. CARR: Yes.

6 MS. RICE: And the challenge exam
7 questions I guess are the same questions that a
8 person who goes through the program would get. Are
9 those multiple choice or open-ended or is it a mix?

10 MR. CARR: The majority are multiple
11 choice. I'm sorry, I'm corrected. They are all
12 multiple choice at this point.

13 MS. RICE: Thank you.

14 ADMINISTRATIVE LAW JUDGE COX: Any other
15 questions please?

16 MR. AHLERS: Heinz Ahlers from the
17 National Institute for Occupational Safety and
18 Health. When NIOSH reviewed some of these training
19 requirements, specifically with reference to
20 emergency responders, we noted that -- and we have a
21 sort of cookbook list of things that people should be
22 trained in for the 40-hour program and for the 24-
23 hour program, and I also believe there's a 16-hour
24 program, and that's OSHA's list, which we do concur
25 with. We think they did a very good job on preparing

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1 that list and we like those, except our impression
2 was when we get down to the concept of emergency
3 responders that those particular blocks of training
4 in the way they had been set out were not necessarily
5 applicable to what happens when an emergency response
6 is taking place. Would you concur with that? In
7 other words, what I'm saying is when we train a guy
8 to be able to go on to a waste site and get to the
9 borders of that property and do a sampling and make
10 up his mind on what he's going to do when he goes on
11 there, and he may have two or three weeks to make up
12 his mind. If he's not sure, he can take a sample and
13 send it off. You don't have that kind of luxury?

14 MR. CARR: That's correct.

15 MR. AHLERS: And in general when you
16 arrive, it's because there are other things happening
17 besides just the hazardous waste exposure?

18 MR. CARR: That's a very strong
19 possibility.

20 MR. AHLERS: Okay. One of the things
21 that came up was we said we're technically on an in-
22 plant thing. We might be talking about a spill of
23 5,000 gallons of some toxic substance. When an
24 emergency responder arrives we're often talking about
25 the same spill but with somebody in the cab of the

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1 truck. So as a result of that, are there different
2 approaches that your kind of training has to take as
3 opposed to what the normal hazardous waste cleanup
4 worker is exposed to?

5 MR. CARR: Yes, it most definitely is.

6 MR. AHLERS: Okay. Would it be your
7 opinion that it takes some of the expertise that
8 comes from fire departments and fire service people
9 in emergency response people to be fed into that
10 besides just strictly the hazardous waste training
11 expertise?

12 MR. CARR: Yes, I would agree with that.

13 MR. AHLERS: Thank you.

14 ADMINISTRATIVE LAW JUDGE COX: Are there
15 any other questions please?

16 You arrived late, but we're glad you're
17 here.

18 MR. FIESTA: Thank you. Better late than
19 never. Thank you, Your Honor.

20 Richard Fiesta, representing the Laborers
21 International Union. Did you submit as part of your
22 testimony any of the curriculum from the awareness or
23 the operations or technician?

24 MR. CARR: No, we have not.

25 MR. FIESTA: Could you without taking up

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1 a lot of time, just kind of describe the curriculum
2 generally?

3 MR. CARR: Well, the easiest way for us
4 to describe our curriculum is to make reference to
5 the instructor guide for each level of competency or
6 for each level that an individual wishes to attain
7 his certification. Each competency from an NFPA 472
8 Standard is cross-referenced in the instructor guide,
9 so that everything that is suggested be part of a
10 curriculum at the awareness level from the NFPA
11 Standard is taken right out of the book and cross-
12 referenced so that you can --

13 MR. FIESTA: You can get an idea from the
14 instructor --

15 MR. CARR: When you're presenting the
16 class, if someone asks you, "Why do I have to know
17 that? Whose idea was this?" It comes out of the
18 NFPA Standard, and this is the appropriate section,
19 or it will give you the appropriate 1910.120
20 reference as to why it is included at that level.

21 MR. FIESTA: Following up on that, how
22 much in the 40-hour course would you say would be
23 hands-on training to a person going through the
24 course?

25 MR. CARR: I would say that approximately

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1 two and a half days of the five-day course is hands-
2 on competencies.

3 MR. FIESTA: How is that evaluated by the
4 instructors?

5 MR. CARR: Each instructor has a
6 checklist for what is to be accomplished at the
7 particular area that he has been assigned to do the
8 instructing in.

9 MR. FIESTA: Okay. One last question,
10 say, for example, at a TSD site or Superfund site a
11 worker is hurt or injured or goes down somehow and
12 then emergency response personnel is needed to go on
13 to rescue that person. Is it your organization's
14 view that that emergency response person should have
15 some sort of certification or accreditation or come
16 through an accredited course before going onto those
17 sites?

18 MR. CARR: Absolutely.

19 MR. FIESTA: Thank you very much.

20 ADMINISTRATIVE LAW JUDGE COX: Are there
21 any other questions?

22 [No response.]

23 MR. GORDON: I see none, Your Honor.

24 Could we just ask, sir, if you could
25 please provide us as a post-hearing comment either

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1 the curricula for your various courses or perhaps
2 just that instructor training book sounds like it
3 would be adequate, and, secondly, could you get the
4 other document?

5 MR. CARR: Certainly.

6 MR. GORDON: Thank you. We greatly
7 appreciate your testimony.

8 MR. CARR: Thank you.

9 MR. GORDON: Your Honor, I understand now
10 that two people who were originally intending to
11 testify later in the week will be testifying, the
12 Automobile Workers Union and the International
13 Association of Fire Chiefs.

14 Are they both here?

15 The UAW is here.

16 Do you wish to take a break or go ahead
17 with them?

18 MR. HALL: The Fire Chiefs are going to
19 be on Thursday.

20 MR. GORDON: On Thursday.

21 MR. HALL: It's a California-Arizona
22 Consortium that's to testify today. The Fire Chiefs
23 are going to testify on Thursday. Sorry.

24 MR. GORDON: I see that.

25 MR. HALL: The UAW is next.

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1 MR. GORDON: Let's introduce that. What
2 is that document?

3 MR. HALL: A Certification for Hazardous
4 Materials Response Personnel by the International
5 Society of Fire Service Instructors.

6 MR. GORDON: Exhibit 40A.

7 MR. HALL: 40A and it's also got a sub-
8 title "Procedures and Criteria."

9 MR. GORDON: No objection, Your Honor.

10 ADMINISTRATIVE LAW JUDGE COX: Very well,
11 so admitted, 40A.

12 (Whereupon, the above-referred
13 to document marked as Exhibit
14 No. 40A was received in
15 evidence.)

16 MR. HALL: By the way, the other group in
17 addition to the UAW will be the California-Arizona
18 Consortium.

19 MR. GORDON: The California-Arizona
20 Consortium. I'm sorry. They are here, too, I see
21 from the nodding head. So we have two more
22 participants. Do you want to go straight through or
23 take a break?

24 ADMINISTRATIVE LAW JUDGE COX: Well, what
25 does the panel want? Do you want to take a break?

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1 MR. HALL: It's a democracy. We have to
2 vote. We have to caucus.

3 MR. GORDON: Well, caucus, will you?

4 MR. HALL: I'll vote for break.

5 MR. GORDON: We'll go for a break. We'll
6 take a break.

7 (Whereupon, off the record for a recess.)

8 MR. GORDON: Your Honor, the next public
9 participant is the United Auto Workers Union, Frank
10 Mierer, Mr. Dooley, and Ms. Mock.

11 Would you please come forward?

12 I don't see Frank. Mr. Mierer doesn't
13 appear to be here.

14 Mr. Dooley.

15 MR. DOOLEY: Good afternoon, Your Honor,
16 gentlemen. My name is Peter Dooley. I am a
17 certified industrial hygienist with the United Auto
18 Workers.

19 MR. GORDON: Mr. Dooley, would you like
20 to introduce your statement as Exhibit 41?

21 MR. DOOLEY: I would like to present item
22 41 here today.

23 MR. GORDON: All right. No objection,
24 Your Honor.

25 ADMINISTRATIVE LAW JUDGE COX: Very well,

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1 let the testimony be entered as Exhibit 41.

2 (Whereupon, the above-referred
3 to document marked as Exhibit
4 No. 41 was received in
5 evidence.)

6 MR. GORDON: Please proceed.

7 MR. DOOLEY: Thank you.

8 INTERNATIONAL UNION, UNITED AUTOMOBILE,
9 AEROSPACE, AND AGRICULTURE IMPLEMENT
10 WORKERS OF AMERICA (UAW)

11 Peter Dooley, M.S., CIH, Industrial
12 Hygienist and Project Coordinator, UAW
13 Hazardous Materials Training; accompanied
14 by Amy Mock, M.P.H., Training
15 Coordinator, UAW Hazardous Materials
16 Training

17 MR. DOOLEY: The testimony was originally
18 planned to be presented by three people of the UAW
19 Health and Safety Department, Doctor Franklin Mierer
20 is the director of the Health and Safety Department,
21 myself, and Ms. Amy Mock. Amy and I were scheduled
22 to do the presentation today and she is under the
23 influence of a torrid Michigan flu and was unable to
24 come, which also accounts for the copies being a
25 little bit rough to read. Amy also had the final

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1 copies that were being presented. So we had to make
2 a quick fax copying deal. So we can certainly
3 present more original copies at a later date.

4 So, once again, my name is Peter Dooley.
5 I'm an industrial hygienist with the UAW Health and
6 Safety Department. I'm currently project coordinator
7 of the UAW Hazardous Material Training Program funded
8 by the National Institute of Environmental Health
9 Sciences. I am a certified industrial hygienist and
10 a professional labor educator.

11 I've been a professional in the field of
12 occupational health and safety for more than ten
13 years. I was going to be accompanied today by Ms.
14 Amy Mock, an occupational health educator with our
15 staff.

16 The UAW is presenting testimony to
17 encourage efforts to make OSHA training requirements
18 the most effective tool in improved health and safety
19 programs at the work site level. We have extensive
20 experience in the field of worker-based health and
21 safety training and look forward to contributing to
22 this effort. UAW has been heralded as a leader in
23 developing and implementing work site health and
24 safety training programs, and continues to believe
25 that education and training can be the most powerful

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1 tool in improving work site health and safety. But
2 this will not happen if OSHA allows for the poor
3 quality, unspecified in length, employer dominated
4 training that has taken place under the guise of
5 "performance language."

6 I would like to comment on some general
7 subjects that are addressed in this proposal and we
8 have additional testimony that will cover specific
9 areas. I will concentrate on three areas as follows:
10 (1) the importance of specified requirements for OSHA
11 mandated training, (2) types of training and its
12 effectiveness, and (3) quality assurance and
13 training.

14 One, importance of specified requirements
15 for OSHA mandated training. The UAW has investigated
16 the factors that result in effective health and
17 safety training at many levels. In 1987 we published
18 the results of a three-year study supported by the
19 National Cancer Institute that documented the
20 effectiveness of generic health and safety training
21 programs. This program was carried out with local
22 union leaders and activists, and provided them skills
23 to participate in the specific health and safety
24 issues that were current in their workplace. The
25 study used both qualitative and quantitative measures

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1 to show that good worker based training is in fact a
2 crucial part to any health and safety program.

3 We have since delivered worker based
4 training at both generic and site-specific training.
5 We are often called in to review existing programs as
6 implemented by management. This experience has led
7 us to some important conclusions.

8 Effective programs rely on work input and
9 must be approved by workers as a vehicle for changing
10 conditions. Whether the training is of a generic
11 nature off-site or involving very specific work
12 practices, a big ingredient is worker acceptance,
13 trust, and approval. We have accomplished this in a
14 variety of settings in both union only and joint
15 union management training.

16 In contrast, we have seen management run
17 programs fail because they are unwilling to have
18 worker/union input. Many management programs are
19 based on the premise of making sure that they will
20 not have to change their standard operating
21 procedures. In contrast, workers must set their
22 goals on constant improvement to reduce the risk of
23 injury or illness.

24 We recommend that the accreditation
25 standard provide for specific provisions that require

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1 worker and union input and agreement with the
2 training program and its follow-up activities.

3 Effective programs have specific
4 objectives and minimum length requirements. The UAW
5 experience with the implementation of the Hazard
6 Communication Standard, 1910.1200, has given us a
7 wealth of information about OSHA required training.
8 Where the union has had input in programs directly,
9 training can be effective. But the vast majority of
10 our small to medium sized work sites have yet to
11 accomplish the intent of the standard. We believe
12 this situation exists because of the non-specific
13 objectives in the standard, lack of minimum length
14 requirements, and lack of enforcement of specific
15 chemical hazard training. Work site after work site
16 report the use of a 20 to 30-minute canned
17 presentation which is characterized as boring at best
18 by attendees. No objectives, no worker
19 participation, no worker input, and it's often "OSHA
20 approved" by a compliance officer. Additionally, the
21 lack of any requirement for a refresher program in
22 hazard communication has been a severe deficit in
23 trying to improve programs.

24 Two, types of training and its
25 effectiveness. The utilization of worker involvement

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1 and participation is clearly the most important
2 factor in the success of training programs. UAW
3 joint programs utilize workers at every level of
4 development, training, and evaluation to insure that
5 programs address the real health and safety issues at
6 the work site. Again, the training is often done
7 off-site in a generic sense that it applies to many
8 work sites. Union and management representatives can
9 then translate that information back to their
10 specific site.

11 Proven adult education techniques are
12 crucial to all types of training programs. Small
13 problem solving groups, hands-on practice, and review
14 of site-specific conditions all play a role in
15 effective training programs. These techniques often
16 require an expertise that experienced trainers have
17 mastered, but are often lacking at most work sites.

18 Health and safety skills are a complement
19 to job training skills. We know from our own UAW
20 research that our most skilled workers by trade are
21 at the highest risk for fatal accidents. The skill
22 to do their job has not been included in the health
23 and safety aspects of their job. For this reason, we
24 believe that health and safety should be kept
25 separate from those job skills.

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1 Three, quality assurance in training.
2 First of all, OSHA must and should accredit all types
3 of training requirements by the 1910.120 standard
4 including emergency response. All training should be
5 approved by worker and union representatives also.

6 Training objectives need to be clear and
7 minimum hours specified. The UAW has found little
8 use for paper and pen testing for individual
9 evaluation. Instead, the combination of some skill
10 performance and attendance has better met our
11 objectives in designing effective health and safety
12 programs.

13 We hope that OSHA will give our comments
14 serious consideration.

15 The second part of the testimony, which
16 was prepared by Amy Mock. Amy is an occupational
17 health educator with the UAW Health and Safety
18 Department. Ms. Mock is currently working on the UAW
19 Hazardous Materials Training Program, also funded by
20 NIEHS. Amy has a master's degree in public health
21 and is a professional health and safety trainer for
22 the last five years.

23 For more than three years prior to
24 joining the UAW Health and Safety Department, Amy
25 directed a training program and conducted at another

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1 NIEHS Superfund grantees, the Midwest Consortium for
2 Hazardous Waste Worker Training. She has extensive
3 experience in training workers covered by the OSHA
4 Hazardous Waste Operations and Emergency Response
5 Standard, ranging from fire fighters to industrial
6 workers to hazardous waste site workers.

7 We are representing the UAW to explain
8 our views on the need to set standards that drive
9 high quality worker training. This testimony will
10 also speak to some of the elements that are required
11 to insure that a program contributes to the
12 improvement of healthful and safe working conditions
13 and work practices. Our hope is that these needs and
14 issues will be better reflected in the final
15 accreditation rule. I will focus on four issues:
16 (a) scope and coverage of the accreditation standard,
17 (b) content and duration of the training program, (c)
18 assessment of training performance, and (d) quality
19 assurance and evaluation.

20 The first one being A, scope and coverage
21 of accreditation standard. The HAZWOPER
22 Accreditation Standard must cover all training
23 programs which are mandated under the OSHA HAZWOPER
24 Standard. In particular, the following mandated
25 training should be included in the accreditation

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1 process: (1) all tiers of chemical emergency
2 response training, (2) all annual refresher training,
3 and (3) post-emergency response cleanup conducted by
4 employees of the facility at which the spill takes
5 place.

6 Three weeks ago, Ms. Amy Mock and myself
7 conducted a walk-through inspection of a
8 manufacturing facility in a small town in western
9 Michigan. The plant, which employs approximately
10 1,600 people, manufactures refrigerators using
11 isocyanates and other hazardous chemicals. There had
12 been five emergency spills of isocyanates in the last
13 eight months at this facility. Michigan OSHA had
14 cited and levied a fine against the company in
15 December, 1990, for several HAZWOPER violations,
16 notably for lack of training and lack of an emergency
17 response plan. Two of the workers involved in trying
18 to stop the spills have had to take sick leave as a
19 result of these incidents.

20 The company responded to the citations by
21 training six salaried employees in chemical emergency
22 response. The training was aimed at equivalency with
23 the First Responder Operations level training under
24 HAZWOPER and was conducted by an employee of the
25 company. I might add that on some further questions

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1 that we asked them about the training as far as
2 length and subjects covered, it was pretty apparent
3 that this training really didn't meet the
4 requirements as specified in the HAZWOPER Standard.

5 In addition, the company alleged that
6 they had replaced all of the faulty hoses that had
7 been the cause of the spills. However, as we sat in
8 the office of the industrial relations director prior
9 to the inspection, another spill took place. The
10 industrial relations director received the news over
11 the phone. He informed us of the spill, but
12 reassured us not to worry that it was only a spill
13 involving the resins used with isocyanates in the
14 production of foam. In fact, these resins are also
15 suspected of being highly hazardous agents. Indeed,
16 according to the company's own container labels,
17 which we viewed later that day, the resins were rated
18 as a greater health hazard than the isocyanate used
19 in that facility. And this was a numerical labeling
20 system, I might add, which we of course have had
21 concerns with all along as far as numerical rating
22 systems not being very informative, and often not
23 being accurate as far as what we have seen out there
24 in the field.

25 The Union Health and Safety Steward from

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1 the local union was accompanying us. The steward
2 pressed the industrial relations director for
3 information. "Had the spill been stopped?" "Yes,"
4 management replied. The union person asked, "By
5 whom?" "By the maintenance personnel." Of course
6 the maintenance personnel had not attended any of the
7 emergency response training. "Had the immediate work
8 area been evacuated?" "No, but the problem has been
9 taken care of," we were told. "Had the spill been
10 cleaned up?" "No, we'll take care of that later."
11 By the way, at this point in time, workers were still
12 working in this department full blast and the spill
13 was just on the floor, kind of being swept to the
14 side. "Were they concerned about the spill?" If the
15 responses to these questions were any indication, we
16 would say not. We certainly had to wonder what the
17 content and impact of the company's emergency
18 response training had been.

19 This story illustrates two main points
20 about training. One, if emergency response training
21 is excluded from the accreditation process, the only
22 way that the adequacy of emergency response training
23 will be assessed is after a spill has occurred, too
24 late for any worker injured or exposed during the
25 incident. And I might add, especially relating to

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1 facilities that use isocyanates and resins, we are
2 finding more and more that the workers who have
3 become sensitized to these chemicals, unfortunately
4 sometimes for a lifetime, are those people in
5 maintenance positions that often are exposed to
6 relatively larger doses and exposures in relatively
7 short terms, but have an extremely detrimental effect
8 on those workers over the long run. Two, a minimum
9 acceptable level of training and course objectives or
10 content must be delineated by OSHA to assure quality
11 and appropriateness of training. Minimum content
12 requirements must include site-specific issues, such
13 as, potential for specific hazardous materials
14 emergencies at specific work locations, recognition
15 of such emergencies and what to do in response to
16 specific HAZMAT emergencies, how, when, and where to
17 evacuate and other relevant details of the facility's
18 emergency response plan, personnel to be contacted in
19 case of an emergency.

20 B, course content and duration. The UAW
21 supports the NIEHS's position that course content and
22 duration must be specified in the final 1910.121
23 regulation according to expected job tasks and
24 exposures. Hands-on training with personal
25 protective equipment and simulated exercises must be

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1 part of all mandated training. All Awareness and
2 Refresher courses, and Post-emergency Response
3 Cleanup training for on-site personnel should last at
4 least eight hours and have minimum training
5 objectives that must be achieved.

6 The UAW agrees with other NIEHS Superfund
7 grantees in their recommendations for specific issues
8 to be addressed in Emergency Response training. All
9 emergency response programs must include the topics
10 Identified below in a tiered fashion to the extent
11 required of the emergency responder's role: (1)
12 hazardous recognition, (a) nature of hazardous
13 material, (b) practical applications of hazard
14 recognition including related presentations on
15 biology and chemistry, (2) principles of toxicology,
16 biological monitoring, and risk assessment, (3) safe
17 work practices and general safety at the emergency
18 incident, (4) engineering controls and hazardous
19 waste operations, (5) site safety plans and standard
20 operating procedures, (6) decontamination practices
21 and procedures, (7) emergency procedures, first aid,
22 and self rescue, (8) safe use of field equipment, (9)
23 handling storage and transportation of hazardous
24 waste, (10) use, care, and limitations of person
25 protective clothing and equipment, (11) safe sampling

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1 procedures, (12) rights and responsibilities of
2 workers under OSHA and other related statutes
3 concerning right to know, protection, compensation,
4 and liability, (13) medical monitoring requirements
5 and issues, and (14) community relations.

6 C, assessing trainee performance. The
7 overall goal of a health and safety training course
8 is for training participants to learn to recognize
9 deficiencies in protection while carrying out a job
10 and to be able to perform the job using the proper
11 protective measures. Any "testing" of whether a
12 training participant has achieved the training
13 objectives of the course must rely on demonstration
14 for these skills. For instance, does a training
15 participant recognize when essential parts are
16 missing from a respirator? However, it is illogical
17 to exclude a worker from a job if he/she has been
18 adequately performing that job prior to attendance at
19 health and safety training based on the result of a
20 test during training. As I mentioned before in my
21 testimony, a paper and pencil test is not an adequate
22 method of assessing a trainee's ability to perform a
23 job safely.

24 D, quality control and evaluation.
25 Methods for assuring quality control and evaluating

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1 program impact must be systematically included in all
2 training programs covered by the final 1910.121 rule.

3 (1) Trainees or their representatives must have a
4 role in reviewing and approving program content and
5 materials of employer sponsored training programs
6 prior to participation of workers in training. (2)

7 An evaluation plan must include methods for: (a)
8 pre-training site assessment to make training
9 specific to operations and job tasks, (b) course
10 evaluation, (c) feedback, (d) updating of courses,
11 (e) corrective action. (3) There must be a defined
12 role and feedback mechanism for trainee evaluation in
13 order to improve and/or correct training program
14 content and process. (4) there must be a defined
15 role and mechanism for assessing the long-term impact
16 of training programs upon the target training
17 audience. The evaluation must include the
18 participation of the workers involved in the training
19 and in performing the jobs which were the subject of
20 training.

21 In summary, the UAW strongly advises that
22 OSHA incorporate into the final accreditation
23 standard stronger mechanisms to insure high quality
24 health and safety training. The specific amendments
25 that must be made to the final accreditation rule

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1 are: inclusion of all mandated training under the
2 scope of the accreditation rule, setting minimum
3 training objectives and time requirements for all
4 training mandated by HAZWOPER, and requirements for
5 training programs to become accredited must include
6 use of performance based assessment tools and strong
7 quality control and program evaluations.

8 Thank you for your time and we hope you
9 seriously consider our comments in revising the
10 accreditation standard. That is the end of the
11 prepared testimony.

12 I might also say as I was waiting to come
13 up to give the testimony, I was listening to the
14 noise outside at the construction site and I was
15 thinking that it was very thoughtful of OSHA to make
16 sure that they had a reminder of the kind of hazards
17 that workers face in construction sites in dealing
18 with hazardous materials, and I would ask the panel
19 since you're going to be here for a couple of days
20 and I'm sure there will be more of those resounding
21 noises out there, maybe that will serve as a reminder
22 about the kinds of hazards that are faced by workers
23 in certainly workplaces that we represent and other
24 people around American workplaces, and the literally
25 hundreds of thousands of workers that face the risk

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1 of injury or illness on the job day in and day out.
2 We hope that this standard can be made so that it is
3 as effective as possible, and that it can be used as
4 a tool to getting a little bit better protection than
5 is out there now. I hope the story that we related,
6 it's not just a one story type of thing. This is the
7 kind of incident that we run into on a constant
8 basis, and there's certainly a lot of problems out
9 there.

10 Thank you very much for your time, and we
11 appreciate being able to be here and participate in
12 the hearings.

13 ADMINISTRATIVE LAW JUDGE COX: Thank you,
14 Mr. Dooley.

15 MR. GORDON: Thank you very much, Mr.
16 Dooley, and we appreciate your testimony, and we're
17 sorry that the other two people couldn't attend.
18 Doctor Mierer is a frequent participant in OSHA
19 hearings, and we always listen to him with interest,
20 and we're glad that some others from the UAW are
21 coming down, too, now. I think we do have some
22 questions.

23 Doctor Conway.

24 DOCTOR CONWAY: When you have a feedback,
25 a worker goes out into the field or in a real

1 situation and experiences a problem, you mention at
2 several points, it may not be your testimony but your
3 colleagues, that the feedback is used to improve and
4 correct training program content and process. Do you
5 have any personal experience yourself that you could
6 share with us? A for instance, an example?

7 MR. DOOLEY: Yes.

8 DOCTOR CONWAY: I'd appreciate hearing.

9 MR. DOOLEY: Sure, I think probably one
10 of the best pieces of training materials we have used
11 in the last seven years that I've been with the UAW
12 is a piece that we produced. It's called the UAW
13 least wanted list, and it lists categories and some
14 specific chemicals that are very often found in UAW
15 represented work sites that we consider the real bad
16 actors and that need very, very strict attention to
17 as far as trying to reduce levels of these chemicals
18 to the lowest possible level. That idea of coming up
19 with that list came out a training program which I
20 was doing which workers working together in small
21 groups brought forth the notion that they wanted to
22 have a list of the kinds of things that we knew were
23 being used out there as far as hazardous chemicals,
24 the kinds of things that they should be looking for,
25 and they were suggesting that these things could be

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1 banned from individual work sites. We took that
2 notion that they brought up in class and we have
3 incorporated into our training materials and it's
4 become probably the most useful piece of training
5 material that we use in a lot of our training
6 program.

7 Further than that, in a lot of our
8 training programs we have actually designed in what
9 we refer to as task analysis, which is trying to go
10 out and analyze the particular tasks that our members
11 are being asked to do, in this case, around hazardous
12 waste operations, and we look at those jobs and try
13 to incorporate that into the training. Now, if
14 people come up with -- we have all the time
15 suggestions from people in class about what kinds of
16 additional hands-on training that they may need.
17 They want to know more information about monitoring
18 equipment. We have incorporated that kind of
19 information and training into training programs as a
20 result of that.

21 DOCTOR CONWAY: It sounds like some of
22 the things that you're doing are getting into
23 ergonomic type concerns as well, is that right?

24 MR. DOOLEY: Yes.

25 DOCTOR CONWAY: With motion and movement.

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1 MR. DOOLEY: Absolutely. In doing
2 training I think one of the things that I have found
3 is that it is very difficult to limit your training
4 to very specific topics, and we often come into this
5 problem when people try to divide health and safety
6 down the middle, you know, and say, "Well, this is
7 training on health hazards. That's a safety hazard,
8 we're not going to talk about that here." And
9 ergonomics is of course an issue that deals with
10 often both of those subjects. We believe in our
11 experience that workers relate to training in a more
12 holistic approach, and they see health and safety as
13 being the same topic, and ergonomics affects both of
14 those issues, and is often incorporated into training
15 programs that we do.

16 DOCTOR CONWAY: This looks like a fairly
17 well developed program with UAW and I'm assuming GM
18 or whoever it is that it's been negotiated with. Has
19 the auto industry resisted this, or do they see
20 something in it for them in terms of maybe
21 productivity enhancement or better performance on the
22 job? Have there been trade-offs that management has
23 been able to sell to their own higher-ups?

24 MR. DOOLEY: Yes, for one thing the UAW
25 Health and Safety Department services the entire UAW

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1 Union, which includes pretty separate units for UAW
2 GM, UAW Ford, UAW Chrysler, and other companies. In,
3 well, certainly the big three auto companies, the
4 ones that I mentioned, they have separate joint
5 health and safety training programs which have been
6 developed as need for specific courses has come up
7 and been met. I think the big incentive for the
8 companies that have participated in those programs
9 has been: (1) they have agreed to do it in contract
10 negotiations under that whole setting, and basically
11 it's an agreement that we make sure that they carry
12 out on, and (2) it serves certainly as a public
13 relations plus for the company to be able to show off
14 the training centers that have been developed under
15 that money, and certainly hopefully, we believe that
16 it really does result in increased productivity and
17 less losses in general for workers that get the
18 benefit of that training.

19 DOCTOR CONWAY: Thank you very much.

20 MR. DOOLEY: If I could just add, just
21 one important component is besides having those big
22 three employers, we have the vast majority of our
23 work sites are much smaller workplaces that are in
24 desperate, desperate need for assistance in health
25 and safety, and under our grant from NIEHS is really

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1 meant to bring some of the benefits that we've seen
2 of other bigger programs to places that are pretty
3 much out there on their own, like this refrigerator
4 company, and ones that we have all over the country.

5 DOCTOR CONWAY: Thank you very much.
6 This is my colleague, Mr. Hutch.

7 MR. HUTCH: Yes, could you comment on the
8 effectiveness of your goal, performance oriented
9 training versus a testing basis type training? Do
10 you have any specific data on incremental value of
11 your specific training program over others?

12 MR. DOOLEY: Offhand I don't know of any
13 data that has been compiled. I could find out
14 whether any of that exists within the joint training
15 centers that have developed a lot of the health and
16 safety training. I can tell you my own view on this
17 is that from my experience from the training, it is
18 given the performance based, hands-on training and
19 evaluation has a great acceptance by trainees, namely
20 workers who are going through training, because in
21 our experience there has been a lot of sort of
22 notions about pen and paper testing that people have
23 had some fairly negative responses to in the past,
24 and by and large consider it irrelevant to the real
25 world, and to judge things by doing tasks makes a lot

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1 of sense to people that I've been involved in
2 trainings with. So task oriented and hands-on
3 performance oriented seems to have a great
4 acceptance, but whether there's data supporting that,
5 I could find out and possibly submit it after the
6 hearing.

7 MR. HUTCH: Thank you.

8 MR. GORDON: Mr. Moore.

9 MR. MOORE: Hi, Peter, thank you. Just
10 for my education and I guess some of my colleagues,
11 could you explain the designation professional labor
12 educator and how it's achieved?

13 MR. DOOLEY: Yes, hopefully I can do my
14 best. It's a tough question. Labor educators are
15 groups of people of which you'll be hearing from one
16 after me, Marianne Brown. Labor educators, typically
17 I don't think there's one set definition that would
18 apply to everyone, but I could tell you my own
19 experience. I got involved in the area of health and
20 safety after many different kinds of jobs in which I
21 worked in oil refineries, boat yards, forestry work,
22 many fairly hazardous jobs, and I later got a
23 master's degree in occupational health and safety,
24 specializing in industrial hygiene. I then went to
25 work for Michigan State University for what's called

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1 the labor program service. We are a state university
2 based program which services unions in and about the
3 entire state. So our task was to set up non-credit
4 classes for workers and worker representatives to
5 inform workers about their rights and about health
6 and safety in particular was my specialty. So
7 there's a great number of programs like that. Labor
8 educators work for unions. They work for labor
9 education programs at universities. They may work
10 for other health and safety training programs, such
11 as ones I'm sure you'll hear testimony during these
12 hearings. Basically it's teaching adult workers
13 involved in some form of labor organizations about
14 their rights and responsibilities as workers and ways
15 in which to try and use the arena of labor relations
16 as a way to make sure that workers are getting the
17 rights that are due them and improve those rights.

18 MR. MOORE: Thank you. You've got to
19 understand I come from a city where titles like that
20 get people interested. They want to know. So this
21 isn't really like a -- well, what comes to mind is
22 CSP and CIH. Is it a designation of, I don't want to
23 say similar?

24 MR. DOOLEY: To my knowledge there is
25 certainly not a widely accepted certification process

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1 for labor educators.

2 MR. MOORE: That's fine. In your
3 testimony, and this is great, you've talked about the
4 effectiveness of training, and you made reference to
5 a study, I believe it's the one of cancer
6 effectiveness training. Is that in the record, do
7 you know? I haven't had a chance to sit down and go
8 through everything.

9 MR. DOOLEY: No, and we could submit it
10 with the post-hearing brief.

11 MR. MOORE: Anything we could get that
12 shows the effectiveness of training and the
13 improvement of worker performance, not only on this
14 rule, but many others would be very helpful. Okay?

15 MR. DOOLEY: Sure.

16 MR. GORDON: Both items are in your
17 bibliography.

18 MR. DOOLEY: Yes, we will.

19 MR. MOORE: Okay?

20 MR. DOOLEY: Yes.

21 MR. MOORE: On page 4, this is more or
22 less for clarification, you made reference to "OSHA
23 approved" by a compliance officer. Could you expand
24 on that? What I'm looking for is I hope we don't
25 have people from our staff out there going around

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1 saying things are OSHA approved, because we don't do
2 that yet.

3 MR. DOOLEY: Okay. Yes, just to
4 explicitly clarify what was meant by that was in our
5 experience we have seen many work sites which we were
6 aware of the kind of training that had been done and
7 in our eyes did not really meet the requirements of
8 the hazardous communications standard which were then
9 visited by a compliance officer which checked the
10 records. The employer said, "Yes, we did the
11 training on these dates. Here's the list," and
12 basically that was pretty much the extent of the
13 verification that the training was done. So that is
14 the context in which I use "OSHA approved."

15 MR. MOORE: Page 5 you talked about
16 another study. The reference you cite is number two.
17 "We know from our own UAW research that most of our
18 skilled workers by trade are at the highest risk for
19 fatal accidents." Is that exposure to risk based
20 upon the fact they're highly trained and therefore
21 used more frequently or could it be interpreted to
22 mean that maybe they're not that highly skilled and
23 therefore less cautious, if you understand what I
24 mean? What you're saying is that the highly skilled
25 workers are subjected to the highest risk, as I

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1 understand it. What concerns me is that may be
2 interpreted by others to show that perhaps these
3 highly skilled people are not that competent, in
4 other words, they're exposing themselves to greater
5 risk. My question is is that exposure to risk based
6 upon their expertise or their competence and their
7 need to be used in more risky occupations? Does that
8 make sense?

9 MR. DOOLEY: Yes, roughly what is
10 considered within our union as skilled trades, which
11 is electrician, pipe fitters, this type, no rights,
12 roughly represent I believe we're talking in the ball
13 park of about 20 percent of the work force, and as
14 far as fatal accidents I believe the numbers run
15 about 44 percent of the fatalities in the study that
16 we did comprised skilled trades workers. One of the
17 more interesting things was that they tended to have
18 -- the fatalities also had very significantly high
19 seniority as far as the amount of time on the job.
20 So I guess my own experience, and again I've worked
21 in a lot of different industries as both certainly
22 general labor and apprentice type positions, and
23 trades are often designated by the amount of time
24 you've spent in the trade and that reflects a certain
25 amount of expertise and skill. In fact I think

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1 that's pretty borne out by a lot of our own
2 experiences. There's nothing like experience to
3 serve as a teacher and educator. Labor educators are
4 good at what they do, but it doesn't beat experience.
5 So I guess I'm not sure whether there's numbers that
6 dispel that possible interpretation, but these are
7 people who do have high risk jobs, and they also have
8 been given incredible amounts of skill development
9 and have used that skill out in the field for a long
10 time and it has certainly not prevented them from
11 being in these fatal accidents.

12 MR. MOORE: So because of their higher
13 skill they're typically exposed to higher technology
14 or more difficult tasks, and, therefore, the higher
15 risk?

16 MR. DOOLEY: Well, I believe that it's
17 that and the fact that they really have not been
18 trained in the skill of health and safety and one of
19 the comments that we are saying is that often health
20 and safety skill development needs to be separate
21 from the job skill training because often the job
22 skill training has already been done but not having
23 health and safety incorporated in it.

24 MR. MOORE: Just one more. I got to get
25 the scenario in Michigan, the incident you cited at

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1 the refrigerator plant.

2 MR. DOOLEY: Sure.

3 MR. MOORE: I guess, just for time, and
4 they'll probably follow-up for me anyway, did those
5 employees have HAZCOM training, the responders, do
6 you know?

7 MR. DOOLEY: They had the bare bones
8 minimum. They had no specific chemical training on
9 the chemicals that they were working with. They
10 roughly had I believe it was characterized as between
11 an hour and an hour and a half training that had been
12 done four and a half years ago and that was it.

13 MR. MOORE: One last thing. I sound like
14 a baker's dozen, but you're a good witness and I
15 appreciate all your input. Well, you already
16 answered that. They got me on this time clock. One
17 last thing. Did they know their rights to file a
18 complaint with MIOSHA, Michigan OSHA, as a result of
19 what happened, MIOSHA or whatever it is?

20 MR. DOOLEY: MIOSHA.

21 MR. MOORE: Do you know that as a result
22 of the incident you witnessed that either the
23 employees or through their representatives could have
24 gone to MIOSHA for a complaint?

25 MR. DOOLEY: Yes, that was discussed

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1 between myself and the union health and safety
2 person, and related to management that that was a
3 possible recourse.

4 MR. MOORE: Okay. Thank you.

5 MR. GORDON: Mr. Thompson, did you have
6 a question?

7 MR. THOMPSON: Yes, just a couple of
8 quick questions.

9 Just to clarify in my mind, when you talk
10 about the setting minimum time requirements for
11 training, do you mean for the entire training
12 program, or specific elements or topics that would be
13 covered?

14 MR. DOOLEY: No, we were referencing the
15 entire training as a whole, namely the minimum of
16 eight hours for the Awareness, that training.

17 MR. THOMPSON: So in other words, I guess
18 we're looking at it a little differently. I guess
19 I'm thinking like, for instance, you list examples of
20 minimum required topics for emergency responders. So
21 for each of those you would suggest that OSHA have a
22 time requirement? That's what I'm asking.

23 MR. DOOLEY: No, no, we're saying that
24 there needs to be time requirements for the whole
25 program.

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1 MR. THOMPSON: The whole program, okay.

2 MR. MOORE: He's going to defer time to
3 me.

4 MR. GORDON: Okay.

5 MR. MOORE: My colleague has deferred
6 time, so one last question. I said that before, but
7 this is on page 2. You talked about your target
8 training audience, and knowing your worker
9 population, I'm not asking you for a 95th percentile
10 general worker, but you stated in your testimony
11 about programs directed to subjects such as biology,
12 chemistry, and toxicology, subjects like that. To
13 the general site worker that we may find at one of
14 these operations, and we've heard testimonies that
15 they come and they go, some can't speak English and
16 vice versa, how can we assure that topics, such as,
17 biology, chemistry, toxicology are going to be
18 adequately presented and then retained by workers in
19 the general work force?

20 MR. DOOLEY: It's a good question.

21 MR. MOORE: He's teaching me how to ask
22 questions. Okay. I'll leave it at that.

23 MR. DOOLEY: In my experience the most
24 important part of training is that individual workers
25 and groups of workers are able to look at the

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1 subjects in relationship to the things that they are
2 working with, and as part of training programs,
3 whether they be off-site in a generic sense where
4 several workplaces are represented or site-specific
5 training at a particular work site, that the most
6 important bottom line is whether people can recognize
7 the hazards associated with the types of chemicals
8 that they are likely to encounter, and I guess that
9 to me the chemistry, toxicology, and biology all have
10 to do with if the worker recognizes the risk of the
11 chemicals that they're working with. That might be
12 done in some kind of assessment of if they know how
13 to work with these chemicals by performing that
14 particular job.

15 MR. MOORE: Okay. Thank you.

16 MR. GORDON: Mr. Seymour.

17 MR. SEYMOUR: Mr. Dooley, you're the head
18 of the UAW Hazardous Waste Program under the NIEHS
19 training grant?

20 MR. DOOLEY: Yes, project coordinator.

21 MR. SEYMOUR: The program that you're
22 implementing, is that towards TSD kinds of workers or
23 what are the targeted audiences that you're trying to
24 address?

25 MR. DOOLEY: Yes, the target audience are

1 TSD facilities and other facilities that may not meet
2 the fine line of what TSD facilities are qualified in
3 the standard as but have similar exposures, and just
4 to bring it down to a level of operations at the
5 particular site, we are addressing concerns of
6 maintenance people who would be responding to
7 emergency spills and such, as well as people who are
8 working with the material before it becomes the
9 "hazardous waste" in the spilled material, people who
10 have to clean out vats, and this kind of maintenance,
11 which we have found are at high risk for exposures.

12 MR. SEYMOUR: So really then it would be
13 paragraph (p) under the 120 rule which deals with TSD
14 and paragraph (q) then?

15 MR. DOOLEY: Yes.

16 MR. SEYMOUR: Okay. On page 4 of your
17 testimony, the top paragraph on page 4, if you might
18 turn to that, addresses, if I understand it
19 correctly, you're talking about the HAZCOM 1910.120
20 standard, is that correct, in that top paragraph?

21 MR. DOOLEY: Yes.

22 MR. SEYMOUR: The effort of refresher
23 training under HAZCOM, you're not saying that under
24 (p) there is a requirement for refresher training and
25 HAZCOM is part of that. Are you doing refresher

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1 training then dealing with HAZCOM under paragraph (p)
2 for TSD facilities?

3 MR. DOOLEY: I'm sorry.

4 MR. SEYMOUR: In paragraph (p)(2) of the
5 standard would require the employer to implement his
6 HAZCOM program. Under paragraph (p)(7) requires the
7 employer to have refresher training, which the HAZCOM
8 refresher training could be part of that.

9 MR. DOOLEY: Right.

10 MR. SEYMOUR: So you're not saying in
11 your testimony that there's not refresher training
12 for HAZCOM under the 120 rule, you're just saying
13 it's not under 1200, is that correct?

14 MR. DOOLEY: Exactly, yes.

15 MR. SEYMOUR: Okay. You might go to page
16 5 where you talk about refresher training, how do you
17 determine the content that you want to see as part of
18 the subject matters to be addressed in the refresher
19 training? How do you go about determining that?
20 Have you done any refresher training? I guess I
21 should ask that first.

22 MR. DOOLEY: We have not done refresher
23 training under the HAZWOPER.

24 MR. SEYMOUR: You have not?

25 MR. DOOLEY: No.

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1 training as abatement?

2 MR. DOOLEY: MIOSHA has not been out to
3 this facility since the company was cited, and there
4 has not been any test to whether they would accept
5 what was done. There was general acceptance at the
6 plant level that they had not done everything
7 required by OSHA, which is why they were talking with
8 us.

9 MR. SEYMOUR: On page 6 of her statement,
10 and it carries over to page 7 as well, she has listed
11 a number of emergency responder role subject matters
12 that need to be addressed I guess in the training
13 program, is that not correct? Is that what she's
14 doing here?

15 MR. DOOLEY: Yes.

16 MR. SEYMOUR: The copies to be
17 identified. I wonder if you have some information
18 you could pass to us as far as like on page 6, what
19 is actually discussed as far as biological monitoring
20 for emergency responders?

21 MR. DOOLEY: That I'm not able to respond
22 to, but --

23 MR. SEYMOUR: Would you be able to talk
24 to her when she feels better?

25 MR. DOOLEY: Sure.

1 MR. SEYMOUR: And maybe post-hearing
2 comments, and I'll have some other ones as well. I
3 would like to have some feedback on those. If we go
4 over to page, we talk about item 5, site safety
5 plans, and I'm wondering whether she or what do you
6 all intend as far as site safety plans, the content?
7 Is that like the site safety and health plans that we
8 require in paragraph (b)? This is item 5.

9 MR. DOOLEY: Right. I would assume that
10 that would involve written programs and procedures
11 like evacuation procedures, and basically having the
12 program formalized in writing so that it can be open
13 to agreement and discussion by all parties concerned.

14 MR. SEYMOUR: I wasn't speaking about the
15 procedures, but I meant just the plan itself. You
16 mean the plan includes those procedures then, is that
17 correct?

18 MR. DOOLEY: Yes.

19 MR. SEYMOUR: Okay. Under item 3 also on
20 page 7 it talks about safe work practices and general
21 safety at the emergency site. I was wondering what
22 is envisioned in that?

23 MR. DOOLEY: This would involve things
24 regarding handling of 55-gallon drums, walking
25 surfaces, the fact that increased personal protective

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1 equipment puts you at risk for any number of possible
2 safety hazards in doing the particular work.

3 MR. SEYMOUR: The idea in the OSHA
4 standards we talk about backup personnel and buddy
5 systems being used. Where would they be cranked into
6 this list as far as practices and procedures? Even
7 the appointment of a safety officer, is that really
8 integrated in here somewhere?

9 MR. DOOLEY: Well, yes, I would say that
10 that would be incorporated into both 3 and 5.

11 MR. SEYMOUR: Okay. That's why I was
12 asking the question. Maybe in your post-hearing
13 comments you can describe what you would have for the
14 content.

15 MR. DOOLEY: Sure.

16 MR. SEYMOUR: And item 14 dealing with
17 community relations, what does that involve?

18 MR. DOOLEY: That would involve the
19 process in which any particular emergency plans and
20 procedures might be shared with the surrounding
21 community. As you're probably aware of, there's
22 increasing interest by community groups to want to
23 have participation in facility's emergency response
24 capabilities, and vice versa, industries wanting to
25 have communication with communities. So that's what

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1 that's all about.

2 MR. SEYMOUR: You're familiar then with
3 the Title III of SARA Legislation, that's what you're
4 talking about there?

5 MR. DOOLEY: Yes, that could be part of
6 community relations.

7 MR. SEYMOUR: Okay. Fine. Thank you.

8 MR. GORDON: Several unions testified
9 that the accredited training programs should have
10 written exams and hands-on exams with minimum level
11 of performance, so that an employee who was taking a
12 course indeed could fail the course and not be given
13 a certificate of successful completion. Does the
14 United Auto Workers support that or not?

15 MR. DOOLEY: No, as stated in our
16 testimony, we do not support the notion that a
17 written test could be used to invalidate the person's
18 ability to do their job. We're proposing that it be
19 more performance oriented and not based on a written
20 testing.

21 MR. GORDON: Thank you very much. We
22 really appreciate the testimony and specific examples
23 like you gave are always very helpful. I think some
24 of the public participants might have questions.

25 ADMINISTRATIVE LAW JUDGE COX: All right.

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1 Mr. Dooley would be glad to answer any of the
2 public's questions, would you, Mr. Dooley?

3 MR. DOOLEY: Absolutely.

4 ADMINISTRATIVE LAW JUDGE COX: Do any of
5 you have some questions?

6 MR. MORAWETZ: John Morawetz from the
7 Chemical Workers. Peter, you referred to the NIEHS
8 document on accrediting emergency response programs.
9 Part of that document talks about programs have to
10 have a means of assuring professional qualifications.
11 Do you think that's appropriate for industrial
12 emergency responders?

13 MR. DOOLEY: No, we do not. We have
14 found that there is quite a bit of difference between
15 the industrial response needs by that team and
16 professional fire fighters as such, and we find that
17 it wouldn't be necessary.

18 MR. MORAWETZ: Fine. That's all I have.

19 ADMINISTRATIVE LAW JUDGE COX: Thank you.

20 Yes.

21 MR. KING: Steven King, LHM Corporation.
22 I've just got a couple of quick questions. First of
23 all, you talked about the examination process and not
24 being in favor of a written means. Well, I tend to
25 agree with you, but how does your organization

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1 establish things like literacy out there? Do you
2 have it as a requirement for workers that work in
3 hazardous waste industry or do you not require them
4 to be able to read?

5 MR. DOOLEY: That would be determined at
6 every particular work site that would having its own
7 specifications for who can meet certain jobs, put in
8 my experience there's very little requirements for
9 literacy as far as part of job performance in most of
10 our --

11 MR. KING: Then you don't believe it's an
12 occupational health and safety hazard to have an
13 individual working under the requirements of 1910.120
14 that cannot read?

15 MR. DOOLEY: I guess it would be
16 determined by exactly what they're doing in the
17 particular facility and in the particular operation.

18 MR. KING: All right. It doesn't
19 strictly answer it, but anyway we'll go onto the next
20 one. Also, with training, and I'll be as quick as
21 possible, in the past in my own personal experiences
22 and I've been on both sides of the camp, both union
23 and with management, on occasions when union
24 personnel are offered training that's safety and
25 occupational health organizations struggle to get for

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1 them through management, they're often turned down
2 based on the fact that the individuals say that it's
3 an extra skill level, and they want a payment or
4 reimbursement for that. Does that occur within your
5 group of union workers? Do they often get offered
6 training and then say, "Well, now we're moving to a
7 different skill level, we would like to have an extra
8 payment of so much an hour because we have to do an
9 extra skill"? Do you support that or do you think
10 that should be part of it in your operation?

11 MR. DOOLEY: It sounds like a pretty
12 gross generalization of any particular agreement that
13 could be made between employers and employees and
14 their representatives. So we support the notion that
15 those agreements be made between employees, their
16 representatives, and the employer.

17 MR. KING: I guess a close example is if
18 an employee is offered a position to become a
19 responder operational within the plant, and respond
20 with the planned emergency team. From my personal
21 experience, I know in some cases that agreements are
22 struck where these individuals will get extra salary
23 or extra pay, and in some cases will refuse to do
24 those tasks simply because they are not offered that
25 opportunity or the last plant that they worked at

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1 they were. Do you believe that it should be a
2 requirement, that we should have to work under that,
3 or is that a bad thing to have, and generally we
4 should just proceed with the training without the
5 enticement and take what we can be offered if it's to
6 the benefit of everybody out there?

7 MR. DOOLEY: I really don't have any
8 experience to base a judgment on and the situation
9 just doesn't seem to be --

10 MR. KING: So as I say this has been my
11 experience and that has occurred. The last one is
12 related to that.

13 MR. DOOLEY: I could add some experience
14 that in general having dealt with several work sites,
15 well, hundreds of work sites regarding health and
16 safety training. Workers and the unions that
17 represent them are very excited about being a part of
18 the health and safety activities of the work site,
19 and regarding emergency response, by and large the
20 overwhelming sense that I've had is that workers and
21 their unions want to be involved to reduce the risk
22 of injury and illness that's going to happen to
23 people involved in the facility, and also to any kind
24 of physical damage.

25 MR. KING: One last question relating to

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1 that specific incident that you quoted. Again, based
2 on personal experience, there has been frequency on
3 both sides when either visiting a plant from the
4 point of view of representing a union, or again from
5 being employed in a safety position there where when
6 certain individuals visit plants on occasions
7 accidents occur through careless incidents or
8 whatever related to why the individuals are there.
9 How do you form an opinion when you deal with the one
10 you specified? Do you take and follow up on the
11 accident incident reports that are submitted by the
12 health and safety departments of those particular
13 facilities or do you mistrust them or generally how
14 do you come to decide whether it needs acting upon or
15 it's been resolved responsibly?

16 MR. DOOLEY: As in this case we often
17 serve as a consultant to the local union health and
18 safety person that basically is been charged with
19 dealing with management on an ongoing basis in their
20 facility. That's, again, the importance of having
21 effective training so that people at the work site
22 specifically have information to base those kinds of
23 relationships at the plant level.

24 MR. KING: Okay. My final question then
25 based on that assumption, how does the UAW generally

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1 feel about organizations who operate health and
2 safety departments? Do they feel that the
3 individuals that work in those organizations and
4 those departments do their job diligently and fairly
5 and do they normally, the UAW, that is, accept the
6 investigations and information that comes from those
7 individuals?

8 MR. DOOLEY: I'm sorry, I didn't
9 understand. What kind of departments?

10 MR. KING: Well, basically do you trust
11 the health and safety organizations that work for
12 large companies? When they come up, if I investigate
13 an accident as a safety officer, do you believe my
14 report or do you believe that I have a leaning
15 towards management?

16 MR. DOOLEY: We base all of our beliefs
17 on what we see in workplaces and the kind of
18 conditions that we see and by and large, as I
19 mentioned earlier, certainly what I see as an
20 individual who goes into roughly 50 to 60 work sites
21 a year, I see a lot of horrible conditions, really,
22 really horrible.

23 MR. KING: Well, I guess my question is
24 do you feel that's the fault of the health and safety
25 department or the fault of management?

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1 MR. DOOLEY: I think every work site is
2 different and different circumstances pervade on who
3 might be at fault for those kinds of things.

4 MR. KING: Thanks very much. I
5 appreciate it.

6 ADMINISTRATIVE LAW JUDGE COX: Any other
7 questions?

8 MS. RADIKE: Martha Radike from the
9 University of Cincinnati. This isn't a question.
10 I'd like to respond to Mr. Moore, who said, "How in
11 the heck can you teach chemistry, biology, and
12 toxicology and get it across?" First time I walked
13 with a bunch of workers, I teach at the University of
14 Cincinnati, I had 22 pages of notes. In five minutes
15 I dropped them in the trash basket. You can't
16 lecture to workers. I don't say, when I'm talking
17 about degreasing agents and benzene, I don't say,
18 "When it gets in your body it is sequestered in your
19 body fat. As your liver turns it over, it returns to
20 the bloodstream. In the liver it is metabolized in
21 the mix function oxidase, and oxygen is placed on it.
22 The mix function oxidase is in the endoplasmic
23 reticulum. Then put a glutathione on it. It now
24 becomes conjugated. It's water soluble. You can get
25 rid of it through the kidney." That's not what I

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1 say. I say, "Where does it go when a degreasing
2 agent gets in the body?" And they finally come up
3 with fat in the liver. I say, "How do you get rid of
4 it?" "Well, there's only one way to get rid of it,
5 either you breathe it out or you got to make it water
6 soluble, because it's not water soluble. You can't
7 get anything that's not water soluble through your
8 kidney. So in the liver it's a real neat system
9 that's there. It sticks an oxygen on it. It sticks
10 a water soluble tail. It's got protein. Now, it's
11 water soluble." That's the way you do it. You have
12 the hit the level.

13 ADMINISTRATIVE LAW JUDGE COX: Thank you.

14 Any other questions please?

15 Mr. Dooley.

16 MR. DOOLEY: If I could make just one
17 more comment because the subject came up about
18 illiteracy. By and large my experience is that the
19 situations that we see with workers being trained is
20 not as much as people being totally illiterate, but
21 basically sometimes having limitations, as far as the
22 amount of literacy and that's a barrier which we
23 believe is very overcomable by the type of training
24 that can be done out there, and that we are involved
25 in.

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1 MR. GORDON: Thank you very much.

2 I see no further questions, Your Honor.

3 ADMINISTRATIVE LAW JUDGE COX: All right.

4 Well, we thank you.

5 MR. DOOLEY: Thank you very much.

6 ADMINISTRATIVE LAW JUDGE COX: I think we
7 have one other group, don't we.

8 MR. GORDON: Yes, we do, the California-
9 Arizona Consortium, Ms. Marianne Brown.

10 You've been waiting very patiently. Ms.
11 Brown, do you have a statement which you'd like to
12 introduce?

13 MS. BROWN: Yes, I do.

14 MR. GORDON: Exhibit 42, Your Honor. We
15 have no objection.

16 ADMINISTRATIVE LAW JUDGE COX: All right.
17 Let it be admitted as Exhibit 42.

18 (Whereupon, the above-referred
19 to document marked as Exhibit
20 No. 42 was received in
21 evidence.)

22 MR. GORDON: Please proceed.

23 THE CALIFORNIA-ARIZONA CONSORTIUM

24 Marianne Parker Brown, MPH, Program
25 Director

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1 MS. BROWN: Thank you very much and good
2 afternoon. My name is Marianne Parker Brown, and I
3 am the Program Director of The California-Arizona
4 Consortium. I am a labor educator also. I have a
5 master's in public health education from UC Berkeley,
6 and I have been doing worker occupational safety and
7 health education for the last 14 years.

8 The California-Arizona Consortium for
9 Hazardous Waste Training is funded by the National
10 Institute of Environmental Health Sciences, and we
11 are very pleased to submit comments to OSHA on its
12 notice of proposed rulemaking for accreditation of
13 training programs for hazardous waste operations.

14 I wanted to tell you just a little bit
15 about our consortium first before I go into our
16 comments. The consortium represents nine
17 institutions which provide hazardous waste training
18 in EPA Region 9, which includes California, Arizona,
19 Nevada, Hawaii, Guam, American Samoa, and Saipan. We
20 have training programs in all those states and
21 territories. Members of the consortium are labor
22 affiliated and/or academic institutions with long
23 histories of involvement and worker health and safety
24 training programs. We did submit for the Washington
25 hearings training manuals for all the courses that we

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1 offer, and we have courses and manuals for our 40-
2 hour training, they've been submitted, the hazardous
3 waste site training, for the 24-hour TSD training,
4 for the Awareness level training for the emergency
5 responders, for the Operations level emergency
6 response training, that's 24-hours for us, and also
7 for the Transporters of hazardous waste, which isn't
8 covered by the standard, but California has a law in
9 that area, so we provide that kind of training. We
10 also have the one-day refresher training and the
11 supervisor one-day training, and manuals on those.

12 We strongly support OSHA's efforts to
13 promulgate an accreditation standard for hazardous
14 waste training programs. It's based on the
15 principles of prevention. We're well aware that
16 enforcement alone of 1910.120 is not sufficient.
17 Without the driving force of accreditation to aid in
18 upholding the quality and integrity of such training
19 programs, it would be necessary for OSHA's
20 enforcement arm to bear the full responsibility of
21 assuring that worker training conducted under
22 1910.120 meets minimum standards.

23 The California-Arizona Consortium does
24 not believe that OSHA employers, trainers, or workers
25 and their representatives consider the use of

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1 enforcement as a viable substitute for good
2 accreditation procedures, especially considering how
3 much funding and staff support that goes into
4 enforcement right now in both federal OSHA and the
5 state OSHA plans. Such an accreditation standard is
6 representative of the basic principle of public
7 health, and many of our staff are people who come out
8 of the public health field, that is, the whole
9 principle of prevention. The standard should set
10 forth criteria for those who design and implement
11 such programs. Enforcement is an approach which
12 attempts to correct existing conditions. it is
13 always more desirable to insure at the outset that
14 acceptable standards of performance are being
15 complied with, and we feel that this is a commendable
16 step in this direction.

17 We support, in essence, the
18 recommendations that were formulated at the technical
19 workshop on training quality sponsored by NIEHS last
20 March. These have been referred to a number of times
21 today and in Washington. We refer to that document,
22 the Minimum Criteria for Worker Health and Safety
23 Training for Hazardous Waste Operations and Emergency
24 Response.

25 Our comments today are going to be

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1 divided into two sections. In the first we're going
2 to make comments on the preamble to the standard, and
3 in the second we're going to recommend some specific
4 changes to the body of 1910.121.

5 With respect to the preamble and the
6 first section on background, this section states that
7 the Omnibus Budget Reconciliation Bill of December
8 22, 1987, says, "The certification procedures shall
9 be no less comprehensive than those adopted by the
10 Environmental Protection Agency in the Model
11 Accreditation Plan for Asbestos Abatement Training."
12 We feel that this statement should not be interpreted
13 such that we adopt a similar plan as the here
14 accreditation plan, for it's been far from exemplary
15 from both educational and public health points of
16 view. For example, it requires that there be a
17 mandatory, pass/fail, multiple choice written
18 examination to determine safe asbestos abatement
19 competence; but educators concur that such an
20 examination cannot effectively insure that asbestos
21 abatement workers or hazardous waste workers for that
22 case have received adequate health and safety skills
23 training in the brief courses that are offered. The
24 passing of such a standardized test gives a feeling
25 of false security to students, teachers, and

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1 employees in the nation's schools where asbestos
2 abatement is underway. This is merely one example of
3 why we feel that we should not look to the Model
4 Accreditation Plan for Asbestos Abatement Training as
5 a model to duplicate in its fact, wordings, or
6 intent.

7 The section on page 2777 says that basic
8 training and education theory was used to develop
9 this regulation. As educators, we acknowledge the
10 need to develop the standard based on sound education
11 principles. However, there is no discussion of these
12 principles or theory in the preamble nor in the
13 appendices. There is no explanation from an
14 educational point of view for any of the components
15 of the accreditation standard. This is a serious
16 omission.

17 Basic adult education guidelines mandate
18 that learning objectives for each topic be clearly
19 defined and measurable. Training materials must be
20 relevant, relevant for the trainees, relevant to
21 their work experience, and put in clear ways. I
22 think the person who just spoke a minute ago about
23 the way to present toxicology is a perfect example of
24 how the training should occur. Activities to
25 accomplish objectives must be appropriate and

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1 participatory. This latter point is particularly
2 important in relation to hands-on training. We
3 estimate that hands-on training activities should
4 comprise at least one-third of the interactions
5 between instructors and trainees in training.

6 Now, my third point is that currently
7 1910.121 excludes emergency response personnel. We
8 feel this group should not be excluded. We train
9 many emergency responders, first responders. Over
10 the past three and a half years we've trained I
11 believe close to 1,000 in that category. Just
12 because some training programs for this emergency
13 response group already exists does not mean that they
14 necessarily are good educational programs. Many, if
15 not all, would benefit from a peer review
16 accreditation process. Also, the requirement for
17 uniform methods of communication among emergency
18 response personnel from different agencies dictates
19 inclusion of common elements in training programs for
20 people who are going to be involved in emergency
21 response. We have people who come out of the police
22 force and fire fighters and voluntary fire fighters
23 who go through our trainings. We are encouraged by
24 the fact that Mr. Martin from Kentucky State Fire
25 Marshal's Office made a strong case for this, and

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1 that also Mr. Carr today felt that there should be
2 some kind of accreditation of training programs for
3 emergency responders.

4 Regarding refresher training, this is
5 point number 4, we think there should be
6 certification of such courses also. In a study
7 presented by our consortium at the American Public
8 Health Association meeting last fall we reported in
9 a study of a sample of 133 hazardous waste site
10 workers who we had interviewed from a random sample,
11 that one-third had not received the required three
12 days of on-site supervised training from their
13 employers. The way I'm making this comparison is
14 that there seems to be an implication in 121 that the
15 employers would handle the refresher, and they would
16 be making the refresher very relevant to their
17 workplace. I think that's a good idea, but I think
18 if what we're finding out about the required three-
19 day on-site training is true, then we should start
20 worrying about whether the refresher is occurring,
21 that employers are providing adequate refresher
22 courses.

23 Refresher training is very important for
24 reenforcement of previous training, to update workers
25 on new information, and to provide an opportunity for

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1 workers to assess activities as performed since the
2 last training. We agree with the NIEHS document as
3 far as what the general subject area should be for
4 refresher training. We think it can be developed
5 such that it can be tailored to the particular group
6 or groups that are attending the training through a
7 process that we use where we send out a survey ahead
8 of time, and find out from the trainees before they
9 come what kinds of problems they've had over the past
10 year, whether there have been accidents, whether
11 there have been illnesses or injuries that are work
12 related, anything like that that we can incorporate
13 into the training so that we can tailor it and make
14 it specific to their needs.

15 The second area that I wanted to cover
16 was summary and explanation section in the standard
17 regarding the accreditation decision process. The
18 process outlined by the NIEHS document appears to be
19 more streamlined and has been successfully applied in
20 other settings, more streamlined than is set forth in
21 the current draft standard. This section in the
22 accreditation standard says nothing about who at OSHA
23 will review the applications for accreditation. We
24 propose that the Assistant Secretary for OSHA
25 establish a permanent peer review panel of members

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1 who are experienced in worker health and safety
2 training, industrial hygiene, toxicology,
3 occupational medicine, hazardous waste management,
4 fire service training, and other relevant
5 disciplines. The panel should be equally divided
6 among union, government, academic, and private
7 industry representatives, and the majority of the
8 panel should have expertise and experience in worker
9 health and safety training so that they can really
10 judge the applications based on sound educational
11 principles. In order to insure a minimum level of
12 quality assurance, the minimum general criteria in
13 the NIEHS grantees' document should be used, and
14 should be included as a mandatory appendix to this
15 standard that you are proposing.

16 The California-Arizona Consortium also
17 supports the elimination of the 24-hour and 16-hour
18 site workers programs as being artificial and
19 confusing. I know this relates to 1910.120 and maybe
20 is inappropriate to bring up here, but it's referred
21 to with respect to accreditation. We feel that 40-
22 hour training should be required of all site workers,
23 and it's been our experience that employers have not
24 asked for the 24-hour or 16-hour training. They've
25 sent their people to the 40-hour which is the only

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1 kind that we provide.

2 Under preliminary regulatory impact
3 analysis, I wanted to address the issue of cost of
4 compliance. The application costs to us appear to be
5 underestimated for our consortium. The cost of
6 duplicating the modules and accompanying materials,
7 primarily slides, for the 40-hour program, which is
8 our biggest program, our longest one, and most
9 intensive, that would run about \$200.00 for one copy
10 of everything. Now, I really questioned what another
11 testifier said today about \$10,000.00 to get this
12 information together. It was my understanding per
13 company, not the trade association, but per company
14 it would cost \$10,000.00 to duplicate a slide set and
15 manuals and possibly videos. It would imply to me
16 that a lot of those programs are not in writing, that
17 they're by the seat of the pants kind of thing, that
18 there aren't training manuals, and it could cost that
19 much. It cost more than that to develop all of our
20 training manuals, and so it concerns me that there
21 are a lot of training programs out there where they
22 do not have a packet of information that can be
23 standardized and used by a lot of trainers within
24 their company, and if the companies are testifying
25 that it costs \$10,000.00 to duplicate already

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1 existing materials, I would say if that's the case,
2 that it's reminiscent of the kinds of testimony we
3 got for the vinyl chloride standard and how much it
4 was going to cost employers and they wouldn't be able
5 to afford it. So I think that should be examined
6 more carefully.

7 The next point is with respect to the
8 training programs and where it says that they must
9 specify a passing score on examinations. This is
10 page 2786 in the standard. Training programs such as
11 ours, and our programs are multiple-employer programs
12 where we have open enrollment by and large. There
13 are some that are specific to a particular company
14 and they contract with us, but most of ours are
15 multiple employer programs. Programs such as ours
16 cannot interfere in the employer/employee
17 relationship by passing or flunking a trainee, and in
18 the latter case possibly jeopardizing the job of the
19 trainee particularly if she or he is an already
20 employed worker. We believe that it is the ultimate
21 responsibility of the employer to certify if the
22 employee passed or is qualified to do hazardous waste
23 work. For example, with the hazardous waste site
24 trainings, the employees must have the 40 hours of
25 training, but then of course they must have the three

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1 additional days of specific training back at the work
2 site with the supervisor, and it would be just taking
3 care of part of the whole thing if we certify for our
4 section and then they have to go back and the
5 employer has to train and then determine whether the
6 person is ready to do this kind of work. So we think
7 that it should really be up to the employer to do
8 that.

9 We also feel that, and this is on page
10 2789, part 1910(e)(31), it should be clarified here
11 that all site workers should receive three days of
12 site-specific training for each new job held, that
13 for each new work site that they go to they should
14 have that kind of training for the 40-hour hazardous
15 waste site workers.

16 I wanted to go onto scope application and
17 definitions. Under the scope application and
18 definitions, just kind of a language thing here that
19 you should include coverage for refresher training
20 programs for hazardous waste operations and emergency
21 response here. Right now it just says hazardous
22 waste operations. Emergency response workers need
23 and deserve the protection of training program
24 accreditation requirements equal to those provided
25 other workers covered by 1910.120.

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1 Under content of applications, the NIEHS
2 minimum criteria document describes more specific
3 information on the items detailed in this section,
4 such as, specific instructor/trainee ratios for
5 certain types of learning activities. We believe the
6 more specific language should be submitted as
7 appropriate. For example, for level C and D training
8 the propose a ratio of trainees to instructors of ten
9 to one, and if it's going to be A and B level, then
10 trainees five to one instructor.

11 We believe that the evaluation of
12 trainees should not be limited to standard written
13 examinations, but rather should emphasize performance
14 assessments of skills learned. This is of particular
15 interest to us in California and Arizona where we're
16 aware of literacy and language differences among a
17 significant proportion of the employed work force.
18 We in fact have offered one course already for TSD
19 workers in Spanish and received very good enrollment
20 and enthusiastic response and we are planning another
21 course like that. We have developed a number of
22 education materials in Spanish and of course the
23 training manual is in Spanish and also videos in
24 Spanish. We also have within the last couple of
25 months I would say received requests from about four

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1 or five companies asking us if we could do training
2 for a portion of their work force where they have
3 limited literacy, and they're at a loss as to what to
4 do with respect to training. We're seeing an upsurge
5 in those kinds of requests. We don't feel prepared
6 to do that kind of training at this point, and are
7 only going as far as going to consult with literacy
8 experts and maybe have a meeting with these
9 representatives from these companies to do some
10 brainstorming about what kinds of approaches could be
11 used. As stated earlier, we believe that the
12 employers should be responsible for determining if an
13 employee is certified or has passed to do hazardous
14 waste work. We use the exams that we have for after
15 all of our classes. We've been using pre and post-
16 tests where we see it as a check to be sure that our
17 instructors are getting across the information that
18 we have determined is the most important information
19 to get across, and then we are using those exams as
20 part of the teaching process, too, because we go over
21 the exams with the trainees afterwards to be sure
22 that everyone understands what the correct responses
23 were.

24 A few more points and then I will close.
25 Under the eight hours of training for supervisors and

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1 managers, we have a few other areas that we have
2 determined are important ones to include in the
3 training, and this is based on experience of
4 teaching, I don't know the exact number, but maybe
5 somewhere between five and ten supervisor courses for
6 the past two and a half years. The following topics
7 should be added to course content, there are four
8 areas: (1) strategies for motivating safe work
9 practices in employees, supervisors are very
10 interested in that topic, (2) emergency response
11 plans, (3) managing personal protective equipment and
12 respiratory protection programs, and (4) supervisor
13 liability for not complying with health and safety
14 procedures and regulations.

15 In conclusion in this last section of
16 this standard (h), specific course content, there is
17 an emphasis on site-specific training for the TSD
18 courses. In effect OSHA precludes the use of
19 training institutions or groups which operate as
20 independent multi-site training programs, such as,
21 the 11 institutions that are part of our consortium.
22 We know this was not the intent of Congress in the
23 SARA legislation. To only accredit employer-based
24 programs is uninformed and unwise for a number of
25 reasons, and I wanted to specify some of the reasons

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1 we have for this statement.

2 (1) It assumes that the employers'
3 implementation of 1910.120, the emergency response
4 plan, hazardous waste handling procedures, HAZCOM
5 program, and medical surveillance programs, are all
6 adequate. That has not been our experience from
7 talking to trainees. There are lots of holes in
8 them.

9 (2) A generic program can tell trainees
10 what should be included in their site safety plan,
11 medical surveillance plan, et cetera, and then the
12 trainees can go back to evaluate if the plans and the
13 procedures in their workplaces are adequate. If not
14 adequate, they can recommend changes. In the
15 California-Arizona impact evaluation, which we
16 conduct three months and 12 months after people have
17 gone through our trainings, we are finding that a
18 significant number are going back to the workplace
19 and initiating safety and health improvements. What
20 we do is, the last day of training, we have a session
21 where trainees identify their major problem areas.
22 So in a given work site they come to agreement on
23 three areas where they want to try and make some
24 changes, and we have a discussion about that, what
25 can be done, what the law says, and there's

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1 discussion in the class. Then they are called at
2 three months and 12 months by our evaluation team to
3 find out if they've had any success in bringing about
4 some of these improvements. Some typical findings as
5 a result of employee interviews that were conducted
6 from September, 1989, to August, 1990, include --
7 well, the most I should say I'm going to go into some
8 of the specific employee comments, but the things
9 that really stood out as far as the areas where they
10 felt there was need for change was either there was
11 no emergency response plans in the workplace or the
12 emergency response plans were very inadequate. Now,
13 these are just hazardous waste site workers that I'm
14 talking about for this part of it. The other area
15 that was a big one was there was inadequate personal
16 protective equipment programs and respiratory
17 protection programs.

18 Here are some of their comments three
19 months after when our evaluation team called them.
20 After the program trainees were able to offer
21 concrete reasons at their workplace for why
22 decontamination procedure needed to be improved.
23 That was one. Another person said, "The courses
24 given me," or the trainee, "information and a neutral
25 authority with which to approach management and train

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1 workers." We find that a number of people are going
2 back and training employees at their work site, even
3 though that isn't the way our courses are designed.
4 They're using the manuals and duplicating them and
5 training other workers. The course gave the trainee
6 information about respirators and emergency response,
7 which he used for training at his own work site. The
8 course gave trainees information about rehearsal of
9 emergency evacuation procedures, which they used for
10 training at their work site. In the course, a
11 trainee learned about equipment and procedures for
12 which there is no provision on his job. He
13 speculated that this kind of knowledge might make
14 bottom up changes more likely at his workplace.

15 In closing, we're also involved in a
16 fairly large inter-grantee evaluation project that
17 includes the International Chemical Workers Union,
18 the Oil, Chemical, Atomic Workers Union, the Midwest
19 Consortium, and ourselves where a questionnaire has
20 been sent out to many trainees, 75 in our area. We
21 got response from 75 with respect to work practices
22 and other changes that have occurred since they went
23 through the training.

24 I think I'll close with that. Thank you.

25 ADMINISTRATIVE LAW JUDGE COX: Thank you.

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1 MR. GORDON: Thank you very much, Ms.
2 Brown. I just want to say that of course there was
3 no intention and we don't think the language in any
4 way would discriminate against general training
5 programs, and certainly the intention was that they
6 could be certified as well as employer based ones.

7 Now, I'd ask, do members of the panel
8 have questions?

9 Doctor Conway.

10 DOCTOR CONWAY: Ms. Brown, as program
11 coordinator, are you in charge of all of Region 9's
12 Consortium?

13 MS. BROWN: Yes.

14 DOCTOR CONWAY: For how long have you had
15 that position?

16 MS. BROWN: Since the grant came, which
17 was in September of 1987.

18 DOCTOR CONWAY: Have you had a hand
19 personally in the development of this evaluation
20 component of the training program? The evaluation
21 component?

22 MS. BROWN: Yes, because we're the lead
23 agency at the UCLA Labor Center and the evaluator is
24 based there. So, yes, we've been very involved from
25 the beginning. I have.

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1 DOCTOR CONWAY: Did that emanate from the
2 west and flow east or not?

3 MS. BROWN: Well, actually --

4 DOCTOR CONWAY: We heard a presenter
5 earlier comment that the program in the south also
6 does evaluation. I don't want to get into odious
7 comparisons, but is it an initiative that -- just
8 historically?

9 MS. BROWN: Well, no, we can't take
10 credit for starting in the west.

11 DOCTOR CONWAY: That's what I'm trying to
12 get at.

13 MS. BROWN: Yes, there was a requirement
14 from the outset that all the programs have an
15 evaluation component from NIEHS. There wasn't
16 anything that said impact evaluation per se, but
17 we've had a lot of grantees meetings. We've shared
18 a lot of ideas on the kinds of evaluations that we
19 think we need, and so there's a lot of similarities.
20 Some of the ideas that we got were from the
21 International Chemical Workers Union in the way they
22 were doing their evaluation.

23 DOCTOR CONWAY: I found much in your
24 presentation to like.

25 MS. BROWN: Thank you.

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1 DOCTOR CONWAY: And to compliment you on,
2 but I wonder if I could turn around a comment that
3 you made almost at the beginning and turn it into a
4 question to you. I would like for you to attempt a
5 response now, but if you think of anything in
6 addition, to perhaps do as a follow-up comment.
7 Specifically, your observation that there's no
8 explanation from an educational point of view to
9 support the various provisions, components, of the
10 accreditation proposed rule, and I think that's a
11 very astute observation. I think there is something,
12 but I think that we're going to be forced to do much
13 more of this in this rule I think, and in the future
14 as we get into the training type rules, and from your
15 perspective, anything that you would want to share as
16 an illustration perhaps now to say, "For this
17 component here from an educator's perspective, is a
18 rationale or a justification." Or in the literature
19 that you're aware of or anything that you've come
20 across not just in the past in your current job, but
21 preceding that that gives support, that essentially
22 reflects a belief in training. Now, I know that may
23 seem surprising to some of us that have a belief in
24 training and its consequences, but we will be
25 challenged rule by rule on why we're putting in a

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1 training component, what's the purpose of it, what do
2 you expect to get, what's its effectiveness, prove
3 it's effectiveness. So, again, I think you've hit
4 the nail on the head, but anything you could do to
5 help us out I think would be appreciated and any
6 anecdote you might want to supply now.

7 MS. BROWN: Okay. The thing that really
8 drew my attention to it was just the fact that right
9 in the standard it said, "We've drawn on these basic
10 principles," and then none of them were laid out
11 there, so I didn't know what they're referring to.
12 But this may sound contradictory in a way, but the
13 area in there where you say certain training must be
14 site-specific, in a sense that ties in with a
15 training principle about making it very relevant to
16 the workers, that you should try to cite examples and
17 call upon the workers to cite examples from their own
18 experience, and just it's a basic adult education
19 learning principle that they will learn what you're
20 teaching them a lot better if they can put it into an
21 existing framework that they already have about the
22 situation. These things are happening, but we need
23 to do this. And I think for a group like us to make
24 it site-specific, then we need to do some homework
25 ahead of time. We have to go and to whatever extent

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1 we can visit the plants, see what the problems are,
2 do this survey, so that we can use the scenarios,
3 that we use the problems, that we present as part of
4 the training will be as specific to their workplaces
5 as possible. If I have time, I would like to have
6 more documentation, submit more documentation around
7 training principles.

8 DOCTOR CONWAY: We'd be very grateful.
9 Thank you.

10 MR. GORDON: Mike, Mr. Moore.

11 MR. MOORE: Yes, thank you.

12 That pre-attendance survey, that's a good
13 idea. The only thing that I'll have a problem, and
14 I won't personally have a problem, but we may have,
15 is if you go in and you do your pre-attendance survey
16 and you find out what the unique needs may be for a
17 particular training client, how significantly is that
18 going to affect your generic program if that generic
19 program has been previously accredited? Does that
20 make sense?

21 MS. BROWN: Yes. I think there are
22 certain general agenda items or however you want to
23 put it that you folks can approve, and then the
24 specific examples that we use, for example, if it's
25 going to be an update on hazard awareness, that's

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1 what we call our talks, it may say it's going to be
2 an update on what's new in the area of hazard
3 awareness or toxicology, but then the specific
4 examples are going to be ones that are going to be
5 related to those workplaces that are represented
6 there.

7 MR. MOORE: Certainly the accreditation
8 of a generic program is going to be logistically
9 helpful to us. The only problem is if we get down to
10 where we have to consider each individual training
11 program as a separate entity, and we get into this
12 pre-attendance survey, which to me makes all the
13 sense in the world, then you significantly change the
14 program as we propose, that program may have to come
15 back for reaccreditation, and I don't think we're
16 getting that support. You wouldn't support that I
17 suppose?

18 MS. BROWN: No, and I don't think anyone
19 here would probably.

20 MR. MOORE: I put the words in your mouth
21 with that.

22 MS. BROWN: And you wouldn't either. All
23 the work, it sounds like it's going to be an immense
24 amount of work as it is.

25 MR. MOORE: If you could possibly give me

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1 a range of costs or possibly an average cost based
2 upon your members' experiences or even possibly
3 getting with the rest of the grantees as to what the
4 cost would be, range of costs or estimated costs or
5 average costs -- if I were to become a training
6 provider and start from scratch, as many of the
7 members of your consortium did at one time and
8 perhaps the other grantees, as well as the other
9 vendors, to start from scratch and develop a
10 reasonable program and what you would consider an
11 acceptable program to the level ready to present it
12 as you see our standards provide. Not now, but in
13 post-hearing, just a reasonable cost and an estimate,
14 okay?

15 MS. BROWN: Yes.

16 MR. MOORE: Certainly there are some
17 people who come in well-prepared and can start off
18 with nothing and run, and then others have to go to
19 scratch, because the figure \$8,000.00 to \$10,000.00
20 is high.

21 I hear you supporting 40 hours of
22 training as an employee moves from job to job. If
23 you could come back to us with, and again this may be
24 more towards some of the labor programs, turnover
25 rates for employees engaged in hazardous waste

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1 operations, and what I'm looking at is, well,
2 including when an employee would go from company A to
3 company B and have to get 40 hours or, say, for
4 example, an employee is working for company A and
5 he's on site 1, or she's on site 1, and that employee
6 then goes to site 2. Do you mean to get 40 hours
7 there?

8 MS. BROWN: No, that wasn't it. I was
9 proposing the three days of on-site supervised
10 training should occur each time when someone goes to
11 a new site, but not the 40-hour.

12 MR. MOORE: Not the 40-hour?

13 MS. BROWN: No.

14 MR. MOORE: Okay. That's all I got.
15 Thank you very much.

16 MS. BROWN: Thank you.

17 MR. GORDON: Mr. Pierce.

18 MR. PIERCE: Does your consortium plan to
19 apply for accreditation?

20 MS. BROWN: We haven't discussed it, but,
21 yes, I think so.

22 MR. PIERCE: We've heard testimony that
23 some of the grantees felt that accreditation would
24 not be needed for them is why I asked the question.

25 MS. BROWN: Well, I don't know. A number

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1 of groups that come for our training, they say, "Are
2 you accredited?" And I said, "Well, there is no
3 accredited program right now." And they say, "Well,
4 you folks have been around for a while. You've gone
5 through site review with NIEHS. We want to send our
6 people to you folks because you're as good as being
7 accredited at this point." So I know that some
8 people that send folks to training are going to be--
9 I mean they're all going to looking for accredited
10 programs. I don't know why they would want to sent
11 to a non-accredited one if they're paying out money.

12 MR. PIERCE: How will accreditation
13 affect or improve or change your current training
14 programs, or will it?

15 MS. BROWN: The way it's set right now in
16 the draft standard, I don't think it will change them
17 at all really.

18 MR. PIERCE: Thank you very much.

19 MR. GORDON: Mr. Seymour.

20 MR. SEYMOUR: Ms. Brown, you had
21 mentioned that you were providing I think under
22 paragraph (q) awareness training and operation level
23 training, is that correct?

24 MS. BROWN: That's right.

25 MR. SEYMOUR: Could you describe whatever

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1 interfacing you have done to stay with the state fire
2 training programs in Nevada and Arizona and
3 California? Have you worked together with them? Or
4 even Hawaii?

5 MS. BROWN: At this point just with
6 California because the expansion into Nevada and
7 Arizona and the trust territories has just occurred
8 as of last September and we got a lot of connections
9 going with those yet. But with the California
10 Specialized Training Institute, which trains fire
11 personnel and emergency responders in the state, all
12 of our trainers have graduated from that Train the
13 Trainer Program that the California Specialized
14 Training Institute puts on, and they have approved
15 our course, CSTI, and people who go through our
16 course take that exam, the same exam as the folks who
17 go through the CSTI, but I think we are reaching some
18 people that the California Specialized Training
19 Institute hasn't met so much, and that's the
20 volunteer fire fighters in rural California is one
21 group that we're reaching. And, also, I mean we're
22 not having any problem filling up our classes. So I
23 think that CSTI can't meet the needs of everyone.

24 MR. SEYMOUR: But your instructors are
25 now state certified by the California program or

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1 whatever the governmental entities are, and then you
2 said they certified?

3 MR. GORDON: The Court Reporter can't
4 pick up her nod. Could you please respond?

5 MS. BROWN: Yes, that's right.

6 MR. SEYMOUR: It's all verbal. Did you
7 indicate that they also approve, is that your
8 awareness training program that they certified or
9 accredited or recognized?

10 MS. BROWN: The operations level they
11 did, and awareness is a more recent one. I'm not
12 sure whether it's been approved or not yet.

13 MR. SEYMOUR: Do I understand, I mean,
14 you actually haven't done awareness training in
15 Arizona or Nevada yet?

16 MS. BROWN: That's correct.

17 MR. SEYMOUR: In the area of the number
18 of possible applications we might receive in your
19 envisioning of an accreditation program, say, for you
20 advocated all training to be accredited, is that
21 correct?

22 MS. BROWN: Yes.

23 MR. SEYMOUR: How many applications do
24 you think the Agency might receive from essentially
25 Region 9 that you're involved in right now? Any

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1 idea? Any estimate?

2 MS. BROWN: No, I might be able to find
3 out, but I don't know.

4 MR. SEYMOUR: The O'Hara Program, you
5 mentioned a few problems with that. I wonder if
6 there are other difficulties that you're aware of
7 that you would caution the agency not to follow those
8 aspects of that particular model.

9 MS. BROWN: Those points that I made were
10 the primary ones. I don't know. You may know more
11 than I do on that.

12 MR. SEYMOUR: Do you have any
13 recommendation for the Agency as to how we might
14 structure the date upon which the accredited training
15 would then become mandatory and employees who would
16 take training after that must then go to an
17 accredited agency? Do you have any sense of when
18 that kind of sequence ought to come about?

19 MS. BROWN: I'm not sure. I think some
20 of the programs that already have peer review, such
21 as the NIEHS ones, I would propose that they be given
22 maybe more of a lead time for that, that you wouldn't
23 have to work at accrediting ours, but work at
24 accrediting the ones that haven't gone through any
25 peer review. So maybe we might be six months after

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1 or something that the others have to meet a deadline,
2 or you might just automatically grandfather us in for
3 the first year, and then review us. I don't know how
4 long it would really take to do that. Maybe I could
5 ask you a question. When do you expect it to be
6 finalized?

7 MR. SEYMOUR: That's within the question.
8 The question was asked in Washington, and the
9 administration is planning to try to finish the final
10 rule in fiscal year 1992, which would be after
11 October next year, I'm sorry, October this year. We
12 would do it after that. Expect to hopefully finish
13 it sometime next fiscal year. But that's why I'm
14 interested in some kind of triggering date, because
15 where my concern is once we actually set that date,
16 then anybody who takes training thereafter must be
17 through an accredited program, and the idea is to
18 have sufficient accredited programs in place so that
19 the needs like in your region could be fully met when
20 people need to go to a training course, they're not
21 being held up and waiting through a backlog of some
22 sort to actually get the training.

23 MS. BROWN: Well, I can tell you that for
24 the first course that we offered it took eight months
25 from when we heard that we were getting funding, but

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1 then we didn't hire staff until about three months
2 into that. So once we had staff it was about five
3 months, because it took a while to obtain equipment.
4 It was a big thing. I might mention that as far as
5 with respect cost that a number of groups in our
6 consortium and others have been able to get free or
7 loaned equipment, sometimes at a very reduced price
8 from industrial hygiene equipment companies because
9 they like the publicity. So there are ways to get it
10 at a reduced price.

11 MR. SEYMOUR: In the course that you are
12 providing right now and you were testifying about who
13 has to certify that the person has met the training
14 obligations and requirements and it's all right for
15 them now to work, say, on a cleanup site. How are
16 you issuing your certificates now for the training
17 programs that you're issuing, say, under the 40-hour
18 course?

19 MS. BROWN: We're giving them
20 certificates to say that they attended the class and
21 we say how many hours. So if they miss one day of
22 class of a 40-hour class, we say they attended 32
23 hours of the 40-hour course, and we also include on
24 that certificate that this does not complete the
25 total requirement, that they have to have three days

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1 of on-site supervised training in addition, but it's
2 only that they've attended.

3 MR. SEYMOUR: Are you familiar with
4 paragraph (e)(6) requirements in the final rule where
5 it says about the instructor or the head instructor
6 and the training supervisor as having successfully
7 completed it, so when people take your course do they
8 understand that you are not going to make any kind of
9 statement that they've actually successfully
10 completed the 40-hour course that's now going to
11 incumbent on the employer at the final three days of
12 the OJT, everybody understands that when you start
13 the class?

14 MS. BROWN: Well, what is successful
15 completion is being there.

16 MR. SEYMOUR: Just attending?

17 MS. BROWN: Yes.

18 MR. SEYMOUR: Your eight-hour supervision
19 course, can you tell us what are the contents of that
20 eight-hour course, the subject matters you address?
21 You mentioned strategy for motivating safe work
22 practices among employees should be added. You
23 mentioned emergency response plans should be added,
24 and PPE and respirator training should be added, and
25 supervisor liability should be added, but what else

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1 are you already teaching?

2 MS. BROWN: Are you talking about the
3 supervisor course not the refresher?

4 MR. SEYMOUR: That's correct, the eight-
5 hour supervisor course.

6 MS. BROWN: I don't have the full agenda
7 right with me. I don't know if another staff person
8 here does.

9 MS. DELPOUSH: I don't have it with me,
10 but I can tell you --

11 ADMINISTRATIVE LAW JUDGE COX: Ma'am,
12 you'll have to come to the speaker.

13 MS. BROWN: This is Linda Delpoush, head
14 of the LOSHA Hazardous Waste Training Program at
15 UCLA.

16 MS. DELPOUSH: Linda Delpoush, and I
17 don't have the agenda with me also, but we do spend
18 a significant amount more time on the laws and
19 regulations feeling that supervisors need to
20 understand that in more complexity than in our other
21 training programs.

22 MR. SEYMOUR: I guess my concern is that
23 in the final rule we say that the supervisor training
24 has to address personal protective equipment program
25 that the employer has. So why are you suggesting to

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1 us that we do something in the PPE respirator area
2 because it's in the standard that that's got to be
3 part of the employer's or whoever is going to give
4 the supervisors training? It's one the elements we
5 actually have in the standard, so when you say add
6 it, it's already in the standard. Do you see what my
7 concern is?

8 MS. BROWN: Oh, you mean for the 40-hour,
9 in that they've already had it in the 40-hour?

10 MR. SEYMOUR: No, Ma'am. The final rule,
11 and this is in paragraph (e)(4), it's where it says
12 that the specialized training job assignment is
13 timed, but not limited to the employer safety and
14 health program, associated employee training program,
15 personal and protective equipment program, spill
16 containment program, and health hazard monitoring
17 procedures and techniques, which is what supervisors
18 are supposed to get. That's the eight hours
19 additional training.

20 MS. BROWN: Okay. Well, they do. We do
21 particular focus on the respiratory protection
22 program in the requirement under California OSHA and
23 what goes into a respiratory protection.

24 MR. SEYMOUR: Then do I understand that
25 you're aware of some people who are conducting

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1 supervisory eight-hour training courses and they're
2 not addressing PPE and respiratory training for
3 supervisors?

4 MS. BROWN: Well, it was my understanding
5 that that wasn't included in 121, but maybe I'm
6 incorrect.

7 MR. SEYMOUR: I'm speaking of 120.

8 MS. BROWN: Okay. But in 121 we feel
9 there should be also kind of a what the supervisor's
10 responsibility is under the respiratory protection
11 standard, something more specific to supervisors.

12 MR. SEYMOUR: Okay. You're advocating
13 that we accredit that eight-hour training program,
14 which we did not give a laundry list of what those
15 course contents should be, and you're asking that
16 that be done?

17 MS. BROWN: Yes.

18 MR. SEYMOUR: That's what you're saying
19 to us here?

20 MS. BROWN: Yes.

21 MR. SEYMOUR: Okay. That's why I was
22 asking also what should be the total content. If
23 you're familiar with the appendix material, we also
24 mention there about the importance of emergency
25 response training for the supervisors. So that's why

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1 I was concerned.

2 One or two more questions dealing with
3 the peer review and the outside advisory board.
4 Would you advocate that the people who would be on
5 those boards would not be people who are actually are
6 going to be aware of submitting their own programs
7 for such recognition, but we should actually try to
8 seek people who are not going to be involved in
9 actually having programs that they've been a part of
10 being submitted for accreditation?

11 MS. BROWN: Not necessarily, but I think
12 they would have to excuse themselves when there is a
13 conflict of interest, not reviewing their own program
14 or if there was a submission from, say, another
15 University of California institution that wasn't part
16 of our consortium, we should excuse ourselves from
17 that around conflict of interest.

18 MR. SEYMOUR: Thank you very much.

19 MR. GORDON: Thank you very much. We
20 have no further questions.

21 ADMINISTRATIVE LAW JUDGE COX: Does
22 somebody from the audience have a question?

23 [No response.]

24 I think she would be able to answer it.
25 She's answered these pretty well.

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1 Nobody wants to question you, I guess.

2 MS. BROWN: It's 4:45.

3 ADMINISTRATIVE LAW JUDGE COX: I think
4 that must be the reason. All right. We'll be
5 recessed until tomorrow until 9:00.

6 MS. BROWN: Thank you.

7 (Whereupon, the hearing was adjourned to
8 reconvene on February 14, 1991, at 9:00 a.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: DOL - OSHA - INFORMAL PUBLIC HEARING ON
PROPOSED RULEMAKING ON ACCREDITATION OF
TRAINING PROGRAMS FOR HAZARDOUS WASTE
OPERATIONS

Before: ROBERT L. COX, ALJ

Date: FEBRUARY 12, 1991

Place: CINCINNATI, OHIO

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.

Vicki Albertson

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