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1 U.S. DEPARTMENT OF LABOR  
2 INFORMAL PUBLIC HEARING ON OSHA'S PROPOSED RULE  
3 ON GENERAL WORKING CONDITIONS  
4 IN SHIPYARD EMPLOYMENT  
5

6 9:30 a.m.  
7 October 22, 2008  
8 Renaissance Seattle Hotel  
9 515 Madison Street  
10 Seattle, Washington  
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1 (Hearing Commenced at 9:30 a.m.)

2 JUDGE GEE: This is the Informal Public Hearing  
3 on OSHA's Proposed Rule on General Working Conditions in  
4 Shipyard Employment. Today is October 22, 2008. Our  
5 program continues today with a panel -- I'm sorry, it's  
6 not a panel. Mr. Allen Rainsberger will be the first  
7 person to testify. Mr. Rainsberger.

8 MS. SHORTALL: Your Honor, as Mr. Rainsberger  
9 gets up and ready to testify, I would like to enter a  
10 couple of items into the record.

11 JUDGE GEE: All right.

12 MS. SHORTALL: First is Exhibit 0177, written  
13 testimony from Lurilla Lee, and the second of all is

14 Exhibit 0178, the hard copy of the Power Point  
15 presentation that Mr. Rainsberger will be making.

16 THE COURT: So ordered.

17 MS. SHORTALL: Thank you, your Honor,

18 JUDGE GEE: Mr. Rainsberger, state your name  
19 and spell your first and last name and your affiliation  
20 and then you may start.

21 MR. RAINSBERGER: My name is Allen Rainsberger.

22 The first name is A-L-L-E-N, last name is  
23 R-A-I-N-S-B-E-R-G-E-R. I'm with Foss Maritime and  
24 president of the Puget Sound Shipbuilders Association.

25 JUDGE GEE: Thank you. You may begin.

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1 MR. RAINSBERGER: Thank you.

2 I know that on October 3rd the group has heard a lot  
3 of folks from the aircraft carriers and some of the  
4 bigger operations as far as shipyards, and yesterday I  
5 think you got a good overview of the fishing fleet here  
6 in the Northwest, at least.

7 Today I think the Association would like to give  
8 some testimony and some presentations to the panel on  
9 some of the small to mid-sized shipyards. The issues  
10 sometimes are vastly different.

11 And what I would like to actually do today is give  
12 you a little bit of an overview, moving into those that  
13 will actually be doing the individual presentations  
14 through the today.

15 I, as I said, am president of Puget Sound  
16 Shipbuilders Association, and the association is a group  
17 of 32 different entities that meet on a quarterly basis  
18 here in the Puget Sound regarding safety. I'm also a  
19 member of the American Society of Engineers. I'm a  
20 member of the Seattle Fire Code Advisory Board and a  
21 member of Marine Chemist Qualification Board, and also  
22 preside over the Environment Coalition of South Seattle.

23 I've got 30 years in the industry, and I worked at  
24 Todd Shipyard for 28 years, 20 of those years in the  
25 safety department, and I started out in the shipyards as

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1 a painter. So I know from the deck place the operations  
2 that happen in shipyards all the way up to the  
3 administrative challenges of the operation of the  
4 shipyards.

5 Our members include a lot of folks throughout  
6 Alaska, Washington and Oregon, so it's misconceiving to  
7 say the Puget Sound Shipbuilders Association, but the  
8 association has just grown quite a bit, so we do have  
9 other shipyards outside of the Puget Sound region that  
10 actively belong to the association.

11 I'm not going to read all of these different names.  
12 You've got them all in front of you. But just to give  
13 you an idea, we do have a lot of small to medium-sized  
14 shipyards, the largest being Todd Shipyards in Seattle,  
15 which currently employs about 500 people.

16 We also have some associate members that involve the  
17 insurance companies, worker's compensation carriers. I  
18 think you have all heard from Amy Duz from iWorkWise, who  
19 belongs to our association as well, welding manufacturers  
20 and suppliers helping us with the hexavalent chromium  
21 issues that we deal with and studies of that work from  
22 the University of Washington, as well as the marine  
23 chemists, different safety suppliers and life-saving  
24 equipment suppliers as well. So we try to get a lot of  
25 different facets of the safety representation throughout

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1 our association so we feel we're pretty well rounded.

2 The Puget Sound Shipbuilders Association itself is a  
3 nonprofit organization. We do have a set of bylaws that  
4 actually go back to the mid 1940's when the association  
5 was formed. We have quarterly meetings. We actually  
6 just had a meeting on Monday, and Mr. Vonkowski from OSHA  
7 was a speaker at our meeting and he gave an overview on  
8 fire plan requirements under Subpart P.

9 We do have daily interactions through e-mails and  
10 phone calls within the members working together to assure  
11 that we provide safe workplaces for all of our employees.  
12 Collectively we all believe strongly that the strongest  
13 resource that we have in the shipbuilding industry is the  
14 employees that we have. We take it very seriously that  
15 we protect these employees.

16 We do a lot of education and training employers on  
17 the safety issues. Some of the smaller shipyards have

18 anywhere from 10 to 50 people. They don't really have  
19 the resources to have a full-time safety person per se.  
20 That person may wear a lot of different hats. So  
21 sometimes it's good for them to come up to one of the  
22 other shipyards that already has a program and help them  
23 out too, give them the resources that they need to bring  
24 forth safe work measures to their employees.

25 So the networking is really key to all of this. We  
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1 try to share the information and grow from that.

2 We do a lot of the technology presentations of new  
3 safety equipment that's available, better ways of doing  
4 things, thinking outside the box a little bit other than  
5 standard procedures that have been in place for quite  
6 some time.

7 We do have an alliance with OSHA throughout the  
8 Puget Sound Shipbuilders Association. OSHA does attend  
9 our meetings all the way from the area directors to the  
10 regional directors to compliance officers. Same with the  
11 state act too with the DOSH folks, they have attended our  
12 meetings in the past. We do have seminars that we've  
13 done. As I mentioned, we did one on fire plans under  
14 Subpart P on Monday. We've done OSHA 300 recordkeeping.  
15 It was actually an ex-OSHA employee, Linda Glasby  
16 actually gave that with her 30 years of experience.

17 We're done presentations on hexavalent chromium  
18 standards, the electrical standards and shipboard  
19 ventilation are just some examples. I'm sure I forgot  
20 some of the other things we covered through the alliance.  
21 It's been very active. It's been beneficial for both  
22 OSHA and for the Association.

23 Many shipyards in this region have closed for a  
24 number of different reasons. Just recently Fairhaven  
25 Shipyard of Bellingham shut their doors on Wednesday of  
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1 last week, not because of safety reasons but because of  
2 labor negotiations that have been going on for some time  
3 unsuccessfully. We've also had Duwamish Shipyards,  
4 Marco, Tacoma Boat and some of our other local shipyards  
5 that actually have closed their doors.

6 So the industry itself is facing a lot of  
7 challenges, a lot of economic challenges, a lot of  
8 environmental challenges. The Puget Sound region has  
9 very stringent environmental regulations such as keeping  
10 our yards very clean for the environment, which actually  
11 dovetails into safety issues as well because a clean yard  
12 is a safer yard as well.

13 1915 also not only covers the shipyards but a lot of  
14 shoreside activities as well. Hence my question from  
15 yesterday about the subcontractors that's been taken into  
16 effect. You asked for a number of percentile of  
17 subcontractors that work in the industry, and I can only  
18 guess at what that number is, but it is substantial. If  
19 you want me to estimate, I would say between 20 and 30  
20 percent of the shipyard work is subcontracted out. That  
21 probably hasn't been factored into your numbers.

22 You did a good job earlier going out to the BLS  
23 survey showing improvements. If you go back actually,  
24 the improvements are about 75 percent over the time  
25 period that you went, all the way from 38 of an incident  
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1 rate to the current BLS standards of around nine. So the  
2 industry itself in the last 15 years has done a lot of  
3 good things. A lot of things have changed with  
4 technology and opportunities, and we try to capitalize on  
5 those things.

6 The only thing I really want to say because you  
7 asked about it, heard too much about it, is on .89,  
8 Hazardous Energy for lockout/tagout. It's a huge issue  
9 for a lot of different folks. It's huge for aircraft  
10 carriers. It's important -- it doesn't involve just  
11 electrical, it involves hydraulics and steam and other  
12 things as well. But there will be other people  
13 testifying as far as the lockout/tagout hazardous energy  
14 portion as well, but I just wanted to make sure you knew  
15 it was on my radar screen as well.

16 The wording in the eye wash section is just an  
17 example of things that would make sense to me. If you're  
18 around an acid tank or a caustic tank to have a shower  
19 there, an eye wash. The way it's worded right now, you  
20 have to have an eye wash every 15 feet in the shipyard.  
21 It's just not practical, and it's not feasible.

22 Snow removal language. I'm sure the east coast  
23 folks probably have some comments about that as well as  
24 my brethren from Alaska who is in attendance. Huge  
25 challenge for the way it's worded in snow removal. I  
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1 think every yard does a great job of doing what they can  
2 do to get all the snow up. To get every flake of snow up  
3 is virtually impossible.  
4 AED's, challenges there. I think it's a great thing  
5 here in the city of Seattle, largest per capita of CPR  
6 folks in the nation. In my facility we do have AED's,  
7 and we actually have them on our tug boats as well.  
8 Challenge would be what if someone doesn't want to use  
9 it, what do you do.  
10 Toilet facilities, I think that needs to be worked  
11 out a little bit too. I know what the intent is or the  
12 way the language is. It has some work that needs to be  
13 done.  
14 Really the solution that I see is to allow our  
15 association to work with some of the other associations  
16 to get the wording right, come up with something that's  
17 doable, feasible and practical for all our employees, to  
18 get a good product that keeps all of our workers safe.  
19 That's really the goal for me personally and for the  
20 members of the Puget Sound Shipbuilders Association.  
21 That's basically all I have, Judge.  
22 JUDGE GEE: Thank you. Is there anybody in the  
23 audience who would like to ask questions?  
24 MS. SHORTALL: Yes, your Honor. We have  
25 questions. We'd like to start with Mr. Daddura.  
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1 JUDGE GEE: We have a question from the  
2 audience.  
3 MS. SHORTALL: Excuse me.  
4 JUDGE GEE: Please identify yourself, spell  
5 your name and state your affiliation.  
6 MR. SCULLY: Yes. My name is Andrew Scully,  
7 and I'm president of the Synergy Group. We're a safety,  
8 health and environment consulting group.  
9 MS. SHORTALL: Your Honor, this person has not  
10 filed, to my understanding, a notice of intention to  
11 appear here today. Therefore, discussions would not be  
12 allowed.  
13 MR. SCULLY: I can't ask a question?  
14 MS. SHORTALL: No. You have to file a notice  
15 of intention to appear.  
16 However, Your Honor, it is within your discretion if  
17 he has comments he wants to make, at the end of the day,  
18 to allow him up to 10 minutes to make any comments he  
19 wants.  
20 JUDGE GEE: Well --  
21 MR. SCULLY: Did I misunderstand you asked for  
22 questions? I just wanted to ask a question of Mr.  
23 Rainsberger.  
24 MS. SHORTALL: We have a procedure that  
25 requires that any person who wanted to participate in the  
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1 rule file a notice of intention to appear, and every  
2 person -- this was a legal document, placed in the  
3 Federal Register on OSHA's web page. Any person who was  
4 interested was able to file for either the purpose of  
5 testifying or asking questions.  
6 However, we do understand every once in a while  
7 there is someone who doesn't get the word, and for those  
8 persons if time permits at the end of the hearing, we do  
9 allow for them to have up to 10 minutes to have their  
10 say.  
11 MR. SCULLY: Okay. Well, I didn't get the  
12 notice of the proposed rulemaking, but I did find out  
13 later about it and thought I might have an input on a  
14 question.  
15 JUDGE GEE: You'll be able to do that at the  
16 end of the day.  
17 MR. SCULLY: I won't be able to because I won't  
18 be here at the end of the day, but perhaps I can submit a  
19 written comment to the panel later. Is that possible?  
20 MS. SHORTALL: At this point the participation  
21 is limited to those persons who filed a notice of  
22 intention to appear. If you have an organization that  
23 you're working through who has filed a notice, you can  
24 certainly could give your comment or question to them.  
25 JUDGE GEE: Thank you. I'm sorry about that.

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1 MS. SHORTALL: We have questions and we will  
2 start with Mr. Daddura.  
3 MR. DADDURA: Good morning, Allen.  
4 MR. RAINSBERGER: Good morning.  
5 MR. DADDURA: Just a couple of questions.  
6 You're representing an organization currently at this  
7 meeting; is that correct?  
8 MR. RAINSBERGER: I'm representing the Puget  
9 Sound Shipbuilders Association and my employer, Foss  
10 Maritime.  
11 MR. DADDURA: Puget Sound Association, how many  
12 employees do they have roughly?  
13 MR. RAINSBERGER: Roughly about 2,500.  
14 MR. DADDURA: You have one yard, one location  
15 in your company?  
16 MR. RAINSBERGER: We have two yards actually.  
17 We have a yard in Seattle and a yard in Rainier, Oregon.  
18 MR. DADDURA: How many employees in each yard?  
19 MR. RAINSBERGER: We have 105 in Seattle and 29  
20 in Oregon.  
21 MR. DADDURA: Being a safety and health  
22 professional as you are, injury rates for both of your  
23 yards, and I guess your association also, I understand.  
24 Let's talk about your yards, first in Seattle. Do you  
25 track injury rates?

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1 MR. RAINSBERGER: Absolutely.  
2 MR. DADDURA: Can you tell us what type of  
3 major injuries and number of injuries you're having  
4 currently.  
5 MR. RAINSBERGER: The major injuries we have  
6 are sprains and strains.  
7 MR. DADDURA: Okay.  
8 MR. RAINSBERGER: Our incident rate is  
9 approximately at 8.9 right now, total loss time of about  
10 3.  
11 MR. DADDURA: What about your small yard in  
12 Oregon?  
13 MR. RAINSBERGER: Last year they had no  
14 injuries at all. They had one reportable injury this  
15 year.  
16 MR. DADDURA: Association, do you have those  
17 numbers?  
18 MR. RAINSBERGER: We have done some  
19 benchmarking in the past, and historically our numbers  
20 have been very comparable to the BLS numbers.  
21 MR. DADDURA: Would you please explain a little  
22 bit more about the association, when it was started, and  
23 is it all just shipyards involved or is it other people?  
24 MR. RAINSBERGER: It's maritime activities,  
25 it's not just shipyards. We do have people from the

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1 fishing fleet. We have people from shipyard engineering  
2 firms, shipyards themselves. We actually have an  
3 environmental attorney. We have other safety  
4 professionals throughout the worker's compensation  
5 carriers with Sea Bright and Alaskan insurance, safety  
6 vendors.  
7 So it's not just shipyards. Everyone who has a  
8 maritime interest is invited to join the association.  
9 MR. DADDURA: Thank you.  
10 Let's move on to the standard now. When a ship  
11 comes in regardless of the size, how do you control the  
12 amount of hoses and lines and equipment and walkways?  
13 MR. RAINSBERGER: We use a lead management  
14 system where we use what's called Christmas trees and  
15 hangers. Christmas trees is basically a stanchion that  
16 goes up. It's has hooks that goes off the side and you  
17 elevate the leads up off the deck, have them up away from  
18 the aiseways and the walkways, as well as what we call S  
19 hooks that actually go into the overhead and have a hook  
20 that comes in an S shape where you actually put lines up  
21 with as well.  
22 Those lines, high steam lines and things you can't  
23 put up in the overhead for fear of causing more damage  
24 than it would, we actually put barriers over them so that  
25 they're not a tripping hazard.

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1 MR. DADDURA: Barriers meaning like a ramp or  
2 crossover?  
3 MR. RAINSBERGER: Correct.

4 MR. DADDURA: So you establish walkways?  
5 MR. RAINSBERGER: Yes.  
6 MR. DADDURA: What's the difference between a  
7 walkway and the work area or work surface, working  
8 surface?  
9 MR. RAINSBERGER: Oh, a working surface to me  
10 basically would be an area where the mechanic would  
11 actually be stationed for a period of time doing a  
12 designated work task, where a walkway would be an area  
13 where the thoroughfare would be going through, people  
14 pass through going from one area of the vessel to another  
15 area.  
16 MR. DADDURA: The working surface, work area,  
17 are the lines placed in these hooks in the overhead and  
18 things of that nature also?  
19 MR. RAINSBERGER: Correct.  
20 MR. DADDURA: So new lines on every deck?  
21 MR. RAINSBERGER: I wouldn't say every. The  
22 shipbuilding industry is ever changing. Every 15 minutes  
23 things change, the body positioning, parts of the  
24 components of the ship, so there is a constant need to  
25 evaluate workplace and move things again. So I wouldn't  
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1 say there is never anything lying on the deck. That  
2 wouldn't be a correct assumption, Mr. Daddura.  
3 MR. DADDURA: What about material or equipment;  
4 is that placed on the deck or is that placed in overhead  
5 also?  
6 MR. RAINSBERGER: Material depending on the  
7 size would be brought in either by crane or by handtruck  
8 or by a person actually carrying something in that was of  
9 lighter weight. The intention of the industry is to make  
10 sure the equipment gets into place as soon as possible,  
11 to get any dunnage that was left over such as cardboard  
12 or crating off the vessel expeditiously and then let them  
13 do their production work to put that system in place.  
14 MR. DADDURA: So you're saying there's never  
15 material laying on the deck in a work area?  
16 MR. RAINSBERGER: There would be for a period  
17 of time until you put the material up to where it's going  
18 to be. Not everything lays on the ship. There's a lot  
19 of things in the overhead and on the bulkhead, so it's  
20 got to be on the deck for a certain period of time until  
21 you can move it into place and put it in.  
22 MR. DADDURA: But you only bring on the  
23 material that you use for that ship, that employee?  
24 MR. RAINSBERGER: That is definitely the goal,  
25 yes.  
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1 MR. DADDURA: Is that working?  
2 MR. RAINSBERGER: It works well.  
3 MR. DADDURA: Utilities. Let me go back.  
4 Contractors, how do you control contractors bringing on  
5 their equipment, lines, hoses and things of that nature?  
6 MR. RAINSBERGER: We make sure they coordinate  
7 through our superintendents and our supervision. Then we  
8 use our crane service for a heavy lift.  
9 For the materials they bring on themselves, we have  
10 safety observations that go on on a daily basis to make  
11 sure the subcontractors are following our same  
12 procedures.  
13 MR. DADDURA: If you find a violation, what  
14 happens?  
15 MR. RAINSBERGER: We'll sit down and talk with  
16 them and explain the way the procedure is supposed to  
17 work.  
18 MR. DADDURA: Thank you.  
19 Utilities. What procedures does Foss have? In most  
20 PSSA shipyards that hook up and steam to the vessels;  
21 what procedure is there?  
22 MR. RAINSBERGER: There's temporary services  
23 that come off utilities that involve steam, water,  
24 sewage, electrical and such that is actually piped and  
25 plumbed from pier side up to the vessel.  
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1 MR. DADDURA: And your steam, it a high  
2 pressure steam?  
3 MR. RAINSBERGER: We don't use a lot of steam.  
4 There's very little use for steam in most of our shipyard  
5 applications.  
6 MR. DADDURA: When you do use steam, do you  
7 provide a relief valve and gauge?

8 MR. RAINSBERGER: Yes.  
9 MR. DADDURA: Where do you position the relief  
10 valve, next to the gauge?  
11 MR. RAINSBERGER: It's closer to the pier side  
12 than it is to the vessel.  
13 Most shipyards are unionized, and the plumbers have  
14 the jurisdiction on setting those up, so they have that  
15 expertise, the journeymen who actually set those systems  
16 up.  
17 MR. DADDURA: Is it near walkways or access?  
18 MR. RAINSBERGER: No, it would be away from the  
19 access to the vessel.  
20 MR. DADDURA: Thank you.  
21 Let's talk about work you could find in isolated  
22 spaces. I'm sure there is occasion or is there occasion  
23 where your employees are assigned tasks in work locations  
24 that are not normally with other workers involved nearby,  
25 second shift and things. How do you provide safety for  
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1 them or how do you check on them to make sure nothing has  
2 happened, they didn't slip or fall or become injured?  
3 MR. RAINSBERGER: Well, supervision has to do  
4 frequent checks on the employees, and in our operations  
5 we make sure it's at least hourly.  
6 The employees also have means such as whistles,  
7 two-way radios, other ways to alert someone that it's a  
8 situation that takes place on the back ships.  
9 We have shipyard competent people who actually roam  
10 the jobs to make sure that areas remain safe. There is a  
11 number of means to address that situation.  
12 MR. DADDURA: The maintenance people for your  
13 shipyards, they work all shifts, correct?  
14 MR. RAINSBERGER: We probably just work days  
15 and swing shift.  
16 MR. DADDURA: Do they have radio  
17 communications?  
18 MR. RAINSBERGER: Yes.  
19 MR. DADDURA: If they are down there by  
20 themselves, working in the pump rooms and things of that  
21 nature?  
22 MR. RAINSBERGER: They do have radios, yes.  
23 MR. DADDURA: Let's move on to lighting. Does  
24 your yard measure the lighting for employees to walk and  
25 work? I'm speaking of lumens, foot-candles, the old  
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1 terminology is foot-candles.  
2 MR. RAINSBERGER: There's not a formalized  
3 process on measurement, no.  
4 MR. DADDURA: Have you ever done a check on the  
5 lighting?  
6 MR. RAINSBERGER: Years ago, I did, yes.  
7 MR. DADDURA: Where was that at?  
8 MR. RAINSBERGER: It was at Todd Shipyards.  
9 MR. DADDURA: Was it the parking lot, was it  
10 the shipyard, the pier?  
11 MR. RAINSBERGER: It was actually the buildings  
12 and the facility. And we did some on one of the native  
13 vessels that was in for repair at the time.  
14 MR. DADDURA: Do you find that the vessel  
15 lighting is adequate or inadequate where you have to  
16 supplement temporary lights to the existing lighting on  
17 the vessel?  
18 MR. RAINSBERGER: In general the ship's  
19 lighting is sufficient. The exception may be if you are  
20 down in a confined space where you would have to have  
21 temporary lighting to supplement anything else.  
22 MR. DADDURA: Do you measure that lighting?  
23 MR. RAINSBERGER: Not in lumens or anything.  
24 The measurement is basically a standard for how the  
25 electricians set up their lighting. No. 1, it would have  
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1 to be explosion proof if it's in a confined space; No. 2,  
2 there is a number of lights and stringers that actually  
3 go on. They tend to actually light those up even greater  
4 than they were if you were inside the ship.  
5 MR. DADDURA: What about the employee working  
6 in the corner or on a flag somewhere where lighting is  
7 not very adequate, and he has to perform some welding or  
8 fitting or burning or something like that. How do you  
9 supplement the lighting for that?  
10 MR. RAINSBERGER: Some people use a strap-on  
11 light on their hard hat, flashlights. They'll bring the

12 screen closer to their work site actually, essentially  
13 improves ventilation as well.  
14 MR. DADDURA: Do you have a problem with power  
15 going out and lighting going out and people are trapped  
16 into the tanks and spaces?  
17 MR. RAINSBERGER: It's very rare.  
18 MR. DADDURA: Is there a requirement for your  
19 employees to carry a handheld flashlight with them?  
20 MR. RAINSBERGER: Yes.  
21 MR. DADDURA: At all times?  
22 MR. RAINSBERGER: Yes.  
23 MR. DADDURA: Sanitation. Speaking for your  
24 shipyard -- I don't want you to speak for all the  
25 association -- do you have enough sewer fixed toilets to

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1 handle your population? I mean, is your population  
2 stable, work population stable?  
3 MR. RAINSBERGER: Fairly stable, yes.  
4 MR. DADDURA: What it's, 100?  
5 MR. RAINSBERGER: We have a 105. We'll dip  
6 down to 95 or ramp up to 115, so it's fairly consistent.  
7 MR. DADDURA: Do you use portable toilets?  
8 MR. RAINSBERGER: There are some available out  
9 on the piers that are away from the main facility where  
10 the majority of the toilets are.  
11 MR. DADDURA: Are you allowed to use the ships  
12 toilets at any time?  
13 MR. RAINSBERGER: Depending on the customer. A  
14 lot of times you can use the system if everything is  
15 plumbed up. If the plumbing is being worked on or  
16 something or is tagged out, then you're not allowed to  
17 use the facility. So it just depends on the nature of  
18 the repairs being taken care of.  
19 MR. DADDURA: When you use the term "plumbed  
20 up," do you mean secured?  
21 MR. RAINSBERGER: Yes.  
22 MR. DADDURA: Thank you.  
23 Do you only do work in your shipyard, your  
24 geographical location of your shipyard? Do you ever do  
25 work outside of the shipyard for customers?

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1 MR. RAINSBERGER: At Foss Maritime we will do  
2 very rare occasions outside of our facility. But other  
3 shipyards probably do work outside of their facilities,  
4 yes.  
5 MR. DADDURA: Do you know about the facilities  
6 there; I mean, if they're downtown Seattle at a pier, are  
7 there facilities available on that pier for the  
8 employees?  
9 MR. RAINSBERGER: The ferry dock right in  
10 Coleman is an example of when they do work on the ferry,  
11 there is toilet facilities right there and everything  
12 they want is right there.  
13 MR. DADDURA: I'm assuming there's hand washing  
14 facilities there also?  
15 MR. RAINSBERGER: Sure.  
16 MR. DADDURA: Have you ever used hand washing  
17 facilities for portable toilets?  
18 MR. RAINSBERGER: Yes.  
19 MR. DADDURA: Lockout/tagout, energy control.  
20 How many shops do you have in your shipyard?  
21 MR. RAINSBERGER: We actually have 11 different  
22 unions that comprise I believe 12 shops.  
23 MR. DADDURA: Physical shops, buildings?  
24 MR. RAINSBERGER: Well, it's two large  
25 buildings and six buildings in each shop, I believe.

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1 MR. DADDURA: What form of lock out/tag out do  
2 you use for maintenance of those buildings or your cranes  
3 or your mobile equipment?  
4 MR. RAINSBERGER: They use locks, tags, hasps,  
5 clasps, the energized systems, take away the wires and  
6 fuses. Everyone has been trained. There are effective  
7 employees, those who are actually authorized to do  
8 lockout/tag out. We don't have any problems with that.  
9 MR. DADDURA: Is all your equipment lockable?  
10 MR. RAINSBERGER: No.  
11 MR. DADDURA: Is there plans to replace that  
12 equipment, the unlockable equipment?  
13 MR. RAINSBERGER: Probably not in my working  
14 career.  
15 MR. DADDURA: Okay, that's an honest answer.



16           Interesting you said about pulling a lead or  
17           disconnecting or pulling a fuse. Is that done routinely  
18           in the shipyard maintenance portion of it?  
19           MR. RAINSBERGER: A large percent of the time  
20           that would be one of the methods used or supplemental  
21           method as well, just to eliminate the hazard altogether  
22           so it's not an issue for anyone else.  
23           MR. DADDURA: How about your crane maintenance.  
24           How do you ensure that the mechanic working on the crane  
25           is shut down, not operable?

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1           MR. RAINSBERGER: Pretty much going through the  
2           same process, make sure they bleed out all the energy  
3           after they've done the lockout/tagout procedures. I  
4           think Richard McKenzie, who I believe speaks after me, is  
5           actually a crane expert with maintenance and has  
6           performed the last ten or 12 of his 13 years of his  
7           career doing crane maintenance. He might be the best  
8           person to answer that question.

9           MR. DADDURA: Okay. Let's move on board  
10          vessels. Do you have routine customers who bring vessels  
11          back each time that you're familiar with?

12          MR. RAINSBERGER: Yes, and in my situation we  
13          work on a lot of our own fleet.

14          MR. DADDURA: What engine control procedure do  
15          you have working on vessels?

16          MR. RAINSBERGER: Actually, each one of our  
17          vessels has a kit, a lockout/tagout kit that has all the  
18          different locks, tags, different types of hasps, other  
19          types of barriers for piping systems and such particular  
20          to that vessel as well as a log. Everyone has been  
21          through a training protocol that's been done locally  
22          within the industries and received training.

23          MR. DADDURA: What type of vessels do you  
24          normally work on?

25          MR. RAINSBERGER: Tug boats, barges and small

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1          fishing boats.

2          MR. DADDURA: Any big processors or anything  
3          like that?

4          MR. RAINSBERGER: No.

5          MR. DADDURA: Do any of these vessels have  
6          emergency generators on them?

7          MR. RAINSBERGER: I believe some vessels do  
8          have emergency generators, yes.

9          MR. DADDURA: Do you secure that system when a  
10          ship comes in?

11          MR. RAINSBERGER: I'm not really familiar with  
12          what the requirements are for that.

13          MR. DADDURA: When it gets down to the  
14          hydraulic system and the valves, what procedures do you  
15          use, just the lockbox that we saw yesterday with the  
16          plastic cap on top of the valve handle that locks?

17          MR. RAINSBERGER: I've seen chains with  
18          different locks for securing. I've seen people take the  
19          handles off so you can't turn the handles, a bunch of  
20          different means to positively secure the system.

21          I think the most important that you can do is bleed  
22          the system out to make sure there is no energy left.

23          MR. DADDURA: Is there a requirement for your  
24          employees, your maintenance people to test before they  
25          actually put their hands into a situation where hazardous

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1          energy could be?

2          MR. RAINSBERGER: Absolutely.

3          MR. DADDURA: Is that done daily? I mean, some  
4          work is continued on from day to day or week to week. Is  
5          there a requirement for any tests to make sure that the  
6          system is still secure?

7          MR. RAINSBERGER: Yes.

8          MR. DADDURA: Is that in writing?

9          MR. RAINSBERGER: It's in our policy, yes.

10          MR. DADDURA: Can you provide that program of  
11          your policy to this hearing?

12          MR. RAINSBERGER: I could do that at a later  
13          date, yes.

14          MR. DADDURA: I appreciate it. Thank you.

15          MS. SHORTALL: Mr. Bolon, do you have any  
16          questions?

17          MR. BOLON: Just a few.

18          It sounds like your yards are primarily or  
19          exclusively engaged in the ship repair rather than in

20 shipbuilding?

21 MR. RAINSBERGER: The Seattle yard is all  
22 repair, and the Rainier yard is all new construction.

23 MR. BOLON: Just to follow up on a point that  
24 Joe raised, the total is a comprehensive program which  
25 requires that it be written and you've mentioned training  
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1 already. Does Foss have a comprehensive program that's  
2 written as well as the various types of provisions that's  
3 in the proposal?

4 MR. RAINSBERGER: Yes.

5 MR. BOLON: That's all I've got.

6 MS. SHORTALL: Ms. Wangdahl has questions next.

7 MS. WANGDAHL: I just have a few questions.

8 I believe you said you have AED's at your facility?  
9 MR. RAINSBERGER: We have them at our shipyards  
10 and have them on our tugboats.

11 MS. WANGDAHL: Do you know if Washington has a  
12 Good Samaritan law?

13 MR. RAINSBERGER: I believe Washington does,  
14 yes.

15 MS. WANGDAHL: But you don't think it should be  
16 a requirement; you think it should be more of a guidance  
17 or --

18 MR. RAINSBERGER: Are you going back to my  
19 comments earlier in my opening?

20 MS. WANGDAHL: Yes.

21 MR. RAINSBERGER: I think there is situations,  
22 not just in the workplace, where people are uncomfortable  
23 giving CPR even though they've been trained. And there  
24 are situations where somebody doesn't feel comfortable  
25 using an AED just because they've been through a training  
0030

1 class. Do they have an obligation to use that? I think  
2 the answer is probably no.

3 MS. WANGDAHL: How long have you had them in  
4 your shipyards?

5 MR. RAINSBERGER: Probably going back about six  
6 years.

7 MS. WANGDAHL: And then one more comment.  
8 Going back to your testimony, you talked about that the  
9 sanitation section needs work. Can you elaborate on  
10 that? What portion of the sanitation needs work?

11 MR. RAINSBERGER: I only read it I think twice  
12 over the last four months or whatever, so I might not  
13 remember all of it.

14 But it just seems to be provisions where you would  
15 actually -- the portable sanicans are acceptable for  
16 certain periods where if someone needed to actually use a  
17 toilet facility on a short-term basis or on a vast basis  
18 versus walking a little bit further to go to the main  
19 plumbed area where there is actually a series of toilets.  
20 And depending on the person who read it and depending on  
21 the wording in there and the enforcement officer that  
22 shows up to enforce how that's written, I think it's not  
23 clear, it's unclear.

24 Does that mean that we have to start plumbing every  
25 pier we have with toilets and we'll just have a yard of  
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1 toilets? It's very unclear.

2 And I've seen inspectors come through and they're  
3 very reasonable and could read something and say, I know  
4 what the intent is, and I've seen a compliance officer  
5 come through that would read it totally the opposite.

6 MS. WANGDAHL: Do you agree with the ratio, the  
7 amount of toilets per employees; is that working for you?

8 MR. RAINSBERGER: You have to refresh my memory  
9 of the numbers.

10 MS. WANGDAHL: One to 15.

11 MR. RAINSBERGER: That's probably a sufficient  
12 number, yes.

13 MS. WANGDAHL: Thank you.

14 MS. SHORTALL: Ms. Brinkerhoff has questions  
15 next.

16 MS. BRINKERHOFF: Do you have any idea how many  
17 of the small shipyards in the Seattle area attend your  
18 safety seminars, like what percentage?

19 MR. RAINSBERGER: Ninety-five percent.

20 MS. BRINKERHOFF: You also said you've got  
21 people from the fishing fleet in your organization?

22 MR. RAINSBERGER: Correct.

23 MS. BRINKERHOFF: Do they attend those safety

24 seminars also?

25 MR. RAINSBERGER: Absolutely.

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1 MS. BRINKERHOFF: Because I think someone  
2 mentioned yesterday that there were a lot of people who  
3 were not at this meeting, and our concern would be do  
4 they know about this rulemaking. But it sounds like they  
5 hear about safety issues from your organization and you  
6 reach out to about how many, do you think, of the small  
7 fishing owners?

8 MR. RAINSBERGER: Well, we have Trident and  
9 American Seafood are members of our association. They  
10 belong to other associations.

11 But I couldn't estimate the number outside of the  
12 association.

13 MS. BRINKERHOFF: Okay. And my last question  
14 is about audit. Do you perform audits or inspections of  
15 your hazardous energy control systems at your shipyard?

16 MR. RAINSBERGER: Yes, we do.

17 MS. BRINKERHOFF: About how often?

18 MR. RAINSBERGER: At least annually. We try to  
19 do it twice a year.

20 MS. BRINKERHOFF: Do you have any idea how  
21 many -- what the members of your organization are doing  
22 in that regard?

23 MR. RAINSBERGER: Could you be a little more  
24 clear?

25 MS. BRINKERHOFF: I mean, is it kind of

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1 standard industry procedure to do audits or inspections  
2 on an annual basis or semi-annual?

3 MR. RAINSBERGER: It's something that I do  
4 twice a year walking our facility. For my walks, I would  
5 generate other questions.

6 But the electricians and the pipefitters who are  
7 probably the ones who are involved in lockout/tagout are  
8 the ones I go to and let them audit the programs.

9 MS. BRINKERHOFF: Does that seem to be  
10 something that other shipyards do, do you know?

11 MR. RAINSBERGER: I'm not sure what each  
12 company does.

13 MS. SHORTALL: Thank you, Mr. Rainsberger. I  
14 appreciate you being here today. I have a few questions  
15 as well.

16 I was wondering if you could tell us, you say you're  
17 here representing the small to mid-sized shipyards.  
18 Could you tell me what characterizes small to mid. Is it  
19 based on sales or income or number of employees or size  
20 of the shipyard?

21 MR. RAINSBERGER: It's more on the size of the  
22 vessel that they actually work on and the number of  
23 employees in the facilities.

24 MS. SHORTALL: So could you tell me for small  
25 to mid what size vessels do you work on?

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1 MR. RAINSBERGER: Small to mid could be  
2 anywhere from 30 feet up to 58 feet, mid could be from 58  
3 up to 250.

4 MS. SHORTALL: What would you say for those  
5 PSSA members that are the small to mid shipyard their  
6 average number of employees is?

7 MR. RAINSBERGER: Anywhere from 10 to 50 would  
8 be small, and anywhere from 50 to say 200 would be  
9 considered a mid-sized.

10 MS. SHORTALL: And what about the physical size  
11 of small to mid shipyards and then mid to large?

12 MR. RAINSBERGER: Some of the smaller yards  
13 might be an acre or two. Some of the medium-sized would  
14 be anywhere from three acres up to 20 acres.

15 MS. SHORTALL: Three to 20, okay.

16 MR. RAINSBERGER: I do want to add all the  
17 yards that belong to our association are private  
18 shipyards. There are no public shipyards, so we're not  
19 subsidized by the Navy or anything.

20 MS. SHORTALL: I was just trying to figure out  
21 how you classify --

22 MR. RAINSBERGER: I understand.

23 MS. SHORTALL: -- what went into that. I would  
24 have thought it would have been size or number of  
25 employees. It's very interesting to find out that for

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1 you you classify the size of the vessel you work on. I

2 thought that was very interesting.

3 MR. RAINSBERGER: It's one of the factors as  
4 well as the number of employees.

5 MS. SHORTALL: Are there any substances in  
6 using shipyards that if an employee were splashed with  
7 them they could cause serious and immediate damage to the  
8 eyes or skin other than corrosives?

9 MR. RAINSBERGER: Well, corrosives, acids and  
10 caustics would be the main concern. When you talk about  
11 the type of damage, did you use the word severe damage?

12 MS. SHORTALL: Acute, immediate and serious.  
13 So we're talking about something that, you know, it would  
14 cause, if you didn't get something right now you could  
15 have serious damage occurring.

16 MR. RAINSBERGER: I've had paint splashed in my  
17 eye, and I flushed it out with water and was fine the  
18 next day, so I wouldn't call that serious. So paint  
19 would not fall in that category.

20 I've never squirted 409 in my eye, but there is 409  
21 in the shipyard.

22 MS. SHORTALL: I just wanted to know if there  
23 were ones that you consider to be other than corrosives  
24 the kinds of substances that if your employees were  
25 splashed with them while they're on the job and they

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1 didn't have something to immediately wash off, it could  
2 cause serious and immediate damage to them.

3 MR. RAINSBERGER: I'm not thinking of anything  
4 off the top of my head, no.

5 MS. SHORTALL: If OSHA were to rewrite in its  
6 final rule that instead of saying for quick drench  
7 facilities toxic or hazardous substances, instead say  
8 employers each provide these facilities, if there is a  
9 potential that an employee could be splashed with a  
10 substance that could cause immediate and serious damage,  
11 would that take care of a lot of the concern that you  
12 have about that particular provision?

13 MR. RAINSBERGER: That would sure assist versus  
14 the way it's written right now. I think you can clarify  
15 even more by saying acids and caustics would make it  
16 pretty clear, it's cut and dry. When you use words like  
17 toxic or hazardous or severe, I mean, there is different  
18 interpretations of the definition depending on who you're  
19 talking to.

20 MS. SHORTALL: Do you consider an acid to be a  
21 corrosive?

22 MR. RAINSBERGER: An acid is a corrosive, yes.

23 MS. SHORTALL: You were here yesterday.

24 MR. RAINSBERGER: I was in the morning and had  
25 to go to work.

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1 MS. SHORTALL: A number of people who were here  
2 yesterday in addition to Amy Duz indicated that they have  
3 preference for locks, would like to see that happen for  
4 the lockout/tagout programs for shipyards and vessels.

5 MR. RAINSBERGER: Sure.

6 MS. SHORTALL: Do you agree with that?

7 MR. RAINSBERGER: Whenever it's capable of  
8 being locked up, that's the preferred method, yes.

9 MS. SHORTALL: In his testimony afternoon, Mr.  
10 Davis indicated that through a course of just routine  
11 equipment replacement over let's say 10 years, that his  
12 company could make some big inroads in moving from  
13 nonlockable equipment to lockable equipment.

14 How long would it take your company through normal  
15 equipment replacement to also have significant inroads  
16 and change into all lockable equipment or achieve an all  
17 lockable equipment status?

18 MR. RAINSBERGER: To be 100 percent may take a  
19 little bit longer. You know, sometimes it's like the  
20 cart before the horse, you have to educate the  
21 manufacturers of panels today, say from now on when you  
22 make these panels, make sure they're lockable. As we get  
23 this panels five years down the road, seven to 10 years,  
24 then it's there.

25 There is still a lot of manufacturers who make brand

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1 new things that don't accept a lock on their system, so  
2 it's a lockout/tagout issue. That's the challenge, I  
3 think, is the manufacturers aren't there yet.

4 MS. SHORTALL: So, for example, would a 10-year  
5 lead time be enough to get the word out to manufacturers

6 and get manufacturers on board so as shipyards go through  
7 their routine replacement they could move to lockable  
8 equipment?

9 MR. RAINSBERGER: That would sure be great.

10 MS. SHORTALL: I know that Mr. Daddura has some  
11 further questions he would like to ask you. I would just  
12 like to say on behalf of OSHA's Solicitor's Office, I  
13 would like to thank you for coming here today and for all  
14 the work that you and PSSA have done to be involved in  
15 this rulemaking.

16 MR. RAINSBERGER: I think you can tell we have  
17 a lot of passion for this and we want to make sure our  
18 employees are well taken care of.

19 MS. SHORTALL: It's obvious that both the  
20 organization and you personally have a great passion for  
21 it. It's easy to see.

22 MR. RAINSBERGER: We do.

23 MR. DADDURA: Just a couple of more follow-up  
24 questions.

25 A question about quick drenching. Is there ever a

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1 time when an employee who could be drenched in a paint  
2 thinner or highly polymeric materials that would need a  
3 quick drench shower operation?

4 MR. RAINSBERGER: If a hose exploded on an  
5 airless sprayer that was full of thinner, that situation  
6 could arise, yes.

7 MR. DADDURA: Jumping to lockout/tagout. How  
8 do you handle group lockouts currently in your yard and  
9 on your vessels?

10 MR. RAINSBERGER: Well, going back to removing  
11 the hazard completely would eliminate the group lockout  
12 in a lot of occasions.

13 MR. DADDURA: Let's clarify, what do you mean  
14 by "removing the hazard completely?"

15 MR. RAINSBERGER: Such as taking the wires away  
16 and taking the fuse out so there isn't a hazard to start  
17 with. So if electrical folks and maintenance are working  
18 on the system, there would be no need for a rigger who is  
19 working on the opposite side of the area to be affected  
20 in any way, because there's no way they could energize it  
21 even if they tried to. There isn't a hazard there.  
22 That's the best way.

23 Now, to put a group hasp on there with multiple ways  
24 to lock it off is one way to do it. But I'm not sure if  
25 the rigger who is actually working on a task 30 feet away

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1 would need to have a lock that would be part of the group  
2 lockout/tagout. If you follow where I was going with  
3 that.

4 MR. DADDURA: Completely. But you have a union  
5 yard, correct?

6 MR. RAINSBERGER: Yes.

7 MR. DADDURA: And you have lines.

8 MR. RAINSBERGER: Yes.

9 MR. DADDURA: Let's take for example a fire  
10 pump. You disconnect the cable and the wire from the  
11 fire pump and then you have the riggers come in and  
12 remove it, right, and then sheetmetal come back and check  
13 something. When you have multiple crafts like that or  
14 welding or whatever the case might be, it could be six or  
15 seven crafts involved, multiple employees on each craft,  
16 do you feel a lockbox is adequate, should be used once  
17 the hazard has been removed completely to where that pump  
18 is not going to turn, is not going to energize?

19 MR. RAINSBERGER: If they could eliminate that  
20 hazard from being energized in the first place, that  
21 means away from the turn on and off switch to that pump  
22 going back somewhere in the system to do that, then I  
23 would feel comfortable that a group lock wouldn't be  
24 necessary.

25 MR. DADDURA: How would the electrician know

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1 when they were done?

2 MR. RAINSBERGER: They would be the initial one  
3 to tag it out and they would be the initial one to put it  
4 back on line.

5 MR. DADDURA: Suppose one day, let's say I'm  
6 going to go down and hook that pump back up, and you've  
7 still got people working on that system. How do you  
8 prevent that?

9 MR. RAINSBERGER: Through communication and

10 signage just to make sure people understand, job safety  
11 analysis.

12 MR. DADDURA: I'm saying is it the employee's  
13 responsibility to get in and assign themselves work, him  
14 or her?

15 MR. RAINSBERGER: They're assigned work by  
16 their supervisors.

17 MR. DADDURA: So the supervisors control their  
18 assignments basically?

19 MR. RAINSBERGER: Absolutely.

20 MR. DADDURA: So they can't just go, let me go  
21 hook this pump up or this system up before I leave  
22 here --

23 MR. RAINSBERGER: Right.

24 MR. DADDURA: -- without checking with anybody.

25 MR. RAINSBERGER: That's correct.

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1 MR. DADDURA: Same with the contractors?

2 MR. RAINSBERGER: Absolutely.

3 MR. DADDURA: They have to go through the  
4 supervisor, superintendent, whatever to --

5 MR. RAINSBERGER: Subcontractors go through our  
6 supervision to do the lockout/tagout measures.

7 MR. DADDURA: Okay, that's all I have. Thank  
8 you.

9 MS. SHORTALL: Thank you.

10 JUDGE GEE: Thank you, Mr. Rainsberger.

11 Our witness next is Andrew Posewitz and Phil  
12 McKenzie.

13 MR. MCKENZIE: Andrew is not going to be able  
14 to be here today, and he sent an e-mail to that effect.  
15 I think the person told me some additional comments will  
16 be forwarded that related to this.

17 JUDGE GEE: Will you please state your name and  
18 your affiliation.

19 MR. MCKENZIE: Phil McKenzie and I'm with Todd  
20 Pacific Shipyards.

21 JUDGE GEE: Thank you.

22 MR. MCKENZIE: Thank you for your time today  
23 and the great distance you've traveled to be present. My  
24 name is Phil McKenzie, and I'm the safety manager for  
25 Todd Pacific Shipyards, and I will be speaking on behalf

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1 of Todd today because Andrew is not able to be here  
2 today.

3 Todd Shipyards has been in the industry since 1960.  
4 As a member of the maritime industry, we've actively  
5 participated in the many challenges that have occurred  
6 since then. We currently employ as few as 300, which is  
7 about where we're at right now, and at times over 1,000  
8 employees. We normally utilize between nine and 12  
9 subcontractors, but in really high periods that number  
10 could be 20 to 30.

11 We recognize and appreciate OSHA's commitment to  
12 safety as well as your expertise in the formulation of  
13 the specific language used in regulations, but we also  
14 recognize that as members of the maritime industry we are  
15 the experts in the day-to-day functions and challenges  
16 that are present in our work. Many of our challenges we  
17 face are strictly unique to our industry. Using the  
18 Bureau of Labor Statistics data, we have a demonstrated  
19 track record of our commitment to safety.

20 From 1996 to 2006, the period of time that reflected  
21 no significant -- I won't say none -- but no significant  
22 regulatory changes by OSHA, our industry's reportable  
23 injury rate shows a steady decline from 27.4 to 10.7.  
24 Our efforts are not just a product of compliance. We  
25 have a vested interest to self-regulate.

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1 In a time of watchful spending, our industry is very  
2 competitive. The high costs associated with worker  
3 injuries is more than just insurance and medical  
4 payments, it's also the loss of friends, coworkers, years  
5 of talent, morale and productivity. We have and we will  
6 continue to embrace new ideas and technologies for our  
7 workers' safety.

8 In fact, several years ago when AED's first came  
9 out, and I wasn't the safety manager at the time, but  
10 when they first came out we had an employee that an AED  
11 was utilized on. Not only is that employee alive, but  
12 he's still an active member of our workforce today. We  
13 recognize and appreciate those technologies, and we look

14 forward to expanding those.

15 With that said, though, the exclusion of our  
16 expertise in the formulation of the proposed new  
17 regulations has resulted in what we believe to be no  
18 meaningful purpose towards that advance of safety. Many  
19 elements of the proposed rule will be spoken at in length  
20 by my colleagues and with greater detail than I could  
21 ever provide. I'm fairly new as a safety manager.

22 But in addition to that, I would like OSHA to note  
23 my support of the written comments of PSSA, and I would  
24 hope that and strongly encourage that once again, as it's  
25 happened before, the maritime industry would work with

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1 OSHA in a collaborative effort to bring about the  
2 formulation of regulations that will not just be  
3 effective in reaching our shared goal of increased worker  
4 safety but also be cost effective as well. The cost  
5 effective in this competitive environment is very  
6 important for all of us.

7 JUDGE GEE: Is there anybody in the audience  
8 who has questions for Mr. McKenzie?

9 The OSHA panel.

10 MS. SHORTALL: We'll start with Ms. Wangdahl.

11 MS. WANGDAHL: Good morning, Mr. McKenzie.

12 MR. MCKENZIE: Good morning.

13 MS. WANGDAHL: You stated that you have AED's  
14 at Todd right now?

15 MR. MCKENZIE: We do.

16 MS. WANGDAHL: Can you tell me how many you  
17 have, where they're located?

18 MR. MCKENZIE: We currently have two. We have  
19 one that is in the -- we have an emergency van that is  
20 loaded with additional equipment along with the AED, and  
21 then we have one in our medical dispenser.

22 MS. WANGDAHL: The van, is that what you're  
23 using right now for your first aid provisions?

24 MR. MCKENZIE: Yes.

25 MS. WANGDAHL: Who operates the van?

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1 MR. MCKENZIE: The fire safety officers and the  
2 medical or the clinic staff.

3 MS. WANGDAHL: What's the physical size of  
4 Todd? It can be a rough estimate.

5 MR. MCKENZIE: I believe it's like 40 acres.  
6 Al is out there, and he can verify that.

7 MS. WANGDAHL: Are you operating 24 hours?

8 MR. MCKENZIE: Yes. Well, what do you mean?

9 We are capable of operating 24 hours a day, and we have  
10 security personnel and fire safety personnel there 24  
11 hours a day.

12 MS. WANGDAHL: But you don't necessarily have  
13 employees there 24 hours all the time?

14 MR. MCKENZIE: Not all the time.

15 MS. WANGDAHL: Just as work is needed?

16 MR. MCKENZIE: We just have as work is  
17 required. We normally run a day shift Monday through  
18 Friday and swing shift Monday through Friday, and as  
19 needed we may work a day or swing shift on Saturday or  
20 Sunday, holidays. We do have provisions in the labor  
21 agreement for a graveyard shift as well.

22 MS. WANGDAHL: Is your fire safety officer  
23 there during all those shifts as well?

24 MR. MCKENZIE: Yes.

25 MS. WANGDAHL: So there's more than one;

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1 obviously you have more than one?

2 MR. MCKENZIE: There is at least one security  
3 and a minimum of one fire safety officer.

4 MS. WANGDAHL: Can you explain what would  
5 happen if there is an accident. What's the method of  
6 communication and how long would it take the van to get  
7 to the employee?

8 MR. MCKENZIE: That's a really good question.  
9 The method of communication, we have radios, we have  
10 telephones. The fire safety officer also has a dedicated  
11 cell phone, the on-duty cell phone.

12 We also have a dedicated ring line that is in the  
13 medical clinic, in the safety office, in the  
14 transportation office, and also at the main gate. If any  
15 one of those phones is picked up, all phones will ring,  
16 everybody will get on the line and that's an additional  
17 method of communication.

18 MS. WANGDAHL: How long would it take the van  
19 to get to the employee?  
20 MR. MCKENZIE: Anywhere in the yard is just a  
21 few minutes.  
22 On the vessel is another story. On the vessel or if  
23 it were an employee that was working inside of dry dock  
24 doing maintenance, that would be difficult for me to give  
25 you a specific answer.

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1 MS. WANGDAHL: Is the fire safety officer CPR  
2 and first aid trained?  
3 MR. MCKENZIE: Yes. In fact, currently of the  
4 staff that I have, all but one of them has EMT  
5 experience.  
6 MS. WANGDAHL: Is there anybody else within the  
7 yard that also has these certifications?  
8 MR. MCKENZIE: Yes. Many of the supervisors  
9 have first aid CPR training that we go through, as well  
10 as we have a medical clinic that is staffed on day shift  
11 and swing shift during the normal Monday through Friday  
12 with medical technicians that have advanced medical  
13 skills.  
14 MS. WANGDAHL: So for any type of accident, you  
15 would rely solely on your in-house fire safety officer or  
16 are there instances when you would call 911?  
17 MR. MCKENZIE: Oh, absolutely there is  
18 instances when we would call 911. As good as our staff  
19 is, we consider them the first line of defense and only  
20 an immediate beginning of the process, and a 911 call for  
21 that specialized care.  
22 MS. WANGDAHL: What's their response time?  
23 MR. MCKENZIE: They are quick. Station 36 is  
24 1.75 miles from our facility, and Station 36 is the  
25 maritime experts for marine recovery rescue, and if they

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1 needed additional support the other stations are not much  
2 further.  
3 MS. WANGDAHL: Do you have first aid kits  
4 throughout the yard?  
5 MR. MCKENZIE: We, we do.  
6 MS. WANGDAHL: So you allow employees, if they  
7 need a Band-Aid or some supplies from the first aid kit,  
8 they can go there whenever they need?  
9 MR. MCKENZIE: Yes, we do. Our injury program  
10 requires that any injuries more than a Band-Aid, the  
11 employee, the affected employee and his supervisor must  
12 both come to the medical facility and fill out our  
13 accident reports. The medical officer determines what  
14 the classification is, what the necessary treatment is  
15 and if we need any additional support at that time.  
16 But yes, we do have the first aid kits out there,  
17 and yes, they can put a Band-Aid on.  
18 MS. WANGDAHL: Let's shift gears a little bit  
19 and talk about working in confined and isolated spaces.  
20 As you know, this is a current requirement, so when we  
21 say isolated space, what does that mean to you?  
22 MR. MCKENZIE: Isolated?  
23 MS. WANGDAHL: Working in an isolated space.  
24 MR. MCKENZIE: Confined space? Confined space  
25 or an isolated space?

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1 MS. WANGDAHL: Isolated space.  
2 MR. MCKENZIE: You got me, you got me. I'm not  
3 a -- confined space, as I'm sure you're aware of, we deal  
4 with on a daily basis. But I'm not so sure I understand  
5 what an isolated space is.  
6 MS. WANGDAHL: Do you think we need a  
7 definition for this in the final rule?  
8 MR. MCKENZIE: It sounds good to me.  
9 MS. WANGDAHL: How do you check on your  
10 employees when they're working in confined spaces?  
11 MR. MCKENZIE: In confined spaces?  
12 MS. WANGDAHL: Yes.  
13 MR. MCKENZIE: The employees are -- the  
14 immediate supervisors for those employees are directly  
15 responsible for those employees and make regular checks.  
16 They are supposed to check the workspace before the work  
17 assignment is given to ensure that they have the tools  
18 that they need, that the space is adequate for the work  
19 that is being performed and the proper certifications  
20 have been completed for the space.  
21 In addition to that, the fire safety officers are



22 the persons that take care of those certifications for  
23 the confined spaces. And in addition to doing that, they  
24 also make regular checks during their shift of all the  
25 vessels in the yard and all areas where work is going on

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1 to ensure that safety is being followed.

2 MS. WANGDAHL: Do you have an end-of-shift  
3 muster or end-of-shift check?

4 MR. MCKENZIE: The supervisors take care of the  
5 employees time, and they assign a task and they are  
6 required to check at the end of the day to ensure that  
7 the people are there and they can't enter the time if  
8 they're not.

9 MS. WANGDAHL: Do you have any sort of  
10 procedure if somebody doesn't show up at the end of a  
11 shift?

12 MR. MCKENZIE: I'm sorry?

13 MS. WANGDAHL: If someone doesn't show --

14 MR. MCKENZIE: At the end of the shift?

15 MS. WANGDAHL: Yes.

16 MR. MCKENZIE: The supervisor will make the  
17 notifications to his supervisor and will go and look and  
18 find out where they are.

19 MS. WANGDAHL: Let's talk about lockout/tagout  
20 again. Can you talk about your procedures that you have  
21 or your program that you have.

22 MR. MCKENZIE: The lockout/tagout program that  
23 we have is probably very similar to what you just heard  
24 from Al Rainsberger, since a lot of that was set up by  
25 him as my predecessor.

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1 The lockout/tagout program for us because of the  
2 size of our facility, we have a maintenance program for  
3 the facility side, which is strictly for the facility  
4 side. It parallels the same requirements as the  
5 production side except that we have a designated  
6 lockout/tagout coordinator, permanent lockout/tagout  
7 coordinator, and we have a book that's maintained at the  
8 facilities office.

9 Any tag that is put on by an authorized employee  
10 that is going to be there for anything, anymore than an  
11 eight-hour shift or an eight-hour period must be logged  
12 in the book. And nobody can remove a tag except that  
13 authorized employee or the coordinator. Sorry, had a  
14 little blank spot.

15 MS. WANGDAHL: I have them all the time.

16 What is your biggest challenge with the proposed  
17 rule or what do you perceive is going to be your biggest  
18 challenge?

19 MR. MCKENZIE: Well, I think Al addressed it  
20 quite well. We have our shipyard, as I mentioned, is a  
21 very, very old shipyard, and a lot of our systems could  
22 be locked out in the manner that have been spoken to or  
23 addressed.

24 The replacement of those, I'm sure even as young as  
25 I am, they probably won't all be replaced before I'm

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1 gone.

2 And, of course, there is others challenges as well.  
3 The 440 equipment is ground fault. There is not very  
4 much equipment out there for that. The manufacturers, as  
5 you suggested, extending the lead time I think is  
6 probably a very wise move to give manufacturers time to  
7 make sure those products are available for us.

8 MS. WANGDAHL: Thank you very much.

9 MS. SHORTALL: Mr. Bolon will ask questions  
10 now.

11 MR. BOLON: How do you transport people around  
12 your shipyard?

13 MR. MCKENZIE: I'm sorry?

14 MR. BOLON: How do your employees get around  
15 your shipyard? It's fairly big.

16 MR. MCKENZIE: We walk.

17 MR. BOLON: Do you use forklifts at all?

18 MR. MCKENZIE: We do have forklifts, yes.

19 MR. BOLON: Are your employees required to wear  
20 seat belts when they're operating them?

21 MR. MCKENZIE: Yes, they are.

22 MR. BOLON: Do you move people around via  
23 pickups or any kind of things like that, golf carts?

24 MR. MCKENZIE: We do have some -- we do have a  
25 few vehicles, some pickups, but those are not primarily

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1 for the movement of people within the yard. We do have  
2 some battery-powered carts, golf carts, if you will, that  
3 are used. There is a few of them, and they're used  
4 mostly for the maintenance crew who have designated  
5 equipment that they need to go from place to place.  
6 There is one or two people. Those carts as well have  
7 seat belts.

8 The production personnel though primarily, they  
9 carry tools to and from the workspace with the except of  
10 the heavy tools that we have. We have boxes that we've  
11 converted into deployable units that are prepped prior to  
12 the job with the tools and equipment, the safety gear,  
13 whatever is needed or expected to be needed for that job,  
14 called kitting for the job, and that box is moved out by  
15 a forklift to the job site. And that's how most of it is  
16 carried out there.

17 MR. BOLON: Do you have any safety issues with  
18 your vehicles and pedestrian traffic, just do you have  
19 any accidents or safety issues about how they move  
20 around?

21 MR. MCKENZIE: We haven't had any accidents in  
22 regards to that recently. I think a very, very long time  
23 ago I do seem to recall something, something minor.

24 But for the most part we do not. We have signage,  
25 we have lines, we have stop lines on blind corners. We

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1 have areas where we've installed mirrors where a person  
2 can see around the corner.

3 We really don't have a big issue with that.

4 MR. BOLON: Thanks.

5 MS. SHORTALL: Ms. Watson will ask questions  
6 next.

7 MS. WATSON: I just have one quick question.  
8 Earlier when Ms. Wangdahl was questioning you and you  
9 mentioned for emergencies you use cell phones and radios  
10 for communication. I'm just curious how those have  
11 worked out for you. Have there ever been situations  
12 where maybe someone couldn't get through to their  
13 responders?

14 MR. MCKENZIE: No, we really haven't had an  
15 issue with it. The radios actually probably work better  
16 than cell phones do, especially in the wing walls. Our  
17 experience has been that sometimes a cell phone won't get  
18 out of the wing wall whereas the radios, we seem to be  
19 able to have radio coverage throughout the yard.

20 In fact, our transportation offices where they  
21 dispatch the forklifts has a, what do you call it, an  
22 outside antenna which increases the available coverage.  
23 So even if someone on the other end of the yard couldn't  
24 hear, the transportation office always does, and one of  
25 the ring down phones is in the transportation office.

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1 MS. WATSON: With those radios, who are issued  
2 those other than the emergency responders; is it  
3 supervisors?

4 MR. MCKENZIE: Yes, supervisors have radios,  
5 the fire safety officers have radios, the security  
6 officers have radios. Just about every craft group has a  
7 number of radios. Certainly not every employee does, but  
8 at least every supervisor does.

9 MS. WATSON: So those supervisors are in charge  
10 of a certain amount of employees and they're checking up  
11 on them?

12 MR. MCKENZIE: That's correct.

13 MS. WATSON: Thank you.

14 MS. SHORTALL: Mr. Daddura will ask questions  
15 next.

16 MR. DADDURA: Good morning.

17 MR. MCKENZIE: Good morning.

18 MR. DADDURA: I'll try and make it short.

19 Have you ever had an occasion where you sent an  
20 employee to a machine shop or rigging shop off ship when  
21 no one else is around to pick up material or equipment  
22 that's needed for a job?

23 MR. MCKENZIE: Let me make sure I understand  
24 the question. When you say nobody is around --

25 MR. DADDURA: No one is off ship. You have 25

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1 people working on ship, working through the ship. The  
2 supervisor says, Hey, Phil, go down and get me a reach  
3 rod or an inch and a quarter, and Phil goes to the

4 machine job to get the reach rod, no one else is working  
5 in the machine shop. Has that ever happened?  
6 MR. MCKENZIE: I can't say that it hasn't. But  
7 I certainly can say that every trade is very prominently  
8 represented in our yard and have very clear lines of  
9 jurisdiction, and if that is not their job, they're not  
10 going to do it.  
11 MR. DADDURA: The question is to send someone  
12 into an area where no one else is there.  
13 MR. MCKENZIE: So you're not talking about --  
14 MR. DADDURA: No, I'm talking --  
15 MR. MCKENZIE: You're just talking about going  
16 into a building where nobody else might be.  
17 MR. DADDURA: Correct, or a tank or a space on  
18 a ship, something like that.  
19 MR. MCKENZIE: Well, in a building I would say  
20 that probably does happen with some regularity.  
21 MR. DADDURA: What about a space in a ship, a  
22 tank, passageway?  
23 MR. MCKENZIE: Passageway, probably yes;  
24 confined spaces, no.  
25 MR. DADDURA: Do you think there are isolated  
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1 spaces when no one else is around that can --  
2 MR. MCKENZIE: That would probably be a fair  
3 definition.  
4 MR. DADDURA: If you send someone down to put a  
5 bolt in a bracket in the engine room to finish a job and  
6 no one else is there, that's what our concern is. When  
7 we say isolated spaces, no one else is there. On day  
8 shift you have people walking around doing other jobs;  
9 they are visually seen. That's what our concern is with  
10 isolated spaces.  
11 MR. MCKENZIE: Okay, that's fair.  
12 MR. DADDURA: You used the term wing wall or  
13 wing tank.  
14 MR. MCKENZIE: Wing wall, yes. Those are in  
15 reference to our floating dry docks.  
16 MR. DADDURA: Can you explain that a little bit  
17 just for the record, explain what that terminology is.  
18 MR. MCKENZIE: Yes, I will. The floating dry  
19 docks are somewhat of a U-shape, if you will, so you have  
20 an open end. In this case the way ours are oriented, you  
21 have an open end on the north and you have an open end on  
22 the south.  
23 On the east and west you have walls of the  
24 structure. Those wing walls have an outside deck, and  
25 then just below that at a minimum they have a safety  
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1 deck. On that safety deck is usually where the  
2 equipment, pumps for control for the submergence and  
3 bringing up of a dry dock.  
4 And then below that safety deck is where we're  
5 talking about the wing wall itself, which is the internal  
6 structure, the retrods that go from the pumps to the  
7 actual valves that are inside of the tanks and the  
8 different tank areas that comprise the floating dry dock  
9 itself.  
10 Does that help?  
11 MR. DADDURA: Yes, that helps a great deal.  
12 Can you send more than one person in there?  
13 MR. MCKENZIE: Yes.  
14 MR. DADDURA: In the same location?  
15 MR. MCKENZIE: Yes.  
16 MR. DADDURA: Can you send more than one person  
17 to all of your confined spaces or in close spaces?  
18 MR. MCKENZIE: Well, that wouldn't be a fair  
19 statement because sometimes a confined space is so  
20 confined that --  
21 MR. DADDURA: You can't fit more than one.  
22 MR. MCKENZIE: -- you can't fit more than one.  
23 MR. DADDURA: I understand.  
24 MR. MCKENZIE: In a confined space, there is  
25 always one person that is doing the work and at least one  
0060  
1 person that is either directly observing the work or  
2 outside the space.  
3 MR. DADDURA: Thank you.  
4 MS. SHORTALL: Ms. Brinkerhoff will ask  
5 questions now.  
6 MS. BRINKERHOFF: During your testimony you  
7 described employees at Todd ranging from 300 to 1,000.

8 I'm wondering what causes that range; is that just kind  
9 of a periodic fluctuation or is it seasonal or is it a  
10 function of the economy?

11 MR. MCKENZIE: Yes, yes, yes.

12 MS. BRINKERHOFF: And why are you at 300 now?  
13 That seems a low point.

14 MR. MCKENZIE: The workforce fluctuates  
15 depending on the production requirements. We, as a  
16 shipyard, do mostly repair, some building. And when the  
17 work is there, you have employees; when the work is not  
18 there, you roll down to the minimum amount of  
19 administrative staff and the required personnel.

20 MS. BRINKERHOFF: So is it something that  
21 happens kind of periodically, it comes and goes?

22 MR. MCKENZIE: Everybody is watching the  
23 dollar. So, yeah, I mean, they certainly try to -- we  
24 want as much business as we can, just as any shipyard  
25 does. And we try to keep our berthing spaces and our dry

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1 docks as full as possible. Obviously that's the only way  
2 to make money. But it doesn't always happen that way.

3 MS. BRINKERHOFF: Thanks.

4 MS. SHORTALL: Mr. McKenzie, thank you so much  
5 for being here today. I have also a few questions.

6 You happened to mention before certain lines of  
7 authority and if something isn't your job, you know,  
8 you're not going to do it. Can you tell me what labor  
9 organizations are represented at your facility?

10 MR. MCKENZIE: Well, we have the electricians,  
11 pipefitters, we have the Teamsters, who we actually have  
12 two groups of Teamsters, one who do the outside forklift  
13 and one who do the warehouse work, and so a warehouse  
14 forklift driver cannot take supplies or loads outside of  
15 dropping it off outside of the warehouse. And then an  
16 outside forklift has to pick it up and take it to  
17 wherever else it has to go.

18 We have operating engineers for the crane operators.  
19 We have inside machinists, we have outside machinists.

20 I know I'm missing some. We have the labor, labor  
21 department, we have boilermakers.

22 MS. SHORTALL: The laborers?

23 MR. MCKENZIE: Laborers, yes. I'm not sure  
24 which union that is, but we have a labor department.

25 MS. SHORTALL: Is that Labors International; is

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1 that what it is?

2 MR. MCKENZIE: I can do that later, I'm sorry,  
3 I don't know.

4 I don't know, boilermakers, riggers.

5 MS. SHORTALL: It's a big list, isn't it?

6 MR. MCKENZIE: Yes, it's a big list.

7 And they're all represented individually by their  
8 different unions, but they all collectively bargain under  
9 the Metal Trades Council.

10 MS. SHORTALL: If you think of any other  
11 organizations that are at your shipyard, could you add  
12 that in your post-hearing comments?

13 MR. MCKENZIE: I would certainly be happy to  
14 just forward you a copy of it.

15 MS. SHORTALL: All right. Can you tell me how  
16 many injuries you've had at your shipyard this year?

17 MR. MCKENZIE: In the past 12 months?

18 MS. SHORTALL: Do you do your recordkeeping on  
19 a calendar basis or on a fiscal year?

20 MR. MCKENZIE: We have a rolling record. And  
21 our current rate, I believe, is 12.

22 MS. SHORTALL: Your current rate is 12?

23 MR. MCKENZIE: Yes.

24 MS. SHORTALL: So am I --

25 MR. MCKENZIE: I believe that to be correct.

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1 MS. SHORTALL: So that would be the rate for  
2 the industry as a whole?

3 MR. MCKENZIE: Right now, yes. But then a  
4 couple of months ago it was eight.

5 MS. SHORTALL: What are the injury trends; what  
6 tend to be the operations in which injuries are occurring  
7 most often and what type of injuries are you seeing most  
8 frequently?

9 MR. MCKENZIE: A lot of our workforce is an  
10 aging workforce, and the biggest majority is -- we do see  
11 some minor eye injuries. But most of our injuries are

12 strains and sprains and trips and falls.

13 MS. SHORTALL: Do you know of any substances  
14 other than corrosives or acids in your workplace where if  
15 an employee was splashed with them it could cause acute,  
16 immediate and serious damage?

17 MR. MCKENZIE: I was listening to that question  
18 before and kind of running through my head, and I cannot  
19 think of anything else that I could add to that.

20 MS. SHORTALL: If OSHA were to change our final  
21 rule, so moved away from that toxic and hazardous, and  
22 instead focused on quick drench and try to get at areas  
23 where if you don't get something right away you are going  
24 to be injured, there could be serious damage, so if we  
25 focus on that, would that take care of a lot of the

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1 concern you have over -- the concern the industry has  
2 over that particular provision?

3 MR. MCKENZIE: I think it would make it easier  
4 to comply with.

5 MS. SHORTALL: All right.

6 MR. MCKENZIE: More appropriate in practice and  
7 would provide a level of safety for the employees that  
8 the alternatives would not.

9 MS. SHORTALL: I don't know if you were here  
10 yesterday.

11 MR. MCKENZIE: I wasn't. I was not able to be  
12 here yesterday.

13 MS. SHORTALL: We had several people indicate  
14 that they have a preference for locks for lockout/tagout  
15 in this industry. Do you share that preference as well?

16 MR. MCKENZIE: I would agree that whenever  
17 possible a lock, a physical barrier rather than just a  
18 tag is always the most appropriate, or as Al said, and we  
19 have them as well, just isolate the system completely to  
20 make it completely safe, there is no hazard.

21 MS. SHORTALL: Do you think over let's say a  
22 10-year period of normal replacement of equipment in your  
23 facility that you could make significant inroads or make  
24 significant increases in the number of, the amount of  
25 lockable equipment you have in the shipyard?

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1 MR. MCKENZIE: I would say that the statement  
2 of a significant increase would be fair, yes.

3 MS. SHORTALL: How long do you think it would  
4 take you to go from, just a normal routine replacement of  
5 equipment, to go from a non-lockable situation in the  
6 shipyard to being totally lockable?

7 MR. MCKENZIE: That would be very difficult for  
8 me to answer, and I'll explain why. Again, the shipyard  
9 has been there since 1916, and naturally some of the  
10 structures have been there probably longer than that. It  
11 wasn't always Todd.

12 A lot of the equipment that was built and is still  
13 in service today was built at a standard to last a  
14 lifetime versus what we build today, which is, you know,  
15 there is a rather defined period of life to it.

16 In fact, as an example, we have some -- we have a  
17 crane, an inside crane, overhead crane. Anyway, this  
18 crane is still in service today and was originally  
19 manufactured, I believe in 1920-something. And it's a  
20 very -- it's a very great crane, it works well. It's  
21 very difficult to get parts for.

22 But to try and change it is even more difficult and  
23 extremely cost prohibitive. The really only viable  
24 alternative would be actually take it out of service and  
25 replace it with something.

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1 MS. SHORTALL: One other small line of inquiry.  
2 What arrangements do you have in your shipyard for when  
3 it snows, cleaning off so employees can, one, walk to the  
4 place where they need to work, and two, do the work in a  
5 situation where they're not going to be slipping and  
6 falling?

7 MR. MCKENZIE: We have a freeze-up plan that is  
8 part of our contingencies, and in fact, just went back  
9 into effect last week. In this freeze-up plan, our  
10 powerhouse operators watch the temperatures, the  
11 surrounding temperatures.

12 When the temperature gets to 34 degrees or less,  
13 they make a notification to facilities manager or his  
14 designee and explain what's going on and what appears to  
15 be the trend. They make a decision based on that

16 information to say yes, we need a crew and this is how  
17 many we need.  
18 And when that decision is made, that crew is called  
19 out either immediately, depending on circumstances, or  
20 several hours before the regular workforce comes in so  
21 that they can prepare the areas and ensure that we have a  
22 safe area.

23 MS. SHORTALL: Do you get -- I was really  
24 surprised when I woke up this morning and turned on the  
25 television and found out there were significant areas of  
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1 Seattle that had black ice today. Is black ice an issue  
2 in your shipyard?

3 MR. MCKENZIE: Not so much for us. I  
4 personally live about 40 miles from the shipyard, and  
5 where I live, I can walk out of the door and find frost  
6 and ice and black ice and everything. And then by the  
7 time I get down to Harbor Island, you know, it's 40-plus  
8 degrees, warm. So there can be a lot of variance there.

9 We do occasionally have problems during the winter  
10 months, and like I said, we call the freeze-up crew and  
11 they're out there early, and then they periodically  
12 throughout the day as needed will take whatever  
13 corrective steps.

14 MS. SHORTALL: We had one person in our  
15 Washington DC hearing who said they did not like -- we've  
16 had several -- but one person who said, I don't like the  
17 way you've phrased remove slippery conditions as they  
18 occur and suggested instead what the language might be is  
19 where employees are walking and working, you have to  
20 clear it off, and where they're not, you don't have to;  
21 in other words, restrict the area.

22 If we were to change to get to that type of thing to  
23 protect people actually where they are, would that also  
24 take care of some of the problem that you've having?

25 MR. MCKENZIE: Most certainly. And especially  
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1 for us and the size of our facility, we would have to  
2 hire an entire contingent of personnel just to maintain a  
3 facility for areas that nobody is going to be in.

4 We currently have probably -- well, at least  
5 one-third of the yard that is not used at all on a  
6 regular basis, and then probably another third that is  
7 only used as needed. It could be a huge expense for us.

8 MS. SHORTALL: And you don't allow people to go  
9 in places that haven't had the snow and ice removed?

10 MR. MCKENZIE: Right.

11 MS. SHORTALL: Thank you very much. It was  
12 really helpful to have you hear today, and we really look  
13 forward to your post-hearing comments. Thank you.

14 JUDGE GEE: Thank you, Mr. McKenzie.

15 Let's take a five-minute break. And if there is  
16 anybody in the room who has not checked in with Veneta,  
17 please do so.

18 (Recess from 11:00 a.m. to 11:05 a.m.)

19 JUDGE GEE: Our next speakers will be a panel  
20 consisting of Rick Brown, Doug Ward, Kim Hodne and John  
21 Killingsworth. If you could sit in the order in which I  
22 called your name, that will help the court reporter.

23 MS. SHORTALL: Your Honor, while we're waiting  
24 to start, I would like to mark Mr. Brown's hearing  
25 testimony as Exhibit 0179 in the previously-mentioned  
0069

1 document.

2 JUDGE GEE: All right, so ordered.

3 We're still missing one person.

4 MR. HODNE: Mr. Ward was unable to attend  
5 today. We're from the same company, so I'll carry on.

6 JUDGE GEE: We'll ask Mr. Brown to begin.

7 Please state your name and your affiliation.

8 MR. ROWN: Rick Brown, Trident Seafoods. I'm  
9 going to repeat some of the information that we already  
10 provided yesterday.

11 Good morning, Judge Gee, ladies and gentlemen, my  
12 name is Rick Brown. Thank you for the opportunity to  
13 testify today on behalf of Trident Seafoods Corporation.

14 As you heard yesterday from Lurilla Lee, our VP of  
15 vessel safety, we harvest, process and market seafood  
16 from Alaska, the Pacific Northwest and around the world.  
17 Trident Seafoods is firmly committed to providing a safe  
18 workplace for our employees. We want each and every  
19 person working for us to go home safely every day.

20 I'm the Alaska Support Engineering Manager for  
21 Trident's fleet of over 40 fishing industry vessels,  
22 currently comprised of 16 fish tenders, 16 catcher  
23 vessels, six fish processor vessels and four catcher  
24 processors.

25 Our vessel lengths range from 66 feet to 356 feet.

0070

1 Our crew sizes range from four to 235 persons per vessel,  
2 many from various places throughout the world. We have  
3 two repair and maintenance facilities located in Puget  
4 Sound for our fleet. We own our customer base and they  
5 own us.

6 Our two facilities almost exclusively service  
7 vessels owned and operated by Trident Seafoods. Our  
8 Tacoma facility sits on 12.6 acres with 3,030 feet of  
9 mooring space, and 150 persons employed during peak  
10 activity.

11 Our Seattle facility sits on 2.5 acres with 400 feet  
12 of mooring space and 70 persons employed during the peak  
13 activity. These facilities are truly multi-purpose and  
14 include all of the following services: moorage for our  
15 vessels between fishing seasons, shipping and receiving  
16 for our vessel fleet and shore plants, purchasing,  
17 warehousing vessel processing equipment storage, process  
18 equipment overall, fishing gear storage, and of course,  
19 vessel repair and maintenance as well as fabrication of  
20 new process equipment for vessels and shore plants. We  
21 employ over 190 subcontractors at various times  
22 throughout the year at both locations.

23 We have no dry dock capability at either facility,  
24 which makes us dry dock customers to most of the  
25 shipyards throughout Puget Sound when needed for our

0071

1 fleet. One of our most active trawlers is actually going  
2 up on dry dock this morning at Todd Shipyard here in  
3 Seattle. One of our fish tenders has been up on dry dock  
4 at Marine Industries Northwest in Tacoma for the past  
5 week.

6 We are members of the North Pacific Fishing Vessel  
7 Owners Association and Puget Sound Shipbuilders  
8 Association, both of whom have OSHA alliances.

9 I have over 30 years of maritime experience. I  
10 obtained a Bachelor of Science degree in marine  
11 engineering from the U.S. Merchant Marine Academy. I  
12 have held a U.S. Coast Guard Chief Engineer's license for  
13 steam and motor vessels of any horsepower since 1986. I  
14 sailed on various inspected vessels in the U.S. Merchant  
15 fleet following graduation, steadily advancing in  
16 responsibility from third engineer to chief engineer.

17 I entered the fishing industry in 1987 as chief  
18 engineer on a Bering Sea factory trawler converted from  
19 an offshore supply vessel at a small shipyard in Slidell,  
20 Louisiana. I worked on that vessel through the  
21 conversion in Louisiana, delivered it to Seattle for  
22 final outfitting in early 1988, and subsequently sailed  
23 on that vessel and another ship in Alaska as chief  
24 engineer for the next ten years.

25 I have been shoreside since 1998 and worked at

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1 Trident Seafoods since 2004. The past year I've been  
2 transitioning into the role of Alaska Support Engineering  
3 Manager and prior to that I worked directly for Lurilla  
4 Lee in the Trident Seafoods Vessel Safety Department.

5 Here are a few of my proposed rule comments.  
6 Section 1915.81 on housekeeping. In Paragraph (g), I  
7 recommend adding the phrase, quote, eliminate as  
8 practical, unquote, with regards to snow and ice on  
9 walking and working surfaces. It's not always practical  
10 or possible to eliminate snow and ice as it occurs. Some  
11 of these comments have already been covered. I'm  
12 probably going to be redundant. I'll reiterate them for  
13 the record.

14 In Paragraph (i), I recommend including the option  
15 of ensuring that hoses and electrical cords are kept to  
16 the side of a walkway or working surface provided they  
17 are not trip hazards or in danger of being damaged.

18 Hanging over or placing under can be difficult in  
19 some circumstances due to no under deck access, awkward  
20 construction and/or the sheer time needed to run the  
21 lines and hoist configurations to complete a quick task.

22 Section 1915.82 on lighting. Paragraph (b)(7), I  
23 recommend referencing a recognized standard for

24 determining appropriate splices insulation such as an  
25 NFPA NC 70, Article 400.1 splices.

0073

1 Paragraph (c), even when we provide portable  
2 handheld light, it will be difficult to ensure each  
3 employee carries a light when they are entering spaces  
4 that may unexpectedly go dark. Where temporary lighting  
5 from outside sources is provided, it may prove difficult  
6 to ensure portable lights are available in the immediate  
7 area. Generally in the work and living spaces, of  
8 course, commercial lights are permanently installed and  
9 functional on our vessels.

10 Section 1915.83, utilities. In the paragraphs on  
11 steam supply systems, steam hoses and electric power, I  
12 ask that you include in the body of the regulations  
13 instead of it being a preamble, a statement, quote,  
14 employers are free to ascertain the critical information  
15 from a responsible vessel's representative, a contract or  
16 any other person who is qualified by training, knowledge  
17 or experience to make that determination. That  
18 determination refers to determining those shipboard  
19 systems that are in a, quote, safe condition.

20 Section 1915.84, work in confined or isolated  
21 spaces. We request that isolated spaces be defined and a  
22 better description of how frequently each shift the  
23 worker in these types of spaces should be checked.

24 Section 1915.87, medical circumstances and first  
25 aid. This is certainly a repeat here. Please note that

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1 outside entities, such as our local fire departments and  
2 Coast Guard use their own response equipment. Therefore,  
3 we recommend that no more than one basket structure be  
4 required per vessel.

5 We also ask that we be allowed to use alternative  
6 devices meeting the same criteria as basket stretchers,  
7 such as a sked.

8 Although we do have AED's available at our facility,  
9 we do not recommend requiring them. The cost of AED's  
10 built to withstand shipyard and shipyard environments  
11 remains significant, over \$2,500 per unit, and this does  
12 not include the reoccurring training costs and the costs  
13 of replacing components at expiration dates.

14 Section 1915.89, control of hazardous energy,  
15 lockout/tagout. These requirements must be feasible and  
16 reasonable for our shipyard applications. We must be  
17 allowed to rely on system experts who isolate hazardous  
18 energy. I ask that you develop a control of hazardous  
19 energy program and associated regulations by working with  
20 the affected stakeholders and our OSHA alliances. As  
21 you've already heard, we strongly support the development  
22 of one standard, 1915.89, as the single standard for  
23 servicing ship systems on board vessels.

24 But the way, I want to confirm that our ship's crews  
25 do frequently perform service work on our vessels, both

0075

1 off site and on their way while under OSHA's  
2 jurisdiction.

3 Section 1915.93, motor vehicle safety equipment,  
4 operation and maintenance. This regulation requiring the  
5 employer to ensure all employees are wearing their seat  
6 belts in a personal motor vehicle will be challenging as  
7 we will only be able to routinely check that as the  
8 vehicle enters in with the gate guard. We do not have  
9 dedicated travel lanes for vehicles, bicycles or  
10 pedestrians at our facilities. However, we do tape off  
11 temporary walkways when crewing our fishing vessels, and  
12 by that I mean when we're letting the vessel crews on for  
13 them to travel north to Alaska. So we put in temporary  
14 walkways so that they can get on the gate, directly to  
15 the vessel, that kind of thing, with caution tape.

16 Thank you again for the opportunity to take part in  
17 these hearings. Trident Seafoods and others in the  
18 fishing industry look forward to working with you in  
19 producing an updated version of the shipyard employment  
20 regulations to meet our common safety goals.

21 JUDGE GEE: Thank you. Mr. Hodne.

22 MR. HODNE: Hello, I'm Kim Hodne, and I  
23 appreciate the opportunity to be here to testify.

24 I started my career in the shipyard industry as a  
25 laborer, moving up to a painter, serving on the company's

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1 safety committee to the confined space rescue team, and



2 in 1996 became a certified shipyard competent person. I  
3 actually owe a debt of gratitude to OSHA for my  
4 accidental career in safety.

5 It was the September 1990 rule change, the clean  
6 shaven clause. Due to my baby face, I could not shave,  
7 and when I approached the owner of Dakota Creek with my  
8 doctor's note, I was kind of floored when he said they  
9 didn't want to lose me and wanted to keep a person that  
10 came into the shipyard, and I was fortunate to be moved  
11 to the safety department.

12 It was my pleasure to have as teacher and mentor Mr.  
13 Killingworth, whom I have the distinct pleasure of  
14 sitting on the panel with today to teach me and bring me  
15 up in the ranks of safety.

16 The next milestone for me came in May 2000. That's  
17 when I was recruited by the regulatory agency, WISHA for  
18 the position of compliance officer. This was also an  
19 accident. Because of the physician's prerequisite, they  
20 had to go outside the department to hire.

21 I also followed through with the hiring process  
22 because we were appealing a WISHA citation at the time,  
23 and I didn't want to rock the boat. I had a job, and I  
24 loved it. I love working in the shipyard industry. It's  
25 an industry that as a boy from Iowa, it amazes me every

0077

1 day. I pinch myself for the opportunity to do what I get  
2 to do.

3 So when the opportunity for employment came, I once  
4 again had to approach my boss with the news out of left  
5 field, much like the clean shaven rule, I will never  
6 forget his reply or his reaction. He told me to take the  
7 job, it would be good for the industry to have someone  
8 from the shipbuilding industry versus non-industry  
9 inexperienced inspectors we currently had to deal with.  
10 Coat ties, as they were known.

11 He also told me if I couldn't handle the politics  
12 and the bureaucrats, I would always have a job back at  
13 Dakota Creek. It was a win/win situation for me and a  
14 great education.

15 The point of this story is that I have been part of  
16 all three sides, employee, regulatory and shipyard  
17 safety. I know what it takes to do the job, and I  
18 understand how rules are to be interpreted and how to  
19 apply them and how to motivate a workforce to comply to  
20 understand it is not just an idea of being safe, we have  
21 to be compliant at the same time. Just because we are  
22 working safe doesn't mean that we're in compliance with  
23 the rules.

24 First I would like to address OSHA's longstanding  
25 tradition of Subpart F that applies to shipyard

0078

1 employment, regardless of geographic location of the  
2 shipyard activities. Geographic location can make all  
3 the difference in the cost and practicality of the  
4 implemented rule.

5 And I understand the fact that regulations can't be  
6 written differently for all regions of the country, but  
7 San Diego and their 14 inches of precipitation a year is  
8 not even a drop in the bucket compared to our rainforest  
9 location with 165 inches of rain per year. It seems that  
10 we are all under wet, slippery conditions constantly.  
11 Trust me, if any workforce is adapted to working in wet  
12 conditions, we are.

13 So, again, I would quote your preamble. Whenever  
14 practical, standards shall be expressed in terms of  
15 objective criteria of the performance desired.

16 With regard to snow and ice removal, I asked our  
17 yard superintendent for his thoughts. He is 70 years old  
18 and a lifelong Alaskan. It would be inappropriate to  
19 quote him, so I'll paraphrase. Removing snow and ice as  
20 it occurs is not reasonable. Providing safe access in a  
21 timely manner is reasonable. The steel foreman chimed  
22 in, trust me, the proposed 1915.81 (d), "The employer  
23 shall provide appropriate waterproof footwear, such as  
24 rubber overboots." There's ketchikan sneakers. Even my  
25 15-month-old granddaughter has a pair.

0079

1 ASB has a 100 percent steel-toed boot policy, and  
2 I'm sure we buy more steel-toed rubber boots than anyone  
3 in the country. And if we had to buy two pair per year  
4 for each employee at a cost of \$75 each, the annual cost  
5 would be close to \$20,000 a year. That is just in rubber

6 boots.

7 I passed the rule proposal to our yard frontline  
8 foremen and supervisors with an experience range of eight  
9 to 20 years and including all trades. There is a side  
10 note to make at this point. Our workforce is gray, it's  
11 across the board, it's all trades. There is no legacy  
12 workers today like there were four years ago. The kids  
13 today are brainwashed into thinking they have to go to  
14 college. They get a job, get their \$50,000. A year  
15 after they get their degree, you will see a blue collar  
16 worker like their fathers were. If this same trend  
17 continues, in the not too distant future the tradesmen  
18 will be earning \$50,000 and the computer geek will get 15  
19 bucks an hour.

20 The mature workforce is more fragile, but absolutely  
21 works safer and smarter than what they did 25 years ago.  
22 We are not our father's, and we are not our grandfather's  
23 workforce. Everyone has worked in and under the OSHA  
24 jurisdiction. If they're under 50, all they know is  
25 OSHA. We have moved, we are not what we were 30 years

0080

1 ago at the inception of the OSHA rules.

2 The painters were amazed at the notion of adding  
3 their department to the world of the 10-second time of  
4 quick drench. This is to them ridiculous when working in  
5 the bottom of vessels and tanks. They say, hey, we  
6 already have high vac and full tanks on, what's the  
7 problem. We are not going to risk injury getting out of  
8 confined spaces just because we got splashed with paint  
9 or solvents. That's why we wear PPE, and that's why we  
10 do a job hazardous analysis before starting a job.

11 Our company is very job hazardous analysis centered.  
12 Every job -- if I walked up to the welders doing their  
13 work, painters, I will ask for their job hazard analysis,  
14 which every man involved in the operation will have been  
15 a part of developing the JHA and will have signed off on  
16 it. If there are particular things about the operation  
17 that they are going through that are edging on what  
18 compliance with the standard would be, it's covered in  
19 the JHA. They talk about it, they're trained about it,  
20 they recognize the hazardous, and it actually helps  
21 production in the job flow because they have to stop and  
22 figure out all the steps they go through, not just  
23 recognizing all the hazards, but recognizing the job  
24 process at the same time.

25 We have -- that is probably the hallmark of our

0081

1 safety program is the fact that job hazardous analysis  
2 occur with everything including the sweeping down of the  
3 shop, because there are hazards involved with sweeping  
4 down the shop. Everybody has a job hazardous analysis.

5 If OSHA could just make one standard, you will have  
6 a job hazardous analysis for everything you do, and if a  
7 compliance officer showed up and he wanted to see it, it  
8 would be covered. If it wasn't covered, that would be  
9 problem. I know that's expensive, but nonetheless job  
10 hazard analysis take us a long way and protect our  
11 workers.

12 In my three and a half years at Alaska Ship and Dry  
13 Dock, the ambulance has never shown up, the yard in its  
14 entirety has never had a fatality, never had an  
15 amputation, maybe a few minor stitches, foreign bodies in  
16 the eye, but our owner is safety first. That is the  
17 mantra. Everybody walks out the gate at the end of the  
18 day in the same way and in the same condition they came  
19 in at the beginning of the workday. It is not something  
20 that is pushed from the bottom up, as is the case most of  
21 the time; this is pushed from the top down. We can use  
22 it, we can live buy it, and it is the way that we work.

23 The volunteer firefighters we have laughed at the  
24 idea of the basket stretchers scattered all around the  
25 yard. When their department responds, they need to be

0082

1 the ones to wrap an injured worker in their gear that  
2 they trained with and use, not that of the workforce.  
3 They're untrained people. There is a liability risk that  
4 is not acceptable to them and the injury in their care.  
5 They are the pros, not us.

6 The language of current rule 1915.98 (b), this  
7 paragraph does not apply where ambulance services which  
8 are available are known to carry such stretchers. So  
9 it's already there. Why fix that which is not broken.

10 There is a stretcher rule there and it applies and it  
11 makes sense.

12 In closing, I would first like to apologize if I  
13 come across as rude or impertinent. It's not my  
14 intention. OSHA needs to rid themselves of lawyers until  
15 the very end, get them out of the rulemaking right. The  
16 biggest problem with the standards is that they are not  
17 user friendly. The legalese confuses the common man and  
18 is not needed. It just needs to be CYA approach to rule  
19 writing. The best written standards in the country are  
20 right here in Washington state.

21 Seven years ago Governor Gary Locke gave executive  
22 order for clearer rule writing. Washington state's WISHA  
23 program has the most simply understood, clearest written  
24 rules that I've ever come across. OSHA needs to think  
25 about that. They need to write the rules to be user

0083

1 friendly to where I can hand them to our supervisors and  
2 our foremen. They can read them and they can interpret  
3 them and without question they can realize what they need  
4 to do.

5 Thank you.

6 JUDGE GEE: Thank you very much.

7 Mr. John Killingsworth.

8 MR. KILLINGSWORTH: Thank you. In my 10  
9 minutes, I probably won't be able to say as much.

10 I'm John Killingsworth. I bring 43 years of work  
11 experience in various industries, mostly manufacturing.  
12 Eighteen of those years has been in shipyards. I have a  
13 couple of engineering degrees from the University of  
14 Washington, and I am currently employed by Dakota Creek  
15 Industries, and I thought we were a small shipyard, but I  
16 guess we're a medium shipyard, medium-sized shipyard by  
17 the discussion I heard today. We're located in  
18 Anacortes, Washington.

19 I speak on behalf of the Puget Sound Shipbuilders  
20 Association, and I'm glad to be able to do that. We are  
21 an association of professionals and competing businesses  
22 who are in similar jobs. We get together on a regular  
23 basis and work together on educational and regulatory  
24 issues.

25 I got into the business of saving lives about 15

0084

1 years ago and daily deal with confined space issues that  
2 our workers face. Every job presents its unique  
3 conditions, and they all require analysis and planning in  
4 order to successfully meet our customers' needs while  
5 ensuring a safe workplace.

6 Through daily job hazardous analysis, we identify  
7 the risks associated with accomplishing the necessary  
8 tasks and engineer methods that minimize risks common to  
9 heavy industrial environment.

10 I'd like to make some comments on the preamble. On  
11 page 72453, I'd like to quote a few lines under Hazards.  
12 "Working in shipyards is one of the riskiest occupations  
13 in the United States. Shipyard employees are at risk due  
14 to the nature of their work."

15 Down a little bit, "The hazards associated with  
16 these work activities are heightened because they are  
17 often performed outdoors in all kinds of weather, on  
18 board vessels, in confined or enclosed spaces.

19 "The safe coordination of these work activities is  
20 also complicated by the fact that most shipyards are  
21 multi-employer work sites where shipyard employees,  
22 ship's crew, contractors and subcontractors work  
23 side-by-side and often on the same ship's systems at the  
24 same time.

25 "The combination of these hazards presents a

0085

1 significant risk of injury to shipyard employees."

2 I'll tell you, quite frankly, I find this preamble  
3 overly exaggerated and unnecessary, I think. Why is it  
4 necessary to make such inflammatory statements? If I had  
5 read this prior to applying to work in a shipyard, I  
6 probably would have had second thoughts, because I didn't  
7 know it was so dangerous.

8 Anyway, then the section goes on a little further,  
9 and it says, "As this section illustrates, OSHA believes  
10 the proposed rule will significantly reduce those risks."

11 Well, if I read -- in this section -- okay, let me  
12 get lost a little bit. The section goes on, okay. Down  
13 a little further there is a table. Table 1, 2002 Injury

14 and Illness Data Comparisons. The section presents  
15 numbers that would scare anyone if you didn't realize  
16 that it compares apples with oranges. You can't compare  
17 shipbuilding with the total private sector or even  
18 cleaning manufacturers.

19 Personally I work with real people with real skills  
20 and together we simply accomplish more than most of the  
21 private sector. These inflammatory statements diminish  
22 the thousands of tens of thousands of workers across the  
23 nation. And don't forget, these are the people that are  
24 generating the tax dollars that pay governments and  
25 salaries.

0086

1 Now, I get back to the section where it says OSHA  
2 believes the proposed rule significantly reduces those  
3 risks. You know, the numbers in the table, any numbers  
4 in any table can be made to say anything you want. But  
5 to use these numbers as justification for the next level  
6 of detail in regulation is simply wrong. You know, we're  
7 all in the business of reducing risk, we simply disagree  
8 on the way to accomplish it.

9 I was exposed to more risk and experienced more  
10 hazards driving the 100 miles to this hearing this  
11 morning than I'm sure I was exposed to for the last month  
12 in the shipyard. Let's deal with some specifics.

13 On lighting, 1915.82. There again the section  
14 starts out with a table of numbers. Not that I have a  
15 problem with these numbers. In fact, the numbers in this  
16 table on lumens for specific work areas are somewhat  
17 reasonable and they're achievable. But in my 43 years of  
18 work experience, I've never had to carry a light meter  
19 into any work area I've been in. In order to comply with  
20 this section, however, I guess I'll have to. Will it  
21 reduce risk? I don't think so.

22 1915.82 (c), handheld portable lights. You've heard  
23 a lot about that. But under the current wording, this  
24 wording implies that the use of a helmet-mounted portable  
25 light would be a violation. I wouldn't say I would have

0087

1 to hold a handheld portable light in order to comply.  
2 You know, there's been so many advances in flashlight  
3 products, too, why can't you just call them flashlights.  
4 It's not an issue of being handheld, and it is portable,  
5 and everybody understands what you mean by a flashlight.

6 1915.82 (c)(3), "The employer will ensure that only  
7 explosion-proof, self-contained handheld portable lights  
8 are used in areas that are not gas-free." The way I  
9 interpret that and the way I'm sure a diligent inspector  
10 would interpret that, this means that a tank cleaner  
11 entering an engine room prior to a marine chemist  
12 inspection must use that kind of a flashlight.

13 Now, these flashlights don't work for that. They  
14 are not explosion-proof. And I was going to bring a  
15 sample to show you what one looks like and intrinsically  
16 say explosion-proof handheld light. I personally  
17 couldn't. I can't afford them. The small one was \$300,  
18 the bigger one was \$500. And if you put a tank light  
19 into a confined space, you're talking \$2,100. So I think  
20 there is a specific case here where OSHA has  
21 underestimated the cost to industry of such a  
22 requirement.

23 Remember, our industry is so competitive that such  
24 costs are not passed onto the customers. It comes right  
25 out of whatever profit might be left over at the end of

0088

1 the job.

2 1915.84, confined spaces. You've heard the  
3 discussion about the definition of isolated spaces versus  
4 confined spaces, and I think you need to do some work on  
5 the definition of isolated spaces. We don't really know  
6 what that means.

7 We understand fully what confined spaces means,  
8 because we understand 29 CFR 1915 Subpart B. This  
9 happens to be the document that PSSA fully endorses, and  
10 through our local chemists has conducted several training  
11 seminars to its members. We find it thorough, we find it  
12 workable, and we want to offer our compliments to the  
13 authors. It would be difficult to improve on it.

14 I would encourage OSHA to follow the lead of some  
15 other agencies, some other branches of the regulating  
16 community trying to instill some reasoning into the  
17 rules. Recently, Congress passed the Clean Boating Act

18 of 2008. And Senator Maria Cantwell's office explained  
19 that the bill directs the EPA, that is the Environmental  
20 Protection Agency, to develop reasonable management  
21 practices. And it goes on further and says to protect  
22 boaters from unnecessary government red tape.

23 In response to that, the regulated community through  
24 Vote US hailed this as a fabulous victory for common  
25 sense. And it just goes to show what can be done when

0089

1 the voting public, the marine industry and our elected  
2 representatives in Congress were all together.

3 In another recent case, EPA administrator Steven  
4 Johnson signed a final rule October 7 that would  
5 encourage businesses to recycle hazardous secondary  
6 materials instead of disposing of them as waste. The new  
7 rule streamlines the regulation. I think that's the  
8 point. The new job as regulators you must be aware of  
9 the interim consequence of your good intentions.

10 The proposal by OSHA to regulate to regulate working  
11 conditions at shipyards is anything but streamlining. In  
12 fact, it goes to great length, far too much detail in an  
13 effort to be thorough. What it creates is a Bible of  
14 opportunity for a diligent inspector to easily fill his  
15 quota of fines and citations. It needs to focus on what  
16 will truly reduce risk and then stop at a reasonable  
17 level of detail.

18 Thank you.

19 JUDGE GEE: Thank you, Mr. Killingsworth. Are  
20 there any questions from the audience for the panel.

21 From the OSHA group.

22 MS. SHORTALL: We'll start with Ms. Watson.

23 MS. WATSON: Good morning, thank you for  
24 coming. I have kind of a mix of questions some will be  
25 individual based on your testimony and the rest will be

0090

1 for the whole panel to answer. I'd like to start with  
2 Rick.

3 You had mentioned your vehicle, that you don't  
4 really have stop signs or that sort of thing. I'm just  
5 curious, have there been any accidents at your facility  
6 regarding vehicles?

7 MR. BROWN: Not to my knowledge.

8 MS. WATSON: And then you mentioned that you  
9 work with a lot of contractors, and I was just curious  
10 how do you deal with that, especially with  
11 lockout/tagout. How do you kind of make sure that  
12 everybody is in the loop, you know, like with group  
13 lockout/tagout?

14 MR. BROWN: We've developed a set of contractor  
15 safety guidelines that we have our subcontractors sign,  
16 and in that they have to follow, for instance, on like a  
17 tagout specifically, they have to come on and actually  
18 use the lockout/tagout on Rule 1910.127 on our vessels  
19 when they perform work for us. Is that what you are  
20 getting at?

21 MS. WATSON: Yes. Are you getting that, like  
22 if you are hanging tags or locks, are you actually  
23 issuing them the materials to do that or is it they are  
24 bringing it?

25 MR. BROWN: They have to bring their own at

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1 this time.

2 MS. WATSON: You've also mentioned about the  
3 cords and hoses, kind of asking OSHA to kind of have an  
4 exemption to just push them aside. Can you just explain  
5 to me what you guys do when you're working on vessels  
6 regarding hoses and cords?

7 MR. BROWN: Very similar to Al's testimony  
8 earlier today. As is on any vessel, you try and make a  
9 reasonable walkway, whether it's with S hooks or trees or  
10 any combination therefore and try and make it as safe as  
11 possible for passage.

12 MS. WATSON: Today, Kim and John, you guys both  
13 discussed job hazardous analysis, and I was wondering if  
14 you could go into that a little bit, maybe give an  
15 example of situations when you would use analysis like  
16 that.

17 MR. HODNE: We use it for all the operations.  
18 It's a part of what they discuss with the employees  
19 before they go out. If you're in production release, for  
20 instance, and inserted on the hull of a ship, they will  
21 send down the three or four, whoever is going to be doing

22 that, and they will recognize what they need to do, what  
23 habits will be recommended. They will look at staging in  
24 place, they do a fire watch on the inside, they do fire  
25 watches on the outside, all of the PPE might be required,

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1 they go through the steps of the process with regards to  
2 that production and release the job they're going to do.  
3 It's actually a three-step affair.

4 It's the job steps, the hazards involved and the  
5 abatement of. It's three columns, straight across, this  
6 is what we're doing, this is the hazards that are a part  
7 of that, and this is how we will abate that hazard, be it  
8 ear plugs, be it whatever. Those are expected with every  
9 job.

10 A lot of jobs are routine. They're done many times  
11 over and over through the year, so at that point we've  
12 created a library where you can actually go online, pull  
13 down the generic data for that operation, that particular  
14 process, and then depending obviously if there is any  
15 changes, special conditions, it's raining, it's snowing,  
16 it happens to be a sun shiny day, they might not need to  
17 do snow removal before they have to do it. But then they  
18 can read that particular hazard analysis for the  
19 operation.

20 MS. WATSON: Who is in charge of that, a  
21 supervisor?

22 MR. HODNE: Every employee is trained on it.  
23 Every employee is responsible for them, whichever lead.  
24 If the three of us were to go off and do a job and none  
25 of us were a supervisor, but when the supervisor assigned

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1 the three of us to do the work, you get an JHA done,  
2 bring it by me for review. And the supervisor would sign  
3 off on it. And quite often supervisors on new processes,  
4 they'll bring me the job hazard analysis. We do job  
5 hazard analysis even for the very routine haul out and  
6 launch process of our dry dock. We do that 100 times a  
7 year, and it couldn't be more routine.

8 But if the wind is blowing, if it's pouring out, is  
9 it sunny, is it raining, then I review and sign off one  
10 every one of those job hazard analysis, and we have a  
11 safety meeting right there at the gangway. The job  
12 hazard analysis is gone over with our whole crew, they  
13 all sign off on it, I've already reviewed it, and we go  
14 through, and that's done one very single thing we do.

15 MS. WATSON: Could you just give me an idea of  
16 how much time that takes out of your day to do that job  
17 hazard analysis, just on average?

18 MR. HODNE: On average, it's 10 to 20 minutes,  
19 I suppose. We've been doing it for over a year and a  
20 half it's been mandated, so they are better. In the  
21 beginning, they complained, like workers, it's their  
22 right to do, to complain when you put something extra on  
23 them.

24 Today it's expected and it has been streamlined, it  
25 happens easily. And like I said earlier, it actually

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1 increases the flow of production because they don't have  
2 to stop and think about what they're doing, and it lays  
3 out all the processes and the steps that they are going  
4 to do as well as the hazards.

5 MS. WATSON: John, would you say it's the same  
6 for you?

7 MR. KILLINGSWORTH: Yes. I would like to build  
8 on the job hazard analysis issue. It does not always  
9 have to be a formal process. In order to explain that,  
10 you have to understand the nature of our business.

11 There are two actual businesses that we're involved  
12 in, new building, which is working with nice clean models  
13 and a more structured environment, and the other is ship  
14 repair. Ship repair is more of a discovery process. The  
15 owner will come into port thinking he has a list of  
16 things he wants done. We will look over the job as much  
17 as possible, but in the process of making the  
18 preparations to accomplish what he wants you to do, you  
19 discover that there are other things that need to be  
20 done, some of which present very unique conditions and  
21 hazards, and that has to be dealt with.

22 When an employee encounters a situation like that  
23 work stops, heads get together, they work it out with the  
24 owner and the project manager and come up with a suitable  
25 solution thereby minimizing any risks to the employee.

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1 But it doesn't always get written down. You have to  
2 understand that the effort takes place, and that's part  
3 of the professional attitude that we've cultured in that  
4 part of our yard.

5 MS. WATSON: Do you have some sort of overall  
6 safety procedures that just say a hazard analysis will be  
7 conducted?

8 MR. KILLINGSWORTH: Well, that happens actually  
9 first at the project manager's level when he and the  
10 customer come up with the list of work in the beginning.  
11 And then daily revisions to that occur on the job.

12 MS. WATSON: Kim, and actually John as well,  
13 you didn't mention the size and the number of employees.  
14 I don't think you did. I apologize if you did. Could  
15 you please just tell me the size.

16 MR. HODNE: About 125 production employees.

17 MS. WATSON: And how large is your facility?

18 MR. HODNE: Two and a half, maybe three acres.

19 MS. WATSON: And, John, can you please tell me  
20 at your facility.

21 MR. KILLINGSWORTH: It depends what we've had  
22 going on. I've been there when we've had 30 employees.  
23 Right now we're blessed with having hired our 300th  
24 recently. Sometimes we're doing work in two acres;  
25 otherwise we might be spread out over 10.

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1 We happen to be on a piece of property in the Port  
2 of Anacortes marine terminal. So as demands increase, we  
3 can spread out and use more, lease more of the land  
4 that's available for our work. Right now we are blessed  
5 with enough work to keep a lot of people working. I  
6 guess we've grown to be classified as large. I think  
7 it's small, but let's settle for medium.

8 MS. WATSON: John, thank you for bringing that  
9 hard hat with the light on it. Is that normally what  
10 your employees use?

11 MR. KILLINGSWORTH: These?

12 MS. WATSON: Right.

13 MR. KILLINGSWORTH: Oh, more and more you'll  
14 find versions of the head helmet-mounted light. It's  
15 just hands-free and more practical.

16 MR. HODNE: Less of a hassle.

17 MS. WATSON: In most cases you guys are wearing  
18 hard hats, or the employees are wearing hard hats?

19 MR. KILLINGSWORTH: All cases.

20 MS. WATSON: That's something that would be  
21 easy to --

22 MR. KILLINGSWORTH: Oh, yeah. Some of these  
23 new products that are coming out on the market making it  
24 easy and affordable. The new LED technology that we're  
25 experiencing has spurred a whole bunch of new products.

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1 Like I said, I wish I could have brought one of those  
2 intrinsically safe flashlights down to show you, but  
3 sorry.

4 MS. WATSON: That's fine.

5 I guess since we're on the lighting topic, in case  
6 of a loss of power -- and this is for the whole panel --  
7 what kind of procedures do you have in place if the power  
8 goes off?

9 MR. KILLINGSWORTH: I'll do you one better.  
10 The typical on a Washington state ferry outboard might be  
11 a space that you crawl into. I know it's kind of hard to  
12 regulate it because I'm an SEP, but it's lined with what  
13 they call a cold tar epoxy. It's kind of like a musky  
14 version of rhinoliner that you've seen on cars. It's  
15 just a very black substance, it's very resistant to  
16 corrosion and rust. That's the protection you want to  
17 prevent the sips, but it soaks up every bit of light you  
18 can possibly put in there. I don't care how many lights  
19 you put in there, it's tough to light a space like that.

20 I could guarantee we could not comply with the lumen  
21 levels prescribed in that one table if you took  
22 measurements in those kinds of spaces. They are the  
23 kinds of spaces that we normally regularly have to go  
24 into. If the lights go out, every single one of our  
25 employees are told that they better have some means of

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1 emergency lighting. It's easy nowadays with the  
2 flashlight technology we have to get enough light to get  
3 out of such spaces.

4 generally speaking, though, when the lights go out,  
5 the call goes out to the electrician to figure out why.  
6 Obviously if it's a breaker that's thrown, it's a matter  
7 of chasing it down, and within five minutes the light is  
8 restored.  
9 So normally if there is a problem for a person in a  
10 very dark space with very little light that he cannot get  
11 out, he's advised to just stay put.  
12 MR. HODNE: For us it's a part of new employee  
13 orientation. It's 100 percent every employee when going  
14 into any spaces will have a portable light with them.  
15 There is signs on stores, we provide them to them,  
16 they're right there. We go through literally thousands  
17 of flashlights annually. Don't get busted in a tank  
18 without your flashlight.  
19 MR. BROWN: We don't require it, but I would  
20 say the vast majority of our employees that do go into  
21 those kind of areas carry their own flashlights, and if  
22 the lights go out, the same thing, the call goes out and  
23 we get the lights back on as quickly as possible. And  
24 they should just shelter in place. I think that's pretty  
25 much standard practice with us as well.

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1 MS. WATSON: And you have responders that you  
2 can shelter in place that would come by and check on  
3 them?  
4 MR. BROWN: The lead man on that particular  
5 vessel for us. For us, like I said, we work on several  
6 vessels. At our facility the work crews on each vessel  
7 and that would be the same if the power goes off on only  
8 one vessel. The lead man usually gets the radio and the  
9 response will be rapid.  
10 MR. KILLINGSWORTH: May I comment on the  
11 frequency of checking on employees in confined spaces?  
12 MS. WATSON: Yes, please.  
13 MR. KILLINGSWORTH: Obviously there is a  
14 requirement that the lead check on his employees. The  
15 standard says something like frequently or regularly or  
16 whatever that is. But if anything happens unfortunate,  
17 there would always be the case that we didn't check  
18 frequently enough. We normally have several breaks  
19 during the day. Anybody who doesn't show up obviously is  
20 chased down and accounted for. So I would say four times  
21 a day is what we usually do.  
22 But obviously there are jobs that don't last that  
23 long. They may be in a space for a few minutes at a  
24 time, and that employee while he's in there may not be  
25 checked up on. So that requirement needs to have some

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1 reason added to it.  
2 MS. WATSON: Now, is that with all spaces, the  
3 four times during that shift or day, or is it just  
4 confined spaces?  
5 MR. KILLINGSWORTH: In our case we can pretty  
6 much check on employees four times a day, but in confined  
7 spaces, that's where we're talking about, the need is to  
8 be very diligent and perhaps more frequently would be  
9 adequate.  
10 But like I say, if anything happens, it may not be  
11 frequent enough.  
12 MS. WATSON: For the whole -- go ahead.  
13 MR. HODNE: For us, we all have our ID badges,  
14 like many of us do now, and when anybody goes into any  
15 space on the guard that is around that hatch or whatever,  
16 that ID tag is clipped on on the confined space permit on  
17 the tag right there. So when the supervisors or anybody  
18 is walking around, you know you can see if you stick your  
19 head in there, if I have three tags, I better have three  
20 men in the tank, and if there is four men in the tank, I  
21 want to know why I'm missing a tag.  
22 On the other side of that, if I have three tags and  
23 only two guys down in the tank, if the other guy didn't  
24 take a tag with him when he went up to the store to get  
25 equipment, I want to know that because in case of an

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1 emergency, we're going to be looking for three, and if we  
2 only see two come out, he can explain to my widow why I  
3 went down into a hole looking for a ghost that wasn't  
4 there and I ended up dead. So we press those very hard.  
5 MR. KILLINGSWORTH: Our system works  
6 differently. Personally, as an SCP, I'm going to tanks  
7 alone. It may be 20 spaces on a vessel that I visit



8 every single day. I'm not going to hang a tag at every  
9 hatch as I go in and come out. That would be  
10 impractical.

11 MS. WATSON: Rick, how about you for confined  
12 spaces?

13 MR. BROWN: We don't have a formal system with  
14 tags. I'd be working, again, with a lead man or on a  
15 particular vessel. Frequent checks is same thing, in and  
16 out for short visits, like John said, so I don't have a  
17 formal system in place other than frequent checks and a  
18 lead man that is responsible for a particular crew on a  
19 vessel. And if they are in a confined space, someone  
20 will be checking on a fairly often basis.

21 MS. WATSON: And for the panel, do any of your  
22 yards or your procedures involve end-of-shift musters or  
23 end-of-task musters?

24 MR. HODNE: Absolutely. The supervisors have  
25 to account for the timecard at the end of the day. At

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1 the end of the day he's right there, and at the end of  
2 the shift he's gathering timecards. If he's missing  
3 somebody who has punched out and not punched out, and he  
4 knows that he doesn't have anyone on extended hours, he's  
5 going to go and find out where this person is. They look  
6 at it as a guy walking around and he's getting special  
7 hours. He wants to know because he has to account for  
8 his timecards at the end of the shift and all of the  
9 numbers have to check out. If he has one that hasn't  
10 punched out, he's looking for that person.

11 MS. WATSON: Let's shift gears a little bit to  
12 medical and first aid. Could each one of you talk a  
13 little bit about your program as far as training,  
14 training personnel on-site.

15 MR. BROWN: I'll start. Probably all of our  
16 lead men and supervisors are first aid and CPR trained.  
17 We have a training room on site and conduct training,  
18 have conducted CPR and first aid and AED training. We  
19 have first aid kits located around the facility, fixed  
20 and portable, in several locations. We have an AED at  
21 each facility as well.

22 MS. WATSON: What's the number of AED's that  
23 you have, just one per facility?

24 MR. BROWN: Just one at each one of my  
25 facilities, yes.

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1 MR. HODNE: I would say that probably 15 to 20  
2 percent of our workforce is first aid/CPR trained, and  
3 the ambulance and first responders are three blocks from  
4 our facility. So there is a quick response there.

5 But in all honesty, the reality of it is they go  
6 through the training. I've been through it a dozen times  
7 or more, as many people have, but they never get to use  
8 it. In the shipyard, a majority of what goes on is  
9 Band-aid first aid. You get a cut, you clean it, you put  
10 salve it, put a Band-Aid on, do whatever.

11 For emergency trauma technicians, we rely on the  
12 experts. They don't use it much. It's almost a hazard  
13 in itself to have all of these first aid trained people.  
14 We all can put Band-Aids on. We can do our own first  
15 aid. We grow up through life doing that.

16 To put that requirement on them is almost a hazard  
17 because they're stopping, they're fumbling, they're  
18 trying to remember what they were trained to do. They're  
19 scared to death to get it wrong. They don't want the  
20 liability of it. The Good Samaritan rule does not always  
21 apply.

22 But there again, they've got each other's back.  
23 They watch out for each other. They will render aid to  
24 whomever needs it, even if they are not first aid  
25 trained. If I am not first aid trained, and John and I

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1 are working, and he gets a cut and he needs something,  
2 common sense, I'm an adult, I'm a thinking person. I'm  
3 going to render aid. I'm not going to not render aid  
4 just because I've not been through a first aid class.

5 I guarantee the majority of the people in this room  
6 have probably never had to deal with a heart attack,  
7 would not even be able to recognize when CPR was or was  
8 not needed or an AED. Is it a diabetic, is it a diabetic  
9 reaction, is there something else going on there or are  
10 they having a heart attack?

11 It sounds good, it feels good. It allows you to

12 train people in it. But to put the emphasis on it like  
13 we do, I have probably 20 first aid kits around, and I  
14 put Band-Aids in baggies with a Band-Aid, it's in the  
15 baggy and the wrapper, take it out and fling it on there  
16 so they can see, oh, that's a fingertip Band-Aid. I  
17 mean, we facilitate as best we can. I know it's never  
18 going to come out of the rule, but if you look at it  
19 board picture, there's a hazard to the whole first aid  
20 rule also.

21 I don't want somebody that was trained a year and a  
22 half ago to come in and aiding me and he's trying to  
23 think, oh, pulling a card out of his pocket, what am I  
24 supposed to do. Because I was trained in what I'm  
25 supposed to do, not everybody deals with stress in

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1 emergency situations the same. Some are good at it and  
2 some are absolutely horrid at it.

3 MS. WATSON: You mentioned a short response  
4 time. How long does it usually take?

5 MR. HODNE: Two minutes. We drill those.

6 MR. KILLINGSWORTH: We're three minutes. We're  
7 in a small town. Anacortes has a small fire department,  
8 but they are very professional. We rely on them for  
9 paramedic services. We actually have had their people  
10 down and participated in our confined space training  
11 programs and our shipyard competent person programs. And  
12 when we do train, we probably train, oh, between nine and  
13 12 of their staff in shipyard competent person skills.

14 They do have equipment, but they still do rely on  
15 shipyard when it comes to anything that might happen on a  
16 vessel. We've come to an agreement that the shipyard  
17 will, through its, you might say its confined space  
18 rescue team, handle the victim, as it were, from the  
19 vessel to the ground, and then we would rely on the  
20 paramedics to provide the victim care during that period.

21 When the victim hits the ground, however, the  
22 paramedics take over using their own equipment and  
23 provide whatever is necessary from there. That's the way  
24 our drills go.

25 MS. WATSON: Do you have a basket stretcher or

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1 a type of stretcher that you would use to transport them  
2 from the vessel to the pier?

3 MR. KILLINGSWORTH: We have basket stretchers  
4 wherever we may have the need to get somebody off a  
5 vessel. However, the fire department won't use them.  
6 They insist on using their own backboards and equipment  
7 in those scenarios.

8 MS. WATSON: Sanitation. I was just curious,  
9 do each one of your yards have a designated spot for  
10 employees to smoke, eat or drink?

11 MR. HODNE: We have designated areas where they  
12 cannot, and that's probably an easier way to state that.  
13 We actually don't allow smoking on board customer  
14 vessels, that's foreboden. At the end of the gangway,  
15 yeah. You're not going to smoke on the vessels. Because  
16 we lease our facility from the state, so it's a  
17 state-owned facility, so they can't even smoke in the  
18 office buildings and such, so we're kind of regulated  
19 that way. It's more where they cannot. Everybody knows  
20 where they can.

21 MS. WATSON: So there's adequate signage up to  
22 say that.

23 MR. HODNE: Yes.

24 MS. WATSON: On a number of the vessels, I  
25 know, John, you said you do shipbuilding and ship repair,

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1 but do a lot of them have secondary power sources or are  
2 most of them you're finding it's a primary easy, you  
3 know, lockout or tagout with employees trying to do work?

4 MR. KILLINGSWORTH: If a vessel is dockside and  
5 not hooked to shore power, they would be on their own  
6 generator, but that doesn't happen so often. Most likely  
7 scenario is they are on shore power, especially if the  
8 vessel is invariably shore powered and nobody is relying  
9 on any of their auxiliary shipboard power.

10 MS. WATSON: So most of the time you're not  
11 having to worry about isolating a secondary source?

12 MR. KILLINGSWORTH: Rarely. I can't think of  
13 it. We put people on shore power, that's it. We're not  
14 going to fire up another facility, mainly because those  
15 facilities are water coolant, and once you pull a boat

16 out of the water.

17 MS. WATSON: Well, I'm just curious. There is  
18 a lot of vessels that have, you know, if we're talking  
19 about a military ship, they would have primary and  
20 secondary for most of their systems. So that's why I was  
21 just curious with the smaller yards.

22 MR. KILLINGSWORTH: We don't handle military  
23 vessels.

24 MS. WATSON: Right, I understand that. Is it  
25 same for both?

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1 MR. KILLINGSWORTH: Yes.

2 MS. WATSON: For the entire panel, is your  
3 lockout/tagout system, is it primarily tags, locks; can  
4 you go into a little bit of detail about what you use.

5 MR. BROWN: Our system for your shops is locks  
6 and tags, and the vast majority of the equipment we have  
7 in our shops is lockable at the equipment. So as far as  
8 our power line site, I just kind of want to clarify, we  
9 are small, our actual trade group in Tacoma is  
10 probably -- the actual trades people who work on the  
11 vessels for us is less than 40 total. Like I said in my  
12 description, our facilities cover a lot of ground for  
13 supporting Trident Seafoods.

14 Back to the lockout/tagout, it's mostly lock.  
15 Almost everything is lockable on the land side. And I  
16 think we have the same challenges on our vessels as every  
17 vessel does as far as a mix of what's lockable and not.

18 At some point you follow that closely enough to the  
19 source and we have found ways to lock it out on our  
20 vessels as well, at least that's what we strive for.

21 MS. WATSON: What kind of things do you use to  
22 lock them out?

23 MR. BROWN: Just like the kit that Allen showed  
24 yesterday, the clamps for breakers, and we have been able  
25 to do retrofits, if we can install lockable breakers and

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1 the lock goes right on. There's a whole gambit of  
2 equipment that's out there, for example, and we've  
3 supplied every one of our vessels.

4 MR. HODNE: Same for us. The JHA will again  
5 identify what lockout/tagout is necessary, breaker lock,  
6 we need chains for large valves, we'll chain those down.  
7 And it's identified in the job hazard analysis so they  
8 know what they need to do.

9 The only problem that we have encountered once in my  
10 10 years off a ship in dry dock is when the ferry workers  
11 came and actually removed one of our locks. That turned  
12 into a blowup, so that ultimately ended up in a contract  
13 rewrite for what goes on there.

14 But other than that, it's identified in the job  
15 hazard analysis, and it's tagged, it's that simple, all  
16 the way down the chains, blanks, whatever the job hazard  
17 analysis identifies.

18 MR. KILLINGSWORTH: It depends. Ideally in  
19 shipbuilding tagout seems to be a very effective process,  
20 and usually that happens during systems startups.  
21 Primarily it's dealing with electrical energy, but in  
22 ship repair, you're dealing with all kinds of energies,  
23 hydraulic, hematic, electrical, of course.

24 But we have to engineer means of securing these  
25 systems even it means blanking out pipe systems before we

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1 can work on them. And it's very common practice.

2 But locks don't work on pipes too well unless like  
3 in the case of valves, you're using chains with locks.  
4 Tags and the training and the principles of  
5 lockout/tagout, I found to have been very effective.  
6 Fifteen years ago when I started work there, nobody  
7 understood what lockout/tagout was all about.

8 So it's been something we've had to build a culture  
9 around, and education has been the most effective tool  
10 getting on top of those problems.

11 MS. WATSON: How often do you do training in  
12 lockout/tagout?

13 MR. KILLINGSWORTH: It depends on the new crew  
14 that might be coming in. But for anybody new coming into  
15 the yard, they go through an orientation process in  
16 general which touches on that, and at the craft level  
17 they do regular monthly training sessions as needed as  
18 new people come in and join the staff.

19 MS. WATSON: I just have one final topic or

20 question for the panel. I was just curious when, John,  
21 you had mentioned hooking up to shore power, so dealing  
22 with services such as steam and shore power, do you go on  
23 board the vessel to inspect prior to to make sure the  
24 panels are in safe condition or that sort of thing?

25 MR. KILLINGSWORTH: I personally don't, okay.

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1 But our electrician, foreman, superintendent, whatever,  
2 will have a conference with the boat skipper and the  
3 project manager to ensure that the system he's talking  
4 about is secure and that he might be working on is  
5 secure.

6 You said steam?

7 MS. WATSON: Yes.

8 MR. KILLINGSWORTH: We don't deal with steam.

9 MS. WATSON: So you're just running shore  
10 power?

11 MR. KILLINGSWORTH: Shore power would consist  
12 of a power cord to a certain amperage service to  
13 someplace on shore.

14 MR. HODNE: We do deal with steam, and when I  
15 passed around the proposed rule, our facilities guy, and  
16 I didn't get it in there because he wrote me two and a  
17 half pages in response to this whole steam thing. And he  
18 had a real consternation over the fact of the five times  
19 safety factor. He's calling the vendors trying to find  
20 such a hose. Such a hose does not exist for a feed line.  
21 250 psi is what all of ours are rated at, it's what  
22 they're stamped at, it's where we work at.

23 But if he's running at 80 or 90 psi, there's not one  
24 on the market, it doesn't exist for the steam. He gets  
25 together with the chief engineer of every vessel that

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1 comes in. Primarily Alaska Green Highway ferries that  
2 use steam and there's only two of those boats, so we know  
3 the vessels quite well. They talk every time before  
4 going on, and there is no problem. There's never been a  
5 steam burn, because, there again, safety is the most  
6 important thing. These guys want to go home at the end  
7 of the day. Common sense does apply, they're not idiots.  
8 They're thinking men, and they know what it takes to be  
9 safe, and they're proud of the work that they do.

10 So the communication between vessel and shipyard is  
11 constant, and familiarity is a good thing.

12 MR. BROWN: We don't deal with steam at all for  
13 supplying our vessels. For hooking up shore power,  
14 typically we -- we have a policy or program like John's  
15 where we've got short power cables hooking up to our  
16 vessels. Almost 100 percent of the time when they're on  
17 our dock, we're hooked up to shore power. And we work  
18 with the ship's crew when they come in from say a trip  
19 from up north, come in from Alaska, tied to the dock, we  
20 secure ship's systems, work with the ship's crew to hook  
21 up to shore power.

22 MS. WATSON: Thank you for coming, and please,  
23 if there is any questions you weren't asked or you  
24 weren't able to comment on, please provide those in the  
25 post-hearing comments.

0113

1 MS. SHORTALL: Mr. Bolon has questions next.

2 MR. BOLON: I don't have any questions, Sarah.

3 MS. SHORALL: Mr. Daddura.

4 MR. DADDURA: I'm just curious, Mr. Brown, you  
5 talk about maintaining and working on your vessel or  
6 fleet. Was there ever an occasion where working on the  
7 job it's not typically your vessels?

8 MR. BROWN: No.

9 MR. DADDURA: Can either one, John or Kim, what  
10 type of vessel do you work on, what size?

11 MR. KILLINGSWORTH: We generally work on  
12 vessels larger than 85 feet and less than 350.

13 MR. DADDURA: You spoke of ferries?

14 MR. KILLINGSWORTH: Ferries.

15 MR. DADDURA: All ferries?

16 MR. KILLINGSWORTH: No. We service the factory  
17 trawler market as well, tugs, barges, special services,  
18 fire boats, things like that.

19 MR. HODNE: Pretty much the same for us. Tugs,  
20 barges, fuel barges, all of the Alaska state ferry fleet,  
21 one of which is 429 feet, the Columbia. That is probably  
22 the largest ship that we've ever worked on, and that's  
23 the only one of that size. The median average ship is

24 250 feet, so that's primarily where our market focuses.

25 MR. DADDURA: And you do build ferries,

0114

1 correct?

2 MR. HODNE: Yes, little ones.

3 MR. DADDURA: You do build?

4 MR. KILLINGSWORTH: We have in the past built  
5 ferries. We repair the current fleet of the Washington  
6 state ferries, but we don't get involved in the  
7 construction of ferries very often.

8 MR. DADDURA: Thank you.

9 Back to working in isolated spaces. There seems to  
10 be some confusion. We have a confined space standard,  
11 Subpart (d) and there is this little blip down here about  
12 isolated cases on locations.

13 Is there a time when you send someone to do an  
14 errand or to fix something or install pipe bracket or  
15 whatever, a small job where he's by himself?

16 MR. KILLINGSWORTH: In a confined space?

17 MR. DADDURA: Anywhere.

18 MR. KILLINGSWORTH: Sure. Once in a while  
19 we'll have a small case where like we say a pipeline  
20 breaks, so we have to go in and fix it. It will take one  
21 person maybe a half hour or an hour or something like  
22 that.

23 MR. DADDURA: But you have a time set that he  
24 or she reports back?

25 MR. KILLINGSWORTH: Correct.

0115

1 MR. DADDURA: Before their next job.

2 MR. KILLINGSWORTH: Yes. Chances are they will  
3 be in and out of that area several times, but if they  
4 forget a tool or if they need another bolt or something  
5 like that, they'll be in and out. It's easy to check on  
6 them coming and going.

7 MR. DADDURA: I think, Rick, you stated you use  
8 1910.147 for lockout/tagout of your vessels in your yard?

9 MR. BROWN: That's correct.

10 MR. DADDURA: Do you gentlemen also use 1910  
11 for your vessels as much as you can?

12 MR. KILLINGSWORTH: I'm reticent to say yes  
13 because of all the details that I'm not remembering, and  
14 I'm not trying to -- that probably does not satisfy you,  
15 but I'm sure we attempt to.

16 MR. HODNE: I'm going to say no simply because  
17 I don't look at 1910. We have a lockout/tagout system.  
18 We recognize the systems have to have them.

19 MR. DADDURA: That's fair and honest.

20 MR. HODNE: We follow that and tag it out.

21 MR. DADDURA: I guess for all three of you the  
22 question, far from the fact you're not following word for  
23 word 1910's requirements, did you all start with 1910 and  
24 basically develop your own programs?

25 MR. KILLINGSWORTH: Without the document in

0116

1 front of me going through line by line, I'm reticent to  
2 say yes. We do have a definite system in place. Our  
3 electrical foremen and our superintendents supervises  
4 that program. The other craft foremen understand as it  
5 applies to their forms of energy, they do apply the  
6 principles as relevant.

7 MR. HODNE: And again, I'll say no simply  
8 because I don't look at it as 1910; I look it as the  
9 hazard of lockout/tagout and assess it.

10 From our hydraulic shop, we talk about it often, and  
11 they recognize all of the hydraulics, the different  
12 things they work with, the electricians the same thing.  
13 There is crossover.

14 We just approach lockout/tagout as an issue, not as  
15 1910 or 1915 or wherever it comes from, you know, this is  
16 it. I know I have the responsibility of protecting the  
17 employees, and we have a lockout/tagout need and we have  
18 a lockout/tagout program. It's not a program that I  
19 wrote, it's one that I inherited.

20 But from my background, it's what you have to do to  
21 get the work done, and everybody goes home at night. I'm  
22 sorry, I just don't look at 1910. I don't look at the  
23 lockout/tagout program the same as you do.

24 MR. DADDURA: The question is basically where  
25 you did you get the information from to start or develop

0117

1 the idea of protecting your employees by locking out

2 hazards?  
3 MR. HODNE: Probably for me as a compliance  
4 officer with WISHA.  
5 MR. DADDURA: Where did you get it from?  
6 MR. HODNE: Me?  
7 MR. DADDURA: Yes. Did WISHA have their own  
8 lockout/tagout?  
9 MR. HODNE: Well, my experience is, where my  
10 true knowledge of lockout/tagout comes from my three  
11 years as a regulatory compliance officer for the State of  
12 Washington.  
13 MR. DADDURA: Did you read that somewhere or  
14 did you wake up one morning at WISHA and say, Hey, I'm a  
15 lockout/tagout expert?  
16 MR. HODNE: No, they trained me on it.  
17 MR. DADDURA: Do you know what standard they  
18 trained you on; was it a state standard?  
19 MR. HODNE: It's a WISHA standard. It's a  
20 state-run thing.  
21 MR. DADDURA: I understand. But you don't know  
22 where they got it from?  
23 MR. HODNE: No.  
24 MR. DADDURA: Rick?  
25 MR. BROWN: To the best of my understanding,  
0118  
1 1910 is what we tried and built our programs on.  
2 MR. DADDURA: Thank you.  
3 Walking to working surfaces. Is there any confusion  
4 there from your standpoint that walking surface is  
5 anything that you walk on or is it a designated walkway  
6 you establish and maintain clear to get from space to  
7 space?  
8 MR. KILLINGSWORTH: Have you ever been on a  
9 boat where you tear up all the deck boards and then go to  
10 work?  
11 MR. DADDURA: Definitely.  
12 MR. KILLINGSWORTH: There is no walkway. It is  
13 all a working surface. It's very complicated.  
14 MR. DADDURA: When you're going to put that  
15 thing back together, do you then have a walkway?  
16 MR. KILLINGSWORTH: Yes, then there is a  
17 walking surface.  
18 MR. DADDURA: It's an established walkway,  
19 correct?  
20 MR. KILLINGSWORTH: Yes.  
21 MR. DADDURA: You try to maintain material free  
22 and line free and things of that nature, correct?  
23 MR. KILLINGSWORTH: We will try, yes.  
24 MR. HODNE: Same. They can double as a walking  
25 surface and working surface all at once.  
0119  
1 MR. DADDURA: Mr. Brown?  
2 MR. BROWN: It varies from boat to boat and  
3 vessel to vessel. They all come together and go in  
4 different directions.  
5 MR. DADDURA: Fair enough.  
6 That's all I have.  
7 MR. KILLINGSWORTH: By the way, when we're on  
8 the upper deck and put people to work, we designate it as  
9 a hazardous area and call attention to holes and  
10 trip-and-fall hazards, so we don't go in there blindly.  
11 MS. SHORTALL: Mr. Perry has some questions  
12 next.  
13 MR. PERRY: Just a few quick ones, I think.  
14 John, you were talking about the injury rates  
15 presented as a preamble earlier. Could you tell the  
16 panel what your recordable injury rate is for the most  
17 recent year, if you have that?  
18 MR. KILLINGSWORTH: In fact, I looked it up for  
19 2006 and it was -- 2006 was 20 and 19.2 in 2007. And  
20 we've been examining those numbers and developing  
21 programs to make improvements in that area.  
22 MR. PERRY: That's your total?  
23 MR. KILLINGSWORTH: That's the total, yes.  
24 MR. PERRY: Would you know lost workday rate?  
25 MR. KILLINGSWORTH: I don't recall. Kim?  
0120  
1 MR. HODNE: I have one lost day for three  
2 injuries recordable for this year.  
3 MR. PERRY: Rick?  
4 MR. BROWN: I don't know the rates off the top  
5 of my head, but for '08 I think we have seven total

6 recordable injuries, all minor injuries, all minor.

7 MR. PERRY: Thank you.

8 John, you had mentioned before, I think, and correct  
9 me if I'm wrong, I think you said you can't compare  
10 injury rates for shipbuilding ship repair with  
11 manufacturing rates, I presume construction rates as  
12 well. Would you elaborate on why?

13 MR. KILLINGSWORTH: Yeah. I think comparing  
14 shipyard work environment with the total work environment  
15 you might see that in communities. You can't compare  
16 flipping burgers with working on steel ships. It just  
17 doesn't work. The environments are different.

18 And people have to be trained specifically in our  
19 environment to survive. That may not be true if you're  
20 selling real estate or driving a car or, you know, a bus.  
21 We train our people coming in so that they can work in  
22 that environment safely. We have several programs in the  
23 community.

24 We work in a community where there are refineries,  
25 and there is a program in the community that everybody is

0121

1 used to called sea stock that applies -- might as well  
2 apply in the shipyard too. People are very aware of the  
3 heavy work environment. It's not like working in a  
4 hospital.

5 That's why I say it's hard to compare what you see  
6 out in the rest of the community with what might be in  
7 the shipyard.

8 MR. PERRY: I understand. Okay, thank you very  
9 much.

10 MS. SHORTALL: Ms. Wangdahl has questions now.

11 MS. WANGDAHL: I just have a few.

12 Can you talk about your local EMS. Can you tell me  
13 a little bit about that.

14 MR. HODNE: As a matter of fact, I did one just  
15 this last Friday with the confined space rescue team.  
16 Probably quarterly at least we'll get together with them  
17 and one of the vessels in the yard and put somebody down  
18 in the thruster room. We've done it on our brand new dry  
19 dock, and we explained to you earlier about dry dock.

20 Down at the very bottom in the crossover, we put one  
21 of our people down there, and we have to extract them out  
22 and go through the whole deal. It's quarterly.

23 I also blow the alarm, which you can hear downtown  
24 in Ketchikan and in the yard, and everybody comes and  
25 they muster. We're getting ready, this coming November

0122

1 we're going to do a larger, expanded drill with the  
2 Alaska Green Highway system with one of their boats, the  
3 local fire department, our people and the U.S. Coast  
4 Guard, and we'll have a table propped in front of us and  
5 we'll build a fire and there are four or five of us, and  
6 we do it often enough that it's rather boring, but it's  
7 situations that you might have happen on a larger vessel,  
8 so there's probably at least six a year.

9 MS. WANGDAHL: How long have you been doing  
10 this?

11 MR. HODNE: That was part of John's original  
12 compliance-based rescue team in '94.

13 MR. KILLINGSWORTH: It was later than that.

14 MR. HODNE: '97?

15 MR. KILLINGSWORTH: Something like that.

16 MS. WANGDAHL: Do you only drill confined space  
17 rescue?

18 MR. HODNE: No, no, no. We'll do fire or we'll  
19 do -- our quarterly ones, while we won't have a drill per  
20 se other than me setting off the alarm just to see if  
21 this guys remember how to and where to muster and do I  
22 have any dead spots, because work is dynamic and it moves  
23 around the yard, and I want to know is this alarm, are  
24 you hearing it the way that it needs to be heard.  
25 Sometimes we have a dead spot in the yard.

0123

1 MS. WANGDAHL: Do you feel with your facility  
2 relying on off-site EMS is adequate?

3 MR. HODNE: Oh, absolutely. They're three  
4 blocks down the street.

5 MS. WANGDAHL: John, so you were the one that  
6 initially set up having the drills with the local EMS?

7 MR. KILLINGSWORTH: Yes. I was the one that  
8 started the confined space rescue team in our yard and  
9 subsequent training efforts with the local paramedics.

10 MS. WANGDAHL: How often do you do this?  
11 MR. KILLINGSWORTH: Probably twice a year now.  
12 We've increased our frequency on that.  
13 MS. WANGDAHL: Did you initiate it or did the  
14 fire department initiate it?  
15 MR. KILLINGSWORTH: Initially I did.  
16 MS. WANGDAHL: And they had no problems doing  
17 it; you have no problems scheduling?  
18 MR. KILLINGSWORTH: No, we have a good rapport  
19 with the fire department. Like I say, it's a small town  
20 and they are our neighbors and we work together on issues  
21 like this, and they appreciate it.  
22 MS. WANGDAHL: Rick, do you do anything  
23 similar?  
24 MR. BROWN: I'm not directly involved, but I  
25 don't think we've had any confined space drills like that  
0124  
1 with the local fire department, but I know our facilities  
2 safety managers have the fire department come in, they  
3 are familiar, they walk the facility, make sure they know  
4 the layout of our facility and our vessels.  
5 But I don't believe we've done any formal programs,  
6 drills, I should say.  
7 MS. WANGDAHL: And, Rick, I just had one more  
8 question for you. You stated previously, I think it was  
9 in your original testimony or it may have been in an  
10 answer to one of Ms. Watson's questions, but you stated  
11 you put up temporary walkways for the crew on fishing  
12 vessels?  
13 MR. BROWN: We establish temporary walkways  
14 from the guard shack in that facility, and all I mean is  
15 it's cones and caution tape, for example, so they can get  
16 directly to the particular vessel that we're crewing.  
17 MS. WANGDAHL: Why don't you do this on a  
18 permanent basis for your own employees?  
19 MR. BROWN: I don't think we really -- I need  
20 to think through that answer real quickly. As our teams  
21 go out to the different vessels, our maintenance teams, I  
22 don't see the need. My quick answer is I just don't see  
23 the need.  
24 We just don't have, as far as I can think, issues  
25 with traffic. We don't have that much traffic. It's  
0125  
1 when they're crewing the vessels at the same time we're  
2 loading raw materials for the season, so there is a lot  
3 more activity right at the time maintaining those vessels  
4 the last couple of days before a vessel is ready to  
5 depart for a fishing season. We have a lot more  
6 activity.  
7 MS. WANGDAHL: You don't have a lot of areas  
8 where you're going to have pedestrians as well as your  
9 own vehicles on a regular basis; is that what you're  
10 saying?  
11 MR. BROWN: That's fair, yes.  
12 MS. WANGDAHL: Thank you very much.  
13 MS. SHORTALL: Ms. Brinkerhoff has some  
14 questions.  
15 MS. BRINKERHOFF: Mr. Brown, in your testimony  
16 you talked about efforts to isolate hazardous energy on  
17 vessels, and I'm just wondering if you modify that at all  
18 on your smaller vessels where your crews are pretty small  
19 compared to your larger vessels.  
20 MR. BROWN: Could you explain modify.  
21 MS. BRINKERHOFF: Well, do you use the same  
22 hazardous energy control program for your large vessels  
23 as your small vessels?  
24 MR. BROWN: I'd say that the vast majority of  
25 our smaller vessels we try to put lockout/tagout kits on  
0126  
1 them and try to put a program in place that is similar.  
2 As far as experts go, it is the ship's crew who is  
3 usually I would probably say the default, and we have a  
4 flight engineering staff that has various, like we'll  
5 have full engineering for most of ours in one segment,  
6 our catcher vessels, and that particular person could  
7 certainly be qualified as a system expert.  
8 Do I understand your question?  
9 MS. BRINKERHOFF: Yes, I think so, and it  
10 sounds like you're saying there is somebody on each of  
11 your vessels, even the smaller ones. I think that's what  
12 you're saying.  
13 MR. BROWN: We've certainly extended the



14 program, our lockout/tagout program, as we try to build  
15 it on our larger vessels down to the smaller. It's not  
16 complete by any stretch, but I say getting system  
17 experts, my first answer would be our default is  
18 definitely the ship's crew.

19 MS. BRINKERHOFF: On the smaller --  
20 MR. BROWN: Yes, on the smaller. They know the  
21 vessel the best.

22 MS. BRINKERHOFF: Mr. Hodne, which of your  
23 shipyard employees wear personal protective equipment?  
24 MR. HODNE: Everyone.  
25 MS. BRINKERHOFF: Everybody?

0127

1 MR. HODNE: Yes. We have 100 percent  
2 steel-toed boots and safety glasses and hard hats, and  
3 then the PPE's goes up from there, ear plugs, tie backs,  
4 gloves. Yeah, everybody.

5 MS. BRINKERHOFF: But like the tie backs and  
6 the eyeglasses, who wears those?  
7 MR. HODNE: Everybody wears safety glasses, and  
8 the tie backs, it depends on -- there again, I'll go back  
9 to the JHA. The painters are going to be painting,  
10 they're going to be wearing it; if the services guys,  
11 labor guys, are doing a bunch of grinding or things with  
12 dust, they'll have theirs. No grinding is done without  
13 full eye protection, actual eyeglasses, and they may be  
14 wearing a tie back. The hydraulic guys are messing with  
15 fluids and they are in a greasy situation, they'll put  
16 the tie backs on. And that's the way they work.

17 MS. BRINKERHOFF: And that's all spelled out in  
18 your job --  
19 MR. HODNE: Job hazardous analysis.  
20 MS. BRINKERHOFF: That's part of the abatement  
21 section of the job?  
22 MR. HODNE: Yes.  
23 MS. BRINKERHOFF: And my other question to you  
24 was you mentioned that Washington state has the most  
25 clearly written rules. Are you talking about WISHA?

0128

1 MR. HODNE: Yes. I think they changes their  
2 name to DOS or something.  
3 MS. BRINKERHOFF: Right, I think it's DOS.  
4 And Mr. Killingsworth, I just wondered if your  
5 company has any of those really expensive flashlights?  
6 MR. KILLINGSWORTH: Not yet.  
7 MS. BRINKERHOFF: That's all I have.  
8 MS. SHORTALL: I have a few questions for you.  
9 Mr. Killingsworth, I'll refer to you first.

10 Mr. Killingsworth, in your facility, do you have any  
11 spaces containing bulk quantities of combustible or  
12 flammable liquids or gases or spaces containing  
13 quantities of liquid gasses or solids that are toxic,  
14 corrosive or irritating?  
15 MR. KILLINGSWORTH: No.  
16 MS. SHORTALL: I also wanted to know how far  
17 the closest EMT facility is from your facility  
18 mileage-wise.  
19 MR. KILLINGSWORTH: Nine blocks.  
20 MS. SHORTALL: Nine blocks?  
21 MR. KILLINGSWORTH: Less than a mile. I think  
22 it's five-eighths of a mile the last time we measured.  
23 And we are within their three-minute response radius.  
24 MS. SHORTALL: Does the three-minute response  
25 radius mean the time for them to get from their facility

0129

1 to your shipyard?  
2 MR. KILLINGSWORTH: Once they get the call, it  
3 takes them less than three minutes to get to our  
4 facility.  
5 MS. SHORTALL: So how long does it take them to  
6 get from their facility to an injured person who is in  
7 the bottom deck of the largest vessel you may have at  
8 your facility?  
9 MR. KILLINGSWORTH: Again, it depends. If the  
10 injury is in a new building area, access is immediate.  
11 If it's on one of the vessels, it will be, depending on  
12 when the rescue team gets the victim out of the vessel,  
13 however long that might be.  
14 When they come on-site, though, they go directly to  
15 the victim and offer the victim care.  
16 MS. SHORTALL: Right.  
17 MR. KILLINGSWORTH: We are not the experts in

18 victim care. We rely on the paramedics to do that.  
19 MS. SHORTALL: I'm just trying to understand  
20 how long does it take them from their point of their EMT  
21 facility to get to that employee if that employee were  
22 injured on the bottom deck of your largest vessel.  
23 MR. KILLINGSWORTH: Five, six minutes,  
24 something like that.  
25 MS. SHORTALL: Five, six minutes?

0130  
1 MR. KILLINGSWORTH: It depends on how deep they  
2 are in the vessel. I'm thinking of the largest vessel.  
3 MS. SHORTALL: Mr. Hodne, how close is the  
4 furthest EMT facility from your shipyard?  
5 MR. HODNE: Two blocks.  
6 MS. SHORTALL: Two blocks. When you said it's  
7 two minutes, did you also mean from the point of them  
8 getting from their facility to your facility?  
9 MR. HODNE: To the ship side. We're very  
10 small, and when the alarm goes out, the way is cleared,  
11 and we also have somebody at the gate to give directions  
12 to where they need to go. It's two minutes door to door.  
13 MS. SHORTALL: Door to door.  
14 MR. HODNE: Yes.  
15 MS. SHORTALL: It's been very fun, I've been  
16 looking at the websites for everybody, and I happened to  
17 look at your Ketchikan Shipyard Development Plan. Is it  
18 fully developed now?  
19 MR. HODNE: No, we're in the middle of it.  
20 MS. SHORTALL: Pardon?  
21 MR. HODNE: We'll in the middle of it.  
22 MS. SHORTALL: It looks like it's going to be  
23 quite a large -- to me it looks pretty large and a lot of  
24 different aisles and aspects to it.  
25 MR. HODNE: It's going to be probably the

0131  
1 newest shipyard in the country. Our footprint is -- does  
2 it say our footprint? I think it's going to be two and a  
3 half acres. It's really quite small. But the way that  
4 we've designed it, we'll be able to utilize that space  
5 that isn't utilized today.  
6 MS. SHORTALL: So how long will it take for  
7 that EMT personnel to get from your gate -- same  
8 question -- to the bottom deck to reach an employee in  
9 the largest ship that you work on or build or repair at  
10 your facility?  
11 MR. HODNE: Well, from the main gate to the dry  
12 dock, that large ship would be on the pier side, is maybe  
13 200 or 250 yards, so that distance is covered quickly. A  
14 lot of the gangway we'll have it cleared, or six minutes  
15 or less.  
16 MS. SHORTALL: Where are the AED's located?  
17 MR. HODNE: We don't have AED's.  
18 MR. KILLINGSWORTH: We rely on the fire  
19 department for that.  
20 MS. SHORTALL: Mr. Hodne, I want you to tell me  
21 why your company decided it was so important to do the  
22 job hazard analysis?  
23 MR. HODNE: Funny you should ask. Our shipyard  
24 is only 15 years old. We had a pulp mill, before I got  
25 there, it was a pulp mill, which was closed down some 10

0132  
1 or 12 years ago. It put 600 people out.  
2 And the owner of our company had a construction firm  
3 as well, and he's a benevolent man, and he hated laying  
4 off his people in the off season. This state facility,  
5 which we lease, was available. He didn't know  
6 shipbuilding, ship repair from anything, but he knew that  
7 he was given an opportunity that was presented to him, so  
8 he jumped into the shipbuilding, ship repair business 15  
9 years ago.  
10 What was the question?  
11 MS. SHORTALL: I want to know, I think it's  
12 great that you do the job hazard analysis. You said it's  
13 been triggered by management commitment down, so I wanted  
14 to know --  
15 MR. HODNE: For me, to work through with  
16 loggers and fishermen displaced into a new industry, the  
17 easiest way to get them is -- six feet or 10 feet tall is  
18 not the average of our shipyard, so it shifted over. The  
19 cultures changed and you're under new rules, and they're  
20 stubborn, loggers are stubborn.  
21 So going through the job hazardous analysis got them

22 to have to stop and recognize the myth, and do the steps  
23 to recognize, which then gets them into a recognition of  
24 the hazard.

25 And actually in 2009, we're trying to push it

0133

1 forward. We're going to have a weekly \$100 incentive. I  
2 don't believe in incentives at all, but I have to tell  
3 you, they're going to know and they are going to give you  
4 the rule; what is the standard; what is wrong with this  
5 picture, and they're going to give you 1915 dot dah, dah,  
6 dah, dah, dah. And we're going to push the knowledge.  
7 Besides, there's nothing to do up there except work,  
8 drink and sleep. I would rather that they work, learn  
9 and sleep.

10 MS. SHORTALL: You told us that you had one  
11 lost workday injury this year. What's your total number  
12 of injuries this year?

13 MR. HODNE: Reportable, I think I'm at five or  
14 six. And that's the little nicks and cuts and you put a  
15 Band-Aid on it.

16 MS. SHORTALL: When we were talking before  
17 about the time for the EMT to get to your plant and then  
18 to get to the gangplank and then to get down to the  
19 bottom of the ship, if you added it all up you're talking  
20 about six to seven minutes total. I can't think of a  
21 nice way to say it.

22 MR. HODNE: Just say it.

23 MS. SHORTALL: Are you aware of the American  
24 Heart Association's and Red Cross's statements, as well  
25 as other studies, that suggest that in a situation where

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1 a person has stopped breathing or their heart has  
2 stopped, that the golden window of opportunity is one to  
3 five minutes to get CPR started and an AED.

4 We're now past that point, that golden window of  
5 opportunity, if you had an injury at the bottom of yours.  
6 How is your company either dealing with that or planning  
7 to deal with that?

8 MR. HODNE: You have to understand the culture  
9 and the attitude of Alaskans. It's not like the lower  
10 48. When we say we're going down south, we don't mean  
11 Seattle. It's very much a self-preservation idea.

12 And these guys will do -- you have to recognize, we  
13 are CPR trained, we are first aid trained, even though I  
14 have a separate opinion about that. But we're going to  
15 render aid as best we can.

16 But then again, those AED's, they fail, they are not  
17 100 percent effective. And I wish I brought my notes  
18 with me, because that same 70-year-old superintendent has  
19 an opinion on AED's. And he surfs the net all the time,  
20 and they have a 20 percent success rate, some  
21 phenomenally low number.

22 People are putting way too much faith and way too  
23 much credence in AED's. It's just the way it is.  
24 They're great, they sound great, on theory and paper it's  
25 the right thing to do. But in practice and in outcomes,

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1 there is an edge, but they're not an end all/be all deal.

2 MS. SHORTALL: Mr. Brown, you use forklifts at  
3 your facility, right?

4 MR. BROWN: Yes, we do.

5 MS. SHORTALL: Do all your employees who  
6 operate forklifts wear seat belts?

7 MR. BROWN: Absolutely.

8 MS. SHORTALL: How did you get that climate or  
9 culture for you to tell your employees that you must wear  
10 the seat belts when you're operating the forklift?

11 MR. BROWN: We made that the rule and we  
12 enforce it.

13 MS. SHORTALL: What do you mean by enforcing  
14 it? What happens to an employee who gets caught without  
15 a seat belt on?

16 MR. BROWN: We have a progressive system in  
17 place there that our shipyard competent person at our  
18 facility and manager, and any manager at the facility is  
19 encouraged to support, that if you see someone not  
20 wearing a seat belt, we have a chit system where we write  
21 them up and put them in their files.

22 If they're found -- this is one example -- like  
23 driving a forklift without a seat belt on or any other  
24 number of violations, not wearing a hard hat, safety  
25 glasses, et cetera.

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1 MS. SHORTALL: Do you think you could apply  
2 that process or that system that you have to people using  
3 seat belts in other vehicles in which they might be  
4 riding or operating when they're on your facility?

5 MR. BROWN: My comments in my testimony I  
6 mentioned that that might be a difficult thing. We don't  
7 have that many personal vehicles enter into our facility  
8 other than catching them right at the gate as they go in.

9 My opinion is that might be a little bit difficult  
10 for our facility, for example, to enforce. There are  
11 very few personal vehicles we allow in, so it's a little  
12 hard for me to answer that.

13 I don't think that's going to be easy. It's a lot  
14 easier and a lot more visible on every forklift that  
15 you're going to see them if they're not wearing their  
16 seat belt.

17 MS. SHORTALL: If you had a pickup truck and  
18 people riding in the back of it, would it be pretty  
19 visible to see they're probably not in a seat belt back  
20 there?

21 MR. BROWN: Yeah, but we don't do that at our  
22 facility, absolutely not.

23 MS. SHORTALL: Gentlemen, thank you so much for  
24 coming here today. Your testimony has been wonderful,  
25 and we look forward to receiving your post-hearing

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1 comments as well. Thank you again.

2 JUDGE GEE: Thank you very much. We'll have  
3 our lunch break now. It's 12:45 now. We'll start up at  
4 1:45.

5 (Luncheon recess from 12:45 p.m. to 1:45 p.m.)

6 JUDGE GEE: If there is anyone in the room who  
7 has not signed in at the desk in front of the room,  
8 please do so so we have a record of who is participating  
9 and attending these hearings.

10 Our first presenter this afternoon is Philip Dovich.  
11 Is that how you pronounce your name?

12 MR. DOVINH: Yes, Your Honor.

13 JUDGE GEE: Please state your full name, spell  
14 it and your affiliation.

15 MR. DOVINH: Good afternoon. My name is Philip  
16 Dovich, spelled P-H-I-L-I-P, last name, D-O-V-I-N-H, and  
17 I work for Sound Testing, a company based here in  
18 Seattle, Washington.

19 MS. SHORTALL: Your Honor, I'd like to ask Mr.  
20 Dovich if he has additional copies of his testimony that  
21 we could follow along with it.

22 MR. DOVINH: I do. I only have one copy.

23 JUDGE GEE: Did you want to mark that as an  
24 exhibit?

25 MS. SHORTALL: Yes, Your Honor. I'd like to

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1 mark first of all John Killingsworth's testimony as  
2 Exhibit 0180, Chris Kline's testimony from Icicle  
3 Seafoods as Exhibit 0181, and Mr. Dovich's testimony as  
4 Exhibit 0182.

5 JUDGE GEE: So ordered. Thank you.

6 Mr. Dovich, you may begin.

7 MR. DOVINH: Thank you.

8 Thank you for the opportunity to share our concerns  
9 regarding your proposed 1915 Subpart F, General Working  
10 Conditions.

11 I'm not a commercial fisherman, I'm not a vessel  
12 owner, and I do not own or run a shipyard or ship repair  
13 facility. I am an NFPA certified marine chemist and  
14 chemical engineer for over 20 years. I'd like to share  
15 with you a little bit about what I do and why  
16 lockout/tagout is such an important part of my life.

17 As a chemical engineer, I specialize in the safe  
18 handling, processing, categorization, treatment,  
19 reclaiming and recycling hazardous materials, waste oils  
20 and other waste means through the marine industry.

21 As a marine chemist, I am an expert in the field of  
22 compliance-based entry, aqua and the controlled workers  
23 exposure to hazardous and toxic materials in the shipyard  
24 industry. I also specialize in the control of fires and  
25 explosions in the marine industry, tank forms,

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1 refineries, shore tanks, underground and aboveground  
2 storage tanks.

3 In the shipyard industry, confined spaces are not

4 limited just to tanks, voids or cofferdams with limited  
5 access, but also include hull structures, piping and  
6 other spaces which by their small sizes and confined  
7 nature can readily create or aggravate a hazardous  
8 exposure.

9 A confined space to me is any space that may be  
10 oxygen deficient or contain flammable or toxic materials  
11 or hidden physical hazards.

12 I'm often privileged to be the first person to enter  
13 these various confined spaces on shore and on the marine  
14 vessels, such as fuel tanks, crude oil tanks, fish oil  
15 tanks, ballice tanks, voids and even sewage tanks to test  
16 for their atmospheric conditions. Once they require  
17 testing, an inspection is completed and safe conditions  
18 are ascertained, I issue a marine chemist certificate, a  
19 legal document that authorizes workers to enter and work  
20 inside the confined spaces.

21 In a unique way, I am one of the foremost experts  
22 and the frontline of defense against atmospheric hazards  
23 in all types of confined and enclosed spaces on ships,  
24 marine vessels and shore tanks.

25 The types of marine vessels that I inspect range

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1 from crude oil tankers, bulk carriers, tank ships and  
2 tank barges, container freighters, Navy ships, aircraft  
3 carriers, submarines, U.S. Coast Guard icebreakers and  
4 buoy tenders, NOAA research vessels, all passenger ship  
5 carriers, tugboats, catamarans and all types of fishing  
6 vessels large and small.

7 That is how I have come to know many of the vessel  
8 owners, ship repairers, shipyard owners and operators and  
9 their safety supervisors present here in the last two  
10 days of this hearing. In fact, one of the marine  
11 chemists working with our company has successfully  
12 entered, inspected and certified over 300,000 confined  
13 spaces and tanks safely in his 40 yearlong career. I  
14 have another 20 years to catch up to this giant.

15 Besides working as an NFPA certified marine chemist  
16 chemical engineer, I also hold classes in confined space  
17 training, hot work, Benzene, lead, hexavalent chromium,  
18 shipyard competent person training, fire watch training  
19 and various supervisory-level safety training classes.  
20 Most of these people that were here yesterday and today  
21 have gone through my classes.

22 I also represent the marine industry on the Seattle  
23 Fire Code Advisory Board for nearly 10 years and helped  
24 develop various atmospheric rules. Currently I'm an  
25 active member of the Marine Chemist Association. I'm

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1 also a board member of the Marine Chemists Association  
2 Executive Committee, and I'm also a member of the Puget  
3 Sound Shipbuilders Association.

4 Since my friends and associates in the commercial  
5 fishing industry and shipyard industry have done such a  
6 wonderful job at voicing their concerns in front of your  
7 panel regarding housekeeping of Subpart F, I'm here today  
8 mainly to concentrate on 1915.89, control of hazardous  
9 energy, lockout/tagout.

10 I hope to fill in some of the holes left open and  
11 also to clarify other issues that might be helpful to  
12 your panel.

13 First, I would like to remind everybody here that  
14 OSHA 29 CFR Part 1915, the shipyard industry standard,  
15 including this proposed Subpart F, are meant to cover all  
16 employees of employers fulfilling maritime activities on  
17 board vessels, vessel sections and landside operations on  
18 the shore, pier, terminal, yard, shipyard, machine shop,  
19 river banks, et cetera, as well as on vessels afloat or  
20 in dry docks or in waiting docks, regardless of  
21 geographical location.

22 The term ship repair means any repair of vessel  
23 including but not restricted to alteration, conversions,  
24 installation, tank cleaning, painting and maintenance  
25 work. Shipyard employment in our region, here in the

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1 Pacific Northwest, is comprised of the owners and  
2 operators of tank ships, tank barges, tugboats, carriers,  
3 container ships, cruise ships, bulk carriers, commercial  
4 fishing industry, shipyards, independent vessel repairers  
5 and then numerous subcontractors.

6 I feel that the shipyard employment in our region  
7 has not been adequately represented during the drafting

8 and initial development process of the Proposed 29C 1915  
9 Subpart F.

10 In the mid 1990's during the development process of  
11 29 CFR Part 1915, Subpart P, which I'm pretty sure Mr.  
12 Joe Daddura remembers quite well, fire protection in the  
13 shipyard industry. Mr. Joe Daddura made several trips to  
14 the Seattle area and consulted with our local shipyards  
15 and ship repairers. The representatives from the  
16 shipyard industry in our region consulted with Mr.  
17 Daddura and took him to various shipyards, ship repair  
18 facilities for his observation and evaluation.

19 Mr. Daddura was also given a copy of the Seattle  
20 Fire Department Administrative Rule 49.01, which I helped  
21 develop, cutting, welding and other hot work on marine  
22 vessels for his review. Many of the components from our  
23 local hot work regulation were considered and  
24 incorporated into the final version of Subpart P.

25 Although 29 CFR 1915 Subpart P is not perfect, but

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1 it was practical and realistic for our industry, and our  
2 industry did not have any major difficulty adopting its  
3 requirements.

4 Today on behalf of our local shipyard industry, I  
5 would like to express our gratitude and thanks to Mr. Joe  
6 Daddura for a wonderful job that he has done for us in  
7 developing Subpart P.

8 When the proposed version of Subpart F, general  
9 working conditions in shipyard employment came out, many  
10 people in our industry read it carefully and found that  
11 it contained sections that were uncompleted, undefined  
12 terminologies, ambiguous, impractical, unnecessary and  
13 too costly, impossible to implement or to comply with,  
14 and maybe even in conflict with certain existing federal  
15 regulations.

16 Your language used in Subpart F is often unclear,  
17 confusing, open-ended and leaves ample room for erroneous  
18 or misinterpretations which may result in unnecessary or  
19 costly modifications and potential citations.

20 The data from the U.S. Bureau of Labor Statistics  
21 shows that in 2007 commercial fishermen and related  
22 fishing workers had the highest rate of fatalities, 100.8  
23 per every 100,000 employed workers. The next highest was  
24 logging at 87.1, and the lowest was education and  
25 librarian workers at 0.2 per 100,000.

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1 The shipyard, ship repair industry has always been  
2 known to be one of the most dangerous professions. In  
3 the Pacific Northwest, we have a very special marriage  
4 between these two industries. After completing fishing  
5 working in treacherous conditions on the high seas, the  
6 same fishermen go to various shores, piers, terminals,  
7 dry docks, shipyards to perform ship repairs. But this  
8 time they work in a completely different set of  
9 treacherous conditions.

10 There are numerous and many inherent risks and  
11 dangers in both of these industries, even with the  
12 strictest of all regulations and safety measures taken.  
13 The risks and the dangers remain.

14 I believe that the best risk management is a  
15 combination of workers awareness, available options,  
16 training, site inspections, safety inspections, safety  
17 programs, personal protective equipment, engineering  
18 controls along with regulatory guidance. It is important  
19 to note that everyone in our industry appreciates OSHA's  
20 good intention to help our industry lower the statistics  
21 of fatalities and accidents in the shipyard industry.

22 Many of us also believe that safety could also be  
23 achieved in a voluntarily basis, a performance-based  
24 basis with some additional guidance from OSHA, but not  
25 necessarily in terms of a new set of regulations.

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1 I also feel that the economic impacts as analyzed by  
2 OSHA grossly underestimate the cost of implementing the  
3 proposed Subpart F by shipyard employment in our region.  
4 A large part of the shipyard employment in the Pacific  
5 Northwest hinges closely to the success or failure of the  
6 commercial fishing and fish processing industry.

7 Because the commercial fishing industry in our area  
8 is cyclical, one bad year of commercial fishing may turn  
9 into two or three years of terrible for the rest of the  
10 shipyard employment. I would ask you to carefully  
11 consider this regional cyclical and economic issue when

12 you revisit the section of economic impact analysis.

13 The current conclusion made by OSHA that the  
14 proposed regulation is economically feasible definitely  
15 is not appropriate because it doesn't reflect reality,  
16 especially in the Pacific Northwest area.

17 Based on the current data from the U.S. Bureau of  
18 Labor Statistics, BLS, approximately 70 percent of all  
19 shipyard accidents are related to atmospheric hazards,  
20 mostly oxygen deficiency. The remaining 25 of all  
21 shipyard accidents are related to other causes, mostly  
22 physical hazards that have to do with slip, trip and  
23 fall.

24 Approximately five to six percent of all shipyard  
25 accidents are related to sudden release of hazardous

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1 energy. Not only that, the BLS also indicated that  
2 workers who are non-native English speakers have a  
3 minimum of at least 40 percent higher risk of death and  
4 injuries on the job than their counterparts.

5 Mr. Alan Davis of American Seafoods mentioned in his  
6 testimony yesterday that there were as many as 80  
7 different languages being spoken on some of his vessels.  
8 I believe that by proposing the regulation 1915.81  
9 housekeeping and 1915.89 control hazardous energy,  
10 lockout/tagout, OSHA has hit several nails right on the  
11 head pretty hard. But OSHA hit the wrong nails.

12 In my opinion, to reduce the maximum number of  
13 fatalities and injury rates in the shipyard industry  
14 today, OSHA should concentrate on ways to help workers  
15 improve atmospheric conditions in tanks, confined spaces,  
16 enclosed spaces and isolated spaces during the ship  
17 repair.

18 In the current 29 CFR 1915 shipyard industry, OSHA  
19 referred to the term ventilation, ventilating, ventilate  
20 55 times -- 55 times. This fact indicates that OSHA  
21 knows that the risks associated with bad air, and that  
22 OSHA recognizes ventilation is the single-most important  
23 engineering control measure that a ship repair industry  
24 could use during ship repair operations.

25 Second, OSHA should concentrate on ways to help

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1 employees to better deal with the dangers of uneven  
2 surfaces, slippery and wet conditions, gangway access,  
3 extreme temperature, guarding machines and equipment,  
4 open manholes, open fish holes, open cargo holes, loud  
5 noises, high pressures, heights, et cetera, and ways to  
6 minimize burns, cuts, scrapes, bruises by ship's  
7 structure.

8 Yesterday somebody asked how much of the area on the  
9 ship has to do with working and walking surfaces. I can  
10 tell you during ship repair, every inch of that vessel  
11 the ship repairers have to climb around and do the  
12 welding, burning, cutting or grinding.

13 Third, OSHA should concentrate on communication  
14 program to help workers in the shipyard industry better  
15 understand the risks and hazards associated with their  
16 work and ways to minimize or reduce them.

17 To summarize, there are three reasons, three main  
18 reasons that currently injure, hurt or kill the most  
19 workers in the shipyard industry. No. 1, hazardous  
20 atmospheric conditions; No. 2, slips, trips and falls;  
21 No. 3, lack of or inadequate communication.

22 The recent OSHA release of guidelines for the  
23 shipyards ergonomics for the prevention of  
24 musculoskeletal disorders, OSHA publication 3341-03N 2008  
25 is an exemplary example of OSHA's effort to help the

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1 shipyard industry to deal with ergonomic issues instead  
2 of implementing another set of regulations. I have a  
3 copy here if you wish to see it.

4 This set of OSHA advisory guidelines on ergonomics  
5 is a great example to show that a general integral  
6 reliance between OSHA and the shipyards can produce  
7 exceptional results. In fact, many pictures and  
8 guidelines and suggestions included in this document came  
9 directly from our local shipyards in this region.

10 I strongly recommend that OSHA produce additional  
11 safety guidelines on the subjects of ventilation, slips,  
12 trips and falls, signs and communication, housekeeping as  
13 well as lockout/tagout for shipyard industry.

14 If OSHA were to continue implementing Subpart F for  
15 our industry, in order to be most effective, I ask that

16 our shipyard industry be given a unified set of  
17 lockout/tagout standards. By having a unified standard  
18 on lockout/tagout, everyone in our industry from the  
19 safety professionals to the chief engineers, from the  
20 skippers to the foremen, from the machine operators to  
21 the deckhands, from the ship superintendents to the  
22 laborers, from the vessel repairers to the tank cleaners,  
23 from the electrician to the mechanics, from the  
24 boilermakers to the pipefitters, from the port engineers  
25 to the marine chemists, from the competent person to the

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1 fire watchers, everyone will be applying and working  
2 under one set of lockout/tagout operations, regulations,  
3 and that would truly enhance safety and minimize the loss  
4 of life, limbs and property.

5 I would like to give you one example. Although not  
6 perfect, the Hexavalent Chromium Standard that became  
7 effective in 2006 -- I also have a copy right here,  
8 Publication 3320-10N -- is another excellent example of  
9 OSHA's abilities.

10 OSHA effectively revised one set of standards for  
11 each industry, General Industry Standard 1910.1026,  
12 Shipyard Standard 1915.1026, Construction Standard,  
13 1926.1126.

14 In each of these standards, each industry has its  
15 own independent set of regulations and applicable  
16 exceptions. They were well written. They were written  
17 clearly and credibility is exceptional, and all of the  
18 definitions were listed at the beginning immediately  
19 right next to the scope of the standard.

20 I feel that OSHA proposed 1915.89, control hazardous  
21 energy lockout/tagout is very confusing, incomplete. The  
22 topics of hazardous energy and lockout/tagout needed to  
23 be reevaluated, reassessed, rewritten, streamlined,  
24 simplified and unified.

25 Lockout/tagout operations and requirements on ships

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1 in the marine industry are completely and inherently  
2 differently from those of general industry. The  
3 procedures that work well in general industry may be  
4 extremely dangerous or costly when trying to implement  
5 blindly in the shipyard industry.

6 For example, there are cargo lines, fuel lines, vent  
7 lines, freon lines, ammonia lines, steam lines, hydraulic  
8 lines, thermal oil lines, heating coils, manifolds, tanks  
9 and cascading piping systems that are continuous with  
10 little or no valve in line.

11 Many electrical wiring systems are hidden behind  
12 bulkheads, overheads, under decks, control panels,  
13 conduits, processing equipment, cabinets, control  
14 equipment and other structures or obstacles.

15 Piping system, refrigeration, fuel oil system,  
16 hydraulic systems often have piping, flanges or expansion  
17 joints built inside other fuel tanks. These are also the  
18 same systems that need constant repair and hot work. In  
19 order to blank a valve, one would have to empty the fuel  
20 tank, ventilate it, clean it, gas free it before blanking  
21 can take place. If adjacent spaces are involved, at  
22 least two or three or four more tanks would have to be  
23 cleaned, would have to be emptied and gas free.

24 When shipyard industry refers to lockout and tagout,  
25 we normally mean a positive measure of some kind is to be

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1 used, not only just to lockout or tagout, but also  
2 closing valves, removing handles, splash zoning,  
3 blanking, plugging, ballooning, stuffing with a rag,  
4 wedging, capping, drill, tap, plug, bandaging, securing  
5 manholes, closing doors and hatches, shutting portholes  
6 and ventilation ducts, tying ropes, duct-taping, guarding  
7 machinery, posting signs in confined space entry when hot  
8 work remains, re-energize, disconnect, pull the plug,  
9 tank cleaning, isolation, building containment,  
10 jerryrigging, hanging fire blankets, water blanketing, et  
11 cetera.

12 JUDGE GEE: Mr. Dovich, you only asked for 10  
13 minutes. Do you have much more?

14 MR. DOVINH: I have three more pages, Your  
15 Honor. May I?

16 MS. SHORTALL: Is there some way you can sort  
17 of sum up the last four pages? We'll put it verbatim  
18 into the record.

19 MR. DOVINH: These pages are very important.



20 This is the core of what we think the lockout/tagout is  
21 lacking.

22 MS. SHORTALL: It's up to the judge.

23 JUDGE GEE: I'll let you do it, but if you  
24 could summarize it in any way at all, that would be  
25 beneficial. We do have other witnesses to testify.

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1 MR. DOVINH: Thank you, Your Honor.

2 OSHA purports for Subpart F, control hazardous  
3 energy, only covers mostly electrical hazardous energy.  
4 This is bias and lopsided because it does not cover the  
5 rest of the other energy sources that might hurt workers  
6 just the same or worse.

7 I'm going to try to summarize. For example, the  
8 term hazardous energy could not be found anywhere in 29  
9 CFR 1915. It is not defined. There is a definition for  
10 hazardous or toxic substances. There is a definition for  
11 energy source. But there is no definition for hazardous  
12 energy.

13 There is a term other energy which is also not  
14 defined. Does it include kinetic, potential,  
15 gravitational or other sources of energy. It is  
16 important to realize that any one of these energy sources  
17 may be harmful -- may have harmful effects on the workers  
18 being exposed, and certainly that message is the only  
19 determining factor between life and death for the  
20 workers.

21 In the shipyard employment, all of the strings,  
22 coils, tightsropes and chains, suspending chains and  
23 cables, harnesses, straps, and stacked objects that have  
24 mass, structures and bulkheads, combustible fuels in  
25 cargos, combustible insulation, all of those have stored

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1 energy which this Subpart F has not covered.

2 Here's my conclusion. I have a feeling that you've  
3 been looking for an answer as to what our industry has  
4 been doing in the past many years. If our industry  
5 didn't have some kind of procedure to do lockout/tagout,  
6 the number of deaths and fatalities would have been  
7 tenfold. And let me give you what I think has been  
8 helping our industry.

9 The answer to these questions may include some of  
10 the following: No. 1, the good and the bad experiences  
11 that we gained in the last 150 years of building and  
12 repairing modern ships has been applied to engineers,  
13 port engineers, safety persons, competent persons,  
14 chemists and safety supervisors today.

15 No. 2, the good and the bad experiences gained in  
16 the mining industry for the last 200 years. The mining  
17 industry shares common problems with the shipyards, lack  
18 of oxygen, confined spaces, toxic gasses, explosive  
19 gasses, lockouts and tagouts.

20 No. 3, the information from private companies and  
21 the ongoing training, both volunteer, are required by  
22 OSHA, U.S. Coast Guard, NFPA ANSI regarding lockout and  
23 tagout and hazardous flammable and toxic as well as  
24 control of hazardous energy have been trickled down into  
25 our industry, and they are being put to good use by the

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1 shipyard industry.

2 No. 4, bad and good experiences means actual  
3 accidents and deaths. The findings and lessons learned  
4 are updated, analyzed and shared among our industry  
5 daily.

6 No. 5, workers performing unsafe operations are  
7 either killed or crippled or no longer able to work and  
8 no longer able to carry out additional dangerous and  
9 risky behavior.

10 No. 6, economics and the demand for competent  
11 employees drives safety. Sometimes poor economics also  
12 drives safety to the other direction.

13 Lastly, No. 7, existing safety standards,  
14 regulations and programs already implemented in place as  
15 required by OSHA 29 CFR Part 1915, U.S. Coast Guard  
16 regulations and FDA 306, such as the competent person  
17 program and the marine chemist program.

18 After more than 20 years of working in the shipyard  
19 industry and over 70,000 confined spaces later, I  
20 strongly believe that during the actual ship repair  
21 period, the shipyard competent person and their confined  
22 space and hot work program along with the marine chemist  
23 inspection and certification, that is what has kept our

24 industry from having a very high accident rate regarding  
25 the issues of lockout and tagout.

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1 Thank you for the opportunity to speak. Thank you  
2 for your generosity, Your Honor.

3 JUDGE GEE: Thank you, Mr. Dovinh. Your entire  
4 statement is part of the record, part of the written  
5 record.

6 MR. DOVINH: Thank you, I appreciate that.

7 JUDGE GEE: Is there anyone in the audience who  
8 has questions for Mr. Dovinh?

9 OSHA panel.

10 MS. SHORTALL: Yes. We'll start with Mr.

11 Daddura.

12 MR. DADDURA: Good afternoon, Philip.

13 MR. DOVINH: Good afternoon.

14 MR. DADDURA: Briefly for the record, how do  
15 you know so much about the industry in the Pacific  
16 Northwest? What is your job function and what is your  
17 direction when shipyards call you up; what exactly do you  
18 do?

19 MR. DOVINH: I've lived here for 32 years, and  
20 I've been a chemical engineer for over 21 years and a  
21 marine chemist for almost 20 years.

22 What I do is before, according to the current Coast  
23 Guard and OSHA regulation 1915, before any repair is  
24 being done, performed on fuel oil lines, fuel oil tanks,  
25 or any cargo or any tank that has hazardous or toxic

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1 substances, they are required to have a marine chemist  
2 perform the initial inspection to make sure it's safe.  
3 And they require that I have to physically enter these  
4 confined spaces. In a way, I'm the guinea pig.

5 I would do the initial entry, do the testing, and  
6 based on the permissible exposure unit of the American  
7 Conference of Industrial Hygienists, PLV, we will measure  
8 and do the instrument test and then determine whether the  
9 space is safe or not. And then I would come out alive  
10 and testify on a certificate saying that this space is  
11 safe for hot work, meaning people can go inside and do  
12 welding, cutting and burning.

13 And then I also certify safety workers, meaning  
14 people can go inside safely without become exposed to any  
15 of these toxic gasses.

16 MR. DADDURA: Everyone has standards to follow.  
17 What is the standards that the NCA certified marine  
18 chemists follow?

19 MR. DOVINH: In the 29 CFR 1915, the standard  
20 is incorporated by reference. So it calls for the use of  
21 NFPA 306. NFPA 306 is the detailed instruction, it's the  
22 Bible that regulate the marine chemists. We have to  
23 abide by that.

24 We get certified by the NFPA, recertified by them  
25 every five years, and we then we go to seminars and

0157

1 training every year. The idea is to make sure we're not  
2 going to make stupid mistakes to blow up people or kill  
3 people in these hazardous situations.

4 MR. DADDURA: You have reporting requirements  
5 also within the NFPA, correct?

6 MR. DOVINH: Yes, I do. Every certificate that  
7 I have issued in the last 19 years, they have a copy of  
8 that. They can always go back and see it.

9 MR. DADDURA: When, God forbid, you make a  
10 mistake or something goes astray, what happens; what do  
11 you have to do or what could happen?

12 MR. DOVINH: If there is a incident on a vessel  
13 that has a written certificate, whether it is my mistake  
14 or not, that doesn't matter, I have to immediately report  
15 to the National Fire Protection Association within a  
16 24-hour period, and then I have to send them copies of  
17 what I wrote and write them a report. And then based on  
18 that, they will take further action.

19 MR. DADDURA: What further action might be  
20 taken?

21 MR. DOVINH: Well, I hope 20 more years, Joe,  
22 there will be none of it. I have done it for almost two  
23 decades and I have plenty more to go, and I'm not going  
24 to make any mistake.

25 But in case something like this happened, we carry a

0158

1 large sum of insurance, liability insurance and all that.

2 And I probably would no longer be a marine chemist.

3 What I do would be similar to a captain that runs,  
4 that pilots a crude oil tanker. If he screws up once,  
5 he's done. I don't plan to do that.

6 MR. DADDURA: What is your -- I understand  
7 you're a marine chemist qualification board as an  
8 oversight for each marine chemist.

9 MR. DOVINH: When I was being certified, I  
10 remember you were on that board. You were on the marine  
11 chemist certification board.

12 MR. DADDURA: Many years ago.

13 MR. DOVINH: That's right. And in the whole  
14 United States there are 100 certified marine chemists.  
15 There are not too many people that would go to school,  
16 college, get trained and then crawl in a ship tank and  
17 take all that liability. That's the reason why there are  
18 so few marine chemists is because of the liability.

19 We are insured by Lloyds of London. We used to  
20 until two years go and we changed to another company. We  
21 went to the maximum liability insurance. So the NFPA and  
22 the marine chemist qualification board, they make sure we  
23 don't screw up.

24 MR. DADDURA: So you have oversight by an  
25 independent third party, an independent board, something

0159  
1 like a doctor has?

2 MR. DOVINH: Many people think it's even more  
3 critical, because on that board there are representatives  
4 from the petroleum industry, from OSHA, from the U.S.  
5 Coast Guard, from the Navy, from the NFPA, from the  
6 marine chemists, from people in the shipyard, and then  
7 from the civilians and then from the general industry.

8 There are 12 members on that board. And they have,  
9 once we finish all of our training, we have to pass a  
10 written test, and the final examination would be an oral  
11 examination, and all 12 members have to unanimously  
12 certify us.

13 MR. DADDURA: Getting back to your work with  
14 the shipyards, when they call you, you're called the  
15 utmost industry expert.

16 MR. DOVINH: That is what I'd like them to  
17 believe.

18 MR. DADDURA: That is correct, though, right,  
19 the buck stops with you. No one else is going to be  
20 overriding.

21 MR. DOVINH: We think we know more than anyone  
22 about confined space entry.

23 MR. DADDURA: You've been in all the shipyards  
24 up here?

25 MR. DOVINH: Yes, I have.

0160  
1 MR. DADDURA: Have you noticed certain things  
2 that aren't identical in terms of lockout/tagout?

3 MR. DOVINH: Very tremendously, sir.

4 MR. DADDURA: So there's different ways of  
5 doing different things in your dealings?

6 MR. DOVINH: That's correct.

7 MR. DADDURA: Do you think it's a need for one  
8 standard for everyone to follow to make it uniform all  
9 across the country or just up here?

10 MR. DOVINH: It doesn't have to be necessarily  
11 a standard or requirement. It could be an industry  
12 consensus; it could be performance based; it could be  
13 volunteer based.

14 Up to this point, the marine ship repair industry  
15 does not have its own independence. There are some  
16 sections, actually about three sections that I have in my  
17 report, currently in the OSHA regulation. That's what we  
18 follow plus the requirements of NFPA 306.

19 So I mention that during the ship repair, there are  
20 two most important person; that's the marine chemist and  
21 the competent person. These are the two persons that  
22 enter these tanks initially, and then repeatedly day in  
23 and day out as often as necessary per your regulation to  
24 make sure that the pipeline is not leaking, to make sure  
25 that ammonia is not leaking, to make sure the oxygen is

0161  
1 sufficient.

2 And all of that has to do with lockout/tagout.  
3 That's the reason why I mention the lockout/tagout is  
4 very close and dear to my heart.

5 MR. DADDURA: 29 CFR 1915.15, main conditions.

6 Are you familiar with that section?  
7 MR. DOVINH: I don't have the book here, but,  
8 yes, I am.  
9 MR. DADDURA: There is a requirement either to  
10 lock out to make sure no other materials come into the  
11 space.  
12 MR. DOVINH: Yes. It specifically states --  
13 may I get my book, it's right here?  
14 MR. DADDURA: Sure.  
15 MR. DOVINH: I remember that it specifically  
16 states that you have to use a positive means to lockout  
17 or to blank.  
18 Positive means in our industry it could be a wooden  
19 plug, it could be a pencil wedged into a hole, it could  
20 be a wet blanket stuffed up into a pipe, any positive  
21 means to prevent or to slow down or to prevent the spread  
22 of fire or the spread of hazardous material into the  
23 working area.  
24 It does not have to be a solid blank or lock or  
25 chain or a cap. And NFPA 306 also requires a positive  
0162  
1 means has to be taken.  
2 And that's what's been happening throughout our  
3 industry. It varies a lot, but they're all taking some  
4 positive means.  
5 MR. DADDURA: You've been to a lot of  
6 shipyards; you're the first one into the tanks. What  
7 lighting is available to you when you go into a tank?  
8 MR. DOVINH: What kind of lighting?  
9 MR. DADDURA: Yes.  
10 MR. DOVINH: I carry explosion-proof Pelican  
11 flashlights. The U.S. Coast Guard, one thing we learned  
12 from them is to always carry two, one is a backup.  
13 MR. DADDURA: So the shipyards don't provide  
14 you lighting into a space?  
15 MR. DOVINH: They do not.  
16 MR. DADDURA: Is there a reason why they don't?  
17 MR. DOVINH: Many times the atmospheric  
18 conditions inside that tank may be flammable. And if  
19 it's flammable, they're not going to use any type of drop  
20 lights or electrical tools in that space until it has  
21 been inspected and certified by me that it's not  
22 flammable.  
23 I would be the one that would authorize the use of  
24 conventional electrical lighting or non-explosion proof  
25 or non-intrusive tools.  
0163  
1 MR. DADDURA: Housekeeping, throwing out lines  
2 and things like that. When you get on board a ship, do  
3 you see housekeeping problems or issues?  
4 MR. DOVINH: A tremendous amount of  
5 housekeeping problems. The ship repair industry, we like  
6 to have you believe that everybody that works on that  
7 ship have extra pairs of eyes on our toes or on our  
8 boots. In a way, it's true.  
9 If they work around these things, they have ways to  
10 walk the vessel without slip, trip and fall because  
11 they're used to it. That's what they do. Somebody who  
12 is not familiar with that environment, I guarantee you  
13 within minutes they will be tripping or slipping over  
14 cables and plates and decks and things like that, because  
15 the ship repair industry is always temporary, always  
16 rushed, always in a hurry, and it's always messy. It's  
17 not clean like Boeing or Weyerhaeuser.  
18 MR. DADDURA: Have you ever had the opportunity  
19 to board a ship at sea?  
20 MR. DOVINH: I have.  
21 MR. DADDURA: What kind of conditions does that  
22 involve?  
23 MR. DOVINH: It depends on the kind of ships.  
24 If it's a Chinese log ship or a Greek tanker, where they  
25 like to give me alcohol and tobacco, or one of these  
0164  
1 Conoco Phillips crude oil tankers. It depends.  
2 Some of them follow housekeeping lockout/tagout to  
3 the letter. Some of them don't.  
4 I'll give you one example. Just a few years ago I  
5 was working on these tankers in Port Angeles. This is  
6 crude oil tankers, the equivalent of the Exxon Valdez  
7 that ran aground. In the control room they have panels  
8 that control valves. These tanks, 18 tanks, and between  
9 each tank they have a slouch valve, slouch gate valve.

10 By flipping a button on the control panel, they can open  
11 that gate valve. And that's what they did for years.  
12 They flipped the button, the gates open, and then they  
13 took about a dozen of these caps that you use on the  
14 Nyquil, the cough medication, they used that to cap the  
15 switch. And that was their lockout/tagout for at least  
16 12 years.

17 MR. DADDURA: So you couldn't push down on  
18 them.

19 MR. DOVINH: That's right.

20 So sometimes a very simple lockout/tagout procedure,  
21 if it isn't visual, if it's in isolation, so they know  
22 which valve is secure and which is not.

23 After we did this we found out that it was not  
24 really safe because sometimes I would crawl all the way  
25 to the bow. On my way back halfway, some of the slouch

0165

1 valve, the gate valve came down halfway. The hydraulic  
2 system leaked. So we required them to bring in sections  
3 of 4 by 4 and block the valve up for us before we cross  
4 through. And that's what they do now.

5 MR. DADDURA: Let's move on to I guess  
6 sanitation. Part of your function as a marine chemist is  
7 you inspect CHT tanks, correct?

8 MR. DOVINH: I do. The shipyard competent  
9 person often is qualified, according to your regulation,  
10 they can inspect CHT tanks, sewage tanks, CHT stands for  
11 chemical holding tanks. But they don't. Ninety-nine  
12 percent of the time they say, let's call the chemist. So  
13 we get the luxury to crawl all of those too.

14 The sewage tank has biological hazards, germs,  
15 millions of e-coli, millions of other coliform materials.  
16 But what we do is the potential of sewage, generally  
17 methane gas, that's an explosive gas.

18 Also sewage tank has a potential of generating  
19 hydrogen sulfide gas. That is a toxic gas and it's also  
20 an explosive gas. So when we test a sewage tank, those  
21 are the gasses we look for.

22 MR. DADDURA: Do you require the ship to lock  
23 out all the toilets before you go into the tank?

24 MR. DOVINH: Definitely.

25 MR. DADDURA: How is that done?

0166

1 MR. DOVINH: We have them pull the blanks, the  
2 flanges and put in pancake. Sometimes if that's  
3 possible, we --

4 MR. DADDURA: Pancake is what, just for the  
5 record.

6 MR. DOVINH: Pancake is a flat, metal plate  
7 that they would insert between the open flanges to  
8 isolate potential liquid and solid flowing inside the  
9 tank.

10 There are times that that is not possible because  
11 there is no flanges. Then we do not allow workers to go  
12 inside a sewage tank. We require them to wear either  
13 full-face or half-face respirators, it depends on what we  
14 find initially by testing from the manual opening. We  
15 have them clean and vacuum the product from the manhole  
16 opening.

17 And then from that, we can do additional inspection  
18 and look at the suction and the fuel lines. If they're  
19 not leaking and if the tank is clean sufficiently, we  
20 have workers wear proper PPE to go in. The first thing  
21 they would do is to put a plug inside each one of these  
22 lines, and OSHA does allow you to do that.

23 MR. DADDURA: Let's move on to tank cleaning.  
24 Say you have a fistful of tanks you clean. The access to  
25 the tank from the workers climbing in and out, what kind

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1 of conditions are they in?

2 MR. DOVINH: Mr. Daddura is talking about heavy  
3 bunker fuel, No. 6 fuel. This is yucky, dirty fuel, and  
4 they have a lot of BTU value, combustion value. Normally  
5 many of these tanks have only one manhole opening, so we  
6 would require them to do ventilation first.

7 MR. DADDURA: I just want to know the condition  
8 by the workers climbing in and out of the tank. Do you  
9 get any product on the deck walking surface?

10 MR. DOVINH: Yes, all the time, sometimes up to  
11 their knees.

12 MR. DADDURA: Pulling hoses out and things of  
13 that nature?

14 MR. DOVINH: If there is a lot of product left,  
15 we have them try to evacuate the remaining product  
16 remotely from the deck of the vessel. And once it's down  
17 to an inch or two, after proper ventilation and  
18 respirators and PPE, we allow them to go in under a  
19 certification called Enter With Restrictions.

20 MR. DADDURA: I'm just basically getting into  
21 the conditions of the deck from the workers climbing in  
22 and out of the tank, moving the hoses around, we have  
23 product on the tank top.

24 MR. DOVINH: Yes, we do.

25 MR. DADDURA: Is it slippery?

0168

1 MR. DOVINH: Yes.

2 MR. DADDURA: Is it cleaned up immediately?

3 MR. DOVINH: No.

4 MR. DADDURA: When is it usually cleaned?

5 MR. DOVINH: They use diesel to clean.

6 MR. DADDURA: When is it usually cleaned up,  
7 after the job has been completed, the tank has been  
8 cleaned, you send down the hose to clean up the areas  
9 where they worked.

10 MR. DOVINH: What they try to do is first  
11 remove the remaining liquid, and then they try to go down  
12 in and muck the tank, meaning they scrape the remaining  
13 solid or waxy material first.

14 And then they would go in and use container that has  
15 either diesel or kerosene and then they spray the  
16 bulkhead and spray the bottom and allow at least three or  
17 four hours for the kerosene to suck in the black oil.

18 And then they come back in and they pressure wash it  
19 with a high pressure water. Sometimes they heat up the  
20 water to about 120, 140 degrees to assist with the  
21 removal.

22 And then all of the product is evacuated through a  
23 vacuum hose into a vacuum truck.

24 MR. DADDURA: And people are down there walking  
25 around, right?

0169

1 MR. DOVINH: Constantly, they have to.

2 MR. DADDURA: And the conditions are very  
3 slippery and wet.

4 MR. DOVINH: Sometimes, not always, sometimes.  
5 The tank cleaners, these are special species. They know  
6 how to handle all of these, and there are boots that  
7 allow them to walk on the petroleum product without being  
8 slippery. Technology is there, and that's what they use.  
9 There are petroleum product resistant boots. Same thing  
10 with gloves and rain gear.

11 MR. DADDURA: You really don't supervise  
12 anyone, do you? As I read your certificate, you really  
13 don't say, Hey, Joe, go in there and start work.

14 MR. DOVINH: I do, I do. OSHA regulation 1915  
15 allow me to prescribe respiratory protection for workers,  
16 allow me to determine when it's safe for hot work and  
17 when it's not, allow me to certify people to enter in  
18 toxic and hazardous chemical tank, we'll call them.

19 OSHA also allow me to give more verbal and written  
20 instruction to the ship repair industry, and they must  
21 follow both verbal and written. There is no other  
22 regulation like that in the industry.

23 MR. DADDURA: That's correct or in OSHA.

24 MR. DOVINH: Yes. And my friends down there  
25 can testify to you, that I'm very humble most of the

0170

1 time.

2 MR. DADDURA: I can see that by your testimony  
3 today.

4 That's all the questions I have.

5 MS. SHORTALL: Ms. Brinkerhoff has questions.

6 MS. BRINKERHOFF: You mentioned a regulation or  
7 proposed standard might conflict with another federal  
8 regulation, and I'm wondering which that one is.

9 MR. DOVINH: You ask a very tough question, and  
10 I'm prepared to answer that.

11 That has to do with the housekeeping part. In the  
12 back of that part, if you read carefully, OSHA says we  
13 have to take care of vermin, pests. And the definition  
14 of vermin includes birds. And guess what? Our industry  
15 process fish and salmon all over Alaska. Eagle is a  
16 protected species. Eagle is a scavenger. Eagles like to  
17 hang around and mess up everybody's car. If we were to

18 follow your regulation, we would have to control those  
19 birds. To control them, we have to shot them or kill  
20 them.

21 No. 2, there are seals and lions that would climb  
22 around on the dock, the same dock that these people are  
23 trying to do ship repair. They are messy and stinky and  
24 noisy. To get rid of those pests, we would have to shot  
25 them according to the current federal regulation. And

0171  
1 environmental law, we cannot even scare them by noise,  
2 let alone trying to get rid of them. That's what I mean.

3 MS. BRINKERHOFF: I actually found that part of  
4 your testimony really interesting.

5 MR. DOVINH: Thank you.

6 MS. BRINKERHOFF: Because you talk about some  
7 vermin being friends of workers, and I'm wondering which  
8 vermin those are.

9 MR. DOVINH: You know, in the shipyard once in  
10 a while you see a cat and the seagulls and different  
11 kinds of birds, even squirrels and even rats. And some  
12 of these workers, these welders and pipefitters, they  
13 look like macho, but they have a soft heart. They like  
14 to feed these animals. That's what relieves the stress  
15 during the lunch and the break hours. I don't think we  
16 should get rid of those animals.

17 MS. BRINKERHOFF: I have a question about your  
18 Pelican flashlight.

19 MR. DOVINH: Yes.

20 MS. BRINKERHOFF: How much did that cost?

21 MR. DOVINH: It used to be \$26.99 and now it's  
22 about \$35 each.

23 MS. BRINKERHOFF: Is that explosive --

24 MR. DOVINH: It is.

25 MS. BRINKERHOFF: -- explosion proof?

0172  
1 MR. DOVINH: Yes. That's the same kind the  
2 U.S. Coast Guard is using.

3 MS. BRINKERHOFF: How often do you need to tell  
4 your clients they need to be using explosion-proof  
5 flashlights?

6 MR. DOVINH: According to your Regulation 1915,  
7 anytime the atmospheric condition rates above 10 percent  
8 of the lower exposure limit or anytime the residues, the  
9 coding or the product might regenerate, might regenerate  
10 over 10 percent, then they have to use explosion-proof  
11 equipment.

12 MS. BRINKERHOFF: How often does that happen?

13 MR. DOVINH: I don't let that happen. I make  
14 sure they use explosion-proof equipment and ventilate it  
15 until it goes back to zero. OSHA allow up to 10 percent.  
16 And we follow zero, because we like zero percent error  
17 rate much better than 10.

18 Once you ventilate down to zero and maintain a  
19 continuous ventilation, there is no chance for anything  
20 to regenerate. If there is anything that regenerate, it  
21 will get evacuated. That way the workers continue to use  
22 conventional electrical tool. It doesn't have to be  
23 intrinsically safe in that space.

24 MS. BRINKERHOFF: Then as I was reading your  
25 written comments, I'm not sure if I got this right or

0173  
1 not, but were you saying that our proposed standard might  
2 also conflict with, especially the way hazardous  
3 materials are handled --

4 MR. DOVINH: Yes.

5 MS. BRINKERHOFF: -- might conflict with --

6 MR. DOVINH: The core thing -- I've spent hours  
7 and hours and hours reading your standards, because I  
8 have to know those standards. These people depend on me.  
9 John can testify to that. These people call me day in  
10 and day out and ask me.

11 I can tell you I know your standard better than 90  
12 percent of all of your inspectors here in Seattle. I can  
13 tell you that. And Mr. Joe Fleck can tell you that, and  
14 Mr. Woykowski can tell you that. Because we have to know  
15 them very well. We are the one the industry relies on.

16 So the core, the crux of your hazardous energy has  
17 to do with the term hazardous energy. But you don't  
18 define it. If you don't define it, you're leaving it to  
19 our industry to fumble in the dark to figure out what it  
20 is.

21 I spent over 150 hours preparing 10 pages. It's

22 condensed, and I put a lot of thought into it. I know it  
23 sounds very aggressive, because I need to get my point  
24 across to you. I'm not rude, but I need to get the  
25 information across on behalf of our industry.

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1 I do safety training in Alaska, Texas, California,  
2 Washington and also Oregon, Maryland also and Baltimore.  
3 So I always have to know the local regulations of those  
4 states too.

5 MS. BRINKERHOFF: I guess what I was asking was  
6 is there any part of the proposed standard that conflicts  
7 with any of those local regulations?

8 MR. DOVINH: Well, it's not conflict, it's  
9 incomplete. Right now it's top heavy, it's only biased  
10 towards the energy, the electrical energy. And I gave  
11 you the statistics of 70 percent, 25 percent and five and  
12 six percent.

13 You are basing on five and six of those percent, and  
14 even half of that has to do with guarding equipment,  
15 guarding moving parts, not pure electrical energy.

16 So the whole standard you are putting the industry  
17 through just for one part, and it's not even well  
18 defined; thus, it's flawed.

19 MS. BRINKERHOFF: Thank you. I don't have  
20 anymore questions.

21 MS. SHORTALL: I have some questions. First of  
22 all, Mr. Dovinh, thank you so much for coming to testify  
23 at our hearing.

24 Do you know if in shipyards there are substances  
25 other than corrosives used in shipyards that could cause

0175

1 immediate, acute and serious damage if an employee were  
2 splashed with them?

3 MR. DOVINH: Yes.

4 MS. SHORTALL: Could you tell me some of the  
5 types of substances?

6 MR. DOVINH: Sure. There are tank washes that  
7 carry ureae. Ureae is corrosive.

8 They also carry ammonia or ammonia nitrate. A lot  
9 of these are components that they use to make fertilizer.  
10 And maybe halfway through after a year or two years the  
11 owners decide to change, they want to change to carry  
12 diesel, they may have to send tank cleaners inside these  
13 tanks to pressure wash and clean all of these materials  
14 and remove them out of these tanks. It's called a change  
15 of products.

16 And during the washing, we take all kinds of  
17 precautions. We don't allow them to wear just the  
18 goggles; we're talking about full-face SCBA respirators,  
19 fully encapsulated with suits and all of that. And even  
20 with that, there are times that just the rubbing of the  
21 cuffs will blister and form bubbles around the wrists and  
22 the necks and the ankles. There are potential.

23 Those are the times when we would require the tank  
24 cleaner to set up a continuous flow of eye wash station  
25 on deck along with sodium carbonate eye wash bottles.

0176

1 MS. SHORTALL: The ammonia that you were  
2 talking about there, is that --

3 MR. DOVINH: These are ammonia-based  
4 fertilizers, corrosives.

5 MS. SHORTALL: I want to ask if there were  
6 substance other than corrosives.

7 MR. DOVINH: Acids?

8 MS. SHORTALL: Another person suggested that  
9 they viewed acids as a form of corrosives. I'm trying to  
10 get at other things that are not currently covered by the  
11 regulations --

12 MR. DOVINH: Yes.

13 MS. SHORTALL: -- that if an employee were  
14 splashed with them could result in immediate, acute or  
15 serious damage.

16 MR. DOVINH: Sure, I'll give you two. Sewage  
17 tank is a hydrogen sulfide gas. Hydrogen sulfide gas is  
18 explosive, toxic and it's acidic gas. If a high  
19 concentration of that is around, it would irritate your  
20 eyes tremendously. And what happens is if you get  
21 exposed to that kind of gas, the irritation of your eyes  
22 causes the person to try to run and get away.

23 And many times it's not the gas that kills them,  
24 it's the physical hazard by bumping his head against the  
25 bulkhead and bleeding to death.



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1 Another example is ammonia from refrigeration  
2 system. That's corrosive, toxic and explosive.

3 MS. SHORTALL: I've got very good examples now  
4 of the corrosives. I want you to tell me are there any  
5 substances that are not corrosives that cause --

6 MR. DOVINH: I'll give you the other one. The  
7 fishing industry has fish oil tanks. Fish oil tanks has  
8 this omega 3 oil from salmon roe and all that, good  
9 stuff. It has about another 15,000 different chemicals,  
10 God knows what. We know that they burn our eyes every  
11 time we get into it without ventilation and without  
12 full-face respiratory protection. We don't know what it  
13 is.

14 MS. SHORTALL: And if a person didn't have all  
15 of that on and they were splashed with that, they could  
16 experience immediate, acute and serious damage to their  
17 eyes and --

18 MR. DOVINH: Yes.

19 MS. SHORTALL: -- their skin?

20 MR. DOVINH: Yes.

21 MS. SHORTALL: Do you --

22 MR. DOVINH: What we do is we take measures,  
23 because we are the ones who authorize them to go into  
24 those tanks. We take the responsibility. We have  
25 cleaned the tank remotely from the manhole opening, okay,

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1 so by the time they finish, 80 percent of the produce  
2 would have been removed.

3 There is another way to clean these tanks. They  
4 have what they call butterworth tank cleaning systems.  
5 These are mechanical nozzles that you put inside these  
6 tanks through the manhole opening, and they can spin at  
7 high velocity, and you can space them in different areas  
8 within the tank.

9 The mechanical nozzle would clean and get everything  
10 down to 99 -- remove 99 percent, and then the remaining  
11 one percent the tank cleaner would go in after we  
12 authorize entry to clean up the remaining prior to the  
13 rest of the workers going in for prepping or hot work or  
14 whatever.

15 Even though it's dangerous and toxic, there are  
16 existing procedures that we can do safely. The marine  
17 chemist program has been in place since 1922. We have 86  
18 years of experience in the industry.

19 MS. SHORTALL: So in places where those types  
20 of non-corrosive substances are present, are shipyards or  
21 vessels today currently providing eye wash or quick  
22 drench facilities in case someone were to get splashed?

23 MR. DOVINH: I have seen some on vessels, and I  
24 have seen various locations within the shipyard. It  
25 depends on how big the shipyard is. Some little

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1 shipyards may only have one in the front office, just for  
2 the owner, huh.

3 The bigger shipyards, like Todd Shipyard, they have  
4 them right at the entrance to the dry dock or the pier.  
5 So there are stations.

6 Now, if I was running a job, doing inspection, and  
7 if I knew that these are materials that could cause eye  
8 irritation or burning, I would require them to have it.

9 MS. SHORTALL: Is a marine chemist present  
10 every time a tank is cleaned?

11 MR. DOVINH: Ballice tanks, water tanks, they  
12 don't have to have me. But they still have to have a  
13 competent person who acts similarly to the capacity of a  
14 marine chemist. He has less training, less authority and  
15 less in term of capability to test for toxics, and less  
16 experience when compared to a marine chemist, but he's  
17 the king in his yard when it comes to safety.

18 In fact, I can tell you there is only 100 marine  
19 chemists in the industry. It's not the marine chemists  
20 that keep this industry safe. I must and all 99 of my  
21 other marine chemist associates agree that it's a  
22 competent person in these shipyards that keep them safe  
23 from confined space entry to lockout/tagout de-energize  
24 it's the shipyard competent person program.

25 MS. SHORTALL: Changing the subject a little

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1 bit, I want to go back to sanitation. On fishing vessels  
2 as well as shipyards when you've been doing inspections,  
3 do you see people drinking and smoking and eating

4 wherever they want or have you seen employers say you may  
5 do that only in this area?

6 MR. DOVINH: As far as I know, the big  
7 shipyards, medium shipyards and the small shipyards, they  
8 all have some kind of policy in place. Whether or not  
9 the employees follow it is a different thing.

10 Now, if you were to ask me what about the fisherman  
11 over at Fisherman Terminal, I don't think they have any  
12 policy.

13 MS. SHORTALL: So let's say the ones that do  
14 have those designated areas, what are they doing to keep  
15 vermin out of those areas and the feces and the waste  
16 that those vermin produce so --

17 MR. DOVINH: They can't --

18 MS. SHORTALL: Let me just finish. So  
19 employees actually are eating and drinking without  
20 getting exposed to those types of waste contaminants?

21 MR. DOVINH: From what I've seen, most of the  
22 areas where the workers and employees sit and eat, I do  
23 not see any animal waste. I do see garbage and coffee  
24 cups and potato chip bags and things like that. I see  
25 dirt and oil, but I don't see any rats running around.

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1 MS. SHORTALL: What are they doing to keep --

2 MR. DOVINH: Most places have some kind of  
3 laborer that sweep up the area periodically. But when  
4 they can't find a place to sit, they'll sweep it up.

5 MS. SHORTALL: What are they doing to keep the  
6 vermin out of the area other than sweeping up? I know  
7 when you go on a beach, you sit there, you start taking  
8 out your sandwich, every gull in the area wants --

9 MR. DOVINH: Sure.

10 MS. SHORTALL: -- something. What are they  
11 doing to try to keep that away from those types of areas  
12 so that employees won't be exposed to those contaminants?

13 MR. DOVINH: It's a simple question for you,  
14 but it's a difficult answer for me because that's out of  
15 my jurisdiction. I have nothing to do with vermin in  
16 shipyards.

17 MS. SHORTALL: I'm not saying -- I'm just  
18 asking you because you've been around all of these places  
19 what your observation is.

20 MR. DOVINH: All of these years, I haven't seen  
21 anybody using any kind of bait to kill them except for  
22 the City of Seattle. I don't see any shipyard putting  
23 bait or poison or anything.

24 The only place is the City of Seattle, and they're  
25 doing that because a lot of rats underneath the crawl

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1 space at the north police precinct in north Seattle.  
2 Every month we come over and we do crawl space entry  
3 before these trappers and these cures went in and get rid  
4 of the rats.

5 MS. SHORTALL: This is sort of just a  
6 frustration question for me, and maybe you can help me  
7 with it. We've had a number of employers come in here  
8 and talk about some of the regulations that they have  
9 difficulty with, and some of the regulations they've  
10 having difficulty with have been OSHA regulations for 30  
11 years.

12 MR. DOVINH: I agree.

13 MS. SHORTALL: I'm sitting here going, well,  
14 what have they been doing for 30 years. Can you --

15 MR. DOVINH: Yes.

16 MS. SHORTALL: -- help me understand. Are they  
17 just not been aware of --

18 MR. DOVINH: Very simple.

19 MS. SHORTALL: -- the regulation; do they just  
20 don't think even though they say shipyard employment that  
21 they don't apply to them?

22 MR. DOVINH: Very simple answer.

23 MS. SHORTALL: What is that?

24 MR. DOVINH: Even the marine chemist, the  
25 industrial hygienist, your own OSHA inspector and even

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1 people on your panel, I guarantee you, every one of us  
2 have difficulty with certain OSHA regulations. I don't  
3 blame our industry. The general industry, the  
4 construction industry, the petroleum industry, every  
5 single industry, they all have parts or segments of the  
6 industry that have problems with the current regulation.  
7 The mining industry has been around for 200 years.

8 They blow up mines and kill people hundreds of times,  
9 still happening, still happening.

10 MS. SHORTALL: I'll give you an example. On  
11 the books currently existing regulation says shipyard  
12 employers must eliminate slippery conditions as they  
13 occur. And it's like everyone has come in and said, you  
14 can't require that, and I guess my first reaction is,  
15 well, it's been there for 30 years.

16 Can you tell me from your own observation what  
17 shipyard employers have been doing. Have they been  
18 eliminating slippery conditions as they occur or have  
19 they not been or do they not understand the rule?

20 MR. DOVINH: They do understand. The rule that  
21 you propose now, expanding on that a little further, and  
22 it has to be expanded a little bit more. And because the  
23 nature of the ship repair and the commercial fishing  
24 industry, water, ice, slip, trip, I mean, that's part of  
25 life. These are risks that our industry know that we

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1 cannot get rid of. These are the same risks that you  
2 think that we can get rid of. That's the difference.  
3 These risks will remain with us forever, and we cannot  
4 get rid of them.

5 MS. SHORTALL: I believe the risk remains, that  
6 there will always be slippery conditions that occur. Are  
7 you saying that because they have always occurred they  
8 are not being cleaned up as they occur or are you  
9 saying --

10 MR. DOVINH: They try to clean them up. For  
11 example, on a deck of a steam vessel, they need to weld  
12 on a deck and it's raining here in Seattle. They try to  
13 put up a pump. They try to do cement to build a little  
14 containment. They do that right now already, right now  
15 already they're doing that.

16 But they cannot stop welding in the rain on the wet  
17 surface. They can only minimize and reduce. There are  
18 tanks that has water and the competent person has been  
19 trained, they know by experience. They're not going to  
20 send in a welder to weld inside because saltwater  
21 transfer occur. So they will have that pumped out first.

22 MS. SHORTALL: Going on to lockout/tagout,  
23 during the regular course of replacing equipment, are  
24 shipyards and vessels now able to obtain replacement  
25 equipment that is lockable, No. 1; and No. 2, how long a

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1 period of time would it take to have almost all the  
2 equipment be lockable just simply through the normal  
3 course of replacement?

4 MR. DOVINH: I think there will always be some  
5 equipment that cannot be locked. I'll give you an  
6 example. If you have these vent lines and fuel lines  
7 that people need to be welding on because it has a  
8 pinhole leak, according to your regulations, they would  
9 have to be blanked. That's what you say right now,  
10 you've got to blank it before you do the work. These  
11 lines, the flanges that connect the section of the pipe  
12 together are inside of a fuel oil tank. How can you  
13 blank it?

14 MS. SHORTALL: That's not my question. My  
15 question was this: As shipyard employers and vessels are  
16 replacing equipment, have they been able to obtain  
17 equipment that is lockable?

18 MR. DOVINH: I think some.

19 MS. SHORTALL: If we were to give a significant  
20 period of time, such as 10 years, for employers to as  
21 they change out equipment get lockable equipment with the  
22 few exceptions that you're mentioning there, would we be  
23 able to see these employers move to almost full lockable  
24 equipment?

25 MR. DOVINH: You know, I've been around only

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1 for 20-some years, I'm not that old. I'm still a kid,  
2 especially in Joe's eyes. I don't think that even 10  
3 years or 20 years in the industry might be able to change  
4 out everything.

5 I think the best option is that there are vessels  
6 that have the old equipment. The next best thing for  
7 them is to scrap that vessel and buy another one that is  
8 15 years younger that they might be able to upgrade  
9 equipment in a more effective manner. Some of these  
10 vessels, it cost more money to upgrade and change  
11 equipment out. It might take forever.

12 MS. SHORTALL: I'm not talking about going in  
13 and upgrading today; I'm talking only about when you go  
14 through the normal course of replacing pieces of  
15 equipment, not forcing anyone to replace equipment, but  
16 now this piece of equipment is worn out and it no longer  
17 works and we've got to get something new.

18 MR. DOVINH: Yes.

19 MS. SHORTALL: Do you think by and large  
20 shipyard employers and vessels will be able as they move  
21 down the road to replace that equipment with lockable  
22 equipment?

23 MR. DOVINH: I answered that already. I  
24 believe some of them they can, but not all of them. And  
25 some may take a shorter amount of time; some maybe they

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1 can never do it. I just don't know. I don't think it  
2 can be done.

3 MS. SHORTALL: I appreciate you trying to  
4 hazard a guess for me. Oops, I used the word hazard.

5 Mr. Dovich, thank you ever so much for coming here  
6 and giving your testimony and for the time that you spent  
7 in developing it, and we look forward to your comments  
8 during the post-hearing comment period too. Thank you  
9 again.

10 MR. DOVINH: Thank you very much.

11 JUDGE GEE: Thank you, Mr. Dovich.

12 Let's take a five-minute break.

13 (Recess from 3:04 p.m. to 3:15 p.m.)

14 MS. SHORTALL: Your Honor, I would like to ask  
15 if anybody other than Mr. Tinker has written testimony  
16 they would like to give to me to put into the record.

17 MR. DIXON: I have an exhibit.

18 MS. SHORTALL: Your Honor, I would like to  
19 enter into the record the hard copy of Mr. Tinker's Power  
20 Point presentation as Exhibit 0183, and the Grass Grow  
21 Back Starter Kit with Grinder Cost Sheet as Exhibit 0184.

22 JUDGE GEE: Thank you. So ordered.

23 Our next panel is a combination of the panel that  
24 was previously identified as Panel 4 and 5. The members  
25 of this panel are Frank Townsend, Dick Webster, Robert

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1 Tinker and Doug Dixon. We will be taking testimony  
2 from Mr. Townsend, Mr. Webster and Mr. Tinker. It's my  
3 understanding that Mr. Dixon testified in Washington DC.  
4 So he will be available today for questioning.

5 Mr. Townsend, would you like to begin, please, and  
6 please state your full name and affiliation.

7 MR. TOWNSEND: My name is Frank Townsend. I'm  
8 the owner and operator of Petersburg Shipwrights,  
9 Incorporated in Petersburg, Alaska.

10 I have a hard act to follow there. I took the  
11 shipyard competence from Phil. I'm a very small company,  
12 and that's why I came today to testify was that a lot of  
13 the regulations are for larger shipyards. People may  
14 think a shipyard is a shipyard, but I have five employees  
15 working in the field, and I feel that some of the  
16 regulations are just expensive.

17 I was telling one of the fellows I got cited for not  
18 putting signs on my mezzanines last year. The shipyard  
19 is 55 years old, and I didn't have the weight regulations  
20 on them.

21 There are regulations in here that are probably 30  
22 years old that I have no idea how to read them, you know,  
23 how to interpret them. So I hired Amy Duz to help me,  
24 and she gives me a phone call every now and then and  
25 says, it looks like chromium is going to be your next

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1 battle.

2 So last year I rebuilt my mezzanines instead of  
3 upgrading my staging. So I think maybe there should be a  
4 thought about how much it costs the small shipyard to  
5 comply or not do the business, which is what we decided  
6 to do with the chromium. We no longer weld stainless.  
7 It's kind of a sad way to go, but that's what happens.

8 I believe the AED question, somehow if you're going  
9 to require them, there should be a distance or the time  
10 to get to one. I have a state ferry system on one side  
11 of me within a block, and I have the Coast Guard based on  
12 the other side within a block.

13 I just had an incident at the shop where a young man  
14 basically dropped a grinder, and it ran up his arm. It  
15 was totally guarded. It came up and cut him on the neck.

16 He was bleeding pretty good. He got himself out of the  
17 hole.

18 But by the time the people got there, it was less  
19 than five minutes, there was a defibrillator and a cage  
20 basket already there. The local EMT's had arrived one at  
21 a time with each one of their components, and they didn't  
22 want our components. We had a backboard all ready to go,  
23 but like other fellows have said, they like to use their  
24 own equipment.

25 I'm probably rambling in all directions, but I was  
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1 trying to get what would affect me. I've got some great  
2 ideas. But I do believe that regulations should be cost  
3 effective, however, however that works. I know it  
4 doesn't work. People like to save lives. But when we're  
5 clumped in with the 10 to 50 employees, it makes it  
6 really unreasonable for us to comply.

7 Thanks.

8 JUDGE GEE: Mr. Webster?

9 MR. WEBSTER: Good afternoon, my name is  
10 Richard Webster. I'm with Marine Industries Northwest.  
11 We are a small shipyard operated in Tacoma, about 30  
12 miles south of here.

13 The shipyard has been in existence since 1976. I've  
14 been with them since 1979. My original venue is  
15 treasurer, but I've been with safety and environmental  
16 compliance as well.

17 We have a dry dock at our facility. We have a way  
18 in which we can haul vessels out, and we've also got  
19 about 400 feet of dock space located on about three to  
20 four acres. It's hard to tell, but three to four acres.

21 We're averaging five union workers, six trade  
22 unions, probably 40 to 125 depending on the season and  
23 the amount of job activity. Customers are primarily  
24 commercial tug and barge operators, intercoastal  
25 transport companies, the small ones, we do several of

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1 them that go between Seattle and southeast Alaska and up  
2 into the Anchorage area. We do some work for the Navy,  
3 fighting barges. We don't get the big equipment in, but  
4 we do a lot of the barge and some of their base  
5 equipment. We do a fair amount of work for the Army.  
6 They've got a landing craft based down in Tacoma. So  
7 they've got their equipment plus their support equipment,  
8 so we do a fair amount of work with them.

9 Haven't done much work with the State of Washington  
10 because our facility isn't big enough, and the vessels  
11 have a bigger compartment than what we can offer.

12 We've got support shops for our tools and supplies  
13 and basically everything that is bought for jobs that  
14 come into the yard. We don't have a big inventory space.  
15 But the job site is the job, which takes care of the land  
16 side. And based on these new regulations, we've got some  
17 confusion when you're talking about the job site and the  
18 job, and some of these activities is a very fine line  
19 between which is the job site and the job when you repair  
20 because you need to start taking things apart, you're  
21 putting things back together at the same time as you're  
22 taking things apart in the next phase. And it becomes a  
23 very complicated environment very soon.

24 So even though your job activity could be over in  
25 that corner, you could be staging, you've got equipment

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1 coming in and out. We've got six different crafts  
2 involved, and you might have boilermakers in there for an  
3 hour or two and then they've got to pull it back, you put  
4 a pipefitter or a machinist come in and may do some work,  
5 and then they go back and pursue their activity. So  
6 there is a lot of working coming and going.

7 It makes it very difficult when you're talking about  
8 pulling back leads and extension cords. We try to keep  
9 them out of their way. But to pull them back when  
10 they're not working, you get into a definition of if you  
11 need it 15 minutes from now, then you pull them out and  
12 then put them back in 15 minutes.

13 Color coding is one thing I wanted to talk about.  
14 We work on an awful lot of barges, 400 feet long, 99 feet  
15 wide, go into the bottom of those to renew the structure,  
16 because they're either wasted away or they've got a new  
17 type of deck load and they need extra reinforcing for  
18 that load. You go in there and you are going to find  
19 beams down there anywhere from 12 to 18 inches high,

20 perhaps as high as 24 inches. Are we suppose to color  
21 all of those yellow? Because yellow is the color for  
22 hazards, we are supposed to be identifying blocking  
23 hazards.

24 If it was in our facility and we had that, we would  
25 have to painted that yellow, so do we have to paint all

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1 of those yellow too. You take the working planks off the  
2 engine compartment and you're back down into the members  
3 of the vessels. Do we have to start color coding all of  
4 this yellow, red, as hazardous? It's just part of the  
5 work environment.

6 When you remove the manhole you have a frame around  
7 it, it's a tripping hazard. We've already got a cone  
8 around it. Do we have to paint it yellow? These all  
9 need to be color coded, as I understand.

10 What else did I have to say here.

11 Oh, this eye wash drenching situation. It's my  
12 understanding that the language has been changed from  
13 caustic to hazardous material. Spray cans are a, quote,  
14 hazardous materials. Do we need an eye wash station next  
15 to wherever there was a can of spray paint? The paint  
16 that we're applying to the vessels is hazardous material.  
17 From an environmental aspect, that's all hazardous  
18 material. Where we store all of this hazardous material,  
19 do we need an eye wash station there?

20 I can appreciate for the caustic soda, but just for  
21 something that may have caused a problem and happens to  
22 be hazardous, it just seems to be totally overkill.

23 There were a lot of ambiguous statements in this  
24 coding that I wanted to point out. But there was a  
25 comment I want to make real quick, because it just

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1 crossed my mind, and that's on this flashlight, what you  
2 saw this morning when John had a light on his hard hat.  
3 It would be much more effective if you're in a confined  
4 space or you're down in the bottom of a barge, there's  
5 probably 99 percent chance that you're going to have to  
6 climb a ladder or some other way that got you in there.  
7 If you have something in your hand and then you have two  
8 hands on the ladder when you're trying to get out, I  
9 thought that was a very blatant hazard.

10 There is no call for that at all. When you're  
11 trying to get the employee out safely, it would be much  
12 better to have something that he could clip on rather  
13 than something that he has to hold in his hands when he's  
14 trying to get out of it. Chances are he's going to drop  
15 it.

16 You used the terminology over and over again,  
17 adequate, adequate. Adequate number of first aid kits,  
18 adequate number of -- adequate supplies. Let's see, the  
19 term adequate is just begging for definition. What's  
20 adequate is just like you were saying with regards to  
21 frequent inspections. If there is an accident, then they  
22 weren't frequent enough. What is adequate? If I have 30  
23 guys down there, then you'll have 30 definitions of what  
24 adequate is.

25 I love the 35 foot rule for hot work. Everybody

0195

1 knows what 35 feet is up, down, either way, to the next  
2 compartment. Adequate to 35 different people is totally  
3 confusing. It's either ripe for abuse or just punitive  
4 penalties as this gentleman was talking about. The  
5 inspector comes in, he says that's not adequate to me,  
6 and here you are, he's up in Petersburg.

7 Work area is also an awkward definition. You've got  
8 work location and work area, but you really don't define  
9 what it is. So is it like 35 feet from that corner with  
10 that welder over there, or is it within 10 feet. You  
11 haven't -- you guys haven't had your visit as far as the  
12 vessels yet. It would have been very helpful if you had  
13 it before you heard the testimony so then you can see how  
14 confusing these vessels become. You take them all apart  
15 and you still only have the confines of the deck of the  
16 vessel to have as your workspace. It gets very, very  
17 complicated as to why you maintain space and working  
18 conditions.

19 So it would be helpful to have work area were much  
20 better defined than it is right now.

21 You cannot make the risk disappear by more rules for  
22 language. You've got plenty of rules that have already  
23 been in place for a number of years.

24 Education would be extremely helpful. We work with  
25 WISHA on our land site operations. I think OSHA has just  
0196

1 come up with Mike Bronkowski. I may have mispronounced  
2 his last name. That's been the last couple of months  
3 he's been signed as the and he's been an advocate for --  
4 as a noncompliant adequate where an employer could call  
5 up and ask their advise and get some input. I think  
6 that's extremely helpful.

7 The membership in the PSSA that we are involved in  
8 for the small shipyard standpoint is extremely helpful  
9 because we get the insight from the marine chemists and  
10 that which we don't have. I wear several hats. The  
11 people at the larger shipyards, they've got people with  
12 single hats and they can really focus, but it's really  
13 nice to get their oversight and also their insight.

14 One thing I didn't mention which I wanted to go back  
15 to is we do dockings, we do about two dockings a month.  
16 At a small shipyard we have smaller jobs, they don't stay  
17 as long, and it's something I wanted to point out.

18 On our dock-side work, we do about 10 dock side jobs  
19 a month. At least one half of them are less than 100 man  
20 hours in the job. If something comes in, it's there for  
21 two or three days, you set up, you have an immediate  
22 small repair that they need to take care of and it's gone  
23 away in two or three days.

24 We also do voyager care work out of our yard. We do  
25 about six of those jobs a month. About two-thirds of  
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1 those are less than 100 man hours. Based on the lack of  
2 clarity, our costs could go up considerably as far as the  
3 staging and the pull back requirements which is going to  
4 increase and that we're going to have to bill our  
5 customers.

6 One thing I don't think OSHA wants is for the work  
7 to go away because our customers are economic entities as  
8 well. Their costs go up, they're going to try to find a  
9 cheaper way to do it.

10 All of our customers have their own berthing  
11 stations where they have their vessels when they're not  
12 being used. And if they start going to basically, I just  
13 call them pickup truck operators, where they don't have a  
14 facility through OSHA to visit anywhere close to their  
15 pier site, you're not even going to have a place to  
16 inspect.

17 At least with the shipyards you can maintain an idea  
18 as to what the culture of safety is within that shipyard.  
19 You have a place to visit, you have a place to inspect.  
20 If you drive the small jobs out of the smaller shipyards,  
21 you won't find them, and employees certainly are not  
22 going to be safer.

23 Those are my comments, and I appreciate the ability  
24 to share them with you.

25 JUDGE GEE: Thank you, Mr. Webster. Mr.  
0198

1 Tinker.

2 MR. TINKER: Thank you, Judge Gee. My name is  
3 Robert Tinker, and I appreciate the opportunity to share  
4 my comments. I'm representing Fishing Vessel Owners  
5 Marine Ways, Incorporated, referred to as FVO. That's  
6 the term that we refer to ourselves as.

7 We're located at the Port of Seattle Fisherman's  
8 Terminal since 1917. We like to advertise ourselves as a  
9 medium-sized shipyard located within the Port of Seattle  
10 Fisherman's Terminal.

11 Looking at the above pictures, starting on the left  
12 side, which is a view of the water -- a view from the  
13 water looking at the two main railways used to pull  
14 vessels out of the water.

15 And moving right, we have moorage for dockside  
16 repair along with an approximately 300-foot concrete  
17 pier.

18 This is an aerial view of the Port of Seattle  
19 Fisherman's Terminal, outlined in green, which includes  
20 FVO's approximately two-acre shipyard, on the east side  
21 outlined in yellow.

22 The operations we conduct are not limited to the  
23 site. However, the majority of the services we offer and  
24 perform do take place within the yellow boundary.

25 The primary exception to that is our outside  
0199

1 machinist staff of five employees that regularly perform

2 service to vessels on and off site.

3 Vessels we repair are primarily small commercial  
4 fishing vessels, typically under 100 feet. The hulls are  
5 predominantly wood, steel and aluminum, and we repair  
6 approximately 113 vessels a year.

7 Our haul-out facilities are made up of two marine  
8 railways, 300- and 500-ton capacity, operating  
9 approximately 60 times each year.

10 I hope these general pictures and description of our  
11 operations bring additional understanding of small to  
12 medium-sized shipyard.

13 With that being said, on behalf of FVO, I'd like to  
14 say that many elements of the proposed rule will be and  
15 have been spoken about at length today. And while time  
16 does not allow that I comment on all of these elements as  
17 well, I would like to express my support for the comments  
18 of my colleagues.

19 In addition, I would like OSHA to note my support of  
20 the written comments of the Puget Sound Shipbuilders  
21 Association, specifically oppose a feeling in our  
22 industry approach to lockout/tagout in shipyards. This  
23 approach does not adequately acknowledge or address the  
24 challenges we face while working in a maritime  
25 environment.

0200

1 Along with my colleagues, I encourage OSHA to study  
2 best practices and work harder to find a solution that is  
3 practical and will adequately protect our employees.

4 I also ask that OSHA provide specific definitions in  
5 the final rule as well as language that is precise and  
6 achievable.

7 FVO currently employs 32 people today, and  
8 personally in the last year I've seen our numbers spike  
9 up to close to 50 employees and back down. I would like  
10 to share a perspective from a small business like FVO  
11 associated with effectiveness and cost issues pertaining  
12 to the proposed general working conditions in shipyard  
13 employment.

14 To start, specifically 1915.93, designated lanes of  
15 travel. Given the capacity of the work areas in our  
16 relatively small site, we feel it is more effective to  
17 educate our employees of hazards associated with  
18 pedestrians, bicycles and motor vehicle traffic rather  
19 than install lanes of travel that will routinely need to  
20 be broken to perform our service. FVO feels that  
21 educating increases awareness, while the lanes of travel  
22 and control devices encourage the employee to take the  
23 danger that is still present for granted.

24 Eye wash stations. We have three eye wash stations  
25 located on the vicinity of the primary areas that

0201

1 chemicals are being applied and fabrication is being  
2 performed. Given the proposed rule of 10 seconds from  
3 any location, that would mean we would have a single  
4 employee using a chemical such as WD 40, carburetor  
5 cleaner, anti-splatter, that we would need to at least  
6 triple the amount of eye wash stations and line this  
7 300-foot concrete pier within approximately 100 feet on  
8 each side to be within 10 seconds. And that's up in the  
9 far left corner of the yellow outlined area there.

10 I would just like to expand on that a little bit.  
11 Our eye wash stations, I feel in the last year that I've  
12 been there, have been adequate. We have had a rash of  
13 eye injuries with just foreign objects entering the eyes,  
14 approximately six in the last year, and working with our  
15 consultant and really pushed for double eye protection  
16 and encouraged that with our employees. But as far as  
17 chemicals in the eye, we feel the three in the positions  
18 that they are are sufficient.

19 First aid, 1915.87, we need clarification on work  
20 location. If we interpret that as each vessel that the  
21 services are being performed on on our site, then we'll  
22 need to increase our first aid stations by approximately  
23 300 percent. The first aid stations we currently utilize  
24 are available to all employees without restrictions, and  
25 this amount is sufficient for our site.

0202

1 1915.88(d)(2), sewerage toilets. The legal intent is  
2 to have a sewer toilet that has necessary lighting and  
3 heating and proper facilities to sanitize hands available  
4 to every employee. In the interest of temporary growth  
5 in employment, requiring the use of a minimum of one



6 portable unsewered toilet facility that does not require  
7 heating or running water. Frankly, the portable toilet  
8 used will be primarily used as a urinal and the cost  
9 associated with portable toilets is a difference of \$85  
10 per week for a toilet that is unheated and equipped with  
11 hand sanitizer which includes regular inspections and  
12 servicing needs as compared to greater than \$2000 a week  
13 for portable facilities equipped with heat and running  
14 water, plus additional costs for servicing.

15 Cost of this \$2000 is approximately greater than  
16 five percent of our weekly payroll as we are right now.  
17 A site our size could have an additional cost of  
18 approximately 50 hours per employee per week.

19 These few issues that I brought up in hopes that  
20 OSHA recognizes the economic impact versus the  
21 effectiveness associated with the proposed rule for small  
22 business. I've personally only been a part of the  
23 shipyard industry for 11 months and have appreciated  
24 OSHA's local participation with the Puget Sound  
25 Shipbuilders Association.

0203

1 In addition, I also have enjoyed the pleasure of  
2 participating with the OSHA inspection at FVO this  
3 summer. And I look forward in the future to learning  
4 more through the services offered by OSHA.

5 Thank you for this opportunity to share my comments  
6 and I appreciate your time and consideration.

7 JUDGE GEE: Thank you, Mr. Tinker.

8 Is there anybody in the audience with questions for  
9 the panel?

10 MR. RAINSBERGER: Is this the appropriate time  
11 to ask Mr. Dixon a question?

12 JUDGE GEE: Yes, please identify yourself and  
13 your affiliation.

14 MR. RAINSBERGER: My name is Al Rainsberger.  
15 I'm the president of the Puget Sound Shipbuilders  
16 Association, and I'm the safety director at Foss  
17 Maritime. I gave testimony first thing this morning.

18 I just noticed that Mr. Dixon brought what looks to  
19 me to be a palm sander. I didn't know what the purpose  
20 of that was. Can I ask him that question?

21 JUDGE GEE: Sure.

22 MR. DIXON: Thanks for asking that. But my  
23 question that I was going to ask is a similar one of the  
24 three panel members. This is a palm sander. Do you guys  
25 ever use these in your shipyards?

0204

1 MR. TINKER: We have them in our carpenter  
2 shop.

3 MR. WEBSTER: We have them in our carpenter  
4 shop also.

5 MR. DIXON: This is a rather standard device  
6 throughout the shipyards and also in the 79,000 or  
7 whatever fishing vessels that we're talking about. All  
8 of the wood vessels -- there are a lot of wood vessels  
9 out there, but oftentimes the steel ones too, have this  
10 have this type of device there.

11 And, Sarah, this is really directed towards that one  
12 comment about the 30 years have you guys really been  
13 violating OSHA regulations for 30 years, and the answer  
14 is absolutely yes. There is no deadman switch on here.  
15 It's a portable electrical device. It violates 1915, I  
16 forget what it is. It's a direct violation. It's been  
17 going on for 30 years.

18 And this is just a small part of it. And the other  
19 issue that I testified in DC that I couldn't find any  
20 with deadman switches, I did get pointed out by one of  
21 our colleagues when they saw my testimony, back east we  
22 found some that range from \$900 to \$1600 without even the  
23 vacuum device that the policy is demanding. So \$900 to  
24 \$1600 for a replacement for this, and it's not even a  
25 vibrating style, but it's air actuated. And most of the

0205

1 smaller vessels don't have air on board that can power  
2 this type of thing. It is an electrical device. It just  
3 does not have the deadman switch.

4 When you get into the conditions where our policy is  
5 now for grinders and putting us into a position, it's a  
6 tremendous cost, it's a tremendous burden.

7 But really, my request to you was not just to look  
8 at the new regulations but the 30-year-old regulations  
9 and find a proactive way to take the things that are not

10 really safety inherent here and find a way to help  
11 rewrite the 30-year regulations so that we can be  
12 compliant and have a safer operating thing and identify  
13 what is safe and what isn't.

14 Then I have a second question for these guys, and  
15 that is, I'm preparing at OSHA's request, going through  
16 our OSHA 300, seeing what our loss records are and severe  
17 versus none. Have you guys had any deaths at your  
18 shipyards in recent history?

19 MR. TINKER: I have personally asked the  
20 president of FVO who has been there 35 years, and the  
21 company has been since 1917, and he says we have not had  
22 any facility in the whole history of the company.

23 MR. DIXON: And how about significant serious  
24 accidents?

25 MR. WEBSTER: I'll answer for our company. We  
0206

1 have had no deaths. We've about been in business since  
2 1979. We have had one serious accident, and it was a  
3 split ring coming off of a forklift, and the guy was  
4 reinflating the tire, and the split ring came off.  
5 That's been our serious accident.

6 MR. DIXON: Is that part of the new regulation  
7 that's being tightened up or is that a violation of the  
8 old regulation?

9 MR. WEBSTER: I'm not sure if it's a violation  
10 underneath either one of them. We weren't cited for, and  
11 it would have fallen under WISHA anyway.

12 MR. TOWNSEND: We've had no deaths. The only  
13 serious accident that we've had since I owned the company  
14 was this young man that set the grinder on his arm. And  
15 it was human error. But I think it could have been.

16 MR. DIXON: Did that grinder have a deadman  
17 switch on it?

18 MR. TOWNSEND: It did.

19 MR. DIXON: My nephew was recently in here  
20 three weeks ago buying a grinder in our shipyard that has  
21 a deadman switch on it. The problem with a deadman  
22 switch is when you take it off, if your hand falls off  
23 the grinder, you drop it, that's what happens. That  
24 grinder wheel is going at 10,000-plus rpm's. The deadman  
25 switch doesn't do anything for you.

0207

1 And here's something that requires a deadman switch  
2 and it's not going to hurt anybody. And I challenge you  
3 guys, how many people on the panel actually have one in  
4 their house or have used one in their lifetime.

5 Can I have a show of hands; is that fair?

6 MS. SHORTALL: I think, Mr. Dixon, we are  
7 giving you an awful lot of leeway here --

8 MR. DIXON: I understand.

9 MS. SHORTALL: -- when this is not the issue  
10 before us today.

11 MR. DIXON: But here is another example of the  
12 30-year-old rules where we do need to take a good look at  
13 them and find a different way to make us safer. That's  
14 all we're asking.

15 JUDGE GEE: Is there anyone else in the  
16 audience that has a question for the panel?

17 How about the OSHA panel?

18 MS. SHORTALL: Yes, we have questions. Amy  
19 Wangdahl will start in just a second.

20 Mr. Townsend, you said you had a number of ideas,  
21 but then you didn't give any. Could you just maybe give  
22 your ideas and then we'll go into questioning. We'd love  
23 to have your ideas.

24 MR. TOWNSEND: You want my ideas? Well, the  
25 definition of a shipyard. I went around and around with  
0208

1 Amy. I'm not a shipyard, I'm just a little boat yard,  
2 but OSHA says I'm a shipyard. That was one idea, do I  
3 really, being as small as I am and doing what I do, do I  
4 qualify as a shipyard.

5 The fellow hauling the boats out with a trailer and  
6 putting them in a side yard, is he a shipyard? He's my  
7 competition. It's a one-man operation. He doesn't have  
8 any OSHA standards doing that. I just want some clarity.

9 What was the other one? The other one was the  
10 isolated, enclosed and confined. Those definitions, it  
11 would be nice to have them a little crisper.

12 And those are the two things that I have here.

13 MS. SHORTALL: Thank you very much, and we'll

14 begin the questioning with Ms. Wangdahl.

15 MS. WANGDAHL: Mr. Tinker, what is your  
16 capacity at FVO?

17 MR. TINKER: I was hired in November of 2007 in  
18 environmental compliance. Since then I have taken on  
19 additional responsibilities including a system safety  
20 task.

21 MS. WANGDAHL: Can you go back to the slide  
22 where you showed where the quick drench and the first aid  
23 stations are located. Can you explain to me, let's start  
24 with the first aid stations. All we can see is the  
25 building. What's inside the building?

0209

1 MR. TINKER: Well, basically we have a first  
2 aid station to the far left, top one is in our storeroom,  
3 and that's been in the main front building, and that's  
4 equipped with, our, you know, all our internal safety  
5 supplies and that's where we keep our storage of safety  
6 supplies to restock.

7 The primary thing that goes through is filling it up  
8 and restocking with antacids and cough drops, which is  
9 the big one.

10 The two lower ones that are both inside the machine  
11 shop is that lower left one that's at the opposite end of  
12 the building, which is where the welders shop is, and the  
13 boilermakers one is the one next to it on the right.

14 MS. WANGDAHL: About how many employees will be  
15 working in those building on a typical day?

16 MR. TINKER: The store comes and goes because  
17 we have one employee that runs the -- does purchasing,  
18 but that's the easiest access for all employees.

19 In the middle of all of those is the railway that  
20 stems from the water, and we can sidestep two or three  
21 ships, so we'll have employees primarily working in that  
22 area, along with those two railways, so that's the  
23 easiest access for them.

24 The welding shop can be, you know, three, four. I  
25 don't typically see more than four people.

0210

1 The machine shop has about four people regularly  
2 working there.

3 MS. WANGDAHL: And then the eye wash stations,  
4 again the top left is in the store again?

5 MR. TINKER: Right in the store.

6 MS. WANGDAHL: And then the center green X is  
7 in the welding shop?

8 MR. TINKER: In the welding shop.

9 MS. WANGDAHL: The far right?

10 MR. TINKER: That is called our winch room, and  
11 that is the closest access to basically all the chemical  
12 storage. Our chemical storage is the building next to  
13 that just below that.

14 And so, yes, you have a drench station between the  
15 machine shop and the welders. The store is just as  
16 accessible for anybody in that center area. Pretty much  
17 all of them are very accessible, I would say well within  
18 10 seconds.

19 MS. WANGDAHL: Were these here before you came  
20 on board?

21 MR. TINKER: Yes, they were.

22 MS. WANGDAHL: So you may not be able to answer  
23 this question, but the decision to put them in these  
24 locations, do you know what made that determination?

25 MR. TINKER: I do not know.

0211

1 MS. WANGDAHL: But they seem to be centrally  
2 located?

3 MR. TINKER: Yes.

4 MS. WANGDAHL: What other provisions have you  
5 made for first aid; do you have CPR trained --

6 MR. TINKER: I can get this information for  
7 you, get that to you if you like, but personally I don't  
8 know.

9 MS. WANGDAHL: So if there is an accident,  
10 what's the procedure, do you know that?

11 MR. TINKER: For accident procedures?

12 MS. WANGDAHL: Yes.

13 MR. TINKER: They are reported to the  
14 supervisor. The supervisor is not required to report the  
15 accident directly to us at the time, but the person that  
16 had the accident comes straight to the office and reports  
17 it to, I believe our Human Resources person, and when she

18 is not there, I have paperwork necessary to, along with  
19 the superintendent has paperwork necessary to file a  
20 report and to get medical help if they need to go to an  
21 additional facility.

22 MS. WANGDAHL: What if the employee can't get  
23 to you; do you have someone on-site that can treat them  
24 or do you rely solely on 911?

25 MR. TINKER: We have somebody -- we rely, in

0212

1 this picture -- let me get to that picture again. Yes,  
2 when we rely on 911, we have dock 1, 2 and 3 is the  
3 cement dock on the left, dock 4 is the one next to it on  
4 the left. At the end of that dock is a fire department,  
5 and that's the proximity of medical services for us,  
6 emergency medical services.

7 MS. WANGDAHL: Are they staffed 24/7; is it a  
8 volunteer?

9 MR. TINKER: Yes. No, it's not a volunteer.

10 MS. WANGDAHL: Mr. Webster, what sort of  
11 provisions have you made for first aid at your facility?

12 MR. WEBSTER: All of our foremen have formal  
13 first aid training, all of shipyard competent person at  
14 the shipyard is first aid trained through the Red Cross.  
15 They come on site and do it twice a year depending on the  
16 number of people we have that need certificates. If it's  
17 on-site, we probably have at least 12 people there.

18 MS. WANGDAHL: I'm sorry, I know you said this  
19 in the beginning, how many employees do you have?

20 MR. WEBSTER: We average 85. We've got two  
21 shifts that go between 45 and 50 and 125.

22 MS. WANGDAHL: Mr. Townsend, have you made any  
23 provisions for first aid?

24 MR. TOWNSEND: At least half of our staff are  
25 trained in first aid CPR.

0213

1 MS. WANGDAHL: That's quite a bit considering  
2 there's five employees?

3 MR. TOWNSEND: Well, there's nine altogether,  
4 but we have some part-time help in our store, so they're  
5 not in the field.

6 MS. WANGDAHL: And I believe you said you have  
7 a fire department fairly close?

8 MR. TOWNSEND: They were at the site within  
9 three minutes. A person with a cell phone on the dock  
10 called immediately. Matter of fact, we called twice.  
11 The people in the store heard someone yelling, and they  
12 called and someone else called.

13 MS. WANGDAHL: How is he today?

14 MR. TOWNSEND: He's fine. He's pretty well  
15 stitched up. But the dead switch, he didn't let go of  
16 it. It had a hold of him. That was the problem. I can  
17 see the problem with the switches. He didn't want to let  
18 go of it. It went towards his neck. He's got a nice  
19 little slice on his neck from a grinder.

20 MS. WANGDAHL: And that's the only serious  
21 accident that you've had?

22 MR. TOWNSEND: We've had some soft tissue  
23 accidents.

24 MS. WANGDAHL: This question is for everybody.  
25 Do you issue flashlights or any sort of portable

0214

1 handheld? Mr. Webster, you were referring to the light  
2 on the hard hat that Mr. Killingsworth brought in. What  
3 are all of you doing currently?

4 MR. TOWNSEND: We have disposable flashlights  
5 available everywhere, but we also have halogen  
6 flashlights available in the metal shop and in the shed  
7 that they have.

8 MS. WANGDAHL: Do you require employees to  
9 carry them with them at all times or just as needed?

10 MR. TOWNSEND: No, we don't. They're  
11 available.

12 MS. WANGDAHL: Okay.

13 MR. WEBSTER: We have flashlights that are  
14 available. The only ones we require to carry are the  
15 electricians that go in and pre light the areas, put the  
16 temporary lighting in. They wouldn't have any backup,  
17 but they are required.

18 Again, I think it was brought up earlier when those  
19 go out, if it's a circuit breaker or something that gets  
20 flipped, within a matter of minutes the lights are back  
21 on.

22 But they available throughout our facility. We've  
23 got hundreds of flashlights.

24 MS. WANGDAHL: Mr. Tinker?

25 MR. TINKER: Definitely we have hundreds of

0215

1 flashlights available throughout the facility. The only  
2 requirements that I know of are inside the job boxes that  
3 are typically put on each vessel prior to work starting  
4 there.

5 But I don't believe that -- but I can find out for  
6 sure -- but I don't believe each employee is required to  
7 carry one at all times.

8 MS. WANGDAHL: Mr. Dixon?

9 MR. DIXON: All of our electricians and  
10 machinists generally carry them and they are available in  
11 our store. They don't have to buy them. Any employee  
12 can have one at any time for any use.

13 MS. WANGDAHL: Are the electricians required or  
14 is --

15 MR. DIXON: No.

16 MS. WANGDAHL: -- it just typical?

17 MR. DIXON: It's just typical that they have  
18 them, yes.

19 MS. WANGDAHL: Okay.

20 MR. DIXON: I'll tell you about a  
21 darkness-related accident that might be interesting. We  
22 were dry docking a boat and the dry dock crew was on the  
23 bow of the vessel, and it was a small passenger vessel,  
24 maybe 150 feet with all cabins.

25 In order to get to the aft end of the boat, you had

0216

1 to walk -- well, you didn't have to, but in this case our  
2 guy elected to walk from the bow to the stern to handle  
3 the line. And this vessel had just come in by the  
4 owner's crew.

5 And unbeknownst to us, they had left a manhole open.  
6 And our guy went interior and, of course, it's a dead  
7 ship because it's going into dry dock. It got towed in  
8 or whatever, so the drop-off crew dropped it off. And he  
9 walked internally in a dark area where the crew had left  
10 a manhole open and fell into that manhole. He didn't get  
11 hurt too bad, it was a small ship.

12 But still, that's a case where had he had a  
13 flashlight to go from the bow to the stern and he was  
14 required to carry one, then he may have seen that open  
15 hatch that was left by the crew.

16 We get into circumstances, you know, lots of times,  
17 and, you know, you talk about these lights, like the guys  
18 are the ones who break the chemical ones for if you are  
19 in a confined space that you have something special, and  
20 we're going to look into those and just then these little  
21 portable things for our guys that do occasionally but not  
22 normally want to carry the bulk of having a regular  
23 flashlight around.

24 It's not a big cost, and I don't have in mind  
25 looking at that sort of thing. We respect you for a lot

0217

1 of the things that you bring up that really can, we can  
2 see, have a value to them.

3 MS. WANGDAHL: Thank you.

4 Mr. Dixon, you had answered this line of questioning  
5 in DC. I would like to ask the remaining three. What  
6 sort of lockout/tagout programs do you have in your  
7 facilities, if any?

8 MR. TOWNSEND: We have locks and tags on all of  
9 our electrical.

10 MS. WANGDAHL: Who is responsible for making  
11 sure equipment is locked out?

12 MR. TOWNSEND: Everybody.

13 MS. WANGDAHL: Okay.

14 MR. WEBSTER: In our electrical department  
15 we've got locks and tags also. That is the  
16 responsibility of the foreman of that shop from the  
17 electrical standpoint.

18 The other two crafts that we're primarily concerned  
19 about are the pipefitters and machinists, and they're  
20 handling hydraulic lines and other lines that might be  
21 charged to make sure that the pressure has been relieved  
22 or the lines have been blanked off so something can't be  
23 turned on and product goes through those lines. They are  
24 just tagged off.

25 MS. WANGDAHL: When you use tags, are you using

0218

1 an additional measure; is there something else you do  
2 besides just tagging?

3 MR. WEBSTER: We tag, put banks in, and there's  
4 other ways to do it. Our typical experience is with  
5 sewage lines. There always seems to be one flush left in  
6 some toilet, so you try to use blanks.

7 MS. WANGDAHL: Mr. Tinker?

8 MR. TINKER: Concerning lockout/tagout, I know  
9 I'm not very familiar with our lockout/tagout. I could  
10 forward you our policy on that. I know that we have a  
11 whole wall of tags and locks used by machinists when  
12 they're working on it. But I'm not really familiar with  
13 it.

14 MS. WANGDAHL: Thank you.

15 Mr. Townsend, I think you're the smallest employer  
16 that we have had throughout this whole process, so I do  
17 appreciate you coming. When you reviewed the proposed  
18 rule, I'm sure there were a few things that jumped out at  
19 you that you thought, no way. Do you seem to remember  
20 any of those?

21 MR. TOWNSEND: The basket seems unrealistic in  
22 my situation.

23 MS. WANGDAHL: Is that because you are relying  
24 on off site?

25 MR. TOWNSEND: We have backboards that we have

0219

1 used over and over, the cranes that pull out the baskets.  
2 And I think we had the fellow at the hospital before the  
3 crane got set up. We generally work on two or three  
4 projects at a time. You don't find two people working on  
5 one job very often. They're in the same compartment.  
6 That's about the only.

7 MS. WANGDAHL: That was the one biggie?

8 MR. TOWNSEND: The AED, that just seems  
9 unrealistic. I think it's a great idea and it's  
10 wonderful to have the training. If they were a thousand  
11 dollars, I'd have one.

12 MS. WANGDAHL: Just because you just mentioned  
13 it, do you frequently have employees that are working  
14 alone?

15 MR. TOWNSEND: Yes.

16 MS. WANGDAHL: What kind of spaces are they  
17 working in?

18 MR. TOWNSEND: Oh, like an engine room, usually  
19 there's one man in it and one man outside on most of  
20 those type of projects.

21 MS. WANGDAHL: Is communication maintained  
22 throughout the job?

23 MR. TOWNSEND: We have radios and everybody has  
24 cell phones. We use both.

25 MS. WANGDAHL: Thank you very much.

0220

1 MS. SHORTALL: Mr. Daddura has questions next.

2 MR. DADDURA: You mentioned job box. What is a  
3 job box?

4 MR. TINKER: Like a steel box approximately  
5 half the size of this table, about this tall, that holds  
6 tools necessary for working on the vessel.

7 MR. DADDURA: So there's a gang box you send  
8 down to the work site to the vessel; is that what it is?

9 MR. TINKER: That's what a gang box is, yes.

10 MR. DADDURA: Okay, just wondering.

11 Disposable flashlight; what is that?

12 MR. TOWNSEND: Did I say it?

13 MR. DADDURA: Yes.

14 MR. TOWNSEND: I think I did. That's what they  
15 are. You can't change the battery, so they're  
16 throw-aways once they go dead.

17 MR. DADDURA: So they're a light stick.

18 You wanted a definition of shipyard. Why do you  
19 think you need a definition of shipyard?

20 MR. TOWNSEND: Well, I believe there are haul  
21 out facilities that are not OSHA standards, they don't  
22 use OSHA standards, they're uninspected. I'm saying like  
23 a brownell trailer. If you have a brownell trailer in  
24 the parking lot away from the water, you're not under the  
25 shipyard standards, yet you're my competition.

0221

1 MR. DADDURA: I'm not sure I understand that.

2 You're saying there is pickup truck companies picking up  
3 from --

4 MR. TOWNSEND: No. He backs down the ramp and  
5 he picks up a boat that I would haul last year, but he's  
6 got no facility; he's just a parking lot with boats in  
7 it. Is he a shipyard?  
8 MR. DADDURA: Well, we don't go by definition  
9 of shipyard. We go by the definition of shipyard  
10 employment. He's doing your type of work, he's your  
11 competitor, he's definitely falling under the same  
12 standards. That is defined in the regulations.  
13 MR. TOWNSEND: Okay.  
14 MR. DADDURA: I'm curious from all four of you  
15 if you would give me your definition, if it's different,  
16 of a work site versus a work location. In your own  
17 words, what do you think it means?  
18 MR. TINKER: I can start. I would consider the  
19 work site and work location -- basically I would like to  
20 consider RER a work location along with a work site.  
21 MR. DADDURA: A work site would be what?  
22 MR. TINKER: I would like to say they're the  
23 same.  
24 MR. DADDURA: It would be the same?  
25 MR. TINKER: The same, yeah.

0222  
1 MR. DADDURA: Mr. Dixon?  
2 MR. DIXON: I think they're synonymous. I  
3 would have to read it. Do they show up in the  
4 regulation?  
5 MR. DADDURA: I just want your interpretation  
6 of what you think the --  
7 MR. DIXON: Work site and work location to me  
8 it means the same thing.  
9 Do you want me to help out on the shipyard versus  
10 boat yard?  
11 MR. DADDURA: No, not shipyard versus boat  
12 yard; it's shipyard versus non-shipyard.  
13 MR. TOWNSEND: That's what we want.  
14 MR. DADDURA: Mr. Webster?  
15 MR. WEBSTER: Well, the shipyard would be --  
16 MR. DADDURA: No, the work location and work  
17 site.  
18 MR. WEBSTER: I would say that the workplace is  
19 where the actual work activity stage is taking place,  
20 within a reasonable radius right around that spot. If  
21 you've got a 400-foot vessel and you only have activity  
22 in one hole and a tank down in one end, so you've got an  
23 awful lot of access there. You've got a lot of walking  
24 before you even get to where the actual work activity is.  
25 MR. DADDURA: The work location then would be  
0223  
1 what?  
2 MR. WEBSTER: The work site would be where the  
3 actual physical work is taking place.  
4 MR. DADDURA: Right.  
5 MR. WEBSTER: And the work location would be  
6 barge 450-16 or some identifiable geographical spot.  
7 MR. DADDURA: Okay.  
8 MR. TOWNSEND: I think the work location could  
9 be as big as my shipyards, all of my property, and the  
10 work site may be in the stern of the boat.  
11 MR. DADDURA: Thank you. That's all I have.  
12 MS. SHORTALL: Mr. Bolon has questions next.  
13 MR. BOLON: Mr. Townsend, could you describe  
14 your shipyard. Is it a dock; do you have shops?  
15 MR. TOWNSEND: Sorry. After everybody else  
16 described theirs, I thought about that. I have a split  
17 railway. It's 400 feet, two carriage railway, end to  
18 end, two separate docks, floating metal shop and a  
19 floating boathouse that I can put a 58-footer inside and  
20 about a 4000 square foot store and inventory.  
21 MR. BOLON: The proposed standard on  
22 lockout/tagout, it's a comprehensive program that  
23 requires that you have to have a written program as well  
24 as do training and other things. So I would ask each of  
25 you, in your lockout/tagout, although you may have some  
0224  
1 of those components, do you have a written program; do  
2 you have that kind of comprehensive --  
3 MR. TOWNSEND: Yes, we do. I actually hired,  
4 on the recommendation of an OSHA inspector, I hired a  
5 safety officer, and she's been working on MSDS work all  
6 year, and we have a lockout/tag out program.  
7 MR. WEBSTER: We have a written one also.

8 MR. TINKER: Yes, we have a written one also.  
9 MR. DIXON: We have a written one also. We  
10 have a board in the tool room with locks and tags and  
11 that sort of business and try to keep a log.  
12 MR. BOLON: That's very much.  
13 MS. SHORTALL: Ms. Brinkerhoff has questions  
14 next.  
15 MS. BRINKERHOFF: I'm wondering if each of you  
16 can tell me what are your most common types of accidents  
17 at the shipyard.  
18 MR. TOWNSEND: I would say objects in the eyes.  
19 Dust would probably be the most common. Like I say,  
20 lately it's been soft tissues, sprains and pulled muscles  
21 and that sort of thing.  
22 MS. BRINKERHOFF: Sprains from tripping?  
23 MR. TOWNSEND: Tripping or falling.  
24 MR. WEBSTER: Probably our most prevalent one  
25 would be debris in the eye. We use a lot of positive  
0225  
1 ventilation because they're working with chemicals, so  
2 they've got positive ventilation. So as the guys are  
3 coming out of that, it gets blown off their clothes.  
4 They're actually working, but the actual activity of  
5 leaving a space with the velocity of the air going over  
6 them, it blows up into their eyes and you get a lot of  
7 grit.  
8 And the other one would be sprains. Part of that is  
9 just the repair nature of the business. The other is the  
10 age of our workforce. We're getting a lot more sprains a  
11 lot more easier than we used to.  
12 MS. BRINKERHOFF: We heard that from people who  
13 have testified.  
14 MR. TINKER: As I said earlier, yeah, we've had  
15 a lot of foreign particles in the eyes in the last year,  
16 and a lot of this is due to a large majority of grinding  
17 and welding operations around one vessel, and when you  
18 push to get it out in a certain time.  
19 In a sense, I would say that's all our injuries  
20 other than maybe a sprain or a pulled muscle. Once that  
21 boat was done, then our next one we had gone to double  
22 eye protection, and we had no foreign particles.  
23 MR. DIXON: We have a lot of eye losses. We do  
24 a lot of lost control or shipyard analysis of these  
25 things, so we went and spent a lot of effort in getting a  
0226  
1 protective Rayban style that kept the dust out. So we've  
2 really brought that down.  
3 So we are in the sprain and stress type thing from  
4 the aging workforce. We're into the hearing loss that  
5 gets filed right at retirement so they can have continued  
6 care through their -- they get a free --  
7 MR. TINKER: RV.  
8 MR. DIXON: Yeah, they get an RV and then they  
9 get hearing aids for life, just because they've been  
10 around noisy things. But at retirement time, 60-year-old  
11 people often lose their hearing.  
12 We get some stress and strains and the phony strains  
13 and we get the fraudulent claims and that sort of  
14 business. We've lost hundreds and hundreds of thousands  
15 of dollars on fraud, people using the system to bilk us.  
16 MS. BRINKERHOFF: I think somebody earlier  
17 mentioned they counted up the number of times we used the  
18 word adequate in the proposed rule. I'm wondering if you  
19 have an opinion. Would you rather us be more specific  
20 about what we mean or do you prefer if we're going to  
21 publish a rule that it be performance based, it would be  
22 kind of non-specific, non-descriptive?  
23 MR. TOWNSEND: I think as long as the inspector  
24 was using the same definition would be adequate. That's  
25 been my complaint. What's serious and what's not  
0227  
1 serious. One year it's serious and the next year  
2 nothing. That sort of thing, the inconsistency.  
3 MS. BRINKERHOFF: Okay.  
4 MR. WEBSTER: I think I was the one making the  
5 point, and I didn't count the number of times it was used  
6 as Phil had done in your report, but I know it was used  
7 quite often. And if we all had to describe something in  
8 here, we'd probably have 15 different definitions of what  
9 each of us thought something was adequate.  
10 If you could give us some examples, it would be  
11 helpful. It certainly would help reduce the number of



12 Monday morning quarterback fines when OSHA comes in and  
13 decides, well, it happened, so I guess it wasn't adequate  
14 enough.

15 It's the same thing that someone had mentioned  
16 earlier today about frequently checking things. It's  
17 always frequently enough until something happens, and  
18 then it's not frequently enough.

19 Maybe some examples of what you consider adequate  
20 would give us guidance and also give your inspectors  
21 guidance.

22 MS. BRINKERHOFF: Thank you. Mr. Tinker?

23 MR. TINKER: I'm very happy with what I've  
24 heard from more experience than me that these gentlemen  
25 have shared.

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1 MS. BRINKERHOFF: Mr. Dixon?

2 MR. DIXON: I do like the word adequate. It  
3 gives us a leeway of making some determination of what we  
4 feel is right for our particular situation. Maybe it  
5 needs to be more expanded to other things, but then we  
6 have the conundrum of what the inspector feels or if  
7 there is an accident. So if there is some way that you  
8 your legalese can come up with something that would  
9 satisfy both, that would be great.

10 MS. BRINKERHOFF: Thank you.

11 MS. SHORTALL: I have a few questions then.

12 First for Mr. Townsend. Well, first I want to thank you  
13 for coming all the way down from Alaska, such a small  
14 ship or boat yard, whatever you need to call yourself.

15 I would maybe for clarifying as Mr. Daddura was  
16 saying, we define for purposes of whether you're covered  
17 under 1915, we define it by the type of employment you're  
18 doing; are you doing ship repair, shipbuilding, ship  
19 breaking and related activities. So that's how you end  
20 up coming in by doing ship repair or -- we haven't  
21 defined how small it has to be. It's more looking at the  
22 concept of repairing a vessel. And we do define vessel,  
23 by the way.

24 MR. TOWNSEND: Same thing. Amy said, shipyard  
25 standards, and I said, are you sure they're for me,

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1 because we do small vessels. Ninety percent of our  
2 vessels are 58-foot zingers.

3 MS. SHORTALL: We have some actually larger  
4 ones who are doing smaller vessels like you and have many  
5 more employees than you. So it's a hard issue.

6 I'd like to go to the issue of you wished that we  
7 could give you a better definition of isolated to give  
8 you more guidance or to be a little bit more specific.  
9 If in the final rule we ended up saying you had to check  
10 on a person frequently and check on them at the end of a  
11 work shift, if they are working by themselves out of the  
12 visual or audio contact of another person, would that  
13 help?

14 MR. TOWNSEND: That means you could talk to  
15 them on the radio?

16 MS. SHORTALL: Right.

17 MR. TOWNSEND: And say, hey, it's break time.  
18 And if he doesn't come out, then you could go check on  
19 him.

20 MS. SHORTALL: Yes. Would that help you  
21 somewhat?

22 MR. TOWNSEND: That would help.

23 MS. SHORTALL: I guess the other way, even if  
24 you didn't have radios, let's say all of your radios went  
25 down or you are in the process of getting something new

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1 and you have a person who is working by themselves and  
2 they're out of range of sight and they're out of the  
3 range of if they were hurt they can't even shout for  
4 help, because nobody is close to hear them, would that  
5 end up taking care of some of the problems you are having  
6 with the definition?

7 MR. TOWNSEND: My whole shipyard is isolated.

8 MS. SHORTALL: Pardon?

9 MR. TOWNSEND: Every job we do would be  
10 isolated. That was my fear was that it was like a  
11 blanketed -- because my employees 90 percent of the time  
12 work alone.

13 MS. SHORTALL: Work alone. How physically,  
14 what are the dimensions of your --

15 MR. TOWNSEND: I have approximately an acre and

16 a quarter. Sometimes we have three jobs in the water.  
17 There's one on each pier. That means it's two men on the  
18 railway and the other three are scattered throughout the  
19 yard.

20 MS. SHORTALL: Is that one of the reasons why  
21 you've instituted using radios is because everybody seems  
22 to be in a different spot in your yard?

23 MR. TOWNSEND: We're trying to do a lot with a  
24 smaller number of people, so if you need help, you ring  
25 instead of hiring another guy.

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1 MS. SHORTALL: When you're doing servicing of  
2 equipment, do you ever have more than one employee  
3 servicing the same piece of equipment or system at the  
4 same time?

5 MR. TOWNSEND: It's possible.

6 MS. SHORTALL: And when you do have that, do  
7 both people put a lock or a cap on it?

8 MR. TOWNSEND: No, one person is responsible.  
9 Their name goes on the tag.

10 MS. SHORTALL: I see. And what if that person  
11 left the facility and another person comes by. Do you  
12 ever have the danger of that person thinking, oh, I guess  
13 I can remove this tag now, not realizing that there is  
14 another person working?

15 MR. TOWNSEND: No. I've had fellows come to me  
16 and say, can I take this tag off, and I said no, there's  
17 nothing on the other end of the cord. You may want to  
18 use that piece of equipment, just send it out. So if he  
19 would have turned it on, it would have been a live wire  
20 somewhere.

21 MS. SHORTALL: Mr. Tinker, on your, if we could  
22 go back to the slide that you had that had where your  
23 first aid is located, you were questioning where the  
24 placement is, would that constitute either adequate or  
25 readily accessible.

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1 Would you feel better if, for example, we in a final  
2 rule said that first aid supplies and first aid providers  
3 must be located within three to four minutes of response  
4 time to the injured person; would that end up taking care  
5 of some of your concerns about whether you placed the  
6 items in a central enough location?

7 MR. TINKER: I believe it would.

8 MS. SHORTALL: What about you, Mr. Dixon, if we  
9 changed from using the term adequate and using the term  
10 readily accessible so using a term like your first aid  
11 supplies and providers must be within three to four  
12 minutes of where the injured person is located.

13 MR. DIXON: We would like to see the way it is,  
14 I believe informally, enforced right now, which is if  
15 you're doing work in the city of Seattle, that it's  
16 assumed that the city of Seattle when you dial 911,  
17 whether it's three minutes or seven minutes, they are the  
18 primary one that's going to respond and you are therefore  
19 covered.

20 Now, we at the shipyard have 15 first aid trained  
21 guys, AED's, and we're a small enough yard that we meet  
22 the current rules either way.

23 But I'm a little concerned for all of the boats at  
24 Fisherman's Terminal or on some dock, you know, wherever  
25 they are within a city where an engine vendor goes down

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1 to, you know, turn the valve cover lining down there. He  
2 thinks that they're all fine because -- everybody thinks  
3 they're fine because they're within Seattle and something  
4 happens to them on that boat, somebody is going to call  
5 911 and they're going to come and take care of it.

6 I can't say that that's three or four minutes. The  
7 fire department won't guarantee it. They'll say under  
8 normal circumstances, yes, we're probably going to be  
9 there in five minutes.

10 Of course, we all know the AED's are not very  
11 effective after five minutes or so, but sometimes they  
12 help, and you need to get the people on the AED, if you  
13 really want to be real about this, in the first one or  
14 two or three minutes to have a good, more than 40 percent  
15 chance of saving the guy's life, and there's all sorts of  
16 curves and things that you can look at.

17 I don't know how to answer your question. In the  
18 real world, right now, depending on how you interpret  
19 your regulations, there's probably over 50 percent of the

20 people working in ship repairing activities that are not  
21 compliant with your regulations.

22 MS. SHORTALL: Given that you haven't been able  
23 to get a guarantee from the Seattle emergency services  
24 that they can get there within that golden window of  
25 opportunity every time, what do you think is the

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1 appropriate response of employers?

2 MR. DIXON: I think the appropriate response is  
3 if there is an established 911 medical response  
4 organization within your work area, then that should be  
5 it.

6 MS. SHORTALL: What do you mean work area?

7 MR. DIXON: For example, and this is a great  
8 example, this happened today. We're restoring a  
9 100-year-old Viking ship that's in the Nordic Heritage  
10 museum, and I had to send my machinist up before we take  
11 it down to the yard to change the wheel bearings in order  
12 to tow it down there. I only sent one guy there. I sent  
13 him just there by himself.

14 I asked the guy at the museum to check on him every  
15 20 minutes to make sure when he's pulling those tires off  
16 there to redo the wheel bearings and send him to get new  
17 tires, that everything is okay and there is no problems.  
18 And the guy had a cell phone and all that sort of thing.

19 But certainly he wasn't within the three or five  
20 minutes of my first aid kit, which happens to be down at  
21 the shipyards, and he wasn't within that of my AED. So  
22 here he is in the parking lot of a museum doing this  
23 work, and if he got hurt, then it might not have been  
24 discovered for 10 or 15 minutes depending on how often  
25 this guy was checking on him.

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1 That guy would have called 911, and 911 would have  
2 been there within say six minutes, depending on traffic  
3 and other situations.

4 So did I violate OSHA today? I don't know.

5 MS. SHORTALL: What about you, Mr. Webster,  
6 would it help if we had a certain time limit that we put  
7 on instead of saying adequate or readily accessible?

8 MR. WEBSTER: I've got several questions here.  
9 One is you had mentioned medical supplies versus aid?

10 MS. SHORTALL: I'm saying both.

11 MR. WEBSTER: Those are two different animals.

12 MS. SHORTALL: I'm saying would it help if for  
13 both medical supplies, meaning first aid kits, and for  
14 first aid providers or outside services that you might  
15 bring in, instead of saying they had to be readily  
16 accessible, if we said they have to be no more than three  
17 or four minute distance, response time distance between  
18 where they're located and where the injured worker is.

19 MR. WEBSTER: I think that's a very supporting  
20 proposition. We've got areas that we work on that you  
21 could take 10 minutes just to get to them. You've got a  
22 string of popcorn almost to follow the guy in. Every  
23 three minutes you'd have to drop off a first aid kit so  
24 he could get to it.

25 If you're in the bottom of a 400-foot barge going

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1 across 18-inch beams every six feet, that's not  
2 practical. Or if you are in a draft alley on one of the  
3 Washington state ferries, that takes you 10 minutes to  
4 get in the engine room. There's different compartments  
5 there. Three to four minutes just isn't --

6 MS. SOHRTALL: Let's look at the ship that you  
7 talked about that would take you a long time to get to  
8 the bottom of it. Do you keep first aid kits on larger  
9 vessels that you're servicing?

10 MR. WEBSTER: On the very large ones, we will  
11 have a job box again. They are in there. But that stuff  
12 is on the main deck. By the time you are going to crawl  
13 down a ladder and go maybe 50 feet across the bottom of  
14 the vessel, you're certainly outside of the three- to  
15 four-minute range.

16 MS. SHORTALL: You also said, as I recall, you  
17 have your supervisors trained in first aid; am I correct?

18 MR. WEBSTER: Yes.

19 MS. SHORTALL: What about line of production  
20 employees?

21 MR. WEBSTER: We have some of our lead men  
22 trained in some of our larger crafts, which is primarily  
23 boilermakers is our largest craft. Some of those are

24 trained. Our competent persons are trained, also some of  
25 our foremen.

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1 MS. SHORTALL: If there is someone down at the  
2 bottom deck or level of a vessel who gets injured, is it  
3 more than likely that person is working alone or will  
4 there usually be either a lead person or supervisor or  
5 someone else in the general vicinity who might have first  
6 aid training?

7 MR. WEBSTER: There would be people in the  
8 general vicinity who would have first aid training.

9 MS. SHORTALL: Is that one of the reasons you  
10 end up training --

11 MR. WEBSTER: Yes.

12 MS. SHORTALL: -- additional?

13 MR. WEBSTER: Yes.

14 MS. SHORTALL: So in essence, at least the  
15 first aid provider very likely could be within three  
16 minutes because of the --

17 MR. WEBSTER: It's a possibility, but it's also  
18 a very sporty possibility based on just the actual job  
19 site problems.

20 MS. SHORTALL: What about you, Mr. --

21 MR. WEBSTER: It would be the same thing if  
22 you're on the 30th floor here and you had to have access  
23 to the lobby in three minutes but the elevators are out  
24 and you've got to take the stairwell. It would be a lot  
25 different time frame than just dropping down on the

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1 elevators.

2 MS. SHORTALL: Certainly. What about you, Mr.  
3 Townsend, would it help if we said something like three  
4 to four minutes, would that give you the type of  
5 certainty or guideline you're looking for?

6 MR. TOWNSEND: If you consider that the aid car  
7 is coming and your injured man is already there and  
8 they're going to meet at some point, that works. That's  
9 exactly what happened. We stopped the bleeding before  
10 the car got there. By the time we got him on deck, the  
11 aid car was there.

12 MS. SHORTALL: Thank you very much. Once  
13 again, I just want to thank all of you for coming here  
14 today and participating in our hearing, and we really  
15 look forward to your post-hearing comments. And I know a  
16 number of you were sitting here either today, and in the  
17 case of Mr. Tinker, I know I saw you yesterday as well.

18 I am hoping that you will take the opportunity if  
19 there was anything that you heard that we asked or talked  
20 about with another panel that you would also like to  
21 comment on in your post-hearing comments, please feel  
22 free to do so. Our whole purpose in this hearing is to  
23 gather as much information as possible to give us the  
24 most complete record that we can get, and we appreciate  
25 your help with that.

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1 Thank you again.

2 MR. WEBSTER: Thanks for the opportunity.

3 MS. SHORTALL: We're done, Your Honor, with our  
4 witnesses at this point.

5 JUDGE GEE: Did you want to address the  
6 post-hearing comments?

7 MS. SHORTALL: Yes, I would at this point, Your  
8 Honor.

9 As mentioned in the Notice of Proposed Hearing, that  
10 in our pre-hearing order and in the post-hearing order,  
11 Judge Steven Purcell, who presided in the Washington DC  
12 hearing on September 9 established a post-hearing comment  
13 period.

14 Customarily, this is divided into two parts. The  
15 first part is a period of time for submitting additional  
16 information and data relevant to the rulemaking,  
17 including information data that during this hearing we  
18 may have asked you to submit.

19 For example, in the case of Mr. Dixon, we asked if  
20 he could provide a list of recordable injuries, and he's  
21 going through with that. So it's time to get that data  
22 and information in.

23 The second part of the submission or the second part  
24 of the post-hearing comment is for submission of final  
25 written comments, arguments, summations, briefs, any

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1 closing thoughts that you would like to give the agency

2 as we begin the deliberations and moving to a final rule.

3 In most special rulemaking, the post-hearing comment  
4 is a total of 60 days long, 30 days for the first part  
5 and 30 days for the second. But because of special time  
6 constraints for a number of the interested parties in  
7 this rulemaking, Judge Purcell granted our motion to  
8 allow 61 days after the close of the hearing in Seattle,  
9 Washington until December 22, 2008 since the 60th day  
10 falls on a Sunday for the first part of the post-hearing  
11 comment period for interested parties to get additional  
12 information and data, and Judge Purcell also granted our  
13 motion to allow an additional 60 days until February 20,  
14 2009 for the second post-hearing comment period for  
15 interested parties to submit final written comments and  
16 briefs.

17 The post-hearing order that Judge Purcell has signed  
18 is already in the docket of this rulemaking and it is  
19 available for anyone to view on [www.regulations.gov](http://www.regulations.gov), and  
20 it is the following Exhibit No. OSHA-S049-2006-0675-0169.

21 So if you have any further questions, you can  
22 consult the post-hearing order.

23 So in essence, what we are doing and what Judge  
24 Purcell granted was for us to double the amount of time  
25 that we currently allow for the post-hearing comment

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1 period to allow for interested parties here to have  
2 adequate time to participate in that.

3 JUDGE GEE: Thank you. So pursuant to the  
4 provisions of 29 CFR Part 1911, as provided in the Notice  
5 of Proposed Rulemaking, the pre-hearing guidelines signed  
6 by Judge Purcell and the post-hearing order issued Judge  
7 Purcell, the record will reopen at the close of today's  
8 hearing and will remain open until December 22, 2008 for  
9 the submission of additional information and data.

10 The record will then close on the receipt of the  
11 information and data, but will remain open until February  
12 20, 2009 for the submission of final written comments,  
13 arguments, summations and briefs.

14 MS. SHORTALL: Your Honor, may I add for the  
15 record that in the folder all the participants received,  
16 there should be a copy of that post-hearing order. If it  
17 doesn't make it all the way back up to Alaska with you,  
18 Mr. Townsend, you can always go back on  
19 [www.regulations.gov](http://www.regulations.gov). If you didn't by any chance have  
20 one of those, we should still have some copies at the  
21 table outside of here, right outside the entrance here.

22 I want to add one thing about the folders that you  
23 received. They were prepared by Ms. Wangdahl and Ms.  
24 Watson, which is something we've never done before,  
25 hearing participants before. They felt very strongly

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1 since the majority of you who participated in the hearing  
2 were new to the process, they wanted to make sure  
3 everything was collected and everything you would need,  
4 you wouldn't miss getting. So special compliments to  
5 them, and I hope you appreciate their consideration in  
6 making you feel like you've got everything you need to be  
7 active participants in this hearing. Thank you.

8 JUDGE GEE: Thank you.

9 Let the record show that all persons and  
10 organizations who reported their notice of intention to  
11 appear have been extended the opportunity to do so.

12 Let the record also show that in every instance  
13 following the presentation of oral comments and testimony  
14 that an opportunity has been extended for questioning of  
15 the witnesses, first by the public hearing attendees and  
16 then by members of the OSHA panel.

17 On behalf of the Department of Labor, I wish to  
18 publicly thank all of the witnesses who gave of their  
19 time and thought and expended their own funds to attend  
20 and contribute to this hearing.

21 Further, I want the record to reflect the  
22 Department's appreciation for the promptness, preparation  
23 and attention exhibited by the OSHA panel.

24 To all participants, thank you for your interest in  
25 this very important matter.

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1 This public hearing on the proposed standard to  
2 update OSHA's Standards on General Working Conditions and  
3 Shipyard Employment is hereby adjourned. Thank you very  
4 much.

5 (Hearing adjourned at 4:37 p.m.)

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1 CERTIFICATE  
2 STATE OF WASHINGTON )  
 ) ss.  
3 COUNTY OF KING )

4 I, KIMBERLY MIFFLIN, Notary Public in and for the  
5 State of Washington, do hereby certify:

6 That the annexed and foregoing Transcript of the  
7 Informal Public Hearing on OSHA's Proposed Rule on  
8 General Working Conditions in Shipyard Employment was  
9 taken by me stenographically and transcribed by me;

10 I further certify that said hearing, as above  
11 transcribed, is a full, true and accurate transcript of  
12 the informal public hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand and  
14 affixed my official seal this 7th day of November, 2008.  
15  
16

17 \_\_\_\_\_  
KIMBERLY MIFFLIN  
18 CSR NO. 2349  
NOTARY PUBLIC in and for the  
State of Washington, residing  
in Kent.  
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