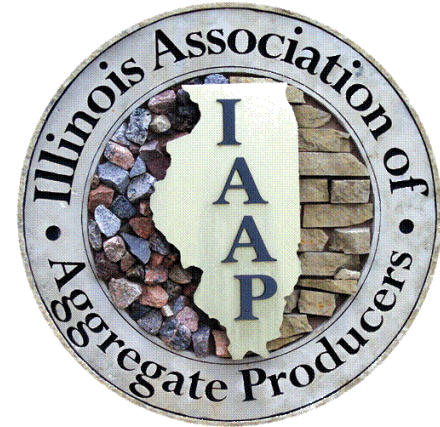


# Illinois Association of Aggregate Producers

Meeting with Joe Main  
August 15, 2011  
Gateway Center  
Collinsville, Illinois



Illinois aggregate mines  
have been fatality-free for 7  
years in a row – over 51  
million employee hours  
without a fatality.

# Success Stories – Improved Communication

- During our June 2010 meeting, we asked that MSHA provide industry fair notice of regulatory changes -- communicate new compliance efforts, interpretations and standards before enforcement begins.
  - MSHA rolled out, in a very deliberate fashion, a program to enforce exposure limits on airborne contaminants in surface and underground mines.
  - A key part of this enforcement program was MSHA's outreach efforts focusing on exposure monitoring rules found at 30 CFR Sections 56.5002 and 57.5002.
  - Very helpful approach, the opposite of "I Gotcha."

# Success Stories – Improved Communication

- During this meeting we also asked that MSHA create technical groups with industry, at regional and national level, to work on problem areas.
  - MSHA met with the State aggregate association execs of the North Central District early this year to discuss regional compliance issues.
  - This meeting that helped improve communication with the mines that operate in our district.
  - MSHA also met with State aggregate association execs from the Northeast districts in order to discuss issues.

## Issue: Inspector Competence

- Over the past 25 years we have seen a marked reduction in the quality of newly hired mine inspectors, who have little to no mining experience.
- This lack of prior experience has lead to inconsistencies in the interpretation and enforcement of standards.
- We continue to experience inconsistent enforcement activities between districts, field offices within districts and even within the field offices themselves.
- This problem is getting worse, not better.

## Issue: Inspector Competence

- We were told over a year ago that MSHA was going to address this through training and retraining of supervisors and district managers.
- Has this been accomplished?
- Operators have the right to expect fair and consistent interpretations and enforcement from MSHA.
- What can we as operators do to help solve this problem?

# Issue: Institutional Bias Against Mining

- We hear about inspectors being told during training at Beckley that operators are trying to hide things – implying that the mining industry is essentially untrustworthy.
- These reports seem to indicate the existence, in MSHA, of an institutional bias against mine operators.
- We understand that the NSSGA is working on a video presentation about aggregate mining to help improve the quality of training at Beckley – a good first step.
- However, we strongly suggest that inspector trainees should visit operating aggregate mines during training at Beckley to become more familiar with our industry.

# Issue: Meaningless Citations That Don't Promote Worker Health and Safety

- The vast majority of operators strive for zero accidents and zero citations.
- Yet inspectors are still coming to mine sites and announcing that they will not leave without writing at least one citation.
- We are told that this is to prevent the inspector and the mine from a follow-up visit from the supervisor or the audit team.
- This unreasonable approach to enforcement does not promote a safe and healthy workplace.

# Issue: Independent Contractor Citations

- We have seen an up tick in citations written to both the contractor and mine operator for violations that only pertain to the contractor.
- Specifically, the mine operator was not in the area and the site was under control of the contractor.
- Historically if the operator had no involvement or influence on the contractor, he would not be additionally cited.
- Is there a policy change at MSHA?

## Issue: Employee Reluctance to Talk with MSHA

- Employees, both hourly and salaried are becoming more and more reluctant to speak to MSHA inspectors. Miners and supervisors are afraid of being set up for civil penalties when questioned by inspectors.
- After actions or citations that reflect a miner's comments, many times a miner complains that that's not what he told the inspector, or "that's not what I meant."
- Many miners now feel that MSHA is not there for their safety anymore, just there to play a session of "I Gotcha".

## Issue: Employee Reluctance to Talk with MSHA

- We are being told by inspectors that there is a push for more 104(d)s and personal citations to be written. Most miners do not agree with many of the frivolous citations that are being written in our industry that have little to do with their safety.
- Most miners take ownership in their plants and work areas and feel as if they themselves are being penalized for conditions that have existed over time and have been accepted during previous inspections. It appears that MSHA's credibility with the workforce that they are charged with protecting is waning through their own actions.

## Issue: Guarding

- It's been a year since MSHA's Guarding Power point has been out. We were told that this should be an aid along with the actual standard, the Program Policy Manual and the latest version (2004) Guide to Equipment Guarding Manual to alleviate questionable guarding problems and citations.
- Since its' introduction, we have experienced an increase in guarding citations for return roller and tail section guarding. There appears to be confusion among the inspectorate of when and where these need guarding due to the references in the power point.

## Issue: Guarding

- Some inspectors claim that the entire plant footprint is a walkway -- some claim that all tail sections need bottom guards -- some claim that all returns under 7 feet need to be guarded -- some claim that the 7 foot height mentioned in the standard, is actually a circumference, that all rotating machinery parts must be guarded to the side and underneath walkways. There is a lot of confusion on what is inadvertent or work related contact and purposeful non-work related contact.
- How can a new inspector with little or no mining experience be in a position to evaluate that activity better than the plant personnel, who are intimately familiar with the plant and its associated work related activity? Is there going to be any more clarification published in these areas?

# The Way Forward – Forging A Professional Working Relationship

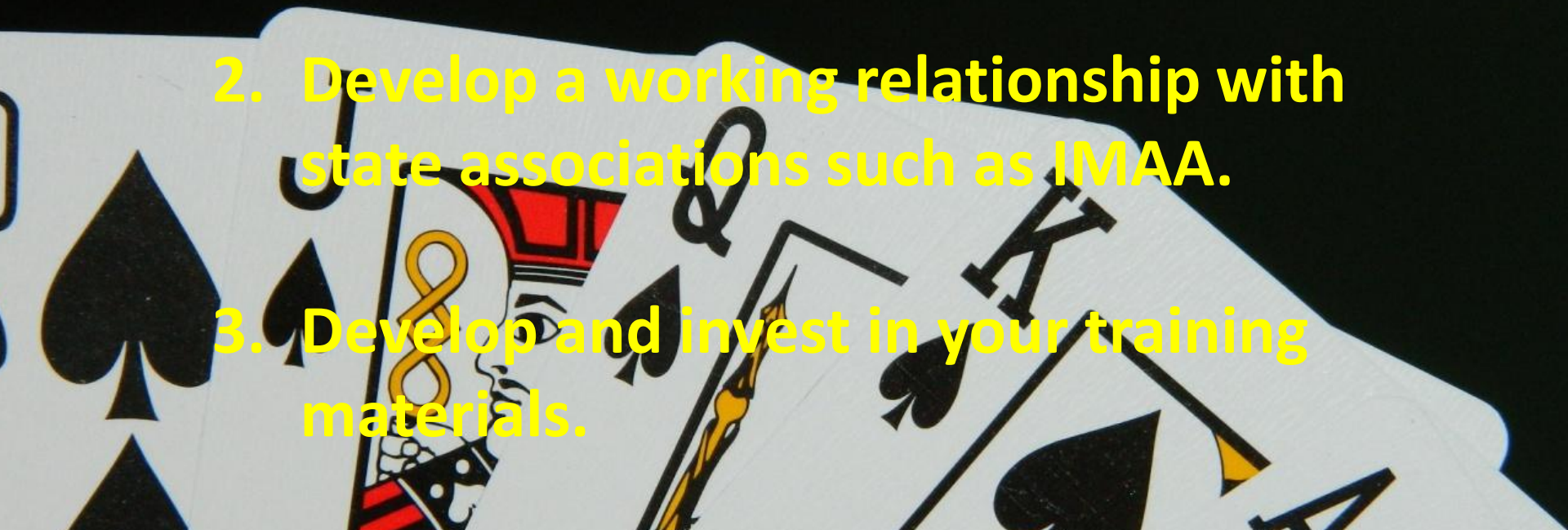
- Offer annual compliance assistance visits to all mines.
- Enhanced professional contacts with the aggregates industry.
  - Provide opportunities for aggregate industry representatives to speak during mine inspector training at Beckley and conduct mine visits for trainees who are unfamiliar with this industry.
  - Encourage MSHA Field Office personnel to work directly with trade associations including serving on safety committees.

# The Way Forward – Changing the Act

- Amend the Act to allow inspectors to issue notices rather than citations for non-S&S violations and to reduce the issuance of questionable citations.
- Amend the Act to reduce the number of mandatory inspections for all mines except underground coal operations.
- Amend the Act to prohibit MSHA from issuing citations for violations terminated by previous inspectors in the absence of operational changes at mine.
- Amend the Act to require that MSHA justify the issuance of new rules and prohibit MSHA from issuing binding “guidance documents” without going through rulemaking.

# Showing our hand...

1. Consider Mine Act changes for frequency of inspections. (Based on solid merit)
2. Develop a working relationship with state associations such as IMAA.
3. Develop and invest in your training materials.



# Training Materials



U.S. Department of Labor Mine Safety and Health Administration

# Highwall Hazards

LABOR MINE SAFETY AND HEALTH ADMINISTRATION  
**FALL PROTECTION: A LIFELINE TO SAFETY**  
12 Minutes

ENGLISH AND SPANISH VERSIONS  
**DVD 506-S**

ADMINISTRATION

Protección contra caídas:  
Su línea de vida hacia la seguridad  
12 minutos

U.S. DEPARTMENT OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION  
**SAFETY AROUND OR NEAR WATER**  
14 Minutes

MINE SAFETY AND HEALTH ADMINISTRATION DVD PRODUCTION



MSHA  
Prog  
DVD  
SHA DVD

La seguridad en el agua o cerca de ella  
14 minutos

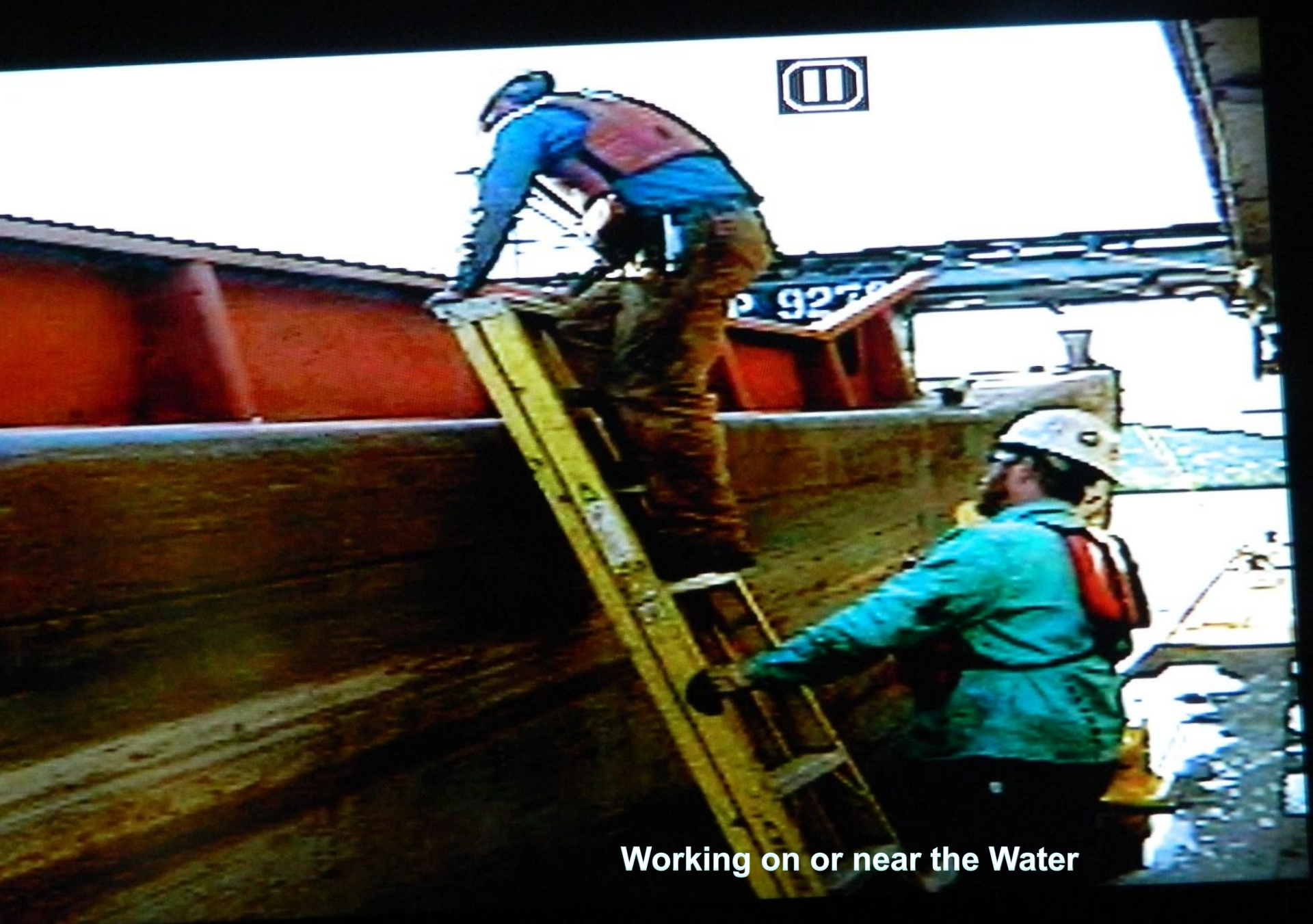
# What's Wrong – You Ask?

## Antique

- ✓ Dial 911 on rotary phones
- ✓ Black and White Videos

## Lack Regulatory Explanation

## Show violations of 30CFR56



**Working on or near the Water**



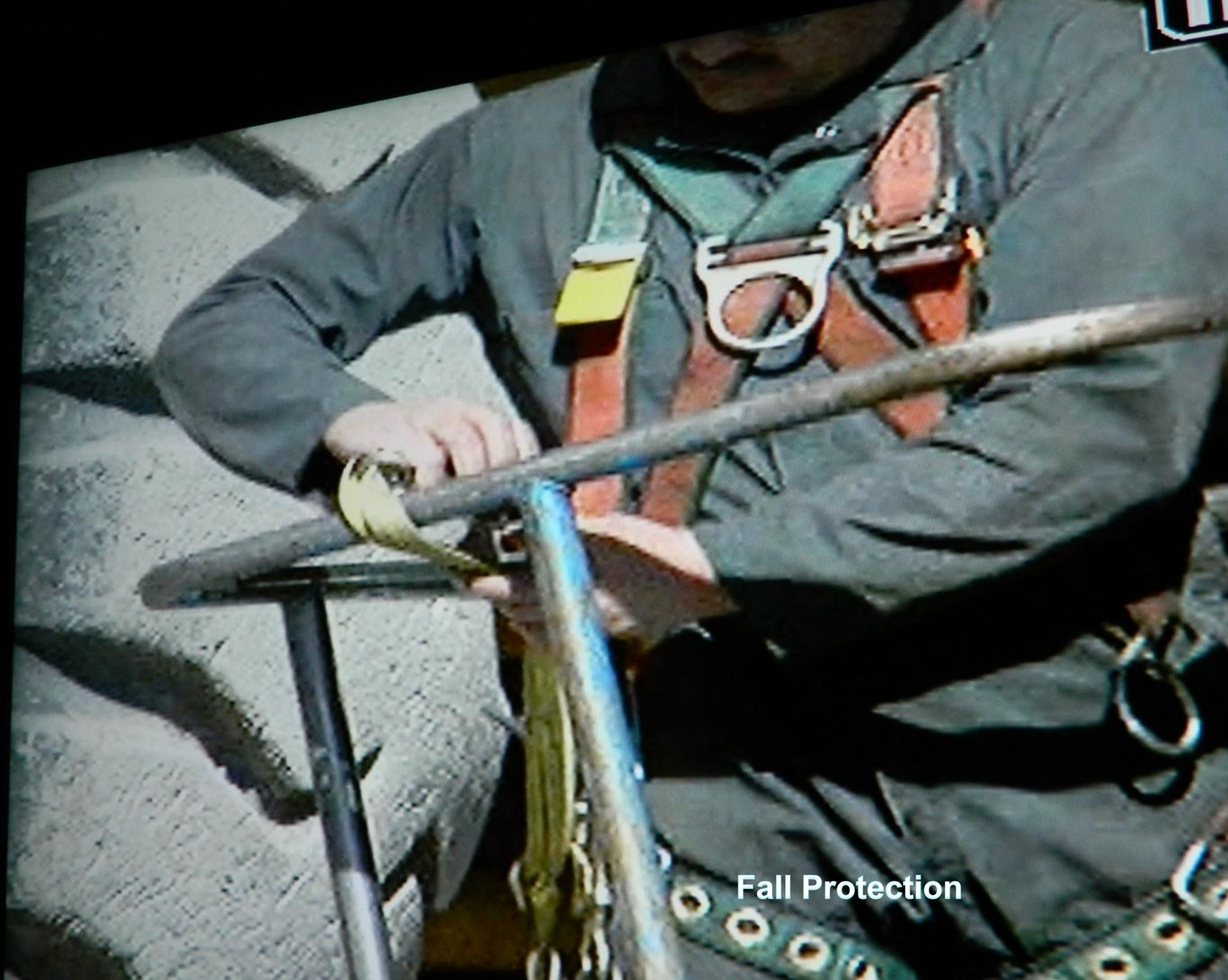
**Fall Protection**



**Working on or near the Water**



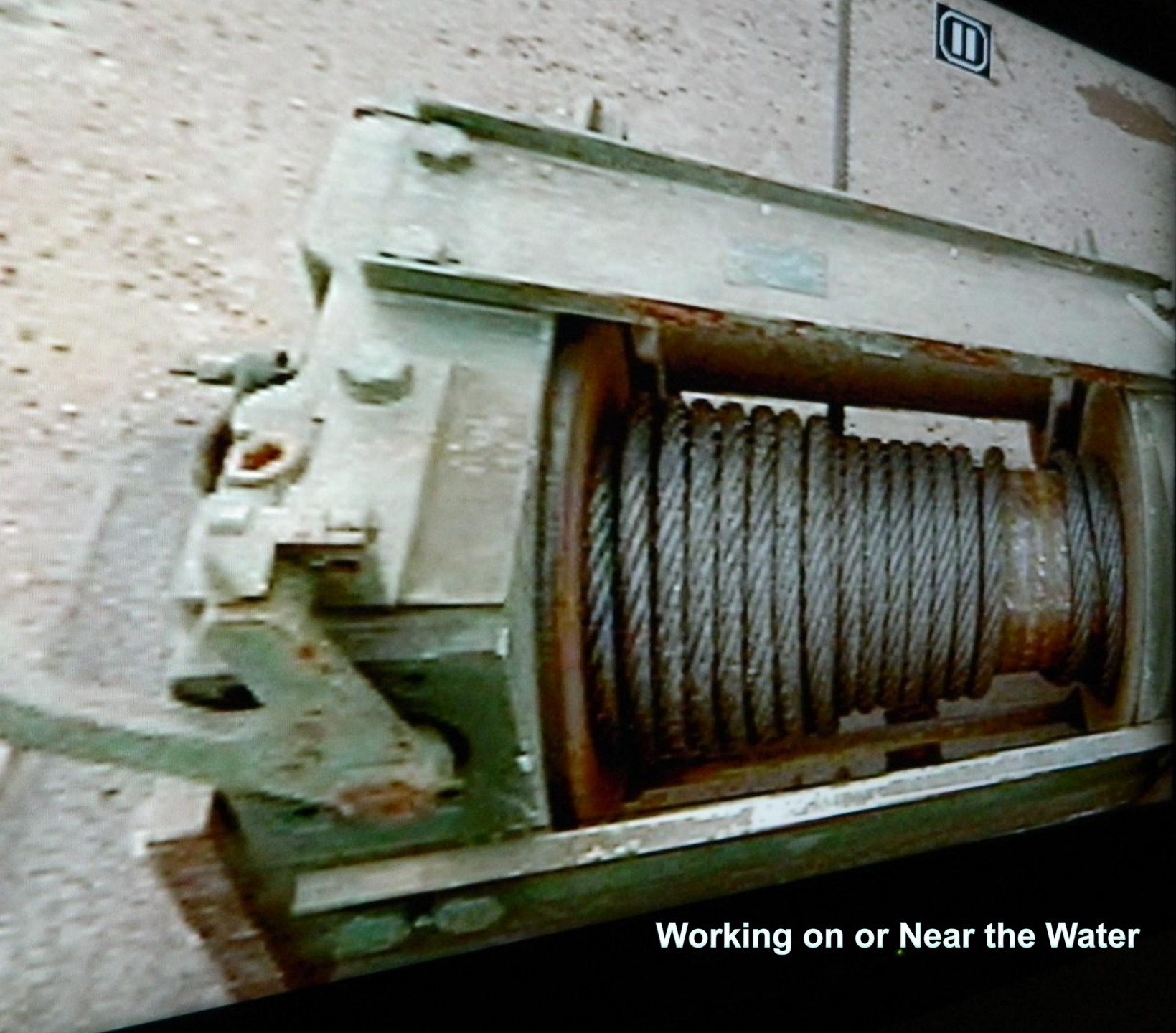
Working on or Near the Water



Fall Protection



Working on or Near the Water



**Working on or Near the Water**



# Iowa Limestone Producers Association



# Issue: Procedures

- MSHA's procedures require the mining industry to take measures to terminate an alleged violation prior to being able to dispute its validity.
- Does this process call into question the constitutionality of a system that circumvents due process and the rights of the accused?
- This is compounded by the questions raised earlier regarding inspector competence.

# Issue: Inspector Attitude

- Should MSHA project an attitude of cooperation with miners and management to keep miners safe, or rather an attitude of writing as many citations as possible regardless of the impact on safety?
- Do MSHA administrators train inspectors against the use intimidation when interacting with mine employees?

# Issue: Overwriting of Citations

- Is it proper for an MSHA inspector to leave a quarry after an inspection, only to return a day or two later with additional citations or increased gravity after consulting with his supervisor?
- Why are inspectors who are “on the ground” being over ridden by supervisors?

# Issue: Repeat Violations

- If MSHA regulations have not changed, why would one inspector be allowed to cite a violation (guarding for example) where it can be documented the current situation had been cited by MSHA, corrected by the operator, and vacated by a previous inspector?

# Ohio Aggregates & Industrial Minerals Association (OAIMA)

- 94 member companies mining and producing sand, gravel, stone and clay, shale, salt and silica sand.
- 527 (631) operations in 2009, 397 (423) active mines, 3 of which are underground.
- Operating in 86 out of 88 Ohio counties.
- 100 associate member companies provide goods and services to aggregate producers.
- In 2009, Ohio Produced over 80 million tons of aggregates and industrial minerals. (down 20%)



# The Good News

- Communications and Face-To-Face Meetings have been helpful.
  - Guidance on Guardrails on Scales
  - Guidance on Noise and Dust
  - Meetings with Administration
  - Round-Tables at state level
  - 5002 Standards Information and Guidance

# Ohio Specific Topics

- Inconsistency

- Example: Hand-railing on dredges and workboats

- After much effort and expense installing to meet “requirements” – operator is now being informed that they are not needed if the “life jacket policy” is enforced
    - After the fact “revelations” tend to be divisive and contribute to difficulties in the field.
    - District interpretations should be consistent.

# Ohio Specific Topics

- Inconsistency
  - Example: Limiting Access and Barricades
    - What is sufficient?
    - Tape/Barricades/Cones? Varies by inspector.
    - Tape is not an “invitation to inspect”

# Ohio Specific Topics

- Catch “22”
  - Example: Zero Tolerance Policy leads to S & S
  - Producer institutes “Zero Tolerance” Policy leading to termination of employment
  - Complaint filed to MSHA
  - Producer receives S & S as a result of complaint
  - This is a “Catch 22” for the operator.

# Ohio Specific Topics

- Pre-Shift Inspections

- Example: Citation Issued for defect found (or Not) during “Pre-Shift” inspection.
- MSHA has issued S & S Citations for “Inadequate Pre-Shift” for a violation found on equipment that is in operation.
- Citations are written for equipment issues found during a “Pre-Shift” inspection even when proper measures are taken.
- Bottom Line....Citations are Written!
- Producers and Inspectors have requested guidance.
- What is “A Timely Manner”?

# The Way Forward – Continued and Improved Communication

- Continue **N**ational, **R**egional and **L**ocal meetings  
**AND**
- When specific Safety & Health related conditions are identified:
  - Substantiate the Safety & Health issue caused by the condition through the use of data. **Make it REAL!**
  - Alert operators immediately so that corrective actions can be taken.

# The Way Forward – Resource Allocation

- Strengthen Compliance Assistance Efforts
- Reduce the Number of Mandatory Inspections
- Risk Based System?
- Acknowledge the differences between gaseous and non-gaseous mines in the Act.
- Fix the Pre-Shift Inspection Problems