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PROTECTING AMERICA'S WORKERS: AN ENFORCEMENT UPDATE FROM THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, OCTOBER 7, 2015

Serial No. 114–30

Printed for the use of the Committee on Education and the Workforce

Available via the World Wide Web: *www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=education*
or
Committee address: *http://edworkforce.house.gov*

U.S. GOVERNMENT PUBLISHING OFFICE

96–821 PDF WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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PROTECTING AMERICA'S WORKERS: AN ENFORCEMENT UPDATE FROM THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Wednesday, October 7, 2015
U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Workforce Protections
Washington, D.C.

The subcommittee met, pursuant to call, at 1:00 p.m., in Room 2261, Rayburn House Office Building. Hon. Tim Walberg (Chairman of the subcommittee) presiding.

Present: Representatives Walberg, Stefanik, Wilson, and Pocan.

Also Present: Representatives Kline, Hartzler, and Rogers of Alabama.

Staff Present: Janelle Belland, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Jessica Goodman, Legislative Assistant; Callie Harman, Legislative Assistant; Tyler Hernandez, Press Secretary; Nancy Locke, Chief Clerk; John Martin, Professional Staff Member; Geoffrey MacLeay, Professional Staff Member; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Lauren Reddington, Deputy Press Secretary; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Alissa Strawcutter, Deputy Clerk; Loren Sweatt, Senior Policy Advisor; Olivia Voslow, Staff Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Christine Godinez, Minority Staff Assistant; Brian Kennedy, Minority General Counsel; John Mantz, Minority Labor Detailee; and Richard Miller, Minority Senior Labor Policy Advisor.

Chairman WALBERG. How is that for a gavel? I was mentioning to Loren that from my old Taekwondo days I did not want to bust the table in half here, but fortunately, I was not very good.

A quorum being present, the subcommittee will come to order.

Good afternoon, everyone. I would like to extend a special welcome to you, Dr. Michaels. We were just trying to decide how long it has been since we were in the same room together. It is right about four years, or a little less than four years, so it is good to have you back in front of us. We thank you for being with us to discuss an issue that is incredibly important to every one of us, ensuring the health and safety of American workers. And also, the security of their jobs.

We all agree that men and women working hard to make a living deserve workplaces that are safe and working conditions that protect their health and well-being. In the twenty-first century workplace, employees should be able to put in a day's work without having to fear being injured on the job or having to worry whether they will be able to return home to their families at the end of the shift. That is why we continue to demand every American have strong and effective health and safety protections.

We are here today to take a closer look at these rules and the enforcement process to make sure they are working well for both employees and employers. Providing for the health and safety of American workers is an important responsibility, but it is important to be responsible in carrying it out. Otherwise, we will end up with inadequate protections and unnecessary regulatory burdens that stifle productivity and job creation, while doing little to keep workers safe.

That is why this Committee has long urged Dr. Michaels, his colleagues at the Occupational Safety and Health Administration, and others to engage in responsible safety enforcement. By identifying gaps in safety and working with employers and other key stakeholders to develop positive solutions, we can ensure that federal policies are effective and workers are safe, and these are both goals that I believe stretch across party lines.

President Obama promised, and I quote, "an unprecedented level of openness in government," and vowed to establish a system of transparency, public participation, and collaboration. That has not always been the case, and changing enforcement policies in one area in which we have seen a lack of transparency, public participation, and collaboration. In fact, on several occasions, the administration has used what it calls "enforcement guidance" to alter significant rules without public input. This one-sided approach is not the kind of responsible rulemaking and enforcement American workers deserve.

When actions of the administration or other policymakers are in conflict with the best interest of the American people, it is our responsibility to speak out. So that is what we did with OSHA. We spoke out when they altered longstanding policies outside the public rulemaking process. We spoke out when they failed to conduct proper oversight of their own enforcement activities. We spoke out when they spent significant time and responses pursuing unsound and unnecessary regulatory schemes. OSHA, on several occasions, has listened to some of our concerns and we appreciate that. Not all of our concerns, but enough to say that we have made progress in a number of areas.

As a result of our oversight, OSHA is pursuing a responsible approach to protecting the men and women employed on family farms. More small businesses are able to participate in an important safety and health program, and employees in the telecommunications industry have more clarity and certainty. Workers are safer because we spoke up, the agency listened, and steps were taken to promote smart, responsible, regulatory policies.

However, while we have made gains, there is still work to be done. This brings us back to the reason we are here today. Standing up for workers and ensuring safe workplaces remain leading

priorities for this Committee. We have seen what we can accomplish when we work together to improve the health and safety of American workers, and this hearing is an important part of these efforts.

I look forward to hearing from Dr. Michaels on his agency's regulatory enforcement actions, and I welcome the opportunity to discuss ways in which we can better protect hardworking men and women and provide greater clarity to job creators.

[The statement of Chairman Walberg follows:]

Opening Statement of Rep. Tim Walberg (R-MI)
Chairman, Subcommittee on Workforce Protections
Hearing on "Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration"
October 7, 2015

Good afternoon, everyone. I'd like to extend a special welcome to you, Dr. Michaels, and thank you for being with us to discuss an issue that is incredibly important to every one of us: ensuring the health and safety of American workers.

We all agree that men and women working hard to make a living deserve workplaces that are safe and working conditions that protect their health and wellbeing. In the 21st century workplace, employees should be able to put in a day's work without having to fear being injured on the job or having to worry whether they'll be able to return home to their families at the end of a shift. That's why we continue to demand every American have strong and effective health and safety protections.

We're here today to take a closer look at these rules and the enforcement process to make sure they're working well for both employees *and* employers. Providing for the health and safety of American workers is an important responsibility, but it's important to be responsible in carrying it out. Otherwise, we will end up with inadequate protections and unnecessary regulatory burdens that stifle productivity and job creation while doing little to keep workers safe.

That's why this committee has long urged Dr. Michaels, his colleagues at the Occupational Safety and Health Administration, and others to engage in responsible safety enforcement. By identifying gaps in safety and working with employers and other key stakeholders to develop positive solutions, we can ensure that federal policies are effective and workers are safe. And these are both goals that I believe stretch across party lines.

President Obama promised an "unprecedented level of openness in government" and vowed to establish a system of "transparency, public participation, and collaboration." Unfortunately, that has not always been the case, and changing enforcement policies is one area in which we've seen a *lack* of transparency, public participation, and collaboration. In fact, on several occasions, the administration has used what it calls "enforcement guidance" to alter significant rules *without* public input. This one-sided approach is not the kind of responsible rulemaking and enforcement American workers deserve.

When actions of the administration or other policymakers are in conflict with the best interests of the American people, it's our responsibility to speak out. So that's what we did with OSHA. We spoke out when they altered long-standing policies outside the public rulemaking process. We

spoke out when they failed to conduct proper oversight of their own enforcement activities. We spoke out when they spent significant time and resources pursuing unsound and unnecessary regulatory schemes.

OSHA, on several occasions, has listened to some of our concerns. Not *all* of our concerns, but enough to say that we've made progress in a number of areas.

As a result of our oversight, OSHA is pursuing a responsible approach to protecting the men and women employed on family farms, more small businesses are able to participate in an important safety and health program, and employees in the telecommunications industry have more clarity and certainty. Workers are safer because we spoke up, the agency listened, and steps were taken to promote smart, responsible regulatory policies. However, while we have made gains, there is still work to be done. Which brings us back to the reason we're here today.

Standing up for workers and ensuring safe workplaces remain leading priorities for this committee. We've seen what we can accomplish when we work together to improve the health and safety of American workers. This hearing is an important part of those efforts.

I look forward to hearing from Dr. Michaels on his agency's regulatory and enforcement actions, and I welcome the opportunity to discuss ways in which we can better protect hardworking men and women and provide greater clarity to job creators.

With that, I will now recognize Ranking Member Wilson for her opening remarks.

Chairman WALBERG. With that, I will now—I would recognize the Ranking Member Wilson for opening remarks but I believe we have altered that. When she arrives, we will have the opportunity for her to make those then. But we appreciate you sitting in for the seat here.

Pursuant to Committee Rule 7, all subcommittee members will be permitted to submit written statements to be included in the permanent hearing record, and without objection, the hearing record will remain open for 14 days to allow the statements, questions for the record, and other extraneous material referenced during the hearing to be submitted in the official hearing record.

At this point, let me also recognize our colleague, Representative Hartzler, who does not sit on this subcommittee. She wishes she did, but has a great interest in this issue relative to OSHA and the regulatory standards. And so without objection, I would ask my colleagues to allow her to be seated and participate with the members of the Committee.

Hearing none, welcome.

It is now my pleasure to introduce today's witness. Dr. David Michaels is the assistant secretary of the Occupational Safety and Health Administration at the U.S. Department of Labor here in Washington, D.C. Before coming to OSHA in December 2009—that is an extensive record as we talked about, of still being here for this long. That is impressive. Dr. Michaels was professor of Environmental and Occupational Health at the George Washington University, School of Public Health and Health Services, directing the department's project on Scientific Knowledge and Public Policy.

Dr. Michaels, since you last appeared before us, we have now a policy where we swear in our witnesses, so I will ask you at this time to stand and raise your right hand.

[Witness sworn.]

Chairman WALBERG. Let the record reflect Dr. Michaels answered in the affirmative as we expected. We thank you for that. You may take your seat.

Before I recognize you to provide your testimony, let me briefly remind you of our lighting system. You know, the lighting system. And while we have five minutes allotted as my Chairman of the full Committee says so often, I am averse to holding you to that. We are glad to have you here. Now, if you start to get to 15 minutes or so then we might gavel you down then, but we want to hear what you have to say and appreciate you being here. I recognize you for your testimony.

TESTIMONY OF THE HONORABLE DAVID MICHAELS, PHD, MPH, ASSISTANT SECRETARY, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

Dr. MICHAELS. Thank you so much. Good afternoon. Chairman Walberg, Representative Pocan, Representative Hartzler. Thank you for inviting me here today. I am honored to testify about the work we at OSHA are doing to improve the safety and health of American workers.

Over the past 44 years since OSHA was created, we have made dramatic strides in reducing work-related injuries, illnesses, and

deaths, but there is still much work to be done. In the almost four years since I last appeared before this subcommittee, we have accomplished a great deal. Today, I would like to highlight some of the progress we have made and the challenges that still remain.

First, after extensive outreach, public comment, and review, OSHA has finalized important and lifesaving standards. These include measures to protect those working in shipyards, construction, and around electrical hazards. We also finalized a rule expanding injury and illness reporting requirements, and we have made significant progress towards updating our decades-old silica standard.

Last year, at a DuPont Chemical plant in Texas, four workers were killed by a highly toxic chemical release. This came in the wake of the tragic explosion at the West Fertilizer Company that killed 15 people. Unfortunately, disasters like this are far too common. Since 2009, at least 28 significant chemical plant incidents have occurred resulting in over 79 worker deaths.

To help prevent more tragedies, President Obama issued Executive Order 13650, instructing OSHA, the Environmental Protection Agency, the Department of Homeland Security, and other agencies to work together closely to improve chemical facility safety and security. Together, we undertook a comprehensive review of these programs, engaging in extensive stakeholder outreach to solicit feedback and identify best practices.

As a result of these and other efforts, OSHA has taken steps to better protect workers at these facilities. First and foremost, we are working to modernize our process safety management standard that sets requirements for the management of highly hazardous substances. Towards this, OSHA issued a request for information on possible improvements. In addition, we issued memoranda explaining how we will apply the standard to certain chemicals, and clarifying the definition of retail facilities. We also memorialized our interpretation of the term, "Recognized and Generally Accepted Good Engineering Practices," or RAGAGEP.

At OSHA, we recognize that most employers want to do the right thing, and we are committed to ensuring they have the tools and the information they need. This is why we have made compliance assistance a priority, and we work diligently to provide training, educational materials, and consultation services to employers and workers.

The cornerstone of this effort is our onsite consultation program for small and medium-sized businesses. Last year, over 26,000 employers took advantage of this free service, and through our VPP and SHARP programs, we recognize employers who have developed outstanding injury and illness prevention programs.

Our enforcement programs specifically target the most dangerous workplaces and the most recalcitrant employers. Last year, Sarah Jones, a 27-year-old camera assistant was killed by an oncoming train during the filming of the movie, Midnight Rider. The filmmakers had been denied authorization to film on live railroad tracks but decided to do so anyway. Sarah Jones paid the ultimate price for that decision. We issued a fine of almost $75,000, sending a message to all employers that willful disregard for workers' safety is unacceptable.

OSHA is also charged with enforcing the whistleblower provisions in 22 statutes that protect the safety, health, and well-being of the American public. If a worker who is covered by these laws is punished for raising a concern about toxic chemicals fouling our drinking water, the safety of passengers on railroads, accounting fraud, or a food manufacturer's contaminated products, OSHA is charged with protecting that worker.

Over the last few years, OSHA has significantly strengthened this program. To begin with, we established the whistleblower protection program as a separate directorate and increased staffing. We developed an online complaint form, enhanced training, and streamlined procedures. We have reduced our backlog, improved enforcement, and enhanced the consistency of our investigations.

As the structure of employment relationships in this country undergoes dramatic change, workers are put at increased risk. OSHA has long addressed situations where more than one employer has a role in preventing injury and illness. When these employers fail to fulfill their responsibilities, the results can be tragic.

Take the case of Day Davis, a 21-year-old recent Job Corps graduate. He was hired by a staffing agency and sent to work at a Bacardi Bottling plant in Jacksonville, Florida. It was his first day at a paid job ever. And Day Davis's first day at work was his last day on earth. He was crushed to death just hours after he arrived because neither the temp agency nor the host employer provided him adequate training. Day Davis's death and the shared responsibility of host and temporary employer for workers' safety demonstrates why we must continue working to address the realities of the twenty-first century workplace.

But we cannot fully address these challenges alone; we need your help. The *OSH Act* has not been updated in more than 44 years. There are areas where legislative improvements could help prevent needless injuries and deaths. These include increasing civil and criminal penalties to provide a real disincentive for employers, protecting the 10 million public sector employees who currently do not have the right to a safe workplace, and updating the whistleblower provisions of the *OSH Act* to more closely align with modern statutes that protect whistleblowers.

So thank you again for the opportunity to testify today. I would be very pleased to answer any questions you may have.

[The statement of Dr. Michaels follows:]

STATEMENT OF
DAVID MICHAELS, PHD, MPH

ASSISTANT SECRETARY
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
U.S. DEPARTMENT OF LABOR

BEFORE THE

COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS

U.S. HOUSE OF REPRESENTATIVES

OCTOBER 7, 2015

Introduction

Chairman Walberg, Ranking Member Wilson and distinguished Members of the Subcommittee, thank you for inviting me here today. As Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA), I am honored to testify before you about the important work the Department is doing to assure the health, safety and dignity of America's workers.

The Obama Administration is committed to helping workers reach and stay in the middle class by getting and maintaining good jobs. Workplace injuries, illnesses and fatalities stand in the way of workers earning a living wage. Today's sad reality is that many workers, and the families they support, are one job injury away from falling out of the middle class.

Under the Occupational Safety and Health (OSH) Act of 1970, employers have the responsibility to provide a workplace free of recognized hazards. The law gives us a range of tools and strategies and OSHA attempts to apply them in ways that will be most effective and efficient.

Working together, OSHA, our state partners, employers, unions, and health and safety professionals have made great strides in reducing the incidence of workplace injuries, illnesses and fatalities. In 1970, an estimated 14,000 workers were killed on the job, an annual rate of 18 per 100,000 or about 38 workers killed on the job every day. Today, with a workforce almost twice as large, that rate has fallen to 3.3 per 100,000, or about 13 workers killed every day. Injuries and illnesses also are down dramatically -- from 10.9 per 100 workers per year in 1972 to less than 3.3 per 100 workers in 2013.

OSHA's safety and health standards -- including rules for asbestos, fall protection, cotton dust, trenching, machine guarding, benzene, lead and bloodborne pathogens -- have prevented countless work-related injuries, illnesses and deaths. For example, OSHA's 1978 Cotton Dust standard helped drive down the rates of brown lung disease among textile workers from 12 percent to 1 percent. Since OSHA enacted the grain handling standard in the late 1980s, there has been a significant reduction in grain explosions resulting in far fewer worker injuries and deaths. In addition, since OSHA revised the excavation and trenching standard in 1989, there has been a twenty-two percent drop in fatal trenching injuries, even as construction activities have increased by twenty percent. Finally, OSHA's Bloodborne Pathogens Standard and the Needlestick Safety and Prevention Act have helped reduce Hepatitis B infections among healthcare workers by 90 percent.

While this represents great progress, 13 deaths a day is still 13 too many families devastated by the loss of a family member. Furthermore, over the last two decades, the rate of fatal work injuries has reached a plateau and is no longer decreasing as dramatically as it had in earlier years. The preliminary Census of Fatal Occupational Injuries results released by the Bureau of Labor Statistics (BLS) last month show the number of fatal work injuries was 4,679 in 2014, a 2 percent increase over the revised count of 4,585 in 2013. This increase was concentrated in a several particularly hazardous industries.

In addition to workplace fatalities, according to BLS, last year employers recorded almost 4 million serious job related injuries among private and public sector workers on the injury and

illness logs that OSHA requires them to maintain. It is now widely recognized that this statistic, although alarmingly high in itself, is an underestimate, and the actual number of workers who are injured on the job annually is substantially higher.

Workplace injuries and illnesses cause an enormous amount of physical, financial and emotional hardship for individual workers and their families. Combined with insufficient workers' compensation benefits, these injuries and illnesses can not only cause physical pain and suffering but also loss of employment and wages, burdensome debt, inability to maintain a previous standard of living, loss of home ownership and even bankruptcy. At the same time, costs to employers of workplace injuries and illnesses are also substantial, including workers compensation payments, decreased productivity and the costs of replacing injured workers.

These harsh realities underscore the urgent need for employers to provide a safe workplace for their employees as the law requires. That is why OSHA continues extensive outreach and strong enforcement campaigns and will continue to work with employers, workers, community organizations, unions and others to make sure that all workers can return home safely at the end of every day.

I want to briefly describe the work that OSHA has been doing to accomplish this end and improve the safety and health of all American workplaces.

Overview of OSHA

As many of you know, OSHA's mission is to assure safe and healthful working conditions for working men and women by setting and enforcing standards and providing training, outreach, education, and compliance assistance. With a budget of approximately $550 million, OSHA has a staff of 2,200, including about 1,100 inspectors. State plans have an additional 1,200 inspectors. Field activities are directed by ten regional administrators, who supervise approximately 85 local area offices throughout the United States. OSHA has approximately 350 staff in the National Office.

We are a small agency with a large mission -- ensuring the safety and health of roughly 130 million workers, employed in somewhere between 7 and 8 million workplaces all across the country. OSHA and its state partners are accomplishing the gains discussed above with relatively fewer personnel. In the late 1970s, there were about 36 federal and state compliance officers for every million covered workers. In the second half of the last decade, that ratio dropped below 20. Currently, there are less than 20 inspectors for every million covered workers.

With limited resources, we achieve this mission through a balanced approach, consisting of standards, enforcement, compliance assistance and outreach, and whistleblower protection.

Standards

OSHA's common sense standards have made working conditions in America today far safer than 44 years ago when the agency was created, without slowing the growth of American business. Developing OSHA regulations is a complex and long process, with extensive public consultation

before any new standards are issued including, depending on the standard, requests for information, stakeholder meetings, Small Business Regulatory Enforcement and Fairness Act (SBREFA) panels, public hearings, and pre- and post-hearing comment periods. We are required by law to ensure that our standards are economically and technically feasible. Over the past few years, OSHA has finalized long-awaited standards to protect shipyard workers and electrical workers, a standard protecting workers from hazards associated with cranes and derricks, a confined spaces standard for construction workers, as well as a standard to harmonize chemical hazard communication with programs around the world. In addition, we finalized a rule expanding requirements for employers to notify OSHA when a worker is killed on the job, or suffers a work related hospitalization, amputation or loss of an eye.

We have made significant progress in protecting workers from exposure to silica dust which causes silicosis, renal disease, chronic obstructive pulmonary disease, and lung cancer. Silica has been known for hundreds of years to cause deaths and severe lung disease. Secretary of Labor Frances Perkins, more than 75 years ago, committed the country to eliminating silica related disease. Our current standards are over 40 years old and the overwhelming weight of science has shown these antiquated standards to endanger workers' health.

OSHA held three weeks of public hearings on our proposal last year, and accepted public comment on our proposal for almost a year. This critical update to the current standards will better protect workers and modernize inadequately protective, antiquated and difficult-to-use rules.

Enforcement

Earlier this year in Houston, Texas, a worker was hospitalized with broken arms and severe contusions after falling 12 feet off of a roof. The saddest part of this case wasn't that the employer did not provide fall protection for this worker; it was that the worker had actually requested fall protection and the employer had denied it. The employer then waited three days to report the incident to OSHA, despite a requirement to do so within 24 hours.

And in February 2014, Sarah Jones, a 27-year-old camera assistant, was killed while trying to escape an oncoming freight train during the filming of a scene for the movie "Midnight Rider." The company had been denied authorization to film on live railroad tracks, but decided to do so anyway and put the lives of its crew at risk in the process. Sarah Jones paid the ultimate price for that decision and eight other workers were injured.

This type of willful disregard for the safety of workers is why enforcement remains one of OSHA's fundamental tools. Our enforcement program specifically targets the most dangerous workplaces, where workers are most likely to be hurt on the job, and the most recalcitrant employers. We recognize that most employers want to keep their employees safe and make great efforts to protect them from workplace hazards. But there are still far too many employers that cut corners on safety and neglect well recognized OSHA standards and basic safety measures.

For this second category of employers, enforcement remains an effective deterrent. In the last several years, we have made strong, fair and effective enforcement one of OSHA's primary

objectives. OSHA's targeted Severe Violator Enforcement Program includes increased OSHA inspections of recalcitrant employers, mandatory follow-up inspections, and inspections of other worksites managed by the same employers. Under this program, we are uncovering more systemic problems -- sometimes in multiple worksites owned by the same employer, and sometimes across entire industries. Rooting out systemic problems can eventually make a huge difference in the lives of tens of thousands of workers.

Compliance Assistance and Outreach

Because the vast majority of employers want to do the right thing and protect their workers from harm, OSHA is committed to providing assistance. For those employers who need technical assistance, we provide free on-site consultations to small employers, as well as other compliance assistance, educational materials and training.

We want to make sure that no small business in this country fails to protect its workers simply because it can't afford good safety information or doesn't understand how to comply with safety and health standards.

Last year we provided assistance to more than 200,000 individuals by phone and answered an additional 23,000 e-mail requests for help. In FY 2014, OSHA's On-site Consultation Program conducted more than 26,700 free on-site visits to small and medium-sized business worksites employing almost 1.3 million workers nationwide. On-site consultation services are separate from enforcement and do not result in penalties and citations.

Operated through offices in every state, this free service saves small- and medium- sized employers money and reduces workplace injuries. Consultants from state agencies or universities work with these businesses to: identify workplace hazards; provide advice on compliance with OSHA standards; and help employers establish injury and illness prevention programs.

OSHA's standards are the minimum legal requirements, but many employers go further and establish safety and health management systems (also known as injury and illness prevention programs) to protect their employees more effectively. OSHA recognizes those employers through several cooperative programs under which businesses, labor groups, and other organizations work cooperatively with OSHA to help prevent injuries, illnesses and fatalities in the workplace. OSHA's Voluntary Protection Program (VPP) recognizes employers and workers in industry and federal agencies who have implemented effective safety and health management systems and who maintain injury and illness rates below the national average for their industries. OSHA's Safety and Health Achievement Recognition Program (SHARP), run by the state Consultation programs, recognizes small business's exemplary safety and health management systems.

OSHA also provides extensive outreach and assistance to employers and workers to help them prevent injuries and understand OSHA requirements and best practices. Accompanying OSHA standards are web pages, fact sheets, guidance documents, on-line webinars, interactive training programs and special products for small businesses. In addition, there is a compliance assistance

specialist in almost all of OSHA's 85 area offices who assists employers and workers in understanding hazards and how to control them.

Lastly, OSHA's Outreach Training and the OSHA Training Institute Education Centers Programs trained more than 825,000 workers, supervisors and employers in the last year. These training programs are an integral part of OSHA's outreach plans through timely dissemination of knowledge and training on new occupational safety and health initiatives and standards to both the public and private sectors.

Whistleblower Protection

In passing the OSH Act, Congress understood that workers play a crucial role in ensuring that their workplaces are safe, but also recognized that employees would be less likely to participate in safety or health activities, or to report hazardous conditions to their employer or to OSHA if they feared their employer would fire them or otherwise retaliate against them. For that reason, section 11(c) of the OSH Act prohibits discrimination against employees for exercising their rights under the law. In the decades since the passage of the OSH Act, Congress has enacted several other statutes containing whistleblower protection provisions and has given OSHA responsibility for enforcing most of them. This is a strong acknowledgement that workers are this Nation's eyes and ears, identifying and helping to control not only hazards facing workers at jobsites, but also practices that endanger the public's health, safety, or well-being and the fair and effective functioning of our government.

Whistleblowers serve as a check on the government and business, shining a light on illegal, unethical, or dangerous practices that otherwise may go uncorrected. Whether the safety of our food, environment, transportation systems, or workplaces; or the integrity of our financial systems is at issue, whistleblowers help to ensure that the laws that protect the public's safety, health and well-being are fairly executed. OSHA is a small agency with a big role to fill in protecting whistleblowers. We take our responsibility under all 22 whistleblower statutes very seriously, and protecting whistleblowers has been a priority of this administration.

Over the last several years, we have implemented a number of significant structural and programmatic changes to strengthen our whistleblower program. OSHA has established the Whistleblower Protection Program as a separate Directorate, with its own budget; developed an online form so that employees can file complaints electronically; enhanced training; streamlined investigation procedures; and, with additional resources appropriated by Congress, significantly increased staffing. In addition, by updating our Whistleblower Investigations Manual and establishing a Federal Advisory Committee on Whistleblower Protections, we have been able to improve our enforcement efforts, including enhancing the completeness and consistency of our investigations of complaints filed under the anti-retaliation statutes that OSHA administers.

OSHA Initiatives

EO 13650 Actions to Improve Chemical Facility Safety and Security

Late last year, at a DuPont chemical plant in LaPorte, Texas, 4 workers died -- including two brothers -- as a result of a release of highly toxic methyl mercaptan. Unfortunately, chemical facilities continue to experience serious incidents that not only kill and injure workers at these plants, but also threaten the health and safety of those living nearby. Since 2009, at least 28 significant process safety related incidents have occurred, resulting in over 79 fatalities, multiple injuries, and extensive consequences for work places and communities.

A catastrophic failure of a heat exchanger in Geismar, Louisiana in June 2013, resulted in a fire and explosion that killed two workers. And, of course, there was the tragic explosion at the West Fertilizer Company in West, Texas, which killed 15 people in April of 2013 and destroyed surrounding buildings, including a middle school and a nursing home. The West Fertilizer explosion came only three years after the Deepwater Horizon explosion that killed 11 workers and created the biggest environmental catastrophe in our Nation's history.

These tragedies prompted President Obama, on August 1, 2013, to issue Executive Order (EO) 13650 - Improving Chemical Facility Safety and Security, to enhance the safety and security of chemical facilities and to reduce the risks associated with hazardous chemicals to workers and communities. The EO directed the Environmental Protection Agency (EPA), the Department of Labor (DOL), the Department of Homeland Security (DHS), the Department of Justice (DOJ), the Department of Agriculture (USDA), and the Department of Transportation (DOT) to identify ways to improve operational coordination with State, local, tribal, and territorial partners; to enhance Federal agency coordination and information sharing; to modernize policies, regulations, and standards to enhance safety and security in chemical facilities; and to work with stakeholders to identify best practices to reduce safety and security risks in the production and storage of potentially harmful chemicals.

To accomplish goals set by the President, an interagency working group (National Working Group) was established that includes other Federal departments and agencies involved in the oversight of chemical facility safety and security. Recognizing that stakeholders are essential to managing and mitigating the risks of potential chemical facility hazards, the National Working Group initiated a robust stakeholder outreach effort to assist in identifying successes and best practices.

After conducting a thorough analysis of the current operating environment and existing regulatory programs and obtaining stakeholder feedback, the National Working Group took a number of actions to minimize risks and developed a consolidated Federal Action Plan outlining additional actions to further minimize risks. These actions focus on five principles:

- Strengthening community planning and preparedness;
- Enhancing Federal, State, local, and tribal operational coordination;
- Improving data management;
- Modernizing policies and regulations; and
- Incorporating stakeholder feedback and developing best practices.

The National Working Group has relied heavily on stakeholder input and feedback in the development of the Action Plan, and we continue to keep stakeholders involved in its implementation. Altogether, a dozen public listening sessions were held in addition to meetings

with scores of stakeholders from industry, labor and environmental organizations since the report was released. In addition, the EO Executive Committee held a public webinar on November 10, 2014, to update the public on our progress.

In addition, OSHA has made significant progress in updating key programs designed to protect workers.

- OSHA issued an RFI in November 2013 seeking public input on possible improvements for its Process Safety Management (PSM) standard and, in June 2015, initiated a Small Business Regulatory Flexibility Review Act (SBREFA) panel to get feedback from small businesses.
- OSHA issued new policy memoranda, explaining how it will apply the standard to chemicals without concentrations listed in Appendix A, memorializing its existing interpretation of the term Recognized and Generally Accepted Good Engineering Practices or RAGAGEP, and clarifying the definition of retail facilities.
- Both OSHA and EPA are considering new requirements in PSM and RMP for the use of safer technology and alternatives. As an interim measure, the agencies issued a joint alert promoting the use of safer technologies and alternatives. This alert includes information on best practices from industry and is the beginning framework for safer technology and alternatives.
- Regional Working Groups (RWGs) were established in all ten Federal Regions under the leadership of regional tri-chairs from DHS, EPA, and OSHA. The RWGs are holding regular meetings to foster relationships with regional and local stakeholders and share best practices.

The Working Group has made progress in furthering Ammonium Nitrate safety and security:

- EPA, OSHA, and ATF have updated and re-issued the Chemical Advisory on Safe Storage, Handling, and Management of Ammonium Nitrate, which was originally issued in August 2013. It incorporates stakeholder comments and concerns, as well as the latest practices in Ammonium Nitrate safety.
- OSHA issued a letter and additional materials to major stakeholders in the fertilizer industry to emphasize current requirements for Ammonium Nitrate storage.
- The Fertilizer Safety and Health Partners Alliance was formed between OSHA and the fertilizer industry, emergency response organizations, and other working group agencies to provide guidance and training resources to better protect the health, safety, and security of chemical facility work.
- OSHA also issued guidance to Regional Administrators on enforcement of the Explosives and Blasting Agents Standard and is in the process of developing Regional and Local emphasis programs to more effectively enforce standards for the safe storage of ammonium nitrate.

Severe Injury Reporting Program

On January 1st, OSHA changed the way we do business by requiring employers to report -- in addition to all work related fatalities -- every hospitalization, amputation and loss of an eye. Before 2015, employers were only required to report to OSHA work related fatalities or

incidents where three or more workers were hospitalized. Often, when we conducted inspections of the worksites involved in these tragic events, we found that they had previous serious injuries and amputations that we had never known about. These injuries were red flags that there were serious hazards in this workplace that needed to be prevented.

In the first 9 months of this new policy, we have already received more than 8,700 reports. We are triaging every call and initiating inspections in about a third -- but we are engaging with every employer. For those employers that we are not inspecting, we expect them to conduct an investigation and let us know what changes they will make to prevent further injuries. Investigating a worksite incident -- a fatality, injury, illness, or close call -- provides employers and workers the opportunity to identify hazards in their operations and shortcomings in their safety and health programs. Most importantly, it enables employers and workers to investigate incidents, and identify and implement the corrective actions necessary to prevent future incidents.

Incident investigations that focus on identifying and correcting root causes, not on finding fault or blame, also improve workplace morale and increase productivity by demonstrating an employer's commitment to a safe and healthful workplace. By establishing a relationship with all employers who report these severe injuries, and by encouraging them to investigate the incidents in which the worker was hurt, I believe we will make a huge difference.

Our field staff is already using data from the Severe Injury Reporting Program to focus their life-saving activities. For example, the employer at a sawmill in Kittanning, PA notified the Pittsburgh area office that an employee's left index finger had been amputated while he was operating a large circular saw. The Area Office conducted an inspection and found that the 52 inch blade of the saw was not guarded, along with a variety of other issues. To abate the cited hazards, the company has agreed to retain a qualified safety consultant to help develop a safety and health program and to train company managers concerning the applicable OSHA standards. Given the remote location of this company, absent the new reporting requirement, OSHA would likely never have known of the hazards at this workplace.

This is just one of the many success stories we've seen so far as a result of the new reporting rules. But the successes haven't been limited to our field work. We've also reacted quickly to new information to target compliance assistance where it is badly needed. For example, we developed a new fact sheet on hazards from food slicers and meat grinders used in grocery stores, restaurants and delis based on information we saw in initial reports from the new requirements. This is an issue we likely would not have seen without the new reporting requirements and now, because we did see it, there is a resource to help employers protect workers from these hazards.

Reducing Workplace Exposure to Hazardous Chemicals

Each year in the United States, tens of thousands of workers die from exposures to hazardous chemicals that they were exposed to years ago. This is why OSHA has launched several initiatives to protect workers from these hazards.

In March 2012 OSHA aligned its Hazard Communication Standard with the Globally Harmonized System of Classification and Labeling. We did this to provide a common, understandable approach to classifying chemicals and communicating hazard information on labels and safety data sheets worldwide.

OSHA has also begun a dialogue with our stakeholders to help prevent work-related illnesses and better protect the health of America's workers. While many workplace chemicals are harmful, only a few are regulated in the workplace, and for most of those, our standards are dangerously out-of-date. The process through which OSHA issues new exposure limits or updates old ones is inefficient, time consuming and unable to address the thousands of chemicals used in industry that need oversight. As a result, we have issued a Request for Information (RFI) to ask stakeholders to help us identify the best approaches to managing chemical hazards and strategies for updating our permissible exposure limits (PELs). We believe this RFI and the dialogue it will initiate are important steps towards protecting the current and future generations of workers who build and sustain our nation's economy.

We know that the most efficient and effective way to protect workers from hazardous chemicals is by replacing them with safer alternatives. Proactive, preventative approaches that drive the elimination of chemical hazards at the source and promote the development and adoption of safer alternatives must be a part of any chemical management strategy. But, in cases where efforts to control chemical hazards do not carefully consider the impact of substitutes, workers may face new or similar hazards. For example, workers in the furniture industry suffered severe neurological damage where 1-bromopropane was used to reduce exposures to methylene chloride.

To address this problem, in 2013, OSHA launched an online toolkit to help employers and workers find ways to eliminate hazardous chemicals, or substitute them with a safer chemical, material, product, or process. The resource includes information, methods, tools, and guidance on using informed substitution in the workplace. Thanks to our safer chemicals toolkit, employers are able to visit our webpage for help. We've also posted annotated PEL tables so employers can voluntarily adopt exposure limits that are more protective than OSHA's PELs.

Protecting Vulnerable Workers

We are also focusing on protecting day laborers and other vulnerable workers in America who work in high-risk industries. Because of language barriers, literacy, lack of training and other challenges, these workers are often hard to reach, and are also at the greatest risk for injury, illness and death on the job. Latino workers are killed and injured on the job often at higher rates than other workers. While the BLS preliminary data shows a decrease in the rate from 2013 to 2014 for these workers, it is still too high. About 15 Latino workers die on the job every week while often doing the hardest and most dangerous jobs in America.

These vulnerable workers are also the least likely to speak up for their rights. Following the groundbreaking National Action Summit for Latino Worker Health and Safety in Houston in April 2010, OSHA has partnered with consultants, community and faith-based groups, unions, employers, and other government agencies to reach out to vulnerable workers with information

about their rights and to enhance their ability to use these rights. We have translated hundreds of publications into multiple languages and created a Spanish language home page on OSHA's Web site.

OSHA also reminds employers to comply with requirements that they must present information about workers' rights, safety and health training materials, information and instructions in a language and level that their workers can understand. I issued a directive to OSHA inspectors to check for this during site visits to be sure that employers are complying.

In addition, through the Susan Harwood Training Grants Program, OSHA awards grants to nonprofit organizations, community colleges and business associations to provide training and education to vulnerable, hard-to-reach workers. Through outreach and the Harwood program, OSHA has for years helped workers control hazards in nail and hair salons, many of whom are Asian-American immigrants. These training grants focus on the recognition and control of safety and health hazards in workplaces. And last year our Harwood Grantees trained nearly 106,000 workers and employers -- an all-time yearly high!

Finally, we continue to focus on protecting vulnerable workers in high-risk industries through partnerships with consulates, community and faith-based groups, unions, employers, and other government agencies.

Protecting Workers in Oil and Gas Extraction

Hazardous working conditions are taking the lives of a growing number of workers employed in oil and gas extraction. The oil and gas extraction industry has experienced a fatality rate of several times the average of all U.S. industry over the past 20 years. In addition, the BLS 2014 preliminary data show that the number of fatalities in the oil and gas extraction industry increased 27 percent from the previous year. OSHA is utilizing all its tools to assist employers and workers to address hazards in the oil and gas extraction industry, including enforcement and compliance assistance. OSHA has also expanded its Severe Violators Enforcement Program to the upstream oil and gas industry.

Enforcement of the oil and gas industry presents many unique challenges. It is difficult to identify when these worksites are active because they are transitory, time-limited operations, often in very remote locations. And because the oil and gas industry is exempt from many OSHA standards, we must go through the added legal burden of issuing General Duty Clause citations when we identify clearly unsafe working conditions because these operations are often not covered by specific OSHA standards. General Duty Clause citations are more resource-intensive than citations issued for specific standards. And finally, the multi- or joint-employer structure of the industry presents many legal challenges to traditional enforcement.

Because of the difficulties in enforcement in this area, OSHA has conducted an unprecedented amount of compliance assistance in the oil and gas extraction industry. Our compliance assistance tools include work with alliances, the VPP program, and production of safety and health materials and training for employers and workers.

The National Service, Transmission, Exploration & Production Safety (STEPS) Network is an all-volunteer oil and gas industry organization which was founded in 2003 in South Texas by OSHA and industry, in an attempt to reduce injuries and fatalities in that region. STEPS has continued to grow, currently including twenty-two independent regional networks serving twenty producing states. OSHA has signed formal alliances with eight of the networks and, in December 2014, signed a formal alliance with the National STEPS Network and the National Institute for Occupational Safety and Health (NIOSH).

OSHA has taken a variety of compliance assistance actions. For instance, our free on-site consultation program has conducted 260 visits to oil and gas sites over the last four years. We helped develop an Emerging Issues Focus Group for U.S. Onshore Oil and Gas Extraction and a biannual OSHA Oil and Gas Safety and Health Conference. We have supported stand-downs reaching more than 70,000 workers and identifying over 20,000 hazards since the summer of 2013. In addition to the stand-downs, conferences and consultations, we've produced web resources, publications, hazard alerts about silica hazards and tank gauging hazards, and training materials, including assisting in the development of training for workers in the exploration and production industry. Together with NIOSH, OSHA has identified tank gauging, a previously unrecognized cause of death in oil production. The STEPS Network has now posted alarms and guidance that is available to industry.

Clearly, however, as the latest BLS numbers underscore, these unprecedented compliance assistance efforts have not been sufficient, and we are actively looking at ways to increase our effectiveness in preventing injuries and illnesses in the oil and gas industry.

Changing Structure of Work

Another challenge OSHA must face is with the changing structure of employment relationships. OSHA has long addressed situations where more than one employer has a role in preventing injury and illness and we will continue to shape our work to address the realities of the 21st Century workplace. This is not a major challenge in the oil and gas industry only, as mentioned previously -- it's a challenge in almost every industry.

For example, just a few decades ago, temporary work was relatively rare and concentrated in white-collar professions. But in recent years temporary workers are now commonplace in virtually every type of workplace and their numbers have grown dramatically. According to the American Staffing Association, there are almost 3 million temporary workers in the nation's workforce today -- many doing highly hazardous construction and manufacturing jobs.

Unless properly managed, these structural employment changes greatly increase risks of injuries and illnesses among all the workers in these workplaces. We have found that too often employers do not provide temporary workers with the same protections or training as permanent employees. Similarly, many times employers of different workers at the same worksite fail to communicate about the presence of hazards, therefore endangering some or all the workers at the site.

The results can be tragic, as in the case of Lawrence Daquan "Day" Davis, a 21-year-old temporary worker who died his first day on the job. He was crushed to death by a palletizer

machine at a Bacardi Bottling facility in August 2012. The company had failed to train temporary employees on utilizing locks and tags to prevent the accidental start-up of machines as well as failing to ensure its own employees utilized procedures to lock or tag out machines.

Our Temporary Worker Initiative has made the hazards facing temporary workers a national concern. We continue to insist that host employers and staffing agencies both protect temporary workers on the job, and provide them the same protections as all other workers.

When OSHA investigates a workplace, we consider different work arrangements and if there are multiple employers that are responsible for protecting workers exposed to hazards. Agency inspectors determine, in every inspection, whether **every** worker on the site has received the safety training and protections required by law for the job and, if there is joint employment, which employer is responsible, or depending on the circumstances, whether more than one employer should be held accountable.

OSHA has begun working with the American Staffing Association and employers that use staffing agencies, to promote best practices for ensuring that temporary workers are protected from job hazards. Together we are making sure that both host employers and temporary agencies understand their responsibilities for protecting workers. And we are making sure that all workers in the country understand that they have the right to safe workplaces, and that all workers, including temporary workers, have the right to contact OSHA if they face workplace hazards.

Safety and Health Campaigns

Through nationwide safety and health campaigns, we are trying to ensure that all workers understand the workplace hazards they face and know their rights.

Heat Illness Prevention

Every year, dozens of workers die due to working in the heat and thousands become ill. In order to raise awareness about these preventable tragedies we are now in our fifth year of the Campaign to Prevent Heat Illness in Workers. In 2011, we launched a partnership with the National Oceanic and Atmospheric Administration (NOAA) and the National Weather Service to educate employers and workers on the dangers of working in the heat. As a result, important worker safety information is now included in all National Weather Service extreme heat alerts and on NOAA's Heat Watch Page.

We also worked with the National Weather Service to develop a smartphone heat safety app that allows users to calculate risk levels in their area code and learn the protective measures needed to prevent heat illness. More than 250,000 people have downloaded the app so far.

Through these efforts, we have reached over 11 million workers and employees and distributed over 800,000 print resources in over 4,150 national and local informational and training sessions.

Fall Prevention

Falls continue to be the leading cause of death in construction -- they account for roughly one third of all construction deaths. In 2012, we joined with stakeholders in the industry and labor, and with NIOSH in an unprecedented nationwide outreach effort to prevent these fatal falls.

Since then, OSHA has conducted more than 1,000 workshops, presentations, site visits, radio and TV interviews, and discussions with foreign consulates; produced new low-literacy fact sheets, posters, QuickCards, wallet cards, videos and other resources – many in multiple languages; and produced 10 new fall-prevention videos in English and Spanish, which have been viewed more than 32,000 times on YouTube.

We've worked with employers, workers, industry groups, and civic and faith-based organizations to host city-wide safety stand-downs across the country, where workers and employers voluntarily stop for part of the workday to focus on recognizing hazards and particularly on preventing falls. This year's stand down showed how effective these campaigns can be with thousands of employers and millions of workers participating.

Protecting Healthcare Workers

In hospitals and other healthcare facilities, workers are hurt at rates even higher than in construction and manufacturing. OSHA is responding to the alarmingly high rate of worker injuries and illnesses in hospitals and other healthcare settings by helping hospitals and nursing homes recognize the close link between patient safety and worker safety -- we know that managing for worker safety will protect patients, too.

We are also responding to the danger of workplace violence, which disproportionately threatens workers in the healthcare industry. OSHA released updated guidance for preventing workplace violence in healthcare settings and established procedures for investigating these incidents. As we move forward we will continue to hold employers accountable for developing and implementing policies to prevent assaults on healthcare workers.

Potential Legislative Initiatives to Improve Worker Protection

We cannot fully address the challenges facing OSHA in the 21st Century alone – we need your help as well. Congress passed the OSH Act in 1970 and while it has helped improve working conditions for American workers over the past 44 years, OSHA has identified areas where legislative updates to modernize the Act could have a significant impact in further improving protections for workers.

Civil and Criminal Penalties

The most serious obstacle to effective OSHA enforcement of the law is the very low level of civil penalties allowed under our law, as well as our weak criminal sanctions. The deterrent effects of these penalties are determined by both the magnitude and the likelihood of penalties. However, OSHA's current penalties are not strong enough to provide adequate incentives.

This is apparent when compared to penalties in other statutes. For example, the Environmental Protection Agency can impose a penalty of $270,000 for violations of the Clean Air Act and a penalty of $1 million for attempting to tamper with a public water system. Yet, the maximum civil penalty OSHA may impose when a hard-working man or woman is killed on the job -- even when the death is caused by a willful violation of an OSHA requirement -- is $70,000.

Similarly, the criminal provisions in the OSH Act are weaker than those in virtually every other safety and health and environmental law. The Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act all provide for criminal prosecution for knowing violations of the law, and for knowing endangerment that places a person in imminent danger of death or serious bodily harm, with penalties of up to 15 years in jail. There is no prerequisite in these laws for a death or serious injury to occur. Yet, under the OSH Act, criminal penalties are limited to those cases where a willful violation of an OSHA standard results in the death of a worker and to cases of false statements or misrepresentations. The maximum period of incarceration upon conviction for a violation that costs a worker's life is six months in jail, making these crimes a misdemeanor.

The Protecting America's Workers Act (PAWA) makes much needed increases in both civil and criminal penalties for every type of violation of the OSH Act and would index civil penalties to increases or decreases in the Consumer Price Index (CPI). In addition, PAWA would also amend the criminal provision of the OSH Act to change the requisite mental state from "willfully" to "knowingly." These changes would be consistent with other protective statutes. Harmonizing the language of the OSH Act with that of these other statutes would add clarity to the law. As we have previously testified, OSHA strongly supports these changes in the law. Simply put, OSHA penalties must be increased to provide a real disincentive for employers accepting injuries and worker deaths as a cost of doing business.

OSHA Coverage for Public Employees

In addition to making much needed changes to the OSH Act's penalty provisions, PAWA would cover all public employees. There are currently 26 states and two U.S. territories that are State Plans and therefore cover public employees. Twenty-two State Plans (21 states and one U.S. territory) cover both private and state and local government workplaces. The remaining six State Plans (five states and one U.S. territory) cover state and local government workers only. That leaves 10 million employees in 24 states where State and local government workers are left without the right to a safe workplace. These public employees are highway construction workers who work inches from speeding traffic in the middle of the night, firefighters who risk their lives to protect our homes and families, mental health workers, social service workers and corrections officers who face the threat of workplace violence on a daily basis, and wastewater treatment plant workers who wade through raw sewage and deadly gasses to ensure that the water we drink and use on a daily basis is safe. Public employees need the same right to a safe workplace – to come home in one piece at the end of the day – that private sector employees have enjoyed for more than 40 years.

Strengthening Whistleblower Protection Provisions

In the decades since the OSH Act was passed in 1970, we have learned a great deal from newer anti-retaliation statutes about protecting workers, particularly the statutes passed by the Congress within the last decade. These statutes are more effective at making whole workers who have been retaliated against, and are leading to significant improvements in workplace culture.

To give section 11(c) the teeth it needs to be as effective as newer whistleblower statutes, it must be updated. To this end, OSHA recommends strengthening the procedural requirements of section 11(c) to be consistent with more recent whistleblower statutes, by: (1) providing OSHA with the authority to order immediate preliminary reinstatement of employees that OSHA finds to have suffered illegal termination; (2) modifying the adjudication process to provide a "kick-out" provision which will enable workers to take their disputes to a Federal District Court if the Department fails to reach a conclusion in a timely manner; (3) allowing for a full administrative review of OSHA determinations to the Department of Labor's Office of Administrative Law Judges and Administrative Review Board; (4) extending the statute of limitations for filing complaints; and (5) revising the burden of proof under section 11(c) to conform to the standard utilized in more recently enacted statutes.

Conclusion

We continue to work hard each and every day to ensure employers are protecting their workers from the myriad of safety and health hazards in workplaces across this country. Despite the challenges I have laid out for you today, we have been very successful in making America a safer nation in which to work. Even with our best efforts, every year, still nearly four million workers are injured or made sick at work, and thousands more die from work-related injuries or illnesses.

The financial and social impacts of these injuries and illnesses are huge, with the costs, which should be paid by employers, are borne primarily by the workers and their families, and by taxpayer supported programs. Every one of us has seen how injuries and illnesses can force working families out of the middle class and into poverty, and prevent the families of lower wage workers from ever entering the middle class.

I want to thank you again for inviting me to this hearing to describe to you the efforts we are taking to protect American workers and to discuss how, together, we can do this even more effectively. I look forward to your questions.

Chairman WALBERG. Thank you, Dr. Michaels, for your testimony, and I think as I listened, and I am sure my colleagues as well, we appreciate the fact of the task that you have. And when we hear the illustrations as well, that is where I think we link arms, join hands together in saying let us enforce, let us make sure we enforce and come alongside and make sure that our employers are following the regulations and the laws that are in place. I guess it is a question today in a big way is what we have relative to the plans moving forward. So I recognize myself for five minutes of questioning.

In a recent Senate hearing, a Department of Labor official suggested the guidance documents did not change the underlying PSM standard, insisting these are simply clarifications. Fundamentally, these documents had changed the type of entities and drastically expanded, at least as I read them, the number of entities that are covered by the regulation. Let me ask you how OSHA can justify this as just simply a clarification?

Dr. MICHAELS. Thank you for that question, Chairman Walberg. We are actually talking about I suspect three documents, and they are all quite different, so it is a little complex to answer that question about all three. But the basis of this is understanding that after the explosion at the West Fertilizer Plant, President Obama issued a directive, the executive order, telling us to look at these issues and make sure workers are protected. And we have done a number of things, and part of that are three memoranda that all follow the law very carefully but essentially tell either OSHA or tell employers how they should make sure workers are protected.

The first of these, and probably the one that there is the most discussion about is around the retail exemption.

Chairman WALBERG. Correct.

Dr. MICHAELS. And that is probably the one that is most——

Chairman WALBERG. That was the largest. That was a drastic change.

Dr. MICHAELS. Well, when you go back and look at the process safety measurement standard, it is clear to us the standard was being misinterpreted. Essentially, what the standard said was that retailers who are really identified as, for example, gas stations, entities that sell small amounts and keep small amounts of a material onsite should be exempt, but when we went back and looked at how that was being interpreted in one of our policies, we thought the way we were doing this was clearly wrong. West, for example, had 50,000 pounds of anhydrous ammonia onsite and they sold large quantities of it. Other facilities with 10,000 pounds onsite are not exempted from process safety management. In fact, there have been terrible events that have occurred at far lower quantities than those onsite at West.

So we went back following the law very carefully and getting tremendous public input. You know, President Obama talked about this two years ago. We have held countless public meetings and meetings with stakeholders talking about what the meaning of that "retail" exemption is and how to fix it. And so it was no surprise when we put out this memorandum changing this interpretation.

Chairman WALBERG. To 3,800 businesses that were exempt beforehand, it was no small change for them. So I would suggest that

that is the challenge that I see, that that small change in how we defined retail and the exemption that came with that had a fairly significant impact. Financially, it can have a tremendously negative impact up to costing the business the opportunity to move and grow. I think that is the concern about the clarification process that goes on. And I think that is where best practices, bringing the stakeholders in for an extended period of time to look at this if this is going to be treated basically as a rule is important.

How many lawsuits are pending related to the PSM guidance documents?

Dr. MICHAELS. I cannot tell you how many lawsuits. I know there are several lawsuits. I do not know the number. But I believe that there are three documents, and there have been lawsuits associated with each one. I do not know if they are separate lawsuits or the same lawsuits, but there are several lawsuits.

Chairman WALBERG. How many comments did you receive regarding December 2013 request for information regarding the retail exemption?

Dr. MICHAELS. Well, you know, we raised the issues of the retail exemption in numerous public meetings. We held a dozen public meetings around the country and then two more, and so we had a huge number of meetings. I cannot tell you though. I would be happy to get back to you with how many written comments we got from the request for information, but we had countless meetings with our stakeholders. We formed a new alliance with the Fertilizer Institute, the Agricultural Retail Association, the firefighters, to discuss these issues, so we have had a huge amount of input. And I can give you more detail later on.

Chairman WALBERG. I would be interested to know how many were in favor of these changes, especially looking at the example of West and the destruction that went on outside of the loss of life that was tremendous. Still with that, I would be interested to know the numbers that were in favor of any changes that went on as well.

Yesterday, OSHA released an update of the Field Operations Manual. Does it contain any new multi-employer citation policy?

Dr. MICHAELS. What are you referring to?

Chairman WALBERG. Field Operations Manual.

Dr. MICHAELS. That update simply memorializes many of the directives that we put out. There was nothing new in that. What that does is that puts in one place lots of documents and memos we had sent out to the field that we put on the web.

Chairman WALBERG. But you are going to issue a new instruction manual then subsequent to this?

Dr. MICHAELS. Well, the Field Operations Manual is actually a guide for our staff on what to do. You know, how do they operate in the field? And so there is nothing new in there. It is their instruction manual.

Chairman WALBERG. My time is expired, and so now I recognize Mr. Pocan for your five minutes.

Mr. POCAN. Sure. Thank you, Mr. Chairman. And thank you, Mr. Michaels, for being here.

Let me ask you a general question about budget and then let us come back to the *OSH Act* updates, a couple of them that you men-

tioned. If I understand it, you have sufficient resources right now to inspect each jobsite once every 140 years on average.

Dr. MICHAELS. That is about right.

Mr. POCAN. And I believe the appropriations bill that was passed this year by the House cut that by about 15 percent, 32 million, and it is about 7 percent less than last year's budget's—last year's levels. How is this going to impact you? Briefly, what is the impact?

Dr. MICHAELS. Well, the concern I have, of course, is how that impacts the safety and health of workers across the United States. We would certainly do significantly less enforcement, and we know that enforcement has an impact. You know, there is a study done by business school professors from Harvard and Berkeley that was published in Science Magazine a couple years ago that showed that our random inspections, every single one of them, reduces injuries at the workplace we visit by 24 percent and saves the employer money. And so the fewer inspections we do, the more injuries are going to occur and the more costs are going to go up. And so we know that this is going to have a bad impact on workers.

Mr. POCAN. Thank you.

On the *OSH Act* updates, one of the things you mentioned were the civil and criminal penalties. And again, painfully low. If I understand it right, you are the only agency in the Department of Labor who is prevented from automatically adjusting the maximum penalties for inflation. If I remember right, according to the "Death on the Job" report, in 2014, there was a penalty for a fatality case that was $5,050. Could you just talk a little bit about the needs to adjust those?

Dr. MICHAELS. No, that is sadly not uncommon. We do not issue penalties because there is a fatality, but because we see a violation. And the maximum penalty for a serious violation is $7,000, and we always discount it for small employers and for history and good faith. And so even when there are significant events where workers are killed and we have multiple violations, the fine is very low. I mean, an example, a few years ago we had a terrible incident at an oil refinery half owned by Shell and half owned by Saudi Aramco. You know, these are big companies. A worker named Jeff Davis was essentially virtually dissolved in an acid spill. His body, you could barely find it, and eight other workers were hurt. The total penalty against this multinational company was $175,000, which is pretty low. In comparison, EPA followed us in because crab and fish were killed by this acid spill. Their penalty was $10 million. The value of human life seemed so low in that case.

Mr. POCAN. Sure. Thank you.

Also, you mentioned public sector employees. Eight to 10 million public sector employees not protected. Can you talk a little bit about that?

Dr. MICHAELS. Yes. The way the OSHA law is written is if a state has federal jurisdiction as Wisconsin has or Missouri has or Florida has, the state and local workers have no coverage. Fortunately, public sector workers in Michigan do have coverage because there is a state OSHA plan, but in the other states, unless the state decides to have an OSHA plan themselves, those workers have no coverage. So we are pleased that Maine, for example, just

signed on, and Illinois and New York and New Jersey and Connecticut have them, but most of the states where we have jurisdiction, those public sector workers do not have the right to a safe workplace. When one of them is killed, there is no investigation. Nothing happens.

Mr. POCAN. And some large employers, if they have operations in multiple states at some of the facilities in one of those 29 federal OSHA states and at some of the 21 state OSHA state plans, when considering whether a violation is repeated, does OSHA have the authority to consider the history of an employer's violations from a state plan?

Dr. MICHAELS. We cannot. And that is a big issue for companies which are in multiple places. We think it is very important to look at the history, and if an employer violates the law in one part of the country, they should not be allowed to violate without major penalty somewhere else, but that is unfortunately the way the law is written.

Mr. POCAN. I see the yellow light but the time is—oh, I see I have a minute left. Okay. So let me go to really quickly on OSHA updating new safety and health standards. I know this says 10 to 20 years in order to do that. Can you just address that issue?

Dr. MICHAELS. The requirements for OSHA to issue a new standard are very complicated. We put a tremendous amount of work into our standards. We have extensive public input. In fact, for our silica standard, we took public input for a year. But because of the requirements for a complicated standard, it easily could take 10 years. The GAO estimated eight years and that is an underestimate. So it takes us a long time to make those changes. So most of our standards are really dramatically out of date and workers are paying the price.

Mr. POCAN. Thank you. And I yield back because I have 10 seconds.

Chairman WALBERG. I thank the gentleman. And now I recognize the Chairman of the Full Education and the Workforce Committee, Mr. Kline.

Mr. KLINE. Thank you, Mr. Chairman. Thank you, Dr. Michaels, for being here and for your testimony. I know that Chairman Walberg has a working list of issues he would like to address, so I yield my time to him.

Chairman WALBERG. Thank you, Mr. Chairman. I accept that yield. I do have a number of questions, and I know right now we are on borrowed time, and I appreciate the borrowed time we are on.

Dr. MICHAELS. I will speak quickly.

Chairman WALBERG. Representative Pocan, in your response to his question, brought up a question that I would like to address with you. OSHA is looking at the California, Oregon, and Washington State plans with respect to roofing and residential construction projects. BLS data suggests states governed by the federal OSHA plan with similar sizes have a higher incident rate than these three states—California, Oregon, and Washington. Why does OSHA think the federal standard requirement is more protective than these three states?

Dr. MICHAELS. That is a great question. There are lots of reasons for a fatality rate or even a fall rate. Compliance with a standard is really in some ways the key thing, and there are lots of areas where California, Washington, and Oregon have lower injury rates and lower fatality rates than the rest of the country. The standard is just a piece of that. When we look though at fatalities that have occurred that have been in violation of a standard, we see lots of them and we know they could have been prevented if our standard had been stronger. And that is why we actually changed the enforcement policy for residential construction a few years ago because people were dying because they were not following the new standard because we were not enforcing it. So we can see that our standard will have an effect in those places where it is applied. And I have no doubt that any state that strengthens their standard, they will actually reduce fatalities and falls as well.

Chairman WALBERG. What criteria are you using to determine if the state plans are at least as effective as the federal rules?

Dr. MICHAELS. That is certainly something that we have been working on. In fact, we are probably the first administration ever to develop metrics to say this is how to measure a state plan in comparison with the federal government. The law has been around for 44 years, but for the first 40, OSHA never said, "Do we have a rigorous way to actually measure the concept at least as effective?" So we have implemented that a year ago. We now are collecting data from the state plans, and I think we are doing very well.

Chairman WALBERG. So it is still in progress?

Dr. MICHAELS. Yes.

Chairman WALBERG. Blacklisting. Last year the administration issued the Fair Pay and Safe Workplaces Executive Order, otherwise known as the Blacklisting Executive Order—I think that is an industry term—in an attempt to ensure labor law compliance by federal contractors. Earlier this year, OSHA issued a memorandum directing compliance safety and health officers to collect additional data during inspections regarding employers' federal contractor status. The question I would like to ask you, do you think knowledge of an employer's contract work is relevant to an OSHA inspection?

Dr. MICHAELS. Well, you know, we have learned a lot in the last year since that has come out and I think we have had a very successful experience. Our interest is not "blacklisting" or barring an employer from federal contracts; we want to use any leverage we can to make sure workers are protected. And I have heard from some of our area offices in states where they do a lot of defense contracting, defense contractors have said, "Well, you know, we are a little concerned about this. Tell us what we need to do to make sure we do not get on this list." And we are happy to work with them. Our aim is not to bar any employer from being a federal contractor but to work with them saying, "Look, we would like you to continue to be a federal contractor. Let us make sure you are in compliance with our law."

Chairman WALBERG. Well, it is one thing for the contractor or the contractor wanna-be but I think the concern is it is so easy for them to get caught up without even knowing the question to ask

and all of a sudden being on a list that could impact contract negotiations or even getting the contract.

Dr. MICHAELS. My understanding is that comments have been received and they are still working out what the procedures are, but we are very much committed to setting up a system where we can work with employers to make sure that they are in compliance rather than being debarred. And that is our commitment. That is what we want to do.

Chairman WALBERG. Let me ask you. Do the three guidance documents carry the force of law? This probably gets to the nub of our concern.

Dr. MICHAELS. Yeah. Standards carry the force of law, but the way we interpret them and enforce them comes from those documents and other sorts of documents. So we will use those documents in issuing citations, for example, because it tells our inspectors what to do.

Chairman WALBERG. But does it tell our employers fully what to do and what is expected, especially since they are guidance documents as opposed to rules or laws themselves?

Dr. MICHAELS. Rules always need interpretation. We issue, we get requests from employers on a weekly basis to interpret our rules. In fact, we issue probably 100 letters of interpretation a year when an employer says, "Well, what does this really mean? Or what is the definition of this?" Essentially, this tells employers, "Yes, this is the definition." So it tells, for example, that employers who thought that they were exempt under the retail exemption now are not exempt and therefore, you know, they always should have been following the law; we just would not enforce it. Now, actually, they know we could make an inspection.

Chairman WALBERG. Okay. Well, my time is expired for the second time. And now I recognize the new member of our Committee, the gentlelady from Missouri, Mrs. Hartzler.

Mrs. HARTZLER. Thank you, Mr. Chairman. I appreciate you letting me sit in here today and participate in this very important hearing. And I certainly appreciate Dr. Michaels' leadership you provide to keeping our workers safe across the country.

But as you do the enforcement, I think it needs to be coupled with common sense. And I was just wondering your opinion about some citations that I have heard about. So do you think that a company should be fined thousands of dollars because the emergency eyewash station, the water was too cold?

Dr. MICHAELS. You know, I would have to look at the specifics. Obviously, that does seem questionable, but there are lots of issues in any one inspection, and the facts drive that decision. And so we would have to—I would be happy to look at that.

Mrs. HARTZLER. How about being fined thousands of dollars because you did not have a yellow line painted 10 feet from the edge of a flat roof?

Dr. MICHAELS. Again, the same thing. But, you know, we have rules about protecting workers up on roofs, and we have too many fatalities, so we expect employers to follow that. If that were the only reason they got fined, we would have to look at it very carefully.

Mrs. HARTZLER. Or how about an extension cord that is in the wrong place?

Dr. MICHAELS. Well, if the extension cord is frayed and someone could be tripping over it, we would have to—again, it is fact specific but I understand your concerns.

Mrs. HARTZLER. Yeah, my concerns are, I was wondering, you said you had a field manual. So how much discretion is given to OSHA employees when enforcing the regulations. If they find something are they able to say, "Hey, why do you not unplug it and move it?" Do they have that authority? Are they supposed to just slap them with a fine of 6,000 bucks right there?

Dr. MICHAELS. No. The discretion actually is with the area director. The inspector is supposed to report what they see, and then the employer is supposed to meet with the area director and talk about what are the implications of this? Have they in good faith tried to eliminate the problems? Things like that. And the area director has a great deal of discretion around the fines.

Mrs. HARTZLER. So they have the discretion to totally eliminate it?

Dr. MICHAELS. No. Here is the reason. If we had a policy where we said the first time we see a problem there is no fine, then everybody would say, "Okay, we will not do anything until after we are caught once." We cannot allow that. But we think we have a tremendous amount of discretion.

The other thing we tell small employers is, "Look, we have a free consultation service. Once you get into that service, you are exempt from inspections while you are using that service," and that is what we want employers to do.

Mrs. HARTZLER. And I do commend you for that service, but I think it does not make sense to go ahead and fine—in my case, I mean, the stories that I have heard, it is almost like extortion. Small businesses are told, "Okay, you are going to be fined for a nonserious violation." That is what we are talking about, $6,000. "But if you agree not to appeal it, if you pay today, it is only $2,000." How is that different from extortion?

Dr. MICHAELS. Well, you cannot be fined $6,000 for a nonserious violation. We have a very clear step system of penalties and the maximum penalty for a nonserious violation for the first time is quite a bit lower than that.

Mrs. HARTZLER. Well, still, thousands of dollars. If you are a family-owned business, that can have huge implications.

I guess another question, you talked about your whistleblowers. How many inspections are a result of the employee who has been fired? Do you keep track of that?

Dr. MICHAELS. I do not think we do. We keep track of health and safety inspections that come from complaints, and then we have a separate database when a worker has alleged that they have been retaliated against. And we have to match the two, you know, if we get both sets of complaints. But I do not know the answer to that.

Mrs. HARTZLER. I would encourage you to keep track of that because while there may be certainly legitimate cases, and we want to protect the worker in those cases, but then other times, would you concede that sometimes maybe retaliation does occur? Somebody got fired because of incompetence and something else and

then they are going to get back at them. We will call OSHA and boy, they will come in and get them.

Dr. MICHAELS. When we investigate allegations of retaliation, we often find that the retaliation that is being alleged did not occur and the retaliation or the firing occurred for other reasons. We do an independent investigation of those, and that is a common finding. On the other hand, we also find that workers have complained about safety and health reasons and then they are fired. And so we have to take the allegation very seriously, but I think we do a good job parsing that out.

Mrs. HARTZLER. Sure. Well, I just disagree with you, I guess, saying that you think that just doing away with a fine for something that is nonserious, that the company would not, you know, respond. I think you would have served your purpose in raising an awareness of a danger, but if it is something that could be fixed easily, the government should work with businesses, especially family-owned businesses instead of treating them like criminals and coming in with a clipboard and "we gotcha" type mentality. So I think OSHA and all government, we work for the people, and OSHA should have that attitude when they confront the businesses.

Dr. MICHAELS. And we do. You know, we have a category of de minimis violations, ones where we issue no fine. But if someone could be hurt, we feel that there is some penalty that should be associated. It could be less than $100, but there has to be something associated with that. But again, we stress for these family-owned firms, we can help you for free. Let us do that before we send an inspector and before a worker gets hurt.

Mrs. HARTZLER. Sure. Thank you, Mr. Chairman. I yield back.

Chairman WALBERG. I thank the gentlelady.

I now recognize the gentlelady from New York, Ms. Stefanik.

Ms. STEFANIK. Thank you. And I yield my time to Mr. Walberg.

Chairman WALBERG. I love this chairmanship. Great members. Thank you.

The injury and illness hospitalization regulation went into effect as I understand it January 1, 2015. When does the agency expect the online reporting component of the injury and illness regulation to be available to employers?

Dr. MICHAELS. I wish I could say. We are having some IT issues and it will not be available in the next few weeks I do not believe, but we are working hard on getting up there.

Chairman WALBERG. As long as the IT issues are not emails.

Dr. MICHAELS. That is correct. They are not.

Chairman WALBERG. Okay. Well, we hope they come out as soon as possible. I know industry is waiting.

Where in the final rule does OSHA explain how the agency would respond to the increased reports submitted under the injury and illness regulations?

Dr. MICHAELS. Well, we do not explain in the final rule but I have explained it publicly many times and I would be happy to tell you what my approach to this is, which I think is one which most employers will welcome. What I tell our staff, our inspectors, is that if you get a report of a worker being injured, of a hospitalization or an amputation, you do not have to inspect. Obviously, fatali-

ties, we absolutely have to inspect, and certain really serious injuries we do as well. But there is an opportunity cost. If we inspect this one workplace, then we cannot inspect the other workplace because we can only do the same number of inspections. So what we would like to do is use these notifications as teachable moments where if we can work with the employer on the telephone and get them into the consultation system and get them to respond to us and do an incident investigation where they understand the root causes of the injury and solve the problem themselves. We do not have to go out there, and therefore, there is no inspection and there is no fine. Right now, we are inspecting less than 40 percent of the reports, and I would like to drive that down even further because we think this can have an impact on workplaces without us actually ever going out to visit them. And that is particularly important in those places where our inspectors have to travel great distances to get to the workplaces. So I think we are making some progress. We have gotten reports where we have not inspected, but employers have reported to us that they have set up whole new systems as a result of this and we are pleased.

Chairman WALBERG. Did the August 2014 Injury and Illness Regulatory Proposal undergo OMB review?

Dr. MICHAELS. It will.

Chairman WALBERG. It has not yet?

Dr. MICHAELS. Which one is this called?

Chairman WALBERG. This is the Injury and Illness Regulatory Proposal, August 2014.

Dr. MICHAELS. I think the one you are referring to——

Chairman WALBERG. For under 250 employees.

Dr. MICHAELS. Yeah. That one will undergo OMB review.

Chairman WALBERG. But it has not yet?

Dr. MICHAELS. It has just been sent to OMB. We expect it will undergo it in the near future.

Chairman WALBERG. Okay. Let me move over to online training. Coming off of this desire to have workplaces with you on that and reduce the need for inspection if they submit to doing the right thing. OSHA's online outreach training program is the most broadly utilized online workplace safety training in the country. Since 2001, these courses have been provided by OSHA authorized entities. In 2008, OSHA established rigorous guidelines for the ongoing approval and regulation of these programs. The question is how is it that continued use of the 2008 guidelines is not the most practical way forward?

Dr. MICHAELS. I think what you are referring to is our move towards a new system where we select the providers. The reason for that is we had some significant quality issues with some of the providers, and under our old system——

Chairman WALBERG. You said quality issues?

Dr. MICHAELS. Yes. We would get complaints from people who had signed up. The systems were not working. The quality of the online teaching really was not very good. And overseeing that quality was important because people would get a card that said they were an OSHA certified 10-hour or 30-hour participant. And so we have moved toward a system where we really can have better qual-

ity control, and we have gone through some real bumps on the road, and so we have to——

Chairman WALBERG. Talk to us a little bit more about that. With these failed procurements that you have had—I think we would call it that.

Dr. MICHAELS. Yes.

Chairman WALBERG. How are you going to address that?

Dr. MICHAELS. Well, I believe, and I am not as up on this as others in the agency are, you know, essentially, most recently there has been a court decision that said that our description of what we wanted was fine except we had said that we would have access, essentially free access, copyright access to the materials developed by these contractors, by the people providing this online service. Everything else we asked for was fine. That, though, requires us to re-offer, to send out the offering again to get bids again. The rest does not have to change, but in the next procurement here, because it was a failed procurement, the next one has to say that we would not have the ability to essentially have free access and use to the educational materials developed by the contractor.

So we will re-offer it, and then we will then go through the same process where applicants have to submit applications, and we will choose the applicants to fit each category and move forward.

Chairman WALBERG. Okay. Well, I wish you well on that because, again, it is a popular approach when it works.

My time is expired.

While we await the Ranking Member—I am glad she has arrived and everything is okay. I would like to recognize Representative Mike Rogers, who is not a subcommittee member but has some great interest in OSHA.

Mr. Rogers, do you have any questions you would like—or comments you would like to make?

Mr. ROGERS. I would be happy to if I got a chance.

Chairman WALBERG. We recognize you.

Mr. ROGERS. Well, thank you.

One of my concerns has been when OSHA comes in and does a plant inspection, just a regular annual or semi-annual plant inspection, there have been no accidents or injuries, and during an inspection they find that some machine or part of the plant is out of compliance with your rules or regulations for safety. They are told to bring it back into compliance and you will come back in to inspect it and confirm that has happened. But then, my experience, the company is not told exactly what they have to do to come back into compliance. My plants have told me that they are told, "Get a consultant. That is not my job to tell you how to fix it. I can just tell you, you are out of compliance." They then hire a consultant, bring them in, fix the problem, call OSHA to come back in to verify that it has been corrected. OSHA says, "It has been corrected. Here is your $50,000 fine." Why in the world would you not tell somebody what they have to do to come back into compliance? And then if nobody has been injured, they fix it within a reasonable amount of time, why would you fine them? And that has happened in two different companies in my district.

Dr. MICHAELS. This in some ways is the same question that Representative Hartzler asked. There are a couple different issues.

First, one thing I discussed earlier, what we really would like small employers to do is to bring in a free consultant, which we will help them get. We fund the free consultants, but they are separate from OSHA and they are independent. When an employer asks for a free consultant, we do not inspect during that period, and they will make sure that they are in compliance. We tend not to tell, or we do not tell employers exactly what they must do to fix it because we actually hear from employers all the time, "Just, you know, do not be prescriptive. Your standards are there. Let us figure out how to get there." And, you know, there are some standards which are very clear what they have to—if a lockout tag, they have to have the lock. It has to be tagged out. It is all pretty straightforward. But there are other ones that say you have to have a system to address the problem, and they could come up with that system in ways that will address the problem. We have guidance that will say, "If you do these things it will be effective." But we like to give employers a lot of leeway.

What we do not do though is give them back the money or say there is no fine because if we say the first time there is a problem and you only fix it after we found it, what is the incentive for employers to abate hazards before we get there? And that is really the issue. If every employer thought, "Well, I am not going to get fined until OSHA gets here the second time," who is going to fix things?

Mr. ROGERS. How are they going to know they are out of compliance? There is one particular plant that just stands out as egregious. The machine that OSHA came in and found to be out of compliance they had had for 30 years. Nobody had ever been injured on it. They did not know it was out of compliance. They had to paint a stripe on the floor and that brought them back into compliance. A yellow stripe that came out three feet, and they got a $50,000 fine. A $50,000 fine is obscene.

Dr. MICHAELS. A $50,000 fine for no yellow line?

Mr. ROGERS. Correct.

Dr. MICHAELS. Again, I would be surprised. I mean, usually——

Mr. ROGERS. I was surprised, too. That is why I am here.

Dr. MICHAELS. I would love to see—if you do not mind sharing that with me, we will take a look at it.

Mr. ROGERS. I would be happy to. I just find that obscene. And it is different if somebody had been injured and you would be right with that logic, but if somebody is not injured and you just find it during an inspection, give them a reasonable amount of time to fix it. If they fix it, free pass. I just do not understand why you feel like you have got to penalize somebody for trying to do right.

Dr. MICHAELS. Well, you know, it is interesting. We actually do not penalize employers because a worker has been hurt or killed or injured. We only penalize them for the violation. In fact, we have had fatalities where there is no citation issued because no violation occurred. On the other hand, if the violation could have led to a worker being injured, whether or not they were injured, we feel we should issue the citation because it is a warning to that employer and to other employers that they cannot let those violations occur because maybe a worker has not been hurt by that machine, but another machine like it probably has hurt many workers, and we know that.

Mr. ROGERS. And if you had any information that the employer had knowledge they were out of compliance, you should fine them. But if you have no knowledge that they had any reason to believe they were out of compliance, you should not fine them. And while I am not on this Committee, I intend to do everything in my power to fix it that way before I leave Congress.

Thank you. I yield back.

Chairman WALBERG. I thank the gentleman.

And now I recognize the Ranking Member, Ms. Wilson, for her opening statement and questions. It is your floor.

Ms. WILSON. One question. I think I will have time.

Thank you so much, Chairman Walberg, for allowing me to make this opening statement, and I would like to welcome Dr. Michaels and thank him for testifying this morning. It has been four years since you last appeared before this Committee, so I thank you for coming back again and giving us the progress at the Occupational Safety and Health Administration.

It is well known that your agency faces several obstacles to effectively enforce the rules that protect and promote worker safety. One of these major obstacles is budget constraints. OSHA only has enough inspectors to inspect each workplace in its jurisdiction once every 140 years.

In my home state of Florida, OSHA has only enough inspectors to inspect each jobsite once every 256 years. I find it inexcusable that given these current conditions, a House budget bill would cut $32 million from OSHA's already sparse enforcement budget. This 14 percent cut would leave OSHA even less able to enforce standards that keep workers safe. Given its limited resources, OSHA must be able to use additional methods to monitor the health and safety conditions of our workplace.

As a member of the Subcommittee on Workforce Protections, we are charged with examining the weaknesses in the *OSH Act* and proposing reforms to strengthen OSHA's ability to protect American workers. Firstly, we must ensure that the eight million state and local government workers in 24 states with no OSHA protections gain coverage. These workers, including the 894,000 workers in Florida, deserve OSHA protections, especially where the states are not stepping up to protect workers.

The truth is, most employers are deeply committed to worker safety, but for those few employers who callously disregard the well-being of their workers, we must ensure that OSHA has the tools to act. This means raising OSHA's civil monetary policies which have not been adjusted for inflation since 1990. Penalties must serve as a strong deterrent, sending a clear message that if you do not value your workers you will surely pay.

In preparing for the hearing, I was deeply saddened to hear Carlos Centeno's story. Carlos was a temporary worker at a Chicago-area factory. He was asked to clean a 500-gallon chemical tank with no safety gear other than latex gloves and rubber boots. An open hatch erupted, showering Carlos with a 185 degree solution of water and citric acid, burning over 80 percent of his body. Even though Carlos's skin was peeling, his employer refused to call 911. It took more than an hour and 40 minutes for Carlos to arrive at

a burn unit. Sadly, he died three weeks later. As Carlos's son put it, the employer failed to think of him as a human being.

When we hear egregious stories like this, it is shocking to know that for employers who willfully violate a health and safety requirement that causes a worker's death or fail to act to keep him from dying, the maximum criminal sanction under *OSH Act* is only a misdemeanor. Since 1970, there have been 390,000 workplace fatalities but only 88 prosecutions under the *OSH Act*.

Mr. Chairman, reforms to address these and other weaknesses are included in the *Protecting America's Workers Act*, H.R. 2090. I would welcome the opportunity to work with you on a bipartisan basis to identify the highest priorities and begin work to strengthen and improve the *OSH Act.*

I want to thank Dr. Michaels for being here today, and I look forward to hearing how we, as the Subcommittee on Workforce Protections, can help OSHA in its efforts to promote and protect the safe and healthy workplaces all Americans deserve.

[The statement of Ms. Wilson follows:]

Opening Statement

Ranking Member Frederica S. Wilson
Workforce Protections Subcommittee Hearing
"Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration."
Thursday, October 7, 2015

Mr. Chairman, I want to thank you for calling today's hearing and for inviting Assistant Secretary Michaels to testify. Dr. Michaels, it has been four years since you last appeared before this Committee, so I am eager to hear about the progress at the Occupational Safety and Health Administration.

Dr. Michaels, it is well known that your agency faces several obstacles to effectively enforcing the rules that protect and promote worker safety.

One of these major obstacles is budget constraints. OSHA only has enough inspectors to inspect each workplace in its jurisdiction once every 140 years. In my home state of Florida, OSHA only has enough inspectors to inspect each job site once every 256 years.

I find it inexcusable that, given these current conditions, a House budget bill would cut $32 million from OSHA's already sparse enforcement budget. This 14 percent cut would leave OSHA even less able to enforce standards that keep workers safe.

Given its limited resources, OSHA must be able to use additional methods to monitor the health and safety conditions of our workplaces.

I applaud OSHA's newly finalized severe injury reporting rule. This rule requires employers to report certain work-related incidents within 24 hours, allowing OSHA to assess whether an inspection is needed to help prevent future accidents.

OSHA also relies on front-line workers to serve as the agency's eyes and ears and to report unsafe workplace conditions. Despite its best efforts, however, 72% of the time, OSHA is unable to investigate reports of retaliation against whistleblowers within statutory time limits. Congress has tasked OSHA with investigating whistleblower complaints under 22 additional statutes, yet has failed to provide the additional resources needed to investigate. I am troubled that a lack of funding is eroding OSHA's ability to fight retaliation against the workers who speak out against unsafe working conditions.

As members of the Subcommittee on Workforce Protections, we are charged with examining the weaknesses in the OSHA Act and proposing reforms that strengthen OSHA's ability to protect American workers.

Firstly, we must ensure that the 8 million state and local government workers in 24 states with no OSHA protections gain coverage.

These workers, including the 894,000 workers in Florida, deserve OSHA protections, especially where the states are not stepping up to protect workers. For example, in 2000, the state of Florida abolished the Florida Division of Safety and all safety rules and regulations. Instead, Governor Bush signed an executive order that made state agency compliance with OSHA requirements "voluntarily." Can we seriously argue that protecting the safety and health of our workforce should be "voluntary?"

The truth is, most employers are deeply committed to worker safety. But for those few employers who callously disregard the well-being of their workers, we must ensure OSHA has the tools to act.

This means raising OSHA's civil monetary penalties, which have not been adjusted for inflation since 1990. Penalties must serve as a strong deterrent, sending the clear message that, if you do not value your workers, you will surely pay.

In preparing for the hearing, I was deeply saddened to hear Carlos Centeno's story. Carlos was a temporary worker at a Chicago-area factory asked to clean a 500-gallon chemical tank with no safety gear other than latex gloves and rubber boots. An open hatch erupted, showering Carlos with a 185-degree solution of water and citric acid, burning over 80 percent of his body. Even though Carlos's skin was peeling, his employer *refused* to call 911. It took more than an hour and 40 minutes for Carlos to arrive at a burn unit. Sadly, he died three weeks later. As Carlos's son put it, the employer failed to "think of him as a human being."

When we hear egregious stories like this, it is shocking to know that, for employers who willfully violate a health and safety requirement that causes a workers' death or fail to act to keep him from dying, the maximum criminal sanction under the OSHA Act is only a misdemeanor. Since 1970, there have been 390,000 workplace fatalities, but only 88 prosecutions under the OHSA Act.

Mr. Chairman, reforms to address these and other weaknesses are included in the Protecting America's Workers Act, H.R. 2090. I would welcome the opportunity to work with you on a bipartisan basis to identify our highest priorities and begin work to strengthen and improve the OSHA Act.

In closing, we know that most employers recognize and revere their responsibility to protect their workers. But when that is not the case, OSHA provides education, compliance assistance, and where necessary, enforcement.

I want to thank Dr. Michaels for being here today, and I look forward to hearing how we, as the Subcommittee on Workforce Protections, can help OSHA in its efforts to promote and protect the safe and healthy workplaces all Americans deserve.

Ms. WILSON. And I want to ask this one little question. What is the impact of this lack of coverage for this group of workers? What would you recommend Congress do to address this problem of incomplete coverage? I spoke about Carlos Centeno's story and how his employer refused to call 911. Does OSHA support strengthening criminal sanctions in the *OSH Act*?

Dr. MICHAELS. We do. We know that the threat of criminal sanctions changes behavior, and in so many other areas we see the effectiveness of this. I mean, right now there is a big discussion in the food safety area. The owner of a company that sold contaminated peanuts that resulted in dozens of deaths and hundreds of people being made sick by the peanuts just has gotten I think 28 years in jail. And that sends a message out to other food manufacturers that they cannot get away with this. But there is no criminal penalty of any importance associated with the *OSH Act*. If a worker is killed and it is associated with a willful violation—in other words, the employer knew about this hazard and willfully left it there—the maximum penalty is a misdemeanor, six months, and it is aimed at the corporation. People do not go to jail for that. I think it would make a big difference if—and we are talking about the tiny number of employers who really treat their workers this way, but we need to send them a message because these workers—that is where workers are being killed.

Ms. WILSON. Thank you. I yield back. I have to vote.

Chairman WALBERG. I thank the gentlelady. We have votes coming, so we cannot belabor this.

I want to say thank you, Dr. Michaels, for being here. Thank you for your work. I think this hearing, the value of this as we move forward and considering some of the things that are brought up today is to find a mechanism by which there can be a true partnership between business and industry and the government, specifically the regulator with OSHA. It is an important function. We hate hearing stories like that. We also hate hearing stories that were brought up by my colleague, Mr. Rogers, where maybe six months in jail would have been better than the $50,000 fine for painting a yellow strip. It just did not make sense. I think if we can promote the idea of that partnership that comes together with best practices from the industry and a working relationship from OSHA that says we are willing to listen to those and learn from those, in turn, that partnership might foster greater growth in our safety in the workplace. I do not think that any of us here at this dais want to stand in the way of the safety of the worker. And we do not want to stand in the way of the regulator that is working to the best interest, but we also want to be on the team with the employer who is not like that particular employer and is caring about their employees as well.

Thanks again, and with no further questions before the Committee, it is adjourned.

[Whereupon, at 1:56 p.m., the subcommittee was adjourned.]

[Additional submissions by Chairman Walberg follow:]

U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Workforce Protections
2181 Rayburn House Office Building
Washington, D.C. 20515

October 7, 2015 hearing on:

"Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration"

Commitment to Safety by America's Oil and Natural Gas Industry, submitted by the American Petroleum Institute on October 21, 2015

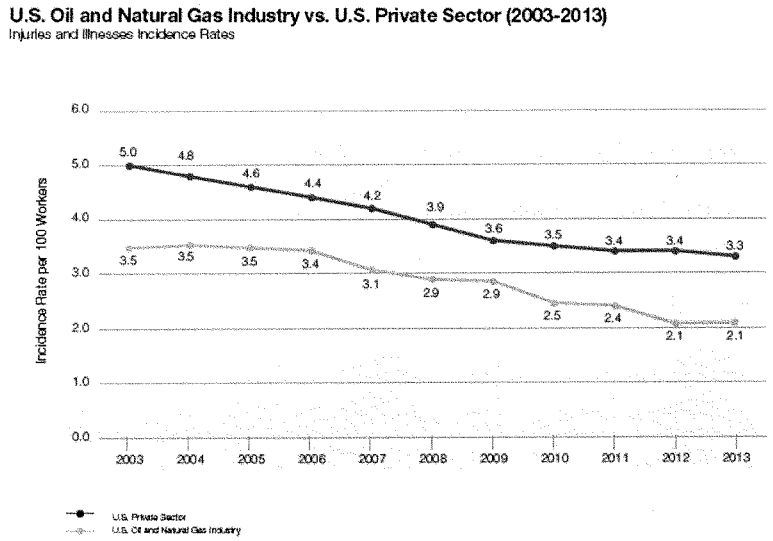
The American Petroleum Institute respectfully submits this statement for the record in response to the recently conducted hearing entitled "Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration." Safety is a core value for America's oil and natural gas industry and our commitment to safety is continuously demonstrated by the proactive efforts by the industry to achieve a goal of zero incidents, as well as by the data published by the government on safety incidents.

The American Petroleum Institute (API) is a national trade association representing over 625 member companies who are leaders of a technology-driven industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies and contractors that support all segments of the industry. API members carry out operations for safe and environmentally responsible exploration and production of natural gas, crude oil, and associated liquids on lands administered by state and federal authorities, including production via the use of hydraulic fracturing and horizontal drilling in unconventional plays. The U.S. oil and natural gas industry supports 9.8 million domestic jobs and comprises more than 8% of the U.S. economy and, since 2000, has invested nearly $2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. The oil and natural gas industry works tirelessly to improve safety in the workplace through ongoing research, standards development, training, information transfer, and advocacy.

Our efforts are paying off, despite workplace environments that often involve transportation, heavy equipment, hazardous materials, high temperatures, and high pressure equipment.

DATA:

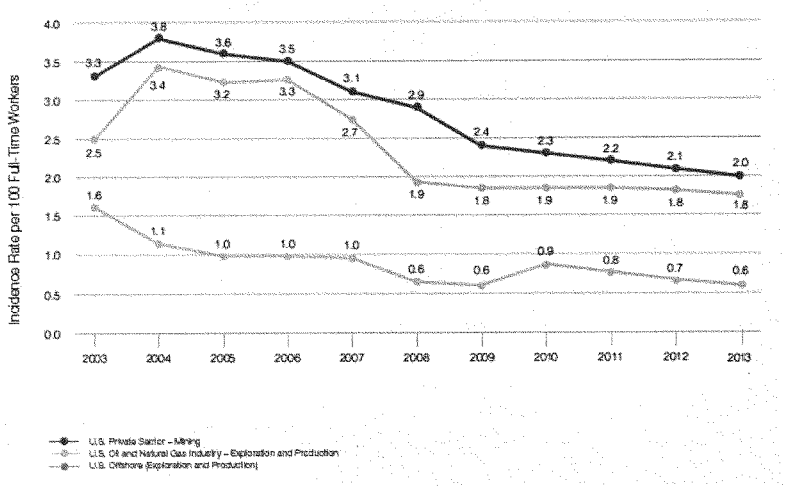
According to API's *Workplace Injuries and Illnesses Safety (WIIS) Report, 2003-2013*[1], in 2013, the rate of job-related nonfatal injuries and illnesses for the Oil and Natural Gas industry was 2.1 per 100 full-time workers, compared to a rate of 3.3 for the entire U.S. Private sector:



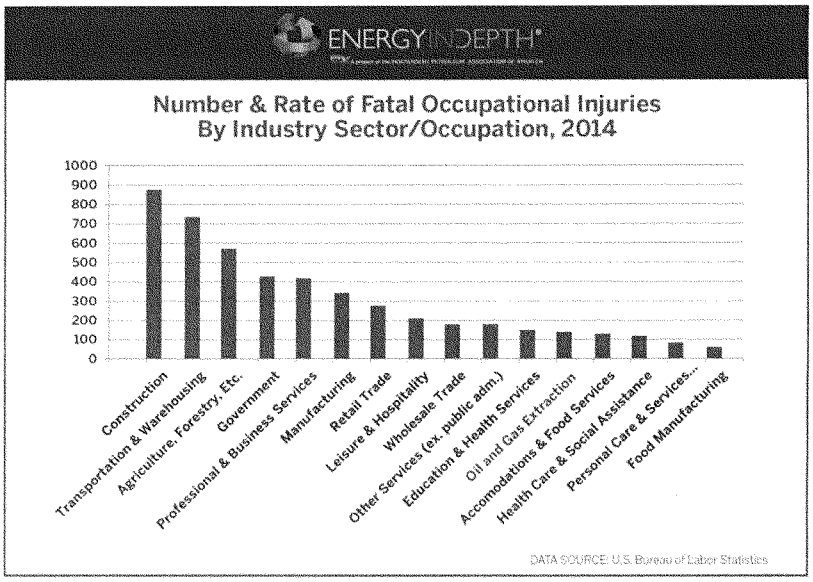
[1] A copy of this report is attached for the record.

In 2013, the rate of job-related nonfatal injuries and illnesses among U.S. Oil and Natural Gas exploration and production workers was 1.8 per 100 full-time workers compared with 2.0 for the U.S. Mining sector. The U.S. Offshore industry, a segment of the U.S. Oil and Natural Gas Exploration and Production sector had a rate of 0.6 per 100 full-time workers:

Exploration and Production vs. Mining (2003-2013)
Injuries and Illnesses Incidence Rates

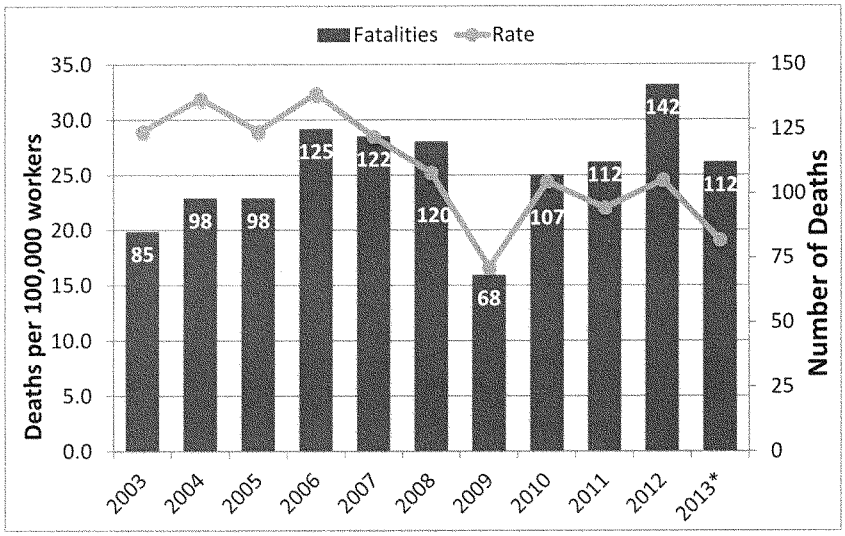


Energy-In-Depth recently published information that also demonstrates the comparative fatality rate of the upstream (exploration and production) oil and natural gas industry and other industries[2]:



[2] See http://energyindepth.org/national/oil-and-gas-worker-safety-what-you-need-to-know/

The National Institute of Occupational Safety and Health has also published similar information that demonstrates positive trends within the upstream oil and gas industry. The following graph shows the number and rate of fatal work injuries in the U.S. oil and natural gas extraction industry from 2001-2013. Fatality counts are from the BLS Census of Fatal Occupational Injuries. Worker estimates are from the BLS Quarterly Census of Employment and Wages (2013). This includes North American Industry Classification System (NAICS) codes 211, 213111, 213112. The overall rate has been declining despite a doubling of the workforce and a significant increase in the number of active drilling rigs over the time period in the graph:



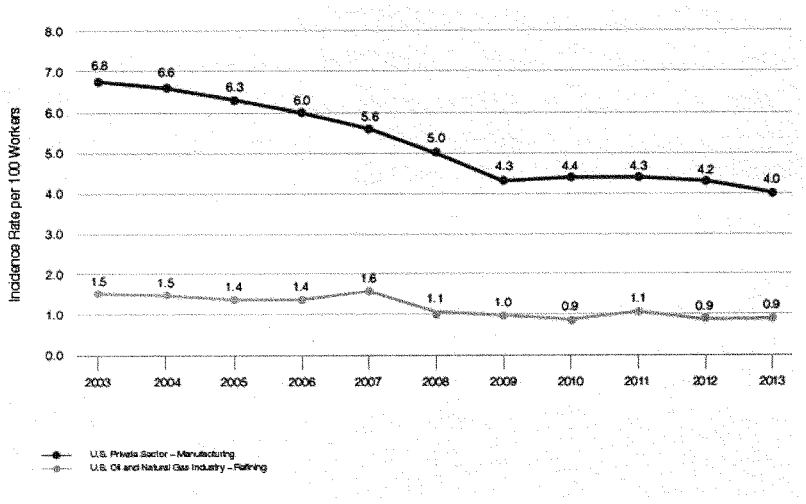
Number and Rate of Fatal Work Injuries
U.S. Oil & Gas Extraction Industry, 2003-2013[3]

3 Kyla Retzer, National Institutes for Occupational Safety and Health, and Scott Richardson, Bureau of Labor and Statistics, "Trends in Occupational Fatalities in Oil and Gas Extraction," Oil and Gas Safety and Health Conference 2014, OSHA Exploration and Production. *Preliminary data.

When it comes to worker safety, the refining industry injury rate has been steadily decreasing – including a decline of 36% from 2005 to 2013 for refinery job-related injuries and illnesses, including process safety accidents. In fact, refinery employees are four times less likely to be injured on the job than employees in other manufacturing sectors, and job-related injury and illness rates at refineries have declined 42 percent since 2003, according to Bureau of Labor Statistics data.

According to API's *Workplace Injuries and Illnesses Safety (WIIS) Report, 2003-2013,* in 2013, the rate of job-related nonfatal injuries and illnesses for petroleum refinery workers was 0.9 per 100 full-time workers, compared to a rate of 4.0 for the U.S. Manufacturing sector:

Petroleum Refining vs. Manufacturing (2003-2013)
Injuries and Illnesses Incidence Rates



EXPLORATION AND PRODUCTION:

1. API collects safety data to provide a consistent, reliable and accurate industry metric for measuring and tracking safety trends and to promote continuous improvement within the industry. Oil and gas companies use these reports to track their progress and identify areas where safety can be improved.

- The Occupational Injury and Illness report is a benchmarking survey available to participants across the industry, regardless of membership in API.
- The Workplace Injuries and Illnesses Safety report compares up-to-date U.S. Bureau of Labor Statistics (BLS) for the oil and gas sectors and other industries.

2. API's Global Industry Services (GIS) division offers industry-leading training and certification programs to provide employees and contractors with the skills and knowledge they need to stay safe in the workplace. These programs include everything from tool selection and hot work to trenching and driving safety.

    - All of API's WorkSafe programs include a detailed curriculum, training modules, and exams.
    - The E&P Onshore Operations Safety Program provides training on key safety issues found at onshore job sites and includes an examination covering the API Onshore Operations Safety Handbook.

3. Since 1924, API has been the leader in developing industry standards that promote reliability and safety in the workplace. The API Standards Program is accredited by the American National Standards Institute (ANSI), the same body that accredits programs at several national laboratories, and our standards are developed by the best and brightest technical experts from government, academia, and industry.

    - API has over 650 active standards and technical publications. Over 100 of them have been incorporated into U.S. regulations, and they are the most widely cited standards by international regulators.
    - 13 API upstream (exploration and production) standards are incorporated into OSHA regulations for workplace safety.
    - API has published more than 200 standards[4] that apply to onshore oil and gas operations, including the following:
        - RP 49 - Drilling and Well Service Operations Involving Hydrogen Sulfide
        - RP 54 - Occupational Safety for Rotary Drilling Operations and Well Servicing Operations
        - RP 55 - Gas Processing Plant Operations Where Hydrogen Sulfide is Present
        - RP 67 - Explosives Used in Oil and Gas Well Operations
        - RP 68 - Oil and Well Servicing and Workover Operations Involving Hydrogen Sulfide
        - RP 74 - Safe Working Conditions for Personnel Engaged in Onshore Oil and Gas Production

[4] Please find attached a graphic that includes many of the safety documents that apply to onshore oil and natural gas operations.

- BULL 75L - Safety and Environmental Management System (SEMS) for Onshore Operations
- RP 76 - Implementation of a Contractor Safety Program and Improve the Overall Safety Performance
- RP 98 - Oil Spill Responder Personal Protective Equipment (PPE) Control Measures
- RP 99 – Flash Fire Risk Assessment for the Upstream Oil and Gas Industry

4. API experts collaborate with key stakeholders and OSHA to improve workplace safety. We work closely with members of the American Industrial Hygiene Association ("AIHA"), the American Conference of Governmental Industrial Hygienists ("ACGIH"), the Society of Petroleum Engineers, the American Society of Safety Engineers and the American Society for Testing and Materials International.

   - API and our member companies are active participants in the National Service, Transmission, Explorations and Production Safety ("nSTEPS") Network, founded in 2003 in South Texas by OSHA and industry to reduce injuries and fatalities. We meet regularly to share information, identify best practices, and develop strategies to improve workplace safety. The nSteps initiative now encompasses 22 regional networks.
   - API is a proud sponsor of OSHA's Oil and Gas Safety Conference, which seeks to improve safety performance through cooperation, best practices, knowledge sharing, and relationship building. The most recent conference was in Houston on December 2-3, 2014, and then next will be in November 29-30, 2016.
   - API members employ industrial hygiene and safety professionals to prepare site-specific Job Safety Assessments (JSAs) well before work begins. JSAs outline the tasks to be performed, as well as important safety measures (known as controls) for potential risks.
   - API serves as advisory member of the National STEPS Network and on the NIOSH National Occupational Research Agenda (NORA) Council for Oil and Gas Extraction, supporting the work of both organizations.
   - API's Director of Standards recently served as a delegate for the 8th Joint US/EU Conference on Safety and Health.

REFINING:

API and the U.S. refining companies have worked and continue to work with many stakeholders such as OSHA, the U.S. Chemical Safety Board, EPA, AFPM and others to improve refinery safety.

API has developed and maintains more than 200 refining safe operating standards and safe work practices. API and its member companies are committed to ensuring that all industry standards contain the latest science and technologies; that they recognize industry

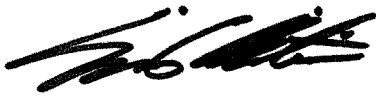
best practices and incorporate lessons-learned from past incidents. Over the least 10 years, API has published over 180 new editions of its refining safety standards and recommended practices – new versions that reflect the latest science, technologies and enhanced practices & procedures.

The industry has invested, and continues to invest, significant resources at both the individual company and industry levels to improve safety performance. Examples of these investments include:

- Developing new and updating existing refinery safety standards
- Sponsoring efforts to advance and share new/improved technologies, practices and procedures
- Implementing leading and lagging metrics programs to enhance the process safety performance and reduce risk
- Conducting industry technical forums and providing other mechanisms to share lessons-learned from incidents and near misses
- Evaluating industry safety data to identify performance improvement opportunities
- Offering a service that uses qualified, highly experienced 3rd party assessors to evaluate and provide feedback on plant process safety systems

Thank you for the opportunity to submit additional information for the record on this critical topic. API is available at your convenience to further discuss our efforts to continuously improve and enhance safe operations.

Best regards,



Erik G. Milito
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RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

JAMIE CLOVER ADAMS
DIRECTOR

October 8, 2015

The Honorable Tim Walberg
United States Representative
2436 Rayburn House Office Building
Washington DC 20515

RE: July 22, 2015, OSHA decision redefining the "Retail" exemption

Dear Congressman Walberg:

In light of your Subcommittee on Workforce Protections meeting yesterday, I wanted to share my concerns about the process used by OSHA in July to re-interpret the definition of "retail" under the Process Safety Management (PSM) rule without going through a rulemaking process or soliciting meaningful input from the public and the regulated community.

This re-interpretation expands the requirements placed on anhydrous ammonia manufacturing plants to small and medium –sized retail facilities that sell this agricultural fertilizer to farmers. National industry feedback estimates a cost of $18,000 - $30,000 per facility with an estimated one hundred man hours to develop each program.

My concern goes beyond OSHA's immediate PSM rule decision. As a regulator myself, I understand that if I want to change a regulation that affects Michigan's food and agriculture sector, I must go through the rulemaking process. I also know that getting input and working through the issues with all stakeholders is an invaluable step to ensure we get rulemaking right and so the regulated community understands the problem being addressed and is part of crafting a commonsense solution.

It is my understanding that these changes to the PSM rule were prompted by Executive Order 13650 which mandated the modernization of policies and regulations, most specifically the OSHA PSM rule. However, the Executive Order also mandates meaningful stakeholder feedback and development of best practices. It is apparent this did not happen.

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October 8, 2015
Page Two
Congressman Walberg

The use of anhydrous ammonia is on the decline in Michigan and this OSHA re-interpretation will likely further reduce its use in Michigan agriculture because of the burdens placed on retailers. However, I am just as concerned about what will be the next OSHA rule that is "re-interpreted" that greatly impacts Michigan's food and agriculture sector that will also be implemented without going through the necessary rulemaking process and include stakeholder and public input.

I respectfully request that you examine OSHA's actions in this case during the committee hearing and require them to put these changes through the rulemaking process to transparently gather public and stakeholder input and justify any change made to the PSM rule.

Thank you for your consideration.

Regards,

Jamie Clover Adams

Jamie Clover Adams
Director

October 7, 2014

The Honorable Tim Walberg
Chairman, Workforce Protections Subcommittee
House Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

NRCA wishes to commend you for holding a hearing of the Workforce Protections Subcommittee on the enforcement and regulatory activities of the Occupational Safety and Health Administration (OSHA). NRCA has been a leader on the critical need to advance safety within the roofing industry for many years, and we appreciate the opportunity share our views on OSHA policy at this time.

Established in 1886, NRCA is one of the nation's oldest trade associations and the voice of professional roofing contractors worldwide. NRCA has approximately 3,500 members in all 50 states who are typically small, privately held companies, with the average member employing 45 people and attaining sales of about $4.5 million per year.

NRCA wishes to comment on the preliminary 2014 occupational fatality statistics that were recently released by the U.S. Bureau of Labor Statistics and the implications for OSHA policy. The BLS fatality totals are discouraging to say the least. Deaths from falls in the roofing industry and in residential building construction have increased steadily from 2011:

Roofing industry deaths from falls	Residential building construction deaths from falls
2014.....69	2014.....53
2013.....66	2013.....44
2012.....65	2012.....49
2011.....61	2011.....27

Given the increase in the BLS fatality numbers with respect to roofing and residential construction, we are pleased that members of Congress are reviewing the effectiveness of OSHA policies at this time.

In 2010, OSHA announced it was rescinding a directive that had been in place for over a decade that allowed alternative fall protection options for certain residential construction work along with conventional systems. The enforcement date under that directive was June 16, 2011. OSHA's stated purpose for rescission was that construction fatalities continued to rise. Only **conventional** fall protection systems are currently allowed (guardrails, safety nets and personal fall arrest systems or harnesses) under the new rule unless infeasible. Despite a history of over ten years of effective

NATIONAL ROOFING CONTRACTORS ASSOCIATION

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alternative fall protection options, OSHA refused to acknowledge conditions where conventional fall protection does not work. At a meeting of the Advisory Committee on Construction Safety and Health, OSHA's representative stated "you can't say across the board, there is (sic) these situations that it (conventional fall protection) is infeasible."

In fact, state plan states that are authorized under the Occupational Safety and Health (OSH) Act of 1970 (P.L. 91-596) to develop rules and administer their own occupational safety and health agencies often allow for alternative methods of fall protection in a number of construction operations. Importantly, those state plan states have significantly better fatality rates from falls during construction operations than states operating under the federal rules. Specifically, Arizona, California, Oregon and Washington have fatality incidence rates well below those of states operating under federal OSHA rules and lower also than state plan states that enforce the federal rules. (Arizona recently submitted to enforcing the federal rules rather than their alternative fall protection rules previously in effect due to pressure from OSHA to take over the Arizona state plan.) OSHA is moving to force all state plan states to have their construction OSH regulations mirror those of the federal government. This is being initiated under the guise of language in the OSH Act that says that state rules must be "at least as effective" as the federal rules. OSHA argues that phrase means they must be exactly the same. However, the agency never quotes the exact language from the OSH Act in this regard with respect to state plan rules: "which standards (and the enforcement of which standards) are or will be *at least as effective in providing safe and healthful employment and places of employment* as the standards promulgated under section 6…" (Italics added). The congressional intent of the OSH Act was to provide for safe places to work through regulatory means that achieved that result—not to achieve regulatory symmetry as its only empty goal.

Some examples of construction fatality rates in state plan states versus federal states illustrate that state plan states that allow alternative fall protection options have significantly lower incidences of fatalities. In 2014, Oregon, a state plan state with unique fall protection requirements, had a construction workforce of about 81,000 workers. There were 6 deaths in the construction industry that year in the state and Oregon reported no fatalities from falls, slips, or trips. Alabama is a state under federal jurisdiction and conventional fall protection rules with a construction workforce also of about 81,000. Alabama had 9 deaths in construction in 2014, 5 of which were the result of falls, slips, or trips. California is a state plan state with a construction workforce 30,000 greater than Texas (a federal state) at about 700,000. California had 47 construction fatalities in 2014 compared to 105 in Texas. Of the construction deaths related to falls, slips, or trips, California had 21 compared to 29 in Texas.

State-plan administrators have long complained about OSHA's focus on inspection numbers and other such data while ignoring state fatality, injury and illness figures that are historically significantly better than federal states. Recently, during OSHA's audit process of states that operate under its state-plan authorization, OSHA was critical of many of the metrics that state plan administrators had failed to meet for the previous year for number of completed jobsite inspections and other administrative goals. For example, Washington (a state plan state) proposed to have 4,099 safety inspections in 2014 but only had 3,961—a variance of 3.4%. This was considered a major failure by federal OSHA auditors. However, ignored by federal officials was the fact that in 2014, Washington had 7 construction fatalities with a construction workforce of about 180,000; Illinois (a federal state) had 32 deaths in construction—over 4 times as many with a little over a 10 percent greater workforce

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of 200,000. These state plan states appear to have achieved "safe and healthful employment and places of employment" as the OSH Act intended without identical regulatory language.

Now, after having forced Arizona to rescind its construction regulations under its state plan, OSHA has turned its sights on California, Oregon and Washington to bring their rules into lock step with the federal rules. This, despite much better injury, fatality and illness rates that each state has delivered that far surpass any comparable federal state. The flaw in OSHA's management of the occupational safety and health environment is its failure to take a comprehensive approach that goes beyond specific regulatory requirements to incorporate a variety of hazard control options for complex environments found in the construction industry, particularly fall protection system options, state outreach resources and efforts, and successful local initiatives and practices that produce better injury and fatality rates. Until OSHA broadens its perspective and embraces the expertise of others in the occupational health and safety arena, it will continue to be a part of the problem rather than a solution to workplace hazards.

NRCA appreciates the opportunity to provide the views of professional roofing contractors throughout the U.S. to the Subcommittee with respect to OSHA policies and enforcement. We look forward to continuing to work with Congress and agency officials to promote federal and state policies that result in the safest possible working environment within the roofing industry.

Sincerely,

William A. Good
Chief Executive Officer
National Roofing Contractors Association

NATIONAL ROOFING CONTRACTORS ASSOCIATION

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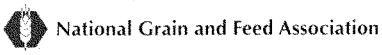


October 7, 2015

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frederica Wilson
Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

RE: October 7, 2015, hearing titled "Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration"

Dear Chairman Walberg and Ranking Member Wilson:

The undersigned agriculture organizations write to express our concerns with recent changes made by the Occupational Safety and Health Administration (OSHA) to the Process Safety Management (PSM) program. In particular, we are very concerned with the July 22, 2015, memorandum revoking a longstanding definition of what constitutes a retail facility ("retail exclusion") under the PSM program. This change significantly expands the scope, complexity and costs for agricultural retail facilities that store or handle anhydrous ammonia, a critical nitrogen fertilizer. Any disruption in the supply of anhydrous ammonia at agricultural retail facilities will directly impact farmers' operations as well as their ability to ensure adequate fertilization of their crops.

We believe that the failure of OSHA to properly consider the full impact on the agriculture sector dictates that this memorandum be withdrawn and subject to a formal notice and comment rulemaking.

On July 22, 2015, OSHA issued an enforcement directive, via memorandum, revoking a 23 year-old definition of what constitutes a retail facility under the PSM program. Since 1992, OSHA's policy has been that an establishment was exempt from PSM coverage if it "derived more than 50 percent of its income from direct sales of highly hazardous chemicals to the end user." The end user in this case is the American farmer. The new policy states "only facilities, or the portions of facilities, engaged in retail trade as defined by the current and any future updates to sectors 44 and 45 of the NAICS Manual may be afforded the retail exemption at 29 CFR 1910.119(a)(2)(i)." Therefore, unless a facility is in NAICS 44 or 45 and holds threshold quantities (TQ) of highly hazardous chemicals (anhydrous ammonia -10,000 lbs, aqua ammonia – 15,000 lbs), it is subject to PSM. OSHA has provided agricultural retail facilities 6 months to come into compliance.

There are approximately 6,500 agricultural retail facilities in the United States. More than 3,800 of these facilities manage anhydrous ammonia, an essential crop nutrient, and are now subject to PSM under the new rules. Aside from an informal and very broad Request for Information (RFI) issued as part of Executive Order 13650 (EO), the agricultural sector was not formally consulted in advance of the policy change. Additionally, OSHA failed to notify the agricultural industry once the rule change went into effect.

This new interpretation will cost agricultural retail facilities tens of millions of dollars to implement. Taken together, the costs imposed by the changes will easily exceed the $100,000,000 threshold used by the OMB when determining whether a regulatory action is "major," thereby requiring review.

These significant costs come at a time of very low commodity prices, which affect both agricultural retailers and their farm customers' business and bottom line. Retailers are committed to compliance with all federal laws, and not only want to do the right thing but also want to do it in the right way. As such many will need several years to budget for facility upgrades of this magnitude.

Additionally, the six month compliance period coincides with the busy harvest season and ammonia application season. Many agricultural retailers also operate grain handling facilities and will have all available staff completely occupied with either harvest or grain handling operations. Harvest is quickly followed by the on-farm ammonia application season, when it is also nearly impossible to make upgrades. Under normal circumstances, upgrades to retailers' ammonia systems are scheduled well in advance to ensure they do not interrupt important business operations.

Agricultural retail facilities that store or handle more than 10,000 lbs of anhydrous ammonia are already highly regulated under many federal and state programs. The following is a list of current federal regulations that these facilities must comply with.

Occupational Safety and Health Administration (OSHA)
General Duty Clause
Standard 1910.111: "Storage and Handling of Anhydrous Ammonia"
Standard 1910.1000: "Air Contaminants"

U.S. Environmental Protection Agency (EPA)
Emergency Planning and Community Right-to-Know Act (EPCRA)
Clean Air Act, Section 112(r)(7) Risk Management Plans (RMPs) – Program 2 (myRMP)

U.S. Department of Homeland Security (DHS)
Chemical Facility Anti-Terrorism Standards (CFATS)
Maritime Transportation Security Act (MTSA)

While we share OSHA's desire for worker protection, we urge the agency not to upend the entire agricultural sector in the process. For these reasons, we believe that OSHA should immediately withdraw the July 22 memorandum and begin a formal notice and comment rulemaking. We are proud of our role in helping to feed the world and we look forward to working with you to address these policy changes that will have a significant impact on the agricultural sector.

Sincerely,

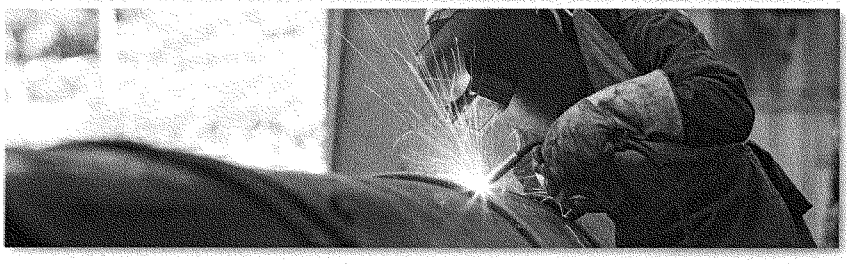
Agricultural Retailers Association
American Farm Bureau Federation
The Fertilizer Institute
National Association of Corn Growers
National Association of State Departments of Agriculture
National Council of Farmer Cooperatives
National Grain and Feed Association

energy API

AMERICAN PETROLEUM INSTITUTE

Workplace Injuries and Illnesses Safety (WIIS) Report

by the U.S. Oil and Natural Gas Industry



This report covers only the rates of injuries and illnesses as published by the BLS.

2003–2013

Workplace Injuries and Illnesses Safety Report (WIISR)

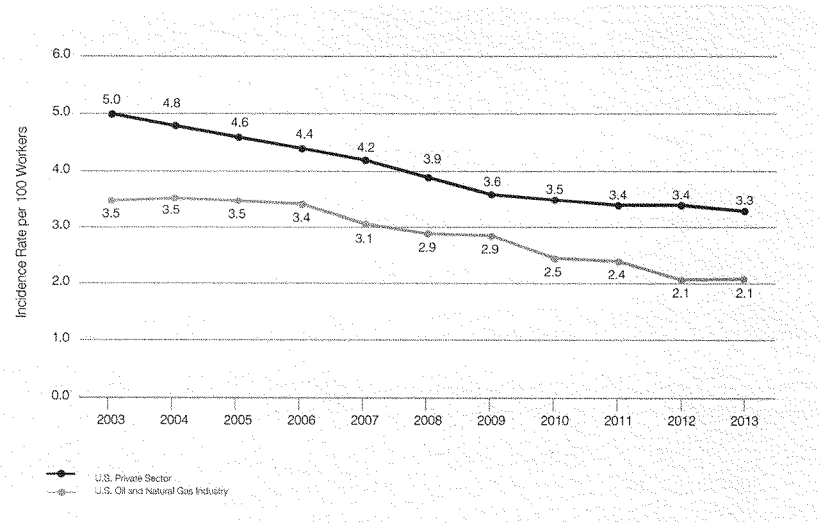
This report compares the safety rates of job related nonfatal injuries and illnesses of the U.S. Oil and Natural Gas industry with comparable U.S. industries. The Oil and Natural Gas industry's workplace safety record consistently improves on the Private sector average, reflecting the industry's commitment to safe and healthy working environments.

Comparison

U.S. Oil and Natural Gas Industry vs. U.S. Private Sector

In 2013, the rate of job-related nonfatal injuries and illnesses for the Oil and Natural Gas industry was 2.1 per 100 full-time workers, compared to a rate of 3.3 for the entire U.S. Private sector.

Figure 1
U.S. Oil and Natural Gas Industry vs. U.S. Private Sector (2003-2013)
Injuries and Illnesses Incidence Rates



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Comparison

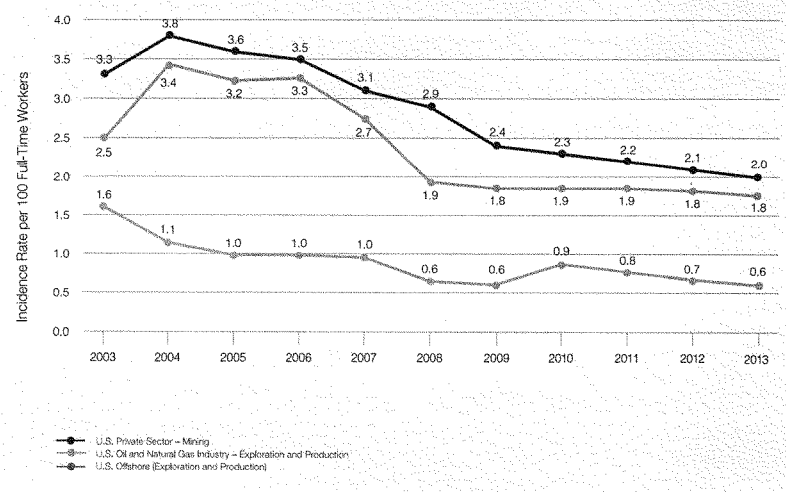
U.S. Oil and Natural Gas Industry – Exploration and Production[1] vs. U.S. Mining

In 2013, the rate of job-related nonfatal injuries and illnesses among U.S. Oil and Natural Gas exploration and production workers was 1.8 per 100 full-time workers compared with 2.0 for the U.S. Mining sector. The U.S. Offshore industry , a segment of the U.S. Oil and Natural Gas Exploration and Production sector had a rate of 0.6 per 100 full-time workers.

1 E&P is a weighted average calculated by API using BLS data. Support activities for oil and gas operations, drilling oil and gas wells, and oil and gas extraction make up the Exploration and Production sector. In 2003, BLS did not publish the rates of injuries and illnesses for support activities for oil and gas operations and in 2008 and 2009, BLS did not publish the rates of injuries and illnesses for drilling oil and gas wells because they did not meet BLS criteria.

2 Offshore incidence rates were calculated using data from Mineral and Management Service (MMS). Effective July 17, 2006, MMS revised the regulations for Incident Reporting. Changes were made to the reporting criteria for Injuries, Loss of Well Control Incidents, Collisions, and Other Incidents. Thus the number of incidents shown for 2006 and beyond may be affected by this change when compared to previous years. Offshore illness and injuries rate excludes construction workers. Injuries and illnesses rates are self-reported injuries for a sample.

Figure 2
Exploration and Production vs. Mining (2003-2013)
Injuries and Illnesses Incidence Rates



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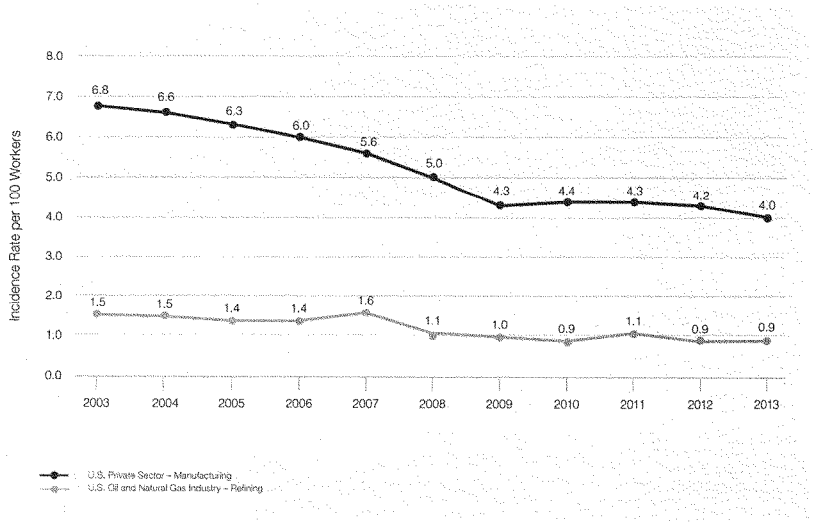
Comparison

U.S. Oil and Natural Gas Industry – Petroleum Refineries vs. U.S. Manufacturing

In 2013, the rate of job-related nonfatal injuries and illnesses for petroleum refinery workers was 0.9 per 100 full-time workers, compared to a rate of 4.0 for the U.S. Manufacturing sector.

Figure 3
Petroleum Refining vs. Manufacturing (2003-2013)
Injuries and Illnesses Incidence Rates



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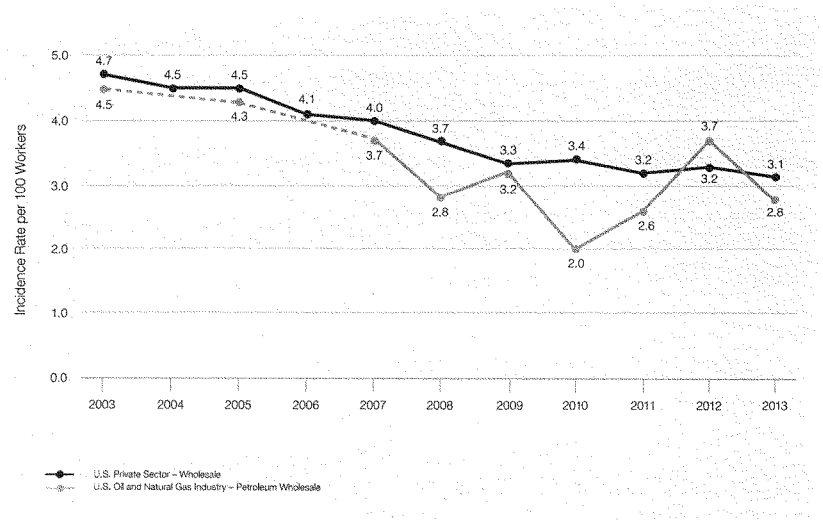
Comparison

U.S. Oil and Natural Gas Industry – Petroleum Wholesale Marketing[3] vs. U.S. Wholesale Marketing

In 2013, the rate of job-related nonfatal injuries and illnesses for petroleum wholesale marketing was 2.8 per 100 full-time workers, compared to a rate of 3.1 for the U.S. Wholesale marketing sector.

3 In 2004 and 2006, BLS did not publish the rates of injuries and illnesses for Petroleum Wholesale Marketing because they did not meet BLS criteria.

Figure 4
Petroleum Wholesale Marketing vs. U.S. Marketing (2003-2013)
Injuries and Illnesses Incidence Rates



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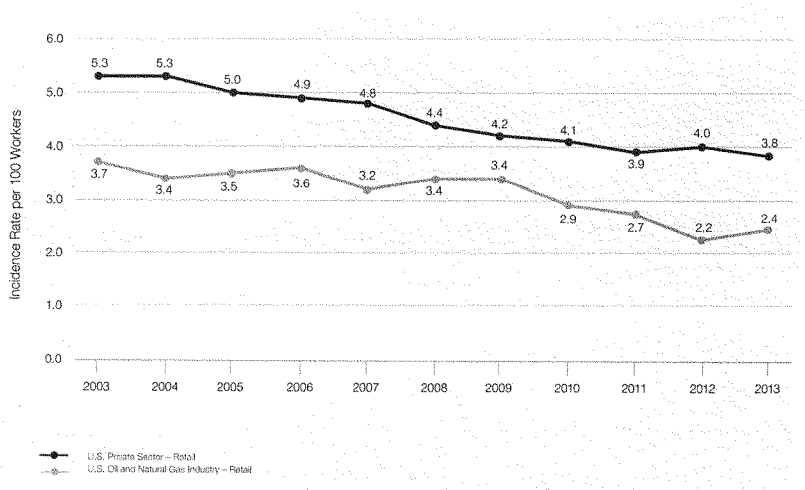
Comparison

U.S. Oil and Natural Gas Industry – Retail Marketing vs. U.S. Retail Marketing

In 2013, the rate of job-related nonfatal injuries and illnesses among U.S. Oil and Natural Gas retail marketing personnel was 2.4 per 100 full-time workers, compared to a rate of 3.8 for the U.S. Retail Marketing sector.

Figure 5
U.S. Oil and Natural Gas Industry- Retail Marketing vs. U.S. Retail Marketing (2003-2013)
Injuries and Illnesses Incidence Rates



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Comparison

U.S. Oil and Natural Gas Industry – Pipelines[4] vs. U.S. Transportation and Warehousing

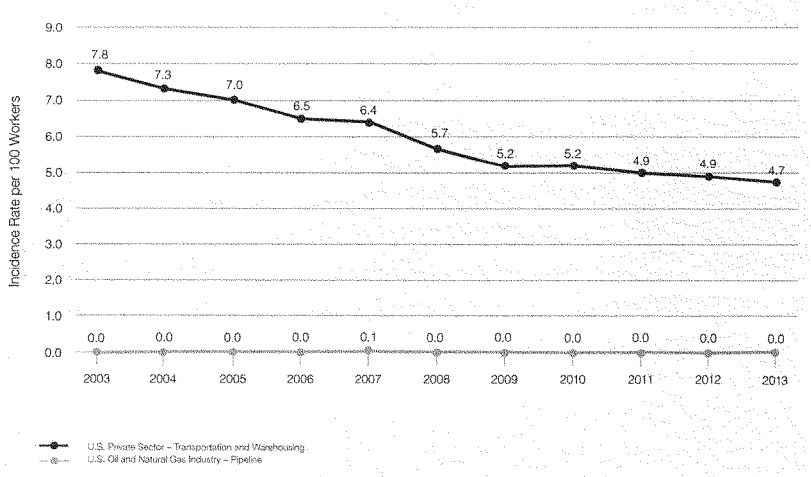
In 2013, the rate of job-related nonfatal injuries and illnesses among U.S. Oil and Natural Gas pipeline transportation personnel was 0.0 per 100 full-time workers, compared to a rate of 4.7 for the U.S. Transportation and Warehousing sector.

4 Pipeline injuries and illnesses numbers are from PHMSA. BLS does not consistently report pipeline data.

5 In March 2004, PHMSA revised the reporting format for gas distribution. Pre March 2004 data does not allow the breakout of incidents for employees, contractors and the general public. Thus 2003 gas distribution data, as well as January and February 2004 gas distribution data is not included in this report.

6 Pipeline data includes contractor workers.

Figure 6
U.S. Oil and Natural Gas Pipelines vs. U.S. Transportation and Warehousing (2003-2013)
Injuries and Illnesses Incidence Rates



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Comparison

U.S. Oil and Natural Gas Industry – Natural Gas Distribution[7] vs. U.S. Utilities

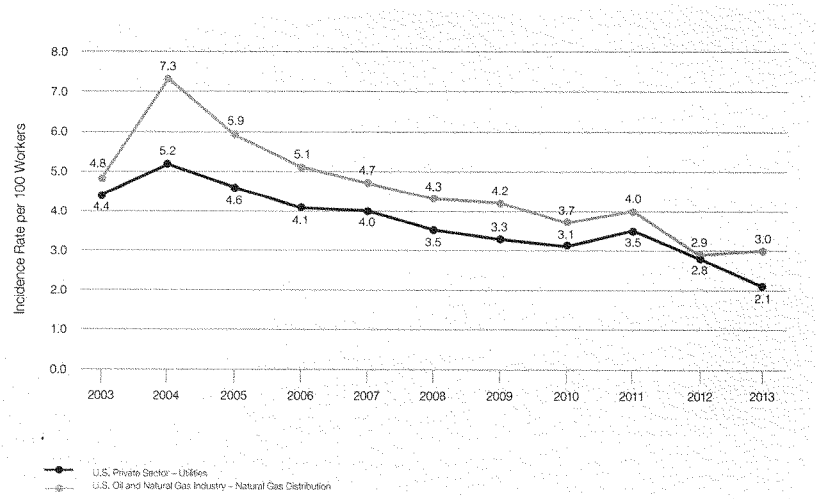
In 2013, the rate of job-related nonfatal injuries and illnesses among U.S. Oil and Natural Gas Industry's natural gas distribution personnel was 3.0 per 100 full-time workers, compared to a rate of 2.1 for the U.S. Utilities sector.

7 Natural Gas Distribution incidents where fire/explosion was the primary cause of failure, such as a house fire that subsequently resulted in – but was not caused by – a distribution line failure are excluded from 2004 onward. This exclusion has not been applied in years prior to 2004 due to difficulty in identifying these types of events with the older report formats.

Figure 7

U.S. Oil and Natural Gas Industry – Natural Gas Distribution vs. U.S. Utilities (2003-2013)

Injuries and Illnesses Incidence Rates



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Comparison

U.S. Oil and Natural Gas Industry Sectors and Comparable U.S. Segments: 2013 job-related nonfatal Injury and Illnesses Incidence Rate

Figure 7

U.S. Oil and Natural Gas Industry – Natural Gas Distribution vs. U.S. Utilities (2003-2013)

Injuries and Illnesses Incidence Rates

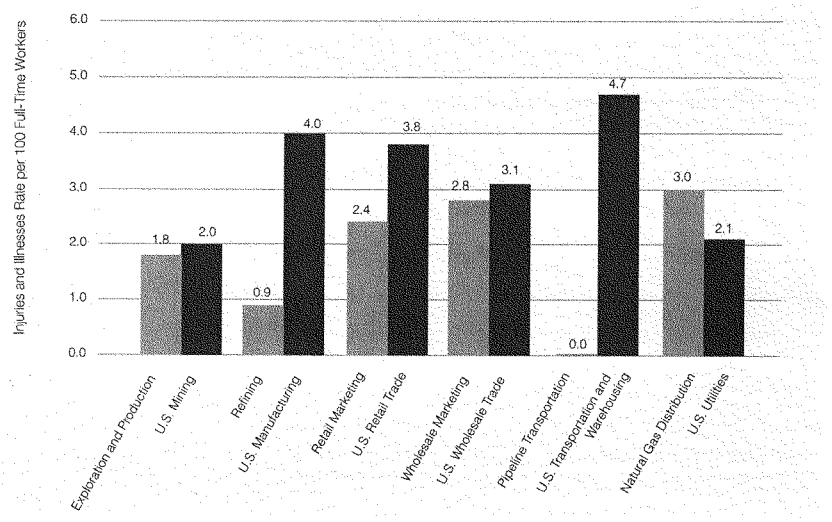

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Table 1
U.S. Oil and Natural Gas Industry Job-Related Nonfatal Injuries and Illnesses Rate:
2003-2013 (per 100 full-time workers)

Year	Exploration and Production	Refining	Retail Marketing	Wholesale Marketing	Pipeline Transportation	Natural Gas Distribution	Oil and Natural Gas Industry
2003	2.5	1.5	3.7	4.5	0.0	4.8	3.5
2004	3.4	1.5	3.4	ND	0.0	7.3	3.5
2005	3.2	1.4	3.5	4.3	0.0	5.9	3.5
2006	3.3	1.4	3.6	ND	0.0	5.1	3.4
2007	2.7	1.6	3.2	3.7	0.1	4.7	3.1
2008	1.9	1.1	3.4	2.8	0.0	4.3	2.9
2009	1.8	1.0	3.4	3.2	0.0	4.2	2.9
2010	1.9	0.9	2.9	2.0	0.0	3.7	2.5
2011	1.9	1.1	2.7	2.6	0.0	4.0	2.4
2012	1.8	0.9	2.2	3.7	0.0	2.9	2.1
2013	1.8	0.9	2.4	2.8	0.0	3.0	2.1
% Change*							
2012–2013	–3%	0%	9%	-24%	–29%	3%	1%
2003–2013	–29%	–42%	–35%	–38%	74%	–38%	-40%

ND = No Data available
* % change may not be exact due to rounding

Table 2
Comparable U.S. Industries Job-Related Nonfatal Injuries and Illnesses Rate:
2003-2013 (per 100 full-time workers)

Year	Mining	Manufacturing	Retail Trade	Wholesale Trade	Transportation and Warehousing	Utilities	Private Sector
2003	3.3	6.8	5.3	4.7	7.8	4.4	5.0
2004	3.8	6.6	5.3	4.5	7.3	5.2	4.8
2005	3.6	6.3	5.0	4.5	7.0	4.6	4.6
2006	3.5	6.0	4.9	4.1	6.5	4.1	4.4
2007	3.1	5.6	4.8	4.0	6.4	4.0	4.2
2008	2.9	5.0	4.4	3.7	5.7	3.5	3.9
2009	2.4	4.3	4.2	3.3	5.2	3.3	3.6
2010	2.3	4.4	4.1	3.4	5.2	3.1	3.5
2011	2.2	4.3	3.9	3.2	4.9	3.5	3.4
2012	2.1	4.2	4.0	3.2	4.9	2.8	3.4
2013	2.0	4.0	3.8	3.1	4.7	2.1	3.3
% Change*							
2012–2013	–5%	-5%	-5%	-3%	–4%	–25%	-3%
2003–2013	–39%	–41%	–28%	–34%	–40%	–52%	–34%

* % change may not be exact due to rounding

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Non-Comparable Industries –Workplace Injuries and Illnesses Safety (WIIS) Report

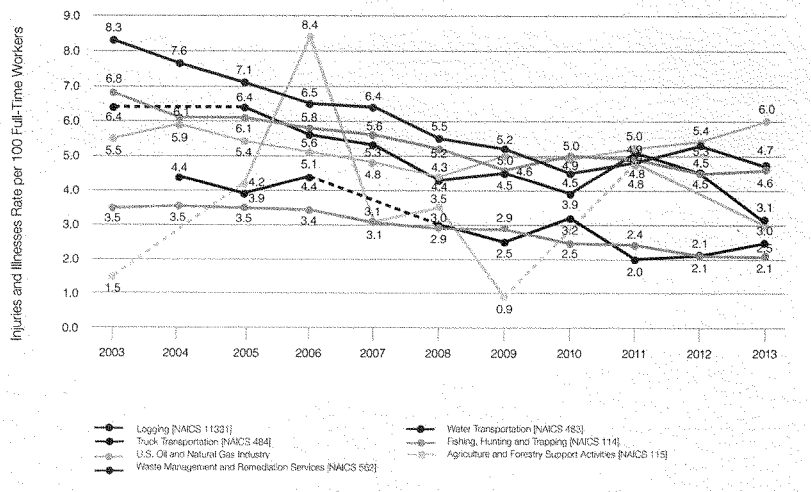
An in-depth look into the safety of six other industries demonstrates that the Oil and Natural Gas industry is generally safer than industries of similar characteristics. In this report, the safety rate of job related nonfatal injuries and illnesses of the Oil and Natural Gas industry was compared to the following industries: Logging [NAICS 11331], Fishing, Hunting and Trapping [NAICS 114], Agriculture and Forestry Support Activities [NAICS 115], Water Transportation [NAICS 483], Truck Transportation [NAICS 484], and Waste Management and Remediation Services [NAICS 562].

Comparison

U.S. Oil and Natural Gas Industry vs. Non-Comparable Industries

In 2013, the rate of job-related nonfatal Injuries and Illnesses for the Oil and Natural Gas industry was 2.1 per 100 full-time workers.

Figure 8
U.S. Oil and Natural Gas Industry vs. Non-Comparable Industries (2003-2013)
Injuries and Illnesses Incidence Rates



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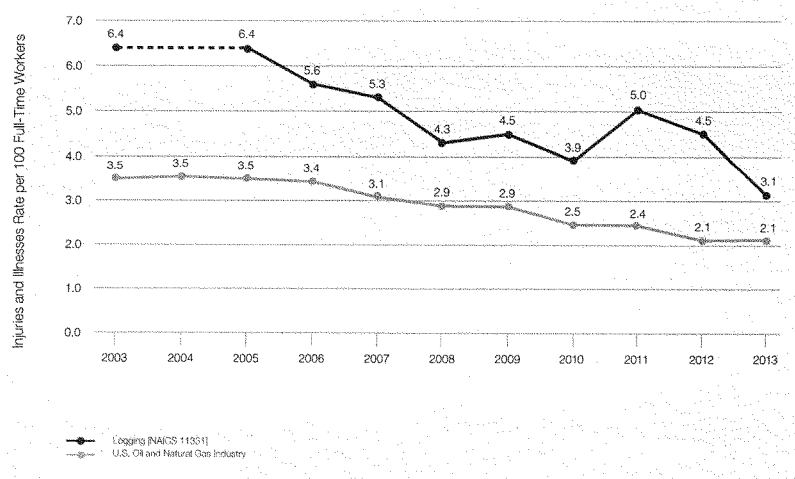
Comparison

U.S. Oil and Natural Gas Industry vs. Logging Industry

In 2013, the rate of job-related nonfatal Injuries and Illnesses for the Logging[8] industry was 3.1 per 100 full-time workers compared to 2.1 for the Oil and Natural Gas industry.

8 In 2004, BLS did not publish the rate of injuries and illnesses for the Logging Industry because it did not meet BLS criteria.

Figure 9
U.S. Oil and Natural Gas Industry vs. Logging Industry (2003-2013)
Injuries and Illnesses Incidence Rates



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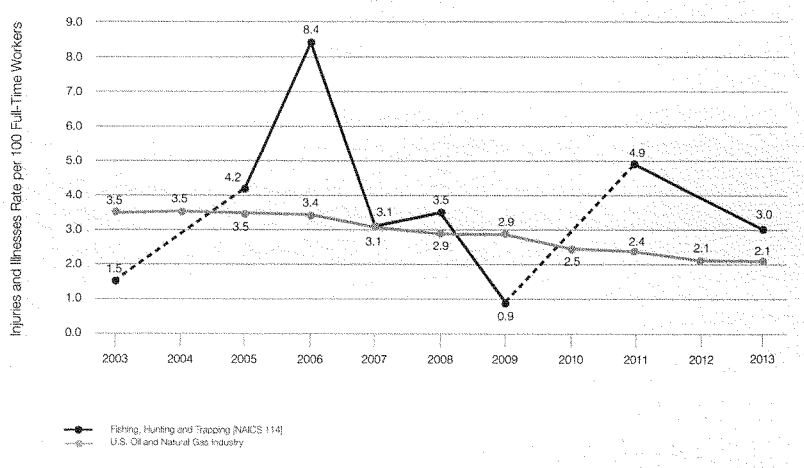
Comparison

U.S. Oil and Natural Gas Industry vs. Fishing, Hunting and Trapping Industry

In 2013, the rate of job-related nonfatal Injuries and Illnesses for the Fishing, Hunting, and Trapping[9] industry 3.0 per 100 full-time workers compared to 2.1 for the Oil and Natural Gas industry.

9 In 2004 and 2010, BLS did not publish the rate of injuries and illnesses for the Fishing, Hunting and Trapping Industry because it did not meet BLS criteria.

Figure 10
U.S. Oil and Natural Gas Industry vs. Fishing, Hunting, and Trapping Industry (2003-2013)
Injuries and Illnesses Incidence Rates



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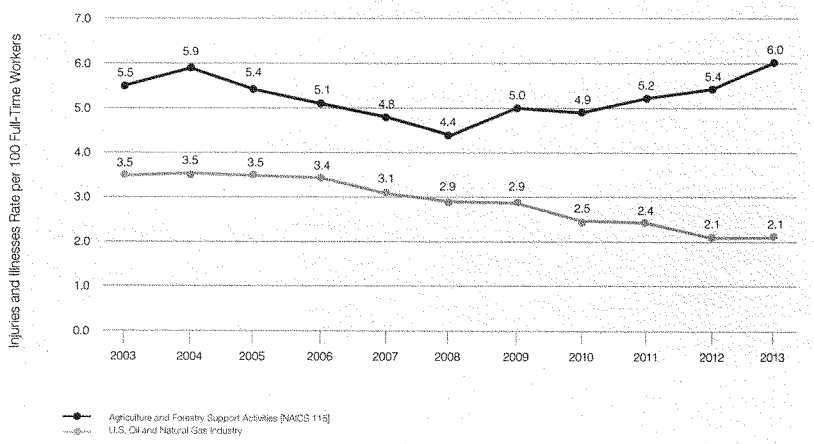
Comparison

U.S. Oil and Natural Gas Industry vs. Agriculture and Forest Support Activities Industry

In 2013, the rate of job-related nonfatal Injuries and Illnesses for the Agriculture and Forestry Support Activities industry was 6.0 per 100 full-time workers compared to 2.1 for the Oil and Natural Gas industry.

Figure 11

U.S. Oil and Natural Gas Industry vs. Agriculture and Forestry Support Activities Industry (2003-2013) Injuries and Illnesses Incidence Rates



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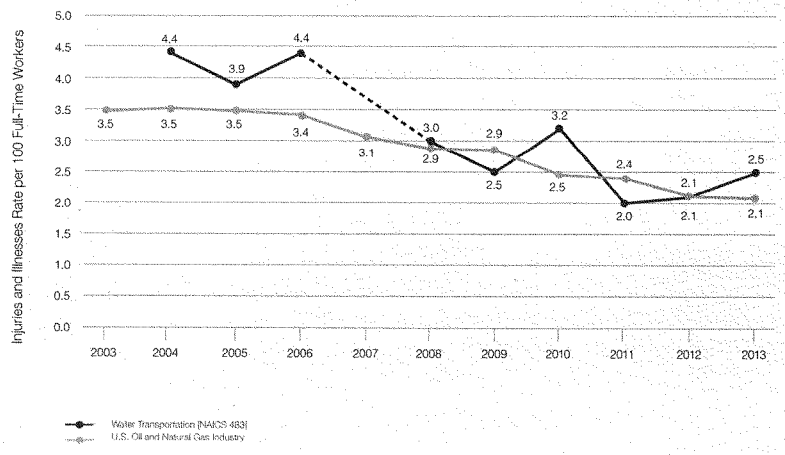
Comparison

U.S. Oil and Natural Gas Industry vs. Water Transportation Industry

In 2013, the rate of job-related nonfatal Injuries and Illnesses for the Water Transportation[10] industry was 2.5 per 100 full-time workers compared to 2.1 for the Oil and Natural Gas industry.

10 In 2003 and 2007, BLS did not publish the rate of injuries and illnesses for the Water Transportation Industry because they did not meet BLS criteria.

Figure 12
U.S. Oil and Natural Gas Industry vs. Water Transportation Industry (2003-2013)
Injuries and Illnesses Incidence Rates



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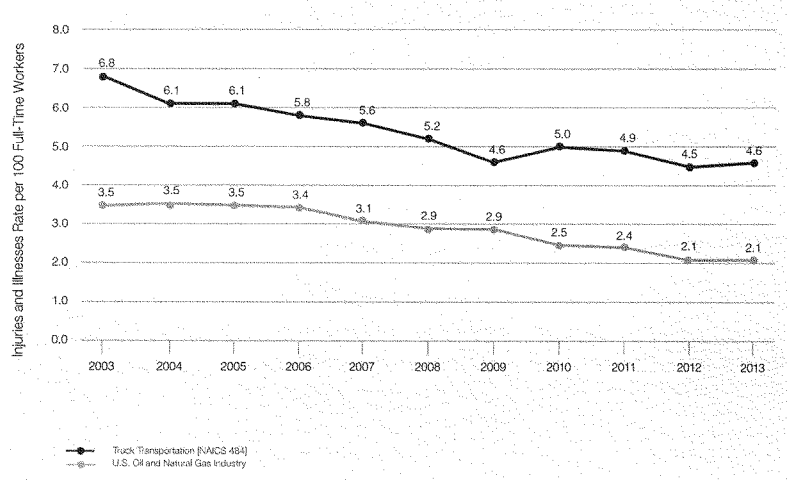
Comparison

U.S. Oil and Natural Gas Industry vs. Truck Transportation Industry

In 2013, the rate of job-related nonfatal Injuries and Illnesses for the Truck Transportation industry was 4.6 per 100 full-time workers compared to 2.1 for the Oil and Natural Gas industry.

Figure 13
U.S. Oil and Natural Gas Industry vs. Truck Transportation Industry (2003-2013)
Injuries and Illnesses Incidence Rates



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Comparison

U.S. Oil and Natural Gas Industry vs. Waste Management and Remediation Services Industry

In 2013, the rate of job-related nonfatal Injuries and Illnesses for the Waste Management and Remediation Services industry was 4.7 per 100 full-time workers compared to 2.1 for the Oil and Natural Gas industry.

Figure 14

U.S. Oil and Natural Gas Industry vs. Waste Management and Remediation Services Industry (2003-2013) Injuries and Illnesses Incidence Rates

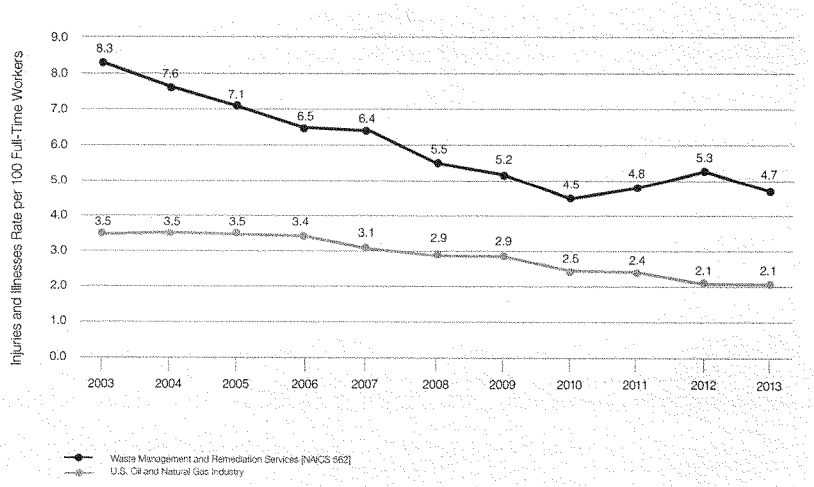

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Table 3:
Select U.S. Industries Job-Related Nonfatal Injuries and Illnesses Rate: 2003–2012
(per 100 full-time workers)

Year	Logging [NAICS 11331]	Fishing, Hunting and Trapping [NAICS 114]	Agriculture and Forestry Support Activities [NAICS 115]	Water Transportation [NAICS 483]	Truck Transportation [NAICS 484]	Waste Management and Remediation Services [NAICS 562]	Oil and Natural Gas Industry
2003	6.4	1.5	5.5	ND	6.8	8.3	3.5
2004	ND	ND	5.9	4.4	6.1	7.6	3.5
2005	6.4	4.2	5.4	3.9	6.1	7.1	3.5
2006	5.6	8.4	5.1	4.4	5.8	6.5	3.4
2007	5.3	3.1	4.8	ND	5.6	6.4	3.1
2008	4.3	3.5	4.4	3.0	5.2	5.5	2.9
2009	4.5	0.9	5.0	2.5	4.6	5.2	2.9
2010	3.9	ND	4.9	3.2	5.0	4.5	2.5
2011	5.0	4.9	5.2	2.0	4.9	4.8	2.4
2012	4.5	ND	5.4	2.1	4.5	5.3	2.1
2013	3.1	3.0	6.0	2.5	4.6	4.7	2.1
% Change*							
2012-2013	–31%	ND	11%	19%	2%	–11%	1%
2003-2012	–52%	100%	9%	ND	–32%	–43%	–40%

ND = No Data available
* % change may not be exact due to rounding

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About This Report

This report is based on information from the U.S. Bureau of Labor Statistics' (BLS) Survey of Occupational Injuries, Illnesses, and Fatalities (www.bls.gov/iif), the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) formerly known as the Minerals Management Service (MMS) (http://www.boemre.gov/incidents/IncidentStatisticsSummaries.htm) , as well as the U.S. Department of Transportation Pipeline Hazardous Materials Safety Administration (PHMSA) (http://www.phmsa.dot.gov/pipeline/library/data-stats). The Survey of Occupational Injuries, Illnesses, and Fatalities is a Federal and State program in which employer reports are collected from the private sector. It excludes the self-employed; farms with fewer than 11 employees; private households; Federal government agencies; and, for national estimates, employees in state and local government agencies.

The annual survey provides estimates of the number and frequency (incidence rates) of workplace nonfatal injuries and illnesses based on logs required to be kept by private industry employers throughout the year. These records reflect not only the year's injuries and illnesses experience, but also the employers' understanding of which cases are work-related under recordkeeping rules revised by the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor and made effective on January 1, 2002. These revisions affected how employers record various nonfatal job-related injuries and illnesses, and how the information is aggregated by BLS.

The pipeline incidence rates in this report were calculated by dividing the number of injuries reported to PHMSA by the total hours worked by all employees during a calendar year. The offshore incidence numbers were calculated by dividing the number of injuries reported to MMS by the total hours reported to MMS.

The total hours worked for the sectors are derived by multiplying the employment figures published in BLS's Table 1. Incidence rates of nonfatal occupational injuries and illnesses by industry and cases types, YEAR by 2000 hours (40 hours and 50 weeks per year per full time employee).

In 2012, BLS stopped publishing the employment numbers in Table 1. Incidence rates of nonfatal occupational injuries and illnesses by industry and cases types, YEAR. As a result, beginning with 2012 data, the employment numbers and hours will be derived by 'reverse engineering', i.e., calculating the employment numbers using the published rates, injuries based on 2000 hours. The employment figures are derived primarily from the Quarterly Census of Employment and Wages (QCEW) program. The QCEW program publishes a quarterly count of employment and wages reported by employers covering 98 percent of U.S. jobs, available at the county, Metropolitan Statistical Area (MSA), state and national levels by industry. The employment numbers are an annual average aggregate.

The 2003 survey marked the first time that establishments in the Survey of Occupational Injuries and Illnesses were classified by industry based on the 2002 North American Industry Classification System (NAICS) Manual. Prior to 2003, the survey used the Standard Industrial Classification system (SIC). NAICS is the industry classification system now used by the statistical agencies of the United States. It is the first economic classification system to be constructed based on a single economic concept. Establishments that use the same or similar processes to produce goods or services are grouped together. It was developed jointly by the United States, Canada, and Mexico, and reflects the structure of today's economy in these three countries, including the emergence and growth of the service sector and new and advanced technologies. Consequently, beginning with the 2003 survey the estimates by sector are not comparable with those from prior years.

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Definitions

Full-time worker: For purposes of this report, the equivalent of someone who works 40 hours per week for 50 weeks a year or 2,000 hours per year. Thus, two people working 1,000 hours apiece count as one full-time worker.

Nonfatal injury or illness: A nonfatal job-related injury or illness is an abnormal condition or disorder that results in days away from work, restricted work, or transfer to another job, medical treatment beyond first aid, or loss of consciousness. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.

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[Additional submissions by Ms. Wilson follow:]

Protecting America's Workers: An Enforcement Update
from the Occupational Safety and Health Administration
Letter for the House Committee on Education and Labor OSHA Oversight Hearing

By Amy Mattern
USMWF - Family Members and Daughter of Deceased Worker, Llewellyn R. Mattern

Thursday, October 7, 2015

I would like to extend my gratitude to Chair Representative John Kline and Robert C. "Bobby" Scott", Senior Democratic Member for holding this important hearing and permitting me to contribute.

My Dad, Llewellyn R. Mattern, died tragically in a workplace accident in Scottsbluff, Nebraska. It was late spring 2014, and my Dad, a semi-retired UPS driver, opted to take a temporary job for the summer. On the day my Dad died, he was participating in controlled burn of debris in several miles of irrigation ditches. The ditches were burned simply to clear the debris from the winter so the water could flow undeterred to the nearby fields.

With little training my Dad began to work along the irrigation ditches controlling the fire. However, during the afternoon of May 9. 2014, my Dad fell into the ditch of fire and was not rescued in enough time to save his life. There were only a few rudimentary rescue measures in place to prevent the incident that took my Dad's life. At the time of my Dad's death there was one retired fire truck on the scene to cover several miles of irrigation ditches and over 30 workers. When my Dad fell into the ditch of fire the old retired fire truck was ineffective because it could not get to the scene quickly enough.

My sisters and I, desperately sought answers from our Dad's boss, head of the company and co-workers as to how this tragedy happened and why it could not have been prevented. Our pleas for answers fell on deaf ears and we were repeatedly told that nobody saw anything or knew exactly what happened.

Our disbelief only grew when we learned that OSHA would not be investigating the case because the company our Dad worked for was a semi-governmental entity or as they are called in Nebraska a political subdivision. (Pathfinder Irrigation District, PO Box 338, Mitchell, Nebraska 69357) The OSHA representative I spoke with assured me that the deemed the incident serious and worthy of a complete investigation, but it simply lacked jurisdiction.

My sisters and I turned our attention to Nebraska State government to pursue an avenue for an investigation. However, we soon learned that the State does not have any mechanism for investigating workplace tragedies that occur on its watch. Unfortunately, our Dad tragically died in a state that does not have a worker safety investigative body comparable to OSHA. We made personal requests for investigations to Nebraska state authorities which were not granted. Part of the problem, however, is that the State does not have anyone readily available and trained to investigate work place deaths. It is for this reason that we enthusiastically support the Protecting America's Worker Act in its entirety. However, in my Dad's case Title I would have made a huge difference in correcting a dangerous working condition, providing additional safety measure and bringing some closure and sense of justice to my family.

As the law currently stands, it is a patch work of Federal and state laws. This patch work of law is leaving some workplaces dangerous and some employers are not being held accountable. My Dad and other American workers should have the right to an OSHA investigation regardless of whether their employer happens to work for a public or private entity. The workers that are employed by public employer should not have to sacrifice their safety. Also, public employers should not be held to a different safety standard than private employers. This is a gross injustice. This is a huge gap in the law governing workplace safety.

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"Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration"
Letter for the House Committee on Education and Labor OSHA Oversight Hearing

By Debi Fergen
Outreach Director
USMWF - United Support and Memorial for Workplace Fatalities
October 5, 2015

To Whom It May Concern

I am the mother of a young man who was taken from our family in a horrible work related incident in 2006. He was 26 years old and trusted that his supervisors would not put him, in harm's way. Especially since he was not trained for the task they asked of him. His death was completely preventable. While being told week after week by the Chief Administration Officer of the OSHA office that I "would be pleased with the outcome", in relation to holding the company accountable for the "egregiousness" of my son's case, I was anything but pleased to find out that the potential fines that should have been in the millions was reduced to pocket change for a high powered casino owner.

What I wish others understood is that fines and penalties are the only way for many of us to find justice for the wrongful death of our loved one. To find out that those fines and penalties have been reduced in favor of the company is like being slapped in the face. Why is it that the company gets that favor, and sometimes an all-out pass when the family who is left behind to pick up the pieces of their lives are left out in the cold? We often have no other recourse for justice because we know the police are not going to arrest anyone and put them in jail for what was essentially a crime.

Family members are not interested in the money, from the fines, for themselves. They want the company, who caused (as in my case) a death, or allowed the death of an employee due to their lack of proper safety measures where they worked to be held accountable.

In many cases family members know about the unsafe conditions at their loved one's work because they have been complaining about the conditions or at least expressing concerns for their safety. Then the unthinkable happens and that loved one is taken from them. And after the investigation is complete and the company is given a pass for whatever reason, it angers us because we know things that we know the company did not share with them, yet OSHA does not even bother to interview the person's family to hear what they have to say. Again, another unfair advantage given to the company. And more times than not, the family hears from their loved ones co-workers that nothing has changed at the company which leaves them vulnerable to another incident.

For me, it is only common sense that a company who causes a worker's death due to the company's negligence, will continue "business as usual" once the investigation is over if they know they will face little or no penalty for the death of someone under their watch. The only way to stop the increase in deaths in our country from work related incidents is to hold the company accountable to the letter. Especially repeat offenders as was my son's employer. As in my son's case, I said it loud and clear that if OSHA had held accountable the company that killed my son, it would have sent a message, ripple effect, through the city and most likely have spared the lives of so many who were killed on a huge project being built not long after my son's death. Instead, it was known that OSHA was a push-over and so the companies working on that project kept pushing their people and it was just "business as usual". A few lives lost was just the cost of doing business for them.

In closing I would just ask that those who can change how fines and/or penalties are enforced, will realize the importance of holding companies accountable for their actions. At the end of the day, facing a penalty and fine(s) may be the only way to get the attention of these companies who feel that the death of an employee is just the cost of doing business.

Sincerely,

Debi Fergen

Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration

Letter for the House Committee on Education and Labor OSHA Oversight Hearing

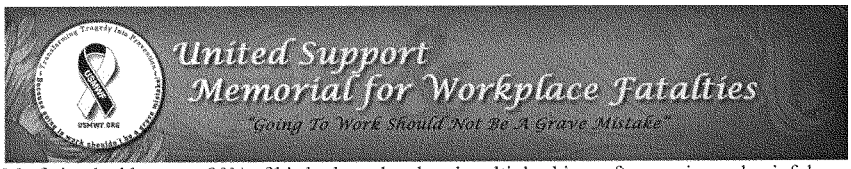
By Katherine Rodriguez, CPA
USMWF - Board Members
Thursday, October 7, 2015

Honorable Committee Members,

I would like to respectfully offer my comments to you on the topic of workplace safety and fatalities in the workplace. In accordance with USMWF's Family Bill of Rights, Volume 2, I would like to address the issue that the Occupational Safety and Health Administration, "OSHA" should not reduce penalties for cases with fatalities and penalties and fines should be increased. (USMWF, 2014)

OSHA should revise its policies related to proposed penalty amounts for fatality cases. The maximum possible penalty should be applied for any violation that directly contributed to a fatality. This is currently $7,000 for a serious violation and $70,000 for a willful and repeat violation. These penalties should not be reduced on appeal. (USMWF, 2014)

I offer a highly personal perspective of the need to address this issue. My father, Ray Gonzalez, was killed at the former BP Texas City refinery in an incident 6 months before a fatal explosion in 2005 that killed 15 workers. The incident that took his life occurred on September 2, 2004. His death was reviewed by the U.S. Chemical Safety Board and cited in its final report issued March 20, 2007 (Board, 2007). Referred to in the report as the Ultraformer #3 Incident, my father along with two of his co-workers and friends received 2nd and 3rd degree burns to the majority of their bodies from exposure to 500 degree water and steam during the opening of a pipe flange. The check valve they were working on had stored hazardous energy. It was determined that the absence of a bleed valve did not allow them to verify for certain that the pipe was safe to open.

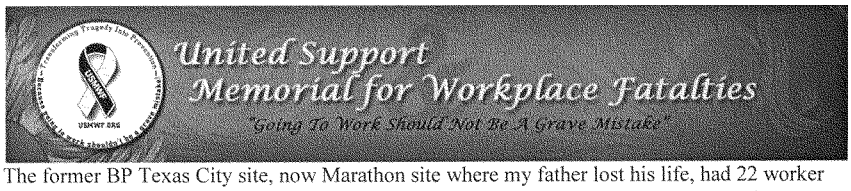


My father had burns to 80% of his body and endured multiple skin graft surgeries and painful daily cleaning of his skin. He endured 2 ½ months in the hospital before losing his life on November 12, 2004. The torture inflicted upon my father and his two friends, and the lingering grief of my family, should be a compelling call for better safety standards and more reasonable penalty amounts.

OSHA investigated my father's incident and cited BP Products, North America $109,500 for 7 serious and 1 willful violation. The willful violation was for failure to control hazardous energy. The fine was later reduced to $102,500. In truth, $102,500 is not a very persuasive motivator for large corporations, nor should that amount have been reduced in anyway. The incident that took my father's life also took the life of another father, Leonard Maurice Moore. Mr. Moore was only 39 years old and left behind a wife and two teenage children. Two fathers were taken from their families and a third was seriously injured and the only penalty amount paid was $102,500. BP's net income for 2004 was $15.7 billion. The violation dollar amount was .0000007% of BP's 2004 net income!

Unfortunately, I am not alone in my story. All across Texas, families have to endure the pain of losing a loved one and then the process of watching their incidents investigated and proposed ridiculously low fine amounts. In March 2005, Donald Smith, 23 was working for Sanderson Farms in Bryan, TX when he was electrocuted and killed. This young man had his father working right alongside him in the same plant. His father, Coit Smith, had to go through the investigation process only to have a $31,000 fine proposed for seven serious violations. If that wasn't enough, the fine was reduced in an informal settlement to one serious violation in the amount of $5,000.

On April 17, 2013 a fertilizer plant in West, Texas exploded killing 15 people. Most of those killed were first responders. Fifty homes and buildings were destroyed and over 300 people were injured. Losses from the explosion topped $100 million. The facility in West had not been inspected by OSHA since 1985, but OSHA's investigation proposed fines totaling $118,300. An entire community was devastated by this explosion and 15 families lost a loved one, but the only fine proposed was $118,300. OSHA was the only agency to take action against the company responsible.



The former BP Texas City site, now Marathon site where my father lost his life, had 22 worker fatalities in five years (2004-2009), an astonishing and disturbing number that demonstrates that gentle prods do not generate change. (Steffy, 2011) Legislation must be passed to increase the amount of penalties for

these fines and allow felony prosecutions against employers who commit willful violations. All of these items are addressed in proposed HR 2090, the Protecting America's Workers Act. Citations and penalties have not been adjusted for inflation since 1991.

Our family members who die on the job are not just incidents or statistics. They are our sons, daughters, sister, brothers, husbands and fathers. My father spent his 35th wedding anniversary in the hospital. My kids will only hear stories about him. I miss my father very much, that pain will never go away.

I am asking for your assistance to demonstrate respect for life through job safety so that no other family has to endure the pain and grief that mine has.

Sincerely,

Katherine Rodriguez, CPA

Board, U. C. (2007). *Investigation Report: Refinery Explosion and Fire.* Washington, D.C. .

Steffy, L. C. (2011). *Drowning in Oil, BP and the Reckless Pursuit of Profit.* New York: McGraw Hill .

USMWF, (2014). *Family Bill of Rights, Volume 2.* Available at: http://www.usmwf.org/pdf/bill/2014USMWFFBR2-Final.pdf Accessed: September 21, 2014.

Protecting America's Workers: An Enforcement Update
from the Occupational Safety and Health Administration
Letter for the House Committee on Education and Labor OSHA Oversight Hearing

By Linda McCardle
USMWF - Family Members
Thursday, October 7, 2015

Honorable Committee Members,

On June 4, 1988 my beautiful blessing was brought into this world. He left his safe place to join the world. Even then he had his own way of doing things. That didn't stop then. He has always been so full of personality and life. He was so strong-willed, adventurous, and eager to learn and conquer. At the same time he was his mama's baby boy. He also learned that smiles and laughter made life better.

The first time he went to a tower site he knew that was what he would someday do. He fell in love with towers. In his words "there is no better job in the world, there is nothing like it". He always had the biggest smile when he talked about the towers. He became an adult and with years of watching him work and listening to him talk about it, my fears became less and I trusted him and his promises.

Zach had 7 years of experience in broadcast and cellular towers. He was a member of a tiger team, had completed safety training and studied and researched on his own.

On July 8, 2013 our life was shattered. While working in New Town, ND Zach and another man lost their lives when they fell from a tower doing a beef up for AT&T on a tower owned by Mountrail- Williams Electric Cooperative. They were employed by Monarch Towers, Inc.

Even to this day I still cannot fully comprehend that my son is gone. He is a part of me and a part of me has died. Mine, my husband's, and Zach's plans to start a company has died. Our life will never be the same.

My husband wasn't physically hurt but mentally he was. He watched our son die. It is something that he tries to live with every day. There is no help for watching your child die; it doesn't matter if you are mentally hurt. Since his death we have sold most of what we have to live. The way it is going we will be homeless in a short time.

It has always been my job to protect my children and stand up for them. My son is not just a number. He is a person. Just because he was not a part of their lives, the companies, carriers, disability, OSHA and others, they can just brush it off and go on. He was however, a part of their success and the money they make. If it wasn't for him and other tower climbers, where would they be? They would not be at all. If they can risk their lives for them, then why can't their lives mean something to them? Where are you when the families have lost their world? How many families have you visited with, talked with, showed any kind of compassion to and even offered to help? My guess would be none. I have however seen where the carriers have contributed or helped others, so why wouldn't you want to help the ones that risk their lives and the families left behind doing work for you?

On December 13, 2013 two willful violations were issued at $7.000.00 each. On January 8, 2014 they were contested. One was dropped and the other was reduced to $5,600.00.

It is unbelievable to me that workers lose their lives just trying to make a living. Companies just move forward and replace them. Companies can do this because they are getting a slap on the wrist. Instead of saying these workers are only worth so little, hit them hard and they will work harder to make sure and or cut down on these fatalities.

Protecting America's Workers: An Enforcement Update
from the Occupational Safety and Health Administration
Letter for the House Committee on Education and Labor OSHA Oversight Hearing

By Michelle Canada
USMWF - Family Members
Thursday, October 7, 2015

Honorable Committee Members,

My name is Michelle Canada and I am writing this in regards to the incident that occurred at the International Nutrition Plant on January 20, 2014 in Omaha, Nebraska. My brother David Ball was one of the two workers fatally injured in this incident when the building collapsed.

Mr. Ball worked there for 7+ years as a Maintenance worker. It breaks my heart to say today that my brother was crushed that cold day under approximately a million pounds of debris that fell onto him trapping him in the rubble of the building that he once maintained. We believe and hope that he died within seconds of the incident however my brother on January 20, 2014 when the sun went down was known to the eastern part of Nebraska as the unaccounted for International Nutrition worker they left behind in the building because the scene was considered unsafe until the following day at 4pm when the rescue team could resume their search. To us he was known as our brother, uncle and most importantly a young girl's dad who went to work and may not come home.

Federal OSHA investigated the incident and proposed a $120,000.00 penalty for seven serious, one willful, one repeat and two other than serious violations. In an informal settlement the penalty was reduced to $78,000.00 for four serious, two repeat and three other than serious violations.

It is very frustrating for us, his family and especially his 16 year old daughter that the company only had to pay $78,000 dollars in fines compared to the $120,000 originally fined. We realize a company is not cited for the value of our loved ones' however, they are cited to prevent future incidents and to protect their employees and fines should not be decreased.

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Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration
Letter for the House Committee on Education and Labor OSHA Oversight Hearing

By Trina Honomichl
USMWF - Family Members
Thursday, October 7, 2015

Honorable Committee Members,

My name is Trina Honomichl and on August 11, 2013 my husband Robert "Bob" Honomichl worked for the City of Minden of Minden, Nebraska. On this day he went down into a lift station to pick up a few rags so they wouldn't clog the station up again.

Mr. Honomichl became overcome with toxic gas fumes and became disoriented at which time his boss went down to bring him out and he as well became overcome by the gas fumes. At that time the lift station started filling with sewer again at which time both men were trapped for approximately 30 minutes until help arrived. They pulled Mr. Honomichl's boss out first believing he may have been in the worst shape of them two. He was taken to the hospital were thankfully he survived his physical injuries. A short time after they got Mr. Honomichl out, he was then taken to local hospital as he could not breathe well, once he was believed to be stable he was transported to Good Samaritan Hospital in Kearney, Nebraska. My husband was then put in an induced coma and was on a respirator where he succumbed to his injuries on August 13, 2013.

No safety equipment had been purchased prior to or after the incident that took my husband from us because the City could not afford the safety equipment and believes that outsourcing the job would be more cost effective.

No one ever came to investigate the accident, not OSHA and/or the local Police Department. To this day my husband's death has never been investigated.

Sadly, I waited a year thinking someone would come and investigate the incident that forever has changed my life. I finally called OSHA myself and that's when I learned that OSHA had no jurisdiction and could not investigate this work related fatality. Without the complete investigation process it has left my family with a lot of unanswered questions . We believe that any work related injury and/or fatality should be thoroughly investigated and inspected by the proper organization giving the families the closure in which they deserve and also making sure that the employers are aware of the cause of the injury or fatality so that they can complete the safety changes needed to make sure that the incident does not occur again and that their other employees are safe while at work.

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[Questions submitted for the record and their responses follow:]

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November 16, 2015

The Honorable David Michaels
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear Assistant Secretary Michaels:

Thank you for testifying at the October 7, 2015, Subcommittee on Workforce Protections hearing entitled, "Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration." I appreciate your participation.

Enclosed are additional questions related to the hearing. Please provide a written response no later than December 4, 2015, for inclusion in the official hearing record. The response should be sent to Loren Sweatt of the Committee staff, and she can be contacted at (202) 225-7101, should your staff have any questions or need additional information.

Thank you again for your contribution to the work of the Committee.

Sincerely,

Tim Walberg

TIM WALBERG
Chairman
Subcommittee on Workforce Protections

Questions for the Record
"Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration"
Subcommittee on Workforce Protections
October 7, 2015

Questions from Chairman Tim Walberg (MI-7)

Process Safety Management

1. How many lawsuits are pending related to each of the three Process Safety Management (PSM) guidance documents issued earlier this year: the PSM retail exemption interim enforcement policy, recognized and generally accepted good engineering practices in process safety management enforcement, and the process safety management of highly hazardous chemicals and covered concentrations of listed Appendix A chemicals?

2. How many comments did OSHA receive in response to the December 2013 request for information regarding the retail exemption? How many of those comments indicated support or opposition of the proposed changes to the retail exemption?

Procurement

3. Considering the difficulties with recent requests for procurement (RFP) for online training, has OSHA considered operating under the 2008 Guidelines until it is able to successfully conduct a procurement that results in valid contracts?

4. Considering the recent litigation regarding the RFP, will OSHA issue a new RFP? If so, when? Will the agency consider an actual pre-solicitation conference prior to any new RFP?

Rulemakings and Enforcement

5. On August 9, 2010, OSHA published a final, revised standard on the use of cranes and derricks in construction. On September 25, 2014, OSHA extended the implementation deadline for Crane Operator Certification from November 2014 to November 2017, recognizing several concerns related to training crane operators and how an operator is "deemed qualified." On February 11, 2015, the Committee sent a letter to OSHA encouraging the agency to work with stakeholders to address these concerns. Please describe how OSHA is working with stakeholders and considering their recommendations, as well as any revisions to the rule OSHA may be considering. Does OSHA plan to initiate a cost study of the draft proposal pursuant to the *Small Business Regulatory Enforcement Fairness Act*?

6. During the hearing, you addressed the issue of the agency's use of guidance documents. Please elaborate on your response about how you believe the various forms of guidance

are enforceable. Does a letter of interpretation, field memo, or compliance directive have the same force of law as a appropriately promulgated regulation?

7. Regulations are generally available from multiple sources, receive more scrutiny, and are published in the Federal Register, while guidance actions are not. How is an employer supposed to be aware of and find information on OSHA's website regarding OSHA's requirements for a specific industry? Further, when OSHA posts guidance documents, it is often days or months after the effective date of the guidance. How is an employer to know its responsibilities without timely publication of guidance?

8. Please describe the history of OSHA's "longstanding" policy that the citation window for recordkeeping violations applies to the entire five-year period an employer must maintain records, as well as where this policy can be located (i.e. in regulation, field office manual etc.). How did OSHA decide upon this policy? How was it disseminated? How would you reconcile this "longstanding" policy with the language from the October 2015 Field Operations Manual at page 4-2 (below) stating that only when the employee exposure has happened within the last six months can a Compliance Safety and Health Officer issue a citation?

   Employee Exposure.

   > *A hazardous condition that violates an OSHA standard or the general duty clause shall be cited only when employee exposure can be documented. The exposure(s) must have occurred within the six months immediately preceding the issuance of the citation to serve as a basis for a violation, except where the employer has concealed the violative condition or misled OSHA, in which case the citation must be issued within six months from the date when OSHA learns, or should have known, of the condition. The RSOL should be consulted in such cases.*

Questions for the Record
"Protecting America's Workers: An Enforcement Update from the Occupational Safety and Health Administration"
Subcommittee on Workforce Protections
House Committee on Education and the Workforce

October 7, 2015

Questions from Chairman Tim Walberg (MI-7)

Process Safety Management:

1. **How many lawsuits are pending related to each of the three Process Safety Management (PSM) guidance documents issued earlier this year: the PSM retail exemption interim enforcement policy, recognized and generally accepted good engineering practices in process safety management enforcement, and the process safety management of highly hazardous chemicals and covered concentrations of listed Appendix A chemicals?**

   Response: There are currently 2 pending lawsuits. On August 3, 2015, the American Petroleum Institute, the American Fuel & Petrochemical Manufacturers, and the American Chemistry Council petitioned for review of the June 5, 2015, recognized and generally accepted good engineering practices memo in the U.S. Court of Appeals for the D.C. Circuit. On August 3, 2015, the American Chemistry Council petitioned for review of the June 5, 2015, Hazardous Chemicals Concentration memo in the U.S. Court of Appeals for the D.C. Circuit. The pleadings in both cases are publicly available in docket nos. 15-1253 and 15-1252, respectively, in the Court of Appeals.

   On September 16, 2015, the Agricultural Retailers Association and Fertilizer Institute filed a petition in the U.S. Court of Appeals for the D.C. Circuit challenging the July 22, 2015, revised interpretation concerning the retail exemption. On September 21, 2015, Allied Co-op of Adams, WI, et al. also filed a petition for review of the revised retail exemption interpretation. The pleadings in both cases are publicly available in docket nos. 15-1326 and 15-1340, respectively, in the Court of Appeals.

2. **How many comments did OSHA receive in response to the December 2013 request for information regarding the retail exemption? How many of those comments indicated support or opposition of the proposed changes to the retail exemption?**

   Response: OSHA received 13 comments in response to the December 2013 request for information regarding the retail exemption. Some commenters supported the existing interpretation of the retail exemption. Others expressed that the retail exemption should be limited to North American Industry Classification System (NAICS) 44-45 or even removed from the standard entirely.

Procurement:

3. **Considering the difficulties with recent requests for procurement (RFP) for online training, has OSHA considered operating under the 2008 Guidelines until it is able to successfully conduct a procurement that results in valid contracts?**

   Response: On October 8, 2014, OSHA announced a request for proposals (RFP) to deliver 10-hour and 30-hour Outreach Training Program courses, on behalf of OSHA, in the construction industry, general industry, and maritime industry, as well as targeted training for young workers, in an online format. The contractor(s) selected for award would be authorized to provide online Outreach Training Program courses to members of the public. These contracts would not involve any compensation or reimbursement from the Government. The contractor(s) could charge a fee to its students. The Government might assess a fee from the contractor(s) to cover the costs of course-completion cards and other administrative expenses. This Solicitation closed on December 12, 2014.

   On December 5, 2014, a pre-award protest was filed by American Safety Council, Inc. in the United States Court of Federal Claims. The matter, Case No. 14-1175C (Fed. Cl.), was resolved by decision publicly issued on August 10, 2015.[1] Until such time as OSHA decides the next steps it should take in response to the Court's decision, the contractors currently authorized to provide online Outreach Training Program courses to members of the public will continue to be so authorized.

4. **Considering the recent litigation regarding the RFP, will OSHA issue a new RFP? If so, when? Will the agency consider an actual pre-solicitation conference prior to any new RFP?**

   Response: OSHA intends to take action consistent with the Court's decision and is currently considering next steps.

Rulemakings and Enforcement:

5. **On August 9, 2010, OSHA published a final, revised standard on the use of cranes and derricks in construction. On September 25, 2014, OSHA extended the implementation deadline for Crane Operator Certification from November 2014 to November 2017, recognizing several concerns related to training crane operators and how an operator is "deemed qualified." On February 11, 2015, the Committee sent a letter to OSHA encouraging the agency to work with stakeholders to address these concerns. Please describe how OSHA is working with stakeholders and considering their recommendations, as well as any revisions to the rule OSHA may be considering. Does OSHA plan to initiate a cost study of the draft proposal pursuant to the *Small Business Regulatory Enforcement Fairness Act?***

   Response: The 2010 final crane rule, which was the result of negotiated rulemaking, ensured crane operator competence by requiring all operators be certified on the type and capacity of the

[1] A copy of the decision may be found on the United States Court of Federal Claims Web site at www.uscfc.uscourts.gov.

crane operated by a third-party testing body. After publishing the final rule, OSHA heard two concerns from the regulated community. First, industry voiced concerns that third-party certification was not sufficient to ensure safety, but rather viewed as akin to a learners permit for driving cars. Second, several certification testing organizations stated that they would have difficulty providing certification by capacity of crane.

OSHA conducted stakeholder meetings in 2013 on these issues, and decided to extend the deadline for certification from November 2014 to November 2017 to give the agency time to evaluate the issues raised. OSHA conducted extensive research, including over 40 site visits and interviews with a variety of stakeholders in the crane and construction industries and labor. The agency developed a draft revised regulatory text based on that information, reflecting current industry practice, which would require employers to evaluate the competence of crane operators to use the equipment to which they are assigned, in addition to ensuring the operator has third-party certification for the broader "type" of crane. The draft also drops the requirement that certifications be done by capacity of the crane. OSHA presented that draft text to a joint meeting of stakeholders and the agency's Advisory Committee on Construction Safety and Health in March 2015, and it is currently considering the comments it received. OSHA routinely estimates the costs of its proposed rules on small entities in determining whether to certify that the proposal would not have a significant economic impact on a substantial number of small entities under SBREFA (see 5 USC § 605), and the agency intends to follow that practice in this rulemaking.

6. **During the hearing, you addressed the issue of the agency's use of guidance documents. Please elaborate on your response about how you believe the various forms of guidance are enforceable. Does a letter of interpretation, field memo, or compliance directive have the same force of law as an appropriately promulgated regulation?**

   Response: Guidance documents, such as letters of interpretation, field memos, and compliance directives, serve as the agency's general statements of enforcement policy. They are intended to clarify and provide assistance to OSHA field personnel and the regulated community, and do not create any new legal obligations or requirements for employers to follow. Rather, these documents set forth agency interpretations of existing promulgated and adopted standards, regulations, and the general duty clause, and they are intended to timely advise the regulated community. OSHA ultimately enforces the OSH Act, and standards and regulations implementing it, which together bind regulated parties.

7. **Regulations are generally available from multiple sources, receive more scrutiny, and are published in the Federal Register, while guidance actions are not. How is an employer supposed to be aware of and find information on OSHA's website regarding OSHA's requirements for a specific industry? Further, when OSHA posts guidance documents, it is often days or months after the effective date of the guidance. How is an employer to know its responsibilities without timely publication of guidance?**

   Response: OSHA's guidance documents are well-organized on the agency's webpage, www.OSHA.gov, alphabetically by subject matter. Letters of interpretation are also organized by the OSHA safety or health standard being interpreted. Finally, OSHA's webpage includes Topics Pages on a vast variety of safety and health subjects for those dealing with particular hazards or

industries. As mentioned above, guidance documents, such as letters of interpretation, field memos and compliance directives, serve as the agency's general statements of enforcement policy. They are intended to clarify and provide assistance to OSHA field personnel and the regulated community, and do not create any new legal obligations or requirements for employers to follow.

8. **Please describe the history of OSHA's "longstanding" policy that the citation window for recordkeeping violations applies to the entire five-year period an employer must maintain records, as well as where this policy can be located (i.e. in regulation, field office manual etc.). How did OSHA decide upon this policy? How was it disseminated? How would you reconcile this "longstanding" policy with the language from the October 2015 Field Operations Manual at page 4-2 (below) stating that only when the employee exposure has happened within the last six months can a Compliance Safety and Health Officer issue a citation?**

Employee Exposure.

A hazardous condition that violates an OSHA standard or the general duty clause shall be cited only when employee exposure can be documented. The exposure(s) must have occurred within the six months immediately preceding the issuance of the citation to serve as a basis for a violation, except where the employer has concealed the violative condition or misled OSHA, in which case the citation must be issued within six months from the date when OSHA learns, or should have known, of the condition. The RSOL should be consulted in such cases.

Response: Since enacting its recordkeeping regulations in 29 C.F.R. Part 1904 in 1971, OSHA consistently took the position (in citations and case filings) that violations of the recordkeeping regulations constitute continuing violations[2] until corrected or until the five-year record retention period ends. *See, e.g., Johnson Controls*, 15 BNA OSHC 2132, 2135-36 (No. 89-2614, 1993) (acknowledging and adopting Secretary's continuing recordkeeping violation theory); *Gen. Dynamics Corp.*, 15 BNA OSHC 2122, 2128 (No. 87-1195, 1993) ("Part 1904 creates an obligation to keep a log entry for each occupational injury or illness each day for a five-year period."); *Kaspar Wire Works, Inc.*, 18 BNA OSHC 2178 (No. 90-2775, 2000) (rejecting employer's contention that recordkeeping violations cited more than six months after initial violation but within five-year retention period should be vacated as untimely).

In 2012, the D.C. Circuit held that OSHA cannot "cite an employer for a record-making violation more than six months after the recording failure." *AKM LLC v. Sec'y of Labor*, 675 F.3d 752, 758 (D.C. Cir. 2012). In a concurring opinion, Judge Garland concluded that OSHA's existing recordkeeping regulations do not create continuing recordkeeping obligations. *Id.* at 759-64. Since this decision, OSHA has suspended enforcement of its prior approach. Furthermore, OSHA has issued a notice of proposed rulemaking titled "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness." See 80 Fed. Reg. 45116 (July 29, 2015).

OSHA continues to believe that this policy is necessary because accurate injury and illness records "are a cornerstone of the Act and play a crucial role in providing the information necessary to make

[2] A continuing violation exists when there is noncompliance with "the text of . . . [a] pertinent law [that] imposes a continuing obligation to act or refrain from acting." *Earle v. Dist. of Columbia*, 707 F.3d 299, 307 (D.C. Cir. 2012).

workplaces safer and healthier." *General Motors Corp.*, 8 BNA OSHC 2036, 2041 (No. 76-5033, 1980). They provide information to employers whose employees are being injured or made ill in the workplace. They also assist employers in the identification of hazards, and encourage the voluntary correction of hazardous workplace conditions. Similarly, employees who are accurately informed about injuries and illnesses are more alert to hazards they face in the work environment, more likely to report them, and more inclined to use prescribed safety equipment and to follow safe work practices. *See* 66 Fed. Reg. 5917 (January 19, 2001) ("When employees are aware of workplace hazards and participate in the identification and control of those hazards, the overall level of safety and health in the workplace improves."). Accurate records also enhance OSHA's enforcement efforts. Before beginning an inspection of a worksite, OSHA reviews the employer's injury and illness data and then focuses its inspection on the hazards revealed by the records. Employers' records also yield statistical data on the incidence of workplace injuries and illnesses, thereby affording a more complete measure of the nature and magnitude of the occupational safety and health problem across the country.

Because recordkeeping violations are continuing violations, when an employer fails to maintain accurate records during the five-year retention period a violative condition (inaccurate records) affecting all workers in the relevant workplace occurs each and every day that the employer fails to correct its illness and injury records. OSHA's longstanding policy of citing an employer's failure to maintain accurate records during the five-year retention policy is therefore consistent with the 2015 Field Operations Manual limiting citations to those cases where employee exposure occurred within six months of the issuance of the citation.

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