

Y4
.Ed 8/1
Sa 1/9

9544
Ed 8/1
Sa 1/9

OCCUPATIONAL SAFETY AND HEALTH IN THE STATE OF HAWAII

GOVERNMENT
Storage

DOCUMENTS

JUL 23 1979

FARRELL LIBRARY
KANSAS STATE UNIVERSITY

HEARING

BEFORE THE

SUBCOMMITTEE ON COMPENSATION,
HEALTH AND SAFETY

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

HEARING HELD IN HONOLULU, HAWAII ON NOVEMBER 16, 1978

Printed for the use of the Committee on Education and Labor

KSU LIBRARIES
A11900 990685



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

1/8/63
9/1/62

COMMITTEE ON EDUCATION AND LABOR

CARL D. PERKINS, Kentucky, *Chairman*

FRANK THOMPSON, Jr., New Jersey
JOHN H. DENT, Pennsylvania
JOHN BRADEMAM, Indiana
AUGUSTUS F. HAWKINS, California
WILLIAM D. FORD, Michigan
PHILLIP BURTON, California
JOSEPH M. GAYDOS, Pennsylvania
WILLIAM "BILL" CLAY, Missouri
MARIO BIAGGI, New York
IKE ANDREWS, North Carolina
MICHAEL T. BLOUIN, Iowa
ROBERT J. CORNELL, Wisconsin
PAUL SIMON, Illinois
EDWARD P. BEARD, Rhode Island
LEO C. ZEFERETTI, New York
GEORGE MILLER, California
RONALD M. MOTTL, Ohio
MICHAEL O. MYERS, Pennsylvania
AUSTIN J. MURPHY, Pennsylvania
JOSEPH A. Le FANTE, New Jersey
TED WEISS, New York
CEC HEFTEL, Hawaii
BALTASAR CORRADA, Puerto Rico
DALE E. KILDEE, Michigan

ALBERT H. QUIE, Minnesota
JOHN M. ASHBROOK, Ohio
JOHN N. ERLNBORN, Illinois
RONALD A. SARASIN, Connecticut
JOHN BUCHANAN, Alabama
JAMES M. JEFFORDS, Vermont
LARRY PRESSLER, South Dakota
WILLIAM F. GOODLING, Pennsylvania
BUD SHUSTER, Pennsylvania
SHIRLEY N. PETTIS, California
CARL D. PURSELL, Michigan
MICKEY EDWARDS, Oklahoma

SUBCOMMITTEE ON COMPENSATION, HEALTH AND SAFETY

JOSEPH M. GAYDOS, Pennsylvania, *Chairman*

JOHN H. DENT, Pennsylvania
AUSTIN J. MURPHY, Pennsylvania
ROBERT J. CORNELL, Wisconsin
LEO C. ZEFERETTI, New York
JOSEPH A. Le FANTE, New Jersey
MICHAEL O. MYERS, Pennsylvania
GEORGE MILLER, California
CARL D. PERKINS, Kentucky

RONALD A. SARASIN, Connecticut
JOHN BUCHANAN, Alabama
BUD SHUSTER, Pennsylvania
ALBERT H. QUIE, Minnesota
Ex Officio

Ex Officio

CONTENTS

	Page
Hearing held in Honolulu, Hawaii on November 16, 1978-----	1
Statement of—	
Armerding, Ludwig, governmental affairs representative, National Federation of Independent Business-----	15
Chong, Howard, president-elect, Home Builders Association of Hawaii-----	47
Gilkey, Robert C., deputy director, Hawaii Department of Labor and Industrial Relations-----	4
Gregory, Frank, general manager, Earle M. Jorgensen Co-----	52
Hirozawa, Betty, vice-president, Hawaii Employers Council, on behalf of Chamber of Commerce of Hawaii-----	50
Knoll, Robert, corporate manager of safety and loss prevention, Alexander & Baldwin, Inc., accompanied by Ken Peterson, legal department-----	33
Mount, Wayne, program specialist, Division of Occupational Safety and Health, State of Hawaii-----	4
Okazaki, Shoji, legislative representative, International Longshoremen's & Warehousemen's Union, local 142-----	21
Olson, Obie, president and manager, Service Packaging Corp-----	12
Plischke, Gene, advisor, Manufacturers Association of the State of Hawaii (M.A.S.H.)-----	38
Uyesugi, Takeshi, business representative, Hawaii Building & Construction Council, AFL-CIO-----	46
Van Horn Diamond, A., executive secretary-treasurer, Hawaii State Federation of Labor, AFL-CIO-----	25
Prepared statements, letters, supplemental materials, etc.—	
Agsalud, Joshua C., director, Department of Labor and Industrial Relations, prepared statement of-----	11
Armerding, Ludwig E., governmental affairs representative, National Federation of Independent Business:	
Letter from George H. Morisada, president, ABC Chemical Corp., dated November 8, 1978-----	20
Letter from Henry A. Wilks, chief executive officer, Kleenco Corp., dated November 2, 1978-----	20
Statement of-----	19
Chong, Howard, president-elect, Home Builders Association of Hawaii, prepared statement of-----	49
Gregory, Frank, general manager, Earle M. Jorgensen Co., prepared statement of-----	54
Hirozawa, Betty, vice president, Hawaii Employers Council on behalf of the chamber of commerce, Hawaii Employers Council, prepared statement of-----	52
Knoll, Robert, corporate manager of safety and loss prevention, Alexander & Baldwin, Inc., prepared statement of-----	36
Okazaki, Shoji, legislative representative, International Longshoremen's & Warehousemen's Union, local 142, prepared statement of-----	24
Olson, Obie, president, Service Packaging Corp., prepared statement of-----	14
Plischke, Gene, advisor, Manufacturers Association of the State of Hawaii, Inc. (M.A.S.H.) prepared statement of-----	43
Uyesugi, Takeshi, business representative, Hawaii Building & Construction Trades Council, AFL-CIO, prepared statement of-----	47
Van Horn Diamond, A., executive secretary-treasurer, Hawaii State Federation of Labor, AFL-CIO, prepared statement of-----	31

IV

APPENDIX

	Page
DiSanto, Dennis, president, Pepsi-Cola/Seven-up Bottling Co. of Honolulu, testimony of-----	60
Fetsis, Rick, chairman, safety committee, General Contractors Association of Hawaii, letter to Chairman Gaydos, dated November 16, 1978-----	57
Judd, Clement M., Jr., executive director, Hawaii Hotel Association, letter to Congressman Heftel, dated November 15, 1978-----	57
Kurisu, Kiyoshi, vice president, Pneumatic Equipment Co., Ltd., Honolulu, Hawaii :	
Letter to John McLaren, c/o Office of Senator Matsunaga, dated October 17, 1978-----	58
Letter to Occupational Safety and Health Division, attention Mr. Edward Turner, dated February 2, 1978-----	59
Letter to Subcommittee on Compensation, Health and Safety, dated November 14, 1978-----	58
Loebl, Arthur H., safety coordinator, MTL, Inc., letter to Congressman Heftel, dated December 18, 1978-----	91
Plischke, Gene, advisor, Manufacturers Association of the State of Hawaii, Inc. (M.A.S.H.) :	
Letter to Chairman Gaydos, enclosing extension of testimony presented November 16, 1978, dated January 19, 1979-----	88
Letter to Congressman Heftel, enclosing requested information, dated January 19, 1979-----	88
Letter to Congressman Heftel, dated January 22, 1979-----	88
Tengan, Lester S., letter to Congressman Heftel, enclosing several attachments, dated November 13, 1978-----	60

OCCUPATIONAL SAFETY AND HEALTH IN THE STATE OF HAWAII

THURSDAY, NOVEMBER 16, 1978

SUBCOMMITTEE ON COMPENSATION, HEALTH AND SAFETY
COMMITTEE ON EDUCATION AND LABOR,
Honolulu, Hawaii.

The subcommittee met, pursuant to call, at 9:30 a.m., in classrooms 3 and 4, U.S. Army Reserve Center, Ft. De Russy, Kalani, 302 Maluhia Road, Honolulu, Hawaii, Hon. Cecil Heftel presiding.

Members present: Representatives Heftel, Zeferetti, Myers, Miller, and Akaka.

Staff present: Paul F. Dwyer, counsel for the majority; Edith Carter Baum, counsel for the minority; and from Congressman Heftel's office and staff, Harvey Meyerson, Ernest S. Kessler and Douglas P. Carlson.

Mr. HEFTEL. The hearing will come to order. The Subcommittee on Compensation, Health and Safety of the Standing Committee on Education and Labor, U.S. House of Representatives has already this week conducted 2 days of hearings into the problem of asbestos-related occupational diseases.

Today's hearing will consist of a general oversight on the Occupational Safety and Health Act and its impact on the State of Hawaii. This State is one of several which, pursuant to section 18 of the Occupational Safety and Health Act of 1970, has assumed responsibility for the development and enforcement of occupational safety and health.

The chairman of this subcommittee is Hon. Joseph M. Gaydos, of the 20th Congressional District of Pennsylvania. Chairman Gaydos is unable to be present at these hearings, but he has requested me to preside today. Joining me is Hon. George Miller of the 7th Congressional District of California, Daniel Akaka of the 2nd District of Hawaii. Staff members present are counsel for the majority, Paul F. Dwyer; counsel for the minority, Edie Baum, and from Congressman Heftel's staff, Harvey Meyerson, Ernest S. Kessler and Douglas Carlson.

If this week's hearings on asbestos by this same subcommittee demonstrated anything, it is that we have a need for OSHA. But, we also have a need to ascertain that it is performing its functions in the most meaningful and effective manner, without undue neglect at one extreme or harassment at the other extreme. The testimony we will hear today will, I believe, have an important influence on the continuing process of shaping OSHA to meet the needs of the American

people, both employees and employers. I am hopeful that this process will evolve in a spirit of cooperation between Government and private industry.

Today, we look forward to the testimony of the several witnesses who have been scheduled to testify, as well as others who may wish to add their views to these hearings. We are most interested in learning from them just how the workplace safety can be and should be.

We have written testimony from a number of businesses and interested individuals in the community which I will not read, but it is indicative of the fact that there is a high degree of concern and interest over how OSHA functions or doesn't function.

And now I would call on our first witness, Robert C. Gilkey, deputy director of the Hawaii Department of Labor and Industrial Relations, perhaps speaking on behalf of himself or, perhaps, speaking on behalf of Joshua Agsalud.

Before you start, let me do this. Let me first put into the record our unanimous consent on all of the testimony that has been submitted. And let me invite Danny Akaka and George Miller to express their observations on OSHA in today's hearing.

Danny?

Mr. AKAKA. Thank you very much. My colleague and chairman Cec Heftel, I want you to know that he has worked dedicatedly and diligently in getting these hearings out to these islands. And knowing the effect the hearings will have on the formulation of laws in Congress, these hearings will certainly make a difference and be a credit to Congressman Heftel.

I also want to express my gratitude to George Miller for his time and effort out here in Hawaii. And I want to make a statement that very often these people, like Congressman Miller, have difficulty in accepting to come out to hearings in Hawaii. The difficulty is that they are accused of coming out here on a junket. But, I think you know as well as I do that these are working sessions and it's time consuming and takes brave people like him to come to Hawaii to participate in hearings like this. And, I want to thank him for coming out here.

I would like to make a statement, Mr. Chairman, and to have this included in the record.

The Occupational Safety and Health Administration has recently received a great deal of criticism concerning its programs. Although OSHA has made progress under the direction of Mrs. Bingham, we are all aware that additional changes are needed. Perhaps it is the nature of this agency, since it directly influences our lives, that makes it the recipient of such harsh criticism. Yet, it is that very criticism that has made the American workplace safe.

Let me point to several improvements in the last few years. At one time, a common complaint was that the businessman seeking advice from OSHA would often find that as soon as the inspector entered the workplace—the agency has now corrected this problem through its consultation program from small businesses. For many years, businessmen objected to the many so-called nuisance standards. OSHA has now eliminated some seventy pages of useless regulations.

We are all aware that there are dangers in the workplace that threaten the health of the workers. To emphasize safety standards to the exclusion of health standards, is not only a nuisance but a danger.

The questions and regulations affecting the workers' health are complex and require that OSHA inspectors receive this through training. Congress has made efforts to provide additional funding for the retraining of OSHA inspectors, so that they may devote more time to health problems in the workplace. Statistics show that nine out of every ten deaths in the American workplace are directly related to health problems and not safety considerations. Therefore, we can consider this retraining program as a positive step for OSHA.

There is yet another side to the issue. One concern of small businesses is the cost of Workers' Compensation. From Committee hearings held earlier this year, we have learned that such increases are forcing the small businesses to carry a great economic burden. Properly supervised inspections of OSHA providing accurate data will show the cost of Workers' Compensation. This is one of the goals of the Occupational Safety and Health Administration, and one to which the Congress is firmly committed. It is paramount that OSHA avoid becoming merely a punitive agency. To do so would force businessmen to conceal potential safety and health problems from the inspectors.

OSHA must work with business for a common goal of creating a safer worker environment. This will increase productive man hours and decrease unnecessary expenses. The Appropriations Bill for the Departments of Labor and Health, Education and Welfare, included a two million dollar increase to enable the Secretary of Labor to evaluate OSHA programs in order to simplify operations. Already some one thousand one hundred regulations have been singled out for elimination.

This trend toward the reduction of regulations must continue. In 1977, OSHA conducted more than 1,700 inspections in direct response to reported industrial accidents or injuries. Yet, while there are one thousand Federal grain inspectors for 10,000 grain elevators, there are only 1,500 OSHA inspectors to protect more than sixty-five million workers and five million workplaces.

Money saved from needless regulations could be channeled into more productive areas, such as increasing personnel to meet the legitimate needs. The Occupational Safety and Health Administration is making progress and today's hearings will let the committee know what further action is needed. This is an arm of the Federal Government that can help decrease business costs and ultimately strengthen the American economy.

I look forward to hearing the views of the people of Hawaii and I will take those concerns with our colleagues here to Washington, to the 96th Congress.

I thank my colleague and chairman for this few minutes.

Mr. HEFTEL. Thank you very much, Danny. We have with us, now, Ozzie Myers from Philadelphia, that city of Brotherly Love.

Mr. Myers?

Mr. MYERS. Thank you, Mr. Heftel.

Mr. HEFTEL. And, do you have any remarks you want to make?

Mr. MYERS. I'm a freshman member of the 95th Congress, along with your two men who are from Hawaii. And, I can let you know that I'm from back east and I have two guys that are working very hard and when they went around and talked to the members of the

Education-Labor Committee about this trip, they didn't have any problem finding members willing to come out here.

We do realize that this is a long distance from my home, but I'm certainly aware of the problems you have here and want to try to do something to help you out. And, I just want to commend you two men for doing an excellent job in Congress.

Thank you.

Mr. HEFTEL. Thank you very much. If you would like longer, we can arrange it.

Now, Mr. Gilkey, we would be delighted to have you speak. And, would you identify your associate for the record?

STATEMENT OF ROBERT C. GILKEY, DEPUTY DIRECTOR, HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS ACCOMPANIED BY WAYNE MOUNT, PROGRAM SPECIALIST, DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, STATE OF HAWAII

Mr. GILKEY. Thank you, Mr. Chairman Heftel and committee members.

Mr. Chairman and members, my name is Robert C. Gilkey. I am deputy director of the Hawaii Department of Labor and Industrial Relations and I am, as a matter of fact, representing Dr. Joshua Agsalud, State designee for the Hawaii Occupational Safety and Health Program. He is in Texas, as a matter of fact, attending an OSHA conference in Antonio.

With me is Mr. Wayne Mount, the program specialist with the Division of Occupational Safety and Health here in Hawaii.

If I might be permitted a personal note to start out in relation to Congressman Myers. The reelection totals that we gave Congressman Heftel and Congressman Akaka show that we here in Hawaii very much appreciate your work.

I will briefly describe the status of the Hawaii occupational safety and health program, the administrative organization (DOSH for Division of Occupational Safety and Health), and some of the program activities. Also, I would like to mention the relationships of our program to other State organizations and agencies and to the Federal OSHA program.

The Hawaii occupational safety and health law was passed in May 1972. The plan to implement the law was forwarded to the Secretary of Labor in November 1972 and was approved in December 1973. The (DOSH) division became fully operational in 1974, reported all developmental steps were completed in June 1976, and finally, a plan was certified by Assistant Secretary Bingham in April 1978. DOSH is one of the operating divisions of the Department of Labor and Industrial Relations. Incorporated within the division are occupational safety and health enforcement, consultation in the public and private sectors and State-wide training and information programs for employers and employees. Our program emphasis is voluntary compliance with the OSHA standards, rules and regulations. To this end, an effective training and consultation effort is backed by an efficient enforcement program if establishments do not demonstrate voluntary compliance. I might point out that Federal enclaves and maritime

activities in Hawaii have remained under Federal OSHA jurisdiction from the start of the program.

Although the fiscal year 1978 grant support was significantly curtailed, DOSH reached 39 percent more individuals with training and consultation programs while the number of compliance inspections increased by 71 percent over the fiscal year 1977 period. The level of fiscal year 1979 grant support more closely reflects available State matching funds and program needs. The State matching funds are assured through June 1979 and past experience has demonstrated that both executive and legislative support for program needs will be forthcoming for the next biennium period, July 1979-June 1981. With adequate support, we anticipate continuing improvement in effectiveness and efficiency measures within DOSH—which can only result in improved workplace safety and health.

In the OSH Act of 1970, one of the purposes of encouraging States to administer their own law was to foster innovation and experimentation to meet State needs. We feel that within the constraints imposed by Federal monitoring, Hawaii has been innovative. First, our voluntary compliance through training and consultation was part of our initial plan design. Our interest and enthusiasm for this program element was not shared by Federal OSHA until recently.

Second, we have sought the involvement of all parties who share interest and responsibility for workplace safety and health. Our standards advisory committee membership reflects such interest and responsibility and includes representatives from government, labor and management. Since this volunteer group has program-wide advisory responsibilities, the members have provided vital two-way communications between the program and affected workers and employers; and we believe, have helped us avoid some of the dissension that has plagued the national program.

Third, our Hawaii State Legislature has maintained close surveillance over DOSH activities. In addition to our annual program report to the legislative committees, the State House of Representatives has conducted two public investigations to review the implementation of the law since DOSH became fully operational in 1974. This close relationship has given our program added dimension.

During the 1978 sessions, two concurrent resolutions were passed that promise significant program impact. One urged cooperation of labor unions and employers in coordination with government in developing and implementing safety training. The second specifically requested that our department coordinate with Workers' Compensation insurers and self-insurers in effectuating safety consultation services for their insurers. This type of legislative impetus has facilitated the organization of an action committee of insurers to assess and plan for meeting the needs of their clients, with coordination assistance being provided by DOSH.

Also, there are other training and consultative alliances that have been, and continue to be, formed to improve workplace safety and health. The General Contractors Association, the Building Trades Council, all major unions, the Department of Education, and the Hawaii Sugar Planters Association, are but some of the organizations with which DOSH is coordinating and providing assistance.

We are confident that Hawaii is providing safety and health protection to our workers that is superior to that provided in the past and to that which could be provided if the program were abandoned to Federal enforcement. This belief is an extension of the conviction held when the OSH Act was passed in December 1970 and the State responded to the explicit encouragement in the act—to assume the fullest responsibility for administration and enforcement of our State law. In the past, we have voiced concerns that the daily Federal monitoring tended to encourage the exact replication of the Federal program in Hawaii, thereby thwarting innovation and experimentation. After almost five years of operations under State administration, Federal monitoring continues to consume considerable State and Federal resources without visible benefit to program goals. We recommend that this expensive monitoring system be abandoned in favor of an analysis of monthly activity reports which could be augmented by on-site audits as necessary.

Within the language of the OSH Act, we believe is a strong implication supporting a partnership relationship between the Federal program and the participating States. This concept has received considerable support from OSHA leaders. Recently, we have been encouraged by the initiatives of Assistant Secretary Bingham in inviting State participation in the development of new standards and view this as a move toward a closer alliance. We would hope that the supportive partnership relationship can be expanded to include operational matters and program policy setting.

Thank you for the opportunity to discuss our State program with you. I would be pleased to answer any questions.

Mr. HEFTEL. Thank you very much, Bob.

Under the existing OSHA rules and Federal rules pertaining to Federal establishments, are you permitted to investigate the Navy installations?

Mr. GILKEY. No, that is Federal.

Mr. HEFTEL. OSHA is not permitted to investigate the Federal?

Mr. GILKEY. Not our State Division of Occupational Safety and Health. The Federal is.

Mr. HEFTEL. Are you satisfied with the manner in which the Federal OSHA personnel have investigated the Navy programs here?

Mr. GILKEY. I'm not really prepared to comment on that.

Mr. MOUNT. I would rather not state a judgment on that.

Mr. HEFTEL. Would you consider the Dillingham Shipyards to be comparable to the Pearl Harbor Navy Shipyards in some degree?

Mr. MOUNT. We have not conducted formal investigations of the Dillingham Shipyards. That is part of the maritime jurisdiction in Federal enclaves, reserved for the Federal jurisdiction. They do have enforcement authority and enforcement forces here within the city for that purpose.

Mr. HEFTEL. What comparable installation under your responsibility involving asbestos hazards are you responsible for and what have you done in monitoring those installations that you are responsible for?

Mr. MOUNT. Most of our asbestos problems within the State, as we have testified to on Tuesday, are concerned with brake and clutch and

garage vehicle maintenance type of activities and some of the demolition projects. When the asbestos scare was introduced into the program, we did some extensive monitoring, cooperating with the Public Health agencies and school boards in examining some of the older buildings that have preference of asbestos in construction materials.

We are continuing to monitor those identified sources of asbestos.

Mr. HEFTEL. The reason I brought this up was we know that we have had Federal and State OSHA programs. We know that we have had serious violations of existing rules and regulations and technical and scientific and medical knowledge. And, yet, while all of these abuses were continuing to occur, we had OSHA provided to investigate sometimes minor and sometimes unnecessary installations. And, we are trying to get a perspective of whether the large picture is being ignored for the easy accessible investigations that look good on a report, but don't touch 99 percent of the problems that the community has.

And, I would like, if you have a reaction to that observation, maybe you could comment on it.

Mr. GILKEY. I can only comment in relation to our State program. I don't think that comment would apply in connection with our program. We focus, for example, on construction and highway kinds of industry. I think we do concentrate on those areas and their significant problems.

Mr. MOUNT. May I expand on that?

From the start, we have emphasized the worst first type of inspections scheduling system when we have something that Federal OSHA does not have, one that is, perhaps, attributed to the fact that we are not as large as their problems. But, we are inspecting on an establishment basis, whereas Federal OSHA is required to identify those hazardous SIC's, Standard Industrial Classification areas. And, they inspect within that as a hazard. We identify high hazardous establishments, whether they be corner drugstores or whether they be energy plants.

We inspect on that basis. From that standpoint, I think we are a much—from the grounds of seeking out the high hazard problems and not just the high hazard industries.

Mr. HEFTEL. Thank you.

Mr. Akaka?

Mr. AKAKA. Thank you very much, Mr. Chairman.

I want to take the time to commend Mr. Gilkey and Mr. Aagsalud and the Labor Department for their work. I know as you stated, you feel that your programs have been effective in Hawaii in carrying out the laws of OSHA.

I just wanted to take the time to commend you on that. Thank you.

Mr. HEFTEL. Mr. Miller?

Mr. MILLER. Thank you, Mr. Chairman. I wonder if you might expand just a little bit on your statement on the last page of your testimony, about the gapping effect you feel the continuing monitoring has on your ability to be innovative.

Mr. GILKEY. Right now we are subject to daily monitoring by Federal OSHA. In addition, we have the semiannual evaluations.

Mr. MILLER. Daily monitoring in what nature?

Mr. GILKEY. The work that our inspectors are doing and that kind of thing.

Mr. MILLER. Explain to me how they monitor, the procedure.

Mr. MOUNT. There are several ways. They identify in laymen fashion which inspections they want to monitor and they do so by several means. One is when the company is visited, a Federal OSHA inspector actually accompanies our inspector and looks over his shoulder. And, then, criticizes or praises the report, as the case may be, on the performance of our OSHA inspector. He has no jurisdictional authority, other than evaluating the performance of our inspector.

The other is that they will go out on what we call spot inspections two or three days after our inspector has completed his inspection. They will go out and reinspect the same establishment to see what hazards might exist that our inspector might have missed. This is not the type of activity employers welcome. We have followup inspection requirements in our own program to insure the abatement of serious hazards. And, we are required to followup.

Sometimes we will find circumstances where we go and make an inspection and the Federal monitor will make a spot check. Then, we go with a followup inspection and the Federal monitor can even make a spot check on our spot check. And, by this time the employer is getting a little upset with the Occupational Safety and Health inspectors.

The other method is a case file review kind of thing, where they come in and examine the entire case file once it is closed out. They examine it for administrative deficiencies and lack of evidential support in case it goes to court and that sort of thing.

Mr. MILLER. Let me get this straight, without taking too much time.

You say on a daily basis how many inspectors from your office are out in the field on an average day?

Mr. MOUNT. Out of the Oahu office here, we have 12 inspectors and we have 5 neighbor islands, so 17 inspectors.

Mr. MILLER. Whose job is it to be out in the field to inspect various workplaces?

Mr. MOUNT. Those are argued by five house inspectors.

Mr. MILLER. They are either responding to departmental determination that this establishment needs an inspection, or responding to complaints or requests by workers?

Mr. MOUNT. Yes.

Mr. MILLER. OK. And, you are telling me that some of these people are coming in on a daily basis by Federal OSHA?

Mr. MOUNT. Yes, sir.

Mr. MILLER. How many?

Mr. MOUNT. The Federal area office has four safety compliance and two health inspectors. They are, to the best of my knowledge, full-time monitoring our activities.

Mr. MILLER. I guess we are going to continue these hearings, in Washington, but I'd be very interested in that, because Mr. Heftel and Mr. Akaka both pointed out that you have an industry in the islands here that has some very serious problems. And, if they are running around following you, who is watching the shipyard workers?

Because the maritime trades, as you pointed out, are reserved and have already been determined to be hazardous. That is why there is that special insurance and compensation program.

And, I don't mean to make light of it, but I'm a little bit concerned because we have sat through hours and hours of testimony where there are not enough OSHA inspectors to deal with the problems in the entire country. And either we have delegated some responsibilities to the State or we haven't. And, if we want that, we ought to hire the 17 plus the 4 and go to work. But, to keep looking over your shoulders, I think we ought to be concerned you're doing right.

All States are not on the same level. In some cases, I can understand those problems of compliance. But, I can't understand in light of what we have heard in the last 2 days here, that they would be doing that. Basically, you are telling me it's four man hours of effort to look over your shoulders. I can understand auditing and compliance. That is what we are here to find out about. But, the other thing makes me a little concerned.

Mr. MOUNT. Would the committee permit me to make a personal observation?

Mr. HEFTEL. That is what we want.

Mr. MOUNT. The most serious impact, in my view, is the morale of the State inspector. He is our emissary in the field, the one we have entrusted to carry the program goals to the workplace to be generated.

Mr. MILLER. I'd say you're not getting cooperation out of the employers because you never know what the rules are.

Mr. MOUNT. It's the morale of the compliance people that concerns me. They are subject to constant daily criticism and we just don't have any positive strokes within the current system that we can provide by way of balance.

Mr. MILLER. Thank you.

Mr. MYERS. What type of training do your inspectors receive prior to going into the field?

Mr. MOUNT. We initially participated in OSHA institute training in Chicago, when we first got our program underway. It was very clear to us that being 2,000 miles away from the mainland, that Chicago was going to be very, very expensive. We have developed our own inhouse training capability. That is one of the reasons we fought very hard for maintaining our training and education branch.

We think we give our compliance officers that same quality of training that they received in Chicago.

Mr. MYERS. One other question. You mentioned in your statement here that you were encouraged by Secretary Bingham to invite States to participate in the rulemaking process. Have you participated in any of the rulemaking processes?

Mr. GILKEY. Not directly in the rulemaking process per se. But, they have expanded the communication channels in giving us advanced communication on proposed standards and asking for input.

Mr. MYERS. Have you forwarded some of your ideas so the Federal agencies can cope with some of the problems here and have they used any of it?

Mr. MOUNT. We have discussed it at considerable length with the regions.

Mr. MYERS. It would seem to me that you are probably more on track with what is happening here than they are on the mainland. Your input probably would be very helpful. At least I would think that, anyway.

Mr. GILKEY. I think with this expanded communication we will look forward to making this kind of input in the future.

Mr. MOUNT. One of Dr. Bingham's initiatives has been to call the State designees together. And, that's exactly what they are doing today in San Antonio, and that is conveying to her some of the same concerns that we are stating here.

Mr. GILKEY. That is why you have got the second string here.

Mr. HEFTEL. Mr. Gilkey, before you adjourn and I don't know if this is an easy question for you to publicly answer in the absence of Joshua Aagsalud. Do you think that we should either have a Federal program carried out by the Federal agencies or State programs carried out by the State agencies, but not endeavor to have both as we do now?

Mr. GILKEY. I think generally, we would be in favor of the present arrangement, not only looking at Hawaii, but looking at the country as a whole. I think there is a need for Federal involvement. We like to think that we are up there among the more advanced States, because we had a very good industrial safety and health law before OSHA was passed.

But, I think there are States that would need, perhaps, more than we do, a Federal involvement. So, we would be in favor of the present arrangement with the objections and concerns that we have voiced. I think if it came down to the alternative that you mentioned, we would be in favor of running our own program in Hawaii, rather than having a complete Federal program.

Mr. MYERS. Mr. Chairman?

Mr. HEFTEL. Yes.

Mr. MYERS. One more question. Do you have any problems with other Federal agencies, where let's say EPA had some jurisdiction in a plant? Do they cooperate with your inspectors? Or, do you have a problem there? I'm talking about where you have EPA regulations and, also, your State agency is involved with safety regulations.

Mr. GILKEY. We don't have any problems with other Federal agencies.

Mr. MYERS. You have none?

Mr. MOUNT. No, sir. Their representation out here is not heavy.

Mr. HEFTEL. They don't bother them because they don't have anybody.

Mr. MOUNT. We establish contact with them. The communication is open.

Mr. MYERS. They are here, in other words?

Mr. MOUNT. Yes, sir.

Mr. MYERS. One other question. What type of background experience do your inspectors have? What do you look for in hiring inspectors? Do you look for someone who has worked in the trades, that has worked around hazardous substance? Do you look for a high school graduate, with college training? What do you look for?

Mr. GILKEY. I think as far as the inspectors go, they come from a wide range of backgrounds. Most of the inspectors that we have now

were ones that we had with us prior to the passage of OSHA. Most of them have been around so long, I really don't know what many of them did before they came with the State.

Mr. MYERS. It's a small turn over?

Mr. GILKEY. A very small turn over in this program.

Mr. MYERS. Thank you.

Mr. HEFTEL. Thank you very much, gentlemen. We appreciate your time and valuable insights.

[Prepared statement of Joshua Agsalud follows:]

STATEMENT OF JOSHUA C. AGSALUD, DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

THE OCCUPATIONAL SAFETY AND HEALTH PROGRAM IN HAWAII

Mr. Chairman and members, my name is Robert C. Gilkey. I am Deputy Director of the Hawaii Department of Labor and Industrial Relations and am representing Dr. Joshua Agsalud, State Designee for the Hawaii Occupational Safety and Health program.

I will briefly describe the status of the Hawaii Occupational Safety and Health Program, the administrative organization (DOSHS, for Division of Occupational Safety and Health), and some of the program activities. Also, I would like to mention the relationships of our program to State organizations and agencies and to the Federal OSHA program.

The Hawaii Occupational Safety and Health Law was passed in May 1972. The plan to implement the Law was forwarded to the Secretary of Labor in November 1972 and was approved in December 1973. The division (DOSHS) became fully operational in 1974, reported all developmental steps completed in June 1976, and the plan was certified by Assistant Secretary Bingham in April 1978. DOSHS is an operating division of the Department of Labor and Industrial Relations. Incorporated within the division are occupational safety and health enforcement, consultation in the public and private sectors, and state-wide training and information programs for employers and employees. The program emphasis is voluntary compliance with the OSHA standards, rules and regulations. To this end, an effective training and consultation effort is backed by an efficient enforcement program if establishments do not demonstrate voluntary compliance. I might point out that Federal enclaves and maritime activities in Hawaii have remained under Federal OSHA jurisdiction from the start of the program.

Although the fiscal year 1978 grant support was significantly curtailed, DOSHS reached 39 percent more individuals with training and consultation programs while the number of compliance inspections increased by 71 percent over the fiscal year 1977 period. The level of fiscal year 1979 grant support more closely reflects available State matching funds and program needs. The State matching funds are assured through June 1979 and past experience has demonstrated that both executive and legislative support for program needs will be forthcoming for the next biennium period, July 1979 to June 1981. With adequate support, we anticipate continuing improvement in effectiveness and efficiency measures within DOSHS—which can only result in improved workplace safety and health.

In the OSH Act of 1970, one of the purposes of encouraging States to administer their own law was to foster innovation and experimentation to meet State needs. We feel that within the constraints imposed by Federal monitoring, Hawaii has been innovative. First, our voluntary compliance through training and consultation was part of our initial plan design. Our interest and enthusiasm for this program element was not shared by Federal OSHA until recently. Second, we have sought the involvement of all parties who share interest and responsibility for workplace safety and health. Our Standards Advisory Committee membership reflects such interest and responsibility and includes representatives from Government, labor and management. Since this volunteer group has program-wide advisory responsibilities, the members have provided vital two-way communications between the program and affected workers and employers; and we believe, have helped us avoid some of the dissension that has plagued the national program. Third, our Hawaii Legislature has maintained close surveillance over DOSHS activities.

In addition to our annual program report to the legislative committees, the State House of Representatives has conducted two public investigations to review the implementation of the Law since DOSH became fully operational in 1974. This close relationship has given our program added dimension. During the 1978 sessions, two concurrent resolutions were passed that promise significant program impact. One urged cooperation of labor unions and employers in coordination with government in developing and implementing safety training. The second specifically requested that our department coordinate with workers' compensation insurers and self-insurers in effectuating safety consultation services for their insurers. This type of legislative impetus has facilitated the organization of an action committee of insurers to assess and plan for meeting the needs of their clients, with coordination assistance being provided by DOSH. Also, there are other training and consultative alliances that have been, and continue to be, formed to improve workplace safety and health. The General Contractors Association, the Building Trades Council, all major unions, the Department of Education, and the Hawaii Sugar Planters Association, are but some of the organizations with which DOSH is coordinating and providing assistance.

We are confident that Hawaii is providing safety and health protection to our workers that is superior to that provided in the past and to that which could be provided if the program were abandoned to Federal enforcement. This belief is an extension of the conviction held when the OSH Act was passed in December, 1970 and the State responded to the explicit encouragement in the Act—to assume the fullest responsibility for administration and enforcement of our State Law.

In the past, we have voiced concerns that the daily Federal monitoring tended to encourage the exact replication of the Federal program in Hawaii, thereby thwarting innovation and experimentation. After almost five years of operations under State administration, Federal monitoring continues to consume considerable State and Federal resources without visible benefit to program goals. We recommend that this expensive monitoring system be abandoned in favor of an analysis of monthly activity reports which could be augmented by on-site audits as necessary.

Within the language of the OSH Act, we believe is a strong implication supporting a partnership relationship between the Federal program and the participating States. This concept has received considerable support from OSHA leaders. Recently, we have been encouraged by the initiatives of Assistant Secretary Bingham in inviting State participation in the development of new standards and view this as a move toward a closer alliance. We would hope that the supportive partnership relationship can be expanded to include operational matters and program policy setting.

Thank you for the opportunity to discuss our State program with you. I would be pleased to answer any questions.

Mr. HEFTEL. Is the panel for the National Federation of Independent Business Personnel here now? Obie Olson, manager of the Service Packaging Corp.? Ludwig Armerding?

Gentlemen, would you like to identify yourselves for the record?

STATEMENT OF OBIE OLSON, PRESIDENT AND MANAGER, SERVICE PACKAGING CORP.

Mr. OLSON. I'm Obie Olson, president and manager of Service Packaging Corp.

Mr. ARMERDING. I'm Ludwig Armerding, the governmental affairs representative, and I'm also the owner and manager of Western Temporary Services.

Mr. OLSON. We have prepared a little statement and, then, I understand we may digress into some sort of panel.

Mr. HEFTEL. You may introduce your statement into the record by unanimous consent. It will become part of the permanent record. You may, then, enter into any dialog you wish to. The record will include your prepared statements.

Mr. OLSON. I'd like to briefly go through it. I've kept it down to 4 minutes. I think it's small enough.

As I said, I am the president and general manager of Service Packaging Corp. We are a small business firm that employs 14 people and we manufacture corrugated boxes and packaging supplies.

I would like to emphasize that we are a small business. Our sales and administrative staff numbers only four. We have a bookkeeper, an order clerk, and two salesmen. Everybody does a little bit of everything, as is common in a small business operation.

On May 11, 1977, the OSHA man arrived, complete with card and briefcase, and a bright, shiny smile. He announced his intent to inspect the company to see if it met OSHA requirements and requested that we show him our safety and health program. It is my belief that he really felt that we should have set up a complete department that is solely concerned with making sure our company is in strict compliance and is totally familiar with the 1,400 pages of OSHA regulations. I understand from Mr. Akaka that that has now been reduced to 1,330, which I thank you. His disappointment showed when we explained to him that we did not have at least one person who was totally involved in OSHA requirements.

The inspector was very polite and very apologetic. I am sure he has been involved in many stormy sessions with other businesses and through these experiences found that this was the best way to accomplish his mission.

Now, I have always taken pride in my plant, and continually preach safety, quality, and cleanliness. I felt we would have no problems at all in passing any inspection. But, this inspection was, in my estimation, one of the greatest examples of nitpicking I have ever seen. We were cited for seven nonserious violations and one serious violation. The seven nonserious violations ran the gamut from, not having an effective occupational safety and health program, to using cords with splices. Even though the splices were made to lengthen a new cord and were done in a particularly safe method, it was explained to us that OSHA allows no splices. The serious violation was failure to guard fan blades less than 7 feet from the floor. The fan blades were of the plastic variety, but the guards did not meet OSHA requirements. We were assessed a penalty of \$65 and instructed to correct our deficiencies and that we would be reinspected upon completion.

After some additional discussion with the inspector, and having referenced through the regulations, I came to the conclusion that, if strictly applied, those regulations would shut down about 95 percent of our businesses in the United States.

I have my suspicions that most inspection reports that are completed show at least some penalties. This tends to develop a file that shows each inspector is performing his duties and, I also believe that each report carries a financial penalty to help offset costs. We are dealing with bureaucracy in its purest form.

But, gentlemen, I could go on quite some time about this inspection and the ensuing events, but in the interest of time, let me make some general comments.

1. In OSHA you have established a bureaucracy of the worst kind.
2. It has been compounded by regulations that were created at the Federal level and are to be administered by the State government.

You now have a watchdog watching a watchdog, both of which have different interpretations.

3. Being a big government, OSHA only knows how to deal with big business, so all forms and regulations are geared to this relationship.

4. In its regulations, OSHA has taken it upon itself to cover all possible situations from explaining how to safely mount a shelf in a cabinet through getting an astronaut to the moon and back.

Now, I believe that OSHA's intent is important and necessary, but I would like to make some suggestions.

1. Simplify the regulations by having an overall basic book that would apply to almost any business.

2. Establish separate books for specialized situations such as the manufacturing of asbestos, deep sea diving, et cetera.

3. Let each State administer their own program within Federal guidelines.

4. Keep the required programs and regulations very simple for small businesses, and possibly establish a program that these small businesses can join, rather than forcing them to create their own.

5. Above all, have OSHA keep its attention on the main issues of major consequence and not become another regulatory agency going through the motions.

Thank you.

Mr. HEFTEL. Thank you very much. We will question both of you gentlemen after you have finished your presentations.

[Prepared statement of Obie Olson follows:]

TESTIMONY OF O. P. "OBIE" OLSON, PRESIDENT, SERVICE PACKAGING CORP.

My name is Obie Olson and I am the President and General Manager of Service Packaging Corporation. We are a small business firm that employs 14 people and we manufacture corrugated boxes and packaging supplies.

Now, I would like to emphasize that we are a small business. Our sales and administrative staff numbers only four. We have a bookkeeper, an order clerk and two salesmen. Everybody does a little bit of everything, as is common in a small operation.

On May 11, 1977, the OSHA man arrived, complete with card and briefcase, and a bright, shiny smile. He announced his intent to inspect the company to see if it met OSHA requirements and requested that we show him our safety and health program. It is my belief that he really felt that we should have set up a complete department that is solely concerned with making sure our company is in strict compliance and is totally familiar with the 1400 pages of OSHA regulations. His disappointment showed when we explained to him that we did not have at least one person who was totally involved in OSHA requirements.

The inspector was very polite and very apologetic. I'm sure he has been involved in many stormy sessions with other businesses and through these experiences found that this was the best way to accomplish his mission.

Now, I have always taken pride in my plant, and continually preach safety, quality, and cleanliness. I felt we would have no problems at all in passing any inspection. But, this inspection was, in my estimation, one of the greatest examples of nit-picking I have ever seen. We were cited for 7 non-serious violations and 1 serious violation. The 7 non-serious violations ran the gamut from, not having an effective occupational safety and health program, to, using cords with splices. (Even though the splices were made to lengthen a new cord and were done in a particularly safe method. It was explained to us that OSHA allows no splices.) The serious violation was failure to guard fan blades less than 7 feet from the floor. (The fan blades were of the plastic variety, but the guards did not meet OSHA requirements.) We were assessed a penalty of \$65 and instructed to correct our deficiencies and that we would be reinspected upon completion. After some additional discussion with the inspector and having

referenced through the regulations, I came to the conclusion that, if strictly applied, those regulations would shut down about 95 percent of our businesses in the United States.

I have my suspicions that most inspection reports that are completed show at least some penalties. This tends to develop a file that shows each inspector is performing his duties and, I also believe that each report carries a financial penalty to help offset costs. We are dealing with bureaucracy in its purest form.

Gentlemen, I could go on quite some time about this inspection and the ensuing events, but in the interests of time, let me make some general comments.

1. In OSHA you have established a bureaucracy of the worst kind.
2. It has been compounded by regulations that were created at the federal level and are to be administered by the State Government. You now have a watchdog watching a watchdog, both of which have different interpretations.
3. Being a big government OSHA only knows how to deal with big business, so all forms and regulations are geared to this relationship.
4. In its regulations, OSHA has taken it upon itself to cover all possible situations from, explaining how to safely mount a shelf in a cabinet, through getting an astronaut to the moon and back.

Now I believe that OSHA's intent is important and necessary, but I would like to make some suggestions.

1. Simplify the regulations by having an overall basic book that would apply to almost any business.
2. Establish separate books for specialized situations such as the manufacturing of asbestos, deep sea diving, etc.
3. Let each state administer their own program within federal guidelines.
4. Keep the required programs and regulations very simple for small businesses, and possibly establish a program that these small businesses can join, rather than forcing them to create their own.
5. Above all, have OSHA keep its attention on the main issues of major consequence and not become another regulatory agency going through the motions.

STATEMENT OF LUDWIG ARMERDING, GOVERNMENTAL AFFAIRS REPRESENTATIVE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. ARMERDING. Thank you, Mr. Heftel. We are very happy to be here today to have this opportunity. The testimony that I have given you is based on telephone contacts with forty-nine of our members.

Interestingly enough, only nine of them have been inspected within the last year. So, we have elected to only focus on the recent experience because we are of the impression that the process is being changed, is being improved. And, we felt to go back into the dim past would not be productive.

So, we tried to focus on what is really current and relevant. I think Mr. Olson has given you just the classic specific example of the kinds of problems that we are faced with. I have given you eight suggestions, which we hope are not excessively critical, but rather are an intent to suggest ways in which we think the program could be improved.

Like Mr. Olson, we believe there is a place for the program. We certainly are not recommending that it should be abolished. But, we do feel there are lots of ways it can be improved. The excessive legalistic bureaucratic approach to it is perhaps the most serious problem that we face.

With 70 out of 1,400 pages eliminated, I think would be a good goal. Really, I guess, the common sense I have pointed out in my fourth point here in the implementation of these programs, the idea of focusing in on the areas where there is known obvious risk, I think this is great. This is the way to go and not worry too much about a position

of a sign in the men's room or something like that, which has been the case.

So, my testimony has been given to you in writing. I trust it's complete. If there are any questions, I'd be more than happy to answer them.

Mr. HEFTEL. I would like to ask both of you gentlemen approximately the same question.

Do you feel that OSHA, in its present form, provides a service that is needed for employee health and safety standards? Do you think that, for instance, it should be reorganized classifying the known dangers and, then, approaching those according to the industries that would have those implicit dangers in their structure?

Mr. ARMERDING. If I may, I would suggest that the statistics on workers' compensation would be a very interesting basis. And it may already be used. I would hesitate to think that they weren't looking at those statistics.

Using those, then, as the basis for directing their efforts and focusing more on what I have chosen to call the educational and supportive effort, rather than punitive effort would, I think, be very productive. So, we have to have a satisfactory basis for determining whether high hazards to both health and safety exist, so we can focus at least first on those.

And, secondly, we have to try to do it through education and through a supportive effort. In other words, the inspector doesn't come in to find something wrong. He comes in to help the guy who is running the business, who may in many cases just be, as Obie has said. Small businesses are really a different proposition than really large businesses. We can't afford this.

He is a big business as far as I'm concerned, I have three permanent employees. I can't afford somebody in my office who is concerned solely with the safety and health of the people. I have to do that as part of my time. So, I think if we could focus on what I call the supportive educational effort and a lot has to be focused on the employees. Because I don't think the employers, at least the ones I know, are that blind.

The last thing I want is an employee off or sick because they are sick or have had an accident. This doesn't do me any good. From what I've heard from a number of small businessmen, a lot of the problem resides with the employees themselves.

Mr. OLSON. So the education effort, then, is very important. I think what has happened is the agency is going through the motions at the lower levels. I don't think they are being that effective. It seems to me the Federal level should deal with the major problems on an industry-wide basis and setup guidelines that the States could follow and have the States develop their own safety regulations that they would inspect and do it on a basis that they should be doing it. This would be on a daily overall operation, where you have a fire extinguisher and what you do with these regulations.

But, to have the overlapping of the Federal and State situation, I think is ridiculous. Its redundant and costs money. And, I'm sure there were other people that were inspected by the Federal inspector and was right on the heels of the State inspector.

Mr. HEFTEL. Thank you very much.

Mr. Miller?

Mr. MILLER. To listen to both of you gentlemen places some concern in that you paint a picture of OSHA being a nuisance, in a sense, and that it really hasn't changed. You mentioned your serious violation was a failure to screen a fan?

Mr. OLSON. The guard was, I think, one-quarter of an inch too wide between the mesh on it, as far as OSHA regulations. It was legal for other people, but not for us.

Mr. HEFTEL. Legal for other people to buy.

Mr. MILLER. My concern is that we know a good number of people are injured, maimed, killed every year in small businesses for no other reason than there are a tremendous number of people employed in small businesses. An overwhelming number of people work in the establishments with 10 or 15 employees. And, I think we have an obligation to assure their safety. We find that even in the hazardous industries, we have developed general standards of due care and due diligence, and have sought enforcement based upon those general standards of care, rather than questions of whether the screen is a quarter of an inch or not.

But, there is some effort in this thing of prevention and, I don't know how you get at your concerns and get at our concerns of preventing it. It is very easy to go back and say you were negligent after the person lost a finger or an arm. That is not terribly difficult. But, it's not helpful here either for the person who lost his finger or arm, or to you in terms of your production.

My family runs one and a lot of people I know do, and we have heard this concern expressed all the time since I have been in Congress. And, I don't know how you do it, unless you are prepared to stand by a general standard that is sort of a common law today.

You must have a standard of due care and diligence toward the safety of your workers. If you don't, you are going to be sued. I don't know if that's enough. I don't know if you are willing to stand by that.

Mr. ARMERDING. There is, I think, in all of this a problem of perception and, certainly, we are biased. We are not claiming to sit here as impartial judges. We know that we are biased. But, I have been in business now for—I hate to think quite how long—40 years. And, I really have not met very many employers who weren't honestly concerned about the welfare of their employees.

And, quite honestly, part of it was pure selfishness. In my case, I can't afford to have people sick. I can't afford to have people injured. In spite of the fact that I have run my business for 8 years without one single workers' comp injury in my office, my workers' comp rates have gone steadily up, to the point where in some instances they have tripled what they were 8 years ago. Obviously, somebody is causing a problem. It is not my office.

I realize in an insurable situation you can't necessarily distinguish between A and B. You have to deal with both of them the same.

Mr. MILLER. The other side of the coin would be somebody hasn't solved the problem either if your comp rates continue to climb. That means we continue to have accidents and increases in losses, even though we have OSHA.

Mr. ARMERDING. It could also just mean inflation.

Mr. OLSON. We are operating under a zero defect type of program. In many instances I find their application of putting a guard on a saw makes it more difficult for an employee to get his work done. Consequently, one minute you compound his efforts and, then, you turn your back and he is going to find an easier way to do it again. They go overboard as far as guards and systems and things like that, rather than saying, "Fine, we are going to find a way to safeguard this machine properly." They have a tendency to try and make it impossible to have an injury on that machine.

So, you can carry it to a point beyond common sense, to where it's almost ridiculous. What happens, then, is you have companies virtually saying, "Well, we passed the OSHA inspection," and as soon as the inspector is gone they go back to work. You have to have a reasonable effort that can be applied, that the people are going to accept before you ever get the thing established. They carry it too far, to where it becomes ridiculous and the whole program goes out.

Mr. MILLER. Thank you.

Mr. HEFTEL. Mr. Akaka?

Mr. AKAKA. Mr. Olson, how long have you been in business in Hawaii?

Mr. OLSON. Approximately 11 years.

Mr. AKAKA. How long has OSHA been surveying your particular shop?

Mr. OLSON. We were inspected on one occasion in 1977 and prior to that we had no experience with them.

Mr. AKAKA. Since 1977, have you seen any improvement in their inspections?

Mr. OLSON. We saw them just the one time. And, after that we got numerous phone calls and a number of letters. But, there was no re-inspection, no followup.

Mr. AKAKA. I know many costs have escalated, inflated. My question is, since you have been investigated by OSHA and apparently had to make some adjustments, has this increased your cost of production?

Mr. OLSON. Not for us, because basically what we were found in violation of were very minor things, like replacing a fan cord. I'm like Ludwig, in that you certainly don't want to have any accidents in your plant. And, I think the essence of it is that you can only talk safety to your employees, to make sure everybody is aware of it.

Our equipment was not cited for any problems. We have never had a problem in that way. We had safety equipment to begin with and it has continued on that basis.

Mr. AKAKA. My final question is do you feel that OSHA is doing the necessary job that is needed for the improvements?

Mr. OLSON. Yes, I think the program is very necessary, because there are certainly many firms and many industries that don't follow the situation and try to circumvent it to some degree. So, I think it is necessary. I think application has to be changed as to what their exact format is and how they are trying to apply it.

Mr. AKAKA. Thank you very much.

Mr. HEFTEL. Ozzie?

Mr. MYERS. Mr. Chairman, I'm just happy to hear these gentlemen say that they agree that OSHA is necessary, because 2 years ago,

beginning with the 95th Congress there were four bills to abolish OSHA. And, most small businessmen I spoke to either wanted an exemption, exclusion, or to do away with it. So, it's encouraging to hear these gentlemen indicate that they do agree there is a need for OSHA.

I would have to say that I would agree that a lot of trivial violations should be done away with. And, I would just like to commend these gentlemen for their input.

Thank you.

Mr. HEFTEL. I think it's apparent that OSHA should never have been designed as implied to make a violation for a \$65 fine for having bought a fan which meets standards, to allow it to be sold in the first place. There is something wrong there. And, I think that's what we are trying to find out. Because I reflect totally what Ozzie just said, that there is a serious question of whether or not OSHA should continue to function.

After this week of experience with asbestos, it is obvious that there is a need for a governmental function in relation to employees' safety. There is also a need to not do the thing you experienced in relation to OSHA. And, whatever is done to change that legislation is going to come out of this type of input.

So, we thank you very, very much. And, continue with the input. [Prepared statement of Ludwig Armerding follows:]

STATEMENT OF LUDWIG ARMERDING, GOVERNMENTAL AFFAIRS REPRESENTATIVE,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman and members of the subcommittee, we are grateful for the invitation extended to us through Representative Heftel to participate in this hearing.

During the last days of October, we contacted 49 of our members on the island of Oahu in order to elicit from them the most current information available with reference to Occupational Safety and Health regulations and enforcement procedures.

Of those contacted, 36 have never had an inspection under OSHA and four of them, although they had been inspected, had not been inspected within the last year. Nine, however, had been inspected within the past year and a summary of their observations is as follows:

1. The regulations and enforcement procedures should distinguish between real problems and petty infractions and focus on those things which represent genuine and serious dangers or health hazards.
2. In situations which involve both contractors and subcontractors, the one directly responsible should be cited but not both of them.
3. The regulations are excessive in every respect. No one can possibly know all that is in them. They should be reduced to cover only those things which are meaningful and important and should be written in layman's language.
4. Some inspectors fail to use common sense. Some of them are not really qualified to inspect the things which they cite as infractions. In fact, given the complexity and scope of the areas covered, no one could possibly be qualified to handle all of them. The procedure which makes the inspector both jury and judge is unfair. Any fine should be levied by some higher official than the inspector himself who issued the citation.
5. There should be no unannounced inspections and a search warrant should be required.
6. The appeals procedure is visualized as being excessively costly and cumbersome so that the offender often feels that he is better off to pay the fine than to go to the effort and expense of contesting it.
7. Even though no fine may be levied, compliance can be very costly and sometimes appears to have no meaningful relationship to whatever hazard or infraction has been revealed.

8. In the eyes of those to whom we spoke, they see little evidence that this whole thing has had any measurable effect in either reducing industrial accidents or improving the health of workers and the cost, both of direct administration and enforcement and of compliance has been far greater than the benefit realized. The educational and supportive effort has been lacking and excessive attention is focused on the trivial, unimportant and vexing aspects.

Several of our members have been invited to attend this hearing and will be giving their testimony personally. Attached to this summary are two specific examples submitted by members of the National Federation of Independent Business who will not be attending this hearing.

Thank you for this opportunity for us to provide you with our perceptions of this costly and pervasive legislation and its implementation.

Attachments.

ABC CHEMICAL CORP.,
Waipahu, Hawaii, November 8, 1978.

Mr. ARMERDING,
National Federation of Independent Business,
Honolulu, Hawaii.

DEAR MR. ARMERDING: In response to your inquiry regarding our experiences with OSHA, we were subjected to a distinctly diverse treatment from two different enforcement officers from OSHA.

One was the perfect stereotype of those that have been universally described thousands of times in thousands of publications. He was the typical "split toilet seat" sleuth. We would have satisfied him if we had plastered every wall with every conceivable "safety" signs and posters, if every employee was welded-in with safety apparel resembling a knight in armor.

But do we blame him? Or is he just another bureaucrat parroting and merely reflecting the very image that Washington wants to cast? If not, why then are we all experiencing typically the same type of nickpicking, Mickey Mouse harassment?

Contrary to the earlier experience, we were very fortunate in having another visitation by a different enforcement officer, whose apparent purpose was to encourage improvement and compliance rather than attempting to establish a "new record" of finding violations. He concentrated his efforts in helping us improve our facilities for the benefit of our employees. He spent many hours in our plant, observing our operations, testing, checking, understanding, and making constructive suggestions to help us correct deficiencies where some existed and improve on other areas where improvement was necessary. He did not demand the impossible nor dwelled on the minute.

He was very understanding, sympathetic, cooperative, and most effective in making us want to improve. He had completely changed our image and attitude of OSHA which we had harbored by our initial inspection and further influenced by the many "horror stories" regarding OSHA.

His name is Mr. Lester Tengan.

Since Congress has abundantly earned the reputation of legislating anything and everything, can we encourage them to legislate the attitude and behavior of OSHA? Let us help Congress to encourage OSHA to train their men to be like Mr. Tengan.

Sincerely,

GEORGE H. MORISADA, *President.*

KLEENCO CORP.,
Honolulu, Hawaii, November 2, 1978.

Mr. LUDWIG E. ARMERDING,
Manager, NFIB,
Honolulu, Hawaii.

DEAR MR. ARMERDING: In response to our telephone conversation, I welcome the opportunity to submit my written statement regarding OSHA.

Without going into a lot of name calling, mud slinging, and individual cases, the absolute bottom line problem with OSHA is very simple. The administrators and inspectors of OSHA do not have the education or background to understand the regulations and/or administer same.

An inspector once told me after I had asked him a question regarding the regulations, "If you don't understand the language, take it to your lawyer and get him to interpret it for you." Isn't that outrageous? Isn't that unbelievable?

After this run-in, I tried for six weeks of letterwriting, telephone calls, etc. to find the answer to the following questions:

1. What was the inspector's education; that is, safety engineer, structural engineer, et cetera.

2. What date was he hired and what experience did he have prior to employment with OSHA?

3. How many hours of classroom and/or instructions did he receive prior to being put out on the road as an inspector?

Needless to say, after many requests, none of the OSHA administrators would supply me with the answers to any of the above questions.

Thank you very much for the opportunity to submit this written statement.

Yours very truly,

HENRY A. WILKS, *Chief Executive Officer.*

Mr. HEFTEL. Is Mr. Van Diamond with us? I'm informed that he is on his way.

Is Mr. Okazaki with us? The legislative representative of the ILWU?

**STATEMENT OF SHOJI OKAZAKI, LEGISLATIVE REPRESENTATIVE,
INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, LOCAL 142**

Mr. OKAZAKI. Mr. Chairman and members of the committee, my name is Shoji Okazaki. I am the legislative representative of the International Longshoremen's & Warehousemen's Union, Local 142, which represents 23,000 workers in this State. Our members work on the waterfront, sugar and pineapple plantations, and ranches; in bakeries, supermarkets, fish, nut and pineapple canneries, automotive repair plants, hospitals, offices; and in other industries.

Among the 13 declarations of purpose and policy of the Occupational Safety and Health Act of 1970 is the following:

* * * encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions. * * *

There are several points which we wish to make regarding this declaration as well as the other 12 which, we feel, have been subverted by recent developments.

1. The Congress must grapple with the Barlow decision which mandates a warrant before an employer's premises can be inspected.

The inability to conduct random and warrantless inspections frustrate and defeat the efforts of workers and the government to force employers to provide safe and healthful working conditions.

2. We are opposed to any attempt to exempt small businesses with 10 or fewer employees from OSHA's jurisdiction as was contemplated in a recent House-Senate Conference Committee. It would be rank discrimination against workers who suffer the same kind of crippling accidents and illnesses from unsafe working conditions in small as well as large operations.

3. Congressional appropriations for the enforcement of OSHA must be large enough to provide adequate inspections, compliance, and education. Inspections and compliance after workers are hurt or killed are too late.

4. OSHA should not hesitate to levy heavy fines, nay even jail sentences as per the law, against employers who violate the Act. Up

to very recently, the agency has been satisfied with levying only small fines—comparable to a “go thou and sin again” with impunity license.

Unless OSHA is firmly administered, employers will be saddled with the problems of an unstable workforce with low productivity, huge payments for workers’ compensation and disability compensation plans. This will result in added pressures to the already costly maintenance of our health care system.

The Occupational Safety and Health Act can be viewed as the preventive arm of workers’ compensation and disability compensation plans, similar to the preventive care and health maintenance aspects in our health care system. The money spent on OSHA now will result in larger payoffs in terms of stability of the work force with increased productivity, fewer dollars spent for curative and rehabilitative care, and that safe and healthful work environment that is the promise of the act.

One need only hark back to the testimony of the last few days on asbestos to realize the enormous costs we are paying for the “a pound for cure, but not a penny for prevention” philosophy that we have been pursuing all these years.

Surely the workers of this Nation deserve more of the profits that they have made and are making for business and industry.

Thank you.

Mr. HEFTEL. Thank you very much. Do you have any statistics correlating Workmen Compensation claims and OSHA inspections?

Mr. OKAZAKI. No; I’m sorry, Congressman Heftel, we don’t have that kind of statistics because we don’t have the manpower to do it.

Mr. HEFTEL. Do you think we have to know more about where the workmen compensations are occurring and how they are occurring, and relate it back to the way OSHA is operating so that OSHA targets the areas where we are having workmen claims?

Mr. OKAZAKI. Yes; definitely. I’m glad you asked that question. Because obviously, like the previous speaker, I think if that is looked into, perhaps, some of the OSHA regulations as written, could fit very well in the area perhaps—you know, stiffer rules and regulations should be taken.

Mr. HEFTEL. Mr. Miller?

Mr. MILLER. No questions.

Mr. AKAKA. No questions.

Mr. HEFTEL. Mr. Myers?

Mr. MYERS. Thank you, Mr. Chairman.

I’d like to ask a question dealing with working aboard a vessel. You are longshoremen. Let’s say you had a ship from England, the home port is out of London and it comes to Hawaii to discharge cargo. You have a stevedore accompanying it that does the work, correct?

Mr. OKAZAKI. Yes.

Mr. MYERS. And, they hire a longshoreman to do the hauling of the cargo. Whose responsibility is it to look for a dangerous condition aboard a ship that your employer, the stevedore company, is doing the work for? In other words, you’re involving three parties here. Whose responsibility is it to notice a cable that is unsafe or anything?

Mr. OKAZAKI. As far as responsibility—let me answer the question this way. Our membership who are in the longshore business, they are

very conscious of safety. They will not work a ship unless protective measures are taken and, perhaps, because of that we have not had any major mishaps in the waterfront.

Mr. MYERS. So, it would be the men themselves who would recognize this danger and, then, report it to their employer and, he in turn, would notify OSHA and they would come in for an inspection?

Mr. OKAZAKI. As far as the employers calling OSHA, I don't know about that. I would call them first.

Mr. MYERS. Your membership would call OSHA? I'm talking about a ship that just arrived. It docks, and a half hour later the men board and do the unloading work. So, there are no previous inspections made. No one knows what type of ship you have. Do you just refuse to work if you see a dangerous condition?

Mr. OKAZAKI. Not so much refuse to work. They will do the work, but they won't damage the safety or welfare of the workers in that area. But, in that particular area, yes, they would refuse to work.

Mr. MYERS. My concern is a lot of foreign flight vessels, particularly of Nigerian registry are in such poor condition when they pull into port—I'm a former longshoreman. I'm from the east coast. I'm familiar with how it works. If a ship that's in poor condition pulls into port, sometimes 15 minutes after it's docked, we board and start unloading. Now, in many, many cases the gear is faulty.

My question is whose responsibility is it? Is it your men's here to contact OSHA merely if they see bad rigging or any other thing?

Mr. OKAZAKI. I don't think I can answer that the way you are asking me. Our people would definitely make sure those measures are corrected.

Mr. MYERS. Obviously, there is not going to be an OSHA inspector standing on the dock for every ship that docks.

Mr. OKAZAKI. Let me say this much, whenever we call the Federal OSHA people, they come down to the docks immediately and have corrective measures taken.

Mr. MILLER. Is that the case? Because if I understood what Congressman Myers is suggesting, he is suggesting you almost have the ability to have a repeat performance for every ship in port. So, is it more the case where the union says, "We are not going to unload that particular haul until corrective measures are taken, or until the owners of the ship agrees or the person in charge of the ship agrees to correct the measures," and the ship goes on its way with no formal records that the ship maybe had this problem in every port that it has gone to?

The question is this: It may be very easy for the union members in Hawaii to say, "We are not going to do it." But, it may not be so easy for people in other ports to do it. So, you have a dangerous vessel roaming around.

Mr. HEFTEL. It's a traveling hazard.

Mr. MYERS. In many cases on the east coast, the first port of call being Boston, normally I saw ships there where the longshoremen refused to unload the cargo in Boston, New York, Philadelphia, that would wind up in Savannah where they just would unload it, not knowing the danger.

Mr. OKAZAKI. We don't have that problem here, because there is only one port.

Mr. MYERS. One other question. You talked about money. Let me give you a couple of figures here. When OSHA was first enacted in 1970, it was appropriated \$1 million. Last year, it received \$109 million. Next year, that has been increased to \$160 million. So, we in the Congress are supplying the dollars to try to clean up the workplace. You can be assured of that.

Mr. OKAZAKI. I would appreciate some of the filtering through of the Hawaii area right now. The home office has a staff of seven, a director, a field supervisor, a maritime safety officer and four compliance officers.

Mr. MILLER. I don't know if you were in the room, but we had this discussion that there are OSHA people following the State people around as they inspect business establishments. You have Federal OSHA people who are following State OSHA people around to see that they comply with the Federal law. You complain about manpower and we just heard that possibly four people out of Federal OSHA are following State people around.

Mr. OKAZAKI. These people who spoke previous, they are not unionized. I don't know the problem that is particular to their kind of operation.

Mr. MILLER. I'm talking about the testimony by the State Department. They said that they use their 17 people to make inspections under the State jurisdiction, which is not your jurisdiction. Then, we have Federal officials come in and check on what they are doing, doing spot examinations, and using the manpower in that fashion rather than apparently using it to deal with Federal jurisdiction in the maritime trades and the shipyards.

You are suggesting there is not enough manpower on the waterfront to adequately protect your operation, is that right?

Mr. OKAZAKI. That is correct.

Mr. MILLER. But, there is definitely in your mind, a shortage of compliance officers on the waterfront?

Mr. OKAZAKI. Yes.

Mr. MILLER. Thank you.

Mr. HEFTEL. Thank you very much.

[Prepared statement of Shoji Okazaki follows:]

STATEMENT OF SHOJI OKAZAKI, LEGISLATIVE REPRESENTATIVE, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 142

My name is Shoji Okazaki. I am the Legislative Representative of the International Longshoremen's & Warehousemen's Union, Local 142, which represents 23,000 workers in this State. Our members work on the waterfront, sugar and pineapple plantations, and ranches; in bakeries, supermarkets, fish, nut and pineapple canneries, automotive repair plants, hospitals, offices and in other industries.

Among the 13 declarations of purpose and policy of the Occupational Safety & Health Act of 1970 is the following: " * * * encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions * * * "

There are several points which we wish to make regarding this declaration as well as the other 12 which, we feel, have been subverted by recent developments.

1. The Congress must grapple with the Barlow decision which mandates a warrant before an employer's premises can be inspected.

The inability to conduct random and warrantless inspections frustrate and defeat the efforts of workers and the government to force employers to provide safe and healthful working conditions.

2. We are opposed to any attempt to exempt small businesses with 10 or fewer employees from OSHA's jurisdiction as was contemplated in a recent House-Senate Conference Committee. It would be rank discrimination against workers who suffer the same kind of crippling accidents and illnesses from unsafe working conditions in small as well as large operations.

3. Congressional appropriations for the enforcement of OSHA must be large enough to provide adequate inspections, compliance, and education. Inspections and compliance after workers are hurt or killed are too late.

4. OSHA should not hesitate to levy heavy fines, nay even jail sentences as per the law, against employers who violate the Act. Up to very recently, the agency has been satisfied with levying only small fines—comparable to a "go thou and sin again" with impunity license.

Unless OSHA is firmly administered, employers will be saddled with the problems of an unstable workforce with low productivity, huge payments for workers' compensation and disability compensation plans. This will result in added pressures to the already costly maintenance of our health care system.

The Occupational Safety and Health Act can be viewed as the preventive arm of workers' compensation and disability compensation plans, similar to the preventive care and health maintenance aspects in our health care system. The money spent on OSHA now will result in larger payoffs in terms of stability of the workforce with increased productivity, fewer dollars spent for curative and rehabilitative care, and that safe and healthful work environment that is the promise of the Act.

One need only hark back to the testimony of the last few days on asbestos to realize the enormous costs we are paying for the "a pound for cure, but not a penny for prevention" philosophy that we have been pursuing all these years.

Surely the workers of this nation deserve more of the profits that they have made and are making for business and industry.

Mr. HEFTEL. I believe Van Horn Diamond is among us now. The executive secretary-treasurer of the AFL-CIO. The roster is all yours.

STATEMENT OF A. VAN HORN DIAMOND, EXECUTIVE SECRETARY-TREASURER, HAWAII STATE FEDERATION OF LABOR, AFL-CIO

Mr. VAN HORN DIAMOND. I kind of divided this testimony into three parts. The first one addresses itself to the State OSHA program and stating clearly that our position is that we presently support the State administered program. I would like to underscore that we identify the reasons why we think the State program should be given its opportunity to function by virtue of a greater staff accessibility, since their offices are situated throughout the State and cover public as well as private sectors.

There are also some additional options for redress. But, I also want to state at the same time that we are presently consistent with what the AFL policy is as far as the State plans are concerned. And, also, consistent with the fact—it's my understanding that only very recently the State program was given the opportunity to fly on its own, as opposed to establishing the prior relationship. We suggested at the time that that relationship continue for a little bit longer, to strengthen it.

So, as long as it does not fail to protect the work force, and it is up to par as far as the Federal OSH program, our support will continue. That is, with respect to the State program in the overall. We suggest, in our own thinking, a part of the criteria would be the actions of the responsible State agency to demonstrate a consistent and conscientious pattern of helping Hawaii's work force to have a safe and healthy work environment.

Is the State program as effective as the Federal program? That is two parts of it. But, in regard to the Federal OSH program, the ILWU

with hopefully some other maritime trades, will be submitting some testimony to the exclusive jurisdiction issue. I think, however, at the same time, I'd like to recommend that there be some consideration given to the region IX operation as a whole, simply the first reason being the fact that it covers a geographic region that may be a little different from the other regional offices. Specifically, it covers the States of Arizona, Nevada, California as well as Hawaii, as well as the possessions of the United States in the Pacific area.

And, if it's 2,000-plus miles between Hawaii and California, and then, there is only one house in Guam, then there is also American Samoa, the commonwealth of the Mariannas, and the rest of the trust territories to be covered by Federal OSHA staff. The Honolulu office would be the first logical available personnel, and that might also underscore the thing, what Shoji's talking about relative to the docks.

I may be interpreting the question you asked about Federal staff following them around. I'm not so sure that that's totally true. I think the Federal agency has a responsibility by law of monitoring the effectiveness of the State OSH program. It has to be about the business of ascertaining whether or not from the labor movement that it is satisfied from business of whether or not they feel they are getting a fair shake. I don't think they are following them around. I think they have a responsibility. I think that one of the things I happen to know about is that in relation with State and Federal, and a lot of the labor movement, there has been a lot of assistance provided us in developing our awareness in national and regional trades.

Beginning in 1975 until the present, together with the State Labor Department, responsible for OSHA, there has been an ongoing kind of educational program for the labor movement. In 1978, the first statewide conference on Occupational Safety and Health was held, in which a private organization put together and had input and participation from both the Federal and State agencies. And, that was also true in July of this year. The first in a series of workshops dealing with women in the work force—the first one was in Honolulu at the Ala Moana Hotel. That was a joint sponsorship, again, between the AFL-CIO, Federal OSH Regional Office, State OSH, the Commission on the Status of Women in the State of Hawaii and the University of Hawaii. They put it on.

And, it is planned to go to the neighbor island jurisdictions as well.

All I guess I am saying is, maybe there is a feeling of competition or being overlooked. But, there is clearly a place that the activities need not be competitive. As a matter of fact, it can be complimentary provided the leadership is responsible and responsive to the point that it can be complimentary.

As to the third portion, dealing with suggested legislation, I'm not going to go into the one about the warranties and all that stuff. I would like to suggest that there is, if I understand correctly, a court supported decision relative to a standard that was promulgated by Federal OSH, in which no time or pay would be lost by an employee who participates in a OSHA inspection walk around. In addition to the walk around, there will be opportunities for participation in all those activities and related to that inspection.

So, we are suggesting at this point that maybe there ought to be consideration to amend the law so that it is not simply a regulation. But you would have to make that judgment.

The second one dealing with job shut-down pay is not well explained. But, basically, the thrust is: If you have a company that has a very serious hazard on the equipment so they tag it and, so that they cannot be used and it requires corrective action, the thrust of the remark is—it seems to make a lot of sense that the employee ought not to suffer any form of economic loss as a result of that tag. That is really the whole work of it.

The State Labor together with the State AFL and a representative of the construction industry, back in 1975, I think it was, tried to put something together which would accommodate some of the needs in this area. The representative went back to the construction industry and he came back with a no vote. But, there are efforts made in this regard and it still seems to make a lot of sense.

The last one maybe has something to do with the cost implication relative to OSHA. And, that is, as I understand it, presently Federal OSHA uses in standard making—they use the definition of feasibility. I am not thoroughly familiar with that, but I think it means that the industry is technologically and financially capable of complying with the standard.

It is my understanding that there is an effort being made to change that definition on the part of either industry, which would change it to simply a performance standard, and maybe one of the implications would be if you didn't have that feasible definition. Then, the performance standard would enable maybe an industry to have, as its basic responsibility for protecting against asbestos, simply the respirator.

Presumably, it is more advanced than the one presented in prior testimony, which was first used in the 1920's. There is also, I understand, some effort on the part of the President's Council on wage and price stability regulatory analysis review group that they want to include in part of the determination for standards, the use of cost benefit analysis, especially with regard to carcinogen substances.

If I recall my history correctly, under the Ford administration OSH was required to develop economic impact statements for every standard. One of the reasons why the standard making was changed, was in order to eliminate the delays. It seems that maybe the cost benefit analysis is part of it.

Fighting inflation could be responded to as follows—then, I will take questions if I may—and, I refer to a portion of a telephone call I was privileged to hear in 1977 at the AFL Convention in Los Angeles, and I'm quoting.

We not only have good technology, we not only have the best in science, but we have the best in people, people that know how to get the job done, particularly if they have a challenge. That challenge today is to combine these great strengths to produce a whole new day of hope and optimism and confidence and social justice in America.

This is a challenge to the American experiment in self-government, and it is a challenge that shall be seen as a great achievement in the decades ahead.

That's what I live for; that's what I work for; that's why I'm with you. And, I'm going to continue to be with you as long as the Good Lord gives me the breath to live.

The date is December 8, 1977. The caller for the AFL-CIO Convention is an American by the name of Hubert H. Humphrey.

This is the end of my testimony.

Mr. HEFTEL. Thank you very much, Van. Do you feel that OSHA should have a different way of determining where its inspectors should be working, or where its personnel should be applying their energies? As an example, do you have to get the workmen's comp figures and determine where the accidents and where the filings are occurring?

Do we have to have the broad categories of understanding as opposed to what apparently is currently now, which is a lot of time and energy dissipated to what are apparently establishments that may not have any accident ratio at all, where you buy, for instance, a fan which is totally legal to sell but doesn't fit another standard in an OSHA book. As a result, the gentleman is fined in his establishment and a great deal of time is dissipated and it's unrelated to what is a hazard or has been established as a hazard.

Mr. VAN HORN DIAMOND. Let me see if I understand your question first. I think it has two parts. The first part, you are saying is whether or not the use of worker compensation data should be a guide in directing energies to what seems to be based on workers' comp data on high risk groups. The second part of your question deals with the relevance of standards and its specifics.

Mr. HEFTEL. Well, we know we have health and safety problems in a broad general sense, be in mines, shipyards, we are able to identify them dealing with certain sources of health hazards, be it asbestos or others.

Mr. VAN HORN DIAMOND. I'm not so sure I know how to answer both questions. I can say, however, that I don't think workers' compensation data of and by itself, ought to be the only indicator to where you might want to set it, if it is possible to set a priority. That maybe is an after-the-fact situation. And, it would seem that maybe there are other particular areas at any given point in time that don't have any relationship at all to what seems to be an occupational related safety hazard or health hazard.

And, that may only result in the OSH inspector having the liberty to respond to the complaint that is done in terms of requesting anonymity and, may be done in terms of complaints against the State program with a Federal agency relative to decisions being made. It may be in terms of some important thing that may be in the construction industry.

Let's say certain trenches are not being properly shored or maybe in terms of how they lay out a piping that is going over a trench. These things may be other indicators of where there may be a whole series of problems. Just because workmen's compensation data drops or goes up, it doesn't necessarily mean that ought to be a concentration of OSH. I think it ought to be one of several factors.

Let me see if I got the second question, again. The relevance of standards.

Every standard is really kind of designed just like every particular law, to cover as much as possible. But, like anything else, if you set up a submarine net you are supposed to catch submarines. But, you don't construct a submarine net that catches tuna or whatever kind of fish you want, maybe mampachi which are the small ones along the shoreline.

However, within those small workplaces, there seems to be a need. The judgment has to be made because the employer does happen to

have the opportunity to appeal within the process, any particular decision that is made on the issue. Sometimes there is a need to be responsible to the point of you sticking your neck out and challenging the decision. Sometimes, instead of coming maybe to a hearing the challenge has to be made with the procedures that are made available, and I suggest that maybe in evaluating the reasonable standards, that is a fact that maybe has to be taken into account.

A standard doesn't necessarily fit everybody's thing. It is designed to meet and to protect the beneficiary of the law, which I think in truth, that happens to be the worker. The more he happens to have—big, small or medium, I don't know how you define small, except a one man operation—presumably as to what would be thought the American way to take care of the worker or workers.

Mr. HEFTEL. Thank you.

Mr. MILLER. Let me ask you a theoretical question. There's a lot of writing going on now about OSHA, and it ranges from people who say we should do away with it and people who say we should strengthen it. One of the suggestions that is starting to be made is based on the realization that we will never really have enough OSHA inspectors to cover the 5 million workplaces in America.

While they are inspecting employer A, you have unsafe conditions with employer C, and by the time you get to employer C, the job is done and you are now at employer D and employer A has problems. You go around and around, and it is like playing Russian roulette. Your number may come up and the inspector may be there when you have an unsafe working condition and you may, in fact, yet rectify it. In my area, certainly in the refinery business, it is not too good in terms of the safety of the workers. And, what people are suggesting is that the question of whether you could create the classification of some type of safety inspector whose position may be allowed in some instances, say in a steel mill or a refinery, to be a worker but, also, he has additional responsibilities. He would be funded—he could be funded by the union. He could be funded by the Federal Government and by the employer. He would be given job protection and, hopefully, he would remain somewhat impartial.

Because, if you look at the county I represent, I have seven refineries, three steel mills, a number of chemical industries, and big port facilities. There is no way the regional office of OSHA is going to carry that along with the rest of the San Francisco Bay area.

The question is whether or not we ought to start looking for resident safety people who have the ability to shut down that facility, whether it is construction work or whether it's—something else—and, I'm talking about big industries at this point. I'm not talking about ma's and pa's. I am talking about where there are real risks. If you look at refinery construction, time and again, scaffolding is out of compliance and by the time OSHA goes on the scene and, by the time they wait at the front gate, the scaffolding is taking care of.

I just wondered if you had been approached to consider that area, whether that even sounds feasible to you as a representative of organized labor here? In the past, we have always had the problem of safety inspectors becoming captives of the employer, and is not ready to tell the employer to shutdown part of his operations.

Mr. VAN HORN DIAMOND. I'm not so sure whether or not that's required yet. Although it sounds kind of good. I think that there are some other things that might be helpful. The application of the law in terms of the people who presently administer the law doesn't apply specifically to Hawaii, but it applies to a lot of areas. I think in many respects attitude happens to describe behavior. I think that's a nice way of saying it. I think their activities in the community might have to be taken into account.

For example, in this State, the labor movement together with some businesses, as well as the government, went to the State legislature to fund an educational program within the community colleges to develop a work force of people and refresh them in the area of occupational safety and health. Timeframe: About 1975.

The activity recently on the part of the labor movement, together with the University of Hawaii to get that OSH grant to develop the strategy to reach the organized—and, I should have mentioned that before—to reach the organization and organized work force of Hawaii, relative to occupational safety and health. There should be a strengthening of the realization of the rights and responsibilities of the Federal organization, together with the State and books, these are the rights and responsibilities and the procedures.

There are television commercials which create 30-second impact delusions. It does not clearly address a particular problem. I have seen it happen where the employee representative, according to our rules—I think this is right—only the person that is an employee representative on the job—in other words working for the employer, is permitted, in effect, really to accompany it. It seems to make some sense that if the local union happens to have expertise on that staff, it ought to be part of that inspection walk around, without any question as to whether or not here she can come in. If there's an industrial fatality—I'm reflecting on what happened a while ago, which involved a heavy equipment operator. Timeframe: 1967. The piece of equipment rolled over. There was no roll over bar. The safety person involved from the union really has no authority to be present to do an investigation together with the OSH guy, unless the employer permits it.

If the employer representative could be an insurance person, he has authority by virtue of being a representative of the employer to take a look at that accident. Some of those little things may together indicate that it is not necessary to have that kind of a proposition that you suggested. But, it's a long-term thing. Maybe that is necessary. But, there are some things within the community on the assumption that theoretically they all come together at a given point in time and the worker would be more aggressive in asserting his rights. The representative ought to have more particular activities. The employer ought to be more responsible. And, the State administration or whoever administers the program, ought to be more responsible as well.

And, maybe that will get them off their business. It falls down, I guess, to what I put down in the closing remarks of my testimony on asbestos. The issue of OSHA is like asbestos or anything else. It really is going to depend upon the value system of our country and society. Where do we put in our series of priorities, the economic aspect over

the human aspect? If you put them together kind of close, then maybe human life prevails, then, maybe there is no necessity for that. Everybody will go about their business of providing responsible leadership that elevates that awareness.

I guess that is the only way I can answer you.

Mr. MILLER. Thank you.

Mr. MYERS. No questions.

Mr. HEFTEL. Thank you very much.

[Prepared statement of A. Van Horn Diamond follows:]

STATEMENT OF A. VAN HORN DIAMOND, EXECUTIVE SECRETARY-TREASURER, HAWAII
STATE FEDERATION OF LABOR, AFL-CIO

Members of Congress; my name is A. Van Horn Diamond, Executive Secretary-Treasurer of the Hawaii State Federation of Labor, AFL-CIO.

Thank you for this opportunity to testify on OSHA.

STATE OSHA PROGRAM

The Hawaii State Federation of Labor, AFL-CIO, presently supports the State-administered OSH program for Hawaii. The reasons are: (1) the responsible state agency, Division of Occupational Safety & Health (DOSH), State Department of Labor & Industrial Relations (DLIR), has a larger staff with offices situated in each major political subdivision of the State. Presumably, this enables the State to be more responsive to the OSH needs of Hawaii's workforce. (2) Hawaii's Occupational Safety & Health law covers practically the entire workforce in private and public employment. (3) Hawaii can enact contemporary, enforceable, and, where warranted, tougher statutory provisions, regulations, rules and standards. (4) With a state-run OSH program, complaints against it can be handled without almost immediate use of the courts. That is, if I have a complaint against the state OSH agency, I can seek redress by using one or all of the following "non-court" resources: the State Labor Department, the Federal OSH area and regional offices, the U.S. Dept. of Labor in Washington, D.C., the State Legislature and the Congress.

These additional avenues for relief can produce more timely and responsive determinations—without depriving a complainant the option of court adjudication.

Please know that the State AFL-CIO has been critical of the Hawaii OSH program. In fact, we disagreed with the recent decision which enabled the State of Hawaii to become autonomous, subject to the current federal monitoring of said program relationship. It was our judgment that the prior close-ties with the federal OSH agency could further strengthen Hawaii's Occupational Safety & Health program. However, it was decided the State program must now protect Hawaii's workforce as effectively as the federal OSHA program.

Accordingly, our support for the Hawaii program will continue so long as it does not persistently fail to protect Hawaii's workforce. Clearly, part of our criteria in assessing Hawaii's OSH program performance will be: "Does the actions of the responsible State Agency demonstrate a consistent and conscientious pattern of helping secure for Hawaii's workforce a safe and healthy work environment? Is the State program as effective as the federal program?"

For now, the State Federation reserves judgment because we want DOSH to prove itself. (The State Plan has been on its own for less than a year.) Further, we would hope the federal OSH administration will effectively use its monitoring responsibility to assist State OSH in fulfilling its statutory mission.

Our preference is a state-run OSH program, provided, it is able, with its greater resources, to better service Hawaii's working men and women. But, its Federal funding must not be arbitrarily cut, too. Each reduction reduces the State contribution unless the State is able to offset the Federal cut.

RE FEDERAL OSHA OPERATION

First, the State AFL-CIO defers to the AFL-CIO Maritime affiliates and the ILWU regarding the effectiveness of the federal OSH agency in latter's exclusive

program jurisdiction. Their direct contacts and interactions with federal OSH is pertinent to your deliberations.

Second, the Hawaii State Federation of Labor, AFL-CIO, believe OSHA's Region IX operation should have extra funding to better service and administer its statutorily determined constituency, the workforces throughout the geographic area of Region IX.

OSHA's Region IX operation is responsible for servicing the workers in Arizona, California, Nevada, Hawaii, and all U.S. possessions within the Pacific. The Pacific area, other than Hawaii, includes American Samoa, the Commonwealth of the Mariannas, Guam, and the remaining U.S. Trust Territories. Except for the contiguous states of Region IX, the rest of Region IX is separated by considerable distances of ocean. Clearly, travel costs, etc. affects the ability of federal OSH to service the workforces of these Pacific communities.

Given these realities, we are appreciative of Region IX administrator's leadership and his staff's dedication throughout the region. Such ability and commitment deserves recognition and support to sustain, preferably improve, federal OSHA services.

The State Federation recognizes individual unions may have legitimate criticisms of the federal OSH operation. However, we also know Region IX of federal OSHA has aggressively sought to develop meaningful lines of communication with business, government, and labor, pursuant to advancing OSHA for its beneficiary—workers. They have assisted the State AFL-CIO in many ways especially in terms of increasing our awareness of national and regional OSHA developments. For example, Region IX representatives have worked with the State Labor Department, the State Federation, and the labor movement, in OSH education and training programs for trade union representatives. They have also participated in the First State Conference on Occupational Safety and Health for business, government and labor. This was held in early 1978.

In July 1978, the first in a series of workshops were conducted in Hawaii on "Women in the Workforce." The program was jointly sponsored by federal OSHA, the State AFL-CIO, the University of Hawaii's Center for Labor Education and Research, Hawaii's Commission on the Status of Women, and State Dept. of Labor. It was open to the general public.

Recently, the U.S. Dept. of Labor awarded an OSH planning grant to the University of Hawaii's Center for Labor Education and Research. Its purpose is to develop an education and training program strategy on Occupational Safety & Health for both the organized and unorganized segments of Hawaii's workforce.

Clearly, the Hawaii State Federation of Labor, AFL-CIO, appreciates the presence of federal OSHA in Hawaii and would like to see it strengthen. Federal and State OSHA activities need not be competitive. Rather, responsible leadership can make their respective activities complementary. The labor movement can help in this regard.

RECOMMENDED LEGISLATION

The Hawaii State Federation of Labor, AFL-CIO, respectfully recommends the Congress favorably consider amending the appropriate provisions of the federal Occupational safety & Health Law so that:

- (1) No time and/or pay will be lost by employees or their representatives who accompany an OSHA compliance officer's inspection of the workplace,
- (2) Employee representatives participate in conference resulting from OSHA inspections of the workplace without loss of time and pay,
- (3) An employee whose job is adversely affected by an OSHA directive for immediate correction of a job site or equipment hazard is compensated at the prevailing wage rate or union scale for his occupation—whichever is greater, and
- (4) The term "feasible" in the establishing of standards shall mean that industry has the technological and financial capability to comply.

RE COMPENSATION FOR EXPLICIT OSHA PARTICIPATION (NOS. 1 AND 2)

Recently, a federal OSHA regulation (Section 1977.21) under the non-discrimination provision of the governing law, states employee participation is a vital feature of an OSHA inspection: that workers ought not to incur economic loss of exercising this right. Additionally, inspection-related activities are compensable.

Clearly, the regulation ought to be reinforced by amending the statute.

RE JOB SHUT-DOWN PAY

An employee operating unsafe equipment should, when said equipment is OSHA tagged, not be left in limbo. He is not laid off. He is not able to draw U.I. But, he cannot expect to be paid because his equipment cannot be operated until the unsafe condition is corrected. If he is assigned tasks outside his occupation, he may be taking work away from a fellow worker. Or, he may jeopardize his job-related benefits and union-related benefits. Also, his assignment may cause intra-union jurisdictional disputes.

The key point—he is not working because of an established employer error of some sort. Corrective action may take too long. Must he suffer the economic loss? OSHA was not enacted to penalize employees.

RE FEASIBILITY DEFINITION

Except for a recent 5th Circuit Court of Appeal decision, the proposed meaning of feasibility has been upheld in the courts. In the exception, the court required a cost/benefit analysis.

The President's Council on Wage and Price stability Regulatory Analysis Review Group (RARG) is now calling for cost/benefit analysis approach to OSHA standards especially with regard to carcinogen substances.

One initial consequence is the likelihood of changing the standard from one which now specifies compliance to simply a performance standard. In such an instance, it would allow industries to use respirators as a primary means of worker protection—which presently is specifically discouraged.

Under President Ford, a sort of economic impact statement was required per standard especially those concerning chemicals. Consequently, the standards were unduly delayed. I believe the present approach was designed to expedite the process for issuing standards. Presumably, this was caused by timely response. It would seem the cost/benefit approach will deter again the advancement of worker protection. I guess the apology for cost/benefit will be to control inflation.

In response to the arguers for cost/benefit analysis as being anti-inflationary as well as the issue of worker health and safety being less important, I'd like to refer them to a portion of a telephone call I was privileged to hear at the 1977 AFL-CIO Convention in Los Angeles.

"We not only have good technology, we not only have the best in science, but we have the best in people, people that know how to get the job done, particularly if they have a challenge. That challenge today is to combine these great strengths to produce a whole new day of hope and optimism and confidence and social justice in America. This is the challenge to the American experiment in self-government, and it is a challenge that shall be seen as a great achievement in the decades ahead.

"That's what I live for; that's what I work for; that's why I'm with you. And I'm going to continue to be with you as long as the good Lord gives me the breath to live."

The date: December 8, 1977.

The caller: Hubert H. Humphrey—American.

Thank you.

Mr. HEFTEL. Mr. Knoll? Will you identify your associate, please?

STATEMENT OF ROBERT KNOLL, CORPORATE MANAGER OF SAFETY AND LOSS PREVENTION, ALEXANDER & BALDWIN, INC., ACCOMPANIED BY KEN PETERSON, LEGAL DEPARTMENT

Mr. KNOLL. I would like to introduce Mr. Ken Peterson of the legal department of Alexander & Baldwin.

Mr. Chairman and distinguished members of the U.S. House of Representatives, Subcommittee on Compensation, Safety and Health, I appreciate this opportunity to submit testimony on behalf of Alexander & Baldwin, Inc. and its member companies.

My name is Robert Knoll and I am the corporate manager of safety and loss prevention for Alexander & Baldwin, Inc. I have 22 years

experience in safety and health, and am a graduate engineer, a certified safety professional, a registered professional engineer, and a professional member of the American Society of Safety Engineers.

For approximately 50 years, long before the enactment of the Federal Occupational Safety and Health Act, Alexander & Baldwin has been concerned with the safety and health of its employees, and in line with this concern has implemented effective written safety and health programs and procedures. We have installed engineering and administrative controls where possible and require and enforce the use of personal protective equipment where engineering and administrative controls are not feasible.

We have two subjects about which we wish to testify. The first subject is regarding toxic substances and the degree to which private industry should or could be held liable to affected individuals for exposure to substances which are just now being identified as hazardous. Second, we wish to comment upon a specific regulation which has been promulgated by the Occupational Safety and Health Administration, which we believe to be unjustified.

Regarding the first subject of compensation to individuals affected by exposure to asbestos, we are particularly concerned because there has been much controversy in the media recently charging that certain employers had prior knowledge of the risks involved in asbestos use and withheld this information to the detriment of employees.

While we cannot comment upon the extent of knowledge that producers or extensive users of asbestos may have had in the past, I can state honestly that in my personal 22 years of experience in safety and health, it was not until only very recently that I and those fellow safety professionals with whom I personally have been associated, have had any information which indicated any health risks inherent with the use of asbestos. To my knowledge, no employer with whom I have been associated has had any such information until very recently.

The first indication of any such health risks that I have had was based upon inferences drawn from exposure limitations established by regulations promulgated under the act. The information disseminated by the media to which I referred earlier, followed well after these new laws and regulations.

In response to this knowledge and the occupational health regulations, Alexander & Baldwin, Inc., and all or most of the other major Hawaii employers, have instituted stringent work practices which have reduced asbestos exposures essentially to zero. We also have instituted monitoring programs with enforcement and disciplinary measures to insure the effectiveness of these safety practices.

Now we, as conscientious employers, and you, as legislators, are aware that there may be a veritable flood of compensation claims by affected workers and their family members.

The question arises as to who should bear the potentially enormously high financial burden of compensating those affected? Claims very easily may reach a total of hundreds of millions and, perhaps, billions of dollars nationally.

Similarly, should employers who had no reason to know that health consequences would manifest years and even decades after exposure, bear the financial burden for using an apparently safe and extremely

useful material? We respectfully submit that this should not be the case. Even for companies such as ours, which have made relatively very limited use of asbestos, the consequences of such a burden could be disastrous.

As I am sure you are aware, traditional legal tort principles of liability for injury to others has been that a person is liable only when he should have known the risk to others and did not take reasonable actions to avoid injury.

By contrast, worker compensation law makes an employer responsible to employees without requiring a finding that the employer had reason to know the risk to employees, or that the employer violated any understood duty of care.

A fundamental assumption of worker compensation law is that employers should know the risks and can avoid liability by instituting safety practices which prevent injuries.

As a general rule, we agree with this worker compensation principle as a necessary cost and benefit to society to insure that employees can enter the labor market without risk to their welfare. However, we do not think that it should be assumed that all employers knew or should have known the health risks related to asbestos. Nor, do we believe that this assumption should be used as a basis for imposing liability on all employers.

In closing on this subject, we request that in the course of this committee's deliberations and in conjunction with its work with Congress, very great consideration be given to enacting Federal legislation which either will make responsible those who withheld this information or which will provide funding for the compensation of affected individuals without placing the burden upon equally innocent employers.

The second subject which we wish to address is the regulation promulgated by the Occupational Safety and Health Administration, found at 29 Code of Federal Regulations, section 1926.52(b), regarding corrective measures which must be taken in the event of excessive workplace noise.

The section 1926.52(b) regulation provides in pertinent part that in the event of excessive noise :

* * * feasible administrative or engineering controls shall be utilized. If such controls fail to reduce sound levels within the (permissible) levels * * *, personal protection equipment * * * shall be provided and used * * *.

The State of Hawaii has promulgated a similar regulation as required by the act.

The problem that has faced very many employers, both in Hawaii and nationwide, is that this regulation by its literal language and by the vigorous enforcement activities of the Federal administration, requires that administrative and engineering noise controls be implemented before the lowest cost but extremely effective alternative measure of personal protective devices can be used.

The Federal administration has repeatedly litigated that feasible means possible without regard to cost-effectiveness. Because the Federal administration has review authority over State-administered programs, the States must enforce this regulation or be subject to disqualification of their program.

We believe that absent statutory mandate or substantial justification in terms of added employee protection, any regulation which requires use of highest cost alternatives, first, whether or not they solve the problem, and lowest cost alternatives only as a last resort, is questionable on its face, especially in these inflationary times.

In the case of this particular regulation, there is no statutory mandate, only that reasonable and necessary regulations be promulgated. Neither is there substantial justification for imposing this unnecessary burden on employers and, ultimately, on consumers.

Currently, there are earmuffs and plugs which have certified attenuation capacities which will reduce actual noise exposures to all sugar industry employees to well within current standards and even the anticipated future more stringent standards. Yet, the quoted regulation and current Federal administration enforcement policy do not sanction their use without each employer first spending what, in most cases, would amount to very large sums of money to reduce noise as low as possible through engineering.

We agree that in the best of all possible worlds, all industrial noise would be eliminated through cost-effective engineering. The fact is, however, that unaffordable sums would be necessary to engineer out the noise in sugarmills, for example, or the approximately 900 pieces of field equipment now used by the sugar industry alone.

In the interest of time, I have not gone into detail on this subject. I would be pleased, however, to provide additional information on request.

In closing, we are not in any way suggesting that employees should be exposed to unnecessary or unreasonable risks for the sake of cost savings. We remain committed to providing our employees with all necessary and prudent protection in their work. We think it unworkable, however, that providing employees with effective safety and health protection should be made any more expensive than necessary.

Thank you for this opportunity to present our views.

Mr. HEFTEL. Thank you very, very much.

[Prepared statement of Robert Knoll follows:]

STATEMENT OF ROBERT KNOLL, CORPORATE MANAGER OF SAFETY AND LOSS PREVENTION, ALEXANDER & BALDWIN, INC., ACCOMPANIED BY KEN PETERSON, LEGAL DEPARTMENT

Mr. Chairman and distinguished members of the United States House of Representatives Subcommittee on Compensation, Safety and Health, I appreciate this opportunity to submit testimony on behalf of Alexander & Baldwin, Inc. and its member companies.

My name is Robert Knoll and I am the Corporate Manager of Safety and Loss Prevention for Alexander & Baldwin, Inc. I have 22 years experience in safety and health, and am a Graduate Engineer, a Certified Safety Professional, a Registered Professional Engineer, and a professional member of the American Society of Safety Engineers.

For approximately 50 years, long before the enactment of the Federal Occupational Safety and Health Act ("Act"), Alexander & Baldwin has been concerned with the safety and health of its employees, and in line with this concern has implemented effective written safety and health programs and procedures. We have installed engineering and administrative controls where possible and require and enforce the use of personal protective equipment where engineering and administrative controls are not feasible.

We have two subjects about which we wish to testify. The first subject is regarding toxic substances and the degree to which private industry should or

could be held liable to affect individuals for exposure to substances which are just now being identified as hazardous. Second, we wish to comment upon a specific regulation which has been promulgated by the Occupational Safety and Health Administration, which we believe to be unjustified.

I

Regarding the first subject of compensation to individuals affected by exposure to asbestos, we are particularly concerned because there has been much controversy in the media recently charging that certain employers had prior knowledge of the risks involved in asbestos use and withheld this information to the detriment of employees.

While we cannot comment upon the extent of knowledge that producers or extensive users of asbestos may have had in the past, I can state honestly that in my personal 22 years of experience in safety and health, it was not until only very recently that I and those fellow safety professionals with whom I personally have been associated, have had any information which indicated any health risks inherent with the use of asbestos. To my knowledge no employer with whom I have been associated has had any such information until very recently.

The first indication of any such health risks that I have had was based upon inferences drawn from exposure limitations established by regulations promulgated under the Act. The information disseminated by the media to which I referred earlier, followed well after these new laws and regulations.

In response to this knowledge and the occupational health regulations, Alexander & Baldwin, Inc., and all or most of the other major Hawaii employers, have instituted stringent work practices which have reduced asbestos exposures essentially to zero. We also have instituted monitoring programs with enforcement and disciplinary measures to ensure the effectiveness of these safety practices.

Now we, as conscientious employers, and you, as legislators, are aware that there may be a veritable flood of compensation claims by affected workers and their family members.

The question arises as to who should bear the potentially enormously high financial burden of compensating those affected? Claims very easily may reach a total of hundreds of millions and perhaps billions of dollars nationally.

Similarly, should employers who had no reason to know that health consequences would manifest years and even decades after exposure, bear the financial burden for using an apparently safe and extremely useful material? We respectfully submit that this should not be the case. Even for companies such as ours which have made relatively very limited use of asbestos, the consequences of such a burden could be disastrous.

As I am sure you are aware, traditional legal tort principles of liability for injury to others has been that a person is liable only when he should have known the risk to others and did not take reasonable actions to avoid injury.

By contrast, worker compensation law makes an employer responsible to employees without requiring a finding that the employer had reason to know the risk to employees, or that the employer violated any understood duty of care.

A fundamental assumption of worker compensation law is that employers should know the risks and can avoid liability by instituting safety practices which prevent injuries.

As a general rule, we agree with this worker compensation principle as a necessary cost and benefit to society to ensure that employees can enter the labor market without risk to their welfare. However, we do not think that it should be assumed that all employers knew or should have known the health risks related to asbestos. Nor do we believe that this assumption should be used as a basis for imposing liability on all employers.

In closing on this subject, we request that in the course of this Committee's deliberations and in conjunction with its work with Congress, very great consideration be given to enacting federal legislation which either will make responsible those who withheld this information or which will provide funding for the compensation of affected individuals without placing this burden upon equally innocent employers.

II

The second subject which we wish to address is the regulation promulgated by the Occupational Safety and Health Administration ("Administration"),

found at 29 Code of Federal Regulations Section 1926.52(b), regarding corrective measures which must be taken in the event of excessive work place noise.

The Section 1926.52(b) regulation provides in pertinent part that in the event of excessive noise, " * * * feasible administrative or engineering controls shall be utilized. If such controls fail to reduce sound levels within the [permissible] levels * * *, personal protection equipment * * * shall be provided and used * * *."

The State of Hawaii has promulgated a similar regulation as required by the Act.

The problem that has faced very many employers, both in Hawaii and nationwide, is that this regulation by its literal language and by the vigorous enforcement activities of the federal Administration, requires that administrative and engineering noise controls be implemented before the lowest cost but extremely effective alternative measure of personal protective devices can be used.

The federal Administration has repeatedly litigated that "feasible" means "possible" without regard to cost-effectiveness. Because the federal Administration has review authority over state-administered programs, the states must enforce this regulation or be subject to disqualification of their program.

We believe that absent statutory mandate or substantial justification in terms of added employee protection, any regulation which requires use of highest cost alternatives first, whether or not they solve the problem, and lowest cost alternatives only as a last resort, is questionable on its face, especially in these inflationary times.

In the case of this particular regulation, there is no statutory mandate, only that reasonable and necessary regulations be promulgated. Neither is there substantial justification for imposing this unnecessary burden on employers and, ultimately, on consumers.

Currently, there are ear muffs and plugs which have certified attenuation capacities which will reduce actual noise exposures to all sugar industry employees to well within current standards and even the anticipated future more stringent standards. Yet, the quoted regulation and current federal Administration enforcement policy do not sanction their use without each employer first spending what in most cases would amount to very large sums of money to reduce noise as low as possible through engineering.

We agree that in the best of all possible worlds, all industrial noise would be eliminated through cost-effective engineering. The fact is, however, that unaffordable sums would be necessary to engineer out the noise in sugar mills, for example, or the approximately 900 pieces of field equipment now used by the sugar industry alone.

In the interest of time, I have not gone into detail on this subject. I would be pleased, however, to provide additional information on request.

In closing, we are not in any way suggesting that employees should be exposed to unnecessary or unreasonable risks for the sake of cost savings. We remain committed to providing our employees with all necessary and prudent protection in their work. We think it unworkable, however, that providing employees with effective safety and health protection should be made any more expensive than necessary.

Thank you for this opportunity to present our views.

Mr. HEFTEL. Why don't we give the young lady who has been very strenuously following our proceedings a 5-minute break at this time, since we will continue to the conclusion.

RECESS

Mr. HEFTEL. Hawaii Manufacturers Association.

STATEMENT OF GENE PLISCHKE, ADVISOR, MANUFACTURERS
ASSOCIATION OF THE STATE OF HAWAII (M.A.S.H)

Mr. PLISCHKE. Mr. Chairman, since I reduced my original 150 pages of testimony down to what you have in your hand, I'll stick to the prepared text, if I may.

This testimony is presented on behalf of the Manufacturers Association of the State of Hawaii, an affiliate of the Chamber of Commerce of Hawaii.

My name is Gene Plischke. I serve as an advisor to MASH on safety and health matters.

I noticed before that there were five members of the subcommittee from Pennsylvania and there was earlier one here from Pennsylvania. I was going to mention that I, too, originated from Pennsylvania, for what purpose it served. I'm a graduate of Carnegie Tech, from Pittsburgh.

I am the safety, health and environment affairs manager of Amfac, Inc. I am a registered professional safety engineer with over 25 years experience in the safety and health field, the last 8 years being with Amfac.

We appreciate the privilege and opportunity to make this submission to the distinguished members of this committee, and especially to be able to do so here in Hawaii.

More time would be needed to fully research, identify and document all that we would like to present, so we will exercise a limitation on this occasion to a few issues which are indicative of our interests and concerns and several examples that you may be less aware of. We will avoid excessive reiteration of those which also concern us, but have conspicuously reappeared in prior hearings and other media. I might also add at this hearing today. We are particularly concerned with the localized effects of Federal actions or programs which impinge upon State needs or programs. We are concerned about the costly and pervasive effect upon business and the consuming public of over-regulation and believe every effort should be extended to avoid its prompting of adversary proceedings.

At the time of passage of the OSHA Act, many recognized it as sweeping legislation. We shared agreement with its declared purpose. It seemed timely in its coincidence with evolution of other legislation focusing attention on the environment, transportation and consumer protection. It contained novelties in its approaches intended to assure attainment of its stated objectives. Undoubtedly, few recognized its ultimate impact; its full impact is yet to be realized, but will obviously be in the health areas.

Congress, the executive branch and the OSHA administration are to be commended for their announced intentions to translate the legislative intent of the OSH Act in accordance with the changing life styles and requirements. Unfortunately, this translation process has been time-consuming and costly.

Changing employment and business regulations under a multitude of legislation along with executive and agency administration changes have noticeably affected the orientation of OSH Act and related legislative and regulatory developments. The complexity of issues to be resolved has proliferated at an astonishing rate under the simultaneous proliferation of statutory amendments and regulatory revisions. The constant changes have made corporate planning very difficult in the defining of objectives and establishment of priorities.

The search for solutions or a panacea for improvements in the quality of life has served as a springboard for legislative and regulatory re-

forms intended to provide remedies. In view of some of the regulatory agencies' actions, we cannot help but share the concerns expressed by others as to whether or not legislative intents are being rationally pursued or adhered to.

The constantly changing statutes and regulations, further affected by regulatory overlaps and jurisdictional disputes and compounded by varying intra-agency interpretations and judicial decisions, have a tremendous impact upon corporate planning and business decisions and especially upon the ability of businesses to identify, understand and cope with their many obligations and still maintain profitability and reasonable growth.

These new and changing laws and regulations in part stem from increased public concerns and greater awareness, but the burden of compliance falls upon the shoulders of business, with the smaller businesses being at the greater disadvantage.

We believe we represent responsible companies who strive to be good corporate citizens in the communities in which we operate. At the same time, we seem to be tripping over our feet in governmental restrictions while trying to determine how best to achieve our varied social responsibilities and legal obligations. In too many instances, it has become more difficult if not impossible to even determine what our legal obligations are, let alone understand the meaning, application, scope and intent of many of the regulatory rules and standards. Again, the smaller business is particularly disadvantaged, having lesser facility and resources to learn, understand and apply its responsibilities and obligations.

Let us look at several examples of issues we believe need further exploration.

In sections 2(b) (5) and (6) of the OSH Act, Congress declared its purpose and policy including providing for research in the field of occupational safety and health, "by developing innovative methods, techniques, and approaches," for dealing with problems. Section 20 expands upon this. However, we do not believe this intent has been properly or effectively implemented; the burden has actually been imposed by the OSH Administration upon employers individually in many instances through citation issuances.

As a case in point, numerous citations are issued on failure to implement noise control through engineering methodology, when in fact there are no proven means known within an industry, let alone by individual employers. This obligates most employers to perform or provide for a research and development function which is usually beyond their capability. In essence, a great number of employers are seriously impacted individually by being forced to invent or re-invent the wheel. The smaller employers are the most adversely affected. In few instances can this function even be served through industry associations. Furthermore, communication gaps inhibit dissemination of solutions attained by one to the benefit of others.

It would seem that a lesson could be taken from other agencies' efforts to provide or grant and coordinate in R. & D. activity which would develop the solutions and make them available to all before imposition of citations and first instance sanctions. Such an approach should also better serve the interests of the national economy.

Noise control is only one of many such examples where an effectively structured R. & D. effort is needed.

As Congress efforts to provide the public and individual protections have resulted in a proliferation of statutory amendments and regulatory revisions, regulatory overlaps and jurisdictional disputes have been created out of the efforts to fill the gaps. Among those which have been identified, but remain to be resolved, some present significant impact upon business; the impact of others is yet to be felt.

If nothing else, business does not know which agency's regulations or whose interpretations prevail and are to be applied. Even with the creation of the Inter-Agency Regulatory Liaison Group it does not appear that the agencies have been able to resolve their differences, if one looks beyond the rhetoric of the upper echelon of the participating agencies. Congressional action may be necessary on some issues. It does not seem reasonable that the burden of judicial clarification should fall upon the private sector as has occurred.

Among several examples, one which stands out is the overlap between EPA and OSHA in the control of toxic substances, and notably in pesticides use and application. OSHA and/or State plan states have asserted broad jurisdiction and are issuing citations on pesticide use. Of the few changes where one agency has yielded to another, only the OSHA revocation of its field re-entry requirements seems to be commonly known. This was associated with the fifth circuit decision in *Florida Peach Growers Association vs. the U.S. Department of Labor, et al.* Apparently less commonly known is the *District of Columbia Circuit decision on OMICA, et al. vs. Department of Labor, et al.*, which appears to establish that EPA, under FIFRA and as amended by FEPCA, has exclusive jurisdiction over pesticide use not only as it may affect the environment, but also the exposed workers. The decision concludes with a statement of confidence that Congress stands ready to rectify any future finding of inadequacy in the provisions of FEPCA and that the decisions to be made are legislative rather than judicial and properly remain the Congress' province.

Another example of legislative or regulatory confusion is associated with the motor carrier noise regulations of 40 CFR Part 202 promulgated under the Noise Control Act of 1972 (Public Law 92-574) and as they bear upon other agency and State regulations. Again, the present recourse for clarification appears to be via the judicial process, but might lie with Congress.

OSH Act section 2(b)(9) declares the purpose of providing for the development and promulgation of standards. Rulemaking is further expanded in section 6 and as governed by the administrative procedures provisions of the United States Code. Section 2(b)(11) and section 18 govern State plans.

Up to a point, State plan performance is monitored by OSHA. There are evidences of watchdogging of OSHA, such as by GAO or through legislative committees. However, we cannot help but wonder about the effectiveness of these presumed checks and balances.

Many of our State plan problems are the direct result of factors imposed by OSHA. For the purposes of this testimony, we are limiting our observations to the Federal program and present only this one recent example of what appears to be an error exceeding the adminis-

trative rulemaking authority of the OSH Administration and which we view as posing significant impact. Bear in mind, however, that we are not taking issue with the stated need to encourage greater employee participation in our safety and health programing.

OSHA Program Directive 200-82 issued August 15, 1978, recites the documentation, regulations, and other program directives affected by it. We have not had opportunity to completely research its language, but this directive appears to exceed the regulations at 29 CFR 1903 which it recites and thus would be rulemaking without affording the due process of public hearing.

It appears to provide for full party status of employee representation in both opening and closing conferences in the course of an inspection and in any informal conference which may be held subsequent to issuance of a citation. It includes the proviso that a citation or penalty shall not be amended or withdrawn without first obtaining the views of the employee representative. And further, that in the event of disagreement, an appeal may be filed.

As a series 200 directive, it is forceful only in areas of Federal jurisdiction. However, simple administrative issuance of a series 500 directive would additionally impose it upon all State plans.

Its impact might include forcing an employer into a formal contest, which is additionally time-consuming and costly, on matters which have heretofore been resolved by the informal conference. Furthermore, this would seem to be another example of the negation of the commonsense priorities approach, including the announced efforts to streamline the adjudication system. It would also be an example of the problems imposed upon multistate companies as the result of significant differences in the regulations and their interpretations from State to State or area to area.

There are a number of other issues we would like to explore and present to your committee. However, our receipt of notice of this opportunity to be heard did not give us much time to develop meaningful input on all of our concerns. Nor do we feel this is the time or place for an extensive presentation, in view of the other urgent interests you are concurrently investigating and evaluating.

Should you desire elaboration on the items we selected to address or would honor other input at a later date after we have had ample time to solicit our members and develop appropriate documentation, we would be pleased to respond.

Thank you.

Mr. HEFTEL. Thank you very much. We would like you to develop additional material that you think would be appropriate, as we consider what should or should not be the future of OSHA legislation. We would, then, make that a part of the record and it would be part of our proceedings.

Mr. PLISCHKE. Thank you. We would be pleased to do so.

Mr. HEFTEL. Do you feel that OSHA is confused in its rule in that the inspectors are going to what we call small business establishments with the mentality of a large industry in their approach in thinking?

Mr. PLISCHKE. I don't know if they change their approach that much entering into a small business compared with a larger establishment. I am concerned about the attitudes that have been demonstrated. The

approaches that have been demonstrated in the past, it has been improved over the years in the origin of the OSH Act. I think there is still a lot of room for improvement. I can cite a couple of examples which disturb me.

One recently involved an establishment having three employees. One of which worked on each of three shifts and among the citation items issued was lack of an effective safety program, no safety director, no written safety policy.

Mr. HEFTEL. That is an example of what I was trying to get at, where you walk in thinking that everybody is supposed to have an organization devoted to OSHA, but in fact, there are only people doing specific tasks, three, four or five people and the inspector coming in isn't understanding what goes on in a small business.

Mr. PLISCHKE. I don't think they have practical realization of what a small businessman is up against just trying to do business day to day. That is the compliance officer going in is attuned to safety standards, safety and health standards. I myself have been fundamentally full-time in that aspect for most of my engineering career. I am reasonably knowledgeable on the standards and I can pass my knowledge on to others. At the same time, I am not a business manager. I don't have a business of my own. And, in trying to get across those which are compliance requirements, those which are safety and health needs whether or not covered by standards, and tie those in with the day-to-day business management requirements is not an easy task.

Mr. HEFTEL. Thank you very much for your time and testimony.

Would you have any problem in compiling additional information before the end of this year? Let me put it this way, whatever material you would like to forward to us, why don't you try to have it by the end of the year so we will have it for the January 1 compilation.

Mr. PLISCHKE. I would put together what I could within that time constraint.

Mr. HEFTEL. Thank you very, very much.

[Prepared statement of Gene Plischke follows:]

STATEMENT OF GENE PLISCHKE, ADVISOR, MANUFACTURERS ASSOCIATION OF THE STATE OF HAWAII (M.A.S.H.)

Mr. Chairman, this testimony is presented on behalf of the Manufacturers Association of the State of Hawaii, an affiliate of the Chamber of Commerce of Hawaii.

My name is Gene Plischke. I serve as an advisor to M.A.S.H. on safety and health matters. I am the Safety, Health and Environmental Affairs Manager of Amfac, Inc. I am a Registered Professional Safety Engineer with over 25 years experience in the safety and health field, the last 8 years being with Amfac.

We appreciate the privilege and opportunity to make this submission to the distinguished members of this committee, and especially to be able to do so here in Hawaii.

More time would be needed to fully research, identify and document all that we would like to present, so we will exercise a limitation on this occasion to a few issues which are indicative of our interests and concerns and several examples that you may be less aware of. We will avoid excessive reiteration of those which also concern us, but have conspicuously reappeared in prior hearings and other media. We are particularly concerned with the localized effects of Federal actions or programs which impinge upon state needs or programs. We are concerned about the costly and pervasive effect upon business and the consuming public of over-regulation and believe every effort should be extended to avoid its prompting of adversary proceedings.

At the time of passage of the OSHAct, many recognized it as sweeping legislation. We shared agreement with its declared purpose. It seemed timely in its coincidence with evolution of other legislation focusing attention on the environment, transportation and consumer protection. It contained novelties in its approaches intended to assure attainment of its stated objectives. Undoubtedly, few recognized its ultimate impact; its full impact is yet to be realized, but will obviously be in the health areas.

Congress, the Executive Branch and the OSHAdministration are to be commended for their announced intentions to translate the legislative intent of the OSHAct in accordance with the changing life styles and requirements. Unfortunately, this translation process has been time-consuming and costly.

Changing employment and business regulations under a multitude of legislation along with executive and agency administration changes have noticeably affected the orientation of OSHAct and related legislative and regulatory developments. The complexity of issues to be resolved has proliferated at an astonishing rate under the simultaneous proliferation of statutory amendments and regulatory revisions. The constant changes have made corporate planning very difficult in the defining of objectives and establishment of priorities.

The search for solutions or a panacea for improvements in the quality of life has served as a springboard for legislative and regulatory reforms intended to provide remedies. In view of some of the regulatory agencies' actions, we cannot help but share the concerns expressed by others as to whether or not legislative intents are being rationally pursued or adhered to.

The constantly changing statutes and regulations, further affected by regulatory overlaps and jurisdictional disputes and compounded by varying intra-agency interpretations and judicial decisions, have a tremendous impact upon corporate planning and business decisions and especially upon the ability of businesses to identify, understand and cope with their many obligations and still maintain profitability and reasonable growth. These new and changing laws and regulations in part stem from increased public concerns and greater awareness, but the burden of compliance falls upon the shoulders of business, with the smaller businesses being at the greater disadvantage.

We believe we represent responsible companies who strive to be good corporate citizens in the communities in which we operate. At the same time, we seem to be tripping over our feet in governmental restrictions while trying to determine how best to achieve our varied social responsibilities and legal obligations. In too many instances, it has become more difficult if not impossible to even determine what our legal obligations are, let alone understand the meaning, application, scope and intent of many of the regulatory rules and standards. Again, the smaller business is particularly disadvantaged, having lesser facility and resources to learn, understand and apply its responsibilities and obligations.

Let us look at several examples of issues we believe need further exploration.

In Sections 2(b) (5) and (6) of the OSHAct, Congress declared its purpose and policy included providing for research in the field of occupational safety and health "by developing innovative methods, techniques, and approaches" for dealing with problems. Section 20 expands upon this. However, we do not believe this intent has been properly or effectively implemented; the burden has actually been imposed by the OSHAdministration upon employers individually in many instances through citation issuance.

As a case in point, numerous citations are issued on failure to implement noise control through engineering methodology, when in fact there are no proven means known within an industry, let alone by individual employers. This obligates most employers to perform or provide for a research and development function which is usually beyond their capability. In essence, a great number of employers are seriously impacted individually by being forced to invent or re-invent the wheel. The smaller employers are the most adversely affected. In few instances can this function even be served through industry associations. Furthermore, communication gaps inhibit dissemination of solutions attained by one to the benefit of others.

It would seem that a lesson could be taken from other agencies' efforts to provide or grant and coordinate an R&D activity which would develop the solutions and make them available to all before imposition of citations and first instance sanctions. Such an approach should also better serve the interests of the national economy.

Noise control is only one of many such examples where an effectively structured R&D effort is needed.

As Congress' efforts to provide the public and individual protections have resulted in a proliferation of statutory amendments and regulatory revisions, regulatory overlaps and jurisdictional disputes have been created out of the efforts to fill the gaps. Among those which have been identified, but remain to be resolved, some present significant impact upon business; the impact of others is yet to be felt. If nothing else, business does not know which agency's regulations or whose interpretations prevail and are to be applied. Even with the creation of the Inter-Agency Regulatory Liaison Group it does not appear that the agencies have been able to resolve their difference, if one looks beyond the rhetoric of the upper echelon of the participating agencies. Congressional action may be necessary on some issues. It does not seem reasonable that the burden of judicial clarification should fall upon the private sector as has occurred.

Among several examples, one which stands out is the overlap between EPA and OSHA in the control of toxic substances, and notably in pesticides use and application. OSHA and/or state plan states have asserted broad jurisdiction and are issuing citations on pesticide use. Of the few changes where one agency has yielded to another, only the OSHA revocation of its field re-entry requirements seems to be commonly known. This was associated with the Fifth Circuit decision in Florida Peach Growers Association vs. the U.S. Department of Labor, et al. Apparently less commonly known is the District of Columbia Circuit decision on OMICA, et. al. vs. Department of Labor, et. al. which appears to establish that EPA, under FIFRA and as amended by FEPCA, has exclusive jurisdiction over pesticide use not only as it may affect the environment, but also the exposed workers. The decision concludes with a statement of confidence that Congress stands ready to rectify any future finding of inadequacy in the provisions of FEPCA and that the decisions to be made are legislative rather than judicial and properly remain the Congress' province.

Another example of legislative or regulatory confusion is associated with the motor carrier noise regulations of 40 CFR Part 202 promulgated under the Noise Control Act of 1972 (PL92-574) and as they bear upon other agency and state regulations. Again, the present recourse for clarification appears to be via the judicial process, but might lie with Congress.

OSHA Act Section 2(b)(9) declares the purpose of providing for the development and promulgation of standards. Rule-making is further expanded in Section 6 and as governed by the administrative procedures provisions of the United States Code. Section 2(b)(11) and Section 18 govern state plans.

Up to a point, state plan performance is monitored by OSHA. There are evidences of watchdogging of OSHA, such as by GAO or through legislative committees. However, we cannot help but wonder about the effectiveness of these presumed checks and balances.

Many of our state plan problems are the direct result of factors imposed by OSHA. For the purposes of this testimony, we are limiting our observations to the Federal Program and present only this one recent example of what appears to be an error exceeding the administrative rule-making authority of the OSHA Administration and which we view as posing significant impact. Bear in mind, however, that we are not taking issue with the stated need to encourage greater employee participation in our safety and health programming.

OSHA Program Directive 200-82 issued August 15, 1978 recites the documentation, regulations and other program directives affected by it. We have not had opportunity to completely research its language, but this directive appears to exceed the regulations at 29 CFR 1903 which it recites and thus would be rule-making without affording the due process of public hearing.

It appears to provide for "full party status" of employee representation in both opening and closing conferences in the course of an inspection and in any informal conference which may be held subsequent to issuance of a citation. It includes the proviso that a citation or penalty shall not be amended or withdrawn without first obtaining the views of the employee representative. And further, that in event of disagreement, an appeal may be filed.

As a Series 200 directive, it is forceful only in areas of Federal jurisdiction. However, simple administrative issuance of a Series 500 directive would additionally impose it upon all state plans.

Its impact might include forcing an employer into a formal contest, which is additionally time-consuming and costly, on matters which have heretofore been resolved by the informal conference. Furthermore, this would seem to be another example of the negation of the "common sense priorities" approach, including

the announced efforts to streamline the adjudication system. It would also be an example of the problems imposed upon multi-state companies as the result of significant differences in the regulations and their interpretations from state to state or area to area.

There are a number of other issues we would like to explore and present to your committee. However, our receipt of notice of this opportunity to be heard did not give us much time to develop meaningful input on all of our concerns. Nor do we feel this is the time or place for an extensive presentation, in view of the other urgent interests you are concurrently investigating and evaluating.

Should you desire elaboration on the items we selected to address or would honor other input at a later date after we have had ample time to solicit our members and develop appropriate documentation, we would be pleased to respond.

Mr. HEFTTEL. Mr. Uyesugi, business representative of the Hawaii Building and Construction Council. How are you today, sir?

**STATEMENT OF TAKESHI UYESUGI, BUSINESS REPRESENTATIVE,
HAWAII BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO**

Mr. UYESUGI. Fine.

My name is Takeshi Uyesugi, and I represent the Hawaii Building and Construction Trades Council, AFL-CIO, which is comprised of 18 trade unions with a total membership of approximately 20,000 construction workers.

The Building Trades Council supports the need for a strong OSHA program administered by the U.S. Department of Labor to eliminate the safety and health hazards of the uncontrolled work environments.

We consider attempts to weaken safety and health regulations inconsistent with the primary purpose of OSHA which is to protect the working men and women. We consider any attempt to exempt small employers from OSHA-applicable occupational and health standards a grave threat to all workers in construction.

The construction of a building is an integral enterprise of contractor and subcontractors. To exempt small employers from OSHA removes "equal protection" for workers and lowers the standards of performance in safety. Instead of lower safety standards, we want more OSHA inspectors to visit the construction jobsites. More OSHA inspectors means more employers will start to take a look at the hazards of the jobsites and, hopefully, make corrective changes.

The Building Trades Council feels that OSHA is doing a fair job with its resources. However, we feel OSHA needs to do a lot more—a lot more to protect the lives of the construction workers and their families.

Mr. HEFTTEL. Thank you, Take. You focused on distinction and I don't think it has been made before and I think it's a very important point. Most of the consideration of what we will term small business has been in a self-contained sense. You are now bringing out the over-all construction site, where whether a person is working for a small contractor or a large subcontractor, there is no difference. The danger is the same, the project is the same. And, we may have to take another look if ever there is an exception on the basis of size for those who participate in such things as construction, where regardless of the size of the employer, the need for OSHA is no different or the need for the inspection of safety standards is no different.

And, it's a very, very critical distinction that hasn't been made before. And, it is one that I want to be sure that we make a part of the record, to the extent that we may analyze how we might draft legislation. And, if we ultimately do, concerning the size of the business establishment.

When we are involved, as an example, in a common site for construction or any other activity, at that point there could be no exceptions. Because the program would overrule and the need for the safety would be the same no matter what the size of the subcontractor was.

Mr. UYESUGI. We have a thing in Hawaii, what we call an owner-builder. Maybe it's a private company in the State of Hawaii who wants to build its own building, which has happened, we want to be sure that whoever they pick as a subcontractor in the process would adhere to the law at that particular point. The fact that he is a subcontractor, doesn't exempt him from any responsibilities.

Mr. HEFTEL. Once you have a construction site, then, all of the applicable safety features built into the law should apply to that construction site, regardless of who the employer or the builder may be. In fact, it may protect the builder's own son.

Mr. UYESUGI. Thank you.

Mr. HEFTEL. It's very appropriate. Thank you very much, Take.

[Prepared statement of Takeshi Uyesugi follows:]

STATEMENT OF TAKESHI UYESUGI, BUSINESS REPRESENTATIVE, HAWAII
BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO

My name is Takeshi Uyesugi, and I represent the Hawaii Building and Construction Trades Council, AFL-CIO, which is comprised of eighteen trade unions with a total membership of approximately 20,000 construction workers.

The Building Trades Council supports the need for a strong OSHA program administered by the U.S. Department of Labor to eliminate the safety and health hazards of the uncontrolled work environments.

We consider attempts to weaken safety and health regulations inconsistent with the primary purpose of OSHA which is to protect the working men and women. We consider any attempt to exempt small employers from OSHA-applicable occupational and health standards a grave threat to all workers in construction.

The construction of a building is an integral enterprise of contractor and subcontractors. To exempt small employers from OSHA removes "equal protection" for workers and lowers the standards of performance in safety. Instead of lower safety standards, we want more OSHA inspectors to visit the construction job sites. More OSHA inspectors means more employers will start to take a look at the hazards of the job sites and, hopefully, make corrective changes.

The Building Trades Council feels that OSHA is doing a fair job with its resources. However, we feel OSHA needs to do a lot more—a lot more to protect the lives of the construction workers and their families.

Mr. HEFTEL. Howard Chong president-elect of the home builders association. We are delighted to have you with us today.

STATEMENT OF HOWARD CHONG, PRESIDENT-ELECT, HOME
BUILDERS ASSOCIATION OF HAWAII

Mr. CHONG. Mr. Chairman and members of the subcommittee, I am Howard Chong, president-elect of the 450-member Home Builders Association of Hawaii, speaking in its behalf on the subject measure.

We appreciate this opportunity given such a small organization like

ours to discuss some of our views relative to the general subject of OSHA.

Recognizing that many others are planning to testify, let me go directly to our concerns. We are aware that possibly the organizations that represent the large industrial and government contract builders may not agree with some of our viewpoints.

We strongly believe that a distinction should be made between heavy and light construction. Our member firms do basically residential and related structures generally not bigger than three stories, and thus the distinction given us within the industry as light construction builders.

Our foremost concern in any type of work we do is the welfare and safety of our employees. So, in our discussion of cost impacts, hopefully you will not misconstrue the emphasis given to the latter as if we are uncaring about the former.

The examples of unnecessary regulation are in those specific areas where we feel, on the basis of OSHA data, the safeguards required are more hindering than protective.

For example, when erecting roof trusses in residential construction, the regulation requires a positive safety system such as scaffolding to protect the worker. Prior to the adoption of the standard, workers have always erected roof trusses without scaffolding. Data indicate that this former practice has not been a source or cause of accidents, at least to a degree that it warrants regulation.

Another standard requires the use of guards over the blades of a table saw. These guards prevent visual observation of the actual sawing, make it impossible to do an angle cut and in many cases, hinders the finishing of the lumber being cut.

On two-story construction, guard rails must be provided at the second floor decking and exterior wall studs are erected. Construction of a standard residence usually calls for the foundation, first floor walls, second floor joist, second floor deck, second floor walls and then the roof.

With this sequence of work, the exposure of falling from the second floor during the erection of guard rails versus the time to erect the finish wall studs is not that great. Then too, the worker is dealing directly with the problem while erecting the wall studs and will be less apt to fall accidentally.

Please remember that in light construction, the workers are not being hindered by heavy equipment, loud noises such as pile drivers, excessive heights and large groups of unfamiliar workers. Most light construction contractors work with a small group of men who all know each other and also subcontractors who are also well known to him. People working in this kind of atmosphere tend to "look out" for each other.

We also wish to cite the economic impact of safety meetings. We feel such meetings are vital and should continue, but should be conducted as a matter of mutual interest to both employer and employee. Both should agree to set aside time on their own, at no one else's expense, to discuss on-the-job safety periodically.

Current practice is to have such meetings conducted every 4 to 6 weeks for familiarization of safety rules and practices. The duration of such meetings is generally 15 to 30 minutes, and presently are held

during working hours. At the present, carpenter journeyman's hourly rate, for example, including fringe benefit costs, we are talking about a cost to the employer of nearly \$114 per man per year.

True, these may be minor to the major contractors, but for the small volume builder, the costs resulting from adherence to the regulations earlier cited are prohibitive in terms of shaving costs wherever possible, for today's beleaguered cost-conscious home buyer. We are a "cost pass-on" industry and we all know that there is a line drawn where resistance starts against further cost hikes. As employers in a business in which profits are becoming more marginal and uncertain as regulations mount, we are sensible enough to realize that if we ignore basic safety rules and take a chance with human lives, we deserve having the "book" thrown at us.

Construction is admittedly one of the more hazardous occupational areas, but your honorable body should seriously consider the differences between light and heavy construction and see whether the exemptions being requested are justified.

We thank you for the time, your patience, and understanding of our expressed concerns.

Mr. HEFTEL. Thank you very much, Howard.

It's interesting to note both from yourself and from Take, who preceded you, in terms of why both the hearings are important and the exposure to all viewpoints are important, because you made a very valid distinction between the size of business and construction sites. For once you are at a construction site, the business should not be a factor. You are making a second distinction, which is the size of the construction site.

Is it a high rise? Is it a one story? Is it two stories? And, again, I think there is great validity in targeting on the distinction of the size of the construction site, along with the fact that once you are at a construction site I think it's logical to comply with regards to the size of the employer. So, I think all of this will be taken into a logical approach on the part of the committee. And, whatever subsequently comes out of our deliberations, I am sure this will be included in our approach.

Thank you very much.

[Prepared statement of Howard Chong follows:]

STATEMENT OF HOWARD CHONG, PRESIDENT-ELECT, HOME BUILDERS ASSOCIATION OF HAWAII

Chairman Gaydos and members of the subcommittee, I am Howard Chong, President-Elect of the 450-member Home Builders Association of Hawaii, speaking in its behalf on the subject measure.

We appreciate the rare opportunity given grassroots organizations like ours to discuss some of our views relative to the general subject of OSHA before such an august body.

Recognizing that many others are planning to testify, let me go directly to our concerns. First, we are aware that possibly the organizations that represent the large industrial and government contract builders may be at odds with our viewpoints, but allow us to put them right on the table, so to speak.

We strongly believe that a distinction should be made between heavy and light construction. Our member firms do basically residential and related structures generally not bigger than three stories, and thus the distinction given us within the industry as light construction builders.

Our foremost concern in any type of work we do is the welfare and safety of our employees. So in our discussion of cost impacts, hopefully you will not misconstrue the emphasis given to the latter as if we are uncaring about the former.

The examples of unnecessary regulation are in those specific areas where we feel, on the basis of OSHA data, the safeguards required are more hindering than protective.

When erecting roof trusses in residential construction, the regulation requires a positive safety system such as scaffolding to protect the worker. Prior to the adoption of the standard, workers have always erected roof trusses without scaffolding. Data indicate that this former practice has not been a source or cause of accidents, at least to a degree that it warrants regulation.

Another standard requires the use of guards over the blades of a table saw. These guards prevent visual observation of the actual sawing, make it impossible to do an angle cut and in many cases, hinders the finishing of the lumber being cut.

On two story construction, guard rails must be provided at the second floor before the floor decking and exterior wall studs are erected. Construction of a standard residence usually calls for the foundation, first floor walls, second floor joist, second floor deck, second floor walls and then the roof.

With this sequence of work, the exposure of falling from the second floor during the erection of guard rails versus the time to erect the finish wall studs is not that great. Then too, the worker is dealing directly with the problem while erecting the wall studs and will be less apt to fall accidentally.

Please remember that in light construction, the workers are not being hindered by heavy equipment, loud noises such as pile drivers, excessive heights and large groups of unfamiliar workers. Most light construction contractors work with a small group of men who all know each other and also subcontractors who are also well known to him. People working in this kind of atmosphere tend to "look out" for each other.

We also wish to cite the economic impact of safety meetings. We feel such meetings are vital and should continue, but should be conducted as a matter of mutual interest to both employer and employee. Both should agree to set aside time on their own, at no one else's expense, to discuss on-the-job safety periodically.

Current practice is to have such meetings conducted very four to six weeks for familiarization of safety rules and practices. The duration of such meetings is generally 15 to 30 minutes, and presently are held during working hours. At the present carpenter journeyman's hourly rate, for example, including fringe benefit costs, we are talking about a cost to the employer of nearly \$114.00 per man per year.

True, these may be minor to the major contractors, but for the small volume builder, the costs resulting from adherence to the regulations earlier cited are prohibitive in terms of shaving costs wherever possible, for today's beleaguered cost-conscious home buyer. We are a "cost pass-on" industry and we all know that there is a line drawn where resistance starts against further cost hikes. As employers in a business in which profits are becoming more marginal and uncertain as regulations mount, we are sensible enough to realize that if we ignore basic safety rules and take a chance with human lives, we deserve having the "book" thrown at us.

Construction is admittedly one of the more hazardous occupational areas, but your honorable body should seriously consider the differences between light and heavy construction and see whether the exemptions being requested are justified.

We thank you for the time, your patience and understanding of our expressed concerns.

Mr. HEFTEL. Betty Hirozawa, wherefore art thou? Betty is representing the Chamber of Commerce of Hawaii.

STATEMENT OF BETTY HIROZAWA, VICE PRESIDENT, HAWAII EMPLOYERS COUNCIL, ON BEHALF OF CHAMBER OF COMMERCE OF HAWAII

Ms. HIROZAWA. I'm Betty Hirozawa, vice president of the Hawaii Employers Council, and am speaking on behalf of the Chamber of

Commerce of Hawaii, as a member of its government affairs committee and chairman of the labor subcommittee.

I have to limit my remarks to rather general terms because OSHA standards have different impact on employers depending on size and type of activity and exposure to various hazards. We feel the recent "winnowing out" of certain OSHA so-called nuisance standards was a welcome action and we feel that the standards need to be regularly reviewed and either changed or eliminated.

The Chamber of Commerce of Hawaii follows the local State legislative activities very closely and therefore our focus is on DOSH which is the State agency enforcing OSHA. In general, I think the employers have a good working relationship with the State people and also with the Federal OSHA office representatives in Hawaii. However, I would be remiss if I did not state that there are instances of employers who become unhappy with either or both agencies. The chamber works with the U.S. Chamber in its monitoring of OSHA happenings at the Federal level.

There is an area of concern regarding OSHA and its administration which has been relayed to me by some of the employers in Hawaii.

The concern involves the noise and environment standards. It is not so much the specific standards, but the fact that while the State DOSH agency investigates and inspects various worksites and works out with employers the needed changes to meet certain standards, there seems to be Federal intervention in such cases. If the State has been judged competent and meets the certification for enforcement of OSHA, then, they should be fully accorded that responsibility and not have the Federal agency monitor every State action. The purpose, is to assure safe working places for employees and the employers of Hawaii are working with the State agency to provide it.

It is my understanding, that other industry representatives have testified on some other specific concerns and therefore have limited my comments to this single issue. If the committee wishes to receive additional comments and/or reactions to any other points brought up at today's hearing, we will try to obtain them and forward them to you.

Thank you for the opportunity to present this testimony.

Mr. HEFTEL. Thank you very much, Betty. I do have a few questions I'd like to consider having answered and to be made part of the record before the end of the year.

Because you not only represent the employers' council, but also the chamber of commerce, one of the things that always comes up related to OSHA is whether a given sized business should be exempted. I think that still should be addressed. Under what circumstances do businesses of a given size or character not lend themselves to being a part of the OSHA standards and regulatory body? There are so many instances of investigators coming in and citing businesses for the size, for the toilet, for the location of a fire extinguisher, the kind of a lightbulb, and an assortment of things that just simply aren't what OSHA should be doing. Because there are so many major concerns that aren't being covered adequately enough. That is the main point.

And, so, we are listening today to suggestions that we need to distinguish between—both the size of a business and, then, when you get to a construction site you need standards which apply to that

site, regardless of the size of the employer. Then, you move to the next question that came up and that is the size of the construction site itself.

But, going back to the small business, I think the chamber's perception would be helpful to see what you think would make sense. First, do we need an application of OSHA to small businesses and, if so, under what conditions?

Ms. HIROZAWA. I think I understand what you are saying, and I will try to get some information to you.

Mr. HEFTTEL. We are just delighted to have you here. Thank you very much, Betty.

Ms. HIROZAWA. Thank you very much.

[Prepared statement of Betty Hirozawa follows:]

STATEMENT OF BETTY HIROZAWA, VICE-PRESIDENT, HAWAII EMPLOYERS COUNCIL,
ON BEHALF OF CHAMBER OF COMMERCE OF HAWAII

Mr. Chairman and members, I'm Betty Hirozawa, Vice President of the Hawaii Employers Council, and am speaking on behalf of the Chamber of Commerce of Hawaii, as a member of its Government Affairs Committee and chairman of the labor subcommittee.

I have to limit my remarks to rather general terms because OSHA standards have different impact on employers depending on size and type of activity and exposure to various hazards. The recent "winnowing out" of certain OSHA standards was a welcome action and we feel that the standards need to be regularly reviewed and either changed or eliminated.

The Chamber of Commerce of Hawaii follows the local state legislative activities very closely and therefore our focus is on DOSH which is the state agency enforcing OSHA. In general, employers have a good working relationship with the state people and also with the federal OSHA office representatives in Hawaii. However, I would be remiss if I did not state that there are instances of employers who become unhappy with either or both agencies. The Chamber works with the U.S. Chamber in its monitoring of OSHA happenings at the federal level.

There is an area of concern regarding OSHA and its administration which has been relayed to me by various employers in Hawaii.

The concern involves the noise and environment standards. It is not so much the specific standards, but the fact that while the state DOSH agency investigates and inspects various work sites and works out with employers the needed changes to meet certain standards, there seems to be federal intervention in such cases. If the state has been judged competent and meets the certification for enforcement of OSHA, then they should be fully accorded that responsibility and not have the federal agency monitor every state action. The purpose is to assure safe working places for employees and the employers of Hawaii are working with the state agency to provide it.

It is my understanding that other industry representatives will be testifying on some other specific concerns and therefore have limited my comments to this single issue. If the committee wishes to receive additional comments and/or reactions to any other points brought up at today's hearing, we will try to obtain them and forward them to you.

Thank you for the opportunity to present this testimony.

Mr. HEFTTEL. Frank Gregory, general manager for the Earle M. Jorgensen Steel Co.

How are you today?

STATEMENT OF FRANK GREGORY, GENERAL MANAGER, EARLE M.
JORGENSEN CO.

Mr. GREGORY. Pretty good.

Mr. Chairman, gentlemen, my name is Frank Gregory and I am general manager of the Earle M. Jorgensen Co. here in Honolulu. The Earle M. Jorgensen Co. is a steel service center engaged in steel and aluminum distribution.

In our service center area, we do saw cutting, shearing, burning, threading, and make anchor bolts for the Hawaiian trade.

In our manufacturing division at Campbell Industrial Park, we make corrugated culvert pipe, chain link fencing, roofing and siding in various profiles, and we have a galvanizing plant.

You can see that we have a diversified group of production centers subject to many hazards. Long before OSHA was ever in the picture, we, at Jorgensen, preached safety to our employees, and since the era of OSHA and its restrictions we did not find it difficult to comply with most of the regulations. As a point of interest, our warehouse division has gone 1,995 days without a lost time accident.

The State OSHA personnel have inspected our plants several times and the Federal OSHA people have also made inspections. In our humble opinion, I feel that these inspectors have been helpful and have done a very good job as far as Jorgensen Steel is concerned.

I would like to mention one point of constructive criticism, however, and that is I feel "reasonableness" should be one of the important bywords or should be a part of the language of the regulations. For example, in our warehouse where we have steel in racks throughout the warehouse, OSHA regulations state that a fire extinguisher must be within 75 feet of any spot in that warehouse. Our steel will not suddenly catch fire as, perhaps, a lumber yard might or a furniture manufacturer. Reasonableness should dictate that. In our case fire extinguishers that close together are not necessary. Incidentally, the ceiling of our entire warehouse does have a sprinkling system. To say the least, in this area, we've got overkill.

In summary, as regards Jorgensen Steel and OSHA's overall performance, I feel they are doing a good job and inspectors are welcome on our premises anytime.

Thank you.

Mr. HEFTEL. Thank you very much, Frank.

As you remarked about fire extinguishers in a warehouse with steel beams, I am reminded of the regulations on the farm, and I think we are aware of how you fertilize crops. But, there was a requirement for an unreasonable number of outdoor toilets, and it created irritation and discredited the process because of the lack of commonsense thought. And, that is the same thing that you are communicating to us.

It may well be we still have a lack of that commonsense approach to all the facets of OSHA. And, when we don't use commonsense, it loses its credibility and gets ignored.

So, we lose what we were trying to do in the first place, which is to get people to respect the need for safety. So, when they tell you your life is being endangered by asbestos and that is the same organization that told you to put in a bunch of fire extinguishers, and all you have is steel that doesn't burn, it becomes apparent you don't know what you are talking about. So, you get discredited on a very important area,

where you may not know something because you are talking about something you have no knowledge of or you don't get input on.

So, it's extremely appropriate and it makes you wonder how they ever drafted a law and, then, how did they ever draft legislation which is so obviously stupid.

Mr. GREGORY. I'd like to bring up one little point—maybe I shouldn't. I just noticed in these rooms there is a lot of people and you have four doors and there is not one sign that says, "exit."

Mr. HEFTEL. But you see, this is a Federal Establishment, not subject to OSHA. It is not to the credit, I think, to the Federal Establishment that it does pass laws and establish agencies and exempt part of the Federal Establishment from them. I think a classic example is the fact that Congress itself does not allow itself to be subject to the EO provisions and other laws that we pass. So, the point is well taken. Thank you very much.

[Prepared statement of Frank Gregory follows:]

STATEMENT OF FRANK GREGORY, GENERAL MANAGER,
EARLE M. JORGENSEN CO.

Gentlemen, my name is Frank Gregory and I am General Manager of the Earle M. Jorgensen Co. here in Honolulu. The Earle M. Jorgensen Co. is a Steel Service Center engaged in steel and aluminum distribution.

In our Service Center area, we do saw cutting, shearing, burning, threading, and make anchor bolts for the Hawaiian trade.

In our Manufacturing Division at Campbell Industrial Park, we make corrugated culvert pipe, chain link fencing, roofing and siding in various profiles, and we have a galvanizing plant.

You can see that we have a diversified group of production centers subject to hazards. Long before OSHA was ever in the picture, we, at Jorgensen, preached safety to our employees, and since the era of OSHA and its restrictions we did not find it difficult to comply with most of the regulations. As a point of interest, our warehouses division has gone 1,995 days without a lost time accident.

The State OSHA personnel have inspected our plants several times and the Federal OSHA people have also made inspections. In our humble opinion, I feel that these inspectors have been helpful and have done a very good job as far as Jorgensen Steel is concerned.

I would like to mention one point of constructive criticism, however, and that is I feel "reasonableness" should be one of the important bywords or should be a part of the language of the regulations. For example, in our warehouse where we have steel in racks throughout the warehouse, OSHA regulations state that a fire extinguisher must be within 75 ft of any spot in that warehouse. Our steel will not suddenly catch fire as perhaps a lumber yard might or a furniture manufacturer. Reasonableness should dictate that, in our case fire extinguishers that close together are not necessary. Incidentally, the ceiling of our entire warehouse does have a sprinkling system. To say the least, in this area we've got overkill.

In summary, as regards Jorgensen Steel and OSHA's overall performance, I feel they are doing a good job and inspectors are welcome on our premises any time.

Mr. HEFTEL. Is Rick Fetsis from the General Contractors Association of Hawaii here with us?

Since he is not here, his statement will be introduced into the record by unanimous consent.

Richard Botani from the Hawaii Business League? I don't think he is here.

Before we adjourn, I would like to know if there are others among us who have testimony they would like to present, even though they

have not been previously listed to present such testimony? If so, you are most welcome to present that testimony at this time, either in written form or to give us your verbal observations.

If there are no further witnesses, I certainly would like to thank you for your participation and your patience. I think we are all aware that what we are asking for, what the witnesses are asking for is commonsense. And, when Government doesn't use commonsense, it loses credibility and we all suffer, along with a great loss of money that accompanies it.

And, so, these are very valuable hearings and your participation is indispensable. Without your participation there are no hearings. If no one stays to the conclusions of the hearings, we have nothing. So, you are the group who made it possible to complete these hearings today at this time and my respect and appreciation to you, and our warmest aloha. Good day.

Excuse me. I just wanted to make an observation. Usually we have both minority and majority members of the committee, and then, we have the participation of the counsel for each committee. But, in this instance, no minority members, which is the Republican Party, came to these hearings. But, the counsel for the committee did and, so, I will turn this over to Edie Baum.

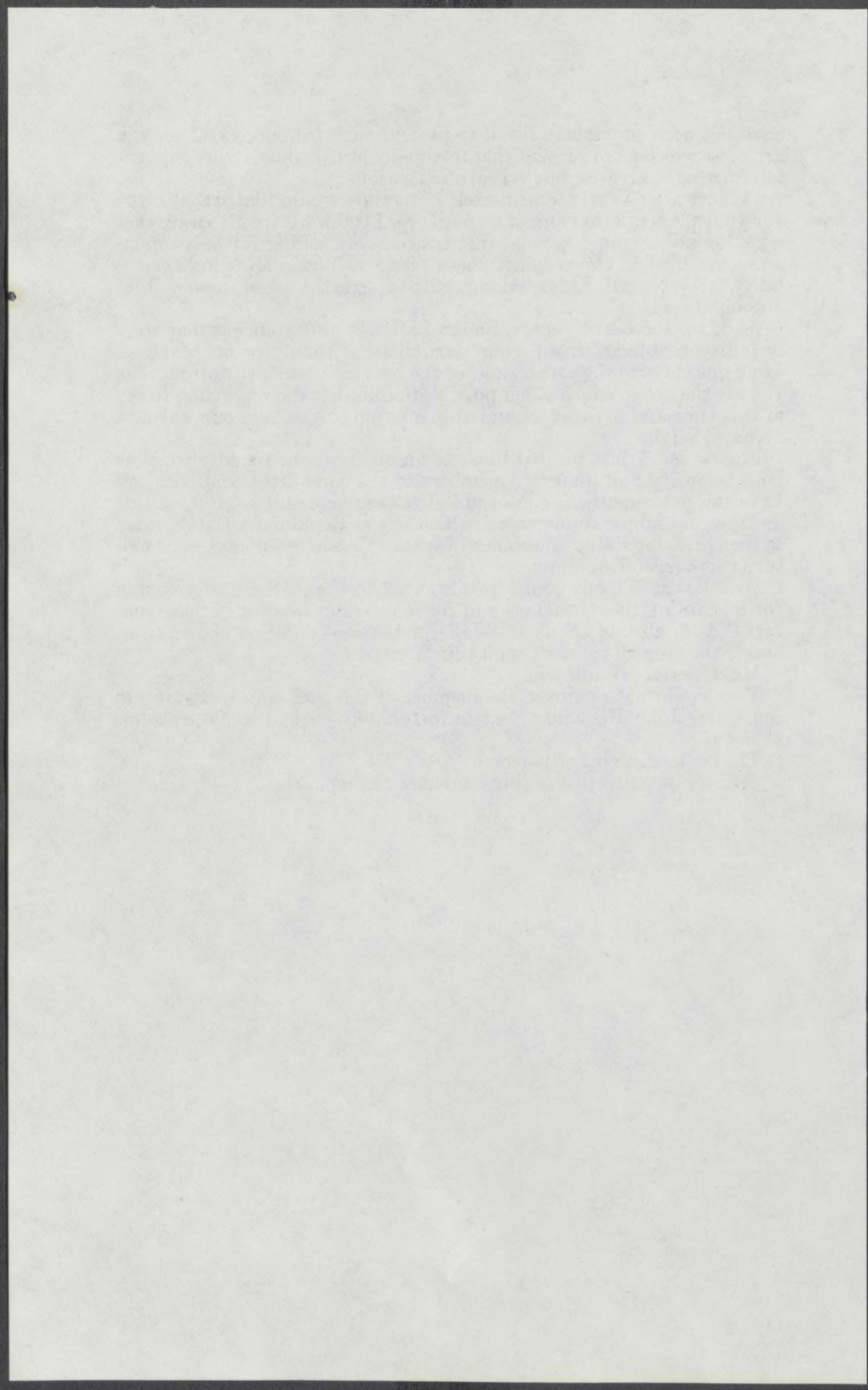
Mrs. BAUM. Thank you. I just wanted to thank the Congressman for scheduling these hearings and for his obvious interest in these concerns. And, also, to thank the staff for the consideration shown to us and to the minority staff. Thank you very much.

Mr. HEFTEL. Thank you.

You would have enjoyed the member of the staff who was going to come out, John Buchanan, but unfortunately he had some problems at home.

The hearing is now adjourned.

[Whereupon, the proceedings ended at 12:30 p.m.]



APPENDIX

GENERAL CONTRACTORS ASSOCIATION OF HAWAII,
Honolulu, Hawaii, November 16, 1978.

Subject: OSHA oversight hearings, November 16, 1978.

Hon. JOSEPH M. GAYDOS,

Chairman, Subcommittee on Compensation Safety and Health, Committee on Education and Labor, U.S. House of Representatives.

CHAIRMAN GAYDOS AND COMMITTEE MEMBERS: Operating under Hawaii's Division of Occupational Safety and Health (DOSH) Rules and Regulations, our industries interface with the Federal OSHA program is quite limited. However, there is one area of Federal involvement we would like to comment on. Namely, the manner in which reviews of the State Plan's operation are conducted, specifically in the area of OSHA attempting to measure the effectiveness of the compliance activities carried out by DOSH.

As we understand it, this measuring of effectiveness is primarily carried out through the use of follow-up inspections by OSHA compliance personnel of workplaces previously visited by State Compliance Officers. The Federal violations list is then compared with the State's in an effort to determine if any violations were overlooked by the State. Should a "serious" violation have been overlooked, the State will then conduct a follow-up inspection to the OSHA follow-up. The option then exists for OSHA to conduct a follow-up inspection on the DOSH follow-up to it's (OSHA's) follow-up inspection. A situation which members of our industry have experienced and which has not necessarily ended with but two follow-up visits.

A construction project is one in which the conditions are everchanging; where hazards appear and vanish from hour to hour or in even less time. As such, we fail to see how an OSHA follow-up inspection cannot help but discover standards violations which were apparently "missed" (non-existent at the time) by DOSH Compliance Officers, which in turn can lead to the additional inspections outlined above.

The disruptive effect on a jobsite of a single inspection is bad enough, but one which we accept as necessary. However, when this is followed by another, and another and yet another, it is little wonder why contractors begin to resent inspection activities and feel that they are being unduly harassed.

We have no solution to offer for this problem although we would like to suggest that some thought be given to developing a more meaningful monitoring procedure for the compliance activities of State Plans, especially as concerns the construction industry.

Thank you for the opportunity to present this testimony.

Respectfully submitted.

RICK FETSI, *Safety Chairman.*

HAWAII HOTEL ASSOCIATION,
Honolulu, Hawaii, November 15, 1978.

Representative CECIL HEFTEL,
U.S. House of Representatives.

Subject: Your letter of November 8, 1978, re OSHA's regulations.

DEAR CEC: At a board of directors meeting of the Hawaii Hotel Association held yesterday it was decided we should write you to express some of our concerns in the area of OSHA.

A particular problem in Hawaii is the dual inspections by the state officials, frequently followed by an inspection for identical purposes by OSHA. This seems to be an inefficient method of reviewing the state program, and we request that you look into this matter.

We have no problem with the intent of the program, but quite often are concerned with the safety value of many of the items required, and whether or not they are truly necessary.

Thank you for the opportunity to respond.

Aloha,

CLEMENT M. JUDD, Jr.,
Executive Director.

PNEUMATIC EQUIPMENT CO., LTD.,
Honolulu, Hawaii, November 14, 1978.

SUBCOMMITTEE ON COMPENSATION, HEALTH AND SAFETY,
U.S. House of Representatives,
Honolulu, Hawaii.

(Attention of Mr. Davis Higa).

GENTLEMEN: We enclose copies of our letters to the Occupational Health and Safety Division, State of Hawaii, dated February 2, 1978, and to Mr. John McLaren dated October 17, 1978.

The health and safety of its employees contribute greatly to the success and profitability of any industry, and industry should welcome any help it can get toward this end. There exist numerous hazards which are not readily apparent. For these we need special help like Osha.

However, some cures are worse than the ailment. Traffic fatalities will be virtually eliminated if the speed limit was reduced to 5 miles per hour. But, to keep our economy from coming to a standstill, our existing speed limits must be retained. Our airlines cannot exist if sound levels were to be drastically lowered.

We believe it is vitally necessary that Osha not be strictly a "police force," but be a consultant, if stern, to industry on how best to keep the work place as safe as possible.

Sincerely,

KIYOSHI KURISU, *Vice President.*

Enclosures.

OCTOBER 17, 1978.

Mr. JOHN McLAREN,
c/o Office of Senator Matsunaga,
Russell Senate Office Building,
Washington, D.C.

DEAR MR. McLAREN: We wish to thank Senator Matsunaga and his capable staff for all the kindness and attention given us during our visit to Washington. We were especially impressed by your help and cooperation.

As per your request we enclose a copy of the letter we sent to the Occupational Health and Safety Division, State of Hawaii, over 8 months ago. These fittings were discussed in detail at your shop with a representative from the State. We were advised that their committee was quite favorably impressed, but we have had no further word.

As reported to you, the Roll Over Protective Structures (ROPS) can be an extremely dangerous thing when used on backhoes. This structure tends to crush the operator when the backhoe falls on its side since the operator almost always falls to the ground before the ponderous machine. Accidents of this nature should surface if accident reports were checked out. The ROPS is a dubious safety device in that it is virtually impossible to make a backhoe roll over or flip on its back because of its high boom and very slow movements on the jobsite. It travels at less than 25 mph on the highway. The use of seatbelts makes the backhoe well nigh impossible to operate safely because the operators visibility is seriously impaired.

The air tanks on portable air compressors used in the construction industry has a 200 psi ASME rating. This means it has passed a hydrostatic test of 400 psi and possibly engineered for an 800 psi burst strength. The engine, or motor, will in all probability fail before the pressure reaches 200 psi. These steel tanks do not weaken overall. They may rust and pit, and even begin to leak, but its basic strength remains, and the leaks are actually like safety features in that

it helps to reduce the tank pressure. These tanks, and the complete compressor, should be checked periodically by mechanical type inspectors and not Boiler Inspectors who may be overly, and unnecessarily strict yet miss some basic mechanical flaw.

We are quite satisfied with the accomplishment and very understanding attitude of our Occupational Health and Safety Division, State of Hawaii. But we are concerned with the slow and ponderous response which, understandably, is part of any government organization.

We humbly ask that you help us by contacting Osha so that these processes might be speeded up and Osha can really accomplish its task. To this end, it would be nice of Osha, instead of being dreaded like the Gestapo, were a consulting organization, if stern, who would work with the industries and its employees to discuss and elevate the safety standards of our nation.

Sincerely,

PNEUMATIC EQUIPMENT CO., LTD.,
KIYOSHI KURISU, *Vice President.*

Enclosure.

FEBRUARY 2, 1978.

Attention: Mr. Edward Turner.
Subject: Air Line Safety Check Valves.

OCCUPATIONAL HEALTH AND SAFETY DIVISION,
Honolulu, Hawaii.

GENTLEMEN: Osha requires the use of air line safety check valves on air compressors with air lines of over $\frac{1}{2}$ " inside diameter. The installation of the valve itself poses no big problem, and any additional safety back up is certainly a virtue.

However, compliance with this requirement has been a source of headaches for the contractors engaged in the construction business.

The selection of a proper sized valve is well nigh impossible because none of these valves are readily resetttable for each of the varied tools used and the varied lengths of the air lines involved. This valve is installed at the source which further aggravates the lines pressure losses on the lines of at least 100 ft. which are quite common.

With the construction business in the doldrums and the added aggravation of labor unrest and strikes, the contractors are hard put just to stay alive. They may not be able to withstand additional labor costs.

The well being of these contractors are very important to Pneumatic Equipment Co., Ltd. We exist to serve them.

We have been renting air compressors for over 25 years and have no record of any injury caused by our equipment which could not be attributed to plain stupidity or ignorance.

We have changed from the quick coupling or snap lock type to the threaded ground joint type of coupling many years ago—long before the advent of Osha.

This entailed the cost of revamping all our hoses but the elimination of a source of danger was well worth it.

The ground joint coupling does not allow the line to come apart unexpectedly. The coupling has to unthread completely before it can come apart. The loss of air is evidenced by not only the sound of the escaping air but the decreased efficiency of the tool. The tool may even come to a stop before the air line parts.

If the air line check valve is absolutely necessary to maintain safety, we have no choice but to install them. But we believe that the use of proper air hoses and tools, plus an orientation on air line safety, should largely eliminate any dangerous situations. We do maintain an adequate stock of safety check valves for those contractors who requests them. We will be most happy to show you the inherent safety of the fittings used.

We contend that we can maintain adequate safety without resorting to a check valve or other devises which greatly lowers efficiency and raises construction cost.

We request your help and cooperation in resolving this problem.

Sincerely,

PNEUMATIC EQUIPMENT CO., LTD.,
KIYOSHI KURISU, *Vice President.*

TESTIMONY OF DENNIS DiSANTO, PRESIDENT, PEPSI-COLA/SEVEN-UP BOTTLING CO.
OF HONOLULU, CONCERNING OSHA

We would like to make the following observations and comments regarding OSHA:

1. There seems to be very little discernible relationship between the things that OSHA inspectors are looking for during their inspections and the factors which are usually involved when an industrial accident actually occurs. This opinion has been reinforced by company notes with other businessmen, and it seems to indicate a need for OSHA to redefine priorities. It is encouraging to see a large number of "nitpicking" regulations being dropped, but that is only part of the problem. OSHA should devote more resources to researching the actual causes of accidents and to helping find "realistic" solutions to problems rather than going around penalizing businesses for not using imaginary techniques that haven't even been developed yet. If OSHA can't do a good job of finding practical solutions, it should be discontinued completely.

2. Another specific problem with OSHA inspections has been the substantial amount of management time they waste during and after inspections because the inspectors seem to be more concerned about making work for themselves many times than they are about helping improve actual job safety.

3. Another specific area which needs a great deal of attention is the area of so-called "repeat violations." The way it stands now, several totally insignificant violations of questionable standards can be linked together because they fall within a single general category, and a company can find itself faced with a substantial fine and/or a large investment in management time trying to negotiate a more realistic interpretation of the situation. OSHA should have to show that two incidents are very clearly related to each other before one can be called a repeat of the other. In addition, repeat violations should not be allowed if OSHA cannot demonstrate there is a practical solution to the alleged violation.

There are many other specific problems that could be discussed, but it can probably all be summarized by saying that the burden should be on OSHA to demonstrate that it has made a significant contribution to job safety without causing a disproportionate increase in costs. If that cannot be clearly shown, there is no need for the program and it should be eliminated as an unnecessary drag on the economy.

WAIPAHU, HAWAII, November 13, 1978.

Hon. CECIL HEFTEL,
U.S. House of Representatives,
Honolulu, Hawaii.

DEAR SIR: Provisions within the Williams-Steiger Occupational Safety and Health Law passed in 1969 offered States the opportunity to establish programs "as effective as" the federal program. Hawaii's Occupational Safety and Health Law of 1972 is administered and enforced by the Division of Occupational Safety and Health of the State Department of Labor and Industrial Relations.

Under a plan approved on January 4, 1974, by the U.S. Department of Labor, Occupational Safety and Health Administration, the State of Hawaii is providing job safety and health protection for workers throughout the State. OSHA's area office in Honolulu and the regional office in San Francisco have been monitoring the operation of Hawaii's plan since 1974 to assure that continued monitoring is merited.

It is this continued monitoring which I would like to bring to the attention of the Committee. Granted the federal government provides up to 50 percent of the funding so is entitled to monitor the State program. However, the question I would like to pose to you is, "Is the current degree of monitoring necessary, or is it just a means to satisfy special interest groups or create additional paperwork and add to inefficient use of personnel?"

Currently enforcement within the State of Hawaii is administered by 16 safety inspectors and 6 industrial hygienists averaging 10 and 5 years of experience respectively. The State schedules training sessions every four months to upgrade inspectors and keep them abreast of developments in the safety and health field. With increasing national emphasis on health hazards, Hawaii's occupational health program has taken a number of steps to upgrade itself. The industrial hygiene staff of the State is highly qualified; and their level of competency is

exhibited by the fact that two members of the Health Branch are certified by the American Board of Industrial Hygiene, and two more have completed the first phase and are awaiting testing for final certification. The State's laboratory is one of a handful nationwide that has been accredited; participation in an analytical proficiency testing program administered by the National Institute for Occupational Safety and Health assures continued maintenance of professional standards.

State inspectors in Hawaii and other areas have and will continue to be evaluated by one of three forms of monitoring: 1) Accompanied visits—a federal inspector accompanies a State inspector on inspections; 2) Spot-checks—a federal inspector randomly visits an establishment within 10 days of the initial State inspection; 3) Case file reviews—records of the inspection are reviewed for deficiencies (See attachments 1, 2 and 3). In a time of growing business concern of over regulation, federal monitoring has burdened employers with additional unnecessary time and effort. Potentially employers can be inspected up to six times on a general schedule inspection. Random selection and federal guidelines enabled one inspector to be monitored seven times in a seven week period. Direct and indirect expenses, time spent by the inspectors, supervisors, support staff, federal area inspectors, area directors, regional evaluators, etc., amounts to an incredible amount of money an effort that could be utilized in a more efficient manner. The federal inspectors could spend more time doing actual inspections of industries under their jurisdictions rather than waste their time—and that of the compliance officers—in duplicating State efforts.

Other federal programs are not monitored as intensely as OSHA but are still able to function effectively. Periodic and not daily monitoring might enable the state and federal programs to better provide safe and healthful working conditions throughout the country. Prudent administration of State plans would occur because of the threat of cutbacks in federal funding, and the fact that posters prominently displayed in workplaces covered under the Act inform employees, employers and unions of their right to file complaints against administration of the State plan (Attachment 4).

In times where the state and federal governments are faced with fiscal restraints, austere budgets, increasing business concern of over regulation and existence of a nationwide need for qualified safety and health inspectors, the Committee should take a close hard look in utilizing the \$20,000-\$30,000 "Trained" federal inspectors more efficiently. Thank you.

Sincerely,

LESTER S. TENGAN.

Attachments.

ATTACHMENT 1

AI FORM A

Inspection Evaluation Guide

U.S. DEPARTMENT OF LABOR
Occupational Safety & Health Administration

1. State	Region	7. Type of Business	SIC:
2. District Office		8. Employer's Name	
		Address	
3. Inspector	I.D. #	9a. No. of Employees	
		b. No. of Employees Affected	
4. CSHO's Name	I.D. #	Report #	
10. Type of Inspection			
<input type="checkbox"/> Initial <input type="checkbox"/> Follow-up <input type="checkbox"/> Complaint			
<input type="checkbox"/> Accident <input type="checkbox"/> Other (identify)			
5. Date (month-day-year)			
6. Inspection Time Time Spent at Establishment			

MONITORING FACTORS

I. PRE-INSPECTION PREPARATION

A. The compliance officer has:

1. Knowledge of workplace (industry) history including any previous inspections.
2. Knowledge of unusual standards that are likely to be relevant to inspection.
3. All necessary equipment and materials.

B. ADVANCE NOTICE

1. Advance Notice given -
 - a. If given, properly authorized.
 - b. If given, properly implemented.

C. COMMENTS ON A AND B ABOVE:

YES	NO	N/A	REMARKS

Page 1 of 1 pages

(12/1/77)

I. ENTRANCE PROCEDURES

- A. Request to see highest level management.
- B. Presents credentials to management representative.
- C. Was any difficulty encountered in entering the facility? If so, how did the inspector handle the situation?
- D. Comments on entrance procedures:

YES	NO	N/A	REMARKS

I. OPENING CONFERENCE

- A. Did the inspector meet with appropriate management representative at the opening conference?

- B. The compliance officer:

1. Discusses purpose, nature and scope of inspection.
2. Discusses legal authority for inspection.
3. Discusses provision for protection of trade secrets.
4. Explains walk-around procedures.

	YES	NO	N/A	REMARKS
5. Provides opportunity for employee and employer representatives to accompany inspector during inspection.				
6. Provides copies of appropriate standards and informational materials to employer.				
7. Arranges for closing conference.				
8. Reviews employer's safety program.				

C. Comments on opening conference:

IV. EMPLOYEE RIGHTS

A. If workers have employee representative, did the inspector -

1. Provide for an employee representative for walk-around in appropriate manner?
2. Brief employee representative prior to walk-around?
3. Inform employee representative of employees' rights under the law?
4. Give employee representative an opportunity to point out hazards.

B. If not accompanied by employee representative, did inspector conduct appropriate employee interviews?

C. Comments on employee rights:

V. INSPECTION WALK-AROUND

- A. Checks for compliance with record-keeping and posting requirements.
- B. Follows a systematic procedure on walk-around.
- C. Covers all pertinent areas of the work-site.
- D. Ascertains if employees are aware of exposure to toxic materials or harmful physical agents.
- E. Notes all observable hazards in workplace. If any hazards were missed by State inspector, describe in worksheet (AI Form B).
- F. Identifies each apparent violation adequately (e.g., noting number of units, locations in the worksite, number of employees exposed).
- G. Uses equipment where necessary to document apparent violations.
- H. Uses instruments where necessary to check for hazardous conditions (ventilation, noise, etc.).
- I. If an imminent danger situation is found, follows procedure as prescribed by the State Compliance Manual.

	YES	NO	N/A	REMARKS
A.				
B.				
C.				
D.				
E.				
F.				
G.				
H.				
I.				

	YES	NO	N/A	REMARKS
J. Looks for possible health hazards.				
K. Identifies need for additional expertise where applicable (e.g., Industrial Hygienist, other specialists).				
L. Examines personal protective equipment in use.				

M. Health Inspections Only:

1. Instruments and/or equipment were prepared in accordance with standard methods of sampling and calibration.				
2. Appropriate instruments and/or equipment used in sampling.				
3. Sampling and measurements taken in close proximity to employee (e.g., breathing zone for air contaminants, etc.).				
4. Samples represent a full shift exposure (except where ceiling level applies).				
5. Records and notes made for sampling, calibration and analysis.				
6. Employer's protective equipment, engineering and/or administrative control program are evaluated.				

N. Comments on Inspection Procedures:

AI FORM CSAMPLE LETTER FOR ACCOMPANIED INSPECTION

Date
 State Designee or his/her representative
 State Department
 Address

Dear _____:

On _____, a Federal monitor accompanied a State inspector on an inspection _____ (name of establishment and any other identification required).

Our findings on this accompanied inspection are as follows:

- A. Inspection Site Selection (comment on type of site selected, degree of difficulty of hazard to be found in such an industry, etc.).
- B. Conduct of Inspection (discuss manner in which State inspector conducted various aspects of inspection - conferences, employee participation, etc.).
- C. Hazard Recognition
 1. Make a statement of degree of hazard recognition ability of State inspector. From violations in Code A you can determine the percent of violations identified by the State inspector.

2. Explain the violation (AI Form B) worksheet by a statement such as the following:

The attached list of violations represents those violations identified and would be cited by the Federal monitor in the accompanied inspection. The various codes indicate whether the State inspector identified or did not identify the violation and whether they were cited or not cited in the State citation.

For those violations which are considered serious violations (using the Federal definition) by the Federal monitor, and which your inspector did not identify and/or did not cite (noted in Codes A-2, B-2, or C-2), you are requested to conduct a follow-up inspection as soon as possible in order that we may be assured that the violation has been cited and abated. For other than serious violations, a follow-up inspection is also suggested.

- D. Classification of Violations

If the case file review (CFR form item #21) indicates that the State classified violations inappropriately (e.g. serious classified as other, other classified as serious, de minimus classified as other, etc.) discuss in this section specifying which violations are incorrectly classified and why they are incorrect.

(12/1/77)

E. Other Findings

Note in this section relevant information from the case file review which can reflect on the quality of the inspection. For example, violation documentation, length of abatement periods, etc.

Sincerely,

Area Director

Enclosures - (1) AI Form B
(2) AI Form D

ATTACHMENT 2

Establishment: _____
 Address: _____

SCMV FORM A
 (2/17/78)

SPOT-CHECK MONITORING VISIT

1. Category: Safety _____ 2. Date of State Inspection _____
 Health _____ 3. Date of SCMV _____
 4. Date of CFR _____
5. State _____ 6. Office _____
7. State CSHO No. _____ 8. Monitor _____
 (or Name) _____
9. Employees: No. in Establishment 1 No. Affected 2
10. Scope of State Inspection _____ 3
11. Type of SCMV: Random 4 Non-Random 5
 If the SCMV was non-random, complete the following:
 Result of CFR 6 CASPA 7 Variance 8
 Abatement Study 9 Other 10
12. If employer representative from State inspection is available during the SCMV, ask whether the State compliance officer:
- a. discussed purpose, nature, and scope of inspection 11 12 13
 yes no n/a _____
- b. discussed protection of trade secrets 14 15 16
 yes no n/a _____
- c. explained walkaround procedures 17 18 19
 yes no n/a _____
- d. provided opportunity for employee and employer representative to accompany during inspection 20 21 22
 yes no n/a _____
- e. provided copies of appropriate standards and informational materials to employer 23 24 25
 yes no n/a _____
- f. arranged for closing conference 26 27 28
 yes no n/a _____
- g. reviewed employer's safety program 29 30 31
 yes no n/a _____
- h. related alleged violations to standards 32 33 34
 yes no n/a _____
- i. identified need for additional expertise where applicable (e.g., industrial hygienist, specialist) 35 36 37
 yes no n/a _____
- j. informed employer that citations might be issued and penalties proposed 38 39 40
 yes no n/a _____
- k. obtained information from employer for establishing abatement dates 41 42 43
 yes no n/a _____
- l. informed employer that citations must be posted 44 45 46
 yes no n/a _____
- m. described follow-up inspection procedures 47 48 49
 yes no n/a _____

15. If monitor was unable to interview the employer and employees interviewed by the State inspector during the State inspection, list the name, title, and address of the person or persons whom the monitor interviewed during the SCMV.

16. Other Inspection Factors:

Explain any instances where the State compliance officer did not carry out prescribed State procedures.

- a. Opening conference _____

- b. Review of recordkeeping and posting requirements _____

- c. Closing conference _____

- d. Other _____

U. S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION
HONOLULU AREA OFFICE
300 Ala Moana Boulevard, Suite 5122
P. O. Box 50072
Honolulu, Hawaii 96850

SCMV FORM B

Telephone: 546-3157



████████████████████
Div. of Occupational Safety & Health
State Dept. of Labor & Industrial Relations
677 Ala Moana Boulevard, Suite 910
Honolulu, Hawaii 96813

Dear ██████████:

On _____, a Federal Monitor conducted a Spot
Check Monitoring Visit (SCMV) at the establishment of _____

This establishment was inspected by a DOSH inspector on _____

Our findings on this Spot Check Monitoring Visit are as follows:

The DOSH inspection revealed that the inspector cited /
 did not cite for alleged violations, but the Spot Check
inspection revealed _____ alleged violations. _____
of these alleged violations were present at the time of the
State inspection and were not cited by the DOSH inspector.
These were violations of the following standards:

<u>Standard Violated</u>	<u>Location</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

and considered Serious / Other alleged violations.

The following alleged violations were new and were not deemed present during the DOSH inspection.

<u>Standard Violated</u>	<u>Location</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The employer conveyed to the Federal Monitor during the Spot Check Monitoring Visit the information that the DOSH inspector covered all phases / did not cover the following phases of the opening and closing conferences.

The findings of the Spot Check Monitoring Visit disclosed that the DOSH inspector did an effective inspection of the employer's premises, but overlooked the _____ minor alleged violations relating to the _____

This Spot Check Monitoring Visit indicated that the inspection was effective.

The findings of this Spot Check Monitoring Visit disclosed that the DOSH inspection was not considered as effective as desired in that _____ Serious / _____ Other or a total of _____ violations were overlooked.

The attached list of violations represents those identified by the Federal Monitor, but were not included on the citation resulting from your inspection.

3

For those violations considered Serious by the Federal Monitor, you are required to conduct a follow-up inspection as soon as possible in order that the violation may be cited and abated. For Other violations, a follow-up inspection is suggested.

Please notify this office of the results of any follow-up inspections.

Sincerely,

~~XXXXXXXXXX~~
Area Director

Enclosures:
SCMV Forms C and D

PFH:mi

SPOT-CHECK MONITORING VISIT - VIOLATION LIST

Following is a list of the violations determined to be present at the time of the State inspection at _____ which were not identified by the State inspector and/or were not cited in the State's citation. A description of the violation codes follows in SCMV Form D.

The Federal definition of serious (s) and other-than-serious (o) have been applied by the Federal monitor to determine the importance of the violation.

State Standard	Description of Violation	Substantiality		Code
		Serious	Other	

SPOT-CHECK MONITORING VISIT - VIOLATION SUMMARY
(To be furnished to State with SCMV Form C)

This form is a summary of all the violations present at the establishment inspected at the time of the State inspection. Some of the violations coded as A-1 and C-1 may have been abated by the time of the spot-check monitoring visit. The number of abated violations have been determined through the comparison of the State's citation to the list of violations found by the Federal monitor during the SCMV. The rest of the violations, in the various codes, were determined to be present at the time of the State inspection and were present during the spot-check monitoring visit. The violations are placed in the various codes to indicate whether the violations were identified or were not identified by the State inspector and to note whether they were cited or not cited in the State citation.

The Federal definitions of serious (s) and other-than-serious (o) have been applied by the Federal monitor to determine the importance of the violation. Hazards considered de minimus by the Federal monitor are excluded. The number and the substantiality of violations noted on this form may be different from the number and classification of violations in the State's citations.

CODE	DESCRIPTION OF CODE	VIOLATION SUBSTANTIALLY	
		SERIOUS	OTHER
A	1 Violations <u>identified</u> by State inspector and <u>cited</u> in State's citation.		
	2 Violations <u>identified</u> by State inspector and <u>not cited</u> in State's citation.		
B	Violations <u>not identified</u> by State inspector (which were present at the time of the State inspection) and <u>not cited</u> in State's citation.		
C	1 Violations <u>identified</u> by State inspector in <u>some instances</u> but not identified in other instances of the same inspection and <u>cited</u> in the State's citation.		
	2 Violations identified by State inspector in <u>some instances</u> but not identified in other instances of the same inspection and <u>not cited</u> in the State's citation.		

ATTACHMENT 3

Public Sector : CASE FILE REVIEW Office of State Progr

(8 trip) - (ATTACHMENT 3) (1/16/71) str

1. Category: Safety _____
 Health _____
 Both _____

2. Date of Inspection _____
 3. Date of CFR _____
 4. Date of AI _____

5. State _____

6. Office _____

7. CHSO Name or No. _____

8. Monitor _____ (1)

9. Name & Address of Workplace: _____
 Name _____
 Street _____ City _____ County _____

10. SIC _____

11. Type of Business _____

12. Type of Inspection: Fatality _____ (2) Accident _____ (3)
 Complaint (F) _____ (4) Follow-up _____ (6) General Schedule _____ (7)
 Complaint (I) _____ (5) Special Emphasis _____ (8)

a. If the inspection was a formal complaint inspection complete the following:

(1) Number of days between receipt of complaint and beginning of inspection _____ (9)

(2) Was the complainant notified of the results of the inspection?
 Yes _____ (10) No _____ (11)

13. Employees: Number in Establishment _____ (12)
 Number Affected _____ (13)
 Case File: In-Compliance _____ (14)
 Not In-Compliance _____ (15)

14. Statistics:

	Number	Number with Penalties
a. Serious violations	_____ (16)	_____ (29)
b. Other violations	_____ (17)	_____ (40)
c. Repeat serious violations	_____ (18)	_____ (31)
d. Repeat other violations	_____ (19)	_____ (32)
e. Willful violations (serious)	_____ (20)	_____ (33)
f. Willful violations (other)	_____ (21)	_____ (34)
g. Failure to abate (serious)	_____ (22)	_____ (35)
h. Failure to abate (other)	_____ (23)	_____ (36)
i. Statutory violations:		
--- Failure to post poster	_____ (24)	_____ (37)
--- Failure to maintain records	_____ (25)	_____ (38)
--- Failure to post citation	_____ (26)	_____ (39)
(Follow-up only)		
j. Other: Explain below	_____ (27)	_____ (40)
k. Total violations	_____ (28)	_____ (41)

19. CITATION LAPSE TIME:

a. Safety:

Number of workdays between closing conference and issuance of citation _____

b. Health:

Number of workdays between closing conference and receipt of all sample results _____ (75)

Number of workdays between receipt of all sample results and issuance of citation _____ (76)

c. Comments:

20. DOCUMENTATION OF VIOLATION INSTANCES:

a. Were all instances of all violations adequately documented

yes _____ (77) no _____ (78)

(If answer is no, complete the following.)

b. Number of instances of violations with adequate documentation _____ (79)

c. Number of instances of violations with inadequate documentation _____ (80)

d. Complete following for the adequacy of the documentation of all instances of violations. Use violation documentation worksheet to explain each deficiency for each instance found to be inadequately documented.

	Number Inadequate	Number Adequate
(1) Employee exposure data	_____ (81)	_____ (91)
(2) Identification or location data	_____ (82)	_____ (92)
(3) Photographs or sketches	_____ (83)	_____ (93)
(4) Measurements	_____ (84)	_____ (94)
(5) Witness statements	_____ (85)	_____ (95)
(6) Sampling methods	_____ (86)	_____ (96)
(7) Equipment	_____ (87)	_____ (97)
(8) Sampling equipment calibration	_____ (88)	_____ (98)
(9) Sampling adequacy	_____ (89)	_____ (99)
(10) Other (specify)	_____ (90)	_____ (100)

21. VIOLATION CLASSIFICATION:

- a. Number of violations which were other than should have been serious _____ (101)
- b. Number of violations which were serious that should have been other _____ (102)
- c. Number of violations which should have been repeat (previously inspected establishments only) _____ (103)
- d. Number of violations that should have been failure to abate _____ (104)
- e. Other (e.g., willful) _____ (105)

Explain each wrongful classification on summary sheet

22. ACCURACY OF CITATION:

- a. Number of violations cited correctly _____ (106)
- b. Number of violations cited incorrectly _____ (107)
- (1) Number of violations where any instance improperly described _____ (108)
- (2) Number of violations where any location descriptions were inadequate or omitted _____ (109)
- (3) Number of violations with incorrect standard, paragraph, or sub-paragraph of standard _____ (110)
- (4) Other _____ (111)

Explain each deficiency on worksheet

23. ABATEMENT REQUIREMENTS:

a. Appropriateness of abatement period

- (1) Abatement period appropriate _____ (112)
- (2) Abatement period too long _____ (113)
- (3) Abatement period too short _____ (114)

b. Abatement spread (workdays)

Serious:	3 days _____ (115)	7 days _____ (116)	Over 7 _____
Willful:	5 days _____ (118)	10 days _____ (119)	Over 10 _____
Repeat:	5 days _____ (121)	10 days _____ (122)	Over 10 _____
Other:	0-10 days _____ (124)		
	11-20 days _____ (125)		
	21-30 days _____ (126)		
	Over 30 days _____ (127)		

WORKSHEET -- VIOLATION DOCUMENTATION

For each instance of each violation, complete the following. Please explain any deficiencies. Totals should be entered in item 20, page 3.

Violation #	# of Instances	Number Required	Number Inspected
1. Employee exposure data		_____	_____
2. Identification or location data		_____	_____
3. Photographs or sketches		_____	_____
4. Measurements		_____	_____
5. Witness statements		_____	_____
6. Sampling methods		_____	_____
7. Equipment		_____	_____
8. Sampling equipment calibration		_____	_____
9. Sampling adequacy		_____	_____
10. Other (specify)		_____	_____
COMMENTS:			

Violation #	# of Instances	Number Required	Number Inspected
1. Employee exposure data		_____	_____
2. Identification or location data		_____	_____
3. Photographs or sketches		_____	_____
4. Measurements		_____	_____
5. Witness statements		_____	_____
6. Sampling methods		_____	_____
7. Equipment		_____	_____
8. Sampling equipment calibration		_____	_____
9. Sampling adequacy		_____	_____
10. Other (specify)		_____	_____
COMMENTS:			

Violation #	# of Instances	Number Required	Number Inspected
1. Employee exposure data		_____	_____
2. Identification or location data		_____	_____
3. Photographs or sketches		_____	_____
4. Measurements		_____	_____
5. Witness statements		_____	_____
6. Sampling methods		_____	_____
7. Equipment		_____	_____
8. Sampling equipment calibration		_____	_____
9. Sampling adequacy		_____	_____
10. Other (specify)		_____	_____
COMMENTS:			

ATTACHMENT 4

SAFETY AND HEALTH PROTECTION ON THE JOB

The intent of the *Hawaii Occupational Safety and Health Law of 1972, Chapter 396, Hawaii Revised Statutes*, is to assure, so far as possible, safe and healthful working conditions for workers in the State.

The Division of Occupational Safety and Health (DOSH) of the State Department of Labor and Industrial Relations (DLIR) has primary responsibility for administering and enforcing the Law and the safety and health standards promulgated under its provisions.

Requirements of the Law include the following:

EMPLOYERS:

Each employer shall furnish his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm. The Law further requires that employers comply with the *Occupational Safety and Health Standards, Rules and Regulations*.

EMPLOYEES:

Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued under the Law which are applicable to his own actions and conduct.

INSPECTION:

The Law requires that an opportunity be provided for employees and their representatives to bring possible safety and health violations to the attention of the Occupational Safety and Health Compliance Officer in order to aid the inspection. This requirement may be fulfilled by allowing a representative of the employees and a representative of the employer to accompany the Compliance Officer during the inspection. Where there is no employee representative, the Compliance Officer shall consult with a reasonable number of employees.

COMPLAINT:

The employee has the right to file a complaint with the DLIR and where reasonable grounds exist for the DLIR to believe there may be a hazard, there shall be an inspection. Unless permission is given by the employee complaining to release his name, it will be withheld from the employer.

The Law provides that no employer shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee for his failure or refusal to engage in unsafe practices or for filing a complaint, testifying or otherwise acting to exercise his rights under the Law.

An employee who believes he has been discriminated against may file a complaint with the DLIR within 30 days of the alleged discrimination. The Director of the DLIR shall investigate said complaint and if he finds discrimination in violation of the Law, he shall order the employer to provide necessary relief to the employee. This relief may include rehiring, reinstatement to former job with back pay and restoration of seniority.

The employee is also afforded protection from discrimination under the Federal Occupational Safety and Health Act and may file a complaint with the U. S. Secretary of Labor within 30 days of the alleged discrimination.

VIOLATION NOTICE:

When an alleged violation of any provision of the Law has occurred, the DLIR shall promptly issue a written order to the employer, who shall be required to post it prominently at or near the place where the alleged violation occurred until it is made safe and required safeguards are provided.

PROPOSED PENALTIES:

The Law provides for mandatory penalties of not more than \$1,000 for each serious violation and for optional penalties of up to \$1,000 for each non-serious violation. Any employer who fails to correct a violation within the prescribed abatement period may be assessed a penalty of not more than \$1,000 for each day beyond the abatement date during which such violation continues. Also, any employer who willfully or repeatedly violates the Law is to be assessed civil penalties of not more than \$10,000 for each violation.

Criminal penalties are also provided for in the Law. Any willful violation resulting in death of an employee, upon conviction, is punishable by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both. If the conviction is for a violation committed after a first conviction, the penalty shall be a fine of not more than \$20,000 or imprisonment for not more than one year or both.

VOLUNTARY ACTIVITY:

While providing penalties for violations, the Law also encourages efforts by labor and management, before DOSH inspections, to reduce injuries and illnesses arising out of employment.

The DLIR encourages employers and employees to reduce workplace hazards voluntarily and to develop and improve safety and health programs in all workplaces and industries.

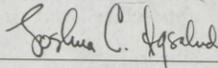
Such cooperative action would initially focus on the identification and elimination of hazards that could cause death, injury, or illness to employees and supervisors. There are many public and private organizations that can provide information and assistance in this effort, if requested.

COVERAGE:

DOSH does not cover those hired for domestic service in or about a private home and those covered by a federal agency. Those exempted from DOSH coverage include employees in maritime activities, who are covered by OSHA, and employees in atomic energy activities, who are covered by the Atomic Energy Commission.

MORE INFORMATION:

Assistance and additional information, including copies of the Law and the *Occupational Safety and Health Standards, Rules and Regulations*, may be obtained from any DOSH office. The telephone numbers may be found in the Hawaii State Government listing in the telephone directories under the Department of Labor and Industrial Relations. The address of the DOSH office on Oahu is Suite 910, Gold Bond Building, 677 Ala Moana, Honolulu, Hawaii 96813; the phone number is 548-7510.



Joshua C. Agsalud,
Director of Labor and Industrial Relations



EMPLOYERS: This poster must be displayed prominently in the workplace.

AMFAC, INC.,
HONOLULU, HAWAII, January 22, 1979.

HON. CECIL "CEC" HEFTEL,
House of Representatives,
Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN HEFTEL: By the time the attached material was completed, we learned of your appointment to Ways and Means. We realize this terminates your serving on the Education and Labor Committee. However, it seemed appropriate to follow through with the submission of this material, as addressed, so you would at least be apprised of our response to the request you originated and with the trust that you would still have interest in the subject.

Congratulations on your new appointment.

Sincerely,

GENE PLISCHKE,
Safety, Health and Environmental Affairs Manager.

MANUFACTURERS ASSOCIATION OF THE STATE OF HAWAII, INC.,
Honolulu, Hawaii, January 19, 1979.

HON. CECIL "CEC" HEFTEL,
House of Representatives,
Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN HEFTEL: As you requested after our presentation at the November 16, 1978 OSHA Oversight Hearing in Honolulu, the attached is an extension of our testimony and expresses several additional areas of concern. Obviously, these issues along with those in our earlier testimony are interacting and complex. We realize there is no simple resolution of their impact.

Policy declarations have alluded to improving the effectiveness of occupational safety and health efforts and reducing unnecessary burdens upon employers by streamlining the regulations and instituting other program changes. However, we share the concerns of others about the efficacy of the methodology utilized to date toward attainment of these objectives.

We have addressed the "watchdogging" mechanism, the problems attending OSHA standards derivations and particularly those of interpretation and application and the propitious translation of pious policies and proposals into meaningful program improvements. We are naturally concerned about the continual changes in regulatory perspectives which disrupt business planning processes, especially, those which are replete with intents for expanded recordkeeping, monitoring and surveillance requirements that are apt to prove only that there was no problem needing governing.

We believe those segments of the system for monitoring state plan states which verge on an adversarial posture or perpetuate a proverbial numbers game would be better redirected to enhance rather than inhibit state plan innovations. This should come through constructive assistance in developing priorities geared to local needs rather than force conformance with a nebular hypothesis wherein the federal program is sustained as the best for all.

We appreciate your invitation to submit these additional observations as attached.

Sincerely,

EUGENE W. PLISCHKE,
Environmental Affairs.

MANUFACTURERS ASSOCIATION OF THE STATE OF HAWAII, INC.,
Honolulu, Hawaii, January 19, 1979.

Subject: OSHA oversight hearing, November 16, 1978.

HON. JOSEPH M. GAYDOS,
Chairman, Subcommittee on Compensation, Health and Safety,
U.S. House of Representatives.

As requested, the following is an extension of our testimony presented in Honolulu.

Actually, it would not appear that this should be needed. We say this because of the well publicized policies and plans intended to improve the OSHAAdmin-

istration programs and those of interfacing agencies, including the formation of a number of groups to help attain these objectives.

For example, the Interagency Task Force on Workplace Safety and Health was created by the President in August 1977 to evaluate government-wide administration of safety and health activities and to review other means of improving safety and health activities of all federal agencies. Its preliminary report, released September 1978, contained fourteen recommendations developed after public input from some 1200 sources. A final report was to follow.

Also, in August 1977, the Interagency Regulatory Liaison Group (IRLG) announced its agreement to work together to improve the public health through sharing of information, cross training of personnel, avoiding duplication of effort and developing consistent regulatory policy.

The Regulatory Analysis Review Group (RARG) recently created by the President and composed of essentially the same members as the Interagency Task Force is charged with zeroing in on regulations which have not undergone adequate economic analysis, regulations whose economic effects appear significant, regulations which raise policy issues of broad interest and those which suggest the possibility of regulatory overlap or conflict.

As new Chairman of the President's Regulatory Council, EPA Administrator Douglas Costle announced November 15, 1978 that the government is committed to improving the regulatory process and cutting unnecessary costs. The Council's objectives are to prepare and semiannually update a regulatory calendar of all major contemplated regulatory actions, identify ways to end duplication, eliminate inconsistent approaches, cut red tape and assure that the regulatory structure is as streamlined as possible.

With so many groups working on so many of the same issues and with the same objectives to demonstrate responsiveness to the growing demands for more intelligent, efficient and effective government and to restore the sense that the nation is a community of individual interests, we should be able to rest assured that our concerns are being attended to.

However, we cannot help but wonder about the efficacy of the creation of so many overlapping groups charged with resolving regulatory overlaps and conflicts. Of these groups, the Interagency Task Force seems to have achieved the most to date. Its preliminary report with fourteen recommendations was a progressive step. We have seen only a synopsis of its draft final report released December 19, 1978, which includes the fourteen "first recommendations". Although we do not fully concur with all items, we believe the efforts of the Task Force are, on balance, well directed. At this point, we can only hope that the final report of this Task Force and the output of the other groups will be translated into meaningful agency program improvements.

In our November testimony, one issue we alluded to, yet leads in many directions to other issues, is the difficulty for businesses to understand the standards in order to correctly apply or implement them. In part this arises from the sheer volume of standards and the manner in which they were initially developed or adopted from existing federal standards or consensus source standards, e.g. ANSI and NFPA. To some extent, this possibly could be excused on the basis of statutory time allowed for promulgation of the initial OSHA standards. Nevertheless, significant problems were created; few have been resolved. Translation of proposals into meaningful regulatory improvements has been painfully slow. The completion record for past proposals for standards revisions has not been particularly good.

Considerable publicity attended the OSHA standards deletion proposal package which addressed 1100 standards. Most of these have now been revoked, seemingly by much the same inexplicable selection process used in their earlier adoption. Despite the ballyhoo about eliminating "nit-picking" standards, we share the concerns publicly voiced by others that this accomplishment is substantially window dressing. It is difficult to see how this "common sense priorities" action will have any material effect on lessening the burden upon business, or improving worker safety and health except to make room for proposed and contemplated new standards. Most of the standards in the deletions package were duplicative, explanatory, or of otherwise unenforceable language; their space will be taken by new standards imposing expanded recordkeeping and health monitoring requirements which are unlikely to have much direct or immediate effect upon worker safety and health. There is little substantive evidence yet of streamlining the regulations, but there are questions about the change in regulatory perspective.

Little has yet been accomplished toward improving the clarity of standards to aid in determining which ones apply to a given set of conditions of particular work activity, to eliminate ambiguity or vagueness in language so as to reduce the need for extensive interpretation, to correct technological inaccuracies, or to recognize technical realities that differ from so many of the specification standards. The issue of the interpretations involve a number of complications.

It is unfortunate that interpretations of the meaning, scope and applicability of standards have such a significant role in their enforcement and adjudication. This probably results from "safety" being such an inexact science. Interpretation commences with the initial compliance action. With most small businesses lacking the technical expertise in dealing with standards, the interpretive actions of the compliance branch prevail. In comparatively fewer instances, there are review and appeal proceedings. It seems ironic that so many of the standards recite or can be identified with their consensus origin, yet those sources are seldom consulted for "official" interpretations by those who understood their basis and need. Upon OSHA adoption, OSHA frequently applied different interpretations. In many instances this resulted from OSHA taking these standards out of context during the process of extraction from their consensus standards sources. Thus, even those skilled in standards application have difficulty in comprehending these interpretation differences.

When there is a lack of uniform understanding or interpretation among those charged with compliance enforcement, safety consultants, the lawyers who prosecute an action, the review commissioners, or the various appeal boards in courts, how can the average businessman assess his duties and obligations? Even the simplistic approach suggested by one compliance officer in a published article is indicative of the lack of comprehension of this issue of understanding the standards. This compliance officer declared, "eleven violations were cited on my last inspection. If the employer had read the standards, there would not have been any." Really? Where does the average compliance officer acquire the expertise to correctly apply the multitude of standards which cover such a broad spectrum, some areas of which are highly specialized? How does the average businessman acquire it? It does not come from simply reading the standards.

One common example among many of misapplication of a standard seems to stem from a NIOSH publication listing gasoline as a Class IA flammable liquid. On this basis, many citations have been issued for failure to implement the corresponding stringent storage and handling requirements, when in fact OSHA's own definition (taken from NFPA) clearly establishes gasoline as a Class 1B liquid. Actually, this is not even a situation requiring interpretation, but is a case of misapplication. Although brought to the attention of both NIOSH and OSHA, no enforcement changes were made that we know of.

Possibly, because the OSHA standards addressing fire protection were taken out of context from NFPA, they are among the more poorly developed standards. The sciences of fire protection is likely the more misunderstood by OSHA. Thus the net result in enforcement actions is more the misapplication of the fire protection standards and the conflict generated in relation to those agencies enforcing basically the NFPA standards and utilizing NFPA interpretations.

We have just learned of a December 22nd proposal to extensively overhaul the OSHA standards which initially incorporated by reference, some 2400 National Fire Protection Association (NFPA) consensus standards. We hope it will resolve the conflicts with other agencies, including the interpretation problems. If the proposal is realistic and implemented without undue delay, we would consider this to be material evidence of OSHA's announced "common sense" approach. Should it become bogged down as have other such proposals in the past, then we could only continue our concern about the ability of the agency to effect its declared intents for program improvements.

Because uniformity of regulations and interpretations is essential to the success of any enforcement program as well as voluntary compliance efforts, we reiterate our concern about the lack of uniformity within OSHA not only among the Regions but as the problems are intensified by state-plan states where the claim is that they are bound neither by decisions of the Occupational Safety and Health Review Commission nor by appellate decisions of courts in other jurisdictions. As we identified before, these problems are further complicated by the overlap and jurisdictional disputes involving two or more agencies, whether federal, state or local, and with the multi-state employer being the more affected.

The example of a recent California State OSHA decision requiring the employer to pay for safety shoes warrants more than curiosity. Federal and other

state OSHA opinions, policies and decisions have followed the historic position that has reigned nationally and for good cause that this type of personal item is just that, a personal item not contemplated as an employer expense. Federal OSHA has initiated some questionable precedents, as have some courts, but decisions such as in this CAL OSHA case kindle more confusion. How does an employer know where he stands? Again, we focus on the needs of the small businessman and the multi-state employer.

Some states, e.g., Hawaii, California and Washington, have provisions for and cite for failure to have an effective safety program, but without a performance measure to validate effectiveness other than the opinion or interpretation of the enforcement branch. The basis for a citation may be anything from lack of a written safety policy or for no "safety committee" to "too many" violations. At least one state now specifically requires *all* employers to have a safety committee, although this technique is well known to be a pure waste in many instances and is certainly not a panacea. At the public hearing, we recited the case of the establishment with one employee on each shift being cited for lack of an effective program, i.e., no written safety policy, no designated safety director, no safety training sessions and no safety inspections. Do these activities constitute measurement of effectiveness? Small companies with a history of no reportable accidents have been cited for lack of an effective program solely on the basis of no written safety policy.

These problems from widely varying standards and interpretations are complex and not easily solved. A partial solution to the problems associated with extensive differences among OSHA and state plan programs may lie within the Federal OSHA monitoring system, but the Federal OSHA inconsistencies would have to be resolved first to at least establish credibility for being able to do the needed job. There is no secret about the monitoring program needing revamping, if for no other reason than to achieve the states' claims that it inhibits state plan innovations.

We realize the OSHAct provides that all states shall maintain the minimum equivalency of OSHA requirements. It gives OSHA no jurisdiction over state provisions which exceed Federal requirements. So OSHA seldom voices opinions about either their adequacy or propriety. There are examples of states extending standards promulgation into areas of coverage where even OSHA has determined there was insufficient evidence to justify federal action. If the expertise exists within OSHA as is claimed, then it would appear that they might serve more actively in the standards promulgation deliberations at the state levels or expand efforts in this direction within the monitoring program.

Sincerely,

EUGENE W. PLISCHKE.

MTL, Inc.,

Honolulu, Hawaii, December 18, 1978.

Hon. CECIL HEFTEL,
District Office,
Honolulu, Hawaii

Hon. CECIL HEFTEL: Thank you for informing and allowing MTL, Inc. the opportunity to attend the committee hearing on the Occupational Safety and Health Administration oversights. Although we did not present testimony we would like to present our views concerning this matter.

We definitely feel there is a place for the OSHA Act but disagree with the way it is administered. In particular, we feel too much attention is given to nonserious violations rather than serious violations which produce severe injuries. We recently completed our second Hawaii DOSH inspection and incurred several violations labeled "Repeated Non-Serious" resulting in a penalty of \$750. The following violations are a typical example of what was cited:

204.2-5(1) Fire extinguishers not thoroughly examined at regular intervals, no more than one year apart.

Physical inspection revealed extinguisher in proper condition but tag was not punched by a qualified fire extinguisher inspector within one year. A complete inspection had been contracted for that month but had not been initiated yet. There is no guarantee the fire extinguisher will operate properly, even after inspection. Some of the areas had dual protection—internal sprinkler systems plus fire extinguisher.

301.1-7D Maximum safe load limits of floors in pounds per square foot, within buildings or structures, were not conspicuously posted in all storage areas, except for floor or slab on grade:

All assigned employees recognized the limitation of certain mezzanine storage areas, its use was held to a minimum and no injury was ever incurred in over 20 years. This standard is meaningless since it does not provide guidance on calculating the weight nor require storage items to be weighed.

324.1-1E The blades of a fan were not protected by a guard with ½-inch openings when the periphery of the blades were less than 7 feet above the floor on working level (G.E. 14" fan).

It was an employee's personal fan which had the old type guard and was mounted about 6 feet high on a wall about 3 feet away from the employees' working area. It presented no immediate hazard to the employee nor was it used constantly.

All of these type (nonserious) violations were corrected on the spot or shortly thereafter but did not have much effect on the reduction or elimination of the penalty. It is this kind of concentration and administration of penalties for non-serious violations (nit-picking) that is a source of frustration to us. To add to the problem, these types of violations were considered repetitious because they were cited elsewhere in the facility in the first inspection a couple years earlier. The following recommendations are made on the basis of obtaining a more cost-effective system:

1. The State and Federal OSHA compliance officers should be assigned separate jurisdictions and target industries based on priorities from Workmen's Compensation System.

2. Citations should be based on the whole regulation and not just a specific fault. It should also take into consideration the time with which the violation is removed.

3. All nonserious citations should not incur a penalty except when the employer refuses to abate it.

4. The educational branch officer should be assigned to all industries rather than by priority asked by an employer, to inspect his plant or educate employees concerning safety.

5. It should be mandatory that local building codes meet OSHA regulations in order to reduce the building of obsolete plants and provide better consistency in plant facility safety.

6. A clearinghouse for Material Safety Data Sheets dealing with chemicals, flammables and toxic materials etc. should be established within the OSHA structure in each state. This will allow an employer pin-point information concerning the necessary protection to be used to protect his employees. At present it is done piece-meal by employers and only if the manufacturer is willing to provide the data sheet.

Thank you again for the opportunity to make our views known and hope they will lead to a safer and better America.

Sincerely yours,

ARTHUR H. LOEBL,
Safety Coordinator.