OSHA: NEW MISSION FOR A NEW WORKPLACE

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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TUESDAY, OCTOBER 17, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HUMAN RESOURCES AND
INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2247, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Morella, Souder, Martini, Scarborough, Lantos, Green, and Fattah.

Staff present: Lawrence J. Halloran, staff director and counsel; Doris F. Jacobs, associate counsel; Christopher Allred, professional staff member; and Thomas M. Costa, clerk; Cheryl Phelps, minority professional staff member; and Elisabeth Campbell, minority staff assistant.

Mr. SHAYS. I would like to call the hearing to order, welcome our witnesses on our three panels and welcome our guests to this hearing.

I would like to begin by reading the fine observation that was made by someone recently. It goes this way, "In the public's view, OSHA has been driven too often by numbers and rules, not by smart enforcement and results. Business complains about overzealous and burdensome rules. Many people see OSHA as an agency so enmeshed in its own red tape that it has lost sight of its own mission. And too often, a 'one-size-fits-all' regulatory approach has treated conscientious employers no differently from those who put workers needlessly at risk."

The source of this critique? The Chamber of Commerce? No. The National Federation of Independent Businesses? No. Newt Gingrich? No. This candidate assessment comes from the Occupational Safety and Health Administration (OSHA), announcing "The New OSHA—Reinventing Worker Safety and Health."

This oversight hearing will examine OSHA's efforts to reengineer worker safety standards and enforcement to meet the new realities of the 21st century workplace. Again, in OSHA's own words, we will look at "the need for OSHA" and "the need for OSHA to change."

The need for national safety and health standards in the workplace is undisputed. Last year, more than 6,000 people died as a result of occupational injury. That human tragedy demands a vigilant national response to the hazards of work. In purely economic terms, the skill and energy of the American worker have made our

economy the most productive in the world. That asset is best protected and enhanced in a safe workplace, but the American workplace is changing, and OSHA must change with it.

In 1970, when the Occupational Health and Safety Act was enacted, U.S. non-agricultural employment stood at 71 million. Today that work force is almost twice as large, 114 million.

In 1970, 33 percent of all non-farm jobs were in goods-producing industries, including manufacturing and construction. By 1994, that percentage had fallen to 21 percent.

In 1970, 67 percent of jobs were in service-producing industries. Today, 79 percent, or 90 million employees, work in service industries.

If it was ever true that OSHA could effectively inspect, monitor, and improve safety conditions at all the Nation's workplaces, it is not a valid operational premise today. Instead, new approaches are being explored to stimulate voluntary compliance by industry and to transform OSHA from cop to counselor, from prosecutor to partner.

By targeting the most unsafe workplaces through programs like Maine 200 or working cooperatively with business and labor to address health and safety issues in the Voluntary Protection Program, OSHA says it is responding to the concerns of its customers and focusing on results.

So we ask our witnesses to tell us how the reinvention of OSHA is going and to convince us that the agency no longer deserves its red tape reputation.

For me, the bottom-line question is this: Will a re-engineered OSHA effectively and efficiently protect the safety of American workers?

I would like to welcome our witness, but before doing that, it is my distinct pleasure to invite Mr. Lantos, a gentleman whom I consider a model of the very best in terms of his ability to learn a lot at public hearings. I welcome the gentleman back, and it is an honor to have you here.

Mr. LANTOS. Thank you very much, Mr. Chairman. You and I have shared countless hours during the HUD hearings, and I think you deserve a great deal of the credit for having cleaned up at least some of the mess during the Reagan administration in the Department of Housing and Urban Development.

As you well know, a very large number of individuals who testified before our committee are presently enjoying Federal prison facilities which is not an indication as to what will happen to our current witnesses.

Mr. Chairman, I could not think of a more fair-minded Republican chairman than you are, and I enjoy sitting here with you, but I cannot help but comment at the outset that the mindless assault on OSHA, which has in its relatively short existence of 25 years saved 140,000 American lives—and I want to repeat that—140,000 American working men and women are alive today because of OSHA, an organization which, as so many worthwhile organizations, is under a frontal and brutal and mindless assault.

I will do my utmost in this field, as in other fields, to prevent the wrecking crew from doing its work. It is as realistic to evaluate OSHA on the basis of some stupid bureaucratic red tape regulation

of which I am sure it is guilty than it is to evaluate the U.S. military in terms of the Mali massacre.

It is very easy to find anecdotal evidence of OSHA's stupidity and incompetence, excessive bureaucracy, and red tape, but I think it is important we don't lose sight of the overall objectives of OSHA.

Since 1970, job fatality rates have been cut in half. Injury rates have fallen dramatically, and while we have had a great deal of progress on an average working day, 154 working men and women lose their lives as a result of workplace injuries and illnesses. 16,000 are injured. There is a workplace death or injury every 5 seconds, and it must be on the conscience of those who would like to eviscerate and make impotent OSHA to respond to the hundreds of thousands and millions of American families whose breadwinner's health depends upon vigilant, hardworking OSHA work.

OSHA, as you know, Mr. Chairman, has about 900 inspectors. This means that the average workplace can be inspected once every 87 years, and while some consider that excessive, I consider it woefully inadequate.

The current budget of OSHA amounts to about $1 per citizen, and it compares with $350 per citizen that had to be spent to bail out the savings and loan industry. So, when we talk about the excessive cost of OSHA, I hope you always bear in mind the 350-times-higher cost because of incompetence and corruption and greed in the savings and loan industry.

The hope we have with respect to OSHA and every other agency is that we can make it leaner, more cost effective, more up to date, more efficient, more effective, and I suspect we all join in that pursuit, but I think it is extremely critical as we examine this agency that we recognize its enormous achievements, the appallingly unfair press it has received, and the determination of segments of the employer community who would like to destroy this watchdog of the health and safety of American working men and women.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman for his very important statement.

At this time, I will call our first witness, Mr. Joseph Dear, Assistant Secretary of Labor, head of OSHA, the Occupational Safety and Health Administration.

Mr. Dear, you are highly praised by people, both employers and employees. It is a real pleasure to have you here. I look forward to your statement.

As is the custom of our committee, we swear in all our witnesses, as I think you know. If you would please stand.

[Witness sworn.]

Mr. SHAYS. I note for the record that our witness has responded in the affirmative.

If I could just take care of some housekeeping, I ask unanimous consent that all members of the subcommittee be permitted to place any opening statements in the record and that the record remain open for 3 days for that purpose, and without objection, so ordered.

[The prepared statements of Hon. Cardiss Collins and Hon. Gene Green follow:]

OPENING STATEMENT OF REP. CARDISS COLLINS
SUBCOMMITTEE ON
HUMAN RESOURCES AND INTERGOVERNMENTAL
RELATIONS

"OSHA: New Mission for a New Workplace"

October 17, 1995

Mr. Chairman, thank you for convening this hearing to examine the mission and reform objectives of the Department of Labor's Occupational Safety and Health Administration. OSHA manifests the Federal government's commitment to protect the health and safety of its workforce, and its policies touch the lives of every American worker.

In its 25 year history, OSHA's protective standards and enforcement procedures have reduced the annual workplace death rate by 50 percent. Even so, the number of American workers affected by workplace hazards is tragic and impressive. 56,000 people die each year as a result of work-related accidents and illnesses; and 16,000 workers are injured each day, 6,000 seriously enough to lose time from work. A total of 6 million people suffer non-fatal workplace injuries annually, costing the economy $110 billion each year.

Mr. Chairman, these numbers would be far worse if OSHA did not exist, and I do not buy the argument that left solely to themselves industries would self-regulate their worksites. If this were true, we would not see the flagrant abuses of Mexican laborers in U.S. companies at the maquiladora industrial parks on the border. For that matter, the we know that even in this country, where OSHA is not an active presence, injury and fatality rates remain high.

Nevertheless, workers in this country suffer a terrible toll of workplace injury and death. OSHA must improve its efforts to expand and strengthen worker health and safety protections, and it must do so with limited and shrinking resources.

With 2000 inspectors and $300 million budget, OSHA is challenged to monitor an estimated 6 million worksites nationally. The only way this can be accomplished through innovation reform that enlists the cooperation of employers. This fundamental truth means that OSHA must make itself more user-friendly to employers, a group that as long criticized the agency for its convoluted regulations, excessive enforcement procedures, and general unfriendly disposition.

Therefore, the question before us this morning is how do we improve our ability to protect America's workers, and also reduce the unfair burdens on business? I look forward with interest to the testimony of our witnesses and welcome their response.

CAP

Statement of Representative Gene Green
Subcommitte on Human Resources and Intergovernmental Relations
October 16, 1995

Thank you, Mr. Chairman, for calling this hearing. I appreciate the Chairman's attention to this issue and I welcome the opportunity to discuss the important role OSHA still has to play in today's workplace.

Industrial and other occupational accidents are still part of what workers must face in today's workplace. In industries in which OSHA has concentrated its resources and attention, we have seen a significant decrease in injuries and fatalities over the past two decades. In areas in which OSHA has not directed its resources, like service industries, the results have not been as dramatic.

Rep. Cass Ballenger of North Carolina has sponsored his own OSHA reform bill that is supported

by many Republicans. This bill would provide employers essentially with one free shot at a citation because unless someone is killed or seriously injured they cannot be cited or penalized for a first offense. Also, workers would be prevented from contacting OSHA unless they have first raised the problem with their employer. Workers who fear retribution from their employer would have less incentive to bring up problems.

Workers and honest businesses need OSHA to act as a cop on the beat to monitor bad employers who may skimp on safety as a competitive strategy. What are the incentives to invest in safety, if you see your competitors taking advantage of the situation.

OSHA is currently undergoing significant reform. It is putting together a new strategy for increasing

worker protections, reducing paperwork, cutting burdensome regulations for employers. OSHA realizes that some of its practices in the past have significantly increased compliance costs while not increasing worker safety.

Again, I appreciate the Chairman offering OSHA a fair hearing and I look forward to hearing the testimony of today's witnesses.

Mr. SHAYS. I also ask unanimous consent that our witnesses be permitted to include their written statements in the record, and without objection, so ordered.

Your statement is very important to us. We are discussing your agency, and you should feel free to give your statement free of any 5-minute requirement.

I would like, for the record, just so I am certain, as I am getting conflicting information, if you would state before giving your testimony, the total number of employees and the total number of inspectors you have.

STATEMENT OF JOSEPH A. DEAR, ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR

Mr. DEAR. There are about 2,317 authorized FTE for OSHA in fiscal 1995. About 1,000 of those are in positions designated for compliance. That includes supervision.

It is important to also note that 21 States enforce health and safety in private sector workplaces. They include about another 1,000 enforcement personnel. In rough terms, Mr. Chairman, there are approximately 2,000 compliance inspectors to cover 6 million workplaces.

Mr. SHAYS. Not a particularly large number for such a major task.

Mr. Dear, I welcome your testimony.

Mr. DEAR. Thank you, Mr. Chairman.

I am pleased to appear before the subcommittee today to discuss the mission of the Occupational Safety and Health Administration and to describe the innovations that we are implementing to improve the efficiency and effectiveness of OSHA.

Mr. Chairman, I applaud your longstanding concern for OSHA and for worker health and safety. The tragedy at Bridgeport at L'Ambiance Plaza is with us every day at OSHA and reminds us of the importance of improving our operations, so we can protect the health and safety of more workers.

Mr. Lantos, I am also familiar with your work and became familiar with it well before I ever thought I might be in Washington, DC, with the opportunity and the responsibility of administering OSHA.

The problem that OSHA is intended to address, the preventable injury, illness, and death in America's workplace, imposes a staggering human and economic toll. According to the National Safety Counsel, the cost of preventable accidents alone exceeds $112 billion to the economy. We don't have an accurate figure for losses associated with preventable illness, and the human side of that equation is incalculable, but huge and lasting on workers and their families.

OSHA's mission is to assure, so far as possible, every working man and woman in the Nation safe and healthful employment. That mission is just as important today as it was almost 25 years ago when the Occupational Safety and Health Act was approved by the Congress, but because the mission is the same and as important does not mean we have to conduct our business in the same

way. We can learn from 25 years of experience how to improve the effectiveness of OSHA's operation.

What I would like to do in summarizing my remarks is to describe the reinvention initiatives of OSHA and how they are intended to accomplish improved results for workers, for employers, with our admittedly scarce resources.

Why reinvent OSHA? Well, the first reason, as both Mr. Chairman and Mr. Lantos have noted, is that there is an enormous gap between the resources that OSHA is provided, $312 million in the last fiscal year and 2,300 people at the Federal level, and the work force and workplaces we are supposed to cover. The chart that is illustrated shows that gap. It is growing. OSHA hasn't changed in its staffing level for the past decade. Yet, the work force with rights under the Occupational Safety and Health Act continues to grow.

The first impetus behind the reinvention of OSHA is to close the gap with reinvention initiatives.

A second impetus is that neither business nor labor expresses a great deal of satisfaction with OSHA's performance.

As Mr. Lantos noted, OSHA has a lot to be proud of in terms of the reduction of fatalities which have occurred, and every day, millions of working men and women are protected by OSHA's standards as they work.

OSHA standards in cotton dust have helped eliminate, virtually eliminate, the presence of brown lung, byssinosis, in the textile industry. The grain handling standard has helped reduce fatalities by over 40 percent in the grain handling industry. Even a relatively mundane hazard like trenching where OSHA updated its standard in 1990 has seen a 30-plus-percent decrease in trenching fatalities. These standards make a difference every day. OSHA's enforcement programs also make a difference.

This chart illustrates that OSHA has concentrated the majority of its enforcement attention and its compliance inspections in three industries: manufacturing, construction, and oil and gas extraction. They are shown in red. The injury and illness rates are illustrated there.

Almost 85 percent of OSHA's compliance inspections between 1975 and 1993 were conducted in those three industries. The orange bars illustrate that injury and illness rates in those industries declined.

On the other hand, where just over 15 percent of OSHA's compliance activity was focussed in wholesale, retail, agricultural, transportation, and health care, injury and illness rates have all gone up during that same 1975 to 1993 time period. It tells us where we focus our enforcement energies, we can have an impact on worker health and safety, but we do have to target our limited resource. We have to decide where we are going to aim it.

I will go to the next chart.

The question is how can we target those limited enforcement resources, so they can have the maximum impact, but also find other ways to leverage employers to get them to operate workplaces in a healthy and safe manner?

OSHA's reinvention is built around three strategies described in the report issued by President Clinton and Vice President Gore in May 1995 entitled "Reinventing Worker Health and Safety."

The three strategies are these. First, offer employers a choice between partnership or traditional enforcement. Second, use common sense in developing regulations and enforcing them. Third, focus OSHA on results, not red tape.

Let me describe for each of these strategic initiatives what we are doing now. In the area of partnership or traditional enforcement, in the State of Maine, we identified employers who had a high number of worker's compensation claims, some 200 Maine employers.

We wrote them and said, "You are on our list. Clearly, you have workplace health and safety problems. We will target you for a compliance inspection. However, if you develop a safety and health program and implement it, we will move you to a secondary targeting list." Not surprisingly, most of the employers who received that letter opted for the development of a safety and health program.

The impact of this program is illustrated in the chart before you now. It shows on the left-hand side that OSHA, through traditional enforcement means, going out and physically inspecting these workplaces that were on our targeted list, would have found about 13,000 serious hazards. The participating companies in the Maine 200 program found 181,000 serious hazards and are working to abate them.

I am not suggesting that every single one of those hazards would not have been found otherwise, but I think this chart illustrates the leverage that was possible because we offered these employers a choice, and they opted for the partnership route.

I have had a chance to visit with companies who participated in the Maine 200 program, and they talk about the reduction in injury and illness, the improvement in labor management relations, and the improved relationship they have with OSHA as a result of this program.

One employer told me that her responsibility included insurance purchases and worker health and safety, and the last thing she would consider doing to get help with the health and safety problem was to call OSHA, but because of the Maine 200 program, she had the opportunity to discuss problems, to get suggestions and advice about how to fix them, and now she said, "I call the office so much, they recognize my voice when I ask for one of the staff."

So Maine 200 is one illustration of how we can leverage the willingness of employers to participate and develop partnerships. The President has asked OSHA to nationalize this Maine 200 concept and to expand it to every State.

Another example of partnership is the voluntary protection programs. These represent the highest level of partnership between OSHA employers and workers. Voluntary Protection Program [VPP] sites have demonstrated sustained excellence in safety and health. As a group, they have injury and illness rates that are 60 percent below their industry peers. It is not an easy program to get in, and it is a program that requires work to stay in. Participation in this program has about doubled during my time at the Occupational Safety and Health Administration. There are now 231 sites that participate in VPP programs, and some of our State plan partners are beginning to open their States up to VPP, so the compa-

nies with national operations can have VPP sites all around the country, but these represent the very best models of excellence that can be used to show what is possible in safety and health.

The other side of the partnership is enforcement. I want to underscore that as OSHA seeks to develop partnerships with employers, to take advantage of the interest, be it economic or enlightened human resource management that many employers have for safety and health, it is utterly essential that there be a credible enforcement program.

For some employers who choose traditional enforcement, the only way to get the message is through a credible enforcement program.

In the past year, we have increased the number of what we call significant penalty cases substantially. We define those as penalty cases with citations exceeding $100,000. You can see that in fiscal 1992, there were 57 such cases, 61 in 1993, 68 in 1994, and 122 in 1995. This includes 17 egregious cases. "Egregious" is our term for those situations that involve such violation of health and safety that we multiply the violations times the number of workers exposed to the hazard. There were 17 such cases in fiscal 1995. So effective credible enforcement is part of this reinvention of OSHA. Where it is appropriate, we need to use that.

Mr. LANTOS. Mr. Chairman, may I ask the witness to tell us what was the most egregious case?

Mr. DEAR. I can think of several. One that most recently occurred was at a sheet metal firm in Philadelphia called Southwark. It had about 300 employees at the site.

We took videotapes of the setting there. There were virtually no machine guards. About four finger amputations had occurred to the workers at that plant over a relatively short period.

The impression I was left in viewing those tapes was that I was looking at a workplace out of the 1890's, not the 1990's, and we settled with the company. They paid a very large penalty, $1 million, but the company decided that rather than to contest the citations, they would agree to abatement of the hazards, and we now have the attention of that company's ownership. They are working to solve the problems. We have resolved the contest around the cases.

The workers at that plant were primarily non-English-speaking immigrants. They weren't aware necessarily of their rights to a safe and healthful workplace. OSHA arrived there because of a programmed or random inspection. If we didn't have the capacity to do that kind of inspection, OSHA never would have showed up in that workplace, and the conditions which I found so appalling would still exist today.

Mr. LANTOS. Can you give us another one?

Mr. DEAR. There was another medium-sized company in New Jersey named Omega Plastics. This case is still in contest; that is, it has not been completely resolved.

In this situation, the employer purchased equipment from out of State, brought it to New Jersey and installed it, and left off all the machine guards. This is a company that made plastic parts. Again, we saw a number of amputations of fingers of workers, and notwithstanding those injuries, the machine guards were left off the equipment, even though injuries were actually occurring at that workplace.

That case had a penalty of $1.4 million, and as I say, it is still in contest.

Mr. LANTOS. Thank you.

Mr. DEAR. I would be happy to supply the committee with a list of all the egregious cases for the past fiscal year.

Mr. SHAYS. I think that would be very helpful.

If you would just continue.

[The information referred to follows:]

Attached is a list of all egregious cases that were handled in Fiscal Year 1995. An egregious case is an enforcement action where large numbers of serious or willful violations are found. OSHA then proposes penalties on an instance-by-instance basis instead of grouping similar violations together.

EGREGIOUS CASES ISSUED IN FY 1995
(17 cases issued)

Company Name	Type of Inspection & Major Violations	Initial/ Final Penalty	Issuance Date	Disposition: as of 09/11/95
C.T. Taylor Inc./ Esprit Constructors, Inc. Hudson, Ohio **(Region 5)** #121939664 E128 **General contractor - SIC 1542** **Steel erection contractor - SIC 1791**	**Type** - Accident/ Fatality. Two ee's fell from a height of 39 feet to their death **Violations** - Various fall protection issues (cited under 1926.105(a), .20 and 21(b) Esprit: 5(a)(1)	$ 154,000 $ 294,000 $ 448,000	10/21/94	In litigation
Gethmann Construction Gladbrook, Iowa **(Region 7)** #109324699 E129 **Concrete construction contractor - SIC 1771**	**Type** - Accident/ Fatality. An ee fell while walking a steel beam without the use of fall protection **Violations** - Fall protection in construction (cited under 1926.105(a) & .21(b)(2)	$ 742,000	10/27/94	In litigation

Company Name	Type of Inspection & Major Violations	Initial/ Final Penalty	Issuance Date	Disposition: as of 09/11/95
Ravenswood Aluminum Corporation Ravenswood, West Virginia **(Region 3)** #101175719 E130 **Aluminum producer - SIC 3353 & 3334**	**Type** - Accident/ Fatality. An ee died when a crucible table fell on him. **Violations** - Lockout/ tagout	**Initial:** $ 2,121,000 **Final:** $ 1,175,000	11/09/94	Settled 06/02/95
Shell Oil Chemical Co. Belpre, Ohio **(Region 5)** #103342093 E131 **Thermoplastic elastometer mfg. - SIC 2821**	**Type** - Accident/ Fatality investigation; A catastrophic failure of a chemical reactor vessel killed 3 ee's. **Violations** - Various PSM violations	**Initial:** $ 3,017,000 **Final:** $ 3,017,000	11/22/94	Simultaneous Settlement Agreement reached on 11/22/94
Brooks, Berry, Haynie and Associates Atlanta, Georgia **(Region 4)** #106522733 E132 **Electrical contractor - SIC 1731**	**Type** - Accident/Fatality investigation; 2 ee's were electrocuted when operating a crane and its load within 10 feet of an energized line **Violations** - Crane safety (cited under 1926.550(a)(15)(i)	$ 441,000 **Final:** $ 100,000	11/22/94	Settled (date TBA as the company has not yet signed the document, but our SOL have)

Company Name	Type of Inspection & Major Violations	Initial/ Final Penalty	Issuance Date	Disposition: as of 09/11/95
Manganas Painting Company, Inc. Canonsburg, Pennsylvania **(Region 5)** #103378006 E133 **Painting contractor - SIC 1721**	**Type** - Referral **Violations** - Lead in construction (1926.62) and fall protection	$ 2,452,500	12/16/94	Contested
Star-Kist Samoa, Inc. Tutuila Island Pago Pago, American Samoa **(Region 9)** #109510594 E134 **Tuna processing and can mfg. - SIC 1691**	**Type** -LEP for American Samoa **Violations** - Noise, lockout/tagout, machine guarding	**Initial:** $ 1,800,000 **Final:** $ 1,800,000	12/13/94	Simultaneous Settlement Agreement reached 12/13/94
Barnard Construction Company, Inc. Pompton Plains, New Jersey **(Region 2)** #2100477 E135 **Utility construction - SIC 1623**	**Type** - Referral **Violations** - Trenching (1926.652(a)(1)	**Initial:** $ 314,200 **Final:** $ 100,000	01/04/95	Settlement Agreement reached 01/12/95

Company Name	Type of Inspection & Major Violations	Initial/ Final Penalty	Issuance Date	Disposition: as of 09/11/95
Henry Gurtzweiler, Inc. Toledo, Ohio **(Region 5)** #121976021 E136 **Steel erection contractor - SIC 1791**	**Type** - Referral **Violations** - Fall Protection (cited @ 1926.105(a)	$ 285,600	01/20/95	In litigation
Tewksbury Auto Parts, Inc. Tewksbury, Massachusetts **(Region 1)** #109627174 E137 **Metal Scrap processer - SIC 5093**	**Type** - Fatality **Violations** - Machine Guarding	**Initial:** $ 613,000 **Final:** $ 600,000	01/25/95	Informal Settlement--payment plan
Tube Products Troy, Ohio **(Region 5)** #103378667 E138 **Mfg. motor vehicle exhaust system components - SIC 3714**	**Type** - Referral **Violations** - Machine Guarding	$ 1,257,500	02/22/95	In litigation

Company Name	Type of Inspection & Major Violations	Initial/ Final Penalty	Issuance Date	Disposition: as of 09/11/95
Dayton Power & Light Co. Aberdeen, Ohio **(Region 5)** **#103127502** E139 **Electric Utility - SIC 4911**	**Type** - Accident/ Fatality **Violations** - PPE	**Initial:** $ 295,000 **Final:** $ 295,000	04/27/95	Simultaneous settlement; agreement signed 04/27/95
Conoco, Inc. Westlake, Louisiana **(Region 6)** **#110416989** E140 **Petroleum Refining - 2911**	**Type** - Fatality (one) and (one) ee hospitalized from an explosion **Violations** - PSM	INITIAL $ 1,571,500 FINAL: $ 1,571,500	04/20/95	Simultaneous settlement; agreement signed on 04/20/95: penalty paid in full on 05/02/95
Omega Plastics Corp. Lyndhurst, New Jersey **(Region 2)** **#109935924** E141 **Plastic bag mfg. - SIC 3089**	**Type** - Referral following a serious accident **Violations** - Machine Guarding--1910.212	$ 1,386,000	05/18/95	Currently in litigation; but settlement discussions are underway

Company Name	Type of Inspection & Major Violations	Initial/ Final Penalty	Issuance Date	Disposition: as of 09/11/95
Midwest Metallics LP Chicago, Illinois (McCook, Joliet, 130th St. and Argo sites) **(Region 5)** #108725409 #108726142 E142 E143 **Scrap Recycler - SIC 5093**	**Type** - Fatality **Violations** - 1910.178(p)(1) & (q)(7) - Forklifts; and 1910.1025 - Overexposure to lead	$ 205,800 $ 794,200 $ 1,000,000	06/02/95	Settled on 06/02/95; company agrees to pay the full penalty
Southwark Metal Mfg. Philadelphia, Pennsylvania **(Region 3)** #102937802 (safety) #102938537 (health) E144 E145 **Sheet metal mfg - SIC 3444**	**Type** - programmed inspection **Violations** - lack of machine guarding on power presses - 1910.212 & 1910.217; 5(a)(1) [lack of guarding on foot pedals for other machinery]	**Initial:** $ 1,000,000 **Final:** $ 1,000,000	09/15/95	Simultaneous settlement 09/15/95; company pd. 100% of penalty and will abate all hazards

Company Name	Type of Inspection & Major Violations	Initial/ Final Penalty	Issuance Date	Disposition: as of 09/11/95
Samsung Guam, Inc. Tamuning, Guam (Region 9) #107329740 E146 Steel Erection - SIC 1791 & General contractor SIC 1542	Type - Fatality investigation Violations - Fall protection [1926.451, 1926.501, 1926.502, 1926.1051, 1926.1052, and 1926.1053]	Initial: $ 8,260,000	on or before 09/22/95	----

Mr. DEAR. Thank you.

The next initiative that is part of OSHA's reinvention is bringing common sense to development of regulation, to the enforcement of regulation. These may seem like blindingly obvious changes, but they are important and they are making a difference.

In the development of regulations, the idea is to negotiate, not dictate regulations, to bring those affected by the standard on the labor side, the business side, safety and health professionals, medical health professionals, into the standard-setting process early.

We are doing that in the construction industry with a negotiated rulemaking around the steel erection standard. This is a formal negotiation under the Negotiated Rulemaking Act, and I hope that that Negotiated Rulemaking Committee will report a consensus proposal this fall which I said we will then publish for public hearing and comment.

The largest killer of construction workers in the country is falls, and in the steel erection industry, that is a major hazard. Here we have the industry, labor, architects, engineers working with OSHA standards writers to develop a standard.

I know even if we fail to reach consensus, we will have a better standard because it will be written with the practical experience of those who work in the industry and will have to live with it.

We have done other less formal approaches to rulemaking. We invited industry and labor in to help us look at ways of simplifying recordkeeping, to reduce the paperwork burden associated with keeping statistics on injury and illness, but at the same time improving the accuracy of those statistics which are fundamental to assessing the impact of OSHA and evaluating our programs, and I hope to be publishing that standard for public comment this fall.

We are working right now with industry and labor to develop a safety and health management program standard. They are meeting today in Washington, DC, here, to talk about how we can move forward to develop a safety and health program standard.

We have also looked at our existing regulations. There are some 3,000 pages of OSHA regulations in the Code of Federal Regulation. At the President's request, we went over those page by page. We have identified 1,000 pages of duplicate standards that we can take out. We will still be able to provide information to construction and maritime employers, but we won't need a lot of duplicate pages to do that.

We have looked at 600 pages of standards which were adopted without public hearing in 1971 under the original authority of the Occupational Safety and Health Act to adopt consensus standards without public hearing. These standards are often the source of much of the complaint about confusing or difficult-to-understand regulations.

We are going to rewrite those. There are, as I said, 600 pages of them. To give you one illustration of the potential here, one of those standards talks about egress. It goes on for 7 or 8 pages to describe what adequate egress is from a facility. This is a term dear to the hearts of safety professionals, but "escape route" might be a pretty good term for employers or workers to talk about what to do, and in rewriting this standard into plain English, we have discovered we can make it 40-percent shorter.

It will take us quite a while to do all 600 pages, but we will be publishing that proposed standard soon, and our plan of this year is to do three more. If we have the resources, we will accelerate that effort, but using common sense, we will try to put the standard into plain language, so that it is easy for non-experts to understand.

The other side of the common sense initiative is how we enforce standards. The chart I am showing now illustrates the number of times OSHA cited employers for violations of the poster requirement.

Employers are obligated to post a sign that tells workers of their rights to a safe and healthful workplace. This is very important information. OSHA, in 1991, cited employers 4,319 times and penalized them for not having the poster up.

Beginning with this fiscal year, we changed our approach. Instead of not seeing the poster and fining the employer, we have said to employers, "You need to have the poster up. It is important. Here is one. Please post it," and as you can see from the chart, the number of poster violations fell to two in the fourth quarter of this fiscal year. Those were repeat violations.

If there are other safety and health problems in those workplaces, then they can be noted as serious hazards and cited appropriately, but the paperwork or poster violation has fallen from the 24th most frequently cited OSHA violation to off the chart.

When I describe OSHA's reinvention initiatives, I often hear people say they sound good. Then they question me about whether or not they will actually materialize in the field.

Working in Washington, DC, we tend to become consumed with policy and legislation or regulation, but it is not real unless it happens at the workplace. If a compliance officer can't articulate the requirement, if the employer can't understand it, if the worker doesn't know what the correct procedure is, then we are not going to have a healthy and safe workplace.

The average tenure for someone in my position is 18 months. I have just about made 2 years now, but one of the things that people in the organization say is this sounds like the flavor of the month, this is the management fad, and as they say about kidney stones, this, too, shall pass.

It is very important for OSHA's reinvention that we think about how it will affect our workers at the front line and their interaction with employers and workers, and we are devoting considerable attention to getting results and not the red tape part of our reinvention effort.

To do this, we are taking a page from the best-managed American businesses. We are asking our customers through surveys what do you expect, what kind of services do you need, how did we do in fulfilling that. We are asking our workers what ideas do you have that can improve your effectiveness in the field. We are looking at taking quality improvement principles, total quality management, and applying them to our own operations to increase the efficiency of our operation and to create resources to devote to other activities.

We are trying to become data-driven, to look at statistics of injury and illness, to analyze problems, to find root causes, and to go

out and work at those root causes rather than being completely reactive, responding only when there are complaints, accidents or catastrophes.

We are beginning to see results. We have designed a new program to conduct our day-to-day operations in the field. We have implemented it in 7 of our 67 offices. We are doing five more this quarter, and budget permitting, we will continue to roll out these newly designed offices at five per quarter until we are finished, sometime in late 1997 or early fiscal 1998.

Let me give you one illustration of what the practical impact of this reinvention in the field is. One of the most important services OSHA provides is responding to worker complaints. It is their right to complain to us. It also comprises 25 percent of our workload in the field, and in some OSHA offices, all they have time to work on are complaints from workers. They do not have time and resources to do proactive inspections.

So we asked workers who are involved in that process to sit down, chart out the work, identify the value-added steps, identify the non-value-added steps, and design a better way of handling worker complaints.

This chart illustrates what our front-line workers were able to do. The orange bars show the average time to respond to an informal worker complaint.

Mr. SHAYS. Let me just interrupt you for a second, just so I understand. You are using "worker" in two contexts, your own OSHA workers who are responding to workers' complaints out in the field.

Mr. DEAR. Yes. Thank you for the clarification. I will try to make that distinction. The worker complaints I refer to are workers in private sector employment, typically.

They will call us. They will say I want to report a problem. In the past, OSHA would then say could you put it in writing? If they didn't, we would put it in writing. We would mail a letter to the employer. The employer would get the letter. If it was a large employer, it would go around in the employer's organization a while before it got to the desk of somebody who could do something, and the consequence—in our Parsippany, NJ, office, for example—it took 50 days from the time we got a complaint to when we had documentation that the hazard was corrected.

Now if we get a worker complaint and the worker is agreeable, we will call the employer the same day we get the complaint. We will say we have had a report of a complaint, what do you say? We want to secure a verbal commitment from the employer that he will check into the complaint and correct it.

We then fax our description of the complaint to them. We ask them to take corrective action and to document, call us back, send in a photograph. The Parsippany office can now respond to worker complaints in an average of 9 days.

As the chart illustrates, Atlanta, Savannah, Columbus, Kansas City, St. Louis, and Wichita have all seen at least 50-percent improvement in the response time, and some of those offices have seen 75- and 80-percent improvement in response time.

This, to me, is some of the best of reinvention. We have gotten this idea from our workers. Our customers like it. Workers are amazed to see action being taken so promptly after their complaint

was voiced, and employers have told us that they appreciate the opportunity to hear from us, to explain their side of the story, and to take corrective action without a physical inspection.

We will inspect if a worker insists on that. That is a legal duty we have, and we will do that, but many times what workers want is the hazard corrected, and this is a way of doing it much more quickly. Because there is much less paper followup, it frees up resources in our office, so that we can devote our time and attention to problem-solving approaches, the root cause analysis.

Mr. SHAYS. When I gave you your invitation to not feel inhibited by any limit, there were only two Members here, and I might say that we have been joined by Mr. Green from Texas, Mr. Souder from Indiana, Mr. Martini from New Jersey, Mrs. Morella from Maryland, and Mr. Scarborough from Florida. You will probably have the opportunity to talk a lot more by responding to our questions. So I am going to encourage you to come to a conclusion pretty soon.

Do you have much more?

Mr. DEAR. Just one basic observation.

Mr. SHAYS. Sure.

Mr. DEAR. I came to Washington believing that there is an enormous potential for common ground between employers and workers around the issue of workplace safety and health; that health and safe workplaces are self-evidently good for workers. It respects their fundamental human dignity in a profound way, but it is also good for employers because healthy and safe employers are profitable and competitive employers. That is what the reinvention of OSHA is about.

Again, Mr. Chairman, I appreciate the opportunity to join with the committee today.

[The prepared statement of Mr. Dear follows:]

STATEMENT OF JOSEPH A. DEAR
ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 17, 1995

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before the Subcommittee today to review the mission of the Occupational safety and Health Administration (OSHA) and to discuss the many innovative programs the agency has developed to improve workplace protections for America's working men and women. Mr. Chairman, I applaud your longstanding concern for OSHA and for the American worker. The memorial in Bridgeport to those workers killed at L'Ambiance Plaza is a constant reminder to me and to OSHA's staff that we must improve our efforts to protect America's workers.

As you know, OSHA has received considerable criticism in the 104th Congress. Some have proposed to eliminate the agency. Others have proposed to slash OSHA's budget and trim our enforcement and regulatory powers to an extent that would greatly diminish our efforts to protect workers. In addition, there have been many misrepresentations of the agency's activities, from stories about OSHA banning the tooth fairy to the portrayal of

OSHA as an agency bent on collecting fines for its own benefit. Mr. Chairman, I welcome this opportunity to set the record straight concerning our mission and to describe our efforts to reinvent OSHA.

Let me begin with the agency's mission and the continuing need for OSHA in today's workplace.

OSHA'S Mission

OSHA's mission, mandated by the Occupational Safety and Health Act of 1970, is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions..." This is a huge responsibility. There are over 6 million worksites in the United States under OSHA's jurisdiction, employing almost 100 million workers. Accomplishing this mission is extremely challenging in the context of the resources available to the agency. As you can see from the attached chart (#1), there is a growing gap between the resources available to OSHA and the size of the workforce it must protect. Counting State plan personnel, OSHA has a total of about 2,000 inspectors available to monitor workplaces and provide technical assistance to employers.

In spite of limited resources, OSHA has improved the lives of America's workers. Since its creation in 1970, the workplace

fatality rate has declined 57 percent. Standards issued and enforced by the agency have made a real difference for millions of working people.

OSHA's cotton dust standard has virtually eliminated brown lung disease, which used to plague workers in the textile industry. The lead standard has reduced poisoning of workers in smelting plants and battery plants by two-thirds. In five years the grain dust standard reduced fatalities in grain elevators by 58 percent and reduced related injuries by more than 40 percent. OSHA's trenching standard has helped reduce trenching fatalities by 35 percent since 1990.

In areas where OSHA has concentrated its enforcement attention, such as manufacturing, construction, and oil and gas extraction, we have found that between 1975 and 1993 injury and illness rates have declined significantly (Chart #2). In industries that received less enforcement attention, such as wholesale trade, retail trade, and the service industry (including health care), the rates went up.

I am proud of OSHA's record. It is a story that needs to be told. At the same time, we still have along way to go. Every year work-related accidents and illnesses cost an estimated 56,000 lives. That is more than we lost in battle during the entire nine-year Vietnam War. On a average day 18 workers will

be killed in safety accidents and an estimated 137 more will die from occupational disease. Both the human and economic toll are staggering. Accidents alone cost the economy over $112 billion a year.

In the face of the reality of limited resources, it was clear to me when I came to OSHA that the agency had to change its basic way of doing business if it were to continue making progress in the fight to improve worker safety and health. I would now like to discuss the key changes that have been made in the way OSHA operates.

The New OSHA

Many employers have complained that OSHA cares less about worker protection than about meeting perceived "quotas" for citations and penalties. While OSHA has never used quotas, it has in the past used inspections, citations and penalties as performance measures. The New OSHA's performance will now be measured by results--by the impact we are having on reduction of injuries, illnesses and fatalities in the workplace. We are beginning to measure such things as the percent of programmed inspections that find significant hazards as interim measures of success. Ultimately we are developing programs that will allow us to measure the success we've had at reducing injury, death and illness at both the sites we visit and the industry level in

general.

On May 16 President Clinton announced three sets of regulatory reform initiatives for OSHA that the agency had been working on since 1993. These initiatives will fundamentally change the way we do business. First, OSHA will alter its basic operating method from one of command and control to one that offers employers a real choice between partnership and traditional enforcement. Second, OSHA will change its approach to regulations by identifying clear and sensible priorities, focusing on key building block rules, eliminating or fixing outdated and confusing standards and emphasizing interaction with business and labor in the development of rules. Finally, OSHA will alter the way it works on a day-to-day basis by focusing on the most serious hazards and the most dangerous workplaces instead of worrying about technical violations. We will insist on results instead of red tape. I will now describe some of the specific changes we have made to implement these initiatives.

Maine 200--A Partnership that Works

OSHA recognizes that most employers are interested in protecting their employees. Those who choose to work with their employees and with OSHA in reducing injuries and illnesses will find OSHA to be a willing partner. For example, in 1993 OSHA

instituted a program in the state of Maine in which the 200 companies with the highest number of injuries were offered a choice: work in partnership to improve safety or face stepped-up enforcement. All but two firms chose partnership. Those firms opting to work with OSHA received assistance in developing strong safety and health programs, which include a self-inspection component to find and fix hazards. At the same time they were given the lowest priority for inspection, usually only being inspected if there were complaints from employees about serious hazards. In two years these employers have self-identified more than 14 times as many hazards as would have been expected to be cited by OSHA inspectors (Chart #3). Nearly six out of ten employers in the program have already reduced their injury and illness rates. Those employers that chose not to enter into a partnership with OSHA were given a traditional enforcement inspection.

The Maine 200 project demonstrates that OSHA can leverage limited resources to achieve worker protection by shifting responsibility back to the employers and employees at the worksite. OSHA has expanded the concept into New Hampshire and Wisconsin and will be instituting it in every state this fiscal year. The Maine 200 project has been recognized by the Ford Foundation. OSHA is a finalist for an "Innovations in American Government" award. This is the first time government organizations at the Federal level are being considered for this

prestigious award.

Focused Inspections in Construction

Construction is one of the most hazardous industries in America. I know that this industry has been of particular concern to you, Mr. Chairman. OSHA believes that the key to a safe construction worksite is the establishment of an effective safety and health program by the controlling employer covering all worksite conditions. In order to encourage the establishment of such programs and to focus OSHA's limited resources effectively, OSHA launched in October 1994 its Focused Inspection Initiative in construction. Our compliance officers now conduct a review of the controlling contractor's safety and health program. If the employer has a program that meets OSHA's requirements, with an individual responsible for implementation, the inspection concentrates on the four leading construction dangers--falls, electrocution, crushing injuries such as trenching cave-ins, and being struck by material or equipment, and does not address the myriad of other OSHA regulations that a general inspection would encompass. These four hazards cause 90% of all deaths in the construction sector. If there is no satisfactory program, a comprehensive inspection is conducted. Focused inspections allow OSHA to concentrate on the real dangers in this industry while encouraging employers to establish

comprehensive programs at their worksites. They allow OSHA to reach more construction worksites.

Revised Penalty Policy

OSHA's penalty system provides an incentive for employers to engage in proper safety and health activity. In recognition of the fact that the amount of penalty necessary to create such an incentive is smaller for smaller firms than for large ones, OSHA will increase the possible reduction in penalties which the OSH Act allows based on employer size. Soon penalty reductions of up to 80% may be given in certain circumstances to employers based upon the size of the establishment, with the smallest employers receiving the largest reductions.

Consistent with OSHA's belief that effective safety and health programs have a positive impact, penalty reductions for employers demonstrating "good faith," based upon the quality of their safety and health programs, will also be increased from the current 25% maximum. OSHA will be looking for programs that include management leadership, employee participation, workplace analysis, and hazard prevention.

OSHA's new focus on serious hazards rather than technical

violations is illustrated by the dramatic reduction in minor paperwork violations in recent years, as shown in Chart #4. In FY 1991 OSHA issued more than 4300 citations to employers for failing to have an OSHA poster in the workplace. In the fourth quarter of FY 1995 OSHA issued two such citations. If an employer does not have the poster required by OSHA hanging in his shop the compliance officer will hand him the poster instead of handing out a fine. If there are no injuries or illnesses to record, OSHA no longer cites an employer for failing to complete recordkeeping. OSHA's compliance officers no longer cite for minor paperwork requirements; they advise and educate the employer instead.

On the other hand OSHA remains committed to strong enforcement measures for those employers who are not making an effort to protect their workers. In workplaces where OSHA still finds willful, serious, and repeat violations employers will continue to be penalized. Chart #5 shows that the number of inspections with initial penalties of $100,000 or more has increased by 79 percent from FY 1994 to FY 1995.

Reinventing Area Offices

In order to change the way OSHA operates it is essential that reform begin with OSHA's front-line workers who deal with the regulated community on a regular basis. OSHA has been in the

forefront of the Clinton Administration's reinvention efforts. We began by developing a model office and pilot testing it in seven area offices. OSHA is using a Rollout Team, composed of internal union and management representatives, to bring to each office the improvements that have been piloted. Our goal is to redesign federal enforcement by FY 1997.

OSHA's Field Office Redesign Effort will change every aspect of our offices' operations. The basic philosophy underlying this effort is that OSHA's staff has the responsibility to reduce injuries, illness and deaths rather than simply enforce regulations. We will use Strategic Intervention Teams to identify the leading causes of workplace problems within a given area and then use a variety of techniques--enforcement inspections, investigations, education--to solve the problem. In Atlanta a Strategic Intervention Team formed a partnership with the Horizon Steel Company. In return for technical assistance at one site, Horizon Steel agreed to implement a fall protection program with front-line accountability throughout the company. Horizon Steel saw a reduction of 96 percent in its accident costs per man hour and three lives were saved as a result of using fall protection techniques at three different sites never visited by OSHA.

When OSHA's office in Parsippany, New Jersey, became aware of an increasing number of lead poisoning cases among bridge

workers, the office formed a partnership with New Jersey's Department of Health and Transportation. Together they developed strategies for protecting these workers from increased blood lead levels, which are an indication of lead poisoning. OSHA's office used enforcement, implemented a comprehensive medical surveillance program, and developed a lead safety plan for each worksite where lead exposure occurred. OSHA and the New Jersey Health Department sponsored training sessions for employers and employees before they started working on a bridge or renovation project. OSHA described to the contractors the OSHA-funded on-site consultation program available in New Jersey which provides free advice on ways to identify and eliminate workplace hazards. If an employer, having been informed of his responsibilities and the assistance available, chose not to comply, OSHA initiated strong enforcement action.

As a result of this intensive effort, the mean blood level among affected bridge workers dropped 25 percent between 1991 and 1994. The percentage of employees who had blood levels higher than 50 ug/dl dropped from 24 percent in 1991 to 2 percent in 1994. OSHA and the State of New Jersey, working with employers and employees, made major advances in protecting bridge workers from the hazards of lead.

Another result of our efforts to reinvent the way OSHA's Area Offices do business is the reduction in the time it takes to

get a hazard abated as a result of a complaint from a worker about safety and health. OSHA's offices in Cleveland and Peoria piloted a project to reduce the time period from when a complaint arrives in the office to when the hazard is corrected. They began responding to complaints over the telephone and by fax. Employers may respond by phone and fax in describing how the workplace danger was eliminated. It used to take almost fifty days for the Cleveland office to achieve hazard abatement. Now the time to abatement is 10 days. Peoria has cut its abatement time from 35 days to 8 (Chart #6). This more efficient approach to handling formal and nonformal complaints will be used by all OSHA Area offices.

OSHA is streamlining other procedures to serve the public better. In the past it sometimes took many weeks or months to receive a response to a request under the Freedom of Information Act (FOIA). Several offices are experimenting with new ways to answer FOIA requests and reduce the time required for a response. The Atlanta Area office has reduced the time for completing a FOIA request from 60 days to 4.5 days--a dramatic increase in service. Other offices are working to achieve the same kind of improvement.

OSHA's field offices are also becoming more efficient by changing procedures, making better use of computers and video cameras and forming partnerships with the private sector.

Standards Initiatives

OSHA's history of setting standards priorities has been haphazard. Priorities constantly shifted, it took many years to issue a regulation, and much of the regulated public was frustrated with both the process and the outcome. A new approach was essential if OSHA was to address the many serious unregulated hazards in the workplace. We have instituted a new five-point regulatory strategy to identify priority issues, focus on key building block rules, eliminate or fix confusing and out-of-date regulations, emphasize plain language and use cooperative partnerships. Under our Priority Planning Process a committee composed of members from OSHA, DOL, NIOSH, EPA, and MSHA actively solicited input from stakeholders and the public beginning in August 1994. More than 100 stakeholders submitted written comments to the committee and nearly 200 representatives of labor, industry, professional and academic organizations, State plans, voluntary standards organizations and the public participated. NIOSH in particular played a key role providing technical assistance throughout the process and in the final selection of the priorities.

The Agency will soon announce the results of the Priority Planning Process, which will identify the most pressing workplace safety and health hazards in need of either regulatory or non-regulatory action. Identifying priorities will ensure that the

leading causes of death, injury, and illness in the workplace are addressed first. To arrive at the priorities, the Committee applied a set of decision criteria to a list of 125 hazards nominated by stakeholders and agency staff. A group of approximately 20 issues, which affect millions of workingmen and women, were designated as priorities. Of these, a small number have been chosen for rulemaking and will be added to the regulatory calendar as other standards are completed. OSHA will work with industry, labor, the States and the safety and health community to find non-regulatory ways, such as information, education, and voluntary compliance, to address the remaining hazards. We now have a more rational process for addressing the most pressing safety and health needs of this nation than that used in the past.

In response to a directive from the President to review its rules and identify those in need of revision, OSHA has analyzed 3,200 pages of its Code of Federal Regulations. The Agency plans to "reinvent" 39 percent of these pages and eliminate 32 percent more. For instance, we will consolidate separate training, records maintenance, monitoring and medical surveillance provisions that were written at different times throughout the agency's history. OSHA will remedy the problem caused by regulations that were adopted in 1971 but have become outdated. Most of these regulations were originally written in technical or engineering text that was difficult for the layman to understand.

By the end of 1996 OSHA will re-write more than 500 pages in an easier-to-read format.

One of the standards of most concern to employers, particularly those with small businesses, is the Hazard Communication rule. Yet this regulation is vital because workers must be aware of the dangers they face from toxic substances in the workplace. We have requested that the National Advisory Committee on Occupational Safety and Health, which is composed of representatives from industry, labor, the States, and academia, identify ways to improve the standard. Our goal is to focus on the most serious hazards, simplify the Material Safety Data Sheets which have been the source of numerous complaints about complexity, and reduce the amount of paperwork required by the Hazard Communication Standard. The work group will begin its meetings, which are open to the public, on October 19.

OSHA has implemented a number of projects to make information about the agency's regulations more easily available. In 1992 OSHA introduced the OSHA CD-ROM, which provides in one format all of OSHA's regulations and interpretations, its Field Inspection Reference Manual, decisions of the Occupational Safety and Health Review Commission and much more information. This is now the Government Printing Office's best selling CD-ROM. We are encouraging public participation in standards development by routinely disseminating the text of proposed and final standards

through the OSHA CD-ROM and the Department of Labor's Electronic Bulletin Board. To provide special assistance for small businesses, OSHA is working with the National Performance Review to provide electronic access to regulatory information and services through the Internet.

Voluntary Protection Programs

One of the accomplishments of which I am most proud since I came to OSHA is the expansion of the Voluntary Protection Programs (VPP) (Chart #7). The prototype for VPP was a project developed by the Bechtel Corporation and the State of California in 1979-80 -- just the kind of innovative state effort that this Subcommittee has expressed interest in. Last month the Vice President characterized the VPP as:

> fine examples of what Reinvented Government is all about. It is about working in partnership with common goals instead of as adversaries -- partnership between government and business -- between labor and management.

Companies participating in the VPP must undergo a rigorous, week-long evaluation by OSHA and periodic monitoring. They exceed OSHA's requirements and actively involve their employees in safety and health. In FY 1994 the number of lost workday injuries suffered by employees at the VPP sites was 49 percent lower than the average for their industry.

Currently there are 231 sites participating in the VPP,

almost double the number of participating sites when I came to the Agency. Together these sites provide quality safety and health protection to approximately 167,000 workers. Other outreach activities, such as speeches by VPP participants at conferences and training events, have reached 100,000 more employees. Through the Voluntary Protection Programs Participants Association (VPPPA), a private organization, VPP participants actually mentor other companies, reaching another 71,000 workers by providing models and advice on safety and health. Thus, through VPP and the VPPPA 338,000 workers receive improved safety and health protection. This is an extremely effective way of leveraging our resources. The VPP has received the Vice-President's Hammer award, signifying that it is a leading example of government reinvention.

Compliance Assistance

OSHA spends a sizable portion of its budget, almost $45 million in FY 1995, on compliance assistance programs for employers and employees. Some of these programs are especially designed to ensure that small business employers understand our rules and how to comply with them. For instance, OSHA's consultation program, administered by the States, is a free service available to employers to help them identify potential hazards at their worksite, improve their safety management systems, and qualify for one-year exemptions from routine OSHA

inspections. The program is targeted toward small businesses in hazardous industries. It is completely separate from the enforcement program and participants cannot be cited during the consultation visit. In the last five years OSHA has helped over 100,000 small and medium-sized businesses identify and correct over 800,000 hazards.

OSHA's Training Institute, which instructs state and federal compliance officers, also provides instruction to the private sector. Sixty courses, dealing with subjects such as confined spaces, machine guarding, construction operations, and industrial hygiene, are open to employers and employees who wish to enroll. Some courses include simulated workplace environments with hands-on instruction in hazard recognition and control. Requests from the private sector for instruction have increased so rapidly that OSHA began offering its curriculum in community colleges and research centers throughout the country. There are now a dozen private educational institutions which conduct safety and health training.

State Plan Innovations

The Subcommittee has expressed interest in the relationship between OSHA and its state plans. The 25 States and territories which operate their own programs are an integral part of our effort to protect the American workforce. Approximately 40

percent of all employers are covered by the States rather than federal OSHA. We do not expect the States to be identical to federal OSHA, but we do expect them to be at least as effective in protecting the workers in their jurisdictions. As a former State plan administrator I know the particular strengths which the States bring to this program, such as knowledge of the industries and workforce in their jurisdictions and flexibility to innovate and do things in a way different from the Federal Government.

We have tried to encourage the states to experiment with new ways to prevent injuries and illnesses. Working closely with the Occupational Safety and Health State Plan Association, OSHA is developing performance agreements that would define goals and performance measures for state activities that differ from federal practices. Instead of monitoring the states by comparing federal and state activities, OSHA will assess results in each state. Since federal OSHA is redesigning its program, we should not stand in the way of States that want to do the same. We should also not expect the states to adopt every innovation developed in Washington. Many states will go beyond our reinvention efforts and others will find alternatives. Our only requirement is that the alternatives be in conformance with the State's basic statutory responsibility.

For instance, we would not allow a State to eliminate

enforcement, but we would allow experiments such as that undertaken by the Washington State Department of Labor and Industries. Under an agreement between the Department and crane contractors in the State, a crane safety association will develop standards for the industry using penalties collected from inspections of their members. The association is open to crane companies, labor unions, and manufacturers.

Other examples of innovative efforts by the States include:

--The Virginia OSHA program initiated the "Blue Ridge Safety Network" in 1993. It links businesses in a geographical area to promote workplace safety through shared expertise and resources. There are 182 employers, insurers, health care providers, and educational institutions participating in the Network's Pilot Program. Larger employers share their safety expertise and experience with smaller employers. The Network has four subcommittees geared toward manufacturing, construction, agriculture, and health care.

--Approximately one-half of the States use establishment-specific workers' compensation data for targeting their inspections to the most dangerous worksites. They provided the model for the Maine 200 program.

--Connecticut, Minnesota, New Mexico, and other States

require employers to have safety and health programs. OSHA is now working on ways to encourage more employers to institute programs and is using programs as an incentive in some of the new enforcement policies that I have described. In fact, today a group of OSHA's "stakeholders" is meeting to discuss ways to make employers more aware of the value of safety and health programs.

--Washington State began a special construction program in 1989 in response to an increasing number of fatalities in that industry. The State formed a Construction Advisory Committee of more than two dozen representatives of labor, management and the Washington OSHA program. They produced a plan to focus the State's inspections on the five most hazardous construction operations, as indicated by workers' compensation data. In less than three years the construction industry in Washington experienced a 19 percent decline in compensable claims due to falls from elevation.

Threats to Further Progress

I believe that the changes we are instituting in OSHA will improve the agency's performance and help assure improvements in worker safety and health. All of OSHA's past and future success is threatened, however, by two pieces of legislation currently

before the Congress.

The first is the FY 1996 appropriations bill for DOL, HHS, and Education, passed by the House in July. The measure would cut OSHA's budget by 15.5 percent and slash enforcement programs by 33 percent. By slashing OSHA's budget the House would risk higher fatality, injury, and illness rates, imposing millions of dollars of additional costs on employers in the form of higher workers compensation payments, related medical costs, and employee turnover.

In addition, the bill contains language that restricts OSHA from taking action on a standard for ergonomics and seeks to weaken the agency's rule on fall protection in construction.

A 33 percent cut in enforcement would decimate the Agency's enforcement effort. It would result in a 50 percent reduction in inspections and an estimated 50,000 more injuries a year to American workers. OSHA's diminished enforcement effort would consist of responses to accidents, complaints and referrals with virtually no resources available to do proactive inspections of high-hazard firms.

The second bill that would cause irreparable harm is H.R. 1834, which is being considered in the House Committee on Economic and Educational Opportunities. There is a fundamental

difference between H.R. 1834 and the President's plans for a "New OSHA." Both approaches acknowledge that OSHA must find a new way of doing business. But the legislation would provide any employer--including those who choose to disregard worker safety--with exemptions and defenses against OSHA enforcement. In contrast, the "New OSHA" treats responsible employers differently from neglectful ones, offering incentives and cooperation to the former and applying traditional enforcement to the latter. The "New OSHA" offers employers a partnership with the agency that demonstrates a commitment to safety and health before being placed on a low priority inspection list. H.R. 1834 would represent a huge step backward from the principle of prevention through enforcement:

> --It would prohibit the Agency from issuing first instance sanctions unless workers are killed or seriously injured or an imminent danger is present. Employers would receive only a warning even when they have ignored the most obvious hazards. There would be little incentive for employers to protect their workers before OSHA gets to their workplace. In contrast, The "New OSHA" will continue to issue first instance sanctions where workers' safety and health is threatened but will adjust penalties for those employers demonstrating a sincere effort to improve their workplaces.

--H.R. 1834 would force workers to notify their employers before filing a complaint about unsafe working conditions with OSHA, even when workers face an imminent danger on the job and possible retaliation from their employer. The bill would provide a disincentive for reporting hazards. The "New OSHA" is improving its response time to employee complaints while being more flexible with employers to ensure that hazards are abated.

--The bill would eliminate penalties for violations of the "General Duty Clause," thus removing a tool which OSHA has used for 25 years to require employers to keep workplaces free from hazards even when there is no specific standard. The General Duty Clause is a legal recognition of an employer's obligation to protect his workers from conditions the employer recognizes to be threats to the employees' safety and health. Making this provision unenforceable would effectively repeal it. If H.R. 1834 had been in effect in 1989, OSHA could have issued a penalty of only $10,800 after the explosion and fire which killed 23 workers at the Phillipps 66 plant in Pasedena, Texas, that year. Under its "General Duty" authority OSHA proposed a penalty of $5.6 million to an employer that did not live up to its obligation to protect its workers from a serious explosion hazard.

--The bill would prevent OSHA from using its egregious penalty policy when it finds a significant number of serious violations in a single workplace. OSHA's ability to pressure "low road" employers, who shirk on workers' safety to gain competitive advantage, would be severely compromised. If this provision had been in effect in 1987 OSHA would have been allowed to issue a penalty of only $125,000 after the tragic construction collapse at L'Ambiance Plaza. Using the egregious penalty procedure OSHA issued a proposed penalty of $5.1 million. In addition to addressing the specific employer, these penalty levels allow OSHA to focus an entire industry on the safety and health problems of that industry.

--H.R. 1834 would exempt from programmed inspections all businesses of fewer than 50 employees in certain industries regardless of the conditions in the individual workplace. The "New OSHA" is improving its inspection targeting methods to assure that, where data are available, inspectors go to the most dangerous workplaces regardless of the overall industry safety and health record.

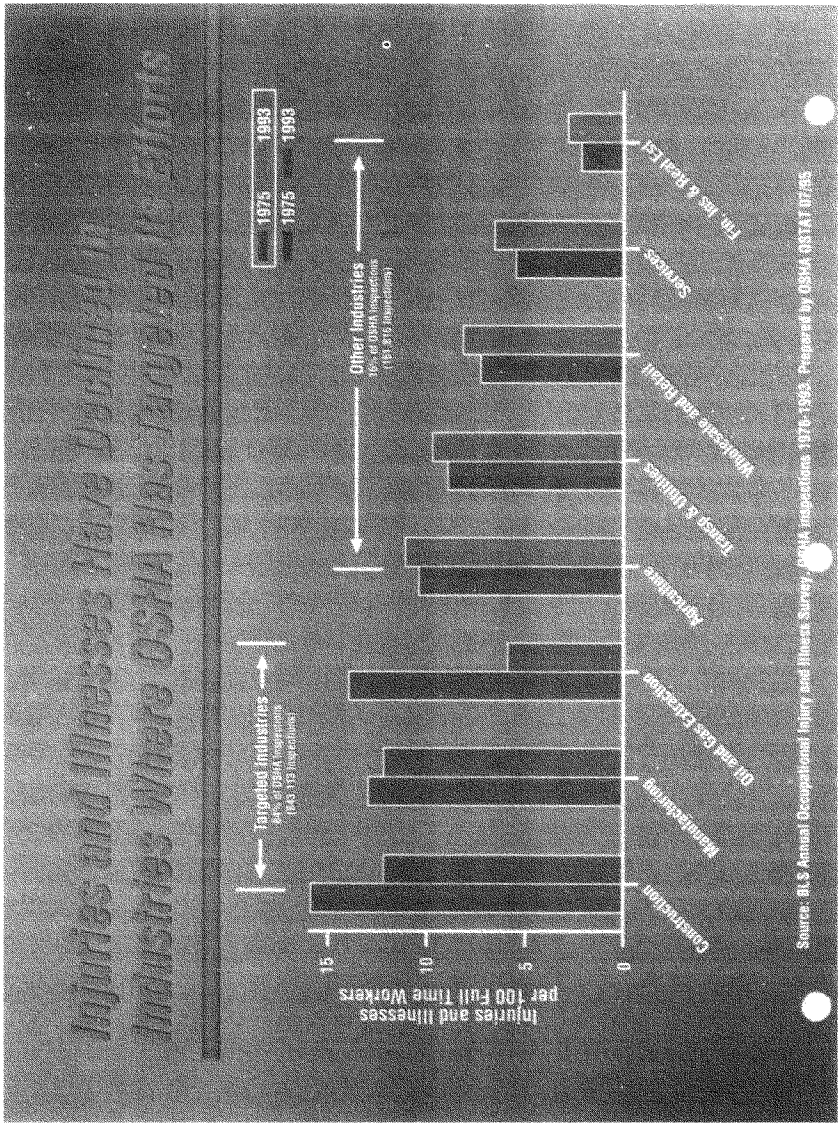
These are just a few of the troubling provisions of H.R. 1834.

Mr. Chairman, there is a right way and a wrong way to reform OSHA. Slashing the agency's budget and enacting legislation such

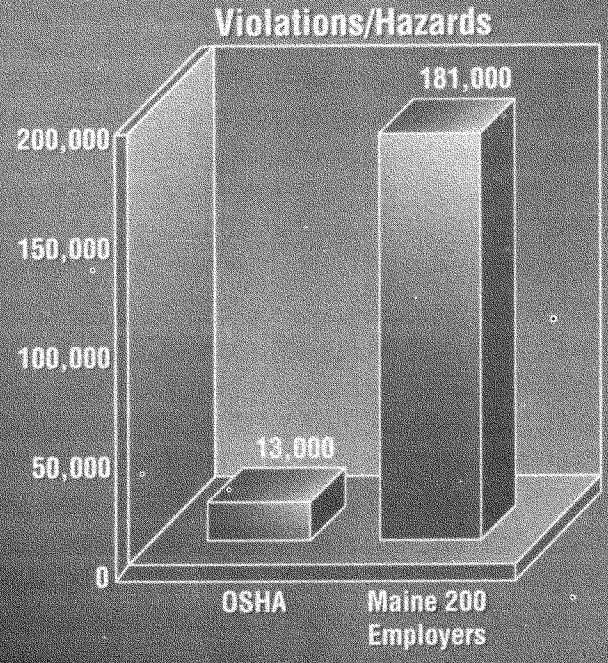
as H.R. 1834 is the wrong way. These actions would reduce protections for American workers and result in increased death and injury. Surely this is not what the American public expects from its government. I believe that the "New OSHA" is the proper way and that the agency is making striking progress down this path.

Our experience in redesigning this Agency with the backing of the President and Vice President has proven to me that federal agencies, which were once considered impervious to change, can undergo a complete alteration of their culture. In this case the beneficiaries of change will be the working men and women of America who will receive increased protection from OSHA as well as employers who will find that they can work constructively with OSHA.

The Gap Between OSHA's Mission and Resources
OSHA FTE
Workers (in millions)
3200
3000
2800
2600
2400
2200
2000
100
95
90
85
80
75
70
American Workers
OSHA FTE
80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95*
Year
* Employment Source: Employment and Earnings 1995 Statistics through August

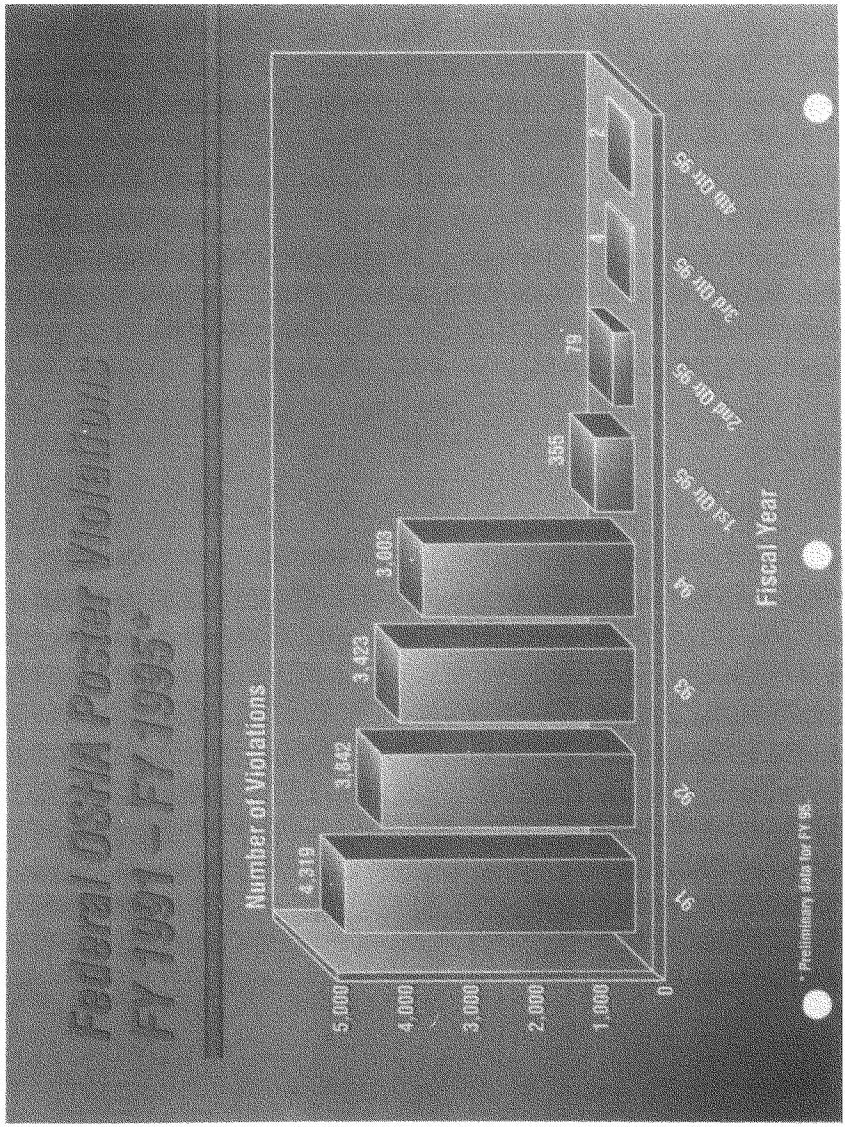

Injuries and Illnesses Have Declined Since 1979
Injuries and illnesses per 100 Full Time Workers
15
10
5
0
Construction
Manufacturing
Oil and Gas Extraction
Agriculture
Transp. & Utilities
Wholesale and Retail
Services
Fin., Ins. & Real Est.
Other Industries
10% of 10th Workforce
11% of 9th Workforce
Targeted Industries
9% of 10th Workforce
10% of 9th Workforce
1975
1983
1988
1993
Source: BLS Annual Occupational Injury and Illness Survey, OSHA Inspections 1979-1993. Prepared by OSHA OSTAT Office

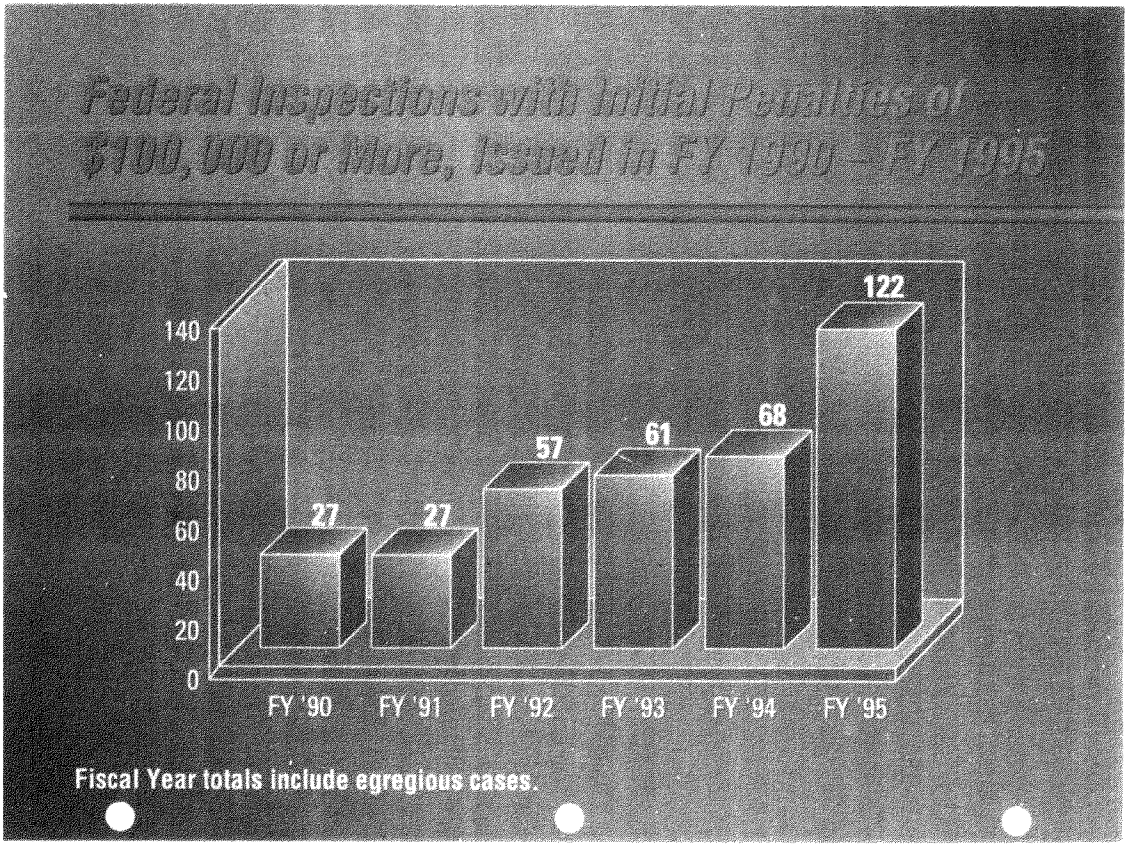
Employers with Effective Safety and Health Programs Identify Hazards in Maine

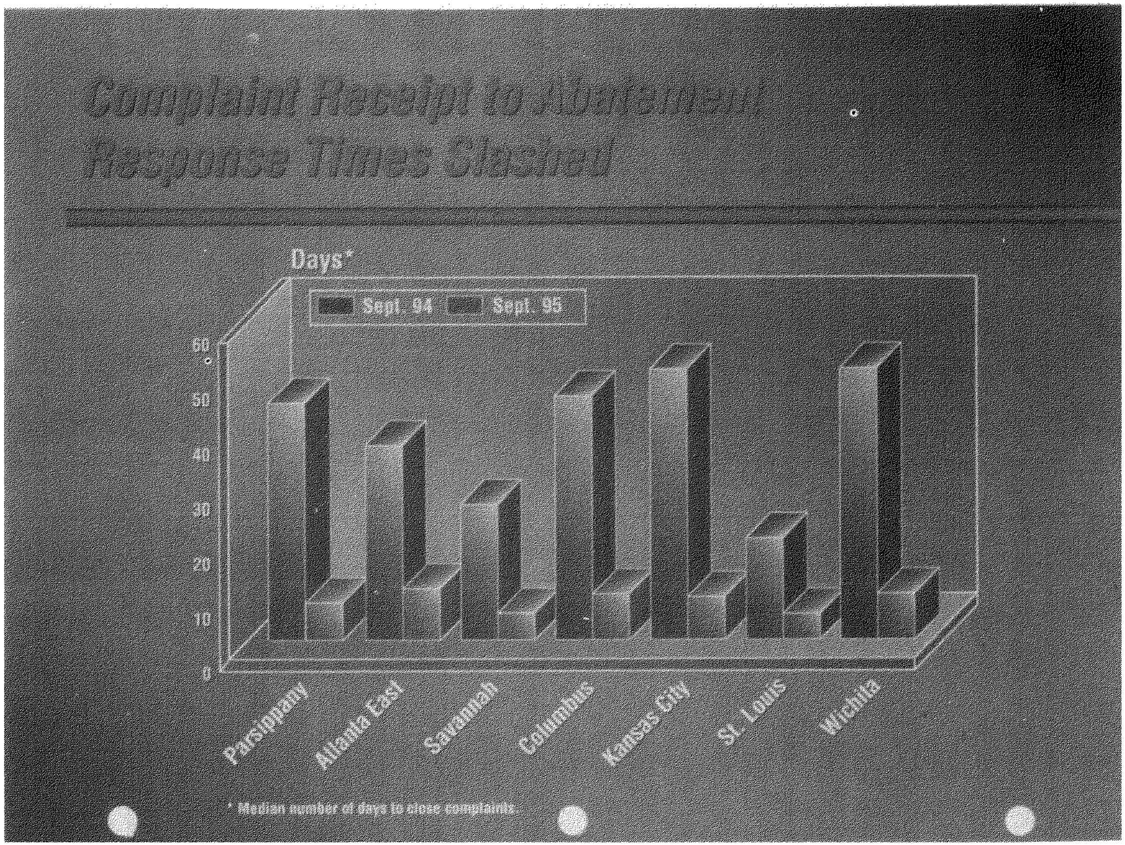


OSHA – Total number of violations discovered by OSHA inspections: 1989 – 1993.
Maine 200 – Total number of hazards identified by employers: May 1993 – October 1995.

Federal
State
300
250
200
120
100
50
0
55
57
63
69
76
89
107
124
189
231
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995**
* Number of VPP Sites on the Last Day of Each Calendar Year
** As of 10/12/95.
Source: OSHA, Office of Voluntary Programs, 10/12/95.


Federal Work Force
FY 1991 - FY 1995
Number of Violations
5,000
4,000
3,000
2,000
1,000
0
3,319
3,642
3,423
3,003
395
78
2
1
FY 91
FY 92
FY 93
FY 94
FY 95*
Fiscal Year
* Preliminary data for FY 95.


Federal Inspections with Initial Penalties of $100,000 or More, Issued in FY 1990 – FY 1995
140
120
100
80
60
40
20
0
27
27
57
61
68
122
FY '90
FY '91
FY '92
FY '93
FY '94
FY '95
Fiscal Year totals include egregious cases.


Complaint Receipt to Abatement
Response Times Slashed
Days*
Sept. 94
Sept. 95
60
50
40
30
20
10
0
Parsippany
Atlanta East
Savannah
Columbus
Kansas City
St. Louis
Wichita
* Median number of days to close complaints.

Mr. SHAYS. I appreciate you being here, Mr. Secretary.

This is the mike that amplifies in the room, and you can even lift that other one up a little bit. That is great.

I am going to give the floor to Mr. Souder to start the questions, but let me ask you this. The substantive changes you have talked about, we can see the process results in terms of the amount of time it is taking your inspectors and you can reorient their time. Is it too early to conclude whether there are noticeable differences in the workplace in terms of reduced injuries and deaths? Is it too early to determine that at this point?

Mr. DEAR. For Maine, we know that reported incidence of injury and illness in the 2 years that the program has run has declined. Sixty percent of the employers have lower injury and illness rates. That program began in early 1993.

Mr. SHAYS. You didn't say 6 percent.

Mr. DEAR. It is 60 percent of the employers.

Mr. SHAYS. We will probably get into that. That is quite a statistic.

Mr. DEAR. On the redesigned offices, there is good anecdotal information. The first offices implemented the new procedures less than a year ago. So there hasn't been enough time to demonstrate empirically that the impact we seek is occurring, but all of these new programs were designed to measure impact as part of the program.

Mr. SHAYS. Thank you.

Mr. Souder.

Mr. SOUDER. First, I wanted to compliment you on reducing the number of technical violations in things like the poster violations and so on. I have heard repeatedly what a nice guy you are and how friendly you are. It doesn't change who you represent in my eyes, but I want to compliment you personally and say that we all respect that you are trying to do the best you can regardless of how we may agree or not agree.

You raised concerns about Congressman Ballenger's bill. I wanted to know, do you still support Senator Kennedy's bill in the Senate? Is that what OSHA would still support at this point?

Mr. DEAR. That bill is not before the Congress. We did support it when it was introduced in the 103d Congress. I think there were very important elements in that bill, providing a real voice for worker participation in statute, addressing some problems with inadequate standards that could be remedied, addressing the lack of coverage for State and local employees in 29 Federal enforcement States, and a variety of issues like that.

What I had hoped would have happened in the 103d Congress, and what I hope will happen in the 104th Congress, is that we can engage in a debate on a principled basis, look at 25 years of experience with occupational safety and health under the act and decide whether the problems can be solved administratively, which I believe they largely can be, or whether statutory adjustments are necessary. But extreme proposals on either side, I don't believe will actually improve situations at the workplace.

Mr. SOUDER. You made a number of statements in the record criticizing the Ballenger bill, and what I would like to insert in the record is a labor policy association report that suggests some of the

similarities between the administration and Congressman Ballenger's bill as opposed to an expansion which Senator Kennedy does.

If you can go through that and if you have any comments for the record later on, rather than try to spring this on and go through that at this point.

I also had a couple of technical questions on numbers. I saw you had a reference to a decline in grain elevators based on the number of injuries; 58 percent, I think the number was. Have you frozen those? Is that 58 percent for the same number of grain elevators? Have you frozen any other variables?

I know, for example, the grain elevator in my hometown no longer has injuries. They closed down. It is an industry that has had huge numbers going out of that industry.

In fact, on your chart, the ones with declining numbers of injuries are predominantly declining industries, and the ones where you have increasing number of injuries are growing industries.

Are those numbers indicative of what OSHA is doing, or are they numbers that merely are reflecting changes in the economy and somewhat give a misleading approach to what OSHA's effectiveness is?

Mr. DEAR. My testimony referred to lead, cotton dust, trenches, and grain elevators. Those represent studies that were done, and we would be happy to turn those over to the committee. So those were frozen in time.

With respect to the point about manufacturing employment, in a relative sense, there may have been a decline. There are still millions of workers that are employed in manufacturing establishments, millions in construction. Those hazards are very real, and the presence of OSHA enforcement has helped reduce injury and illness.

The lesson, I think, we have to apply as we watch the growth of the service sector is how do we address those issues. It may be through enforcement. It may be through other means. We are lacking some critical standards in the service sector area to help guide employers on what they need to do to prevent musculoskeletal disorders among other injuries.

Mr. SOUDER. I think it is really important in both places to be very careful what numbers we use, and that is really what I was getting at.

Did you say at lunch or was it one of the other speakers over at the chamber a while ago that OSHA gets to a business about once every 88 years if you took the number of visits times the number of employers?

Mr. DEAR. There are a number of figures that are bandied about. You are right. At the chamber meeting today, the figure, once in 88 years, is used. We calculated it once in 62 years on a nationwide basis. It really is kind of academic, 60 or 80 years.

Even if you isolate low hazard workplaces out, you are still talking of frequency once every 20 years. It is why reliance solely on enforcement through physical inspection is likely to yield little in terms of results because of the infrequency of coverage.

I am convinced that the public's perceptions were of a much larger agency than that or we might have a larger noncompliance problem.

Mr. SOUDER. I would just say on the surface, whether it is 20 years, 62 years or 88 years, it would suggest that there are other forces in the economy as well that are pushing for safety, and it isn't just OSHA regulations because you are not likely to be living in fear of a visit of every 62 years. There are other forces, too, that are pushing health and safety.

In addition to OSHA, there is no denying that it helped. The question is how much of the credit goes where, and that is important when we look at the different pieces of legislation.

Mr. SHAYS. I am going to try to enforce the 5-minute rule given the number of Members.

Mr. Lantos.

Mr. LANTOS. Thank you, Mr. Chairman.

Secretary, I am intrigued by this emphasis on partnerships because when we had hearings in earlier Congresses here, we had hearings exploring terrible working conditions, utterly irresponsible employers providing a nightmare in terms of lack of safety, lack of decent working conditions. We had an avalanche of witnesses testifying to the horrors they had to go through.

I am just wondering what your approach is to bad employers. Everybody rationally would like to see well-intentioned employers and well-intentioned unions working together and OSHA helping in a constructive fashion, but of course, that is not the way the world is built in any arena, and there are people who for economic or other reasons want to cut corners on safety and health.

With the enormous cutbacks, 33-percent cutback in enforcement, the agency's enforcement efforts will be decimated. The best estimates I saw is that there would be a 50-percent reduction in inspections, and you in your testimony state 50,000 more injuries a year to American working men and women.

The people who are voting for these abominations have a responsibility to explain to the American people why they favor 50,000 more injuries to working men and women in the United States.

My question to you is first with respect to this issue with good employers/bad employers. How do you plan to deal with this? Partnership surely is not the answer in this very instance, as your egregious stories earlier indicated.

The second question I want to raise relates to the ergonomic standards. As Mr. Shays will remember, we had a number of hearings on the question of ergonomics. We were appalled by the range of industries where men and women become permanently crippled from newspapers to meat packing, young men and women, middle-aged men and women being permanently unemployable because their employers were unwilling to use appropriate ergonomic standards.

Riders have been attached to the 1995 recision bill and the 1996 appropriation measure which will prohibit the agency from developing standards or guidelines on this issue which I think is an abomination, nothing short of an abomination. It destroys the physical health and the mental health of vast numbers of American

working men and women and deprives their families of somebody who can earn a living for them.

How does OSHA plan to deal with this?

Mr. DEAR. You asked two large questions.

The strategy that says we want to build partnership involves a choice, and the other side of that choice is a traditional enforcement relationship.

As I indicated in my testimony, we have stepped up enforcement. We have doubled the number of egregious cases in the past year, and none of those were recordkeeping cases which in the early years of egregious was one of the emphases.

Mr. LANTOS. Don't minimize the recordkeeping cases. Mr. Shays and I sat through testimony here, where we had double sets of books by employers. So recordkeeping is not a minor, little, technical issue. Recordkeeping can be a big issue if the employer keeps a double set of books.

The real injuries appear in a book that is not shown to anybody, and the phoney set of figures are presented to OSHA. We are dealing with an outrage that OSHA needs to deal with.

Mr. DEAR. Of course, you are right, but we have concentrated on violations of standards that are egregious that have actually resulted in injury or death to workers. We doubled the number of those cases in the past year, and we have actually increased the number of high-penalty cases.

Trying to do that and then trying to get notice of those actions, so that it is transmitted throughout the industries, throughout the communities where these occur, is one of the most effective deterrents OSHA has.

Again, as I indicated earlier, we are very much emphasizing that choice. Some employers have already chosen, and they have chosen the enforcement route. Their behavior is such that the offer of a partnership to fix things is not appropriate.

The other employers who have been given the opportunity to work cooperatively with us will do a lot more than we could if we were depending on getting to that workplace and inspecting, and that is where the leverage comes.

The difficult resource allocation choice for us is we could spend all our time on enforcement. It could consume all of our resources. We could do none of the partnership initiatives. Will that further us better than trying to balance the approaches?

I think we are trying to find that balance. I don't know if today we have done it. We haven't seen the full potential of the partnerships, but I know we will have a lot less willing partners if we don't have effective enforcement.

With respect to ergonomics, your hearings were what I referred to when I talked about my knowledge of your work before I ever came to Washington. My predecessors began work to develop a standard to protect workers from work-related musculoskeletal disorders. It is a huge problem, and it is a very expensive problem. Something like $20 billion, a third of the Nation's worker's compensation expense, is associated with over-exertion and repetitive-motion injuries.

It affects workers in a way that can disable them for a lifetime. I carried forward that work from prior administrations, assembled

a team, and made the development of proposed regulations one of our top priorities. Where are we today? I am prohibited by the Congress from suggesting to the public that we have a proposed remedy to this solution.

In addition to the restrictions from the fiscal 1995 recision bill which says we can't promulgate a proposed or final rule or issue a guideline, the 1996 appropriations language from the House says we can't even collect data on the problem, and I am absolutely confounded by that since this is the same body that wants us to improve the science and the economics that we use to develop our standards.

We need to be able to put a proposal before employers and workers and see and gage what that reaction is. I can be very flexible about how to approach that, but we need to address this problem. It is not going away, and pretending it is not there doesn't help anybody.

Mr. SHAYS. Thank you.

Mr. Martini.

Mr. MARTINI. Yes. Thank you, Mr. Chairman, and I thank you for holding this important hearing. I do have some opening remarks which I would ask unanimous consent to submit in the record.

Mr. SHAYS. If I could interrupt the gentleman, for all Members, there is unanimous consent. Any information or statement will be inserted in the record.

Mr. MARTINI. Thank you very much.

I would like to try to summarize and then formulate a question or two to the Secretary, if I may. I guess I would first like to begin by saying, as is often the case with some of the things that we have learned in the short tenure of being a freshman Congressman, often the case is programs begin with good intentions and goals and meet those intentions and goals.

And certainly, OSHA in many respects has achieved some of the goals and intentions that were set out by when it was, in fact, enacted into law. But also, I think we find, as is often the case, that the pendulum tends to swing beyond many of the intentions and goals, and goes to the extreme situations.

We have been the recipient of listening to and hearing of complaints in the workplace, and also, as a former local-elected official, even at the municipal and county levels, some of the excesses that exist in the current system seem to raise all of our concerns as to whether we are today still reaching those goals.

You mentioned in your comments whether or not these could be addressed, some of the excesses could be addressed either administratively through reforms that are being initiated currently or whether they require the actions of Congress.

I think you also mentioned the term "effective enforcement," and how we get to that is really the question that is most on my mind, especially when in preparation for this hearing we had the benefit of looking at a memorandum, an internal memorandum of OSHA which, I think, sets forth better than anything I can say, and it is a memorandum about the concerns issued to compliance officers who are issuing ACS citations with respect to products like dish water bricks, lubricating oils, dishwashing liquid, et cetera.

You are probably familiar with this March 21, 1995, memo, and if you are not, I would like to make it a part of the record for purposes of this hearing.

[The information referred to follows:]

RECORD TYPE : Interpretation

STANDARD NUMBER : 1910.1200
1915.1200
1917.28
1918.90
1926.59

SUBJECT : Hazard Communication Standard.

INFORMATION DATE : March 21, 1995

LETTER :

March 21, 1995

MEMORANDUM FOR: ALL REGIONAL ADMINISTRATORS

FROM: JOHN B. MILES JR., DIRECTOR
DIRECTORATE OF COMPLIANCE PROGRAMS

SUBJECT: Hazard Communication Standard: Documentation of Citations Related to the Exposure to Hazardous Substances and Consumer Products

This memorandum provides clarification and guidance for the Hazard Communication Standard, (HCS) 29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, and 1926.59, when applied to the standard's provisions for exemptions of consumer products and articles.

OSHA has reviewed its enforcement history with respect to instances where the consumer product safety/hazardous substance (1910.1200(b)(ix)) or article (1910.1200(b)(v)) exemptions could have been applied.

[redacted]

(As a matter of policy, OSHA Compliance Officers shall not issue HCS citations for consumer products unless there is documentation that employee(s) causing serious injury or illness are occurring. Please be aware that exposure is defined in the HCS to include potential exposure.

The performance-oriented nature of HCS makes it difficult to draw clear, exact lines for the number of times a consumer product or the circumstances under which an article can be used before the provisions of the rule apply. During the course of an inspection, to justify a

[redacted]

situations where employee use of a consumer product is similar to the way a consumer would use a product or where the hazardous chemical under consideration meets the definition of an article shall not be cited as a violation of HCS.

To ensure that citations of HCS for consumer products are appropriate, the

following elements must be included as documentation in the case file:

1. Document what information establishes the chemical as a consumer product. Was the container labeled with a label that is subject to the regulations of the Consumer Product Safety Act?

2. Document the hazardous chemical(s) present in the consumer product that employees were exposed to. Does the chemical present an acute or chronic hazard? Was the chemical on the employer's hazardous chemical inventory?

3. Document the duration of use, the period of time the chemical was used during the workshift and week. Did it greatly exceed normal or expected use by a consumer?

4. Document the frequency or pattern of use. Did it greatly exceed normal or expected use by a consumer?

5. Document the purpose of use. Was the consumer product used as recommended by the manufacturer or proscribed by the manufacturer?

6. Document the manner of use; was the consumer product used in a concentrated form or solution? What amount (i.e., the liters or grams) of the chemical was used?

7. Attach the MSDS, where available, for the cited product, i.e., is it defined as a hazardous chemical; what is its intended use(s)?

When citing HCS violations involving consumer products, identify in the citation the specific hazardous chemical and the concentration of the hazardous chemical present in the consumer product. In addition, the frequency and duration of use that resulted in exposures significantly greater than those of a consumer must be documented [redacted].

In a similar fashion, for HCS violations involving manufactured items or commercial products which under normal conditions of use may release hazardous chemicals and do not meet the criteria of the "article" exemption (1910.1200(c)), the specific hazardous chemical identified in the specific item shall be described in the citation. In the case of mixtures, the concentration of the specific hazardous chemicals shall be included in the citation. [redacted] In this case, compliance officers shall identify the specific hazardous chemical, such as silica, present in the item, the concentration of the specific hazardous chemical in the item, the product name of the item, the specific operation(s) where an employee is or may be exposed to a physical or health hazard and the duration of employee exposure.

To ensure that citations of HCS for items that appear to be "articles" [redacted] are appropriate, the following elements must be included as documentation in the case file:

1. Document the hazardous chemical(s) and the concentration that was present in the item that employees were exposed to. Was the chemical on the employer's hazardous chemical

inventory?

Document the activities or operations that resulted in employee exposure to the hazardous chemical(s) in the item and the duration of use.

Attach the MSDS, where available, for the cited product, ie., does it define it as a hazardous chemical and any statements of its intended use(s)?

[redacted] If the hazardous chemical is an ingredient in a mixture, compliance officers shall identify in the citation the specific hazardous chemical(s) present, and the relative concentration(s) of the chemical(s) in the mixture. In addition, the specific operations where an employee is or may be exposed to a physical or health hazard and the duration of employee exposure shall also be identified.

Should you have any questions regarding this issue, please call Tom Galassi in the Office of Health Compliance Assistance at (202) 219-8036.

TOP 10 MOST FREQUENTLY VIOLATED STANDARDS, FY 92 - FY 95*

RANK	FY 92 STANDARD VIOLATED # VIOLATIONS	FY 93 STANDARD VIOLATED # VIOLATIONS	FY 94 STANDARD VIOLATED # VIOLATIONS	FY 95 STANDARD VIOLATED # VIOLATIONS
1	1910.1200 Hazard Communication 19,329	1910.1200 Hazard Communication 17,888	1910.1200 Hazard Communication 17,000	1910.1200 Hazard Communication 10,165
2	1926.059 Hazard Communication (Construction) 13,819	1926.059 Hazard Communication (Construction) 11,363	1926.059 Hazard Communication (Construction) 10,421	1910.147 Lockout/Tagout 4,700
3	1910.147 Lockout/Tagout 6,592	1910.147 Lockout/Tagout 7,080	1910.147 Lockout/Tagout 7,264	1926.451 Scaffolding 4,048
4	1910.219 Mechanical Power - Transmission Apparatus 4,904	1910.305 Wiring Methods, Components, Equipment for General Use 4,851	1926.451 Scaffolding 5,539	1910.305 Wiring Methods, Components, Equipment for General Use 3,457
5	1926.451 Scaffolding 4,812	1910.219 Mechanical Power - Transmission Apparatus 4,634	1910.305 Wiring Methods, Components, Equipment Apparatus 5,023	1910.219 Mechanical Power - Transmission Apparatus 3,355
6	1910.305 Wiring Methods, Components, Equipment for General Use 4,766	1926.451 Scaffolding 4,444	1910.219 Mechanical Power - Transmission Apparatus 4,530	1926.059 Hazard Communication (Construction) 3,315
7	1904.002 Injury Log 4,211	1904.002 Injury Log 4,257	1904.002 Injury Log 4,082	1910.132 Personal Protective Equip. 3,070
8	1910.134 Respiratory Protection 3,981	1910.1030 Bloodborne Pathogens 4,041	1910.212 Machine Guarding 3,964	1910.212 Machine Guarding 3,016
9	1910.212 Machine Guarding 3,866	1910.134 Respiratory Protection 3,881	1910.134 Respiratory Protection 3,956	1910.303 Electrical 2,548
10	1903.002 OSHA Poster 3,697	1910.212 Machine Guarding 3,813	1910.157 Portable Fire Extinguishers 3,643	1910.215 Abrasive Wheel Machinery 2,507

* FY 95 (as of September 22, 1995)
Source: OMDS IMIS Reports.

Most Frequently Cited OSHA Standard Sections
Fiscal 1994

	Standard Section 29 CFR	Standard	Subject	No. of Alleged Violations
1	1910.1200(e)(1)	✓HazCom/General Industry	Written Program	4,728
2	1904.2(a)	Recordkeeping	OSHA Log	3,944
3	1910.1200(h)	✓HazCom/General Industry	Information, Training	3,833
4	1926.59(e)(1)	✓HazCom/Construction	Written Program	3,463
5	1903.2(a)(1)	OSHA Notice	Posting	2,901
6	1926.59(h)	✓HazCom/Construction	Information, Training	2,277
7	1910.147(c)(1)	Lockout/Tagout	Energy Control Program	1,958
8	1910.212(a)(1)	Machine Guarding	Guarding Methods	1,887
9	1910.215(b)(9)	Abrasive Wheel Machinery	Guard Adjustments	1,737
10	1910.1200(f)(5)(i)	✓HazCom/General Industry	Container Labeling/Identity	1,729
11	1910.1200 (g)(1)	✓HazCom/General Industry	MSDSs	1,627
12	1910.151(c)	Medical Services/First Aid	Drenching Facilities	1,584
13	1910.1200(f)(5)(ii)	✓HazCom/General Industry	Container Labeling/Hazard Warnings	1,571
14	1926.21(b)(2)	Safety Training	Worker Instruction	1,541
15	1926.100(a)	Head Protection	Protective Helmets	1,412
16	1910.219(d)(1)	Power-Transmission Belts	Pulley Guarding	1,375
17	1926.59(g)(1)	✓HazCom/Construction	MSDSs/Provision	1,306
18	1926.500(d)(1)	Cranes and Derricks	Rated Load Marking	1,271
19	1926.59(g)(8)	✓HazCom/Construction	MSDSs	1,200
20	1910.147(c)(7)(i)	Lockout/Tagout	Worker Training	1,186
	1910.147(c)(4)(i)	Lockout/Tagout	Energy Control Procedure	1,184
	1910.212(a)(3)(ii)	Machine Guarding	Point of Operation	1,177
	1910.215(a)(4)	Abrasive Wheel Machinery	Work Rests	1,159
	1910.23(c)(1)	Floor/Wall Opening Guarding	Standard Railing	1,114
	1926.404(b)(1)(i)	Wire Design	Ground Fault Protection	1,029
	1910.305(b)(1)	Wiring Methods/Protection	Cabinets, Boxes, and Fittings	1,021
	1910.132(a)	Personal Protective Equipment	Provision, Use, Maintenance	1,008
	1910.1200(g)(8)	HazCom/General Industry	MSDSs/Maintenance	1,002
	1926.451(d)(10)	Tubular Welded Frame Scaffolds	Guardrails, Toeboards	985
	Section 5(a)(1)	General Duty Clause	Safe and Healthful Conditions	981

Total Number of Alleged Violations Cited in Fiscal 1994: 174,305

Mr. MARTINI. I guess this sums it up better than any questions I could ask. We are here today, and this is only some months ago, and we are talking about how do we avoid these excesses, and these are the types of excesses that I think are of great concern to employers, municipalities, and counties. I think this is clearly what we would refer to as a paperwork type of citation which is probably more cumbersome in your agency than actual substantive citations in many respects.

So I guess, first, my question is in the face of a very recent memorandum, what assurance do we have that this can be addressed purely through administrative oversight because it would seem to me that this is something that should have never even gotten to this point versus defining better what it is we are looking and overseeing. That is No. 1. Then, if we have time, I have another question, if I may.

Mr. DEAR. Hazard communication is enormously important because there are only chemical standard exposure limits for about 400-plus chemicals. Yet, there are about 50,000 toxic substances in use in workplaces. Hazard communication was developed as a way of providing information to workers and their employers about the nature of the substances they were working with, what signs of adverse health effects are and what first aid remedy. So, yes, you have to put it in paper, so it is paperwork, but this can be enormously important life-saving information.

We are reviewing and revising the enforcement of that standard, as you noted from the memorandum that we sent out. We have also asked our National Advisory Committee on Occupational Safety and Health to review the hazard communication standard altogether, and there is a work group that meets this week, in fact, to do that. Our advisory committee is a statutory labor-management public advisory committee. They have been given staff.

I think there are two problems with hazard communication. One is we haven't looked at opportunities to use information technology to ease compliance since the standard was developed, and there may well be ways of actually reducing the burden on small employers with technology solutions. Second, if you look at a material safety data sheet which is what is required, it is often very difficult to understand. So, in terms of getting useful information to the worker, there is an opportunity for improvement.

To demonstrate what we are doing, in 1994, we cited construction employers for 15,000 violations of the hazard communication standard. In 1995, we cited them 7,000 times. That is a result of our focused inspection and construction program in that emphasis.

So I am willing and I support the elimination of penalties which don't represent serious threats to worker health and safety, but I do not agree that failing to provide information about toxic chemicals to workers is a non-serious problem.

Mr. MARTINI. Mr. Chairman, may I just follow up for 10 seconds, if I may?

The problem I have is you are not addressing the lack of supervision of even the compliance officers. When they start to go out and issue citations for dish washing liquid and welding rods and lubricating oils and bricks and things like that, we all know there is a need for a certain amount of hazardous information in the

workplace, but this is the type of example firsthand that I saw all too often at the very local and municipal levels, and I don't know how we remedy that, and I don't think you could do it administratively. This is a current memorandum that strikes home.

Mr. SHAYS. If I could say, that was a long 15 seconds. My challenge is that what I would like to do is allow Members, if they would like to, to ask you a second round of questions and we keep it under 5 minutes. I would like to give you a chance to response if you would like, but I want to be now generous to my colleague on my right side to extend over 5 minutes. That is the challenge.

Mr. DEAR. If I could briefly respond because you get to a larger question here, how do you measure performance? Organizations perform according to the incentives that exist within them. OSHA's performance was measured primarily by looking at the number of inspections that were done, and then underneath that number, how many violations were found for inspection and how many penalty dollars we collected. That is what Congress budgeted.

What was the primary workload driver in our appropriation? Number of inspections. This existed over the Carter administration, Reagan, Bush, into the Clinton administration. The primary measurement of OSHA activity, since I don't think it was a result, was number of inspections.

I think we are here to reduce injury, illness, and death in the workplace. That is the output that we should be measured against.

So what I have done in OSHA is to take out what our own people call the numbers game, trying to get inspections, trying to get violation for inspection. Why were some employers cited for serious violations, for relatively minor and to the public seemingly nonsensical failures to provide information about common household products? Because it wasn't good inspection if you didn't get 4.2 violations.

That can be fixed administratively, and evaluations of performance of workers, supervisors, and me can be conducted accordingly.

Mr. SHAYS. I am learning as a new chairman that the way you get around the 5-minute rule is you basically ask all your questions in the first 5 minutes, and then you allow the gentleman to take the next 5 minutes to respond. I did want to give you an opportunity. You are only a freshman and you have learned that.

Mr. MARTINI. Thank you very much.

Mr. SHAYS. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

I would like to thank the Secretary for being here today, and I guess my experience in the private sector was during the 1980's before the reform, and I helped work and manage a printing company. I walked through our printing shop with OSHA inspectors. I received the impression, and I wasn't told, but they were just looking for violations.

I think the goal of what you are doing and the administration is doing is recognizing that you can't set a quota, and I know there was never an official quota, but I sure got that impression on two occasions during the 1980's, and that wasn't during this administration. That was during two previous administrations in the private sector.

I guess my concern was I was a legislature at that time. In Texas, we serve part time. This inspector knew very little about the printing industry. In fact, he was not concerned about what we were concerned about, people getting their hand caught into the press and things like that. They were looking for what I called minor violations, just to be able to write me up or write the business up. I was not the owner. I was the manager of it. I am glad you are changing that because, again, that was my experience during the 1980's, but I left that in 1990.

Let me get to some of your testimony that you did not get to give because of the time schedule. I was interested where you talked about the 1996 appropriations bill for both the DOL, HHS, and Education that passed our House in July; that it would slash enforcement programs by 33 percent?

Mr. DEAR. Yes.

Mr. GREEN. And it would result in a 50-percent reduction in the inspections?

Mr. DEAR. That is correct.

Mr. GREEN. I know my colleague mentioned the 50,000 more injuries a year, and we went over the numbers games that we talked about, whether it is every 60 years or 80 years or every 20 years, but you do have to have the ability to inspect just as a basis, but that is not going to cause a safe workplace in itself. It has to be other programs, and I think you are trying to institute that.

I am also serving on another committee. In fact, my colleague and I, Mr. Chairman, that is why we weren't here. We were in a hearing, and there were only a couple of Members there for that hearing on the Committee on Economic and Educational Opportunity.

In the remainder of your statement, you talk about H.R. 1834 that we will consider in that committee. It had been in effect in 1989. OSHA could have issued only a penalty of $10,800 for the explosion and fire that killed 23 workers at a Phillips 66 plant in Pasadena, TX.

I represent that plant facility, and I was there before and I was there after that plant exploded. Again, I was not in Congress at that time, but I represent that facility now. I represented across the Ship Channel at that time in the State Senate.

If H.R. 1834 passed, would that tragedy have happened? Again, I am honored to represent the Houston Ship Channel, but we also have a volatile product that we produce, and we have had explosions in the past.

In fact, a good friend of mine was a plant manager at a facility not close to the Phillips plant that caused death and injury, and that plant manager literally lost his friends in that. So it wasn't necessarily his fault, but somebody has to be overseeing, and that is a good company, and Phillips is, too, in a great many cases. Good companies do make mistakes.

In your testimony you are giving us today, if that bill passes this Congress with the explosion and loss of life at Phillips, there would only have been a $10,000 penalty?

Mr. DEAR. That is correct because the H.R. 1834 would prohibit OSHA from issuing penalties for violations under the general duty clause.

The general duty clause is a basic requirement that employer provide a workplace and a place of employment free of recognized hazard.

At the time of the catastrophe at Phillips, there was no standard which pertained specifically to the operation of highly hazardous chemical facilities. We do now have such a standard, the process safety management standard.

The only way we could conduct enforcement and sanction for that tragedy which killed 23 workers is under the general duty clause, and under H.R. 1834, no more.

In fact, under that bill, unless there is a serious injury or death, there would be no effective enforcement at all the first time OSHA visited. If we are there once every 60 years and the next visit is in the next century, the whole notion of prevention has turned on its head with that bill.

Mr. GREEN. I like the statistics you showed us with the Maine example. Again, as a business person, if there is some way to safeguard the workers that I happen to be working with, I want to do it and to have both the carrot and the stick, but you can't just go with the carrot. You have to have that stick every once in a while by slashing the appropriations a third and taking away that ability.

Again, as you have testified today, it is not the same as it was 5 years ago or even 4 years ago or maybe even 3 years ago with occupational safety, and I want to encourage you to continue that because the reason you see bills like 1834 and the effort from a lot of Members of Congress is a frustration with that program that we have perceived and some of us have actually experienced.

I have one last question, Mr. Chairman.

Mr. SHAYS. Let me just say for the record you are over your 5 minutes, but I would like to be fair to both sides here. Feel free to ask that last question.

Mr. GREEN. If you could tell someone in the business community who may not be in favor of turning OSHA into a consultive agency, and again, I like the idea of consulting, but I would also like, as a policymaker now, to make sure we still have that stick to go out and enforce those unsafe job sites that we know are out there.

Mr. DEAR. Consultation is important. You find an employer who has a problem. They need help working on it.

We have a grant program that operates in 44 States and provides assistance in the remaining States for a consultation program that provides services free of charge to small businesses in high-hazard industries. They are operated through programs in State commerce and labor departments.

Texas as a result of its worker's compensation reform has vastly stepped up the consultation assistance available to employers and made it a requirement for insurers doing business in the State to provide that kind of assistance, and that can be useful.

It is just a matter of common sense. If there is no enforcement, who is going to ask for a consultation? Some employers will, but a lot will just move that item down further on their priority list. They won't get to it. Something terrible will happen, and we will all feel that we have been let down.

Mr. Green, is Deer Park in your district?

Mr. GREEN. I have the industrial part of Deer Park. I have the Shell refinery.

Mr. DEAR. I visited the Shell refinery. I met with the labor-management committee there. They are keenly aware of the extremely low probability, but the high catastrophe potential of their operation, and they are an example of what happens when the labor union and a company decide they are going to work together, when management says we are going to listen to the voice of workers.

Those folks need encouragement, and they need recognition for their effort. There are other employers that need to know that the Government is keeping a sharp eye on them.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. SHAYS. Mrs. Morella.

[The prepared statement of Hon. Constance A. Morella follows:]

Statement of Congresswoman Constance A. Morella
Hearing: "OSHA: New Mission for a New Workplace"
Subcommittee on Human Resources and Intergovernmental Relations

October 17, 1995

I would like to commend you, Mr. Chairman, for holding this important oversight hearing regarding the Occupational Safety and Health Administration (OSHA). I also welcome Assistant Secretary (Joseph) Dear and extend my appreciation for his willingness to enlighten me and the members of the Subcommittee about the important role of OSHA and efforts to make his agency more effective.

Since it was created 25 years ago, OSHA has been instrumental in reducing workplace fatalities and preventing thousands of job-related injuries and illnesses. The injury and fatality rates have shown greater declines in industries where OSHA has concentrated its standards and enforcement activities. However, in areas where OSHA has not focused its energy and added attention, such as the federal workplace, health and safety hazards are causing a high rate of injuries and illness.

By law, every federal agency is required to establish an effective safety and health program. OSHA's Office of Federal Agency Programs (OFAP) oversees the implementation of these programs, which rely on voluntary compliance. While workplace hazards continue to grow, the staffing levels at OFAP have decreased. Budget constraints have limited OFAP's evaluations to two per year. This is a matter of great concern to me.

The lack of resources at OSHA, coupled with the failure by most agencies to evaluate their managers' performance in the area of health and safety, put federal employees at risk on a daily basis.

The health and safety concerns in the public sector mirror the private sector. Asbestos fiber release in buildings, Legionnaire's disease, accendental death due to poor training and supervision, and failure to properly ventilate machine shops are among the commonplace concerns in both the public and private work environments.

In the private sector as well as the public sector, a great number of workplace injuries are occurring in repetitive motion occupations, primarily where computer and video display terminals (VDTs) are used. In the federal sector, the workers most likely to sustain these injuries are women. We need to take reasonable steps to protect our federal workers.

I look forward to hearing testimony from our expert witnesses today. I especially would like to explore some of [redacted] my concerns about the federal workplace in the context of a refocused OSHA with Assistant Secretary Dear.

Mrs. MORELLA. Thank you.

Thank you, Secretary Dear, for your testimony. I know it is a very lengthy one that you have given all of us to peruse and to study.

I would like to just address a question with regard to Federal employees. I am certainly concerned about the health and safety hazard that our Federal employees face on a daily basis. According to a report from your agency, in 1991, there were more than 170,000 work-related injuries and illnesses in the Federal Government at a cost of more than $1.5 billion.

I would like to ask you what can be done to make our Federal environment safer for these workers, and add to that the fact that, for instance, in 1992, the American Federation of Government Employees, AFGE, conducted a study relating to repetitive motion injuries at the Social Security Administration. Among the results are: 78.4 percent of the employees surveyed experienced pain in their shoulders, arm, elbows and necks; 53.8 percent have had pain, aching, stiffness, burning, numbness; 56.5 percent wake up during the night. A lot of this is part of that carpal tunnel syndrome, and of course, most of the workers who experienced the injuries were women.

I just wondered if you were aware of that survey and if you would like to offer any comments with regard to the Federal environment for our workers.

Mr. DEAR. I am not aware of that survey specifically, but I must say that I am not surprised since the work activities of employees in Social Security Administration involving intensive keying all day long would produce the same sorts of injury we see for their counterparts in the private sector.

OSHA undertook one major enforcement action in the Federal sector in the past year. That was an investigation of the fire at the South Canyon, Glenwood Springs fire in Colorado, that took the lives of 14 fire-fighters. This was a very detailed, lengthy, and intensive investigation into the causes of that. It represented our most significant enforcement action in the past year.

I am happy to report that both the Department of Agriculture and particularly the Interior Department have taken our report to heart and are working hard to implement changes and to see that a tragedy like that doesn't occur.

My second observation, which probably should be the first, is I think public employers and Federal employers should have exactly the same obligation as private employers. After all, we are talking about workers, and the color of the check shouldn't make a difference in terms of the degree of protection those workers are afforded.

In many instances when OSHA interacts with Federal agencies, the agencies are responsive and will address the concerns, but there have been cases where those agencies have not. In those instances, OSHA has no enforcement ability at all. We can be ignored.

The administration supported reform of occupational safety and health law for the Federal sector to treat Federal employers the same as private sector employers, and I think that would be an appropriate step.

Otherwise, we are in the same predicament with the Federal sector as we are with the private sector. We have an enormous responsibility. There are many problems, and we have very limited resources to deal with them.

Mrs. MORELLA. Have you suggested any performance standards for managers at Federal agencies?

Mr. DEAR. We have at the Department of Labor.

It is outside my purview and my knowledge, but the way in which worker's compensation benefits are charged to the agency is not as responsive as private sector worker's compensation experience rating is. If that was fed into the budgets of the agencies, so that they had some more of the bottom line encouragement to manage prevention and disability management, I think it could be beneficial.

Mrs. MORELLA. It is going to be hard to do it financially, but I think certainly in terms of making sure that we do have some kind of performance satisfaction and guarantees, the Federal sector is appropriate.

I agree with you. I think the Federal sector should not be ignored as we are looking for standards in workplace safety.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentlewoman.

Mr. Fattah.

Mr. FATTAH. Mr. Dear, later on this committee is going to hear, at least it is evident by the written testimony, from someone who represents American workers, steelworkers, who says that what you do is important, in fact, that it saves lives.

He discusses in the written document that has been supplied to the committee that some 35 individual members died last year on the job, and 26 so far this year in various workplaces.

These cuts that are in the fiscal year 1996 budget and the legislative constraints around enforcement issues, as we all deal in a lot of Federal rhetoric, if you put what you have said about that in your testimony and what is going to be told to the committee a little bit later on, it seems pretty clear that what we are talking about is the fact that we are going to be jeopardizing the lives of American workers if this Congress continues to go in the direction that it is going relative to OSHA.

Is that a true statement? Is that an overstatement? What is your professional judgment?

Mr. DEAR. I agree with that. I think the consequence of gutting OSHA's enforcement capacity will be more injury and illness to American workers, and in the end, we won't be saving anybody anything, not the workers who will suffer the consequences of those injuries and illnesses for a lifetime and not their employers who will pay directly and indirectly for that, all in the name of saving $48 million which is the amount of the overall House cut.

Furthermore, that cut will inhibit our ability to move in the new direction we are trying to get to which will not only keep us at the present level of the prevention, but will augment that, that will increase it.

How can I do a VPP site evaluation to recognize excellence and just set up a model in a community of how to do it in the best

sense possible if all I have got resource to do is to go investigate accidents, fatalities, and catastrophes?

Mr. FATTAH. Let me go a little bit further. Most of your work, a lot of your work is in voluntary compliance and in technical assistance to companies, but in all good, there is some bad. Obviously, most employers want to provide a safe workplace.

I am very concerned about the cuts in enforcement. I am having difficulty with the numbers. You say on the one hand that you have a 33-percent cut and a 50-percent drop in inspections. If you could have us understand more clearly why those numbers are different, rather than a 33-percent cut in inspection.

Mr. DEAR. A 33-percent cut will force us to reduce our staff. When we reduce staff, it costs money. Basically, for every two employees I RIF, I have to RIF a third employee to pay the cost of the other RIF.

Because of the procedures that are established in conditions when employees are reduced, we have no control over who is left. It is a contractual and a legal obligation that we have to follow.

That means that as a function is closed down, those people lose their jobs, and they have a right, depending on their seniority, to other jobs in the organization. The displacement then can occur in different geographic locations, and we are obligated to pay the cost of the move as we should be, but the short-term consequence of this is that the immediate cut is much deeper than effect on operations.

Mr. FATTAH. So you have a budget cut on one side that hurts inspections. Are there also other provisions that cause you not to do inspections until there is some significant event that takes place before you can go out and do an inspection?

Mr. DEAR. There is a priority. A complaint of imminent danger requires an immediate response, a report of fatality or catastrophe, like the Pennzoil explosion in Pennsylvania yesterday. We have five or six people onsite right now. We drop everything and go there and begin to work to find out what happened.

So the priorities drive the work, and when you run out of workers to do the work, then everything beneath that becomes something that is not done, and one of the things that won't get done are proactive random inspections.

Mr. FATTAH. Let me thank you for your testimony.

In conclusion, I think it is of interest that we have American workers who are working every day who are paying taxes that help support an agency that hopefully in some important ways helps to protect their life and their health and that we think as a Congress that somehow that is not a good enough thing to do with their dollars, and I think it is unfortunate. I hope that we would find ways to restore these funds.

Thank you.

Mr. SHAYS. I thank the distinguished gentleman from Pennsylvania.

Mr. Scarborough.

Mr. SCARBOROUGH. Thank you, Mr. Chairman. I thank you for holding the hearing.

I would just like to followup. I certainly think it is a noble goal for Government to try to protect the life and health, but I think it is also important for us to do a balancing act where not only do

we protect workers' lives and health, but also protect their jobs and make sure that regulations aren't so overly burdensome that the business isn't put in jeopardy.

Let me say this. I had a visit with Monsanto in my district in northwest Florida, and Monsanto, I believe, is part of the VPP program. I couldn't get them to say anything bad about OSHA.

You are doing a good job in that area. They were extremely pleased with the program. It was like nothing I have ever heard from business, and I think you should be commended for that.

My concern has come, and I think many concerns echo the concerns that Mr. Green stated earlier. It comes more from small businesses, and I am sure that you recognize the problems there.

The White House Conference on Small Business has singled OSHA out just in June 1995 as one of their major obstacles.

Also, we had a meeting. I believe it was the Government Reform and Oversight Committee had a meeting with Vice President Gore a few months back, and the Republicans had their say first, the five or so that were there, and all of them were criticizing OSHA. Then the Vice President turned to the Democrats and basically was saying come on, I am waiting for the calvary to come in, and the Democrats all criticized OSHA. Obviously, Congressman Lantos wasn't there.

Anyway, you do recognize that there is a perceived adversarial problem between OSHA and small businesses, do you not?

Mr. DEAR. Oh, sure. I was at the Small Business conference and met with them.

I am very concerned about that. I don't think that the right to a safe and healthy place to work should be dependent on the size of your employer that the right extends to all workers regardless of where they work.

At the same time, we have to recognize that depending on the size of the firm, the internal resources available to the firm to deal with health and safety issues may be quite limited. For a new firm with a few employees where the entrepreneur is struggling every day, it is quite a challenge to stay in business.

The balance we have to find is how to reconcile that right of a worker to have a safe and healthful workplace and not to have a variable application of the law around the country with the different ability of firms to manage safety and health or other regulatory obligations.

Among a number of specific steps we are taking now, we are revising our penalty policy. We are saying that employers who demonstrate a commitment to health and safety through a plan, and it doesn't even have to be a written plan, but through a plan, such as a small contractor does a toolbox meeting before going to work, will get a significantly larger reduction in any penalty that they may have as a result of violation based on size and based on commitment. This is an expansion of existing reductions.

We have asked the Congress for more money for the grant program, which I described earlier, that provides free consultation assistance to small business and high-hazard industries as a way of getting information to them.

I have been trying to work with the insurance industry and with one or two insurers specifically who sell worker's compensation in-

surance to try to tap into the market incentives that exist to reduce injury and illness and reduce worker's compensation expense. So I think there are a host of issues.

One final thing, if I could point out, we are working with the home builders to write a simplified description of hazards in the home building industry, 10 pages, what are the major hazards that hurt construction workers and what is a simple, easy-to-understand, with pictures and diagrams, way that a home builder can comply. If you follow that guideline, you know you are not going to be in any serious problem if there is an OSHA inspection. We hope to finish that brochure or that pamphlet this fall and then use the association to distribute it to its members.

So I think there are a lot of things we can do to help small business, help them save money, help them be competitive, and also to ensure that workers are as safe and as healthy as they are entitled to be under the law.

Mr. SCARBOROUGH. You are aware of the fall protection provisions that right now appear to be in flux. It was at 16 feet. Now there is some talk that it is going to be lowered even below 16 feet to a point where some will have to wear harness protection while working on 1-story homes.

I know there is a rider to the Labor/HHS bill that takes care of that. I had understood that OSHA was reexamining that. Are you interested in going back and possibly changing your opinion on the 16-foot threshold? What is the status of that right now?

Mr. DEAR. We adopted a change to the fall protection standard involving construction, including home building, that took effect in February 1995. It set a standard of fall protection requirements beginning at 6 feet, not 16 feet. We did so because falls are the leading killer of construction workers.

We have worked in the standard that we adopted at that time to provide flexibility to home builders and to roofers to allow them to identify alternate means of protection.

We have been in further discussion since the standard took effect to clarify what it would take to demonstrate that alternative means, and we are actively discussing that now. We might be prepared to consider reopening the rule to provide assurance in the regulatory text and the preamble as to how the standard will apply in the home building industry, and as I say, that is a discussion which is continuing at this time.

I would note that the rider that the House placed on our appropriation for this year not only took the fall protection standard that we changed back to 16 feet. It swept other fall protection standards for opening stairwells and other things to 16 feet which was actually worse than what existed before. So it actually would roll back standards well before the time that I acted to increase fall protection.

The bottom line here is I think we can work something out that will help prevent falls in the construction industry, but which will allow appropriate flexibility for the home builders, and I hope through further discussion we can resolve that without having to resort to congressional appropriations language.

Mr. SCARBOROUGH. Thank you.

Mr. SHAYS. I thank the gentleman.

I deferred my question until the end, and I would like to enable some of our other witnesses to come forward, but I want to ask you a few questions for clarification.

First off, independent workers, do they have to abide by any requirements you have if they are self-employed?

Mr. DEAR. No.

Mr. SHAYS. If someone is an independent contractor on a facility, let's just say building a home. They are a roofer or a two-man operation and they are both partners. Do they have to abide by any requirements?

Mr. DEAR. Sole proprietorships and partnerships do not define an employment relationship which would bring that activity under the Occupational Safety and Health Act.

Mr. SHAYS. Does having unclassified workers, misclassified workers present a challenge to you and OSHA?

Mr. DEAR. That has not arisen during my time with Federal OSHA. I administered a State plan before I came here, and I have experienced that issue whether or not there was an employment relationship which would create an obligation to comply with OSHA standards.

Mr. SHAYS. You have extraordinary rulemaking powers, and then you have the basic enforcement of the rules. Is it fair to look at those two as your primary responsibility? Is there another responsibility I should insert in there?

Mr. DEAR. Education, training, and recognition are the third part of our functions.

Mr. SHAYS. First off, I might just parenthetically say there have been questions about this hearing. There are some people wondering what is the intent of this hearing. Are we trying to go after OSHA? Is that the intent now when there have been budget cuts? Is it wise to have you before this subcommittee? I just would comment that you are in a very difficult situation of being asked to do more with less, but my sense is the direction your are headed is the direction that most Members of Congress would want you to head. And, that is to work on a cooperative basis with employers, so they can save lives, notwithstanding the challenge that Mr. Lantos makes that there are some employers who are simply going to want to cut corners and save dollars and, in essence, jeopardize their employees.

One of the things that has troubled me is that murder in the workplace is basically exempt from any real punishment. I can't think of more than one or two times in 20 years that anyone has been found guilty. I can think of very few. Let me put it that way, where they have been found guilty of murder in the workplace. Under Federal Statute the test is that you have to actually show intent to harm the employee. Have you looked at whether it would be advisable for us to make the standard a little easier? For instance, in the case of what happened in Waterbury, CT, when someone knows that their plant isn't ventilated and knows that an individual is going to be a night watchman who has no sense of what chemicals are being used, and that watchman suffocates and dies. That employee was murdered in my judgment, but based on our standard, we had to prove intent.

Have you looked at this issue of criminal statutes as it relates to this?

Mr. DEAR. Let me tell you of a case we recently handled. We got a conviction of an employer in Georgia who operated a tank washing company. The employer had asked for a consultation from the State of Georgia and received it and had purchased equipment for retrieval of workers from confined spaces.

After the consultation, the employer returned the retrieval equipment unopened. One of his workers subsequently entered a tank, was overcome by fumes, and died. He was prosecuted by the Department of Justice and found guilty of a gross misdemeanor. He received the maximum penalty under law of 6 months.

Mr. SHAYS. Misdemeanor?

Mr. DEAR. Gross misdemeanor, a 6-month period in jail, and a 100-and-some-odd-thousand-dollar fine. That is the most we could do under the Occupational Safety and Health Act.

Last year, we supported legislation which would have created felony penalties for willful violations involving the death of an employee. It was the provision of the bill which was most effectively used by employer opponents of the OSHA reform to scare employers into believing that OSHA would run rampant with criminal penalty authority and would terrorize the employer community, when all we sought to do was to assure in cases when the conduct was so gross and outrageous and so offensive to public decency that appropriate criminal sanctions were necessary.

U.S. Attorneys have got a lot of work to do, and you bring them a gross misdemeanor case and unless it is a really, really, really good case, they are not going to take it up.

Mr. SHAYS. Thank you.

I would offer any Member a question, if necessary, but I would like to encourage us to go forward.

Mr. Souder.

Mr. SOUDER. May I make a comment?

Mr. SHAYS. Sure.

Mr. SOUDER. I attempted to be very polite at first, and I don't really want to get into debate, but I do appreciate the difference between how you have answered some of the questions and how some people have made assertions or even in the written testimony assertions have been made about Congressman Ballenger's bill causing 30,000 more deaths. You, in fact, said it is likely to increase accidents. That is substantially different than putting a numerical number on it, and that it should be clear that we shouldn't have fake science masquerade as science; that in fact, your own numbers suggest that there is a lack of clarity.

We could put together a chart. There is a nearly perfect correlation that suggests that whatever industry you have been successful in lowering the abuse in, there has been a decline in jobs, and therefore, OSHA is causing a decline in jobs.

You can do a lot of things with charts that may not be representative. I think that we can argue about the merits of a bill. This is like having a public discussion over what a tolerance in actual should have in a car or a tolerance of what they should have in a tire because, certainly, there are going to be failures, and it is very difficult without making those of us who believe that there should

be reform which benefits the American workers with those of us who believe that your voluntary compliance efforts are worthwhile, and Congressman Ballenger's bill does a lot of that, are somehow being held personally liable for every death or every injury that occurs, and 62 percent are transportation, homicide or suicide which OSHA has very little to do with.

I commend your efforts to reform the agency. I commend, quite frankly, in personal response to questions, your carefulness in not doing that. I hope other Members of Congress are also careful with specific data and in your testimony that you would be a little more cautious about the nature of the claims, even though you are trying to defend your agency.

Mr. DEAR. I, of course, stand by my testimony and would be happy to go into the numbers at any time.

I must say, Mr. Chairman, how much I appreciate the opportunity to come to the committee and talk about the management of a Government agency and how to make it more effective. It hasn't happened in my 2 years here.

This is what really counts to the American people. I think they expect us to get our act together, to get Government and business and labor working together to solve their real problems, and being hurt or killed or permanently made sick on the job is a real problem for people. I think we can do a lot, and I appreciate this opportunity to describe how we are working on that.

[The information referred to follows:]

Souder

Clinton Administration "New OSHA" White Paper, Ballenger Bill Seek Similar OSHA Reform Goals

The Clinton Administration recently announced a major "Reinventing Government" initiative involving significant changes at the Occupational Safety and Health Administration. It is designed to address long-standing complaints about the way that agency has enforced the Occupational Safety and Health Act. More recently, Rep. Cass Ballenger has introduced major OSHA reform legislation. While the Administration's approach calls for administrative rather than legislative change, there is surprising similarity between the Administration white paper and the Ballenger proposal. A comparison of the White Paper's three sets of regulatory reform initiatives and related provisions from the Ballenger bill based on a House Opportunities staff summary follows:

Clinton White Paper	Ballenger Bill Summary
1. The New OSHA: OSHA will change its fundamental operating paradigm from one of command and control to one that provides employers a real choice between a partnership and a traditional enforcement relationship.	• Makes the Voluntary Protection Program (VPP) a central part of OSHA's overall program and mission.
— Nationalize the "Maine 200" concept (*i.e.*, using worksite specific data to help identify high-hazard workplaces; providing information to employers about effective safety and health programs; offering employers a voice in how they want to work with OSHA; ensuring management commitment and worker involvement; and modifying enforcement policies for high-performance employers).	• Creates a new Voluntary Compliance Program (VCP) allowing certified individuals to conduct advisory safety and health review for employers.
— Focused inspections for employers with strong and effective safety and health programs.	• Exempts employers who participate in the VCP from random inspections for up to one year following the review.
— Incentives for employers with safety and health programs.	• Protects and encourages employee participation committees or plans that address safety and health issues.
— Employee participation in safety and health efforts.	• Encourages the adoption of voluntary substance abuse programs.
	• Enhances protection for employees who bring safety and health concerns to the attention of the employer by beefing up antidiscrimination provisions.
	• Encourages employers to conduct internal safety and health audits without penalty from OSHA.

Labor Policy Association, Inc. • 1015 Fifteenth Street, NW • Washington, DC 20005 • Telephone 202-789-8670 • Fax 202-789-0064

Clinton White Paper

2. Common sense regulation: OSHA will change its approach to regulations by identifying clear and sensible priorities; focusing on key building-block rules; eliminating or fixing out-of-date and confusing standards; and emphasizing interaction with business and labor in the development of rules.

— Priority planning process (to identify priorities for agency action).

— A logical framework of basic building blocks .

— Improve, update, and eliminate confusing and out-of-date standards.

— Hazard communication and the right to know (focus on the most serious hazards, simplify material safety data sheets, reduce the amount of required paperwork, and improve the effectiveness of worker training).

— New approaches to new hazards.

— OSHA's involvement in nontraditional sectors.

Ballenger Bill Summary

- Amends OSH Act to include regulatory impact, risk assessment, and cost benefit reform.
- Requires risk assessment and cost/benefit analysis to be industry specific.
- Requires independent peer review of the economic and scientific basis for standards.
- Creates a petition process to review existing regulations.
- Improves the existing variance process by clarifying its use by the agency and employers.
- Consolidates existing government programs by merging MSHA with OSHA, and MSHRC with OSHRC, and by transferring training and certification functions of NIOSH to OSHA.
- Eliminates penalties for alleged violations of the general duty clause.

Clinton White Paper

3. Results, not red tape: OSHA will change the way it works on a day-to-day basis by focusing on the most serious hazards and the most dangerous workplaces and by insisting on results instead of red tape.

— Field office redesign—getting results and improving performance.

— Strengthen OSHA's partnership with state programs.

— "Quick fix": incentives for fixing hazards quickly.

— Compliance assistance through information technology.

— Measuring OSHA's performance.

Ballenger Bill Summary

- Reserves at least 50 percent of OSHA funds for consultation, training, education, and compliance assistance programs.
- Expands small business consultation program.
- Requires trained and experienced OSHA inspectors with knowledge of the industry or a clear understanding of the types of hazard under inspection.
- Requires employees who are aware of safety and health problems in the workplace to work with the employer to correct the problem prior to contacting the government.
- Codifies the "employee accountability" defense.
- Provides that a citation may be vacated if employer can prove that alternative methods are equal or more effective than those required by OSHA.
- Gives employers the opportunity to fix alleged safety and health violations prior to a citation.
- Specifies that a citation will be issued if a violation is not corrected.
- Revamps penalty system to eliminate arbitrary and subjective classifications.
- Bases penalties on objective formula and relates them to the seriousness of injuries caused by violations.
- Eliminates penalties for posting and paperwork violations unless they pose a direct threat to employees or the employer intentionally tries to mislead or deceive.

95-130

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

JAN 17 1996

The Honorable Christopher Shays
Chairman
Subcommittee on Human Resources
and Intergovernmental Relations
Committee on Government Reform and Oversight
U.S. House of Representatives
Room B-372 Rayburn Building
Washington, D.C. 20515

Dear Congressman Shays:

This is in further response to your November 1 letter requesting follow-up information to the Subcommittee's recent hearing on OSHA's reinvention initiatives. Several weeks ago, we sent you a document detailing the 17 egregious cases for which OSHA issued citations in fiscal year 1995. We are now providing comments on the summary prepared by the Labor Policy Association, Inc. (LPA) on Congressman Ballenger's OSHA reform bill.

As I emphasized during the Subcommittee's hearing, there is a fundamental difference between H.R. 1834 and our "New OSHA" initiatives. The bill would force drastic changes in OSHA's enforcement program, diminishing essential protections and rights for the nation's workers. The LPA's document attempts to present "surprising similarities," yet their document is based on a committee staff summary of the bill rather than the actual legislative text. Thus, the comparison does not accurately reflect the true impact of H.R. 1834 on OSHA's ability to protect working men and women. Our response to the LPA's summary is contained in the attached table.

I appreciated the opportunity to present the Subcommittee with our approach to improving OSHA's performance and effectiveness, and I look forward to working with you to make the "New OSHA" a reality.

Sincerely,

Joe Dear

Joseph A. Dear
Assistant Secretary

Enclosure

OSHA's Comments on the Labor Policy Association (LPA)
Summary of the Ballenger Bill

Elements of LPA's Ballenger Bill Summary	OSHA Comments
[1] *(See note)* *"Makes the Voluntary Protection Program (VPP) a central part of OSHA's overall program and mission."*	OSHA strongly supports the VPP and believes the program is an excellent example of successful partnerships between business and government, and labor and management. ***The "New OSHA" will continue to support the VPP, building on the 86% increase in participation achieved from 1993 to 1995.***
"Creates a new Voluntary Compliance Program (VCP) allowing certified individuals to conduct advisory safety and health review for employers." *"Exempts employers who participate in the VCP from random inspections for up to one year following the review."*	In response to the recommendations of the National Performance Review, OSHA agreed to study a third party certification system. In July 1994, the Agency discussed the recommendation with a large group representing labor, business and other professionals. The participants raised serious legal and resource concerns which need to be discussed further before OSHA could consider such certification and exemption programs. These provisions, as detailed in the bill, raise a number of specific concerns including: (1) the requirement that only "serious hazards" be corrected; (2) the conflicts of interest created when consultants, paid by a company, are expected to approve that company's program; (3) the possibility that employers may falsify records and audit data (similar to the unintended consequences of OSHA's "records check policy" in the early 1980's;) and, (4) the resource demands of establishing and maintaining a viable certification program. (Cont'd on next page)

[1]These excerpts from the LPA's summary do not match adequately with the actual provisions of H.R. 1834.

Elements of LPA's Ballenger Bill Summary	OSHA Comments
(Cont'd) *"Creates a new Voluntary Compliance Program (VCP) allowing certified individuals to conduct advisory safety and health reviews for employers."* *"Exempts employers who participate in the VCP from random inspections for up to one year following the review."*	OSHA's VPP and SHARP programs do grant exemptions from programmed inspections to the participants, but only after a rigorous on-site review by trained OSHA professionals and assurance of effective, fully implemented programs which feature worker participation, among other elements. ***The "New OSHA" and our State Plan partners have begun to explore the concept of third-party certification through pilot programs. The results of these experimental efforts will be evaluated for their success in leveraging resources and ensuring workers' safety and health.*** ***The "New OSHA" will maintain its focus on preventing workplace injuries and illnesses through a credible enforcement program. The "New OSHA" is not about offering employers exemptions, penalty reductions, defenses or other relief at the expense of workers' rights to safe and healthy workplaces. Incentives will be offered to employers who take genuine steps to fulfill their responsibilities under the OSH Act.***
"Protects and encourages employee participation committees or plans that address safety and health issues."	The Administration opposes provisions to amend the National Labor Relations Act. Such changes in this protective labor law would permit employers to dominate, or interfere with, any labor organization or employee involvement mechanism, undermining employee protection. OSHA has learned much from the experience of its VPP participants, companies that have been recognized for excellence in workplace safety and health. These employers insist that their success depends on cooperative partnerships with their workers--a model for all employers to follow. Since workers themselves are keenly aware of the hazards to which they are exposed, they play a fundamental role in preventing workplace injuries and illnesses. ***The "New OSHA" will ensure that its programs encourage and foster employee participation, without sacrificing other important worker rights.***

Elements of LPA's Ballenger Bill Summary	OSHA Comments
"Encourages the adoption of voluntary substance abuse programs."	The Administration supports a reasonable program of drug testing within a comprehensive workplace employee assistance program for certain "safety-sensitive" duties. H.R. 1834 in contrast, does not limit an employer's power to require drug testing. ***The "New OSHA" is grounded in the principle of protecting workers' rights to safe and healthy workplaces, balanced with the needs of those employers who strive to meet their responsibilities under the OSH Act.***
"Enhances protection for employees who bring safety and health concerns to the attention of the employer by beefing up antidiscrimination provisions."	OSHA supports strengthening anti-discrimination protection for workers. But, despite the bill's provisions to strengthen some protections, H.R. 1834 is a "net loss" for workers because it carves away at another basic right. This bill would require workers to notify their employers before contacting OSHA to complain about a dangerous condition, even if the worker faces an imminent danger or fears retaliation. This provision erodes workers' fundamental right to file a complaint in confidence. Even with the protections provided under the existing OSH Act, OSHA receives about 1,000 complaints per year from workers who believe they have been discriminated against for trying to improve safety and health at their worksites. ***The "New OSHA" will not abandon fundamental protections for workers, nor support proposals that discourage workers from raising legitimate safety and health concerns.***

Elements of LPA's Ballenger Bill Summary	OSHA Comments
"Encourages employers to conduct internal safety and health audits without penalty from OSHA."	OSHA opposes this provision. ***The "New OSHA" seeks to distinguish good actors, the majority of firms, and those who make genuine efforts to prevent workplace injuries and illnesses, from bad actors who disregard their workers' safety and health. Since OSHA knows that safety audits and hazard assessments are part of an effective safety and health program, OSHA supports employers who take such proactive measures, and will create incentives to encourage this practice.*** ***The "New OSHA" is opposed to this measure because it would limit OSHA's access to self-audit information. Reports from internal safety and health reviews are essential for effective enforcement.*** Employers who "find and fix" hazards have nothing to fear from disclosure of self-audit records; this provision of H.R. 1834 would benefit employers who identify hazards but choose to ignore them. ***In addition, the "New OSHA" seeks to reward employers who are proactive in workplace safety and health. Legitimate records of self-audits, coupled with other measures, demonstrate an employer's good faith, making them eligible for incentives like penalty reductions or limited-scope inspections.***

Elements of LPA's Ballenger Bill Summary	OSHA Comments
"Amends OSH Act to include regulatory impact, risk assessment, and cost-benefit reform." *"Requires risk assessment and cost-benefit analysis to be industry-specific."*	OSHA opposes this provision. The Administration fully supports and, in fact, requires regulatory decisions based on solid data, and thorough analyses of risks, costs, and benefits. OSHA's economically significant regulations are routinely based on analyses of this kind. At a recent congressional hearing, the Small Business Administration's Chief Counsel for Advocacy reported that the current Executive Order for regulatory procedures has been more successful than previous such Orders in reducing economic burdens because it actually requires special consideration for small firms. Industry-by-industry analyses at the 4-digit SIC level would impose an incredible administrative burden on OSHA, diverting resources that would not add to the quality of its final rules. Of greater concern, however, is that the new procedural steps would delay the protection provided to workers by OSHA's safety and health rules. Moreover, if OSHA failed to meet all of the prescriptive analyses for each industry, it would be barred from enforcing a rule even if workers in those industries face significant hazards. ***The "New OSHA" is reducing regulatory burdens by proposing to eliminate hundreds of pages of regulatory text, rewriting rules in plain English, and working extensively with representatives of business and labor as it considers and drafts new protective standards.*** ***The "New OSHA" will continue to be held to a strict legal test for rulemaking, one mandated by the OSH Act and interpretations by the U.S. Supreme Court. For years, OSHA has been required to prove that workers are exposed to a significant risk, that the regulation in question would substantially reduce that risk, and that the standard would be technologically and economically feasible.***
"Requires independent peer review of the economic and scientific basis for standards."	OSHA opposes this provision. A costly, formal peer review process would add little to the soundness of OSHA's existing rulemaking process, or the quality of its final rules. ***The "New OSHA" will continue to use its unique public hearing process for rulemaking. The current process allows an unlimited number of participants to provide their views and data, and cross-examine OSHA staff, expert scientists, economists and others. When more traditional peer review is warranted for certain regulatory proposals, OSHA convenes panels of experts.***

Elements of LPA's Ballenger Bill Summary	OSHA Comments
"Creates a petition process to review existing regulations.	OSHA opposes this provision. ***This provision could spark a flood of petitions, halting the "New OSHA's" efforts to develop rules addressing new hazards or revising outdated or complicated rules.***
"Improves the existing variance process by clarifying its use by the agency and employers."	OSHA opposes this provision. Individuals would be enticed to flood OSHA with variance requests in order to circumvent OSHA regulations. Without additional resources to review such requests, OSHA might be unable to act within the 90 day time limit. This would allow employers to follow their own procedures which may not be as protective as those required by OSHA's protective standards.
"Consolidates existing government programs by merging MSHA with OSHA, and MSHRC with OSHRC, and by transferring training and certification functions of NIOSH to OSHA."	The Department opposes this provision. Protections for miners would be sacrificed dramatically since the bill would repeal most of the Federal Mine Safety and Health Act of 1977, including the requirement for most mandatory mine inspections. The Department opposes this provision. Without NIOSH's expertise, OSHA would have difficulty establishing the extent of risk posed by particular hazards. Elimination of NIOSH would profoundly undermine the safety and health of workers.
"Eliminates penalties for alleged violations of the general duty clause."	OSHA opposes this provision. The threat of an OSHA penalty against an industry-recognized but unregulated hazard motivates many employers to take steps to protect their workers. OSHA has used the general duty clause to cite employers for dangerous conditions when a specific standard was not yet published, or even when formal rulemaking has not yet begun (e.g. repetitive motion injuries in the meatpacking industry, dangerous exposure to lead in construction, and asphyxiation in confined spaces.) ***The "New OSHA" will uphold a promise Congress made 25 years ago to America's working men and women that they have a right to workplaces that are free from recognized hazards that cause or are likely to cause death or physical harm. At the same time, OSHA will enforce the general duty clause only for hazards recognized by the employer or its industry and which feasible means of abatement exist.***

Prepared by OSHA, December 8, 1995

Mr. SHAYS. You have a very difficult job. I have been noticing that you can get it from both sides. I think you have been a wonderful witness. I have tremendous admiration for the job you are doing, and I just want to encourage you to keep doing it.

Mr. GREEN. Mr. Chairman?

Mr. SHAYS. Mr. Green.

I knew Mr. Souder's comments might bring a comment on the other side.

Mr. GREEN. Mr. Souder, I appreciate the comment about using statistics, particularly in your statement. In here, the 62 percent was transportation, homicide or whatever. I would like to see those numbers validated, also.

Mr. SHAYS. But not now.

Mr. GREEN. But not now.

Anyway, I think there are differences of opinion, but I think you are heading in the right direction because a lot of our frustration is with OSHA and sometimes Government in general.

Mr. DEAR. Thank you, Mr. Chairman.

Mr. SHAYS. I thank you very much for coming.

I would at this time ask the second panel to remain standing, and they will speak in this order, Cornelia Blanchette, Lee Anne Elliott, and Glenn Rondeau. This is our second panel, and if you would remain standing.

Are we missing a witness? I see two. I had three witnesses. Do we not have Glenn Rondeau?

Are you Glenn?

Mr. RONDEAU. Yes.

Mr. SHAYS. And you will be joined by someone else?

Mr. RONDEAU. Yes.

Mr. SHAYS. But you will be testifying, correct?

I am sorry. This is James Hamilton.

Both of you will be giving testimony or one?

Fine. I am sorry. If you would raise your right hand.

[Witnesses sworn.]

Mr. SHAYS. For the record, I would note that all of our witnesses have responded in the affirmative.

Please come up. Mr. Hamilton, you are in the middle there.

Could I ask you to identify yourself for the record?

Mr. JESZECK. Yes. I am Charlie Jeszeck. I am the Assistant Director for Education and Employment with the General Accounting Office.

Mr. SHAYS. Thank you, Mr. Jeszeck. It is nice to have you here. Please feel free to come forward.

I am going to be a little more strict, even though we have fewer Members here now, on testimonies given.

We will start with our first witness, Ms. Blanchette.

STATEMENTS OF CORNELIA M. BLANCHETTE, ASSOCIATE DIRECTOR, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY CHARLES JESZECK, ASSISTANT DIRECTOR, EDUCATION AND EMPLOYMENT, U.S. GENERAL ACCOUNTING OFFICE; LEE ANNE ELLIOTT, EXECUTIVE DIRECTOR, VOLUNTARY PROTECTION PROGRAMS PARTICIPANTS' ASSOCIATION; AND GLENN RONDEAU, MANAGER OF SAFETY SERVICE, BOWATER/GREAT NORTHERN PAPER CO., ACCOMPANIED BY JAMES W. HAMILTON, PRESIDENT, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY

Ms. BLANCHETTE. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, we are pleased to be here today to assist the subcommittee as it looks for ways to help OSHA to determine how it should fulfill its role in ensuring American workers safe and healthful workplaces.

Since its creation 25 years ago, OSHA has made significant progress in achieving its mission. Today, I would like to comment on how employer and employee representatives view OSHA's mission and its accomplishment of that mission as well as how OSHA can enhance its efforts.

My discussion is based on work we have done over several years. Our work suggests that although OSHA has accomplished much during its fairly short history, its approaches to regulating workplace safety and health have sometimes been ineffective and frustrating for both employers and workers. What is needed according to employer and employee representatives we spoke with is a greater service orientation. This means improved communication with business and labor, including making information more accessible, and enhance cooperation with employers and workers throughout the regulatory process.

To its credit, OSHA has begun to take some positive steps to change its enforcement approach. Last year, we reported on employer and employee experiences with Federal workplace regulations, including Occupational Safety and Health standards. We found that both employer and employee representatives generally supported OSHA's mission as well as its general regulatory effort to implement that mission.

However, the agency's enforcement strategies do not always appear well-suited to the demands and challenges of today's work world. In our study of workplace regulation, we found that the employer and employee representatives we interviewed generally believed that: (1) communication between OSHA and firms and unions is poor, and OSHA does not always provide the accurate and complete information that firms and unions need to comply with OSHA's requirements; (2) OSHA relies on an adversarial, rigid, got-you approach rather than a more collaborative enforcement strategy; and (3) standards enforcement is unfair and inconsistent, in part, due to staff's lack of knowledge of regulations and how those regulations apply to specific business or industry operations.

Given these perceptions about OSHA, it is not surprising that many employer and employee representatives believe OSHA needs to take a critical look at the way it operates. Many suggest that

OSHA could foster greater compliance by increasing the amount of technical assistance it provides and better educating workers and employers about their rights and responsibilities. Some employers also suggest expanding OSHA's consultation assistance and expanding outside attendance at OSHA's training institute.

Some employers and union officials we talked to also identified a need for more and better-trained staff. However, given current budgetary realities and the large number of employers, this approach has severe limitations. We believe that other regulatory approaches that place greater responsibility on workers and employers for maintaining safe and healthful workplaces show greater promise.

As you can see from the suggestions that involve increasing or expanding existing services, OSHA has already taken some steps to be more service-oriented. One existing OSHA activity that appears to have enjoyed employer support is the voluntary protection program. Employers we interviewed support an expansion of this program. Other examples of positive initiatives include the Maine 200 program and a pilot project aimed at the expeditious abatement of workplace hazards in return for reduction in penalties.

In summary, there is a general consensus among both the employer and employee representatives we spoke to that OSHA continues to play an important role in providing for the safety and health of American workers. Although OSHA appears to be moving in the right direction, it is too early to fully assess the impact of the agency's actions.

In the interim, OSHA should be encouraged to continue its experimentation with new regulatory strategies that improve its service orientation and foster a less adversarial regulatory climate while not jeopardizing the safety and health of America's workers.

Mr. Chairman, this concludes my prepared statement, and I will be happy to answer any questions that you or the members of the subcommittee might have.

[The prepared statement of Ms. Blanchette follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Human Resources
and Intergovernmental Relations
Committee on Government Reform and Oversight
House of Representatives

5

For Release on Delivery
Expected at 2:00 p.m.
Tuesday, October 17, 1995

OSHA

Potential to Reform Regulatory Enforcement Efforts

Cornelia M. Blanchette, Associate Director
Education and Employment Issues
Health, Education, and Human Services Division

GAO/T-HEHS-96-42

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to assist the Subcommittee as it looks for ways to improve operations at the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA). Since its creation in 1970, OSHA has made significant progress in achieving its mission of assuring American workers safe and healthful workplaces. However, the ever-accelerating pace of technological change, increasing globalization of markets, and continually evolving employer-employee relations have created new demands and challenges for OSHA. You asked us to focus our remarks on the question: What should OSHA's role be today in ensuring American workers a safe and healthful workplace and how can that role be carried out in a cost-effective manner? More specifically, I would like to comment on how employers and employee representatives view OSHA's mission and its current strategy to protect workers and their perspectives on how OSHA can enhance its enforcement efforts. My discussion is based on work we have done over the years on OSHA's role in the regulation of occupational safety and health. (See app. I.)

In summary, our work suggests that although OSHA has accomplished more than may often be acknowledged during its fairly short history, its current approaches to regulating safety and health are in some cases dated and frustrating for both workers and employers. What is needed, according to employer and employee representatives we spoke with, is a greater service orientation.

This means improved communication with business and labor, increased employer and worker accessibility to compliance information, and enhanced cooperation with both business and labor throughout the regulatory process. By developing alternative regulatory strategies that supplement and in some instances substitute for its often confrontational labor-intensive enforcement approach, OSHA may be able to carry out its statutory responsibilities in a more effective manner. To its credit, OSHA has begun to take some positive steps to change its enforcement approach, although it may be too early to assess their effect.

BACKGROUND

The Congress enacted the Occupational Safety and Health Act of 1970 with the sweeping goal of

> "assuring so far as possible every working man and woman in the Nation safe and healthful working conditions."

The act marked the first comprehensive, nationwide regulatory program to prevent workplace injuries and illnesses. It requires employers in the private sector to (1) furnish employment and a place of employment that are free from recognized hazards that cause or are likely to cause serious physical harm or death to workers and (2) comply with occupational safety and health standards.

OSHA and the approved state-operated safety and health programs[1] set mandatory safety and health standards. Through its regional, area, and district offices, OSHA inspects private sector worksites, proposes penalties and prescribes abatement deadlines for employers found violating the standards or failing to meet their general duty to provide a safe and healthful workplace. Several other agencies assist OSHA in conducting its mission. The Bureau of Labor Statistics facilitates OSHA's enforcement by providing the agency with occupational injury and illness data by specific industry for the targeting of inspections. The National Institute of Occupational Safety and Health, within the Department of Health and Human Services, is responsible for conducting research to assist OSHA's promulgation of new safety and health workplace standards. Finally, the independent Occupational Safety and Health Review Commission provides an opportunity for review for those employers who wish to appeal the penalty assessments proposed by OSHA.

In fiscal year 1995, the Congress appropriated about $313 million to OSHA, which maintained a staff of 2,323, including about 1,900 field personnel in 107 offices. In total, federal OSHA and

[1]The act permits states, with OSHA's approval, to operate their own safety and health programs. The performance of the state programs is to be "at least as effective" as OSHA, and OSHA monitors the state programs to assure that they perform at that level. OSHA provides up to 50 percent of program costs to state programs. In fiscal year 1995, there were 23 state-operated programs for private sector employers and 2 additional states had state-operated plans covering only state and local government employees.

the state-operated safety and health programs had approximately 2,000 compliance officers to enforce standards in well over 6 million workplaces, employing about 97 million workers.

EMPLOYERS AND EMPLOYEES SUPPORT OSHA'S MISSION

Last year we released a report that collected information about actual employer and employee experiences within the existing framework of federal workplace regulation, including occupational safety and health standards.[2] To obtain this information, we used a case-study approach and interviewed a range of employers and employee representatives of 36 large and small businesses and employee organizations in over 20 industries with headquarters in 16 states and the District of Columbia. Six of the employers had fewer than 75 workers, 12 had more than 500 workers. Nine of the businesses had multistate operations and 9 had some workers represented by a union.

We found that both employer and employee representatives generally supported OSHA's mission as well as the general regulatory effort to implement that mission. For example, an official from a large retail company had a typical response, saying

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[2]Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994).

"[The Occupational Safety and Health Act] is a very important statute and has really contributed to the protection of employees in the workplace. . .. The [act] has really forced many corporations to change their health and safety practices in the workplace."

A representative from a large electronics manufacturer echoed this sentiment, saying he was

". . . absolutely convinced that OSHA's rules have reduced workplace injuries and illnesses. . .. For the company, OSHA provides a baseline standard with which the firm can judge its own program."

Union officials also supported OSHA saying that it provides a general baseline of protection for workers and supplements the protection that union members receive from collective bargaining contracts.

Although we have conducted only limited formal assessments of OSHA's effectiveness, in at least one area, employers have reported positive effects from OSHA's regulation. In our nationally representative study[3] of employer perspectives on OSHA's Hazard

[3]Occupational Safety and Health: OSHA Action Needed to Improve Compliance with Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991) and Occupational Safety and Health: Employer Experiences in Complying With the Hazard Communication Standard (GAO/HRD-92-63BR, May 8, 1992.)

Communications Standard (HCS),[4] one of the most far reaching and controversial of OSHA's regulatory efforts, 29 percent of the complying employers told us that they had replaced workplace chemicals with safer, less hazardous alternatives because of information they received under the regulation and 17 percent reported fewer workplace injuries because of the standard's requirements. This suggests a real improvement in the protection afforded to American workers.

EMPLOYERS AND UNIONS DISSATISFIED WITH OSHA'S CURRENT STRATEGY FOR ENSURING WORKERS' PROTECTION

Despite support for OSHA's mission and recognition of its contributions in protecting workers, the agency's enforcement strategies do not always appear well-suited to the demands and challenges of today's work world. In our study of workplace regulation,[5] we found that although firms of all sizes supported the need for the regulation of occupational safety and health, employers and workers were more concerned with how that regulation

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[4]HCS, issued by OSHA in 1983 to cover only manufacturing firms and extended in 1987 to all industries, requires the identification of workplace hazardous chemicals and the communication of information--typically through labels or material safety data sheets (MSDSs)--on these hazards to employees. It requires, among other things, that employers maintain a file of MSDSs on the hazardous chemicals they use in their business and to train their employees in the safe handling and use of hazardous chemicals.

[5]Workplace Regulation (GAO/HEHS-94-138, June 30, 1994).

was carried out than with the goals of the regulations themselves. For example, employers we interviewed generally believed that

-- communication between OSHA and firms and unions is poor and OSHA does not facilitate appropriate access to compliance information;

-- OSHA relies on an adversarial approach rather than a more collaborative strategy to enforce safety and health regulations; and

-- standards enforcement is unfair and inconsistent, in part due to staffs' lack of knowledge of regulations and how those regulations apply to specific business or industry operations.

Some employer and union representatives whom we interviewed reported difficulty getting information from federal OSHA or the state-operated OSHA programs and believed that they sometimes received inaccurate or incomplete information. For example, an official from a large oil refining company had a problem getting information from OSHA and said

> " maintaining the injury and illness records required by OSHA is largely not a problem. The difficult problem is determining which illnesses are OSHA-recordable illnesses. . . .; We feel that we cannot get a correct

answer from OSHA on this: we can call three levels there and get three different interpretations."[6]

Another company, a medium-sized fruit packing firm, reported that it made a number of informational inquiries to OSHA without ever receiving a response. Unions also described difficulties obtaining information. Officials from a local union representing hotel and restaurant workers claimed that they had difficulty obtaining information from the state OSHA regarding the inspection records of particular employers, even though they are public records.

Our past work on HCS[7] also provides evidence concerning how the lack of information available to employers affects compliance efforts with OSHA requirements. We found that almost 52 percent of employers of all sizes in the construction, manufacturing, and selected service industries reported that they were out of compliance with at least one HCS requirement. However, about 26 percent of all employers had little or no awareness of the regulation and, further, over one-half of those employers who said that they were aware of HCS were not knowledgeable about key requirements of the regulation.

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[6]OSHA does make information available to the public, and several years ago the Department of Labor began publishing a handbook on employer compliance requirements for OSHA and other statutes it enforces.

[7]Occupational Safety and Health (GAO/HRD-92-8, Nov. 26, 1991) and Occupational Safety and Health (GAO/HRD-92-63BR, May 8, 1992.)

Many employers whom we recently interviewed also believe that OSHA's attitude concerning its enforcement efforts contributes to an adversarial environment and discourages more constructive responses to safety and health issues. For example, an official of a large hospital said,

> "OSHA has conducted several inspections at our facility, which we believe were done on a 'gotcha' approach . . .. The hospital is not allowed to interpret regulations and standards for the situations at hand. The standards are enforced too rigidly."

Employers also believe that OSHA's enforcement is inconsistent across regions and that inspectors often appear to have inadequate training or insufficient knowledge of the work processes of a particular firm or industry. This was illustrated by the comments from an official from a large multistate manufacturer

> "The interpretation of standards by inspectors will vary from region to region; some are stricter than others. Because there is no single strict OSHA interpretation, inspectors can interpret the standards differently from state to state. We have been cited for a violation in one state that was acceptable in another state."[8]

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[8]Some of this inconsistency may be due to variations in practices across the state-operated programs as well as across different federal OSHA offices.

OPPORTUNITIES TO INCREASE OSHA'S SERVICE ORIENTATION MAY EXIST

Despite past successes, there is a growing concern that OSHA must take a critical look at the way it conducts its business to find more effective means of assuring workers a safe and healthful workplace. Consistent with this perspective, many employer and union representatives we interviewed expressed a belief in the need for OSHA to adopt a greater service orientation. For example, they suggested that OSHA make a greater effort to improve communication and provide more and better compliance information to both employers and to workers. Similar conclusions were reached in a recent study looking at ways to improve workplace practices and views of workers on workplace issues.[9]

Many employer and union representatives that we interviewed suggested that OSHA could foster greater compliance by increasing the amount of technical assistance it provides and better educating workers and employers about their rights and responsibilities. Some of the suggestions they made include (1) setting up toll-free hot-lines and computer bulletin boards to help employers and

[9]In March 1993, the President asked the Secretaries of Labor and Commerce to form a Commission on the Future of Worker-Management Relations to explore, for example, the extent to which the present legal framework and practices of collective bargaining could be enhanced to improve productivity and reduce conflict in the workplace. The Commission issued its final report in December 1994: Report and Recommendations: Commission on the Future of Worker-Management Relations, U.S. Departments of Labor and Commerce.

workers get information, (2) establishing information offices with staff who would answer questions, (3) providing more education and outreach services, and (4) publishing newsletters on regulatory developments.

Some employers also suggested expanding OSHA's consultation assistance and expanding outside attendance at OSHA's training institute.[10] An official from an employee leasing company raved

> ". . .. The best thing about OSHA is its consultative service; it's one of the last of the good deals. The consultants are former OSHA compliance officers, so they are very knowledgeable about OSHA regulations."

An official from a large oil refinery said

> "OSHA has allowed our staff to attend its training institute. This has been a very positive experience. . .. The price is reasonable, and the courses are excellent . . .. This is a good opportunity

[10]OSHA's consultation assistance is a free service available to employers who need help in establishing and maintaining a safe and healthful workplace. Assistance includes identifying and correcting hazards; appraising work practices; and developing and implementing workplace safety and health programs, training, and education. No penalties or citations are issued when consultants identify hazards and the employer's identity is not reported to OSHA's inspection staff. OSHA also operates a training institute where it provides training, primarily to agency staff, on various regulatory and inspection issues.

for industry representatives to discuss issues with OSHA's compliance officers in a non-adversarial way."

While some of these suggestions may be limited by existing budgetary constraints, they merit review and consideration.

Another existing OSHA activity that appears to have enjoyed employers' support is the Voluntary Protection Program (VPP). Employers we interviewed supported an expansion of this program, which is designed to recognize the success of employers who have integrated safety and health programs into their workplaces; who motivate other employers to do the same; and who promote cooperation between employers, employees and OSHA. Under VPP, in return for management developing a comprehensive safety and health program and demonstrating a serious commitment to safety and health, participants are not subject to programmed--targeted--OSHA inspections.

The participation of employers in VPP is completely voluntary. At this time, the program remains comparatively small. As of October 6, 1995, about 200 worksites, including both union and unorganized facilities, employing about 142,000 employees in about 30 states were enrolled in VPP. Most of these participating worksites are in manufacturing industries, especially chemicals, petroleum, and high-hazard industries like paper manufacturing. OSHA has stated that in cooperation with the employers

participating in the program, it is currently exploring ways to improve VPP's effectiveness.

Some employers and union officials we talked to also identified additional staffing resources--more and better trained staff--as a means to assure the adequacy and timeliness of OSHA's enforcement efforts. However, given current budgetary realities and its relatively large number of employers--currently OSHA has one compliance officer for about every 3,000 employers--there are limitations to this approach. In the future, faced with a decreasing workforce, OSHA may want to better focus its enforcement efforts to worksites that are more hazardous in nature. In addition, based on our past work,[11] we believe that other regulatory approaches that involve placing greater responsibility on workers and individual employers to maintain a safe and healthful workplace show great promise in enabling OSHA to fulfill its statutory mission more effectively. For example, in our review of employer worksite safety and health programs,[12] we determined that the

[11]For other options to improve OSHA's enforcement, standard setting, and education and outreach efforts see Occupational Safety and Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, August 24, 1990.)

[12]Worksite safety and health programs are essentially management systems for overseeing and controlling safety and health in the workplace. Components of such programs can include development of a written plan addressing workplace hazards and the means to control these hazards, worker training and education on health and safety, and employee involvement in the development and implementation of the program. OSHA issued voluntary guidelines for such programs in 1989 but has no regulation requiring the formation of such programs. See Occupational Safety and Health:
(continued...)

potential reduction in injuries and illness could likely justify the additional burden associated with their implementation, at least for high-risk employers. Although we did not review their effectiveness, we note that four states require or encourage the formation of joint labor-management health and safety committees and several Canadian provinces rely on such committees as a critical component in protecting workplace safety and health.[13] OSHA has issued voluntary guidelines on the formation of worksite programs and one of the components includes structuring employee participation such as labor management committees. As for expanding the role of employees, we identified increasing worker participation in OSHA's inspection process as one option to strengthen the role of workers in the regulatory process.[14]

OSHA, in some recent actions, has begun addressing the service-orientation and cooperative issues we have raised. For example, in 1993, OSHA initiated a pilot program in Maine where OSHA invited the state's 200 companies with the highest number of injuries to conduct self-inspections to identify workplace hazards and to develop worksite safety and health action plans. In return for such participation, OSHA would remove them from its primary

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[12](...continued)
Worksite Safety and Health Programs Show Promise (GAO/HRD-92-68, May 19,1992.)

[13]Occupational Safety and Health: Differences Between Programs in the United States and Canada (GAO/HRD-94-15FS, Dec. 6, 1993).

[14]See Occupational Safety and Health (GAO/HRD-90-66BR, August 24, 1990.)

targeted inspection list. About 90 percent of these firms agreed to participate in the program, and over the 18-month pilot period they detected over 95,000 hazards--three times the number detected during the previous 8 years of inspections. OSHA has also conducted a pilot project aimed at the expeditious abatement of workplace hazards--abatement before an inspection's closing conference--in return for a reduction in penalties.[16] We have not assessed either of these initiatives but they appear consistent with the goal of improving the agency's service orientation and fostering a more collaborative inspection process.

OSHA has also taken steps to change its focus on penalties mind-set. For example, it has proposed new regulations that would waive penalties for any employer with up to 250 employees who is found to have no significant (willful, repeated, or serious) violations of health and safety regulations. In addition, employers who already have implemented a worksite safety and health program will qualify for another program that would allow a reduction in penalties for significant violations.

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[16]On the issue of hazard abatement, we have urged OSHA to revise its procedures to verify the abatement of workplace hazards by requiring better evidence from employers that they have taken action. OSHA has taken some action in this area, issuing a proposed regulation in April 1994, and expects to issue a final regulation in December 1995. See Occupational Safety and Health (GAO/HRD-91-35, May 8, 1991), and Occupational Safety and Health (GAO/HRD-90-66BR, Aug. 24, 1990).

CONCLUSION

Based on our past work, there is a general consensus among both the employer and union representatives that we spoke to that OSHA continues to play an important role in providing for the safety and health of American workers. Although OSHA appears to be taking some steps in the right direction, it is too early to fully assess the impact of the agency's actions. In the interim, OSHA should be encouraged to continue its experimentation with new regulatory strategies that improve its service orientation and foster a less combative regulatory climate, while not jeopardizing the safety and health of America's workers.

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Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you or other Members of the Subcommittee may have.

For more information on this testimony, please call Charlie Jeszeck at (202) 512-7036 or Linda Stokes at 512-7040.

RELATED GAO PRODUCTS

Department of Labor: Rethinking the Federal Role in Worker Protection and Workforce Development (GAO/T-HEHS-95-125, Apr. 4, 1995).

Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops (GAO/HEHS-95-20, Nov. 2, 1994).

Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994).

Occupational Safety and Health: Changes Needed in the Combined Federal-State Approach (GAO/HEHS-94-10, Feb. 28, 1994).

Health and Safety: DOE's Implementation of a Comprehensive Health Surveillance Program Is Slow (GAO/RCED-94-47, Dec. 16, 1993).

Occupational Safety and Health: Differences Between Programs in the United States and Canada (GAO/HRD-94-15FS, Dec. 6, 1993).

U.S.-Mexico Trade: The Work Environment at Eight U.S.-Owned Maquiladora Auto Parts Plants (GAO/GGD-94-22, Nov. 1, 1993).

Mine Safety and Health: Tampering Scandal Led to Improved Sampling Devices (GAO/HRD-93-63, Feb. 25, 1993).

Risk-Risk Analysis: OMB's Review of a Proposed OSHA Rule (GAO/PEMD-92-33, July 2, 1992).

Hazardous Waste: A North Carolina Incinerator's Noncompliance With EPA and OSHA Requirements (GAO/RCED-92-78, June 30, 1992).

Occupational Safety and Health: Worksite Safety and Health Programs Show Promise (GAO/HRD-92-68, May 19, 1992).

Occupational Safety and Health: Options to Improve Hazard-Abatement Procedures in the Workplace (GAO/HRD-92-105, May 12, 1992).

Occupational Safety and Health: Employers' Experiences in Complying With the Hazard Communication Standard (GAO/HRD-92-63BR, May 8, 1992).

Occupational Safety and Health: Penalties for Violations Are Well Below Maximum Allowable Penalties (GAO/HRD-92-48, Apr. 6, 1992).

Occupational Safety and Health: OSHA Action Needed to Improve Compliance With Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991).

Occupational Safety and Health: Inspectors' Opinions on Improving OSHA Effectiveness (GAO/HRD-91-9FS, Nov. 14, 1990).

Occupational Safety and Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

Occupational Safety and Health: California's Resumption of Enforcement Responsibility in the Private Sector (GAO/HRD-89-82, Apr. 17, 1989).

Occupational Safety and Health: Assuring Accuracy in Employer Injury and Illness Records (GAO/HRD-89-23, Dec. 30, 1988).

Whistleblowers: Management of the Program to Protect Trucking Company Employees Against Reprisal (GAO/GGD-88-123, Sept. 22, 1988)

OSHA's Resumption of Private Sector Enforcement Activities in California (GAO/T-HRD-88-19, June 20, 1988).

OSHA's Monitoring and Evaluation of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

(205309)

Mr. SHAYS. Thank you very much.

Ms. Elliott.

Ms. ELLIOTT. Thank you.

Good afternoon. My name is Lee Anne Elliott, and I am the executive director of the Voluntary Protection Programs Participants' Association. I want to thank Chairman Shays and this committee for the opportunity to discuss with you the Occupational Safety and Health Administration and OSHA's Voluntary Protection Programs' positive impact that they have on improving and promoting worker safety and health across this Nation.

The VPPPA commends OSHA's Assistant Secretary Joe Dear for his vision in recognizing the role and value of cooperative programs, including the VPP within the agency's efforts to assure worker safety and health.

Through the development of programs which encourage and recognize employers and foster partnerships between the Government and industry, the agency has adopted a more balanced approach, utilizing cooperative programs in conjunction with its more traditional enforcement efforts.

Under Mr. Dear's leadership, the number of sites participating in the VPP has more than doubled to its current level of over 230 facilities across the Nation.

Additionally, under his direction, VPP participants and OSHA have become true partners in reinventing Government. This effort was recognized this past month by Vice President Al Gore. Mr. Gore presented the administration's highest honor in its Reinventing Government program, the Hammer Award, to both the VPPPA and OSHA's VPP division for their contributions in providing a Government that works better and costs less.

The VPP is an outstanding example of how OSHA has developed partnerships with industry to encourage and recognize excellence and create models from which others can learn. Participation in the VPP fosters cooperation among labor, management, and the Government. This partnership, one of the most frequently cited benefits of VPP participation, results from the facility's desire to go beyond mere compliance, and OSHA's willingness to work with the site to enhance its safety and health performance.

Additionally, management commitment and meaningful employee involvement promote internal cooperation between these groups and are fundamental to participation in the VPP.

The VPP process shows results. VPP sites demonstrate the benefits of proactive approaches to managing worker safety and health. These benefits include lost workday rates that are 60-percent lower overall than the industry average, reduced worker's compensation cost, increased productivity, reduced absenteeism, and a cooperative relationship with the Government.

In addition to these benefits, VPP sites are recognized as proactive leaders in ensuring worker safety and health. All of these benefits combine to further enhance VPP participants' competitiveness in the global market.

An example of these results can be seen in the success of Mobil Corp. During the 3-year period that Mobil brought all of its chemical facilities into the VPP, recordable injuries fell by 32 percent.

Lost workday incidents declined by 39 percent. These reductions translated into financial savings of over $1.6 million.

Mobil's Joliet refinery in Illinois reported worker's compensation cost of $300,000 in 1989 when it began the VPP application process. When the site was approved to the VPP in 1991, its worker's compensation cost had declined by 89 percent to $34,000. Absenteeism has dropped by 25 percent, and the refinery's throughput has continued to exceed predictions.

The plant also extended the VPP concepts to its waste minimization effort and has reduced waste outhaul by more than 50 percent.

Another VPP site, Woodpro Cabinetry in Cabool, MO, is a small business with 100 employees. In 1992, before VPP participation, Woodpro Cabinetry had a lost time recordable rate of 22.4. The facility was accepted into the VPP this past year and currently has a year-to-date lost time recordable rate of 2.

The positive effects of the VPP reach well beyond the facilities that are participating in the programs. A survey conducted earlier this year by our organization to measure the impact on worker safety and health that the VPPPA and VPP sites have across the Nation indicated that more than three-quarters of a million employees have been reached.

Since this survey only included responses from one-fourth of the VPP sites currently participating, the numbers of employees actually impacted, we believe, is much greater.

OSHA also benefits greatly from its participation and involvement with the VPP. Agency representatives observe best practices in safety and health which they can then share with others as models and use in the development of more effective standards and policies.

As an example of this partnership, the VPPPA members and OSHA recently teamed together to train every OSHA field employee in safety and health program evaluation. This training initiative was an integral part of OSHA's own internal safety and health program.

During this time of leveraging, of Reinventing Government, and redesigning Government agencies, VPP sites have taken a proactive approach to working with OSHA to elevate its limited resources. VPP sites and OSHA have developed several cooperative efforts as a result of this partnership, including the VPPPA mentoring program, the special Government employee program, pro bono assistance to small businesses, and training initiatives.

The results of the VPP that I have shared with you today have been achieved at a cost to the agency of only .6 of 1 percent of its annual budget for 1995. With more resources devoted to these efforts, the positive impact on worker safety and health could be even greater.

The VPP demonstrates the dramatic success of the power of partnerships between Government and industry. The programs have had a profound impact on worker safety and health and play a crucial role in OSHA's reinvention effort and ability to achieve its mission.

Thank you.

[The prepared statement of Ms. Elliott follows:]

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TESTIMONY OF LEE ANNE ELLIOTT, EXECUTIVE DIRECTOR
VOLUNTARY PROTECTION PROGRAMS PARTICIPANTS' ASSOCIATION
BEFORE THE HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON
HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS
"OSHA: NEW MISSION FOR A NEW WORKPLACE"
OCTOBER 17, 1995

Good morning, my name is Lee Anne Elliott. I am Executive Director of the Voluntary Protection Programs Participants' Association (VPPPA). I would like to thank Chairman Shays and this Committee for the opportunity to discuss the positive impact the Occupational Safety and Health Administration's (OSHA) Voluntary Protection Programs (VPP) have on improving and promoting safety and health at worksites across the nation.

The VPPPA, a non-profit organization, is a leader in safety, health and environmental excellence through cooperative efforts among labor, management, and government. The members of the VPPPA are sites which are either participating in or have applied to participate in OSHA's VPP or the Department of Energy's VPP.

The VPPPA commends OSHA Assistant Secretary Joe Dear for his vision in recognizing the role and value of cooperative programs, including the VPP, within the agency's efforts to assure worker safety and health. Through the development of programs which encourage excellence and foster partnerships between government and industry, the agency has adopted a more balanced approach that utilizes cooperative programs in conjunction with its more traditional enforcement efforts.

Under Mr. Dear's leadership, the number of sites participating in the VPP has more than doubled to its current level of 230 facilities. Additionally, under his direction, VPP participants and OSHA have become true partners in reinventing government. This effort was recently recognized by Vice-President Al Gore. He presented the administration's highest honor in the reinventing government program, the Hammer Award, to both the VPPPA and OSHA's VPP Division for their contributions towards providing a government that works better and costs less.

The VPP are an outstanding example of how OSHA has developed partnerships with industry to encourage and recognize excellence and create models from which others can learn. Participation in VPP fosters cooperation among labor, management, and government. This partnership, one of the most frequently cited benefits of VPP

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participation, results from the facility's desire to go beyond mere compliance, and OSHA's willingness to work with the site to enhance its safety and health performance. Additionally, management commitment and meaningful employee involvement promote internal cooperation between these groups and are fundamental to participation in the VPP.

The VPP process shows results. VPP sites demonstrate the benefits of proactive approaches to managing worker safety and health. These benefits include lost workday incidence rates that are 60 percent lower than the industry average, reduced workers' compensation costs, increased productivity, reduced absenteeism, and a cooperative relationship with the government. In addition to these benefits, VPP sites are recognized as proactive leaders in protecting worker safety and health. All these benefits combine to further enhance VPP participants' competitiveness in the global market.

An example of these results can be seen in the success of Mobil Corporation. During the three year period that Mobil brought its chemical plants into the VPP, recordable injuries fell 32% and lost workday cases declined by 39%. These reductions translated into financial savings of more than $1.6 million. Mobil's Joliet refinery in Illinois reported workers' compensation costs of $300,000 when it began the VPP application process in 1989. When the site was approved into the VPP in 1991, its workers' compensation costs had decreased 89%, to $34,000. Absenteeism has dropped 25%, and the refinery's throughput has continued to exceed predictions. The plant also extended VPP concepts to the Waste Minimization effort and reduced waste outhaul by 45%.

Another VPP site, Woodpro Cabinetry in Cabool, Missouri, is a small business with 100 employees. In 1992, before VPP participation, Woodpro Cabinetry had a lost time recordable rate of 22.4. The facility was accepted into the VPP this year and currently has a year to date lost time recordable rate of 2.0.

The positive effects of the VPP reach well beyond the sites participating in the programs. A survey conducted earlier this Spring to measure worker safety and health impact the VPPPA and VPP sites have on employees across the nation indicated that more than three-quarters of a million employees have been reached. Since this survey only includes responses from one-fourth of the VPP sites, the number of employees actually impacted is much greater.

OSHA also benefits greatly from its involvement with VPP sites. Agency representatives observe best practices in safety and health which they can then use as a

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model to share with other employers and use in the development of more effective standards and policies. As an example of this partnership, VPPPA members and OSHA recently teamed together to train every OSHA field employee in safety and health program evaluation. This training initiative was an integral part of the agency's redesign efforts.

During this time of reinventing government and redesigning government agencies, VPP sites have taken a proactive approach to working with OSHA to leverage its limited resources. The VPP sites and OSHA have developed several cooperative efforts as a result of this partnership, including the VPPPA Mentoring Program, the Special Government Employee (SGE) program, pro-bono assistance to small businesses, and training initiatives.

I would like to briefly expand on two of these programs. The VPPPA Mentoring Program assists worksites that are seeking assistance in developing or improving their safety and health programs. This effort is open to all worksites, and many go on to apply for VPP participation. An example of this program is an effort between OSHA, Exxon Chemical and the Small Business Administration (SBA) to assist small businesses with safety and health. Exxon Chemical in Linden, New Jersey, a VPP site, will mentor a group of four small businesses simultaneously as they each apply for VPP approval. More than 50 worksites have been assisted through the VPPPA Mentoring Program, which equates to safer and more healthful workplaces for more than 71,000 employees.

The SGE Program allows OSHA to leverage its resources by using qualified VPP site personnel for VPP onsite reviews at other facilities. While it is important for OSHA to maintain the leadership role in the VPP application process, this concept is evidence of the trust and partnership between VPP participants and OSHA.

The results of the VPP I have shared with you today have been achieved at a cost to OSHA of only six-tenths of one percent of its 1995 annual budget. With more resources devoted to these efforts, the positive impact on worker safety and health could be even greater.

The VPP demonstrate the dramatic success of the power of partnerships between government and industry. The programs have had a profound impact on workplace safety and health, and play a crucial role in OSHA's reinvention efforts and ability to achieve its mission. Thank you.

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Mr. SHAYS. Thank you very much.

Glenn Rondeau.

Mr. RONDEAU. Good afternoon. Mr. Chairman and members of the subcommittee, my name is Glenn Rondeau. I am manager of safety services for Great Northern Paper located in Northern Maine.

Joining me on my left is Jim Hamilton, president of Local 485, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and who is a fellow employee at Great Northern.

We are deeply honored to be invited to speak before this committee and discuss an innovative worker safety program that was the first of its type in the United States and involved the courage and trust of our company, our unions, and OSHA.

Our testimony before you is aimed at describing how a prescription for safety was developed within a company that suffered from the pressures of downsizing and hostile takeovers in a rapidly changing economic climate.

Great Northern Paper is almost 100 years old. It is comprised of two pulp and paper mills, a saw mill, the largest private hydro system in the United States, and just over 2 million acres of land in the State of Maine.

Through the years, its success was legendary throughout the pulp and paper industry. It was widely known for its quality paper products and dedicated work force, employing over 4,200 workers in the early 1980's. It was at this time that the company began to undergo change.

Great Northern's parent company began diverting capital for expansion to other States where opportunity was perceived to be better. The two mills in Maine began to age. Pressure to reduce costs led to wave after wave of reductions in the work force. Great Northern's parent company was the victim of a hostile takeover in 1990. The new parent company shopped off Great Northern selling the Maine operations to Bowater, Inc., at the start of 1992.

To employees, it was the third owner in 3 years, and employment that had been over 4,000, 8 years earlier, had already dropped to 2,000, with more layoffs on the way. Morale was poor among both union and salaried workers who perceived an uncertain future.

At the time Bowater purchased Great Northern in 1992, a union president filed a complaint with OSHA that a previous safety condition brought to the attention of Great Northern 10 years earlier had not been addressed. The complaint was more a cry for help than to cripple the company.

Through all the turmoil of the 1980's and early 1990's, safety had suffered, and with it, trust. The union president who has since retired wanted, along with the other unions, not to bring the new owners of the company to its knees, but to have OSHA motivate us.

Bowater had purchased Great Northern for the long term. It wanted to invest in its new properties and its work force without having to be fined for a violation it knew nothing about. It became clear to OSHA, the unions, and to Bowater that the typical wall-to-wall inspection was not the preferred path.

Here was an opportunity to try something new that would correct safety deficiencies and help restore cooperation and trust with all concerned. OSHA was looking for an employer who was willing to form a unique partnership with a Federal agency and with organized labor. The old carrot and the stick approach needed to be changed. Great Northern Paper was a perfect setting for the experiment.

OSHA, our unions, and representatives of the company sat down in 1992 and formulated a local emphasis program, or LEP–200, now known as the Maine 200 program. The goal was simple. Bring all of our facilities into safety compliance.

We developed a force that at one time exceeded over 150 to 160 people who are divided into teams that search for problems and then fix them. Every inch of our vast facilities were inspected. Every item identified as a potential or real safety problem was tracked by a complex computerized tracking system to assure that item was corrected. Progress reports were given to OSHA. This year, we expect the entire program will be completed.

Our employees have identified nearly 30,000 different items, and we are on target to correct all of them. The cost to date has gone over $32 million. At one point, we were spending about $250,000 per week. The value of this unique LEP–200 program has gone far beyond improving safety. It has become the foundation of a new relationship between Great Northern, its unions, and OSHA. Our employees and management will soon apply for OSHA's Voluntary Protection Program with the expectation of becoming, if not the first, among the first of the pulp and paper companies in the State of Maine to achieve that status.

The LEP–200 experience has shown us all that we have a cooperative partnership with OSHA instead of the adversarial relationships of the past. Most importantly, safety has been established as a continuing high-priority item by all involved. This unique program has benefited Great Northern with its unions, and our experience and success in involving them with the LEP–200 effort was the blueprint for dealing with other issues.

After the LEP–200 program was established, we received the cooperation of our unions in finding ways to reduce our operating costs by millions of dollars.

Our employees are now leading the way at developing goals and a mission for our company. They are redefining how our maintenance of our mills should be carried out. Our employees are now actively involved in plotting the future of Great Northern Paper.

This summer, this new spirit of cooperation and trust that had begun with OSHA's encouragement was best demonstrated when the company and the unions quickly and peacefully inked new 6-year labor agreements.

At this point, my colleague, Jim Hamilton, has a very brief statement on behalf of the unions at Great Northern Paper, and then we would be honored to answer any questions that you or others on the subcommittee may have.

Jim.

Mr. SHAYS. Thank you. Let me just say, Mr. Hamilton, I am sorry I didn't recognize that, of course, you are on my program to give testimony. I appreciate you being here. I realize that you are

co-partners in this effort, and we will be asking questions of you, just as we will the others here. Thank you for being here.

Mr. HAMILTON. Thank you, Mr. Shays.

I am very honored to be here, and my statement, all 14 union presidents at Great Northern have reviewed and concur with the statement you have just heard. An attachment of our signatures accompanies the document of testimony depicting the actual events and reflects the cooperative effort which all have been involved. This includes OSHA, Great Northern Paper Co., Bowater, Inc., the unions, employees, and management.

Mr. Shays, if you will allow me time, I would like to read this into the record. It is very short.

Mr. SHAYS. You may definitely do that.

Mr. HAMILTON. Thank you very much, sir.

"Honorable Christopher Shays and distinguished members, we, the undersigned 14 union presidents have read the attached document of testimony to be presented by Mr. Glenn Rondeau and Mr. James Hamilton on October 17, 1995. We are in agreement and have indicated by our signatures the attached document of testimony in good faith depicts not only the actual events historically, that it is accurate testimony which embodies and reflects the cooperative effort of which all have been involved, namely, OSHA, the company Great Northern paper Company, Bowater, Incorporated, with operations in Millinocket, East Millinocket, and Ashland, Maine, to include all employees, union, and management."

I would like to present this copy to you of the original signatures of this committee, and thank you very much.

[The prepared statements of Messers. Rondeau and Hamilton follow:]

MR. CHAIRMAN AND COMMITTEE MEMBERS:

WE ARE DEEPLY HONORED TO BE INVITED TO SPEAK BEFORE YOU ON OCTOBER 17, 1995. THIS DOCUMENT PACKAGE CONTAINS THE FOLLOWING RELATED TO OUR TESTIMONY:

INTRODUCTORY COMMENTS

COPY OF OUR ORAL PRESENTATION

COPY OF OUR MOST RECENT QUARTERLY REPORT TO OSHA (dated August 8, 1995 without attachments)

COPY OF OUR RECENT IN-HOUSE NEWSPAPER

COPY OF OUR "GNP FACTS"

INTRODUCTORY COMMENTS:

One of the concerns that is read in the media regarding opposition to volunteer programming as opposed to traditional programming is that volunteer programming may look good on paper, but they do not have OSHA's presence on the shop floor.

The Maine LEP 200 Program does not operate that way. It involves OSHA from the outset and throughout the process in a true partnership with on-site monitoring visits, Quarterly and other reports, training sessions and meetings.

The following information will give a good representation of how this program has worked for the betterment of all. We are proud of what we have accomplished in a short 2+ years through this program and are committed to the continuation of this success and harmony.

This success would not and could not have been accomplished with traditional OSHA techniques of enforcement with stiff penalties. Such techniques motivate on a short term only and while they may produce media headlines, they do not get at the true causes of accidents in most cases. Furthermore, traditional inspections force time consuming attention on those subjects on which OSHA can support citations in litigation, which is time and money consuming as well.

The volunteer approaches avoid this and enable everyone to work in harmony concentrating efforts in those areas where the efforts and monies will do the most good in terms of accident prevention. It enables prioritization and innovation rather than simply complying with the codes. And the process teaches and builds trust while creating long term program effectiveness..

When Bowater purchased Great Northern Paper in 1992, it was recognized that the safeness of the facilities and programs would need to be rebuilt. Bowater was faced with another more important problem than fixing these, and that was remotivating the people and restoring their confidence in themselves as well as earning their trust.

Faced with an OSHA complaint filed by one of the Union Local's President, the Unions, Company and OSHA could have taken the traditional approach and allowed a wall-to-wall inspection to take place. Such an inspection would have revealed a number of the problems (but not all) and would have resulted in multi-million dollar penalties in addition to the cost of fixing the identified problems.

Such an approach would have been less expensive than the thorough approach taken but, the process certainly would not have created harmonious relationships, which is what everyone wanted. Plus the new owner wanted to invest and rebuild and this meant find and correct not just some, but all of the problems; and create trust that will result in an energized and empowered workforce who will take the Company into the next century. This is what is occuring at Great Northern Paper.

We are deeply grateful to OSHA, our Unions and our employees for the courage to try a new approach. We encourage it to be adopted nationwide as it has worked, is working and will continue to work to continuously improve our operations as well as other employers participating in the Maine LEP 200. We are proud of our results, outlined in this report, and encourage similar voluntary programs.

Thank you for inviting us to tell our story. We look forward to meeting with you and assisting you on October 17th and beyond as you and/or others desire.

On behalf of Great Northern Paper and our fellow employees, we trust that we will be of assistance to you.

Sincerely,

Glenn L. Rondeau, C.S.P.
Manager of Safety Services
and Liason for the LEP 200
for Great Northern Paper

James W. Hamilton
President, Local 485
United Association of Journeymen and
Apprentices of the Plumbing and
Pipefitting Industry of the
United States and Canada

TESTIMONY BEFORE CONGRESSIONAL SUBCOMMITTEE ON
HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS
BY GLENN L. RONDEAU AND JAMES W. HAMILTON
OCTOBER 17, 1995
WASHINGTON D.C.

GOOD MORNING. MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE MY NAME IS GLENN L. RONDEAU, MANAGER OF SAFETY SERVICES FOR GREAT NORTHERN PAPER LOCATED IN NORTHERN MAINE. JOINING ME IS JAMES W. HAMILTON, PRESIDENT OF LOCAL 485 UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA AND WHO IS A FELLOW EMPLOYEE AT GREAT NORTHERN.

WE ARE DEEPLY HONORED TO BE INVITED TO SPEAK BEFORE THIS COMMITTEE AND DISCUSS AN INNOVATIVE WORKER SAFETY PROGRAM THAT WAS THE FIRST ITS TYPE IN THE UNITED STATES AND INVOLVED THE COURAGE AND TRUST OF OUR COMPANY, OUR UNIONS AND OSHA.

OUR TESTIMONY BEFORE YOU IS AIMED AT DESCRIBING HOW A PRESCRIPTION FOR SAFETY WAS DEVELOPED WITHIN A COMPANY THAT SUFFERED FROM THE PERILS OF DOWNSIZING, HOSTILE TAKEOVERS AND A RAPIDLY CHANGING ECONOMIC CLIMATE.

GREAT NORTHERN PAPER IS ALMOST 100 YEARS OLD. IT IS COMPRISED OF TWO PULP AND PAPER MILLS, A SAWMILL, THE LARGEST PRIVATE HYDRO SYSTEM IN THE UNITED STATES AND JUST OVER TWO MILLION ACRES OF LAND IN MAINE. THROUGH THE YEARS ITS SUCCESS WAS LEGENDARY THROUGHOUT THE PULP AND PAPER INDUSTRY. IT WAS WIDELY KNOWN FOR ITS QUALITY PAPER PRODUCTS AND DEDICATED WORKFORCE EMPLOYING OVER 4200 WORKERS IN THE EARLY 1980'S. IT WAS AT THIS TIME THAT THE COMPANY BEGAN TO UNDERGO

CHANGE. GREAT NORTHERN'S PARENT COMPANY BEGAN DIVERTING CAPITAL FOR EXPANSION TO OTHER STATES WHERE OPPORTUNITY WAS PERCEIVED TO BE BETTER. THE TWO MILLS IN MAINE BEGAN TO AGE. PRESSURE TO REDUCE COSTS LED TO WAVE AFTER WAVE OR REDUCTIONS IN THE WORKFORCE. GREAT NORTHERN'S PARENT COMPANY WAS THE VICTIM OF A HOSTILE TAKEOVER IN 1990. THE NEW PARENT COMPANY SHOPPED OFF GREAT NORTHERN SELLING THE MAINE OPERATIONS TO BOWATER INCORPORATED AT THE START OF 1992. TO EMPLOYEES IT WAS THE THIRD OWNER IN THREE YEARS AND EMPLOYMENT THAT HAD BEEN OVER 4,000 EIGHT YEARS EARLIER HAD DROPPED TO 2,000 WITH MORE LAYOFFS ON THE WAY. MORALE WAS POOR AMONG BOTH UNION AND SALARIED WORKERS WHO PERCEIVED AN UNCERTAIN FUTURE.

AT THE TIME BOWATER PURCHASED GREAT NORTHERN IN 1992, A UNION PRESIDENT FILED A COMPLAINT WITH OSHA THAT A PREVIOUS SAFETY CONDITION BROUGHT TO THE ATTENTION OF GREAT NORTHERN 10 YEARS EARLIER HAD NOT BEEN ADDRESSED. THE COMPLAINT WAS MORE A CRY FOR HELP THAN TO CRIPPLE THE COMPANY. THROUGH ALL THE TURMOIL OF THE 1980'S AND EARLY 1990'S SAFETY HAD SUFFERED AND WITH IT TRUST. THE UNION PRESIDENT (WHO HAS SINCE RETIRED) WANTED ALONG WITH THE OTHER UNIONS NOT TO BRING THE NEW OWNERS OF THE COMPANY TO ITS KNEES BUT TO HAVE OSHA MOTIVATE THEM. BOWATER HAD PURCHASED GREAT NORTHERN FOR THE LONG TERM. IT WANTED TO INVEST IN ITS NEW PROPERTIES AND WORKFORCE WITHOUT HAVING TO BE FINED FOR A VIOLATION IT KNEW NOTHING OF. IT BECAME CLEAR TO OSHA, THE UNIONS AND BOWATER THAT THE TYPICAL WALL TO WALL INSPECTION WAS NOT THE PREFERRED PATH. HERE WAS AN OPPORTUNITY TO TRY SOMETHING NEW THAT WOULD CORRECT SAFETY DEFICIENCIES AND HELP RESTORE COOPERATION AND TRUST WITH ALL CONCERNED. OSHA WAS LOOKING FOR AN EMPLOYER WHO WAS WILLING TO FORM A UNIQUE PARTNERSHIP WITH THE FEDERAL AGENCY AND WITH ORGANIZED LABOR. THE OLD CARROT AND THE STICK APPROACH NEEDED TO BE CHANGED. GREAT NORTHERN PAPER WAS A PERFECT SETTING FOR THE EXPERIMENT.

OSHA, OUR UNIONS AND REPRESENTATIVES OF THE COMPANY SAT DOWN IN 1992 AND FORMULATED A LOCAL EMPHASIS PROGRAM OR LEP-200 PROGRAM. THE GOAL WAS SIMPLE--BRING ALL OF OUR FACILITIES INTO SAFETY COMPLIANCE. WE DEVELOPED A FORCE THAT AT ONE TIME EXCEEDED 163 PEOPLE WHO WERE DIVIDED INTO TEAMS THAT SEARCHED FOR PROBLEMS AND THOSE THEN FIXED THEM. EVERY INCH OF OUR VAST FACILITIES WERE INSPECTED. EVERY ITEM IDENTIFIED AS A POTENTIAL OR REAL SAFETY PROBLEM WAS TRACKED BY A COMPLEX COMPUTERIZED TRACKING SYSTEM TO ASSURE THE ITEM WAS CORRECTED. PROGRESS REPORTS WERE GIVEN TO OSHA. THIS YEAR WE EXPECT THE ENTIRE PROGRAM WILL BE COMPLETED.

OUR EMPLOYEES HAVE IDENTIFIED NEARLY 30 THOUSAND DIFFERENT ITEMS AND WE ARE ON TARGET TO CORRECT ALL OF THEM. THE COST TO DATE HAS GONE OVER $32 MILLION. AT ONE POINT WE WERE SPENDING $250 THOUSAND PER WEEK. THE VALUE OF THIS UNIQUE LEP-200 PROGRAM HAS GONE BEYOND IMPROVING SAFETY. IT HAS BECOME THE FOUNDATION OF A NEW RELATIONSHIP BETWEEN GREAT NORTHERN, ITS UNIONS AND OSHA. OUR EMPLOYEES AND MANAGEMENT WILL SOON APPLY FOR OSHA'S VOLUNTARY PROTECTION PROGRAM WITH THE EXPECTATION OF BECOMING THE FIRST PULP AND PAPER COMPANY IN MAINE TO ACHIEVE THAT STATUS. THE LEP-200 EXPERIENCE HAS SHOWN US ALL THAT WE HAVE A COOPERATIVE PARTNERSHIP WITH OSHA INSTEAD OF THE ADVERSARIAL RELATIONSHIPS OF THE PAST. MOST IMPORTANT SAFETY HAS BEEN ESTABLISHED AS A CONTINUING HIGH PRIORITY ITEM BY ALL INVOLVED.

THIS UNIQUE PROGRAM HAS BENEFITED GREAT NORTHERN WITH ITS UNIONS. OUR EXPERIENCE AND SUCCESS INVOLVING THEM WITH THE LEP-200 EFFORT WAS A BLUEPRINT FOR DEALING WITH OTHER ISSUES. AFTER THE LEP-200 PROGRAM WAS ESTABLISHED WE RECEIVED THE COOPERATION OF OUR UNIONS IN FINDING WAYS TO REDUCE OUR OPERATING COSTS BY

MILLIONS OF DOLLARS. OUR EMPLOYEES ARE NOW LEADING THE WAY AT DEVELOPING GOALS AND A MISSION FOR OUR COMPANY. THEY ARE REDEFINING HOW MAINTENANCE OF OUR MILLS SHOULD BE CARRIED OUT. OUR EMPLOYEES ARE NOW ACTIVELY INVOLVED IN PLOTTING THE FUTURE OF GREAT NORTHERN PAPER. THIS SUMMER, THIS NEW SPIRIT OF COOPERATION AND TRUST THAT BEGAN WITH OSHA'S ENCOURAGEMENT WAS BEST DEMONSTRATED WHEN THE COMPANY AND THE UNIONS QUICKLY INKED NEW, SIX YEAR LABOR AGREEMENTS.

AT THIS POINT, MY COLLEAGUE JAMES HAMILTON HAS A VERY BRIEF STATEMENT ON BEHALF OF THE UNIONS AT GREAT NORTHERN AND THEN WE WOULD BE HONORED TO ANSWER ANY QUESTIONS YOU OR OTHERS ON THE SUBCOMMITTEE MAY HAVE. JIM.

(STATEMENT OF JAMES HAMILTON)

ALL 15 UNION PRESIDENTS AT GREAT NORTHERN HAVE REVIEWED AND CONCUR WITH THE STATEMENT YOU HAVE JUST HEARD. AN ATTACHMENT OF OUR SIGNATURES ACCOMPANIES THE DOCUMENT OF TESTIMONY DEPICTING THE ACTUAL EVENTS AND REFLECTS THE COOPERATIVE EFFORT OF WHICH ALL HAVE BEEN INVOLVED. THIS INCLUDES OSHA, GREAT NORTHERN PAPER, BOWATER INC., THE UNIONS, EMPLOYEES AND MANAGEMENT.

THANKYOU.

TO THE CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 21515-6143

HONORABLE CHRISTOPHER SHAYS AND DISTINGUISHED MEMBERS
OF THE SUBCOMMITTEE ON HUMAN RESOURCES AND
INTERGOVERNMENTAL AFFAIRS OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
104TH CONGRESS

HONORABLE MEMBERS,

WE, THE UNDERSIGNED 14 UNION PRESIDENTS HAVE READ THE ATTACHED DOCUMENT OF TESTIMONY TO BE PRESENTED BY MR. GLENN RONDEAU AND MR. JAMES HAMILTON ON OCTOBER 17, 1995. WE ARE IN AGREEMENT AND HAVE INDICATED BY OUR SIGNATURES THE ATTACHED DOCUMENT OF TESTIMONY IN GOOD FAITH DEPICTS NOT ONLY THE ACTUAL EVENTS HISTORICALLY, THAT IT IS ACCURATE TESTIMONY WHICH EMBODIES AND REFLECTS THE CO-OPERATIVE EFFORT OF WHICH ALL HAVE BEEN INVOLVED, NAMELY, O.S.H.A., THE COMPANY (GREAT NORTHERN PAPER CO., BOWATER INC., WITH OPERATIONS IN MILLINOCKET, EAST MILLINOCKET, AND ASHLAND MAINE.) TO INCLUDE ALL EMPLOYEES, UNION AND MANAGEMENT.

MR. H. JOHN DAVIS
PRESIDENT, LOCAL 12
P.O. BOX 1158
MILLINOCKET, MAINE 04462 John Davis

MR. DOUG ALLEY
PRESIDENT, LOCAL 24
49 LINCOLN STREET
MILLINOCKET, MAINE 04462

MR. TERRENCE LYON
PRESIDENT, LOCAL 37
P.O. BOX 292
EAST MILLINOCKET, MAINE 04430 Terrence Lyon

MR. GALEN HALE
PRESIDENT, LOCAL 152
HCR 86 BOX 2234
MEDWAY, MAINE 04460

MR. DAN MCGILLICUDDY
PRESIDENT, LOCAL 658
40 ORCHARD STREET
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MR. JAMES HAMILTON
PRESIDENT, LOCAL 485
RT. 1 BOX 401
GLENBURN, ME 04401

GREAT NORTHERN PAPER, INC.
One Katahdin Avenue
Millinocket, ME 04462-1398
(207) 723-5131
Subsidiary of Bowater Incorporated

BOWATER

August 8, 1995

Mr. C. William Freeman
Area Director
USDOL-OSHA
202 Harlow Street, Room 211
Bangor, Maine 04401

Dear Mr. Freeman:

Pursuant with CPL 2.1A, attached is our Quarterly Report dated August 8, 1995.

Please note in particular that this report contains detailed information concerning our status of Process Safety Management (PSM), Ergonomics, Digester Safety Relief, ISO 9002 and more.

The recent months have been a turning point in our programs and more importantly, in our relationships. Our hourly and salary employees, all of us, are working more closely in team atmospheres on a day-to-day basis. Many new committees and expanded membership of others are steadily causing improvements.

Our efforts continue to utilize employees who would have been laid off to do our abatement work, and we are currently increasing our efforts of implementing participative management with extensive employee involvement. Our employees are very actively involved in our ISO 9002 and Cost Assessment projects, and we are all excited about the levels of energy being displayed. As noted in the attached report, our labor/management safety committees have made big strides since the last Quarterly Report and streamlined the process of developing GNP Divisional safety policies. We are confident, with all of this energy, that we will reach our P-200 goals in 1995, and be ready for VPP status.

If you have any questions pertaining to the attached report and its appendix items, please do not hesitate to call.

Sincerely yours,

Robert W. Martin,
Manager of Manufacturing

encl

Distribution list on next page

Distribution:

R. Caron	J. Martin	Safety Survey Teams
R. Dickinson	M. Mckeague	All Union Locals Presidents
E. Doody	D. McNeil	Executive Safety Council - West.
R. Grondin	P. Noddin	Mutual Safety Committee - East
F. Knaut	R. Pepin	Safety Committee - Pinkham
J. Koller	G. Rondeau	Safety Committee - Woodlands
R. Kuran	G. Smith	
G. Manuel	B. Stetson	
G. Manuel		

SECTION 1 - INTRODUCTION

This document will serve to meet the requirements of the OSHA Augusta Area Office CPL2.1A, which requires quarterly progress reports under paragraph G5f. The format will address the four requirements of that paragraph as follows:

- Status of baseline comprehensive survey,
- Status of activities addressing survey concerns,
- Status of the development of the comprehensive safety and health plan described in the Action Plan, and
- Year-to-date incident rates for each facility; West Operations, East operations, Pinkham Lumber and Woodlands, using columns 2, 3, 4, 5, 6, 9, 10, 11, 12, and 13 from the OSHA 200 Log of Injuries and Illnesses. Note that employee numbers are also included. These numbers indicate an increase due to seasonal employees coupled with the reduction of salary workforce not yet fully achieved at this time.

Each section will be discussed separately and the Action Plan submitted on March 26, 1993 will be used as a point of reference.

SECTION TWO - UPDATES

The liaison for the Top Two Hundred program is:

Glenn Rondeau, CSP, Manager Safety Services
Great Northern Paper Company, Inc.
One Katahdin Avenue
Millinocket, Maine 04462

SECTION THREE - STATUS OF BASELINE COMPREHENSIVE SURVEY

ONE MILL CONCEPT FOR WEST AND EAST OPERATIONS

As reported in the last quarterly report, we are considering the West and East Operations as "one mill with a long walk between" and the management structure has been reorganized to reflect this. For the purposes of the TOP 200 Program reporting to you, we will continue to treat the two locations separately for statistical tracking and completion of HITs as we have in the past.

West Operation

The recent months have been a turning point in our programs and relations at West. The Committees are full of energy and are addressing their subject areas (topics and location areas) on a dynamic basis. In summary, things are getting accomplished with enthusiasm and with ever-increasing employee involvement.

The downsized Safety Survey Team (SST) continues to work toward total completion of the SST audit phase at West. The remaining SST is comprised of two hourly workers from the original SST reporting to Glenn Rondeau. The audit is essentially complete at West with all "new" items charged against operations rather than the OSHA P-200 Project. The abatement effort continues forward. There are nov 0 contractor and 0 GNP personnel involved full time in the abatement effort which is over 99% complete. The miscellaneous remaining items are being addressed through the Maintenance Department.

East Operation

The original structure of the SST at East continues to be one supervisor and two hourly SSTs. Their follow-up audit continues. There has been approximately 28 GNP personnel assigned to the abatement effort at East Operation and that effort is approximately 96% complete. Some fix-it employees have been assigned to the East Operation fix-it effort instead of being laid off and the total number of fix-it employees is 19.

Pinkham Lumber

The audit is essentially complete at Pinkham and repair work is ongoing with more than 99% of the identified work having been completed. Work is being done by existing employees.

Woodlands

The Woodlands Operation, principally their offices and maintenance headquarters in Millinocket, has been surveyed, approximately 65 HIT's identified and they have all been abated.

Project Status

The status of each team and each facility as a whole is delineated in the charts included herein. In order to prepare this report for timely submission, data was revieved to create the charts and graphs belov. Data was used for these documents from reports for the dates listed belov.

West and East Operations and Pinkham Total HIT Information Summary - Week Ending July 28, 1995.

Total HIT Summary by Team for East and West Operations - July 28, 1995

Using a recordkeeping start date of October 15, 1992, the West Operation is currently in the 145th week of the project; and a recordkeeping start date of December 1, 1992, the East Operation is in its 139th week of the project and a recordkeeping start date of January 1, 1993, Pinkham is in its 134th week of the project.

Progress charts for all three facilities are included in the Appendix of this report. The legend delineates which lines are the "actual" number of HIT's and which are the "estimated" number of HIT's from the beginning of the survey.

The charts indicate progress to date. West is significantly ahead of its projected HIT's identified and is on track with the number of HIT's repaired. The charts for East and Pinkham may be somevhat deceiving since the "Actual" lines appear to be behind schedule. This reflects the change in thinking sometime ago to be more attentive to correcting HIT's than to generating "numbers". Multiple HIT's were combined on single work orders which has made the charts look behind schedule even though they are likely on track with original estimates. In addition, the number of HIT's anticipated are substantially higher than first projected. The original estimate for West was for 6,000 HIT's and the total nov stands at 14,295 with many HIT's including multiple items. The HIT's ID line has flattened out as the survey has been completed and the program is nov in the abatement mode. Likevise for East, the original estimate was for 9,500 HIT's and the actual total nov stands at 13,771 which is up from the 13,732 reported in April. Please use the tables included here and the charts provided in the Appendix for a complete representation of the progress of the project.

The identification aspect of the project at West and Pinkham are essentially complete, but it is certain that additional HIT's will be identified and for that reason their percent of completion is stated to be 99%.

Total HIT Information Summary (As of July 28, 1995)

	West Act	West Est	East Act	East Est	Pinkham
Total Active HIT's	146	1	485	100	0
Total Completed HIT's	14,149	14,949	13,286	9,400	965
Total HIT's to Date	14,294	14,950	13,771	9,500	965
% HIT's Abated	99%	99.9%	96.4%	98.9%	99%

Total HIT Summary by Team For West Operation (As of July 28, 1995)

	Guarding	Electrical	Fire	Ind Hyg
Total Active HIT's	0	132	2	13
Total Completed HIT's	4,575	6,728	2,419	388
Total HIT's to Date	4,575	6,860	2,421	401
% HIT's Abated	99.9%	98.1%	99.9%	96.8%
% Completion Survey	99%	99%	99%	99%

Total HIT Summary by Team For East Operation (As of July 28, 1995)

	Guarding	Electrical	Fire	Ind Hyg
Total Active HIT's	88	386	2	9
Total completed HIT's	2,991	8,889	857	548
Total HIT's to Date	3,079	9,275	859	557
% HIT's Abated	97.1%	95.8%	99.8%	98.4%
% Completion Survey	99%	99%	99%	99%

Based on discussions with August Area Office, we are not supplying a summary report US DOL - OSHA P-200 Progress Report as was submitted previously. The same data is still being tabulated and can be used for future reports, if so needed and/or desired by you.

Appendices provided with this report include the following:

- Graphs for each facility titled Actual vs. Estimated HIT's ID'd and Fixed
- A table titled Great Northern Paper P-200 Timetable
- Charts titled OSHA Incident Rates by Location and Lost Time Case Incident Rates by Location and Severity Rates by Location.
- OSHA Injury/Illness record keeping log - 200 for East, West, Pinkham and Woodlands for 1995.
- Employee Evacuation Alarm System Schedule Timetable (ITEM G)
- Ergonomics Plan Update (ITEM I)
- Process Safety Management (PST) Projects Status (ITEM J)
- Emergency Response Table Top Drill Agenda (ITEM U)
- Safety Systems Evaluation (Bowater's self-examination status report ITEM BB)
- ISO 9002 (ITEM CC)
- Workplace Hand Accident Prevention (WHAP!) sample (ITEM DD)
- Batch Digester Safety Relief Report (ITEM HH)

The Actual vs. Estimated tables are explained above. The P-200 Timetable is provided as an overview of the total Safety and Health effort regarding identification and abatement of hazards, implementation of programs and long-term capital projects. This timetable was originally presented in the Action Plan and was updated in previous reports. The modifications to the time line frame for East and West was extended to the end of the second quarter of 1994. We found more concerns that need evaluating than we estimated and this takes time; even though we are ahead of schedule for total HIT's. A complete review at both East and West had concluded completion of the survey was possible by the end of June 1994, and that occurred. In order to accomplish this, we assigned (5) extra people from the West Operation to the East Operation, bringing the total to eight (8) for their survey. Additionally, we have assigned employees from the West Operation to assist in the fix-it portion at East to speed up the overall completion, to occur on or before December 31, 1995. Our commitment to this date continues and it looks like we will complete ahead of schedule. Therefore, we reverted back to our original completion date at East of September 30, 1995.

The information described and/or delineated above represents documentation for items #1 and #2 under paragraph (G)(5)(f) to address the status of the hazard identification survey and corrective actions.

Several charts in the appendix compare incident rates by location. The specific incident rate numbers are provided as a table and are also graphed. These are followed by copies of our year-end OSHA Injury/Illness Logs. Note these are reviewed annually to ensure accuracy. Also, please note that we have included in this report for the first time, charting of our downward trends on severity of our injuries. These rates are down substantially.

Other appendix items are the Timeline for the Employee Evacuation Alarm (Item G in this Report), Ergonomics Plan (Item 1), Process Safety Management (PSM) Projects Status (Item J).

As you are aware, we have curtailed some of our operations. There were 689 HIT's associated with these operations that were placed on hold following an initial review of the "to be curtailed operations." As the shutdown operations are cleaned up and/or stripped, further review is conducted to determine which, if any, of these HIT's need to be addressed as well as any situations created by the curtailment that may need a HIT and these are being resolved. Each of the 689 inactive HIT's associated with the curtailed operations have been tracked in the statistics reported elsewhere in this report until they are resolved. If you desire further information or have questions, please call.

Please be aware that we have recently concluded negotiations with our Trades and UPIU bargaining groups resulting in a six-year labor contract with each of the Trades and UPIU Union locals. Additionally, our organization has reorganized as previously discussed. We are in a transition stage at present time and will be for awhile on both of these subjects.

SECTION FOUR - STATUS OF COMPREHENSIVE SAFETY AND HEALTH PLAN

The original Action Plan addressed the overall problem of "culture" within the company where safety and health had been not as high of a priority under previous owners and continues to be brought to a level of paramount importance with Quality and Productivity. This concept is presented by the Bovater success triangle with Safety as the platform for the other two sides - Quality and Production. (See Appendix) To change the way people have worked for years and, more importantly, to change their attitude continues to be a difficult and time consuming task. In addition to dealing with the employment cutbacks, safety programs aimed at affecting a cultural change will continue to be a focus in 1995.

A major negative factor in changing the culture has been the employment cutbacks and the effect they have had on morale, as we have discussed. The P-200 Program is very costly with the extensive numbers of HIT's to abate and other efforts. Some continue to see this as extravagant spending in view of jobs being lost. Offestting these aspects has been the reorganizational changes coupled with the ratification of the labor agreements and the extensive safety committee involvements & empoverment. There is a genuine feeling of optimism that is spreading on a daily basis and morale is getting better.

Also when changing cultures and implementing safety as a condition of employment rather than an option, there is a certain amount of resistance to be expected. There have been cases in the past where this resistance had been severe enough to warrant discipline of the involved employees. As stated in the last Quarterly Report, there has been a decrease in this area. There continues to be threat of employee complaints to OSHA, however. To offset these factors, safety efforts continue to be increasingly more visible and many employee assistance and outplacement programs continue to be conducted to prepare and assist those employees laid off and their families. Also, the various safety committees are gaining in membership and frequency of meetings and the resourcing of these committees by Safety Services staff, although very time-consuming, is assisting in the "buying into" the changes.

A number of the issues that were presented in the Action Plan and previous quarterly reports will be discussed to give an update of where they stand.

1. Safety Organization

Page 11 to 14 of the Action Plan describe the establishment of a company-wide safety organization and a significant tool, the Personal Health and Safety Manual, that will help to make it work. The GNP Health and Safety Board (HSB) previously established and in the organizational stage did not succeed as envisioned. A new HSB was being created smaller in size, and considered to be more efficient and successful, it was decided not to have this HSB at all, but rather to empower the individual site location "central safety committees" to have abilitity to work collectively making the HSB unnecessary.

The crew level health and safety assistance is established and good results are being realized with area safety committees in place at West and a similar structure at East. Efforts are ongoing to enhance their effectiveness and establish the crew level safety person(s). The slow approach continues to be necessitated by the fact that there has been continuous job turnover and vacations throughout the Spring and Summer. All areas at West now have area safety committees meeting on a weekly basis to resolve their area concerns with good results. East also has an area safety concept in place.

Additionally, we now have in place sub-committees or Teams of the East and West "central safety committees". These Teams meet at their location and collectively to resolve/develop activities and policies withing their scope of function. They do this for their location individually and collectively for the Division. This activity replaced the the GNP HSB concept, which has been dropped as stated above. The safety committee teams are fast becoming the key ingredient of GNP safety systems programming and that is what is desired.

The Personal Health and Safety Manual is being distributed to all employees since January 20th. The safety and health pocket guide, that will serve as an overview of safety and health policies for the whole facility will be distributed to employees, contractors, vendors and visitors. It is to be titled "Bowater/GNP Safety and Health Pocket Guide." Target is November 1995.

2. Program Status

The status of several programs discussed in the Action Plan are as follows:

A. Hearing Conservation - Exposure surveys are complete for all facilities. All workers monitored have been notified in writing of the results of the survey and all those not monitored were notified of their representative exposures through departmental postings. The 1993 "Noise Hazards" directive has been re-emphasized and will soon be reissued to all facilities. It directs the use of hearing protection in all production and associated areas and also lists areas that will be double hearing protection required. Of equal importance is the fact that the directive includes procedures for ensuring that Workplace exposures are monitored, controlled and/or abated. Plans addressing abatement, where needed, will be put together in Fall of 1995 on a case-by-case basis. Update monitoring has been done and will continue to be done as needed on new, retrofitted or otherwise changed facilities and periodically to ensure they are current.

   During calendar 1995, the audiometric testing program continues to be improved with all employees being offerred audiometric evaluations. A testing van was brought on-site in July to facilitate this. Any deficiencies with baseline audiograms will be corrected and a new recordkeeping procedure will be implemented.

B. Hazard Communication Program - Chemical inventories have been completed for some time with current MSDS's now obtained for all three facilities. The collection process is ongoing and is 99% complete for the West Operation, 99% complete for the East Operation and nearly 100% complete for Pinkham Lumber.

Our intent is to distribute MSDS's by computerized system as you know. The request has been approved and Digital Equipment Company or DEC has been on site and is working up the implementation. Equipment and software is installed and the MSDSs are being data entered into the computer. On-line capability is expected in October/November. In the interim, any requests for MSDS's are referred through the safety and environmental departments and the SST where the master inventory of MSDS's currently resides.

E-Z Com™, has been selected to be used for hazard communication training and labeling and train-the-trainer has been done. The E-Z Com startup labeling and other materials have been received and overall training of all employees began January 20th at West Operations began at East Operations on March 31st. Installation of placards and labeling is ongoing at both West and East locations with West further along than East.

The New Chemical Approval and Substance Evaluation Request Form is working well. Any new product, including free samples, must be approved by three departments - safety, environmental and purchasing - before it can be brought into the facility. This new system continues to prevent the introduction of new products that would introduce high hazard chemicals. The system underwent its six-month review in June, and improvements were made. Further improvements are being made as we implement the EZ Com system.

Process Pipe and Tank Labeling - This program continues to be done utilizing in-house labor, and is steadily progressing to completion, although slower than if we used contractors. We continue with our desire to utilize our employees so that they learn their areas while placing the labels. The West Operation and the East Operation are both working towards completion. Many areas are complete, but there continues to be work needed elsewhere as information labeling is improved. This is an on-going subject as replacement of damaged or deteriorated labels will always be needed.

Related to this is the work being done in subjects of confined space, lockout tag-out, and general identification improvements of equipment controls, etc. Several approaches are being used to provide highly visible and easily read and understood labels or identification plates.

C. Confined Space - This program experienced additional review and upgrading in 1994. All confined spaces were revisited to make certain the appropriate spaces were reviewed and correct hazard determinations are being made. Extensive training took place in March, April and May just prior to a cold shutdown at the East Operation to get as many supervisory and other personnel involved as possible. The training was very well received and has led to many employees questioning the work to be done in areas that may be confined spaces before they do the work resulting in improvements. This program is working much better than before. Pinkham has also received review attention.

In March, we began another review of the written Confined Space and Lockout/Tagout policies. This review by the safety committees and others was extensive and resulted in updating these policies to be followed by further employee training on the updates. This is taking place with the schedule to be completed prior to our Fall cold shutdown.

D. IH Exposure Monitoring - All questionable operations have been monitored at Pinkham Lumber and there are no exposures requiring additional monitoring other than periodic remonitoring, which is being done. A baseline IH monitoring survey is essentially complete at West and East involving all areas for contaminants including total dust, welding, solvents, acids and caustics, indoor Air quality (IAQ) concerns, asbestos, washup/locker rooms, hydrogen sulfide, sulphur dioxide and miscellaneous unique situations. Questionable exposures are dealt with on a case by case basis with planned programming calling for overall annual review to ensure baseline updating as needed. This overall policy, hoped to be finalized in Summer, 1995, with the monitoring itself being on-going on a scheduled as well as "as needed" basis, will be finalized in Fall. The monitoring is on-going and as needed and is progressing on schedule.

The same type of baseline survey was completed at the East Operation and the West Operation and remonitoring/unique monitoring continues as well.

All workers monitored are advised of their exposure as soon as the results are available. When all results are in for a given department or area, all results are posted so that all workers can see what the results are. All results are available to all employees through the Medical and Safety Departments.

E. Asbestos - Asbestos abatement (removal or encapsulation) of the heater houses at the West operation is complete. The heater houses remaining have had all asbestos containing material removed and have been sealed off since they are out of service. $3.5+ million has been spent to abate highly friable and/or high hazard asbestos situations. The asbestos management program is undergoing complete review to identify improvement opportunities at East and West and future direction. This continues to be reviewed and implementation of several changes are close to being announced. These will be reported when announced. Staff updates since the April Quarterly Report include Hal Boynton, Asbestos Coordinator for West Operations attending Asbestos Project Supervisor Course, and Ben McLaughlin is the Asbestos Coordinator at East.

F. Inspection Programs - There have been substantial accomplishments in this area. A Safety Fact Sheet has been issued to all supervisors with the requirements for area inspections of the following items that are asterisked below. The others will follow soon.

Emergency Respiratory Protection
Emergency Showers and Eyewashes *
Fire Extinguishers *
Hose Reels *
Stretchers *
Emergency Lights *
Hoisting/Rigging Equipment
Mobile Equipment (forklifts and motor vehicles) *
Exits, including passageways and aisles
Compressed Gas Cylinders & Related Equipment
Pipe Insulation/Labeling
Ladders, Scaffolds, Associated Equipment
Floor Loading
Railroad Trackage on Company Property
Lighting
Plant Facilities Grounds
Specific Equipment such as portable welders
Specific Subjects such as temporary wiring
Lockers/Restrooms
Heat Stress/High Heat Jobs *
Emergency Response HAZMAT
Ergonomics Programming

Using a combination of checklists or inspection tags affixed to each individual piece of equipment, each department continues to assume responsibility for the equipment in their area.

For example, all fire extinguishers have been accounted for and renumbered to make identification and tracking easier. An inventory of extinguishers for each department has been made available so that each department can be responsible for their own inspections. Plastic inspection tags are placed on each extinguisher and punches are issued to the inspector for that area who punches the tag as the inspection progresses. This is part of a much larger effort to make each work area responsible for the equipment in their own area. Audits of the inspection procedure verify that it is working properly and documentation will be on file for future reference and guidance. A goal of this program is for routine inspections to be well documented as to what is needed to be done and by who/what group. Such an overall listing with instructions is being prepared and is being circulated as a 2nd Draft for comments.

There have been many accomplishments to accompany this part of the program. The following is a list of some of those accomplishments.

- Computerized maps of areas of the mill have been developed with all emergency equipment located on them. Evacuation routes are as well. Emergency equipment includes fire extinguishers, stretchers, showers and eyewashes, SCBA's and emergency respiratory protection. This part of the project is ongoing. A sample copy of the maps was included in the March 1994 quarterly report. These maps have also been produced for our East Operations.

Separate from the above maps are Pre Fire Planning Maps which are the above maps with additional information added to them such as specific instructions unique to the building or its contents, locations of chemical storage, roofing that contains asbestos, locations of fire doors and other data that is important to emergency response operations/responders. We have completed these for West Operations and are working on them at East Operations and Pinkham Lumber.

- Safety Fact Sheets for inspections have been developed and are being distributed that will be used at the departmental level to assist in each department being responsible for their own area. Each piece of equipment is tagged with a plastic monthly inspection tag and each department will "sign out" a punch to punch the tag as the inspection is being conducted. This will enable us to keep track of who is responsible for the inspection and to audit the programs effectiveness. A copy of a Safety Fact Sheet has been included as an item in the appendix in previous reports.

- Related to inspections is a new computerized "Tickler Program" to ensure equipment is looked at and serviced on a regular basis. This Preventive/Predictive Maintenance Programming is being developed for both East and West Operations. Development is done with goal of all being tracked and controlled by computer.

- The Safety Coordinators for the West and East Operations participate in the daily staff meeting (including Saturday, Sunday and Holidays) with their Manufacturing Manager. It is largely their input and daily reinforcement coupled with Plant Engineering's PM work that is helping these inspection programs to proceed and succeed. Additionally, other meetings are held with East and West manufacturing managers on safety matters. Several meetings with all supervisors have also been held and more will be on a continuing basis at least monthly. The reorganization has "flattened" the two mills into "one mill" which enables better communication between the two locations. Currently, during the building transition of the structure, we are already reaping the benefits of these changes which will foster consistency and efficiency in what we do.

G. Emergency Evacuation and Alarm System - A new alarm and evacuation system for the West Operation is currently being installed with completion intended by the end of 1994. The system was modified some which delayed full implementation of the system which will be complete by mid-June 1995. This system is upgradeable as the mill changes to make the implementation of the system as cost effective as possible. Part of this system are pagers that will be carried by members of the Emergency Response Groups, ie: Confined Space Rescue Team, Fire Brigade, HazMat Team, Medical, Environmental, and Safety Services Groups. The system has been tested and the pagers are being distributed to all West location responders at this time. East's pagers are ordered but not yet received. They will be distributed by end of August. The system provides for automatic computerized tracking of all group call-ups.

H. STOP Program - The West Operation is continuing with DuPont STOP (Safety Training Observation Program) for all employees, and East is doing the advanced version of STOP. The expansion of this program by taking pictures of situations involving unsafe conditions and unsafe activity continues. The pictures are brought to the East and West morning staff meeting to both help educate front line supervision and to show the relative degree of success throughout the mill. With the safety supervisor from the mill and/or SST representation, the pictures have become an effective tool that helps get the point across and promote continuous improvement. These photo efforts are again being increased due to their successful educational and oversight functions.

An additional effort in this area is Employee Assistance Training. This training has been given to supervision and management to raise their sensitivity awareness and skill sets in conjunction with curtailments at GNP and will continue indefinitely with additional subjects added.

In 1994, a program on Workers Compensation was also given to all supervisors stressing the importance of thoroughly investigating and documenting all incidents for reasons of accident prevention and fairness to both employee and company. This program was given again in January as a make up for those who missed it. As can be imagined, the curtailments and job turnovers have resulted in a lot of employees (including supervisors) working with distracted minds, and we are constantly on the alert for this. Investigations are one such vehicle where true causes are sought out for why the incidents have occurred so that we can take steps to prevent the next one. All levels of incidents, including Near Miss, are investigated.

I. Ergonomics - As previously reported, we have been expanding our efforts in areas of Ergonomics. To date, these have included comprehensive examination of entry jobs per ADA, education of employees and engineering approaches on a sporadic basis at all GNP facilities. At East, we are expanding their committee and we have put in place similar committees at other facilities. As communicated previously, our plan for accomplishing our GNP Ergonomics programming has seen furnished to you (see appendix in the previous and updated in this quarterly report). We are doing alot of Ergonomics work. Recruitment to the teams, training and actual implementation has occurred as specified in the plan. We also continue devoting our resources in other areas such as reorganizations within our Company (explained in opening comments of this report), Process Safety Management, training of employees displaced by the curtailment of operations (primarily at West), updating safety programming associated with this and in general, addressing the myriad of day-to-day issues of conducting our business in a survival mode. There have been and there will be more changes in 1995/1996 that will affect jobs and tasks, and, we are committed to the attached Ergonomics Plan.

As part of the ergonomics subject, the Teams are surveying all jobs and tasks for discomfort to gain further information to help in evaluating the previous survey information and ergonomic assessment of the job/task. This survey's results will assist the Ergonomic Teams in their further evaluations of these jobs/tasks.

J. Process Safety Management - The program continues. Our increased efforts during 1994/1995 have resulted in compliance. A status report and charting of each PSM project is included in the appendix of this report.

Note that in our efforts to meet the September 30, 1994 deadline date, we decided that, based upon considerable research, the processes in our MgO and Sulfite operations at the Millinocket facilities did not/could not produce or emit sufficient quantities of Sulfur Dioxide to be included under the requirements of the 29 CFR 1910.119 standard. Therefore, we removed it from such coverage of the September 30th deadline. This has been previously communicated to you, as also our intents to essentially continue doing the 14 elements specified by the standard on these two processes at our own pace to be completed by

June 30, 1995. You have agreed with our position and plan and, also, in your letter of November 8th, reminded us of our responsibilities to complete the program.

Our commitment remains to this goal and progress continues. As the timeline chart in the appendix shows, the boycott by the union of the effort at MgO has ended and we are making very good progress. We are realizing, however, that more work than previously believed is needed, and to complete this work additional resources and time will be needed. We assessed what this means in terms of time and resources and determined that we will need until January 1, 1996. You advised that we do not need to complete a Petition for Modification of Abatement Date so one is not being submitted. Please advise if this will be needed. This applies only to our PSM programming on processes which are not covered by 29 CFR 1910.119, and specifically the MgO and Sulphite processes at West Operations.

K. Heat Stress Management - An initial heat stress screening survey has been conducted at both the West and East Operations. This survey is only intended to be a baseline and serves as the basis for the development of an ongoing heat stress management policy and further testing in different areas of the mill during different seasons of the year. Equipment is in place to monitor activities and this has been and will continue to be ongoing with increased monitoring taking place during the warm weather months.

L. Safety Policies - Existing safety and health policies have been collected, are under review for updating, and are being reintroduced as this process continues. These will be issued to all employees in a condensed format eventually, but this project is going much slower than expected due to all that is going on. One major policy is Personal Protection Equipment (PPE) which includes a new prescription safety glass program (has been implemented since the last Quarterly Report). Eye protection is worn locker-to-locker and the Company provides the protection. This includes providing one pair of prescription safety glasses every two years to any employee wearing prescription eyewear.

M. Record Keeping - Employee databases, the inventory information for fire extinguishers, emergency respirators and confined spaces is now computerized as are all of the noise exposure, IH exposure, heat stress and chemical inventory data. The remaining inventories are also being computerized as are schedules for inspections and medical monitoring such as audiometric testing and pulmonary function testing, respirator fit testing (now done with TSI Portacounts), before we are through. The general intent is to make the computer track required dates and time tables to keep things on schedule once they get on track. Training records are also computerized. This continues.

N. Bloodborne Pathogen - This program was previously communicated in the correspondence of September 24, 1993 and was reviewed and updated/reissued in 1994. It is again being reviewed at this time and will be updated as needed.

O. Process Releases of Chemicals - This subject has already been addressed in the previous quarterly report, dated December 3, 1993. This is also related to item J. Process Safety Management and item U, Emergency Response.

P. Radiation Safety - This program was updated in the December 3, 1993 correspondence. More was reported in the last Quarterly Report:

- Storage - There currently are two sites in the U.S.A. that are accepting radioactive waste. One is in Washington State, the other is in South Carolina. These sites have set up geographical boundaries from which they will accept waste. Because of this, we can't ship to either of these facilities. When we send a source to a disposal broker such as Texas Nuclear, the broker stores the waste themselves. When a site opens up that they can ship to, they will permanently dispose of the waste. A request for quotation was generated in March of 1995, to acquire a disposal broker to facilitate the removal of radioactive waste sources from our property.

Q. L.P. Gas Safety - The compressed gas storage and handling issue continues to be reviewed. The new outside storage area for the East Operation located by the Training Center is working well. West Operations maintains a number of storage areas throughout the facility. These areas utilize either storage containment cages or cylinder storage racks with safety chains and are primarily used to store empty fork truck cylinders. Empty cylinders are picked up by the yard department and transported to the stores dept. where they are filled by an outside vendor and restocked for future use. Cylinders are also filled on-site at the Old Finishing room due to the frequency of cylinders changes. Since last Quarterly Report, Safety Services and West Operations Fire Chief met with our LPG supplier to review concerns. Both supplier and GNP are addressing these concerns through SOPs and training of both groups' employees.

R. Long Lead Abatement Items - There were several long lead time abatement items that were discussed in the Action Plan. The following is an update for those items.

a. Roof Structural Integrity - This issue was reported on in the September 24, 1993 correspondence. The survey is complete and appropriate action has been/is being taken.

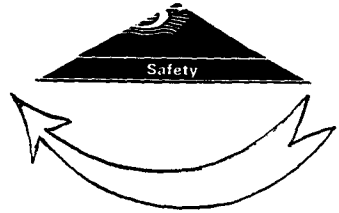
b. Washer Building Substation - The Authorization Request (AR-funding authorization) has been approved and completion is expected by December 31, 1995.

c. Digester Building Roof - This project was completed in early summer, 1994.

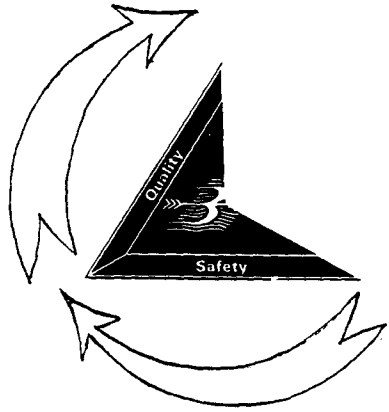
d. West Emergency, Fire & Evacuation Alarm System - Contractors began the installation during February and work continues in progress. The system will be implemented fully by September, 1995 on this Phase

SUCCESS TRIANGLE

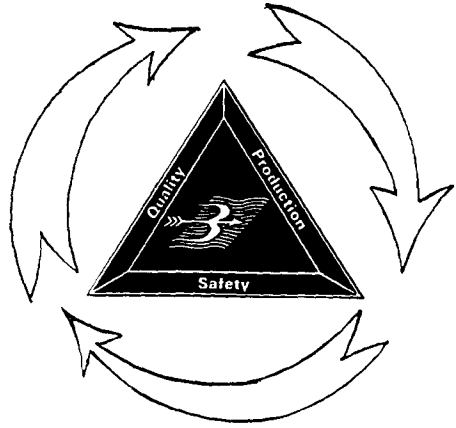
SAFETY comes first. Without it, there is no way to protect the people who create GNP products.

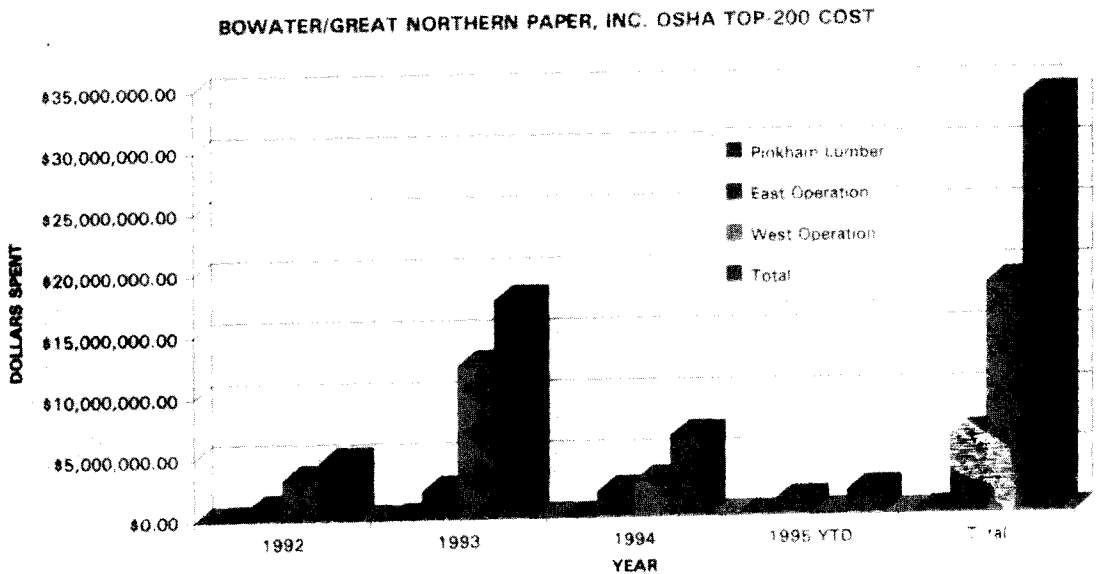


QUALITY comes next. Without it, there is no way to sustain the customer's need for GNP products.



PRODUCTION comes next. Without it, there is no means to create the economic return required to sustain the entire GNP organization.





As of September 30, 1996

GREAT NORTHERN PAPER DIVISION

OSHA PROJECT

- OSHA TOP 200 PROJECT
- PILOT PROGRAM - 1993
  - * ONLY IN STATE OF MAINE
  - * PATTERNED AFTER VOLUNTARY PROTECTION
  - * TOP 200 = EMPLOYERS WITH MOST WORK COMP
  - * GOAL IS ACCIDENT REDUCTION
  - * MOTIVATOR IS THREAT OF INSPECTION TO JOIN
- HOW IT WORKS
  - * EMPLOYER IS INVITED TO JOIN
    - * APPLY TO PROGRAM AND MAYBE BE INSPECTED
    - * IF NO APPLICATION, INSPECTION GUARANTEED
  - * INSPECTIONS TO BE SELECTED OFF LISTS
    - * INSPECTIONS SEPARATE FROM COMPLAINTS, ETC.
    - * INSPECTIONS CLASSED AS ROUTINE
    - * RANDOM BASIS FROM TWO LISTS - A AND B
    - * A LIST THOSE WHO AREN'T IN PROGRAM
    - * B LIST EMPLOYERS IN PROGRAM
    - * 1 B LISTED FOR EVERY 4 A LISTED INSPECTION
    - * PENALTIES
      - * A LISTED EMPLOYERS - MAXIMUM
      - * B LISTED EMPLOYERS - NONE WHILE PROGRESSING
        - HEAVY IF NOT PROGRESSING
  - * SET PROGRAM OF WHAT THE EMPLOYER IS TO DO
  - * PROGRAM IS FORMALLY APPROVED BY OSHA
    - * GREAT NORTHERN PAPER FIRST ONE APPROVED

GREAT NORTHERN PAPER DIVISION

OSHA PROJECT

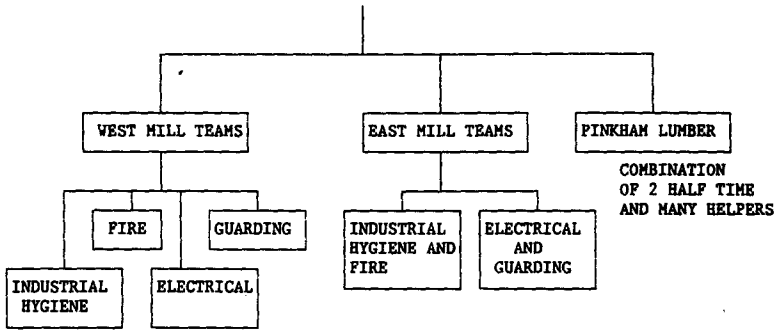
- OSHA TOP 200 PROJECT continued
- PROGRAM ESTABLISHED THAT THE EMPLOYER MUST FOLLOW
  - * EMPLOYER MUST BE INVITED TO PARTICIPATE
  - * OSHA TO HELP ESTABLISH PROGRAM WITH UNION/CO
  - * PROGRAM MUST BE FOLLOWED UPON APPROVAL
  - * CONTAINS SPECIFIC LANGUAGE AS TO DATES, ETC.
  - * QUARTERLY PROGRESS REPORTS TO OSHA
    - * OUR FIRST REPORT DUE IN JULY, 1993
    - * REPORT TO OUTLINE SPECIFIC PROGRESS ON ITEMS
  - * TIMETABLES CAN BE ADJUSTED
    - * CAN'T BE ARBITRARY IN REQUEST
    - * REQUEST MUST BE APPROVED BY OSHA
  - * PROGRAM LENGTH 3 YEARS TO COMPLETE - ESTIMATE
- TOP 200 PROGRAM
  - * TO BE EXPANDED TO NEXT LEVEL OF 200 EMPLOYERS
  - * TO BE EXPANDED NATIONALLY - OSHA'S GOAL
  - * PUTS EMPLOYER IN POSITION FOR ACCEPTANCE TO THE VOLUNTARY PROTECTION PROGRAM UPON COMPLETION OF THE TOP 200 PROGRAM

GREAT NORTHERN PAPER COMPANY
OSHA LEP P-200 PROJECT

IDENTIFY - DETERMINE RESOLUTION - TAG WITH HIT - WRITE W.O.
(SAFETY SURVEY TEAMS - SSTs)

SAFETY MANAGEMENT OF P-200

CONSULTANTS (2 GROUPS) PLUS MANAGER OF SAFETY SERVICES
AND PLANT ENGINEERING MANAGER OVERSEEING THE PROGRAM



STARTED WITH 12 EMPLOYEES

EACH TEAM: 1 SUPERVISOR
2 HOURLY

NOW HAVE 2 HOURLY ONLY

STARTED WITH 5 EMPLOYEES
1 SUPERVISOR
4 HOURLY

NOW HAVE 2 HOURLY ONLY

Mr. SHAYS. I thank all of you very much.

Let me say that I think OSHA is in a very difficult situation now. It has a number of very strong critics, but it also has an extraordinary important role to play. As the testimony has evolved, I almost feel like I am in church. I feel like saying right on, praise the Lord.

We want Government to work, and the message that I am getting from GAO is that OSHA must use a more cooperative approach to leverage the limited OSHA assets and resources that it has available to it.

I am hearing of the incredible program of the VPPPA, as you have described it, Ms. Elliott, in terms of your efforts throughout the country. I am hearing from a pilot program.

Bowater/Great Northern Paper Co., I have to be sure whether it is part of the VPP program or part of the Maine 200 program, I need to be clearer about that. But what I am learning is that if you can get the employers and the employees to sit down together and you have a cooperative regulatory body allowing that to happen you can get extraordinary results. I really want to make sure that message gets out.

Could you just explain to me, are you part of the VPPPA? Are you part of the VPP program? Are you part of Maine 200? How does it all fit in?

Mr. RONDEAU. It is our goal to become part of the VPP. We are the P–200 program. The P–200 program started with our facilities, our company, our unions, and our management.

Mr. SHAYS. In Maine?

Mr. RONDEAU. In Maine.

We were the first, the pilot or flag ship, whatever term you want to use.

Mr. SHAYS. What I am gathering from your description is that you were having extraordinary problems at your plant. Obviously, this was one of the plants you bought.

Mr. RONDEAU. Yes. Bowater purchased the Maine division which, again, includes two paper mills, a very large saw mill, which at one time had 300 employees and now has 123, the Nation's largest private hydroelectric system, over 2 million acres of timberlands, and a woodlands operation that had to be downsized.

When you downsize, as Mr. Dear said earlier, it has a ripple effect. Not only do you lose the people that actually go out the door, but then when all the domino effect takes place, we have a lot of people doing jobs that they are not familiar with and so on. During all this time, we had our challenges.

Mr. SHAYS. Let me ask you, Mr. Hamilton, are you associated with the Maine plant?

Mr. HAMILTON. Yes, I am, sir.

Mr. SHAYS. Was your concern at first what would Bowater do with it? Were you concerned it might be shut down? Were you concerned that this joint effort was not going to bear fruit?

If you could give me a sense of the attitude at the time, were you hopeful? Could you describe it? Was it a slow process? Fill me in.

Mr. HAMILTON. I think there was some skepticism in the beginning, sir, because of the ownership changes and just the feeling of the employees, but that turned around. That participative coopera-

tion of everybody after the programs got rolling took effect, and people became involved and took ownership in it and could see the benefits in it that it has paid many dividends beyond just the safety.

Mr. SHAYS. I was tempted to ask what is the problem with this program, but I obviously don't have the right witnesses for that one.

What would be the potential negative of a program like this?

Let me ask GAO. You have heard the testimony and so on, and you have been following this. Are you hopeful that this kind of program can be expanded well beyond its present scope?

Ms. BLANCHETTE. You are talking about the Maine 200?

Mr. SHAYS. Do me a favor. Define the difference.

Ms. BLANCHETTE. OK, I will try. For the Maine 200 program, its participants are the 200 firms in Maine that has the highest number of injuries, and it is a voluntary program, as is the VPP.

The idea was that among those 200, the firms that were willing to cooperate, that they would do an assessment of their own workplace, their own work sites, and they would come up with their own action plan for correcting any deficiencies.

As a result of that, they would not be on the No. 1 list in terms of inspections. I believe that is correct. If I am incorrect, correct me, please.

The VPP is a program whereby outstanding, I guess we could use that term, firms that have outstanding workplace safety and health programs of their own and beyond their own programs and their own outstanding safety record, they are willing to reach out to other companies and share their successes.

Mr. SHAYS. In both instances, there is a very definite cooperation between three parties.

Ms. BLANCHETTE. Absolutely.

Mr. SHAYS. The employer, the employee, and the regulatory body, the lawmaking authority and also the regulatory authority.

Ms. BLANCHETTE. Absolutely.

Ms. ELLIOTT. May I just interject one thing?

Mr. SHAYS. Yes.

Ms. ELLIOTT. With the employee involvement component, it is a very crucial part for VPP participation that there is meaningful employee involvement at the facility in addition to the management commitment. For facilities that have collective bargaining agents present, it is a requirement that the representatives from that local collective bargaining agent turn in a signed statement to the agency stating that they do not oppose the facility's participation in the VPP. At any time during their participation in the VPP, the union has the right to inform OSHA that they no longer support the program, and they will then withdraw from the program. So it is a definite partnership among OSHA, the employees, and the management at the site.

Mr. SHAYS. Can I just make an observation? Mr. Rondeau, your plant obviously spent a lot of money to comply, but it probably spent it in the most effective ways.

Mr. RONDEAU. Yes. Yes, we did.

Mr. SHAYS. Mr. Souder.

Mr. SOUDER. I will try to reasonably behave so that the chairman does not start singing the Hank Williams, Jr., song, "All My Rowdy Friends Tonight."

I want to say up front, too, that I believe that businesses that carelessly put their employees at risk are not only a shame, that is, they are morally incorrect, but they are stupid financially, and it is really good to see efforts such as yours that are trying to address those type of things.

I wanted to ask, first, Ms. Blanchette this question. We just heard from Mr. Dear about his efforts to change the agency and you saying at the end of your testimony trying to change the agency, but we also heard about the 6-foot rule. Mr. Scarborough would presumably have to wear a harness in case he fell down. That is how legends are created by OSHA, to say that 6 feet is a danger. Do you believe that they adequately consulted with people? Are you familiar with that rule? Does that not seem like the type of thing that just sends businessmen up a wall when they hear something like Michael Jordan falling over is a danger?

Ms. BLANCHETTE. I am not familiar with that rule, but I will give Mr. Jeszeck a chance to answer because he has worked in this area a lot longer than I have.

I will say that there are a number of regulations that OSHA itself recognizes as being duplicative or in need of revision for some other reason, and it is in the process currently of revising regulations and eliminating regulations.

I can't talk specifically about this one, and I can't understand how such a rule would evoke that kind of reaction. In the work we did on workplace regulation and the people we talked to, we got similar reactions to specific instances of standards that they saw as unreasonable.

Mr. SOUDER. I think Mr. Dear in his testimony has one reference that one of the voluntary compliance companies, the two people that weren't in the Maine program had 14 times more violations than would have been normally expected. You said that there were 30,000 things that you were working through in the process.

In your GAO study, given the fact that they had 30,000 violations or things that they potentially could work through, do you think most businesses look at the OSHA as something that they are going to try to voluntarily work with, unless they are in one of the programs, or do they just kind of wait for their visit coming once every 60 years or 20 years or whatever it is, fearing and knowing that when OSHA comes there is going to be a slam, but more or less giving up? I mean, you would need multiple attorneys to figure out first the OSHA law, then the labor law, then the fair employment standards law, and all the EPA laws.

As a businessman, is it not true, I will phrase it that way, that most businesses more or less sit and wait until the enforcement comes?

Ms. BLANCHETTE. I really can't speak for most businesses other than to say, as you did in your introduction to the questions, that it only makes sense from a business person's point of view to protect its workers and it is also morally the right thing to do.

So I certainly would not say that there are businesses in great numbers doing whatever it is they feel like doing and thinking that

they are safe because OSHA is only going to be there every 60 years, but at the same time, I am sure there are some firms that fall in that category as well.

In terms of the multiple standards and the multiple violations that go along with the standards, currently OSHA is trying through its change in a more negotiated rulemaking to bring about a consensus before standards are actually officially proposed, and that will probably help in that regard.

Also, as I understand each of these programs, a major part of it is prioritizing what it is that the company is going to deal with. So, in the case of 30,000 problems, obviously they couldn't address all of those. So there would be some mechanism for prioritizing the problems.

If I may, I will let Mr. Jeszeck comment maybe on the previous question, as well as this one.

Mr. JESZECK. In our study, it was not a nationally representative study, but it was an in-depth case study of 24 employers, 10 unions, and 2 non-union employee committees. We worked very closely with national organizations like the AFL–CIO, as well as the Labor Policy Association and NAM, and constantly bounced off of them the kinds of things we were hearing to see whether they made sense.

With regard to your question, one of the things that really came up was that employers especially felt that there was a real need for knowledge, a real need for information. A lot of employers that we talked to wanted to do the right thing, especially the smaller ones, but they didn't know what to do. They didn't know where to get information, and it did contribute, to some extent, to creating an element of fear. They didn't know a lot about OSHA.

In another study, we have had a lot of employers who have never had any experience with OSHA, and most of what they have heard about OSHA was hearsay. So it does contribute to this climate of fear, and a thing that came again and again was that they wanted information. They want to know what they had to do, and in many instances, it was difficult for them to get that information.

Mr. SOUDER. I would just like to close with this comment. I believe, too, that we have seen exemplary programs, and I believe in Congressman Ballenger's bill. He is attempting to boost that portion, and instead of the enforcement, that we focus more on shared programs where we provide the information.

From what we heard of Ms. Elliott's testimony, in fact, companies make more money when they do a number of these things, and what we should be doing is encouraging the chamber, even if it is OSHA, rather than have so many people in the field to hold regional seminars on how to comply, how to be effective, to show how that can help a business.

Michael Porter in the Harvard Business Review wrote in the issue before last about how environmental regulation changes can actually save money for businesses, but there is this kind of fear hanging over the head that I believe leads a lot of businesses right now to have, as you pointed out in your report, a hostile attitude toward the agencies. Therefore, they are not even looking at the financial gain. They are, more or less, sitting back and waiting for fear of what is going to happen, and the team concept that we are

pushing through is really the way capitalism should work, and that is really what you have done in Maine is to have the company and the employees sit down together and work it like it should have been done in all industry in this country, rather than the adversarial relationship.

Thank you.

Mr. SHAYS. I thank the gentleman.

Mrs. Morella.

Mrs. MORELLA. Thank you.

I just wanted to comment, as I am learning about this reinvent plan, Maine 200 is where companies in Maine that had the worst safety record were called together and told you will either cooperate or else we are going to lower the boom with incredible sanctions from OSHA. Therefore, what alternative did they have? So they said sure, we will cooperate. Then that is how this has worked out.

I want to ask you, to get to the bottom line, do you see as we work toward reinvent and, of course, the promise that you are going to have 16,000 regulations that are going to be eliminated and maybe clarification of regulations which is something I hear a lot about? People can't even understand what these regulations are in order to enforce them. Do you see a congressional role in this? Do you think that this reinvent process will just proceed by itself that way, or do you see a role for Congress in this?

Any or all of you, briefly. Thank you.

Mr. RONDEAU. I can only speak to the experience we have had in the P–200 program. It has been a true partnership. We needed some guidance. OSHA needed some guidance, and we got that guidance by working together. With a cooperative partnership, the reforms and all that, I don't think are really needed. I think if the shackles were taken off of OSHA, so they could have more of this cooperative effort and be the consultants and help the employers that want to be helped, that those employers will help ourselves, and that leaves, as Mr. Dear said, the leveraging that they can allocate the small resources that they really have toward going after those that don't want to help themselves.

Mrs. MORELLA. Do you think sometimes you have an overabundance of faith?

Mr. RONDEAU. Faith is through motivation, and in the P–200 program, there is motivation. We were given the choice. We could have allowed OSHA to come in. It would have been a lot cheaper to let OSHA come in and do an inspection and see what they see and cite us and walk away and not do any more, but in the long run, that would have been the most expensive route for us to take because, through our efforts, our employees uncovered many, many, many real hazards that OSHA inspectors don't see; electrical hazards, for an example, 67 percent at one mill and 48 percent of the hazards we uncovered at another mill were electrical.

OSHA inspections traditionally don't uncover electrical hazards, but those are the kind of hazards that kill people. You may never get involved in them, but when you do, you don't get a second chance.

Mrs. MORELLA. A very positive result.

Ms. Elliott, would you agree?

Ms. ELLIOTT. Yes. I would like to say two comments on that.

The first one has to do with a comment I made earlier in my testimony about the need for a balanced approach, utilizing cooperative programs along with firm and fair enforcement for those employers, like Mr. Dear talked about earlier, that are not the ones who are interested in pursuing a cooperative relationship.

Unfortunately, there are work sites out there where the employers do not have as important a regard for their worker's safety and health as we would hope, and the cooperative programs are an important part of the balance, but you need to have the balance be for both sides.

The other part of it extends from the comments that the gentleman here just made about how Congress measures OSHA's performance, and Mr. Dear also mentioned that earlier, as far as measuring them on enforcement inspections and citations issued versus overall impact on improving worker safety and health.

Certainly, the VPP and the Maine 200 experience that we have heard have had a tremendous impact on worker safety and health that are very valuable to the agency, and encouraging that sort of a measurement as to what is the overall impact on improving worker safety and health is an important role that Congress can play.

Mrs. MORELLA. It seems to be working out well, and I would hope other States would look to it, but I am just wondering in terms of the bottom line whether there is a role for Congress. I just begin to think maybe there is.

GAO, I am sure you would like to comment on that.

Ms. BLANCHETTE. I don't know whether I can define a concrete role other than as Ms. Elliott said, to encourage OSHA's efforts to continue experimenting with collaborative efforts and publicize the successes and efforts such as this hearing.

As the gentleman from the union said, initially, there was reluctance to cooperate with management in this new program, and I think that there is still a lot of natural tendencies for management and labor to mistrust one another and for the business sector to mistrust the Federal regulatory sector. So the more that is known about the successes, the more collaborative efforts will be undertaken.

Mrs. MORELLA. Thank you very much.

Mr. HAMILTON. Mrs. Morella, I would like to make a comment.

Mrs. MORELLA. Yes, Mr. Hamilton.

Mr. HAMILTON. I think it is very important, OSHA's presence and the U.S. Government's, for the workers in this country and the people you represent, all of you, that I think you will play a very important role, and I think the funding is very important.

Thank you, Mrs. Morella.

Mrs. MORELLA. Thank you. I appreciate that.

Mr. SHAYS. I am not looking for many or long answers. I just want to know, does the voluntary program focus mostly on larger businesses?

I will ask you, Ms. Elliott. Is it mostly larger businesses that are invited to participate?

Ms. ELLIOTT. The current participants which are in Federal and State OSHA jurisdictions, 231, a majority of the employers would

fall under probably what most people would think of as larger businesses.

There are small businesses, like Woodpro Cabinetry that I referred to in my testimony and others, that are involved in the programs.

One of our organization's emphasis in the coming years is to expand and work with OSHA on encouraging more small businesses to get into the Voluntary Protection Program, be it through our mentoring program or through our outreach and assistance, to encourage them not only in improving worker safety and health in their facilities, but also encouraging them to get to the level of excellence that VPP requires.

Mr. SHAYS. Let me say that I have found all of your testimony very helpful and also very encouraging. I want to thank the GAO, for the work done in the past and for its continued good work. I appreciate you sharing the floor, so to speak, with others as well.

Thank you all for coming to Washington and for testifying. It has been very interesting.

We will conclude with our third panel, William Steinmetz, Jr., safety and loss control manager, Midland Engineering Co., and also Michael J. Wright, director of health, safety, and environment, United Steelworkers of America.

If they would both come forward and remain standing.

Mr. Steinmetz, if you would just remain standing for a second. As someone who notices ties, I like your tie.

Mr. STEINMETZ. Thank you.

Mr. SHAYS. Raise your right hand, please.

[Witnesses sworn.]

Mr. SHAYS. Thank you.

I would note for the record that both of our witnesses answered in the affirmative, and we will start, I think, with you, Mr. Steinmetz. I appreciate both of you being here.

STATEMENTS OF WILLIAM STEINMETZ, JR., SAFETY AND LOSS CONTROL MANAGER, MIDLAND ENGINEERING CO.; AND MICHAEL J. WRIGHT, DIRECTOR OF HEALTH, SAFETY, AND ENVIRONMENT, UNITED STEELWORKERS OF AMERICA

Mr. STEINMETZ. Thank you, Mr. Chairman.

Before I begin, I would like to mention Congressman Green asked the question of documentation regarding 62 percent of workplace fatalities in transportation or homicides, and I do have that piece of documentation that documents that. This is from the Bureau of Labor Statistics.

Mr. Souder, it was your question that generated that, and I do have that if you are interested in it. Unfortunately, Congressman Green has left.

Chairman Shays and members of the subcommittee, my name is Bill Steinmetz. I am the safety and loss control manager for the Midland Engineering Co. We are roofing and sheet metal contractors from South Bend, IN, and we have performed some 600 projects a year throughout the midwest, including the United Center, the new home of the Chicago Bulls and Blackhawks.

We receive as many as 10 OSHA inspections per year. I am also a vice president of the National Roofing Contractors Association,

NRCA, and I appreciate being able to comment on the need to reform the Occupational Safety and Health Administration, OSHA, and applaud the subcommittee for holding a hearing on this issue.

NRCA supports the Safety and Health Improvement Regulatory Reform Act of 1995, H.R. 1834, introduced by Representative Cass Ballenger, and we understand that it now has 148 cosponsors.

In addition to our support of 1834, NRCA is also a member of the Coalition on Occupational Safety and Health, COSH, which consists of more than 400 companies, associations, and professional societies that represent all sectors of business, large and small, in America.

Given the administration's call for a new OSHA, neither the need for nor the direction of OSHA reform are at issue. As to the means for achieving reform, the employer community believes that it can best be accomplished by legislative change.

Mr. Chairman, with your permission, I would like my written statement placed into the hearing record, and I will now summarize my comments beginning on page 5.

OSHA's attempts to reinvent itself would seem to be the second stage of its response to criticism of its standards and policies. The first stage involve the formation of a rapid response team or a truth squad to defuse reports of excessive OSHA regulation.

It has been my experience with OSHA's truth squad that it vigorously denies the existence of ridiculous regulations even as the agency quietly modifies them or alters enforcement of them.

For example, this year, the Secretary of Labor and OSHA have consistently denied reports that there is a regulation that prohibits gum chewing while roofing. Yet, on January 13th, a memo from OSHA's directorate of compliance programs to regional administrators instructed inspectors to refrain from issuing citations for gum chewing and roofing.

Throughout 1995, OSHA has also repeatedly denied that it issued citations under Haz-Com for the use of household products, such as dishwashing detergent. Yet, on March 21st, OSHA issued a memo to regional administrators stating that an enforcement review showed that citations had been issued for material such as bricks, rebar, lubricating oils, welding rods, and dish washing detergent.

Another example is OSHA's new fall protection standard which has been in effect since February 6th. It triggers costly and burdensome work practices at heights above 6 feet and has touched off a firestorm of protest.

Despite the fact that workers, management, and even State-planned OSHA programs are dissatisfied with the standard, OSHA's truth squad portrayed the standard as immanently fair and flexible.

Nonetheless, OSHA management has convened a series of meetings with NRCA, and it is NRCA's hope that the fall protection standard can be fixed.

Mr. Chairman, this is the fifth time since 1991 that I have testified before Congress on OSHA. On June 22d of this year, I testified before the Senate Labor and Human Resources Committee. During that hearing, Mr. Dear was asked whether OSHA continues to support legislation from the 103d Congress, referred to as COSHRA,

the Comprehensive Occupational Safety and Health Reform Act. His answer was yes.

For those members who were not in the 103d Congress, COSHRA was sponsored by House and Senate Labor Committee chairmen, Bill Ford and Ted Kennedy. Since COSHRA takes the opposite approach to OSHA reform for Mr. Ballenger's bill, not to mention statements from the President, it is difficult to understand how OSHA can simultaneously embrace opposing reform ideologies.

I applaud the things that OSHA has proposed to reinvent themselves, focused inspections, less emphasis on paperwork, incentive for safe employers. I just haven't seen any evidence of them. In fact, Haz-Com continues to be the No. 1 OSHA citation for 1995.

Absent the current congressional pressure, I doubt that OSHA would be interested in these reforms at all, and so I can only wonder if the reinvention is more in appearance than in substance.

Clearly, the reforms embodied in the Ballenger bill will ensure that OSHA can be given a new and more effective direction in worker health and safety.

Thank you, and I will be happy to answer any questions.

[The prepared statement of Mr. Steinmetz follows:]

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STATEMENT BY

WILLIAM STEINMETZ JR.

OF THE

THE NATIONAL ROOFING CONTRACTORS ASSOCIATION (NRCA)

TO THE

SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

CONCERNING REVAMPING THE

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OCTOBER 17, 1995

The National Roofing Contractors Association (NRCA) is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry and has over 3,500 members represented in all 50 states. All NRCA contractors are small, privately held companies; NRCA's average member employs 35 people and has sales of just over $3 million per year.

NRCA is a member of the Coalition on Occupational Safety and Health (COSH), which is comprised of more than 400 companies, associations, and professional societies that represent all sectors of business, large and small, in America.

COSH members are committed to providing safe and healthful working conditions for their employees and recognize this as a fundamental responsibility of effective management. COSH believes this employer commitment is reflected in the steady downward trend in workplace injuries, illnesses and fatalities.

We applaud the Subcommittee on Human Resources and Intergovernmental Affairs for holding routine oversight hearings on regulatory agencies such as the Occupational Safety and Health Administration (OSHA). Systematic congressional oversight is crucial to curbing the growth of regulations and removing the strangle-hold that overregulation has on small business in this country.

OSHA'S HAZARD COMMUNICATION STANDARD

One of the most egregious regulatory burdens placed on the roofing industry today is OSHA's Hazard Communication Standard, or Haz-Com, originally promulgated in 1983 for the manufacturing sector. In 1987, OSHA expanded Haz-Com to include construction. The standard requires employers to assess chemical hazards in the workplace; write a policy for the safe handling of these materials including a complete inventory; and provide information and training to exposed employees.

The cornerstone of this training is the Material Safety Data Sheet, or MSDS. It will tell you everything you could want to know about a hazardous material such as the manufacturer's name and address; ingredients; physical characteristics; flammability; reactivity; potential health hazards; precautions for safe handling; and required personal protective equipment.

Regrettably, Haz-Com and its MSDSs are confusing, expensive, and have done little to improve safety within the construction industry. Haz-Com was supposed to provide a single reference source for employers and employees in the event of an emergency involving dangerous substances, but, in fact it is the last place that they would look -- Haz-Com has given us thousands of MSDSs on everything from "air" to dishwashing detergent.

On any given day, contractors must have MSDSs at all job sites for all "hazardous" materials. They must know which of these products are in use at each job site and make sure the correct, brand specific MSDS is available at each job site. No wonder that in 1994, Haz-Com violations comprised nine out of the top twenty most frequently cited OSHA standard violations (attachment) -- they are the easiest to identify because 100 percent compliance is nearly impossible.

OSHA has opened the public record for various parts of the standard, sometimes for long periods of time. A modified final Haz-Com standard was printed in the February 9, 1994 *Federal Register*. Despite the proliferation of paperwork, and the fact that the standard is the most frequently cited by OSHA inspectors (a roofing contractor in Indiana was cited for not having a brand-specific MSDS for caulk), the modified standard makes minor changes that can be found only with a magnifying glass.

The President recently signed into law the Paperwork Reduction Act re-authorization, which overturns ***Dole v. United Steelworkers of America***, allowing the Office of Management and Budget (OMB) to review third-party paperwork requirements such as Haz-Com. And OSHA had its National Advisory Committee on Occupational Safety and Health establish a work group to make recommendations regarding the inefficiencies of the current standard, particularly those related to construction and other mobile workforce industries. But the question remains: Will the Clinton Administration seize the opportunity to rein-in Haz-Com?

RECENT ADMINISTRATION/OSHA INITIATIVES

The Clinton Administration has taken several highly publicized steps this year in the name of regulatory reform, but regrettably, the substance does not match the rhetoric touting these steps. On March 16, the President held a press event at a print shop to announce a list of "reinventing regulation" proposals. Though most involved the Food and Drug Administration and the Environmental Protection Agency, two were government-wide: 1) agencies would be given discretion to allow small businesses to apply the dollar amount of assessed fines to fix the problems, or even waive the fines for first-time violators who agree to quickly correct the errors; and, 2) the Administration would direct each agency to cut in half the frequency of periodic reports, consistent with statutory requirements. On April 21, the President issued a memorandum to agencies to implement these proposals -- but the memorandum lacks the force of law and leaves action entirely to the discretion of the agency.

The memorandum directs agencies to waive penalties for small businesses "to the extent permitted by law" if the business shows a good-faith effort to comply with applicable regulations; if the cited violation does not involve criminal wrong-doing or a significant threat to health, safety or the environment; if the violation is corrected within a time-frame set by the agency; and if the agency so chooses. It is left to each agency to come up with its own definition of "small" business.

The memorandum also directs agencies to reduce by one-half the frequency of regularly scheduled reports which employers are required to provide to the federal government, but agencies are given broad discretion to ignore this directive. In fact, bureaucrats have explicit permission not to reduce reporting requirements if they believe cutting back might "impede the effective administration of the agency's program."

Each agency was given until June 15 to submit a plan to OMB describing how it would implement the provisions of the memorandum, and any enforcement policies modified as a result of this exercise were to take effect by July 4.

On May 16, at a sheet metal factory, the President announced a major "Reinventing Government" initiative involving changes at OSHA. It is puzzling that President Clinton used the announcement to criticize Republican efforts to reform OSHA, because of the similarity between statements in the Administration's white paper that accompanied the announcement and the proposals in H.R. 1834, the Safety and Health Improvement and Regulatory Reform Act of 1995.

Per the President's announcement, OSHA's new inspection program will go nationwide with the "Maine 200" pilot program. OSHA used Maine's workers' compensation claims to identify the 200 companies with the worst safety records. According to OSHA, they accounted for nearly half of Maine's (workers' compensation) injuries and illnesses. These companies were given the choice of either developing a comprehensive health and safety plan to fix the problems, or be subject to traditional OSHA inspections and heavy fines. Not surprisingly, most opted for the "cooperative" approach and OSHA has claimed dramatic results.

The other new inspection program will extend "focused inspections" in the construction industry to all industries. The program has been in effect since October 1, 1994, and, in theory, OSHA inspectors determine from the contractor (with job site responsibility) whether an effective safety and health program is in place and being implemented by a competent person. If this meets OSHA's criteria, then inspectors focus on finding hazards related to the four principal hazards in construction: falls from elevations, being struck by an object, crushing injuries, and electrical shock. If, according to OSHA, a contractor does not have an effective safety program being administered by a competent person, then OSHA inspectors conduct a "comprehensive, resource-intensive investigation."

Unfortunately, OSHA's performance regarding regulatory reform has been poor. For example, due to inadequate instructions provided by the agency to inspectors, a very small percentage (reportedly less than 5 percent) of all OSHA construction inspections have been of the "focused" variety. And even though total OSHA inspections went down in 1994, total fines went up. Just last summer, OSHA raised the minimum willful serious violation penalty for businesses from $5,000 to $25,000, as announced on nationwide television by the Secretary of Labor. However, with little notice this March, OSHA reduced the minimum penalty for employers with 50 or fewer workers to its previous level of $5,000.

In May, OSHA reported to business and union representatives from the construction industry that, pursuant to the President's February 21 directive to agencies to eliminate or revise regulations, its review of 3,000 pages of OSHA regulations found 1,000 pages of duplication. This represents pages that could be eliminated without substantively touching the regulations. Regardless, on June 12, at the White House Conference on Small Business, the President and Vice President announced to the delegates that 16,000 pages in the *Code of Federal Regulations* would be eliminated.

On September 6, the White House made one more in its series of announcements about ending or simplifying regulations. According to the President, these reforms would cover several agencies, including the Department of Labor (DOL), and would eliminate approximately 16,000 pages of regulations and simplify another 31,000 pages. NRCA is not aware of the specifics, but it is rumored that one candidate might be OSHA's regulation effectively prohibiting gum-chewing and roofing.

OSHA'S "TRUTH SQUAD"

OSHA's attempts to "reinvent" itself would seem to be the second stage of its response to criticism of its standards and policies. The first stage involved the formation of a rapid response team, or "Truth Squad," to diffuse reports of excessive OSHA regulation. It has been NRCA's experience with OSHA's "Truth Squad" that it vigorously denies the existence of ridiculous regulations, even as the agency quietly modifies them and/or alters its enforcement of them.

For example, this year the Secretary of Labor and OSHA have consistently denied reports that there is a regulation that prohibits gum-chewing while roofing. This has been happening repeatedly despite a January 13 memo from OSHA's Directorate of Compliance Programs to regional administrators instructing inspectors to refrain from issuing citations under the gum-chewing provision.

Throughout this year, OSHA has also repeatedly denied that it issues citations under Haz-Com when household products, such as dishwashing detergent, are being used without MSDSs at job sites. Yet on March 21, OSHA's Directorate of Compliance Programs issued a memo to regional administrators stating that an enforcement review showed that "citations have been issued for materials such as bricks, rebar, lubricating oils, welding rods and dishwashing liquid without adequate documentation of employee exposure to a specific hazardous chemical or that their use fails to meet OSHA's consumer product exemption."

Another example is OSHA's new Fall Protection Standard, which has been in effect since February 6. It triggers costly and burdensome work practices at heights above six feet and has touched off a firestorm of protest. Despite the fact that workers, management, and even state-plan OSHA programs are dissatisfied with the standard, OSHA's "Truth Squad" portrayed the standard as eminently fair and flexible. Nonetheless, OSHA management has convened a series of meetings with NRCA and it is NRCA's hope that the Fall Protection Standard can be fixed.

NRCA commends the House Subcommittee on Regulation and Paperwork for holding a June 15, 1995 hearing on the Fall Protection Standard. NRCA also appreciates the fact that concern in the Congress over this standard's negative impact on the economy has led the House to attach an amendment to the Labor/HHS appropriations bill (H.R. 2127) directing OSHA to reopen its fall protection rulemaking -- and the Senate is poised to do the same.

REINVENTION OR COSMETIC CHANGE?

Mr. Chairman, this is the fifth time since 1991 that I have testified before Congress on OSHA. On June 22, I testified before the Senate Labor and Human Resources Committee. During that hearing, the OSHA witness was asked whether OSHA continues to support legislation from the 103rd Congress referred to as "COSHRA," the Comprehensive Occupational Safety and Health Reform Act (H.R. 1280/S. 575). The answer was *yes*.

For those Members who were not in the 103rd Congress, COSHRA was sponsored by House and Senate Labor committee chairmen Bill Ford and Ted Kennedy. Since COSHRA is generally considered to take the opposite approach to OSHA reform from Mr. Ballenger's bill, not to mention the President's rhetoric, it is difficult to understand how OSHA can reinvent itself.

Aggravating this dilemma is the overall tone of OSHA's National Advisory Committee on Occupational Safety and Health (NACOSH), which is advising the agency. At its September meeting, one NACOSH member suggested that business community efforts to reform OSHA be renamed the "Coalition *Against* Safety and Health," while another commended OSHA legislative representatives for circulating a "Fact or Myth" publication to refute regulatory "horror stories."

After 25 years of doing things the same way, OSHA is a victim of "in-speak" and will probably never be able to take a fresh look at improving worker safety by itself. Absent congressional pressure, it is doubtful that OSHA will allocate more funds to the small business consultation program, or consider ways to cut down on paperwork citations.

CONCLUSION

Clearly, even with administrative attempts to "reinvent" OSHA, Congress will need to pass the meaningful OSHA reforms embodied in H.R. 1834 to ensure that necessary changes take place within the agency regarding OSHA policies and practices.

Most Frequently Cited OSHA Standard Sections
Fiscal 1994

	Standard Section 29 CFR	Standard	Subject	No. of Alleged Violations
1	1910.1200(e)(1)	✓HazCom/General Industry	Written Program	4,728
2	1904.2(a)	Recordkeeping	OSHA Log	3,944
3	1910.1200(h)	✓HazCom/General Industry	Information, Training	3,833
4	1926.59(e)(1)	✓HazCom/Construction	Written Program	3,463
5	1903.2(a)(1)	OSHA Notice	Posting	2,901
6	1926.59(h)	✓HazCom/Construction	Information, Training	2,277
7	1910.147(c)(1)	Lockout/Tagout	Energy Control Program	1,958
8	1910.212(a)(1)	Machine Guarding	Guarding Methods	1,887
9	1910.215(b)(9)	Abrasive Wheel Machinery	Guard Adjustments	1,737
10	1910.1200(f)(5)(i)	✓HazCom/General Industry	Container Labeling/Identity	1,729
11	1910.1200 (g)(1)	✓HazCom/General Industry	MSDSs	1,627
12	1910.151(c)	Medical Services/First Aid	Drenching Facilities	1,584
13	1910.1200(f)(5)(ii)	✓HazCom/General Industry	Container Labeling/Hazard Warnings	1,571
14	1926.21(b)(2)	Safety Training	Worker Instruction	1,541
15	1926.100(a)	Head Protection	Protective Helmets	1,412
16	1910.219(d)(1)	Power-Transmission Belts	Pulley Guarding	1,375
17	1926.59(g)(1)	✓HazCom/Construction	MSDSs/Provision	1,306
18	1926.500(d)(1)	Cranes and Derricks	Rated Load Marking	1,271
19	1926.59(g)(8)	✓HazCom/Construction	MSDSs	1,200
20	1910.147(c)(7)(i)	Lockout/Tagout	Worker Training	1,186
	1910.147(c)(4)(i)	Lockout/Tagout	Energy Control Procedure	1,184
	1910.212(a)(3)(ii)	Machine Guarding	Point of Operation	1,177
	1910.215(a)(4)	Abrasive Wheel Machinery	Work Rests	1,159
	1910.23(c)(1)	Floor/Wall Opening Guarding	Standard Railing	1,114
	1926.404(b)(1)(i)	Wire Design	Ground Fault Protection	1,029
	1910.305(b)(1)	Wiring Methods/Protection	Cabinets, Boxes, and Fittings	1,021
	1910.132(a)	Personal Protective Equipment	Provision, Use, Maintenance	1,008
	1910.1200(g)(8)	HazCom/General Industry	MSDSs/Maintenance	1,002
	1926.451(d)(10)	Tubular Welded Frame Scaffolds	Guardrails, Toeboards	985
	Section 5(a)(1)	General Duty Clause	Safe and Healthful Conditions	981

Total Number of Alleged Violations Cited in Fiscal 1994: 174,305

TOP 10 MOST FREQUENTLY VIOLATED STANDARDS - FY 95*

RANK	FY 95 STANDARD VIOLATED # VIOLATIONS
1	1910.1200 Hazard Communication 10,165
2	1910.147 Lockout/Tagout 4,700
3	1926.451 Scaffolding 4,048
4	1910.305 Wiring Methods, Components, Equipment for General Use 3,457
5	1910.219 Mechanical Power - Transmission Apparatus 3,355
6	1926.059 Hazard Communication (Construction) 3,315
7	1910.132 Personal Protective Equip 3,070
8	1910.212 Machine Guarding 3,016
9	1910.303 Electrical 2,548
10	1910.215 Abrasive Wheel Machinery 2,507

* FY 95 (as of September 22, 1995)
Source: OMDS IMIS Reports

Mr. SHAYS. Thank you. I appreciate your concise testimony.

Mr. Wright.

Mr. WRIGHT. Thank you, Mr. Chairman.

Any real attempt to understand OSHA has to begin with the actual experience of those OSHA is charged to protect. My union represents about 500,000 of them, and notwithstanding our name, they are in really every segment of the economy, steel, of course, but also mining, rubber, chemicals, general manufacturing, health care services, even public employment.

Last year, 35 of our members died in workplace accidents in the United States, along with more than a dozen supervisors and contractors in plants we represent, and 26 have died so far this year. Not a single one was a homicide. Not a single one was a suicide. There were three transportation-related accidents, but they were things like workers being crushed between rail cars or seriously injured with a subsequent death by a shifting load on a flatbed truck.

Mr. SHAYS. How many employees are we talking about, again, sir? Mr. Wright, you said all of your workers. I am sorry to interrupt your testimony. I realize that takes your train of thought away.

Mr. WRIGHT. We have about 600,000 in the United States.

Mr. SHAYS. You say to date, starting at the beginning of this year, you have had 25 deaths?

Mr. WRIGHT. We have had 26 so far this year. We had 35 last year in the United States in the industries that are regulated by OSHA which, of course, is not every industry.

All of the accidents were different, but there is one statement you can make about all of them, and that is that none of the accidents occurred because OSHA was too strong. Not a single worker died because the Government was too tough or inspected too often or assessed too high a penalty or set too many standards or was not sufficiently cooperative with employers.

On the contrary, they died because all too often, OSHA is too weak. There are too few inspections. There are too many serious, but unregulated hazards in American workplaces, and fundamentally, because too many employers think they have nothing to fear from OSHA.

Many of us in organized labor have criticized some aspects of what OSHA calls its reinvention, but we fully support its stated goals; first, to better protect American workers on the job, and second, but subordinate, to ease the burden of compliance for employers who really want to do a good job.

We are working hard on that reinvention, along with employers, safety and health professionals, and of course, the agency itself, but I want to make just one simple point this afternoon, and that is that without a strong program of standard-setting and enforcement, coupled with an emphasis on worker rights, OSHA reinvention will fail.

I have spent most of my career trying to build voluntary cooperative safety and health programs between workers and management. That is my job. That is exactly what the OSHA reinvention seeks to do, but all of my experience convinces me that the best incentives for voluntary programs are mandatory standards and vigorous Government enforcement. The best way to ensure that the

programs work is to include workers and their representatives in their implementation.

I will give you a couple of examples. In the steel industry, up until about 1980, we were losing about six workers a year from carbon monoxide, a very serious hazard in primary steel plants. Near the end of 1979, we lost six in a single accident. In 1980, the steel industry sat down with the union in those negotiations, and we crafted a comprehensive agreement on carbon monoxide. It took about a year to implement the engineering changes and other controls, but since that time, two workers have died from CO in plants. That is two too many.

Mr. SHAYS. From what period?

Mr. WRIGHT. Between the full implementation of the programs in 1981, and today we have lost two. We were losing six a year. Based on that previous death rate, the agreement saved roughly 50 lives.

OSHA wasn't directly involved in those negotiations. They weren't involved at all or in the resulting agreements, but we made it clear to the companies that negotiation was an alternative to an OSHA standard and that we were fully prepared to go to OSHA if the negotiation broke down.

I have a very high regard for our bargaining partners in the steel industry. I would like to think that we would have reached agreement even without the possibility of petitioning OSHA, but I know that at least one company negotiator sold the final agreement to his superiors by saying if we don't agree to this, we will get an OSHA standard. OSHA provides leverage.

The point is there isn't any tradeoff between voluntary programs and enforcement. It is not a matter of one or the other. Increased enforcement in voluntary programs will increase, also. Decreased enforcement and fewer employers will want to establish strong safety and health programs voluntarily.

That is not to say that every company would willingly violate the law were it not for OSHA inspections. There are many employers that would do their best to protect workers without OSHA. In fact, there are three broad categories of employers, and OSHA needs to handle each one a little differently. A major effort of the reinvention should be to do just that.

First, there are those for whom safety is an important corporate responsibility they strive to honor. We have heard about the volunteer protection program. Assistant Secretary Dear has talked about other programs, to recognize and support their efforts, and we applaud those programs.

On the other end of the spectrum are the corporate lawbreakers for whom safety is a cost to be avoided and workers are expendable. We have heard about how strong enforcement can turn some of those companies around as well.

In the middle, I think, is the vast group of employers, and that is the group that cares about safety that may want to do a good job, but need a little extra guidance and a little extra incentive. There are lots of ways we can provide the guidance. We have talked about consultation programs, rewriting standards in simple English, and other programs.

The incentive can be provided by the kind of ideas that Maine 200 represents. We have been a critic of some aspects of Maine

200, and some of my criticisms are in the written statement, but I think the important point about Maine 200 and the other programs like it, and there are similar programs going on in New Hampshire and in Wisconsin, a somewhat different focus, but a similar emphasis is that without the stick of enforcement, those programs will not succeed because they are based on enforcement as the driving force for voluntary compliance.

Targeted employers in Maine are told that they will get a comprehensive inspection if they do not join the program. I submit that relatively few would join it otherwise. Some would, but not all those that need to join it.

Indeed, the entire reinvention effort depends on strong standards, vigorous enforcement, and worker rights. Standards written in plain language are useless if there is no incentive to read them. Producing a penalty for good faith is impossible if there is no penalty to begin with. OSHA will rarely uncover phony paper programs unless workers feel free to complain to the agency when that is necessary. Too few companies will choose the high road if the low road carries no risk.

This brings me to my final point. Most of the OSHA legislation now in Congress, if enacted, would destroy OSHA's reinvention effort. In fact, they would virtually destroy the agency itself and greatly compromise the safety and health of every American worker.

H.R. 1834 introduced by Representative Ballenger would eliminate first instance penalties in most cases. Employers would have little reason to enter into any of the involuntary programs before the first inspection since that inspection would be a free ride.

H.R. 1834 would also repeal the right of a worker to file a confidential complaint and the right of a union to file a complaint at all. Many hazards would go uncorrected since OSHA would never learn of their existence.

Of course, the big cuts in OSHA enforcement contemplated in the House budget would reduce correspondingly the incentive for voluntary compliance. Taken together, H.R. 1834 and the appropriations bill would make American workplaces much more dangerous and, to put it bluntly, get a lot of American citizens killed.

This view is widely shared by safety and health professionals. You would be surprised how many company safety directors have told me confidentially that without OSHA, top management would not provide nearly as much support for the corporate safety program.

Their trade association lobbyist may tell you something different, but in a recent survey by Industrial Safety and Hygiene News, one of the professional magazines for industrial hygienists and safety professionals, almost two-thirds of respondents said that the current anti-regulatory climate in Washington would have an adverse effect on their corporate safety and health programs. Almost two-thirds, and that is just the climate. Consider the impact if the bill is actually passed.

Mr. Chairman, voluntary compliance is essential. Cooperation is the best way to promote safety and health. Done right, OSHA's re-

invention effort can facilitate all of those things, but none of it will happen without strong standard-setting, strong enforcement, and worker rights.

Thank you.

[The prepared statement of Mr. Wright follows:]

STATEMENT OF MICHAEL J. WRIGHT
DIRECTOR OF HEALTH, SAFETY AND ENVIRONMENT
UNITED STEELWORKERS OF AMERICA
BEFORE THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS
U.S. HOUSE OF REPRESENTATIVES

October 17, 1995

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss the Occupational Safety and Health Administration, in particular OSHA's reinvention effort. My name is Michael Wright. I am privileged to lead the health, safety and environment department of the United Steelworkers of America. I am also a member of the National Advisory Committee on Occupational Safety and Health, a federal advisory committee established by the Occupational Safety and Health Act. Of course, the views I will express are my own, not those of NACOSH.

Any genuine attempt to understand OSHA must begin with the actual experience of those OSHA is charged to protect. Half a million of them belong to our union. Notwithstanding our name, the USWA represents workers in virtually every segment of the economy -- steel of course, but also mining, rubber, chemicals, general manufacturing, health care, services, even public employment.

Last year, thirty-five of our members died in workplace accidents in the United States, along with more than a dozen supervisors and contractors in plants we represent. Twenty-six have died so far this year. They were a diverse group, from many different industries. Their ages ranged from 19 to 63. Most had children. One was a single mother.

One of my duties is to oversee the union's investigation of fatal accidents. They were all different -- a 53-year-old pump repairman who died from carbon monoxide in a relatively new operation because his employer had never done the kind of

engineering analysis that would have found and fixed that hazard; a 36-year-old product inspector who was crushed to death in a rolling mill because her employer had failed to properly guard the equipment; a 27-year-old furnace operator burned to death by a breakout of molten metal because his employer made a conscious decision to push the furnace beyond the safe life of its refractory lining; a 61-year-old engineer crushed between two rail cars inside a steel plant because there are no OSHA standards or industry-wide voluntary programs governing such operations.

Though these accidents were diverse, there is one statement that is true for all of them -- none of the accidents occurred because OSHA was too strong. Not a single worker died because the government was too tough, or inspected too often, or assessed too high a penalty, or set too many standards, or was not sufficiently cooperative with employers. On the contrary, they died because OSHA is too weak, because there are too few inspections, because there are too many serious, but unregulated, hazards in American workplaces and, fundamentally, because too many employers think they have little to fear from OSHA.

Of course, these accidents are only a small manifestation, in one group of workers, of the risks facing all working men and women. One death is a tragedy; the 56,000 deaths we suffer each year from occupational accidents and disease is a national catastrophe and a national disgrace.

Many of us in organized labor have criticized some aspects of what OSHA calls its reinvention. But we fully support its stated goals -- first, to better protect American workers on the job; second, and subordinate, to ease the burden of compliance for those employers who genuinely want to do a good job.

We are working hard on the reinvention, along with employers, health and safety professionals, and of course the agency itself. I have been, and will be, personally involved in two aspects of the reinvention, just this week. Yesterday and

today, OSHA is hosting a stakeholders meeting on safety and health programs. On Thursday and Friday, a subcommittee of the NACOSH will be holding a public meeting on OSHA's Hazard Communication Standard. Mr. Steinmetz, who testified earlier, is a critic of that standard. I hope he can join us there for a more comprehensive discussion of his views.

Assistant Secretary Dear and others have discussed various aspects of the OSHA reinvention effort. For my part, I want to make just one simple point this afternoon. Without a strong program of standards-setting and enforcement, coupled with an emphasis on worker rights, OSHA reinvention will fail.

Let us consider what Congress achieved with the Occupational Safety and Health Act. As terrible as the current death toll is, without OSHA it would be far worse. In 1970, the year the Act was passed, the fatality rate from workplace accidents was 18 per hundred-thousand workers. In 1993, it was eight -- a 55% decrease. In the high-hazard industries that OSHA targets, the improvement has been even more dramatic. For example, fatal accidents in construction have decreased by more than 60%. Conversely, the rates have declined less in sectors with less OSHA enforcement. One example is government. As you know, state and local workers are covered only in state plan states. Federal workers can ask for an OSHA inspection, but OSHA has no power to require compliance from other federal agencies. Among government workers, the fatality rate has declined by only 21%. Since 1989, the rate among government workers actually has exceeded the rate in manufacturing.

Now some may object to my statement that OSHA has been responsible for the decline in workplace fatality rates. Of course, many groups had a part in the improvement. Employers built strong corporate safety programs; unions expanded their safety and health staffs, and worked with management to create thousands of workplace safety and health committees. Universities trained an increasing number of safety engineers and

industrial hygienists. Professional societies increased their involvement.

However, OSHA was the seed around which all this activity crystallized. And at the heart of OSHA are the agency's standards, its enforcement programs, and the rights the OSH Act grants to American workers.

If there is one thing on which everyone here agrees, it is that enlightened employers should provide safe workplaces voluntarily. The question is, how do we get them to do it? I have spent most of my career trying to build voluntary, cooperative safety and health programs between workers and management. All my experience convinces me that the best incentives for such programs are mandatory standards and vigorous government enforcement. The best way to ensure that the programs work, is to include workers and their representatives in their implementation.

This is not the first hearing devoted to the relationship between regulations and voluntary programs. As long ago as 1845, the Massachusetts legislature held hearings on the hours of labor and working conditions in the textile industry, prompted by the early labor organizations formed by the women in the mills. Worker after worker testified on the health problems caused by long hours and poor ventilation. Several described lung conditions they attributed to cotton dust. Ninety years later the medical profession would recognize their disease as byssinosis, or brown lung.

The women asked for regulations governing hours and working conditions. The Massachusetts legislature expressed its sympathy, and agreed with the workers on every point except one. The remedy, they said, was not in regulation, but in "the progressive improvement in art and science, in a higher appreciation of man's destiny, in less love for money, and a more ardent love of social happiness and intellectual superiority."

That is a more elegant phrase than "voluntary compliance," but it is essentially the same.

And of course, it did not work. As the industry expanded, tens of thousands of textile workers were killed or crippled by byssinosis. By 1978, there were an 40,000 active cases, amounting to 20% of the industry's workforce. That was the year OSHA established a mandatory standard, and began to enforce it. By 1985, the rate of byssinosis had been cut by 95%. Many of those firms complied without ever seeing an OSHA inspector. But it took the standard, and the possibility of an inspection, to gain their cooperation.

Voluntary programs can work, but they are hard to establish outside a framework of regulation. One example comes from our own union. In the late 1970s, we lost four to six workers each year from carbon monoxide in the steel industry. Near the end of 1979, we lost six in a single accident. In the 1980 steel negotiations we sat down with the industry to craft a comprehensive agreement on carbon monoxide. It took about a year to implement the engineering changes and other controls, but since that time, only two workers covered by the agreements have died from carbon monoxide. Based on the previous death rates, the agreements have saved more than 50 lives.

OSHA was not directly involved in the negotiations or the resulting agreements. But we made it clear to the companies that negotiation was an alternative to an OSHA standard, and that we were fully prepared to go to OSHA if the negotiations broke down.

I have a high regard for our bargaining partners from those steel companies. I would like to think that we would have reached agreement even without the possibility of petitioning OSHA. But I also know that more than one company negotiator sold the final agreement to his superiors by contrasting it with the alternative of an OSHA standard.

Enforcement leads to cooperation. That principle also applies in the day-to-day administration of safety and health.

We have joint safety and health committees in virtually all of our workplaces. We expect them to discuss and resolve safety and health problems and, in most cases, they do just that. It is very unusual for the union to file an OSHA complaint where the safety and health committee is working well. Almost every dispute gets resolved between the union and the company, usually at the workplace level. But what makes this possible is OSHA. OSHA keeps both sides honest. The company knows that we can and will go to OSHA if they refuse to correct a legitimate problem. The union knows better than to raise frivolous complaints, because OSHA will not support us under those circumstances and we will lose credibility.

Several years ago, a company whose workers we represent decided they could save time by lifting heavy loads through the limit switch of a crane. That is a dangerous practice, because the lifting mechanism can fail and the entire load can fall. The safety and health committee discussed it; the union showed the company the law, but the company refused to listen. Reluctantly, we went to OSHA; the company was cited for a willful violation. As a result, we were able to agree on a comprehensive program of crane safety. Today, both sides listen to each other. That local union never had to go to OSHA again.

In non-union workplaces, OSHA is even more important. All too often it is the threat of an OSHA inspection, and possible penalties, that persuades management to read the relevant standards, audit the workplace, call a consultant, look for the hazards, and fix them.

The point is, that there is no trade off between voluntary programs and enforcement. It is not a matter of one or the other. Increase enforcement, and voluntary programs will increase also. Decrease enforcement, and fewer employers will establish strong safety and health programs voluntarily.

This is not to say every company would violate the law, were it not for OSHA inspections. There are many employers who would

do their best to protect their workers even without OSHA. In fact, there are three broad categories of employers, and OSHA needs to handle each one a little differently. A major objective of OSHA reinvention should be to do just that.

First, there are the employers for whom safety is an important corporate responsibility that they strive to honor. For these employers, safety is more than a priority to be weighed against other priorities, it is a value to be incorporated into every aspect of their operation. OSHA needs to recognize and support the efforts of such employers, and use them as benchmarks for other firms. That is what the Voluntary Protection Program is all about. Lee Anne Elliott described VPP to you earlier today. We have questioned some aspects of VPP, but we certainly support both the concept and the overall program.

OSHA is also working on a compliance directive that will reduce penalties for employers who establish strong safety and health programs. We were dismayed by an earlier draft of the directive, because we thought it opened the door to sham programs existing on paper only. But we support the goals of the directive, and we are working with OSHA and the employer community to embody the goals in more effective language.

Most of all, OSHA can help cooperative companies by enforcing the law with respect to their less enlightened competitors, for whom safety is a cost to be avoided, and workers are expendable. Those companies are at the other end of the spectrum, and there are all too many of them: Imperial Foods in Hamlet, North Carolina, where 25 workers died behind locked exit doors when the plant caught fire; Napp Technologies in Lodi, New Jersey, where five workers were killed when the company knowingly ordered them into an area where a runaway reaction was building toward a catastrophic explosion; A.K. Steel in Middletown, Ohio, where four workers died because the company and an outside contractor broke many of the rules for working in confined spaces; Master Metals in Cleveland, where the owner deliberately

falsified blood lead records to avoid removing lead-poisoned workers from exposure and getting them the medical treatment they needed; Dayton Tire in Oklahoma City, where a worker was killed because the company continued to willfully violate OSHA's lockout/tagout standard, even after numerous injuries. The only answer for these companies is to hit them with the kind of citations and penalties that will get their attention and the attention of other would-be lawbreakers.

Unfortunately, the reinvention has not focused sufficiently on these corporate outlaws. Several measures would help. The agency could, for example, reduce the time it takes to process the most serious violations. The OSH Act imposes a 6-month deadline for issuing a citation, from the time the violation is first discovered. OSHA routinely takes the full six months to issue the largest citations. The reason is the confusing, multi-layer review process within the Department of Labor, involving not only OSHA, but a separate Solicitor's office. But the result is that workers exposed to the deadliest hazards have to wait the longest for OSHA to get around to ordering a correction. This problem culminated in the absurd situation of the Secretary of Labor arriving at Dayton Tire in Oklahoma City to deliver a citation alleging <u>imminent</u> danger six months after the violation was found. The Secretary was right. It was imminent danger. But it was even more imminent six months earlier, and as a result of its delay, OSHA lost the case. Sadly, the Department of Labor has not yet learned its lesson, and processing delays in serious cases are just as bad today. Justice should be more swift.

OSHA could also tie its penalties more closely to the economic "benefit" a company thinks it gains by breaking the law. If an employer saves $1000 by failing to guard one machine, OSHA appropriately charges a single OSHA violation. If an employer saves $100,000 by failing to guard 100 machines, OSHA still charges a single violation in all but the most egregious cases, with a resulting penalty of a few thousand dollars. It is not

hard to see how that plays out in the cost/benefit calculation of an employer who cares only about the bottom line.

Companies who neglect safety are, almost by definition, those who treat their employees the worst. OSHA needs to be especially protective of worker and union rights in such cases, including the right to be involved in the inspection, and in all settlement discussions.

That brings me to the third group of employers -- the largest group, the ones in the middle. They may care about safety. They might want to do a good job. But they need a little extra guidance and a little extra incentive.

The guidance can come through the state consultation programs, OSHA training grants, compliance assistance and outreach programs for small business, and some even simpler measures. For example, OSHA is exploring the possibility of rewriting some of its standards in plain English. In fact, it would help just to reformat the standards, with appropriate headings and indentations, so that a reader could find the right provision quickly. (For some standards, we have done that ourselves in the USWA -- primarily for our members and their employers, although a number of OSHA compliance officers have also requested copies.)

However, it is the incentives for compliance which are most important. The Maine 200 experiment, which was described earlier, is designed to make employers with the highest numbers of injuries choose between active, voluntary programs, and strict enforcement.

Maine 200 clearly works in many companies; you heard an example of that earlier. But OSHA needs to do a much more thorough evaluation before the experiment is declared an success across the board -- especially in non-union companies. OSHA's claim that employers voluntarily corrected more violations than OSHA would have cited, is undoubtedly true. But that should be

the case even without Maine 200. Strong enforcement also leverages voluntary compliance, in Maine and elsewhere.

In fact, there are serious unanswered questions about several aspects of the program. For example, Maine 200 relies on workers compensation data; companies sometimes avoid workers compensation reporting by shifting cases to their group health program, or by discouraging accident reporting through programs which reward workers for low accident rates. OSHA personnel in Maine have not done enough to ensure that worker and union rights are recognized in all employer programs. The reliability of company self-reporting is another concern, although OSHA has begun to test it through its monitoring visits. The program takes a large share of OSHA's resources in Maine; a number of unions have complained about OSHA's availability in workplaces not among the targeted 200, especially in construction, which is excluded from the program altogether. Most fundamentally, we question the wisdom of eliminating routine inspections in the most dangerous workplaces.

We think a better model is provided by two other OSHA initiatives -- the Wisconsin 200 program, and the New Hampshire Focused 50. In both cases, OSHA informed employers with the worst injury rates that they were targeted for inspection. At the same time, OSHA offered training and compliance assistance in advance. All the targeted workplaces were, or will be, inspected. But employers who took steps in advance to find and correct hazards were treated differently than those who did not.

Whatever the ultimate evaluation shows, all three programs are well-motivated. They are based on the hope that even those employers with the highest injury rates can be encouraged to improve their safety and health programs and better protect their workers. But all three programs depend on strict enforcement as the driving force for voluntary compliance. Targeted employers in Maine are told that they will get a comprehensive inspection if they do not join the program; few would join it otherwise.

Targeted employers in the other two states know that they will be inspected; that knowledge provides them the incentive to improve their workplaces before OSHA arrives.

Indeed, the entire reinvention effort depends on strong standards, vigorous enforcement, and worker rights. Standards written in plain language are useless if there is no incentive to read them. Reducing a penalty for good faith is impossible if there is no penalty to begin with. OSHA will rarely uncover phoney, paper programs unless workers feel free to complain to the agency when it is necessary. Too few companies will choose the high road, if the low road carries no risk.

That brings me to my final point. Most of the OSHA legislation now in Congress, if enacted, would destroy OSHA's reinvention effort. In fact, they would virtually destroy the agency itself, and greatly compromise the safety and health of every American worker. For example, H.R. 1834, introduced by Representative Ballenger, would eliminate first-instance penalties in most cases. Employers would have little reason to enter any of the voluntary programs before the first inspection, since that inspection would be a free-ride.

H.R. 1834 would also repeal the right of a worker to file a confidential complaint, and the right of a union to file a complaint at all. Many hazards would go uncorrected, since OSHA would never learn of their existence.

Or consider ergonomic hazards, the greatest single source of injury in American workplaces. A rider in the House appropriations bill (H.R. 2127) would deny OSHA the authority, not only to promulgate an ergonomics standard, but to establish voluntary programs, or even to collect records of ergonomic injuries. Employers in the experimental programs in Maine, New Hampshire, and Wisconsin have reported significant drops in ergonomic injury rates. Under the House budget, OSHA would be forbidden to help them with ergonomic problems, or even to listen, in any sort of official capacity, when they report

success. Nor could OSHA enforce any ergonomic standard against their less enlightened competitors. According to a recent survey by the Bureau of Labor Statistics, ergonomic hazards account for about half of all lost workday injury cases. Forbid OSHA to deal with ergonomics, and you doom the agency to failure in its mission. More important, you doom thousands of workers to painful and debilitating injuries.

Of course the big cuts in OSHA enforcement contemplated in the House budget would reduce correspondingly the incentive for voluntary compliance. Taken together, H.R. 1834 and the appropriations bill would make American workplaces much more dangerous and, to put it bluntly, get a lot of American citizens injured or killed.

This view is widely shared by safety and health professionals. You would be surprised how many company safety directors have told me, confidentially, that without OSHA, top management would not provide nearly as much support for the corporate safety program. Their trade associations lobbyists may tell you something different, but in a recent survey by Industrial Safety and Hygiene News, scheduled for publication later this year, almost two-thirds of respondents said that the current anti-regulatory climate in Washington would have an adverse effect on their corporate safety and health programs. And that is just the climate. Consider the impact if these bills actually pass.

Mister Chairman, voluntary compliance is essential. Cooperation is the best way to promote safety and health. Done right, OSHA's reinvention effort can facilitate all those things. But none of it will happen without strong standards-setting, enforcement, and worker rights.

You can view the OSH Act of 1970 in several different ways -- as a public health measure, as a labor law, as legislation aimed at improving the economy by reducing the economic burden of workplace injuries and disease. But we view it as a commitment

Congress made to American workers. In the Act, Congress said that every American worker has a right to a safe and healthful workplace, subject only to the constraint of feasibility. Congress did not say: "You have a right to a safe and healthful workplace -- so long as your employer is enlightened enough to provide one voluntarily." Congress told American workers that their lives were important, and worthy of protection. The Act was a promise Congress made to American workers and their families a quarter century ago. That promise must not be broken.

Thank you.

Mr. SHAYS. Thank you both very much.

As I view the challenge that OSHA has, it is not dissimilar to the challenge that we face in our environmental laws. The pendulum went too far one way, and people didn't want to risk bringing it into balance in the past few years. So we let it stay that way, and there is danger, at least from my perspective, that it will now go too far the other way. It is really, I think, unfortunate that people from both sides of the aisle couldn't sit down in past years to say it has gone too far one way, let's acknowledge that, and then bring it into balance.

OSHA is legendary in terms of the extraordinary numbers of foolish regulations and foolish enforcement. They are not just incidental.

At the same time, I am a strong supporter of OSHA. I believe that we have murder in the workplace today, candidly. I think there are people that know their employees are in danger and they are very negligent, and yet, they are able to ignore what is sound business practice, and people die.

So what I hear from the second panel, the kind of cooperation, I get excited about it. I get the sense from the both of you that you come from different directions which is really important for us to hear.

So I would love to have you give me an assessment of what you thought of the presentation of the second panel. Is it too Pollyanna? Am I living in a dream world? I will tell you, from my standpoint, I think it is the future. So I would love for you both to just comment on that.

Mr. STEINMETZ. I would like to address the VPP program that OSHA does offer. I think they are wonderful programs. I think you heard good evidence that they are doing wonderful things in the business community.

They don't apply to what I do at all. I do 600 projects a year. The VPP program is written. It is site-specific. It is a relatively complicated program. There is a lot of paperwork involved. I don't mean to characterize it as a bad program, but it is not for the type of business I am in. There really is no incentive program for the type of business I am in.

We are in negotiations now with OSHA to try and come up with a compliance incentive program specifically for the roofing construction industry. Let's add some carrot back to it, too, not just all stick.

I am not in favor of taking away all the stick because I don't think that is a good idea either, and I don't think Representative Ballenger's bill does that, but I think OSHA, by their own admission, doesn't have the resources to go out and enforce the standards across all industries. So they need voluntary compliance. They need incentives. They need to reward people that are doing the right things.

Mr. SHAYS. Let me just say before I ask you to comment, Mr. Wright, how I would respond if I were working in the administration and I were asked what my thought was about Senator Kennedy's bill. From their standpoint, given their position in the past, I would probably try to find a way to say, yes, it was there, but

not encourage it to be implemented. I don't see the administration asking Congress to move forward with Senator Kennedy's bill.

I guess what I am driving at is you are making a case, and it may be a valid one, but I don't think so. You are saying that a lot of what we are seeing in OSHA is really not from the heart.

I think Mr. Dear deserves a little more credit than that. I do believe it is from his heart.

If you are saying it is from other people in the administration, the jury is still out. If we in Congress buy that the monumental changes taking place have helped encourage the administration to think in the way they are thinking, more power to them. However, I believe that this administration knows that OSHA needs to change, and I believe the fact that they have recognized this change through their award process has been a signal to a lot of people that it is not just intended to be superficial.

Mr. STEINMETZ. But they didn't come to that conclusion on their own. My testimony was trying to characterize an agency that is incapable of reforming themselves.

I think without codifying this, without introducing legislation, the next time the political climate changes, we will be back to square one.

Mr. SHAYS. You may be right. You may be right. That is a valid point.

Mr. Wright.

Mr. WRIGHT. First, I think that changes in OSHA are very useful, will protect a lot of workers, are enormously overdue. I think OSHA is getting around to correcting some things that were really a result of the original act.

For example, some of the regulations you have talked about that are on the books and just don't make sense anymore are regulations that came in, in 1970, when the act was passed because Congress said OSHA is not going to be able to get to everything right away, given the cumbersome standard-setting process. So many industry voluntary standards were simply put on the books. That was really the only way to do it.

All of those standards were written by the regulated industries. Many of them are very out of date. A lot of them don't make sense anymore, and that is what they are going after.

Some of the things that we have heard that are allegedly silly regulations, and I will use the gum chewing on the roof one, make a lot of sense. Let me tell you about that regulation. There is no OSHA regulation that says you can't chew gum while doing a roofing project. There is a regulation that says you can't chew gum while working around asbestos because you ought to be wearing a respirator while working around asbestos, and because we know that if you chew gum, drink water, eat while you are working with highly toxic substances, some of those things will get into your body through that route.

So, essentially, what the regulation does is if you are tearing out asbestos shingle on a roof, then you can't chew gum. That is very different than saying roofers can't chew gum, in general. That was one of the new standards, and we generally support that.

OSHA in its memorandum that was sent out to the field, and I don't have it in front of me, but my understanding is that what the

memorandum said was that if the exposures are below the permitted exposure level, then it is all right to chew gum, and I think that makes sense, but characterizing that as a silly regulation is a long way from the truth.

Mr. SHAYS. OK.

Mr. Souder, I appreciate you being here, and you have the floor.

Mr. SOUDER. I wanted to ask Mr. Steinmetz a question, and possibly, this gum chewing example can help me lead into it. Is not part of the problem on some of the regulations both the employer and the employee much like individuals who ride motorcycles who don't want to wear helmets? I thought that was a good point about asbestos, but you can't really have the employer roofing company out checking on the half hour to see whether his employees are chewing gum. We need to have some common sense upon the employees as well that the employer needs to tell the employees the danger with this, but to some degree, Big Brother can't be watching everybody all the time, particularly every 60 years if that is the amount of enforcement.

At the same time, it is hard to deny that in the roofing industry, A, it is dangerous. There are a lot of deaths from falls. We have had some in my district recently. How would you suggest, since you seem to share a philosophy that I share that I don't believe the Federal Government is necessarily the way to do it, to have processes that both encourage the companies to be a little more aggressive with their employees because sometimes the employees understand that the companies are kind of winking at violations of law, and yet, I see many work sites where people don't have hard hats on, where they are not being responsible on the roofs.

I know many of my friends who build homes and other things behave very irresponsibly on the job on an individual basis, and their employer probably doesn't even have the faintest idea.

How would you do this if you wouldn't have the threat? We are always going to have the threat of some enforcement for carelessness, but how would you try to improve safety at the work site if you wouldn't have it be done through OSHA?

Mr. STEINMETZ. As you stated earlier, there are a number of other factors in place besides just OSHA. I have my employee morale to worry about. I have productivity to worry about. I have public relations to worry about. I have the cost of my insurance to worry about. I have my ability to compete. It is all impacted by health and safety. I take health and safety very seriously, and I don't mean to be cavalier, but OSHA doesn't change my attitude toward health and safety.

My safety program has gotten to the point where it has gotten two components. One is to keep my employees safe because I have a vested interest in that. The other is to keep OSHA happy. Haz-Com is a good example.

You have probably heard the examples of Haz-Com. I have spent an inordinate amount of time hassling with Haz-Com. Haz-Com is a paper chase to keep OSHA happy. It is money I could be better spending. It is money OSHA could be better spending.

In 1994, 9 of the top 20 citations were for Haz-Com. We have heard a lot of people talk about how what OSHA could be doing to save more lives. The Ballenger bill is going to cost this amount

of lives. OSHA's emphasis on Haz-Com and other paperwork citations is costing lives. That is money that they should be spending chasing things that are killing people. Haz-Com in construction isn't killing people. Falls are killing people. Trenching is killing people. Electrical is killing people. Struck-by-accidents are killing people. That is the things OSHA should be spending their time on.

They are telling us they have now come to the conclusion that yes, maybe that is where they should be spending their time. I haven't seen any evidence of it.

Mr. SOUDER. We could get off on a whole number of angles with the materials because, while some materials are dangerous, other materials are less. Some of us back applying laws to Congress to see how we deal with the labor laws and how we deal with all of the things such as the ink blotters and the fountain pens having hazardous materials, and you are supposed to file a report if you have fountain pens in your office. We will see how many Members of Congress do that.

Mr. Wright, I had a concern because I know that the steel industry and the foundry industry, and I realize your represent a lot more than that, but those are very dangerous, particularly in the old-fashioned industry before a lot of the productivity came in. Are you suggesting that we move to zero tolerance on death and accidents? In other words, part of the way we could get to zero tolerance would be to have all our jobs exported or to have plastics instead of steel in automobiles.

There is some kind of a line there. Would you grant between employability whether it is the Clean Air Act, which overall has helped our country, and the Safety Acts, which I am not going to disagree have saved a lot of lives? Would you not agree there is some balance in here that we can't move to, in effect, zero tolerance without making us non-competitive?

Mr. WRIGHT. I disagree with the premise. We work with a lot of very good companies that are profitable, provide lots of employment, and have very good safety records, and their policy on safety is zero tolerance.

I can recall one safety manager who was told by the corporation, your goal here is to bring the fatalities down to three from the six it was the previous year worldwide. This was a very large company with operations in 20 or 30 countries. The corporate goal was to bring the six down to three, and he said which three people do you want me to kill. He said that is not my goal, my goal is zero. I don't think there is a tradeoff, at least where we are now in the workplace. There isn't a tradeoff in our local unions and our workplaces, anyway, between providing jobs and providing safety.

We found that the companies that do the best job providing safety also do the best jobs at keeping the company profitable and providing jobs.

When safety goes bad, it is a management failure, and that management failure usually means there has been a management failure across the board, and that is the company we worry about going out of business.

Maybe at some level, we would reach some academic tradeoff, but where we are operating in the workplace now, we can do an awful lot to make workplaces enormously safer through cooperative

programs, through strong enforcement, through all those things, and create jobs in the process.

Mr. SOUDER. I appreciate your comments. It is a really complicated issue because, as we know with SDI and a lot of the new steel companies that aren't union, you have a tremendous boost in employment and a lot of changes in the market, but I definitely agree the goal should be toward zero tolerance. I appreciate your answer.

Thank you both.

Mr. SHAYS. I thank both gentlemen for being here today.

Let me also thank the staff on both sides of the aisle who make these hearings possible, and also our court reporter, Amy Rose, who is quietly making sure it is all taken down.

So, again, I thank everyone, and this hearing is adjourned.

[Whereupon, at 4:50 p.m., the subcommittee meeting was adjourned.]

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