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OSHA LISTENS MEETING:
Department of Labor Auditorium
200 Constitution Avenue, NW
Washington, D.C.
March 4, 2010
Morning Session

1 P R O C E E D I N G S

2 MR. MICHAELS: Welcome everyone to the special
3 OSHA Listens meeting. My name is David Michaels. I'm
4 Assistant Secretary of Labor for Occupational Safety
5 and Health. When I arrived at OSHA three months ago I
6 made a commitment to move this agency forward working
7 to fulfill its vital mission, to assure the safety and
8 health of America's working men and women.

9 I also made a commitment to listen to OSHA
10 stakeholders, and to present opportunities to
11 [indiscernible] engage with OSHA to provide suggestions
12 and comments on the best ways for the agency to address
13 major safety and health concerns in workplaces across
14 our nation.

15 This meeting, reflecting President Obama's open
16 government initiative, is being broadcast live on the
17 Internet. Also, your submitted statements will be
18 posted on the Internet. This meeting is just the
19 beginning of our commitment to engaging in public and
20 [indiscernible] decision-making. We are in the process
21 of preparing our strategic goals and plans for the
22 agency, and we want and need your feedback.

1 I will start that process today by asking a few of
2 you some questions about our goals and how we measure
3 our success. We will also be reaching out to you again
4 in the upcoming months to get your views and concerns
5 before we finalize our strategic plan. This year, as
6 OSHA marks its 40th anniversary, our nation's workers
7 clearly faced far better working conditions than before
8 OSHA arrived.

9 Still, every year in our country more than 5000
10 workers die on the job and thousands more are sickened
11 and maimed by preventable illnesses and injuries. This
12 must stop. We must do a better job of protecting
13 workers. This meeting provides an opportunity for the
14 public to communicate with its government.

15 We welcome comments from employers, workers and
16 their families, occupational safety and health experts,
17 scientists and engineers, labor leaders, community
18 organizations and others with constructive ideas on how
19 we can make workplaces safer and more healthful. I
20 want to thank all of you who came here today to offer
21 your perspectives, your suggestions and your help.

22 When we originally planned to hold this forum last

1 month, our speakers list and seating space were booked
2 solid. Then the historic blizzard arrived, shutting
3 down our transportation, and so we rescheduled to
4 today. And today once again, our roster is full. We
5 have 240 people registered to attend during the day,
6 and about 45 speakers scheduled right up to closing at
7 6:00 p.m. tonight.

8 Not everyone who expressed interest in this forum
9 was able to travel to Washington, and in a single day
10 we couldn't accommodate everyone who wanted to speak.
11 So, in the spirit of inclusiveness and transparency, we
12 have also invited the public to send their written
13 comments to OSHA.

14 We will soon post every comment we receive up to
15 March 30th. As soon as we can, we will also post on
16 the web a transcript of today's meeting. We have
17 already received more than 60 comments. I have read
18 them and I found them to be very useful. Some people
19 submitted comments that identified areas where OSHA
20 needs new standards, or where standards should be
21 updated or changed.

22 We received technical suggestions on how to

1 improve enforcement procedures, as well as more
2 philosophical ideas about how to change our message and
3 image. Some suggested ways that we could better
4 protect whistleblowers and others who exercise their
5 rights at work. Some offered ideas on how we can
6 improve worker training and inspector training.

7 For those of you who are speaking today, or who
8 wrote in, thank you for getting the conversation
9 started. For those of you who traveled great distances
10 to be here today, you especially have my sincere thanks
11 for making the trip. We promise to listen to everyone.
12 I also especially want to thank those who are here to
13 speak for family members who were killed on the job.

14 OSHA is looking for more and better ways to
15 involve these family members in our efforts to protect
16 workers. I appreciate the courage it took to come here
17 and tell your stories. You have my personal assurance
18 that OSHA takes its commitment to workers' families
19 very seriously. Behind us are photographs of fallen
20 workers. These pictures, chosen by family members, are
21 a daily reminder of OSHA's priority, protecting workers
22 all over America who shouldn't have to die while trying

1 to earn a living.

2 The photos are here courtesy of the United Support
3 and Memorial for Workplace Fatalities. This nonprofit
4 organization promotes family involvement, transparency
5 and fairness during investigations, and strives to give
6 a face to those killed on the job. Thank you for these
7 photographs and thank you for your efforts. We also
8 welcome, as always, the success stories of employers
9 who excel at safety and health, who surpass OSHA
10 standards and have transformed the culture of their
11 workplaces.

12 This forum offers an opportunity for you to
13 suggest how we can move more employers to follow your
14 example. Our ultimate goal is found in Labor Secretary
15 Hilda Solis' pledge to provide good jobs for everyone.
16 And let's bear this in mind, no job is a good job
17 unless it's a safe job.

18 I want to thank Debbie Berkowitz, my chief of
19 staff, and Cory Hutcheson, a regulatory analyst in our
20 Directorate of Construction, for managing the many,
21 many details in organizing this listening session. I
22 also want to introduce two OSHA department directors

1 who are taking the day and joining me at this session,
2 Richard Fairfax, Director of Enforcement Programs, and
3 Dorothy Dougherty, Director of Standards and Guidance.

4 Before I turn over the microphone and let Debbie
5 explain how we will proceed this morning, I want to say
6 once again to everyone offering written or spoken
7 comments, thank you. Your ideas may help us save
8 lives.

9 MS. BERKOWITZ: Hi. I'm Debbie Berkowitz, and I'm
10 going to go over just a few logistical matters and the
11 structure of the day. You know, in the Federal
12 Register notice that we sent out, we requested that
13 when people register, they let us know if they want to
14 make a presentation and what they were going to speak
15 about. And so based on this information, we've
16 organized all the presenters into panels of two, three,
17 four or five, and we tried our best to, based on the
18 information you sent us, to group people into panels by
19 topic.

20 This wasn't a perfect science, and so we apologize
21 in advance if folks are talking about slightly
22 different topics, but in the end, at the end of the

1 day, all of us will be talking about the key issues
2 facing OSHA and getting your advice about how we should
3 move forward. As we stated in our correspondence to
4 everybody, we are limiting comments to five minutes.

5 We're being very strict about this because we have
6 a full day and we want to make sure that everybody has
7 time to present, and that we have time to question
8 people. So during the panel, we actually have a little
9 light over there that we borrowed from someone, and the
10 green light indicates that you have plenty of time.
11 The yellow light indicates that you may want to start
12 wrapping up, and the red light means just finish your
13 sentence, and the five minutes are up, and then we'll
14 move on.

15 And we've got a great panel here working the clock
16 there, and then the way we're going to work the day,
17 because it's a full day is I'm going to call the panel
18 to the podium, and then I'm going to call the next
19 panel to come up front and sort of be on deck so that
20 you're sort of -- you know, you're ready to go.

21 A couple other items that I want to just let you
22 know, just being here in the Department of Labor, we're

1 so grateful that you all came here. I know a lot of
2 you came great distances. Everybody has a badge. You
3 have to wear that badge at all times to move around in
4 the Department of Labor. We do have a big cafeteria on
5 the sixth floor. It is open now all the way through
6 until three o'clock, and there is a little store right
7 next to it and you can get coffee, lunch, and whatever
8 else you need.

9 The elevators to the sixth floor are right in back
10 of the auditorium here. If you want to go someplace
11 else in the building, go see one of our staff at
12 registration and, you know, they'll take you there. If
13 you need assistance, you know, just let us know. I
14 just want to make sure people -- just remind people
15 this is being webcast live, as David mentioned, and
16 it's also being transcribed.

17 And I think with that, we are sort of ready to
18 begin. I have -- everybody has gotten a copy of the
19 agenda.

20 MR. MICHAELS: The exits.

21 MS. BERKOWITZ: Oh, okay, and if there is an
22 emergency, there are emergency exits, so just, you know

1 --

2 MR. MICHAELS: Through the back door and to the
3 right.

4 MS. BERKOWITZ: Through this way and --

5 MR. MICHAELS: To the right.

6 MS. BERKOWITZ: To the right. So when we call you
7 up, it's just because this is being transcribed. Make
8 sure that you state your name at the beginning of the
9 statement, and your organization, if any. So thank you
10 and we'll start with our first panel. Thanks so much
11 for coming.

12 MS. FORD: I want to start off by saying thank you
13 very much for taking the time to listen to our stories.
14 My name is Tonya Ford and I'm here in honor of my uncle
15 Robert Fitch, or as I called him, Uncle Bobby, and all
16 of the families that have lost a loved one due to a
17 work related fatality.

18 He is not another name, another statistic, another
19 casualty. He was a son, brother, father, uncle and
20 friend and on January 29th, 2009, a little over one
21 year ago, his life was taken from us in a very harsh
22 way, a way that no man or woman should ever die. The

1 sad thing is his death could have been prevented. My
2 Uncle Bobby went to work at ADM located in Lincoln,
3 Nebraska. He did that every day for 32 years, only
4 this day would be different. My uncle said his last
5 words when he announced at approximately 8:54 he was
6 going to break over the walkie-talkie.

7 He stepped on the manlift. Something went wrong
8 on that manlift and my uncle fell approximately 80 feet
9 to his death. When he fell he impacted each wall in a
10 zigzag formation before landing on an air duct in which
11 the impact slid 19 feet. Then he slid off the air duct
12 and fell through the manhole below causing him to fall
13 an additional 40 feet, impacting each wall in the
14 manlift until he landed on the cement floor at the
15 doorway.

16 He laid there in his own blood and brain matter
17 before he was found by my father, his brother-in-law.
18 When my uncle fell that day, he lost his helmet,
19 glasses, and broke every bone in his body but his
20 pinky. He severely injured every organ, and there was
21 evidence all over the walls. I have since heard from a
22 fireman that stated it was the worst accident he had

1 seen in eight years on the department.

2 I never realized that there are no mandatory
3 inspections on these devices locally or federally. I
4 have been laughed at and told I needed to get money by
5 one of my state representatives when asked what can I
6 do to make changes to Conveyancy Safety Act. At that
7 point I figured we had OSHA. That has safety
8 regulations that will guarantee the equipment be
9 inspected and safe. I was again was wrong.

10 Don't get me wrong, there are many companies that
11 are required to maintain their equipment, but not if
12 they are grandfathered in, such as ADM. A company does
13 have -- a company does not have to maintain and/or
14 upgrade any mechanical devices, or structures to the
15 building, if they are under grandfather clause. It's
16 my understanding.

17 Why would they pay money out of their pocket to
18 protect their employees if they won't be fined for any
19 accidents and/or deaths caused by these mechanical
20 devices or structures of the company. Nothing protects
21 the employees. After a loved one dies, the family
22 should have the opportunity to sit and reflect on

1 memories that they had with their loved ones. They
2 should not have to do research and finding more about
3 the accident that took their loved one's life so
4 tragically. There are many stages of grief and one
5 stage is wanting the answers to questions.

6 We had many questions and didn't know who to go
7 to. So I went to the media and informed them that I
8 was ready to speak on behalf of my family. However, I
9 needed their help, and they owed that to us. They had
10 informed their local viewers of the accident at ADM,
11 while we were listening to a doctor inform us that he
12 was dead. And they had cleaned him up enough for us to
13 view him. Yet we were not able to touch him, and he
14 was considered evidence.

15 At this time we were trying to acknowledge what
16 happened that day and why we were crying over our loved
17 one that laid in front of us with a sheet covering his
18 body from his neck down. Gauze was wrapped thickly
19 around his head and blood seeping through the gauze was
20 drying around his eyes and ears and mouth. You should
21 never see your loved one this way.

22 OSHA was interviewed prior to me. The first

1 question I was asked, how do you feel about the
2 decision OSHA made regarding the accident at ADM. I
3 have to admit I looked at him with disbelief and
4 informed them I had not heard about the fine. While
5 the cameras were rolling, I was told what OSHA's
6 investigation entailed. During the 10 o'clock news
7 that night, the rest of my family was.

8 ADM was fined nothing because they were
9 grandfathered in for a mechanical device that took my
10 uncle from us. The past year has been a fight for me
11 and my family to raise awareness of the danger of belt
12 operated manlifts. I find that now we are being
13 noticed as I receive multiple e-mails of encouragement
14 not to give up my fight. Something needs to be done.

15 I sit here and wonder why was I receiving these e-
16 mails. I found out on January 30th, 2010, 49-year-old
17 Tim Wilson died from a fall off of a manlift in a
18 Nebraska city meat packing plant, exactly one year and
19 one day after my uncle's death. Nothing has changed.
20 I guess my fight to make a difference, to make a
21 change, is far from close to being completed.

22 However, I sit here and put myself in the Wilson

1 family shoes again, and how can I help them get
2 closure. Many families would like the opportunity to
3 visit the place that their loved ones last stood and
4 talked and laughed with their coworkers. A chance to
5 say goodbye. We feel that the families need the
6 opportunity to view the scene of the accident to get
7 more of an understanding of what went wrong that day.

8 After all, my uncle and dad and even grandfather
9 worked at ADM for many years, and yet we are the family
10 had no understanding of the danger of his job. Also,
11 family should have the opportunity for a representative
12 of the individual that died in work the related
13 accident to be a part of the discussion between OSHA
14 and the company. You would be amazed how many times
15 people come home and speak about of what happened at
16 work.

17 MS. RODRIGUEZ: Good morning. My name is
18 Katherine Rodriguez. I would like to introduce my
19 mother, Mary Gonzalez, my sister, Jennifer Ornelis
20 (phonetic), and my other sister, Joanna Gonzalez. Let
21 me first thank you for allowing us to be here and tell
22 our story. I have one other sister who wanted to be

1 here, but she couldn't. We come to you as a family to
2 tell you about our husband and father, Ray Gonzalez.

3 My father was a pipe fitter by trade with 33 years
4 of experience. He knew the value of hard work and took
5 pride in what he did. When not at work, he was with
6 his family, married to my mom for 35 years with four
7 daughters. He would sacrifice his own needs just to
8 make sure we had what we needed. Family is who my
9 father was. On September 2nd, 2004, our lives were
10 changed forever.

11 The BP Texas City Refinery had an incident. Three
12 families were devastated to learn that three workers
13 were injured when a seal ruptured on a water pump.
14 When the seal burst it sprayed 500° superheated water
15 and steam on all three workers. All three were rushed
16 to the hospital with second and third degree burns to
17 90, 80 and 70% of their bodies.

18 My father Ray received 80%, while Maurice Moore,
19 Jr. received 90% and Robert Kemp received 70%. All
20 three men expressed concern for the other. Mr. Moore
21 died the next day at the age of 39. Mr. Kemp recovered
22 and survived. My father fought a long tough battle.

1 For 2 1/2 months he would remain in the burn unit ICU.
2 I can tell you that my mom was there every single day,
3 from September 2nd to November 12th. On November 12th,
4 2004, he lost his battle and died from his injuries.
5 Our hearts have been broken ever since.

6 Over the last five years our family has tried to
7 put our lives back together. OSHA did investigate my
8 father's incident and cited his employer, BP Texas City
9 Refinery \$109,500 for seven serious and one willful
10 violation. The willful violation was for failure to
11 control hazardous energy. The case was settled for a
12 total fine paid of \$102,500.

13 Through this I realized that her nation's laws and
14 regulations need improvement. No family should have to
15 go through this. I would like to ask you to consider
16 these recommendations. On March 5th, 2005, I read in
17 our local newspaper the headline, OSHA fines BP
18 Refinery for safety violations. I anxiously read the
19 article and thought why am I reading this in the
20 newspaper.

21 Did the local office not feel like the families of
22 these three men would want to know the outcome? I

1 recommend that all documents and correspondence sent to
2 the employer be provided simultaneously to the
3 families, including any citations and penalties. My
4 family was in the hospital with my dad for 2 1/2 months
5 and we had many visitors from the plant. We were told
6 a lot of information that maybe the investigators
7 didn't know because they didn't interview these
8 particular people.

9 If they had spoken with us, they may have gotten
10 better information. Also, fellow coworkers are more
11 willing to talk to the family than any investigator.
12 Family members must have the opportunity to recommend
13 names of individuals to be interviewed by OSHA.
14 Lastly, my father's employer, BP Products, North
15 America Texas City Refinery had 21 fatalities in five
16 years.

17 After my father's incident an internal BP report
18 stated, the refinery's policy and training don't
19 address potential stored energy hazards. OSHA area
20 director called the September incident a tragic loss of
21 life that could have been avoided if standards were
22 followed. A survey conducted of the Texas City

1 Refinery employees reported that most interviewees say
2 pressure for production and understaffing are the major
3 causes of accidents at Texas City. On March 23rd,
4 2005, the same site had a massive explosion that killed
5 15 contract workers and injured over 170 people. This
6 triggered even more investigation.

7 The Baker Panel concluded that the company
8 emphasized personal safety over process safety. The
9 CSB said the company fostered bad management at the
10 plant and cost cutting was a factor in the explosion.
11 OSHA's own investigation resulted in 300 violations.
12 My question to you is, how did BP Texas City get to
13 this point. Where was OSHA and why did 21 people have
14 to die before action was taken.

15 My father deserved better. The men and women who
16 work there deserve better. The people of Texas City
17 deserve better. I can only ask that you help make
18 Texas City a place where families will not have to
19 worry about their loved one coming home while just
20 trying to make a living. My father spent his 35th
21 wedding anniversary in the hospital.

22 My children will never get to enjoy their

1 grandfather. Jennifer's children were seven and three
2 at the time and they will never get to play with him
3 again. All three of my sisters graduated from college
4 without him there, and Joanna, who was only 20 at the
5 time of his death, won't have him there to walk her
6 down the aisle. This is our life now, all because of a
7 willful violation with \$102,500 fine for a company that
8 had net income for 2004 of \$15.7 billion.

9 Please help OSHA be the best that it can be at
10 preventing workplace fatalities. Everything I do and
11 will continue to do is for you daddy. Thank you.

12 MS. MORILLO: Thank you for giving us the
13 opportunity to speak today. My name is Wanda DeJesus
14 Morillo. I am the widow of Juan Pablo Morillo. Pablo
15 was on the cusp of turning 31 when his life was snuffed
16 out by an explosion at his job. That explosion also
17 claimed the lives of two other men, and severely
18 injured a third man. The accident occurred because of
19 a faulty check valve, which failed to block the flow of
20 acetylene.

21 Its singular hazard is associated with its
22 intrinsic instability. Samples of concentrated or pure

1 acetylene will explosively decompose. It's
2 overwhelming at times to think that HC2H was as lethal
3 as a bomb to these victims. In the end, eight children
4 now had no father. Among these eight children was the
5 daughter I was carrying who would never meet her
6 father. We had been married a scant year and a half,
7 to lose him only two months before having the child he
8 yearned for was especially heartbreaking for me.

9 He was a young man who worked hard to provide for
10 his family, the youngest of 13 children and a loving
11 uncle to all his nieces and nephews. He is missed. I
12 must admit, his company was nothing if not completely
13 helpful after the accident. The company cooperated
14 100% with authorities, among them OSHA and the Chemical
15 Safety and Hazard Board. I retained legal counsel.
16 Therefore my interaction with OSHA and the USCSB has
17 been very limited.

18 I am here speaking for my late husband, Juan Pablo
19 Morillo who is no longer here to say this. I am also
20 here today as a part of a community of individuals who
21 are bound together by the shared experience of losing a
22 loved one. Mr. Secretary, we want improvements in our

1 nation's laws and regulations so that other families do
2 not have to endure the pain and sadness we've gone
3 through. We will support you in your efforts to make
4 such changes. We also respectfully ask you to consider
5 the following recommendations.

6 OSHA should change its regulation to require an
7 employer to immediately notify federal or state OSHA of
8 a fatality or serious incident rather than giving an
9 employer eight hours to do so. OSHA should have the
10 authority to prohibit any alterations to the scene in
11 order to preserve physical evidence.

12 The Mine Safety and Health Administration
13 Regulations require employers to notify it of serious
14 incidents within 15 minutes, and we feel OSHA should
15 adopt equivalent requirements. Immediate reporting and
16 follow-up can significantly reduce risk to others still
17 in the environment. Moreover, such a requirement would
18 provide leadership to the state and send a clear signal
19 of OSHA's intent to collect data.

20 We believe that reducing the reporting period for
21 the agency to respond quickly and inspect for hazardous
22 conditions may help -- sorry, incidents where they may

1 pose a risk to other workers at the work site. Prompt
2 inspections will enable OSHA to determine whether its
3 current standards adequately cover the hazards involved
4 in the incident. OSHA will also gather better
5 information on the causes of incidents which can be
6 used to identify serious hazards, prevent incidents in
7 the future, and form basis for revised standards.

8 Increasing the number of serious incidents
9 reported will present OSHA the opportunity to inspect a
10 greater number of hazardous worksites. Reducing the
11 reporting period from eight hours enables OSHA to
12 inspect the site of the incident and interview
13 personnel while their recollections are more immediate,
14 fresh and untainted by other events, thus providing
15 more timely and accurate information.

16 The shorter reporting time also makes it more
17 likely that the incident site will be undisturbed,
18 affording the investigating compliance officer a better
19 view of the work site as it appeared at the time of the
20 incident. The sooner a witness is interviewed the
21 better his or her memory and the less likely he or she
22 will color testimony to favor a particular position.

1 The medical examiner and the police and fire
2 departments can immediately notify OSHA of worksite
3 deaths and severe injuries.

4 The practice of prompt reporting and investigation
5 would be of great benefit. It may be argued that in
6 the wake of an accident causing one or more fatalities
7 or three or more serious injuries the employer has more
8 important responsibilities than the fulfillment of a
9 federal reporting requirement. For example, he or she
10 must deal with emergency services, anxious workers and
11 distraught family members.

12 However, it is disingenuous to suggest that there
13 is only one person capable of doing all these things at
14 any place of work. One or more employees could be
15 delegated with the task of notifying OSHA immediately
16 of an accident causing at least one fatality and/or
17 three or more serious injuries. The minimal burden
18 imposed on American business by the proposed change as
19 justified setting the required reporting timeframe at
20 much less than in ours, preferably immediately.

21 This will allow for more timely investigation and
22 provide for the possibility to more effectively reduce

1 the risk to other workers take, decrease the
2 opportunity for circumstances at the incident site to
3 change, and witness's recollection of the incident will
4 be more fresh and clear. These factors will increase
5 OSHA's effectiveness in investigating the causes of
6 reported workplace accidents, and identifying and
7 controlling the hazards which caused the fatalities or
8 serious injuries.

9 Prompt investigation is a key element in OSHA's
10 ability to enforce existing standards and to evaluate
11 the need for new standards.

12 MS. MONFORTON: Good morning, Dr. Michaels and
13 OSHA staff. My name is Celeste Monforton. I am
14 speaking here today on behalf of Tammy Miser, the
15 founder and executive director of United Support and
16 Memorial for Workplace Fatalities. Tammy's brother,
17 Shawn Boone, was killed in 2003 at the Hayes Lemmerz
18 plant from an aluminum dust explosion. Tammy's husband
19 Mark also worked at that same plant. In her written
20 statement she describes the terrible burns to her
21 brother's body and his painful death.

22 She explains the grief that her family endured and

1 how Shawn's death was too great for her younger brother
2 to fathom. He took his own life in 2007. Tammy asked
3 me to extend her sincere appreciation to all of you for
4 this event. Tammy created USMWF to support and unite
5 family members who have lost loved ones in fatal
6 workplace incidents and from health hazards.

7 In many ways it is a community glued together by
8 e-mail and telephone conversations made up of
9 individuals who are victims of a regulatory and
10 oversight system that failed to protect their loved
11 ones. USMWF has written you a letter offering a list
12 of ideas and recommendations for improving our nation's
13 health and safety system and providing a role for
14 family members and injured workers.

15 The ideas contained in their letter were informed
16 by their own experiences during the fatality
17 investigation and the contest process. Some of the
18 recommendations may be obvious, such as those you've
19 heard from the witnesses here. Others cut across
20 agencies and pertain to different statutes and may
21 require you, Dr. Michaels, to challenge your staff and
22 the solicitor of labor to think about issues from a new

1 perspective.

2 USMWF families have heard that some of their
3 recommendations are impractical, or even ill-informed.
4 If you consider them unreasonable or illegal, the
5 families would like to know that. They ask that you
6 think of their letter as a starting place for a
7 dialogue. The USMWF families are looking for your
8 guidance, Mr. Secretary, to help them understand how
9 the system is supposed to work, and whether it is
10 accomplishing what our laws promised.

11 They also urge the administration to support the
12 Protecting America's Workers Act which contain modest
13 provisions offering new rights to family members and
14 injured workers. Last night I had the privilege of
15 having supper with a group of family members. We
16 discussed how OSHA is painfully under resourced, and
17 even for workplaces at which a worker was killed, OSHA
18 doesn't have the staff to conduct follow-up inspections
19 to confirm that the hazard has been corrected by the
20 employer, and to talk to the workers affected.

21 I suggest that OSHA allow family members or their
22 representatives to be designated as special government

1 employees for the purpose of conducting follow-up
2 inspections at sites where workers have been killed or
3 seriously injured. No one is more determined than a
4 family member to ensure that dangerous conditions and
5 practices are eliminated once and for all because these
6 families don't want other families to endure what they
7 have suffered.

8 These special government employees should receive
9 appropriate training such as provided at OSHA's
10 training institute, and as their knowledge and skills
11 develop, they could be called upon to conduct follow-up
12 inspections. Family members are not asking for any
13 special treatment. Family members understand that
14 there is precedent for this practice by allowing
15 special government employees to conduct oversight, and
16 family members would be asking for nothing more than
17 what is already extended to OSHA's VPP sites.

18 I believe that no one would provide a keener set
19 of eyes and ears for OSHA than family members who have
20 suffered most from employers indifference, or worse, to
21 workers' health and safety. Today OSHA is listening.
22 On behalf of USMWF, we thank you.

1 MS. REINSTEIN: Thank you for giving me -- thank
2 you for giving me the honor and the opportunity to
3 participate in OSHA's important event, to turn
4 listening into action. I'm Linda Reinstein, the
5 Executive Director and cofounder of the Asbestos
6 Disease Awareness Organization, ADAO. We have become
7 the largest independent asbestos organization in the
8 United States.

9 But on behalf of ADO today, I sit before you
10 finally representing tens of thousands of asbestos
11 victims silenced. Since 2004, ADO has worked with
12 members of Congress and government agencies to prevent
13 asbestos exposure through legislation and educational
14 campaigns, and we need OSHA's help.

15 Our ADO tradition is to dedicate every keynote or
16 conference speech to a victim, and today to Ron Diana,
17 who lost his mesothelioma battle at age 59, and to his
18 shattered family left behind. ADO uses, consciously
19 uses the word victim because that is the only word that
20 describes the patient, the family and the decedent who
21 has been impacted by asbestos.

22 In fact, mesothelioma, knowing that it is a

1 preventable disease often induces such trauma that the
2 family, entire family requires trauma and psychiatric
3 care. Now, for more than a century, asbestos, a human
4 carcinogen, has been known to cause disease, and impact
5 workers' health and their families. And in 2003, after
6 enduring nine months of undiagnosed symptoms, my late
7 husband was diagnosed with mesothelioma.

8 He opted for the radical EPP surgery to break his
9 left rib, to remove his left lung, to remove his
10 pericardium and replace his diaphragm in hopes for more
11 time with his 10-year-old daughter and to see her on
12 the bema for her bar mitzvah. Alan paid the ultimate
13 price for his job; his life. And when my daughter was
14 just 13, she and I stood over Alan as he gasped for the
15 last time.

16 She watched her father die from a preventable
17 disease. OSHA didn't receive a complaint about my
18 husband because his exposure was in the 1960s probably,
19 before OSHA was founded. Now although the WHO, the
20 ILO, the EPA, the US Surgeon General, all agree there
21 is no safe levels of asbestos exposure, exposure
22 continues. And I want to quote something from your

1 OSHA website.

2 You very well know, asbestos is well recognized as
3 a health hazard and is highly regulated. An estimated
4 1.3 million employees in construction and general
5 industry have faced significant asbestos exposure. ADO
6 is routinely alerted to regulatory violations
7 confirming the lack of compliance and enforcement that
8 threatens public health.

9 And more than 10,000 Americans die every year from
10 asbestos caused diseases. There is a tragic example
11 right in your backyard, with the US tunnel workers who
12 were employees of the architect of the capitol were
13 exposed and sickened by asbestos. Multiple citations
14 were sent to the AOC, and sadly enough these hard-
15 working men ultimately were released from their
16 positions. More than half of them are sickened.
17 They've all lost their jobs and some don't have
18 healthcare insurance. It's atrocious.

19 ADO urges OSHA to move from helping to control to
20 preventing asbestos exposure, and we urge you to help
21 disseminate other government agencies information like
22 the Gold Book, the Green Book, and the Purple Book, to

1 protect -- yes, to increase awareness and support best
2 practices and encourage compliance. I'll report to you
3 sadly today that in our present Hill meetings to
4 discuss ban asbestos legislation, that more than half
5 of the offices were most concerned about job loss.
6 What will this do to the economy. And as I solemnly
7 said to them, we believe that a life is worth more than
8 a job. You can always find another job, but you cannot
9 bring back my husband Alan, or Ron Diana, or the tens
10 of thousands of others.

11 So clearly one life lost two to an asbestos caused
12 disease is tragic, but hundreds of thousands of lives
13 lost is unconscionable. OSHA has the opportunity and
14 responsibility to protect Americans from these
15 preventable diseases. We count on you to push this
16 forward, and we would encourage and as that Secretary
17 Solis support a ban, an asbestos ban legislation to
18 prevent asbestos caused diseases to protect workers and
19 their families.

20 And on behalf of the tens of thousands who have
21 lost their lives, thank you for giving us this
22 opportunity today.

1 MR. MICHAELS: Thank you all very much. I know
2 how difficult this must have been to come here to
3 travel a great distance and speak in a public setting
4 about your loss, and I really respect you and salute
5 you for your willingness to do that. And we're
6 grateful. You've given us suggestions not just on how
7 we can involve family members more in OSHA's
8 activities and OSHA's investigations but I think you've
9 given us some useful suggestions that we need to look
10 at around our penalty structure, on ways we can abate
11 other sorts of safety and health hazards, our reporting
12 requirements and just generally how our inspectors
13 address these issues and how we can change what's going
14 on in workplaces.

15 I haven't seen yet the letter. I've read your
16 testimony, I haven't seen yet the letter from USMWF,
17 but I look forward to reading it and will certainly
18 take it very seriously. I think Rich Fairfax had some
19 [indiscernible] questions.

20 MR. FAIRFAX: I should just comment. First, thank
21 you all for coming. I lost a family member years ago
22 also in an accident, so I have some understanding of

1 what you're going through. I know what it did to my
2 family. It's just more comments I guess on what you
3 said. You've raised a lot of good issues, interviewing
4 the family members. Just a comment on that. I think
5 that's a wonderful idea and I actually can start
6 looking to implement that.

7 I know our concern in the field when they do
8 inspections is -- they don't want to be a bother or,
9 you know, interfere with the grieving and things like
10 that but, you know, I'm hearing kind of the same thing
11 from all of you. It's something we can I think look
12 at. Celeste, you're absolutely right. We don't do
13 enough follow-ups, and I don't see any reasons why we
14 couldn't put in mandatory follow-ups on fatality
15 inspections and a few other things. So I'll look into
16 doing that.

17 One of the things Dr. Michaels would like us to do
18 is do more follow-ups, which we're going to do. I
19 guess one question I have, you raised a lot of good
20 points. I'm just wondering if there's other things
21 when we do an inspection that we could do or, you know,
22 contact you to get more information. Certainly the

1 interviewing, getting other comments from people, but
2 you know we do send a letter out and we do make contact
3 and we do try to provide the information. Is there
4 more that we can do? It's sort of an open question for
5 the whole panel?

6 MS. RODRIGUEZ: Well, I think both Tonya and I
7 mentioned that we found out about our penalties and
8 citations through the media.

9 MR. FAIRFAX: Right. Now, that's not right.

10 MS. RODRIGUEZ: Yeah, I would have loved to have
11 someone just picked up the phone and said, hey, we're
12 done, and here's what we found.

13 MR. FAIRFAX: Okay.

14 MS. RODRIGUEZ: Instead of reading it in the
15 newspaper.

16 MR. FAIRFAX: Yeah, we're supposed to do that, so
17 I'll look into that.

18 MS. REINSTEIN: I'd like to suggest before an
19 accident becomes a fatality that we work on the
20 progressive and preventative side.

21 MR. FAIRFAX: Right.

22 MS. REINSTEIN: What we know is asbestos is a

1 human carcinogen. We have workers contact ADO
2 routinely who have had their rights violated. They
3 haven't had proper protection. They may speak another
4 language and haven't been educated in their own
5 language, so we have a lot to do on the educational and
6 awareness front.

7 MR. FAIRFAX: Sure.

8 MS. REINSTEIN: And we look to OSHA to help us do
9 that.

10 MR. FAIRFAX: I was actually in listening to -- I
11 read your testimony and was listening to you talk.
12 I'll probably be contacting you later because if you
13 were getting contacts and referrals on asbestos, then
14 maybe there's some sort of information exchange we can
15 make. One of the problems we have with asbestos, and
16 I'll be real frank with you, is when we go out to do an
17 inspection.

18 It's almost always after the fact. You know, the
19 asbestos has been removed. The job is done and we may
20 get a complaint or we may get a referral, but we don't
21 -- you know, it's hard finding that out. So I will
22 contact you later if you don't mind.

1 MS. REINSTEIN: We welcome that opportunity to
2 prevent disease.

3 MR. FAIRFAX: Thank you.

4 MS. BERKOWITZ: Thanks so much. We really
5 appreciate it. I want to call the next panel, Marc
6 Freedman, Keith Smith, Frank White and Stephen
7 Sandherr, and then the panel after that -- and then
8 after that, we have a break and then the next panel.
9 Okay. Go ahead. Marc, do you want to start?

10 MR. FREEDMAN: Certainly. Thank you. Good
11 morning. Assistant Secretary Michaels and OSHA staff.
12 At the outset, let me join in what I am sure is going
13 to be a long course of people commending you for
14 holding this session. In my years working on OSHA
15 issues I do not recall a similar event. Certainly not
16 one with as open an invitation as this one.

17 The pursuit of improved workplace safety is a
18 cause that the employer community takes seriously. You
19 were here today from various representatives of
20 employers who will make this point in various ways. I
21 submit to you that each one is being sincere and their
22 commitment is genuine. The question on which I think

1 OSHA should focus is what are the best ways to improve
2 workplace safety. Notice I said improve workplace
3 safety and not just improving compliance with OSHA
4 regulations.

5 We need to understand that to many employers,
6 especially small ones, OSHA is not the main driver in
7 improving workplace safety. They know they will not be
8 inspected unless there is an accident. Fundamentally
9 we think OSHA must play two roles. Yes, it should be
10 an enforcement agency. We do not question that and we
11 expect OSHA to fill that role.

12 Employers who put the employees at risk, or who
13 are responsible for fatalities, should be the subject
14 of enforcement. But enforcement, regardless of how
15 much OSHA focuses on it, will never be a proactive
16 strategy. It will never help a small business owner
17 answer the question about how to comply with the
18 regulation that they know they must satisfy.

19 OSHA needs to do more than just enforce. It
20 should encourage, it should guide, it should explain.
21 In short, it must also be a resource. I spent some
22 time on the website last night while preparing these

1 remarks, and to OSHA's credit, found an array of useful
2 information. Some of it industry-specific, like the
3 material directed to the construction industry. Some
4 of it standard specific. In most cases the information
5 was presented in simple terms and clearly designed for
6 an audience other than lawyers accustomed to reading
7 OSHA regulations. I even found some small entity
8 compliance guides that are required by the Small
9 Business Regulatory Enforcement Fairness Act, for
10 regulations that will have a certain level of impact on
11 small businesses.

12 I wish I had found more of those. Finding these
13 items is encouraging and only heightens my concern when
14 I hear speeches from Secretary Solis, Assistant
15 Secretary Michaels and Deputy Assistant Secretary
16 Jordan Barab emphasizing the administration's focus on
17 enforcement as the panacea to improving workplace
18 safety. As much as OSHA may be listening today,
19 employers have been listening carefully since the
20 beginning of this administration.

21 What we have heard is a consistent message about
22 there being a new sheriff in town and a no excuse work

1 zone. We also see what has been proposed in the FY
2 2011 budget and how you want to allocate resources.
3 The message that emerges is that compliance assistance
4 is not going to be a focal point of this OSHA. This
5 comes through especially clearly in the budget
6 commission which requests a funding increase of more
7 than \$14 million in FY 2011, but also an increase in an
8 internal enforcement capabilities by transferring 35
9 employees from compliance assistant to enforcement, as
10 well as hiring 25 new compliance safety and health
11 officers.

12 I think this begs a question. If Congress gave
13 OSHA all the money anyone wants for enforcement, how
14 much would be enough. Short of posting a compliance
15 officer in every workplace, making sure that all
16 employees followed every training and use their PPE
17 appropriately, when will there be adequate enforcement
18 resources.

19 You can't put an OSHA officer in every workplace,
20 just as you can't put a traffic cop on every corner
21 making sure people drive safely. Is it your view that
22 small businesses who may not fully understand OSHA

1 regulations, nor have the resources to hire safety
2 specialists, will do a better job protecting our
3 employees from workplace hazards merely because there
4 will be more enforcement officers who will likely never
5 visit them?

6 OSHA has made great strides in developing
7 materials and assistance for employers to help them
8 learn what they are supposed to be doing. The goal
9 should be to find ways to expand this level of support
10 and get it in more employers' hands, not to redirect
11 resources to emphasize enforcement first. OSHA should
12 be out front promoting the cause of workplace safety
13 and public messages rather than trying to scare
14 employers by touting its enforcement agenda.

15 And not only employers need to get this message.
16 Employees do, too. Indeed the OSHA act says this
17 explicitly. OSHA should be working to create a culture
18 of safety that extends beyond just telling employers
19 they will be caught if they don't comply. Finally, let
20 me close with one more question. What are the
21 measurable for determining whether workplace safety has
22 improved. Is it how many standards are issued, how

1 many inspections have been conducted, how many new
2 citations have been written?

3 I suggest, and I hope you would agree, that it
4 should be lower numbers of workplace injuries,
5 illnesses and deaths. The budget says that the
6 department will be investing, quote, in -- will be,
7 quote, investing in what works, end quote. We know
8 from the data stretching back over several
9 administrations, showing sustained decreases in
10 workplace injuries, illness and fatality rates, to now
11 their lowest level since records were kept, that
12 providing well-crafted, useful compliance assistance is
13 a key component to producing these results.

14 Now is not the time to radically shift approaches.
15 I hope that OSHA and the department will begin to
16 appreciate the reality there is more to improving
17 workplace safety than merely being a new sheriff in
18 town. Thank you for the opportunity to appear today.
19 I'll be happy to discuss this further.

20 MR. SMITH: Dr. Michaels, I truly appreciate this
21 opportunity to speak today and how -- how OSHA can work
22 with manufacturers to continue to improve workplace

1 safety. I'm Keith Smith with the National Association
2 of Manufacturers. We are the nation's largest
3 industrial trade association representing small and
4 large employers, manufacturers employing nearly
5 12,000,000 Americans that work directly in the
6 manufacturing economy and comprise 10% of the overall
7 workforce in the US.

8 Manufacturers are committed to improving the
9 safety of their workplaces. Overall in the private
10 sector we saw the most significant improvement last
11 year with a 7.1% decrease in the total recordable case
12 rates. However, rates in the manufacturing sector
13 improved more significantly at a rate of 10.7% last
14 year. No one factor completely explains this
15 improvement and we hope that OSHA recognizes what's
16 working before radically overhauling the current
17 system.

18 Manufacturers are concerned with the tone and the
19 approach the Department of Labor and OSHA have been
20 taking in pledging a new emphasis on more aggressive
21 enforcement. The effectiveness of nonpunitive programs
22 that assist employers to better understand and comply

1 with existing standards must be recognized and
2 promoted. Manufacturers overwhelmingly want to protect
3 their employees and maintain safe work places. The
4 goal of OSHA programs and standards must support
5 manufacturers' efforts to make workplaces safer. To
6 this end, the NAM believes that OSHA is as much of a
7 resource as it is an enforcement agency.

8 However, emphasizing enforcement over compliance
9 assistance programs foster a more adversarial
10 relationship while doing little to reinforce the
11 successful work that is already taking place. Although
12 many questioned the data used to track workplace safety
13 rates, the continuing improving trends of injury and
14 illness rates demonstrate manufacturers' commitment to
15 the safety of their employees.

16 Efforts taken to target bad actors should not
17 unnecessarily burden the majority of manufacturers who
18 have demonstrated such a commitment to workplace
19 safety. Manufacturers believe that there needs to be a
20 commitment to safety by both employers and employees
21 alike. Many manufacturers have found success in
22 improving safety awareness among their employees

1 through programs that recognize their workforce for
2 commitment to workplace safety. These proactive
3 approaches help to highlight that safety programs
4 require the commitment from both parties.

5 Likewise, we feel that approaches to enhance
6 safety are best done through cooperative approaches
7 between OSHA and employers. Aggressive enforcement
8 tactics, coupled with -- simply coupled with higher
9 penalties and public shaming will not foster the needed
10 trust that employers must have for the agency to be
11 successful.

12 Additionally, manufacturers value programs that
13 enable employers to go above and beyond minimum safety
14 requirements. Unfortunately, many of these efforts
15 have been described as voluntary compliance programs,
16 but in reality these programs assist employers to
17 design safety systems that best fit their workplace's
18 needs. If OSHA increases the use of their resources to
19 aggressive enforcement, it should not come at the
20 expense -- come at the expense of programs that assist
21 employers of all sizes to better comply with existing
22 standards and regulations.

1 To this end, we hope that the department ensures
2 that programs like VPP, on-site consultation and
3 alliances have all the necessary resources to encourage
4 employers to implement safer programs that will go far
5 beyond minimum compliance requirements. In discussing
6 safety issues with our members, we hear many concerns
7 with how the department describes their approach to
8 enforcement as well as certain regulatory proposals
9 that have been announced, particularly manufacturers
10 who are concerned with efforts to expand OSHA's
11 enforcement approaches and proposals to require
12 employers to capture certain information related to
13 musculoskeletal disorders.

14 While we intend to work with the agency to express
15 our concerns more thoroughly and in more detail to the
16 formal regulatory process. While we recognize that the
17 agency will continue to develop new standards and
18 regulations to address new changes in the manufacturing
19 economy, we hope that these efforts are developed with
20 reliable data and science, and promulgated in a
21 transparent manner that enables stakeholders to assist
22 the department to develop more effective regulations.

1 Deregulation should not stifle our nation's economic
2 competitiveness and must take into account the
3 challenges that face individual industries and
4 employers of various sizes.

5 The issues of workplace safety are complex and
6 therefore require clarity, especially when new
7 standards are set, particularly these efforts should
8 assist smaller sized employers to better understand
9 what is required in order to ensure greater levels of
10 compliance, and more importantly, to make our
11 workplaces safer.

12 Clarity and regulations won't just help smaller
13 sized employers obtain compliance with existing
14 regulations, but they'll result in a net gain in our
15 workplace safety. Again, I appreciate the opportunity
16 to speak today, and I hope to continue to work with you
17 and others in the agency to improve the safety of
18 manufacturing workplaces.

19 MR. WHITE: Good morning. It's a pleasure to be
20 here. ORC very much appreciates OSHA's leadership
21 personally taking the time to talk, up close and
22 personally, if you will, to OSHA's stakeholders. Like

1 other OSHA stakeholders, ORC has lots of ideas about
2 how the agency can improve in its policy and programs.
3 I'm going to focus briefly on just three. First,
4 today's public meeting I think is an important initial
5 step in what will hopefully be a long-term commitment
6 by OSHA to a fuller more substantive public engagement
7 and its processes for developing and improving the
8 agency's policies and programs.

9 ORC will continue to encourage OSHA to adopt what
10 we have referred to as a new more collaborative
11 infrastructure. I think the first panel this morning
12 is a vivid testament to the need for a more
13 collaborative and open agency. We know it's not easy
14 moving to a culture that's more transparent and
15 ultimately more publicly accountable. ORC's member
16 companies have often struggled to move toward similar
17 kinds of unfamiliar and sometimes uncomfortable
18 approaches toward governance, but we believe in the
19 long run OSHA will be a more effective and credible
20 agency if it actively works collaboratively with its
21 stakeholders in developing its policies and programs.

22 For example, we strongly believe that it is

1 possible to involve the public in the development of
2 compliance directives and other key guidance documents
3 in ways that would generate valuable information and
4 use from the affected public without creating unwieldy
5 public procedural impediments, and we look forward to
6 discussing that further with OSHA.

7 The second issue we want to discuss, and frankly
8 most important from ORC's perspective is for OSHA to
9 refocus its energies and resources on the development
10 of policies, programs and initiatives that emphasize
11 the need for employers and workers to identify, assess
12 and systematically eliminate and control workplace
13 risks.

14 This is a broader more comprehensive and frankly
15 more sustainable approach to reducing injuries and
16 illnesses than OSHA's historic approach of focusing
17 primarily on compliance with OSHA standards. It's also
18 in keeping with the demands of the modern workplace and
19 is consistent with the programs that businesses and
20 governments are adopting worldwide.

21 OSHA should begin now really to shift its focus to
22 risk assessment and control by promoting and

1 incentivizing the adoption of safety and health
2 management systems. Short-term steps might fruitfully
3 entail initiatives including enhancing OSHA's own
4 website by providing a wider range of tools and
5 resources for the implementation of risk-based
6 management systems, and updating the agency's 1989
7 safety and health program guidelines to incorporate
8 more recent thinking about managing risks from sources
9 such as the NCC 10 national consensus standard.

10 OSHA might also consider the revival of a modified
11 cooperative compliance program based on the old main
12 200 program, in accordance of course, with the
13 reviewing court's admonitions about how that should be
14 done. We realize that in the long-term, the agency may
15 be considering the development of a management systems
16 standard, but what we're talking about today is laying
17 important groundwork by taking steps to help business
18 shift its focus from a compliance first approach to
19 safety and health, to a broader and frankly ultimately
20 more effective risk assessment and reduction approach.

21 The third and final issue I sort of feel compelled
22 to touch on today is the perplexing dilemma of OSHA's

1 permissible exposure limits. If there's any single
2 issue on which virtually all OSHA stakeholders are
3 agreed it's that the agencies PELs are woefully in fact
4 embarrassingly out of date. And since the 1991 court
5 ruling overturning OSHA's 1989 PEL update, there have
6 been a few serious and well-intentioned, although
7 ultimately unsuccessful attempts by groups of
8 stakeholders, and a broad range of stakeholders I might
9 add, to come up with possible approaches to addressing
10 this unacceptable gap in worker protection.

11 ORC believes it may still be possible to craft a
12 viable approach, but doing so will require OSHA's
13 leadership and active engagement in its development.
14 Previous efforts I think have failed, at least in part,
15 because OSHA failed to play much of a proactive role.
16 So we encourage OSHA to take a leadership role in this
17 regard.

18 Again, OSHA greatly -- ORC greatly appreciates
19 being part of today's listening session. We look
20 forward to sort of getting a report from you all on
21 what you've heard today, but more importantly, we look
22 forward to helping OSHA bring to fruition some of the

1 above suggestions and some of the other ideas you hear
2 today. Thank you.

3 MR. SANDHERR: Good morning. I'm Steve Sandherr,
4 CEO of the Associated General Contractors of America,
5 and like the other panelists, I would like to thank you
6 for taking the time to listen to us today. AGC is the
7 leading association for the construction industry, and
8 places safety in our industry as a top priority.
9 Founded in 1918 at the express request of President
10 Woodrow Wilson, AGC now represents more than 33,000
11 firms and 96 chapters throughout the United States.

12 Among the association's members are approximately
13 7500 of the nation's leading general contractors, more
14 than 12,500 specialty contractors, and more than 13,000
15 suppliers and service providers. These firms engage in
16 the building of America's private and public
17 infrastructure. And AGC proudly represents both union
18 and open shop construction firms. AGC and its chapters
19 nationwide have had the privilege of building excellent
20 working relationships with OSHA's national, regional
21 and area offices over the past several years. OSHA
22 staff members have regularly addressed AGC members in

1 our semiannual national safety and health committee
2 conferences, worked with our chapters to conduct safety
3 training courses throughout the country, and have
4 played a critical role in forging regional partnerships
5 and alliances. Currently, OSHA's website lists at
6 least 31 AGC member companies as participants in the
7 voluntary protection program, and interest continues to
8 grow among our membership.

9 It is because of the success of these cooperative
10 efforts that AGC and its members are concerned about
11 cuts to the VPP and OSHA's recently proposed budget.
12 We are also troubled by other agency statements
13 implying that cooperative efforts to improve safety on
14 construction sites are no longer a key part of OSHA's
15 focus. For example, DOL and OSHA leadership have
16 repeatedly indicated that OSHA plans to shift resources
17 from cooperative programs to enforcement activity.

18 While we understand resources are limited, we
19 believe these actions will have the unintended result
20 of discouraging participation in the programs and
21 undermining the success that OSHA and the industry have
22 had in improving the safety of the nation's

1 construction workforce.

2 For many years, AGC and the construction industry
3 have been willing partners with OSHA in developing
4 industry programs that employers use to improve safety.
5 And we hope this continues for the foreseeable future.
6 While we may never be able to quantify the exact number
7 of fatalities prevented through the OSHA cooperative
8 programs, it is clear these programs have played a
9 major role in reducing construction related fatalities
10 from 1226 in 2001 to 969 in 2008.

11 Almost a 30% reduction during probably the most --
12 the most construction volume put in place in our
13 lifetimes, increasing construction volume during that
14 period. Shifting emphasis to enforcement activity
15 however may create needless disincentives for employers
16 and workers to find and address safety hazards by
17 creating an adversarial, instead of collaborative
18 mindset between construction employers and OSHA.

19 The enforcement first approach will re-create the
20 divide between the employer community and the agency
21 experienced years ago that both have worked diligently
22 to build and improve upon. OSHA should instead

1 continue a balanced approach of both enforcement and
2 cooperative programs in its mission to protect the
3 American worker. The VPP adds value to workplace
4 safety and health by encouraging worksites to go beyond
5 minimal compliance.

6 OSHA's efforts to engage the construction industry
7 and work together has undoubtedly saved lives and
8 reduced injuries. Yet despite these clear benefits, we
9 are greatly concerned these programs are at risk of
10 being cut or severely underfunded. VPP promotes
11 effective worksite-based safety and health, in which
12 management, labor, and OSHA encourage worksites to go
13 beyond compliance.

14 According to a May 2009 GAL report, the number of
15 VPP worksites have more than doubled from 2000 to 2008,
16 from 1039 to 2174. The same report credits the program
17 for the fact its participants inspired nonparticipant
18 companies to also improve their safety programs. By
19 significantly reducing the VPP budget, and shifting
20 staff members to enforcement efforts, OSHA is turning
21 its back on key allies in a battle to promote a culture
22 of safety in the American workplace.

1 Through the cooperative programs, OSHA has been
2 able to create quality guidance documents and
3 informational resources. For safety to continue to
4 improve, we need more safety apostles, not less. AGC
5 hopes to continue to work with OSHA to reduce
6 construction industry fatalities and injuries through
7 cooperative efforts, and by providing the best safety
8 training to the employers and employees alike.

9 Enforcement alone, however, will not make
10 construction any safer. It is our sincere hope that
11 OSHA will reconsider reductions to its OSHA cooperative
12 programs budget. Thank you for listening to me today
13 and we look forward to working with you.

14 MR. MICHAELS: Great. Excuse me. Thank you all
15 very much. I'm very grateful that you were willing to
16 come here and begin this engagement. This is certainly
17 the beginning of -- I think as many as you have said, I
18 think some very important discussions that we will
19 have. You know, there are many places we could start.
20 You've touched upon a lot of the issues that we're also
21 grappling with. One specific one I thought we would
22 start with is really this question of how do we measure

1 our success and how do we measure the success of the
2 employers. You know, I felt, and I think other people
3 have recognized this that injury and illness and
4 fatality numbers are important but have some
5 limitations.

6 And I think, Frank, in your testimony, you talk
7 about how businesses are moving beyond that. So look
8 at different sorts of metrics. I was wondering what
9 you think. And Mark, specifically you mentioned -- you
10 said we should be looking at fatality numbers and
11 injuries and illnesses. So how do we reconcile that?
12 What do you think we should do? How do we measure our
13 success? How should employers measure their success in
14 tangible metrics so we can compare and evaluate?

15 MR. FREEDMAN: I guess the easy way to start with
16 that is to say on an employer by employer basis, the
17 answer would be make sure everybody goes home safely at
18 the end of the day. Now, collectively, in sort of
19 aggregating that, that's going to show up in statistics
20 that are collected by the department and others on
21 injuries and illnesses and fatalities.

22 There's been obviously some debate about where

1 those numbers come from and their reliability, but I
2 don't think anyone has yet challenged the trends and
3 the historic records, where those numbers are right
4 now. You know, it is a daunting problem. It's a
5 threshold challenge and I understand how you would be
6 looking at it carefully, but I guess the bottom line I
7 look at is how many employees are going home at the end
8 of the day and not necessarily where the department has
9 applied their resources and, you know, whether you get
10 more regulations out during this term than any previous
11 administration did.

12 I mean that to me is not an indication of
13 progress. The progress is have people been protected.

14 MR. WHITE: In ORC's experience what employers are
15 increasingly trying to do is obviously look to prevent
16 injuries and illnesses, and so they are looking at
17 measures of activities which hopefully will lead to
18 that prevention. So what you're trying to do is find
19 out what are the things that prevent risks and prevent
20 injuries and illnesses. If management systems and
21 employee engagement and management leadership are key
22 elements in reducing risk and preventing injuries and

1 illnesses, then you want to find measures that perhaps
2 somewhat subjectively but accurately measure the levels
3 of employee engagement and management commitment.

4 You want to look at how many risks have been
5 eliminated or reduced, not just look at, you know, how
6 many things we fixed or how many violations or
7 potential injuries we've eliminated. We want to look
8 at, you know, what are the hazards, what are the
9 likelihood that those hazards will result in risks and
10 how do we measure the reduction of those risks. And I
11 think there are measures.

12 Are workers being trained adequately in
13 prevention. I mean if workers are being trained
14 adequately in recognizing and reducing risks, then you
15 can predict that there will be a reduction in risk and
16 a reduction of injury. So you want to measure these
17 leading indicators and not just the bad results, not
18 just the negative results.

19 So I think you need to look at -- obviously
20 ultimately you want to prevent the outcome. You want
21 to prevent the injuries and illnesses. You do want to
22 look at that, but you also want to look at measures

1 which accurately will predict injury reduction and risk
2 reduction. And I think there are many measures out
3 there that have that potential.

4 MR. SANDHERR: If I could chime in. We've been --
5 we think we've been very successful in the past few
6 years when we had Susan Harwood grants, particularly in
7 the training of focus four which were the four most
8 common incidents or accidents that occur in the
9 construction industry. And I think for the
10 construction industry, that's one place to focus
11 efforts, to look at those four most common occurrences
12 and increase collaboration, increase education and
13 increase enforcement in those areas and make sure that
14 we continue to bring the curve down on fatalities and
15 injuries, occurring to those most common occurrences.

16 MR. SMITH: To add to that, I agree. Simply
17 looking at levels of penalties and number of citations
18 isn't the most accurate way to really assess that. I
19 think in addition to that very tangible data, on top of
20 that there should be -- the department should look to
21 measure a lot of the feedback that they get from the
22 employer community through open dialogue, to be able to

1 better assess what challenges are existing. You know,
2 moving beyond the numbers and getting that feedback
3 from employers in that type of constructive environment
4 I think would be able to provide useful data to be able
5 to better assess the question of how safe are our
6 workplaces.

7 MR. MICHAELS: Maybe I just have one more. I know
8 everyone has got a lot of questions. Just to build on
9 that, one of the things OSHA uses -- one of our
10 programs uses injury and illness rates to target our
11 inspections. And are there better metrics to use? How
12 do you think -- what should we look at to target our
13 inspections, beyond injuries and illnesses? Let's see
14 if that's the way to go?

15 MR. WHITE: Well, I mean the real question, what
16 other available data are there that you can rely on,
17 and we know that injury and illness data are
18 questionable in some cases in terms of their accuracy.
19 Putting too much pressure on any single metric is going
20 to be a problem. It's going to create a problem.

21 So I mean I think we have to think about, well,
22 what other possible data are there available. I'm

1 having trouble thinking of any off the top of my head
2 unfortunately, but again, I think you have to look at
3 risk, and in part, we know that injuries -- you know,
4 that measuring injuries and illnesses is the ultimate
5 measure of risk, but we have to look for measures that
6 also measure -- we talked about the difference between
7 PSM, sort of the process safety risks, which only
8 occasionally lead to catastrophes, and so you don't
9 want to look at the catastrophes that occur in order to
10 prevent PSM type incidents.

11 So you have to look at other measures that will
12 predict, you know, when a catastrophe might occur. And
13 I think there are measures available, but in terms of
14 OSHA's responsibility, it's a little tougher to find a
15 good big body of data that you can rely on.

16 MR. FREEDMAN: Actually if I can just go back to
17 my remarks for a moment. I think that question is
18 interesting because what I'm trying to encourage is
19 that the agency think beyond its actual contact and
20 role with the employer community to promoting the cause
21 more broadly so that it doesn't rely on whether you
22 show up for an inspection to get an employer to do the

1 right thing. You need -- I mean I think the goal
2 should be to get them thinking in that direction beyond
3 whether they're going to be facing an OSHA inspector
4 and, you know, put the message out.

5 Bring the information to them. Make it easy to
6 get -- obviously the Internet is the way to go here, or
7 at least the obvious one. And the more you can promote
8 that and get them thinking in those terms and provide
9 them the tools that they need, the less the question of
10 how you target your inspections will matter in the
11 bigger picture.

12 MR. SMITH: Yeah, and I would say that a more
13 effective way to look at it isn't necessarily how to
14 target enforcement but how to prioritize resources, to
15 be able to see if there are indicators that show that
16 there are certain industries that are facing
17 challenges, that those are industries that aren't
18 necessarily in need of increased inspection but rather
19 in need of increased guidance and assistance from the
20 department and better understanding of how to address
21 the challenges because I think at the end of the day
22 it's important that it's understood that it's not OSHA

1 that creates safer workplaces. It's employers and
2 employees.

3 MR. SANDHEER: Yeah, and I would like to add
4 there, too. I don't think employers, the good
5 employers in our industry are creating safety policies
6 because they're afraid of getting an OSHA inspection.
7 They're creating safety policies and living up to those
8 policies for moral reasons as well as legal reasons.
9 They want -- they recognize that having lower mod rates
10 is good for their business, makes them more
11 competitive.

12 They recognize that when they demonstrate to their
13 employees that safety is a priority that it improves
14 employee morale, creates reasons for employees to stay
15 with that employer, and helps them hire people when
16 they need to. Because if there's a culture of safety
17 in a construction firm then you're demonstrating to the
18 employees that you are part of the family and we
19 actually care about whether you can go home at night.

20 MR. WHITE: Just one other comment. One of the
21 things that the ORC companies are increasingly looking
22 at is near miss data. There are far many more

1 incidents that result in maybe no property damage, and
2 certainly no injuries or illnesses, but could have.
3 And, you know, evaluating the near misses gives you a
4 much bigger pool of information about where the risks
5 are. And so if you can gather that data and analyze
6 that near miss data, you can better predict I think and
7 prevent the injury from happening.

8 MS. DOUGHERTY: Yeah, I would just like to engage
9 the panel a little bit on the standard side of the
10 house. Mark, you had mentioned the small entity
11 compliance guides that we are required to publish after
12 the publication of one of our standards and then Frank,
13 you talked a little bit about the PELs. Do you see the
14 publication of OSHA standards as a valuable education
15 or outreach tool for your members, and just any
16 thoughts that you have that may be on the standard
17 setting process, or the priority process for us?

18 MR. FREEDMAN: Well, it would seem to me that the
19 outreach is not in the publishing of a standard, but
20 how you communicate what that standard requires and how
21 you communicate to the employer community how they can
22 satisfy that or achieve the goal of that standard. And

1 so there are standards that, you know, are necessary
2 but it's the back -- it's the effort behind it that's
3 going to make the difference. Merely putting it out
4 there is not going to create outreach. I mean the
5 small entity compliance guides I saw were I think very
6 helpful. I would like to see the agency do that more
7 as a matter of routine than as a matter of just
8 obligation to satisfy [indiscernible] but, you know,
9 that's a good example. Those are good ideas to
10 continue pushing on.

11 MR. WHITE: Yeah, I would agree with that. OSHA
12 has, you know, never done a terrific job of providing
13 sort of key information and guidance about how to
14 comply with the standard until after the standard is
15 generally promulgated. I know it's difficult because
16 you've got to coordinate what is ultimately going to be
17 in the standard with the guidance. But I think Mark is
18 right that employers will accept standards more often
19 if they understand them better, and they have enough
20 lead time to comply.

21 So, yeah, standards are important and valuable but
22 you need that educational feature to make them work

1 right, to make them work well.

2 MR. FAIRFAX: I have just one question. I know
3 we're running out of time but, Frank, you caught my
4 interest with the main 200 and the CCP program. I was
5 involved actually in both of those. By all accounts
6 outside of the agency and inside the CCP -- or the main
7 200 program, main was very successful and worked quite
8 well. As you know, we tried to launch it nationally
9 and got beat up pretty badly.

10 But you've already said, and I've actually been
11 thinking about it over the last couple of months. I'm
12 just interested in what the panel might think about
13 something in that area. I'm always looking at, you
14 know, how can we do this enforcement part better.

15 MR. WHITE: Well, the reason we think it's a
16 useful thing to think about again, and doing it in a
17 way that conforms to the Court's guidance, is for two
18 reasons. It does look at the -- it does focus OSHA's
19 resources on the bad actors where you're trying to
20 gather data, albeit not always totally accurate data
21 but, you know, you had a pretty good idea of which were
22 the employer -- who were the employers or

1 establishments which were really out of, you know, the
2 outliers. And you focused on those and the way you
3 focused on them was to say you need to develop a
4 management system so you can get these hazards under
5 control.

6 So you took the management system approach but you
7 also identified the worst actors and you tried to meld
8 those together. I still think there are ways to do
9 that in ways that are legal and that could generate
10 support from the employer community.

11 MR. MICHAELS: You know, you have all talked about
12 employers essentially taking on the responsibility for
13 safe workplaces, moving it away from OSHA. I'm
14 wondering how you evaluate the California safety and
15 health program standards in California, a major
16 component of the United States economy. I imagine all
17 of your organizations have plenty of members in
18 California who are required by state regulations to
19 have a program to essentially evaluate hazards and fix
20 them.

21 And it's a risk based system. It's not standard
22 specific like federal. I'm wondering how you evaluate

1 that, if you think it's a good approach, the success or
2 failure of that program, what we can learn from it?

3 MR. FREEMAN: Honestly I'm not familiar with it
4 enough. I would have to talk to some of our members
5 out there to see how they feel about it.

6 MR. MICHAELS: It would be great if you would.

7 MR. WHITE: For ORC members, I mean they generally
8 have their large global employers are generally ORC
9 members, and they have programs which are really beyond
10 the IIP so it's hard for us to judge. I think John
11 Mendelhoff from Rand is actually doing an evaluation of
12 the California program, and that will be an interesting
13 study.

14 MR. SMITH: And again, I'm not intimately familiar
15 with the California program, but I know it's something
16 that our members have talked to us about, the concept
17 of safety and health program standards. And before any
18 effort is, you know, taken on to look at that quote --
19 you know, to look at developing such a program standard
20 is to really provide the evidence that such a process
21 would have an effective improvement on workplace safety
22 rates.

1 So I think there definitely is a need to look at
2 sound basis for development of anything along those
3 lines, and make sure that there's, you know,
4 understandable parameters for a broader application.

5 MR. SANDHERR: And I would have to check with my
6 California chapters as well. I'm not all that familiar
7 --

8 MR. MICHAELS: I would be grateful if you would
9 because, you know, I'm very much drawn to -- certainly
10 Frank has suggested, many people have suggested this
11 idea that, you know, this is something that employers
12 should take on themselves, that they should -- it's
13 interesting. One of our -- it's been said to me, every
14 employer has an injury and illness prevention system.
15 Some of them just don't know it.

16 So I would be interested in continuing this
17 dialogue around this issue, and is this a useful
18 approach. I mean many states have gone there and we're
19 certainly thinking about it. So we would love your
20 thoughts on that. Any other questions or --

21 MR. FAIRFAX: No, I'm just -- you know, getting
22 back to you, Frank. You raised sharing compliance

1 directives and guidance documents, and I -- we just
2 talked about that before and, you know, it's something
3 I think about a lot. You know, because they're not
4 really shared on the outside until after they come out.
5 And usually after they come out obviously we get a
6 whole bunch of letters with ideas and stuff but, you
7 know, I'll just throw it open to the rest of the panel
8 because it's something I'm always thinking about, how
9 can we make the best directive that we have and stuff
10 and I'm assuming the rest would be interested in, you
11 know, looking at it and be able to comment back.

12 One of my concerns is the potential of having to
13 respond to every single comment. So I don't -- but I
14 don't know if you have comments on it or.

15 MR. WHITE: You have to strike the balance, but
16 that also goes to Dorothy's question about standards
17 and the importance of standards, and the acceptance of
18 standards. I mean I think participation -- you know,
19 everybody participates in the rulemaking process and
20 it's very robust and open and public and transparent,
21 but then when it comes to writing the compliance
22 directive it's like, you know, well, we're not going to

1 -- we'll tell you what that is when we issue it. So I
2 think there's a disconnect there, and if you can sort
3 of bridge that gap somehow without creating undue
4 impediments, I think it would be valuable.

5 MR. MICHAELS: Great. Well, thank you all. We'll
6 take a 10 minute break. We're actually a little ahead.

7 MS. BERKOWITZ: Right. 15 minutes.

8 MR. MICHAELS: 15 minute break I've been told by
9 Debbie, so.

10 [Off the record].

11 MS. BERKOWITZ: Can we start taking our seats and
12 get ready for the next panel, I think. Okay, we're
13 going to begin in a second. I just wanted to let folks
14 know that the next panel after this one is Chris
15 Patton, Kathy Kirkland and Aaron Trippler, just to make
16 sure you're ready to come on down. You're on deck. So
17 I guess we'll start now. So thanks so much. Peg, do
18 you want to start?

19 MS. SEMINARIO: Right. Good morning. My name is
20 Peg Seminario. I'm Safety and Health Director for the
21 AFL-CIO and first I want to thank you all for the
22 opportunity to participate today and commend the

1 department of labor, Secretary Solis, you, Dr. Michaels
2 and all of you at OSHA for getting the agency back on
3 track and back to its mission of protecting workers.
4 As everyone knows, there is a lot of work to do. We've
5 made a lot of progress in the 40 years since the
6 passage of the act but over -- you know, in recent
7 years, unfortunately, at least from the view of the
8 labor movement, the agency got away from its core
9 mission of protecting workers, and there's a huge
10 backlog of hazards and needs, and problems that workers
11 are facing.

12 So there's a lot of work that needs to be -- that
13 needs to be done. I think one of the things that we in
14 the labor movement are concerned about is in recent
15 years that with a lot of pressure, competitive
16 pressures, without the kind of strong leadership and
17 direction from OSHA, there has been an erosion of
18 safety and health in workplaces across this country.

19 And clearly some groups of workers are more at
20 risk than others, and so -- and we've seen a shift from
21 focusing on hazards to the behavior of workers. What
22 we think is needed now is really a strong, aggressive

1 action by the agency to rebuild and strengthen the
2 foundation of safety and health in this country, and
3 that you need to do so by first setting clear
4 priorities about what the -- what needs to be
5 addressed, and that the agency itself, as far as where
6 it makes the biggest difference in safety and health,
7 given the resource limitations that you have, is in its
8 core missions, and that is to set standards, to set a
9 basis of performance across the board in workplaces,
10 and a strategic and effective enforcement to make sure
11 that those rules are followed.

12 That's not to say that there aren't other things,
13 compliance assistance, education outreach, but you are
14 the only one that sets standards and you are the only
15 ones that enforce. And so if you don't do that, no one
16 else does. And so those are the areas that we think it
17 makes the most sense to focus on and have as
18 priorities, which you are doing.

19 I want to talk about two initiatives that I think
20 the agency should be looking at undertaking to try to
21 rebuild the foundation on a broad basis. And one is
22 the development and issuance of a safety and health

1 program rule, to identify and correct hazards in
2 workplaces, and that will help build the capacity
3 across workplaces in this country to both have
4 employers, workers and unions, actively involved in
5 addressing hazards on a day in day out basis. We need
6 to build that capacity systematically.

7 It's not going to be the same in every workplace,
8 but to do that I think there needs to be a basic
9 requirement in place as there is in California,
10 Minnesota, requirements with the Department of Energy,
11 which you are familiar with, and that that should be a
12 priority for the agency. And you should be doing that
13 by building off of what's there, the draft rule that
14 was developed back in 1999, the state laws, other
15 initiatives, the ANSI Z10, safety and health management
16 standard. All those are things that should be looked
17 at.

18 The other area I would encourage the agency to
19 look at and become involved in is the updating of
20 permissible exposure limits on toxic chemicals. The
21 effort in 1989 was not successful. There were efforts
22 by a number of us led by the American Industrial

1 Hygiene Association back in 2002/2003 to come up with
2 some recommendations, and an approach. Unfortunately
3 at that point in time, OSHA didn't participate. And
4 that lack of leadership was really noticeable and hurt
5 those efforts from being successful, but I do think
6 that there is a broad enough base of interest in
7 reconvening people who had involvement in those efforts
8 to really focus on this, with the focus being how do we
9 put in place a process here that cuts through a lot of
10 the burden, the requirements, et cetera, where we can
11 come to agreement on exposure limits and get those put
12 in place quickly.

13 Some of the chemicals are going to need long 6B
14 rule-makings, but all of them don't. And so I would
15 encourage you to make this one of your priorities and
16 to take leadership over this as well because we need
17 that leadership if indeed we are going to be successful
18 in these efforts. So those are the areas that I just
19 wanted to focus on, not to give short trip to
20 enforcement. We can talk about that later because as I
21 said that is obviously critical, and again want to
22 commend you on the work that you are doing to get OSHA

1 back to its business of protecting workers. Thank you.

2 MR. WRIGHT: My name is Michael Wright. I'm the
3 head of health safety environment for the steelworker's
4 union. First, thanks for holding this. I do want to
5 note that the title is OSHA Listens, and in that
6 context, I want to say that a lot of people at OSHA
7 have been good listeners all along, and what I'm
8 referring to are all the dedicated career employees in
9 the agency who have been here for often a long time who
10 work in Washington and work in the field offices who
11 are dedicated to the cause of safety and health.

12 What this really is is OSHA listens at the policy
13 level, and that's long overdue. And so thank you for
14 holding this. In the past few months we in the union -
15 - in the steelworker's union have been involved in a
16 number of OSHA settlement discussions where OSHA has
17 issued in most cases a major citation. The company has
18 contested and we're in the process of trying to settle
19 that case. I want to single out three of them.

20 I won't mention the companies because in some
21 cases we are still discussing things with those
22 companies. All three were subsequent to fatalities and

1 very serious accidents that left workers maimed and
2 injured for life. Two are under federal jurisdiction
3 and one was in a state plan state.

4 When we go into settlement discussions, as the
5 union we know what we want. We do want to see an
6 appropriate penalty. We do want to see appropriate
7 gravity of the violations, but most of all what we want
8 is to see that that never happens again. And what that
9 means is what we want is a good safety and health
10 management systems program.

11 We know what that consists of. There needs to be
12 accountability in management. There needs to be a
13 strong safety and health committee. There needs to be
14 training for union members and especially for members
15 of a joint safety and health committee, and we
16 typically propose as the union 30 hours of OSHA
17 training. The OSHA 30 class for safety committee
18 members, union and management, and OSHA 10 class for
19 the workforce.

20 We offer to provide that, as the union. No cost
21 to the company except the cost of sending the people
22 and to pay their wages while they're there. We want a

1 good audit system. We want a good system for
2 management of change. We want hazard mapping. We want
3 most of all a focus on safety systems and not on simply
4 trying to correct individual worker behavior, although
5 that can sometimes be important as well. That's what
6 we try to get in the settlement.

7 Sometimes we are successful. In these three cases
8 -- in one case we never reached a settlement and that
9 case will, unless we can settle it later, go before the
10 review commission. In a second case we were able to
11 get about 30% of that. The company was much more
12 interested in basically paying the penalty, paying the
13 fine. They were willing to do that. They didn't
14 really want the kind of safety system that we were
15 proposing.

16 In a third case we got about 70% of what we
17 proposed from a bankrupt company, a company that really
18 wanted to do the right thing. And we see that as a
19 partial success, but the problem is it came after
20 somebody lost their life. You know, that's when we get
21 safety and health programs in this country, when
22 somebody loses their life, and that's what we have got

1 to change. That's why we especially need a strong OSHA
2 safety and health program rule so that we can, you
3 know, prevent those fatalities before they occur so
4 that we can get the things we need.

5 The OSHA rule book is terrific, but any company
6 that tries to manage safety by the rule book is really
7 doing the wrong thing. One of the things we found in
8 researching past fatalities is that a majority of our -
9 - a majority of our fatality cases, our root cause was
10 not a violation of an OSHA, MSHA, or equivalent
11 Canadian standard. Instead it was -- it was -- it was
12 an occurrence that was unexpected.

13 It was an upset condition. It was something that
14 had there been a good safety and health analysis, good
15 job safety analysis, the company would have seen it.
16 But since there was none, they didn't. That doesn't
17 say that -- that's not to say that OSHA standards
18 aren't effective. They're very effective. When OSHA
19 sets a standard people stop dying as a result of that
20 condition.

21 But there are so many hazards out there for which
22 there is no standard, and frankly you will never get to

1 them. What you really need is a good -- what we all
2 need is a good safety and health program rule. There
3 are things that OSHA can do that would facilitate those
4 settlement discussions. One of our favorites is that
5 you ought to be issuing serious citations a whole lot
6 faster than -- and by serious, I don't mean in the
7 technical sense. I mean the large citations, the ones
8 for very serious hazards.

9 You ought to be issuing those within weeks of an
10 inspection instead of right at the deadline of the six-
11 month rule. We have the momentum, when there's been a
12 major accident, to really make some changes. Six
13 months later that momentum is often gone, and that
14 hazard has often persisted for six months while OSHA
15 sets that citation through its lengthy review process.
16 That's got to change also. Thank you.

17 MR. SCHNEIDER: Hi. My name is Scott Schneider.
18 I'm the Director of Occupation Safety and Health for
19 the Laborers Health and Safety Fund in North America,
20 and thanks for holding this forum. I appreciate it. I
21 think it's long overdue. I thought about, you know, in
22 five minutes, what to really focus on. There's

1 obviously a lot of things I think, you know, would be
2 useful for OSHA to do, and we've had many discussions.
3 I'm sure we'll have many more forums like this to talk
4 about other issues, but I thought I would focus on one
5 issue.

6 When I saw the title was OSHA Listens I thought,
7 well, I need to talk about hearing conservation. So I
8 am and this is something that's been very, very --
9 something that's very important to our union. It's
10 also very important to -- it's been important to me for
11 20 some years. Hearing loss is widespread among
12 construction workers. NIOSH estimates about -- that a
13 25-year-old construction worker has a hearing of a 50-
14 year-old worker who has had no occupational noise
15 exposure.

16 And it makes life very difficult for workers. It
17 can also present a safety risk if they can't hear or
18 locate warning signals. Twenty-seven years ago this
19 month OSHA promulgated a hearing conservation standard
20 to protect the hearing of workers, recognizing that
21 their noise standard was insufficient, but construction
22 workers were excluded. Ten years ago this month, the

1 laborers union held a national conference on preventing
2 hearing loss in construction which was cosponsored by
3 OSHA. At the conference, our apprenticeship director,
4 Bill Duke, spoke very eloquently about the impact
5 hearing loss has had on his life. He needed hearing
6 aids by age 34, and I actually brought a DVD of his
7 presentation. It's on our website now, so I'll leave
8 this with you to review.

9 And at the conference Secretary Jeffress at the
10 time said, quote, already too much time has passed
11 since OSHA adopted the hearing conservation standard
12 for general industry in 1983. At that time we pledged
13 to develop a separate similar requirement for
14 construction, but we've yet to deliver on that promise.
15 Someone once said you will never find time for
16 anything. If you want time you must make it.

17 I want you to know that OSHA is determined to make
18 time to develop a more detailed hearing conservation
19 center for construction and we intend to issue an
20 advanced notice of proposed rulemaking this year.
21 Well, two and half years later an advanced notice was
22 published but no proposal ever followed. Our general

1 president wrote to OSHA urging them to follow up, but
2 to no avail. Since OSHA has been in action, we began
3 working on a consensus, a voluntary standard to prevent
4 hearing loss in construction and after five years of
5 work, in 2007 it was issued as ANSI, ASSE A1047. It
6 takes a task-based approach to preventing hearing loss.

7 Controls and hearing protection are required for
8 any task where exposures exceed 85 dB. For the past
9 five years OSHA has listed hearing conservation for
10 construction on its regulatory agenda as a long-term
11 action with no real commitment towards moving forward.
12 It's time for this new administration to move forward
13 and make a commitment to protecting the hearing of
14 construction workers and ending the disparity that
15 exists between them and general industry workers.

16 Construction workers should not be treated as
17 second-class citizens any longer and should be
18 guaranteed the same protections as others. OSHA has
19 already done a substantial amount of work on this
20 proposed rule. Washington state already has such a
21 standard in place and it's time to publish the proposal
22 this year and get it finalized to prevent -- to stop

1 the toll of hearing loss in this industry.

2 So I just wanted to highlight that one issue for
3 us. Thanks.

4 MR. MICHAELS: Great. Thank you for your work and
5 your presentations. You have raised all sorts of
6 important questions. I thought I would begin by
7 actually going back to the discussion we had with the
8 previous panel which is a really tough question we're
9 grappling with. You know, how should we measure our
10 success or failure? What metrics should we use, what
11 metrics should employers use, and then follow up on
12 that? You know, what metrics should we use to target
13 our inspections? If you have suggestions on that, I
14 would be very grateful.

15 MS. SEMINARIO: Well, I would -- I didn't hear the
16 entire last panel but, you know, I would agree with
17 some of what was said, that you know getting well
18 beyond the lost workday case rates as being the
19 indicator. It's such a limited, narrow, after the fact
20 indicator and as you know, I mean all kinds of
21 questions about the accuracy of that information
22 because of pressures on workers not to report, and so

1 much pressure is being put on that indicator that I
2 think it's really skewing safety and health.

3 And so one of the things I think we have to be
4 careful about with respect to metrics is whether there
5 are unintended consequences as well, but I think you
6 want to be focusing on risk and exposure. And so
7 looking at what does that translate into in terms of
8 workers being at risk, whether it's a particular
9 chemical, particular hazards, and trying to get fuller
10 information that reflect exposures. And you have some
11 of that. I mean you have some of that on the health
12 side from your exposure monitoring data.

13 That database could be, you know, used more
14 widely. We had suggested on the exposure side some
15 work in trying to find and get information from
16 employers about chemicals that use range of exposure.
17 We did work with both agencies, EPA and OSHA on that
18 back in the 1990s, something equivalent to the toxic
19 release inventory, the toxic use inventory.

20 I think looking at history, history of, you know,
21 employers. I mean that gets you somewhat into a trap
22 that you are then just recycling the same, you know,

1 20,000 employers you inspected in a year, but the
2 history obviously will tell you something. And so, you
3 know, I don't have the specific answer as to which
4 metrics to use. I know OSHA has put a lot of time into
5 this. There is thinking going into this, but I think
6 trying to develop some forums here where people can
7 talk and exchange ideas in that regard is really
8 important.

9 You haven't had a session just to come in and
10 let's talk about targeting and get people thinking on
11 that. And with some questions, some thinking, you
12 know, a structured discussion, may cause you to look at
13 these issues. You know, they would pull together
14 workbooks workgroups and maybe you could do it through
15 NACOSH. They would have a work group that was broader
16 than just the folks that are there. Those are just a
17 couple of ideas.

18 MR. SCHNEIDER: And I'm on a workgroup with CBWR
19 looking at metrics that construction companies can use,
20 but that's internal metrics, and I think that's very
21 important, but if you're looking at what metrics OSHA
22 should use to determine how successful OSHA has been, I

1 mean we know they're are flaws with the [indiscernible]
2 injury data, which is the only data you really have.
3 But I think to me it's got to be a broader question is,
4 you know, how much of the industry, like in the
5 construction industry knows about OSHA, knows what the
6 OSHA rules are, knows what they are supposed to be
7 doing, and actually have programs in place.

8 And it's not something -- maybe that's something
9 you could collect through surveys to find out, to go to
10 do surveys of small employers and see if they
11 understand what their obligations are, or do surveys
12 that a worker has done to see if they understand what
13 their rights are. I think that would be sort of a
14 broader metric to see how successful this is.

15 And I think part of that has to do with, you know,
16 really getting -- making OSHA more visible, and I think
17 having a media strategy so that the public really
18 understands much more the serious nature of
19 occupational injuries and illnesses and what the
20 government is doing about it would be very helpful.

21 MR. MICHAELS: Great. I don't have much to add
22 but I do want to talk about the problem with focus on

1 lost workday case rates which Peg alluded to. They're
2 too easy to gain, and we've seen -- we've seen
3 companies use that very honestly, frankly, that there
4 are companies that care about the metric, want to make
5 sure it really reflects workplace conditions, but we've
6 seen far too many places where the goal is to keep that
7 number down, and it doesn't matter how you do it.

8 And sometimes the way you do it, for example, is
9 by sending every worker in the plant a message that
10 says if you get injured in this plant, and we find out
11 about it, we're going to blame it on you and we're
12 going to get -- we're going to put you on a path to
13 progressive discipline and ultimately you're out of
14 here.

15 And what happens then is people hide injuries. We
16 had one workplace, a small steel strip shop made --
17 made steel strip where the main hazard is cuts where
18 workers called it the bloody pocket syndrome. You cut
19 your hand on a piece of steel strip, you wrap your hand
20 in a shop rag. You take it home and then you go see a
21 doctor and you never tell the company.

22 And the problem is number one, people were hurt.

1 Number two, the company doesn't get the information it
2 needs, nor does the union, to manage safety
3 effectively, and third, people are diverted from the
4 worker's comp system into the already overburdened
5 regular medical system. And the more a company focuses
6 on that, the more OSHA focuses on that, the more that
7 kind of problem will persist.

8 We don't even attempt to measure -- to look at
9 those numbers in most companies. We think they're
10 irrelevant. We look at fatalities. We look at very
11 serious accidents. The bad thing about those, from a
12 statistical point, the very good thing from a human
13 point is that there are too few to really draw good
14 statistical inferences, except on very broad levels,
15 but OSHA really has to do something to discourage
16 companies from gaining lost workday rates.

17 MR. MICHAELS: And what do you think OSHA could do
18 to discourage that?

19 MS. SEMINARIO: Well, one of the things that you
20 are doing right now is you are -- you know, you have
21 your national emphasis program in place on record-
22 keeping, which is -- which is important, but I think

1 that there's got to be some public attention to these
2 issues here. I think when people think about record-
3 keeping they think, well, is it on the log. And that's
4 important. But the issue is what is going on in that
5 workplace with respect to workplace injuries, whether
6 they're being reported.

7 More importantly are they being addressed, are the
8 hazards being addressed. And so I think a real focus
9 on that particular issue more publicly, and some
10 examples made. Remember back to the 1980s when there
11 were problems with record-keeping with information not
12 being on the log and the meatpacking companies and
13 others, and the agency did some very, very significant
14 high-level enforcement, and that sent a message. And
15 so I think in looking at some of these issues here,
16 looking at the initiative that you now have, doing
17 education around what it's about, and then also clearly
18 if you are finding problems and significant problems,
19 making that very clear so that you are sending a
20 message that that kind of activity and behavior is
21 unacceptable.

22 And if necessary, changing rules to make it

1 explicit that it is a violation of OSHA. Not just 11C,
2 but in terms of record-keeping, to have anything --
3 policies and practices in place which discourage the
4 reporting of injuries.

5 MR. WRIGHT: One small thing you could do I think
6 is start calling it by its proper name. For example,
7 the wage and hour division of the Department of Labor
8 started -- stopped talking about wage and hour
9 violations, started calling them wage theft. What this
10 really is is employer injury fraud.

11 When a worker files a false comp claim, that's
12 called, you know, worker injury fraud. This is
13 employer injury fraud and that's how it ought to be
14 described.

15 MR. FAIRFAX: First, thank you for being here. I
16 appreciate it. There's some interrupting items here.
17 I'm going to get back into enforcement, but a couple of
18 questions and, Mike, I've heard you mention before. In
19 fact I think we were on a panel one time where you were
20 talking about injuries and illnesses and you focused on
21 -- at the time you thought we should move away from our
22 site-specific targeting and move to more on program

1 targeting, looking at emphasis programs, whether
2 they're local or national.

3 Like I wanted to comment, or just think about
4 that, and then the second question for everyone. In
5 the last panel the issue got raised on the old main 200
6 program, cooperative compliance program that we tried
7 to initiate. As I said on the last panel, I've been
8 thinking about that a lot because I actually liked that
9 program. I thought we had good results on it but, you
10 know, we obviously never got to initiate, move forward
11 on a national level, but maybe your thoughts and
12 comments on that program also?

13 MR. WRIGHT: We liked that program also, and if I
14 remember -- this is some years back of course, but if I
15 remember -- I remember the court decision. They didn't
16 -- you know, I mean the court doesn't say it's a bad
17 program. They never say that. They just say you
18 didn't do it right, and what they said was it should
19 have gone through some form of notice and comment, or
20 at least quasi rule making. And if that's the case
21 then that can be corrected.

22 You can still establish but do it -- do it in a

1 way that the Court will find acceptable. We would
2 support that. We think it's a good program.

3 MR. FAIRFAX: Okay. And what about emphasis
4 programs versus the like FFT or --

5 MR. WRIGHT: We are also very much for special
6 emphasis programs. I think one of the things that's
7 really made a difference in the refining industry,
8 which where we represent the majority of folks who work
9 in oil refineries, that that program has been very
10 successful and very useful. In fact, we think it ought
11 to be extended to state plan states. We think that
12 it's a mistake to exempt VPP sites from it.

13 VPP sites often, even where they qualify for VPP
14 with respect to injury and illness rates, we've seen
15 VPP sites with very good injury and illness rates, very
16 bad process safety programs and that's what it's really
17 all about. And there ought to be another round. We've
18 had one major oil refinery that for politeness sake
19 won't mention, but they had a big OSHA citation.

20 It didn't sufficiently get their attention, and
21 they had a much bigger OSHA citation after that and
22 that really got their attention. I think that's the

1 way that the rest of the industry has got to be
2 treated. There needs to be a second round.

3 MS. SEMINARIO: I would just say that I think that
4 the agency's resources are so limited. You know,
5 obviously you've got to think strategically about how
6 do you have the biggest impact and I think the emphasis
7 programs have more impact than the site-specific
8 targeting because you are clearly having -- you've set
9 those industries or those hazards as a priority, gotten
10 the message out about that. And so it is trying to
11 bring about a level of attention and hopefully
12 compliance even before you get there.

13 And so -- and I think the agency could do a better
14 job, though, of trying to do some more integration on
15 these hazards or issues so that you're not just doing
16 it as an enforcement program but you are tying outreach
17 to it. You know, you have tried to in some cases
18 education, trying to focus both not only on employers
19 but on workers. And so I would suggest a more
20 integrated approach to some of the high hazard
21 industries and high hazard problems, and that would be
22 again I think a more effective approach.

1 As far as the main 200 program I think there were
2 some good things about that. There were also I think
3 some problems as you tried to expand that, as I recall,
4 across the country. There were different data. There
5 were different requirements. It was a mess. I mean it
6 was like everybody was like let 50 programs bloom and
7 we went crazy. And so I don't have quite the fond
8 memories of the whole situation as Mike does, but I
9 would not say that you should say that an enforcement
10 program like that should substitute for a safety and
11 health program rule.

12 And that's what that attempted to do, and that was
13 though wrong approach of trying to use enforcement to
14 put in place requirements for safety and health
15 programs. And so put a program rule in place and then
16 perhaps look at some data and try to figure out if
17 maybe employers, how to try to move things, and use,
18 you know, more fuller data from comp or wherever, as a
19 way to do enforcement and try to do some leveraging,
20 but don't have a replace and safety and health program
21 rule.

22 MR. SCHNEIDER: On the special emphasis programs,

1 and we had success a couple of years ago working on
2 this with trenching, and trench fatalities have been
3 cut in half over the last several years, and it was a
4 combination of outreach and enforcement and I think it
5 was very helpful, and I think it could be done with
6 other things.

7 And we have talked for example about, well, one of
8 the things that -- there are 25 different OSHA
9 standards that require competent persons. We don't
10 know really how much that's being used or enforced, but
11 clearly it could have a major impact on construction
12 sites to make sure they have a competent person in
13 place with the authority to stop work if conditions
14 warrant.

15 I think that would be a really useful thing to
16 look at, and I think the problem in construction is you
17 have so many construction sites, so many that are not
18 on OSHA's radar, and we have talked in the past about
19 the idea of maybe having a national registration system
20 for construction sites where at least OSHA would know
21 where all these sites are, particularly the small ones,
22 where we know there is a number of hazards and people

1 aren't -- don't have the sophisticated safety and
2 health programs in place.

3 MS. SEMINARIO: One last point on the emphasis
4 programs. I mean OSHA may know what the emphasis
5 programs are, but I think everybody needs to know what
6 they are. What are we emphasizing, right? So the
7 emphasis isn't just in that area office but it's a
8 safety and health community in a particular region.
9 People know that that's actually -- you know, that it
10 actually is important, not just to the agency for
11 enforcement, but it should be important to employers
12 and unions and workers as well.

13 So having more sort of a public face on those
14 emphasis programs and how they relate to injuries and
15 how they relate to the kind of initiatives that
16 employers should be taking I think is really important.

17 MS. DOUGHERTY: [Indiscernible] to answer the
18 question. How do you ensure that workers are really
19 involved in an injury and illness prevention program or
20 safety and health programs?

21 MS. SEMINARIO: Well, by letting them organize and
22 have a union. I mean seriously. I think one of the

1 things that's very difficult in the US is that we have
2 such a low level of unionization, as far as having a
3 structured involvement in the workplace is different
4 than it is in a lot of countries. And so but that's
5 the reality. So then given that reality here, how do
6 you do that. And I think it's a really -- you know,
7 it's a tough issue.

8 I think you've got to start with basically some
9 basic education that people have to know their rights
10 and they actually have to be able to exercise them;
11 right? If they don't know their rights, and they
12 actually are not free to exercise them, there's no
13 participation. And so I think doing a lot more
14 education of what worker's rights, I think building
15 into a safety and health program rule, a real role for
16 workers, basic requirements for training that have to
17 be there because again, if you don't know hazards, and
18 you don't know your rights, the worker participation
19 really doesn't -- you know, doesn't mean a whole lot.

20 You know, but at the end of the day, and also
21 backing that up with a more vigorous antidiscrimination
22 program. If you don't have that backed up then, you

1 know, people can't really can't exercise their rights
2 and that's an the area of where we think the law needs
3 to be changed. 11C is the oldest of all of the
4 antidiscrimination provisions and there's no reason why
5 on safety and health, workers shouldn't have the same
6 rights that they had virtually on every other hazard
7 and under every other program.

8 So we would encourage the agency to perhaps look
9 at some -- you know, proposing some legislative changes
10 so that you've got some basic protections in place.

11 MR. WRIGHT: Let me say that I think our problem,
12 at least in my union, isn't persuading employees to be
13 involved. It's persuading employers to let them be
14 involved. And we try to do that through collective
15 bargaining and all kinds of other ways and again, in
16 OSHA's settlement agreements. But one thing I've
17 noticed from doing work in other countries around the
18 world, and we do some work with unions and in some
19 cases employers and other countries, we are one of the
20 few countries in the world that doesn't have a formal
21 mechanism for employee involvement in safety and
22 health.

1 Canada has that kind of system. The European
2 Union has that kind of system. To name some places
3 that I know about, Romania has that kind of system.
4 Brazil has that kind of system. South Africa has that
5 kind of system. The US does not, and we need that, in
6 part legislatively, but there are things OSHA can do
7 through the, again, the program rule that would ensure
8 workers a much stronger voice in their own working
9 conditions than they have now.

10 MR. SCHNEIDER: Yeah, let me just add. I mean I
11 agree with Mike and Peg, but I think that we've been
12 focusing a lot in our work on looking at safety culture
13 in construction sites. You know, do -- and the basic
14 measure of safety culture is do employees feel
15 comfortable raising safety issues that they're going to
16 be supported in that. And I think really that's the
17 essence of employee involvement is them feeling like
18 they can speak up and be supported and they are going
19 to be listened to, and that things are actually going
20 to happen for the actions taken as a result of their
21 speaking up.

22 Because if they speak up and nothing gets done,

1 obviously that discourages employee involvement. So I
2 think really that's the essence of it. And I know in
3 VPP programs, they've done a lot of work on this as
4 well, and it's a required part of VPP. So I would have
5 you look at those companies and ask them for
6 suggestions as well.

7 MR. MICHAELS: Thank you so much.

8 MS. BERKOWITZ: So the next panel is Chris Patton
9 and Kathy Kirkland, and Aaron Trippler.

10 MR. PATTON: Thank you. I'm Chris Patton and as
11 president of the American Society of Safety Engineers,
12 I'm very proud to be here today to share the views of
13 my fellow 32,000 member safety, health and
14 environmental professionals. We appreciate this
15 opportunity to join with our other stakeholders to
16 share some thoughts about the issues facing OSHA and
17 the entire occupational safety and health community.

18 ASSE has asked that OSHA be a leader in bringing
19 this community together and we hope that OSHA can hold
20 similar opportunities to share views on issues that
21 this community finds difficult to address. PELs,
22 updating OSHA standards with voluntary consensus

1 standards, and even ergonomics, to name a few. Each
2 idea that we share here today reflects the hard-won
3 experience gained by our members on the front lines,
4 helping manage the safety and health risks that
5 threaten workers and keep companies from achieving the
6 bottom line results they need to be competitive in
7 today's global marketplace.

8 Our members experience first-hand when OSHA works
9 well and when it does not. They deal with highly
10 competent field staff and with those who fail to
11 understand fully the real risks in the workplace. They
12 live with OSHA standards that help them protect workers
13 and with standards that make their work unnecessarily
14 complicated. They see OSHA build relationships to
15 advance safety and also see OSHA drive employers away
16 from any interest in reaching out to OSHA.

17 But make no mistake, they want OSHA to work well.
18 While it's not easy to summarize in this short time,
19 ASSE's detailed comments can be brought together in its
20 overbroad ideas. You ask what can be done to improve
21 employer and employee efforts to identify and address
22 workplace hazards. The answer is clear to our members.

1 Adopt a safety and health program rule. The risk
2 assessment throughout the US workplace as such a
3 standard would cause is by far the best way to address
4 both current and emerging hazards for which OSHA will
5 find it increasingly difficult to set standards. ASSE
6 is pleased at the current leadership of OSHA and has
7 stated an interest in such a standard and we look
8 forward to supporting that effort.

9 Also moving towards performance-based OSHA
10 standards would be significant. Performance-based
11 standards encourage employers to take responsibility
12 for addressing risks. Not only are prescriptive
13 standards difficult to meet across varying workplaces,
14 they will not meet future needs. Our members are
15 already being asked by employers to meet growing
16 international performance-based standards.

17 OSHA needs to move forward in this direction as
18 well. You also ask how can the agency improve its
19 efforts to engage stakeholders in programs and
20 initiatives. Our members value greatly OSHA's
21 cooperative programs. ASSE is proud to be an alliance
22 partner and we know the cooperation it has fostered.

1 The alliance has helped many OSHA staff feel much more
2 a part of their profession, an important part of staff
3 development that we urge OSHA to support. While
4 proposed FY 2011 funding, the compliance assistance is
5 not insignificant, ASSE is troubled by OSHA's
6 unwillingness to support the voluntary protection
7 program. VPP helps our members solidify and expand
8 their employer's commitment to safety, often not easy
9 to achieve in even the best corporations.

10 OSHA will not improve its efforts to engage
11 stakeholders by failing to support the VPP. One of the
12 key challenges facing OSHA is its inability to keep up
13 with the relatively rapid advancements in occupational
14 safety and health voluntary consensus standards. ASSE
15 supported the performance oriented approach proposed in
16 its rulemaking on updated OSHA standards based on
17 national consensus standards for personal protective
18 equipment.

19 We urge OSHA to move that proposal forward. A
20 solution is long overdue. Throughout our comments are
21 repeated calls from our members for OSHA to move
22 quickly into the future, whether performance-based

1 standards, control banning or nanotechnology and other
2 emerging technologies, they want OSHA to join them
3 where the profession is already demanding that they be.
4 They particularly want OSHA to join them in the social
5 media revolution occurring all around us.

6 They want to engage OSHA in a new level of shared
7 professionalism and openness. We HS and E
8 professionals may be the most dynamic profession on the
9 globe, constantly reacting to change. If OSHA cannot
10 keep up with the same demands we face, it risks
11 irrelevance. Finally long overdue by OSHA, and
12 admittedly ASSE itself, is a thoughtful examination of
13 what constitutes a competent person in OSHA standards.

14 In most fields, research and commitment to
15 professional standards has resulted in a fairly clear
16 understanding of the levels of responsibility
17 appropriate for certain levels of training and
18 experience. That does not exist in Occupational Safety
19 and Health. When so much attention is given to how to
20 protect workers through standards, we are missing a
21 needed discussion about who provides the professional
22 leadership to assure a standard is appropriately met.

1 Again, we appreciate this opportunity to share in
2 this dialogue and look forward to future opportunities
3 to talk in depth about the issues we've shared here
4 today. Thank you.

5 MS. KIRKLAND: By name is Kathy Kirkland. I'm the
6 Executive Director of the Association of Occupational
7 and Environmental Clinics, so I come at this from a
8 slightly different perspective than most of the prior
9 speakers. We deal with clinical assistance and
10 prevention, treatment of the outcomes of the lack of
11 worker health and safety.

12 We've been at this as an association since 1987.
13 Because it's such a broad range, I sort of picked two
14 topics. I go from the Alpha and the Omega. One is
15 the efforts the AOEC has recently been putting in on
16 healthy aging for sustainable workforce, which OSHA
17 helped sponsor, and I couldn't resist the opportunity
18 to say we've got a real good conference report.

19 And basically we are looking at the fact that even
20 if you just look around this room, we've got an aging
21 workforce. That's a given. Yeah, sorry about that,
22 but there's just too many of us over 40 in this room.

1 The need to conduct -- you know, one of the things
2 we've recognized is the need to conduct additional
3 research to understand how to prevent work-related
4 injury and illness among the older workers. You know,
5 all of us who have reached that magic 50 mark know that
6 we are no longer quite as coordinated, and our memories
7 aren't quite as good, and our eyesight isn't quite as
8 good as it used to be.

9 And so we need to fill in the knowledge gaps,
10 create more better data systems to figure out what is
11 going on and is there definite trends. Focusing on the
12 health and well-being of all workers is of primary
13 importance because if all workers are safe then older
14 workers are safe. But, you know, that's a definite
15 issue that I think should be addressed by OSHA is
16 looking at those differences.

17 And one of the obstacles to looking at these
18 issues is the fact that not only is the entire
19 workforce aging, but the health care and occupational
20 health and safety workforce is aging. We need to get
21 more young people into the field. And, you know, one
22 of the efforts that AOEC has been putting into this is

1 looking at recruiting a new generation of workers
2 through an occupational health internship program which
3 basically introduces people to the field of
4 occupational health and safety through a summer
5 internship, getting them an idea, so even if they don't
6 stay in occupational health and safety as a career,
7 they are aware of what the situation is.

8 They're working with minority underserved
9 populations. They're understanding what the problems
10 are, and that's something that I think OSHA needs to
11 support. Admittedly, you know, NIOSH is the federal
12 agency that's pretty much tasked with the training and
13 recruitment of new health and safety professionals, but
14 it needs to be across the board.

15 It needs to be every agency looking at it and
16 particularly OSHA, MSHA, NIOSH, and all of the
17 agencies, which gets me to the point of one of the
18 metrics. I've been listening to you, that can be
19 brought forward by the health professions is the fact
20 that one of the metrics you need to be looking at is
21 workers comp data.

22 Well, you can't get good data out of workers comp

1 if the physicians and the nurses who are treating the
2 patients when they come in after hours and, you know,
3 like the steelworkers say, come into a private clinic
4 rather than reporting directly to workers comp. If
5 your clinicians are aware that this is a work-related
6 illness or injury and they can report it, either
7 through workers comp because that may be the only way
8 they're going to get paid, or through the surveillance
9 systems that NIOSH is currently supporting, others
10 should be supporting, CDC, OSHA, you know, getting your
11 information not just from the OSHA 200 logs but from
12 your health professionals reporting in some instances.

13 A lot of your European countries have this in
14 place and I think it's something that we need to be
15 looking at. It's going to be very difficult. So with
16 that, I am going to leave it to Aaron.

17 MR. TRIPPLER: Thank you. Dr. Michaels and the
18 rest of the panel, I appreciate the opportunity to be
19 here today and represent AIHA. My name is Aaron
20 Trippler and what I'm going to try to do is to just
21 cover some of the broad term things that AIHA believes
22 the agency should look at. It's easy to look at the

1 short-term existing projects you're working on, a
2 globally harmonized system, things like that. So I
3 thought we would take a look at some of the broad
4 things. One of the things we did do is we had a town
5 hall meeting where we went out and listened to our
6 members to find out what they thought, and we put that
7 in extensive comments that we already submitted to
8 OSHA, and you should have.

9 And I'll just cover a couple of the main things
10 that OSHA -- or that AIHA believes is very important.
11 You've heard Peg Seminario and Frank White talk about
12 the PEL process and there's no doubt that we believe
13 that is the number one issue for our membership. It
14 has been for the last 10 years in our annual surveys,
15 and that goes along with the rulemaking process itself.

16 Let's face it, the rulemaking process is broken.
17 It shouldn't take 10+ years to put any standard in
18 place. As a matter of fact, if I'm correct I believe
19 the statistics show that since 2001 you've put out
20 about six or 700 guidelines and yet you've probably
21 only put out a handful of health and safety standards.
22 The reason is because it's much easier to put out

1 guidelines.

2 So we need to take a look at the PEL process, and
3 it's something that's a very, very important. And the
4 longer the agency goes without doing this, the tougher
5 it's going to be to increase the credibility and
6 improve the health and safety of workers. I don't
7 think it's a time now to say we can sit back and do
8 nothing any longer.

9 We must move ahead with the PEL process. Some of
10 the things that we believe is important is because
11 there is -- they've been outdated because of better
12 toxicology, et cetera, and while OSHA has to consider
13 the economic impact, they must also consider the health
14 impact as we look at things. You must require written
15 health and safety programs to be involved also because
16 as workers take a look at the possibility of impact on
17 their health and safety, the standards that are set,
18 the PELs that are being used in the workplace are very,
19 very important, and we do believe that the agency must
20 now take a look at that.

21 However, I think one of the other things that we
22 take a look at is you must maybe find an alternative to

1 this. Maybe it's no longer possible to put standards
2 together on an individual, single standard basis.
3 Maybe you need to take a look at a broader, generic,
4 general duty clause. A generic exposure standard, or
5 maybe just risk assessment in general. These are some
6 of the things that you must take a look at as you look
7 down in the future and try to make this agency
8 successful.

9 A couple of other things that we also believe you
10 must take a look at is retaining the VPP program. We
11 believe that is very, very important and it received
12 considerable response from our members during the town
13 hall. They're aware of the resource limitations the
14 agency has. We're aware of the GAO report that shows
15 that the agency must have continued oversight and we
16 support that.

17 But we urge you not to turn around and take a look
18 at the VPP program and say it's no longer needed. We
19 believe it's needed. We believe it's been a success
20 and we hope you can build upon that success. The third
21 thing that I would like to cover very quickly is the
22 requirement of a written health and safety program

1 standard. There's no doubt that we've supported it for
2 years. You've heard previous speakers talk about it,
3 and I think it's one of the things that you must move
4 forward as you look down the road. A couple of the
5 things that are members talked about that I think are
6 very, very important and it was interesting to listen
7 to some of them.

8 I thought the most important one was the
9 partnerships that they talked about with professional
10 associations. What they really felt was important was
11 that the agency go out and deal with professional
12 associations before you draft standards and rules and
13 regulations. Sit down with the professional
14 associations and find out what they think before you
15 start drafting it. I think the best example of that
16 was probably the DOL approach in the last
17 administration towards the end on what we call the
18 secret rule on risk assessment where we found out that
19 when they proposed that they had already been out there
20 a year doing some kind of research where they thought
21 this is why it was important, and they never contacted
22 any of the professional associations that deal with

1 risk on a daily basis.

2 And I think that goes to show why it's needed.
3 That you sit down with the professional associations up
4 front and say how do you think we best approach this
5 and how should we do it. With that I think I will
6 leave it to you to ask questions. I appreciate the
7 opportunity to be here today and represent AIHA.

8 MR. MICHAELS: All right. Well, thank you all.
9 It's a very exciting panel and let me just say I'm
10 personally very gratified that you actually all went
11 back and obviously talked, engaged members of your
12 organization to prepare for this. So it really -- you
13 know, there's a ripple effect of this discussion. Sort
14 of building on the last couple of panels and the things
15 all of you have said, I'm interested in if you do think
16 we should be moving toward a program standard. It's
17 just how -- what component is there? How do you build
18 that so it doesn't distance -- so it doesn't -- so it
19 incentivizes accurate reporting of injuries. You don't
20 have disincentives, as the previous panel talked about
21 for reporting.

22 MS. KIRKLAND: Unfortunately, I think one of the

1 things we're going to have to have is the health care
2 reform because one of the problems that we've run into,
3 and AOEC did a lot of work with World Trade Center
4 workers around the country, and you had physicians and
5 hospitals who would not touch a worker's comp case.
6 They wouldn't treat any of the people that we wanted to
7 refer to them if they thought we were a worker's comp
8 payer.

9 It was only when I was able to explain that I was
10 paying them on behalf of the American Red Cross that we
11 had hospitals, physicians, psychiatrists willing to see
12 World Trade Center workers, and that was a big wake-up
13 call.

14 MR. MICHAELS: [Indiscernible] on this one. It's
15 a tough question.

16 MR. TRIPPLER: It's a tough question for me
17 because I don't know if our members have really put
18 together anything specific on what would be required
19 within that. I would have to go back and check. It's
20 just that it's something that as I keep talking to our
21 members and listening to them they keep saying it is so
22 important, because in the workplace now if you don't

1 have anything even written down, it's impossible for
2 that employer even to sit down with his employees and
3 talk to them about what is needed.

4 MR. PATTON: Yeah, and I think -- you know,
5 obviously we support the idea of a program standard
6 and, you know, your idea of what elements are going to
7 help drive accurate record-keeping is a challenge
8 because in those workplaces where our members are,
9 that's part of their job. That's their focus is
10 identifying where that risk is and identifying the
11 injuries that have happened and tracking those.

12 So I think the challenge is going to be in those
13 areas that don't have those resources and those people
14 in place, how are you going to drive that.

15 MR. MICHAELS: I have more questions but I know
16 everyone has some questions they would like to ask.

17 MS. DOUGHERTY: I really enjoyed reading your
18 paper, Aaron. A lot of ideas, especially on the
19 standard side of sort of priorities, but if you could
20 expand a little, the standards that you suggest and as
21 you discussed, it takes a long time to promulgate a
22 standard, but as many, as you suggested would really

1 exceed the resources that we have available. So any
2 thoughts you could share on sort of prioritizing your
3 list.

4 MR. TRIPPER: Well, I think if we were going to
5 prioritize it would have to be the GHS is number one.
6 As we take a look down the list, I think control
7 banning is something you should take a look at.
8 Nanotechnology is very, very important. I think
9 probably I'm a little surprised that the agency hasn't
10 moved more quickly on cranes and derricks and even
11 confined spaces in construction.

12 They've been hanging around for a long time, and I
13 think that brings up even a broader approach. When you
14 take a look at the issue of cranes and derricks and
15 confined spaces in construction, and even combustible
16 dust, you had numerous accidents around the country
17 with cranes, deaths. You had combustible dust deaths
18 and explosion, and yet those local jurisdictions, or
19 the states, addressed those issues within a very short
20 period of time.

21 And yet the federal government has not been able
22 to do so. And I think it brings to light the fact that

1 it seems as if the states have assumed a little bit
2 more of a lead in doing this. Now I realize it's much
3 more difficult on the federal level, but I think it
4 bears us out to go down to the states and say how can
5 you do this. The State of California updates their
6 PELs on a regular basis now. They have a new process
7 put in place.

8 So I think when you -- I understand the problems
9 and the resources and the limitations you have, but
10 there has to be a better way, and I think one of the
11 ways is to sit down with professional associations,
12 other stakeholders, labor industry and say how can we
13 fix this. What's the best approach. Let's hear some
14 ideas. Maybe have one of these meetings just as Peg
15 said, having a meeting on a specific issue.

16 Maybe you need a full day meeting on just this
17 issue, on how to solve this rulemaking process.

18 MS. DOUGHERTY: Do you have any thoughts on a
19 criteria to use for determining sort of the priorities?

20 MR. TRIPLER: No, I really don't and I would be
21 speaking out of place on that one because I'm not sure
22 the association has ever sat down and taken a look at

1 that issue.

2 MR. FAIRFAX: Chris, you're talking about
3 performance-based standards. I personally like them,
4 too. It just kind of drives employers to look at their
5 own programs and comply with the standard, but it gives
6 them a lot of creativity. For me, one of the hardest
7 things is, you know, everyone wants a specific
8 interpretation on that. And what I hear commonly from
9 employers across -- you know, across the country really
10 is that they don't like performance based standard.

11 They want to be told exactly what to do. I mean
12 how -- you know, how high does that guardrail have to
13 be. So it's sort of a dilemma. I don't know if you
14 have -- I like them. I think they drive health and
15 safety, but how do I get around that, I guess.

16 MR. PATTON: Sure. Well, you know, ideally there
17 are some things out there that you may have to specify.
18 You know, how high your guardrail is going to be and
19 whatnot, but I would be curious to know which employers
20 you're talking to that are saying they want that
21 because I know, you know, my organization is made up of
22 safety and health professionals who, you know, we would

1 like to know what your expectation is and we're all
2 after the same outcome, but would appreciate the
3 opportunity to be able to find our own unique ways to
4 get there.

5 You know, as you know, every employer environment
6 is different and, you know, whether you walk into a
7 manufacturing plant or a construction site, you may be
8 wanting the same thing, but how you get there is going
9 to be different. So I think for us it's much more
10 effective for our professionals out there to be able to
11 make those decisions, identify those ways to get there.

12 I think the other challenge that you have is with
13 the new emerging technologies, things like
14 nanotechnology and whatnot that are coming down the
15 pike. You're going to have a hard time keeping up with
16 the standards if you don't take it from a performance
17 oriented approach.

18 MR. FAIRFAX: Okay. Aaron, you brought up on
19 PELs. I certainly agree with you, and probably one of
20 the questions I get when I give talks a lot about
21 updating the PELs, but you touched on something I
22 thought was interesting. It may be a generic or

1 performance based approach where it would require to
2 employers to -- maybe I'm assuming you're talking about
3 having them do the risk assessment and protect
4 accordingly.

5 MR. TRIPPLER: Yeah. I think -- I think as we
6 move forward and we're in the process of trying to sit
7 down and determine should we get another group together
8 to look at a new process, one of the alternatives that
9 we keep hearing about is maybe the broader approach is
10 just to simply look at an employer and say you're
11 responsible for the hazards in the workplace, and you
12 must just address that hazard, whatever it is. And as
13 you take a look at a generic approach to it, I think
14 that's where they're coming from is saying we don't
15 know if we can look at every little hazard that OSHA
16 comes out with.

17 We don't have half of those hazards. And so why
18 don't you just let us take the approach on what is
19 important in our workplace. Now, that's all the
20 further it's gone, just in the discussion stage, and I
21 would hope that as we put together a group here, you
22 know, this spring, we can delve into that a little bit

1 further.

2 MR. MICHAELS: Let me just follow up on in some
3 ways all of these, but specifically saying what Chris
4 mentioned a minute ago which is sort of some of the
5 emerging hazards that we're far from issuing a standard
6 for. We certainly couldn't issue an exposures
7 standard, but there are also other concerns we have.
8 The Obama administration recently has taken on the
9 issue of distracted driving, and specifically texting
10 while driving, which obviously I think we could all
11 agree is a significant hazard and the Department of
12 Transportation has essentially put out regulations, or
13 is moving to regulations, for commercial truck drivers.

14 But there are plenty of other people and workers
15 who either voluntarily or are forced to text while they
16 drive. How can OSHA deal with some of these emerging
17 issues that we're not going to issue a standard for
18 very easily. We know standards take a long time, but
19 at the same time either present obvious hazards or
20 potential hazards.

21 A new chemical where we have surmountable data but
22 we don't yet have human data. What should we do? How

1 do we deal with those?

2 MR. PATTON: I think the ideal answer is rely on
3 the employer to identify those risks and control them.
4 If they're willing to invest in that process and have
5 the resources available to do it, that's the best
6 approach. I think the challenge there is going to be,
7 you know, there are employers out there that don't have
8 those resources and trying to identify how you can
9 support them in doing that.

10 MS. KIRKLAND: I think the other thing is that
11 you're going to have to publicize when you come up with
12 one of these new risks, get it out. You know, if not
13 to the general public, at least to the professional
14 societies, your stakeholders working within OSHA,
15 NIOSH, all the other organizations. You know, CDC has
16 a clinician's outreach and communications activity
17 which sends out an e-mail probably once a day that just
18 sort of lists very briefly, and I get some things from
19 OSHA. But, you know, it doesn't have to be formal but
20 let people know that you're looking at this. You may
21 find that you've got a risk.

22 MR. TRIPPLER: I would agree with the other two.

1 I think on the texting, I think Oprah has the best
2 thing going. I think she's got a huge thing that's
3 probably more popular than the President's but, you
4 know --

5 MR. MICHAELS: But what do we do with a company
6 that doesn't -- that requires texting while you drive?
7 What's OSHA's approach? Just leave it to the employer?

8 MS. KIRKLAND: No.

9 MR. TRIPPLER: I don't think it's possible for the
10 agency to enforce that.

11 MR. MICHAELS:: Well, that's the question.

12 MR. TRIPPLER: I do believe that communication as
13 -- what's said here is becoming a huge thing. When we
14 listen to our members, communication between OSHA,
15 employers and employees was huge, even down to the
16 level of high school saying that you need to start
17 teaching worker health and safety in the schools to
18 teach these people what to expect when they get in the
19 workplace.

20 MR. PATTON: I think one thing I would add also is
21 that look, there are a lot of professionals out there
22 that deal with that particular hazard and engaging them

1 and asking their opinion on how to help control that is
2 a great first step.

3 MR. MICHAELS: Very good. All right. Thank you
4 all. That was great. Thank you. Very helpful.

5 MS. BERKOWITZ: Thank you very much. So the next
6 panel is Kathleen McPhaul, Hestor Lipscomb, Rick
7 Neitzel and Mark Schudtz. I just want to -- in case
8 you weren't here at the beginning, just let you know
9 that the little red light, green light, yellow light
10 device we have here, when the yellow light goes on, you
11 have a minute, so you don't have to end there, but then
12 when the red light goes on, then the five minutes are
13 up. So thank you. So you want to just start with
14 Kathleen?

15 MS. MCPHAUL: Sure. I'm Kate McPhaul, University
16 of Maryland, Work in Health Research Center and current
17 chair of the Occupational Health and Safety section of
18 the American Public Health Association. As I started,
19 I would also like to dedicate my remarks this morning
20 to the memory of Hannah Wheeler who is a 65-year-old
21 teacher of troubled youth who was murdered recently
22 while on the job, just a few miles from here, the

1 latest victim of workplace violence. Members of the
2 occupational health and safety section and the American
3 Public Health Association are individuals involved in
4 preventing work-related injuries, illnesses,
5 disabilities and death through research, training,
6 treatment, advocacy and policy making.

7 The OHS section is one of the oldest within the
8 American Public Health Association celebrating its 95th
9 year in 2009. We have 700+ members representing a
10 multitude of disciplines from medicine and nursing,
11 industrial hygiene, epidemiology, environmental health,
12 statistics, community organizing, teaching, history,
13 law and journalism.

14 We're very multidisciplinary. The section
15 provides leadership and expertise on occupational
16 health matters recognizing the intrinsic link between
17 the work environment and the health and safety of
18 families, communities and the environment at large.
19 Most of our highest priorities align with the
20 fundamental mission of OSHA.

21 That is ensure the health and safety and
22 protection for all workers, count. All occupational

1 injuries and illnesses, increase worker participation
2 and eliminate disparity. The latest US government data
3 from 2007 show that 15 workers each day lose their
4 lives from work-related injuries and four each minute
5 suffer work related injuries that cause them to miss
6 work, modify their job tasks, or transfer to other
7 jobs.

8 Over the last eight years federal OSHA and MSHA
9 have not done nearly enough to enforce existing worker
10 health and safety standards and have done almost
11 nothing to pass tougher new standards based on the
12 clear scientific evidence of harm to workers. The US
13 government counts work related injury and illness every
14 year based only on a survey of employer reports.

15 We know these statistics do not tell the whole
16 story about work-related injuries and illnesses and we
17 don't do enough to target the riskiest industries for
18 enforcement and prevention efforts. Our first message
19 to OSHA is this. Ensure health and safety protection
20 of all workers through tough enforcement of existing
21 regulations and adoption of new worker protection
22 standards such as the health and safety program

1 standard.

2 Our next message to OSHA is count. Count all the
3 occupational injuries and illnesses. All work-related
4 injuries and illnesses should be completely reported,
5 counted and tracked as such data is vital for public
6 public-health prevention efforts. OSHA and MSHA should
7 conduct robust enforcement audits of employer's injury
8 and illness records to ensure the accuracy and
9 completeness of the annual survey of occupational
10 injuries and illnesses.

11 The next message to OSHA, increase worker
12 participation. A safe workplace must include workers
13 in identifying and correcting hazards. All workers
14 must be protected from harassment, firing and other
15 forms of discrimination if they report an unsafe
16 workplace or file complaints with OSHA or MSHA.

17 OSHA Susan Harwood grants should be used
18 exclusively for training programs that build workers'
19 capacity to exercise their rights under the OHS Act and
20 serve a meaningful and effective role in injury and
21 illness prevention. OSHA should promulgate standards
22 requiring safety and health committees and annual

1 training in all workplaces with paid time for worker
2 participation.

3 Our final message to OSHA is eliminate
4 disparities. The unacceptably high rate of deaths,
5 injuries and illnesses among vulnerable populations,
6 including African Americans, Hispanic and immigrant
7 workers, must be eliminated. All workers regardless of
8 their ethnicity, race, age, nationality or the
9 industrial sector in which they work have the right to
10 the same safe and healthy working conditions.

11 OSHA should initiate a new special emphasis
12 program in industries with high rates of injuries and
13 illnesses among these vulnerable workers, including
14 teen workers, older workers and eliminate barriers that
15 prevent immigrant workers from accessing health and
16 safety protection.

17 This testimony is based on the protecting workers
18 on the job agenda which was developed by the members of
19 our section. Thank you.

20 MR. NEITZEL: Good morning. My name is Rick
21 Neitzel. I am now the immediate past president of the
22 National Hearing Conservation Association, or NHCA.

1 The mission of NHCA is to prevent hearing loss from
2 environmental factors and all other sources of noise in
3 all sectors of society. I would like to begin by
4 commending OSHA for initiating this very important
5 public input process as well as for the opportunity for
6 NHCA to provide specific input.

7 As way of a brief introduction, I would like to
8 note as some of our previous panelists did as well that
9 the OSHA hearing conservation amendment was passed
10 nearly 30 years ago and yet noise exposure and noise
11 induced hearing loss remain very significant problems
12 in the US workplaces. Noise is among, if not the most
13 common occupational exposure Americans are exposed to
14 and subsequent noise induced hearing loss remains one
15 of the most highly prevalent occupational diseases in
16 the US.

17 Despite the ubiquitousness of noise, though, and
18 the high prevalence of noise induced hearing loss, as
19 well as the growing body of research indicating that
20 noise is associated with stress, hypertension,
21 cardiovascular disease and workplace accidents, there
22 have been very little enforcement activity in recent

1 years, which is very disappointing.

2 So NHCA would like to respectfully suggest some
3 steps the agency could take to better protect the
4 hearing health of American workers. First among these
5 is a very simple act. Actually OSHA should withdraw
6 immediately the administrative policy of 1983 that
7 allows hearing protector use in lieu of engineering
8 controls for full shift worker exposures that are less
9 than 100 dBA.

10 This 1983 policy is baseless. It was instituted
11 in the absence of public comment and notice and I would
12 suggest that the legality of this administrative policy
13 is highly questionable. Instead OSHA should revert
14 immediately to the original language of the noise
15 exposure regulation which requires engineering controls
16 for full shift exposures of greater than 90 dBA.

17 Second, the agency should move immediately to
18 issue a proposed hearing conservation regulation for
19 the construction industry, and we've heard several
20 panelists previously suggest this as well. Workers are
21 not effectively covered with the existing regulation.
22 And as we've heard already, the rulemaking process was

1 begun in 2004, but it appears to have essentially
2 ceased at this point.

3 So I encourage the agency to restart this process
4 and rely as much as possible on the recently passed
5 American National Standards Institute and the ASSE
6 standard 810.46-2007. The third thing I would like to
7 suggest is that a rulemaking process should be begun
8 for workers who are currently covered by no noise
9 exposure regulation.

10 This would include workers in the agriculture, oil
11 and gas drilling and servicing, and the services
12 industry. There is a lot of growing evidence
13 suggesting that workers in these industries have
14 potentially extremely high noise exposures, and yet
15 they're not covered by any regulation as of now.

16 The agency should also begin the rulemaking
17 process to revise the permissible exposure limit from
18 9285 dBA and to lower the exchange rate from 5 dB to 3
19 dB. The existing OSHA noise exposure regulation is not
20 -- does not agree with current scientific consensus and
21 knowledge on noise induced hearing loss, and revising
22 these parameters would go far to protect more American

1 workers from noise.

2 If the agency can't do these things simultaneously
3 due to the difficulties we have incurred in the
4 rulemaking process, I would encourage them to break the
5 process up, revise the exchange rate first and the
6 permissible exposure limit second. That might be a
7 more achievable goal that will still accomplish great
8 things in protecting American workers.

9 The agency should certainly continue to support
10 stakeholders via alliances, outreach activities and
11 through more extensive use of the Internet, and HDA
12 actually has a [indiscernible] alliance with NIOSH and
13 with OSHA which has already produced a variety of best
14 practices and training documents that would not have
15 been produced otherwise.

16 So certainly I feel this program has been very
17 successful. I also encourage OSHA to make available
18 more information on the Internet, particularly on noise
19 reduction strategies. It would be available both to
20 compliance officers who are often not well schooled on
21 this issue as well as to the general public. And
22 finally, some very reasonable and I think quickly made

1 changes involved than 191095 standard appendices. I
2 would suggest that OSHA could immediately add a
3 nonmandatory appendix to that regulation suggesting
4 exposure parameters that I described previously, update
5 the information in there to reflect more current
6 hearing loss data.

7 They'll need to be changes made to the hearing
8 protector attenuation section pending the Environmental
9 Protection Agency's new hearing protection standard. I
10 would also encourage the agency to continue evaluating
11 individual evaluation of hearing protection, and
12 certainly referencing current ANSI standards needs to
13 be the case throughout that regulation.

14 So I would suggest that these recommendations
15 would allow OSHA to better protect American workers and
16 potentially reduce not only noise induced hearing loss,
17 but also cardiovascular disease and workplace
18 accidents. And again, I thank you very much for this
19 opportunity.

20 MS. LIPSCOMB: Okay. My name Hestor Lipscomb. I
21 am an injury epidemiologist and a professor in the
22 Division of Occupational and Environmental Medicine at

1 Duke. Thank you for the opportunity to talk with you.
2 In contrast to some of the other speakers, I come with
3 a very specific request. My comments are based on over
4 10 years of study of acute injuries associated with the
5 use of pneumatic nail guns in residential construction.
6 During this time we've documented the following.
7 Injuries from pneumatic nail guns are the most common
8 struck by injury in residential carpentry.

9 They account for approximately 14% of reported
10 OSHA recordable injuries among residential carpenters.
11 Nail guns are the most common cause of tool related
12 hospitalization among workers in the construction
13 industry, not just in residential construction, even
14 though their use is largely limited to wood frame
15 construction. Eleven to 12% of injuries are to
16 bystanders. These typically involve inadvertent
17 shooting of a coworker.

18 Injuries are largely associated with framing
19 nailers with contact triggers. Contact triggers allow
20 the gun to discharge the nail any time the nose piece
21 and the trigger are both depressed. The user can hold
22 the trigger down and rapidly bump fire the gun. It

1 also means the user can shoot a coworker or themselves
2 if they bump against the nose piece when the trigger is
3 depressed, and it allows inadvertent firing if the gun
4 hits the wood surface or a previously placed nail
5 following the recoil that's associated with the firing
6 of this tool.

7 Because the center of gravity of the tool is at
8 the trigger, it's natural for workers to hold the gun
9 with the trigger depressed. Tools with contact trip
10 triggers are twice as dangerous as those with
11 sequential triggers which require the nose be depressed
12 before the trigger is pulled in order to fire a nail.
13 Inexperienced, untrained users are at particular risk,
14 but part of their excess risk is related to greater
15 exposure.

16 The tool is very easy to use and consequently it's
17 often given to inexperienced workers. The majority of
18 nail gun injuries are not reported. The injuries are
19 largely puncture wounds to the hand and finger
20 secondary to discharged nails. Injuries to other body
21 areas and internal organs are also seen. Nail gun
22 injuries can be among the most expensive work related

1 compensation claims in residential carpentry and they
2 can cause death.

3 We have documented a 55% drop in injury rates
4 based on actual hours of tool use over a four year
5 period among apprentice carpenters in the Midwest as
6 training was initiated for early apprentices and
7 contractors switched to tools with sequential
8 actuation. Laboratory studies are consistent with
9 these epidemiologic findings. We are aware of two
10 concerns regarding the use of the sequential trigger,
11 namely slowing the speed of the work in this very fast-
12 paced sector of the construction industry and concerns
13 about repetitive trauma from pulling the sequential
14 trigger.

15 Under experimental conditions with experienced
16 users, the contact trip trigger is slightly faster, but
17 the majority of speed variability is related to who is
18 using the tool, not the trigger. Productivity concerns
19 should focus on training workers rather than on the
20 type of tool being used. There is no evidence from
21 field study that the sequential trigger causes more
22 repetitive trauma.

1 In fact, we see higher rates of musculoskeletal
2 complaints among users of the contact trip tools. We
3 have identified very few musculoskeletal events and we
4 acknowledge these estimates are imprecise. The
5 epidemiology of acute injuries from pneumatic nail guns
6 is now well described. Consistent findings over
7 different study designs and populations document a two
8 fold excess risk among users of tools with contact
9 triggers.

10 The safer sequential trigger has been available
11 for over 30 years. The ANSI standard sponsored by the
12 tool association in 2003 called for shipment of framing
13 nailers with the sequential trigger. Since then many
14 manufacturers ship tools with both triggers, so cost is
15 obviously not an issue. There are nearly 40,000 nail
16 gun injuries treated in emergency room departments each
17 year in the US.

18 The decreasing cost and easy availability of the
19 tool has extended what was largely an occupational risk
20 to the general public as well. I draw your attention
21 to the 2007 death of Damon Hutahla, a 26-year-old
22 experienced carpenter who fell with a nail gun in his

1 hand. The OSHA investigator concluded that he fell
2 with his finger on the trigger and the nose piece the
3 gun contacted his head discharging a framing nail into
4 his brain stem.

5 The safety mechanism on the tool was described as
6 intact and operating. This was a tool with a contact
7 trigger and it operated exactly as it was designed.
8 Sadly at the time of this young man's death we already
9 knew how to prevent this type of injury. Many safety
10 issues in construction are difficult to address. This
11 one is not. I ask you to move forward with the
12 December 2009 unanimous recommendation of the OSHA
13 advisory council on construction safety and health to
14 consider both short-term and long-term remedies to this
15 problem, including revision and subsequent enforcement
16 of the standard on pneumatic tools to adequately
17 address this acute injury hazard in a manner that will
18 assure that safer tools are in the hands of workers.

19 In the meantime OSHA compliance officers should
20 educate contractors regarding tool risk and available
21 control measures. They typically purchase the power
22 tools for their employees. These tools carry a

1 significant injury risk that is well described for
2 which there is feasible abatement at no additional
3 cost. As such, with support from federal OSHA the
4 general duty clause could be invoked to control risk
5 now.

6 Doing so could prevent a similar senseless death
7 to that of Mr. Hutahla. Thank you.

8 MR. SCHUDTZ: I'm Matt Schudtz. I'm a policy
9 analyst with the Center for Progressive Reform. Thanks
10 for having me. The Center for Progressive Reform is an
11 organization comprising about 60 law professors from
12 around the country who work on environmental and public
13 health issues. The Center for Progressive Reform
14 recently released a report that focuses on the many
15 opportunities for improving OSHA's capacity to protect
16 US workers to existing statutory authority.

17 The report is the result of collaborative work
18 between Professor Steinzer (phonetic), from the
19 University of Maryland, Prof. Thomas McGarity from the
20 University of Texas, Professor Sydney Shapiro from Wake
21 Forest, and me. Acknowledging the resource constraints
22 within which OSHA has always operated, our report

1 outlines some changes to your rulemaking process,
2 enforcement priorities and relationships with other
3 agencies that we believe could result in improved
4 conditions for US workers. We were all encouraged when
5 we heard Secretary Solis say there is a new sheriff in
6 town.

7 And building on that theme, and given that OSHA's
8 enforcement budget and staff far outpace the resources
9 available for rulemaking, I'll begin with our ideas for
10 strengthening enforcement. First, we believe that OSHA
11 should expand its use of the general duty clause to
12 eliminate significant health risks from toxins not
13 regulated under Table B standards. Hundreds of
14 chemicals that lack PELs have been reviewed by NIOSH,
15 ACGIH or IRC (phonetic) for the toxicological effect.

16 Significant risks have been discovered and
17 recommended occupational exposure limits exist. OSHA
18 could use these levels as a starting point for
19 establishing a case that certain worksites have known
20 hazards that are likely to cause death or serious
21 physical injury. Second, in any case for violations of
22 the OSHA act are discovered and OSHA decides to settle

1 the case with the employer, I believe that the
2 settlement agreement should be released for public
3 comment.

4 As a comparative measure, when the EPA settles
5 cases under nearly every statute it enforces, from the
6 Clean Air Act to the Superfund Law, the settlement is
7 published for public review before it is finalized.
8 Workers and their representatives have more at stake in
9 OSHA's enforcement of the OSHA act than they do in
10 EPA's enforcement of its laws. It's time that
11 involvement in OSHA enforcement reflects that fact.

12 Third, we would like to focus on a point that it's
13 as much about resource allocation as it is enforcement
14 policy. We recommend that OSHA reconsider the amount
15 of its budget allocated to compliance assistance,
16 particularly money spent on helping large employers who
17 can and do hire professional full-time occupational
18 hygienists and legal experts. These large employers do
19 not have the same needs as small employers and OSHA
20 needs to treat them differently.

21 I'll end my discussion of enforcement policies by
22 saying that we are encouraged by what we see as a trend

1 under your leadership, to go after the full penalties
2 allowed under the OSHA act and by your efforts to
3 improve OSHA enforcement policies and its severe
4 violators. Of course OSHA's enforcement capabilities
5 are only as powerful as the rules being enforced.

6 So our report describes several ways the
7 rulemaking process could be improved. First, we
8 believe that OSHA can eliminate some of the delays in
9 its rulemaking process by combining multiple steps. As
10 I believe others have recommended peer reviews
11 conducted in accordance with the Debt Quality Act,
12 could be run at the same time as public hearings. That
13 is when a peer review is even necessary.

14 OSHA should consider how previously peer-reviewed
15 health assessments by other agencies such as the EPA or
16 NIOSH are sufficient to show significant risk
17 encountered by US workers. Incidentally we do not
18 believe the Supreme Court's Benzene decision calls for
19 the hundred plus page risk analyses that have become
20 typical in recent OSHA rule makings.

21 [Indiscernible] the solicitor of labor for new
22 interpretation of the analytical requirements imposed

1 by that decision. Second, we encourage you to make use
2 of what we call generic standards to address health and
3 safety hazards that are commonly found together in the
4 workplace. By addressing multiple hazards in a single
5 rule-making OSHA can make the best use of the limited
6 resources devoted to standard settings.

7 Finally we urge you to improve transparency with
8 respect to the White House Office of Management and
9 Budgets influence in the rulemaking process. All
10 correspondence between OSHA staff and LNB staff should
11 be docketed, particularly interactions that occur
12 before LNB officially enters the rulemaking process
13 during EO12868 review. LNB has a history of being a
14 liaison for regulated parties to impact the rulemaking
15 process outside of the standard public notice and
16 comment procedures, and we believe it is important to
17 shine a light on LNB's involvement in all aspects of
18 the federal regulatory process.

19 The EPA is doing something like this with their
20 new regulations gateway and we encourage you to look
21 into establishing a similar system under OSHA. More
22 details about these recommendations and other

1 suggestions are in our report which is available on our
2 website. Thank you again.

3 MR. MICHAELS: Thank you all very much. There
4 were four very interesting presentations. Let me
5 start, Dr. Lipscomb, would you advocate banning this
6 type of nail gun?

7 MS. LIPSCOMB: I think that it makes no sense not
8 to require the use of the sequential trigger, and I
9 think it's a situation where the Consumer Product
10 Safety Commission and OSHA should look at it jointly.
11 It makes no sense for consumers or workers to be using
12 a tool that carries twice the risk of acute injury.

13 MR. MICHAELS: All right. You clearly have an
14 opinion on it. Good. Let's ask Mr. Schudtz. Have you
15 thought about the -- have you looked at the negotiated
16 rulemaking process?

17 MR. SCHUDTZ: Yes.

18 MR. MICHAELS: And what's your opinion on that?

19 MR. SCHUDTZ: OSHA's regulations state that the
20 rulemaking -- the negotiated rulemaking should be used
21 in certain situations and we think that a lot of those
22 factors generally aren't met, that it could be

1 affective at coming to consensus quickly and we think
2 that perhaps there could be guidance from your office
3 that says absent evidence that suggests particular
4 negotiated rulemaking is different from all the past
5 negotiated rule makings, that that process can be
6 skipped.

7 MR. MICHAELS: I'll come back.

8 MR. FAIRFAX: A couple of things. On the nail
9 guns, I had always read and heard that with the
10 sequential triggers that there is an ergonomics problem
11 with that, but I was interested in what you said, and I
12 just wondered if you could add anything onto that
13 because I'm -- you know, that was different than
14 everything I have heard. I like what you said, but --

15 MS. LIPSCOMB: Well, I think theoretically there
16 is concern when you're continuing to trigger over and
17 over, but what we actually see in the field is not
18 that. The use of the sequential trigger has been very
19 low compared to the contact trigger. I think it's been
20 difficult to gather data that actually documents what
21 the risk is from an ergonomic standpoint, but what we
22 are seeing is in fact the reverse.

1 We see more complaints of musculoskeletal concern
2 with the contact trip trigger, and it may be because
3 the finger is held down constantly on the trigger and
4 there is a continued sustained contraction in the
5 forearm. And there are investigators at NIOSH that are
6 looking into that at this point.

7 And again, I would say our estimates are imprecise
8 because the number of musculoskeletal concerns are so
9 overshadowed by the acute injury risk.

10 MR. FAIRFAX: Just so you know, we are working on
11 a couple of things with nail guns, so that is in the
12 works so to speak. On noise, on the exchange rate and
13 then in changing the PEL. I would have switched them.
14 I'm just curious why you would go with the exchange
15 rate first and not A PEL later. Not that anyone is
16 right. I'm just -- I was surprised.

17 MR. NEITZEL: I'm happy to elucidate on that. Our
18 thought is that as American jobs move more and more
19 away from manufacturing environments where there is a
20 steady exposure and the exchange rate becomes
21 relatively insignificant, we're learning more jobs that
22 have highly variable noise exposures, construction of

1 course the prototypical example, but services and other
2 industries have extremely variable exposures, and for
3 those types of exposures, the exchange rate is the
4 critical parameter. I would argue more important than
5 the permissible exposure limit.

6 MR. FAIRFAX: Just a couple of comments. One of
7 the first things Dr. Michaels did when he came in is
8 ask us to take a look at that 1983 policy
9 [indiscernible], so that's in the works, which I
10 thought you would appreciate, and I had another one but
11 I would have to find it here.

12 MS. DOUGHERTY: For Kate McPhaul. Could you
13 please express your opinion on the issue of whether
14 implementation of mechanical lifts for safe patient
15 handling would or would not increase a risk for patient
16 related violence?

17 MS. MCPHAUL: There's one paper that says that the
18 lifts actually reduce the patient related violence
19 because presumably, although that wasn't the point of
20 the paper, you know, you're pulling the worker out of
21 the distance, the field to get the hair pulling, the
22 agitated, demented type of patient. Other than that, I

1 don't know that there is a lot of evidence, but that
2 makes a lot of sense to me because I'm a nurse and I
3 teach nursing students, and I run a safe lifting lab
4 for a course that I teach.

5 And I have the nursing students get in the lifts
6 and everybody can understand, you know. It's not
7 necessarily fewer staff when you use a mechanical lift,
8 but it's a much safer process all around for both the
9 patient and the staff person. And I think that
10 distance has something to do with it and I think the --
11 you know, just depending on the mental status of the
12 patients, you know, they just may feel more secure.

13 MR. MICHAELS: Also, I'm going back to your, the
14 very beginning of your talk. Are there concrete steps
15 OSHA should take to reduce workplace violence?

16 MS. MCPHAUL: Absolutely.

17 MR. MICHAELS: What are they?

18 MS. MCPHAUL: Personally I think a performance-
19 based standard would be best, but a mandatory standard
20 because you've got voluntary guidelines to cover
21 healthcare and social service workplaces. What that
22 leaves us is having to work with the general duty

1 clause with employers. We do a lot of work in health
2 care and social service facilities.

3 These are often, if they're public sectors, they
4 are strapped with brittle sources of funding. Their
5 staffing is usually to the bone and these additional
6 apparently nonoperational requirements, you know, get
7 deemphasized and what we find is that it takes a
8 homicide or a murder or something really tragic before
9 the employer will start to pay attention.

10 So the State of Maryland, for example, Department
11 of Juvenile Services, you know, they now have their
12 attention that, you know, people are -- staff people
13 are killed on the job, but it takes that kind of
14 attention and, you know, with a performance-based
15 standard, we recommend a risk assessment. I mean
16 that's what the standards recommend.

17 We recommend the worker participation, the
18 committees, the surveillance. But I think there has to
19 be a level of enforcement. People are just not out
20 there -- employers are not out there doing it. There
21 are other cultural issues, especially in the service
22 sector that somehow this is part of the job. So I

1 think violence is one of those hazards.

2 I wouldn't even call it an emerging hazard. Our
3 data are 15 years old, but it -- culturally it's tough
4 to break that nut that in the service sector that
5 agitated patients, students, clients are part of the
6 work. So a little enforcement would help that, I
7 think.

8 MR. FAIRFAX: Yeah, just going back on the
9 workplace violence and that kind of area comes out of
10 my office and one of the things we struggle with is,
11 you know, where there's been an incidence or workplace
12 violence issue, or is it a law enforcement issue and I
13 just wondered if you have any comments or thoughts on
14 separating that out.

15 MS. MCPHAUL: Well, I think it can be both, and I
16 think that the two fields and sciences should
17 absolutely be working together more. The National
18 Institute of Justice doesn't really do much with
19 workplace violence so you'll find that when you go over
20 there, they're not that helpful, either from a
21 theoretical standpoint or from an engineering control
22 standpoint.

1 We've written papers that show that some of their
2 theories actually can apply in the health care and
3 social service setting, but I think they need to work
4 together. Some of the issues are whether nurses for
5 example can press charges on their, you know, clients
6 that really assault them. And that's very
7 controversial, but in the State of New York there are
8 several districts that are working with district
9 attorneys and working out ways so that if the client is
10 not, you know, incompetent, that that kind of charge
11 can go forward.

12 Usually it's something that the employer has to be
13 supportive of as well. I'm not saying that that's the
14 end-all be-all, but it tends to be one of those
15 indicators of responsiveness from the employer, from
16 the criminal justice system that this isn't okay.

17 MR. MICHAELS: I actually wanted to ask this panel
18 the same question I was asking some of the other ones
19 which is ways that we can -- are there metrics other
20 than injuries and illnesses and fatalities that you
21 think OSHA could use to evaluate our performance and
22 also the employers use to examine what's going on in

1 their workplaces?

2 MR. NEITZEL: I'll just put forward actually a bit
3 of applause for the agency, and the Bureau of Labor
4 Statistics for now even capturing hearing loss data in
5 the first place. As you know, it's only been a few
6 years since we've begun capturing that information
7 specifically rather than treating it as a more generic
8 occupational disease.

9 So from a noise and noise induced hearing
10 perspective I think you guys have moved in the right
11 direction and I encourage you to continue that effort.
12 I can also tell you our members are reporting some
13 pressure from employers to underreport hearing loss
14 cases, to basically shut them off as non occupational
15 or some other source.

16 So I would encourage the agency to develop
17 guidelines, perhaps in partnership with associations
18 like NHCA to establish some perhaps ethical guidelines
19 on what should and shouldn't be reported.

20 MR. MICHAELS: I don't think OSHA has established
21 ethical guidelines for a profession, but are there
22 specifics you think OSHA could suggest or have guidance

1 for us on regulations that would address this problem?

2 MR. NEITZEL: I'm not aware of any previous OSHA
3 activity in this area. I can tell you that NACA
4 actually has a task force working to develop guidelines
5 for basically testing providers to establish when they
6 should and shouldn't be reporting hearing loss. And
7 even the identification of whether a hearing loss is
8 from work-related noise or non-occupational noise is a
9 very gray area.

10 So we're certainly working to establish a
11 guideline that I would hope OSHA could then implement
12 in some fashion as a requirement, or at least a
13 recommendation.

14 MR. MICHAELS: Thank you. That's very helpful.

15 MS. MCPHAUL: May I respond to that?

16 MR. MICHAELS: Please.

17 MS. MCPHAUL: You know, as someone that does mixed
18 message research and we get away from sometimes the
19 hard injury data, I think you can, as one of the
20 earlier panelists said, you can -- some single
21 questions can assess the safety culture of a workplace.
22 Like do you feel comfortable reporting safety. So we

1 have survey questions. We have qualitative work. I
2 think you can look at other structural pieces of an
3 employer's program, the composition of the health and
4 safety committee, whether the health and safety
5 committee does anything.

6 Whether the data that the employer does collect,
7 whether it's worker's comp or OSHA 300 is made
8 available to the members of the health and safety
9 committee, and anyone who asks. So I think there are a
10 lot of procedural and structural and sort of
11 qualitative things that OSHA can take a look at when
12 they go in, in addition to the illnesses and injury
13 statistics.

14 MS. LIPSCOMB: I don't have an answer for you, but
15 I have more information. Many times people will
16 comment that acute injuries are less likely to be
17 underreported than musculoskeletal disorders,
18 illnesses, hearing loss, and our experience with nail
19 gun injuries, this one issue we found three times
20 higher rates of injury that resulted in lost time
21 beyond the day of injury, or medical care above first
22 aid than OSHA recordables in this same area.

1 So even for this one particular problem the injury
2 rates that should have met an OSHA recordable were
3 three times higher based on self-report.

4 MR. MICHAELS: Thank you. I want to thank this
5 panel. It was a very interesting panel and I think --
6 in the brief sort of interim report, since we'll soon
7 be breaking, I just wanted to again take the
8 opportunity to thank Cori Hutcheson and Debbie
9 Berkowitz who put this session together. Incredible
10 [indiscernible] been extremely productive and useful
11 for us and I hope for the audience as well. So thank
12 you both for a much for doing this. I'll turn it over
13 to Debbie for logistical directions.

14 MS. BERKOWITZ: We ended a little early. We had a
15 speaker that didn't show up and so I think we're about
16 10 minutes ahead of schedule, which I know everybody
17 could use the break so we'll -- if everybody can get
18 back around 1:25, 1:20, we're going to start right at
19 1:30 with the next panel.

20 And I also wanted to just note that we are aware
21 that many people who are in the audience listening have
22 come from far places and we're really grateful and, you

1 know, thank you for coming and look forward to resuming
2 in about an hour and 10 minutes. So thanks so much.

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