

United States Senate
Committee on
Health, Education, Labor & Pensions

Putting Safety First:
Strengthening Enforcement
and
Creating a Culture of Compliance at Mines
and
Other Dangerous Workplaces

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Presented by

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Chairman Harkin and Members of the Committee:

Employees and employers across the United States, as well as the professionals who work on the front line of worker health and safety, thank you for holding this hearing.

My name is Michael Brandt and I serve as the President-elect of the American Industrial Hygiene Association (AIHA). Today, I am here solely as a private citizen representing the AIHA and our membership of more than 10,000 health and safety professionals. I hold a doctorate in public health with a specialty in Environmental Health Sciences. I also hold master's degrees in industrial hygiene and public health policy, am a certified industrial hygienist, and, finally, have been involved in the occupational health and safety profession for more than 32 years. I am currently employed at the Los Alamos National Laboratory in Los Alamos, New Mexico.

It is a privilege for me to represent the AIHA and our membership who work each day to protect worker health and safety. I appreciate the opportunity to appear at this hearing to discuss how we can work together to transform our workplaces into ones in which employees and employers work together to ensure worker health and safety, and by doing so create a competitive business advantage for American businesses. It goes without saying it is truly unfortunate we meet under circumstances where 29 workers recently lost their lives in the Upper Big Branch coal mine and just this past week 11 workers were lost in the Deepwater Horizon oil rig explosion in the Gulf of Mexico. Such tragedies again show us the fragility of life and why worker health and safety requires our full attention and resources.

AIHA is the premier association serving the needs of professionals involved in occupational and environmental health and safety. We represent members practicing industrial hygiene in industry, government, labor, academic institutions, and independent organizations. AIHA and our members are committed to protecting and improving worker health and safety, and the health, safety and well-being of everyone in our communities. One of AIHA's primary goals is to bring "sound science" and the benefit of our collective professional experience as practicing industrial hygienists to the public policy process directed at improving regulatory protections for worker health and safety.

AIHA shares the concerns of many that we must apply the lessons learned from the foundational sciences of public health, including epidemiology, industrial hygiene, toxicology, engineering, and environmental health to further develop the technology, resources, and education needed to develop effective and affordable solutions to address health and safety risks. More recently, these resources in universities, government agencies, including OSHA and the National Institute for Occupational Safety and Health (NIOSH) and professional organizations have suffered from underfunding in the United States, eroding the competitive advantage they provide to American enterprises.

I will focus on a few important views of workplace health and safety and changes we believe can make a material difference in both the lives of workers and their employers.

- 1) Workers and their families expect to return home from work safe and healthy. Workers should not become ill, suffer injuries, or die on the job. Providing a healthy and safe workplace requires that employees, employers, and health and safety professionals collaborate to identify and eliminate occupational risks. In addition, it is essential that we have enforceable regulatory oversight that rewards successful efforts to protect worker health and safety, and is free from tactics intended to challenge and cast doubt over the validity of regulatory findings and delay investing in hazard control measures.

- 2) Most of America's employers understand the critical importance of health and safety and are concerned about the health and safety of their workers. These employers implement health and safety management systems and hazard identification and control programs to ensure that their workers go home safe and healthy each and every day. They have recognized that healthy and safe workers are good for their business and represent a competitive advantage for U.S. business.

In America today employers no longer need to choose between protecting the health and safety of workers and making money. High performing organizations realize that investing in health and safety protections are good for the bottom line and good for workers. AIHA has clearly demonstrated this competitive advantage through a value study conducted for our members. Conducted on the shop floors across the United States, this "Value of the Profession Study" clearly demonstrates how occupational health programs and workplace risk reduction positively impacts the bottom line, not only in healthier and safer employees, but in a positive return on an organization's investment in health and safety.

This important study was conducted in collaboration with NIOSH and we believe OSHA, MSHA and NIOSH should collaborate further with AIHA to develop additional case studies across industry, business, and commercial sectors and share the case studies results, success stories, and the value methodology with employers. In this way, together we can continue to share cost effective solutions to common sets of occupational risks and hazards with employers, employees, and the regulatory community.

- 3) While most employers are "doing the right thing" with investment in healthy and safe workplaces, there are still too many who avoid this investment in their workers because they feel the investment is not worth the cost. It is these employers who must be educated about the benefits of providing a safe and healthy workplace, and if education does not affect their decision making

behavior, they must be held accountable for making decisions that injure, kill, or sicken workers.

For many, the minimal penalties for health and safety violations is a small price to pay and does not affect their decision making. It's just a small cost of doing business. This must change!

AIHA supports increasing the penalties for egregious and willful violations. It is inconceivable that a willful violation of an OSHA rule or regulation resulting in a fatality is considered a misdemeanor resulting in minimal penalties. Rep. George Miller in a U.S. House Committee hearing earlier this month commented that *"these penalties for failing to protect workers pale in comparison to the penalties for failing to protect animals or the environment generally. Even maliciously harassing a wild burro under the Federal Wild Horses and Burros Act can bring twice as much prison time as killing a worker after willfully violating the law"*. It has long been known to employers that if they are to violate an EPA rule the penalty can be financially and operationally severe while violating an OSHA rule is simply a "slap on the wrist".

AIHA supports that section of the Protecting America's Workers Act (S. 1580) that considerably increases both civil and criminal penalties for those employers who violate OSHA rules and regulations. Similar increased penalties are needed at MSHA. AIHA also supports increasing penalties for egregious and willful violations. Consistent and substantial penalties are one of society's primary means to deliver some measure of justice and improve conditions that affect public health and worker health and safety.

Criminalizing willful violations through changes in the regulations must be carefully considered and applied. The standard of evidence for willful violations will have to be higher than it is today and OSHA and MSHA inspectors will need increased training and skill development to meet the level of evidence required.

AIHA supports OSHA's efforts to ensure compliance officers achieve professional certification as CIHs and CSPs. A similar effort is need of MSHA inspectors. Establishing criminal violations needs to be based on the weight of evidence collected and evaluated by health and safety professionals using a variety of information sources, both quantitative and qualitative. It is essential that the regulatory process provide for carefully considering the complex conditions affecting risks in the workplace and the determination of risk at a given point in time.

AIHA supports language that would also make officers and directors legally responsible when it is clearly demonstrated that they had, or should have had, direct knowledge and authority for the violation and did not act to mitigate the risk associated with a known violation. Occupational health and safety professionals should not become the "scapegoat" if their recommendations are not followed. In this era of sustainability and social responsibility, the hallmark of an effective occupational health and safety regulatory program needs to be guided by transparency and accountability.

- 4) Strong penalties and enforcement alone are not sufficient to achieve improved worker health and safety. AIHA supports an approach in which stronger penalties and enforcement are balanced by providing more compliance assistance and supporting efforts to develop occupational health and safety professionals.

Employers need guidance and support to identify hazards and control measures, and to understand regulatory requirements and how to comply with rules and regulations in ways that are practical and in harmony with the employer's daily business practices. There are numerous successful ways in which employers receive the support and assistance they need.

One of the most successful is the Voluntary Protection Program (VPP). VPP sites add value to worker health and safety protection through a systematic approach of management and employee involvement in creating a sustainable healthy and safe workplace. This program has grown considerably since its inception and AIHA supports continuation of the program. OSHA has indicated its continued support of the program, albeit appropriating fewer resources to the program in the future. A 2009 Government Accountability Office report stated that improved oversight and controls would better ensure program quality. AIHA hopes OSHA and the Voluntary Protection Program Participants Association (VPPPA) work together to see that the program remains a viable and successful means to better worker health and safety. AIHA hopes this Senate Committee feels the same way and ensures adequate funding to support the VPP.

Another incentive is to provide greater funding for consultation services for small and medium size businesses, which are historically underserved workplaces in terms of health and safety protection and health and safety compliance. These companies and businesses too often do not have access to health and safety professionals or have the financial resources, skills, or technical expertise to implement many of the OSHA required programs and regulations to protect its workforce. AIHA is aware of the limited resources of the Federal government and suggests OSHA consider additional ways to recognize and use an existing pool of qualified and competent professionals such as industrial hygienists and safety professionals to provide employers the needed guidance and technical expertise.

- 5) And finally, the agency itself must make some changes in how it does business. OSHA must address the problems with the rule-making process and the difficulty in updating standards. The agency recognizes these problems and has recently taken the first step to address them.

One of these efforts is implementation of an Injury and Illness Prevention Program in every workplace. AIHA could not have said it better than Assistant Secretary of Labor for OSHA Dr. David Michaels when he recently stated what is needed is *“a requirement that every employer establish a comprehensive workplace safety and health program that features management leadership, worker participation, and structure that fosters continual improvement”*.

OSHA has also taken the first step in addressing the long-standing problem of outdated permissible exposure limits (PELs) by creating an agency task force to compile options on how best to address the issue of the PELs, most of which are forty or more years old. These outdated standards place us behind the rest of the world in health and safety protections for workers, put our workers at risk, and erode the competitive advantage of American businesses.

AIHA offers our support for both of these efforts.

CONCLUSION

In conclusion, AIHA believes we can improve worker health and safety by:

- Showing the value (including financial and other benefits) of health and safety to employers and employees.
- Holding employers who willfully disregard the law accountable by increasing penalties and enforcement on those who fail to protect workers. Active enforcement would ensure that all organizations are complying with the OSHA regulations. This would level the playing field for all businesses, particularly the compliant.
- Continuing and funding compliance assistance programs such as VPP and providing adequate resources to assist small and medium size businesses.

- Requiring injury and illness prevention programs in every workplace.

AIHA members and many others believe that working together we can eliminate injuries and fatalities in the workplace. Organizations that make financial investments in health and safety anticipate a positive return on that investment by keeping workers healthy and safe and improving operational performance. But, there is a cost for investing in health and safety, and in compliance. Organizations that don't invest in OSHA compliance have an unfair financial advantage. It is better for employers and employees if OSHA sets good and reasonable standards, enforces them uniformly, and the consequences for non-compliance are financially and legally meaningful.

As for resources, this is where Congress can play an important role. OSHA and EPA were both created in 1970, yet it is inconceivable that the annual budget for OSHA is just over \$550 million while the EPA budget is over \$10 billion. Occupational health and safety professionals do not understand this budget discrepancy. Society has such stringent penalties and enforcement for environmental matters, yet the penalties that directly impact workers are not given the same importance. Shouldn't we care at least as much about people?

AIHA members put the health and safety of people first and that is why AIHA supports stronger penalties and enforcement as well as good and reasonable standards. America's workers deserve it.

On behalf of AIHA, thank you for this opportunity to participate and present our views. AIHA offers our assistance to Congress and OSHA in any way possible.

I would be happy to answer any questions the Committee may have.