

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ADVISORY COMMITTEE ON CONSTRUCTION
SAFETY AND HEALTH

Thursday, January 24, 2008

The meeting came to order at 8:30
a.m. in Room N3437 of the Frances Perkins
Building, 200 Constitution Avenue, N.W.,
Washington, D.C. Linwood Smith, Chairman,
presiding.

PRESENT:

LINWOOD O. SMITH, Chairman
FRANK MIGLIACCIO, JR., Employee Representative
DALE DAVID HAGGERTY, Employee Representative
ROBERT KRUL, Employee Representative
EMMETT M. RUSSELL, Employee Representative
THOMAS L. KAVICKY, Employee Representative
MICHAEL J. THIBODEAUX, Employer Representative
THOMAS SHANAHAN, Employer Representative
DANIEL D. ZARLETTI, Employer Representative
DAN MURPHY, Employer Representative
KEVIN BEAUREGARD, State Representative
STEVEN D. HAWKINS, State Representative
THOMAS A. BRODERICK, Public Representative
ELIZABETH ARIOTO, Public Representative
MATT GILLEN, Federal Representative
STEVEN F. WITT, Designated Federal Official

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Remarks/Reconvene January 25, 2008

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

8:34 a.m.

Opening Remarks and Introductions

MR. SMITH: Okay. Thank you for your attendance today at the Advisory Committee on Construction Safety and Health.

We appreciate everyone being here.

Just a little business first. The bathrooms, restrooms are right up the hall to your left. There's a break room on the fourth floor, restaurant up on the sixth.

Please turn your cell phones on vibrate or turn them off. Reception's not real good in here to start with, but that would help.

The first thing we want to do is go around, and we have a lot of new members up here, but we want to go around the room and introduce the members of the committee to start with who are all, I believe, sitting up here.

The only one not here at present is Tom, and he's involved in a medical situation.

He should be here shortly. He is in town.

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1 So we should have a full Board today, and
2 hopefully everyone will be present.

3 So, the first thing we'd like to do
4 is go around the room and let everybody
5 introduce themselves, and let's start up here
6 at the head table.

7 I'd like the new members
8 particularly to tell a little bit about
9 yourself, if you will, and we would appreciate
10 that.

11 Let's start with our solicitor.

12 MS. SHORTALL: My name is Sarah
13 Shortall. I'm from the Office of the
14 Solicitor, and I'm the counsel for ACCSH.

15 MR. MURPHY: Dan Murphy, Zurich
16 North America.

17 MS. ARIOTO: Elizabeth Arioto,
18 Consulting Services. My past experience is 10
19 years as a nurse. I worked for like 13 years
20 with an ironworking company as their safety
21 director. I worked for the GC as their safety
22 director for seven years, and I'm a
23 consultant.

24 MR. SMITH: Can everyone hear? Can

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1 you hear? Okay.

2 MR. MIGLIACCIO: Frank Migliaccio,
3 Executive Director, Safety and Health, for the
4 Iron Workers International, and I represent
5 labor.

6 MR. HAGGERTY: I'm David Haggerty.
7 I'm with the International Brotherhood of
8 Boilermakers, and I represent labor.

9 MR. HAWKINS: I'm Steve Hawkins,
10 Assistant Administrator with the Tennessee
11 OSHA Program.

12 MR. RUSSELL: Good morning. Emmett
13 Russell with Operating Engineers, 35-year
14 member.

15 MR. KRUL: Bob Krul with the United
16 Union of Roofers, and I don't want to say how
17 long I've been there, but I also represent
18 labor.

19 MR. THIBODEAUX: Mike Thibodeaux,
20 Consultant with the National Association of
21 Homebuilders.

22 MR. KAVICKY: Tom Kavicky, Safety
23 Director, out of the Chicago and Northeast
24 Illinois Regional Council of Carpenters.

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1 MR. ZARLETTI: Dan Zarletti, Vice
2 President of Safety for Kenny Construction
3 Company in Chicago.

4 MR. BEAUREGARD: Kevin Beauregard,
5 Assistant Deputy Commissioner, North Carolina
6 Department of Labor, and a State
7 Representative.

8 MR. GILLEN: Matt Gillen. I'm the
9 NIOSH Construction Program Coordinator.

10 MR. SHANAHAN: Tom Shanahan. I'm
11 with the National Roofing Contractors
12 Association. I've been there for 19 years and
13 responsible for their health, safety and
14 education-related areas.

15 MR. WITT: Steven Witt, Director of
16 Construction, OSHA.

17 MR. SMITH: Linwood Smith, T.A.
18 Loving, Goldsboro, North Carolina, and I'm an
19 Employer Representative.

20 Let's start right here and go
21 around, if we would.

22 MR. CARNEY: Dave Carney,
23 Stonesmith Patented Systems.

24 MR. SCHNEIDER: Scott Schneider with

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1 the Laborers Health and Safety Fund North
2 America.

3 MR. BURTON: Richard Burton, NESH
4 Institute.

5 MR. MIDDLETON: George Middleton,
6 Toll Brothers, Inc.

7 MR. BIRD: Charlie Bird, Balfour
8 Beatty Construction, Fairfax, Virginia.

9 MR. TRAUGER: Tom Trauger,
10 Winchester Homes.

11 MS. SHAFER: Carmen Shafer,
12 Grunley-Walsh, Rockville, Maryland.

13 MS. TRAHAN: Chris Trahan, CPWR.

14 MR. DRESSLER: Dick Dressler, the
15 Association of Equipment Manufacturers in
16 Milwaukee.

17 MS. BILHORN: Susan Bilhorn, Jacobs
18 Engineering.

19 MS. MYERS: Michele Myers, the
20 Associated General Contractors of America.

21 MR. AHAL: Bill Ahal, Alberici
22 Corporation, St. Louis.

23 MR. HENDRICKS: Mark Hendricks with
24 Weyerhaeuser Real Estate Company.

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1 MR. BRUMBAUGH: Larry Brumbaugh,
2 Maracay Homes.

3 MR. BETHANCOURT: Jeremy
4 Bethancourt, LeBlanc Building Company.

5 MR. HOLT: Dave Holt, Pardee Homes.

6 MR. OLIVA: Joel Oliva, the
7 National Commission for the Certification of
8 Crane Operators.

9 MR. BRENT: Graham Brent, also with
10 the National Commission for the Certification
11 of Crane Operators.

12 MS. PUNJ: Shweta Punj, Inside
13 OSHA.

14 MS. MORGAN: Theresa Morgan, also
15 with Inside OSHA.

16 MS. HANSEN: Heidi Hansen, Law
17 Office of Adele Abrams for ASSE.

18 MR. IBARRA: Robert Ibarra,
19 Directorate of Construction with OSHA.

20 MR. MASARICK: John Masarick,
21 Independent Electrical Contractors
22 Association.

23 MR. CLOUTIER: Steve Cloutier,
24 Bovis Lend Lease out of Charlotte.

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1 MR. BURKHAMMER: Stew Burkhammer,
2 OSHA today, retired tomorrow.

3 MR. PARSONS: Bill Parsons, OSHA,
4 Directorate of Construction.

5 MS. CHATMON: Veneta Chatmon,
6 Office of Communications.

7 MR. SMITH: Right. That's our
8 right hand.

9 The first thing, if you're from the
10 public and you would like to speak during the
11 public comment period, please sign the list at
12 the back in order that we can look over that
13 list and see how much time we've got and try
14 to see if we can accommodate you. Please make
15 sure you sign the list if you'd like to speak
16 as a member of the public.

17 The next thing I'd like to do just
18 very briefly, and it's not much about it, but
19 if you look in the Federal Register, the
20 mission of our committee, so to speak, or our
21 mission statement, it says, "The aforesaid
22 Section 107 requires the Secretary of Labor to
23 seek the advice of the advisory committee in
24 formulating construction standards

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1 thereunder."

2 So our role is to provide advice to
3 the Secretary of Labor through this committee
4 on standards that may be promulgated by them.

5 With that, I welcome you. It's
6 real good to be here. We've not had a lot of
7 meetings recently. This is the second meeting
8 since I've been chairman. The first meeting,
9 I was in the hospital, I believe, and did not
10 make myself. So I'm extremely glad to be
11 here, extremely glad to be in good health and
12 appreciate it in a lot of ways.

13 If you would, to the members,
14 minutes are in your packet. I'd like for you
15 to look over them from the last meeting that
16 we had, and I'd like to have a motion that we
17 accept those, please.

18 MR. MIGLIACCIO: So moved.

19 MR. SMITH: Okay. I have a motion.
20 Is there a second?

21 MR. KRUL: Second.

22 MR. SMITH: Thank you. Any
23 discussion?

24 (No response.)

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1 MR. SMITH: All in favor, please
2 say aye.

3 (Chorus of ayes.)

4 MR. SMITH: Thank you. All
5 opposed, likewise.

6 (No response.)

7 MR. SMITH: Thank you very much.
8 Yes, Bob?

9 MR. KRUL: Mr. Chairman, just a
10 point of order. The minutes reflect at the
11 October 11th and 12th meeting that the minutes
12 of the previous meeting were not available at
13 that meeting and would be made available at
14 this meeting, and I only see these minutes.

15 MR. SMITH: Right. Could someone
16 see if we make those available to the members
17 of the committee today? We would appreciate
18 that.

19 I want to recognize Bob Krul,
20 Robert Krul. He is our former chairman. He
21 was a great chairman. I enjoyed serving on
22 this committee under him, and I'm already
23 counting on him as an advisor and told him to
24 please let me know, keep me straight.

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1 So thank you, Bob, for your years
2 of service, we appreciate it very much, as
3 chairman. Glad you're still on the committee.

4 MR. KRUL: Thank you, Mr. Chairman.

5 MR. SMITH: At this time, we will
6 call on Mr. Witt to make a few comments.

7 Remarks - Directorate of Construction/DFO

8 MR. WITT: Thank you, Linwood.

9 First of all, let me welcome the
10 new members of the committee. Thank you for
11 agreeing to support our advisory committee.
12 Your service is appreciated, and thanks to
13 those in the audience who have taken the time
14 to be with us today and hopefully tomorrow,
15 and we look forward to your participation
16 during the public comment period.

17 For those who don't know me, I've
18 been the Director of Construction since
19 October of 2006, but I actually have a long
20 relationship with this committee.

21 In 1978, almost 30 years ago, I was
22 the counsel to this committee, the position
23 that Sarah's holding now, and I joined the
24 Department of Labor in 1972.

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1 Some of my previous
2 responsibilities have been Executive Assistant
3 in OSHA, Director of Technical Support,
4 Director of Health Standards, Director of
5 Safety Standards, Director of Standards and
6 Guidance, Deputy Assistant Secretary, now
7 Director of Construction, and I would like to
8 say that I'm very pleased with my current
9 assignment.

10 I've enjoyed working with those
11 involved in the construction industry. It's
12 been a very interesting and challenging 15 or
13 16 months, and I look forward to the next two
14 days.

15 I think we have a full agenda.
16 We'll have reports from a number of the OSHA
17 directorates and some other discussion items,
18 reports from the work groups. I think we have
19 a lot of work to do the next two days, and I
20 believe that it will be a productive meeting
21 and we will be, and Linwood will mention this
22 later, we will be making plans for our next
23 meeting and hopefully in the near future, we
24 won't be waiting as long as we have since the

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1 last meeting in 2006.

2 Let me just comment for a moment on
3 the nomination process that we followed. In
4 January of last year, we published a Federal
5 Register Notice asking for nominees to this
6 committee and were pleased that we received
7 over 60 nominees, many of them well qualified.

8 I'm extremely pleased on the
9 selections that the Secretary of Labor made.
10 I think we have an excellent committee, a
11 committee with a lot of experience in the
12 construction area and a lot that they can do
13 to support this committee and provide advice
14 to the Assistant Secretary.

15 Based on that very open process, as
16 we move forward in the future, I think it's
17 the Assistant Secretary's intention as we fill
18 vacancies as they occur, as terms expire, we
19 will continue to make this an open and as
20 transparent a process as possible so we can
21 attract the most qualified members to this
22 committee.

23 And with that, I'm going to turn it
24 back to Linwood and look forward to the next

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1 two days.

2 MR. SMITH: Thank you.

3 MS. SHORTALL: I wanted to make one
4 comment about the nominations for officers.

5 I wanted to add one other thing
6 about the nominations process. Assistant
7 Secretary Ed Foulke has wanted to make the
8 process more transparent and accessible for
9 anyone who's interested in viewing the process
10 and/or in submitting nominations, and so with
11 this last round of nominations, not only did
12 we put the nomination request in the Federal
13 Register but everything that we received in
14 response to that was put into the public
15 record.

16 So that at any time, if any person
17 would want to check that and see that
18 information, they'd be able to do so and we
19 keep that part of our ongoing docket system.

20 With that, I also would remind any
21 person who has an interest in the future in
22 applying, we will continue to put that in the
23 Federal Register Notice and we will put it in
24 our docket. So we caution you about submitting

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1 certain types of personal information that you
2 wouldn't want to make public, like your birth
3 dates or your Social Security numbers.

4 Thank you.

5 MR. SMITH: Thank you. Also, Stew
6 Burkhammer, Stew left the room to go get these
7 minutes. There will be a retirement party for
8 him tonight after work across the street at
9 one of the local restaurants. I'm sure all of
10 you know him personally, but they've asked
11 that we contribute \$10 apiece to help defray
12 the cost. They have him a real nice gift and
13 snacks provided. It will be a cash bar. We're
14 looking for a big crowd.

15 Is Veneta here? Anyway, we will
16 have someone in the room in a little bit to
17 take up your money if you'd like to contribute
18 and you'd like to go to that. We would
19 certainly be glad to have you. Look forward
20 to seeing you there tonight after work.

21 Okay. Veneta was on the agenda.
22 She did meet with us yesterday and went over
23 the orientation for the new members. We
24 appreciate that. At this point, we're running

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1 a little bit ahead of schedule which is a good
2 thing.

3 Okay. Right here is the young lady
4 who can take up your money, if you would like
5 to contribute \$10 and get on the list to go to
6 the party.

7 Please, if anyone in the back of
8 the room would like to sign up for Stew's
9 retirement party to go and they've got \$10
10 they'd like to contribute, please. Would you
11 raise your hand if you'd like to --

12 MR. WITT: And it's 5 to 7 this
13 evening across the street at this really fancy
14 bar called My Brother's Place. So, tie and
15 jacket required. It's upstairs, and we'll
16 begin hopefully right after we finish here.

17 MR. SMITH: Thank you very much.
18 Raise your hands again so she can see you.
19 Thank you, Leah.

20 MR. KRUL: If you don't have a gun
21 when you go in, they'll search you and give
22 you one.

23 (Laughter.)

24 MR. SMITH: Hopefully we're going

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1 to have a little fun tonight with Stew and
2 anybody that's been in the safety business 43
3 years needs a little special recognition.

4 Okay. We have Veneta, and you want
5 to just give a little update?

6 MR. WITT: I assume not all of the
7 members were present yesterday afternoon when
8 you went over the administrative details for
9 the committee.

10 Would you just summarize them? We
11 put you on the agenda for a few minutes. Just
12 summarize what you discussed yesterday
13 afternoon with the committee members that were
14 present.

15 Remarks - Office of Communication

16 MS. CHATMON: Basically, I shared
17 with the members that were here the procedures
18 for doing travel as an ACCSH member.
19 Basically, things have changed. Everything is
20 done by me and my assistant, Frances Durant,
21 and all I ask that you do is just contact me
22 with your travel arrangement plans.

23 I will put in the TA and process it
24 and e-mail you a copy, and upon your return to

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1 your designated locations, I ask that you send
2 back to me your hotel receipts and any other
3 receipts over \$75, so a voucher can be
4 processed for reimbursement.

5 If you need any additional
6 information, you know, please contact me at
7 202-693-1912, and Frances's number is 202-693-
8 1999.

9 MR. SMITH: Thank you. Any
10 questions for Veneta?

11 (No response.)

12 MR. SMITH: Thank you very much.
13 You now have the minutes of the meeting that
14 was referenced earlier. Take just a second
15 and look over those, and we'd like a motion
16 that they be accepted into the report.

17 Okay. Do we have a motion that
18 they be accepted into the report?

19 MR. MIGLIACCIO: I make a motion
20 they be accepted.

21 MR. SMITH: Thank you, Frank. Is
22 there a second?

23 MR. GILLEN: Second.

24 MR. SMITH: Thank you, Matt. All

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1 in favor, please say aye.

2 (Chorus of ayes.)

3 MR. SMITH: Any opposed, likewise.

4 (No response.)

5 MR. SMITH: Thank you. Take just a
6 minute, if you will, and look over the agenda
7 for the meeting, see if you would like
8 anything added or updated on the agenda.

9 Any questions or comments about the
10 agenda?

11 (No response.)

12 MR. SMITH: Okay. Thank you very
13 much.

14 Okay. I noticed earlier at least a
15 couple people in the audience that have been
16 members of this Board before. I'd like for
17 them to stand and anybody else that's in the
18 audience that's been on this Board. Please
19 stand. We'd like to thank them for their
20 years of service.

21 Of course, Stew was once chairman
22 of this Board. I think Steve, you were
23 chairman, weren't you?

24 MR. CLOUTIER: I was an acting

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1 chairman.

2 MR. SMITH: Okay. Acting chairman,
3 and Scott Schneider, who just recently went
4 off. Let's give them a hand for serving on
5 this committee.

6 (Applause.)

7 MR. SMITH: Thank you. We're told
8 that Secretary Foulke will be up in just a
9 couple minutes. So, we're kind of waiting on
10 him at this point.

11 If anybody on the committee has a
12 comment they would like to make at this time?

13 Yes, sir, Frank?

14 MR. MIGLIACCIO: Frank Migliaccio.
15 I have a question.

16 MR. SMITH: Okay.

17 MR. MIGLIACCIO: Why did we not
18 have a meeting last year?

19 MR. SMITH: I am going to defer
20 that to Mr. Witt.

21 MR. WITT: We did not have a
22 meeting because the decision was made when we
23 published the Federal Register Notice last
24 January asking for nominations, and we thought

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1 the process would go fairly quickly in getting
2 selections made by the Secretary of Labor.

3 The process took longer than we had
4 planned, and the decision was made by the
5 Assistant Secretary, because he also thought
6 it would move more quickly than it did, that
7 the next meeting of the committee would be the
8 committee with the seven new members present,
9 and the decision was made not to have a
10 meeting with a committee where almost 50
11 percent of the members' terms had expired.

12 MR. SMITH: Thank you.

13 MR. WITT: But it is his intention,
14 as I said, he may say this earlier, it is his
15 intention to hold a meeting in the next
16 several months. So we will hopefully not have
17 that type of delay again.

18 MR. SMITH: Thank you. We'd like
19 for the members of the committee to go ahead
20 and submit their schedules for the last of
21 April and the first of May. That is the
22 tentative date that we will be having another
23 meeting at this point, and please submit that
24 to Michael Buchet, if you would, and we'll

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1 hopefully be able to have another committee
2 meeting then.

3 Thank you, Frank. Any other
4 questions?

5 (No response.)

6 MR. SMITH: If everyone would then,
7 let's just kind of stand at ease till
8 Secretary Foulke gets here. Should be just a
9 second. Please don't leave the room.
10 Hopefully he'll be coming in very shortly, but
11 just please feel free to stand up for a second
12 and stretch your legs.

13 (Whereupon, the foregoing matter
14 went off the record at 8:55 a.m.
15 and went back on the record at
16 9:05 a.m.)

17 MR. SMITH: I'm going to carry this
18 gavel home with me. It works better up here
19 than it does at home. I need something to get
20 people's attention at home. Thank you for
21 your attention.

22 At this time, it's my privilege to
23 introduce to you Assistant Secretary Edwin
24 Foulke, and he will make a few comments, and I

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1 turn it over to you, Mr. Foulke.

2 Remarks - New Member Welcome

3 ASST. SEC. FOULKE: I'm going to
4 make comments? Okay. That's right.

5 Good morning. How are you all
6 doing this morning? Hope that everything's
7 going well.

8 I just kind of wanted to start by
9 welcoming -- I think there's seven new members
10 to the committee, and also thank the members,
11 the returning members, for your service to our
12 country.

13 I know that you all could be at
14 other things. You have a lot of
15 responsibilities in your normal jobs, and I
16 know it's difficult to be able to be here and
17 take your time away from your jobs, but I do
18 appreciate your service to the country, but I
19 think you recognize, as I do recognize, that
20 this is important to not only your particular
21 companies but to your particular industry and
22 that there are a lot of critical issues that
23 your industry faces, and so what you all do
24 here is going to be very important and help

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1 people.

2 I talk a lot in my speeches about
3 the bottom line. I don't talk about the
4 bottom line being the financial bottom line,
5 but what I see as the true bottom line for any
6 business and our bottom line for OSHA is
7 making sure that people go home safe and sound
8 every night back to their families and loved
9 ones, and so I just want to say thank you for
10 what you all do and I thank you for it. I
11 appreciate you all being involved in this.

12 It is important, and over the
13 years, I know that ACCSH has been involved
14 with a lot of recommendations to OSHA, and
15 it's been extremely helpful to OSHA in helping
16 its recommendations for the reg agenda but
17 also recommendations for other things that we
18 do, the guidance documents and stuff like
19 that.

20 So I just want to say thank you for
21 all that and that you have a lot more work to
22 do because we still got a long way to go.

23 Even though our injuries and illnesses
24 and fatality numbers are down, the rates are

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1 down to the lowest that we've had in a long
2 time, we still can't stop there because I know
3 you believe and I believe -- you believe the
4 same that I believe, that obviously one
5 fatality is one fatality too many.

6 So we still have a lot of work to
7 do, and I really do appreciate you willing to
8 be able to serve.

9 I also wanted to thank Chairman
10 Linwood Smith for agreeing to chair the
11 committee again. Once again, you know, it's a
12 difficult thing to have to take time off of
13 your jobs, but like I said, this is a
14 significant commitment that you all have made,
15 and I do really appreciate that.

16 You really are helping us fulfill
17 our mandate to ensure that we have safe
18 working conditions for all of our employees.

19 I also want to recognize Stew
20 Burkhammer. Where is Stew? Stew, you know, I
21 really did want to say thank you to Stew.
22 I've already said thank you to Stew, but I
23 wanted to thank him for his contributions on
24 his impending retirement after a decade of

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1 service to ACCSH and the five years he's been
2 at the OSHA's Directorate of Construction as
3 the Director of OSHA Office of Construction
4 Services.

5 Is he still outside? Okay. Well,
6 I'll make sure we thank him properly. So I
7 did want to thank him.

8 I did want to kind of talk a little
9 bit about what we've been doing at OSHA and --
10 that is of interest and involved in the
11 construction industry and would be of interest
12 to the committee.

13 We've been involved in a lot of
14 different things, and one of the things that -
15 - an area that we've been involved with much
16 more in-depth than probably we have over the
17 last seven, ten years is emergency
18 preparedness.

19 We really have a lot more focus on
20 that, and the most recent example of our
21 involvement in emergency preparedness or
22 emergency response, I guess, is more the case
23 in this one, was the Minneapolis Interstate
24 Bridge Collapse back in September of last year

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1 and also the wildfires in California this
2 Fall.

3 Once again, what I really am -- I
4 guess what was very interesting to me was the
5 fact that we had a really good partnership
6 with our state partners, working with the
7 states in both of those responses.

8 We worked hand in hand with our
9 state partners and agencies, state agencies to
10 ensure that the response and recovery crews on
11 the scene could work safely, and because of
12 that, I think we did prevent people from being
13 injured in both of those areas, and I'm very
14 excited about how we responded and how quickly
15 we were able to respond to it and how
16 thoroughly we responded to it.

17 I understand that Jeff Isakson,
18 Director of the Minnesota OSHA State Plan,
19 will be here this afternoon, I believe, to
20 discuss with you more about what happened
21 there.

22 But I would just say that we are
23 aware that emergency response crews,
24 particularly construction people, need

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1 immediate information and advice to stay safe
2 while they're working in these type of
3 situations, these highly hazardous situations,
4 and we're continuing to improve on our
5 abilities to respond quickly and to provide
6 the information and provide the assistance
7 that those response crews need, and so we'll
8 continue to do that in the future.

9 Also, I understand later this
10 morning, you're going to be hearing from Ruth
11 McCully, who's our Director of the Directorate
12 of Science, Technology, and Medicine, about
13 the OSHA's Role in the National Response Plan.

14 I was at a -- on Tuesday, I was at
15 a meeting at the National Press Club where the
16 Secretary of Homeland Security rolled out the
17 National Response Framework which is the
18 overall document now that we're going to be
19 working under for all federal, state, local,
20 tribes are going to be -- gives us a framework
21 of how we're going to be responding to all
22 types of emergency situations.

23 I also understand that Mohammad
24 Ayub, Director of OSHA's Office of Engineering

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1 Services, will brief you about OSHA's
2 Structural Response Team in national
3 emergencies, and I think you'll find that very
4 interesting. He had provided us a briefing
5 during the Minneapolis bridge collapse of what
6 was going on there which he responded to
7 personally, and so I think that you will find
8 that very informative.

9 Another area that we've been
10 working that I think -- this kind of goes
11 across all industries, is the issue on
12 pandemic flu guidelines and the pandemic
13 influenza generally.

14 We are looking at this. You know,
15 there is no pandemic flu at this time, but all
16 the experts agree it's not a matter of if it
17 will occur, it is a question of when it will
18 occur, and so it's difficult to predict when
19 it will occur or how severe it will be, but
20 the most important thing is that we're going
21 to be prepared for that, and it's important
22 that all companies, all industries are making
23 preparations now because it is clear that if
24 and -- or when the pandemic flu hits, that we

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1 will not -- no industry, no company is going
2 to be able to respond if they haven't done any
3 preparation in advance.

4 This is not something that you can
5 just prepare for once it shows up. You can't
6 wait, say we'll wait till it shows up, wherever
7 it shows up, and then we'll start planning,
8 because this is going to take some detailed
9 response.

10 So, we're taking this issue, the
11 federal government is taking this issue
12 seriously. OSHA is working to fulfill our
13 role under the President's National Strategy
14 for Pandemic Influenza in that we're charged
15 to make sure that government employees are
16 able to -- that the government runs, that
17 employees are able to come to work, and our
18 response is also to make sure that the
19 businesses run and companies run and providing
20 the information needed to allow that to occur.

21 So to meet this potential challenge
22 of the pandemic, OSHA has developed two major
23 guidance documents on pan. flu, one for
24 general industry which outlines a whole tiered

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1 approach of how you would handle a pandemic,
2 and the other one, the other document, which
3 is a much -- is probably -- a fairly thick
4 document dealing with pandemic response for
5 health care industry.

6 So we've been working on that, and
7 basically the guidance allows information on
8 how the influenza would spread, how employers
9 can maintain operations, how to protect their
10 employees, steps for identifying whether
11 you're a low, medium, or high-risk workplace,
12 and tips for employees, to provide your
13 employees to stay safe while traveling and
14 living abroad to work because that's one area
15 that we also focus on, even those American
16 workers that are out working on the -- outside
17 the country.

18 So we've been -- we'll be sharing
19 that, and Ruth can actually -- we have a
20 couple directors, but Ruth's been involved
21 with that preparation and so if you have any
22 questions on that particularly, she can
23 provide that information.

24 On the regulatory agenda, you know,

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1 the Cranes and Derrick Negotiated Rulemaking
2 Advisory Committee had been working to
3 complete the analysis and review all the
4 requirements to publish a Notice of Proposed
5 Rulemaking.

6 With respect to the cranes and
7 derricks standard, we are in the latter stages
8 of development of the proposed rule, and if
9 you had looked on the Federal Register, we
10 were looking to publish the Notice of Proposed
11 Rulemaking in January of '08.

12 Unfortunately, we're just not going
13 to be able to make that date because this is a
14 very detailed rule. It is going to be an
15 extremely -- it's a large document is what it
16 comes out to be and so it is just taking a lot
17 -- taking us longer to get things through, to
18 get things completed on this document, but our
19 goal is to publish that NPRM this year on
20 cranes and derricks. So we'll be moving on
21 that, and we're committed to move on that
22 project.

23 One of the things that we've done -
24 - that we did complete in November of last

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1 year was to publish a final rule on payment
2 for personal protective equipment, and under
3 this rule, employers are required to provide
4 personal protective equipment or PPE at no
5 cost to the employees, except under certain
6 circumstances.

7 The rule contains exceptions for
8 clothing and gear and clarified OSHA's
9 requirement regarding payment of employee-
10 owned PPE and replacement PPE.

11 We must have done something well
12 because I think the time period for appealing,
13 filing an appeal on that, has passed, and we
14 didn't, as far as I know, we did not have
15 anyone appeal that particular standard.

16 You know, I think we made a good --
17 we did a real good job of balancing all the
18 issues that were involved in that. It was a
19 complicated standard. There were some really
20 complicated issues, but I think that foremost,
21 it really kind of spelled out and clarified
22 when employers are required to pay for PPE
23 which is, for the most cases, almost all
24 cases, but there are certain exceptions, and I

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1 like it because now we have, I think, a clear
2 and consistent policy on what employers have
3 to pay for and also the standard projects that
4 we're going to provide -- by implementing this
5 rule will result in 21,000 fewer occupational
6 injuries per year.

7 So you know, I think that's
8 important. That demonstrates how this
9 standard is going to be useful in that
10 respect.

11 But I think, you know, the whole
12 main thing is that, you know -- one thing the
13 rule did not change is what personal
14 protective equipment was required, and we've
15 had some questions on that from different
16 groups.

17 But the standard only dealt with
18 who was paying for it. What type of personal
19 protective equipment is necessary and when and
20 how you determine that, what hazard
21 assessments that you have to do, has actually
22 been spelled out in previous personal
23 protective equipment standards.

24 So the new one did not impact at

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1 all as to what PPE was required. It's just
2 who was going to pay for it.

3 Also in November of 2007, we
4 proposed a rule for confined space in
5 construction and general working conditions in
6 shipyards.

7 Yesterday, in the January 23rd
8 Federal Register, we announced a 30-day
9 extension for the comment period, extending it
10 to February 28th, on the proposed rule for
11 confined spaces in construction.

12 And I believe Noah Connell, the
13 Deputy Director of the Construction
14 Directorate, is going to give you -- talk more
15 about this in the Construction -- his
16 Construction Update.

17 Trenching. In 2008, OSHA will
18 continue to -- its trenching initiative as
19 part of its commitment to focus on enforcement
20 efforts in one of the most hazardous working
21 conditions in your industry.

22 I do have some good news to report.

23 In the last four years, in collecting data,
24 calendar years 2003 to 2006, we've seen a

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1 marked decrease in trenching fatalities in the
2 industry, about 50 percent. So we went from
3 59 fatalities in 2003 to 29 fatalities in
4 2006.

5 Clearly, we're making progress in
6 this area. Once again, one fatality is one
7 fatality too many, and we're going to have to
8 keep striving to get that number to zero.
9 That has to be our goal, and we're going to
10 continue to target outreach and ensure that
11 that number in trenching fatalities continues
12 to drop until we achieve our goal of zero.

13 Another construction-related OSHA
14 activity is our teen summer job campaign
15 involving construction jobs.

16 We have set up a five-year plan to
17 target different industries dealing with teen
18 summer jobs, and we're looking at the next
19 generation of working men and women, and so
20 three years ago we launched this initiative to
21 improve the health and safety of teenagers,
22 thousands of teenagers in the workforce each
23 year, and we're going to be -- this year, it's
24 going to focus on construction and probably

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1 residential construction is where we're going
2 to -- will be the focus of this campaign.

3 We're going to be kicking that off.

4 We're hoping to do a high-profile campaign
5 kick-off, possibly in New York City, and at
6 the same time, kicking the whole program off,
7 having a ten-city, one in each region, ten-
8 city kick-off this Spring.

9 So we're going to -- the focus
10 obviously is to raise national awareness of
11 the need for employees when they're hiring
12 young people to provide appropriate safety and
13 health training and protective equipment.

14 I remember when -- one of my first
15 jobs when I was working in law school in the
16 summer time when I was in law school was in
17 construction, and I was doing road
18 construction, and I was driving a -- I did a
19 number of things, but one of the things I
20 drove was a pan, which you know is a fairly
21 large piece of equipment, and my safety
22 training involved showing me what the seatbelt
23 was.

24 So I understand the need for this,

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1 and I also understand that a lot of teenagers,
2 some of you all may have some teenagers, kind
3 of feel like they're bulletproof, so to speak,
4 that they can't get injured, and unfortunately
5 accidents occur so easily and that's why we
6 need to have this campaign.

7 It's been very successful over the
8 two years we've done it already, and this will
9 be our third year. So once again, we're
10 hoping to impress upon the teens that there
11 are hazards in the workplace that they need to
12 be aware of and at the same time encourage
13 employers to make sure that all teenagers,
14 even though they are a summer job, that
15 they're fully trained before they get put on
16 the job and they understand the hazards, and
17 so we'll be doing that.

18 Another area that we've been moving
19 in construction is our cooperative programs
20 for construction, and I believe Paula White is
21 going to be talking to you today. She heads
22 up our Directorate of Cooperative State
23 Programs, and she's going to provide you
24 details about our cooperative programs in the

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1 construction industry.

2 We've been very -- obviously the
3 last year, I guess it's been a little over a
4 year, we had our -- we opened up our voluntary
5 protection program into the construction,
6 started doing model program, and right now we
7 have 64 construction companies that have
8 attained the recognition for safety and health
9 by attaining VPP status in the construction
10 area.

11 This is more than any time in the
12 program's 25-year history, and we're opening
13 the VPP to more general and specialty trade
14 contractors, once again, to demonstrate that
15 for those companies that have great safety and
16 health programs, to recognize them for their
17 great programs, and I think we have a number
18 of companies here that have facilities or
19 sites that are in VPP and we do appreciate
20 that.

21 Our OSHA Challenge, which is our
22 program to help employers reach -- to move
23 forward in their safety and health program to
24 attain a VPP, has had tremendous results.

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1 It's basically a three incremental
2 stage program and after one year of OSHA
3 Challenge, construction companies report a
4 rate reduction averaging more than 30 percent,
5 30 percent reduction for those companies after
6 one year of being in the Challenge program.

7 And since we introduced our
8 strategic partnership program in 1998, we have
9 partnered with more than 350 construction
10 employers, and so once again here we have
11 labor, management, and the government working
12 together at the start of these large projects
13 to go through the program and basically say
14 how we're going to look at safety and health
15 on this particular project, what are we going
16 to anticipate are going to be the hazards, and
17 so we really do appreciate that.

18 And I am really excited about how
19 we've done on our outreach programs, our
20 partnerships in the construction area, and
21 hopefully we're going to continue to focus on
22 that -- well, we are going to focus on that
23 more, to try to get more and more companies
24 working with OSHA, construction companies

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1 working with OSHA to make sure that we have
2 more safe and healthy worksites and that we
3 protect our employees.

4 And once again, it goes back again
5 to what Mike had said. The true bottom line
6 of any company should be making sure that your
7 employees go home safe and sound.

8 So I just want to say, I'll end by
9 just saying thank you for what you all have
10 been doing and your involvement in this
11 program really is important, and I do
12 appreciate that, and looking forward to
13 working with you, and you have my commitment,
14 personal commitment, that whatever I can do to
15 help to make this committee a success and that
16 I'm going to be here to help you do that.

17 So thank you for your service to
18 the country and to this committee. So, Mr.
19 Chairman?

20 MR. SMITH: Thank you, Assistant
21 Secretary Foulke.

22 And Stew just walked back in the
23 room if you'd like to say a little word about
24 him. What can you say, right?

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1 ASST. SEC. FOULKE: That's right.
2 There he is. Stand up.

3 MR. BURKHAMMER: I'm standing up.
4 When you retire, you shrink.

5 ASST. SEC. FOULKE: I do personally
6 want to thank you for your work in the
7 construction area. You've been involved with
8 the ACCSH Committee, I understand, for over
9 ten years, been with the Directorate for five,
10 but pretty much your whole life has been
11 committed to safety and health in the
12 construction area, and so I really do
13 appreciate the work that you've done with us
14 and your service to that.

15 So thank you very much for that,
16 and we'll definitely miss you, but just
17 because you're retired doesn't mean we're not
18 going to use you in some other fashion. We'll
19 still work you to death. Thank you.

20 (Applause.)

21 MR. SMITH: I think it also would
22 be prudent for this committee to go on record
23 as thanking Stew for his service to this
24 committee and also to the Directorate of

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1 Construction Office.

2 Could I hear a motion to that
3 effect?

4 MR. KRUL: So moved.

5 MR. SMITH: Second?

6 MR. MIGLIACCIO: Second.

7 MR. SMITH: All in favor, say aye.

8 (Chorus of ayes.)

9 MR. SMITH: Thank you very much,
10 Stew. We really appreciate it.

11 At this time, are there any
12 questions for Secretary Foulke?

13 MR. MIGLIACCIO: Sir, it's my
14 understanding that the OSHA Training Institute
15 is trying to make some changes in the way it
16 structures or picks the trainers.

17 Can you give us a little background
18 on that, please?

19 ASST. SEC. FOULKE: Well, I can
20 give you a little background on what we're
21 trying to do with the whole program.

22 Last year, I took -- the Training
23 Institute had been part of another
24 directorate, and so I decided that -- you

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1 know, when I first got involved with safety
2 and health, I started practicing law in '78,
3 and I think it was about '79 or '80 is when I
4 first started doing OSHA work, and at that
5 point in time, I remember that people used to
6 talk about the OSHA Training Institute.

7 It was like that is where you went
8 to get trained and that was where you really
9 needed to be involved in -- that's where we
10 had -- that was -- it was like kind of the
11 gold standard for training for safety and
12 health, and so as a result of that, I decided
13 it really needed to be its own directorate.

14 So we established it as its own
15 directorate, pulled it out of -- it was in
16 State Plans, is where it was, under there,
17 made its own directorate, and I put Hank
18 Payne, Dr. Hank Payne, in charge of that, and
19 my charge to him was to make sure that the
20 OSHA Training Institute became the gold
21 standard again for training, safety and health
22 training in the country.

23 So we're moving on that, and we've
24 been reviewing, as I understand, all the

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1 different training programs. We're actually
2 reviewing all the -- I know one area that
3 we've done is we're actually revamping all the
4 CSHO training to have much more detail,
5 reviewing what training they should have and
6 to do that.

7 We're also expanding the training
8 programs that are available, and I know that
9 they've done some -- they have talked about
10 doing some additional changes on the program
11 on training the trainers and stuff like that,
12 expanding the requirements for the trainers, I
13 believe, but I can't say right offhand what
14 that is, to tell you the truth.

15 MR. MIGLIACCIO: My understanding
16 of what they were trying to do, and somebody
17 else can fill this in here a little bit, that
18 they were looking for the OSHA 500 instructors
19 to be basically professionals from colleges.

20 Now, you being a lawyer, I don't
21 think you'd want an ironworker out there
22 practicing law because we don't actually know
23 what we're doing there, and I personally feel
24 as though --

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1 ASST. SEC. FOULKE: They may be
2 better than some lawyers.

3 MR. MIGLIACCIO: Maybe. But
4 there's some out there that -- I mean, I can
5 only speak on behalf of my program, the OSHA
6 500 instructors where we have six master
7 instructors, I'd pit them against any academic
8 person out there teaching safety and health,
9 and the reason I say this is because they work
10 it every day. They're not full time. They
11 work in the field.

12 ASST. SEC. FOULKE: Right.

13 MR. MIGLIACCIO: And that academic
14 person, they can do a lot of book learning,
15 and we found this out when we trained the
16 compliance officers under Subpart R, that we
17 had the OSHA people in there training, and we
18 had different -- we had ABC in there with us,
19 we had contractors training with us, and there
20 was a variety of people, and it seemed like --
21 and, you know, here we can talk to some of the
22 people who were actually there.

23 The field personnel that were doing
24 the training, your compliance officers got a

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1 lot more out of those people than they did out
2 of anybody else, and I find it interesting
3 that Dr. Payne or any of his people under him
4 would want to take that knowledge away from
5 the instructors that's going to be out there
6 protecting these people.

7 So I'm a little --

8 ASST. SEC. FOULKE: I'm glad you
9 raised that. I will have to look into that to
10 see what -- no, I'll look at it and see what
11 we have because I can understand what --

12 MR. WITT: If I may, Frank, my
13 understanding is Dr. Payne will be joining us
14 some time today, and if he does, I spoke to
15 him the other day, I think he's --

16 ASST. SEC. FOULKE: Is he coming in
17 or not? I thought he wasn't coming in. But
18 go ahead.

19 MR. WITT: Maybe there's a change.
20 He had indicated to me the other day he would
21 be coming in, and he will be available, if he
22 is coming in, to respond to your comment. If
23 not, I know he has prepared a summary of what
24 the activities that are going on related to

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1 the outreach or train the trainer, and I will
2 get those from him and distribute them to the
3 committee.

4 MR. MIGLIACCIO: Up until today, I
5 mean I hope it still goes on, but the
6 subcommittee of the OTI, I chair it, and I
7 found it interesting that nobody even
8 approached us about any of this information
9 that they want to change.

10 I would have thought they would at
11 least come to the committee, said something to
12 us, and then we could have brought it as our
13 subcommittee to this full body, but we had no
14 knowledge of it till, you know, till after all
15 the letters went out there, and it's real
16 interesting how they sort of circumvented --

17 MR. WITT: I've heard a little bit
18 about this, but I'm not exactly sure -- I'm
19 not fully informed what is all required or
20 what they're looking to make -- change the
21 requirements to. So I'll look at that.

22 I mean, all I can -- I know what
23 I've charged Dr. Payne to do is to bring this
24 to -- the OSHA Training Institute to be the

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1 gold standard for safety and health training.

2 Now, you know, obviously practical
3 experience always is very important, and to
4 me, at least it's my thought that practical
5 experience is important to be able to provide
6 insight in how things are really done in
7 training, and so we'll just look at that and
8 get back with you on that.

9 MR. MIGLIACCIO: I'd appreciate
10 that.

11 MR. WITT: Maybe today.

12 MR. SMITH: Other questions? Yes,
13 Bob?

14 MR. KRUL: Thank you, Mr.
15 Secretary, for coming in, and I heard your
16 remarks that you had no appeals on the PPE
17 standard, but let me try to shave the corpse
18 one more time.

19 It's still problematic for those of
20 us who deal in collective bargaining
21 agreements, especially when we do maintenance
22 work in industrial facilities, when an owner
23 mandates that steel-toed boots and/or
24 metatarsal equipment has to be worn as to

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1 whose responsibility that is.

2 I understand the exceptions, but it
3 still seems that that's like a nebulous area
4 that isn't clear when it comes to --
5 protective footwear, exactly whose
6 responsibility it is.

7 I know what the employers' side is
8 because those of us on labor have heard that
9 argument a hundred times, and in fairness to
10 the employers, their argument is that ought to
11 be equipment that a construction worker should
12 just purchase in the event that he or she has
13 to go out on to a site where this equipment is
14 mandated.

15 And from the safety and health
16 viewpoint, you can go to Walmart or Kmart and
17 get a pair of steel-toed shoes, but are they
18 really what you're looking for for protection,
19 and our argument with our apprentices that may
20 come in in the first year and only be making
21 60 percent of what a journey person makes,
22 this becomes quite a financial outlay for
23 them.

24 And we understand management's

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1 viewpoint on those quick turnaround jobs where
2 they may have hundreds of people and looking
3 at a \$125 per boot, but it gets a little
4 jumbled when the owner mandates that in order
5 to come on his facility that you have to have
6 this equipment in order to perform maintenance
7 work.

8 ASST. SEC. FOULKE: Well, I think
9 with respect to metatarsals, we did say that
10 they could be required to pay for the -- not
11 the built-in ones but the ones that go over
12 top of the shoes or they could provide a
13 credit for that.

14 So it is a complicated issue, you
15 know. One thing I try to do is I went through
16 all the testimony. There were a lot of
17 different things we looked at, you know. We
18 get in this thing about the tools of the trade
19 and everything else. That was the kind of
20 thing that we had opened or reopened the
21 record to look at those things.

22 So like I say, I think we tried
23 very hard to make sure we had the right type
24 of balance and hopefully -- you know, like I

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1 say, it's a complicated issue, and that's why
2 I guess it took the standard so long to get
3 around through there.

4 But I'm glad that we finally
5 finished the standard and got it out and, you
6 know, maybe we'll have to look and see down
7 the road what other -- if there's any changes,
8 you know, that will be made.

9 And I suspect that we're going to
10 have questions on requests for letters of
11 interpretations on the standard, too. As a
12 matter of fact, I know we will. We've already
13 had two groups that have asked us about
14 specific items dealing with certain PPE.

15 So thank you.

16 MR. KRUL: Thank you.

17 MR. SMITH: Other questions?

18 (No response.)

19 MR. SMITH: Any comments?

20 (No response.)

21 MR. SMITH: We'd like to thank the
22 Assistant Secretary Foulke for coming in today
23 and making these comments and also being
24 available to respond to questions and taking

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1 your time to work with this committee.

2 This is a dedicated group, as you
3 alluded to, and we gladly give our time to try
4 to help our industry and appreciate your role
5 in that regard, also.

6 Thank you very much.

7 ASST. SEC. FOULKE: Thank you, and
8 thank you again for your service. I
9 appreciate it.

10 (Applause.)

11 MR. SMITH: At this time, we want
12 to take a 15-minute break, and I'd like to ask
13 the committee to please stay present. I think
14 there's going to be some photographs that they
15 want to take at this time.

16 (Whereupon, the foregoing matter
17 went off the record at 9:38 a.m.
18 and went back on the record at
19 9:56 a.m.)

20 MR. SMITH: Okay. Let me have your
21 attention, please. We'll start back.

22 MR. KRUL: Mr. Chairman?

23 MR. SMITH: Mr. Krul has asked for
24 one minute.

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1 MR. KRUL: Thank you, Mr. Chairman.
2 In light of the discussion with Secretary
3 Foulke on this whole issue of the proposed
4 recommendations and changes to the OSHA
5 Training Institute, and for the benefit of the
6 committee, the four major recommendations that
7 the OTI is proposing, --

8 MR. SMITH: Sir, Mr. Krul, if I
9 could, this afternoon, later on this
10 afternoon, they're going to arrange a
11 conference call with Dr. Payne at OTI.

12 Would it be appropriate to wait
13 till then?

14 MR. KRUL: We could wait, but in
15 light of Mr. Migliaccio's comments, I think
16 this motion is in order. The Chair could rule
17 me out of order.

18 What I would like to do is make a
19 motion that this committee recommend to the
20 Assistant Secretary that he direct the OTI
21 that any proposed recommendations come through
22 the work group formed by the OTI for any
23 proposed recommendations and changes to that
24 program.

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1 MR. SMITH: Okay. I'd like -- the
2 Chair would like to ask, if we could, that we
3 wait till we get Dr. Payne on the phone, let
4 him explain it, and then the motion would
5 certainly be in order.

6 MR. KRUL: That's fine, Mr.
7 Chairman.

8 MR. SMITH: Let's give him the
9 opportunity to address us first.

10 MR. KRUL: That's fine.

11 MR. SMITH: If that's okay. Thank
12 you very much.

13 Okay. Our next presenter, as soon
14 as I put my glasses on, will be Amanda Edens
15 with the Directorate of Standards and
16 Guidance, and she will be discussing -- giving
17 us a general industry standards update. We
18 thank her for appearing before this committee.

19 MS. EDENS: Thank you.

20 MR. SMITH: And I need to move.

21 MS. EDENS: Yes, you do.

22 DSG - General Industry Standards Update

23 MS. EDENS: I'm going to cover the
24 first 15 minutes, and then I'm going to turn

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1 it over to John Steelneck who's going to speak
2 a little bit about our new rulemaking with
3 regards to a new fit testing alternative for
4 respiratory protection. We just did one on a
5 new Bitrex method, and then we have another
6 one coming up, and I'll leave it to John to
7 kind of discuss after I get through.

8 What I want to do is to go quickly
9 over some of the Directorate of Standards and
10 Guidance activities, primarily our regulatory
11 projects, and I'll talk a little bit about a
12 few of the upcoming guidance products we have.

13 Unless you don't know, the current
14 regulatory agenda we just published a little
15 over a month ago in sort of a new method. It
16 generally comes out in paper but now through
17 the magic of e-government, it's on the web
18 which is kind of hard to -- you know, a lot of
19 people kind of still like paper, I think I'm
20 one of them, but now it's all electronic.

21 So if you actually get the Federal
22 Register version, there's only like two
23 regulatory items, but those are the
24 significant items we have, and the other 26

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1 items are in this website, reginfo.gov. So if
2 you want to go and look at all the different
3 items we have, seventeen of which are the
4 responsibility of the directorate in which I'm
5 in, you can see the details of those.

6 I'm not going to go over all of
7 those. I was going to pick out a few,
8 primarily the ones that have some impact or
9 may impact on construction. I will not cover
10 the two construction ones, cranes and derricks
11 or confined spaces, because they're in our
12 Construction Directorate, but these are ones
13 that we're working on in DSG that also have
14 some construction implications.

15 I heard some questions just when I
16 came in a little bit about PPE payment. This
17 is one we've had for a few years and finally
18 finalized this November where it doesn't
19 really address anything in terms of what PPE
20 is required, but mainly the issue is the
21 payment of PPE, and this sets the requirement
22 that employers pay for most types of PPE and
23 there are some exclusions that we have in
24 this, and I think you discussed these maybe a

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1 little bit earlier.

2 So I'm not going to really get into
3 a lot of detail about this, but things like
4 ordinary safety toe wear and things like that.

5 They're not covered by these things, but
6 things that are required, especially under the
7 general PPE standard or the substance-specific
8 standards that we have, the employer's
9 required to pay for those.

10 We also have another big project
11 which we refer to as our consensus standards
12 project, and there's a lot of different little
13 rulemakings embedded in there.

14 One of the first ones we did was a
15 direct final back in 2004, and so the overall
16 goal of this project is that, as many of you
17 are probably aware, a lot of the standards, in
18 particular a lot of the safety standards, we
19 have used consensus standards as the basis in
20 some form or another for the existing OSHA
21 standards, and over time, these consensus
22 groups have updated their standards, and OSHA
23 has not been able to keep up pace.

24 So the point of this project is to

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1 try to look at the ones that we could address
2 in a short fashion, and some may take a little
3 bit longer, but to pick off as many as we can
4 and in as quick a fashion as we can to update
5 some and make them more consistent with
6 current consensus standards.

7 The most recent one that we did was
8 another issue with PPE, not with payment but
9 with the consensus standard on PPE, and this
10 covers head, foot, and eye protection, and we
11 published this in the spring of last year and
12 completed hearings last month. So the
13 rulemaking record on that will close in a
14 little while, and we'll evaluate that record
15 and go on and complete the final.

16 Another one that we published, it's
17 almost a year ago now, was our final standard
18 on Subpart S. This is a general industry
19 standard. So we have a counter in the
20 construction industry, but this one was geared
21 to look primarily at electrical installations
22 in general industry. It was published as a
23 final in February of last year, became
24 effective this summer.

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1 But there has been one issue with
2 regards to temporary wiring and ground fault
3 circuit interrupters, and the reason I bring
4 this is up, because it does use some
5 terminology which has created some confusion
6 because the terminology it uses is that it
7 requires the use of GFCIs where temporary
8 wiring is used, and it gives these examples,
9 and one of them is construction-like
10 activities.

11 What we're trying to get at is the
12 standard covers general industry. So first of
13 all, you'd have to make a cut about whether
14 it's construction or general industry, and
15 once you've made that determination, you come
16 into the general industry standard, but there
17 are some activities that we believe are sort
18 of construction-like in nature and the hazard
19 is the same, and so we would require the same
20 type of requirement.

21 But this particular phrase has sort
22 of created a little bit of confusion. So what
23 we're going to plan to do is have a technical
24 amendment to explain what we mean here. It's

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1 not meant to try to draw the line necessarily
2 between construction and general industry but
3 more to try to explain to people what our
4 impetus was behind this particular provision.

5 So really it's just for clarity's sake.

6 Another electrical standard we have
7 is working on Subpart V. I mean, typically,
8 we sort of generically refer to it as Subpart
9 V because most of the work is going to cover
10 the construction standard for electric power
11 generation, transmission, and distribution,
12 but there is a small part that's also general
13 industry, dealing with maintenance under
14 1910.269.

15 We proposed this back in '05,
16 commenced hearings the next year, and right
17 now in our current reg. agenda, we're
18 estimating final publication some time spring
19 of this year.

20 We had to do a little bit of
21 adjusting because in order to complete our PPE
22 standard, we had to pull somebody off of that
23 standard out of the Maritime Office to work on
24 PPE and subsequently had to pull somebody out

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1 of our Electrical Office into Maritime to
2 backfill that.

3 So we got a little bit, in terms of
4 trying to cover all the different work we had,
5 we had a little bit of delay on that one. So
6 we might not quite make that, but we're still
7 working hard to make that date.

8 The main things that this will
9 cover are trying to address communication
10 issues between host employers and contract
11 employers, things to protect from electric
12 arcs, both in terms of PPE as well as, you
13 know, laying out ways in which you would
14 determine the energy in certain systems,
15 address minimum approach distances, fall
16 protection for employees working in aerial
17 lifts, and also training to help them
18 understand how to determine the -- energies of
19 different power lines that they would be
20 working on or around.

21 Going to more sort of the health
22 end, we have our work on hazard communication
23 where what we're trying to do now is -- the
24 United States, in particular individuals in

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1 OSHA have been heavily involved in getting the
2 globally harmonized system of classification
3 of labeling of chemicals, and so right now,
4 the United States is at the point of adopting
5 this system.

6 OSHA is one of those agencies, as
7 well as EPA and CPSC have some work there,
8 too, but what we're working towards is a
9 proposal that would amend the current hazard
10 communication standard to adopt this globally
11 harmonized system where we would be more in
12 line with the way the rest of the world
13 classifies and labels chemicals.

14 We had an ANPR last year or
15 actually over a year ago now, and that period,
16 comment period, closed at the end of last
17 year, and we just completed the peer review of
18 our economic analysis. So we're moving
19 forward trying to get this done as quickly as
20 possible.

21 There was an international goal of
22 adopting the hazard communication, the GHS, by
23 2008, but we, as well as a number of other
24 countries, are finding that rather

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1 challenging.

2 In particular, because, I mean, the
3 hazard communication sounds very ideal and
4 it's a very simple concept in terms of, you
5 know, trying to get everybody to have the same
6 sort of system to classify and label chemicals
7 so that everybody -- if you're going to cross
8 countries, you have sort of a unified way of
9 identifying hazards and recognizing them so
10 that, you know, employees would have less
11 confusion if they're seeing labels coming from
12 different countries.

13 The complexity that's entered into
14 it in OSHA is that, you know, we have a number
15 of different standards which use phrases like
16 "flammable," "explosive," and things like
17 that. So we have to be very careful about how
18 we adopt these definitions because they can
19 have the unintended consequence of affecting
20 another standard.

21 For example, something like the
22 process safety management standard where you
23 have a certain definition for reactive or
24 something like that. You start changing the

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1 definition, you know, you might inadvertently
2 change the scope of, say, the PSM standard.

3 So we have to be very careful and
4 go through all the different standards that
5 have these sorts of definitions to figure out
6 ways in which it might impact those standards
7 and ways in which we might lessen that impact.

8 Another standard that has some
9 impacts in construction is our standard on
10 silica. It's been around for a long time like
11 a number of other substances under the air
12 contaminant standard.

13 There's a fairly large amount of
14 non-compliance with the existing PELs.
15 There's a lot of complexity of this in terms
16 of sampling and whatnot.

17 We did the SBREFA process a couple
18 years ago, and now we've been in the process
19 of trying to pull together our health effects
20 and risk assessment to the point where we can
21 get it peer reviewed.

22 We were fairly well along in that
23 process, but then OMB passed some new
24 guidelines about peer review, and so we had to

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1 sort of take a step back in order to be in
2 compliance with those guidelines, and we also
3 spent a fair amount of effort getting our
4 conflict of interest form out because when you
5 go out and seek peer reviewers, you have to
6 get their conflict of interest, and if you get
7 more than nine people that you're requesting
8 it from, OMB considers that a survey.

9 So you have to actually have that
10 form approved, and sort of the approach we
11 took on that, rather than just making it very
12 specific to silica, we thought it would be in
13 our best interests to get this conflict of
14 interest form filled for any chemical that we
15 might have peer reviewed so that we wouldn't
16 have to keep going back every time we wanted
17 to, you know, go and seek more than nine
18 people to get their input on a risk
19 assessment. So that took a little bit of time
20 to get that figured out.

21 Beryllium, another substance that
22 was adopted back in the early '70s. It had
23 some earlier work in 2002, both in terms of an
24 RFI and some safety and health hazard

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1 information bulletins, and most recently, we
2 completed our SBREFA review.

3 We started that back in September,
4 and the panel report was just recently signed
5 off by OMB. So I think that panel report will
6 be, if not already, sent to the Assistant
7 Secretary, and probably we'll be able to make
8 that publicly available on the website. Is
9 that right, Sarah?

10 MS. SHORTALL: Yes, it was signed
11 this week. The report went to the Assistant
12 Secretary this week, and it will be put into
13 the record for the beryllium rulemaking.

14 MS. EDENS: We have another project
15 that is now in its third phase and it may even
16 have a fourth or fifth phase, it's called the
17 Standards Improvement Process, and basically
18 this effort all along is to try to look at
19 things that are sort of outdated, that might
20 be duplicative, so that it could be simpler
21 for employers to understand, and so now we're
22 in our third phase.

23 We published an ANPR in December of
24 '06, and the proposal now is under

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1 development. It's going -- departmental
2 review right now.

3 Some of the issues that might be of
4 concern in construction, (1) there's an issue
5 regarding posting of the requirements for the
6 hazard assessment that's required under the
7 PPE standard.

8 We're looking at updating our
9 definition of potable water. Also, we're
10 trying to clarify some of the triggers for
11 medical surveillance and exposure monitoring
12 and making them more consistent for the lead
13 standard and also attempting to remove some
14 redundant training requirements under the
15 comprehensive health standards.

16 As you may know, we have sort of a
17 hazard communication standard that has an
18 overarching training requirement, and then in
19 a lot of existing health standards, there's
20 lots of different ways in which that training
21 requirement is explained. So we're looking at
22 some ways to sort of harmonize those and make
23 it simpler for employers who may have to
24 comply with a number of different standards.

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1 Hearing and conservation. We did
2 an ANPR a few years back, and then we held a
3 couple of different stakeholder meetings, and
4 since that time, we've been putting a fair
5 amount of effort into going out and doing site
6 visits and doing some analyses to collect
7 different kinds of programs and to evaluate
8 sort of the current practices out there and
9 how effective they are so that we could do
10 sort of the necessary technologic and economic
11 feasibility assessments that we would need to
12 do in order to move this standard forward.

13 And finally, just to mention this,
14 I don't know how much it will have in
15 construction, but we did an RFI in September
16 of last year regarding emergency response and
17 preparedness, and really this was sort of an
18 outgrowth of sort of 9/11, where we do have a
19 lot of different sort of emergency response
20 requirements out there.

21 We have HAZWOPER. We have some
22 requirements for emergency programs and
23 different standards and things of that nature,
24 but now sort of the nature of emergency

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1 response and preparedness has changed, and the
2 way people have to sort of respond to sort of
3 the modern environment where we have either
4 things that are purposely done or sort of
5 these things like pan. flu and the nature that
6 we really hadn't thought of in the past, and
7 so this effort is to sort of look at that in
8 the new way we're looking at emergency
9 response and to get people's input on how OSHA
10 should best move forward dealing with these
11 new sort of challenges in the emergency
12 response environment.

13 Just a couple quick things on
14 guidance. I won't spend too much time before
15 I turn it over to John.

16 I guess guidance now has been a new
17 mission in our directorate for a few years
18 now, and we've been fairly productive. I'm
19 not going to go through a lot of these right
20 here, but we're finding it very challenging
21 and rewarding to get a different kind of spin
22 on things, not just doing regulations but
23 doing some guidance projects, and we have a
24 lot of creative people at our directorate and

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1 have been fairly active in putting some things
2 out.

3 In particular, we have the OSHA
4 pan. flu guidance which we did as a part of a
5 larger federal effort. This one right here is
6 the general one, and then our colleagues in
7 the Directorate of Science, Technology, and
8 Medicine did a more specific one regarding
9 healthcare.

10 This just lists a few of the
11 guidance products we have in development, and
12 I'll highlight the one at the bottom which we
13 have come to this committee before with this
14 issue which is working with Portland cement.

15 As you know, we did not include
16 Portland cement under coverage of our
17 hexavalent chromium standard because we felt
18 that there were existing standards to address
19 the particular hazard that comes with Portland
20 cement which is primarily from a dermal
21 exposure.

22 So partly as a result of just our
23 own need to make sure that people understood
24 those standards and also as an outgrowth of

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1 some of the settlement work that we did with
2 the Building Construction Trades Department,
3 we had this - I don't know if it was a
4 pamphlet or a document, whatever you want to
5 call it, it's going to be Working Safely with
6 Portland Cement. This will address what the
7 major hazards are as well as clearly identify
8 the standards that employers have, the
9 responsibilities they have under those
10 existing standards with regards to working
11 safely with Portland cement.

12 The silicon exposure document, that
13 is now in OSHA clearance process. So
14 hopefully that would not take too long and we
15 could get it through the department and have
16 that out in not-too-distant future.

17 And the ergonomics and shipyards,
18 we actually published that a few months back
19 and got comments, and I don't think we got a
20 whole lot of criticism on that one. So
21 hopefully it shouldn't take too long to turn
22 around that document and get that out in a
23 final.

24 And with that, I will turn it over

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1 to John to let him complete, and then we'll
2 take the last five minutes or so for
3 questions.

4 MR. STEELNECK: All right. I am
5 John Steelneck. I'm the project officer on
6 OSHA's respirator standard.

7 When the OSHA published its
8 respirator standard in 1998, it contains OSHA-
9 accepted qualitative and quantitative fit test
10 protocols in Appendix A, but it also contains
11 in Part 2 a way to get new fit testing
12 protocols approved by OSHA, basically by going
13 through what's called Section 6(b)(7)
14 rulemaking, notice and comment rulemaking.

15 Now the last time I was before the
16 advisory committee here was to present the
17 abbreviated Bitrex NPRM. That was in October
18 of 2006. Since then, it has gone through the
19 system, has been approved, and it was finally
20 published in December 26th of 2007, and is out
21 right now for public comment. Public comments
22 on that are due February 25th, 2008, and then
23 we'll go forward and look at the comments and
24 hopefully finalize that.

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1 At the time I presented that before
2 the advisory committee, I also told them that
3 we had just received the PortaCount. The
4 PortaCount is the most widely-used
5 qualitative, quantitative fit testing machine
6 out there.

7 It's widely used for doing
8 quantitative fit testing using the PortaCount
9 really, and I said that we would be coming to
10 the next advisory committee meeting to present
11 that.

12 Well, I'm now here. History of the
13 TSI, Inc., the manufacturer, the one who
14 manufactures and distributes the PortaCount,
15 submitted their peer-reviewed article to start
16 their review system for an abbreviated set of
17 fit test protocols, two new protocols for use
18 with the PortaCount.

19 This was published by Dr. Roy T.
20 McKay, who's a researcher, works at the
21 University of Cincinnati, but he's also
22 Chairman of the ANSI Z-8810 Fit Testing
23 Subcommittee currently, and so he's very
24 knowledgeable about fit testing, and I think

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1 that's why they got him to do their testing
2 for them.

3 There are two protocols.
4 Basically, one of them just does the exact
5 same protocol that OSHA has, but instead of
6 using 60 seconds, a one minute exercise, they
7 cut the time in half to 30 seconds. Then they
8 have a second protocol which has five
9 exercises. They eliminated two exercises,
10 deep breathing and the first normal breathing,
11 which are both where you don't really move
12 your head a lot, and instead they did other
13 things to make it a tougher, more constrictive
14 fit test.

15 Basically, they raised the
16 pass/fail criteria for the second protocol
17 from 100 to 200 for half mask and from 500 to
18 a thousand for full face pieces. This is
19 basically to eliminate the number of false-
20 positives that make it a more stricter fit
21 test. It provides a more conservative fit
22 test by raising the pass/fail criteria and
23 that worked pretty well.

24 That second fit test performed very

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1 well. It actually showed up when compared to
2 the ANSI Z-8810 standard has and their
3 Appendix A-2 a set of criteria for evaluating
4 new fit tests and for all the criteria, it
5 turned out very well.

6 As you can see, basically here in
7 the actual standard, proposed standard that I
8 distributed back here, there is -- they are in
9 the actual -- Page 11 is the actual values and
10 you see for both half masks and full face
11 pieces, the Protocol Number 2 exceeded all of
12 the ANSI values.

13 The Protocol Number 1, which is
14 where they just reduced it to 30 seconds, has
15 a problem in that the sensitivity was only 91
16 percent when they really needed 95 percent.
17 That's a problem. Basically, they have a
18 false-positive in the test, meaning for the
19 quick test, somebody would pass. There's a
20 chance that one person might pass that would
21 fail with the full 60-second OSHA test and
22 that is a problem for us, but we're proposing
23 to put it out for public comment to see what
24 comments we do get on that from the general

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1 public.

2 Okay. We have invited comments
3 basically on the accuracy and reliability of
4 the proposed protocols. We ask a number of
5 questions on Page 15, as you can see,
6 describing how do they look at the peer-
7 reviewed article, how well is it controlled,
8 do they see problems, what do they feel the
9 problem is, especially with the one issue we
10 have, the 91 percent, and I think that will
11 probably be a problem.

12 The second protocol performed very
13 well against the ANSI standard criteria and
14 that looks in much better shape, but we'll see
15 what the public comments are.

16 Finally, once we've presented it
17 here, this is a very short review, and what
18 will happen is after you folks have a chance
19 to look at it and make any comments, we will
20 then proceed with the OSHA clearance process
21 here within OSHA before we send it to OMB, the
22 same process we did with the Bitrex fit test,
23 after you saw that last time, and we will go
24 through and publish it in the Federal

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1 Register, hopefully some time later this year,
2 and that's what we're planning to do with the
3 revised PortaCount fit test method.

4 Thanks.

5 MS. EDENS: I think that's all we
6 have, unless you have some questions.

7 MR. MURPHY: Amanda, Dan Murphy
8 with Zurich.

9 Amanda, hearing conservation in
10 construction. Have you begun to do any
11 research on what, if anything, is happening
12 out there?

13 MS. EDENS: Well, yes. I mean that
14 is the purpose of our site visits, is we have
15 a contractor who's going out, surveying some
16 of the sites where they have hearing
17 conservation programs in place, trying to
18 evaluate what kinds of things they have, what
19 kinds of things they don't have, and trying to
20 see, you know, are they being effective, and
21 so we'll look at, you know, basically what we
22 can collect from the different places that we
23 go and see if they are effective, if they're
24 not, and also to kind of get a baseline of

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1 sort of what is out there, so that if we were
2 to have, you know, a standard, it would help
3 us to assess, you know, how much more would
4 people have to implement and what would it
5 take to get them up to a place that we feel
6 would be adequate in terms of our hearing
7 conservation program.

8 MR. MURPHY: Okay. Because it's a
9 major issue in the construction business.
10 We've had those discussions at this committee
11 in the past, and I guess if you need any
12 assistance in trying to take a look at that,
13 please contact me because I have a great
14 interest in trying to solve that problem, but
15 I'm not sure how to solve that problem,
16 especially from a medical monitoring
17 perspective.

18 MS. EDENS: Thank you for that
19 offer.

20 MR. RUSSELL: Yes, on hearing
21 conservation, do you have any time table or
22 goals or next steps really clearly outlined as
23 to where it's kind of heading?

24 MS. EDENS: No. Right now, the

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1 current step in the most current reg agenda
2 that just got published in December has it
3 down as undetermined. So, we don't have a
4 next step plotted out at this point that's on
5 our agenda.

6 MR. RUSSELL: Could at least we,
7 you know, think about some methods of trying
8 to define that, you know, so that it's not
9 open, if you follow what I'm saying?

10 MS. EDENS: Well, I think, you
11 know, every -- at least twice a year, we go
12 through the different projects that we have on
13 the reg agenda and try to make some management
14 choices about what the next steps are going to
15 be in terms of what we know, what resources we
16 have and that.

17 So, you know, the new agenda will
18 come out in like April or May, depending on
19 how quick OMB gets all the different
20 requirements together, but we'll be going
21 through that next cycle and we go through each
22 of these items.

23 I mean, the best I can promise you
24 is that we will look at that item like we look

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1 at all the other items we have in trying to
2 figure out what our next step will be and that
3 will be made, you know, in conjunction with
4 the Assistant Secretary and the department as
5 well.

6 MR. RUSSELL: Thank you.

7 MR. BEAUREGARD: Amanda, Kevin
8 Beauregard with the Department of Labor, North
9 Carolina.

10 Can you expand or explain what went
11 into the decision on the pay for PPE in
12 regards to logging boots? I noticed that
13 there is an exception for logging boots.

14 MS. EDENS: Well, I'll make an
15 attempt. I mean, the best person, Kevin, you
16 heard Jim Maddux was at OSPA last week, and
17 really take this with me not -- I'm not sort
18 of the expert on PPE, but there were already
19 some issues under the logging standard where
20 they address the issue about PPE in the
21 logging standards and this rule was not trying
22 to get into that particular one.

23 So, I think it really was a
24 division of having two different rules and

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1 trying to make them sort of consistent.

2 MS. SHORTALL: Kevin, in the 1994
3 Federal Register Notice announcing the final
4 rule for logging, there is a very large
5 discussion for why logging shoes were the one
6 item that employers were not going to be
7 required to pay for. For all other items of
8 PPE that were required under that standard,
9 employers were specifically required to pay
10 and it was specified in the standard.

11 So, if you want an exact cite, give
12 me an e-mail and I'll send you the explanation
13 for it.

14 MR. BEAUREGARD: Okay. Great.
15 Thank you.

16 MS. EDENS: Thanks, Sarah.

17 MR. MIGLIACCIO: Amanda, Frank
18 Migliaccio with the Ironworkers. I have a few
19 things.

20 When you were talking about the
21 Portland Cement, you said that there was a
22 Working Safe with Portland Cement. There's
23 cards going to be out. Are they out yet?

24 MS. EDENS: No, they're not. They

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1 are -- we had them. They're pretty much
2 almost ready to be released. It's not really
3 a card. It's going to be -- I don't know how
4 to best describe it. I don't know if it's a
5 pamphlet is the best word. It's not going to
6 be like a little quick card, though.

7 It's cleared pretty much all of
8 OSHA. I guess we're trying to clear up some
9 issues about whether or not it needs to go to
10 our departmental clearance folks, and I think
11 they said that that wasn't necessary. So,
12 hopefully we can get that out pretty soon.

13 The only step that might be taken
14 now is to give it to our communications people
15 to make it pretty, so we have all the right
16 information, but we do like it to look nice as
17 well.

18 MR. MIGLIACCIO: It would just be
19 interesting to get some of those cards and
20 reproduce them ourselves.

21 MS. EDENS: Sure.

22 MR. MIGLIACCIO: The other one is
23 you talk about the consensus standard on the
24 PPE.

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1 Is there any talk about taking the
2 consensus standard with the construction and
3 general industry and maritime and putting it
4 all together as one?

5 MS. EDENS: I don't know. I'd have
6 to get back to you on that one. I don't know
7 the answer to that.

8 Sarah, do you?

9 MS. SHORTALL: That's another
10 standard that I was working -- I have been
11 working on.

12 This is sort of the first phase of
13 a number of different things that we're doing
14 on some of the PPE standards. So, it was
15 decided to take it sort of a step at a time
16 with the idea and notion that, you know, based
17 on what we got for comments during the
18 December 4th hearing, that would give us the
19 information we needed to also then thereafter
20 address construction, and we did have
21 representatives from the construction industry
22 who did come to testify at that hearing.

23 MR. MIGLIACCIO: Thank you.

24 MR. SMITH: Yes, sir?

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1 MR. RUSSELL: Emmett Russell. One
2 last question.

3 As it relates to silica, I know
4 that's kind of a construction industry and we
5 may have a presentation from construction, is
6 it appropriate to ask that then or is it
7 appropriate to ask now, you know, what's the
8 status of silica?

9 MS. EDENS: That's really in our
10 directorate. We're taking both of those,
11 unless Steve wants to answer.

12 MR. WITT: As the former director
13 of Standards and Guidance, I think that would
14 be appropriate for Amanda to answer.

15 MR. St. AMOUR: Right now, the reg
16 agenda has it down as the peer review being
17 completed in January. Since we haven't
18 started it, I'm fairly certain that it won't
19 be completed in the next five days.

20 So, I mean, what we're doing now is
21 it's cleared some of our SOL attorneys or not
22 cleared but we're working out just some of the
23 last comments and hopefully we'll be taking it
24 down to the Assistant Secretary and he can

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1 decide sort of the timing on that one.

2 So, I don't know. What more
3 specific did you want? That's the next step,
4 is in the reg agenda, just to complete the
5 peer review of the health effects and the risk
6 assessment. So, we haven't really projected
7 the date beyond that particular step at this
8 point.

9 MR. RUSSELL: But it's definitely
10 still in the process of moving forward?

11 MS. EDENS: Yes.

12 MR. RUSSELL: Thank you.

13 MR. SMITH: Other questions or
14 comments? Yes, sir?

15 MR. ZARLETTI: Dan Zarletti from
16 Kennett Construction. I wanted to just ask a
17 question on Subpart V.

18 Does April '08 sound like a firm,
19 still a firm date, and who will be the key
20 person to contact?

21 MS. EDENS: The key person working
22 on that is Dave Wallace. He's the office
23 director in Office of Engineering Safety where
24 that project resides.

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1 As I mentioned before, Dave has had
2 to do some double duty because we've had to do
3 a little bit of personnel shifting in order to
4 meet the deadline we had for the PPE standard.

5 One of the experts on that was in another
6 office and Dave sort of had to do some double
7 duty. So, he had to do that.

8 The deadline on that probably might
9 slip a couple months, but it shouldn't be too
10 far. We're fairly well down the road on that,
11 unless something unexpected, you know, were to
12 come up because we did complete the hearings
13 and we have staff working on it, but I can
14 never predict when something will happen and,
15 you know, you have to reopen the record or
16 something like that.

17 MR. ZARLETTI: Right. But is there
18 anything in print now as a draft?

19 MS. EDENS: No. The only thing
20 that's out there would be the proposal.

21 MR. ZARLETTI: Okay. Thank you.

22 MR. SMITH: Thank you. Other
23 comments by anyone that hasn't spoken?

24 (No response.)

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1 MR. SMITH: Amanda, we thank you
2 very much for your presentation and for your
3 time here before the committee this morning.

4 MS. EDENS: You're welcome.

5 MR. SMITH: Is our next presenter
6 here, the Directorate of Science, Technology,
7 and Medicine? Okay. If you would come
8 forward and get your presentation ready, we
9 would appreciate it.

10 Okay. We thank Ruth for coming
11 this morning, Ruth McCully, and look forward
12 to her presentation and she's going to be
13 talking about the OSHA National Response Plan,
14 I believe.

15 MS. McCULLY: Right.

16 MR. SMITH: And we'll turn it over
17 to you at this time and thank you so much.

18 MS. McCULLY: Well, thank you. I
19 have some handouts.

20 MR. SMITH: Do you have a
21 PowerPoint?

22 MS. McCULLY: I do not have a
23 PowerPoint.

24 MR. SMITH: Okay. Good. I can sit

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1 here then.

2 MS. McCULLY: You can.

3 OSHA's Role in National Response Plan

4 MS. McCULLY: I'm Ruth McCully, and
5 I'm Director of the Directorate of Science,
6 Technology, and Medicine in OSHA, and what
7 I've been asked to go over with you all today
8 is the National Response Plan, and actually we
9 don't have a national response plan anymore.
10 It's called the National Response Framework
11 and what is being distributed is materials.

12 The National Response Framework was
13 rolled out on Tuesday at the National Press
14 Club. The Secretary of Homeland Security,
15 along with a number of other secretaries and
16 assistant secretaries, our Assistant Secretary
17 was there, rolled out this new National
18 Response Framework and so the materials that
19 you have that are going around are the press
20 release. There's a Q&A document and then, you
21 know, What's New in the National Response
22 Framework.

23 Then there is a -- I have the color
24 version, you all do not, but it's another

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1 handout that is called Introducing the
2 National Response Framework, and this
3 introduces you to a center which will be on
4 the Internet that you can go to. It will be
5 updated periodically with documents that are
6 relevant to the National Response Framework.

7 So, my goal today is to really go
8 over with you what is this new document, the
9 National Response Framework, how does it
10 differ from the National Response Plan, what
11 does it mean to us, and in particular to go
12 over the revised Worker Safety and Health
13 Support Annex because that has gone through a
14 number of revisions, and one of the handouts
15 that has gone around is the Worker Safety and
16 Health Support Annex to the National Response
17 Framework.

18 All right. So that's the goal, and
19 then after that, if there are any other
20 questions related to the directorate, I'd be
21 happy to take them.

22 This was a process that was a long
23 time coming. Just to set the stage, prior to
24 9/11, the country had four response plans,

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1 basically. It had the Federal Response Plan
2 which is probably what the states and locals
3 are most familiar with. It gets activated if
4 there's a natural disaster.

5 There was a Federal Radiological
6 Emergency Response Plan for radiological
7 events. There was a Con Plan which was for
8 terrorist events, and there was a National
9 Contingency Plan for major spills that came
10 out of basically the Oil Spill Act that was
11 passed by Congress.

12 After 9/11, one of the lessons
13 learned was the country needs one plan. So,
14 they did away with those plans and we came up
15 with the National Response Plan.

16 The National Response Plan was
17 basically the country's largest MOU. It was
18 signed by every single secretary, including
19 some private sector organizations, the
20 American Red Cross, for example, and this
21 document was signed in 2004, went into effect
22 in April 2005.

23 We were rolling it out through the
24 end of June of 2005 and then we had Hurricane

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1 Katrina, the country's largest natural
2 disaster, and we never really had an
3 opportunity to really exercise the National
4 Response Plan, but as a result of that, one of
5 the reports that came out, really the lessons
6 learned from Katrina was the National Response
7 Plan wasn't working. It was too big. It was
8 a very thick document. It was too much to get
9 through. It wasn't flexible enough, and as a
10 result, the country really needed a framework
11 instead of a plan that was too dictatorial, I
12 guess might be the best word.

13 So, the idea to come up with a
14 National Response Framework really came out of
15 the White House Lessons Learned Report on
16 Katrina.

17 The process for this started a year
18 ago. About a year ago, work groups were
19 established to say how can we redo this
20 document in a way that will be most useful to
21 the users and that's not necessarily the
22 Federal Government.

23 All response is local. So, how do
24 we come up with a framework that includes the

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1 local entities, the states, but also talks
2 about how the Federal Government can assist in
3 those types of situations?

4 There were a number of work groups
5 that were established. There were about 400
6 people who participated in work groups in the
7 development of the National Response
8 Framework, and the Response Framework was sent
9 out for comment in September of 2007.

10 So, it's basically a document that
11 focuses on response as compared to the
12 National Response Plan that focused on
13 planning, preparedness, prevention, response
14 and recovery. It does have sections on
15 planning, it does have sections on recovery,
16 but the main emphasis of the National Response
17 Framework is response.

18 What are the organizations, what
19 are the coordinating structures at the local
20 level and the federal level that are going to
21 be engaged in response? It really lays out
22 how the states will function, how the locals
23 will function, and then how the Federal
24 Government will function.

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1 It follow the incident command
2 system. The incident command system is the
3 language of response and that was one of the
4 items that was really kind of lacking in the
5 National Response Plan.

6 So, the National Response Plan
7 makes sure that the incident command system is
8 integrated into this framework. It relies on
9 another document which is called the National
10 Incident Management System which really lays
11 out the structures and how locals, states and
12 Feds will respond in an incident command
13 structure type of organization.

14 It also says, for example, that the
15 National Response Framework is in effect
16 always. In the past, the National Response
17 Plan, for example, had to be implemented by
18 the Secretary of Homeland Security. This is
19 saying that the National Response Framework is
20 always in effect. There's other mechanisms
21 for calling in different organizations, if
22 needed.

23 So, it's a tool that is really
24 geared for senior officials, federal

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1 officials, and senior officials at the state
2 and local levels. It also addresses tribal
3 entities as well.

4 It's a document that is geared to
5 be scalable, depending upon the size of the
6 event that's being responded to, and it also
7 includes -- it's a base document that's
8 relatively short. It's about 60 pages, which
9 is nice compared to what the regular one was,
10 and it is also supplemented by emergency
11 support function annexes, support annexes, and
12 incident annexes.

13 You will see, for example, that
14 there are some things that have been
15 eliminated from the document. For example, it
16 goes into more -- let me make sure -- I want
17 to make sure I've got this right.

18 It really defines the whole notion
19 of what a Principal Federal Official is.
20 There was a lot of concern about that. A
21 Principal Federal Official will be appointed
22 by the Department of Homeland Security if you
23 have a large event, but for most events, it's
24 really going to rely on a federal coordinating

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1 official which is appointed by FEMA.

2 A little bit about the background
3 in establishing this is that we received a
4 number of comments, which I'm trying to find
5 right now. Here they are. Just bear with me
6 a minute.

7 All right. We received a number of
8 comments. A total of 5,700 comments were
9 received on the National Response Framework
10 and on the annexes. The National Response
11 Framework was put out for comment in
12 September, the annexes were put out for
13 comment in November.

14 So, we had over 300 entities that
15 commented and over 5,700 comments that had to
16 be resolved, and it was a pretty aggressive
17 schedule that we were all put on to try to
18 resolve those types of comments.

19 As I mentioned, there's an NRF
20 Resource Center and that's in one of the
21 handouts that you have. I have been on it. I
22 tested it. It's user-friendly. It's
23 intuitive. You can go to it pretty easily and
24 get to different documents, and I would

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1 suggest if you have an emergency response
2 person in your organization, you make them
3 familiar with this because this is going to be
4 something that, as changes come up, they're
5 going to be reflected on that National
6 Response Framework, on the National Resource
7 Center.

8 Why this is important is they make
9 the point, particularly in the cases of the
10 annexes, is that these are living documents
11 and they can be changed at any time. There
12 isn't going to be a type of -- it makes it
13 appear that there won't be a situation where
14 they're going to say, okay, we want to now
15 make changes to the National Response
16 Framework. This is the process. They can
17 take any of these annexes at any time and make
18 changes to them. So, it really is going to be
19 a dynamic type of situation.

20 There will be an aggressive
21 training program that is going to go along
22 with the National Response Framework. There
23 is going to be awareness training for
24 emergency support functions that is scheduled

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1 for mid March. Awareness training for support
2 annexes is also scheduled for March, and the
3 incident annex training is scheduled for
4 April.

5 They're also planning to have
6 position-specific training, and why this is
7 relevant to us in particular is that in this
8 framework, it specifies a safety officer and a
9 safety function. So, we want to make sure
10 that we're involved and for that position-
11 specific training to make sure that that
12 safety function training addresses the issues
13 that it needs to address for emergency
14 response and preparedness.

15 Some of the things that are new in
16 the Response Framework. We've done away with
17 some of our teams. We no longer have
18 emergency response teams. We now have
19 incident management assist teams, basically
20 the same thing, a new name, a new acronym.

21 My experience in the emergency
22 response world over the past seven years is if
23 you don't like that acronym, just wait awhile,
24 it'll change. Half of it is just trying to

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1 keep up with the acronyms.

2 The other changes that you'll see
3 that are probably most relevant, ESF-6 is no
4 longer being taken care of by American Red
5 Cross. The American Red Cross is no longer
6 the primary agency. That's been taken over by
7 DHS-FEMA. That's the one for mass care,
8 emergency assistance and housing and human
9 services.

10 There's been a collapsing of some
11 ESFs. After Hurricane Katrina and with
12 household pets and animals, there was a real
13 concern about people being separated from
14 their pets. Pets are family members and for
15 some individuals, it may be really the only
16 family that they have and it's important that
17 their pets and them stay together.

18 So, for ESF-11, for agriculture and
19 natural resources, a primary function of
20 safety and well being of household pets has
21 been added to that function to make sure that
22 pets are not separated from their family
23 members.

24 There's a new annex that has a

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1 support annex that has been implemented.
2 There's been considerable work going on over
3 the past couple years over at DHS on critical
4 infrastructure and key resources, and these
5 are really private sector entities.

6 We're talking about utilities.
7 We're talking about chemical industries, so
8 forth, and so there's a new support annex that
9 details processes to ensure the coordination
10 and integration of these critical
11 infrastructure and key resources.

12 If there's a major disaster going
13 on, we want to make sure that those issues are
14 addressed and that those critical
15 infrastructures are maintained and continues
16 to function. So that's been elevated.

17 There is also an incident annex
18 that has been added on mass evacuation and
19 clearly that's one of the lessons learned from
20 Katrina, is how we effectively do mass
21 evacuations.

22 In the past two hurricane seasons
23 since Katrina, there's been considerable --
24 there have been exercises that have been done

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1 and a lot of focus on mass evacuations and so
2 now with the National Response Framework,
3 there is an incident annex that deals
4 specifically with mass evacuations, so we
5 don't end up with a situation like we had with
6 Katrina where, in the middle of a flood,
7 you're trying to evacuate hundreds of
8 thousands of people.

9 Probably one of the issues that
10 people are most concerned about in this
11 meeting is the worker safety and health
12 support annex.

13 As you know, the Department of
14 Labor put forward a recommendation that the
15 worker safety and health support annex be
16 elevated to an emergency support function
17 rather than a support annex, and this got --
18 and Assistant Secretary Ed Foulke presented
19 the case for elevating it to an emergency
20 support function.

21 However, when it was heard, the
22 decision was made by the Interagency Community
23 that it remain as a support annex rather than
24 an emergency support function.

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1 This process was overseen by both
2 the Department of Homeland Security and an
3 interagency work group called basically the
4 Domestic Readiness Group which is made up of
5 assistant secretaries across the Federal
6 Government, so it's an interagency group, and
7 they viewed the worker safety and health
8 support annex as an annex that should be
9 called up basically whenever there's any type
10 of disaster.

11 There are workers who are involved,
12 health and safety of those workers needs to be
13 ensured, and so it's an annex that plays a
14 role in any of those entities.

15 Now, in the process of doing that,
16 we have redrafted the worker safety and health
17 support annex, and this is based on our
18 lessons learned from Hurricane Katrina as well
19 as input that we received from the GAO and
20 their findings in the GAO report, and what I'd
21 like to do is go over what some of them are
22 here, kind of walk you through just some high
23 points of this document.

24 First thing that you can see is in

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1 the Scope, the second bullet there, is that
2 it's very clear that this annex is structured
3 to provide technical assistance and support
4 for response and recovery worker safety and
5 health and this really lays out the types of
6 activities that you can find as a result of
7 this support annex.

8 For example, the activities within
9 the scope of this support annex will include
10 the development of health and safety plans,
11 identifying and doing assessment of health and
12 safety hazards, conducting exposure
13 monitoring, collecting and managing data,
14 providing technical assistance and support for
15 PPE programs, incident-specific response and
16 recovery worker training, medical
17 surveillance, providing exposure and risk
18 management information, and providing
19 technical assistance in the form of assistance
20 relative to industrial hygiene, occupational
21 safety and health, engineering and
22 occupational medicine.

23 So, the scope kind of lays out what
24 are the specific types of activities,

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1 resources, that will be provided by this
2 annex.

3 The annex clearly lays out, for
4 example, under the Organization on Page 2,
5 that the annex operates under the direction
6 and leadership of the Assistant Secretary for
7 Occupational Safety and Health. So, DOL-OSHA
8 is the coordinating agency for this and the
9 Assistant Secretary basically leads the
10 direction of this annex.

11 At the local field level, the OSHA
12 Regional Administrator is the regional leader
13 for the annex.

14 One of the questions that came up,
15 for example, is what is the breakdown between
16 what the worker safety and health annex would
17 be responsible for and what FEMA would be
18 responsible for, and on Page 3, you'll find
19 that that is covered, and on the top of Page
20 3, it talks about within the joint field
21 office, FEMA is responsible for the safety and
22 health of its own employees as well as the
23 safety and health of staff in FEMA-managed
24 facilities.

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1 This annex is responsible for the
2 safety and health of all other workers, if
3 it's implemented, and so the coordinator, the
4 representative of the coordinating agency of
5 this annex, would report directly to the FCO,
6 the federal coordinating official, and would
7 report on safety and health issues relative to
8 response and recovery workers beyond the FEMA
9 jurisdiction.

10 In the initial actions at the
11 bottom of Page 3, this is new to annexes, it
12 will talk about, for example, that within two
13 hours of notification, the OSHA Assistant
14 Secretary will ensure that all DOL-OSHA
15 parties are fully informed, that it will alert
16 cooperating agencies, and that we will send
17 representatives over to the National Response
18 Coordinating Center, which is housed over at
19 FEMA Headquarters.

20 At the local level, the regional
21 administrator will assume control for
22 operations of this annex in the field and will
23 staff the regional response coordination
24 center.

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1 So, we didn't have this in the
2 past. We now have seats at the two major
3 coordinating centers, both at the national and
4 at the regional level, to address worker
5 safety and health issues during a response and
6 that is new. That didn't exist before.

7 In incident-related actions, within
8 two hours of being notified as the
9 coordinating agency, we will convene, probably
10 through a conference call, a meeting of the
11 appropriate agency representatives of our
12 cooperating agencies, and on the front page of
13 the document, it lists the cooperating
14 agencies.

15 These include the Department of
16 Defense, specifically the Coast Guard, the
17 Department of Energy, Department of Health and
18 Human Services, which includes NIOSH and
19 Federal Occupational Health. We will also
20 include the Department of Homeland Security
21 and that specifically is FEMA as well as the
22 other cooperating agencies, EPA.

23 So, we will look to all of our
24 cooperating agencies for assistance. I left

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1 one out. Department of Health and Human
2 Services, this is a key player for us, is the
3 National Institute for Environmental Health
4 Sciences. They are a key player for us,
5 particularly in the demands that come for
6 training of workers.

7 All right. Under the Incident-
8 Related Actions, rather than having a menu
9 like we did last time, we tried to group that
10 and you'll see that the incident-related
11 actions that we have include worker safety and
12 health needs assessment, which will include
13 monitoring as well as observation of safety
14 hazards, the development of health and safety
15 plans, safety and health assessment ongoing
16 monitoring, personal protective equipment,
17 depending upon the event.

18 We will assist in the monitoring
19 and/or providing information and technical
20 assistance for PPE programs, including the
21 selection, use and decon of PPE, and in
22 coordination with FEMA and ESF-7, we will work
23 with them on the logistics to make sure that
24 if PPE is needed, it's being purchased and

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1 it's being delivered to where it needs to be
2 delivered.

3 We'll also focus on data management
4 which, as you know, in an event can be its own
5 type of difficult situation to deal with to
6 get that type of injury and illness data from
7 federal agencies and from private sector
8 entities.

9 Training and communication is
10 always key and we will start work -- and we
11 usually rely on NIEHS. They have the master
12 trainers and we use them to put basically
13 just-in-time training together for those
14 response and recovery workers.

15 We will work with ESF-8, which is
16 HHS is the lead agency for that, on worker
17 health and medical surveillance and we have
18 our staff of occupational physicians who have
19 worked with HHS in the past in doing those
20 types of situations, doing that type of work.

21 And then in the area of
22 psychological resiliency, we will continue to
23 work with HHS, Federal Occupational Health, in
24 the Substance Abuse Mental Health Services

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1 Administration, to address psychological
2 resiliency during emergency response.

3 So, as the last few pages of this
4 document then list the responsibilities of the
5 coordinating agency, that being DOL-OSHA, as
6 well as the cooperating agencies and for each
7 cooperating agency, it gives a summary of what
8 the functions of that organization would be
9 during emergency response.

10 The other change that comes about
11 in this is that established at the joint field
12 office is an Interagency Safety and Health
13 Committee that's made up of representatives of
14 the federal agencies that are representing the
15 emergency support functions in the joint field
16 office and we would chair that Interagency
17 Safety and Health Committee.

18 What we found in Katrina, for
19 example, that committee met daily in the early
20 days. It continued to meet during that 12-
21 month response recovery period, although it
22 ended up at the end meeting once a week, but
23 we would basically be involved and that's
24 where you really get to share the information

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1 of what hazards are being seen, getting
2 information out there as far as changing
3 requirements for PPE or changing requirements
4 for controls. So that Interagency Safety and
5 Health Committee is an important communication
6 tool during response activities.

7 So that is a summary of the new
8 National Response Framework. I really do urge
9 you to take a look at the website and you can
10 download the information and have your own
11 personal copy.

12 This has not been published in the
13 Federal Register yet. Once it's published in
14 the Federal Register, it will become effective
15 60 days after publication in the Federal
16 Register.

17 MR. SMITH: Thank you very much,
18 Ruth.

19 Are there any questions or comments
20 for Ruth while our next presenter's coming
21 forward and getting ready? Yes, sir?

22 MR. ZARLETTI: Yes, Ruth. This is
23 Dan Zarletti from Kennett Construction.

24 You mentioned training that's

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1 coming up in March and April. Is that on the
2 website, information about where and when?

3 MS. McCULLY: I don't know. I
4 mean, this is just information that I just
5 received yesterday. So, as we get information
6 on training, I'd be happy to send that over to
7 Steve Witt and he can send it out to you all.

8 MR. ZARLETTI: Thank you.

9 MR. SMITH: Thomas?

10 MR. KAVICKY: Thanks, Mr. Chairman.

11

12 Ruth, Tom Kavicky, Carpenters Union
13 out of Chicago.

14 As we all know, Ruth, OSHA was
15 heavily criticized during the World Trade
16 Center and Katrina for not enforcing
17 standards.

18 Does the annex account for that?
19 How is OSHA going to enforce those standards
20 or are they in the future responses?

21 MS. McCULLY: That's really covered
22 under a directive that we have for the agency,
23 and the directive is -- basically, it's our
24 National Emergency Management Plan, and during

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1 -- although it does away with -- although the
2 National Response Framework does away with the
3 term "incident of national significance," if
4 there's a large-scale incident and, for
5 example, the annex is implemented, initially
6 that response will be a technical assistance
7 response rather than an enforcement response.

8 And the decision to go -- to return
9 to enforcement will be made in consultation
10 between the regional administrator and the
11 Assistant Secretary, and we have looked at the
12 different types of approaches that we can take
13 to work out those issues as far as enforcement
14 versus technical assistance.

15 But in the early days, when we're
16 in a response and we're talking about a large-
17 scale disaster response and recovery, we would
18 be operating in a technical assistance mode.

19 Now, as things change during that
20 event, as things start to return to normal, if
21 there are situations where you have basically
22 a resistance to putting in the corrections
23 that we are asking to be put in, then the
24 agency can look at the use of the enforcement

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1 tool in those particular situations.

2 So, it's not a black and white
3 answer at this point. It's really on a case
4 by case basis.

5 MR. BEAUREGARD: Just real briefly.

6 Can you go over the interaction with
7 specifically state plan, OSHA states, when you
8 implement or when the annex is implemented?

9 Particularly, this kind of follows
10 on the question that was just asked, is that
11 in state plans, if enforcement is necessary,
12 the state plan states actually have
13 jurisdiction over local and state emergency
14 responders, fire departments, paramedics.

15 In OSHA-regulated states, there's
16 no enforcement ability over those. So, how do
17 you plan on interacting with the states and
18 coordinating within state plan states?

19 MS. McCULLY: Well, the regional
20 administrators have been given direction by
21 the Assistant Secretary and past assistant
22 secretaries to coordinate with the state plan
23 states and what we have found in both real
24 world, whether it be the Minnesota bridge

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1 collapse or in exercises, for example, we just
2 completed a top-up exercise in Oregon, is that
3 we've been able to basically put forth to the
4 world one OSHA and, you know, when we go into
5 those situations, the state plan does have
6 jurisdiction in those areas and we're there
7 and we pretty much provide assistance to that
8 state plan who often doesn't have the same
9 depth and volume of resources that we have.

10 What we have experienced is we
11 haven't found that to be a problem and that in
12 both exercises and in the real world, when
13 you're working within this command structure,
14 certainly at the local level, the fire tends
15 to be the incident commander. So, you're
16 working with them and they're paying attention
17 to what you're requiring and I think you'll
18 hear with the Minnesota bridge collapse, for
19 example, they used a very innovative technique
20 on daily checking on what the requirements
21 were, and I think you'll hear a story as to
22 how that worked very effectively.

23 But it is all working together. I
24 mean that's the thing with an emergency, is

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1 making sure that we're all working together.

2 MR. SMITH: Okay. Thank you very
3 much, Ruth, for your time. Appreciate that.

4 We're ready for our next presenter.

5 It will be our last presentation before
6 lunch.

7 OSHA's Structural Response Team,
8 Mohammad Ayub, I think. Mohammad, are you
9 ready?

10 MR. AYUB: Yes, I think we need to
11 turn on the computer.

12 MR. BUCHET: If there's anything
13 wrong, it's my fault.

14 OSHA's Structural Response Team

15 MR. AYUB: I think for the next one
16 half hour, I'm going to walk you through some
17 of the actual construction collapses that we
18 have gone out to help in the enforcement mode.

19 From 1 to 2 o'clock today in the
20 afternoon, you are going to hear about the
21 Minnesota bridge collapse. So, I'm not going
22 to deal with that collapse now and I'm not
23 going to steal the show. So, they will be
24 here at 1 o'clock and they are going to talk

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1 about that.

2 Before I proceed, I just wanted you
3 to know as to who are the members of the
4 National Structural Collapse Team. It's now
5 coming up, I believe. Okay.

6 This team right now comprises six
7 people and they have been drawn from National
8 Office and here you are. We are going to add
9 at least two more members soon in the team and
10 this team in theory, it is only in action when
11 the Assistant Secretary activates the National
12 Emergency Plan, but in the case of a normal
13 construction collapse, we can also draw some
14 assistance from the team.

15 I'm just now waiting for the slide
16 to show up there.

17 MR. THIBODEAUX: Keep going.

18 MR. AYUB: Okay. This team, while
19 the National Emergency Plan has not been
20 activated, it goes through training, one week
21 of training goes through in classroom
22 environment and one week of training goes out
23 in the field, and the third week of the
24 training is kind of a cross training between

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1 the full team that we have because in the case
2 of a collapse of a nuclear power plant, you
3 might imagine that there will be radiation,
4 there will be some chemical.

5 So, there is a need for the full
6 team to act together. That's why we have a
7 cross training between the full teams.

8 Next slide, please. Okay. These
9 are the members of our Structural Response
10 Team, and as I said earlier, we are going to
11 add two more members soon.

12 Number 1 and Number 2 are by
13 training, education and experience as chemical
14 engineers and from 3 to 6, they are
15 construction safety specialists and they have
16 varied training in the disasters in the
17 cranes, in all sorts of activities there.

18 Now, if you go to the Slide Number
19 3, this is what is one of the primary
20 functions that you'll see, is to provide
21 engineering assistance to the field in case of
22 the major collapses.

23 This slide should not be confused
24 with the earlier slide because this slide is

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1 active all the time 24/7. Any time there is a
2 collapse, in Jacksonville, Atlanta, New York,
3 the RA is going to call the director of the
4 DOC and they will come to some agreement that
5 yes, there is need for some engineering help
6 and we will provide that help.

7 In this slide, we are into the
8 enforcement mode. In Slide Number 2, we were
9 only in the technical assistance mode. So, in
10 this slide, we will provide them engineering
11 assistance. We will write a report to tell
12 what was the cause of the collapse and we will
13 also discuss whether or not there was
14 violations of the OSHA standards or violation
15 of the industry standards.

16 When we go out there, we have three
17 objectives in our mind. The first objective
18 is that the part of the structure that has
19 already collapsed, it remains stable, there
20 are no further collapses, and the part of the
21 structure that has not collapsed, it is
22 braced, it is shored, such that there are no
23 unplanned collapses.

24 Number 2. We have an objective to

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1 find out whether or not any of the OSHA
2 standards or any of the industry standards
3 have been violated, and the third objective is
4 to find the cause of the collapse.

5 Can we go to the next slide,
6 please? I'm going to walk you through some of
7 the recent collapses that we have gone out in
8 the field to help the RA here and area office.

9 One thing I would like to share
10 with you, that based upon our 65
11 investigations that we have conducted so far
12 of the immediate collapses, 15 to 20 percent
13 of them are caused by the structural design
14 flaw. It's not the fault of the contractor.
15 It was the manner in which it was designed.

16 For example, Tropicana Garage
17 collapse in Atlantic City. You will also know
18 about the Jacksonville, Florida, garage
19 collapse. Light Tower in Atlanta, a major
20 sign in Georgia, which you see if you are
21 driving I-95, there's a huge sign, that sign
22 collapsed and killed three employees.

23 There was a steel chimney in
24 Austin, Texas, and that failed. Just to give

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1 you a few examples, that about 15 to 20
2 percent of the collapses take place because
3 the structural engineer did not design the
4 structure properly as per the described codes.

5 The first major incident I'd like
6 to run by you is the Jacksonville, Florida,
7 garage collapse. It was a five-story poured-
8 in-place garage and on December 6th in the
9 morning at about 6 o'clock, they were pouring
10 the roof slab. That was the last to be poured
11 and -- can you activate that?

12 This is a five-story poured-in-
13 place garage. It is a one-bay post-tension
14 slab with slopes in the roof and also one-bay
15 post-tension beams and that green area is the
16 area that was being poured on December 6th.

17 As they had started pouring
18 concrete at about 12:30 a.m. in the morning
19 and they worked four hours, except the two
20 bays on the south, the entire garage
21 collapsed.

22 The contractor was from Atlanta,
23 Georgia, and we are finding -- we are not
24 there yet. We have not yet concluded our

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1 findings, but it seems that there are some
2 major structural design flaws and also the
3 fact that the amount of reshoring was not
4 enough. He had only shored one level and two
5 levels of reshoring, even though the shop
6 drawings said the shoring calls for the
7 reshores be placed up to the ground floor.

8 Now, the next slide is going to
9 show you the manner in which it was collapsed.

10 The last two bays that you see on the south
11 did not fail but all the other five bays
12 failed and as I said earlier, one of our prime
13 functions is to make sure that the area of the
14 building which has not collapsed, it remains
15 stable, and we determined at the site that
16 even though it had not collapsed, it is in
17 danger of collapse, and the basis of that was
18 that it is a one-bay post-tension slab and all
19 the cables have lost their inner strength. It
20 had become loose, therefore those slabs had no
21 strength in them, and we asked the contractor
22 that no one should be allowed to go underneath
23 those two bays that have not failed. The
24 contractor might have decided that he is going

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1 to demolish that, too.

2 So, one more thing I would like to
3 share with you, that by statute, we have only
4 six months time in which we have to conclude
5 everything. So, from the date of the
6 incident, we have -- I mean the DOC has about
7 four months in order to write a report, in
8 order to conclude the findings, in order to
9 write the basis and to find out as to what was
10 the cause of the collapse.

11 In four months, you will find that
12 some of the evidence are not out there yet.
13 For example, in this case here, until today,
14 the debris have not even been removed. So, we
15 don't know where the shores, where were the
16 reshores. We have no benefit of any test data
17 on the strength of the concrete.

18 So, we work under a big constraint
19 here, but our citations are not based upon the
20 cause of the collapse. Our citations are
21 based upon whether or not any standards have
22 been violated, but some of the information
23 comes out way later, like eight months or one
24 year after the collapse.

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1 The next incident which was a major
2 incident of the Tropicana Garage Collapse that
3 killed four garage employees and until last
4 night that was the largest construction
5 settlement, \$101 million, but last night in
6 Boston, due to the Big Dig at the airport, the
7 settlement, I heard, was about \$450 million.
8 So now it is no longer the largest
9 construction settlement here.

10 This is a very interesting case
11 here and as I said earlier, part of the reason
12 that the garage collapsed was the structural
13 design flaw.

14 It was a very unique system that
15 they had here. I don't know how many of you
16 have heard the word "filigree." There was a
17 filigree panel here. It is a two-inch thick
18 precast concrete slab that acts as a form work
19 for the poured-in-place concrete and it also
20 becomes a part of the permanent slab.

21 That is the system that was used
22 here. It's not very popular in all parts of
23 the country, but at least in New Jersey, New
24 York, Pennsylvania, it is fairly popular here.

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1 So, this is a garage here. It was
2 an eight-story garage and on October 30th,
3 while the seventh floor was being poured here,
4 we can see the filigree slab and the filigree
5 beam and the shores here and while the sixth -
6 - I'm not sure whether it was the sixth floor
7 or the seventh floor.

8 It was being poured and the
9 exterior bay, which was about 60 feet wide, it
10 collapsed from the seventh floor up to the
11 fourth floor here.

12 Here you see the duration of the
13 deflection of the slabs and those are the
14 shores and those are the reshores and there
15 was a big contention of the contractor that he
16 was not required to extend the reshoring up to
17 the first floor.

18 We'll see in this kind of animation
19 that the reshoring and the shoring was only
20 for three levels and the problem was
21 essentially in the beam column joint in the
22 exterior. The beam was much wider and the
23 column was very narrow.

24 For example, the column was only 12

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1 inches wide and on that narrow column, a 48-
2 inch beam was going to rest on. Loading that
3 column in a very eccentric manner here.
4 Outside is the collapsed here area.

5 Can you go to the end? Okay.
6 You'll see here that was the floor at the top.

7 That was in whole and ACI, which is the
8 Concrete Institute that says that you have to
9 take a 50 pound per square foot as the load of
10 the construction load that will account for
11 the people that are standing on that floor and
12 some of the equipment, and as you can see,
13 there was only one level of shore and two
14 level of reshore and why that was being
15 poured, the slabs, exterior beams, and the
16 columns failed.

17 One of our primary functions was to
18 ensure that those bays which have not failed
19 remain stable. So, we worked with the
20 contractor and we came up with a plan as to
21 shore them and guide those columns and brace
22 those columns so that there's no other
23 failures.

24 There was also a shear wall here

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1 that was freely standing about 80 feet without
2 any support of floors. Even though it did
3 appear to be in danger, but when we ran the
4 computations, we found that it is in no
5 danger. It can take a wind speed of up to 110
6 miles an hour.

7 So, when we go out there, we have
8 to keep in mind that those parts of the
9 structures which have not failed, there's no
10 unplanned collapse of those structures.

11 One of the recent incidents that we
12 had was in U.S. 90 in Mississippi. The old
13 bridge was destroyed by the Katrina storm and
14 they were building a new bridge about 20-40
15 feet east of the old bridge, and one of the
16 big bridge piers, it is 12 feet wide, six feet
17 long, 39 feet high, it was being pulled.

18 Can you go to the next slide? And
19 while it was being pulled, the form work that
20 you see in the bay, it's now 12 X 6 and the
21 thing that you are seeing are the rebar which
22 went into the foundation and as they were
23 coming up pouring the concrete into the form
24 work, they had almost gone up to the required

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1 height and the entire form work collapsed and
2 it killed two of the employees.

3 When we did the investigation, we
4 found that the reason was two reasons. One,
5 that the rate of pouring was too high. They
6 were pouring nine feet per hour. You can
7 imagine at what speed it was being poured
8 because the area of the bridge pier is 12 feet
9 by six feet.

10 We also found that the concrete had
11 superelasticizer and it also had a retarder.
12 When you have a retarder in the concrete, the
13 setting time is quite increased. Instead of
14 having an initial setting time in about one
15 half hour, it is going to set in three hours,
16 in four hours.

17 So, all this much concrete coming
18 up into the form work, it applied a lot of
19 direct pressure on the form work and the form
20 work was not designed for the pressure of the
21 fluid concrete.

22 Next slide. This is Peachtree in
23 Atlanta, Georgia. It was an elevator shaft
24 being poured and the form work being built and

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1 the reason was that they had made the elevator
2 door opening taller. When they made the
3 elevator door opening taller, the beam which
4 was embedded in the concrete did not have
5 enough meat below the insert and because it
6 didn't have enough concrete below the insert,
7 the entire concrete dropped off and it failed
8 and it killed a couple of people.

9 In Virgin Islands, -- oh, by the
10 way, we also exchange engineering assistance
11 to State OSHA plan, if they need it. They
12 need to ask us and if we believe that, yes,
13 there is a need to exchange the engineering
14 assistance to them, we will do that. We have
15 helped in Virginia, Portland, Oregon,
16 Minnesota, and some other places here.

17 This was a very huge manmade
18 landslide. They were trying to build a
19 parking lot and they compacted the slope too
20 steep and when we conducted a stability
21 analysis, we found that the angle of repose
22 was too great.

23 Can you show that? This is the
24 area of the manmade landslide. Any time when

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1 you are told about the landslide, we are
2 always reminded of the nature of landslides.
3 It's usually caused by nature, but this was a
4 manmade landslide.

5 Next one, please. Oh, this is a
6 major area of concern for us. Can you show?
7 These are the roof trusses and we are finding
8 more and more that the roof trusses are
9 collapsing when you build a church, when you
10 build an auditorium or when you build a large
11 span structure.

12 This is a restaurant which was
13 being built. I think it was a restaurant or
14 perhaps an office building. Any time you have
15 a span of the roof trusses greater than 90
16 feet, there is a problem.

17 According to the Truss Plate
18 Institute, you have to have a professional
19 engineer design for you a bracing plan as to
20 how these trusses will be braced. They need
21 to be braced at the top core, the bottom core,
22 and the diagonal.

23 But most truss erectors of these
24 projects are very small-size erectors. They

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1 are like, I mean, son and father or like three
2 people and four people and they just are
3 confident that if they can do an erection of
4 a 12-foot truss, why can't they do the
5 erection of a 90-foot long truss?

6 These we are finding almost
7 everywhere in Atlanta, in New Jersey, in
8 Philadelphia, in New York. So, what we are
9 going to do right now is that we are right now
10 working with the Truss Plate Institute and
11 some of the leading designers of the trusses,
12 like Mitek, and we are going to hold a seminar
13 at certain places. It's not yet final, but we
14 are still working on it.

15 But the main problem is how to
16 bring these contractors in the hall because
17 they are so small in size that there's not a
18 good record of them. So, we are working with
19 the Carpenter's Union and we will also work
20 with some other unions in the Eastern United
21 States so that OSHA, along with the Truss
22 Plate Institute and also along with the major
23 designers of the trusses, we can at least hold
24 some seminars so that we can focus on the need

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1 that if you have the long wooden trusses,
2 there should be a flag. You need to brace
3 them properly.

4 In this case, not only were the
5 trusses not braced properly, they also placed
6 on the top of the truss 2 X 4 and 2 X 6 and 2
7 X 8 bundles on them and that load was such
8 that it failed the trusses.

9 These trusses are very light
10 trusses and they will only gain the strength
11 if you have the plywood on the top because
12 those members are the compression members and
13 they will only gain the strength if you have
14 the plywood at the top. If there's no
15 sheathing at the top, it has very little
16 strength.

17 It is in our backyard here. It was
18 an office building and one day, we held a big
19 promotion and a big roof collapse took place
20 there. The whole roof of a 22-story building
21 and the entire floor shoring collapsed on the
22 floor and when we did the analysis, we found
23 that the shores were not done properly and
24 also there was space shoring that was placed

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1 on this floor that was not meant to be placed
2 on the floor.

3 This was for the floors below and
4 there has never been any design for the
5 shoring for that ever. Why? Because there
6 was an upset beam there. I mean, it was like
7 a 12-foot wide 18-inch deep upset beam and for
8 that heavy load, the contractor never ever
9 asked the shoring supplier to come up with a
10 shoring plan, and even though there was an
11 inspector there hired by the owner, there was
12 an inspector by the county and when we talked
13 to them, they said that this floor had the
14 same shoring plan that was meant for the
15 floors below can also be used here at the
16 roof, even though on the plan, it says that
17 this drawing is meant only for floors and not
18 for roof.

19 So, the inspector was there and in
20 spite of the fact that at times, you have the
21 inspector hired by the owner, you have
22 inspector by some other people and still the
23 problems come up here.

24 Okay. So, because of the time

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1 frame, I had only presented to you a few of
2 the major incidents that we had gone out in
3 the field to help.

4 This is primarily a DOC activity
5 and as I said earlier, one of the primary
6 functions of the DOC is to provide engineering
7 assistance to the field, to go out to the
8 field and help the area office.

9 If you have any questions to ask on
10 any of the incidents or if you have a general
11 question, I will be glad to answer them.

12 MR. SMITH: Okay.

13 MR. GILLEN: Thanks. That was a
14 terrific presentation. Enjoyed it.

15 I just wanted to say that from
16 NIOSH's perspective, we would be interested in
17 hearing from your investigations if you
18 uncover what you think is a good research
19 topic, an engineering-related research topic.

20 We'd be interested in hearing that.

21 I was wondering, also, it might be
22 something for the DOC to think about, is in
23 cases where you find that perhaps a new type
24 of construction method perhaps isn't really

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1 adequately addressed by current regulation, is
2 there something where there might be a need
3 for thinking about how to address these types
4 of problems in the future, it would be useful
5 to hear more about that or get your
6 recommendations in those regards as well.

7 MR. AYUB: Okay. Most of our
8 investigation reports are on the OSHA
9 Intranet, not on Internet. They are on the
10 OSHA Intranet. So, you have access to that.
11 NIOSH? No?

12 MR. GILLEN: No.

13 MR. AYUB: Okay. We will be glad
14 to provide you with copies of our reports
15 here, but based upon my experience here, 99
16 percent of the collapses take place not
17 because of very big mistakes done by the
18 contractor but from very simple blunders,
19 simple blunders, and when there's a need to
20 get engineering assistance, the contractors
21 shy out.

22 They are quite shy to call the
23 structural engineer in the field and get help
24 from them. If they will do that, I think most

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1 of the incidents will not take place.

2 There are some shortcuts that have
3 been used and thank God that there is so much
4 factor of safety in the design of the bridges
5 and the buildings that they don't fail, but if
6 you do a very simple blunder, very, if I may,
7 stupid mistake, it's going to fail the
8 building or the bridge or the tower or the
9 tunnels.

10 They need to concentrate and they
11 need to realize that if there's a need for
12 engineering assistance, ask for it, get it.
13 You are not qualified enough to solve the
14 engineering problem. Get help from the right
15 source.

16 MR. SMITH: Okay. Thank you. Yes,
17 Tom?

18 MR. KAVICKY: Just a quick comment,
19 Mr. Chairman.

20 Couldn't OSHA develop specifically
21 for the truss collapses, we've had the same
22 issues out in Chicago, a safety and health
23 information bulletin regarding that?

24 MR. AYUB: There is one. It is not

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1 by us, but it's by the Truss Plate Institute
2 and that is a very good document. It shows in
3 color, it shows in three dimensions where
4 should the bracings be. It shows at the top,
5 at the diagonal, at the bottom. It gives you
6 in three colors all the bracing that needs to
7 be there.

8 But if the span of the bridge is
9 more than 90 feet, then the TPI will not take
10 the responsibility. They say that
11 professional engineer must be contacted and he
12 or she be asked to, you know, design the
13 bracings.

14 It is just a matter of
15 communicating with the small contractors.
16 That's my problem all the time. When I go out
17 in the field, I find that he has never done a
18 large truss and he doesn't even understand
19 that it needs to be braced.

20 So, I think it is more a matter of
21 education, but we have the slides. They have
22 the color brochures. They have a large-scale
23 depiction of how the trusses need to be
24 braced.

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1 MR. SMITH: Okay. A couple of
2 housekeeping duties and we'll adjourn for
3 lunch.

4 First, anyone from the public that
5 would like to sign up to speak this afternoon,
6 the list is in the back of the room. This is
7 the last time that we will ask right as we
8 come back from lunch, but please sign that
9 during lunch.

10 And second, anyone that's arrived
11 late that would like to attend Stewart
12 Burkhammer's retirement party tonight, please
13 see someone at OSHA and they'll get you signed
14 up.

15 Mohammad, if you would -- Mohammad,
16 could you provide us a copy of your PowerPoint
17 presentation for the record, please?

18 MR. AYUB: Yes, I can.

19 MR. SMITH: Okay. Thank you. We'd
20 like to have that today, if possible. Okay.
21 Thank you very much.

22 With that, please be back at 1
23 o'clock for the presentation on the Minnesota
24 Bridge Collapse.

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1 (Whereupon, the meeting was in
2 lunch recess from 11:41 a.m. until 1:04 p.m.)

3 MR. SMITH: Okay. Appreciate your
4 promptness and we'll get started.

5 Last time I'm going to mention this
6 but the sign-up sheet for the Public Comment's
7 in the back of the room. That will be later
8 on this afternoon and if you're going to sign
9 up, now's the time to do it. It's the last
10 opportunity. We'll take it off the table
11 after we start back. So, please, if you're
12 going to wait to sign up, now's your chance.

13 Okay. And any latecomers,
14 hopefully you know about the retirement party
15 for Mr. Burkhammer tonight. Please see any
16 OSHA reps in the room if you'd like to attend.

17 That will be right after work today. So, we
18 can't run late today because we've got a big
19 retirement party to go to.

20 So, appreciate your promptness. I
21 know everybody's excited about hearing our
22 next presentation regarding the Minnesota
23 Bridge Collapse and OSHA's Role in that, and
24 I'm going to turn it over to Jeff Isakson --

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1 how do you pronounce that?

2 MR. ISAKSON: Isakson.

3 MR. SMITH: Isakson. I'm sorry.
4 My Southern accent catches me again.

5 Appreciate you coming. He flew in
6 this morning just for this and we appreciate
7 it and he's got someone he'll be introducing
8 that's going to help him with the
9 presentation.

10 MN I-35 Bridge Collapse and OSHA's Role

11 MR. ISAKSON: Thanks, Linwood.

12 Again, my name is Jeff Isakson.
13 I'm the Director for Minnesota OSHA, and I'm
14 going to be doing this presentation along with
15 Mark Hysell, who's the Area Director and
16 covers our area for Region 5.

17 Both of us worked very, very
18 closely on the whole removal/recovery process
19 of the 35W bridge collapse in Minneapolis, and
20 when I left Minneapolis this morning, it was
21 24 degrees below zero. So, thank you for the
22 heat wave. I appreciate it. I forgot my suit
23 jacket, but when I was on the plane walking
24 back toward the facilities, I was stopped

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1 twice, people asked me if I could give them a
2 refill on the beverages. So, I told them I
3 was the pilot.

4 Anyway, to start things off, Mark's
5 going to start us off, we have a short video
6 that we're going to share with you on
7 different events or different videos that were
8 taken during the bridge collapse and then
9 we'll move forward from there.

10 So, Mark?

11 MR. HYSELL: Thank you. Thank you,
12 Jeff.

13 Again, my name's Mark Hysell. I'm
14 the Area Director in Eau Claire, Wisconsin,
15 and part of my job is to assist Jeff with
16 monitoring the State of Minnesota OSHA Program
17 for the Federal Government.

18 What we'd like to cover today is
19 again, as Jeff explained, the video that we're
20 going to show you and we wanted to show you
21 this video so that you could actually see the
22 magnitude of the event and some of the hazards
23 that were associated with it that we had to
24 deal with.

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1 You know, the media and the
2 television coverage really didn't do it
3 justice. So, I think that you'll really be
4 surprised at this video.

5 In addition to that, we want to
6 cover our initial response, just a summary of
7 our thoughts and how we came together
8 cooperatively to try to incorporate safety and
9 health into the removal, recovery and removal
10 process, and then, in addition to that, we
11 transitioned from what we called controlled
12 chaos to getting control of the site through
13 safety and health and ultimately the State of
14 Minnesota and Minnesota OSHA entered into a
15 cooperative agreement with the removal
16 contractor and now the rebuild contractor.
17 So, there's actually partnerships that have
18 been developed as a result of this entire
19 process.

20 And then we're going to cover a
21 little bit of a lessons learned and hopefully
22 we'll have time for a few questions. So, with
23 that, I did want to give you a little bit of a
24 summary of the event.

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1 If you weren't aware of it, it
2 happened on August 1st, about 6 p.m.,
3 Interstate 35W, the bridge crossing the river.

4 It's in downtown Minneapolis. Actually,
5 it's real close to the Metrodome. If you're
6 not aware of exactly where it is, a quarter of
7 a mile from the ramp going to the actual
8 Metrodome and the State of Minnesota or
9 Minnesota -- University of Minnesota is right
10 on the other side of the river. So, it's a
11 very congested area.

12 AUDIENCE MEMBER: Could you sit
13 down, please, so we can see the screen?

14 MR. HYSELL: Oh, that's fine.
15 Thank you for that.

16 So again, it's a very congested
17 area and actually it's the most traveled
18 bridge in the entire state of Minnesota. It
19 was rush hour. There was a Minnesota Twins
20 game getting ready to kick off at 7 p.m.

21 Just so you're aware, there were 13
22 fatalities associated with this collapse
23 ultimately and one fatality had OSHA
24 jurisdiction, where the State of Minnesota had

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1 jurisdiction for the investigation of that
2 fatality. 98 total injured.

3 The emergency response, the fire
4 department had 40 pieces of equipment, as you
5 can see. 40 to 50 mutual aid fire departments
6 also responded initially. The police
7 department had 850 officers onsite for the
8 initial rescue and initial recovery. 64 law
9 enforcement agencies and then we had 40 units
10 respond, EMS response and the hospitals in the
11 area. Everybody really went into action right
12 after the collapse.

13 So, with that, Jeff's going to walk
14 you through the video presentation.

15 MR. ISAKSON: What you're going to
16 see is you're going to see a couple of
17 surveillance camera shots that were taken from
18 Mn/DOT. One was down in the river area and
19 the other one was up above the approach to the
20 bridge itself.

21 You're also going to see some cell
22 phone video that was taken by a bystander and
23 then some home video taken by another person,
24 and then there's a piece that was put out by

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1 the American Red Cross that kind of gives you
2 a perspective of what really occurred.

3 This is from the surveillance
4 camera from down below in the dam area. Some
5 of you probably have seen this on TV. This
6 next piece was from up above. The camera
7 basically followed what was going on at the
8 time of the bridge collapse.

9 This is right after it occurred.
10 As you can see that there's cars that just
11 stopped and turned around and people trying to
12 get out of the area.

13 This was taken by an individual
14 cell phone up on the 10th Street Bridge, which
15 was right next door to the 35W Bridge, and
16 this was shortly after. You can see the bus
17 up on the upper right-hand side. All the kids
18 that were -- that was a full school bus. All
19 the kids were taken out and nobody was injured
20 there.

21 The fire's from a truck. The
22 bridge actually came down over top of the cab
23 of a bread truck and that person was -- he was
24 killed.

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1 This is some home video that was
2 taken by a bystander that was down in the --
3 this is the road that actually takes them to
4 the bottom portion of the bridge and this is
5 the initial response by the different
6 emergency response vehicles.

7 This piece here was what was put
8 together by the American Red Cross. It kind
9 of puts into perspective what the bridge
10 looked like and after the collapse what quite
11 a number of people really had to go through as
12 far as the recovery and removal process of
13 that bridge.

14 When they removed the bridge, and
15 you'll see some of the structure there, a lot
16 of the metal portion of the bridge was better
17 than an inch thick and they brought in a crane
18 with some shears and to cut the bridge up, but
19 I would say about 85 percent of the bridge was
20 actually cut apart in pieces by the cutting
21 torches just simply because they wanted to
22 reassemble it. NTSB wanted to reassemble it
23 so they could kind of reconstruct it to help
24 determine what actually caused the bridge

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1 collapse.

2 You see a lot of the people --
3 that's the 10th Street Bridge there where the
4 previous cell phone video was taken.

5 The number of people that were on
6 there those initial days, it was kind of like
7 going to a state fair. I mean, it was just a
8 sea of people walking around and the
9 Minneapolis Police Department did a very good
10 job with securing that site. As quickly as
11 they could, they put a barrier fence up to
12 keep people out of that area. It was shortly
13 after that they did close that 10th Street
14 Bridge as they were doing the recovery of the
15 deceased. So, it was really restricted as far
16 as what people could see.

17 Mark?

18 MR. HYSELL: So, as you can see,
19 there was quite a mess and that evening,
20 shortly after the collapse, communication
21 between the State of Minnesota, Minnesota
22 OSHA, and Federal OSHA started.

23 I was in contact with my boss, Mike
24 Connors, the regional administrator out of

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1 Region 5, and Jeff was in contact with his
2 managers, and I was in contact with Jeff and
3 we started our initial brainstorming on how we
4 would respond in a cooperative assistance mode
5 and ultimately the next morning, we had a
6 meeting via conference call, Department of
7 Labor and Industry, Commissioner of Department
8 of Labor and Industry, Jeff and myself, and we
9 discussed our initial response and how we were
10 going to try to get into the site.

11 So, what Jeff did is he contacted
12 the Minneapolis Police Department and
13 attempted to gain access to the site and
14 actually went and toured the site that morning
15 and he was escorted by the fire chief.

16 In the meantime, my boss was
17 telling me to saddle up and head that
18 direction, also. Federal OSHA, of course,
19 wanted to assist Minnesota OSHA with anything
20 that we could bring to the table, but, in
21 addition to that, we had jurisdiction over the
22 navigable waterways of the Mississippi River
23 and all the work activity that would occur in
24 the river itself.

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1 And so I headed that direction,
2 myself and my assistant area director, and we
3 arrived that afternoon and Jeff briefed me on
4 just the overall condition of the site. We
5 went over our PPE requirements again and so on
6 and then we traveled to the site together that
7 afternoon.

8 And when we got there, for lack of
9 a better term, and I kind of opened with this,
10 but it really was controlled chaos. There
11 were a lot of folks there doing a lot of
12 different things and we really didn't find at
13 the time -- and keep in mind, this is only,
14 you know, 20 hours, 18 hours after this has
15 occurred, and we really didn't find a real
16 incident command structure like you would
17 normally find or at least what you're trained
18 to find when you go through the incident
19 command trainings.

20 At that time, it's just, I guess,
21 ironic, one of the first folks that we did
22 come in contact with was Mn/DOT Safety and
23 ultimately they became -- they were the agency
24 that was in control of the bridge and they

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1 were actually made the incident commander a
2 couple of days later.

3 We conducted our first site survey
4 of the bridge, and as Jeff explained,
5 basically there were -- outside of the
6 controlled areas and the controlled areas got
7 more significant and more significant and the
8 Minneapolis Police Department again did a
9 great job, but outside of that, just getting
10 from one side of the river to the other, it
11 was like a carnival.

12 There were so many boats down
13 there, that you'd sit at a stoplight and it
14 would take three changes of a light to even
15 get to the light and so we were dealing with
16 that.

17 We surveyed the entire site and
18 then at the same time, Minnesota OSHA was
19 starting to gear up back at the Department of
20 Labor and Industry with training folks to
21 respond in cooperative assistance mode and
22 they identified compliance assistance
23 specialists and folks that actually responded
24 to Katrina and 9/11. So, we used that pool of

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1 staff members originally.

2 About that same time, Mr. Connors
3 was activating Federal OSHA for just some
4 expertise to give me some assistance.
5 Mohammad was the presenter right before lunch.
6 He traveled to the site and immediately he
7 was on a plane.

8 We also had a civil engineer from
9 the regional office, a diving expert from
10 Cleveland, and a crane expert from Aurora, and
11 I had my office set up a logistics for those
12 folks and originally we were out in St. Paul
13 at a hotel out there.

14 That evening, about 10:30 p.m.,
15 Jeff and I returned to the Department of Labor
16 and Industry and that was when the rubber
17 really met the road.

18 We had one goal and that was to
19 develop a plan for OSHA's unified response.
20 Here it is going on midnight and we knew that
21 we were going to have to brief our bosses at 8
22 o'clock in the morning on what we thought of
23 the site, our overall assessment, and what we
24 could do to assist the responders and ultimate

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1 removal throughout the entire process and so I
2 want to go over a little bit of thought
3 process that we went through that night as we
4 went ahead.

5 The first thing that we did is we
6 started with the site itself, okay, and as any
7 true blue safety and health professional, the
8 first thing we want to start with is what are
9 the hazards?

10 Okay. We had a white board. We
11 put up there all the different hazards that we
12 saw going on, different activities, and also
13 we were looking ahead at what type of
14 engineering practices and work practices that
15 were going to be incorporated at the site, all
16 the way through to the end, and so we wanted
17 to try to address that, personal protective
18 equipment requirements, how we were going to
19 offer our assistance, overall training needs
20 for the site, and Jeff's going to get into
21 exactly what we established for that.

22 We also at the time had identified
23 some key players that we knew were at the site
24 working and so we listed them and then we

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1 knew, in addition to that, we would also need
2 to identify when all the daily meetings were
3 going to occur and how we were going to plug
4 into those meetings.

5 We wanted to ultimately focus our
6 activities in site hazards and developing a
7 JHA system for any work activities that
8 occurred.

9 Now, when we first arrived, when we
10 first traveled to the site, there was really
11 no control of the hazards and there was no
12 identified red zone where it's extremely
13 dangerous to be and where it's not, and
14 Mohammad helped me out a lot with that when he
15 arrived, and MnOSHA and Federal OSHA actually
16 established the red zone or the hot zone for
17 the site.

18 We discussed safety and health
19 plans for the site. In addition to that, we
20 wanted to look at what health hazards there
21 were going to be and what we envisioned for
22 the future and lead, hex chrome and silica
23 were what we started to focus our attentions
24 on.

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1 Now, for OSHA, now we knew that we
2 were going to have our folks on the site and
3 we wanted, first and foremost, to make sure
4 that we were protected. I mean at this time,
5 we didn't have a hot zone. We didn't have
6 control of anything. So, we had to come up
7 with a plan of how we were going to get there,
8 what we were going to do when we get there and
9 how we were going to make sure none of our
10 folks got hurt in doing what we were doing.

11 This is what we came up with.
12 Four-person teams, two Minnesota OSHA and two
13 Federal OSHA, seven days, three shifts, and a
14 buddy system where we would pair up a
15 Minnesota OSHA staff member and a Federal OSHA
16 staff member and they would always stay
17 together. We thought that that was paramount.

18 Each team was comprised of an
19 industrial hygienist, safety specialist, and
20 at least a diving expert during diving
21 operations. We always had a crane expert in
22 the mix of the four and so on.

23 In addition to that, we knew that
24 we had to train our personnel as they arrived

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1 in Minneapolis, the Federal OSHA personnel
2 and, in addition to that, the Minnesota OSHA
3 personnel that were going to be involved in
4 this project.

5 So, we started the initial
6 brainstorming of exactly what that would
7 entail. Personal protective equipment, of
8 course, communication of span and control,
9 that was very important, and ensuring our
10 folks were safe.

11 The projected logistics
12 requirements, you know. We needed to get
13 people from the airport to the site. We
14 needed to get a hotel close to the site. We
15 needed to get people from the hotel to the
16 site. We had shift rotations and so on.

17 Also, the estimated commitment in
18 time. I needed to tell my boss how long I
19 thought it was going to take to get this
20 bridge out of the water and from my initial
21 survey, I wanted to do that when I briefed
22 Mike in the morning, and it's kind of funny.
23 I don't know, just dumb luck, I guess, I said
24 nine weeks, and it took eight, a little over

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1 eight. So, we were pretty pleased with that.

2 That next morning, Mohammad and the
3 other three experts arrived in St. Paul and I
4 met them at the hotel first thing in the
5 morning, I think it was 6:30-7 o'clock, and
6 then we traveled to the Department of Labor
7 and Industry, and I briefed Mike on the plan
8 over the phone and at the same time, Jeff was
9 briefing the commissioner, and ultimately the
10 plan was approved pretty much exactly how we
11 had planned it throughout the night. So that
12 worked out very well.

13 When we went back to the site after
14 that to start identifying the hot zone, you
15 know, incorporate Federal OSHA into every
16 aspect of this entire project and Minnesota
17 OSHA, OSHA in general, I'm sorry, into this
18 entire process, it really was chaotic.

19 There were a lot of turf wars that
20 were going on and, you know, in my wildest
21 dreams, I, you know, think about this a lot
22 since 9/11, but I never envisioned the turf
23 wars and I guess I was just naive because it
24 stands to reason that there is going to be

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1 some turf wars.

2 We had the NTSB onsite and they
3 were in charge of the collapse investigation
4 and they wanted to find out as quickly as
5 possible what had happened so that they could
6 prevent it from happening again somewhere else
7 and that's in direct conflict with body
8 removal and other types of operations that are
9 going on because the NTSB is saying you can't
10 touch that. Okay? Well, we've got to touch
11 that and so on.

12 In addition to that, there was a
13 criminal investigation going on. The FBI was
14 there and the ATF was there. They had dogs
15 going over the bridge. They had other types
16 of explosive-sensing equipment that they were
17 using.

18 Hennepin County Sheriff's
19 Department actually set up shop on the river
20 and took over control of the river and the
21 body recovery operations in the river and, as
22 we mentioned earlier, the City of Minneapolis
23 had overall security of the entire site, and
24 most of us are aware there's usually some sort

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1 of friction between city police and county
2 police and state police and jurisdictional
3 issues and that really did come to light a lot
4 during this event.

5 We also had, after President Bush
6 came to the site, he sent in the Navy Dive
7 Team. They landed in Minneapolis about
8 midnight that Saturday night and they were
9 there for one purpose and that was to assist
10 the Hennepin County Sheriff's Department with
11 finding those bodies and getting those bodies
12 out of there. So, there was a lot of friction
13 between them and the NTSB.

14 FEMA was onsite. At about that
15 same time, a contract was let for a contractor
16 for the bridge removal and that was Bolander
17 and Sons out of St. Paul, and they did an
18 outstanding job and they were wonderful,
19 ultimately wonderful to work with, and again
20 MnDOT was in charge of the overall site and so
21 we, as OSHA, worked intimately with MnDOT and
22 MnDOT Safety to make this chaos something that
23 could be controlled and ultimately try to meet
24 our goal that nobody else was injured or

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1 killed as a result of this catastrophe.

2 And this picture, I think, best
3 depicts the hazards that we were observing
4 initially when we got back to the site after
5 getting the approval for our plan.

6 So, we had to transition from this
7 to getting control of the site through Safety
8 and Health and Jeff's going to explain how we
9 did that.

10 MR. ISAKSON: As Mark had just
11 explained that MnDOT was actually in control
12 of the site, but the previous slide before
13 where it says MnDOT had control of the site,
14 there should be a whole bunch of question
15 marks after that because of all of the turf
16 wars that were going on at that time, they did
17 have safety professionals with 24/7 coverage,
18 but one of the things that I think that they
19 were really struggling with is their staff was
20 not really field staff.

21 So, they came to the site kind of
22 blind, really not quite sure what to do, and
23 all of our folks that were onsite were really
24 field people. They were field staff, and they

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1 knew really pretty much what needed to be
2 done.

3 The unfortunate thing was those
4 first few days that we were out there, we kind
5 of looked at ourselves, you know, we stood
6 back, looked at ourselves and we realized that
7 we were really being kind of glorified
8 babysitters because of all that was going on
9 and one of the biggest difficulties you
10 encounter when you have something like this
11 happen is initially you've got rescue
12 operations that are going on.

13 Then it goes into recovery
14 operations and getting people to transition
15 from rescue to recovery is extremely
16 difficult, to get the people to realizing
17 that, you know, there's no more people that
18 you're going to be rescuing, unfortunately the
19 people that you're going to take out of the
20 river now are no longer alive, you know, and
21 that's the unfortunate fact of what occurred.

22 But people still think that they
23 have the right or the ability to be crawling
24 all over that collapsed structure.

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1 So, with that, there's a lot of the
2 babysitting that was going on, pulling people
3 out of areas, sitting down, talking to them,
4 letting them know that they can't do this,
5 can't do that, and it was a few days later, we
6 had a meeting and in the meeting, it was
7 myself, Mark, and the deputy regional
8 administrator, Sandy Taylor from Federal OSHA.

9 We sat down till the wee hours of
10 the evening and we discussed, okay, what are
11 site leadership's roles and responsibilities
12 and we really mapped out what are the clear
13 expectations that we're going to give the
14 people that are working on that site to make
15 sure nobody else gets hurt, you know.

16 We didn't want to have any more
17 fatalities or any other injuries that could
18 occur out at that site because we knew that
19 there's going to -- when you think of a
20 demolition site, especially a collapsed
21 structure, I don't think you're going to find
22 a more hazardous site than something like
23 this, and you could see that by some of my
24 earlier pictures.

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1 So, what occurred then was Federal
2 OSHA, which was Mark and Sandy, met with the
3 federal agencies to sit down and explain to
4 them what our expectations were, basically
5 told them we are compliance assistance, we're
6 not enforcement, and there are options.

7 I mean, if there's not going to be
8 cooperation and people think that they can be
9 all over the bridge doing what they really
10 feel that they should do, there's nothing that
11 says that we can't go into enforcement mode.

12 We didn't want to do that. We
13 wanted to focus on the compliance assistance,
14 but the federal agencies were extremely,
15 extremely cooperative with that, once we sat
16 down and talked to them and explained the
17 meanings that we were looking at.

18 And then Minnesota OSHA met with
19 MnDOT, who were the folks that supposedly were
20 in control of the site, and they kind of led
21 them down the path on what our expectations
22 were for them, also.

23 The first thing that we did was we
24 put together a uniform site orientation and

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1 the little 35W, that's actually a sticker that
2 we required anybody that entered that bridge
3 site had to have on their hard hat before they
4 were allowed into that bridge site and we
5 expedited getting those out there available
6 for people.

7 It was required for all workers
8 onsite, including police, fire, NTSB,
9 contractors, subcontractors, et. cetera.

10 One of the interesting situations
11 that we would encounter from time to time is
12 we'd have a utility company that maybe had to
13 go into that area to do some utility work and
14 when they were approached saying, you know,
15 you really can't come in there and do work
16 unless you've got the orientation behind you
17 and you're following the site safety plan and
18 the response, initial response was no, we're
19 not part of this removal operation, so we
20 really don't have to do those things.

21 So, our response back to them was,
22 well, true, you don't have to, but this is a
23 cooperative agreement that we're working on.
24 We're working on a partnership right now with

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1 all the groups that are working out there. If
2 you don't want to participate in that, then
3 you'll be under enforcement. I kind of stood
4 back and they said, no, I think that we'll go
5 through your orientation. That's not a
6 problem.

7 So, you know, it took a couple of
8 times before people really understood that
9 this was really meant to be best for all of
10 them.

11 We developed a grid system map and
12 you probably really can't see it, but it's
13 basically a map of the entire site. There's
14 grid lines on there. The grid lines are
15 actually different colors.

16 Over the river, they're blue. That
17 means that if you enter any of that area
18 that's blue, you had to have personal
19 flotation devices as part of your PPE, and as
20 our folks went out and did their hazard
21 assessments and interventions, we entered
22 those into an access database and we looked at
23 trends of different things that were happening
24 out there on that bridge site over that period

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1 and we used this grid map to really identify
2 the locations where those things were
3 happening.

4 This is the intervention access
5 database that we put together and this was
6 actually as the documentation was entered, we
7 would pull this up on a daily basis and take a
8 look at what type of interventions were going
9 on, what types of hazards were being
10 identified, and looked at trends and then we
11 would have our leadership meetings every day
12 and we would meet with the groups and we would
13 talk about those trends and these are the
14 things that they really need to look closely
15 at and to address on a day by day basis.

16 We also put together activity
17 sheets. These are daily activity sheets and
18 it's basically a job hazard analysis
19 permitting system. If you think of like a
20 confined space permit or hot work permit, it
21 was kind of the same concept, and what it was
22 was every job that took place out on that
23 site, they had to fill out one of these
24 permits and they had to have a copy with them

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1 as the work was being performed and a copy
2 would stay with our safety trailer.

3 This was something that really kind
4 of evolved throughout that initial time period
5 when the collapse first occurred, but how it
6 would work is this would be filled out, would
7 identify the hazards that were associated with
8 the work that they're going to be doing,
9 basically who was going to be doing the work,
10 why they were doing the work, the area that
11 they're going to be entering, and then it had
12 to have signed-off approval by MnDOT Safety
13 and then Federal OSHA and Minnesota OSHA would
14 also look at it.

15 If there was work that was being
16 performed in certain parts of the structure,
17 such as if they had to actually enter the
18 structure themselves, they had to have sign-on
19 from a structural engineer saying that it was
20 safe for them to enter that area.

21 I mean, this is even the NTSB that
22 would enter that site, taking the measurements
23 and that type of stuff. On a daily basis,
24 they had to fill out one of these things.

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1 If the work changed throughout that
2 day, they had to fill out a new one of these.

3 So, sometimes they would fill out two or
4 three of them in one day for the work that
5 they were doing.

6 Federal OSHA jurisdiction included
7 the boats, the barges and floating platforms
8 that were on the site, the diving maritime
9 experience presence, the transition from the
10 Navy Dive Team to the commercial contractor,
11 and Federal OSHA did a comprehensive review of
12 the contractor's operation, and then they
13 ensure that those diving operations met the
14 requirements and this evaluation was really
15 critical in determining Federal OSHA's
16 departure from the site.

17 So, I'll kind of summarize the
18 response. We had a total of 24 Federal OSHA
19 and 30 Minnesota OSHA personnel that reported
20 to the site, and we experienced no injuries
21 from any of our staff.

22 The regional administrator and
23 deputy regional administrator were present at
24 the site within the first 24 hours -- or the

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1 first week of the catastrophe and they were
2 included in the 24 from Federal OSHA.

3 We established a hot zone. A
4 safety office trailer was established and that
5 was housed by both MnDOT Safety, Minnesota
6 OSHA and Federal OSHA and that's actually
7 where we had our orientations there in that
8 trailer, also, and it was a place where people
9 could come, ask questions. We were the
10 resource there and we typically had all of our
11 people out in the field the majority of the
12 time just working with folks.

13 The work permitting process was
14 complete and it was required to be approved
15 prior to the start of any work. All personnel
16 onsite were required to attend the site safety
17 training and companies performing work in the
18 area of Federal OSHA jurisdiction received a
19 comprehensive evaluation from Federal OSHA and
20 then Federal OSHA's goal of assisting
21 Minnesota OSHA was accomplished and to make
22 sure that the responders were safe that were
23 working at that job site.

24 A memo of understanding was signed

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1 between the commissioner and Mike Connors, the
2 regional administrator, to turn the entire
3 site over to Minnesota OSHA and then Federal
4 OSHA stood down at 3 p.m. on Friday, August
5 24th. So, they were there for, well, almost
6 --

7 MR. HYSELL: Three and a half
8 weeks.

9 MR. ISAKSON: About three and a
10 half weeks.

11 I've got some pictures here I'll
12 just kind of show you quickly. This is on the
13 north side of the bridge. You can see that
14 they've already started to knock out some of
15 the structure over the top of the skeleton of
16 the bridge itself.

17 This picture was taken, you can see
18 the individual that's standing down kind of
19 toward the center right side of the picture,
20 that's how massive this building was -- this
21 structure was that we're working with.

22 Here, you've got the surface taken
23 off prior to the demolition or the cutting of
24 the structure. You can see some of the

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1 structure off to the back there and the bridge
2 was hauled off to an area upstream, what we
3 call The Flats, and that's where they were
4 kind of reassembling the bridge at that time.

5 This was a -- they hauled in I
6 can't remember how many tons of gravel, but it
7 was quite a bit, so they could bring this 50-
8 ton crane out there to lift the pieces out of
9 the water and that roadway that they made out
10 of the river is still there as they're
11 building the new bridge.

12 Partnerships. We had a couple of
13 partnerships that we actually signed with the
14 companies or the contractors that were doing
15 the work out there.

16 The first partnership was with
17 MnDOT and Bolander and Sons who was the
18 removal contractor, and the most difficult
19 part of this whole partnership, to be honest
20 with you, especially coming from Minnesota,
21 was actually admitting that we modeled this
22 after the stadium that the Green Bay Packers
23 play in. So, we really, really struggled with
24 that.

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1 We had full-time compliance
2 assistance during that partnership. We did
3 industrial hygiene monitoring and employees
4 were able to utilize us as a resource, of
5 course, and we performed unannounced
6 inspections as part of that.

7 We currently have a partnership
8 with MnDOT and Flatiron. Flatiron is the
9 rebuild contractor and they're onsite right
10 now. Basically the same thing. They're part
11 of the design. They're responsible to design
12 and build, full-time compliance assistance
13 coverage, and then employees will be able to
14 use us as a resource through the duration of
15 the project.

16 Right now, there's -- I think by
17 the end of this month, we'll have about 300
18 contractors, 300 employees working out there
19 on the bridge. Flatiron has been phenomenal
20 to work with. Bolander and Sons was
21 phenomenal to work with.

22 Flatiron. Right now, they have
23 five full-time safety people that are working
24 out on that bridge site. I was notified

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1 yesterday that they're bringing in three more.

2 A lot of the work is just -- they're doing a
3 lot of the concrete pouring, that type of
4 work.

5 They've had to shut down the
6 project three times because of the cold
7 weather and I'm sure it's probably shut down
8 again today because the concrete pouring
9 that's -- the weather gets too cold for them
10 to pour the concrete.

11 So, summary of the recovery and
12 removal process. Approximately 85 percent of
13 the contractor laborers or workforce received
14 the OSHA 10-hour course which is huge. Going
15 through that 10-hour course takes some time
16 and fortunately we set up a class and put many
17 of them through that.

18 624 employees received orientation
19 training. The site-specific activity plans,
20 that's those job hazard analysis, we had 962 of
21 those submitted during that nine-week period.

22 So, as you can see, there was a lot of those
23 forms that were filled out and approved.

24 We had over 4,800 employees trained

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1 per each of those plans. So each time one of
2 those plans was filled out, they had to cover
3 that with a crew or they had to cover that
4 with the folks that were going to be going out
5 doing that work.

6 We identified over 4,500 hazards.
7 Total removal took approximately nine weeks, a
8 little less than nine weeks. We logged
9 approximately a 100,000 hours during that time
10 period, and the best part of that is nobody
11 got hurt. There was some near-misses that
12 occurred, but there was no serious injuries
13 that resulted in lost time or reportable
14 injury.

15 This is what the location looked
16 like once the bridge was removed. I didn't
17 add slides of what it looks like now, but this
18 is what the new bridge will look like when
19 it's complete.

20 Key observations. When you go on
21 to a site like this, OSHA is typically viewed
22 as a site safety officer and that's one of the
23 things that we kind of battle through to make
24 sure that, you know, folks understood we were

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1 there as a resource. We were there to provide
2 compliance assistance. We weren't the site
3 safety officer. That was really the
4 responsibility of the incident commander to
5 assign that person and that's typically the
6 folks that are in charge of that site and in
7 this point, it was MnDOT.

8 Incident command on paper versus
9 reality are really two different things. We
10 really learned that. I mean, you can put down
11 whatever you want on paper, but when you start
12 dealing with personalities, you start dealing
13 with, you know, really people, you find some
14 pretty big challenges.

15 One of the things that we realized
16 was OSHA's mindset when we had our
17 investigators on that site doing the
18 compliance assistance, they came on that site
19 with that mindset that was really no different
20 than the other fatalities that they routinely
21 inspect or catastrophes that they routinely
22 inspect.

23 So, they had that mindset already
24 which kind of brought about kind of a common

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1 effect because they knew how to approach and
2 talk to people and that, I know, made both
3 Mark and I extremely proud with the way that
4 they really handled themselves, our
5 investigators handled themselves on the site.

6 Transitioning from rescue to
7 recovery to removal mindset. I talked about
8 that a little bit. Huge challenge.
9 Flexibility. That's one of the key things we
10 learned, is you've got to be flexible.

11 Compliance assistance versus
12 enforcement. I did talk about that a little
13 bit. For example, when we had the issues with
14 some of the utility companies and just let
15 them know, you know, we're OSHA and we're here
16 to help. They kind of look at you funny to
17 begin with, but then when they work with you a
18 little bit, they tend to really appreciate the
19 work that you do.

20 And then establish an OSHA command
21 post immediately was one of the things that we
22 found that we probably should have done
23 because at the incident command site, people
24 had tents. We kind of showed up without a

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1 home and that's one of the learnings that we
2 took back with us, is that, if anything, you
3 need to set up a tent that says OSHA across
4 the top of it so people know that, hey,
5 there's a safety resource here that we can go
6 to.

7 And then, you know, one of the
8 hassles we had to go through is, from time to
9 time, people would come up and want to take
10 their picture with us and we were polite. We
11 said, yes, okay, we'll take our picture with
12 you, that's okay. It was an honor to be able
13 to meet the president and that's that.

14 MR. HYSELL: So, we would like to
15 open it up for any questions that you might
16 have concerning any aspects of what we dealt
17 with and how we got to where we ultimately got
18 in achieving our goals.

19 Please.

20 MS. ARIOTO: Elizabeth Arioto,
21 Safety and Health Consultant Services. I
22 would like to ask you a couple of questions,
23 really.

24 How long did it take you to start

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1 the orientation of personnel onsite?

2 MR. ISAKSON: The orientation
3 actually started taking place, it was about a
4 couple days after, but it was kind of
5 segmented.

6 I mean, we had the construction
7 company that was conducting the orientation.
8 MnDOT, they were doing an orientation for
9 their own people. But it actually took us, I
10 believe it was, probably about four or five
11 days before we pulled it all together and we
12 had one orientation that we really had
13 everybody going through.

14 MS. ARIOTO: Since you said that,
15 is there anything that you would do to improve
16 that time period or that time frame?

17 MR. ISAKSON: I would -- you know,
18 I guess the learning that we took from it is
19 when you have something like this that occurs,
20 there's a lot of emotions that you're really
21 dealing with and it's all part of that
22 transition period from rescue to recovery that
23 I talked about and really getting people to
24 understand that.

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1 You know that there's a lot going
2 on here and we have to have, you know, --
3 we've got to really start thinking about the
4 folks that are doing the work out there and
5 pulling them in to start going through some
6 sort of an orientation.

7 Pulling the orientation together
8 took a little bit of time because we really
9 had to really assess what the hazards were
10 that people were going to be facing out there
11 and the work that they were going to be doing.

12 So, I guess could we have done it
13 sooner than that? If we could have, I think
14 that maybe a day sooner. It would have been
15 tough.

16 MR. HYSELL: You know, one of the
17 real challenges that we had is establishing a
18 site at the site for the training and just so
19 you know, we had a trailer on its way through
20 the City of Minneapolis on that Friday, just a
21 day and a half or so after the collapse, and
22 the Secret Service came up to us and said you
23 can't bring that trailer here, you're going to
24 be putting it right where the president's

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1 helicopters are going to land tomorrow
2 morning.

3 So, we had to stop that and we
4 weren't able to get the trailer there because
5 of that until Monday and so all of that went
6 into that and then, you know, there were other
7 issues, too.

8 We had, for instance, when you tell
9 the NTSB, look, you know, before you go back
10 out there, you've got to go through this
11 training, well, you can imagine the resistance
12 that we were starting to get, you know, and
13 the looks and everything else, but we stood
14 our ground and we made them go through it,
15 even though they'd been onsite from the
16 beginning.

17 In addition to that, we had law
18 enforcement officers that were at security
19 posts all around the site that couldn't leave
20 their posts to go to security training. So,
21 we actually took the dog and pony show on the
22 road and we went to them and provided them
23 with the site orientation briefing at each one
24 of the security posts.

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1 MS. ARIOTO: And I have one other
2 question with the contractor that you worked
3 with.

4 Are there any plans in the state
5 where you would have companies already like
6 preapproved, where they had training for their
7 employees for disasters and stuff like that?

8 MR. ISAKSON: Are you talking about
9 contractors?

10 MS. ARIOTO: Yes.

11 MR. ISAKSON: No, there wasn't.
12 There haven't been really any plans to do that
13 because -- and I think that would be somewhat
14 difficult to do because each disaster is
15 different, you know.

16 It was shortly after the bridge
17 collapsed, we had floods down in the southern
18 part of the state and when you face a
19 structure collapse versus something like that,
20 the training is going to be significantly
21 different.

22 I know that, you know, through some
23 of the training that the trades go through,
24 you know, they do learn the basics, such as

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1 doing hazard assessments, those types of
2 things, but to really capture a potential
3 event that could occur and train people on
4 that would be difficult.

5 They may not face that kind of a
6 situation for -- you know, hopefully never,
7 but it's really hard to pinpoint exactly what
8 it is that they would need.

9 MS. ARIOTO: And the only reason I
10 say that is because the state I'm from,
11 California, they're trying to develop with
12 different companies, in case there's an
13 emergency, they can call on certain companies
14 that have planning with them already, whether
15 if you need ironworkers or if you need
16 laborers, operators, whatever.

17 So that's just something maybe to
18 think of in the future.

19 MR. ISAKSON: Sure.

20 MR. SMITH: Okay. Frank?

21 MR. MIGLIACCIO: Frank Migliaccio
22 with the Ironworkers International.

23 Did any of the -- you said you put
24 quite a few people through the OSHA 10-hour

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1 training. Did anybody come to the site with
2 the training already that you didn't require
3 to go through it?

4 MR. ISAKSON: Yes, there was quite
5 a few that already had the 10-hour course.
6 That's one of the great things that -- you
7 know, with the relationship that we have with
8 a lot of the trade unions in the state, is our
9 consultation group will actually go and
10 provide them the 10-hour course and I know
11 that there's some of them that they do require
12 all of their folks to go through the 10-hour
13 training, such as I think the labor union
14 requires that and the carpenter's union.

15 There may be others, too, but that
16 was one of the benefits that we had in
17 Minnesota, is quite a number of them already
18 had the 10-hour course.

19 MR. MIGLIACCIO: Thank you.

20 MR. SMITH: Other questions or
21 comments? Tom? I'd like to welcome Tom
22 Broderick who's on our committee who was
23 unable to make it this morning. We're glad
24 you're here this afternoon.

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1 MR. BRODERICK: Thank you. This is
2 kind of a follow-up on the questions that Liz
3 and Frank asked.

4 After September 11th, the OSHA
5 Training Institute put together a group of
6 people who were both involved in the rescue
7 and recovery and other subject matter experts
8 and developed two courses.

9 One was the 5600 course and the
10 other is the 7600 course, and the 5600 course
11 is an instructor course. The 7600 is a course
12 for disaster site workers and that was
13 disseminated to all of the OSHA Training
14 Institute education centers, and it seems like
15 it really has not gotten any traction and
16 after Katrina happened, we went back and
17 revamped the 5600 and the 7600 to address many
18 of the different types of hazards that would
19 come with a hurricane, including floods and
20 some of the exposures that I'm sure that you
21 were faced with.

22 I guess a question for the agency,
23 for the OSHA Training Institute, is did you
24 learn anything or do you have any insight on

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1 how we could get those courses, which really
2 do cover a lot more than the OSHA 10-hour in
3 terms of some of the specific hazards you were
4 talking about there, how we can get traction
5 behind that course so that there would be a
6 cadre of workers in the Twin Cities or any
7 other metropolitan area that would be prepared
8 when they hit the site?

9 MR. HYSELL: Well, one thing that
10 we found is that it's critical that anybody
11 that responds to this, especially in a
12 management capacity, understands how the
13 incident command system is supposed to work.

14 Okay. Regardless of how it's going
15 to be when you get there, you need to know how
16 it is actually supposed to be and then you
17 know that you can work within that system
18 that's there at that time and you can also use
19 that training and how it's supposed to be for
20 your own folks and your own command structure
21 until the entire site can come up to speed.

22 Let's face it. A catastrophe like
23 this is significantly large and, you know, it
24 took a little while for things to get under

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1 control and there's probability that there'd
2 be quite larger and we're aware of that.

3 To answer your question, Federal
4 OSHA, in Region 5, part of our regional
5 emergency planning committee, we're working on
6 identifying what levels of training folks are
7 going to need.

8 Incident commanders. Just so you
9 know, the 3600 course is going to be taking
10 place at OTI, the incident commander. That's
11 in July. The incident commander people that
12 are going to be identified that Mike Connors
13 could use would attend that.

14 In addition to that, all area
15 directors have to at least be ICS trained
16 through the 300 course and all personnel that
17 would respond would have to be trained to the
18 ICS 200 course.

19 I think part of our cooperative
20 assistance and our compliance assistance
21 specialists and our own speeches, we can
22 explain a lot of that information and the need
23 for that to the general public and, of course,
24 get the information out that OTI has these

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1 courses available for contractors to be able -
2 - but I think the communication does need to
3 get out there because I think that everybody
4 that goes to the site needs to be aware of
5 what to expect as far as what the structure's
6 going to be like and so I think that that --
7 you know, we can certainly work on that and I
8 think it would be something we should look
9 into.

10 MR. BRODERICK: Yes, and just a
11 follow-up to your point.

12 After the bridge collapse, you did
13 have serious flooding situations going on.
14 So, I mean, there is a small cluster where
15 people that have had the workers who are
16 skilled support staff who had that 7600 course
17 would have been able to respond to both of
18 those and have had training not only in the
19 incident command structure but what to do if
20 you find a body or what to do if you incur
21 certain things that are unique to a disaster
22 site.

23 MR. ISAKSON: Tom, I think you
24 really bring up a great point because I know

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1 shortly after Katrina, Federal OSHA had also
2 put together some pages on their website that
3 really covers, you know, some of the
4 approaches to the different types of
5 situations that you can encounter and myself
6 and quite a few of our folks use those pages
7 all the time because, I mean, you can relate
8 them to just about everything that you can
9 encounter, even if there's not, you know, a
10 catastrophe that occurs.

11 Just for general knowledge
12 purposes, if you're out doing any kind of an
13 inspection or any compliance assistance or
14 even a consultation. So, those have been a
15 super resource for us, and one of the things
16 that Minnesota OSHA does is we're constantly
17 reviewing our core training that we require
18 our investigators to go through and I know
19 that we've looked at some of those courses to
20 really determine, unfortunately after the
21 fact, who we need to have go through some of
22 those courses.

23 But, you know, it's kind of like
24 anything else. We want to have some experts

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1 on staff that have that knowledge that
2 whenever we do have a situation like that
3 occur, we can turn to them as our subject
4 matter experts and utilize that knowledge that
5 they've got.

6 MR. BRODERICK: Thank you.

7 MR. MURPHY: My name is Dan Murphy
8 with Zurich. I live in the Twin Cities and I
9 just wanted to take a moment to thank you
10 gentlemen for the great job that you did and
11 the fact that you made it through that time
12 period and we didn't have any more serious
13 loss or injury was phenomenal.

14 When you went down and look at that
15 site, it's unbelievable people weren't falling
16 and dying all over the place. So, I wanted to
17 just thank you very much for what you did for
18 that time period.

19 MR. ISAKSON: Thank you.

20 MR. HYSELL: Thank you.

21 MR. SHANAHAN: I'm Tom Shanahan
22 with the National Roofing Contractors.

23 Jeff, I was struck a number of
24 times. You had mentioned about the difficulty

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1 of getting everybody kind of on the same page
2 with the territorial issues and things like
3 that.

4 I'm always interested in that and
5 clearly we're not getting these kind of
6 situations, but that you got over that hump,
7 I'm just wondering if there's something -- you
8 kind of mentioned the reality versus what's on
9 paper in terms of when you went in there.

10 I was just kind of wondering what
11 lessons or kernels that you got from that that
12 maybe we could include for others.

13 MR. ISAKSON: Well, I think the key
14 learning there is just to remember that you're
15 dealing with people and dealing with people
16 versus dealing with paper are really two
17 different things and when you deal with
18 people, you sometimes deal with some fairly
19 strong personalities.

20 You know, the reason that, you
21 know, a certain person maybe that is leading a
22 certain organization that's responding to a
23 catastrophe like that, they're reasoning for
24 having that strong personality -- the reason

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1 that they have the position that they're in is
2 typically because they have a fairly strong
3 personality and they can lead in a way that
4 they need to in order to get things done.

5 You know, some of the jobs that
6 they had out there were extremely difficult.
7 I mean, you look at the Hennepin County
8 Sheriff. I mean, his responsibility was
9 getting those bodies out of the river and to
10 make sure -- I mean, and not only just to get
11 the bodies out of the river but also to deal
12 with those families of the victims and on a
13 daily basis.

14 So, I'm sure that he was facing a
15 heck of a lot of challenges during that time,
16 also, along with really trying to cooperate,
17 you know, with those that had really site
18 responsibility for making sure that people
19 were really safe.

20 You had the Navy Dive Team out
21 there that, you know, I know I was talking to
22 a couple of them and I asked them, I says, you
23 know, geez, the water's pretty murky, you can
24 only see maybe a foot in front of you and

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1 there's constant current. This has got to be
2 one of the most difficult recoveries I've ever
3 faced. The guy looked at me and says,
4 "Actually, this is one of the easier ones
5 because nobody's shooting at you."

6 So, I mean, you're dealing with a
7 lot of that kind of stuff and to really pull
8 those people together and say, okay, bottom
9 line is we're not going to hurt anybody else,
10 you know. We're not going to have any more
11 injuries. That's really the bottom line and
12 to get everybody to kind of step back, think
13 about it and come to the table and say, yes,
14 we agree, we have -- I have five people, 10
15 people, 20 people here, I want them going home
16 the same way that I brought them here, to get
17 them to realize that, it takes a little bit of
18 talking, you know, a little bit of really, you
19 know, coaching and, you know, how you do that
20 approach is different, regardless of who it is
21 that you talk to.

22 So, it's a challenge and that's
23 really what it is that you face and that's the
24 difference between the paper and reality piece

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1 of it.

2 MR. SHANAHAN: Thank you.

3 MR. SMITH: I would like to think,
4 too, that anywhere we go in the country, we
5 would have this type of partnership, but I'm
6 not positive we would.

7 I thank you for your efforts in
8 working together. Outstanding job you did and
9 on behalf of the committee, we commend you
10 guys and appreciate you taking time to share
11 this with us. It's been of tremendous value
12 and, you know, thank God nobody else got hurt.
13 That's the main thing.

14 Thank you very much.

15 MR. HYSELL: Thank you, Linwood.

16 MR. ISAKSON: Thank you.

17 (Applause.)

18 MR. SMITH: Okay. Noah Connell,
19 Deputy Director of Construction, Report on
20 Standards.

21 Okay. Let's get started, please.
22 Let me have your attention. Let's devote our
23 attention to Noah.

24 DOC - Standards Update

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1 MR. CONNELL: Thank you. My name
2 is Noah Connell. I've two roles in the
3 Directorate of Construction. I'm the Deputy
4 Director and I'm also the Director of the
5 Office of Construction Standards and Guidance,
6 one of the three offices within the
7 directorate, and our Office of Standards and
8 Guidance has two principal responsibilities.

9 One is that, of course, we develop
10 new construction standards, but we also issue
11 the interpretations of the standards.

12 Before I go on, I just first want
13 to say a personal thanks to Stew Burkhammer.
14 It's been my pleasure to work with Stew for
15 the last five years in the directorate and
16 it's really been a pleasure to work with him.

17 It's been a tremendous asset for us in
18 Standards and Guidance, in particular to have
19 someone of Stew's experience and also he's
20 such an easy person to work with that we have
21 made maximum use of him being on the staff and
22 have badgered him with many, many hundreds of
23 questions every year. So, just a personal
24 thanks to Stew.

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1 On the standards front, we are
2 currently doing two major rulemakings. One is
3 confined space in construction, the other is
4 cranes and derricks in construction.

5 In confined space, first I'll just
6 note, as I imagine you're all already aware,
7 the comment period for the proposed rule -- we
8 issued the proposed rule in November. The
9 comment period was to close this month on the
10 28th, but it's been extended for 30 days, to
11 February 28th.

12 After the comment period closes,
13 then we will begin the process of -- well, if
14 someone requests a hearing, there would be a
15 hearing and then after, we would, of course,
16 begin the process of analyzing the comments.
17 We take a close look at the comments, make
18 assessments.

19 We would then at the staff level
20 make presentations to our bosses in terms of
21 what has come in from the public and whether
22 we think there should be changes made for
23 purposes of the final rule and then ultimately
24 we issue the final rule. A simple

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1 straightforward process.

2 The general philosophy of the
3 confined space proposed rule, I think you will
4 find in looking at the published rule and the
5 explanation in the preamble, is we've tried to
6 make this as user-friendly for the --
7 particularly for the small businesses who do
8 not have separate safety people on staff.

9 We tried to design it for them so
10 that it would be something that they could
11 understand and that they could really use, and
12 we tried to walk the employer step by step
13 from the moment they get on the site all the
14 way through the process for protecting their
15 workers from the hazards of confined spaces.

16 One of the points we make in the
17 preamble is that, and I think, I hope you
18 would agree with me on this, that
19 substantively, probably about 90 percent of
20 what is in our proposed rule is also in the
21 general industry standards, substantively.

22 There are some differences. We
23 have some other requirements that are designed
24 specifically for construction to deal with

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1 circumstances that are unique to construction.

2 So, there are some additional things in there
3 in that regard.

4 The way it is presented is
5 different and that's because, you know, we
6 made this special effort to try to make what
7 is intrinsically an extraordinarily complex
8 set of concepts to try to make them as
9 straightforward and understandable as
10 possible.

11 So, the way it's presented is very
12 different than what's in general industry, but
13 I think, by and large, substantively, it's
14 very similar.

15 Any questions about confined space?

16 (No response.)

17 MR. CONNELL: The other major
18 rulemaking, of course, is our cranes and
19 derricks standard. This is a standard that we
20 are using negotiated rulemaking to develop. A
21 negotiated rulemaking committee was formed and
22 convened 11 times in about a one-year time
23 period and in the Summer of 2004 completed a
24 consensus document which is the basis for

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1 what's going to be our proposed rule.

2 It's early 2008 and I know you're
3 thinking he just said 2004, what's the deal
4 there? I'll say a little bit about that.

5 The standard itself, if you look at
6 the CDAC document, in terms of its length and
7 compare it to the existing Subpart N
8 requirements -- now the existing Subpart N
9 requirements are found both in the Code of
10 Federal Regulations, which is only a few
11 pages, it's about seven and a half pages long
12 in the Code of Federal Regulations, but it
13 incorporates by reference numerous consensus
14 standards, numerous consensus standards, which
15 in some cases incorporate by reference other
16 consensus standards. So, you have layers of
17 incorporation.

18 If you calculate the number of
19 words on all of those documents and you make
20 an estimate of how many pages in the CFR that
21 would take to print, which we've estimated
22 this, it comes out to about -- the current
23 rule comes out to about 99 CFR pages. That's
24 the current rule.

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1 The CDAC document, which also has
2 some incorporations by reference but not
3 nearly as many as the current rule, it comes
4 out to about 65 CFR pages.

5 So, it's not that the CDAC document
6 is really longer, it's not longer, it's
7 shorter, but in the rulemaking process, after
8 we have the negotiated rulemaking committee
9 finish its work, we then had to write a
10 complete history, explanation and
11 justification for pretty much every single
12 provision that's in the standard and that is,
13 quite simply, an enormous undertaking.

14 We had to do the same thing with
15 the confined space. OSHA does this with all
16 of its standards and it is that process,
17 probably more than anything else, that just
18 takes an unbelievable effort and amount of
19 time. That's what we've been doing all these
20 years. We've been writing this encyclopedic
21 description, explanation, analysis.

22 Fortunately, we are near the end of
23 this process. Now, once we finish and we're
24 close to finishing the drafting of it, and

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1 we've been working with the Office of the
2 Solicitor on it and we're near the end of that
3 process, then there will be some internal
4 Department of Labor reviews and then the
5 Office of Management and Budget will have 90
6 days to review the document. So that will
7 give you some idea of where we are and what we
8 have ahead of us. That's to publish the
9 proposed rule.

10 Of course, after that, a hearing,
11 analysis and comments, changes as appropriate,
12 and publication of a final rule.

13 Any question about cranes and
14 derricks?

15 MR. SMITH: I'm surprised, Frank.
16 Go right ahead.

17 MR. MIGLIACCIO: Frank Migliaccio
18 with the Ironworkers.

19 Noah, what you're saying then is
20 this will probably, if it does go in effect
21 and I say if and I'm not sure about that even,
22 this won't happen till next administration
23 comes in, most likely.

24 MR. CONNELL: Well, our target for

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1 the past several years, our target has been to
2 try to get the final rule out by the end of
3 2008 and I know that the Assistant Secretary
4 Foulke has made that point in the past and if
5 you tally up where we are right now, you
6 really can't get there from here at this
7 point.

8 So, we are, of course, disappointed
9 at that, but we certainly aren't slowing down
10 and, you know, we've been going flat out and
11 we will continue to go flat out.

12 This is the Number 1 priority in
13 our Office of Construction Standards and
14 Guidance. We all, you know, are devoting the
15 big chunk of our time to it and, you know,
16 that's where we are. So, we're plowing ahead,
17 but, you know, I will say this.

18 It's a legitimate complaint that we
19 often hear about the complexity of federal
20 rules and it's certainly our obligation to
21 make these things as easily understood and as
22 simple as possible, but we're dealing with a
23 very complex industry.

24 The process of building a building,

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1 and I'm not from the construction industry,
2 but I've certainly been working with folks
3 from the construction industry for some time
4 now, and it doesn't take long to realize that
5 the process of building structures and the
6 process of building structures with cranes is
7 extraordinarily complex and when you try to
8 figure out and say, well, how do you do that
9 complex process safely is also an
10 extraordinarily complex undertaking and so,
11 you know, when viewed from that perspective,
12 it's not that surprising that this has -- this
13 is a huge project.

14 It is unfortunate that the preamble
15 has evolved to the point where, you know, it
16 now is in all these rulemakings the biggest
17 part of the rulemaking process, but that's
18 what we have and that's what we're dealing
19 with.

20 MR. MIGLIACCIO: In the beginning,
21 though, it just seems like the date -- like
22 every meeting we've had with ACCSH, the date
23 always changes. It was 2006, then it was
24 going to be early 2007, and now it's going to

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1 be late 2008, and for the complexity of
2 building a building, I think construction
3 builds buildings a -- I'm not going to say it
4 -- a lot faster than what OSHA does when it
5 comes to rulemaking.

6 Now, it can't be that complex. I
7 just -- I don't understand the complexity of
8 this. I mean, there probably is and like you
9 said, you're not from the construction
10 industry. I'm not sure how many people in
11 your office are from the construction
12 industry, but it just seems like it's not
13 working.

14 The amount of time it takes,
15 there's people out there working with cranes
16 every day. I mean, there's a lot of
17 organizations. There were 23 people on the
18 committee. There are two of the people on the
19 committee are in the room right here sitting
20 on this committee here.

21 A lot of time was put into it, and
22 I think you say you're disappointed. I think
23 we're a lot more disappointed than you are.
24 We just expected it to be a lot faster.

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1 MR. CONNELL: Well, yes, I think
2 it's a real tribute to the committee that the
3 committee was able to develop the draft
4 proposed rule in 11 months' time. I mean that
5 was an extraordinary accomplishment.

6 Our job since then has been to
7 explain each and every provision in that
8 document and that's, you know, a 95+ page
9 double-spaced document and also the agency has
10 had to do an economic analysis of the
11 implications of everything that's in there and
12 that is another document.

13 So, yes, I'm just saying it's an
14 enormous undertaking not just to develop the
15 provisions themselves but to explain them, and
16 we take great pains to try to make sure that
17 we're explaining them correctly.

18 Now, in terms of, you know,
19 construction experience, the way the
20 Directorate of Construction has been set up,
21 we have our Office of Construction Services
22 where we have people with extensive experience
23 in the construction industry and we spend a
24 lot of time with them.

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1 We also have our Office of
2 Engineering Services where we have engineers
3 and we spend time with them, but also,
4 fortunately, one of the great benefits of
5 negotiated rulemaking is that we come to know
6 the members of the committee and those members
7 also are a source of technical information.

8 So, we do not do our work in a
9 vacuum. Whenever we come across, which we do
10 constantly, issues and questions of a
11 technical nature regarding the construction
12 process, we go to construction people for that
13 information and, you know, that takes time,
14 too, but that's time well worth spending.

15 So, we do take that very seriously.

16 So, we're not doing this in a vacuum. We
17 weren't doing it in a vacuum when we
18 negotiated it and we're not doing this part of
19 it in a vacuum either.

20 You know, the timelines, it's very
21 difficult to predict these dates. You know,
22 we don't work independently. We work with a
23 number of different agencies within OSHA.
24 Those different parts of OSHA have projects

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1 other than our project and so inevitably there
2 is some competition of resources and, you
3 know, the agency as a whole has been working
4 on many, many projects concurrently.

5 So, as I'm sure everyone in this
6 room knows, when you have a situation like
7 that, there are windows that open and close
8 when it comes to the availability of other
9 resources within your organization and if
10 things don't wind up being coordinated
11 perfectly, especially when unforeseen events
12 come in from the outside, you know, that
13 window might be closed when you need it to be
14 open.

15 So, I think that's in large measure
16 why the dates you refer to, you know, keep
17 slipping. It's very difficult to predict how
18 it's all going to play out in the end.

19 The only thing I can assure you all
20 of is that we have never for a day slowed down
21 in what we are doing to get this thing
22 finished. I mean, this has been and continues
23 to be our Number 1 priority and, you know,
24 that's all we can do.

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1 MR. SMITH: Okay. Thank you very
2 much, Noah.

3 Is there any other questions for
4 Noah involving any questions, other than the
5 timeline? I think he's sufficiently answered
6 that for us. Any other questions?

7 (No response.)

8 MR. SMITH: Okay. Thank you very
9 much.

10 MR. CONNELL: Thank you.

11 MR. SMITH: I know you didn't look
12 forward to giving that report to us. Thank
13 you a lot.

14 (Applause.)

15 MR. SMITH: Okay. We'll take a
16 break in just a second here.

17 Anything we need to cover before we
18 take a break? Okay. Just a minute, please.

19 MR. WITT: If you would review -- I
20 understand Sarah Shortall passed out some
21 materials this morning.

22 MS. SHORTALL: Yes. This morning,
23 the members of the committee were given copies
24 of the PortaCount Draft Notice of Proposed

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1 Rulemaking and a copy of a memorandum to ACCSH
2 from Dorothy Dougherty, Director of the
3 Directorate of Standards and Guidance on the
4 PortaCount Proposed Rule, and it is my
5 understanding that Mr. Witt would like to have
6 the members of the committee review these
7 materials this evening so that they can be
8 discussed tomorrow and members of that
9 rulemaking team will also be available
10 tomorrow to answer your questions.

11 Steve, did you want to --

12 MR. WITT: We would like to get
13 your reaction to that document. Any
14 recommendations or suggestions you may have, a
15 sense of the members of the committee.

16 This issue was raised at the last
17 committee. I know we have seven new members
18 since October of 2006. We'd like to get a
19 sense of the committee as relates to that
20 document. So, if you have the opportunity, if
21 you would look at it tonight or late this
22 afternoon, we would appreciate it.

23 MS. SHORTALL: So, before we go off
24 the record, so that tomorrow will be

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1 considered your opportunity to provide
2 recommendations on this proposed rule.

3 MR. SMITH: Okay. Is everybody
4 familiar with the document now?

5 MR. SHANAHAN: The other one was
6 what?

7 MR. SMITH: Okay. Be back at 2:45.
8 Paula White will be here.

9 (Whereupon, the foregoing matter
10 went off the record at 2:27 p.m.
11 and went back on the record at
12 2:48 p.m.)

13 MR. SMITH: Okay. Thank you.
14 Okay. At this point, we'll hear from the
15 Director of Cooperative and State Programs,
16 Paula White. Thank you. Appreciate you being
17 with us.

18 Construction Cooperative Programs

19 MS. WHITE: Thank you so much.
20 It's a pleasure to be here with you this
21 afternoon.

22 I wanted to give you a brief update
23 of where we are and what we're doing in the
24 Cooperative and State Programs. It may be

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1 somewhat repetitious of information you
2 already know and if it is, I apologize. I
3 really know that you are all OSHA hands, but
4 sometimes a reminder is good for everyone.

5 So, the programs I want to talk to
6 you about today include where we are with our
7 primary cooperative programs, including the
8 Alliance Program, our Consultation Program,
9 including the SHARP Recognition Program, the
10 Voluntary Protection Programs, our Partnership
11 Program, and then a word or two on OSHA State
12 Plans.

13 So, first of all, in terms of the
14 Alliance Program, I think doubtless you all
15 are familiar with it and I'm thinking you're
16 familiar with it because we do in fact have
17 considerable participation -- oh, thank you so
18 much. That does make a difference, doesn't
19 it?

20 We do have considerable
21 participation by the construction industry and
22 not just participation but successful
23 participation in this program.

24 The Alliance Program is our newest

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1 cooperative program. It does offer an
2 opportunity for us and I actually think for
3 our Alliance Program partners as well to find
4 ways for us to work together and maximize
5 resources.

6 We focus primarily on very specific
7 activities around training, outreach and
8 education, certainly on very specific kinds of
9 product development.

10 Through the Alliance Program, we
11 have been very successful in developing
12 jointly an array of products, ranging, as you
13 can see, from publications to having the
14 private sector participate with us on our Ed
15 Boards, for our safety and health topic pages.

16 We've developed joint training.
17 We've provided joint training. More
18 importantly, I think one of the most important
19 things that's happened through this program is
20 an opportunity for people in the private
21 sector and for our Alliance partners to offer
22 training to OSHA staff and that certainly is a
23 rich resource that is made available to us
24 through the program.

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1 Another thing that's been very
2 important to us is development of success
3 stories, business case studies and that's
4 something I think, especially in the
5 construction industry, we would like to see if
6 we can find a willing partner to work with us
7 on.

8 I mean, in general industry, we
9 have worked closely with Abbott, formerly
10 known as Abbott Labs, over about the last four
11 years. We've developed a number of business
12 case studies. We've developed some business
13 case studies with Dow and with some other
14 partners and actually most recently, with the
15 Washington Group, but I think business case
16 studies are something that are important for
17 all of us in developing compelling evidence
18 about the importance of safety and health to
19 any successful workplace.

20 So, these are just web page cutouts
21 of many of the products that are up on our Web
22 with the construction focus and as you can
23 see, they range everywhere from topics pages
24 to tip sheets to a boxtop, fact sheets.

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1 One of the wonderful things I think
2 about the Alliance Program is the ready
3 availability of information on the Web. Every
4 one of our alliance -- each of our alliances
5 at the national level has its own website.
6 All of the information that is developed is
7 readily available through that website. We
8 have linkages to the websites of those that we
9 are in partnership with.

10 We currently have 13 national
11 construction alliances and as you can see, I
12 don't need to read to you the topics that we
13 are working on, but we have -- I actually
14 believe, and I'm not just saying this because
15 you are the Construction Advisory Committee.

16 I do think that the construction
17 community has been probably our very best
18 partner as a community group in terms of the
19 work that we have done together in the
20 Alliance Program and certainly one of the most
21 -- some of the most important accomplishments
22 have come out of the Construction Roundtable
23 effort.

24 In July of '04, really from the --

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1 it was an impetus of the partners, we were
2 working with so many national construction
3 groups, the thought was why don't we all get
4 together in the same room and figure out, you
5 know, where our interests overlap and what are
6 the things we could do together to have more
7 impact, and as a result of a very enthusiastic
8 meeting, this group formed themselves into two
9 subgroups, one focusing on fall protection and
10 the other focusing on design for safety, and
11 they have really been going full tilt at this
12 since the Summer of 2004.

13 The group is about to meet again as
14 a whole, I guess next week, to relook at where
15 they are, to talk about, you know, where we
16 want -- how we want to move forward, and what
17 the next steps are.

18 Certainly the design for safety
19 group has just, I think, been outstanding in
20 terms of, you know, we've done any number of
21 presentations at national events. We
22 participated at the NIOSH event last summer
23 together. I think they're doing some
24 groundbreaking work, and I would urge you, if

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1 you've not looked at the website and looked at
2 some of the products and looked at the
3 information, to do so, and again the
4 leadership really for this effort is coming
5 from the groups in the Construction Alliance.

6 But we have, for example, with the
7 fall protection group developed a series of
8 toolbox talks which address ladder safety,
9 some tip sheets for both employers and
10 employees. We have a design for safety web
11 page that is up, a slide presentation that can
12 be used by anyone with interest in this field
13 to do presentations, and one of the things
14 that we're doing now that we are very excited
15 about is developing a 10-hour course that's
16 focused on engineers who are doing the
17 designing of buildings.

18 So, you know, it's really
19 beginning, I think. It's capitalizing on an
20 issue that's of national importance and I
21 think we're in on the ground floor and we're
22 just extremely pleased with what these groups
23 have done.

24 Just to give you a couple of

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1 specific examples, again in case you're not
2 familiar with some of our alliances, we have
3 had for a number of years an alliance with
4 NAHB.

5 One of the things that has been, I
6 think, particularly successful in this
7 alliance is the training that has been
8 developed in how to build a house series.
9 This is something that OSHA people have been
10 able to participate in, including our
11 Assistant Secretary. I think not many months
12 ago, Steve accompanied one of my staff to a
13 local how to build a house seminar.

14 But in addition to that, a number
15 of training resources with a focus on non-
16 English-speaking employees have been
17 developed. We're very pleased that NAHB
18 representatives help us on the Ed Board for
19 our topics page, on residential construction.

20 So again, a number of opportunities to work
21 together.

22 One of the things, as I mentioned
23 to you, that I think is of particular note in
24 terms of the success of the Alliance Program

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1 are training opportunities that have been
2 developed. Sometimes these training
3 opportunities are opportunities in which the
4 alliance partner offers training to OSHA and
5 our state plan partners. Sometimes it is
6 training that they have developed and offer
7 not only to their own members or employees but
8 to others.

9 But just so you are aware, in this
10 last fiscal year, through the Alliance
11 Program, there were 25 training events that
12 reached over 4,500 employees and that
13 obviously includes OSHA employees and this has
14 been a steadily increasing outcome of the
15 Alliance Program, and as you can see from some
16 of the examples that are on the slide, the
17 training addresses any number of topics, from,
18 as you can see, safe take entry to small
19 businesses.

20 We've had training on pyrotechnics.

21 We've had training on process safety
22 management and really just an array of
23 subjects.

24 So, you are aware of what's new

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1 and/or up and coming. We actually have just
2 posted this last week a new cleaning industry
3 topics page that is a product of our alliance
4 with that group. We have updated and is
5 posted on our small business page our safety
6 page advisor, which I think, if you look at,
7 you will see is a much improved tool and
8 perhaps something that would be useful for you
9 in this industry to use, especially with small
10 subcontractors.

11 We are working with a number of
12 alliance groups on a new eTool for powered
13 industrial trucks, and we are updating our
14 hospital eTool.

15 So, changing topics to another one
16 of our cooperative programs, I often say and
17 at the same time, I think, am embarrassed to
18 say, you know, we often feel that our
19 consultation program remains a secret and it
20 is something we want those who work with us,
21 including our advisory committees as well as
22 our cooperative program partners, to help us
23 get more information out into your communities
24 and your states and your organizations about

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1 the OSHA Consultation Program.

2 OSHA funds in every state a free
3 service, run by state agencies, an agency
4 designated by the governor of each state.
5 This consultation program that provides
6 assistance to small employers. The target
7 audience is employers with 250 or fewer
8 employees at a site. Generally speaking, the
9 focus is on employers with no more than 500
10 corporatewide with some exceptions.

11 Consultation projects are more and
12 more getting into the construction business
13 and we are looking to work with them, talking
14 about developing a pilot program for
15 recognition through the Safety and Health
16 Recognition Program, the SHARP Program, which
17 I will talk about in a minute.

18 This is a good program in terms of
19 offering both training assistance as well as
20 assistance in recognition and abatement of
21 hazards and, more importantly, the
22 implementation of effective safety and health
23 management systems.

24 The recognition program that exists

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1 that is part of the Consultation Program is a
2 program called SHARP. As I said before, it's
3 the Safety and Health Achievement Recognition
4 Program. Isn't that a great government
5 acronym? You can see why we call it SHARP.

6
7 SHARP is a program that looks a lot
8 like the VPP Program in terms of the program
9 requirements. Certainly the intention is an
10 effective safety and health management system,
11 as I said.

12 There are criteria for the program
13 in terms of safety and health performance, but
14 this is a program that recognizes that small
15 employers may need assistance in achieving
16 safety and health excellence and so in this
17 case, unlike our Voluntary Protection
18 Programs, the assistance that helps the small
19 employer is assistance offered by the state
20 consultation projects.

21 Anthony Forest Products is but one
22 of many, many examples of the success of this
23 program. This is a family-owned business that
24 operates in four states. Their experience

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1 with our Consultation Program started in
2 Texas. They have sites in Texas, Arkansas,
3 Louisiana and Georgia and now all six of their
4 businesses are in the SHARP Program.

5 Linda Anthony, who actually was in
6 the building today, is an outspoken supporter
7 of this Consultation Program and the SHARP
8 Program, and they very willingly share their
9 experience of having invested \$50,000 and they
10 believe they've had something over a million
11 dollar return on that investment.

12 The most important thing obviously
13 is the improved safety and health environment
14 for their employees.

15 One of the things we have just
16 completed, albeit completed in that this is
17 now posted but it is an ongoing project for
18 us, is a new look and feel to our small
19 business web page. I would urge you to go
20 look at it.

21 We designed it, redesigned it in a
22 tab format because we think it is easier to
23 use. It provides a clearer focus for the
24 page.

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1 One of the things that is up and
2 coming that will be of importance to you will
3 be the development and a focus on the
4 development of material that can be easily
5 downloaded that is focus material on training
6 for especially Hispanic employees.

7 So, we're going to have a series of
8 training tools. There will be things you can
9 download, like a poster and information that
10 will allow you to do training for it. We're
11 going to have information that will have a
12 family focus, so that these will be things
13 that can be downloaded and printed for
14 employees that they'll be able to take home.

15 Certainly one of the things we know
16 that, you know, if you get the kids involved,
17 you know, with coloring books, with, you know,
18 cartoon-like characters the kids can focus
19 on, that we think this will have a real
20 impact.

21 We're very lucky. We've hired
22 recently some folks with really good expertise
23 and experience in this area and so I think
24 this is going to be something very, very

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1 powerful with a focus on small employers.
2 Again, it's something that our state plan
3 partners in California have had a lot of
4 success with, especially in residential fall
5 protection -- I'm sorry -- residential home
6 building and so I think this is something that
7 downstream is going to have a big pay-off for
8 all of us.

9 I mentioned before our new safety
10 SafetyPay Tool. This product has just gone
11 up. SafetyPay Tool is something that OSHA's
12 had for a number of years, but it was pretty
13 awkward to use. It was not really accessible.

14 You had to download it to your computer. You
15 had to use it offline and it was a bit
16 cumbersome.

17 This is now set up with dropdown
18 menus. It's the kind of thing that you can,
19 you know, plug in amputation and you can plug
20 in the cost, you know, what you know it's
21 going to cost you in terms of insurance costs
22 and you can immediately start seeing what it
23 costs, what you have to generate in profit to
24 make up for the cost of that accident.

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1 So again, I think, especially for
2 small contractors, folks that are operating on
3 the margin in terms of profit, clearly this
4 safety and health is not something they should
5 do because it is profitable, but this might be
6 what you need to push them to understand the
7 consequences of behavior and perhaps change
8 behavior.

9 So, a few minutes now, kind of
10 transitioning once again to talk a bit about
11 the Voluntary Protection Programs, a program
12 that we're having more and more interest and
13 more and more opportunities for the
14 construction industry.

15 So, I want to talk briefly about
16 our Corporate Program, our Mobile Workforce
17 Program, because you are all taxpayers and
18 because I think it's very, very important, and
19 I want to talk about what we're doing in
20 federal agencies and then finally to talk a
21 bit about OSHA Challenge.

22 One of the things I would just
23 mention at the onset because it's something I
24 would like you to all think about where you

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1 work is that we see the Voluntary Protection
2 Program really offers an opportunity for
3 leveraging safety beyond individual sites.

4 This is but an example, not a
5 construction example but I think a good
6 example. Valero Refineries, Valero has
7 actually been a very committed VPP partner in
8 terms of focusing on bringing all of their
9 refineries into the program, but one of the
10 things they did at this particular site in
11 Corpus Christi is make a commitment to get all
12 of their contractors in.

13 So, in this site, you can see the
14 array of VPP flags, I think there should be
15 seven there, and they represent flags not just
16 for Valero but for them insisting on
17 contractor safety and health at an exemplary
18 performance point so that all of their
19 contractors are recognized by VPP as well as
20 the Valero site and certainly I think
21 downstream, as all of you look to improving
22 safety and health wherever you work, you are
23 all dealing with contractors on some level or
24 another, and I think this simply illustrates

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1 quite graphically that you can successfully
2 improve safety and health not for just for
3 your own employees but for your contractors as
4 well.

5 One of the things, a pilot that we
6 started about -- I always think things
7 happened yesterday and now I don't know.
8 Probably four or five years ago. We began a
9 corporate pilot which is an opportunity for us
10 to look at ways to leverage our resources and
11 to save resources, both on the part of OSHA
12 and on our partners' part so that we've got a
13 corporate process that allows us to look at
14 and approve those corporate safety and health
15 programs that are applicable to all the
16 corporate entities' sites, so that then when
17 individual sites apply, we can have an
18 abbreviated application and a more abbreviated
19 onsite because we're not continuing to review
20 paper programs we've reviewed. We're looking
21 at the effect of programs onsite.

22 So, our initial experience was with
23 the six groups listed there. Our initial
24 experience tells us that this is working, that

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1 we are seeing a resource savings both on our
2 part and on the part of our partners.

3 The Postal Service is certainly our
4 most prolific partner. Prior to beginning in
5 the corporate pilot in 2005, the Postal
6 Service had 17 sites in VPP. They now have a
7 104.

8 The Washington Group is, in this
9 initial group, our only partner that has
10 construction experience. As you will see from
11 this slide, we are now expanding participation
12 in the corporate pilot. We're kind of moving
13 into Phase 2.

14 These are the groups that we are
15 working with currently. We've already
16 received an application from four. I am very
17 intrigued about what the expansion of this
18 pilot is going to give us an opportunity to
19 explore.

20 As you can see, we now are going to
21 have not just the Washington Group but also
22 Fluor, Jacobs, and Parsons in this program and
23 so it's not just -- so, it's going to really
24 give us an opportunity to figure out in a very

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1 real world way, you know, how does the concept
2 of corporate VPP work for construction
3 entities.

4 More interestingly, you know, we've
5 had sidebar conversations with folks from all
6 of these corporate entities and clearly there
7 are times that they work together in a joint
8 venture. What's that going to look like and
9 how does it work? How is this going to work
10 with our state plan partners?

11 Steve and Kevin are folks that we
12 need to talk to about that because often, you
13 know, as they are making these kinds of
14 commitments and their work is often in state
15 plan states, I think we need to try to pave
16 the way and find a way to make this work on a
17 national basis.

18 So, it's one of the nicest things I
19 think about VPP is it offers us an opportunity
20 to do pilots, to have demonstration projects
21 and to figure out what works.

22 So, we're very excited about the
23 commitment that everyone is making, all of the
24 groups on this slide, because it really is

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1 giving us a good opportunity to look -- to not
2 just expand the VPP Program but to do it in a
3 sensible way and to do it in a way that's
4 effective and makes sense in terms of safety
5 and health.

6 The OSHA Challenge Program is
7 another program I know you guys have heard
8 about and you've heard from me about. Again a
9 program that we're very, very excited about
10 and is working very well for us.

11 We designed this program really as
12 a roadmap to VPP. In point of fact, this
13 program has success whether you go to VPP or
14 not. It really is a roadmap to improving
15 safety and health performance, to improving --
16 to helping any entity, be it the general
17 industry or construction, leading them to the
18 implementation of effective safety and health
19 management systems, whether or not they ever
20 decide to go into VPP.

21 We do have two tracks, as I said,
22 for general industry and construction. The
23 last bullet is the most important bullet on
24 this page. I truly believe there is no other

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1 program we can find and the wonderful part
2 about this program is it is almost resource
3 neutral for OSHA, but it allows us to collect
4 data from the program administrators about the
5 participating sites from the moment the sites
6 come in the program and that's really what
7 we're doing, is looking at the data.

8 So, the data is telling us that the
9 average participant in this program is
10 improving their total case incident rate and
11 the days away rate close to 40 percent a year.

12 Now I just don't think you're going to find
13 another program which is minimizing government
14 resources, is maximizing your reliance on
15 essentially a mentoring and support system of
16 volunteers and have that kind of improvement
17 in safety and health.

18 So, it is certainly something we
19 are interested in expanding. It is something
20 that I think has a pay-off for all of us.
21 This is simply a list and these are on our
22 website, but you now have a copy of my slides.

23 These are our current VPP Challenge program
24 administrators in the construction industry.

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1 Again construction performance has
2 been better than the performance in general
3 industry. We've really had a lot more
4 participation on the construction side. So,
5 we are always looking for new challenge
6 administrators. We are happy, if anyone is
7 interested, both to encourage you to speak to
8 other people who've already done it, also to
9 do a webinar, to share information with you.

10 But again a very, very exciting
11 program and one that the data suggests is
12 very, very good.

13 Just one slide to talk about one of
14 our many successes, North American Energy
15 Services. They reduced their total case
16 incident rate from 11.3 to 4.9. They reduced
17 their EMR from 1.09 to .7.

18 One of the things that most of the
19 construction data is going to tell us is that
20 participation in this program has improved
21 their competitiveness and I think, you know,
22 if you just think about the data about the
23 improvement in an EMR rate, you can appreciate
24 why in fact it would improve their

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1 competitiveness.

2 So again, we're happy to talk more
3 about this. We're looking for everybody to
4 sign up. I have a slide that I use sometimes
5 at presentations that's got Uncle Sam, you
6 know, kind of we want you to be a challenge
7 administrator, but we do.

8 I talked to you before. You know,
9 we launched nationally about a year and a half
10 ago our VPP demo for construction. It is a
11 program that in some ways has surprised me
12 because it is a program that has not taken off
13 as much as we thought it would.

14 Those who are in it are very, very
15 excited about it and again have very
16 successful programs and are very happy with
17 the program.

18 What we did, the 17 VPP demo
19 construction participants represent new demo
20 folks. We actually overall in terms of
21 construction participation in VPP, when you
22 wrap them all up, we've got about a hundred
23 different sites participating in the program.

24 Again, a good VPP example from

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1 Quadrant Homes, a couple of things obviously
2 leap out at you, I think, from this slide;
3 that is, a 57 percent decrease in reportables
4 and a \$2.4 million savings for direct cost,
5 direct and indirect costs associated with
6 safety and health for Quadrant Homes.

7 Just a word now. Again, as I said
8 before, you are all taxpayers and you are all
9 safety and health professionals, and I think,
10 you know, a longstanding issue for those of us
11 who are federal employees has been as safety
12 and health has improved generally in the
13 country, that oftentimes I think federal
14 employees have been a bit left behind.

15 We are very excited about the
16 growing interest in the Federal Government in
17 VPP as a solution to many of the very serious
18 safety and health issues that exist in a
19 number of federal agencies. So, as you can
20 see, we now have a 150 VPP sites in eight
21 agencies.

22 A couple of very exciting things
23 for us. First, it is that OSHA is walking the
24 walk, as the expression goes, as well as

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1 talking the talk. We now have five area
2 offices that are in the program. Probably
3 more importantly, we do have an agencywide
4 initiative on VPP that is very strong, very
5 focused and is ongoing.

6 Along with Mike Connors, our
7 regional administrator from Chicago, I'm
8 chairing the group of executives. We've got a
9 number of teams. We are developing an agency
10 policy and programs so that we've got a
11 consistent safety and health management
12 system. We're looking at what the issues are.

13 We're working with our unions, and it
14 certainly has been Ed's expectation that all
15 of the regions are moving toward VPP in some
16 of their area offices.

17 Clearly, you know, Mike's well
18 ahead of the rest of the agency with five
19 sites in, and he actually told me in a
20 conference call earlier this week he has three
21 other area offices he thinks will come in in
22 about the next year.

23 So, this is something I think that
24 is very important for us. Certainly the

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1 experience of the folks in those area offices,
2 they think it helps them tremendously now when
3 they are out in the field and they are talking
4 to employers about some of the obstacles they
5 face. They can say, yes, you know, we went
6 through that, too.

7 Often, I think safety and health
8 professionals are probably the hardest sell
9 because they think, you know, OSHA people, we
10 think we know it all and we're the best and we
11 don't need to improve and in point of fact, we
12 do and we have, and there's a strong
13 commitment here on the part of the agency.

14 The other really major piece for us
15 has been the commitment of the Department of
16 Defense, originally going back to Secretary
17 Rumsfeld, continuing with the new Secretary.
18 They have an extremely active program.
19 They've invested really considerable money in
20 terms of contractors that are helping them
21 with hazard assessment and GAAP analyses.

22 We have a newly-signed partnership
23 with the Air Force, another partnership with
24 the Army. We're negotiating a partnership

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1 with the Navy as well.

2 As you can see, the total number of
3 sites now is fairly small, but we've got a
4 very structured plan for bringing in
5 considerable more sites, Army bases, Air Force
6 bases, and the like.

7 Certainly in terms of readiness, in
8 terms of the cost to the taxpayer, more
9 importantly the cost to working men and women,
10 improving safety and health in the Defense
11 Department is of importance, I think, to all
12 of us and there is a great deal of enthusiasm
13 in the services for this program.

14 Then just briefly, a bit on our
15 Strategic Partnership Program. This is a
16 program that has remained at a fairly steady
17 size over the years. We usually have about 55
18 new partnerships a year. Again, it is a
19 program that has had its best success in the
20 construction and our most active participation
21 has been in the construction industry and you
22 can sort of compare the numbers there when you
23 look at, you know, out of a current 169
24 active, a 139 are construction partnerships.

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1 So, you can pretty much see this is a
2 construction program.

3 Great successes, especially in big
4 construction projects. I think all of the
5 major new sports stadiums have been built
6 under construction.

7 A successful partnership, though,
8 that is not in construction but one that is of
9 great interest and the information on this is
10 available on our website is our partnership
11 with the Postal Service.

12 This is a partnership that has
13 focused on the implementation of a new
14 ergonomic risk reduction strategy by the
15 Postal Service. The focus for this
16 partnership is in their major mail
17 distribution sites.

18 As you can see again the numbers,
19 they've had considerable success, both in
20 reductions in MSD recordable rates as
21 reductions having to do with lifting.

22 The Postal Service, as I mentioned
23 before, is also a VPP partner. These two
24 obviously complement one another, but a very

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1 good success, and then just one more success,
2 which is again a bit more typical.

3 Fox Energy Center. This was a
4 building of a new power plant. I don't need
5 to read the data to you. You can see it. The
6 data is very, very impressive in terms of both
7 the illness and injury reductions as well as
8 the importance of 1.45 million hours worked
9 with no fatalities, three days away cases, and
10 this is pretty typical, I think, for these
11 major construction partnerships.

12 Again Busch Stadium. This is a
13 partnership that's been closed obviously for a
14 couple of years since the stadium opened in
15 2006, but it is a process that has been
16 replicated in most of these major stadiums,
17 showing you the success of these partnerships.

18 Just leaving you with this word
19 before I have just a couple words on State
20 Programs. We were very excited a couple of
21 months ago to find from Australia a recent
22 report by Goldman Sachs, JB Were, in which
23 they have done a pretty intense study to
24 advise their investors and one of the things

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1 that they have noted is that they are
2 essentially telling their investors that there
3 are relationships between workplace safety and
4 health and investment performance and they are
5 really telling their investors, you know, if
6 you want to make money, you want to look to
7 invest in a place that is focused and
8 cognizant of their workplace safety and health
9 corporate responsibilities and they are very
10 clear about a return on investment.

11 Certainly something that was music
12 to our ears because it is something we believe
13 as an agency. We're very pleased to have
14 Goldman Sachs confirm it, but certainly in
15 terms of corporate social responsibility, I
16 think it's something that is important for all
17 of us to keep in mind.

18 Then one brief word because I know
19 many of you either live or work or may work in
20 state plan states. Certainly our state plan
21 partners are very important to the overall
22 OSHA programs and our state plan partners are
23 responsible for 40 percent of the OSH coverage
24 in this country.

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1 In our 22 states, we have 22 states
2 with full state plans, four more states that
3 cover only public employees, one of the things
4 that we have been working on and are about to
5 launch are new pages describing each of our
6 state plans.

7 These pages will be parallel one to
8 another. They will provide you with
9 consistent descriptive information and, most
10 importantly, they're going to provide you with
11 either a link in terms of a hyperlink or a
12 phone number to call to get information about
13 all of the important issues that are described
14 on these pages.

15 Something we're all pretty excited
16 about, both our state plan partners and us.
17 You know, I know people go often to the OSHA
18 website to get information about our
19 directives, information about our new
20 standards, you know, but when you get it, you
21 know that you're generally getting information
22 about what Federal OSHA is doing.

23 So, we have developed these new
24 pages, and I know this -- I'm certain it's

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1 even worse on the tiny ones you have. You
2 can't really read this handout, but we will
3 now be attaching every time there is a new
4 OSHA standard or a new OSHA directive, we will
5 attach after the six-month period that states
6 have to respond a chart that will indicate to
7 you whether the state addressed this issue, if
8 they addressed it, did they adopt an identical
9 standard or policy to the federal policy.

10 If they adopted something
11 different, it's going to tell you that and
12 it's going to give you information on how to
13 get -- you know, where to find out what the
14 state is doing.

15 So, this really will be a good
16 solid one-stop place to get information about
17 what's going on nationally because you'll have
18 a complete chart, you know, as we develop new
19 items. So, I think it will be very helpful to
20 anyone who, you know, is working in any area
21 besides one federal state.

22 So that is a brief update for us.
23 We're very excited about all of the
24 opportunities that we have to work on this

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1 exciting array of programs, certainly
2 appreciate your input and your help with any
3 of these.

4 Steve and Kevin are very strong
5 state plan partners. We work regularly with
6 them as well. I'm very pleased that they are
7 included in this committee because it's
8 certainly a viewpoint that's important to us
9 as well as to you.

10 So, I'd be happy to answer any
11 questions or allow the agenda to move on so we
12 can all move toward party time.

13 MR. SMITH: We've got time for a
14 few questions, but we'll have time for the
15 other, also.

16 MR. KRUL: Bob Krul with the
17 Roofers.

18 Mr. Chairman, thank you. One quick
19 question, Paula.

20 Your VPP Challenge Program
21 construction administrators list. Some of
22 them had an asterisk next to them.

23 MS. WHITE: Oh, yes, thank you.
24 I'm sorry I didn't say that. The asterisk

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1 simply means they were -- those with the
2 asterisk were in our original group. So, they
3 are just original partners.

4 MR. KRUL: Okay. Secondly, the
5 statistics on individual sites speak for
6 themselves with injury rates and the data you
7 provided, but these bigger companies with
8 multiple construction sites and OSHA only has
9 human and financial resources to do job site
10 visits in roughly 10 percent of them, how do
11 you assure that all those sites are in
12 compliance with safety standards?

13 MS. WHITE: Well, I'm assuming that
14 the context of the question would be with VPP.

15 MR. KRUL: Yes.

16 MS. WHITE: Okay. As you know, our
17 approach to construction and VPP is different
18 than it is in general industry.

19 Right now, the way we have set the
20 program up for our VPP demo program is if you
21 apply -- now I'm not talking about corporate
22 because, as I said, corporate, we've got to
23 figure out, but our current VPP demo,
24 applications are accepted in a defined

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1 geographic area and the applier has to
2 negotiate that geographic area with the
3 regional administrator. It can be limited to
4 an area office. It could be a state. It
5 could be the entire region.

6 I will be quite honest with you. I
7 don't think we have any regional administrator
8 right now who's willing to go into our region.

9 You know, we're often more turtle-like than
10 hare-like and so we're moving slowly and I
11 think that's good. That's the reason you have
12 pilots. It lets us know what we're doing.

13 So, I know, for example, Mike has
14 had, you know, companies that have applied in
15 the demo that first have been an area office
16 and he's had some expansions statewide and I
17 think we do this based on our experience.

18 The program is written very clearly
19 that, you know, if you apply, you know, we
20 aren't going to all your sites. We're going
21 to go to select ones of your sites.

22 The important part about this
23 demonstration project, and it's the same in
24 the Corporate Program, is that (1) the key

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1 thing -- a key thing we are reviewing is not
2 just a corporate commitment but a
3 demonstration that the corporation can assure
4 us of their oversight capacity, so that we
5 look not just at paper but we interview and
6 clearly if we have indications that there is a
7 failure in that corporate oversight, then
8 we're going to go back.

9 I think the other fail safe in this
10 is -- there are a couple things. You know, I
11 know my friend Mr. Swanson is in the audience
12 today.

13 One of the things that we've always
14 thought about and looked at in OSHA is that we
15 do have limited resources and ultimately we
16 cannot go every place and so we do want to be
17 strategic about where we enforce and we want
18 to encourage people who are doing the right
19 thing to do the right thing even better and to
20 be responsible and so I think one of the
21 things this program offers us is an
22 opportunity to encourage people to do what
23 they are supposed to be doing, which is
24 ensuring safety and health, and we do monitor

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1 that corporate oversight.

2 We never relinquish responding to
3 employee complaints, responding to a disaster.

4 If something goes awry, we are there. So, I
5 think there are sufficient fail safes, and I
6 think -- but I think the opportunity for
7 improvement by encouraging -- you know, VPP is
8 a striking program in that OSHA's not giving
9 anybody a whole lot beyond recognition and the
10 fact that people are willing to do as much as
11 they're willing to do just for that
12 recognition is really inspirational,
13 inspirational to me on a personal level, but I
14 think it's that that we need to encourage.

15 MR. KRUL: Thank you, Paula. Thank
16 you, Mr. Chairman.

17 MR. SMITH: Thank you. Other
18 comments?

19 MR. HAWKINS: Mr. Chairman?

20 MR. SMITH: Yes, sir?

21 MR. HAWKINS: I'd like to recognize
22 Steve Hawkins from Tennessee Plan.

23 At our OCOSH meeting, Ms. Paula
24 announced her intent to retire and be sure

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1 that our OCOSH group acknowledges that and
2 thanks her for her service and didn't know if
3 you were aware of that.

4 MR. SMITH: Thank you very much.

5 MS. WHITE: Thank you, Steve. He
6 wants to make me cry. Thank you.

7 MR. HAWKINS: We thought she was
8 crying the last time but she just had a bad
9 cold.

10 MS. WHITE: I was crying.

11 MR. HAWKINS: She came in with her
12 handkerchief, but she has been of service to
13 this group, I know.

14 MR. SMITH: She sure has.

15 MR. HAWKINS: I just want to make
16 that motion.

17 MS. WHITE: Thank you so much.
18 Thank you.

19 MR. SMITH: And thank you for --
20 and that's a good way to end.

21 MS. WHITE: Thank you.

22 MR. SMITH: Thank you so much for
23 coming in.

24 MS. WHITE: Thank you, Linwood.

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1 Thank you. I will be around this evening, so
2 I'm happy to answer any more questions or
3 provide any information that you guys need.

4 MR. SMITH: And as the committee,
5 we would like to thank you for your service
6 very much.

7 MS. WHITE: Thank you so much.

8 MR. SMITH: We really appreciate
9 it.

10 MS. WHITE: I appreciate it. Thank
11 you.

12 (Applause.)

13 MR. SMITH: Thank you.

14 MS. WHITE: Thank you so much.

15 MR. SMITH: Thank you. Okay. Mr.
16 Buchet, you want to get Mr. Butler, Hank Payne
17 on the phone?

18 MR. BUCHET: I understood he was
19 going to be standing by at 3:45.

20 MR. SMITH: 3:45. Okay. We can
21 move right on then. It's 3:30 now. We will
22 keep meeting. We've got work groups. We've
23 got two work groups that met yesterday and I
24 think they're both ready to make their

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1 reports. So, let's start with Tom Kavicky on
2 Residential Fall Protection and we'll keep
3 moving right along and then at 3:45, we'll
4 stop and talk to Dr. Payne.

5 MR. KAVICKY: Thank you, Mr.
6 Chairman.

7 Co-Chair Mike Thibodeaux is going
8 to give the presentation.

9 MR. SMITH: How did you talk him
10 into that?

11 ACCSH Governance/Work Group Reports

12 MR. THIBODEAUX: We began our
13 meeting at 9 yesterday on Residential Fall
14 Protection and we started out, Tom and I,
15 summarizing the prior presentations on
16 residential fall protection at the other work
17 group meetings we had, to include roof and
18 truss operations, use of scaffolds and ladders
19 in truss operations.

20 MR. SMITH: Would you forgive me?
21 Let me interrupt.

22 I'm going to back up a minute. I
23 don't put my glasses on often enough. Hold
24 your report.

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1 MR. THIBODEAUX: Okay.

2 MR. SMITH: We've got two gentlemen
3 that have signed up for Public Comments and
4 just in case they have other obligations or
5 other places they need to be, they were
6 supposed to go at 3:45 and we're going to be
7 tied up with Dr. Payne at 3:45.

8 So, at this time, Scott Schneider
9 and Mike McCann, and we'll let them -- Scott
10 go first, if that's okay, and Scott, if you
11 take about five minutes, we'd really
12 appreciate it.

13 Public Comment

14 MR. SCHNEIDER: Scott Schneider
15 with the Laborers Health and Safety Fund of
16 North America, and thank you very much for
17 letting me make a short announcement.

18 I wanted to make two announcements,
19 really. One of them is just to make you
20 aware, next month, at the National Hearing
21 Conservation Association in Portland, we'll be
22 announcing -- we're working with NIOSH,
23 between NIOSH and the National Hearing
24 Conservation Association, to develop a special

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1 award to be given to the construction company
2 that has an excellent hearing conservation,
3 hearing loss prevention program.

4 So, we're going to be hopefully
5 working with all of you to help promote this
6 and encourage people to apply, and the first
7 award will be given at the National Hearing
8 Conservation Association meeting a year from
9 February, in February of '09, but we'll be
10 promoting it at the Construction Safety
11 Conference in Chicago and hopefully we'll get
12 a lot of people that have really good
13 programs, so we can give an award out. So
14 that's just one thing I wanted to mention to
15 you, some minor progress.

16 The other progress I wanted to
17 mention to you is while I was on the committee
18 a couple of years ago, I kept harping on
19 trying to make the work group reports a lot
20 more accessible because the work groups do
21 tremendous amount of work and really
22 productive and very good work, but the reports
23 from the work groups are unfortunately buried
24 in the OSHA docket. It's very difficult to

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1 find them.

2 So, last month or maybe it was two
3 months ago, I worked with CPWR to put all the
4 work group reports that we could find up on
5 the LCOSH website. So, if you go to the
6 Electronic Library for Construction Safety and
7 Health, there is a page where you can access
8 very easily the ACCSH Work Group Reports and I
9 believe that link is now on the OSHA/ACCSH web
10 page. So, you can go directly from there to
11 the LCOSH.

12 So, anyway, minor progress but
13 progress nonetheless.

14 Okay. Thank you very much.

15 MR. SMITH: Thank you. Thank you
16 very much. I knew you had been sitting here
17 all day and wanted to make sure we got your
18 comments. I appreciate that.

19 Mike McCann. Thank you very much,
20 also, for being with us and we'd like for you
21 to take five minutes or less, if you would.

22 MR. McCANN: Thank you.

23 MR. SMITH: Thank you.

24 MR. McCANN: Mike McCann, Director

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1 of Safety Research at CPWR, the Center for
2 Construction Research and Training, a new
3 name.

4 In the past, in meeting notices and
5 everything that we have put out on ACCSH, it's
6 talked about for ACCSH members, employee
7 representatives and employer representatives.

8 However, and a number of people have brought
9 this up to me, in this meeting, last meeting
10 notice of December 17th, it talked about
11 representatives of employee viewpoints and
12 representatives of employer viewpoints.

13 I know that was an issue that some
14 of the non-union construction contractors had
15 been saying that, oh, we represent employee
16 viewpoints and so I'm just wondering what is
17 the reason for this change. Does anyone know,
18 and does it --

19 MR. SMITH: Well, I certainly don't
20 know. Is anyone here capable of commenting on
21 that or qualified to comment on that?

22 MR. SHANAHAN: I just want to get a
23 clarifying question. So, are you asking that
24 like non -- are non-union employees being

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1 represented?

2 MR. McCANN: No. Is this a change
3 in position on OSHA that would ultimately may
4 be allowed non-union employees to be
5 represented by employers or something like
6 that?

7 MR. SHANAHAN: I see.

8 MS. SHORTALL: Want me to deal with
9 it?

10 MR. SMITH: Go right ahead.

11 MS. SHORTALL: Okay. In the
12 Construction Safety Act, it does specifically
13 say identify what type of membership has to
14 be represented here. Three members shall be
15 individuals, representative employees,
16 primarily in the building trades and
17 construction industry, engaged in carrying out
18 contracts to which the section applies.

19 In the regulations that OSHA
20 developed or promulgated to carry over the
21 Construction Safety Act, it does specifically
22 say in here that there are to be five members
23 who are qualified by experience, affiliation
24 to present the viewpoint of employees

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1 involved.

2 So, I think what they were just
3 trying to do was track the exact language that
4 you would find in Section 1912.3 of OSHA
5 regulations. It was not representing any type
6 of change in OSHA's position but, rather, just
7 trying to stick as closely as possible to the
8 exact language in the regulations.

9 MR. McCANN: It was a change in
10 that people had noticed it and wondered about
11 the significance of it.

12 MR. WITT: It wasn't meant to
13 suggest a change in philosophy, policy or
14 practice, just to better reflect the language
15 in the regulations.

16 As Sarah said, the language -- the
17 regulation implements the Construction Safety
18 Act which was carried over and that's -- as
19 many of you know, this committee was formed
20 under the Construction Safety Act.

21 This was the means we used to bring
22 this committee under the Occupational Safety
23 and Health Act.

24 MR. McCANN: Okay. Thank you.

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1 MR. SMITH: Thank you. Thank you
2 very much.

3 Okay. We'll go back to our report
4 on Residential Fall Protection.

5 MR. THIBODEAUX: All right. As I
6 stated, we summarized the prior presentations
7 that were made to the Residential Fall
8 Protection Group, scaffolds, ladders, fall
9 rest systems, use of the wall walker system,
10 and we've got copies of the prior minutes of
11 the work group meetings that we will submit
12 along with this report.

13 Discussions opened concerning
14 definition of residential construction and how
15 residential construction is characterized and
16 obviously it's characterized by wood framing,
17 wooden floor joists and roof structures, and
18 after discussion with the group, the consensus
19 was urging OSHA to redefine residential
20 construction and supports the inclusion of
21 concrete block or cinder block construction as
22 well as metal stud framing when used in
23 residential construction as part of that
24 definition.

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1 There was a presentation by LeBlanc
2 Building, Weyerhaeuser Real Estate, and
3 Maracay, not MaryKay but Maracay, Homes, and
4 they gave us a presentation on fall protection
5 in residential construction and it included
6 the use of all conventional fall protection
7 methods with showing us concrete basement
8 walls by using rails and the installation of
9 floor joists and floor trusses and subfloor
10 leading edge work, installation of roof
11 trusses where they used conventional fall
12 protection before the trusses were sheathed
13 and also in roof sheathing and also during
14 roofing operations.

15 The discussion following this
16 presentation, a number of questions were asked
17 concerning will these roof trusses support the
18 fall protection anchors without being fully
19 sheathed, and, of course, they tested it and
20 showed us in their presentation that they had
21 them attached to four trusses rather than one
22 truss.

23 And the amount of training that was
24 required to train people to be able to utilize

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1 this fall protection system and they stated
2 that it was about eight hours of training
3 where they felt comfortable that their workers
4 could operate this very safely.

5 So, also, a question was asked
6 concerning increased costs for implementing
7 this in residential homebuilding and the cost
8 of this truss bar, which I said encompasses
9 three or four trusses, is anywhere from \$1,200
10 to \$1,500. The cost of the self-retracting
11 lifelines cost anywhere from \$500 to \$800, and
12 they had also roof and window anchors that
13 they use for painters, siders, et. cetera,
14 that were \$20 to \$30 apiece.

15 Of course, the truss bar and the
16 self-retracting lifelines are reusable for
17 quite a long time, until you have a fall, and
18 then the self-retracting lifeline has to be
19 replaced, but they estimated the cost to
20 implement this kind of program was
21 approximately \$250 per home.

22 Now, one thing that they didn't
23 have was engineering, scientific data on the
24 fall protection program as well as data from

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1 their truss manufacturer stating that they
2 were okay with the way they set this up
3 because what they've done has contradicted
4 what the National Truss Manufacturers
5 Association has stated concerning trusses that
6 are not sheathed, you know. They're not
7 designed to handle that type of fall
8 protection without being even partially
9 sheathed.

10 So, they're going to furnish that
11 to us and to the folks that were there who
12 requested it and we'll look at that and it may
13 be that this is, you know, an appropriate
14 presentation to be made to the full ACCSH
15 Committee at our next meeting in either April
16 or May.

17 A couple other things. One
18 commenter expressed concern about the smaller
19 contractors may find the initial cost
20 prohibitive to implement these systems and the
21 presentation also showed the use of a crane in
22 putting the trusses on the home itself and I
23 don't believe that they did it like some -- in
24 some areas of the country where they build the

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1 roof trusses onsite and put them up one at a
2 time and how is that going to work and whether
3 that is feasible for the particular system.
4 That was from that presentation.

5 We had another one from the
6 National Frame Building Association. Although
7 they're primarily used in the agricultural and
8 commercial industry, this was presented to be
9 similar in design and resembling residential
10 construction, built on grade, no basements.

11 There's supposed to be a more
12 detailed presentation to the committee
13 tomorrow and the bottom line is the National
14 Frame Building Association would like to be --
15 they would like their industry to be included
16 under the residential fall protection
17 compliance guidelines and so that you'll hear
18 that tomorrow, a more detailed report. So
19 that's why I didn't go into much detail on it.

20 There was a big discussion
21 concerning the interim standard and I don't
22 know what the number is now, but it was called
23 STD-3.01(a) that was promulgated, I think, in
24 '94.

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1 The question was asked, you know,
2 hey, let's talk about either retaining this,
3 modifying it, or eliminating it, and a number
4 of the comments were, from a number of folks,
5 that the interim standards creates confusion
6 and it authorizes alternative fall protection
7 measures, but it doesn't have the limitation
8 that Subpart M does.

9 It doesn't have to be a written
10 fall protection plan. You don't have to show
11 infeasibility or greater hazard. You can just
12 implement it and I think that is -- what's the
13 best way I can put this? That allows some
14 folks to not follow Subpart M, even though it
15 could be feasible and there's not a greater
16 hazard and I think that was the consensus.

17 There was a concern for the lack of
18 written fall protection plans and the majority
19 of state plan states think that this interim
20 standard should be rescinded because most of
21 them don't use it. I think there were only
22 four that do use it throughout the states.

23 NAHB talked about their training
24 programs and they distributed a copy of their

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1 training manual for fall protection as well as
2 a copy of their video that they're using in
3 their training program and it was noted in
4 their comments that there's no reference to
5 the interim standard in their training
6 documents which was, I think back in '94, NAHB
7 was one of the promulgators of the interim
8 standard and I think they feel with the things
9 that have come about over the last 14 years
10 that allow folks to be able to use more
11 standardized fall protection measures to
12 protect the workers, especially in roof and
13 truss operations and framing operations.

14 A number of attendees voiced their
15 support of the NAHB's direction towards
16 following Subpart M, and National Roofing
17 Contractors actually said that they opposed
18 the elimination of the standard because it
19 allows them -- and that was just strictly for
20 roof operations, not for truss operations or
21 anything else. It allows them some
22 flexibility.

23 And comments were also made that
24 OSHA should train their compliance officers so

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1 that there's more uniform enforcement of the
2 standards under Subpart M.

3 MR. SMITH: Okay. We need to call
4 Dr. Payne. I think -- I know I heard one
5 recommendation in that report and possibly
6 another one. If you'd like to make those as
7 recommendations to the full committee, then we
8 can vote on it after we do this, we'll be glad
9 to do that.

10 MR. THIBODEAUX: Sure.

11 MR. SMITH: Thank you for your
12 understanding.

13 DR. PAYNE: Hey.

14 MR. SMITH: Dr. Payne, can you hear
15 us?

16 DR. PAYNE: Barely.

17 MR. SMITH: Okay. This is Linwood
18 Smith, Chairman of ACCSH.

19 DR. PAYNE: How you doing?

20 MR. SMITH: Doing good. Appreciate
21 you standing by for us. Can you hear us
22 better now?

23 DR. PAYNE: Yes.

24 MR. SMITH: Would you like to

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1 update us on any changes in OTI? Then I'm
2 sure some of our members will have some
3 questions.

4 DR. PAYNE: I'm not sure how many of
5 you know, I don't remember the last time I was
6 at ACCSH, but we've hired -- we've had a
7 number of changes in the management structure
8 out here.

9 Sean Zin Yin is now the head of the
10 Construction Branch out here. He's a
11 structural engineer who used to be with Region
12 5.

13 Charlie Shields is the new Director
14 of the OSHA Training Institute who replaced
15 Sig Sedaucus who retired about two years ago
16 now.

17 We have a new admin director out
18 here, Sam Lombardo, and a new Director of
19 Programs. His name is Jim Barnes. A new
20 Deputy Director who is Ernest Thompson, who
21 used to be the head of the Programs Office out
22 here. So, we've had a number of personnel
23 changes out here.

24 We also -- I think maybe you knew

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1 we went through -- our office went through
2 competitive sourcing which is the A-76 process
3 whereby the instructor positions, the
4 developer positions and a lot of the staff
5 positions went through a competition and to
6 see if it would be cheaper to outsource the
7 work or keep it in the house with federal
8 employees, and it was cheaper to keep it
9 inhouse with federal employees.

10 So, we were very happy about that,
11 although we are working under a most efficient
12 organizational structure right now which does
13 cause us some constraints in terms of
14 personnel assignments and who can do what, but
15 we're working around those.

16 Those are probably the two big
17 things that -- two major things that have gone
18 on out here, I think, since ACCSH last met.
19 It's been all in the personnel changes and
20 getting through this competition.

21 MR. SMITH: Thank you. Could you
22 talk to us briefly -- I've heard some comments
23 from the members of the committee -- about the
24 OSHA 500 instructors and maybe some changes

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1 that are going to take place there or being
2 contemplated?

3 DR. PAYNE: Yes, I can. The
4 Outreach Training Program is basically the
5 program, I guess it's probably known as the
6 10- and 30-hour card program, but officially
7 it's the OSHA Outreach Training Program, where
8 OSHA authorizes instructors who complete a
9 training program to go out and do 10- and 30-
10 hour courses in either construction or in
11 general industry.

12 Periodically, we take a look at the
13 program and we update it and make changes.
14 The last time any changes were made to the
15 program was in 2003. We're currently looking
16 at the program right now to see what changes
17 that might need to be made. We're still in
18 the process of discussing a lot of those, but
19 basically they're kind of -- they really come
20 under two areas.

21 The first area would be topic
22 changes. Right now, there are specific areas.
23 Under each program, there are required topics
24 and then there are, for lack of a better term,

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1 topic areas that you can choose from to fill
2 in the 10 or remaining 30 hours.

3 Then the second set of changes
4 basically deal with an ongoing issue that a
5 number, a large number of the OSHA Training
6 Institute education centers have been
7 reporting to us dealing around the
8 prerequisites for becoming an authorized
9 instructor and then primarily it being that a
10 number of the people now enrolling in the
11 trainer courses which are the 500 and the 501
12 courses are really struggling with not having
13 a sufficient background and many of them
14 switch and go through the standards course.

15 Now that sounds more ominous than
16 it is. It is a course that is an overview of
17 construction standards, policies and
18 procedures. It's not a blow by blow here are
19 all the standards in construction and here's
20 everything you need to know.

21 It really is an overview of
22 standards to help give them a feel for what
23 kind of standards cover the construction
24 industry and the kinds of things they need to

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1 help them be better instructors.

2 In the past, we have allowed the
3 OSHA 30-hour to substitute for the standards
4 course and what the ed centers have been
5 reporting to us is that those students are
6 more and more having problems in the trainer
7 course and a number of them are backing out of
8 the trainer course and are going into taking
9 the standards course.

10 So, we are at this point exploring
11 whether we're going to eliminate the 30-hour
12 and basically require the standards course, in
13 the construction case it would be the 510
14 course, or what we would call an equivalent
15 and there are a number of areas that we're
16 considering as equivalent areas.

17 For example, an associate's,
18 bachelor's or master's degree in the safety
19 and health field. If the person is a
20 certified safety professional or a certified -
21 - an occupational health and safety
22 technologist or a construction safety and
23 health technician or a professional engineer
24 who's had course work in OSHA standards,

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1 things along those lines are what we are
2 currently considering as would substitute as
3 an equivalent for that 510 course.

4 MR. SMITH: Okay. Thank you very
5 much.

6 At this point, Hank, I'm going to
7 ask the committee if they have any questions,
8 and I'm going to ask them to identify
9 themselves before they ask the question so you
10 know you're responding to.

11 DR. PAYNE: Okay. Thanks.

12 MR. SMITH: Yes, sir, Frank?

13 MR. MIGLIACCIO: Frank Migliaccio
14 with the Ironworkers, Hank.

15 DR. PAYNE: Hi, Frank. How you
16 doing?

17 MR. MIGLIACCIO: Good. How you
18 doing?

19 DR. PAYNE: Okay.

20 MR. MIGLIACCIO: It's my
21 understanding some of the prerequisites you
22 were looking at here and you basically spelled
23 them out right there were college degrees,
24 engineering degrees, so forth like that, and

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1 you've worked with our people for, God, I
2 don't know how many years.

3 We have six master instructors. I
4 think all the trades, building trades have the
5 same. We're allowed six master instructors
6 and our master instructors have gone through
7 the training that was required before.
8 They've been evaluated. They've taught
9 courses for the OTI themselves and come back
10 with excellent evaluations.

11 And this morning when Assistant
12 Secretary Foulke was here, it was brought up
13 and I actually said that if it comes down to
14 somebody teaching a class to construction
15 personnel, I can't find anybody better than a
16 person that works in the construction field,
17 not somebody who's got book learning.

18 There's a lot of people in the
19 world got book learning but they don't have a
20 drop of common sense, and in construction, it
21 takes common sense to put something together
22 and it works safe.

23 Now, if there's going to be changes
24 made here, I was surprised that the OTI didn't

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1 even come to or even think about coming to the
2 subcommittee through ACCSH, the OTI
3 subcommittee, which I chair.

4 I felt as though we were like, you
5 know, just circumvented here. I'm not sure
6 what the reason for this is and the only thing
7 I can see motivationwise is the colleges and
8 so forth that have come forward and said that
9 some people are having this trouble, is it's a
10 money issue, and when you start putting money
11 issues ahead of safety and the correct way of
12 training, I'm totally against this.

13 I think most of the people on this
14 committee would feel the same way.

15 The other thing I want to talk
16 about was -- he's not going to answer, I don't
17 think.

18 Excuse me. Would you like to
19 answer that question? I didn't give it as a
20 question, but go ahead.

21 DR. PAYNE: I didn't really hear a
22 question, but I don't really see it -- we
23 don't really see it as a money issue. We see
24 it as a program integrity issue, and Frank, we

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1 have been struggling with the issue and on how
2 to deal with the master trainers in the
3 building trades and we haven't really come to
4 a resolution.

5 MR. MIGLIACCIO: Okay. When you
6 come up with a resolution or when you come up
7 with an idea, would you be willing to bring
8 this in front of the subcommittee that I
9 chair?

10 DR. PAYNE: Sure.

11 MR. MIGLIACCIO: All right. That
12 answered that question.

13 Now, the other thing I had here was
14 one of the other things I guess OSHA was
15 looking at was an expiration date on a 10-to-
16 30-hour card, and this has come in front of
17 the committee several times.

18 If a person comes out and takes the
19 OSHA 10, they do it on their own time. It's
20 voluntary because OSHA doesn't require an OSHA
21 10-hour card to get on any job. The
22 contractors in turn do. Contractors can
23 require the card and they can require every
24 two-three years somebody go back through a

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1 refresher class, so to speak.

2 But for OSHA to come out and OTI to
3 come out and say that they feel as though
4 there should be an expiration date on a card
5 that's not mandatory in the first place, how
6 can you punish somebody for taking the class
7 on their own time, putting their own time and
8 money and effort into it, and then punish them
9 by making them come back through something
10 that maybe a contractor doesn't require? That
11 is a question.

12 DR. PAYNE: I don't know where this
13 expiration date is coming from. We hear it a
14 number of times. We're not proposing an
15 expiration date be put on the construction or
16 the general industry 10-hour or 30-hour cards.

17 MR. SMITH: The only expiration, I
18 think, is on the OSHA 500 instructors.

19 DR. PAYNE: The trainer cards have
20 an expiration date and have had for a long
21 time but not the worker cards.

22 MR. SMITH: Okay. Thank you.
23 Someone else have a question for Hank? Anyone
24 else?

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1 (No response.)

2 MR. SMITH: Well, we sure
3 appreciate you dropping in today.

4 DR. PAYNE: Okay. Hey, Frank, I'll
5 be in touch with you.

6 MR. MIGLIACCIO: You've got my
7 number.

8 DR. PAYNE: Yes.

9 MR. SMITH: How's the weather?

10 DR. PAYNE: It's cold.

11 MR. SMITH: Okay. Thanks a lot.

12 DR. PAYNE: Okay.

13 MR. SMITH: Thank you. Okay.
14 Thank you very much. Do you still have a
15 motion?

16 MR. KRUL: Yes, sir, Mr. Chairman.
17 Thank you.

18 I still would like to propose the
19 motion that I made earlier and that's that we
20 make a recommendation to the Assistant
21 Secretary that any proposed changes to the
22 OSHA Training Institute current parameters be
23 brought before the subcommittee that's been
24 charged with the OSHA Training Institute

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1 matters and that any of those recommendations
2 then be brought back to this full committee
3 and again for recommendations back to the
4 Assistant Secretary and I make that in the
5 form of a motion.

6 MR. SMITH: Okay. We have a motion
7 on the floor. Is there a second?

8 MR. MIGLIACCIO: Second.

9 MR. SMITH: Okay. Any discussion?
10 Any discussion?

11 MR. BEAUREGARD: I just have a
12 question. This is Kevin Beauregard from North
13 Carolina.

14 I have no problem with the motion,
15 but you might want to limit it to in the area
16 of construction because NCI does a lot of
17 other things outside of the construction
18 arena, and I don't know if you want everything
19 going through this committee.

20 MR. KRUL: Well, -- go ahead,
21 Frank.

22 MR. MIGLIACCIO: This is only
23 construction. He can only relate to
24 construction to us.

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1 MR. KRUL: I would amend my motion
2 to limit it to construction.

3 MR. BEAUREGARD: Very good.

4 MR. SHANAHAN: This is Tom
5 Shanahan.

6 I guess just a discussion question.
7 What is the -- does anybody know what the
8 OTI's chain of command is in terms of when
9 they want to make changes? Is it -- I mean,
10 are we receiving this because we have to have
11 a work group or --

12 MR. SMITH: Let's vote on this
13 motion and then we'll entertain your question.
14 It concerns a different thing really.

15 Let's vote on this motion. Any
16 other questions on this motion?

17 (No response.)

18 MR. SMITH: Okay. All in favor,
19 say aye.

20 (Chorus of ayes.)

21 MR. SMITH: All opposed, likewise.

22 (No response.)

23 MR. SMITH: Motion carries. Now
24 your question is about when they might make a

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1 change?

2 MR. SHANAHAN: Well, I just
3 wondered what the process was in general for
4 OTI's --

5 MR. MIGLIACCIO: I can speak to the
6 internal process, specifically that the
7 Director Hank Payne uses to consider changes
8 to either existing policy or existing
9 procedures to the Training Institute, but for
10 the most part, those changes would come to
11 Washington for presenting to the Assistant
12 Secretary and those decisions made by the
13 Assistant Secretary.

14 I'm sure there's some minor
15 procedural changes there that don't rise to
16 the level of the Assistant Secretary, but any
17 change that would have a significant effect on
18 those who either take courses directly at the
19 Training Institute or through the ed centers
20 or through the train the trainer would come to
21 Washington, but Hank Payne, the Director of
22 the Training and Education until recently was
23 an office within the Directorate of the
24 Cooperative and State Programs, it's now a

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1 freestanding directorate that answers directly
2 to the Assistant Secretary's Office.

3 MR. SMITH: And the chair
4 appreciates Mike's consideration in stopping
5 his report. Would you like to finish your
6 report, Mike, and/or make a recommendation to
7 the committee?

8 MR. THIBODEAUX: Yes, I did have a
9 few other things to say.

10 MR. SMITH: Please go right ahead.
11 Thank you.

12 MR. THIBODEAUX: The NAHB
13 representative presented just a short summary
14 of a residential fall protection study they
15 had done by a third party and I understand
16 that's going to be published within the next
17 month or so and will be available for us, and
18 the study revealed that the leading causes of
19 deaths due to falls in residential
20 construction were first from roofs, second
21 from ladders, third from scaffolding, falls
22 from other areas which weren't delineated, and
23 then the fifth one was falls from a floor, a
24 dock, or ground level.

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1 This fatality data was collected
2 from the Bureau of Labor Statistics Census of
3 Fatal Occupational Injuries. So, it's from a
4 very reliable source.

5 We did have a motion to make and
6 even before that, also NAHB said they still
7 had some more handbooks on fall protection as
8 well as video to give out to anyone who didn't
9 get any yesterday and they'll be here after
10 the meeting.

11 I have a motion that the full
12 committee recommend to OSHA to include
13 concrete block, cinder block and metal stud
14 framing in trusses in the definition of
15 residential construction but only for
16 residential homebuilding.

17 MR. SMITH: Okay. You've heard a
18 motion. Is there a second?

19 MR. SHANAHAN: Second.

20 MR. SMITH: Okay. We have a motion
21 and a second. Discussion?

22 MR. MIGLIACCIO: Can you say that
23 again?

24 MR. THIBODEAUX: The motion itself

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1 is basically right now, under the
2 interpretation by OSHA, concrete block, cinder
3 block, and metal stud framing in trusses are
4 not included as part of residential
5 construction, as part of the definition of
6 residential construction and so they have to
7 go to other means to do their fall protection,
8 et. cetera, and it is confusing because cinder
9 block and concrete block and metal studs are
10 used in homebuilding a lot more than they were
11 many years ago and the consensus of the work
12 group yesterday was that it should all be
13 included as part of the residential
14 construction, so long as it fits within the
15 home, you know, residential homebuilding
16 definition of the type and means of -- type of
17 materials used, because right now it's just
18 wood framing and there is metal framing in
19 metal trusses and there's also concrete block
20 that's used on the waffles and once they're
21 braced, they're, you know, the same strength
22 as wood truss.

23 And we also have wooden floor
24 joists and roof structures. They have metal

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1 floor joists and metal trusses that they're
2 using, also, in homebuilding and the gist of
3 the motion is that should be a part of rather
4 than excluded from the residential
5 construction definition.

6 MR. SMITH: Thank you. Mike, we've
7 been asked to have you restate your motion one
8 more time.

9 MR. THIBODEAUX: Okay. And then
10 Dan wants to ask you a question.

11 MR. THIBODEAUX: I'm glad I wrote
12 it down.

13 MR. SMITH: Can you give us the
14 written copy? Maybe that would help. Go
15 ahead.

16 MR. THIBODEAUX: The motion is that
17 the ACCSH Committee recommend to OSHA that
18 they include concrete block and cinder block
19 and metal stud framing in trusses in the
20 definition of residential construction so long
21 as they're used only in residential
22 homebuilding.

23 MR. SMITH: Thank you. Dan?

24 MR. MURPHY: Dan Murphy. Mike,

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1 you've got to help me out a little bit.

2 Yesterday, I sat in on the
3 committee meeting or the subgroup meeting, and
4 one of the major areas of concern was poured-
5 in-place concrete basement, and you don't
6 identify that as part of residential, at least
7 I didn't hear poured-in-place concrete, but
8 yesterday's example was they had handrails
9 around a basement that was poured-in-place.

10 So, I don't mean to muddy the
11 waters, but I wonder if that should or should
12 not be a part of your definition.

13 MR. THIBODEAUX: From my
14 standpoint, you're going to have to be very
15 narrow in doing that. Poured-in-place
16 basement foundations only used in residential
17 construction might be, you know, appropriate,
18 but I wouldn't want to just say poured-in-
19 place concrete because that just widens it way
20 too much and gets into the commercial area way
21 too much.

22 MR. MURPHY: Yes, because your
23 cinder block example would cover a base,
24 correct?

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1 MR. THIBODEAUX: Correct.

2 MR. MURPHY: But poured concrete
3 wouldn't be included, but we have the same
4 exposures?

5 MR. THIBODEAUX: Right. I don't
6 have any problem in amending my motion to
7 include, you know, poured concrete for
8 basement walls in residential homebuilding.

9 MR. SMITH: Okay. Say it one more
10 time.

11 MR. KAVICKY: Now you now why Mike
12 is here.

13 MR. THIBODEAUX: This is the last
14 time, Tom.

15 MR. SMITH: No, not the entire
16 motion, just the part about the poured-in-
17 place concrete.

18 MR. THIBODEAUX: Okay. To include
19 poured-in-place concrete for basement walls in
20 residential construction.

21 MR. SMITH: Very good. Thank you.
22 Any other comments? Would OSHA like to
23 comment on that or anyone else?

24 MR. WITT: Not at this time.

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1 MR. SMITH: Okay. You've heard the
2 motion. Have a second. No more discussion.

3 All in favor, say aye.

4 (Chorus of ayes.)

5 MR. SMITH: All opposed?

6 (No response.)

7 MR. SMITH: Okay. Thank you. Do
8 you have another motion?

9 MR. THIBODEAUX: No, sir, not at
10 this time.

11 MR. SMITH: Okay. You don't have
12 one on the interpretation?

13 MR. THIBODEAUX: No. We want to
14 get more on the engineering data and truss
15 information before we finally make that.

16 MR. SMITH: That's fine. Thank you
17 very much.

18 Dan, are you ready to make your
19 report? I know you wanted Tom to make it, but
20 he keeps -- and you have to understand today,
21 Tom doesn't have a personal medical situation
22 himself but his parents have a situation today
23 and he's been called to the phone on that
24 several times. So, please understand his not

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1 being in the room today. He'd be here if he
2 could.

3 MR. MURPHY: With that said,
4 Linwood, if at all possible, I would like to -
5 - we have a report that would probably be no
6 more than five to 10 minutes, but there was a
7 lot of discussion that Tom led and if it would
8 be okay with you, Mr. Chairman, and the
9 committee, we'd like to report out when Tom's
10 available and hopefully that will be a little
11 later today or tomorrow morning, if you don't
12 have issue with that.

13 MR. SMITH: That will be fine, sir.

14 MR. MURPHY: Thank you.

15 MR. SMITH: Everyone, if you would,
16 take out your sheet in your folder at this
17 point that's entitled ACCSH Work Group
18 Membership and DOC Staff. Please take a look
19 at that. It's in your brochure. If you don't
20 find it, let us know. This is a test. It's
21 amazing how confusing we can get papers here
22 today. Does everyone have it?

23 MR. HAWKINS: Mr. Chairman, I don't
24 think I have a copy.

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1 MR. SMITH: It's not in your packet
2 of information?

3 MR. BUCHET: Originally, it was the
4 third sheet in on the right side.

5 MR. SMITH: Okay.

6 MR. HAWKINS: I got it.

7 MR. SMITH: Okay. He's got it,
8 he's got it. Okay. Everyone got it? Okay.
9 Let's look at that for a second and talk about
10 our work groups and we want to talk about the
11 work groups and first we want to talk about
12 whether they should continue or not, they
13 should carry over, or whether their charter
14 and purpose has been fulfilled, and then we
15 want to talk about the chairman and vice
16 chairman and if the chairman or vice chairman
17 this year, we'd certainly defer to them for
18 their comments, and then we'll take
19 recommendations.

20 Let's just start at the top of the
21 page, Diversity and Multilingual was Dan
22 Murphy and Tom Broderick, and they did meet
23 yesterday.

24 Do you recommend they continue?

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1 Dan?

2 MR. MURPHY: Well, as a part of the
3 report, this is as good a spot as any to talk
4 a little bit about Diversity and Multilingual.

5 It was the committee's consensus
6 that we have fulfilled the requirements of the
7 charge that we had and basically what we said
8 was we're at a point in the free market where
9 there's a lot of materials available in other
10 languages for trainers and educators to use
11 and so we have a lot of the stuff.

12 One of the suggestions that was
13 made was we split this committee actually into
14 two groups because we had the Women in
15 Construction document that's housed on the
16 OSHA web page that we felt could certainly be
17 a plus to employers today but it's a 1999
18 document and so we're nine years out of date
19 and a lot has happened.

20 From a Multilingual -- so, we
21 thought maybe there should be a work group on
22 Women in Construction and then we thought the
23 Multilingual may continue, but we wanted to
24 talk more about issues, develop goals and

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1 objectives for that committee that certainly
2 include like culture change in a construction
3 company and how we could maybe get some more
4 of that happening and we had two folks from
5 NIOSH at our meeting and they were saying that
6 most of the incidents that they have looked at
7 were with construction companies with 10 or
8 less employees.

9 So, from a work group perspective,
10 maybe we could work on figuring out how to get
11 more of the safety culture into the smaller
12 construction companies. So that was the
13 recommendation of the group that we wanted to
14 bring here and see if that made sense to the
15 rest of the committee.

16 MR. SMITH: Okay. So, you're
17 recommending we split Diversity and
18 Multilingual into two work groups?

19 MR. MURPHY: Yes.

20 MR. SMITH: Okay. You're an
21 employer rep, Tom's the public rep on the
22 total committee now. Have you all talked
23 about how you would like to -- what you would
24 like to do?

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1 MR. MURPHY: That's when the stuff
2 started happening. So, I haven't talked to
3 Tom since that started.

4 MR. SMITH: Okay.

5 MR. MURPHY: So, if we can give you
6 some feedback on that, if he ever gets off of
7 this conference call, we'll be able to do that
8 either today or tomorrow morning.

9 MR. SMITH: Okay. Would anybody
10 like to volunteer for Diversity or
11 Multilingual? Elizabeth?

12 MS. ARIOTO: I'll volunteer for
13 Diversity.

14 MR. SMITH: For Diversity?

15 MS. ARIOTO: Yes.

16 MR. SMITH: Diversity, for Women in
17 Construction. And also, per your
18 recommendation, we'll rename it Women in
19 Construction?

20 MR. MURPHY: I guess I would need
21 some help there, but that was one of the
22 things that we thought could be accomplished
23 as an update of a fantastic report that was
24 done nine years ago.

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1 MR. SMITH: Okay.

2 MR. MURPHY: But that may not be
3 the only issue as Women in Construction, there
4 may be other diversity issues that that group
5 may deal with. So, I don't know what you
6 should name it.

7 MR. SMITH: Okay. Any volunteers
8 from employee reps for Diversity or
9 Multilingual? Anybody like to volunteer for
10 either one of those two groups? And this is
11 just all recommendations, I guess, at this
12 point, but would anybody like to volunteer for
13 those two?

14 I assume what we're doing is making
15 recommendations to the Director of
16 Construction and they will make decisions.

17 MR. KAVICKY: I wouldn't mind -- I
18 had originally talked with Emmett about going
19 on Trenching, but I'm involved in Women in
20 the Trades and Diversity back home. So, I
21 would be willing to work with Elizabeth on
22 Diversity.

23 MR. SMITH: Okay. Tom Kavicky.

24 MR. KAVICKY: Yes.

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1 MR. SMITH: Very good.

2 MR. KAVICKY: Thank you.

3 MR. SMITH: Okay. Focused
4 Inspection Initiative. Frank? Kevin?

5 MR. BEAUREGARD: I'm not sure
6 exactly what our goals are on that committee
7 because it was established awhile back, but I
8 know that OSHA has a focused inspection
9 initiative. I know many state plans have OSHA
10 focused inspection initiatives in
11 construction.

12 Does anybody recall what our goal
13 or objective was for that particular
14 committee?

15 MR. SMITH: Steve, we'll ask you to
16 comment on that.

17 MR. KRUL: Is this your final
18 official duty?

19 MR. CLOUTIER: No. I just learned
20 something you don't know yet.

21 If you remember back, Bruce and I
22 brought this before you last time. Based on a
23 question that came in from one of the past
24 members of ACCSH that said that focused

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1 inspections were not uniformly being done
2 across the 10 regions and that's how this
3 whole thing started, so Bruce wanted to do a
4 study, and he's left or he could do this
5 instead, but Bruce wanted the committee to
6 look into that and do a study throughout the
7 10 regions to see just whether they were or
8 they weren't and that was the charge, Kevin,
9 that was given to the original focus.

10 MR. BEAUREGARD: What was the
11 purpose of the work group?

12 MR. CLOUTIER: The purpose of the
13 work group was to conduct a study at any way
14 they chose to do that and then report back at
15 the next meeting what their findings were, but
16 we never had -- we didn't have the next
17 meeting, so we didn't hear the findings.

18 MR. SMITH: One of the purposes of
19 having a work group, we may recommend that to
20 OSHA that they do it.

21 MR. CLOUTIER: Well, it's up to
22 Steve if he wants to continue that or not. I
23 mean, I don't see a need to do it anymore.

24 MR. SHANAHAN: And the chairman

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1 doesn't either?

2 MR. SMITH: No, no. We will ask,
3 you know, if that's something OSHA might
4 consider looking at.

5 MR. GILLEN: I'm interested in
6 that. I think that's a partnership.

7 MR. SMITH: Okay. You're public.
8 Matt Gillen. What's the sense of the
9 committee? Obviously, you know, my opinion is
10 noise is still an issue and certainly is and
11 we've asked questions about it today, I
12 believe. So, I think we can do it. Okay.
13 We've got employee/employer. Would people
14 like to volunteer?

15 MR. MURPHY: Linwood, Dan Murphy. I
16 would be happy to do the employer piece.

17 MR. SMITH: Okay. How about from
18 employee side, employee rep?

19 MR. MURPHY: Frank.

20 MR. MIGLIACCIO: I'll take it.

21 MR. SMITH: Thank you, Frank, for
22 volunteering, with Dan's help.

23 OTI, who we just talked to. We've
24 already got a motion that it -- we've already

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1 got a second committee with Frank.

2 MR. HAGGERTY: I would like to be
3 called for that on the employee side.

4 MR. SMITH: Okay. You can be on
5 the committee and not be the chairman and
6 Frank, I think, wants to keep -- be the
7 chairman. You've got a new recruit there,
8 Frank.

9 Residential Fall Protection,
10 Kavicky and Mike.

11 MR. THIBODEAUX: Yes.

12 MR. SMITH: Okay. That definitely
13 needs to continue, I think. You had a
14 tremendous meeting yesterday.

15 MR. THIBODEAUX: Yes.

16 MR. SMITH: ROPS, ROPS.

17 MR. GILLEN: Can I ask a point of
18 clarification?

19 MR. SMITH: Yes, sir.

20 MR. GILLEN: This is to pick the
21 chairs or is this to indicate interest in
22 being on the committee?

23 MR. SMITH: No, this is just the
24 chairs and the vice chairs --

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1 MR. GILLEN: Okay.

2 MR. SMITH: -- and the reps from
3 each, you know, each segment. Good point.
4 Thank you, Matt.

5 ROPS, ROPS.

6 MR. RUSSELL: I can take that over
7 from Frank.

8 MR. SMITH: Okay.

9 MR. RUSSELL: Emmett Russell.

10 MR. SMITH: Thank you, Emmett.

11 MR. MIGLIACCIO: I want to stay on
12 the committee, though.

13 MR. SMITH: Does this committee
14 need to continue?

15 MR. RUSSELL: Yes, we should be
16 close to a final report back to the group.
17 So, yes, it does.

18 MR. SMITH: Okay. And what are you
19 working on?

20 MR. RUSSELL: ROPS is on
21 compactors. Right now, the OSHA standard says
22 that rollover protective structures are not
23 necessary and the committee was to take a look
24 at that and make a recommendation as to where

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1 we go in the future with that.

2 MR. SMITH: Okay. Thank you very
3 much, Emmett.

4 For employer, we've got Mike listed
5 and Dan Murphy. Well, I guess we just need
6 one basically, right? I know. We need the
7 employer rep and employee rep. We're showing
8 two employer reps right now. We only need one
9 as chairman. They both can be on the
10 committee, but we only need one as the vice
11 chair or chairman.

12 MR. MIGLIACCIO: Chair is much more
13 knowledgeable.

14 MR. SMITH: That's fine. We'll
15 take your name off the chart then. So, I'm
16 saying from the employer side, we're showing
17 Mike and Dan and we only need one of them, you
18 know, for the chairmanship or vice chairman.

19 MR. MURPHY: Congratulations, Mike.

20 MR. THIBODEAUX: I said it first.

21 MR. MURPHY: Either way is fine
22 with me.

23 MR. SMITH: Okay. Who's on the
24 most committees, I guess? Probably about

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1 equal, right?

2 MR. MURPHY: I got three.

3 MR. SMITH: Okay. Let's use Mike
4 on this then.

5 Silica. Silica Work Group. Have
6 you got a work group on that? I show Mike. I
7 show Matt.

8 MR. GILLEN: I'm interested in that
9 one.

10 MR. SMITH: Okay.

11 MR. KRUL: Mr. Chairman, I'll be
12 interested in that committee.

13 MR. SMITH: Okay.

14 MR. WITT: Can I ask a question?

15 MR. SMITH: Yes, sir. Thank you,
16 Robert.

17 MR. WITT: The interest expressed
18 in the subject. The work group will have a
19 purpose. It's not just interest. There will
20 be an assignment or a purpose for the work
21 group to have discussions on a particular
22 issue and report back to the full committee?

23 I just want to make sure it's not
24 just for interest in the subject. There's

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1 probably 30 construction subjects you're
2 interested in, but we don't necessarily need a
3 work group.

4 MR. SMITH: Can someone tell us
5 what their assignment was or what their charge
6 was as a subcommittee? Scott?

7 MR. SCHNEIDER: Yes, I chaired this
8 previously and I think part of it was to
9 review a lot of information that was coming
10 out on silica in construction, there's quite a
11 bit, and I think part of it was also in
12 preparation for action that OSHA was going to
13 take in reviewing their reg analysis, et.
14 cetera.

15 So, we're anticipating that
16 something will need to come before the
17 committee and I would hope it would be sooner
18 rather than later, but I would hope that they
19 would work closely with this committee in
20 developing their regulation and also their
21 regulatory package.

22 MR. SMITH: Okay. Thank you.
23 Anyone like to volunteer from the employer
24 side? This don't mean all these committees

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1 are going to be formed now. This is just --
2 if they are formed and we've got them in place
3 and ready to go.

4 But is there an employer rep that
5 would like to --

6 MR. SHANAHAN: Sure. I will.

7 MR. SMITH: Okay. Thank you, Tom.
8 Okay. Training and Certification. What was
9 their charge? Is that something we need to
10 continue? Mike?

11 MR. BUCHET: I don't think so.

12 MR. SMITH: That's all gone? We've
13 got consensus on one.

14 Trenching. Trenching Task Force.
15 Yes, sir?

16 MR. BUCHET: In the packet, there
17 is a list of action items. Michael Buchet,
18 Director of Construction staff.

19 In your packet, originally on the
20 left-hand side, there is a print-out of
21 materials that we received from Brent
22 Strudwick, the past co-chair of the Trench
23 Work Group, and it includes the action items
24 from that work group and if you don't mind, if

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1 you can refer to Mr. Scott Schneider, I think
2 he can tell you about half of them were done
3 because he was the other co-chair.

4 MR. SMITH: Okay.

5 MR. BUCHET: And we at the agency
6 are continuing our trenching initiative for
7 another year. You may want to put that in the
8 balance.

9 MR. SMITH: Okay. So, there may be
10 other work to do on it, right? Okay.

11 Daniel, would you serve as the
12 employer rep?

13 MR. ZARLETTI: On trenching? Sure.

14 MR. SMITH: Okay. Employee rep?

15 MR. GILLEN: I'm interested in
16 serving on that committee.

17 MR. SMITH: Okay.

18 MR. RUSSELL: I would volunteer for
19 employee.

20 MR. SMITH: Okay. Thank you,
21 Emmett.

22 MR. HAWKINS: Mr. Chairman, I'd be
23 willing to -- Steve Hawkins. I'd be willing
24 to serve on that committee as well.

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1 MR. SMITH: Okay. Super. Keep in
2 mind, you know, each committee needs a chair
3 and a vice chair, a public representative
4 assigned to it, and keep in mind that the
5 agency will actually look over these
6 subcommittees and determine resources and how
7 many, you know, they can fund and how many can
8 meet and how much work is left to do and what
9 the charge is and, you know, then they'll
10 report back to us on what committees have
11 actually been formed.

12 Yes, sir, Emmett?

13 MR. RUSSELL: Mr. Chairman, I'd
14 like to make a recommendation that, based on a
15 presentation this morning, which was on
16 structural failures, I think it might interest
17 us to look at a Structural Failures Prevention
18 Work Group because I think clearly on some of
19 the presentations this morning, it was clear
20 that if employees had a chance to voice what
21 they saw on the job, they had a chance to
22 exercise some options, a number of those
23 failures could have been prevented, and I
24 think that's the case where we can look at a

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1 possibility of what are some of the options we
2 might present where, when we clearly see signs
3 of failures and in a lot of cases, the signs
4 were there, how do we prevent them from
5 happening and empower people to have a voice.

6 To give you an example, for
7 instance, in the cranes and derricks proposal,
8 it was clear that when it comes to critical
9 lifts, you had to have a competent person, you
10 had to have a meeting before you start the
11 process, also an assembly/disassembly, and I
12 think in some cases, something similar to that
13 in some of the cases presented might actually
14 prevent the loss of lives and injury.

15 MR. SMITH: Okay. Thank you,
16 Emmett, for those comments.

17 Any other comments on starting that
18 subcommittee?

19 MR. BEAUREGARD: Not on starting up
20 another subcommittee, but I'd like to make a
21 recommendation that at some point, we go on
22 record in the meeting minutes or somewhere and
23 outline what the scope and the objectives and
24 the goals of these work groups are because

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1 people come and go off these committees and
2 I've been around for awhile and it's really
3 nice when there's a charge, you know what
4 you're supposed to do, you do it, and you
5 disband the group. Otherwise we get in a
6 situation where nobody really knows what the
7 group's supposed to do and they go on in
8 perpetuity.

9 So, at some point in time, I'd like
10 to see if we can't do that.

11 MR. SMITH: By consensus, can we
12 ask DOL, DOC, Director of Construction Office,
13 to look at our list and see if there's a
14 charge already in place and if there is, you
15 know, if we need it to continue, to continue
16 it, or either help create a charge for the new
17 subcommittees? Would that be fair?

18 MR. BUCHET: Yes, but -- yes,
19 that's fair, as the former chair.

20 MR. WITT: That was a year and a
21 half ago. You want to count on his memory?

22 No. Of course we'll do that.
23 We'll review the past documents that contain
24 the purpose or the charge for each subgroup

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1 and we'll distribute copies of that to
2 everyone, but we would then ask for feedback
3 on whether that purpose still asks and are
4 there any other responsibilities we'd like to
5 get to these particular subgroups or should
6 they be disbanded.

7 I agree that some of the work
8 groups go on in perpetuity. The work groups
9 usually are established to meet a certain
10 purpose and then dissolve. So, yes, I think
11 it would be good to go through this process.

12 MR. SMITH: Okay. And you can use
13 the people here especially after we go through
14 the process and hopefully we'll send that out
15 to you, but when the DOC sends that out, then
16 maybe the people listed here could write back,
17 you know, will you agree or you think some
18 changes need to be made to the charge or, you
19 know, you disagree, and we can talk about it
20 next week.

21 MR. RUSSELL: One other issue I
22 would like to bring up and that is, that if
23 it's agreed that a Structural Failures
24 Prevention Work Group -- and I'm not saying

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1 that's the formal name, but for right now at
2 least that identifies the possibility, I did
3 talk to the engineer, Mohammad Ayub or however
4 you pronounce his last name, and I thought
5 that if the work group were to be formed, it
6 would be crucial that he or his organization
7 be part of that group because I think clearly
8 he could bring some substance for
9 consideration, if that were to be a work
10 group.

11 MR. SMITH: Okay. Yes, sir, Bob?

12 MR. KRUL: Along those lines, maybe
13 it should come through the work group, but
14 I'll ask Steve Witt this question.

15 That to me was a very, very
16 dramatic presentation on structural failure,
17 and Mr. Ayub's recommendations as an engineer
18 for prevention to me seem like they're
19 invaluable.

20 I know OSHA has limited resources,
21 but would it be possible to put that on the
22 OSHA website under Construction, that that
23 could be a resource for contractors to use?

24 MR. WITT: The structural reports

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1 that Mohammad's office does when they go
2 onsite, I can look into it. There may be some
3 problems, but I'll try and get those resolved
4 because these reports were all part of --
5 these are all part of enforcement inspections.

6 Mohammad and his staff are called
7 out when there has been a structural collapse
8 and OSHA goes onsite as part of an inspection,
9 but I'll look into it and if we can, we'll
10 link them through the ACCSH page.

11 MR. KRUL: Okay. Thanks, Steve.

12 MR. ZARLETTI: I want to go back to
13 the work group when we split up the
14 Multilingual and Diversity.

15 Now, do I understand that you and
16 Tom continue on the Multilingual and Liz took
17 on the Diversity with who? Who else?

18 MR. SMITH: Tom Kavicky.

19 MR. ZARLETTI: And you only need
20 two on there? Is that what you're saying?

21 MR. SMITH: Well, no. What we're
22 saying is we're just looking at the chairs.
23 When we have a subgroup meeting, you know,
24 they need other members obviously and you can

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1 be -- you can volunteer for those committees
2 or you can go to all of them, you know, or
3 some of them.

4 Like yesterday, Residential Fall
5 Group had over 30 people in attendance and the
6 work groups traditionally, if they have a
7 meeting, even have people from outside this
8 committee to come in and participate in the
9 work group.

10 So, you know, this is just looking
11 for chairs. Like I sat in on some of these
12 committees the other day. So, thank you for
13 asking me the question and we'll ask them also
14 to look at the structural issue.

15 MS. SHORTALL: It looks like there
16 still needs to be Diversity and --

17 MR. SMITH: We've got a
18 recommendation on Diversity. Multilingual,
19 Dan's going to get back to us after he talks
20 to his --

21 MS. SHORTALL: If you're going to
22 have the committees, then you still need
23 either a public -- excuse me -- either an
24 employee or employer rep on some of these.

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1 Liz represents public. So, you don't have an
2 employer rep on that one.

3 MR. ZARLETTI: That's what I was
4 doing.

5 MS. SHORTALL: Multilingual, you
6 don't have an employee rep.

7 MR. SMITH: Okay. Very good.
8 Anyone like to --

9 MR. ZARLETTI: I'll take the
10 employer on Diversity.

11 MR. SMITH: Diversity.

12 MS. SHORTALL: So, then you need an
13 employee on the Multilingual side.

14 MR. SMITH: Right. Then an
15 employee on the Multilingual side. Anyone
16 interested in that? I'm getting confused.

17 MR. MIGLIACCIO: Okay. Let me
18 suggest that we work out the final chair and
19 how many chairs and vice chairs we need for
20 each one after we first resolve which
21 committees we will have and which will
22 continue and what their purpose will be.

23 MR. SMITH: Well, I agree with
24 that. We've got some names, but we'll work

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1 out the final. After we work out which groups
2 we're going to have, we will certainly need to
3 look at it and make sure that it's kind of a
4 fair split between everybody and everybody's
5 got a fair load and, you know, we don't have
6 one person chair or vice chair of all the
7 committees. So, we'll try to make sure
8 everybody's got an equal workload. Does that
9 sound good?

10 Okay. Any other comments on work
11 groups?

12 MS. SHORTALL: Mr. Chair, I have a
13 number of housekeeping items to take care of
14 today and they are marking certain items as
15 exhibits and entering them into the record of
16 this meeting.

17 They will be entered into Docket
18 Number OSHA-2007-0082. The first one is
19 Minutes from the October 11th and 12th, '06,
20 ACCSH Meeting, marked as Exhibit 0002.

21 The Minutes from the December 8th,
22 '05, ACCSH Meeting as 0003.

23 The hard copy of OSHA's Standards
24 and Guidance Update PowerPoint Presentation by

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1 Amanda Edens as 0004.

2 The Memo to ACCSH from Dorothy
3 Dougherty regarding the PortaCount Proposal as
4 0005.

5 The Draft OSHA Notice of Proposed
6 Rulemaking on PortaCount Quantitative Fit
7 Testing Protocols as 0006.

8 The National Response Framework and
9 Annex of January 2008 as Exhibit 0007.

10 The NRF Fact Sheet as 0008.

11 The NRF Press Release of January
12 22nd, 2008, as 0009.

13 The hard copy of OSHA Structural
14 Response Plan PowerPoint Presentation by Mr.
15 Mohammad Ayub as 0010.

16 The hard copy of Minnesota OSHA's
17 PowerPoint Presentation by Jeff Isakson to be
18 reserved as 0011.

19 The hard copy of OSHA's
20 Construction Cooperative Programs PowerPoint
21 Presentation by Paula White as 0012.

22 And finally, the Residential Fall
23 Protection Work Group Report from the January
24 23, '08, Work Group Meeting, as 0013.

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1 MR. SMITH: Thank you. That will
2 be entered into the record after some
3 corrections.

4 MS. SHORTALL: And all of those
5 exhibits will be located for your perusal once
6 again in OSHA Docket OSHA-2007-0082.

7 This change in the OSHA Docket
8 represents the fact that OSHA, like all other
9 agencies of the Federal Government, have moved
10 over to the eRulemaking Federal Portal which
11 is now on regulations.gov. So that's how you
12 will now access the documents. You will go to
13 www.regulations.gov.

14 MR. SMITH: Okay. Thank you.

15 MR. KRUL: Mr. Chairman, just a
16 question for Sarah. 2007 or 2008?

17 MS. SHORTALL: We're putting them
18 in the 2007 because they're related to the
19 meeting announcement, the meeting announcement
20 that came out on December 17th. So, those
21 relate to that, but you're right, the next
22 thing we'll do will be entered in under 2008.

23 MR. KRUL: Okay. Thank you.

24 MR. SMITH: Okay. Any other

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1 comments? Frank?

2 MR. MIGLIACCIO: Frank Migliaccio
3 with the Ironworkers.

4 Yes, it's been brought to my
5 attention yesterday coming in here and then
6 today about the badges and I was asked to
7 bring it up in front of the committee, what
8 happened with the badges. The photos that
9 need to be taken now with, you now, another --
10 having to stand in line and waiting to get in.

11 MR. WITT: I can answer that,
12 Frank. That's not something OSHA's done.
13 There's a new Homeland Security Directive that
14 controls photo badges that are given out to
15 those who have access to federal buildings.
16 All our new badges have microchips with
17 personal information stored and our
18 fingerprints.

19 The practice now is not to give
20 those badges out generally. There is a
21 background check that needs to be done before
22 they're given and at least the Department of
23 Labor at this point is not issuing those type
24 of badges, to my understanding, and I can

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1 check on that.

2 Now we do -- there are contractors
3 in the building who have them and others that
4 have some financial relationship with the
5 Department of Labor, but I can check as to
6 whether they're willing to give them out to
7 advisory committee members, but there has been
8 a change in the type of badges we get and the
9 rules that apply to the issuance of badges.

10 MR. MIGLIACCIO: Will the badges
11 you're carrying now, are they similar to the
12 TWIC badges?

13 MR. WITT: They look like this and
14 they have little microchips.

15 MR. MIGLIACCIO: Yes, I'm talking
16 about -- well, the TWIC has the same thing.

17 MR. SMITH: Anybody on this
18 committee got a problem with background check?

19 MR. THIBODEAUX: It's Frank.

20 MR. MIGLIACCIO: I come here, I'm
21 legal.

22 MR. SMITH: Would it be appropriate
23 for this group to go on record as asking that
24 the agency consider that?

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1 MR. WITT: Sure. And of course, if
2 it's possible, we'll do it, but it's not
3 within our control, but I'll have someone
4 check with the department's administrative
5 people who control the issuance process.

6 MR. SMITH: You know, of course,
7 they've got to find your name, stand in line,
8 and then you only got one door you can come
9 through, same thing. You know, depending on
10 where you're staying, that could be a little
11 bit more of a walk. That's a longer walk.

12 Can I get a motion on this?

13 MR. THIBODEAUX: And Frank, you're
14 on one of those watch lists.

15 MR. MIGLIACCIO: I know, but they
16 couldn't find my name.

17 MR. BUCHET: Committee members
18 should be at the top of the list, not
19 alphabeticized with everybody else. That's
20 the way we sent it down there.

21 MR. SMITH: Can I get a motion on
22 that?

23 MR. MIGLIACCIO: I make a motion.

24 MR. SMITH: Okay. Frank makes the

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1 motion that we ask the DOC Office, Director of
2 Construction Office, to see if they can
3 somehow get us name badges which would be very
4 beneficial. Is there a second?

5 MR. THIBODEAUX: Second.

6 MR. KRUL: Second.

7 MR. SMITH: Any more discussion?

8 (No response.)

9 MR. SMITH: Okay. All in favor,
10 say aye.

11 MR. RUSSELL: One question.

12 MR. SMITH: Okay.

13 MR. RUSSELL: I am a member of
14 another committee and let me say this. What I
15 have to go through to deal with that committee
16 is something I would not recommend because
17 with that committee, not only do they have to
18 do a background, you've got to give financial
19 disclosure and it's a whole bunch of other
20 stuff.

21 So, I would say if we can get the
22 badges without all of that, we get them, but
23 if all of that's going to be required of each
24 committee member, let me say that's a lot of

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1 process and I think we're better off with what
2 we have.

3 MR. MIGLIACCIO: Because the
4 Department of Labor, they know what I make
5 anyway. So, it doesn't make any difference.

6 MR. SMITH: Well, --

7 MR. WITT: Let me make one other
8 comment. Michael distributed about a 37-page
9 document that relates to the issue that was
10 raised earlier on the PortaCount and I said
11 we'd like to look over the Federal Register
12 Notice. Two pieces of material that John
13 Steelneck gave you earlier.

14 Please, if you have a chance, look
15 at it. I know we're not all going to go back
16 and study this material tonight, but we would
17 like to get a sense of the committee or any
18 recommendations.

19 Michael is going to describe to you
20 the additional document that was handed out
21 that's even longer and what this represents
22 from the last committee meeting.

23 Michael?

24 MR. SMITH: It's getting late in

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1 the day and my friend here is letting me slide
2 with this. We haven't voted on this motion
3 that Frank made yet.

4 All in favor of the motion, say
5 aye.

6 (Chorus of ayes.)

7 MR. SMITH: All opposed, likewise.

8 (No response.)

9 MR. SMITH: Okay. Then we have an
10 official recommendation from this committee.

11 Any other items to claim our
12 attention today?

13 MS. SHORTALL: Yes, we have
14 reconsideration of the minutes from 2005.

15 MR. SMITH: The minutes from 2005.

16 MR. MIGLIACCIO: I make a motion to
17 accept them after reading them again.

18 MR. SMITH: Thank you. Is there a
19 second?

20 MR. THIBODEAUX: Second.

21 MR. SMITH: Any discussion?

22 (No response.)

23 MR. SMITH: All in favor, say aye.

24 (Chorus of ayes.)

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1 MR. SMITH: All opposed, likewise.

2 (No response.)

3 MR. SMITH: Thank you. Everything
4 clear? Sarah's got something else.

5 MS. SHORTALL: I have one question.
6 I'm sorry. I was trying to look something
7 up.

8 Mr. Migliaccio's earlier
9 recommendation. Was there a second? Had
10 there been a second?

11 MR. SMITH: Name badges?

12 MS. SHORTALL: Name badges.

13 MR. SMITH: Yes, oh, yes.

14 MS. SHORTALL: Okay. Just want to
15 make sure. Thank you.

16 MR. SMITH: Okay. Anything else?
17 Yes, sir, Michael? Would you give us
18 directions?

19 MR. BUCHET: Which order would you
20 like it? Talk about this or directions?

21 MR. SMITH: Either way.

22 MR. BUCHET: While your memory is
23 still fresh.

24 MR. SMITH: Either way, sir.

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1 MR. BUCHET: You want to know where
2 the food is. After you pay attention on this
3 sheet of paper.

4 Michael Buchet, Director of
5 Construction staff.

6 This is an excerpt of the
7 transcript from the October 11th, 2006, ACCSH
8 Meeting. John Steelneck and Carol Jones came
9 and gave a lengthy presentation on sign
10 protection factors and a lengthy one on
11 PortaCount.

12 It is the entirety of their
13 testimony and the questions and answers. You
14 will recognize some of the names of the
15 committee members who asked questions that you
16 might want to look at. Mr. Kavicky asked some
17 questions. Mr. Hayslip, who is not here,
18 asked some questions.

19 It will give you some background
20 into the presentation they gave today and some
21 more meat in your thoughts on the subject.

22 There are actually, if you want the
23 full transcript, another 300 pages.

24 Thank you.

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1 MR. SMITH: Okay.

2 MR. KRUL: You know, I know how
3 much everybody's going to take this home
4 tonight and read it with their reading light
5 on after going to Stew's retirement party, but
6 there's one thing in this draft NPRM that I
7 will put out now and not want an answer until
8 tomorrow.

9 But there's three issues in these
10 two test value tables. One of the test values
11 failed, the other one's borderline failure,
12 and then the other test value for full face
13 respirators, there's a borderline failure, and
14 my pragmatic side says why would we be
15 considering giving any kind of a positive
16 response or nod from this committee for
17 respirators that are failing or are borderline
18 failing in any test protocol?

19 I'd just leave that for thought.

20 MR. SMITH: Okay. Thank you, Bob.
21 Okay. Directions, if anybody needs them.

22 MR. BUCHET: Directions to My
23 Brother's Place. How many of you know where
24 My Brother's Place is? That'll simplify it.

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1 MR. KRUL: If there was building
2 security, you could walk out that door.

3 MR. SMITH: Hold on a minute.

4 MR. BUCHET: You will have to walk

5 --

6 MR. SMITH: Just a minute. Let's
7 go off the record. Meeting is hereby
8 adjourned. We're off the record now.

9 (Whereupon, the above-entitled
10 matter was adjourned at 4:46 p.m.)

11

12

13

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