

Congressman Jack Kingston
Testimony to the Education & Labor Committee
Wednesday, March 12th, 2008

Good morning Chairman Miller, Ranking Member McKeon, and colleagues, and thank you for inviting me. Today's hearing is about dust standards, and I am sure we will talk in great detail about that. I am here today to encourage a proper balance between acting quickly and acting effectively. We should work to guarantee a standard that prevents future accidents like this. I know we all share the goal of comprehensive worker safety.

I am concerned that this well-intended bill, in its present form, may have some unintended consequences. Primarily, it is a "one-size-fits-all" approach. As such, it fails to tailor the regulation for different types of dusts and the many different industries which create this dust. Just to name a few, dust is produced by coal, metal, organics, sugar, plastics, wood, and pharmaceuticals. Each has its own chemical properties and flashpoints. I believe the bill should be amended to address these differences.

This legislation does not call for more inspections from the Occupational Safety and Health Administration (OSHA). There are around 80,000 plants that have potential dust-related hazards. Thus, since this legislation doesn't call for additional inspections, housekeeping and violations of the "general duty" clause of the 1970 OSH Act could continue to be a problem.

H.R. 5522 recommends a rule based on having "no less protection" than the National Fire Protection Association's (NFPA) standards. The NFPA 654 and NFPA 484 feature numerous provisions which are comparable to existing OSHA standards, such as housekeeping controls for

accumulation of combustible dust and electrical ignition sources. Other parts of NFPA 654 and 484 would expand the scope of OSHA's authority into areas such as building design. Is this the intent of the Committee? In addition, NFPA 61 covers agricultural products including sugar but is not listed in the legislation. Certainly, this should be remedied.

H.R. 5522 requires OSHA to violate its statutory mandate for a public comment period. I see why Congress may want to move quickly, but doing so eliminates helpful comments from thousands of industry stakeholders, employees, and unions who could contribute their helpful suggestions and concerns. Without the appropriate time frame for evaluation and their input, it will be difficult for OSHA to determine any unintended consequences of this regulation.

Finally, we don't know definitively what caused this tragedy. Numerous inspectors are trying to answer that question even as we meet today. These include OSHA, the Chemical Safety Board, the Bureau of Alcohol, Tobacco and Firearms, local fire inspectors and insurance adjusters. Among these questions are, what ignited the dust? Why, after 90 years in operation, did an explosion of this size occur? Was there a change in dust containment? Was there a lapse in dust housekeeping? Did the ventilation change? Was there a processing change? Certainly, the answers to these questions are relevant to effective legislation.

While fast action is desired, appropriate action and regulation should not be discounted. I hope we can meet both objectives and look forward to working with you as we progress.