

Testimony of Rick Engler, Director
New Jersey Work Environment Council (WEC)
U.S. House Subcommittee on Workforce Protections
U.S. House Committee on Education and Labor

Hearing on

Workplace Tragedies: Examining Problems and Solutions

January 14, 2008, Linden, New Jersey

Chairwoman Woolsey, Representatives Payne, Andrews, Holt, and Wilson, witnesses and guests, my name is Rick Engler. I am the Director of the New Jersey Work Environment Council. WEC is an alliance of 70 labor, community, and environmental organizations working together for safe, secure jobs and a healthy, sustainable environment. WEC provides training, technical, and organizational assistance to workers and unions and links workers, communities, and environmentalists through campaigns to promote dialogue, collaboration, and joint action. Our members in the Linden area include affiliates of UNITE-HERE, Teamsters, Steelworkers, Communications Workers, Auto Workers, and other unions, as well as environmental organizations.

WEC extends our heartfelt sympathy to the family, friends, and co-workers of Carlos and Victor Diaz. Their horrible, clearly preventable, and possibly criminal deaths at North East Linen on December 1, 2007 cry out for justice.

Our testimony addresses three problems: 1) the Bush Administration favors ineffective, voluntary efforts and superficial partnerships with employers over mandatory standards and enforcement initiatives; 2) OSHA's consultation program has serious deficiencies; and 3) OSHA requires major statutory reforms.

The Bush Administration has made insuring friendly relationships with corporations a higher priority than protecting worker health.

Major workplace hazards such as repetitive motion injuries, airborne infectious diseases, and violence remain unaddressed. The first act of the Bush Administration in 2001 was to revoke OSHA's new ergonomic standard. Musculoskeletal disorders caused by ergonomic hazards continue to be the largest source of job injuries in New Jersey and the nation. Yet the only significant rules that have been issued by the Bush administration concerning any hazard are ones that have been mandated by law or required by court order.

OSHA should issue new standards to address present day hazards.

The Occupational Safety and Health Act of 1970 was landmark legislation enacted by the Congress with the goal of assuring "so far as possible every working man and woman in the Nation safe and healthful working conditions." Since that time, progress has been made. Job fatalities and injuries have declined and exposures to many toxic

substances have been substantially reduced. However, in recent years, progress has slowed and the death rate has been largely unchanged. In New Jersey, between 115 and 129 workers have died on the job every year between 2000 and 2005.¹ Moreover, new groups of workers are at risk. Latino and immigrant workers have a high fatality rate. They work in dangerous jobs and dangerous industries. Many of these workers are unorganized. They do not know or are unable to exercise their legal rights. Those who are undocumented are particularly vulnerable and fearful.

OSHA should conduct enforcement initiatives on the hazards that are causing deaths. These include confined space entry, machine lockout-tagout, falls, and highway work zones, as well as in other industries employing immigrant workers with high fatality rates.

At workplaces that use *extremely* hazardous substances and that could endanger surrounding communities in the event of an accident or terrorist attack, OSHA has conducted few inspections, even with increased public attention to these facilities since September 11, 2001. Of the 21 facilities in New Jersey that could each potentially harm up to 15,000 people, according to employer data collected by the US Environmental Protection Agency, OSHA has inspected just eight since 9/11. For example, OSHA has never inspected Kuehne Chemical in South Kearny, a plant where a “worst case” release of deadly chlorine could kill thousands. This facility is arguably the most potentially dangerous plant in our state to workers and communities. This is an outrage.

OSHA’s Process Safety Management Standard (PSM) requires facilities with extremely hazardous substances to review what could go wrong in the event of a release and to ensure safeguards.² OSHA should aggressively enforce this standard.

The number of workers and workplaces covered by OSHA today is double what it was in 1970.³ In New Jersey, there are four OSHA offices with a total of just 56 inspectors, one for roughly every 60,000 employees. It will take 75 years for OSHA to inspect all jobsites in our state just once. And we are one of the better states. The national average is 133 years.⁴

OSHA needs more staff to issue standards and conduct inspections.

OSHA should abolish the silly partnerships, the superficial alliances, and other voluntary compliance efforts that are about PR, not worker safety.

A Congress and President that care about working people can require OSHA to issue standards, conduct basic law enforcement, and can focus and increase OSHA’s staff resources to ensure safety and health.

OSHA’s Consultation Program has serious deficiencies.

OSHA is now investigating the deaths at North East Linen. However, the only time OSHA examined this company location until workers died was when the State’s

federally funded consultation program conducted a limited visit in January 2007 and found no hazards. Their review of the employer's injury and illness records showed none recorded. Workers were not included in the consultant's visits opening or closing conference. Thirty-three workers received Hazard Communication training, but somehow the victims were not included. Although related to Hazard Communication, OSHA's confined space entry standard, meant to prevent exactly this type of tragedy, was not addressed. We know that commercial laundries often have hazards from excessive heat and repetitive work -- but these were not addressed either. Absurdly, OSHA enforcement staff will not have access to the consultant's report unless North East Linen voluntarily shares it with them.⁵

Washington State has conducted several analyses of the association between the consultation and enforcement inspection activity of their Division of Occupational Safety and Health (DOSH) and compensable claims rates. All three studies show that enforcement inspections were associated with a decline in workers' compensation rates relative to businesses that had no DOSH visits. No statistically significant change was found among businesses receiving only consultation visits.⁶

Therefore, WEC calls for the following changes to OSHA's consultation program:

- Employers should only be able to receive consultation services if they have a trained joint safety and health committee with meaningful worker rights and they allow a complete facility inspection for all potential hazards with committee participation.
- Employees and their unions should also be able to receive consultant inspections upon request.
- OSHA consultation should refer employers to OSHA enforcement if all hazards are not abated within a period appropriate to the seriousness of the hazard.
- All consultation information provided to the employer should also be provided to employees and their union.

Other problems, however, require statutory changes to the Act.

- Unlike in New Jersey, where the Work Environment Council and public sector unions led a successful 2001 campaign for a public employee OSHA state plan, 8.6 million workers facing hazards everyday in 21 states are not covered by the OSHAct. *The Act should be amended to cover all public employees nationwide as well as millions who work in the transportation and agriculture industries and at Department of Energy contract facilities who lack full protection under the Act.*
- The current national system for reporting work-related injuries and illnesses markedly underestimates the magnitude of these conditions. A recent study that examined injury and illness reporting found that the Bureau of Labor Statistic's Annual Survey missed more than two-thirds of occupational injuries and illnesses.⁷ *The Act should be amended to establish a more comprehensive injury and illness surveillance system,*

such as the one developed for traumatic workplace fatalities, a program that does not rely on employer based data sources.

- Even with significantly more staff, OSHA would not have enough personnel to regularly inspect every worksite. Yet workers remain largely an untapped source of expertise about the dangers they face everyday and can offer practical solutions to prevent those hazards. As Governor Jon Corzine has said, “Who knows better than workers about the hazards they face on the job.” Therefore, workers and unions need to be empowered by a reformed OSHA to have meaningful participation rights. *The Act should be amended to require employers to establish joint safety, health, and security committees. These committees should have clearly defined rights and responsibilities, including the right to survey the workplace on a regular basis, to training, and to investigate accidents, near-accidents, and exposures.* A number of states already require joint safety and health committees. (Proposed statutory language is provided at the end of this testimony.)
- OSHA whistleblower provisions have not been updated since their adoption in 1970. Experience has shown them to be woefully inadequate. *The Act should be amended to give real whistleblower protection to employees so they will be able to use their participation rights without putting their jobs on the line.*
- Finally, the civil and criminal penalty structure for violations needs to be reformed to provide meaningful incentives for employers to comply. Currently an employer may only be charged with a misdemeanor when a willful violation leads to a worker’s death. This should be a felony. All penalty money should be set aside for health and safety training, education, and research.

Clearly, the OSHAct requires major reforms. It is time. We appreciate that Representative Woolsey and Senator Kennedy have introduced the *Protecting America’s Workers Act*, which incorporates some of the needed changes.⁸

WEC asks Congress to prepare in 2008 to make OSHA reform a priority in 2009.

We request that this subcommittee hold additional hearings to address the Bush Administration’s weakening of OSHA enforcement and the statutory deficiencies of the OSHA Act that have become evident since its passage in 1970.

Thank you for holding this important hearing and for providing the Work Environment Council the opportunity to testify.

For more information, contact:

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Proposed Draft Language on Safety, Health, and Security Committees
Prepared by the New Jersey Work Environment Council
January 11, 2008

Within three months following the effective date of this rule, the owner or operator of the facility must establish a Safety, Health, and Security Committee for that facility.

Existing safety and health, environmental, or similar committees that meet all of the requirements of this section may be used in lieu of establishing a new Committee by written agreement of the owner or operator and the employee representative(s), if any.

The Committee shall be composed of employees and management, with at least an equal number of employees to management representatives.

The total number of Committee members to be selected shall be determined by the number of employees at the facility as follows:

10-19 employees – 2 members
20-99 employees – 4 members
100-299 employees – 6 members
300-499 employees – 8 members
500-999 employees – 10 members
1,000 or more employees – 12 members

Alternate members may be designated if members are temporarily unavailable.

All committee members shall be employed at the facility.

In workplaces with an employee representative, the employee representative shall select employee members. In workplaces without an employee representative, management shall actively solicit volunteers among employees potentially exposed to hazardous substances. If there are no volunteers to serve as committee members at a facility where there are no employee representatives, the owner or operator shall select employee members.

The owner or operator shall prominently post at each process a current list of the names and work location of all committee members, which shall specify whether they are employee or management members.

The Committee shall be co-chaired by an employee committee member and a management committee member.

The Committee shall meet at least monthly at a time, date, and location agreed to by the committee.

A majority of committee members shall constitute a quorum for the transaction of committee business.

Actions by the committee shall require an affirmative vote of a majority of the members present.

The Committee shall have authority to:

- a) identify, discuss, and make recommendations to management concerning potential hazards and risks relevant to security, safety, health, and the environment and potential responses;
- b) survey the workplace for potential security, safety, health, and environmental vulnerabilities and determine a schedule to survey all or part of the facility monthly;
- c) assist in the investigation of, as soon as practicable, accidents, releases, fires, explosions, and near-miss incidents; and
- d) participate in the initial and ongoing development, review, and revision of any Risk Management Plan, Facility Vulnerability Assessment, Inherent Safety Options Analysis, Risk Reduction Plan, and emergency response plan, as required for that facility.

The Committee shall ensure that its recommendations are reduced to writing and that the status of past recommendations is reviewed at the subsequent meeting. The owner or operator shall address each recommendation, accepting the recommendation, offering a revision, or denying the recommendation and providing justification for the denial. In the event of a disagreement within the Committee, such disagreements shall be documented and shall be retained by the owner or operator.

Endnotes

¹ NJ Dept. of Health and Senior Services, *Occupational Health Service Annual Report*, FY2007, July 2007.

www.state.nj.us/health/eoh/odisweb/documents/annual_report_fy07.pdf

² WEC letter to OSHA dated February 20, 2007 and OSHA response of July 5, 2007.

³ Testimony of Peg Seminario, Director Safety and Health, AFL-CIO before the Senate Employment and Worker Safety Subcommittee of the Health, Education, Labor, and Pensions Committee Hearing on “Is OSHA Working for Working People?” April 26, 2007. www.aflcio.org/issues/safety/upload/SeminarioOSHA20070426.pdf

⁴ AFL-CIO, *Death on the Job: The Toll of Neglect*, April 2007, citing data from the Bureau of Labor Statistics. www.aflcio.org/issues/safety/memorial/upload/doj_2007.pdf Data for number of OSHA inspections in New Jersey is from OSHA as of September 2007.

⁵ OSHA Regulation 1908.7(a)(3) says: “The identity of employers requesting onsite consultation, as well as the file of the consultant's visit, shall not be provided to OSHA for use in any compliance activity, except as provided for in § 1908.6(f)(1) (failure to eliminate imminent danger,) § 1908.6(f)(4) (failure to eliminate serious hazards,) paragraph (b)(1) of this section (inspection deferral) and paragraph (b)(4) of this section (recognition and exemption program).”

⁶ Z. J. Fan et al. *The Effect of DOSH Enforcement Inspections and Consultation Visits on the Compensable Claims Rates in Washington State, 2004-2005*, December 2006. <http://lni.wa.gov/Safety/Research/Files/Cne2006.pdf>

⁷ K.D. Rosenman et al. *How Much Work-Related Injury and Illness is Missed by the Current National Surveillance System?* *Journal of Occupational and Environmental Medicine*, Vol. 48, No. 4, April 2006. The study focused on Michigan.

⁸ Press release from Senators Kennedy, Murray and Reps. Woolsey, April 26, 2007. http://kennedy.senate.gov/newsroom/press_release.cfm?id=886469E3-04D2-4E72-B33A-38A9A538CCCB