

**Testimony of
Professor David Michaels
The George Washington University**

**Hearing Before the
House Education and the Workforce Committee, Subcommittee on Workforce Protections
United States House of Representatives**

A More Effective and Collaborative OSHA: A View from Stakeholders

February 27, 2018

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Chairman Byrne, Ranking Member Takano and Members of the Subcommittee, thank you for inviting me. My name is David Michaels. I am an epidemiologist and Professor of Environmental and Occupational Health at the Milken Institute School of Public Health of George Washington University. The views expressed in my testimony are my own and do not represent the views of George Washington University.

From 2009 until January 2017, I served as Assistant Secretary of Labor for Occupational Safety and Health, the longest serving Assistant Secretary in OSHA's history. From 1998 to 2001, I was Assistant Secretary for Environment, Safety and Health in the U.S. Department of Energy, charged with protecting the workers, community residents and environment in and around the nation's nuclear weapons facilities.

Almost fifty years ago, Congress passed the Occupational Safety and Health Act, giving workers the right to a safe workplace and requiring employers to provide workers with a workplace free of recognized serious hazards. With that law, Congress created the Occupational Safety and Health Administration to enforce that law, to make sure that workers are not killed or injured or made sick because of their work.

The OSHA Act established standard setting and enforcement as the twin foundations of OSHA. These two tools are to be supplemented by compliance assistance, outreach, and other activities. And there is compelling evidence that this formula works -- that both strong standards and OSHA inspections are effective in preventing work injuries. I will explain why in my testimony.

OSHA's compliance assistance programs are useful for those employers who voluntarily want to protect their employees and for employees who want to know what hazards they face and their rights under the law, but for many reasons, these programs are far less effective than, and are not a substitute for protective standards and strong, fair enforcement

Over these almost five decades, great progress has been made in protecting the safety and health of workers in the United States. It is not hyperbole to use the word "carnage" to describe the hazardous conditions in the American workplace before OSHA. In any year, more workers were killed on the job than US soldiers were killed on the battlefield in Vietnam. In 1970, an estimated 14,000 workers were killed on the job, an annual rate of 18 per 100,000 or about 38 workers killed on the job every day.

Today, thanks to the efforts of OSHA, employers, workers and their representatives and safety and health professionals, the situation is much improved. The fatal injury rate is 3.6 per 100,000; with a workforce almost twice as large as that of 1970. But this translates to more than 14 workplace deaths every day. The Bureau of Labor Statistics recently reported that 5,190 fatal work injuries died on the job in 2016, a seven percent increase from the 4,836 fatal injuries reported in 2015 and the third year in a row the number has increased.¹ Tens of thousands die of occupational disease every year and over three million suffer serious injuries.*

* This is likely a significant undercount because, although statistics on fatal injury statistic are considered to be reasonably accurate and complete, it is widely recognized that this is not the case for non-fatal work-related injuries.

While the OSHA budget hovers year after year at around \$550 million, that number is dwarfed by the enormous cost of workplace injury, illness and death: one study estimated the annual cost of occupational injuries, illnesses, and deaths in the United States at \$250 billion (in 2007 dollars), which is more than the \$219 billion for cancer and more than half of the \$431.8 billion for cardiovascular disease.²

The primary challenge I faced as Assistant Secretary and that OSHA faces today is how to ensure that employers provide safe workplaces and prevent as many injuries and illnesses as possible, and doing this with astonishingly meager – and shrinking -- resources given the size and scope of workplace injury and illness that still exist in this country.

As Assistant Secretary, I had to examine and evaluate the tools Congress gave OSHA. There is no question that standards are OSHA's most effective and efficient tool to save lives because standards improve workplace practices and conditions in the largest number of workplaces. Much of the progress OSHA has made is in reducing hazards, and saving lives, in the areas where it has issued standards. Most employers are law abiding and will comply with OSHA standards; even without an inspection, they attempt to follow the law and protect their workers from the hazards addressed by the standard.

Standards

In Washington DC these days, many politicians rarely use the word “regulation” without prefacing it with words like “job-killing” and “burdensome.” This sentiment is deeply erroneous. First, it is more accurate to call OSHA standards public health “protections” because that’s exactly what they do: protect workers from preventable injuries, illnesses and death. When you hear someone talk about rolling back OSHA regulations, they’re really talking about endangering workers.

The evidence for the life-saving effects of OSHA standards is compelling and impressive: Asbestos exposure in US workplaces, once common-place, is now largely controlled. After the OSHA bloodborne pathogens standard, the rate of new hepatitis B cases in healthcare workers dropped dramatically to almost zero today. Grain explosions used to be regular occurrences; the OSHA standard has made them relatively rare. I could go on and on describing how every OSHA standard has saved lives and protected workers’ health.

Second, while there is powerful evidence that OSHA standards save lives, there is no evidence that OSHA standards kill jobs. Not only are OSHA standards not “job killers”, once implemented, their economic costs have been shown to be far lower than employer groups predicted in the rule-making process. In fact, they are generally lower than even OSHA

Following a series of studies showing that employer logs did not contain a substantial portion of workplace injuries reported elsewhere (among, for example, those reported to workers' compensation carriers or through emergency department visits), BLS estimates the Survey of Occupational Injuries and Illnesses (SOII) collects between 40% and 70% of workplace injuries. (see Wiatrowski WJ. Examining the Completeness of Occupational Injuries and Illnesses. Monthly Labor Review June 2014 1-12. Available at: <https://www.bls.gov/opub/mlr/2014/article/pdf/examining-the-completeness-of-occupational-injury-and-illness-data-an-update-on-current-research.pdf>)

estimated, because new standards drive technological change that make implementation of these standards significantly less costly than even OSHA could have foreseen.³

Here is the truth: OSHA standards don't kill jobs. They stop jobs from killing workers.

After almost 20 years of work, OSHA issued a silica standard in 2016. This new rule will prevent hundreds of cases of silicosis and lung cancer each year. Employers in the construction industry now recognize that they must control silica dust and by all reports employers are now purchasing equipment with vacuum or wetting attachments that the standard requires to protect workers. The costs of this equipment are small, especially in comparison to the human and economic costs of a case of lung cancer or silicosis. Because most employers want to follow the law, simply by issuing this standard OSHA will save thousands of lives.

There are other important examples of OSHA standards that protect workers and save lives, but sadly not enough. This is because standard setting takes far too long. The GAO estimated that it takes an average of seven years for OSHA to issue one major standard,⁴ and I believe that's an underestimate. For example, OSHA began working on the beryllium standard almost 20 years before finally issuing it in 2017. The new standard protecting workers from respirable crystalline silica took equally long. Standard setting is also resource-intensive, and some administrations simply neglect their duty to protect workers and stop issuing new standards. This is what the current Administration is doing – by stopping efforts to protect workers through issuing new standards and by attempting to roll back existing protections.

Even more problematic for workers and employers who recognize the need for standards, President Trump has issued an Executive Order requiring agencies to rescind two regulations for every one added.⁵ There is no legal basis -- and certainly no moral basis -- for removing two worker protections for every one added. If OSHA issues a standard to protect tree-care workers, will they have to eliminate protections for workers in trenches or workers exposed to asbestos?

There are thousands of chemicals in use in the nation's workplaces; OSHA has standards for only about 500 of them and 95% of those standards date to the 1960s or earlier. Despite the image that many like to give OSHA as a machine that churns out regulation after regulation, the agency has been able to update or issue new standards for only about 30 chemicals in 50 years.

One example of the many hazardous chemicals for which OSHA does not have a standard is 1-bromopropane, a chemical that has severe neurological effects, rendering exposed workers unable to walk or maintain their balance.⁶ In addition, the chemical and is categorized by the National Toxicology Program as "reasonably anticipated to be a human carcinogen."

To address this, OSHA started the process of issuing a standard for 1-bromopropane. It is astounding to me that the Department of Labor has simply terminated that effort, with no further discussion of how it plans to protect workers from this chemical.

Similarly, OSHA has no standards, or weak, outdated ones in important safety areas as well, and the Department of Labor is ending efforts to address these gaps as well:

- The explosion and fire at West Fertilizer in West, Texas and other chemical facilities in recent years illuminated many of the holes in the Process Safety Management Standard. It is listed as on long-term action on the Regulatory Agenda and to date, we have heard nothing from OSHA that would indicate that this important standard is moving forward.

- Each year, thousands of workers in healthcare and social services are victims of workplace violence – California has a standard protecting health care workers from workplace violence, but OSHA has none. Before I left OSHA, we announced we were starting work on a standard. Despite the fact that there has been a one-day stakeholder meeting and a very active Request for Information (RFI), OSHA has yet to announce a date for the small business review (or SBREFA) process – the first major step of rulemaking, and no SBREFA is scheduled for FY 2019 according to the Congressional Budget justification. This important standard, one that could save thousands of our front-line health care workers from serious injury, has apparently been put on the backburner.
- Similarly, no action is scheduled for OSHA’s infectious disease standard. In an age where we’ve already seen Ebola cases in the United States, where rare and deadly diseases can travel across continents in a matter of hours, our front-line health care workers remain vulnerable to all but bloodborne pathogens, a standard that was issued almost 30 years ago.
- The only major new standard that OSHA seems to be moving forward on at present is one to protect cell tower workers. While this is welcomed, OSHA meanwhile has taken standards off the regulatory agenda that would have protected workers who are crushed to death by construction vehicles; workers exposed to 1-bromopropane or styrene; and, years after the devastating explosion at Imperial Sugar that killed 14 workers and injured 39 more, OSHA has taken the combustible dust standard off of the agenda.

There is much talk today of the costs of regulations to employers. Forgotten in this conversation is the cost to workers and their families of *not* creating these protections. These costs are enormous, and they are paid not just in dollars. They are paid in lives.

Instead of working on new protections for workers, OSHA’s leadership seems to be more concerned about putting resources into weakening current worker protections. After many years of work, and eighteen years after the Department of Energy updated its workplace beryllium exposure standard, OSHA finally issued its own beryllium regulation in 2017, updating an antiquated and inadequately protective standard. Under the Trump Administration, the agency has now issued a proposal to weaken beryllium protections for construction and maritime workers, not because this standard would threaten either industry, and not because any new evidence has surfaced that the protections are not needed, but solely as a result of intensive lobbying from coal slag producers whose business is threatened by the standard.

OSHA is also considering weakening the electronic recordkeeping rule that holds promise to provide valuable information that OSHA and employers can use to improve health and safety conditions for working people.

Enforcement of OSHA Standards

Enforcement is OSHA’s other fundamental tool. While many employers will comply with OSHA standards even if no OSHA inspector shows up at their door, there are far too many employers who cut corners on safety in this country, and far too many workers who never come home.

Study after study have shown that OSHA inspections (and, particularly, inspections with penalties) prevent injuries in the years after the inspection occurs. One study, conducted by

Business School faculty from Harvard and the University of California Berkeley and published in the prestigious journal Science, found that establishments subject to random OSHA inspections showed a 9.4 percent decrease in injury rates compared with uninspected firms. The study also found no evidence of any cost to inspected companies complying with regulations. In fact, the decrease in injuries led to a 26 percent reduction in costs from medical expenses and lost wages. This translates to an average of \$350,000 per company, showing that OSHA regulations actually save businesses money.⁷

This study, along with a Commentary⁸ I wrote for the American Journal of Industrial Medicine that describes the study published in Science and two other studies that show similar results,^{9,10} are attached to this testimony.

OSHA's ability to conduct those injury-preventing inspections is limited by its meager budget and small inspectorate. OSHA and its state plan partners are responsible for the health and safety of worker in 8 million workplaces in this country, but the agency has only enough inspectors to visit every workplace one every 159 years.¹¹ What this means is that unless an employee is hospitalized or killed in the workplace, the vast majority of employers in this country – even in high hazard workplaces – are not likely to ever see an OSHA inspector.

I was happy to see that the administration proposed a small increase in OSHA's enforcement budget for next year, but even this modest increase will not bring staffing levels up to those of 2010, when after years of erosion, were restored to FY 2001 levels. Further cuts in enforcement, as the House proposed for FY 2018, would have devastating effects for workers' lives and health.

And also remember that federal OSHA enforces the law in only 29 states. No increase has been proposed for the state plan states that enforce OSHA standards in the other 21 states. In fact, the state plans have not had a budget increase in eight years, and their budget is actually lower today than it was in 2010.

But even with this proposed budget, OSHA has a lot of catching up to do. The hiring freeze that was only recently lifted for Compliance Safety and Health Officers--and remains for all other employees - has had a devastating effect on OSHA's enforcement program. In one state, Mississippi, statistically one of the most dangerous states in the country, inspections fell by almost 25% last year because of empty inspector positions that were not filled.

And the hiring freeze has still not been lifted for other OSHA staff – managers, administrative staff and whistleblower investigators for example. Fewer managers and administrative support means it takes longer for cases to get done. And the longer it takes for a case to be finalized, the longer workers are exposed to hazards.

Recognizing that we did not have the resources to conduct many more inspections, during the Obama Administration we made great efforts to increase the impact of inspections – so that non-inspected employers would voluntarily abate hazards without OSHA having to inspect. Unfortunately, the Trump Administration's Department of Labor is attempting to reverse many of these efforts and their reversal will undoubtedly result in more workers being injured and killed.

We focused most of OSHA's enforcement activities on the worksites where workers were most at risk. These local or national emphasis programs targeted a specific industry or hazard where higher injury and illness rates, and other problems had been documented. OSHA developed new emphasis programs in numerous high risk industries, including grain handling, auto parts and poultry industry. Meat and poultry workers, for example, have among the highest injury rates of any industry, and even those numbers are underreported.

Poultry was one area on which we put special attention because of the high amputation rates and other serious problems like employers failing to allow workers on the poultry processing line to use the bathroom. You can imagine how shocked I was recently to learn that OSHA had rejected recommendations from the Government Accountability Office (GAO) that the agency "consider off-site interviews or exploring other options to obtain information anonymously," and that OSHA inspectors make a greater effort to ask poultry workers about the extent to which bathroom access is a problem.¹² These recommendations were designed to address findings from its investigation that poultry workers are intimidated about reporting health and safety problems to OSHA, particularly about their inability to get bathroom breaks. What possible reason OSHA had to reject these common-sense recommendations I can't imagine.

And let me clarify again. OSHA enforcement does not just "react" to workers who have already been injured or killed. In fact, most OSHA inspections are conducted before workers are injured or killed. The main benefit of OSHA inspections is that by demonstrating that OSHA is on the job, ensuring that employers comply with the law, they prevent further injuries and illnesses.

A third area we used to leverage enforcement resources was the use of Enforcement Units (EUs), a weighting system that gives area offices greater credit for more complex, impactful inspections. Before implementing this system, every inspection, no matter how lengthy or complex, was counted the same - one inspection toward meeting an office's target. Some offices focused on quick inspections to meet their target. Now inspectors get more credit for inspections involving, among other things, measuring for chemical exposure, ergonomic hazards, PSM, or workplace violence, all of which are time consuming.

Currently, OSHA is moving toward counting Compliance Assistance Outreach as part of the EU system, which would result in the system no longer providing a weighted measure of enforcement activities. Compliance assistance, as discussed below, is an important OSHA function, but it is conducted by different staff and funded under a different budget line than enforcement. Merging the two appears to be a non-transparent mechanism to shift resources from enforcement to compliance assistance.

A fourth strategy we utilized to enhance the impact of enforcement was to publicize significant enforcement cases. Previous administrations issued press releases for every enforcement case that had penalties greater than \$70,000. We reduced that threshold to inspections with fines above \$40,000, theorizing that reminding employers in the same geographic area or in the same industry that OSHA is on the job, and is issuing penalties will be an important additional incentive to encourage employers to abate hazards, even in workplaces that OSHA is unable to inspect.

A recently completed study supports our theory. Duke University economist Dr. Matthew Johnson completed a study that found that "publicizing the violations of one facility leads geographically proximate facilities in the same sector to improve their compliance with safety

and health regulations and to experience fewer occupational injuries. According to Dr. Johnson, this suggests that OSHA would have to conduct at least 40 additional inspections to achieve the same improvement in compliance as that achieved with a single press release.¹³ (Emphasis added.)

Even if it turns out that the effect of OSHA press releases is only a fraction of what Johnson estimates, there is still no doubt that OSHA press releases can influence employer behavior and therefore reduce injuries and save lives.

Recordkeeping

The injury recordkeeping and reporting components of the OSHA Act are not simply paperwork requirements – they are fundamentally important in preventing workplace injury. Many employers are required to maintain a log of work injuries, logs that are roadmaps for prevention of future injuries. These logs are used by OSHA inspectors and, starting in 1996, some employers were required to send summary data from those logs to the agency under the OSHA Data Initiative. OSHA used this data to identify employers with high injury rates and to target enforcement inspections to these establishments.

Recognizing that injury data could be used more effectively and efficiently, we focused on modernizing injury recordkeeping and reporting.

In 2015, OSHA implemented its Severe Injury Reporting Program, which for the first time, required employers to report all hospitalizations, amputations and loss of an eye. Previously, employers were only required to report fatalities or multiple hospitalizations to OSHA. Before this regulation was issued, a serious incident could have hospitalized two workers with severe, life-threatening and permanent injuries, but OSHA may never have known. Now OSHA is notified of all hospitalizations and amputations, and is able to decide whether an inspection or some other intervention is necessary.

The Severe Injury Reporting Program is an example of how OSHA can be collaborative without sacrificing enforcement. The program is guided by the principle that when employers engage with OSHA after a worker suffers a severe injury — whether or not a workplace inspection is launched — they are more likely to take action to prevent future injuries. The majority of severe injury reports did not result in an inspection. Instead, OSHA conducted a Rapid Response Investigation, a collaborative, problem-solving approach that invited the employer and an OSHA Area Office expert to work together toward the shared goal of fixing hazards and improving overall workplace safety.¹⁴ The agency's report on the first year of the program is attached to this testimony.

In 2016, OSHA also issued the Improve Tracking of Workplace Injuries and Illnesses Rule (commonly known as the Electronic Recordkeeping Rule), applying the insights of behavioral economics to improve workplace safety and prevent injuries and illnesses, without conducting additional inspections.¹⁵

The rule requires employers with 20 or more employees to electronically file the annual summary data that employers have already prepared – the same information that was submitted under the earlier OSHA Data Initiative, without a requirement for electronic reporting. After some needless delay, the Department of Labor implemented this component of the rule in December, 2017.

The rule also requires large employers with 250 or more employees to electronically report to OSHA more detailed information about serious workplace injuries. These additional data provide information on the type of injury and the exposures or conditions that caused the injury and would allow OSHA and others to use the data to focus on serious hazards of particular concern. Moreover, the electronic collection of this data provides OSHA a powerful new mechanism for conducting outreach and providing compliance assistance to tens of thousands of employers. OSHA can electronically provide feedback to reporting employers – tools to help employers analyze injury records and identify problems, links to resources on hazard abatement and control, and data to allow employers to benchmark their performance against others in the industry. Under the regulation, OSHA is required to collect these detailed data by July, 2018.

However, instead of moving forward with the implementation of this important new injury prevention initiative, the Department of Labor has announced that it plans to repeal the requirement for employers to submit detailed injury and illness information to the agency. In contrast, the Mine Safety and Health Administration (MSHA) requires mine operators and contractors to submit more comprehensive data on all mine accidents, injuries and illnesses, and MSHA has made these data publicly available through posting on its website for years.¹⁶

Another important component of this rule is the public posting of these data. Just as public disclosure of their kitchens' sanitary conditions encourages restaurant owners to improve food safety, OSHA recognized that public disclosure of work injury data will encourage employers to increase their efforts to prevent work-related injuries and illnesses. Since high injury rates are a sign of poor management, and no employer wants to be seen publicly as operating a dangerous workplace, new reporting requirements will “nudge” employers to prevent worker injuries and illnesses to demonstrate to investors, job seekers, customers and the public that they operate safe and well-managed facilities. Access to injury data will also help OSHA better target compliance assistance and enforcement resources at establishments where workers are at greatest risk and will enable 'big data' researchers to apply their skills to making workplaces safer.

It is very disturbing that the Department of Labor is refusing to release to the public the data that has already been collected under this rule. OSHA's website already contains similar data from 2002 through 2011 for tens of thousands of employers submitted under OSHA's earlier data initiative.¹⁷ Failure to post these data, and to collect by July 2018 the additional required by this rule, will represent a lost opportunity for OSHA to apply modern electronic tools and insights from behavioral sciences to prevent injury and illness without conducting additional inspections.

One argument that has been used against this rule is that OSHA will require employers to send in confidential information that cannot be safeguarded. This is a myth. Before we issued the regulations, OMB required OSHA to ensure that there were effective safeguards in place to prevent the disclosure of personal or confidential information contained in the recordkeeping forms and submitted to OSHA. OSHA will not collect employee name, employee address, name of physician or other health care professional, or healthcare facility name and address if treatment was given away from the worksite. All of the case specific narrative information in employer reports will be scrubbed for personally identifiable information using software that will search for, and de-identify, personally identifiable information before the data are posted.

Much more can be done using injury recordkeeping and reporting to prevent injuries from occurring. The National Academy of Sciences, Engineering, and Medicine recently released a

report written by a distinguished panel of experts calling for OSH surveillance efforts to leverage newer technologies and tools for identifying, organizing, analyzing, and interpreting data in more innovative, powerful, and cost-effective ways. In doing so, the report stated, the data could reveal problems, trends, and emerging issues within and across sectors, groups, and geographic regions of workers. In addition, new technologies, including OSHA's electronic injury reporting can help disseminate the information to employers and worker organizations who can use surveillance data to take preventive action, thereby improving worker safety and health and reducing associated human and economic costs of work-related injuries and illnesses.¹⁸

I was very pleased with the recommendations of this report, which were agreed upon by all members of the study panel including Scott Mugno, the nominee for the position of Assistant Secretary of Labor for OSHA. Hopefully, under Mr. Mugno's leadership, OSHA will move promptly to implement these recommendations, including fully implementing OSHA's electronic injury reporting rule.

Complete and accurate injury records are of fundamental importance for any of these systems to work. Unfortunately, this administration and Congress took a major step backwards in ensuring recordkeeping accuracy with the repeal of the so-called Volks Rule that had allowed OSHA for 40 years to cite employers who did not keep complete or accurate injury and illness records over the previous five years.

Throughout OSHA's history, this had enabled both Republican and Democratic administrations to issue major citations for widespread recordkeeping violations, to identify deliberate patterns of under reporting, and to require improvements, not just of those employers' recordkeeping practices, but of their unsafe work practices. These led to major changes in such dangerous industries as meatpacking, auto, chemical and others.

Unfortunately, the repeal of this rule now makes it impossible for OSHA to cite most employers' recordkeeping violations in any meaningful way and workers will pay the price in preventable injuries and illnesses. Badly needed here is legislation to restore OSHA's authority to cite employers who do not maintain accurate injury logs, and I support passage of H.R. 2428, "The Accurate Workplace Injury and Illness Records Restoration Act".

Compliance Assistance, Consultation and Cooperative Programs

Compliance assistance also contributes to ensuring that workers come home safe and sound at the end of every workday. But even in this, enforcement plays a role: it is widely recognized that enforcement drives collaborative programs. Remove the obligation to comply and fewer employers will seek compliance assistance. During the Obama Administration, we felt that no employer should expose workers to hazards because the employer lacked knowledge of the hazard. Many employers – especially small employers -- need assistance in learning how to abate hazards, and OSHA has historically provided that. We recognized that small employers often could not afford to hire safety and health staff, or even consultants, so we focused on strengthening OSHA's On-site Consultation Program within the budgets that Congress provided. Similarly, workers need information about the hazards they face, what to do about them, and their rights under the law. This is why we provided both employers and workers with strong and active consultation and cooperative programs.

Under my leadership, we issued important guidance documents and expanded our website that gets millions of hits a year. We launched major national campaigns, promoting safety and health management systems, fall protection, and heat safety. The heat campaign featured a smartphone heat safety tool that has been downloaded hundreds of thousands of times. We strengthened our Alliance program, expanding it to new industries like the National STEPS Network with the upstream oil and gas industry, the Temporary Worker Initiative featuring close collaboration with the American Staffing Association, and new voluntary initiatives involving cell tower climbers, waste recycling, grain handling, hospitals, and many other high hazard industries.

In addition to expanding and restructuring the Whistleblower program, we formed a Whistleblower Protections Advisory Committee, composed of labor, management and government representatives, and asked this committee how we could work more collaboratively with employers. The members of the committee took up the challenge and drafted a recommended practices document and unanimously submitted it to the agency. We then published this as OSHA's Recommended Practices for Anti-Retaliation Programs¹⁹ and the members of this committee are currently promoting the use of these guidelines to employers and employer groups.²⁰ Shortsightedly, the Trump administration has proposed eliminating this valuable, hard-working and well-balanced committee.

We also made a major effort to ensure that vulnerable workers were aware of the hazards they faced and their rights under the law. Day laborers and temporary employees who may have a different employer every month or every week or every day, were particularly hard for OSHA inspectors to reach. Other workers who did not have English as a first language and were not familiar with OSHA also needed specialized information.

One proven, effect program that helped protect vulnerable workers, and workers in small businesses is OSHA's highly successful Susan Harwood Training Grant Program. We focused these grants on high hazards industries, like tree care, (including multiple grants to the Tree Care Industry Association), construction and poultry processing, workers employed by small businesses, and organizations that train the vulnerable workers that OSHA has difficulty reaching.

And these efforts have paid off. After Superstorm Sandy and Hurricanes Harvey, Irma and Maria, for example, organizations that had received Harwood grants were there to ensure that the day laborers, immigrant workers and others were on the ground, ready, and able to safely rebuild the cities that had been devastated by the hurricanes. Without the training provided by Harwood grantees, I believe that many more workers would have been injured or killed in the recovery effort.

OSHA's consultation and cooperative programs – like the Voluntary Protection Programs (VPP)-- supplement OSHA's enforcement efforts but are limited in their effectiveness. Standards and strong, fair enforcement impact multiple employers at the same time. There is compelling evidence they are effective in preventing injuries. In contrast, most of OSHA's cooperative programs focus on individual employers, and have no strategic focus. The fact is, most of these efforts don't have broad widespread impact on hazards or industries.

We also worked hard to strengthen the Voluntary Protection Program. VPP is designed to recognize "the best of the best," establishments that had well-functioning safety and health management programs that exceeded OSHA's requirements. To function well, VPP requires use

of extensive resources: agency staff must conduct a wall to wall inspection in these plants prior to entry into the program, and then must complete a sizable amount of paperwork. Further, VPP participants need to go through an exhaustive re-approval process every three to five years.

Unfortunately, when we arrived, the program was in crisis. The previous administration had rapidly expanded the program but did not have the resources to ensure its integrity, nor could OSHA vouch that every participant in VPP was in fact was one of the best and deserved the recognition and inspection exemptions that VPP provided. Some VPP establishments had experienced fatalities and received willful citations, yet were allowed to remain in the program.

This should have been no surprise to anyone. A June 2009 GAO report warned that the uncontrolled growth of the program threatened its integrity. Noting that the number of participants in VPP had more than doubled from 2003 to 2008, the GAO warned that OSHA was not ensuring that only qualified sites participated in VPP. Specifically, OSHA was allowing participants that had experienced fatalities and serious injuries to remain in the program without reviewing the adequacy of their programs.²¹

OSHA worked hard to re-establish the program's integrity by issuing new policies to address fatalities and willful violations in VPP establishments. Due to budget restrictions, we were forced to focus on re-approvals of current members, rather than bringing in new members. Although we proposed an efficient mechanism to expand the program by charging a fee for membership, the Voluntary Protection Participants Association (VPPPA) opposed that innovation, condemning the program to shrink as budget resources dried up.

Secretary Acosta has promoted expansion of VPP as a means to improve workplace safety across the country. I understand that desire, as well-functioning safety and health management programs are indeed effective in preventing injuries. I strongly believe OSHA should be doing all it can to ensure that every employer has a well-functioning safety and health management program. During my tenure, we used a public notice and comment process to develop and release updated guidance written to assist all employers, but particularly small and medium sized companies, to develop effective safety and health management programs. I also support the concept of recognizing employers who prove that they can meet and exceed OSHA standards. But for several reasons, OSHA needs to take a hard look at whether expansion of VPP would be an effective use of OSHA's scarce resources.

First, there is no evidence that participation in VPP reduces injury or illness risk. In fact, the argument that VPP participants have better safety records than non-participants confuses cause with effect. While VPP participants clearly have better safety and health records than the average company, they were already dedicated to improving their safety and health programs, they already had good safety records, and saw VPP as a means to get them to a higher level. In other words, these companies are in VPP because of their superior safety records. They don't have superior safety records because of VPP.

There are plenty of well-known companies that have successful safety and health management systems and that prevent injuries just as successfully as any VPP participant but have reached these goals because it is the right thing to do; not because they participated in VPP.

Second, unlike enforcement, no rigorous study has ever been conducted on the effectiveness of VPP. In the past, OSHA requested additional funding for program evaluation but these requests

were rejected by Congress. Now the Trump administration is proposing to eliminate the entire OSHA program evaluation office.

Third, and finally, most VPP companies are large, and among the wealthiest in the country. They have the resources and expertise to implement excellent safety and health programs on their own. It is difficult to justify spending scarce OSHA resources on these large firms with good safety records, when there are so many workplaces with serious hazards and high injury rates that need OSHA's attention.

The bottom line is that OSHA must make some hard decisions about how to prioritize its shrinking resources. Should OSHA put its resources into proven enforcement activities to focus on low-road employers who cut corners and endanger their workers, or put resources into VPP, an unproven program that recognizes high-road employers who already understand the value of workplace safety? Unless OSHA's budget grows significantly, it will be difficult to do both.

Now I'd like to take a moment to talk about some other stakeholders who could not be here today to tell you their stories, four workers who were employed by DuPont, at that company's facility in LaPorte Texas. During my years running OSHA, I received several reports of safety system failures at DuPont facilities. I watched with great concern as the company cut costs and let its safety program deteriorate. Needed repairs and upgrades were delayed, worker training was postponed, and risk assessments were overlooked.

The culmination was an incident at the insecticide plant in LaPorte, when 23,000 pounds of an extremely toxic chemical – methyl mercaptan – was released. Crystle Rae Wise, described as a 53-year-old, dog-loving, Harley-Davidson-riding grandmother with electric blue eyes, was nearby and called for help. Robert Tisnado rushed over, and Wade Baker, one of the managers, followed him in. Robert's brother, Gilbert "Gibby" Tisnado couldn't reach any of his three colleagues, so he hurried over, too. DuPont's emergency response program was profoundly broken. and none had the protection required for the situation.

As a result, all four workers -- Crystle Rae Wise, Robert Tisnado, Wade Baker, and Gibby Tisnado -- were killed.²²

Would increasing the size of VPP have prevented those four deaths? DuPont knew about VPP – in fact several of its establishments are members. Would more compliance assistance specialists have saved them? No, but if OSHA had the resources to have inspected that facility before the tragedy, it would have seen the dramatic deterioration in safety procedures. But instead of increasing inspections, under the current administration, the number of OSHA inspections is dropping, while at the same time there is talk about increasing resources to voluntary programs.

What we saw at DuPont is true in hundreds of cases I reviewed. Cases where employees were killed because they were not given fall protection equipment; told to go into deep, unprotected trenches; or forced to bypass procedures to fix machines that had not been locked out. In all of these cases, the employer knew what the law required, but chose to cut corners. Like in the DuPont tragedy, more dollars dedicated to VPP would not have saved these lives.

OSHA's job is to stop the carnage. I have never known of a worker being killed because OSHA wasn't being more collaborative.

What is Needed?

Every day, fourteen workers don't return home to their families because they have been killed at work. And each year, tens of thousands more workers die from occupational illnesses and millions are seriously injured at work. This toll is far too high. We can do better and with additional resources and legislative support, there is much more that OSHA can do to save lives and prevent these work-related injuries and illnesses. I hope this Committee and this Congress take action to assist OSHA in the following areas:

- **Enforcement:** Enforcement resources need to be increased and strategically focused on the most significant hazards and the worst employers. The American economy has changed significantly since OSHA was created. Work has shifted from manufacturing to the service sector. More employees are temporary workers, and enforcement and standards need to follow that change from manufacturing to the service sector, especially health care. Focus needs to be put on standards and enforcement programs that protect health care workers, hotel workers and others in the service sector. The workplace has been fissured with more use of independent contractors, temporary employees, and workers dispatched through electronic platforms. OSHA needs to refocus its enforcement strategy and find creative ways to leverage its meager enforcement resources. Any further cuts to OSHA's enforcement budget would have disastrous results for worker safety and health.
- **Standards:** Healthcare workers have among the highest injury rates of any workers in the country, OSHA needs to issue standards that protect these workers – including rules preventing infectious disease transmission and workplace violence. The upstream oil and gas industry is exempt from several important OSHA standards, including Process Safety Management, and in my tenure at OSHA, leaders in that industry implored me to start working on standards to better protect their workers – and to protect the high road employers who should not be at a disadvantage competing with employers who care nothing about their workers' safety. The standard setting process needs to be speeded up significantly while continuing to collect public input and scientific support. Every year it takes to issue a worker protection means more workers are suffering injuries, illnesses and deaths that could have been prevented by speedier process. OSHA should work together with Congress and major stakeholder to speed OSHA's standards development process, and to identify new ways to effectively protect workers from chemical exposures. Finally, standards that protect the public's safety and health, including the safety and health of workers, need to be exempted from President Trump's "one in, two out" Executive Order.
- **Outreach:** OSHA needs to develop new ways of reaching workers, especially the most vulnerable workers in this country, and find creative and effective ways of intervening with employers and workers to address hazards. That means strengthening effective programs like the Susan Harwood Training Grant program and growing its other compliance assistance activities targeting vulnerable workers and small employers.
- **Data:** Never before has society had instant access to as much data as we do today. We need to collect those data and use them to be smarter and more effective. For the first

time, OSHA is collecting all severe injury reports as well as electronically collecting injury rates. By law, OSHA should be collecting additional injury reports by this summer, although it appears that the agency may be delaying or discarding this important aspect of the Injury Tracking regulation. OSHA needs to promptly post the data it receives, since by doing so, it can reach hundreds of thousands of employers, encouraging them to abate hazards, providing benchmark comparisons with other employers, and enabling OSHA to efficiently disseminate information and tools to address these problems.

- **Whistleblower Protections:** The founding parents of OSHA saw the need for active worker participation in maintaining safe workplaces. But worker participation is doomed to fail unless workers are safe from retaliation. While we made great strides in improving OSHA's whistleblower program, it is still plagued by enormous problems – lack of funding and weak legislative language being the greatest obstacles to a well-functioning program. The fact that this administration did not ask for an increase in funding for the program, and that the Administration's current budget proposal kills the whistleblower advisory committee suggests this administration's lack of commitment to this program.
- **Criminal Prosecution:** Nothing focuses the mind for employers who deliberately flout the law and endanger workers like the prospect of time in jail. My colleagues in the UK tell me that criminal penalties for corporate executives who preside over serious incidents in which there is gross negligence, have led to much improvement in safety. There are minimal criminal penalties for violating the OSHA law. They are limited to situations in which a worker was killed and there was a willful violation – and the penalty in these cases is only a misdemeanor, and it is generally applied to the firm, not an individual like the plant manager. I was heartened to hear Secretary Acosta endorse the concept of criminal prosecution for OSHA violations; however, until there are teeth in the law, prosecutions will lack deterrent value.
- **Public employees:** Eight million public employees in this country remain without the guarantee of a safe workplace despite the fact that many do work every day that is as dangerous – or more dangerous—than work done by private sector employees who receive OSHA protection. Almost 50 years after the OSHAct was passed, public employees continue to suffer a higher injury and illness rate than private sector workers. It's past time for Congress to act to stop treating these workers as second-class citizens whose lives are not worth the same of their private sector colleagues.

In summary, it is a false choice to say that OSHA must choose between strong enforcement and robust compliance assistance. OSHA must do both and during the Obama Administration, OSHA did both. Substituting voluntary programs for life-saving standards and a strong enforcement program would be a dereliction of duty and lead to more workers being hurt.

Tragically, the Trump Administration is already trying to roll back life-saving standards and has failed to fill critical positions, undermining enforcement. Promotion of collaborative programs in place of standards and enforcement will not be as effective in accomplishing OSHA's vital mission: ensuring that employers protect the lives, the lungs and the limbs of their workers.

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