TESTIMONY OF

FRANKLIN E. MIRER, PHD, CIH

DIRECTOR
UAW HEALTH AND SAFETY DEPARTMENT

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

on the subject of

EXAMINING THE USE OF NONCONSENSUS STANDARDS IN WORKPLACE HEALTH AND SAFETY

before the

WORKPLACE PROTECTION SUBCOMMITTEE
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

April 27, 2006

My name is Frank Mirer and I am the Director of the Health and Safety Department of the United Automobile, Aerospace, and Agricultural Implement Workers of American (UAW), International Union. The UAW would like to thank you for the opportunity to testify on the use of nonconsensus standards in workplace health and safety. My testimony will focus on the need for OSHA to promulgate standards for a host of chemicals and what Congress can do to make this happen. On the eve of Workers Memorial Day, we should be thinking about protecting workers.

Chronic illness arising from long term chemical exposures at work accounts for 90% of known work-related mortality. Few of these victims are named on Workers Memorial Day, and many are not aware of the chemical cause of their illness. Reducing those known dangerous exposures is therefore the best opportunity to protect the lives and health of American workers. Recognizing the dangers of chemicals at work also would facilitate controlling those chemicals at home and in the community environment.

When OSHA was established in 1968, it inherited a group of chemical exposure limits, based on the science of the '60s and before. Those limits were set with substantial involvement of scientists affiliated with the chemical industries through the American Conference of Governmental Industrial Hygienists (ACGIH). Those limits were not intended to meet the criteria for protection mandated by the OSHA law. Nevertheless, this was a place to start in regulating chemical standards.

In the more than three decades that OSHA has been in existence, OSHA has issued standards for only 17 agents or groups of agents. These rules radically reduced allowable exposures from the 1968 levels, protected workers, transformed industries, and largely avoided high costs projected by industry doomsayers. Those costs incurred included wages of workers fabricating and maintaining control equipment, and cleaning the workplace, so these rules actually created jobs. OSHA should have issued rules for dozens more chemicals.

The effects of OSHA failing to set new standards can sometimes be seen in victims we can name. Here's a real story, documented in the scientific literature and the popular press.

In November 2000, Dave Patterson, a machine operator at a brake systems plant in Mt. Vernon, Ohio, initially reported breathing difficulties to his physician. In January 2001, machinist J.J. Johnson and set-up man John Gooch were hospitalized with hypersensitivity pneumonitis (HP), a serious disease that can lead to respiratory failure. Subsequently, additional HP cases developed as well as cases of bronchitis and occupational asthma (OA).

On February 5, 2001, an OSHA inspector responded to a complaint from one of the victims. The inspector issued no citation for MWF exposure because they found management in compliance. OSHA gave management a clean bill of health for metalworking fluids.

Workers continued to get sick. In June 2001, a National Institute for Occupational Safety and Health (NIOSH) Health Hazard Evaluation was called in by management and UAW Local 1939. By November 2001, 107 workers (out of 400) had been placed on restriction and 37 remained on medical leave. NIOSH identified 14 with occupational asthma, 12 with hypersensitivity pneumonitis, three with occupational bronchitis.

The UAW worked closely with TRW and NIOSH to protect our members. Ventilation was improved to bring exposure into compliance with UAW and NIOSH recommended limits. Eleven months after the first case, new cases stopped appearing, but some victims were still unable to return to work. Recent reports from our members and the press show that previous victims still suffer.

This was one of at least a dozen "outbreaks" of illness and disability from HP in machining plants which are in compliance with OSHA's exposure limits. These outbreaks were and are epidemics of acute severe illness on top of the endemic risks of asthma, other respiratory conditions, and most likely cancer.

Well before OSHA's 2001 inaction in Ohio, the problem was known to OSHA and to the industry. In 1993, the UAW petitioned OSHA for an emergency temporary standard for metalworking fluids based on research largely conducted jointly in the auto industry. OSHA denied that petition, but did convene an industry-labor-public health standards advisory committee. The automobile industry responded in 1995 and 1997 by convening symposia on the health effects and control measures for exposure to metalworking fluids. Both concluded that the effects were real and controls were feasible. The UAW negotiated exposure limits lower than OSHA with the auto industry employers, as well as other control measures. The year 1997 also saw the crafting of an American National Standards Institute (ANSI) standard on mist control for machine tools and a workshop was held to identify the cause and prevention of hypersensitivity pneumonitis. The following year (1998) NIOSH completed a "Criteria Document" on metal working fluids (a proposal to OSHA for a standard), concurring with the UAW recommended limit. The OSHA Standards Advisory Committee voted 11-4 that OSHA issue a comprehensive standard to drastically reduce the mist levels to which workers are exposed and to enact strict requirements for fluid management. OSHA responded to the SAC report by issuing voluntary guidelines, but left the new standard on the regulatory agenda.

So where was OSHA during the TRW outbreak? As workers were being hospitalized, an OSHA inspector was giving a "clean bill of health" to the plant,

based on a 30+ year old standard that would allow a typical worker to inhale 1 pint of oil over the course of a working lifetime. And then, in October, 2001, OSHA deleted Metalworking Fluids (MWF) from the regulatory agenda, withdrawing the advanced notice of proposed rulemaking. OSHA acknowledged the respiratory illness from MWF exposure at prevailing and permitted exposure levels, but stated the asthma and hypersensitivity pneumonitis were "rarely fatal." The UAW petitioned the 3rd Circuit Court of Appeals to compel OSHA to restart the rulemaking. On March 24, 2004, that Court deferred to OSHA's decision NOT to act or start setting a standard.

Since 1970, scientific evidence and practical experience has identified workplace chemical causes of many instances of illness, disability and death among workers. Technical methods for estimating quantitative risks at various exposure levels – methods demanded by industry – demonstrate very large risks at very low exposures. Multiple studies have shown that widely distributed chemicals, like silica, are now known to cause cancer in humans. Lung cancer has been observed among workers exposed at levels permitted by the current OSHA standard and prevailing in American workplaces and at American construction sites. Organic dusts, like flour, are known to cause occupational asthma at exposure levels prevailing in American workplaces. A predictable fraction of asthma victims will die of that illness.

The most visible recent demonstration of the impact of OSHA's failure to move forward on new exposure standards was at the World Trade Center recovery site. The scientific literature and popular press recount the ongoing toll of disability and even death among recovery workers. Those accounts fail to connect the dots, that OSHA, and EPA, correctly reported that none of the measured exposures at the site violated outdated OSHA standards.

The standards process, when allowed to proceed according to law, drastically reduces permissible and actual exposures. The OSHA asbestos permissible exposure limit, revised several times, was cut to 1/50 of what it was in 1970, and even this limit leaves behind a substantial cancer risk. We still pay for the legacy of those old, high exposures.

Unfortunately, the chemical hazard standards process nearly ground to a halt in the last decade. The most recent rule protecting against cancer-causing chrome compounds was issued this year following a court order to regulate and a court decreed time limit to get it done. The mandated reduction is not sufficient, but it's something. The standard promulgated before chrome compounds, the methylene chloride standard, began with a UAW petition.

Without a doubt, these delays in the standard setting process have been aggravated by Congressionally imposed special reviews by "small" business

employers [but not employees of small business], OMB imposed regulatory reviews, and increasing demands for detailed economic analyses. These have injected procedural Botox into an agency already paralyzed by analysis. But the delays are also attributable to the failure of OSHA and the Administration to support prompt action in promulgating additional standards.

The legislative fix to this impasse has two parts. First, OSHA should be required to meet as high a threshold to defend refusing a petition for a new standard as it does to promulgate a new standard. Second, Congress should authorize OSHA to adopt the current Threshold Limit Values (TLV) list on a one time only basis. TLVs are developed by ACGIH, a group of scientists charged with investigating, recommending, and annually reviewing exposure limits for chemical substances. Generally, the TLV's are not as protective as permissible exposure limits set according to the OSHA law. Often the values allow a significant risk of material impairment to health, and don't push as far as would be economically feasible for the industry. In part, these shortcomings in protection arise from the nature of the ACGIH and its TLV committee, a set of volunteer organizations, with limited resources. ACGIH is not able to hold months of hearings, or hire specialized experts as OSHA might. But given OSHA's lack of action on setting new standards, the TLV's are a reasonable starting point in getting protection and future rulemaking. Congress should direct this action, not prevent this action. Where there is substantial objection to the limit for a particular agent, and a showing of material problems with compliance with that limit, OSHA should be compelled to place that agent in line for complete 6(b) rulemaking on a clear timetable.

The UAW was able to negotiate with auto industry employers to establish the TLV's as the internal occupational exposure guidelines, with updating as needed. A limited but significant number of TLV's really make a difference. They establish exposure levels lower than those which prevail or may prevail in the industry. For example, the TLV for carbon monoxide is ½ the OSHA permissible exposure limit, and this value can really drive improved ventilation in many industrial and service occupations.

In conclusion, the UAW appreciates the opportunity to testify before this Subcommittee. We look forward to continuing to work with Congress and OSHA to improve the safety and health of all American workers. Thank you.

FM/SJ/AR:lb
opeiu494
L8064