

Good morning Dr. Michaels and OSHA staff:

I am speaking here today on behalf of Tammy Miser, the founder and executive director of United Support and Memorial for Workplace Fatalities. Tammy's brother Shawn Boone was killed in 2003 at the Hayes Lemmerz plant from an aluminum dust explosion. Tammy's husband Mark Miser also worked at the same plant. In her written statement she describes the terrible burns to her brother's body and his painful death. She explains the grief her family has endured, and how Shawn's death was too great for her younger brother to fathom. He took his own life in 2007.

Tammy asked me to extend her sincere appreciation to you for organizing this event.

Tammy created USMWF to support and unite family members who have lost loved ones in fatal workplace incidents and from health hazards. In many ways, it is a community glued together by email and telephone conversations, made up of individuals who are victims of a regulatory and oversight system that failed to protect their loved ones.

USMWF families have written you a letter offering their ideas for improving our nation's H&S system and providing a role for families and injured workers. The ideas contained in their letter were informed by their own experiences during the fatality investigation and contest periods.

For some of the recommendations, the aim may be obvious. Others cut across agencies and pertain to different statutes, and may require you to challenge your staff and the Solicitor of Labor to think about issues from a new perspective.

USMWF families have heard that some of their recommendations are impractical or even ill-informed. If you consider them unreasonable, the families would like to know that. They ask that you think of their letter as a starting place for a dialogue.

The USMWF families are looking for your guidance, Mr. Secretary, to help them understand how the system is supposed to work and whether it is accomplishing what our laws promise. They also urge the Administration to support the Protecting America's Workers Act which contains modest provisions offering new rights to family members and injured workers.

Last night, I had the privilege to have supper with a group of family members. We discussed how OSHA is painfully under-resourced, and even for workplaces at which a worker was killed, OSHA doesn't have the staff to conduct follow-up inspection to confirm that the hazards have been corrected by the company and to talk to the workers.

I suggest that OSHA allow family members or their representative to be designated as "special government employees" (SGEs) for the purpose of conducting follow-up inspections at sites where workers have been killed or seriously injured. No one is more determined than family members to ensure that dangerous conditions and practices have been eliminated once and for all because they don't want another family to endure what they have suffered, especially after learning how many of these deaths and serious injuries are PREVENTABLE. These SGEs should receive appropriate training, such as that provided by the OSHA Training Institute, and as their knowledge and skills develop, they could be called upon to conduct follow-up assessments at many different worksites. Family members are not asking for any special treatment. Family members understand that there is an OSHA precedent for allowing non-government employees to conduct oversight. And family members

would be asking for nothing more than what OSHA already allows through its Voluntary Protection Program. I believe that no one would provide a keener set of eyes and ears for OSHA than family members who have suffered most from employers' indifference (or worse) to workers' health and safety.

Today, OSHA is listening, and on behalf of USMWF, we thank you.

Written Statement of  
Wanda DeJesus Morillo, wife of Juan Pablo Morillo  
OSHA Listening Session, February 10, 2010

Juan Pablo Morillo was on the cusp of turning 31 when his life was snuffed out by an explosion at this job. That explosion also claimed the lives of 2 other men, and severely injured a third man. The accident occurred because of a faulty check valve, which failed to block the flow of acetylene. Its singular hazard is associated with its intrinsic instability; samples of concentrated or pure acetylene will explosively decompose. It's overwhelming at times to think that HC<sub>2</sub>H was as lethal as a bomb to these victims.

In the end, 8 children now had no father. Among those 8 children was the daughter I was carrying, who would never meet her father. We had been married a scant year and a half, together for more than 8 years. To lose him only 2 months before having the child he yearned for was especially heartbreaking for me.

He was a young man who worked hard to provide for his family, who loved his family deeply. He was the youngest of 13 children, and a loving uncle to all his nieces and nephews. He is missed.

I must admit, his company was nothing if not completely helpful after the accident. It was a small company, and the owner was obviously deeply sorrowed to be at the helm when such a tragedy occurred. The company cooperated 100% with the authorities, among them OSHA and the United States Chemical Safety and Hazard Investigation Board. I retained legal counsel approximately 3 months after the explosion, therefore my interaction with OSHA and the US CSB was very limited. I contacted the CSB a few times for status updates, and was promptly given one.

I am here speaking for my late husband, Juan Pablo Morillo, who is no longer here to say this. I am also here today as part of a community of individuals who are bound together by the shared experience of losing a loved one because of unsafe working conditions. Mr. Secretary, we want improvements in our nation's laws and regulations so that other families do not have to endure the pain and sadness we've gone through. We will support you in your efforts to make such changes. We also respectfully ask you to consider the following recommendations:

OSHA should change its regulation to require an employer to immediately notify federal or State OSHA of a fatality or serious incidents rather than giving an employer 8 hours to

do so. OSHA should have the authority to prohibit any alterations to the scene in order to preserve physical evidence. The Mine Safety and Health Administration's regulations require employers to notify MSHA of serious incidents within 15 minutes, and prohibit an employer from altering the scene until it is released back to company by the agency. OSHA should adopt equivalent requirements.

When OSHA shortened the time allotted in which to report fatalities/serious injuries from a whopping 48 hour to the 8-hour mandate it has now, we were told:

"A shorter reporting period will enable OSHA to respond to workplace accidents more quickly to help assure that no other employees remain at risk from the conditions which resulted in the catastrophe," said Dorothy L. Strunk, OSHA's acting administrator.

Federal regulations require operators to notify the NTSB immediately of aviation accidents and certain incidents. An *accident* is defined as an occurrence associated with the operation of an aircraft that takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. An *incident* is an occurrence other than an accident that affects or could affect the safety of operations.

We would support a Federal Policy which reflects the reporting requirements of the California regulations which require immediate reporting of every case involving a serious injury or illness (medical treatment beyond first aid) or death. In many cases such occurrences are serious threats to the health and safety of other workers.

Immediate reporting and follow-up can significantly reduce risk to others still in the environment. Moreover, such a requirement would provide leadership to the states and send a clear signal of OSHA's intent to collect data and develop standards to best protect the American workforce.

It should be noted that California requires immediate reporting and Utah has a 1-hour reporting requirement. If these states are achieving compliance with these requirements, OSHA should consider a reporting requirement of less than 8 hours. At a minimum, OSHA should require immediate reporting of a serious incident, not to exceed the shortest time period OSHA determines is reasonable. Prompt investigation is critical.

We believe that reducing the reporting period for the Agency to respond quickly and inspect for hazardous conditions that may pose a risk to other workers at the worksite. Moreover, prompt inspections will enable OSHA to determine whether its current standards adequately cover the hazards involved in the incident. OSHA will also gather better information on the causes of incidents which can be used to identify serious hazards, prevent incidents in the future, and form the basis for revised standards. Increasing the number of serious incidents reported will present OSHA the opportunity to inspect a greater number of hazardous worksites.

Reducing the reporting period from 8 hours enables OSHA to inspect the site of the incident and interview personnel while their recollections are more immediate, fresh and untainted by other events, thus providing more timely and accurate information pertaining to possible causes. The shorter reporting time also makes it more likely that the incident site will be undisturbed, affording the investigating compliance officer a better view of the worksite as it appeared at the time of the incident. The sooner a witness is interviewed the better is his or her memory and the less likely that he or she will color testimony to favor a particular position. The medical examiner and the police and fire departments should immediately notify OSHA of work site deaths and severe injuries. The practice of prompt reporting and investigation would be of great benefit to OSHA investigators.

It may be argued that in the wake of an accident causing one or more fatalities or 3 or more serious injuries, the employer has more important responsibilities than the fulfillment of a federal reporting requirement. For example, he or she must deal with emergency services, anxious workers, and sometimes distraught family members. However, it is disingenuous to suggest that there is only one person capable of doing all these things at any place of work. Perhaps one or more employees could be delegated with the task of notifying OSHA immediately of an accident causing at least one fatality and/or 3 or more serious injuries.

The minimal burden imposed on American business by the proposed change as justifies setting the required reporting time frame at much less than 8 hours. Preferably, immediately. This will allow for more timely investigation and provide for the possibility to more effectively reduce the risk of injury to other workers, decrease the opportunity for circumstances at the incident site to change, and witnesses'

recollections of the incident will be more fresh and clear. These factors will increase OSHA's effectiveness in investigating the causes of reported workplace incidents, and at identifying and controlling the hazards which caused the fatalities or serious injuries or illnesses. Prompt investigation of incidents is also a key element in OSHA's ability to enforce existing standards and to evaluate the need for new standards.