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**Testimony of Eric Frumin
Health and Safety Coordinator**

Change to Win

Before the

**Subcommittee on Employment and Workplace Safety
Committee on Health, Education, Labor and Pensions
United States Senate**

**Serious OSHA Violations:
Strategies for Breaking Dangerous Patterns**

Washington, DC

April 1, 2008

Chairman Murray, Ranking Member Isaakson and members of the Subcommittee, thank you for the opportunity to testify today.

I am Eric Frumin. I serve as the Health and Safety Coordinator for Change to Win (CtW), and have worked in this field for 34 years. CtW is a partnership of seven unions and six million workers, in a wide variety of industries, building a new movement of working people equipped to meet the challenges of the global economy in the 21st century and restore the American Dream: a paycheck that can support a family, affordable health care, a secure retirement and dignity on the job. The seven partner unions are: International Brotherhood of Teamsters, Laborers' International Union of North America, Service Employees International Union, UNITE HERE, United Brotherhood of Carpenters and Joiners of America, United Farm Workers of America, and United Food and Commercial Workers International Union.

I wish that Eleazar Torres-Gomez, Raul Figueroa and Oscar Pintado could be here to tell you about the urgent need to stop dangerous working conditions. But they can't. They were killed by preventable workplace tragedies.

Nobody should die on the job. Period.

At the outset, we must establish a basic principle: employers – not the government and not individual workers – have the primary responsibility to protect workers' lives on the job. They are obligated under law to provide workers with safe equipment, a healthy work environment, and effective management systems that deliver that safety, or hold managers accountable when they fail.

Because, too often, companies, including many large and sophisticated corporate employers, do fail, with shameful consequences. On average, every single day 16 workers die from injuries on the job,¹ and an estimated 130 workers die from occupational diseases.² Tens of thousands of workers are injured on the job every day.

Increasingly, these victims are Hispanic. Hispanic workers died in greater numbers in 2007 than at any earlier time,³ and face a stunning 18% greater risk of dying on the job than workers generally.⁴

This is a reprehensible record. Worse yet is the fact that we have recently seen a growing pattern of large corporations ignoring or avoiding their obligations to insure a safe workplace.

These dangerous patterns of abuse take several all-too familiar forms:

¹ US BLS, Census of Fatal Occupational Injuries (CFOI), 2006.

² Centers for Disease Control and Prevention (CDC). National Occupational Research Agenda. *Morbidity and Mortality Weekly Report* 45:445-446, 1996, cited at US DHHS, "Healthy People 2010"; <http://www.healthypeople.gov/document/html/volume2/20occshtm>

³ US BLS, CFOI, 2006

⁴ Ibid.

- Corporate demands for subsidiaries, divisions and local managers to cut costs overwhelm any local requests for critical safety and health investments.
- Production pressures that put increased output and higher profits ahead of the most basic worker protections.
- Corporate safety programs that focus overwhelmingly on “worker behaviors” – blaming workers for alleged carelessness or insubordination for the results of corporate failures – while ignoring management’s responsibility to protect workers through safe equipment, systems and management accountability.
- Business models that rely on worker (and environmental) exploitation for profits, combined with unscrupulous employment schemes, instead of using smart engineering and ethical labor practices.

We would not be surprised to read such conclusions about industrial safety in the beginning of the 20th Century when child labor, unbridled corporate control of workers and a laissez-faire approach to government regulation all conspired to kill and injure workers needlessly.

But many of us, and many of our institutions, believed that we had overcome these abusive conditions. In the field of job safety and health, we believed that with the passage of the 1970 Occupational Safety and Health Act (OSHAct), and with comparable and even stronger provisions in our mine safety and environmental laws, we had replaced those abuses with a nation of laws and, at least, an expectation of ethical corporate behavior.

Unfortunately, we now see every day that those laws are virtually meaningless to many large corporations. These companies are huge, and when they drive down standards, they drive them down for everyone. They make it impossible for honest and ethical employers to compete. Essentially, they themselves repeal the very laws on which the rest of us rely.

It is time for all of us –Congress, the media, and the ethical employers who know better – to put a stop to this worker abuse. Compliance with our nation’s laws must be a first priority, not an afterthought once profits are counted, bonuses calculated and dividends distributed. Any other outcome is morally indefensible, politically untenable, and on the most personal, human level, fundamentally immoral.

BP – Texas City

The patterns described above are clearly seen in the case of BP, one of the world’s largest corporate entities. BP could have chosen to set the standards for excellence, just as it marketed itself as the new “green” company that was “Beyond Petroleum.”

The record, however, shows that BP’s leaders chose a different path, with terrible consequences for workers and their families.

In its landmark report on the horrible explosion that killed 15 BP workers in Texas City in March, 2005, the US Chemical Safety and Hazard Investigation Board (CSB) pointed to BP’s repeated cost-cutting at the expense of safety. The CCSB found that BP failed to fix serious hazards at Texas City, despite repeated pleas from local managers.⁵ The CSB cited key admissions by senior BP managers, including the Business Unit leader who commented:

⁵ US Chemical and Safety and Hazard Investigation Board. *Investigation Report: Refinery Explosion and Fire, BP, Texas City, Texas, March 23, 2005. Report No. 2005-04-I-TX, March 2007.*

Key Organizational Findings:

- (1) Cost-cutting, failure to invest, and production pressures from BP Group executive managers at all levels impaired process safety performance at Texas City, (p. 25).
- (8) Numerous surveys, studies and audits identified deep-seated safety problems at Texas City, but the response of BP managers typically was “too little, too late,” (p. 26).

Chapter 10: Analysis of Safety Culture

The BP Chief Executive and the BP Board of Directors did not exercise effective safety oversight. Decisions to cut budgets were made at the highest levels of the BP Group despite serious safety deficiencies at Texas City. BP executives directed Texas City to cut capital expenditures in the 2005 budget by an additional 25 percent despite three major accidents and fatalities at the refinery in 2004, (p.189).

Chapter 9: BP’s Safety Culture_9.4.17 2005 Budget Cuts

In late 2004, BP Group refining leadership ordered a 25 percent budget reduction “challenge” for 2005. The Texas City Business Unit Leader asked for more funds based on the conditions of the Texas City plant, but the Group refining managers did not, at first, agree to his request. Initial budget documents for 2005 reflect a proposed 25 percent cutback in capital expenditures, including on compliance, HSE, and capital expenditures needed to maintain safe plant operations. The Texas City Business Unit Leader told the Group refining executives that the 25 percent cut was too deep, and argued for restoration of the HSE and maintenance-related capital to sustain existing assets in the 2005 budget. The Business Unit Leader was able to negotiate a restoration of less than half the 25 percent cut; however, he indicated that the news of the budget cut negatively affected workforce morale and the belief that the BP Group and Texas City managers were sincere about culture change.

In February 2005, the BP Group VP and the North American VP for Refining visited Houston, where refinery managers presented details about safety transformation efforts, the Telos cultural assessment, and “Safety Reality” slides. The presentation listed the major Telos findings, including concern about the condition of the refinery, budget cuts, pressure for production overshadowing safety, and inadequate training. Also discussed were the three fatalities in 2004 and the poor PSM action item closure rate. The site’s mechanical availability was graded a “D,” with little or no progress due to unplanned events such as the UU4 fire. Also identified were the initial 25 percent capital expenditure cuts in the 2005 budget and the amount restored. Texas City managers proposed, in the presentation, that the executive leaders restore an additional \$41 million of the 2005 cuts in the 2006 budget.

Chapter 9: BP’s Safety Culture_9.4.18 2005 Key Risk—“Texas City kills someone”

The *2005 Texas City HSSE Business Plan* warned that the refinery likely would “Kill someone in the next 12-18 months.” This fear of a fatality was also expressed in early 2005 by the HSE manager: “I truly believe that we are on

[S]eeing the brutal facts so clearly defined was hard to digest, including the concern around the conflict between production and safety ... [while the Texas City plant's \$1 billion dollar profit was] "the best profitability [ever] last year – more than any other refinery in the BP system."⁶

The CSB also noted that "...BP managers increased site bonuses even in the face of three fatalities in 2004."⁷

Chillingly, the Board even found that just days before the deaths, BP's own managers had predicted the catastrophe:

[BP's Texas City safety business plan] warned that the refinery likely would "kill someone in the next 12-18 months.... [W]e are on the verge of something bigger happening."⁸

In the opinion of Change to Win, the explosion at BP was not an unavoidable accident;⁹ but the result of the company's deliberate decision to ignore clear warnings of imminent disaster and put profit before the safety of its workers.

BP got into this trouble in part by misdirecting its systems for preventing workplace hazards. Instead of focusing on the critical area of process safety management for major refinery hazards, the company's own executives and managers focused on controlling workers' behavior. And instead of determining plant safety conditions by looking at previous close calls and small process safety upsets, "BP's approach to safety largely focused on personal safety rather than on addressing major hazards," according to the CSB report.¹⁰

A central component of the BP Texas City approach to safety was its behavioral programs which had been in effect in some form since 1997. In 2004, 48,000 safety observations were reported under [a] new program. This behavior-based program did not typically examine safety systems, management activities, or any process safety-related activities.¹¹

the verge of something bigger happening," referring to a catastrophic incident. Another key safety risk in the 2005 HSSE Business Plan was that the site was "not reporting all incidents in fear of consequences." PSM gaps identified by the plan included "funding and compliance," and deficiency in the quality and consistency of the PSM action items. The plan's 2005 PSM key risks included mechanical integrity, inspection of equipment including safety critical instruments, and competency levels for operators and supervisors. Deficiencies in all these areas contributed to the ISOM incident.

⁶CSB report, p. 175.

⁷ Ibid, p. 178.

⁸ Ibid, p. 177.

⁹ See *Hearing before the House Education and Labor Committee*, March 22, 2007. Testimony of Carolyn Merritt, Chair, US Chemical Safety Board, "Mr. Chairman, the accident at BP was avoidable. In my view, it was the inevitable result of a series of actions by the company." http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:33902.pdf

¹⁰ Ibid, p. 155.

¹¹ Ibid, p. 153-154.

Unless huge corporations like BP understand that they are obliged to provide safe jobs and that they will be held accountable for bad judgments that hurt and kill people, then we can never expect to see widespread compliance with our fundamental labor and environmental laws. No government agencies, no prosecutors, no journalists are capable on their own of turning this kind of misconduct. It is only the corporate executives themselves who can do this, and the day for such a reckoning is long past due. And if corporate leaders won't change, then the Congress has no option but to change the fundamental legal framework itself.

If nothing else, BP has shown us that such fundamental change might indeed be necessary.

The “McWane Way”

McWane Corp., one of the nation's largest suppliers of steel pipe, with estimated sales in 2003 of \$2 billion,¹² shows a different kind of abuse. McWane subsidiaries maintained production levels and sent the profits back to corporate headquarters. But they did so at the expense of workplace safety. In the short space of seven years, from 1995 to 2003, nine workers died in various plants, and at least 4,600 were injured on the job.¹³ In the following two years, another two workers died in two of the same plants, even as the company was facing unprecedented investigations from OSHA, EPA and the Department of Justice.¹⁴

What was the response of McWane's managers and executives to these terrible incidents? Like BP, McWane first blamed their own employees. At trial of the McWane subsidiary, Atlantic States Cast Iron Pipe Co., in New Jersey, where the company and multiple executives were convicted on a total of 70 counts, including 52 felonies covering conspiracy, worker endangerment, and obstruction of justice,¹⁵ the US Attorney told the jury:

Welcome to the real Atlantic States, where laborers are intimidated through the words and conduct of their supervisors, who threaten to fire them if they file a worker's compensation claim, if they refuse to lie for the company, or if they hold up production...Where deception is part of their business,...lying to government investigators...where blame is part of their business, too, blame the victim, blame the regulators, blame the employees....¹⁶

But even worse was what veteran government prosecutors found was an unsettling contempt for the law. The former Federal prosecutor who organized the ground-breaking effort to bring McWane to justice himself concluded that McWane was:

[A] company that was one of the most persistent violators of environmental and workers' safety laws of any company that we had come across in my 17 years at the Justice Department....

¹² <http://www.pbs.org/wgbh/pages/frontline/shows/workplace/mcwane/two.html>; McWane is privately-owned.

¹³ <http://www.nytimes.com/2003/01/08/national/08PIPE.html?ex=1206504000&en=9058011f27f0c422&ei=5070>

¹⁴ <http://www.pbs.org/wgbh/pages/frontline/mcwane/etc/prosecutions.html>

¹⁵ Judge's Memorandum Opinion, *US v. Atlantic States Cast Iron Pipe Co., et al*, 3:03-cr-00852 (NJDC 2007).

¹⁶ *US v. Atlantic States Cast Iron Pipe Co., et al*, 3:03-cr-00852 (NJDC 2007). Trial Transcript, April 3, 2006, pp, 4-5.

[Y]ou don't have the kind of violations that we saw at multiple facilities within a company and not have ... a culture of lawlessness.... That very much was the culture at McWane, or we wouldn't have seen this number of violations at this number of facilities.

[W]e're talking about deliberate, intentional conduct: people lying; people concealing information; people committing workers' safety violations that result in people dying; ... Doing all of that knowingly, doing all of that intentionally.

They weren't mistakes, they weren't accidents, and they certainly weren't the activities of a few isolated people within the company. This was the McWane way.

So it's fair to say we had never seen a company quite like McWane, and I would hope we would never see a company quite like McWane again.¹⁷

The US Environmental Protection Agency eventually proposed that McWane be debarred from federal contractual work, stating that McWane had:

[A] dreadful history of environmental and worker safety crimes [and that] no taxpayer dollars should be spent at a company with a history as scandalous as that of McWane.¹⁸

It was largely the pioneering efforts of the mass media and the unparalleled joint intervention of the both career OSHA inspectors and dedicated Justice Department criminal prosecutors that forced any changes at McWane.¹⁹

The price paid by those workers and communities is completely unacceptable. But worse yet, such a price, tragically, is neither unique nor behind us. It is still happening to workers daily, and will happen again until the McWanes of the nation – both the corporations and the executives who run them—are finally pursued, corralled and required to obey the law.

Cintas Corp.

Cintas Corp. is another example of a terrible multi-billion dollar company that failed to protect its workers from the hazards of the workplace. Cintas has a history of gruesome worker injuries and Cintas has been cited for over twice as many OSHA violations as its three largest competitors combined.²⁰

¹⁷ <http://www.pbs.org/wgbh/pages/frontline/mcwane/interviews/uhlmann.html> , Accessed December 4, 2007.

¹⁸ <http://www.pbs.org/wgbh/pages/frontline/mcwane/etc/prosecutions.html>

¹⁹ <http://www.pbs.org/wgbh/pages/frontline/mcwane/interviews/uhlmann.html>.

²⁰ According to OSHA's *Integrated Management Information System (IMIS)*, available at <http://www.osha.gov/pls/imis/establishment.html>, between Feb. 1, 2003 to Feb. 29, 2008, Cintas facilities have received a total of 265 separate violations, including 157 in cases that are officially closed, and another 108 in cases that are still open for a variety of reasons (including potential modification of OSHA's original citation). In contrast, Cintas' three largest competitors Aramark Uniform Services, G&K Uniform Services, and Unifirst, Inc., received a total of 123, of which 14 are still "open" for potential modification.

Cintas is another huge corporate organization, the largest in the uniform industry, with hundreds of laundries, over 34,000 workers, nearly \$4 billion in annual sales and profits running almost \$1 million per day.²¹

Like BP, Cintas exercises very strict control of capital costs at its local facilities,²² and the record shows that, like BP and McWane, Cintas failed to provide its workers the protection they needed to avoid death or injury. And throughout the company, the production-first mentality appears to overshadow crucial safety considerations.

In Tulsa, Oklahoma, in February and March 2007, Cintas laundry production workers were working hard to keep production levels high. To keep the piles of laundry moving from the washers into the huge industrial dryers, workers climbed up onto unguarded, automated conveyors multiple times per day to un-jam the hundreds of pounds of uniforms and mats. The overhead video surveillance camera recorded dozens of such dangerous incidents.²³

On the morning of March 6, 44-year-old Eleazar Torres-Gomez, a seven year-employee and father of 4, was pulled off the conveyor into a huge uniform dryer. The dryer door closed, and it kept operating, at 300 degrees. Mr. Torres-Gomez died inside that dryer. After 20 minutes, another employee reportedly heard a noise, and finally opened the dryer door.²⁴

Failing to protect workers from moving conveyors is an extremely dangerous practice, and risks workers' lives. The hazards of unguarded conveyors were well-known to Cintas. In fact, OSHA had cited Cintas in Central Islip, New York, for violating machine-guarding standards on computer-controlled conveyors just two years earlier.²⁵ And before that, OSHA cited Cintas in Rochester, New York for repeated violations of standards on machinery repair and maintenance.²⁶

The Department of Labor has said that Cintas corporate officials were well aware of these violations and the need for increased measures to protect workers from hazards on automated conveyors and other dangerous equipment in Cintas plants.²⁷ And the entire linen and uniform laundry industry – which employs 130,000 workers²⁸—long recognized this urgent problem, after multiple fatalities involving the increasingly widespread and dangerous equipment.²⁹

²¹ See: Cintas Corp., *FY 2007 Annual sales and profit announcement*, July 18, 2007. Daily profit calculated by dividing annual profit of \$335M by 365, or \$918,000 per day.

²² Cintas Corp. *Policy #C-27, "Capital Expenditure Authorization"*, rev'd Dec. 2, 2004.

²³ OSHA citation 309792216, Tulsa, OK, Aug. 16, 2007

²⁴ Marshall, Nicole, "Tulsa killed in industrial laundry facility accident," *Tulsa World*, March, 2007.

²⁵ OSHA citation #307631937, Aug. 11, 2005, Item #2, "Machine guarding violation on conveyor shuttle.."

²⁶ OSHA citation #307843045, Sept. 16, 2004, Repeat lockout violations involving washing equipment.

²⁷ Personal communication from USDOL Office of the Solicitor to Eric Frumin, UNITE HERE, November, 2005 (Rochester case) and May 2005 and March, 2007 (Central Islip case)

²⁸ US Bureau of Labor Statistics, *Employment and Earnings Report*, March, 2007.

²⁹ During 2005 and 2006, the ANSI Z8 Committee on commercial laundry equipment safety, "[Met]...in 2004, 2005 and 2006 to review new proposals on the [Z8] standard;" the committee issued a revised standard in Jan. 2006, and reissued the final revised standard in December, 2006. See: Forward, *American National Standard for Commercial Laundry and Dry cleaning Equipment and Operations—Safety Requirements, American National Standard ANSI Z8.1-2006*, American National Standards Institute, Inc., December 2006, p. 8; See also: *OSHA Standard Interpretation: Machine guarding and exposure to hazards from robotic laundry shuttles.*, July 7, 2005.

But Cintas failed to take the action needed to protect its employees. Its failures in Tulsa and elsewhere, in OSHA's own words, are "willful," "repeated," and "serious." As Assistant Secretary of Labor Edward Foulke said when OSHA issued its citations in Tulsa and Columbus, Ohio: "Plant management at the Cintas Tulsa laundry facility ignored safety and health rules that could have prevented the death of this employee,"³⁰

How did Cintas executives respond to this tragedy? Cintas launched an aggressive defense against OSHA's own efforts, and an attack on workers who wanted safer jobs. Refusing to accept corporate responsibility for the unsafe conditions, Cintas CEO Scott Farmer on March 22 publicly blamed Mr. Torres Gomez for his own death, less than a month after the incident and when OSHA's inspection had barely begun, "[I]t is clear that our partner did not follow established safety rules which would have prevented this tragic accident."³¹

Rather than focusing solely or primarily on employee behavior, OSHA's standards explicitly require physical safeguards. Yet, once again, as at BP and countless other companies, Cintas blamed "worker behavior," instead of on fixing the high-hazard equipment that had just been responsible for a worker's death.

The hypocrisy and inadequacy of this response is clear from the record. Since the tragedy, OSHA has found similar violations in Columbus, Ohio, in Stockton, California, and in Yakima, Washington, where a worker had his arm mangled in washing equipment less than a month before Torres-Gomez's death.³²

Four months after the tragedy, when OSHA inspectors in Mobile, Alabama investigated worker complaints, they found even more "willful" and "repeated" violations of machine safety standards in the wash alley. When OSHA cited Cintas in October, it said:

As a large, national employer with a history of OSHA inspections and citations for hazards at other facilities, we are disappointed to find so many of the same or similar hazards at this facility. OSHA will take aggressive action when employers show indifference to the safety and health of their employees.³³

Cintas is still appealing these violations, and no settlement has yet been reached.³⁴ Workers continue to report to us that they are exposed to hazardous conditions in the washing operations in other Cintas plants. Just a few weeks ago, Cintas workers in Bedford Park Illinois filed yet another complaint regarding these hazards in their laundry plant.

Incredibly, even after all this attention, the company still sticks to the blame-the-victim approach and refuses to accept responsibility for their obligation to undertake the basic engineering and design necessary to fix the equipment. Even today, Cintas' fact sheet on employee safety

³⁰ OSHA press release, Aug. 16, 2007.

³¹ Cintas Corp., Media Statement Regarding: March 6 Incident in Tulsa, OK, March 22, 2007

³² CalOSHA citation #310545298, Stockton, CA, and OSHA citation #311109973, Mobile, Alabama.

³³ OSHA press release, Oct. 31, 2007.

³⁴ OSHRC cases 07-1710 (Mobile, Alabama), 07-1419 (Tulsa, Oklahoma) and 07-1395 (Columbus, Ohio).

continues to assert that “[W]orkplace injuries are the result of unsafe actions by individuals, rather than unsafe workplace conditions.”³⁵

It appears that Cintas executives have chosen to disregard the most fundamental principles of workplace safety management. Like their counterparts at McWane and BP, they would prefer to find fault in their own workers, even though properly guarding the equipment like that which killed Mr. Torres Gomez would have cost \$20,000, or less than ten minutes of profit.

That Cintas is by far the industry’s giant makes this inaction much more serious. When the leader goes in the wrong direction, others may follow, and workers across the industry will suffer as well.

Poultry and Meatpacking³⁶

Now let’s look at the food industry.

After I finish, you will hear next from Doris Morrow, a poultry worker who will tell you much more about these conditions. But let me first review some of the basics.

For over a hundred years, the food industry and its workers have suffered from negligent companies which repeatedly violate safety and health standards.

This is not the first time Congress has looked at health and safety problems in the meatpacking industry.³⁷ And as recently as 2004, Senator Kennedy asked the Government Accountability Office to investigate the work nature and number of injuries, and the effectiveness of OSHA in meatpacking and poultry.³⁸

Today, 226,500 workers are employed in meatpacking and 213,800 in poultry, two of the most dangerous industries in the U.S.

According to the BLS, the average rate of injury in meatpacking is 13 per 100 workers; the average for poultry is 7 per 100 workers. The average rate of injury for all manufacturing in 2006 was 6 per 100 workers.³⁹ While reported injury rates are higher than other manufacturing industries in the US, government reports and company records document evidence of underreporting.

³⁵ Cintas Corp., *Health and Safety Overview*, downloaded from www.Cintas.com, accessed March 23, 2008.

³⁶ Research Associates of America. *Packaged with Abuse: Safety and Health Conditions at Smithfield Packing’s Tar Heel Plant*. October, 2006, revised and updated January, 2007.

³⁷ *Hearings before a Subcommittee of the Committee on Government Operations, House of Representatives*, 100th Congress, Washington D.C., (March 19, 1987; May 6, 1987 and September 21, 1987), Underreporting of Occupational Injuries and Its Impact on Workers’ Safety, (Parts 1, 2, and 3).

³⁸ GAO, *Workplace Safety and Health: Safety in the Meat and Poultry Industry, while Improving, Could be further Strengthened*, GAO-05-96, (Washington, DC.: January 2005). Human Rights Watch, *Blood, Sweat and Fear: Workers’ Rights in U.S. Meat and Poultry Plants*, 2004.

³⁹ *Annual Survey of Occupational Injuries and Illnesses*, U.S. Department of Labor, Bureau of Labor Statistics, Washington D.C., 2006.

OSHA, researchers and unions have all stated that the underreporting of injuries and illnesses is a problem in these two industries.⁴⁰ The *Charlotte Observer* investigators recently uncovered more evidence of underreporting based on worker interviews and a review of the OSHA logs at one poultry company, House of Raeford.⁴¹

The UFCW recently reviewed the 2006 OSHA 300 logs from one Smithfield Foods plant in Sioux City, Iowa and found 35 cases, 19% of the recorded injuries and illnesses, had been removed from the log apparently because the claims were denied by workers' compensation (as noted in the margin), a clear violation of the OSHA recordkeeping standard, 29 CFR 1910.4.⁴²

The largest proportions of workers in the industries are young, male and/or Hispanic. More than 25% of the workers are estimated to be foreign-born non-citizens.⁴³ Workers are fearful for their jobs and therefore fearful to report injuries or unsafe conditions.

House of Raeford , Smithfield Foods and AgriProcessors

An especially flagrant failure to observe proper standards of workplace safety killed 25 hard working Americans in 1991 in a gruesome fire at the Imperial Food Products Co., in Hamlet, North Carolina, where 25 hard-working Americans were killed in a gruesome fire, "their bodies found clustered around the blocked doorways or trapped in the freezer, where the workers had fled in vain from the fire's heat and smoke".⁴⁴

In the same article, *Time Magazine* reported:

The fire also exposed the weakness of measures for ensuring job safety. The 11-year-old Imperial Food Products plant had never been inspected. Like a lot of American workplaces, it fell through the gaping cracks of a system in which there are too few inspectors, penalties are mostly trifling, and the procedures for reporting dangerous conditions can leave workers to choose between risking their jobs and risking their lives....

Labor organizers and workers' rights groups are calling for stronger measures. Some want an independent investigative body ... with the power to examine accident sites and set in motion industry-wide changes to save lives in the future. Another proposal ... would make it easier for OSHA to bring criminal charges against individual employers who are repeat offenders.

And why not? When the recklessness of employers becomes lethal, perhaps it is time to call it a crime—and act accordingly.

⁴⁰ GAO report, page 28.

⁴¹ <http://www.charlotte.com/poultry/story/487187.html>, February 10, 2008.

⁴² UFCW Research.

⁴³ GAO report, page 16.

⁴⁴ <http://www.time.com/time/printout/0,8816,973801,00.html>, September 16, 1991.

Have things changed much since the Hamlet fire in the Carolinas poultry industry? According to the recent two-year-long investigation by the *Charlotte Observer*, things have only gotten worse.

House of Raeford

The *Observer* looked carefully at the House of Raeford, a privately held company, owned by Marvin Johnson, one of the largest poultry producers in the country, with 6,000 workers in 7 factories in the Carolinas who processes 29 million pounds of chicken and turkey every week.

The *Observer* reported the abusive treatment of workers – many of them Latino immigrants - and conditions that are now as bad or worse than at the time of the Hamlet fire. Workers are exposed to loud noise, sharp tools and dangerous machinery. Many must stand for long periods of time in “refrigerators,” wielding knives and hooks to slaughter or process meat on a production line that moves at very fast speeds. Workers responsible for cleaning the plants, a task which is largely contracted out, must use strong chemicals and hot pressurized water on running equipment. They suffer serious injuries including amputations and even death.

House of Raeford has repeatedly been cited by state and federal occupational safety and health agencies: 130 serious safety violations since 2000, among the most of any US poultry company.⁴⁵

This company has shown a similar disregard for environmental regulations and the communities where it does business. In the last 5 years, House of Raeford has been cited and fined nearly \$45,000 for violations of state and federal EPA regulations at 5 of its plants.⁴⁶

As in 1991, the state officials in North Carolina have utterly failed to carry out their own mandate to protect the people at House of Raeford. North Carolina Labor Commissioner Cherie Berry blamed the workers for the egregious violations of their own employers. When asked by the *Observer* about the strong evidence the *Observer* found that House of Raeford failed to report serious injuries, Berry addressed the issue as merely a paperwork issue rather than a gross health and safety problem.⁴⁷

And when the reporters asked her about workers who were afraid to speak up because of fear of retaliation, she simply dismissed the problem and placed the burden at the feet of the victims themselves: “They need to call us. If we don't know about them, we can't help them.”⁴⁸

In his letter to readers at the outset of the series, *Observer* Editor Rick Thames asked his readers to pay attention to the newspaper's shocking findings, stating:

They are our newest subclass. If you look beneath America's entanglements with slavery and child labor, you will find governments that failed famously to balance a free market against the inherent promise of basic human rights.

⁴⁵ <http://www.charlotte.com/716/v-print/story/488123.html>

⁴⁶ <http://www.epa-echo.gov/echo>

⁴⁷ <http://www.charlotte.com/739/story/528605.html>, March 9, 2008.

⁴⁸ <http://www.charlotte.com/739/story/528605.html>, March 9, 2008.

We should demand that our leaders repair those policies with realistic solutions. But as citizens and consumers, we should also insist on humane treatment for this new subclass of Latino immigrants who now work to the benefit of many in this country. We've learned from our history. We are better than that.⁴⁹

We believe that human treatment is not too much to ask for anyone who works hard, doing a fundamentally unpleasant job, and puts the food on our tables. But apparently, unless a government agency is willing to intervene, too many leaders of the poultry industry fail to adequately secure safe and healthy workplaces.

Smithfield Packing

Smithfield Packing displays the same problems in the meatpacking industry.

In Tar Heel, North Carolina, in the same part of the same state where the poultry industry exploits workers by the thousands, Smithfield Packing maintains the world's largest single pork packinghouse, where approximately 5,000 workers slaughter and process 32,000 hogs a day. Overall, Smithfield slaughters hogs at seven plants in the U.S. (five in the Midwest and two in the Southeast), with a current slaughter capacity of 101,000 hogs per day.

Like the poultry industry, Smithfield Packing goes to great lengths to maintain production levels at its Tar Heel facility. Not surprisingly, as in the poultry industry, injury rates rose rapidly between 2003 and 2006, especially for the musculoskeletal disorders (MSDs) that plague workers in meatpacking and poultry plants and other industries throughout the economy. An examination of Smithfield's injury data from 2003 to 2006 reveals injury and production rates that dramatically increased at its Tar Heel plant. The production rates at the plant increased from an average of 145,363 hogs per week to 151,713 hogs per week, or an average of 29,073 a day to 30,342 a day. The rate of reported injuries in the plant rose from 318 in 2003 to 696 in 2006—an increase of more than 200%.

On November 20, 2003, a 25-year old Smithfield Packing employee climbed into a tank to clean it out; he was quickly overcome with toxic fumes and killed by asphyxiation. North Carolina Department of Labor's Occupational Safety and Health Administration (NC-OSHA), conducted an investigation of the event and found that the young man had been improperly trained and supervised, and the tanker was not properly labeled as a dangerous confined space. Smithfield Packing was fined \$4,323.⁵⁰

On March 2, 2005, NC-OSHA conducted a general walk-through and comprehensive safety inspection of the Tar Heel plant and identified over 50 violations of safety and health laws, the majority of which were categorized as "serious." These included lack of safety training, unguarded blades, missing guardrails, blocked exits, illegible signage, and improper safety procedures. Smithfield Packing paid \$17,900 in fines.⁵¹

⁴⁹ <http://www.charlotte.com/poultry/story/487184.html>, February 10, 2008

⁵⁰ NCOSHA inspection #07215731 closed June 4, 2004

⁵¹ NCOSHA inspection #308548866 closed October 31, 2005 and #308542513 closed April 13, 2006

On June 28, 2005, NC-OSHA visited the plant after it received a report that 661 pounds of ammonia had been spilled on the roof on June 15, 2005. No injuries were reported, but the kill floor was evacuated and employees arriving for work were not allowed in the plant. While the cause of the spill was found to be related to the improper installation of a refrigeration unit, OSHA determined that it was Smithfield Packing's responsibility to review the changes to the system that were being installed. Smithfield Packing also failed to update training records and operating procedures related to the refrigeration unit. OSHA fined Smithfield Packing \$2,275.⁵²

A report produced by Research Associates of America, *Packaged with Abuse*, identified several key issues at the Smithfield Tar Heel plant.⁵³

- **Smithfield Packing tells workers that “the injury didn’t happen on the job.”**
By refusing to record an injury, Smithfield Packing may deny the workers their rights to receive workers’ compensation benefits, which they are guaranteed under the law.
- **Smithfield Packing requires workers to return work before full recovery.**
Studies have revealed that insufficient rest and recovery greatly increases the possibility of re-injury or long term health problems due to incomplete healing. Many workers have been injured multiple times, and some are left with permanent disabilities.
- **Smithfield Packing workers have often lost their jobs after having been injured.**
Many workers who can’t keep up with production or who take too much time off work after an injury have been terminated. Their health insurance is then cut off, and if they are not receiving workers compensation, they are left with no means of receiving medical treatment.

In reporting his injury, Smithfield Foods worker, James McCormick, revealed that he had been injured years before but had healed. Smithfield told him that he was fired for failing to reveal the prior injury on his job application.

I got hurt soon after I began working for Smithfield Foods. I was moving heavy pallets around and suddenly I felt my back go “pop.” Smithfield Foods told me that they no longer had any use for me at work.

—James McCormick, fired after being injured and left with no access to health care.

Migadalia Felicia Valdez was eight months pregnant when she had a miscarriage following a strenuous workday, which she believes was caused by the physical stress of struggling to keep up with the line speed. Valdez was put on the line with seasoned workers though she didn’t have adequate training, and says Smithfield Packing doesn’t slow the line down for workers in training at the Tar Heel plant.

⁵² NCOSHA inspection #308782754 closed July 28, 2005

⁵³Research Associates of America, October 2006, *Packaged with Abuse: Safety and Health Conditions at Smithfield Foods Packing Tar Heel Plant* (revised and updated January 2007).

We have to put a stop to this. I'm not the only one--there is a pregnant woman on my line who the supervisors know is far along, yet they still put her on the line working with knives.

–Migadalia Felicia Valdez, speaking out of concern for coworkers who may become pregnant and may be in danger of miscarriage.

To meet production goals at the world's largest pork plant, the processing lines move exceedingly fast. Workers are under extreme pressure to keep up, and some have reported being verbally abused, or even fired, if they fall behind. Others try to keep up to the best of their abilities, but many of those working in this plant have suffered a job related injury or illness.

Packaged with Abuse also found that at the same time, in other unionized Smithfield Packing plants, injury rates generally have declined during the 2003-2006 period. MSD cases have either declined or increased only slightly during the same period.⁵⁴

Like House of Raeford, Smithfield Packing has shown a similar disregard for environmental regulations and the communities where they do business.

In 2000, after years of hog waste spills and discharges of animal waste in North Carolina, Smithfield Foods and its subsidiaries reached an agreement with the NC State Attorney General to pay \$65 million dollars to improve the environment and develop new technologies for processing and treating waste.⁵⁵

In 1997, Smithfield Foods was fined \$12.6 million by the Environmental Protection Agency (EPA) for 7,000 violations of the Clean Water Act at its Virginia packing plants.⁵⁶

AgriProcessors

AgriProcessors is one of the world's largest kosher meat producers. The company is based in Postville, Iowa where it employs over 800 people and produces beef, poultry, turkey and lamb. The company has a smaller plant in Gordon, Nebraska, which employs roughly 100 workers. AgriProcessors produces meat products under brands such as Aaron's Best, Aaron's Choice and Rubashkin's. The company's products are sold at well-known retailers such as Trader Joe's and Albertsons.

The plant has been the center of controversies for a variety of issues, including health and safety and environmental issues. In the period of April 2001 to February 2006, OSHA records show no less than twenty violations at AgriProcessors Postville plant. Of these, twelve were identified by OSHA as serious. An examination of the Postville plant's OSHA 300 logs reveals five

⁵⁴ Ibid., Appendix

⁵⁵ <http://www.edf.org/pressrelease.cfm?contentID=1207>

⁵⁶ *US v Smithfield Foods, Inc., Smithfield Packing Company, Inc., and Gwaltney of Smithfield, Ltd.* . 965 F. Supp. 769 (E.D. Va 1997). Opinion Filed May 30, 1997, Rebecca Beach Smith, US District Court Judge, Supp. 769, 772-81.

amputations along with dozens of other serious injuries such as broken bones, eye injuries and hearing loss.

On March 20, 2008, the Iowa Occupational Health and Safety Agency (IOSHA) cited AgriProcessors with 39 new health and safety violations with proposed fines totaling \$180,000. For perspective, in 2007, IOSHA issued 19 violations for all meatpacking plants in Iowa with fines totaling over \$120,000.

From 2000 to 2008, numerous reports in the media and a 2006 investigation by an independent commission of Rabbis have revealed numerous cases of worker mistreatment including lack of training, job favoritism, and unsafe conditions.⁵⁷

MSDs and Line Speeds in Poultry and Meat Packing

Musculoskeletal disorders (MSDs) are the most prevalent injury in poultry and meatpacking plants. Workers suffer sore hands, wrists, elbows and shoulders from numbingly repetitive, forceful motions performed thousands of times a day. These disorders became epidemic in the industry when production changes set in motion in the early 1980s changed. “Boxed beef” meant that workers made more cuts at faster pace. UFCW OSHA complaints and inspections under the general duty clause caused changes in the design of the work and medical management for the disorders. The enforcement, however, did nothing to change the pace of the work.

Today, with the Bush Administration’s rescission of the OSHA Ergonomics Standard in 2001 and lack of OSHA enforcement for ergonomics, workers once again are suffering high rates of injuries. While the rate of MSDs reported to the BLS from the meatpacking industry is 50 per 10,000 workers in meatpacking,⁵⁸ a recent investigation of OSHA 300 logs from a major meatpacking multi-national company represented by the UFCW found rates of 10 to 38 per 100 workers.⁵⁹

While poultry processing is much more automated than meatpacking, the conditions that Mark Linder portrayed in 1995 still exist today.

It is human hands that . . . (must work) at a grueling pace, set by a relentless conveyor belt and reinforced by circulating foremen, while workers are standing in pools of water and grease in temperatures that range from freezing to ninety-five degrees and being

⁵⁷ *The Forward*, “In Iowa Meat Plant, Kosher ‘Jungle’ Breeds Fear, Injury, Short Pay,” May 26, 2006; “Kosher Slaughterhouse Hit with Lawsuit,” May 18, 2007; *Gazette*, Cedar Rapids, Iowa, “Postville meatpacker hit with 39 citations,” March 21, 2008; *Des Moines Register*, “Agriprocessors cited for alleged health, safety problems,” March 21, 2008; *United Synagogue of Conservative Judaism*, “Report of the Commission of Inquiry,” http://www.uscj.org/Report_of_the_Commis7199.html, December 12, 2006.

⁵⁸ BLS, *Table 1: Number, incidence rate, median days away from work, and relative standard errors of occupational injuries and illnesses involving days away from work by selected industries with musculoskeletal disorders in private industry for 1992 – 2006*.

⁵⁹ UFCW Research

pelted by flying fat globules or dripping blood . . .the painful damage to tendons and nerves can permanently cripple fingers, hands, wrists, arms and shoulders.⁶⁰

Line speeds in these two industries are at meteoric rates. In poultry, some plants slaughter chickens at speeds of 177 birds per minute. The recently proposed USDA “Public Health-Based Slaughter Inspection System” will remove maximum line speed regulations in exchange for increased microbial testing, further subjecting poultry workers to dangerous workplace conditions.⁶¹ In meatpacking, line speeds in pork have increased nearly 80% from the 1980s to present. Beef slaughter speeds have increased 25% in the last decade.⁶²

OSHA is conducting many inspections of meatpacking plants and issuing citations but no inspections are being conducted nor citations issued for the most frequently reported injury on the OSHA 300 logs: musculoskeletal disorders. In a conversation with an OSHA Area Director, there is no support for requiring either inspections or citations for ergonomics from the National OSHA office.⁶³

OSHA Investigations in the Poultry Industry

Workplace safety inspections at poultry plants have dropped to their lowest point in 15 years. OSHA says poultry plants are safer than ever, pointing to a decade of declining rates of reported injuries.⁶⁴ The *Charlotte Observer* found that the official injury statistics aren’t accurate and that the industry is more dangerous than its reports to regulators suggest. The true rate for poultry processors is likely two to three times higher than government numbers suggest, according to Bob Whitmore, an OSHA official on administrative leave.⁶⁵ OSHA targeting for inspections is based on injury reporting and inspections targeted at high injury workplaces. Therefore, most plants that report low numbers of injury and illness will not be selected for inspection.⁶⁶

Waste Management, Inc.⁶⁷

In another emerging industry – solid waste management – we see the same signs of abusive negligence or willful misconduct that we see so alarmingly at BP, McWane, and Cintas.

The abuses in this industry are not as legendary as in steelmaking, oil refineries or food processing. However, if any one event in our history demonstrated the lengths that waste workers must go to defend their lives and dignity, the 1968 sanitation strike in Memphis, TN, where Dr.

⁶⁰ M. Linder, *I Gave My Employer a Chicken That Had No Bone: Joint Firm-State Responsibility for Line-Speed-Related Occupational Injuries*, Case Western Reserve Law Review, 1995.

⁶¹ http://www.fsis.usda.gov/OPPDE/NACMPI/Feb2008/Poultry_Slaughter_Tech_Report.pdf

⁶² UFCW research by Jackie Nowell, Director Occupational Safety and Health Office, UFCW International Union (mid-1990s - 2006).

⁶³ UFCW communication, Jackie Nowell, Director Occupational Safety and Health Office, UFCW International Union and OSHA Area Director

⁶⁴ <http://www.charlotte.com/716/story/487177.html>

⁶⁵ <http://www.charlotte.com/716/story/487188.html>

⁶⁶ GAO report, page 44.

⁶⁷ National Commission of Inquiry into the Worker Health and Safety Crisis in the Solid Waste Industry. *In Harm’s Way: How Waste Management, Inc. Endangers the Sanitation Workers who Protect the Public’s Health*. April, 2008.

King was assassinated, showed us all the need for fundamental change in labor conditions and workers' rights.

Every day, the people who collect and dispose of our trash face danger on a job that is essential to protecting the public health. Sometimes they die at work, like Raul Figueroa, a Waste Management Inc., mechanic, who died alone in a repair bay on January 3, 2008. He was cut in half and crushed to death by the hydraulic arm of the garbage truck he was fixing.⁶⁸ Figueroa's death is one of many fatalities and injuries that sanitation workers incur each year on the job. Since the Memphis sanitation strike of 1968—which was sparked by the deaths of two workers crushed by faulty equipment—safety has been at the heart of sanitation workers' struggle for basic human rights. Today, 40 years after Memphis, sanitation work is still dangerous and deadly.

Sanitation work is another dangerous job, more dangerous than firefighting or police work.⁶⁹ A sanitation worker is 10 times more likely to die on the job than the average worker.⁷⁰ Waste collection and disposal ranks as the fifth most dangerous job in the United States.⁷¹ Garbage collection and landfill workers are about twice as likely as the average worker to suffer a work-related illness or injury.⁷²

Since 1968, as in other sectors of the services industry like industrial laundries, ownership has been concentrated into a few big companies. Again, the largest company dominating this industry has a particularly bad safety record. Waste Management, Inc. (WMI) is by far the biggest company in the solid waste industry. (WMI, Allied Waste/BFI and Republic Services are known collectively as the Big Three.)

⁶⁸ *Miami Herald*, "Mechanic cut in half while fixing truck," January 4, 2008.

⁶⁹ Truini, Joe, "Speakers: Greener equals safer," *Waste News*, September 25, 2006. Previous research, although not extensive, has confirmed this conclusion. See for instance Huren An, James Englehardt, Lora Fleming, Judy Bean, "Occupational health and safety amongst municipal solid waste workers in Florida," *Waste Management and Research*, 17, 5 (October 1999); James D. Englehardt, et al, *Solid Waste Management Health and Safety Risks: Epidemiology and Assessment to Support Risk Reduction*, Florida Center for Solid and Hazardous Waste Management, University of Florida, Report #00-01 (March 2000). The latter study concludes, based on an examination of workers compensation cases, that "the driver/helper occupational group suffered an average of 9.8 WC cases of greater than seven calendar lost work days (LWD) per 100 workers annually, 7.4 times higher than the rate for the general workforce in Florida" (p. xvi). An earlier study, Gerald Gellin, "Dermatoses acquired by solid-waste handlers," *American Journal of Industrial Medicine*, vol. 8, no. 4-5, pp. 363-70, focusing on skin abrasion found 75 percent of waste collectors had palmar calluses, resulting from repeated pressure and friction. An international perspective is offered in Sandra Cointreau-Levine, *Occupational and Environmental Health Issues of Solid Waste Management*, n.d., accessed at <http://www.ilsr.org/recycling/other/dctransfer/ochealth.pdf>, on December 12, 2007. A major study of the UK trash industry found major industry rates about three times as high as the national average and fatality rates 10 times the national average—numbers comparable to the American industry. See *Mapping Health & Safety in the UK Waste Industry*, Research Report 240 (Berks, UK: BOMEL Ltd., 2004), [ISBN 0 7176 2865 5].

⁷⁰ Source: Bureau of Labor Statistics tables at www.bls.gov/iif/oshwc/cfoi/cfch0004.pdf, accessed on March 5, 2008.

⁷¹ Truini, Joe, "Speakers: Greener equals safer," *Waste News*, 25 September 2006.

⁷² Source: *Bureau of Labor Statistics*, Industry and Illness Data, Summary Table, 2006, at www.bls.gov/iif/oshum.htm, accessed on December 13, 2007.

WMI could set an industry safety standard, yet instead continues to rack up safety violations that threaten workers and the public. WMI employs approximately 50,000 workers and operates 370 transfer stations and 283 landfills. It dwarfs the rest of the top 10 waste hauling companies. Thus, WMI sets the standards in the industry, so any fight for safety and health reforms must start there.

With gross revenues of more than \$13 billion in 2007, WMI could easily afford safety reforms. WMI spent \$25 to \$30 million a year for the last three years on advertising and public relations,⁷³ and on its web site WMI speaks of safety as a “core value.” But WMI’s widely documented safety problems tarnish its carefully polished image. In the past five years, OSHA has cited WMI for 232 current violations.⁷⁴ Included in these are multiple instances of failing to properly fit employees for protective respiratory equipment, as well as exposing employees to electrical hazards and fall hazards.⁷⁵

Like its counterparts-in-shame at BP, McWane, Cintas, House of Raeford and Smithfield Packing, Waste Management’s “Life Critical Rules” safety program disregards the science of safety management. Making the same mistakes as BP and Cintas, WMI’s program is framed around the antiquated and faulty notion that reducing accidents relies solely on worker behavior. But the first goal of modern safety management is to evaluate the workplace for hazards and develop measures to control and eliminate exposure of workers to hazards. WMI’s focus is to blame the worker for human error, and avoid needed workplace safety reforms, an approach in stark contrast to the philosophy upon which OSHA was founded 37 years ago.⁷⁶

WMI’s safety record appears to be worsening. WMI’s OSHA violations increased by 28 percent between 2003 and 2007.⁷⁷ Nearly a third of WMI’s OSHA violations over the past five years were categorized as “serious,” defined by OSHA as violations in which “there is a substantial probability that death or serious physical harm could result.”

Workers are closest to virtually every risk that the industry generates. They place their lives in harm’s way every day to protect the public’s health and keep our streets clean. They face hazards

⁷³ Deutsch, Claudia H., “A Garbage Hauler Tidies Up Its Image,” *New York Times*, February 7, 2008

⁷⁴ <http://www.osha.gov/pls/imis/establishment.html>, January 31, 2008. The 232 violations were not dismissed upon appeal by the company.

⁷⁵ Inspections in response to accidents or complaints have discovered other types of WMI safety violations as well. After an employee lost part of his hand in equipment at a Washington facility in 2006, OSHA found that employees were inspecting the equipment while it was operating and with the safety guards removed. Another OSHA inspector found an untrained employee operating a forklift in New Jersey in 2007 after a complaint was filed. Examples: *Department of Labor, Occupational Safety and Health Administration*. OSHA No.(s): 309813004, 309813012, 307926980, 119650307, 309122042, 308640010, 308766054, 310204458

⁷⁶ See *Occupational Safety and Health Act of 1970*, Section 5 (Duties), accessed March 11, 2008, at <http://www.legalarchiver.org/osh.htm>

⁷⁷ These violations do not capture the extent of the safety risks workers face at Waste Management, because OSHA evaluates work sites during regularly scheduled inspections, in response to complaints, following accidents, or in response to referrals from other agencies. Almost all inspections occur at the employer’s physical address. This means that for waste companies’ trash hauling divisions, the most dangerous work—performing trash pick-up on trucks out on their routes—is not inspected. Off-premise inspections do occur in response to accidents, and can uncover practices that might not be discovered otherwise.

that include being crushed by machinery, inhaling asbestos, handling used medical needles and human feces, and working 13-hour days.

Vehicle accidents are a key occupational and public risk in the solid waste industry, and occur at higher levels than for the trucking industry in general. Garbage trucks are involved in 41 percent more fatal crashes than the average work-related truck.⁷⁸ In 2004, 115 members of the general public and 45 sanitation workers were killed in waste industry-related traffic accidents.⁷⁹

Waste Management is putting unsafe trucks on the highways and in our communities. Waste Management's out-of-repair trucks are among those most often pulled off the nation's highways by the U.S. Department of Transportation (DOT) as unfit to be driven, or "out of service." Waste Management trucks, for example, have Out-of-Service violations 28.6% of the time (indicating state police actually stopped the truck from proceeding based upon the severity of the violations discovered), the highest rate among the Big Three.⁸⁰ WMI's Out-of-Service rate is 25 percent higher than the average for the trucking industry as a whole.⁸¹

More than 59 percent of the Waste Management workers rated WMI's overall truck maintenance as "fair," "poor" or a "failure" in a recent survey by the University of Illinois Occupational Health Services Institute and the Teamsters Solid Waste Division and Safety and Health Department.⁸² Only 7.6 percent rated the company's truck maintenance as "excellent."

Long hours for sanitation workers make driving riskier. The hundreds of WMI workers who responded to the survey averaged 10 hours of work a day. Nearly 40 percent reported working 11

⁷⁸ Source: Paul E. Green and Daniel Blower, "The safety profile of work-related trucks," p. 31, prepared for the *National Truck Equipment Association, University of Michigan Transportation Research Institute*, July 2005, at <http://hdl.handle.net/2027.42/13897> accessed on July 17, 2007. Data drawn from *Trucks Involved in Fatal Accidents* data, 1997-2000; 2002, and *Vehicle Inventory and Use Survey (VIUS)*, 2002. Trucks involved in fewer than 100 fatal crashes excluded.

⁷⁹ Bureau of Labor Statistics, *Census of Fatal Occupational Injuries*, "Industry by transportation incidents and homicides, 2004," available at www.bls.gov/iif/oshcfoi1.htm#2003, accessed December 8, 2007; *Center for National Truck and Bus Statistics, University of Michigan, Transportation Research Institute, Trucks Involved in Fatal Accidents database*, March, 2007. Data for 2004 is the most recent available.

⁸⁰ In several states, the out-of-service percentage is above 30 percent: Arizona, Colorado, Massachusetts, Minnesota and Virginia. In Illinois, it is 40 percent, and in Orlando, Florida, WMI's out-of-service record is 56.7 percent. Source: *United States Department of Transportation, Federal Motor Carrier Safety Administration, SafeState Online*, acc. From ai.fmcsa.dot.gov, accessed on December 11, 2007. The FMCA recorded information for the 30 months up to late October 2007. DOT registration numbers were for Waste Management, Inc. entities with more than 100 power units. For comparison, United Parcel Service has an OOS rate of less than 8%.

⁸¹ WMI's vehicle out-of-service rate of 28.6% drawn from *United States Department of Transportation, Federal Motor Carrier Safety Administration, SageStat Online*, accessed from ai.fmcsa.dot.gov on Dec. 11, 2007. Information on inspections is from the 30 months up to late October, 2007. DOT registration numbers for more than 100 power units. For the trucking industry as a whole, the rate of 22.89% is for 2006, drawn from "Program Measures, Roadside Inspections, National Reports, Activity Summary," at ai.fmcsa.dot.gov/ProgramMeasures/RI/NR/NAS/Report.asp?FC=C&RF=T, accessed on March 20, 2008.

⁸² National Commission of Inquiry into the Worker Health and Safety Crisis in the Solid Waste Industry. *In Harm's Way: How Waste Management, Inc. Endangers the Sanitation Workers who Protect the Public's Health*. April, 2008.

or more hours per day. Hours like these mean driver fatigue, which a 2005 DOT report revealed as a key factor in serious crashes.⁸³

Exposure to hazardous substances—including used syringes, blood products, and asbestos—is a daily occurrence for WMI workers. In the recent University of Illinois/Teamsters survey, more than 54.1 percent of the WMI workers surveyed reported being in contact with used syringes over the past three months. 46.5 percent reported being in contact with medical waste over the past three months. 37.7 percent reported coming into contact with blood products and 33 percent came into contact with asbestos. These statistics raise the issue for these workers of lifelong exposure to blood borne pathogens and asbestos.

Nearly half of WMI workers in the survey reported working while injured during the past year; more than a fifth reported working injured on a regular basis. Due to fierce management pressure and intimidation, as well as too few sick days, sanitation workers often continue working even though injured and in pain.

OSHA needs greater enforcement powers regarding companies such as Waste Management, companies with a history of rampant and persistent safety violation. Bad actors such as WMI will not be deterred by “slap on the wrist” fines from OSHA. For example, a WMI worker was killed in Florida in 2005 when he fell under and was crushed by a trash collection vehicle. OSHA found that WMI was using temporary workers as helpers on trash trucks and did not assure that personal protective equipment was “provided, used or maintained wherever necessary.”⁸⁴ WMI was fined only \$1,000 for this violation. This amounted to a token fine for a company that in 2006 took in \$268,000 for each worker employed.

It is clear that the sanitation industry, upon whom we all rely on a daily basis, is long overdue for major changes in its health and safety practices. It is equally clear that leading employers like WMI should be among the companies high on the list for that attention.

Avalon Bay

In the residential construction industry, unscrupulous developers and contractors have tolerated, and in some cases repeatedly allowed, highly hazardous conditions which imperil worker safety.

On March 8, 2007, Oscar Pintado, a 27-year-old carpenter, died at an apartment complex in Woburn MA, where he was working near an elevator shaft. He reportedly fell off a ladder and plunged at least 45 feet inside the shaft. The builder/developer on this project was Avalon Bay Communities, a large national developer and construction manager for residential complexes.⁸⁵

⁸³ “Large Truck Crash Causation Study database,” July 2005, in *U.S. Department of Transportation, Federal Motor Carrier Safety Administration*, “Report to Congress on the Large Truck Crash Causation Study,” March 2006, at www.fmcsa.dot.gov/facts-research/research-technology/report/ltrccs-2006.pdf, accessed on August 15, 2007.

⁸⁴ *Department of Labor, Occupational Safety and Health Administration*. “Informal Settlement Agreement in the Matter of Waste Management of North Florida,” OSHA No.(s): 309068864. December 13, 2005.

⁸⁵ *Woburn Daily Times Chronicle*, “OSHA begins review into fatal fall at Avalon,” March 9, 2007.

This was certainly not the first time that contractors hired and supervised by Avalon Bay failed to provide the fall protection considered essential on any competently-run construction job site. For instance, throughout New England and New York State, the Avalon Bay company has hired the framing contractor Shawnlee Construction, Inc. In June and August, 2006, OSHA inspected job sites of Avalon Bay/Shawnlee site in Newton, Massachusetts and Danvers, Massachusetts where they found substantial fall hazards. The inspectors found workers without fall protection working at heights of 32 and 22 feet, respectively.⁸⁶ At the time of these two inspections, while there had been one incident involving a fall, no one had yet been seriously injured or killed.

The following December, OSHA cited the two companies for repeated violations of OSHA's fall protection standards, with proposed penalties totaling \$164,000 for Shawnlee and another \$43,000 for Avalon Bay. As OSHA's New England Regional office said at the time:

OSHA issued two repeat citations to Shawnlee for the fall hazards in Newton and Danvers because the agency had cited the company in 2004 and 2005 for fall hazards at jobsites in Andover and Charlton, Mass. Shawnlee was issued an additional repeat citation for exposing employees to overhead hazards at the Newton site, because it was cited in 2005 for similar hazards at jobsites in Hudson, Mass., and Mt. Kisco, N.Y. Proposed fines for the repeat citations total \$140,000.

Seven serious citations, carrying \$24,000 in proposed fines, were issued to Shawnlee for uncovered floor holes at the Danvers worksite and for electrical, fire extinguisher, guardrail, debris, stairway and additional fall protection hazards at the Newton site. OSHA issues a serious citation when death or serious physical harm is likely to result from a hazard about which the employer knew or should have known.

Shortly thereafter, on Avalon Bay's project in Woburn, Oscar Pintado fell and suffered his fatal injury.

Shawnlee was cited by OSHA three more times for "repeat" fall protection violations in the following year, again paying tens of thousands of dollars in penalties.

In total, OSHA has found Shawnlee to have violated critical fall protection standards 21 separate times since 2000 alone. And five times, in four separate inspections, OSHA inspectors cited Shawnlee for "repeated" violations of fall-protection standards.⁸⁷

What will it take to force large companies like Avalon Bay and Shawnlee to stop their reckless and repeated violations of critical, life-saving OSHA protections on fall-protection and other essential construction safety measures?

There is no way to answer that question without acknowledging the critical importance of labor relationships in the construction industry. The labor relations system in construction is increasingly based on shifting liability from powerful construction managers like Avalon Bay, to

⁸⁶ http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=13284.

⁸⁷ OSHA Integrated Management Information System, <http://www.osha.gov/pls/imis/establishment.html>, accessed March 13-14, 2008.

multiple subcontractors and individuals without resources to ensure job safety, leaving industry leaders looking blameless for the evident failures of the very contractors they select, supervise and pay.

While subcontracting obscures responsibility for critical workplace failures, misclassification of construction workers leaves workers without protection when they are injured. By wrongly classifying their regular employees as “independent contractors,” construction contractors (as well as other trucking companies and other industries) evade their obligations to pay workers’ compensation or unemployment, withhold payroll taxes, pay overtime, provide employee benefits, or obey a multitude of laws adopted to protect employee rights. Because employers have no legal obligation to the health and safety of independent contractors, disregard for worker safety rules is aggravated by misclassification.

According to a special study done for the US Department of Labor, “the number one reason employers use ICs [independent contractors] and/or misclassify employees is the savings in not paying workers’ compensation premiums and not being subject to workplace injury and disability-related disputes.”⁸⁸ Employers that don’t have to pay workers’ compensation and other entitlements gain a substantial financial advantage and can underbid law-abiding employers who do provide coverage for their workers.

Oscar Pintado himself was reportedly considered a “subcontractor” at the Woburn site. It is no wonder, therefore, that National Carpentry Corp. appears to have escaped any sanction by OSHA for the hazardous conditions leading to his death.⁸⁹ And yet, less than a year later, National Carpentry was cited by OSHA for repeat fall-protection violations at another site, in Stamford, Connecticut.⁹⁰

Typically, Avalon Bay was not even formally included in OSHA’s Woburn inspection after Pintado’s death. In fact, according to the comprehensive enforcement data on OSHA’s website, Avalon Bay was repeatedly inspected during the 2003-2008 period and often escaped OSHA’s grip.

However, for reasons that OSHA has yet to explain publicly, OSHA withdrew the high-penalty citations against Avalon Bay and Shawnlee issued in MA in December, 2006. This failure by the agency to maintain its high enforcement profile can only encourage other contractors and developers to follow Avalon Bay’s lead, and continue to expose workers to severe, and even potentially fatal, hazards.

OSHA Can Stop These Problems with Added Resources, New Authority and Political Will

OSHA has repeatedly failed in its 37-year history to protect workers. Resources have been a constant problem. In far too many cases, inspectors arriving only after a serious incident or years of neglect, where earlier intervention would have saved lives. In other situations, the problem

⁸⁸ “Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs,” *Planmatics, Inc.* February, 2000, p. iii.

⁸⁹ OSHA inspection #310746318, no violations identified, as of March 24, 2008.

⁹⁰ OSHA inspection #311550214; citations issued February 8, 2008.

arises from limits on OSHA's legal authority, like weak or missing standards, or OSHA's inability to compel compliance while employers appeal citations (as contrasted with the fix-first/appeal later rules under the mine safety laws).

This record is not to diminish for a moment OSHA's successes, which are considerable. It is undeniable that the long-term drop in death and injury rates has much to do with OSHA's presence on the industrial landscape, at least in some industries where OSHA has traditionally had a significant presence, demonstrated by both effective standards and consistent enforcement.

Nor do OSHA's repeated failures diminish the dedication of career OSHA staff who have often found themselves a lonely voice of reason and humanity in a world of industrial chaos.

But the biggest single obstacle to effective intervention is simple lack of political will. For many of its years, OSHA has been a captive of entire administrations and their political appointees who were, frankly, hostile to or only mildly supportive of the agency's fundamental mission as an enforcer of strict labor standards. The Bush Administration and the current Assistant Secretary Edward Foulke are, unfortunately, no exception. At the state level, many state OSHA plan administrators also suffer from the same hostility and neglect by labor commissioners or state legislatures, assuming that they are even committed to their mandate in the first place.

Front-line OSHA inspectors – even the best of them – are often overburdened and under-trained by the same ineffective agency leaders. Under the circumstances, it can seem like a virtual miracle when a dedicated inspector actually confronts a deceitful employer, finds the most serious and hidden violations, overcomes the legal obstacles, skirts the political minefields, and actually holds an employer accountable. Only rarely do they receive the full support that should be brought to bear routinely. As one observer noted, before the McWane prosecution in New Jersey, employers lied so often to OSHA inspectors that they lied just to stay in practice. And after the McWane convictions, employers in New Jersey now virtually salute the same inspectors.

It should not take the deaths of seven workers to finally get inspectors the kind of support and resources they need. All employers—and especially those who look for loopholes—and all workers should expect that the next OSHA inspection will be competent, persistent, sophisticated and knowledgeable. The evidence before us demonstrates that anything less than that is a recipe for failure.

Stronger Criminal Provisions

However, no civil enforcement agency, no matter how well-motivated or well-funded, can stop all such abuses, especially when committed on such a scale as the likes of major industry leaders like BP, McWane, Cintas, House of Raeford, Smithfield, Waste Management, Avalon Bay and Shawnlee. OSHA will need greatly expanded power and resources if it is ever to seriously come to grips with this level of misconduct. Currently, the law provides criminal sanctions only in the case of fatalities resulting from a willful violation of a specific standard. And even that egregious misconduct is only a misdemeanor, punishable with a maximum six-month sentence.

OSHA is also incapable of dealing forcefully with employers whose bad behavior, like that of McWane, is deliberately hidden, and simply never shows up on OSHA's radar screen. Unless and until OSHA has both the will and the tools to impose its authority directly on powerful employers – especially those that misrepresent or conceal the facts from inspectors – American workers will never have adequate protection, let alone avoid worker deaths like those of Eleazar Torres-Gomez, Raul Figueroa and Oscar Pintado, who died while citations were pending as yet unremedied.

And some of those tools must come from the US Department of Justice, to finally make sure that the McWanes and Cintas of the nation do not escape the full consequences when their willful violations kill workers. Criminal prosecutions for worker deaths are extremely rare, and a person prosecuted for harassing a wild burro on federal land faces more serious punishment than one prosecuted for a willful OSHA violation that causes the death of an employee⁹¹ And even the \$3 million civil penalty that Cintas faces in OSHA fines is less than one percent of its annual profits.

In his recent interview with PBS Frontline, Assistant Attorney General Ronald Tenpas cited the complexity of the McWane and BP cases, especially given the weakness of OSHA compared to environmental laws. He virtually invited this Subcommittee to give him the power to pursue outrageous corporate violators of worker health and safety laws:

Q: One of the more startling things we learned early on in our reporting is that if you "willfully" violate an OSHA regulation and a worker dies, it's a misdemeanor under federal law.

A: At the end of the day, we work with the penalties that Congress has decided over time are the appropriate ones to provide.⁹²

Congress should provide OSHA with the new tools and resources it needs. This means, first and foremost, treating criminal violations of the OSHAct as felonies, with appropriate sentences. It also means expanding these sanctions to cases of severe worker injury, and, under appropriate circumstances (which now apply in federal environment statutes), even the endangerment of workers.

Congress should provide increased penalties as incorporated in the Protecting America's Workers Act, as well as other legislation to complete the necessary reforms.

More Resources

⁹¹ David Barstow, "US Rarely Seeks Charges for Deaths in Workplace," *New York Times*, 22 December 2003.

⁹² <http://www.pbs.org/wgbh/pages/frontline/mcwane/interviews/tenpas.html>, December 13, 2007. Tenpas, who directs the Justice Department's Environment and Natural Resources Division, continued: "In some of those cases, McWane being an example, we have found there may be violations related to worker safety, but there are also more serious violations related to the environment where penalties are typically much more significant: maximum five years, 10 years, jail time... What we do every day is try to protect the environment because environmental violations can cause lots of harm. They can obviously hurt rivers and trees and wildlife, but part of the reason we have environmental statutes is to protect people, too.... And we certainly hope that changing conduct is going to have beneficial effects for the workers who are there at the plant."

OSHA will also need – at long last – the resources they have been denied for so long. Federal OSHA’s staffing itself continues to stagnate, with roughly the same number of full-time equivalent staff (FTE’s) now as it had in 1983. That represents about a 23% drop from the peak staffing achieved in 1980. At this level, it would take OSHA inspectors 133 years to examine every workplace under their jurisdiction. State OSHA plans do not fair much better.⁹³

Our economy has grown substantially since then and with only minor variations, OSHA’s staff has not kept pace. The number of “establishments” and employees per FTE are now more than what they were when OSHA first began. Like other regulatory agencies whose staff and budgets were cut, OSHA desperately needs the funding and staff resources sufficient to ensure OSHA can do the job that America’s employers, workers and their families are counting on it to do.⁹⁴ This would include greater assistance for state plans that are often under-funded themselves.

And some of these resources should be shifted from the over-funded compliance assistance programs that have yet to demonstrate their value in either preventing injuries and illnesses or actually increasing employer compliance. While recent evidence again indicates that compliance inspections are indeed associated with reduced injury rates, there is no comparable evidence that the \$50 million compliance assistance program produces consistent or positive results.⁹⁵ This is clearly unacceptable in an era of limited budgets and Congressional scrutiny.

Adopt and Expand the *Protecting America’s Workers Act*

We strongly urge you to adopt the measures that will finally give us a new and stronger OSHA, like that envisioned by S.1244, the *Protecting America’s Workers Act* (PAWAct). It would not only strengthen enforcement, such as criminal sanctions and enhanced penalties for fatal injuries, but also expand rights for the victims and survivors of workplace tragedies. For the first time, it would provide criminal prosecutions for negligent employers who seriously injure workers, actions that now escape criminal sanction entirely. The PAWAct would also expand and strengthen “whistleblower” and anti-retaliation protections for workers who complain about hazards and injuries, as well as – at long last – expand coverage to the millions of public sector workers who currently have no protection at all under the OSHAct.

Additional Legislative Remedies – Beyond the PAWAct

Our standards are grossly inadequate. We need not only more and better standards, but also a mandate to force OSHA’s current leadership to cease endlessly dragging its feet and relying on hastily announced national emphasis programs that are no substitute for a legal standard with serious enforcement. OSHA should issue standards on well-documented hazards such as diacetyl, cranes and combustible dust, as well as permissible exposure limits generally. And most

⁹³ AFL-CIO, “Death on the Job,” 2007.

⁹⁴ *Senate Subcommittee on Employment and Workplace Safety*, April 26, 2007. Testimony of Peg Seminario, AFL-CIO,

⁹⁵ “The Effect of DOSH Enforcement Inspections and Consultation Visits on the Compensable Claims Rates in Washington State,” 2004-2005 *SHARP Technical Report Number: 70-03-2006*, Washington State Department of Labor and Industries Olympia, WA, December, 2006.

of all, OSHA should reverse the regrettable repeal of the landmark Ergonomics Program Standard.

We also need a realistic capacity at OSHA to do the kinds of corporate-wide investigations that proved so invaluable at companies like McWane and are still needed at Cintas, Avalon Bay and others. OSHA must make sure that corporate offices – and the corporate officers who work there – are as much the target of investigations as the supervisors and workers who OSHA first interviews. This is especially important when investigations involve either serious consequences, employer deception, or both.

OSHA – and OSHA’s practice for 37 years—are designed to determine violations at individual “establishments.” In an era of giant corporate entities, we need greatly expanded authority to conduct broader investigations, and take enforcement action on a corporate-wide basis. And OSHA must take such action *before* fatalities or injuries occur, without waiting for the willful, repeated, and egregious violations, which typically trigger the application of broad, but essentially unenforceable, “corporate-wide” settlement agreements. While some of these agreements have worked well, others have not. In any case, they were reactive responses to problems, not preventive approaches in keeping with the overall preventive purposes the Congress intended from the outset.

In order to accomplish those goals, we urge you to make sure that OSHA has, finally, a 21st Century information system; one that keeps close track of employers, even large employers, instead of treating each separate inspection or location like a unique entity, irrespective of the patterns of abuse throughout large multi-site companies. Repeated violations in one location should not escape scrutiny simply because the employer operates under another name, or in a state with a separate state enforcement program.

But OSHA alone can’t do it, even if you give the Justice Department the tools to pursue effective criminal sanctions and OSHA finally takes this weapon seriously.

Most of all, OSHA will need the political will to seriously administer the OSH Act, an essential ingredient of any regulatory program which has missing from the Labor Department for a long time.

We also need strict oversight by the Labor Department of companies who refuse to comply with federal laws on worker health, safety and taxation, as well as on environmental issues, including debarment from federal contracts from repeated or willful conduct.

If EPA can debar McWane from federal contracts for polluting the water or poisoning the air, why should not the Secretary of Labor be able to bar McWane for violations that repeatedly kill workers?

Nobody should die on the job. Period.

In 1998, Mr. Gerard Scannell criticized an OSHA/EPA investigation, finding that the agencies had again failed to closely examine the management systems, and asked the fundamental

question about corporate accountability for violations of federal worker safety and environmental rules: “Don’t these companies know about the rules? Don’t they care?”⁹⁶

We believe that these companies have already answered these questions. They have shown little regard for human life and ethical corporate conduct.

It would have cost these huge companies almost nothing to protect their workers.

America’s working families know all too what will happen if we do not strengthen OSHA. More workers will die because of exposure to well documented hazards like diacetyl, combustible dust and slipshod site management. More workers will suffer crippling injuries from high production pressures and poor ergonomics. More companies will go unpunished, even when knowingly putting workers in harm’s way.

We call upon this Subcommittee to adopt these measures. But we also call upon the Committee itself to investigate directly the employers who flout our labor laws and enforcement agencies. We ask you to send a clear message to negligent employers:

- Workers’ lives must be valued more than profits.
- Hazards must be eliminated.
- Workers must be trained, not blamed.
- No worker should be allowed to die as a result of corporate greed and reckless disregard.
- Managers *must* be held accountable.
- Corporations like Cintas, WMI and Smithfield Packing must behave ethically and legally, or face the most severe consequences.

Thank you.

Respectfully submitted,

Eric Frumin
Health and Safety Coordinator
Change to Win

212-265-7000

⁹⁶ Expert Review of *EPA/OSHA Joint Chemical Accident Investigation Report*, Napp Technologies, Inc., Lodi, NJ, March, 1999, EPA 550-F99-004. Congressional dissatisfaction with the EPA/OSHA report was the final straw in the Congress’ bi-partisan efforts to force the Clinton Administration to withdraw its traditional line-item veto threat that had left the US Chemical Safety and Hazard Investigation Board without funding since its initial establishment by the Congress in 1990. See Weiss, Rick, “*Report on N.J. Blast Revives a Debate; Clinton to Decide on Funding for Chemical Safety Board*”, *Washington Post*, October 23, 1997; also, Weiss, Rick, “*Chemical Safety Board Lurching Back to Life*,” *Washington Post*, October 9, 1997.

ADDENDUM

For further information, see the report by the National Commission of Inquiry into the Worker Health and Safety Crisis in the Solid Waste Industry, *In Harm's Way: How Waste Management, Inc. Endangers the Sanitation Workers who Protect the Public's Health*. Published April, 2008. http://www.teamster.org/08news/nr_080325_1.asp.

See also the report published by Research Associates of America, *Packaged with Abuse: Safety and Health Conditions at Smithfield Packing's Tar Heel Plant*. Revised January, 2007. <http://www.smithfieldjustice.com/pressrelease.php>.

How far have we come in 17 years?



Monday, Sep. 16, 1991
Accidents Death on the Shop Floor
By Richard Lacayo

Nobody who worked at the Imperial Food Products plant in Hamlet, N.C., had much love for the place. The job -- cooking, weighing and packing fried chicken parts for fast-food restaurants -- was hot, greasy and poorly paid. The conveyor belts moved briskly, and the few rest breaks were so strictly timed that going to the bathroom at the wrong moment could lead to dismissal. But in the sleepy town of 6,200 there was not much else in the way of work. So most of the plant's 200 employees, predominantly black and female, were thankful just to have the minimum-wage job. Until last week, that is.

The morning shift had just started when an overhead hydraulic line ruptured, spilling its volatile fluid onto the floor. Gas burners under the frying vats ignited the vapors and turned the 30,000-sq.-ft. plant into an inferno of flame and thick, yellow smoke. Panicked employees rushed for emergency exits only to find several of them locked. "I thought I was gone, until a man broke the lock off," says Letha Terry, one of the survivors. Twenty-five of Terry's fellow employees were not so lucky. Their bodies were found clustered around the blocked doorways or trapped in the freezer, where the workers had fled in vain from the fire's heat and smoke.

The disaster brought to light the mostly invisible body count of the American workplace. By some estimates, more than 10,000 workers die each year from on-the-job injuries -- about 30 every day. Perhaps 70,000 more are permanently disabled. The fire also exposed the weakness of

measures for ensuring job safety. The 11-year-old Imperial Food Products plant had never been inspected. Like a lot of American workplaces, it fell through the gaping cracks of a system in which there are too few inspectors, penalties are mostly trifling, and the procedures for reporting dangerous conditions can leave workers to choose between risking their jobs and risking their lives.

"The tragedy that occurred in Hamlet is a direct result of 10 years of the Reagan-Bush philosophy of letting industry police itself," says Deborah E. Berkowitz, top safety expert for the United Food and Commercial Workers International Union. "There's a USDA inspector in every poultry plant to protect consumers from getting a stomachache, but there's nobody protecting people from getting killed."

By almost every measure, America's regulatory safeguards have grown threadbare. At the top of the frayed system is the 21-year-old Occupational Safety and Health Administration, the federal body that attempts to oversee the nation's 6 million workplaces with just 1,200 inspectors -- down from a high of 1,388 in 1980. A strained operation at best, OSHA was stretched to the breaking point by Ronald Reagan, who came to office persuaded that businesses should police themselves. Under him, OSHA's budget fell one-fourth.

OSHA has begun a turnaround under Gerard G. Scannell, a former safety chief at Johnson & Johnson who was chosen to head the agency in 1989. After years in which it rarely issued safety guidelines, OSHA has begun adopting them wholesale -- though critics complain it too often approves rules drawn up by the industries it is supposed to supervise. Scannell has also brought eye-catching fines against offenders, including \$3.5 million against Arco Chemical and a record \$4 million against Phillips Petroleum, after giant explosions at their plants left 40 dead. The agency "is more effective today than it has been in any time in its history," insists Alan McMillan, Deputy Assistant Secretary of Labor for occupational safety and health.

But OSHA still lacks the clout to protect most American workers. By one important measure, the jobsite is safer: work-related fatalities have dropped from 12,500 ten years ago to 10,500 last year. But that is partly because there are fewer jobs these days in some of the most lethal industries, including steel, shipbuilding and logging. Meanwhile, job-related illnesses and crippling injuries are on the increase. "The walking wounded are a part of the cost of doing business," says Bruce Raynor of the Amalgamated Clothing and Textile Workers Union.

Twenty-three states have devised their own regulatory schemes, which exempt them from federal scrutiny, but the results have been mixed. North Carolina, where the Hamlet fire took place, has one of the worst systems. Under federal guidelines, the state should have 116 inspectors. Instead it has just 27 to oversee 163,053 employers. Last week the Charlotte Observer reported that in 1990 inspections declined 35% from the previous year and the state returned \$453,000 in unspent federal money that could have been used to perform more inspections.

Changes in the American economy have left employees more vulnerable, especially the ones in unskilled blue-collar jobs. Labor unions, which can step in to remedy unsafe conditions, now represent just 18% of the work force. Some of the most injury-prone industries, like food

processing and textiles, have clustered in right-to-work states across the South, where labor organizers get the kind of welcome that used to greet Freedom Riders.

The merger-and-acquisition craze of the past decade also led to imprudent cost cutting. The elimination of relief crews, forced overtime and deferred (meaning neglected) maintenance have resulted in tired workers and worn equipment -- a deadly combination. There are further dangers in industries like oil and petrochemicals, where subcontracting has become a common money-saving move. Barely trained newcomers, many of them aliens with an imperfect grasp of English, are put at the controls of dangerous machinery, with predictable results. In Texas six major explosions at chemical plants and refineries have killed 47 workers in the past five years and injured 1,000 more. Subcontract employees were believed to have been at fault in two, the blasts at Arco and Phillips.

The hazards of poultry factories are typical of the conditions that workers face in many industries. With the demand for chicken rising as it gains on beef in the American diet, the assembly lines in poultry plants move twice as fast as they did a decade ago, often butchering employees as well as poultry. According to the National Institute for Occupational Safety and Health, 1 in 5 poultry workers has been seriously injured in the hands, wrists or shoulders.

In addition to severe cuts, the most common problems are the chronic disabilities that go under the heading of repetitive-motion trauma. Line workers, who gut, clean and divide hundreds of birds each day, typically perform the same movement from 60 to 90 times a minute, thousands of times a day. When the human body is pressed to imitate the tireless actions of a machine, it revolts. The result is chronic tendonitis and carpal-tunnel syndrome, a painful condition of the wrists and forearms that can leave a worker virtually crippled even after corrective surgery.

Like many dangerous industries, poultry processing has the advantage of a docile work force. Not only is the complaint process an intimidating bureaucratic tangle, but the plant workers are often poorly paid and uneducated women. Anxious to keep their jobs -- despite an average industry wage of just \$5.50 an hour -- they are unlikely to make waves. Many of the 25 who died in last week's fire were so poor that the Textile Workers Union sent dresses and men's suits to Hamlet for use as burial clothes.

This fall Congress will hold hearings on a bill designed to toughen the regulatory system. Sponsored in the House by Michigan Democrat William Ford, the bill would require any company with more than 11 employees to set up a worker-management safety committee empowered to enforce jobsite safety rules. "Then there's no reason for an inspector to show up to unlock a door," says Franklin Mirer, safety director for the United Auto Workers. "The workers can do it."

Labor organizers and workers' rights groups are calling for stronger measures. Some want an independent investigative body, like the National Transportation Safety Board, with the power to examine accident sites and set in motion industry-wide changes to save lives in the future. Another proposal in the Ford bill is more to their liking. It would make it easier for OSHA to bring criminal charges against individual employers who are repeat offenders. "Everyone knows that the subway worker who killed five people in New York was indicted for murder," says

Joseph A. Kinney, executive director of National Safe Workplace Institute in Chicago. "When are we going to be asking for indictments against the owners of Imperial Food?"

And why not? When the recklessness of employers becomes lethal, perhaps it is time to call it a crime -- and act accordingly.

With reporting by Joe Kane/Atlanta and Elaine Shannon/Washington

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