

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

ADVISORY COMMITTEE ON
CONSTRUCTION SAFETY AND HEALTH (ACCSH)

Thursday, December 10, 2009

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D.C.

Diversified Reporting Services, Inc.

(202) 467-9200

COMMITTEE MEMBERS PRESENT:

EMPLOYEE REPRESENTATIVES:

Frank L. Migliaccio, Jr., (Chairman)

International Iron Workers Union

James R. Tomaseski

International Brotherhood of Electrical Workers

Walter Jones

Laborers' Health and Safety Fund of North America

Emmett M. Russell

International Union of Operating Engineers

Thomas L. Kavicky

United Brotherhood of Carpenters

EMPLOYER REPRESENTATIVES:

Michael J. Thibodeaux

National Association of Home Builders

Thomas R. Shanahan

National Roofing Contractors Association

William R. "Bill" Ahal

Ahal Preconstruction Services LLC

COMMITTEE MEMBERS PRESENT: (Continued)

EMPLOYER REPRESENTATIVES (Continued):

Daniel D. Zarletti

Kenny Construction Company

Susan G. Bilhorn

Jacobs Technology

STATE REPRESENTATIVES:

Kevin D. Beauregard

North Carolina Department of Labor

Division of Occupational Safety & Health

Steven D. Hawkins

Tennessee Occupational Safety and

Health Administration

PUBLIC REPRESENTATIVES:

Thomas A. Broderick

Construction Safety Council

Jewel Elizabeth Arioto

Elizabeth Arioto Safety and Health

Consulting Services

COMMITTEE MEMBERS PRESENT: (Continued)

FEDERAL REPRESENTATIVES:

Matt Gillen

NIOSH, Office of the Director

DESIGNATED FEDERAL OFFICIAL:

Noah Connell

U.S. Department of Labor/OSHA

Michael M.X. Buchet

U.S. Department of Labor/OSHA

COMMITTEE SOLICITOR CONTACT:

Sarah Shortall

ACCSH Counsel

C O N T E N T S

	PAGE
Opening Remarks and Agenda - Chairman Frank Migliaccio	87
Construction Update - Bill Parsons, Directorate of Construction Staff	11
Work Group Report on Education and Training, OTI	16
Work Group Report on Power Fastening Tools (Nail Guns)	22
Presentation on Stimulus Impact on Alternate Energy, Transmission and Distribution, Including Smart Grid Concerns - Jerry Rivera, National Electrical Contractors Association	31
Work Group Report on Multilingual	51
Work Group Report on Trenching	60

C O N T E N T S (Continued)

	PAGE
Welcome and OSHA Update - Jordan Barab, Deputy Assistant Secretary of Labor and David Michaels, Assistant Secretary of Labor	68
Presentation on Stimulus Impact on Transportation/Utility Construction - Kenneth Simonson, Associated General Contractors	105
Presentation on OSHA Ten Hour and Hispanic Worker Health and Safety Conference Updates - Debbie Berkowitz, Chief of Staff	122
Overview and Clarification on the Following: Revisions to OSHA's Occupational Injury and Illness Recording and Reporting (Recordkeeping) Regulation; Proposed Rule on Occupational Exposure to Crystalline Silica; Proposed Rule on the Standards Improvement Project III - Dorothy Dougherty, Jim Maddux, Ryan Tremain, Dave O'Connor, Bill Perry	149

C O N T E N T S (Continued)

	PAGE
Work Group Report on Silica	207
Work Group Report on Residential Fall Protection	217
Presentation on Analysis Fiscal Year 2007	
Construction Health Enforcement Data - Pam Susi, Center to Protect Worker Rights, Center for Research Construction and Training	247
(No Public Comments)	281
ACCSH Administration - Next Meeting	282
MOTIONS: Pages 21, 28, 20, 56, 59, 65, 67, 99, 104, 214, 222, 223	

1 P R O C E E D I N G S

2 (8:35 a.m.)

3 OPENING REMARKS/AGENDA

4 CHAIRMAN MIGLIACCIO: Everybody, take their
5 seats, please. I'd like to welcome everybody here and
6 before I forget, I hope everybody had a great
7 Thanksgiving and I hope you all have a merry, merry
8 Christmas and a Happy New Year.

9 Some housekeeping I want to go through. First
10 is fire drills. If there should be a fire drill or a
11 fire takes place, exit out here, take the stairway down
12 to the closest exit. Stairways are on both sides,
13 here, and on the other side of the room down there.

14 The restrooms are located on both sides of
15 this room.

16 Please turn off your cell phones or at least
17 put them on vibrate.

18 We will go through the self introductions, if
19 the Committee members will state their names and the
20 groups they represent.

21 MS. SHORTALL: I'm Sarah Shortall from the
22 Office of the Solicitor, and I am ACCSH counsel.

1 MR. KAVICKY: I'm Thomas Kavicky with the
2 United Brotherhood of Carpenters, and I am an Employee
3 rep.

4 MS. BILHORN: Susan Bilhorn, Jacobs
5 Technology. I am an Employer rep.

6 MR. HAWKINS: Steve Hawkins, Tennessee OSHA,
7 State/Agency rep.

8 MR. AHAL: Bill Ahal, Ahal Preconstruction
9 Services, Employer representative.

10 MR. JONES: Walter Jones, Employee rep,
11 Laborers' Health and Safety Fund of North America.

12 MR. SHANAHAN: Thomas Shanahan, National
13 Roofing Contractors Association. I'm an Employer rep.

14 MR. TOMASESKI: Jim Tomaseski, International
15 Brotherhood of Electrical Workers, Employee rep.

16 MR. BRODERICK: Tom Broderick, Construction
17 Safety Council, and I am a public representative.

18 MR. THIBODEAUX: Mike Thibodeaux, National
19 Association of Home Builders, Employer rep.

20 MR. BEAUREGARD: Kevin Beauregard, North
21 Carolina Department of Labor, State representative.

22 MR. ZARLETTI: Dan Zarletti, Kenny

1 Construction Company, Employer representative.

2 MR. GILLEN: Matt Gillen, NIOSH, Public rep.

3 MS. ARIOTO: Jewel Arioto, Arioto Safety and
4 Health Consulting Services, Public rep.

5 MR. RUSSELL: Emmett Russell, International
6 Union of Operating Engineers, an Employee rep.

7 MR. CONNELL: Noah Connell, Deputy Director,
8 Directorate of Construction.

9 CHAIRMAN MIGLIACCIO: I'm Frank Migliaccio,
10 Employee rep with the Iron Workers International in
11 Washington, D.C.

12 If the public will also do the same, state
13 their name and who they are here with.

14 (Introduction of audience members.)

15 CHAIRMAN MIGLIACCIO: Thank you. Also in the
16 back of the room is a public comment sign-in sheet.
17 For anybody who would like to address the ACCSH
18 Committee this afternoon, please sign up. We will make
19 this announcement several times.

20 Before I forget, tomorrow being Friday, it's a
21 travel day. Casual clothing is acceptable.

22 I will read some of the agenda for this

1 morning. We just finished the opening remarks. We
2 will go through the agenda now.

3 We have construction update at 8:45. At 9:00,
4 we will start the work group reports, Education and
5 Training (OTI), Power Fastening Tools (Nail Guns.)

6 Are the chairs of the two committees ready?

7 MR. JONES: We are ready.

8 CHAIRMAN MIGLIACCIO: At 9:30, we have
9 stimulus impact on alternate energy, transmission and
10 distribution, including smart grid concerns. That is
11 the National Electrical Contractors Association.

12 At 10:00, we have a welcome from the
13 Acting -- he's no longer Acting now -- Jordan Barab
14 will be here and hopefully the Assistant Secretary of
15 Labor for OSHA, David Michaels, will be with him.

16 Let's get started. Directorate of
17 Construction Staff. Bill?

18 CONSTRUCTION UPDATE

19 MR. PARSONS: Good morning, everyone. I'd
20 like to begin by thanking everyone for their hard work.
21 I know although today is the first day of the Committee
22 meeting itself, there has been a lot of work going on

1 for the past couple of days and even before this
2 meeting, before we came here this week, we were having
3 conference calls and other activities. We really
4 appreciate the hard work and we are here to support you
5 with that.

6 I'd like to first remind you that we are
7 working on confined spaces in construction where the
8 proposed rule is out. We are reviewing the comments
9 from the post-hearing. We anticipate completing this
10 review some time in the Spring of next year.

11 Of course, the final rule for confined spaces
12 in construction will be issued some time after the
13 cranes and derricks' rule is issued. Regarding cranes
14 and derricks, we had a hearing on March 17 - 20, 2009.
15 The record closed on June 18, 2009. We are currently
16 reviewing comments and preparing the final rule, and
17 the final rule will be issued in July 2010.

18 We are continuing to work on outreach
19 materials that I briefed you on at the last meeting.
20 Those include quick cards, fact sheets and guidance
21 documents for which we anticipate providing drafts to
22 Committee members very soon for review and comment.

1 Of course, we are doing some work on
2 residential construction directives. We are developing
3 a directive that will rescind Standard 300.001. We are
4 also developing outreach materials in support of that
5 directive.

6 Another topic that has been keeping us quite
7 busy is green jobs, particularly green jobs in
8 construction. We are working closely with NIOSH on
9 issues relating to green jobs.

10 OSHA has formed a committee to evaluate the
11 safety of green jobs in general, and of course, our
12 part of that is green jobs in construction.

13 Next week, several of our staff members,
14 including myself, will be attending a NIOSH and OSHA
15 supported green jobs workshop here in Washington. It
16 is actually Monday, Tuesday and Wednesday of next week.
17 We are going to be busy participating in that.

18 As you will remember at a previous Committee
19 meeting, I announced that we would be reviewing and
20 updating the Committee on recommendations that the
21 Committee makes to OSHA on a regular basis. Each
22 meeting will include an update as to the status of

1 those recommendations.

2 I'd like to review the recommendations made at
3 the last Committee meeting. One was to create a
4 document to assist in ensuring subcontractors have an
5 effective safety and health program.

6 Our response to that is we are looking at
7 developing a sample model program specifically for
8 small contractors.

9 The next recommendation was to update ACCSH on
10 items recommended by ACCSH. Of course, that's what we
11 are doing here now. We plan to continue doing that. I
12 think that is a very good thing for us to be doing.

13 Another recommendation was to revise 1926.602,
14 material handling equipment, to include tip over
15 protection for tools and equipment not included in the
16 current language.

17 We are taking that under advisement.

18 I will say at this point you make
19 recommendations and sometimes we may not be able to
20 tell you that we have completed something at the next
21 meeting, but I will always share with you the fact that
22 we are working on it and evaluating the recommendation

1 to see if it is something we will be able to support,
2 if we need to come back to you for questions or if we
3 need to come back to you and say this is not going to
4 work and why it is not going to work, but as of today,
5 just understand we are looking at it and we will get
6 back with you at a future meeting on the status of
7 that.

8 I will brief it at every meeting until we
9 respond with some sort of definitive response.

10 Next, OSHA should look into the possibility of
11 changing the language found in the construction
12 standard to be consistent with that of the general
13 industry standard in reference to personal protective
14 equipment that properly fits each affected employee.
15 Be advised that is under advisement as well.

16 At this time, I'll answer any questions that
17 you might have regarding activities of the Directorate
18 of Construction.

19 CHAIRMAN MIGLIACCIO: Any questions from the
20 Committee?

21 (No response.)

22 MR. PARSONS: No questions today. Thank you.

1 CHAIRMAN MIGLIACCIO: Thank you, Bill.

2 We will move on to the work group reports.

3 OTI?

4 WORK GROUP REPORT ON EDUCATION AND TRAINING (OTI)

5 MR. SHANAHAN: Mr. Chairman, we had a terrific
6 meeting. We had about 30 attendees at the meeting
7 yesterday. Walter Jones and I co-chaired that. After
8 everybody introduced themselves, the agenda -- Walter
9 and I had worked on the agenda.

10 We really looked over the last number of
11 meeting minutes, and Walter had worked hard on coming
12 up with a list of things that were identified from
13 previous minutes, and we talked about that and together
14 we came up with basically a work plan that we developed
15 into an agenda for that meeting.

16 We went through that agenda, and I've attached
17 it in the meeting minutes so you can see what we intend
18 to be the work plan for the next couple of meetings.

19 In this particular meeting, we only made it
20 through the first two points on the agenda, which was
21 by design actually, because we wanted to make sure we
22 start this process.

1 When we talked to the group about that
2 approach, there were no objections to that, so that is
3 what we are going to currently use.

4 There were a number of interesting things that
5 we talked about. Initially, we asked about the 30 hour
6 class and discussion ensued regarding identifying the
7 audiences for all those classes, whether it's the OSHA
8 10, the 30, the 500, 510. The consensus of the group
9 was to recommend to OTI to better identify the courses,
10 their intent and intended audiences for each.

11 It is really felt there is a lot of blurring
12 between those courses and who should go to which ones.
13 We also recognize the fact that initially those courses
14 for the OSHA 10 hour in particular was meant to be an
15 introductory type course, and over time, because of a
16 lot of construction contracts, employers and unions are
17 being required to have all of their employees, for
18 example, to have the OSHA 30 hour course. That wasn't
19 necessarily the intent of that. Like I said, there is
20 a lot of blurring going on.

21 Our intent is to ask OTI to do a better job of
22 identifying those courses and who they are aimed at, so

1 that the right people go to those courses.

2 Regarding the OSHA 10 hour class, it was
3 mentioned that recently the Director of Training and
4 Education met with the principals of the OSHA Education
5 Centers, and the issue of trainer accountability was
6 raised. For example, ensuing classes last the proper
7 length, cover the appropriate topic, et cetera.

8 There was discussion there regarding audit
9 methods to do this, although no decisions have been
10 made.

11 However, it was reported that the 500 hour
12 refresher course was changed recently requiring
13 attendees to do in-class role playing to improve their
14 training skills, something that was brought up at
15 previous meetings. It was also said that these changes
16 were welcomed and so far as they have been implemented,
17 it looks like they will be very positive changes to the
18 program.

19 There was also some discussion of whether
20 another class should be developed as a gold standard,
21 for example, an OSHA training course for construction
22 workers, sort of like a 40 hour class or something.

1 It was felt at this point in time, it was
2 better to improve the current classes than to start a
3 brand new one.

4 Concern also was raised that fraud is still
5 going on and the OTI leadership will be asked to
6 provide a formal response to the work group on what
7 steps it is taking to stem those incidents.

8 One way to validate classes was offered. It
9 was suggested that students be asked to provide an
10 evaluation back to OTI or that OTI randomly ask
11 students to rate their experience as a way of
12 validating the training quality.

13 There is a concern that has been raised at a
14 number of recent meetings that asked how to evaluate
15 student learning. OTI will be asked how to evaluate
16 this and report back to the group at the next meeting.
17 As I mentioned earlier, there have been changes that
18 seem to be helping already with the effectiveness.

19 Regarding program content, there was a
20 suggestion that the work group provide feedback to OTI
21 breaking down specific topics to be covered within each
22 required category.

1 It was felt this would help with training
2 consistency on those topics that are required to be
3 taught in every 10 and 30 hour programs and just to add
4 on to that, it wasn't to take away from like sector
5 specific training because there was a period of time in
6 each class where you can devote time, for example, in
7 our classes, to roofing, whatever the situation may be,
8 but for the required parts, we found that having more
9 consistency between classes was very important.

10 The concept of refresher training was raised
11 again and the consensus of the group was to make a
12 recommendation that OSHA expressly state that refresher
13 or repeated training should occur at five year
14 intervals for those who hold the OSHA 10 and 30 hour
15 cards, because taking the 10 and 30 hour programs is
16 still voluntary in most states, and the refresher or
17 repeat training would also be considered voluntary.

18 Finally, OSHA will be asked to provide sample
19 cards that are given to students who finish all these
20 courses, so we can look at them. We want to really
21 understand what was being given to the students so we
22 can evaluate them a little better.

1 As I mentioned earlier, we only got through
2 the first two items on the agenda, which is attached
3 there. I think we have a very good foothold from which
4 to go forward and continue to work.

5 If there are any questions, Walter and I would
6 be happy to take them.

7 CHAIRMAN MIGLIACCIO: Walter, do you have
8 anything to add?

9 MR. JONES: No, I think he pretty much summed
10 it all up.

11 CHAIRMAN MIGLIACCIO: Any questions for this
12 work group?

13 (No response.)

14 M O T I O N

15 CHAIRMAN MIGLIACCIO: Seeing none, I'll
16 entertain a motion at this time to accept.

17 MR. TOMASESKI: So moved.

18 CHAIRMAN MIGLIACCIO: Mike, a second?

19 MR. THIBODEAUX: Second.

20 CHAIRMAN MIGLIACCIO: Questions?

21 (No response.)

22 CHAIRMAN MIGLIACCIO: All in favor, say aye.

1 (Chorus of ayes.)

2 CHAIRMAN MIGLIACCIO: Opposed?

3 (No response.)

4 CHAIRMAN MIGLIACCIO: The ayes have it.

5 MS. SHORTALL: Mr. Chair, at this time I'd
6 like to do just a couple of housekeeping matters.
7 Marked as Exhibit No. 2, the agenda for the ACCSH
8 meeting for December 10 and 11. As Exhibit 3, the
9 approved OTI work group meeting for December 9, 2009,
10 and as Exhibit 3.1, the OTI work group meeting agenda
11 from their December 9 meeting.

12 CHAIRMAN MIGLIACCIO: Thank you. Moving on.

13 Power fastening tools (nail guns).

14 Mr. Kavicky?

15 MR. KAVICKY: Thank you, Mr. Chairman.

16 WORK GROUP REPORT ON POWER FASTENING TOOLS (NAIL GUNS)

17 MR. KAVICKY: Mr. Chairman, Tom Kavicky,
18 Employee Representative of ACCSH.

19 Mr. Chairman, the Power Fastening Tools (Nail
20 Guns) work group meeting was held December 9 from 8:30
21 to 10:00 a.m. We had 15 attendees. We had the opening
22 comments and agenda. We did pass out the meeting

1 minutes from the July 28, 2009 meeting and asked for
2 comments. There were none.

3 Gary Dageers, M.D., gave a presentation
4 entitled "Pneumatic Nailers, Sequential Versus Contact
5 Trip, Injury Evaluation Summary," and gave his medical
6 perspective on injuries related to contact trip and
7 sequential trigger nail guns.

8 He based the injury rates on the number of
9 nails fired and not the number of hours in use. It was
10 his opinion that many of the injuries evaluated were
11 due to the worker's lack of training in nail gun
12 safety.

13 A brief discussion followed by work group
14 members on the qualifications of the speaker and if any
15 of his studies were published. A question was asked if
16 any manufacturers promoted any studies for the
17 possibility of redesigning the tool and trigger
18 mechanisms to make it more ergonomically beneficial to
19 the user and less likely to cause injury.

20 The question of job rotation was asked by a
21 work group member. A brief discussion was held
22 discussing the construction standards, specifically

1 1926.302(b)(3), for pneumatic nail guns addressing a
2 safety device attached to the muzzle of the nailer to
3 prevent accidental discharge of nails, and had any
4 manufacturers installed such a device on their
5 equipment. It appeared to be none to a few.

6 An attendee raised the concern of the
7 increased need for more formal, factual containing
8 studies regarding injury data due to nail guns instead
9 of stating opinions.

10 A discussion followed regarding the accuracy
11 versus speed and the experience of the worker when
12 nailing and installing roof sheeting to roof structures
13 using a contact trip nail gun.

14 John Kurtz of ISANTA discussed the cost versus
15 productivity versus the cost of nail gun injuries due
16 to the use of sequential trigger nail guns.

17 Jeremy Bethencourt discussed his company's
18 past nail gun injuries due to lack of training,
19 transitional workforce, and design issues of framing
20 construction requirements.

21 Matt Gillen of NIOSH gave a presentation
22 entitled "NIOSH Supported Research on Nail Guns

1 Suggests Next Steps." The presentation included number
2 one, a review of Dr. Hestor Lipscomb's results based on
3 the injury study done with the St. Louis Carpenters
4 Union.

5 Two, a 2002 Consumer Products Safety
6 Commission report regarding issues concerning the
7 center of gravity of the tool lies near the trigger
8 making it more likely that the tool will be carried
9 with a finger on the trigger, and the susceptibility of
10 the contact trip trigger nailer to double fire and
11 other concerns to the user of these nailers.

12 Number three, bottom line results from two
13 studies showed that 68 percent of injuries from contact
14 trip trigger nail guns would in all likelihood not have
15 occurred if the gun had a sequential trigger mechanism.
16 That was the Lipscomb study.

17 Between 66 and 69 percent of nail gun injuries
18 found in a study of Workers' Comp claims' data and
19 accompanying text from N.C. Home Builders might have
20 been prevented by the use of sequential triggers. That
21 was the Dement study.

22 Number four, 1926.302 does not directly

1 address nail gun risk factors.

2 Five, review of the White Safety Best
3 Practices for pneumatic nail gun safety, nail gun
4 injuries, rising trends in nail gun injuries, and safe
5 work practices for pneumatic nail gun use.

6 Six, building blocks for regulation guidance
7 including engineering controls such as safer sequential
8 triggers, administrative controls such as worker
9 training on risk factors and establishing safe work
10 practices, and the use of personal protective equipment
11 such as safety glasses and steel toed boots.

12 A discussion followed and the next steps were
13 discussed by the work group. Suggestions included
14 adding a training requirement for pneumatic nail guns
15 and reference the current ANSI standard to the existing
16 1926.302 construction standard.

17 Two, need for increased engineering controls
18 and training. Three, the work group to request a
19 letter of interpretation from the Agency regarding
20 training requirements. Four, develop a nail gun fact
21 sheet and/or best practices for nail gun safety.

22 Matt Gillen discussed the fact that the

1 current regulation for pneumatic nail guns does not
2 directly address what we know about nail gun risks and
3 injuries. He recommended that OSHA adopt a short and
4 long term strategy to develop awareness materials and
5 update the OSHA standards for pneumatic nail guns.

6 The work group plans to continue collecting
7 information to support this effort. The work group
8 meeting was adjourned at 10:10 a.m.

9 CHAIRMAN MIGLIACCIO: Thank you. Elizabeth,
10 do you have anything to add?

11 MS. ARIOTO: No.

12 CHAIRMAN MIGLIACCIO: Questions for the work
13 group?

14 Matt?

15 MR. GILLEN: My recollection of the meeting is
16 I made a motion and the work group members voted and
17 accepted. The motion was that the ACCSH work group
18 finds that current OSHA regulations on nail guns do not
19 directly address what we know about nail gun risks and
20 injuries and that the work group recommends that OSHA
21 adopt short and long term strategies to develop
22 awareness materials and update the OSHA standard. That

1 is my recollection of the motion that was subsequently
2 passed by the work group.

3 It might be relevant because we might want to
4 see if ACCSH wants to act on that as well and recommend
5 that to the Agency.

6 Do you agree that's what happened at the
7 meeting?

8 MR. KAVICKY: Yes. There was a motion.

9 MR. GILLEN: Do you want to make a motion that
10 ACCSH -- let's see if they have any questions for the
11 work group on these issues before we make a motion.

12 M O T I O N

13 MR. GILLEN: The motion would be that ACCSH
14 finds that current OSHA regulations on nail guns do not
15 directly address what we know about nail gun risks and
16 injuries and ACCSH recommends that OSHA adopt a short
17 and long term strategy to develop awareness materials
18 and update the OSHA standard.

19 MR. JONES: Second.

20 CHAIRMAN MIGLIACCIO: Any discussion or
21 questions on this?

22 MR. ZARLETTI: Are you carrying the motion

1 first and then asking for questions?

2 CHAIRMAN MIGLIACCIO: Yes.

3 MR. ZARLETTI: Not a question but a friendly
4 comment. I think this is a culture issue that also
5 needs to be addressed in the process of the training
6 because I think across the board, Americans can walk
7 into any hardware store and get a nail gun without any
8 questions. They don't have a clue what to do with it
9 either, but they know it works or somewhat how it
10 works.

11 I think the culture starts at home and in the
12 work shop, so I think there should be something in here
13 that plays out on the training element and maybe a
14 quick card to pass back down to society levels.

15 CHAIRMAN MIGLIACCIO: Any other questions or
16 discussion?

17 (No response.)

18 CHAIRMAN MIGLIACCIO: Hearing none, all in
19 favor of this motion, say aye.

20 (Chorus of ayes.)

21 CHAIRMAN MIGLIACCIO: Opposed?

22 (No response.)

1 CHAIRMAN MIGLIACCIO: The motion carries.

2 MR. KAVICKY: Thank you, Mr. Chairman.

3 CHAIRMAN MIGLIACCIO: Thank you.

4 MS. SHORTALL: Matt Gillen moved that the
5 current OSHA standard for pneumatic nail guns do not
6 directly address what we know about nail gun risks and
7 injuries, and that ACCSH recommend that OSHA adopt
8 short and long term strategies to develop awareness
9 materials and update the OSHA standard for pneumatic
10 nail guns, and the motion passed unanimously.

11 CHAIRMAN MIGLIACCIO: Elizabeth?

12 MS. ARIOTO: I believe there is already a card
13 made, a quick card on the nail guns. There is one
14 already produced.

15 MR. RUSSELL: I'd like to request that OSHA
16 give the Committee copies of the quick card, because I
17 don't believe everyone has actually seen that new quick
18 card for nail guns.

19 CHAIRMAN MIGLIACCIO: Thank you, Emmett.

20 M O T I O N

21 CHAIRMAN MIGLIACCIO: I need a motion to
22 approve the minutes of the work group.

1 MR. THIBODEAUX: So move.

2 MR. AHAL: Second.

3 CHAIRMAN MIGLIACCIO: Questions or discussion?

4 (No response.)

5 CHAIRMAN MIGLIACCIO: All in favor, say aye.

6 (Chorus of ayes.)

7 CHAIRMAN MIGLIACCIO: Opposed?

8 (No response.)

9 CHAIRMAN MIGLIACCIO: The ayes have it. The
10 motion carries. Thank you.

11 Now we will have stimulus impact on alternate
12 energy, transmission and distribution, including smart
13 grid concerns, National Electrical Contractors
14 Association, Jerry Rivera.

15 WORK GROUP REPORT ON STIMULUS IMPACT ON ALTERNATE
16 ENERGY, TRANSMISSION AND DISTRIBUTION
17 INCLUDING SMART GRID CONCERNS

18 MR. RIVERA: Good morning. Mr. Chairman and
19 honorable members of the Committee, and also the
20 audience, thanks for the invitation on behalf of NECA.

21 My name is Jerry Rivera and I'm the Director
22 of Safety for the National Electrical Contractors

1 Association. I am here on behalf of Mr. Michael
2 Johnston, who because of prior commitments could not be
3 here today, but hopefully we will give you an idea of
4 some of the things we are experiencing in the
5 electrical industry as far as the title is related.

6 The National Electrical Contractors
7 Association is the voice of the electrical industry.
8 We represent an industry sector of about 130 billion in
9 electrical construction that brings communication,
10 lighting and building to the United States.

11 When we talk about NECA, we need to consider
12 that our workforce is the IBEW and NJTC is our training
13 branch. As I talk about NECA, keep that in the back of
14 your mind, that our workforce is an unionized
15 workforce, highly skilled workers, the best
16 electricians out there, and our training branch, NJTC,
17 has contributed to the evolution of the quality of that
18 craftsmanship.

19 No one of these components could be separated.
20 There would not be a NECA without the workers. There
21 would not be an NJTC or IBEW without the NJTC. It's a
22 triangle that we formed and that's the strength.

1 As far as stimulus impact within the
2 electrical industry, where's the money? That's the
3 magic question. Here is some information that we got
4 from Recovery.gov. In short, on the electrical
5 industry, a very minimal impact has been seen on the
6 contractor side. Has there been any money allocated
7 out there? Absolutely, but it's not the focus of our
8 work right now.

9 \$92.2 billion has been in tax benefits,
10 contracts, grants or loans. \$60.8 billion and \$84
11 billion in entitlements. Again, for electrical
12 contractors, have we seen any of that money out there?
13 Very few have.

14 Just recently, there was a communication from
15 the Department of Energy that says \$620 million has
16 been allocated to smart grid. I will add this to the
17 record, which is basically a breakdown of where the
18 money went.

19 You will see the bulk of the money has gone
20 into research in states and some utilities. Again,
21 even involvement of the stimulus money on the utility
22 side is going to some sort of research or pilot

1 programs.

2 If we think about utilities or the work that's
3 being done on the utilities' side, we can only assume
4 the contractors, electrical contractors, will be doing
5 that work.

6 I will add this to the record. That's a list
7 of the current allocation and distribution of where the
8 money has gone.

9 When we think about alternate energy, I know
10 it seems to be lately a new fad, this is brand new. We
11 talk about solar photovoltaic type systems, geothermal.
12 This is not new stuff. This is things that electrical
13 contractors have been working on for years. It's just
14 part of what we do, the scope of our business.

15 Because of the increased tax benefits to the
16 consumer and because the United States is trying to
17 stay away from petroleum or foreign oil dependency, it
18 has picked up again.

19 As far as on the solar side, Article 2690.2 of
20 the National Electric Code, which is our Bible for the
21 electrical industry, the total component of the system,
22 is a combination of solar energy into electrical energy

1 suitable for connection for utilization. Basically,
2 solar energy is transferred into electrical energy, and
3 once that connection is done, obviously, that is within
4 the scope of the business that we do.

5 What is the industry doing towards the
6 photovoltaic type systems or NECA contractors as we can
7 see right now. We have a couple of training centers
8 that are geared to address those particular tasks. One
9 that was recently opened in Nebraska, it was part of a
10 green job Nebraska grant. They actually have a wind
11 simulator up there where many of our apprentices go
12 through that program, and again, I will add this to the
13 record, they not only learn the hazards, the electrical
14 hazards, but also some aerial work rescue's, learning
15 how to tie basic knots, hand signals, and all that in
16 detail is being covered by our NJTCs.

17 This is a real life scenario. This is not
18 textbook. They have actually erected this wind tower
19 in this location which powers the facility as a whole.

20 It just shows how while it's viewed to many
21 others in the industry, the electrical contractors have
22 been working all along through that, and we have a

1 curriculum sample here that we can provide for the
2 Committee.

3 Also, on behalf of NJTC and the national
4 staff, if the Committee would like to have a walk
5 through of the facility to see what the training
6 program is all about and what they train apprentices
7 on, that invitation is open, not only to the ACCSH
8 Committee but some of the OSHA folks also, if that
9 would be your wish.

10 That's the training center. As I mentioned,
11 that is just one scenario. When I talk about wind
12 energy, I'm talking about the electrical component, the
13 connection to the distribution or the smart grid, the
14 next generation, the work that is being done, if it's
15 electrical work, it's basically the electrical hazards.
16 NFPA 70-E highlights some of the unique hazards those
17 confined spaces bring, and we know these are confined
18 spaces.

19 Again, our NJTCs are training to that. We
20 would be more than happy to elaborate more on that.

21 I'm not getting into the technical part, not
22 to overwhelm everybody, but by all means, if you have

1 any questions, we can go as technical or as casual as
2 you would like to.

3 This is geared to just spark up conversation
4 and give you an idea of what's going on.

5 Transmission and distribution, we mentioned at
6 the beginning that utilities will be getting some of
7 the funding from the stimulus, and if that's the case,
8 contractors' linemen will be doing that.

9 I know you have heard before and you will hear
10 again, the industry has come together as a whole and
11 created a partnership, which is the transmission and
12 distribution partnership, which has been proactive in
13 identifying some of the key hazards for that sector of
14 the industry and how to resolve them.

15 Here's just a brief breakdown of what the
16 partnership is composed of. We have a management
17 branch, an executive branch, a steering committee,
18 which is a working arm of the partnership, and the
19 different task groups which have the tasks respective
20 to their group.

21 One gathers the data. The other one develops
22 the training. We develop some best practices and

1 communication is basically getting that exposure out
2 there for the partnership.

3 You can visit this website,
4 powerline.safety.org, where you can get more
5 information on some of those best practices that have
6 been established by this partnership.

7 Again, showing that current OSHA regulations,
8 although not specific, it has allowed for the industry
9 to take a more proactive approach and develop some
10 standards that are unique to them.

11 That partnership has worked primarily because
12 it represents a broad spectrum of our industry. It not
13 only reflects the labor side, but the contractor side,
14 the utility, Union contractors, non-Union contractors.
15 This is an industry partnership that has come together
16 and said look, we're going to take ownership of the
17 safety and health of our workers within our scope.

18 Having said that, the partnership is a model
19 for others to follow as far as what can the industry
20 do, and if OSHA needs additional information on some of
21 the hazards that are impacting that section of the
22 industry, this would definitely be a great resource to

1 reach out to.

2 As far as smart grid, there is still a lot of
3 uncertainty out there, but one thing that is happening
4 is NFPA has gotten together with Mr. Michael Johnston,
5 our executive director, and they have put together a
6 smart grid group that are going to take a look at the
7 scope of the work, some of the unique hazards that are
8 geared towards that section of the industry.

9 We have challenges today to turn off power to
10 work on some transmission lines. You can imagine what
11 it would entail when you have a smart grid. Somebody
12 in New York turning on, turning off, connecting to a
13 grid in Texas or California. There are some
14 challenges. The industry, once again, has taken
15 ownership of this.

16 The electrical industry has been placed in an
17 unique circumstance. We have always been proactive in
18 the way we handle our business. That's a reflection of
19 our participation in some of these groups like the NFPA
20 and the partnership.

21 In conclusion, some of these for the alternate
22 energy and where there is wind power or solar,

1 geothermal, if there's any electrical work in that, it
2 should be performed by qualified electrical workers.

3 These are the guys and gals who know how to do
4 the work. They understand the hazards and they have
5 been working along with us for over 100 years.

6 I think as we stand now with the current
7 economical climate, everybody is trying to engage in
8 some work and trying to venture into areas where I
9 think that is where the hazards are at, unqualified
10 workers trying to do electrical work. Qualified
11 contractors should be doing that.

12 In the broader picture, not only is it a
13 safety and health issue, but it's also a consumer
14 issue. If you're connecting somebody's solar power or
15 solar panels, there is a fire hazard for that consumer
16 also.

17 It is not just a small element. It's a
18 broader spectrum of an overall picture out there.

19 Having said that, that is all I have to say
20 about that. I would be more than happy to entertain
21 questions on behalf of the Committee or members of the
22 audience.

1 CHAIRMAN MIGLIACCIO: Thank you. Questions
2 from the Committee? Dan?

3 MR. ZARLETTI: Actually, I realize this may be
4 trying to put the toothpaste back in the tube, but
5 you're not the first person I've heard say they are
6 having trouble getting the stimulus money. I realize
7 we're not in the right place to get some.

8 There may be some collective things we can do
9 that are going to really provide the delinquency
10 notices to the people who are sitting on that money and
11 not allowing it to come out.

12 Not only are you not the first person, this is
13 not the first industry that has been impacted
14 adversely. My employer, Kenny Construction, actually
15 is currently the largest T&D contractor in America. We
16 are seeing this everywhere we go.

17 I'm wondering what the organization is doing
18 that is serving notice on those who are holding up
19 these funds.

20 MR. RIVERA: As I mentioned in the
21 presentation, a lot of the money -- this is going to go
22 to the record -- has been going to research in states,

1 but there was a lot of grant writers involved. Our
2 association is trying to get involved at local chapters
3 to try to capture some of that work, or at least, where
4 is it going.

5 MR. ZARLETTI: It is something we have heard
6 about, about how much is coming, and maybe the key
7 point now is not how much but when.

8 MR. RIVERA: That's the magic question. If
9 you know the answer to that question, let me know.
10 That would do a great service.

11 CHAIRMAN MIGLIACCIO: Any other questions?
12 Walter?

13 MR. JONES: I want to go back to a couple of
14 points you brought out, the first being when you were
15 talking about photovoltaic cells, what are folks doing
16 or specifically NECA in terms of photovoltaic cells, in
17 terms of installation?

18 If there is going to be an explosion of
19 installation of these solar panels, what are you guys
20 doing in terms of providing a standard or practice that
21 protects against electrical hazard issues, and can you
22 forward anything to this Committee?

1 MR. RIVERA: That's a great question. Going
2 back to the NJTC, our training branch, they have been
3 training toward the solar side for about ten years now.
4 Part of their component is safety and health.

5 I did add a curriculum, a sample of what's
6 covered in the curriculum for the wind energy and the
7 photovoltaic systems. Once again, we can talk about it
8 all day but if the Committee would like to see what one
9 of these training branches are doing, they are more
10 than happy to entertain that.

11 MR. JONES: I'm interested, speaking for
12 myself more so than for the Committee, they may want to
13 review it, but I'd like to see what's going on, in my
14 capacity and other hats that I wear, I'm interested in
15 what this industry is doing in terms of providing a
16 level of safety to hazards.

17 My second question is concerning the other
18 topic you brought up this morning on the nacelles, the
19 wind mills, and the confined spaces. What are you guys
20 doing in terms of assessing that?

21 Do you have material that I or we can review
22 to see what the standard of practice is in that area

1 and have you folks contacted the manufacturer of
2 nacelles to see if they could respond to the confined
3 space issues associated with it?

4 MR. RIVERA: We do have, going back to the
5 curriculum, the information that we can submit to the
6 Committee for evaluation specific to the confined
7 spaces, the electrical component of the training
8 program. That will be more elaborate.

9 It is copyright material, but they have also
10 expressed interest that we can forward that to the
11 Committee if you are interested in it.

12 MR. JONES: I am.

13 MR. RIVERA: Okay. I'll make note of that.

14 MR. JONES: Thank you.

15 CHAIRMAN MIGLIACCIO: Matt?

16 MR. GILLEN: I have a question. We all hear
17 that one of the biggest electrical problems is working
18 live, having to work on live equipment. We all try to
19 be proactive and your group's trying to be proactive.

20 One of the hardest areas is to work with
21 designers. Can you comment on what you think of the
22 potential to work so the smart grid can provide more

1 opportunities for shutting down the area, so people
2 don't have to work live?

3 We don't want to hear years from now that
4 there is a lot of fatalities because people had to work
5 on the smart grid system because it wasn't designed to
6 be able to allow people to shut it down. It would be
7 nice if it was safety smart as well as a smart grid.

8 Any thoughts on that or how we can we all work
9 together on that?

10 MR. RIVERA: There's a couple of things that
11 are happening. There is a task group that I mentioned
12 that's being formed. That is going to develop some of
13 the scope of work that is going to be handled.

14 70-E for electrical safety is also tackling
15 some of the issues as far as being exposed to
16 electrical hazards, and it currently does. When you go
17 out to the connected to the grid or the utility side,
18 the NESC is also the authority on that sector. There
19 are three components that come together, but they do
20 work in harmony.

21 Jim, if you have a comment on the NESC side.

22 MR. TOMASESKI: Just to make a comment on the

1 energized work. For a number of years now, there has
2 been a tremendous emphasis put on working on circuits
3 energized. To the industry and labor, the code writers
4 have responded to this by putting together a very good
5 set of work rules associated with doing energized work.

6 I would have to include OSHA is doing the same
7 thing. OSHA is in the process of revising two
8 different standards, and both of those standards are
9 components of energized work.

10 As Jerry said, NFPA, IEEE, with the Institute
11 of Electrical Engineers, the National Electric Safety
12 Code and other ANSI standards, all of the consensus
13 bodies that write standards that are associated with
14 this type of work have been doing so for a number of
15 years.

16 If you take a look at the accidents, if you
17 look at what we have done to improve the work practices
18 associated with the energized work, the accidents have
19 gone down, tremendously gone down. There are still a
20 high number, still unacceptable where they are at, but
21 it has gone down tremendously.

22 I remember when I first started doing this

1 work, we were told in the early days we had 1.5
2 fatalities every week, and we were losing close to 50
3 percent of the workforce. We are nowhere near that
4 now, thank goodness.

5 There has been a lot that has happened that
6 has improved tools, equipment, the work practices. A
7 tremendous amount of work has gone into improving this.

8 While on the outside, you might think
9 energized work is maybe even a little ridiculous, on
10 the inside, those of us associated with this, it's an
11 every day common practice.

12 It would be great if we could do everything
13 energized, but I don't know if the smart grid is going
14 to even have any focus on that aspect of it. One of
15 the things you have to worry about is redundant systems
16 and where are you going to put them. You and I don't
17 want these systems in our back yards.

18 Siting for new facilities, for new
19 transmission and distribution facilities is a major
20 problem within itself.

21 Talking about where is the money going to come
22 out, they are talking about over \$3 billion to be

1 invested into the transmission and distribution
2 infrastructure, but where are we going to put it. What
3 are we going to do with the lines that are there? If
4 we have to replace the lines that are there and we have
5 to keep our lights on, we are going to work this
6 energized.

7 MR. RIVERA: That's a good point, Jim. There
8 are two different components of that, and Jim talked
9 about the utility side, you know, working live. It's
10 eye opening to all of us how we are going to work it.

11 The partnership has done a great job to reduce
12 that exposure to energized circuits on the utility
13 side, but on the inside, 70-E goes through in great
14 detail how to justify the energized work, and when you
15 are talking about the electrical industry, that is the
16 guide we follow.

17 That's the difference between somebody who is
18 knowledgeable in the topic and can really implement
19 those systems versus a service tech or that jack of all
20 trades who goes in, that's putting our men and women at
21 risk.

22 CHAIRMAN MIGLIACCIO: Thank you. Noah?

1 MR. CONNELL: I think the point that Matt was
2 raising -- Matt, correct me if I'm wrong -- I think the
3 point he was raising was a question really, is there
4 some potential, especially at this kind of early stage,
5 to get the industry interested to the extent it can be
6 done to incorporate through the design process, make
7 use of what the developing technology in smart grid is,
8 get the people who are going to be designing these
9 things interested in the safety aspect and interested
10 in perhaps incorporating into this concept the notion
11 that maybe there could be more flexibility in
12 de-energizing.

13 I think that is the point Matt is raising.

14 MR. RIVERA: It's hard to speak on behalf of
15 the manufacturers. As contractors, we are contracted
16 to do the work. The beauty is we have industry
17 representatives there that are a reflection of not only
18 the contractor side but the manufacturer. To that
19 point, they are involved.

20 Are we talking through the design phase?
21 There is some talk on that aspect. As far as
22 significant movement, I can't attest to that at this

1 point.

2 MR. CONNELL: I would just emphasize that from
3 OSHA's perspective, when we talk about things like
4 green jobs, our interest is in getting the concept of
5 safety built into this whole movement forward.

6 This is one example of where I think we would
7 like to see some attention paid to building in safety
8 to these kinds of concepts.

9 MR. RIVERA: Believe me, the contractor side
10 or the employee side fully embraces that. It would
11 work for all of us.

12 CHAIRMAN MIGLIACCIO: Tom?

13 MR. BRODERICK: Would IEEE be more the body
14 that would be able to address the design issues?

15 MR. RIVERA: Probably. They do a lot of the
16 studies. It probably is within their scope.

17 MR. BRODERICK: I know they have their big
18 program in the Spring in New Orleans coming up. I was
19 just wondering if that would be a good venue to be able
20 to speak with people who may be in the process of
21 designing a portion or all of this installation.

22 CHAIRMAN MIGLIACCIO: Any other questions?

1 (No response.)

2 CHAIRMAN MIGLIACCIO: Sarah?

3 MS. SHORTALL: Mr. Chair, first I'd like to
4 mark as Exhibit 4 the power fastening tools, nail guns,
5 report, and as 4.1, the nail gun quick card. As
6 Exhibit 5, the presentation on alternate energy,
7 transmission and distribution, including smart grid
8 concerns.

9 (Inaudible.)

10 MR. RIVERA: Yes.

11 CHAIRMAN MIGLIACCIO: Thank you. Thank you,
12 Jerry.

13 We are a little bit ahead here. I'm going to
14 move on to the Multilingual work group. Tom Shanahan
15 will give the presentation.

16 WORK GROUP REPORT ON MULTILINGUAL

17 MR. SHANAHAN: We had the work group meeting.
18 We had a very good meeting. There were 13 of us in
19 attendance at some point during the meeting.

20 We reviewed the minutes from the previous
21 meeting and approved them, and everybody introduced
22 themselves. Then we had a presentation by Dr. Sokas

1 who represents the OSHA Office of Occupational
2 Medicine.

3 Also, OSHA's Hispanic Worker Safety and Health
4 Conference will be held during the Spring of 2010 in
5 Houston at the Hilton Americas Hotel. It is meant to
6 be an outreach conference, to expand outreach and share
7 best practices to reach Hispanic workers.

8 She is looking to the work group and ACCSH to
9 get program sponsors and to assist in any way with the
10 program content input.

11 Like I mentioned, she's looking for
12 co-sponsors for the event, meaning she really was
13 asking -- I'll make it a little more formal
14 here -- that ACCSH members help support this effort in
15 any way we can through our trade associations or Union
16 associations to get the word out and to get people
17 there. They are also very interested in content
18 development as well.

19 This is being framed as an action conference
20 versus a research conference. It is hoped to have some
21 500 attendees. As a result, there is a lot of
22 conversation about how to get the word out on the

1 conference.

2 The NRC representative offered his assistance
3 in getting the word out and this model going to trade
4 associations and other employer groups is important,
5 that we get the right people to come to the conference,
6 and asked that we pursue it through each of the ACCSH
7 members, as I mentioned a second ago, and also reaching
8 out to ESL programs being offered and making sure the
9 representatives from those organizations are contacted
10 to help spread the word as well.

11 She did mention the conference isn't
12 necessarily for Hispanic workers, but for those who
13 represent them in the workplace, so the idea is that we
14 can get out and affect as many workers as possible.

15 It is important to get the message across to
16 Hispanic workers that each has the right to a safe
17 workplace, and importantly, that OSHA is not
18 Immigration.

19 Maybe OSHA can look at areas of high
20 concentrations of Hispanic workers to promote the
21 conference. Also, that various trade groups could
22 assist.

1 An idea was presented to encourage development
2 of three minute safety lessons that are available via
3 a simple phone call. This is being done in other
4 countries with some success.

5 The audience for the program overall is
6 representatives from employer associations, labor
7 groups, community organizations, worker centers, the
8 medical community, safety and health professionals,
9 Government officials, consulates and other traditional
10 partners.

11 It was reported that the diversity work group
12 within OSHA is still meeting and all regions are well
13 represented there.

14 Regarding Susan Howard Grant materials'
15 availability, an effort was made to see if the Susan
16 Howard Grant work product could be posted on the OSHA
17 website for easy access. This will be further pursued
18 by the co-chairs. In particular, they will look to see
19 if grants awarded in the last two years can be made
20 available.

21 We looked into it a little bit and we saw
22 there are some copyright issues, once the grants are no

1 longer outside the grant period --

2 (Interruption by public address system.)

3 MR. CONNELL: We do that three times a day
4 every day.

5 (Laughter.)

6 MR. SHANAHAN: We're back. I think the
7 electrical guys must have known something.

8 (Laughter.)

9 MR. SHANAHAN: Further business, Tom Broderick
10 distributed copies of Workers' Rights, Hispanic
11 Employment and Construction, it's a new document and it
12 will be distributed to all ACCSH members. We have them
13 here somewhere.

14 MR. BRODERICK: It's in the works right now.

15 MR. SHANAHAN: A discussion was had after
16 identifying the mission for this work group. It was
17 tabled for the next meeting. There was an important
18 point. A few years ago, the group was diversity and
19 multilingual work group together, and diversity has
20 been separated from the multilingual, and there was
21 some discussion that now we have to kind of redefine
22 what our mission is for the group, and we will be doing

1 that.

2 Just as a wrap up here, as to the following
3 items we wanted to bring before you, we have the
4 request that ACCSH members assist in providing broad
5 outreach to encourage both participation in the
6 conference itself and the formation of meaningful
7 partnerships between the OSHA area offices and
8 organizations and stakeholders.

9 Also, the request that ACCSH assist in
10 identifying partners and co-sponsors for the
11 conference. That the ACCSH members contact recent
12 recipients of the Susan Howard Grants and ask that
13 Spanish related material be made available for use by
14 the public.

15 M O T I O N

16 MR. SHANAHAN: They asked that we make a
17 motion that ACCSH strongly support the Secretary's
18 upcoming Hispanic Worker Occupational Safety and Health
19 Conference, so I guess in that regard, we would like to
20 formally have a motion to do that.

21 The motion is that ACCSH support the
22 Secretary's upcoming Hispanic Worker Occupational

1 Safety and Health Conference.

2 CHAIRMAN MIGLIACCIO: Do we have a second?

3 SPEAKER: Second.

4 CHAIRMAN MIGLIACCIO: Discussion? Questions?

5 MR. THIBODEAUX: I have a question. That is
6 going to be held in Houston; is that correct?

7 MR. SHANAHAN: I understand it is in the
8 Spring, but someone had mentioned to me it was some
9 time in April.

10 MR. BRODERICK: Debbie Berkowitz will be doing
11 a report. We kind of have the cart before the horse.
12 The dates are set. They do have a hotel. We will be
13 learning more about it.

14 CHAIRMAN MIGLIACCIO: Any other discussion?

15 (No response.)

16 CHAIRMAN MIGLIACCIO: We have a motion on the
17 floor and a second. All in favor, say aye.

18 (Chorus of ayes.)

19 CHAIRMAN MIGLIACCIO: Opposed?

20 (No response.)

21 CHAIRMAN MIGLIACCIO: The ayes have it.

22 MR. SHANAHAN: The last item here, we have

1 written it down as a motion but it was just a request
2 that ACCSH recommend the Department of Labor establish
3 a memorandum of understanding between OSHA and Wage and
4 Hour so these investigators become cross trained to
5 screen OSHA violations and make appropriate referrals.

6 I think, if I remember correctly, and Tom,
7 correct me if I'm wrong, that the idea was there is
8 concern about Hispanic workers and the idea of their
9 safety. I think that is to make sure that is being
10 upheld and that it is important.

11 MR. BRODERICK: I think it could and perhaps
12 should be raised to a motion, but I think we should
13 table that until our next meeting so we have time to
14 talk to the staff and make sure this recommendation is
15 something that can actually be executed, a memorandum
16 of understanding between the two.

17 Sarah, were you present when we discussed
18 this?

19 MS. SHORTALL: Yes (Inaudible.)

20 MR. BRODERICK: From a legal standpoint --

21 MS. SHORTALL: (Inaudible.)

22 MR. SHANAHAN: Maybe the latter.

1 MR. BRODERICK: Maybe the latter. I would be
2 prepared to do it because I think it's a very good
3 idea. It was discussed pretty thoroughly. There seems
4 like there are opportunities being missed where Wage
5 and Hour investigators and OSHA investigators are
6 not -- there is no overlap. I think there could be a
7 good overlap that would be helpful to OSHA. I am
8 prepared to postpone it until our next meeting.

9 CHAIRMAN MIGLIACCIO: Thank you. Any
10 questions from the Committee?

11 (No response.)

12 M O T I O N

13 CHAIRMAN MIGLIACCIO: Can I have a motion to
14 accept the report?

15 MR. THIBODEAUX: So moved.

16 CHAIRMAN MIGLIACCIO: Second?

17 MR. HAWKINS: Second.

18 CHAIRMAN MIGLIACCIO: Discussion?

19 (No response.)

20 CHAIRMAN MIGLIACCIO: All in favor, say aye.

21 (Chorus of ayes.)

22 CHAIRMAN MIGLIACCIO: Opposed?

1 (No response.)

2 CHAIRMAN MIGLIACCIO: The ayes have it.

3 MS. SHORTALL: Mr. Chair, at this time, we
4 will mark the multilingual work group report from
5 December 8, 2009 as an exhibit.

6 CHAIRMAN MIGLIACCIO: Thank you. Let's move
7 on to trenching. Emmett Russell and Dan Zarletti.
8 Emmett will give the presentation.

9 WORK GROUP REPORT ON TRENCHING

10 MR. RUSSELL: By the way, in your package,
11 OSHA provided a Bureau of Labor Statistics Census of
12 Fatal Occupational Injuries' data for construction
13 trenching fatalities.

14 This might be an excellent document to look at
15 in conjunction with our report, the trenching work
16 group report.

17 The trenching work group meeting was held on
18 December 8. We have a list of the participants. We
19 had a welcome and self introductions. Co-chairs Emmett
20 Russell and Dan Zarletti opened the meeting.

21 The group was provided with minutes of the
22 previous meeting held on July 28, 2009. Copies of

1 booklets and pamphlets from the Trench, Shoring and
2 Shielding Association were provided to the committee.
3 A number of the committee members did not receive
4 copies of this information at a previous meeting.

5 Copies of materials from NIOSH's presentation
6 provided by T.J. Lenz on trench safety were given to
7 the committee, and we have a list of those items that
8 were passed out.

9 OSHA provided the committee with trench
10 fatality data by regions for the years 1999 through
11 2003, showing trench related fatalities, trench cave-in
12 fatalities, trench electrocution fatalities, and
13 fatalities caused by other hazards.

14 OSHA also provided the committee with data on
15 trench fatalities for the years 2004 through 2008,
16 which shows a downward trend in the reduction of trench
17 related fatalities.

18 George Kennedy of NUPA gave a presentation to
19 the committee on the hazards of trenchless technology,
20 which includes drilling, directional boring, pipe
21 jacking and other methods where utilities and/or pipe
22 might be installed without use of an open trench.

1 The committee was provided data from Mike
2 McCann through CPWR, the Center for Construction
3 Research and Training, on fatalities from directional
4 boring machines which average one death per year.

5 Steve Hawkins from Tennessee OSHA talked about
6 the special emphasis inspection program and how
7 Tennessee OSHA is now getting calls from the public on
8 hazardous trenches. He also stated both contractors
9 and the public is now aware of the hazards of unsafe
10 trenches.

11 Liz Arioto gave a presentation and answered
12 questions on the California trench permit process where
13 the contractor has to apply for a trenching permit,
14 state construction and safety methods, and receive
15 approval before the start of construction for all
16 trenches five feet and deeper.

17 This permit system gives inspectors the
18 location of all trenches and mandates safety planning
19 for all jobs, projects and contractors.

20 The work group held a discussion on next
21 steps, and was the task of the committee completed. It
22 was agreed that in the next meeting, the work group

1 would explore and review recommendations made to ACCSH
2 and OSHA in a memorandum dated September 30, 2004, and
3 action items from the work group dated February 17,
4 2005, to determine if there were any outstanding items
5 that should be completed.

6 There was a recommendation that a work group
7 product should be placed on an OSHA/ACCSH trenching
8 website.

9 The committee requested the Agency, OSHA, and
10 any ACCSH member supply the work group with any
11 additional recommendations for work group activities.

12 The work group agreed it would explore and
13 define specific activities for its future or examine
14 the possibility of its task being completed at its next
15 meeting.

16 To give a quick summation, there is a feeling
17 that we may have explored all we need to explore for
18 right now for the trenching work group. The next
19 meeting is on point, where if there is anything the
20 work group needs to do, we would welcome anyone to
21 submit any recommendations that they think the work
22 group can carry out.

1 Exploring those recommendations is the sum
2 point at the next meeting. We will have to determine
3 specifically what will be our task moving forward or
4 has our task been completed as a work group.

5 Thank you. The meeting adjourned at 4:00.

6 CHAIRMAN MIGLIACCIO: Dan, do you have
7 anything to add?

8 MR. ZARLETTI: Yes, I do, Mr. Chairman. I
9 would like to first ask a question. Under the CPWR, is
10 there a separate department or center for construction
11 research and training?

12 SPEAKER: (Inaudible.)

13 MR. ZARLETTI: In the first paragraph on the
14 second page, it specifies that Mike McCann spoke. It
15 says "CPWR, Center for Construction Research and
16 Training."

17 SPEAKER: That's what he said.

18 MR. ZARLETTI: All right. In the second to
19 last paragraph, I also noted that -- what I don't want
20 is to make this sound like what we are asking for or
21 are suggesting that we are looking for a separate
22 website for trenching but rather put a folder on the

1 OSHA website under the ACCSH tab that will allow us to
2 take all work product of this work group, scan it into
3 that folder, so that the legacy of that committee can
4 be maintained in years to come.

5 While we feel now that we have met the
6 opportunity and the goal of this work group, that in so
7 doing, if it becomes inactive, all of the work product
8 should be scanned and available electronically in that
9 folder, not on a separate trenching website.

10 That was the only clarification I wanted to
11 make.

12 CHAIRMAN MIGLIACCIO: Thank you, Dan.

13 Any questions of the work group?

14 (No response.)

15 M O T I O N

16 MR. ZARLETTI: Mr. Chairman, I would supply
17 this motion to the committee, that we make arrangements
18 for a folder to be added under the ACCSH tab on OSHA's
19 website so that all work product of the trenching work
20 group would be copied, scanned or otherwise entered
21 electronically into that folder for future use to
22 maintain the legacy of that committee's work over the

1 past several years.

2 MS. BILHORN: Second.

3 MR. BRODERICK: I think you had mentioned the
4 fact that there is on the ACCSH page a portion for
5 ACCSH work product, and that's where you thought it
6 should reside.

7 CHAIRMAN MIGLIACCIO: Questions? Discussion?

8 MR. JONES: Yes. I'd like to amend that to
9 not limit it just to trenching but to all of our work
10 groups, that OSHA develop a folder similar to what Dan
11 was saying for each of our work groups, where all of
12 our products of those work groups is easily identified.

13 MR. ZARLETTI: I would concur with that. I
14 was going to wait until this motion carried before I
15 made future recommendations similar to what his
16 suggestion was. I wanted to take them one at a time.

17 We're looking at something later on with ROPS,
18 for instance, which is also coming to its maturity
19 level, where it could become inactive, but you don't
20 want to lose everything that's been done thus far.

21 I would definitely get behind that motion, if
22 we're separating it.

1 MS. SHORTALL: If Mr. Jones wants to make a
2 motion to amend, that would be in order.

3 M O T I O N

4 MR. JONES: I make a motion to amend the
5 question on the table to include all work group product
6 of all ACCSH work groups.

7 MR. ZARLETTI: I would second that.

8 CHAIRMAN MIGLIACCIO: Questions or discussion
9 on this motion?

10 MR. BRODERICK: I just want to reiterate,
11 there already is a tab for ACCSH work products. The
12 only thing that's been in it, I believe, is the HAZWIC
13 report from 1999. It really is a good place, a good
14 repository for all of the things that we have created.

15 I think if we put them there, people will
16 start going there. I've gone to it a number of times
17 hoping there would be some additional stuff and there
18 hasn't.

19 MR. ZARLETTI: As part of the discussion and
20 for this motion, I think we should make sure that we
21 identify a folder with the name of each of the work
22 groups so that as work product is produced, it is

1 electronically scanned and entered therein.

2 CHAIRMAN MIGLIACCIO: I'm going to put all the
3 motions on hold at this time for our next speakers.
4 They are under a time constraint. We will get back to
5 this.

6 Our next speaker will be Jordan Barab along
7 with David Michaels, Assistant Secretary of Labor.
8 Jordan, I'm not sure of your title.

9 (Applause.)

10 WELCOME/OSHA UPDATE

11 MR. BARAB: I'm not sure of my title either.

12 (Laughter.)

13 MR. BARAB: I am now Deputy Assistant
14 Secretary of Labor, and right now, I am just here to
15 introduce our new Assistant Secretary of Labor, Dr.
16 David Michaels, for some remarks.

17 CHAIRMAN MIGLIACCIO: Welcome.

18 MR. MICHAELS: Thank you so much. I'm here
19 this afternoon as my first formal welcome and greeting,
20 being sworn in late yesterday afternoon. I'll be very
21 brief for among other reasons, I haven't even been
22 fingerprinted yet.

1 (Laughter.)

2 MR. MICHAELS: I had better go take care of
3 that to make sure I'm not someone else.

4 First, I'd like you to join me in thanking
5 Jordan Barab for the phenomenal work he has done.

6 (Applause.)

7 MR. MICHAELS: I step into very warm shoes
8 that have been filled by a very able person and heading
9 in the right directions. I hope to continue that.

10 The other thing is to tell you how much I
11 appreciate the work of the Advisory Committee. I've
12 served on Federal advisory committees and I've had them
13 report to me when I started, actually two advisory
14 committees, and agencies can't do the work they need to
15 do without people like you giving your time, your
16 expertise, your thoughts, your passion to this. I am
17 very grateful and I look forward to working closely
18 with you over the next few years.

19 Thank you all very much. I will turn this
20 over to Jordan.

21 MR. BARAB: This was actually my first forum
22 as well when I first got here. I think I would express

1 to you the same thoughts, we in this Administration
2 particularly consider advisory committees and the
3 purpose of advisory committees is to give advice, and
4 we very much welcome your advice.

5 As David said, we have some difficult problems
6 we are going to be facing and that we continue to face
7 here at OSHA. We are definitely going to need your
8 help, particularly in the area of construction. As you
9 know, that's where we face probably most of our
10 problems and certainly most of our fatalities that are
11 under our jurisdiction.

12 I'm just going to go through a few things that
13 we have been doing over the last several months since
14 last we were here, and I think I'm going to shorten
15 this down and turn it over to questions.

16 MR. MICHAELS: They did get a photo.

17 MR. BARAB: Well, you go get those
18 fingerprints.

19 CHAIRMAN MIGLIACCIO: Let's go off the record
20 at this time.

21 (A brief recess was taken.)

22 CHAIRMAN MIGLIACCIO: We are back on the

1 record.

2 MR. BARAB: Thanks. I'm going to go through a
3 little bit what the Agency has been doing, what we are
4 kind of planning on doing, and I'll be glad to take a
5 few questions at the end.

6 First of all, and I don't know when your last
7 meeting was, but over the last several months, we have
8 certainly been focusing on the central mission of this
9 Agency, which is setting standards and enforcing those
10 standards.

11 Let me start off with a little bit of
12 enforcement news, some of which has gotten quite a bit
13 of publicity, as you have probably heard. We did issue
14 a \$87.4 million penalty against BP in Texas City for
15 their failure to comply with the terms of the
16 settlement agreement we reached with them after the
17 2005 explosion that killed 15 workers, in addition to a
18 number of other violations that we identified.

19 We have also in addition to that have now
20 issued, I believe, seven -- it will soon be seven
21 egregious cases just in the first quarter of this
22 fiscal year compared to four in all of last year.

1 These, as usual, are fairly tragic situations.
2 One was \$1.6 million against Temple Grain Elevators in
3 Wiley, Colorado, for the death of a 17 year old kid who
4 was sent in to walk down the grain without any
5 precautions in terms of grain handling or confined
6 spaces.

7 Another half million dollars against
8 Cranesville Aggregate, a significant cement and asphalt
9 bagging plant. Lauren Cook Company, half a million
10 dollars after a worker was killed by an ejected machine
11 part.

12 We also did a citation against a company -- I
13 don't remember the name -- in New York. This was for
14 exposing, again, teenage kids, to very serious asbestos
15 hazards. It is a company that is well known as an
16 asbestos company that knew what it was doing, should
17 have known what it was doing, and that is following a
18 lot of the precautions in the upper floors that had a
19 bunch of trash, asbestos laden trash, that they brought
20 a bunch of teenage kids in to clean up.

21 These are the kinds of things that we just
22 will not tolerate and we will use all the means we have

1 available in terms of our penalty structure to ensure
2 those messages are sent out not only to the companies
3 involved but to the entire industry.

4 I think that message is being heard, certainly
5 the BP citation is being heard throughout the refinery
6 industry, and hopefully again these other penalties are
7 as well.

8 We talked last time about the construction
9 sweep that we had launched in Texas. We felt that was
10 very successful. We certainly will be keeping our eyes
11 open for similar problems, similar pikes, and trying to
12 make this Agency into a really flexible and responsive
13 agency when we find problems.

14 We are going to be -- Debbie Berkowitz will be
15 here right after me, I think, to talk in a little more
16 detail about some of these issues. Specifically, we
17 have scheduled a conference for Hispanic workers, to
18 deal with Hispanic worker safety and health in Texas in
19 April. Debbie will go into much more details about
20 what we are doing at this conference.

21 We are very excited about it. We want to
22 bring together not just OSHA people, and we are

1 co-sponsoring this with NIOSH. We are going to bring
2 in not just a lot of OSHA people, but also we want to
3 bring in a lot of the day labor organizations,
4 immigrant organizations, churches, everyone who is
5 working with Hispanic workers in this country, and give
6 them a lot more tools about how to address these
7 issues.

8 We definitely are going to want your help in
9 planning that conference.

10 State plan oversight. As you all know, OSHA
11 actually only enforces the law for private sector
12 employees in 29 states. There are another 21 states
13 that run their own health and safety programs.

14 Largely as a result of the high number of
15 fatalities on the Las Vegas strip a while back, when I
16 first got here, we put together a taskforce and
17 launched an investigation into the Nevada state plan,
18 where we have been receiving reports that they were not
19 really responding adequately to the high number of
20 fatalities on the strip.

21 That report was released a couple of months
22 ago and had some very troubling findings about how that

1 program was being run.

2 We testified at a hearing a while back. What
3 we announced there is what we found from that
4 investigation. What that told us is not only that
5 there were problems in Nevada but we better take a
6 close look at all of our state programs.

7 We have a responsibility to ensure that these
8 state programs are running at least as effectively as
9 the Federal program. We need to do better oversight.
10 We are not putting total blame on Nevada here because
11 it is also our responsibility to do oversight, and we
12 have not been doing the oversight that's needed here.

13 We are going to be taking a close look at all
14 of the 21 state programs. Based on the results there,
15 we will be determining what we need to do in terms of
16 permanently changing our oversight policies for state
17 programs.

18 We are expecting to find some problems in
19 other state programs. We are hoping not to find major
20 problems in all the state programs. We put a lot of
21 value in state programs. They have been very
22 innovative, some of them, particularly in the area of

1 standards, and we are hoping to find some shining
2 examples in some state programs that we can use as
3 models for the ones that are having problems.

4 The good news out of all this is we are
5 getting some very good cooperation out of Nevada. They
6 understand they have had problems. It's a new
7 administration there at their Labor Commission and
8 their state OSHA, and that new leadership is very open
9 to working with us. We are hoping that will continue.

10 Recordkeeping. One of the other things of
11 major emphasis for this Agency lately is to focus in on
12 recordkeeping, particularly injury and illness
13 recordkeeping.

14 We launched a national emphasis program or we
15 announced a national emphasis program on injury and
16 illness reporting in October. It's just now getting
17 off the ground.

18 We had been receiving a lot of reports, both
19 in terms of scholarly studies, congressional hearings,
20 media reports, about some serious problems with the
21 accuracy of injury and illness reporting in this
22 country.

1 We then just received a Government
2 Accountability Office report that confirmed a lot of
3 that, but also added some features or some other
4 aspects.

5 One is problems with emphasis programs depend
6 on injury and illness numbers on reportable injuries,
7 and on the other side of that are discipline programs
8 and how these programs may discourage workers from
9 reporting injuries. That is something we are going to
10 be taking a very close look at.

11 The other thing that was very troubling is
12 there is a very high percentage of health care
13 professionals who reported being pressured to under
14 treat workers or in some other way mess with the
15 treatment and the treatment information, as to again
16 avoid reporting injuries and illnesses. Again, these
17 are things we are going to be looking at as well.

18 Needless to say, we take this very seriously.
19 We depend on these numbers largely for our inspection
20 targeting. We depend on these numbers to determine
21 whether we are doing a good job, whether we are being
22 effective.

1 Employers depend on accurate numbers to be
2 able to effectively -- employers and workers -- to be
3 able to effectively identify health and safety problems
4 in their workplaces.

5 This is a high priority. We plan to back that
6 up where necessary with some serious enforcements of
7 these rules.

8 We are moving forward. This is a frustrating
9 area but we are moving forward as quickly as we can on
10 standards and guidance. As you know, in terms of some
11 standards and standard interpretations, we do plan to
12 revise our fall protection compliance directive for
13 steel erection.

14 We put out a letter of interpretation
15 requiring the use of high visibility warnings to
16 protect construction workers and highway work zones and
17 also issued a direct final rule to revise our settling
18 on the standard. We are working and are hopefully
19 close to also changing our residential fall protection
20 compliance directive that I know has received a lot of
21 critical attention over the last several years.

22 We are continuing to work on confined space.

1 As always, we value your comments on our
2 regulatory activity, both in the work we are engaged in
3 now and if you are interested in any future activity.
4 Again, as I said, this is a frustrating area for us
5 here. It takes us far too long to issue standards.

6 One of the things that David has made as one
7 of his top priorities here is to really take a good
8 look at the standard setting process and figure out how
9 we can streamline it. Hopefully, if we get there, it
10 will mean not only changes within the Department of
11 Labor, but we will have to also engage in discussions
12 with OMB and other parties in terms of how we can
13 figure out how to get standards out faster.

14 Right now, it takes five to ten years to get a
15 standard out. That is just no way to run a worker
16 protection agency.

17 We are also becoming more active in green
18 jobs. The green jobs workshop, as you know, is next
19 week that NIOSH is sponsoring. We are all very excited
20 about green jobs and job creation, but being OSHA, we
21 are also somewhat suspicious and the first thing that
22 pops into my mind is lead and asbestos, and again, as

1 we all know, that is not just a frivolous fear here.
2 It is very real as we go around and weatherize and
3 renovate buildings.

4 Some of the other issues, for example, is the
5 chemicals involved in some of the weatherization
6 materials, the insulation, foam stuff. These are all
7 things that we really need to be looking at. There are
8 a number of other issues. Wind energy, we are looking
9 at some of the hazards there.

10 This is going to be a challenge for OSHA but
11 it is also an opportunity for OSHA because to the
12 extent these are new industries just getting off the
13 ground, we can actually be very useful in building
14 safety in literally from the ground up with some of
15 these new industries.

16 We are seeing this not as just a challenge but
17 also as an opportunity.

18 I guess you all are setting up a work group on
19 green jobs in construction, which is a good thing. We
20 hope to work with you very closely on that.

21 I have set up a taskforce here. We have a
22 green jobs czar here, so we are going to be working

1 very closely.

2 We have been talking about your work groups.
3 I know you have had a very active and very useful
4 silica work group. Obviously, there are going to be
5 other health hazards in construction that we want to
6 address, so we are hoping that you will if you haven't
7 already expand the scope of that work group to talk a
8 little bit more about other health hazards facing
9 construction workers.

10 One of the other things that I know David is
11 going to be working on is our PELs in OSHA. As you
12 know, if the rest of our regulatory system is sick, the
13 whole PELs thing is really broken. We are still now
14 almost at OSHA's 40th anniversary enforcing PELs that
15 were based on science from the 1950s and 1960s.

16 When you consider this Agency has only put out
17 about two new chemical standards in the last ten years,
18 again, there's something broken there. We are going to
19 try to work very closely not only with you all, but
20 with labor and industry in trying to figure out how we
21 can better address chemicals and generally health
22 issues here at OSHA.

1 We are going to focus and we are encouraged
2 that you are also focusing on prevention through
3 design. We are hoping you also broaden your work
4 groups out to work much more on those issues as well.

5 Again, in the green jobs area, to the extent
6 we can build in safety into our construction projects,
7 we are that far ahead.

8 Again, I just want to commend this Committee.
9 It has really been a great Committee. We hope that it
10 will continue to be a great Committee and an even
11 better Committee as you all evolve and as we all evolve
12 to address some of the new issues that are coming up
13 and some of the changes that are coming up and some of
14 the priorities of OSHA.

15 There has been some discussion here about kind
16 of what we need. We need you to advise us, as I said.
17 We will be communicating even more closely with you
18 about the kind of advice we are going to need from this
19 Advisory Committee.

20 Thank you very much and I'd be glad to answer
21 your questions.

22 CHAIRMAN MIGLIACCIO: Questions? Mike?

1 MR. THIBODEAUX: You had mentioned that the
2 July and August inspections that you did in Texas were
3 successful. I'm just wondering, what did you find?
4 Some compliance? A lot of compliance? A lot of
5 citations?

6 MR. BARAB: Well, we always find both. We had
7 a lot of citations. I don't know if I have the
8 statistics here. We did about 900 inspections and it
9 came to about \$2 million in fines -- don't quote me on
10 that. I should have this memorized now because I say
11 it in every speech.

12 In any case, we considered it to be a big
13 success. In 900 inspections, 1,500 citations and fines
14 totaling almost \$2 million.

15 More important than that, and that is
16 important in finding these problems and correcting
17 them, but I think also the message goes out from this
18 that we are very serious. We plan, at least in this
19 time frame, in this area, to be pretty much everywhere.

20 Even reading some of the business presses that
21 have come out lately, not just reflecting this but many
22 of our other citations, the message seems to be going

1 out that there is a new OSHA here and we are obviously
2 under staffed. We can't be everywhere at once. We
3 plan to be a lot more places and we plan to be a lot
4 more serious about what we are doing, so companies
5 better take that into account, those who are out there
6 thinking they can get away with cutting corners on
7 safety.

8 MR. THIBODEAUX: Thank you.

9 CHAIRMAN MIGLIACCIO: Susan?

10 MS. BILHORN: I just wanted to mention since
11 you said at the beginning of your comments about the
12 fines and including what happened with BP. I just want
13 to make a comment on behalf of 11 of our employees who
14 were involved in that incident.

15 One of the areas was while a fine may get some
16 attention, this happened on March 23, 2005, one of the
17 areas that we recognized a need for attention in is the
18 recognition of hazards associated with tangential
19 activities, where one contractor may not be able to
20 know what's going on everywhere, and hence, their
21 employees may not know.

22 Those tangential activities could be related

1 to the existing operation or it could be actually
2 located next to another facility nearby. That was one
3 area that we found to be a pretty serious concern.

4 I'm not sure if OSHA is doing anything in that
5 area.

6 MR. BARAB: We are certainly aware of those
7 problems. Everybody is aware of the 15 workers that
8 were killed at BP were not BP employees, they were
9 contractors, many of whom just happened to be in the
10 area, illegal, I guess, which is a violation in and of
11 itself.

12 As you know, coming out of that, we launched a
13 national emphasis program to refineries. We have
14 within our Federal states, we have pretty much visited
15 every refinery in the country except for those under
16 the VPP program which have also come under extra
17 scrutiny. It's a big job. It has been enormously
18 resource intensive and there are things we are trying
19 to focus on.

20 There are a lot of problems in refineries that
21 we haven't been able to touch on directly, but we are
22 hoping again that our general attention to refineries

1 will bring a lot more scrutiny to all of those issues,
2 including those, and we will be looking at any issue.
3 There is nothing there that is necessarily out of our
4 bounds as long as obviously it is either covered by our
5 standards or we can bring it in under our general duty
6 clause.

7 MS. BILHORN: Just to add, we actually took it
8 further than just looking at refineries because you
9 could be working as a contractor near cranes that are
10 operating, facility construction. We actually took it
11 further to say you really need to look wherever you are
12 working at hazards that are tangential.

13 I just don't if tangential hazards may be a
14 focus area. Being able to be aware of or look at how
15 contractors or operators are looking at the tangential
16 activities.

17 MR. BARAB: That's an area that if we have not
18 paid enough attention to, we need to work with you more
19 on.

20 Ultimately, and this is kind of a theme that
21 we are trying to focus on here, it should be obvious,
22 it has been obvious to a lot of us for a long time,

1 that in this case and other cases, OSHA doesn't work
2 unless workers are involved. We don't get places -- we
3 have our targeting systems and things.

4 We only get to places where we hear there are
5 problems or we have some indication there are problems,
6 and to the extent there are a lot of those problems
7 that you're talking about that we can intervene on, we
8 need to hear from you, and we will get people out there
9 and look at those problems.

10 CHAIRMAN MIGLIACCIO: Tom?

11 MR. SHANAHAN: Tom Shanahan with the National
12 Roofing Contractors Association. You mentioned briefly
13 and at the last meeting about with the
14 withdrawal/rescission of the residential fall
15 protection guidelines, and I attended the last meeting
16 by phone, but had mentioned then that as you do that,
17 and as Joe had mentioned earlier, you are working on a
18 compliance directive for that, and to not only consider
19 what the residential fall protection work group is
20 doing but to talk to NRCA and also the home builders,
21 since they are the ones who negotiated the agreement in
22 the first place.

1 I just wanted to extend that, I guess, more
2 formally, that as you craft that document, that you
3 contact both of us. There are some very important
4 issues within the roofing industry and we would want to
5 be a part of that since we were part of that from the
6 beginning.

7 MR. BARAB: Right.

8 CHAIRMAN MIGLIACCIO: Tom Broderick?

9 MR. BRODERICK: Jordan, I just wanted to thank
10 you for a number of things, not only bringing a breath
11 of fresh air to the Agency but in some ways, breathing
12 life back into the Agency.

13 Also, a very important thing, I think, is the
14 OSHA website, the home page, the recitation of the
15 fatalities. It really is a start, attention getter.
16 It really brings home to those of us in this room the
17 fact that contractors unfortunately account for a
18 disproportionate number of fatalities. On behalf of
19 all of us, I appreciate it.

20 MR. BARAB: Thank you. As you know, we are
21 trying to make a lot of changes to our web page and a
22 lot of our operations here. I think we're trying to

1 remember although we live with these tragedies every
2 day here, that's what we are about, we are OSHA.
3 Unfortunately, that's our job.

4 I think we are trying to remind people outside
5 of OSHA and remind ourselves that people outside of
6 OSHA need to be reminded what goes on in workplaces
7 every day. We still have more than 14 people killed in
8 the workplace every day. They die in ways that could
9 perfectly have been well prevented if OSHA standards
10 were being followed, safe workplace practices.

11 We are trying to get that word out even more
12 about what is happening in the American workplaces and
13 the need for this Agency to take an aggressive approach
14 to what's happening.

15 CHAIRMAN MIGLIACCIO: Emmett?

16 MR. RUSSELL: Mr. Barab, Emmett Russell. Can
17 you supply the ACCSH Committee with a complete time
18 line or proposed time line for the cranes and derricks'
19 standard?

20 Naturally, you go to OMB and what's next, if
21 in any way you can supply an expected time line as to
22 next steps before it becomes a possible regulation,

1 that would be appreciated.

2 MR. BARAB: We can do that. We're pretty much
3 finished with it. We are just doing our analysis,
4 addressing the issues that came out of the hearings and
5 the public comment period. Once we're finished with
6 that, which will be soon, we will shoot it on over to
7 OMB. There are only those two steps left. We'd be
8 glad to supply you with that.

9 At this point, it's fairly simple. We are
10 just trying to figure out how to get that out as
11 quickly as we can as with our other standards.

12 MR. RUSSELL: Thank you.

13 CHAIRMAN MIGLIACCIO: Any other questions?

14 (No response.)

15 CHAIRMAN MIGLIACCIO: I have one question.
16 You say you are doing the state OSHA programs now;
17 correct? After you finish with the state, is there any
18 idea that you would be looking into the Federal
19 Government's part in handling the states that don't
20 have state programs?

21 MR. BARAB: The Federal Government handling?

22 CHAIRMAN MIGLIACCIO: You have 21 states that

1 have the state plans and you have the Federal
2 Government that takes care of the rest of the states.
3 Is there any possibility you would start also looking
4 into them?

5 MR. BARAB: Auditing ourselves?

6 CHAIRMAN MIGLIACCIO: Yes.

7 MR. BARAB: We actually do that already. We
8 have a whole audit program where we audit ourselves on
9 an annual basis. It is basically area office by area
10 office, to make sure they are operating according to
11 how we want them to operate. That is something again
12 we take very seriously about ourselves as well.

13 CHAIRMAN MIGLIACCIO: Thanks. Dan?

14 MR. ZARLETTI: Dan Zarletti with Kenny
15 Construction. I understand there is going to be a
16 press to add more officers in the field. Of course,
17 they can't know everything at the beginning. They
18 learn by experience as they come in.

19 As contractors, we would welcome the
20 opportunity to be involved in their overall field
21 training. Some of the stuff, you can learn by books
22 and regulations, and that's great to have as a

1 foundation. It doesn't really serve as the actual
2 hands on.

3 MR. BARAB: We are certainly looking at all
4 those opportunities. That was also one of the big
5 concerns I had when I first got here. I was pleasantly
6 surprised the President had requested new money and we
7 were getting a lot of new inspectors, but the second
8 thing that popped into my mind was do we have the
9 capacity to really train those.

10 Also, I've been traveling around quite a bit
11 and talking to folks out in the field. That is always
12 one of their top issues, not just for the new ones, but
13 for the ones who have been here for a while, brushing
14 up on that training as well.

15 As you know, it can often cost a bit of money
16 in terms of travel and setting up that training. We do
17 want to work with anybody we can to help us make sure
18 our people are trained and stay trained.

19 CHAIRMAN MIGLIACCIO: Bill?

20 MR. AHAL: Bill Ahal. The Agency changes to
21 the new OSHA you mentioned, is that method of
22 leadership going to be single and alone or how much

1 will it involve the industry, and could you compare
2 that to the way it has been so we have a benchmark and
3 what we will see going forward?

4 MR. BARAB: We very much want to maintain good
5 relations with the industry. In fact, if you look at
6 my speaking schedule, I spend a good of time speaking
7 before industry organizations/associations, joint labor
8 management associations. We have been trying to get
9 out and about.

10 Anything we do here, whether it's enforcement,
11 particularly standards, obviously our first priority is
12 protecting workers in the best way we see to do that,
13 we need to also be doing that in a way that makes sense
14 and that works in everybody's workplace.

15 The only way we know how to do that well is to
16 be talking to people and seeing what works and what
17 doesn't work. Yes, we very much want to be talking to
18 everyone, either going out and speaking or having you
19 all come in.

20 I know a lot of you and a lot of the
21 associations you belong to have come in and talked to
22 us about a number of things.

1 I try and I'm sure David will to be very
2 candid with you all about what we are doing. We want
3 to continue that.

4 MR. AHAL: Can you give a benchmark, more,
5 less or the same as it has been? More, less or
6 additional cooperation from the industry?

7 MR. BARAB: We want to cooperate with
8 everyone. We want to certainly continue our
9 relationships with industry. I think one thing, this
10 Administration, if you want to compare benchmarks, I'm
11 sure we have much more and better relationships with
12 labor, organized labor, than the previous
13 Administration did. We sent that message out in
14 everything that we do. We want to make sure workers
15 have their representatives involved in everything we do
16 as well.

17 We very much want to have everybody at the
18 table and we want to listen to everybody. We certainly
19 are not shutting anybody out. We are just bringing
20 more people in.

21 MR. AHAL: Thank you.

22 CHAIRMAN MIGLIACCIO: Matt?

1 MR. GILLEN: Matt Gillen, NIOSH. There have
2 been a lot of studies showing that there has been under
3 reporting of non-fatal injuries in construction, it's a
4 long-standing problem. As you put together your
5 strategies for responding to GAO and improving
6 recordkeeping, is construction part of that, and if so,
7 can you share any thoughts on that?

8 MR. BARAB: I think so. It's a little bit
9 harder with construction because the sites move. I'm
10 trying to remember now. I know we discussed it and we
11 were trying to figure out how to address that issue. I
12 wouldn't swear that it's actually part of this one, but
13 it is a concern.

14 As with a lot of different things, targeting
15 construction, there are extra challenges there. We
16 should work on that more. Maybe we can work with you
17 all and figure out ways to better deal with those
18 issues in construction.

19 MR. GILLEN: Thanks.

20 CHAIRMAN MIGLIACCIO: Kevin?

21 MR. BEAUREGARD: Kevin Beauregard, State
22 representative.

1 MR. BARAB: Kevin, you're just on every
2 committee.

3 (Laughter.)

4 MR. BEAUREGARD: I just want to follow up on
5 some of Frank's comments. I do want to say as the
6 current chair of the State Planning Association, the
7 state plans have absolutely no problem on auditing and
8 monitoring. I think it's a good thing. I think it's
9 an opportunity to point out both strengths and
10 weaknesses and to work on those.

11 The states do go through a quarterly
12 monitoring and an annual monitoring currently. As a
13 result of the Nevada monitoring, there is going to be
14 an increased look at the annual monitoring. Again, we
15 have no problems with that.

16 To follow up on what Frank said, I do think to
17 promote equivalent safety and health protection in all
18 states and territories, if the results of those
19 monitoring visits are going to be made public, as I
20 think it was stated earlier, that a similar type of
21 monitoring that occurs on the Federal level should also
22 be made public, so there is a complete picture.

1 What I mean by this is you mentioned the
2 Federal audits. There is an auditing procedure where I
3 believe the area offices on the Federal side are self
4 audited at least once every four years.

5 A lot of the same things are looked at that
6 are looked at on the state level. I know those are
7 self audits, but maybe some similar type audits that go
8 on on the state level should also be made publicly
9 available if the intent is to have equivalent
10 protection and ensure -- the audits look at measures,
11 program management, quality, training, and I think all
12 those things are important areas.

13 I do think they should be looked at as a whole
14 for the country as opposed to just signaling out the
15 state plan states.

16 MR. BARAB: A lot of those are. A lot of the
17 oversight we're doing on state plans are obviously
18 compared with many of the statistical measures and
19 operating procedures that we use on the Federal level,
20 so to a certain extent, that is kind of built into the
21 system.

22 We hear you. We will be working with you on

1 making sure everything is done fairly and justly and as
2 openly as possible.

3 MR. BEAUREGARD: I would also like to say that
4 since you have come on as Acting Assistant Secretary, I
5 think you have made great attempts to work with the
6 State Plan Association. I do appreciate that. You
7 participated in our last Board meeting last week, and I
8 know you have a busy schedule. I do appreciate that.
9 I think working together we can work to make sure that
10 we have effective safety and health protection across
11 the country.

12 MR. BARAB: Thanks.

13 CHAIRMAN MIGLIACCIO: Any other questions?

14 (No response.)

15 CHAIRMAN MIGLIACCIO: I think I speak for the
16 whole Committee, Jordan, thank you for everything you
17 have done since you have come in. The man's following
18 you, he has your shoes to fill really, but I think he
19 will do a fine job also.

20 MR. BARAB: I look forward to continuing to
21 work with you. Thank you very much.

22 CHAIRMAN MIGLIACCIO: Thank you.

1 (Applause.)

2 CHAIRMAN MIGLIACCIO: We will go ahead and
3 take a 15 minute break.

4 (A brief recess was taken.)

5 CHAIRMAN MIGLIACCIO: All right. We do have
6 two motions on the floor. Walter had a motion and Dan
7 had a motion on the floor. We have to get that worked
8 out before we go any further.

9 MS. SHORTALL: (Inaudible.)

10 CHAIRMAN MIGLIACCIO: Thank you. Dan, are you
11 willing to accept the other motion?

12 MR. ZARLETTI: Absolutely.

13 MS. SHORTALL: (Inaudible.)

14 CHAIRMAN MIGLIACCIO: Walter, will you state
15 your motion now, please?

16 M O T I O N

17 MS. SHORTALL: (Inaudible.) -- on all work
18 group products to be posted.

19 CHAIRMAN MIGLIACCIO: We have a first. Do we
20 have a second on that motion?

21 MR. THIBODEAUX: Second.

22 CHAIRMAN MIGLIACCIO: Discussion/questions?

1 Susan?

2 MS. BILHORN: Just a question of
3 effectiveness. Do we need to clarify how that would be
4 maintained? Going backwards, there's a historical as
5 to what has already been produced, which we could task
6 the working groups with identifying that information to
7 put on, and then in the future, will the working groups
8 be responsible for we would like these posted or would
9 it be something we would leave to OSHA to decide?

10 I think maybe we ought to figure out how it
11 would be maintained.

12 MS. SHORTALL: (Inaudible.)

13 CHAIRMAN MIGLIACCIO: Tom?

14 MR. SHANAHAN: You had mentioned earlier there
15 is a folder or repository there.

16 MR. BRODERICK: Right. That's what I thought
17 should be made clear in this motion, we're not talking
18 about creating anything new on the OSHA website, it's
19 just we would start using the ACCSH work product tab
20 that's already there.

21 MS. SHORTALL: (Inaudible.) -- work product
22 tab for all ACCSH work group products.

1 CHAIRMAN MIGLIACCIO: We have a motion, a
2 second and we have had discussion. All in favor -- I'm
3 sorry.

4 MR. CONNELL: I think there might be some
5 confusion here. Maybe not. Maybe just in my own mind.
6 There's a difference between products that are approved
7 by the full Committee and working products that might
8 be generated by a work group that never received
9 approval by the full Committee.

10 I'm not sure if the suggestion was -- if the
11 idea behind the suggestion is work groups work for
12 sometimes a number of years, a lot of stuff is
13 generated in the course of them doing their work, all
14 those things may or may not result in some one document
15 or something like that, but you want to preserve the
16 underlying material so that in the future, that would
17 be available. That's one concept.

18 Another concept is the work group came to
19 agreement on some particular document, recommended that
20 back to the Committee and the Committee voted on it and
21 said yes, we approve this. That's going to be a more
22 limited number of documents.

1 Maybe you want to think about what is it that
2 you are really talking about, one or the other.

3 MR. BRODERICK: I believe it was the latter.

4 MS. SHORTALL: (Inaudible.) -- ACCSH approved
5 documents.

6 MR. CONNELL: Okay, as long as that's clear.

7 CHAIRMAN MIGLIACCIO: Tom?

8 MR. SHANAHAN: Just to clarify, for example,
9 as I go on the website, I'm always doing a search. It
10 takes forever to find some of that, even when I look
11 for it. It would be nice if there was a place for like
12 the minutes within these folders, if it's organized
13 that way. That would be very helpful.

14 All I'm able to do is a word search and then
15 go through a lot of documents before you find
16 something.

17 MS. SHORTALL: (Inaudible.)

18 CHAIRMAN MIGLIACCIO: Emmett?

19 MR. RUSSELL: Based on our discussion in our
20 work group, we talked about this, for instance, on the
21 work group report, we had some booklets and pamphlets
22 from the Trench, Shoring and Shielding Association, and

1 we identified those pamphlets. We would think those
2 pamphlets are a product.

3 Again, we have a number of things that came
4 from NIOSH, we would think that was a product. For
5 instance, even today, we had discussion on the whole
6 California trench permit experience where we have a
7 number of documents that outline that whole permit
8 process in California.

9 We think other states and/or other counties
10 can profit from this whole trench permit situation, so
11 we have a package that we would submit, and this
12 package would be considered a product.

13 From the perspective of the committee in our
14 discussion, we talked about a number of expert speakers
15 coming to a work group, bringing information that we
16 thought could be shared with the public, and it would
17 be that information, as mentioned in my report, we
18 would think would be work group products.

19 MS. SHORTALL: (Inaudible.)

20 CHAIRMAN MIGLIACCIO: Okay. Any other
21 questions or discussion?

22 (No response.)

1 CHAIRMAN MIGLIACCIO: All in favor, say aye.

2 (Chorus of ayes.)

3 CHAIRMAN MIGLIACCIO: Opposed?

4 (No response.)

5 MS. SHORTALL: (Inaudible.) Exhibit 5.1 and
6 5.2.

7 MR. RUSSELL: Thank you. Those are what we
8 would consider to be work group products.

9 MS. SHORTALL: (Inaudible.) Maybe during
10 lunch, I can type up an exhibit list.

11 CHAIRMAN MIGLIACCIO: Thank you. Our next
12 presentation is stimulus impact on
13 transportation/utility construction. I'm a little
14 ahead of myself.

15 M O T I O N

16 I need a motion on the floor to accept the
17 work group's --

18 MS. ARIOTO: So move.

19 CHAIRMAN MIGLIACCIO: Second?

20 SPEAKER: Second.

21 CHAIRMAN MIGLIACCIO: Discussion?

22 (No response.)

1 CHAIRMAN MIGLIACCIO: All in favor, say aye.

2 (Chorus of ayes.)

3 CHAIRMAN MIGLIACCIO: Opposed?

4 (No response.)

5 CHAIRMAN MIGLIACCIO: The ayes so have it.

6 The next presentation will be stimulus impact
7 on transportation/utility construction by the
8 Associated General Contractors, and Kenneth Simonson.

9 REPORT ON STIMULUS IMPACT ON TRANSPORTATION/
10 UTILITY CONSTRUCTION

11 MR. SIMONSON: Thank you. I am Ken Simonson.
12 I'm the chief economist for Associated General
13 Contractors of America, which is the leading national
14 construction trade association.

15 We operate through 95 chapters, from Alaska to
16 Puerto Rico, and collectively have about 33,000
17 members, 7,000 general contractors, 13,000 specialty
18 contracting firms, and 13,000 suppliers of goods and
19 services of all types to the construction industry.

20 Our members do every type of construction
21 other than single family home building.

22 With me today is Kevin Cannon, our liaison to

1 ACCSH and Director of Occupational Safety and Health
2 Programs and Policies.

3 I have an extensive slide presentation, which
4 I won't drag you all the way through, but I want to
5 highlight in particular the stimulus legislation, how
6 it fits into the broader construction picture, and in
7 particular, I know you're interested in the
8 transportation and utility aspects, but I wanted you to
9 know the full presentation will be available to anybody
10 who wants it.

11 The American Recovery and Reinvestment Act was
12 estimated at \$787 billion of spending and tax
13 provisions at the time it was signed by President Obama
14 in February.

15 Of that, \$308 billion is appropriated spending
16 or in layman's language, Federal Government purchases
17 of stuff. There is also \$267 billion of direct
18 payments to individuals and states for things like
19 expanded and extended unemployment benefits, Medicaid
20 expenses and so forth, and \$212 billion of tax cuts.

21 All of these have some implications to
22 construction, but clearly the most important part is

1 the direct appropriations for what we consider
2 construction related stimulus funding.

3 That is \$135 billion, by far the largest
4 amount that the Federal Government has ever put in a
5 single bill for construction.

6 We identified 61 separate programs that are
7 funded relating to construction, and have created a
8 website to help people track that, which agency has
9 responsibility, the timing and amounts, any regulations
10 that come out or interpretations.

11 Very broadly, it can be broken into four
12 categories. \$49 billion for transportation; \$35
13 billion for buildings; \$30 billion for energy and
14 technology, and \$21 billion for water and environment.

15 Within the transportation, there is \$27.5
16 billion for highway programs. This is the part that
17 was appropriated, obligated and in some cases spent the
18 fastest. \$20.7 billion of that \$27.5 billion went to
19 state DOTs under formula's already used to apportion
20 highway money under SAFETEA-LU, the highway and transit
21 program that recently expired.

22 The state DOTs already knew before President

1 Obama signed the legislation exactly how much each of
2 them would be getting. In many cases, they had
3 recently had to cut back on projects that they planned
4 to award simply because the state gas/diesel tax, car
5 and truck registration fees or excise tax revenues had
6 been falling short of what they had projected, and they
7 didn't have enough money left in their highway trust
8 funds to do their own programs. This money came at a
9 very opportune time to enable them to restore spending.

10 In addition, the highway money had a very
11 tight deadline. Fifty percent of that had to be
12 obligated within 120 days of enactment. All of the
13 states met that deadline and a few have now reached 100
14 percent of the funds available to them, most are well
15 above 75 percent, and they should all meet the 100
16 percent by the deadline of February 17, the anniversary
17 of the bill being signed.

18 Beyond the highway money, there is \$8 billion
19 for high speed rail. That is sort of at the other
20 extreme, there had been no high speed rail program in
21 place, so the Federal Railroad Administration had to
22 design criteria and give states a chance to put

1 together proposals and now is evaluating those
2 proposals.

3 They received proposals from 34 states
4 totaling \$57 billion. We understand they will be making
5 the first set of announcements next month, then the
6 winning states will have to design the projects in
7 greater detail, advertise them and award them.

8 We don't expect to see any jobs created or
9 money going to contractors until the second half of
10 2010, perhaps even later.

11 In between there are programs for transit, for
12 AMTRAK, for airports, and that money is starting to
13 flow.

14 In general, I would say most of this money has
15 not yet been awarded, let alone led to hiring because
16 of three factors.

17 One, new programs such as high speed rail or
18 smart grid where just in the last couple of weeks we
19 have had agency awards, and a second problem is perhaps
20 called the embarrassment of riches. There are programs
21 that had existed and had been funded at such a low
22 level considered to what is in the stimulus bill that

1 agencies didn't have enough contracting personnel to
2 process the requests.

3 An example of that was pointed out to me when
4 I spoke to the AGC of Kentucky. A contractor said yes,
5 he had won a grant from the Forest Services to update a
6 building in a national forest but the contracting
7 officer said can you wait six or eight weeks for the
8 pre-construction conference, I'm so busy trying to
9 award other projects that I can't meet with you.

10 A third problem has been the Buy American
11 provision within the stimulus, which has kept many
12 projects from spending money because they have to use
13 American made iron, steel and manufactured materials.

14 In some areas such as water and wastewater
15 treatment plants, we have starved the programs for so
16 long that all of the advanced equipment is made outside
17 the U.S. and has components made outside the U.S., and
18 unless a waiver is issued, the stimulus money can't be
19 spent.

20 The Environmental Protection Agency has issued
21 24 project specific waivers, but we understand there
22 are dozens more projects awaiting waivers, and the

1 Rural Utility Service of the Department of Agriculture,
2 so far as I have heard, hasn't issued any waivers yet.

3 In addition to those factors, certainly
4 stimulus has led to a lot of questions about how many
5 jobs are created. We know the reports have been rather
6 contradictory and confusing, aside from some outright
7 errors, I think there is a general difficulty of
8 mismatching, timing and definitions, but the biggest
9 problem is nobody knows the totality of jobs created by
10 a particular project.

11 We think the answer to that is actually to go
12 to a model. Two years ago, AGC asked Professor Steven
13 Fuller of George Mason University, one of the leading
14 regional economists, to estimate the impact of \$1
15 billion invested in non-residential construction at a
16 time of slack resources, which unfortunately describes
17 today's economy.

18 He estimated that \$1 billion would support
19 28,500 jobs, about a third of those are direct on-site
20 construction jobs, one-sixth comes from supplying
21 industries, ranging from quarries to manufacturers of
22 materials and equipment to all types of suppliers, from

1 architects, engineers, safety advisors, accounting and
2 leasing firms and so forth.

3 Half the jobs or so-called induced jobs
4 throughout the rest of the economy is the workers and
5 owners of the construction supplying firms spending
6 their additional income, and those will never be
7 captured by a reporting system.

8 The multiplier is 3.4. That is once that \$1
9 billion passes through all those hands, gross domestic
10 product would go up by \$3.4 billion, about a third of
11 which would show up as personal earnings.

12 Let me spend just a minute to put the stimulus
13 in the context of the overall construction economy.
14 This is a series from the Census Bureau that comes out
15 at the beginning of each month, and it's called "Value
16 of Construction Put in Place" or "Construction
17 Spending" for short.

18 It is measured as seasonally, adjusted annual
19 rate. Before your eyes glaze over, let me say a
20 seasonal adjustment takes into account there is
21 typically less outdoors construction activity in
22 December than in July. Normal seasonal variations due

1 to weather or holidays are removed and then monthly
2 figures are multiplied by 12, so you can compare it to
3 a full year.

4 What this shows at the top is the total
5 construction activity has dropped by 14 percent. One
6 other point, "construction put in place" means the
7 measure of spending that actually occurred that month.

8 Some of you may be familiar with the series
9 from McGraw Hill construction or reconstruction data
10 that measured the value at construction starts. That
11 is kind of a leading indicator, it takes the whole
12 value of a new project that may be as much as \$1
13 billion for a stadium or interchange on a highway, and
14 puts that into the month the project starts or the
15 contract is signed, and then you would have a big drop
16 off the next month.

17 The Census series is a coincident indicator,
18 it is measuring activity that is actually taking place.
19 That \$1 billion might be spread over two or three
20 years, however long it takes to spend.

21 The actual spending ongoing including projects
22 started long ago has dropped off by 14 percent. The

1 leading indicators are down much more.

2 When you break the total into three
3 components, you see a deep drop in private
4 non-residential construction, 21 percent over those 12
5 months, and it's continuing at about the same rate as
6 it has been.

7 Public construction, where most of the
8 stimulus money is going, has actually risen four
9 percent. That is the pale green line in the middle.
10 At the bottom, private residential spending, the blue
11 line, had a very deep drop until last Spring, bottomed
12 out and is now showing signs of starting to pick up,
13 even though year over year, it's down 24 percent.

14 One of the non-residential components, this is
15 the crowded table, the Census Bureau actually reports
16 on 16 different non-residential components in its press
17 release and breaks those into 100 and some
18 subcomponents.

19 Let me take you to one in particular. Here,
20 the blue line shows the monthly level of that
21 seasonally adjusted annual rate of spending for one of
22 the components in 2008, and the red line, the first ten

1 months of 2009. In the upper left, you can see that
2 highway construction is running ahead of year ago
3 levels.

4 In October, it was 4.6 percent above the
5 October 2008 level, and it was down just three-tenths
6 of a percent compared to September of 2009.

7 My best reading is with the help of stimulus
8 money that has not yet been spent, that highway figure
9 will remain roughly where it is now, in the \$87 billion
10 annual rate range.

11 Earlier this week, President Obama spoke about
12 additional funding for infrastructure. Naturally, we
13 think that's a great idea. This has already worked in
14 terms of putting more people to work, and the American
15 Association of State Highway and Transportation
16 Officials says the state DOTs have identified some 60
17 or \$70 billion of additional projects that they could
18 award within 120 days of getting the funding. There is
19 plenty of work still available.

20 Without that, we think at best, highway
21 spending will remain level and it may start dropping
22 back next year, so that in the second half of next

1 year, it could be below current levels.

2 Below that, you see transportation facilities.
3 That includes transit, rail, ports and airports. Also,
4 at the moment, well above year ago levels. I think as
5 more of that stimulus money is awarded, that will
6 remain where it is, perhaps climb somewhat.

7 On the right-hand, you see sewage and
8 wastewater and drinking water facilities. At the
9 moment, those are below, but Congress appears to be on
10 the verge of passing a significant appropriations
11 increase for those categories, and if the Buy American
12 roadblock gets taken down or at least waivers passed,
13 we think the water and wastewater spending will also be
14 higher next year than in comparable months of this
15 year.

16 I don't want to impose too much on your time.
17 Let me skip ahead here. A very brief look at what's
18 happened to materials costs. This does cover the
19 picture that I just showed you.

20 It doesn't take into account the fact that
21 over the last six years, the Producing Price Index for
22 imports to the construction industry, shown by the blue

1 line here, which has a weighted average of cost of all
2 materials going into every type of construction, plus
3 items used by contractors, such as diesel fuel, that
4 index has soared relative to the Consumer Price Index,
5 the red line below it.

6 The break out started in early 2004 when steel
7 prices jumped, diesel, copper, asphalt, many other
8 items that had jumped at one time or another, until the
9 Summer of 2008. Since then, you saw the blue line took
10 a deep dive as steel, copper and diesel and asphalt all
11 moved down from record levels, leveled off earlier this
12 year. The line has kind of been crab walking since
13 then.

14 I think going forward, at best, we will see
15 materials costs stay put. They could jump again at any
16 time as demand rises in countries like China, India and
17 Brazil that are industrializing building
18 infrastructure, putting demand on materials like
19 copper, for which there are very few suppliers around
20 the world, so as demand rises and supply is affected by
21 strikes or earthquakes or power shortages or civil
22 unrest, you get these spikes.

1 As early as next year, we could see back those
2 six to eight percent increases in materials costs.

3 Lastly, let me show you what is happening in
4 construction employment. In the upper left, you see in
5 the last 12 months, construction has accounted for more
6 than 20 percent of all job losses. In fact, in the
7 November report which came out last Friday,
8 construction lost another 27,700 jobs, where the
9 economy as a whole lost 11,000.

10 You can say the non-construction economy
11 finally started adding jobs, the construction has
12 accounted for last month more than 100 percent of job
13 loss, even though the industry accounts for only 4.5
14 percent of total employment, less than 1 out of 20
15 jobs.

16 The unemployment rate in construction, not
17 seasonally adjusted, in November was 19.4 percent, more
18 than double the all industry rate, highest of any
19 industry.

20 In the upper right, you can see every month
21 construction has been losing one percent or more of its
22 workforce. That's the blue line. The red line shows

1 the overall economy has lost half a percent or even a
2 smaller percentage.

3 The up shot for wages is that whereas a year
4 and a half ago, they were going up four or five
5 percent, as many contracts were being signed with
6 multi-year increases, and now the wage increase has
7 tailed off to about two percent.

8 Jobs are being lost in every state except
9 North Dakota, which had a two percent gain, 400 jobs,
10 but it is significant there.

11 At the metro level, and I haven't tried to
12 crowd this on the map, only five of the 337 metro areas
13 for which the Labor Department provides data had job
14 increases from October 2008 through October 2009 in
15 construction jobs.

16 Lastly, two indicators of where the jobs will
17 be a year from now, architecture billings index and
18 architectural and engineering services employment, both
19 of these have been below break even level all year. If
20 the architects and engineers aren't designing projects
21 now, contractors aren't going to have the work to do a
22 year from now, and the declines that I've showed you

1 are likely to continue with a few exceptions.

2 I think the stimulus money will result in more
3 public works. In addition, we may see a revival of
4 higher education and hospital projects that were
5 stopped cold over the last year as endowments fell,
6 capital campaigns were canceled, and access to credit
7 markets dried up, those things have bounced back and we
8 may see a resumption in that construction.

9 Overall construction, down in double digit
10 rates this year. Next year, perhaps breaking even with
11 at best level materials costs, perhaps a small rise,
12 and a slowing of labor cost increases.

13 That's my story, I'm sticking to it until I
14 get more data. When I do, I'll put it in the data
15 digest, my weekly one page summary of economic news
16 relative to construction. I think you got a copy of
17 that this week. It discusses not just the economic
18 data but the non-fatal occupational injury and illness
19 data that DLS put out just a couple of weeks ago.

20 I would be glad to add any of you to the
21 e-mail list for that. Thank you.

22 CHAIRMAN MIGLIACCIO: Any questions from the

1 Committee? Tom?

2 MR. KAVICKY: Great report. Tom Kavicky,
3 Employee representative for ACCSH.

4 On your highway slide, highway spending slide,
5 could you give us any numbers on the percent of new
6 construction on highways and bridges versus
7 resurfacing?

8 MR. SIMONSON: The Federal Highway
9 Administration has been preparing tables on that each
10 month. They have marked them for "internal
11 distribution only." I have gotten to see a copy
12 unofficially recently. I guess for the record, no, I
13 don't have that information.

14 MR. KAVICKY: Thank you, I think.

15 (Laughter.)

16 CHAIRMAN MIGLIACCIO: Any other questions?

17 (No response.)

18 CHAIRMAN MIGLIACCIO: Thank you very much.

19 Sarah?

20 MS. SHORTALL: (Inaudible.) Exhibits 7 and 8.

21 CHAIRMAN MIGLIACCIO: Thank you.

22 Our next presentation is on OSHA ten hour and

1 Hispanic worker safety and health conference updates,
2 Chief of Staff, Debbie Berkowitz. Welcome.

3 PRESENTATION ON OSHA - 10 HOUR AND HISPANIC WORKER
4 SAFETY AND HEALTH CONFERENCE UPDATES

5 MS. BERKOWITZ: Hi. It's good to be here.

6 This is my first time addressing you, and I know some
7 people because I have talked to some people. Kevin, I
8 met at a state plan meeting. I hope to get to know all
9 of you in my term here.

10 As you heard from Jordan, we have an open
11 door. We want your input. We want everybody's input
12 as we move forward.

13 I have only been here for three and a half
14 months, but my family thinks I've been here for like
15 five years because I seem to never go home.

16 We have been moving forward very quickly on a
17 number of things. Before I begin, and I know Tom isn't
18 here, but I want to tell everybody that I hear from
19 everybody about the limitations of our website. We
20 understand this and we are working on it to make it
21 more accessible for everybody and to make sure you can
22 find things when you're looking for them, and to get

1 more products on the website for both industry and for
2 workers.

3 There is a lot of good material out there that
4 we should make available, and that's one thing we could
5 do.

6 I have a couple of different things to talk
7 about today. One really doesn't relate to the other,
8 but somehow they got merged on the agenda.

9 First, I wanted to talk to you about a very
10 exciting thing that we are doing at the Department of
11 Labor and OSHA, and that is we are convening a Hispanic
12 worker health and safety conference on April 14 and 15,
13 and I have a "save a date," so I'm going to pass it
14 around. It's not quite up on our website yet.

15 This conference is very relevant to this
16 Committee, which is why I asked to come here. I know
17 Ken's data was very sobering in terms of the
18 unemployment rate in construction right now, but
19 construction is currently the workforce sector with the
20 highest percentage of Hispanic workers.

21 Nearly one quarter of the industry is Hispanic
22 workers, and as you know, construction is one of the

1 more dangerous industries in the U.S., and the death
2 rate for Hispanic construction workers has been higher
3 than overall all other workers in the U.S., and
4 Hispanic workers have experienced high rates of
5 non-fatal loss work time injuries.

6 The primary focus of the conference is going
7 to be construction and construction workers, but we are
8 going to include other industries that have large
9 percentages of Hispanic workers.

10 The goal of the conference is to bring
11 together employer associations, labor unions, community
12 organizations, interfaith worker centers, the medical
13 community, safety officials, Government officials,
14 consulates, the entertainment community, and other
15 non-traditional partners.

16 The point of the conference is to showcase
17 effective partnerships between Government and community
18 groups and worker centers that provide education and
19 outreach. We want to showcase best practices by
20 employers. We want to showcase effective education
21 programs and materials that target low literacy,
22 Spanish speaking workers.

1 We want to discuss strategies. I heard this
2 mentioned before, to reach small employers. The Center
3 to Protect Worker Rights released a study this year
4 that two out of three fatal falls in construction
5 happens in employers with ten or fewer.

6 We need to figure out how you reach those
7 small contractors. We need to talk about the need for
8 better data on fatalities and injuries that Matt
9 alluded to.

10 I can talk about in a second, but there is
11 real under reporting, especially I think among small
12 contractors with sort of non-fatal but serious
13 injuries.

14 We are going to talk about how interfaith
15 groups and the consulates and community partners can
16 team up on education and outreach.

17 The conference is April 14 and 15. It is at
18 the Hilton Americas in Houston, Texas. This is my
19 first announcement of it. I come from the non-profit
20 world and when you're in the Government and you're
21 putting a conference together, it's not like you're
22 going out and throwing a wedding for your kid. You

1 have 45 lawyers to go through. Yesterday, we got the
2 e-mail that we could announce it, so there it is.

3 I'm actually very excited that it comes at
4 this time because I want to tell you that we are really
5 looking for your input and advice on what you would
6 like to see in this conference, what you can get out of
7 it. I know I've reached out to the Center to Protect
8 Worker Rights. I've reached out to the Association of
9 General Contractors.

10 I think I'll be reaching out to all of you for
11 a phone conversation in the next couple of weeks as we
12 put the agenda together and the workshops together to
13 make sure that we're getting the best product.

14 We'd also like your help in publicizing the
15 conference and getting support. The hotel can hold
16 more than 500 people. We're assuming it will be about
17 500.

18 We are planning to have a large Federal
19 presence and we hope state presence because a lot of
20 the goal is to get OSHA area offices into partnerships
21 to reach out in terms of education and training and
22 sort of to reach a more vulnerable sector of our

1 economy that we aren't usually able to reach for a
2 number of different reasons.

3 We are also going to have our Consultation
4 Services there so they get educated, so small
5 contractors and everybody else understands what they do
6 and how they can help.

7 Our educational centers will be there. NIOSH
8 is a partner. The National Institute of Environmental
9 Health Sciences is a partner. We are reaching out to
10 all the community clinics and the migrant clinics to be
11 partners there, as well as non-governmental bodies.

12 I think it will be a very exciting thing. The
13 Secretary announced this conference in her Labor Day
14 speech, and we are probably going to have some -- Wage
15 and Hour will be there also because this is sort of a
16 joint issue in outreach, but this will be a safety and
17 health conference.

18 I don't know if you want to talk about the
19 conference now before I go into another part of my
20 conversation. One of the things I just wanted to bring
21 to your attention, and unfortunately, I thought I'd be
22 able to bring the press release, but it must have just

1 gotten issued at 11:00, and that is we are really
2 focusing on building partnerships to reach workers with
3 education and information so they know their rights,
4 they know what is expected on the job, so they can
5 identify safety and health hazards and bring it up to
6 their employers that are hard to reach through sort of
7 traditional patterns we have.

8 Today in New York, and I think it's very
9 exciting, and there will be a release on our website
10 shortly, there is a joint program that is being
11 announced, a memorandum of understanding between
12 Federal OSHA, Federal Wage and Hour, the New York State
13 Department of Labor, the Mexican Consulate, and the
14 Catholic Migration Office, that they have announced a
15 joint partnership.

16 They are setting up a hotline. It's called
17 the Labora hotline, which will be run by the Catholic
18 Migration Office. Hispanic workers and Latino workers
19 can call in. We think that will be more accessible to
20 them. I think there is a large fear about calling the
21 Federal Government.

22 We are training the Catholic Migration Offices

1 to be able to receive these phone calls and then they
2 will transfer the phone calls to OSHA or Wage and Hour
3 to provide information, assistance, education and
4 outreach.

5 We think this is a good template and we are
6 looking forward to seeing how it works over the next
7 couple of months and will bring you the results in
8 April.

9 CHAIRMAN MIGLIACCIO: Any questions on the
10 first part at this time? Tom?

11 MR. BRODERICK: I am one of the co-chairs of
12 the multilingual work group. We had a resolution
13 earlier today supporting this conference.

14 MS. BERKOWITZ: Great.

15 MR. BRODERICK: I think one thing that we have
16 not brought up that I would like to surface for my
17 colleagues on the Committee is the possibility that we
18 could move ACCSH to have a meeting in Houston in
19 conjunction with this conference.

20 MS. BERKOWITZ: I think that would be a great
21 idea but we are not a member of the Committee.

22 (Laughter.)

1 CHAIRMAN MIGLIACCIO: We are going to be
2 discussing our next meetings and so forth this
3 afternoon. We will bring that back up. Thank you.

4 MS. BERKOWITZ: We'd be happy to accommodate
5 you. The Hilton Americas is a huge hotel.

6 MR. TOMASESKI: You said you had an attendance
7 capability of around 500. Who do you anticipate the
8 audience to be? Who do you want to get there?

9 MS. BERKOWITZ: I think the audience is
10 probably going to be made up of employer associations,
11 labor unions, representatives from the interfaith
12 worker centers, there will be a large Federal presence
13 and we are hoping state presence as well as presence of
14 our educational centers and our Consultation Services
15 at OSHA.

16 We are also looking for the educational
17 community, the medical community, and safety and health
18 professionals. ASSE, et cetera, to sort of bring
19 together sort of the best minds.

20 This is a working conference. It will be
21 educational but we will announce progress that we have
22 made. We will demonstrate best practices. We will

1 provide education. We also want sort of reporting back
2 and an agenda to move forward.

3 Right now, and I'm not announcing this
4 formally, but our plan is for a number of us from
5 Federal OSHA to stay over on that Saturday and work
6 with our area office and the consulate in the region
7 and other employer associations to have a program for
8 workers on Saturday in Houston, for Hispanic workers
9 and their families around health and safety.

10 I know the conference is on a week day so it's
11 hard for people to just leave their job and come. We
12 want to also reach out to the community in Houston who
13 will be hosting the conference.

14 CHAIRMAN MIGLIACCIO: Bill and then Kevin.

15 MR. AHAL: You mentioned one of the ways to
16 accomplish what you are doing -- you mentioned the word
17 "partnerships." Have you developed any thoughts on
18 just the term "partnership," what that means and who
19 you really want to reach out to in partnerships?

20 MS. BERKOWITZ: I know in previous years,
21 "partnership" had to deal with enforcement and things
22 like that. That's not what I'm talking about. I'm

1 talking about a real working relationship where our
2 office or our area offices especially are very
3 connected to the local community and channels to reach
4 workers and small employers and other employers that
5 need assistance.

6 That's what I mean by "partnership."

7 MR. AHAL: You plan to work perhaps closer
8 with the area offices in this than maybe has happened
9 in the past?

10 MS. BERKOWITZ: Yes, we are expecting a large
11 presence of area offices at this conference.

12 MR. AHAL: Thank you.

13 CHAIRMAN MIGLIACCIO: Kevin?

14 MR. BEAUREGARD: I have a statement and then a
15 question. I'll do my best to promote a state presence
16 at these meetings, but as you know, many of the states
17 are facing financial difficulties to the tune where
18 they have restrictions on out of state travel.

19 I don't know how big a presence we are going
20 to be able to have and it's a shame because I know a
21 lot of states have a large Hispanic construction
22 population. A lot of states have done a lot of

1 initiatives and activities and could offer valuable
2 input. I'll certainly promote that.

3 The question has to do with you talked about
4 the Catholic Migration Office setting up a hotline. Is
5 that a nationwide hotline or a local hotline?

6 MS. BERKOWITZ: It's a local hotline in New
7 York right now.

8 MR. BEAUREGARD: Thank you.

9 CHAIRMAN MIGLIACCIO: Any other questions?

10 (No response.)

11 CHAIRMAN MIGLIACCIO: I just have one
12 question, Debbie. On your news release you were
13 talking about that was going out at 11:00 today, will
14 we be able to use that like say for the iron workers so
15 I can put this in the magazine?

16 MS. BERKOWITZ: Yes. You will see from the
17 news release that it's a limited geographic area that
18 operates that hotline.

19 CHAIRMAN MIGLIACCIO: Didn't you say you had a
20 news release about the conference itself?

21 MS. BERKOWITZ: Yes. It should be on OSHA's
22 website, Wage and Hour, and the Department of Labor,

1 but I haven't seen it yet, and it's because the press
2 conference starts at 11:00 today. That would be great.
3 We will get you copies this afternoon.

4 CHAIRMAN MIGLIACCIO: Tom?

5 MR. BRODERICK: I would implore not only the
6 members of ACCSH that are here, but I know in the
7 audience there are people representing international
8 unions and trade associations, national trade
9 associations. I would implore you all to support and
10 to publicize this very important conference.

11 It is very important because of the subject
12 matter and very important because I really believe this
13 conference -- unlike the Hispanic conference that was
14 held in Orlando some years ago that didn't have any
15 follow through -- will have follow through, and we can
16 hopefully make an impact in turning around this
17 situation where Latino workers are getting hurt and
18 killed on their jobs at a disproportionate rate.
19 Whatever you all can do to help, that would be great.

20 MS. BERKOWITZ: I'm hoping by the end of next
21 week it will be up on our website and registration.
22 Right now, I have a "save a date" notice coming out.

1 CHAIRMAN MIGLIACCIO: Susan?

2 MS. BILHORN: Debbie, just one question. Is
3 there any outline of an agenda?

4 MS. BERKOWITZ: No. We're bringing it
5 together right now. We would love your input on what
6 you think in terms of workshops and things like that.

7 CHAIRMAN MIGLIACCIO: Thank you. If there are
8 no other questions, we will go into your second part,
9 OSHA 10.

10 MS. BERKOWITZ: I know there was a working
11 group on education and the OSHA 10-30 course, but I'm
12 actually talking about a very small part of this.

13 When I came to OSHA at the beginning of
14 September, there were a number of items that clearly
15 needed to be addressed, that we decided -- Acting
16 Assistant Secretary Jordan Barab asked me to sort of
17 move forward on, and I wanted to share with you what we
18 decided to do.

19 As you know, the ten hour course, as well as
20 the 30 hour course, is a voluntary program that started
21 way back even before I started working in health and
22 safety, and I started working in 1978, so it started

1 before that, that construction workers to provide a
2 general understanding of health and safety hazards on
3 the job.

4 It does not alleviate employers of the
5 responsibility to provide the on the job training that
6 they are supposed to with their specific hazards, but
7 it is very widespread. It is very helpful, very
8 informative, and it is sort of a good program to keep
9 out there.

10 It has really expanded a lot over the last ten
11 years. As you know, you get an OSHA card which has our
12 name on it as an agency when you finish the 10 or 30
13 hour, but OSHA itself as an agency doesn't set a
14 million specific requirements on what you are to be
15 trained on, things like this.

16 There have been a lot of questions raised the
17 Summer before I got here about the integrity of the
18 training that workers are receiving. We sort of had a
19 choice as an agency of what do you do when there is
20 this training out there which a lot of it is terrific.

21 I've seen a lot of programs, the Center to
22 Protect Worker Rights has shared with me a lot of their

1 programs, and they are great, but they don't do all the
2 training.

3 We got news reports of different training
4 taking place in different establishments.

5 What we decided to do just to start with, just
6 to sort of make sure that -- given that different
7 states are requiring this training, even though OSHA
8 does not because it's a very good thing and we promote
9 health and safety training, workers need to know what
10 the hazards are, but that doesn't mean that's all the
11 training they need.

12 We are starting the process of taking hold of
13 some of the basic courses, and we are going to start
14 with the four leading causes of fatalities, falls, et
15 cetera, and we are actually going to write a much more
16 detailed curriculum that will be a minimum of what
17 people can cover. They can cover more.

18 I've seen other programs which we all know
19 were very deficient, web based programs, and heard
20 stories about other kinds of training.

21 We are working with OTI. I know they have a
22 lot of copies of a lot of programs probably for

1 everybody on this Committee, that they are putting
2 together, but the beginning course just about OSHA and
3 your rights was about an hour.

4 I just talked to OTI early this week. So far,
5 it's two hours now. They are getting everybody's
6 material. That's fine. I think workers need to know
7 their rights. I think that's good.

8 That's what we are doing. I'm sure for the
9 courses that I have seen, like for the Center to
10 Protect Worker Rights -- there are a lot of other
11 alliances that OSHA has. Those courses, you don't have
12 to worry about. They are already covering stuff.

13 You need to believe me that there are plenty
14 of courses that are not. Some of them are very slanted
15 one way or the other. I think we just need to move
16 forward to give the courses a little more integrity,
17 especially if different states are going to require it.

18 I don't want people to think this is a
19 panacea, that workers take this course and they don't
20 need any other training. That is just not true.

21 That's what we are doing. I was asked by the
22 construction folks in the Agency to sort of talk with

1 you about it and get your input and hopefully your
2 support.

3 CHAIRMAN MIGLIACCIO: Any questions? Tom?

4 MR. SHANAHAN: I'm Tom Shanahan. I work with
5 the National Roofing Contractors Association. I've
6 been co-chair of the OTI work group here for the last
7 couple of years. I just want to let you know that I
8 think OTI has been very responsive in helping move the
9 ball in terms of making those courses better, and
10 especially the way they have taken on kind of a life of
11 their own in these last couple of years. We had a
12 really good meeting about it yesterday.

13 I do have a question with regard to your idea
14 for what sounds like a new introductory course. I
15 didn't understand.

16 MS. BERKOWITZ: The first course of the OSHA
17 rights' course.

18 SPEAKER: Module.

19 MS. BERKOWITZ: Yes, module, of the ten hour.
20 First is OSHA and then there are four others that deal
21 with the leading cause of fatalities. This is the
22 first module I'm talking about. We are just starting

1 there. We are not adding modules. We are just taking
2 the required modules and trying to build some integrity
3 into the courses.

4 CHAIRMAN MIGLIACCIO: Walter?

5 MR. JONES: I co-chair on the committee with
6 Tom. As you develop your curriculum, what are your
7 intentions of running that by our Committee for review?

8 MS. BERKOWITZ: I can do that, or maybe I can
9 run it by the subcommittee.

10 MR. JONES: Yes, the subcommittee for review.
11 Will there be an opportunity for us to provide input as
12 you are crafting it at the beginning stages so we don't
13 get to the end stage and find there may be problems, if
14 we could be a partner in this process along the way. I
15 think that would be really important and we could avoid
16 a lot of pitfalls that happen a lot of times, that
17 stuff comes out and we are not apprised of what led to
18 the development.

19 MS. BERKOWITZ: Yes.

20 MR. GILLEN: Matt Gillen, NIOSH. I want to
21 say if there is any way we can help, be sure to let us
22 know.

1 One concept that I hear them talking about
2 sometimes in addition to curriculum is thinking about
3 learning objectives as a way to think about it, because
4 you give people more flexibility that way.

5 What are the key things that we want people to
6 learn from the course and really just having a list of
7 those, it sounds like a very basic thing, but it
8 doesn't exist a lot of times. It is an important
9 concept.

10 MS. BERKOWITZ: That's a very good point. In
11 our initial discussions with OTI, we talked about the
12 starting point is learning objectives and then going
13 back from there to figure out how you teach the course.

14 Matt also raises a very good issue, and that
15 is in the training program for instructors, the whole
16 issue of building into that program how you train, how
17 you teach.

18 It's one thing when the program is a little
19 bit smaller and involuntary, but now that it has taken
20 on a life of its own, all these states are requiring
21 it, and that's okay, but you want to make sure it is
22 worth it.

1 I'm not saying your programs aren't or your
2 programs aren't, but you are not the ones that do all
3 the training. Our educational centers do training but
4 they don't do all of it.

5 CHAIRMAN MIGLIACCIO: Steve?

6 MR. HAWKINS: You discussed on line. Is there
7 any consideration underway that would limit on line for
8 the ten hour training? Are you talking about
9 restricting it or not allowing ten hour training to be
10 on line?

11 MS. BERKOWITZ: No, I didn't say that. I said
12 I saw an on line program and it raised concerns.

13 MR. HAWKINS: I probably would share those
14 same concerns, that's the reason for my question.
15 Second, I would just like to encourage you as you work
16 on this, if you are going to make specific things
17 required, which personally I support, I think there
18 needs to be a strong emphasis placed on some way for
19 workers -- if you are going to continue this on line
20 training -- a very meaningful way workers could pose
21 questions as they are trained and have answers to those
22 questions in somewhat of a timely manner.

1 I know I have looked at some on line training
2 and you don't see any way for a worker to ask
3 questions. I have been a presenter for ten hour
4 training, and the training became a discussion more
5 than dissemination of information. I have always felt
6 that was much more effective.

7 I understand there are ways to train on line
8 and I understand there are ways to do that effectively,
9 but for it to be effective, there has to be almost a
10 real time way for people to ask questions as they go
11 through that.

12 I would just like to encourage that to be
13 considered as you go through looking at and delineating
14 what needs to be covered in the ten hour training.

15 Thank you.

16 MS. BERKOWITZ: That's a very good point.
17 When the Nevada legislature made this training
18 mandatory, immediately there were questions, well, what
19 happens in the out of the way areas, where do people
20 have to travel for this training. They are still
21 working out the details now. They said well, who is
22 paying for this. Workers are supposed to take like two

1 weeks off and it's not even in their communities.

2 On line training came up. Oh, they can do
3 this on line. Then there were questions, well, is this
4 adequate.

5 It is something we really need to get a handle
6 on; right.

7 MR. HAWKINS: Thank you.

8 CHAIRMAN MIGLIACCIO: Walter?

9 MR. JONES: You are bringing up a lot of
10 interesting issues but maybe we need to look bigger
11 than OSHA 10. It's obvious from the unique
12 characteristics of the construction industry, states,
13 employers, workers, unions have been crying out for
14 some sort of basic required training, just to do the
15 work.

16 The employers want it. States have decided we
17 are going to make it mandatory because we think it's
18 important. Unions have gotten together and said we
19 want to make sure that any worker that goes into any
20 construction environment will have basic safety and
21 health training on awareness of these issues.

22 Not only advocating that employers'

1 responsibility to provide a safe work site and
2 additional training, but because of the hazards
3 associated with this industry where we are representing
4 21 percent of the fatalities and five percent of the
5 work.

6 Isn't this a time that the Agency may need to
7 look at, what is it, 1926.21, and tighten that up? We
8 can keep nibbling around the edges of the OSHA 10, but
9 at some point, we need to get ahead of this and really
10 design this and provide guidance.

11 The states have spoken, they like the
12 concepts. Employers have spoken, they like the
13 concepts. The workers and unions have spoken, they
14 like the concept. It is time for this Agency to take
15 the lead on this and stop -- I'm not trying to be too
16 rough here -- stop nibbling around the edges and
17 provide some direction.

18 MS. BERKOWITZ: I've heard that before and now
19 that we have a new Assistant Secretary, I think we will
20 be discussing that.

21 CHAIRMAN MIGLIACCIO: Tom?

22 MR. BRODERICK: I really wish Dr. Payne hadn't

1 fallen ill and would have been able to be here. I did
2 share yesterday that OSHA at the training institute is
3 making great strides in ratcheting up the quality of
4 the ten hour and the quality of the 30 hour, and the
5 integrity of the trainer program.

6 There are enabling and terminal learning
7 objectives for both the 10 and 30 hour.

8 I think to leave this segment of our meeting
9 not recognizing that wouldn't do service to the people
10 at OTE.

11 I am the head of one of the organizations that
12 is in an ed center, and we just had a meeting in San
13 Diego. There were a lot of really interesting and very
14 exciting things that OTE is right now embarking on
15 right now to address the quality issues, both for the
16 instructor courses as well as the courses those
17 instructors would be authorized to teach.

18 CHAIRMAN MIGLIACCIO: Any other questions?
19 Kevin?

20 MR. BEAUREGARD: I don't have a question. I
21 just wanted to say I applaud the efforts of tightening
22 up the curriculum for both the 10 and 30. I think

1 safety and health training is the key and we need to
2 make sure that the training that's being conducted out
3 there is meeting the needs to actually get people to a
4 place where they are going to be able to do their jobs
5 safer.

6 If we allow that training to be water downed
7 or not cover the appropriate things, we run a real risk
8 in just having paperwork training as opposed to
9 effective training.

10 I do applaud the efforts on that.

11 MS. BERKOWITZ: Thank you.

12 CHAIRMAN MIGLIACCIO: Any other questions?
13 Sarah?

14 MS. SHORTALL: Yes. At this time, I would
15 like to mark as Exhibit 9 and enter into the record the
16 statement on the conference in Houston, and I'd also
17 like to mark as Exhibit 10 the Hispanic employment and
18 construction newsletter, I guess, prepared by the
19 Center for Protection of Worker Rights. As Exhibit
20 10.1, a letter from Peter Stafford giving OSHA
21 permission to put that document in OSHA's public
22 docket.

1 CHAIRMAN MIGLIACCIO: Okay. Debbie, thank you
2 very much.

3 MS. BERKOWITZ: Thank you.

4 CHAIRMAN MIGLIACCIO: We will see you again, I
5 imagine.

6 MS. BERKOWITZ: Yes, maybe in Texas.

7 CHAIRMAN MIGLIACCIO: Before we break for
8 lunch, I want to remind everybody that in the back of
9 the room is the public comment sign in sheet. If
10 anyone wants to address the Committee this afternoon,
11 please sign up.

12 (A luncheon recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 (1:08 p.m.)

3 CHAIRMAN MIGLIACCIO: Our next presentation
4 will be put on by the Directorate of Standards and
5 Guidance. It will be an overview and clarification of
6 the following: revisions to the OSHA occupational
7 injury and illness recording and reporting regulation;
8 proposed rule on occupational exposure to crystalline
9 silica; and proposed rule on the Standards Improvement
10 Project III.

11 I'd like to introduce Dorothy Dougherty, and
12 you can introduce everybody else.

13 MS. DOUGHERTY: I will.

14 CHAIRMAN MIGLIACCIO: Thank you, Dorothy.

15 OVERVIEW AND CLARIFICATION BY OSHA

16 DIRECTORATE OF STANDARDS AND GUIDANCE

17 MS. DOUGHERTY: Thank you. Good afternoon. I
18 am pleased to be here to address this meeting of the
19 Advisory Committee for Construction Safety and Health
20 or ACCSH.

21 I'm Dorothy Dougherty, Director of OSHA's
22 Directorate of Standards and Guidance or DSG.

1 We are here today to present three regulatory
2 initiatives and ask the Committee for its
3 recommendations to OSHA. Background material on these
4 projects was distributed to the Committee over the past
5 few weeks.

6 If you have seen the Agency's regulatory
7 agenda published last Monday, you know that we have an
8 ambitious agenda, and Mr. Barab addressed this in his
9 remarks this morning.

10 The current Administration believes that
11 setting new standards is a critical tool to the Agency
12 to help ensure the safety and health of the American
13 workforce.

14 We are accelerating work on a number of
15 standards' initiatives that deal with a variety of
16 workplace hazards.

17 The first initiative we will be presenting
18 today is a proposed revision to OSHA's recordkeeping
19 requirements to add a column for employers to identify
20 work related musculoskeletal disorders or MSDs.

21 On the OSHA Form 300, we have targeted January
22 2010 for a proposed rule.

1 Second, DSG will be proposing the third phase
2 of our Standards Improvement Project or SIP, which has
3 been an ongoing effort to increase consistency and
4 clarity in our safety and health standards and to
5 delete obsolete requirements.

6 This phase includes a number of items that are
7 relevant to the construction industry, and we will
8 summarize those here today.

9 We are projecting a proposal date of February
10 2010 for SIP III.

11 Third, DSG will be presenting a major
12 rulemaking to propose a comprehensive standard
13 addressing exposure to crystalline silica. As you
14 know, many construction tasks can result in high
15 exposures to silica and increase the risk of silicosis,
16 lung cancer and other diseases.

17 The regulatory agenda projects a July 2010
18 date for publication of the proposal.

19 This past Tuesday, DSG presented its current
20 thinking on the silica proposed rule to the silica work
21 group. We had an excellent discussion on a number of
22 points.

1 I understand that the work group will be
2 reporting out to the Full Committee after our
3 presentation today.

4 Consulting with the ACCSH Committee is an
5 important step in our regulatory development process,
6 and we value the expertise that the Committee brings to
7 the table in formulating its recommendations.

8 I know asking the Committee to make
9 recommendations at this meeting on three rules may be
10 asking a lot. Please understand that this reflects the
11 Agency's renewed commitment to its regulatory program.
12 We greatly appreciate the Committee's attention and
13 look forward to answering your questions and hearing
14 your recommendations during this meeting.

15 Now I'd like to introduce Mr. Jim Maddux to my
16 right, the Acting Deputy for DSG, who will present on
17 our recordkeeping rulemaking initiative. Thank you.

18 CHAIRMAN MIGLIACCIO: Thank you.

19 MR. MADDUX: We got materials to you on the
20 MSD column rulemaking last week. Basically, this is an
21 issue that has a very long history. If you look, those
22 of us who remember the old OSHA 200 log that was used

1 for injury and illness recordkeeping, will recall there
2 was a column for disorders associated with repeated
3 trauma. It captured a lot of the things that we now
4 call "MSDs."

5 Unfortunately, it also captured hearing loss,
6 which caused some muddying up of the data, and it did
7 not include other types of injuries like back injuries.
8 It had some MSD data and some value but it was not a
9 very clean dataset for taking a look at MSD problems.

10 In 2001, we issued the rule that had the new
11 300 log that had the MSD column associated with it.
12 With the change of administrations, that regulation was
13 reviewed and a determination was finally made to remove
14 that column and to remove the regulatory text which
15 related to it.

16 Now we have re-evaluated the need for the
17 data. We think there is a need to try to get better
18 data on work related MSDs, so we are planning to
19 propose adding the column once again to the 300 log, so
20 that the data will be part of the BLS survey
21 information that will be reported out and will be
22 available to workers and to employers at individual job

1 sites so they have a better idea of what kind of MSD
2 problems they are having.

3 That's really about it. I'd be happy to
4 answer any questions that you might have.

5 CHAIRMAN MIGLIACCIO: Any questions from the
6 Committee?

7 MR. SHANAHAN: You mentioned there was
8 confusion with the data originally, including hearing
9 data and other things. How going forward would that be
10 clarified?

11 MR. MADDUX: That will be clarified because
12 the rule that came out in 2001 kind of did away with
13 the separate recording criteria for injuries and
14 illnesses, so the interpretations that were in effect
15 before 2001 with what we used to call the "blue book,"
16 are no longer there.

17 Back injuries, for example, were always
18 considered injuries, and they were never put in
19 "illness" columns as a disorder associated with
20 repeated trauma. I think we all know there are an
21 awful lot of back injuries with repeated lifting and
22 repeated activity.

1 It kind of cleans up both of those. The
2 hearing loss column was actually split out as a
3 separate column. Now when people have a recordable
4 hearing loss which has a certain threshold dealing with
5 audiograms, then they get recorded in the hearing loss
6 column. We have been collecting this data on hearing
7 loss now for about six or seven years in the BLS
8 survey, and it's really very useful and very
9 interesting.

10 I think people for a long time thought that
11 almost all hearing loss was sort of confined to
12 construction and manufacturing. A review of that data
13 shows that is clearly not the case.

14 MR. SHANAHAN: Thanks.

15 CHAIRMAN MIGLIACCIO: Walter?

16 MR. JONES: Can you clear up a couple of
17 things for us on this? Will this lead to an increased
18 number of injuries recorded and are we looking at a
19 change in definition?

20 MR. MADDUX: This does not change any of the
21 definitions or rules regarding which cases get recorded
22 on the log. All these cases are required to be

1 recorded right now. It's the same injury recording
2 criteria, is the case work related, is it a new case,
3 and does it meet one of the recording criteria, does it
4 have days away, transfers to another job, work
5 restrictions, medical treatment beyond first day.

6 Right now, we think all these cases are being
7 recorded, but instead of being checked in an MSD
8 column, they are being checked either in the injury
9 column or in the "all other illness" column.

10 This is just really bringing it together in
11 one place that identifies them as a separate class of
12 injuries and illnesses.

13 MR. JONES: Thank you.

14 CHAIRMAN MIGLIACCIO: Tom, did you have a
15 question?

16 MR. KAVICKY: Yes, I do. How does a
17 contractor document an MSD that happened for another
18 contractor and now it's reoccurring for him as a new
19 employer of that worker?

20 MR. MADDUX: Generally, the recordkeeping rule
21 is just as you would record them now, as Walter was
22 asking. If you have an employee that you hire that has

1 a preexisting condition, then you have to re-evaluate
2 any sort of new symptoms or problems that they have and
3 ask yourself the question is this a recurrence of an
4 off the job injury that is simply surfacing at work, or
5 is there an activity or exposure in the workplace that
6 caused these symptoms to reappear, and therefore, it's
7 a new injury.

8 It's really no different than if one of your
9 employees you had with you for many years has sort of a
10 recurring problem, so they have a back injury and they
11 come to work, did they do something at work that
12 re-injured their back or is it merely the same symptoms
13 of the old injury that are popping up again.

14 MR. KAVICKY: Thank you.

15 CHAIRMAN MIGLIACCIO: Any other questions?

16 MS. SHORTALL: (Inaudible.)

17 MR. MADDUX: Yes, I'll be more than happy to
18 come for that session.

19 MS. SHORTALL: Thank you.

20 CHAIRMAN MIGLIACCIO: We will now turn it over
21 to Ryan Tremain to talk about the SIP proposal.

22 MS. SHORTALL: Mr. Chairman, I would like to

1 mark as Exhibit 11 the materials provided to ACCSH
2 members on the proposed rules.

3 MR. TREMAIN: Hello, I'm Ryan Tremain.
4 Another project we have been working on is phase three
5 of the Standards Improvement Project.

6 The object of the Standards Improvement
7 Project is to identify and revise confusing, outdated
8 or duplicative language within the standards. It arose
9 originally in 1996 out of a Presidential Memorandum on
10 Improving Government Regulations. SIP I was out later
11 that year. It made miscellaneous changes to general
12 industry and construction standards, namely removing
13 obsolete medical requirements and eliminating
14 unnecessary cross references.

15 SIP II was out later in 2005, and it focused
16 on eliminating unnecessary paperwork, revising employee
17 notification requirements, and we hope to have SIP III
18 out ASAP, which will be focusing on a number of
19 relatively smaller problems with standards, including
20 rigging NIOSH records and training certifications.

21 You all probably have the 12 or 13 page
22 briefing paper that includes the topics that I will

1 highlight here briefly.

2 One of the items is the definition of "potable
3 water." Currently, it's based on an outdated and I
4 believe defunct U.S. Public Health Service Code. It is
5 more customary to refer to the current EPA standard,
6 which is listed up there.

7 Another item is methods for drying of hands.
8 The current standard stipulates that hand blowers
9 utilize warm air. However, OSHA recognizes that newer
10 technology uses high velocity air to achieve
11 essentially the same effect, and that's an acceptable
12 means. Therefore, OSHA proposes to remove the word
13 "warm" from the standard.

14 Another item is transfer of exposure in
15 medical records to NIOSH. Under the construction
16 standards, the proposal would remove the requirement to
17 transfer such records if an employer ceases to operate
18 or out of the term for storage of those records. That
19 includes access to employees' exposure medical records,
20 methyl dianaline, lead and asbestos.

21 Additionally, there are general industry
22 standards that operate in the same means. The records

1 are to be transferred to NIOSH. However, NIOSH has
2 requested that OSHA re-examine this practice because
3 they have been charged with receiving and processing
4 and storing all of these records for years now, and
5 essentially they don't use these records for anything.
6 It doesn't serve their purpose for research, and they
7 have asked to remove the sending of records to them.

8 Another item is removal of training
9 certification records. 13 carcinogens, vinyl chloride,
10 acrylonitrile and the rest of them listed. It is
11 deemed that these training certifications, the
12 maintenance thereof, is unnecessary due to the fact
13 that the training is verified by worker interviews
14 on-site.

15 Another is the lead standard and the triggers
16 by which an employer will act to protect their
17 employees exposed to lead. It has been suggested that
18 we amend the trigger levels for general industry and
19 the construction industry to be more consistent with
20 one another.

21 It essentially proposes when there is a
22 written notification and corrective action, currently

1 the language says "when it is at or above the PEL," and
2 it's going to be amended to say "above the PEL."

3 As for follow up blood sampling tests, it
4 currently reads "when it exceeds the numerical
5 criterion," and it will be changed to "is at or above."

6 Similarly, an amendment would be made to the
7 medical removal and return to service.

8 The next few items refer to respiratory
9 protection issues, namely the first one here is
10 removing a requirement in the lead standard as it is
11 duplicative of training requirements in Paragraph K of
12 the respiratory protection standard.

13 Additionally, in regard to the 13 carcinogens,
14 4-Nitrobiphenyl and the others, originally they were
15 listed as 13 altogether which were listed as
16 particulates. However, four of them are actually
17 liquids, methyl chloromethyl ether, bis-chloromethyl
18 ether, ethyleneimine and beta-propiolactone.

19 OSHA is proposing to revise the paragraph to
20 require a full face piece supplied air respirator with
21 continuous flow or pressure demand to provide workers
22 with maximum protection. It is believed this provision

1 would increase the level of protection and increase
2 protection of the face and eyes.

3 As for Appendices C and D at the end of the
4 respiratory protection standard, within Appendix C,
5 there is a term in a medical questionnaire that uses
6 the term "fits," that is proposed to be an outdated
7 term. I guess akin to "seizures." It has been
8 suggested that term "fits" be removed.

9 Likewise, within Appendix D, we propose that
10 it is made clear to employers that Appendix D within
11 Subpart (I) of 1910.134 is indeed mandatory.

12 Finally, with regard to respiratory protection
13 and breathing air quality for self contained breathing
14 apparatus cylinders, currently the standard references
15 DOT standards. Since that time, DOT has changed the
16 location of their standard, relocated it to
17 requirements in 49 CFR Part 180, Subpart C.

18 Our revision would simply reflect that and
19 provide the regulated community assistance in locating
20 the requirements they need to locate.

21 Another proposal has to do with weighting
22 requirements, specifically with slings and shackles.

1 These would be a revision to the construction rating
2 requirements by removing outdated safe working load
3 tables and instead utilizing the manufacturer
4 prescribed safe working loads.

5 There would be new requirements added that
6 slings have permanently affixed identification markings
7 and tags and use of these slings or shackles would be
8 prohibited if those markings or tags did not exist or
9 were not legible.

10 On the asbestos standard, there is currently a
11 simple typographical error. It references a paragraph
12 H that doesn't exist. That is something that will just
13 be corrected. The same goes for the cadmium standard,
14 there is a paragraph H referred to, which doesn't
15 exist.

16 As for commercial diving, it was proposed that
17 two requirements in the commercial diving standard be
18 removed because they are no longer necessary. One is
19 with regard to medical examinations and retaining the
20 records for five years. However, those medical
21 examinations are no longer required, so obviously
22 neither are the records.

1 Also, there is another typographical error
2 where 1910.20 is referred to instead of 1910.1020.

3 That just about covers all the construction
4 related items. I know that went pretty fast. It's
5 pretty well spelled out in the briefing document, and
6 I'm open to any questions you have.

7 CHAIRMAN MIGLIACCIO: Questions from the
8 Committee?

9 MR. SHANAHAN: Just a comment. I really
10 appreciate the fact that you sent that out as early as
11 you did because I had a chance to go through the whole
12 thing. Thanks so much.

13 CHAIRMAN MIGLIACCIO: Any other questions?
14 Steve?

15 MR. HAWKINS: I just wanted to ask a question
16 about the provisions when an employer goes out of
17 business, and that information be sent to NIOSH. Is
18 that going to be replaced with an instruction of where
19 employers should send those records in case employees
20 need to access them later in their life?

21 MR. MADDUX: No. I don't think employees are
22 actually going to NIOSH and getting their old records

1 now.

2 What we did with this rule is we put out an
3 advanced notice of proposed rulemaking several years
4 ago, and asked the public and kind of everybody to
5 suggest candidates that we would take care of in SIP
6 III, and NIOSH in their comments said we are getting
7 these records and we are not using them for analysis
8 nor are we getting very many requests to go look around
9 in them.

10 Really, they are literally just accepting them
11 and storing them. There will be no requirement to send
12 the records to anybody. When the company goes out of
13 business, the records would just -- they would go
14 wherever the rest of their records go when companies
15 dissolve.

16 I think different states do have requirements
17 for preserving business records for some period of
18 time, particularly for incorporated entities. It would
19 be treated in the same manner as any of those records
20 are treated.

21 MS. DOUGHERTY: I'll just add a statement
22 here, too. It has become a hardship for NIOSH because

1 they have run out of room really to store these things
2 and they are not maintained so they can go back and
3 retrieve them. They are paper copies.

4 The way it's been explained to me, they have
5 been storing them in some of the underground mines that
6 they have from the Bureau of Mines up in the Pittsburgh
7 area. They are paper copies of things that they
8 couldn't even go back if they were requested to
9 retrieve them.

10 The way the standard was written, it never
11 panned out to be useful on either end.

12 CHAIRMAN MIGLIACCIO: Tom?

13 MR. BRODERICK: Do the employers still have
14 the requirement to maintain those records for a certain
15 period?

16 MR. MADDUX: Yes, the medical records standard
17 requires an employer to keep records for the duration
18 of the employee's employment plus another 30 years. The
19 only question that arises is okay, what happens when
20 the company goes out of business during the 30 years.

21 The existing requirements for the employer to
22 keep and preserve those records will remain exactly the

1 same.

2 MR. BRODERICK: The change with slings and
3 shackles to require the safe working loads on a tag or
4 marked directly on the unit, how will that be phased
5 in? I can imagine there needs to be a period where the
6 inventory that employers have will be exhausted and
7 then the properly marked devices would be obtained.

8 MR. MADDUX: It's our understanding that the
9 current ANSI standard for slings requires markings or
10 tags. Slings that are being manufactured now, our
11 understanding is all the manufacturers are following
12 the ANSI standard or in some cases even going beyond it
13 in terms of safety. They should be on existing slings
14 today that are in service.

15 MR. BRODERICK: And shackles?

16 MR. MADDUX: And shackles.

17 MR. BRODERICK: The other thing I had a
18 question on, the removal of the duplicative language
19 regarding training where it's in the interim lead
20 standard; is that correct?

21 MR. MADDUX: Yes.

22 MR. BRODERICK: Also in the respirator

1 standard. Has that provided some confusion? I don't
2 understand why having that overlap -- so we would have
3 two bites at the apple to have people understand their
4 training. It's hard enough to get them to training.

5 MR. MADDUX: It's been one of the actual
6 stated goals of SIP over the years since its inception
7 in 1996, that one of the goals was to try to remove
8 duplicative language from the standard, that the same
9 requirement did not have to be stated more than once.

10 That is certainly one of the things that we'd
11 welcome comment on during the comment period. If there
12 is value in saying it twice, then we may decide to keep
13 it, if we get that sort of comment.

14 CHAIRMAN MIGLIACCIO: Walter?

15 MR. JONES: I was thinking just a couple of
16 months ago I was visiting a contractor who was going
17 out of business because of Work Comp costs and injury
18 costs, driving this person out of business.

19 I think before I got back in town, it became a
20 new business. In that case, is that data now okay to
21 be thrown away?

22 MR. MADDUX: Well, I guess the question there

1 is whether there is truly a new business or whether the
2 business has simply been re-labeled.

3 MR. JONES: The employees are still there. In
4 many cases in construction, it happens all the time
5 where it's Jones and then becomes Jones & Sons.

6 MR. MADDUX: I don't think that's actually a
7 company that has gone out of business. I believe that
8 is a company that has simply reorganized itself. I
9 think it has to be looked at on an individual company
10 basis.

11 The idea of the requirement has always been
12 for companies that truly cease to do business.

13 CHAIRMAN MIGLIACCIO: I have a question. Is
14 there some way -- a person works for a company say five
15 to seven years. They leave the company and they go to
16 work for company B and five or six years down the road,
17 this company goes out of business. Is there some way
18 we can make it mandatory that the company notify their
19 employees that they are going out of business so they
20 can request their own medical records?

21 MR. MADDUX: That's an alternative.

22 CHAIRMAN MIGLIACCIO: Just because they are

1 supposed to do something with it because the state says
2 they have to doesn't necessarily mean they are going
3 to. A lot of people, if they don't know -- this is one
4 of the things we talked about with the OSHA 10, this
5 might be something we would want to put in that
6 introduction to OSHA, the Worker Rights, that they know
7 and they should know they have the right to get their
8 medical records.

9 This way, if they know the company is going
10 out of business, they will be informed to get them.
11 This is probably something we will have to discuss.

12 MR. MADDUX: To the extent they are so easily
13 locatable, where companies move and workers move, too.

14 CHAIRMAN MIGLIACCIO: I know with the
15 Department of Energy, the problems they had there with
16 people working there during the Cold War, their
17 records -- it took sometimes years to get their
18 records. They knew where they worked and they knew who
19 they were working for, but the records weren't there
20 any longer.

21 If they were organized labor, it was good,
22 they could go back to the union. If they were working

1 for the unorganized area, they don't have that same
2 mechanism.

3 MR. MADDUX: That's the same difficulty that
4 NIOSH has with trying to do epidemiological research in
5 a lot of these areas. The workers have gone from one
6 employer to the next and they have gone from one
7 actually completely career to the next, so it's very
8 difficult to patch together the occupational history of
9 an individual, especially for when they are already
10 deceased, to figure out well, yes, they died and they
11 died of lung cancer but what were they exposed to
12 during their life.

13 That was really part of the original idea of
14 trying to collect up these records, that it might
15 provide some research database to go in and try and
16 figure some of that out. Unfortunately, that goal was
17 not met. The data is simply too spotty and in too many
18 different forms and too difficult to work with to do
19 that.

20 We can certainly take a look at whether or not
21 it's reasonable to have some other sort of mechanism to
22 try to make sure that individual workers get their

1 medical records. They always have the right to them.

2 CHAIRMAN MIGLIACCIO: I know they have the
3 right to them. I'm just saying if the person should
4 pass on and their family doesn't know what their rights
5 were. That's the other problem with this, if they
6 don't have any idea where they can go to get this
7 information.

8 MR. MADDUX: Yes, I think that is a great
9 difficulty. I don't know how often it comes up. When
10 it does come up, it can be very difficult to try to
11 patch together, like I said, this entire occupational
12 history and this whole string of medical records for a
13 person's life.

14 CHAIRMAN MIGLIACCIO: Thank you. Any other
15 questions? Matt?

16 MR. GILLEN: I did have a technical question
17 from our national personal technology lab about one of
18 the respirator things. I forgot to print it out and
19 bring it. I was going to bring it tomorrow morning.

20 MR. MADDUX: If you could e-mail it to us, we
21 can try to take a look at it this afternoon and see if
22 we could figure it out.

1 CHAIRMAN MIGLIACCIO: Any other questions?
2 Jim?

3 MR. TOMASESKI: In terms of an employer going
4 out of business and like we were talking about,
5 becoming another business, who is going to make that
6 determination?

7 The reason I ask the question is because I
8 could see the possibility of records being trashed when
9 they should have been kept, and somewhere down the road
10 in some sort of litigation process or something, it was
11 determined they should have been kept, but if there is
12 no instruction to the employer to keep them or somebody
13 to keep them, then they are lost forever.

14 MR. MADDUX: That's a requirement in the
15 existing rule. To the extent that it is a problem that
16 companies are reorganizing and claiming they are going
17 out of business and inappropriately destroying records,
18 that's a problem today that has nothing to do with us
19 changing this rule, I don't think.

20 I think that those companies are not changing
21 names and sending in records to NIOSH now. I don't
22 know what the practice is. We are not out there with

1 every company that's reorganizing or changing its name
2 telling them -- you know, to hold their hand as they go
3 through that process.

4 We are finding what we find when we go through
5 inspections and so forth. I haven't heard anything
6 from any of our field folks that I've talked to about
7 this being a problem that they are running into a lot.

8 If there is something we need to know, we'd
9 love to hear about it. Do you have anything to add to
10 that?

11 MR. CONNELL: In the broader context from an
12 enforcement standpoint in construction specifically, we
13 have been for quite some time very concerned about
14 businesses who attempt on paper to make it look like
15 they have gone out of business and they just re-form.
16 Some of them do this expressly to avoid or to try to
17 avoid OSHA penalties. In fact, we internally have been
18 developing some procedures to better deal with that.

19 Ultimately, it's a legal issue. The question
20 of whether you have a legitimate business, the question
21 of whether in legal terms it is referred to as piercing
22 the corporate veil where a court would find this is

1 just a paper exercise, it's really the same company,
2 that's ultimately a legal issue.

3 It's something that we are very concerned
4 about because obviously a company that really is
5 continuing to do what it was doing shouldn't be able to
6 just get out from under its obligations by hiring
7 clever counsel.

8 It's a much broader problem than this in terms
9 of medical records. It relates to OSHA's ability to
10 enforce its requirements. That is why we are concerned
11 about it and we spend a fair amount of time when these
12 cases come up trying to deal successfully with it.

13 MR. MADDUX: In terms of this rule, the intent
14 is to maintain the existing requirement for the
15 employer to keep these records for 30 years even though
16 they go through these reorganizations. There is
17 certainly no idea that we are trying to let people sort
18 of wash away these records.

19 MR. CONNELL: Let me just say there have been
20 a number of cases where we have gone through the rather
21 considerable effort on the enforcement side to prove
22 that companies had not in fact dissolved and to keep

1 after them until their obligations are met. We do make
2 that effort, just in case anybody is listening.

3 (Laughter.)

4 CHAIRMAN MIGLIACCIO: Matt?

5 MR. GILLEN: I asked our folks in the
6 Education Division who really are responsible for this
7 provision to provide some information because I
8 anticipated there might be some questions. I believe
9 OSHA is doing this at NIOSH's request.

10 They sent back some information. I'll read
11 part of it hopefully to clarify NIOSH's rationale here.

12 Based on the regulatory history, it is NIOSH's
13 understanding that the purpose of the transfer was to
14 have the records available as a resource for potential
15 NIOSH research, such as conduct of epidemiological
16 studies.

17 While NIOSH supported this regulatory intent
18 in the abstract many years ago when the referenced OSHA
19 standards were first developed, the records
20 unfortunately have not proved suitable for research
21 purposes.

22 NIOSH has been receiving these types of

1 records for more than 30 years and through 2006 at the
2 time this was put together, NIOSH had cataloged over
3 170,000 records. There is one exception, NIOSH has not
4 used any of these 170,000 records for research nor was
5 NIOSH aware they were used by OSHA for regulatory
6 purposes.

7 NIOSH has reviewed the records it has received
8 on several separate occasions and determined they were
9 not suitable for research. As a general rule, they
10 don't contain work histories which would be necessary
11 to tie exposure levels to specific job activities, nor
12 do they appear to have been systematically collected.

13 In addition, the quality of records varies
14 greatly from company to company. Some provide fairly
15 complete medical files. Others simply appear to be a
16 random collection of medical information acquired over
17 the course of the individual's employment, whether or
18 not it relates specifically to a particular exposure.
19 Others contain no medical information at all.

20 They may only include, for example, sign in
21 sheets verifying an employee attended a particular
22 training session, such as hearing protection, and in

1 some cases, the records are not maintained by employee.
2 They may be arranged by project, for example, making
3 them difficult to use.

4 The OSHA standard requires transfer of
5 employee medical exposure records related only to
6 specific hazards or activities, but many companies are
7 simply submitting their records without attention to
8 the actual criteria or first asking NIOSH if we really
9 wanted them.

10 In one case a company that was closing
11 notified NIOSH after the fact that they had shipped
12 more than 500 boxes of company records. These records
13 were not ones that the OSHA standard required be sent
14 to NIOSH. Had we been notified prior to shipping, we
15 would not have instructed the company to send them.

16 However, we could not stop shipment because
17 the records were already in transit. We could not
18 refuse delivery and have them returned because the
19 company no longer existed. There was literally no one
20 to take them back.

21 Once NIOSH received these records, they passed
22 into NIOSH's possession. At that time, certain

1 processes and requirements kick in, and the boxes are
2 currently in temporary storage in a NIOSH facility
3 waiting for resources to become available to process
4 them.

5 This is the kind of problem it is. Often when
6 a company closes, only skeleton staff remain to
7 complete the shutdown. Some may be contractors hired
8 specifically to close the facility and who have no
9 historical knowledge of the company. As a result,
10 company resources may not be available to allow
11 appropriate records clean up prior to sending them to
12 NIOSH.

13 In fact, some companies have used the
14 opportunity to simply empty their files and send
15 everything to NIOSH. As a result, we often receive
16 extraneous information unrelated to the requirements of
17 the standard, such as contract reports, drug test
18 clearances, records for hazards that are not required
19 to be submitted.

20 On some occasions, even when valid medical
21 records are sent, the records do not identify the
22 particular hazard the worker was exposed to.

1 Once NIOSH takes possession of the records, we
2 must expend our increasingly scarce research resources
3 in processing them in accordance with the NIOSH records
4 schedule.

5 This involves reviewing, sorting and
6 extracting the information from the records and
7 manually entering the information into an electronic
8 inventory database, and then hard copy records are
9 re-boxed and shipped to the Federal Records Center
10 where they remain stored for 30 years.

11 We have previously estimated the in-house cost
12 of processing to be about \$1.35 per record for records
13 received under the OSHA carcinogen standard.

14 Other more poorly organized records, the
15 extraneous ones, are more costly to process as well.

16 The long term storage cost for the 170,000
17 records currently that we have, it represents a total
18 lifetime storage amount of more than \$2 million.

19 NIOSH has received very few requests from
20 employees for their records in their possession.
21 Between 2000 and 2005, one period that we tracked,
22 there was only 18 such requests.

1 In certain of these instances, we haven't even
2 been able to provide the records that were requested
3 because we didn't have the resources to commit to
4 cataloging the records.

5 In summary, NIOSH believes that at the time
6 the records transfer requirements were incorporated
7 into the OSHA standards, it was somewhat naively
8 believed that the records would provide a valuable
9 research resource, but this has not been the case for a
10 number of reasons.

11 Based on our experience over the last 30
12 years, we believe the significant costs associated with
13 the records transfer requirements cannot be justified
14 in light of the complete lack of scientific utility of
15 the records.

16 That kind of represents NIOSH's perspective on
17 what our experience has been.

18 CHAIRMAN MIGLIACCIO: Any other questions
19 related to this topic?

20 (No response.)

21 MR. MADDUX: Thank you.

22 MS. SHORTALL: I would like to mark as Exhibit

1 12 (Inaudible.) Also, as Exhibit 12.1 (Inaudible.)

2 CHAIRMAN MIGLIACCIO: Okay.

3 MR. O'CONNOR: Good afternoon, everyone. My
4 name is Dave O'Connor. Bill Perry is joining me here
5 along with Dorothy.

6 As Dorothy mentioned, we had an excellent
7 discussion on Tuesday in the work group regarding our
8 silica proposal. For the benefit of those of you who
9 were not able to attend, I'm going to very briefly run
10 through an overview of the NPRM here, and perhaps
11 expand a little bit on some of the portions of that
12 that were of some interest in the work group
13 discussion.

14 OSHA currently has a permissible exposure
15 limit that is based on a particle counting method that
16 is obsolete. There is also a substantial amount of
17 information that indicates that our current permissible
18 exposure limit does not adequately protect workers.
19 There is evidence indicating that exposure to
20 crystalline silica is associated with lung cancer,
21 silicosis, other respiratory diseases such as
22 bronchitis and COPD, as well as kidney and autoimmune

1 disease.

2 Those are the reasons why we are proceeding
3 with this rulemaking.

4 We are currently developing a health effects
5 analysis and a quantitative risk assessment and those
6 are undergoing peer review. We anticipate that peer
7 review process is going to be completed in January, and
8 we will be publishing those in the Federal Register
9 with the proposed rule.

10 The Agency has identified 11 construction
11 activities where we anticipate exposures can occur. You
12 received a handout that gives an indication of the
13 exposures that are associated with those tasks. It
14 goes into more detail than we have presented here in
15 this summary slide.

16 You can see from the general overview there
17 are a substantial number of exposed employees who are
18 exposed at relatively low levels, as well as a good
19 number of people who are exposed in excess of our
20 current PEL, those in the range of about 250 micrograms
21 per cubic meter and above.

22 The Agency is working on an economic analysis

1 that will provide estimated costs and impacts of the
2 proposed standard. That is a work in process.

3 We do have some information based upon the
4 small business review process that was conducted in
5 2003, and based on that information, we have a general
6 indication that the annual cost of the rule would be
7 about \$490 million with a PEL of 100 micrograms per
8 cubic meter, and that would be higher, about \$603
9 million per year if the PEL was at 50 micrograms per
10 cubic meter.

11 A substantial proportion of those costs,
12 approximately \$300 million, would be associated with
13 achieving compliance with the current PEL.

14 As far as the provisions of the rule, we are
15 considering a number of revisions to the SBREFA draft
16 that was provided to you prior to the meeting. We are
17 looking at a rule that would apply to all workplaces
18 covered under our construction regulations with an
19 exception possibly where objective data is used to
20 demonstrate that exposures cannot exceed the action
21 level.

22 That is an approach that has been used in

1 several previous OSHA standards.

2 On the definitions, we are looking at a number
3 of revisions there, first deleting our definition of
4 "compliant laboratory" and incorporating much of the
5 substance of that definition in the text of the
6 standard.

7 Eliminating the definition for "competent
8 person," and we will talk a little bit about that later
9 when we get into methods of compliance, and adjusting
10 the definition of the "health care professional" to
11 coincide with the standard terminology that the Agency
12 has been using in recent standards, using the term
13 "PLHCP," or physician or other licensed health care
14 professional.

15 We are considering two alternative PELs at
16 this point, either 50 micrograms per cubic meter or 100
17 micrograms per cubic meter as an eight hour time
18 weighted average. That is measured as respirable
19 crystalline silica.

20 We are not looking at the 75 micrograms per
21 cubic meter, a potential PEL that was considered in the
22 SBREFA draft, and we are considering an action level of

1 one-half the PEL, either of the PELs, the 100 or 50,
2 that we are considering, so there would be an action
3 level of 25 associated with 50 and an action level of
4 50 micrograms per cubic meter if the PEL was 100.

5 For methods of compliance, we are continuing
6 to rely upon the traditional hierarchy of controls
7 where engineering and work practice controls would be
8 required prior to use of respiratory protection.

9 There is a Table 1 that was included in the
10 SBREFA draft, and we provided a modified version of
11 that. Table 1 is an approach that would allow the
12 employer to go with certain specified control measures
13 for a given task.

14 If they follow those control measures and
15 implemented them properly, then they would be
16 considered to be in compliance with the methods of
17 compliance section and also would avoid a requirement
18 to do exposure monitoring.

19 The methods of compliance section would also
20 include certain housekeeping methods.

21 The prohibited practices from the SBREFA draft
22 are substantially unchanged. We were looking to delete

1 some specific provisions that were included in the
2 SBREFA draft that applied to abrasive blasting
3 operations, and the requirements for a competent person
4 is something that we were looking at deleting.

5 I can talk a little bit about the rationale
6 for us when we were considering that competent person
7 provision.

8 If you look at the competent person provision
9 in the SBREFA draft, it indicates very generally what
10 is expected, and that is on page five of the draft
11 standard. It indicates that the competent person would
12 evaluate workplace exposures and the effectiveness of
13 existing controls and implement corrective measures.

14 Our thought was really that in and of itself
15 might not add a great deal of value, that the measures
16 themselves were really what was important, that if the
17 appropriate controls were in place, if exposures were
18 properly assessed, that would be the substantive
19 requirement that would be protecting workers, and the
20 requirement for a competent person to implement that or
21 oversee that may not particularly add any value.

22 Particularly in light of the SBREFA process

1 that we went through, and for those of you who are not
2 familiar with that, that is a process where OSHA along
3 with the Small Business Administration and the Office
4 of Management and Budget bring in groups of small
5 entity representatives to get their input into the
6 draft rule.

7 When that process was underway in 2003, we got
8 some input on the competent person requirement, and
9 there was a substantial amount of confusion with regard
10 to what that meant, what the qualifications of the
11 competent person needed to be and what their
12 responsibilities were. That was a factor that played
13 into OSHA's thinking as well.

14 We are looking at some adjustments to
15 compensate for that, and you can see, for example, in
16 Table 1, in the modifications that were made to that,
17 that there are some indications that controls be
18 implemented in accordance with manufacturer
19 specifications.

20 Measures of that nature that are intended to
21 ensure that the controls that are implemented would be
22 properly implemented and would be effective in their

1 intended purpose.

2 Also, with regard to the SBREFA draft, we were
3 looking at a potential change in the requirement for
4 regulated areas. Originally, we had been looking at a
5 traditional approach where a regulated area would be
6 established where exposures could exceed the PEL.

7 Again, in the SBREFA process, we received some
8 input there, that there may be potential problems in
9 some situations. Road construction work was an example
10 that was given, where it may be very difficult for an
11 employer to properly establish and demarcate a
12 regulated area and control access to it.

13 What we were looking at there was the
14 possibility of establishing a requirement for a written
15 exposure control plan, and we are looking for some
16 input on that from the Committee as to whether that was
17 an approach that might be effective in this situation.

18 For exposure assessment, we are looking at an
19 action level of one-half the PEL with a fixed periodic
20 monitoring schedule based upon initial sampling
21 results, and we are also considering an alternative
22 that would allow the employer to sample as frequently

1 as necessary to accurately characterize exposure.

2 As mentioned earlier, when employers are
3 following Table 1, there would be no requirement for
4 monitoring.

5 There is also the requirements for the
6 compliant laboratory which are moved into the exposure
7 assessment section and would apply to the laboratories
8 that employers are using for analysis.

9 Essentially, what would happen here as far as
10 exposure assessment is the employer would have three
11 options. First, they could either choose to follow
12 Table 1 with regard to the activities that are
13 mentioned there.

14 They could do monitoring in the traditional
15 approach that is included in the OSHA standards, or
16 they could follow that performance oriented approach
17 that would allow coverage of tasks that were not listed
18 in Table 1, or could allow in certain situations new
19 technologies to be incorporated where something new was
20 developed and a sufficient body of data was developed
21 to indicate the effectiveness of that control. The
22 employer could use that and rely upon that data with

1 the performance oriented approach.

2 We are looking at employee notification of
3 monitoring results within five days of receipt, and
4 that is consistent with a previous SIP rulemaking that
5 standardized that for the construction industries.

6 Respiratory protection. We weren't looking at
7 anything that was different or in addition to what's
8 required under the respiratory protection standard.

9 Protective work clothing. This is another
10 topic where we were hoping for some input from the
11 Committee as to identifying an appropriate trigger for
12 protective clothing requirements.

13 Silica, of course, is an epidermal hazard.
14 Protection clothing would be considered where it would
15 be helpful in reducing airborne exposures. Whether
16 that is actually an useful requirement in any
17 situation, we are unsure of that, and if so, what the
18 appropriate trigger would be for a requirement of
19 protective clothing is something that is open at this
20 point as well.

21 Housekeeping and hygiene practices. We were
22 considering combining the housekeeping requirements

1 similar to those in the SBREFA draft and incorporating
2 those in the methods of compliance section.

3 With regard to the employee health screening,
4 we were looking at a requirement for medical
5 examinations within 30 days of initial assignment and
6 annually thereafter with an x-ray required at least
7 every three years.

8 This would be following an approach that is
9 consistent with other OSHA health standards where the
10 employee would be receiving the written medical
11 opinion. The written medical opinion would pass from
12 the physician or other licensed health care provider to
13 the employer and then would be provided to the
14 employee.

15 If you had a situation where an employee was
16 changing jobs at fairly frequent intervals, they would
17 have that written medical opinion and would be able to
18 take it to a future employer so that if after three or
19 six months they moved to a different employer, they
20 would have that written medical opinion that they could
21 carry forward, and the new employer could use that as a
22 basis for demonstrating they had received their medical

1 examination within the past year.

2 The SBREFA draft had a number of alternatives
3 there that we are no longer considering.

4 Medical testing. We are looking at adding a
5 requirement for tuberculosis testing at the initial
6 exam at the discretion of the PLHCP, and referral to a
7 pulmonary specialist when the PLHCP deems it necessary.

8 We were looking at eliminating a potential
9 requirement for reporting silicosis cases to NIOSH
10 simply because the information that the employer is
11 receiving is probably not going to be of particular
12 value to NIOSH.

13 Hazard communication. The Agency is currently
14 working on the GHS rulemaking and we were relying upon
15 that for the specific information that would be
16 included on labels and the classification that would be
17 determining what information was provided on material
18 safety datasheets.

19 Recordkeeping. We are not looking at any
20 substantive changes from the SBREFA draft.

21 Mentioned earlier, we had several issues that
22 we were trying to draw the Committee's attention to.

1 First was Table 1 and the general concept that's
2 presented there. It's a little bit different than what
3 we previously used in OSHA health standards.

4 We are presenting certain construction tasks
5 and the controls that would be associated with them,
6 and whether that's an appropriate approach for the
7 silica standard.

8 Regulated areas. Whether a requirement for a
9 written exposure control plan would be an appropriate
10 alternative to the traditional approach of establishing
11 regulated areas, and the protective clothing
12 requirement, whether it's needed, and if so, what the
13 appropriate trigger would be.

14 We would be happy to take any questions you
15 might have.

16 CHAIRMAN MIGLIACCIO: Questions? Kevin?

17 MR. BEAUREGARD: I have a comment. You gave a
18 similar presentation in the silica work group
19 yesterday. We had a discussion about possibly -- I
20 think we were all in agreement that the table approach
21 seemed to be a pretty good approach particularly for
22 employers that may not be as cognizant of the more

1 specific issues.

2 One of the issues we talked about is possibly
3 adding some type of language that would allow for
4 objective data to be utilized for new products and new
5 technologies. I think somebody was passing around the
6 room some literature on a piece of equipment that
7 really isn't addressed by the table.

8 However, there appeared to be objective data
9 that would support that if you used that product, you
10 would be in compliance with the standard.

11 Is there any thought about adding some
12 language like that?

13 MR. O'CONNOR: Yes. That performance oriented
14 alternative is something that we are looking at
15 including in the standard. It would be a situation
16 where the data would have to be sufficient to
17 accurately characterize exposures in the particular
18 situation that is present in that workplace.

19 You would have to have a situation where there
20 is that type of data, but we are looking at having that
21 type of allowance in the standard.

22 MR. BEAUREGARD: Thanks.

1 MR. PERRY: Bill Perry. Just let me add to
2 that. Keep in mind employee exposure as we mean under
3 our proposed rule will be a full shift, time weighted
4 average exposure to crystalline silica, as determined
5 by personal sampling.

6 To the extent objective data provides reliable
7 information on what exposures characterized that way
8 would be, but clearly different kinds of objective
9 data -- I'm not familiar with the kind of information a
10 manufacturer might provide for their equipment -- I
11 think we would expect to be fairly cautious in terms of
12 how we look at objective data or how we might define it
13 because it's goal would be for the purpose of assessing
14 full shift exposure to the people who are working with
15 that piece of equipment, so just a caveat to that.

16 MR. BEAUREGARD: I agree with that approach.
17 I think it would be good if OSHA does develop something
18 and they can get that out so the manufacturers would be
19 aware of what is required.

20 As we know, technology changes quite a bit and
21 a lot of the OSHA standards right now didn't envision
22 the products that are out there right now, so it would

1 be nice to put something in that wouldn't be obsolete
2 in another five years that would account for new
3 equipment.

4 CHAIRMAN MIGLIACCIO: Any other questions?
5 Tom?

6 MR. KAVICKY: As I brought up in the silica
7 work group meeting on Tuesday, I would be not in favor
8 of dropping the "competent person" language part. I
9 believe that not all employees understand the hazards
10 or may be made aware of the hazards.

11 Somebody has to be the authoritarian to take
12 responsibility, and it would bring consistency with the
13 other standards that require the competent person
14 language. I just wanted to pass that on.

15 CHAIRMAN MIGLIACCIO: Matt?

16 MR. GILLEN: Yes. I had a question. Dave,
17 can you clarify, you mentioned how you are going to not
18 use the definition of the "compliant laboratory." Does
19 that mean you are going to incorporate the concept into
20 some of the provisions but just not use the definition?

21 MR. O'CONNOR: Yes, that's correct. We had a
22 separate term, "compliant laboratory" in the SBREFA

1 draft and a definition for it and what it entailed.
2 What we are looking at here is having in the exposure
3 assessment paragraph very similar requirements that
4 would apply to the laboratories that are used, so it is
5 just simply avoiding use of that additional term.

6 I think substantively, the requirements are
7 not going to be --

8 MR. GILLEN: In NIOSH, the key expert on this,
9 Dr. Rosa Key Schwartz, felt that a lot of those
10 specific characteristics were really important.

11 MR. O'CONNOR: Yes.

12 CHAIRMAN MIGLIACCIO: Dan?

13 MR. ZARLETTI: You said you wanted to have
14 some conversation with this group about the trigger
15 point to PPE?

16 MR. O'CONNOR: Yes.

17 MR. ZARLETTI: Over and above what we already
18 know as being appropriate, depending upon the person.
19 In other words, it addresses size, but it's indirectly.
20 Are you looking at more specifics?

21 MR. O'CONNOR: We are really looking
22 specifically at silica and whether there should be a

1 requirement for protective clothing for people who are
2 working with silica that is based on exposure to silica
3 and not for any other purpose.

4 MR. ZARLETTI: Right, but when you threw out
5 the word "trigger" --

6 MR. O'CONNOR: Yes, when would that be
7 required. I believe the SBREFA draft might have
8 indicated for those exposed above the PEL or something
9 like that, I'm not certain offhand, but what would it
10 be that would trigger a requirement for protective
11 clothing if there was to be one.

12 MR. PERRY: If I could elaborate a little bit.
13 I think that is right, that our SBREFA draft would have
14 required employers to provide and require that
15 employees wear protective clothing where there are
16 exposures above the PEL.

17 We may alternatively have had a provision to
18 permit vacuuming of dust from clothing.

19 The concern is when does somebody's work
20 clothes get so dusty that the dust coming off the
21 clothing adds to their inhalation exposure. We are
22 thinking now that the PEL might not be an appropriate

1 point at which to require clothing because the air
2 concentrations are still pretty low, and we wouldn't
3 expect at least from what's in the air for the clothing
4 to become so heavily contaminated that it is going to
5 become dusty.

6 We have a little bit of information that is
7 fairly old that suggests to us that when clothing
8 becomes grossly contaminated with very fine silica
9 containing material, that it can in fact add to the
10 inhalation burden, but I don't know that the PEL is
11 really the point at which we should address that issue.

12 We don't want to unnecessarily be putting
13 people in protective clothing because that has its own
14 problems.

15 The question is should protective clothing be
16 required for certain kinds of operations that are
17 particularly dusty or are there other situations that
18 could be spelled out in the standard that would trigger
19 the use of protective clothing. That's what we mean by
20 "trigger."

21 MR. ZARLETTI: As a contractor, I'd be looking
22 more at the source of that exposure than I would be

1 clothing we could provide. I would be talking about
2 minimizing the dust so I could minimize the exposure
3 and clothing.

4 MR. PERRY: Of course. This is something that
5 would be designed to work hand in hand with our
6 requirements for an exposure limit and all the other
7 dust control requirements that are in the standard.

8 Still, there may be instances where things go
9 wrong or instances where it's just dust can't be
10 controlled to that level, at which point we need to
11 supplement that with respiratory protection and it may
12 be protective clothing as well.

13 We are just not sure. Maybe the answer is
14 nobody uses it and nobody has ever found the need to
15 use it, or maybe the answer is yes, there are certain
16 situations where you can tell, the clothing gets so
17 dusty that you really don't want the person continuing
18 to wear it for very long because they are going to be
19 breathing in the dust from what comes off the clothing.

20 Any advice the Committee might have as to what
21 makes sense here would be helpful to us.

22 CHAIRMAN MIGLIACCIO: Tom Shanahan and then

1 Susan and Steve.

2 MR. SHANAHAN: The question I have is with
3 regard to is at a number of silica work group meetings
4 and three years or so ago, NIOSH, OSHA and the roofing
5 industry got together because of exposures of cutting
6 roofing tiles.

7 Part of the issue there was and why NIOSH has
8 been looking at it so carefully is the exposures and
9 how to reduce them, and when you are dealing with a
10 roofing situation, they are problematic to say the
11 least.

12 This standard comes from original data which
13 precedes when this issue came up and we were all made
14 aware of it.

15 Cal OSHA has done something recently that
16 addresses that. I wanted to see if maybe we could
17 bridge that somehow so the Federal one considers that
18 in some way, shape or form as well.

19 MR. PERRY: Yes, it's something we would look
20 at if you have any specific information. We are at a
21 point in our rulemaking where we are open to receiving
22 any useful information. It doesn't all have to come

1 through this Committee.

2 If you have information or data, exposure
3 information, whatever, that you think would be useful
4 to OSHA to consider as it moves forward, we are at a
5 point now where we can accept that kind of information.

6 MR. SHANAHAN: Okay. There is a lot of good
7 stuff from NIOSH.

8 MR. PERRY: We are aware of that work.

9 CHAIRMAN MIGLIACCIO: Susan?

10 MS. BILHORN: Actually, my question was
11 addressed in the discussion.

12 CHAIRMAN MIGLIACCIO: Steve?

13 MR. HAWKINS: I'm not aware of any and I'm not
14 aware if you might be, are there types of protective
15 clothing that don't necessarily attract dust, in other
16 words, they shed dust, would shed the material that's
17 used in sand blasting as opposed to street clothing
18 that might have more of a tendency to attract it, by
19 the fibers.

20 If a person is exposed at certain levels,
21 should there be changing areas, clean rooms, frequency
22 of disposing of your clothing, washing your clothing.

1 If there is protective clothing on the market
2 so that you could wear this, and when you're finished,
3 if you walked away, you would have almost no silica
4 containing materials on you, then certainly there might
5 be a certain level, but if there is no such clothing,
6 it doesn't seem well advised to require protective
7 clothing because it's more like how often do you need
8 to change if you are exposed for eight hours at certain
9 levels doing certain activities. You need to have a
10 way to change your clothing in a clean area, not walk
11 around the rest of the job site like Linus -- the guy
12 that had all the dust on him.

13 (Laughter.)

14 MR. HAWKINS: Do you all know that?

15 MR. PERRY: I don't have a lot of knowledge.
16 I can tell you at least once I did see a mortar
17 grinding operation where the operator was wearing tie
18 back's and a full face piece respirator.

19 The point of the tie back, I think, was simply
20 because it is something that could very easily be taken
21 off. You get the contaminated material and dust out,
22 so we are not creating a situation where the person is

1 in very, very dusty clothing for prolonged periods of
2 time and it's getting all kicked up and breathed in and
3 so forth.

4 At least that is probably the only situation
5 of personal clothing use in a construction operation
6 I've seen with respect to silica.

7 I think some of the industrial sand facilities
8 and some other general industry operations where very
9 fine silica containing materials are handled, there has
10 been use of disposable clothing. Again, the point is
11 it is something that can be easily taken off.

12 The question is even if clothing as you
13 described is available, when does it make sense to
14 require its use. I don't know that exposures above the
15 PEL is necessarily the right point. That is going to
16 be put a lot of people in protective clothing. Maybe
17 it is necessary, maybe it isn't. We have had very
18 little reliable information on that point.

19 MR. HAWKINS: Even the work methods that were
20 used in that activity could determine it.

21 MR. PERRY: Yes, this will undoubtedly be an
22 area where we will be asking questions in our proposed

1 rule, but I think where this Committee could be helpful
2 is to think about is there something specific that OSHA
3 should be proposing at this point in order to get that
4 public comment.

5 CHAIRMAN MIGLIACCIO: Any other questions?

6 (No response.)

7 CHAIRMAN MIGLIACCIO: Sarah?

8 MS. SHORTALL: Mr. Chairman, I'd like to mark
9 as Exhibit 13 materials provided to ACCSH members on
10 the proposed rule on occupational exposure to
11 crystalline silica and SIP III.

12 CHAIRMAN MIGLIACCIO: Dorothy, will your group
13 be available tomorrow morning at 9:15?

14 MS. DOUGHERTY: Yes, we sure will. Any time
15 you need us.

16 CHAIRMAN MIGLIACCIO: We will be discussing it
17 and there might be other questions.

18 MS. DOUGHERTY: Yes, we will make ourselves
19 available all day long if you want.

20 CHAIRMAN MIGLIACCIO: All day, half of us will
21 be gone.

22 (Laughter.)

1 MS. DOUGHERTY: We will give you our cell
2 numbers.

3 CHAIRMAN MIGLIACCIO: Thank you.

4 Following this presentation, we have our work
5 group report on silica.

6 Matt?

7 WORK GROUP REPORT ON SILICA

8 MR. GILLEN: As it has been alluded to before,
9 we had a great meeting yesterday. We had about 34
10 folks attending. Most of the discussion was on the
11 information provided by OSHA to ACCSH, and the same
12 panel here actually presented at that meeting and went
13 over the same slides, basically their current thinking
14 on the requirements, and especially with a focus on any
15 changes in comparison to the SBREFA review version.

16 We went through the materials. We made copies
17 of the tables in the materials for the work group
18 participants to facilitate discussion. After they gave
19 a presentation, we had follow up and discussion and
20 questions.

21 I tried to capture some of them, didn't
22 capture them all. Basically, one was about the

1 rationale for removal of controlled equipment,
2 maintenance and evaluation requirements.

3 OSHA mentioned that the PEL would serve as a
4 performance oriented goal for control effectiveness,
5 and responding to questions about what that means for
6 using Table 1, OSHA indicated they would be adding
7 specific maintenance and evaluation language to each of
8 the Table 1 operations.

9 In regard to questions about how would medical
10 surveillance work for short term employees, OSHA
11 indicated it was likely that the various methods
12 described by attendees to provide portable results
13 among several employers would be allowed. OSHA
14 clarified that employers do not get information on
15 employee health or silicosis status.

16 CHAIRMAN MIGLIACCIO: Can you speak up?

17 MR. GILLEN: Okay. What would be the trigger
18 for requiring the written control plan was one of the
19 questions. OSHA stated this would be a trigger above
20 the PEL for air monitoring approaches and in addition,
21 triggers would need to be developed for the Table 1
22 approach.

1 As far as the rationale for removing the
2 "competent person" provisions, OSHA described being
3 uncertain about the need for the provision.

4 In response, ACCSH members shares insights
5 about how competent person requirements had been an
6 integral part of numerous OSHA construction standards,
7 such as fraud protection, cranes and derricks,
8 excavations, steel erections, asbestos and lead, and it
9 is by and large an accepted approach for construction,
10 given the large numbers of small construction employers
11 who do not have full time safety and health staff, the
12 competent person provisions can be an effective way to
13 make sure that designated employees get basic training
14 about the hazard and about technical details for proper
15 use of controls and PPE, along with the authority to
16 make them work.

17 The competent person provisions can serve to
18 increase the competency of controls in Table 1 are
19 being used and maintained correctly and that proper PPE
20 is used.

21 Several ACCSH members spoke in support of the
22 value of the competent person provisions as an

1 effective way to tailor the regulations to construction
2 settings.

3 OSHA indicated this gave them some additional
4 ideas to think about and they are open to reconsidering
5 the competent person issue, especially in regard to
6 Table 1.

7 They were interested in further information on
8 appropriate competent person duties.

9 Questions about how to accommodate new
10 innovations of controls and tools, how can Table 1 be
11 more of a living table that could change over time,
12 could employers use information provided by equipment
13 manufacturers to show the controls are effective,
14 assuming the operations are similar and the information
15 is suitably detailed.

16 A number of participants spoke to the value of
17 being able to accommodate new innovations. For
18 example, a commercially available masonry saw using
19 local exhaust ventilation was provided, since Table 1
20 only includes use of wet methods for masonry saws.

21 OSHA agreed these were important issues but
22 described how some options such as changing Table 1,

1 would be more difficult than others and similarly may
2 require additional rulemaking.

3 Some of the options mentioned by attendees for
4 further consideration by OSHA included using an
5 approach similar to that used by OSHA for asbestos,
6 alternative control methods, methods used by OSHA in
7 the respirator standard for considering new respirator
8 fit test protocols, the idea of a mandatory or
9 unmandatory appendix, and the idea of defining
10 objective data as a basis for such claims, similar to
11 what was in the building construction trade silica
12 proposal.

13 What was the rationale for considering
14 eliminating requirements to report silicosis cases to
15 NIOSH, and what was NIOSH's perspective?

16 OSHA indicated employers would not have access
17 to the kind of information that would be useful for
18 surveillance or research.

19 NIOSH reported that its subject matter experts
20 agreed that employers would not have appropriate
21 information but suggested instead that OSHA consider
22 whether it might be possible to recast the requirements

1 to focus on reporting by the health care providers
2 working on behalf of employers to state health
3 departments. OSHA responded they did not think this
4 approach would work.

5 OSHA asked the group for ideas for how to
6 trigger protective clothing requirements. The group
7 did not have any specific ideas at the time other than
8 the option for vacuuming clothes using a hepa vacuum.

9 The importance of adding any other known
10 operations with effective controls to Table 1 was
11 mentioned. Preference for a PEL of 50 over 100 was
12 mentioned by an ACCSH member and several attendees.

13 The co-chair thanked OSHA's Directorate of
14 Standards and Guidance for their presentation and
15 opportunity for discussion.

16 Co-chair Walter Jones the moved that the
17 silica work group recommend that ACCSH urge OSHA to
18 return the competent person requirement and
19 responsibilities to the silica proposed rule.

20 The motion was seconded and the ACCSH members
21 on the work group passed it unanimously. The motion
22 also reflected the consensus of those individuals

1 participating in the work group meeting.

2 Co-chair Walter Jones also moved that the
3 silica work group recommend that ACCSH support the
4 concept in Table 1 which would exempt employers from
5 some exposure monitoring requirements in certain
6 construction work activities if they implemented the
7 specific controls in Table 1 as being appropriate for
8 the crystalline silica proposed rule.

9 The motion was seconded and the ACCSH members
10 on the work group passed it unanimously. The motion
11 also reflected the consensus of those individuals
12 participating in the work group at that meeting.

13 We did have an agenda item number two which
14 was to discuss the OSHA proposed silica fact sheets,
15 but we didn't have time for that, and given the
16 importance of agenda item one, it was given less
17 priority, and that remains an issue to be discussed,
18 and then the meeting adjourned.

19 CHAIRMAN MIGLIACCIO: Walter, do you have
20 anything to add?

21 MR. JONES: No, I don't.

22 CHAIRMAN MIGLIACCIO: Any questions of this

1 work group?

2 (No response.)

3 M O T I O N

4 CHAIRMAN MIGLIACCIO: I need a motion to
5 accept.

6 MR. TOMASESKI: So move.

7 MR. KAVICKY: Second.

8 CHAIRMAN MIGLIACCIO: Discussion?

9 MR. ZARLETTI: Just one thing. I realize we
10 need to focus just on the employer's responsibility to
11 provide employees with safe working conditions.

12 However, there are residual effects to the surrounding
13 areas when silica is found in the workplace.

14 Let's say this dust cloud then lands on a
15 playset another 50 yards away, a contractor needs to
16 keep that in mind as well, even though it is not
17 employer/employee, it could certainly be a third party
18 liability because they are sending this stuff off, they
19 are not letting it down and they are not vac'ing it, it
20 is off on its own, it's settling somewhere, just like
21 in a plant. It's settling somewhere and if it does, on
22 a playset or whatever and kids are playing, there is

1 that outside exposure.

2 I think as you look at this piece and you look
3 at the exposure modifications, how you can actually
4 mitigate the exposure by letting down the environment
5 and so forth, it makes a big difference, so to think
6 about it in a broader scope.

7 MR. GILLEN: To me, that is an issue that is
8 saying if you use Table 1 or if you use controls, there
9 are secondary benefits and you are really sharply
10 curtailing any environmental exposures or clean up
11 issues related to cars that can get dusty, so there is
12 really secondary benefits in addition to worker
13 protection to following the Table 1 or using controls
14 basically.

15 MR. ZARLETTI: We just had this very situation
16 come up not only with the playset but there was so much
17 saw cutting going on on our tollway system for new
18 concrete that had to be notched out, it actually made a
19 cloud of dust, mason dust, that was so significant that
20 cars that were still on the tollway driving, you could
21 watch them enter this cloud but you could not see them
22 going through it.

1 If there was a vehicle stopped somewhere for
2 whatever reason or if they backed a piece of equipment
3 out, somebody would just slam right into it and not
4 even know what they hit.

5 Going to the source and controlling this thing
6 has not only the benefits of employer/employee, but
7 subsequently to society in general.

8 CHAIRMAN MIGLIACCIO: Any other questions or
9 discussion?

10 MR. GILLEN: The two motions that the work
11 group passed, does ACCSH need to pass those for those
12 to be meaningful to OSHA?

13 MR. JONES: Or are we going to do that in the
14 morning?

15 CHAIRMAN MIGLIACCIO: We can do either/or
16 really. I know we are going to talk about it tomorrow
17 again. The second one was support the concept of the
18 table.

19 We are going to vote on accepting this.
20 Tomorrow, we are going to revisit these two options and
21 we will have a full discussion on it again.

22 Any other discussion?

1 (No response.)

2 CHAIRMAN MIGLIACCIO: All in favor, say aye of
3 accepting.

4 (Chorus of ayes.)

5 CHAIRMAN MIGLIACCIO: Opposed?

6 (No response.)

7 CHAIRMAN MIGLIACCIO: The ayes have it.
8 Sarah?

9 MS. SHORTALL: Mr. Chair, I'd like to mark as
10 Exhibit 14 and enter into the record the approved
11 silica work group report from December 8, 2009.

12 CHAIRMAN MIGLIACCIO: Thank you. We have a
13 little bit of time before our break coming up. I have
14 asked for the work group report on residential fall
15 protection. Mike?

16 WORK GROUP REPORT ON RESIDENTIAL FALL PROTECTION

17 MR. THIBODEAUX: We met on December 8.
18 Contrary to our report, we had 30 attendees.

19 In January 2008, we as a Committee recommended
20 that OSHA issue a more complete definition of
21 "residential construction," and I have a copy of the
22 minutes back in January of 2008 and it was on about six

1 different pages because we had interruptions, et
2 cetera, so we brought this up to the work group on the
3 8th to talk about making one consolidated
4 recommendation that we wanted ACCSH to give to OSHA for
5 residential construction.

6 This is what the definition would say:
7 "Residential construction is building single family
8 homes or townhomes, and includes activities performed
9 on structures where the working environment, materials,
10 methods and work procedures are essentially the same as
11 those used in building single family homes and
12 townhomes.

13 The materials used in residential construction
14 are wood framing, metal stud framing, wood and metal
15 floor joists, wood and metal roof structures, concrete
16 block, cinder block and poured in place concrete for
17 basement walls.

18 Work on discrete parts of a commercial
19 structure could be considered residential construction
20 so long as the working environment, materials, methods
21 and procedures were similar to those used for single
22 family homes and townhomes."

1 That was a condensation of the prior
2 recommendation that the work group made to ACCSH back
3 in January of 2008, but it was never put together in
4 one document such as this or one paragraph such as
5 this.

6 Dave Barber from Peterson Dean Roofing gave a
7 presentation on the conventional fall protection that
8 they use in roofing and re-roofing. I have a copy of
9 his presentation here that I want to enter as part of
10 the record.

11 He did state they issue a personal fall system
12 to each of their employees. They provide three to five
13 hours of pre-work training for new hire's, which
14 includes harness fit testing. They do install
15 permanent anchors on roofs, for not only their use but
16 for other trade use. They also use guard rail systems
17 for six and 12 pitch roofs and below. They do use
18 personal fall protection during all their roofing work.

19 Jeremy Bethencourt of LeMar Framing in Arizona
20 gave a presentation on fall protection used in Arizona
21 and I think also in Nevada, to include guard rails,
22 safety nets, and personal fall systems in residential

1 construction, and there were a number of photographs of
2 this type of material being used for fall protection,
3 and I also have a copy of his presentation that I would
4 like to enter into the record.

5 Larry Friert of Winchester Homes commented on
6 fall protection anchors used in attics in residential
7 construction, and his summary was basically that these
8 types of anchors used in attics have to be specifically
9 engineered for use in attics, and if they weren't, they
10 shouldn't be considered adequate for use.

11 In other words, if you have one that is
12 supposed to be used on a roof, it might not be
13 applicable to use it in an attic to protect someone
14 from falling, because the configuration is different.

15 Rob Matuga of NHB made a presentation on the
16 research by NIOSH, and this was Jim Green's
17 presentation, by the NHB and the Structural Building
18 Components Association, formerly known as the Wood
19 Truss Association, on evaluating anchor systems.

20 The issues that were to be covered by this
21 research are as follows: would wood frames support a
22 worker in a fall. We have seen some evidence that is

1 correct. At what frame stage is it feasible to tie off
2 to a structure, and is there sufficient clearance to
3 prevent reaching the next level.

4 Rob did state that if every structure was
5 braced to the wood truss standards, trusses would
6 probably support a worker fall. However, from a
7 practical standpoint, this amount of bracing is
8 probably not being used in the field. In many cases or
9 in a lot of cases, that would not be adequate
10 protection for the worker to tie off to a personal fall
11 system.

12 A copy of his presentation is to be put into
13 the record also.

14 He did make a request that we ask ACCSH to
15 request OSHA to support this research going forward.

16 We had a number of other issues that we wanted
17 to discuss but again, time ran out and we didn't have
18 the opportunity to do those.

19 We did have a number of attendees go into the
20 next room and ask questions of each of the presenters
21 that they could not ask in the time, and it was just a
22 general discussion and something that will probably be

1 raised again at our next meeting when we get together
2 in February or April, whenever it is.

3 M O T I O N

4 MR. THIBODEAUX: I'm not certain if we need a
5 formal motion for this definition of "residential
6 construction" since we have already done that before,
7 but I think it would be a lot clearer if we had it
8 here, and I would like to make a formal motion that the
9 full ACCSH request OSHA to utilize this definition of
10 "residential construction" going forward.

11 MR. SHANAHAN: I would second that.

12 CHAIRMAN MIGLIACCIO: The motion was made and
13 seconded. What we are going to do is the old
14 "residential construction" definition is vague and it
15 is probably important that this one replace it, so that
16 is what we will do.

17 Any discussion on this?

18 (No response.)

19 CHAIRMAN MIGLIACCIO: All in favor of
20 accepting this, say aye.

21 (Chorus of ayes.)

22 CHAIRMAN MIGLIACCIO: Opposed?

1 (No response.)

2 CHAIRMAN MIGLIACCIO: The ayes have it.

3 Are there any questions to the work group?

4 (No response.)

5 M O T I O N

6 CHAIRMAN MIGLIACCIO: I need a motion to
7 accept the minutes.

8 MS. BILHORN: Tom has a question.

9 MR. SHANAHAN: I don't have a question about
10 the minutes but I had a discussion point I'd like to
11 bring up related to this but it's separate.

12 CHAIRMAN MIGLIACCIO: Okay. Do I have a
13 motion to accept?

14 MR. GILLEN: So move.

15 CHAIRMAN MIGLIACCIO: Second?

16 MR. SHANAHAN: Second.

17 CHAIRMAN MIGLIACCIO: Discussion?

18 (No response.)

19 CHAIRMAN MIGLIACCIO: Tom?

20 MR. SHANAHAN: Again, it has little to do with
21 the committee itself and the minutes, but I wanted to
22 bring up kind of a separate but related point, and that

1 is with 3.1, which the work group has been supportive
2 of and I have not been, so we are clear on that, and
3 there is a reason for that, and I wanted to bring that
4 back up and just talk about it maybe in a little
5 different way than in the past, so we are clear on what
6 I believe we are doing with pulling that unilaterally.

7 The issue is that with regard to roofing in
8 particular, so in other words, group four, and the idea
9 that slide guards would no longer be an option, a fall
10 prevention option available to roofing workers and
11 roofing contractors in the residential segment, the way
12 those guidelines read currently is that when the slide
13 guards are available to be used -- it is a very narrow
14 box.

15 It is 4 and 12, 6 and 12 and 8 and 12, with
16 varying requirements, 25 feet or less, about a two
17 story building.

18 That represents again a very narrow box.
19 Everything outside of that, you have to tie off, and we
20 support all that.

21 By the way, the idea that slide guards is
22 something that we think would be in lieu of 100 percent

1 fall protection is not something that we support,
2 however, we don't support the removal of an option that
3 does work in many, many situations, especially for
4 these small residential re-roofing contractors which
5 are doing probably 80 percent of the work -- 80 percent
6 of the work being done in the roofing industry has to
7 do with re-roofing operations.

8 These are very small employers with a
9 tremendous amount of workers out there that are exposed
10 to falls that are currently using slide guards, or over
11 time, have been using slide guards on a more frequent
12 basis than they ever have in the past.

13 These are folks that fly under OSHA's radar.
14 We can have the intellectual discussion. We can have
15 the factual discussion. I'm a safety professional. I
16 support 100 percent fall protection.

17 The reality is there are a lot of people out
18 there, a lot of workers being exposed to falls that
19 these slide guards are a gateway fall protection
20 method. It gets folks to be doing something initially
21 that is low cost and easy to install, and by removing
22 that option -- remember, in the standard, there is no

1 allowance for slide guards.

2 In Appendix E that the home builders have, you
3 can use slide guards in certain operations, but not for
4 roofing operations. It is for some unique home
5 building operations.

6 The fact that it is in the standard providing
7 it for some operations and not for others, I think
8 there is an equity situation there, but more
9 importantly, the idea that we have something where
10 roofing workers and roofing contractors can use some
11 form of fall protection on this narrow situation, I
12 think it is something we have to seriously consider.

13 I realize the ship has sailed, but as the DOC
14 is coming up with a compliance directive, I really
15 believe ACCSH should ask OSHA to consider the use of
16 slide guards in narrow circumstances and in particular,
17 re-roofing and repair type operations in that narrow
18 band.

19 This group of people that typically would be
20 using them who flies under the radar of OSHA, we have
21 to do something to help protect those workers.

22 This is a gateway fall protection option.

1 Twenty years ago, fall protection -- where we are today
2 is significantly different than where we were 20 years
3 ago.

4 I have roofing contractors now who are small
5 businesses, \$3 million and less, who are endeavoring
6 100 percent fall protection. I just think that is
7 wonderful that all these years later we have
8 contractors that want to do 100 percent fall
9 protection.

10 What they are telling us -- I just did a
11 survey -- what they are telling us overwhelmingly is
12 that don't eliminate this option. We still need it in
13 certain circumstances and we need it because there are
14 so many contractors we are competing with in the
15 marketplace who don't use anything, we can sell to
16 homeowners the idea of make sure the guy that you hire
17 at least uses slide guards, so it's the way of bringing
18 the bottom up so to speak.

19 Through our OSHA grants that we have had and
20 we have been doing a lot of free training out there,
21 you see them more and more out there. You don't see
22 them a lot. I will be the first one to tell you that,

1 but you are seeing them more and more.

2 Like I said, it's an entry into fall
3 protection, and what our contractors are telling us
4 that used these initially is now they are seeing it,
5 how it works, how it is better for their business, and
6 over time, they are tying off and moving up the chain.

7 I'm afraid that if we eliminate that option
8 altogether, which is what is going to happen here, you
9 create this gap where they are just going to be like
10 screw it, I'm not going to do this. That's a mentality
11 we are dealing with. It is not the mentality of this
12 room but it is the reality that's out there.

13 I certainly would love any push back or
14 agreement or whatever, but I think there is this group
15 here that we are forgetting about, and I think OSHA
16 represents them as well.

17 CHAIRMAN MIGLIACCIO: Bill?

18 MR. AHAL: In your opinion, if they were
19 eliminated, would those people that are using them now
20 cease to use them? If slide guards are better than
21 nothing and they are going to tend to go to nothing,
22 screw it, I'm not even going to mess with it any more,

1 then maybe that's better than having no protection, if
2 it's all this or nothing.

3 MS. BILHORN: Yes, that's what he is saying.

4 MR. SHANAHAN: That's part of what I'm saying
5 and the other issue is the way the standard reads is in
6 residential construction, you could write a fall
7 protection plan, and in theory, if you can prove
8 infeasibility or greater hazard, then say I'll use
9 slide guards.

10 As we have seen this week from some very
11 sophisticated contractors, and we use them as our gold
12 standard, the infeasibility argument is almost blown. I
13 just don't see these contractors who are selling a job
14 and working on the job basically going to be spending
15 time writing individual plans.

16 When we negotiated this all those years ago
17 was so they could side step this paperwork burden.
18 Remember, it applies in a very narrow band, but an
19 important band, but you can do this.

20 CHAIRMAN MIGLIACCIO: Further discussion?

21 Mike?

22 MR. THIBODEAUX: I'm not certain that doing

1 away with the STD, fall protection standard, eliminates
2 slide guards. That's another type of fall protection
3 that's available. There may be a better type of fall
4 protection that's available when you are doing work, et
5 cetera.

6 Along the lines that Bill was talking about,
7 you are doing re-roofing and you have to take all the
8 stuff off, I would think the first thing you would want
9 to do is put up slide guards, get all your stuff off,
10 look at both the decker and rafters, trusses, to see
11 whether or not they are going to support you having a
12 personal fall arrest system attached to that truss or
13 rafter, et cetera.

14 I'm not certain it says hey, you can't use it
15 at all. I think it's just one step in the process.

16 MR. SHANAHAN: What it does do, Mike, is it
17 eliminates it as a sole option. In other words, you
18 couldn't use it solely without doing something else
19 like writing a plan. The plan -- that threshold is
20 only crossed once you have proved infeasibility or
21 greater hazard.

22 Those are very tough arguments now given all

1 the things we have been seeing lately and what we know.

2 Like I said, it's that sole option in this
3 narrow band, which the current STD identifies that is
4 problematic. I think we are creating a gap in fall
5 protection that I don't think anybody ever really
6 intended to do, but I believe it will happen. I know
7 it will happen.

8 MR. THIBODEAUX: What about roofing a new
9 home?

10 MR. SHANAHAN: On new construction, I'm
11 perfectly comfortable with the idea that new
12 construction is a different bird. There, everything is
13 open to you. The idea of you're not dealing with
14 having to tear the old roof off or repair situations
15 where you are in and out so quickly.

16 Again, I fully recognize that a slide guard is
17 a minimum, just like a safety monitor minimum kind of
18 thing.

19 I mentioned it was on re-roofing and repair
20 operations. That's what I'm talking about, not new
21 construction.

22 MR. ZARLETTI: You just threw me because a

1 minute ago you said slide guards would not be used in
2 and of itself as fall protection, and now you said it
3 could be a minimum usage.

4 MR. SHANAHAN: Currently, with the STD in
5 place, you can use a slide guard as a sole option.
6 Without the STD, when they rescind 3.1, the ability to
7 use a slide guard as a sole option is gone. You have
8 to go right to tying off or guard rails or safety nets.

9 That is a tall gap now that we are leaving.
10 What the STD has done is has bridged that gap between
11 doing nothing and then having to have harnesses and the
12 whole nine yards. It's an entry to fall protection in
13 a narrow band that is useful, it works, and tying off
14 is better, but we are not there yet. We have come a
15 long way but we are going to create a gap that I just
16 think is dangerous.

17 CHAIRMAN MIGLIACCIO: Any other discussion or
18 questions?

19 MR. AHAL: If the removal in the STD does or
20 does not create what you are saying -- I'm not clear on
21 how we evaluate that.

22 MR. SHANAHAN: It does.

1 MR. CONNELL: When we rescind the current
2 directive, it will take us back to the standard. I
3 will agree with Tom on one aspect of what he said,
4 which is slide guards are not one of the methods of
5 fall protection that are listed in the standard as a
6 fall protection.

7 The only circumstance where you would be
8 allowed to use not one of the listed forms of fall
9 protection but something less than that, and slide
10 guards are something less than that, would be if one,
11 the employer can prove infeasibility or greater hazard
12 of regular fall protection, and two, implements a
13 written site specific fall protection plan.

14 What would have to be part of that written
15 plan would be the next best thing to regular fall
16 protection.

17 He is correct that the only way that you would
18 be allowed to use slide guards would be if you could
19 make those threshold showing's and if slide guards was
20 in fact the next best thing to regular fall protection.

21 MR. SHANAHAN: Just to add to that, the
22 current STD, Bill, allows you to circumvent writing

1 site specific plans for every job you are doing.

2 Remember, these jobs last one or two days, bla, bla,

3 bla.

4 MR. THIBODEAUX: The fall protection standard
5 does not require any written plan for any fall
6 protection at all.

7 MR. SHANAHAN: In no circumstances -- for
8 group four --

9 MR. THIBODEAUX: They don't require a written
10 fall protection plan at all, and that was part of the
11 problem that we saw in residential home building, that
12 people were using that as let me step aside and I'll do
13 monitoring.

14 MR. SHANAHAN: Just to clear that up, for the
15 purpose of group four, roofing contractors do not have
16 to write plans only in those operations that are
17 between 4 and 12 and 8 and 12, 25 feet or less in
18 height; right?

19 MR. CONNELL: In group four or for that
20 matter, in any of the four groups that are listed in
21 the existing compliance directive, you do not have to
22 have a written plan at all.

1 You don't have to have a written site specific
2 plan. As long as you are doing the specified measures
3 in each group, whichever one applies, you don't have to
4 have a written plan under the directive.

5 We are going to rescind that. That kicks you
6 back to the standard which says if you make that
7 showing that I described before, then you do have to
8 have a written site specific plan.

9 MR. SHANAHAN: Mike, just to your particular
10 point, again, it isn't on any job, it's on this narrow,
11 4 and 12 to 8 and 12 jobs with 25 feet or less, that's
12 the only time you are excepted from doing this fall
13 protection plan option. It is not on every job. You
14 said it was on every job and that is not the case. I
15 just want to confirm that, so there is no
16 misunderstanding.

17 MR. THIBODEAUX: I'm not sure what the
18 disagreement is. Is the question when do you currently
19 have to have a written site specific plan if you are
20 operating under the directive?

21 MR. CONNELL: When do you not have to have a
22 written site specific plan? You don't have to have a

1 plan right now as long as you fit into -- for
2 roofing -- you fit into the description of group four
3 and you are doing the things that are specified in
4 group four.

5 In that circumstance, you do not have to have
6 a written plan under the directive.

7 MR. SHANAHAN: Between 4 and 12 and 8 and 12,
8 25 feet or less in height. Mike, when you just said a
9 little while ago -- the statement you made, and maybe
10 that is not what you meant, they are excepted from
11 writing plans unilaterally on any residential job is
12 not true. It is only in that specific area that is the
13 case.

14 Beyond that, you tie off or you write a plan
15 if you want to do something different. That is part of
16 the problem. There is a lot of misunderstanding about
17 what exactly is being talked about.

18 That is one of the reasons I wanted to get it
19 clear that what we are talking about is a narrow band
20 when this STD applied and allowed this exception.

21 MR. CONNELL: It's true, and I think you said
22 just before, while it's a very specified set of

1 circumstances, those circumstances were in fact
2 designed to cover a huge percentage of the re-roofing
3 activity that goes on.

4 MR. SHANAHAN: It does.

5 MR. CONNELL: It's narrowly defined but it
6 covers an awful lot.

7 MR. SHANAHAN: What is important about that is
8 it covers that kind of exposure for which slide guards
9 would be an appropriate sole method as an entry level.

10 MR. CONNELL: We can debate that until the
11 cows come home.

12 MR. SHANAHAN: The point is it isn't allowing
13 it on roofs that are 12/12, for example, or three
14 stories or all those other things where the exposure
15 would be greater.

16 CHAIRMAN MIGLIACCIO: Steve?

17 MR. HAWKINS: Is there any likelihood that
18 when it is rewritten -- there will need to be something
19 written, I would think, more than just something that
20 says -- to give people some guidance, compliance
21 officers, some guidance to compliance officers to be
22 able to determine what is residential construction like

1 we just talked about and also how, because they haven't
2 had to do it all these years, how to determine at least
3 some guidance about what is feasible and what is not
4 feasible as far as conventional fall protection goes.

5 The very first thing that a person has to do
6 when they try to meet the standard without regard to
7 the existing CPL is to determine are conventional fall
8 protection methods feasible in this work environment.

9 That is correct, right? That's the first
10 thing you do. If the answer is yes, you're done. You
11 don't write a plan or anything. You just use
12 conventional fall protection methods.

13 MR. CONNELL: Actually, that's not quite
14 right. The presumption is that it is feasible.

15 MR. HAWKINS: I'm saying if it goes away.

16 MR. CONNELL: The standard specifically says
17 that fall protection is presumed to be feasible. The
18 employer is only allowed to do something other than
19 fall protection if it first can establish -- the burden
20 is on the employer to establish it is either infeasible
21 or creates a greater hazard.

22 MR. HAWKINS: If an employer who is doing the

1 work that Tom is talking about was able to determine
2 that it was infeasible, and the only way I can think
3 that would be possible from the presentations we have
4 seen would be if the roof were in bad enough shape that
5 there were not places to put anchor points because you
6 couldn't make a reliable connection of an anchor point
7 to the rafter.

8 You went and looked and you said you know,
9 these rafters are in bad shape, but they were good
10 enough to hold the roof deck but not good enough to tie
11 to, and even then -- this is really abstract.

12 Would the new CPL be written to say for
13 roofing, the minimum is the slide guards because if it
14 didn't say that, what would be the minimum if you could
15 prove that conventional fall protection methods were
16 infeasible on this 4 and 12 and 8 and 12, will the CPL
17 say what is the minimum if you are able to prove that
18 convention, which I think would be remote, I don't see
19 how you could do that in most cases, but assuming that
20 a person could argue successfully it was infeasible, is
21 it likely at all that the replacement CPL will be
22 written that the slide guards are the minimum as

1 opposed to a control access and a monitor?

2 MR. CONNELL: I think the way to view the path
3 forward that we are likely to take is first of all, we
4 are going to go back to the standard. We did a
5 standard. We did notice and comment rulemaking on the
6 standard.

7 The ink didn't get very dry before that
8 compliance directive was issued, but we did do a
9 standard. As Mr. Barab has announced several times, we
10 are going to rescind this thing and by rescinding it,
11 we are going to go back to the standard.

12 We are aware there is some debate in the
13 Committee about well, are there any situations where an
14 employer could prove infeasibility or greater hazard,
15 and I guess if you really look closely at the standard
16 and how it was designed, you know, at the time OSHA
17 could have said well, what are we going to do about
18 residential construction.

19 All right, are there certain situations where
20 fall protection isn't feasible. What are those
21 situations and what are we going to require in those
22 situations.

1 The Agency didn't do that. The Agency, I
2 think, seems to have said -- left open the door, maybe
3 in a particular situation, you have a particular
4 problem, and it wouldn't be necessarily the same kind
5 of thing across the board. Something happens to crop
6 up in a particular situation.

7 Can you really say well, in every case in that
8 situation, here's what the next best thing is, and that
9 next best thing is always going to be slide guards, and
10 never something better than slide guards. No, that's
11 not what the Agency did. It didn't do that kind of
12 thing across the board.

13 I think one of the reasons when we say we are
14 withdrawing this directive, I think there is an
15 implication that we are not going to take the approach
16 that we took in the directive that had been issued,
17 which was to basically write another standard.

18 It has well defined groups. It has particular
19 procedures. That is what we are withdrawing.

20 I'm not going to make any promises or firm
21 predictions, but I think if you start reading the tea
22 leaves, you know, I think an arrow points in a

1 particular direction, that we are going back not just
2 to the standard but to the philosophy of the standard,
3 and the philosophy of the standard is no, you can't say
4 across the board, there is these situations that it is
5 infeasible.

6 It's feasible. It's presumed to be feasible.
7 It's about time that we now implement that after all
8 these years.

9 MR. SHANAHAN: I appreciate your passion for
10 that, Noah. The problem that I have and that I think
11 the industry has with that thinking is in that
12 viewpoint -- by the way, I don't disagree with you
13 personally.

14 The practicalness of the impact of that
15 approach leaves bare fall protection in a huge segment.
16 OSHA is not doing anything to help those people that
17 are in that segment that can use this as a method. Is
18 it the best method? No. Is it an entry method? Yes.
19 The Agency had bridged this before and looked like it
20 meant this group to do that kind of fall protection.

21 The point is I just wanted to have this
22 discussion with the Committee and I wanted to ask if

1 anybody would be in favor of recommending to the
2 Directorate of Construction that as they write this
3 compliance standard that they consider the use of slide
4 guards in certain situations, so we don't lose that
5 option. That is the question I'd like to ask.

6 CHAIRMAN MIGLIACCIO: Two questions first.

7 MR. BRODERICK: I was thinking back. We have
8 had this discussion before. It seemed to me that the
9 scenario that was presented about this narrow scope of
10 work, these would be predominately very small
11 contractors with probably non-represented and
12 marginal -- the workers, they could even be day
13 laborers, and from the earlier discussions, you might
14 have four or five of these people on a roof surface at
15 one time tearing off shingles and throwing them to the
16 ground.

17 It was not then infeasibility but more of
18 greater hazard because if you had them all tied off
19 through personal fall arrest systems, you would have
20 people tripping over their lines and over each other.

21 Was that pretty much the scenario?

22 MR. SHANAHAN: Yes, still is.

1 MR. BRODERICK: I understand it. I guess I
2 really would love to be able to figure out how we could
3 continue to use slide guards to protect those people,
4 but I don't know there is any way to do it without
5 making it clear to the contractors that are doing it
6 that at a minimum, they would have to have a procedure
7 that would accommodate that.

8 MR. SHANAHAN: You mean writing a plan?

9 MR. BRODERICK: Yes.

10 MR. SHANAHAN: Yes, in that group, it probably
11 wouldn't get done.

12 MR. BRODERICK: If they are going out to the
13 lumber yards and they are buying the lumber to tack
14 onto the roof and the nails and having the tools, which
15 they don't always necessarily have with them, saws and
16 hammers, the idea that they would have a piece of paper
17 with either an one story or two story fall protection
18 plan, it seems like that could be something that could
19 happen.

20 Even if it were not site specific, if they
21 were following it and using the slide guards, it would
22 seem like any citation would not be necessarily

1 serious.

2 MR. SHANAHAN: I like the approach but I don't
3 think it would comply.

4 CHAIRMAN MIGLIACCIO: We have one question.

5 MR. RUSSELL: Not to belabor the discussion,
6 but some of us are not familiar with roofing and don't
7 have a clue what a "slide guard" is. It would be nice
8 if we could get some basic information. It would help
9 us better understand the discussion. When it comes
10 time for a vote, it would help us understand what we
11 are considering.

12 MR. SHANAHAN: I felt we were going to have
13 this discussion tomorrow, but I have a graphic I was
14 going to show.

15 MR. RUSSELL: It would be nice to be
16 enlightened so we would at least -- maybe I'm the only
17 member that is in that situation. It would be nice to
18 have a better understanding.

19 MR. SHANAHAN: Like I said, I thought we were
20 going to have this discussion tomorrow.

21 CHAIRMAN MIGLIACCIO: We have had discussion.
22 We have a motion to accept the minutes. The motion was

1 made and seconded and we had discussion.

2 All in favor of accepting the minutes of the
3 residential fall protection work group, say aye.

4 (Chorus of ayes.)

5 CHAIRMAN MIGLIACCIO: Opposed?

6 (No response.)

7 MS. SHORTALL: Mr. Chair, I'd like to mark for
8 the record as Exhibit 15 the approved residential fall
9 protection work group report of December 8.

10 There are a number of additional items that
11 have been given to me by Mike Thibodeaux which also
12 will be entered into the record, but we don't have a
13 complete list. If anyone on that work group has
14 anything else, you will have to make that motion
15 tomorrow as well.

16 CHAIRMAN MIGLIACCIO: Walter?

17 MR. JONES: I'm just not quite clear on
18 everything that just went on. Is there a question on
19 the table? Did you call a question?

20 CHAIRMAN MIGLIACCIO: I did, yes.

21 (Pause.)

22 MR. GILLEN: Then you have to table it.

1 CHAIRMAN MIGLIACCIO: We are going to take a
2 break until 3:20.

3 (A brief recess was taken.)

4 CHAIRMAN MIGLIACCIO: For the record, Noah
5 Connell stepped away from the seat here and Mike Buchet
6 is taking his place.

7 At this time, we are going to have analysis of
8 the fiscal year 2007 construction health enforcement
9 data, Center for Construction Research and Training,
10 Center to Protect Workers' Rights. Pam Susi will be
11 doing the presentation.

12 Go ahead, Pam.

13 PRESENTATION ON ANALYSIS OF FISCAL YEAR 2007
14 CONSTRUCTION HEALTH ENFORCEMENT DATA

15 MS. SUSI: I want to thank you for having me
16 speak on this issue and I was going to acknowledge Matt
17 because I presented a very similar presentation.

18 CHAIRMAN MIGLIACCIO: He's here.

19 MS. SUSI: Good, just in time. He was at the
20 conference in Toronto and he suggested I present here,
21 and I welcome that opportunity and maybe it is
22 something you can follow up on.

1 I'm going to cover data that's really about a
2 year old now in my presentation, but you should have a
3 table in your packets, and after I do the presentation
4 real quickly, maybe we can go over that, and you will
5 see more current data. I have extra copies I can pass
6 around.

7 You guys know a lot of this stuff so I'm going
8 to go through it very quickly. We know there are
9 construction health hazards, that they are task
10 generated, could be from in place materials, could be
11 from materials being used, could be present at the
12 facility or site where the work is underway, like the
13 ACCSH member alluded to this morning, exposure could be
14 created by another trade.

15 These are just some examples. This is a
16 picture taken in New Jersey. He's doing abrasive
17 blasting and he has the hazards with the abrasive he's
18 using and lead paint and silicon inside the lead paint
19 on top of that.

20 MR. HAWKINS: We're all looking for our
21 handout.

22 MS. SUSI: I have extra copies, too.

1 CHAIRMAN MIGLIACCIO: It should be in the back
2 right-hand side of the folder; two-sided. Okay,
3 everybody has it.

4 MS. SUSI: Also, I want to say in talking
5 about OSHA data with all these OSHA people here, it's a
6 little intimidating. I'm sure I'll get something
7 wrong, so feel free to correct me if I say something
8 inaccurate, which is highly likely.

9 I work in the Philly area. The benzene in the
10 refineries is often a concern. Heavy metal exposures
11 are an issue in power plant renovation work. Like I
12 said, if you were working in the vicinity of this guy,
13 it wouldn't matter what you were doing, you'd be in
14 trouble.

15 We often think of OSHA not having that many
16 health standards in construction, and there may be few
17 that actually were created just for construction, but
18 there is actually quite a few that would apply. I just
19 made a list of the ones that are either health
20 standards or health standard related.

21 It is kind of hard to make out here. The ones
22 that are in light blue are ones that I'm going to be

1 kind of focused on. These were standards for which
2 there are hazards that I know would be likely to occur.

3 This is hard to read, too, but the next three
4 slides are going to be things from CPWR's chart book,
5 and the first one just kind of shows where health
6 hazards falls out in overall citations by OSHA. I
7 believe this is 2006 data. Health hazards falls down
8 at the bottom just above trenching.

9 In 2006, OSHA conducted pretty close to 23,000
10 inspections. About five and a half percent of those
11 covered health standards, and that compares to 17
12 percent of inspections that we see for health standards
13 in other industries.

14 A total cost of the penalties, and this is
15 just for Federal plan states, the 29 Federal states,
16 the total penalty was about \$1.5 million. Using a
17 rough estimate of seven million workers in
18 construction, that works out to be about \$0.20 per
19 worker or \$2.00 per establishment. Health standard
20 enforcement activities really isn't a big ticket item
21 for contractors for the most part.

22 This is a graphic again from the chart book

1 that just shows the number of OSHA inspections in
2 general have been going down somewhat since late 1980s,
3 but the number of construction establishments has
4 actually increased. It is kind of a double whammy
5 there.

6 As I go through and talk about the fact that
7 there are problems with health standard enforcement, I
8 just wanted to point out that one, I'm not here to bash
9 OSHA by any means, that's for sure, and wanted to
10 acknowledge there are reasons for it being difficult to
11 do citations or inspections.

12 Obviously, construction is still a very
13 dangerous industry. You're not going to overlook an
14 imminent danger to deal with something that might be a
15 little less imminently dangerous.

16 The work is sometimes intermittent. I've
17 talked to compliance officers who say they would like
18 to be able to go out and do inspections for chromium
19 and hexchrome in construction but they are not always
20 doing stainless steel welding.

21 There is the issue of resources and labor
22 power, still don't have enough OSHA inspectors. There

1 is probably a lack of awareness of a lot of the health
2 hazards in the workforce, so they are not getting those
3 complaints that would get them out on those job sites.

4 This is a learning process for me. One of the
5 things in doing this research was just figuring out
6 which citation -- when the citation was issued, who it
7 covered and what standards they used.

8 It turns out they may be cited using a general
9 industry standard by reference, and this happens a lot
10 more than I realized, and in the case of HAZCOM, I
11 think over 2,000 inspections in construction were based
12 on the 1910 standard by reference.

13 The other examples are a non-construction
14 employer can be cited if they are doing one of the
15 construction standard operations or activities defined
16 as construction work activities by 1910.12, alteration,
17 repair, including painting and decorating, or if it's a
18 multi-employer site.

19 A compliance officer in the Philly area gave
20 me a good example of the first example, this is back in
21 the 1970s in Bethlehem Steel, there was a horrible
22 fire. I think he said -- actually, it wasn't a fire.

1 It was a demolition issue. There was a
2 collapse of some masonry wall work when they were doing
3 demolition and there were two or three workers killed
4 who were Bethlehem Steel employees, but they used the
5 construction industry demolition standards to cite
6 them.

7 This is just looking at the data. There is a
8 nice utility on the OSHA web page where you can search
9 inspections by the standard. From October 2007 to
10 September 2008, for asbestos, there were 672 citations
11 but like 406 of them were for the construction SIC
12 Code. You can see from there the top three standards
13 were asbestos, lead and sanitation.

14 At the time when I did this, I didn't do the
15 general industry standards search for all these, so had
16 I done that, HAZCOM would have been at the top of the
17 list, given the general industry citations.

18 MR. ZARLETTI: Did it say for scaffolding?

19 MS. SUSI: When I searched by construction
20 standard for citations, it only came up with 127
21 citations, all of these were 15, 16, 17, 119
22 inspections and \$38,000, thereabouts. I grouped them

1 into three different groups, more than 100 citations,
2 greater than ten and less than ten. These were the
3 three that were greater than ten.

4 MR. ZARLETTI: One of your previous charts
5 showed scaffolding as over 10,000 citations.

6 MS. SUSI: I probably didn't understand your
7 question. Scaffolding is not on this slide.

8 MR. ZARLETTI: I thought scaffolding lined up
9 with SIC 17.

10 MR. BEAUREGARD: There are a number of trades
11 in there, like plumbing. I don't think there is a
12 scaffolding trade.

13 MS. SUSI: This is probably what you were
14 talking about.

15 MR. ZARLETTI: Special trade, in the center
16 right.

17 MS. SUSI: This is in the chart book.

18 MR. GILLEN: For scaffolding, the big white
19 bar is special trades, the next bar with 54 is heavy
20 construction, and the blue bar is SIC 15.

21 MR. BUCHET: Pam, the first slide shows how
22 many citations across the board and then there is a

1 small portion down at the bottom that says "health
2 standards."

3 MS. SUSI: Right, the whole point of this was
4 just to illustrate health standards overall and the big
5 picture is a relatively small piece of the pie.

6 There is other interesting data in terms of
7 safety standard enforcement. Again, that is in the
8 CPWR chart book if you want to look at that in more
9 detail.

10 The three big ones here would be asbestos,
11 lead, sanitation and actually HAZCOM if you looked at
12 the 1910 citation.

13 In terms of greater than ten but less than 100
14 citations, you have HAZCOM, gas, vapors, PELs, noise
15 and hexchrome. That really kind of surprised me, the
16 hexchrome, because there are only three inspections in
17 the whole Federal plan area.

18 If you look at general industry enforcement of
19 the hexchrome standard -- that was in effect at this
20 point, for enforcement of the general industry,
21 hexchrome, there were 311 citations, 128 inspections
22 and \$178,000 in penalties. It kind of surprised me how

1 little enforcement there was of the construction
2 hexchrome standard in particular.

3 When you look at some of these other standards
4 like methylene chloride, ventilation welding, benzene,
5 cadmium, arsenic, now we are looking at single digits
6 in the area of like two inspections. I think the
7 biggest one was cadmium.

8 Here, I actually pulled up the general
9 industry standard, too. I pulled up the construction
10 and it said zero. I said wait a minute, there must be
11 something going on. Generally, there was something but
12 it was very small.

13 Chris actually used this data and put together
14 a nice little summary table and it kind of shows the
15 numbers and where everything came from.

16 For the data I just reported, the first two
17 tables were based only on the 1926 standards, and then
18 the last remaining six were both general industry and
19 construction.

20 MS. BILHORN: Can I ask about the sanitation?

21 MS. SUSI: Sure.

22 MS. BILHORN: Sanitation is very broad. Do

1 you happen to know in what areas?

2 MS. SUSI: That was the problem. It just
3 gives you what was cited. It doesn't give you that
4 level of detail.

5 MR. GILLEN: When you included the general
6 industry, you are talking about construction violations
7 at general industry establishments?

8 MS. SUSI: I should be more clear about that.

9 MR. GILLEN: You're not comparing it to
10 general industry.

11 MS. SUSI: Right. With all of these three
12 graphs, the ones with more than 100, in some cases it
13 includes other than 15, 16, 17 SIC Codes. For
14 asbestos, there were more than construction people
15 being cited using the construction standard. For the
16 remaining health standards I looked at, it was only for
17 SIC 15, 16 and 17.

18 I started by searching the construction
19 standard and nobody turned up, general industry,
20 construction, whatever. Then I looked at the general
21 industry standard equivalent just for the SIC Codes,
22 construction.

1 There are a lot of different ways to slice and
2 dice it. The bottom line is there is not a whole hell
3 of a lot of enforcement going on with health standards
4 in construction, with the exception of possibly
5 asbestos, lead and HAZCOM.

6 MR. JONES: Why do you think that is?

7 MS. SUSI: Because there is not enough
8 emphasis on it. There are the issues that I discussed
9 that are barriers. There is probably just not enough
10 emphasis on it.

11 MR. ZARLETTI: Whatever OSHA is not looking at
12 or --

13 MR. JONES: Or it's just the nature of the
14 construction.

15 MS. SUSI: The hazards are there. In terms of
16 going into more detail, I did talk to the Enforcement
17 Office about the asbestos and lead to try to get a
18 little more detail.

19 The information they had was the top three
20 issues that were being cited for asbestos was
21 insufficient training, lack of initial exposure
22 assessment, and then failure to comply with the

1 prescribed methods for certain tasks in the asbestos
2 standard.

3 Again, this is very hard to read. A slide
4 that illustrates proportionate mortality ratio's for
5 construction workers, which is a clear indicator of
6 elevated risks, so if you have a PMR greater than one,
7 it's sort of a flag there is a problem here.

8 We started with PMRs of asbestosis of 1.6 for
9 carpenters and go all the way up to 84 for insulation
10 workers. Certainly, there is a problem with asbestosis
11 in the construction industry.

12 In terms of lung cancer, you see elevated PMRs
13 for those same trades. It ranges from 1.19 to 1.69.

14 This is a study that was done looking at
15 former Department of Energy workers, construction
16 workers, abnormal chest x-rays. The numbers again here
17 were really high starting with a low of about 12
18 percent among operating engineers going up to 40
19 percent with asbestos workers, and 25 percent,
20 millwrights, and so on.

21 This is hard to see but this is something that
22 Matt tipped me off to, a health and safety executive in

1 the U.K. Has a nice little web resource where you go in
2 and it not only tells you about the hazards of asbestos
3 and where to do in terms of standards, but it has these
4 personal accounts of workers who have asbestosis. It
5 kind of gives you a compelling point of view on the
6 whole thing.

7 MR. GILLEN: What we were talking about is
8 perhaps one of the underlying factors is awareness of
9 health hazards among construction workers and
10 contractors is probably lower than awareness about
11 injury hazards, and what are things we could do to
12 raise awareness about health hazards. That was a good
13 example of a pretty good website that helps get
14 people's attention and explains to people in their
15 language what the issues are.

16 MS. SUSI: I guess to carry that out further,
17 asbestos, there is probably more awareness about that
18 than anything, but if you had something similar for
19 other health hazards, that might be particularly
20 useful.

21 The top three lead violations were again
22 initial exposure assessment was lacking, and the

1 interim protections in the lead standard requires
2 interim respiratory protection for certain tasks until
3 they can establish exposures below the PEL, and then
4 lack of provision of protective work clothing.

5 This slide is hard to read but it
6 illustrates -- this is taken from the blood lead
7 registry data that Massachusetts keeps. They happen to
8 be one of the better ones, I think, in terms of
9 tracking that.

10 It just shows how in terms of the very high
11 blood leads, over 40 micrograms per deciliter, you can
12 see the first three work categories are painting,
13 de-leading and other construction with a really high
14 percentage. 1996 to 2001, over 40 percent of the
15 elevated blood lead cases were among the painters and
16 so on.

17 Based on this, what could we be doing better.
18 You guys can probably better answer that question. It
19 seems like OSHA could be doing more health inspections
20 in construction. If there is not a problem so be it,
21 you wouldn't have citations. We are not even seeing
22 inspections. Have to at least do that much to make

1 sure there is not a problem.

2 Construction employers still are not
3 adequately protecting workers from lead as evidenced,
4 or asbestos, as evidenced by the OSHA standards and
5 apparently not with HAZCOM.

6 There are problems with other agents, like
7 benzene, arsenic, silica, manganese, chromium, welding
8 fumes. There is really not an OSHA impact because
9 either there is not a standard or the standards aren't
10 being enforced because there are not inspections out
11 there going on.

12 The issue of occupational disease, whether it
13 is a real issue. There is one study that came out in
14 the peer review literature a couple of years ago that
15 estimates about 50,000 to 60,000 deaths per year from
16 occupational illness in the U.S., and that would put it
17 by their estimates as the eighth leading cause of
18 death, actually ahead of motor vehicle accidents, and
19 the cost of occupational disease and injuries works out
20 to about \$23 billion per year.

21 These are just some pictures to kind of speak
22 to Walter's issue about whether it isn't an issue.

1 Certainly, we know silica is. This is a very limited
2 amount of data.

3 It just shows some measurements that we took
4 and we saw exposures that were 500 times the NIOSH
5 recommended limit for painters, up to over 20 times for
6 bricklayers. That is probably lower than other data
7 that we have seen. Operators and laborers' exposures
8 going up to 12 times the NIOSH recommended exposure
9 limit.

10 We have done some measurements that show
11 elevated exposures to manganese, hexchrome, just
12 respirable welding fumes in general. One thing we
13 don't see a lot of is engineering controls in
14 construction, and as industrial hygienists, that is
15 supposed to be our primary goal, to protect workers
16 through controlling the environment.

17 The OSHA standards typically take that
18 approach, but still we don't see it that much.

19 Sadly, this picture was taken in New Jersey
20 where they even have a state statute that requires use
21 of water for dry cutting, and it wasn't happening on
22 that particular job.

1 Some other things that the Enforcement Office
2 shared with me is they do have the silica national
3 emphasis program, and between February 2008 and 2009,
4 they recorded over 660 citations for both general
5 industry and construction. They say there is going to
6 be a national emphasis program for hexchrome. It would
7 be interesting to see if there is much more activity
8 with regard to construction.

9 I don't usually put pictures of my kids up at
10 the end of presentations, but on the left is a slide I
11 show usually to illustrate take home hazards. This is
12 my daughter almost 30 years ago, 25 years ago, where
13 she's dressed up in my work clothes. I was a carpenter
14 working on smelting.

15 I wasn't hip to the fact you probably
16 shouldn't let them be playing around with your tool
17 belt. Actually, I was on the night shift, and she got
18 into it while I was sleeping.

19 I showed this to the other committee Frank
20 also chairs and I said to them is there anything else
21 you want me to point out to the ACCSH folks or do
22 differently with the presentation, yeah, you should add

1 a picture of her now. I had showed it to them back in
2 September and she was about to get married. I was
3 being a sentimental mom. He said, well, show a picture
4 from her wedding, so that is what that is.

5 If you go to the table now, this is more
6 apples and apples. The data I presented just now, it
7 was confusing because I was mixing up different
8 standards and so on.

9 The table is strictly SIC 15, 16 and 17, and
10 you have data for both the general industry and the
11 construction citation for each standard.

12 You can see for asbestos -- this is the year I
13 presented just now and then the current year, which
14 goes from October 2008 to September 2009. It hasn't
15 changed that much.

16 Where I have the asterisk, that means I didn't
17 have -- the first data you see is current data. The
18 data behind the back slash is last year's data. Where
19 you see an asterisk, that means I didn't get the
20 general industry standard data and there is no way of
21 getting it now because that's not on the Internet any
22 more.

1 You can see with regard to asbestos, there are
2 about 336 inspections this past year, 406 before that,
3 not that different. The only thing that is really
4 different is the HAZCOM. If you go to the next page,
5 you can see for yourself. Not a whole lot of activity
6 for those SIC Codes regardless of which citation you
7 use.

8 We had a case of cadmium, they actually did
9 double the inspections. They did one last year and two
10 this year. The doubling isn't quite as impressive as
11 it may sound.

12 MR. HAWKINS: I'm just curious why you didn't
13 use the state data.

14 MS. SUSI: When I did it, I was thinking it
15 was not very easy to do state data.

16 MR. HAWKINS: We are all required to report to
17 the INIS. It should be there.

18 MS. SUSI: I don't know if on this particular
19 utility you can or can't to be truthful, but there was
20 some reason I didn't. I think for purposes of what I
21 was looking at, you really couldn't get to the state
22 data. I'd have to verify that. I'm not sure. I know

1 you could get it if you did the search, but for this
2 particular utility, I'm not sure you could get to it.

3 MR. BEAUREGARD: I was just going to add to
4 Steve's comments, I would recommend that you try to get
5 the state data for a couple of different reasons. One
6 is I think you had a slide up there that indicated
7 construction related inspections were down on the
8 Federal OSHA side. I believe they are actually up on
9 the state OSHA side. State OSHA actually conducts
10 quite a few more inspections.

11 I'm not saying the data is going to be any
12 different, but it would give you a more comprehensive
13 set of data to look at, if you're looking at these
14 particular substances.

15 The other thing, I just wanted to make a few
16 comments on a couple of slides. One of the things you
17 talked about was some of the 1910 standards being
18 applicable in construction.

19 I believe the reason for that was back when
20 they had the Paper Reduction Act back in the 1990s,
21 there used to be a duplicate of standards, both in
22 construction and in general industry. There used to be

1 HAZCOM standards in construction.

2 As part of that, they eliminated those, and
3 now there are certain 1910 standards that are
4 applicable in construction. I believe the reason they
5 did that, and the Directorate can talk on that, was
6 basically to eliminate duplication, because the
7 requirements were the same.

8 The final thing I wanted to comment on is the
9 methylene chloride, where you are only showing a couple
10 of inspections, I can't speak for this everywhere, but
11 we saw a drastic decline in the usage of methylene
12 chloride in industry, and we saw it replaced with
13 1-bromopropane, and 1-bromopropane is an unregulated
14 item under OSHA, which is one of the reasons we saw a
15 big switch. We have a lot of furniture manufacturing
16 industries and other industries that use this
17 substance.

18 We put together some hazard alerts and other
19 things, because that was what we were seeing. We were
20 seeing a switch from methylene chloride to
21 1-bromopropane, which may account for why you are
22 seeing few methylene chloride violations. We end up

1 citing that under the general duty clause because there
2 are exposure levels but there is not an OSHA regulation
3 to regulate 1-bromopropane.

4 MS. SUSI: Where have you seen it, in paint
5 stripping operations mainly?

6 MR. BEAUREGARD: In a lot of furniture related
7 manufacturing operations which would include that. You
8 also see it in operations where they have foam and
9 other upholstery type operations.

10 1-bromopropane appears to be in pretty
11 widespread use. If you go to our website, we have a
12 hazard alert on it that indicates a lot of the usage we
13 were finding out there.

14 MS. SUSI: That's a good idea. If we can do
15 that, we will certainly do that, see if there is a
16 difference there.

17 On the citation thing, in addition to what you
18 said, I think somebody told me from OSHA that you are
19 just allowed to do that, you are allowed to cite by
20 reference. After dealing with these standards, I can
21 understand why you do that. If you are using 1910.1000
22 for eight of ten citations, it's easier to do that than

1 go back and look up the construction standard.

2 CHAIRMAN MIGLIACCIO: Any other questions?

3 MR. JONES: Doesn't this also point to what
4 they are trying to do with the silica program, going to
5 a task based approach, where controls are instituted by
6 requirement and moving away from the need for OSHA to
7 have scheduling of every construction project so they
8 know when certain health hazard activities are
9 occurring so they can see if these are being
10 controlled?

11 MS. SUSI: You mean the tasks in terms of
12 citations?

13 MR. JONES: You're making the case that health
14 hazards -- everyone agrees that health hazards is
15 poorly respected in construction. I was saying because
16 of the difficulty and the nature of construction, OSHA,
17 being involved in a time of limited resources, being
18 able to get to every project when that scheduled time
19 that hazard is going to occur in order to actually cite
20 it or evaluate it, it's easier if these controls were
21 being used and you just come out and review whether the
22 controls were being used.

1 MS. SUSI: I think the big issue is
2 enforcement. Like with asbestos and lead, there are
3 requirements that you use certain controls, do
4 monitoring and have controls, and they were being cited
5 for both of those.

6 I agree, I think mandating use of engineering
7 controls for certain tasks we know are high exposure
8 definitely is the way to go, and they are doing that in
9 California. PPE is another issue, but I'm not here to
10 talk about that.

11 CHAIRMAN MIGLIACCIO: Elizabeth?

12 MS. ARIOTO: With regard to the hazard
13 communication, there are so many citations, do you have
14 any idea, was it just because they didn't have a
15 program? Was there lack of training? I know it's easy
16 to write a violation if you have no program. When you
17 see all the other health hazards or health issues --

18 MS. SUSI: That is kind of like what Kevin
19 said, the state analyses would be good, and also if
20 there is some way to do a more detailed analysis. I
21 couldn't find it in terms of the utility I was using.
22 If it doesn't exist, maybe that is something you could

1 get from OSHA directly.

2 MR. JONES: Even with a health hazard, I mean
3 with a HAZCOM, if there is an exposure to benzene or
4 something, now we have to sample. Now you have to find
5 an operation where you are going to get representative
6 sampling, an eight hour sampling, and that process in
7 construction may be over with.

8 In general industry, the widget maker sitting
9 at the widget machine eight hours a day, 40 hours a
10 week, it's easy to go in there and hang a pump. In
11 construction, the guy cutting block, you hang a pump on
12 him and he suddenly decides to sweep the parking lot.
13 Then when you come back again, you may do some sampling
14 and the wall is already built or already demolished.
15 What do you do now?

16 If I was in OSHA and I had limited resources,
17 it's difficult for me to throw a bunch of pumps in the
18 truck and run around town trying to find a particular
19 hazard. I'm looking for vapor and I have particulate
20 catchers or whatever.

21 It is a lot more complex. I think having the
22 will is one thing but I just don't know about the

1 practicality for construction, and that is why you will
2 always hear me talking about what we have done in
3 silica, going to task based controls, like we have done
4 with the ANSI standard where if it's loud, use hearing
5 protection.

6 We don't need to sample to determine how loud
7 it is and how long you have to wear hearing protection.
8 If I'm yelling to talk to you, let's do something about
9 it. You don't have to hire me at \$250 an hour to hang
10 a pump to let you know it's loud. It's the same thing
11 we are trying to get at with silica.

12 I think that is a more practical way in a time
13 of limited resources to address these hazards and bring
14 awareness.

15 MS. SUSI: I think she's just looking for more
16 details on HAZCOM.

17 MS. ARIOTO: I've noticed with compliance
18 officers when they have come to certain sites, where is
19 your HAZCOM program, and if there isn't one, that's a
20 citation right there. I've seen inspectors go out and
21 they will go up to workers and say can you tell me
22 where your MSDS sheet is, and then the worker will say

1 what's an MSDS sheet. There's your ineffective
2 program.

3 I think there is a follow through from the
4 hazard communication program, so you look at an MSDS
5 and see one of these chemicals and see what the company
6 is doing or not doing.

7 MS. SUSI: That makes sense.

8 MS. ARIOTO: I think that is an important
9 issue. Not just having a citation for not having a
10 HAZCOM program but why.

11 MR. BEAUREGARD: I just wanted to speak on the
12 number of health related inspections. I don't know if
13 this is the answer but I know since I've been involved
14 with OSHA, targeting has always been a challenging
15 issue for exactly what Walter indicated about you have
16 to have specific operations going on at a specific time
17 in order to have health compliance go in and look at
18 that.

19 As a result, I know a great deal of the
20 activity that we do is a result of a referral, where we
21 may have a safety compliance officer at that site doing
22 a safety inspection and they come across some health

1 related items, they refer it to our health section and
2 the health section goes in there at that time and is
3 able to do the sampling or arrange the sampling,
4 whereas it seems to be a little bit tougher of a
5 challenge to target health inspections than to target
6 safety inspections when it comes to the construction
7 industry.

8 MS. SUSI: What about when they do program
9 inspections, does that play into it? How does that
10 work?

11 MR. BEAUREGARD: I can't speak on the Federal
12 level and possibly they can. We do program plan
13 inspections in general industry that are health
14 targeted. Many of the construction inspections that we
15 do generally start out as a safety compliance
16 inspection and then we bring the health folks into it
17 on an as needed basis because many of the items
18 originally being looked at are safety related, and you
19 don't know whether or not there is going to be health
20 issues or not until you get into it.

21 MS. SUSI: I did this at the industrial
22 hygiene conference, somebody was a former compliance

1 officer. She said that did tend to go on. It seemed
2 if you were doing construction, the safety people went
3 there. If you were a hygienist, you went into general
4 industry. She thought that might have been one of the
5 reasons that you didn't see so many.

6 CHAIRMAN MIGLIACCIO: Steve?

7 MR. HAWKINS: I think one of the other things
8 you could kind of look at is the number of industrial
9 hygiene inspections that are complaint driven, you will
10 find it is more than half in most states, and
11 considerably more than half in Federal OSHA, 60 some
12 odd percent are complaint driven.

13 I think if you were to look at the source of
14 those complaints or where those complaints came from, I
15 think you would find very few come from the
16 construction industry.

17 MS. SUSI: And they are chasing those, right.

18 MR. HAWKINS: We get very few industrial
19 hygiene related complaints, health related complaints,
20 from construction workers. I think that is because
21 they are not educated on health hazards. That is
22 something else.

1 MS. SUSI: Maybe there is a little less job
2 security there and people are concerned about that.

3 MR. HAWKINS: They can do it anonymously. It
4 is hit or miss.

5 MS. SUSI: You see compliance with lead more
6 maybe because it's so continuous, plus potential public
7 exposure, that helps.

8 CHAIRMAN MIGLIACCIO: Kevin?

9 MR. BEAUREGARD: I just wanted to add to what
10 Steve was saying. On lead and asbestos and some other
11 items, we probably have more activity particularly in
12 our state because there are certain reporting
13 requirements to the Department of Health. The Health
14 Department provides us with referrals. That is one of
15 the program activities we do. They don't have
16 reporting requirements for all these various things,
17 just specific substances.

18 It is probably different in each state.

19 MS. SUSI: Yes, that is a good point.

20 CHAIRMAN MIGLIACCIO: Any other questions?

21 MR. GILLEN: I have a question. I know there
22 is cross over training with compliance officers and

1 safety. Is it specific? For example, do the
2 inspectors who focus on construction safety, do they
3 get a cross over that goes into detail about some of
4 the health and vice versa to make referrals more
5 effective? I just wonder if that is something we can
6 look into more to perhaps try to improve the inspection
7 apparatus over time.

8 MS. SUSI: That would have an impact, I would
9 think.

10 MR. HAWKINS: We do cross train our industrial
11 hygienists. I would dare say that the vast majority of
12 the citations and penalties that were issued there
13 probably were as a result of referrals from safety
14 compliance officers to industrial hygienists. That is
15 probably the source of most of those.

16 MS. SUSI: Again, it's an awareness issue, it
17 is more visible, with the benzene and these other
18 things, it's not as common; right?

19 MR. HAWKINS: A well cross trained safety
20 compliance officer being there on the day there might
21 be some kind of -- that's pretty remote. To identify
22 it, not all are cross trained, some are just getting

1 started as safety compliance officers.

2 MS. SUSI: By the time they get the hygienists
3 out there, it might not be going on.

4 MR. HAWKINS: By the time the hygienist comes,
5 they are done. They say well, we're going to come back
6 and sample when you do this again, well, that's fine,
7 but we're never going to do this again.

8 I think what is really missing and I think it
9 is very difficult to do is a targeting mechanism for
10 industrial hygiene in construction. I think it is very
11 difficult to target. You can do it. As you just saw,
12 you have people lumped into 15, 16 and 17. They build
13 bridges or they are a plumber or whatever. General
14 industry, you have furniture industries and
15 probably -- what was the --

16 SPEAKER: Methylene chloride.

17 MR. HAWKINS: You know there is exposure there
18 so you can target that. There might be methylene
19 chloride exposure on a construction site, you have no
20 way to know that in advance, that I'm aware of.

21 A targeting mechanism for hygiene for
22 construction is --

1 MS. SUSI: Maybe the special emphasis programs
2 is really the best bet, then they go industry-wide.

3 MR. HAWKINS: If you targeted an industry by
4 their SIC Code in construction, if you say, well, we
5 found a plumber exposed on this job, so we are going to
6 go target plumbers, you might look through 200 before
7 you found that exposure. Probably wouldn't be a good
8 return on your investment.

9 MS. SUSI: It's tough to capture.

10 MR. HAWKINS: I think targeting is the
11 problem. The proof would be well trained, well cross
12 trained safety compliance officers to make good
13 referrals and rapid response times for industrial
14 hygienists to respond. If they are backed up on
15 complaints, complaints usually come from referrals.

16 CHAIRMAN MIGLIACCIO: Any other questions?

17 MR. BEAUREGARD: Just to add, the OSHA
18 training as well as the state plan training includes an
19 industrial hygiene for safety compliance office course.
20 It's a little bit different than the industrial hygiene
21 courses for the industrial hygienist.

22 Part of that is a referral process. They do

1 go over that in that program.

2 MR. GILLEN: Does that cover general industry
3 and construction or just construction?

4 MR. BEAUREGARD: When we do it, it covers
5 both, but I can't tell you what is in the OSHA one.

6 MR. HAWKINS: I think it's both in the Federal
7 one, too.

8 CHAIRMAN MIGLIACCIO: Any other questions?

9 (No response.)

10 CHAIRMAN MIGLIACCIO: Sarah?

11 MS. SHORTALL: Mr. Chairman, I'd like to mark
12 as Exhibit 16 and enter into the record the
13 presentation on enforcement of OSHA health standards in
14 construction by Pam Susi, and as Exhibit 16.1, the
15 tables.

16 MS. SUSI: Thank you.

17 CHAIRMAN MIGLIACCIO: Thank you.

18 PUBLIC COMMENTS

19 CHAIRMAN MIGLIACCIO: We are at public comment
20 time. We only have one person signed up. Is Dan
21 Glucksman in the room?

22 (No response.)

1 CHAIRMAN MIGLIACCIO: The last thing on the
2 agenda today is ACCSH administration/next meeting.

3 ACCSH ADMINISTRATION/NEXT MEETING

4 CHAIRMAN MIGLIACCIO: Discussion for the next
5 meeting and we also have something left over from this
6 morning for discussion for the meeting in Texas. That
7 probably won't be the next meeting. That is in April.
8 That is four months down the road.

9 MR. BRODERICK: You're welcome to come to
10 Chicago. I just don't know that we could do Chicago
11 and --

12 CHAIRMAN MIGLIACCIO: I talked to Noah about
13 that. The one thing you have to remember is the
14 Department of Labor/OSHA is going to decide where we
15 are going and it's costing them money to send several
16 people. At best, we are only going to one of those
17 places.

18 It really depends on do we want to do one here
19 in Washington and try to get to Texas in April or do we
20 want to try to get to Chicago and not Texas in April.

21 How does the Committee feel? Susan?

22 MS. BILHORN: Not that I don't love going to

1 Chicago in February --

2 (Laughter.)

3 MS. BILHORN: I'm assuming that had nothing to
4 do with it.

5 (Laughter.)

6 MS. BILHORN: Given the fact that the agenda
7 is so well laid out for not our meeting but the meeting
8 we would be in collaboration with up in Chicago and
9 there seems to be a real open agenda at this point for
10 the one in Houston, where we might have an opportunity
11 to participate and support, I would myself suggest we
12 might find a better opportunity there to combine it
13 with Houston.

14 MR. KAVICKY: What's the weather like down
15 there, Mike, in April?

16 MR. THIBODEAUX: Terrible. It's probably 75.

17 MS. BILHORN: And you might get some rain, but
18 probably not.

19 CHAIRMAN MIGLIACCIO: If Texas is the choice,
20 we could do the work groups Tuesday and Wednesday, the
21 13th and 14th. Their conference is all day on the 15th
22 and we would have a full Committee meeting only one

1 day, on the 16th, if that is what we choose.

2 MR. THIBODEAUX: Didn't they also say --

3 CHAIRMAN MIGLIACCIO: I thought it was a day
4 and a half. Half a day on the 14th.

5 MS. SHORTALL: We can get that information to
6 you by tomorrow morning.

7 CHAIRMAN MIGLIACCIO: Do we want to try to get
8 something in before then? That would be February here.

9 MS. BILHORN: If we are attempting to
10 influence either if we met in person or could do a
11 conference call, to attempt to help frame things, if we
12 are attempting to achieve some support or involvement
13 in the April meeting, it would be hard not to do
14 anything between now and then.

15 MS. SHORTALL: (Inaudible.) You still have to
16 meet the other requirements of that, to allow the
17 general public to participate. What will end up
18 probably happening is we would have a room here for
19 those who are able to be here, and everybody else can
20 be patched in by phone, so the public could come and
21 listen in this room.

22 The question is whether you want to do that

1 with both work groups as well as with the full
2 Committee or just the full Committee.

3 MR. JONES: I want to clarify something. You
4 said we would only be meeting one full day in Texas and
5 one full day of Committee meeting or no?

6 CHAIRMAN MIGLIACCIO: One full day of
7 Committee meeting would be the Friday, it would be a
8 full day. Tuesday and Wednesday, you would still have
9 your work groups. They would be having their thing for
10 half a day, it would be our work groups. Thursday, we
11 would be with them all day. Friday, we would have our
12 full day for Committee.

13 MR. JONES: That's a lot for us not to meet
14 for four months and then have a truncated meeting,
15 considering all that is on our plate. I think it is
16 something we should consider.

17 CHAIRMAN MIGLIACCIO: Then a February meeting
18 here.

19 MS. BILHORN: Would anyone be willing to meet
20 on Monday?

21 MR. BRODERICK: Having the people in the
22 conference aware we are having our meeting on Friday

1 should they want to come and observe.

2 MS. BILHORN: Is there a reason that we
3 couldn't meet on Monday? I know that means travel on
4 Sunday.

5 CHAIRMAN MIGLIACCIO: The work groups would
6 have to meet Monday and Tuesday, we could meet on
7 Wednesday and Friday, if you want to do that.

8 MS. ARIOTO: Are you talking about Texas?

9 CHAIRMAN MIGLIACCIO: Yes, Texas. We still
10 have to have OSHA's approval to have the ACCSH meeting
11 in Texas.

12 MR. HAWKINS: Could we start half a day on
13 Monday or 8:00, you're thinking?

14 CHAIRMAN MIGLIACCIO: We could do half a day
15 and meet all day Friday. Here, we only meet half a day
16 on Friday.

17 MS. BILHORN: So, flip it.

18 CHAIRMAN MIGLIACCIO: Yes, just flip it. Then
19 have the work groups -- you could do this, Steve, day
20 and a half for work groups on Monday and Tuesday, full
21 body meeting on Wednesday, and then still have half a
22 day on Friday. That would work, too. Just a day and a

1 half of work groups instead of two full days.

2 MR. SHANAHAN: Frank, did I understand the
3 conference starts Wednesday afternoon?

4 CHAIRMAN MIGLIACCIO: Wednesday afternoon.

5 MR. SHANAHAN: We would meet all day Wednesday
6 so we would not be available for that opening?

7 CHAIRMAN MIGLIACCIO: We could meet half a day
8 Wednesday, go there for the opening, and meet all day
9 Friday.

10 MR. GILLEN: It kind of depends on OSHA.

11 CHAIRMAN MIGLIACCIO: That's what I said,
12 everything depends on OSHA. Could we find out from
13 OSHA how they would want us to meet?

14 MR. CONNELL: Yes.

15 CHAIRMAN MIGLIACCIO: That is April. Let's go
16 back to February. The February holiday is President's
17 Day, the 15th.

18 MR. KAVICKY: When is your conference, Tom?

19 MR. BRODERICK: 16th, 17th and 18th.

20 CHAIRMAN MIGLIACCIO: What does everybody's
21 schedule look like for the 9th, 10th, 11th and 12th of
22 February? Tuesday, Wednesday, Thursday and Friday.

1 That would be here in D.C. Tuesday and Wednesday, work
2 groups. Thursday, all day, Friday, half a day.

3 That's what we are looking at right now. OSHA
4 will get the information out to everybody.

5 We still have a little bit of time. I want to
6 try to find out, you heard Jordan this morning, one of
7 the work groups we are going to come up with is green
8 jobs. What I need to know is what work groups right
9 now are complete or one day shy of complete.

10 Dan?

11 MR. ZARLETTI: I would offer up Trenching and
12 ROPS as two separate groups, and I will chair them
13 both. I think what we have asked is for
14 recommendations so that Emmett and I can take a look at
15 them.

16 We would comprise a letter recommending to
17 OSHA this would be put on an inactive list, not
18 disbanded, and then have everything put on the ACCSH
19 tab on the OSHA page, all the work products we have on
20 Trenching, put it on inactive status, and we don't need
21 to wait until the next meeting for that.

22 CHAIRMAN MIGLIACCIO: We could finalize

1 Trenching?

2 MR. ZARLETTI: If you are looking for a couple
3 of slots to replace.

4 MR. RUSSELL: We think one more meeting for
5 Trenching to give everyone a chance for input. We are
6 thinking there is not going to be anything that is
7 going to be significant enough to keep us working as a
8 work group. I would say we will consider our task
9 done, so one more meeting on Trenching.

10 MR. ZARLETTI: We should move onto other
11 areas, like the one we just saw.

12 CHAIRMAN MIGLIACCIO: What Jordan has
13 basically asked us to do and it is really up to us to
14 decide what we want to do, is with silica, keep silica
15 going but have it silica, maybe "/health hazards."

16 We have co-chairs, Matt and Walter.

17 MR. JONES: I'm fine with that.

18 CHAIRMAN MIGLIACCIO: Trenching would be done.

19 ROPS?

20 MR. RUSSELL: On ROPS, we should be able to
21 have one more meeting and then give a final report to
22 OSHA after that meeting.

1 CHAIRMAN MIGLIACCIO: You will be able to
2 finish that but you will have a new name also,
3 Prevention Through Design. That will accomplish ROPS
4 and anything else you feel should fit in there.

5 MR. ZARLETTI: To extend the health piece a
6 little bit more, I think you need to include things
7 like pathogens.

8 CHAIRMAN MIGLIACCIO: These are things that
9 you are going to actually have to come up with, what
10 you think your charter would be, Matt and Walter.

11 MR. JONES: I don't see why health pathogens
12 wouldn't be under that, or noise, radiation, or
13 anything else.

14 MS. BILHORN: Regulatory compliance, what we
15 were going to do tomorrow during the report is say that
16 there are a couple of outstanding questions, we would
17 really like to see the answers before we decide if
18 there is any meat, and given there is no meat there for
19 us to look into it or provide advice on, then we would
20 suggest moving over to green jobs or combining the two,
21 if there is enough to chew on, but maybe not a full
22 plate to be able to enable the green jobs.

1 I guess one question I have on that is while
2 we might put aside one subject, when we do have a
3 pallet of new subjects, maybe we ought to take a look
4 around and see who should be the working group leads
5 for those, that would be appropriate, not just taking
6 the people who are currently on --

7 CHAIRMAN MIGLIACCIO: I just want to make
8 sure -- the regulatory compliance group, you will be
9 talking tomorrow.

10 MS. BILHORN: Yes, we have some questions.

11 CHAIRMAN MIGLIACCIO: Bill, at the last
12 meeting, you had signed up for a work group. Do you
13 remember which one it was?

14 MR. AHAL: Alternative energy.

15 CHAIRMAN MIGLIACCIO: That would be green
16 jobs.

17 Would you be willing to co-chair that?

18 MR. AHAL: If you need me to. I would have a
19 strong interest in the design issues.

20 MS. BILHORN: That's why I said if we can get
21 the pallet, maybe we can all look at the pallet.

22 CHAIRMAN MIGLIACCIO: Jim, do you remember

1 what you said you would do?

2 MR. TOMASESKI: I don't remember.

3 SPEAKER: I think it was alternative.

4 MR. TOMASESKI: Alternative? I'll do that.

5 CHAIRMAN MIGLIACCIO: Tom?

6 MR. BRODERICK: The subject of safety program,
7 isn't that kind of looming out there as well?

8 MR. GILLEN: Safety and health programs?

9 CHAIRMAN MIGLIACCIO: It wasn't one of the
10 ones listed when we had our meeting yesterday.

11 What we are going to do, if we can get a list,
12 residential fall protection will stay. Multilingual
13 will stay. Power Fastening Tools will stay. Diversity
14 (Women in Construction) stays, and Education and
15 Training will stay.

16 By doing away with Trenching, it brings us
17 down to eight work groups and cuts out that long day
18 for everybody on Tuesday. Everybody can still go to
19 all the other work groups.

20 What we have to do is come up with a list of
21 all the work groups, and then tomorrow, we will go
22 through and see who would like to co-chair the

1 different work groups.

2 MS. BILHORN: What you might do is actually
3 put a list out and have people sign up.

4 CHAIRMAN MIGLIACCIO: That's what I said, come
5 up with a list and have everybody sign it tomorrow, and
6 we will go from there.

7 MR. ZARLETTI: I wanted to make a point of
8 part of our suggesting what we did with Trenching is
9 not just because we have to fulfill the charter, but
10 it's because the fatality rates have declined at such a
11 pace that it just would be giving way to something else
12 that is a greater issue.

13 If all of a sudden we start seeing spikes in
14 trenching, we can bring that back on line.

15 MS. ARIOTO: Tom has three groups. I know how
16 much work he puts into that.

17 CHAIRMAN MIGLIACCIO: Tomorrow, we will try to
18 get everybody at least two.

19 MS. SHORTALL: One thing we should keep in
20 mind is (Inaudible.)

21 MR. BEAUREGARD: Just a real quick question.
22 I know a number of the ACCSH members' terms are

1 officially expired, although folks continue on in those
2 roles until new terms start up. Is the Directorate
3 able to provide any update as far as the time line of
4 replacing members?

5 MR. CONNELL: We don't have a time line at the
6 moment.

7 MR. ZARLETTI: I would ask for those members
8 whose terms are expired or expiring, should we be doing
9 something about that, to at least let the Agency be
10 aware we are interested or no longer interested?

11 MR. BUCHET: Deputy Assistant Secretary Barab
12 has instructed us to begin the paperwork process for
13 the Federal Register Notice soliciting new membership.
14 How long it will take us to get that done, it is
15 probably safe to say some time next year. Remember,
16 January is around the corner.

17 Beyond that, it will look much like the last
18 solicitation. It will be a Federal Register Notice
19 requiring electronic response, including resume's,
20 letter of nomination, letters of support, documentation
21 that you know something about the construction
22 industry. We haven't written it yet. We have a draft

1 and it will go through the concurrence process.

2 MR. ZARLETTI: Do we enroll the same way,
3 through that process?

4 MR. BUCHET: Yes. As far as people doing
5 things ahead of time, several of you have already
6 written letters and had letters written for you. There
7 is no reason why the rest of you can't do that. We
8 will keep track of that.

9 MS. SHORTALL: (Inaudible.) Prepared letters
10 to be sent acknowledging receipt of the nominations and
11 volunteered to put them into the public record.

12 MR. BUCHET: I believe the language we used in
13 the last solicitation, the one before that, says we
14 will look at everything that has been submitted and
15 other. Your materials that you submit ahead of time
16 will be included. That doesn't mean that you don't
17 need to submit what is required by the Federal Register
18 Notice.

19 About half the committee expired, well, the
20 representative from NIOSH has an indeterminable
21 expiration date.

22 MS. SHORTALL: (Inaudible.)

1 CHAIRMAN MIGLIACCIO: First thing tomorrow on
2 the agenda, we will have a list of the eight work
3 groups and then we will start fresh. We will have you
4 fill in your names and we will go from there. We will
5 have to come up with the job tasks or mission
6 statement.

7 It is going to be Green Jobs/Health Hazards,
8 Residential Fall Protection, Multilingual, Power
9 Fastening Tools, Diversity (Women in Construction),
10 Education and Training, OTI, and Prevention Through
11 Design. It is going to be similar to that. Think
12 about it tonight.

13 MR. AHAL: (Inaudible.)

14 CHAIRMAN MIGLIACCIO: Basically, that's what
15 has happened with Trenching. The mission -- we don't
16 want to do away with that.

17 MR. ZARLETTI: If there is a good record of
18 fatalities increasing, we will bring it back.

19 MR. AHAL: We will bring it back.

20 MS. SHORTALL: (Inaudible.)

21 MR. GILLEN: Could you e-mail that in Word?

22 MS. BILHORN: Template for an agenda and a

1 template for a report to ACCSH.

2 MR. BUCHET: (Inaudible.)

3 CHAIRMAN MIGLIACCIO: One person speak at a
4 time, please, so the Reporter can get it.

5 Sarah, maybe you can provide some guidance on
6 what the terms are. The work groups are definitely not
7 chartered.

8 MS. SHORTALL: (Inaudible.)

9 MS. BILHORN: It was the working group leads
10 should state what it is they intend to achieve, whether
11 you call it a mission or charter, what they intend to
12 achieve; right?

13 MS. SHORTALL: Sure.

14 MS. BILHORN: That is what we did back in
15 April.

16 MS. SHORTALL: You're right; absolutely.

17 MS. BILHORN: Frank, a couple of suggestions
18 based on the last couple of meetings --

19 CHAIRMAN MIGLIACCIO: Excuse me. The Reporter
20 cannot understand the person that is recognized, if you
21 would just keep quiet for a minute. Thank you. Susan?

22 MS. BILHORN: Maybe this is just me, but I had

1 thought at one time that the working group leads
2 actually had a chance to comment on the schedule in
3 advance of the meetings. That certainly is helpful.

4 On occasion, one or the other of us has a
5 conflict that we can't get around, but we could get
6 around it if we could have our working group at a
7 different time.

8 I don't know if you see the schedule in
9 advance or if you design it, but if you could
10 coordinate with the leads, at least for me, it would be
11 very helpful.

12 CHAIRMAN MIGLIACCIO: Mike?

13 MR. BUCHET: We make every attempt to do that.
14 The issue with scheduling the work groups is they have
15 to be in print for concurrence for the Federal Register
16 Notice. If you call up too late and that document is
17 going through the system, we have no chance to change
18 anything.

19 If some people call up and say can you change
20 this and switch this, and I go it's not a problem
21 today. Tomorrow, once the document goes into the
22 review process, it's very difficult.

1 MS. BILHORN: If we don't see it, we don't
2 have a chance to --

3 MR. JONES: If you know you are sending it on
4 April 12, on April 8, you could say, head's up,
5 committee chairs, this is what we have going on.

6 MR. BUCHET: I work with the chairs. If that
7 is what you would like to have done, we will do it.

8 CHAIRMAN MIGLIACCIO: If you'd like, when I
9 get it, I can e-mail it to all the chairs and then you
10 can see what it is. We do need to get that back. We
11 have changed it like three or four times.

12 MS. SHORTALL: (Inaudible.) We have to go
13 through a significant review process. Maybe doing that
14 type of check off, a month in advance.

15 MS. BILHORN: I absolutely would appreciate
16 that and the 15 days does help, but it would help also,
17 Frank, if you would send it out when you are finalizing
18 it.

19 For example, I didn't know I had a conflict
20 until two weeks in advance. I did know I had it sooner
21 than 15 days. If I had that deadline, I could push
22 harder.

1 MR. BUCHET: The issue, if I could be really
2 clear, is it has to be in the Federal Register 15 days
3 ahead of time. It goes into the pipeline to get to the
4 Federal Register a week and a half or more before that.

5 It would be a good idea -- at least a month
6 out.

7 MR. JONES: It doesn't matter when it goes in,
8 if you know it's going in on this day, give us a head's
9 up. That's all, professional courtesy.

10 MS. SHORTALL: Once OSHA makes a decision and
11 it goes into the review process (Inaudible.)

12 MS. BILHORN: I get the point. I was not
13 suggesting that we try to change it once it goes out in
14 the Federal Register or once it is going through the
15 legal review. I was not suggesting that.

16 I was just suggesting there might be a prompt
17 that Frank could do when he was finalizing the agenda
18 and just send it out to the leads and say do you have
19 any issues with this, just to remind us.

20 MR. BUCHET: We have gone through a great many
21 groups to adjust the schedules to meet everybody's
22 things. I have told Tom, sorry, you're out of luck.

1 If you had done it a day earlier, we could have
2 switched yours and yours. People have called in saying
3 people are coming in from out of town, they need to
4 travel on certain days, can you arrange stuff.

5 All of that is possible and we do it, but --

6 MS. BILHORN: Please don't take this as
7 criticism. It was a request, merely.

8 MR. BUCHET: We will do it a month out. As
9 soon as we get it together a month out, and you can
10 e-mail me back. Not always can we make the changes.
11 That is one thing you have to realize.

12 MS. BILHORN: Thank you.

13 MR. BUCHET: We will do it a month out and that
14 gives us three weeks, 15 days plus a week, 21 days.
15 That is cutting it close. We'd rather get it there
16 sooner and then our concurrence process depends on who
17 is here to do it. If you can get it to us, without a
18 doubt, I would say five weeks.

19 CHAIRMAN MIGLIACCIO: Five weeks before the
20 next meeting. We will plan it out. We will get it out
21 to everybody.

22 MS. BILHORN: Since that was so

1 non-controversial --

2 (Laughter.)

3 MR. THIBODEAUX: And it went so well.

4 MS. BILHORN: And it went so well, I think I
5 have certainly stumbled upon it and maybe others as
6 well, a lack of my own understanding of what support is
7 available.

8 Mike has been always great. Maybe if there is
9 a process that would be easier for you guys, because I
10 know sometimes it has not always been so easy, but if
11 we knew what the ground rules are and who would be the
12 best person to go to, for example, to get Xerox's or
13 any support that we need while we are here, it would be
14 helpful if that was outlined for us, all of us,
15 universally. That is a request, in terms of any
16 logistics support we may need while we are here, like
17 Xeroxing.

18 CHAIRMAN MIGLIACCIO: Your group, you have
19 three people, Franklin, Hall and Preston. One of those
20 three should be your contact person to get your
21 presentations ready for the next day.

22 MS. BILHORN: I'm so sorry. I did not know.

1 CHAIRMAN MIGLIACCIO: They are your staff
2 contacts. Bill was my staff contact, Bill Parson.

3 MS. BILHORN: These people are available to
4 copy materials for us for the meeting?

5 CHAIRMAN MIGLIACCIO: Or get the copies done.

6 MS. BILHORN: They are available to make
7 copies for us as well. Thank you. That helps.

8 CHAIRMAN MIGLIACCIO: That's what I used to
9 do.

10 MS. BILHORN: I have been sending them to
11 Michael and Michael has been good enough to send them
12 out. I didn't realize that. It would be nice if we
13 could have their e-mail addresses or at least one. I
14 don't have any of these.

15 If they are our points for logistics, it would
16 be helpful to have their contact information.

17 MR. BUCHET: Thank you. Maybe we can
18 entertain some other ideas about how the administrative
19 process goes.

20 The time frame for making paper available is
21 just precious resources. Unfortunately, our equipment
22 breaks. Unfortunately, the money runs out on the 18th.

1 We are working on last year's funds, which
2 means we don't always have the ability to buy printer
3 cartridges, for instance, mine is out of ink, and has
4 been since Friday morning.

5 We will get it done and we have to figure out
6 how to get it done, so I can't tell you what the
7 process is. We may have people running around the
8 building going here's a case of paper, can I use your
9 printer. Please bear with us. We will get it made.

10 We need to focus on a way and assigning staff
11 to the work groups is the idea, so you can go to your
12 person and say hi, I need my minutes typed up. If you
13 say hi, I need 1,000 copies of a 50 page document, that
14 becomes problematic. Big stuff to hand out at the
15 meeting, we can send to the print shop, again, if we
16 get it ahead of time.

17 You will notice that not everything that we
18 got did get it ahead of time. We were making copies
19 late last night and early this morning.

20 There isn't a great process because this is
21 not a conference center operation. We try to make it
22 that way. Please bring your requests to me and we will

1 farm it out to the people who can get it done, but
2 please be patient when we say it is going to take a
3 while.

4 MS. BILHORN: But these staff contacts are the
5 ones we should be going to, and if we had their contact
6 information -- I didn't realize --

7 MR. BUCHET: We will have at least one staff
8 contact who is going to be relatively consistent with
9 the work groups. At the moment, I can't speak for
10 Bill's shop, but Preston and Hall's, they are brand new
11 hire's. We are working through the personnel issue and
12 assigning people to work groups in a permanent manner.
13 You will notice they have changed fairly often over the
14 last three or four meetings.

15 CHAIRMAN MIGLIACCIO: Anything else?

16 (No response.)

17 CHAIRMAN MIGLIACCIO: Like I said, Friday is a
18 travel day, casual clothing is accepted. With that, we
19 will meet tomorrow morning at 8:30.

20 (Whereupon, at 4:45 p.m., the meeting was
21 recessed, to reconvene the following day, Friday,
22 December 11, 2009.) * * * * *