

1 UNITED STATES OF AMERICA
2 DEPARTMENT OF LABOR
3 OCCUPATIONAL SAFETY AND HEALTH
4 ADMINISTRATION
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6 ADVISORY COMMITTEE ON CONSTRUCTION
7 SAFETY AND HEALTH
8 + + + + +
9 MEETING

10 + + + + +
11 FRIDAY, APRIL 16, 2010

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13 The meeting convened at 8:00 a.m. in the
14 Bluebonnet B Room, Holiday Inn Crowne Plaza Hotel, 1700
15 Smith Street, Houston, Texas, 77002, Frank Migliaccio,
16 Chair, presiding.

17
18 EMPLOYEE REPRESENTATIVES:

19 FRANK L. MIGLIACCIO, JR., Executive Director
20 Safety & Health, International
21 Association of Bridge, Structural,
22 Ornamental & Reinforcing Iron Workers

23
24 WALTER R. JONES, Associate Director,
25 Occupational Safety & Health, Laborers
Health & Safety Fund of North America

EMMETT M. RUSSELL, Director,
Department of Safety & Health,
International Union of Operating
Engineers

1 EMPLOYEE REPRESENTATIVES (cont'd):

2 THOMAS L. KAVICKY, Safety
3 Director/Assistant to the President,
4 Chicago Regional Council of Carpenters

5 EMPLOYER REPRESENTATIVES:

6 MICHAEL J. THIBODEAUX, President, MJT
7 Consulting, for the National Association
8 of Homebuilders

9 THOMAS SHANAHAN, Associate Executive
10 Director, National Roofing Contractors
11 Association

12 WILLIAM R. AHAL, President, Ahal
13 Preconstruction Services, LLC, for the
14 Associated General Contractors

15 DANIEL D. ZARLETTI, Vice President, Safety,
16 Health & Environment, Kenny Construction
17 Company

18 SUSAN G. BILHORN, Senior Vice President of
19 Operations, Jacobs Technology

20 STATE REPRESENTATIVES:

21 STEVEN D. HAWKINS, Assistant Administrator,
22 Tennessee Occupational Safety & Health
23 Administration

24 PUBLIC REPRESENTATIVES:

25 THOMAS A. BRODERICK, Executive Director,
Construction Safety Council

JEWEL ELIZABETH ARIOTO, Elizabeth Arioto
Safety & Health Consulting Services

1 FEDERAL REPRESENTATIVE:

2 MATT GILLEN, Construction Program Coordinator/
3 Senior Scientist, Office of the Director,
4 CDC-NIOSH

5 DESIGNATED FEDERAL OFFICIAL:

6 BILL R. PARSONS, Acting Director,
7 Directorate of Construction,
8 U. S. Department of Labor-OSHA

9 MICHAEL M. X. BUCHET, Project Officer, Office
10 of Construction Services, Directorate of
11 Construction

12 COMMITTEE SOLICITOR CONTACT:

13 SARAH SHORTALL, ACCSH Counsel, Office of the
14 Solicitor, U. S. Department of Labor
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1 P R O C E E D I N G S

2 8:05 a.m.

3 CHAIR MIGLIACCIO: Like to reconvene the
4 ACCSH committee meeting. For those in the back, there's
5 the public comments listed back there, the sign-in sheet
6 back there, so put your e-mail if you want to be
7 e-mailed. It's there.

8 This morning, well, just about the whole
9 morning, we have work groups, so we'll get started on
10 the work groups.

11 First work group up is Powered Fastening Tools.
12 Who's going to give the presentation?

13 MR. KAVICKY: I will. Tom Kavicky. The
14 Powered Fastening Tools, Nail Guns Work Group meeting
15 was held on April 12th, 1:30 p.m. to 2:45 p.m. We
16 had -- the co-chairs are Elizabeth Arioto and myself,
17 Tom Kavicky. We did the welcome, self-introduction. We
18 had 41 attendants, very well-attended work group. Went
19 through the agenda for the meeting and reviewed the
20 meeting minutes from the work group on July 28th, 2009.

21 First thing on the -- on the agenda was a video
22 clip of "OSHA Listens" showing testimony from Hester
23 Lipscomb addressing OSHA regarding the seriousness of
24 nail gun injuries and the need for continuing research
25 for the prevention of worker injuries. It was shown to

1 the work groups. Comments did follow the video.

2 Bob Bellman then provided oral comments
3 regarding the danger of nail guns. Mr. Bellman
4 explained the type of trigger mechanism used by the
5 worker was not the real problem that is causing the nail
6 gun injuries. He stated that the injuries were being
7 caused by the lack of basic nail gun safety training.
8 His company developed a nail gun safety training program
9 for his employees that used both contact trip and
10 sequential trigger pneumatic nailers. He feels that
11 training was the most important component in reducing
12 the numbers of injuries. They do pretesting, hands-on
13 training and post-testing of all the workers prior to
14 their operating the nailer.

15 The company found that they needed to provide
16 refresher training and testing every 18 months in order
17 to continue the reduction of nail gun injuries within
18 their company.

19 Scott Schneider discussed the Hester Lipscomb
20 video clip, making reference to 13,000 annual nail gun
21 injuries that occur on construction sites. He suggested
22 the need for improving the contact trigger nail gun
23 design and safety mechanism due to the many accidental
24 injuries involving this type of nailer.

25 Tom Traeger suggested that more research is

1 needed for the prevention of nail gun injuries.

2 John Kurtz of ISNTA provided the work group
3 with a PowerPoint presentation titled, "Nailing Roof
4 Deck: Two Actuated Systems." The video demonstrated a
5 comparison of two workers tasked with nailing a large
6 open area warehouse deck using both sequential and
7 contact trip nailers. Upon completion, both workers
8 provided comments regarding the nail guns that they were
9 using during the task. Comments regarding production
10 and ergonomic issues were given by the workers.

11 John then handed out a copy of the CALOSHA
12 regulation, Article 28, Section 1704, "Pneumatically-
13 Driven Nailers and Staplers," and a brief discussion
14 followed with the work group.

15 A discussion by the work group members ensued
16 regarding the accuracy of a sequential trigger gun
17 versus the speed of a contact trigger gun while
18 performing work activities involving precise nailing of
19 structures such as floor and roof trusses, rafters and
20 other framing components. Comments were made regarding
21 some of the various needs and applications of both
22 nailers to be used on the residential site.

23 Jim Albers of NIOSH discussed the differences
24 in nail gun triggers and their applications in
25 residential construction. He spoke about the existing

1 ANSI standard for pneumatic fasteners and -- that
2 states, "The contact trip nail gun is used as a
3 production tool and the sequential gun is used for
4 precise nailing." Although no definition of "precise
5 nailing" is given in the standard, Mr. Albers then gave
6 a PowerPoint presentation titled, "Adoption and
7 Diffusion of Safety-Improved Nail Guns." It's a NIOSH
8 project update.

9 The work group co-chair will contact the
10 National Electronic Surveillance Injury Systems to
11 secure more data on nail gun injuries. The work group
12 did adjourn at 2:50 p.m.

13 CHAIR MIGLIACCIO: Liz, do you have
14 anything to add?

15 MS. ARIOTO: No.

16 CHAIR MIGLIACCIO: At this time, I'll
17 entertain a motion to accept the Nail Gun -- or the
18 Powered Fastening Tools Nail Gun Groups.

19 MR. THIBODEAUX: Motion.

20 MR. AHAL: Second.

21 CHAIR MIGLIACCIO: Motion was made by Mike
22 Thibodeaux and seconded by Bill Ahal.

23 Discussion? Tom?

24 MR. SHANAHAN: Tom Shanahan. I was
25 wondering, was there any discussion as to the

1 difference, was one better than the other or, you know,
2 any kind of -- with all these terrific presentations --
3 and I'm sorry I missed that meeting; I really wanted to
4 be there -- but I was wondering if there was any.

5 MR. KAVICKY: Yes, Tom, we're sorry you
6 missed it, also. It was a good work group meeting.
7 Like I said, 41 attendees. We've had some phenomenal
8 numbers in work groups this week. There was a brief
9 discussion regarding the use of both guns: The contact
10 trip in deck and roof sheeting operations versus the
11 precise nailing of the sequential gun when you're
12 using -- when you're doing framing operations. So we're
13 going to pursue that a little bit more. And the work
14 group has already talked to John Kurtz -- the work group
15 co-chairs have talked to John Kurtz of ISNTA, and
16 we've -- we're trying to schedule in an engineer from
17 the nail gun manufacturers to come into the next work
18 group and explain what's coming out, what's new, what
19 they're trying to improve. And the work group could
20 give them what we feel they should be head -- what
21 direction they should be heading in, also.

22 MR. SHANAHAN: Thank you.

23 CHAIR MIGLIACCIO: Any discussion? Tom?

24 MR. BRODERICK: I think that the -- that
25 the subject is an important one, and I think the subject

1 is one that will be a persistent one. I would encourage
2 NIOSH to look for or sponsor some additional
3 surveillance activities that includes different types of
4 residential construction.

5 We heard in the fall protection work group
6 about all sorts of different regional variations in how
7 homes are built, and I -- it seems as though the --
8 the -- the study that we're all focusing on that was a
9 peer-reviewed, well-done study of a cohort of carpenters
10 in the St. Louis area, is just that. It is a study of
11 how the tool is used by residential carpenters in the
12 St. Louis area. And I really think that for us to help
13 move an industry to using a tool more safely, it would
14 be very helpful if we could call on studies that had
15 been done by other researchers in other parts of the
16 country.

17 So I just wanted to get on record that I think
18 that there's a very rich opportunity for NIOSH to
19 conduct or to sponsor additional research.

20 CHAIR MIGLIACCIO: Thank you. Any other
21 discussions?

22 MR. GILLEN: I wanted to comment that
23 there has been studies in Washington state and there's
24 been studies of experience in North Carolina. They all
25 seem to point to the same conclusion; that is, that

1 the -- the -- that the bump trigger is about twice as
2 risky as the sequential trigger. I'm sorry. We'll get
3 those studies out and distribute them.

4 CHAIR MIGLIACCIO: Thank you. Any other
5 discussion? All in favor of accepting?

6 Question? Excuse me.

7 MR. SHANAHAN: I have one more question,
8 I'm sorry, Frank. Matt, do you know, or others, is the
9 issue -- or has any research been done or is the
10 issue -- a lot of the discussion, as I've sat through
11 these meetings, has been -- it seems like what happens
12 often is that defeating of mechanism -- safety
13 mechanisms, you know, so that -- and that -- I wonder if
14 there's been any research done that shows of those who
15 have gotten injured, have they been defeating these
16 safety mechanisms, you know, versus -- one tool against
17 the other, so to speak? Because they both have their
18 places.

19 MR. GILLEN: I'll look. I don't know
20 offhand if there was. The most recent study just came
21 out, and it involved interviewing 413 carpenters who had
22 been injured in nail gun injuries to sort of get more
23 information about what happened. And so maybe at the
24 next meeting, we can also hear more about what that
25 study found, because that should maybe get at that

1 question.

2 MR. SHANAHAN: Because I think it's an
3 important point. You know, manufacturers can be
4 providing things, and yet -- you know, we see it with
5 saws, all kinds of things -- we defeat the safety
6 mechanism; and if that was the proximate cause -- and of
7 course, then the issue of, you know, will an employee
8 admit to or, because they're -- or even if somebody told
9 them to, you know, whatever. Trying to get at that data
10 is sometimes problematic. I just hate to kind of be
11 focusing on various tools when there might be some other
12 endemic problems that are going on.

13 MR. GILLEN: It's not really clear what
14 safety mechanism you mean for the bump trigger would be
15 defeated.

16 MR. SHANAHAN: Well...

17 CHAIR MIGLIACCIO: Any other questions or
18 discussion?

19 (None heard.)

20 CHAIR MIGLIACCIO: Seeing none, all in
21 favor of accepting this work group's report, say aye.

22 (Ayes heard.)

23 CHAIR MIGLIACCIO: Opposed?

24 (None heard.)

25 CHAIR MIGLIACCIO: The ayes so have it.

1 MS. SHORTALL: Mr. Chairman, I'd like to
2 mark and place into the record the following as Exhibit
3 4: The Approved Powered Fastening Tools Nail Guns Work
4 Group Report from the April 12th, 2008. The Power --
5 4.1, the "PowerPoint on Nail Group Deck 2 Actuation
6 Systems" presented by John Kurtz; as Exhibit 4.2, the
7 CALOSHA Standard on Pneumatically Driven Nailers and
8 Staplers; and as Exhibit 4.3, the PowerPoint on Adoption
9 and Diffusion of Safety Improved Nail Guns, NIOSH
10 Project Update by Jim Albers of NIOSH."

11 Matt, will you be able to contact Mr. Albers
12 about getting us an electronic copy of that PowerPoint,
13 if we don't already have it?

14 MR. GILLEN: Sure.

15 MS. SHORTALL: Okay.

16 MR. GILLEN: You want an electronic copy?

17 MS. SHORTALL: That would be great.

18 Mr. Kurtz, have you given Mr. Buchet an
19 electronic copy of your PowerPoint presentation?

20 MR. KURTZ: We gave him a copy on a DVD,
21 and I can furnish you with a transcript of the voice
22 stuff. So he has the one; I can give you the other, and
23 does that help?

24 MS. SHORTALL: You don't have to worry
25 about the voice if Mr. Buchet has the PowerPoint on disk

1 already.

2 MR. KURTZ: It's a video on a DVD.

3 MS. SHORTALL: Okay. We have it, then,
4 and that will be enough and acceptable. Thanks so much,
5 Mr. Kurtz.

6 CHAIR MIGLIACCIO: Next report is
7 Residential Fall Protection. Who will be giving that
8 report?

9 UNIDENTIFIED SPEAKER: Mike Thibodeaux.

10 CHAIR MIGLIACCIO: Mike?

11 MR. THIBODEAUX: We met on Monday,
12 April 12th, at noon. We had 41 attendees, also. We
13 reviewed the minutes of the December 8th work group
14 meeting. There was a PowerPoint presentation by Joe
15 Soliz and Brandon Butler, Trendmaker Homes, who build
16 here in Houston, and it showed the fall protection that
17 they are utilizing when building stick-built homes using
18 rafters built on site.

19 They discussed their process of getting buy-in
20 from their subs on using fall protection during the
21 framing, decking and rafter process. It was very
22 informative.

23 An oral presentation was given by Marcus
24 Odorizzi of the NAHB on a draft fall protection Safety
25 Card to guide companies and workers. The Safety Card

1 listed eight steps as a guide to fall protection on the
2 residential construction site. Photos supplemented the
3 written guidance, and this card's going to be offered in
4 both English and Spanish. And NAHB is going to continue
5 to work with OSHA through their alliance to further
6 refine this document and have it out as soon as possible
7 to assist companies and workers when the interim fall
8 protection standard is rescinded.

9 Discussion was had that CALOSHA is having a
10 meeting next week on -- to discuss only using
11 retractable lifelines versus nonretractable for fall
12 protection, and we should have -- we will have an update
13 by the next meeting.

14 Bill Parsons reported that OSHA has a proposed
15 definition for residential construction. It's currently
16 under review and hopefully will be out soon.

17 Rob Matuga from NAHB asked if OSHA, through the
18 Harwood training grants, could include more training for
19 residential fall protection, and a discussion was had at
20 that time.

21 Steve Hawkins then made a motion that the
22 residential fall protection work group request the full
23 ACCSH recommend OSHA use the Harwood training grants to
24 provide additional training on fall protection in
25 residence construction. That motion was seconded and

1 passed unanimously, and then Steve amended his motion to
2 recommend that they use -- grants be used to provide
3 additional training on fall protection specific to the
4 type of residential construction being done. That
5 motion was also seconded and passed unanimously. And
6 the meeting was adjourned at 1:15.

7 CHAIR MIGLIACCIO: Thank you. Tom, do you
8 have anything to add?

9 MR. KAVICKY: Steve is going to make the
10 motion.

11 CHAIR MIGLIACCIO: We'll do that after the
12 acceptance. Other than the motion, do you have anything
13 else to add?

14 MR. SHANAHAN: No, sir.

15 CHAIR MIGLIACCIO: At this time, I'll
16 entertain a motion to accept the work group's report.

17 MR. SHANAHAN: So move.

18 MR. KAVICKY: Second.

19 CHAIR MIGLIACCIO: Tom Shanahan made the
20 motion. Tom Kavicky seconded.

21 Questions?

22 MR. HAWKINS: I'd like to make a motion,
23 Mr. Chairman.

24 MS. SHORTALL: We already have a motion on
25 the floor.

1 CHAIR MIGLIACCIO: We have a motion to
2 accept this first.

3 MR. HAWKINS: I thought Tom seconded, I'm
4 sorry. No questions, no questions.

5 CHAIR MIGLIACCIO: Any other questions,
6 discussions?

7 All in favor, signify by saying aye.

8 (Ayes heard.)

9 CHAIR MIGLIACCIO: Opposed?

10 (None heard.)

11 CHAIR MIGLIACCIO: Seeing none, it passes.

12 Now we have a question?

13 MR. HAWKINS: Mr. Chairman, I'd like to
14 make a motion.

15 CHAIR MIGLIACCIO: Okay.

16 MR. ZARLETTI: Still?

17 MR. HAWKINS: I'd like to make a motion
18 that ACCSH recommended to OSHA that the Susan Harwood
19 training grants be used to provide additional training
20 on fall protection in residential construction, and that
21 it be specific to the type of residential construction
22 method being performed.

23 CHAIR MIGLIACCIO: Motion on the floor. I
24 need a second.

25 MR. THIBODEAUX: Second.

1 CHAIR MIGLIACCIO: Mike Thibodeaux,
2 second. Discussion?

3 MR. AHAL: When you -- specific to the
4 type of training, your last comment that it be
5 specific -- the grant be specific to the specific type
6 of training, not the area of the country or something
7 like that?

8 MR. HAWKINS: No, because the -- we
9 discussed the area of the country, but that's really not
10 important. What's important is that the training would
11 be focused on stick-built or rafter-built or, in certain
12 parts of the country, I understand they use a lot of
13 tile and block, and that the grants would be specific to
14 that.

15 And what the -- what the work group was trying
16 to get at is that we wouldn't have a Harwood grant out
17 there that just said, "This is for residential
18 construction," that it would be specific to that to
19 really try to bring education about safety for
20 particular types of construction methods down to the
21 trades that do that work. That was why we -- that's why
22 the motion is -- is stated as it is.

23 CHAIR MIGLIACCIO: Any other discussion?

24 MS. SHORTALL: Could I ask that
25 Mr. Hawkins repeat the motion?

1 CHAIR MIGLIACCIO: Could you read it one
2 more time, please?

3 MR. HAWKINS: Yes. I'd like to
4 recommend -- the motion is that ACCSH recommend to OSHA
5 that Susan Harwood training grants be used to provide
6 additional training on fall protection in residential
7 construction specific to the type of residential
8 construction being performed.

9 Actually, let me back up. Particular to the
10 type of construction -- residential construction
11 methods, really, because it's -- the work's not being
12 performed. This is before it's going to be performed.
13 So actually, let's just strike that and put "to the
14 particular type of construction method."

15 MS. SHORTALL: To be used?

16 MR. KAVICKY: It's assumed. He's saying
17 it's assumed. He wants to strike that.

18 CHAIR MIGLIACCIO: Any other discussion?
19 All in favor of accepting this motion, say aye.

20 (Ayes heard.)

21 CHAIR MIGLIACCIO: Opposed?

22 (None heard.)

23 CHAIR MIGLIACCIO: Seeing none, motion so
24 carries.

25 MR. BRODERICK: Mr. Chair?

1 MS. SHORTALL: I --

2 CHAIR MIGLIACCIO: Discussion or --

3 MR. BRODERICK: No, I just was going to
4 make a comment about the Harwood.

5 CHAIR MIGLIACCIO: Go ahead.

6 MR. BRODERICK: Have we not voted on this
7 yet?

8 CHAIR MIGLIACCIO: Yeah, we voted on it,
9 yes. We are just having Sarah go ahead and get the
10 numbers (inaudible).

11 MR. BRODERICK: Okay. What I was just
12 going to say as sort of an aside is that it was our
13 experience in doing Harwood programs, for those who --
14 whose organizations might be thinking about doing them
15 and maybe haven't done a lot of them before, our
16 experience is that the request for proposals is pretty
17 darn generic. It gives you a lot of latitude, but if
18 you read between the lines and go down through and read
19 carefully the entire request for proposal for the
20 Harwood grants, you'll see that the broader the
21 applicability, the better.

22 In other words, when we have a health hazards
23 in construction grant, instead of just doing lead or
24 just doing silica, we took the approach of as many
25 health hazards as we thought that construction

1 contractors and workers might experience. And we've
2 taken that approach on other successful Harwood grants
3 that we have gone after. So even if the particular
4 language is not as we suggested in this last motion, I
5 still think it bears consideration by prospective
6 Harwood grant pursuers to take that approach.

7 CHAIR MIGLIACCIO: Okay. Sarah?

8 MS. SHORTALL: Mr. Chair, at this time,
9 I'd like to mark as Exhibit 5 the approved residential
10 fall protection work group report from the April 12
11 meeting. There were two presentations made at the work
12 group meeting, but we have not received permission to
13 put either of those into the record. If we do receive
14 permission and the materials later, I will put them in.

15 CHAIR MIGLIACCIO: Okay. Next work group
16 up is education and training.

17 Emmett, I understand you're going to give the
18 report?

19 MS. BILHORN: I'm not in education and
20 training. Sorry, I'm green jobs.

21 CHAIR MIGLIACCIO: Oh, I'm sorry.

22 MS. BILHORN: That's okay.

23 CHAIR MIGLIACCIO: All right. It's either
24 Walter, Tom? Who's going to -- Tom? Sorry about that.

25 MS. BILHORN: That's okay.

1 MR. SHANAHAN: All right. For the
2 education training OTI workshop, for the agenda, we had
3 35 people at the meeting. We opened the meeting with a
4 recap of the previous minutes and action items, and
5 obviously, due to the short time, we -- Walter and I had
6 pared down the agenda. Hank Payne, the Director of
7 Training Education, was there, which was terrific, and
8 he was recognized.

9 He asked -- he was asked to comment on OTI
10 outreach efforts to address Hispanic and other
11 non-English-speaking, and he reported there's a website
12 at www.outreachtrainers.org, established where trainers
13 can register and make special note if they have
14 non-English language proficiency.

15 Currently, there are 330 Spanish-speaking
16 trainers who have signed up on that site. In addition,
17 the OTI website has numerous Spanish training and
18 educational materials available, and he mentioned that
19 OTI is encouraging the OSHA Training Institute Education
20 Centers to offer training in Spanish and other
21 languages, and to date, a number of them are doing just
22 that.

23 Mr. Payne also reported that Spanish-language
24 training materials developed through the Susan Harwood
25 grants are being made available on OSHA's website at

1 www.osha.gov under the "publications" tab.

2 They have posted most of the material from
3 fiscal year '07, and I will (inaudible) back at some
4 point, I'm sure we will have that in there.

5 In addition, OTI has approved a few 10- and 30-
6 hour online training for Spanish-speaking workers as
7 well, with a recurring question as to verification of
8 the student actually taking the course is still on the
9 table, and Mr. Payne said that is being addressed and
10 could not share information about the progress of this
11 at this time.

12 Next question from Mr. Payne regarded the
13 quality control efforts of the trainers in the training
14 sessions. He reported that approximately a year ago, a
15 hotline was established where people could report issues
16 with those trainers or training events. To date, there
17 are some 60 ongoing investigations occurring. There's
18 an investigation and review process in place now, and
19 the Solicitor's Office is reviewing all the cases. It
20 has addressed the concerns brought to OTI by New York
21 and Nevada and a work group as well. And Mr. Payne
22 mentioned that he would bring any subsequent issues to
23 the work group for input as necessary.

24 He mentioned that OTI is looking at changing
25 the record-keeping requirements for trainers, attesting

1 to the fact that they are adhering to guidelines as
2 required by OSHA. As this develops, more information
3 will be forthcoming. A suggestion was made to include a
4 picture of the trainer or student on the various cards.
5 OTI is still looking for a way to increase the security
6 issues.

7 There are cost issues that have to be
8 addressed, also. OTI doesn't keep a national database
9 on authorized trainers and workers, which also creates
10 some hurdles for monitoring trainers.

11 Mr. Payne asked that anyone in attendance to
12 please report any violators or encourage, through our
13 own networks, others to do as well.

14 The discussion then turned to training
15 requirements under a possible safety and health program
16 standard. Dr. Payne asked that the work group provide
17 input on what that might look like. After much
18 discussion, the consensus of the work group was
19 two-fold: First, the current OSHA 10- and 30-hour
20 courses are to be assessed as to their places in the
21 scheme of the mandatory safety training for line and
22 supervisory workers. A concern was expressed that these
23 courses have become a sort of catch-all for safety
24 training. They are meant to be awareness-type training,
25 and not a substitute for companies' specific worker and

1 junior management safety training and education.

2 Second, a suggestion was made to develop a full
3 training scheme addressing worker safety, education and
4 management. For example, a complete training curriculum
5 might include some or all of the following: A new
6 employees safety orientation program; general awareness
7 training, such as the 10-hour class; general safety
8 awareness training for front-line supervisors, such as
9 the 30-hour class; safety management training, including
10 communication training and management skills
11 development; industry-specific awareness training;
12 company-specific training and job-site specific
13 training.

14 It was mentioned that OSHA has a document
15 number 2254 that provides the Agency's suggestions for
16 safety training. It will be reviewed at the next work
17 group meeting.

18 Mr. Payne offered to share with the work group
19 what OTI has developed regarding supervisory training.
20 A suggestion was made to ask all work group members to
21 submit their training program schemes to share with the
22 group.

23 For the next meeting, the following items were
24 tabled: The issue of improving the quality of training
25 within the 10- and 30-hour programs; outreach trainers

1 will be required not only to pass a written test, but to
2 pass a practical teaching exam; it may be appropriate to
3 ask Dr. Carol Stevenson from NIOSH to discuss her
4 research on training efficacy; the new CALOSHA 10- and
5 30-hour programs; and then finally, for the next OTI
6 meeting, to -- for OTI to provide sample cards given to
7 students to complete the 10, 30, 500 and 510 courses.

8 It was a very good meeting. We had obviously
9 accomplished a lot and have a lot on our plate for next
10 time, and we're looking forward to that, and the meeting
11 was adjourned at 4:15.

12 CHAIR MIGLIACCIO: Anything to add?

13 MR. JONES: I just want to add one
14 comment. When Hank was talking about the information to
15 put on the web, I -- Tom and I, and the process of those
16 weren't really clear, but I thought he actually said all
17 Harwood grants from 2008, 2007 -- and I believe even
18 2006 have already been uploaded, not just Hispanic, but
19 we weren't really -- him and I couldn't really
20 effectively remember, but we knew definitely it did say
21 Hispanic from Harwood. But we believe it's all the --
22 all the -- yes, that's correct, all Harwood grants. And
23 that was in response to Tom and the public's comments in
24 the past at our OTI meetings, that is there a way that
25 some of this material doesn't get lost and it gets -- is

1 there a repository for it.

2 And I'd like -- Tom said that was probably one
3 of the biggest things that happened in our few months
4 chairing together.

5 CHAIR MIGLIACCIO: At this time, I'd like
6 to entertain a motion to accept the OTI work group.

7 MR. THIBODEAUX: So move.

8 CHAIR MIGLIACCIO: Second?

9 MR. BRODERICK: Second.

10 CHAIR MIGLIACCIO: Questions? Questions
11 or discussions?

12 Bill? All right. All in favor of accepting
13 OTI's work group?

14 (Ayes heard.)

15 CHAIR MIGLIACCIO: Opposed?

16 (None heard.)

17 CHAIR MIGLIACCIO: Seeing none, it
18 carries.

19 MS. SHORTALL: Mr. Chair, at this time, I
20 would like to enter as Exhibit No. 6 the approved OTI
21 training work group report from the April 13 meeting.

22 CHAIR MIGLIACCIO: Moving right along,
23 next is Green Jobs in Construction.

24 MS. BILHORN: You want to go ahead and
25 give it?

1 MR. RUSSELL: No, you got it.

2 CHAIR MIGLIACCIO: It's coming around now.
3 We'll pass that out now. Is Susan going to give --

4 MS. BILHORN: Okay. So this is a working
5 group that has co-chaired is --

6 CHAIR MIGLIACCIO: Get the mic.

7 MS. BILHORN: Meeting was called to order
8 at 9:30. Meeting was chaired by Emmett Russell, Matt
9 Gillen and myself, Susan Bilhorn.

10 Called to order at 9:30 with introductions.
11 There were 33 participants at our meeting with 12 ACCSH
12 members participating. We opened with a presentation
13 from Dean McKenzie, OSHA, where he defined what is a
14 green job and talked about hazards associated with green
15 jobs, most of which he connected with traditional
16 construction hazards.

17 There was a presentation that he had that
18 hopefully he's also provided a copy --

19 (Ms. Shortall gestured.)

20 MS. BILHORN: Good. He noted that there
21 is a need to map existing standards for relating
22 construction hazards to green jobs so that the
23 relationship is apparent.

24 One question to consider is whether safety
25 standards apply to construction and maintenance of cell

1 towers is one that we wondered, and how they might apply
2 to green jobs. So, for example, wind generation
3 facilities that have the same sort of height and remote
4 location and maintenance kind of issues that you would
5 have with cell phones. So that's a question.

6 Information was shared on green technology,
7 such as heavy metals, photovoltaics, carbon fiber for
8 windmill turbine blades, nanotechnology in
9 manufacturing, formaldehyde with composite wood
10 materials and polyisocyanates from the spray foam
11 insulation.

12 Most physical hazards are introduced during
13 construction and maintenance, such as -- many hazards,
14 such as working while suspended during on-site
15 installation of blades, confined space work with a
16 generator -- within the generator housing, emergency
17 recovery in a remote area, and with the opportunities
18 for fire.

19 Dean also noted that some wind and solar
20 facilities are being constructed in Brown-Field sites.
21 Those are EPA Brown Superfund sites that may not have
22 been adequately remediated, exposing construction
23 workers to environmental hazards.

24 Three types of green industries Dean focused on
25 were solar, wind and recycling. In terms of wind and

1 solar power, Dean mentioned three types of applications,
2 residential, community and industrial.

3 There currently are no standards for wind and
4 solar; however, there are a number national consensus
5 groups working on such standards.

6 There was considerable discussion of
7 associations involved with green construction, such as
8 wind -- the American Wind Energy Association and the
9 U.S. Green Building Council.

10 We also discussed the U.S. Green Building
11 Council's LEED point system and the National Institute
12 of Home Builders Green Building Program. Both of these
13 programs seem to serve as a good framework for driving
14 effective designs; however, we were not aware that
15 there's any safety incidents considered in those point
16 systems.

17 There was considerable debate about whether it
18 might be better to integrate safety into existing green
19 building programs or establish a separate approach.

20 As a result, we decided that we needed further
21 research, which -- on those associations and programs to
22 better understand their coverage and intent. So what
23 exists in terms of safety already in those processes and
24 programs, where the gaps are, and then assess what's
25 needed to -- the most effective approach to address

1 those gaps.

2 We also agreed to research what national
3 consensus standards exist or are under development that
4 we might consider as appropriate templates or vehicles
5 to address safety concerns, and we agreed that dialogue
6 with these other association should be pursued to
7 understand their thinking and approaches.

8 We acknowledged that BLS data does not provide
9 Green Jobs as a category, which limits our information
10 about injuries and fatalities that are being experienced
11 in those industries; however, BLS will be publishing a
12 public register notice soliciting information from the
13 industry on Green Jobs. Don't know the date on that.
14 Do you, Matt?

15 MR. GILLEN: I think it was March 16th it
16 came out, and I think the final date for comments is
17 April 30th.

18 MS. BILHORN: Topics for discussion at
19 future meetings: NIOSH will be sharing perspectives on
20 green construction-related hazards in the next meeting;
21 we'll like to discuss industries involved in green
22 construction, who they are, what they do, what
23 information already exists on them, including even
24 inviting them to discuss with us their approaches.

25 Another topic would be where federal funding

1 and incentives for green technology and construction --
2 where the funding is flowing. So that means the federal
3 focus on green technology in construction.

4 Another subject would be EPA use of hazardous
5 sites for green construction, what are the potential
6 hazards introduced with that? Another subject would be,
7 more broadly, the topic of sustainability as an approach
8 that would encompass green technologies and approaches
9 for safety in both design and construction. Topic of
10 sustainability provides that potential significant
11 opportunity in terms of embracing the whole of the
12 subject, not just green jobs.

13 Companies doing wind and solar construction is
14 another topic under consideration; and then discussions
15 with associations for solar wind and recycling.

16 Our objective in the next couple of meetings is
17 to explore the elements of green jobs well enough so
18 that we can then define the goal and intended outcomes
19 of this working group, since it was just -- this was the
20 first meeting of them.

21 CHAIR MIGLIACCIO: Thank you, Susan.

22 Matt or Emmett, would you like to add anything?

23 MR. GILLEN: Great job.

24 CHAIR MIGLIACCIO: At this time, I'll
25 entertain a motion to accept this work group's report.

1 MR. THIBODEAUX: So moved.

2 CHAIR MIGLIACCIO: Mike Thibodeaux.

3 Seconded?

4 MR. GILLEN: Seconded.

5 CHAIR MIGLIACCIO: Matt Gillen.

6 Discussion, questions?

7 (None heard.)

8 CHAIR MIGLIACCIO: Hearing none, all in
9 favor of accepting the work group's report, say aye.

10 (Ayes heard.)

11 CHAIR MIGLIACCIO: Opposed?

12 (None heard.)

13 CHAIR MIGLIACCIO: Seeing none, I so pass.

14 MS. SHORTALL: Mr. Chair, at this time,
15 I'd like to mark as Exhibit No. 7 the approved Green
16 Jobs Work Group Report from April 13, 2010 meeting, and
17 as Exhibit 7.1 the PowerPoint on Green Jobs presented by
18 Dean McKenzie, OSHA's Directorate of Construction.

19 CHAIR MIGLIACCIO: Done.

20 MS. BILHORN: Mr. Chairman, a number of us
21 have worked on a motion that -- it's kind of a fallout
22 of conversations in design and construction as well as
23 green jobs. So several of us have drafted that and
24 Walter is prepared to read that motion.

25 CHAIR MIGLIACCIO: Okay. Can we do the

1 Prevention by Design and then have the motion?

2 MS. BILHORN: Sure. We --

3 CHAIR MIGLIACCIO: So that way, we'll have
4 that report.

5 MS. BILHORN: That would be fine.

6 CHAIR MIGLIACCIO: Thank you. Next up is
7 Silica and Other Health Hazards in Construction. Who
8 will be giving the report?

9 MR. GILLEN: Walter, should I give that
10 report?

11 MR. JONES: Please.

12 MR. GILLEN: Okay. I'll give the report,
13 Matt Gillen.

14 On April 12th, there were 32 attendees,
15 co-chair Walter Jones presiding, and co-chairs Dan
16 Zarletti and Matt Gillen assisted. Because this was the
17 first meeting of the work group since the scope was
18 expanded beyond silica, we decided that the goal of the
19 meeting should be to begin with an update on silica, and
20 then explore other directions the work group might go
21 in.

22 The first thing we had was an update on silica,
23 and Director Dorothy Dougherty and Mike Seymour of the
24 OSHA Directorate of Standards and Guidance, DSG,
25 provided an update on the development of the proposed

1 rule for silica. The July proposal publication date
2 provided at the December 2009 ACCSH meeting has slipped,
3 and a revised date will be available once DOL's
4 regulatory agenda is published in a few weeks. The peer
5 review is done, and DSG is reviewing the health effects
6 document. Silica is still an OSHA priority.

7 DSG thanked ACCSH for the previous input and
8 reported that they are working on table 1, which has
9 received support from various stakeholders and the
10 competent person provisions. The protective clothing
11 provisions are still being reviewed. One suggestion
12 provided was to examine the record on clothing-related
13 exposures from the asbestos hearings.

14 The second item was to discuss other health
15 hazards, and in that, committee members discussed other
16 health hazards and asked the OSHA DSG representatives
17 for comment on noise, diisocyanates and lead, and their
18 response was that hearing conservation is important and
19 will be on the regulatory agenda, but the key issue is
20 whether it should be a short- or long-term goal.

21 Mike Seymour did report that addressing hearing
22 conservation was not the same as addressing noise in
23 construction, and that ACCSH should be clear in any
24 messages it intends to provide OSHA about noise.

25 It's reported that OSHA is in the early stages

1 of working on some guidance for diisocyanates and is
2 working with EPA, NIOSH and CPSC on spray polyurethane
3 foam issues.

4 OSHA has heard from state epidemiologists, EPA
5 and others that there is a need to revisit the lead
6 standard based on newer information. OSHA has not made
7 any decisions yet on this issue. Welding fumes are an
8 additional topic of concern in construction for
9 additional discussion.

10 The third item was developing a basic approach
11 for controlling and enforcing health hazards in
12 construction. And the importance of tailoring health
13 standards to construction by using a task-based control
14 approach was discussed. And we brought along excerpts
15 from a 30-year-old ACCSH report to OSHA titled, "Report
16 on Occupational Health Standards for the Construction
17 Industry." And so we read several excerpts, including
18 this excerpt here, which is, quote: "From the
19 standpoint of worker protection, then, the use of
20 exposure-level measurements alone is not always the best
21 way to protect workers. Construction standards should
22 include provision for use of specific work practices as
23 an alternative to some of the sampling and laboratory
24 sequences required to comply with the permissible
25 exposure limits."

1 Asbestos, lead and the silica rule currently
2 under development have each used variations on this
3 approach. Co-chairs suggested it might be useful to
4 further discuss a template for health standards for
5 construction.

6 Other common issues for construction health
7 hazards include the need for awareness materials and the
8 need to improve targeting approaches for scheduling
9 health-related construction inspections.

10 Eric Harbin of OSHA's Directorate of
11 Construction reported that health standards are hard to
12 target, and that OSHA currently relies on regional
13 emphasis programs for such targeting. These typically
14 include using referrals from safety inspectors along
15 with responding to complaints.

16 As far as discussion, the attendees and the
17 ACCSH members identified a number of potential health
18 hazards and work group topics. These included
19 protecting bystander workers, nearby workers, via
20 controlled access zone and site control programs, use of
21 pictorial images to improve awareness materials,
22 continuing issues with Material Safety Data Sheets and
23 continuing issues with inadvertent ingestion of toxic
24 substances on construction jobs and how that relates to
25 handwashing facilities.

1 Suggested hazards to consider further included
2 mold, treated lumber, radiation, lead, Chinese drywall,
3 heat stress and epoxies and solvents. One suggested
4 activity was to develop a report describing the types of
5 health hazards in construction to help raise awareness.

6 The work group discussed some potential
7 language for the revised work group scope, but more
8 discussion is needed, and a decision was made to discuss
9 and vote on scope language at the next work group
10 meeting.

11 And that's it. I have the list that I will
12 give you. Is that what you're looking for?

13 CHAIR MIGLIACCIO: That's it.

14 (Tenders list to Ms. Shortall.)

15 CHAIR MIGLIACCIO: At this time, I'd like
16 to entertain a motion to accept this work group's
17 report.

18 MR. SHANAHAN: I so motion.

19 CHAIR MIGLIACCIO: Tom Shanahan made the
20 motion. Mike Thibodeaux seconded. Discussion,
21 questions?

22 MR. JONES: Walter Jones. I just want to
23 say thank you to Bill Parsons and thank you to the
24 Directorate of Standards for Dorothy Dougherty and Mike
25 Seymour to actually come to our committee. I don't know

1 how often it happens that they come to the
2 subcommittees, and especially when we're out of town,
3 and we were quite appreciative. They went beyond the
4 call of duty in terms of answering to the detail any
5 questions we had. I don't recall any bureaucratic
6 non-answers at all during the time of this subcommittee,
7 and they should be lauded for their efforts. Thank you.

8 CHAIR MIGLIACCIO: Thank you, Walter. Do
9 you have anything to add?

10 (None heard.)

11 CHAIR MIGLIACCIO: Any other questions,
12 discussions?

13 (None heard.)

14 CHAIR MIGLIACCIO: Seeing none, all in
15 favor of accepting this work group's report, say aye.

16 (Ayes heard.)

17 CHAIR MIGLIACCIO: Opposed?

18 (None heard.)

19 CHAIR MIGLIACCIO: Ayes so have it.

20 MS. SHORTALL: At this time, I'd like to
21 mark as Exhibit 8 the approved Silica and Other
22 Construction Health Hazards Work Group Report from their
23 April 12, 2010 meeting, which includes the attached list
24 of everybody attending the meeting. Thank you.

25 CHAIR MIGLIACCIO: Thank you. Let's do

1 the Prevention by Design, and after that, we'll have a
2 motion, Walter, if that's okay.

3 Prevention by Design. Bill Ahal or Emmett,
4 you'll be giving the report.

5 MR. AHAL: There's copies going around.

6 CHAIR MIGLIACCIO: Go ahead.

7 MR. AHAL: Okay. Prevention by Design
8 work group met. There were 37 persons in attendance,
9 including 11 of those ACCSH members. Meeting began with
10 co-chairs Bill Ahal and Emmett Russell initiating
11 discussion about the charge of the group, which I will
12 cover here. It is to assist the Agency with ACCSH's
13 work concerning prevention of construction hazards by
14 addressing hazard elimination at the design stage of
15 projects, jobs, processes, materials, tools and
16 equipment.

17 With that, the meeting, the discussion opened
18 up, suggesting possible paths that the group could go
19 down. Input was solicited from the group as to paths to
20 follow towards that. And one comment that came from
21 that was that -- see how quickly OSHA could take a
22 quicker lead on this subject.

23 Suggestion was then made from the group to seek
24 out existing data and research that has currently been
25 done, such as what NIOSH has worked on. It was noted

1 that the construction alliance has developed fact
2 sheets, also, on this subject.

3 Another suggestion was made that the Agency
4 could put -- potentially put pressure on contractors and
5 the design community. An example was given that the
6 design community might use the -- in their design these
7 examples as tools for prevention, such as design of
8 parapets, skylight covers and similar things.

9 National Roofing Contractor Association has --
10 it was noted, has a document on fall protection that
11 suggests design changes that provide safer working
12 conditions.

13 It was commented that we could possibly do an
14 outreach effort, see what information exists out there.
15 NIOSH has a Prevention by Design initiative going right
16 now. Matt Gillen indicated that NIOSH would be willing
17 to do a presentation on their efforts in this area, and
18 we will likely take him up on that.

19 It was also suggested that the group lead the
20 effort to collect various examples of Prevention by
21 Design techniques, ideas that exist now, make these
22 available to the design community in hopes -- in order
23 that they -- makes it easier for them to utilize the
24 current information that's out there, current
25 opportunities.

1 Discussion was had on Prevention by Design
2 opportunities and the inclusion of life cycle costs in
3 the evaluation of any particular idea. It was noted
4 that some of these opportunities may also provide not
5 only for a safer work area during construction, but as
6 well, post-construction, that the owner of the project
7 continued to derive benefits and safety from them.

8 From the group, a comment was made that we need
9 to ascertain what OSHA is going to do with any of this
10 information that might be collected. OSHA -- it was
11 noted that OSHA has had some successes already in this
12 area. An example was given that the -- on asphalt-
13 paving machines, the operating platform was raised up as
14 a result of preventing problems by design, which puts
15 the operator of the machine farther away from the fumes
16 from the hot asphalt.

17 It was suggested that the enforcement of
18 Prevention by Design techniques would be harder -- would
19 be a harder path to follow than developing an outreach
20 program of education for the industry to follow the
21 techniques.

22 Efforts have been made by NIOSH already to work
23 with the engineering community to add safety to the
24 education curriculum for engineers. Similar efforts
25 have not been made, it was noted, with the architectural

1 design community.

2 Suggestion was raised that safety might be
3 written into the work scope on projects, and also, that
4 safety details would be appropriated into the plans and
5 blueprints.

6 Comment was made that the owners should be
7 encouraged to emphasize safety to the designers that
8 they hire for their projects. It was then commented on
9 that the design/build delivery method may be a good way
10 to initiate an effort such as that.

11 We then saw a presentation by Jeremy
12 Bethancourt by LeBlanc Builders, a PowerPoint
13 presentation on that firm's efforts to eliminate a
14 specific hazard in their job sites -- job sites that was
15 created by the design requirements that require the use
16 of a 16-penny nail to join wood framing members
17 together. Those wood framing members were not as thick
18 as the nail was long, thus, about a quarter inch of the
19 nail would protrude through the back of the framing.
20 They were providing a hazard to anybody working in the
21 area, as they rub up against it. And this creates a
22 potential injury that LeBlanc was eventually able to
23 eliminate after several years of effort by working with
24 the designer to simply specify a smaller length of nail,
25 thus eliminating that hazard.

1 This was a good example of Prevention by Design
2 technique that was utilized through a non-regulatory
3 solution.

4 It was commented the design community does not
5 involve themselves typically in Prevention by Design
6 because of the potential liability they may -- they feel
7 may exist if they get involved with design. It was
8 commented on by several that -- to that to achieve this
9 change will require a change in the culture of the
10 design community.

11 Comment was made that project owners should be
12 made aware of this issue to change their attitude
13 towards safety and towards the designers that they hire.

14 Comment was made that to achieve its success in
15 this effort would require owners to change their
16 thinking about how their project should be built during
17 the development phase of the design. An example was
18 provided where the Tennessee Department of
19 Transportation re-thought how their construction
20 easements were developed. Previously, the easements --
21 it was noted previously, the easements were getting
22 smaller and smaller in size. This was forcing
23 excavations to become very difficult to construct. And
24 by realizing that widening the construction easements
25 allowed for a safer method of excavation was one example

1 of how the owner, during the development of the project,
2 could create a safer project during construction, and
3 that was created during the conceptual design for the
4 construction.

5 Another example was the -- was illustrated as
6 the installation of Nelson studs on beam flanges. This
7 design change provided a safer working condition using a
8 Prevention by Design technique.

9 Suggestion was made that another way to help
10 achieve success in this area would be to encourage
11 designers to spend more time in the field and gain
12 information and understand what it is that the -- that
13 the goal is involving Prevention by Design.

14 Comment from the group came forward that the
15 construction community will often live with a hazard
16 until it is shown how to mitigate the hazard. In
17 construction, we tend to emphasize the negative and we
18 show that negative. In the marketing and the business
19 development community, they emphasize the positive, so
20 it was suggested that in order to better market the
21 Prevention by Design techniques, we should not be
22 emphasizing the negative; we should show the negative,
23 but quickly move on to the positive side of that.

24 It was suggested perhaps we should review the
25 entire process first and identify the issues and hazards

1 involved.

2 Suggestion came forward that standardizing the
3 approach to safety is better than identifying specific
4 areas or special processes in different areas of the
5 country. And is not the way to go in -- attempting to
6 devise individual mitigation of the hazards may not be
7 the way to go versus a more generalized approach.

8 It was also suggested that this Prevention
9 Design -- by Design issue could turn into a P & L,
10 profit and loss issue for companies. Suggestion was
11 made to possibly have VPP companies push this Prevention
12 by Design effort through their programs.

13 Comment was taken that we need to invite
14 members of the Architectural/Engineering community to
15 work group meetings and get their involvement in this
16 effort.

17 We should also aim efforts towards modifying
18 the design codes that the design community works under
19 to achieve Prevention by Design techniques.

20 Mr. Kavicky commented that in the Chicago area,
21 efforts had been made to add a safety curriculum as
22 opportunities for the Architectural/Engineering
23 community to earn their Continuing Education credits.
24 He offered to bring information on this to the next work
25 group meeting, which we were very grateful and will

1 accept that.

2 And the discussion concluded by a reminder and
3 recap that one thing we have to be diligent about, to
4 not let happen, is the perception that this Prevention
5 by Design effort is merely an attempt to shift risk and
6 liability from one part of the process to another.

7 The whole mission here in this meeting was to
8 really gather ideas and thoughts about where we would
9 go. I think -- Emmett, chime in -- we've got a lot of
10 ideas, and now we formulate what the next group looks
11 like in terms of presentations and information.

12 CHAIR MIGLIACCIO: Emmett?

13 MR. RUSSELL: None.

14 CHAIR MIGLIACCIO: Nothing to add? At
15 this time, I'll entertain a motion to accept this work
16 group's report.

17 MR. ZARLETTI: Mr. Chairman, I make the
18 motion to accept it.

19 MR. THIBODEAUX: Second.

20 CHAIR MIGLIACCIO: Mike Thibodeaux
21 seconded. Questions, discussions? Dan?

22 MR. ZARLETTI: Bill or Emmett, do you know
23 if Mr. LeBlanc or if LeBlanc Builders PowerPoint
24 presentation will be available electronically to us?

25 MR. AHAL: I didn't -- I thought Jeremy

1 was going to be here yesterday, and he left earlier. I
2 didn't get a chance to ask him. I have it and I will
3 find out whether or not he's willing to let us use that
4 further.

5 MR. ZARLETTI: I mean, if we're going to
6 use what was taken in the committee to make things
7 better in the field, there's no sense of recreating the
8 wheel.

9 MR. AHAL: Right.

10 MS. SHORTALL: He presented this. It will
11 be going into the docket for this meeting, which will be
12 available electronically at regulations.gov, so you
13 should be able to pull it down.

14 MR. ZARLETTI: Okay.

15 CHAIR MIGLIACCIO: Any other questions?

16 MR. GILLEN: I had just a question or
17 comment. You know, NIOSH has been working on this for
18 several years, and we called it Prevention through
19 Design, PTD, and OSHA and ACCSH is certainly entitled to
20 brand what they want to do differently. PBD, Prevention
21 by Design, if you like, and that's fine.

22 By the same token, you know, that the
23 communities we need to reach are outside the safety and
24 health community -- the design community, the
25 architectural community -- and I think it's a little bit

1 confusing having separate terms, so we may want to think
2 over time about what the term we'd like to use, whether
3 we want to have multiple terms going on PBD and PTD, et
4 cetera. Just wanted to mention that.

5 MR. BRODERICK: I support a motion to
6 change it.

7 MR. SHANAHAN: Are you suggesting that the
8 names be the same?

9 MR. GILLEN: If it's the same, I think
10 it's a solid message coming from the safety and health
11 community. If there's two names, it sends a
12 different -- I think having the same name would be fine.
13 I'm not an English major, so I don't know which is the
14 more correct, but...

15 CHAIR MIGLIACCIO: Emmett?

16 MR. RUSSELL: Yeah, I agree. On NIOSH's
17 considerable research, as a matter of fact, they have a
18 web page already existing, Prevention through Design, so
19 I would not have a problem with making that change. And
20 as a matter of fact, if it's appropriate, I would
21 introduce a motion to make the change on the OSHA work
22 group to Prevention through Design instead of Prevention
23 by Design.

24 CHAIR MIGLIACCIO: Okay. There's a motion
25 on the floor first. We'll take that, can't do that

1 until we get this motion out first.

2 Any other questions or discussion?

3 (None heard.)

4 CHAIR MIGLIACCIO: Seeing none, all in
5 favor of accepting the work group's report, say aye.

6 (Ayes heard.)

7 CHAIR MIGLIACCIO: Opposed?

8 (None heard.)

9 CHAIR MIGLIACCIO: Seeing none, the ayes
10 so have it.

11 All right. Now, want to do yours first?

12 MS. BILHORN: No, Mr. Chairman, we
13 actually -- my distinguish colleague here from ROSHAFNA
14 (phonetic) and I would like to put this on after the
15 break.

16 CHAIR MIGLIACCIO: Okay. Now I
17 entertain --

18 MR. RUSSELL: Emmett Russell. Yes,
19 Mr. Chairman, I'd like to make a motion to change the
20 name of the Prevention by Design work group to
21 Prevention through Design to be consistent with all of
22 the work and research that NIOSH has already done.

23 CHAIR MIGLIACCIO: Okay. And we have a
24 second?

25 MR. SHANAHAN: Second.

1 CHAIR MIGLIACCIO: Tom Shanahan seconded
2 it. Discussion questions?

3 (None heard.)

4 CHAIR MIGLIACCIO: Seeing none, all in
5 favor say aye.

6 (Ayes heard.)

7 CHAIR MIGLIACCIO: Opposed?

8 (None heard.)

9 CHAIR MIGLIACCIO: Seeing none, the ayes
10 so have it.

11 MS. SHORTALL: Mr. Chair, at this time,
12 I'd like to enter the following things into the record:
13 This first one goes back to the Silica and Other
14 Construction Hazards, and that would be Exhibit 8.1.
15 The ACCSH report on Occupational Health Standards for
16 Construction Industry submitted to OSHA on May 16th,
17 1980.

18 As Exhibit 9, the Approved Prevention by Design
19 work group report from the April 13, 2010 meeting.

20 As Exhibit 9.1, the PowerPoint on Hazard
21 Mitigation Through Design presented by Jeremy
22 Bethancourt from LeBlanc Building Company, Incorporated.

23 CHAIR MIGLIACCIO: Okay. All right. At
24 this time, let's take a 15-minute break. Be back here
25 20 minutes after, please.

1 (Short break 9:06 to 9:25 a.m.)

2 CHAIR MIGLIACCIO: Everybody have their
3 seats, please. Okay. Our next work group will be
4 Diversity-Women in Construction. And let's see, Liz,
5 will you -- I guess it will be you. Jim's not here.

6 MS. ARIOTO: Yes. Liz Arioto. I have the
7 Diversity-Women in Construction work group. On
8 April 13th, it started at 1:15 and was adjourned at
9 2:45 p.m. We had 34 attendees, 11 of which were ACCSH
10 members. The minutes of the December 9th, 2009 meeting
11 were distributed for comment.

12 A presentation was given by attorney Frances C.
13 Schreiber. The PowerPoint presentation was titled,
14 "Women in Construction, Occupation Safety and Health
15 Issues for Women in Trades."

16 She addressed the following issues:
17 Sanitation, PPE, toxics and reproductive harm, stress
18 and health-tradeswomen. Sanitation, PPE and toxics and
19 reproductive harm were discussed in detail by the work
20 group. Kathleen Dobson stated that in Michigan, they
21 are making progress in separating the toilets between
22 genders. Employers are still having difficulty
23 interpreting the hand-washing regulations.

24 Sarah Shortall stated that the federal OSHA
25 standards in sanitation were adopted in 1972 and haven't

1 been changed since that time.

2 MS. SHORTALL: Could I add one thing? I
3 was referring to -- at that time, I was referring to
4 1910.141, the general industry. I will have to check
5 for you on the construction.

6 MS. ARIOTO: That's fine. Thank you,
7 Sarah.

8 Susan Bilhorn moved that the Diversity-Women in
9 Construction work group request that ACCSH recommend
10 that OSHA update its construction sanitation standards
11 so they are consistent with CALOSHA's standards on
12 toilet and hand-washing facilities. The motion was
13 second and passed unanimously. Handouts of the
14 presentation were distributed to the work group, which
15 included copies of the CALOSHA's regulations on toilet
16 and hand-washing facilities.

17 A draft of both the Women in Construction Fact
18 Sheet and Quick Card that was developed by Mr. Kevin
19 Beauregard and his staff was distributed to the work
20 group for a final review.

21 Scott Schneider made a comment on the
22 ergonomics section of the Fact Sheet, indicating that
23 more discussion is needed. The co-chair requested that
24 the work group members review and be prepared to make
25 final recommendation/comments on the Fact Sheet and

1 Quick Card during the next ACCSH meeting.

2 A copy of a vendors' list of women's PPE
3 prepared by Daniel Gluckman, a member of the
4 International Safety Equipment Association, the ISEA,
5 was distributed to the work group for review and
6 discussion for the next meeting.

7 I would like to give special thanks to Elisha
8 Seaton and Francis Dougherty for their assistance that
9 they gave me during the absence of my co-chair not being
10 present at this meeting.

11 Recommendations of the work group sent to the
12 full ACCSH committee is that the work group recommends
13 that OSHA update the construction sanitation standards
14 so they are consistent with CALOSHA standards,
15 Subchapter 4, Construction Safety Orders, Article 3,
16 Section 1526, toilets at the construction job sites, and
17 Section 1527, washing facilities.

18 CHAIR MIGLIACCIO: Thank you. All right.
19 At this time, I entertain a motion to accept this work
20 group's -- Tom Shannon made the motion. Mike
21 Thibodeaux, second.

22 Questions, discussions?

23 (None heard.)

24 CHAIR MIGLIACCIO: Seeing none, all in
25 favor of accepting the work group's recommendation or --

1 yeah, report, say aye.

2 (Ayes heard.)

3 CHAIR MIGLIACCIO: Opposed?

4 (None heard.)

5 CHAIR MIGLIACCIO: Seeing none...

6 MS. ARIOTO: I also handed a handout,
7 1926.51(a), Safety and Health Regulations for
8 Construction, Occupational Health and Environmental
9 Controls to Assist Sanitation. This was put together by
10 both Fran Schreiber and myself, and it addresses the
11 whole regulation with fed OSHA, which would be read
12 there would be no changes, that is marked in red, and
13 the recommended changes are indicated in blue.

14 So 1926.51(c), on the bottom of the first page,
15 it says, "see recommended changes," "toilet at
16 construction job sites." And below that, "a minimum of
17 one separate toilet for each sex shall be provided for
18 each 20 employees or fraction thereof of each sex.
19 Exception: where there are less than five employees on a
20 job site, separate toilet facilities for each sex are
21 not required provided that the toilet facilities can be
22 locked from the inside and contain at least one toilet."

23 1926.51(f)(1), the changes will be, "For
24 employees, wherever toilet facilities are required and
25 such shall be located and arranged so that at any time a

1 toilet is used, they can be used" -- "the user can
2 readily wash. The employer shall provide adequate
3 hand-washing facilities."

4 And we go down to 1926.51(f)(3)(i), "Lavatories
5 shall be made available in all places of employment. A
6 minimum of one washing station shall be provided for
7 each 20 employees or fraction thereof."

8 1926.51(f)(3)(ii), "Each lavatory shall be
9 provided with an adequate supply of hot and cold running
10 water or tepid running water for effective washing."

11 And then 1926.51(f)(3)(iii), that "A readily
12 available supply of hand soap or similar cleansing agent
13 shall be provided."

14 And then on the back page, 1926.51(f)(3)(v),
15 "When lavatories are provided in association with a
16 nonwater carriage toilet facility, provide a sign or
17 equivalent method of notice indicating the water is
18 intended for washing."

19 1926(f)(3)(vi), "When lavatories are provided
20 in association with a nonwater carriage toilet, they
21 shall be located outside of the toilet facility and not
22 attached to it. Exception: When there are less than
23 five employees and only one toilet facility is provided,
24 the required washing facility may be located inside the
25 toilet facility."

1 CHAIR MIGLIACCIO: Motion on the floor?

2 Second?

3 UNIDENTIFIED SPEAKER: What's our motion?

4 MR. HAWKINS: That was a motion of the
5 committee, Mr. Chairman. I'd like to make a motion at
6 this time. And before I do so, just commenting on the
7 discussion that we have on the floor, at the very tail
8 end of our work group -- we actually went 15 minutes
9 over, and at the last minute, we just discussed in our
10 work group meeting that perhaps the CALOSHA standard
11 would be a good one to go to. There was some discussion
12 about the ANSI standard that differs some, and so I'm
13 going to read my motion with that thought in mind, that
14 there is some discrepancy between these two standards,
15 and at this time, we don't know -- we can't say as a
16 group, as ACCSH, that we all believe that California has
17 the perfect standard. So I'd like to read my motion, if
18 I may.

19 Be it resolved that: The construction
20 sanitation standard has not been updated in any
21 significant way since OSHA adopted its present -- its
22 present standard -- I'm sorry, adopted it pursuant to
23 Section 6 A of that OSH Act.

24 And be it resolved that: The construction
25 sanitation standard is out of date.

1 And be it resolved that: ACCSH has repeatedly
2 recommended that OSHA update its construction sanitation
3 standard, but the Agency has not taken any action to do
4 so.

5 And be it further resolved that: The lack of
6 appropriate, clean and sanitary sanitation facilities
7 has become a barrier to the entry and retention of women
8 in the construction industry.

9 Therefore, I move that ACCSH again strongly
10 recommend that OSHA put at the top of its regulatory
11 priority list the updating of the construction
12 sanitation standard, including updating the requirements
13 on the number of toilet facilities construction
14 employees -- employers must provide, and updating the
15 requirements to -- updating the requirement to provide
16 separate facilities for male and female workers.

17 And I further move that OSHA provide ACCSH with
18 an update at every meeting until OSHA has promulgated a
19 final rule updating the construction sanitation
20 standard.

21 I'd like to have a second so that we can
22 discuss this.

23 MS. BILHORN: I second.

24 MR. JONES: What is the status of this?

25 This is part of your report or -- or is this part of the

1 motion?

2 MR. HAWKINS: What's that?

3 MS. BILHORN: It's not part of the motion.

4 MR. HAWKINS: That's the minutes.

5 MR. JONES: Oh, this is just the minutes.

6 Okay.

7 CHAIR MIGLIACCIO: Okay. We have a motion
8 on the floor. We have it seconded. Discussion,
9 questions?

10 MR. GILLEN: I have a question. Are you
11 saying that -- it appears to me this is the 1926.51(a)
12 where they added recommended changes is a good start.

13 MS. ARIOTO: A good start.

14 MR. GILLEN: Is that part of yours or do
15 you disagree or --

16 MR. HAWKINS: No, sir, that's not part of
17 my motion.

18 CHAIR MIGLIACCIO: Any other questions,
19 discussion?

20 MS. ARIOTO: I would like to recommend
21 that this group be considered, this document, to move
22 forward.

23 MR. JONES: I'm sorry, are you amending
24 his motion?

25 CHAIR MIGLIACCIO: No, separate.

1 MS. SHORTALL: That could either be a
2 separate motion if Miss Arioto would like to do it after
3 we do this, make a motion to amend Mr. Hawkins' motion,
4 but that would also have to passed before it would be
5 amended.

6 MS. ARIOTO: I'd like to make a separate
7 motion.

8 CHAIR MIGLIACCIO: Tom?

9 MR. SHANAHAN: I have a question on the
10 first one.

11 CHAIR MIGLIACCIO: We're only on the first
12 one right now, anyways, so go ahead.

13 MR. SHANAHAN: Tom Shanahan. So Steve, in
14 your -- is the bottom line, what you're saying is that
15 you are making a motion that OSHA put on its regulatory
16 agenda in a high priority this issue of the toilets?

17 MR. HAWKINS: Yes, and that it would
18 include changing the number of toilets that are
19 provided, and that it have separate facilities for men
20 and women, because I've been on this committee now I
21 guess at least three years. I have attended the
22 diversity meetings, and then when the name was changed
23 to Women in Construction, and this issue comes up
24 repeatedly. Every speaker that we have says this is an
25 impediment to women entering this field. I have a -- a

1 daughter who's a civil engineering major who has already
2 brought this to my attention. The two issues were
3 toilet facilities and language, so I'm going to start
4 with this one. We'll work on cussing, as we call it in
5 the South, at the next meeting.

6 But right now, you know, we discuss this every
7 time we have a meeting, that it's an impediment to women
8 in construction, that they -- that they have -- that
9 they don't have separate facilities.

10 At the meeting that we had of the work group
11 most recently, it was brought up that sometimes women
12 purposely don't drink water so they won't have to use
13 the toilet facility. So what looks like a somewhat
14 benign issue of toilets can actually have a much greater
15 impact because of heat stress.

16 We're coming into the summer months. It's
17 going to be hot. We all know from OSHA's Quick Card
18 that they developed, that drinking adequate fluids is
19 important to maintaining, you know, your health, and
20 certainly to avoid heat stress, is adequate fluids. If
21 you drink adequate fluids, you're going to use the rest
22 room. If women are not intaking adequate fluids, they
23 can develop urinary tract problems, and I just -- I just
24 feel strongly that we recommend to OSHA in 2010, here we
25 are, and you can have a -- we don't have separate

1 bathrooms.

2 Where else do you ever go that you don't see
3 separate facilities for men and women? We ate out every
4 night this week. I didn't see any unisex bathrooms
5 there. We've been in this hotel. There's not any. We
6 were at the hotel for the Latino Summit, they had
7 separate facilities. Everywhere has separate
8 facilities; and yet, you go to a construction job to go
9 to work every day, you don't have separate facilities.

10 And we've had -- we've had several studies
11 presented. The issue comes up over and over, and I was
12 attempting to make a motion to put this issue to rest
13 and to recommend to the Agency that they pursue this,
14 because I -- I really feel strongly, I think the
15 committee feels strongly, the women who have spoke at
16 the work groups have all stated strongly that this is a
17 big problem. So that's kind of the history of the
18 motion.

19 CHAIR MIGLIACCIO: Susan?

20 MS. BILHORN: I want to express my sincere
21 appreciation for your -- your passion on this subject,
22 because it is true, it's just repeated, you know, we
23 mouthed this thing for a long time, and it is in the way
24 of progress. So I absolutely agree.

25 I do want to mention that during the

1 discussion, you know, we also did raise the fact that
2 obviously, any -- appropriate sanitary facilities are
3 important for men and women, so it's not just for women,
4 because sometimes it is this question of, it's so bad
5 that even men don't want to use it, they want to use the
6 women's, you know.

7 So I do think the overarching issue is
8 sanitation, appropriate sanitary facilities for workers
9 is important. But certainly, I absolutely agree with
10 this motion, because this is in the way of our
11 workforce.

12 CHAIR MIGLIACCIO: Tom Shanahan?

13 MR. SHANAHAN: So my follow-up to -- my
14 point is, is the motion seemed -- expresses that
15 passion, and I just wonder if we just collapsed it to
16 the action item so that it -- so that the message gets
17 sent very clearly that we want OSHA to put, at the top
18 of their regulatory agenda, the sanitation issue and the
19 toilet -- the toilet issue. Just so it's very clean.

20 CHAIR MIGLIACCIO: I think he said it.

21 MS. BILHORN: So we get 'er done, is that
22 what you're saying?

23 MR. SHANAHAN: Yeah, you know. It just
24 was very long. I don't know if it hit your --

25 UNIDENTIFIED SPEAKER: I thought it was

1 eloquent.

2 MS. BILHORN: I thought it was eloquent,
3 too.

4 MR. HAWKINS: I won't repeat it, the
5 entire motion, but I don't mind repeating the actual
6 motion part of my statement; and that was that -- I move
7 that ACCSH, again, strongly recommend that OSHA put at
8 the top of its regulatory agenda the updating of its
9 construction standard -- sanitation standard, including
10 updating the requirements of the number of toilet
11 facilities construction employers must provide and
12 updating the requirement to provide separate toilet --
13 I'm sorry, separate facilities for male and female
14 workers.

15 And I further move that OSHA provide ACCSH with
16 an update at every meeting until OSHA has promulgated a
17 final rule updating the construction sanitation
18 standard.

19 So that's the actual meat of the motion. I
20 think it's -- it's pretty well stated. That's what
21 we're asking for.

22 MR. ZARLETTI: Do you want a second?

23 MS. SHORTALL: Mr. Hawkins, after -- after
24 the meeting is over, could you provide me a copy of your
25 written motion, or your motion in writing?

1 MR. HAWKINS: Yes, ma'am.

2 MS. SHORTALL: Thank you.

3 MR. ZARLETTI: Are we still under
4 discussion?

5 CHAIR MIGLIACCIO: Yeah, we're still under
6 discussion. Go ahead, Dan.

7 MR. ZARLETTI: Dan Zarletti. I think that
8 in some part of this effort to advise OSHA on this
9 subject, we should conclude by giving -- asking them for
10 a closure date instead of advising us once every meeting
11 when we meet three or four months apart, because that
12 could take us another two or three years. I think we
13 need to close the door on this, and say, "They need to
14 tell us by the next meeting when they anticipate this
15 being done and have a date set," if that's -- I know
16 that that's, you know, a pipe dream, but it could be
17 asked. I know it's all negotiable and everything is
18 political and all the rest, but...

19 CHAIR MIGLIACCIO: Emmett? Oh, Tom?

20 MR. BRODERICK: I think a very important
21 point here is that -- that along with this fine motion,
22 the Agency is drawn to the record of ACCSH and the
23 historical background. In some ways, I think this
24 possibly should be named -- your predecessor,
25 Mr. Chairman, Steve Cooper from the Iron Workers, and

1 Jane Williams, who fought tirelessly to try to move this
2 issue along, and here we are, this many years later, and
3 we're still fighting the same battle. So I just happen
4 to have been around for a while, and it's something that
5 it just -- it's something that doesn't ever seem to want
6 to struggle to the top of the pile, and I think that we
7 have an administration now that I believe would be
8 disposed to make something happen.

9 So if -- if we could have a companion to this
10 motion or preface this -- this motion, should we pass
11 it, that the Agency be drawn to this, this history, and
12 I'm certain that we could go back and do a little bit of
13 research and pull out from ACCSH meetings past that
14 history and make it be a companion to the motion.

15 MS. SHORTALL: Can I address
16 Mr. Zarletti's issue? Since Mr. Hawkins' motion is to
17 take regulatory action, it requires a number of steps,
18 the first of which would be for the Agency to put it on
19 their regulatory agenda.

20 We do have a number of elements under our own
21 regulations, under the Administrative Procedures Act
22 that we have to follow in order to promulgate any rule.
23 So I think if the Agency were to put this on the
24 regulatory agenda, Mr. Zarletti would have to understand
25 it could be a few years in order to get a final rule

1 out. You have to, you know, get a proposal out, then
2 you have to go through a number of steps to get a
3 proposal out, including being reviewed within the
4 department by OMB. We have required Notice of Comment
5 requirements. If anyone requests a hearing, we usually
6 grant it. It might be a hearing of more than one
7 location. Then we have post-hearing comments, then we
8 have to go through the process all over again with a
9 final.

10 So I wanted him to understand that he would
11 like to have something happen in less than a couple of
12 years, but I don't know if that's possible, given all
13 the steps that the Agency is required to undertake in
14 order to promulgate a rule.

15 MR. ZARLETTI: Well, Miss Shortall, I
16 understand the protocol of a motion and the rule-making,
17 but I also understand from the testimony we've heard
18 that this has already been several years in the making.
19 So if that's the process, I'm just looking for activity,
20 not passive -- not passivity (inaudible).

21 MS. SHORTALL: Miss Arioto?

22 MS. ARIOTO: Sarah, may I ask you a
23 question? Is there such a thing as emergency
24 regulations when we're having concerns with heat coming
25 up?

1 MS. SHORTALL: Best we can do, there is a
2 provisional act that permits emergency regulations, but
3 there are very definite procedures and a very definite
4 level of danger that must be reached in order to qualify
5 under that. It has to be a grave danger or has to be a
6 new hazard, and I'm not sure, under either of those,
7 this particular item would fit. We have done emergency
8 temporary standards when Congress has ordered us to do
9 so. That would include, for example, lead in
10 construction. We were ordered to do an interim final
11 standard to get something out immediately.

12 MS. ARIOTO: The reason I ask that, Sarah,
13 is because if we're saying that tradespeople or people
14 working on the job sites, you know, aren't drinking
15 water because of the concerns of not having the correct
16 toilet facilities or clean toilet facilities, then I can
17 see a hazard, and really see a hazard with heat illness
18 and -- and it's recordable. So I would consider this
19 a -- really, in my opinion, for a woman being in
20 construction, a double kind of hazard, not just a health
21 hazard, like bladder infections, but also from like heat
22 illness problems, so...

23 MS. SHORTALL: If you would -- if you are
24 interested or if someone wanted to do an emergency
25 temporary standard, they have to petition the Agency for

1 that and lay out the reasons why they believe they
2 qualify under -- I think it's section G -- 6 G of the
3 Act.

4 MR. PARSONS: Let me say something, if I
5 may. Bill Parsons. I'll be meeting with Dr. Michaels
6 this week, and one of the subjects that he and I are set
7 to discuss is the regulatory agenda, and I'll commit
8 that it will be the number-one item on my list to
9 present to Dr. Michaels this week.

10 (Applause.)

11 MS. ARIOTO: Thank you very much.

12 CHAIR MIGLIACCIO: Mike Thibodeaux?

13 MR. THIBODEAUX: I have a question. Is
14 there an interim thing that OSHA can do -- not
15 necessarily regulatory, but maybe a directive or
16 guidance or something of that nature that could, in
17 effect, make these changes before it's made into or
18 changed into a regulation?

19 MR. PARSONS: I can say that we can
20 certainly put out a product that would encourage
21 separate facilities. We couldn't direct separate
22 facilities in anything without going through the
23 rule-making process.

24 I do have a Quick Card that's about to go out
25 that we just reviewed as recent as last week that I can

1 certainly modify to include encouraging separate
2 facilities.

3 Understand what I have to do with that is, I
4 have to enter it on the draft and then I have to send it
5 back through the review process again, but based upon
6 what I've heard here today and the history of this
7 subject, I think it's prudent that I do that, and I'll
8 do that next week.

9 MR. THIBODEAUX: Thank you.

10 CHAIR MIGLIACCIO: Bill Ahal?

11 MR. AHAL: I have a question, maybe
12 Mr. Broderick could help. This is going to reach back.
13 Has anything that's been done thus far -- and I'm aware
14 of Jean Williams and multiple efforts on multiple
15 fronts -- has any of that moved this issue forward at
16 all that we can start from there? Or is it all we're
17 still back at ground zero as far as initiating this as
18 it's been suggested?

19 MR. PARSONS: Well, I know we've been
20 tracking it for years. I know it's on the ACCSH agenda
21 for years. I know that there's been discussion, there's
22 been motions. To my knowledge, that's where it is. I
23 don't think it's moved forward at all.

24 MR. AHAL: Okay. So that was all good
25 information, but it hasn't done -- it's still -- where

1 it is this morning is the same place it's been every
2 time. So that asks the question, then, is there -- to
3 kind of enhance on what Mr. Thibodeaux said, is there a
4 method to help effect these changes, even if in a
5 nonbinding way, any quicker that we just are not aware
6 of, that you deal with every day, to get it to the --

7 MR. JONES: Not to step on anybody, but
8 aren't you able to cite towards standards, and is the
9 ANSI standard a standard that -- I don't know whether it
10 contains your concerns, but since you are able to cite
11 it as a standard, are you able to use the ANSI standard
12 in the interim or some other recognized standard that
13 some of us may not be aware of at this time that may
14 address the issues that we've all been talking about?

15 MR. PARSONS: First and foremost, we have
16 to determine if there are other standards on the subject
17 that -- that we feel like should apply. And after we
18 evaluate that, I could better answer that question, but
19 I can't just arbitrarily say today that we can use
20 something else. I have to see what that something else
21 is and whether or not it's going to get us where we need
22 to go.

23 And I certainly understand what you're saying
24 here. You know, I'd like to -- I'd like to say that we
25 can do it right away. I can't say that. I can say that

1 Dr. Michaels and I have talked recently, and he's
2 instructed me to address some issues that he would like
3 to talk about rule-making, and I firmly believe that
4 he's committed to us moving forward on several issues,
5 and I have no reason to believe that this would not be
6 one of those issues.

7 Other than a guidance document at this time,
8 Walt, I don't know what we could do, but I'll certainly
9 look at the ANSI standards and whatever is available to
10 see if there is some way we can do that.

11 MS. SHORTALL: Mr. Jones, regarding the
12 ANSI standards: Although when OSHA promulgates a rule,
13 we are supposed to take due consideration of ANSI
14 standards, and if we choose not to adopt them, we're to,
15 you know, lay out the safety and health reasons for not
16 doing so, their use, where we have a standard, cannot
17 change the obligation for employers. We can use them
18 where we have 5(a)1 General Duty clause, and we
19 primarily use the ANSI standards, one, to establish
20 knowledge of the hazard; and number two, that there are
21 feasible means to abate.

22 If it were determined that there are hazards
23 that 1926.51 does not address, then we might be able to
24 look at ANSI standards; however, if not, then we would
25 have to follow the OSHA standard, and employers could

1 not be held to a different standard at this point.

2 CHAIR MIGLIACCIO: Tom?

3 MR. BRODERICK: I think another concern
4 there, Sarah, would be the legal threshold of a hazard
5 rising to the degree of seriousness, and I -- and I
6 understand some of the issues, but I'm not sure that the
7 Agency's position would be to issue guidance to the
8 field to use 5(a)(1) backed by an ANSI -- this
9 particular ANSI standard.

10 MS. SHORTALL: That's exactly what I'm
11 saying. I'm saying -- I'm using the word "if" very
12 loud. It would have to be if the Agency decided that a
13 hazard wasn't addressed; and therefore, could be
14 addressed by 5(a)(1), then you would -- you could look
15 to something like a national consensus standard. A
16 national consensus standard, though, provides a -- a
17 good blueprint for any agency moving forward on the
18 rule-making.

19 MR. BRODERICK: If I'm not mistaken,
20 somewhere during, I think, the -- at the end of the
21 first, beginning of the second term of the Clinton
22 administration, this subject did make it onto the
23 regulatory agenda, and subsequently, fell off of it.
24 I'm not sure. But I'm going to do a little homework
25 when I get back to Chicago and see if that's the case,

1 because Bill, through your discussion, I think it would
2 be instructive to note whether or not it did get to that
3 point, and for whatever reasons, it --

4 MR. PARSONS: Correct.

5 MR. BRODERICK: -- didn't -- wasn't
6 sustained.

7 MS. SHORTALL: Regulatory -- the
8 semi-annual regulatory agenda is printed in the Federal
9 Register. And the Federal Register is online, going
10 back to, I believe, 1994, so a person would be able to
11 check to see if something had been on OSHA's regulatory
12 agenda.

13 CHAIR MIGLIACCIO: Okay. Any more
14 discussion or question on Steve's motion?

15 (None heard.)

16 CHAIR MIGLIACCIO: Seeing none, all in
17 favor of accepting his motion, say aye.

18 (Ayes heard.)

19 CHAIR MIGLIACCIO: Opposed?

20 (None heard.)

21 CHAIR MIGLIACCIO: The ayes so have it.

22 MS. ARIOTO: I would like to make a
23 separate motion now.

24 CHAIR MIGLIACCIO: Yes.

25 MS. ARIOTO: I move that OSHA consider the

1 ANSI standard and the California OSHA standard
2 addressing toilet and washing facilities when moving
3 forward on this issue.

4 CHAIR MIGLIACCIO: Do we have a second?

5 MS. BILHORN: Seconded.

6 CHAIR MIGLIACCIO: Questions, discussions?

7 (None heard.)

8 CHAIR MIGLIACCIO: Seeing none, all in
9 favor, say aye.

10 (Ayes heard.)

11 CHAIR MIGLIACCIO: Opposed?

12 (None heard.)

13 CHAIR MIGLIACCIO: The ayes so have it.

14 Okay. Sarah?

15 MS. SHORTALL: Just a second.

16 CHAIR MIGLIACCIO: Okay.

17 MS. SHORTALL: Mr. Chair, at this time, I
18 would like to add a number of items to the list of
19 exhibits.

20 As Exhibit 10, the Improved Diversity-Women in
21 Construction work group report from their April 13
22 meeting.

23 As Exhibit 10.1, a list of PPE manufacturers
24 that provide PPE Scientific Women in Construction
25 Workers.

1 As Exhibit 10.2, the PowerPoint presentation on
2 Women in Construction presented by Fran Schreiber of
3 Kazan, McClain, Lyons, Greenwood & Harley.

4 As Exhibit 10.3, CALOSHA Standards on Toilets
5 and Hand-Washing Facilities at Construction Job Sites.

6 As Exhibit 10.4, the North Carolina Department
7 of Labor Card on Women in Construction.

8 As Exhibit 10.5, Draft Fact Sheet and Quick
9 Card on Women in Construction developed by the ACCSH
10 Women -- Diversity-Women in Construction work group.

11 As Exhibit 10.6, Changes to OSHA Construction
12 Standard 29 CFR 1926.51 that the Diversity-Women in
13 Construction request that ACCSH forward to OSHA in
14 updating a proposed rule.

15 CHAIR MIGLIACCIO: Okay. Thank you.

16 Susan, do you have a motion to put on the
17 floor?

18 MS. BILHORN: Yes. Thank you,
19 Mr. Chairman. A number of us have had significant
20 involvement in this, and I do have a copy of this for
21 Sarah, depending on --

22 MS. SHORTALL: Thank you.

23 MR. GILLEN: So as background, given that
24 federal agencies undertake a significant amount --
25 significant volume of construction and need many people

1 in the execution of such construction, the safety
2 practices that these agencies employ are very visible
3 and establish a precedent.

4 An Executive Order presently exists to ensure
5 that green design and construction practices are used
6 for new federal projects to drive environmental
7 interests and concerns. However, there is no Executive
8 Order that insures the use of best practices to insure
9 that people's health and safety are protected in the
10 design and execution of these projects. As a result,
11 the federal government is not only missing an
12 opportunity to lead by example, but is, in fact,
13 inhibiting progress by setting the wrong precedent.

14 To remedy this gap, I propose the following
15 motion for ACCSH to OSHA; and that is, ACCSH strongly
16 recommends that OSHA and NIOSH work together to collect
17 information on current federal orders and requirements
18 relating to construction safety and health and to
19 develop an Executive Order that clearly directs federal
20 entities to lead by example in construction safety and
21 health by employing design for safe constructability
22 concepts, including training for workers and supervisors
23 and subcontractor prequalification based on demonstrated
24 programs and performance.

25 That's the motion. Anyone want me to repeat

1 that?

2 (None heard.)

3 MR. JONES: Second.

4 CHAIR MIGLIACCIO: We have a motion on the
5 floor and seconded by Walter.

6 Questions, discussion?

7 (None heard.)

8 CHAIR MIGLIACCIO: Any questions,
9 discussion?

10 MR. THIBODEAUX: No.

11 MR. SHANAHAN: I do. I guess, Susan, the
12 very last part there where you talk about training, I
13 just kind of want to hear that again, if you don't mind.

14 MS. BILHORN: Okay. So -- and it is a
15 long, run-on sentence.

16 "Strongly recommend that OSHA and NIOSH work
17 together to collect information on current federal
18 orders and requirements relating to construction safety
19 and health."

20 That's because we're -- because we want to make
21 sure whatever exists out there is clearly understood,
22 you know, before -- to insure that the gap is
23 identified. And -- and, as opposed to waiting for that,
24 and -- so that would just help clarify the language of
25 the Executive Order -- but "and develop an Executive

1 Order that clearly directs federal entities," because we
2 don't -- because nothing is clearly out there now -- "to
3 lead by example in construction safety and health by
4 employing design for safe constructability concepts."
5 And when we say that, it's the broadest use of the
6 reference to safe constructability concepts.

7 So we didn't want anybody to feel pigeon-holed
8 into their understanding of, you know, design safety or
9 safety in design, we wanted to make it broad, so it's
10 "safe constructability concepts." And those include
11 "training for workers and supervisors and supervisor
12 (sic) prequalification," with that prequalification
13 being based on demonstrated programs and performance,
14 not just the lagging metrics.

15 Does that make -- is that clear for you? Did
16 that change anything from --

17 MR. GILLEN: I'm trying to pick up -- was
18 it contractor prequalification or supervisor?

19 Is it contractor prequalification?

20 MS. BILHORN: Oh, I apologize. I did.
21 The training was for workers and supervisors. And the
22 prequalification was for contractors.

23 CHAIR MIGLIACCIO: Any other questions or
24 discussions?

25 MR. JONES: I just have one slight

1 question. Sarah, is there a process or is there a --
2 some sort of prohibition or whatever from an agency
3 seeking an Executive Order, and is there certain
4 conflict inherent?

5 MS. SHORTALL: There's no prohibition
6 against an agency seeking to have the president issue an
7 Executive Order, but all Executive Orders are signed by
8 the president of the United States, considered a
9 presidential document.

10 MR. JONES: So if I could follow, I don't
11 know if this should be part of the -- I'm not making any
12 motions, but I -- I'm wondering if a request, maybe, of
13 the -- of the chair that, at our next meeting, that
14 Dr. Michaels come and, as part of his presentation, we
15 ask that he give us his views on ways to move forward,
16 best ways to move forward, other entities to help us
17 with moving this process, since it has to be signed by
18 the president more so than him, forward, how it -- just
19 a comment. That's all.

20 MS. BILHORN: That's a good point to add
21 on. We'd rather this not just either stick or fall. If
22 it -- if there is a reason that what we're recommending
23 can't take wings, we'd like to know what alternatives
24 could exist to gain that same objective.

25 MR. JONES: Besides hiring lobbyists.

1 MS. SHORTALL: Certainly, our joint --
2 there certainly are joint agency documents that -- for
3 example, OSHA and NIOSH, if those want to work together,
4 could enter into or could jointly sign and release.

5 MR. JONES: So I'm just saying at --
6 informally, I'm talking to Bill probably more directly.
7 If at some point during any conversations you do have
8 with Dr. Michaels that you could ask him if he could
9 speak to this issue at our next meeting, that's all.

10 MR. PARSONS: Bill Parsons. Yes, I'll be
11 happy to do that.

12 MS. BILHORN: Bill, is there any
13 clarification?

14 MR. PARSONS: No, I think it was well
15 said. And you know, I'll certainly bring it to his
16 attention and ask -- and inform him that the committee
17 would like to ask that he speak on that at the next
18 committee meeting. Be happy to do it.

19 MS. BILHORN: But on the motion itself, is
20 there any question or concern that I can clarify to not
21 have that in the way?

22 MR. PARSONS: No, I see that if there
23 becomes a question or concern, we could certainly,
24 through a conference call with the committee, gain
25 clarification on the question.

1 MS. BILHORN: Wonderful.

2 MR. PARSONS: Okay?

3 CHAIR MIGLIACCIO: Any more discussions or
4 questions?

5 (None heard.)

6 MS. SHORTALL: I would add one thing, if
7 you wanted to know. The amount of time that it would
8 take to get a joint NIOSH/DOL or NIOSH/OSHA statement
9 and the amount of time it would take to have the few
10 agencies meet with the president to urge him to issue an
11 Executive Order are not equal.

12 MS. BILHORN: So the thought there being
13 that it may be more -- a simpler or more timely process
14 if it just went through OSHA, versus trying to --

15 MS. SHORTALL: Well, the issue is, what is
16 the most important priority to the committee. If the
17 committee wants to get something out more quickly,
18 something that was done at just the -- either the Agency
19 or the joint-Agency level would probably be -- could be
20 done more quickly than something that has to rise to the
21 level of Executive Order. But I'm saying that I
22 don't -- I'm not sure that the -- I mean, what the
23 committee's intent is. If the committee's intent is
24 they do want the president's intention to make that,
25 then --

1 MS. BILHORN: That is the intent.

2 MS. SHORTALL: Okay.

3 MS. BILHORN: And you know, recognizing in
4 a very positive way the momentum that's been gained
5 through the Executive Order on (inaudible), you know, so
6 that same energy, we'd like around safety and well-being
7 of people.

8 MR. JONES: Sarah, if I understand you
9 correctly, if this went through the Agency -- and just
10 going back on the sanitation issue, which you are saying
11 would take two or three years in the best-case scenario,
12 you're saying that an Executive Order, then, would take
13 even longer than that?

14 MS. SHORTALL: I would just say that it --
15 to get it to filter all the way up to the top does
16 require, you know, more effort, more planning.

17 MR. JONES: I believe it would take more
18 effort and more planning, and it should be -- the point
19 of my earlier statement was that it should be more by
20 (inaudible), we should all be, as well, with our
21 individual organizations and our individual accesses to
22 1600 Pennsylvania Avenue, be pushing this concept as
23 well -- and we are and will -- but I can't imagine
24 that -- and they will decide whether they're going to do
25 it or not probably pretty quickly, but it has to be

1 quicker than trying to get this through a regulatory
2 process, especially since the folks that you're talking
3 about with Design for Safety --

4 MS. SHORTALL: This motion is not
5 requesting a regulation. This motion is asking for an
6 executive statement.

7 MR. JONES: Okay.

8 MS. SHORTALL: So I'm not equating it with
9 regulatory process.

10 MR. JONES: Okay, thank you. Understood.

11 MR. GILLEN: I was just going to say this
12 is probably a process where NIOSH and OSHA work together
13 on this and come back to the committee a couple times,
14 report on where they've come. It's going to take
15 several steps. Do you agree, Bill?

16 MR. PARSONS: I agree. I agree.

17 MS. BILHORN: And the reason to have both
18 OSHA and NIOSH work together to move this forward to the
19 president, to a directive, is because both have -- have
20 the -- you know, the responsibility for this kind of an
21 outcome.

22 CHAIR MIGLIACCIO: Okay. Any more
23 questions or discussions before we vote on it?

24 MS. SHORTALL: Did we have a second on it?

25 CHAIR MIGLIACCIO: We had a second. It

1 was Walter.

2 All in favor, say aye.

3 (Ayes heard.)

4 CHAIR MIGLIACCIO: Opposed?

5 (None heard.)

6 CHAIR MIGLIACCIO: Seeing none, ayes have
7 it.

8 Our last work group is multilingual. Who's
9 going to be giving it, Mike? Okay.

10 MR. THIBODEAUX: Multilingual work groups
11 met on April 13, and Tom Broderick and I are co-chairs
12 of the committee. Welcomed ACCSH members and guests to
13 our work group. And since it's being held here in
14 conjunction with the National Action Summit for Latino
15 Worker Health and Safety, attendance was a lot higher
16 than normal, and that was great. We had 33 members and
17 guests that attended.

18 We had a reorganization of the work groups
19 since the last meeting, and Tom Shanahan has assumed
20 duties on other work groups, and he was thanked for his
21 contribution as a former co-chair of this group.

22 There were many presentations that were going
23 to be at this Latino Action Summit. The ACCSH members
24 attended, and we were basically voluntarily assigned to
25 attend different sessions so that we could get all the

1 ideas coming out of this Summit and hopefully bring them
2 back not only to this committee, to any other committees
3 that may be appropriate, and we can then address and
4 implement relevant matters for this multilingual work
5 group.

6 Danezza Quintero gave a report on the
7 activities of the OSHA internal Hispanic Task Force, and
8 most of their focus over the past couple of months has
9 been preparing for the Latino Summit.

10 We also discussed the need to create a new
11 mission statement for this work group, and it was
12 determined that this item will be picked up at the next
13 meeting and taking into consideration all of the
14 discussions we had at the work group meeting as well as
15 what the ACCSH members gleaned from the Latino Summit.

16 Felipe Devora is a senior risk engineer with
17 Zurich North America Insurance Company. He is a former
18 ACCSH member and former staff member of OSHA's
19 Directorate of Construction. He gave attendees an
20 overview of the insurance industry's -- and
21 specifically, his company's approach to providing
22 training and education for the Latino worker.

23 A number of discussions he made are as follows:
24 Focus on the new immigrant worker, the one coming just
25 into the construction industry, and start right away on

1 them rather than two or three or four years after they
2 get here.

3 Family safety fairs were discussed, and there's
4 one tomorrow here in Houston at the George R. Brown
5 Convention Center. And this is a good way not only to
6 include just the workers, but their families. And that
7 gives a lot more emphasis, according to what Felipe
8 said, to making sure that the worker understands that
9 his family is going to be -- pressure him to make sure
10 he works safe and help him along in learning to do this
11 better, because it's not just for his safety, it's for
12 the safety of his family, also.

13 He suggested using "Mexican Spanish," his term,
14 in training materials, because that's the most common in
15 the Southwest and the South as far as Latino workers.

16 He suggested also that OSHA enforcement should
17 ensure violations are specific about which employer is
18 responsible and what the proper method of compliance
19 should be, not just citing and saying, "You violated
20 this regulation," but give them some guidance on how to
21 do it correctly and why it makes sense to do that
22 correctly. Such as, it's going to save you time, it's
23 going to -- going to keep your workers more fresh, and
24 then the bottom line is, it will probably save you money
25 in the long run.

1 Conducting training for workers and
2 supervisors -- managers and supervisors should be held
3 in the classroom, and he suggested that for the workers,
4 holding it on site is probably more effective than doing
5 it in the classroom for them, because you have the site
6 there, you can show exactly what's being done, how to do
7 it correctly, and it gives a longer-lasting effect. And
8 he said this is the most effective way to show what's
9 wrong and how to correct it.

10 Make sure that all that are being trained know
11 that doing it the right way, the safe way, will save
12 time, money and, most important, safe lives. Both
13 techniques are very effective.

14 We thank you for taking time to share this
15 important information on how to more effectively manage
16 safety in construction for the Latino workforce, and
17 this carries over to all the workforce.

18 Meeting adjourned at 12:15.

19 CHAIR MIGLIACCIO: Tom Broderick, do you
20 have anything to add?

21 MR. BRODERICK: No. Good report.

22 CHAIR MIGLIACCIO: Thank you. I'd like to
23 entertain a motion to accept this work group's report.

24 Liz seconded -- or first. Second?

25 MR. GILLEN: I'll second it.

1 CHAIR MIGLIACCIO: Thank you. Matt Gillen
2 seconded.

3 Questions, discussion?

4 (None heard.)

5 CHAIR MIGLIACCIO: Seeing none, all in
6 favor of accepting the work group's report, say aye.

7 (Ayes heard.)

8 CHAIR MIGLIACCIO: Opposed?

9 (None heard.)

10 CHAIR MIGLIACCIO: The ayes so have it.

11 MS. SHORTALL: Mr. Chair, at this time,
12 I'd like to mark as Exhibit 11 the approved Multilingual
13 Work Group Report from the April 13th meeting; and as
14 Exhibit 11.1, Immigrant Worker Safety and Health Report
15 from a Conference on Research Needs, Draft NIOSH
16 scientific information disseminated for peer review that
17 was passed out at the multilingual meeting.

18 CHAIR MIGLIACCIO: Thank you.

19 Okay. At this time, Bill Parsons has a few
20 announcements to make and report on some things that
21 went through.

22 MR. PARSONS: I'd like to first begin by
23 asking Dean McKenzie to make a comment regarding the
24 green job work group and the rope access issue.

25 Dean, if you don't mind, would you do that,

1 please?

2 MR. MCKENZIE: Good morning. One thing
3 that was a request I had yesterday in the presentation
4 at the final point was to make it a priority for the
5 group of rope access. It is kind of a growing issue in
6 the industry. Construction sees it, as well as general
7 industry; and technically, you know, by the letter of
8 the standard, it is illegal, but it is going on as
9 advertised and growing. It is very broadly used in
10 Europe and Asia.

11 And, you know, once again, I'm not saying it's
12 safe or unsafe, but by our standards, it is not good,
13 and I would really like to get the committee's opinion
14 formally on it, which will require some research.
15 The -- there's two primary associations that deal with
16 it: One is the U.S. version, it's called SPRAT, Society
17 of Practitioners of Rope Access or something, and IRATA,
18 the international --

19 MR. JONES: What is rope access?

20 MR. MCKENZIE: Rope access is using
21 essentially mountain-climbing gear for vertical access,
22 similar to what you would see a window washer use, but
23 it's being done industrially all over the world. And
24 typically, under the OSHA standards, it is a one-way
25 trip. You start at the top and let yourself down until

1 you hit the ground and get off.

2 With rope access, you go back up the same way
3 you came down, so you have climbing -- you go up with
4 it. You are not in a full-body harness, you are in a
5 (inaudible) harness instead of a boatswain's chair.
6 They allow knots, and it's prescribed to use knots, they
7 use multiple anchor points.

8 MR. JONES: When are you seeing this?

9 MS. BILHORN: Wind.

10 MR. MCKENZIE: Wind is one of the primary
11 places that we're seeing this right now. But you will
12 also see it used in refineries and dams, cooling tower
13 inspections and repairs. This -- it's growing.

14 UNIDENTIFIED SPEAKER: Window washer
15 scaffolding.

16 MR. MCKENZIE: It's not huge yet, but it
17 will be.

18 MS. BILHORN: I want to apologize, we
19 actually did talk about that. I didn't capture the
20 notes. It was actually when we -- when we talked about
21 looking at cell tower maintenance, it was with thinking
22 of the -- how they, you know, access and egress, because
23 I believe similar things are being done there.

24 MR. MCKENZIE: Yes.

25 MS. BILHORN: So -- so we -- actually,

1 (inaudible) about that I apologize we didn't capture
2 that directly in here. We took your question and we'll
3 be looking into it.

4 MR. MCKENZIE: Part of the thing with the
5 cell towers or communications towers is, their erection
6 needs to be done by Subpart R and not just as a
7 communications tower, where they set them up as a gym
8 pole or how they are erected. When used for power
9 generation, the standard would call it out as being
10 subpart R, steel erection, which invokes the additional
11 training and rigging requirements and such that are not
12 in communications towers. So that's where that would --
13 I took that comment to go. Thank you.

14 CHAIR MIGLIACCIO: Dean -- excuse me.
15 Dean, you and I spoke, that was going to be part of your
16 public comment also, also, so this will --

17 MR. MCKENZIE: Yes, sir.

18 CHAIR MIGLIACCIO: Okay. Thank you.

19 Bill?

20 MR. PARSONS: Couple of points there,
21 couple of issues I'd like to cover.

22 First, as I promised several months ago, at
23 each committee meeting, I would cover the status on
24 recommendations from previous meetings. And someone
25 pointed out to me earlier that I forgot to do that

1 earlier this week, and I apologize. However, after
2 reviewing the recommendations, I realized that
3 Ms. Dougherty, while here a couple of days ago,
4 addressed many of those recommendations. As a matter's
5 of fact, all but one or two.

6 So I am going to summarize, however briefly:
7 First was a recommendation that was unanimously passed
8 made by Walter Jones on an MSD column for the OSHA 300
9 and 300A. That was provided by the Directorate of
10 Standards and Guidance because that was written by
11 Standards and Guidance, and so it's under advisement to
12 them.

13 Next was Mr. Hawkins recommended in the
14 proposed rule -- record-keeping rule, a definition of an
15 MSD, and that also went to the Directorate of Standards
16 and Guidance.

17 The committee discussed the disposition of
18 medical records brought up by Mr. Migliaccio, and that's
19 under advisement. We have a list of subjects to talk
20 about next week, and Dr. Michaels and I will be talking
21 about that one in particular.

22 Mr. Kavicky moved that ACCSH recommend that
23 OSHA move forward with the SIPS project that's being
24 handled by Standards and Guidance.

25 Miss Arioto moved that ACCSH recommend that

1 OSHA add a provision to the SIPS Project 3, again,
2 Standards and Guidance.

3 And I appreciate the fact that you're making
4 all these recommendations to Standards and Guidance.

5 (Laughter.)

6 MR. PARSONS: This is working very well.
7 Thank you.

8 Mr. Jones moved that ACCSH support the concept
9 of Table 1, and I heard Miss Dougherty's brief on that a
10 couple of days ago.

11 Mr. Beauregard moved that ACCSH recognize the
12 controls listed in Table 1. Again, Miss Dougherty
13 briefed on that the other day.

14 Mr. Hawkins moved that ACCSH recommend that
15 OSHA maintain the language on protective clothing from
16 the SBREFA Panel Draft Regulatory Text in the Proposed
17 Rule on Occupational Exposure to Crystalline Silica.
18 Again, Standards and Guidance. And I heard her talking
19 about some of those issues.

20 To make a long story short, the other two were
21 on crystalline silica, also, Standards and Guidance.

22 So any questions regarding motions passed at
23 the last meeting that I can answer?

24 MR. GILLEN: (Inaudible.)

25 MR. PARSONS: (Gesturing.) Another

1 subject -- and I'll answer any questions you might have
2 after this on anything in particular, if you'd like.

3 There was also a question regarding
4 clarification of who's running what in the Directorate
5 of Construction.

6 CHAIR MIGLIACCIO: Standards and Guidance.

7 (Laughter.)

8 MR. PARSONS: I checked my list this
9 morning, and I'll brief. I introduced Eric Harbin as
10 the new Director of the Office of Construction Services,
11 and he couldn't be here today as he was traveling this
12 morning and had a previous commitment, but he's -- he's
13 in the office, working now, and he's the Director of the
14 Office of Construction services.

15 Mohammed Ayub is and continues to be the
16 Director of Engineering Services.

17 Mr. Buchet is the Acting Director of the Office
18 of Construction Standards and Guidance.

19 We -- at this particular point, we have no
20 Deputy Director to be announced, and I, for the time
21 being, am the Acting Director of the Directorate of
22 Construction.

23 Any questions on anything at all that I might
24 be able to answer for you?

25 CHAIR MIGLIACCIO: Susan?

1 MS. BILHORN: One question, Bill. For
2 those things that go off to Standards and Guidance,
3 they're now going to be part of this -- are they going
4 to continue to be part, so can we expect updates on a
5 regular basis --

6 MR. PARSONS: Yes, ma'am.

7 MS. BILHORN: -- from Standards and
8 Guidance?

9 MR. PARSONS: Yes, ma'am.

10 CHAIR MIGLIACCIO: Bill?

11 MR. AHAL: I'm Bill Ahal. Bill, I made a
12 recommendation several meetings ago, it's more of a
13 general nature, not out of specifics, but this is going
14 to be more of a -- your response should be more of a,
15 has this been just forgotten or not. But I asked that
16 the -- that the Agency not lose sight of the importance
17 of outreach and educational programs versus regulations;
18 in other words, all the efforts that have been
19 accumulated and the progress made over the last few
20 years not be dropped. And so I'm wondering, just from
21 an inside view, if that was the last time that was even
22 listened to, or do you feel that that's still in what's
23 being done today, or status of that in general, comment?

24 MR. PARSONS: Outreach in general or a
25 specific?

1 MR. AHAL: Well, education and outreach
2 versus, you know, partnerships, cooperative programs,
3 and that general atmosphere and technique in getting
4 things done.

5 MR. PARSONS: And Mr. Buchet informs me
6 that Lee Anne Jillings did a presentation regarding the
7 outreach efforts earlier this week. Let me add to that
8 that my primary concern is the Directorate of
9 Construction and the outreach efforts performed by the
10 Directorate of Construction. I can say that, without
11 exception, we are doing more in regards to outreach
12 today than we've done in many years.

13 We -- at the present time, everybody on staff
14 in the Office of Construction Services has been
15 traveling to present to different groups. I have
16 Mr. McKenzie out next week to speak before a thousand
17 people at Wal-Mart -- or week after next to speak to a
18 thousand people at Wal-Mart. I have another person
19 going out to California the same week to speak before
20 about 150 employers. I think outreach is a very
21 important element of what we do, and we're going to
22 continue to push that.

23 You know, we've strained our travel budget
24 beyond its limits months ago. I think I was informed at
25 the end of the first quarter, I'd already spent my

1 travel budget for the year, and -- and it's not because
2 we're out having a good time, it's because we're out
3 spreading the word and talking about the things that we
4 need to be talking about and educating people on
5 programs and processes and -- and safety.

6 So as far as -- as far as I'm aware, the Agency
7 continues to move forward in all those areas, and
8 certainly, the Directorate of Construction is moving
9 forward more so than we've done in many years.

10 MR. AHAL: Thank you.

11 CHAIR MIGLIACCIO: Susan?

12 MS. BILHORN: Adding on, in the same
13 direction, it's been clearly -- clear the emphasis, as
14 Mr. Michaels said during his talk this week, is around,
15 you know, strengthening enforcement penalties
16 (inaudible) has been a repeated theme of a heavy dose of
17 that, which, you know, it apparently is still needed,
18 unfortunately. But I -- I guess where I'm taking it,
19 Bill, I don't know if this is where you're going with
20 it -- is, I know we've expressed concern before that
21 there -- you know, not be as much focused on the VPP and
22 consulting services. And even when Miss Jillings spoke,
23 she did talk about looking for funding sources, because
24 there weren't -- because it sounds like there wasn't
25 enough to do in those areas because of -- and maybe

1 that's because of the focused enforcement.

2 I just want to underscore the concern, you
3 know, if we have big issues out there, penalties, fines,
4 certainly it would be great to come to some point where
5 we don't have to brag about the -- the high-ticket
6 violations, because they aren't happening. And the
7 consultative services seemed to be -- I think have
8 driven an impressive improvement.

9 MR. AHAL: Same. Same (inaudible). We
10 heard the opening remarks Wednesday afternoon, and there
11 was a lot of emphasis on fines and hammers versus
12 education and outreach. At least that's what I heard.
13 And that was what has directed my recommendation. Susan
14 is right in the same...

15 MS. BILHORN: And the concern is, it can
16 get into a feeding frenzy if that is the focus,
17 ticket-writing kind of a thing, as opposed to really
18 getting ahead of the game. And that becomes an
19 unintended consequence in terms of the way we then see
20 the response improvement. So you know, I'm probably
21 speaking -- preaching to the choir, but that's the
22 concern that, you know, I have, and I think (inaudible).

23 MR. AHAL: Well, I mean, just the comment
24 that Lee Anne made on looking for alternative funding
25 sources, you can take that a couple ways. The way I

1 don't want to take it but that prompted, in part, my
2 question was that, does that mean that there's going to
3 be a change and cutback in that -- in that because --
4 because of funding problems? And if there is, that's
5 what I'm looking for, or was that -- is that -- that can
6 have an effect, obviously. If they're looking for funds
7 to continue what they're doing, then sounds like what
8 they're doing is going to be different, and that's what
9 I'm looking for.

10 MR. PARSONS: I can say that the
11 activities relating to outreach efforts, such as VPP and
12 alliances and partnerships, is to have stronger
13 alliances and partnerships and have companies that are
14 very deserving of that status participate with OSHA in
15 those activities.

16 I -- I think you heard her say that we had
17 fewer alliances now that -- that we don't have as many
18 people on the list for VPP activity today. I think it's
19 because we're trying to do a better job of having the
20 best of the best. And, you know, I can't speak for the
21 activities of the Directorate of Cooperative and State
22 Programs, all I can speak to is the Directorate of
23 Construction. And I can tell you, within the
24 Directorate of Construction, we find work with
25 stakeholders and outreach projects very valuable and --

1 and we intend to continue pushing forward with those.

2 CHAIR MIGLIACCIO: Tom Broderick.

3 MR. BRODERICK: Bill, to your comment,
4 I -- and I thought a good bit about this: I think the
5 dynamic that we're working with here is that the
6 voluntary programs, like Challenge and VPP, and
7 Challenge is the -- is a program that helps companies
8 get ready to -- they get their programs in order to be
9 able to go into VPP.

10 The cookie for being in VPP, of course, has
11 always been those who achieve it, get taken off of the
12 general scheduled inspection list. And that
13 historically has been a -- a big deal, and it's one that
14 really -- the argument is that that's taking OSHA's eye
15 off the ball, and the only way that OSHA would see that
16 happening is by making darn sure that the companies --
17 and there are a high number of petrochemical companies
18 in VPP -- that those companies are really doing an
19 excellent job.

20 So I think the whole -- the whole program has a
21 heavy component of surveillance of those companies that
22 are trying to get into VPP; and then once they're in,
23 making sure that inspection teams go out periodically
24 with up to half federal OSHA people and half SGE's,
25 special government employees, who are private-sector

1 people that have special training, to do these
2 inspections.

3 And I believe what -- what is trying to happen
4 is finding some alternative to keeping the -- the
5 pressure on VPP companies to stay at that very high
6 level without being so resource intensive to the Agency.
7 And I think what one of the alternatives would be -- and
8 I might be all wet on it -- but I think one of the
9 alternatives might be to back away, to some degree, from
10 not having those companies who are in VPP have a carte
11 blanche, "There will not be any regular compliance type
12 of inspections," because if that -- if that were not the
13 big cookie, if just doing the right thing would be --
14 would be, then OSHA would not have as much exposure to
15 the possible downside of there being a bad actor that
16 gets in the VPP. Does that make sense?

17 MR. AHAL: Somewhat. I mean, I guess -- I
18 guess I look at the fact that the comment was made it
19 would take 130-something years to hit every workplace,
20 okay? Now, if you took the best of the best, anyhow,
21 and took them off the top of the priority list, it might
22 only take 127 years to get there. But it took the
23 resources -- instead of going back to the same place
24 where you're going to have to work hard to try to find
25 something, and that's the goal, and go to a place where

1 you probably have to be blind not to be able to improve
2 that job site. So utilizing your resources in the most
3 efficient manner seems to be you go where -- this just
4 goes back to how you choose and things like that, but I
5 don't think finding the job sites -- they're out there.

6 MR. BRODERICK: Right.

7 MR. AHAL: We can find them, and we're not
8 necessarily looking, so that's my whole point with that
9 is -- is are we putting things in the right -- to the
10 right spot.

11 MR. BRODERICK: And I believe one the
12 alternatives that the Agency floated in front of the VPP
13 association was the idea of user fees to -- to help make
14 the program be less costly to the Agency. And I -- I
15 would, you know, have problems with that, because user
16 fees could translate to buying one's (inaudible).

17 MR. AHAL: Yeah, for the right fee, you
18 can get -- achieve what you want. Yeah. I would agree
19 with you.

20 CHAIR MIGLIACCIO: Okay. Thanks. Susan?

21 MS. BILHORN: I'm sorry, I had forgotten,
22 I didn't hear on your status list, a couple meetings
23 back, we had drafted a Quick Card.

24 A couple of meetings back, the Regulatory
25 Compliance group had given a draft Quick Card and

1 recommended -- and this was on subcontractor -- you
2 know, best practices or guidance on subcontractor
3 selection. I just wondered if you knew the status of
4 that.

5 And one other thing that was asked last time as
6 part of the closure of the Regulatory Compliance group,
7 making sure that we kind of had addressed the objectives
8 of that group before we, you know, totally moved on,
9 since that one's now in abeyance, was to understand the
10 focus -- focus construct -- or focused inspection
11 initiative and whether OSHA felt that it -- that
12 initiative had met its intent, especially understanding
13 that there's been a significant reduction of those from
14 2004 to 2008. So those were two kind of follow-up
15 things that we had asked that I didn't hear in your
16 report.

17 MR. PARSONS: And I apologize. I do not
18 have a status on those today, but I'll get the status
19 out to you via e-mail. Okay?

20 MS. BILHORN: Thank you. Can I just close
21 with that, and just say, Bill, Mr. Parsons and Miss
22 Shortall, I just want to, on a personal perspective,
23 reflect to you -- and I kind of suspect that there may
24 be others who will say the same, based on our
25 conversations -- that I really appreciate your proactive

1 response and can-do kind of approach. I find it -- I
2 believe it's very important -- that kind of approach is
3 very important to the committee being able to achieve
4 our objectives, and also, it is extremely respectful of
5 the members, so I want to express my personal
6 appreciation for that.

7 (Applause.)

8 MS. SHORTALL: I didn't pay her, no.

9 (Laughter.)

10 CHAIR MIGLIACCIO: Any other questions of
11 Bill?

12 MS. SHORTALL: I have a couple of
13 housekeeping issues.

14 I have two more exhibits to enter into the
15 record. As Exhibit 11.2, the list of Latino Summit
16 Workshops that ACCSH members signed up to attend. And
17 as Exhibit 12, the agenda of the April 14 and 16, 2010
18 ACCSH meeting.

19 And I wanted to update you on the issues, since
20 I've been asked several times this week about the
21 Federal Register notice requesting nominations for
22 membership on ACCSH. Mr. Buchet has sent that notice to
23 all of you electronically, and we passed out copies --
24 hard copies of that to you this morning. There are also
25 copies of it out on the table where the sign-up sheet is

1 for any other member of the public who wants to, can
2 pick one up.

3 CHAIR MIGLIACCIO: She passed it out this
4 morning.

5 MR. JONES: The hard copy?

6 CHAIR MIGLIACCIO: There were several
7 things passed out.

8 MR. GILLEN: Here's another copy.

9 UNIDENTIFIED SPEAKER: Oh, from the
10 Register.

11 (Inaudible question by Mr. Kavicky.)

12 MS. SHORTALL: You're asking a question of
13 me, is there acknowledgment that the Agency has received
14 it? The acknowledgment is going to be that you'll see
15 it in the public record. At the top of the
16 announcement, there is a docket number. All you have to
17 do is look on regulations.gov, and you'll be able to see
18 it there. That would be your acknowledgment that it's
19 been received.

20 MR. GILLEN: I just had a question. Can
21 you identify for us where in the docket this particular
22 meeting would be? Again, it's still confusing to me to
23 find all these materials that you so carefully put in
24 the docket. I just have a hard time finding them.

25 MS. SHORTALL: Okay. What you should do

1 is look at the -- well, two ways you could do it: You
2 can go to regulations.gov, and on the right-hand side
3 where it says "search," you can type in the words
4 "ACCSH," and that will get you to several different
5 dockets for ACCSH.

6 If you want to be more specific, what you would
7 first do is look at the meeting notice that came out for
8 this Federal Register -- in the Federal Register for
9 this meeting, and there will be a docket number for
10 that. And if you just plug that docket number into the
11 search, the docket will show up.

12 Now, the easiest way to do that is when you get
13 to the docket showing up is go to the right-hand side
14 that says "view entire docket folder." If you click on
15 that, every item that's in that docket will then appear.

16 MR. GILLEN: Thank you.

17 CHAIR MIGLIACCIO: Steve?

18 MR. HAWKINS: Sarah, did you say
19 "regulations"?

20 MS. SHORTALL: It's https, colon,
21 backslash, backslash, www, dot, regulations dot gov.

22 CHAIR MIGLIACCIO: Any other questions or
23 discussions?

24 MS. SHORTALL: Mike, do you happen to
25 remember what the docket number was for this meeting?

1 UNIDENTIFIED SPEAKER: I'm afraid not.

2 MS. SHORTALL: For some reason, I think it
3 was --

4 UNIDENTIFIED SPEAKER: It was like 0005, I
5 believe. So it would be OSHA, dash, 2010, dash, 0005,
6 and all the exhibits would be dash some other number
7 after them.

8 MR. GILLEN: It's on the Federal Register
9 notice?

10 MS. SHORTALL: It's not going to be on the
11 Federal Register notice for the nominations. That's a
12 separate document. It would be the Federal Register of
13 the meeting. And you can find that Federal Register
14 notice on OSHA's web page.

15 UNIDENTIFIED SPEAKER: Everybody should
16 have received an e-mail copy of the Federal Register
17 notice.

18 CHAIR MIGLIACCIO: Susan?

19 MS. BILHORN: A question: When OSHA gets
20 all these nominations and is considering the -- I heard
21 someone rumor there was 400 applications; and if so,
22 that would be wonderful, but when OSHA is considering
23 those, is there a specific kind of -- I understand that
24 there are categories, obviously, employer, employee,
25 representatives, et cetera. But how about in the

1 subject areas that we are currently dealing with? So,
2 for example, green jobs and design and construction. I
3 can see that there -- there may be some -- you take a
4 look at the dynamics of our group, I think we miss some
5 of those pieces. Certainly, we can invite it in, but it
6 would be nice when that's looked at, if you could kind
7 of look at the subject areas, and is there somebody, you
8 know, with experience and/or representing companies or
9 associations or -- you know what I'm saying? That could
10 kind of help us in those areas? I'm just wondering how
11 much that's considered in the process.

12 MR. PARSONS: Mr. Buchet, would you like
13 to speak to that? You have the corporate knowledge on
14 this.

15 MR. BUCHET: Michael Buchet, Office of
16 Construction Standards and Guidance, and actually, the
17 Solicitor and I can try answering this together.

18 The requirements are that we find five persons
19 representative of employer interests; five persons
20 representative of employee interest; two who are
21 equipped, by knowledge and experience, to make a
22 valuable contribution -- the shorthand for that is
23 public interest; two representing state plan programs;
24 and the representative traditionally chosen by the head
25 of Health and Human Services has come from NIOSH, and is

1 formally -- or appointed by the Secretary of Labor along
2 with the other members or simply accepted as an
3 indefinite term.

4 The process is laid out in Federal Register
5 notice, and we try to stick to that as carefully as we
6 can. The individuals are not there on the committee as
7 yourselves, you represent an interest, so one of the
8 things that we look for is people who have access to the
9 interests.

10 MS. BILHORN: That's my point.

11 MR. BUCHET: Well, that is the point, and
12 that's one of the -- one of the criteria, and you will
13 see, if you -- if you look at the nomination process, is
14 that a great many of the -- the first five and the
15 second five are nominated by an association.

16 Theoretically, the representative nominated by that
17 association, once accepted, doesn't come here and say,
18 "This is what I want or think," they say, "This is what
19 I represent wants or thinks." Which is a delaying
20 process, because a question raised, most associations
21 don't meet every day. You have to go back to the
22 association, go through the association process and find
23 out what the consensus of the association is bringing
24 forward.

25 The labor representative, same thing, they

1 don't sit here necessarily and represent themselves,
2 they represent the collective understanding --

3 MS. BILHORN: Can I rephrase my question?
4 I don't want to interrupt, except that you're going down
5 a path that is well known.

6 MR. BUCHET: But that's the path.

7 MS. BILHORN: But let me just recast my
8 question so maybe you can answer that. I see the
9 Federal Register notice, and I -- I think I understand
10 that, Mr. Buchet. What I'm -- the question I'm getting
11 at is, if there is a large volume of applications in one
12 or more of those areas, you get more than five for each
13 of those areas, you know, if there's a large volume, and
14 hopefully, there is, and there may be twenty-five
15 applications for five slots. In the selection of it,
16 you know, I'm assuming there's, you know, adequate
17 qualifications, the right kind of nomination and all
18 those things, but, say, you get 25 valid candidates for
19 five slots. Would there be -- you know, in honing it
20 down, would there be an opportunity there to look at
21 representatives that -- that add some perspective in
22 areas that are currently not on our plates from the
23 (inaudible)?

24 MR. BRODERICK: Architects/engineers.

25 MS. BILHORN: Yeah, so architects/

1 engineers, from the perspective of design -- safety and
2 design, you know, and --

3 MR. BUCHET: The issue there is that OSHA
4 has, at best, tenuous authority to regulate architects
5 and engineers. So we are looking at the population that
6 are affected by OSHA regulations and the employer
7 interests that are affected by those regulations. So I
8 think pulling in somebody from outside the regulated
9 community would be next to impossible.

10 MR. PARSONS: Let me speak, if I may.
11 Bill Parsons.

12 Miss Bilhorn, when these applications come in,
13 we certainly -- "we" being the Directorate of
14 Construction, certainly see these applications. And if
15 we are focusing our standards development in a
16 particular direction, we may, from those applications,
17 look at the qualifications and flag a particular
18 application by saying, "This person representing this
19 group has significant experience in the following area."
20 And when the selection is ultimately made, that may help
21 the selecting official in determining who they're going
22 to select.

23 Does that answer your question?

24 MS. BILHORN: Very much so. Thank you.

25 MS. SHORTALL: Sort of as a bridge between

1 what Mr. Buchet and Mr. Parsons are saying, is the fact
2 that one of the things that you're required to do in the
3 nomination is state what interest you can represent. So
4 if, for example, an employer group decided what they
5 really wanted was an engineer, they certainly could, you
6 know, nominate, but the person has to be able to
7 represent a group. So in the case of like an architect
8 or an engineer who's not nominated by either an employee
9 or employer group, about the only place they would be
10 able to qualify would be in the public membership, what
11 interest could they serve. So as all -- since Mike says
12 you're serving in a representative capacity, you're
13 serving in a representative capacity among balanced
14 interests. And so we have to keep the interests
15 balanced.

16 And you'll notice that the representation you
17 have here tries to get as many players -- diverse
18 players in the construction industry at the table. So
19 they will balance, you know, carpenters and iron workers
20 and road construction and residential construction. So
21 they do as broad a base as possible, because the idea
22 under an advisory committee is that an agency will want
23 to listen to that group that fairly and adequately
24 represents and brings together all the interests to the
25 table at one time.

1 So, you know, they will look at expertise, and
2 they -- also, there's a major push by the department to
3 look at diversity as well. That's something I think we
4 even mentioned in the Federal Register notice this time,
5 the commitment of the department to get diversity in
6 there, too.

7 The office prepares quite an elaborate grid
8 system of, you know, the person, you know, what
9 experiences they have, what their CVs say, everything.
10 So when the evaluation occurs, you know, they have tried
11 to synthesize the information and presented, you know,
12 what would be, you know, the most important part.

13 And of course, then they have to be vetted by
14 the department to see if there are any potential
15 conflicts of interest that would be inappropriate to
16 have, you know, if there was -- I don't know, if the
17 brother of the head of ACCSH wanted to be on -- on the
18 committee, that would -- might be an example of a -- you
19 know, a question or issue that presents conflict of
20 interest.

21 MS. BILHORN: Thank you very much.

22 CHAIR MIGLIACCIO: Mike?

23 MR. BUCHET: We'd be absolutely
24 overwhelmed if we got more than 75 or 80 applications
25 for the slots.

1 MS. SHORTALL: "Overwhelmed" meaning in a
2 pleasurable way.

3 MS. BILHORN: Delighted.

4 MR. BUCHET: Yes, overwhelmed. Deluged.
5 In comparison to the 60-odd that we've been getting for
6 the last few years.

7 CHAIR MIGLIACCIO: Any other questions or
8 discussions?

9 Okay. I guess we'll wrap it up. Any motions
10 to adjourn?

11 No, there were no -- excuse me, Mike.

12 MR. BUCHET: I would say ask again, just
13 in case.

14 CHAIR MIGLIACCIO: Okay. Are there any
15 public comments out there? I know nobody's signed up
16 now.

17 (None heard.)

18 CHAIR MIGLIACCIO: Seeing none, motion to
19 adjourn?

20 MR. THIBODEAUX: So moved.

21 CHAIR MIGLIACCIO: Mike Thibodeaux.
22 Second?

23 MR. KAVICKY: Second.

24 CHAIR MIGLIACCIO: Tom Kavicky. All in
25 favor, say aye.

1 (Ayes heard.)

2 CHAIR MIGLIACCIO: Thank you.

3 (Off the record at 10:55 a.m.)

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1 REPORTER'S CERTIFICATE OF PROCEEDINGS

2 U.S. DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

3 ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

MEETING APRIL 16, 2010

4
5 I, Susan T. Baker, Certified Shorthand Reporter in
6 and for the State of Texas, certify that the above and
7 foregoing contains a true and correct transcription of
8 all proceedings conducted in the above-referenced
9 meeting, all of which was reported by me.

10 I further certify that I am neither related to,
11 nor employed by any parties to the meeting in which
12 these proceedings were conducted, nor do I have a
13 financial interest in the proceedings.

14 Certified to by me on this the 28th day of April,
15 2010.

16 _____
17 Susan T. Baker, RDR, Texas CSR #1561

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