

**MINUTES FOR THE NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL
SAFETY AND HEALTH (NACOSH) – SEPTEMBER 14-15, 2010**

Members Present

Michael Silverstein	Chairman and Public Representative
Linda Rae Murray	Public Representative
Denise Pouget	Public Representative
Roy Buchan	Public Representative
Susan Randolph	Health Representative
Peter Dooley	Safety Representative
Emory Knowles	Safety Representative
Joseph Van Houten	Management Representative
Peg Seminario	Labor Representative
William Borwegan	Labor Representative

DOL and NIOSH Staff Members

Dr. David Michaels, Assistant Secretary, Occupational Safety and Health Administration (OSHA)
Dr. John Howard, Director, National Institute for Occupational Safety and Health (NIOSH)
Deborah Berkowitz, OSHA Chief of Staff
Sarah Shortall, NACOSH Counsel
Robert Sandler, DOL Counsel for Ethics
Keith Goddard, Director, OSHA Directorate of Evaluation and Evaluation
Deborah Crawford, NACOSH Designated Federal Official
Paul Middendorf, NIOSH Representative
Frances Durant, Office of Communications

Chairman Michael Silverstein called the meeting to order at 8:39 a.m. Introductions of the committee members, DOL and NIOSH staff were made. Deborah Berkowitz welcomed the committee members and thanked them for their service on behalf of Assistant Secretary Dr. David Michaels.

Mr. Robert Sadler advised the members to be conscience of ethics rules when conducting business with the government. He referenced the handout, “Summary of Ethics Rules for Non-Federal Employees” and encouraged them to contact him or committee staff if they had any questions.

NIOSH Presentation

Dr. John Howard thanked everyone for their participation. He mentioned three areas that NACOSH could offer advice: 1) social media; 2) prevention by

design; and 3) H1N1. He noted that NIOSH is watching as a second congressional legislative issue the movement of the World Trade Center program bill. NIOSH is anxious to see an actual authorizing legislation. He said that he would love to see authorization from Congress that will give NIOSH specific guidance on how to conduct that program.

He mentioned several other important issues that the Centers for Disease Control (CDC) is addressing: health care associated infections, HIV, obesity, nutrition, physical activity, food safety, teen pregnancy, and immunizations. He also said that motor vehicle accidents are the leading cause of occupational fatalities.

Dr. Howard said that on September 3, NIOSH responded to an OSHA request to look at 15 candidate chemical substances that are proposed for OSHA permissible exposure limit (PEL) development: perchloroethylene, hexane, isocyanate, manganese, styrene, toluene, acetone, carbon monoxide, diesel, mercury, n-propyl bromide, glutaraldehyde, anesthetic gases as a class, chemotherapeutics and welding fumes. NIOSH also added trichloroethylene to the list and sent back to OSHA all of their information to help OSHA in their efforts in this area.

NIOSH entered into an interagency agreement with OSHA on nanotechnology. He said NIOSH has been trying to interest OSHA in this area and he's pleased to finally have a receptive assistant secretary in Dr. Michaels. They will look at control banding and prevention through design principles for the manufacture and use of engineered nano materials. The objective is to design and contribute to control risk management strategies and guidance materials and others that can be co-branded and produce a large impact in this emerging area.

In the area of science updates, he said NIOSH has just started new quantitative risk assessments and some draft criteria documents for formaldehyde, diethanolamine, benzene and toluene diisocyanate. NIOSH will begin updating the quantitative risk

assessment issues and the scientific literature on metal-working fluids. They will also look at lead.

NIOSH is looking at several aspects of work hours and shift work. The science of fatigue has started advancing in terms of finally recognizing that the human being is a biological entity and not a machine. The Europeans are leading in this area.

Dr. Howard discussed an evolving issue regarding indium tin oxide, which is present in flat panel and televisions. In March 2010, NIOSH investigators published a report describing two indium tin oxide workers at one facility with a fairly rare disease called Alveolar Proteinosis. It's a disease where the terminal airways or the air sacks in the lungs fill up with protein that should not be there and obviously there's no more room for gas exchange in that air sack. NIOSH was also contacted by Asian investigators who have seen similar cases. Most flat screen televisions are made in Asia. On September 19-20, NIOSH will hold a workshop in Morgantown to bring together Japanese, Chinese, Korean and U.S. investigators to look at the issue and to identify practices for this emerging issue.

In the area of science process updates, Dr. Howard discussed electronic medical records. He called it a pivotal issue in health reform and a lot of researchers believe that administrative costs can be saved by the use of electronic medical records. He talked about the transition of their chest radiography surveillance. NIOSH is transitioning from the flat, plain film to digital radiography.

Another science process update included the Ryan White HIV/AIDS Treatment Extension Act of 2009 which passed last year. Part G of the act entitled, "Notification of Possible Exposure to Infectious Diseases", states that not later than 180 days after the date of the enactment the Secretary of HHS has to complete a list of potentially life-threatening infectious disease, emerging infectious diseases to which an emergency responder could be exposed during an emergency. The list should be published in the Federal Register shortly.

NIOSH will be hosting two physicians from Afghanistan who worked for the Afghanistan Ministry of Public Health and the Afghan Public Health Institute from October 9 through November 4. The purpose is to introduce occupational safety and health issues to the Afghan public health infrastructure, chiefly in the areas primarily of agricultural workers, which both America and Afghanistan are trying to make an infrastructure investment.

Dr. Howard was asked about the aging workforce. He said NIOSH's Work Life Program has a major emphasis in the aging workforce. They are developing relationships to prepare a series of policy recommendations from the safety and health perspective. He was also asked if he could look into what is going on with the safe patient handling laws around the country where nurses are getting older and patients are getting heavier. It was suggested that NIOSH add links to their webpage to some of the state laws on safe patient handling.

There was more discussion about the electronic health records and there are many other sources of information that could be put in a health information exchange to allow those in public health to engage in active surveillance. Dr. Howard said he would contact Dr. Eileen Story and they could figure out how the public health voice can be stronger in this very large effort primarily by the clinician field.

There was discussion about increased claims for workplace stress and illnesses associated with workplace stress. Is NIOSH examining whether it's the economy or other stresses in life that are weighing on people's shoulders, but is spilling over into the workplace. Dr. Howard mentioned that NIOSH has a legacy program in work organization and stress. They have one of the most famous researchers in that area—Steve Sadder along with Richard Kerosac and several others—who have done the essential work on saying just because a worker's stressed it's not necessarily because of family problems or personal problems. The work itself and how work is organized and the pressures that someone has at work can be a source of stress.

Dr. Howard said that the science of resiliency is a new area of research that a lot of folks in occupational psychology are into now and it replaces the older term of coping issue. NIOSH is looking at the issue and a number of folk have published papers in that area.

Dr. Silverstein said that the world of work is substantially different than it was when the OSH Act was written and NIOSH and OSHA were charged with their responsibilities. There have been huge demographic changes of both age and ethnicity as well as huge changes in the nature of industry. The distribution of work in different sectors is fundamentally different than it was 40 years ago. There are exposures that exist now that were not anticipated by Congress when writing the Act. He suggested that the committee might want to look at whether the deployment of resources by OSHA and NIOSH match the current circumstances. He is interested in information from NIOSH and OSHA about their budgets; how their resources are deployed; and if their resources match their needs.

Mr. Borwegen said he was struck by the mismatch between where OSHA spends their time and energy and NIOSH and the BLS statistics on where people work today and where they're getting injury. He said that there are more healthcare workers today than there are manufacturing workers in this country. He questioned how to balance the resource commitment to where people work today and where they're getting injured.

Ms. Seminario encouraged a future discussion about how OSHA and NIOSH work together on recommending and developing standards.

Gulf Oil Spill

Ms. Berkowitz provided an update on OSHA's activities on the Gulf Oil Spill. She referenced a report by the Center for Progressive Reform that had some organizational issue recommendations regarding the National Contingency Plan and

the oil spill. She said the agency had just received the report and did not have ample opportunity to thoroughly review the report. She mentioned that there were a lot of errors in the executive summary and throughout the report.

She said that OSHA staff was meeting to develop a “lessons learned” document that would be available at the next NACOSH meeting. She praised the work with NIOSH, EPA, the Coast Guard and others for their hard work and dedication. She presented a chronology of events beginning with the April 20 Deep Water Horizon oil rig explosion. By April 22, the national response team was activated and on April 26 OSHA had sent staff into the field before oil was anywhere near the shore to begin talks with BP and the Coast Guard. OSHA’s job was to ensure that BP protected workers. In the end, OSHA staff made 4,000 site visits and took over 6,000 exposure assessments. Details were available on OSHA’s website.

Dr. Howard emphasized that the spill was not a Stafford Act FEMA event. He felt that the agencies did a pretty good job interacting with the power structure, which was the Coast Guard. His second point was that the National Recovery Plan, all of the Stafford Act issues that OSHA cannot be handmaiden to FEMA or the Coast Guard in getting activated and inserting themselves into the process. OSHA must have their own ability to do it. He said that safety and health is an annex to the larger issues and that’s really not right. OSHA needs to be able to say “we’re coming in.” He’s been trying to make that point for several years. From HHS’s perspective, there was a lot of involvement. The FDA is still involved in whether it’s safe to eat the fish with NOAA. SAMSHA was very involved in community mental health issues. NIH, International Institute of Environmental Health Sciences will be involved very soon and more involved in longer-term health issues. He praised the State of Louisiana health department for collecting information and keeping everyone informed. He discussed NIOSH’s response to NACOSH’s recommendations from the June meeting.

Ms. Seminario suggested that we look at how does the work that was done in the Gulf become institutionalized in some way so that the next time an event happens, there is a better system in place to be followed. When the agencies look at the lessons learned, state what would have been helpful in terms of both authorities, resources, etc. to be able to do your job more effectively.

Mr. Van Houten asked about who had jurisdiction over the entire incident. Who investigated the deaths of the workers and the follow-up to the explosion? Dr. Howard said that Homeland Security Secretary Napolitano had jurisdiction over the incident. He also said that the President appointed a panel of people to investigate the deaths. OSHA did not have jurisdiction. Where the oil was coming out was the Coast Guard and MMS. OSHA's jurisdiction is technically just three miles out on shore, but because of the expertise on worker safety, OSHA went out on boats right up to where the source was.

Dr. Murray wanted to know how do we build local and state infrastructure in capacity in these areas? What happened to the public sector workers that were there, whether they were public health or other local or state government workers? What's the responsibility for helping them and making sure that they had the protection and training?

Dr. Silverstein inquired about how to close the gap on the issue of heat stress which emerged as the leading safety and health problem in the Gulf. Dr. Howard responded that the agencies can take the lessons learned from this exposure and incorporate it into a general template. Perhaps OSHA and NIOSH can develop and co-brand a set of publications on heat stress.

Ms. Berkowitz provided an update on the Severe Violators Enforcement Program, which focuses on the more recalcitrant employers and the SPEC Program which targets employers in a couple of different categories that have willful, repeat or failure to abate violations when there's a fatality or catastrophe situation, when

they're exposing workers to occupational hazards that are subject for a national emphasis program or are a high hazardous emphasis program or that are exposing workers to hazards related to potential release of highly hazardous chemicals or are involved in an egregious case.

She said the national emphasis program on recordkeeping will continue through the fiscal year. There have been approximately 85 inspections initiated under it. OSHA is slightly adjusting the targeting mechanism in that program that should be done within the week.

She also noted that there were a number of grain elevator deaths. OSHA issued three egregious cases in the past nine months to the grain industry.

Ms. Berkowitz announced that OSHA will be launching an initiative on distracted driving during the upcoming week. According to BLS, motor vehicle incidents are one of the leading causes of occupational fatalities. Data show that between 11 and 20 percent of all car accidents are due to distracted driving. OSHA is joining forces with Transportation Secretary LaHood who is taking the lead on the project. The focus will be on preventing texting while driving.

Mr. Mike Seymour discussed OSHA's injury and illness prevention project. He said that it was Dr. Michaels' number one priority project and something that he believes in very strongly. The agency has taken an approach of using core elements as the major organizing focus in drafting the rule. The key core elements include: management commitment, employer commitment and hazard identification and assessment. He said the agency held five stakeholder meetings during the summer in East Brunswick, New Jersey; Dallas, Texas; two in Washington, DC; and the final meeting in Sacramento, California. He said the meetings were well attended and the agency learned a lot from the conversations. The notes for the meeting are available on OSHA's website.

Mr. Seymour offered snippets from the stakeholder conversations which includes: the standard should be flexible, yet enforceable; the standard should be simple, yet detailed; safety committees are effective, yet may run afoul of the National Labor Relations Act; management systems are desirable yet small businesses may not implement them; write a performance standard yet tell all employers and compliance officers exactly what is required; and the program should be applied universally to all employees.

Ms. Seminario said it was important for I2P2 to apply to all employers. She said dealing with a board-based standard is critical. Mr. Seymour said preliminary drafts of a potential rule do tend to be as broad as possible to cast as wide a net as possible. There are still some issues that need to be addressed. Construction is one issue where there's not a fixed worksite and a highly mobile workforce where they have some specific issues. He said OSHA hopes to write a set of requirements that apply to everyone to make sure that everyone gets the protection associated with this kind of universal intervention. He said the agency plans to put the SBREFA process in place as quickly as possible. The SBREFA panel is something to learn from before putting a proposed rule in the Federal Register.

Mr. Borwegen asked if OSHA could recommend that employers change their workplace policies so that workers do not text while driving or talk on cell phones while driving or even with hand-free sets. Ms. Berkowitz responded that OSHA is looking at all distracted driving and OSHA will focus on texting because of President Obama's executive order last week about no texting. She said that 30 states have already passed rules prohibiting texting. The Department of Transportation has issued a proposed rule in April and should become final shortly on prohibiting texting while driving for commercial carriers. They govern trucks that are 10,000 pounds or more. OSHA is just beginning this process and we're starting with texting while driving.

Mr. Van Houten asked OSHA to think about expanding the policies to hand-held devices rather than just texting because of GPS units, computers and other things that are just as dangerous as texting. Ms. Berkowitz agreed and said the Department of Transportation rules and the Executive Order include all hand-held devices brought into the vehicles.

Mr. Knowles offer the suggestion that agencies incorporate into the educational programs an emphasis program for teen workers. Even though many of them aren't drivers, we need to reach the younger generation that is overwhelming us with all these new technologies. Ms. Berkowitz indicated that the Secretary has plans to increase outreach to younger workers. Ms. Seminario said cautioned the agency to keep things in perspective with respect to authority, resources and other competing priorities. Mr. Van Houten said he thinks there should be stronger interest on the part of OSHA in employees that drive on company business. Mr. Borwegen said that the Department of Transportation needs to take the lead in this area.

Ms. Amanda Edens updated the committee on the permissible exposure limits (PELs) process. She said the agency has formed an internal taskforce that included folks from the Directorate of Standards and Guidance, Office of the Solicitor, and the regional offices to look at a range of options that OSHA might pursue to tackle the problem of updating PELs. She said that a select group of stakeholders from industry, academia and the unions also provided input about how the agency should move forward.

There were a range of options presented. Some were a substance-by-substance approach to identify a subset of chemicals that OSHA would do some rulemaking efforts or enforcement efforts. There was a category of options that dealt with more control-based types of options which would be I2P2 approach or a control-banding approach where you wouldn't necessarily look at individual chemicals on a substance basis, but try to have an approach like a safety and health management standard where employers could look at all the chemicals in their workplace.

Another option included using existing 5(a)(1) authority under the OSH Act or amending 29 CFR 1910.1000 to alert people that the PELs are out of date.

In August the agency had a web forum where people wrote in and nominated their favorite chemical and described why they believed OSHA should focus their efforts on those chemicals. OSHA received approximately 130 nominations and will post them soon. Some of the nominations included: different isocyanates, manganese, carbon monoxide, and styrene which were not a surprise to the agency. She said the agency will begin to look at some of the best approaches. She said the committee may have some ideas about what strategies OSHA should take.

Ms. Berkowitz provided an update on the reaching out to vulnerable workers. She mentioned the Latino Summit held in April. She said the agency strongly believes that workers and employers have to be educated about their rights and responsibilities. Many of the vulnerable workers are in low wage and high-risk industries. All of OSHA's regional offices are providing outreach programs for these workers.

Dr. John Howard presented on influenza. About 30,000 people succumb to the flu every year. (page 149-165). Dr. Murray comments (165-169). Ms. Seminario asked about how to get to the issues of protecting healthcare workers against a major exposure? It is OSHA and NIOSH's responsibility. She suggested looking at the issue and coming up with some recommendations so that the occupational health issues have some prominence. She mentioned a CDC advisory committee on infectious diseases that doesn't really have occupational health people on it. Their advice is putting the worker issues secondary.

The Committee decided to brainstorm and make decisions about areas besides Gulf Oil to focus energies. The committee agreed that OSHA and NIOSH had adequately briefed them on the gulf oil activities. Both agencies agreed to provide a lessons learned document once it was developed.

Mr. Van Houten said he was still concerned about the 11 workers who died during the initial gulf oil explosion. He referenced a report, Public Attitudes Towards and Experiences with Workplace Safety. He wanted to look at ways to protect lives in the future. Ms. Seminario said that “there is nothing in our planning mechanisms, planning documents in oil or in any other planning that goes in the organizational structures that puts worker safety and health first.” She said that workers safety and health is an annex and it’s up to somebody else—the Coast Guard or someone else—to activate the annex and have worker safety and health issues looked at. She said the Committee could look at those structures and what does it take and what should change to make worker safety and health first. Dr. Murray suggested that the gulf oil workgroup look at how NIOSH and OSHA through training, policy, etc. make sure that the health and safety of workers involved in an emergency is appropriately addressed.

Dr. Silverstein asked the group to consider several options: 1) what can OSHA and NIOSH do to better deploy their resources in a way that really matches the most pressing worker protection and workplace safety and health needs in the country; 2) how can we ensure that worker protections get sufficiently high priority during emergencies such the Gulf oil spill. This includes how the agencies are currently annexed in the national priority plan.

The meeting adjourned at 4:29 p.m.

September 15, 2010

Chairman Silverstein welcomed everyone to the meeting. He reiterated that the agencies had responded well to the gulf oil crisis, even with the limited authority given.

Dr. Michaels

He thanked the committee and staff for their service.

He’s eager to look at the lessons of the Gulf—what they can do differently, what they can do better, and what structures or changes. One of the lessons is the importance of collaboration. OSHA worked closely with NIOSH, the National

Institute for Environmental and Health Sciences and EPA, the Coast Guard and several other agencies.

He said the issues of heat and fatigue in the Gulf continue to come up and he welcomes the committees input into ways to approach these issues. He also said that injury tracking, injury surveillance and incentive programs. He said that a great deal can be learned by studying patterns of injury which is necessary to prevent future injuries from occurring. Employers with high injury rates are places where you'll find a significant number of violations.

He is interested in the role of incentive programs, where peer pressure is used to discourage workers from reporting injuries, and the most classic example of safety Bingo or Friday afternoon pizza parties. Other areas of interest include: injury and illness surveillance, the incentive programs, and how data is used to direct resources.

Dr. Michaels said that OSHA is looking at ways to reach out to vulnerable populations using methods that OSHA hasn't done before—reaching out to workers and many faith-based groups to tell them what their rights are and that OSHA exists. OSHA is looking at various ways to get translation services and our information to them in different languages.

There was discussion about influenza and healthcare workers . Dr. Michaels said he'd love Committee's assistance on this issue. He said that OSHA is looking at ways to

A Recordkeeping Workgroup was established to advise OSHA and NIOSH on the design and use of recordkeeping and surveillance systems to guide policy decisions and the deployment of resources. The key question for the workgroup: How can these systems and policies be improved and changed in order to better accomplish the ability to find and fix hazards and to ensure worker protection? In order to accomplish this, the first issues the workgroup will examine are the following:

1. How are the current workplace injury, illness and exposure data, recordkeeping and surveillance systems designed?

2. How are these systems currently being used?
3. What are the current incentives and disincentives that affect the accuracy and completeness of reporting and recordkeeping?
4. Are the current deployment of resources and the design of policies appropriate to address the distribution of injuries, illnesses and exposures?
5. How might the recordkeeping and reporting elements of injury and illness prevention plans be best designed to encourage accurate and complete reporting and investigating of injuries, illnesses, hazardous exposures and “close calls”?

The Committee requested that OSHA and NIOSH provide the following:

1. Report from OSHA’s stakeholder meetings on recordkeeping modernization.
2. Summary reports that are available regarding where people work, where injuries and illnesses are reported; and where OSHA and NIOSH conduct research, enforcement and regulation.
3. Current OSHA and NIOSH strategic plans.
4. Make a small panel available for the next NACOSH meeting to discuss the above questions with the Committee.
5. Provide copies of the Congressional Budget justifications and budget summaries for OSHA and NIOSH.

In addition, the Gulf Oil Spill Workgroup, established in June, 2010 commended OSHA and NIOSH for their efforts to protect workers during the Gulf Oil Spill response. In order to learn from this experience and to be better prepared to respond to emergencies or disasters in the future, we recommend that as part of the agencies’ lessons-learned and evaluation activities that they examine the following questions and issues. We hope these questions are examined in their broad context, and for possible impact on future emergencies and disasters.

1. What processes and information were used to make decisions about the appropriate personal protective equipment, control measures, and safety and health training? If these decisions deviated from requirements under existing standards, what criteria were used to make these decisions?
2. How were workers assessed for their ability to work safely? What medical assessments might have been useful before placement of workers, during the emergency as well as after the immediate incident?
3. How did the unified area command oversee safety and health of personnel and how did the coordination with BP, NIOSH, OSHA, state and other agencies occur? What was the effectiveness of the coordination and what should happen in the future? How can the national response plan better address worker safety and health issues during future emergencies and disasters?
4. What were OSHA's and NIOSH's roles in ensuring safety and health in the oil spill response? How many staff were deployed in the response? Is the intensive oversight role that OSHA played (which is different from the agency's normal investigation/inspection role) necessary or appropriate? Did the agencies consider recruiting or relying upon other resources (e.g., FEMA task forces, state agency personnel, SGEs, safety and health volunteers) to perform or assist in this activity? Do the agencies have ideas or recommendations for enhancing surge capacity for addressing safety and health issues in future disasters or emergencies?
5. What were the challenges presented by dealing with a prolonged, dynamic incident? Were there differences in the issues presented in this disaster response and the response at the World Trade Center?
6. What steps will OSHA and NIOSH be taking based on experience and lessons learned to better prepare for the next disaster? Is it possible to develop

more formalized plans regarding the provision of appropriate training, personal protective equipment, control measures, injury and illness reporting and surveillance systems in order to be better prepared for the next disaster?

7. Does NIOSH have specific plans to recommend or to conduct any follow-up surveillance on these workers, similar to the follow-up surveillance and monitoring conducted at the World Trade Center?

NACOSH requests that OSHA and NIOSH provide copies of their “lessons learned” evaluations of the Gulf Coast Oil Spill response to NACOSH as soon as they are available.