

Statement of
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Hearing on
"Addressing Concerns about the U.S. Department of Labor's Use
of Non-Consensus Standards in Workplace Health and Safety,"

The United States House of Representatives
Committee on Education and the Workforce
Subcommittee on Workforce Protections

June 14, 2006

Good morning Mr. Chairman and members of the Committee. My name is David Michaels. I am a Research Professor in Environmental and Occupational Health at the George Washington School of Public Health and Director of the Project on Scientific Knowledge and Public Policy, known as SKAPP.¹ SKAPP was created five years ago by a group of public health scientists to enhance the public's understanding of how scientific evidence is used in the regulatory and legal arenas. From 1998 to 2001, I served as the Department of Energy's Assistant Secretary for Environment, Safety and Health from 1998 through January 2001. I had primary responsibility for protecting the health and safety of workers, the neighboring communities and the environment surrounding the nation's nuclear weapons facilities.

This legislation, Mr. Chairman, is not what it appears to be. Its objective is not to improve the administrative process and it certainly makes no attempt to ensure that good science is used to protect the health of workers, or the public. In fact, it does the opposite. It ensures that the newest, best science will not be used to protect workers from hazardous chemicals.

The purpose of the OSHA and MSHA "HazCom" standard is ensure that employers and workers receive information about the risks associated with exposure to a product – information that product's manufacturer is required to provide on Material Safety Data Sheets, known as MSDSs. The current OSHA and MSHA rules require the MSDS for any product to include, among other things, any recommended exposure limits to the product from certain professional organizations which have expertise in occupational safety and health.

Under the proposed legislation, OSHA and MSHA could not require such recommended exposure limits be included on an MSDS *unless* the agency determines that the recommendation was reached using a process that ensures that the impacted industries are in substantial agreement with the recommendation. And, Mr. Chairman, that simply is not going to happen. Protecting workers from chemical hazards should not depend on what everyone can agree.

Manufactured Uncertainty

The sad truth is that industries responsible for hazards generally prefer to manufacture uncertainty in order to avoid the costs associated with reducing toxic exposures.^{2,3}

¹ I am testifying today on my own behalf, and am not representing George Washington University or any other organization.

² Michaels D, Monforton C. Manufacturing Uncertainty: Contested Science and the Protection of the Public's Health and Environment. *Am J Pub Health* 2005;95:Suppl1:S39-48. Available at <http://www.defendingscience.org/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=2406>

³ Michaels D. Doubt is their Product. *Scientific American*, June 2005; 292:74-80. Available at <http://www.defendingscience.org/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=2372&CFID=8884749&CFTOKEN=35991257>

This bill would directly bar OSHA and MSHA from complying with their statutory mandates to take into account the best scientific evidence in developing rules currently in process. The proposed legislation is written so broadly, Mr. Chairman, that it would even stop the Department of Labor from using the recommendations of highly regarded government panels, such as those of the National Toxicology Program.

The reality is that this legislation is part of a campaign, spearheaded by the well-paid lobbyists at the firm of Patton, Boggs, being waged on behalf of a small group of companies and trade associations. After losing in federal court, not once, but twice, these parties now seek special favors from Congress in the form of this anti-public health legislation. Proponents of this bill want to make sure they can continue to expose workers and the public to deadly hazards, and do so without interference by public health authorities and without the threat of legal action by those injured by their negligence. Attorneys from Patton Boggs, for example, represent a group of mining companies who have fought for at least a decade for the right to expose underground miners to diesel particulate matter, a hazard that increases their risk of cardiovascular and cardiopulmonary disease and lung cancer.⁴ The EPA and this Congress have made important strides to limit the public's exposure to such dangerous particulates, but Patton Boggs continues to challenge the Department of Labor's efforts to protect underground miners through sustained procedural attacks, and sadly, have succeeded in delaying the rule. The unceasing efforts of these lobbyists have genuine health consequences for exposed workers.

You recently heard testimony from a witness representing the American Bakers Association complaining about the ACGIH threshold limit value (TLV) for flour dust. What the witness failed to mention is that respiratory disease among bakery workers is a serious matter, and the scientific literature contains significant evidence that workers with excessive exposure to flour dust are at increase risk of debilitating respiratory disease. I commend the ACGIH for examining this hazard and other health risks that OSHA failed to address.

Today, Mr. Chairman, the work of organizations like IARC and the ACGIH are more important than ever. That is because the regulatory agencies are simply unable to keep up. In 1971, OSHA adopted *en masse*, about 400 ACGIH TLVs, reached using the science of the 1950's and 1960's, before we knew as nearly as much as we know today about the long-term effects of many hazardous chemicals.

Since then, OSHA has updated only a handful of them. The rest have been unchanged in more than 35 years. The OSHA standard setting process is cumbersome and easily delayed by those intent on slowing action. The political appointees who run the agency

⁴ Monforton C. Weight of the Evidence or Wait for the Evidence? Protecting Underground Miners from Diesel Particulate Matter. *Am J Pub Health* 2006; 96: 271-276. Available at: http://www.defendingscience.org/case_studies/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=2631

at the present time have no desire to strengthen weak standards; except when under a court order. Workers cannot rely on OSHA to issue new regulations on chemical hazards. OSHA is paralyzed and has abdicated its responsibility to issue health standards that protect workers. The situation at MSHA is no better, as their exposure limits date back to 1973.

While OSHA and MSHA are frozen in time, IARC and the ACGIH have moved forward. The organizations recognize that our scientific methodologies are much improved since the 1960s and we are always learning more about chemical hazards and therefore how to prevent occupational disease and death.

Since the early 1970's the monograph program of IARC, a branch of the World Health Organization, has convened interdisciplinary panels of scientific experts to identify substances that pose a carcinogenic risk to humans. These include some of the best scientists in the world, and the program is supported with US funding.

These expert panels conduct public meetings in which representatives of the affected industries and their lobbyists are allowed to participate and comment. The scientists review the published literature and evaluating the full range of evidence.⁵ It has been nearly 10 years since IARC designated crystalline silica as a human carcinogen. Washington trade groups, like the Brick Industry Association, may object to IARC's designation, but representatives of the producers and users of silica were present at the IARC meeting and their input was heard.⁶ In the time since the IARC designation, the evidence of the carcinogenicity of crystalline silica continues to grow, while OSHA's standard, based on 1968 science, remains unchanged and hopelessly outdated.

The IARC monograph series provides a great service, offering the public health community a comprehensive assessment of the current scientific information, at times when our own public health agencies are under-resourced and unable to do so. When an IARC expert panel concludes that a substance like silica, or beryllium, or hexavalent chromium are carcinogenic to humans, shouldn't this information be provided to workers through a MSDS and the right-to-know protections afforded by the Hazard Communication standard?

Similarly, the ACGIH has developed TLV recommendations that are stronger than OSHA's standards for a small but important group of hazards. Hazards such as welding

⁵ International Agency for Research on Cancer (IARC). 2006. "IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Preamble." Lyon, France. Available at: <http://monographs.iarc.fr/ENG/Preamble/CurrentPreamble.pdf>

⁶ Wilbourn JD, McGregor DB, Partensky C, Rice JM. 1997. "Meeting Report: IARC Reevaluates Silica and Related Substances." International Agency for Research on Cancer; Lyon, France. Printed in: *Environ Health Perspect* 105(7):756-759. Available at: <http://www.ehponline.org/members/1997/105-7/wilbourn-full.html>

fumes, particulate matter and silica. None of these are trivial - each is responsible for death and disability among exposed workers.

In addition, the ACGIH has produced recommendations for many chemicals for which no OSHA PEL currently exists. Since OSHA has essentially stopped issuing new chemical standards, these recommended TLVs serve as the basis for disease prevention programs by responsible employers and public health professionals. And that, Mr. Chairman, is a key purpose of OSHA and MSHA's Hazard Communication standards---giving workers and employers the health effects information they need to be proactive and take measures to prevent workplace injuries and illnesses.

Taking the Tobacco Road

The proponents of this legislation have taken a page from the Tobacco Industry's playbook. With no scientific support, except from their own mercenary consultants, they've labeled any recommendations they don't like as "junk science". With all due respect, the attorneys and trade associations who are pushing this line are as wrong as those tobacco executives who testified under oath in front of a House Energy and Commerce committee hearing that tobacco didn't cause cancer.

The secret agenda of Patton Boggs aside, you and I evidently agree that OSHA should be issuing more standards, and that they have abdicated their responsibility to do so.⁷ I have attached a list of 31 OSHA standards killed, withdrawn or delayed by the Bush Administration.

The effects of this OSHA failure are real and they are tragic and they are happening right before our eyes. Nearly 200 workers have been diagnosed with what has been called "popcorn workers lung" from a widely used chemical that provides butter flavoring for popcorn, but OSHA has no plans for a standard to protect food industry workers from having their lungs destroyed. (See attached article on popcorn workers lung and OSHA's abdication.⁸) OSHA's current beryllium exposure standard dates to 1949. Fifty years later, when I was Assistant Secretary of Energy, we issued a workplace exposure standard for beryllium that is ten times stronger than OSHA's. After much initial opposition, even the beryllium industry now acknowledges the current OSHA standard is inadequate. The bill being considered today would prohibit OSHA from referencing the ACGIH's recommendations on beryllium, or IARC's findings that beryllium is a human carcinogen. There are no comprehensive standards to protect workers from ergonomic

⁷ Norwood C. Opening statement before Subcommittee on Workforce Protections of the U.S. House of Representatives' Committee on Education and the Workforce. Hearing: "Examining the Use of Non-Consensus Standards in Workplace Health and Safety." 27 April 2006. Available at <http://edworkforce.house.gov/hearings/109th/wp/acgih042706/osnorwood.htm>

⁸ Michaels D, Monforton C. Scientific Evidence in the Regulatory System: Manufacturing Uncertainty and the Demise of the Formal Regulatory System. J Law Policy 2005;13(1): 17-41. Available at: <http://www.defendingscience.org/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=1709&CFID=8885296&CFTOKEN=44529282>

hazards, or from noise in the construction industry. I could go on and on. This is a public health crisis.

I hope that Members of Congress will reject claims made by proponents of this bill, and instead take the positive step of passing legislation to incorporate the most current ACGIH TLVs into OSHA and MSHA regulations. Worker health is not served by enforcing 40 year old exposure limits. Workers in the United States deserve 21st century protections.

I want to close by saying that I am saddened and a little embarrassed to read in a press release on the Patton Boggs website that the chairman of this subcommittee said “The ACGIH is going to stop writing the laws of this land, if it's the last thing I do on this earth.”⁹ Mr. Chairman, I ask you, do you want to be remembered in the history books as someone who saved lives, who promoted the use of good science to protect workers from developing cancer or lung disease, so they could live long enough to play with their grandchildren, or as someone who was instrumental in blocking public health agencies, employers and endangered workers from using important scientific information to prevent disease?

Thank you very much.

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⁹ Patton Boggs LLP. “Alert: Congress Investigates Backdoor Rulemaking.” April 2006. Available at <http://www.pattonboggs.com/news/detail.aspx?news=245>

OSHA Standards Killed, Withdrawn or Delayed by the Bush Administration¹⁰

Standards Killed

Ergonomics Standard (Killed by Congress under the Congressional Review Act in March 2001)

Standards Withdrawn

PELs for Air Contaminants (Dec. 2001)

Metalworking Fluids (Dec. 2001)

Update and Revision of Flammable and Combustible Liquids Std. (Dec. 2001)

Process Safety Management of Highly Hazardous Chemicals (Dec. 2001)

Revision/Update of Mechanical Power Transmission Apparatus Std. (Dec. 2001)

Safety Standards for Scaffolds in Construction – Part II (Dec. 2001)

Safety and Health Programs for Construction (Dec. 2001)

Control of Hazardous Energy in Construction (Dec. 2001)

Consolidation of Records Maintenance Requirements in OSHA Stds. (Dec. 2001)

Oil and Gas Well Drilling and Servicing (Dec. 2001)

Update and Revision of Spray Applications (Dec. 2001)

Occupational Exposure to Perchloroethylene (Dec. 2001)

Sanitation in the Construction Industry (Dec. 2001)

Update and Revision of Woodworking Machinery Standard (Dec. 2001)

Ergonomics Programs in Construction (Dec. 2001)

¹⁰ Source: AFL-CIO Death on the Job: The Toll of Neglect. 15th edition, April 2006. Available online at http://www.aflcio.org/issues/safety/memorial/doj_2006.cfm

Occupational Health Risks in the Manufacture/Assembly of Semiconductors (Dec. 2001)

Indoor Air Quality (May 2002)

Scaffolds in Shipyards (May 2002)

Access and Egress in Shipyards (June 2002)

Accreditation of Training Programs for HAZWOPER (August 2002)

Safety and Health Programs for General Industry (August 2002)

Fall Protection in Construction (August 2002)

Glycol Ethers (Dec. 2003)

Occupational Exposure to Tuberculosis (Dec. 2003)

Standards Delayed

Payment for Personal Protective Equipment (Notice of proposed rulemaking March 1999. Public hearing August 1999. Still in final rule stage)

Assigned Protection Factors for Respirators (Notice of proposed rulemaking June 2003. Public hearing January 2004. Post hearing briefs end May 2004. Still in final rule stage)

Occupational Exposure to Crystalline Silica (On regulatory agenda since 1997. Now at prerule stage)

Occupational Exposure to Beryllium (On regulatory agenda since at least 2000. Now at prerule stage)

Hearing Conservation in Construction (On regulatory agenda since at least 2002. Currently listed as long-term action)

Confined Spaces in Construction (On regulatory agenda since at least 2000. Remains at proposed rule stage since 2004)