



July 19, 2010

## **OSHA at Forty: New Challenges and New Directions**

Dear Colleagues:

Recent months have been marked by a series of workplace tragedies. Seven workers were killed in a refinery fire in Anacortes, Washington, 29 coal miners perished in the Upper Big Branch mine in West Virginia, and 11 more were lost in the Deepwater Horizon explosion off the coast of Louisiana.

These catastrophic events are powerful reminders of the risks faced by workers across the country every day. Fourteen workers die on the job each day, far from the headlines, often noted only by their families, friends and co-workers. Every year, more than four million workers are seriously injured or are sickened by exposure to toxic agents.

Our mission at OSHA, put most simply, is to protect workers from death, injury and illness. We are a public health agency and our job is to save lives. Our greatest resource is our staff; OSHA personnel work tirelessly so that every worker who comes to work goes home safely at the end of their shift. Our mission is a vital one, to these workers and their families, and to the nation. Our country is fortunate that you are a highly skilled, dedicated group of professionals who carry out this mission.

Secretary Hilda Solis' vision is "Good Jobs for Everyone." At OSHA, we understand that a job cannot be a good job unless it's a safe job. As President Obama said at the Upper Big Branch miners' memorial, "How can we let anyone in this country put their lives at risk by simply showing up to work, by simply pursuing the American dream?"

Toward this end, Secretary Solis has identified two outcomes goals for which OSHA shares responsibility with other Department of Labor agencies: securing safe and healthy workplaces, particularly in high-risk industries; and ensuring workers' voice in the workplace. To accomplish this, Secretary Solis has formulated a series of strategies for reforming worker protection at the Labor Department. These strategies, appended to this document, are a central component of the Department of Labor's new regulatory and enforcement initiative -- Plan/Prevent/Protect -- embraced by not just OSHA but all the Department's worker protection agencies.

By law, it is the responsibility of employers to ensure that workplaces are safe and free of recognized hazards. It is OSHA's job to make sure this happens. I believe that we at OSHA will have an important and positive impact on this nation's workplaces by helping

change the way businesses and their organizational practices view safety: in other words, building a workplace culture that promotes safety. Workplaces where safety is taken seriously are ones in which employers encourage worker participation and where together they strive to identify and eliminate hazards, not merely avoid OSHA violations. All parts of OSHA can help achieve these results.

Most employers recognize the importance of preventing workplace injuries and illnesses, but others clearly do not. In many cases, cutting corners on safety provides a significant advantage in a competitive market. One of OSHA's goals must be to level the playing field, to ensure that responsible employers, who make the investment to protect their workers, are not undercut by the irresponsible ones who put short term gain ahead of the health of their employees.

In times of crisis, OSHA's work has been vital in protecting public health. Right now, teams of OSHA professionals are working long hours throughout the gulf coast region, trying to ensure that workers are not hurt or exposed to toxic chemicals as they clean up the oil released in the Deepwater Horizon catastrophe. I am very proud of our work in the gulf, and everywhere where we are protecting the health and safety of America's workers.

In our efforts to encourage employers to provide safe workplaces, we struggle with several significant challenges:

- We are a small agency; with our state partners we have about 2,000 inspectors responsible for the health and safety of 130 million workers, employed at 7 million worksites around the nation.
- We do not have enforcement tools as strong as those of other regulatory agencies and too often the fines we are permitted to levy are not large enough to have an adequate deterrent effect. (Our maximum fine, \$7,000 for a serious violation, is a small fraction of those imposed by other federal agencies. In comparison, the top penalty for violating the South Pacific Tuna Act is \$350,000. Similarly, the maximum criminal penalty for a fatality associated with a willful violation of an OSHA standard is a misdemeanor, up to six months in jail. Harassing a wild burro on federal land is a felony, with a sentence of up to a year.)
- Our ability to protect workers from retaliation and discrimination when they exercise their voice at work to protect themselves and their co-workers is hampered by weak legislation.
- We have occupational exposure standards for a relatively small percentage of chemicals commonly used in American workplaces, and most of these are based on out-of-date science. Our standard-setting process is slow and resource-intensive, making it very difficult and time-consuming to issue new, badly needed regulations.

Yet OSHA has had a huge, positive impact on the country. Fatality and injury rates have dropped markedly since OSHA began in 1971. Enforcement of OSHA's standards for

asbestos, benzene, lead, bloodborne pathogens and other health hazards has prevented countless cases of work-related disease. Dedicated OSHA staff has done excellent work, even during periods of stagnant budgets and political leadership that didn't value strong regulation.

There is no doubt that OSHA has saved thousands of lives. But far too many preventable injuries and fatalities continue to occur. Millions of workers are exposed to levels of chemicals that increase their future risk of disease.

We have been fortunate that OSHA's budget was increased last year, and President Obama's budget asks for more funds in FY 2011. In this time of fiscal difficulty, the White House and Congress recognize the importance of our work and the need for us to expand our activities.

It is clear to me that doing more of the same, but doing it better and with more resources, is necessary, but it is not nearly enough.

After forty years, OSHA needs a fundamental transformation in the way we address workplace hazards, and in our relationship to employers and workers. And I need your assistance and guidance in determining how to make the key changes that will make OSHA stronger and more effective.

With your help, I hope to lead OSHA through this transformation, applying several of Secretary Solis' strategies (see appendix), and focusing on these key areas:

1. Stronger Enforcement: Some Employers Need Incentives to Do the Right Thing

Currently, many employers are willing to permit the existence of workplace hazards because they recognize that it is not in their financial interest to abate serious hazards, especially in the short term. The likelihood of an inspection is low and even when we get there and find something, OSHA fines are often inconsequential. In traditional economic terms, workplace safety is an example of a market failure. Too often, the economic and social costs of workplace injuries are borne by the injured worker, their family and our taxpayer supported social programs, rather than the employer.

Deterrence must be a primary objective of our enforcement activities. We must encourage employers to make the investment in safety before the OSHA inspector arrives. To accomplish this, we will increase our inspection activities by hiring additional compliance officers and shifting others from compliance assistance to enforcement, target our enforcement resources to focus on those who most need our attention, and increase the likelihood that an unsafe employer will face an appropriate penalty. Toward this objective, under the leadership of the Directorate of Enforcement Programs we have recently announced two significant policy changes: an alteration in the way penalties are calculated that will result in increased employer fines, and the new Severe Violator Enforcement Program.

To assure that increased inspections and higher penalties becomes an effective deterrent for all employers we must expand public awareness of our enhanced enforcement activities. Employers must know that it is not acceptable to put workers at risk. Not

only do they risk fines but they themselves risk public condemnation of their activities. In some cases, “regulation by shaming” may be the most effective means for OSHA to encourage elimination of life-threatening hazards and we will not hesitate to publicize the names of violators, especially when their actions place the safety and health of workers in danger. To do this, we will issue more hard-hitting press releases that explain more clearly why we cited a specific employer.

We will strive to ensure that our inspection activities include high-risk industries and employers who employ vulnerable, at-risk populations of workers, knowing that in these groups we are more likely to find workers exposed to significant hazards. Many of our regional and area offices have already started to strengthen our relationships with unions, community groups and faith-based organizations, encouraging them to identify workplaces where vulnerable workers are at increased risk of injury or illness. Since responsible employers are at a disadvantage competing with irresponsible ones, this effort will contribute to protecting the safety of all workers.

Finally, we will increase our enforcement focus on ergonomic hazards, since these continue to be responsible for large numbers of serious musculoskeletal disorders among workers in many industries.

## 2. Ensure Workers Have a Voice

The participation of an active, engaged workforce is not only a vital component of any workplace injury and illness prevention program, but it is also important to the effectiveness of our agency. The authors of the *Occupational Safety and Health Act* were aware that it is not enough for workers to be aware of the hazards they face and ways to protect themselves. Workers must also be knowledgeable of their rights under the law and feel secure that they can actively exercise those rights without fear of retaliation. We can play an important role in giving those assurances.

Only knowledgeable and secure workers will be able to participate effectively in their employer's safety and health programs and monitor their implementation. And knowledgeable, secure, empowered workers are OSHA's best eyes and ears. They can identify the instances where employers are not taking the steps necessary to ensure a safe workplace.

This administration is committed to ensuring that all workers have a voice. To do this, we will direct resources and effort to reach out to the most vulnerable and hard to reach workers, including immigrants and non-English speakers, especially those employed in high hazard industries. The National Action Summit for Latino Worker Health and Safety, attended by 1,000 workers, employers, safety and health professionals (including over 100 OSHA staff) and community activists, was a vitally important first step in OSHA's commitment to helping our most at-risk workers. Building on this groundbreaking meeting, Regional and Area offices are already involved and will implement compliance assistance activities and develop or enhance relationships to facilitate closer ties between their offices and community-based organizations that can help reach vulnerable populations. We will focus on training workers and their representatives on hazards, worker rights and how to request an OSHA inspection.

Workers cannot work safely if they are not informed of the hazards to which they are exposed and not trained in safe work practices. The nation's workers speak many languages and a sizable percentage of them speak little or no English. Our compliance officers will assure that when training is required by OSHA standards, it is conducted in a language that workers can understand. And we will strive to ensure that in every inspection, our compliance officers talk to workers privately and confidentially in a language they speak.

Silenced workers are not safe workers. Protecting workers who voice safety and health concerns is a vital component of our work. We will strengthen the OSHA Whistleblower Protection Program, especially among vulnerable populations. To accomplish this, we will reach out through labor, community and faith-based organizations, informing workers of their right to participate in safety and health activities without fear of retaliation or discrimination. We will also focus our Susan Harwood grant program, ably administered by the OSHA Training Institute to provide education and training to high-risk workers and build capacity in organizations that can assist workers in enhancing their voice in the workplace.

Our commitment to ensuring that workers have a voice in the workplace goes beyond safety and health. We have been given the responsibility to enforce the whistleblower provisions of 17 statutes, with more likely to be added in the very near future. The importance of this work is enormous, as is the challenge of doing it well. OSHA whistleblower personnel strive to obtain justice for aggrieved workers covered under a mosaic of laws with different requirements, in tremendously varied subject areas, while carrying heavy case loads. Even in situations where the injustice is apparent, too often we are unable to protect the worker who has been the object of discrimination or retaliation. This system is clearly not functioning well and we must find ways to improve it. Toward this end, we have begun a comprehensive review of our Whistleblower Protection Program, in order to identify ways to strengthen it.

### 3. Refocus and Strengthen Our Compliance Assistance Programs

OSHA has important tools beyond strong enforcement to encourage employers to abate hazards. The on-site consultation program is an invaluable source of assistance to small business owners and our compliance assistance tools, including fact sheets and guidance documents help employers and workers understand and abate hazards. Our alliances, strategic partnerships and the Voluntary Protection Program provide us with innovative ways to work with stakeholders to identify and eliminate hazards. Finally, our training grants amplify our ability to educate workers and employers in ways to improve workplace safety and health conditions across the Nation.

Many employers and workers do not have access to the information and tools they need to ensure safe workplaces or to develop and implement injury and illness prevention programs. Under the strong leadership of the Directorate of Cooperative and State Programs, OSHA will encourage the development and dissemination of tools, information and best practices that enable workers to understand the workplace hazards they face and how to use their rights to protect themselves, as well as enable employers to provide safe workplaces. To do this:

- OSHA will develop more compliance assistance materials that are accessible to workers without technical backgrounds, including some with limited English language literacy. Our materials will be focused on what workers need and presented in a way that workers can understand and use.
- We will strive to increase and strengthen our On-Site Consultation Service and other compliance assistance activities provided to small businesses who cannot afford to hire health and safety consultants.
- OSHA, our partners in cooperative programs, and our Susan Harwood program grantees produce extensive educational materials; worker training materials must be written in ways accessible to workers without technical backgrounds, including some with limited English language literacy. We have already begun making all these material available on the web, and will continue to do so. I encourage those who have not recently looked at our website to do so, and see the strides that we are making and give suggestions for further progress.
- OSHA's alliances, strategic partnerships and various cooperative programs are designed to assist those many employers who want to protect their workers. When these programs work well, they make a huge contribution to our collective efforts. When they don't, when they are just paper programs, they detract from our efforts because they provide a false indication of activity and commitment. We will examine all existing cooperative programs, expanding and strengthening the effective ones and eliminating ones that contribute little.
- The fundamental objective of all of our cooperative programs is to protect the safety and health of workers; therefore, a necessary component of these programs must be worker participation. This may take many different forms, but workers must have a role in OSHA-supported programs designed to protect them.

#### 4. Change Workplace Culture: Employers Must "Find and Fix" Workplace Hazards

Ensuring that American workplaces are safe will require a paradigm shift, with employers going beyond simply attempting to meet OSHA standards, to implementing risk-based workplace injury and illness prevention programs. This means becoming aware of and fixing hazards through investigating not only incidents that have already caused harm but also uncovering and focusing on near misses and exposures that may result in long-term health effects. This represents a fundamental change in workplace culture, with its success resting on the close collaboration between employers and workers.

OSHA has begun stakeholder meetings to develop a proposed rule mandating workplace injury and illness prevention programs. We know that the best employers in many industries already have safety and health management systems. Thousands of large and small employers, including many who are members of cooperative programs, go beyond OSHA's requirements and have embraced safety and health management systems that have been proven to reduce risk of injury and illness. Their experience shows that even in



high-hazard industries, an employer can be safe and profitable. We need to think together about how to promote and publicize these successes and efforts.

For other employers, especially many small ones, implementing comprehensive safety and health programs will not be easily accomplished. We will explore the best ways to accomplish this task over the next months, and then implement various enforcement and compliance assistance strategies.

Our partners in the State Consultation Programs will be of important assistance in changing workplace culture. These programs conducted 30,000 visits last year, assisting small employers in hazard abatement. Their skills and dedication will help show employers how to implement safety and health programs tailored to their industry, size and hazards.

#### 5. Develop Innovative Approaches to Addressing New (and Old) Hazards: Improve Intra-Agency Collaboration

OSHA's process for issuing regulations is unworkable. New or revised workplace Permissible Exposure Limits (PELs) take many years to issue and require sizable resource commitments. At best, we can work on only a handful a year. The staff of our Directorate of Standards and Guidance is dedicated, smart and extremely hard working. With their help, we must develop ways to issue standards more quickly, but we must also explore alternatives to hazard-by-hazard standard setting. Toward this end, I have appointed an internal taskforce to examine this issue and reach out to stakeholders to explore alternatives. But we cannot wait for a long-term solution to this long-standing problem: we must ensure the protection of workers currently exposed to well-recognized chemical hazards for which we have an inadequate or no PEL.

There are many workplace hazards which do not easily lend themselves to the traditional standard setting, either because there are relatively few workers exposed, or because the science is not adequately developed to support a standard. However, we must act now to protect exposed workers; we will develop new approaches to reducing exposure to these hazards.

OSHA's directorates and field operations do not always work closely and cooperatively. In the past, standards were developed without the input of the enforcement and field operations. All of our activities -- enforcement, compliance assistance, standards development, analysis and evaluation -- are by definition closely connected and interdependent. OSHA staff will make intra-agency collaboration a high priority.

We will develop collaborative activities that complement and enhance the work of both OSHA and other federal agencies with whom we share the responsibility for safeguarding public health. In particular, we will increase collaboration with other worker protection agencies, like MSHA, and other federal, state and local public health agencies, including the National Institute for Occupational Safety and Health (NIOSH), the National Institute for Environmental Health Sciences and the Environmental Protection Agency. I am pleased to report we are currently working closely with all three of these public health

agencies in protecting the health and safety of workers in the gulf who are cleaning up the oil released in BP's Deepwater Horizon explosion.

6. Improve and Modernize Workplace Injury and Illness Tracking: Strengthen our Focus on Accurate Recordkeeping

Reports and patterns of current workplace injuries and illnesses are a particularly important tool in preventing future injuries and illnesses. Employers and workers need this information in a timely manner to focus their prevention activities and OSHA needs this information to better target our inspections. Along with many employers, OSHA must complete its transition to electronic data collection to take advantage of the many benefits of electronic injury tracking. Under the leadership of the Directorate of Evaluation and Analysis, we will soon propose new regulations to bring OSHA's reporting requirements into the 21<sup>st</sup> century.

Effective safety programs rely on accurate injury reporting. Unfortunately, it appears that there are many employers, particularly in high-hazard industries, that have implemented programs, inadvertently or by design, that discourage injury reporting. If accurate injury records are not compiled because workers believe they will be fired for reporting an injury, or supervisors fear they will lose their bonuses or even their jobs if workers report injuries, real safety is not being achieved. Depending on the environment, workers may fear being fired if they report an injury, or may be pressured by co-workers not to report in order not to jeopardize a group reward.

The result is that these employers appear to be safer, while the occurrence of the injury and a failure to investigate its causes can not contribute to efforts to prevent similar events in the future. Much can be learned from injury investigations, conducted by employers, workers or OSHA. When an injury is not reported, the injured worker is denied access to the workers' compensation benefits they should rightfully receive. Inaccurate and incomplete statistics also impact OSHA, misdirecting our inspections away from the real high-risk employers. Therefore, OSHA will continue to focus on ensuring that the OSHA recordkeeping requirements are met in the Nation's workplaces, and that injury and illness data reported by employers are accurate and not influenced by improper incentive and disincentive programs. We also have begun to engage stakeholders to help us examine this question and to assist us in distinguishing between programs that encourage safe work and those that discourage injured workers from reporting their injuries.

Numerous studies have found that significant proportions of workplace injuries, and most workplace illnesses, are not recorded in our statistics. If we do our job well, and our efforts result in more accurate reporting of injuries, it is likely to result in a rise in the rate of reported injuries. Some may assert, incorrectly, that the real rate of injuries is rising and that OSHA enhanced enforcement is not working. We must be prepared for this and not allow it to hinder our efforts to improve the accuracy of injury reporting.



## 7. Strengthen OSHA's Use of Science

OSHA is a public health agency; our activities must be firmly grounded in strong science. The agency will strengthen its ties to the scientific and public health communities and work more closely with NIOSH, our sister agency. We will develop ways to better and more quickly incorporate scientific advances into our regulatory and compliance assistance activities. In particular, under the leadership of the Directorate of Technical Support and Emergency Management, OSHA will identify ways to address new and emerging hazards quickly, serving as a conduit of information from the scientific community to workers and employers.

## 8. Strengthen State OSHA Plans

A significant amount of OSHA's enforcement work is done by state plans; we are all part of the same system and we share a commitment to protecting worker safety and health. These programs cover private and public sector workers in twenty-two states and territories, and public sector employees only in five more. OSHA must continue to work closely with these plans, ensuring that they really are, as the law requires, at least as effective as the federal enforcement program. Many state OSHA programs address challenges differently than we do, and there is much we can learn from their experience. At the same time, we must help state plans grow in strength and effectiveness, and embrace some of our new initiatives and approaches.

## 9. Conduct Our Work with Transparency, Openness, Integrity and Humility

OSHA's actions must be transparent and our decision-making process open. In March, we held our first "OSHA Listens" sessions, at which employers, workers, safety and health professionals and the families of workers killed or injured on the job, came from all parts of the country to talk to us about many of the key issues facing our agency. OSHA has much to learn from our stakeholders, and we will continue to encourage and provide opportunities for their input, especially on the area and regional level. We will make a concerted effort to reach out to members and representatives of vulnerable populations whose voices are not normally heard.

The families of workers injured or killed on the job have an important role to play in our work. These families are often the ones who pay the greatest costs when a worker is injured. Family members may also have information useful in our investigations. In the past, OSHA has sometimes neglected needed contact with family of victims; speaking to family of victims must become a regular component of our investigative work. We will strengthen our commitment to regular, meaningful contact with the families of injured workers.

President Obama has committed this administration to openness, internal and external. OSHA has been working on an Open Government action plan that addresses a myriad of issues including innovative stakeholder engagement and improved public access to important data sets. We have recently posted on the web the results 585,000 exposure measurement samples gathered in 67,000 inspections. This data set joins the workplace fatality reports and the establishment-specific injury and illness rates collected in the

OSHA Data Initiative, already posted on the web. These data initiatives are the result of an excellent collaboration between the Directorates of Information Technology, Technical Support and Emergency Management, and Enforcement. With the help of these Directorates, we will expand our efforts to share OSHA data with the public and encourage employers, unions, activists and researchers to put these data to good use.

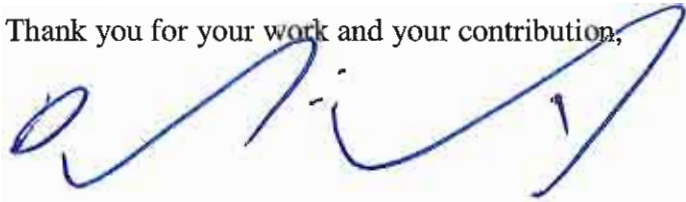
We will pursue creative new ways to communicate, including OSHApedia, an internal Wiki project to increase collaboration and eliminate stove piping across the Agency and to share knowledge about specific safety and health issues. In the months ahead, the entire Agency will be involved in this challenge.

OSHA will continue to carry out its responsibilities with integrity, acting with honesty and accountability in all that we do. We must be on guard for unethical behavior, in ourselves and our co-workers, and to meet the President's mandate to embrace transparency and openness, OSHA must be honest and accountable to itself and to the workers and employers of this nation.

Finally, we will regularly re-examine the effects of our efforts. It is normal to defend comfortable old practices, assuming we are doing things the best way possible. But we must take a different road. We will encourage our colleagues and our stakeholders to tell us if they think there are better ways to accomplish our goals, and we will apply rigorous tools to evaluate our actions. I've been appointed to lead the OSHA, but you all do the work. Our success, yours and mine, are intertwined.

In this spirit, I hope you consider this letter as part of an ongoing conversation. Please send your thoughts and comments to [PublicMichaelsDavid@dol.gov](mailto:PublicMichaelsDavid@dol.gov). I may not respond to all the notes I receive, but I promise to read what you send because I greatly value your thoughts, your commitment and your dedication to OSHA and our shared mission.

Thank you for your work and your contribution,

A handwritten signature in blue ink, appearing to read 'David Michaels', written over a light blue rectangular background.

David Michaels, PhD, MPH

Assistant Secretary  
Occupational Safety and Health Administration  
United States Department of Labor

## **APPENDIX**

### **Secretary Hilda Solis' Strategies for Reforming**

#### **Worker Protection at the Labor Department:**

#### **Evaluation, Innovation, and Improved Implementation**

##### ***Evaluation***

- Target the most egregious and persistent violators.
- Protect the most vulnerable populations while assuring broad-based compliance.
- Regulate to eliminate or reduce the hazards with the broadest and most serious consequences based on sound science.
- Establish regular processes for evaluating the success of enforcement and regulatory strategies in helping to achieve the desired outcomes.

##### ***Innovation***

- Foster a culture that emphasizes continuous improvement in our regulatory and enforcement programs.
- Shift the burden of compliance to the employer or other regulated entity rather than relying exclusively on enforcement interventions. “No more ‘catch me if you can’ regulation and enforcement.”
- Emphasize corporate-wide or enterprise-wide enforcement and other strategies for leveraging limited resources to accomplish the broadest possible compliance.
- Use openness, transparency, and effective press and communications strategies as means of ensuring broad-based and continuing compliance.

### *Improved Implementation*

- Implement collaborative enforcement strategies with other DOL, federal, state and local agencies to leverage limited resources and ensure compliance in the whole workplace.
- Establish and maintain an effective partnership between the worker protection agencies and the Solicitor's Office in all aspects of regulation and enforcement.
- Impose penalties and other remedies that are consistent with the seriousness of the violation and act as effective deterrents, including identifying and aggressively pursuing appropriate cases for criminal prosecution.
- Partner with worker and community-based organization to identify likely violations and educate workers, small business, and others about the laws' requirements.
- Involve workers and worker organizations in the workplace to prevent, identify, and remedy violations.
- Provide meaningful compliance assistance and engage the regulated community in designing and implementing compliance assistance.