

## Enzi, Kennedy Push Legislation To Bolster OSHA's Katrina Role

Senate labor committee leaders Michael Enzi (R-WY) and Ted Kennedy (D-MA) are pushing legislation to bolster OSHA's role in the Katrina cleanup efforts by authorizing additional money for agency inspections and other activities. The bill, which Enzi hopes to bring up on the Senate floor in the next 10 days, calls on OSHA to promptly implement the worker safety and health portion of the National Response Plan, and to work with labor unions, industry and other government agencies to improve existing efforts to ensure the health and safety of recovery workers.

The bill, called the Katrina Worker Safety and Filing Flexibility Act of 2005, also calls for OSHA to collect and store records on the identity of individuals involved in the recovery and rebuilding efforts.

Congress would keep close tabs on OSHA's progress. OSHA would be required to brief lawmakers within 60 days of the bill's passage on its Katrina activities, and to deliver a written report within nine months. The Labor Department's Office of Inspector General would audit OSHA's activities and deliver weekly reports to the Senate labor and House education and workforce committees.

Kennedy, in a Sept. 26 statement on the Senate floor, elucidated the many health hazards workers face in

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## MICHIGAN GOV. SIGNS BUDGET THAT BLOCKS FUNDING FOR ERGO RULE

In an surprise move Michigan Gov. Jennifer Granholm (D) has signed a state budget that aims to kill the state's controversial effort to develop an ergonomics rule by blocking funding for the initiative. But the politically charged ergonomics battle may not be over, as a spokesperson for Granholm said that while the governor did not veto the ergonomics language she does not believe that it is enforceable.

The budget language approved by the state legislature and now signed by the governor states: "Of the funds appropriated in part 1, no funds shall be used to support the development of, or activities that promote the development

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## OSHA IN TALKS TO EXPAND VPP THROUGH NAFTA, EUROPEAN UNION

OSHA is in talks to expand its hallmark Voluntary Protection Program (VPP) to Canada and Mexico through the North American Free Trade Agreement (NAFTA), acting OSHA chief Jonathan Snare announced at a meeting of the VPP Participants Association (VPPPA) in Dallas, TX last month.

An industry source tells *Inside OSHA* that OSHA is also in talks with the United Kingdom (UK) to expand the program there and eventually throughout the European Union. VPP is the centerpiece of OSHA's effort to get companies to voluntarily instill health and safety initiatives, and companies that sign up to the program generally face fewer OSHA inspections.

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## DRAFT ANSI STANDARD CALLS FOR 1st EVER USE OF SAFETY RESTRAINTS IN EMS WORKERS

Researchers are applauding a draft ANSI standard that if approved would for the first time require safety restraints for emergency medical service (EMS) workers in the back of the ambulance. The standard would also require management of motor vehicle safety, driver recruitment and vehicle inspections.

Academic researchers, who have been trying for years to get a standard passed for personal protective equipment (PPE) and restraints inside the ambulance for EMS workers, say the ANSI standard is a good first step. The ANSI standard, however, does not address PPE. At the moment only

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## TURF BATTLE

### SUIT ADDRESSES IF OSHA OR FAA OVERSEES FLIGHT ATTENDANTS

The flight attendants union has gone to court in a bid to resolve a 30-year old debate over whether OSHA or the Federal Aviation Administration (FAA) should be responsible for overseeing the health and safety of flight attendants. FAA took on the job in 1975, and the union has been unsuccessful in repeated attempts over the years to get FAA to follow OSHA's health and safety regulations. So now it is suing both FAA and the Labor Department, saying DOL is ultimately responsible for ensuring worker safety.

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But OSHA and FAA maintain that no safety enforcement void exists and say the two agencies will continue to work together in studying issues related to the safety and health of aviation employees. “We do not think that a safety enforcement void exists with respect to the aviation industry,” an OSHA spokesperson tells *Inside OSHA*. “OSHA will continue to work with the FAA in studying issues related to the safety and health of aviation employees.”

An FAA spokesperson said the agency’s current voluntary program remains the agency’s preferred plan for ensuring airline employee health and safety.

The Association of Flight Attendants-CWA (AFA-CWA) filed its complaint in the U.S. District Court for the District of Columbia. The suit cites the Occupational Safety and Health Act of 1970, wherein the Secretary of Labor takes responsibility to ensure the health and safety of “every working man and woman” unless another federal agency exercises authority. The FAA took responsibility for the safety of employees of the airline industry in 1975, yet the FAA has “repeatedly ignored the health and safety of flight attendants,” said AFA-CWA International President Patricia Friend in a press release about the suit.

The complaint asks that the court issue an order declaring that both the FAA and DOL failed to ensure safe working conditions for flight attendants.

“This is a measure of last resort,” said a source at AFA-CWA. “For more than a dozen years we’ve been waiting for the FAA to step up and adopt safety standards.”

OSHA and the FAA say they continue to work towards assuring the safety of attendants through an Aug. 7, 2000 Memorandum of Understanding (MOU) that directed the two agencies to establish a procedure for enforcing safety standards for flight attendants and for “resolving jurisdictional questions.”

The AFA-CWA blames the change of administration in 2001 for the failure to implement the provisions of the MOU.

The MOU established the Aviation Health and Safety

Team (ASHT), which in turn created the Aviation Safety and Health Partnership Program (ASHPP), a voluntary program that proposes “that air carriers provide certain safety and health protections.” The program also developed “evaluation criteria to assert program effectiveness and procedures for air carriers to report employee injury and illness data to the FAA.” The data would then be analyzed by the Aviation Safety and Health Program Rulemaking Committee, who would recommend if FAA should take any additional measures to address safety and health issues.

The FAA maintains that the ASHPP “remains our preferred vehicle,” according to a spokesman.

The AFA-CWA, however, never accepted the ASHPP, saying that air carriers cannot be blamed for not implementing a voluntary program, as they are always looking to “cut costs,” an AFA-CWA spokesman said. “The AFA voiced displeasure [with the ASHPP]. The FAA just set up another voluntary program that’s not very effective. They gave the carrier the option to do what they want, but it takes government effort to compel the regulations,” he continued.

A spokesperson for the FAA refused to comment directly on the filed complaint.

A spokesperson for the AFA-CWA says the union hopes to “obtain OSHA protection” for flight attendants. AFA-CWA wants to reduce what it views as a “shocking” number of injuries and illnesses that afflict flight attendants, a number that is twice as high as construction workers, according to an AFA-CWA source.

OSHA and the DOL Solicitor’s Office will work with the Department of Justice as it prepares the government’s defense, according to an OSHA spokesperson.

Among the safety concerns the complaint specifically cites are bloodborne pathogen exposure, poor sanitation, pesticide spraying, poorly designed carts used by attendants and poorly designed overhead bins, says the source at AFA-CWA.

## UNION BLASTS DUPONT’S SAFETY RECORD DURING HEALTH, SAFETY CONGRESS

The United Steelworkers International Union (USW) blasts DuPont’s safety record in a report released at a recent occupational safety conference co-sponsored by DuPont, prompting charges by DuPont that the union is merely trying to bolster its local bargaining position. Dupont spokesperson Kelli Kukura defends the company’s safety record, saying, “USW is trying to use safety as a contract negotiating tactic for local bargaining.”

The report, entitled *Not Walking the Talk: DuPont’s Untold Safety Failures*, blasts what it calls one of the “dirtiest and most dangerous companies in the United States, and possibly, the world.” It was released during the 17<sup>th</sup> World Congress on Safety and Health Work, held in Orlando, Fl Sept. 18-22.

USW charges in the report that “DuPont’s safety program blames the worker for on-the-job hazards and its goal of zero accidents encourages a system of non-

reporting.”

The union blames DuPont’s STOP safety program for the company’s safety record. “First, it is important to gain a better understanding of the role that DuPont Safety Training Observation Program (STOP), the company’s behavioral-based safety program, plays in DuPont’s approach to safety. STOP is grounded in the theory that almost all injuries are caused by worker unsafe acts and neglects many elements included in the National Safety Council’s Hierarchy of Controls. DuPont earns about \$100 million in revenues by selling other corporations, a program that only returns short-term results. DuPont’s actual record contradicts its claim to being one of the safest companies in the world.”

The report also says that STOP “takes away the need for examining work areas for potential hazards and focuses attention on alleged worker carelessness and

unsafe behaviors.”

### **DuPont rejects the report as politically motivated.**

“The USW, which represents 5 of our over 150 DuPont sites in the U.S., neglected to give the reason for its unfair and inappropriate attack on DuPont. It has absolutely nothing to do with the facts regarding safety and environ-

mental stewardship,” Kukura says.

“The USW announced a corporate campaign against DuPont in April of 2003. Its stated goal was to bargain corporately with DuPont rather than at the site level,” according to Kukura. “The USW leadership has continued this campaign on many levels in an attempt to gain attention.”

## **Following international conference...**

### **INDUSTRY, UNION SOURCES SAY OSHA IS NOT PROACTIVE IN HEALTH & SAFETY**

Industry and labor representatives are criticizing what they call OSHA’s lack of world leadership in occupational health and safety in the wake of recent OSHA meetings with its international counterparts. Several industry and organized labor officials who attended the meeting say they view the European Union as leading the way in regulatory reform and uniformity while OSHA lags behind.

According to an industry source, the EU is being aggressive and forward thinking in addressing upcoming occupational health and safety issues and the United States is “behind the curve in these issues. The U.S. is being dragged along [instead of leading].”

In September, OSHA took part in two international conferences on worker health and safety. The U.S.-EU Joint Conference was held from Sept. 14-16 in Orlando, FL. The conference participants addressed control banding, advanced good practices in health and safety, the new OSHA-Ireland Voluntary Protection Program (VPP) Pilot Project, and immigrant workers’ health and safety.

The second, the World Congress on Safety and Health at Work, took place from Sept. 18-22 and participants came from all over the world to discuss worker health and

safety. In addition to the issues discussed at the U.S.-EU conference, OSHA addressed psychosocial issues at work, emergency response, ergonomics, and young worker’s health and safety.

Europe is leading the way in psychosocial, stress, and control banding, an industry participant said. The source says NIOSH, however, is doing more on these issues than OSHA.

The biggest benefit of these conferences, according to an industry source, “is being able to network with peers in the EU.”

“A lot more work needs to be done to protect workers. OSHA is too inwardly focused, the agency looks at traditional ways of doing things. It is not enough to say our authority is in the U.S. The agency needs to get more involved at a global level. It is important that OSHA assert leadership in some of these issues,” the industry source says.

A key organized labor source was also critical. “The U.S. should work in coordination with Europe so that what is happening there can be applied here.”

Industry insiders argue that having uniformity in health and safety practices and rules would help multinational companies meet health and safety requirements.

## **NSC HEAD APPLAUDS FOULKE, SAYS HE WILL BRING SMALL BUSINESS FOCUS**

Edwin Foulke, recently nominated by President Bush to head OSHA, has received a strong endorsement from the National Safety Council (NSC) president. NSC President Alan McMillan, in an interview with *Inside OSHA*, praised Foulke as the best presidential nominee in the agency’s history and said his past dealings with Foulke suggest the candidate will bring a special interest in small business issues to the top post.

McMillan said Foulke has a strong familiarity with the Washington establishment. McMillan also believes Foulke “has a personal interest in the small employer and how Washington impacts them. The regulatory world of OSHA needs to be in tune with small employers. Large corporations have resources that can impact regulation, small businesses do not have access to this.”

McMillan says Foulke’s advantage lies in the fact that he has already been in Washington, DC in a presidentially appointed position, as head of Occupational Safety and Health Review Commission. McMillan says he believes Foulke will “hit the deck running. He understands how Congress works, [and understands] the Office of Management and Budget and the Department of Labor. That gives

him the opportunity to get things running quickly.”

McMillan believes that Foulke will be easily confirmed to head OSHA.

At press time it remains unclear when the Senate labor committee will hold confirmation hearings on Foulke. A spokesperson for the committee said the panel has yet to receive the confirmation paperwork from the White House.

Meanwhile, organized labor sources say they are hopeful that Foulke will be asked key health and safety questions during his confirmation hearing. “His experience is pretty narrow, that being an attorney handling a review commission. Does he have the capability of running the agency?” asked an organized labor source.

“Secondly, the current administration has essentially shut down standards operations, and that’s the key function of the agency. What is he going to do as secretary to reverse this trend?”

Union sources also hope that Foulke’s relationship with labor will be a topic of the confirmation hearings. “The Senate ought to ask serious questions as to how he intends to interact with labor organizations and represent workers,” the source said.

## OSHA REFORM BILLS NEARLY DONE, ISAKSON'S PROVISION LIKELY DROPPED

A spokesman for Sen. Michael Enzi (R-WY) says the three OSHA reform bills being drafted by the health committee chair are nearing completion, but it is unclear if they will reach the Senate floor any time soon due to pressing issues rising from Hurricane Katrina.

The spokesman says that the "majority of work has been accomplished," but no official word on a publication date has been released.

The first two of the three bills contain provisions that would require OSHA to set up a committee examining the United Nation's Global Harmonized System of Classification and Labeling of Chemicals, and to shield companies nationwide from OSHA citations if they hire third-party safety auditors, sources close to the issue say.

The wording of a controversial measure to attach criminal penalties to the House-passed OSHA reform legislation is still up in the air, but a source close to the

issue does say that criminal penalties "will still be in the package."

A spokesperson for Sen. Johnny Isakson (R-GA) says that it is "less likely" than it was before that Isakson's provision that would address the controversy surrounding OSHA's use of research data from the American Conference of Governmental Industrial Hygienists (ACGIH) will be included in the Senate reform bills. Industry has criticized OSHA for adopting ACGIH thresholds without adequately examining ACGIH's research methods.

On July 12, four OSHA reform bills passed the House. Enzi soon followed by assembling his yet-to-be-unveiled Senate reform package that contains language from the House bills. Enzi's controversial criminal penalties measure would increase criminal penalties for certain health and safety violations

## \$21 MILLION FINE TO BP WAS MORE THAN DOUBLE LARGEST FINE IN OSHA HISTORY

BP Products North America's agreement to pay more than \$21 million in penalties for health and safety violations related to a fatal explosion at its Texas City, TX in March is more than double the largest fine in OSHA history. The agency is still considering whether to ask the Justice Department to pursue criminal charges against the company, OSHA Dallas Regional Administrator John Miles said.

The agreement, announced by OSHA Sept. 22, settles citations issued against BP following the March 23 explosion, which claimed the lives of 15 workers and injured more than 170. The settlement also requires the company to implement process safety management reforms plant-wide, OSHA announced.

"Safety conditions at the plant were very lax and BP was not doing what the company had on the books," Miles said, adding that the plant was ripe for an accident. The fatal explosion at the Texas City refinery complex was caused by a fire in the isomerization unit (ISOM) when a cloud of hydrocarbon vapors ignited during the start-up of the ISOM.

When questioned if OSHA was at fault for the safety lapses, Miles answered, "There was no lapse on OSHA's part. We cannot be in every workplace. Safety is the responsibility of the employer."

Miles also said OSHA was keeping its options open and has not decided whether to proceed with criminal charges, and would not say if possible criminal charges have been discussed with BP. "Statutorily we have five years on criminal citations and, if we decide to proceed, DOJ would do the indictments," he said.

The settlement with BP came the same day the agency issued the citation. OSHA issued the citation and BP immediately agreed to a settlement, Miles said. OSHA did not give in on the citation amounts, he said. He would not discuss what changes BP may have requested as part of the settlement, saying the company asked that its requests not

be released.

The safety changes agreed to by BP in the settlement agreement will extend to any outside contractors hired by the company. The agreement also requires BP to hire an outside consultant and improve communications with employees on safety matters. The agreement requires BP to do this within 60 days, and Miles says the company "has already started to hire some people."

Miles also said a "lack of safety culture at the plant was at the heart of the problem and management recognizes this."

"We are going to be studying OSHA's citation closely in the coming weeks and we will continue our investigation," a spokesperson for the Chemical Safety and Hazard Investigation Board (CSB) said. "We want to get out the information on preventing this from happening again. OSHA's citation focuses on the same areas CSB has focused on." CSB launched an investigation of the Texas City plant at the time of the accident.

Labor representatives are glad to see that OSHA and BP were able to settle the case and that the citation reflects the seriousness of what happened at the refinery. However, some feel that unions should have been involved in the process and others feel that the level of the citation is not enough.

United Steel Workers (USW) President Leo Gerard said in a press release, "We are glad that BP was willing to settle this case, but that settlement should have happened after a citation, not before."

The union also blasted OSHA for conducting negotiations behind closed doors and not allowing "workers and their union have the right to participate in that process."

Another labor source says that while the citation is the largest in the agency's history it is not that significant for BP. According to the source, BP "made \$93.7 million in pure profit per day or about \$4 million per hour in 2004. It

will take BP about 5 hours worth of profit making to pay this penalty; or about 20 minutes per worker killed. And this is before OSHA has their informal settlement.... They reported profits of \$34.196 billion last year.”

In a press release issued Sept. 22, BP states, “BP has accepted responsibility for the March 23rd explosion. The company has set aside \$700 million to compensate victims of the explosion and has worked to resolve claims arising from the incident. Settlements have been achieved with the families of most of the workers who died and with many

workers who suffered serious injuries.”

The release adds, “BP continues to cooperate with the US Chemical Safety and Hazard Investigation Board, the US Environmental Protection Agency and the Texas Commission on Environmental Quality regarding the Texas City explosion and related concerns.”

Labor Solicitor Howard Radzely said the unprecedented level of the fine “sends a strong message to all employers about the need to protect workers and to make health and safety a core value.”

## OSHA PLAYS IMPORTANT ROLE IN DEBRIS MANAGEMENT IN MISSISSIPPI

OSHA is working closely with the Environmental Protection Agency (EPA) and the Army Corps of Engineers to assist in debris removal in hurricane-affected areas of Mississippi, giving technical advice on worker safety to mobile debris crews.

OSHA described its role in hurricane debris collection in a multi-agency conference call Wednesday (Sept. 21).

Ruth McCully, the agency’s director of science, technology and medicine, said the agency is providing technical assistance to mobile debris crews, as well as going to county debris sites and providing safety assistance

and advice to crews there.

McCully also said OSHA has distributed 4,800 fact sheets in both English and Spanish, and provided assistance to over 650 crews in the area.

Two main areas of worker safety that OSHA is concerned with during recovery efforts are roadway debris removal and chainsaw safety, McCully stated. Visibility of workers is a priority with roadway debris removal, she said. Visi-Vests, reflective vests for work zone safety, have been necessary Personal Protective Equipment (PPE) for workers involved with that aspect

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- OSHA Awards \$10.3 Million In Safety And Health Training Grants
- Flight Attendants Sue FAA, DOL For Not Enforcing Safety Standards
- Texas Senator Proposes Bill Protecting Volunteers Aiding In Post-Hurricane Cleanup
- DHS Announces \$30 Million In Grants To Train Emergency First Responders
- OSHA Adds New Modules To Its Shipyard Employment ETool
- Agency For Healthcare Research And Quality Releases Tools To Aid Emergency Responders During Health Emergencies
- OSHA Partners With Wisconsin, Health Groups To Reduce Ergonomic Injuries
- OSHA Official To Lead Conference On Machine Tool Safety In Michigan
- CDC Releases Dispatch On Infectious Diseases And Dermatologic Conditions In Rescue Workers After Katrina
- Kennedy, Enzi Worker Safety Bill Would Bolster OSHA's Role In Hurricane Clean Up, Fund New OSHA Inspectors
- CDC Issues Hospital Preparedness Report; Nearly All Sampled Had Natural Disaster Response Plan
- USW Applauds BP Settlement, But Questions Union's Exclusion From Settlement Process
- Bicameral Legislation Would Provide Free Medical Screenings For First Responders
- OSHA Slaps Unprecedented \$21 Million Fine On BP Following Texas City Explosion
- Asbestos Alliance Skeptical Of Bates White Study On FAIR Act's Impracticality
- AIHA Urges Adoption Of Uniform MSDS Format For All Audiences
- Labor Secretary Emphasizes Need For Health, Safety Training For New Generation Of Workers
- 'Global Workplace' Brings Work-Related Stress Issues To Forefront
- Asbestos Injury Laws 'Fundamentally Flawed,' Charges Legislative Council

of cleanup, according to McCully.

Kevin Jasper, project manager for the Army Corps of Engineers, said that the task of debris removal after Katrina is “unprecedented” and “far and above” Hurricane Andrew’s waste removal effort.

Charles Chisolm, executive director of the Mississippi Department of Environmental Quality, lauded the cooperation of federal and state governments in the area of waste

management.

McCully also addressed concerns over delays by the administration in naming OSHA as Federal Safety Coordinator for Worker Safety and Health under the National Response Plan for Hurricane Katrina. She told *Inside OSHA* that the agency is already preparing workers in Texas for possible relief efforts that may be needed following Hurricane Rita.

## **SENATE BILL BOLSTERS OSHA KATRINA ROLE . . . begins on page one**

Katrina recovery efforts. Among them, he cited biological and chemical contamination, oil spills, and exposure to E. Coli bacteria.

“It is imperative that workers and volunteers be protected from these serious hazards,” Kennedy stated. To do so, the legislation, “urges OSHA...to follow the Worker Safety and Health Annex protections of our National Response Plan,” Kennedy said.

In the bill, OSHA would be specifically required to do the following: implement all of the relevant provisions of the Worker Safety and Health Annex plan; develop multiple methods to provide workers and employers with the information they need to maintain a safe workplace; communicate with immigrant and non-English speaking workers and employers about safety rights; deploy sufficient personnel to the region; collaborate with state and local government, as well as other federal agencies; and keep records of the identity of individuals involved in the recovery and rebuilding efforts.

The bill also authorizes funding to enable OSHA to pay for needed communications, additional personnel, enforcement of safety standards, and health and safety training.

Overseeing OSHA in all this would be the Labor Department’s Inspector General, who will “audit and

investigate the Department’s efforts to implement the protections established in this bill,” according to Kennedy.

The final part of the bill would provide temporary relief to companies, unions and individuals who cannot meet financial and other reporting obligations during the next few months due to record destruction from Katrina.

A spokesperson for Enzi was unclear on when the bill would be put to a vote by the Senate, but he stated there was a “high probability within 10 days.”

This legislation comes after the Federal Emergency Management Agency (FEMA) received some criticism for its delayed implementation of the Worker Safety and Health Support Annex under the National Response Plan. On Sept. 15, some two weeks after Katrina hit, a DOL press release stated it “recently” activated the annex and that OSHA “is developing an overall worker safety and health strategy.”

An organized labor source responded to the bill by saying, “It’s good that these issues are being raised, but we would prefer the stipulations on safety equipment be mandatory and not just encouraged.” However, she added, “With regular reporting, perhaps we will get a better idea of what the DOL is doing.”

An OSHA spokesperson responded by saying the agency has not yet taken a position on the legislation.

## **CDC: HOSPITALS LAG IN IMPLEMENTING EMERGENCY RESPONSE PLANS**

A study released Sept. 27 by the Centers for Disease Control and Prevention (CDC) finds that most hospitals have response plans for natural, chemical and biological disasters, but acknowledges a disparity between a written plan and actual implementation in the time of an emergency.

The study, titled “Bioterrorism and Mass Casualty Preparedness in Hospitals,” was requested by the Department of Health and Human Services following 9/11, and surveyed hospitals regarding their preparedness for treating patients from bioterrorism attacks or mass casualty incidents.

Among the questions asked by the survey were whether a hospital updated its emergency response plan since 9/11, and whether that plan addressed natural disasters and biological, chemical, nuclear-radiological, and explosive-incendiary terrorism incidents.

The study also dissected the specifics of the response plan itself — namely the content of the plan; training for

terrorism response; a hospital’s experience with internal and external disaster drills; and availability of specialized equipment such as decontamination showers, personal protective suits and negative pressure isolation rooms.

The study found that almost all hospitals sampled have plans for responding to natural disasters, and most have plans for responding to chemical, biological, nuclear-radiological and explosive incidents.

In regards to internal planning, 73 percent of the hospitals planned to halt admissions during an emergency and 60 percent had plans to utilize non-medical space for medical purposes. Conversely, about 76 percent of the hospitals surveyed had community-wide provisions in their response plans in order to cooperate with outside entities.

In the study’s concluding comments, the authors point out that hospitals often reported that their drills lagged behind their written response plans. Robert Weiss, vice president of the division of standards and survey methods for Joint Commission on Accreditation of Healthcare

Organizations (JCAHO), says that perhaps the study's name is a misnomer. "The study does not really look at preparedness, it just looks at if a plan exists or not," Weiss said. "There is a significant gap with an organization having a plan, and if they can effectively respond."

The study comes out just as JCAHO is about to co-host an October seminar with OSHA addressing the widespread lack of appropriate decontamination equipment and emergency training and planning in many hospitals. JCAHO officials fear that many hospitals in the United States might not be able to prevent the spread of diseases within their grounds after natural disasters, chemical releases or nuclear and bioterrorism attacks.

On the topic of community-wide planning, Weiss said that most natural disasters or bioterrorism attacks would

impact an entire community, which would make it "impossible for a single organization to plan for." He continued, "Everybody has a plan, but often if the plan involves multiple teams, they start to compete for limited resources. For instance, with Hurricane Katrina, multiple groups had plans for an evacuation, but they all planned to use the same bus company." A community-wide plan, therefore, would have to include "who gets what resources, and how they are dispersed," Weiss said.

An effective way to test a hospital's ability to respond in an emergency would be "to go into different parts of the country that are commonly hit by natural disasters, and see how communities have been able to prepare and understand their strengths and weaknesses," Weiss said.

A call to CDC went unanswered by press time.

## ***MI ERGO DEBATE CONTINUES . . . begins on page one***

of, guidelines, rules, standards, protocols, or other similar mandates that are more stringent than federal voluntary ergonomics guidelines. This section does not prohibit any person from adopting, or working with the state to develop, voluntary ergonomics standards."

Last year Granholm privately assured lawmakers that she would not allow an ergonomics rule to be signed into law if they agreed to remove the funding restriction from the budget. Granholm, however, never publicly verbalized the compromise and the Michigan Occupational Safety and Health Administration's (MIOSHA) ergonomics standard advisory committee continued its work. The advisory panel most recently met Sept. 28 and during the meeting the committee members again discussed the scope and application of a draft ergonomics rule.

A spokesperson for MIOSHA had no comment on the governor's action and said the committee will have to wait and see how it affects their work.

An industry source earlier told *Inside OSHA* that since the state budget is not a supplemental budget the governor could not have line-item vetoed the language. Granholm would only have been able to veto appropriations not

disappropriations, which is what the language in the budget would do, the industry source says.

It is not clear why the governor decided not to veto the language, but a source close to the issue told *Inside OSHA* that the governor is "currently very nervous about her dropping approval numbers." The governor had said earlier in the year that she did not support the ergonomics spending restriction.

**Meanwhile, additional legislative efforts to block the ergonomics effort are still underway.** Michigan state Rep. Rick Jones (R) told *Inside OSHA* that he plans to go forward with a separate bill in two weeks that will block the rulemaking effort by changing the statute to prevent further expansion of MIOSHA and thereby prevent the enactment of new rules. A spokesperson for Jones said that while "there is no money in the budget it does not mean that they would not be able to enforce an ergonomics standard. They could use a back door way to enforce the standard."

The ergonomics advisory committee is scheduled to meet again on Oct. 26.

## **OSHA PARTNERS WITH WISCONSIN ON PILOT COOPERATIVE ERGONOMICS EFFORT**

OSHA is launching a partnership with the state of Wisconsin, six foundries, and four unions to implement a three-year, trial ergonomics program. As a trade-off for participating in the trial program, OSHA will defer programmed inspections for six months and not cite non-serious violations that are corrected during an inspection.

Organized labor sources say OSHA should institute a mandatory program instead of offering to defer inspections for companies following voluntary guidelines.

In a Sept. 27 press release, OSHA announced that through this partnership the agency hopes to implement a successful ergonomic program, to analyze workstations and work processes for ergonomic hazards, and document ergonomic control measures and best practices that can be

shared with the public.

Taking part in the trial program are local foundries such as Neenah Foundry Company and Brillion Iron Works. Local labor unions will participate as well, including United Steel Workers of America, International Association of Machinist & Aero Space Workers, and the Paper Allied-Industrial Chemical and Energy Workers International Union.

"We want to review jobs and look at the ergo risk factor, and then try to reduce that," said Mel Lischefski, OSHA's area director in Appleton. "The second aspect is to make the business case for safety and health."

**Some labor sources are already expressing concerns about the plan.** "The bottom line is that they need to have mandatory guidelines in place. These kind of

initiatives rely upon incentives,” a union source said.

On whether a state-by-state approach is the proper way to create ergonomics legislation, the source said, “[Musculoskeletal disease] is the biggest source of job injuries in this country. You can’t address a problem of this level on an employer-by-employer basis. They should still be developing a national standard.” She concluded that state-by-state voluntary guidelines are “totally inadequate.”

Another concern of organized labor is the inclusion of

local unions without consulting with national unions. “I’m sure they [unions] have no idea on a national level what’s going on,” a source close to the issue said.

Lichefski maintains that this program has “nothing to do” with a state ergonomics standards and that “no rulemaking” is in the works.

The announcement of this pilot ergonomics program comes just as the Michigan governor signed a budget that prohibits funding for a controversial state ergonomics rulemaking effort (see related story).

## **OSHA PLANS TO EXPAND VPP . . . begins on page one**

VPPPA was created in the 1980s by VPP member sites, and the group is comprised of VPP sites, companies trying to get into VPP, and corporate sites that have divisions under VPP and the corporate offices want to join the program. Some VPPPA members helped Ireland create its own VPP program.

OSHA’s VPP program has been controversial. Last month a Bureau Of Labor Statistics report showed workplace fatalities increased in 2004 at the same time that the agency was touting new VPP members.

Industry and some labor union groups tout the initiative as important for ensuring worker health and safety. For industry, especially large multinationals, VPP enables them to have uniform standards throughout the world, an industry source says. But some organized labor groups charge the program merely allows companies to avoid OSHA enforcement.

OSHA is now promoting the program to government agencies as well, even though they are not subject to OSHA oversight. The agency’s Columbus, OH area office recently joined the program.

Other recent entries include International Paper, located in Tennessee; GRACE Davison of Sulphur, LA (which is being investigated for extracting and processing asbestos-contaminated vermiculite at a mine in Libby, MT, between 1963 and 1990); and General Electric’s (GE) Infrastructure facility in Dublin, Ireland.

The GE facility was the first in the Ireland VPP program to become part of the top-tier VPP star program.

Ireland also plans to add two more U.S. companies by the end of the year.

The GE facility does not fall directly under OSHA’s jurisdiction, but instead is part of an Irish VPP effort modeled after the OSHA program. The facility was discussed as part of a dialogue between the United States and the European Union on health and safety issues in the workplace, sources say.

When OSHA announced its Columbus, OH office was joining VPP, an organized labor source said the office “was included in [OSHA’s VPP] press release as sort of a pat on the back [for the agency].”

The same source said that naming one of the agency’s own offices to the VPP program is “self-centered” especially when there has been an increase in deaths in the workplace. Another organized labor source says, “[this] should be on Saturday Night Live, it’s beyond laughable. It’s absurd, like an April’s fools day joke.”

An OSHA spokesperson defended the decision at the time. “The OSHA Area Office in Columbus, Ohio, was the first [federal] site approved into VPP. The site was approved at the Star designation, VPP’s highest honor. Approval of the site is a testament to the commitment of DOL and OSHA to continuous improvement in workplace safety and health — a hallmark of VPP. Other DOL sites are expected to follow in the path of the Columbus Area Office in achieving the VPP Star designation.”

OSHA did not return calls seeking comment on the VPP expansion abroad.

## **INDUSTRY GROUP ISSUES PROPOSAL TO SUE AGENCIES UNDER PAPERWORK ACT**

An industry-funded group is recommending that the Paperwork Reduction Act (PRA) be revised to make it easier for outside parties to hold Environmental Protection Agency (EPA) and other federal agencies accountable under the law, including suggestions for new legislation allowing judicial review of decisions under the act, according to a new proposal issued by the group.

The group argues that the law should resemble the recent corporate accountability Sarbanes-Oxley Act by allowing outside parties to sue federal agencies if information certification requirements under the PRA are violated. The PRA requires agencies to minimize the paperwork burdens they impose on the public and to maximize the utility of the information they collect.

“The PRA requirements for certification of a fair and independent compliance assessment parallel requirements in the Sarbanes-Oxley Act and other securities laws,” says a new proposal floated by the Center for Regulatory Effectiveness (CRE), an industry-funded government watchdog group. “The PRA differs significantly from Sarbanes-Oxley in that the PRA does not contain an explicit judicially reviewable enforcement mechanism.”

The industry push may attract the attention of Rep. Candice Miller (R-MI), chairman of the House Government Reform regulatory affairs subcommittee, who has targeted reauthorization of the act as a top legislative priority. In a Sept. 28 interview with *Inside EPA*, she said she had intended to propose legislation on the issue in

September, but in the aftermath of the Gulf Coast hurricanes, the effort has been pushed back. She offered no timeline for moving a bill, but said she does “intend to get to it.”

Miller’s efforts are part of a broader Republican regulatory reform agenda to make rules less burdensome on industry and heighten accountability for EPA and other agencies’ regulatory decisions. Critics decry the efforts as ways to slow down and thwart regulations.

While the Senate has shown little interest in the effort, observers say the House Republicans appear to be laying the groundwork for a new regulatory reform push.

For instance, the House federal workforce & agency organization subcommittee held a hearing this week on an administration proposal to establish a commission to “sunset” ineffective federal programs and agencies, and Miller’s subcommittee held a Sept. 28 hearing to examine EPA rules that hamper manufacturing. Miller is also considering whether to propose legislation that would widen the scope of the controversial Information Quality Act, which allows outside groups to petition federal agencies to correct information used in justifying policy decisions.

Observers say the reauthorization of the PRA could be a vehicle for these controversial proposals, which critics say would hurt EPA’s ability to efficiently regulate industry.

Under the PRA, agencies must submit all information collection proposals to the White House Office of Management & Budget (OMB) for approval. The law needs to be reauthorized because the authorization for funding OMB’s

Office of Information & Regulatory Affairs, which oversees PRA implementation, expired in 2001. Since then, lawmakers have appropriated money for the office through the Transportation and Treasury appropriations bills without reauthorizing new spending levels.

The CRE proposal, entitled *The Paperwork Reduction Act Certification Process: The Sarbanes-Oxley for the Public Sector*, says the PRA should have a stronger enforceable certification requirement that resembles mandates in the corporate accountability law. The Sarbanes-Oxley Act requires that corporate financial reports be certified by a company’s chief executive officer and chief financial officer.

The group says a June Government Accountability Office (GAO) report boosts their argument that agencies are not being held accountable for their alleged failure to comply with the law. The GAO said that of 12 case studies, federal chief information officers (CIOs) provided certifications “despite often missing or inadequate support. . . . Further, although the law requires CIOs to provide support for certifications, agency files contained little evidence that CIO reviewers had made efforts to improve the support offered by program offices.”

For this reason, the CRE argues that the act needs to permit judicial review of decisions made under the PRA.

A source with the watchdog group OMB Watch criticizes the proposal, saying the certification requirement would bog down agency regulatory actions even further and could cripple the regulatory process.— *Inside EPA*

## **STANDARD ADDRESSES EMS WORK SAFETY . . . begins on page one**

firefighters have requirements for PPE and as such the fatality rate for EMS workers in the United States is 35 times higher than in Australia.

The American Society of Safety Engineers (ASSE) is working on ANSI Z15.1 Standard for Motor Vehicle Operations that addresses company as well as private vehicles, and refers to “the organization’s driver” in order to also include subcontractors. It includes best practices regarding driver selection and training, vehicle maintenance and inspection, record keeping and data analysis.

The public review comment period ended July 15, an ASSE spokesperson says. The Z15 Accredited Standards Committee is currently reviewing and addressing the comments from the public review. After this process, ASSE as secretariat will submit the draft to ANSI. Pending ANSI approval, ASSE may publish the standard in 2006, possibly by early spring. If the standard is approved it would include ambulances and require restraints for EMS workers.

The standard has been accused of being too vague. “We wanted to make it strong,” said committee vice chair William Hinderks of Risk & Insurance Management Co., IL, referring to the frequent use of “shall” instead of “should” in much of the draft, which he presented June 15 at ASSE’s annual conference in New Orleans, LA.

However, instead of recommending specific actions

for issues such as distracted driving, the standard often merely recommends a fleet safety program to address the issue. “It’s designed to complement an organization’s existing efforts, be non-prescriptive and compatible with state laws and other regulatory requirements,” Hinderks said.

However, advocates for EMS worker safety point out that this is the first time that ambulances have been included in a standard.

NIOSH is also doing studies and making recommendations for protecting EMS workers on the job. Jim Green, NIOSH deputy chief of the Protective Technology Branch of the Division of Safety Research, says in a statement, “Based on information collected from fatal ambulance crash investigations, focus groups, and discussions with EMS workers, NIOSH identified the concept of occupant restraints that would allow mobility to work in the patient compartment while providing crash protection, as a potential intervention. It should also be noted, the use of mobile restraints is common in military air applications and some commercial air ambulance services.”

However, Nadine Levick, research director of the emergency department and Maimonides Medical Center, says that the restraints being tested by NIOSH put passengers at greater risk and she would like to see restraints similar to those used in medical helicopters used in

ambulances. Levick would also like for EMS workers to be required to use helmets.

Levick has spent several years studying ways to protect EMS workers. During this time, Levick says, she has been pushing NIOSH to do field data research required to determine how many EMS workers are injured on the job and how many of these injuries are fatal. According to Levick, NIOSH has instead gone on to the next step of making recommendations for restraints in ambulances, which she calls dangerous.

During her presentation at the 17<sup>th</sup> World Congress on Safety and Health Work, held in Orlando, Fl, Sept. 18-22, Levick presented graphic pictures of what happens to EMS workers and the patients on board these ambulances after an accident. In one case, a patient being transported after a survivable accident was killed due to lack of restraints on the gurney. EMS workers have also been killed for lack of head gear protection. Currently, only firefighters are required to wear PPE, which includes helmets, respirators and protective clothing that covers the fire fighter's entire body. By contrast, EMS workers are usually only equipped with gloves.

Levick would also like to see the design of the ambulance patient compartment changed to ensure that things, such as oxygen tanks, are not moving around while the ambulance is in use and that, in the case of an accident, padding and design help ensure survivability. About the ambulance design, Green also says that "overall seat

design, cabinet geometry, as well as strategic placement of energy absorbing padding, are improvements worth considering prior to the purchase of a new or modified ambulance."

Of his research, Green says, "NIOSH chose to test the restraints at both extremes of use: for an occupant standing next to the head of the patient and for an occupant seated fully against the seat back. It is a common engineering practice to test the operational extremes expected for the use of any device or system. This should not be construed as a recommendation by NIOSH that EMS workers stand in the back of a moving ambulance. Instead, it is in recognition that in today's ambulance, as currently configured, EMS workers do find the need to move from a seated position to care for patients. The test severity levels were chosen to correlate with the crash testing required by the National Highway Traffic Safety Administration for protection of passengers in motor vehicles. NIOSH testing of restraint systems was done to demonstrate the feasibility and potential safety improvement possible when using a mobile restraint."

Levick, however, disputes the assertion that EMS workers need to stand to perform their duties and points to the way a medical helicopter is designed, where the EMS worker does not stand but is strapped into their seats the whole time.

If the standard is approved it would be a strong first step to protecting EMS workers. Levick is currently writing a standard to submit to NIOSH.

## SENATE GOP MAY DEFER CONTROVERSIAL REFINERY ISSUES UNTIL CONFERENCE

A key Senate Republican is suggesting that lawmakers may have to wait until a possible congressional conference committee negotiates refinery legislation before deciding whether to pursue controversial proposals in a House GOP bill that are intended to boost refining capacity in the wake of the two recent hurricanes.

The suggestion by Senate Energy & Natural Resources Chairman Pete Domenici (R-NM) could foreshadow the emerging strategy to pass refinery legislation, as the House may approve as early as next week a plan sponsored by House energy committee Chairman Joe Barton (R-TX) that includes sweeping Clean Air Act (CAA) exemptions to help boost refinery capacity.

"I think that the refinery package is extremely difficult in the United States Senate," Domenici told *Inside EPA* Sept. 27. "Maybe we can get a bill out on something on refining, and then go to conference." When asked whether he thought a House-Senate conference committee would retain the controversial air act revisions, Domenici declined to comment.

Environmentalists and Democrats fear that many of the CAA amendments, which have long been sought by the refining industry, may be inserted in a final refinery bill that emerges from a House-Senate conference committee.

While Senate Republican aides are downplaying that strategy, environmentalists and other critics are worried because that appears to be the only way to enact far-

reaching reforms, since such changes to the CAA would almost certainly fail to pass out of the Senate Environment & Public Works Committee.

"There's concern about a conference committee strategy," John Walke, clean air director for the Natural Resources Defense Council, said at a Sept. 27 briefing with reporters. Environmentalists are concerned that there will be an effort "to purposefully keep gross attacks on the Clean Air Act out of the Senate legislation and have leadership include a deal during conference committee."

The critics of the House measures say they regard the Senate as the best chance to defeat major proposed changes to environmental requirements affecting refineries and other industries.

Some observers say Inhofe's bill could be used as a vehicle to push a number of stalled environmentalist-supported proposals to prompt a showdown with the House during any conference committee negotiations. Such proposals may include increased fuel efficiency mandates for motor vehicles, caps on greenhouse gas emissions, a renewable portfolio standard and anti price-gouging requirements for the oil industry.

But Capitol Hill and other sources say it is unclear how the Senate would react if the proposal reached a House-Senate conference committee, with the Senate having agreed to a number of industry-sought changes to environmental requirements as part of the recently enacted

energy law, while rejecting others.

Such developments could parallel a pattern that occurred during consideration of energy legislation this year, when Congress dropped several of the most controversial changes to environmental rules during conference proceedings, including a provision Barton authored relaxing ozone requirements and a liability waiver for contamination caused by the fuel additive methyl tertiary butyl ether.

Conference negotiators, however, ended up including a number of less-controversial items, including less-ambitious changes to the National Environmental Policy Act than the House had originally sought, an exemption for hydraulic fracturing from the Safe Drinking Water Act, relaxed stormwater requirements and streamlined permitting for liquefied natural gas terminals despite state objections.

Barton's bill, which was expected at press time to win approval by the House Energy & Commerce Committee Sept. 28, would significantly overhaul the CAA new source review (NSR) program that requires pollution controls when power plants modify their equipment. The legislation also would allow governors to request that the Department of Energy (DOE) coordinate the permit process for new refinery capacity and codifies a court decision restricting the application of NSR, as well as several controversial Bush administration regulatory changes to that program.

The bill also extends attainment deadlines for counties to meet ozone standards and says the Environmental Protection Agency can approve only six fuel blends, including two types of diesel fuels.

Barton said at the Sept. 28 committee markup the NSR language was the "primary request of the Bush administration for this particular bill." President Bush earlier this week cited NSR rules as a possible roadblock to new refinery construction. "The issue of new source review, for example, is one that we've reviewed and said that, for the sake of, in this case, the expeditious expansion — of refining capacity, we ought to look at those rules and regulations."

With respect to NSR, both industry and environmental experts say the legislation would enshrine into statute a controversial equipment replacement exemption now being litigated in the U.S. Court of Appeals for the District of Columbia Circuit, a more lenient rate-based approach for measuring emissions that would undercut future enforcement against the utility industry and an exemption from the program for pollution-control projects. While EPA has been developing a regulation to adopt the rate-based approach for electric utilities, the new legislation would extend the approach to all industries.

Barton told reporters Sept. 28 that he thinks the Senate

would be "very receptive to everything in this bill."

Barton says the measure needs to be passed expeditiously to address the nation's fuel crisis as a result of the hurricanes, and House Speaker Dennis Hastert (R-IL) reportedly is seeking a final congressional vote on post-hurricane energy legislation before Columbus Day.

But critics say the economics of the industry have contributed more to the lack of new refineries, which have not been built since the early 1970s.

In one early indication that the Senate may wait until conference to consider controversial refinery provisions, Senate environment committee Chairman James Inhofe (R-OK) unveiled a more moderate proposal than Barton's bill. Entitled the Gas Price Act, the bill is intended to boost refinery capacity but does not include explicit changes to environmental rules.

Inhofe's legislation would give EPA, rather than DOE, a central role in decisions to expedite permits for refineries. The bill sets a 90-day deadline for the agency to act on permits to expand existing capacity and 270 days for new refineries. Inhofe aides say the plan permits those deadlines to be extended and allows the "severability" of troublesome permits from the regulatory review process.

Both bills also include a number of provisions aimed at locating refineries at former military bases.

Andrew Wheeler, majority staff director for the environment committee, said in an interview after a Sept. 27 briefing that Inhofe did not seek to exempt NSR as Barton does because it is "a bit of a hot-button issue" that could affect the senator's attempts to win bipartisan support.

Wheeler told *Inside EPA* that Inhofe has not developed a strategy for combining his bill with Barton's in any conference. "I don't know if Barton's bill would even be" combined with the Inhofe bill, Wheeler said.

Sen. Lisa Murkowski (R-AK), a member of the energy committee, suggested the Senate may need to soften its approach in order to get to conference. Murkowski said in a Sept. 27 interview that the Senate is unlikely to pass a bill boosting refining capacity in the wake of the two recent hurricanes unless it also contains provisions addressing fuel efficiency and other conservation measures.

Murkowski says the refinery proposal pushed by Barton appears to focus exclusively on energy production and "it is more difficult on the Senate side" to move energy-related proposals without a more balanced approach. Murkowski cited fuel efficiency standards and a renewable portfolio standards — two items debated during development of energy legislation earlier this year — as proposals that could resurface during debate over refinery legislation. "We must be judicious in what we move forward with," she said. — *Inside EPA*

## **First survey of its kind finds**

# **HISPANIC POULTRY WORKERS INJURIES ARE GREATER THAN OSHA REPORTS**

A survey done by researchers at Wake-Forest University School of Medicine in North Carolina found Hispanic poultry workers under report musculoskeletal injuries to OSHA, and urges poultry plants to implement OSHA's ergonomic guidelines for poultry processors. Researchers surveyed 200 workers in six western North Carolina counties and found that 60 percent said they had work-related problems.

The symptoms most reported include headache; injuries or pain in the legs, feet, arms, back, neck and hands; sore throat; eye pain; and irritation. Injuries and illnesses on average exceed rates reported by plants to OSHA.

Sara Quandt, a Wake-Forest researcher who led the study, says the reason for the difference in the number of injuries reported to OSHA and the findings of the survey are due to the way OSHA gathers data. Normally, an employee would report an injury to the employer and the employer would certify that it was due to a job-related injury and then report it to OSHA.

The survey was done face to face with workers from three companies. The survey asked workers about symptoms they had experienced in the previous month. It would have been preferable to collect the data with the help of employers, Quandt says, but they refused. At first, according to Quandt, the companies collaborated with researchers

“to a certain point but then sent a letter saying they would not cooperate.”

The United Food and Commercial Workers (UFCW) is not surprised by the results, a UFCW source says. The union believes the problem lies in the way OSHA collects information and the lack of a standard. Currently, there is only a guideline that companies are not required to implement. OSHA depends on voluntary reporting by employees and where you have immigrant employees this rarely happens, the union source says.

The differences are usually due to cultural reasons. In some companies, although not necessarily in the ones where these workers come from, there may be pressure on employees not to report injuries. Some immigrants may be illegal and fear being deported. At times there may be a lack of communication between the immigrant worker and an English-speaking supervisor and a lack of knowledge about workers' rights.

The survey recommends poultry processing plants implement OSHA's 2004 *Guidelines for Poultry Processing Ergonomics for the Prevention of Musculoskeletal Disorders* in order to prevent further injuries and illness to poultry workers.

UFCW wants OSHA to implement a formal standard instead of relying on employers to voluntarily implement the agency's guidelines.

### **SUBSCRIPTIONS:**

**703-416-8500 or  
800-424-9068  
custsvc@iwpnews.com**

### **NEWS OFFICE:**

**703-416-8574  
Fax: 703-416-8543  
insideosha@iwpnews.com**

Health Group Publisher: Donna Haseley (donna.haseley@iwpnews.com)  
Associate Editor: Lourdes Fernandez (lourdes.fernandez@iwpnews.com)  
Brad Pearson (brad.pearson@iwpnews.com)  
Production Manager: Lori Nicholson  
Production Specialists: Daniel Arrieta, Kudzai Nyagura

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