

STATEMENT FOR THE RECORDY

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For the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

Committee on Oversight and Government Reform

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My name is Tammy Miser and I founded the not-for-profit organization United Support and Memorial for Workplace Fatalities (USMWF). USMWF offers support, guidance, resources, and advocacy to empower family members who have lost a loved one from work-related injuries or illnesses. My brother Shawn Boone, 33, was killed at work from an aluminum dust explosion that was completely preventable. USMWF works with other organizations, government agencies, and businesses as a catalyst for positive change to ensure safe and healthy working conditions for all.

I understand the Committee on Oversight and Government is examining the impact of regulations on businesses. My husband and I used to run a small business. We understand about complying with regulations, but we recognize that regulations serve a purpose, especially those that are designed to protect workers' lives. I urge the Committee to not just look at the costs of OSHA regulations, but also the benefits to workers and their families. I ask the Committee to set aside the rhetoric about job-killing regulations and do a reality check. There have only been two new major OSHA regulations in the last 10 years: crane and derricks, and hexavalent chromium. Both only affect a fraction of U.S. businesses.

As I talked to families from around the country who have lost loved ones from workplace hazards, we don't see an avalanche of new OSHA regulations. It's more like a drought. I shook my head in dismay when I read several letters sent to Congressman Issa complaining about a possible OSHA rule to prevent explosions and fires from combustible dust. OSHA

hasn't even proposed a rule yet, and at its current pace, there likely won't be one on the books for 10 years.

My brother Shawn Boone worked at the Hayes Lemmerz plant in Huntington, Indiana where they made aluminum wheels. The plant had a history of fires, but workers were told not to call the fire department. My brother and a couple coworkers went in to relight a chip melt furnace. They decided to stick around a few minutes to make sure everything was ok and then went back to gather tools. Shawn's back was toward the furnace when the first explosion occurred. Someone said that Shawn got up and started walking toward the doors when there was a second and more intense blast. The heat from that blast was hot enough to melt copper piping. Shawn did not die instantly. He laid on floor smoldering while the aluminum dust continued to burn through his flesh and muscle tissue. The breaths that he took burned his internal organs and the blast took his eyesight. Shawn was still conscious and asking for help when the ambulance took him.

Hayes Lemmerz never bothered to call any of my family members to let us know that there was an explosion, or that Shawn was injured. The only call we received was from a friend of my husband, Mark, who told them that Shawn was in route to a Ft. Wayne burn unit. (Mark also worked at the plant.) When Mark asked the hospital staff where Shawn was, we found that no one even bothered to identify him. We were told that there was a "white, unidentified male" admitted to the unit. When Mark tried to describe Shawn, the nurse stopped him to say that there was an unidentified male with no body hair and no physical markings to identify. So my Shawn was ultimately identified only by his body weight and type.

We drove five hours to Indiana wondering if it really was Shawn, hoping and praying that it wasn't. This still brings about guilt because I would not wish this feeling on anyone. We arrived only to be told that Shawn was being kept alive for us. The onsite pastor stopped us and told us to prepare ourselves, adding he had not seen anything like this since the war. The doctors refused to treat Shawn, saying even if they took his limbs, his internal organs were burned beyond repair. This was apparent by the black sludge they were pumping from his body.

I went into the burn unit to see my brother. Maybe someone who didn't know Shawn wouldn't recognize him, but he was still my brother. You can't spend a lifetime with someone and not know who they are. Shawn's face had been cleaned up and it was very swollen and splitting, but he was still my Bub. My family immediately started talking about taking Shawn off of life support. If we did all agree, I would be ultimately giving up on Shawn. I would have taken his last breath, even if there was no hope and we weren't to blame. I still had to make that decision. To watch them stop the machines and watch my little brother die before my eyes.

But we did take him off and we did stay to see his last breath. The two things I remember most are Shawn's last words, "I'm in a world of hurt." And his last breath.

This has been the hardest thing my family has had to deal with until 2007. My youngest brother drove half way across the United States with a few photo's and phone records of the night Shawn was killed that he had tucked into his bible. Tommy then proceeded to shoot himself in the head. I can't say that Shawn's death alone caused my brother to take his own life, but I know for a fact he couldn't deal with it and that was what was on his mind.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) said the explosion that killed Shawn probably originated in a dust collector that was not adequately vented or cleaned. The dust collector was also too close to the aluminum scrap processing area. Hayes Lemmerz management allowed dust to accumulate on overhead beams and structures which caused a second, more massive explosion. The CSB concluded that had the company adhered to the National Fire Protection Association's standard for combustible metal dust, the explosion would have been minimized or prevented altogether.¹

¹ U.S. Chemical Safety and Hazard Investigation Board. Investigation Report Aluminum Dust Explosion, Hayes Lemmerz International, Huntington, Indiana, October 29, 2003. Report No. 2004-04-I-IN, September 2005.

During my own struggle for information about the OSHA investigative process, it became clear that family member victims of workplace fatalities needed a place to get information and support. That's how USMWF was formed. We are a virtual community of individuals with the shared experience of losing a loved one from a work-related injury or disease. Thousands of family members across the U.S. suffer profoundly because of our nation's inadequate regulatory system and its failure to protect workers' fundamental right to a safe and healthy worksite.

Steven Lillicrap was only 21 years old in February 2009 when he was fatally pulled into the cables of a 100-ton crane. OSHA had been working to revise its outdated crane safety standard for 10 years, but the new rule came too late for Steven. It was finally issued last July and is expected to prevent 22 deaths, 175 injuries, and millions of dollars in property damage per year. The benefits far outweigh the \$154 million cost. When you look at the few standards that OSHA has issued over its 40 year history, the benefits always exceed the costs. And those are only the benefits you can quantify.

The CSB warned OSHA in 2006 about combustible dust hazards. Had the National Fire Protection Association (NFPA) standard been implemented, as a mandatory regulation instead of a voluntary consensus code, my brother Shawn and many others would still be here today. In 2008 the Imperial Sugar refinery explosion killed 14 workers and 36 were burned. The means to prevent these deadly explosions is well known. And preventing dust explosions has been done before, such as in grain handling facilities. Prior to OSHA's 1978 safety standard, there were about 20 explosions per year in grain elevators. Today, there are only about six. Yet some companies choose to gamble with workers' lives because there is no OSHA standard and failing to act gives them a competitive advantage over more responsible companies.

When preventable disasters strike in the workplace, they not only take a huge toll on the injured and their families, but workers can lose their jobs and the community suffers.

Some disasters occur because employers fail to comply with safety regulations.

After the 2009 explosion at the Sunoco refinery in Pennsylvania, the company decided not to rebuild its ethylene unit. Fifty workers were laid off.² Had there been better compliance with OSHA's process safety management requirements, it would never have happened.

Some disasters occur because of inadequate regulations. In 2009, Con Agra's Slim Jim plant exploded, 3 workers were killed and 71 were injured. A contractor was using a procedure that purged natural gas into the indoor work environment, instead of purging the gas out of doors and using an explosivity detection meter. This disaster could have been prevented if OSHA had regulations requiring natural gas to be purged out of doors. The CSB found that OSHA doesn't have specific rules for natural gas purging, nor are there voluntary codes.³ Because there is no OSHA regulation, there have been too many explosions of this nature in commercial and industrial facilities.

The lack of regulations not only killed 3 workers at the ConAgra plant, it also killed jobs. Before the disaster 700 people worked at the factory. Now the factory is closing. Rather than rebuild the damaged portion of the plant, the company is consolidating production elsewhere.⁴

The T-2 gasoline additive factory near Jacksonville, Florida had a runaway reaction in December 2007 involving highly reactive sodium metal. The explosion killed 4 and injured 32, including 28 at surrounding businesses. Pieces of the building were found a mile away. An investigation by the CSB found that the reactions could have been prevented if OSHA's process safety management standard covered reactive hazards. Sadly, the owner of the T-2 factory was among those killed by the explosion. Three adjacent businesses had to relocate from the

² Logue T. Sunoco to lay off 40-50, close ethylene complex. *Daily (Delaware) Times*. July 7, 2009.

³ U.S. Chemical Safety and Hazard Investigation Board. Urgent Recommendations on Gas Purging. August 2010.

⁴ Nagem S, Wolf AM. Slim Jim plant's demise to put 450 out of work. *NewsObserver.com*. March 4, 2010.

industrial area, and a fourth business—a trucking company--was put out of business due to the damage.

There's no price tag that can be put on seeing your husband walk your daughter down her wedding aisle, or seeing your son graduate from college, or holding a grandchild. The economic disruption to a family who loses a breadwinner is never offset by workers' compensation benefits. Workplace safety regulations and even-handed enforcement help level the playing field for employers who do the right thing versus those who take the low road.

A one-sided look at the costs of OSHA rules, but excluding the benefits, does a disservice to workers, responsible employers, families and communities.