

April 28, 2011

The Honorable Hilda Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Dear Secretary Solis,

We appreciate the opportunity to meet with you in Las Vegas, Nevada on International Worker Memorial Day. Our organization, United Support and Memorial for Workplace Fatalities (USMWF), offers support, guidance, resources, and advocacy to empower family members who have lost a loved one from work-related injuries or illnesses. We are a non-profit group supported largely by volunteers. We seek to work with other organizations and government agencies to promote rights for family-member victims of occupational hazards and ensure safe and healthy working conditions for all.

We realize your time is limited and we may not have an opportunity to delve deeply into the issues of greatest concern to us. For that reason, we outline below the topics we touched on in our meeting with you.

1. OSHA announced its plan on Worker Memorial Day 2010 to revise its policy on communicating with family member victims of workplace fatalities. We are eager to see an improved policy put in place. We appreciate the opportunities given to us by OSHA's regional and headquarter staff to provide our ideas on this revised policy and we hope our recommendations are receiving serious consideration. They include providing the victim's family a copy of citations or a notice that citation(s) will be issued before or at the same time as the employer. (The Mine Safety and Health Administration and some OSHA State Plan States (e.g., Indiana) have policies to share citation information with family-member victims before the employer.) We disagree with OSHA's policy of waiting until it receives confirmation that the employer has received the citations before it shares this information with the family.

2. OSHA announced last fall the results of comprehensive reviews of each of the OSHA State Plan State programs. A significant aspect of those reviews included the States' performance conducting fatality investigations and compliance with their policies for communicating with family members. We welcome those types of comprehensive reviews and believe they are important to ensure continuous improvement by the agencies. We also recognize the vital role that "Complaints about State Program Administration" (CASPA) have played in forcing reforms in certain OSHA State Plan programs. Several family members who are part of the USMWF community have used CASPAs to shine a light on inferior (or worse) performance in the OSHA State Plans. There is, however, no comparable mechanism for federal OSHA.

In December 2010, we sent a letter to Assistant Secretary David Michaels expressing our concern about an OSHA area office's investigation of an October 2008 incident that killed two workers in New Jersey: Richard Brady, 35 and Steven Sprague, 28. We respectfully requested an independent review of the office's performance and suggested that the agency appoint individuals, such as from a different OSHA office or an OSHA State Plan program to review the facts of the case, interview

appropriate individuals including OSHA staff, and determine whether citations and penalties should have been proposed, had the case been handled properly. We know the six month statute of limitations has long passed and issuing citations against responsible parties is no longer an option. We believe, however, important lessons could be learned from this case and recommendations made to improve federal OSHA's performance.

We hope you will have a discussion with OSHA's top staff to determine how a system of independent review of fatality cases could be established. If you believe the appropriate mechanism is the Department's Office of Inspector General, we would appreciate hearing this from you. We have not yet received a response from Assistant Secretary David Michaels to our December letter.

3. OSHA and MSHA have policies to block family members from obtaining a copy of the fatality investigation file until the case is completely closed. If the employer contests the citations or penalties, this means a family may have to wait several years before being able to obtain a copy of the file. We believe this is a very strict interpretation of the FOIA and unnecessarily withholds information from the victim's family. We find it difficult to believe that every piece of paper in a case file is vital to the Department's efforts to defend its citations and/or penalties. OSHA has the discretion to withhold key pieces of evidence in the file, but instead, it has a blanket policy to withhold everything. We do not believe this is consistent with President Obama's FOIA declaration:

“in the face of doubt openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.” (January 21, 2009)

We understand also when a company contests a case and litigation with the Department of Labor results, the employer and/or his legal counsel will often receive the entire OSHA case file to prepare their defense. If this is true, we believe the family of the victim deserves the same right. If our understanding is incorrect, we would like you to inform us of our misunderstanding.

4. OSHA began posting in mid-2009 information on its website about fatality incidents. It was a welcome addition to the site and helps to make real the terrible toll of work-related deaths. OSHA's site would be substantially improved if the deceased individual's name and age were provided. We've asked OSHA in writing (September 2010) and in conversations to follow MSHA's example and provide information about the victims so they are no longer just a nameless “worker.”

5. We know the issue of protecting workers from deaths and burns from combustible dust is important to you. We were very pleased in May 2008 when you voted in support of legislation (H.R. 5522) which would have required OSHA to issue an interim final rule on combustible dust within 90 days, and a final standard within 18 months. On Worker Memorial Day 2009 you said OSHA will begin the rulemaking on combustible dust standard and noted a standard was “long overdue.”

We are concerned that OSHA does not have a sense of urgency about this rule. In the Department's 2010 fall regulatory agenda, OSHA indicated it would be convening a panel of small businesses in April 2011 to review a draft proposed rule on combustible dust. Now April has nearly come and gone, and this panel hasn't been convened. We hope you will look into this matter.

Again, we appreciate the opportunity to meet with you, share with you a little information about our loved ones, and asked for your assistance in helping to make the Department of Labor more responsive to family member victims of workplace fatalities.

Sincerely,