

U.S. CHEMICAL SAFETY
AND
HAZARD INVESTIGATION BOARD

BETHUNE WASTEWATER TREATMENT PLANT
EXPLOSION
PUBLIC HEARING

Thursday,
December 14, 2006

DAYTONA BEACH RESORT & CONFERENCE CENTER
Tides A Meeting Room
2700 North Atlantic Avenue
Daytona Beach, Florida

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Board Present:

Carolyn Merritt, Chairman and CEO
John Bresland
Gary Visscher
William Wark
William Wright
Chris Warner - General Counsel

Investigator's Panel

Robert Hall
Jordan Barab
Randy McClure
Jeffrey Wanko
Katherine Leskin

Expert Panel:

Mark Brodie
Edwin Granberry
Brian Berke

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I-N-D-E-X

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1 P R O C E E D I N G S

2 (8:05 a.m.)

3 CHAIRPERSON MERRITT: Good
4 morning. Welcome to this public hearing of
5 the U.S. Chemical Safety and Hazard
6 Investigation Board, the CSB.

7 I'm Carolyn Merritt, Chair and CEO
8 of the Chemical Safety Board. With me today
9 are our other Board members: Mr. John Bresland
10 to my right; Mr. Gary Visscher on the end; Mr.
11 William Wark in the middle and over here on my
12 left is Mr. William Wright. Also, with us
13 this morning is our General Counsel, Chris
14 Warner and CSB Staff members whose efforts
15 have made this meeting possible.

16 The purpose of today's meeting is
17 to hear key findings from the investigation
18 team regarding the fatal explosion that
19 occurred at the Bethune Point Wastewater Plant
20 on January 11, 2006. We will also hear
21 testimony from health and safety experts.

22 Before we begin though, I would

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1 like to point out some safety information.
2 Should the exit in the back be blocked, for
3 any reason these side exits also lead to the
4 outside in the event of an emergency. I would
5 also ask that if you have cell phones or
6 pagers that you take a moment to mute them so
7 that we are not disturbed, by ringing phones
8 and that includes all of our press people.
9 The exits here lead to the outside as well as
10 the one in the back.

11 I think that's all. Thank you.
12 Restrooms are on either end of this corridor.

13 On January 11, 2006, two municipal
14 workers died and another was seriously injured
15 while attempting to remove a steel roof over a
16 storage tank at the Bethune Wastewater Plant.

17 The plant was operated by the city of Daytona
18 Beach.

19 Highly flammable vapors coming
20 from the tank vent were ignited by a cutting
21 torch being used to remove the roof above.
22 The flames then entered into the storage tank

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1 causing an explosion. The explosion inside
2 the tank led to multiple piping failures and a
3 large fire that engulfed the tank and the
4 workers.

5 On behalf of the Board and the
6 CSB, I would like to express my and our
7 sincere condolences to the families and
8 friends of the victims and those injured.

9 There appears to be a gap in
10 workplace safety coverage for state municipal
11 workers in Florida. The communication of
12 hazards to workers is an important factor in
13 maintaining a safe environment and preventing
14 accidents such as this one that we are going
15 to be discussing today. Today's hearing will
16 allow the Board to publicly ask questions
17 regarding the investigative findings and
18 expert testimony. Information presented
19 during the testimony will be further
20 considered during the upcoming recommendations
21 portion of this investigation.

22 I would like to acknowledge the

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1 CSB team who has been working diligently to
2 investigate this tragic accident.

3 I would also like to thank you,
4 the audience, for expressing interest in this
5 issue that affects workers in your city and
6 throughout the State of Florida. If anyone in
7 the audience wishes to make a comment or speak
8 to the Board publicly after the panel have
9 given their testimony, please sign up at the
10 table in the check-in area and I will call
11 your names at the appropriate time. We
12 encourage you to speak. Please note though
13 that we will have to limit your comments to
14 five minutes to give time for those who would
15 like to speak.

16 I will now recognize any other
17 Board members for any opening statements that
18 they might have. Are there any Board members
19 who have any opening statements?

20 (No response.)

21 CHAIRPERSON MERRITT: Well, with
22 that then I would like to begin and thank you,

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1 the audience, for your attention and the
2 Board.

3 Before we continue this meeting, I
4 would also like to thank the City of Daytona
5 Beach for outstanding cooperation with our
6 federal investigation. I also want to let you
7 know that our thoughts during this time are
8 also with the family and the City on the loss
9 of Mayor Yvonne Scarlett-Golden who passed
10 away recently.

11 At this time, I would like to
12 introduce our investigation team. First, Mr.
13 Steve Salk is an investigation manager with
14 almost 30 years of chemical engineering
15 experience in the area of plant operations,
16 design, management, and accident
17 reconstruction. He also holds several
18 professional engineering licenses.

19 Mr. Robert Hall, who is our lead
20 investigator, is a supervisory investigator
21 for the CSB. Mr. Hall is a registered
22 professional engineer and lead investigator

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1 for the incident at the Bethune Wastewater
2 treatment Plant. He has more than 25 years of
3 experience in design, inspection, and
4 evaluation of hazardous systems. His
5 specialty is in mechanical integrity and
6 regulatory compliance programs.

7 Thirdly, is Mr. Jordan Barab, who
8 is a former special assistant to the Assistant
9 Secretary of Labor for OSHA and has directed
10 health and safety programs. He is serving as
11 the recommendation manager for this
12 investigation and has special knowledge of
13 health and safety policy issues related to
14 municipal employees.

15 I will now ask, Mr. Hall to
16 present the key findings of this
17 investigation. Mr. Hall.

18 MR. HALL: Thank you, Chairman,
19 Merritt, and distinguished Board members.

20 Today we will cover three areas.
21 First, the investigators will report on the
22 incident and the major findings to the

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1 investigation. Following the investigator's
2 report the panel of experts in the field of
3 public employee safety will make presentations
4 on OSHA coverage for public employees.
5 Lastly, we will provide an opportunity for
6 members of the public to comment on the
7 incident and public employee safety.

8 I have with me the team that
9 investigated the incident that occurred on
10 January 11, 2006 at the Bethune Wastewater
11 treatment Plant here in the City of Daytona
12 Beach. We have prepared this report for you
13 on the incident. We will begin our
14 investigator's report by providing an overview
15 of the incident and our investigation followed
16 by an animation of the incident. We will then
17 present our major findings and answer
18 questions for the Board.

19 The incident occurred on January
20 11, 2006 at about 11:15 in the morning. Three
21 city workers were removing a roof damaged by
22 hurricanes. The roof was installed over two

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1 chemical storage tanks. One was empty and one
2 contained methanol, a highly flammable liquid.

3 Methanol is used as part of the biological
4 treatment process at the plant.

5 The workers using an oxyacetylene
6 torch accidentally ignited vapors coming from
7 the methanol tank. This resulted in an
8 explosion inside the tank. A large methanol
9 fire ensued leaving one worker dead, one
10 fatally injured, and a third critically
11 injured.

12 This is an aerial view of the
13 Bethune Point Treatment Plant and the accident
14 site. Here on the right is methanol tank, it
15 is painted red. Here is the roof that was
16 damaged, the man lift, and the crane that the
17 workers were using. We will talk more about
18 these later in our presentation.

19 Our investigation began on January
20 13, 2006, two days following the incident. As
21 part of the investigation we thoroughly photo
22 documented the incident site. We conducted

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1 interviews with the Bethune Point Treatment
2 Plant and other city employees. We also
3 interviewed employees of Camp, Dresser and
4 McKee, the engineering firm hired by the City
5 that designed the methanol system. We
6 collected and examined physical evidence. We
7 reviewed documentation, researched similar
8 incidents in Florida, and we analyzed the
9 regulations with respect to employee safety in
10 Florida.

11 In the course of the
12 investigation, we had the full cooperation of
13 the City including the fire, police
14 departments, the utilities department, and the
15 support services department. We also
16 appreciated the assistance and cooperation of
17 the State Fire Marshall's Office.

18 From the evidence that we
19 collected, we prepared an animation of what
20 most likely happened on that tragic day last
21 January. This animation is about two minutes
22 in length. The explosion and fire began very

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1 quickly. Most of the events depicted in this
2 animation occurred in just a few seconds. We
3 have slowed them down so you can see what
4 happened.

5 Here is the animation.

6 (Presentation shown)

7 NARRATOR: On January 11, 2006
8 three workers were removing a hurricane
9 damaged steel roof at the Bethune Point
10 Wastewater Treatment Plant in Daytona Beach,
11 Florida. The roof covered two chemical
12 storage tanks: one empty, the other containing
13 about 3,000 gallons of methanol, a highly
14 flammable liquid.

15 Two of the workers were up in a
16 man-lift basket where they were using an
17 oxyacetylene torch to cut the roof into
18 sections. The third worker was operating a
19 crane to lower the roof sections to the
20 ground.

21 Beneath them methanol vapor, which
22 is invisible but colored gray here for

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1 illustration, is venting from the top of the
2 tank as the morning sun warmed the liquid
3 inside. As designed, the tank vented the
4 methanol vapor through a flame arrester. A
5 simple device intended to prevent the contents
6 of the tank from being ignited by a fire
7 outside.

8 As the workers cut the roof,
9 sparks from the torch showered down on to the
10 tank. The sparks ignited the methanol vapor
11 creating a fireball under the two workers in
12 the open man-lift basket. The fire flashed
13 into the flame arrester, but it was badly
14 corroded and it failed to function. Flames
15 spread instantly into the tank igniting the
16 methanol inside.

17 The force of the explosion from
18 the methanol air mixture inside the tank was
19 so great it rounded out the tank bottom and
20 lifted the tank walls. The blast ejected the
21 level switch and flame arrester from the tank.

22 Plastic piping connected to the tank

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1 fractured as the tank lifted and deformed.
2 Methanol under pressure from the explosion
3 spewed from the broken pipes and ignited
4 spreading the fire.

5 Methanol from broken pipes sprayed
6 the crane cab, caught fire and burned the
7 worker inside. He died from his injuries the
8 following day. Burning methanol vapors flowed
9 out of the open vent on the top of the tank.
10 In the man-lift basket both workers were now
11 burning. One jumped or fell from the basket
12 and died. The other worker escaped by
13 climbing on to the roof, jumping to a lower
14 roof, and, then, to the ground. He was
15 gravely injured but survived after many months
16 in the hospital.

17 MR. HALL: Our major findings from
18 this investigation address issues in the
19 following areas: A flame arrester installed
20 on the methanol storage tank that severely
21 corroded over time and did not work the day of
22 the incident; a methanol system constructed of

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1 plastic piping, a weak and brittle material
2 compared to steel; an ineffective safety
3 program at the Bethune Point Wastewater
4 Treatment Plant; other chemical incidents that
5 have occurred at public facilities in Florida;
6 and a lack of public employee safety coverage
7 in Florida.

8 I will begin with our findings on
9 the flame arrester. This is the flame
10 arrester that was on the methanol storage
11 tank, at the Bethune Point Wastewater
12 Treatment Plant, and here is where it was
13 installed on the end of this vent pipe. After
14 the accident, it was found on the concrete
15 foundation next to the tank.

16 A flame arrester is a safety
17 device typically installed on flammable liquid
18 storage tanks to prevent ignition inside the
19 tank from an external fire. This device works
20 by channeling gas through narrow gaps between
21 metal plates. As a flame moves through the
22 gaps, the plates absorb heat, and cool a flame

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1 and extinguish it. The size of these gaps and
2 the cleanliness of the plates are critical to
3 the performance of this device. If the gaps
4 are too wide or the plates are dirty or
5 corroded, they may not absorb enough energy to
6 extinguish the flame. The manufacturer of
7 this device recommends regular cleaning and
8 inspection to maintain this critical element.

9 This is a photograph of the
10 exterior of the flame arrester plates. These
11 are the outside edges of the plates here. You
12 can clearly see the dirt and corrosion buildup
13 on these plates. Here are two photographs of
14 the interior of the flame arrester showing the
15 condition of the plates. Here, you can see
16 how the plates are corroded. We measured the
17 plates and found that nearly a half inch of
18 the inside edge of the plate was corroded
19 away. And here, we found portions of the
20 plates actually missing, leaving holes where a
21 flame could pass through.

22 The investigation found that the

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1 flame arrester was made of aluminum. Several
2 published sources indicate methanol is
3 corrosive to aluminum. Additionally we found
4 that there were no cleaning or inspection
5 requirements for the flame arrester and the
6 equipment instructions provided to the city
7 when the methanol system was installed. The
8 city workers at Bethune Point were completely
9 unaware of any need to clean or inspect this
10 device. Not surprisingly, we also found that
11 the city had not cleaned the device since it
12 was installed in 1993. Had this flame
13 arrester been cleaned, and maintained in good
14 working order, the explosion in the tank would
15 not have occurred.

16 I would now like to talk about the
17 plastic piping. The piping and valves in the
18 methanol system at Bethune Point were made of
19 polyvinyl chloride, a plastic material.
20 Compared to steel, polyvinyl chloride is a
21 weak and brittle material. As you saw on the
22 animation, when the explosion occurred inside

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1 the methanol tank, the plastic piping broke
2 spraying the crane with methanol and the flame
3 arrester blew off the end of the plastic vent
4 pipe under the man-lift basket.

5 There is an overhead photograph
6 showing the methanol tank in the upper right
7 corner and the crane down here in the lower
8 left. Here are the one-inch pipes where the
9 level switch had been attached with plastic
10 pipe. Here's the level switch that was found
11 several feet away. When the plastic pipe
12 broke from the explosion methanol sprayed out
13 of these pipes on to the crane cab here and
14 this is where the worker was when the methanol
15 sprayed on the crane.

16 This is a photograph showing the
17 tank and the vent pipe under the man-lift
18 basket. The vent pipe is here. When the
19 explosion occurred the flame arrester that had
20 been on top of this vent pipe was blown off.
21 Burning methanol vapors from the tank likely
22 vented from this pipe directly into the open

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1 man-lift basket where the two workers were.

2 Camp, Dresser and McKee, the
3 engineering firm hired by the City who
4 designed the methanol system, specified
5 plastic piping and valves for the aboveground
6 portions of the system. National Fire
7 Protection Association Code NFPA 30, known as
8 the Flammable and Combustible Liquids Code is
9 a widely used code for flammable liquid
10 systems. This code requires valves installed
11 on tanks, as well as their connections to the
12 tanks, be made of steel. The methanol system
13 designed by Camp, Dresser, and McKee, did not
14 comply with this standard.

15 Additionally, OSHA standard
16 1910.106, the Flammable and Combustible
17 Liquids Standard, allows plastic pipe in
18 aboveground flammable liquid systems but only
19 when necessary. In the investigation, we
20 observed that the methanol tank was made of
21 steel, that steel pipe is commonly used in
22 flammable liquid systems, and that published

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1 data indicates methanol is compatible with
2 steel. From this we concluded no necessity to
3 use plastic pipe in this case existed.

4 Despite the OSHA and NFPA
5 requirements, Camp, Dresser, and McKee
6 specified and the constructor installed
7 plastic pipe and valves in the methanol
8 system. Had the piping and valves been made
9 of steel, the worker in the crane likely would
10 not have been fatally injured, and the
11 injuries to the worker in the man-lift basket
12 may have been less severe.

13 I would now like to talk about the
14 Bethune Point safety programs. The City of
15 Daytona Beach has a Right to Know, or Hazard
16 Communication Training Program. The program
17 was based on a Florida Right to Know law that
18 was repealed by the State Legislature in 2000.

19 We will talk more about that later in our
20 presentation.

21 The investigators reviewed the
22 City program and found that the training at

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1 Bethune Point was conducted only seven times
2 in the twelve years preceding the incident and
3 not since 2002. The investigators also found
4 no evidence that would indicate that the
5 Bethune Point workers were trained on the
6 flammable and explosive hazards of methanol.
7 The investigators also found a steady decline
8 in the number of safety training sessions
9 offered to the Bethune Point plant workers.

10 It should be noted on this graph, as we have
11 shown here, training sessions in the year --
12 It should be noted that each of these training
13 sessions was likely an hour or less in length.

14 Before 2000 there was an average of five
15 training sessions a year and since 2000 the
16 year the State also repealed the public safety
17 law, there was a steady decline in the number
18 of training sessions offered until 2004 and
19 2005 where there was just one training session
20 in each of those years. Just one hour of
21 training -- safety training -- for an entire
22 year.

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1 Additionally, the investigators
2 found that the City eliminated its only safety
3 position in 2004, further illustrating the
4 decreasing importance of worker safety
5 programs at the City.

6 Hot work is a common term used to
7 describe activities such as welding, cutting
8 and grinding. These are all processes that
9 produce sparks or a flame that could ignite
10 flammable materials and cause fires. Hot work
11 permit programs typically require a view of
12 the work area to identify and eliminate
13 possible fire hazards. The investigators
14 found that the Bethune Point Plant had no
15 program, written or otherwise, to control hot
16 work. In contrast, OSHA requires hazard
17 communication training on chemicals that
18 workers may be exposed to in a workplace.
19 OSHA also requires a hot work program to
20 prevent fires and explosions in a workplace.
21 Had the City adopted and followed the OSHA
22 standards, the workers likely would have been

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1 trained on the hazards of methanol, and
2 systematically checked for fire hazards where
3 the torch was being used and this incident may
4 never have occurred.

5 At this point, I would like to
6 introduce Jordan Barab our recommendation
7 manager and one of the investigators on this
8 case. He will talk about public employee
9 safety.

10 MR. BARAB: Thank you, Mr. Hall.

11 As was evident from Mr. Hall's
12 presentation, public employees in Daytona
13 Beach do many of the same dangerous jobs as
14 private sector workers, and are exposed to
15 many of the same hazardous chemicals, heavy
16 machinery, and other hazards faced by private
17 sector workers.

18 Daytona Beach is not the only
19 municipality in Florida to have had a chemical
20 incident. The investigators conducted a
21 survey of publicly available records
22 addressing just chemically related incidents

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1 among public employees in Florida. The
2 investigators identified 34 serious chemical
3 incidents at Florida public facilities over
4 the past five years including the incident
5 that we are discussing today. These incidents
6 caused two fatalities, ten injuries, many of
7 which were serious, 23 medical evaluations,
8 and 15 community or facility evacuations.

9 Because this is only publicly
10 accessible data, mostly collected through
11 press accounts it is likely an underestimate
12 of the true extent of the problem.

13 Before moving on it's important to
14 understand the national health and safety
15 environment in which public employees work.
16 The Occupational Safety and Health Act of 1970
17 does not cover public employees. The law
18 does, however, provide opportunities for
19 individual states to cover their public
20 employees and to receive federal matching
21 funds to support the program. Twenty-four
22 states, colored here in pink, provide what's

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1 known as federally approved coverage of public
2 employees and 26 states, colored here in
3 purple, don=t.

4 These federally approved programs
5 receive federally matching funds but the law
6 stipulates that the staffing, enforcement and
7 standards in these federally approved programs
8 must be at least as effective as Federal OSHA.

9 Of the remaining 26 states that do not have
10 federally approved OSHA programs, several have
11 programs that covers some or all public
12 employees but the funding, staffing, and
13 resources of these programs vary widely.

14 Florida was one of the states that
15 had a non-federally approved public employee
16 OSHA program and a right-to-know law until
17 2000 when the programs were eliminated by the
18 state legislature. To address the situation
19 where public employees were suddenly left with
20 no workplace safety oversight, the Governor
21 issued an executive order in September 2000.
22 The executive order directed certain state

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1 agencies to voluntarily comply with a limited
2 set of OSHA standards, not including
3 construction standards.

4 Cities and counties, on the other
5 hand, are not subject to governors' executive
6 orders. The governor's executive order,
7 therefore, only requested that cities and
8 counties review existing policies, practices,
9 and procedures, and implement any made
10 necessary by the repeal of the state public
11 employee health and safety program.
12 Incidentally, Daytona Beach officials as well
13 as other city and county officials in Florida
14 have said they do not recall ever seeing the
15 Governor's executive order.

16 It's important here to emphasize
17 that when we speak of OSHA coverage we are not
18 just talking about employee and employer
19 compliance with specific OSHA standards, such
20 as hot work mentioned before. OSHA coverage
21 encompasses a number of other provisions
22 including -- if you look at the first column

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1 of this chart here -- it also includes the
2 ability of workers to request inspections by
3 an outside authority and to participate in
4 those inspections. This includes individual
5 investigations, independent investigations of
6 serious accidents and fatalities. It includes
7 enforcement of the law, training that's
8 required by specific standards such as OSHA's
9 confined space, or emergency response
10 standards, as well as OSHA's hazardous
11 communication training about chemical hazards.
12 It includes protecting workers against
13 retaliation by management for exercising their
14 health and safety rights. OSHA coverage also
15 includes the ability of workers to access
16 medical and exposure records, as well as
17 general injury and illness statistics about
18 their work sites.

19 Moving to the second column headed
20 by State, you will note that Florida State
21 employers are now required to voluntarily
22 comply with OSHA standards and to provide

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1 training. But there are no inspection,
2 enforcement, or protections against
3 retaliation or access to health and safety
4 records.

5 For cities and counties, here in
6 the third column, even standards and training
7 are optional.

8 I also want to note that the State
9 of Florida through the University of South
10 Florida has an OSHA consultation program that
11 provides health and safety training and
12 assistance to private sector and small
13 business employers. The program is partially
14 funded by federal government funds, but
15 because of the federal funding the program is
16 not allowed to offer any consultation services
17 to Florida's public employers.

18 This concludes my presentation
19 about the state of public employee health and
20 safety protections in the State of Florida. I
21 will now take questions from the Board.

22 CHAIRPERSON MERRITT: Thank you,

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1 Mr. Hall and Mr. Barab. At this time, I would
2 like to open the floor for the Board members.

3 Are there any Board member questions?

4 MR. VISSCHER: Madam Chair?

5 CHAIRPERSON MERRITT: Yes, sir.

6 Mr. Visscher, Thank you.

7 MR. VISSCHER: If no one else
8 would like to go first.

9 CHAIRPERSON MERRITT: Go right
10 ahead.

11 MR. VISSCHER: Okay. Thanks.

12 Mr. Hall, I'm curious, what would
13 have been good safety practices, had there
14 been a safety program in this case? Can you
15 explain how the work would have proceeded if
16 there were practices and procedures in place?

17 MR. HALL: Well, there are two
18 safety practices that come to mind that would
19 be very important. First, is the hazard
20 communication. As I indicated they did some
21 hazard communication at the city but it was in
22 effective in the way that it was done and that

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1 they randomly chose chemicals to review and in
2 each of those sessions they typically reviewed
3 only one chemical. They would go through the
4 sheet. The program itself did not instill the
5 workers with the sense of Awhen planning a job
6 I should go look at the information on the
7 chemicals in the vicinity where I am working.@"

8 So that didn=t occur and a good hazard
9 communication program would instill the
10 workers with the need to go look at that
11 material and review that material before doing
12 work in that area.

13 The second was the hot work, which
14 is an OSHA requirement as well. In the hot
15 work program workers have to do pre-job
16 planning where they go out, evaluate and look
17 at what are the flammable and combustible
18 hazards in the work area and then plan the
19 work to a manner that you don=t cause a fire
20 or an explosion. In this case had they looked
21 at that, recognized the flammable hazards, an
22 appropriate action may have been to drain the

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1 tank or to use a different method to cut the
2 roof that did not involve a torch, an open
3 flame or sparks.

4 MR. VISSCHER: Have you all looked
5 at to what extent similar flame arresters are
6 used elsewhere? You talked about that they
7 were subject to corrosion, and these were
8 obviously very corroded. Have we gotten any
9 basis for how widespread the use of this
10 particular flame arrester, particularly in
11 these kinds of systems is?

12 MR. HALL: We did do some looking
13 in to the flame arrester. We found a couple
14 of things. One, with the flame arrester it
15 wasn't just the corrosion and the methanol but
16 the fact that there was no requirement to
17 clean and inspect, which is a very important
18 requirement. Even though the flame arrester
19 could be corroded by methanol, had they had a
20 requirement to clean and inspect they would
21 have discovered that very soon into the life
22 of the flame arrester and presumably taken

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1 action to correct it or periodically replace
2 the Flame arrester.

3 We also found in reviewing a
4 similar plant that uses methanol, similar
5 wastewater treatment plant that they had
6 chosen a flame arrester made of stainless
7 steel not corroded by methanol. They also had
8 requirements to annually clean that flame
9 arrester.

10 MR. VISSCHER: Do we know whether
11 these flame arrester are -- Are there a lot of
12 them being used?

13 MR. HALL: They are widespread
14 throughout the country in flammable liquid
15 service tanks not, just at wastewater
16 treatment plants.

17 MR. VISSCHER: One clarification
18 question from Mr. Barab. On the chart that
19 showed the number of incidents in Florida in
20 five years, it lists two fatalities. Is that
21 in addition to this incident?

22 MR. BARAB: No. That includes

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1 this incident we are talking about today.

2 MR. VISSCHER: Oh, so these were
3 the two fatalities.

4 Thank you, Madam Chair.

5 CHAIRPERSON MERRITT: Other
6 questions? Mr. Wright, do you have questions?

7 MR. WRIGHT: Mr. Hall, I would
8 like to know what motivates a municipality to
9 have a safety program in general and secondly,
10 do we have any information in this particular
11 case as to why they eliminated that program?

12 MR. HALL: There are many things
13 that would motivate a company or a
14 municipality to have a safety program. When
15 you have workers and workers become injured
16 you lose a valuable resource and so protecting
17 the workers is protecting a resource. There
18 are also costs involved with injuries that are
19 prevented by having a safety program. So,
20 it's a prevention program.

21 The City program, basically, was
22 not a very comprehensive program and we could

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1 not point to any one reason for why it was
2 declining but there just seemed to be a lack
3 of interest in pursuing safety at the city.

4 MR. WRIGHT: So they lost their
5 motivation for some particular reason or just
6 --

7 MR. HALL: Well, yes. I think
8 what we have here I think in this country in
9 general and particularly with public employers
10 where they are not covered by OSHA, where you
11 don=t have a -- very often where you don=t
12 have a law covering some of these issues, it
13 becomes more or less optional to the extent --
14 not that it's optional whether or not to
15 injure public employees, but cities
16 particularly are rather restricted in terms of
17 the funds they have to spend and they need to
18 make some hard choices. Where there is no
19 guidance, no strong guidance the choices can
20 go either way. They can choose to invest a
21 lot in health and safety or they can choose to
22 invest in other city needs.

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1 I think actually some of your
2 questions may be answered better by some of
3 the panelists we have coming up afterwards
4 that are going to talk about some of the
5 situations here in Florida and some of the
6 things that motivate, particularly municipal
7 and public health and safety programs. But,
8 that is an excellent question. In fact, that
9 goes to the core of what we are discussing
10 today.

11 MR. WRIGHT: Thank you.

12 Thank you, Madam Chair.

13 CHAIRPERSON MERRITT: Mr. Wark.

14 MR. WARK: Yes. I would just like
15 to up a little bit the previous questions. In
16 particular, we are the U.S. Chemical Safety
17 Board and I would like to know what lessons
18 learned that we can apply nationally as a
19 result of this incident?

20 MR. HALL: There are a number of
21 lessons that have national implication. The
22 first is that flame arresters and safety

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1 devices need to be cleaned, inspected and
2 maintained so that they maintain their
3 functionality. That's a very important lesson
4 for any facility that has a flame arrester.

5 Secondly, they should be
6 constructed of materials that are compatible
7 with the materials in the tank they are
8 protecting. Additionally, plastic piping
9 should not be used in flammable liquid service
10 above ground. It's incompatible with that
11 service and should not be used.

12 Thirdly, safety programs are very
13 important for municipalities across the
14 country. As Jordan mentioned, 26 states are
15 not covered by federal OSHA. The right to
16 know hazard communication, hot work, these are
17 important programs of significance to all of
18 these 26 states that do not follow the OSHA
19 standards.

20 CHAIRPERSON MERRITT: Mr.
21 Bresland.

22 MR. BRESLAND: Thank you, Madam

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1 Chair.

2 Following up on the hot work
3 permit issue, going back to my days in the
4 chemical industry. I always thought that two
5 of the most dangerous things, potentially
6 dangerous things that can happen when you are
7 doing work around chemicals would be the hot
8 work, burning around flammable chemicals, and
9 also confined space injury. In my experience
10 with hot work, typically there would be a
11 permit program in place where someone would
12 have to sign off. It could be the supervisor
13 for the project, it could be the maintenance
14 person who was in charge of the project and it
15 could be the safety person as well. It
16 appears that nothing like this happened in
17 this incident. There was no -- was there any
18 sort of check of what the potential hazards
19 were before the job started? Did anybody look
20 at the job? Did anybody sign off on it?

21 MR. HALL: We found in the
22 investigation one that there was no hot work

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1 permit program at all, which is a very
2 valuable program because of the checks that it
3 provides as you mentioned and also that second
4 level review of management that signs off on
5 the job planning where you get two sets of
6 eyes to look at the job, not just one. But
7 there was no indication that anyone ever
8 considered the hazards or did any planning
9 relative to the hazards.

10 When we were interviewing the
11 employees, none of the employees that we
12 interviewed understood what the flame arrester
13 was, that methanol vapor could vent from that
14 flame arrester. There was just a lack of
15 understanding of the hazard that this tank
16 represented in the facility and that there was
17 not considered in any job planning. We
18 interviewed the manager of the facility, who
19 did not review the details of the job
20 planning. He left that to one of the workers
21 that was planning the job.

22 MR. BRESLAND: Moving more to the

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1 issue of the plastic pipe versus a steel pipe.

2 What would have been the outcome in your
3 opinion of this situation had steel pipe been
4 used instead of plastic pipe in the areas
5 where you described it should have been used
6 according to the codes?

7 MR. HALL: If the only difference
8 had been the steel pipe instead of the plastic
9 pipe, the steel pipe when we looked at the
10 mechanical properties of the steel pipe, it's
11 more than ten times the strength of the
12 plastic as well as more than ten times the
13 fracture toughness, which is a measure of its
14 ability to withstand fracture. It is the
15 opinion of the investigators that that steel
16 pipe would have remained intact, so you still
17 could have had the fireball outside the flame
18 arrester and if the flame arrester was not
19 maintained the explosion inside the tank.
20 But, then, when the tank lifted and deformed
21 the plastic pipes would not or the steel pipe
22 would not likely have broken and would have

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1 remained intact and that would have ended the
2 incident at that point. You would not have
3 the pressure spewing the methanol out the
4 broken connections on to the crane and you
5 likely would not have had the flame arrester
6 being blown off the end of the vent pipe
7 because the vent pipe was plastic, and that
8 flame arrester was screwed on to the plastic
9 threads, an extremely weak connection.

10 MR. BRESLAND: Thank you.

11 CHAIRPERSON MERRITT: I have a
12 question about the design and engineering of
13 the system, you mentioned that it was designed
14 by an engineering firm, do we know that this
15 system was designed specifically for methanol
16 use?

17 MR. HALL: Yes. We do.

18 CHAIRPERSON MERRITT: Was it
19 certified by a professional engineer? I know
20 that I have done these in my history and
21 usually the plans are certified by somebody.

22 MR. HALL: The drawings that were

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1 prepared that indicated it was to be
2 constructed of plastic pipe were sealed by a
3 professional engineer.

4 CHAIRPERSON MERRITT: Can you tell
5 me -- you said that methanol is corrosive to
6 aluminum. In this service then is that
7 information about the compatibility of
8 aluminum and methanol or incompatibility of
9 methanol and aluminum service, is that readily
10 available somewhere?

11 MR. HALL: We found that
12 information readily available in information
13 published by an organization known as NACE,
14 the National Association of Corrosion
15 Engineers, which is the premier organization
16 in this country that deals with corrosion
17 data. And that information was readily
18 available from NACE. It required a simple
19 table look up.

20 CHAIRPERSON MERRITT: Thank you
21 very much.

22 Are there any other questions by

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1 Board members? Yes, Mr. Visscher?

2 MR. VISSCHER: What steps has the
3 City taken since the incident regarding
4 safety?

5 MR. HALL: The one major step that
6 we know that they have done is they have
7 reestablished the safety position and hired an
8 individual with a background in safety to
9 fulfill that position. It's likely they have
10 taken other steps. The course of our
11 investigation was really focused on what
12 existed at the time of the incident, not the
13 actions that have been taken since.

14 MR. VISSCHER: Thank you.

15 CHAIRPERSON MERRITT: Mr. Wright.

16 MR. WRIGHT: Mr. Hall, you
17 mentioned that the standard permits the use of
18 plastic pipe when necessary. Can you give me
19 an example of when the use of plastic pipe
20 would be necessary?

21 MR. HALL: In certain cases you
22 may have a chemical that would be incompatible

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1 with steel that would be corrosive to steel to
2 such a point that you would need to provide
3 some degree of protection in that sense. But
4 there are also options there such as lined
5 pipe, which are more expensive. But that
6 would be a case where there would be an
7 engineering necessity to use plastic.

8 MR. WRIGHT: Thank you.

9 Thank you, Madam Chair.

10 CHAIRPERSON MERRITT: We mentioned
11 NFPA Code 30, is that commonly available?
12 When engineering is done is it usually done
13 with a specification that it meets all codes
14 and standards?

15 MR. HALL: That is a commonly
16 available and widely used code. In fact, the
17 specifications that were written by Camp,
18 Dresser and McKee actually referenced NFPA 30
19 for the tank construction. Yet, the same
20 specifications said use plastic pipe. So the
21 specifications were inconsistent within
22 themselves in referencing a noted standard

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1 that required steel but then still requiring
2 plastic.

3 CHAIRPERSON MERRITT: Are there
4 any other questions by any of the other Board
5 members?

6 (No response.)

7 CHAIRPERSON MERRITT: What we will
8 do at this point is -- we have covered the
9 first three segments of our agenda and we will
10 take a 15-minute break at this time during
11 which we will set up our panel who will then
12 address the second two segments or the last
13 two. Which are: other chemical incidents in
14 Florida and the lack of public employee safety
15 coverage in Florida. We are right on fifteen
16 after, at 10:30 exactly we will start again.
17 So please reconvene at 10:30.

18 (Whereupon, at 10:15 a.m., a
19 recess was had:)

20 CHAIRPERSON MERRITT: Could I ask
21 everyone to please be seated.

22 At this time, I would like to

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1 recognize Jordan Barab, who will introduce our
2 panelists.

3 MR. BARAB: Thank you, Madam
4 Chair.

5 We are now moving to our panel
6 discussion where we will hear testimony from
7 three experts on public employee health and
8 safety. I'll introduce each of the three at
9 the beginning and then they will make their
10 presentations that will be followed by
11 questions from the Board.

12 The first panelist is Brian Berke,
13 President-Elect of the Florida section of the
14 American Industrial Hygiene Association. Our
15 second panelist is Mark Brody, Education
16 Director for the American Federation of State,
17 County and Municipal Employees in the State of
18 Florida. Our final panelist will be Edwin
19 Granberry, Vice President of Governmental
20 Affairs for Region 4 of the American Society
21 of Safety Engineers.

22 Mr. Berke.

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1 MR. BERKE: Good morning. My name
2 is Brian Berke. I am President Elect and past
3 President of the Florida section of the
4 Industrial Hygiene Association and I'm here
5 today to discuss the national AIHA position
6 regarding expansion of the OSHA Act to all
7 federal and state employees.

8 AIHA was founded in 1939 and is
9 the premier association of occupational and
10 environmental health and safety professionals.

11 AIHA's 12,000 members play a critical role on
12 the front line of worker health and safety
13 every day. Members represent a cross section
14 of industry, private business, labor, academia
15 and government.

16 My comments, which follow, are
17 excerpted largely from AIHA letters of
18 legislative support and AIHA news publications
19 by the AIHA director of government affairs
20 Aaron Tripler, and I have spoken to Aaron on
21 this and he wished me good luck.

22 On February 13, 2003, the American

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1 Industrial Hygiene Association offered support
2 for U.S. House of Representatives' Bill HR536,
3 which was titled: The Fairness of State and
4 Local Workers' Bill. This bill was sponsored
5 to amend the Occupational Safety and Health
6 Act to provide coverage under the Act for
7 employees of states and political subdivisions
8 of states. The bill was drafted by
9 Representative Robert E. Andrews of the First
10 District of New Jersey. In that letter, AIHA
11 indicated that support for the legislation was
12 not a difficult decision. AIHA went on to say
13 that it believes that all workers, regardless
14 of their employer, should be provided with
15 quality health and safety workplace
16 protection.

17 The AIHA letter expressed AIHA's
18 concern that resources which are expended by
19 our state and political subdivisions are for
20 citizen services and that those services are
21 not compromised to provide worker health and
22 safety protections. The AIHA's statement ends

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1 with the assurance that both services to
2 citizens and protection to employees are
3 achievable with adequate resource allocation.

4 AIHA's particular focus has always
5 been and will continue to be the necessity of
6 ensuring that adequate resources are allocated
7 for training, compliance assistance and other
8 forms of workplace health and safety education
9 to meet OSHA compliance requirements. AIHA is
10 concerned that without adequate funding OSHA
11 would be stretched too thin in order to
12 provide for the additional coverage.

13 In a July 27, 2005, letter AIHA
14 again offered support for the bill to amend
15 the Occupational Safety and Health Act of 1970
16 to apply to federal and state government
17 employees. That was Bill HR3473. That bill
18 would expand coverage to all federal and state
19 government employees and the employees of
20 political subdivisions of the state or any
21 intrastate government agency; this Bill was
22 sponsored by Representative Phil English of

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1 Pennsylvania.

2 AIHA once, again, cautioned about
3 the need for additional OSHA funding to
4 provide compliance assistance and enforcement.

5 AIHA continues to be consistent with support
6 as long as there are adequate resources
7 committed.

8 The following comments I have are
9 going to be largely my own. I have talked
10 about AIHA National's position. I have had
11 extensive -- I have an extensive background of
12 working within the State of Florida so I just
13 want to indicate these are my comments. They
14 are not my present employer's, which is the
15 Board of County Commissioners of Palm Beach
16 County, which clearly has an excellent
17 program. So, again, these are my comments
18 only.

19 I have been involved with health
20 and safety in Florida for over 25 years. I
21 began my career in 1979 as a safety and health
22 representative and later industrial hygiene

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1 supervisor and Florida Right to Know Committee
2 liaison for the State of Florida Division of
3 Workers' Compensation Bureau of Industrial
4 Safety. At that time about 40 percent of the
5 Bureau's activities were dedicated to public
6 sector enforcement of which I participated.
7 These are largely inspections and
8 consultation.

9 Each year the Florida Legislature
10 adopted pretty much pro forma the current OSHA
11 standards, which were largely 1910 and 1926
12 standards for public sector coverage and that
13 was what we used. Bureau representatives
14 conducted regular inspections. In addition,
15 they were known and recognized by their public
16 sector context. I believe that the bureau's
17 activities were largely effective and that a
18 significant amount of anecdotal evidence
19 indicates that we were successful in
20 preventing deaths and significant injuries.

21 The Division was first organized
22 following World War II and as most of you

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1 know, was disbanded in the year 2000. The
2 presence of a state program made the need for
3 public sector safety and health programs very
4 clear. While most of the programs were
5 established by the larger counties and cities
6 within the state I think that without the
7 legitimizing effect of having something like
8 an OSHA requirement or standards it's very,
9 very difficult and I doubt that few
10 independent programs would have been
11 established without that impetus.

12 Today, without any regulatory
13 emphasis I think that only the most
14 enlightened (shall I say) public sector
15 entities support in a significant way safety
16 and health activities. In my experience, most
17 public sector employees have been shocked and
18 probably very surprised to find out that OSHA
19 cannot enter that workplace and that they do
20 not have jurisdiction at those work locations.

21 I believe that safety can only
22 flourish where it has its advocates and the

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1 modern culture of providing more with reduced
2 resources is a challenge, which few entities
3 are up to. Unfortunately, for many, safety is
4 considered to be something that is just common
5 sense and only affects other people. Typical
6 safety activities are viewed, I think, by the
7 public as being inconvenient, costly,
8 impractical, not particularly cost effective.

9 The prevalence of the 'it won't happen to me'
10 mentality is widespread but, of course,
11 everything changes when a significant incident
12 occurs.

13 I have been the manager of
14 employee safety loss control for Palm Beach
15 County Board of County Commissioners for five
16 years now. The safety program was first
17 established about 25 years ago largely as a
18 response to regulatory pressure. During the
19 last 25 years, Palm Beach County has grown
20 like all of Florida. Effective safety and
21 health programs still make sense even without
22 regulatory pressure. Workers' compensation,

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1 the union disputes, tort liability, certainly
2 response to employee concerns, and not least
3 of which is our strong responsibility to
4 provide a safe and healthful workplace for our
5 employees.

6 Presently my division is
7 adequately funded and staffed and while we may
8 all agree on the appropriateness of an
9 effective safety and health program, I have no
10 assurance that our program will continue to
11 have the support that it has enjoyed up till
12 now. Public sector is a political environment
13 subject to cost cutting pressures and needs
14 review constantly. Extreme pressures could be
15 brought to bear on even our program in the
16 future and our advocacy for safety and health
17 programs within the public sector may be for
18 naught.

19 A strong regulatory presence would
20 make this task easier and the argument more
21 convincing. It is my belief that only
22 mandatory regulatory requirements, whether

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1 coming from a state or federal level, are
2 needed to support and nurture safety efforts
3 within the public sector.

4 Thank you.

5 CHAIRPERSON MERRITT: Thank you,
6 Mr. Berke.

7 Are there any questions from the
8 Panel or Board members?

9 MR. VISSCHER: We will wait until
10 the end.

11 CHAIRPERSON MERRITT: Mr. Brody.

12 MR. BRODY: Thank you, Madam
13 Chair.

14 Madam Chair, Board members, my
15 name is Marc Brody. I'm the Director of
16 Education for AFSCME Council 79 of Florida.
17 We are part of the American Federation of
18 State, County and Municipal Employees. We
19 represent 1.4 million employees nationwide and
20 130,000 members in the State of Florida.

21 Working for state and local
22 governments is full of dangers. As a union

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1 that represents public employees across the
2 country, AFSCME is too aware of serious
3 hazards that our membership face everyday in
4 wastewater treatment facilities and other
5 working sites.

6 In Florida we represent city,
7 county, state, university, school board and
8 private sector employees, including hospital,
9 housing authorities, skill trades employees,
10 clerical workers, nurses, service employees
11 and each and every area that we represent face
12 safety issues everyday. The tragedy that
13 occurred at the Bethune Point Wastewater
14 Treatment Plant dramatically reminds us once
15 again that our members and other public
16 employees face serious risk of injury, illness
17 and death daily.

18 One of the things that we did when
19 this first came up, is we went to our safety
20 department out of Washington and we talked to
21 them about what are the kinds of things that
22 we needed to ask and look for. The questions

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1 that they gave us were: Could this incident
2 have been prevented? Could the incident have
3 been prevented? Was there an effective
4 process in place to address the dangers
5 present on January 11, and is there an
6 effective safety and health program to prevent
7 deaths and injuries from other well-recognized
8 hazards? And we will hear from this body, and
9 you will give us the answer to those
10 questions, I'm hoping.

11 Public sector employees throughout
12 Florida do not have well functioning proactive
13 safety programs. There is no occupational
14 safety and health law that requires them to.
15 Florida is one of 26 states in this country
16 where state and local government workers are
17 not covered by a federally approved state OSHA
18 plan. It's scandalous that wastewater
19 treatment workers and thousands of other state
20 and local government workers in Florida do not
21 have the most fundamental rights to a safe
22 workplace that every American worker needs and

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1 deserves.

2 What does OSHA coverage mean?
3 OSHA coverage means that employer must provide
4 work and a place of employment which is free
5 from recognized hazards that are causing or
6 likely to cause deaths or serious physical
7 harm to employees. Employers must comply with
8 OSHA standards of which there are many that
9 apply to hazards present in wastewater
10 treatment plants. Employers must perform
11 monitoring, maintain records, provide
12 information and training to workers, and
13 employers are subject to inspections and
14 enforcement if they are not in compliance.
15 That does not occur in the State of Florida.

16 There is a wide range of hazards
17 associated with wastewater treatment
18 operations. On one given day, workers may
19 enter confined spaces, are exposed to
20 potentially toxic chemicals, and have physical
21 hazards and infectious agents. The work,
22 equipment and machinery can cause severe harm

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1 with the potential of dangers that are well
2 recognized.

3 What we need is an effective means
4 to control the hazards and to protect workers
5 and environment. In states where public
6 employees are covered by OSHA, many of these
7 hazards are addressed by specific standards.
8 Unfortunately, at Bethune Point, these safety
9 procedures were not practiced and two workers
10 paid the ultimate price. A hazardous
11 communication program should have been in
12 place. That's the Right to Know that we
13 talked about earlier. The workers should have
14 received training in the dangers of methanol
15 and the appropriate procedures to follow where
16 a risk of substance was present. Workers
17 should have received training on the physical
18 properties of methanol including the dangers
19 of fire and explosion, and that a cutting
20 torch could be the ignition source if methanol
21 was present.

22 Daytona Beach did not have an

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1 effective permit system for performing
2 hazardous tests or hot work. Current
3 procedures should have been in place to assess
4 conditions, determine if methanol and other
5 substances were present, before using the
6 cutting torch, nor does it appear that they
7 had any implementation of a program that would
8 talk about high aboveground work. One of the
9 things that we talked about with our safety
10 department is, there should have been written
11 safety precautions. There should have been a
12 standard that the job was evaluated before
13 people went in and turned those cutting
14 torches on. And certainly there should have
15 been air testing and, again, they should have
16 been looking for fire hazards whether it be
17 leaks in that tank, oily rags, or whatever it
18 was that could be combustible when you ignited
19 something that had fire coming out the other
20 end.

21 We are anxious to hear what the
22 CSB Investigation has turned up, and what

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1 caused the explosion. We expect that you will
2 find multiple lapses in procedure and
3 identified hazards. We further anticipate
4 that many of the conditions that existed in
5 the plant at the time of the explosion are
6 inconsistent with the provisions of numerous
7 OSHA standards that were applicable
8 requirements.

9 As always in cases following these
10 type of tragedies, no investigation, finding
11 of fact, or attributing blame will bring back
12 the lives of those who were killed or injured.

13 However, lessons can be learned through this
14 incident. Lessons should include changes of
15 equipment, more effective procedures, and
16 better training. Another conclusion must be
17 that all reasonable steps to make a workplace
18 safe should not be optional. This means that
19 Daytona Beach and other jurisdictions across
20 the State of Florida should be required to
21 provide protection that are contained in the
22 Occupational Safety and Health Act and

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1 occupational safety standards.

2 Now, the states of New York, New
3 Jersey and Connecticut have accomplished this
4 by having federally approved OSHA plans that
5 cover state and local government workers.
6 Private sector workers, of course, are still
7 covered by the jurisdiction of federal OSHA.

8 Now, what really makes this sad,
9 what really makes this sad and disturbs us
10 greatly, is that until 2002 Florida was
11 covered by safety standards. We had a Florida
12 Chapter 442, the Occupational Safety and
13 Health that was modeled after the federal OSHA
14 guidelines. There were some pertinent
15 sections. But, basically, what those statutes
16 talked about was -- They talked about
17 preventing incidents, accidents and
18 occupational diseases, and they had through
19 the Department of Safety the power to assess
20 civil penalties and fines that went up to
21 \$50,000 for those incidents if the compliance
22 wasn't made. This section was entirely

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1 deleted in July of 2002 and they eliminated
2 the Department of Safety, which was under the
3 Department of Labor, which ultimately they
4 eliminated also.

5 There were 17 sub-offices
6 throughout the State of Florida, 144 employees
7 in the Division of Safety were laid off. A
8 lot of them were our members by the way.
9 Governor Bush, legislators and business
10 leaders had opposed the safety program for
11 public employees, and they felt it was
12 duplicative. Because of that we lost whatever
13 safety issues we had.

14 Lacking state law, rules, or
15 standards in occupational safety and health
16 numerous public employees including cities,
17 counties, school boards, and universities have
18 adopted formal and informal policies and
19 procedures to avoid worker accidents and
20 promote safety. Many public-sector unions
21 including ours have tried to include safety
22 language in our contracts, but the problem is

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1 that safety language, except for a few, has
2 really no teeth and you are in no way to back
3 it with administrative criminal sanctions and
4 violations.

5 We do have safety language in the
6 city of Daytona that says that the city agrees
7 to comply with all safety and health laws and
8 regulations applicable to facilities and
9 employees. It's nice language. We are going
10 to be going back to the table and talking
11 about how we can put some teeth in it. In
12 addition, to their credit they do have safety
13 committees and those safety committees work
14 quarterly with management participation and
15 union participation. I believe those have
16 been reinstated along with the person coming
17 in to do their safety.

18 Not only does the city of Daytona
19 have language, the School Board of Volusia
20 County has language that talks about safety
21 committees and brining safety concerns in the
22 form of a written document to the supervisor.

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1 Where we do have some very good language is
2 our university system and our university
3 contracts talk about employees have the right
4 to refuse to do a job if they feel they are
5 going to risk life and limb. Of course, that
6 borders on being written up for
7 insubordination, but we have had some good
8 success and, again, they do come and inspect
9 the job and talk about whether or not that job
10 is going to be completed or they need to do
11 some research into doing that job. But,
12 again, the language is not as strong as it
13 should be and we will be working on that
14 further.

15 Although the recent political
16 climate for federal standards and state is
17 unfriendly towards AFSCME, the AFL-CIO, AFSCME
18 and other unions have talked about readopting
19 the Occupational Safety and Health.

20 If I could go back, I just want to
21 mention one thing that I did miss. After the
22 demise of the Division of Safety in 2002

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1 fatalities rose from 329 employees killed in
2 2000, to in 2005 404, an increase of 22.7
3 percent. Staggering numbers. Staggering
4 numbers. We are very concerned about that.

5 Part of what we would hope that
6 this committee would do in one of your
7 recommendations, help us to bring forward the
8 option that we include in your recommendations
9 that a minimum for public service employees
10 would be that they have safety rules based on
11 federal OSHA guidelines implemented.

12 In conclusion, the lives and
13 health of workers are worth no less if they
14 work for public employers as they work for
15 private employers.

16 We thank you for your time.

17 CHAIRPERSON MERRITT: Thank you,
18 Mr. Brody.

19 Mr. Granberry with the American
20 Society of Safety Engineers.

21 MR. GRANBERRY: Yes, ma'am. Good
22 morning.

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1 CHAIRPERSON MERRITT: Good
2 morning.

3 MR. GRANBERRY: My name is Edwin
4 Granberry, Jr., and I represent the 30,000
5 members of the Safety and Health and
6 Environmental Professionals of the American
7 Society of Safety Engineers. I would first
8 like to express our society's sincere sympathy
9 to the families of the two deceased employees.

10 I have been a professional member
11 of the society for 35 years and currently
12 serve as the vice-president of Government
13 Affairs for ASSE's Region 4. Region 4
14 includes the states of Florida, Alabama,
15 Louisiana, Mississippi, Georgia and Puerto
16 Rico.

17 I have been a resident of the
18 State of Florida since 1930. I'm a consulting
19 chemist and have more than 48 years experience
20 in the field of chemical process, explosive
21 safety operations -- ranging from
22 manufacturing of nitroglycerin and high energy

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1 rocket propellants -- processing orange
2 concentrate and cattle feed and finally
3 serving as a launch safety officer on the
4 Mercury, Gemini, and Apollo manned space
5 launches at the U.S. Air Force guided missiles
6 range at Cape Canaveral, Florida.

7 My work as a consultant has taken
8 me to job sites both public and private from
9 Key West all the way to the Panhandle and all
10 across the United States. My service prior to
11 now to the State of Florida has included two
12 gubernatorial appointments to the Toxic
13 Substances Advisory Counsel and the Florida
14 State Emergency Response Commission. I
15 assisted in formulating the Florida Right to
16 Know law before OSHA standard even existed.
17 Mr. Berke who is here at this table with me
18 was a member of that formulating group.

19 So I would believe that I do have
20 a firsthand comprehensive understanding of the
21 importance of safety for public sector
22 workers.

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1 It is under the most unfortunate
2 circumstances that we have to meet today but I
3 hope this public meeting will bring attention
4 to a situation that every Floridian should
5 know and be deeply concerned about. Florida's
6 public employees do not enjoy the same
7 occupational, safety, and health protections
8 by law that the rest of us do. This is a
9 longstanding national issue of concern to the
10 American Society of Safety Engineers. There
11 are an estimated 8.1 million state and local
12 government employees, who are not afforded any
13 kind of protection given all other U.S.
14 workers under the federal OSHA Act. That is
15 unacceptable. ASSE will be working through
16 our various representatives to introduce
17 legislation in the new Congress to address
18 this shortcoming as quickly as possible in
19 this coming year.

20 This is also been an issue of
21 concern to Florida Safety and Health
22 professionals and ASSE members since 2000 when

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1 Florida let sunset the administrative code
2 provisions Chapter 442 that required public
3 sector employees to comply with federal
4 occupational safety and health laws. There is
5 no doubt in my mind that if there's anything
6 that I have learned in my long career is that
7 employees are better protected when there is a
8 standard that the employers know they must
9 meet. It is not a negotiable thing. They
10 must meet it.

11 We hear a lot of talk about
12 government wanting to be efficient, to perform
13 efficiently like business does. In the
14 business world, merely meeting OSHA standards
15 is considered a minimal, I repeat minimal
16 level of protection for workers. Most large
17 employers, as the state and many Florida
18 municipalities would be considered, expect an
19 even higher safety and health standard to be
20 met. The bar must be moved higher from where
21 it is now. Why is this?

22 It's because employers and I would

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1 suspect that even municipalities must
2 understand that a good safety program and
3 fewer injuries actually saves money in
4 workers' compensation and liability costs,
5 tort litigation costs, and health insurance
6 costs, because they understand that they
7 additionally have a moral responsibility, that
8 they need to make sure that their workers are
9 able to come home every night instead of being
10 picked up by an ambulance at a work site.
11 Florida workers deserve no less of a
12 commitment to safety from their employers.
13 When I say Florida workers, I'm talking about
14 municipal workers.

15 While Governor Bush required 13
16 major state departments to comply voluntarily
17 with OSHA standards through executive order of
18 2000-292, we do not know how seriously these
19 departments took the order, and we do not know
20 what other agencies, municipalities and other
21 government employees are doing in this state
22 to protect its workers.

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1 With the deaths of the two workers
2 and recommendations of CSB all of us here
3 today should want to start a process to
4 correct this lack of safety standards coverage
5 for municipal employees. ASSE will urge the
6 Florida legislature through appropriate means
7 to establish a task force and charge this task
8 force with researching and recommending to the
9 2007 session of the Florida Legislature a
10 viable solution requiring adequate safety and
11 health coverage for Florida's municipal sector
12 employees.

13 In closing, I would like to
14 respectfully challenge Senator Anthony Hill,
15 Sr., and Representative Sandra Adams and Joyce
16 Cusack, who represent Volusia County in the
17 2007 Florida Legislature to take the necessary
18 steps to set up such a task force and to
19 designate the membership from interested
20 parties within the State of Florida. I would
21 last, in closing, volunteer my personal
22 services as a safety and health professional

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1 to serve on this task force representing ASSE.

2 Copies of my statement are
3 available out at the front desk and I thank
4 you for listening to my testimony.

5 CHAIRPERSON MERRITT: Thank you,
6 Mr. Granberry.

7 At this time, I would like to open
8 the floor for Board questions. Mr. Wright, do
9 you have a question?

10 MR. WRIGHT: I do, Thank you,
11 Madam Chair.

12 Gentlemen, given your statements,
13 do you think or believe that the fatalities in
14 this case would have been prevented had the
15 State of Florida maintained its safety
16 program?

17 MR. BERKE: I guess I'll start
18 off. I think of course it's difficult to
19 predict whether those activities would have
20 prevented those fatalities. I think what's
21 clear though is by having that activity a
22 chain of events could have occurred. There

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1 could have been more interest. There could
2 have been more positions. There could have
3 been more activities that certainly would have
4 had a high probability or higher probability
5 of preventing it. I don't think any of us
6 can really say whether it would have
7 definitely prevented it but certainly, without
8 those activities we know that inevitably those
9 types of incidents occur.

10 MR. BRODY: I guess I'll respond
11 also. It just becomes very clear if the
12 standards had been met, if people had done the
13 things they should have done before that torch
14 was lit there is a good possibility that they
15 would have detected the methane and that job
16 would not have gone forward. So, it appears
17 that it could have been prevented.

18 MR. GRANBERRY: As an experienced
19 safety and health professional, I have always
20 believed that training is the key to almost
21 anything, not just in health and safety
22 issues. Training, teaching and listening is a

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1 key to most of the world's ills. I am not on
2 a podium right now, but I'll wax eloquent for
3 a few seconds.

4 I have been a college university
5 instructor. I served my career teaching the
6 sixth grade at one point in my career. I have
7 also taught chemistry and physics. It's very
8 clear when I saw the shocking statistics of
9 the lack of training sessions; the poor folks
10 that were working this job did not know what
11 was happening. Now, NFPA 51(b), which is fire
12 prevention at cutting and welding sites,
13 requires a fire blanket, a fire blanket over
14 the -- you couldn't put a fire blanket over
15 that tank. It's too big. And they had no
16 idea that the flame arrester was deficient and
17 defective, had never been inspected since
18 1993, absolutely incredible.

19 So they were going into a
20 situation they had not been trained to
21 address. They knew nothing about it.

22 To answer your question and I

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1 would mirror what Mr. Berke said, I think if
2 the laws of the State of Florida, the statutes
3 had existed, there would be a probability that
4 it might have been prevented but it goes much,
5 much further than that. A law or statute does
6 not prevent. It's simply a guideline. And
7 you have to have active participation by the
8 people the law or the statute applies to.
9 That didn't happen here at all.

10 MR. WRIGHT: Thank you.

11 CHAIRPERSON MERRITT: Any other
12 questions?

13 Mr. Visscher.

14 MR. VISSCHER: Thank you, Madam
15 Chair.

16 Mr. Berke, your local government
17 has obviously kept a pretty active safety and
18 health program. Would you explain a little
19 bit why and what kind of pressures you have
20 felt about it, if you have had those
21 pressures?

22 MR. BERKE: Well, again, as I

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1 mentioned the program within Palm Beach County
2 was started probably about 25 years ago and I
3 think that good safety and health activities
4 are a result of what we'll call advocates. I
5 was very lucky insofar as my predecessor was
6 very interested in it and she had a mentor who
7 I might say is Mr. Granberry here, who had
8 worked closely with the County to set up that
9 program. Clearly, at that time, we had the
10 state, which had a presence, which had
11 activities within the county. So, it was a
12 relatively simple sell.

13 The fortunate thing for Palm Beach
14 County is it is a relatively affluent county
15 and I think people understood the importance
16 of it. And again, I think that's why it was
17 started.

18 Again, in those days we pretty
19 much had similar activities, almost like a
20 corporate kind of structure. My department
21 has eight professionals within it and we've
22 got probably almost 6,000 employees in

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1 constitutional offices everywhere from
2 facilities to fire rescue and we have all kind
3 of activities to support that. So I would
4 have to give a lot of the credit to my
5 predecessors and the fact that at heart the
6 county and I think the employees are
7 interested in safety. That's a cultural
8 thing. I think that's a very hard thing, had
9 it been the year 2006, to have similarly
10 started the way that it did.

11 MR. VISSCHER: I think Mr. Brody
12 and Mr. Granberry both mentioned the idea and
13 belief that good safety programs actually save
14 money, which I think is true and certainly
15 safety people believe that. I don't know if
16 there are people, if that awareness is as
17 strong elsewhere, but it would seem to me that
18 the absence of safety programs throughout the
19 state, in fact, if it's premised on some sort
20 of cost savings was, in fact, not accurate
21 that, in fact, it ends up costing money. Has
22 anybody that you are aware of done any kind of

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1 analysis of whether it's -- what workers comp
2 rates in the public sector have done since the
3 safety program at the state level has
4 disappeared or any other kind of cost thing
5 that would, cost analysis that would indicate
6 that this has not, in fact, saved either local
7 or state government money but, in fact, has
8 ended up costing money?

9 MR. GRANBERRY: I have access to
10 data which I don't have stored in my head
11 right now, but I believe the answer to that
12 would be a simple, yes, that the costs of
13 workers compensation, the cost of insurance,
14 the cost of replacing equipment and the costs
15 of hospitalization have increased dramatically
16 in Florida.

17 MR. VISSCHER: In the public
18 sector?

19 MR. GRANBERRY: Yes, sir. And we
20 can prove that. That's not just a conjecture.
21 We can prove it.

22 MR. VISSCHER: If we asked for

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1 that --

2 MR. GRANBERRY: The answer is,
3 yes, sir.

4 MR. VISSCHER: -- could you show
5 us? Could you send it?

6 MR. GRANBERRY: Yes.

7 MR. VISSCHER: That would be very
8 helpful, I think.

9 MR. GRANBERRY: I will jump ahead
10 and answer, yes, we can do that.

11 MR. VISSCHER: Thank you, Mr.
12 Granberry.

13 Thank you, Madam Chair.

14 CHAIRPERSON MERRITT: Mr.
15 Bresland.

16 MR. BRESLAND: Yes. I've got
17 several questions for different members of the
18 Panel.

19 For Mr. Berke, a couple of
20 questions -- I'll give you a couple of
21 questions and you can answer them at the same
22 time. What is the budget in Palm Beach for

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1 your program and in a general way, what sort
2 of safety issues would you cover in terms of
3 municipal employees? I know we are talking
4 here about a specific chemical hot work permit
5 issue, but what other sorts of safety issues
6 across the Board would you cover?

7 MR. BERKE: Well, to answer your
8 question, I guess the total budget including
9 salaries is a little bit over \$1 million for
10 my particular group. If memory serves me, we
11 have about \$160,000, \$150,000 just for
12 training efforts. I have eight professionals
13 who are assigned to approximately 25
14 departments. For instance, within
15 water/utilities we are involved with, I know
16 some acid storage and some response should
17 there be leaks. Training, we do annual
18 training for them. We have an active safety
19 committee within that department. Our large
20 departments do that.

21 We get involved with
22 quantitatively fit-testing respirators for our

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1 1,200 fire/rescue people both for N95s and
2 SCBA. We may have special projects based on -
3 - for instance, we have one going on to see
4 about fall-arrest equipment for fixed ladder
5 within the county and through that, surveyed
6 and prioritized and are working at getting
7 fall-arrests for that.

8 Any number of things. I think one
9 of the things is my coming from private sector
10 it was very important, while loss control is
11 an important factor and formerly my
12 department's only title was loss control.
13 Employee safety is certainly at least as
14 important if not more important at least to me
15 and I have tried to guide traditional
16 industrial hygiene and safety recognition and
17 control, evaluation control of hazards at the
18 work site and we do that through a lot of
19 active safety committees.

20 Additional budgets, for instance
21 you asked the question of budgets, clearly
22 things as far as fixed ladders and such, fall

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1 arrests that falls to the Department and we
2 have been pretty successful at getting
3 funding.

4 MR. BRESLAND: Do any of our
5 counties or municipalities in the State of
6 Florida have as comprehensive a program as the
7 one in Palm Beach?

8 MR. BERKE: I can't really say. I
9 know that I am contacted regularly by people
10 within the state. My observation is some of
11 them who have contacted me have perhaps one or
12 two people. They seem to be most interested
13 in fleet issues. Not to say those aren't
14 important and we, for instance, do take care
15 of fleet issues and fleet safety also. I
16 think that it's rare for them to be trained
17 and for them to get personnel who are trained
18 in occupational safety and health in what I
19 will call the traditional areas, rather than
20 risk management and loss control.

21 MR. BRESLAND: Thank you.

22 For Mr. Brody, can you clarify the

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1 statistics that you give on fatalities? Maybe
2 I wasn't thinking or listening carefully
3 enough but you had statistics showing the
4 number of fatalities before and after?

5 MR. BERKE: Yes. This comes from
6 the Bureau of Labor Statistics. In 2000 there
7 were 329 deaths, and in 2005 there were 404 an
8 increase of 22 percent. Again, that's from the
9 Federal Bureau of Labor Statistics.

10 MR. BRESLAND: Which areas or
11 which industries?

12 MR. BRODY: That's overall.
13 That's overall. I got this from our public
14 relations person. So I don't have the answer
15 to that.

16 CHAIRPERSON MERRITT: It's not
17 just Florida that's --

18 MR. BRODY: No. This is for
19 Florida.

20 CHAIRPERSON MERRITT: For Florida?
21 That's one a day.

22 MR. BRESLAND: Is that public

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1 employees?

2 MR. BRODY: That was the
3 information that I received. If you'd like I
4 can get clarification and get back to you but
5 that's my understanding.

6 MR. BRESLAND: I think it would be
7 interesting to know just in the public sector
8 what those statistics are, were and are.

9 Another question for Mr. Brody.
10 This appears to be a political issue in terms
11 of the coverage of municipal employees. As a
12 chemical safety board what can we do or what
13 do you think would --

14 MR. BRODY: Well, I think part of
15 what we are going to be doing is we are going
16 to be going forward during this legislative
17 session and talk about bringing back safety,
18 OSHA safety. Yes, it is a political
19 situation. While this was going on there was
20 a new administration. They were downsizing
21 government, state government. They were
22 closing agencies. Although, I don't want to

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1 get into that particularly, it was a bad thing
2 that they did and I think what we need to do
3 is bring it back. So we are going to be
4 coming forth with legislation hopefully one of
5 your recommendations will be as we are hearing
6 is that we would be covered under the federal
7 OSHA standards and that public employees have
8 that option.

9 Did that answer your question?

10 MR. BRESLAND: Even at the local
11 level is there support for going back to the
12 way it was?

13 MR. BRODY: Well, we have good
14 relationships certainly with the city of
15 Daytona and with Volusia County -- I don't
16 think that people are opposed to that. The
17 problem is, it has to do with economics and it
18 has to do with budgets, and with all the other
19 things that have to go out in expenditures
20 from the cities, counties, the school boards
21 and the universities. If nothing is
22 happening, if there's not an accident that

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1 brings safety to the forefront then it's not
2 something that's immediate and they have to
3 deal with the immediacy of what's going on.

4 Having said that, I haven't spoken
5 to any folks about whether they are for or
6 against it, but certainly I believe that
7 quietly there are people that would be
8 agreeing with us.

9 MR. BRESLAND: Thank you.

10 CHAIRPERSON MERRITT: Mr. Wark, do
11 you have a question?

12 MR. WARK: Yes, I just have one
13 question actually and that is: With respect
14 to the executive order that the governor
15 signed making a lot of this voluntary, have
16 you looked into the aspects of that with
17 respect to whether or not it has been
18 effective in any of the sectors that you would
19 be concerned about?

20 MR. BRODY: Is that my question?

21 MR. WARK: All three, start with
22 Mr. Brody.

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1 MR. BRODY: Yes, I guess it is my
2 question.

3 The problem with having a
4 voluntary system is that's exactly what it is
5 and different people see it differently. The
6 voluntary system we have now with school
7 boards is that they will talk with us
8 quarterly. The voluntary system we have with
9 a lot of cities and counties is they will have
10 labor management committees and they will have
11 their own policies. The problem is, and
12 again, I'm not talking about Daytona but I'm
13 talking about in general. Because safety gets
14 put on the back burner and the safety programs
15 are not enforced and the training is not
16 enforced, it caused them to take people off
17 the job to do the training, they are working
18 short staffed. They are more concerned about
19 salaries and not laying people off. So any
20 money that they can use to put into those
21 areas they are going to do, and safety
22 suffers.

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1 So the voluntary systems that we
2 have seen, unless something major comes up and
3 we end up dealing with risk managers because
4 it's going to start costing them a ton of
5 money for injuries, we don't see it being that
6 effective.

7 MR. GRANBERRY: Most cities are
8 not perceived as high hazard industries or
9 locations. The average person on the street
10 if you ask the question is working for a city
11 garage, a high hazard occupation, the answer
12 would be I'm sure no.

13 Generally, high hazard industries
14 such as manufacturing explosives, that I am
15 very familiar with, or nitroglycerine is
16 considered very high hazard and you are
17 generally allowed one mistake, and after that
18 one mistake you can phone in from above to see
19 what's going to happen to your family. So
20 those types of companies have very, very
21 stringent, very good, very comprehensible by
22 their employees, safety and health programs.

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1 Entities that the management
2 doesn't think that there is a hazard - they
3 usually have nothing. Now, why would
4 employees -- you have already answered the
5 question, Mr. Hall's presentation. Why would
6 employees think that a cloud of methanol is
7 going to pose a hazard to sparks? Well, they
8 have nothing in the back of their head about
9 LELs and UELs, that's lower explosive level
10 and upper explosive levels. Above and below
11 those two numbers, gasoline, methanol, jet
12 fuel, every flammable liquid is fairly
13 innocuous in the limits of those two numbers.
14 It's terrible.

15 So you have to have -- I believe
16 the question was, is there a need or is there
17 a recognized -- is there interest in re-
18 instituting some sort of program. I would say
19 the answer to that right now is, no. And I
20 think that it behooves the members of my
21 professional society to assist whomever we may
22 in doing something about it. Mr. Bresland

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1 asked the question earlier about, are there
2 other counties in Florida that have exemplary
3 programs like Palm Beach County and the answer
4 is, yes, and that is Hillsborough County in
5 Tampa. They have an outstanding program.

6 MR. BERKE: I guess I would make
7 two comments. The first of which is that I
8 have no evidence that really in the public
9 sector, at least for the people that I have
10 dealt with, are aware of the governor's
11 recommendations in any context. In other
12 words, I'm not sure that in the public sector
13 some people are even aware that the Bureau and
14 the Department of Labor and all are no longer
15 enough force, you know, from our standpoint.
16 That's a little secret we would just as soon
17 keep, we are not broadcasting it.

18 CHAIRPERSON MERRITT: It's out.

19 MR. BERKE: Yes, I understand
20 that. I think that the other thing is that as
21 far as an interest within public sector on
22 safety programs, I agree with Mr. Granberry.

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1 I don't think that there's going to be a
2 sentiment from people. It's going to come
3 from workers. It's going to come from health
4 and safety professionals.

5 You know unfortunately, peoples'
6 view of risk and our view of risk is a lot
7 different. I think there was a recent article
8 in Time that talked about why do people worry
9 about things they shouldn=t and they don=t
10 worry about things that they should. I think
11 unfortunately one of the things about health
12 and safety people is we are constantly
13 indicating things that need to be done that
14 sometimes is a surprise and is not generally
15 viewed as being particularly important. We
16 are accused of being nitpickers and not really
17 important. Certainly, nobody wants to hurt
18 employees, but without those activities and
19 without that training I just don=t think
20 there's going to be an upswelling of interest
21 in it. I think it's important though.

22 CHAIRPERSON MERRITT: One question

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1 I have is -- and we find this all the time in
2 our investigation. There were many accidents
3 that happen, small accidents that happen over
4 time and there is no accident investigation or
5 follow-up on the hazard that was created that
6 caused that accident to happen. In Palm
7 County, do you have, wherever you are, do you
8 have an accident investigation follow-up
9 process?

10 MR. BERKE: Well, actually it's
11 funny you mention that because I have been
12 with the county for about five years and we
13 get what we call supervisor incident forms and
14 needless to say we always see that as the
15 corrective action, being more careful and all
16 this kind of stuff. As a response to that and
17 it just happens to be fortuitous, we actually
18 provide about a half day training to
19 supervisors and lead people on accident
20 investigation which goes through a very, very
21 amended, brief, root cause analysis and, you
22 know, cause and effect, and you know,

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1 whatever, a few techniques to give them the
2 idea that --first of all, one of the things is
3 that preventing injuries and illnesses is hard
4 work and it takes follow-up. It takes
5 accountability. It takes a whole chain of
6 things. And just identifying the proximal
7 cause is clearly not going to do it. So, yes,
8 we provide the training. Yes, we still get
9 reports that are deficient. Yes, we have
10 staff members that work with those people and,
11 yes, we go out and we do, certainly, accident
12 investigations.

13 On the workers' comp side, you
14 know, what we advise people is that we should
15 be as vigorous in making sure that people that
16 are harmed get workers' comp as we are
17 vigorous in making sure that people that
18 really weren't harmed in the workplace do not
19 receive it. So we try to be very above board
20 but we have been pretty successful with that
21 course. We have been doing it for about three
22 years and we continue to do it.

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1 CHAIRPERSON MERRITT: Well,
2 recognition of hazards through accident
3 investigation is certainly something that we
4 always find is a key to prevention, because if
5 you don=t recognize the hazards then you are
6 just flying blind and -- yes, sir. Mr.
7 Granberry.

8 MR. GRANBERRY: I would like to
9 point out, you just said a key thing that I
10 think is extremely important. I'm sitting
11 here looking at this podium and somebody has
12 taped down the cords for your monitor, that's
13 fine. But, by NFPA Life Safety Code 101 and
14 which is part and parcel of Florida State Fire
15 Marshal's regulations the leading edge of the
16 platform is supposed to be highlighted and a
17 black nosing is not a highlight. So that
18 platform is in violation of the state fire
19 codes.

20 The point of my little story is
21 that hazard assessment, failure mode effects
22 analysis, root cause analysis are all-

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1 important things that started early on with
2 NASA. And those of you who can remember some
3 of the details of the Challenger -- I mean,
4 here we have probably the most complex piece
5 of equipment ever designed anywhere in the
6 world, and what happened? O-rings between two
7 solid propellant rocket motors, because that
8 horrible morning in January the O-rings froze.

9 And when polymeric materials freeze, as Mr.
10 Hall can testify to, their physical and
11 chemical properties change, so they failed.

12 So in order for a city to get
13 excited about -- Instead of talking about
14 deaths and fatalities and hospital cases and
15 insurance, talk about saving money. And
16 safety engineers, not a lot of us but most of
17 us years ago realized that if you want to get
18 into the CEO's head and front office, you need
19 to talk money because they will listen to
20 that. It has never failed for me.

21 MR. WRIGHT: I have a question,
22 Madam Chair.

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1 CHAIRPERSON MERRITT: Yes, Mr.
2 Wright.

3 MR. WRIGHT: Gentlemen, in your
4 statements you have all, if I'm correct in
5 understanding your statements, alluded to the
6 fact that when the state eliminated its
7 program, and when the governor and his
8 executive order encouraged or recommended to
9 municipalities to review standards and to
10 adopt those that would protect workers, that
11 we have, in fact, in some way lost part of the
12 safety culture. I would like it if you would
13 give comment with respect to how you view the
14 safety culture at the local and state levels
15 in view of the executive order that's been
16 passed in the State of Florida. That is, are
17 they embracing safety? Are they ignoring
18 safety? Is it an evil necessity? How do you
19 view the culture today with respect to safety?

20 MR. BERKE: I can only speak from
21 my experience, obviously within the county; I
22 think our safety culture is good. It needs to

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1 be a lot better. Reinforcement in the way of
2 -- I'm not inviting enforcement actions, but
3 reinforcement in terms of the fact that there
4 is a legal issue and there is right of entry I
5 think is important to support the programs.
6 I'm not aware of anything going on within the
7 state in terms of that much activity. I work,
8 and again, certainly within public sector we
9 have very, very little to do with the remains
10 of the consultation program that's at the
11 University of South Florida. But certainly,
12 the safety culture has gone down a lot.

13 Again, I was with the state's program
14 from about 1979 to '84. We would go into a
15 small city whether it was Leesburg or Mt. Dora
16 or something else. We would do our
17 inspections. Obviously, the quality of the
18 inspections were dependent on the quality of
19 the person who was doing it. Some were very
20 high level. Some were not as high as we
21 wanted but we kept working at it. The people
22 knew us. There was a relationship so that

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1 they knew whom to call if they had some issues
2 and we were resources. I would surmise that
3 that is pretty much gone and I think that's a
4 shame.

5 CHAIRPERSON MERRITT: Mr.
6 Granberry.

7 MR. GRANBERRY: You asked
8 questions about safety culture and what our
9 perceptions might be of safety culture in the
10 State of Florida. That's a very difficult
11 question to answer. I think anybody can give
12 a broad general answer that covers the entire
13 state.

14 However, if you look at specific
15 companies and specific jobs, for example, the
16 next time you, and this will happen even in
17 D.C. or Maryland or Virginia, drive down the
18 highway and you see a power line crew working
19 at heights on a telephone pole, power pole,
20 whatever, they all in warm weather in Florida
21 are -- in Florida right now, you always wear a
22 long sleeve shirt. Why is that? That's to

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1 protect your arms from electric flash, so on
2 and so forth.

3 So the crews for our state utility
4 companies, I don't think their culture need to
5 change because they have a culture. It's
6 already there. They have used it for years.
7 And they know that it's important. The places
8 that don=t know that it is important are the
9 small battery shop west of Miami where they
10 take old batteries and dump the contents out
11 into the sand and they have people working
12 there drawing sulfuric acid out of plastic
13 containers and pouring it into the new
14 containers and then they have a tar pot and
15 they put a new top on the battery. And this
16 mom and pop shop has only three or four
17 employees. Safety program? They don=t even
18 know what you are talking about.

19 So to say that safety culture in
20 Florida is broken would be incorrect. It's
21 broken in some places. It's wonderful in
22 others. Obviously, in this location, in this

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1 instance it wasn=t even there.

2 MR. WRIGHT: My question was more
3 pointed to the public sector as opposed to the
4 private sector. And I was trying to
5 differentiate between the governor's executive
6 order where he directed various state
7 departments to embrace safety versus the local
8 municipalities where he said please review or
9 recommended that they review and adopt as
10 necessary.

11 I was wondering from your
12 professional judgment as to whether or not
13 there is any perceptible difference between
14 those two.

15 MR. GRANBERRY: In my opinion, the
16 answer would be, yes. For example, two of the
17 departments in the State of Florida that have
18 to comply with safety regulations, all right -
19 - the Department of Lottery, and the
20 Department of Corrections, Prisons. I don't
21 think I need to say much more.

22 CHAIRPERSON MERRITT: Are there

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1 any other questions?

2 (No response.)

3 CHAIRPERSON MERRITT: If there are
4 no other questions at this time I want to
5 thank the panel very much for your
6 participation and for your input. It's very
7 valuable to us as we perceived. And while you
8 are departing, I would like to ask if there
9 are any members of the audience who would like
10 to give public comment to please register and
11 we will prepare for that public comment.

12 MR. BARAB: Madam Chair, I also
13 wanted to add one thing. Just for the record,
14 we also invited the Florida League of Cities
15 as well as the Florida Chapter of the National
16 Association of Counties to testify before the
17 Board today, both of which declined.

18 CHAIRPERSON MERRITT: Thank you.

19 Anybody who would like to speak
20 please just be recognized when I ask for that
21 information. The first name I have here is
22 Ricky N. Jones. If you wouldn't mind, please

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1 state your name in the microphone and your
2 affiliation?

3 MR. JONES: Thank you, Madam
4 Chair. My name is Ricky Nelson Jones. I'm
5 the brother of Clyde Anthony Jones, one of the
6 ones who was tragically killed during the
7 incident. I'm here looking for closure and
8 the comment I have is about the tank itself.
9 Was the tank really a part of the treatment
10 plant at the time or had they moved on to
11 another way of treatment, and if so, why was
12 it still there and filled with liquid or half
13 filled with 3,000 gallons of liquid?
14 Shouldn't it have been removed prior to that
15 and by professionals instead of city workers
16 with no training?

17 CHAIRPERSON MERRITT: Thank you.
18 We will take that comment and those will be
19 answered in the report. Thank you, Mr. Jones.
20 Mr. Ebbets, please state your name and
21 affiliation.

22 MR. EBBETS : Madam Chair, my name

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1 is Charles Chobee Ebbets, I'm an attorney for
2 the Estate of Clyde Jones representing his
3 wife Casey and the family.

4 I would like to make two comments
5 first before I then add some comments of fact
6 that may help this important Board. One, I
7 have practiced for 30 years and had to
8 represent similar families in other tragedies.

9 I have dealt the with NTSB, the FAA, with
10 OSHA and I want you to know that your staff
11 has been the most courteous and been the most
12 honestly concerned about the welfare of the
13 victims and finding the truth of any
14 organization that I have had the pleasure of
15 dealing with and they are to be commended.
16 They have never breached their levels of
17 confidentiality, never given false hope but
18 shown real concern without being asked to show
19 that concern, and I can tell you that is
20 wonderfully refreshing to people charged with
21 the responsibility of finding answers for the
22 families involved.

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1 Secondly, I want to thank you for
2 the thoroughness of this morning's
3 presentation. The families, the ones that I
4 represent, certainly other families every hour
5 that that young woman there has been alive
6 since she was told her husband was in the
7 situation he was, and then certainly lost him
8 the next day, there hasn=t been an hour go by
9 that she has not wondered why this happened.
10 And today for her and many others it's
11 starting the process of having clarity to what
12 happened.

13 When she came to me and these are
14 the three points I would like to add, when she
15 came to me asking for help for her family she
16 said to me what many people in her position
17 recognize immediately. All the money in the
18 world will not bring her husband back. And in
19 answering the question of why did she lose a
20 man like her husband and why did these other
21 people suffer their loss, what she wants this
22 Board to know and would say to them is, if

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1 there's any way that what you can do can bring
2 a message so that one other person's life is
3 saved, one other person is not critically or
4 severely injured, then that helps at least her
5 and her family have comfort that her husband's
6 loss was not in vain.

7 The points of fact that I would
8 like to add for you are important points that
9 your investigators would not otherwise know
10 without me telling this Board. One, I don't
11 know the backgrounds vividly of the other men,
12 but I do know the background of Clyde Jones.
13 You need to know that Clyde Jones was a member
14 of the United States Army and served in the
15 Gulf War as a Ranger. He was not an
16 unintelligent man by any stretch of the
17 imagination. He was not a man who would
18 recklessly and carelessly expose himself to a
19 risk such as this. He had been trained in the
20 highest levels of safety, as you can imagine,
21 to put his life in harm=s way as a Ranger.

22 He had worked at that plant for

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1 five years. He had with pride showed the
2 plant to his wife saying, this is where I
3 work. He never knew, never knew the dangers
4 of those gasses and what type of explosion
5 could occur. And if there's any thought about
6 that these people were just three stupid
7 people doing something careless, that even
8 common sense would tell you not to do, I want
9 this Board to know that is not a fact.

10 Secondly, I want you to know that
11 I had requested as their counsel the records
12 of the City of Daytona Beach regarding the
13 building of this plant and I was given access
14 to four boxes of materials through a public
15 records request. I don't know that your
16 panel, your investigators have really needed
17 to look there or wanted to look there but I
18 will tell you there is a great deal to be
19 learned from looking in those boxes of
20 materials.

21 What you will find is as in so
22 many city projects or government projects the

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1 idea of Amake it as cheap as possible@ was
2 ever-present and time constraints, get it
3 done, was ever present, and price and cost
4 overruns were rampant throughout the letters
5 that are in the materials. I was shocked, and
6 I don't know that your investigators know this
7 but in late 2003 as they were going through
8 necessary testing procedures to put the plant
9 online, the flame arrester had not even been
10 installed yet and someone discovered that and
11 said, oops, where is the flame arrester. And
12 there's literally a letter to that in the city
13 records.

14 The second fact that I don't know
15 that the investigators have commented on is
16 that we that have lived in this community
17 along the ocean's edge and know the caustic
18 effects of the salt water environment,
19 Floridians know that by and large, the fact is
20 this plant was less than 200 yards from the
21 edge of the Halifax River in a highly caustic
22 salt environment. Everyone knew that. So the

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1 need for regular maintenance was even
2 heightened by where the plant was located.

3 Then the third point is that while
4 the Board properly, the investigators properly
5 identified to this Board that there was
6 complete absence of any specific training for
7 the dangers inherent in working around
8 flammable gasses. In my early discovery in
9 this case I have learned that there was
10 absolutely no safety setup for this project
11 whatsoever. That no city manager, no plant
12 manager, no plant assistant manager, no one
13 said: AOkay, we want you to remove the work.
14 How do you propose to do it?@ I mean nothing.
15 Not even like, what are you going out to
16 paint? So it is such a high level of lack of
17 concern that what my clients would ask this
18 Board to do when it is collecting and making
19 its recommendations, is to as strongly as it
20 can say it, bring to the attention of places,
21 of entities like Daytona Beach the need to do
22 things immediately. Casey's comment

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1 whispering to me over and over again, is tell
2 them now, now. And I assure you that while
3 there have been efforts to say we will do
4 this, those efforts really aren't accounting
5 for anything until the programs are really in
6 place. And we would hope that this Board
7 could do that.

8 Again, I want to thank you for all
9 that you have done on behalf of this family
10 and the other families involved.

11 CHAIRPERSON MERRITT: Thank you.
12 Mr. Jim Smith.

13 MR. SMITH: Thank you, very much,
14 I'm Jim Smith of Arthur G. Gallagher Company
15 and also on the Board of Directors for the
16 American Society of Safety Engineers. I want
17 to echo some of the gentlemen's comments on
18 the CSB. First of all, you know, you have to
19 be commended to take on a public forum like
20 this because it's such a big problem in
21 Florida. I deal with a lot of municipalities
22 and governmental entities on a day-in, day-out

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1 basis and I have a whole host of answers to
2 many of your questions.

3 One of the things I'd like to
4 suggest is that I know we talked about the
5 safety program and a lack of that. You know,
6 we've really got to look at who is managing
7 that at the city or county level. I mean, if
8 you don't have a professional managing this
9 process, I don't care what laws you have in
10 place if somebody doesn't know how to do
11 hazard analysis, hot work permit designation,
12 coordinating in this political environment,
13 you are just going to be having rules that sit
14 there with nobody to manage it at the local
15 level. So that's one of the things I think
16 you should consider.

17 The second thing I would consider
18 is that I would love to see you do a survey
19 with the county and city management people,
20 even the Boards of these city and counties to
21 find out, do they really even know how many
22 workers are getting hurt every day on their

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1 job because, Gary, your answer is that 60
2 percent of the claims, all claims for city and
3 counties are worker related injuries, 60
4 percent. Those are data that I can show you.

5 The thing about it is that we've
6 got to look at somebody managing the process
7 especially in a political environment like the
8 city and county government. You are always
9 competing with dollars and cost savings, so
10 you have to have people to be able to number
11 one know the technical skills but also have
12 the business savvy to be able to take that and
13 make it work within the county and city and
14 change those cultures that don=t have it and
15 enhance those cultures that do have it.

16 So I would like to offer that as a
17 future something that CSB might want to
18 consider. But I do want to again echo CSB's
19 in coming forward and making this a public
20 forum because this is something that really
21 the governor's office, some of our legislators
22 really need to take a look at. This really

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1 has an opportunity -- this is not the end.
2 This should be the beginning.

3 So that's the comments I would
4 like to make. Thank you.

5 CHAIRPERSON MERRITT: Between, I
6 would ask is that the data you have with
7 regard that you were speaking of, that you
8 submit it to for the record. We would be
9 happy to do that.

10 MR. SMITH: Well, you guys can
11 talk with me about this. Some of it is
12 proprietary so I have to collectively put it
13 in some generic format but if you want to talk
14 with me off the record then we will be glad to
15 talk and work with you and show you some of
16 the data.

17 By the way, for your answer, John,
18 there are 27 fatalities in 2005. It's on the
19 database. You go to the Division of Workers'
20 Compensation database. I've got a report for
21 you. I'll hand it to you.

22 You can query on the Division of

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1 Workers' Comp database -- you can query
2 different SIT codes in terms of general
3 government. You won't get all of the
4 government but you will get a lot of the
5 government. And you can actually print out
6 that data right there. And it will show you
7 how many total, what they call indemnity
8 losses, how many cases, there's tens of
9 thousands.

10 By the way, an indemnity case is
11 when somebody is severe enough to be injured,
12 they lose seven or more days of work. This is
13 not one or two days you are out. This is
14 seven days you are out. So there's tens of
15 thousands of cases every single year.

16 It gives you the average cost of a
17 workers' comp claim. I mean those are
18 business value case -- you can make cases for
19 managing this process.

20 But I will be glad to talk to you.
21 I think I have given one of your
22 investigators my card and certainly would like

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1 to work with you if you need any of that data.

2 So, Thank you.

3 CHAIRPERSON MERRITT: Thank you
4 very much.

5 Marie Mobley, I don't know if I
6 have pronounced that correctly.

7 MS. MOBLEY: That is correct.

8 Hello, my name is Marie Mobley,
9 I'm with the American Federation of State,
10 County, and Municipal Employees. I work in
11 Miami-Dade County=s Solid Waste Department.
12 That's the sanitation department for those of
13 you who do not know.

14 First of all I would like to
15 sympathize with the family of the bereaving
16 family and to all the bereaving families that
17 I have worked with through the 27 years that I
18 have worked with the county.

19 I have heard a lot of statements
20 this morning and it's somewhat similar or sad
21 that we go through a hidden safety or a hidden
22 items as the families have just gone through.

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1 I mean through the years that I have been
2 there and being there now it's very few people
3 that deal with sanitation that live past their
4 30 years. A lot of them hate to retire
5 because there is no life expectancy after the
6 30 years. It's the natural chemicals or the
7 hazardous conditions that we are faced with.

8 I mean I look at the fire
9 department, police department, how they have
10 certain things in their clauses to protect
11 them or pay them while they are working under
12 these conditions, and here we are, sanitation
13 workers, not only in the State of Florida,
14 throughout the states, all over the United
15 States and anywhere that deals with
16 sanitation, we have no protection. Not with
17 government, with OSHA, with no one. I mean
18 those are hidden elements that you, me or
19 anyone does not see. It's the things that we
20 breathe. It's how we collect. How we dispose
21 of.

22 I looked in the landfills on the

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1 way here this morning from Miami and I noticed
2 that every landfill from Dade to Palm Beach or
3 anywhere that I have been even to
4 Jacksonville, Orlando, throughout the state,
5 it's somewhere near water. And that leaching
6 has a format of running off those landfills
7 because there's a layer of how we do the
8 landfills that gets into our water table. And
9 through that process, there's a cleaning
10 process that they have to do in order to make
11 it acceptable for us to drink. I mean that's
12 just one of those incidents that you can
13 relate chemicals getting off into.

14 But the main thing that saddens me
15 with the family and with the conditions that I
16 work under and throughout all the states, as I
17 said, for other sanitation employees, that
18 there is nothing set up for us, no type of
19 retirement, early retirement. No type of
20 benefits because Miami-Dade County has
21 specifically stated that there is no one
22 across the southern eastern part of the United

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1 States that receives a compensation for the
2 type of work that we do.

3 Like I said, before, I'm saddened
4 for that family, but I'm also saddened for
5 those families that belong to me and the
6 people that surround me that work with me and
7 the people that do work just like I do because
8 there is no element set in place or no
9 protection set in place for those employees.

10 Thank you.

11 CHAIRPERSON MERRITT: Thank you.

12 MR. WILLIAMS: My name is Jerry
13 Williams and I am also with American
14 Federation of State Municipal Employees, and
15 like we say in the panel people have said
16 there's no regulation when the governor took
17 the regulations out, nobody want to put safety
18 first. They want to put making money first,
19 money over lives. And you see it every day.
20 Money over lives and like the man says, if you
21 talk money then they will listen to you. If
22 you come in there and say safety, you need

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1 some kind of regulation they won't do it. And
2 it's sad that people have to die before we see
3 that we have a need for safety.

4 CHAIRPERSON MERRITT: Thank you.
5 Are there any other comments? Yes, ma'am.
6 Please state your name and affiliation.

7 MS. BOHAN: Good morning, my name
8 is Jessica Bohan. I'm a certified --

9 CHAIRPERSON MERRITT: Could you
10 spell that please?

11 MS. BOHAN: B, as in boy, o-h-a-n,
12 I'm a certified safety professional and also
13 on the Board of Directors for the
14 Certification Council of Environmental Safety
15 Technicians. I currently work at the
16 University of South Florida OSHA consultation
17 program and I used to work at the State of
18 Florida Division of Safety, which has come
19 under quite a bit of talk this morning. I
20 wasn't originally going to speak but it's been
21 such an interesting and informative meeting I
22 thought maybe my comments would be interesting

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1 or helpful in some way.

2 First of all, I'd like to express
3 my condolences to the families. I think --
4 may I continue in a moment?

5 CHAIRPERSON MERRITT: Yes.

6 MS. BOHAN: Thank you.

7 CHAIRPERSON MERRITT: Do we have
8 another commenter?

9 MR. MALO: Good morning. Thank
10 you, Madam Chair.

11 My name is Walter Malo, I'm safety
12 program manager for the State Fire Marshal's
13 office within the Division of Financial
14 Services the State of Florida. I just want to
15 give you a point of information because I have
16 been hearing everybody say that public
17 employees don=t have any protection.

18 Firefighters do, and I'm their
19 protection. When the Division of Safety was
20 allowed to sunset in 2000, the State Fire
21 Marshal Chief Financial Officer began doing
22 what needed to be done to secure permission

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1 and authority to create safety programs for
2 firefighters. We have Florida Statute 633.801
3 through .821 and Florida Administrative Code
4 69A-62 which comprise the Florida Firefighter
5 Occupational Safety and Health Act. They are
6 the only public entity employees with that
7 kind of protection. I just wanted to give you
8 that kind of information.

9 I want to thank you for an
10 excellent presentation. Outstanding. And,
11 again, as others have done I want to express
12 my condolences to the families.

13 Thank you very much.

14 CHAIRPERSON MERRITT: Thank you.

15 Ms. Bohan, spell it again?

16 MS. BOHAN: B-o-h-a-n.

17 CHAIRPERSON MERRITT: Bohan, Thank
18 you,

19 MS. BOHAN: I think I'm okay now.

20 Anyway, I wanted just to say in
21 the Division of Safety we provided a variety
22 of services to the public sector employers.

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1 Enforcement was one, just one component of
2 what we did. We also provided training,
3 assistance with developing programs such as
4 hot work permit, lockout, tag out, confined
5 space entry, things like that. I performed
6 fatality and complaint investigations in
7 behalf of both the government as well as the
8 employees if there were complaints.

9 During my time, there I started in
10 about 1995 and, of course, I lost my job June
11 30, 2000. There was always a real need for
12 our services. I was located here in the
13 Daytona Beach satellite office. We were from
14 the Orlando Region. Some employers were
15 better than others but they all needed some
16 help and we were able to provide them
17 specialized technical at no charge. And with
18 public sector, we all keep talking about
19 money, and here was a resource they could call
20 and we could do things for them.

21 The day I lost my job, well, we
22 knew it was coming, we watched the Senate

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1 session very carefully, I remember thinking to
2 myself well, who is going to watch out for
3 these employees. I'm gone. They don't have
4 me to call anymore. I had cases of asbestos
5 exposure, lead exposures, trench collapses,
6 every kind of exposure you can think of
7 because public sector work we heard earlier a
8 gentleman reference, it's typically classified
9 as low hazard but there are position such as
10 fire, police, wastewater, utility work that is
11 high hazard. And so who would go out? Who
12 would stop the work? Who would make the
13 complaints? Who would make the report saying,
14 here is how we can prevent this in the future.

15 We were gone.

16 I find it -- I now work, like I
17 said, for the USF OSHA Consultation Program.
18 We provide services in the private sector but
19 are not allowed by law to help the public
20 sector. They can use our video library but
21 they can't call me for technical advice. I
22 can't come out and look at a job site for

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1 them.

2 One thing I realized in public
3 sector is that that work is not glamorous.
4 There are no public sector jobs other than
5 maybe being a high-ranking official. These
6 people work hard for a living. Typically,
7 they are not paid very well, but they work for
8 every penny that they make and they are proud
9 people and many of them have been at their
10 jobs for many, many years.

11 I think it's appalling and yet I'm
12 still astonished we have not done anything in
13 the State of Florida since 2000 to rectify the
14 situation. How in the United States of
15 America can we treat our public sector
16 employees, the ones that keep our communities
17 functioning, we can turn the lights on. We
18 can use the toilet. Things we take for
19 granted. There are people out there every day
20 working on these systems and we are not
21 protecting them.

22 So it's my recommendation or

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1 request to the Board to please look at getting
2 away from voluntary compliance. If there was
3 no speed limit on the road, I would drive as
4 fast as I could.

5 Thank you.

6 CHAIRPERSON MERRITT: Thank you.

7 Are there any other comments?

8 (No response.)

9 CHAIRPERSON MERRITT: I would like
10 to thank everybody for your participation and
11 for your efforts. We appreciate your
12 attendance at this public meeting concerning
13 the CSB's investigation of the fatal Bethune
14 Point Wastewater Plant explosion. This has
15 been a very informative and insightful day.
16 Our investigation team has provided us with
17 new information about the conditions
18 surrounding this accident and I thank them for
19 their continuing hard and excellent work on
20 this and other investigations.

21 The Board will be considering
22 everything that has been said today as we move

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1 forward in developing recommendations for
2 preventing similar future accidents.

3 I also want to thank each of the
4 panelists specifically for their comments,
5 their perspectives and their efforts for
6 coming here today and would again like to
7 thank the audience for your attention and your
8 participation.

9 We hope to finish our
10 investigation within the next month and will
11 return here to Florida with our final report
12 and safety recommendations. Did you get that?

13 A month.

14 With that, I would like to thank
15 everybody and adjourn this meeting.

16 (Off the record.)
17
18
19
20
21

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