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Good Morning. I am Thomas Galassi, Director of the Directorate of Enforcement Programs for the Occupational Safety and Health Administration. On behalf of our Assistant Secretary, Dr. David Michaels and Secretary of Labor Thomas Perez, I want to thank you for inviting OSHA to this important meeting.

As you are aware, OSHA and its state plan delegates regulate health and safety in over 8 million workplaces over a wide range of industries. Despite our efforts, each year more than 4,500 workers die on the job in the United States and more than 1,000,000 workers suffer injuries serious enough for them to miss at least one day of work. OSHA cares deeply for the health and safety of *all* workers in America and believes these injuries and fatalities are preventable. We act aggressively to enforce all of our standards, including those impacting the process industries. OSHA's 29 CFR 1910.119, Process Safety Management of Highly Hazardous Chemicals is the most comprehensive standard applicable to the process industries.

Before I discuss OSHA's activities, I want to make one very important point. Although OSHA's mission is to assure safe and healthful working conditions for workers in America, it is ultimately the employer's responsibility to provide a safe and healthy workplace. OSHA has a

number of tools at its disposal to make sure that employers fulfill that duty and protect workers from workplace hazards. The tools include enforcement (with special emphasis programs to help focus inspection activities), issuance of standards and regulations on which enforcement is based, and compliance assistance – providing guidance materials and training.

OSHA citations are based on standards and regulations issued by the Agency. Where no standard exists, OSHA can use its general duty clause, which states that an employer must furnish a place of employment free from recognized hazards likely to cause death or serious physical harm.

Standard setting is one of the most important and permanent actions that OSHA can take, but it is rarely the quickest means of addressing workplace hazards. Not only do OSHA standards require a substantial outlay of scarce resources, but the process is extremely long. A recent Government Accountability Office report, for example, estimated that it takes, on average, seven years for OSHA to issue a standard, and that process is only getting longer. Rulemaking, therefore, is a tool best reserved for the most widespread and serious hazards.

Because of the enormous job OSHA has, and the limited resources available to perform those tasks, we must carefully choose which of these tools we use in any given situation and what the most effective and efficient action would be to address the most important hazards. Before deciding to address a hazard by promulgating a new standard, OSHA considers a number of factors including:

- The estimated time it takes to issue a final OSHA standard;
- The existing applicable OSHA standards;

- The usefulness of OSHA's general duty clause for addressing particular hazards, including the existence of industry standards and codes that show industry knowledge of hazards;
- The effectiveness of training, education, consultation, and outreach efforts, as well as vigorous use of the bully pulpit; and
- OSHA's available resources.

OSHA appreciates and takes the CSB recommendations very seriously. We have carefully considered and responded to every recommendation the board has submitted to the agency, taking into account our resources and broad responsibility to protect all workers in America, not only those exposed to explosion hazards. Each of our responses, including the four considered here today, was delivered to the Board in a timely manner. When, in OSHA's analysis, a Board recommendation, including recommendations to promulgate new standards, may not be the most effective option, OSHA may use other methods to address the hazard—essentially taking a different route to the same destination—in order to protect workers as effectively and expeditiously as possible.

I will now describe the actions OSHA has taken or in the process of taking to respond to the recommendations under review today.

Coverage of Atmospheric Tanks in 29 CFR 1910.119

Following its investigation of the July 17, 2001, sulfuric acid tank explosion at Motiva Enterprise's Delaware City, Delaware facility, the CSB recommended that OSHA ensure coverage under the Process Safety Management Standard (PSM) of atmospheric storage tanks that could be involved in a potential catastrophic release as a result of being interconnected to a covered process.

The incident occurred when welding on a walkway close to a spent sulfuric acid tank ignited a flammable atmosphere in the headspace of the tank. Motiva used the tank to separate spent sulfuric acid used in petroleum refining from entrained hydrocarbons. Because of the hydrocarbon content, the tank's headspace contained a flammable atmosphere. The explosion caused the failure of the tank and resulted in the death of a welder.

OSHA's Process Safety Management (or PSM) standard exempts from coverage the contents of atmospheric tanks the sole function of which is storing flammable liquids. OSHA responded to the CSB recommendation on April 22, 2003, explaining that the spent sulfuric acid tank at Motiva was actually a process tank meant for the separation of sulfuric acid and hydrocarbons and NOT a storage tank subject to the atmospheric tank exemption. OSHA also told the CSB it intended to prepare a directive for its field offices outlining the application of the atmospheric tank exemption.

OSHA continues to address potential hazards associated with atmospheric tanks on a case by case basis and is moving forward with the guidance to the field offices I mentioned previously. In addition, OSHA is considering including questions regarding the atmospheric tank exemption in its recently announced Request for Information (RFI) related to the revising of its Process Safety Management standard. The RFI will address a number of issues that have become evident in the 21 years since OSHA promulgated the PSM standard.

Management of Organizational Change

Following its investigation of the 2005 BP Texas City, Texas explosion, the CSB recommended that OSHA change its PSM standard to explicitly state that organizational changes—such as mergers, reorganizations, personnel changes, staffing levels, or budget cuts—are covered under 29 CFR 1910.119(l) Management of Change.

In a December 12, 2007, response to this recommendation, OSHA explained to the CSB that organizational changes affecting process safety are already a part of PSM requirements. OSHA has successfully cited organizational changes under paragraph 119(l) both before and after the issuance of the CSB recommendation. At both Formosa Plastics and Kraft Foods, OSHA successfully cited organizational changes that materially affected the safety of the process. OSHA therefore requested that the CSB close the recommendation.

In addition, OSHA issued a memorandum to its regional administrators on March 31, 2009, explaining OSHA's position on enforcement of paragraph 119(l) and organizational change. The memorandum clearly states that a facility must initiate its management of change process if an organizational change has the potential to impact any of the process elements listed in paragraph 119(l)(1).

Finally, OSHA is considering including questions regarding management of organizational change to the recently announced RFI for revising the Process Safety Management standard.

Fuel Gas Safety

Following the 2010 explosion at the Kleen Energy construction site in Middletown, Connecticut, the CSB recommended that OSHA promulgate regulations that address fuel gas safety for both construction and general industry. OSHA responded that the agency would consider promulgating new flammable gas safety regulations. However, upon further review, OSHA determined that rulemaking is not the best option at this time for a number of reasons that I would like to briefly touch on.

In general, OSHA believes the country is well-served by the current framework of building and mechanical codes that base fuel gas safety on the National Fire Protection Association's standard 54 – the National Fuel Gas Code, the International Code Councils' International Fuel Gas Code, and the American Society of Mechanical Engineers Codes for Pressure Piping. These codes, incorporated by reference in many municipalities, counties, and states throughout the country provide broad engineering standards for fuel gas systems in businesses and residences. Given that this effective regulatory structure already exists, OSHA must consider the utility of a fuel gas standard given its regulatory priorities and finite rulemaking resources.

OSHA's other compressed gas standards exist because the gases present unique hazards (e.g., the detonation hazards of acetylene and hydrogen, and the high density and release potential of liquefied gases such as propane) and because the facilities that use gases such as hydrogen, acetylene, propane, and butane typically store large inventories on-site or at the point of use, which presents a much greater hazard to workers.

In response to the CSB recommendation related to the Kleen Energy explosion on the purging and cleaning of fuel gas piping, OSHA participated as a technical resource in the preparation of NFPA's new fuel gas process safety standard (NFPA 56) and, as a result, has maintained full awareness of the standard's content . Relatedly, by letter dated August 27, 2010, OSHA directly placed energy companies and turbine manufacturers on notice regarding the hazard of releasing flammable gases into congested workspaces.

OSHA will continue to monitor the development and implementation of NFPA 56 as it becomes a permanent NFPA standard. If, in the future, OSHA discovers an employer exposing employees to fire and explosion hazards associated with gas blows, the agency can cite the employer for a violation of the general duty clause with NFPA 56 representing one source of industry recognition of gas blow hazards. Even though OSHA has several tools to address hazards associated with gas blows, it has determined that gas blows and their associated hazards are not widespread. In fact, our search revealed that there have been no other fatalities due to gas blows or gas purging since the Kleen Energy and ConAgra incidents. As a result, OSHA believes that no further regulatory action is needed because of effective comprehensive enforcement mechanisms already in place.

Combustible Dust

In 2006, the CSB recommended that OSHA issue a standard designed to prevent combustible dust fires and explosions in general industry. OSHA strongly agrees that the best course of action is a federal regulation to control combustible dust hazards. As you may know, on April 29, 2009, DOL announced its intent to initiate a comprehensive rulemaking on combustible dust, the first new OSHA regulatory action of this administration. On October 21, 2009, OSHA published an advance notice of proposed rulemaking (ANPR) in the *Federal Register*, as an initial step in the development of a standard to address the hazards of combustible dust. The ANPR included 69 questions. The questions covered a variety of categories including definition of combustible dust, controls needed to mitigate the hazards, hazard analyses and other such categories. During the comment period which ended in January of 2010, OSHA received comments from over 150 individuals representing different industries and organizations, and the comments can be found on www.regulations.gov. At present, the comments have been compiled and the responses to each question have been addressed. After the ANPR publication, OSHA convened 6 stakeholder meetings: two in Washington, D.C, in December of 2009; two in Atlanta, in February 2010; and two in Chicago, in April of 2010; and a web chat on June 28, 2010. As a part of the rulemaking efforts, OSHA conducted 11 site visits of facilities handling combustible dusts. The visits covered pharmaceutical plants, paper, power plants, furniture, food, sulfur, and wet corn milling industries representing a cross section of industries potentially affected by a new combustible dust standard. Additionally, staff from OSHA's standards group accompanied Region/Area office personnel and/or contractor on three visits.

OSHA has developed several regulatory alternatives, ranging from basic to comprehensive. The agency is also preparing the necessary materials and analyses for the Small Business Regulatory Enforcement Fairness Act review, which is scheduled to begin in November 2013. After the SBREFA meeting, OSHA will continue to work towards publishing the proposed rule.

Because the rulemaking process is time consuming, OSHA has taken more rapid steps to ensure that workers are protected in the interim. In October 2007, OSHA initiated a Combustible Dust National Emphasis Program (NEP). In light of the Imperial Sugar dust explosion on February 7, 2008, OSHA expanded the NEP to focus on industries with more frequent and high consequence dust incidents. The revised NEP includes 64 types of industries for inspection. In addition, OSHA inspected all sugar refineries (Beet and Sugarcane) under Federal jurisdiction as part of the NEP.

OSHA is taking, and will continue to take, strong enforcement actions to address combustible dust hazards. Since the start of the NEP, OSHA and its state plan partners conducted over 3,700 inspections; Identifying over 14,000 violations at facilities handling combustible dusts. In the absence of a dedicated combustible dust standard, OSHA has a number of tools such as the general duty clause and the housekeeping standard to address combustible dust hazards.

OSHA also uses its education tools. In 2005, OSHA published a Safety and Health Information Bulletin, titled *Combustible Dust in Industry: Preventing and Mitigating the Effects of Fire and Explosions*. This comprehensive guidance highlights the hazards associated with combustible dust; the work practices and engineering controls that reduce the potential for a dust explosion or

that reduce the danger to employees if such an explosion were to occur; and the training needed to protect employees from these hazards. In light of the tragedy at the Imperial Sugar plant, OSHA mailed 30,000 copies of this bulletin to employers identified as being an at-risk industry. This proactive step reminded employers of their duty to furnish their employees with places of employment that are free of hazards and offering them instruction and information as to how it can be accomplished.

OSHA also clarified its hazard communication requirements for combustible dust hazards. On March 26, 2012, OSHA amended its Hazard Communication Standard to incorporate the Globally Harmonized Standard for Classification and Labeling of Chemicals (GHS). As a part of those revisions, OSHA adopted regulatory language that explicitly requires combustible dust hazards to be disclosed on labels and safety data sheets. OSHA is also working with the UN Sub-Committee on the GHS to include text in the GHS on the classification of combustible dust hazards.

In the interim, until a final combustible dust standard is issued, the Agency's strong and effective enforcement of existing regulatory and statutory requirements, combined with education and outreach to employers and employees, is helping to protect the safety and health of working men and women who may be exposed to combustible dust hazards. OSHA is certain that rulemaking efforts that are currently underway will further reduce the potential combustible dust flash fires, deflagrations, and explosions.

OSHA is in full agreement with the CSB that there are serious chemical plant- related safety and health issues facing workers in America and that strong action must be taken. In every instance, OSHA has taken strong action to address the hazards identified by the CSB. We would like to

work constructively with the CSB in the future to find ways to best reach our common goal—to protect the workers and communities of this country.