

Joint Union Coalition Comments Submitted to the U.S. Chemical Safety Board Regarding CSB Recommendations Related to Combustible Dust. Submitted on July 25, 2013

The coalition of unions (listed below) is taking this opportunity to strongly support the four recommendations made by the Chemical Safety Board related to prevention of combustible dust fires and explosions – most of which urge OSHA to simply develop and publish a comprehensive combustible dust standard for general industry.

We also support CSB's highlighting the need for the standard in light of OSHA's failure to move ahead with rulemaking on combustible dust.

We do this in order to prevent further deaths and injuries from these recognized hazards.

In November 2006, CSB issued its investigative report, "*Combustible Dust Hazard Investigation Study*", which covered 281 combustible dust incidents between 1980 and 2005. CSB found that 119 workers were killed and 718 injured as a result of these incidents. The CSB report concluded that combustible dust explosions are a serious hazard in American industry and that existing efforts inadequately address this hazard. That report provided compelling evidence then that OSHA needed to promulgate a mandatory standard to prevent combustible dust fires and explosions in general industry.

In 2008, the Imperial Sugar plant exploded in Port Wentworth Georgia, resulting in the death of 14 workers and severe burns and injuries to dozens more. CSB recommendations that resulted from that investigation and report were again to "proceed expeditiously" with rulemaking. An OSHA investigation at a companion plant in Gramercy, LA revealed similar conditions which could have resulted in a comparable catastrophe.

Our unions represent workers who are exposed to combustible dust hazards. Some work in facilities where uncontrolled combustible dust hazards are present today. These industries include grain handling, food production, sugar, paper, plastics, wood rubber, metal, furniture, textiles, and pharmaceuticals. These are industries in which hundreds of workers have been either killed or seriously injured as a result of combustible dust explosions.

We note that OSHA has had many opportunities to better regulate combustible dust in general industry but has failed to do so. In 1970, when the OSH Act was passed by Congress, "Congress stipulated that OSHA should adopt appropriate consensus and technical standards and codes into OSHA's safety and health regulations." Several NFPA standards were adopted. However, those NFPA standards addressing combustible dust explosions which existed at the time of the OSH Act were not: notably NFPA 654 (*Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids*), and NFPA 651 (for dust explosions involving plastics and aluminum).

In 1987 OSHA issued the Grain Handling Facilities Standard partly as a result of a proliferation of grain dust explosions in the late 1970s and early 1980s. This standard had the desired effect of reducing the

number and severity of combustible grain dust explosions in the grain handling industry. Unfortunately, the section of the Grain Handling Standard relating to combustible dust is not comprehensive; thus explosions due to combustible grain dust occur regularly, putting tens of thousands of workers lives in jeopardy.

The Grain Handling Facilities Standard was never intended to regulate combustible dusts in industries outside of the grain industry and the continued devastation caused by explosions in the grain handling industry illustrates the inadequacy of the combustible dust provisions in that standard.

Attached is a chronology of the limited and to-date unsuccessful efforts to regulate combustible dusts throughout general industry under the OSHAct.

In 2008, following the Imperial Sugar refinery explosion, the UFCW and the Teamsters petitioned OSHA seeking an Emergency Temporary Standard, pursuant to Section 6 (c), of the Occupational Safety and Health Act, as well as seeking expedited rulemaking for a combustible dust standard for general industry.

In that petition the unions noted the “grave dangers” workers face in facilities where uncontrolled combustible dust emissions can result in fatalities or serious injuries as a result of dust fires and explosions. OSHA opted instead, at that time, to reissue a directive through the National Emphasis Program that required each Area Office to conduct a minimum of one inspection per fiscal year. The NEP detailed how inspections were to be conducted, but provided no additional financial or human resources to Area Offices to support enforcement and did not require implementation in State Plan States. At the time of the Imperial Sugar incident, OSHA had not included “sugar refineries” in its NEP targeting, and had done no inspections at either of the Imperial Sugar plants.

In May of 2009, following a hearing into the Imperial Sugar incident, the U.S. House of Representatives passed HR 5522, mandating a temporary standard within 90 days.

OSHA finally issued an Advanced Notice of Proposed Rulemaking on Combustible Dust in October 2009, and in it clearly outlined the dangers associated with combustible dust as well as with voluntary compliance. We could not agree more with OSHA’s own conclusions. In 2009 OSHA wrote:

“The existing regulatory regime is fragmented and incomplete. The Agency’s analysis of the CD NEP... shows that existing OSHA standards do not regulate important elements of combustible dust hazards. The consensus standards related to CD are large, complex, numerous, add interrelated, which make it difficult for employers to comply with them. In addition, where these consensus standard standards have been adopted as part of State or local codes, available evidence show that they are poorly enforced at the local State levels.”

OSHA goes on to state that “the information currently available indicates that the risk of combustible dust explosions is considerable and that a single comprehensive standard addressing all of these hazards will likely provide clarity for employers and increased safety for expose workers.”

This was the gap in essential protections in 2009. This gap still exists today.

To illustrate the stakes at risk in the current situation, attached is a list which the Board compiled last year of “High-Consequence Combustible Dust Incidents”, covering only the 14 months from 2011 through March 2, 2012.

The standard that eventually emerges from OSHA’s rulemaking must include meaningful roles for workers and worker representatives in all aspects of the standard, including planning, hazard identification and evaluation, reporting, inspections, monitoring of the plan, abatement activities, training and incident investigations.

There is also a need for strong anti-retaliation protections for workers who participate and who report hazards. Many of the workers exposed to these hazards have no other protection from employer intimidation and harassment in the event that they seek to assure employer compliance with the standard’s requirements.

We understand that the rule making process is complex, and OSHA faces many obstacles in its efforts to adopt new standards. In some cases, those obstacles are ones which OSHA itself is supposed to confront and resolve. For instance, there can be technical questions regarding the definition and determination of the hazard or of the means to preventing hazards in the first place. In other cases, the adoption of new standards requires substantial innovations in technology or management systems to assure that detection and prevention occur. None of that is the case regarding combustible dusts. For the vast majority of dust hazards, both the hazards and the means of prevention are already well established. As was so clearly demonstrated in the horrific chain of events at Imperial Sugar, the Hoeganaese factory in Gallatin, TN, and elsewhere, the awareness of the hazard was clear. What was lacking was the management’s will to deal with the problem and to implement an effective prevention effort. In other words, what was lacking was a mandatory requirement that the managers take action to protect the workers, rather than ignoring or delaying or otherwise allowing the hazards to persist.

In other cases, there are serious questions about how best to estimate the costs. But given the well-known and available technology for both determining and controlling these hazards, the information on costs are well within the capacity of both OSHA itself as well as the affected industries should they agree to cooperate in the rulemaking.

We believe that most of that work either has already been done, or should have been done had OSHA been allowed to do it.

Instead, we believe that the years of delay are due to a lack of political will in the various Administrations on whose watch these events have occurred. Nothing else can explain the outright refusal of the Bush Administration to move ahead with a proposed standard even in the face of the Board’s 2006 Recommendation, the multiple severe incidents, the Congressional pleas for action, the formal petition by the affected labor unions and the explicit support from the National Fire Protection Association.

For that reason, we welcomed the Advanced Notice of Proposed Rulemaking that OSHA issued in 2009, and have actively participated in the formal rulemaking as well as the multiple Stakeholder meetings and the parallel process sponsored by the NFPA. We are pleased that OSHA, even under the limits it faces on rulemaking issues, has continued to devote staff and other resources to work on this rulemaking, and that OSHA has included the Combustible Dust Standard in the latest Regulatory Agenda.

However, the question is not just one of whether OSHA's own response is unacceptable. The failure of the Obama Administration itself to pursue the rulemaking after the success of those various efforts is inexcusable. It is evident to us that OSHA has the desire and the interest to move forward. What is missing, apparently, is the permission to do so. And that, apparently, is still not forthcoming. OSHA has missed every deadline it has set for itself. The latest is the November, 2013 scheduled start of yet another obstacle to OSHA's rulemaking – the convening of a "Small Business" review panel. Will OSHA be allowed to do that? Will the Office of Information and Regulatory Affairs, enforcer of Administration regulatory policy, finally assure for once and for all that OSHA meets a deadline stated in the Administration's own Regulatory Agenda? Will the Office of Management and Budget assure that OSHA has the funds needed to compile all the information which OMB and others demand in order to allow OSHA to move forward? Will the Administration ever be satisfied that OSHA is doing its job correctly – and allow OSHA to proceed?

Or will we instead be forced to submit to the spectacle of more delays?

Today, the Board is considering the designation of high-priority, urgently needed actions by the agencies to which the Board submits its Recommendations. While there is no denying that combustible dust deserves a high-priority effort, we believe there are also many other hazards and regulatory gaps deserving of high-level attention by both the Board, EPA, OSHA and the other agencies within the Board's purview. These hazards and regulatory gaps include the other issues that the Board is considering today regarding the Process Safety Management standard, as well as other issues not under consideration today.

But whatever decision the Board makes today regarding the issue deserving the highest priority, we certainly agree with the Board that the urgency of unregulated combustible dust hazards is very clear. It is vital that, in response to this urgency, the Board itself take additional steps to reflect that urgency.

Therefore, we strongly urge the Board to call upon both the Office of Management and Budget and its Office of Information and Regulatory Affairs to provide OSHA with the support that OSHA needs to quickly and finally move ahead on the proposed standard. Those agencies' postures will ultimately determine whether or not OSHA issues a proposed standard, and it is high time for the Board to directly call upon them to support OSHA rather than to obstruct or ignore it.

This also would not be the first time that the Board had communicated directly with OIRA on the combustible dust issue. When OIRA was considering OSHA's draft final revision of the Hazard Communication Standard to reflect the GHS rulemaking and create a new category of "unclassified" hazards, the Board wrote to OIRA to urge OIRA to "endorse the current OSHA rulemaking without recommending any significant changes to the proposed hazard categories." We agree that OIRA's failure

to support OSHA's rulemaking on Combustible Dust itself is at least as important as the question of its support for the "unclassified" hazards, and merits an equivalent action by the Board at this time.

Likewise, given the severity of the hazards and the delays to date, we urge the Board to report to the Congress itself that this is an urgent matter for which OSHA will require sufficient funds to complete this critical task.

We don't know when the next major combustible dust incident will occur. It could be later today, or tomorrow morning.

For the families of Gallatin, TN, it has already tragically come and gone. For Chris Sherburne, whose husband Wiley was killed at Hoeganaese on Jan. 31, 2011 after suffering burns on 95 percent of his body, the delays are just "rubbing salt in a really fresh wound."

As we reflect on this sordid history of delays, we ask all those with the power to assure that OSHA moves quickly: how much more salt will you rub in the wounds of America's workers and their families?

The time for a proposed standard on Combustible Dust is now – not next year or the year after that. Let OSHA do its job, and finally give America's workers, families and communities the protection which they deserve and to which they are most certainly entitled.

ATTACHMENTS

1. Timeline on OSHA Combustible Dust Standard
2. "High-Consequence Combustible Dust Incidents", 2011 through March 2, 2012, US Chemical Safety Board, March 2, 2012.

Respectfully Submitted by:

American Federation of Labor and Congress of Industrial Unions (AFL-CIO)

Change to Win

Bakery, Confectionery, Tobacco Workers, and Grain Millers International Union (BCTGM)

International Chemical Workers Union Council of United Food and Commercial Workers (ICWUC/UFCW)

United Steel Workers International Union (USW)

Timeline on OSHA's Combustible Dust Standard

1923: NFPA publishes the first "national consensus standard" on the prevention of dust explosions in grain terminals and flour mills.

1972: OSHA adopts "national consensus standards" on housekeeping (cleaning of floors and other walking/working surfaces), and fire prevention/electrical safety.

1977: Grain elevator explosions in LA and TX kill 45 workers and injure 34 others.

1980: OSHA begins rulemaking to prevent grain dust explosions, and issues proposed rule on Jan. 6, 1984.

1980: Grain elevator explosions peak at 37/year, and averages 21/year during 1978-1987.

1987: OSHA issues final grain dust standard; number of explosions drops to 10/year during 1988-97.

1995-2003: Massive explosions from combustible dust kill 28, injure 169 and destroy multiple factories.

2003: OSHA issues "Safety Bulletin" to promote voluntary employer action to prevent dust explosions.

2004: After investigations at 3 separate multiple-fatality incidents, the US Chemical Safety Board (CSB) broadens investigation to a nationwide study of combustible dust hazards.

2006: US CSB releases Combustible Dust Study finding widespread hazards involving 281 incidents in 1980-2005 that killed 119 and injured over 700 workers, and recommends OSHA issue a new standard.

2007 (October): OSHA refuses to initiate rulemaking, but issues a National Enforcement Program Directive requiring one inspection/year/Area Office

2008 (February): Imperial Sugar refinery in Port Wentworth, GA explodes, killing 14 and injuring 38.

2008 (February): Labor unions petition Secretary Chao for an Emergency Temporary Standard.

2008 (March): US House Committee on Education and Labor holds hearing; US Chamber of Commerce agrees that the hazard is well-known, but opposes any mandate for an emergency OSHA standard, and calls for more study.

2008 (May): House passes HR 5522, mandating a new temporary standard within 90 days.

2009 (October): OSHA issues Advanced Notice of Proposed Rulemaking requesting information from the public on dust issues, and saying: "The existing regulatory regime is fragmented and incomplete. The Agency's analysis of the combustible dust NEP ... shows that existing OSHA standards do not regulate important elements of combustible dust hazards."



US CSB High Consequence Combustible Dust Incidents 2011 - Present

Number of Incidents 21

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Date 3/2/2012
Time 10:42:09 AM

Incident Date and Time	Company	City	State	Fatalities	Injuries
1/31/2011 at 5:00 AM	Hoeganaes Corp/GKN	Gallatin	Tennessee	2	0
3/15/2011 at 8:00 AM	Progress Energy - Sutton	Wilmington	North Carolina	1	0
3/5/2011	Yokohama Tire Corp - Salem, VA	Salem	Virginia	0	1
4/26/2011 at 9:30 AM	Agilent Technologies	Santa Rosa	California	0	1
5/9/2011	Eckart America	Louisville	Kentucky	0	2
5/27/2011 at 5:30 AM	Hoeganaes Corporation	Gallatin	Tennessee	3	2
6/9/2011	Haverhill Township Farm - Grain Dust	Havervill Township	Minnesota	0	1
6/23/2011	Universal Woods	Louisville	Kentucky	0	2
6/27/2011	Delta Oil Mill	Greenwood	Mississippi	1	1
8/12/2011 at 7:00 AM	New Page Corp. - Biron, WI	Biron	Wisconsin	0	3
7/27/2011	Walker Manufacturing	Harrisonburg	Virginia	0	1
8/16/2011	Stimson Lumber Company	Gaston	Oregon	0	3
8/18/2011	ADM (Archer Daniels Midland) - Clinton, IA	Clinton	Iowa	0	1
9/15/2011	Hutterite Colony Coal Bin Explosion - Britton, S	Britton	South Dakota	2	0
9/9/2011	Stollberg Inc.- Niagara Falls, NY	Niagara Falls	New York	0	1
9/15/2011	Sara Lee - London, KY	London	Kentucky	0	1
10/6/2011 at 12:00 PM	Gilster-Mary Lee Corporation- Steeleville, IL	Steeleville	Illinois	0	2
10/29/2011	Bartlett Grain Co.-Atchison, KS	Atchison	Kansas	6	2
12/7/2011	Polymer Partners, LLC - Henderson, KY	Henderson	Kentucky	1	3
1/6/2012	North Central Farmers Elevator - Faulkton, SD	Faulkton	South Dakota	0	1
1/12/2012 at 9:00 AM	NOV Tuboscope - Edmond, OK	Edmond	Oklahoma	0	4