

**Written Testimony of Carolyn W. Merritt
Chairman and Chief Executive Officer
U.S. Chemical Safety Board
Submitted to the U.S. House of Representatives
Committee on Education and Labor
Subcommittee on Workforce Protections
“Workplace Safety: Why do Millions of Workers Remain Without OSHA Coverage?”
May 24, 2007**

Madam Chairman, Ranking Member Wilson, and distinguished members of the Committee: thank you for the opportunity to submit written testimony today in support of providing stronger workplace safety protections for America’s state, county, and municipal workers. I submit this testimony on behalf of the U.S. Chemical Safety Board, an independent, non-regulatory federal agency that investigates major chemical accidents.

This Saturday, May 26, we mark the 15th anniversary of the U.S. Occupational Safety and Health Administration’s Process Safety Management (PSM) standard, a landmark regulation that protects private sector employees throughout the country from chemical accidents. Companies and governments throughout the U.S. and overseas respect the PSM standard and the safe management practices it represents.

The PSM standard is one of several important OSHA standards that safeguard workers from chemical hazards. On this anniversary, it is sobering to think that today millions of public employees still do not enjoy the same protections from workplace dangers as private sector workers. A number of key chemical safety regulations – governing hazard communication, personal protective equipment, flammable liquids, hot work, confined space entry, and lock-out/tag-out, along with PSM – simply do not apply to many of our public employees.

Every day, public employees face many of the same hazards as private sector workers. State and local employees – particularly those engaged in drinking water and wastewater treatment – regularly use and process large volumes of hazardous chemicals. Public emergency responders also frequently encounter serious chemical hazards.

A recently completed CSB accident investigation in Florida underscores the potentially grave dangers facing public employees who work with dangerous chemicals without workplace safety standards.

On January 11, 2006, an explosion and fire occurred at the Bethune Point Wastewater Treatment Plant in Daytona Beach, Florida – a facility owned and operated by the city. This tragic accident killed two employees and severely burned a third.

Our investigation determined that maintenance workers using a cutting torch on a roof above a methanol storage tank accidentally ignited vapors coming from the tank vent. This unsafe hot work caused flames to flash back into the storage tank, causing an internal explosion, multiple piping failures, and a large fire that engulfed the workers.

The CSB identified several causes of this fatal accident, including a lack of recognition for the hazards of methanol, a lack of safety and hazard review in job planning, use of inappropriate piping materials, and an ineffective flame arrester – a device intended to prevent the spread of flames into the tank. In addition, the CSB found that the City of Daytona Beach did not implement adequate controls for hot work at the plant and did not have a program to effectively communicate the hazards of methanol to municipal workers. Furthermore, the City of Daytona Beach had no program to evaluate the safety of non-routine tasks such as the roof repairs, which involved using a cutting torch near a flammable storage tank.

The hazards of using a torch in proximity to the methanol tank would likely have been identified and possibly prevented if Florida public employees were covered under federal OSHA regulations. The CSB report recommended that the governor and legislature of the State of Florida “implement policies, practices, procedures . . . covering the workplace health and safety of Florida public employees that are at least as effective as OSHA” and “establish and fund a mechanism to ensure compliance with these standards.” The CSB also made recommendations to the City of Daytona Beach, the National Fire Protection Association, and the Occupational Safety and Health Administration.

Federal OSHA standards mandate that private employers conduct hazard communication (HAZCOM) training annually. Chemical hazard recognition is commonly addressed through a HAZCOM program that provides employees with information on chemical hazards and trains them on specific hazards and the use of available information.

However, HAZCOM training was not required at the Bethune Point wastewater plant since its workers were municipal employees. The scope, content, and frequency of the HAZCOM training provided to the city employees at the plant did not adequately prepare them to deal with the hazards associated with flammable materials such as methanol that were involved in the explosion.

Daytona Beach had previously provided hazard communication (HAZCOM) training seven times at the Bethune Point facility. However, no such training took place between 2002 and the date of the accident in 2006. Additionally, the CSB report states that the city experienced a decline in the number of safety-related training sessions after the year 2000. Lacking appropriate training, the municipal workers involved in the hot work were unaware of the hazards of a methanol fire and explosion. Likewise, OSHA standards would have required control of hot work to prevent the use of open flames near a potentially flammable atmosphere.

While public employers are not covered by the Occupational Safety and Health Act of 1970, the Occupational Safety and Health Act does include two opportunities for city, county, and state employers to provide OSHA coverage: state plans and public employee-only plans. States may establish their own occupational safety and health programs as “state-plan states” by establishing “an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions,” according to Section 18 of the Act. States may provide OSHA coverage even where no state plan covering private employers is in effect as a “public employee-only plan state.”

According to OSHA, twenty-one states have adopted OSHA state plans and three states have adopted public employee-only plans (List 1). While the federal government establishes staffing and enforcement benchmarks for state plans and public employee-only plans to ensure enforcement and standards are “at least as effective” as the federal program, twenty-five states do not operate under this system. Some of the states without “state plans” and “public employee-only plans” provide safety and health protection to public employees, although these programs do not receive federal funding and are not subject to federal OSHA oversight.

Florida currently has no OSHA-approved “state plan” or “public employee-only plan.” Chapter 442 of the Florida Occupational Safety and Health Act, which was enacted in 1982 but repealed in 1999, had directed the Florida Division of Safety to assist employers (both private and public, including cities and counties) to make their workplaces safer and decrease the frequency and severity of on-the-job injuries. State, city, and county employers were required to comply with most OSHA regulations and the state had the authority to cite public employers.

Following the repeal of Chapter 442 in 1999, the governor issued an executive order addressing public employee safety and health. State agencies listed in the executive order are directed to comply with General Industry OSHA standards. However, municipalities are not required to comply with the executive order and many lack public worker safety programs. Coverage of Florida public employees under an occupational safety and health program in accordance with Section 18(b) of the Occupational Safety and Health Act of 1970 and 29 CFR 1956.1 will improve the safety of workers and the control of chemical risks.

Today, no Florida state laws or regulations exist to require municipalities to implement safe work practices or communicate chemical hazards to municipal employees. This fatal accident that occurred in Florida should serve as a cautionary tale for the twenty-five other states that do not provide public employees with OSHA protections.

As a matter of fundamental fairness – and to protect the lives of America’s public employees and the communities in which they work – the CSB urges governments at all levels to take steps to protect public employees from preventable chemical accidents, including the establishment of programs incorporating mandatory OSHA standards. It is simply inequitable to afford public employees with lesser workplace protections than workers in private industry. No worker – whether employed by the city, county, state, federal government, or the private sector – should have to suffer injury or death just to earn a living.

We thank the Committee for drawing attention to this important workplace safety issue and for considering our testimony.

List 1

PUBLIC EMPLOYEE OSHA COVERAGE

The following states have approved State Plans:

Alaska	New Jersey*
Arizona	New Mexico
California	New York*
Connecticut*	North Carolina
Hawaii	Oregon
Indiana	South Carolina
Iowa	Tennessee
Kentucky	Utah
Maryland	Vermont
Michigan	Virginia
Minnesota	Washington
Nevada	Wyoming

*Public Employee-Only Plans

Source: Occupational Safety & Health Administration; www.osha.gov/dcsp/osp/index.html