

**STATEMENT OF RICHARD FAIRFAX
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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Stupak, Ranking Member Whitfield, and Members of the Subcommittee:

Thank you for the opportunity to testify today and discuss the Occupational Safety and Health Administration's (OSHA) role in safeguarding workers in the nation's refining industry.

My name is Richard Fairfax. I have worked for OSHA for 29 years. Since 1998, I have been the Director of OSHA's Directorate of Enforcement Programs, for which I coordinate the agency's federal inspection efforts. Federal OSHA conducts inspections from each of its 86 local offices around the nation. These efforts are overseen and supported by the agency's 10 regional offices. Twenty-one states and Puerto Rico have chosen to exercise the option given them by the Occupational Safety and Health (OSH) Act of 1970 to become "state-plan states" and operate OSHA-approved occupational safety and health programs covering employers and workers in their states. These state programs conduct inspections in their own jurisdictions. Alaska, where BP's Prudhoe Bay facility is located, is a state-plan state which is not under federal OSHA's jurisdiction.

OSHA uses a variety of strategies to accomplish its mission of saving lives and reducing injuries and illnesses. This balanced approach includes: 1) strong, fair, and effective enforcement; 2) safety and health standards and guidance; 3) training and education; and 4) cooperative programs, compliance assistance, and outreach.

OSHA's balanced strategy is achieving results, as evidenced by all-time low occupational injury, illness, and fatality rates. The overall workplace injury/illness rate, at 4.6 per 100 employees in 2005, is the lowest since the Bureau of Labor Statistics began publishing data in 1973. Since 2002, the injury/illness rate has fallen by more than 13 percent, and the overall fatality rate has fallen by 7 percent since 2001. These numbers highlight OSHA's commitment to protecting the safety and health of the nation's workforce.

Enforcement is a key component of our strategy. Let me be perfectly clear in stating that compliance with OSHA standards is *mandatory*. All employers are responsible for ensuring the safety and health of the employees at their worksites. Since 2001, OSHA has proposed more than three-quarters of a billion dollars in penalties for safety and health violations. In addition, the agency has made 56 criminal referrals to the Department of Justice when we believed that an employer willfully violated the law, and one or more employees died as a result. Referrals to the Justice Department have increased from six cases per year on average in the 10 years preceding Fiscal Year (FY) 2003 to 9 cases in FY '03, 10 cases in each of FY '04 and FY '05, and 12 cases in the last fiscal year. Last year's total is the highest number of referrals since FY 1991.

The refinery industry is a major focus for this agency. Last year, OSHA and its state partners conducted 98 inspections in refineries. Comprehensive refinery inspections are complex and lengthy, often taking hundreds and, in some cases thousands, of hours of inspector time for OSHA's multi-member inspection teams to complete.

The OSH Act provides us with the tools we need to deal with companies that have encountered systemic problems at multiple worksites. When OSHA encounters a company that repeatedly ignores its legal obligations and places workers at risk, the agency employs its Enhanced Enforcement Program (EEP). This program targets employers, such as BP Products, with serious violations related to a worker fatality or multiple, willful or repeated violations of the law. Since the EEP was launched in FY 2004, OSHA has identified 1844 establishments meeting the criteria defined by the EEP. These establishments were targeted for additional enforcement action. For these employers, OSHA schedules enhanced follow-up inspections, negotiates comprehensive settlement provisions to protect the site's workforce and may conduct inspections of other workplaces of the same employer, as well.

Prior to the explosion at BP Products in Texas City, Texas, in March of 2005, there were no incidents at the Texas City refinery that caused OSHA to employ the EEP. Following the March 2005 disaster, OSHA, utilizing the EEP, conducted an extensive inspection of the refinery. OSHA has since taken significant enforcement action against the company, including imposing the largest penalty in the agency's history, which BP is paying in full. In a settlement agreement, BP Products paid more than \$21 million in penalties and will

abate all cited hazards. As required by that settlement, the company retained a consultant with expertise in process safety management (PSM) and another expert consultant in human factor analysis to conduct refinery-wide audits and analyses. BP Products will also submit to OSHA and to the company's employee representative logs of occupational injuries and illnesses every six months for three years. Any incident at the Texas City site that results in workers losing one or more workdays during that period will also be reported to OSHA. BP has notified OSHA that the blowdown stack in the Isomerization unit, which was the cause of the explosion, has been permanently removed from service. In January 2006, OSHA referred this case to the Department of Justice to determine if criminal willful charges should be pursued against the company.

To determine whether similar conditions existed at other BP refineries, OSHA issued alerts to its regional offices and state plan partners concerning its findings for Texas City and began inspections at BP's other refineries. Soon after completing the Texas investigation, OSHA inspected the BP refinery in Oregon, Ohio (the only other BP refinery under federal OSHA jurisdiction), and identified a number of violations similar to those found at Texas City. Using the EEP, OSHA issued numerous citations and assessed the company more than \$2.4 million in fines. OSHA issued 32 willful citations, focusing on the company's practice of placing employees in vulnerable buildings among its processing units, failing to correct de-pressurization deficiencies, as well as failing to correct deficiencies with gas monitors. Similar to Texas City, OSHA found numerous ignition sources that compound the risk of fire and explosion. BP has contested these

citations and their accompanying abatement orders. This contested case is now pending before the Occupational Safety and Health Review Commission.

Comprehensive OSHA enforcement involving BP Products continues. We are currently conducting a follow-up inspection at the Texas City refinery, including an investigation of an incident last month in which more than 100 workers were taken to a hospital after complaining of flu-like symptoms. With assistance from our staff in OSHA's Region 5, Indiana-OSHA (a state-plan state) conducted an inspection of a BP Products refinery in Whiting, Indiana, resulting in over \$300,000 in penalties and the issuance of several willful citations. In recent years, the California and Washington State OSHA plans have also conducted inspections of BP refineries (Carson, California, and Cherry Point, Washington).

Not all BP workplaces have safety and health problems, however. Nine of its facilities participate in OSHA's Voluntary Protection Programs, which recognize worksites that go *above and beyond* OSHA's requirements in protecting their workforce. OSHA officials have met with representatives of BP, who have expressed a desire to make improvements to their safety and health practices and procedures. OSHA will continue to monitor the company's facilities closely to ensure that these improvements do occur.

The refinery incidents we are discussing today are very serious matters. While large-scale disasters at these refining and chemical facilities are low-probability events, such events can have catastrophic consequences. OSHA is proud of the fact that since the

agency began enforcing its PSM standard, there has been a steady decline in the number of fatality/catastrophe events. These are the types of incidents that the PSM standard was promulgated to prevent. The number of fatal or catastrophic events declined from 24 in 1994 to 5 in 2005.

In addition to ongoing effective enforcement activities, OSHA participates in Alliances with the petroleum industry to promote safety and health. For instance, an Alliance between OSHA, the American Petroleum Institute and the National Fire Protection Association (NFPA) facilitates worker training on safe tank entry, cleaning, maintenance and rescue operations in petroleum refining facilities and encourages workers to take NFPA courses on confined space practices and share this knowledge with fellow operators.

OSHA also shares expertise with the industry to help protect refinery workers. For instance, in 2003, OSHA and the Environmental Protection Agency (EPA) issued a Safety and Health Information Bulletin alerting workers, employers and emergency responders about the hazards associated with Delayed Coker Unit (DCU) Operations in the oil refining process. The bulletin addressed the batch stage of the operation, which is responsible for most of the serious incidents during the DCU operation. The bulletin was sent to hundreds of refineries and was posted on the websites of both OSHA and EPA.

As a result of the Texas City accident, OSHA began evaluating its data on fatalities and catastrophes and determined that refineries experienced more of these problems than the

next three industry sectors combined. Accordingly, OSHA is preparing to launch a National Emphasis Program (NEP) for petroleum refineries focusing on the PSM standard. NEPs target establishments or industries based upon hazardous conditions such as employee exposures to trench cave-ins, lead exposure, or hazards of amputations. The NEP will use a new inspection strategy that we believe will yield more effective results than the current approach to enforcing PSM. OSHA's compliance officers will enter each facility with a list of items on which they will focus their attention during the visit. These items will represent the conditions most likely to be significant hazards to workers in the facility. Before the end of 2008, our agency will conduct enforcement inspections at all 81 refineries under federal jurisdiction. In addition, OSHA will encourage its state partners to implement our NEP or create their own emphasis program.

After the 81 refinery NEP inspections have been completed, OSHA will continue to address low-probability/high consequence events in refineries and high risk chemical operations. The agency is conducting research to identify indicators that are most useful in predicting which facilities are most at risk of a catastrophe.

As the Subcommittee knows, following the BP Texas City explosion, the Chemical Safety Board (CSB) made a number of recommendations to OSHA. For example, the Board suggested that OSHA strengthen enforcement of its PSM Standard by identifying facilities at greatest risk of catastrophic accident and conducting comprehensive inspections at those workplaces.

As stated earlier, OSHA had already begun work on its Refinery NEP in recognition of the need identified by its analysis of fatality/catastrophe data. In addition, OSHA has been conducting a comprehensive training program for its compliance officers on the PSM Standard, which contains requirements for the management of hazards associated with processes that use highly hazardous chemicals. OSHA's investigators are already capable and highly-trained individuals. This comprehensive training will enhance their expertise. OSHA currently provides three courses on this standard at its Training Institute. Enforcement personnel conducting the NEP inspections – Team Leaders and our top technical experts – will have taken all three courses: Advanced Process Safety, Hazard Analysis in Chemical Process Industries, and Safety and Health in the Chemical Processing Industries. By the time we conclude our Advanced Process Safety Course this fall, we project that we will have at least 75 Team Leaders or top technical experts trained. More than 200 of our compliance officers have received instruction in one or more of these classes thus far. We project that by the time we complete our Advanced Process Safety Course this fall, we will have trained 280 compliance officers in our PSM courses. These numbers of trained PSM compliance officers reflect those individuals who will have received PSM training since we began our aggressive approach to increasing our trained PSM staff last fall. We also have other OSHA personnel who have received advanced training and are conducting PSM inspections.

All of OSHA's efforts are intended to strengthen worker protections in this industry, as well as other industries. Although OSHA and our state partners have made considerable

progress in reducing the injury/illness and fatality rates in America's workplaces over the past 36 years, even a single fatality is one too many.

Mr. Chairman, we are aware of the devastation wrought by refinery explosions and fires in the communities where they are located. Our staff has met with the families of these workers and has seen the toll it takes upon their lives. This agency is using all of its resources to combat the dangers in this industry and will continue to work to improve conditions in refineries nationwide.

I would be happy to answer any questions.