

Via Hand Delivery

February 19, 2008

The Honorable Elaine L. Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Room S-2018
Washington DC 20210

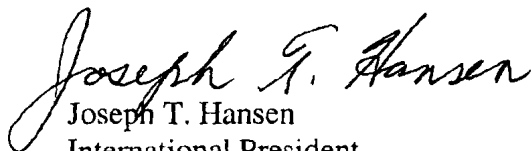
Dear Secretary Chao:

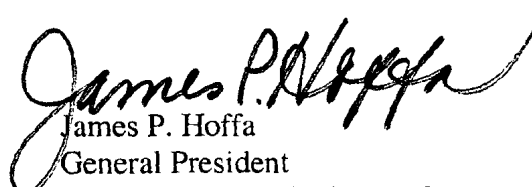
RE: Petition for an OSHA Emergency Temporary Standard and Expedited Rulemaking for a Combustible Dust Standard for General Industry

The United Food and Commercial Workers International Union (UFCW), the International Brotherhood of Teamsters (IBT), and the undersigned labor organizations, hereby transmit the enclosed petition to the U.S. Department of Labor (DOL) for an Emergency Temporary Standard (ETS) for combustible dust in general industry. Workers who are employed in facilities where uncontrolled combustible dust emissions are present face "grave danger" of experiencing fatalities or serious injuries as a result of dust explosions and resultant fires. Subsequent to issuing an ETS, we are requesting that the agency conduct an expedited rulemaking that will result in a permanent rule which will address the hazards resulting from combustible dust explosions.

This is a matter of great concern and we urge you to take action on this petition immediately. We look forward to your timely response to this petition.

Respectfully submitted,


Joseph T. Hansen
International President
United Food and Commercial Workers
International Union


James P. Hoffa
General President
International Brotherhood of
Teamsters

Enclosure

Frank Hurt
International President
Bakery, Confectionary, Tobacco Workers,
and Grain Millers International Union

Service Employees
International Union

Union of Needletrades, Industrial and Textile
Employees, Hotel Employees and Restaurant
Employees International Union

International Union, United
Automobile, Aerospace
and Agricultural Implement
Workers of America

Petition for an OSHA Emergency Temporary Standard and Expedited Rulemaking for a Combustible Dust Standard for General Industry

The United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) hereby petition the U.S. Department of Labor (DOL) pursuant to Section 6 (c) of the Occupational Safety and Health (OSH) Act, to immediately issue an Emergency Temporary Standard (ETS) for combustible dust in general industry. Workers who are employed in facilities where uncontrolled combustible dust emissions are present face “grave danger” of experiencing fatalities or serious injuries as a result of dust explosions and resultant fires. Subsequent to issuing an ETS, we are requesting that the agency conduct an expedited rulemaking that will result in a permanent rule which will address the hazards resulting from combustible dust explosions.

We are requesting that the DOL take immediate steps to protect workers from the recognized danger and hazard of combustible dust in order to prevent further deaths and injuries such as those that resulted from the deadly explosion that occurred at the Imperial Sugar refinery in Savannah, Georgia, just this past week. However, sugar is only one of the combustible dusts, the Occupational Safety and Health Administration (OSHA) needs to properly regulate all combustible dusts. The DOL has to look no further than the report issued by the U.S. Chemical Safety Board (CSB) in November 2006, entitled “Combustible Dust Hazard Study,” Report No. 2006-H-1 for guidance on how to proceed. In fact, in that report, the CSB made very specific recommendations to OSHA on the need to adopt a comprehensive standard on combustible dust in general industry to prevent and mitigate further deaths and injuries from this hazard. OSHA chose to ignore these recommendations and opted, instead, to issue a directive through the National Emphasis Program that requires that each Area Office conduct a minimum of one inspection per fiscal year, layout details on how inspections should be conducted, but provides no additional financial or human resources to Area Offices to support enforcement and does not require implementation in State Plan states. Since that report was issued, at least two additional explosions have occurred in facilities where combustible dust exists and nine workers have been killed, and scores more injured and maimed.

How many more dead and injured workers does it take for OSHA to decide to require employers to take the recognized steps necessary to prevent further death and injury from combustible dust explosions in the U.S. workplaces? Clearly, a standard is needed as quickly as possible.

On behalf of our own members, as well as all workers and communities affected by combustible dust hazards, we urge OSHA to properly discharge its authority as laid forth in the OSH Act. The actions we are requesting are:

1. Issuance of an ETS to require immediate controls instituted by employers where combustible dust hazards exist. Under Section 6(c) of the OSH Act:

The Secretary shall provide ... for an emergency temporary standard to take immediate effect upon publication in the Federal Register if she determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful ... And (B) that such emergency standard is necessary to protect the employees from such danger.

2. Expedited action by OSHA to put a new permanent standard in place for control of combustible dust hazards in general industry. *Section 6 (c) (3) ... Such (emergency) standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection. ... The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard ...*

3. Use of the technical principles embodied in two National Fire Protection Association (NFPA) consensus standards (NFPA 654, *Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids*, and NFPA 484, *Standard for Combustible Metals-2006*) which can serve as the basis of an effective OSHA standard. These consensus standards address hazard assessment, engineering controls, housekeeping, building design, explosion protection, operating procedures, and worker training.

4. Require that covered employers report to OSHA critical information that would allow OSHA to know that the employer a) is covered by the standard at a specific establishment, and b) has assessed the potential exposures.

5. Immediate inspection of sugar processing plants utilizing inspection guidance provided in the OSHA National Emphasis Program Directive (CPL 03-00-006). This directive provides instruction on how to use current OSHA regulations including the General Duty Clause, where dangerous or uncontrolled exposures to combustible dust exist.

6. While the above steps are being taken, immediately implement a Special Emphasis Program on combustible dust hazards, including inspection of worksites where combustible dust hazards exist and dissemination of the information contained in the July 2005 federal OSHA produced Safety and Health Information Bulletin (SHIB), *Combustible Dust in Industry: Preventing and Mitigating the Effects of Fire and Explosions*.

An ETS is needed because workers will continue to be at risk and in grave danger of being killed or critically injured during the time it would take for OSHA to set a permanent standard. A permanent standard is needed to ensure that workers continue to be protected from the hazards and risks associated with combustible dust explosions and resulting fires.

Background

Following three catastrophic dust explosions that killed 14 workers in 2003, the CSB undertook an extensive study of dust explosions in general industry, including current regulations governing dust explosions and what can be done to reduce their risk. The CSB identified 281 combustible dust incidents that occurred between 1980 and 2005. There were 119 workers killed and 718 injured. Industrial facilities were extensively damaged and surrounding communities significantly impacted.

Most recently, within the last six months, two explosions have occurred at sugar refineries, both apparently involving combustible sugar dust. In November 2007, an explosion at a Domino Sugar Refinery in Baltimore, Maryland, occurred which resulted in an injured worker and damage to the plant. On February 7, 2008, Imperial Sugar Refinery in Savannah, Georgia, exploded. At this time, nine workers are known to have been killed and more than a dozen workers are in critical condition with severe burns.

The lack of a comprehensive OSHA standard to require employers in general industry to implement dust explosion and mitigation measures puts the thousands of workers who are exposed to these hazards at great peril.

Which workers are at risk?

A combustible dust explosion hazard may exist in a variety of industries including food, plastics, wood rubber, metal, furniture, textiles, pesticides, and pharmaceutical dyes. In comments found in the preamble to the 1987 Grain Handling Facilities Standard, OSHA's expert witness on dust observed: "potential dust explosion hazards exist where combustible dusts are made, handled, processed or accumulated, and dust explosions have occurred persistently in a wide variety of industries including the agricultural, mining, plastics, chemicals, and metals."

The CSB investigated three catastrophic dust explosions in 2003 which occurred in three different industries. The following is taken directly from the CSB Investigative Report, # Report No. 2006-H-1:

- On January 29, 2003, a massive dust explosion at the West Pharmaceutical Services facility in Kinston, North Carolina, killed six workers and destroyed the facility. The explosion involved a part of the building used to compound rubber.
- On February 20, 2003, a series of dust explosions occurred at the CTA Acoustics (CTA) facility in Corbin, Kentucky. Seven workers were killed, 37 injured, and the manufacturing facility was destroyed. This facility primarily made acoustic insulation for automobiles.
- On October 29, 2003, one worker was killed and several others injured as the result of an aluminum dust explosion at the Hayes Lemmerz International facility in Huntington, Indiana, where aluminum and aluminum alloy automobile wheels were cast.

The CSB report on dust hazards also drew attention to the infamous fire/explosion at Malden Mills Lowell, MA in 1995, on the heels of an earlier incident in 1993, notwithstanding the uncertainty as to whether the initiating event in 1995 was actually a fire as compared to an explosion.

In total, CSB identified 281 major combustible dust incidents that occurred between 1980 and 2005. Four industry sectors accounted for over half of the incidents: food products, lumber and wood products, chemicals, and primary metals.

The Cost of OSHA Inaction

OSHA has shown utter disregard for those who work in the industries where these dangers lie. OSHA has had many opportunities to regulate combustible dust in general industry but has failed to do so. In 1970, when the OSHA 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 as the result of a grain dust explosions in the late 1970s and early 1980s. This standard has effectively reduced the number and severity of combustible grain dust explosions in the grain handling industry. However, the Grain Handling Facilities Standard stopped short of regulating combustible dusts in industries outside of the grain industry.

In 2006, after a comprehensive and thoroughly researched report was issued by the CSB, with clear recommendations to OSHA aimed at reducing and preventing death and injury from combustible dust explosions, OSHA ignored CSB’s recommendation to issue a comprehensive federal standard for general industry that addresses hazard assessment, engineering controls, housekeeping, and worker training.

As the CSB concluded in its report, “combustible dust explosions are a serious hazard in American industry.” The cost of continued inaction on the part of the DOL and OSHA will be more worker deaths and serious injuries.

Lack of Comprehensive OSHA Standard and Program

Despite the seriousness of the combustible dust problem in general industry, OSHA lacks a comprehensive standard to address combustible dust hazards. OSHA’s only outreach activity in the area of combustible dusts has been a July 2005 federal OSHA-produced SHIB, “Combustible Dust in Industry: Preventing and Mitigating the Effects of Fire and Explosions.” CSB found that “although OSHA has cited employers for dust explosion hazards, most of OSHA’s enforcement activities

related to combustible dust hazards have been in response to incidents, rather than focusing on prevention.” OSHA standards exist which partially address some of the preventive actions relevant to dust explosions, these include OSHA Housekeeping standard, Electrical Standards, Bakery Equipment Standards, and Sawmills Standards. However, many of these are limited in scope, and apply to only specific industries. In addition, such critical considerations as design, maintenance, hazard review, and explosion protection are not addressed - considerations critical to prevention and mitigation of combustible dust explosions.

Methods of Controlling Hazard Exists

Current NFPA standards exist which, if implemented and complied with by general industry, would prevent and mitigate combustible dust explosions. The standards are widely recognized by experts as effective and authoritative. However, their adoption and enforcement by state and local jurisdictions is “inconsistent and largely ineffective.” The CSB states that “unlike OSHA, which has the authority to set national workplace safety standards, no federal legislative authority, agency, or other government mechanism is empowered to require that minimum or uniform fire codes be adopted or enforced in all states.”

The two principle NFPA standards which CSB directs OSHA to embody in a standard are: NFPA 654 (*Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids-2006*) and NFPA 484 (*Standard for Combustible Metals-2006*). CSB states: “These standards, typically updated every five years, have long been recognized as the benchmarks for good engineering practice for handling most combustible dusts in general industry.” In fact, CSB notes that had these standards been adopted and enforced in, for example, the West Pharmaceutical Services explosion, January 29, 2003, “the explosion could have been prevented or minimized. “

The CSB’s recommendation in 2006 was that OSHA issue a comprehensive dust standard that applies to general industry, which relies upon the NFPA consensus fire standards widely viewed to be effective, authoritative and scientifically and technically sound.

Proven Effectiveness of Grain Handling Facilities Standard

The NFPA consensus standards have been proven to be effective in preventing and mitigating combustible dust explosions. In 2003, OSHA conducted its own review of the effectiveness of the Grain Handling Facilities Standard and found it to be working in preventing dust explosions in the grain industry. OSHA found that since this standard had been instituted, grain explosions were down 42 percent, injuries 60 percent, and fatalities from grain explosions 60 percent. On average, OSHA estimates that the Grain Handling Facilities Standard has prevented five deaths per year. As a comparison, one can look at the CSB study of deaths as the result of combustible dust

explosions. On average, the CSB found that about five deaths per year occurred between 1980 and 2005.

The current patchwork of OSHA regulations used to address combustible dust explosions is clearly not working. Explosions are continuing and workers are dying.

Conclusion

In 1987, when OSHA issued the Grain Handling Facilities Standard, national attention was focused on the destructiveness of explosions in grain handling facilities. In issuing the standard, OSHA recognized the dangers faced by employees in these facilities. OSHA's failure to act in response to the pattern of dust explosions in recent years - and its studied inaction following the CSB's explicit recommendation - raises the most serious question about your willingness to adopt new standards of any kind. We know of no credible explanation for your refusal to act in the face of such overwhelming evidence.

We urge you, in the strongest terms possible; to relinquish whatever objections you have to the issuance of new occupational safety and health standards, and to take action on this petition immediately. We look forward to your timely response to this petition.

Petition date: February 19, 2008

REFERENCES

U.S. Chemical Safety Board, Investigative Report. *Combustible Dust Hazard Study*, Report No. 2006-H-1, November 2006.

U.S. Department of Labor, Occupational Safety and Health Administration, Safety and Health Information Bulletin, *Combustible Dust in Industry: Preventing and Mitigating the Effects of Fire and Explosions*, July, 2005

Federal Register, Vol. 52, No. 251, Department of Labor, OSHA, 29 CFR Parts 1910 and 1917, *Grain Handling Facility, Final Rule Preamble*, Page 49595, December 31, 1987.

U.S. Department of Labor, OSHA, Completion of Regulatory Review, Grain Handling Facilities Standard, 29CFR 1910.272, March 14, 2003.