



March 4, 2010

OSHA Docket Office
Docket No. OSHA-2010-0004
Technical Data Center, Room N-2625
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: OSHA Listens Stakeholder Meeting on Key Issues, March 4, 2010

Members of American Iron and Steel Institute (AISI) appreciate the opportunity to comment on the referenced notice and commend the administration for convening this stakeholders meeting to discuss key issues. AISI member companies are subject to both federal and state OSHA requirements. Any changes adopted by federal OSHA ultimately will have an impact on their employees, operations, and safety and health programs.

AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of 25 member companies, including integrated and electric furnace steelmakers, and 138 associate and affiliate members who are suppliers to or customers of the steel industry. AISI's member companies represent approximately 75 percent of both U.S. and North American steel capacity.

Steel remains the backbone of America and steel making, shaping, and treating operations are massive and complex. Employees who make steel are exhaustively trained to use the sophisticated equipment that convert tens of thousands of tons of raw materials into useful products under extreme temperatures and pressures.

Every AISI member currently has a formal safety and health program. Many of these programs were in effect prior to the enactment of the OSHAct. These programs are updated and improved based on both experience and regulatory/legislative policy changes. The Bureau of Labor Statistics has documented this continued improvement over the past 30 years. And in the future, AISI members will continue to work with their employees to improve

workplace safety and health until the mutually beneficial and desired goal of zero work-related injury and illness can be achieved.

Some of this improvement can be attributed to today's steel production technology because the steel workplace has changed dramatically over the years. North American steel companies remain capital and energy intensive but have transformed their labor intensive operations to efficient, computerized, process controlled, high-technology workplaces. Today's workforce is better educated than at any other time in its history. Consequently, the U.S. steel industry is globally competitive in all aspects, including workplace safety and health. Management relies on this workforce of highly-valued people to meet strict customer demands. Managers have no interest in subjecting these employees to unnecessary risk of workplace injury or illness.

As noted above, AISI members are pleased that OSHA has convened this stakeholders meeting on key issues and respectfully offers the following comments noted below.

1. What can the agency do to enhance and encourage the efforts of employers, workers and unions to identify and address workplace hazards?

When Congress enacted the OSHAct in 1970, it recognized that both employers and employees have distinct responsibilities to achieve its stated goals. We believe that each OSHA policy should uphold that concept. AISI believes employees and employers working together with OSHA have an opportunity to create a synergistic effect for improving safety and health performance. But for this to succeed, we must view each other as partners rather than adversaries and not allow populist polemic or policy changes that serve to threaten earlier successes to subvert such an effort.

There is currently a pending proposal that would eliminate incentives that have helped recruit employers to participate in cooperative efforts in the SHARP program. We are compelled to raise a cautionary flag for OSHA not to weaken a program that has been demonstrated to work effectively. Although strong enforcement may be needed to encourage a few outliers to comply with regulations, tools such as the VPP can produce better results among a much larger group of employers. If OSHA focuses its scarce resources on a minute percentage of scofflaws, it misses the opportunity to achieve greater improvements in safety and health performance for many more employees on a national basis.

We also believe OSHA can work together with employers and employees to identify workplace hazards by convening a tripartite panel to identify the most significant hazards based on injury and illness statistics collected and research conducted over the past several decades by the BLS, OSHA, and NIOSH. This panel could prepare both long-term and short-term strategies for

developing policies and regulations for needed standards, including updating PELs under current law. Several models have been proposed and are described under question nine. There are pros and cons for each of these and we believe that a tripartite consensus process could help provide the best answer within a matter of months.

OSHA recently began weekly posting of severe injuries and deaths. Affected employees and their representatives already have access to these data and we believe the public's interest will be very limited. This is particularly so if the agency does not provide the conclusions of its investigations (e.g., root cause and contributing factors.) Otherwise these postings will be of limited value. We believe OSHA has a significant opportunity to expand the concept of hazard identification by beginning to identify actions or inactions of people (and the underlying causes of such activity) that lead to the creation of hazards and/or injuries. A systematic inclusion of this portion of the risk spectrum, done in a non-punitive manner, would drive all parties to openly identify, discuss, and develop long term solutions to this aspect of risk and be a positive development.

2. What are the most important emerging or unaddressed health and safety issues in the workplace and what can OSHA do to address these?

AISI believes that a tripartite panel should consider this important question in the context of known health and safety issues. It is important for OSHA to consider the relative risk, severity, and extent of currently unaddressed health and safety issues *vis-à-vis* emerging hazards before developing a plan to address them.

3. How can the agency improve its efforts to engage stakeholders in programs and initiatives?

AISI encourages OSHA to reach out to stakeholders through stakeholder meetings such as this. We also believe the appointment of tripartite panels to work on critical complex issues where consensus can be reached presents OSHA with an opportunity to achieve more efficient long-term results. OSHA should consider implementation of voluntary agreements with affected industries to reduce or eliminate identified hazards in lieu of adoption of a Section 6(b) standard. (Also, please refer to item 6 below.)

4. What specific actions can the agency take to enhance the voice of workers in the workplace, particularly workers who are hard to reach, do not have ready access to information about hazards or their rights, or are afraid to exercise their rights?

As noted previously, AISI member companies have committed significant resources to training employees on proper working procedures through, among other means, the use of job safety

analyses (JSA) for steel operations. These JSA are updated on a regular basis based on feedback provided by employees who perform the work. Additionally, workers have an opportunity to question their supervisors and inform each other through meetings and computer access to facilities' safety and health intranets.

Member companies also use various tools to facilitate daily interaction of employees and their immediate supervisors. These activities run the spectrum from safety contacts on material that employees can use to reduce the likelihood of injuries, to safety meetings where employee concerns can be captured and tracked to closure, to direct engagement where supervisors and senior managers interact with employees on the floor to solicit ideas for improvement while simultaneously providing direction on activities and circumstances observed that can eliminate hazards and unsafe work practices.

Finally, AISI member companies work cooperatively with contract services (thousands of large and small employers who work in steel plants) to assist them to improve their health and safety performance and OSHA compliance. For example, some steel companies require all contract services to register via a third party consortium to assure they are prequalified with respect to safety and health performance and compliance. Use of a third party helps eliminate gaps in compliance programs. Companies also provide site-specific training and audit the contractor's work practices when on site.

AISI contractor member companies also noted that increased focus by their customers (steel mills) helps ensure that all contractors have the requisite credentials, programs, and training. This effort helps demonstrate a commitment to safety by the customer. They noted that contractors be held accountable both for their actions and inactions and removed from the facilities when program deficiencies arise.

5. Are there additional measures to improve the effectiveness of the agency's current compliance assistance efforts and the on site consultation program, to ensure that small businesses have the information needed to provide safe workplaces?

AISI members' operations/mills do not fall into the small business category. However, we believe compliance assistance and the on site consultation program should be available to all employers. These are excellent tools OSHA has that can be used to improve its effectiveness. As noted above, OSHA also has an opportunity to reach out to small business contractors through third party consortia.

6. Given the length and difficulty of the current OSHA rulemaking process, and given the need for new standards that will protect workers from unaddressed, inadequately addressed and emerging hazards, are

there policies and procedures that will decrease the time to issue final standards so that OSHA may implement needed protections in a timely manner?

AISI was the first industry group to petition OSHA to regulate a health standard. It asked OSHA to convene a tripartite panel on coke oven emissions. Eula Bingham was appointed chairwoman and the Steelworkers and OSHA worked with AISI to prepare recommendations that OSHA incorporated into a comprehensive standard. The process took several years but the standard substantially reduced a significant risk of material impairment for employees and implementation was feasible and practicable.

In the late 1990s, AISI was a party to negotiated rulemaking with the Ironworkers and OSHA on a proposed SENRAC provision of the original steel erection standard dealing with slip resistance for metal decking and roofing. Ultimately OSHA withdrew this provision from what became the final standard because the Ironworkers agreed that the companies' commitment to voluntarily reduce or eliminate vanishing oil use on its products would produce mutually satisfactory results in less time than OSHA rulemaking.

Another example of tripartite effort in which AISI was involved was the advisory committee on metalworking fluid. The recommendations made by the advisory panel were viewed favorably by AISI members. However, OSHA did not issue a final standard.

And in 2003 AISI worked with OSHA to create the Steel Alliance to update the technical information available on the OSHA web site and used to train OSHA compliance officers about the safety and health hazards found in steel operations. The information developed was also made available to downstream customers through the OSHA web site and through the Steel Alliance web site.

Finally, AISI believes OSHA can decrease the time needed to promulgate rules by issuing more performance oriented standards for capital intensive industries. Giving employers additional flexibility to install new technology that looms on the horizon will offer greater protections to employees than mandating the retrofitting of engineering controls. For example, the replacement of teeming (pouring molten metal into ingots) in the 1980s by continuous casting significantly reduced or eliminated exposures to hazardous chemicals and physical agents more effectively than had the companies been required to retrofit ventilation equipment and other controls. Preserving capital for modernization also permitted the steel industry to remain globally competitive.

7. As we continue to progress through a new information age vastly different from the environment in which OSHA was created, what new mechanisms or tools can the agency use to more effectively reach

high risk employees and employers with training, education and outreach? What is OSHA doing now that may no longer be necessary?

OSHA has produced several computerized decision logic guides to help employers comply with some of its more complex standards. For example, the cadmium standard provides an excellent example of a guide that employers can use to determine what medical testing is required. This tool was developed jointly with AISI when the standard was promulgated. AISI believes it would be useful for OSHA to continue developing similar guides as the rule is being developed so that it is available when the final rule is issued.

8. Are there indicators, other than worksite injuries and illness logs, that OSHA can use to enhance resource targeting?

AISI believes that scarce OSHA resources should be targeted to employers whose safety and health performance is significantly poorer than the average in its respective industry.

AISI also believes that OSHA needs to carefully evaluate each policy change, such as the proposed addition of a separate column on the OSHA 300 form to log the “musculoskeletal” injury, to ensure it will not be counter-productive. But OSHA does not have any mechanism to determine whether or not the injury is work-related. Asking employers to record ill-defined injuries separately will complicate and confound OSHA enforcement and standards development resources.

9. In the late 1980s, OSHA and its stakeholders worked together to update the Permissible Exposure Limits (PELs) (exposure limits for hazardous substances; most adopted in 1971), but the effort was unsuccessful. Should updating the PELs be a priority for the agency? Are there suggestions for ways to update the PELs, or other ways to control workplace chemical exposures?

AISI and the AFL-CIO successfully challenged the PELs process because neither believed that OSHA had complied with the basic legal requirements stipulated by the Act for issuing 6(b) standards. The major differences in the recommendations presented to the court for resolving our respective challenges were that AISI asked that the entire standard be vacated and remanded for proper rulemaking, whereas the AFL-CIO asked that only a few of the substances be vacated and remanded. The court determined that OSHA did not explain its reasons for changing any of the PELs and granted AISI’s request. Although this created a major problem for OSHA, it is not in workers’ best interests to force employers to misallocate limited resources to control hazardous substances using PELs that are not, in fact, based on sound medical evidence.

Over the past few years, several models have been suggested to deal with outdated PELs. One is to convert RELs to PELs by legislative fiat. Another is for Congress to lower the legal threshold permitting OSHA to issue PELs without having to demonstrate significant risk and economic feasibility. A third model suggests that OSHA regulate hazardous substances with similar properties in a single rulemaking. And a fourth would have OSHA establish multiple PELs in a single rulemaking for “non-controversial” hazardous substances. There are pros and cons to each approach and AISI believes this matter would be best addressed using a tripartite process.

On behalf of AISI members, we thank OSHA for the opportunity to submit these comments. If you have any questions, would like more information, please contact:

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