U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

March 11, 2019

TO: Members, Subcommittee on Environment and Climate Change

FROM: Committee Republican Staff

RE: Hearing entitled "Mismanaging Chemical Risks: EPA's Failure to Protect Workers"

I. INTRODUCTION

The Subcommittee on Environment and Climate Change will hold a hearing on Wednesday, March 13, 2019 at 10:30 a.m. in 2322 Rayburn House Office Building. The hearing is entitled: Mismanaging Chemical Risks: EPA's Failure to Protect Workers."

II. WITNESSES

Republican witnesses

- **Tom Grumbles**, CIH, FAIHA, Former President of the American Industrial Hygiene Association and past president of the Product Stewardship Society *on behalf of AIHA*; and
- **Mark Duvall**, Principal, Beveridge and Diamond.

Democratic witnesses

- **Wendy Hutchinson**, *on behalf of the Baltimore Teachers Union*;
- **Pat Morrison**, Assistant to the General President for Health, Safety and Medicine, International Association of Fire Fighters;
- **Jeaneen McGinnis**, United Auto Workers;
- **Giev Kashkooli**, Vice President, United Farm Workers; and
- **Adam M. Finkel, Sc.D., CIH,** Clinical Professor of Environmental Health Sciences, University of Michigan School of Public Health

III. BACKGROUND

Under Federal law, the Occupational Safety and Health Act (OSH Act) is the primary law covering worker safety and its primary goal is to reduce workplace hazards and implement safety and health programs for both employees and employers.[1] The Occupational Health and Safety Administration (OSHA), an agency of the Department of Labor, is the governmental body charged with setting standards, providing information and training to employees and employers, and enforcing the requirements of the OSH Act.[2]

Coverage under the OSH Act extends to most private sector employers and their employees in all 50 states, the District of Columbia, Puerto Rico, and other U.S. territories and is provided directly by the

[1] https://employment.findlaw.com/workplace-safety/workplace-safety-osha-and-osh-act-overview.html
[2] Ibid.

Federal OSHA or by an OSHA-approved state job safety and health plan.[3] The jurisdiction of the OSH Act does not extend to: (1) self-employed persons, (2) farms that only employ the farmer's immediate family members, (3) state and local government employees in OSHA-approved, states, and (4) working conditions specifically covered by other Federal laws and agencies (including mining, nuclear energy, weapons manufacture, and various transportation industries).[4]

The OSH Act assigns OSHA two regulatory functions: (1) setting standards and (2) conducting inspections to ensure that employers are providing safe and healthful workplaces. OSHA standards may require that employers adopt certain practices, means, methods, or processes reasonably necessary and appropriate to protect workers on the job. Employers must comply with all applicable OSHA standards and provide workers with a workplace that does not have serious hazards.[5]

Compliance with standards may include implementing engineering controls to limit exposures to physical hazards and toxic substances; implementing administrative controls; and ensuring that employees have been provided with, have been effectively trained on, and use personal protective equipment when required for safety and health, where the former controls cannot be feasibly implemented. Employees must comply with all rules and regulations that apply to their own actions and conduct. Even in areas where OSHA has not set forth a standard addressing a specific hazard, employers are responsible for complying with the OSH Act's "general duty" clause. The general duty clause, Section 5(a)(1), states that each employer: shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

The OSH Act encourages states to develop and operate their own job safety and health programs. OSHA approves and monitors these "state plans," which operate under the authority of state law. There are currently 26 states and 2 territories with OSHA-approved state plans.[6] Twenty-one states and one territory operate complete state plans (covering both the private sector and state and local government employees) and five states and one territory (Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands) cover state and local government employees only. States with OSHA-approved job safety and health plans must set standards that are at least as effective as the equivalent Federal standard. Most, but not all, state plans, adopt standards that are identical to the Federal standards.

Federal OSHA standards are grouped into four major categories: general industry (29 CFR 1910); construction (29 CFR 1926); maritime (shipyards, marine terminals, longshoring—29 CFR 1915-19); and agriculture (29 CFR 1928). While some standards are specific to just one category, others apply across industries. Among the standards with similar requirements for all sectors of industry are those that address training for and access to medical and exposure records, personal protective equipment, and hazard communication.[7]

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[3] https://webapps.dol.gov/elaws/elg/osha.htm
[4] Id.
[5] OSH Act, §5(a)(1)
[6] Op. Cit.
[7] Id.

The mission of the U.S. Environmental Protection Agency (EPA) is to protect human health and the environment.[8] EPA administers several laws addressing human health and environmental protection across several media. The Energy and Commerce statutes administered by EPA defer to OSHA or the OSH Act for guidance on workplace safety and health. The following statutes include ancillary references to employee issues:

- **Comprehensive Environmental Response, Compensation, and Liability Act**: Worker training grants (Section 111(c)(6));

- **Solid Waste Disposal Act**: Whistleblower protection and requirements regarding information on hazards at places generating, storing, treating, or disposing of hazardous waste (Section 7002(a) and (f));

- **Safe Drinking Water Act**: Whistleblower protection (Section 1450(i));

- **Superfund Amendments and Reauthorization Act**: Requirements for worker health and safety protections under the OSH Act for employees at hazardous waste operation (Section 126);

- **Clean Air Act**:

    - General duty clause and worker training to respond to accidental releases (Section 112(r)(1) and (7)), and
    - Whistleblower protection and employment impacts (Sections 321 and 322).

- **Federal Insecticide, Fungicide, and Rodenticide Act**: Worker exposure warning labels and workers education and protection grants from pesticide registration fees (Sections 4(c)(1) and 33(c)(3)(A)); and

- **Toxic Substances Control Act**:

    - Opportunity for EPA to consider impacts to workers from exposures to new chemicals, new uses of chemicals, existing chemicals, and chemicals presenting an imminent hazard, as well as whistleblower protection (Title I),
    - Employment effects of regulation (Section 24),
    - School employee education and safety procedure training for asbestos in schools as well as grants and restrictions on workers pending approved asbestos management plans (Title II), and
    - Training guidelines, program requirements, and NIOSH worker survey for lead paint abatement (Title IV).

[8] https://www.epa.gov/aboutepa/our-mission-and-what-we-do

IV. EXPECTED DISCUSSION

The EPA has been criticized for the tact that it has taken regarding regulation issued in the prior Administration, including efforts to ensure the legality, implement ability, and practicality of those actions. This hearing was intended to explore many of the areas that the Democrats are most interested in highlighting for further legislation or policies with which it has serious concerns. These areas include: the implementation of the Toxic Substances Control Act, including the accounting for worker exposures and decisions by EPA either not to ban fully a substance or to delay on banning a substance; a decision by EPA not to eliminate certain pesticides; and efforts by EPA to make changes to its Risk Management Program under the Clean Air Act. In addition, there may be discussion at the hearing about whether EPA needs to regulate these areas because OSHA arguably has been slow to regulate them, and/or the OSH Act may not contain aggressive regulatory authorities.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Martin or Jerry Couri of the Committee's Republican staff at (202) 225-3641.