

Obama Nominates David Michaels to Head OSHA

On July 28, President Barack Obama announced the nomination of Dr. David Michaels, Ph.D., MPH, to become the assistant secretary of labor for OSHA.

Dr. Michaels is an epidemiologist and currently is research professor at the Department of Environment and Occupational Health at the George Washington University School of Public Health and Health Services. He has conducted numerous studies of the health effects of occupational exposure to toxic chemicals including asbestos, metals and solvents and has written extensively on science and regulatory policy.

From 1998 to 2001, Michaels served under the Clinton Administration as assistant secretary of energy for Environment, Safety and Health, where he was responsible for protecting the health and safety of workers, neighboring communities and the environment surrounding the nation's nuclear weapons complex.

Michaels was also a contributor to the Pump Handle (<http://thepumphandle.wordpress.com/>), a public health and occupational safety blog that Frontlines recommends to all readers.

DOE Years

USW members (then OCAW and Pace) came to know Michaels most closely during his tenure at DOE back in the late 90's. The Union began a medical surveillance program for DOE weapons plant workers at five sites across the country in 1996. Participants received a comprehensive physical exam and a BeLPT test and hearing test from clinics in their area. All test results were sent to occupational medicine physicians at Queens College in New York who evaluated the tests and sent out the results letters. It is a model Union/University screening program funded but not controlled by the Department of Energy.

From the 80's on, the Union had been calling for an Energy Workers' Bill of Rights.

As time passed, this bill evolved into a more concrete statement of the need for compensation for the many cancers and other diseases workers had incurred as a result of workplace exposures. A compensation claim filed at DOE was routinely challenged – that was DOE policy before Michaels was appointed, and claimants didn't have a chance of getting their claim approved.

As part of their mission to create a groundswell of accept-

ance for a federal compensation program, Michael and Secretary Richardson planned a whirlwind tour of the major DOE sites, nine public town meetings in 10 months. At these meetings, sick workers, survivors and family members could talk about the trails they had suffered as a result of the illnesses they or a family member had suffered from work in the complex.

Local union Medical Surveillance Coordinators donated time to helping victims prepare to testify. They worked with Michael's staff and with Richard Miller, Union Legislative Specialist, to ensure that people testifying were familiar with their work histories and could speak with knowledge about their experiences.

The hearings began in Paducah and continued throughout the country with tremendous assistance from local unions and staff representatives.

This tremendous outpouring of support for a federal compensation program was one of the contributors to the passage of the Energy Employees Occupational Illness Compensation Program Act. It became effective July 31, 2001.



'Doubt Is Their Product'

By David Michaels
Oxford University Press
\$27.95

In this informative work, David Michaels' "Doubt Is Their Product" explains the way corporations fabricate "research" aimed at creating doubt about whether known environmental pollutants – including cigarette smoke, asbestos and hexavalent chromium – actually are health hazards. Michaels, an epidemiologist who served from 1998 to 2001 as assistant secretary for Environment, Safety and Health in the U.S. Department of Energy, describes the impacts of fake research generated by corporate scientists-for-hire, as well as federal regulators' reluctance to control risky substances, even when evidence of risk is present. It is striking how these research tactics employed by industry are similar whether the object is to keep a drug from being banned or to prevent an endangered species from being protected. For example, since 1895, instances of bladder cancer in factory workers who worked with dyes could be traced back to the chemicals used in making those dyes. But corporations continued to use these chemicals, and the federal government did not intervene. In 1967, DuPont's scientists were still trying to cast doubt on the risks

posed by similar dyes. (Michaels credits Public Citizen's efforts as contributing to the eventual regulation in the 1970s of the exposure to these chemicals. Corporations have now discontinued the use of these hazardous chemicals.)

Perhaps most important, Michaels notes that the U.S. Supreme Court's 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals* gives this fake research more weight in product liability lawsuits than it merits. *Daubert* calls upon judges to determine



the admissibility of research in these cases. But corporate-paid research often is given the same weight as the scientifically sound research, leaving a judge uncertain about whether the pollutants in question really harm people. As a result, Michaels says, attorneys representing consumers or workers harmed by these pollutants are reluctant to bring scientific evidence before courts.

Michaels provides an excellent look into tactics corporations use to plant doubt about the risks posed by environmental and occupational pollutants. This book can help train regulators and the public to be more skeptical, and hopefully, reduce the effectiveness of these tactics.

– Lena Pons

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Three Refinery HF Acid Accidents in Six Months Worries Chemical Safety Board

The Citgo Petroleum Corp.'s fire at its Corpus Christi refinery on July 19, 2009, was the original centerpiece of this story. But events soon outpaced the story and we have stories of three refineries with hydrofluoric acid (HF) releases in the last 6 months that raise some serious questions about process safety, the use of inherent safety technology, and effective plant maintenance.

The Citgo refinery shut down its HF alkylation unit and an adjoining fluid catalytic cracking unit July 19 after a fire started on the HF unit. Both units were shut down because their fluid catalytic cracker cannot operate without the alkylation unit.

The refinery employs 500 workers.

HF is one of the most deadly chemicals found in the refining industry. BP Texas City Refinery has identified that a major HF release could remain toxic 25 miles downwind of the plant. While most alkylation units use safer sulfuric acid, about 50 refineries use more hazardous HF.

Citgo workers were repairing a valve on the unit when the fire broke out that Sunday morning. It was not clear what caused the leak of flammable gas and HF, apparently ignited by a heater on a nearby unit.

Water spray from fire cannons was kept on the alkylation unit for days.

John Warner, USW Local 13-1647 president said the workers have repeatedly pointed out problems to Citgo at health and safety committee meetings and other forums throughout the years.

“The workers at this refinery have identified hazards the company has failed to fix.” Warner commented. “We have met with Citgo and told them there were problems and if they weren’t fixed, it was going to get bad. And it got bad” he concluded.

Sierra Club, Citizens for Environmental Justice Get Involved

On July 22, three days after the accident, the Sierra Club and Citizens for Environmental Justice sent a letter to John Bresland, chair of the Chemical Safety Board, asking him to conduct an “expanded probe” of Citgo’s alkylation unit accidents dating back to 1990 and assess the toxic airborne releases of hydrogen fluoride gas based on serious concerns of public health impact.”

CSB Investigators Enter Site When Declared Safe

The four-member investigation team from CSB was finally allowed to go onto the site on July 31 as was OSHA and the USW investigating team.

Burn Victim Continues to Improve

Gabriel Alvarado, 34, a worker at the refinery, was severely burned over 60 percent of his body in the accident and has undergone 10 surgeries including the amputation of an arm. John Warner reports that Alvarado’s health has significantly improved since the accident. Although he remains in the intensive care unit, he has been taken off life support and breathes on his own.

Sunoco Refinery HF Release Sends 10 Workers to Hospital in March, 2009

One story that received little follow up is where 10 Sunoco contract workers at the company’s South Philadelphia refinery were sent to the hospital this past March because of exposure to HF gas after being overcome by a release from the HF alkylation unit. The story was reported as a short item in the Philadelphia Daily News on March 12. The company, according to its spokesperson, Thomas Golembeski, conducted its own investigation of the March 11 morning incident. USW Local 10-1 President Jim Savage said that one of the contractors had severe respiratory effects as a result of the gassing from HF and went into cardiac arrest when he arrived at the hospital. The contractor will most likely be unable to work again, Savage reported. OSHA is concluding its investigation of the accident and is expected to issue a report this week reportedly with at least one citation.

CSB Sends in Team to Investigate at EXXONMOBIL HF Release in Illinois

The third incident occurred just a little over a week ago on August 6 near the city of Joliet, Ill.

Two employees, one of them in critical condition, were taken to a local hospital as a result of the incident. According to a CSB news release, a propane leak resulted in the hydrogen fluoride release. The unit’s water deluge system was activated and the alkylation unit shut down. Chairman John Bresland stated: “We are concerned about the three apparent releases of hydrogen fluoride from refinery alkylation units.... Because of its high toxicity, any loss of primary containment for hydrogen fluoride is a serious matter.

OSHA Finds Metro North Railroad Co. Guilty of Retaliation against 4 Employees Who Reported Work Injuries – Orders Corrective Action and \$300,000 in Punitive Damage

OSHA conducted whistleblower investigations in response to employee complaints, and found that the Metro North Commuter Railroad Co. retaliated against four employees who reported work-related injuries. In a landmark decision, OSHA has ordered the railroad, which provides commuter rail service in New York, New Jersey, and Connecticut, to take corrective actions and pay back wages, fees and a total of \$300,000 in punitive damages.

OSHA administers its Whistleblower Protection Program to protect employees who take part in health and safety activities under the Occupational Safety and Health Act. Section 11 (c) of the Act prohibits any person from discharging or in any manner retaliating against any employee because the employee has exercised rights under the Act.

These rights include complaining to OSHA, seeking an OSHA inspection, and participating or testifying in any proceeding related to an OSHA inspection.

OSHA also administers the whistleblowing provisions of sixteen other statutes protecting employees who report violations of various trucking, airline, nuclear power, pipeline, environmental, rail, consumer product and securities laws.

Jordan Barab, acting assistant secretary for occupational safety and health, said that “railroad employees have the right to report occupational injuries and illnesses without fear that doing so will negatively affect their jobs, their health or their income. Retaliating against employees for exercising this basic, legally protected workplace right, is unacceptable.”

The four Metro North workers suffered on-the-job injuries in 2007 and 2008 and subsequently filed whistleblower complaints with OSHA alleging that the railroad disciplined them for reporting their injuries, interfered with their medical treatment plans and/or reclassified injuries from occupational to non-occupational. OSHA’s investigations, conducted under the whistleblower provisions of the Federal Rail Safety Act (FRSA) found merit to the complaints.

As a result of its findings, OSHA has ordered Metro North to take corrective actions including expunging disciplinary actions and references to them from various records; compensating the workers for lost wages, out-of-pocket medical expenses and attorneys’ fees; amending its attendance policy so that work-related sick leave is not be considered when assessing unsatisfactory attendance or transfer or promotions; ensuring that reporting occupational illnesses or injuries does not disqualify employees from transfers or promotions; and paying each employee \$75,000 in punitive damages. The railroad must also post and provide its employees with information on their FRSA whistleblower rights.

Getting Justice for Workers and Ending Employer Fraud: A Shot over the Bow

OSHA has finally taken a big step forward in discourag-

ing employer practices that retaliate against employees for reporting occupational injuries and illnesses. While OSHA has the authority to issue punitive damages in whistleblower cases, it has rarely done so. This is the first instance of punitive damages of this magnitude being awarded to injured employees who were disciplined for reporting their injuries. Each received \$75,000 plus their jobs and pay for the time lost.

Had OSHA only ordered Metro North to bring these workers back to work with back pay, and not ordered punitive damages, the workers would have gained little in return for the company’s abuse and retaliation. The chilling effect on the other workers could be enormous, as further reporting of injuries and illness would be discouraged by the spoken and unspoken mantra: “If you exercise legal rights to report injuries, you’ll go through grief and the company still wins – even if you eventually get your job back, they aren’t out a dime except for the pay they would have paid you anyway.”

But workers have won this case! It is a shot over the bow to put employers on notice and help end retaliation against workers for reporting injuries and illnesses.

“Beyond the justice received by these workers, this case has implications for workers and workplaces across all industrial sectors,” commented Nancy Lessin, USW-Tony Mazzocchi Center. “If workers feel free to report their work-related injuries and illnesses without fear of retaliation, the hazards that are causing these problems can be identified and addressed. Employers would no longer be free to tout good injury and illness records by engaging in fraud -- discouraging workers from reporting injuries. Injury and illness logs, such as OSHA 300 Logs, would become more truthful, complete and accurate and unions could use them regularly in hazard identification, control and prevention activities” she concluded.

USW and all safety activists should circulate this decision, hang it on union bulletin boards, and discuss it at local health and safety committee meetings and the regular monthly local meeting. Our goal is to end these retaliatory policies and programs wherever they exist, before anyone else gets fired!

If you want further information on combating employer policies, practices and programs that discourage reporting workplace injuries and illnesses; strategies to fight employer fraud regarding injury and illness records; and ideas about how to use accurate records to improve health and safety at your worksite, contact safety@usw.org.

For information on whistleblower regulations, forms and 16 agencies covered by rule, go to <http://osha.gov/dep/oia/whistleblower/index.html>

For copies of the specific press release relating to the story of the workers at Metro North RR, go to http://osha.gov/pls/oshaweb/owadisp.show_document?p_tab le=NEWS_RELEASES&p_id=18068

NEWS RELEASE

FOR IMMEDIATE RELEASE

NEW SOLUTIONS

A Journal of Environmental and Occupational Health Policy

Edited By: Craig Slatin, Beth Rosenberg, and C. Eduardo Siqueira

Announcing the release of Volume 19:2 Special Issue
"NEW SOLUTIONS and the Blue Green Alliance—Good Jobs/Green Jobs Conference"

Guest Editor: James Young

Made possible by the generous support of The Heinz Endowments

In collaboration with the Blue Green Alliance, this special issue presents the speeches and presentations from the second Good Jobs/Green Jobs National Conference held in Washington, D.C., February 4-6, 2009, putting forward powerful ways to rebuild the U.S. economy with good, green jobs in sustainable energy generation, conservation, new transportation systems, and other ways of greening industry.

The authors include: Current Members of the Obama Administration: Lisa Jackson (EPA), Kathleen Sebelius (DHHS), Van Jones (President's Green Jobs adviser). Elected Officials: Governor Martin O'Malley (D, MD), Senators Sherrod Brown (D, OH) and Amy Klobuchar (D, MN). Union Leaders from the United Steelworkers, Teamsters, Communication Workers, Laborers, Service Employees, and the AFL-CIO. Environmental Leaders from the Sierra Club, Natural Resources Defense Council and Policy Analysts from the Apollo Alliance, Center for American Progress, and the Alliance for Climate Protection.

The leaders and activists contributing to this issue provide a set of ideas and concepts for a "green recovery," "green new deal," and "green economy"-terms chosen to frame a broad program to address the national and international crises resulting from destructive modes of production and consumption and failures to commit to socially just distributions of wealth and resources.

Due to the nature of this special issue we are offering the opportunity to purchase the single issue without a full subscription for \$38.00 Online Only; \$46.00 Online + Print (postage and handling included). For quantity orders contact Iroher@optonline.net

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We Want Your **IDEAS!**

To submit a story idea, a letter to the editor, other materials or to be added to the USWTMC Frontlines listserv, please e-mail safety@usw.org

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ERT UPDATE

Fatality, Local 1010, District 7, July 26

Angela Smith, 37, was killed at Areclor Mital's Indiana Harbor Works. She was 37 years old, with two young daughters. Sister Smith was working in the 80-inch slab yard when she was hit by the gantry crane and dragged for some distance. She may also have been pulled into the reduction gearing.

Don Faulkner worked with the local union to investigate the accident. Al McDougall is assisting the family.

Fatality, Local 8420, District 9, July 29

Cason Hosch, 29, was critically injured in an explosion and fire at Mueller Cooper Tube in Fulton, Mississippi. Brother Hosch was engaged to be married. He had only worked for four months at the plant.

Two other employees were burned in the fire. One was treated and released. The other was airlifted to a burn center in Jackson.

District Director Daniel Flippo and Glen Erwin continue to assist the local union and district in the investigation. Virginia Strickland is assisting the family and arranging for counseling for plant workers.

The accident is the third fatality at this plant since April, 2008.

Serious Injury, Local 164L, District 11, August 3

Christian Alvarez suffered a neck wound, spinal cord injury, lung puncture, and numerous fractures from an accident at the Titan Tire Plant in Des Moines, Iowa. He is expected to survive, but with at least upper body paralysis. He is single, but has a large family in the area.

Christian is a tire builder with at least three years at Titan, but when the company laid off 69 workers earlier in the summer, he was assigned to operate the Z-calendar windup – a large roll which winds up tire cord. Somehow, he was pulled into the calendar. Several co-workers were in the area, and they managed to stop the machine and cut him free before he was killed. He had been on the calendar job about two weeks and was considered a trainee.

John Alexander is assisting the local with the investigation. Mike Nicholaus, an ERT District 11 rep, is assisting the family.

Serious Injury, Local 959, District 9, July 28

Enner Perez Vega, a contractor employee, was seriously injured at Goodyear's Fayetteville, NC plant. Mr. Vega was loading scrap tires into a tractor-trailer using a walk-behind lift truck. The tractor-trailer was damaged, with a large hole in the floor and had been taken out of service. But it was left in place with no barricade or signage. Mr. Vega's left leg went into the hole, and as he fell, the lift truck ran over him, crushing his leg. He had several surgeries attempting to repair the leg.

David Cassady is assisting the local union with the investigation. Joseph Smith, a District 9 ERT coordinator, is assisting Mr. Vega's family.

Senators propose changes to OSHA Act

August 10, 2009 in Confined Space @ TPH, Occupational Health & Safety, Politics, Regulation, Safety | by Celeste Monforton

In the U.S. Senate last week, between the debate and the vote on judge Sonia Sotomayor to serve as a justice of the U.S. Supreme Court, Majority Leader Harry Reid introduced S. 1580, on behalf of Senator Edward Kennedy, a bill to amend the Occupational Safety and Health Act of 1970. As far as I can tell, its text is nearly identical to H.R. 2067, the bill introduced in April by Cong. Lynn Woolsey. The bills' major provisions are:

- expanding OSHA coverage to the 8.5 million public sector workers (who are employed by state, county and local governments, and not covered by an OSHA State Plan);
- expanding the definition of protected health and safety activity as it relates to whistleblower protection, and improving administrative procedures for whistleblower investigation;
- increasing civil penalty amounts and requiring inflation adjustments to them;
- revising criteria for criminal violations and the applicable law; and
- providing new rights and access to information for injured worker and family members.

The Senate bill was introduced with 20 cosponsors (Democrats and Independent Bernie Sanders), with Senator Reid noting:

"We now have strong partners in the White House and at the Department of Labor who are committed to making our workplaces safer. But they need action by Congress as well. That is why today we are reintroducing the Protecting America's Workers Act, to take concrete steps to address many of the failures of the existing law."

For the latter suggestion, Congress could model language after the "flagrant" violation authority (and the accompanying \$220,000 penalty maximum) it gave to MSHA in 2006. Moreover, the legislative history of such a provision could make clear to the Review Commission that "due consideration" of size, good faith, history, etc. for the monetary penalty is not relevant for such well-known hazards.

As Senator Reid said, on behalf of Senator Kennedy:

"We now have strong partners in the White House and at the Department of Labor who are committed to making our workplaces safer. But they need action by Congress as well."

It's time for the Administration and the Congress to take some bold action to jump start our worker health and safety system. I hope they don't miss this opportunity.