

## John Howard, M.D., Selected as New Head of NIOSH

HHS Secretary Katherine Sebelius announced the selection of John Howard, M. D. as the new director of the U. S. Centers for Disease Control and Prevention's (CDC) National Institution for Occupational Safety and Health (NIOSH) effective immediately. Dr. Howard will assume dual roles. He will also serve as the World Trade Center Programs coordinator for HHS.

Dr. Howard, who is currently a distinguished consultant at the CDC, served as NIOSH director from 2002 through 2008. He also served as coordinator of HHS' World Trade Center Health Programs from 2006 to 2008.

Howard was instrumental in the allocation and release of more than \$390 million dedicated to treatment and in working with the medical and scientific communities to develop a plan to help those who are or who became ill from 9/11.

He was in charge of WTC Medical Monitoring and Treatment Program which offered medical screening to first responders.

As NIOSH Director, Dr. Howard brought research to practice focusing on mining, nanotechnology, ergonomics and job stress.

He has been at the forefront of protecting healthcare workers from swine flu.

NIOSH is the part of CDC that conducts scientific research and makes recommendations for prevention of work-related illnesses and injuries. NIOSH is headquartered in Washington, D. C. and has facilities in Atlanta, Ga.; Morgantown, W. Va.; Pittsburgh, Pa.; Cincinnati Ohio; Spokane, Wash.; Denver, CO.; and Anchorage, Alaska.

Although Howard made major improvements to NIOSH during his first term and had support from both industry and labor, he faced internal opposition. The CDC first tried to split NIOSH into one of four coordi-

nating centers, drastically affecting its independence.

In July, 2008, he was notified by Julie Geberding, CDC Director," that the Agency will begin a search for a new Director".

That notice released an outburst of protest from unions, members of the House and Senate, the US. Chamber of

Commerce and others. Many were baffled by the CDC's decision and called for immediate reinstatement. In a July 11 editorial, the New York Times called Howard's failure to be reappointed "a pointless departure."



Dr. John Howard

***Welcome back, Dr. Howard.  
USW looks forward to your  
leadership once again...***

*USW members are most familiar with NIOSH through Health Hazard Evaluations conducted when the local and their representative determine in conjunction with the health, safety and environment department that workers are ill from an unknown cause or from other conditions that require the assistance of NIOSH.*

# Workers Have the Right to Choose MSHA Safety Representatives, Not Company

By **Susan J. Eckert**  
**Santarella & Eckert, LLC**

Management officials at the Giant Cement/Giant Resource Recovery Facility in Harleyville, South Carolina, learned the hard way that at USW mining facilities, the workers, not the company, choose the Mine Safety and Health Administration (MSHA) health and safety representatives. When USW Local 216 went on strike in 2005 at an MSHA-regulated cement kiln, management decided that it was a “convenient” time to replace the union’s long-standing health and safety representatives, Don Crowe and Terry Mallard, with scab representatives. Crowe and Mallard participated in the strike and were replaced at work by management and scabs. Once the strike ended, some USW members were returned to work immediately, but not Crowe and Mallard. The scabs remained in place as the MSHA representatives. USW Local 216, with Crowe and Mallard, fought back by filing charges with the National Labor Relations Board (NLRB) and MSHA so that the workers had a voice in ensuring that their facility was safe.

The company officials had been dogged for years by the union health and safety representatives. The company incorrectly concluded that since Crowe and Mallard were on strike, they were no longer employees of the company and, therefore, were not eligible to serve as MSHA Part 40 health and safety representatives. Management then recruited new scab representatives and assisted with the MSHA Part 40 paperwork to designate the scabs as the MSHA health and safety representatives. This was all done without the consent of the USW. The union had never withdrawn its designation of Crowe and Mallard as health and safety representatives with MSHA.

MSHA Part 40 regulations allow two or more miners to designate a representative of miners to serve as the MSHA health and safety representative. The miners may designate any individual or an organization to serve in that capacity. The MSHA representative does not have to be an employee of the facility or a miner. This allows miners to select a union and/or its union organizer to serve as the MSHA health and safety representative, even at non-union mines.

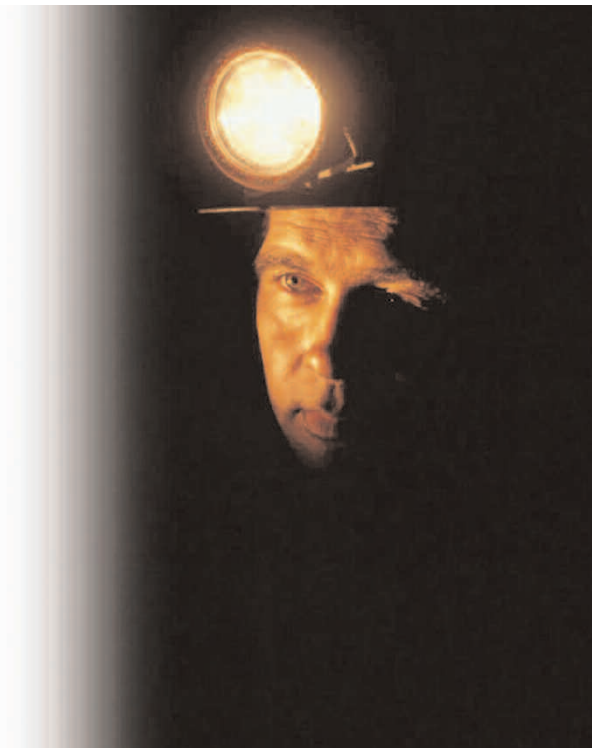
This provision is a great union organizing tool – allowing the union to serve as a health and safety representative at an unorganized mine. At the Giant Facility, it meant that Crowe and Mallard, while no longer actively working at the facility due to the strike and lack of recall, were still eligible to serve as the MSHA health and safety representatives. They had been chosen as the MSHA representatives by two or more active miners, and that designation had never been withdrawn.

Later, when an MSHA inspector came on site to conduct a health and safety inspection at the cement kiln, company

officials told the MSHA inspector that Crowe and Mallard were no longer part of the company. Management did not contact Crowe and Mallard or the union about the inspection, which had always been the practice before the strike, so neither of the two men participated in the inspection. Once the union learned about the inspection, they complained to MSHA that the company’s actions interfered with their “walk around” rights for MSHA inspections and filed unfair labor practice charges with the NLRB. With the help of experienced outside counsel, Crowe and Mallard filed discrimination cases with MSHA before an administrative law judge under section 105(c) of the MSH Act for wrongful interference with their right to serve as the designated MSHA health and safety representatives.

The company fought these claims before the administrative law judge at a discrimination hearing. Eventually, Crowe and Mallard were reinstated as the MSHA health and safety representatives, and the company agreed not to interfere with the union’s designation of health and safety representatives. Now the workers, not the company, choose who will represent them during MSHA inspections at the Giant Facility.

At your mining facility, make sure that your members designate your USW local as the MSHA Part 40 health and safety representative, and check that you are complying with all of the MSHA Part 40 filing requirements. That way the workers, through the union, will always have a voice in protecting the health and safety of their work environment.



# Long Hours and Hard Work Pay Off in the Panhandle

**Steve Cable, USW/TMC**

You just know things might not be quite what you expected at the Valero McKee Refinery as you approach it and see a forest of giant, whirling wind turbines sprouting up near the entrance. “Hmmm...” you ask yourself, “an oil company investing in a wind farm?” Right away you suspect that you’ve arrived somewhere where people are willing to look a little outside the box.

The McKee Refinery sits right at the northern tip of the Texas Panhandle, about an hour’s drive north of Amarillo. Originally built in 1933 by the Shamrock Oil and Gas Company, it became part of Valero Corporation in late 2001. The site employs 468 workers and processes 170,000 barrels of crude a day.

Local 13-487 faced the same issues as any USW local, but on February 16, 2007, an event occurred that shook both the refinery and the local union to their very foundations. A massive fire in the propane de-asphalting unit injured three employees and a contractor. The fire caused extensive equipment damage and resulted in the evacuation and total shutdown of the refinery. It remained shut down for two months, at an estimated loss of over \$50 million. OSHA and the Chemical Safety Board (CSB) began extensive investigations into the incident.

Following this were weeks of turmoil and uncertainty for the workers at McKee. “Everyone was worried whether we’d even have a job when this was over,” said Jaime Valdez, local 13-487 TOP Coordinator. “No one knew if the company would rebuild or take the work elsewhere.”

It was a time when, at many sites, management and union would fall back to their corners, pointing fingers at each other

as employee morale hit bottom. But not this time. “We felt our best strategy for our members was not to distance ourselves from the company, but to reach out so that we could work together to rebuild the refinery and get back to normal operations. The company leadership, contractors, and especially the Valero employees worked long and hard hours to rebuild the refinery in a safe manner,” said Miguel Nevarez, local 13-487 President.

With help and encouragement from a sister Valero site in Delaware City, Delaware, the local moved the company to join the USW Triangle of Prevention Program (TOP). This is a negotiated labor/management program that allows workers to play a much larger role in their safety.

Jaime Valdez, the site TOP Representative said, “Now, we have so much more input into safety. We are doing joint investigations into incidents and near-misses and have trained everyone in the plant on the TOP process and their role in it. We have a full-time TOP Rep, a full-time Health & Safety Rep and a full-time VPP Rep – all hourly people – working on safety full time. We have a much bigger stake in our health and safety than ever before.”

Jaime and Miguel will both admit it hasn’t necessarily been easy to get to this point. There were a lot of issues to work out and old fears and stereotypes to get by first. But a management team and a local union that are willing to look outside the box is a big step toward resolving problems.

Below is a letter sent to McKee’s TOP Mentor from the United Steelworkers International Union from Local Union President, Miguel Nevarez, in appreciation of all the support provided for our TOP program.

*I would like to take a few moments to thank you for your support for our TOP Program here at Valero, McKee refinery. Your professionalism showed and was recognized by all of us here on site, hourly and management. I appreciate the constructive critique of our program, and all the pointers you have given us. With continued support from you and the USW Safety Department, I believe that our program will be one to be emulated and put on display for others to learn from. All the comments from management here were positive, and showed that the company supports our program. Thank you for being available to us when we need guidance and I look forward to building on our professional relationship.*

*Miguel Nevarez  
USW Local 13-487 Local President  
Chairman, Safety Committee*

# Workers' Compensation Corner

By: Marc S. Jacobs

Workers' compensation is the most important right injured workers' and their families have to support themselves when a disabling work-related injury or disease occurs. Benefits can include payment for lost wages, medical bills, death benefits and loss of hearing, vision or use of various parts of the body. In some circumstances, a serious disfigurement may also be included as compensable. In general, the term "injury" has been expanded to mean more than an immediate accident. "Injury" also includes gradual repetitive daily traumas which eventually accumulate to the point of causing disability.

Although coverage for occupational injuries varies from state to state, workers rely on these benefits to help them through difficult financial and emotional times. However, many workers have found (to their surprise) that employers (and their insurance companies) are resistant to voluntary payment of these benefits. Oftentimes, employers will try to control receipt of these benefits. For example, the employer denies that proper notice of the injury was given or the employer tries to make sure the injured worker is treated by a "company doctor" even if the injured worker has a right a doctor of his/her own choice. In these cases, injured workers may receive inadequate medical treatment or be forced to return to work even though they have not recovered from their injury.

**It must be remembered that employers are constantly receiving information from their insurance companies and their attorneys about recent court decisions or amendments to the Compensation Act to keep them updated on the law.**

Thus, it is very important for your local union to have a Workers' Compensation Committee. The committee plays an important role in keeping members updated on legal aspects of the workers' compensation system and assists injured workers through the system, making sure they receive their full legal benefits and helping them to return to work as soon as possible. Also, the committee fills the important role of maintaining contact with injured workers who oftentimes feel quite isolated and alone.

Initially, the formation of a Workers' Compensation Committee is no different than forming any other committee in your local union. Members may be appointed or elected in accordance with local union bylaws. If possible, try to have members on the committee who have some experience with the compensation system. It is not unusual for members who have recently been out on workers' compensation benefits to want to be on the committee. Their recent experience gives some real world

expertise as to how workers' compensation works.

Once the committee is organized it is important to learn about the Compensation Act in your state. Call the Bureau of Workers' Compensation to request publications to learn about the Act. If you have a relationship with a law firm you should invite them to meet with the Committee to review the law and the history of how workers' compensation claims have been handled by your employer. Be sure to discuss any particular problem with regard to giving notice, getting proper medical treatment or any other unique problem which seems to be utilized by the employer or insurance carrier to frustrate a worker's claim.

Education about workers' compensation should extend beyond the committee to all members of the local. Seminars should be arranged so that your shop stewards and the members of the local themselves get a chance to hear a union attorney speak about workers' compensation rights and answer any questions. Material you hand out to your members should include:

1. How to serve notice of an injury and what must be reported to the employer regarding how the injury occurred. Also include the time constraint for giving such notice.

2. What rights (or limitations) an injured worker has in receiving medical treatment or picking a physician of their own choice.

3. Which disabilities are severe enough to also apply for Social Security Disability benefits in addition to workers' compensation benefits.

4. Whether the injured worker can receive any type of alternative health and welfare benefits while the workers' compensation claim is being contested.

5. Whether the injured worker has a potential right to sue the manufacturer of a machine or other item which was the cause of the injury. In most compensation cases the injured worker cannot sue the employer for pain and suffering – only workers' compensation benefits. However, this does not mean the worker may not have a right to sue what's known as a third party.

This column is just the first of many to take a look at the overwhelming issues involved in workers' compensation. There is more information to review regarding your Workers' Compensation Committee, as well as other aspects of the law. If you have any questions feel free to e-mail me at [mjacobs@galfandberger.com](mailto:mjacobs@galfandberger.com) or call me at 1-800-222-8792.

Mr. Jacobs is a Partner in the Law Firm of Galfand Berger, LLP in Philadelphia, PA. The Law Firm has serviced the USW for over 60 years. Mr. Jacobs is a past Chairman of both the Philadelphia Bar Association and Pennsylvania Bar Association Workers' Compensation Section. He is on the Governor's Committee for Amendments to the Workers' Compensation Act and on the Bureau of Workers' Compensation Conference Committee. He has lectured throughout the State and is a contributing editor to the Pennsylvania Bar Institute book *How To Handle a Workers' Compensation Case*.

Sections utilized from booklet *Workers' Compensation For Local Committees* by Joseph Lurie and Galfand Berger.

# Environmental Unions: Labor and the Superfund (2009), Craig Slatin, Baywood Publishing Company: Amityville, NY

## Tom McQuiston, USW/TMC

No one ever could have planned the way the Worker Education and Training Program (WETP) turned out. Funded by the National Institute of Environmental Health Sciences (NIEHS), the WETP is perhaps the largest, most longstanding and most effective health and safety training program in U.S. history. In every step along the WETP's 22 year history, union leaders and their allies continually created a vision for safe and healthy working conditions for hundreds of thousands of workers employed in generating and processing hazardous materials and wastes, cleaning up waste sites, and responding to related emergencies. Author and program participant, Dr. Craig Slatin, guides readers through how this program and its successes were forged out of ideas, programs and alliances that preceded it.

Rarely do politics, regulation, programs and resources come together to create a monumental shift in the world of health, safety and the environment. Slatin documents just such a convergence. Created through hard fought battles, this convergence involved extraordinary visioning, political skills, and alliances to create what would become model training and education programs to serve workers across the nation. Eventually these programs would provide critically important resources at the World Trade Center after 9/11, during the aftermath of Hurricane Katrina and during other disasters.

In his book, Dr. Slatin lays out in important detail what we could and should learn from the way the WETP began. His narrative takes readers on a journey that started from an acute understanding of environmental devastation (think Love Canal) and horrific industrial disaster (think Bhopal and Phillips). Lessons from these disasters, linked with advocacy, made it impossible to continue to ignore worker and community vulnerabilities and needs. He walks us through the legislative processes of the Superfund Amendments and Reauthorization Act (SARA); the forging, nurturing and tensions of coalitions; and the long process of developing a community of individuals and organizations, led by unions and their allies, coming to a common understanding purpose of worker and public health coalitions.

Within this book, the details are many. Slatin documents these necessary pieces of the puzzle by describing the many points of view of diverse players. He shows how self-interests were guided and transformed to collective interests and how these have created stability and longevity.

Once enacted, many among our ranks helped bring the WETP to life. OCAW (one of the unions merged to form what is now the USW), along with its longstanding part-

ner the Labor Institute, were key players. Slatin details how the OCAW promoted participatory, worker-to-worker methods of education and the development of workers as skilled advocates for improving conditions and safety systems. These were important advances, resisted by some and adopted by others. They live on today in the ways the USW-Tony Mazzocchi Center carries out its worker training programs. Rank and file workers continue to play a leading role in the health, safety and environment training programs as worker trainers, worker curriculum writers, and worker researchers and evaluators.

We still face many compelling needs in the realm of health, safety and environment. The history Dr. Slatin documents is a reminder of the roles workers and their unions can play in transforming our workplaces. What emerges from Environmental Unions is, however, not a prescription, but a way to develop new strategies for a world still in desperate need of transformation.

## ERT UPDATE

### **Fatality, Local 375, District 10, August 24**

Peter Uon was fatally injured when his ponytail was caught in the glue Machine at Mid-Atlantic Packaging Co Inc. in Philadelphia, PA.

### **Serious Injury, Local 6135, District 4, August 23**

Michael Garcia, 42, was changing a roll of paper at the El Nuevo DIA

Company when the roll fell on him and injured his leg. His leg had to be amputated.

### **Serious Injury, Local 105, District 11, August 27**

Jon Argenta was seriously injured when an aluminum plate he was working on at an Alcoa plant fell below both knees. He may lose his leg.

### **Serious Injury, Local 105-2, District 11, August 29**

Kyle Fisher was seriously injured while working on a piece of electrical equipment at Sizer Steel when he was electrically shocked resulting in third degree burns over 25% of his body.