

Presentation of Matthew Shultz
Policy Analyst, Center for Progressive Reform

‘OSHA Listens’

March 4, 2010

Washington, DC



I am Matt Shudtz, a policy analyst with the Center for Progressive Reform. Thank you for the opportunity to come speak. CPR is an organization comprising more than 60 professors from around the country who specialize in environmental and public health law and policy.

The Center for Progressive Reform recently released a report that focuses on the many opportunities for improving OSHA's capacity to protect U.S. workers through its existing statutory authority. The report is the result of collaborative work between Professor Rena Steinzor of the University of Maryland, Prof. Thomas McGarity from the University of Texas, Prof. Sidney Shapiro from Wake Forest, and me.

Acknowledging the resource constraints within which OSHA has always operated, our report outlines some changes to your rulemaking process, enforcement priorities, and relationships with other agencies that we believe could result in improved conditions for U.S. workers.

We were all encouraged when we heard Secretary Solis say, "There's a new sheriff in town." Building on that theme, and given that OSHA's enforcement budget and staff far outpace the resources available for rulemaking, I'll begin with our ideas for strengthening enforcement.

First, we believe that OSHA should expand its use of the General Duty Clause to eliminate significant health risks from toxins not regulated under Table Z standards. Hundreds of chemicals that lack PELs have been reviewed by NIOSH, ACGIH, or IARC for their toxicological effects. Significant risks have been discovered and recommended occupational exposure limits exist. OSHA could use these levels as a starting point for establishing a case that certain worksites have known hazards that are likely to cause death or serious physical injury.

Second, in any case where violations of the OSH Act are discovered and OSHA decides to settle the case with the employer, we believe that the settlement agreement should be released for public comment. As a comparative measure, when EPA settles cases under nearly every statute it enforces – from the Clean Air Act to Superfund law – the settlement is published for public review before it is finalized. Workers and their representatives have more at stake in OSHA's enforcement of the OSH Act than they do in EPA's enforcement of its laws. It is time their involvement in OSHA enforcement reflects that fact.

Third, we would like to focus on a point that is as much about resource allocation as it is about enforcement policy. We recommend that OSHA reconsider the amount of its budget allocated to "compliance assistance," particularly the money spent on helping large employers, who can and do hire professional, full-time occupational hygienists and legal experts. These large employers do not have the same needs as smaller employers, and OSHA needs to treat them differently.

I'll end my discussion of enforcement policies by saying that we are encouraged by what we see as a trend under your leadership (and that of Mr. Barab and Secretary Solis) to go after the full penalties allowed under the OSH Act, and by your efforts to improve OSHA enforcement policies aimed at severe violators.

Of course, OSHA's enforcement capabilities are only as powerful as rules being enforced, so our report describes several ways the rulemaking process could be improved.

First, we believe that OSHA can eliminate some of the delays in its rulemaking process by combining multiple steps. As I believe others have recommended, the peer reviews conducted in accordance with Data Quality Act guidance could be run at the same time as public hearings. That is, when a peer review is even necessary. OSHA should consider how previously peer reviewed health assessments by other agencies (*e.g.*, EPA or NIOSH) are sufficient to show significant risks encountered by U.S. workers. Incidentally, we do not believe the Supreme Court's *Benzene* decision calls for the hundred-plus page risk analyses that have become typical in recent OSHA rulemakings. We urge you to ask the Solicitor of Labor for a new interpretation of the analytical requirements imposed by that decision.

Second, we encourage you to make use of what we'd call "generic" standards to address health or safety hazards that are commonly found together in the workplace. By addressing multiple hazards in a single rulemaking, OSHA could make the best use of the limited resources devoted to standard-setting.

Finally, we urge you to improve transparency with respect to the White House Office of Management and Budget's influence in the rulemaking process. All correspondence between OSHA staff and OMB staff should be docketed, particularly interactions that occur before OMB officially enters the rulemaking process during E.O. 12866 review. OMB has a history of being a liaison for regulated parties to impact the rulemaking process outside of the standard public notice-and-comment procedures and we believe it is important to shine a light on OMB's involvement in all aspects of the federal regulatory process. EPA is doing something like this with their new Regulations Gateway, and we encourage you to look into establishing a similar system at OSHA.

More details about these recommendations, as well as other suggestions, are contained in our report, which is available on the Center for Progressive Reform's website.

Thank you.