

Written Statement of
Wanda DeJesus Morillo, wife of Juan Pablo Morillo
OSHA Listening Session, February 10, 2010

Juan Pablo Morillo was on the cusp of turning 31 when his life was snuffed out by an explosion at this job. That explosion also claimed the lives of 2 other men, and severely injured a third man. The accident occurred because of a faulty check valve, which failed to block the flow of acetylene. Its singular hazard is associated with its intrinsic instability; samples of concentrated or pure acetylene will explosively decompose. It's overwhelming at times to think that HC₂H was as lethal as a bomb to these victims.

In the end, 8 children now had no father. Among those 8 children was the daughter I was carrying, who would never meet her father. We had been married a scant year and a half, together for more than 8 years. To lose him only 2 months before having the child he yearned for was especially heartbreaking for me.

He was a young man who worked hard to provide for his family, who loved his family deeply. He was the youngest of 13 children, and a loving uncle to all his nieces and nephews. He is missed.

I must admit, his company was nothing if not completely helpful after the accident. It was a small company, and the owner was obviously deeply sorrowed to be at the helm when such a tragedy occurred. The company cooperated 100% with the authorities, among them OSHA and the United States Chemical Safety and Hazard Investigation Board. I retained legal counsel approximately 3 months after the explosion, therefore my interaction with OSHA and the US CSB was very limited. I contacted the CSB a few times for status updates, and was promptly given one.

I am here speaking for my late husband, Juan Pablo Morillo, who is no longer here to say this. I am also here today as part of a community of individuals who are bound together by the shared experience of losing a loved one because of unsafe working conditions. Mr. Secretary, we want improvements in our nation's laws and regulations so that other families do not have to endure the pain and sadness we've gone through. We will support you in your efforts to make such changes. We also respectfully ask you to consider the following recommendations:

OSHA should change its regulation to require an employer to immediately notify federal or State OSHA of a fatality or serious incidents rather than giving an employer 8 hours to

do so. OSHA should have the authority to prohibit any alterations to the scene in order to preserve physical evidence. The Mine Safety and Health Administration's regulations require employers to notify MSHA of serious incidents within 15 minutes, and prohibit an employer from altering the scene until it is released back to company by the agency. OSHA should adopt equivalent requirements.

When OSHA shortened the time allotted in which to report fatalities/serious injuries from a whopping 48 hour to the 8-hour mandate it has now, we were told:

"A shorter reporting period will enable OSHA to respond to workplace accidents more quickly to help assure that no other employees remain at risk from the conditions which resulted in the catastrophe," said Dorothy L. Strunk, OSHA's acting administrator.

Federal regulations require operators to notify the NTSB immediately of aviation accidents and certain incidents. An *accident* is defined as an occurrence associated with the operation of an aircraft that takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. An *incident* is an occurrence other than an accident that affects or could affect the safety of operations.

We would support a Federal Policy which reflects the reporting requirements of the California regulations which require immediate reporting of every case involving a serious injury or illness (medical treatment beyond first aid) or death. In many cases such occurrences are serious threats to the health and safety of other workers.

Immediate reporting and follow-up can significantly reduce risk to others still in the environment. Moreover, such a requirement would provide leadership to the states and send a clear signal of OSHA's intent to collect data and develop standards to best protect the American workforce.

It should be noted that California requires immediate reporting and Utah has a 1-hour reporting requirement. If these states are achieving compliance with these requirements, OSHA should consider a reporting requirement of less than 8 hours. At a minimum, OSHA should require immediate reporting of a serious incident, not to exceed the shortest time period OSHA determines is reasonable. Prompt investigation is critical.

We believe that reducing the reporting period for the Agency to respond quickly and inspect for hazardous conditions that may pose a risk to other workers at the worksite. Moreover, prompt inspections will enable OSHA to determine whether its current standards adequately cover the hazards involved in the incident. OSHA will also gather better information on the causes of incidents which can be used to identify serious hazards, prevent incidents in the future, and form the basis for revised standards. Increasing the number of serious incidents reported will present OSHA the opportunity to inspect a greater number of hazardous worksites.

Reducing the reporting period from 8 hours enables OSHA to inspect the site of the incident and interview personnel while their recollections are more immediate, fresh and untainted by other events, thus providing more timely and accurate information pertaining to possible causes. The shorter reporting time also makes it more likely that the incident site will be undisturbed, affording the investigating compliance officer a better view of the worksite as it appeared at the time of the incident. The sooner a witness is interviewed the better is his or her memory and the less likely that he or she will color testimony to favor a particular position. The medical examiner and the police and fire departments should immediately notify OSHA of work site deaths and severe injuries. The practice of prompt reporting and investigation would be of great benefit to OSHA investigators.

It may be argued that in the wake of an accident causing one or more fatalities or 3 or more serious injuries, the employer has more important responsibilities than the fulfillment of a federal reporting requirement. For example, he or she must deal with emergency services, anxious workers, and sometimes distraught family members. However, it is disingenuous to suggest that there is only one person capable of doing all these things at any place of work. Perhaps one or more employees could be delegated with the task of notifying OSHA immediately of an accident causing at least one fatality and/or 3 or more serious injuries.

The minimal burden imposed on American business by the proposed change as justifies setting the required reporting time frame at much less than 8 hours. Preferably, immediately. This will allow for more timely investigation and provide for the possibility to more effectively reduce the risk of injury to other workers, decrease the opportunity for circumstances at the incident site to change, and witnesses'

recollections of the incident will be more fresh and clear. These factors will increase OSHA's effectiveness in investigating the causes of reported workplace incidents, and at identifying and controlling the hazards which caused the fatalities or serious injuries or illnesses. Prompt investigation of incidents is also a key element in OSHA's ability to enforce existing standards and to evaluate the need for new standards.