

Statement by Debi Koehler-Fergen

OSHA Listens: Occupational Safety and Health Administration Stakeholder Meeting

Docket No. OSHA-2010-0004

February 10, 2010

Secretary Dr. Michaels,

My name is Debi Koehler-Fergen and I reside in Las Vegas, NV. I thank you for holding this Stakeholder Meeting and allowing me to give my statement. I do so in the memory of my son Travis Wayne Koehler who died three years ago last Tuesday. I am here with a community of other family member victims who are bound together by the unfortunate sharing and experience of having lost a dear loved one to an unsafe work environment. We appreciate this opportunity to lend our voices to the larger picture in the world of worker safety.

I am sure you have read, and others may know the story of Travis' death; that he died while attempting to save the life of a fellow co-worker at the Orleans Hotel in Las Vegas, NV. He was not the only victim and I hope I can also be a voice for Richard Luzier who left behind a wife and two grown sons, and David Snow who thankfully survived. Boyd Gaming engineering department supervisors at the Orleans Hotel violated known safety knowledge. They sent Richard, an untrained, newly hired plumber, into a permit required lift station, or manhole, to perform a task that admittedly they never previously asked their engineering employees to do. They stated they always called in an outside pump company who were highly trained to do any work in the manholes and used that reason as an excuse for not having the department employees trained in confined spaces. Once Richard, upon direction, violated the confined space he cut a line that spewed forth huge volumes of deadly gasses. According to the notes taken during the investigation, Rick was seen trying to climb out of the space and eyewitnesses reported seeing his eyes roll back in his head before falling backward to the bottom of the pit. At that point, the use of the rescue tripod that was on site yet in storage would have come in handy. They did not even make sure fresh oxygen was being pumped into the space; instead, they popped the manhole cover off a couple hours prior to sending them inside. Instead of using the safety equipment they had, 'just in case', they knowingly neglected to take common sense precautions to ensure that Rick or anyone else was not at risk of death or injury. The supervisors did not even think it was necessary to alert the fire department heavy rescue squad, as they knew they were supposed to do. Had they cared enough to ensure a safe work environment, Rick and Travis would be alive today and David would not have spent three weeks in a coma -and none of our three families would wake up every day in this nightmare knowing that it will never go away.

I am here to speak to you because Travis cannot. Not only can Travis no longer speak for himself, he missed his wedding date. He will never know the joy of raising his own children. He can no longer tell his mother that he loves her, call his dad "Pops" just to say hi or to celebrate with his brothers the births of their children. Do you see this bracelet? This was part of a necklace that Travis was wearing when he

was sent to his death. He was sent to his death and then left in his death chamber for five hours because of the unbelievably high levels of toxic gasses that had to be cleared out before he and Rick's lifeless bodies could be removed. Those gasses were so bad they tarnished this sterling silver completely black. His clothes had to be cut off his body before being transported to the coroner's office because he and they were so highly contaminated. The doctors and nurses who were treating David in the ICU could only be near him for 10 minutes at a time because of his toxicity. I am sorry to be so graphic but I see no reason to sugar coat the truth. If feel it is important for everyone to understand what we, as family members, had to endure and continue to live with on a daily basis. I hope that by hearing us, you will understand how important it is to address the need in this country of making our work places safer.

Mr. Secretary, we must have improvements in our nation's laws and regulations so that other families will not be subjected to the pain and grief that we have had to go through. We support your efforts to bring about such changes. No longer can employers be allowed to get away with causing countless deaths and injuries or murder, as happened to Travis in my opinion, and no longer can OSHA allow that to happen by downgrading violations or reducing fines. Why is it okay in this country to care more about a company's bottom line than about someone's life? We feel strongly that the maximum monetary fines and the possibility of facing criminal penalties will be the only deterrent to rouge companies who have a past history and culture of ignoring safety standards and procedures. In addition, OSHA must enforce it. The fine in our case was reduced to a measly pittance; it was one-third (1/3) of one day's net profit for that company! Does that really sound like a deterrent? The lead investigator felt that the reckless acts of my son's direct supervisors and employer and their clear disregard for repeated safety violations at their various properties warranted criminal prosecution yet our state OSHA allowed itself to be influenced to downgrade, reduce and drop violations! I might add that the company received a violation for confined space *after* they caused these deaths and *before* our case was even final.

Travis trusted his employer. He paid his way through classes to become a certified HVAC Journeyman. His long-term goal was to learn all he could and be the best he could be as an engineer and some day, when his supervisors retired, be considered for the position of Assistant Chief Engineer. Unfortunately, he put his trust in a company who cared more about their bottom dollar than their employees. And NV OSHA didn't see fit to hold that company accountable thereby letting not only the dead and injured workers down, but sent the message across the state of Nevada that they didn't have what it took to take a stand and send a strong message to other employers. It has been said recently that they were understaffed and therefore were not able to handle the needed inspections across the Las Vegas Valley. Being understaffed had nothing to do with the handling of our particular case – they had a good investigator who did his job. I have a stack of notes written by the investigator that shows me he did his job. Yet OSHA allowed itself to barter away the life of Richard and my son.

I need not elaborate further on NV OSHA because you all have access to a copy of the Federal Review Report done on the state agency. You can see for yourself what was so wrong in that office and I suspect

in most if not all the state plan agencies, to some degree, in our country. With that said, we respectfully ask you to consider the following recommendations:

Family members firmly believe there must be comparable enforcement, standards and protection of rights whether a worker is employed in a state covered by Federal OSHA or one of the OSHA State Plans. Federal OSHA and the States need to work together and develop criteria to determine the performance of each government agency's program, and that the criteria used to evaluate the State Plans should be used to assess Federal OSHA. It would be helpful if the most current and past grades or rankings given to each program be made available on OSHA's website so the public can compare the performance across the programs.

From personal experience with a state plan agency, it is imperative that there be an oversight in place by Federal OSHA, especially in the case of a fatality, and that although the states retain autonomy, they should not be allowed to decide how to interpret any given OSHA Standard that puts them outside what is the standard for Federal OSHA. Having a means of oversight will also deter any state plan agency from the possibility of undue influences by officials of the offending company or other government entities. I was personally told by a safety professional that any time a citation was going to be issued to the company he worked for, all he had to do was walk into the NV OSHA offices at the beginning of an investigation and he could immediately get a 25% reduction in fines. He could then go to a supervisor in the state agency and get anywhere from another 30% to 50% reduction. He told us that most in his field of work did the same.

We feel that family members must have the opportunity to recommend names of individuals to the accident investigation team who they feel should be interviewed regarding an incident. They should also be able to submit questions to the investigators for response by the interviewees. Currently, OSHA's investigation procedures do not seem to recognize the potentially valuable information that a family member may have regarding working conditions at the site in the days or weeks prior to our loved one's death.

OSHA investigators should put forth the effort to contact the family because they have just gone through a horrific experience; having to deal with a funeral and the rollercoaster of emotions that comes from the grief we are forced to deal with and they may not know they can contact OSHA. In our particular case, Travis told us many times about the problems with the lift stations backing up and everyone knew of the terrible smell around those manholes. We did not know we could tell the investigator, nor were we interviewed during the investigation. We also spoke to a contract employee of the hotel's who we later realized could have valuable information that would have shown that the company was told and knew of the dangers of the lift stations and to keep everyone away from them. Again, we had no idea how the investigation process worked so we never offered that information. Family members may not only have personal knowledge about the workplace, but may also have physical evidence that might assist with the investigation.

In those situations when an employer has or will contest a citation, and the case is then given to the Department of Labor attorneys, we feel it is imperative that the Solicitor of Labor must keep the family members informed of the status of the case on a regular basis, least once a month. The Solicitor of Labor in no way communicated with us at any time during the investigation. In fact, we did not even know any attorneys were looking at the case. In the case of a fatality the Department of Labor attorneys need to take a closer than usual look at the circumstances around the case. They need to be educated about making a criminal case if it is warranted. Especially when, as in the NV case, their own investigator recommends criminal charges for those involved.

Mr. Secretary, again we will support your efforts to make the necessary changes to create a more cohesive and better OSHA that will ensure the safety of all people in the workforce so they can go home to their families at the end of their day.

Thank you again for this opportunity.

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