

**Testimony of  
Kim Nibarger  
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United Steelworkers (USW)  
Before the U.S. Senate Committee on Environment and Public Works  
Washington, D.C. -- July 10, 2007**

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you this morning. My name is Kim Nibarger. I am a member of the United Steelworkers (USW), and a Health and Safety Specialist for our International Union's Health, Safety and Environment Department in Pittsburgh.

The USW represents about 850,000 members in the United States and Canada employed in virtually every industrial segment of the workforce – steel of course, but also, paper, mining, aluminum and other nonferrous metals, chemicals, plastics, tires and rubber, glass, health care, and petrochemicals. Among oil refineries, the USW represents about 30,000 workers employed at more than 20 companies in the U.S.

I know the title of today's hearing is "Lessons Learned from Important Chemical Safety Board Investigations, including the BP catastrophic accident of March 23, 2005 in Texas City, TX", but I wanted to start out by describing "lessons not learned" from previous investigations to see if that has led us to actually learning some lessons.

**PENNZOIL REFINERY** -- On October 16, 1995, an explosion and fire took place at the Pennzoil refinery in Rouseville, Pennsylvania. A trailer that was used by contractors to take work time breaks was destroyed, and two contract workers were killed in the ensuing fire. Their bodies were later found in the debris of that trailer.

One of the recommendations from the investigation that the Environmental Protection Agency (EPA) conducted stated that equipment siting was inadequate. A second recommendation stated that Pennzoil and other facilities should ensure that all process hazards and the consequences and deviations associated with these hazards are completely understood, evaluated, documented, and appropriately addressed through preventive measures. This assessment should also include accident history, equipment design, and integrity.

**TOSCO REFINERY** -- At approximately 7:41pm on January 21, 1997, at the former Tosco Refinery in Avon, California, a section of piping on a hydrocracker reactor ruptured, causing a mixture of hydrogen and hydrocarbons to instantly ignite upon contact with air. An operator checking temperature readings on a panel located at the base of this reactor was killed, while 46 other personnel, including both Tosco employees and contractors were injured.

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Here are descriptions of consequences from the investigation report done by the EPA at the Tosco Refinery:

“Some of the injured were inside or near contractor trailers close to the hydrocracker unit. The blast from the explosion blew out the windows of one trailer and flames prevented workers from exiting the trailer door. The workers climbed out of the trailer window facing away from the fire...Many contractors working nearby were injured on January 21 as the result of being in trailers located less than 100 feet from the hydrocracker unit reactors. These contractor trailers were not designed to withstand explosion and fire.”

According to the EPA report, some of the root causes and contributing factors listed include:

- Supervisory Management Was Inadequate
- Procedures Were Outdated and Incomplete
- Process Hazard Analysis Was Flawed.

Do any of these findings or recommendations sound familiar as ‘lessons not learned?’

Here is a statement from these same two EPA reports: “One of the fundamental ways to prevent accidents is to understand why accidents occur and to apply the lessons learned to prevent future incidents. The ultimate goal of an accident investigation is to determine the root causes in order to reduce the likelihood of recurrence, minimize the consequences associated with accidental releases, and to make chemical production, processing, handling, and storage safer.”

So we can ask: “How are the lessons learned now working?” The causes and recommendations from these two accidents at times read a lot like the BP Texas City explosion.

I was at a refinery two weeks ago where we have had several serious injuries over the past year. We were working to identify the root causes and make some recommendations to prevent a recurrence of injuries. Among the contributing factors we identified were a lack of procedures, even though the Process Safety Management (PSM) standard requires the employer to develop and implement written operating procedures.

So did this employer were I conducted a safety accident review not understand the critical value of the PSM standard? Did they not hear about the lessons learned from the Texas City accident?

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**THE PROCESS SAFETY MANAGEMENT (PSM) STANDARD** -- The PSM standard was developed to help insure safe and healthful workplaces processing toxic, reactive, flammable gasses and liquids or other highly hazardous chemicals. Implementation of PSM began in 1992 and all requirements of the program were to be in place by May 26, 1997.

The following is the language from the PSM standard on procedures for covered process, refineries: "Operating procedures must provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, and shall address at least the following elements: steps for each operating phase, initial startup, normal operations, temporary operations, emergency shutdown, emergency operations, normal shutdown and startup following a turnaround, or after an emergency shutdown."

The PSM standard in the oil refinery industry is the most important tool workers and employers have to assure a safe workplace. PSM provides workers, their families and the communities where they live, the security of knowing that their companies are operating in a safe and responsible manner. Without regulatory oversight and enforcement of the PSM standard, we cannot make that statement.

Until the petrochemical industry takes a serious look at how they continue to operate, we will continue to see catastrophic accidents. The PSM standard must be enforced by OSHA and companies must look at the standard as an absolute minimum, rather than trying to minimize the standard.

This Senate committee needs to consider legislative consultations with the USW that contemplates federal enforcement penalties and accountability requirements around the PSM standard to make certain it keeps workers safe at oil refineries and chemical processing facilities.

The 'Lessons Learned' from the 2005 BP Texas City accident investigation have shown us all that the knee jerk employer reaction of firing workers for alleged mistakes is not the solution. A series of management system failures were identified as the root causes, stemming from years of focus on profit without adequate consideration on safety.

**THE JOINT USW-BP 10-POINT SAFETY INITIATIVE** -- The USW understands 'Lessons Learned' at Texas City and has said enough is enough when 15 workers were killed and another 170 were seriously injured. At a 'BP safety summit' of union and management leaders from five BP refineries that met in Houston in early June of this year, we began an implementation schedule with the individual refineries to establish a

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10-point plan on standards for refinery staffing, new management structures, joint process safety culture, internal maintenance plans and better designed work schedules.

A copy of the joint USW-BP 10-point plan initiative on health and safety has been included in my written testimony submitted to this Senate committee.

All of this has arisen from the failures of the past and reports on the Texas City industrial accident completed by the Baker Commission, the U.S. Chemical Safety Board (CSB), the Occupational Safety & Health Administration (OSHA) and a congressional hearing by the U.S. House Education and Labor Committee held in March that examined the causes of the explosion killing 15 workers and injuring 170 others.

Prior to the BP blast, there was one worker fatality every 16 months for 30 years at the same Texas City refinery. According to OSHA, the number of injuries and death incidents at refineries surpasses the combined total of the next three highest industries: chemical manufacturing, organic chemicals and explosive manufacturing.

The USW is working to get the oil companies to hire and train more workers employed at the refineries. Union skilled workers as stakeholders play a major role in ensuring steady access to gasoline supplies and management accountability for workplace safety.

Acceptance of normalized deviations has found its way into the oil industry. If we operate a system out of the ordinary range and nothing bad happens, pretty soon it is accepted as OK to operate in this manner.

An example on deviations can be cited from a recent USW accident investigation, where a piece of equipment, after being rebuilt, was found to have a vibration reading of 2.0, up from a .5 prior to the rebuild. It went along this way for two years before it catastrophically failed. Deviation was accepted as the new normal operating parameter, rather than shutting down and reducing production to discover the root cause of the change.

**THE CHEMICAL SAFETY BOARD (CSB)** -- The CSB has completed approximately 42 investigations, 35 of those in the last 5 years. Out of that number, about 22, or more than half of the investigations deal with the petrochemical or chemical industry. In addition to these investigations, nearly all of the investigation digests deal with concerns about chemicals.

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The first Safety Bulletin issued by the CSB, 'Management of Change,' was a direct result of six fatalities that occurred in 1998 at the refinery in Anacortes, Washington where I had been employed.

This data highlights the importance of the work that the CSB does as it relates to the petrochemical industry. But the fact that not all the information gathered is being used as it should be leads to another issue.

The CSB is not a regulatory authority, as it was intended to make an investigation more forthright when it comes to information gathering. The fact that the CSB does not wield a hammer, but is instead concerned with finding deficiencies and correcting them -- is its true strength. The investigative mission is also a factor that has at times limited the board's ability to access a site rapidly, or to enforce the chain of custody on evidence following an accident.

The USW strongly supports the work of the CSB and the role they have played in preventing major accidents in the chemical sector. These accidents are usually of an extremely violent nature and often kill or maim workers.

For the past five years, the CSB has been the only governmental voice calling for stronger federal standards and enforcement. A good example is the board's BP Texas City explosion investigation which identified deficiencies corporate wide and recommended that OSHA increase safety inspections at U.S. refineries. The board has also recommended new standards for combustible dust explosions and regulation of reactive chemical hazards.

The USW urges Congress to ensure that the relevant federal agencies adopt what the CSB recommends following their investigations.

We call attention to the CSB's authorizing statute, which is made unusual by not providing for partisan balance in the board of directors. In this regard, the CSB differs from many federal regulatory, safety and advisory commissions. As a result, there has not been a labor representative appointed to the board since 1998. We would urge Congress to make the necessary statutory changes to give both political parties representation on the board, so that all stakeholders -- business, labor and environment -- remain engaged no matter which political party controls the White House.

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The USW also encourages changes to the CSB's authorizing statute to improve the board's authority at accident sites. Last year the board proposed a rule on evidence preservation that faced some strong opposition -- and to date has not yet been issued.

The USW urges Congress to clarify the CSB's authority to issue the evidence rule and require the process to go forward.

The CSB has at times been denied access to accident sites and denied access to physical evidence. A case in point was an explosion in Massachusetts last year where local authorities kept the CSB investigators out of the blast site for almost a week. We urge Congress to improve the board's statutory authorities so that it has clear lead authority; site control and control over the evidence at major accident sites. The CSB should have legal authority similar to the National Transportation Safety Board.

In August of this year, CSB Chairperson Carolyn Merritt will complete her five year term. She has been an outstanding leader and a true independent advocate for worker safety. She has maintained a dialogue with business and labor alike.

The USW strongly urges Congress to very carefully examine the qualifications and views of any future CSB nominees and ensure that the board does not depart from the course charted by Chairperson Merritt since 2002.

Under the current administration, we have seen other federal agencies effectively silenced or undermined by funding shortfalls and staff reductions. Only Congressional action will ensure that the CSB and OSHA serve as advocates for worker safety.

Thank you for giving me the opportunity to testify this morning

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## USW BP Joint Initiative on Health and Safety

BP and the United Steelworkers are determined to ensure the safest possible conditions for BP employees and neighbors of BP facilities. To that end, BP will work with the USW to define a joint safety initiative, based in part on the findings and recommendations of the BP US Refineries Independent Safety Review Panel, the preliminary reports of the U.S. Chemical Safety and Hazard Investigation Board, BP's own investigations, and the experience of the USW.

1. BP will promptly address the immediate causes of the Texas City tragedy, throughout the corporation.
2. BP and the USW will establish joint process safety teams.
3. BP and the USW will establish a joint program for accident and near-miss investigations, and for reviewing safe operating procedures.
4. BP and the USW will work together to upgrade safety education programs.
5. BP will ensure that its facilities are adequately staffed and that employees have reasonable hours of work.
6. The Chief Operator position will be reestablished where it does not now exist, so long as it enhances safety in the refineries.
7. BP will ensure adequate internal maintenance forces.
8. BP will work with the USW and appropriate community officials and organizations to ensure that the corporation is a good environmental neighbor.
9. BP and the USW will define and ensure we have effective teamwork in the refineries.
10. BP and the USW will establish a structure for implementing and overseeing this initiative.

This is an agreement in principle; many details remain to be determined, and additional measures may be added later.

(signed for BP)

*Bob Tucker for Pat Gower*

(signed for the USW)

*Gary Beevers / ST*