

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
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At common-law, it was essential that a person's name appear in the complaint before he or she could be made a defendant in the action.⁹ The majority of courts considering this issue have held that jurisdiction to sue unknown or fictitious persons must be obtained pursuant to some express rule or statute.¹⁰ However, at least one state has judicially adopted Doe pleading without an express statute or rule.¹¹

The estates argue that there has been a long standing practice of Doe pleading in this state. While we

9. Note, Designation of Defendants by Fictitious Names--Use of John Doe Defendants, 47 Iowa L. Rev. 773, 775 (1961). This requirement has been eliminated in certain situations by statutes which allow the pleading of fictitious or John Doe defendants. Id. at 776. However, as the above commentator noted "[t]his is not to say that the rule requiring the true name of the defendant to be stated in the complaint is without force; John Doe complaints are still an exception to the rule and used only under exceptional circumstances." Id.

10. Hailey v. Interstate Machinery Co., 459 N.E.2d 346, 347 (Ill. App. 1984) (citing 59 Am.Jur.2d Parties § 17 (19/1)); Hutchinson v. Fish Engineering Corp., 153 A.2d 594 (Del. Ch. 1959); Grantham Realty Corp. v. Bowers, 22 N.E.2d 832, 836 (Ind. 1939); Hill v. Henry, 57 A. 554 (N.J. Eq. 1904); 59 Am. Jur. 2d Parties § 16, at 401 (1987) ("In actions or proceedings which are not strictly in rem but are in personam or only quasi in rem, there is generally no authority to proceed against unknown persons in the absence of statute or rule. Jurisdiction to sue such persons must be obtained pursuant to some statute or rule."); Note, supra note 9, at 776.

11. Maddux v. Gardner, 192 S.W. 14, 18 (Mo. App. 1945).

acknowledge this past use of Doe pleading, we note that we have never been called upon to consider the propriety of this practice. We decline, however, to address the general propriety of Doe pleading in this case.¹² In the action before us, we find that Judge Ripley did not abuse his discretion in dismissing the claims against the Doe defendants since the estates are unable to identify which allegedly defective component of the Learjet was manufactured by the Doe defendants.¹³ We therefore affirm the superior court's dismissal of the Doe defendants.

F. Did the Court Abuse Its Discretion in Awarding ERA and WAUSAU \$14,476 in Attorney's Fees, which Represented 80 Percent of Their Actual Attorney's Fees?

The trial court awarded ERA and WAUSAU 80 percent of their fees, finding that the plaintiffs' claims "bordered

12. We acknowledge the potential importance of this issue and have referred its consideration to the Civil Rules Committee.

13. The Second Amended Complaint contains the following allegations against the "John Doe" defendants:

Defendants Doe I, II, and III negligently manufactured and designed other equipment used in Learjet N455JA, which items were not manufactured and designed in accordance with generally accepted standards.

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very closely upon the nonmeritorious and the frivolous." Since we reversed the court's dismissal of the claim against WAUSAU, the award of fees to them is vacated. As to the award of fees to ERA, we conclude that the trial court did not abuse its discretion in awarding fees.

In State v. University of Alaska, 624 P.2d 807, 817-18 (Alaska 1981), this court held that an award of "substantially full attorneys fees" is manifestly unreasonable in the absence of a claim that is "frivolous, vexatious or devoid of good faith." The court held that an award over 90 percent of actual costs was a substantially full award of fees. Id.

However, this court has affirmed partial awards of fees as high as 86 percent of actual fees even when the claims were not frivolous. See Hansam v. Wodrich, 574 P.2d 805, 811 (Alaska 1978) (court affirmed award of 86 percent of actual attorney's fees even though the case involved no improper conduct by the losing party); see also O'Buck v. Cottonwood Village Condominium Ass'n, Inc., 750 P.2d 813, 821 (Alaska 1988) (court affirmed award of approximately 80 percent of actual attorney's fees to prevailing defendants); Steenmeyer Corp. v. Mortenson-Neal, 731 P.2d 1221, 1226 (Alaska 1987) (court affirmed award of 75 percent of actual attorney's fees); Crook v. Mortenson-Neal, 727 P.2d 297, 306

(Alaska 1986) (court affirmed award of 80 percent of actual attorney's fees).

We conclude that in this case an award of 80 percent of actual attorney's fees is not manifestly unreasonable. We therefore decline to interfere with the trial court's exercise of discretion and affirm the award of attorney's fees to ERA.

IV.

In conclusion, we affirm the superior court's dismissal of the claims against ERA and the John Doe defendants. We reverse the dismissal of the claims against WAUSAU and remand the claims back to the superior court for further proceedings consistent with this opinion. We vacate the award of attorney's fees to WAUSAU and affirm the award of fees to ERA.

AFFIRMED in part, REVERSED in part, VACATED in part and REMANDED for further proceedings consistent with this opinion.

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State Government Impact
on Job Fatalities
in California

*Testimony before the
California General Assembly
October 27, 1988*

Joseph A. Kinney
Executive Director
The National Safe Workplace Institute
122 South Michigan Avenue
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be evaluated on a case-by-case basis. In fact, tomorrow the NSWI will release a report which is highly critical of a state run program of a Midwest state. If that particular program does not show immediate improvement, the NSWI will recommend that the Secretary of Labor take action to return it to federal control.

For the record, NSWI favors Proposition 97 which will provide a mandate to return job safety and health in California's private sector to state jurisdiction. The NSWI takes this position because of its professional judgment that federal jurisdiction, unless drastically changed from its present form, will result in substantially more job-related fatalities and injuries. Moreover, state job safety and health regulation in California was clearly economically beneficial to both employers and to the state's taxpayers.

The remainder of this testimony is divided into two parts. First, the NSWI will focus on its criticisms of the U.S. Occupational Safety and Health Administration (OSHA). This examination will demonstrate why regulatory programs that existed until July 1, 1987, were particularly effective in reducing job-related injuries. Second, the NSWI will examine what levels of job-related fatalities and costs California would have experienced if safety regulation had been under federal jurisdiction. This review will consider overall fatalities with a more detailed look

CORRECTION

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Background

The National Safe Workplace Institute (NSWI) is a 501(c)3 not-for-profit organization based in Chicago. The NSWI's primary activities include investigative research, intervention, and social service dedicated to safer and healthier workplaces. The NSWI's primary funders are the Joyce Foundation, the J. Roderick MacArthur Foundation, and the Chicago Resource Center.

Since the NSWI was established in 1987, it has engaged in a number of national and regional job safety and health studies. The NSWI has established a national reputation for its work in evaluating a wide variety of occupational safety and health issues and for its leadership in changing public policy.

Introduction

The NSWI fully supports restoring California's private sector job safety and health jurisdiction to state government. In the U.S., 20 state governments have successfully petitioned the Secretary of Labor for the right to regulate job safety and health. In turn for this responsibility, the federal government will pay up to 50% of the cost of program administration.

The NSWI neither favors nor opposes the idea of state job safety regulation. The NSWI believes that state programs should

be evaluated on a case-by-case basis. In fact, tomorrow the NSWI will release a report which is highly critical of a state run program of a Midwest state. If that particular program does not show immediate improvement, the NSWI will recommend that the Secretary of Labor take action to return it to federal control.

For the record, NSWI favors Proposition 97 which will provide a mandate to return job safety and health in California's private sector to state jurisdiction. The NSWI takes this position because of its professional judgment that federal jurisdiction, unless drastically changed from its present form, will result in substantially more job-related fatalities and injuries. Moreover, state job safety and health regulation in California was clearly economically beneficial to both employers and to the state's taxpayers.

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at the construction industry. While NSWI hopes otherwise, it is difficult to envision a scenario for the next five years where the federal government would adopt a regulatory system as comprehensive and as effective as that which existed here until 1987.

In closing this part of this testimony, it is imperative that the reader understand that regulatory posture is only one of several elements that influences job-related fatality, injury, and disease levels. An important factor is workers' compensation. As a general rule, there is an inverse relationship between the level of workers' compensation benefits and job-related fatalities. In other words, higher average compensation claims yields to the recipients correspond to lower fatality levels in the state. In other words, a state can almost assuredly reduce fatality (and injury) levels by increasing workers' compensation benefits.

California is an exception to this important rule. California, at best, provides only average workers' compensation benefits. As we can see in Table 1 below, California has very modest benefit levels.

Table 1. 1984 Workers' Compensation Average Benefit Levels

<u>State</u>	<u>Average per Case</u>
CALIFORNIA	\$ 7,192.29
Illinois	\$ 15,079.93
Indiana	\$ 2,850.72
Virginia	\$ 10,056.89
Washington	\$ 3,421.33

As Table 1 shows, California trails two of the five states considered in terms of workers' compensation benefit levels. However, California workers are much less likely to die on-the-job than are workers in any of the states included in this group. Incidentally, Indiana, Virginia, and Washington are states, like California, where the state government has jurisdiction over job safety and health.

California has demonstrated a very important lesson for job safety and health advocates. The lesson is that strong enforcement and moderate workers' compensation benefit levels are strong inducements to employers to prevent job injuries. In fact, it is reasonable to project, absent a return to a strong regulatory regime, that job-injury and fatality levels in California will eventually rise to the levels of states with comparable workers' compensation benefit levels.

Federal OSHA

One lesson can be learned from federal OSHA's performance over the last eight years. The lesson: Leadership is critical to sound regulation. There can be no question that the federal government backed away from strong regulation in the early and mid-1980s. Since 1986, federal OSHA has engaged in some widely visible penalty actions against major corporations, a reversal of its "bended-knee" approach during the early years of the departing Administration. However, this reversal is far less than

what meets the eye. The NSWI researched federal OSHA's mega-fines. As NSWI reported (1), federal OSHA's mega-fines nearly always resulted in mega-sweetheart deals. Indeed, OSHA seldom gains meaningful abatement in turn for penalty reduction. It is possible that this dealmaking strategy has greatly weakened the respect employers have for OSHA. In reviewing fine collection data compiled by the Department of Labor's Inspector General, NSWI found-out that less than 24% of U.S. employers cited by OSHA paid their fines in a timely fashion(2). No business or state government could tolerate such a debt collection record.

CAL/OSHA Versus Federal OSHA

There are several key differences in the operations of federal OSHA and what was CAL/OSHA. In general, federal OSHA lacks the tools and/or the will to exercise the level and scope of enforcement that existed in California. As we will see later in this testimony, that difference can be measured in lives.

There are key elements in any program designed to gain safety and health compliance. These elements really can be grouped into three areas: standards, enforcement, and education. For the purpose of this report, education will not be considered. However, the education function takes on special meaning when employers know that the standards which have been promulgated are sound and will be faithfully enforced. Economists have demonstrated that employers want to inject as much certainty as possible into their

business operations. Safety-oriented employers strongly favor sound regulation and enforcement, particularly if the regulation results in an even playing field, forcing unsafe competitors to invest in safety measures.

Standards. The record of federal OSHA in promulgating effective standards is poor. Indeed, nearly all of the standards promulgated by OSHA in recent years came as a result of litigation by public interest groups or organized labor. Testimony before the U.S. Senate earlier this year demonstrated that OSHA has suffered from a shortage of will to regulate and sufficient resources (3). Likewise, the U.S. Office of Management and Budget began demanding, in the early 1980s, extensive cost-benefit analysis for each regulation, an intervention which effectively stalled OSHA's rulemaking process (4).

The story in California was substantially different. Until recently, there appeared to be strong, bipartisan support for CAL/OSHA. The differences that emerged over time were dramatic. CAL/OSHA successfully promulgated stricter exposure limits for 267 chemicals, including 23 reproductive hazards, 29 cancer-causing agents, and 34 pesticides (5).

More importantly, CAL/OSHA promulgated effective standards for the construction industry. CAL/OSHA has a construction permit system, and regulations concerning logging, petroleum drilling

and production, crane operation, high hazard tunneling, accident prevention programs, and high voltage line work. By comparison, the federal government has not promulgated standards for any of these areas.

The absence of federal regulations does not mean that federal OSHA does not regulate. However, the absence of standards forces OSHA to rely on what is known as the general duty clause. The general duty clause has been inconsistently applied by federal OSHA, a source of irritation for many employers. Employers are entitled--and should demand--clear rules.

Enforcement. California authorities learned several years ago that strict enforcement is an important tool for achieving compliance. Clearly, neither the federal government nor CAL/OSHA have proposed a level of fines which could force employers into bankruptcy. For the federal government, the absence of significant penalties means that the government must rely, in large part, on the good intentions of those employers who consistently avoid compliance. Here, once again, CAL/OSHA has differentiated itself from the federal government in two very important ways. First, CAL/OSHA could demand immediate abatement or correction of unsafe working conditions. By comparison, the federal government, if required, must seek a court order. That difference alone has probably cost lives. The right to seek immediate abatement is critical and cannot be adequately emphasized.

The second enforcement-related issue concerns the use of criminal prosecutions. The National Safe Workplace Institute has studied the federal government's record in considerable detail. The record is shockingly weak. Since 1981, the federal government has indicted only two firms. One firm was convicted and another was acquitted. A third, non-indicted firm arranged for a plea bargain. During that same period, the State of California achieved 112 successful prosecutions. The message: California will enforce the law when employers take actions that threaten lives. The federal government does not.

So What?

To this point, we have reviewed important differences in job safety enforcement between what was CAL/OSHA and the federal government. This left that task of evaluating the impact of these two strategies on: (1) Lives-saved; and (2) Potential costs. The analysis conducted by NSWI indicates that continued jurisdiction by the federal government, given current trends, will result in substantially more job-related fatalities in California in future years. Indeed, short of restoring CAL/OSHA, the only way for California lawmakers to prevent an increase in fatalities will be to sharply increase workers' compensation. Otherwise, there will not be adequate incentive for California employers to prevent job-related fatalities and injuries.

A word of caution is in order. The analysis that follows

relies heavily on death certificate data. Other job safety and health related statistics are unreliable. For example, both the Bureau of Labor Statistics (BLS) and the National Safety Council (NSC) rely, to some extent, on employer surveys, which is a poor way to collect such important data. While death certificates provide the best information available, we do not know how much underreporting by coroners of proper cause of death may exist. For the purpose of this analysis, there is no reason to believe that California coroners underreport proper cause of death more than coroners in other states.

NIOSH Fatality Data

The best available source of information concerning job related fatality data is the National Institutes of Occupational Safety and Health (NIOSH) which purchases death certificates from all states. NIOSH has analyzed the cause of death in each instance. Recently, NIOSH released a survey report covering job related fatalities from 1980-1985. NSWI used NIOSH data to assess California's experience as compared with selected State Plan (state regulated) states and with selected federally regulated states. Table 2 (page 10) reveals that California would have experienced 203 additional deaths per year during the NIOSH reporting period if it had been under federal jurisdiction.

It is likely that future fatalities will significantly outpace the 203 annual fatality rate reported in Table 2, since

California's actual reduction in job-related fatalities was dropping at a much faster rate during the end of the reporting period (1984-1985). During that same period, the weak enforcement of the departing federal Administration was resulting in an increase in the rate of fatalities, particularly for high-risk workers (7). Again, it is important to emphasize that strong enforcement will stimulate investments in safety equipment, worker training, and safety personnel, causing a ripple effect in fatality and injury reductions.

Table 2. Fatality Comparisons Between California and Selected States, 1980-1985

<u>Category</u>	<u>Fatality Rate Per 100,000 Workers</u>	<u>Average Annual Fatalities</u>
California	7.1	739
Federal Group*	8.4	876
State Group*	9.7	1,008
Fed/State Average	9.1	942
Difference.....		203

*Federal Group: Florida, Illinois, Ohio, Pennsylvania, and Texas.
 **State Group: Indiana, Kentucky, Michigan, Oregon, and Washington.

Compiled by NSWI from NIOSH Data.

There is reason to believe that California's coroners do a more accurate job in recording the cause of death. California has a strong Department of Public Health and coroners receive primary medical reports. In general, other states are far less

systematic and complete. Preliminary results from a study being conducted in Oklahoma indicate that coroners there underreport job-related deaths by 50% (8). If one were to assume that California coroners record the cause of death more accurately, then it is possible that the difference could be an additional 50 or more deaths per year.

Construction

Probably the most important research on safety-related fatalities was done in 1987. This study considered only safety related deaths in the 35 most populous U.S. cities. This analysis ranked these cities by fatalities per billion dollars worth of construction (9). The economic value of the construction was regionally weighted to eliminate distortions from high cost of living cities. California's major cities (San Francisco, Long Beach, San Diego, Los Angeles, and San Jose) ranked at the bottom.

Table 3. Urban Construction Fatality Rates, 1979-1986

<u>Category</u>	<u>Safety-Related Fatalities</u>	<u>Deaths Per Billion Dollars</u>
California	56	1.26
Federal Group*	272	5.89
State Group*	79	4.26
Fed/State Average	176	5.08
Difference.....		170

*Federal Group: New York, Denver, Jacksonville, Houston, and Kansas City.

**State Group: Memphis, Seattle, Baltimore, Honolulu, and Detroit.

Compiled by NSWI from data collected by The New York Times

Table 3 clearly suggests that under federal regulation, we can expect 170 additional construction fatalities each year just in California's major cities! If just the fatality level from federally regulated cities were considered, then California fatalities would have increased by 206 or by 467%! This data and analysis is important because construction remains the most significant source of occupational death in the U.S. Also, it demonstrates the impact that CAL/OSHA, with its thoughtful and effective programs, had on the lives of California workers.

Economics of Job Safety

Job safety and health programs have important economic implications for workers, employers, and government. In the U.S., the cost of a job-related injury is seldom internalized to the business environment that generated the injury. When costs are successfully internalized, employers have sufficient incentive to invest in injury-prevention strategies. Until 1987, California adopted a program of strong regulation and enforcement, featuring immediate hazard abatement and the potential for criminal enforcement. Unlike other states, California has avoided dramatic increases in workers' compensation levels as a means of injury prevention.

The National Safety Council (NSC) has estimated the cost of a job-related fatality at \$460,000 and the cost of a job-related injury at \$12,600 (10). Since the NSC is largely industry funded,

there is reason to believe that costs are not over-stated. We can assume that 25% of these costs are externalized to the public. Table 4 shows the cost impact of job-related fatalities over one-year and five-year time horizons.

Table 4. Job-Related Fatality Costs
(In million dollars)

<u>Fatality Level</u>	<u>Total One Year Costs</u>	<u>Public One Year Costs</u>	<u>Total Five Year Costs</u>	<u>Public Five Year Costs</u>
100	\$ 46	\$ 11.5	\$ 230	\$ 57.5
150	\$ 69	\$ 17.3	\$ 345	\$ 86.3
200	\$ 92	\$ 23.0	\$ 460	\$115.0
300	\$138	\$ 34.5	\$ 690	\$172.5

Source: NSWI calculations based on National Safety Council injury cost estimates.

Based on the preceding analysis of fatalities in federally regulated environments, it is highly possible that California's fatalities could increase by 300 per year. Fatalities are only a small part of total job-injury costs. One should expect that injuries will increase by at least 30,000 a year. By using the NSC's \$12,600 cost estimate, the projected cost of injuries will be \$378 million annually. The externalized cost of injury in California can be calculated by multiplying the average workers' compensation claim (\$7,200) by the number of injuries (30,000) which equals \$216 million. One-fourth of that cost, \$54 million, is probably absorbed by the public.

There is little doubt that increases in job-related injuries will result in enormous increases in workers' compensation costs.

Moreover, the insurance industry believes that a 1% increase in injuries will increase the cost of workers' compensation to California employers by at least \$40 million. Workers' compensation costs in California could easily increase by \$250 million annually.

Conclusion

This analysis has not touched upon the social costs associated with job-related fatalities and injuries. Each day children will wait at the dinner table for a parent who will never arrive. The agony associated with that experience simply cannot be quantified or justly compensated. Unless one believes that the federal government is going to drastically alter its regulatory and enforcement strategies, there will be sharp increases in injuries and fatalities and children without a parent. CAL/OSHA's impact cannot be disputed. Without question, the future costs of increased fatalities and injuries will greatly exceed the \$8 million that CAL/OSHA cost California taxpayers in 1987. The NSWI trusts that this testimony will assist Californians in coming to an informed judgment on Proposition 97.

FOOTNOTES

1. See Failed Opportunities (NSWI, September 2, 1988), pages 18-20.
2. Semiannual Report: Office of Inspector General, U.S. Department of Labor, page 45.
3. Testimony of several witnesses before the Committee on Labor and Human Resources, U.S. Senate, April 18-20.
4. See hearing report, OSHA Oversight, pages 18-20.
5. There are "riders" on the appropriations bill for OSHA that prohibit the Secretary of Labor from taking action to terminate California's State Plan.
6. Interviews and correspondence, including Freedom of Information Act requests, with Ron Medeiros, Senior Counsel, Division of Occupational Safety and Health, State of California, San Francisco.
7. See Footnote #1 above.
8. Interview with Anthony Suruda, M.D., M.P.H., NIOSH, October 17.
9. See The New York Times, September 21, 1987.
10. Accident Facts (National Safety Council, 1987), page 31.

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* Executive Director ** Honorary Member

OBJECTIVES

The National Safe Workplace Institute was founded in 1987. The Institute is funded by foundations, contributions from individuals, and through the sale of publications. The Board of Directors supports the use of appropriate tools to achieve the Institute's goals, including:

Research and Education ...

The Institute examines workplace conditions and policies and educates the public on issues relating to safety and health.

Intervention...

The Institute intervenes on behalf of individuals with regulators, law enforcement agencies, and the social welfare system to secure justice and pursues compensation and other remedies.

Acknowledgement...

Each year the Institute acknowledges, with its "Commitment to Life" award, people who have made important contributions in advancing workplace safety and health.

The National Safe Workplace Institute

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Expendable Hoosiers

Job Safety & Health Problems in Indiana

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October 28, 1988

Expendable Hoosiers
Job Safety & Health Problems in Indiana

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Foreword

This report has been some time in the making. Several months ago, representatives from the Foundation for the Advancement of Industrial Research (FAIR), a not-for-profit corporation concerned about protecting Indiana workers' safety and health, contacted us after the horrible industrial disaster at Bastian Plating in Auburn which claimed five lives.

Growing out of this initial contact was a recognition that FAIR and the National Safe Workplace Institute (NSWI) shared an interest in promoting workplace safety.

Since we wanted to study a state that was not under federal OSHA jurisdiction, we quickly had a convergence of interest. Thus, FAIR commissioned us to prepare a report evaluating Indiana's record of protecting worker safety and of compensating the victims of workplace accidents.

In the ensuing period, we learned that many men and women care deeply about the job safety crisis in Indiana. In conducting our study, we benefited from the insights of numerous individuals, both on and off-of-the record.

FAIR was enormously helpful in tracking down documents and in getting to know those who make a difference and those who do not. This project, we trust, will be the starting point of an enduring relationship. While the National Safe Workplace Institute's origins are substantially different from those of FAIR, we have a common bond in our dedication to dramatically reduce job-related deaths and injuries and to protect the dignity of Indiana workers and their families.

This project benefited from the special skills of David L. Nichols who recently resigned as NSWI's Director of Program Development to accept a new position with the Jacobs Engineering Group. Mr.

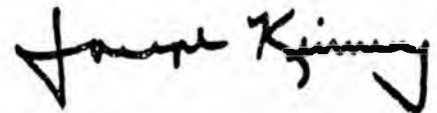
Nichols added greatly to NSWI and will be missed.

Both men and women are the victims of workplace homicide in Indiana. Anytime someone dies, it is a tragedy. It is our utmost responsibility to learn from those deaths, to make sure that the same does not happen again. Shamefully, Indiana's leaders have not learned these important lessons. This report must help. That is our duty.

We invite Indiana's political leaders, particularly the new Governor, to join with us in meeting the victims and family members in Indiana's sorry job safety legacy. Perhaps the new Governor will learn the lessons which his predecessors did not.

In closing, we dedicate this report to the children of victims whose lives will be shortchanged by this leadership breakdown. May their children not be so cheated.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Kinney". The signature is written in dark ink and is positioned above the typed name and title.

Joseph A. Kinney
Executive Director

Chapter One Introduction

In 1970, the U.S. Congress passed the Occupational Safety and Health Act (Job Safety Act), a law designed to ensure men and women safe and healthy workplaces. Passage of the Job Safety Act, combined with state workers' compensation laws, offered workers the promise of workplaces free of job-related injury or death.

The working men and women of Indiana are not meaningfully protected from unsafe workplace conditions and once they are injured, compensation is at poverty levels.

On a national level, the U.S. has fallen far short of that goal. For Indiana, the results have been even more dismal. The working men and women of Indiana are not meaningfully protected from unsafe workplace conditions and once they are injured, compensation is at poverty levels.

The Job Safety Act provides state officials with a choice. Under law a state can gain jurisdiction of job safety and health regulation if that state can assure the Secretary of Labor that it is willing and able to provide its workers with job safety protection equal to that offered by the federal government. In turn, the federal government will make grants of up to 50% of the costs of the program. Indiana is one of 20 states which has assumed jurisdiction for job safety and health.

In this report, we strive to accomplish several objectives. We will evaluate Indiana's job safety statistics relative to its neighboring states—Michigan, Ohio, Kentucky, and Illinois.

These are the states which will compete with Indiana for new jobs and economic growth. Indeed, Indiana business groups argue that excessive regulations or a "generous" workers' compensation program will jeopardize future economic opportunities for Indiana businesses and workers alike. These claims will be examined during the course of this report.

Also, this report will focus on the effectiveness of the state agency charged with protecting workplace

Chapter Two

How Does Indiana Rate in the Midwest?

Public officials have boasted that Indiana is the tenth safest state in the U.S.¹ Hoosiers could be proud of such a ranking— if only it were true. The favorable Indiana ranking depends upon a 1984 U.S. Bureau of Labor Statistics (BLS) study. A study that BLS officials have acknowledged as flawed because it depends on voluntary reporting by employers with 11 or more employees.

U.S. job safety and health statistics are significantly flawed, as a 1987 National Academy of Sciences report revealed.² Recent government action shows that employers dramatically underreport workplace injuries and even fatalities.³

The most reliable study available was published by the National Institute of Occupational Safety and Health (NIOSH). It paints a far different picture of Indiana. The NIOSH study used a form of evidence which is hard to refute, death certificates.⁴ The NIOSH study team looked at death certificates in all 50 states and found Indiana to be far above average for the U.S.

Indiana's fatality results are even less impressive when one considers that the states with the highest death rates are heavily rural states such as Alaska, Idaho, Montana, South Dakota, and Wyoming. These states have high fatalities because of population dispersion and the problems which exist in getting proper medical treatment to seriously injured workers. In other words, a Montana worker has a much higher chance of dying from a workplace accident than a similarly injured worker in Indiana, since travel time to hospitals is longer. Improved trauma and health care in rural areas, especially in states like Montana, would reduce job-related fatalities.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Chapter One Introduction

The working men and women of Indiana are not meaningfully protected from unsafe workplace conditions and once they are injured, compensation is at poverty levels.

In 1970, the U.S. Congress passed the Occupational Safety and Health Act (Job Safety Act), a law designed to ensure men and women safe and healthy workplaces. Passage of the Job Safety Act, combined with state workers' compensation laws, offered workers the promise of workplaces free of job-related injury or death.

On a national level, the U.S. has fallen far short of that goal. For Indiana, the results have been even more dismal. The working men and women of Indiana are not meaningfully protected from unsafe workplace conditions and once they are injured, compensation is at poverty levels.

The Job Safety Act provides state officials with a choice. Under law a state can gain jurisdiction of job safety and health regulation if that state can assure the Secretary of Labor that it is willing and able to provide its workers with job safety protection equal to that offered by the federal government. In turn, the federal government will make grants of up to 50% of the costs of the program. Indiana is one of 20 states which has assumed jurisdiction for job safety and health.

In this report, we strive to accomplish several objectives. We will evaluate Indiana's job safety statistics relative to its neighboring states—Michigan, Ohio, Kentucky, and Illinois.

These are the states which will compete with Indiana for new jobs and economic growth. Indeed, Indiana business groups argue that excessive regulations or a "generous" workers' compensation program will jeopardize future economic opportunities for Indiana businesses and workers alike. These claims will be examined during the course of this report.

Also, this report will focus on the effectiveness of the state agency charged with protecting workplace

safety and health, the Indiana Occupational Safety and Health Administration (IOSHA). We have scrutinized the effectiveness of IOSHA. We especially focus on the tragic community of Auburn and the unwillingness and inability of IOSHA to come to grips with problems in northwest Indiana.

Enforcement, in our view, is an important element of prevention. The second leg of prevention is the compensation system. Clearly, as long as the costs of enforcement and compensation are less than the costs of prevention, employers will have little incentive to take corrective action.

Before we begin our examination, it is important to note that safe and healthy workplaces are not a "government only" question. Many employers have worked constructively with workers to achieve reasonably safe and healthy work environments.

The role of government concerns employers who have not made workplace safety and health a high priority. Effective regulation can stir those employers with whom safety and health are not priorities and engage them in initiatives which are essential for making workplaces safer and healthier. If the existence of regulation is not enough, then the enforcement agency must have the legal muscle to effectively regulate. If an agency cannot effectively regulate, then one must question the desirability of maintaining that organization.

Clearly, as long as the costs of enforcement and compensation are less than the costs of prevention, employers will have little incentive to take corrective action.

Chapter Two How Does Indiana Rate in the Midwest?

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U.S. job safety and health statistics are significantly flawed, as a 1987 National Academy of Sciences report revealed.² Recent government action shows that employers dramatically underreport workplace injuries and even fatalities.³

The most reliable study available was published by the National Institute of Occupational Safety and Health (NIOSH). It paints a far different picture of Indiana. The NIOSH study used a form of evidence which is hard to refute, death certificates.⁴ The NIOSH study team looked at death certificates in all 50 states and found Indiana to be far above average for the U.S.

Indiana's fatality results are even less impressive when one considers that the states with the highest death rates are heavily rural states such as Alaska, Idaho, Montana, South Dakota, and Wyoming. These states have high fatalities because of population dispersion and the problems which exist in getting proper medical treatment to seriously injured workers. In other words, a Montana worker has a much higher chance of dying from a workplace accident than a similarly injured worker in Indiana, since travel time to hospitals is longer. Improved trauma and health care in rural areas, especially in states like Montana, would reduce job-related fatalities.

*Indiana and Its Neighbors--
Who is Safe?*

An objective determination of how safe Indiana workplaces are can be made by comparing actual workplace deaths in Indiana with its neighboring states: Michigan, Ohio, Kentucky, and Illinois.

Compared with bordering states, Indiana ranks only above Kentucky and substantially worse than Michigan, Ohio, or Illinois. While it is difficult to determine, it is very likely that Kentucky's higher death rate is due to mining fatalities.

As we can see from Table 2.1, the average fatality rate in Illinois is 13.5% below that in Indiana. The comparison is even more dramatic for Michigan, 33% below Indiana, and Ohio, which is 37% below Indiana. This means that three Indiana workers die for every two in Michigan and Ohio. Michigan and Kentucky are state-regulated, while Ohio and Illinois are federally-regulated.

Table 2.1

Traumatic Occupational Fatalities, 1980-85
*Average Annual Number & Fatality Rate,
for Private Sector Workers*

<i>State</i>	<i>Average Annual Number</i>	<i>Fatality Rate per 100,000</i>
Illinois	309	7.1
INDIANA	160	8.2
Kentucky	160	14.0
Michigan	167	5.5
Ohio	200	5.2

Source: NIOSH

Construction

The largest source of job-related deaths in the U.S. is the construction industry. Only Kentucky has a higher construction death rate than Indiana of the five states reviewed in this study. Once again, however, Indiana's death rate is substantially higher than that in Michigan, Ohio, or Illinois. In this instance, Indiana's fatality rate of 34.1 per 100,000 construction workers is much higher than the national average of 24.1.

This means that three construction workers in Indiana are dying for every two in Michigan and Ohio.

Table 2.2

Traumatic Occupational Fatalities, 1980-85 in the Construction Industry

<i>State</i>	<i>Average Annual Number</i>	<i>Fatality Rate Per 100,000</i>
Illinois	42	26.0
INDIANA	26	34.1
Kentucky	19	42.0
Michigan	20	20.5
Ohio	30	21.4

Source: NIOSH

As we can see from Table 2.2, the construction death rate in Illinois, the next closest state is 24% lower than the death rate in Indiana. The comparison is even more dramatic for Michigan and Ohio.

The construction death rate in Michigan is 40% below Indiana's and the death rate in Ohio is 37% below its neighbor, Indiana. Again, this means that three construction workers in Indiana are dying for every two in Michigan and Ohio.

Manufacturing

Indiana has a slightly better record in manufacturing than in construction. There are a number of large, highly unionized auto manufacturing plants in Indiana which tend to provide safer workplaces than non-union manufacturing. Kentucky, consistent with trends in other areas, has a higher death rate than Indiana. Indiana and Illinois have the same death rates, but Michigan and Ohio, which are heavily unionized in relative-terms, have much lower death rates.

Table 2.3

Traumatic Occupational Fatalities, 1980-85 in Manufacturing

<i>State</i>	<i>Average Annual Number</i>	<i>Fatality Rate Per 100,000</i>
Illinois	39	3.4
INDIANA	21	3.4
Kentucky	13	5.1
Michigan	24	2.5
Ohio	34	2.9

Source: I. JOSH

The manufacturing death rate in Michigan is 23.5% below Indiana, while that of Ohio is 14.8% below Indiana.

Public Utilities

In the fourth category which we examined, transportation, communications, and public utilities, the same pattern prevails—only Kentucky has a worse death rate than Indiana. However, Indiana's death rate of 37.8 per 100,000 Indiana workers is much higher

than its midwest neighbors.

Table 2.4

Traumatic Occupational Fatalities, 1980-85
*in Transportation, Communications,
 and Public Utilities*

Indiana workers are far more likely to die than their counterparts in neighboring Michigan, Ohio, and Illinois.

<i>State</i>	<i>Average Annual Number</i>	<i>Fatality Rate Per 100,000</i>
Illinois	51	21.9
INDIANA	35	37.8
Kentucky	30	57.4
Michigan	28	20.8
Ohio	46	24.9

Source: NIOSH

The relative statistics from transportation, communications, and public utilities are dramatic. An Indiana worker employed in the area of public utilities has a much higher chance of being killed than his or her counterparts in Michigan, Ohio, or Illinois. A worker in this category has a 42.1% less chance of being killed in Illinois, a 45% less chance in Michigan, and a 34.2% less chance in Ohio.

Conclusion

As we have seen, Indiana workers are far more likely to die than their counterparts in neighboring Michigan, Ohio, and Illinois. Unfortunately, mine-related fatalities tend to make it difficult to compare Kentucky with Indiana.

Furthermore, it is likely that Indiana's state job fatality statistics are inaccurate. A forthcoming study reveals that one-fifth of Indiana's job-related deaths do

not yield workers' compensation claims⁵ when death certificate data are matched with workers' compensation claims.

This means that fatalities are either underreported or do not involve workers' compensation claims. In the case of individuals who do not have dependents, Indiana law limits workers' compensation to only burial expenses.

Finally, this review has not considered agricultural fatality data. Purdue University has an outstanding farm safety program which benefits thousands of Indiana farmers. Generally, agriculture is not regulated in the U.S., even though agriculture may have a higher death rate than mining.⁶

Chapter Three Auburn, Indiana A Tragedy Waiting to Happen

It is a shame anytime someone dies. But in this case, that shame is magnified by the youth of the five workers who died. Everything that they would have produced or done in their lifetime is lost.

Auburn, Indiana has become infamous over the past five months and for some time to come it will be remembered as the town where "those workers died." On June 28, 1988 tragedy struck Bastian Plating Company. It is a day that few in Auburn will ever forget.

It is a shame anytime someone dies. But in this case, that shame is magnified by the youth of the five workers who died. Everything that they would have produced or done in their lifetime is lost. It is also a shame because their deaths were needless and preventable.

The Indiana Occupational Safety and Health Administration had warning signals regarding the problems in Auburn several years before this five-person tragedy occurred. On April 4, 1986, Darrell Bland, a worker at the Auburn Foundry, was killed while working with solvents. Bland's death was the fifth at that plant since 1974.

•The first death occurred in October 1974 when Leroy Funk, 30, was killed when a casting fell through the roof striking him on the head.

•The second occurred in April 1976, when John Mann, 32, died after a grinding wheel exploded and pieces struck him in the abdomen.

•The third occurred in September 1978, when Thomas Takacks, 19, was killed in a conveyor belt accident.

•The fourth occurred in May 1979, when Willis Chrisman, 46, was checking the electrical hook-up on a furnace and he was electrocuted. Bland's death was the fifth in a never-ending litany of death in Auburn.

A news release reported Bland's wife as saying, "What is going on where my husband and five other employees died in a 13-year period?"⁷

But apparently the warning signals were not bright enough for IOSHA to see, as citations were issued in some of those instances but the unsafe situations were allowed to remain.

On June 28, 1988, five workers at the Bastian Foundry died. They were Jeff Link, 25, Barney Sweet, 21, Larry O. Hensinger, 29, Bill M. Freeze, 19, and Craig Fogle, 19. Link was cleaning sludge out of a tank when he was overcome by hydrogen cyanide. The other workers died attempting to rescue Link or each other. Bastian had a history of problems which IOSHA ignored.

The Bastian deaths were the topic of news stories as authorities tried to get to the bottom of this tragedy. Family members lashed out at the different parties who they blamed for the accident, namely IOSHA and the company, Bastian Plating.

IOSHA issued Bastian Plating four knowing citations, two serious citations, and six non-serious citations. The total proposed fine was \$41,700 for the five deaths.

For those who have had a workplace accident or for those who have had a family member die, there are many different reactions. Often these victims either want to shut themselves away and forget. Others want to prevent the same thing from happening to someone else. IOSHA has used the former approach for too long. They should begin to adopt the latter approach.

In most instances, mistakes can be a positive influence if something is learned. But IOSHA apparently did not learn from the first five deaths. One can only hope that the same cannot be said about these recent five deaths.

Chapter Four IOSHA A Safety Agency in Disguise?

In Indiana, the primary agency which has the task of protecting workplace safety and health is the Indiana Occupational Safety and Health Administration (IOSHA). IOSHA combined with the Indiana Occupational Safety Standards Commission (OSSC), should form an effective partnership which would lead to a reduction in job injuries and diseases.

Unfortunately, it does not work that way in Indiana. IOSHA is understaffed and lacks the political and legal clout that is essential for a meaningful program. As we saw in Chapter Two, Indiana clearly has a poor safety and health record, especially in comparison with comparable Midwest states.

As we saw in Chapter Three, the recent tragedy in Auburn is an example of what can happen if safety and health conditions are neglected over time.

In this chapter, we focus on evaluating the performance of IOSHA and its sister standards-setting agency, the OSSC. Despite the dedication of its employees, IOSHA has failed to live-up to its commitment in promoting safer and healthier workplaces for Hoosiers.

A job safety and health agency, whether at the federal or state level, maintains and increases its effectiveness and credibility depending upon its ability to:

- 1) *enforce the safety and health standards through the use of inspections and civil and criminal penalties;*
- 2) *commit adequate resources to the task; and*
- 3) *set standards which protect the safety and*

The Indiana record is shown to be less than what meets the eye—much less.

health of workers under its jurisdiction.

With regards to each of the aforementioned three measures upon which effectiveness and credibility rests, Indiana's Occupational Safety and Health Administration (IOSHA) falls short.

Inspections: A Cover-up?

At first glance, statistics appear to show that IOSHA is performing its inspection function at a level which exceeds federal OSHA and which compares favorably to other state administered job safety programs.

In 1986, for example, Indiana conducted 96 inspections per IOSHA inspector and inspected a total of 4% of the state's workplaces. By comparison, federal OSHA's record for that year, was 62.5 inspections per federal OSHA inspector. Only 2.8% of the workplaces under its jurisdiction were inspected.⁸

However, on closer examination, the Indiana record is shown to be less than what meets the eye—much less. As Table 4 shows, Indiana has shifted its inspection resources from private sector companies, which employ 86.8% of the state's workers and account for 92.3% of the occupational injuries and illnesses, to the public sector.

From 1982 to 1986, public sector inspections grew by 745% while private sector inspections fell by 11.6%. Workers employed by the state and local governments are now nearly 4.5 times more likely to see an IOSHA inspector than are workers on construction sites, in factories, or in private offices. The private sector employs more than 80% of the Indiana's citizens.

In addition, Indiana seriously lags behind other

Table 4.1

IOSHA Inspection Totals
1982 & 1986

1982		
<i>Type of Workplace</i>	<i>Number</i>	<i>% of Total</i>
Industrial	1,957	44.6
Construction	1,898	43.2
Health	765	3.8
 Totals		
Private Sector	4,620	91.6
Public Sector	369	8.4
 1986		
<i>Type of Workplace</i>	<i>Number</i>	<i>% of Total</i>
Industrial	651	9.5
Construction	3,080	45.1
Health	354	5.2
 Totals		
Private Sector	4,085	59.8
Public Sector	2,744	40.2

Source: Legislative Services Agency, p. 22

state OSHA programs and federal OSHA in addressing the problems of occupational health inspections. In 1986, IOSHA conducted 354 health inspections. This number represented only 5.2% of the total inspections done by IOSHA in 1986.

Other state-plan states generally devote 10% or more of their inspection resources to health inspections and federal OSHA completed nearly three times the number of health inspection as Indiana. Federal OSHA devoted 15.3% of its total inspections to health inspections.⁹

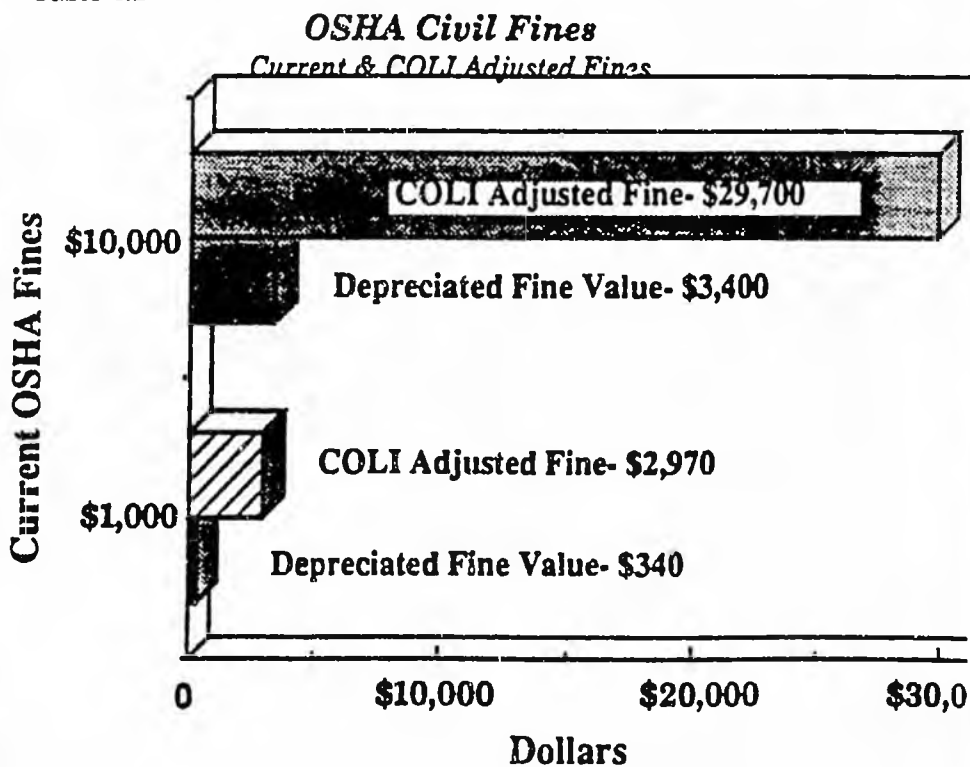
Civil Penalties

To make employers comply with health and safety standards and to deter violations, job safety programs assess civil penalties against violators. As with safety and health standards, Indiana has followed the federal standard by adopting meager penalties which, at best, represent a slap on the wrist.

Penalties range from \$1,000 for non-serious, serious, and failures to abate safety problems to \$10,000 for employers who knowingly violate standards.¹⁰

The penalties for workplace safety violations have remained unaltered since 1971 when workplace safety was first regulated. If penalties had been adjusted for inflation, a \$10,000 knowing citation would, in 1988, cost employers \$29,700. A serious citation would carry a fine of \$2,970. Inflation has eroded the value of IOSHA fines by 68%, as shown in Table 4.2.

Table 4.2



IOSHA has never referred a case to prosecutors for the consideration of a job safety and/or health prosecution.

Beyond failing to keep civil penalties at a pace with inflation, IOSHA has been reluctant to impose civil penalties. From 1984 to 1986, IOSHA inspectors issued an average of \$5,197 in total penalties per year. When divided by the 96 average inspections per inspector in 1986, the average fine amounts to \$54.14 per inspection.

The IOSHA record, as shown in table 7, falls 34.3% below that of federal OSHA inspectors who averaged \$7,910 in fines per year during the same period. An federal OSHA inspector completes an average of 62.5 inspections in 1986. The average fine per inspection by federal OSHA was \$126.56.

Table 4.3

Penalties per Inspector
Federal OSHA v. Indiana OSHA

	1984	1985	1986	1983-86
Federal OSHA	\$5,544	\$7,142	\$11,044	\$7,910
Indiana OSHA	\$4,229	\$5,028	\$ 6,334	\$5,197

Source: LSA and U.S. Department of Labor Report to President for 1986

Criminal Penalties

In addition to civil penalties, federal occupational safety and health law permits the criminal prosecution of employers who commit a willful violation of safety and/or health standards which contributes to the death of an employee.

Indiana's state OSHA law is silent on criminal prosecutions. In fact, IOSHA has never referred a case to prosecutors for the consideration of a job safety and/or health prosecution. State officials have indicated that they believe that IOSHA had no authority to do so.

By abdicating the state's role in prosecuting violations of workplace safety and health, Indiana has

slammed the door on justice for workplace safety victims and their family members.

Moreover, it is possible that this gap in enforcement powers may constitute a failure by the state to maintain a safety program which is at least as effective as the federal government's OSHA program.

Since 1980, California has prosecuted 292 cases and secured 112 convictions for workplace safety violations.¹¹ The result has been a construction death rate which is almost 3 times lower than other state-plan states and almost 4 times lower than the fatality rate in federal OSHA states. See table 4.4.

Table 4.4

Workplace Safety Fatality Rates
in Major Cities

Deaths Per Billion Construction \$

Federal OSHA States	4.22
State-Plan States	3.25
California	1.14

Compiled by NSWI from *The New York Times*, September 21, 1987

IOSHA Resources

Funding constraints on IOSHA play an important role in limiting its effectiveness. In 1986, Indiana spent 37.5% less per worker than other state OSHA program and 46.3% less than federal OSHA.

The federal government is partly responsible for the underfunding of IOSHA. However, Indiana also shares the blame. The problem is two-fold:

1) *federal OSHA grants to Indiana are disproportionately smaller than grants to other state-plan states; and*

2) Indiana appropriates proportionately less to its OSHA program than do other states.

Table 4.5

Comparison of OSHA Funding
Fiscal Year 1986

	Total \$ Per Worker	Federal Share	State Share
Indiana	\$1.73	83¢	90¢
State-Plan States	\$2.77	\$1.66	\$1.11
Federal OSHA	\$3.22	\$3.22	----

The pattern of underfunding by federal OSHA is long standing. In FY 1981, Indiana received 65¢ per worker in federal OSHA funding. Funding for other states ranged from 67¢ per worker in North Carolina to \$2.21 per worker in Washington. While the gap has narrowed in recent years, it remains excessive.

Despite its difficulties in obtaining federal funding, Indiana cannot escape scrutiny. The state has failed to fill the gap created by insufficient federal support.

The Legislative Service Administration reported that low-salary levels have contributed to a high turnover rate among I OSHA inspectors. Entry level safety inspectors have a base pay of \$15,132 compared to \$16,619 in Ohio and \$22,195 in Michigan.¹²

OSSC

The Occupational Safety Standards Commission (OSSC) in Indiana is charged with setting standards which will protect the state's workers from safety and health violations. Like the 19 other state-plan states,

Indiana is obligated, as a minimum level of enforcement, to enforce federal standards.

Only once, in 1983, has the OSSC adopted a standard which was not previously mandated by the federal government.

Clearly, the OSSC is seriously understaffed and underfunded. If state leaders do not want the OSSC to fulfill a needed mission, then the commission should be terminated. Otherwise, the OSSC should be properly funded and mandated to address critical regulatory opportunities designed to promote job safety and health in Indiana.

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Conclusion

The problems experienced by IOSHA are three-fold.

1) *Both civil and criminal penalties against job safety and health violators are little or under used in Indiana.* The penalties have never been altered to reflect the changing economy or to impose the severity needed to keep employers in line.

2) *Both the federal government and the state of Indiana have devoted too little of their total resources to IOSHA.* Without funding, the agency can hardly be expected to draw top-notch, experienced inspectors or administrators. And, if IOSHA receives neither federal nor state backing, then the agency can hardly be expected to fulfill its mission.

3) *The standard-setting commission has basic flaws in its organization, funding, and mission which have led to its present day inert form of only approving what the federal government passes down the pipeline.*

Chapter Five
**Indiana Workers' Compensation
A Benefit Program or A Shield
to Justice?**

Workers' compensation can actually reduce public expenditures by serving as an incentive for employers to reduce injuries, fatalities, and disease.

If a worker is hurt or injured, they must rely on workers' compensation insurance for income protection during the period during which they are out of work. Workers' compensation programs, which date back to the early 1900s, are designed to provide workers with modest income protection in the case of injury or illness, while at the same time, protecting employers against liability litigation.

In many respects, the trade-off implicit in workers' compensation is a Devil's bargain for workers—modest income protection in exchange for the right to recover the true costs.

Workers' compensation is more than an insurance and benefit program. Workers' compensation can actually reduce public expenditures by serving as an incentive for employers to reduce injuries, fatalities, and disease. The way that the program should work is simple.

First, the benefits must meaningfully compensate for the cost of a job injury. Since employers must pay the cost, higher costs provide greater incentives for employers to reduce claims (injuries).

Second, sensible programs must be as "experienced" based as possible. If a state regulates the insurance industry in such a way so the premiums (cost of insurance) do not reflect actual losses (benefits paid), then employers in that state have limited reason to reduce injuries.

The workers' compensation system in Indiana provides firms with little reason to reduce injuries. Indiana has the lowest workers' compensation costs,

based on average annual benefit costs per employee, in the entire U.S., as shown in Table 5.1.

Table 5.1

1985 Benefit Cost Per Covered Employee

<i>State</i>	<i>Benefit Cost Per Employee</i>
Alabama	\$198.00
California	\$314.00
Florida	\$233.00
Illinois	\$231.00
INDIANA	\$ 90.00
Kentucky	\$276.00
Michigan	\$255.00
Mississippi	\$157.00
New Mexico	\$318.00
Ohio	\$365.00
West Virginia	\$558.00

Source: National Foundation for Unemployment Compensation and Workers' Compensation

Indiana is the only state where costs are double digit. Since the cost of workers' compensation is such a small part of the cost of doing business in Indiana, incentives to prevent injuries are correspondingly low.

Indeed, state officials use this argument as an inducement to attract new business. State officials should think through the implications of the message they are sending.

Indeed, that message, to the extent it persuades employers concerned about workers' compensation costs, really involves the importation of death and injury from other states. If anything, state officials should impose high licensing fees on employers with high Experience Modification Ratings (EMRs, the rela-

tive rating of that firm versus other firms in the industry) which wish to relocate to Indiana.

Indiana has outrageously low benefits as compared with neighboring states. Illinois, the highest of the states, has an average benefit per claim which is 5.3 times higher than Indiana's.

Another example of the parsimonious cost of workers compensation in Indiana can be seen in an analysis of base rates in the construction industry. The base, per \$100 payroll, for those involved in electrical wiring in Indiana is only \$1.78. Indiana's border states are Michigan (\$5.75), Kentucky (\$3.54), and Illinois (\$7.38). Once again, Indiana is at the bottom of the 50 states.¹³

An analysis of average workers' compensation benefits (see Table 5.2) shows that Indiana has outrageously low benefits as compared with neighboring states. Illinois, the highest of the states, has an average benefit per claim which is 5.3 times higher than Indiana's. Meager compensation results in lessened incentive on the part of employers to reduce injury and disease.

Table 5-2

Average Workers' Compensation Payout Levels
1984

<i>State</i>	<i>Caseload</i>	<i>Total Compensation Paid</i>	<i>Average Per Case</i>
Illinois	54,723	\$824,872,000	\$15,079.93
INDIANA	47,031	\$133,984,000	\$ 2,850.72
Kentucky	37,145	\$193,854,000	\$ 5,239.30
Michigan	75,045	\$629,560,000	\$ 8,394.13
Ohio	111,772	\$1,121,001,000	\$10,029.35

Compiled from Accident Facts, 1987, Page 34,
National Safety Council, Chicago, Illinois

Indiana's workers' compensation program is stacked in favor of employers and against workers in every important respect. Indeed, the Japanese External Trade Organization (JETRO), which advises

Japanese firms on industrial location decisions, counsels Japanese firms against locating plants in Indiana because of its poor workers' compensation levels.¹⁶ JETRO officials point out in interviews that Japanese managers feel a high degree of responsibility for their workers. Partly as a result of this concern, many major Japanese plants have been built in Michigan and Illinois, states which have far more generous injury compensation programs.

Recently, the Indiana Legislature made modest improvements in workers' compensation benefits. More importantly, Indiana has scheduled significant increases in total disability payments, which will rise from \$190 a week to \$294 a week in 1990. Also, the duration of benefits is important, particularly to those who have permanent disabilities. Table 5.3 shows how Indiana compares with neighboring states.

Table 5.3

**Maximum Total Disability Benefit Levels
Under Workers' Compensation**

<i>State</i>	<i>Maximum Benefit Per Week</i>	<i>Benefit Limitations</i>
Illinois	\$554.00	Life
INDIANA	\$294.00	500 Weeks
Kentucky	\$331.00	Duration
Michigan	\$397.00	Duration
Ohio	\$385.00	Life

What happens to Indiana workers who are permanently disabled after their benefits are exhausted? That is a critical question. Unfortunately, there are no surveys which provide definitive information. However, it is likely that many of these individuals end-up on public welfare. Indeed, as case payments can help generate overwhelming financial problems which may in turn lead to family and/or societal problems.

Termination Hearings

Indiana workers' compensation laws allow employers or insurance companies the right to terminate benefits without a hearing. While comprehensive data are not available, Indiana is alone among its neighbors in adopting such an arbitrary and capricious policy.

Since insurance is both mandated and regulated by the state, the state condones such use of power. The unilateral termination of benefits by the state of Indiana is currently being challenged in U.S. District Court as a violation of due process.¹⁵

Moreover, Indiana procedures allow the employer the right to select an injured worker's doctor. While it is impossible to determine, it is only logical that some doctors may tilt their medical judgement in an employer's favor.

The doctor's inducement for such decisions is simply future business. It is only logical that employers retain doctors who provide them with favorable services. In this context, it is important to emphasize that Indiana's compensation levels are hardly high enough to induce individuals to deliberately stay out of work.

Other Benefit Issues

Indiana is consistently cheap in virtually every category—in the amount of compensation paid for a lost limb or in the duration of benefits for partial disabilities, for example. Indeed, the Legislative Services Agency has reported that Indiana's permanent partial disability is 257% below the national average.

Nor does Indiana law require that benefits be paid in a timely fashion, allowing employers and insurance companies an opportunity to hold onto capital, earning interest at the expense of the injured. In every conceivable respect, the Indiana workers' compensation system is stacked in favor of the employers at the expense of those injured or ill.

Indiana workers' compensation laws allow employers or insurance companies the right to terminate benefits without a hearing.

Indiana's permanent partial disability is 257% below the national average.

Furthermore, the State of Indiana does not require employers to pay for the cost of vocational rehabilitation. Indiana is one of only seven states whose workers' compensation laws contain no vocational rehabilitation component. The result, as we will see in the next chapter, is a tragic saga for workers and their families.

Chapter Six The Human Dimension

Each day, Indiana suffers a human toll of job-related death, injury, and sickness. The numbers, if they could be accurately calculated, would be numbing. As citizens, we have grown numb to the steady drumbeat of death, injury, disease, and disfigurement. We, as a society, accept job injury and disease as a necessary if unwanted part of industrial life.

If society is numb to job injury, individual families are not. Real men and women are really injured. Their story tells of the human dimension of the pain and suffering and the costs, economic and social, that families and society bears. We will let them tell their story.

Elizabeth Groves, Hagerstown

"I keep pretending he is still coming," said Elizabeth Groves. "Each Sunday, we used to go out and see our friends and family. Now, when Sundays come, I don't put on my clothes."

Mrs. Groves, 59 years old, was happily married to Richard Groves, a lineman for Henderson Electric of Louisville, Kentucky. On June 16, 1987, Mrs. Groves got some terrible news. Richard had been electrocuted.

The tragic news of Richard's death foreshadowed worse events to come. "I have never received the full story of what happened. Indiana OSHA never called me. I never did hear a word from Henderson Electric. I heard that Henderson Electric received a fine of \$1,700."

For Mrs. Groves, life had suddenly taken a turn for the worse.

"I went five months without a check," Mrs. Groves remarked. "The hospital where Richard died and the lab both threatened to sue. I begged Hender-

son Electric and the insurance people to straighten out the situation. Things changed only when Congressman (Phillip) Sharp intervened on my behalf."

"My husband was a lineman for 35 years," continued Mrs. Groves. "I now have to live on for a month what I used to budget for a week. I get \$720 a month. Of that, I spend \$200 right-away for my medical (insurance)."

"I don't know what I will do when my benefits run-out at the end of the 500 weeks. The thought of it scares me. I just don't know what I will do."

Peggy Hoffelder, Auburn

On December 16, 1986, Peggy Hoffelder's hand was crushed when the machine she was operating malfunctioned.

Ms. Hoffelder worked making small rubber parts for automobiles. The machine she operated had been designed so that she had to reach into the machine during the machine's cycle to remove each part.

Although Ms. Hoffelder had had the machine previously checked-out, it malfunctioned on that day and came down upon her hand while she was reaching into the machine to remove a part.

Looking back, Peggy Hoffelder says the company where she worked was not unlike a foreign land. "They can do anything to those people in there (their workers), and there is nothing anyone can do about it.

"I never knew anything about (workers') compensation laws before. Unfortunately, I have become very well acquainted with them during the past few years." After the accident, Ms. Hoffelder was simultaneously undergoing medical treatments and trying to receive retribution. She learned that she was, and still is, at the mercy of her former employers.

If she wanted her medical treatments to be paid for, she had no voice in choosing the doctors she saw or the treatments she received.

First, if she wanted her medical treatments to be paid for, she had no voice in choosing the doctors she saw or the treatments she received. The company doctor met her at the hospital over an hour after the accident and he decided which surgeon would reconstruct her hand.

After six months, she still could not return to work, so she was sent to two other specialists for two more operations.

Last November, the doctors decided that no more could be done for Ms. Hoffelder. "I have just recently gotten so I can use my hand." With a lot of aspirin and a splint, Ms. Hoffelder says she can do some things with her hand. "I think it is as good as it is going to get."

Second, the company she worked for is self-insured and the doctors who treated her were hired by the company. Ms. Hoffelder's compensation payments continue to be based upon the evaluation of her condition by those doctors. While working, Ms. Hoffelder made about \$400 a week. Now she receives \$130 a week in workers' compensation.

At one point, from November 1987 to May 1988, her payments stopped. "At the time, I was under the impression that they did not have to pay me anything." Then the checks began again without any prompting on her part.

Ms. Hoffelder's doctors said that there is no more that can be done for her. She fully expects compensation payments to end at any moment. "I guess I will just worry about that tomorrow," said Ms. Hoffelder, who feels that she had no choice but to quit her job after being told that she could not continue with the same type of work. She is still not working.

"I think companies need to be held accountable, not taxpayers."

Third, under the workers' compensation system

employees are not able to sue their employers. One option left open to individuals is a third party lawsuit.

Ms. Hoffelder investigated the possibility of a third-party lawsuit against the manufacturer of the machine which malfunctioned and crushed her hand. She was told by a lawyer that it was impossible as the company she worked for had designed and made the machine she used and she could not sue her employer.

"Nobody should be able to get by with what that company is getting by with," said Ms. Hoffelder.

Eric Fogle, Auburn

"I will never forget the look on Jeremy's face when he came to get me."

That was a few short months ago. Eric Fogle, just 21-years old, was working as a cook at a Hardees Restaurant in Auburn. His younger brother, Jeremy, had come to get Eric when their brother, Craig, had been injured at the Bastian Plating plant in Auburn.

"We went down to the hospital to be with Craig. He was just 19-years old. He was too young to die. But the doctors told us he would not make it. I had hope, but I knew that Craig would die."

Two days later, life was over for Craig. "I was hoping for a miracle. We didn't get it.

"Craig had worked at Bastian for about a year. He went there after working for Auburn Foundry where he started work just after graduating from high school," recalled Eric.

"Craig was scared to work at Bastian. He came home with burns and rashes.

"Life is tough in Auburn. We have too many people hurt and killed. We need to stop this. We need good safety programs. We need to protect our people."

Craig Fogle died in a valliant yet tragic effort trying to rescue fellow workers. A total of five men suffered a common demise at Basitan Plating. The people of Auburn— their family and friends— will not forget them.

Rod Warren, Hobart

Rod Warren can remember the accident just like it was yesterday. The bridge which he was working on simply collapsed. The question in Rod's mind was not avoiding injury, but how to escape alive.

Mr. Warren awoke in a Gary hospital after the bridge collapse. He was alive, but he was only beginning to discover the hell of a job injury. As a 29-year old carpenter, he thought his life was in front of him. After the collapse and the loss of his right leg, his cracked pelvic bone and other serious injuries seemed meager by comparison.

The bridge collapse happened at midday on Thursday. His employer, Superior Construction, paid him for Thursday and Friday. Then Superior terminated his pay. That was only the beginning of his difficulties.

"My family received \$140 per week the first year, then \$75 a week the second year. Without my parents, the carpenters' union, and social security, we would have been in absolute poverty.

"Social security was critical, especially for a family with children. However, it took us a year to get the \$960 a month we received. But with house payments, we needed it to survive.

"I don't know what so many people do," said Mr. Warren. "I borrowed \$10,000 from my parents during the first year. We needed it because I couldn't work for two years."

Mr. Warren has a poor impression of IOSHA. His feeling about the Indiana's workers' compensation

The workers' compensation system...seems only to shield employers and leave workers in poverty.

system are worse. "I have very little respect for IOSHA. They seem almost like a bad joke to me. When they do come around, they seldom get tough. When they get tough, they back-off and reduce their fines.

"The workers' compensation system is worse. It is a disgrace. It seems only to shield employers and leave workers in poverty."

Mr. Warren's accident took place over six years ago. "It is a day I will never forget."

Sheila Grider, Indianapolis

Sheila hates paying Indiana taxes.

This is because these taxes support a system which failed to protect her husband and which did not adequately support her and her child who was born after his death.

Her husband, Charlie, was excited to begin training as a lineman for the Indiana Power and Light company in the summer of 1986. Mrs. Grider had concerns about the safety of this new job.

"He told me that as long as he was careful that everything would be okay." But the one thing neither of them counted on, according to Mrs. Grider, was that someone else would not be careful.

On a windy January 6, 1987, at the age of 23, Charlie Grider was electrocuted and died. On that day, Mr. Grider was installing some new equipment on a pole as two supervisors watched him from below.

Mrs. Grider, who obtained a copy of the Indiana OSHA file, said that it states that the two supervisors knew of the danger yet they left him on the pole and gave him no warning about an unblanketed wire which was behind him.

"The wire blew into by husband's back, he never saw it coming," said Mrs. Grider.

The company was cited for having Mr. Grider work outside of his job description, for undersupervision, and for leaving that wire unblanketed. The fine was \$1,000. Mrs. Grider expressed deep disappointment in Indiana OSHA. "It seems that they should be on sites like this before (an accident), instead of after."

At the time, Mrs. Grider was expecting, Jessica, their first child. Following the accident, Mrs. Grider received \$2,000 from her husband's union and \$2,000 from the company to cover funeral expenses. "It was helpful, but not adequate...I remember sitting there, about to deliver and thinking this is it. This is all we get?"

A representative from the company came and visited Mrs. Grider to give her the \$2,000 and to offer her a job at the company. Mrs. Grider said that for her own sanity she could not work for her husband's company. "I would have been Charlie Grider's widow."

When she requested that the company pick up health insurance for Jessica until the age of 18 or let her buy it at the rate paid by her husband, they refused. Mrs. Grider remembers them saying that by giving her the money and offering her a job they had fulfilled their legal and moral obligations to her.

At present, she receives about \$760 a month in workers' compensation and \$500 a month in social security disability benefits attributed to Jessica. "If they are not going to raise it (the compensation level), then they should open up the right to sue."

Mrs. Grider has gone back to work. "I couldn't live on social security and workers' comp."

With the death of her husband nearly two years past and her daughter one year old, Mrs. Grider considers herself a survivor and not a victim. She still owns

the house which she and her husband bought together, but this is due to her efforts and not as a result of help from the Indiana workers' compensation system.

She is still bitter about the way the system did not protect Jessica's father and then left the two of them holding the bag with no recourse to receive retribution.

"It is just not fair. My child deserves the life she could have had...not just getting by."

Quentin Erwin, Muncie

On October 20, 1986, Quentin Erwin's livelihood took a severe turn for the worse.

On that day, Mr. Erwin was unilaterally terminated from receiving Indiana workers' compensation benefits. Mr. Erwin, however, was not notified of the termination until November 4.

"I was only receiving \$96 a week," Mr. Erwin recalled. "My wife, at that time, and I had to move in with my in-laws to make things work.

"The cut-off left everyone confused. My doctor said that I should not go back to my original job at Procure. He did say that I could work at a job which did not require lifting. Yet he would not release me from disability."

The situation was a true Catch-22. Mr. Erwin was disabled, yet he wasn't. He could not go back to his original job. Although he could work somewhere else. No one would employ Mr. Erwin until he was released from his doctor's care.

"The circumstances left my life in a horrible situation. My in-laws couldn't understand it," Mr. Erwin said. "I ultimately got divorced."

Mr. Erwin was injured when his shoulder was severely dislocated when he was manhandled by a patient at Procare, a Muncie-based firm which treats emotionally disturbed patients. Mr. Erwin, who is 5-foot 4-inches tall, was beaten on several occasions by much larger patients.

To this day, Mr. Erwin remains outraged that his workers' compensation payments were terminated without a hearing. He has filed suit in U.S. District Court to constitutionally test Indiana's procedures for such terminations. Mr. Erwin cannot recover funds under his suit, but a favorable ruling would prevent the state from treating others in a similar manner.

"I intend to win the suit," said Mr. Erwin. "I will fight it with all that I have. It is outrageous that the state of Indiana treats people in such a manner. What the state did to me nearly ruined my life. The situation should not happen to someone else."

Chapter 7

How Many More Must Die?

Conclusions & Recommendations

The State of Indiana must no longer condone legalized workplace homicide. Indiana has not enforced its job safety laws and it has pushed those injured or the family members of those who have been killed on-the-job into poverty.

As we saw earlier in this report, Indiana workers are dying in much larger numbers than their neighbors in Michigan, Ohio, or Illinois. Other data presented in this report show that Indiana is especially parsimonious in the way it handles workers' compensation. The combination of lax enforcement and low workers' compensation has produced a deadly result--business environments which produce excessive death and injury. This is the only possible explanation for the large differences between Indiana and neighboring states in selected job fatality rates.

Hoosiers have heard from industry and political leaders that low workers' compensation costs help lure jobs to Indiana. Indeed, any firm which buys this argument is precisely the type of firm that Indiana should not want. Such firms simply externalize the costs of job-injury to the injured, their families, and the public welfare system. In a report which will be released October 30, 1988, the National Safe Workplace Institute on shows that the costs of job injuries, in terms of increased welfare benefits by the federal government, to be \$9 billion a year.¹⁶ Those costs should be absorbed by the business environments which create the problems in the first place, not by the already hard-pressed taxpayers.

The gap between benefits and costs is outrageous. The maximum benefits paid for an Indiana fatality are less than \$100,000. What is the cost? According to the National Safety Council, an industry group, the cost of a job related fatality is \$460,000.¹⁷

The difference between the benefits paid by workers' compensation and the actual cost of \$360,000 is absorbed by families, private charity, and public welfare.

How Many More Deaths?

Indiana has experienced a much higher death rate in construction than neighboring Michigan and Ohio. According to the National Safety Council, about one-third of job-related deaths occur in construction.¹⁸ The National Institute of Occupational Safety and Health reports that Indiana had at least 133 job related fatalities in 1984,¹⁹ which translates into 44 construction deaths. Table 7.1 demonstrates how many deaths would have occurred if Indiana had fatality rates similar to Michigan or Ohio.

Table 7.1

Relative Death Rates
Indiana Alone, Assuming Michigan and Ohio Rates
Construction Industry

State	Fatality Rate per 100,000	Number of Fatalities	Fatality Gap
Indiana	34.1	44	—
Michigan	20.5	26	18
Ohio	21.4	28	16

As we can see from Table 7.1, Indiana would save 18 lives a year if the state operated programs which had the same effect as Michigan, or 16 if the state had the same programs as Ohio. Indiana's economy would have saved \$8.3 million if it had experienced the same rate as Ohio--using \$460,000 as the cost of a job related death. These estimates obviously do not bring into consideration the social costs of fatalities. Moreover, injuries occur almost in relation to fatalities. Hence, the total bill for Indiana could be a staggering, in the hundreds of millions of dollars each year.

Conclusions & Recommendations

Soon, the people of Indiana will have a new Governor. That Governor should immediately establish worker safety and health protection as a high priority in this administration.

It is time that meaningful protection be offered to the working men and women of Indiana or time that job safety and health jurisdiction be returned to the federal government.

The new Governor should appoint a "Hoosier Job Safety and Health Gubernatorial Task Force." This effort should be comprised of labor and industry members, victims, and others who clearly have a stake in workplace safety and health issues. This Task Force should be required to report to the Governor within 90 days specifying both administrative and legislative reforms which should be made early next year.

This Task Force needs to consider reforms in workplace safety and health and in workers' compensation. The Task Force should conduct hearings, to maximize public input.

The goal which should drive the Task Force is the need for Indiana to have a system which prevents injuries rather than tolerates injuries.

The remainder of this chapter will focus on minimum goals for reforming IOSHA and the workers' compensation system in Indiana.

Enforcement/Regulation

IOSHA badly needs to be reformed. IOSHA needs competent personnel and the resources to compensate it personnel. Perhaps as importantly, IOSHA enforcement officers need a mandate.

They need to know that they will have support from the highest offices of the state to conduct their responsibilities.

IOSHA clearly needs to shift its enforcement activities from the public sector to the private sector. IOSHA should develop a special targeting system to identify those firms with high rates of injury and death.

Injury prevention strategies typically involve the potential of substantial penalties. IOSHA must be ready to impose such penalties in order for Indiana businesses to fully understand that the state will enforce the law.

Clearly, IOSHA has not been fairly treated by the federal government in the budget process for state grants. The federal government has consistently requested higher appropriations for federal programs than it has for state-plan grants.

Finally, the OSSC must have the resources and the authority to establish the safety and health standards which are critical to protecting Indiana workers. The OSSC should not rely on the federal government to promulgate effective standards.

Workers' Compensation

The Indiana workers' compensation system, in spite of recent modification, is a disgrace. Minimum reforms should include:

- 1) *The right to a hearing prior to having benefits terminated;*
- 2) *The adoption of benefits which are comparable to the average benefits in border states (Michigan, Ohio, Kentucky, and Illinois); and*
- 3) *The right to litigate against employers who have demonstrated recklessness.*

As we discussed in this report, there is no evidence to support the claim that firms move to Indiana because of the low-cost of workers' compensation insurance. Indeed, if it is true that firms that move

to Indiana because of lower insurance costs, then these firms would be precisely the firms which Indiana does not want. They would be all too willing to have the workers and taxpayers share the costs of mismanagement and recklessness.

The people of Indiana should be proud of their state. However, that pride should not extend to the way state government enforces job safety and health laws. Nor should that pride extend to Indiana's poverty-level workers' compensation programs.

The people of Indiana should demand that their government operate programs which prevent injury and which justly compensates people when injury occurs. With modest steps, Hoosiers will no longer be expendable people, but people with a future free from excessive death and injury.

NSWI Staff Capacity

Joseph A. Kinney

Mr. Kinney the National Safe Workplace Institute's founder and Executive Director.

Mr. Kinney holds graduate degrees from the University of Pennsylvania and Syracuse University. He previously served as a senior adviser to two U.S. Senators. Mr. Kinney has also served as a Staff Director of the National Governors' Association.

David L. Nichols

Mr. Nichols is the Institute's former Director of Program Development.

Mr. Nichols holds a B.A. from The University of Iowa. He previously served as a Senior Staff Associate with the Council of State Governments and as the Public Information and Planning Director for a social service agency. Mr. Nichols recently resigned from NSWI to join the Jacobs Engineering Group.

Kathy Burgess

Ms. Burgess is a professional staff member at the Institute.

Ms. Burgess holds a B.A. from Rutgers University. Ms. Burgess is currently doing doctoral work at the University of Pennsylvania.

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Footnotes

1. See Legislative Services Agency, Sunset Review Report, Executive Summary, Page 2.
2. See report of the National Academy of Sciences, Panel on Occupational Safety and Health Statistics, October 1987.
3. "National Traumatic Occupational Fatalities," 1980-1985, National Institute of Occupational Safety and Health, June 1988.
4. Death certificate data are more reliable for traumatic injuries than for occupationally-related diseases. Death certificate data provide a minimum count since under-reporting is highly likely.
5. See Anthony Suruda, M.D., M.P.H., "Counting Recognized Occupational Deaths in the United States," Journal of Occupational Medicine, Vol. 30, No. 11, November 1988.
6. See Accident Facts, National Safety Council, p. 34.
7. See news release of the International Molders Union, September 22, 1987.
8. Department of Labor, OSHA Annual Report, 1986.
9. Ibid.
10. See Occupational Safety and Health Act (Public Law 91-596), Section 17.
11. "Ending Legalized Workplace Homicide", National Safe Workplace Institute, July 15, 1988, p. 6.
12. Legislative Services Agency, Sunset Review Report, p. 21.
13. Engineering News Record, September 15, 1988, pages 58-59.
14. Conversation with officials of the Japanese External Trade Organization, Chicago, during October 1988.
15. Case involves Quentin Erwin, this report, pages 32-33.
16. See "Safer Work", NSWI, October 30, 1988.
17. See Accident Facts, National Safety Council, p. 31.
18. This statistic does not include accidents involving motor vehicles. Moreover, NIOSH has estimated that one-third of construction-related deaths go unreported to regulators.
19. See Suruda, op. cit., Table 1.

COMPARISON OF 1987 ALASKA AND NATIONAL
OCCUPATIONAL INJURY AND ILLNESS INCIDENCE RATES

	<u>Alaska Rate</u>	<u>National Rate</u>
Oil and Gas Extraction	9.0	8.3
General Building Construction	17.5	14.2
Heavy Construction	19.4	14.5
Special Trade Construction	15.0	15.0
Canned and Cured Fish Processing	35.2	26.4
Fresh/Frozen Fish Processing	35.3	18.8
Logging Camps and Contractors	51.8	19.3
Trucking and Warehousing	17.7	12.3
Water Transportation	13.2	12.9
Transportation by Air	13.9	14.3
All Private Industries	10.9	8.3

TABLE A-11
Incidence rates of Occupational Injuries and Illnesses
Comparison of all States - Private Sector
1983 to 1987

	1983	1984	1985	1986	1987
USA	7.6	8.0	7.9	7.9	8.3
Alabama	7.9	8.3	8.4	8.7	
Alaska	10.6	10.3	10.7	10.2	10.9
Arizona	9.3	9.5	9.2	8.9	9.0
Arkansas	8.1	8.0	8.0	8.4	
California	9.1	9.3	9.1	8.9	8.8
Colorado	--	--	--	--	--
Connecticut	8.0	8.3	8.3	8.2	
Delaware	5.3	5.5	5.6	6.0	
Florida	8.7	8.9	8.8	8.8	
Georgia	--	--	--	--	--
Hawaii	10.6	10.0	9.6	9.5	9.8
Idaho	--	--	--	--	--
Illinois	--	--	--	--	--
Indiana	7.3	7.7	7.7	8.2	
Iowa	7.8	8.1	8.2	8.4	
Kansas	7.5	7.7	7.7	7.6	
Kentucky	7.6	8.3	8.3	8.4	
Louisiana	7.4	7.9	7.3	7.0	
Maine	11.0	13.2	12.5	12.9	
Maryland	7.6	7.8	7.9	7.8	
Massachusetts	--	--	--	--	--
Michigan	6.8	7.6	8.0	8.2	
Minnesota	7.3	7.7	7.6	7.3	
Mississippi	--	8.0	7.8	8.0	
Missouri	7.5	8.0	7.9	8.5	
Montana	--	8.5	8.0	8.2	
Nebraska	8.4	8.8	7.9	8.1	
Nevada	9.0	9.0	8.5	8.4	9.4
New Hampshire	--	--	--	--	--
New Jersey	--	--	--	--	--
New Mexico	7.8	8.7	8.4	7.7	
New York	--	--	--	--	--
North Carolina	6.8	7.2	7.4	7.2	
North Dakota	--	--	--	--	--
Ohio	--	--	--	--	--
Oklahoma	8.9	9.8	9.5	8.1	
Oregon	9.8	10.6	10.5	10.7	10.9
Pennsylvania	--	--	--	--	--
Rhode Island	8.3	8.4	8.9		
South Carolina	6.7	6.9	7.1	6.9	
South Dakota	--	--	--	--	--
Tennessee	7.9	8.6	8.2		
Texas	--	--	--	--	--
Utah	8.5	9.2	8.5	9.1	
Vermont	9.2	10.0	9.1	8.9	
Virginia	7.0	7.6	7.3	7.6	
Washington	9.7	9.9	9.4	9.8	10.6
West Virginia	6.7	7.2	7.2	7.7	
Wisconsin	--	--	--	--	--
Wyoming	7.9	8.6	7.4	7.6	
American Samoa	2.5	3.0	3.6	3.2	2.6
Guam	2.7	2.8	3.6	3.7	3.6
Puerto Rico	4.2	3.9	3.8	3.9	
Virgin Islands	2.8	2.4	2.4	2.4	

SOURCE: Bureau of Labor Statistics.

-- = Publishable Rate Unavailable.

X = 1987 data not available at time of publication.

1 ALASKA

TABLE A-3
Incidence Rates of Recordable Occupational Injuries and Illnesses
Industry Data Time Series, Alaska 1978 to 1987

Industry	SIC Code	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
TOTAL PRIVATE AND PUBLIC SECTOR.....		9.4	9.2	9.1	9.2	9.5	9.9	9.7	10.1	9.6	10.1
TOTAL PRIVATE SECTOR.....		10.0	10.1	10.4	10.0	10.3	10.6	10.3	10.7	10.2	10.9
MINING.....		15.2	14.0	12.1	15.4	14.8	11.5	10.5	9.4	8.1	8.9
Oil and Gas Extraction.....	13	15.7	13.7	12.4	15.8	15.3	11.8	10.6	9.7	8.2	9.0
Petroleum & Gas Production.....	131	--	--	2.5	7.3	6.7	5.1	2.8	2.6	2.1	3.5
Oil & Gas Field Services.....	138	22.6	23.0	23.8	24.9	24.6	19.6	22.0	17.4	14.8	15.2
CONSTRUCTION.....		16.4	16.4	18.5	17.2	19.4	17.6	16.9	19.4	16.2	17.1
General Building Contractors.....	15	17.1	14.3	16.5	19.8	19.6	21.6	17.7	19.5	17.6	17.5
Residential Buildings.....	152	16.5	11.9	15.1	15.6	16.5	17.7	13.4	15.4	18.0	17.0
Nonresidential Buildings.....	154	18.0	16.8	18.0	23.7	21.9	26.0	22.0	22.9	17.3	17.7
Heavy Construction Contractors.....	16	14.2	16.6	17.3	15.1	20.9	14.9	15.7	18.9	16.5	19.4
Highway and Street Construction...	161	9.7	18.8	19.2	17.8	27.6	19.0	19.8	16.6	20.8	14.4
Heavy Construction, Except Hwy....	162	16.4	15.1	16.4	14.0	16.8	12.9	13.9	20.3	14.3	22.8
Special Trade Contractors.....	17	17.6	17.4	15.9	17.8	17.9	17.7	17.1	19.8	14.9	15.0
Plumbing, Heating & Air Condit....	171	14.6	14.8	16.7	18.8	17.0	25.6	23.3	18.9	16.0	14.4
Electrical Work.....	173	17.0	10.8	16.5	13.4	16.6	13.2	14.3	16.4	15.9	15.4
Misc Special Trade Contractors....	179	--	23.1	16.3	21.6	16.6	14.6	20.6	23.6	15.9	12.6
MANUFACTURING.....		21.4	24.1	23.3	19.1	17.9	23.2	23.0	26.3	28.3	29.5
Food and Kindred Products.....	20	21.8	25.7	26.7	22.2	20.2	29.5	25.0	32.5	33.3	34.5
Misc Food Prep & Kindred Prod....	209	22.3	26.0	26.9	22.5	20.8	30.1	25.7	32.9	33.4	35.3
Canned & Cured Fish & Seafoods...	2091	18.7	23.5	21.4	19.9	18.6	21.4	25.0	30.3	34.3	35.2
Fresh/Froz Pkgd Fish & Seafoods...	2092	27.4	29.2	31.7	24.6	21.8	32.9	26.1	33.9	33.0	35.3
Lumber & Wood Prod Except Furniture	24	31.8	31.0	32.5	26.8	26.9	31.2	43.0	38.6	50.9	48.5
Logging Camps & Contractors.....	241	38.6	39.1	37.3	27.2	30.8	35.7	45.6	45.0	56.6	51.8
Printing, Publishing & Allied Ind...	27	--	--	2.5	3.1	5.7	6.3	6.2	5.1	6.5	5.8
TRANSPORTATION AND PUBLIC UTILITIES...		11.4	11.4	12.2	11.6	10.7	11.4	12.1	11.3	11.3	10.9
Local & Interurban Passenger Transit	41	--	5.1	4.8	6.7	4.9	--	7.1	6.3	11.3	12.8
Trucking and Warehousing.....	42	21.4	20.6	21.7	17.8	14.0	20.7	24.2	17.4	19.5	17.7
Trucking, Local and Long Distance...	421	21.3	21.0	22.1	18.0	13.8	19.8	23.9	17.5	19.7	17.9
Water Transportation.....	44	18.6	16.0	16.2	16.6	11.7	11.9	10.8	16.2	10.7	13.2
Transportation by Air.....	45	15.2	12.4	13.2	13.6	12.7	10.7	14.2	14.0	13.3	13.9
Communication.....	48	3.0	6.9	9.1	8.4	8.6	9.6	5.7	6.7	6.2	4.5
Electric, Gas and Sanitary Services...	49	15.5	14.6	14.6	13.9	14.8	16.4	19.4	16.0	16.2	15.5
WHOLESALE AND RETAIL TRADE.....		8.2	7.9	7.7	8.0	9.3	10.2	9.9	10.0	8.9	9.3
WHOLESALE TRADE.....		12.2	11.4	10.9	9.8	9.6	12.3	11.7	10.9	8.0	9.4
Durable Goods.....	50	12.2	11.6	8.5	7.9	7.4	8.9	9.7	8.9	5.8	7.7
Nondurable Goods.....	51	8.1	11.0	15.4	12.8	13.4	18.0	15.1	14.4	11.5	11.5
RETAIL TRADE.....		7.4	6.9	6.8	7.4	9.3	9.6	9.5	9.8	9.2	9.3
Building Materials & Garden Supplies	52	8.9	6.2	9.4	12.3	13.7	20.5	17.7	17.6	11.3	12.7
Lumber & Bldg Materials.....	521	--	--	--	--	17.2	25.5	22.6	21.3	12.4	--
General Merchandise Stores.....	53	9.2	8.8	6.0	7.1	8.2	12.3	10.4	9.3	10.7	10.8
Food Stores.....	54	9.5	8.9	10.1	8.5	11.8	9.7	15.8	15.5	18.0	15.6
Auto Dealers and Service Stations...	55	10.2	8.5	9.5	8.9	8.1	10.4	10.5	10.8	8.3	8.7
Apparel and Accessory Stores.....	56	3.4	2.7	2.1	2.4	1.0	1.0	1.5	2.5	0.4	3.3
Furniture, Home Furnishings.....	57	--	--	--	--	4.8	3.5	4.4	5.2	6.4	5.8
Eating and Drinking Places.....	58	6.6	7.2	6.5	8.1	11.2	9.8	6.6	8.5	8.3	8.9
Miscellaneous Retail.....	59	4.7	3.9	2.9	5.1	5.5	6.4	6.6	5.9	4.3	3.6
FINANCE, INSURANCE AND REAL ESTATE		0.7	1.4	1.3	1.5	1.5	2.0	1.7	2.1	3.3	2.0
Banking.....	60	1.1	2.1	1.9	2.2	1.8	2.9	2.1	2.6	2.6	3.3
Credit Agencies.....	61	--	--	--	--	1.5	1.1	1.6	0.7	1.7	3.2
Real Estate.....	65	0.8	0.1	2.8	1.9	2.3	2.1	2.4	4.1	4.9	2.7
Holding & Other Investment Offices..	67	0.3	1.8	0.0	1.2	0.7	1.3	1.3	2.3	--	3.5
SERVICES.....		4.3	4.0	4.3	4.3	4.4	4.7	5.1	5.5	5.4	6.5
Hotels and Other Lodging Places.....	70	5.5	7.9	9.3	6.8	7.0	9.9	11.0	10.0	13.4	13.6
Personal Services.....	72	0.6	1.3	2.5	2.8	1.7	4.1	5.3	6.3	1.7	3.7
Business Services.....	73	7.2	3.8	6.7	3.7	6.7	3.9	3.4	2.6	4.5	5.0
Automotive Services.....	75	--	--	--	7.5	8.4	8.2	6.6	9.9	6.3	11.2
Health Services.....	80	4.0	3.7	3.6	5.4	4.1	5.5	7.9	8.9	6.3	8.0
Legal Services.....	81	0.5	1.0	0.2	--	0.3	0.1	0.1	0.8	1.1	0.7
Social Services.....	83	4.3	4.9	3.5	3.9	3.7	4.2	3.5	7.3	3.0	3.7
Membership Organizations.....	86	2.9	2.9	3.1	3.0	2.8	3.0	0.7	1.8	4.0	5.8
Miscellaneous Services.....	89	2.9	1.8	2.8	3.0	2.0	1.1	2.6	2.6	2.8	2.7
STATE AND LOCAL GOVERNMENT.....		7.1	6.3	4.9	6.5	6.7	7.3	7.7	8.1	7.7	7.3
STATE GOVERNMENT.....		6.2	3.8	3.3	4.7	4.6	5.5	5.5	5.2	6.0	6.0
LOCAL GOVERNMENT.....		8.1	8.7	6.3	8.1	8.6	8.7	9.5	10.5	9.0	8.4

See footnotes at end of section.
-- = Publishable rate unavailable.

15 H.E.S.

TABLE A-8
Incidence Rates of Recordable Occupational Injuries and Illnesses
U.S. Private Sector, Select Industries, 1978 to 1987

Industry	SIC Code	Incidence Rate for Total Cases (per 100 workers) 5/									
		1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
TOTAL PRIVATE SECTOR.....		9.4	9.5	8.7	8.3	7.7	7.6	8.0	7.9	7.9	8.3
AGRICULTURE.....		11.6	11.7	11.9	12.3	11.8	11.9	12.0	11.4	11.2	11.2
Mining.....		11.5	11.4	11.2	11.6	10.5	8.4	9.7	8.4	7.4	8.5
Oil and Gas Extraction.....	13	13.9	13.6	13.4	14.1	12.1	9.8	11.8	10.1	9.1	8.3
Petroleum & Gas Production.....	131	8.4	5.4	3.8	6.1	4.3	3.5	3.0	2.7	2.6	2.5
Oil & Gas Field Services.....	138	20.0	18.9	19.3	19.7	16.8	14.3	18.2	15.8	13.4	14.0
CONSTRUCTION.....		16.0	16.2	15.7	15.1	14.6	14.8	15.5	15.2	15.2	14.7
General Building Contractors.....	15	15.9	16.3	15.5	15.1	14.1	14.4	15.4	15.2	14.9	14.3
Residential Buildings.....	152	13.3	13.0	11.9	11.9	10.8	11.9	12.6	12.3	12.5	12.9
Nonresidential Buildings.....	154	19.2	19.7	19.4	18.5	17.1	17.3	18.9	18.7	17.9	18.5
Heavy Construction Contractors.....	16	16.6	16.6	16.3	14.9	15.1	15.4	14.9	14.5	14.7	14.5
Highway and Street Construction.....	161	15.2	15.5	15.6	14.0	13.4	14.3	14.6	13.8	13.3	14.2
Heavy Construction, Except Hwy.....	162	17.2	17.1	16.6	15.3	15.7	15.9	15.1	14.8	15.1	14.7
Special Trade Contractors.....	17	15.8	16.0	15.5	15.2	14.7	14.8	15.8	15.4	15.6	15.0
Plumbing, Heating & Air Condit.....	171	16.9	17.0	16.2	15.7	15.3	15.7	16.4	15.7	16.1	16.4
Electrical Work.....	173	14.0	14.0	14.3	14.0	13.9	13.7	14.4	14.3	15.2	13.8
Misc. Special Trade Contractors.....	179	16.9	17.5	16.2	17.1	15.9	15.1	15.8	16.5	15.7	14.8
MANUFACTURING.....		13.3	13.3	12.2	11.9	10.2	10.0	10.6	10.4	10.6	11.9
Food and Kindred Products.....	20	19.4	19.9	18.7	17.8	16.7	16.5	16.7	16.7	16.5	17.7
Misc. Food Prep. & Kind. Prod.....	209	16.3	16.8	15.3	15.0	14.2	14.1	14.3	14.7	14.1	15.1
Canned & Cured Fish & Seafoods.....	2031	22.3	24.4	20.2	22.4	17.8	17.1	--	--	19.1	26.4
Fresh/Froz. Pkgd. Fish & Seafoods.....	2032	10.4	22.0	19.4	18.6	17.1	17.9	17.3	19.2	19.3	18.8
Lumber & Wood Prod. except Furniture.....	24	22.6	20.7	18.6	17.6	16.9	18.3	19.6	18.5	18.3	18.3
Logging Camps & Contractors.....	241	25.9	24.2	22.7	19.3	20.4	21.5	21.7	20.0	19.1	19.3
Paper and Allied Products.....	26	13.3	13.5	12.7	11.6	10.6	10.0	10.4	10.2	10.5	12.8
Printing, Publishing & Allied Ind.....	27	6.9	7.1	6.9	6.7	6.6	6.6	6.5	6.3	6.5	6.7
TRANSPORTATION AND PUBLIC UTILITIES.....		10.1	10.0	9.4	9.0	8.5	8.2	8.8	8.6	8.2	8.4
Local & Interurban Passenger Transit.....	41	1.7	9.3	9.5	9.3	9.3	9.7	9.0	9.4	9.3	9.2
Trucking and Warehousing.....	42	16.2	15.8	14.9	14.7	14.2	13.3	14.5	13.9	13.1	12.3
Trucking, Local and Long Distance.....	421	16.3	15.7	14.8	14.7	14.2	13.3	14.6	14.0	13.2	12.3
Water Transportation.....	44	14.4	14.1	14.2	13.5	11.4	10.8	13.2	13.0	12.7	12.9
Transportation by Air.....	45	13.4	13.7	13.3	13.5	13.6	12.7	13.1	13.1	13.0	14.3
Communication.....	48	2.7	2.5	2.8	2.7	2.8	2.9	2.7	2.9	2.7	2.8
Electric, Gas and Sanitary Services.....	49	9.0	8.9	8.6	8.3	7.6	7.2	7.4	6.9	6.8	7.6
WHOLESALE & RETAIL TRADE.....		7.9	8.0	7.4	7.3	7.2	7.2	7.4	7.4	7.7	7.7
WHOLESALE TRADE.....		8.9	8.8	8.2	7.7	7.1	7.0	7.2	7.2	7.5	7.4
Durable Goods.....	52	8.6	8.6	7.8	7.3	6.7	6.4	6.7	6.5	6.3	6.7
Non-durable Goods.....	51	9.3	9.1	8.7	8.3	7.8	7.9	8.0	8.2	8.7	8.9
RETAIL TRADE.....		7.5	7.7	7.1	7.1	7.2	7.3	7.5	7.5	7.8	7.8
Building Materials & Garden Supplies.....	52	9.8	9.5	8.8	8.3	8.8	8.5	9.6	9.8	10.1	10.2
General Merchandise Stores.....	53	9.1	9.8	9.3	9.0	9.2	9.7	9.8	10.0	10.4	10.0
Food Stores.....	54	10.7	11.7	10.6	10.4	10.3	10.4	10.8	10.4	12.7	12.9
Auto Dealers and Service Stations.....	55	8.0	7.9	7.2	6.8	6.9	6.8	7.0	6.9	7.1	6.8
Apparel and Accessory Stores.....	56	2.3	2.6	2.2	2.2	2.5	2.4	2.8	2.6	2.9	3.2
Furniture, Home Furnishings.....	57	5.1	4.7	4.7	4.3	3.9	3.7	4.3	4.2	4.9	4.6
Eating and Drinking Places.....	58	7.5	7.6	6.9	7.3	7.6	7.8	7.8	8.2	8.2	8.3
Miscellaneous Retail.....	59	3.8	3.8	3.5	3.5	3.7	3.6	3.9	3.7	4.2	4.3
FINANCE, INSURANCE AND REAL ESTATE.....		2.1	2.1	2.0	1.9	2.0	2.0	1.9	2.0	2.0	2.3
Banking.....	62	1.5	1.7	1.5	1.6	1.7	1.6	1.6	1.6	1.6	1.4
Credit Agencies.....	61	1.1	1.3	1.1	1.3	1.3	1.3	1.4	1.7	1.2	1.3
Insurance.....	63	1.9	2.0	1.7	1.8	1.9	1.8	1.7	1.8	1.9	1.8
Real Estate.....	65	4.9	4.7	4.6	4.0	4.4	4.4	4.5	4.2	4.1	4.7
Holding & Other Investment Offices.....	67	--	--	1.7	1.8	1.9	1.7	--	2.2	--	1.5
SERVICES.....		5.5	5.5	5.2	5.0	4.9	5.1	5.2	5.4	5.3	5.5
Hotels and Other Lodging Places.....	72	9.2	9.1	8.9	8.8	9.0	9.2	9.8	10.0	10.9	12.6
Personal Services.....	73	3.5	3.2	2.9	2.8	3.1	2.9	2.9	2.9	3.2	3.1
Business Services.....	73	4.9	5.0	4.6	4.6	4.4	4.7	4.9	4.7	4.9	4.6
Automotive Services.....	75	8.2	8.0	7.5	7.6	7.6	7.1	6.9	6.5	6.1	6.7
Health Services.....	82	8.8	6.8	6.8	6.1	5.9	6.3	6.3	7.1	6.6	7.2
Legal Services.....	81	--	--	0.4	0.4	0.5	0.5	0.5	0.6	0.5	0.6
Social Services.....	83	6.0	5.9	5.1	5.2	5.0	5.3	5.3	6.0	5.6	5.9
Membership Organizations.....	86	--	--	3.4	2.3	--	2.6	--	--	--	--
Miscellaneous Services.....	89	1.9	2.2	1.6	1.6	1.3	1.3	1.4	1.7	1.6	1.6

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

October 19, 1989

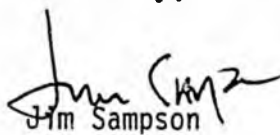
House Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Committee Members:

Enclosed is a Notice of Proposed Changes in the regulations of the Alaska Department of Labor, together with a copy of the specific changes we are proposing.

If you have any questions or comments concerning the action we are proposing, please contact the Occupational Safety and Health Section in the Division of Labor Standards and Safety at (907) 465-4856.

Sincerely,


Jim Sampson
Commissioner

Enclosures

NOTICE OF PROPOSED CHANGES
IN THE REGULATIONS OF THE
ALASKA DEPARTMENT OF LABOR

Notice is given that the Alaska Department of Labor, under authority vested by AS 18.60.020, proposes to amend regulations in Title 8 of the Alaska Administrative Code dealing with occupational safety and health standards which are adopted by reference and proposes to repeal and adopt safety and health standards in Subchapter 05, Construction Code, dealing with the construction of underground tunnels, shafts, chambers, and passage ways, to implement AS 18.60.010 as follows:

8 AAC 61.010 is proposed to be amended to reflect amendments to Subchapter 05, Construction Code, therein adopted by reference.

Section 190 of Subchapter 5, Construction Code is proposed to be repealed and readopted.

The proposed regulations prescribe requirements for:

1. Safe access and egress to all work stations.
2. The check-in/check-out system that must be maintained to ensure that above-ground personnel have an accurate count of persons underground.
3. Safety instruction to be given to employees.
4. Notifying employees at the beginning of a workshift of any hazardous occurrences or conditions that might affect employee safety.
5. Safety instruction for all employees to recognize and avoid hazards associated with underground activities.
6. Methods of communications between the work face, the bottom of the shaft, and the surface.
7. Actions to be taken in case of emergencies.
8. Recognizing conditions under which operations are classified as "gassy" or "potentially gassy" and the work restrictions that accompany such classifications.
9. Air monitoring and atmospheric testing for all underground construction operations.
10. Ventilation and illumination.
11. Fire prevention and control.
12. Welding, cutting and other hot work.
13. Inspecting the work area for ground stability.
14. Blasting.
15. Inspecting drilling and haulage equipment before use.
16. Electrical safety.
17. Hoisting operations unique to underground construction.

The foregoing proposed changes in the regulations of the Alaska Department of Labor are intended to establish minimum safety and health requirements for places of employment in the State, and to be at least as effective as those promulgated by the U.S. Secretary of Labor.

CHAPTER 61.
OCCUPATIONAL SAFETY AND HEALTHARTICLE 1.
ADOPTION OF STANDARDS.

* Section 1. 8 AAC 61.010 is amended to read:

8 AAC 61.010. STANDARDS. The Alaska Department of Labor adopts by reference subchapters 1 (effective 6/30/73, as amended as of 5/21/89); 2 (effective 9/26/74, as amended as of 2/4/89); 3 (effective 6/30/73, as amended as of 2/4/89); 4 (effective 6/30/73, as amended as of 8/23/89); 5 (effective 9/26/74, as amended as of / /); 6 (effective 8/21/78, as amended as of 4/15/87); 7 (effective 3/27/76, as amended as of 2/4/89); 8 (effective 1/26/78, as amended as of 5/22/88); 9 (effective 1/26/78, as amended as of 2/4/89); 10 (effective 6/18/87, as amended as of 12/13/87); 11 (effective 8/11/76, as amended as of 8/23/80); 12 (effective 8/11/76, as amended as of 8/23/80); 13 (effective 8/11/76); 14 (effective 9/30/76, as amended as of 10/14/87); 15 (effective 9/12/84, as amended as of 10/1/88); and 16 (effective 9/1/88) of the Alaska Occupational Safety and Health Standards (AOSAHS), as outlined below. These standards are adopted in accordance with AS 18.60.020, as the minimum standards to be followed throughout the State of Alaska. The standards are adopted by reference pursuant to a finding by the lieutenant governor that a detailed printing of the regulations in the Alaska Administrative Code would be impractical.

(Eff. 6/30/73, Register 46; am 9/26/74, Register 51; am 5/7/75, Register 54; am 11/22/75, Register 56; am 3/27/76, Register 57; am 5/7/76, Register 58; am 8/11/76, Register 59; am 9/30/76, Register 59; am 12/16/76, Register 60; am 4/23/77, Register 62; am 1/26/78, Register 65; am 8/21/78, Register 67; am 11/19/78, Register 68; am 12/24/78, Register 68; am 5/2/79, Register 70; am 10/21/79, Register 72; am 6/13/80, Register 74; am 7/25/80, Register 75; am 8/23/80, Register 75; am 5/30/82, Register 82; am 12/16/82, Register 84; am 3/20/83, Register 85; am 3/25/83, Register 85; am 6/26/83, Register 86; am 9/30/83, Register 87; am 2/19/84, Register 89; am 6/16/84, Register 90; am 9/12/84, Register 91; am 12/16/84, Register 92; am 2/1/85, Register 93; am 6/9/85, Register 94; am 1/8/86, Register 97; am 5/10/86, Register 98; am 7/12/86, Register 99; am 1/9/87, Register 101; am 1/11/87, Register 101; am 1/16/87, Register 101; am 1/18/87, Register 101; am 1/30/87, Register 101; am 4/15/87, Register 102; am 6/18/87, Register 102; am 8/13/87, Register 103; am 10/14/87, Register 104; add'l am 10/14/87, Register 104; am 12/13/87, Register 104; am 3/26/88, Register 105; am 3/30/88, Register 105; am 4/21/88, Register 106; am 5/22/88, Register 106; am 6/19/88, Register 106; am 9/1/88, Register 107; am 9/30/88, Register 107; am 10/1/88, Register 107; am 2/4/89, Register 109; am 4/21/89, Register 110; am 5/21/89, Register 110; am 8/23/89, Register 111; am / / , Register)

Authority: AS 18.60.020
AS 18.60.030
AS 18.60.075
AS 44.62.130

Note to Publisher: Outline of standards remains unchanged.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

NOTICE OF PROPOSED CHANGES
IN THE REGULATIONS OF THE
ALASKA DEPARTMENT OF LABOR

Notice is given that the Alaska Department of Labor, under authority vested by AS 18.60.020, proposes to amend regulations in Title 8 of the Alaska Administrative Code dealing with occupational safety and health standards which are adopted by reference and proposes to repeal and adopt safety and health standards in Subchapter 05, Construction Code, dealing with the construction of underground tunnels, shafts, chambers, and passage ways, to implement AS 18.60.010 as follows:

8 AAC 61.010 is proposed to be amended to reflect amendments to Subchapter 05, Construction Code, therein adopted by reference.

Section 190 of Subchapter 5, Construction Code is proposed to be repealed and readopted.

The proposed regulations prescribe requirements for:

1. Safe access and egress to all work stations.
2. The check-in/check-out system that must be maintained to ensure that above-ground personnel have an accurate count of persons underground.
3. Safety instruction to be given to employees.
4. Notifying employees at the beginning of a workshift of any hazardous occurrences or conditions that might affect employee safety.
5. Safety instruction for all employees to recognize and avoid hazards associated with underground activities.
6. Methods of communications between the work face, the bottom of the shaft, and the surface.
7. Actions to be taken in case of emergencies.
8. Recognizing conditions under which operations are classified as "gassy" or "potentially gassy" and the work restrictions that accompany such classifications.
9. Air monitoring and atmospheric testing for all underground construction operations.
10. Ventilation and illumination.
11. Fire prevention and control.
12. Welding, cutting and other hot work.
13. Inspecting the work area for ground stability.
14. Blasting.
15. Inspecting drilling and haulage equipment before use.
16. Electrical safety.
17. Hoisting operations unique to underground construction.

The foregoing proposed changes in the regulations of the Alaska Department of Labor are intended to establish minimum safety and health requirements for places of employment in the State, and to be at least as effective as those promulgated by the U.S. Secretary of Labor.

Notice is also given that any person interested may present oral and written statements or arguments relevant to the proposed action at a hearing to be held on

November 28, 1989, 9:30 a.m.

Department of Labor Building
1111 W. 8th Street
Room 303
Juneau, AK

November 29, 1989, 9:30

Department of Labor Building
3301 Eagle Street
Room 304
Anchorage, AK

November 30, 1989, 9:30 a.m.

Division of Labor Standards and Safety
Regional Office Building
675 Seventh Street
Fairbanks, Alaska

In addition, written statements or arguments may be sent to the Commissioner of Labor, P.O. Box 21149, Juneau, Alaska 99802-1149, to be received no later than November 30, 1989.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the following offices of the Department of Labor:

Division of Labor Standards and Safety
P.O. Box 21149
Juneau, Alaska 99802-1149

Division of Labor Standards and Safety
P.O. Box 107022
Anchorage, Alaska 99510-7022

Division of Labor Standards and Safety
Regional Office Building
675 Seventh Street
Fairbanks, Alaska 99701-4596

The Alaska Department of Labor, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

Date

10/6/89
Jim Sampson
Jim Sampson, Commissioner

CHAPTER 61.
OCCUPATIONAL SAFETY AND HEALTH

ARTICLE 1.
ADOPTION OF STANDARDS.

* Section 1. 8 AAC 61.010 is amended to read:

8 AAC 61.010. STANDARDS. The Alaska Department of Labor adopts by reference subchapters 1 (effective 6/30/73, as amended as of 5/21/89); 2 (effective 9/26/74, as amended as of 2/4/89); 3 (effective 6/30/73, as amended as of 2/4/89); 4 (effective 6/30/73, as amended as of 8/23/89); 5 (effective 9/26/74, as amended as of / /); 6 (effective 8/21/78, as amended as of 4/15/87); 7 (effective 3/27/76, as amended as of 2/4/89); 8 (effective 1/26/78, as amended as of 5/22/88); 9 (effective 1/26/78, as amended as of 2/4/89); 10 (effective 6/18/87, as amended as of 12/13/87); 11 (effective 8/11/76, as amended as of 8/23/80); 12 (effective 8/11/76, as amended as of 8/23/80); 13 (effective 8/11/76); 14 (effective 9/30/76, as amended as of 10/14/87); 15 (effective 9/12/84, as amended as of 10/1/88); and 16 (effective 9/1/88) of the Alaska Occupational Safety and Health Standards (AOSAHS), as outlined below. These standards are adopted in accordance with AS 18.60.020, as the minimum standards to be followed throughout the State of Alaska. The standards are adopted by reference pursuant to a finding by the lieutenant governor that a detailed printing of the regulations in the Alaska Administrative Code would be impractical.

(Eff. 6/30/73, Register 46; am 9/26/74, Register 51; am 5/7/75, Register 54; am 11/22/75, Register 56; am 3/27/76, Register 57; am 5/7/76, Register 58; am 8/11/76, Register 59; am 9/30/76, Register 59; am 12/16/76, Register 60; am 4/23/77, Register 62; am 1/26/78, Register 65; am 8/21/78, Register 67; am 11/19/78, Register 68; am 12/24/78, Register 68; am 5/2/79, Register 70; am 10/21/79, Register 72; am 6/13/80, Register 74; am 7/25/80, Register 75; am 8/23/80, Register 75; am 5/30/82, Register 82; am 12/16/82, Register 84; am 3/20/83, Register 85; am 3/25/83, Register 85; am 6/26/83, Register 86; am 9/30/83, Register 87; am 2/19/84, Register 89; am 6/16/84, Register 90; am 9/12/84, Register 91; am 12/16/84, Register 92; am 2/1/85, Register 93; am 6/9/85, Register 94; am 1/8/86, Register 97; am 5/10/86, Register 98; am 7/12/86, Register 99; am 1/9/87, Register 101; am 1/11/87, Register 101; am 1/16/87, Register 101; am 1/18/87, Register 101; am 1/30/87, Register 101; am 4/15/87, Register 102; am 6/18/87, Register 102; am 8/13/87, Register 103; am 10/14/87, Register 104; add'l am 10/14/87, Register 104; am 12/13/87, Register 104; am 3/26/88, Register 105; am 3/30/88, Register 105; am 4/21/88, Register 106; am 5/22/88, Register 106; am 6/19/88, Register 106; am 9/1/88, Register 107; am 9/30/88, Register 107; am 10/1/88, Register 107; am 2/4/89, Register 109; am 4/21/89, Register 110; am 5/21/89, Register 110; am 8/23/89, Register 111; am / / , Register)

Authority: AS 18.60.020
AS 18.60.030
AS 18.60.075
AS 44.62.130

Note to Publisher: Outline of standards remains unchanged.

CONSTRUCTION CODE

05.190 is repealed and readopted to read:

05.190 Underground construction. (a) Scope and application.

(1) This section applies to the construction of underground tunnels, shafts, chambers, and passageways. This section also applies to cut-and-cover excavations which are both physically connected to ongoing underground construction operations within the scope of this section, and covered in such a manner as to create conditions characteristic of underground construction.

(2) This section does not apply to the following:

(A) Excavation and trenching operations covered by 05.160, such as foundation operations for above-ground structures that are not physically connected to underground construction operations, and surface excavation; nor

(B) Underground electrical transmission and distribution lines, as addressed in 05.220.

(b) Access and egress.

(1) The employer shall provide and maintain safe means of access and egress to all work stations.

(2) The employer shall provide access and egress in such a manner that employees are protected from being struck by excavators, haulage machines, trains and other mobile equipment.

(3) The employer shall control access to all openings to prevent unauthorized entry underground. Unused chutes, manways, or other openings must be tightly covered, bulkheaded, or fenced off, and must be posted with warning signs indicating "Keep Out" or similar language. Completed or unused sections of the underground facility must be barricaded.

(c) Check-in/check-out. The employer shall maintain a check-in/check-out procedure that will ensure that above-ground personnel can determine an accurate count of the number of persons underground in the event of an emergency. However, this procedure is not required when the construction of underground facilities designed for human occupancy has been sufficiently completed so that the permanent environmental controls are effective, and when the remaining construction activity will not cause any environmental hazard or structural failure within the facilities.

(d) Safety instruction. All employees shall be instructed in the recognition and avoidance of hazards associated with

underground construction activities including, where appropriate, the following subjects:

- (1) Air monitoring;
- (2) Ventilation;
- (3) Illumination;
- (4) Communications;
- (5) Flood control;
- (6) Mechanical equipment;
- (7) Personal protective equipment;
- (8) Explosives;
- (9) Fire prevention and protection; and
- (10) Emergency procedures, including evacuation plans and check-in/check-out systems.

(e) Notification.

(1) Oncoming shifts shall be informed of any hazardous occurrences or conditions that have affected or might affect employee safety, including liberation of gas, equipment failures, earth or rock slides, cave-ins, floodings, fires or explosions.

(2) The employer shall establish and maintain direct communications for coordination of activities with other employers whose operations at the jobsite affect or may affect the safety of employees underground.

(f) Communications. (1) When natural unassisted voice communication is ineffective, a power-assisted means of voice communication must be used to provide communication between the work face, the bottom of the shaft, and the surface.

(2) Two effective means of communication, at least one of which must be voice communication, must be provided in all shafts which are being developed or used either for personnel access or for hoisting. Additional requirements for hoist operator communication are contained in paragraph (t)(3) of this section.

(3) Powered communication systems must operate on an independent power supply, and must be installed so that the use of or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(4) Communication systems must be tested upon initial entry of each shift to the underground, and as often as necessary at later times, to ensure that they are in working order.

(5) Any employee working alone underground in a hazardous location, who is both out of the range of natural unassisted voice communication and not under observation by other persons, must be provided with an effective means of obtaining assistance in an emergency.

(g) Emergency provisions.

(1) Hoisting capability. When a shaft is used as a means of egress, the employer shall make advance arrangements for power-assisted hoisting capability to be readily available in an emergency, unless the regular hoisting means can continue to function in the event of an electrical power failure at the jobsite. Such hoisting means must be designed so that the load hoist drum is powered in both directions of rotation and so that the brake is automatically applied upon power release or failure.

(2) Self-rescuers. The employer shall provide self-rescuers having current approval from the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration to be immediately available to all employees at work stations in underground areas where employees might be trapped by smoke or gas. The selection, issuance, use, and care of respirators must be in accordance with section 05.050(d)(2) and (3) of this subchapter.

(3) Designated person. At least one designated person must be on duty above ground whenever any employee is working underground. This designated person must be responsible for securing immediate aid and keeping an accurate count of employees underground in case of emergency. The designated person must not be so busy with other responsibilities that the counting function is encumbered.

(4) Emergency lighting. Each employee underground must have an acceptable portable hand lamp or cap lamp in his or her work area for emergency use, unless natural light or an emergency lighting system provides adequate illumination for escape.

(5) Rescue teams.

(A) On jobsites where 25 or more employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least two 5-person rescue teams, one on the jobsite or within one-half hour travel time from the entry point, and the other within 2 hours travel time.