



**Testimony of the  
American Society of Safety Engineers  
before the  
Subcommittee on Workforce Protections  
Committee on Education and Labor  
U.S. House of Representatives  
May 24, 2007**

**“Workplace Safety: Why Do Millions of Workers  
Remain Without OSHA Coverage”**

Chairwoman Woolsey and Members of the Subcommittee:

I am Jon Turnipseed, and I am pleased to be here today representing both my own views as a Certified Safety Professional and the views of the 30,000 members of the American Society of Safety Engineers (ASSE). As a volunteer, I am a member of ASSE’s Government Affairs Committee. In my professional capacity, I am a public sector employee serving as the Safety Supervisor for the City of San Bernardino Municipal Water Department in California. Although I work for a municipal government, I am grateful we are subject to inspections and civil penalties for violations of occupational safety and health laws, unlike the estimated 8.5 million other public sector employees across the country who are not. Accompanying me today is Dave Heidorn, ASSE’s Manager of Government Affairs and Policy.

ASSE is the oldest and largest society of safety, health and environmental professionals in the world. Founded in 1911, ASSE's dedicated members include Certified Safety Professionals, Certified Industrial Hygienists, Professional Engineers,

academicians, fire protection engineers, system safety experts, health professionals and an impressive collection of other disciplines. Our members are experts committed to excellence in the protection of people, property and the environment worldwide. The Society has thirteen practice specialties, including an active Public Sector Practice Specialty with members who have wide ranging expertise and knowledge in managing safety, health and environmental risks in every kind of public sector workplace.

Based on the expertise and knowledge of our members, ASSE has long advocated the need to address the lack of occupational safety and health coverage for state and local government workers that now exists in 26 states and the District of Columbia. With the attention today's hearing brings to the issue, ASSE hopes that the reasons why millions of workers remain without OSHA coverage can quickly be resolved.

### **Government Workers Are Not Covered by OSHA**

Most people are shocked to find out that the workplace safety and health protections put in place by the Occupational Safety and Health Act of 1970 (OSH Act) apply only to private sector workers and not all state and local government employees. Under the OSH Act, states are allowed to run their own state OSHA programs in lieu of federal coverage of the private sector. These approved state OSHA programs must be at least as effective as the federal program and, unlike the federal Occupational Safety and Health Administration (OSHA), are required to cover both the private sector and their own state and local government workers.

Twenty-one states and Puerto Rico have federally approved OSHA programs that cover public employees – Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Three states whose private sector workers are covered by federal OSHA – Connecticut, New Jersey, and New York, along with the Virgin Islands – have federally approved state programs that apply only to state and local government workers.

Therefore, 26 states and the District of Columbia leave their state and local government workers unprotected by any federally approved occupational safety and health laws – Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois,

Kansas, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, West Virginia, and Wisconsin. No pattern or underlying reason explains the lack of coverage. Larger and more populated states like Florida, Illinois and Texas join smaller, less populated states like Delaware, Montana and North Dakota in failing to give their workers the same protections private sector employees have in those states.

These unprotected state and local government workers are the good people who keep our state, county and municipal governments functioning on a daily basis. They run the gamut from workers in high-risk jobs such as law enforcement and fire fighters to workers in low risk office jobs. They are the people who make sure that we all have safe water to drink, battle to keep our aging street infrastructure functional, make sure that our kids have decent parks, and keep our legal system up and running to fight crime. Most people are familiar with the hazards associated with working in high profile jobs such law enforcement and firefighting. The safety and health risks these people take every day to protect us go without saying. What this Subcommittee and the American people need to know are the largely hidden occupational safety and health hazards that many less well-known public sector workers face daily.

In my own job, I make sure California OSHA regulations are followed to protect the people who provide drinking water and wastewater treatment for the city. When I tell people what I do, the typical comment is something like, "Working at the water works and the sewer plant surely can't be that dangerous." On the contrary, the men and women I work with enter hundreds of underground vaults, trenches and pits several hundred times each and every year. On any given day, the potentially lethal atmosphere in a vault and other similar confined spaces as well as the potential for a trench collapse can turn their work deadly. Many of these trench entries are in the middle of heavy-traffic streets and highways, which not only compounds trench stability issues but also poses risks to workers on the street level who must try to control the never-ending flow of traffic.

Water and wastewater treatment requires a huge amount of electrical pumps and motors. Therefore, my colleagues must work with or near thousands of low and high voltage electrocution hazards every day. Chemicals are used throughout various water

department operations and many of these constitute potential health hazards if not properly used. Chlorine gas is an essential product for keeping our drinking water safe but, if improperly handled or transported, can quickly become lethal for the workers and nearby citizens. Operating large construction equipment like earthmovers, backhoes, and cranes is another daily task that can become risky if appropriate safety procedures are not followed and enforced. Office staff faces everything from carpal tunnel injuries and other ergonomic hazards to workplace violence from being assaulted by disgruntled customers. In short, people who think that working for a city water department is low risk work that does not need OSHA protections are wrong.

My experience in a municipal water department is only one example of the need for public sector occupational safety and health coverage. People working in hundreds of other job specialties within the state and local government arena face no less dangerous safety, health and environmental risks and deserve the same protections they would enjoy if they were doing these jobs in the private sector.

### **The Risks to Government Workers**

Good reasons support what ASSE hopes will be action by this Subcommittee to protect public sector workers across the United States. From my own view as a public sector employee, the simplest but most compelling reason is that saving lives and preventing injuries always tops the list of values that our government holds dear in every other responsibility it undertakes. State and local government workers are, in many instances, the “first responders” upon whom we all depend. Whether a terrorist attack or a natural disaster, these first responders are the first people who rush in to help save lives. We put a premium on that capability in our society. These same people who protect the public from hazards deserve the no less of a commitment to occupational safety and health protections from their employers, the public, and all of us here today.

Please note that, when I say “first responders,” the term encompasses much more than the usual perception of law enforcement and fire fighters. I know from personal experience that water and wastewater people are right there in the middle of most disasters, moving throughout the affected areas to keep the infrastructure up and running. Hurricane Katrina taught many people a valuable lesson that people in my line of work

have always known – a city is a miserable place when it is without electrical power and communications system. Cut off the water and waste water systems, and a safe and habitable city no longer exists.

That occupational safety and health risks are a problem for public sector workers is clear. The U. S. Department of Labor's Bureau of Labor Statistics tells us that, from 1992 to 2001, 6,455 employees of government entities at all levels were fatally injured while at work. During that period, the annual number fluctuated from a high of 780 in 1995 to a low of 566 in 1999. Among the three levels of government – federal, state and local – workers in local government, which accounted for 50 percent of all government employment, incurred the highest number (3,227) of occupational fatalities over the period.

Because government workers are employed in a wide variety of occupations, they provide a diverse cross section of workers to examine. Of the 6,455 government employees that were fatally injured on the job from 1992 to 2001, 5,694 (88 percent) were men and the remaining 761 (12 percent) were women. In terms of age, 12 percent of the fatally injured workers were aged 24 years and under, 26 percent were aged 25 to 34, 24 percent were aged 35 to 44, 22 percent were aged 45 to 54, and 16 percent were aged 55 and over. Caucasian workers accounted for 77 percent of all workplace fatalities in government over the 10-year span; they accounted for 73 percent of total workplace fatalities. Black workers accounted for 12 percent of the fatalities in government and 10 percent of overall workplace fatalities. Hispanic workers represented 6 percent of the fatalities in government and 11 percent of overall workplace fatalities.

Approximately half of the fatal occupational injuries to government workers resulted from transportation incidents. The next largest event or exposure category was assaults and violent acts, which accounted for 22 percent of the workplace fatalities in government over the 1992-2001 period. The next most common event or exposure category among government workers was exposure to harmful substances or environments, which accounted for 426 (7 percent) workplace fatalities during the period. Of these, 159 involved contact with electric current, and 139 involved oxygen deficiency. A total of 423 government workers were killed through contact with objects or equipment--most (257) from being struck by an object. Finally, 359 government workers

lost their lives in falls, and 270 died in fires and explosions. It must be noted that these totals do not include the many public sector fatalities that resulted from the terrorist attacks of September 11, 2001. The public sector is subject to the same difficult questions facing private industry about underreported deaths from work-related illnesses that are not recorded. Many occupational exposures to chemicals and toxic substances, such as crystalline silica and asbestos, result in illnesses with a long latency period. The correlation between workplace exposure and death is often missed when the worker succumbs fifteen or more years after leaving the workforce.

What is not available are complete data comparing the injury and illness and fatality rates of states whose public sector workers have safety and health coverage and states not requiring such coverage. ASSE has undertaken its own review of what we believe is incomplete data and would be happy to share what we have found with Subcommittee staff. However, the need for a more comprehensive understanding of the problem is needed. ASSE urges this Subcommittee to task OSHA and BLS to work together to devise a way to develop this data and share it with the Subcommittee as quickly as possible.

From my own experience and the experience of my fellow safety and health professionals, rates should be lower in states that have established health and safety requirements and OSHA oversight than rates in states where no one takes responsibility for workplace safety, as is found in the private sector in comparisons between companies who are committed to safety and health and those that are not. Although the data may not be clear, we know for sure that hundreds of state and local government workers are killed and thousands injured each year. Because private industry widely accepts that workplace health and safety programs do prevent or mitigate the effects of workplace hazard exposures, it is difficult to understand why so many state and local governments do not better protect their workers with OSHA coverage.

### **An Unfunded Mandate?**

In the early 1990s, the labor movement attempted several revisions of the OSH Act. One of these revisions would have provided the coverage for all public employees that we seek today. At that time, reportedly, the League of Cities, the Conference of

Mayors and the Association of State Legislators opposed coverage. The primary objections were that such a requirement would be an "unfunded mandate," that it would "cost too much," or that "we don't need it because we take good care of our public employees." These are not supportable positions

I can appreciate the sentiment behind the unfunded mandate argument. As a supervisor, I likewise struggle each year to keep on top of ever-changing regulatory requirements from various levels of government. Yet, as a professional with a moral commitment to protecting the citizens of San Bernardino, I also accept that part of my job is to stay current and help see we do our best to take care of our citizens and our employees with whatever limitations there are on resources. I do not shirk my duty.

As a safety professional, I reject that safety costs too much. Most importantly, not spending money to protect state and local government worker's health and safety sends a message that such workers are expendable, that it is cheaper to kill or injure employees than to protect them. As the best working corporations across this country have found, investment in managing safety, health and environmental risks pays in more productive employees, fewer accidents, less injuries and deaths in workers that can only take from a company's bottom line. Although not the direct subject of this hearing, the benefits of investing in safety and health can be found on ASSE's Business of Safety Committee's website at <http://www.asse.org/search.php?varSearch=business+of+safety>, ASSE's white paper, "Return on Investment for Safety, Health and Environmental Programs" at <http://www.asse.org/search.php?varSearch=return+on+investment>, and the safety and health topics page on OSHA's website, "Making the Business Case for Safety and Health" developed by OSHA, ASSE and other Alliance participant leaders in safety and health at <http://www.osha.gov/dcsp/products/topics/businesscase/index.html>. No doubt, taxpayers would like to know why their governments do not have the same concern over bottom line issues that private sector employers widely accept.

As to the argument that government employers already take good care of their employees without a mandate, the contradiction is obvious. The numbers of deaths alone among public sector workers contradict this statement. If a government entity's employees are well cared for, it could not cost more to follow OSHA standards because an entity would already be making the commitment required by those standards. I

receive this coverage, and I do not believe the San Bernardino Municipal Water Department is any less a good steward of taxpayer's hard-earned dollars than water departments where coverage is not provided.

In fact, a recent tragedy in a municipal water department in Florida, where OSHA coverage is not mandated, provided a telling demonstration of why providing such coverage is both a moral and an economic imperative. On January 11, 2006, an explosion at the City of Daytona Beach's Bethune Waste Water Treatment Plant killed two municipal employees and gravely injured a third. In 2000, Florida had stopped requiring state entities to provide safety and health coverage, giving public sector employers the choice to provide such coverage voluntarily. Six years later, Daytona Beach did not have a commonly found "hotwork" permit system used by OSHA to control cutting and welding operations. The city also did not have a hazard communication plan to train workers on the hazards of the flammable chemicals they were told to work above. When sparks from their cutting torches ignited the flammable liquid tank, two of the workers burnt to death and the third was critically injured.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) investigated and found that the tragedy was preventable if the city had been required to follow the same OSHA standards as private industry. ASSE shares the conclusion CSB Chairman and CEO Carolyn W. Merritt captured when she said, "Workers in private industry benefit from a variety of OSHA standards designed to prevent death and injury, and public sector employees deserve no less." CSB's completed investigation report is at [http://www.chemsafety.gov/index.cfm?folder=completed\\_investigations&page=info&IN\\_V\\_ID=57](http://www.chemsafety.gov/index.cfm?folder=completed_investigations&page=info&IN_V_ID=57). Now, ASSE members in Florida are engaged in an effort to see to it that Florida public sector workers do receive occupational safety and health coverage. Due to their work, we fully expect a bill to be introduced in next year's legislature that would reverse the state's policy that such coverage need only be voluntary.

ASSE's members understand, though, that the surest way to achieve coverage for Florida's workers and every one of the 8.5 million public sector workers who do not have such coverage is an amendment to the federal OSH Act. ASSE fully supports provisions in the bills introduced this year by you, Chairwoman Woolsey (HR 2049) and Senator Kennedy (SB 1244) that would do just that. Until coverage is made federal law,



however, ASSE's members will continue to work for solutions at the state level, as our members are already doing in Florida.

**Conclusion**

ASSE greatly appreciates this opportunity to share our views today. Since 1970, a missing section in the OSH Act has lessened the well being of 8.5 million public sector workers who are not protected from occupational safety and health risks as private sector workers are. The time has come to be fair to all those public sector workers who risk their well being for all of us. The 30,000 members of ASSE stand ready to help this Subcommittee achieve that fairness.

Whatever questions the Subcommittee has for me, I would be more than happy to answer.