

**Honorable George Miller (D-CA)**  
**Chairman, House Education and Labor Committee**  
**Opening Statement at Committee Mark-up of H.R. 5522,**  
**“The Combustible Dust Explosion and Fire Prevention Act of 2008”**  
**Wednesday, April 9, 2008**

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On the evening of February 7, 2008, an explosion ripped through the Imperial Sugar refinery in Port Wentworth, Georgia, immediately killing eight workers. Five more have died in the months since the explosion from the horrific burns they suffered. More than 60 workers were injured, some so seriously that they will never fully recover.

The cause of the explosion was sugar dust. Now if you stopped most people on the street, they'd never guess that sugar dust – or any common dust – could explode with the force to destroy huge factories. But the hazards of combustible dust are well known to those who work in industries at risk. Dust explosions have been happening for centuries. The first National Fire Protection Association standards were issued in 1923.

In 2003, three fatal dust explosions occurred in the United States, killing 14 workers. The U.S. Chemical Safety Board investigated these incidents.

The Board examined whether these tragedies were just coincidences, or a major national problem. It examined whether there were adequate laws to protect workers, or whether new protections were needed.

The CSB report, issued in November 2006, found that combustible dust explosions were a serious national problem, identifying 281 combustible dust incidents between 1980 and 2005 that killed 119 workers and injured 718 and extensively damaged industrial facilities.

A total of 24 percent of the explosions occurred in the food industry, including several at sugar plants.

The CSB also found that although the NFPA had several effective combustible dust standards, these standards were only voluntary and had never been made into enforceable regulations by the U.S. Occupational Safety and Health Administration.

The CSB therefore called upon OSHA to issue a combustible dust regulation to protect American workers from these preventable explosions.

Since that CSB report was issued in 2006, more than 70 additional combustible dust explosions have been recorded in American industry. Yet OSHA has failed to act on the CSB's recommendation.

As a result of OSHA's inaction, Congressman John Barrow and I introduced H.R. 5522, the Combustible Dust Explosion and Fire Prevention Act of 2008.

The act would require OSHA to issue an Interim Standard within 90 days and a permanent standard within 18 months. It would require OSHA to base the new mandatory rule on National Fire Protection Association standards.

In a hearing on this bill held last month, OSHA testified that, instead of developing an enforceable standard, the agency had issued a series of fact sheets and implemented a National Emphasis Program involving inspections of facilities that may be at risk of combustible dust explosions.

The agency also claimed that it has enough existing standards to enforce the prevention of dust explosions.

But witnesses at the hearing from the Chemical Safety Board and the National Fire Protection Association testified that the regulations that OSHA cites – housekeeping, ventilation, the general duty clause, for example – were never intended to address the problem of combustible dusts.

Although these rules have been interpreted to apply to combustible dust hazards, they do not provide the details on safe operating and cleaning procedures that would be included in a dedicated combustible dust standard based on NFPA standards.

For example, as the witnesses pointed out, it's not enough to just say that floors must be kept clean. All surfaces must be kept clean of any combustible dust accumulations thicker than a paperclip. And if not done properly, cleaning activities can actually increase the hazard.

Our goal today is to protect workers from these preventable explosions, and we believe that this legislation accomplishes that goal without imposing unreasonable burdens on employers.

This legislation strives to do no more than the NFPA or CSB says is necessary to keep the workplace safe. We have met with OSHA's professional staff to address any technical problems. But the bottom line is that workers need protection, and the agency dedicated by Congress to protect workers has, once again, failed in that duty.

Some will say we should delay this action – until OSHA finishes its inspection, or until OSHA has time to jump through all of its procedural requirements.

But I say – and I think the families of the workers killed and injured in this tragedy would agree – that the time for OSHA action is long overdue. During the hearing I told Assistant Secretary Foulke that I was shocked at OSHA's lack of urgency on this matter. OSHA may suffer from a lack of urgency, but this Congress doesn't.

Sadly, this is the second time over the past several months that this committee has considered a bill that would require OSHA to issue a standard that the agency should already have been working on.

And unfortunately, this is only one step needed to rectify the years of inaction by OSHA.

The Bush administration has by far the worst record of any administration when it comes to issuing OSHA standards. The only major standards issued by this agency over the past seven years have been done under court order or Congressional pressure.

Once again, this administration has failed to act, so we must.

I want to remind this committee of the closing words of one of our witnesses, Tammy Miser, whose brother, Shawn Boone, was killed in a combustible dust explosion in 2003.

Tammy recounted the terrible suffering her brother went through before he died, her hopes that something would happen after the CSB recommendations were issued, and her disappointment that OSHA hasn't acted – even after the Imperial explosion.

Tammy left us with one request: “that you not let our loved ones die in vain and help us keep other families safe from the dangers of combustible dust.”

It's the least we can do for Shawn Boone and the many others who have needlessly lost their lives.

Thank you.

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