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August 17, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington DC 20210

Dear Secretary Scalia:

Two weeks ago, a massive ammonium nitrate explosion in Beirut, Lebanon killed over 200 people, injured more than 5,000, and left an estimated 300,000 people homeless, according to Lebanese authorities.

That explosion, which destroyed a significant part of the city, was reminiscent of the deadliest industrial accident in United States history—the 1947 ammonium nitrate explosion in Texas City, Texas, which killed at least 581 people and injured thousands of others. Unfortunately, it was also reminiscent of a smaller, but still substantial, ammonium nitrate explosion at the West Fertilizer plant in West, Texas, in 2013, which killed 15, including 12 emergency responders, injured hundreds, and destroyed a major part of the city.

The Occupational Safety and Health Administration (OSHA) addresses ammonium nitrate safety through paragraph (i) of its Explosives and Blasting Agents standard,¹ which is in urgent need of modernizing. That standard was issued in 1971 and is based on a 1970 National Fire Protection Association (NFPA) consensus standard that has since been revised many times, most recently in 2018. OSHA's Process Safety Management (PSM) Standard,² issued to ensure chemical plant safety, is almost 30 years old.

In the wake of the West Fertilizer explosion, as well as other contemporaneous chemical plant incidents, President Obama issued Executive Order 13650 that directed OSHA to revise its PSM

¹ 29 C.F.R. 1910.109

² 29 C.F.R. 1910.119

standard and update standards that addressed ammonium nitrate.³ OSHA launched an effort to update its chemical plant safety standards in 2013, issued a Request for Information (RFI) in 2013⁴, and completed the Small Business Regulatory Enforcement Fairness Act (SBREFA) process in 2016.

Although ammonium nitrate is not currently covered by the PSM Standard, OSHA invited comment in its 2013 RFI on “how to update its regulatory requirements to improve its approach to preventing the hazards associated with ammonium nitrate.”⁵

It has now been over 4 years since the completion of the SBREFA process. The PSM standard revision has been on the long-term regulatory agenda since the end of 2016, and to date there has been no evident progress on the PSM standard or related ammonium nitrate protections, despite the clear need and urgency to finalize these revisions.

A 2014 Government Accountability Office (GAO) report found that “Large quantities of ammonium nitrate are present in the United States” and recommended that OSHA consider updating regulations for the storage of ammonium nitrate and to work with the Environmental Protection Agency (EPA) to revise their related regulations to cover ammonium nitrate. The GAO also called on OSHA to identify high risk facilities working with ammonium nitrate and develop options to target them for inspection.⁶

The GAO concluded that without an updated regulation that ensures “that high risk facilities plan for and manage the risks associated with ammonium nitrate, such facilities may not be prompted to adequately address the risks the chemical creates for workers and neighboring communities.”⁷

In 2014, the U.S. Chemical Safety and Hazard Investigation Board (CSB) recommended that OSHA update its ammonium nitrate standard, finding that the 1971 standard “does not provide sufficient guidance for the safe storage of ammonium nitrate” and “does not provide sufficient fire protection measures for bulk storage of ammonium nitrate.” Specifically, the CSB noted that: the OSHA standard allows storage in wooden bins, which have been outlawed in some other countries; OSHA requires sprinklers only for bagged ammonium nitrate exceeding 2,500 tons; and the standard doesn’t apply to facilities in operation when the standard was issued.⁸

³ Executive Order -- Improving Chemical Facility Safety and Security, <https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security>

⁴ Occupational Safety and Health Administration, Request for Information, Process Safety Management and Prevention of Major Chemical Accidents, <https://www.govinfo.gov/content/pkg/FR-2013-12-09/pdf/2013-29197.pdf#page=1>

⁵ Ibid

⁶ Government Accountability Office, *Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate*, May 2014 <https://www.gao.gov/assets/670/663293.pdf>

⁷ Ibid

⁸ U.S. Chemical Safety and Hazard Investigation Board response to OSHA's December 9, 2013 Request for Information (at 78 FR 73756) https://www.csb.gov/assets/1/6/csb_rficommments2.pdf

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In its 2016 final report⁹ on the West explosion, the CSB recommended that OSHA:

- Develop and issue a Regional Emphasis Program to address ammonium nitrate hazards, and
- Either add ammonium nitrate to OSHA's Process Safety Management Standard or revise OSHA's Explosives and Blasting Agents standard, which currently covers ammonium nitrate.

In order to prevent any future tragedies like the explosions in West, Texas, or Beirut, Lebanon, we call on you to put the Process Safety Management Standard back on the active regulatory agenda and invest resources to ensure its timely issuance in order to protect plant workers, emergency responders, and the surrounding communities from the tragic consequences of ammonium nitrate explosions.

Furthermore, we urge you to cover ammonium nitrate in the PSM Standard, or at a minimum, update OSHA's explosives standard, which covers fertilizer grade ammonium nitrate, to meet the requirements of the latest National Fire Protection Association Code.

We also request that the Occupational Safety and Health Administration provide us with the following information:

1. Please describe any progress that has been made on finalizing the PSM Standard and/or modernizing ammonium nitrate protections since January 20, 2017. In the description, please specifically address whether a decision has been made to either include ammonium nitrate in the PSM standard or update OSHA's explosives standard that addresses ammonium nitrate storage.
2. Will OSHA's Fall Regulatory Agenda restore the PSM standard to active status? If not, what is your schedule for finalizing these regulatory actions?
3. Please provide a list of all inspections and enforcement actions involving ammonium nitrate from April 17, 2013, to the present.

Please respond by August 31, 2020.

Contact Jordan Barab with the House Committee on Education and Labor at jordan.barab@mail.house.gov with any questions. Please send all correspondence relating to this matter to Tylease Alli, Chief Clerk for the Committee on Education and Labor, at tylease.alli@mail.house.gov.

⁹ U.S. Chemical Safety and Hazard Investigation Board, West Fertilizer Company Fire and Explosion, Investigation Report, January 28 2016, <https://www.csb.gov/west-fertilizer-explosion-and-fire/>

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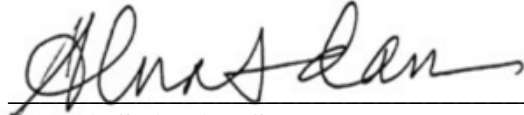
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Thank you for your attention to this matter.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman



ALMA S. ADAMS PH.D.
Chair
Subcommittee on Workforce Protections



JOE COURTNEY
Member of Congress

cc: Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor

Hon. Virginia Foxx, Ranking Member, Committee on Education and Labor