

# Union Safety Experts Say Officials Shut Them Out

By SARAH DORSEY | Posted: Monday, December 10, 2012 5:00 pm

Frustrated union safety experts Dec. 6 challenged state and Federal officials over their performance enforcing worker health regulations during Superstorm Sandy clean-up.

At a New York Committee for Occupational Safety & Health (NYCOSH) conference on the storm response, Teamsters Local 237 Health and Safety Coordinator Diane Stein faulted the state Department of Labor's Public Employee Safety and Health enforcement division (PESH) for not engaging with unions. Labor representatives weren't included on inspections of work sites, she said, which may have led to important health hazards being overlooked.

## Find Feds Soft on Mold

Lisa Baum of District Council 37's health and safety program complained that PESH, following U.S. Occupational Safety and Health Administration guidelines, rarely punished public employers who didn't comply with safety regulations in the storm's aftermath. And several health professionals and activists lamented that Federal regulations do not set safe levels for mold exposure, which workers and residents continue to encounter at dangerous levels.

OSHA Regional Administrator Robert Kulick said in an interview that given the total devastation during the month after Sandy, his compliance officers didn't want to impede responders, so they held off on issuing citations in many instances. The department intervened about 2,500 times in November when employers weren't adhering to safety regulations, but only issued citations or other enforcement actions 49 times.

"We didn't want to be part of the problem; we wanted to be part of the solution," he said, so if workers were trying to clear a fallen tree on the road without face shields, for example, an officer would tell them to get the proper safety equipment and stay until they complied, rather than stopping the work and fining them.

## Focused on Worst Violations

He said if a violation was egregious—say, roofers were working without equipment to protect against falls—the compliance officer would return to see that the rules were being adhered to and would cite the offender if necessary.

Now that much of the worst destruction has been cleaned up, OSHA has resumed its typical enforcement levels, he said.

The agency is constrained in part by internal rules set up after Sept. 11 that require officers to

refrain from enforcing violations when possible after a catastrophe. PESH, which enforces violations at public-sector workplaces, has a mandate to protect workers at least as stringently as OSHA does in the private sector.

Eileen Franko, acting director of the state DOL's Safety & Health Division, said her enforcement officers didn't intentionally exclude the unions from their site walk-throughs.

Ms. Stein said the union "saw very different things" than the DOL, which mostly observed just a few violations like failure to wear hard hats. She said that labor representatives know the workers and their jobs well enough that they often know when to probe further; for example, if the most-hazardous task is performed in the early morning, before the inspectors arrive, a union rep would more likely catch it.

### **Happy to Hear Complaints**

Ms. Franko, after the talk, disputed the idea that workers withheld information from her enforcement agents, saying that as a former compliance officer, she knew employees were never shy about speaking up. She added that she welcomed information about other hazards the union found.

The exchange between the union representatives and the officials got a little heated at times, with the labor cohort sounding exasperated and shooting each other looks of disbelief. District Council 37 Safety and Health Director Lee Clarke accused PESH of having had "very little dialogue with workers" after the storm and of failing to include the unions when investigating a handful of employee deaths related to storm clean-up.

"The unions have a right to be part of that dialogue," she said.

"Nobody should walk out of here thinking we are happy with [your] performance," she added. "We are not happy."

David Newman, an occupational health specialist with NYCOSH, detailed several worker-safety concerns about Sandy clean up, which is still ongoing. State and Federal officials announced two weeks ago that more than 5,000 New Yorkers—including many long-term unemployed—will be hired for temporary government jobs using U.S. Labor Department funds.

### **Anticipated Hazards**

Workers should be prepared to encounter asbestos, lead and silica, Mr. Newman said, along with diesel emissions and carbon monoxide. He noted that OSHA has not set exposure limits for diesel emissions or sewage, which contaminated much of the flood waters during the storm.

Worker advocates hope to make sure officials avoid the worst mistakes made after Sept. 11, when

government health and safety plans weren't issued for months and, they said, slow responses by Federal agencies and regulatory gaps led to avoidable long-term health disasters for first responders.

NYCOSH Executive Director Joel Shufro noted that after Sept. 11, standards governing when buildings were safe for employees and residents to re-enter were absent, allowing building owners to certify that their own properties were safe, which he called a "glaring oversight." Mr. Kulick said employers must be held accountable for providing a safe workplace, but Regional U.S. Environmental Protection Agency Director Judith Enck acknowledged that there are still no standards governing when buildings can be re-inhabited, beyond basic questions of whether the structure is physically intact.

Mr. Kulick said tensions are beginning to rise in the hardest-hit areas where people have been struggling a long time, with homeowners chasing away OSHA inspectors asking about safety practices for contractors. But he said the agency deployed 50 to 60 compliance officers a day in late November, held 1,155 briefings with 34,000 workers in the field about safety practices, and removed about 6,500 employees from hazardous worksites.

He said it typically takes at least five to 10 years to set acceptable exposure levels for hazardous substances, like mold; multiple Federal agencies must review such new regulations. He could not confirm whether mold would be targeted for regulation until the agency releases its next agenda shortly.