

United States Senate

WASHINGTON, DC 20510

July 28, 2017

The Honorable Dorothy Dougherty
Deputy Assistant Secretary of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW
Washington, D.C. 20210

Dear Secretary Dougherty:

I am writing regarding the status of Occupational Safety and Health Administration (OSHA) investigations into Mid-America Steel Drum Company sites in St. Francis and Oak Creek, Wisconsin. Since February, I have repeatedly requested that OSHA investigate these facilities in response to whistleblower concerns and media reports that describe serious health and safety risks and potential violation of federal law. Despite my repeated requests, OSHA has not yet inspected these facilities. OSHA's inaction is extremely troubling and I would reiterate my previous request that you immediately investigate the St. Francis and Oak Creek facilities.

In conversations with my staff earlier in the year, OSHA intimated that it would not investigate the Oak Creek and St. Francis facilities without a complaint from an employee working at those facilities. While I understand that employee referrals are frequently used by OSHA to identify sites to inspect, they are by no means necessary, and the lack of an employee complaint should not preclude an OSHA inspection. In fact, according to OSHA's Field Operations Manual, other acceptable referral methods include media reports and government agency referrals.

A letter addressed to me dated May 19, 2017, from Ken Nishiyama Atha, OSHA Regional Administrator, noted, "if any site specific allegations of serious hazards were brought to OSHA's attention regarding either the Oak Creek or St. Francis sites, they would be evaluated and handled in accordance with OSHA's policies and procedures." On June 30, 2017, the Milwaukee Journal Sentinel published a story^[1] noting that according to court documents, operations at the facilities "appeared to EPA inspectors to be 'staged' to create the appearance of compliance with applicable environmental regulations." In addition, two EPA inspectors became ill after investigating the Mid-America Steel Drum facility in St. Francis, Wisconsin. The story noted that on February 24, EPA inspectors "saw barrels fuming at the St. Francis plant, indicating that drums were not emptied." EPA investigators also reportedly interviewed residents who live near the St. Francis facility and found that, "residents report health complaints including dizziness, itching, watery eyes, rashes on exposed skin, nausea, lymphoma, vitamin D issues, cardiovascular diseases and throat cancer." Health and safety concerns have also been reported at the Oak Creek facility. The Journal Sentinel reported, "At the Oak Creek inspection on March

^[1] <http://www.jsonline.com/story/news/investigations/2017/06/30/epa-investigators-get-sick-barrel-plants/435413001/>

2, inspectors identified several areas of concern. Workers used metal blades to cut the drums containing unknown and potentially flammable chemicals, creating a risk of explosion.”

Media reports make clear that there are serious site specific allegations regarding the Oak Creek and St. Francis sites. I encourage you to review these media reports and the EPA’s investigation of the facilities.

While OSHA has only inspected the facility in Milwaukee, other federal agencies have inspected each of the three facilities following my requests for investigation. The Department of Transportation and the Environmental Protection Administration have each inspected the three facilities and their reviews are ongoing. Additionally, the Wisconsin Department of Natural Resources investigated the three facilities and cited the company for violating 19 environmental laws^[2]. Finally, the EPA’s investigators secured a federal search warrant to investigate the facilities because EPA believed that the company had staged operations at the facility to mask potential violations^[3]. In sum, various government agencies have been very active investigating and uncovering concerns, violations and risks to health and safety that should provide OSHA the evidence needed to investigate all three facilities.

Instead of looking for reasons not to act, OSHA should immediately investigate the allegations regarding health and safety risks at the St. Francis and Oak Creek facilities. I appreciate your attention to this matter.

Sincerely,



Tammy Baldwin
United States Senator

^[2] <http://www.jsonline.com/story/news/investigations/2017/07/25/wisconsin-dnr-says-milwaukee-industrial-barrel-plants-broke-environmental-laws/502524001/>

^[3] <https://www.documentcloud.org/documents/3882913-Application-for-EPA-Warrant.html>