Congress of the United States
Washington, DC 20515

August 2, 2006

The Honorable Elaine Chao, Secretary
The U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Chao:

It is imperative that you take immediate steps to protect U.S. workers from bronchiolitis obliterans, a progressive and often fatal lung disease caused by occupational exposure to diacetyl, a synthetic form of butter flavoring,[1] by issuing an Emergency Temporary Standard in accordance with section 655 (c) of the OSH Act.

Recent investigative reports in the *Sacramento Bee* and the *Baltimore Sun* documented serious outbreaks of bronchiolitis obliterans in recent years. In 2004, the National Institute of Occupational Safety and Health (NIOSH) issued an official alert about the connection between workplace exposure to diacetyl and irreversible lung disease.[2] Despite these NIOSH warnings, the Occupational Safety and Health Administration (OSHA) has refused to take corrective action. When asked about this, OSHA spokesperson Kate Dugan responded: "We cannot regulate every hazard in every industry. That would be an impossible task."[3] OSHA's refusal to act signifies a clear abdication of its statutory responsibilities under the Occupational Safety and Health (OSH) Act, 29 USC § 651 et seq.

Immediate action is essential to prevent new outbreaks of bronchiolitis obliterans and safeguard workers in a wide range of plants that manufacture or use synthetic butter flavoring. They include businesses that use synthetic diacetyl to manufacture butter flavoring as well as those that use the manufactured flavoring in consumer products, including microwave popcorn, baked goods, candy, frozen foods and other products.

In 2000, NIOSH was alerted by the Missouri Department of Health and Senior Services to a bronchiolitis obliterans outbreak among former workers of a microwave popcorn factory in Jasper, Missouri. The Missouri DHSS was first informed of this rash of cases by an astute local physician who suspected that the patients he was seeing had contracted the debilitating lung disease in the workplace. After intensive research, NIOSH scientists concluded that important respiratory protections were needed to prevent new cases of bronchiolitis obliterans. NIOSH scientists subsequently published their findings about flavorings-related lung disease in agency reports and peer-reviewed medical journals.

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In turn, NIOSH officials briefed their counterparts in OSHA and also sent formal alerts to employers and medical professionals. Very recently, NIOSH updated its web-page, adding an alert in Spanish for Latino workers in flavoring plants as well as a user-friendly icon whereby workers, occupational health practitioners and members of the general public can examine all the agency publications on this issue.

It is alarming that at least 200 workers in worksites from California to New Jersey have contracted this severe disease. Yet as reported in the *Baltimore Sun*, OSHA spokespersons have stated the agency has already done all it will do about harmful exposure to diacetyl. OSHA's reputed action has been to "inform" its inspectors that workers in plants manufacturing artificial flavorings may be at risk of "over-exposure to vapors." However, according to the *Sun,* four out of five OSHA compliance inspectors in different regions said they had never been alerted to any new inspection directives for flavoring plants.

On the OSHA website as of July 26, 2006, diacetyl is only referred to in a short technical paper that reviews NIOSH sampling and analytical methods. Moreover, the only reference to cases of severe lung disease triggered by exposure to this synthetic butter flavoring is as follows: "Presently some 138 plants manufacturing butter flavor popcorn employing some 3400 employee[s] may be at risk of contacting lung related illness."[4] This reference ignores the risks of diacetyl exposures in the baking, candy, frozen food and other food industries.

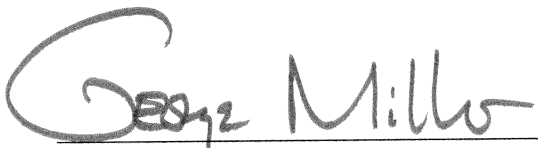
The 2004 NIOSH alert outlined a robust series of recommendations for employers and workers in plants that manufacture or use flavorings. To minimize occupational exposure to any hazardous flavorings, NIOSH urged employers to: (1) substitute less toxic ingredients for hazardous flavorings, (2) use engineering controls such as closed production systems, (3) use administrative controls that isolate and restrict access to areas where flavorings are handled, (4) educate management and workers about the risks of hazardous exposures, (5) provide appropriate personal protective equipment including NIOSH-certified half-mask, negative-pressure respirators, (6) monitor all exposures through routine air sampling, and to (7) establish a comprehensive health monitoring program for workers which would include periodic testing of lung function as well as rigorous surveillance and disease reporting procedures.

The above-cited recommendations reflect the grave health consequences NIOSH scientists discovered when investigating clusters of cases where workers had been exposed to diacetyl. In 2004, NIOSH reported that by the time workers at the Jasper popcorn plant had been referred to a pulmonary specialist, more than half were immediately placed on lung transplant lists. In other plants, a number of workers had such severe disease they were too ill to qualify for a lung transplant. In press accounts, the case of a worker in his mid-twenties who had contracted bronchiolitis obliterans as a result of diacetyl exposure was described in graphic detail. This former worker, hooked up around the clock to an oxygen tank, had become too weak to walk from his bedroom to the bathroom. At least three workers have died from this irreversible lung disease.

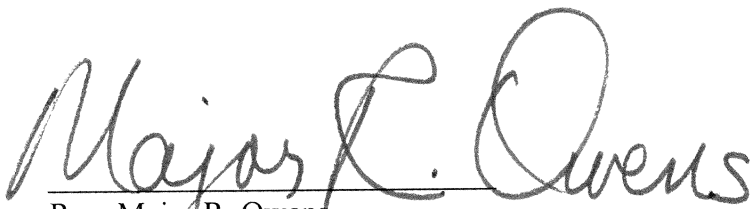
To summarize, NIOSH has already documented the deadly consequences of occupational exposure to synthetic diacetyl and alerted OSHA to this urgent matter. OSHA refuses to act upon the NIOSH alerts and health hazard evaluations of diacetyl. Such inaction signifies a clear disregard for OSHA's statutory responsibilities.

It is therefore incumbent upon you to issue an Emergency Temporary Standard to limit workplace exposure to artificial diacetyl. Given the urgency of this matter, we request a response from you within seven (7) days regarding your immediate plan of action.

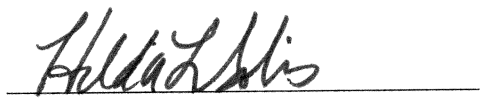
Sincerely,



Rep. George Miller
Senior Democratic Member
Committee on Education and the Workforce



Rep. Major R. Owens
Ranking Democratic Member
Subcommittee on Workforce Protections



Rep. Hilda Solis
Democratic Member

[1] Schneider A, "Disease is swift, response is slow: Government lets flavoring industry police itself, despite damage to workers' lungs" (Special Report), Baltimore Sun, April 23, 2006.
[2] This NIOSH Alert, "Preventing Lung Disease in Workers Who Use or Make Flavorings," is Publication No. 2004-110 and may be found at: http://www.cdc.gov/niosh/docs/2004-110/
[3] This quote may be found at: http://www.baltimoresun.com/news/nationworld/bal-te.flavoring23apr23,1,4220026
[4] This may be found at: http://www.osha.gov/dts/sltc/methods/partial/t-pv2118/t-pv2118/t-pv2118

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*** ACTIVITY REPORT ***
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Committee on Education and the Workforce

Congressman George Miller, Senior Democratic Member

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08 / 02 / 06
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TOTAL PAGES (including this cover sheet): 4

COMMENTS: