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**RE: “OSHA Listens” - Call for public comments  
Docket No. OSHA-2010-0004**

The American Civil Liberties Union (ACLU) submits these comments pursuant to the Occupational Safety and Health Administration (OSHA) request for public comments, as noticed in the Federal Register on January 19, 2010, to solicit suggestions from stakeholders on key issues facing the agency.

**I. Mission and Expertise of the ACLU**

The ACLU is a national, nonpartisan public interest organization of more than 500,000 members, dedicated to protecting the constitutional and civil rights of individuals. Through its Women’s Rights Project, founded in 1972 by Ruth Bader Ginsburg, the ACLU has long been a leader in the legal battles to ensure women’s full equality.

A central mission of the ACLU is to ensure that all persons receive equal treatment under U.S. laws and administrative regulations. Regulatory schemes that may exacerbate existing patterns of racial, ethnic, or gender discrimination are therefore of concern to the ACLU.

The ACLU’s advocacy on employment issues facing women has focused on ensuring that the most vulnerable women—poor women, women of color, and immigrant women—are able to work free from discrimination and in safe working environments. We have represented low-wage, immigrant women workers in industries including agriculture, food processing, hotel, retail, and restaurant service.

Our work on these issues has spanned the country to include outreach to workers and/or advocates in California, New York, North Carolina, Pennsylvania, and Washington State. For example, in New York, the ACLU has played a leading role in convening a taskforce of advocates to develop

and implement strategies to address the problem of toxic chemical exposure among low-wage, immigrant women workers.

## **II. Questions Addressed**

These comments are designed to address the question raised by OSHA relating to “the most important emerging or unaddressed health and safety issues in the workplace.” However, our comments also touch upon what the agency can do to enhance and encourage the efforts of employers, workers and unions to identify and address workplace hazards; what specific actions the agency can take to enhance the voice of workers in the workplace, particularly workers who are hard to reach, do not have ready access to information about hazards or their rights, or are afraid to exercise their rights; and updating the Permissible Exposure Limits (PELs) for hazardous substances.

## **III. The Scope of the Problem**

These comments focus on chemical safety, an often-overlooked issue that affects many low-wage, urban workers, particularly in female-dominated industries. Immigrant workers in the nail salon industry are especially affected by this problem. We focus on the nail salon industry, but workers in other urban industries, such as domestic workers and hotel and retail industry workers, often share similar concerns.

Immigrant women with limited English proficiency are the majority of the nail salon workforce.<sup>1</sup> In California, these workers are predominately Vietnamese, while in other cities, such as New York, they may be Chinese, Korean, and Latina. They are often unable to read health and safety information in English and unaware that their salons are required to provide basic information and training on chemical safety.<sup>2</sup>

These immigrant workers are often dissuaded from complaining about health and safety issues due to threats of retaliation based on their immigration status.<sup>3</sup> Their ability to speak out about health and safety issues may also be impeded by other barriers to workplace health and safety, such as sexual harassment and pregnancy discrimination, which are problems that disempower many nail salon workers.

The combination of limited access to safety information and inability to speak out about concerns has a profoundly negative effect on the health of many low-wage nail salon technicians who work long hours and are exposed to multiple chemicals on a daily basis.

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<sup>1</sup> See CALIFORNIA HEALTHY NAIL SALON COLLABORATIVE, OVEREXPOSED AND UNDERINFORMED: DISMANTLING BARRIERS TO HEALTH AND SAFETY IN CALIFORNIA NAIL SALONS 5 (2009), available at <http://saloncollaborative.files.wordpress.com/2009/03/collaborativepolicyrecreport.pdf>.

<sup>2</sup> See OSHA Hazard Communication Standard, 29 CFR § 1910.1200 (requiring employers to train employees on the use of hazardous chemicals, to label hazardous chemicals, and to maintain a material safety data sheet that is readily accessible to employees for each hazardous chemical used).

<sup>3</sup> See generally REBECCA SMITH, NATIONAL EMPLOYMENT LAW PROJECT, ET AL., ICED OUT: HOW IMMIGRATION ENFORCEMENT HAS INTERFERED WITH WORKERS' RIGHTS (2009), available at [http://www.nelp.org/page/-/Justice/ICED\\_OUT.pdf?nocdn=1](http://www.nelp.org/page/-/Justice/ICED_OUT.pdf?nocdn=1).

The chemicals used in nail salon products have been linked to respiratory difficulties, skin irritation, and neurological problems.<sup>4</sup> Some are even suspected carcinogens, and they may also affect workers' reproductive health, causing miscarriages, infertility, and birth defects.<sup>5</sup> Studies of nail salon workers have documented these debilitating short- and long-term health effects.<sup>6</sup>

#### IV. Actions Required

Some strategies for decreasing workers' exposure to these chemicals require longer-term study and technological expertise, such as improving ventilation in salons and decreasing PEL standards, most of which do not provide adequate protection for nail salon workers.<sup>7</sup> However, other strategies require immediate increased enforcement and bilingual outreach to educate owners and workers about basic safety precautions, including labeling and use of chemicals, proper use of protective equipment, meal breaks away from chemical areas, and adequate bathroom access.

To address chemical health and safety issues for low-wage immigrant women workers in general, including workers in nail salons, OSHA should:

- Implement policies to assure workers that immigration status is not relevant to OSHA's investigations, that workers' immigration status will not be ascertained by OSHA or other governmental agencies working with OSHA, and that immigration status will not be used to harm workers who come forward or cooperate with OSHA.
- Increase its capacity to disseminate health and safety information in other languages.
- Increase the number of bilingual OSHA inspectors who can respond to complaints.
- Improve and build relationships with community organizations that these workers already trust or that are capable of serving these workers. OSHA should also provide the staff of community-based organizations with the resources and support needed to address chemical safety concerns as part of their outreach.

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<sup>4</sup> See UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, PROTECTING THE HEALTH OF NAIL SALON WORKERS, Appendix ii-iii (March 2007), available at <http://www.epa.gov/dfe/pubs/projects/salon/nailsalonguide.pdf>.

<sup>5</sup> See CALIFORNIA HEALTHY NAIL SALON COLLABORATIVE, OVEREXPOSED AND UNDERINFORMED at 5-6; NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM, ISSUE BRIEF: THE NAIL SALON INDUSTRY AND THE IMPACT OF COSMETIC TOXINS ON API WOMEN'S REPRODUCTIVE HEALTH 4 (2008), available at <http://napawf.org/resources/issue-briefs-factsheets/>.

<sup>6</sup> See CALIFORNIA HEALTHY NAIL SALON COLLABORATIVE, OVEREXPOSED AND UNDERINFORMED at 5; Cora Roelofs et al., *Results from a Community-based Occupational Health Survey of Vietnamese-American Nail Salon Workers*, 10 J. IMMIGRANT MINORITY HEALTH 2 (2008); WOMEN'S VOICES FOR THE EARTH, GLOSSED OVER: HEALTH HAZARDS ASSOCIATED WITH TOXIC EXPOSURE IN SALONS 6-7 (2007), available at <http://www.womenandenvironment.org/campaignsandprograms/SafeCosmetics/WVE.NailSalon.Report.pdf>.

<sup>7</sup> See WOMEN'S VOICES FOR THE EARTH, GLOSSED OVER at 6.

To address chemical health and safety issues for nail salon workers in particular, OSHA should further:

- Reevaluate PELs for chemicals used in nail salons, to take into account the effects of continuous exposure to multiple chemicals.
- Seek the input of advocates in California and other states that have made significant headway in this industry as a result of advocates' work in developing innovative models for bilingual community outreach, recommendations for PEL updates, and collaboration with regulatory agencies.

Thank you for your consideration of these comments and we look forward to discussing them further with you. Should you have any questions or need additional information, please contact Vania Leveille at 202-715-0806 or [vleveille@dcaclu.org](mailto:vleveille@dcaclu.org).

Sincerely,



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