

**Occupational Safety and Health Advisory Council
Minutes
May 7, 2010**

Members present

Melanie Allen
Carol Bufton
Harvey Burski
Fay Chawla
Mike Hawthorne
Mike Mueller
Greg Rindal
Bill Stuart
Dean Tharp
Daryl Tindle

Members absent

Erick Ajax
Kathy Smith

Staff members present

Dave Ferkul
Alden Hoffman
Julie Klejewski
Jim Krueger
K. Hon Siow
Brian Zaidman

Visitors present

Mark Hysell, Federal OSHA
Ruth Rasmussen, Midwest Center OHS

The meeting was called to order at 10:05 a.m., by chairperson Carol Bufton. Members and staff members introduced themselves.

Stuart made a motion to accept the Feb. 5, 2010 minutes as printed; seconded by Chawla, all voted in favor and the motion passed.

I. Assistant commissioner's update – Jim Krueger on behalf of Patricia Todd

Krueger mentioned the workers' compensation DVD that was in member's packets. This was discussed at a previous meeting last fall and a copy was promised to members. He briefly reminded members of those membership terms that will be expiring in January 2011. All term expiration dates are listed on the advisory council membership list under their e-mail address. More information will be discussed at subsequent meetings.

Krueger reported the staff did discuss the issue of letting council members attend a field inspection with either consultation or compliance staff members. Staff attorneys are very concerned about liability. As an alternative, the staff would like to bring members into the office to see what enforcement does, show how citations are issued, etc. He stated a quick demonstration could be presented at the next meeting.

Legislatively, he reported that bills going forward were related specifically to CCLD and the Labor Standards unit. There were a couple bills related to MNOSHA and are currently being watched.

II. Federal OSHA update – Mark Hysell

OSHA update and enforcement news:

1. David Michaels, Ph.D., MPH, is OSHA's new Assistant Secretary of Labor

- On Dec. 9, 2009, Dr. Michaels was confirmed as the new head of OSHA
- Michaels is an epidemiologist and a nationally recognized leader in the scientific community's efforts to protect the integrity of the science on which public health and environmental policies and regulation are based
- Before coming to OSHA, he was professor of environmental and occupational health at the George Washington University School of Public Health and Health Services
- From 1998 to 2001, Dr. Michaels served as Assistant Secretary of Energy for Environment, Safety and Health
- As Assistant Secretary of Energy, he was the chief architect of the Energy Employees Occupational Illness Compensation Program, the historic initiative to compensate nuclear weapons workers who contracted occupational illnesses as a result of exposure to radiation, beryllium and other hazards
- The program has provided more than \$5 billion in payments to sick workers and the families of deceased workers

2. On April 14 and 15, Secretary of Labor Solis convened the first-ever national action summit on health and safety of Latino workers

- Each year, thousands of workers in the United States are injured or killed on the job as a result of preventable incidents; Latino workers are killed and suffer work-related injuries at higher rates than all other workers
- The two-day event, in Houston, was cosponsored by OSHA and NIOSH, in partnership with the National Institute of Environmental Health Sciences
- The summit brought together workers and representatives from employer associations, labor unions, the faith community, community organizations, the medical community, safety and health professionals, educators, government officials, consulates, the entertainment community and other nontraditional partners
- The focus was to ensure all workers understand they have a right to a safe workplace, they know what hazards they might face on the job and they have a clear sense of how a safe workplace is supposed to look
- All workers have a right to talk to their employer about unsafe conditions and, if necessary, to call OSHA
- In particular, workers have a right to be trained in a language and in a way they understand and workers need to know how to use these rights without fear of retaliation
- Panelists and participants at the summit represented a variety of groups, such as: Casa Latina in Seattle, Wash.; Tenants and Workers United in Alexandria, Va.; The Hispanic Westchester Coalition in White Plains, N.Y.; and Union Latina de Chicago in Chicago

3. On April 22, OSHA announced it is implementing a new Severe Violator Enforcement Program and increasing civil penalty amounts

- The new Severe Violator Enforcement Program is intended to focus OSHA enforcement resources on employers who endanger workers by demonstrating indifference to their responsibilities under the law
- This enforcement tool includes increased OSHA inspections in these worksites, including mandatory OSHA follow-up inspections and inspections of other worksites of the same employer where similar hazards and deficiencies may be present
- The Severe Violator Enforcement Program will become effective within the next 45 days

- Last year, OSHA assembled a work group to evaluate its penalty policies and found currently assessed penalties are too low to have an adequate deterrent effect
- Based on the group's findings and recommendations, several administrative changes to the penalty calculation system, outlined in the agency's Field Operations Manual, are being made
- These administrative enhancements will become effective in the next several months
- The penalty changes will increase the overall dollar amount of all penalties while maintaining OSHA's policy of reducing penalties for small employers and those acting in good faith

Closer to home:

1. The Eau Claire Area Office fines Elmwood, Wis., dairy farm following investigation into worker's death

- Eau Claire opened its inspection in October 2009 after learning from the Dunn County, Wis., sheriff's department of a fatality reportedly due to the immersion drowning of a migrant farmhand who worked and lived at the farm
- As a result of that inspection, OSHA cited the farm for six serious and one other-than-serious violations of federal workplace safety standards
- OSHA's serious citations address the failure to provide a guarding mechanism to prevent power-driven machinery from accidentally falling into the earthen manure storage facility, alteration of seat belts on that machinery, lack of adequate training and instruction for operators of the skid steer machinery, potential amputation issues and electrical shock hazards – total \$7,200
- While many farming operations, particularly those with 10 or fewer employees, are exempt from OSHA regulations, those that have maintained a temporary labor camp within the past 12 months are not exempt and are subject to all OSHA regulations

2. The Eau Claire Area Office fines Whitehall, Wis., company following safety and health investigations

- Milk Specialties Co. in Whitehall, Wis., agreed to pay \$535,000 in penalties as a result of the Eau Claire Area Office safety and health investigation
- The company engages in the research, development and manufacture of protein and fat products for nutritional applications and feeding regimes that include products such as pasteurized milk extenders, dried whey, condensed whey and liquid whey products
- OSHA began a December 2008 inspection in response to a complaint alleging a variety of safety hazards at the company's whey processing plant
- OSHA Eau Claire office originally cited Milk Specialties Co. \$1,450,000
- Willful citations were issued for the employer's failure to comply with OSHA's confined-space entry and control of hazardous energy requirements; untrained employees entered confined spaces and performed maintenance and cleaning on powered equipment without protection from various hazards
- Milk Specialties had previously been inspected by OSHA 15 times since 1974, including four inspections in Wisconsin between 2006 and 2008, with citations resulting from many of the same safety and health hazards cited in the most recent inspection

There was some discussion regarding who had jurisdiction over investigation of the actual explosion and the oil spill in the gulf. Hysell stated he believes it is the Department of Interior that is responsible; it's possible the Coast Guard may be involved also. Federal OSHA has jurisdiction over the federal OSHA states affected if oil comes aground. There may be state-plan states in that area also.

III. Staff reports: Compliance – James Krueger

Inspections

- Second quarter, FFY 2010

- Investigated two fatalities and seven serious injuries under MNOSHA jurisdiction
- Conducted 713 inspections; in the first half of FFY 2010 we exceeded our inspection goal by 114; our total inspections for the first half of FFY 2010 were 1,362
- Handled 129 complaints, of which 57 resulted in inspections

Construction Breakfast seminars

- Jan. 19, 2010: 45 participants attended “Construction safety training,” which was a panel discussion
- March 16, 2010: 65 attend “Excavation fatalities, a case study”
- May 18, 2010: “Fall protection, what’s new (equipment, best practices) and rescue plans”
- Steering committee met and suggested we concentrate more on MNOSHA standards and how enforced

Outreach

- During first quarter CY 2010, MNOSHA Compliance gave a total of 30 presentations to 1,070 attendees
- MNOSHA exhibited at the Associated General Contractors of Minnesota’s (AGC) Construction Safety Days in Minneapolis and Duluth
- Did an OSHA update at the ASSE PDC in February – 104 safety and health professionals attended
- The 76th Minnesota Safety and Health Conference will be May 12 through 14 in Minneapolis; MNOSHA Compliance will be exhibiting
- Continued assisting MNOSHA Workplace Safety Consultation with its combustible dust seminars
- Responded to 1,133 phone calls and 334 written requests (primarily e-mail) related to safety and health issues

Publications

- The spring edition of *Safety Lines* was posted in April
- The overall, general industry and construction most-cited-standards lists were released
- A window-washing hazard alert was issued in December
- The Internet resources fact sheet and the inspections booklet both underwent significant changes

Employee training

- New hires have at least a four-year degree in industrial safety, industrial hygiene, engineering or a closely related field; many have master’s degrees
- Incoming investigators begin with a five-phase training program:
 - Phase I – Human Resources policies, personal protective equipment (PPE), initial safety and health training;
 - Phase II – inspection procedures and hazard recognition
 - Phase III – specific OSHA standards and report preparation, and is completed within the first year;
 - Phases IV and V –topics such as fall protection, trenching, confined spaces, logging and health care are covered in more depth; these are conducted after about a year; investigators spend about half of their time in the field, gradually taking on more and more responsibility for the inspection process; all of this training is conducted by MNOSHA staff members internally
- Safety investigator core classes include:
 - OSHA 2010 Hazardous Materials (38 hours total);
 - OSHA 2040 Machinery and Machine Guarding Standards (41 hours total);
 - OSHA 2070 Fire Protection and Life Safety (53 hours total);
 - OSHA 3010 Excavation, Trenching and Soil Mechanics (23 hour total);
 - OSHA 3080 Principles of Scaffolding (28 hours total);
 - OSHA 3090 Electrical Standards (50 hours total);
 - OSHA 3110 Fall Arrest Systems (23 hours total)
- Health investigators core classes include:
 - OSHA 2200 Industrial Noise (26 hours total);
 - OSHA 2210 Principles of Industrial Ventilation (32 hours total);
 - OSHA 2220 Respiratory Protection (30 hours total);

- OSHA 2230 Industrial Toxicology (29 hours total);
- Initial Asbestos Inspector Certification training (24 hours total)
- During first quarter CY 2010, 34 investigators attended OTI and five completed a class at the University of Minnesota about negotiating skills; five staff members attended asbestos inspector refresher training and one attended lead abatement supervisor refresher training
- HAZWOPER refresher training for our staff was conducted April 20; the instructor is a consultant with the Minnesota Safety Council
- Compliance staff members attended a total of 56 training sessions
- We currently have 76 total reserved spots at OTI for FFY 2010, with another 23 enrolled in OTI Webinars and online training; we also have 47 people to register or have been registered for classes at other venues
- OTI will be bringing the OSHA 3010 Excavation, Trenching and Soil Mechanics class to Minnesota June 29 through July 1; the course will be conducted at the Construction Laborers' Training Center in Lino Lakes; currently 20 compliance and 10 consultation staff members are enrolled in this course

Open positions

- From an award of \$223,000 from federal OSHA, we have filled four positions: three safety investigators and one industrial hygienist

Significant legislation, rulemaking

Safe patient-handling: in definitions section of the current statute, 182.6552, “clinical settings” is being added

- new 182.6554 = physician, dental and other outpatient care facilities that move patients will have until July 1, 2010, to develop a written SPH plan to achieve by Jan. 1, 2012, the goal of minimizing manual lifting of patients by workers, by using SPH equipment

Current MNOSHA rulemaking proposal:

- revising standards referenced in the acetylene standard; direct final rule; request for comment;
- revising standards referenced in the acetylene standard; final rule; confirmation of effective date;
 - adopted by MNOSHA March 8, 2010
- updating OSHA standards based on national consensus standards; personal protective equipment; final rule;
 - adopted by MNOSHA March 8, 2010
- Minnesota Rules, 5205.0065, suspension scaffolds; technical change;
 - adopted by MNOSHA March 8, 2010

OSHSPA, family meeting

- James Krueger attended OSHSPA and Assistant Attorney General Jack Evans attended the SOLO Winter Conference in Baltimore, Md., Feb. 22 through 24, 2010; I will be attending the OSHSPA meeting in Springfield, Ill., June 21 through 23, 2010
- Will be attending the Region V family meeting Aug. 2 through 4, 2010, in East Lansing, Mich.; will be presenting about family victim involvement in the inspection process and who has contest right to an inspection

MNOSHA changes

- We updated our field compliance manual April 1, and are in the process of reviewing the federal file operations manual to ensure we are as effective as federal OSHA
- We updated our field safety and health manual, which includes annual health questionnaire and audiometric testing of the staff
- Complaint directive has been updated to correspond to our new phone system;
- We are currently doing an exercise to update our strategic plan; it appears we will have items we will be working on: be more innovative, scheduling, further rulemaking and communication

- As discussed last time, our process change – to reduce the number of files with late abatement reports – our number exceeding cases greater than 30 days has dropped for safety from 22 to 16 and for health from 17 to 13

Staff reports: Workplace Safety Consultation – K. Hon Siow

Traditional program

1. Human resources management
No vacant position in 21(d) on-site consultation program
2. Consultation IRIS computer
The project has been completed and the roll-out date was April 12, 2010.
Going through enhancements and refinements of IRIS.
3. Federal-year productivity (Oct. 1, 2009 through April 30, 2010)
Initial visits = 582
Follow-ups = 102
Training sessions = 151
Interventions = 206
4. Training, intervention sessions

Construction

- Hennepin Technical College (Eden Prairie and Brooklyn Park) – their annual 2009-2010 residential re-licensing continuing education seminars consisting of 11 sessions between December 2009 and April 2010. The topics for the 2009-2010 seminars were (safety) residential fall protection and (health) employees right to know in construction. This was the 16th season that the safety and health consultants have participated in their seminar. In attendance were 658 residential contractors.
- Enervation Commercial & Industrial Insulation – employee right to know, March 29, in attendance were 20 employees.
- Builders Association of the Twin Cities – introduction to OSHA, a three-part series, March 25, in attendance were 31 employers.
- Association of General Contractors Safety Day – confined space, a two-part series, March 23, in attendance were 45 employers.
- Twin Cities Roofing Contractors Association Fall Protection Conference – making OSHA work for you and achieving 100 percent fall protection in roofing, March 16 and 17, in attendance were 70 employers.
- Western National Insurance Group Annual Conference – focus four (falls, struck by, caught between and electrical, March 18, in attendance were 31 employers.
- OSHA/Environmental Compliance Systems, Inc. – focus four (falls, struck by, caught between and electrical, Feb. 26, in attendance were 35 employees.
- Associated Builders and Contractors Annual Conference – introduction to OSHA, a two-part series, March 4, in attendance were 25 employers.
- Lake Area Safety and Health Organization – residential fall prevention, Feb. 18, in attendance were 15 employers.
- Q3 Contracting – excavation, a two-part series, Feb. 23 and 24, in attendance were 120 employees.
- The Builders Group – introduction to OSHA, Feb. 2, in attendance were 48 employers.
- Allina Hospital (Mercy Hospital) – safety and health committees, March 22, in attendance were 16 employees.
- Center for Construction Research and Education (CPWR) – presented at annual Construction Safety Conference in Chicago, topic was surveying safety culture for small, medium and large companies in construction, Feb. 16, 17 and 18, in attendance were 80 employers.

Minority

- Brownfield of St Paul – confined-space, a two-part series, Feb. 12, in attendance were 45 employees.

Combustible dust

Preventing combustible-dust explosion – conducted four seminars in 2009 and 2010 about Minnesota OSHA combustible-dust national-emphasis program. We had 80 participants for the four seminars that were Dec. 1, Jan. 28, Feb. 18 and April 28. This training was presented by Minnesota OSHA Compliance, Minnesota OSHA Workplace Safety Consultation and BS&B Safety Systems.

MNSHARP (new site)

Knutson Construction Services (Minneapolis Children’s Hospital Expansion Project, 2525 Chicago Ave. S., Minneapolis, MN)

MNSHARP recertification

1. Malco Products
2. BASF Corp
3. Siewert Cabinet
4. Pollux Mfg

Pre-MNSHARP (new sites)

Starrett Tru-Stone Technologies, Waite Park, Minn., effective Jan. 8, 2010

Mortenson Construction (Duluth Entertainment and Convention Center Expansion, Duluth, Minn.), effective Jan. 7, 2010

Staff reports: Workplace Safety Consultation – Dave Ferkul

Special programs

Public sector

Public-sector safety and health consultants have been working extensively with cities and counties in the state. From February through April, they have completed 23 initial visits that identified 124 hazards and provided 11 training sessions that involved 45 employers and 302 employees. The training session topics have included: lab safety, safety grants program, safety committees, top OSHA citations, hazard recognition, safety management and workplace violence prevention. The public-sector consultants will be conducting a MNSHARP recertification at a public-operated waste-treatment facility later this summer.

Ergonomics

An alliance was recently signed with the Care Providers of Minnesota. This organization is a statewide, nonprofit trade association representing more than 500 proprietary, nonprofit and government-owned providers of long-term-care services, including nursing facilities, senior housing, assisted living, and home- and community-based services.

The alliance provides an education opportunity for participants, through direct involvement in an on-site Workplace Safety Consultation (WSC) visit. Four host sites were identified within the Care Providers group. These sites have requested a consultation and will invite other facilities to participate in the on-site consultation that will be lead by WSC’s ergonomics program coordinator. The focus will be on safe patient-handling (SPH) and complying with the state’s Safe Patient Handling statutes. Other safety and health regulatory issues will also be covered. The participants will be able to ask questions and learn first-hand the regulatory issues related to safety and health in long-term-care facilities.

Several insurance groups have also requested training and consultative assistance for health care facility clientele. Additional training/outreach opportunities are scheduled (a session about manual material handling at the Minnesota Safety Council conference) or are in the planning stages.

Scheduling of SPH grant follow-ups is on-going, with additional SPH consultations for nongrant recipients.

LogSafe

Our outreach/training consultant who coordinated the LogSafe program has been very busy with chain saw safety training and providing on-site consultative assistance for sites throughout the state. The 13 initial visits completed within the past three months were typically tied-in with the chain saw safety training request. The initial visits identified 84 hazards and the training provided involved 36 employers and 438 employees. The majority of training requests are from municipalities and other state agencies that have employees who would use chain saws for tree cutting and clearing.

MNSTAR

The program continues to grow, with a new application received from a northern Minnesota company. Currently, there are six applications pending review.

Sites have been scheduled each month, throughout the year, for pre-approval and recertification evaluations. In the previous quarter, four recertification evaluations were completed and one pre-approval evaluation was completed.

There are currently 52 individual worksites in MNSTAR: 45 are recognized as STAR sites and seven as merit sites. The most recent certification was for a construction worksite – the Eagan USPS building expansion project. The contractor managing the site is Gray/PCL Construction.

Safety grants

On May 26, a safety consultant hired from within WSC will continue the administration of the Safety Grants Program. Currently, a temporary employee with prior experience administering the program has done an excellent job in helping get the program moving forward after a month-long vacancy in the position. Much work has been devoted to re-establishing work-process procedures and maintaining a level of consistency and adherence to grant rules. The new administrator will continue to review grant applications and will also begin conducting random on-site grant verifications and consultations.

Sixty-five applications were received for the Feb. 15 through April 15 round. Thirty-nine safety grant projects are currently in progress.

IV. Business –Carol Bufton

- Presentation – Preview of the workplace safety report

Bufton introduced Brian Zaidman, who works in the Policy Development, Research and Statistics unit at DLI. Zaidman gave a PowerPoint presentation about the coming *Minnesota Workplace Safety Report* that will be out approximately in mid-June 2010. This annual report gives information about Minnesota's job-related injuries, illnesses and fatalities. Data sources for the injuries, illnesses and fatalities are the *Survey of Occupational Injuries and Illnesses* and the *Census of Fatal Occupational Injuries*, both conducted jointly by DLI and the U.S. Bureau of Labor Statistics.

The full report, when available, as well as archived editions, will be online at www.dli.mn.gov/RS/WorkplaceSafety.asp.

V. Future agenda items

- Compliance inspection process, with a detailed organizational chart of MNOSHA
- Enhanced *Federal annual monitoring and evaluation* (FAME) report and special evaluation
- Illnesses that are related to extended occupational exposures
- Safety council's approach regarding safe driving

Motion by Hawthorne to adjourn the meeting; seconded by Stuart, all voted in favor and the meeting was adjourned at noon.

Respectfully Submitted,

Julie A. Klejewski

Julie A. Klejewski