

**Occupational Safety and Health Advisory Council  
Minutes  
Nov. 5, 2010**

**Members present**

Melanie Allen  
Carol Bufton  
Fay Chawla  
Mike Mueller  
Kathy Smith  
Bill Stuart  
Daryl Tindle

**Staff members present**

Dave Ferkul  
Alden Hoffman  
Julie Klejewski  
Jim Krueger  
Patricia Todd

**Members absent**

Erick Ajax  
Harvey Burksi  
Mike Hawthorne  
Greg Rindal  
Dean Tharp

**Visitors present**

Mark Hysell, Federal OSHA  
Matt Marquis, CCA/MPWEA/TICA/MECA  
Ruth Rasmussen, MCOHS  
Christopher Schmitt, Metropolitan Council  
Gary Thaden, MMCA/NECA

The meeting was called to order at 10:02 a.m., by chairperson Carol Bufton. Members and staff members introduced themselves.

*Mueller made a motion to accept the Aug. 6, 2010, minutes as printed, seconded by Stuart. All voted in favor and the motion passed.*

**I. Assistant commissioner's update – Patricia Todd**

Patricia Todd reported the staff is continuing to prepare for the next administration and also focusing on the next legislative session. Legislative items being discussed included working on repealing the crane statute because the federal standard is now in place; and also working with the AG's office dealing with fatalities that are caused due to willful violations. She also reported there is a task force group that has been meeting regarding window washer safety – looking at it both from the building codes side as well as OSHA.

Jim Krueger added they also will be looking at clean-up language to the cause and contribute statute, to make sure interpretations are correct.

**II. Federal OSHA update – Mark Hysell**

1. On June 18 the OSHA Severe Violators Enforcement Program (SVEP) became effective, implementing a program to focus on employers that continually disregard their legal obligations to protect their workers.
- SVEP is intended to focus enforcement efforts on employers that have demonstrated defiance or indifference to their OSH Act obligations by committing willful, repeated or failure-to-abate violations in one or more of the following circumstances:

1. a fatality or catastrophe situation;
  2. in industry operations or processes that expose workers to severe occupational hazards;
  3. exposing workers to hazards related to the potential releases of highly hazardous chemicals;
  4. all egregious enforcement actions.
- SVEP establishes procedures and enforcement actions for the severe violator program, including increased inspections, such as mandatory follow-up inspections of a workplace found in violation and inspections of other worksites of the same company where similar hazards or deficiencies may be present.
2. OSHA released a new standard, addressing the use of cranes and derricks in construction and replacing a decades old standard.
- The final rule was published Aug. 9, 2010, in the *Federal Register*.
  - The rule becomes effective 90 days after Aug. 9, 2010, the date the final rule was published in the *Federal Register* (next week). Certain provisions have delayed effective dates ranging from one to four years.
  - This new standard will comprehensively address key hazards related to cranes and derricks on construction worksites, including the four main causes of worker death and injury: electrocution, crushed by parts of the equipment, struck-by the equipment/load and falls.
  - Significant requirements in this new rule include: a pre-erection inspection of tower crane parts; use of synthetic slings in accordance with the manufacturer's instructions during assembly/disassembly work; assessment of ground conditions; qualification or certification of crane operators; and procedures for working in the vicinity of power lines.
  - Several provisions have been modified from the proposed rule. For example:
    - employers must comply with local and state operator licensing requirements;
    - employers must pay for certification or qualification of their currently uncertified or unqualified operators;
    - written certification tests may be administered in any language understood by the operator candidate;
    - employers must use a qualified rigger for rigging operations during assembly/disassembly; and
    - employers must perform a pre-erection inspection of tower cranes.
  - This final rule requires operators of most types of cranes to be qualified or certified under one of the options set forth in 29 CFR Section 1926.1427.
  - Employers have up to four years to ensure their operators are qualified or certified, unless they are operating in a state or city that has operator requirements.
  - If a city or state has its own licensing or certification program, OSHA mandates compliance with that city or state's requirements only if they meet the minimum criteria set forth in this rule at section 1926.142.
  - The certification requirements in the final rule are designed to work in conjunction with state and local laws.
  - This final rule clarifies employers must pay for all training required by the final rule and for certification of equipment operators employed as of the effective date of the rule.
  - State-plan states must issue job safety and health standards that are “at least as effective as” comparable federal standards within six months of federal issuance. State-plan states also have the option to promulgate more stringent standards or standards covering hazards not addressed by federal standards.
3. On Oct. 1, OSHA announced the implementation of several changes to its administrative penalty calculation system.

- Many of the agency's current penalty adjustment factors have been in place since the early 1970s, resulting in penalties that are often too low to have an adequate deterrent effect. Administrative penalty adjustments will, therefore, be made to several factors that impact the final penalty issued to employers. These factors include the following.
  1. History reduction  
The time frame for considering an employer's history of violations will expand from three years to five. An employer that has been inspected by OSHA within the previous five years and has not been issued any serious, willful, repeat or failure-to-abate citations will receive a 10 percent reduction for history.
  2. History increase  
An employer that has been cited by OSHA for any high-gravity serious, willful, repeat or failure-to-abate violation within the previous five years will receive a 10 percent increase in their penalty, up to the statutory maximum. Employers that have not been inspected and those that have received citations for serious violations that were not high-gravity will receive neither a reduction nor an increase for history.
  3. Repeat violations  
The time period for considering the classification of repeated violations will be increased from three to five years.
  4. Severe violator enforcement program  
Where circumstances warrant, at the discretion of the area director, high-gravity serious violations related to standards and hazards identified in SVEP will not normally be grouped or combined, and may be cited as separate violations with individual proposed penalties.
  5. Gravity-based penalty (GBP)  
The gravity of a violation is the primary consideration in calculating penalties and is established by assessing the severity of the injury/illness that could result from a hazard and the probability that an injury or illness could occur. OSHA is adopting a gravity-based penalty structure for serious citations that will range from \$3,000 to \$7,000.
  6. Size reduction  
OSHA will be amending its penalty reduction structure based on the size of employers, allowing for a penalty reduction between 10 and 40 percent for those with fewer than 250 employees. No size reduction will be applied for employers with 251 or more employees.
  7. Good faith  
The current good faith procedures in the Field Operations Manual will be retained. A penalty reduction is permitted in recognition of an employer's effort to implement an effective workplace safety and health program. Employers must have a safety and health program in place to get any good faith reduction. Good faith reductions are not allowed in the cases of high-gravity serious, willful, repeat or failure-to-abate violations.
  8. The 15 percent quick-fix reduction, which is currently allowed as an abatement incentive program to encourage employers to immediately abate hazards identified during inspections, remains unchanged. However, the 10 percent reduction for employers with a strategic partnership agreement will be eliminated.
  9. Final penalties will be calculated serially, unlike the current practice where all penalty reductions are added and the total percentage of reductions is then multiplied by the gravity-based penalty to arrive at the proposed penalty.
- 4. On Oct. 27, OSHA announced the recent revision to its policy for outreach training programs to address the number of hours each day a student may spend in OSHA 10- and 30-hour classes.
- OSHA revised the length of daily classroom instruction to prevent workers from being saturated with so much information that they may miss content that could prevent injuries, illnesses and death.
- The revised program policy now requires OSHA trainers to limit worker training classes to a maximum of seven-and-a-half hours a day.

- Before OSHA made this change, there were no limitations on how long these classes could last each day. With 10 hours of training, along with necessary breaks and lunch, students could sit in classes for up to 13 hours a day.
- OSHA became concerned that long, mentally fatiguing class days might cause students to miss essential safety and health training.
- Another concern was, in some cases, one- and three-day training classes were not meeting 10- and 30-hour program time requirements. This concern became evident after OSHA conducted random records audits and unannounced monitoring visits.
- To address these issues, the agency now requires OSHA outreach trainers to conduct 10-hour courses over a minimum of two days and 30-hour courses over at least four days.
- This policy change is effective immediately and will be reflected in the next revision of the outreach training program guidelines. OSHA will not recognize training classes that exceed seven-and-a-half hours a day or do not meet all program content requirements. In such cases, trainers will not receive completion cards to distribute to students.

Closer to home:

1. On Sept. 28, OSHA announced it has concluded a special evaluation of state-run occupational safety and health programs under its jurisdiction.

- The Enhanced Federal Annual Monitoring and Evaluation (EFAME) reports provide detailed findings and recommendations about the operations of state-run OSHA programs in 25 states and territories.
- The enhanced review was initiated after a 2009 special OSHA report about Nevada's program, prompted by numerous construction-related fatalities in Las Vegas, and identified serious operational deficiencies in that state.
- The EFAME report and appendices for each of the 25 states, as well as each state's comment and fiscal-year 2009 self-evaluation report, are now available on OSHA's website.
- States have 30 days to provide a formal response, including a detailed corrective action plan for addressing findings and recommendations.
- The EFAME review also identified areas where states have adopted standards and procedures exceeding federal OSHA's requirements, such as injury and illness prevention programs.
- On Oct. 27, OSHA received MNOSHA's formal response to the EFAME report.
- The status of each state's efforts to improve its plans will be reflected in the fiscal-year 2010 Federal Annual Monitoring and Evaluation report, expected in 2011.

### **III. Staff reports: Compliance – James Krueger**

#### **Inspections**

- Fourth quarter FFY 2010:
  - investigated five fatalities and 10 serious injuries that occurred under MNOSHA jurisdiction;
  - conducted 627 inspections, total inspections for FFY 2010 are 2,691, which exceeds the goal by 191 inspections;
  - handled 144 complaints, which resulted in 75 inspections.

#### **Construction Seminar (formerly the Construction Breakfast)**

- Sept. 21, 2010: 10 participants attended "Locating underground utilities before digging."
- Nov. 16, 2010: topic is new EPA lead abatement rules.
- Food service has been discontinued and there is no longer a charge to attend.

#### **Outreach**

- During the third quarter of CY 2010, MNOSHA Compliance gave a total of 16 presentations to 957 attendees.

- During the same quarter, the division responded to 1,282 phone calls and 329 written requests (primarily email messages) related to safety and health issues.

### **Publications**

- The fall edition of *Safety Lines* was posted in October.
- Michigan will be publishing the next OSHSPA *GRASSROOTS* report. Minnesota submitted in August.

### **Training**

- Compliance staff members attended a total of 23 training sessions during the third quarter of CY 2010, including machine guarding and fall arrest systems. Eleven of these were Webinars conducted by OTI and the federal OSHA Directorate of Information Technology.
- During FFY 2010, Compliance staff members completed 156 training courses, including Webinars and online training. The majority of these were conducted by OTI.
- We currently have 72 total reserved spots at OTI for FFY 2011, with another nine enrolled in federal OSHA Webinars. We also have 11 people to register, or who have been registered, for classes at other venues.

### **Significant legislation rulemaking**

- Safe patient handling: Jan. 1, 2012 effective date still pending:  
182.6554 = physician, dental and other outpatient care facilities that move patients had 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;  
Jan. 1, 2011 all provisions of 182.6553 will be enforceable in health care facilities (hospitals, nursing homes and outpatient surgical centers).

Current MNOSHA rulemaking proposal:

Pending federal adoptions-by-reference –

- revising the notification requirements in the exposure determination provisions of the hexavalent chromium standards, direct final rule;  
revising the notification requirements in the exposure determination provisions of the hexavalent chromium standards, final rule, confirmation of effective date;  
safety standards for steel erection; final rule; technical amendment
  - proposed by MNOSHA Oct. 4, 2010,
  - comment period ended Nov. 3, 2010, no comments received, adoption pending.

Pending Minnesota Rules amendment –

- statutorily-required biennial update to Minnesota Rules 5208.1500 Standard Industrial Classification List for AWAIR
  - proposed by MNOSHA Oct. 4, 2010,
  - comment period ended Nov. 3, 2010, no comments received, adoption pending.

Future MNOSHA rulemaking:

federal OSHA issued a new final rule Aug. 9, 2010, addressing cranes and derricks in construction, which becomes effective at the federal level Nov. 8, 2010. State-plan states are required to issue a standard that is “at least as effective as” the federal standard within six months of the Aug. 9, 2010, federal publication date. MNOSHA will initiate rulemaking to adopt the federal standard, with adoption targeted by Feb. 9, 2011.

### **OSHSPA, family meeting**

- James Krueger and Commissioner Steve Sviggum attended the OSHSPA meeting in Las Vegas, Oct. 18 through 20, 2010. There were three key issues: EFAME reports, NEPs and penalties. Also, James was elected to the OSHSPA board of directors during this meeting.

## Staff reports: Consultation – Dave Ferkul

### Consultation statistics

- Fourth quarter FFY 2010:
  - 288 initial visits;
  - 41 follow-ups;
  - 46 training visits with more than 800 participants;
  - 59 interventions with more than 2,200 participants;
  - 1,696 hazards identified, including 1,420 serious requiring abatement.

### MNSTAR Program

- **Currently:** 53 sites participating, 45 STAR sites and eight Merit sites.
- Fourth quarter FFY 2010:
  - one Merit site;
  - three re-certification evaluations
    - eight re-certifications for FFY 2010;
  - new MNSTAR/SHARP team;
  - eight applicants vying for approval
    - initial full-service consultations have been completed.

### MNSHARP

- Forty-three worksites participating (four construction), with five participating in pre-MNSHARP;
- Fourth quarter FFY 2010:
  - nine re-certifications
    - 18 re-certifications in FFY 2010; and
  - two awarded MNSHARP
    - eight sites awarded MNSHARP in FFY 2010.

### Ergonomics

- Fourth quarter FFY 2010:
  - eight initial visits;
  - three training sessions; and
  - six interventions.
- Alliance with Care Providers of Minnesota for on-site consultation and training.

### LogSafe

- Fourth quarter FFY 2010:
  - 17 initial visits, with 91 serious hazards identified;
  - two follow-ups;
  - five training sessions;
  - 24 interventions; and
  - a lot of work with the public sector, providing chain saw training.

### Safety Grants

- Online application now available

- Continue to review and award grants on a bi-monthly basis
  - stronger emphasis on the hazard assessment.
- Fourth quarter FFY 2010 (6-16 to 8-15 round):
  - 28 applicants were awarded grants, 59 applied and 46 were approved for review; and
  - \$163,315 awarded, \$201,212 requested, with more than \$400,000 requested overall.

### **Outreach/training**

- 105 training and intervention visits in fourth quarter FFY 2010
  - B.E.S.T.
  - DLI
  - St. Cloud DEED Office (violence prevention)
  - Minnesota chapter of Housing and Redevelopment officials
  - Minnesota Thermal Sciences
  - Rotary Club
  - Bureau of Indian Affairs
  - Tree Trust

### **IV. Business – Carol Bufton**

- Enhanced Federal Annual Monitoring and Evaluation (EFAME) Report

Jim Krueger gave a presentation about the EFAME Report – a PowerPoint presentation handout was included in each member's packet. Federal OSHA was out in January 2010 and inspected approximately 100 complaint files to see how they are documented and if all items were adequately addressed that needed to be. They looked at all the 2009 fatalities records to make sure citations were cited correctly; they also reviewed some discrimination files.

Overall, the process in Minnesota was very productive. Jim reviewed the 11 findings and responses included in the PowerPoint presentation.

Mark Hysell added that the cooperation federal OSHA received from the MNOSHA staff was phenomenal. He thanks MNOSHA and stated we have an outstanding program.

More information about Minnesota's response to the FY2009 EFAME Report can be found online at [www.dli.mn.gov/Osha\\_audit\\_response.asp](http://www.dli.mn.gov/Osha_audit_response.asp).

- MNOSHA benefits

Krueger and Ferkul gave a joint presentation about the benefits of a state-plan OSHA program; a PowerPoint presentation handout was included in member's packets. There are currently 26 state-operated OSHA programs. State-plan programs cover approximately 40 percent of private-sector workers nationally and extend coverage to more than 10 million workers in the public sector. OSHSPA states cover more than 2.9 million workplaces and 58 million workers. They bring unique strengths and flexibility. Federal OSHA has long recognized state-plan programs for their innovative approaches to protecting working men and women across America.

MNOSHA Workplace Safety Consultation (WSC) provides free consultation services, on request, to help employers prevent workplace accidents and diseases, identify and correct safety and health hazards, and manage effective safety and health programs. MNSHARP and the MNSTAR Program are two cooperative programs where WSC assists employers in achieving safety and health management excellence. They are given recognition for achieving improvements. WSC also has many alliances and partnerships in the industry, as well as providing assistance and services regarding violence prevention, ergonomics, labor-management safety committees, loggers' safety education and safety hazard abatement grants.

Carol Bufton reminded members of the coming 2011 meeting dates and to mark their calendars.

- 2011 council meeting dates: Feb. 4, May 6, Aug. 5, Nov. 4.

**V. Future agenda items**

- Illnesses related to extended occupational exposures;
- employers approach to distracted driving; and
- annual Worker Memorial Day.

*Motion to adjourn by Daryl Tindle; seconded by Mike Mueller. All voted in favor and the meeting adjourned at noon.*

Respectfully submitted,

*Julie A. Klejewski*

Julie A. Klejewski  
Administrative Assistant