

AGREEMENT

BETWEEN

**OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
REGIONAL OFFICE and the
BRAINTREE AREA OFFICE**

AND

**NATIONAL PARK SERVICE,
CAPE COD NATIONAL SEASHORE
Wellfleet, Massachusetts 02667**

I. BACKGROUND

In the past, the National Park Service (NPS) has experienced the highest employee injury and illness rates of all Department of Interior (DOI) bureaus. Recognizing this problem, the NPS approached the Occupational Safety and Health Administration (OSHA) asking for assistance in improving the employee safety and health programs at establishments with high lost time case rate (LTCR).

As a result, the NPS and OSHA enters into this Agreement pursuant to the authority of the NPS Organic Act of 1916, 16 U.S.C. 1-4 and sections 19 and 24 of the Occupational Safety and Health Act of 1970 and Executive Order 12196 that allows OSHA to provide assistance to specific sites categorized as National Parks, National Recreation Areas, and National Seashores. This agreement describes the scope of assistance that will be provided by the Braintree Area Office and the OSHA Regional Office to the Cape Cod National Seashore which has been collaboratively selected by NPS and OSHA.

II. OBJECTIVES

- A. Develop and implement an effective comprehensive safety and health program in accordance with 29 CFR Part 1960 - *Basic Program Elements for Federal Employee Occupational Safety and Health Programs.*
- B. Reduce the total case rates for selected park units by 3% per year, while at the

same time increasing the timeliness of reporting new injuries and illnesses to ESA/OWCP for each agency by 5% per year based on the NPS 5-year average lost time case rate (LTCR). (See Attachment I.)

- C. Reduce the LTCR for selected park units sector by 10% per year.
- D. Identify and correct the primary causal factors in employee injuries and illnesses, in particular those behind the three top causes of injuries and illnesses.
- E. Improve employee productivity and quality of life by providing safe and healthful occupational environments.
- F. Improve the safety and health program to become qualified and eligible to participate in a Federal Agency Voluntary Protection Program (FAVPP).

III. STATEMENT OF AGREEMENT

OSHA, the NPS, and its unions, agree to work in partnership to improve the employee safety and health at Cape Cod National Seashore, Wellfleet, Massachusetts and its park units. Accordingly they make the following commitments:

- A. The OSHA Braintree Area Office and the OSHA Regional Office agree to:
 - 1. Assist NPS in identifying programmatic needs at this site by reviewing the Documented Safety Program (DSP) and provide practical assistance in implementing the safety and health program.
 - 2. Assist NPS in identifying the primary causal factors in injuries and illnesses, in particular the three top hazards at this site and develop countermeasures for correcting those hazards.
 - 3. Provide access to assistance and training resources including:
 - a. A safety management training session for division chiefs.
 - b. OSHA Training Institute (OTI) courses such as off-site courses sponsored by the Federal Safety and Health Councils, and courses available at the OTI Education Center, Region I at Keene State College in Manchester, New Hampshire.
 - c. Guidance to other available sources of training such as monthly safety and health training sessions with the Federal Safety and Health Councils..
 - 4. Help mentor NPS safety and health professionals and offer technical

assistance at Cape Cod National Seashore by arranging Agency Technical Assistance Request (ATARs) so that NPS safety and health professionals could accompany OSHA compliance officers (CSHOs) on inspections of or ATARs for Federal agencies for training. Also, we will arrange for them to visit Voluntary Protection Program (VPP) sites and/or other Federal agencies in the Region. Technical assistance may include:

- a. Practical abatement assistance
 - b. Technical equipment loans
 - c. Air monitoring assistance
5. Accept the findings, if satisfactory, of NPS investigations and inspections of complaints and referrals that would normally be handled by OSHA. These will be conducted in accordance with OSHA policy except as modified by this agreement as follows:
- a. Complaints. (See Appendix I for the description of the types of complaints.)
 - 1) Complaint Inspections. If the complainant agrees, the NPS safety and health professionals may inspect those complaints which would normally result in an OSHA complaint inspection except for:
 - a) Complaints evaluated as imminent danger or high gravity serious;
 - b) Complaint investigations which NPS fails to provide an adequate response to; or
 - c) Complaints where the complainant provides evidence that NPS's response to a complaint investigation is false or does not adequately address the hazard(s).
 - 2) Complaint Investigations.
 - a) When OSHA asks the NPS to inspect a complaint, the NPS safety and health professionals will give a response to the OSHA Braintree Area Office, which has been signed off by the establishment parties. (See Appendix I for definition of establishment parties.)

NOTE: If either establishment party chooses not to sign off on the response, that party can provide a written explanation documenting why. The explanation will be an attachment to the response to OSHA, or, in the case where no explanation is given, the response will advise that no explanation was provided.

b) If a response satisfactory to OSHA is not received by the due date, OSHA may conduct an inspection.

b. Referrals.

1) For referrals handled by letter, NPS safety and health professionals will prepare a written response to OSHA which will be signed off by the establishment parties. (See Appendix I for definition of establishment parties.)

NOTE: If either establishment party chooses not to sign off on the response, that party can provide a written explanation documenting why. The explanation will be attached to the response to OSHA, or, in the case where no explanation is given, the response will advise that no explanation was provided.

2) If a response satisfactory to OSHA is not received by the due date, OSHA may conduct an inspection.

6. The Federal Agency Program Officer (FAPO) will assist NPS in preparing for participation in the Federal Agency Voluntary Protection Program (FAVPP).

7. The FAPO will assist the NPS' providing training for their staff through membership in the Boston Federal Safety and Health Council and other sources as previously mentioned in this agreement.

B. The Superintendent agrees to:

1. Provide a written policy statement from the Superintendent as a part of the introduction to the DSP that identifies safety as the first priority for every

job.

2. Post copies of this signed agreement and the written safety and health policy at key locations.
3. Have top management officials, including division heads and union leadership, attend a program presented by OSHA on basic safety management.
4. Develop and implement a comprehensive training program designed to achieve the goal of educating all employees on safety and health and the need to improve the current safety and health record.
5. Commit to implementing the Documented Safety Program (DSP) and achieving the objectives of this agreement.
6. Make sure that employees participate in developing and managing the safety and health program by soliciting participation of workers and their representatives in:
 - a) Hazard identification and abatement;
 - b) Employee training;
 - c) Participation in implementing a comprehensive safety and health program at this site;
 - d) Employee attendance at all related meetings and training sessions;
 - e) Employee access to all documents pertinent to the safety and health program and this agreement;
 - f) Support of existing safety and health committees; and
 - g) Employee access to safety and health records.
7. Make sure that employees are not subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in the DSP or this agreement.
8. Implement a system of accountability for safety and health that includes rewards, consequences, behavior modification, and inclusion of safety and health in all performance standards.
9. Improve safety and health related communications within the site and with

other similar sites, including sharing safety and health programs, accident investigation results, risk management information, and methods of abatement.

10. Provide adequate resources to effectively implement the safety and health program. However, nothing contained in this Agreement will be construed as obligating either OSHA or the park unit to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this agreement.
11. Implement a system of internal safety and health self audits including action items and follow-up.
12. Ensure union participation, when represented at this particular site, as per section III.C. of this agreement.

C. Union leadership or their representatives will:

1. Inform workers through the union channels about the agreement.
2. Make sure that the Cape Cod National Seashore's senior local union officials participate, as appropriate, in all inspections, assistance visits, and program evaluations conducted by OSHA and by NPS safety and health officials.
3. Make sure that Cape Cod National Seashore's senior local union officials participate, as appropriate, in NPS investigation and inspection of worker complaints and any OSHA referrals and sign off on the response to OSHA or, if they choose not to sign off, provide a written explanation documenting why. (Reference Section III.A.9.)
4. Ensure appropriate employee participation in the agreement as outlined in Section III, A.3, B.4, B.5, B.6 and B.11.

IV. TERM OF AGREEMENT

This agreement will start 90 days from and run for a term of five (5) years beginning from the last date the agreement is signed. The agreement will be reviewed at the end of the five-year term by the signatories and may be renewed by simple letter of renewal signed by the respective signatories. The agreement may be updated at the time of renewal or at any time before renewal by mutual agreement of the signatories.

V. KEY OFFICIALS

The primary key officials in this agreement include the following:

For OSHA: Ruth McCully
Regional Administrator

Brenda Gordon
Area Director, Braintree Area Office

Richard Fazio
Assistant Regional Administrator

For NPS: Maria Burks, Superintendent
NPS Cape Cod National Seashore

Michael Murray, Deputy Superintendent
NPS Cape Cod National Seashore

Robert Cox, Jr.
President AFGE, Local 3789
NPS Cape Cod National Seashore

Other NPS key officials include the Assistant Superintendent, the several division chiefs, and the Risk Manager as general coordinator, and for OSHA include the Federal Agency Program Officer (FAPO) and the Assistant Area Director of the Braintree Area Office.

VI. FUNDS

It is not anticipated that any funding will be transferred between OSHA and the NPS. However, should there be a need for transfer of funds to accomplish the objectives of this agreement, it will be done according to the policies of the agencies and the respective departments of which these agencies are a part.

VII. TERMINATION

Any problems that arise that cannot be resolved satisfactorily through the agreement participants will be addressed in writing. A letter outlining the problems will be sent to all participants and will constitute grounds for discontinuing the agreement if these concerns cannot ultimately be resolved.

SIGNATURES

RUTH McCULLY
Regional Administrator, OSHA

MARIA BURKS
NPS Superintendent

Date: _____

Date: _____

BRENDA GORDON
Braintree Area Director, OSHA
Date: _____

MICHAEL MURRAY
NPS Deputy Superintendent
Date: _____

RICHARD FAZZIO
Assistant Regional Administrator, OSHA
Date: _____

ROBERT COX, JR.
NPS, President AFGE, Local 3789
Date: _____

APPENDIX I

Frequently used OSHA terms.

Agency: The highest operational level of an organization. For example, the Department of Labor is an agency.

Agency safety and health official: The agency or subagency safety and health manager (not the Designated Agency Safety and Health Official).

Agency Technical Assistance Request (ATAR): A request by a Federal agency for onsite assistance which may include hazard abatement advice, training, a partial or comprehensive inspection, and program assistance.

Baseline Questionnaire: A comprehensive questionnaire prepared to assess an agency/subagency compliance with 29 CFR 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters.

Catastrophe: The hospitalization of three or more employees resulting from a work-related incident.

Complaint: Notice of an alleged hazard over which OSHA has jurisdiction, a violation of the Act or 29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters, reported by a past or present employee, employee representative, or any other individual knowledgeable of the alleged hazardous condition.

- a. Complaint Inspection: A complaint inspection is an inspection that is initiated primarily as a result of a complaint, is conducted by an OSHA compliance officer at the agency's worksite, and meets at least one of the criteria listed below:
 1. The complaint was reduced to writing, is signed by a current employee or employee representative, and states the reason for the inspection request with reasonable particularity. In addition, there are reasonable grounds to believe that a violation of a safety or health standard or danger exists.
 2. The complaint alleges that physical harm, such as disabling injuries or illnesses, has occurred as a result of the complained of hazard(s) and there is reason to believe that the hazard or related hazards still exist.
 3. The complaint is based on an allegation of an imminent danger situation.
 4. The complaint identifies an establishment or an alleged hazard covered by a local

or national emphasis program.

5. The employer fails to provide an adequate response to a complaint investigation, or the complainant provides evidence that the agency's response is false or does not adequately address the hazard(s).
 6. The establishment that is the subject of the complaint has a history of egregious, willful, or failure-to-abate Notices, within area office jurisdiction and within the last three years. The Area Director may determine not to inspect a facility when good quality abatement evidence has been provided and programs have been implemented to prevent a recurrence of hazards.
- b. Complaint Investigation: A complaint investigation is conducted for other complaints that do not meet one of the above complaint inspection criteria. It does not include an on-site inspection of the workplace.

Establishment: A single physical location where business is conducted or where services or operations are performed. Typically, an establishment refers to a field activity, regional office, area office, installation, or facility.

Establishment parties: The senior local union official(s) and the superintendent or his/her designee at the establishment level.

Fatality: An employee death resulting from a work-related incident or exposure in general from an accident or illness caused by or related to a workplace hazard.

Follow-up Inspection: An inspection conducted primarily to determine if the previously cited violations have been corrected.

High gravity serious: A greater probability of death or injury involving permanent disability or chronic, irreversible illness.

Monitoring Inspection: An inspection conducted to ensure that hazards are being corrected and employees are being protected, whenever a long period of time is needed for an establishment to come into compliance, or to verify compliance with the terms of granted alternate standards.

OSHA Policy: Guidance given by OSHA Instruction CPL 2.103, dated September 26, 1994, "Field Inspection Reference Manual"; OSHA Instruction FAP 1.3, May 17, 1996, "Federal Agency Safety and Health Programs"; or information in these documents as superseded by more current guidance given in OSHA Notices, memos, etc.

Referral: Notice to OSHA of an alleged hazard, a violation of the Act, or a violation of 29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters, given by any source not listed for complaints. Referrals include media reports and cross referrals between an OSHA safety compliance officer to a health

compliance officer and vice versa.

Signing Ceremony: A ceremony held by the Assistant Secretary for OSHA or his representative attended by the signatories to the agreement.

Subagency: The operational level below the agency level. For example, the Occupational Safety and Health Administration is a subagency of the Department of Labor.

Subagency parties: The senior local union official(s) and top level management at the subagency level.

Three top causes: The three top injuries and illnesses at the subagency level will be identified by OSHA's Office of Federal Agency Programs and their causes will be identified by working cooperatively with top agency/subagency safety and health officials and through workers' compensation (OWCP) data.