

**ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH**  
**(ACCSH)**

**MINUTES of 18-19 May, 2004 Meeting**

U.S. Department of Labor  
200 Constitution Ave.  
Washington, D.C.

The meeting of the Advisory Committee on Construction Safety and Health (ACCSH) was called to order by the **Chair, Robert Krul**, at 8:30 a.m. on Tuesday, May 18, 2004. The following members were present for all or part of the meeting:

<b>NAME</b>	<b>SECTOR Represented</b>	<b>TITLE &amp; ORGANIZATION</b>
Robert Krul Chair	Labor	Dir. of Safety & Health, United Union Roofers Waterproofers & Allied Workers
Jane F. Williams	Public	President, A-Z Safety Resources
Frank L. Migliaccio JR.	Labor	Exec. Dir. Of Safety & Health, Intl. Assoc. of Bridge, Struct. Ornam. & Reinforcing Iron Workers
Scott Schneider	Labor	Dir. Of S&H, Laborers' Health & Safety Fund of No. America
William Rhoten	Labor	Dir. Of S&H, U. A. of Journ. & Appr. Plumbers Of the Pipe Fitting Industries of the U.S. and Canada
Greg Strudwick	Mgt.	President, Greg Strudwick & Assoc. Inc.
David M. Bush	Mgt.	CEO, Adena Corporation
Mike Sotelo	Mgt.	Vice President/Field Operations, W.G. Clark Construction Co.
Thomas A. Broderick	Public	Executive Director, Construction Safety Council
Kevin Beauregard	State	Assist. Dep. Commissioner, Dir. of Div. of Occupational Safety & Health, N.C. DOL
Michael Thibodeau	Mgt.	Dir. Of Risk Mgt., Lennar Corp.

NAME	SECTOR Represented	TITLE & ORGANIZATION
Cheryl Estill	Fed.	Indust. Hygiene Sup., Industry Wide Study Br., DSHEFS, NIOSH
Bruce Swanson	Fed.	Designated Federal Representative (DFR) for ACCSH, Director, Directorate of Construction (DOC)

Approximately 30 members of the public were in attendance at various times, as were a number of DOL/OSHA representatives, including **Sarah Shortall** (ACCSH Counsel, Office of the Solicitor), **Stew Burkhammer** (DOC), **Felipe Devora** (DOC), and **Michael Buchet** (DOC).

**Robert Krul**, the ACCSH Chair, welcomed all attendees, and asked all present to sign in on the ACCSH sign-in sheet. He then discussed the emergency access route and emergency medical procedures, and requested that attendees silence their cell phones. The Chair requested that members of the public who wished to address ACCSH submit their names to the Chair, and indicated that the public comment period would probably be the next day, prior to adjournment. All attendees then introduced themselves.

**Davis Lane**, representing **Assistant Secretary John L. Henshaw**, gave a presentation on **OSHA**, its recent activities, and future plans. Lane discussed the current situation at OSHA, including ongoing initiatives, accomplishments, pending actions, and the President's 2005 budget. He pointed out that the 2005 OSHA budget is over \$4 million higher than the 2004 budget (bringing it to total more than \$461 million), and that the 2005 budget includes a \$1.7 million increase to fund consultation services, and \$4.4 million for compliance, assistance, and outreach. He reiterated the Assistant Secretary's desire to focus on fair and firm enforcement, in addition to outreach, training, and education. As evidence of this enforcement commitment, Lane cited the fact that OSHA will maintain current staffing levels of compliance officers, and projects that the raw numbers of federal inspections in 2005 will be maintained at current levels. Lane discussed OSHA attention to trenching and excavation safety, and Hispanic issues, pointing out that Hispanic worker fatalities have declined according to BLS statistics for 2002, after having increased for a number of years. He also indicated that Assistant Secretary Henshaw is changing to emphasis of Harwood grants away from one-on-one training in order to encourage the use of new technologies and methodologies to reach and train more

workers. The new budget includes \$4 million for training material grant development, and \$1.4 million for targeted training topics, including construction. Lane described some new initiatives, such as Enhanced Enforcement, a new VPP in Construction program, and the Challenge program. He explained that the goal of the Enhanced Enforcement program is to focus attention, and affect change at recalcitrant work places, to try to reduce willful violations by opening violators up to more court action. He explained that the way this works is that, OSHA has the authority, when violations become a file order of the Occupation Safety and Health Review Commission, to go to the courts, and the courts can then make the order a court decision. This means that if the same violation occurs again, the violator could be guilty of not only of a failure to abate under the Occupational Safety and Health Act, but also of a failure to respond to a court action. Lane discussed the status of several pending standards, including: Silica; Hearing conservation; Confined Space; and Hexavalent Chromium. Lane also announced the fact that the DOL will host a Department of Labor Hispanic Summit on 22 July in Orlando Florida. The main focus of the Summit is to examine Hispanic worker issues across all industries. In response to a question from an ACCSH member, Lane discussed what OSHA is doing in relation to motor vehicle safety. He indicated that at some point, the Assistant Secretary will assign responsibility for motor vehicle safety issues to a specific person, who would then report directly to him. Although the individual has not yet been assigned, the agency will begin examining ways to improve compliance with the current executive order, which requires all federal employees who are in a government vehicle or on government business, to have their seat belts buckled, both in the front and rear of the vehicle. In addition, OSHA intends to enhance motor vehicle safety awareness in general, especially the importance of seat belt usage.

**Robert Krul**, the ACCSH Chair, introduced Standards Review of the Hexavalent Chromium (HVC) Standard by arranging for **Bruce Swanson** to inform ACCSH members exactly what OSHA needed from ACCSH concerning the proposed HVC Standard. Specifically, Swanson pointed out that some ACCSH members did not feel ready to comment on the standard at the February ACCSH meeting because they felt they had not had enough time to read the background material. He stated that OSHA needed an input on HVC at this ACCSH, and that all appropriate OSHA personnel, including **Steven Witt** (Director, Directorate of Standards and Guidance), **Bob Burt** (Director of the office of Regulatory Analysis), and **Amanda Edens** (Directorate of Standards and Guidance) were standing by to answer any further questions ACCSH members might have.

Witt informed ACCSH that OSHA would take all the input submitted by ACCSH, place it on the docket, and make sure that it is considered as part of the total information available to OSHA personnel as they complete the final proposal. Witt also informed ACCSH that the schedule for the Standard required by the court order in a briefing given at the February ACCSH had not changed, and that OSHA was still bound by the court order to publish a proposed HVC Standard by October, 2004. A free-flowing, wide-ranging discussion ensued among ACCSH members, the ACCSH Counsel, and various OSHA personnel, concerning various aspects of the HVC Standard. It was pointed out that one SBREFA recommendation was for the HVC Standard not to cover the Construction Industry. Government legal experts present (including **Claudia Thurber**, OSH's Counsel for Health Standards) indicated that, for OSHA to exclude the Construction Industry from the HVC Standard in this way, risked giving the presiding judge the impression that the government was defying the court. The most debated issue centered on whether the HVC Standard should include Wet Portland Cement operations. The current proposal excludes Wet Portland Cement operation from coverage by the Standard. Some ACCSH members felt that this was proper because there is virtually no airborne HVC danger from HVC during wet cement operation - the major health problem experienced by wet cement workers is contact dermatitis, caused by skin contact with the wet cement, which could be precluded by proper use of appropriate Personnel Protective Equipment (PPE). This contact dermatitis condition can be due to an allergic reaction to the HVC, or the other irritating constituents of wet cement. OSHA's rationale for exempting Wet Portland Cement operations from the standard, involved the facts that the data is somewhat inconclusive, that there exists a PPE and a sanitation standard, and that this issue might better be handled through a non-regulatory guidance effort, rather than the HVC standard itself. Some ACCSH members felt strongly that Wet Portland Cement operations should be covered by the HVC standard. It was pointed out that the next public comment period on the Standard would probably come in February of 2005, and that the Standard would be published by January 2006.

The discussions resulted in the following votes by ACCSH members in response to the following **HVC Standard questions** (although these items are listed as "questions," they carry the same weight as **Motions** passed by ACCSH):

**HVC Standard Question #1:** Are you in favor of including wet Portland Cement in the final hexavalent chromium standard?

7 votes Yes

5 votes No

**HVC Standard Question #2:** Are you in favor of establishing an exposure assessment requirement, whereby employers have to consider that their employees are above the PEL for certain tasks and provide appropriate protection, such as respirators, until an initial assessment show otherwise (specifically the following tasks are intended: abrasive blasting of materials coated with chromium; welding, cutting or torch burning of stainless steel, or of materials coated with chromium; and spray application of chromium-containing paints or coatings)?

12 votes Yes  
0 votes No

**HVC Standard Question #3:** Are you in favor of recommending to OSHA that the term "change area" be used instead of the term "change room" to avoid confusion?

12 votes Yes  
0 votes No

**HVC Standard Question #4:** Are you in favor of recommending to OSHA that it is appropriate not to require any housekeeping provisions for the Construction Industry?

12 votes Yes  
0 votes No

**HVC Standard Question #5:** Are you in favor of recommending to OSHA that, in Construction, it is practical to establish regulated areas?

12 votes Yes  
0 votes No

**HVC Standard Question #6:** Are you in favor of recommending to OSHA that the prohibition against eating, drinking, and smoking, as outlined in the proposal is valid?

11 votes Yes  
0 votes No  
1 abstention

**HVC Standard Question #7:** Are you in favor of recommending to OSHA that, (without acknowledging that what is contained in the draft proposal constitutes the final method of medical screening) some form of medical screening will be needed in the HVC Standard?

12 votes Yes  
0 votes No

**HVC Standard Question #8:** Are you in favor of recommending to OSHA that you agree that the Construction Industry should be included in the HVC Standard?

7 votes Yes  
5 votes No

**Robert Krul**, the ACCSH Chair, introduced several individuals and a group who had signed up to give public comment. Chris Trahan from the Center to Protect Workers Rights (CPWR) was the first to speak. She discussed CPWR's history working with unions, owners, and other organizations, such as NIOSH, to work on ameliorating the cement-related contact dermatitis/allergic response problems experienced by workers. She described a training program CPWR developed which is available on CD-ROM. Copies can be obtained by contacting Chris at:301-578-8500. She also described several other hard copy products available, including a pamphlet designed for doctors, describing skin problems related to contact with Wet Portland Cement, and a pamphlet on proper glove use. After discussing several more health and safety issues, Chris arranged to forward copies of the training CD's to ACCSH members.

Next the **Chair** introduced **Jim Tomaseski**, the Safety and Health Director for the International Brotherhood of Electrical Workers. Krul pointed out that Tomaseski is also the Vice Chairman of the ANSI A10 committee, which deals with voluntary standards for construction. Tomaseski introduced several people from the employer's side of the industry, whose companies do construction work directly under the auspices of Subpart V and 1910.269. These contractors all do work on properties owned by the Edison Institute. He pointed out that the Subpart V is over 30 years old, and that a new standard is mandated by new technology, new work procedures, and new work rules. Tomaseski addressed some of the issues involving Flame Resistant (FR) clothing, and voiced his opinion that FR clothing should be considered PPE, and be paid for by the employer. He also discussed the language addressing the host employer/contractor relationship, which involves what kinds of information the contractor needs to

receive from the host in regard to system operation parameters, circuit operation parameters, etc. He suggested that the National Electric Safety Code should be a prime source for OSHA to research to ensure the new regulation is workable.

Next the **Chair** announced that Joe Walker, the editor of the International Safety Equipment Association's newsletter - **Protection Update**, wanted to offer those in attendance free subscriptions. He announced that the free subscriptions could be arranged for by calling Joe Walker at: 703-525-1695.

Next the **Chair** announced that a copy of the HVC court order was available at the head table for ACCSH members to peruse.

Then **ACCSH Chair**, began the **Standards Review of Subpart V** by introducing **Steven Witt**. He, in turn, introduced Dave Wallace, the Office Director responsible for Subpart V, and Brad Hammock, the Solicitor's Office representative working on the Subpart V rulemaking. Witt reminded ACCSH that he had briefed the board twice in the past on this rulemaking, and that on this occasion he was soliciting ACCSH input and advice as they move forward to publish a proposal on Subpart V. Wallace indicated that they had taken the General Industry Maintenance Standard (1910.269), promulgated in 1994, and tried to insert many of those requirements into Subpart V. He indicated that they had inserted new or updated requirements on training, host employer contractor provisions, and flame-resistant clothing. Wallace also discussed the electrical PPE requirements that are currently in Subpart V, and pointed out that these are being updated to match the General Industry standard in 1910.137. He explained that this is being done to make the requirements more applicable to all aspects of construction, not just electric utility work. He went on to point out that some of what OSHA needed ACCSH input on involved a recommendation in the SBREFA report. These issues were discussed in detail, and then ACCSH voted as indicated below:

**Subpart V Standard Question #1:** Are you in favor of requiring the host employer to make available to the contractor the raw information needed to perform a hazard assessment?

12 votes Yes  
0 votes No

**Subpart V Standard Question #2:** Do you believe that Flame Resistant (FR) Clothing is necessary for the protection of workers against electrical are under Subpart V?

12 votes Yes  
0 votes No

**Subpart V Standard Question #3:** Do you recommend that OSHA make the construction and electric power transmission and distribution installations consistent with the General Industry requirements for maintaining these installations?

12 votes Yes  
0 votes No

**Subpart V Standard Question #4:** Do you recommend that OSHA proceed with its update of Subpart V in accordance with the previous ACCSH motions?

12 votes Yes  
0 votes No

**Noah Connell** (Director of the Office of Construction Standards and Guidance) presented a progress report on **Negotiated Rulemaking Subpart N - Cranes And Derricks (C-DAC)**. He reviewed the history of the process, the composition of the committee, and the fact that the committee generally tried to meet once a month. Connell gave a synopsis of the committee's deliberations, and indicated that the committee has been quite successful in reaching consensus on many issues. The committee defined consensus as having no more than two non-federal dissenting members. Some outstanding issues that the committee was still dealing with included: wire rope inspection requirements; operator qualifications; fall protection; power line safety; and derricks and floating cranes. Connell estimated that, assuming the committee finishes its work in July, as planned, the SBREFA process would be well underway by the Fall of 2004.

The **ACCSH Chair** led a discussion on the subject of **Workgroup Charges**. The Chair gave the committee a number of reasons that ACCSH can rationally only support a limited number of Workgroups at any given time. One reason given for not disbanding Workgroups after they fulfilled their charge to develop an input to OSHA was the feeling that OSHA might come back to ACCSH and



want more work done by a Workgroup that had been disbanded. After the ACCSH Counsel informed the Chair that he had full authority under the ACCSH charter to form a Workgroup any time there was a need, a **Motion** was made and seconded, as follows:

**Workgroup Motion #1:** Once the input of a Workgroup has been given to OSHA, the Workgroup will be disbanded, with the understanding that the Chair can reconstitute a Workgroup, if necessary.

12 votes Yes  
0 votes No

The **ACCSH Chair** led a discussion on the subject of **Workgroup** work products and placing those products on the **ACCSH** webpage. The process including its limitations for posting workgroup work products on the ACCSH webpage is described in the **ACCSH Procedures and Guidelines**. ACCSH counsel noted that Workgroup work products were included in OSHA's e(electronic)docket and available through OSHA's webpage.

**Kim Lazor** (Special Assistant to the Assistant Secretary) briefed ACCSH on the **Hispanic Summit**. Lazor reiterated that Hispanic Summit will be held on 22 July in Orlando Florida, with the Secretary of Labor giving the Keynote luncheon address. There will be several speakers addressing the general session, and a number of breakout sessions will be held throughout the day, addressing construction, maritime, and general industry. In addition, sessions covering immigration, agriculture, small business, and Florida regional issues are being planned. The goal of the event is to raise awareness about the safety and health issues impacting the Hispanic community. Lazor also indicated that invitations would go out in June, and that there would be an on-line registration site available. Approximately 300 to 500 people are expected to attend the event.

**Felipe Devora** briefed ACCSH on a variety of Hispanic issues. The issue of what information should be translated is one he wanted input on. His experience indicated that side-by-side presentations are very effective. He also indicated that minimizing verbiage, and utilizing bullet points seemed to be much more effective with most groups. Other ACCSH members agreed, and said that maximizing the use of pictures and photos while minimizing word count seemed to be more effective. The **Chair** informed ACCSH that he would attempt to have the Diversity and Multilingual Workgoup co-chairs funded to attend the Summit and give the full committee a report at the next meeting.

**Stew Burkhammer** gave a **Partnerships/Alliances Update**. He described the OSHA Challenge program and pointed out that after going through the Challenge program, a program or site would be ready to get into VPP if they so desired. Currently the program will be run as a pilot, and in the future administrators will be selected through a Federal Register process. Burkhammer also discussed the VPP program for construction, which he indicated will be ready to go in October of this year. This program differs from the traditional VPP, in that the process is streamlined, and paperwork is reduced. Burkhammer discussed Alliances, saying currently we have 180 alliances nationwide, and 11 of those are in construction.

The **ACCSH Chair** announced that the Task Force on Trenching would meet at 1:00 pm that afternoon instead of at 1:30 pm as originally scheduled. **Beauregard** pointed out that there would be a Tower Workgroup meeting at 1:00 pm also. The Chair then proceeded to go down the list of Workgroups to discuss which ones would be disbanded in accordance with the new ACCSH policy. The following **Motion** was made and seconded, as follows:

**Workgroup Motion #2:** The ACCSH Silica and HVC Workgroup are disbanded as of 19 May 2004.

12 votes Yes  
0 votes No

**Swanson** announced that in the future, DOC will try and schedule the Workgroups in accordance with the wishes of the joint chairs, to have a meeting on the day before ACCSH, or to have a Workgroup meeting subsequent to the ACCSH meeting. He also indicated that he would attempt to find funding for more Workgroup chairs to attend the Hispanic Summit.

The **Chair** proceeded to address **New Business**. Schneider passed out a document containing a proposed recommendation from ACCSH to OSHA presenting a summary of how the HVC standard should apply in construction, when only dealing with Wet Portland Cement exposure. The following **Motion** was made and seconded:

**HVC Motion #9:** ACCSH recommends to OSHA that they utilize the written summary provided by the ACCSH Chair as a guide to delineate a method to put wet cement into the Standard, without placing cement workers under the airborne standard, and thus requiring exposure assessments.

12 votes Yes  
0 votes No

**Schneider** passed out to ACCSH members a written proposal for a **Fatality Free Week**. A **Motion** was made and seconded as follows:

**Fatality FREE Week Proposal #1:** Recommend that OSHA consider developing a campaign like the written **Fatality FREE Week Proposal** for implementation next April.

12 votes Yes

0 votes No

The **Chair** requested that the minutes from the February 2004 ACCSH be voted on. A **motion** was made and seconded as follows:

**February ACCSH Minutes #1:** Recommend the draft February 12 - 13, 2004 ACCSH Minutes be accepted as circulated.

12 votes Yes

0 votes No

**Swanson** took an **Action Item** that all briefings scheduled briefings for the May ACCSH would be carried over to the next meeting.

In response to a procedural question raised by the **ACCSH Counsel**, the following **Motion** was made and seconded:

**ACCSH Procedures and Guidelines Motion #1:** Document references discussed previously will be incorporated into the ACCSH Procedures and Guidelines, and the new document will be presented to ACCSH at the next meeting.

The **Chair** indicated that the next ACCSH meeting would probably be held in Washington DC, in late September, 2004. He indicated that DOC would choose a date, and promulgate it via Federal Register, the ACCSH web page, and email. **Swanson** pointed out that there could potentially be a 50% turnover of the ACCSH membership prior to the next meeting.

ACCSH adjourned at 11:28 am on 19 May, 2004.

