

**U.S. Department of Labor – Occupational Safety and Health Administration  
 Advisory Committee on Construction Safety and Health (ACCSH)  
 Minutes of June 23-24, 2005 Public Meeting  
 U.S. Department of Labor, Frances Perkins Building, Room 3437 A/B/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 Thursday June 23, 2005. The following members were present for all or part of the meeting.

Name	Sector Represented	Title and Organization
Robert Krul	Labor	Director of Safety & Health, United Union Roofers Waterproofers & Allied Workers
Michael Thibodeaux Frank L. Migliaccio, Jr.	Public	Director of Risk Management, Lennar Corporation Executive Director of Safety and Health International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers
Linwood Smith	Management	Vice President-Risk Management & Safety T. A. Loving Company
Stephen Wiltshire Bill Rhoten	Management Labor	Turner Construction Director of Safety & Health Deptat., United Assoc. of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada
Tom Broderick Dan Murphy	Public Management	Executive Director, Construction Safety Council President, Allied North America Insurance Brokerage of Minnesota, LLC
Bruce Swanson John Ferris		Director, OSHA Directorate of Construction Directorate of Science, Technology and Medicine, OSHA
Thomas L. Kavicky	Labor	Safety Director/Special Assistant, Chicago & NE Illinois District Council of Carpenters
Michael Hayslip		President, National Excavation & Safety Training Institute
Greg Strudwick Scott Schneider		Greg Strudwick & Associates/NUCA Director of Safety and Health, Laborers' Health and Safety Fund of North America
Kevin Beauregard	State	Assistant Deputy Commissioner, N.C. Department of Labor
Doug Kalinowski		Chair - OSHSPA /Director Michigan Occupational Safety and Health Administration

Approximately 30 members of the public were in attendance at various times, as were a number of DOL/OSHA representatives.

**Robert Krul**, the ACCSH Chair, welcomed attendees, asked all present to introduce themselves, and requested that members of the public who wished to address ACCSH submit their names to the Chair.

**Jonathan Snare**, Acting Asst. Secretary for OSHA, made his first appearance before ACCSH since assuming his position. Following an orientation for committee members to new staff and changes in his office, he made a presentation on the “balanced approach” that OSHA is seeking to take with the construction industry. A balanced approach seeks to employ the three elements of: 1) Outreach, education, and compliance assistance; 2) cooperative & voluntary programs; and 3) enforcement that is strong, fair, and effective. Citing statistics from the construction industry that show a decline in injuries and fatalities, Mr. Snare reported that the balanced approach appears to be working. Noting that 20 percent of workplace fatalities are in the construction industry, he pointed out that there is still room for improvement. He concluded his presentation highlighting by activities in each of the three areas of the balanced approach.

Responding to questions regarding the schedule for new rulemaking, Mr. Snare reported that OSHA is moving forward as quickly as possible.

**Hank Payne**, Director, Office of Training & Education (OTE), along with Zigmus Sadauskas, presented an overview of training and education activities, accompanied with PowerPoint slides. He described the overall mission and functions of OTE and presented statistics on course participation and the growing number of those trained in construction courses. He provided detail on the development and revision of curriculum and a number of courses offered by the OSHA Training Institute, highlighting trends toward longer courses and increasing use of web-based training. He also noted the work to create competencies standards for compliance officers. In this process, they have broken the job into 8 major functions and 20 different competencies that can be trained and tested. He reminded committee members of the July 21 deadline for applications for Susan Harwood Training Grants.

Mr. Payne was questioned whether more information that has been gleaned through training grants and products developed over the past 25 years could be made available to the public. He responded that much of the material that has been developed is focused on very narrow sectors without broad application; also, that grants did not require the grantee to make products available to OSHA for public dissemination so that there could be copyright issues with the private developers who developed the much of the material. He reported that while some materials are becoming available through their resource lending program, a further complicating issue is “clearance” for documents that are made available to public. If, they find errors through the clearance process, who will correct them? OSHA does not have enough staff and original developers have no obligation to OSHA to do any kind of revising.

Several members expressed their appreciation for the work of trainers and training materials and Chairman **Krul** expressed the wish that Mr. Payne had the manpower and money so that every construction worker would have 10 hours of safety training before ever stepping onto a construction site.

**Jennifer Silk**, Deputy Director, Standards and Guidance, reported on the regulatory schedule for updating Health Standards and Safety Standards for a variety of hazards, including Hexavalent Chromium, Crystalline Silica, Beryllium, and Noise/Hearing Conservation. Concerning problems with rulemaking for Roll Over Protective Structures (ROPS), she reported that OSHA has had to reinstate its pre-1996 rules because the replacement had been adopted without notice and comment. She reported on changes to the peer review in the rulemaking process. Where she had previously been able to hire a contractor to select peer reviewers, the new process will include highly influential scientific information. A number of committee members asked about the hearing conservation program, including whether hearing conservation had been demoted in priority. Ms. Silk reported that it remained on her office's agenda. She reported that, given the transient nature of many construction workers, it has been very difficult to track employees and to have quantitative findings, although she agreed with the Chair that there is no doubt of the existence of a problem regarding hearing on construction sites. Finally, she reported on an initiative regarding hazard communication and that U.S labels under development will be consistent with international standards

**Bruce Swanson** reported on a Steel Coalition proposal regarding slipperiness of metal that was discussed at the February meeting in Chicago. He reported on the difficulties of defining and measuring slipperiness and that there remains no agreement on definition or measurement, and the matter has seen little advance since other regulations were promulgated in 1990s. He reported that, while there is general acknowledgement that there are problems with slippery decks, people appear reluctant to develop a new process if they anticipate that government will come out shortly thereafter declaring the approach to be unsound and giving a new standard. The proposal agrees to use evaporative products on steel so that slipperiness issue will be mitigated; or, use non-evaporative products that will be removed at the construction site; or, signage on construction sites where the other two not possible. However, industry remains hesitant to implement this plan and would like to gain approval of the plan as an interim until agreement on a definition of slippery is reached. The coalition would like endorsement of the three step process as interim solution; they would also like to have removed the "reserved" clause in the standard.

**Frank Migliaccio**, representing the ironworkers, reported that they have met with steel coalition on numerous occasions and pointed out two separate issues: steel decking and the slipperiness of paint on red iron structural steel. They agree with steel coalition that if their members, which comprise 80 percent of the industry would come on voluntarily, the other 20 percent of the industry would likely be enticed to come on board as well. They have no argument regarding the slipperiness of decking, but they don't want the issue of slipperiness of paint to go away as an issue. **Scott Schneider**, however, asked the question, how one could know if they are on the 20 percent of decking that is not coated, and whether OSHA has considered other options for requiring this? Schneider also suggested that removing the reserve clause would suggest that OSHA will not develop a regulation, an idea that he opposed.

**Peter Hernandez** of the Steel Coalition and **Robert Ball** of the Steel Coalition and Steel Deck Institute were called upon to present data and information on the issue. They reported that, although ironworkers believed decking was getting slipperier in the 1980s and '90s, a 1998 joint research project of ironworkers and steel fabricators concluded that there was no test that could

correlate human traction with slipperiness. Following this the focus came to rest on lubricating oil and efforts to reduce oils used in the fabrication process or replace them with evaporative oils. Ironworkers were surveyed and indicated they recognized a difference, finding less slipperiness once lubricants were being removed. Mr. Hernandez and Mr. Ball said that the three step recommendation had been developed jointly by industry and labor and suggested that industry would like to see the “reserved” section removed to bring some sense of finality to issue

**Mr. Schneider** responded that if the experiment was being judged successful, why should OSHA not require this of the other 20 percent? **Mr. Hernandez and Mr. Ball** reported their belief that the agreement could be implemented more quickly as a voluntary program without additional rulemaking; moreover, that the psychological impact of removing the “reserved” section would be positive for both coalition members and non-members.

Other discussion followed, Chair **Krul** declared that the discussion had been on the agenda for the purpose of giving information and that no vote would be taken.

**Keith Goddard**, OSHA Director of Evaluation and Analysis, presented a look back analysis of lead in construction. The OSH Act in 1971 had two lead standards: a general standard and one for construction. When the general industry standard was changed in 1978, the construction industry was excluded from coverage. The 1992 Housing and Community Development Act required an interim final standard for lead in construction, which was comparable to the general industry standard. However, the standard was not to overly burden small businesses. Considerations that were recognized as important included: impact on small business, quality of available data bases, severity of hazard, and number of workers exposed to the hazard. A number of groups have submitted input on the proposed standard, including the Homebuilders Association and the Small Business Association Office of Advocacy. The comment period began June 6 and will conclude September 6.

Questions to Mr. Goddard included: particular concern for workers in the specialized firms that repaint bridges, which often includes abrasive blasting; the social cost of the rule change; concern for renovators; concern for awareness of the new standard and communication within the industry, 90% of which are small businesses of 15-20 or fewer employees; whether pre- and post- blood tests would provide a satisfactory metric; ensuring adherence to the standard; and whether insurers have offered their perspective on the proposed standard. The committee expressed its interest in hearing report on the full range of comments once the period for receiving comments closes.

**Matt Gillen**, Chair, NIOSH Construction Steering Committee, reported on the National Occupational Research Agenda (NORA). Development of the agenda will follow a sector approach for next decade. Each of eight sector groups will develop its own research agenda; construction will be one of the eight. Sector groups will look at research needs, seeking to engage stakeholders to a greater extent, and establish a research to practice model. ACCSH members expressed enthusiasm for the sector approach.

**Noah Connell**, Acting Deputy Director, OSHA Directorate of Construction, gave an update on a number of standards, including the cranes and derricks project. For that rule, they are conducting

an economic analysis and developing the preamble, which is  $\frac{3}{4}$  completed. They are creating a detailed line by line parallel between the existing document and their new CDAC document. They are determining under the Small Business Fairness Act whether they will be required to conduct a SB fairness review. When questioned whether the project was taking longer than projected, Mr. Connell reported that the project schedule had not been affected by changes in agency senior personnel.

Mr. Connell also reported on the slip resistance coating requirement for skeletal steel, a different issue from the slipperiness of metal decking that had been discussed earlier. He reported that, after the standard was published, lawsuit was filed against the department regarding this provision. A 2003 settlement was reached between petitioners (the resilient flooring institute and the steel coalition) and the department. Part of the settlement agreed to open a comment period. Sixteen comments were received during the comment period last fall. OSHA agreed to affirm, amend, or revoke provision and announce its decision by January 2006.

**Kevin Beauregard**, N.C. Dept. of Labor reported on the process for developing safety standards for communication towers in his state. Among the factors that led N.C. to develop standards was the statistic that the fatality rate in this industry is 30 times that of other industries. Mr. Beauregard noted that risk of injury was not limited to NAICS code tower erectors but includes painters, communication companies, etc. North Carolina studied other regulations and studied the ten cases of fatal injury in the state since 1997. They also included insurance company statistics in their study. In drafting their standard, they sought to use definitions already in OSHA standards so as not to result in confusion. Currently, they were working to respond to the more than two objections that were raised concerning each of the topics: fall protection and gin poles sections. Objections to the fall protection section had to do with rescue requirements, e.g., requirement of two lanyards instead of one. Mr. Beauregard noted that the N.C. study concluded that the second greatest risk after fall was microwave radiation. When asked if manufacturers were beginning to build in safety protections, given the rich findings of the N.C. research, he responded that formerly fall protections may not have been put on but now, many times, they are being put on as the system is being erected. He cautioned, however, that they do not have complete knowledge of how manufacturers have responded to their findings. He also noted that resistance to some protections has arisen on account of the added weight they add to a tower, which reduces the weight the tower can support at its top.

**Greg Strudwick** reported on excavations and trenches, displaying a second QuickCard that had been developed. **Tom Broderick** made a presentation on trenching, demonstrating a 30-second public service announcement (PSA) that had been developed, and reported that cable companies are often looking for this type of material for their required public access channels.

**Scott Schneider** reported from the noise workgroup, distributing minutes of the Tuesday workgroup meeting as well as a CD-ROM with a collection of resources and handouts on noise. He described a new product under development, an earmuff that has a button to “push for hearing” so the wearer does not have to repeatedly put the earmuff on and off when alternating between work and conversation.

**Scott Schneider** also reported on the Silica Workgroup, distributing minutes of the workgroup meeting and a CD-ROM with articles on Silica.

During a Public Comment Period, **Pam Susi** of the Center to Protect Workers' Rights, spoke of lead in school book bags and lead in highway paint, noting that the painting industry has really adapted to the best practices that have emerged from debate over the new standard. She reports that her organization supports the OSHA construction lead standard and opposes any action that would weaken standard. She spoke of continued use of some lead-based paints in some construction, of the risk in renovation and demolition of houses with lead-based paint. She pointed out that the risk of elevated lead exposure affects not just painting contractors, but ironworkers and mechanical contractors as well.

In response to questions about the process for establishing the construction lead standard, she was informed that it is not likely to be a quick process; OSHA is likely to spend several years on the look back. They are operating under a legislative mandate that each and every one of OSHA's standards will be eventually looked at. All of OSHA's standards are supposed to go through this process. Input should be communicated to the record; using formal comment approach. Any changes to a rule would go through the rule changing process.

**Marianne Chillingsworth** of the Designers and Planners in Arlington, VA, asked Kevin Beauregard if the N.C. study had given consideration to the medical qualifications of tower climbers or to the ergonomic stresses involved. He replied that the initial focus has not been on ergonomics yet. He also added that the N.C. standard is available on the [www.nc.gov](http://www.nc.gov) website and that the standard does not include towers on motor vehicles or ships.

**Berrien Zettler**, was recognized by the Committee on the eve of his retirement from OSHA. A letter of commendation and appreciation, authored by Tom Broderick, was read and Mr. Zettler was given a standing ovation from all present in the meeting room.

**Michael Thibodeaux**, spoke briefly on Residential Fall Protection and **Frank Migliaccio** spoke on OTI, discussing how training with the OSHA QuickCards has been handed over to another program. Mr. Migliaccio also spoke on roll over protection (ROPS) and introduced Emmett Russell, an operating engineer who has been exploring how the best from a variety of ROPS standards would impact compactors and rollers.

**Stewart C. Burkhammer**, former chairman of the committee, gave a presentation on the Trenching Safety Data and Initiative with PowerPoint slides. The report included a number of statistics on injuries and fatalities in trenches, including the finding that in many cases where there has been a fatality, a trench box has been on site, but was not in use. He reported that they have distributed over 120,000 trench cards, have developed a NIOSH CD, and recently added a poster as the newest piece of the campaign. He also spoke of a brochure they have developed on worker safety and, when asked, reported that they are considering a companion brochure on worker health. Development of QuickCards will continue, with fall protection to be the next focus.

Receiving questions regarding previous citations and whether some companies pile up citations until they have a fatality, he reported that the statistic is 26 percent. Committee members indicated they would like OSHA to look at entities that have prior citations. They also asked if small companies were perhaps overrepresented among companies where fatalities are occurring, or companies that don't pay to send their people to training. Members discussed how noncompliance often comes from illiteracy or the cost of acquiring or renting necessary equipment. Moreover, some of the companies are so small that they have never been inspected while they have been in business for 25 years. These companies may have no previous citations because they have had no previous inspections. There are companies that are, in effect, so small as to be "under the radar scope."

**Paula White**, Director, Cooperative and State Programs, reported on Voluntary Protection Programs (VPP), the Strategic Partnership Program, and the Alliances Program. On VPP, she reported that while statistics show good results, there have been low participation rates. They are developing a program redesign premised on an acknowledgement that the present program did not meet needs of construction industry. The proposed new VPP Construction will provide three ways for participation: site based, demonstration, and (new) allowing application at any level: corporate, division, or business unit. Onsite would be "tiered" according to size. The challenge is complex: how do you balance the interests of a set who might be onsite for five days against those of a set who might be onsite for the duration of a major project?

She also spoke of the OSHA Challenge Program available for the construction industry that looks for ways to help companies improve their safety performance. The first two companies in the pilot have completed the process: Weitz and Garber Bros. After a year, they are beginning to see the concept work.

Another program, the Strategic Partnership Program includes 150 of 196 partners in the construction industry. From partners, they are now gathering cases and data that show dollar savings on account of adherence to health and safety practices. She displayed a new partnership brochure that had just been received from the printer.

Ms. White also spoke of the Alliances Program, noting the Construction Industry Roundtable among alliances members and two particular work groups that are relevant to the construction industry: fall protection and design for safety. When asked how to respond when small specialty firms inquire "What's in a partnership for me?," she replied that the response should be that it is hopefully an improvement in their safety and health experience (e.g., new stadium constructions in last 5 years have all been included in partnership programs). They pre-qualify their subcontractors and judge them regarding their safety and health. Participation in a partnership is a way to ensure that a safety health management plan is in place and employees are safe. From a business perspective, the benefits are saving insurance dollars and being more attractive as a subcontractor to larger contractors.

When reviewing OSHA's three strategies, Ms. White was encouraged that inspectors include ergonomics in any construction inspection. There are ergo hazards on all construction sites. Members also discussed the OSHA Challenge Program and opportunities for those partners that have completed the final Stage III, noting that both companies are willing to work with other

contractors. There is an opportunity to use these folks to make presentations. One member, commenting on the value in teaching each other, requested, "Please also teach us those things that don't work."

Under **Old Business**, it was moved to recommend for OSHA to consider that work group reports be linked to ACCSH webpage. It was clarified that 90% of material is publicly available; the question is accessibility through ACCSH web page; and the desire is that the links be made, not necessarily new copies of the documents. The motion passed.

Under **New Business**, the week of October 17 was floated for a next meeting date.

The meeting was adjourned by Chairman **Krul** at 11:30, Friday, June 24.