

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
(ACCSH)

MINUTES of 11-12 October, 2006 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 Acting Chair, **Thomas A. Broderick**, at 8:20 a.m. on Wednesday October 11, 2006. The following members were present for all or part of the meeting.

Name	Sector Represented	Title and Organization
Michael M. X. Buchet	Federal	Office of Construction Services Directorate of Construction
Michael Hayslip	Public	President, National Excavation & Safety Training Institute
Michael Thibodeaux	Public	Director of Risk Management, Lennar Corporation
Kevin Beauregard	State	Assistant Deputy Commissioner, N.C. Department of Labor
Matt Gillen	Federal	Senior Scientist & Construction Prog. Coordinator NIOSH/CDC Office of the Director
Stew Burkhammer, P.E., CSP	Federal	Director, Office of Construction Services Directorate of Construction
Thomas A. Broderick	Public	Executive Director, Construction Safety Council, Acting Chair
Sarah Shortall	Federal	ACCSH Counsel Office of the Solicitor, U.S. Dept. of Labor
Greg Strudwick	Public	Greg Strudwick & Associates/NUCA
Emmett M. Russell	Labor	Director, Department of Safety and Health International Union of Operating Engineers
Dan Murphy	Management	Vice President, Zurich North America
Steven D. Hawkins	State	TN Occupational Safety & Health Administration
Thomas L. Kavicky	Labor	Safety Director/Special Assistant, Chicago & NE Illinois District Council of Carpenters

Approximately 35 members of the public were in attendance at various times, as were a number of DOL/OSHA representatives.

Thomas A. Broderick, the ACCSH Acting 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. After attending to various housekeeping details Mr. Broderick announced that the ACCSH Committee had a quorum, and that the minutes from the last meeting were not available for approval. They will be approved at the next scheduled meeting. SBREFA comments will be available on the OSHA website.

Stew Burkhammer, Director, Office of Construction Services, welcomed the committee members and public to the “first post Bruce Swanson” meeting. He announced that Lynwood Smith recently underwent bypass surgery and is not yet able to travel. Mr. Smith’s comments will be read into the record. Workgroup meetings are not scheduled during this ACCSH meeting. The Confined Space Standard is expected to be in the Jan 2007 Federal Register. Mr. Burkhammer is pleased with the results of the Trenching Initiative and indicated that fatalities continue to decrease. 400,000 Cards, 40,000 Posters and 4000 CDs have been distributed.

Amanda Edens, Director, Office of Chemical Hazards-Metals provided an update regarding hexavalent chromium. The effective date of the standard is May 30, 2006. The main provisions of the standard (i.e., air monitoring, regulated work areas, and respirators) take effect Nov. 27, 2006 for employers with 20 or more employees, or May 30, 2007 for employers with 19 or fewer employees. If needed, significant engineering controls to get air monitoring results below the permissible exposure limit are not required until May 31, 2010. There are some suits in the court of appeals, settlement negotiations are ongoing. Some issues may be litigated despite negotiated settlements. The court has extended the deadline for briefs to early November. Several members expressed their appreciation for the hard work of those responsible for developing the standard.

Stew Burkhammer, Director, Office of Construction Services, addressing the Crane and Derrick Standard, entered three letters into the record: Two of the letters recommended going forward with the standard (Bob Krul and Frank Migliaccio), and one (Lynwood Smith) expressed some concerns. Mr. Smith considers it premature to go forward without studying the SBREFA report. Additionally, he feels that the cost of training and certification is high. He urged flexibility while ensuring safety and believes drug testing, health, and physical impairments should be addressed.

John E. Steelnack, Directorate of Standards and Guidance, and **Carol Jones**, Directorate of Health Standards reported that OSHA has finalized and published an Assigned Protection Factor Table which goes into effect 22 November 2006.

The 3M Company has an abbreviated Bitrex[®] qualitative fit testing protocol which they assert performs as well as the OSHA protocol. They are requesting that OSHA include the new protocol in the Respiratory Protection Standard at 29 CFR 1910.134. The proposed protocol uses the same fit testing requirements, instrumentation, and procedures as the existing Bitrex[®] protocol, except that the exercise times are reduced from 60 to 15 seconds, and the test uses only test subjects who can taste the Bitrex[®] screening solution within the first 10 squeezes of the nebulizer bulb. A discussion followed regarding fit testing of respirators, and particularly time intervals for testing. Some members expressed concerns that 15 seconds easily can become 5 to 7 seconds in practice, and that some individuals are less sensitive and might take longer to react. Later in the meeting (see page nine) the members voted to recommend approval of the new fit test.

Thomas L. Kavicky, Safety Director/Assistant to the President of the Chicago Regional Council of Carpenters commented regarding the Crane and Derrick Standard. He observed that the panel has done a superb job in developing the standard. He expressed some concerns as to accreditation, the need for varying levels of qualification for complicated equipment, and grandfathering.

Steve Hawkins commented that there is a need for standards for training, and that he does not understand the non-portability of military qualifications. He asked if crane operators who cannot read and write can take an oral test. The **Chair** stated that it is incumbent on operators to use the operator's manual and load charts.

Emmett Russell, Director, Department of Safety and Health, International Union of Operating Engineers, observed that today's cranes are very different from those of 20 years ago, and that now an operator must really know his business. He recommended that the document be accepted as is.

Greg Strudwick, President, Greg Strudwick and Associates, stated that while he can appreciate the concerns of others, a roadmap to the accreditation process is necessary. The panel deserves a round of applause, and it is time to go forward with the standard.

Matt Gillen, Chair, NIOSH Construction Steering Committee, expressed his concern that the standard does not address critical lifts adequately.

Kevin D. Beauregard, Assistant Deputy Commissioner, Assistant Director, Division of Occupational Safety and Health, commended the group on their efforts in the face of contentious issues. He indicated the need for sufficient time to get employees and regulators up to speed, and discussed the need for a means such as a Memorandum of Agreement that would allow operators to work in multiple states.

Michael J. Thibodeaux, Director of Risk Management, Lennar Corporation commended the panel, and expressed concerns regarding portability of certifications, lack of a graduated certification by level of equipment complexity, the cost of training (particularly the differences among various cost estimates) and a grandfathering clause for experienced operators. He asked who would audit the process and where the auditors will come from. Mr. Thibodeaux discussed effectiveness of operator training as it relates to fatalities, and pointed out that many residential construction companies rent or lease cranes, sometimes with operators, and that this may have been overlooked in the standard.

Michael W. Hayslip, President, National Excavation Safety and Training Institute commented that he shares Lynwood Smith's concerns, and that it is time to move forward.

Thomas A. Broderick, Chair, stated that he is impressed with the standard, particularly the detail. He pointed out that the standard will go a long way toward addressing power line contacts, and breaking vs. tipping. He said that he echoes the comments of his colleagues and that while the standard is not perfect it is time to move forward.

A list of 15 questions was compiled to be researched overnight and answered tomorrow by Noah Connell, Acting Director of the Directorate of Construction as part of his presentation. The questions will be available in the transcript of the meeting as exhibit eleven and are included along with Mr. Connell's responses on pages seven through nine of these minutes.

A discussion followed in which various members commented regarding the applicability of training to different types of cranes, signaling, and the desirability of a table of signals as part of the standard. The Chair commented that the bottom line is that the signaling person must be trained. **Kevin Beauregard** commented on the use of the work "could" as it refers to the proximity of power lines, and suggested more precise language. **Emmett Russell** indicated that while the crane operator is responsible for noting obvious conditions, some party with knowledge of the site should inform the operator of hazards such as septic systems and underground utilities. He said the panel attempted to ensure that critical lifts are done in a safe manner. **Greg Standwick** indicated that the standard should define a critical lift. Various members commented on the difficulty of developing a definition because what is critical to one operator or set of equipment may be commonplace to another, etc. Drug and Alcohol testing was discussed. **Emmett Russell** commented that the crane operator cannot be the only individual tested, but that the signalman, riggers, foreman and others working in the vicinity of the crane, or even the entire job site, must also be tested. The discussion turned to whether this standard was the place to include drug testing, some suggested constitutional issues might arise and brought up the possibility of conflict with other federal provisions.

Welcoming Remarks by Edwin G. Foulke, Jr. Assistant Secretary of Labor for

Occupational Safety and Health, The Assistant Secretary expressed thanks to the panel and stressed the importance of this work. He is committed to getting the Crane and Derrick standard in place before the end of the administration. He observed that this standard will save lives, and indicated that safety efforts have seen a reduction from 17,000 annual fatalities 35 years ago to the current 5,700, despite a doubling of the population over the same period. OSHA is going to help contractors emphasize safety, and push safety down to subcontractors. He emphasized that OSHA will help and, if necessary, will employ strong enforcement actions.

In response to a question from **Greg Strudwick** the Assistant Secretary said that he is asking for help to get the message out to small and medium businesses that safety is important. Over 65% of employers have no idea of OSHA's capabilities to help them. In response to a question from **Michael Thibodeaux** regarding Hispanic training the Assistant Secretary said that quick cards are being printed with one side Spanish and the other side in English, and more pictures are being incorporated.

Public Comment Period

Chip Hacock of Steel Erection and Crane Rental spoke in favor of approving the standard. He commented regarding an Ontario study which shows a 77% reduction in fatalities after mandatory training.

Steve Miller, Investigator of Crane Accidents and Fatalities, stated that this effort to develop and approve a standard needs to move forward rapidly. He commented on his frustration with the complexity of load charts and manuals for modern cranes. He feels that computers give a false sense of security which encourages operators to ignore load charts. Mr. Miller stated that

practical skills are very important and that a new operator needs to spend considerable time with an experienced operator. When queried he indicated that he does not find training on a crane simulator to be effective. In response to a question about critical lifts he indicated that an appendix with examples might be effective.

Bill Smith, crane operator, trainer, risk manager, said that for the past forty years we have said that employers must train people, so training should be in place. Certification is new. After discussing various issues in the document, particularly critical lifts, he urged that the standard be approved. In response **Michael Hayslip** commented that one test item might be how to read a load chart. He discussed English as a Second Language issues and ended by saying that 70 to 80 percent of accidents are the result of human error, and that 40 years of training without standards hasn't fixed anything.

Adele Abrams, commenting on her own behalf commended the participants and recommended that certifications be equipment specific, and that testing be scheduled to allow different certifications on the same day or days. She feels that there should be recognized criteria for auditors. The mining industry is now developing proposed drug testing for all miners. Crane operators at mine sites will be included.

National Response Plan for Worker Safety and Health

Ruth McCully, Director Office of Health Compliance Assistance gave a slide presentation regarding the National Response Plan and the annex for Worker Safety and Health. It is an all incident, all hazard plan which went into effect in April 2005. The Annex does not cover public health, but is intended to provide guidelines for implementing worker safety and health support functions during national incidents, including acts of terrorism, major natural disasters or man-made emergencies. Her presentation also addressed OSHA's response to Hurricane Katrina. She summarized early response efforts including contacting utility companies, identifying staging areas, public service announcements, contacts with state and county agencies, and contacts with VPP utility and industrial companies. She described OSHA's assignment from FEMA to provide assistance over a 90,000 square mile area, the development of an incident specific plan, how employee exposure monitoring was implemented, training and assistance provided in dealing with hazardous substances and the establishment of an employee exposure data management system. Hazards faced by workers included electrocution and falls related to restoring power, falls from roofs, trenching, debris site safety, and exposure to silica and asbestos.

Cathy Oliver, Directorate of Cooperative and State Programs, gave a presentation regarding OSHA cooperative programs, compliance assistance and outreach efforts. She covered Cooperative Program participation, discussed the future of VPP and discussed the OSHA Challenge program. The OSHA Challenge program has shown a 57% TCIR reduction from 2003 to 2006, and a 36% EMR reduction from 2002 to 2006. The VPP Mobile Workforce Demonstration for Construction was discussed; the application process and two step evaluation process were explained.

Tina Coles, Deputy Director, Cooperative and State Programs, provided an update of the Alliance Program which included the scope of the program, described the products of the program which include publications electronic tools and training. She described strategic partnerships with the construction industry and discussed resources available on the OSHA web site including training tools, eTools, and expert advisors. The entire presentation is available as exhibit 12 to the transcript of the meeting. Deputy Director Coles continued to say that OSHA wants to be viewed as a resource for all information needs regarding safety and health. She emphasized that she wants to help, and concluded by saying that the OSHA website is one of the best sources of information regarding Safety and Health.

In response to the presentation **Thomas Kavicky** said that he is involved in a strategic partnership in the Chicago area and inquired whether a hazard identified as part of a review can result in a citation. The answer was that it depends on how the partnership is structured. In most cases the contractor would be allowed to immediately correct the hazard; however eminent danger situations are citable. **Greg Strudwick** commented that the mentality of the inspector is to find something and make it stick, that we need to change that mentality and emphasize the need to be cooperative. **Michael Hayslip** commented that ladders should be an area of focus during these inspections. He inquired about the process for becoming an administrator. The answer was that the information is available on the website, or to contact Jim Boone at (202) 693-2213. The position is non-compensated but expenses can be reimbursed.

Thomas Broderick, Chair, indicated that he will not make any workgroup actions of a permanent nature until Lynwood Smith returns. **Michael Thibodeaux** indicated that he would like to schedule a workgroup meeting. **Michael Hayslip** commented that members should coordinate via e-mail so they can meet as a workgroup, rather than meet to schedule a meeting. **Greg Strudwick** indicated some issues need to be addressed before the next ACCOSH meeting, and that he has some information he can share. **Stew Burkhammer** stated that workgroups do a tremendous amount of work, that “meet to meet” is not what it is about, and that workgroups should think about what they are trying to achieve and prepare a report after meetings. The chair questioned the need for the Hex Chrome workgroup and indicated that after Lynwood Smith returns it may be disbanded. The Chair went on to say that the Assistant Secretary would like to see three ACCOSH meetings per year. **Michael Hayslip** commented that guidance is needed for the workgroup meetings. **Stew Burkhammer** stated that workgroups consist of co-chairs. Other members may attend. The co-chairs prepare the reports, any other members, or members of the public, can participate in any workgroup.

Public Comment

Beth O’Quinn representing Specialized Carriers and Riggers Association speaking on the Crane and Derrick standard commended the panel for its work. She disagrees with those who say training costs imposed by certification of operators is too high. Training should be ongoing, and the certification costs spread over 5 years comes to some fifteen cents per day. It is not a cost issue, but is about safety. Certification established a minimum standard of knowledge. She concluded by saying that insurance discounts could potentially offset training costs.

Noah Connell, Acting Director, Directorate of Construction, responded to prepared questions (Exhibit 11 to the transcript); his answers are summarized here.

Question 1: Clarification of accreditation of the qualification/certification program and how it will work. Who will monitor the accreditation process? How will the process be implemented? More specifics? How does a third party training provider or in-house trainer get their programs accredited? How do testers get their programs accredited?

Response: Testing organizations must be accredited by a nationally recognized accrediting agency. Currently two such agencies exist; NCCA and ANSI. Mr. Connell indicated that in his opinion if the need arises, more such agencies will come into being. A certifier can also be a trainer, given adequate separation between the activities.

Question 2: Concerns regarding levels of training/certification of the operators. Does OSHA see an operator that is running a DROT moving materials as skilled as the operator running a hammerhead tower crane as an operator running a multi-hundred ton lattice boom crane? Or does OSHA see training as size/type/configuration specific?

Response: There will be different levels of certification depending on equipment capacity and type; certification is not one size fits all.

Question 3: Will an area certification/qualification program now in existence and operating well be “grandfathered in” to proposal’s program?

Response: There is no grandfathering provision for current operators.

Question 4: Signaling qualification - Will current international union skills and safety training for signal persons be acceptable and be “grandfathered-in” to the proposal’s program? Who will approve/accredit employer/union/other signal training program?

Response: There is no grandfathering provision for current employees. There is no accreditation process in the standard for signaling personnel, it does not address riggers. Signaling certification can be by a third party evaluator or the employer. There is no requirement for qualifiers to be accredited.

Question 5: In Section 1407(a) [also in 1408(a)] what is the definition of “could” as it refers to proximity of approaching minimum distance to power lines? Could the language be more specific?

Response: The overarching theme regarding power lines is that we need a set of measures to help the operator stay away from power lines. The option is to increase distance from power lines.

Question 6: In Section 1408 what is the definition of work zone 360 around crane at maximum working radius?

Response: The standard uses a layered approach to institute procedures to stay away from power lines, for example, establish a work zone with clear boundaries that the operator cannot go past under any circumstances.

Question 7: Section 1402 outlines requirements for the “controlling entity” in regards to ground conditions. Will OSHA determine who the “controlling entity” is in the same manner outlined in the OSHA multi-employer worksite policy? What conditions are being considered in the term “ground conditions?” Does the rental of crane with operator change the analysis of “controlling entity?”

Response: The definition of “Controlling Entity” is the same as in the steel erection standard, and comes from a line of case law over a number of years. No change in the definition is intended. The question comes down to “who controls the detailed performance of the crane operator?” The controlling entity has responsibility to meet the required ground conditions for safe operation, but may need help from others, i.e. the operator. Ground conditions considered include firm, graded, drained, etc. If the controlling entity reasonably relies on information from the crane operator or provider he should not be liable if problems arise. Reasonableness is the touchstone. In the case of a rental crane with operator, apart from this standard the question is “who is the employer?” For OSHA that determination is based on a 12 to 14 point legal list that comes from common law.

Question 8: Will the proposal address issues and precautions related to the topic of “critical lifts?” What is the definition of “critical lift?” Should there be a section devoted to critical lifts? What sections will be relevant?

Response: Critical lift is hard to define, the developers of the standard could not come to a consensus definition other than when more than one piece of equipment is lifting. What is critical to one operator may be commonplace to another. As a practical matter, if the lift is considered critical make a plan and adhere to the plan.

Question 9: Why isn’t the training certification delineated by size/type/configuration of the crane?

Response: There will be different levels of certification depending on equipment capacity and type; certification is not one size fits all.

Question 10: Shouldn’t there be a “grandfather” clause for employer/industry trained operators in the new standard? If not, why not?

Response: There is no grandfathering provision for current operators.

Question 11: What type/size cranes are responsible for the fatalities and how occurred? (Toppling, electrical, struck by, etc.) What kind of data did CDAC use for creating it’s draft?

Response: Struck by, electrocutions, crane overturned, and assembly/disassembly were the key focal points. Electrocution and assembly/disassembly were very prominent. Insurance Company data regarding incidents resulting in claims, data from OSHA studies, and OSHA fatality case files were used.

Question 12: Auditors cost for certifying operators? And who is qualified to be the auditor? What numbers of auditors are available to certify training programs?

Response: Will check on the cost. Auditors can be certified by the entity qualified to certify operators. OSHA assumes there will be a ramping up of auditors.

Question 13: What is the number of incidents/fatalities involving licensed operators vs. non-licensed operators?

Response: There is no direct data. A study of licensed vs. non-licensed operators in Ontario purports to show a dramatic decrease in fatalities with licensed operators.

Question 14: Why the big difference in training costs (OSHA \$2700; Mr. Lynwood Smith \$5000)?

Response: No clear explanation, the estimates are probably based on different assumptions, i.e. Mr. Smith may include salaries while OSHA does not.

Question 15: Why was residential construction noted as not renting/leasing cranes when that statement is not correct? (Many homebuilders use smaller cranes at homes (i.e. truss setting operations.)

Response: That is an error which will be corrected.

New Fit-Test approval

The committee voted on a motion to recommend approval of the previously discussed new fit test.

1 vote abstaining

9 votes Yes

Public Comment

Graham Brent, representing the National Commission for Certification of Crane Operators. His organization represents a grass roots operation by concerned contractors. They conducted job task analysis to determine the body of knowledge required to operate a crane and have captured that knowledge in a test. Ten of the 15 states with a program use this program or the same model. Certification is for a 5 year period and costs \$275.00. Loss of certification can result from culpability in an accident. There is no requirement for continual training during the certification period; however, there is a requirement to operate 1,000 hours over the five years to avoid retaking a practical test as part of the recertification process.

Deliberation. The committee discussed its recommendation regarding the Crane and Derrick Standard. The discussion centered on critical lifts and drug testing. The conclusions were that different kinds of work have different kinds of critical lifts, and that this standard is not the place for drug testing to be addressed. To do so might conflict with constitutional issues, collective bargaining agreements, etc. It was suggested that the Americans with Disabilities Act might be a better place to deal with the issue.

Public comment

Gary Nally of the Manitowoc Crane Group commented that crane operators should be qualified. Cranes have become more complex and training more important. The Manitowoc Group supports the standard and pledges support. Mr. Nally's written comments were entered as exhibit 17.

Steven Kinn commented regarding the hexavalent chromium (hex chrome) standard. He stated that industry needs to have a definitive answer regarding when the standard applies. He recommended that the Hex Chrome working group develop a level or define when a hazard exists. His concern is that some 64% of carbon steel welding exceeds the allowable standard exposure. He said that research is underway to create some objective data for carbon steel welding. The chair commented that this issue is a bump in the road of a subject thought to have been dealt with. Although the Hex Chrome working group was discontinued last meeting it can be re-established if needed.

Graham Brent commented in favor of drug testing and stated that drug abuse should be grounds for revocation of certification or suspension.

Deliberation regarding the Crane and Derrick Standard recommendation

After deliberation and discussion the committee voted unanimously to recommend that OSHA move forward to issue the Crane and Derrick Standard.

13 votes Yes

After the vote the need for an appendix regarding critical lifts was discussed but no motion to include such an appendix was forthcoming.

New Business

The next meeting of the committee was scheduled for the week of 26 February 2007. Work groups will meet Tuesday 27 February and Wednesday 28 February, the Committee will meet Thursday 1 March and Friday 2 March.

The meeting was adjourned at 3:00 PM Friday, 12 October 2006.