

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

**MINUTES OF 28-29 July 2009 MEETING**

**U.S. Department of Labor  
200 Constitution Avenue  
Washington, DC**

The meeting of the Advisory Committee on Construction Safety and Health (ACCSH) was called to order by Chairman Mr. Frank L. Migliaccio, Jr. at 8:30 a.m. on Thursday, July 28, 2009. The following members and representatives were present for all or part of the meeting.

NAME	SECTOR REPRESENTED	TITLE & ORGANIZATION
William R. Ahal	Employer	Vice Pres. of Pre-Construction, Alberici Constructors, Inc.
Jewel Elizabeth Arioto	Public	Elizabeth Arioto Safety and Health Consulting Services
Kevin D. Beauregard	State Agency	Assistant deputy commissioner, Assistant Director, Division of Occupational Safety and Health, NC Department of Labor
Thomas A. Broderick	Public	Executive Director, Construction Safety Council
Matt Gillen	Federal Agency	Construction Program Coordinator, CDC-NIOSH, Office of the Director
Steven D. Hawkins	State Agency	Assistant Administrator, TN Occupational Safety and Health Administration
Walter Jones	Employee	Associate Director, Occupational Safety & Health, Laborers' Health and Safety Fund
Thomas L. Kavicky	Employee	Safety Director, Asst. to the President, Chicago Regional Council of Carpenters
Frank L. Migliaccio, Jr.	Employee	Executive Director, Safety & Health International Assoc. of Bridge, Structural, Ornamental & Reinforcing Ironworkers
Emmett M. Russell	Employee	Director, Department of Safety and Health, International Union of Operating Engineers
Thomas R. Shanahan (by teleconference)	Employer	Associate Executive Director, National Roofing Contractors Association
Michael J. Thibodeaux	Employer	Consultant, National Association of Homebuilders
Daniel D. Zarletti	Employer	Vice President, Safety, Health and Environment, Kenny Construction Company
Bill Parsons	Federal Staff	Director, Office of Construction Standards and Guidance
Sarah Shortall	ACCSH Counsel	Office of the Solicitor, U.S. Dept. of Labor
Michael M. X. Buchet	Alternate Designated Federal Official	Office of Construction Services, Directorate of Construction, DOL OSHA
James R. Tomaseski	Employee	Director, Safety & Health, International Brotherhood of Electrical Workers: NOT Present at any time this meeting.

Approximately 35 members of the public attended at various times, as did a number of DOL/OSHA representatives, and members of the press.

Mr. Migliaccio welcomed the attendees, asked the members to introduce themselves, and discussed the agenda for the meeting. He thanked Mr. Thibodeaux for his service as past chair and explained that Mr. Shanahan is ill and will be teleconferencing from his home.

Ms. Sarah Shortall, ACCSH Counsel, re-emphasized that Federal Advisory Committee Act and General Services Administration Regulations require that meeting minutes be certified by the ACCSH Chairman within 90 days of the meeting, and that members should review the minutes and send any changes back to the chair and Mr. Buchet.

## **Directorate of Construction overview**

Mr. Bill Parsons, Director of the Office of Construction Standards and Guidance speaking for the Directorate of Construction discussed staff changes in the Directorate. He indicated that four new personnel have been hired for the office of Construction Standards and Guidance, and three more are being interviewed; a total of seven will be added by September.

Mr. Parsons said that the Office of Construction Standards and Guidance staff is working hard on the Cranes and Derricks standard. It is the number one priority and about 90% of the staff is involved with it. The seven additional staff will help with the standards and also help with American Recovery and Reinvestment Act activities. In addition to the Cranes and Derricks standard, work is going forward on Confined Spaces in Construction, Sanitation, Masonry Safety, and various quick cards.

## **Office of Construction Standards and Guidance**

Five members of the OCSG introduced themselves and described the work they are involved in. Jessica Douma has been with OSHA for five years, she is working on the Cranes and Derricks standard and helps to process documents; Levon Schlichter is working the Cranes and Derricks standard; Kathy Legan is working the Cranes and Derricks standard and is also involved in enforcement; Kelly Gusto is a summer intern; Mikhail Ponce and Sarah Rooney both work the Cranes and Derricks standard.

They briefly described the organization of their office and its place within OSHA, and discussed their mission statement:

"To provide workplace construction standards and regulations to ensure safe and healthful working conditions in conjunction with providing for the development of comprehensive compliance programs for internal and external stakeholders applicable to the construction industry."

Information concerning the Office of Construction Standards and Guidance is available online at the following web address. <http://www.osha.gov/doc/cscaindex.html>

Mr. Kevin D. Beauregard asked about a construction enforcement task Force. Mr. Parsons said that his office is currently evaluating activities relative to task forces.

Mr. Matt Gillen commented that in the long term it might be valuable to consolidate interpretations instead of looking up each letter of interpretation. Mr. Parsons indicated that he would be open to a recommendation to that effect.

Mr. Broderick inquired how long it takes for a variance request to be processed. The response was that it varies, the requests are handled as soon as possible while ensuring that the variance is at least as safe as the actual standard.

Mr. Emmett Russell thanked Mr. Parsons for the Office of Standards and Guidance presentation.

## **Office of Construction Services**

Ms. Danezza Quintero, acting director - Office of Construction Services, discussed the functions of the Office of Construction Services. She said the office provides support to stakeholders, Maintains technical liaison with appropriate agencies, Provides technical assistance, supports OTI and gives presentations at conventions, etc. Details of the office functions can be found on the OSHA website. <http://www.osha.gov/doc/dcsindex.html>

The Office also helps to evaluate candidates for ACCSH, primarily to ensure real world expertise, and is also involved in crane safety initiatives with a number of products under development.

Ms. Quintero indicated that two positions in the office are open and introduced two recent additions; Mr. Dean McKenzie and Mr. Frank Dougherty. They are experienced in the construction industry and bring current experience to the office.

Ms. Sarah Shortall commented that the Office of Construction Services does a lot to support ACCSH. Mr. Kavicky agreed and added that the office staff makes life much easier and he is appreciative of their work.

### **Office of Engineering Services, Directorate of Construction**

Mr. Mohammad Ayub, director – Office of Engineering Services, described the functions of the Office of Engineering Services. He said the office is a resource for construction engineering. In the event of a collapse they provide engineering assistance and create a report. They act as expert witnesses and provide engineering data if required. Mr. Ayub and his associates are a component of the National Construction Response Team.

Mr. Migliaccio requested ACCSH members begin reporting on the work groups, which they co-chair.

### **Silica Work Group Report**

Mr. Walter Jones presented the report of the Silica Working Group. After a welcome from the co-chairs and self introductions the work group discussed the agenda and meeting goals.

Mr. David O'Connor of OSHA Directorate of Standards and Guidance gave a status update for a proposed rule for silica in construction, and discussed silica guidance developments. The proposed rule is currently undergoing peer review as required by OMB. The peer review process is expected to be finished by September or October. OSHA is developing worker and contractor materials from the recent silica guidance document and requested feedback on two draft versions.

Mr. Henry Kramer, Bricklayers Union Vice President and Chair of the Building and Construction Trades Department Silica subcommittee provided a handout and described five positions of the BCTD on the draft silica regulatory text.

1. PEL should be 50 ug/m<sup>3</sup> and should include an action level of 25 ug/m<sup>3</sup>.
2. Abrasive blasting using materials with greater than 1% silica should be banned.
3. Written exposure assessment and control plans are needed.
4. Methods of compliance need to be clarified.
  - a. Respirators should be viewed as an interim measure
  - b. Permit reliance on scientifically objective data for equivalence.
  - c. Develop a table with 2, 4, and 8 hour task lengths.
  - d. Provide a mechanism for adding tasks to the table.
  - e. Emphasize that employers not following the task controls can receive citations both for not using controls and not sampling.
5. Clarify that employee medical information is not to be shared with the employer.

Ms. Hillary Schubert of Georgia Tech described a tool titled “Silica Manager for the Construction Industry”. The tool lists tasks and provides information such as uncontrolled exposures, controls, controlled exposures, and recommended PPE.

Ms. Schubert said that since field conditions and techniques can affect the protection afforded by controls that a filtering facepiece respirator should be worn for all tasks.

“Silica Manager for the Construction Industry” is available at [www.oshainfo.gatech.edu](http://www.oshainfo.gatech.edu)

Mr. Jim Platner of the Center for Construction Research and Training described the “Construction Solutions” web tool that includes basic information for all tasks listed in OSHA’s Table 1. The tool is available at <http://www.cpwr.com/rp-constructionsolutions.html>.

Mr. Rashod Johnson, a technical consultant with the Mason Contractors Association described consensus standard ASTM E2625, “Standard Practice for Controlling Occupational Exposure to Respirable Crystalline Silica for Construction and Demolition Activities” which is available at <http://www.astm.org/Standards/E2625.htm> .

The work group agreed that there are potential recommendations to OSHA but that more time is needed for discussion. No recommendations to ACCSH were made.

Mike Thibodeaux moved that ACCSH approve the Silica Work Group report from the July 29, 2009, meeting. The motion was seconded and passed unanimously.

### **Diversity-Women in Construction Work Group Report**

Ms. Liz Arioto gave the work group report. Eight ACCSH members and six others attended the work group meeting. After introductions minutes, of the April 14, 2009 meeting were reviewed.

The following handouts were distributed and discussed:

- BLS fatal occupational injuries by worker characteristics and event or exposure, 2007
- BLS census of fatal occupational injuries (2003 forward)
- Household data annual averages for employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity
- OSHA letter of interpretation: 06/07/2002 – Mobile crews must have prompt access to nearby toilet facilities
- OSHA letter of interpretation: 02/23/2005 – Providing employees with toilet facilities on a construction jobsite
- OSHA letter of interpretation: 05/17/2006 – Whether toilets at a construction jobsite must be in a sanitary condition to meet the requirements of 29 CFR 1926.51(c)

The ensuing discussion included the need for separate toilets for women when practical, and tower crane operator access to portable toilets. A product called “Brief Relief” is being used by some crane operators. The product helps prevent bio-hazard issues.

Atkinson Longmire, MD, Office of Occupational Medicine gave a PowerPoint presentation titled “Women in Construction, Medical Issues.”

Kevin Beauregard provided a draft “Women in Construction Quickcard” and a “Women in Construction Fact Sheet.”

The work group will be requesting information from tool manufacturers regarding future developments in tools used in construction, particularly new tools of lighter weight, various sizes and ergonomic designs.

The work group is developing a supplier list for women’s PPE.

In response to a request for a status report on the prior suggestion to include more photographs of women in OSHA construction related literature and posters, Danezza Quintero explained the legal and practical problems surrounding photographing women on construction sites. She suggested that work group members might acquire pictures and the necessary permission from women so the agency can use the photographs.

Mike Thibodeaux moved that ACCSH approve the Diversity-Women in Construction Work Group report from the July 28, 2009, meeting. The motion was seconded and passed unanimously.

Mr. Migliaccio interrupted the ACCSH work group reports to welcome Acting Assistant Secretary of Labor for Occupational Safety and Health, Mr. Jordan Barab.

### **Comments - Acting Assistant Secretary of Labor Jordan Barab**

In his remarks welcoming the ACCSH members Acting Assistant Secretary Barab commented that he enjoys talking with the ACCSH committee. He said that OSHA is actively searching for a Director of the Construction Directorate, and that there are good candidates being considered.

Dr. David Michaels has been nominated as Assistant Secretary and is expected to arrive in the fall.

Mr. Barab said that there has been criticism of the Enhanced Enforcement Program and that there is renewed emphasis on identifying high risk employers and targeting them for additional scrutiny. The Enhanced Enforcement Program is being renamed as the Severe Violator Enforcement Program.

OSHA is moving to identify and address problems in Texas after three workers were killed by a scaffold collapse in Austin., Texas has more construction related fatalities than any other state; many issues are being identified and addressed through enforcement.

OSHA's budget saw a 10% increase in 2010 which will allow adding additional staff. The plan is for 35 new inspectors this year and 35 to 40 more next year.

A recent GAO report was critical of the VPP program, particularly monitoring, and inconsistencies among regions. The VPP and Alliance programs are being evaluated to see how they function and how they fit into the overall OSHA program.

Small employers are another area of interest. OSHA is studying how to address enforcement and stop fatalities. A top to bottom review is underway, and violations will not be tolerated.

The Harwood Grant program has been expanded to two years. There is growing demand for the program and there have been a large number of applications. OSHA is working to take advantage of products grantees are developing.

OSSHA is looking into how to use contracting procedures to promote safety programs. This area appears to have a large potential to improve safety.

Exceptions to residential construction standards are being rescinded, and Mr. Barak suggested that ACCSH can help bridge the gap between interim guidelines and regulations. He assured the committee that their recommendations will be considered.

Mr. Migliaccio thanked Mr. Barab for spending time with the Committee. He then welcomed the next presenter, Dr. Hank Payne, Director – OSHA's Directorate of Training and Education.

### **Directorate of Training and Education**

Dr. Hank Payne presented an overview of the Directorate of Training and Education (DTE). He said that the mission of the directorate is to assure the safety and health of American workers, and it is responsible to improve the skills and knowledge levels in industry and to ensure compliance officers are qualified and competently trained.

Dr. Payne discussed the professional and technical support provided by DTE's OSHA Training Institute (OTI) and described the increase in web based training. He said the training centers focus on training trainers. An Outreach Training has been to provide safety and health training to the maritime industry. Those completing a one-week OSHA Maritime trainer course are authorized to teach 10-hour or 30-hour safety and health hazard recognition and prevention classes in Shipyards, Marine Terminals, and Longshoring.

There is a problem with unauthorized and fraudulent 10 and 30 hour cards. OTI is involved with 25 to 30 fraud investigations.

OTI is responsible for administering the Susan Harwood Training Grants. These grants are awarded to produce education programs or develop training materials regarding prevention of safety and health hazards in the workplace. OSHA selects the safety and health related topics and after a national competition awards the grants. The grants have previously been for a one year period, but are not being extended to two years. The grantees are allowed to copyright the materials they develop. Interest in the program is increasing, this year there are 329 applicants.

Kevin Beauregard commented that he appreciates OTI's efforts, particularly the webinars. He said that they help to keep his state staff up to date, especially in today's economy.

In response to a question from Mr. Bill Ahal, Dr. Payne said that there has been a decrease in attendance to traditional courses but that OTI may set a new record of participation in web based training. Mr. Ahal asked if data regarding where students come from is kept. Dr. Payne explained that such data is not collected because of issues surrounding collecting and storing personal data.

Mr. Steve Hawkins said that he agrees with Mr. Beauregard's comments, and asked if there is a list of "rogue" trainers. Dr. Payne indicated that it is on the website at the following web address:  
[http://www.osha.gov/dte/outreach/construction\\_generalindustry/watchlist.html](http://www.osha.gov/dte/outreach/construction_generalindustry/watchlist.html)

Dr. Payne went on to say that there is no single list of authorized trainers and in response to an inquiry from Mr. Hawkins said that he is unaware of any unauthorized training. He said that about a third of those who complete the trainers course actually become active trainers.

Mr. Walter Jones commented that there is a need for supervisor training which would include how to create a safety culture and how to conduct a safety evaluation. He said he is looking forward to helping in that effort.

Mr. Matt Gillen asked if there is a way to "check out" a current authorized trainer who is found to be incompetent. Dr. Payne said that work is ongoing on a national database of currently authorized trainers, and it should be online by early to mid 2010.

Mr. Broderick commented that he hoped that those not intending to become trainers would take the 30 hour course rather than the OSHA 500.

Ms. Sarah Shortall asked what the focus of the webinars, outreach and education centers is. Dr. Payne said that it is currently compliance officer training. He said that if training is provided to the public that tuition is supposed to be collected. The tuition goes into the Harwood Grant.

Mr. Buchet commented that the 500 course is available on the internet. Dr. Payne said that online 500 course providers have been asked to stop, but in some cases response have been slow to respond. Mr. Buchet asked about both the 502 and 503 courses. Dr. Payne clarified that these courses now include a "teach back" component, which cannot be done online.

The presentations continued.

### **Construction Enforcement – The Legal Perspective**

Ms. Ann Rosenthal of the Office of the Solicitor of Labor briefed the committee on the legal perspective of enforcement in the construction industry. She said that the Construction Safety Act of 1969 requires federal and federal funded projects to meet safety standards. CSA – 1969 applies only to Federal or Federally funded contracts, and requires consultation with an advisory committee to promulgate standards.

The Occupational Safety and Health Act of 1970 called for adoption of existing Federal standards as OSHA standards and said future OSHA standards would also be CSA standards.

The two acts rely on different remedies; the OSH Act is enforced through citations and penalties. The CSA is enforced through debarment, which hasn't been used. However, all Federal construction contracts still must require compliance, and many must also contain an "Accident Prevention Plan." There has not been much focus on those provisions until now; enforcement has been spotty, varying by contracting agency.

Now with the American Recovery and Reinvestment Act (AARA) OSHA is looking at ways to enhance construction safety. Special Training Center courses are being provided; i.e., OTI offers a two day course for contracting personnel. OSHA is gearing up to provide additional assistance to procurement personnel; There is a lot of potential to improve safety and health because of stop-work authority.

Although most employers let OSHA in without a warrant if the employer won't let the inspector into the worksite a warrant is generally needed. Exceptions are if a violation is in plain view – the “open fields” doctrine; or if the owner or general contractor gives access.

OSHA can obtain a warrant based on specific evidence of a violation or a neutral administrative plan. Specific evidence might be a complaint from a worker; news report; referral; etc. A neutral administrative plan has to ensure that OSHA officials don't have "unbridled discretion" to pick and choose who to inspect. Options include Dodge report lists, random number tables from more complete lists, random selection of locations, and inspect every site at that location, or sites doing specific kinds of work (bridges; roads; high-rises; etc.)

Mr. Migliaccio asked about the legal requirements for targeting AARA sites, Ms. Rosenthal said that the requirement is either do neutral selection or inspect all sites. Mr. Gillen asked about construction companies with a poor record. Ms. Rosenthal indicated that a severe violator's enforcement plan is being developed.

Mr. Migliaccio asked that the Committee members resume work group reports.

### **Rollover Protective Structures (ROPS) Work Group report**

Four ACCSH members and eight others attended the work group meeting. After welcome by the co-chairs and self introductions the work group reviewed proposed edits of OSHA regulations regarding ROPS on skid steer loaders, and Tip Over Protective Structures (TOPS) on compact/mini excavators prepared by Dick Dressler the AEM representative. The work group agreed to request that ACCSH submit their proposed edits to OSHA to modify existing regulations to include TOPS on compact/mini excavators.

The work group will look at rollover hazards related to farm tractors and industrial/commercial tractors used in construction. Accident and fatality data for these will be requested from OSHA, and work group members will research and supply data. The work group will also look at overturn hazards for other construction machinery, i.e. asphalt milling machines. Data will be requested from OSHA.

The work group discussed stimulus projects and getting contractors doing this work to purchase and/or use safe equipment. A specific request would be made to OSHA regarding this.

Mike Thibodeaux moved that ACCSH approve the Rollover Protective Structures (ROPS) Work Group report from the July 29, 2009, meeting. The motion was seconded and passed unanimously.

Mike Thibodeaux moved that ACCSH recommend that OSHA revise its construction standard on material handling equipment (29 CFR 1926.602) consistent with the proposed edits document developed by the ACCSH ROPS Work Group as it relates to compact excavators. The motion was seconded and passed unanimously.

## **Multilingual Work Group report**

Six ACCSH committee members and five others attended the work group meeting. Mr. Tom Shanahan will serve as co-chair of the work group. At the next meeting the mission of the work group will be reviewed and restated.

Ms. Danezza Quintero told the work group that OSHA's internal task force on Hispanic worker safety is still in place and suggested that the work group should brief the task force on its activities and offer assistance with the task force work.

The work group members feel that Harwood Program materials done in Spanish and any current training opportunities should be placed on the OSHA website. The OTI work group will be asked to make this an agenda item for their meetings.

The work group will investigate the effectiveness of universal symbols on signage and labels and develop a quick card on the issue for consideration by ACCSH and OSHA. AEM has done some work in this area and their assistance will be sought.

The increase in Hispanic worker fatalities was discussed. There is an urgent need to address this issue.

The work group will ask the Center for Construction Research and Training to consider publishing sections of their publication "Chart Book" that relate to Latino workers as a stand alone document. The work group will also seek permission to develop a quick card or other OSHA document based on this publication.

The Work group reviewed an article by Mark Kies, Esq., an attorney with Seyforth Shaw, outlining employers duties under the OSH act. The work group will author a quick card highlighting the employer's duty to provide safety training that is understood by all workers.

Mike Thibodeaux moved that ACCSH approve the Multilingual Issues in Construction Work Sites Work Group report from the July 28, 2009, meeting. The motion was seconded and passed unanimously.

## **Regulatory Compliance Work Group report**

The work group meeting was attended by 24 participants. Susan Bilhorn and Kevin Beauregard co-chaired the meeting.

After introductions, Susan Bilhorn stated the charge of the group; "To advise OSHA on methods and means to target construction enforcement and outreach efforts to increase effectiveness and efficiency in the use of OSHA resources."

The status of requests to OSHA from the April 2009 meeting was reviewed:

- Update on OIS-OSHA Information System (formerly IMIS) – There will be a presentation addressing this system to ACCSH on Friday 31 July. The work group is interested in this system, especially its impact on the efficient and effective utilization of compliance officers who now spend inordinate time reporting and inputting data.
- Update and dialog from Acting Director of Construction – A conference call on this subject was conducted May 21, and notes from that call were distributed and reviewed.
- Inspection targeting – The working group desires to surface and share the different methods for identifying how best to focus inspection resources to address the areas of greatest risk and concern.
- Notes from conference call of 21 May 2009 – As a result of the conference call a draft of a Quick Card on contractor selection from the safety perspective was developed by Scott Schneider. The work group decided to recommend that ACCSH request that OSHA produce a guidance document on contractor selection and to provide the draft quickcard as proposed content.



- The work group briefly discussed safety and health issues related to stimulus funded jobs. The work group agreed to request information from OSHA regarding additional stringency in terms of expectations for contractor safety in stimulus funded projects.

Copies of the memorandum for Cabinet Secretaries from Hilda Soltis dated 7 May 2009 concerning OSHA Workplace Activities Related to the American Recovery and Reinvestment Act of 2009 were distributed.

The workgroup recommends that ACCSH pursue the following with OSHA:

- Development of a guidance document on contractor selection similar to that provided by the workgroup.
- Request information OSHA's work with procurement to identify additional stringency regarding contractor safety.
- Request a representative of OSHA enforcement to participate in future work group meetings.

Mike Thibodeaux moved that ACCSH approve the Regulatory Compliance (Focused Inspection Initiative) Work Group report from the July 29, 2009, meeting. The motion was seconded and passed unanimously.

Kevin Beauregard moved that ACCSH recommend that OSHA develop a guidance document for contractors to assist them in ensuring that the contractors they select for construction-related activities have established and implemented an effective occupational safety and health program, and ACCSH further recommends that OSHA include in the contractor guidance document information similar to that contained in the contractor document developed by the ACCSH Regulatory Compliance Work Group and submitted to and approved by ACCSH. The motion was seconded and passed unanimously.

Mr. Migliaccio interrupted the work group reports to return to scheduled presentations.

### **McGraw-Hill Construction Data**

An overview of McGraw Hill Construction Data was resented by Dan Palmer, Senior Director East Editorial Operations. McGraw-Hill is the largest provider of project news, plans, specifications, and analysis services in the United States and Canada. They provide detailed information from early planning through construction start.

There are about 250 reporters and 109 Plan Room Associates and Supervisors who report news. Over 600 permit reps acquire information from over 3000 permit offices.

Information sources include:

- Source calls to Architects, Owners, GC's, and Civil Engineers
- Planning Notices & Public Approvals-Permit Offices
- Software – Surveys newspapers/web for out-for-bid notices and newspapers articles about construction
- Software/outsource – web-bot reviewing for construction news leads
- Subscribe to Newspapers for review
- Internet listings of projects
- Customer Leads

Dodge Editorial provides Comprehensive National Service with news, plans, and analysis. They have developed 40 different measurements in an effort to monitor the voice of the customer. Editorial managers monitor them all.

- Covers entire industry
- Industry leading performance
- Number one recognized brand

Mr. Buchet inquired about the time lag between permit issue and information availability. Mr. Palmer answered about 45 days. Mr. Jones asked what portion of the market is captured. Mr. Palmer said about 80%. Mr. Palmer indicated that OSHA gets a regular listing of projects and that stimulus projects just started being reported. Mr. Gillen asked if safety information is available, Mr. Palmer responded that it is not. Mr. Buchet asked if demolition projects are included. Mr. Palmer indicated that they are.

### **OSHA Construction Enforcement – The Field perspective**

Ms. Darlene Fossum, Fort Lauderdale area director, presented an overview of the construction industry in Florida. She said that she recently counted 54 tower cranes between Miami and Homestead. She indicated that in Miami Dade the population is 62% Hispanic and in Broward it is 23%. The construction projects in the area generally consist of warehousing/distribution, metal fabrication, maritime, and retail/service projects. In 2006 Florida had 25 construction fatalities, 219 in 2007, and 11 in 2009. Areas of particular concern are falls, electrocution, and struck by.

Ms. Fossum described the selection of inspection sites from both Dodge reports and complaints. Complaints fall into two categories; formal or informal. A formal complaint is one regarding a current condition in which an employee is willing to sign the complaint. An informal complaint can be anonymous, from a non-employee or from an employee who is unwilling to sign the complaint.

Informal complaints are communicated to the employer by phone or fax, if there is no response within five days an inspector will be dispatched to investigate.

Area Director Fossum estimated that over 50% of complaints in her area come from Latinos. In response to a question from Ms. Shortall the area director said that the percentage of inspections based on complaints is relatively the same in all five areas. Mr. Jones asked if weight was given to whether the employer was small, large, union or non-union. Ms. Fossum replied that “A complaint is a complaint.”

Ms. Fossum indicated that enforcement goals for the future are better targeting, more visibility, an increase in University of Tennessee activity, and identifying and targeting repeat and willful offenders. She has a zero tolerance policy for Focus Four violations. Areas of emphasis are falls, electrical, struck by and caught between. She also intends to emphasize health related issues such as noise, silica and lead.

### **McGraw-Hill Construction Stimulus Update**

Mr. Dan Palmer, McGraw-Hill Senior Director Editorial Operations provided an update on construction stimulus projects.

“ARRA Stimulus” is the attribute applied to content in the Dodge Project News Database representing projects funded by the American Recovery & Reinvestment Act. “Shovel Ready” is the attribute applied to content representing projects identified by Dodge Editorial Reporters as candidate stimulus projects, including but not exclusively projects identified from the Conference of Mayors, State Governors and DOTs, and Federal Agencies.

The following shows the status of projects identified by Dodge as stimulus projects.

- Planning
  - Shovel Ready 9,878
  - ARRA Stimulus 2,828
  - Recovery Tracked 12,706
  - Stimulus Value \$115.7
- Bidding
  - Shovel Ready 668
  - ARRA Stimulus 3,372
  - Recovery Tracked 4,040
  - Stimulus Value \$21.9B

- Construction
  - Shovel Ready 834
  - ARRA Stimulus 2,291
  - Recovery Tracked 3,125
  - Stimulus Value \$16.8B

Mr. Zarletti commented that it was his understanding that stimulus money is paid after a project is completed. Mr. Palmer agreed but also said that when a subcontractor's work is completed he can request his funding before the entire project is complete. Mr. Thibideau ask how long it takes to be paid. Mr. Palmer said it normally is a matter of days.

Mr. Gillen asked if there is any correlation with North American Industry Classification codes. Mr. Palmer responded that he would be happy to provide information as to how McGraw-Hill breaks down the information.

### **Public Comment**

Mr. Rob Matuga of the National Association of Homebuilders asked ACCSH to provide workgroup agendas in advance to allow time to decide whether to attend and to prepare.

There was a general discussion concerning providing work group agendas following Mr Matuga's request. The following points were made during the discussion:

- Often there is no advance agenda, the work groups are open, anyone can participate and the agenda is driven by who attends.
- The Federal Record includes the ACCSH agenda. Anyone can attend workgroup meetings and participate, but only ACCSH members can vote. A non-member can be tasked as part of a workgroup but cannot vote.
- Workgroup discussions often carry over from meeting to meeting; interested persons can read the workgroup reports and generally predict subjects that will be discussed.
- The workgroup co-chairs indicated that they would welcome calls or e-mails inquiring about upcoming meetings.

Mr. Gillen commented that ACCSH values public input and that meetings would be more efficient with an agenda.

Mr. George Kennedy, National Utilities Contractors Association, commented that he agrees with Mr. Matuga, He said that if ACCSH wants public participation in the workgroups the public needs to have an idea of what is to be discussed.

Mr. Migliaccio commented that discussions in workgroups go on from meeting to meeting until issues are resolved.

Mr. Shanahan said that he agrees with Mr. Matuga and Mr. Kennedy and feels that it is a valid request.

In summation Mr. Migliaccio said that the best solution is to call the workgroup chairs for information before the meetings.

### **Residential Fall Protection Work Group Report**

The workgroup was attended by seven ACCSH members and 26 others. After introductions the workgroup reviewed the April 2009 meeting minutes.

Two vendors and NIOSH representatives presented their fall protection devices.

- HUGS (Horizontal Under Eave Guardrail System

- French Creek Productions – Harnesses, anchors and retractable devices
- NIOSH – Adjustable Roof Bracket and Safety Rail Assembly

The workgroup reviewed a draft Residential Fall Protection Guidelines for Employer Compliance (Advisory) and requested comments be provided prior to next meeting. This guideline is in anticipation of STD 3.01A being rescinded.

The workgroup viewed a presentation by Jeremy Bethancourt of LeBlanc Building Company, Inc. titled Personal Fall Arrest System, Anchor Points and Options in Residential Construction. Some components are built on the ground and lifted into place. Anchor points are left on the finished homes for use in future work.

Comments regarding the definition of “Residential Construction” were requested from attendees.

Bill Ahal moved that ACCSH approve the Residential Fall Protection Work Group report from the July 28, 2009, meeting. The motion was seconded and passed unanimously

### **Trenching Work Group Report**

Eight ACCSH members and eight others attended the workgroup meeting. The meeting was co-chaired by Mr. Emmett Russell and Mr. Dan Zarletti. After introductions Emmett Russell and Travis Parsons demonstrated the trench safety tool box talks and trench safety tools from the updated Roadway Safety CD.

Mr. T. J. Lentz discussed two articles published by NIOSH; Trenching, Part 1: Don’t dig your own grave and Trenching Part 2; Steps for employers. He also shared a draft workplace solutions card titled “Trenching and Excavation Safety”, and a NIOSH product called “Preventing Worker Deaths from Trench Cave-ins.”

Mr. Richard Dressler of the Association of Equipment Manufacturers, provided the following recommendations from Mr. Kieth Lamberson who recently gave a presentation to the workgroup.

- Training should educate non-compliant people
- Users of mini-excavators and rubber tired backhoes are a new market to reach
- There is a need to educate small contractors
- Utility contractors now work with rescue services, but accident prevention should be the key
- Look for opportunities to work with OSHA, TSSA, NUCA (AGC, ABC) and universities to educate about risks
- Cost savings can be realized through trenching technology and shoring/shielding

He also provided copies of TSSA booklets and pamphlets

- Trenching Shoring and Shielding Do’s & Don’ts
- Eight Good Reasons Why Trench Shoring and Shielding Saves You Money
- An Introduction to Modern Trench Shoring and Shielding

Matt Gillen moved that ACCSH approve the Trenching Work Group report from the July 28, 2009, meeting. The motion was seconded and passed unanimously.

### **Power Fastening Tools (Nailguns) Work Group Report**

The Power Fastening Tools workgroup was attended by four ACCSH members and 15 others. After reviewing the minutes from the previous meeting the workgroup discussed an e-tool for nail gun safety from CAL-OSHA. When the tool is ready the workgroup will recommend that a link be placed on the OSHA website.

Mr. John Kurtz of the International Staple and Nail Tool Association discussed available training materials and provided handouts to the attendees;

- Power Fastening Safety and You: A partnership (ISANTA)
- Power Fastening Tools (Safety Care)
- Power Nailers (Shopware)
- Pneumatic Nail and Staple Guns (Safety Shorts)
- Play It Safe (Bostich)

Mr. Kurtz indicated that an update to ANSI SNT-101-2002, “Portable, Compressed Air Actuated, Fastener Driving Tools – Safety Requirements for” is about two weeks away.

Two employers discussed their concerns regarding problems with banning contract trip trigger nailguns. Mr Elizzar Benzuides of Benzuides Framing Company feels that a ban on contact trip trigger nailguns would hamper productivity to the point that he could not be competitive. Mr Bruce L. Jones of Bruce L Jones Contractor, Inc. expressed concern regarding ergonomic hand and finger injuries from sequential trigger nailguns. He requested that more safety information be made available in the Spanish language. Mr. Jones said that most nailgun injuries to his workers are the result of nails ricocheting and hitting the employee.

Co-chair Tom Kavicky read a letter from Mr. James Nolan of the Carpenters District Council, St. Louis, MO. Mr Nolan was involved with Hester Lipscomb in collecting data on nail gun injuries in the St. Louis area from 2005 to 2008. Data was collected by surveying 3,088 carpenters, 852 of whom reported at least one nailgun related injury. The majority of the injuries came from contract trip trigger equipped tools.

Mr. Nolan also forwarded a petition asking for the “Outright ban on Contact Triggered Nailers” signed by 518 carpenters.

Steven Hawkins moved that ACCSH approve the Powered Fastening Tools (Nailguns) Work Group report from the July 29, 2009, meeting. The motion was seconded and passed unanimously.

### **Education and Training (OTI) Work Group Report**

Mr. Walter Jones reported that after introductions and a review of the agenda the workgroup discussed new prerequisite requirements for the OSHA 500 course. The OSHA 30 is no longer acceptable, the OSHA 510 or equivalent is required. No equivalent has been established, OTI will review any submitted course material to make a determination.

The workgroup discussed the need to make the OSHA 10 hour course mandatory for construction and demolition work. Dr. Henry Paine discussed issues OTI is facing because of increased demand for the 10 hour course. He cited inconsistencies of statutes, insufficient staffing and budgeting, program control and oversight, consistency of OSHA 10 content, the need for a national database, and card security.

The workgroup suggested that OTI develop a management/supervisory version of the OSHA 30. OTI suggested that the workgroup supply material for review to be included as an optional section of the OSHA 30 hour course.

OTI was asked to prepare a presentation regarding a depository for Susan Harwood grant funded materials for the next meeting.

Mike Thibodeaux moved that ACCSH approve the Education and Training (OTI) Work Group report from the July 29, 2009, meeting.

Mr. Migliaccio welcomed the Directorate of Standards and Guidance (DSG) and staff. The DSG presentation was followed by several others.

## **Directorate of Standards and Guidance Update**

Ms. Dorothy Dougherty, Director of OSHA's Directorate of Standards and Guidance gave an overview of the rulemaking process and the work of her directorate. Recent activities include the final rule for Longshoring and Marine Terminals. Regulatory agenda projects include health standards, hazard communication, diacetyl, beryllium, and silica.

The next step in the rulemaking process for silica is for OSHA to conduct a peer review of the proposed rule's risk assessment and health effects.

Safety standard items in the works include PPE, acetylene, electric power generation, working conditions in shipyards, walking and working surfaces and combustible dust.

OSHA has recently published a combustible dust fact sheet and a combustible dust webpage is now available.

The Hexavalent Chromium final has been remanded back to reconsider notifying employees of monitoring results.

## **Office of Engineering Services Update**

Mr. Mohammad Ayub, Director of the Office of Engineering Services for OSHA's Directorate of Construction described a major construction incident which occurred in Atlanta in December 2008. A 600 foot bridge in a botanical garden collapsed during construction. When the bridge collapsed 21 workers were on the deck, one was killed. Mr Ayub's presentation contained only information in the public domain, the investigation is ongoing.

## **American Wind Energy Association Stimulus impact: Wind Power Generation**

Ms. Michele Myers, Manager of Labor, Health and Safety, American Wind Energy Association gave an overview of wind power development from 1464 to the present.

The first US wind farms were built at Croched Mountain New Hampshire in 1980 and in California in 1981. Wind power received a boost from federal research and development brought about by the 1970's oil crisis.

Although the US was the inventor/creator of wind power generation, in the 1980s Europe moved ahead of the US in design. Safety issues in today's designs present a challenge, as does the combination of new equipment, power generation and elevated working conditions. An industry task force is studying the issues.

## **OSHA Information System (OIS) Update.**

Mr. Robert Pitulej, Mr. Gus Georgiades and Mr. Mehul Sanghavi briefed the committee on the OSHA Information System and gave a short demonstration. OIS is accessed via the web and is the next generation replacement for OSHA's legacy Integrated Management Information System (IMIS). OIS will house agency data including enforcement, consultation, and whistleblower activities. OSHA anticipates deploying the OIS on October 1, 2010.

Existing National Cash Register (NCR) equipment will be retired as part of OIS deployment. OSHA is securing funding to build Whistleblower and Consultation modules, and is exploring the possibility of another limited pilot in late Fall 2009.

This system will enable OSHA to direct resources to where they can do the most good, and from the Regulatory Compliance workgroups perspective will allow more efficient and effective utilization of compliance officers who now must spend inordinate time reporting and entering data into the existing system.

## **Discussion**

Mr. William Ahal moved that ACCSH recommend that the agenda for ACCSH meetings be amended to include, as a standing item, a review and update by the Directorate of Construction of all open, unanswered and unresolved recommendations that ACCSH has made to OSHA as well as all recommendations that OSHA has answered, resolved or completed since the last ACCSH meeting. The motion was seconded and passed unanimously.

#### **Additional Discussion**

Ms. Sarah Shortall provided the committee members copies of the OSH Act, the Construction Safety Act, 29 C.F.R. PART 1912—Advisory Committees on Standards, the ACCSH Charter, and Advisory Committee Procedures and Guidelines.

Mr. Kevin Beauregard said that North Carolina has adopted the Crane and Derrick standard with slight modifications that were necessary to meet the North Carolina rulemaking process. It goes into effect 1 Oct 2009. A copy will soon be posted on the North Carolina website.

Mr. Migliaccio announced that Mr. Thibideaux will now be on the Residential Fall Protection workgroup

The committee discussed the possibility of getting permanent building entry badges for committee members. Mr. Buchet agreed to investigate, but cautioned that the last time he asked the answer was “no.”

Mr. Migliaccio said that the next meeting will be 22 through 25 September 2009. Workgroup meetings will be 22 and 23 September 2009, and the ACCSH 24 and 25 September 2009.

Ms. Shortall said that the docket number for this meeting is OSHA-2009-0020 at <http://www.regulations.gov>

Mr. Dan Zarletti moved that ACCSH adjourn. The motion was seconded and passed unanimously.



**International Association of  
Bridge, Structural, Ornamental and Reinforcing Iron Workers**

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**September 30, 2009**

**Mr. Noah Connell, Designated Federal Official  
Advisory Committee on Construction Safety and Health  
Deputy Director-Directorate of Construction  
Occupational Safety and Health Administration  
U.S. Department of Labor, Room N 3468  
200 Constitution Avenue, NW  
Washington, DC 20210**

**Dear Mr. Connell:**

**I have read the Advisory Committee on Construction Safety and Health (ACCSH) meeting minutes of July 28-29, 2009, as revised from member and staff comments.**

**I certify that all portions of the revised ACCSH July 28-29, 2009, meeting minutes, which represent committee activities, are true and correct to the best of my knowledge.**

**Respectfully submitted,**

**Frank L. Migliaccio, Jr.  
Chairman**

**Cc: Michael Buchet, ACCSH Project Officer**