

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
(ACCSH)

MINUTES OF 19-20 October, 2004 Meeting

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

The meeting of the Advisory Committee on Construction Safety and Health (ACCSH) was called to order by the **Chair, Robert Krul**, at 9:00 a.m. on Tuesday, October 19, 2004. The following members were present for all or part of the meeting:

NAME	SECTOR Represented	TITLE & ORGANIZATION
Robert Krul Chair	Labor	Dir. of Safety Health, United Union Roofers & Waterproofers & Allied Workers
Frank Migliaccio	Labor	Exec.Dir. of Safety & Health, Intl. Assoc. of Bridge, Struct. Ornament. & Reinforcing Iron Workers
Scott Schneider	Labor	Dir. of Safety & Health, Laborers' Health & Safety Fund of No. America
William Rhoten	Labor	Dir. of S & H, United Assoc. of Journ. & Appr. of the Plumbing & Pipe Fitting Industry
Michael Thibodeau	Mgmt.	Dir. of Risk Management, Lennar Corporation
Greg Strudwick	Mgmt.	Pres. of Greg Strudwick & Assoc. Inc.
Linwood Smith (new member)	Mgmt.	Vice Pres. of Risk Management & Safety T.A. Loving Company

Stephen Wiltshire (new member)	Mgmt.	National Safety Dir. of Sports & Public Assembly Group, Turner Construction Company
Dan Murphy	Mgmt.	Sr. Vice Pres. of Risk Control, St. Paul Fire & Marine Insurance
Kevin Beauregard	State	Asst. Deputy Commissioner, Asst. Dir. Division of Occupational Safety & Health, N.C. Dept. of Labor
Douglas Kalinowski (new member)	State	Chair, OSHSPA, Director Michigan Occupational Safety & Health Administration
Thomas Broderick	Public	Exec. Dir. Construction Safety Council
Michael Hayslip (new member)	Public	Pres. Owner, National Excavation & Training Institute
Cheryl Estill	Fed.	Industrial Hygiene Supervisor, Industry Wide Survey Branch, DSHEFSCDC, Natl. Institute for Occupational Safety & Health
Bruce Swanson	Fed.	Designated Federal Official for ACCSH, Dir., Directorate of Construction (DOC)

Approximately 25 members of the public were in attendance at various times, as were a number of DOL/OSHA representatives, including **Sarah Shortall** (ACCSH Counsel, Office of the Solicitor), **Stew Burkhammer** (DOC), **Michael Buchet** (DOC), **Stephen Cloutier** (DOC).

Robert Krul, the ACCSH Chair, welcomed all attendees, and especially the new members. He then discussed the emergency exits and route procedures, and requested that all attendees put all cell phones on silent or vibrate. The Chair asked the members to fill out security photo applications so that new

security photo's can be done. The Chair requested that members of the public who wished to address ACCSH see the Chair, and indicated that the public comment period would be this afternoon. All committee members then introduced themselves. The Chair asked the new members to give a 30-second bio.

Davis Layne, representing **Assistant Secretary John Henshaw**, gave a brief opening statement welcoming the new committee members and added the agency's appreciation on the valuable contributions of the ACCSH committee. He mentioned that the work of the agency is a priority in terms of affecting the bottom line, reducing injuries, illnesses, and loss of life in the workplace. He stated that there have been some successes in the construction industry with some falling in the Hispanic workers. He indicated that the early final numbers for fiscal year 04' have been reviewed and we have been able to maintain a very credible enforcement program and the Assistant Secretary John Henshaw will discuss this further. Also, we have been able to have a positive impact in the workplace in terms of our new alliance programs and our partnerships.

Robert Krul, the ACCSH Chair, introduced Jennifer Silk, Deputy Director of the Directorate of Standards and Guidance. **Jennifer Silk** and her staff, **Amanda Edens** (Directorate of Standards and Guidance), and **Mike Seymour** (Directorate of Standards and Guidance) gave a Standards update on noise and hearing conservation, silica, hexavalent chromium, electric power transmission, Subpart S, controlled negative fit test, and rollover protection. Silk informed ACCSH that the electric power transmission, which is called subpart B in construction is in the final stages of review within OSHA. The notice of proposed rulemaking was developed, and has gone through the SBREFA process. The agency is now in the final stages of review before submitting it to the Department for review. On the issue of Crystalline silica the agency is in the process of doing a risk assessment and getting a peer review of the risk assessment done. It too has gone through the SBREFA process. Silk pointed out that Subpart S, which is electrical safety, OSHA issued a proposed rulemaking. The agency received one request for a hearing, and that the request had been withdrawn. So with that they could develop a final rule now for Subpart S based on the record that was submitted in terms of written comments. Silk also stated that a proposed rule came out last year on Assigned protection factors. A hearing was held earlier this year, the record was closed and their in the process of developing a final rule on assigned protection factors. It will be out sometime within the next few months. OMB will be getting it for review.

Controlled negative fit test was a small rule that was done to add a fit testing protocol to the respirator standard. It was finalized several months ago. ROPS direct final rule, is something that's being done to correct something the agency did that was incorrect some years ago. It is in the process of being reviewed by the solicitor's office and should be available within the next few months. **Amanda Edens** briefly discussed the chromium proposal fact sheet which gave a summary of the major provisions. There are three proposals in one proposal but are ultimately three different standards. There's one for general industry, one for construction, and one for maritime. There are a number of different ancillary provisions, and they vary a bit depending on whether you are in general industry construction or maritime. The provisions are identical for maritime or shipyards and construction, and they are slightly different and a little more burdensome for general industry. There are no requirements for exposure monitoring, regulated areas, or housekeeping. **Mike Seymour** discussed the agency's progress in addressing hearing loss in the construction industry. OSHA issued an advanced notice of proposed rulemaking in 2002. Forty-five comments were received in which we learned that the use of hearing protection in the construction industry is not common, hearing loss occurs in construction at a high rate and that audiometric testing is controversial. Exposure monitoring can be difficult not only to implement, but also to interpret for construction. Contract work to generate an industry profile, and an exposure profile for the construction industry with respect to noise exposures was completed. Hearing conservation programs are difficult in construction because of the mobility of the workforce and the high worker turnover, and the variability of job sites. Simple requirements and simple concepts are what work in the construction industry.

Next the **Chair** introduced the former Chairperson of this esteemed committee, Stew Burkhammer with the Directorate of Construction, he gave a presentation on enhance enforcement in construction. **Stew Burkhammer** stated that on March 12, 2003, the Assistant Secretary in a memorandum to the regional administrators introduced OSHA's new enhanced enforcement policy for employers who are indifferent to their obligations under the OSHA Act. There are Employees who expose workers to serious safety and health hazards, and also employers who continue to defy worker safety and health regulations. He indicated that the basic focus of this program is on Employers that have been subject to high gravity citation cases, high gravity wilful, and multiple high gravity serious, high gravity repeats, failure to obey, or serious wilful or repeat violations related to a

fatality. Enhanced enforcement includes, follow-up inspections, targeted inspections, and it may include federal court enforcement under Section 11B of the Act. He also briefly discussed the process during a settlement agreement and indicated that there have been 45 follow-up inspections in construction.

Robert Krul, the ACCSH Chair introduced Safety and Health Director for the International Union of Operating Engineers, Emmett Russell. **Emmett Russell** introduced **Nick Yaksich** with the Association of Equipment Manufacturers, representing construction equipment manufacturers. They presented and discussed a study on contact of overturns and rollover protective structures (ROPS) done by the Center to Protect Workers' Rights, the Army Corps of Engineers regulation on ROPS on compactors and the BNA article on the study from CPWR and Mel Myers. The discussion resulted in a **Motion** being made and seconded, as follows:

Workgroup Motion #1: Creating a work group to address the issue of the rollover protection structures on compactors.

14 votes Yes

0 votes No

The **ACCSH Chair** requested volunteers for the workgroup and they were as follows: Greg Strudwick, Michael Thibodeaux, Stephen Wiltshire, Frank Migliaccio, William Rhoten, and Dan Murphy. Greg Strudwick will be the chair and Frank Migliaccio as the co-chair.

Next, **Scott Schneider** gave a presentation on behalf of Matt Gillan, of the Office of the Directors for NIOSH, utilizing a CD-ROM on trench safety that was developed by NIOSH, Pat Coleman and the NIOSH Spokane research labs in Spokane, Washington.

The **Chair** discussed the schedule for the next meeting, potentially holding it in conjunction with the Safety Council Conference, in Chicago, IL scheduled for February 15-17, 2005. The next meeting is potentially going to be held a full day on Thursday and a half-day on Friday.

Noah Connell (Director of the Office of Construction Standards and Guidance) gave a presentation on the cranes and derricks standard in construction C-DAC. He indicated this is going to be a proposed standard and he just wanted to brief the committee on what's contained in the proposed document. He stated that there were some specific exclusion such as backhoes, forklifts, and there are some others as well. Equipment 2,000 pounds and below, have limited requirements, dedicated pile drivers, most of the standard does apply, and a few that don't. Also, limited requirements for overhead gantry cranes and side-load tractors. The standard also treats specifically a couple of other types of equipment such as tower cranes, derricks, floating cranes and land cranes on barges and adds some requirements for those. Ground conditions were a key to the safe use of cranes. Another key area of focus was the hazards associated with assembly and disassembly. He further discussed other issues related to electrocution hazards, certification training, safety devices and operational aids, and inspections of cranes.

Next the **ACCSH Chair** introduced Steve Cloutier with the Directorate of Construction gave a presentation on confined spaces. He discussed the draft regulatory text. He indicated that a confined space is a space large enough so employees can enter and perform work. It has limited and restricted means of entry and egress, and is not designed for continuous occupancy. The proposed standard includes a scope, a definition section, an information exchange component, classifications of confined spaces, training requirements, monitoring, entry, rescue and record keeping. He also provided information of two appendices that are included as well. **Brian Eagle**, program analyst with the Directorate of Construction provided information on the difference between the old 1910 versus the new 1926 standard.

Robert Krul, the ACCSH Chair, introduced the following individuals who had requested to give public comments, Anita Drummond, Director of Legal and Regulatory Affairs with Associated Builders and Contractors and George Kennedy, Vice President of Safety for the National Utility Contractor's Association. Ms. Drummond discussed a legal case that was published at the end of July in the U.S. District Court called the New York Times versus the U.S. Department of Labor. Mr. Kennedy discussed his opinion of the confined space draft text.

The **ACCSH Chair**, introduced Greg Strudwick, one of the co-chairs on the trenching and excavation initiative workgroup. He indicated that the group reviewed some materials supplied by the Construction Directorate, related to trenching and excavation and came up with six recommendations. **Scott Schneider**, provided the list of recommendations. The first one was that basically all compliance officers and compliance assistance specialists who are dealing with trenching issues should at a minimum have an eight-hour competent person training in excavation hazard and awareness assessment to try to improve the ability to do inspections and to assist people with trench safety. The second one was that we have tougher and improved enforcement targeted to those places where it's needed. The third recommendation was to improve training through a resource center. The fourth recommendation was to increase the frequency and the quality of training, not just for the workers, but also for competent persons, and for the supervisors in field management. The fifth one basically stated OSHA can't do it by themselves and that we have to get everybody involved, the municipalities, the police, fire, and rescue people, one call centers, owners, insurance folks, trade journals, everybody, and to get information out there and make it a really coordinated effort on the part of everybody. Lastly they recommended doing sort of a public health style campaign. The discussion resulted in a **Motion** being made and seconded, as follows:

Workgroup Motion #1: To accept the report of the trenching and excavation workgroup.

14 votes Yes
0 votes No

Kevin Beauregard, gave a brief report for the Tower Erection workgroup. The tower workgroup looked at compiling some recommendations to OSHA on issues associated with communication towers and the high number of incidents, fatalities, accidents, and injuries related to them. One was job site documentation. This included such things as a competent person, first aid, emergency data, emergency rescue plans, job hazard analysis, safety signs, and material data sheets. The second one was job site conditions on these tower sites. The third one was personal protective equipment, primarily dealing with everything other than fall protection. There was a separate one on fall protection, since fall protection is a critical issue of communication towers. There was a more detailed best practice section on fall protection, the equipment and recommendations, things that are being utilized currently. RF radiation was a section that was included in there, because that was also a hazard consideration dealing with communication towers. Hoists

are used for a number of things on the erection of towers, and they are also used in conjunction with personnel lifting in some instances. Rigging and blocks, gin poles, ladders, and the final section are training. The discussion resulted in **Motions** being made and seconded, as follows:

Workgroup Motion #1: To accept the report of the Tower Erection workgroup.

14 votes Yes
0 votes No

Workgroup Motion #2: The Tower Erection workgroup is disbanded as of 20 October 2005.

14 votes Yes
0 votes No

Thomas Broderick, gave a brief report on the Hispanic Summit. On July 22, 2004, in Orlando, Florida, the Department of Labor, OSHA, NIOSH, the U.S. Hispanic Chamber of Commerce, and the Hispanic Alliance for Progress were among a number of co-sponsors, or sponsors of this event. There was lots of enthusiasm in having similar types of events where we could bring together people from the public sector and private sector, and discuss how we can better integrate Hispanic workers into our workforce. Two recommendations were provided. One was that OSHA support additional Hispanic summits, be it regional or make the summit an annual event. The second recommendation was that OSHA form a National Hispanic Task Force that has representation from all ten regions and that the Directorate consider supporting a member of this workgroup to participate in these task force meetings. The discussion resulted in **Motions** being made and seconded, as follows:

Workgroup Motion #1: It is to recommend to OSHA to support any additional safety and health Hispanic summits held either regionally and/or nationally?

14 votes Yes
0 votes No

Workgroup Motion #2: The Directorate considers supporting a member of the workgroup to participate in the task force meetings.

14 votes Yes
0 votes No

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

September ACCSH Minutes #1: Recommended the May 18-19, 2004 amended minutes are accepted.

14 votes Yes
0 votes No

Robert Krul, ACCSH Chair introduced John Henshaw, the Assistant Secretary for OSHA. **Mr. Henshaw** welcomed the new members and thanked the returning members. He discussed the current and future activities. He pointed out for the committee to review the BLS statistics for 2003 as it relates to the construction industry, and that the 2004 results on our enforcement effort show improvement. He touched on the enhanced enforcement program and regulatory agenda. Mr. Henshaw made comments related to the hexavalent chromium proposal, outreach, education, and compliance assistance. He also mentioned and discussed the Disaster Site Worker Training Program. Other topics of discussion were the Hispanic worker initiative, VPP, and the Alliance partnerships.

The **Chair**, discussed Old Business in which the need for co-chair assignments was addressed. Tower erection was disbanded. Chromium isn't an active committee, and trenching is going to remain. One person needs to be added to the rollover protection workgroup. Frank Migliaccio and Greg Strudwick are co-chairs, along with Bill Rhoten, Mike Thibodeaux, Dan Murphy, and Steve Wiltshire. Recognizing the changes that have taken place in the committee, he requested everyone review the list. If anyone wanted to be a co-chair, or would like to be a member of a committee, please contact the Chair. The Chair is directed in trying to keep a balance between labor management and some public members. So recognize that your wish may not be granted. If there aren't enough volunteers by the next meeting, the Chair will exercise his right to start appointing people. But indicated the committee would try it the democratic way first.

ACCSH adjourned at 11:35 am on 20 October, 2004.