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OSHA Commission Meeting Minutes

Date: November 20, 2015

Time: 10:00 am

Location: Cheyenne OSHA office.

1. Call to order: Peter Perakos called the quarterly meeting to order Due to Chairman David Vaughn's absence. The meeting had been publicized via newspapers, was open to public and recorded.
2. **Introduction of the members.** The following commission members were present: Don Alston, Dennis Shepard, Peter Perakos, Doug Thomas, Monte Paddleford.
3. **Other people present:**

Mackenzie Williams, AG
John Ysebaert, DWS OSHA ,
Daniel Bulkley, DWS OSHA
Karen Godman, DWS OSHA
Ken Masters, DWS OSHA
Ahad Abdurahmonov, DWS OSHA
Bradley Westby, DWS
Marcia Price, DWS, Research & Policy Unit
Brian Clark, DWS Employment & Training
4. **Final Orders** – None at this time but we are currently working on at least 8 files that appear to be heading in a direction that will require a request for a Final Order review of the Commission, and will be presented at the next Commission meeting as needed.
5. **Administratively Close Cases** – None.



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6. **Case Files to Re-open** - None.

7. **Rules adoption progress-** John Ysebaert has assigned two people to assist the WC divisions with the process of adopting/changing rules. Marcia Price and Ann Reyes
 - a. 1904 Record Keeping and Reporting of Injuries, Emergency rules are adopted as of Oct 7, 2015 for 120 days (Feb 25, 2916). Regular rule adoption is in progress.

 - b. 1910, Occupational Safety and Health Standards for General Industry, Subpart A thru Z.

 - c. 1926, Occupational Safety and Health Standards for Construction Industry, Subpart A thru CC,

 - d. 1928, Occupational Standards for Agriculture, Subpart A thru M.

8. **Updates from John Ysebaert on Penalties**
 - a. Updated the Commission about the new amendment to the federal budget regarding increases penalties for OSHA violations. The exact amount of increases is expected to be publicized by august 2016. The increase on those fines is expected to be significant. There are two components of the change; one is catch-up increase that will adjust to the inflation since the rates were adopted in 1990 until 2015. The second is annual adjustments to inflation rate that will be made based on the consumer price index. Since Wyoming OSHA statutes contain specific figures, Wyoming needs to adopt the new rates and the proposal has been sent to the Join Labor Commission for eventual adoption. Adjustments will be made to the maximum fine amounts.

 - b. Another update from the procedural perspective in Wyoming OSHA that had been in place for several months now, for not reducing the amounts those cases that are casually connected to fatalities or serious injury and there is no indication so far that this approach had resulted in increased contested cases. “Causally connected” has to do with employers actions not with the employees that were involved.

 - c. Commission member Don Alston raised a question regarding the outstanding fines and penalties that need to be collected. John said that he met with Attorney General several months ago regarding this matter. The problem is that since we are not the direct recipients of those funds we cannot take legal action to pursue



those funds. It would have to be the various school districts, the recipients, who have not been paid. We sought a legal opinion if it would be possible to with a collection agency to pursue those businesses because collection agencies can go across state borders to pursue those. The answer is yes and we have an RFP (request for proposal) that is about to be released and the collection agency fees will go on the top of those amounts owed.

- d. The participants discussed the prospect of incorporating all the potential fines and fees into the required bond posting for out-of-State businesses. John agreed to work on drafting the proposal.
9. **Files Being Negotiated by AG Office** – Double D Welding and Fabrication (Mick); Samson Resources (Dan). Double D is still handled by Mick Fin and Ken said he had not heard back from the AGs office any updates so far to share. McKenzie also did not have any updates on this case. Dan will provide an update on Samson resources case when he comes back.
 10. **Contested Cases** – Basic Energy Services. Servicing Rig Work place fatality 1-18-2015 – Ken and Christian updated the participants about this case and said that OSHA office needs to thoroughly review this casefile with Mick Fin and decide whether or not to contest or develop a proposal for the company to consider.
 11. **ATS adoptions progress**
 - a. Federal Program Change Memo for TED-01-00-020, Mandatory Training Program for OSHA Whistleblower Investigators Directive has been published and is now available on line. https://www.osha.gov/OshDoc/Directive_pdf/TED_01-00-020.pdf. The Commission moved to adopt it, seconded, and passed.
 - b. Federal Program Change Memo for CPL-02-03-006, Alternative Dispute Resolution Process for Whistleblower Protection Program Directive has been published and is now available on line http://www.osha.gov/OshDoc/Directive_pdf/CPL-02-03-.006.pdf. The Commission moved to adopt it, seconded, and passed.
 - c. Federal Program Change Memo for CPL-02-00-159 Field Operations Manual Directive has been published and is now available on line. https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-159.pdf. The Commission moved to adopt it, seconded, and passed.
 - d. CPL_2-0_124 Multi-Employer Citation Policy 12-10-1999, https://www.osha.gov/OshDoc/Directive_pdf/CPL_2-0_124.pdf. The Commission moved to adopt it, seconded, and passed.



12. Training –

a. OSHA Staff Internal Training is scheduled for: (Ken/Dan)

- i. Apr 4, 2016 - 1230 Accident Investigation
- ii. May 16, 2016 - 1310 Interviewing Technique

Ken: OTI has agreed to come to Cheyenne, WY to provide this class. If the class is not big enough out-of-State trainees from Region VIII might also attend. Karen informed everyone that only OSHA employees may attend OTI trainings.

b. Training Provided to Employer (Karen) Karen informed that in FY 2015 conducted 45 trainings on topics such as Asbestos, Trenching, Excavation, Confined Space, Moving and Ergo training, etc. Two general industry 30 hour courses and one 30 hour construction course, two 10 hour GE course, three 10 hour Construction courses were supplied. FY 2016 just started and three trainings were offered.

c. OSHA is considering not having Consultation directly provide 10 and 30 hr. rules training. But WC would consider sponsoring training provided by others in an effort to reduce the burden on Consultants. (John Ysebaert) - in a meeting it came to light to conduct the 30 hr. training was taking up too much time and resources and only a handful of people were showing up. It should still be available for free by others. Karen Godman said they contacted the community colleges and learned there are grants as well.

13. Open Public Comment – This was an opportunity for Ms. Collins to comment based on the discussion from the last Commission meeting. Ms. Collins is not present in this meeting.

a. Housing for H2A herder – Ken provided an overview about the topic. The 500-foot rule is an OSHA rule related to agricultural industry. A variance is required to get an exception for this rule. Suggested to issue variance for non-serious instances. It needs to be discussed more. Brian also commented on the topic. He said that there could be a few dozen cases potentially seeking variance. DoL has not given guidelines how to bring the housing up to the standard yet.



14. Consultation update- Karen provided the update. There are two vacancies on the Consultation side currently. Submitted an exception request from hiring freeze. Finished up the fiscal year 2015 and performed great, exceeded the expectations (590 instead of 380 visits). Currently committed to 465 visits in the New Year. 83 visits had been made in the New Year since October.
15. Compliance update- Christian provided the update. There are two vacant positions on the Compliance side right now. Also, submitted the request for exception. The Compliance side also exceeded the expectations on the number of visits in FY 2015 (257 instead of 240). So far 21 inspections completed in the New Year. Nine fatalities and two catastrophes in 2015. Also provided other details about performance regarding inspections. Ken added that an additional contractor staff to help with Compliance casefiles.
16. Operations update-
 - a. Budget FFY16 approved and in effect.
 - b. LEPs, reviewing list of LEPs and considering reducing to Oil and Gas, Wen List. Ken responded to a question and said that the Division is striving to be more Wyoming-specific by continuing Oil and GAS LEPs and Wen List LEPs and ultimately reduce the number of LEPs.
17. Alliances update- Karen provided the update. There are 4 alliances currently and OSHA was represented on LOGISA events. The Construction Safety Alliance is rebuilding now and has had meetings cancelled. Nothing was heard from the Refining Safety Alliance. OSHA was not able to attend the Transportation Safety Coalition meeting in November, but planning to attend other meetings in the future. Working with others on the creation of Healthcare Alliance.
18. Summit update – Karen informed that the date is set to June 22-23, 2016 and the location is not confirmed yet.
19. Meetings attended- no updates worthy of the Commission’s attention for now.
20. Open Comments – A Commission member reminded to adopt the minutes of the previous meeting at the beginning of meetings. The Commission voted and adopted the minutes. Then participants discussed the schedule of the upcoming meetings. Ken suggested conducting some of the Commission meetings over the phone. This will have to be finalized later on.



21. Adjourn



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