



Matthew H. Mead
Governor

State of Wyoming

Department of Workforce Services

Office of the Director
122 W. 25th Street, Herschler 2-East
Cheyenne, Wyoming 82002
307.777.8650 ▪ Fax: 307.777.5857
www.wyomingworkforce.org



John Cox
Director
Lisa M. Osvold
Deputy Director

OSHA Commission Meeting Minutes

Date: June 24, 2016

Time: 9:00 a.m.

Location: 1510 East Pershing Blvd-West Wing, OSHA Training Room, Cheyenne WY.

1. **Call to order** – Commission Chair Dennis Shepard called the meeting to order at 9:10 a.m. The meeting had been publicized via newspapers, was open to the public and recorded.
2. **Introduction of the OSHA Commission members.** The following commission members were present: Chairman Dennis Shepard, Mandi Safford, Chuck Dobkins, Doug Thomas, Don Alston.
3. **Other people present:**

Daniel Bulkley, DWS OSHA
Ken Masters, DWS OSHA
Karen Godman, DWS OSHA
Christian Graham, DWS OSHA
Jody Paessler, DWS OSHA
Thomas Trujillo, DWS WCSR
Craig Swierczek, DWS WCSR
Marcia Price, DWS WC Research & Planning
Ken Lantta, KDL Consulting
Fidel Moreno, Moreno Construction
Oscar Moreno, Moreno Construction
4. **Approval of Minutes from Previous Meeting:** Minutes of the OSHA Commission Special Meeting held on June 8, 2016 were approved as submitted with the exception of



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the spelling of Chuck Dobkins last name. Commission moved to approve, seconded, and passed.

5. **Final Orders**

Silver Nail Construction, Inspection #1015804
Luna Construction, Inspection #1048955
Advanced Construction, Inspection #1046223
Moreno Construction LLC, Inspection #1056857
Jose' Martinez Co., Inspection #314513144
Trinity Builders LLC, Inspection #314515016
dba Mike McGuire, Inspection #314513532

Fidel Moreno and Oscar Moreno with Moreno Construction joined the meeting at this point to address their Motion for Final Order. Chairman Shepard asked the employers to explain why they have not addressed the proposed penalties and citations. The citations involved Fall Protection, Walking/Working Surfaces and exposed rebar that was not capped. Oscar Moreno explained that the employees that were on the job site the day of the citations had received Fall Protection training at the local community college and have certificates to document that. He stated that he did not know why the employees were not utilizing the fall protection as it was available in the job trailer that was on site. Oscar went on to say that the same day they purchased each employee their own set of fall protection equipment placed in buckets with the individuals' names so that they would not have an excuse for not using it. The commission requested a copy of the receipt for the purchase of the equipment. The Morenos had copies of the completed training certificates and provided the Commission with copies for the file. Doug Thomas moved to allow Moreno Construction to work with the department on penalty reductions and abatement. Don Alston seconded the motion. Discussion opened. Staff advised the Morenos that going forward they would be required to utilize a daily safety checklist (in English and Spanish) on every job. Christian set a penalty reduction of 10%. Chairman Shepard advised the Morenos that anytime they have safety meetings, which should be at least weekly, or training that they document it by having sign-in sheets for all in attendance and keep it for their records. A payment plan of \$500.00 per month was approved. Call for vote - motion carried. The employer and Christian then left the meeting to get the materials needed for their abatements and penalties.

Doug Thomas moved to review and vote on the remainder of Final Orders as a group. Mandi Safford seconded.

Staff summarized the status of each remaining employers' cases for the Commission. Call for vote - motion carried.

6. **Administratively Close Cases** - None

7. **Case Files To Reopen** – None



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8. Files Being Negotiated by AG Office

Double D:

Initial inspection was in 2011 and the Attorney General's office has had the file since 2012. It involved a triple fatality and the penalty amount was \$14,350.00 and there were 8 serious violations related to the inspection. The department has requested a status and continues to do so on a recurring basis from the AG's office and to date has not received one. Chuck Dobkins moved that the commission make a formal request to the AG's office to provide a status on this open case by the next commission meeting. Doug Thomas seconded. Call for vote - motion carried.

9. Contested

Basic Energy
Safeway

Paperwork has been provided to the AG's office for these two cases in order to get them to hearings. Staff has also requested status on these cases and have not received a response. Chuck Dobkins recused himself from this matter due to conflict of interest. Doug Thomas moved that the commission make a formal request to the AG's office to provide a status on these contested cases by the next commission meeting. Mandi Safford seconded. Call for vote – motion carried.

Chair asked if the department needed a letter from the commission to the AG's office for both of these status requests. Dan Bulkley stated that he would compose an email informing the AG's office that the commission had formally made these requests at this meeting.

10. ATS adoptions progress

Standard Log Entry Memo for 29 CFR PART-1902,1904 - Final Rule to Improve Tracking of Workplace Injuries and Illnesses – Chuck Dobkins moved to adopt, Doug Thomas seconded. Call for vote – motion carried.

Standard Log Entry Memo for 29 CFR PART-1910,1915,1926 - Final Rule for Occupational Exposure to Respirable Crystalline Silica – Chuck Dobkins moved to adopt, Doug Thomas seconded. Dennis inquired about how much the acceptable exposure had gone down. Karen and Dan explained that this puts new calculations in place that are equal across the board as there were discrepancies between the rules so the change was made to make it easier for employers to understand. Dennis then asked how many operations still used sand as opposed to other materials currently in use such as walnut shells and garnet. Dan explained that a good deal of the exposure comes from cutting concrete in road construction and also cutting masonry block. Ken Lancet from KDL Consulting commented that the fracking industry will be highly impacted by this



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change as the exposure not only comes from the process itself but can also come from the dust from access roads, etc. Upon no further discussion, call for vote – motion carried.

11. **Open Public Comments/Concerns - None**

12. **Consultation update**

Karen Godman reported that the H2A and ranch variance is being shifted to the Employment & Training group. Training, checklists and some equipment have been provided to that group to assist them in their inspections. Dennis inquired about whether there had been an MOU executed to document the shift in accountability. Dan stated that because OSHA doesn't have jurisdiction due to the number of employees being less than 10 it was decided that a MOU would not be required. Dennis voiced concern that there be some kind of written record in order to document that accountability belongs to Employment & Training and not OSHA. Dan will draw up a letter outlining the responsibilities of the two groups based on the jurisdiction issues.

Karen continued her consultation update by reporting that due to the adjustments in the program on April 1, the goal for number of visits was adjusted to 284 for the year and the current visit count is 314 so they are above goal. She shared that the program continues to reach out to employers through the alliances and promote the prestige programs.

Consultation has continued to partner with LCCC by assisting with their 10 hour classes to give a face and voice to the OSHA portion of the training and to share what resources are available. Karen also reported that consultation provided 6 presentations at the Safety Summit. The program continues to work with the existing safety alliances. Consultation is also actively reaching out to the healthcare industry to form an alliance within that sector with an emphasis on workplace violence which is a large issue for healthcare workers. Chuck asked whether Homeland Security was involved in the workplace violence discussions. Dan reported that due to an incident reported by a public sector employee in which the individual was intervening in a domestic situation and felt that it was potentially unsafe, Homeland Security did provide training to those public sector employees and it was well received.

The commission commended the department on their work to research and resolve the H2A issue.

13. **Rules adoption progress**

Marcia Price provided an update on rules adoption. Final adoption for Chapter 4 of Practices and Procedures is in place and should be done by the end of August. Repealed OSHA Chapter 1 Workplace Safety Contracts. Notice of Intent to Adopt was sent to the Secretary of State and LSO and should be on their websites. She and her staff are



currently working on 1910, 1926 and 1928; Chapter 3 Practice and Procedure, Section 6. Dan asked Marcia to explain the Workplace Safety Contracts. She went on to clarify that they are grants that employers can apply for up to a maximum of \$10,000 which do have a matching element to them. Proposals for the grant would need to include safety training or equipment that exceed minimum OSHA and MSHA standards. Dan further explained that the Workplace Safety Contracts were their own set of rules and this process will incorporate them into the Workers Compensation rules in Chapter 11 where all the other discount programs are. The appeals process for the Workplace Contracts was also added in this process.

Marcia explained the process for adoption of rules. She and her staff research and prepare the proposed rules and send them to the AG's office to review. Once any changes or recommendations have been incorporated, it then goes to Special Counsel in the Governor's Office. Once cleared, there is a 45-day public comment period. If there is no call for a public hearing during that period (25 people or more must request it) then it goes to the Governor for approval and signature. The Governor has a maximum of 75 days to approve.

Dan added that during the Safety Summit he was approached by the Oil & Gas Commission regarding the Oil & Gas rules. The plan is to combine all the current rules into one and create chapters within that single rule. Input of the Oil & Gas Commission will be solicited throughout the process.

14. Compliance update

Christian reported that Compliance is currently offering possible reductions or reclassification of violations to employers who are willing to sponsor 10 and/or 30 hour training. Sinclair and Capital Roofing are two employers who have currently agreed to sponsor trainings as part of the requirements of their Consent Agreements. Classes will be scheduled when there are an adequate number of participants committed to attend.

15. Operations update

Ken reported a FOIA request update. Since we started tracking FOIA requests the department has received 164. 82 have been satisfied in various ways, with 82 requests remaining unsatisfied. Of the remaining requests, 52 files are still open so information is not releasable, 30 are closed and will be processed. There was some discussion regarding resources used in fulfilling these requests and what requestors are being charged.

Ken then provided an update on the 23(g) and 21(d) grant application process.



The commission asked for an update on current staffing levels within the department. Dan reported that Consultation is fully staffed at 3-1/2 FTE Consultant with Karen allocating half her time as a Consultant and half as Program Manager. Christian reported that Compliance has just offered a position for the west side of the state but also reported that they had just received a resignation from the position in Gillette so that still leaves two positions open. Dan shared that there is an employee within the Workers' Compensation Safety Specialist group that has expressed interest in moving into Compliance and he is working with Tom Trujillo on that matter.

16. Training update

Dan reported that all compliance and consultation staff has received training on Interviewing Techniques and Fall Protection provided by OTI here in Cheyenne. Dan has requested four for next fiscal grant year and two were approved. The Commission asked if there were attendees from other agencies at either of the recent classes. Dan reported that the Fall Protection class was just Wyoming OSHA and Workers' Compensation Safety Specialists but that for the Interviewing class there were some in attendance from other Region VIII programs. Dan also reported that he has been encouraging other states within Region VIII to sponsor OTI classes as well.

17. Alliances update

Chairman Shepard asked if the economic downturn has affected any of the alliances. Karen reported that there has been a shift on some of the boards because of the resignation of some members from their companies and so they had stepped down from the alliance as well and that this had just very recently happened so no replacements have been identified as yet. Dan shared that the department continues to maintain a presence either through conference call or in person at all the alliance meetings to the extent possible. Dan added that the refinery alliance has expanded their outreach to include surrounding states so it has become a more regional rather than Wyoming specific group. Karen said that interaction has increased with the Construction Safety Alliance and the construction associations and coalitions because of the new silica rule.

18. Summit update

Chairman Shepard asked about the possibility of the oversight of the Summit being moved to another department as it is a drain on Consultation's limited resources. Karen reported that there has been some discussion in regard to that but no definitive direction has been provided at this point. Dan pointed out that WCSR provided support by having a booth and providing multiple presentations for the Summit. Chairman Shepard inquired of Tom Trujillo if their group has a commission or board to keep them advised of current issues. Tom reported that he and Dan communicate frequently regarding WCSR site visits and if those sites may also be active compliance sites. Tom also shared that they are fine tuning the way visits are tracked. Chairman Shepard asked if the



WCSR group will be getting involved with any of the alliances – Tom replied that he has been approached by two or three people in that regard. However, at this time they are not actively involved as they are still in the process of managing staff resources. Tom also reported that he is working on getting more training for his staff, in particular healthcare, and is actively reaching out to resources for that. He said that any training scheduled for WCSR staff will also be offered to OSHA personnel as openings are available.

19. Meetings attended

Christian and Clayton Gaunt recently attended the Spring OSHPA meeting. Dan will attend the OSHPA board meeting in Portland in August, then he and Christian will be attending the fall meeting in North Carolina in September. Karen attended the OSHCON meeting in Kansas City in May. Dan has been asked to serve on the OSHA Oil and Gas Task Force.

20. New business



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