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OSHA Commission Meeting Minutes

Date: December 16, 2016

Time: 9:00 a.m.

Location: Laramie County Library, Willow Room, 2200 Pioneer Ave, Cheyenne WY,

1. **Call to order: (00:00:16)** (OSHA Commission Vice Chair Don Alston called the meeting to order at 9:02 a.m. The meeting was publicized via newspapers, was open to the public and recorded.
2. **Commission Members Present:** Vice Chair Don Alston, Dr. Peter Perakos
Via Phone: Chair Dennis Shepard, Chuck Dobkins, Doug Thomas, Monte Paddleford, Mandi Safford
3. **OSHA Staff present:** Dan Bulkley, Deputy Administrator; Ken Masters, Operations Manager; Christian Graham, Compliance Program Manager; Brad Westby, Compliance Program Lead; Jody Paessler, Administrative Support. **Guests present:** Mackenzie Williams, Attorney General's office; Katherine Leuschel, Attorney General's office; Charles Livermont, Thin Six LLC; Marcia Price, Wyoming DWS; Luis Gallegos, Four Brothers Concrete; Todd Crosby, Pacific Northwest Council of Carpenters; Scott Powers, Monument Home Builders; Marcia Wilcox, Inman Roofing; via phone Ken Lantt.
4. **Old Business: (00:02:56)**

Approval of Previous Meeting Minutes for additions or corrections: OSHA Commission Meeting Minutes 9-30-16. **Motion to approve as submitted; seconded; vote carries motion.**

5. **New Business: (00:04:48)**

- a. **Final Orders** (Casefiles that have not been closed through normal informal conference processes and/or employer has not taken requested steps to resolve open items in casefile.) Case summaries were sent to Commission members prior to meeting for review. Some employers had resolved either penalties or



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abatement prior to the meeting and had been removed from the final list for future consideration. Luis Gallegos with Four Brothers was in attendance, and was asked to approach the Commission at this time. Mr. Gallegos requested an interpreter and was asked if he would be able to wait while staff attempted to provide one – he agreed. Vice Chair Alston inquired about the intervals seen in numerous casefiles with regard to a significant gap of time between contact with employers (some as much as two years). Christian Graham addressed the inquiry by acknowledging the issue and explaining that through staff turnover and reorganization some casefiles did fall through the cracks. He stated that a focused effort on resolving the issue has been in place for the last couple of months and that as of the time of the meeting, the sixty “delinquent” casefiles that were discussed at the previous meeting have been brought current. Chair Shepard asked if Christian could provide any numbers with regard to how many casefiles are still outstanding and the total dollar amount they represent. Mr. Graham did not have those readily available but said he could provide them at the next meeting or in between if needed. Chair Shepard indicated that would not be necessary. Vice Chair Alston noted that the read ahead final order list numbered over 20 and the list at the time of the meeting was down to 16. He stated that it demonstrates a change in the dynamic of employer response, with perhaps the idea of having to appear before the Commission driving it. During the reading of casefiles for final orders, Chair Shepard asked Christian how many of them were out of state. Mr. Graham replied that the majority of them are out of state. Vice Chair Alston concurred that he had observed the same and that it demonstrates how challenging it is to follow through on penalty collection. At this point in the meeting Perla Exina-Poutinen with DWS arrived as interpreter for Mr. Gallegos. Luis explained through Ms. Poutinen that he had paid the penalty due under his Consent Agreement and needed to understand what was still required of him in order to close his casefile. Mr. Gallegos asked if staff had received abatement photos that he had previously sent. (NOTE: Mr. Gallegos’ file was not available at the meeting.) Ken and Dan explained that in order to receive a discount in penalties, Luis would have been asked to provide items in addition to the abatement (i.e., training, etc.). Dan stated that the documentation sent with the penalty payment forms would have outlined what Consent Agreement items were required. Mr. Gallegos indicated that he had not seen that documentation, and indicated that his accountant receives all incoming mail and apparently that information had not been passed on to him. Dan then proposed that Mr. Gallegos come to the OSHA offices after the Commission meeting where he could be provided with copies of what is still required in order to close his casefile - Mr. Gallegos agreed. Vice Chair Alston then inquired about the disposition of the Final Order for Four Brothers – whether he should sign it or not. Ken indicated that he could go ahead and sign it and if Mr. Gallegos follows through with providing the outstanding requirements, it would not be filed. The Commission thanked Perla for her assistance. Vice Chair Alston then continued to read through the remaining Final Order casefiles for comments. **Motion to approve the Final Orders as presented; seconded; vote carried motion.**



- b. Administratively Close Cases (00:28:49)** (Case file where a final order has been developed, but no further action is practical to resolve open items in the casefile.) Samson Resources was presented for closure due to notification from the AG's office that the employer filed bankruptcy and OSHA would have no recourse in collecting penalties. Mackenzie Williams with the AG's office clarified that when a bankruptcy is filed, there is an automatic stay against collection or any type of action to collect money. He continued by stating that even if a claim did stand, there is almost no chance that there would be anything left at the end of the bankruptcy process to collect.

- c. Case Files To Reopen (00:30:29)** – (Case files being re-opened due to employers' willingness to resolve items relating to the case file to show good faith.) **None to bring to the Commission at this time.**

- d. Files Being Negotiated by AG Office (00:30:36)** – (Case files where the AG Office is working with the employers Attorney to resolve issued relating to the file.)

Double D – pending a settlement agreement from the Attorney General's office.

Sorento, Inc. – this employer requested to go to a contested case. The AG's office is making one final attempt to negotiate a settlement before sending to the Office of Administrative Hearing (OAH).

- e. Contested Cases (00:31:57)** – Case files where either party has chosen to request the Office of Administrative Hearing to hold a hearing and make a recommendation to the OSHA Commission for their consideration.)

Basic Energy (Inspection) – this employer has now filed bankruptcy and will be withdrawn from the OAH and presented as an administratively closed case.

CUDD Pressure Control Inc. (Inspection) – AG's office reviewing for recommendation as to whether to send to OAH.

CUDD Energy (Whistleblower) – is also in the queue waiting for AG's office to provide recommendation.

Safeway (Inspection) – also waiting for recommendation to send to OAH

Sinclair Refining Company (Whistleblower) – approved for submittal to OAH, attorneys are currently preparing cases



- f. **ATS adoptions progress (00:35:35)** – (New rules and rules changes that require a vote by the commission to approve the new rules or changes for adoption.)

Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) for 1910 General Industry

Dr. Perakos brought up the point that in the past the Commission has received a “redlined” version of the changes to rules needing approval for adoption. Ken stated that a fact sheet outlining the changes should have been in the packet sent out to the Commission prior to the meeting and did have copies for those present. Mandi Safford commented that she had pulled up the fact sheet on osha.gov and the Final Rule basically brings the 1910 rules more in line with the 1926 Construction Fall Protection Rules. Ken and Dan concurred and further iterated that the previous 1910 rule was more a general statement than specific direction on what is required. **Motion to approve Final Rule adoption; seconded; vote carried motion.**

- g. **Rules adoption progress (00:44:45)** – (Information relating to rules that are being adopted.)

Oil and Gas Rules - stakeholders’ meetings held on 10/26/16, 10/27/16 and 10/28/2016 in Pinedale, Riverton and Casper, respectively. Vice Chair asked if there was any further information in regard to this item. Dan reported that due to current efforts by Ken and other staff to address a backlog in the discrimination program, the schedule for presenting a draft set of Oil & Gas rules needs to be pushed out. Originally they hoped that they might have something ready to present by February but are now looking at June as the new target date. The Oil & Gas rules can’t be adopted until 1910 and 1926 are adopted as they are referenced in the O&G rules.

1910-General Industry, 1926-Construction, & 1928-Agriculture Rules – Marcia Price reported that the Secretary of State has recently changed the format in which Rules are submitted for approval, so there have been some delays in moving the documents forward. She said that she expects 1910 and 1926 to be ready to submit to the AG’s office by the second week in January. 1928 has already been approved by the Governor to proceed and are at the AG’s office for approval to begin the rulemaking process.

Emergency Rules – Marcia reported that the current set of Emergency Rules expired 12/16/16 and had a certification page for the Vice Chair’s signature to submit to the AG for presentation to the Governor’s office for approval. **Motion to adopt the Emergency Rules for Chapter 3, Section 6 for a second 120 day period; seconded; vote carries motion.**



Whistleblower Rules – Ken reported that the AG’s office indicated a need for the 1980 Whistleblower Rule to be added to the list of rules that should be adopted by reference. **Motion to add and adopt the 1980 Whistleblower Rule by reference; seconded; vote carries motion.**

- h. Open Public Comments/Concerns (00:59:53)** – (Opportunity for the public to bring up new issues or voice ideas to the commission.) **No public comment or concerns voiced.**
- i. Consultation update (1:00:13)** – (Consultation Manager provides an update to Commission relating to the program, 1st quarter MARC and any other pertinent information.)

Dan reported that the annual Consultation Program report for Region VIII summarizing accomplishments and statistics was submitted for FY2016. Visit projections for FY2017 are 168 and at the end of the first quarter, 68 have been completed: 22 health & safety, 42 safety, and 5 health visits. The Federal audit of the Consultation Program has been completed and the outbriefing was held December 15, 2016. The auditors had some comments and suggestions with no mention of findings (areas where they consider the program to be deficient). Their final report is due within 45-60 days.

Consultation continues to work with the various alliances around the state. The Wyoming Construction Safety Alliance (WCSA) sponsored two CPR courses in Cheyenne during the quarter. WOGISA sponsored crane & rigging training in September which was opened up to all employers, not just those in oil & gas. Vice Chair Alston asked about what communication mechanisms are being used to share information across the alliances. Dan stated that several employers have membership in both WOGISA and WCSA and so cross sharing is occurring. Brad Westby stated that WOGISA has appointed a representative to attend WCSA meetings and share resources.

Dan reported that since Brad is now Compliance Lead, Clayton Gaunt is now serving as the Compliance Assistance Specialist. Brad commented that Marcia Wilcox and Charles Livermont, who are on the board of WCSA, have been excellent partners to the Compliance Assistance program.

Brad added that Inman Roofing will be hosting an open house in Cheyenne for roofing contractors to facilitate resource sharing such as training and even possibly personnel.



- j. Compliance update (1:07:48)-** (Compliance Manager provides an update to Commission relating to the program, 1st quarter SAMM and any other pertinent information.)

Christian Graham began his update by stating that since Brad moved to Compliance Lead, he has been able to assist with case file reviews and informal conferences, which will help keep things on track.

Christian then gave an overview of program inspection data, explaining how seasonal elements have an effect on number of inspections from quarter to quarter. For instance, in the current quarter there were 34 inspections as compared to 144 the previous quarter. Mr. Graham explained that during inclement months, the program uses the WEN list (employer data from Workers' Compensation that identifies those employers who have a higher accident and injury rate and claim costs) to drive inspections. Dan further explained that the employers identified on the WEN list are first given the opportunity to work with either Consultation or the Workers' Compensation Safety & Risk team. Those employers who don't take advantage of those resources are then placed on a list for targeted inspections. Another factor in the fall in numbers is indicative of compliance officers having to spend more time in the current quarter processing casefiles and issuing citations from the previous. Vice Chair Alston wondered if there might be a benefit going forward to presenting the data with an eye toward trend analysis rather than raw numbers. Ken added that there are other mechanisms for reporting being developed, such as the dashboard and trend reports that are prepared in connection with grant application that could be shared with the Commission. Dr. Perakos commented that benchmark analysis would also be valuable in evaluating how our program compares to others regionally and at the national level. They also allow us to determine if the benchmarks are guiding us to providing safer work environments in our state. Dan added that there is data available that compares our program with other state programs and that could be made available to the Commission prior to the next meeting. Vice Chair Alston commented that his view would be that staff not provide special reports for the Commission but that the data be used and analyzed to drive the program toward improved safety environments.

- k. Operations update (1:21:45)** (Operations Manager provides an update to Commission relating to the program.)

Ken began his report by telling the Commission that there are currently five administrative support staff that have been working on the backlog and getting the final orders to the Commission and wanted to acknowledge their help in that regard.



Ken then provided the FY2016 grant budget close out numbers:

Compliance = \$1,740,278.62 under by \$300,074.38

Consultation = \$1,160,964 over by \$126,278.88

He explained that the Compliance budget was under mainly due to vacancies in the program and the Consultation budget was over due to having to amend the grant halfway through the fiscal year. Ken also stated that most of those funds are overmatch dollars provided through the Accident & Injury fund rather than affecting federal dollars or State General funds.

l. Training – (Consultation Manager provides an update on training provided to employers.) **No formal training this quarter.**

m. Alliances update (1:27:42) (Consultation Manager provides an update to Commission relating to activities associated with the Alliances.)

Brad Westby reported that in addition to the previous trainings sponsored by WCSA there are more in the planning stage for after the first of the year. He also noted that there are plans to send commendation letters and press releases to acknowledge the efforts of both WOGISA and WCSA in providing this valuable free training to Wyoming workers. Dan added that Clayton had recently been invited to attend the WOGISA meeting and that Karen participates in the Transportation Coalition and the Construction Coalition via telephone. He also said that the last Transportation Coalition event attended was actually on site at a new runaway vehicle exit demonstrating the latest technology available for these exits. The system uses bands similar to what is in use on aircraft carriers at intervals to slow the vehicles down. It has proven to lessen damage and injury.

Vice Chair asked what the difference is between an alliance and a coalition. Dan explained that an alliance is a formal agreement with the agency and a coalition is a partnership where the agency will work with a group at their request but there is no formal agreement. Brad Westby added that the Governor's office has been supplying staff to attend the alliance meetings and the State Epidemiologist has had representation as well.

n. Summit update (1:35:25) (Deputy Administrator provides an update to the Commission relating to Summit activities.)

Dan reported that the Safety Summit will be in June at Little America in Cheyenne. The participant surveys from the previous summit are being reviewed for requests for presentation topics and OSHA will respond once the review is complete and a list of subjects is formed.



o. Meetings attended (1:37:07) (Deputy Administrator provides an update to the Commission relating to Meetings attended.) OSHSPA, OSHCON

Dan reported that he and Christian attended an OSHSPA meeting and that OSHCON only meets once a year and it will be coming up in the spring. Dan attended an OSHSPA Board meeting the Tuesday prior to the Commission meeting. The next OSHSPA meeting is in Virginia January 31-February 2, 2017 and in conjunction with that there will be a SOLO (State OSHA Lawyers Organization) meeting. The AG's office will be sending representation to the meeting. It provides an opportunity for the state plan attorneys to "compare notes" on defending citations and cases as well as being able to meet with federal counterparts.

Dan reported that Dr. Michaels is stepping down from his position. No appointments expected until the new administration is in place.

Chair Shepard inquired about whether Dr. Michaels had drafted a letter to Federal OSHA requesting that the state plans be funded at the same level as the Federal programs. Dan said he hadn't seen one from him but would check his email and if not ask if he might be able to do so before stepping down.

p. Other Business (1:41:37)

Dr. Perakos asked for an update on fatalities and catastrophes. Dan reported that there were eleven (11) fatalities for FY16. He stated that number was above our benchmark which was set at 8.9. He noted that while historically the majority of fatalities have been in the oil & gas industry, this year was unusual in that they were spread across agriculture, construction and general industry. He attributed the decrease in oil & gas fatalities to the partnership with WOGISA. Dr. Perakos then asked if in the investigations if there were any common denominators, i.e., inadequate training, etc. Christian responded that training is typically a common thread and during this particular fiscal year, new employees also factored in. Brad added that the three agriculture fatalities were related to ATV use and foreign workers. Chair Shepard inquired about comparative transportation fatalities. Dan reported that the State Epidemiologist provided numbers as follows: transportation – 40-45%; OSHA – 20-25%; FAA and railroad picked up the remainder of the percentage. Dan reported that there was one workplace violence fatality in Cheyenne during FY16. Dr. Perakos asked about catastrophes. Dan stated that they are now covered under the new reporting requirements for hospitalizations. Dan inquired if the Commission would like fiscal year fatality reports going forward. Vice Chair asked if the December commission meeting is the best one to present those summaries. Ken suggested that the September meeting, which aligns with the federal fiscal year reporting period, might be more appropriate.



At this time, Mackenzie Williams requested permission to address the Commission. He began by explaining that the AG's office has a position designated to act as legal advisor for the Commission. The previous advisory left the AG's office at about the same time that Mr. Williams moved into a supervisory role for that advisory position. He noted that he has been covering for that position in the interim. He then introduced Katherine Leuschel, Assistant Attorney General, to the group. Vice Chair Alston thanked Mr. Williams for his guidance and support, and welcomed and thanked Ms. Leuschel for assisting the Commission moving forward.

- q. Set Next Meeting date and time (1:56:20)** – The next meeting was set for March 17, 2017 as a telephone meeting in Cheyenne.

- r. Adjourn Meeting (1:58:56)** Meeting adjourned.

