

Federal OSHA to increase its oversight and monitoring of state OSH programs

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Jordan Barab, acting Assistant Secretary for the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), testified on Oct. 29, 2009 before the U.S. House of Representatives Committee on Education and Labor that "serious shortcomings discovered during an evaluation of the Nevada Occupational Safety and Health Administration's safety program" have prompted OSHA to evaluate its oversight, monitoring, and evaluation of all 21 state plans which would include Kentucky's OSH Program.

According to Barab, 21 states and Puerto Rico have complete programs covering both the private and public sector employees. The state plans cover some 40% of the country's workplaces, while Federal OSHA is responsible for the other 60%.

In Kentucky, however, some private employers who perform vital work for the U.S. Government are covered by Federal OSHA rather than the Kentucky agency.

According to the testimony, serious shortcomings were discovered in Nevada's OSH Program. For instance, it was learned that compliance officers investigating fatalities in the construction industry lacked adequate training. It was also noted that "Nevada's average of programmed inspections with serious violations was 26% compared with 79% for Federal OSHA."

Barab concluded that "Nevada inspectors were either failing to target inspections properly, failing to identify serious violations, or failing to classify those violations appropriately."

Barab testified that in order "to improve oversight immediately, I sent interim guidance to OSHA regional administrators about the monitoring tools available to them and encouraged more in-depth investigation of potential problems."

He went on to state that to "ensure that deficiencies similar to those found in Nevada do not exist in any of the other state plans, OSHA will conduct a baseline evaluation, similar to what we conducted in Nevada, for every state that administers its own program. These evaluations will lead to better program performance and consistency throughout all state plans."

Barab noted that under the statute, it was envisioned that the federal government would fund no more than 50% of the cost of state programs, but that now that percentage is about one-third of the total cost of state plans.

In terms of monitoring systems, OSHA at one time examined actual case files and accompanied compliance officers on inspections. In the mid-1980s OSHA discontinued its "manual" approach to oversight in exchange for the states all joining OSHA's computerized management information system, which required that each state's program staff enter data on each inspection and other activity in the same manner as a Federal OSHA compliance office would.

Later, OSHA moved to a monitoring system that relied more on direct statistical comparisons of state performance to Federal performance based on many indicators.

During the Clinton Administration, Barab stated that "oversight was again reduced in response to complaints from the states that they had been running their programs for many years and did not need such extensive oversight, and that they were contributing considerably more money to the program than Federal OSHA."

As a result, there is now a goal-based system in place whereby each state develops its own five-year Strategic Plan and Annual Performance Plan. Thus, Kentucky's OSH Program, and every other state plan, must develop a Strategic Plan that will include

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the goal of reducing workplace injuries, illnesses, and fatalities to be sent to federal OSHA for review. In addition, OSHA may perform investigations of a particular state plan if it receives a complaint or otherwise becomes aware of a problem.

Moving from "reaction to prevention" is the goal of the Obama Administration, according to Barab.

It appears one way to make this transition will be to put more federal funding into state plans and increase oversight. Exactly what the latter will look like and mean for the Kentucky OSH Program and other state plans remains to be seen. ▲

Mark
your
calendar
for the 26th
Annual
Governor's
Safety and
Health
Conference
& Expo,
May 4-7 in
Louisville.

Governor's Safety & Health Conference

The 26th Annual Governor's Safety & Health Conference & Expo will be held May 4-7 at the Galt House in Louisville. The theme of this year's conference is "Aboard for Safety," and the speaker for the opening presentation is Astronaut Mike Mullane.

Mullane, a native of Wichita Falls, Texas, completed three space missions aboard the shuttles Discovery (STS-41D) and Atlantis (STS-27 & 36) before retiring from NASA and the Air Force in 1990. He has been inducted into the International Space Hall of Fame.

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The conference (sponsored by The Kentucky Safety and Health Network Inc., through the Kentucky Labor Cabinet) features workshops on "state of the art techniques, current issues, and trends in workplace safety and health. Also, it included the largest health and safety products exposition in the state.

For additional information, visit the conference Web site at <http://www.kshn.net/>.

Texting while driving is hazardous

The Kentucky legislature, now in session in Frankfort, is considering bills to ban text messaging while operating a motor vehicle. The bill that's moving is HB 43, sponsored by Rep. Jody Richards, D-Bowling Green. Richard's bill limits the ban to "any person under the age of 18." The bill passed the House on a vote of 80-16 and is now in the Senate Judiciary Committee.

Driving skill is impaired by text-messaging. And reading text messages while driving is also unsafe, but not as much as writing. Government studies show that driver inattention is involved in about 80 percent of crashes. And 46 percent of teenagers text

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NOVEMBER CITATIONS & FINES

Below is a listing of the citations and fines issued by the Kentucky Occupational Safety and Health agency during the month of November of 2009. Provided here are summaries of the citations and the total amount of the fines. A company has 15 working days from receipt of the citations and proposed penalties to either elect to comply with them, to request and participate in an informal conference with the KOSH area director, or to contest them before the independent

**KENTUCKY ADMINISTRATIVE
OFFICE OF THE COURTS**

514 W. Liberty St., Louisville
Inspection site: 514 W. Liberty St., Louisville
11-18-09 **\$18,000**

Serious

- Emergency eye-wash/shower was not available for employees using Kodak liquid developer, which contains sodium dichromate and sulfuric acid. \$4,500
- Employer did not provide appropriate eye or face protection to employees using liquid developer. \$4,500
- Employer did not have written hazard communication in place for employees using liquid developer. \$4,500
- MSDS were not readily available; employees were not properly trained on hazards of working with liquid developer. \$4,500

Other

- Employer did not provide first aid training. \$0
- Employees were allowed to store food and drinks in area containing toxic material. \$0

**AMERICAN COLD STORAGE – NORTH
AMERICAN LIMITED PARTNERSHIP**

607 Industry Road, Louisville
Inspection site: 607 Industry Road, Louisville
11-9-09 **\$17,500**

Serious

- Two employees were killed after anhydrous ammonia released while repairing freezer pump. \$5,000
- Emergency eye-wash/shower was not provided to employees working with anhydrous ammonia. \$2,500
- Employer did not inform employees of hazards of non-routine work and hazards associated with chemicals in unlabeled pipes. \$5,000

Other

- Deaths of employees were not reported to KOSH within eight hours. \$5,000