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CITATIONS FOR MAY 2012

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OSHA presents testimony on Voluntary Protection Program

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On June 28, 2012, Jordan Barab, Deputy Assistant Secretary for Occupational Safety and Health at the U.S. Department of Labor, presented prepared testimony to the Subcommittee on Workforce Protections in the U.S. House of Representatives.

The subject of his testimony was OSHA's Voluntary Protection Program ("VPP"). He explained the history of VPP, how it works, and described some recent success stories and also some challenges facing the VPP. His testimony can be found at http://www.osha.gov/pls/oshaweb/owadis.show_document?p_table=TESTIMONIES&p_id=1542.

Mr. Barab began his testimony by stating, "The agency is very proud of VPP and we believe that the program represents a necessary and effective way to recognize and reward companies that make the safety and health of their employees their highest priority."

He went on to say that "VPP recognizes employers and workers, in both private industry and the Federal Government, who have implemented safety and health management systems and maintained injury and illness rates below the national average for their industries."

As the name implies, VPP is a voluntary, cooperative program in which OSHA works with management and labor to prevent injuries, illnesses, and deaths. Mr. Barab stated that, "In our experience, employers who qualify for VPP generally view OSHA standards as establishing a minimum level of safety and health performance; they often go beyond OSHA requirements in protecting their workforce, and involve their employees in all aspects of the health and safety process."

Participation in the VPP is initiated by the employer submitting a written application and undergoing a rigorous on-site evaluation by a team of safety and health professionals, including individuals from other VPP employers. Successful applicants typically receive a formal approval letter three to eight months after the on-site evaluation.

Initial approval is valid for a period ranging between twelve and forty-two months, depending upon the program (Star, Merit, or Demonstration) into which the company is accepted.

As of May 31, 2012, there were a total of 2,374 active VPP sites (both federal and state). This figure has more than doubled since 2003. As a result of the success of the federal VPP, federal OSHA encouraged state plans to establish parallel programs, and all state plans, including Kentucky, have done so.

The tremendous growth of VPP also has presented challenges to federal OSHA in keeping up with subsequent evaluations of worksites after their initial approval period has expired. However, Mr. Barab testified that he expects the backlog of follow-up site evaluations to be current by the end of 2012.

On the topic of safety incentive programs which some employers have implemented in order to reduce injury and accident rates, he pointed out that some of these programs actually discourage workers from reporting injuries. Examples he gave of such programs were pizza parties and raffles if employees meet a goal of not incurring reportable injuries over a specified period of time.

While well intentioned, these programs have the unintended consequence of discouraging workers from reporting injuries, because they want to receive the reward or do not want to be perceived as having ruined it for everyone. The problem here is that unreported injuries that are not investigated cannot

be used to help prevent future injuries. In contrast, Barab cited programs like safety and health committees, safety and health training, and direct encouragement to report, as positive incentive programs which encourage reporting of injuries.

Mr. Barab concluded his testimony by stating that VPP has demonstrated its value in advancing the goal of recognizing and rewarding employers who go beyond OSHA's requirements to protect their employees, and VPP will continue to have the Department of Labor's full support. ▲

Governor appoints Lexington attorney to Kentucky OSH Review Commission

Gov. Steve Beshear has appointed Lexington attorney Joe F. Childers Jr. to the board of the Kentucky Occupational Safety and Health Review Commission to serve the remainder of an unexpired term ending March 1, 2013. Childers replaces Michael Mullins of Hindman, who is deceased. Of the three-member board, Childers, an attorney at Getty and Childers PLLC, will represent the interests of the "occupational safety and health profession." One board member represents employers, and another represents employees.

The Commission is an important but somewhat obscure agency established by state law (KRS 338.071) to hear contested citations. It provides an opportunity for employers — and employees — to come to a hearing and defend against a citation and penalty. The parties appear before a hearing officer employed by the Review Commission, who will hear all of the evidence and make a written recommendation to the Review Commission concerning whether the citations and penalties should be upheld, modified or dismissed.

Any party who disagrees with the findings of the hearing officer may ask the full Review Commission to consider the case further. And board member may also ask the full commission to review a case. Any orders by the commission may be appealed to the Franklin Circuit Court.

The Review Commission is an independent agency. It is not part of the Labor Cabinet, but is attached to the Cabinet for administrative support. By law, each board member is appointed based on a specific area of expertise, and must have five years of experience in that respective field. The expertise requirement is purported to ensure that "the interests of all litigants appearing before the commission are represented and that due process of law is provided with an even hand." However, Childers' appointment virtually ensures that the Review Commission tilts significantly in favor of employees.

In 2010, Gov. Beshear appointed Childers to the Mine Safety Review Commission, which required state Senate confirmation. The Republican-controlled Senate rejected the appointment. Childers' OSHA appointment does not require Senate confirmation. ▲

CITATIONS & FINES

Below is a listing of the citations and fines issued by the Kentucky Occupational Safety and Health agency during the month of May 2012. 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 KYOSH area director, or to contest them before the independent Occupational Safety and Health Review Commission.

MR. ROOF LOUISVILLE

600 Marret Ave., Louisville

Inspection site: 3306 Brownsboro Vista Dr., Louisville

5-24-12

\$112,000

Willful Serious

- Seven subcontractor employees were working on a roof up to 18 feet above ground with no fall protection. \$56,000
- Eight employees or subcontractor employees working on roof up to 18 feet above ground were not properly trained in fall hazards; employer did not certify that employees and subcontractor employees had been trained in fall hazards. \$56,000

Other

- Extension cord was missing ground electrode. \$0

DIAZ CONSTRUCTION

5412 Durhamtree Place, Louisville

Inspection site: 3306 Brownsboro Vista Dr., Louisville

5-24-12

\$70,000

Willful Serious

- Seven employees were working on roof up to 18 feet above ground with no fall protection. \$35,000
- Seven employees working on roof were not trained in fall hazards; employer did not certify that seven employees had been trained in fall hazards. \$35,000

Other

- Extension cord was missing ground electrode. \$0

PROGRESS RAIL SERVICES CORP.

11209 Electron Dr., Louisville

Inspection site: 11209 Electron Dr., Louisville

5-18-12

\$28,000

Serious

- Employer did not incorporate single-stroke mechanism on punch press; employee's finger was amputated while operating punch press. \$7,000
- Punch press was not properly guarded, resulting in amputation of employee's finger. \$7,000
- Punch press was not regularly inspected. \$7,000