

# Statewide Supervisor Meeting

**Date:** 2/7/19

**Start Time:** 10:00am

**Adjourned:** 3:00pm

**Scribe:** Nicole H. Brown

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## Attendees:

Lafayette Atkinson

Kevin Beauregard

Nicole H. Brown

Jennie Cagle

Laura Crawford

Deidre Duncan

Nancy Hall

Ben Harris

Neesia Hill

Leaton Jones

Kaye Knezevich

Wanda Lagoe

Scott Mabry

Bruce Miles

Chris Moore

Judyth Niconienko

Lee Peacock

Beth Rodman

Paul Sullivan

Kaye Thibodeaux

Anne Weaver

## Welcome – Nicole



- ❖ Outlined things planned for this meeting
  - Willful Citation Presentation
  - Strategic Plan and Assignments
  - NCVIP Workplans Discussion

## OSH Director's Update – KEVIN BEAUREGARD

- ❖ Increase in federal funding was received 105, 200 for the 2019 grant year that starts 10/1/19; Department of Labor is not affected by shutdown; we used some of that money for HCO position that is 100% federal funding and we were able to bring that up to the new minimum
- ❖ Used some of that money and some additional money to process some of the items on the waiting list; took 11 people off the waiting list in December; last month we processed another 8 employees; one of those people is on the list still b/c of performance issues
- ❖ 21D and 23G federal grants- a portion is used to pay for indirect cost and we rather keep that money in our program so we can do some other actions; we have a request for legislature to replace that cost w/ 100% state funding so that we can move that money used for the federal grants into our operation; it will be in the Governor's Budget
- ❖ 5 years ago when we went to OSHA Express, we struggled on that decision with going to a State ran system - we decided to go with our own system; The federal touted that the States should utilize their system; The feds have a per person user fee as of last month it was 525/person; at a board meeting in DC they let the States know they were going to increase the cost retroactive back to October and they are going to increase their cost to 1000k per person; They have plans to raise it to 3k per person in the future b/c it actually cost the feds 3k for users to use their system; by going with our own system we still pay OSHA to transfer our data we pay about 15k the new price will be about 17.5k/ year; on that basis alone we made a really good decision;
- ❖ Tennessee asked OSHA if they were pricing themselves out of a system
- ❖ Week ago last Monday; delegation from Korea power incorporation (KEPCO) - the meeting went well b/c they spoke some English; we gave an overview of our program; they were asked how they came to want to meet with us and they told them Instagram; apparently they saw a post we put on Instagram about safety and health and wanted to meet with us. They also met w/

SAS earlier in the day; favorite part of the day we took a picture and they said Kemchi; present at meeting was Wanda Lagos, Kevin O., Scott, and Kevin B.

- ❖ Cory Dunphy and Kevin B. Will be participating in a HLS mtg on 3/6; requested a review of our Hurricane Matthew response;
- ❖ Also asked to participate on 3/4 at 1:30pm on Excavation and Trenching activities; Ted H. Has agreed to represent NCDOL;
- ❖ \*OSHA posted record keeping training; 200 employees or greater do not have to do the electronic submission; deadline is 3/2 for them to submit the electronic data; the employer still has to complete the 300A
- ❖ \*printout on Monday about underutilized State vehicles; it was handed out to BCs on Tuesday; Contacted by Chief of Staff and we have to report with what we plan to do with the vehicles; one of the things he told the BCs is to do more activities; some offices have more vehicles than others; need explanations now; the problem is what we get rid of any trip over 100 miles they will get reimbursed the lower rate 33cents; we pay a fixed cost for our vehicles
- ❖ letters going out this week that falls into a new Consultative class; it affects the people in ETTA and some staff on Consultative; We fought to get another classification b/c it lumped everyone into the same classification; OSHA did agree to the new classification; there is a grade difference and so that could have an impact on Compliance if a position opens up; ETTA Health and Safety standards Officer and Health STAR; the ETTA trainers were not impacted by the classification change
- ❖ NCDOL has a insurance committee and the purpose is that external insurance vendors want to offer their products to the Department the committee is to do a triage to see if the vendors will be offering products/services to employees; all agencies were told to have this committee; it will comprise of employees, no supervisors will be on that committee; if you have anyone willing to be on that committee let management know; will request 2-3 people per division
- ❖ let BCs know to let Director's Office know of items being requested; deadline for use of State Funds 2/8; 4/12 for Federal Funds; the deadlines are to deal with some of the procedural changes that have occurred in our Financial Management Division;
- ❖ we use lapse funds for Attorneys and for other things;
- ❖ we gave back federal funding last year and it's no fault of anyone in the room; but if we do have to give it back we want to do it in sufficient time so other State plans can use it; if you don't give the money back in time it goes back to the Treasury and we may not get that funding in the future; want to utilize that money that is why we do the wish list
- ❖ Q. Bruce - the attorneys are paid by our vacant salaries; Response Kevin - yes. It's about 550k (5 Attorneys, we pay for 4 of them); if we fill our vacant positions we must find the funds to pay for those positions.

#### **Assistant OSH Director's Update – SCOTT MABRY**

- ❖ will talk later in the agenda on workplan discussions
- ❖ appreciate the work on the 60 day report it has gotten better; late last year we had about 120 items and we have decreased it to about 80 inspections
- ❖ fatality meetings w/ AD and BCs; don't have to wait to schedule those meetings; so he can keep Kevin B. On status and we can come up with some ideas
- ❖ Paul - the quicker we have that meeting the more we can figure out what we are going to cite;
- ❖ Nicole - feedback we have received is to include Leaton on the meetings b/c he may not be privy to some of the meeting

- ❖ we are at 63% cut loose (59% of Health; 66% of Safety)
- ❖ Inspection numbers we had a rough October and December is always difficult b/c of holidays; moving forward we have to get people out
- ❖ on SAMM reports at end of January we had 720 inspections; that is a pace at 2100 inspections
- ❖ we are running behind on inspections; anything we can do to help motivate staff will be appreciated
- ❖ we have a projected goal of 2900 inspections and we are currently on pace to do the same numbers we did last year; all of the other stuff we do flows from our # of inspections
- ❖ IC rate is down (through end of January it is 22% for Safety 26% for Health; flip side our lapse time is up; we are writing about the same number of 1b's per inspection as we did last year which was 3.16 and this year it is about 2.90; we get questions from the Feds; we were asked about why our inspections were down last year and it plays into the request for federal funding
- ❖ Leaton - Supervisors need to emphasize this in their district meetings by letting them know about the funding
- ❖ some of the changes we are trying to do with OSH money; we are trying to move the funding to state funded positions to department funding positions; we would like to raise money in our positions but these are merit increases and they will not be part of any increases; it's hard to justify to get the funding if we don't increase our inspection activity; in the past we did more inspections; feedback from staff is that we ask for more; we have a small percentage of files that go through the CFR; Leaton and Scott has come up with a couple of things; I understand it is a lot of work, but we need to focus on why we do what we do and how it impacts the state and how it looks when we have a lower number of inspections year to year; one great thing we have in the background is our injury/illness rate has dropped consistently since the 2000s and it gives a lot of credence to what we do in our program;
- ❖ video conference system; state IT department has the bid package and was told he would have it this week; TVs mounted in all the offices (NOTE: check with Jackie to see if our TVs are mounted)

#### **ASH Update – Beth Rodman**

- ❖ Busy with pre-occupancy; have 2 trainees to go out
- ❖ Martina Gonzalez will be retiring in June; preference Bi-lingual

#### **Consultative Update – BC traveling**

#### **ETTA Update – Wanda Lagoe**

- ❖ Standards books will be delivered in March or April
- ❖ construction forums coming up during fall stand down; wanting SEP team leaders to participate; one in Concord and one in Raleigh; will be working with our Alliances
- ❖ Stand-down w/ ASH 3/25 on grain handling
- ❖ Signed a new Alliance with North Carolina Association of Local Governmental Employee Safety Officials (NCALGESO)
- ❖ OSH 125 posted in February
- ❖ End of June Interviewing and Accident Investigations will be posted
- ❖ 4/9 - 4/11 OCSS Scaffolding (Check w/Wanda)
- ❖ Machine guarding/ LOTO late May
- ❖ Electrical hosted in Raleigh (4-day course; 3095)
- ❖ Legal Aspects 141 at end of year (coordinating with Legal)

- ❖ Safety Management Systems course (Joe is working on that and hope to have it finished this summer)
- ❖ training positions (2 resigned (Safety); 1 is posted/ 1 application referrals rec'd; 1 STAR position)
- ❖ updating the excel spreadsheet for OPN 64
- ❖ iPad works well with flip charts and they communicate well with each other; you can have all the flip charts talk to each other; Robert will be doing some training

STAR sites annual reports have changed to include Best Practices and success stories

## PSIM Update – ANNE WEAVER

- ❖ Injury and Illness electronic filing database; they have rec'd 2016 database; currently working with IT to change the ODI and SST assignment
- ❖ New General Industry schedule was uploaded
- ❖ New filing system in PSIM and in LBT (reloading files this week and next week)
- ❖ currently working on media request
- ❖ CSHOs and supervisors inquire about how Attorneys or anyone should inquire about requesting inspection files; when the new website was revamped it was taken off; now there is one document for all of NCDOL; prefer they send all request via email to Anne's email; they can go online and access [labor.com](http://labor.com); contact; public record form
- ❖ Scott - they continue to ask for in our files (difference b/w an investigation and inspection); they don't seem to understand the difference b/w investigation and inspection; we will investigate a fatality but we may not always do an inspection b/c they don't fall under our jurisdiction (I.e., traffic, natural cause death at work, etc. ); we end up getting death certificates and/or ME reports; we need to have at least the death certificate put in file to justify the decision as to why we didn't conduct an inspection;
- ❖ Lafayette - you can go to the county office and obtain the death certificate
- ❖ Paul we are getting local coroners and MEs that are making a judgement call on a medical diagnosis, with an external viewing; it's hard for OSH Compliance b/c there is some mixed evidence and at the end of the day we need to have enough information to challenge the call of the ME
- ❖ Lafayette - now that we are moving into Heat Stress season they are always heart attack
- ❖ Paul at the very end make sure that your ending summarizes the evidence you obtained does not appear to be work related (Section G- if fatality; most common place to include that detailed summary)
- ❖ Lafayette - as far as the cases they have requested are they mostly fatalities b/c most of them were not fatalities; Scott - they are focusing on poultry;
- ❖ We have received request for all the fatalities out of Charlotte and one for all fatalities out of Winston Salem; it makes why we do our files so important; Bruce - so what do you do, give it to them? Scott - You have to b/c of disclosure request.
- ❖ Kevin it is important to make sure all our information in the file (I.e., witness statements, etc.) because we can get questioned about our procedures if we do not have this information in the file and they can question how we are conducting inspections
- ❖ Paul our last 2 years of fatality IC inspections is 21.4%
- ❖ Kevin B. - only time it would be an IC is employee misconduct or employer knowledge
- ❖ Anne - they can request at any time; just forward the request to PSIM immediately;
- ❖ Laura - what is the reasonable time for an employer to receive the file? Anne - about a month (but it depends on what other requests have been received); Kevin - 3D party litigation receives

#### **OSH Reviewer – Leaton Jones**

- ❖ Routing files to CFR (inspection and settlement agreement); route to Jovonah (send an email to Leaton and Scott w/ Jovonah); should also be routed to Leaton - this is b/c if she is out of the office
- ❖ Laura - requested to have access to Jovonah's spreadsheet on the F: drive
- ❖ Leaton - file audits will not be given to BC but will be provided to Supervisors; he will compile the data; if you have any questions give Leaton a call
- ❖ Lafayette - interviewing employees trying to get to the bottom of lapse time; Leaton said he will come to some conclusion

#### **Administrative Update – Deidre Duncan**

- ❖ new process that will begin; abatements from employers will be tiffed into OE; will be done by CSHO
- ❖ Kevin 2/11 - citation packages will be tiffed into by OE Admin staff
- ❖ Kevin B. - requesting some guidance document; we are working towards going paperless on 10/1/19; there will be some overlap
- ❖ photos received in paper they scan and tiff as document; if they receive electronically a photo the photo to have to import the pictures.
- ❖ Paul - maintaining a separate location of keeping the photos
- ❖ Nancy - the photos on a CD are better b/c you can zoom in but in OE they are so small, and you can't zoom into the system.
- ❖ Lafayette - he hired an employee they had a hard drive they backed photos on
- ❖ Kevin the system we must save photos and I don't understand how they are uploaded; currently you must resize the photos
- ❖ Scott - notified everyone Jackie is retiring 9/30/19 (Diedre and Brent both work with OE); we need to get with Jackie about developing written procedures
- ❖ Jackie is doing an audit on complaints/referrals and no inspection files
- ❖ Kaye brought up the complaint/referral letter processing procedure that Supervisors in the East are being tasked to do the work;
- ❖ Paul - workplace violence responses; employee x vs. employee y and the wrong employee responded; the response will have inflammatory information in the response; we are sending that letter out to the complainant; change the letter "its corrected and no longer exist" to the complaint has been "closed"
- ❖ Scott will follow-up with Jill to see if there is a requirement to include the employer response with the workplace violence complaints.

#### **Staff Industrial Hygienist/ Complaint Desk – Nicole H. Brown**

- ❖ see attached Staff IH/Complaint Desk report

#### **Compliance Update – PAUL SULLIVAN & NICOLE BROWN**

- ❖ Willful Presentation - Paul
  - appendix A - no knowledge of the Act required;

- ❖ Strategic Plan - Paul had a CSHO ask about our inspections and the strategic plan. They were not aware of our strategic plan and our goals. Please make sure you explain to your staff about our goals and look at it every month to see where we are with all our goals. If we are ahead with LTC then we need to shift our resources to an area where we are not meeting the goals.
- ❖ District Lines & Assignments – Nicole
  - CSHOs can conduct inspections outside their district line with the permission of their Supervisor. We ask that their Supervisor/CSHO notify the District Supervisor whose county the inspection was conducted in so that they are aware of the activity to prevent another CSHO from going to the same site.
- ❖ NCVIP workplan discussion – Scott Mabry and Leaton Jones
- ❖ Proposed CSHO Inspection/Citation Goals
  - Increase number of inspections/citations
  - SCO SR, Inspections = 60/ citations = 158
  - SCO JR, Inspections = 45/ citations 114
  - HCO Sr, Inspections = 45/ citations =113
  - HCO JR, Inspections = 35/ citations = 85

Laura- What is our goal with this change? Is it to increase more inspections and/or to increase the number of citations? Scott showed diagram of a sliding scale that was being proposed to determine the amount of citations per the number of citations which would provide the rating

There was a lot of discussion over the proposed workplan changes with Supervisors and nothing was finalized. However, it was determined based on the feedback and comments from Supervisors and Bureau Chiefs is that we have a lot of GREAT CSHOs that are working very hard. They should not be penalized because some CSHOs are not performing well. Scott, Nicole, and Paul all stated that Supervisors need to be addressing performance issues with those CSHOs that are not meeting the goals. That is where we need to focus our attention. It was further stated that this is not being done and this has resulted in the Bureau not reaching the performance goals. If every CSHO did their part the OSH Compliance Bureau would reach all the established goals. Supervisors were told that CSHOs not reaching performance goals should be placed on a performance improvement plan. Not as a form of punishment but to develop a plan to help the CSHO reach the established goals. Performance plans are tools to allow the CSHO be involved in the discussion and identify things they can do to better improve their performance.

## **ATTACHMENTS**

- 1. Staff IH Report**
- 2. Willful Citation Presentation**
- 3. Workplan proposal of sliding scale (example was for SCO)**

## **STAFF INDUSTRIAL HYGIENIST/COMPLAINT DESK UPDATE**



## **STATEWIDE SUPERVISOR MEETING – 2/7/19**

### **FY 2019 – 1<sup>st</sup> Quarter (Oct/Nov/Nov 2019)**

- Complaints – 550 (282 East, 265 West, 3 ASH)
- Referrals (incl. hospitalizations/amputations, media and CSHO self referrals) – 215 (88 East, 104 West, 23 ASH)  
\*Hospitalizations/amputations – 187 of the 215
- Events – 38 (19 East, 19 West, 0 ASH)
- Unprocessed complaints – 605
- Unprocessed accidents – 25

### **Hospitalizations & Amputations (FY 2019, thru 2/5/19) - 210**

Oct – 67

Nov – 69

Dec – 51

Jan – 63

Feb – 6

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### **HH SEP Sampling FY 2019**

#### **1<sup>st</sup> Quarter**

- (23) samples with detectable results
- (13) inspections with detectable results
- Average severity rate = 22.57 (Silica), 2.41 (Lead), 0.08 (Asbestos), 0.04 (Isocyanates)  
\*No samples were collected for hexavalent chromium

In addition, there were (2) silica, (2) lead, (2) asbestos and (1) isocyanates personal samples collected that were below the limit of detection. There were also (6) wipe samples for lead and (1) bulk sample for lead.

### **Action Requests**

(4) action requests have been received so far in FY 2019, (6) since our last statewide meeting in February.

- (1) resulted in changes to FOM Chapter 11 for ASH
- (1) resulted in changes/updates to the mold complaint letter in OE
- (1) for Chapter 16 for handling of green cards
- (1) for adding a checkbox in OE under the Penalty Calculation tab for proximate cause that would automatically only reduce penalties for size (Pending).

## Willful Violations



OSH Supervisor Meeting  
February 7, 2019

Presented by:  
Paul Sullivan & Nicole Brown  
NC Dept. of Labor/Occupational Safety & Health Division

## Intentional and Knowing Violation

- An employer representative was aware of the requirements of the Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements; or
- An employer representative was not aware of the requirements of the Act or standards, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement.



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## Objectives

Become more familiar with willful violations and convey that information to the district CSHOs.

- FOM Chapter IV language
- Elements needed to cite
- Example cases



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## Plain Indifference to the Law

- Higher management officials were aware of an OSH requirement applicable to the company's business but made little or no effort to communicate the requirement to lower level supervisors and employees; or
- Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations; or



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## What is a willful violation?

- Per FOM Chapter IV: A willful violation exists under the Act where the evidence shows either an **intentional violation** of the Act or **plain indifference** to its requirements - not necessarily with knowledge of the standard itself.
- The CSHOs should be familiar with the information in the FOM and use the applicable language in their Violation Worksheet



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## Plain Indifference to the Law

- An employer representative was not aware of any legal requirement, but was aware that a condition or practice was hazardous to the safety or health of employees and made little or no effort to determine the extent of the problem or to take the corrective action.
- Knowledge of a hazard may be gained from such means as insurance company reports, safety committee or other internal reports, the occurrence of illnesses or injuries, media coverage, or, in some cases, complaints of employees or their representatives.
  - Disciplinary action records?
  - Maintenance work orders?



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## It's important to remember...

- It is not necessary that the violation be committed with a bad purpose or an evil intent to be deemed "willful." It is sufficient that the violation was deliberate, voluntary or intentional as distinguished from inadvertent, accidental or ordinarily negligent.



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## An example...

- For example, an employer who normally does minor excavation work-- nothing greater than three to four feet in depth-- is suddenly required to excavate to a depth of eighteen feet. The employer digs the three foot wide excavation with vertical sidewalls. Cracks subsequently appear in the excavation's side walls; soil begins sloughing off the sides and into the trench and water begins to accumulate in the bottom. An employee voices his concern about working in the excavation. If the employer required his employees to work in the bottom of such an excavation, he would be deliberately placing them into a dangerous situation. **Because the employer would be intentionally placing his employees into the trench, he would be violating his duty to ensure their "safety"-- a "requirement" of the standard. Thus, he would be in willful violation of the excavation standard-- despite the fact that he had no specific knowledge of the excavation standard.**



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## Section B1 for Willful Violations

- Should contain (itemized) documentation of the four-part test for a finding of willfulness:
  - Employer knowledge of the violative condition (the typical "knowledge" that we document for each citation).
  - Employer knowledge of the standard.
  - A subsequent violation of the standard.
  - Violation committed voluntarily or with intentional disregard of the standard or with demonstrated plain indifference to the OSH Act.
- This four-part test was developed by the Review Board and approved by the NC Supreme Court.



IC	Rdr, Inc.	
SW	Serious Willful	Citation
	3	No. 1
	1926.0652(a)(1)	

## Documenting Willful Violations

- Willfulness could exist if an employer is advised by employees or employee representative regarding an alleged hazardous condition and the employer does not make a reasonable effort to verify and correct the condition.



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## However...

- The four-part test is not the only way to establish a willful violation (see FOM Appendix IV-A).
- The Court also established that a willful violation can be issued to employers who may be **completely** unknowledgeable concerning the Occupational Safety and Health Act -- yet fail to take precautions which a reasonable person should have known were necessary in light of known hazards.
- This is the "disregard of duty" test. There is a deliberate purpose not to discharge some duty necessary to the safety of the person.



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Investigation of Injury/ Illness

N.C. Department of Labor  
Division of Occupational Safety and Health  
Name of Company: \_\_\_\_\_ Date: \_\_\_\_\_

Investigation of Injury/ Illness

I had the foot pedal while my hand was  
to the point of operation and the die  
came down on my left hand and  
crushed my ring finger &  
middle finger. I was taken to Catawba  
Valley Medical Center by ambulance and the  
next day my fingers had to be amputated.  
The ring finger was amputated down to the  
knuckle & the middle finger was amputated  
to mid finger nail. The doctor stated that he  
might need to remove more if it does not  
heal properly.

CSHO Burgett: How often have you used  
the OBT Press machine in the past?

Mr. Bumgarner: That particular machine  
I have not used often cause I refused to  
operate that press.

CSHO Burgett: Why have you refused to  
operate that press?

Mr. Bumgarner: Because I did not like  
that my hand could be put into the die  
while the machine was operating. I had

CSHO Burgett: 2 of 3

Statement of Mark Gibbs (Lead Man) and also Strategic Partner that I did not like heavy and put my hand in the die while the machine was operating. I suggested that the use of two hand activation to operate the machine. Also I am not a I want to be a die down to the guard opening to see what I am doing. If I do not bend down I cannot see the die area.

CSHO Burgess: Have you been trained to operate the OBI Press Machine?

Mr. Burgess: Yes I have been trained to run all of the machines in the plant. I was trained by Matt (last name unknown) or yes Matt Winkler but he does not work there any more.

END  
CB/BB

Mark Gibbs 3-13-18 RB

## BETCO – Multi-Digit Amputation

Referral Number: 203454983 Establishment: Betco Corporation, Ltd.  
Referral Date: 9/20/2018 228 Commerce Blvd, Statesville, NC 28677

19 Hazard Description

The employee was work on a "press wheel" with an operator and assigned to push metal forward. The operator activated the sheet, causing it to lower onto the injured employee's right hand. The employee suffered partial amputations to the tip of her right pinky, ring and middle fingers. The employee was transported to Baptist Hospital, in Winston-Salem.

UPA Action: UPA Response

Action Date	Action Type	Date Due	Communication	Add	Delete
9/20/2018	On Inspection - Y	9/27/2018			

### Additional Factors for a Possible Willful

- The nature of the employer's business and the knowledge regarding safety and health matters that could reasonably be expected in the industry.
- The precautions taken by the employer to limit the hazardous conditions.
- The employer's awareness of the Act and of the responsibility to provide safe and healthful working conditions.
- Whether similar violations and/or hazardous conditions have been brought to the attention of the employer.
- Whether the nature and extent of the violations disclose a purposeful disregard of the employer's responsibility under the Act.



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### Betco

#### Close-Up of the Expanded Metal Mesh and the Hold Down Tool



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### Betco – Multi-Digit Amputation



Ermaksan CNC HGD Hydraulic Swing Beam Shear



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WITNESS STATEMENT

I understand that this statement is to be used in a legal proceeding and that I am free to make any statement I wish to make, including the statement that I am making, and that I am not being coerced or threatened in any way.

Date: 9-20-18 Time: 11:55 Location: Betco Press Dept.  
Name: Thomas Davis Age: 204-880-8387  
Address: 1714 Hickory Rd.  
City: Statesville  
Social Security Number: 11-11-11  
Signature for: Davis

Occupation: Die Grinder Time to completion: 3-4 months  
Employment: 1-1-16

I hereby declare and say, around December 2017, I was a request to replace the safety glass in the shear machine. I was asked to do it. The request was to replace the glass and did not get replaced before it was finished. The day after I was asked to do it, I was asked to do it a half day.

Mark Thomas

Thomas Davis signed on 9/20/18 Date: 9/20/18

**WITNESS STATEMENT**

I, the undersigned, being duly sworn, depose and say that I am a duly qualified expert in the field of occupational safety and health, and that I am qualified to give testimony in this matter.

Date: 11-20-2019 Time: 10:11 AM Location: Shear

Name: Mark Thompson

Address: \_\_\_\_\_

City: \_\_\_\_\_

Board/Industry: \_\_\_\_\_

Employer: \_\_\_\_\_

Employment Dates: \_\_\_\_\_

I hereby declare and say:

I was a shear guard was missing about 2 weeks. I told the  
owner that guard was not fixed. He said we  
don't have that now. And he said we probably it has  
not come up since then. As it happened, they made  
no more work orders for a guard on the machine.  
Mark Thompson

WITNESS BY: 11-20-2019 10:11 AM Mark Thompson

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

## A Subsequent Violation of the Standard

### 3. A SUBSEQUENT VIOLATION OF THE STANDARD:

There was a bright orange metal guard in place (see photos 8498-8500) on the Enmakom Shear Hydraulic Swing Beam (HSD), which is located a little over 5.75 inches from the shear face (the point of operation). CSHO obtained this measurement from the tool that should be used to assist operators hold the steel sheets in place that are not wide enough to extend out from the guard (see photo 8516-18). While the guard was in place and positioned correctly, it was missing a 2" wide clear portion (like a window) that should run the entire length of the guard. This missing window portion allowed employees to place their fingers and hands through the missing portion of the guard to hold sheets of metal. This missing portion also allowed employees' fingers access to the point of operation.

Mr. Wanta told CSHO that he was trained by former employee 'James' approximately nine months prior to the accident to stick his fingers through the missing portion of the guard on the shear to keep the sheet of metal in place. Additionally, Ms. Reyes was trained by Mr. Wanta a little over three days prior to the accident to stick her fingers through the missing portion of the guard.



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## Knowledge of the Condition

### Willful Considerations:

#### 1. EMPLOYER KNOWLEDGE OF THE VIOLATIVE CONDITION:

During a phone conversation with HR Safety Manager James Stockton and Safety Coordinator Gerry Childress on October 9, 2019, CSHO asked them how long the guard on the shear had been missing the safety glass/Plexiglas portion. Mr. Childress stated it had been missing since at least late June or early July. CSHO asked him how he was so sure of the timeframe and he said he remembers it being during that timeframe because it was approximately a month prior to the "Safety Walk". He observed the missing portion of the guard and submitted a work order to Maintenance.

In August during the "Safety Walk", which included himself, Mr. Cornett, Mr. Thompson, and Mr. Stockton, the missing component of the guard was pointed out again. According to Mr. Childress, Mr. Thompson told all of them that he had to order the material to fix it. Mr. Childress then had Darin (Mr. Ayers), who was still the Assistant Lead in the Press Department at that time, to put in another work order to ensure the guard was fixed.

Mr. Gonzalez admitted to CSHO that he was aware the guard was in that condition for about two months. Mr. Thompson wrote in his witness statement that he was also aware the guard was missing the center portion for approximately two weeks. Mr. Ayers wrote in his witness statement that he submitted a request to the maintenance department "around 3 months" prior to the accident to fix the guard on the shear. The employer was unable to find any of the work orders that were submitted.



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## Intentional Disregard or Plain Indifference

### 4. THE VIOLATION WAS BEING COMMITTED VOLUNTARILY OR WITH INTENTIONAL DISREGARD OF THE STANDARD OR WITH PLAIN INDIFFERENCE TO THE ACT:

Mr. Wanta stated he was trained to put his hands through the missing portion of the guard approximately 9 months prior to the accident occurring. This guard was missing the middle (window) component for at least nine months. Multiple employees and managers, including Mr. Wanta, Mr. Childress, and Mr. Ayers, told CSHO they submitted a work order to fix the guard.

According to Mr. Stockton, this guard had previously never been fixed, however, it was fixed, using steel mesh, immediately following the accident. During interviews it was revealed that work orders are submitted directly to the maintenance department to be completed. After completion, the work orders are supposed to be turned in to Mr. Cornett to be filed. CSHO asked Mr. Thompson and Mr. Cornett for copies of any work orders (open or closed) where the guard had been fixed or replaced. Mr. Thompson told CSHO that there weren't any open work orders for the guard to be fixed. In response to a follow-up email CSHO sent to Mr. Cornett, he replied (October 8, 2018), "We have not been able to find the two work orders that Gerry and Darin said that they filled out and turned in. Since, we have implemented a tracking system for all work orders turned in to help with this problem." (see Appendix 6)

Mr. Thompson's witness statement said that he had been aware the guard was missing about 2 weeks and added, "I told Mr. Alvarez that guard needed to be fixed. Mr. Alvarez said we don't have time we need to have production." When CSHO asked him why he didn't go to General Manager Nick Cornett, he stated he had been down that road many times in his 16 years at this plant and that production always wins out in the end. CSHO did not ask Mr. Gonzalez about Mr. Thompson's written statement.

## Knowledge of the Standard

### EMPLOYER KNOWLEDGE OF THE STANDARD:

All employees receive a copy of the employer's Employee Safety Handbook. On page 2 of the handbook it states, "All employees will comply with the provisions of the OSHA Health Act of 1970. Therefore, any employee who knowingly commits an unsafe act or creates an unsafe condition, disregards the safety policy, or is a repeated safety or health offender will be discharged." One of the grounds for immediate discharge listed is, "Removing and/or making inoperative safety guards on tools or equipment." (see Appendix 5)

Mr. Wanta, Mr. Ayers, and Mr. Childress all stated they put in work orders because they knew that portion of the shear was supposed to be guarded. Mr. Thompson also told CSHO he knew the shear was not guarded properly.



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## Intentional Disregard or Plain Indifference

Per Chapter IV of the FOM, "A willful violation exists under the Act where the evidence shows either an intentional violation of the Act or plain indifference to its requirements - not necessarily with knowledge of the standard itself. The employer committed an intentional and knowing violation if: An employer representative was aware of the requirements of the Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements."

Based on CSHO's interviews with management and employees, the employer intentionally violated the Act. Multiple members working in a management capacity understood the regulatory requirements of point of operation guarding, and machine guarding in general; however, the guard was not repaired and employees were exposed to the hazard. According to Mr. Thompson's witness statement, he was told by Mr. Gonzalez not to slow down production by shutting down the shear to fix the missing window portion of the guard. Mr. Thompson and Mr. Gonzalez are both in management positions and both report to Mr. Cornett. Mr. Thompson did not exercise his due diligence by contacting Mr. Cornett to ensure the guard was fixed. The actions of both Mr. Gonzalez and Mr. Thompson show an intentional and knowing violation of the Act.

Also, Mr. Ayers and Mr. Childress had both put in work orders to have the guard fixed and knew for an extended period of time that the guard was not fixed, yet the shear continued to operate. Mr. Ayers and Mr. Childress' lack of action (i.e. not following up on the status of the work order despite knowing the shear was operating with an ill-equipped guard) at the very least shows plain indifference to the Act's requirements.



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North Carolina Department of Labor Occupational Safety and Health Division		Inspection Number: 318146188 Inspection Date(s): 9/21/2018 Issuance Date: 10/8/2018
<b>Citation and Notification of Penalty</b>		
Company Name: IMCO INC Inspection Site: 228 Commerce Blvd., Statesville, NC 28625		
<b>Citation 01 Item 001</b>	Type of Violation	Willful Serious
29 CFR 1910.212(a)(3)(ii) The point of operation of a machine whose operation exposes an employee to injury was not guarded.		
a) press department - where a two-inch wide section, running the length of the Limaskan CNC Hydraulic Swing Beam Shear (HGB), of the point of operation guard was missing. On or about 9/20/2018, an employee had portions of two fingers amputated while using the aforementioned shear.		
Date By Which Violation Must Be Abated: Proposed Penalty:		Corrected During Inspection \$56,000.00

North Carolina Department of Labor Occupational Safety and Health Division		Inspection Number: 31811457 Inspection Date(s): 7/12/2017 - 7/26/2017 Issuance Date: 7/28/2017
<b>Citation and Notification of Penalty</b>		
Company Name: Hoot & Jan Manufacturing LLC Inspection Site: 402 McKinney Parkway, Lillington, NC 27446		
<b>Citation 01 Item 001</b>	Type of Violation	Willful Serious
NC 29-129.11: The employer did not furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or were likely to cause death or serious injury or serious physical harm to his employees in that employees were exposed to caught-in-between and point of operation hazards.		
a) facility cell-4 work area located at 402 McKinney Parkway, Lillington, NC 27446, where on 05/31/17, an employee was injured when his ring and middle finger were caught-in and crushed in the rollers of an IMCAR Universal Bending Machine (model: CPHV-70 serial #: B304055) while forming a Marwell Ring due to a faulty motor-stop brake. The bending machine rollers did not immediately stop after the employee released the foot-pedal control system.		
Date By Which Violation Must Be Abated: Proposed Penalty:		Corrected During Inspection \$61,000.00

North Carolina Department of Labor Occupational Safety and Health Division		Inspection Number: 318127750 Inspection Date(s): 1/29/2018 Issuance Date: 7/30/2018
<b>Citation and Notification of Penalty</b>		
Company Name: Mossblower Roofing, LLC Inspection Site: 980 Kasey Gibbons Court, Kernersville, NC 27284		
<b>Citation 01 Item 001</b>	Type of Violation	Willful Serious
29 CFR 1926.501(b)(13): Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net system, or personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501 (b).		
a) Kasey, 980 Kasey Gibbons Court, Kernersville, NC 27284 - subcontractor employees performed roof replacement activities, 9 feet 11 inches to approximately 70 feet above ground, on the roof of a two-story residence without utilizing any fall protection measures.		
Among other methods, one feasible and acceptable abatement method to correct these hazards is to ensure the utilization of fall protection measures for subcontractor employees when working 6 feet or greater above lower levels, and; as the event the employer can demonstrate conventional fall protection is infeasible, or creates a greater hazard to use these systems, ensure that the employer develops and implements a fall protection plan that meets the requirements of paragraph (k) of 29CFR 1926.502.		
Date By Which Violation Must Be Abated: Proposed Penalty:		7/30/2018 \$28,000.00

North Carolina Department of Labor Occupational Safety and Health Division		Inspection Number: 318134796 Inspection Date(s): 4/19/2018 - 10/11/2018 Issuance Date: 10/12/2018
<b>Citation and Notification of Penalty</b>		
Company Name: Korolis Three Inc. DBA Preferred Cleaners Inspection Site: 4856 Albemarle Rd., Charlotte, NC 28205		
<b>Citation 01 Item 001</b>	Type of Violation	Willful Serious
NC 29-129.11: The employer did not furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or were likely to cause death or serious injury or serious physical harm to his employees in that employees were exposed to explosion and struck by hazards.		
a) boiler room - where a 1998 Brunner pressure vessel (at 200 PSI) was operated with an active leak, after an unsuccessful attempt to repair it using bondo or a similar material.		
Note: Among other methods, one feasible method to correct this hazard is for the employer to remove the pressure vessel from service until such time it can be repaired by an "R" Certificate Holder from the National Board of Boiler and Pressure Vessel Inspectors.		
Date By Which Violation Must Be Abated: Proposed Penalty:		Corrected During Inspection \$28,000.00

North Carolina Department of Labor Occupational Safety and Health Division		Inspection Number: 318149861 Inspection Date(s): 11/16/2018 Issuance Date: 1/4/2019
<b>Citation and Notification of Penalty</b>		
Company Name: Loose Galley DBA Galley Roofing Company Inspection Site: 401 E. Main Street, Dallas, NC 28034		
<b>Citation 01 Item 001</b>	Type of Violation	Willful Serious
29 CFR 1926.501(b)(13): Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net system, or personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501 (b).		
a) Main Street jobsite - where employees were performing re-roofing activities on a single-story residence without the use of fall protection, exposing them to a fall of up to seventeen feet, three inches.		
Date By Which Violation Must Be Abated: Proposed Penalty:		Corrected During Inspection \$28,000.00

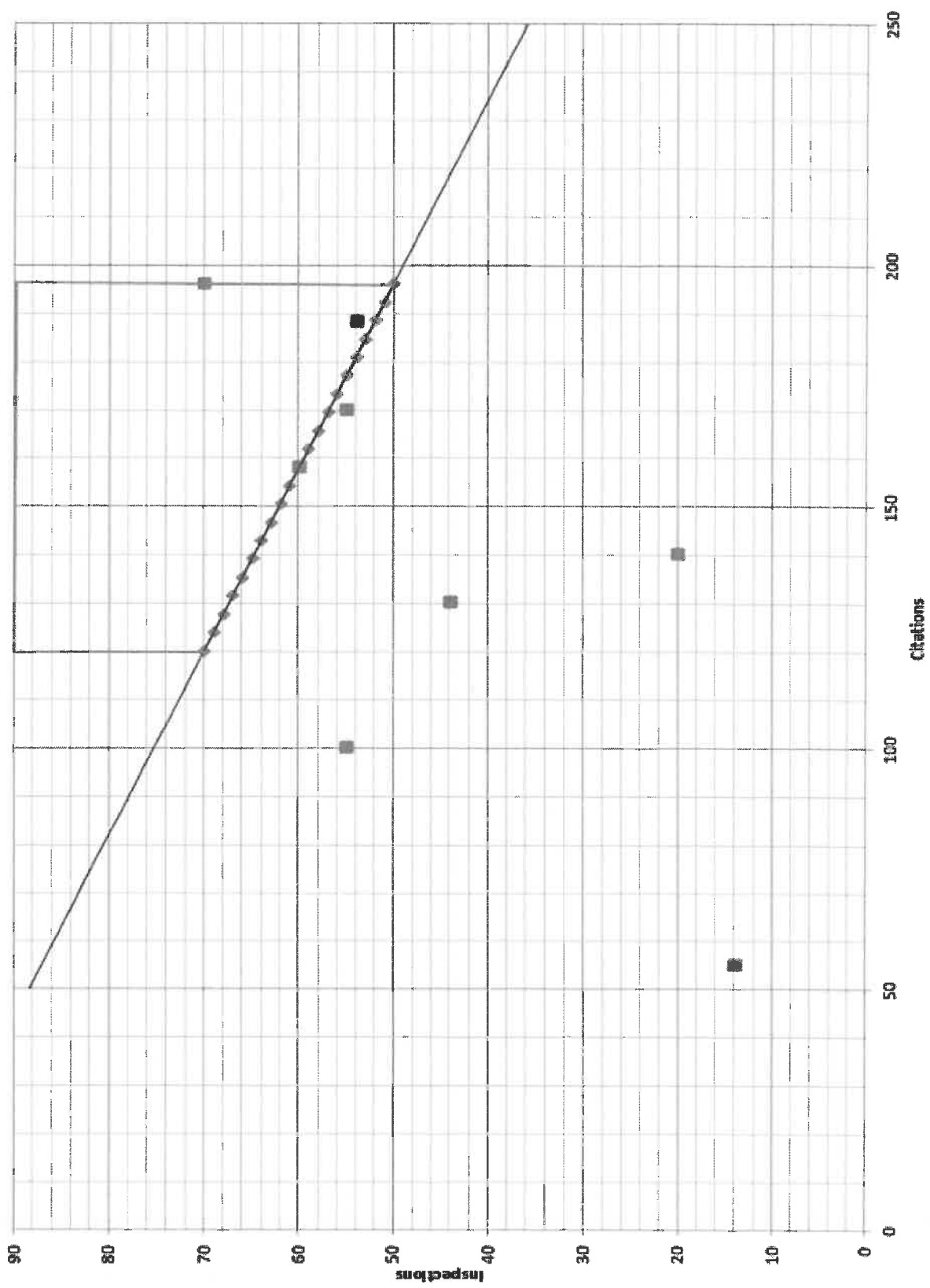
North Carolina Department of Labor Occupational Safety and Health Division		Inspection Number: 318134798 Inspection Date(s): 4/19/2018 - 10/11/2018 Issuance Date: 10/12/2018
<b>Citation and Notification of Penalty</b>		
Company Name: Korolis Three Inc. DBA Preferred Cleaners Inspection Site: 4856 Albemarle Rd., Charlotte, NC 28205		
<b>Citation 01 Item 002</b>	Type of Violation	Willful Serious
NC 29-129.11: The employer did not furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or were likely to cause death or serious injury or serious physical harm to his employees in that employees were exposed to explosion and struck-by hazards.		
a) boiler room, where the employer operated a Williams & Davis 1998 Fire Tube Boiler that was leaking natural gas, and had not been completely repaired.		
Note: Among other methods, one feasible method to correct this hazard is for the employer to fully repair the gas leak on the boiler prior to further operation.		
Date By Which Violation Must Be Abated: Proposed Penalty:		Corrected During Inspection \$28,000.00

## Questions?

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◆ Goal  
■ Actual-Example



# Statewide Supervisor Meeting

**Date:** 11/08/18

**Start Time:** 10:00am

**Adjourned:** 3:00pm

**Scribe:** Chris Moore

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## Attendees:

Lafayette Atkinson  
Kevin Beauregard  
Nicole H. Brown  
Jennie Cagle  
Laura Crawford  
Nancy Hall

Ben Harris  
Scott Justice  
Kaye Knezevich  
Wanda Lagoe  
Scott Mabry  
Bruce Miles

Chris Moore  
Judyth Niconienko  
Lauren Norton  
Lee Peacock  
Cynthia Richardson  
Jackie Spangler

Paul Sullivan  
Ric Schumann  
Anne Weaver  
Hollis Yelverton  
Kaye Thibodeaux

## Welcome – Paul

- ❖ Welcome and introductions
- ❖ Outlined what was to be done this meeting

## OSH Director's Update – KEVIN BEAUREGARD

- ❖ Spoke about attending advisory council meeting (east and west meetings)
- ❖ Federal budget: increase of approximately 1.5%, this has not been released yet. OSH needs to give plan to congress
  - i) 5M was taken away in 2014, we asked to give back to each stated plan within the next couple of months. This could go to certification increases as there are no funds for this right now.
- ❖ Salary adjustment fund submissions for OSH SFGY2020 for those at midpoint of range (max 5% must be matched for non-100% positions).
  - i) We want to put more stated funds to replace federal funding, but the legislature has to do this.
- ❖ New Strategic Plan and IT plan has been submitted to OSBM
  - i) Posted on the intranet, department wide (includes OSH)
  - ii) Only funding things that tie into the strat plan
- ❖ Working on a bill that would make it easier to obtain EMS and police reports during the next legislative session.

- ❖ HR reminder – three holidays in November and December, sups need to be checking time sheets to ensure that no mistakes are made.
- ❖ NCVIP – security training session due. Interims are in January
- ❖ Open Enrollment in close, some employees did not enroll and if they were in the system and not in process they were automatically enrolled in 70/30 without a smoking cessation credit.
- ❖ New consultative safety and health classes that are awaiting approval, hopefully in Dec 2018.
- ❖ New Carpeting in ORB almost completed
- ❖ BLS released injury illness data, national illness/injury rates have decreased
- ❖ OSHA Quarterly meeting on 11/30/18
  - i) FAME report was overall OK, comprehensive FAME every three years instead of every other year, we are pushing for this.
- ❖ OSHSPA, K.B. is the current chair, has submitted Scott's name to ACCSH
- ❖ OSH Advisory committee
  - i) OSH has not had been active on this committee, there are lots of misunderstandings with the rules and regs and it helps that OSH has a representative.
- ❖ No new assistant secretary of labor at the federal level, and there may not be one at all
- ❖ K.B. is on leave from 12/17 to 1/1

#### **Assistant OSH Director's Update – SCOTT MABRY**

- ❖ Hurricane response
  - i) Cory sends updates on this, lets us know the state of the counties
  - ii) No groups to be sent the week of thanksgiving
  - iii) This helps us see the progress of work that is being done in those affected counties
- ❖ Project: pulled 000 FATCAT files, tried to find what was missing/needed for the files
  - i) This is to try and head off issues that could come up if we don't inspect
  - ii) Lots of Media requests, media was looking for mistakes that were made (i.e. dirt)
  - iii) Discussion: L. Atkinson asked about getting death certs and R. Schumann stated that he can get them but cannot distribute them due to privacy issues. J. Spangler stated that the info should be put in the communication log as these cannot be deleted, P. Sullivan stated that discussion can be had with the ME that can help determine the cause of death. It was generally discussed that difficulties can be had in obtaining ME reports based on the county that you are in and could a letter from the ME suffice. K.B. reiterated that this was why there was a bill in the legislature to try and make it easier to obtain ME reports.
- ❖ Lapse Time: went up another seven days across the board
  - i) This will be a focus, try to meet 60+ days on FATCAT file to try and focus on where to go. Hope that this will help with lapse time
- ❖ 2443 total inspections done. This is down 300 from previous year, Goal was in the 2900 range.
  - i) Significant hours worked with hurricane outreach, will adjust for this.
- ❖ Lower turnover currently: Try to schedule classes, this is a positive direction,
- ❖ Returning a ISA within 3 working days is currently on the cover letter for them, why is this here?
  - i) Discussion: Try to do ISA with ER in the office, some agreed some did not. No one was sure where the 3-day requirement came from

### **ASH Update – Lauren Norton**

- ❖ Fully staffed and doing lots of pre-occupancy inspections
- ❖ Lots of trainees to take out
  - i) Try and get trainees scheduled, they should expect 8+ hour day and the inspector can meet the CSHO.
- ❖ Currently ramping up compliance activity with Christmas Tree Farms.

### **ETTA Update – Wanda Lagoe**

- ❖ OSH 100 and tech writing end of Nov beginning of DEC
- ❖ Cory: field training portion of the OCSS class at annual training
  - i) Will update when it's done
- ❖ Wrapping up safety and health management courses
  - i) Currently working on online courses (Mark Catherine and Joe Long)
  - ii) They are trying to put all courses online but this presents challenges
    - (1) Subject matter experts and software experts need to be paired together
    - (2) This will be done over the next couple of years
- ❖ Construction Forum
  - i) Resource intensive to coordinate and host these
  - ii) Need to get vendors and staff together
  - iii) Try to hold one large on next year, spring time frame

### **Standards – Not sure who spoke**

- ❖ Any questions, call Hollis
- ❖ Quick cards: sent to the field offices
- ❖ Beryllium Standard was adopted in NC on 11/7/18
- ❖ Lamont said that there were no specific updates and there was a successful star conference.

### **PSIM Update – ANNE WEAVER**

- ❖ Restarted SST program: respond through injury tracking program
  - i) The OPN is being worked on
- ❖ Public Sector Survey is done, several non-responders and will be trying once more to obtain information
- ❖ New lectriver: all file will be put in the new machine

### **Administrative Update – JACKIE SPANGLER**

- ❖ Admin is now fully staffed
- ❖ OE manual is nearing completion on the One Stop Shop and it will point to the FOM
- ❖ Scanner Project: No hitches, going smoothly so far
- ❖ 000 files: paperless, let us know of any issues

#### **Staff Industrial Hygienist/ Complaint Desk – RIC SCHUMANN**

- ❖ Health hazards, see attached handout that shows inspection/sampling data
- ❖ Equipment is being calibrated as scheduled, did not get some new equipment due this year
- ❖ Death certificates: ask if needed and need an update on accidents ASAP

- see attached Staff IH/Complaint Desk report

#### **OSH reviewer/Director's Office – Leaton Jones**

- ❖ Going well so far, will be visiting offices and there is a plan for new accidents

#### **Compliance Update – PAUL SULLIVAN & NICOLE BROWN**

- ❖ NHB: fed OSH review of Angelica Textile Decision: good idea to go over with staff
- ❖ PS: Talked about an asbestos removal job and the difference between PLM and point counts can be significant and could result in citations that should not be issued.
- ❖ PS: Prisoner workers: if working for private sector on work release they are covered by OSH but if working for the public sector, they are no covered by OSH
- ❖ PS: Presentation on What to Look for during Casefile Review. (see attached presentation)

## **ATTACHMENTS**

### **1. Staff IH Report**

**2. Compliance Presentation** (Do not print and handout b/c it contains screen shot examples from our current general schedule assignment list)

## **STAFF INDUSTRIAL HYGIENIST/COMPLAINT DESK UPDATE**

IH Emphasis Program Tracker									
Health Hazards									
Data Current Through: Overall (Oct 2017-Sep 2018)									
	Silica	Lead	Asbestos	Cr(VI)	Isocyanates				
	Results	Results	Results	Results	Results				Totals
	LY2018	LY2018	LY2018	LY2018	LY2018				LY2018
Number of Total Samples (with detectable results)	36	23	0	6	3				68
Number of Inspections (with detectable results)	18	9	0	5	3				35
# of Samples >2 SD Above Mean	N/A	N/A	N/A	N/A	N/A				
Average Severity - All Samples	4.41	5.04	#DIV/0!	0.09	1.12				
Average Severity - Company Averages	4.44	3.25	#DIV/0!	0.10	1.12				
Median Severity- All Samples	0.51	0.32	#NUM!	0.03	1.17				
Median Severity - Company Averages	1.15	0.35	#NUM!	0.03	1.17				
% of Samples > PEL	11.1%	39.1%	0.0%	0.0%	66.7%				
% of Inspections with Samples > PEL	16.7%	44.4%	0.0%	0.0%	66.7%				

## FY 2018 Health Hazard Sampling

[illegible]



## Complaints/Referrals/FatCat FY 2018

	East					West					ASH					Cumulative Overall Total
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total	
Complaints	241	262	312	306	1121	288	317	349	330	1284	5	2	3	4	14	2419
Referrals	87	78	78	98	341	87	117	107	130	441	8	5	7	20	40	822
Events (Fat/Cat)	13	10	11	14	48	16	18	19	19	72	2	0	1	0	3	123

Notes:

1) Includes all complaints, referrals and fat/cat that were entered but not necessarily inspected.

In addition to the complaints that were entered in OE, there were others that were not entered and placed on our unprocessed complaint log. These include complaints that are not in OSH jurisdiction (wages, discrimination, worker's comp, questions, beyond statute of limitation time frame, etc.)

1st Qtr	654
2nd Qtr	748
3rd Qtr	738
4th Qtr	719
Total	2859

2) Referrals include employer reported accidents/hospitalizations and CSHO self-referrals, government agencies, media, etc.  
Of the total referrals, the following numbers were from hospitalizations/amputations:

1st Qtr	163
2nd Qtr	175
3rd Qtr	158
4th Qtr	201
Total	697

3) "Unprocessed" Accidents/Referrals - due to not meeting reportable guidelines, not within OSHNC jurisdiction, etc. Not entered in OE, but logged for tracking.

1st Qtr	23
2nd Qtr	36
3rd Qtr	24
4th Qtr	35
Total	118

4) Events (Fat/Cat) include fatalities resulting from heart attacks and other natural causes.

**Totals for FY 2018**

	<b>Totals</b>	<b>%</b>
Total incidents	697	
Inspections	160	23
Letters	513	74
No action	8	1
Phone discussion	13	2
	694	100