NEW MEXICO OSHA
Occupational Safety and Health Administration

NM OSHA

MCA OF NEW MEXICO
SAFETY FIRST
WORKERS' COMPENSATION GROUP FUND

MCA OF NM WCGF

MCA of NM Safety, Ownership, Awareness, Respect and Success (SOARS) Agreement

between the

Occupational Health and Safety Bureau
New Mexico Environment Department

and the

Mechanical Contractors Association of New Mexico
Workers' Compensation Group Fund

Purpose

The Mechanical Contractors Association of New Mexico Workers' Compensation Group Fund (MCA of NM WCGF) and the Occupational Health and Safety Bureau of New Mexico, also referred to as New Mexico OSHA (NM OSHA), hereby commit to a cooperative partnership, the purpose of which is to foster, maintain and improve the safety and health conditions and requirements for New Mexico's commercial construction workers and workplaces. The Parties signatory below, mutually commit and dedicate ourselves to this Agreement, particularly on behalf of New Mexico's working families, with a full realization that success in this endeavor will benefit all the people, the businesses and the political institutions of our state. This SOARS partnership does not apply to residential construction. Residential contractors may apply for participation in the NM OSHA Construction Agreement for Residential Employee Safety (CARES) program.

Goals

1.0 We are Committed to:

1.1 Provide leadership in creating a culture of full respect for the lives and sound health of New Mexico's construction workforce;

1.2 Continually seek better methods and technologies for reducing occupational injuries, illnesses, diseases and fatalities in New Mexico's workplaces;

1.3 Foster and encourage the implementation and maintenance of best practice safety and training programs;

1.4 Foster and encourage the implementation and maintenance of effective safety program incentive and enforcement policies;

1.5 Focus primarily on the common job site hazards related to falls, electrocution, and accidental impact injuries; and

1.6 Mitigate, to the extent possible, the negative economic impacts of workplace injuries, illnesses and occupational diseases, including especially the cost of workers' compensation insurance.

2.0 Our primary strategies include:

2.1 Building partnership and employer/employee relationships based on fairness, good faith and mutual respect maintained through honest and open communication;

2.2 Continually striving to improve the science of workplace safety through the adoption of new technologies and improved management practices; and

2.3 Providing recognition and rewards for companies and workers that demonstrate a consistent, proactive approach to safety and health program management.

3.0 The term of this Partnership Agreement shall be three years. Renewal of the Agreement at the end of the three year period is assumed by the Parties' signatory below. The Parties further assume that withdrawal from the Agreement would be for cause, after a mutual, good-faith effort to resolve any issues of concern.

Implementation

The SOARS Agreement will be effective immediately after signing by signatories. Application processes will begin on January 14, 2010 through March 31, 2010. The verification committee will review all applications April 1, 2010 through June 30, 2010. Membership will be effective July 1, 2010.

Effective 2011, new applications and level advancement requests will be accepted January 1st to March 31st .

Safety, Ownership, Awareness, Respect and Success (SOARS) Agreement

SECTION B – Terms of the Agreement

1.0 Employee/Employer Rights

1.1 The Safety, Ownership, Awareness, Respect and Success (SOARS) Agreement does not affect the rights of employees under the Occupational Health and Safety Act (hereinafter referred to as "the Act") and NM OSHA regulations. This partnership does not preclude employees or employers from exercising any right provided under the Act (or, for federal employees, 29 CFR 1960), nor does it abrogate any responsibility to comply with the Act.

1.1.1 Employee rights cited above include, but are not limited to: walk-around rights; the right to file complaints; rights to all pertinent safety and health program information, including OSHA 300 logs; and their own medical records.

1.1.2 The SOARS Agreement supports maximum employee involvement in company safety programs, employer self-audits, safety inspections, job hazard analyses, and accident and near-miss investigations, reviews, and evaluations.

1.2 The SOARS Agreement does not affect the rights employers are guaranteed under the Act, including the right to appeal or contest violations issued by NM OSHA.

1.3 Participation in the SOARS Program does not abrogate an employer's responsibility to comply with the rules and regulations adopted under the Act, nor does it abrogate the employer's responsibility to comply with commitments negotiated via separate agreements with NM OSHA.

1.4 Contractors may publicize their participation in the SOARS Program through job site signs, advertisements and other appropriate means.

1.5 MCA of NM WCGF SOARS Program: The MCA of NM WCGF Safety, Ownership, Awareness, Respect and Success (SOARS) program recognizes three program achievement levels, each with attendant requirements and rewards. Achievement levels are based on objective criteria and a ranking system based on points.

2.0 SOARS Partnership Levels and Benefits

2.1 **Par Level:**

2.1.1 Par participants will receive Certificates of Recognition as SOARS Program participants from NM OSHA.

2.1.2 Par participants will not receive citations for other-than-serious violations that are abated within the period prescribed by NM OSHA.

2.1.3 If citations are issued for OSHA violations, Par participants will receive the maximum good faith penalty reductions authorized by NM OSHA policy.

2.1.4 Par participants will receive an additional 1% discount on premium.

2.2 **Birdie Level:**

2.2.1 Birdie participants will receive Certificates of Recognition as SOARS Program participants from NM OSHA.

2.2.2 Birdie participants will not receive citations for other-than-serious or serious violations that are abated within the period prescribed by NM OSHA.

2.2.3 NM OSHA will allow resolution of all referrals via telephone or fax, except where serious injury or death is involved. If an unprogrammed inspection should be necessary, a summary of the complaint or referral and any resulting actions will be provided to the SOARS Program Committee by NM OSHA.

2.2.4 If cited by NM OSHA, Birdie participants will receive maximum good faith and history penalty reductions authorized by NM OSHA policy.

2.2.5 Birdie participants will receive an additional 2% discount on premium

2.3 **Eagle Level**:

2.3.1 Contingent upon the successful conclusion of the NM OSHA Verification procedure, SOARS Program participants at the Eagle level:

2.3.1.1 Shall receive the same benefits as Birdie level participants;

2.3.1.2 Shall be exempt from NM OSHA programmed plan inspections for one year;

2.3.1.3 Shall be excluded from NM OSHA programmed plan inspections conducted at non-participants' job sites unless cause for their inclusion can be demonstrated; and

2.3.1.4 Shall be given special recognition by NM OSHA designating the Member as an Eagle level participant in the SOARS Program.

2.3.2 NM OSHA will present MCA of NM WCGF Eagle level participants with a banner recognizing participation in the SOARS Program. The banner may be on display at all appropriate job sites. **A walk through by the partnership's NM OSHA Representative shall be conducted prior to the banner being displayed on any job site.** The Member displaying the banner will have exceeded minimally acceptable safety standards by demonstrating a proactive approach to job safety. The same proactive approach must then be consistently maintained in order to retain Eagle level status.

2.3.3 Eagle participants will receive an additional 3% discount on premium.

3.0 SOARS Program Participation

3.1 General Requirements:

3.1.1 Each Member wishing to participate in the SOARS Program at the Eagle, Birdie, or Par level, shall submit to MCA of NM WCGF a SOARS Program application consisting of four parts:

3.1.1.1 Part One shall be a Commitment Agreement signed by an authorized company official (owner, chief operating officer, or general manager).

3.1.1.2 Part Two shall be a copy of the company's written health and safety program, which shall address, at a minimum, the following elements: Management Commitment; Employee Involvement; Worksite Analysis; Hazard Prevention and Control; and Safety and Health Training. The health and safety program shall pertain specifically to the type of work performed by the company.

3.1.1.3 Part Three shall be performance data from the company's OSHA 300 logs, 300As and experience modifiers from the preceding three years.

3.1.1.4 Part Four shall be the applicant's self-evaluation of its safety and health program.

3.1.2 The completed application shall be submitted to MCA of NM WCGF as defined by the selection committee.

3.1.3 MCA of NM WCGF shall provide a copy of the completed applications and recommended award levels to NM OSHA.

3.2 Level Requirements for Program Participation

3.2.1 **Par participants:** In order to be designated a Par Level participant in the SOARS Program, the applicant must:

3.2.1.1 Verify to NM OSHA that the company actively implements its written health and safety program;

3.2.1.2 Actively encourage employee involvement in the company health and safety program;

3.2.1.3 Conduct weekly safety meetings;

3.2.1.4 Implement a responsible approach to job site safety, as indicated by past performance (OSHA 300 logs) and self-evaluation score;

3.2.1.5 Be represented by the Company Owner and the Company Safety Director at an annual meeting at which the Group Fund's protocols, benefits and requirements will be discussed;

3.2.1.6 Have the Company Owner and Company Safety Director participate in a meeting with the MCA of NM WCGF's safety consulting firm every ninety days;

3.2.1.7 Conduct and document at least one tailgate meeting per week in accordance with an approved protocol, and provide documentation for review during quarterly audits completed by the MCA of NM WCGF's safety consulting firm;

3.2.1.8 Conduct at least two employee safety training sessions each year, to be led by a qualified and credentialed instructor;

3.2.1.9 Participate in at least five job site visits from the MCA of NM WCGF's safety consulting firm each year;

3.2.1.10 Have the Company Owner or principal designate an employee to attend the MCA of NM WCGF's safety committee meeting held every other month. Each member company's designee is required to attend a minimum of three meetings per year;

3.2.1.11 Conduct and document safety training for wheeled vehicle hazards, including driving and proper operation of all wheeled vehicles and equipment;

3.2.1.12 Designate a competent person or persons, i.e., an individual employed by the applicant that is authorized to identify and correct workplace hazards; and

3.2.1.13 Attain a self-evaluation score of at least 60.

3.2.2 **Birdie Level**: In order to be designated a Birdie Level participant in the SOARS Program, the applicant must:

3.2.2.1 Meet the requirements for the Par Level, plus;

3.2.2.2 Participate in monthly job site visits from the MCA of NM WCGF's safety consulting firm, which will submit reports of the visits to MCA of NM WCGF;

3.2.2.3 Ensure that all construction site supervisors have obtained OSHA 10-hour certification; and

3.2.2.4 Attain a self-evaluation score at least 150.

3.2.3 **Eagle Level:** In order to be designated an Eagle Level participant in the SOARS Program, the applicant must:

3.2.3.1 Meet the requirements for the Birdie Level, plus;

3.2.3.2 Have achieved a recordable occupational injury and illness rate (total case per BLS formula) that is at least 25 percent below the most recent national average of the contractor's North American Industry Classification System code or have a workers' compensation insurance modification rate of **1.0** or less;

3.2.3.3 Arrange for at least one active job site visit by representatives of the SOARS

Verification Committee;

3.2.3.4 Ensure that all construction site supervisors have obtained OSHA 30-hour certification;

3.2.3.5 Provide evidence of employee involvement in company safety program activities, such as self-audits, site inspections, safety training, safety committees, near misses;

3.2.3.6 Not have been cited by NM OSHA for a serious, repeat, or willful violation in the prior three years; and

3.2.3.7 Attain a self-evaluation score of at least 180.

4.0 NM OSHA Verification Procedures

4.1 SOARS Program designations and benefits will be conferred annually, subject to Verification by NM OSHA that all applicable requirements have been met.

4.2 NM OSHA shall have the authority to validate information submitted by SOARS Program applicants and participants prior to benefits taking effect, and on a periodic basis, at least annually, thereafter, through job site visits and other means.

4.3 Information obtained by NM OSHA in connection with the SOARS Program Verification activities shall not be used for compliance purposes and shall not be shared with other entities, including other government agencies.

4.4 Participants in the SOARS Program shall have designated safety personnel participate in NM OSHA Verification activities at their job sites.

5.0 SOARS Program Governance

5.1 Information submitted by Members as part of their SOARS Program application shall be held in strict confidence by members of the SOAR Verification Committee. However, information normally provided by an employer for purposes of a NM OSHA inspection or investigation shall be provided upon request by NM OSHA.

5.2 Any SOARS Program participant may terminate their participation at any time by notifying MCA of NM WCGF in writing.

6.0 Loss of Benefits and Termination of Participation

6.1 NM OSHA retains the right to downgrade or terminate a company's participation under the SOARS Program due to the following conditions:

6.1.1 Information provided as part of the application does not meet the participation criteria, as demonstrated during NM OSHA's Verification process;

6.1.2 The company is found to have falsified information on its SOARS Program

application or supporting records;

6.1.3 The company's injury/illness rate rises above the minimum required for the receipt of benefits under the program; or

6.1.4 The company demonstrates a pattern of deficiencies evidencing blatant disregard for the occupational health and safety of its employees.

6.2 NM OSHA shall notify the SOARS Verification Committee in writing whenever it proposes to downgrade or terminate a company's participation under the SOARS Program. The notification will include an explanation as to why the action is being taken.

6.3 In the event a Participant is downgraded by NM OSHA, the member will be placed on probation, with the loss of the additional premium discount.

6.4 A participant's involvement under the SOARS Program shall be terminated by MCA of NM WCGF if it fails to maintain its status as a member in good standing of MCA of NM WCGF.

6.5 A participant's SOARS Program achievement level shall not be transferable to another OSHA Partnership Program.

7.0 SOARS Verification Committee & Measurement System

7.1 The SOARS Verification Committee shall oversee activities under the Partnership and shall be comprised of occupational safety and health representatives from designated MCA of NM WCGF member companies. The bureau chief of NM OSHA shall appoint a member of the bureau to serve as advisor to the SOARS Verification Committee.

7.1.1 Each Participant's information will be reviewed and verified annually. Applications are required by participants who wish to upgrade a level.

7.2 The SOARS Verification Committee shall:

7.2.1 Verify each application by confirming the applicant's qualifications, including:

7.2.1.1 Verification of Experience Modifiers;

7.2.1.2 The company's recordable occupational injury and illness rate based on its OSHA 300 Logs; and

7.2.1.3 The qualifications of the company's occupational safety and health professionals;

7.2.2 Review all reports of complaints and referrals issued to SOARS Program participants;

7.2.3 Recommend changes to the SOARS Program, as warranted; and

7.2.4 Prepare documents to support the program, including an explanation of the SOARS Program for distribution to supervisory personnel of contractors participating in the Partnership;

7.3 The SOARS Verification Committee shall review and make recommendations to the Trustees of the MCA of NM WCGF to recommend reinstatement of any participant of the SOARS Program whose involvement has been terminated or reduced if it determines the contractor's experience was unusual and not necessarily inconsistent with a sound occupational safety and health program. In these cases, NM OSHA will conduct a follow-up verification visit and either confirm or reverse its initial decision in the matter.

8.0 SOARS Program Performance Measures

8.1 Each year the MCA of NM WCGF will review OSHA recordable injuries and illnesses to determine the total lost workday injury and illness rate for the participants and participant sites compared to the national average for specific industrial classifications (SIC/NAICS).

8.2 The review activity measures shall include as a minimum:

8.2.1 The number of construction workers trained, and

8.2.2 Experience modifiers and incident rates of Partnership members

8.3 Annual evaluation will be completed in accordance with Appendix C of CSP 03-02-002 OSHA Strategic Partnership Program for Worker Safety and Health.

9.0 SOARS Program Review and Term of Agreement

9.1.1 NM OSHA and the MCA of NM WCGF SOARS Verification Committee will review the SOARS Program annually. The review will include, among other things, a discussion of the success of the Partnership in meeting its stated objectives and any recommended improvements.

9.1.2 Participant incidence of the focused four construction hazards (falls, struck-by, caught between and electrocutions) will be measured and compared against a baseline established in the first year of the Partnership.

9.1.3 The Partnership will have a term of three years and may be renewed. It may be amended from time to time based on the agreement of both parties. Either party may withdraw from the Partnership upon thirty days notice to the other party.

Agreed to this fourteenth day of January, 2010.

Butch Tongate Bureau Chief NM OSHA	Ronda Gilliland Assistant Administrator MCA OF NM WCGF	Keith Wilson Vice Chairman MCA OF NM WCGF

Attachments

1 – SOARS Program – Commitment Agreement

2 – SOARS Program – Participant's Self Evaluation Form

3 – SOARS Program – Verification Committee Sheet per section 7.0

4 – SOARS Program – Letter of Termination or Downgrade