

NARRATIVE

In New Mexico over 900,000 people spend a large portion of their lives at work. Within the environment, there are varying degrees of danger to the health and safety of the worker that this program aims to reduce, through a unified approach of consultation, statistical research, and compliance actions.

The jurisdiction of the Environment Department's Occupational Health and Safety Bureau (OHSB) covers State and Local governments and the private employment sector, with the exceptions of mining, (except oil and gas extractions, which is covered), federal employment, postal workers, employment on military bases, and employment on Indian reservations. Within these industries in 1972, there was an estimated injury and illness rate of 10.3 OSHA-recordable cases per hundred workers. At the time of establishing the NM OH&S Bureau the rate had fallen to 8.4. A major indicator of the effectiveness of the OHSB is the 2006 rate of 4.5 cases per hundred workers.

Information obtained from the New Mexico Workers' Compensation Administration indicates that the injuries and illnesses have a wide variety of sources and types, with consequences ranging up to death. Besides the physical effects, and the disruption of family structure that comes with the loss of a wage earner, workplace injury and illness cases are a major expense of industry. New businesses, and small businesses, which are a major part of the state's industry, find these costs to be particularly burdensome.

In view of the overall job health and safety problem, it appears necessary for employers, employees and government to develop a degree of safety consciousness which will reduce the incidence and prevalence of occupational injury and illness occurring throughout the state.

In an effort to halt rising occupational mortality and morbidity occurring across the nation, President Nixon signed into law the Williams Steiger Occupational Safety and Health Act of 1970. The OSH Act encourages all states to assume the fullest responsibility in the development, enforcement, and administration of occupational health and safety standards. Therefore, pursuant to Section 18 of Public Law 91-596 the State had adopted an Occupational Health and Safety Plan for the State of New Mexico.

The purpose of the plan provided herein is to outline a program and method of implementation designed to assure working men and women in the state a safe and healthful work environment.

- (1) Where occupational illness and injury is significantly reduced;
- (2) Where occupational related absenteeism is minimized and maximum productivity is afforded;
- (3) Where one's personal, social and economic role is not impaired; and
- (4) Where economic benefit is realized due to a reduction in illnesses and injuries and the associated reduction in costs involved.

On January 29, 1971, the Governor designated the Environmental Improvement Agency (now Environment Department) as the agency responsible for administering an Occupational Health and Safety Program for the State of New Mexico. The 13th session of the New Mexico Legislature passed into law Chapter 63, effective February 29th, 1972 which established the New Mexico

Occupational Health and Safety agency. This was known as the Safety Act. The Safety Act was amended by the 15th session of the New Mexico Legislature by Chapter 290, effective April 11, 1975. In 1978 the Safety Act was again amended as 50-9-1 to 50-9-25 NMSA 1978. This is the current law authorizing the New Mexico Occupational Health and Safety Bureau.

To assure that other responsibilities of the Environment Department do not detract from the resources and priorities assigned to administration of the State's implementation plan, the Department's Occupational Health and Safety Bureau has been delegated the functional responsibility of developing and implementing the State's Occupational Health and Safety Program. The Bureau is an established office within the organizational structure of the Department. Bureau activities and resources are and will continue to be, directed towards accomplishing the Department's responsibilities as outlined or implied in the New Mexico Occupational Health and Safety Act.

Budget documents contain verification of state funds to implement the program section. Annual appropriations from the legislature for continuance and improvement of the program shall continue to be sought by the Department.

The State OHSB asserts jurisdiction in places of employment subject to the jurisdiction of the U.S. Department of Labor acting under the provisions of the OSHA Act rather than the State Mines Inspector. This includes coverage of copper smelters.

PUBLIC EMPLOYMENT

Department activities consist of an occupational illness and injury reporting system; periodic inspections of public agencies and establishment of abatement periods for violations noted; notification to employers and employees regarding their rights and responsibilities under the Act and of violations noted; prompt response to eliminate imminent dangers; investigation of fatalities, catastrophes, and employee complaints; and response to request for training and consultation.

Department enforcement provisions for public employers differ from enforcement for private employers. When the OHS Bureau issues citations for alleged serious violations, penalties are proposed. If the public employer abates the violations within the time specified in the citation, the penalties are deemed paid as a matter of law. (Section 50-9-24(B) and (C) NMSA 1978.)

Employers are required to keep occupational illness and injury records. Additionally, under agreement with the Bureau of Labor Statistics, the State of New Mexico conducts surveys of occupational illness and injury reported by employers. (Section 50-9-11 and 50-9-19 NMSA 1978) and Occupational Health and Safety Regulations.)

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The OHS Bureau has a management information system to provide those reports which the Assistant Secretary may require from time to time. The system is designed to measure progress towards objectives established.

In March, 1983 New Mexico began participating in the OSHA Uni-MIS system. The OHS Bureau now participates in the Integrated Management Information System (IMIS) and Consultation Data System (CDS).

STANDARDS

Section 50-9-7 NMSA 1978 requires promulgation of state regulations which are, and will continue to be, as effective as those standards promulgated pursuant to the Federal OHS Act. Since New Mexico generally intends to adopt the Federal standards, it is unlikely that the state

would promulgate regulations which place an unreasonable burden on interstate commerce. In those rare instances which necessitate the adoption of a regulation to address local conditions not addressed by Federal standards, consideration will be given to the effect on interstate commerce. Public input is assured by Section 50-9-7 (A) NMSA 1978 and by the State Rules Act.

Scheduled monthly meetings and called meetings of the Boards assure timely consideration of new Federal standards. Emergency procedures of Section 50-9-12 (A) NMSA 1978 permit adoption of regulations on an emergency basis.

Except for compelling circumstances, it is the intention of the Department to request the promulgation of those Federal standards adopted by the Secretary of Labor under the provisions of the Occupational Safety and Health Act of 1970.

Copies of the Occupational Health and Safety Regulations and the material incorporated therein may be obtained from the Occupational Health and Safety Bureau, 525 Camino de los Marquez, P.O. Box 26110, Santa Fe, New Mexico 87504 or the Environmental Improvement Boards, P.O. Box 26110, Santa Fe, New Mexico 87504. Codes and other material referred to in any standards incorporated in the Occupational Health and Safety Regulations may *be* examined at the same office. The State poster required by 11.5.1.17 NMAC contains notice of availability of regulations adopted by the Board plus other related information.

Information to employers regarding hazards exposures, precautions, symptoms and treatment as well as exposures requiring medical examinations, will be assured by timely adoption of Federal standards or by adoption of a regulation having been judged at least as effective by the Assistant Secretary of Labor. Prescribing personal protective equipment and monitoring or measuring methods will be accomplished in the same manner. Control, notifications, and recording of exposure are required by Section 50-9-7(B) and (C) and 50-9-11 (B) NMSA 1978.

The authority for granting of variances from a regulation is given in Section 50-9-16 NMSA 1978. This section also provides for temporary orders granting variances for short periods of time and sets out the necessary conditions for consideration of a variance application. The format and detailed requirements for a variance application are described in 11.5.1.18 NMAC. Employee knowledge of the variance request and an opportunity for input are assured.

ENFORCEMENT

The system of priorities for scheduling inspections is outlined in the New Mexico Field Operations Manual. Future special emphasis programs will be initiated on the basis of demonstrated need using factors such as illness and/or injury rates and the nature of exposure.

Section 50-9-10(B) and (D) NMSA 1978 assure the right of employees or their representatives to file complaints alleging violations of regulations. Protection of the complainant's identity is assured. The Department's determinations are subject to informal review in accordance with 11.5.1.20.F NMAC.

Right of entry and measures to compel right of entry and inspections are contained in Section 50-9-10 NMSA 1978. Where appropriate the Department will seek a mandatory injunction from the New Mexico District Court upon an employer's denial of a compliance officer's right of entry to conduct an inspection.

Employee access to information regarding exposure to toxic materials is provided for in Section 50-9-7 (B) NMSA 1978, and will be further assured by the intent of the Department to adopt as state regulation those standards promulgated by the Secretary of Labor under the Occupational Safety and Health Act. The right to observe monitoring or measuring of such toxic materials is given in Section 50-9-11 (B) NMSA 1978.

Section 50-9-14 NMSA 1978 provides for protection of employees exposed to imminently dangerous conditions. Restraints are similar to those of the Federal system. The Department follows the emergency procedures provided in the New Mexico Field Operations Manual relative to imminent danger situations.

Employees will be informed of their rights and duties through posting of notices required by Section 50-9-5(C) NMSA 1978, 11.5.1.17 NMAC, and through programs developed under the training and consultative element of the State Plan. A Job Health and Safety poster had been approved by U.S.D.O.L. in accordance with the provisions of 29 CFR 1952.10.

Prompt notification to an employer of alleged violations of regulations is required by Section 50-9-17 NMSA 1978 and by 11.5.1.23 NMAC. Posting of citations to notify employees of the alleged violation is required by Regulation 11.5.1.24 NMAC.

Trade secrets are protected by Section 50-9-21(C) NMSA 1978, 11.5.1.21.F NMAC, and by the sanctions contained in Section 50-9-24 NMSA 1978.

An effective system of sanctions is provided in Section 50-9-24 NMSA 1978. Citation forms, procedures, proposed penalty calculations and adjustments, and determination of abatement dates will follow the New Mexico Field Operations Manual.

ADMINISTRATIVE REVIEW

Informal administrative review is provided for in enforcement actions. These reviews are for clarification and resolution, where possible, without diminution of program effectiveness.

An Occupational Health and Safety Review Commission is established by Section 50-9-9 NMSA 1978. Its function is similar to those of the Federal Review Commission. The notable exception is that hearing officers appointed by the Commission are restricted by state law to the taking of evidence. Decisions are made by the Commission. Section 50-9-9(D) NMSA 1978 requires that the Commission develop its own rules of procedure and the Commission had adopted such rules described in 11.1.5 NMAC.

COOPERATIVE PROGRAMS

In accordance with the Consultation Policies and Procedures Manual (CPPM) issued with OSHA directive CSP 02-00-002 in 2008, the Cooperative Program section of the OHSB provides on-site consultation and training. In addition, OHSB has established a Safety and Health Achievement Recognition Program (SHARP) to recognize employees who work cooperatively with OHSB to develop and continuously improve their safety and health management systems.

OHSB has also formed the Zia Star Voluntary Protection Program, in accordance with the VPP process described in CSP0301003 Voluntary Protection Programs Policies and Procedures Manual. The members of Zia Star have successfully designed and implemented outstanding safety and health management systems.

Six OSHA Strategic Partnerships (OSP) have been formed with various groups of employers and employees to encourage, assist, and recognize efforts to eliminate serious hazards.

Alliances have been formed with six different organizations and educational agencies to prevent workplace injuries, illnesses and fatalities. Training and education are key areas of concern with these alliances.

The Cooperative Programs section of OHSB participates in various outreach activities, such as trade shows and industry meetings to increase awareness of the various cooperative aspects of the bureau.

TRAINING AND EDUCATION

Training for both private and public sector employees and employers is provided by the OHSB Cooperative Programs Section.

Training for Compliance Officers and Consultants is provided in accordance with the Occupational Health and Safety Bureau internal training plan.