Oregon OSHA

OSHSPA State Plan Report
October/November 2017

Michael Wood, Administrator

I. Significant Legislative/Programmatic Changes

Legislatively Mandated Rulemaking
Nothing to report.

Legislative Activity
Oregon OSHA’s submitted three DCBS bills to the 2017 Legislative Assembly. Senate bill 92 and Senate bill 93 passed and will become law January 1, 2018.

Senate bill 92 aligns Oregon OSHA with the Federal Civil Penalties Act of 2015, which requires an increase to the maximum serious violation penalty and maximum repeat or willful violation. It grants the agency the authority to set maximum penalties in accordance with federal guidelines. The rulemaking process is underway and the rulemaking proposal was filed on October 13, 2017, with an anticipated effective date of January 1, 2018.

Senate bill 93 allows the agency to raise the Worker Memorial Scholarship fund from $250,000 to $1,000,000. The scholarships are allocated based on earnings by the fund and this fund has not been increased since 1993. This fund will not increase immediately, but as penalties allow for a gradual increase. DCBS suspects this will take between eighteen months to two years to reach the full 1 million.

Other Rulemaking Activity
Pesticide Worker Protection Standard. The Small Agricultural Employer Advisory Committee was reconvened in March 2017 to discuss three rules proposed last year, but not adopted into Division 4/W, Agriculture/Worker Protections Standard with recent amendments adopted in February 2017. All three proposed rules concern aspects of the application exclusion zone (AEZ). Six committee meetings have been held. Oregon OSHA filed the proposed rules with the Secretary of State in October, 2017, and plans to conduct public hearings, receive comments, and adopt rules to become effective January 1, 2018 (same effective date as the WPS rules adopted in February 2017.)

Penalties. Subsequent to Senate Bill 92 passing, Oregon OSHA is changing penalty amounts to include the addition of a size adjustment category, allowing employers with 1-10 employees to receive a 75 percent reduction, while maintaining a 60 percent reduction for employers with 11-25 employees. Maximum penalties for most serious and death probability hazards will be increased, by increasing the maximum penalty limits overall. Oregon OSHA filed the proposed
rule changes with the Secretary of State in October 2017, and plans to conduct a public hearing, receive comments and adopt rules to become effective January 1, 2018.

**Permissible Exposure Limits (PELS).** In March 2017, Oregon OSHA selected lead and manganese from the PEL advisory group’s list of suggested candidates as the first two of approximately four to six candidates to undergo a PEL reduction through the rulemaking process. These substances were selected because of their broad exposure to workers in Oregon across a wide range of industries. Both lead and manganese rulemakings have formed separate advisory committees who are meeting and beginning the rulemaking process.

**Correction to Personal Climbing Equipment Rules for Telecommunication Activities.**
During Oregon OSHA’s adoption of the Walking Working Surfaces rules, the federal language for 1910.268(g)(1) was unintentionally omitted. Oregon OSHA proposed this rulemaking to keep the state’s rules regarding Walking Working Surfaces in line with federal OSHA. No hearings were held and no public comment was received. This correction was adopted September 5, 2017 and will be effective November 1, 2017.

**Beryllium.** On January 9, 2017, federal OSHA adopted final rules for beryllium for general industry, construction, and maritime Oregon OSHA adopted new Oregon-initiated rules on July 7, 2017, effective by March 12, 2018, that combined the requirements of the general industry and construction rules into one set of rules applicable to both industries, and updated the air contaminants rules for general industry and construction, to reflect the new beryllium rules.

**Walking – Working Surfaces in General Industry.** Oregon OSHA rule changes are based on federal OSHA’s Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) as published in the November 18, 2016 Federal Register. Based on comments received during three public hearings, Oregon OSHA made adjustments to proposed 437-002-2027 Rope Descent & Rope Access Systems. Oregon OSHA adopted final walking-working surfaces and PPE rules May 16, 2017, with an effective date of November 1, 2017.

**Recordkeeping Exemptions.** In January 2017, Oregon School Employees Association (OSEA) petitioned Oregon OSHA to initiate rulemaking to remove NAICS 6111 (Elementary and Secondary Schools), 6116 (Other Schools of Instruction), and 6117 (Educational Support Services) from the exempt status of Table 1 in OAR 437-001-0700 Recording Workplace Injuries and Illnesses. Oregon OSHA discovered that industries covered by this rule have injury and illness rates that are significantly higher than would be expected in a low hazard industry. Oregon OSHA adopted this rule on August 1, 2017, with an effective date of January 1, 2018.

**Fall Protection and Slide Guard Use in Construction.** In response to federal OSHA, Oregon OSHA adopted revisions to fall protection in construction that includes changing the 10-foot general trigger height to 6 feet, effective January 1, 2017. We also adopted the elimination of the use of slide guards as a sole or primary fall protection system, effective October 1, 2017.

**Silica.** Oregon OSHA finalized rulemaking by adopting federal OSHA’s new Occupational Exposure to Respirable Crystalline Silica standard (March 25, 2016 Federal Register), as one rule that is applicable to both general industry and construction rather than two independent rules. The provisions in Oregon are the same as the federal standard. Oregon OSHA adopted final rules September 23, 2016, with an effective date of July 1, 2018.

**Employer Knowledge.** Oregon OSHA plans to complete rulemaking that addresses the issue of employer knowledge and the role of reasonable diligence in determining whether an employer
has “constructive knowledge” of a violation in the worksite. The full committee met May 20, 2016, and a small group met September 21, 2017, with more discussion around the proposed rule language.

All adopted and proposed rules are available at our website http://www.osha.oregon.gov - look under Rules and Laws.

II. New Developments/Activities/Notable Cases Activities: visit http://www.osha.oregon.gov


2017-2018 New Video Contest: The new O[yes] contest year starts October 9, 2017 and the deadline for submissions is February 1, 2018. For more information about the contest and sponsors visit: https://youngemployeesafety.org/contest


Newsletters: Oregon OSHA publishes three newsletters: The “Resource” (a general interest publication) is published every two months, the “Construction Depot” (for the construction industry) is published monthly and the “Forest Activities News” (for the logging and forest industry) is an occasional newsletter from Oregon OSHA covering topics of interest to logging and forest activities employers. These are available at http://www.osha.oregon.gov.

Notable Case: Coos Bay Children’s Academy (CBCA) is located in Coos Bay OR. The Academy opened in May/June of 2016. The owner operates the facility and an onsite director manages it. The owner is onsite every other week. At the time of the incident there were 64 children ranging from 2-10 years old in attendance. Twelve employees were on staff. The facility encompasses 12,000 square feet of space with 9,000 square feet of it carpeted.

This inspection was prompted by a Pesticide Analytical Response Center (PARC) referral which was initiated from an article which appeared in the Oregonian newspaper. PARC was created by executive order in 1978 and consists of eight member agencies including Oregon OSHA, the Oregon Department of Agriculture (ODA), the Oregon Health Authority (OHA), the Oregon Department of Fish & Wildlife, the Department of Environmental Quality, the Oregon Department of Forestry, the State Fire Marshal and Oregon Poison Control Center. PARC is mandated to collect pesticide-related incident data (adverse impacts to humans, animals, or the environment), mobilize expertise for investigations, identify trends, make policy recommendations, and create reports.
Oregon OSHA conducted a joint investigation with the Oregon Department of Agriculture and Oregon Health Authority. Oregon OSHA's investigation was limited to employee exposure to pesticides. The Oregon Department of Agriculture addressed the application of pesticides in a faulty, careless or negligent manner. The Oregon Health Authority performed exposure assessments on the affected individuals.

On April 29th, 2017, the employer’s spouse applied TEMPO SC Ultra Premise Spray to the carpeted areas of the facility to address a flea infestation. The employer purchased the chemical the day prior, at a local store. The employees were told that the employer was going to spray the area on April 28th, but were not provided information on the pesticide to be applied. The employees were instructed to stay out of the area for 8 hours.

On Monday May 1st, 2017, employees re-entered the space and the business operated as normal. Over the next two days children and staff experienced symptoms such as red eyes, swollen eyes, headache, coughing, rash, and some children experienced yellow puss in their eyes. Staff contacted their employer, who had left town directly after the application, to report that people were still getting bitten by fleas and asked what pesticide had been applied. Due to the continued flea problem, the employer arranged to have a second application be performed by a pest control company after employees left the site on May 5th. The employer then had the carpets cleaned on May 5th, 2017.

The employees were not notified of what pesticides were going to be applied at the facility until after the applications. There was no hazard communication program, Safety Data Sheets or training for employees despite their use of disinfectants (which were registered pesticides) on a daily/weekly basis.

Oregon OSHA issued a citation totally of $720 (after reductions) for three serious hazard communication violations and one serious safety committee violation.

ODA issued a civil penalty for performing a pesticide application in a faulty, careless or negligent manner as the label for the pesticide applied does not allow for use in a childcare facility. OHA’s pesticide exposure investigation is ongoing. As a result of the incident, PARC developed a plan to outreach to all Oregon state agencies, informing them about PARC and how to report pesticide-related incidents and concerns.

**Conference dates and locations can be found at:**
http://osha.oregon.gov/conferences/Pages/index.aspx

**Questions?** Contact the Conference Section at (503) 378-3272 or toll-free in Oregon at (888) 292-5247, option 1. or send email to: oregon.conferences@state.or.us

III. Areas of Concern: Nothing new to report.
IV. Information Sought from Other State Programs: Nothing new to report.
V. Administrative Changes: Bryon Snapp was hired August 2017 as the Statewide Safety Enforcement after Gary Beck's retirement July 1, 2017.
VI. Contact Information: Phone: (503) 378-3272, Fax: (503) 947-7461, Internet: www.osha.oregon.gov, Federal Liaison: Pamela Lundsten, pamela.g.lundsten@oregon.gov