Blue Ribbon Panel on Ergonomics

July 19-20, 2001
Seattle Marriott Seatac

Members Present: Larry Bindner, Claude Golden, William Andersen, James Merchant, Lee Anne Jillings, Pat Tyson, David Wegman

Staff: Gary Moore, Michael Silverstein, David Jansen, Kim Contris, Renee Guillierie, Rick Goggins, Michael Wood, Anne Soiza, Ken Mettler, Paul Snow, Diane Lee

Guests: Carolyn Logue, Amber Balch, Tonia Neal, Gary Smith, Barbara Faville, Roger Raignault, Dick Mettler, Melissa Johnson, Rex Caffall, Jim Neeley, Dan Fazio

Recorder: Jenifer Jellison

July 19

❖ Introductions

Meeting called to order by Co-chair Larry Bindner. Panel members, staff, and guests introduced themselves. The following members were unable to attend: Stewart Burkhammer, Jim McCauley, Gwen Malone, and Susan Schurman; however, both Gwen and Susan will be joining their subcommittees via speakerphone.

❖ Agenda Review

Larry reviewed the agenda and noted that most of the work would be completed in subcommittees. There will be time for public comment at the end of the first day as well as time during subcommittees. A discussion regarding future public comment needs will occur at tomorrow's session.

❖ Communication Issues

Co-chairs discussed the public's access to panel members. Claude Golden explained that the co-chairs had a discussion before the first meeting concerning the importance of capturing all documents given to panel members for the public record and determined the best way to accomplish this was to have all communication go through the department. At that time, Larry and Claude decided not to send out panel members' contact information. However, the roster is a public document and must be made available if requested. After discussion the panel requests that anyone sending materials to panel members

also send a copy to Jenifer Jellison at the Department of Labor and Industries to ensure a complete public record is kept.

There were some questions/concerns about what information is disclosable. What about ideas that are not yet ready for public disclosure? **This issue will be put on the agenda for the next meeting with a request to get advice from an expert.**

Claude Golden acknowledged the L&I website as an avenue to keep interested parties apprised of Blue Ribbon activities

- Public Comment Opportunities

How can we make more public comment opportunities available?

The public comment period set aside for this meeting was reemphasized. Besides a comment period at the end of the first day, there would also be time made available in each subcommittee breakout.

A suggestion that came up was having a dedicated public comment meeting available to those panel members who can attend. Lee Anne Jillings asked about the Governor's Conference. She felt it would be a good opportunity for individuals from around the state to attend a forum.

James Merchant suggested it might be advantageous for the whole committee to hear the public comments from the different subcommittees as some of the teams' subjects overlap.

Set up a dedicated public comment opportunity and videotape the dialogue for members unable to attend.

❖ Panel / L&I Dialogue

Larry Bindner indicated there had been some interest from panelists in having a dialogue with L&I.

Bill Andersen was interested in where the ergonomics rule fits into the rest of the safety and health regulations. Michael Silverstein explained that ergonomics is one of two particularly important rule-related activities that the department has been working on. For ergonomics, we needed to address the hazards and rate of work-related musculoskeletal disorders (WMSD) injuries in the state and there was no rule to address it. The other large effort was to redesign existing rules so they can be more easily understood without increasing requirements or decreasing protections. There is other ongoing rulemaking of lesser nature driven by revisions to OSHA rules, where the state has an obligation to follow suit.

Bill also questioned what the relation is to OSHA regulations and asked if they were consistent with OSHA? Michael Silverstein indicated that state plan states must have regulations "at least as effective." If OSHA adopts a regulation, the state is required to either adopt OSHA's rule or adopt our own as long as it meets OSHA's "at least as effective" determination. State plan states also have the ability to adopt rules where OSHA is silent.

David Wegman had expressed interest in better understanding the part of the charge in the Governor's letter about demonstration projects and drafted an explanation to better understand their charge. He has concluded his initial effort led him to lay out a scenario that is much broader than what is needed – more of a way to determine the effectiveness of the rule rather than an understanding of the rule. L&I replied with a memo to all committee members that spoke to projects demonstrating an understanding of the rule by employers and employees.

Dr. Wegman explained that he understands that the demonstration projects are in essence a developmental education project. Whether or not the demonstration projects are successful needs to be judged on whether or not the particular projects accomplished what they set out to do.

Michael Silverstein said that demonstration projects provide concrete examples on how to comply with components of the rule.

Gary Moore indicated that measuring the broader question of the effectiveness of the overall rule in reducing WMSDs is important to the department and referred to the Centers for Disease Control (CDC) grant SHARP received.

With respect to dealing with enforcement policies, has it been determined who will partner with the department to test them out? Dave Jansen responded that partners are still being recruited.

- BREAKOUTS -- The entire panel moved to the Spokane Suite to hear the Wallboard Demonstration Project participants.

  - DEMONSTRATION PROJECT PARTICIPANTS:

  Roger Daignault from Pacific Northwest Regional Council of Carpenters and Dick Mettler from the Northwest Wall and Ceiling Contractors Association were introduced as members of the Wallboard Demonstration Project.

  The men explained that the Wallboard Group evolved into a demonstration project as a result of the rule and with the help of Gary Davis from the department have looked at installation, finishing, and drywall delivery on job sites. Dick explained that the wallboard industry is dynamic with many

caution zone jobs but not a lot of hazard zone jobs except for lifting. Their group has spent a lot of time on weight and established 90lbs as the maximum standard lift for one person.

The group has developed a handout, “Wallboard Ergo Lifting Summary,” which is available to anyone in the industry. Dick said that there are some jobs in the industry that they won’t be able to change and job rotation may be the only way to address them. In terms of monetary investment, both men said the investment of some money is necessary, however it should be minimal. The most important issue is education and teaching workers to do things differently.

Both men feel that this joint venture has already surpassed their expectations. Claude Golden asked if an inspector walked onto a worksite, would contractors feels confident they are in compliance if they use what has been learned from this project. Dick Mettler said yes. The feedback they have received has been, “it’s not such a big deal. We thought you were going to ask us to buy all these things.”

David Wegman asked if going through this project gave them insight into new problems in their industry that they had been unaware of or simply provided a process to help solve the problems. Roger said it opened his eyes to what the hazards were. He realizes now that there was a need to change the industry.

Both men said the existence of the rule spurred this project into being. Bill Andersen asked whether they had any trouble understanding the rule and their response was no. They feel it was written “fairly simplistically.”

Tonia Neal of the BIAW inquired about the 90lbs wallboard lift mentioned earlier – did it take into account the size of the board or the person. Dick Mettler indicated that the rule doesn’t take into consideration the individual sizes of people. Tonia asserted that these two men represented the commercial side of the project, but that there was another side that wasn’t being represented today with different opinions about the project.

Amber Balch asked what solutions that were identified had been turned down. Roger said the 90lb limit took away the size problem – they haven’t changed anything. The important piece is to look at the jobs differently and educate your employees. Amber also questioned whether they would have gotten where they were without the assistance of the department. Dick indicated that he would have as there is help available through associations. Roger said that on a worker level, they wouldn’t have gotten together on their own to work at resolving these issues to make the industry better.

Michael Silverstein said that in addition to L&I working with industry there are other activities happening outside. Demonstration projects provide a benefit for the entire industry. Dick Mettler said that with the long implementation period the information will be filtered down to the smaller employers in the latter stages of compliance.

When asked whether the industry is responding with lighter boards, they replied, "No."

The Wallboard Demonstration Project has looked at both commercial and residential work, as well as stocking issues. Two members of the committee are distributers.

Gary Smith, IBA, asked if the ideas are implemented will there be a decrease in the number of injuries. Dick said it would create an awareness and there will be a decrease of injuries over time which will have a positive effect.

❖ EDUCATION SUBCOMMITTEE:

Sue Schurman (joining in discussions via speakerphone) and Larry Bindner began by clarifying that the subcommittee will be determining whether the educational materials produced by L&I are effective and widely available. Paul Snow explained the function and scope of the materials L&I has developed using his resource and discussion checklist.

The discussion started by reviewing the pending Governor's Safety and Health Conference.

Carolyn Logue of the NFIB asked how many of the attendees of the Governor's Conference are union? non-union? From big companies? Small business? And how are the conference materials sent out and to whom? Anne Soiza responded by explaining that the mailing list for the conference includes 110,000 employers, associations, and key individuals statewide, but L&I does not have data to specifically answer the questions.

Sue Schurman questioned who the statewide targets for training were and how deeply our marketing and outreach penetrated the intended audience. Did the designated education tool reach the target audience and did the tool work, as well as who was the intended audience, what are the materials and learning objectives and did we meet the objectives.

To aid the subcommittee in making their determination they are requesting a document which specifies the targeted segments, their size and industry sector. It should address what education and training tools are used to reach those sectors. A table that lists the product or effort, the intended audience or market, and they ways to measure how well these efforts work is also requested, as well as an overall communication plan.

Carolyn asserted that the plan must include outreach efforts to all employers, especially small business employers and not all employers want to be identified to L&I. Anne noted that small business needed L&I's assistance because they don't have the resources of the large companies.

Mailing ergonomics information with claims information sent to businesses was suggested by Carolyn Logue.

Anne informed the panel that L&I is also encouraging partnerships with various business groups, such as the Chamber of Commerce and other organizations.

Sue recommended that the department produce an overall education plan document soon that answers: How does everything fit together? And what channels do we need to follow to get the educational goals accomplished? She also requested a copy of Paul Snow's project management schedule.

The website was explored with Larry and Sue. Paul Snow also described one of the tools L&I has produced called Deck of Cards. Larry, Sue and Carolyn Logue were impressed with the utility of the concept and Carolyn suggested distributing them through the NFIB and other similar organizations.

- **BREAK**

- DEMONSTRATION PROJECT SUBCOMMITTEE

Gwen Malone joined in subcommittee discussions earlier via speakerphone after the session began. Claude Golden updated Gwen as to what had taken place earlier in the day.

Claude reviewed panel's charge given in the Governor's letter. The panel will determine whether the department has met the following criteria:

- Demonstration projects successful
- Education materials widely available
- Rule requirements are understandable
- Enforcement policies are fair and consistent

Rick Goggins provided an updated list of demonstration projects.

The goal of this subcommittee is to write a report on whether demonstration projects have been successful.

David Wegman said demonstration projects are designed to serve a need now plus the needs will change over time. Rick Goggins agreed saying that demonstration projects have been evolving.

Gwen Malone asked if it would be possible to get a list of projects which would delineate which came out of a process and which were added because of the rule. Claude expanded, asking if they could be listed out as: process demonstration project; demonstration project process; and finite demonstration project. Rick indicated that we could.

Claude said they needed clarify the direction they will go with the team and communicate with Stew Burkhammer. Discussion outlining what a survey might look like ensued. Barbara Silverstein suggested perhaps having demonstration project participants responses to panel questions taped.

❖ EDUCATION SUBCOMMITTEE

Larry asked if the subcommittee wanted to meet on the 20th as well. Sue would be available if Larry wanted to meet, but she didn't feel it was necessary.

Sue asked why people were hesitant to attend L&I training or go to the L&I website. Carolyn responded by explaining that fear of being inspected or audited once they have made themselves known to L&I was a factor. Sue indicated this was what she expected.

Ernesto Carcamo demonstrated the lifting calculator.

All materials requested by the subcommittee for review should be delivered well before the next meeting.

❖ ENFORCEMENT POLICIES AND REQUIREMENTS:

Bill Andersen, chair of the enforcement policies and requirements subcommittee began by reviewing the charge given in the Governor's letter.

- The rule requirements are understandable, and
- The enforcement policies and procedures are fair and consistent.

The panel began to formulate a general notion as to how they will evaluate understandability. Some suggestions on how to measure understandability were:

- A survey to reach different employers and employees
- Focus groups

It was felt that the Governor's letter was asking if rule interpretation was clear to the employer and employee community. Without input, it would be very

difficult to answer this. **The panel asked the department for ideas to obtain input from individuals who will use the rule.**

David Jansen handed out the development plan for the enforcement policies and stated that there will be groups who will be aiding the department in assessing whether or not the rules/policies are fair and consistent.

The wallboard participants (see previous section) thought that the rule was very clear, however, they have worked with the rule for a while. **Michael Silverstein said the department has plans to do focus groups and could include any questions that might aid the panel in making its determination.**

Pat Tyson indicated that in his experience representing employers that employers don't try to understand until the regulation is real and that just asking the question doesn't really answer the question. The best idea would be to give the policies to a group of employers and have them work through the checklist to see what types of discrepancies occur between employers and inspectors. Jim Merchant concurred.

The plan is to have a demonstration project that will incorporate their suggestion. The details are still being worked out. The department already has a selection of enforcement staff who have volunteered to take training and test the policy. Recruitment for employers who will participate is ongoing. There will need to be a cross-section of employers in different industries involved in this project.

Lee Anne Jillings pointed out that in this demonstration project the inspectors will have been in training for this while the employer may or may not have been involved in any training.

In studying the answers to questions provided in the WISHA Regional Directive (WRD), Bill Andersen got the feeling that some of the no's were really yes's and felt that this gave the feeling of insincerity. James Merchant had the same reaction to this issue. Michael Wood indicated that the WRDs are instructions to the inspectors in the field and the department needs to be clear, so that if the answer is "no" to the question "*Must employers document their determination whether they have "caution zone jobs"?* It means no – the employer cannot be cited. The panel felt that Michael made a good point.

Bill Andersen also felt, however, that WRD might be a good resource for employers. Michael Wood agreed that while the formal use for these policies is for inspectors, more employers will read the WRD due to the ratio of inspectors to employers.

A number of the questions in the WRD are derived from what the department hears from the regulated community. This is the first draft of this WRD and will be changed based on comments.

Bill Andersen asked what steps, in terms of quality control or monitoring, the department will have in place to monitor enforcement to ensure that if some variations are occurring, the department knows about it. Michael Wood explained that the department has an audit program which does file reviews and works to ensure consistency in enforcement issues. Also, any ergonomic citations with penalties (and probably all ergonomic citations for the near future) will be reviewed by central office before they are issued.

What measures are used in the audit program to ensure consistency? The review involves reviewing the inspection file and evaluating the level of documentation, thoroughness, whether the inspector followed obvious avenues and cited correctly. The review is based primarily on written record. A small review between 400-500 files a year are reviewed compared to 7000+inspections done yearly. Tyson indicated the panel could use the audit program to answer their charge as it is a measure of consistency, Merchant and Andersen concurred.

What happens when a consultant gives an employer incorrect advice that could result in a citation during an inspection? Michael Wood explained there is a new draft WRD that states if that situation occurs, the employer is still required to comply but no violation will be issued. This policy – which will require discussion with federal OSHA before it can be finalized -- will not be unique to ergonomics.

On page 10 of the WRD, #2 a suggestion was to add something about the fact that employees are often those who come up with and suggest solutions.

Tyson felt that the department was “blazing new ground” by including the terms economic and technological feasibility in the rule.

The subcommittee decided that they would look at the rule itself at their next session the following morning.

SUBCOMMITTEES Adjourned

- CONTINUATION OF PANEL/L&I DIALOGUE

James Merchant asked about any developments that have occurred since the last meeting of the panel. Gary Moore explained that the Washington State Legislature is currently in its third special session. In earlier sessions, there had been a bill delaying implementation of the rule and another bill that tried to impose the federal standard. One bill passed out of the Senate but did not move in the House. The department continues with workshops and education sessions that have had good participation and turnouts.

Has there been a challenge filed in the courts against the ergonomics rule? No lawsuit has been filed at this time.

Bill Andersen asked whether the department expects the bill to come back in the next session. Gary Moore said he wouldn't be surprised. The long phase-in results in allowing more time for bills to be filed.

- PUBLIC COMMENT

  - Amber Balch introduced herself as representing the Association of Washington Business (AWB), which represents 3,700 private employers in the state. She indicated that there is a lot of watchdogging regarding the makeup of the panel, their backgrounds, what they've published, etc. There is a concern among the business community as to the level of review the panel is able to conduct. She felt the flow of information was a problem and that there must be an extra effort to get information out in advance of the meeting so that the public can comment on the information.

    Legislation and efforts for pilot programs were pushed for by the business community as well as advocating a legislative comprehensive analysis. The department's demonstration projects don't follow the rule from start to finish, which has caused a high level of concern in the business community. Businesses don't have the option of picking and choosing portions of the rule to implement, they will have to absorb the costs all at once. Under the Senate bill, a comprehensive analysis of the rule by legislative review and the pilot programs proposed would have occurred before implementation began.

    Amber indicated that the legislation would have also delayed enforcement for an additional two years, allowing for pilot programs to be conducted in all affected industries as well as a legislative review above what this panel does. It would look at the difference in cost benefit studies (dept. vs. outside) and whether the rule did what it was purported to do. It also called for enhancing education and a safety and health grant program.

Amber noted that the wallboard group heard in the demonstration project subcommittee breakout had been working together for two years prior to the adoption of the rule.

Education is another concern of the business community. The business community asked for more information as to what specifically causes injuries and prevents them. They agree that a wide variety of educational material needs to be available -- the real question is “why so much?” If the rule is so understandable, why is such a thick WRD necessary to explain major details of the rule? Amber feels that the employer community (average employer on the street) does not understand the rule.

Bill Andersen asked Amber if she felt this policy directive is technically a rule in the meaning of the APA, and Pat Tyson asked if there have been other WRDs that have been struck down because they should have been rules. Amber indicated there was a very fine line between rule and policy when you get into the substantive definitions.

Dr. Merchant asked the department for advice on previous issues concerning this. Dr. Merchant wondered if anyone is aware of case law regarding a rule versus policy – has there been a policy statement that was struck down because it should be a rule? Michael Silverstein indicated he was not aware of any WISHA policy document that has been struck down due to confusion with a rule. The intent is that this document (WRD) be policy – it can contain no new requirements. The policy establishes a set of steps to review in an inspection. All affected parties will have an opportunity to review and discuss development of the final product.

The AWB will be providing written comments that will address public comment and information sharing.

In response to Amber Balch, Bill Andersen noted that if the definition of rule in the APA is too broadly read, many agencies will stop publicizing staff advice at all, which is not necessarily a benefit to regulated parties. Also, extending the rule definition too far could result in embedding provisional and experimental concepts in a formal rule form, where a time-consuming new rulemaking proceeding is required to change. That might limit flexibility to everyone's detriment.

- Tonia Neal from BIAW. The BIAW represents 9000 builders across the state of Washington – a majority of whom are small businesses.

  Tonia noted that the federal rule had exempted construction.

Tonia addressed the Wallboard Panel heard earlier in the demonstration project subcommittee. She noted this group was not put together for the purpose of the ergonomics rule. This group has been working together for the last five years and the two persons here today represent the commercial side of what has been occurring in that business. One of the tools referenced was a wallboard hoist – these don't fit through residential doors and are not economically feasible for residential builders. A lot of these small employers won't be able to afford these practices. Compliance with the rule will be very difficult for them

-Roger and Rick indicated that the cost of complying with the rule was minimal. Are you challenging that statement? Tonia indicated that commercial vs. residential wallboard companies didn't look at the same things. There are those in the wallboard group who aren't in agreement with all that was said during the demonstration project breakout. The panel indicated that they would be interested in getting feedback (written) from any or all the participants in that project.

BIAW's concern is that if we do all these things the department says there will be fewer injuries. BIAW recommends not going forward with the rule until there are some kind of numbers available.

- Carolyn Logue of the National Federation of Independent Business (NFIB)

The charge of the demonstration project subcommittee is "are the projects successful." The memo handed out earlier indicates that whether or not these projects are effective is outside the scope of this panel. The NFIB is concerned about that. Of particular concern is that many of the demonstration projects have only one participant. The NFIB has been trying to get small businesses to participate, but there is some resistance in these businesses identifying themselves to the department.

In reading through the minutes of the last meeting there was a question regarding whether workshops are meeting participants' expectations. Carolyn has heard some "not so great comments," indicating employers are confused. Another problem is that the content of these workshops will be changed over time as demonstration projects are completed. What does that mean to those who attended the earlier versions of the training; is the previous educational experience still appropriate?

People want more solutions in the shorter workshop sessions. In the educational subcommittee breakout, Sue Schurman asked: "who are the targets, what tools and products are provided." There are groups of businesses who don't identify themselves to the department. There needs to be more outreach to those small businesses who aren't part of an association.

The terms “economic and technological feasibility” need to be clearly defined. A majority of businesses won’t see the WRD, they won’t have the time or knowledge to know that this document exists and is available.

Pat Tyson asked if Carolyn was suggesting that economic feasibility not be included in the rule and asked her to define it. Carolyn responded by asking how can you define economic feasibility when there is so much diversity in the business community. The important issue is how can we help small businesses. She feels that ergonomics awareness is important, but implementation should be on a voluntary basis.

- Gary Smith of IBA

  Small businesses have a lot of regulations to comply with and it will be impossible for them to stop what they are doing to comply with this rule. The Washington State ergonomics rule is the most complex ergonomics rule in the world – it has never been tried anyplace and the demonstration projects are critical to the issue. Currently, there are not demonstration projects in every industry that will need to comply.

  Gary Smith has been involved in the roofing industry’s demonstration project, which will be trying something that hasn’t been tried before because of the many variables involved in the industry. He doesn’t believe they’ll be done by next July when enforcement is scheduled to begin. A lot of demonstration projects won’t be done and many are examining bits and pieces of the rule, not the entire rule. Many of the demonstration projects have one firm representing a whole industry.

  Gary noted that he had a number of meetings with legislators and they are very concerned about the input the panel is getting from small business.

  --Gary Moore indicated that the issue of small employer input had been raised and L&I has agreed to put together a task force of small businesses. In developing the enforcement policy, we said we would ensure that a task force of small businesses was involved.

  Gary Smith indicated that questions concerning economic and technological feasibility are paramount. The business community needs something that has some process – instead the department decided not to define it. People need to understand how we determine economic feasibility – we can’t implement without it. He pointed to difference between Concise Explanatory Statement (CES) and WRD. The definition ought to be in the rule itself. He was also concerned that in the WRD, there is no public notice.

Michael Silverstein offered to clarify two items. The CES is an explanation, in some detail, about how the rule was developed and the rationale behind it. It is required under the APA to accompany any significant rule. Secondly, the WRD and attachments are submitted to the panel and others in a first draft. L&I is required and intends to develop guidance to our field staff that will include no new requirements and will stand as a policy statement. This is a first draft, how it changes depends on the comments L&I gets from those who review it.

At 6p.m., the meeting adjourned until 8 a.m. July 20.

July 20

- Panel Reconvenes in Seattle Ballroom

There was a request to look at calendars to reschedule the October 1 & 2 dates for the next meeting. November 1 & 2 were chosen for the third meeting dates contingent on availability of absent members.

Members were asked for other questions/comments before reconvening the subcommittees.

Lee Anne Jillings questioned what the interaction between the small business taskforce and the panel would be as well as whether the panel would be getting any kind of report from them. The department will contact the Small Business Taskforce and arrange some kind of interaction between the two committees.

Jim Merchant suggested having a day of testimony before the next meeting from those individuals who will be affected by the rule. They could speak to the clarity and reasonableness of the rule. Those who wish to submit written comments are encouraged to do so. In order to enable members to review the testimony before the next meeting, it was suggested that the testimony be videotaped. Claude and Larry will work with the department to schedule a date. It will be important to make the focus clear, perhaps by summarizing the Governor's four points in the meeting notice.

- SUBCOMMITTEE Breakout

  - Demonstration Project Subcommittee

  David Wegman communicated that he has been trying to think about how to structure an evaluation. Categories could be:

  1. Statement of demonstration project objective
  2. Design of the project
  3. Time table to be accomplished

4. Product of the project – completed or anticipated

It will also be important to see the context of the project. **Claude and David ask Rick to provide the names of the key (employer and employee) players for each demonstration project.** Claude will write a letter that will accompany the survey that will need to go out in enough time to receive a response before the next meeting. Claude indicated that he would try calling those participants who didn't respond to the survey.

All should be able to respond to the first three parts of the survey, even for those demonstration projects early in the process. Claude and David request that the department provide them with a matrix with a narrative that says why we chose these, this is how we're covering the objective, etc., which would explain the logic behind them. Because some of the demonstration projects had a history prior to the demonstration project concept and some were specifically designed as demonstration projects the department should provide the reason the former were designated demonstration projects. They determine that the task they have is to evaluate the demonstration projects ability to show comprehension of the rule and the understanding of best practice, safe harbor, etc.

It was suggested that those demonstration projects with interested parties have a key person who receives the survey and the others will be notified that if they have any response to contact that individual.

Comments and suggestions are invited on the questions and make-up of the survey. Please get back to Claude Golden, Co-Chair of the Demonstration Project Subcommittee by August 23rd.

Contact Claude Golden with suggestions of demonstration projects to hear from in the full panel meeting. Claude Golden, The Boeing Company, POB Box 9707, M/S 7A-WK, Seattle, WA 98124-2207

After continued discussion about possible demonstration project participant comments, David Wegman revived the idea of recording it for review before the meeting, which would enable the subcommittee to accomplish more during meeting time. Claude concurred.

Copies of the matrix discussed earlier will go to the full panel and be posted on the Internet.

Subcommittee adjourned.

❖ ENFORCEMENT POLICIES AND REQUIREMENTS

Larry Bindner joined the subcommittee in discussions. The subcommittee decided to hear public comment at the end of the session.

Barbara Silverstein of the Department of Labor and Industries SHARP program was asked to describe the three-year Center for Disease Control grant project. This project, being conducted jointly by L&I's research program and the University of Washington (UW), will evaluate the implementation process. There are three components to this study:

1. An employer survey considered size and SIC code as a stratified sample. The same survey was given in 1998 prior to department's decision to engage in ergonomics rulemaking. The survey is being administered by the Gilmore Research Group who have received 5200 surveys. SHARP receives no specifics -only raw data with which to do its analysis. SHARP will analyze data over the summer and should be able to give preliminary results at the next meeting.

2. Those employers who completed the first survey, and are in the first wave of employers needing to comply with the rule, will be randomly selected and contacted to determine whether they would participate in an interview to be completed by the UW onsite for a total of 30 site visits. They will be asked if they know about the rule, caution zone jobs, employee awareness training and whether or not they have identified hazards. The same procedure will be followed for those employers in the second wave of implementation.

3. Another survey will be conducted in two years. They will be comparing the incidence rate over time between Washington State and Ohio, which also has an exclusive workers' compensation system.

Dr. Merchant asked whether preliminary results will be available from Barbara and the UW (written report) by December? Yes

The subcommittee then moved to discuss the issue of clarity of the rule.

Bill Andersen surveyed the subcommittee about the language in the regulation.

Part 1 describes the purpose and coverage of the rule. Bill indicated that he felt it seemed to be relatively clear. Pat Tyson concurred, "very good writing job."

It will be important to consider who the target audience of this regulation is. Larry Bindner felt from the very beginning that this was a very easy rule to understand, in comparison to other regulations. Jim Merchant said that the ergonomics rule is the clearest rule on a complex topic that he has ever seen. However, the question is not what the panel thinks but what the affected community thinks.

RULE:

Part 1: Subcommittee achieves consensus on clarity

Part 2: One panel member felt it was helpful to have standards such as technological and economic feasibility.

If an employer operating on good faith feels they has done everything economically and technologically feasible to reduce hazards, but still has not eliminated hazards below the thresholds, whose judgment wins? The draft policy addresses part of the issue by not leaving sole judgment up to the inspector. Economic and technological feasibility become an agency determination, not an individual inspector determination.

Pat Tyson felt it was significant that economic feasibility was placed in the rule; it appears in no other regulation. While the issue is sure to come up, the feasibility issue was never much of a problem at the federal level. The federal government never pushed too hard so most of the battles never went too far.

Dr. Merchant noted that technological solutions are usually inexpensive. It's the exception that usually surfaces and that's just a fraction of a percent of the compliance problem.

There was some discussion about how to get input from those individuals who will be required to comply with the rule to find out what their comfort level is.

In terms of job rotation, if an employer rotates jobs but the rotation doesn't reduce hazards is it clear in the rule that they need to reduce the hazard? Michael Wood said that, at the end of the feasibility discussion, there is a bullet about the transfer of MSD hazards. Perhaps the department should deal with it more explicitly.

If an employer has documentation that thorough analyses have been completed and presents the written documents to an inspector, does the department still do its own analysis when the employer appears to have done a good faith effort? Michael Wood answered that the WRD made it clear that employer judgment carried substantial weight; however, an inspection is not just a paper inspection – A walk around and spot check for hazards would be conducted.

Is there a burden of proof when dealing with the ergonomics awareness education? The employer must be able to demonstrate that education has been done.

Lee Anne Jillings suggested making the WRD more approachable as a number of businesses will be using this document as a resource. Michael Silverstein described an attachment that will be added to this policy, which would describe

step-by-step what happens when an inspector comes into the workplace. He asked if this might help. Lee Anne indicated that it would partly answer that concern. She also suggested a summary for the WRD.

- Panel Reconvenes for Sawmill Demonstration Project

  - SAWMILL Demonstration Participants:

  Ken Mettler, L&I staff, clarified his role in this project as the lead since its inception. Ken introduced two of the participants in the Sawmill demonstration project.

  Rex Caffall of Caffall Brothers Forest Products co-owns and is director of one of the demonstration projects sites. His firm has been progressive in reducing the number of WMSDs.

  Jim Neely is a millwright with Weyerhaeuser and represents labor.

  This project grew out of the desire to reduce WMSDs after the sawmill industry was identified as having one of the highest rates. They formed a team that included three individuals each from business and labor. Working with the department they began to work on developing a plan of action. They started with analyzing the work done, focused on nine operations that had the greatest rate of WMSDs, and worked to identify causes and solutions. The group has currently completed a partial draft of a guide that will be published and includes a CD-ROM that can be used for training.

  Jim explained that he has been involved in safety for 28 years and came to the realization that the industry should be more proactive in reducing soft-tissue injuries. They began by targeting the 120 injuries for the previous 3.3 years and analyzed what might be the cause of those injuries. He explained several of the jobs that had led to injuries. There had been 21 cases of carpal tunnel with 21 surgeries; there have been no incidents since they implemented the changes.

  They have four mills involved in the pilot project that have been looking at the major cause of injuries. Jim feels that, dollar for dollar, the demonstration project is a valuable program and allows greater opportunity to share best practices. The Canadians have also benefited from the solutions in this project. Weyerhaeuser will be using it as a training tool worldwide.

  Merchant asked whether any of the technological improvements that Weyerhaeuser implemented are improvements that any mill can make – big or small. Rex runs a small mill and says that they have found that there are many improvements that are inexpensive.

Jim noted that they would look at a video of work being done and found that by making a very minimal dollar investment, they could bring the mill more up to date and prevent injuries.

There was some discussion regarding the concern that both men encountered from either business partners or upper management concerning being involved with L&I staff.

Dr. Wegman questioned whether they felt they were representative of the demonstration projects participants' feelings regarding the project. Both men said they felt they were.

Dr. Merchant asked whether they felt the rule was well done, clear and understandable. Rex said he felt the department did a good job of putting it together.

One panel member asked about the jobs they have been working on and whether they are confident that they have gotten below the hazardous level. They are confident they either have been or will be successful in reducing the level below the hazardous level.

One panel member asked what kind of effect the ergonomics rule had on the impetus of the group. Jim responded by saying that the rule helped to move their efforts forward, but both men asserted they would have still involved themselves even without the rule. Rex also said, however, that a lot of workplaces would not make the ergonomic improvements without the rule.

Dr. Wegman asked if premium discounts were an important driver for the companies involved. For Rex, it helped and for Weyerhaeuser who is self-insured, it did not play a role.

Both men agreed that the demonstration project provided ways to learn how to comply with the rule and also provided an avenue to share the best practices with the rest of the industry. Other companies in the industry are aware of what has been accomplished, are requesting copies of their information, and are ready to accept it. The collaboration that has evolved will continue on after the life of the project. This project also helped in getting labor and management to work together toward a common goal.

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Amber Balch asked them how well they think they would have done on this project without the assistance of the department. Jim Neely indicated that there would have been mills that wouldn't have been able to share information without Hazard Impact Partnership (HIP). The final product, the training material and CD-ROM packet, wouldn't have come to fruition. Rex, speaking from the small mill side of things, said they probably would have made a less organized attempt and it would have taken longer.

How much time and money were involved in the “simple fixes” that were referred to? One fix involved less than an hour in personnel training while another involved a total revamp costing $18-20K, which is less than 0.5 percent of the total overall budget for the small mill. The revamp will move four people into other positions and reduce their potential for WMSDs.

Dan Fazio representing the Farm Bureau said that agriculture in our state is on the decline because we can’t compete with other countries and asked, what their sense was about how this project benefited the sawmill industry’s profits. The response was that the money saved from the cost of these injuries and the replacement of the worker benefited the bottom line.

Rex said that from the small manufacturer’s perspective they look at how this is going to affect the bottom line. They always ask: how do they cost-effectively make the change?

Gary Smith asked how they handled the huge variability within the industry. Rex indicated that they took specific jobs which are mostly similar, and what works for a Weyerhaeuser mill on a large scale, will often work for him on a smaller scale.

Melissa Johnson with the Forest Association asked if Rex found something Weyerhaeuser can do that would not be economically feasible for him as a smaller mill owner. Rex responded, “Of course.”

Both men felt that this project gave them a good platform to start from and will eventually start to focus on other jobs within their industry. This demonstration project was a starting point from which to travel forward.

- Larry asked for a recap from all the subcommittees.

The EDUCATION subcommittee convened yesterday with Sue Schurman calling in. Larry said there was not a whole lot to report but so far it has been very promising. Larry and Sue have asked for a better outline of the education efforts and they will talk about that.

The DEMONSTRATION PROJECT subcommittee laid out a plan for demonstration project evaluation. **Rick Goggins will be pulling together summaries for each of the demonstration projects to include objective, design, timetables, a description of the project, and why the project was chosen.** The subcommittee will design a survey to send to each participant to comment on the vision and plan of their respective projects. They should have the survey going out in early September and will have the responses back by the next meeting date. They will then determine how best to analyze the raw data.

The ENFORCEMENT POLICIES AND REQUIREMENTS subcommittee had their full panel in attendance. They are looking at readability and clarity and consistency of enforcement. The subcommittee came up with a few questions but overall the Washington Ergonomics Rule is the most clearly written rule that the subcommittee has ever seen. Economic feasibility and how to deal with it is a recurring issue. The department's internal audit review process used to ensure consistency was of particular interest.

The panel will explore opening a public comment period to take statements and written comments in a one-day event.

The panel concluded that it was vital to leave the next meeting with a good outline of the report and writing assignments

The next meeting will be November 1 & 2. **A recommendation to organize a dinner for panel members at the next meeting was made.** The fourth and final meeting should be scheduled in early February, Jenifer will poll panel members for the best date.

Amber Balch followed up by indicating that the process just described in reference to the report didn't include public access or interaction with the business community. She cautioned the panel that the business community, legislators, and the courts are going to be very interested in the actions of this panel and reasserted the need for them to seek interaction with the public.

WITH no further business the meeting was adjourned.