

SUBJECT: Interagency Agreements

Purpose: To provide a summary of Interagency Agreements which apply and do not apply to MNOSHA inspection activities

Scope: This notice applies MNOSHA-wide.

References:

1. Federal OSHA Instruction CPL 02-00-042 (formerly known as CPL 2.42), dated March 14, 1980 and Change 1 dated September 16, 1980, "Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration, U. S. Department of Labor."
2. Federal OSHA Instruction CPL 02-00-086 (formerly known as CPL 2.86), dated December 22, 1989, "Memorandum of Understanding between the Occupational Safety and Health Administration and the U. S. Nuclear Regulatory Commission."
3. Federal OSHA Instruction CPL 02-00-095 (formerly known as CPL 2.95), dated February 10, 1992, "Enforcement Authority at the Department of Energy's (DOE) Government-Owned, Contractor-Operated (GOCO) Sites."

Cancellation: This instruction cancels MNOSHA Instruction CPL 2.42, dated May 23, 2005

Background: Section 4(b)(1) of the Federal OSH Act exempts from OSHA coverage those working conditions over which other Federal agencies have exercised their statutory authority. The Minnesota OSH Act requires the Commissioner to insure "maximum possible consistency in procedures and to insure minimum duplication between the department and the other agencies that may be involved in occupational safety and health" [Minn. Stat. § 182.67, subd. 3].

Questions about where jurisdiction begins and ends for some Federal and State agencies have resulted in a number of Interagency Agreements to clarify agency boundaries. This policy summarizes currently effective interagency agreements that apply to Minnesota OSHA activities.

ACTION:

- A. Interagency Agreement Between the Mine Safety and Health Administration (MSHA) and OSHA. In March, 1980, Federal OSHA entered into an interagency agreement with MSHA to clarify situations that involve overlapping jurisdiction with respect to the health and safety of miners. Minnesota OSHA agreed to follow that agreement.

In general, unsafe and unhealthful working conditions on mine sites and in mineral milling operations come under the jurisdiction of MSHA and its regulations. This jurisdiction includes construction at mine and mineral milling sites, including construction related to mining and milling performed by independent contractors. Where the provisions of the Mine Act and standards issued under it either do not cover or do not apply to occupational safety and health hazards on mine or mill sites (e.g., in those facilities unrelated to mining or milling such as hospitals on mine sites), OSHA applies. Also, when MSHA receives information about possible unsafe working conditions in an area over which it has authority, but for which its statutes or standards afford no appropriate remedy, it will refer the matter to OSHA. The agreement also clarifies MSHA and OSHA authority, outlines enforcement procedures and establishes means for interagency coordination.

"Mining" is defined as including mining operations (coal, metals, and non-metals), underground mining, open-pit mining, quarrying, solution mining, dredging (when the primary purpose is to recover metal or nonmetallic minerals for milling and/or sale or use), hydraulicking, ponds (brine evaporation), and auger mining. "Milling" processes which MSHA has authority to regulate include crushing, grinding, pulverizing, sizing, concentrating, washing, drying, roasting, pelletizing, sintering, evaporating, calcining, kiln treatment, heat expansion, retorting (mercury), leaching, and briquetting. MSHA jurisdiction also includes salt processing facilities on mine property; electrolytic plants (where the plants are an integral part of milling operations); stone cutting and stone sawing operations (on mine property where such operations do not occur in a stone polishing or finishing plant); and alumina and cement plants.

OSHA jurisdiction includes the following, whether or not located on mine property: brick, clay pipe, and refractory plants; ceramic plants; fertilizer product operations; concrete ready-mix or batch plants; asphalt-mixing plants; hot mix plants; custom stone finishing plants; smelters and refineries. OSHA jurisdiction also includes salt and cement distribution terminals not located on mine property, and milling operations associated with gypsum board plants not located on mine property.

A complete copy of the Interagency Agreement is included in Federal OSHA Instruction CPL 02-00-042.

- B. Memorandum of Understanding Between OSHA and the U. S. Nuclear Regulatory Commission (NRC). In 1989, Federal OSHA signed a Memorandum of Understanding with the Nuclear Regulatory Commission (NRC) to define the general areas of responsibility of each agency in NRC-licensed facilities, describe the efforts of each agency to protect workers in these facilities, and to coordinate agency activities. Minnesota OSHA agreed to follow the guidelines set out in this agreement.

Generally, NRC is responsible for the nuclear and radiological safety in these facilities; OSHA is responsible for the industrial/worker safety issues. Hazards in NRC-licensed nuclear facility are divided into the following four types:

- (1) radiation risk produced by radioactive material;
- (2) chemical risk produced by radioactive materials;
- (3) plant conditions which affect the safety of radioactive materials and present an increased radiation risk to workers (e.g., these might produce a fire or explosion and cause a release of radioactive materials or unsafe reactor condition); and
- (4) plant conditions which result in an occupational risk but do not affect the safety of licensed radioactive materials.

Usually the NRC covers the first three hazards; OSHA covers the fourth hazard.

Under the agreement, fatality, catastrophe, and complaint inspections are to continue as usual in OSHA jurisdictional areas; however, any observations relating to areas where increased management attention is required are to be referred to the NRC, including such things as lax security control or work practices that may affect nuclear or radiological health and safety, improper posting of radiation areas, or licensee employee allegations on NRC license or regulation violations.

A complete copy of the Interagency Agreement is included in Federal OSHA Instruction CPL 02-00-086.

- C. OSHA Enforcement Authority at the Department of Energy's (DOE) Government-Owned, Contractor-Operated (GOCO) Sites. In 1992, Federal OSHA issued CPL 2.95 to clarify OSHA's policy for inspections at Department of Energy GOCO sites. Minnesota OSHA agreed to follow the guidelines in that CPL.

New construction activities within DOE sites are not considered part of OSHA's jurisdiction; this determination is generally supported by case law. Complaints from employees at such sites are to be referred to DOE for resolution.

- D. On February 2, 2014, Minnesota OSHA (MNOSHA) and Federal OSHA signed a Memorandum of Understanding whereby MNOSHA will provide case file information, summary data or appropriate information to Federal OSHA for administratively closed discrimination cases. When technology improvements allow for the transfer of case file information from Minnesota OSHA Operations System Exchange (MOOSE) to the federal Whistleblower Application, this MOU is considered expired. See Appendix A.
- E. On April 14, 2014, Minnesota OSHA (MNOSHA) and MSHA signed a Memorandum of Understanding regarding the Magnetation Plant 4, Grand Rapids, MN. MNOSHA retains enforcement jurisdiction during the construction phase of Magnetation Plant 4. This MOU is considered expired at the time that any material is processed at this plant. See Appendix B.

NOTE: MNOSHA does not have a Memorandum of Understanding (MOU) between the Employment Standards Administration (ESA) and OSHA; this applies to Federal OSHA only. In 1991, Federal OSHA issued CPL 2.92, which provides guidelines for implementing the Memorandum of Understanding (MOU) between the ESA, Wage and Hour Division, (ESA/WH) and the Occupational Safety and Health Administration (OSHA). MNOSHA will use its established referral process to the Department of Labor and Industry, Labor Standards Unit, when needed.

On August 26, 2014, the Federal Aviation Administration and Federal OSHA signed a Memorandum of Understanding concerning airline cabin crews. However, MNOSHA does not have jurisdiction concerning cabin crews (also known as flight attendants), but will continue to cover aviation industry employees, such as maintenance and ground support personnel.

James Krueger, Director MNOSHA Compliance
For the MNOSHA Management Team

Distribution: OSHA Compliance and WSC Director

Attachments: Appendix A, February 2013, MOU Providing Discrimination Case Information to Federal OSHA
Appendix B, April 2014, MOU with MSHA for Magnetation Plant

NOTICE: Minnesota OSHA Directives are used exclusively by MNOSHA personnel to assist in the administration of the OSHA program and in the proper interpretation and application of occupational safety and health statutes, regulations, and standards. They are not legally binding declarations and they are subject to revision or deletion at any time without notice.

Appendix A

A Memorandum of Understanding
Between
The United States Department of Labor Occupational Safety
and Health Administration And
The State of Minnesota
Department of Labor and Industry

Purpose

The purpose of this memorandum of understanding (MOU) is to set forth the principles by which the State of Minnesota will share certain discrimination (i.e., Whistleblower) case information with federal OSHA.

Background

Minnesota OSHA (MNOSHA) developed and has sole ownership in a proprietary computer program and related source codes and documentation, known as Minnesota OSHA Operations Exchange System (MOOSE), for use by employees of MNOSHA to capture work place safety inspection and discrimination information. USDOL, OSHA, desires to obtain certain information concerning discrimination cases which have been administratively closed. MNOSHA has entered the case information in its MOOSE System, but does not have the resources to duplicate the data entry into the federal Whistleblower Application web-based database for these cases which are not investigated. At present, Minnesota's MOOSE system and the federal Whistleblower Application system do not communicate with each other and therefore the data cannot be exchanged electronically.

Procedures

Upon request of USDOL-OSHA, MNOSHA will provide case information, summary data or other appropriate information to USDOL-OSHA for administratively closed discrimination cases which may have occurred during the requested time period. The format of the information will be mutually agreed upon, and may change during the duration of this MOU.

Termination

If technology improvements allow for the direct electronic transfer of MNOSHA's discrimination case information from MOOSE to the Whistleblower Application, this memorandum shall be considered expired.

Contact Persons

MNOSHA - James Krueger, Director, Occupational Safety and Health Division
USDOL-OSHA - Mary Ann Howe, Assistant Regional Administrator, Region V Whistleblower Protection Program

This document sets forth the entire agreement between the parties. Any understandings, agreements, representations, or warranties not contained in this MOU, or a written amendment shall not be binding on either party.

The parties acknowledge and accept the terms and conditions stated in this memorandum which is signed by the persons named below who warrant that they have the authority to execute it on behalf of MNOSHA and USDOL- OSHA.


Mark Hysell, Area Director date
USDOL-OSHA


James Krueger, Director date
Minnesota Department of Labor and Industry
Occupational Safety and Health Division

Appendix B

US. Department of Labor

Mine Safety and Health Administration
 Duluth Federal Bldg., U.S. Courthouse
 515 W. First Street, Rm. 333.
 Duluth, Minnesota 55802-1302



Interagency MOU for Magnetation Plant 4

Effective Date: 04/14/2014

At the request of the Magnetation Plant 4 Mine Operator, Mine ID 21-03817 MSHA agrees to enter into MOU with MN-OSHA to relinquish jurisdiction specifically for the new construction of the facility.

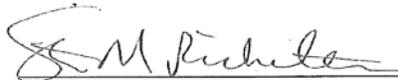
Magnetation Plant 4 is located at 28754 County Road 61, Grand Rapids, MN, and will be producing iron concentrate via magnetic separation. Mining is scheduled to begin sometime in December of 2014. During the interim Magnetation will be engaged in new construction of the facility. The chart below identifies jurisdiction over the construction phase and ultimately where MSHA/OSHA jurisdiction will stop and start during construction.

The plant will be processing material removed from former waste settling ponds, processing the material through vibrating screens to separate larger particles containing iron, slurried into a liquid, processed through magnetic separation, dewatering and finally transporting the product in a wet cake material.

MN-OSHA jurisdiction will end and MSHA will assume full jurisdiction at the time any material is processed.

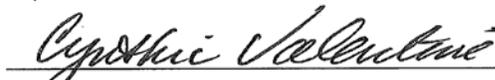
The following chart defines MN-OSHA enforcement activities and MSHA enforcement activities for the duration of the construction period on this specific property. Jurisdictional issues not covered in this chart will be determined case by case between MSHA and MNOSHA:

MSHA JURISTICTION	MNOSHA JURISTICTION
CONSTRUCTION PHASE	
<ul style="list-style-type: none"> ● All stripping ● All Road Construction to Mining Areas ● All Impoundment Construction 	<ul style="list-style-type: none"> ● All building site preparation ● Construction of all buildings ● Construction of gas pipelines ● Construction of power lines
OPERATING PHASE	
<ul style="list-style-type: none"> ● All activities of the mining process 	<ul style="list-style-type: none"> ● None


 _____ Date: 4-14-14
 District Manager North Central District, Steven Richetta


 _____ Date: 4/14/2014
 Assistant District Manager North Central District, Christopher Hensler


 _____ Date: 4/14/14
 Commissioner, Minnesota Department of Labor & Industry, Ken B. Peterson


 _____ Date: 04/14/2014
 Workplace Safety Manager, MNOSHA, Cynthia Valentine