

**BWC Board of Directors  
Audit Committee  
Thurs., March 27, 2008, 4 P.M.**

Ohio Center for Occupational Safety and Health  
Conference Room B  
13430 Yarmouth Drive  
Pickerington, OH 43147

Members Present: Kenneth Haffey, Chair  
Philip Fulton  
William Lhota

Members Absent: None

Other Board Directors in attendance were Alison Falls, Larry Price, James Hummel and David Caldwell.

### **Call to order**

Mr. Haffey called the meeting to order at 4:05 PM and the roll call was taken.

### **Minutes of Feb. 28, 2008**

The minutes were approved on a motion by Mr. Lhota, seconded by Mr. Fulton without further changes.

### **New business/Action**

#### **1.Rule Review**

#### **Public Employment Risk Reduction Program**

Tom Sico, Assistant Legal Counsel, initially addressed a new checklist developed to show proposed rules have been subjected to review of the criteria presented in a recent Executive Order signed by Governor Strickland.

Mr. Sico and Michael Rea, Industrial Safety Administrator, presented changes to fifty rules in Chapter 4167-1 involving the Public Employment Risk Reduction Program (PERRP), resulting from the passage of House Bill 67 in 2005. The full text of all affected rules was provided to the Committee, including changes. Rules 4167-1-03 through 4167-1-15 are abolished as they refer to the Public Employment Risk Reduction Advisory Commission (PERRAC), which no longer exists. The functions of PERRAC have been assumed by the Audit Committee and Board of Directors. Other amendments reflect changes involved with the transfer of functions from the Ohio

Department of Commerce to BWC, which was mandated by House Bill 67. Mr. Sico reviewed the checklist with respect to these rule changes and the public policy safety goals which are achieved.

Mr. Price asked for further explanation regarding the checklist item that stakeholders have input into rule changes. It was agreed that because public hearings have not yet been held, but will be held in the future, the checklist will provide an explanation and be amended prior to the Board meeting.

Mr. Lhota moved to recommend approval of the proposed PERRP rule changes to the Board of Directors, seconded by Mr. Fulton. The motion was approved by unanimous roll call vote.

b. Construction Safety Rules

Mr. Sico and Dan Feeney, Management Analyst Supervisor, Division of Safety and Hygiene, presented proposed amendments to approximately twenty-five (25) Construction Safety rules governing violations of specific safety requirements (VSSR) found in OAC 4123-1-3.

These were first reviewed in 1998. Subsequent five-year rule review was delayed due to extensive discussions on use of OSHA standards in place of these VSSR rules. A series of meetings was held with a stakeholder committee, including representatives from employer, construction, union and trade groups.

Four principles were followed with respect to the rule review:

1. If the industry standard complies with the BWC safety rule and OSHA, no change is necessary;
2. If the industry standard complies with the BWC safety rule but violates OSHA, the BWC rule was changed to conform with OSHA;
3. If the industry standard violates the BWC safety rule but complies with OSHA, the BWC rule was changed to conform with OSHA; and
4. If the industry standard does not exist in BWC safety rules but exists in OSHA, no new rule has been promulgated.

A 31-page summary was provided to the Committee showing comparative changes and explanations. These rules are also subject to public hearing.

In response to questions from Mr. Lhota and Mr. Caldwell, Mr. Feeney explained that the Safety and Hygiene Division's function is safety consulting and education, not safety enforcement, and they were asked to review the existing rules, not make new rules. Mr. Fulton explained that for a VSSR penalty to be enforced there must be an injury, violation and causation, and that it is sometimes difficult to fit particular facts into a specific VSSR rule.

Further discussion ensued regarding differences between OSHA rules and VSSR rules, and why BWC does not adopt OSHA rules as a whole. Mr. Sico stated that the VSSR rules contain some provision which OSHA does not cover. Joy Bush, Executive Director for Employee Management Services, noted that BWC's mandate is to investigate and prevent accidents, not penalize employers. Adoption of all OSHA rules would bring a flood of VSSR applications against employers, while having no impact on an injured worker's receipt of medical benefits and compensation. This is not a positive result from an insurance standpoint. Mr. Caldwell noted that

BWC does not have a “catch-all” clause as OSHA does, and therefore BWC rules must be more specific.

Mr. Feeney also noted that there is a clear procedure in place for adjudicating VSSR applications before the Industrial Commission, rather than assuming that an OSHA citation automatically equals a VSSR. Pursuant to a question from Mr. Lhota, Mr. Feeney emphasized that all involved stakeholder constituents were in favor of updating the rules as presented to the Committee. Pursuant to a question from Mr. Price regarding amending the rules to reflect changes which invariably occur with the passage of time, Mr. Feeney stated that rule review will occur more frequently in the future. Mr. Sico noted that there is a large body of case law interpreting the VSSR rules. Pursuant to a question from Mr. Fulton, Mr. Feeney clarified that there are no formal minutes from the meetings which resulted in the proposed rule changes.

The proposed rule changes were tabled so that additional information could be provided to the Committee.

## **Discussion items**

### **1. Privacy at BWC Presentation**

Due to time constraints, this presentation was tabled until a future meeting.

### **2. Office of Budget and Management, Internal Audit Update**

Mr. Haffey informed the committee that he and Joe Bell, Chief Internal Auditor, recently met with Deloitte. BWC is well ahead of other state agencies with respect to internal auditing.

Mr. Bell advised that Deloitte met with Administrator Ryan and representatives from IT and Finance on March 12 regarding BWC’s risk assessment plan, which will be incorporated into the state internal audit plan.

Factors such as skill set, personnel, technology and cost are also being considered by Deloitte in developing an overall state internal audit function. Mr. Bell indicated feedback from the Board is both welcome and necessary.

Mr. Bell advised that Deloitte will complete its risk assessment by April 4, draft recommendations by April 16, and meet with the Controlling Board on May 7.

### **Other Business**

Mr. Haffey reviewed the provided timetable for rules which will be presented to the Committee over the next 12 months.

April begins the external audit process for BWC. Mr. Haffey will meet with representatives from Schneider Downs.

The litigation update was tabled for presentation before the full Board of Directors on March 28.

## **Adjournment**

The next Audit Committee meeting is April 24, 2008 at 12:00 PM.

Mr. Lhota moved to adjourn the meeting at 5:05 PM, seconded by Mr. Fulton.

Prepared by Jill Whitworth, BWC Staff Counsel  
March 28, 2008