PRO-DAIRY e-Alert: OSHA LEP Update

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The NY State OSHA work group has been involved in numerous conversations with OSHA and NY-DOL staff relating to the upcoming Local Emphasis Program (LEP) dairy inspections in NYS. There are three important items discussed below:

Temporary Labor Camps:

While most dairy farms that offer housing to employees do not consider themselves to be operating a temporary labor camp, there have been some concerns that small farms providing housing to Hispanic employees could be inspected if those workers live in farm housing and if OSHA considers those employees to be temporary workers. For the purpose of this discussion, “small farm” means one that has less than 11 non-family employees. Small farms with temporary labor camps are subject to OSHA inspection and enforcement actions. We have received verbal communication from OSHA to help clarify these questions. OSHA has confirmed that they will only be inspecting dairy farms with 11 or more employees in the program inspections they plan to conduct on NY dairy farms this summer, but the small farm/temporary labor camp question remained open for the next Federal fiscal year starting on October 1, 2014. However, after a review by OSHA legal staff, we have been told that there are two requirements to determine if a farm does in fact maintain a temporary labor camp and is therefore subject to OSHA inspection:

1) the work period set by the employer is temporary (rarely the case for milking staff and barn workers)

AND
2) the employer REQUIRES the worker to use the housing provided to the employee.

If a small farm does not meet these requirements, then they do not have a temporary labor camp and therefore, are NOT subject to ANY OSHA inspection or enforcement.

We understand that OSHA will confirm this in writing in the coming weeks but we felt it was important for small farms that were concerned about this to understand their regulatory status as soon as possible given spring work is fast approaching. Regardless, we do encourage small farms to contact NYCAMH (http://www.nycamh.com/) to conduct safety training for all farm employees and family members as a good operating practice.

Can individuals that are not OSHA employees be part of an inspection on my farm?

Another question that has developed over the last several months relates to the right of OSHA to ask non-OSHA representatives (OSHA calls them “walk around representatives”) to assist with an LEP inspection. OSHA has told us that both the law and regulations provide them with the option to use outside advisors. This is typically done when OSHA personnel believe they lack certain expertise and feel they need additional technical or language skills in order to conduct an effective and complete inspection of the workplace or where a third party may be necessary to build trust with stakeholders of the organization they are inspecting. We have been told that walk around representatives are typically NOT used in inspections of any industry and it is unlikely that they will be used by OSHA in dairy farm inspections under the LEP in NYS. However, if such a person is joining for an inspection, the OSHA inspector needs to declare that person to the farm before the inspection starts (and farm managers would be wise to ask). Every employer has the right to challenge the presence of an outside advisor on an inspection and the farm may refuse entry to that person. OSHA also has the right to assert the need for the walk around rep and may or may not choose to seek a warrant or to take other measures to secure this assistance.

Bunker Silos

After many months of discussion with OSHA about safety issues regarding bunker silos, we have reached a consensus regarding what large dairy farms should have in place for the upcoming summer LEP compliance inspections. This information is now being communicated by OSHA safety officials in presentations that started on March 26, 2014. Prior to March 26th, OSHA officials had cited some bunker safety publications that suggest bunkers should not be filled above bunk wall height, that packing tractor rear axle height should be at or below bunk wall height, and that there should be guard/safety rails along the top of bunk walls. With 2013 harvest long completed, there was concern by many farms that they may be fined for the height of existing feed supplies. There is broad agreement that bunker silos present serious or fatal fall and rollover hazards, and that the ideas being cited by OSHA would help address some of the hazards. However, there is also recognition that feasible solutions to address these hazards will take ingenuity, significant engineering effort, site-specific planning, time and capital to be developed and
implemented.

In the meantime, dairy farm managers should implement the following:

1) **Annual Safety Training Program** - All dairy farm staff, and any custom operators or consultants with duties in the following areas need to be trained at least annually in:
   - operating trucks and packing tractors during silo fill;
   - covering bunks after harvest
   - removal of cover material such as plastic and tires;
   - working near bunk faces, using defacers, taking forage samples (includes feed nutritionist), etc.

(Though written records are not legally required by OSHA, farms will be in the best position by keeping files that include: the dates trainings were conducted, topics covered, materials used for training/or sources of training, and signatures by all who attended).

2) **Tractor Safety Equipment** - Make sure packing tractors have ROPS and safety belts that are in working order and are used by operators.

3) **Silage Truck Safety Equipment** - Make sure all mirrors are in place, tires are properly inflated, and all lights and back up indication equipment work.

4) **Bunker Silo Structural Inspections** - Visually inspect bunkers for obvious structural defects and repair those that could lead to failure before beginning the ensiling process.

5) **Standard Operating Procedure** - Though not required, farms should consider having complete, accurate, written procedures for bunker silos, including filling, covering, and unloading and be sure that employees have been trained on following them.

6) **Bunker Silo Site and Sounding Area** - Visually inspect the bunker silo site and adjacent areas for specific safety concerns, try to eliminate the hazards and make sure relevant employees are informed of changes or any hazards that cannot be eliminated.

7) **General Communications** - Inform all non-essential personnel to stay out of and away from the bunker and post warning signs where practical.

Based on the discussions with OSHA, it is clear that the dairy industry will need to make safety related changes in bunker design and standard operating procedures (management) in the coming years. While the nature of many of these changes is uncertain at this time, it would be helpful for each farm to give consideration to how their bunker systems can be made safer. A technical work group will be forming to evaluate current options and to develop other viable solutions. We will distribute and post new information as it becomes
available on PD, NEDPA, NYCAMH and other websites.

This document is not intended to address all safety hazards or solutions relating to bunker silos.

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