EDITORIAL

Hopefully everyone is aware of the CSMP grandfathering during 2013. This is a great opportunity to earn a quality certification without sitting for an exam. Starting January of 2014 a 100 question exam will be mandatory to earn the CSMP.

ISHM will have a booth at the OHIO EXPO in April, the ASSE event in June and the NSC Expo in September. Please stop by if you are at the convention. Let us know how we are doing and how we can improve.

As ISHM grows there are increased opportunities to assist. If you would like to be on a committee or participate in other ways please let us know.

Meet the ISHM Board of Directors, this month Jan Rosenberg

As the Deputy Administrator of the Nevada Division of Industrial Relations (DIR), I am the top administrator in the Southern Nevada office of the DIR. I work directly with the Chief
Administrative Officers of each of the Division’s four sections to administer OSHA enforcement, OSHA consultation and training, mine safety and training, and workers’ compensation regulation for the State of Nevada. Through working in a lead role regarding the Nevada state OSHA program and interfacing with federal OSHA in that capacity, I bring a unique perspective to the ISHM Board.

As a member of the ISHM Board of Directors since its inception, I have held the positions of Vice Chair, Chair, Secretary, and now Treasurer. I have also served on several ISHM Board committees during my tenure that have involved areas such as professional standards, elections, marketing, bylaws, continuance of certification, standards setting, liaison to NSMS, and exam question workshops.

We have come a long way since our inception as a safety and health certification. Since the ISHM Board was formed, I have had the opportunity to work closely with ISHM Executive Directors’ Phil Mueller and Larry Curtis and I believe we have gradually made strides to improve the recognition of the CSHM and ASHM. Such recognition was highlighted in the achievement of attaining CESB accreditation.

One of my proudest accomplishments as a Board member was the recognition of the CSHM and ASHM as title protected for safety and health in the state of Nevada. To date, Nevada remains the only state to title protect the CSHM and ASHM.

As a lead Board member in establishing the new CSMP, I am excited that ISHM has established a certification for the growing breed of hybrid safety and health professionals. Having to wear many hats is becoming more common in these tough economic times and the CSMP is well designed to meet the needs of professionals that have significant safety and health responsibilities yet have other duties outside of this arena in their organization.

I will continue to work toward making the ISHM a premier organization. Although we have made great progress over the years, there is still much to be done.

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**Ask the Lawyer**

**Question:** If an OSHA Compliance Officer requests a copy of a self-audit report, must I provide it?

**Answer:** This is an important question and one that comes up often. A distinction must be drawn between mandatory and voluntary self-audits. In OSHA’s regulations, there are certain explicit requirements that employers *must* perform compliance audits, such as Process Safety Management audits. (1910.119(o)) If requested, mandatory audits must be produced to OSHA. The issue, however, is whether the employer must turn over voluntary self-audits to OSHA. With that in mind, I will address: 1) OSHA’s voluntary self-audit policy; 2) an employer’s legal basis to withhold production of voluntary self-audits; and 3) practical recommendations.

OSHA published a guidance document entitled: Final Policy Concerning the Occupational Safety and Health Administration’s Treatment of Voluntary Employer Safety and Health Audits. A copy can be found at: [http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=16434](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=16434). This guidance document is not a legally binding rule; it is merely a statement of OSHA’s position on how it will treat self-audits. OSHA agrees it will not *routinely* ask for self-audits during an inspection, but reserves the right...
to do so under limited circumstances, such as during a fatality investigation. If the employer addresses the hazards identified in the self-audit, OSHA will not issue a citation for hazards abated prior to the inspection; and OSHA will not issue a willful citation for hazards that have been addressed but not yet abated prior to the inspection. OSHA will also provide up to a 25% penalty reduction for employers who conduct self-audits and follow through with corrective action.

While OSHA has the right to request self-audits, an employer may withhold the production of the self-audit if it falls within the protection of the Attorney-Client privilege or Attorney Work Product privilege. To establish the Attorney-Client privilege: there must be an attorney-client relationship; the communication must be for the purpose of obtaining legal advice; and there must be an expectation that the communication be kept confidential. To meet this standard, the employer’s attorney must be involved in all pertinent communications during the audit process, including compliance determinations, and must receive a copy of the report, which should be labeled as Privileged and Confidential. Persons outside the control group or audit process cannot receive the report or the privilege will be deemed waived.

The Attorney Work Product privilege is slightly different. Here, an attorney directs the employer to conduct an investigation in anticipation of litigation, typically in the context of post-incident investigations. This type of report is not a typical self-audit, but rather an incident investigation report.

From a practical standpoint, OSHA usually respects an employer’s right to conduct voluntary self-audits and will not seek a copy of the report. That said, OSHA has the legal right to obtain the report, so an employer should take several steps to protect itself. First, to the extent practicable, the employer should conduct any audit within the protection of the Attorney-Client privilege or Attorney Work Product privilege. Furthermore, the employer should assume that the audit report may ultimately be provided to OSHA. Thus, the employer should only include facts and not opinions in the report, and be careful not to admit non-compliance. The employer should also address all hazards identified in the audit report by abating the hazards expeditiously, developing a time-frame to abate the hazards in an economically and technically feasible manner, or documenting good faith reasons why steps will not be taken to address the hazards. Failure to address known hazards may result in a willful citation.

The key for the employer is to treat the self-audit in a confidential manner, but still address any hazards in a responsible manner.

Darren Hunter is a partner and an experienced OSHA practitioner in the Chicago law firm of Rooney Rippie & Ratnaswamy LLP. This column does not constitute legal advice or the formation or proposal of an attorney-client relationship to or with any person or entity. In addition, this column should not be understood to represent the views of ISHM, the law firm, the individual attorneys at the firm, or of any of the firm’s clients or former clients.

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Positions Available

Please do not contact ISHM for these positions.

Larry, I would like to let you know that we have openings in Emory University in Atlanta, GA. We are looking for the following:
EHS Professional II (Job requisition ID 31822BR)
EHS Professional II (Job requisition ID 32014BR)
EHS Technician I (Job requisition ID 32137BR)

They can find the positions posted at Emory Careers. They can also send a resume directly to me.

Thanks for the work you do.

Edwin M. Jean, CSHM
Environmental Health and Safety Professional II
Emory University
Environmental Health and Safety Office
1762 Clifton Road, NE
Broward Health in sunny Ft. Lauderdale is looking for a Corporate Coordinator of Safety & Health. Go on to browardhealth.org to fill in application. The position calls for someone with background in safety and health management in healthcare. Environmental safety as opposed to patient safety. Knowledge of OSHA and environmental safety to reduce injuries among healthcare workers such as patient assaults, lifting, needlesticks. And a background in updating safety policies and procedures. The position is Safety Officer of all primary care, satellite sites as well as coordinating safety efforts among the 5-hospital safety officers.

CSHM QUIZ

CSHMs – Don’t forget the monthly quiz!!!!!!!!! [http://www.mancomm.com/AffiliateQuiz.aspx](http://www.mancomm.com/AffiliateQuiz.aspx)
Password is OSHA11 The quizzes change around the middle of the month.