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PUBLIC EMPLOYEE OCCUPATIONAL SAFETY & HEALTH INSPECTION REPORT AND ORDERS

Wisconsin Commerce Department Safety and Buildings Division Bureau of Field Operations P.O. Box 2538 201 W. Washington Ave Madison, WI 53701

Table with 4 columns: To The Attention Of (CHARLES SORENSON, Chancellor), Inspection Date (6/18/2009, 7/7, 8, 9, & 13/2009), File Number (E- 1906, T0599-138-10A), Number of Violations: 7

Employers Address: UW Stout, PO Box 790, Menomonie, WI 54751-0790

Checkboxes: Safety Program Evaluation (checked), Work Site Inspection (unchecked)

Violations Explained To: Charles Sorenson, Title: Chancellor, Located At (UW-Stout, 915 S. Broadway), City: Menomonie, County: Dunn

Compliance Date: 2-15-2010

NOTICE: Employer must post a copy of this report at site of violation for minimum of 3 days or until all violations are abated, whichever is longer - Wis. Stats. 101.055(6). All violations noted must be abated by the above compliance date, with extensions granted only if a good faith effort is established.

The information you provide may be used for other government agency programs [Privacy Law, s. 15.04(1)(m)]. NOTE: All violation orders starting with "1910" are referenced through Comm 32.50(2) referencing: 29 CFR 1904, 1910 & 1926 (OSHA Codes)

Note: the following is a revision and reissuance of Orders T0599-138-10, items 1-12 which were rescinded by Administrator Greg Jones on November 4, 2009.

This DEPARTMENT ORDER is issued as a result of inspections of the University of Wisconsin – Stout campus as a result of Complaints #1229255 and 1229295 received in June, 2009 regarding asbestos exposure. The following violations were revealed:

1. Code Section Violated: Comm 32.05(2) PARTICIPATION IN INSPECTIONS. Pursuant to s. .055 (5), Stats., a representative of the employer, an employee, or an employee representative shall be provided an opportunity to accompany a department inspector on any inspection made under this chapter.

Condition Found: On 6/18/2009 UW-Stout personnel denied the employee representative access to a meeting between the Department of Commerce Representative and UW-Stout Management. On 7/07/2009 UW-Stout personnel denied access to the employee representative from participation in two meetings.

Corrective Action Ordered: In the future, the employer shall provide an employee representative the opportunity to accompany a Department of Commerce Representative during an inspection.

2. Code Section Violated: 1926.1101(a) Scope and application. (a)(3) Construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain asbestos; (a)(7) Coverage under this standard shall be based on the nature of the work operation involving asbestos exposure.

Condition Found: The 2009 Complaint Inspections found UW Stout to either not implement or incorrectly implement abatement material provided to close the 2006 report violations resulting in further potential for employee exposure to asbestos.

It was discovered that there was a failure by the employer to implement the work practices provided in the 2006 abatement material which required all UW Stout Work Orders that could result in exposure to

Deputy Name: Randy Baldwin Deputy Phone Number: (608) 267 - 9152

Mailing Address: P.O. Box 2658, Madison, WI 53701 Email: Randy.Baldwin@Wisconsin.gov



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asbestos be referred to the Asbestos Coordinator for assessment of employee exposure and/or abatement prior to issuance of Work Orders.

Corrective Action Ordered: The employer shall

- a. Ensure that people or departments with **any** oversight or effect on conditions or processes covered by, or related to, this standard are trained in their requirements.
- b. Provide documentation of the training to the Department of Commerce.
- c. Ensure compliance with all requirements of 1926.1101 by all employees of the University of Wisconsin-Stout.

**Comment [DoC1]:** Attachment: UW-Stout abatement flowchart, UW-Stout workorders, Bowman Room 10D3 WALMS data.

3. Code Section Violated: ss. 101.11 (1), Wis.Stats., provides that: Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters. Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building as to render the same safe.

1926.1101(d)(3) In addition, all employers of employees exposed to asbestos hazards shall comply with applicable protective provisions to protect their employees. For example, if employees working immediately adjacent to a Class I asbestos job are exposed to asbestos due to the inadequate containment of such job, their employer shall either remove the employees from the area until the enclosure breach is repaired; or perform an initial exposure assessment pursuant to (f) of this section.

1926.1101(d)(4) All employers of employees working adjacent to regulated areas established by another employer on a multi-employer work-site, shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fibers do not migrate to such adjacent areas.

1926.1101(o) Competent person. 1926.1101(o)(1) General. On all construction worksites covered by this standard, the employer shall designate a competent person, having the qualifications and authorities for ensuring worker safety and health required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

1926.1101(o)(2) Required Inspections by the Competent Person. Section 1926.20(b)(2) which requires health and safety prevention programs to provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons, is incorporated.

Condition Found: 1. Regular inspections of job sites and equipment were not accomplished;

- DSF Asbestos Consultant reported breaches of containment in regulated areas in Jarvis Hall. Bags of remediated ACM were discovered by UW-Stout employees in the Chiller Room of Price Commons which was reported as cleared.
- ACM residue discovered by UW-Stout elevator contractor on the Price Commons Elevator roof and in the elevator shaft.
- Employees reported being required to work in a Class II abatement area in Jarvis Hall without protections required by the standard. No action was reportedly taken to halt this work.
- UW-Stout employees were not removed from the area while DSF contractor was reported drilling through ACM ceiling tiles in the Sports and Fitness Center.

2. A UW-Stout employee acting as the Competent Person, performed the following tasks without current certifications in asbestos:

Deputy Name: **Randy Baldwin**

Deputy Phone Number: **(608) 267 - 9152**

Mailing Address: **P.O. Box 2658, Madison, WI 53701**

Email: **Randy.Baldwin@Wisconsin.gov**



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- Inspection of work area in response to an employee complaint of exposure to asbestos
- Directed employee participation in, and PPE for, clean up of asbestos contamination of UW Stout employee work area adjacent to Class I regulated area.
- Directed UW Stout employees to contain and remove waste from Class I regulated area.
- Identified as "point of contact" for asbestos abatement projects by DSF Hazardous Materials Abatement Manager.

### Corrective Actions Ordered:

- a. The employer shall ensure that any employee assigned some or all of the Competent Person responsibilities under this standard has the training and certifications required to document the training.
  - b. Until such time as the employer has designated a Competent Person having the qualifications and authority for ensuring worker safety and health required by this standard, UW Stout shall:
    - Remove all UW Stout employees from areas of DSF contractor or other contractor activities in areas containing asbestos.
    - Discontinue or prevent any UW Stout employee activities in areas with ACM or PACM until evaluation by a Competent Person who meets the requirements of this standard.
    - Ensure that the employee assigned to the duties of a Competent Person as defined in this standard is able to meet the requirements of the standard.
  - c. The employer shall provide documentation of compliance with this corrective action to the Department of Commerce.
4. Code Section Violated: 1926.1101(f) Exposure assessments and monitoring.
- 1926.1101(f)(1) General monitoring criteria.
- (f)(1)(i) Each employer who has a workplace or work operation where exposure monitoring is required under this section shall perform monitoring to determine accurately the airborne concentrations of asbestos to which employees may be exposed.
- 1926.1101(f)(2) Initial Exposure Assessment.
- (f)(2)(i) Each employer who has a workplace or work operation covered by this standard shall ensure that a "competent person" conducts an exposure assessment immediately before or at the initiation of the operation to ascertain expected exposures during that operation or workplace. The assessment must be completed in time to comply with requirements which are triggered by exposure data or the lack of a "negative exposure assessment," and to provide information necessary to assure that all control systems planned are appropriate for that operation and will work properly.
- (f)(2)(ii) Basis of Initial Exposure Assessment: Unless a negative exposure assessment has been made pursuant to paragraph (f)(2)(iii) of this section, the initial exposure assessment shall, if feasible, be based on monitoring conducted pursuant to paragraph (f)(1)(iii) of this section. The assessment shall take into consideration both the monitoring results and all observations, information or calculations which indicate employee exposure to asbestos, including any previous monitoring conducted in the workplace, or of the operations of the employer which indicate the levels of airborne asbestos likely to be encountered on the job. For Class I asbestos work, until the employer conducts exposure monitoring and documents that employees on that job will not be exposed in excess of the PELs, or otherwise makes a negative exposure assessment pursuant to paragraph (f)(2)(iii) of this section, the employer shall presume that employees are exposed in excess of the TWA and excursion limit.
- 1926.1101(o)(3) Additional Inspections. In addition, the competent person shall make frequent and regular inspections of the job sites, in order to perform the duties set out below in paragraph (o)(3)(i) and (ii) of this section. For Class I jobs, on-site inspections shall be made at least once during each

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Deputy Phone Number: **(608) 267 - 9152**

Mailing Address: **P.O. Box 2658, Madison, WI 53701** Email: **Randy.Baldwin@Wisconsin.gov**



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work shift, and at any time at employee request. For Class II, III, and IV jobs, on-site inspections shall be made at intervals sufficient to assess whether conditions have changed, and at any reasonable time at employee request.

### Conditions Found:

- a. Employees were directed to cut into ACM tank insulation in Room 10D3 of Bowman Hall without notifying the Competent Person nor provision of air monitoring.
- b. Negative exposure assessment for employees exposed to asbestos work areas was requested; such as but not limited to, 3<sup>rd</sup> floor of Jarvis Hall, Sports & Fitness Center, and Hovlid Hall. This information was asked for during the inspection process and not provided with other information supplied by UW-Stout.

### Corrective Action Ordered:

- a. The employer shall ensure that activities that require air monitoring are conducted by a Competent Person and performed in accordance with the standard.
- b. Training documentation of the UW Stout Competent Person in the requirements of this standard shall be provided to the Department of Commerce.
- c. Negative exposure assessments requested in June, 2009 shall be provided to the Department of Commerce.
- d. The employer shall ensure that actions required by this standard when UW Stout employees are working in or adjacent to asbestos abatement projects conducted by DSF, UW Stout, or any contractor or agency are fully implemented.

### 5. Code Section Violated: 1926.1101(b) definitions

**Class I asbestos work** means activities involving the removal of TSI and surfacing ACM and PACM.

**Class II asbestos work** means activities involving the removal of ACM which is not thermal system insulation or surfacing material. This includes, but is not limited to, the removal of asbestos-containing wallboard, floor tile and sheeting, roofing and siding shingles, and construction mastics.

**Class III asbestos work** means repair and maintenance operations, where "ACM", including TSI and surfacing ACM and PACM, is likely to be disturbed.

**Class IV asbestos work** means maintenance and custodial activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II, and III activities.

#### **1926.1101(e) Regulated areas.**

**1926.1101(e)(1)** All Class I, II and III asbestos work shall be conducted within regulated areas. All other operations covered by this standard shall be conducted within a regulated area where airborne concentrations of asbestos exceed, or there is a reasonable possibility they may exceed a PEL.

Regulated areas shall comply with the requirements of paragraphs (2), (3),(4) and (5) of this section.

**1926.1101(e)(3) Access.** Access to regulated areas shall be limited to authorized persons and to persons authorized by the Act or regulations issued pursuant thereto.

#### **1926.1101(f)(3) Periodic monitoring.**

**1926.1101(f)(3)(i) Class I and II operations.** The employer shall conduct daily monitoring that is representative of the exposure of each employee who is assigned to work within a regulated area who is performing Class I or II work, unless the employer pursuant to (f)(2)(iii) of this section, has made a negative exposure assessment for the entire operation.

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Deputy Phone Number: **(608) 267 - 9152**

Mailing Address: **P.O. Box 2658, Madison, WI 53701**

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**1926.1101(g)(9)** Work Practices and Engineering Controls for Class III asbestos work. Class III asbestos work shall be conducted using engineering and work practice controls which minimize the exposure to employees performing the asbestos work and to bystander employees.

(g)(9)(i) The work shall be performed using wet methods.

(g)(9)(ii) To the extent feasible, the work shall be performed using local exhaust ventilation.

(g)(9)(iii) Where the disturbance involves drilling, cutting, abrading, sanding, chipping, breaking, or sawing of thermal system insulation or surfacing material, the employer shall use impermeable dropcloths, and shall isolate the operation using mini-enclosures or glove bag systems pursuant to paragraph (g)(5) of this section or another isolation method.

(g)(9)(iv) Where the employer does not produce a "negative exposure assessment" for a job, or where monitoring results show the PEL has been exceeded, the employer shall contain the area using impermeable dropcloths and plastic barriers or their equivalent, or shall isolate the operation using a control system listed in and in compliance with paragraph (g)(5) of this section.

(g)(9)(v) Employees performing Class III jobs, which involve the disturbance of thermal system insulation or surfacing material, or where the employer does not produce a "negative exposure assessment" or where monitoring results show a PEL has been exceeded, shall wear respirators which are selected, used and fitted pursuant to provisions of paragraph (h) of this section.

### Conditions Found:

a. Untrained and uncertified employees were directed to cut up water tanks in Bowman Hall insulated with ACM surfacing material, generating inhalable asbestos fibers without following UW Stout assessment protocols or provision for respirators or other requirements of the standard. The employees reported observing and stopping other employees cleaning up debris from ACM tank insulation without following Class IV requirements of the standard.

b. UW-Stout employee dug into a pressed board for an asbestos sample and then directed the building's maintenance man to repair the disturbed ACM area with caulk. The maintenance man was not trained in Class III work as required by the standard to perform the task.

c. A UW-Stout complaint was filed stating that employees were in a Class II asbestos abatement area in Jarvis Hall without required controls. ACM bench tops were broken up with hammers and pulled off the ACM mastic holding them onto cabinets with crowbars, Class II level work, without required controls.

- Employees were not removed from exposure to an unknown concentration of asbestos fibers released during the break up and while the bench tops were moved in carts through occupied areas, onto a shared elevator, to a room on the first floor where the ventilation ducts were not covered to prevent entrainment of fibers in the return air.
- The HVAC system with mixed return and supply air was not turned off during multiple asbestos abatement projects, in addition to the above, until the week following the report of ACM breakage.
- Air monitoring was not conducted nor required to be conducted to demonstrate that employees exposed to such handling practices did not exceed the Excursion limit or Permissible Exposure Limit for exposure to asbestos.

### Corrective Action Ordered:

a. The employer shall ensure that reports of employee exposure to asbestos receive a response in compliance with this standard.

b. The employer shall ensure that employees who are not qualified to perform hazard assessments or responses are not allowed nor required to do so.

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Deputy Phone Number: **(608) 267 - 9152**

Mailing Address: **P.O. Box 2658, Madison, WI 53701** Email: **Randy.Baldwin@Wisconsin.gov**



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c. The employer shall ensure that employees understand who they should contact with asbestos hazard concerns. That person needs to be qualified and empowered to provide the response required to comply with the standard and protect employee health and safety.

6. Code Section Violated: 1926.1101(b) Definitions. **Building/facility Owner** is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.

1926.1101(k) Communication of hazards.

1926.1101(k)(1) This section applies to the communication of information concerning asbestos hazards in construction activities to facilitate compliance with this standard. Most asbestos-related construction activities involve previously installed building materials. Building owners often are the only and/or best sources of information concerning them. Therefore, they, along with employers of potentially exposed employees, are assigned specific information conveying and retention duties under this section. Installed Asbestos Containing Building Material. Employers and building owners shall identify TSI and sprayed or troweled on surfacing materials in buildings as asbestos-containing, unless they determine in compliance with paragraph (k)(5) of this section that the material is not asbestos-containing. Asphalt and vinyl flooring material installed no later than 1980 must also be considered as asbestos containing unless the employer, pursuant to paragraph (g)(8)(i)(I) of this section determines that it is not asbestos-containing. If the employer/building owner has actual knowledge, or should have known through the exercise of due diligence, that other materials are asbestos-containing, they too must be treated as such. When communicating information to employees pursuant to this standard, owners and employers shall identify "PACM" as ACM. Additional requirements relating to communication of asbestos work on multi-employer worksites are set out in paragraph (d) of this section.

1926.1101(k)(2) Duties of building and facility owners.

(k)(2)(i) Before work subject to this standard is begun, building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site pursuant to paragraph (k)(1) of this section.

(k)(2)(ii) Building and/or facility owners shall notify the following persons of the presence, location and quantity of ACM or PACM, at the work sites in their buildings and facilities. Notification either shall be in writing, or shall consist of a personal communication between the owner and the person to whom notification must be given or their authorized representatives:

(k)(2)(ii)(A) Prospective employers applying or bidding for work whose employees reasonably can be expected to work in or adjacent to areas containing such material;

(k)(2)(ii)(B) Employees of the owner who will work in or adjacent to areas containing such material;

(k)(2)(ii)(C) On multi-employer worksites, all employers of employees who will be performing work within or adjacent to areas containing such materials;

(k)(2)(ii)(D) Tenants who will occupy areas containing such material.

(k)(3) Duties of employers whose employees perform work subject to this standard in or adjacent to areas containing ACM and PACM. Building/facility owners whose employees perform such work shall comply with these provisions to the extent applicable.

(k)(3)(i) Before work in areas containing ACM and PACM is begun; employers shall identify the presence, location, and quantity of ACM, and/or PACM therein pursuant to paragraph (k)(1) of this section.

(k)(3)(ii) Before work under this standard is performed employers of employees who will perform such work shall inform the following persons of the location and quantity of ACM and/or PACM present in the area and the precautions to be taken to insure that airborne asbestos is confined to the area.

(k)(3)(ii)(A) Owners of the building/facility;

(k)(3)(ii)(B) Employees who will perform such work and employers of employees who work and/or will be working in adjacent areas.

(k)(3)(iii) Within 10 days of the completion of such work, the employer whose employees have performed work subject to this standard, shall inform the building/facility owner and employers of employees who will be working in the area of the current location and quantity of PACM and/or ACM remaining in the area and final monitoring results, if any.

(k)(4) In addition to the above requirements, all employers who discover ACM and/or PACM on a worksite shall

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Deputy Phone Number: **(608) 267 - 9152**

Mailing Address: **P.O. Box 2658, Madison, WI 53701** Email: **Randy.Baldwin@Wisconsin.gov**



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convey information concerning the presence, location and quantity of such newly discovered ACM and/or PACM to the owner and to other employers of employees working at the work site, within 24 hours of the discovery.

Condition Found: The Hazardous Materials Abatement Manager stated that the Project Liaison is the point of contact for DSF and that UW-Stout employees are not supposed to communicate directly with the DSF contractors to avoid confusion. Therefore the Project Liaison is responsible for provision of information to DSF, including location and quantity of asbestos. DSF is responsible for distribution of this information to their contractors.

- did not identify the water filter as covered in ACM, however did misidentify piping leading to the filter as ACM.
- Email, WALMS and interview information show that the Project Liaison was misinformed as to which bench tops in Jarvis Hall contained asbestos and which did not. The bench tops and instructions were hand written onto the plans provided to DSF contractors.
- Jarvis Hall elevator used to transport improperly contained asbestos material, subsequent spill in the elevator and usage of the elevator without test to prove it was safe.
- The DSF Construction Coordinator / Supervisor stated in an interview that ACM bench top removal was done by a general contractor; other benches were stamped and abated by ADMS.
- The Asbestos Coordinator stated in the 6/18/09 interview that the demolition contractor was frustrated that he could not tell which bench tops were asbestos containing and painted the ACM tops with orange paint. The Project Liaison and others heard and did not contradict this statement. Orange paint on ACM fittings were observed in pictures of pipes in Hovlid Hall.
- A plumber in Hovlid Hall, which contains over 1,000 ACM pipe fittings per WALMS (Wisconsin Asbestos and Lead Abatement Management System) data, decided a pipe fitting was not ACM by poking it, per new the Asbestos Coordinator.
- The UW Stout Project Manager provided documentation to plumbing contractor to provide to OSHA investigator showing room #24 in Hovlid Hall had pipe fittings replaced in the '80s.
  - This information was not mentioned by anyone other than the OSHA Compliance Officer during this inspection and is not included in the WALMS report.
  - Pictures taken by the new Asbestos Coordinator show three kinds of fittings, plaster, dirty canvas and hard plastic in addition to the recently cleared elbow.
- Rooms in the Sports and Fitness Center sampled by the DSF Asbestos Coordinator do not match the rooms reported by UW Stout employees as contaminated.
- Provided identification, and misidentification, of asbestos containing material to DSF and Department of Commerce.

Corrective Action Ordered:

- a. The employer shall ensure that all previous, current, and future documentation regarding asbestos, present or removed, is entered into the WALMS database.
- b. The employer shall verify that every fitting in room #24 Hovlid Hall was abated at the same time or identify which fittings are still ACM / PACM.
- c. The employer shall ensure that, once it is available, accurate information is provided to DSF, contractors, and employees.
- d. The employer shall require DSF to provide accurate documentation to UW Stout regarding asbestos abatement results.
- e. The employer shall provide documentation of the source of the data and the completion of the WALMS update to the Department of Commerce.
- f. The employer shall require that sampling data is provided within 10 days of the completion of work.

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Mailing Address: **P.O. Box 2658, Madison, WI 53701** Email: **Randy.Baldwin@Wisconsin.gov**



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- 7. Code Section Violated: 1926.1101(k)(6) At the entrance to mechanical rooms/areas in which employees reasonably can be expected to enter and which contain ACM and/or PACM, the building owner shall post signs which identify the material which is present, its location, and appropriate work practices which, if followed, will ensure that ACM and/or PACM will not be disturbed. The employer shall ensure, to the extent feasible, that employees who come in contact with these signs can comprehend them. Means to ensure employee comprehension may include the use of foreign languages, pictographs, graphics, and awareness training.

Conditions Found:

- a. Signs were not posted on rooms where employees could reasonably expect to be exposed to asbestos.
- b. Employees brought a sample of tank insulation to be tested for asbestos indicating the material was not identified.
- c. The plumbing contractor guessed the status of pipe fitting insulation in Hovlid Hall mechanical rooms since signs were not posted. Note: WALMS shows that the insulation on 1,200 pipe fittings in Hovlid Hall are ACM.

Corrective Action Ordered: The employer shall ensure that the entrance to mechanical rooms/areas in which employees reasonably can be expected to enter and which contain ACM and/or PACM rooms have a sign posted that meet the requirements of this section.

Note: The original order concerning the Price Commons Elevator has been vacated based on a clearance air sample taken on June 10, 2009 and a subsequent November 4, 2009 inspection and laboratory report indicating a lack of asbestos in the elevator pit and air samples taken from the elevator.

cc: Jim Uhlir, Executive Director of Health and Safety/Asbestos Coordinator  
John Gast, Local 383 President  
Dan Karamanski, Occupational Safety Manager for UW System

Wisconsin Codes can be found at [://www.commerce.state.wi.us/SB/SB-DivCodesListing2002.html](http://www.commerce.state.wi.us/SB/SB-DivCodesListing2002.html)  
Wisconsin enforceable employee exposure limits can be found at [://commerce.wi.gov/SB/SB-PublicSectorSafetyProgram.html](http://commerce.wi.gov/SB/SB-PublicSectorSafetyProgram.html) and scrolling down to item #5.  
OSHA standards can be found at [://www.osha-slc.gov/OshStd\\_data](http://www.osha-slc.gov/OshStd_data)

Department Orders are issued as a result of an inspection on the above referenced site. You are hereby ordered to have the violations corrected to conform to the indicated provisions of the Wisconsin Administrative Code and/or Wisconsin Statutes. These violations must be corrected by the compliance date noted, and upon correction of violations, I must be notified. If you fail to comply, this order is enforceable in circuit court pursuant to s. 101.02(13), Stats, with forfeitures ranging from \$10-\$100 per day for each violation. If you have any questions regarding this matter, please feel free to contact me at the number listed.	
Ch. 101.02(6)(e) stats. Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in this subchapter.	
Deputy Signature:	Date Issued: December 29, 2009

Deputy Name: **Randy Baldwin** Deputy Phone Number: **(608) 267 - 9152**

Mailing Address: **P.O. Box 2658, Madison, WI 53701** Email: **Randy.Baldwin@Wisconsin.gov**