

7/29/11

Nancy Johner
Senator Mike Johanns Office
9900 Nicholas Street
Omaha, Ne. 68114

Dear Nancy,

As per our conversation a few days ago please find a summary of our state wide efforts related to the recent OSHA safety program changes that affect residential contractors in Nebraska.

Goals: What we hope to do

1. Residential construction needs its own safety standards in some areas of the construction process (framing, poured basements, excavations and trenches, etc.). These standards must be clear and reasonable so that they can be understood and used by the contractors building our Nebraska homes. OSHA needs to be in agreement with these standards if compliance and enforcement is to be expected. Residential jobs are different than commercial jobs (short term projects done with smaller contractors and tight profit margins). Having said this safety should not be overlooked.
2. Residential contractors and OSHA need to arrive at a mutual understanding of “Best Safety Practices” for residential construction in Nebraska. This includes construction practices for poured wall contractors and framers, etc.
3. The Frequency and severity of the fines in the state must be addressed. Contractors are being fined out of business or are leaving the business because of the fines.
4. Set up an ongoing communications program between the state residential contractors (using SMI) and OSHA to work out specific safety program details.
5. Have these items in place before the September 15th deadline for the full implementation of the fall protection standards.

What we have done.

Established a State wide Training and Safety program:

1. The Nebraska State Homebuilders Association (NSHBA) has retained the services of SMI (a large Nebraska based safety compliance and training company) to offer state wide customized safety programs to all builders and residential contractors in the state. With the help of SMI it is our hope to establish a state wide, uniform and acceptable set of safety “Best Practices” that all contractors and OSHA could agree upon and implement.
2. Currently SMI is putting together these safety programs for many of the larger contractors across the state.

3. SMI has been retained also to act as a liaison between the safety focus group, NSHBA, NAHB and OSHA

Awareness and Training:

1. SMI has held meetings across the state over a period of several weeks beginning in May. The meetings were held to create awareness of the safety programs that were available and to educate all in attendance about safety "best practices", the differences between the old interim fall protection plan and the standards that are now expected from OSHA, and to answer any other questions related to the OSHA issues. About two hours of each meeting ended up with a question and answer session concerning safety standards, costs, fines and liability.
2. In total over 650 residential contractors from across the state attended these meetings and all of the seven state HBA's were involved.
3. Safety training seminars are currently being set up across the state to cover more issues related to safety on residential job sites.
4. Weekly e-mails are going out to all of the 7 state homebuilders associations and to other interested parties to keep them informed of OSHA compliance, training and fine information.
5. Many of the larger builders have sponsored safety meetings with their respective subcontractors to make them aware of OSHA standards, compliance issues, and their responsibility and liability should OSHA make an inspection on their construction job. Some of these meetings were attended by over 75 subcontractors. The goal of the meetings has been to reinforce the issue that residential job site safety is a "team" effort and that everyone on the job site must understand and comply with good safety practices.
6. Over 1000 "Controlled Worksite" signs are now installed on many residential construction sites. These have created awareness among workers and material suppliers related to safety issues.

Compliance:

1. A safety "variance" for floor joist installation as related to the new fall protection standards has been written and submitted to OSHA in an effort to clarify the new safety standards and to attempt to reach an understanding of what safety practices are workable for Nebraska residential contractors. The first submittal was returned to the task force with the instructions to rewrite and clarify some points and to then submit it to NAHB for presentation to federal OSHA. A variance must follow this path.
2. The writing of these variances involves input from framing and poured basement contractors from across the state as well as the safety people from SMI.
3. Currently we are seeking clarification of exactly what these variances must contain to be considered for acceptance. The requirements are vague.
4. Many contractors across the state have already or are being encouraged to re-write their contracts with subcontractors and suppliers to contain verbiage concerning OSHA compliance, safety awareness and training programs, and fine liability issues.

5. Many builders are requiring safety disclosure sheets from subcontractor new hires in order to assess their level of safety understanding and programs

Meetings with OSHA:

1. The focus group has had several meetings with the Nebraska OSHA director and staff. The meetings were positive and helpful. We all came to a better understanding of the issues.
2. Unfortunately the federal OSHA directives are either vague, incomplete or are unattainable with regard to added safety risks, unreasonable costs (especially in our current housing market where we are having problems with acceptable new home appraised values), and added time to the construction process. Some, who are familiar with the issue, estimate that the sale price of a new home could increase 33% due to the new OSHA standards. In meetings with local appraisers and bankers, the focus group was advised that it would be five years or more before the appraisal system could absorb the expected new home price increases which would result from the new fall protection standards. Homebuyers would be turned away from new homes because mortgage approval standards could not be met.
3. Unreasonable fines were discussed. The \$7,000 fines and multiples thereof have already put some contractors out of business, and some have simply quit business until the OSHA issues are resolved. Some who have already been excessively fined have had to set up payment programs to pay the fine over time with their future earnings. We are losing the best contractors that we have, those that have survived the worst housing recession ever, and they do not intend to return.

National Association of Homebuilders involvement:

1. Contacts between our Nebraska focus group and the National Association of Homebuilders are frequent. There are so many gray and unclear issues that it is hard to know where to start. Many of the new OSHA standards simply can't be done without creating additional safety risks. This is one of the reasons for the need of "variances" to the OSHA programs.
2. NAHB met with the White House staff directly and Vice President Biden to bring this issue to the forefront. NAHB has committed about \$200,000 to help with national OSHA and EPA issues.

Senators and Congressmen:

1. All of our Senators and Congressmen understand the difficulty and unreasonableness of many of the new OSHA directives and the related excessive fine structure. Senator Johanns office has taken the lead on this issue and is in the process of helping us understand and work through the variance writing process.

Where we are today – what comes next

1. Wait for NAHB to clarify our roll in writing variances
 2. Work to help address our OSHA issues on the local, regional, and national level
 3. Continue to be a resource for contractors in the state
 4. Continue the work of setting up safety plans, compliance awareness programs, seminars, tool box topics, etc.
 5. Continue to work to get these issues resolved before Sept. 15th
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As you can see our associations have been working hard to help all of the state's residential contractors, subcontractors, suppliers, and construction workers become aware of the new OSHA safety standards. We have taken steps to increase awareness and to train workers via seminars, association meetings, individual company meetings, and tool box talks.

We believe that we have done everything within our power over the last few months to raise the level of safety awareness, safety standard conformance, and safety training in our state. We still need clarification of the gray areas in the new OSHA program and a resolution to the program's requirements that do not work for residential construction.

Thanks you for your continued help with this matter. Senator Johanns, yourself and the rest of your staff are truly representing Nebraskans.

Sincerely,



Denny Van Moorlehem
Nebraska State Homebuilders Association - Safety Task Force

Cc: Nebraska State Homebuilders Association - Safety Task Force members

