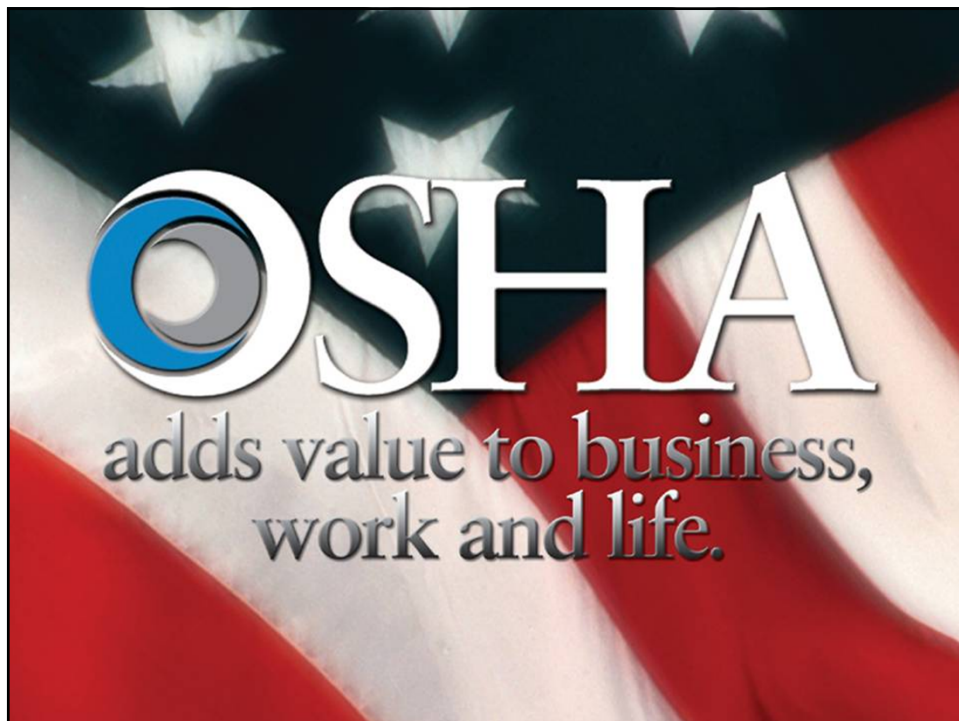


# Dairy LEP - Webinar Intro & LEP Background

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UW – Extension  
December 6, 2011



# OSHA Enforcement for Dairy Farms



UW-Extension Webinar  
December 6, 2011



Mary Bauer CIH, CSP  
Compliance Assistance Specialist  
Eau Claire, WI 54701  
715-832-9019 bauer.mary@dol.gov

## Objectives

- LOCAL EMPHASIS PROGRAM (LEP)
  - Inspection: Background - Appropriate Act
  - Inspection Selection
  - Inspection Process
- Hazards in Dairy Operations
- Resources
- Question & Answers



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

## My Background

- Mary Bauer



- 26 years w/ OSHA
- IH/ Safety
- CIH: Certified Industrial Hygienist
- CSP: Certified Safety Professional
- 1000 + Inspections
- Grew up on Dairy Farm – 35 Milk Cows



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

## Teen who died in Darke County farm accident identified

- ARCANUM — A 16-year-old who was killed in a farm machinery accident on Wednesday has been identified as John Warner of Arcanum, according to the Darke County Sheriff's office.
- The accident, which involved a manure spreader being used on a frozen corn field, occurred about 2:30 p.m. on property at 7664 Delisle-Fourman Road, the sheriff's office said.
- A preliminary investigation suggests that Warner's outer clothing became entangled in the power take-off shaft of a farm implement.
- Warner was pronounced dead at the scene. He was a student at Franklin Monroe High School.
- The incident is still under investigation.
- December 29, 2010



## Mixer Fatality (TMR)

- Milwaukee Journal  
Woman killed in farm accident  
By Jesse Garza of the Journal Sentinel

Jan. 26, 2011 5:08 p.m. |

Authorities in Vernon County are investigating the death of a woman who apparently fell into a grain mixer on a farm near Desoto.

Investigators suspect that Laura J. Groskreutz, 39, fell into the mixer between 10 a.m. and shortly before 6 p.m. Tuesday on the farm in the Town of Sterling, according to a news release from the Vernon County Sheriff's Office.

According to the release, Groskreutz's husband called 911 at 5:44 p.m. reporting that his wife had fallen into the mixer and was dead.

Groskreutz was pronounced dead at the scene and her death remained under investigation Wednesday, according to the release.



UNITED STATES  
DEPARTMENT OF LABOR

Good jobs for everyone.

## Bull Killed Worker



- March 2, 2011
- **Farmington** - A 23-year-old dairy farm worker, a native of the Kyrgyz Republic in Central Asia, died Friday after being kicked or trampled by a bull, Washington County Medical Examiner Kelly McAndrews said Wednesday.
- An autopsy revealed Dilshodbek Mirkamilov died from blunt trauma to his chest while inside a barn at the Chris Elbe farm, 8262 Orchard Valley Road, McAndrews said.
- Mirkamilov had worked at the farm nearly two years and was assigned to move a group of about 20 cows from an enclosure inside the barn to an adjacent milking parlor, Washington County Sheriff's Lt. Martin Schulteis said.
- A co-worker found him on the ground inside the pen after he did not arrive at the parlor, an incident report says.
- There was one bull in the pen with the cows at the time. There were no witnesses but the circumstances indicate his fatal injuries were caused by the bull, McAndrews said. She determined the incident was an accidental death.

## Man Dies in Fond du Lac County Farm Accident

**TOWN OF EDEN — A 49-YEAR-OLD CAMPBELLSPORT MAN DIED MONDAY AFTERNOON AFTER HIS LEGS BECAME ENTANGLED IN AN AUGER INSIDE A SILO.**

June 20, 2011



## Email on 11/29/11- Local EMS

- Mary ~
- We have responded to two farm accident calls to the same family farm for similar injuries (crushing) caused by the same piece of equipment. The first incident was several years ago, involved an adult female patient, and resulted in a fatality. The second occurred last night, involved a 7-year old girl, and resulted in life threatening injuries.
- I don't think OSHA covers family farms, but can you point me in the right direction? The only other avenue I can think of is to research the manufacturer of the equipment and see if we can get anywhere that way to prevent this from happening again.

## Local Emphasis Program



U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 04-00 (LEP 009) EFFECTIVE DATE: 11/01/11

SUBJECT: Local Emphasis Program for Dairy Farm Operations  
REGIONAL IDENTIFIER: Region V



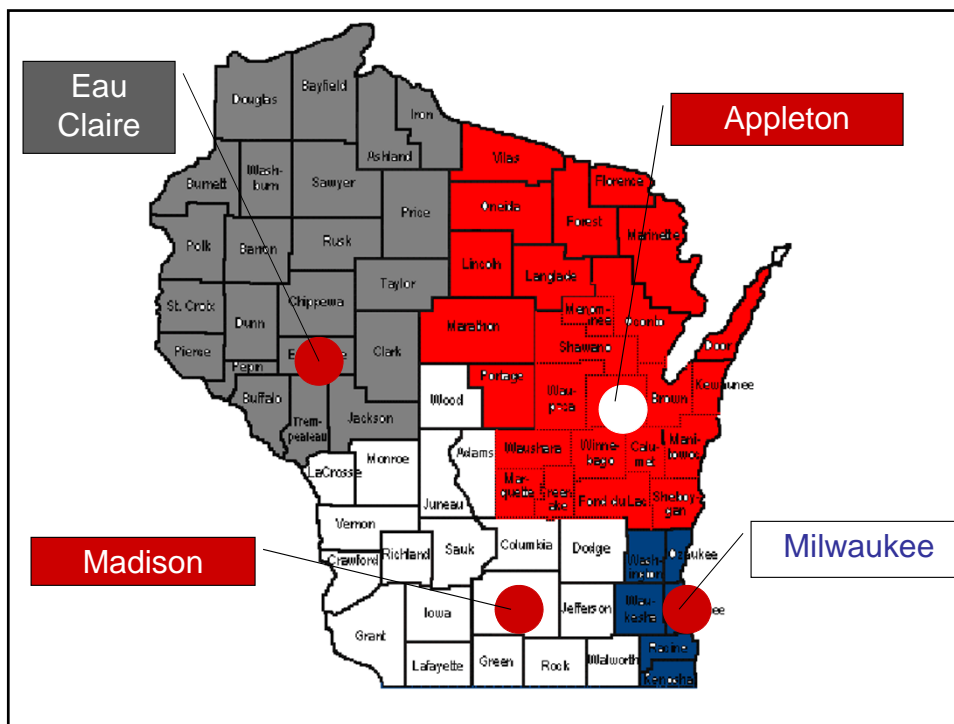
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

## Purpose & Scope

- Inspection Program for Dairy Cattle and Milk Production
  - NAICS: 11212
- State of Wisconsin: Four Offices
  - Eau Claire
  - Madison
  - Milwaukee
  - Appleton



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## Duration of LEP

- In effect since: 11/1/11
- Expires: 9/30/12 (tends to by FY)
  - Program Evaluated Annually
    - # inspections
    - # citations
    - **OUTREACH CONDUCTED**
      - LEP “justifies time spent with this industry”
  - Can Be Renewed Annually



## Outreach Activity

- 34 Events: 2750 Attendees 2010-Present
- Trade Journals, News Papers, Radio Interviews
- Susan Harwood Grant: UW-River Falls
- Multiple Agency/Association Involvement
  - UW Extension
  - Tech Schools
  - National Farm Medicine Center
  - WisCon
  - Insurance Carriers
- Outreach Sessions can be requested



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## Definitions

- Farming operation means any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, **dairy farms** or similar farming operations.
- Agricultural employer means any person engaged in agricultural activity employing one or more employees. Members of the **immediate family** of the farm employer are **not regarded as employees**.
- Immediate family member means those in **direct relation** to the farm employer, such as a **parent, spouse, or child**. Step-children, foster children, step-parents and foster parents will also be considered as immediate family members. Other relatives, even when living permanently in the same household as the employer, will not be considered to be part of the immediate family. Reference: Fair Labor Standards Act, 29 CFR 780.308 "Definition of immediate family" regarding exemptions under minimum wage and overtime provisions

Even if Incorporated



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## Definitions

- Temporary in OSHA regulation Temporary labor camps (29 CFR 1910.142) refers to employees who enter into an employment relationship for a discrete or defined time period. The term “temporary” refers to the length of employment, and not to the physical structures housing employees.
- Temporary labor camp means farm housing directly related to the seasonal or temporary employment of farm workers.
  - Housing includes both permanent and temporary structures located on or off the property of any employer who meets the definition of a “farming operation.”
  - Temporary labor camp housing means required employer-provided housing that, due to company policy or practice, necessarily renders such housing a term or condition of employment.



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## Factors for Temp Labor Camps

1. Employers require employees to live in the housing.
2. The housing is in an isolated location or the lack of economically comparable alternative housing makes it a practical necessity to live there.
3. Additional factors to consider in determining whether the housing is a term and condition of employment include, but are not limited to:
  - a. Cost of the housing to the employee – is it provided free or at a low rent?
  - b. Ownership or control of the housing – is the housing owned or controlled or provided by the employer?
  - c. Distance to the worksite from the camp, distance to the work-site from other non-camp residences – is alternative housing reasonably accessible (distance, travel, cost, etc.) to the worksite?
  - d. Benefit to the employer -- does the employer make the camp available in order to ensure that the business is provided with an adequate supply of labor?
  - e. Relationship of the camp occupants to the employer – are those living in the camp required to work for the employer upon demand?

The condition of the camp will not be inspected,  
By OSHA, under this LEP.

## Immigration Status

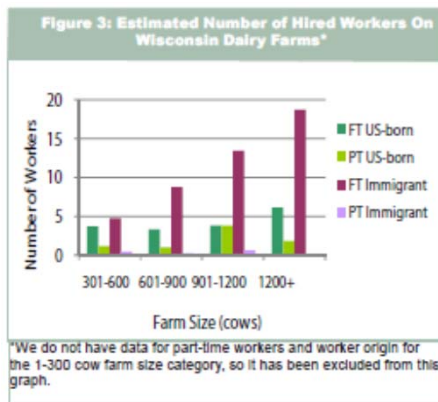
- ALL WORKERS, **EVEN UNDOCUMENTED WORKERS**, HAVE A RIGHT TO A SAFE AND HEALTHY WORKPLACE.
- OSHA DOES NOT IMPOSE PENALTIES FOR UNDOCUMENTED WORKERS.
- *Health and safety laws protect all employees regardless of their immigration status.* Therefore, undocumented workers have rights to information regarding their health and safety rights. They have the right to refuse unsafe work if they reasonably believe it would create a real and apparent hazard to them or their co-workers. They also can file health and safety complaints with Occupational Safety and Health Administration.

**OSHA WILL NOT  
INQUIRE ABOUT  
IMMIGRATION STATUS**



## History/Background

Few Farms  
Larger Herds  
More Hired Help



Source: University of Wisconsin Madison / University of Wisconsin Cooperative Extension Program on Agricultural Technology Studies (PATS) [Harrison et al]: *Changing Hands: Hired Labor on Wisconsin Dairy Farms February 2009 – Briefing no.1 Overview of Immigrant Workers On Wisconsin Dairy Farms2*

# Fatality Data - BLS

41 Deaths Nationwide in 2010

Table 3. Fatal occupational injuries by industry and event or exposure. <sup>(Wisconsin, 2009)</sup>

Industry <sup>1</sup>	NAICS code <sup>2</sup>	Total fatalities (number)	Event or exposure <sup>3</sup>					
			Transportation incidents <sup>4</sup>	Assaults and violent acts <sup>5</sup>	Contact with objects and equipment	Falls	Exposure to harmful substances or environments	Fires and explosions
Total		94	32	18	21	14	7	-
Private Industry		86	28	16	21	14	6	-
Goods Producing		47	13	3	17	11	-	-
Natural Resources and Mining		23	9	-	7	5	-	-
Agriculture, Forestry, Fishing and Hunting	11	23	9	-	7	5	-	-
Crop Production	111	5	3	-	-	-	-	-
Animal Production	112	14	6	-	-	4	-	-
Cattle Ranching and Farming	1121	11	5	-	-	3	-	-
Dairy Cattle and Milk Production	11212	9	4	-	-	-	-	-



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## OSHA

- Occupational
- Safety and
- Health
- Act



### Williams-Steiger Act – 1970

William Steiger – Congressman from Oshkosh, WI

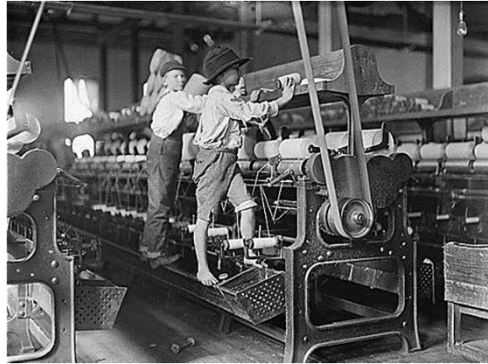
- OSH Act was signed Dec 29, 1970 by President Richard Nixon



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## OSHA's Mission

- “To assure so far as possible every working man and women in this nation a safe and healthful working conditions and to preserve our human resources.”



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## Major Employer Responsibilities



- Provide a workplace free from recognized hazards
- Comply with OSHA standards and regulations
- Be familiar with standards applicable to their workplace



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## Standards Relating to Agriculture

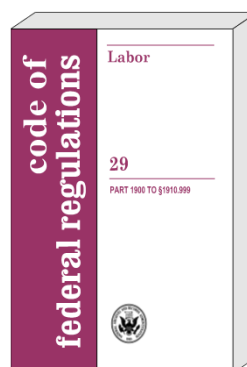
- 29 CFR 1928: Agriculture
  - [http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=1&p\\_keyvalue=1928](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1928)
- 29 CFR 1910: General Industry: As Referenced
  - [http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=1&p\\_keyvalue=1910](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1910)
- General Duty Clause:
  - Section 5(a)(1)



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## OSHA Coverage

- Private Sector Employees
  - General Industry (29 CFR 1910)
    - Manufacturing
    - Health Care
    - Warehousing
  - Construction (29 CFR 1926)
  - Maritime ( 29 CFR 1915-1918)
  - Agriculture (29 CFR 1928)
    - With Some Limitations



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## Appropriation of Funds

- The farming rider provides: . . . That **none of the funds** appropriated under this paragraph [OSHA funds] shall be **obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order** under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a **temporary labor camp** and employs **ten or fewer employees** . . .

Public Law 102-170; November 22, 1991, 105 Stat. 1107.



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## Enforcement of the Act

- OSHA rules apply to:
  - Employee/Employer relationships
    - OSHA cannot *conduct inspections* unless
      - > 10 non-family members employed at a farming operation
      - or
      - the farming operation had a temporary camp in the past 12 months.



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## Coverage of Employees under the Williams-Steiger OSHA 1970

- **1975.4(b)(2)**
- Agricultural employers. Any person engaged in an agricultural activity employing one or more employees comes within the definition of an employer under the Act, and therefore, is covered by its provisions. However, members of the **immediate family** of the farm employer are **not regarded as employees** for the purposes of this definition.



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## Appropriations Rider Issues: CPL 2-0.51J

[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=DIRECTIVES&p\\_id=1519](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=1519)

A "**farming operation**" means any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations. These are employers engaged in businesses that have a two digit Standard Industrial Classification (SIC) of 01 (Agricultural Production - Crops), 02 (Agricultural Production - Livestock and Animal Specialties), and four digit SIC 0711 (Soil Preparation Services), 0721 (Crop Planting, Cultivating, and Protecting), 0722 (Crop Harvesting, Primarily by Machine), 0761 (Farm Labor Contractors and Crew Leaders), and 0762 Farm Management Services).

A "**temporary labor camp**" means farm housing directly related to the seasonal or temporary employment of farm workers.



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## Appropriations Rider Issues

- A farming operation is **exempt** from **all** OSHA activities if it:
  - Employs 10 or fewer employees currently and *at all times* during the last 12 months; and
  - Has not had an active temporary labor camp during the proceeding 12 months.

Family members of farm employers are not counted when determining the number of employees.

Part Time Employee is counted as “1” employee.



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# QUESTIONS

## Part 1



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