



Newsletter

2007 IEHA AEC

**March 14-16 2007
IEHA Education
Conference: Advancing
Environmental Health:
Making a Difference**

The 2007 conference got off to a jump start with a presentation by Drew Falkenstein of Marler Clark law office. He got the attention of the audience by titling his presentation “Lawsuit Basics : Suing a Health Department or Restaurant in Idaho.” After mentioning the law firm was busy with several class action suits, he did a quick review of legal terms and how they might apply to our profession.

Liability: financial responsibility for another’s injuries or property damage. Respondent Superior: em-



Representing Marler Clark law office, R. Drew Falkenstein reviewed liability issues associated with health department duties

ployer liability for employee’s acts committed “within the course and scope of [the employee’s] employment or duties ; employer has duty to defend and indemnify [if doing your job at the time of action that creates liability.]

Negligence: failure to use reasonable care under the circumstances. [What a prudent person would do in that circumstance.]

Elements of negligence: Duty, Breach, Causation, Damages. [A failure to inspect a restaurant complaint before an illness is not the cause of the injury/illness.]

Duty: Legal obligation to act for the benefit of another person. Statute or regulations: Idaho statutes, Title 39, Chapter 16 gives authority to the Board of H&W to adopt rules 39-1603 “...shall

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Special points of interest:

- 2007 AEC

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President’s Message—Dale King

Each year the president of the IEHA attends the NEHA convention to represent the state of Idaho. Last year and this year I had the opportunity of representing you at the national

convention. Next year President Dee Johnson will attend the conference. Both years I have found it very enlightening to see what NEHA does for our profession as well

as attend some very excellent presentations. I would like to highlight just a few of the things that I found of great interest to me. I will not be able to go into detail so feel free to ask me

questions if you find some thing of interest in these notes.

- 1- Sewage – In New Jersey all site evaluations are handled through private companies and any site evaluation will most likely cost between 3 and 5 thousand dollars. Many of the sewage systems installed will cost 35 to 40 thousand dollars and will require quarterly monitoring. (We may not have it too bad here.)
- 2- Global warming - is an issue and the World Health Organization says that it has been measurable over the last 18 year. According to WHO there

is a direct relationship between higher temperatures and diarrhea illnesses. WHO also feels that global warming is causing changes in weather patterns around the world and is responsible for as many as 70,000 deaths in Europe in 2003 as well as many deaths caused by other events.

- 3- Pathogens – E-coli can survive at a Ph of 3.3 (cannot reproduce at 3.3). Salmonella and E-Coli can survive for several days in water. Plants can take up pathogens through their root systems and through their

skins. Warm produce or melons can take in pathogens from cold water.

These are a few things we probably already know but should think about as we go about our duties.

NEHA is placing an emphasis on promoting the environmental health profession. It would be nice if the world knew what we do and how much help we can be.

I will look forward to seeing everyone at the 2008 IEHA conference.

NEHA's 2007 Annual Education Conference from an EHAC, AEHAP, and Boise State University Perspective

Dr. Dale Stephenson, BSU

This was an exciting year for environmental health academic programs at NEHA's 2007 Annual Education Conference. As a Council Member of the National Environmental Health Science and Protection Accreditation Council (EHAC), I am required to attend the Council's annual meeting which is held in conjunction with NEHA's Annual Education Conference.



During this meeting, the Council accredited two new environmental health academic programs; Lake Superior State University and East Central University. This elevates the number

EHAC accredited programs in the United States to 31 (and includes Boise State University). More information concerning EHAC and accredited programs can be found at <http://www.ehacoffice.org/index.php>.

Another exciting happening at the NEHA's Annual Education

Conference was the Association for Environmental Health Academic Program's (AEHAP) Student Research Competition. This competition is open to undergraduate and graduate environmental health students across the nation and carried with it a \$500 monetary award plus free travel to present their research findings during a Tuesday morning session of this year's conference. As the coordinator of this event, I can attest to its competitive nature and I applaud these students for the time and energy they put into each and every submission. Listed below are this year's winning students.

Kimberly Johnson, Boise State University,

“Evaluation of the Effectiveness of a Cross Connection Control Program in Small Public Water Systems”

Valerie Scola and Lucy Loftus, Illinois State University, *“Biodiesel from Campus Waste Oil and Lipase”*

Lauren Lawrence, North Carolina Central University, *“Ultrafine Particulate Matters (PM_{0.1}) Evening Peaks in an Environmental Justice Community: Inevitable Trend?”*

Amanda Grantham, East Carolina University, *“Lead Determination in*

Greenville’s Drinking Water Samples by Inductively Coupled Plasma”

Clarita Lefthand, University of Washington, *“Identification of the Source of Fecal Contamination in Tulalip Bay with Bacteroides 16S rRNA gene and F+ Specific Coliphage Markers”*

Finally, I would be remiss if I failed to acknowledge Boise State University’s own Kimberly Johnson for being awarded this year’s NEHA

scholarship for excellence in academic and community service as she continues to pursue her degree here in Idaho. The scholarship was announced during the opening ceremonies to the conference and Ms. Johnson was awarded \$1000 dollars to go towards her tuition and fees at Boise State University. Con-



NEHA student research winners at 2007 AEC

Reminder from the Awards Committee Chair, July 2007

Start now in putting together the nominations for Environmental Health Specialist (EHS) Award. The deadline is February next year. Please do not wait until the last moment. Anyone can nominate a deserving person. The published criteria does not have to be met in its entirety, but points are assigned to the nominee and then the winner’s selected on basis of points. For the purposes of the EHS Award be aware that statewide impact work gets the most points. We are truly interested in rewarding someone who has made a difference or contribution statewide or something that possibly affects interagency work.

It is a great testimony for the nominee if collaborating recommendations can come from these other agencies or even from the community.

There are a lot of excellent employees that are doing their job in an extraordinary manner. Remember, if you want to use the Awards time at IEHA to acknowledge a “job well done”, let me know. I will provide time for you to recognize the person. This might be a great time to give a thank-you to an employee for special projects work, especially if it has only local impact vs. state impact. It is important to give all employees an opportunity to grow and be recognized.

If there are questions, please call or e-mail. Thanks and have a great day.

Deborah Carney, REHS/RS
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promulgate...”

Duties can be contractual or common law.

Damages: foreign objects with NO physical injury may cause a seeking of damages for emotional injury but is usually “unfounded” unless there is physical hurt.

Strict liability is liability without regard to fault. Product liability falls on the manufacturer if a defect makes the product unreasonably dangerous and the defective product causes injury. Falkenstein also mentioned the adage “Ignorance of the law is no defense” and is also a bad defense.

Discretionary function immunity: there is no liability if an injury arose from the performance of “a discretionary function or duty on part of the governmental entity of employee.”

An interesting point was a 1991 case where a consumer advisory for raw oysters was required at the “point of sale.” The sign was at the oyster bar but not in the adjoining dining room/restaurant. A consumer ordered oysters in the restaurant, became ill and sued. The result was a \$450K judgment against the restaurant and the health department with the health department 75% at fault. On appeal the state supreme court stated the dining room was the “point of sale” and there was a duty to post the advisory there—apportionment amended to 50:50.

He closed his presentation by mentioning other “immunities” and some “hypotheticals” such as negligent failure to discover obvious violations that thereafter cause an E. coli O157:H7 outbreak. And an employee acting with criminal intent has no immunity.

His email address is

dfalkenstein@marlerclark.com.

The food program of the conference continued with a nice segue to Sandy McCurdy, University of Idaho Extension Service presentation titled “Assessment of Cooking Instruction of Labels of Retail, Frozen Ground Beef Patties.”

The study was funded by Marler Clark law firm. The premise is that consumers who follow cooking instruction labels on meat packages will get pathogen-free pat-

ties. The study assessed whether the instructions when followed did result in a safe internal temperature of 160°F. All packages from 16 retail stores in four western states did have Safe Handling Instruction and most recommended cooking to 160°F. Some mentioned color as an indicator, some said color was not an indicator of doneness. Pre-breaded raw patties had browned crumbs. Cooking times, when provided, ranged from 1.5 to 9 minutes per side.

Using consumer conditions, the variables include initial temperature of the frozen patty, pre-heating of the pan, cooking temperature, and time/frequency of turnover. Fat content affects cooking time (USDA). Using a 400°F cooking surface it took 7 minutes to cook a 4 ounce patty to 160°F. Internal temperature measurement is still the most important determination.

Raising the Bar—Patrick Guzzle, Food Program Manager, Idaho H&W, OEFP.

Guzzle mentioned that PHD 7 is now named Eastern Idaho Public Health Department.

All districts meet Standard 9 of the FDA Standards, with Standards 4 & 7 being audited. (Don’t know what these are, you can find out at www.fda.gov or ask your food program manager/supervisor.)

The FDA 2007 Pacific Region meeting is to be held in August in Scottsdale, AZ. (We are expecting a report from attendees.)

The online food safety information including the state exam is at www.foodsafety.idaho.gov. The certificate can be printed when the exam is done and passed and is valid for five years.

The license fee is now permanent and not facing a sunset provision. The district health departments will collect the fee. At minimum an annual inspection is required with the State H&W auditing annually.

The FDA was next with a presentation What’s In My Tea by Dennis Hudson, FDA, Boise.

Hudson outlined FDA functions: consumer complaints, product tampering, surveillance, disasters, health fraud,

criminal investigations. The Seattle District office handles Idaho complaints: Camille-Bennett Hoffman 1-800-353-3965.

[Ed. note: Idaho health districts should have an Word document version of the FDA Interstate Consumer Complaint Form—on disk?]

Complaints can be for filth, illness, adverse reactions, labeling issues, defective products, health claims. Information to collect: brand, product information, (keep perishable food frozen), container type, net weight, lot number/UPC/serial number/other codes. Can use a “?” if digit not legible in code. Get a complete description of the problem: size, color, odor, taste, consistency, when purchased, when, how stored, how prepared, etc.

Fifty percent of complaints are not of FDA regulated products. Idaho has responsibility for outdated food and OTC drugs. Incorrect prescription are under the Idaho Board of Pharmacy. Meat products are USDA jurisdiction.

Tampering cases: the IOM (Investigative Operations Manual) Subchapter 970 addresses tampering. Consider where it may occur—consumer, family member, friend, retail store, in distribution chain, manufacturing plant. What is the motivation. [May have to refer to law enforcement as well.] Anti-tampering laws resulted from the 1983 Tylenol tampering. Title 18, criminal provisions allow \$25K fine/5 years prison for false reporting and threats to tamper. Conspiracy to tamper has same fine with up to 10 years prison.

“Traceback and Recall” was the next topic by Sandra Hanson FDA Emergency Response 1-425-483-4922 in Bothell, WA. Recalls and tracebacks for spinach, oysters, and peanut butter are recent events. The emerging pathogens and global food supply [e.g. from China] will continue to present challenges.

Local and state epi investigations are a key part of mobilizing a traceback or recall action.

For USDA “nationwide” means more than 13 states are involved.

Mark Iverson, USDA, Caldwell, ID, spoke about fresh fruit and produce guid-

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ance based on FDA guidance document.

Brad Tufto, FDA Regional Specialist, led a “you Make the Call” session of questions, answers, and discussion covering annexes, especially the scientific reasons for the Food Code (annex #3), plan reviews, variances, temporary food establishments, risk factors, and date marking.

Date Marking. Is not in compliance if manufacturer’s use by date is exceeded on an open package; or a ready-to-eat (RTE) food has not been discarded by marked date. While it is reasonable to view a prep date marking as in compliance if the firm has a system for discarding based on the prep date, in Idaho the food code does require a date marked to be the discard date.

All RTE’s are to be date-marked regardless if it is to be reheated.

Spices are not considered additives if for flavoring only. Spices are additives if they alter the product or preserve it.

This report on the AEC will be continued in the 2008 Digest. It includes Hazardous Waste, Mosquito Control and West Nile, Emerging Contaminants, Consumer Product Safety

Another Season Passed!

The air is finally easier to breathe with Idaho’s fires doused by rain and snow. Autumn is here and that means it is time to submit your Digest articles for the 2008 edition.

The deadline is February 1 2008, only five months away. Officers should get their messages and reports ready for submission. I know that Dee Johnson is busy preparing for the 2008 AEC. What a great job she did with this year’s!

March, 2008 will be upon us soon, so let’s get going on articles for me to put in the Digest. As I get older, time goes by too fast, reflexes get slower, and thoughts get lost. So help me out, else you get a publication full of health tips and anecdotes.

The Editor, Bob Jue

Personnel/Personal

Have you met the **new members** of your staff? Have you introduced them to the other districts? Now is the time to do so. Please send a short resume of new faces and job duties, changes in the district, to me, Bob Jue, so I can share with everyone.

To get the ball rolling I will tell you what has been happening since March 2007 at CDHD aka PHD4. In August Ada County staff have rotated to new food inspection areas. For those not familiar, the county is divided along zip code areas.

Tammie McCarter was hired to replace **Chad Waters**. **Chad** is still at CDHD but took a senior EHS position in land development. The position opened when **Josh Kriz** moved to Valley County helping **Jeff Lappin**. Josh finally sold his Boise home and found one in McCall. (His spouse is also pleased.)

Susie Simmons is working part-time again ably assisted by **Ann Potcher**. Ann is splitting time in child care and food safety. She also is teaching the Serv-Safe food safety class. Congrats to Ann for passing the REHS exam on the first try!

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Idaho Environmental Health Association

Thank You For Scholarship!

I want to take this opportunity to thank the Idaho Environmental Health Association for the scholarship in the amount of \$500. I want to thank all those that have made this scholarship possible and all the work that has gone into it.

I want to thank my Environmental Health teacher at Boise State University, Dale Stephenson, for motivating me to try to achieve more. For me, this is a great honor and also a great motivator. If you work really hard you can achieve anything.

Thank you,
Deana Smith



BSU student Deana Smith (r) receives scholarship from IEHA Awards Committee Chair Deb Carney.