

Are You Ready For OSHA?

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Agenda

- *OSHA Overview*
- Business Case for Safety
- Enforcement Process and Procedures
- Compliance Issues in the Beer Industry

OSHA Background

- Enacted in 1970 with the OSH Act
 - Intended to follow a 'balanced approach' to achieve its Mission
 - **To assure safe and healthful working conditions for working men and women;** by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.
 - In short: setting and enforcing requirements, education/outreach, consultation.
 - OSHA: a regulatory agency with civil/criminal penalties
 - The OSH Act created:
 - OSHA (Federal or State Plans)
 - NIOSH (National Institute of Occupational Safety & Health)
 - OSHRC (OSHA Review Commission)
- OSHA's Jurisdiction
 - Most workplaces (~8 million nationwide)
 - There are exceptions within transportation, pipelines, Ag, mining, state/local employees (in 'Federal states'), and others

Some Types of (External) OSHA

Activities

- Enforcement
 - Identify exposures to hazards - issue citations
- Education
 - Guidance documents, Hazard Alerts, Bulletins
 - Training programs
- Cooperative Programs
 - Alliances
 - Partnerships
 - Voluntary Protection Programs (VPP)
 - Safety & Health Achievement Recognition Program (SHARP)

OSHA: Federal & State Plans

- 10 OSHA Regions

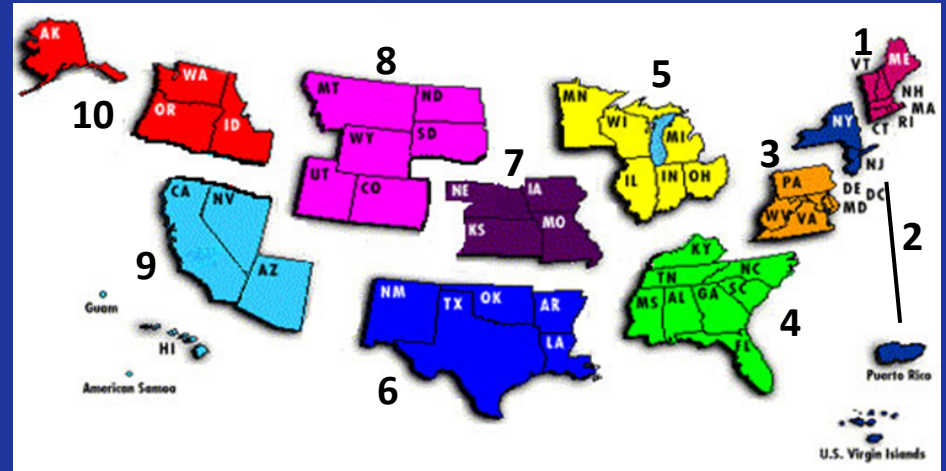
- State vs Federal Plans

- State Plans:

- Managed by the state government. Must be “at least as effective as” Federal OSHA.

- AK, AZ, CA, CT*, HI, IL*, IN, IA, KY, MD, MI, MN, NV, NJ*, NM, NY*, NC, NC, OR, PR, SC, TN, UT, VI*, VA, WA, WY

- All other states fall under Federal OSHA



*Hybrid: Feds cover private sector while State covers state/municipal employees

OSHA Enforcement Basics

- Conduct roughly 95,000 inspections per year
 - Federal: 40,000 State Plans: 55,000
 - Brewers' average, ~3 violations cited per inspection (\$11,500)
 - Avg penalty per cited violation: ~\$4K up to \$70k (Willful)
 - Approximately 22% of inspections result in 'no violations'
- Violation and inspection categories:
 - Willful, Repeat, Failure-To-Abate, Serious, Other-Than-Serious
 - Programmed, Accident, Complaint, Referral
 - Imminent Danger, Egregious policy
- Prevalent Brewing Industry Inspection Triggers
 - Employee Complaints (40%)
 - National/Regional/Local Emphasis Programs (30%)
 - Accidents (10%)
 - Others (20%)

Types of Inspections

- Programmed / Planned
 - “Lottery system” based on NEP/LEPs, SST, and random
- Complaint
 - Current employee files **confidential** formal/informal complaint with OSHA (employer has right to see complaint but not name)
- Accident
 - Inspection following a fatality or accident resulting in ≥ 3 admitted-hospitalizations
- Referral
 - TV/newspapers, CSHO ‘drive-by’, Agency referral (corporate)
- Follow Up
 - Inspections following a citation to ensure employer is correcting the violations/no new ones
- Important OSHA Inspection Terms
 - Imminent Danger
 - Egregious Policy

Categories of Cited Violations

- **Willful** (up to \$70,000 each and/or criminal if fatality)
 - Demonstrated either an intentional disregard or a plain indifference to employee safety and health. It's not necessary for it to be committed with malicious intent/bad purpose to be deemed as "Willful".
- **Repeat** (up to \$70,000 each)
 - A cited final order violation that was abated but returns to noncompliance
- **Failure-to-Abate** (up to \$7,000 per day!!)
 - A cited final order violation that was never brought back into compliance
- **Serious** (up to \$7,000 each)
 - Employer knew or should have known a violation condition has the probability of causing serious harm or even death
- **Other Than Serious** (Up to \$7,000)
 - Violation which could result in injury but cannot be reasonably predicted to result in death or serious harm
 - Typically a few hundred dollars

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What are the business risks,
costs, and benefit impacts
related to safety?

● Business Risks

- Product quality
- Lawsuits
- Reputation
- Regulator scrutiny
- “Surprise” costs
- Employee recruiting

● Benefits

- Less “pain & suffering”
- Improved morale
- Employee retention
- Better bottom line

● In/Direct Costs

- Workers’ comp claims, direct medical costs
- ↑Workers’ comp premiums
- Lost productivity
- ↑Employee turnover
- Compensation issues

OSHA Regional News Release

Region 5

U.S. Department of Labor
Office of Public Affairs

Region 5 News Release: 11-1331-CHI
Oct. 2011
Allen Rhonda Burke
312-353-4807
burke.rhonda@dol.gov

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Oct. 2011
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Anheuser-Busch Cos. LLC in Houston cited by US Labor Department's OSHA for failing to protect workers from carbon dioxide

HOUSTON — The U.S. Department of Labor's Occupational Safety and Health (OSHA) has cited Anheuser-Busch Cos. LLC in Houston for failing to protect workers from carbon dioxide while working in brewery cellars. The October 2012 complaint inspection cited one alleged willful and five serious violations for failing to protect workers from carbon dioxide while working in brewery cellars. The October 2012 complaint inspection totaling \$88,000.

The alleged willful violation was cited for failing to consider the carbon dioxide hazard to life or health while also failing to identify respiratory hazards. A willful violation was cited for disregard for the requirements of the Occupational Safety and Health Act.

"Employers must recognize the hazards that exist in their workplaces to protect workers," said David Doucet, OSHA's area director at its Houston office.

The serious violations cited include failing to verify that conditions in the entry; ensure the entrant can communicate with the permit required for entry; monitor in the event an evacuation is needed; ensure each attendant has a primary duty to monitor and protect the entrant of the permit required for entry; issue summons in a timely manner; and inform each team or rescue team of the location of the rescue at the site. A serious violation is one that could cause death or serious physical harm to employees.

Anheuser-Busch, headquartered in St. Louis, employs about 600 workers in Houston.

OSHA Regional News Release

Region 6

U.S. Department of Labor
Office of Public Affairs

Region 6 News Release: 13-560-DAL
April 29, 2013
Contact: Diana Petterson Juan Rodriguez
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Email: petterson.diana@dol.gov rodriguez.juan@dol.gov

OSHA Regional News Release

U.S. Department of Labor
Office of Public Affairs

Region 8 News Release: 10-47-DEN
Jan. 15, 2010
Contact: Rich Kulczewski
Phone: 303-844-1302

MillerCoors Grain Elevator in Golden, Colo., recognized by US Labor Department's OSHA for excellence in occupational safety and health

GOLDEN, Colo. -- The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has recognized the management and employees of the MillerCoors McIntyre Grain Elevator in Golden for achievement in its employee safety and health program.

The site, which processes, stores and distributes barley, was designated a VPP "star" site, the highest level of recognition that OSHA's Voluntary Protection Programs (VPP) offers. A VPP star site meets or exceeds safety and health program elements that far exceed minimum OSHA standards.

"The McIntyre Elevator is a true leader in employee safety and health, especially in the grain processing industry and we are very fortunate to have such high quality workplaces in our region," said Bob Glover, assistant regional administrator for OSHA in Denver. "This is the fourth grain elevator in the company to be recognized by OSHA for safety and health excellence."

An OSHA VPP flag and plaque were presented to the McIntyre team at the January 14 ceremony.

OSHA's recognition programs include the VPP for employers and employees who have implemented exemplary workplace safety and health management systems. In the VPP, management, labor and OSHA work cooperatively and proactively to prevent injuries, illnesses and workplace hazards. As part of attaining VPP status, employers must demonstrate management commitment to the safety and health of their employees and actively involve employees in the safety and health management system.

OSHA Regional News Release

Region 1

U.S. Department of Labor
Office of Public Affairs

Region 1 News Release: 12-2145-BOS/BOS 2012-187
Oct. 24, 2012
Contact: Ted Fitzgerald Andre J. Bowser
Phone: 617-565-2075 617-565-2074
Email: fitzgerald.edmund@dol.gov bowser.andre.j@dol.gov

OSHA Regional News Release

U.S. Department of Labor
Office of Public Affairs

Region 8 News Release: 09-840-DEN
July 10, 2009
Contact: Rich Kulczewski Jeremy Eggers
Phone: 303-844-1302 303-844-1299

OSHA Regional News Release

U.S. Department of Labor
Office of Public Affairs

Region 8 News Release: 09-840-DEN
July 10, 2009
Contact: Rich Kulczewski Jeremy Eggers
Phone: 303-844-1302 303-844-1299

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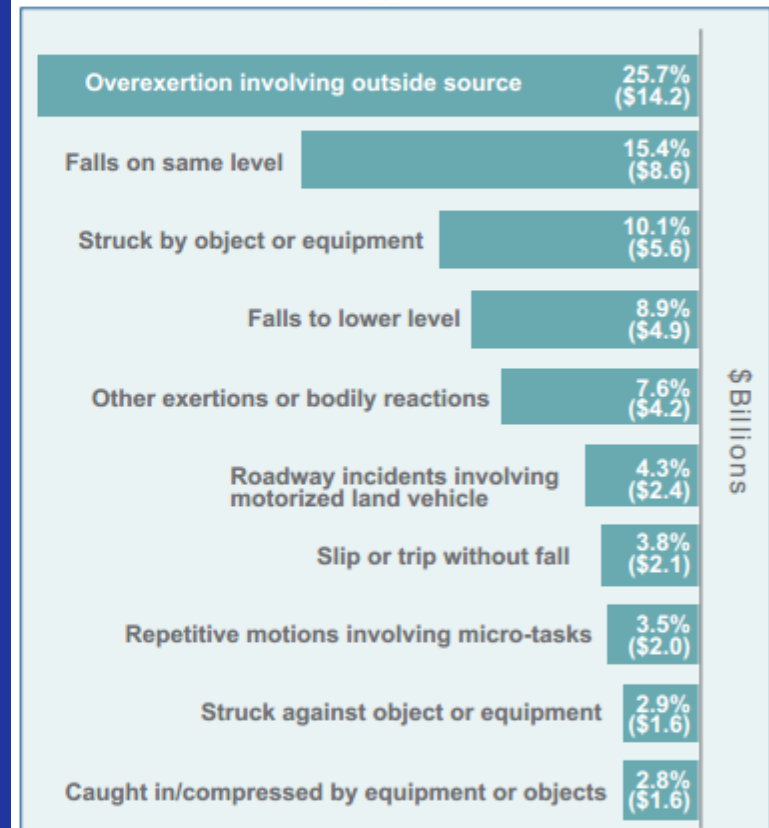


Direct Cost Burden from Injuries

- Injury rates in the beverage industry are high

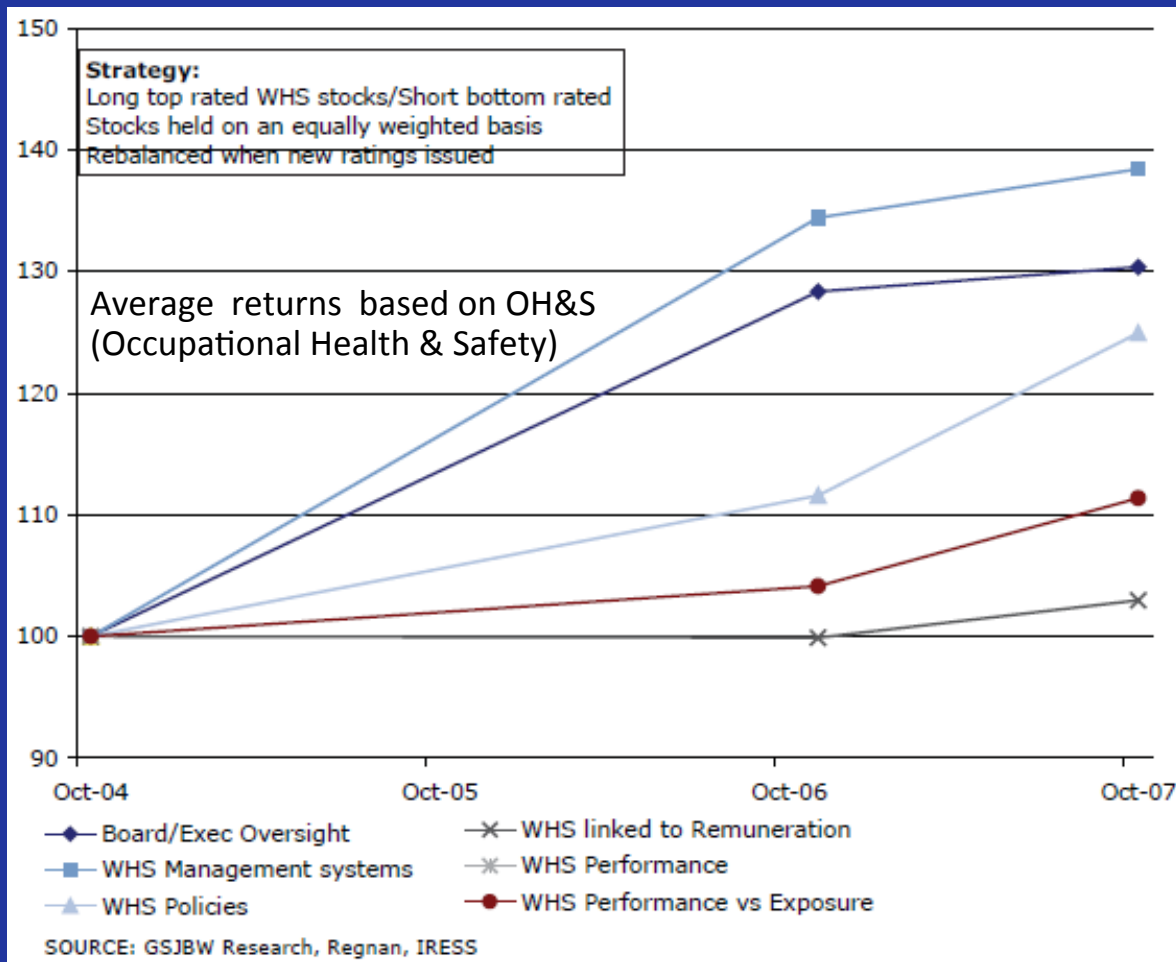
- Beverage: 6.5 (per 100)
- National Avg: 3.4 (per 100)
- Estimated Workers' Comp cost per injury: ~ \$11,000
- Total cost burden to craft brewing industry: ~ \$80M
- Implies typical craft brewer cost of injuries: ~ \$28K
 - This brewer would have to boost sales by \$570K @5% profit margin to make up its cost of injuries

10 Leading Causes and Direct Costs of Workplace Injuries in 2011*



Sum of top 10 events = 85% Total costs = \$55.4 billion
*2-Digit Bureau of Labor Statistics Event Codes

Evidence of Stock Price Impact



- Goldman Sachs study based on Australian market
- This chart shows almost 40% “alpha” over passive market return following a long/short strategy
- Empirical evidence supports argument that Safety can boost company valuation

Higher company valuation

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OSHA Enforcement in the Brewing Industry

- Common triggers for inspection in this industry
 - Employee Complaints
 - Emphasis Enforcement Programs (NEP/REP/LEP)
 - Site-Specific Targeting (SST)
- Be aware of aggressive enforcement policies
 - Severe Violators Enforcement Program (SVEP)

OSHA Complaints / Whistleblower

- Section 11c of the OSH Act specifically protects the rights of employees to file a complaint
- Approximately 8000 inspections conducted per year from an employee complaint
 - *Brewing industry has about 2x the national avg rate*
- OSHA takes this issue very seriously – **never** retaliate against an employee suspected or known to be the whistleblower!
- In our experience, best “defense” against risk of employee complaints is a solid S&H program

Current OSHA Enforcement Emphasis Programs

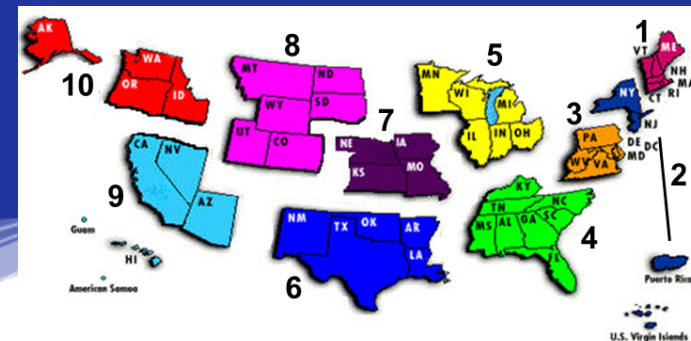
National Emphasis Programs (NEP)

- *Combustible Dust*
- *Hazardous Machinery (Amputations)*
- Respirable Silica
- Trenching / Excavation
- Hexavalent Chromium
- Isocyanates
- Lead
- Nursing / Residential Care Facilities
- Primary Metals Industries
- Process Safety Management / PSM
- Shipbreaking

Regional/Local (REP/LEP)

- *Forklifts*
- *Falls*
- *Noise Exposure*
- *Warehouse Operations*
- *Grain Handling*
- Asbestos
- Construction
- Heat Stress
- Landscaping
- ...many others...

In 2011, Brewers were almost ~7x more likely to be inspected compared to national average



Site-Specific Targeting (SST)

- Department of Labor collects site specific injury & illness data from up to 160k establishments across the country
- Ultimately, data is analyzed to identify 14k establishments with significantly higher injury rates vs peers (“SST List”)
- Commonly results in larger penalty cases and follow up inspections
- SST inspections are typically comprehensive
- Typically, 8 to 12 brewers are on this list every year
 - CSHO (compliance S&H officer) will often presume ‘bad actor’
 - Conduct the inspection with a heightened sense of awareness
 - *~13x more likely to be inspected if on the SST list*
 - On average, SST inspections result in 2x more cited violations

Most Commonly Cited Standards: 2013

<u>Standard</u>	<u>Total Violations</u>
1. 1926.501 – Fall Protection	8,241
2. 1910.1200 – Hazard Communication	6,156
3. 1926.451 – Scaffolding	5,423
4. 1910.134 – Respiratory Protection	3,879
5. 1910.305 – Electrical, Wiring Methods	3,452
6. 1910.178 – Powered Industrial Trucks	3,340
7. 1926.1053 – Ladders	3,311
8. 1910.147 – Lockout/Tagout	3,254
9. 1910.303 – Electrical, General Requirements	2,745
10. 1910.212 – Machine Guarding	2,701

Top 10 account for approximately 40% of all cited violations

Enforcement (Inspection) Process

- Establishment Targeting / Selection
- Opening Conference
- Walk-Around / Interviews
- Closing Conference
- Citation
 - Informal / Formal Settlement
 - Contest / Appeal
- Citation Final Order or Vacated

Employer Do's & Don'ts

- Always treat the CSHO with respect
- CSHO is there to do their job – just like with a police officer, ‘anything you say, do, or provide could be used against you’
- Be responsive to requests for information but make sure you keep a detailed log/ copies of everything you give the compliance officer (CSHO)
 - To the degree possible, get all requests for information in writing
 - Do not provide “extra” information than what is requested
 - Do not lie/misrepresent anything to CSHO. Do not alter evidence.
- Take copious notes of everything you discuss or observe with CSHO
 - Do everything the CSHO does (personal monitoring, photos, notes, etc)
- Remember that it's ok to say ‘you don't know, I need to find out’ (do not guess!)
- DO NOT STAGE/RECREATE A WORK TASK FOR THE CSHO
- Plan for an inspection ahead of time! Do not figure it out as you go...
- Avoid sections that are not relevant to scope - Keep the inspection within scope!
- Abate all hazards raised – immediately or ASAP!!
- Protect your trade secrets
- Implement safety programs **BEFORE** you get inspected

Case Study: Being Proactive Pays Off

- Industry manufacturer with commitment to safety
- Learned of new OSHA NEPs and wanted 3rd party verification of readiness and to identify opportunities for improvements
- Conducted a comprehensive safety & health audit which identified ~35 findings needing attention (promptly resolved)
- Revamped 'Off-the-Shelf' safety programs to be more effective, operationally relevant, and ***eliminate inherent enforcement risk***
- Within the following 12 months
 - Inspected under an NEP = no violations (in-compliance)
 - CSHO was so impressed, recommended that the company consider seeking VPP status
 - Inspected following a complaint = no violations (in-compliance)
 - Different CSHO states they wished all the sites they inspected were this 'good'
 - Inspected following an accident = no violations (in-compliance)
 - Resulted from a flaw in purchased equipment that was out of the company's sphere of influence or control (ie: equipment manufacturer's defect)
 - Company now has stellar reputation and relationship with the area office – demonstrated their commitment to safety

Advice for Avoiding Citations

- Conduct accurate recordkeeping (OSHA Logs)
 - Conduct root cause analysis
- Develop and fully implement customized safety and health programs specific to the work location and environment
- Train employees how to work safely, identify and correct hazards as well as their rights and expectations in the event of an actual inspection – and document all training with quizzes/signoffs
- Conduct robust 3rd party audits and risk assessments
 - The more you find and fix beforehand, the harder it will be for a CSHO to discover and cite a violation (and reduces the risk of employee injuries)
 - Consider doing so via attorney-client privilege (with the right partner, it does not add any cost)
- Think safety culture – not just compliance
- Keep up to date with new/changing requirements and agency enforcement initiatives
- Don't forget to assess your contractors
- Find it, Fix it

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Brewers' Compliance Issues

- OSHA Recordkeeping (“OSHA Logs”)
- Permit Required Confined Space
- Lockout / Tagout (LOTO)
- Hazard Communication
- Forklifts / Powered Industrial Trucks
- Material Handling
- Walking & Working Surfaces
- Machine Guarding
- Grain Handling
- Personal Protective Equipment (PPE) / Resp Protection
- Noise Exposure / Hearing Conservation
- Combustible Dust
- TRAINING, TRAINING, TRAINING!

Partial List

Example: Avoiding the Hazard is Preferred

Bright Tanks

- Problem:
 - Potential for exposure to high levels of CO₂ when placing stand-pipe in tanks
- Solution:
 - Avoid need for PRCs entry by using an extension grabber to place and remove the stand-pipe



Next Steps Advice

- Train...train...train your employees on safety
- Recordkeeping review (OSHA Logs)
- Ensure safety & health programs are up to date and reflect your real world operation scenarios
 - Include discipline measures in the program(s)
 - Avoid “off the shelf” safety programs to reduce OSHA risk
- Conduct 3rd party audits and risk assessments
 - Baseline / gap analysis
 - Implement corrective actions
 - Know the techniques to protect your interests
- Identify inspection team / representatives
 - Train them on the do's/don'ts

Contact Information

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