

## FOND DU LAC'S MILK SPECIALTIES CITED



The Department of Labor's Occupational Safety and Health Administration (OSHA) has cited Fond du Lac's Milk Specialties Co., with three safety violations. While one violation, in this case for combustible dust hazards, has been described by OSHA as "willful", two other citations are for "other-than-serious" violations. A willful violation, constitutes intentional, knowing or voluntary disregard for the law's requirements, or plain indifference to employee safety and health, whereas an "other-than-serious" violation involves one that has a direct relationship to job safety and health, but probably would not cause death or serious physical injury. The "other than serious" violations cited involve failure to properly maintain OSHA 300 logs for 2011 describing days lost by employees or days when work activities were restricted. The processing plant has been ordered to pay \$72,000 in fines. OSHA opened an inspection after the media carried reports of an explosion and fire at the company's Fond du Lac facility. The facility, which is equipped with drying and evaporating capabilities, converts liquid whey into dried whey protein concentrate powder used in sports-nutrition and weight-loss products. Five local fire departments arrived at the scene to find heavy smoke in the factory from the first floor up to the fifth floor. Assistant Fire Chief Steve Beer said all plant personnel were safely evacuated from the building without incident. Firefighters subsequently located the fire in the vibrator fluid bed machine and adjacent duct work on the second floor of the 90,000-square-foot facility. Frank Winingham, OSHA's area director in Appleton, asserted OSHA's commitment to protecting workers on the job. He said, "This employer previously was cited for failing to comply with OSHA's safety regulations. Failing to take appropriate precautions to protect workers from combustible dust explosions and fires is an unnecessary risk". While Milk Specialties respects OSHA's authority, company officials disagree with the agency's assertions in the citation. Joe Kang, Milk Specialties' general counsel, has said via email that had been no explosion at the Fond du Lac plant. "Rather, a small piece of milk product had begun to smolder, resulting in smoke. Milk Specialties has modified its equipment so this problem does not happen again". He added, "As with all its facilities, the Milk Specialties Fond du Lac facility closely follows the industry standards for worker protection and safety, and the facility meets the industry standards in all respects with numerous safeguards in place to protect against any potential fire or combustion". Prior to this inspection, Milk Specialties paid \$535,000 in penalties after OSHA cited the firm in 2009 for a series of violations at a now-closed whey-processing plant in Whitehall in western Wisconsin. During the inspection, OSHA officials were compelled to go to federal court after Milk Specialties officials refused to divulge a five-year strategic plan for combustible dust and a combustible dust review report, citing attorney/client and attorney/work product privileges. Judge J.P. Stadmueller of the U.S. District Court for the Eastern District of Wisconsin ruled that the documents constitute business advice and ordered the company to provide them to OSHA. Milk Specialties is part of Milk Specialties Global, of Carpentersville, Ill. The parent company also has Wisconsin operations in New Holstein, Adell and Boscobel. The company has 15 business days from receipt of its most recent citations and penalties to comply, request an informal conference with OSHA's area director, or contest the findings before the independent Occupational Safety and Health Review Commission.