

Occupational Safety and Health Advisory Council Meeting minutes, Aug. 7, 2015

Members present

Paul Aasen
Michael Hawthorne
Scott Huberty
Pedro Lopez
Michael Mueller
Scott Parker
Elizabeth Rheingans
Greg Rindal
Kurt Zimmerman

Staff members present

Alden Hoffman
Mark Hysell
James Krueger
John Rajkowski
Cindy Valentine

Speakers/guests present

Ron Anderson, MNOSHA Compliance
Matt Marquis, CCA, MDPA, MMFCA
MECA, IMCA, MPWEA, TICA
Tracy Rheingans, student
Gary Thaden, MMCA/NECA
Breca Tschida, MNOSHA Workplace
Safety Consultation
Anastasia Belladonna, legislative director,
Minnesota Council on Latino Affairs
Daniel Estrada, representative, North
Central States Regional Council of
Carpenters Union
Mark Vargas, HCAMN
Dr. Liz Medina Alm, HealthPartners

Call to order

The meeting was called to order at 10:04 a.m. by chairman Paul Aasen. New member Kurt Zimmerman was introduced and welcomed to the council. Announcements were read. Members and guests introduced themselves.

Approval of the agenda

The Hispanic community outreach topic is tabled until the November meeting. Scott Huberty moved to approve the meeting agenda, as amended, which was seconded by Michael Hawthorne. All voted in favor and the motion carried.

Approval of the minutes

Scott Parker moved to approve the May 1, 2015 meeting minutes, seconded by Michael Mueller. All voted in favor and the motion carried.

Legislative news – John Rajkowski, DLI legislative liaison

- After 25 years, the Republicans regained the House of Representatives majority by 11 seats.
- The MPCA Citizens Board was eliminated.
- One MNOSHA bill was passed during a special session.
- There is a budget surplus.
- The Department of Labor and Industry's (DLI's) budget was included in the energy and economic development budget this year. Everything in the bill was agreed to except a full-time-equivalent (FTE) increase for the Apprenticeship unit. The Senate had a bill that provided \$400,000 for the biennium, which covers FTEs, through the Pipeline Project, which

is an apprentice-like program that began as a pilot two years ago to deal with workforce shortages. Four workgroups were formed to look at future workforce shortages in agriculture, health care, information technology and precision manufacturing. During the next two years, DLI will certify specific training programs/pathways for eligible employees. That certification will then be taken to the Department of Employment and Economic Development (DEED) to obtain matching training grants. John will be meeting (along with DLI's deputy commissioner and the director of the Construction Codes and Licensing Division) with the Association of General Contractors, which is concerned with the loss of construction managers, with no one to replace them as they retire and leave the profession. Minnesota has a very low unemployment rate, but has a high labor shortage. The under secretary of labor in Washington, D.C., participated in a webinar to learn about Minnesota's program and has been touting us as a nation-leading effort.

- Kudos to Gary Thaden, a senior member of the Workers' Compensation Advisory Council. For the past decade, the chamber has been advocating for reimbursement reform in health care rates for worker injuries versus personal injuries. The hospitals and insurance companies, after several years, have come to an agreement that will result in an immediate decrease in premiums by seven to 10 percent for inpatient services, starting in 2016. Currently, shoulder and knee surgeries are done in ambulatory surgery centers, which is the future of outpatient services. Cost savings to employers are expected to be reduced by 30 percent.
- The DFL House and Senate supported a study in conjunction with DEED for paid sick leave for all workers. The commissioner of the Department of Health published a white paper this spring, written in health terms rather than in economic terms. People who go to work sick (because they have no sick leave), especially in the restaurant industry, affect customers, which causes less productivity due to the spread of illness.
- Policy initiative/clarification: Safe patient-handling equipment is required whenever lifting is a part of someone's job description. The onus was placed on the employer to provide equipment and training. Breca Tschida, Minnesota OSHA Workplace Safety Consultation (WSC), assisted in developing the language, using NAICS codes, to define the work environment/job description. The House of Representatives created a specific policy about long-term care in health care, which passed in an omnibus policy bill. Federal child labor laws prohibit employees aged 18 and younger who work in these health care facilities from operating lift machinery on their own.

New Business

- **Active shooter drill** – Breca Tschida, WSC: In June, Breca and Workplace Violence Prevention Coordinator Vikki Sanders had an opportunity to participate in a six-hour event at St. Luke's Hospital in Duluth, Minnesota. This training event was coordinated and directed by OSH Advisory Council member Mike Marturano. Seventy volunteers in the health care field, the Duluth Police Department, and fire and rescue organizations tested the hospital's workplace violence prevention system response by acting out four common scenarios involving a lone gunman active shooter, a disgruntled patient/relative and a domestic situation with gunshot wound injuries and fatalities. Real weapons were used – with blanks – by the shooters and police personnel in a closed clinic area. The "Run, hide, fight" set-up was practiced by the emergency responders and volunteers. The hospital's command center failed in the test. In one scenario, the first responders had

trouble entering the building and getting up the elevator; in another, one of the fire doors had been locked because the fire alarm had not been engaged. The exercise showed how hard it is to plan for something like this and the importance of conducting practice drills. The health care challenge for violence prevention is that the industry is very focused on caring for the patients, but providers need to take care of themselves as well. The police are present to stop the shooter, not to look for the staff members in hiding. Getting this information to other organizations, employers and associations is needed. Practice will help staff members to have the mindset for an instant reaction, such as moving people to safety, calling 911, using tools as protection, locking doors, turning off lights, moving furniture in front of a door, knowing where exit doors are located, etc. Breca and Vikki have been in contact with the Minnesota Department of Health to work with them on their new initiative toward workplace violence prevention.

- **Hispanic community outreach** – Pedro Lopez will speak with Roslyn Robertson further about partnering with DLI to address workplace safety issues with the Hispanic community. Pedro’s nonprofit organization is well-equipped and has the resources to assist the Hispanic community and is working with the Mexican Consulate using television and radio communication focusing on construction safety. Pedro distributed documents to the members, for review, to inform and ask for assistance. Many organizations were contacted and his organization has offered no-fee education, but the response has been negative or nothing at all. He needs assistance to get the word out to the general contractors to educate minority workers about job safety. Collaboration of business managers is needed to promote safety within this group of minority and limited-English-speaking employees.
- **Health care emphasis and safe patient handling** – Ron Anderson, industrial hygienist, MNOSHA Compliance: Minnesota OSHA Compliance has had a local emphasis program for some time and it will continue. The Safe Patient Handling Act changes include an amendment to the statute effective July 1, 2015; there has been a change to the definition of a health care facility, using NAICS codes. The statute defines a health care facility by the NAICS codes: hospital; outpatient surgical center; and nursing home. Letters will be sent to stakeholders in August, letting them know the emphasis program will continue. Assistance is available from Workplace Safety Consultation. The continued focus on this industry is due to the high rate of illnesses and injuries that occur, more so than in construction and manufacturing. Some of the common hazards are found in safe patient-handling, bloodborne pathogens, infectious disease, workplace violence, and slips, trips and fall, which continues to be a common hazard in the health care industry.
 - Scott Huberty: Does MNOSHA have the ability to characterize what trends inspections are revealing with regard to how well organizations are addressing these areas, such as safe patient-handling. One of the requirements is to have a safety committee. How effective are committees?
 - Ron Anderson: There are three main components to that program: that a program is developed; that a committee is developed; and that the employer acts on the committee’s recommendations. All aspects of those components have been cited, most likely because different organizations are in different stages of development. Since 2009, we have had five or six years to develop the program.

- Breca Tschida: All of the health care industry struggles, due to high turnover, and staff members don't attend the meetings. It's all over the board, depending upon the environment. The larger hospitals are better prepared, but nursing homes do not have much staff involvement.
- Mark Hysell: The state of Minnesota is the leader in safe patient-handling with the 2009 statute, their enforcement efforts and continuing the LEP. Ergonomics-related injuries account for one-third of the injuries in the workplace in the medical care industry.
- Scott Huberty: I am working with nursing home and hospital workers' compensation claims. These organizations are increasing their activities in home health care claims. Breca Tschida has started four initiatives recognizing home health care is the future of health care: a hospital group that meets quarterly to discuss safe-patient-handling issues; a long-term-care group, specifically with the skilled nursing community, that will hopefully trickle down to assisted-living communities; a home care group that has met to share ideas; and an emergency medical response committee. Home care will be difficult, because there are wide variables going in to someone's home, such as whether any equipment can be provided. If anyone wants to participate or knows of other groups that may be interested in participating contact Breca Tschida.
- Scott Huberty: In August, there is a second Principals of Safe Patient-handling and Mobility class scheduled. Is it possible to add a third session? The September and August sessions are full. Breca Tschida can share seven professional videos from past sessions.
- Paul Aasen: Is there more impact targeting a sector or targeting the issue across the sectors?
- Jim Krueger: Health care is a large industry [sector] in Minnesota. Workers' compensation data supports the focus. The outreach is better, but the enforcement needs to catch up. MNOSHA Compliance is turning this into a "specialty area," where we can dedicate training to staff to provide expertise in that area; we just put 20 or 21 staff members through training. More staff members will be added to be used across other industries.
- Paul Aasen: Another cross-connection to the active shooter drill is the infectious disease aspect. MSC, along with ASSE and AIHA, had a couple of sessions about the status of the Ebola contagion outbreak last year. The real question is: How do you even know who is walking in your door who may have been to an area of contagion? It's the unusual event that triggers a training response, whether it is slips and falls or an active shooter. Constant practice will ensure the proper responses are made.

Old business

- Agenda discussion – Paul Aasen: Consider how we think, focus on issues and act in an advisory role, as well as an information receiving transmission role. A list is available of workplace safety issues important to the council. Are there other issues that are concerning to the members of the council? Do they fall in the council's arena? Currently, there are attempts at the federal level to reinforce consulting and enforcement of federal OSHA. There is the sector focus becomes a problem-solving issue, then it becomes bigger and more systemic. There have been a couple of attempts (on the federal level) to renew, refresh, or re-enforce federal OSHA. Senator Al Franken has a bill to do this,

which is an example of a systems level bill, whether it's on a state or federal level. How do we re-enforce the consulting regulatory interconnection within an OSHA setting, legislatively or statutorily? Another layer has to do with issues that are even bigger: regulatory in administrative contexts. An example, seen from the safety council perspective, is a tremendous level of turnover in veteran safety leadership in the companies who are members. As turnover is occurring, the internal leader or champion in that organization is going out the door, not only carrying information about how to do it, but also carrying the commitment to do it because the leadership in large organizations is short (a couple of years). No longer does it have a 20-year history of an understanding of safety. The debate about employee safety is accelerating. We are losing some big, established members because they are deciding cuts in their safety programs and their membership is being reduced. How do we re-engage the leadership in these organizations to help them understand what the infrastructure is that they have inherited, before they disassemble it and go back to high incidence and workers' compensation rates and how can we help our bottom line and go through the whole exercise again? Should there be an OSHA executive certificate? A way for executives to interact in some way formally with the OSHA process and get recognized for that? There needs to be an incentive: if workers' compensation rates somehow reflect a discount because someone is an OSHA-trained leader. What issues should the OSH Advisory Council tackle? The expertise around this table is enormous and we should take advantage of that.

- Greg Rindal: Many safety committee members are employees who have been hurt on the job. A position was found for them to continue to work within the company. Leadership looks at getting those seriously injured workers into safety positions. Safety professionals are overlooked and often looked upon as an expense in many organizations.
- Pedro Lopez: Injured workers are placed on safety committees. It would be best to see someone who is interested in being a part of the safety environment, someone who is passionate and wants to learn and correct the hazards before accidents happen.
- Liz Rheingans: I work with several ag-related companies and have seen a high turnover in managerial staff during the past 10 years. Management's attitude toward safety can change the company. It's a struggle if the manager doesn't think it is important and the safety budget is cut. The companies that do understand the importance of safety have had fatal accidents; the others, who haven't experienced accidents, think it won't happen to them.
- Paul Aasen: What is important to the management? Themselves, their wallet, their community? Their employees, their families or the bottom line? The regulatory underpinnings are critical, because without that statement of value from this country as a whole, it gets embodied in those federal and state laws, which is but one piece of the puzzle. The risk we run is compliance-based only, on the "letter of the law," becoming the rule or the normal operation if that's all people are worried about. Ninety percent of entities work in good faith, but would they if the laws didn't exist? What issues are important to the council members to work on?
- Mike Mueller: What does the data show? What are the trends? What are the next five areas we can focus on?

- Scott Parker: There has been an increase in out-of-state workers with unsafe work habits. I would like to see the out-of-state employers follow Minnesota’s rules of safety and health for their workers.
- Paul Aasen: Every year in the state Legislature, questions are asked of all regulatory agencies to defend the existing rules. There are real experiences behind the laws/rules. The need to re-educate about the “why” is always present and is a huge undertaking.
- Mike Mueller: Is there a requirement of building projects for prime contractors to get permits?
- Scott Parker: The general contractor is responsible to pull the permit and is responsible for job safety.
- Mike Mueller: How can we focus the attention on the noncompliant?
- Jim Krueger: There is an environment where the majority of them are good contractors. Contractors come and go and their names change. MNOSHA Compliance staff members are trained to look at who the employee works for, on that particular day. That company is held responsible. On occasion, when no one claims responsibility, everyone gets cited.
- Scott Huberty: How do we take these concepts and apply them to the OSHA aspect? One avenue is the federal Severe Violator Enforcement Program (SVEP). The “bad apples” are identified and scrutinized by safety regulators. Is there an SVEP in Minnesota? Federal OSHA sends out a newsletter, showing employers across the country who have been cited. Could that approach be used in Minnesota, showing the large fines levied against Minnesota’s “bad apples”?
- Paul Aasen: During the 1980s, the Metropolitan Council regulators (pertaining to the sewer system costs) published an annual “bad apple” contractor list. It made a difference to the contractors, who did not want to appear on that list. There has been a change to the regulatory tone; regulators aren’t as likely to do that today, but it’s something this group can talk about.
- Cindy Valentine: It’s important to know some of the required data may be nonpublic. DLI has spent a fair amount of time discussing this topic over the summer.
- Mark Hysell: There are a lot of regulations/standards. Companies are, by and large, meeting the federal/state minimum requirements. We need to sell safety and health by prioritizing employee safety is number one. 3M does a wonderful job and there are many other good models out there. If safety and health programs are managed in the manner that everything is driven from that safety environment, the work processes are improved. It also leads to a streamlined company and more efficient workforce.
- Mike Hawthorne: Part of the discussion has been on employer education and awareness. Worker education is important. Employees should want to know the safety requirements pertaining to their jobs, not just what the minimum requirements are. Unfortunately, there is a lot of misperception of what OSHA is.
- Alden Hoffman (responding to Scott Huberty’s SVEP question): Minnesota follows the same program, using the same guidelines as federal OSHA. In addition, federal OSHA asks for a monthly status report, with a half-dozen Minnesota employers on it.

Staff reports

Federal OSHA update – Mark Hysell

- On Aug. 5, 2015, OSHA approved Maine as the newest state-plan state protecting more than 81,000 state and local government employees. Maine is one of six states and territories that administer safety and health programs for the public sector. Federal OSHA continues jurisdiction over private sector and federal government employees.
- On July 9, 2015, OSHA issued a temporary enforcement policy for confined spaces in construction. OSHA is postponing full enforcement of the new standard to Oct. 2, 2015, in response to requests for additional time to train and acquire the equipment necessary to comply with the new standard. During a 60-day temporary enforcement period, OSHA will not issue citations to employers who make good faith efforts to comply with the new standard.
- On July 1, 2015, Minnesota informed OSHA the state plan intends to adopt the new federal standard as published.
- On July 29, 2015, the 2014 FAME report was published. The report is federal OSHA's evaluation of all states' performances and the states' responses.
- The 2016 grant application has been completed. The grant has been reviewed and submitted.
- The fiscal-year 2015 performance evaluation has not yet been received but should arrive sometime in December.

Workplace Safety Consultation – Cindy Valentine for Roslyn Robertson

First through third quarters, federal-fiscal-year 2015: A written update was distributed to the members.

- There were 774 consultation visits.
- The total number of hazards identified was 3,138.
- There were 237 interventions (includes formal training, meetings with professional groups, MNSTAR/VPP, conference participation, more involved technical assistance).
- Construction efforts were increased to focus on residential construction worksites.
- LogSafe continues to be a focus and there were 25 formal presentations about chainsaw safety, felling and logging safety.
- There were 35 total visits and 31 technical assistance visits focused on ergonomics.
- With regard to temporary-worker safety, Roslyn serves on both an advisory council in Minnesota and on the federal level, and has been a leader about how temporary-staffing agencies are looking at this topic in Minnesota. She and her staff have been working with Hennepin Technical College, developing curriculum for employers in this area.
- WSC is starting to do some work with a dairy farm cooperative. MNOSHA cannot inspect dairy farms, because of a rider on some federal legislation, which has had a chilling effect on the amount of interest from that industry in consultation services. WSC has started working with Land O'Lakes; a farm tour will be given in River Falls, Wisconsin, later this month.
- For Hispanic outreach, WSC is partnering with the Mexican Consulate and has enjoyed a good relationship with the consulate over the years. Labor Week will be celebrated Aug. 31 through Sept. 4.

Training, outreach and partnerships – Cindy Valentine for Nancy Zentgraf

The third quarter federal-fiscal-year 2015 MNOSHA training activities report was distributed. Highlights included:

- OSHA's budget situation has improved, which allows for additional staff members to attend training through the OSHA Training Institute (OTI). Seventeen staff members attended training and OTI staff members brought a scaffolding course to St. Paul, Minnesota.
- A total of 29 outreach events were provided to 1,247 people.
- MNOSHA's newsletter "Safety Lines" was published in April with articles about window washing, the national stand-down, WSC's involvement in the new Vikings stadium site, GHS, recordkeeping training, online illness/injury data, the Minnesota Safety Council's conference and more.
- There are eight current partnerships: AGC Cooperative Compliance Partnership projects and the MnDOT St. Croix River Crossing – Lunda/Ames Joint Venture project.

Compliance's third quarter federal-fiscal-year 2015 – Jim Krueger

- Inspections are right on target for the year.
- The new recording requirements are not in effect yet in Minnesota. We have investigated 55 serious injuries to-date, which is about three times more than what we saw last year. Our resources are shifting and we are creating new policies to handle the increase in complaints. A new process is needed to reach the demand. The new recording requirements are effective Oct. 1, 2015.
- One industrial hygienist retired after 37 years. Thank you to Terry Osterbauer for his dedication and tireless work with MNOSHA.
- New positions can be filled. We have one industrial hygienist and three safety positions open.
- Regarding homeland security, thanks go to Alden Hoffman, who has attended numerous meetings and will be participating in an emergency response exercise.
- For the 2014 SOAR, Minnesota met or exceeded performance goals established for the year. Thanks to the MNOSHA staff.
- Emphasis programs continue with excavations, fall protection, silica in construction, health care and public sector (100 cities, counties and schools each year).
- For the OIS/MOOSE data interchange process, we are following up to ensure federal OSHA can receive Minnesota's data.
- The Region V Family Meeting in Indiana took place during the end of July. Alden Hoffman, Nancy Zentgraf and Roslyn Robertson attended. Alden presented about avian flu.
 - Scott Huberty: With confined spaces in construction, are you anticipating the new federal version will replace what Minnesota currently has?
 - Jim Krueger: Minnesota will rescind its version and will adopt by reference the federal rule.
 - Scott Huberty: With temp workers, what has MNOSHA seen?
 - Jim Krueger: Minnesota hasn't changed anything; we've always cited the employer or whomever controls the employee. If it isn't clear, all parties are cited.
 - Kurt Zimmerman: There are 22 serious-injury investigations. What drives an investigation? What constitutes a recordable injury?

- Jim Krueger: Jim clarified that recordability and reporting an injury (what generates an inspection) are two different things.

OSHSPA update – Jim Krueger

Jim Krueger will attend the next OSHSPA meeting, in Maryland, in October. The 2016 spring conference will be in Minnesota.

Publications

- “GRASSROOTS Worker Protection 2014 OSHSPA Report” is available on DLI’s website at www.dli.mn.gov/OSHA/PDF/grassroots_2014.

2015 meeting schedule

- In 2016, meetings are scheduled for Feb. 6, May 1, Aug. 7 and Nov. 6.

Adjournment

The meeting was adjourned at 12:20 p.m.

Respectfully submitted,
Pamela McLaughlin
Executive Secretary