

**Occupational Safety and Health
Advisory Council meeting minutes
May 5, 2017**

Members present

Paul Aasen
Xavier Escobedo
Girard Goder
Brandon Holmes
Scott Huberty
Michael Marturano
Tom Moibi
Elizabeth Rheingans
Christopher Schmitt
Kurt Zimmerman

Staff members present

Ron Anderson
Mark Hysell
Jim Krueger
Alexis Russell
Tyrone Taylor
Nancy Zentgraf

Guests/speakers present

Adam Hanson, MN ABC
Carol Keyes, CHES, Inc
Gary Thaden, MMCA/NCCA
Sophie Thaden, MMCA/NCCA
Kurt VonRueden, IEA, Inc

Call to order

The meeting was called to order at 10:03 a.m. by Chairman Paul Aasen. Announcements were read. Roll call was taken.

Approval of the agenda

Chairman Aasen asked for a motion to approve the May 5, 2017, meeting agenda. Michael Marturano moved to approve, seconded by Xavier Escobedo. All approved and the motion carried.

Approval of the minutes

Chairman Aasen asked for a motion to approve the Feb. 3, 2017, meeting minutes. Michael Marturano moved to approve, seconded by Tom Moibi. All approved and the motion carried.

Department update – Alexis Russell, assistant to the commissioner

- The legislative session ends May 22. There has been a lot of conference activity with omnibus bills, from education to health and human services, and jobs. Combined omnibus bill amendments have just been released. Commissioner Peterson has been involved in negotiations with the committee chairs. The Department of Labor and Industry (DLI) has had no base budget cuts in the job omnibus bill. Money has been appropriated to enforce wage theft prevention and two new programs that focus on youth skills of high school students and different career opportunities, such as in advanced manufacturing. Negotiations continue with the governor's office.
- Chairman Aasen was at the Capitol and stated DLI's requests have moved smoothly through the conference committees, which is a testament to the confidence the Legislature has in the commissioner, to the excellent work of the agency's senior leadership and to the agency's credibility.
- The Hands-free Driving Bill is not moving forward this session, but the proponents are not giving up. The bill was designed to allow only hands-free

cell phone use in vehicles. It was viewed as too much regulation by members of the Legislature. One in four crashes involve distraction; one in five result in a fatality by distraction.

New business

- **Arthur E. McCauley, Jr. Award nomination – Nancy Zentgraf, Minnesota OSHA Compliance, training and outreach director**

The Arthur E. McCauley, Jr. Award is given on a (mostly) annual basis to a safety professional who embodies safety excellence and a commitment to worker safety over a long career. It is named for Art McCauley, a longtime member of the Occupational Safety and Health Advisory Council and manager of the Minnesota Safety Council. Traditionally, the award is presented at the Governor's Safety Awards Luncheon during the Minnesota Safety and Health Conference in May.

Robert Sarna has been nominated. He began with Minnesota OSHA in 1974 as one of the initial investigators, moved into a team leader position and is currently a supervisor. One of Bob's strengths is he is a great trainer to new staff members and has the ability to convey the big picture of the how, what and why that makes a good investigator. Bob has been very supportive of the Minnesota OSHA program and has been a great mentor to so many throughout his more than 40-year career.

Members of the advisory council are encouraged to think about a deserving individual for next year's nomination.

- **Stand down for safety: Excavation recap and fall protection, April 17 through 21 – Nancy Zentgraf**

The excavation stand down event is similar to the fall protection event. Minnesota has had three excavation-related fatalities since 2017. April is the beginning of the construction season. The purpose and the goal of the stand down is to help raise awareness of the many excavation hazards and to prevent accidents. The event focused on job safety analysis talks, lunch and learn events, and toolbox talks. An excavation fact sheet was recently updated and covers the three different types of excavations and what hazards to look for. Eleven Minnesota companies and 248 employees participated in the Stand Down for Excavation Safety event, as well as one Wisconsin employer. One contractor sent the fact sheet and information about the safety stand-down to 47 subcontractors. Certificates of completion were signed by Commissioner Peterson and have been mailed to the employers. The event was considered a success and will be offered again next year.

The National Stand Down for Safety Fall Protection event is May 8, 2017. Minnesota OSHA has participated since 2014. Falls are the leading cause of death on construction sites. Signed certificates can be downloaded after the employer completes the program.

- **Discrimination unit overview – Nancy Zentgraf/Tracy Grundman**
The Discrimination unit consists of three investigators and a supervisor. Approximately 50 cases are reviewed annually. Tracy Grundman, a discrimination investigator, provided an overview. The Discrimination unit enforces the “whistleblower” statute, Minnesota Statutes § 182.669, to protect employees from retaliation for reporting safety or health issues. Protected activity includes reporting an accident, requesting personal protective equipment, telling the employer the employee is being exposed to a chemical and more. The investigator determines whether adverse action or retaliation has occurred, such as intimidation, terminating the employee’s job, demotion or suspension. It is important to note the complaint must be filed with Minnesota OSHA Compliance within 30 days of the adverse action (retaliation). After the case has been accepted, the employer is notified that an allegation of discrimination has been made and documents are requested. Interviews are conducted and the investigator evaluates the statements to determine whether the case has “merit.” If the case has no merit, the case file will be closed. If enough information is received to show the employer retaliated against the employee, the investigator attempts to settle the case, such as back pay to the complainant if there was an unpaid suspension or expunging the disciplinary action from the employee’s personnel file. If the employer does not want to cooperate and settle, the case is usually forwarded to the attorney general’s office, where it may be tried before an administrative law judge.

The Discrimination unit has been conducting outreach to raise the public’s awareness of the program.

A fact sheet is available at www.dli.mn.gov/OSHA/Pdf/fact_discrimination.pdf.

Old business

- **Spanish language training – Tyrone Taylor, Minnesota OSHA Workplace Safety Consultation, director, and Xavier Escobedo, Latino Worker Safety Center**
Minnesota OSHA Workplace Safety Consultation is hosting a Fall Protection Stand Down event Wednesday, May 10, from 7 a.m. to noon, at the Wellstone Center in St. Paul, Minnesota. The Latino Worker Safety Center (LWSC) has agreed to participate. The presentation will be in Spanish and there is no charge to attend.
- LWSC is located in Hillside, Illinois, in the Chicago area. Xavier Escobedo has been working with the group for a couple of years. Currently, a contractor will contact LWSC after the employer has been cited. Contractors contact Xavier Escobedo, who provides safety training for Latino workers nationwide. LWSC provides four-hour fall-protection training in Spanish (funded with an annual Susan G. Harwood grant funded through Minnesota OSHA Workplace Safety Consultation). Pre-and-post tests are given to the students to ensure training has been provided. During the training, some hands-on equipment (lanyard and harness) inspections are provided. LWSC is planning to expand the training in Minnesota and is currently working with the OSHA Training Institute (OTI) for

the training to be added. Chairman Aasen will meet with Mr. Romero to find out if collaboration can be made with the Minnesota Safety Council.

- **Minnesota Safety Council update – Paul Aasen**

Chairman Aasen presented the video “Drive safe, work safe” from the National Safety Council, with statistics showing the leading cause of unintentional death by age bracket. Many workplace accidents are caused by drug use/impairment through the working population. It tapers off as people age, then unintentional death by falls are more common. Thinking about risk and safety, how does this translate in the workplace? For most employees, safety is not the first priority on the job, rather it’s the work that needs to get done. Safety professionals are trying to connect the priority ranking of why the employee shows up in the first place and how to operate their jobs safely, when they are there. How do we get safety far enough into the matrix that overrides the dedication of the employee to get the job done, at the cost of their safety?

Impairment on the job

The railroad industry is heavily regulated. Drug testing is announced prior to the testing, but one-third of the employees fail the tests. Opioid use (on the job) has risen significantly. An increase in deaths among Caucasian males, aged 50 to 54, show an increase per 100,000. Deaths related to overdose, suicide and alcohol use are on the rise for Caucasians, 50 to 54 years old, in the United States, while deaths in all other ethnicities are down. Employees who were injured and take opioids are 70 percent more likely to be re-injured within two years than those who do not take opioids on the same job.

Safety on the job and on the road: Fatigue

Fatigue increases on-the-job injuries. Recent information was presented about worker safety and hours of sleep. Most believe that what they do while away from work doesn’t impact their work life. Looking at some of the data, an interesting indicator is that injury incidence rates increase based upon the employee’s (lack of) hours of sleep.

- The Minnesota Safety and Health Conference will be May 16 through 18 at the Minneapolis Convention Center.

Staff reports

- **Federal OSHA update – Mark Hysell, area director, Eau Claire office**

- On April 28, 2017, R. Alexander Acosta was sworn in by Vice President Mike Pence as the 37th secretary of the U.S. Department of Labor. R. Alexander Acosta is the son of Cuban immigrants. The U.S. Department of Labor enforces more than 180 federal laws, covering about 10 million employers and 125 million workers.
- On April 28, 2017, OSHA recognized Workers’ Memorial Day, with various events throughout the country. American workers are the backbone of our nation’s prosperity and a focal point of President Trump’s “America First” agenda. With the recent increased growth in manufacturing, mining and

construction industries, OSHA renews its commitment to making safety a priority through education, training and collaboration with American workers, businesses and state partners. OSHA honored those who have been injured or lost their lives in the workplace, helping to support and strengthen our nation.

- The OSH Act was promulgated in 1970 and on April 28, 1971, was established to enforce the laws of the act.
- On April 6, 2017, OSHA announced delaying the enforcement of the crystalline silica standard in the construction industry. The agency has determined additional guidance is necessary due to the unique nature of the requirements in the construction standard. Originally scheduled to begin June 23, 2017, enforcement will now begin Sept. 23, 2017. In the interim, OSHA expects employers in the construction industry will continue to take steps, either to come into compliance with the new permissible exposure limit or to implement specific dust controls for certain operations as provided in Table 1 of the standard.
- Section 11 (c) of the OSH Act of 1970 prohibits employers from retaliating against employees for exercising a variety of rights guaranteed under the OSH Act. Federal OSHA investigates and enforces 22 statutes in the United States associated with whistleblower allegations. On April 3, 2017, OSHA ordered Wells Fargo to reinstate a whistleblower, to fully restore lost earnings in the banking industry. OSHA ordered Wells Fargo Bank N.A. to compensate and immediately reinstate a former bank manager who lost his job after reporting suspected fraudulent behavior to superiors and a bank ethics hotline. OSHA's investigation concluded the former manager's whistleblower activity, which is protected under the Sarbanes-Oxley Act of 2002 (resultant from the Enron Energy scandal), was at least a contributing factor in his termination. OSHA does not release names of whistleblower complainants. In addition to reinstating the employee and clearing his personnel file, Wells Fargo has been ordered to fully compensate him for lost earnings during his time out of the banking industry. Back pay, compensatory damages and attorneys' fees were together calculated at about \$5.4 million.

Closer to home

- Fiscal-year 2016, 21(d) and 23(g) RACER and FAME reports have been received and are in final review at the national office. It is anticipated the results will be posted by June 30, 2017. Thank you, Minnesota OSHA, for the outstanding assistance through the review and final submission process from October through April.
- Fiscal-year 2018, 21(d) and 23(g) grant application instructions have been provided to state plans. The applications need to be submitted to Region V by July 14, 2017, for review prior to electronic submission to OSHA.

It was asked whether federal OSHA knew what their funding level for federal-fiscal-year 2018 will be. Mark Hysell responded it is expected to be 20 percent less than in the past. OMB put out a directive that all federal agencies must

come up with a reduction plan by June 30. Region V's staff will total 175, from 230, which is a considerable reduction.

Jim Krueger stated that from Minnesota's standpoint, the grant has remained the same since 2010. The federal-fiscal-year 2018 budget is expected to be the same as the previous year.

Chairman Aasen said there's been a 20-year cycle in the public sector around the notion of searching for efficiencies and cutting unnecessary costs. The productivity matrix from the U.S. Bureau of Labor Statistics in the past couple years, of employment as a whole, shows the productivity per employee has dropped in the past six months for the first time in a while. Employers have found it necessary to add employees, because it has reached a critical point where employees were working longer hours but production wasn't increasing.

- **Workplace Safety Consultation Statistics for the second quarter of federal-fiscal-year 2017 -Tyrone Taylor**

Consultation visits

There were 236 initial visits:

- 186 safety; 43 health; and seven joint safety and health.

There were 37 formal training visits:

- 26 follow-up visits; 299 total consultation visits for safety and health services; and 143 residential construction sites.

Hazards identified

There were 1,495 observed hazards, in violation of 1,215 OSHA standards:

- 1,064 serious (including one imminent danger); 141 other-than-serious hazard exposures; and 10 regulatory (such as recordkeeping).

Total interventions

There were 89 interventions, which includes formal training, Minnesota STAR Program activities, conference participation and technical assistance, impacting 2,120 establishments represented by more than 4,000 employees.

Construction activity

There were 113 initial visits, eight formal training visits and eight follow-up visits. About 20 percent were at residential construction worksites.

Other second-quarter highlights

- Workplace Safety Consultation participated in an OSHA 30-hour construction course hosted by the Cement Masons Union.
- There was an OSHA 10-hour construction course for students participating in the Guadalupe Alternative Programs.
- There were 10 presentations about the new silica standard for construction.
- There were four workplace violence prevention presentations; three were hosted by Minnesota Municipal Utilities Association.

- Other formal training presentation topics included: ladder safety; health standards in construction; A Workplace Accident and Injury Reduction (AWAIR) program; hazard communication and employee right-to know; injury and illness recordkeeping; and walking and working surfaces and the new general industry standard.

Alliance Program

- At the Mexican Consulate, there were monthly presentations about Minnesota OSHA Workplace Safety Consultation, plus general workplace safety and health.
- A renewal was signed with the Minnesota State Colleges (previously known as Minnesota State Colleges and Universities) requiring participation in the OSHA 10-hour general industry course; on-going worksite consultations; and training.
- The Hospital Safety and Health Group met quarterly to discuss safe patient-handling (SPH) and other areas of hospital safety and health.
- The Skilled Nursing Group met quarterly to discuss respiratory protection and development of an SPH committee. A guidance document about forming an SPH committee was created.
- New, renewed alliances included: Alliance of Automotive Service Providers (800 collision and/or repair centers throughout Minnesota); Association of Woman Contractors; Minnesota Dental Association (renewal); National Association of Minority Contractors. Workplace Safety Consultation also initiated development of a presentation package for association conferences that clarifies jurisdiction of entities that regulate dental clinics, bloodborne pathogens exposure control, employee right-to-know, hazard communication, lockout/tagout, fire safety and more.

Minnesota Safety and Health Achievement Recognition Program (MNSHARP)

In general industry, there are 37 MNSHARP worksites and two pre-SHARP worksites.

In construction, there are six MNSHAR Construciton worksites and two pre-SHARP Construction worksites.

Minnesota STAR (MNSTAR, Minnesota's Voluntary Protection Program)

There are 35 MNSTAR Program worksites and one Merit worksite (with the potential to qualify for the MNSTAR Program).

Safety Grant Program - third-quarter of the state fiscal-year

There were 66 grant applications received and reviewed, with a total of \$518,500 requested. Thirty-four grants were awarded, totaling \$236,068, with \$1,877,367 total project costs. The grants were distributed to: 34 private companies (11 construction, four manufacturing, three service, three logging, five health care and six other); and five public-sector entities.

Training, outreach and partnerships for the second-quarter of federal-fiscal-year 2017 – Nancy Zentgraf

- Six Minnesota OSHA investigators and four consultants attended courses at the OSHA Training Institute (OTI):
 - OSHA 3080 Principles of scaffolding;
 - OSHA 1250 Introduction to health standards for industrial hygienists;
 - OSHA 2200 Industrial noise;
 - OSHA 2110 Principles of industrial ventilation;
 - OSHA 3320 Combustible dust hazards and controls;
 - OSHA 1500 Introduction to on-site consultation;
 - OSHA 3090 Electrical standards; and
 - OSHA 3280 Industrial hygiene chemistry.
- Internal training: Minnesota OSHA Compliance welcomed two new staff members, one safety investigator and one industrial hygienist. Both have completed Phases I and II of new-investigator training and are currently finishing up the Phase III classes.
- The annual HAZWOPER refresher course for the staff has been scheduled for Sept. 7, 2017. The instructor will be contracted through the Midwest Center for Occupational Health and Safety. Course attendees will include eight investigators, five consultants and three of our colleagues from the federal OSHA area office in Eau Claire, Wisconsin.
- Outreach: Twenty-eight presentations were provided to 906 participants of various leading organizations, strategic plan organizations and a college youth group.
- The January and March Construction Safety Seminars featured electrical safety and excavations, respectively, to coordinate with Minnesota OSHA's Excavation Safety Stand-down in April. A total of 77 participants attended the two events. The May seminar topic will be the silica standard.
- Publications: The January edition of *Safety Lines* featured the 2016 year-in-review, covering both Compliance and Workplace Safety Consultation. Other included topics were carbon monoxide, most-cited standards, occupational illness and injury data (including fatalities), and partnerships. The frequently asked questions column and a calendar of events were also published.
- Handouts updated during the quarter included the:
 - HAZCOM/Employee right-to-know employers' guide;
 - Trenching and excavation safety fact sheet; and
 - Emergency eyewash and shower booklet.
- Partnerships: There are currently 20 partnership sites statewide. Several of these sites will be completed in the next quarter. Two are with the Minnesota Department of Transportation; the remainder are with the Minnesota Chapter of Associated Builders and Contractors and Associated General Contractors of Minnesota. There was one quarterly partnership meeting with the Level 3 contractors where the contractors share best safety practices with one another.
- Compliance assistance: Minnesota OSHA Compliance answered 1,286 phone calls. The callers were approximately 34 percent employers, 24 percent employees, 3 percent consultants and 40 percent others or unknown. The

division also responded to 537 email messages and 22 written requests for information.

Minnesota OSHA Compliance for the second quarter of federal-fiscal-year 2017 – Jim Krueger

- Inspections:
 - nine fatality and 37 serious-injury inspections conducted;
 - 881 total inspections conducted;
 - 548 complaints received, resulting in 141 inspections;
 - response time to calls and complaints was 3.8 days; and
 - citation issuance time is 29 days for both safety and health, while the national average is 45 days.

- Emphasis programs are prioritized as follows:
 - excavations;
 - fall protection;
 - machine guarding, lockout/tagout; and
 - industrial hygiene.

- Additional staff training completed includes:
 - health care (nursing homes, hospitals);
 - grain handling;
 - foundries; and
 - meat packing.

- Significant legislation/rulemaking

Federal standards

- Final rule for occupational exposure to respirable crystalline silica: Minnesota OSHA adopted the final rule Sept. 26, 2016. Following federal OSHA's decision, Minnesota OSHA will delay the enforcement of the crystalline silica standard (1926.1153) in construction. Enforcement of this standard was to begin June 23, 2017, but will now begin Sept. 23, 2017. Minnesota OSHA continues to provide guidance to employers to ensure they are successful in implementing the requirements of the standard.

- Final rule to improve tracking of workplace injuries and illnesses: Response to federal OSHA was submitted; subsequent rulemaking is dependent upon federal database development.

- Interim final rule on maximum penalty increases: Minnesota OSHA responded timely to this federal program change. This action cannot be accomplished through standards adoption in Minnesota. It requires pending legislative action.

- For more information about the status in Minnesota regarding these and other federal regulations, see “Federal regulation update, April 2017,” at www.dli.mn.gov/OSHA/Pdf/federal_reg_update0417.pdf.
- Walking-working surfaces will be adopted by reference after the public comment period and process is completed.
- Federal OSHA
 - The budget level for federal-fiscal-year 2017 Minnesota OSHA Compliance remains near the levels for the two previous years. Minnesota OSHA Compliance’s inspection numbers are also projected to remain at the levels for the two previous years. The goal is 1,800 inspections. Minnesota OSHA Compliance is starting to plan for federal-fiscal-year 2018 at the same federal funding level as the three previous years.
 - Staffing: Currently, one safety investigator position remains open in the Mankato office.
- The spring Occupational Safety and Health State Plan Association (OSHSPA)/federal meeting is June 6 and 7, 2017, in Burlington, Vermont.

Comment period

Guests wishing to address the council were invited to comment.

Adam Hanson, Minnesota Chapter of Associated Builders and Contractors, expressed disappointment that the June 24, 2016, complaint had been dismissed and that there was no response by the members. Chairman Aasen respectfully disagreed with Adam Hanson’s assessment and referred him to Commissioner Peterson regarding any questions or comments he may have.

Adjournment

The meeting was adjourned at 11:27 a.m.

The 2017 meeting schedule is: Feb. 3, May 5, Aug. 4 and Nov. 3.

Respectfully submitted,
Pamela McLaughlin
 Executive Secretary