

# Meeting minutes: Occupational Safety and Health Advisory Council

Date: May 3, 2019

Minutes prepared by: Carrie Rohling

Location: Minnesota Room, Department of Labor and Industry

## Attendance

- Members present: Chairman Paul Aasen, Chris Bibeau, Xavier Escobedo, Dean Gale, Girard Goder, Tom Moibi, Scott Parker and Elizabeth Rheingans
- Staff members present: Roslyn Robertson, Ron Anderson, Marnie Prochniak, Jim Krueger
- Guests present: Sophie Thaden, MMCA; Gary Thaden, MMCA; Carol Keys, CHES, Inc.; Mark Hysell, OSHA, U.S. Department of Labor

## Agenda

- The May 3, 2019, meeting agenda was approved.
- The Nov. 16, 2018, meeting minutes were approved. Scott Parker motioned to approve and Dean Gale seconded.

## Next meeting

Date: Aug. 2, 2019

Time: 10 a.m. to noon

Location: Minnesota Room, Department of Labor and Industry

Agenda items: Submit proposed agenda items to Carrie Rohling.

## Meeting notes

### New member

Chris Bibeau, Laborer's Training Center, was appointed to the council, representing the occupational safety and health profession.

## Department update

Introductions were made and brief background information was given from each council and staff member. Department of Labor and Industry (DLI) Deputy Commissioner Roslyn Robertson provided some background information about herself and for DLI Commissioner Nancy Leppink.

## Staff updates

- In January 2019, Gov. Tim Walz appointed Leppink as DLI commissioner, she officially started her role in February. Leppink is introducing a new approach for employers to comply with labor laws; she will be laying out a program for strategic compliance that approaches enforcement from an enterprise perspective. Robertson gave some examples of what this vision will look like.
- Robertson was appointed as DLI deputy commissioner and also oversees the Workplace Services, Construction Codes and Licensing, and Workers' Compensation divisions.
- The assistant commissioner for agency enforcement and compliance strategies and partnerships position is currently vacant and it is hoped it will be filled by mid-June.
- Heather McGannon, remains as assistant commissioner and oversees the General Support Division (including the Office of General Counsel, Financial Services, Human Resources, Communications, Research and Statistics, Legislative Services, Combative Sports, and Projects and Planning), as well as Facilities Management.

## Legislative update

The Legislature has a number of bills and provisions we are tracking. This is a budget year. Currently, it does not appear our budgets are threatened. We are preparing to go into conference committee.

- **Wage theft bill:** The governor's intent is to implement a strategy that focuses on employers that are manipulating their obligation to pay their employees. He wants the department to hold those employers accountable. There's a request for \$3.5 million to develop a more aggressive enforcement program so we can start to change the culture. We will be working in the conference committee to develop a workable solution. The commissioner will be negotiating in the next week or so.
- **Workers' compensation bill:** The Workers' Compensation Modernization Program will allow users to file electronically. The program, Claims Access and Management Platform User System (CAMPUS) will update the overall information technology system. We've asked for a final allocation from the governor's office for \$3 million to finish implementing this system by August 2020.
- **Solar installers being required to be licensed as residential building contractors:** This requirement will protect homeowners from faulty work. Feedback was received this week and we will continue working under advisement. We'll see how this rolls out.
- **Request to conform Minnesota OSHA's penalty structure:** Jim Krueger will maybe speak more about this later. Minnesota penalties are higher than those nationwide and we are working on making these penalties consistent across the board. We're hoping the conformity language will pass.

## New business

- **Arthur E McCauley, Jr. Award – Jim Krueger:** Each year, DLI seeks to honor a safety and health professional who is an example of safety and excellence. Arthur E. McCauley, Jr. was the manager of the Minnesota Safety Council and a member of the OSH Advisory Council for many years. He is recognized for his dedication and tireless efforts to improve safety and health in the workplace. Nominations were received and DLI selected an individual to receive the award, which will be presented during the Governor’s Safety Award Luncheon at the Minnesota Safety and Health Conference next week. We will honor Felix “Happ” Spooner, Mal-Co Products. Happ was the safety director and got his company into the Minnesota Safety and Health Achievement Recognition Program (MNSHARP).
- **Eighty-fourth annual Minnesota Safety and Health Conference, May 7 and 8, 2019 – Paul Aasen:** The 85<sup>th</sup> annual Minnesota Safety and Health Conference will be May 7 and 8, 2019, at Mystic Lake Conference Center.
- **Excavation Safety Stand-down – Ron Anderson for Nancy Zentgraf:** The Excavation Safety Stand-down will be April 15 through 19, 2019; this is the third year for the safety event. Minnesota has had three excavation-related fatalities since 2015. The purpose of the stand-down week is to raise the awareness of workers and companies by asking them to focus on preventing excavation hazards.
  - Employees are asked to stop work, participate in a toolbox talk, conduct a lunch and learn or conduct a job safety analysis to focus on safety awareness in excavation.
  - Seventeen companies and 515 employees have participated. Each company receives a certificate of completion signed by DLI’s commissioner.

The National Safety Stand-down to Prevent Falls in Construction is May 6 through 10, 2019. Falls are still one of the leading causes of construction fatalities.

Minnesota OSHA is also participating with federal OSHA in the Safe and Sound Program, Aug. 12 through 18, 2019.

## Old Business

- **Standards update – Anderson:** Electronic submission of injury and illness data; construction shipyards occupational exposure to beryllium; occupational exposure to beryllium, federal OSHA; respirable crystalline silica

Aasen asked if there is a medical surveillance requirement? Anderson explained the requirement.

## Staff reports

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

- Federal OSHA welcomes Robertson back; everyone is very pleased.
- The sixth annual National Safety Stand-down to Prevent Falls in Construction is May 6 through 10, 2019.
  - The week-long event will focus attention on preventing falls in construction, the leading cause of fatalities in the industry.
  - In January, a collection of compliance assistance resources were developed to support OSHA’s goal to promote awareness about common fall hazards in construction, educate job creators and workers about fall prevention, and reduce the number of fall-related injuries and fatalities.
- The National Safety Stand-Up and Grain Safety Week were March 25 through 29, 2019.
  - OSHA joined with industry leaders and safety professionals to raise awareness about the hazards in the grain-handling industry, including potentially deadly engulfment and dust explosions.
- On Feb. 7, 2019, OSHA issued enforcement guidance about the requirements for evaluating crane operators.
  - A final rule, issued Nov. 7, 2018, requires employers to train operators as needed to perform assigned crane activities, evaluate the operators and document successful completion of the evaluations. OSHA began enforcing the evaluation requirement Feb. 7, 2019. However, until April 15, 2019, OSHA offered compliance assistance, in lieu of enforcement, for those employers that had evaluated operators in accordance with the final rule and were making good faith efforts to comply with the new documentation requirement.
- On Jan. 25, 2019, OSHA issued a final rule to protect the privacy of workers.
  - OSHA has issued a final rule that eliminates the requirement for establishments with 250 or more employees to electronically submit information from OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) to OSHA each year. These establishments are still required to electronically submit information from OSHA Form 300A (Summary of Work-Related Injuries and Illnesses).
  - By preventing routine government collection of information that may be quite sensitive, including descriptions of workers’ injuries and body parts affected, OSHA is avoiding the risk that such information might be publicly disclosed under the Freedom of Information Act (FOIA).
  - This rule will better protect personally identifiable information or data that could be re-identified with a particular worker by removing the requirement for covered employers to submit their information from Forms 300 and 301. The final rule does not alter an employer’s duty to maintain Forms 300 and 301 on-site, and OSHA will continue to obtain these forms as needed through inspections and enforcement actions.
  - The final rule also amended the recordkeeping regulation to require covered employers to electronically submit their employer identification number (EIN) with their information from Form 300A. The requirement will make the data more useful to OSHA and the Bureau of Labor Statistics, and could reduce duplicative reporting burdens on employers in the future.
- On Jan. 23, 2019, OSHA posted new frequently asked questions online about controlling silica in general industry.
  - The FAQs were developed by OSHA in consultation with industry and union stakeholders, and provide guidance to employers and employees about the standard’s requirements, such as exposure assessments, regulated areas, methods of compliance and communicating silica hazards to employees.
  - OSHA’s silica standard for general industry webpage contains more information and resources for complying with the standard.
- On Dec. 10, 2018, OSHA proposed to revise the beryllium standard for general industry.

- The proposal satisfies a settlement agreement with stakeholders that had concerns about some of the provisions in the 2017 beryllium final rule. The proposed changes are designed to clarify the standard and to simplify or improve compliance with the standard.
- The proposed rule would amend selected paragraphs of the standard, including “Definitions,” “Methods of Compliance,” “Personal Protective Clothing and Equipment,” “Hygiene Areas and Practices,” “Housekeeping,” “Medical Surveillance,” “Hazard Communication” and “Recordkeeping.” It would also remove the existing Appendix A, which lists suggested controls, and replace it with a new Appendix A, Operations for Establishing Beryllium Work Areas.
- The enforcement date for the provisions affected by this proposal is Dec. 12, 2018. While the rulemaking is pending, compliance with the standard as modified by this proposal will be accepted as compliance. Comments were accepted through Feb. 9, 2019.
- Closer to home:
  - the fiscal-year draft follow-up FAME Report and draft RACER are undergoing review and approval at the national office;
  - the fiscal-year 2019 One-time De-obligation and Funding Request notices have been provided to both the Compliance and Workplace Safety Consultation units and are due May 28 and 30, respectively;
  - the fiscal-year 2020 federal grant application process has begun and the draft applications are due no later than July 12, 2019; and
  - 20 or more employees need to report.

## **Outreach and training update, second quarter of federal-fiscal-year 2019 – Ron Anderson for Nancy Zentgraf**

MNOSHA Compliance staff gave 30 presentations to a total audience of 999 participants during the second quarter of federal-fiscal-year 2019, an average of 33 participants at each event. Eighteen of these presentations were for leading organizations, 11 were for groups covered by the strategic plan and one was for youth. Six of the presentations were related to excavation safety.

Approximately 50 people attended each of the Construction Seminars in January and March. The January seminar focused on mobile earth-moving equipment; excavation was the topic for the March seminar. The May seminar will cover traffic control on construction sites.

### **Publications**

*Safety Lines* was published in January and featured a year in review, a standards update, the reduction in the workplace injury rate, partnerships, carbon monoxide, a safety equipment recall, the Safety Grants Program, recordkeeping, a calendar of events and frequently asked questions.

### **Partnerships**

There are currently 17 partnership sites; three new sites were signed during this quarter. There was also a quarterly partnership meeting with the Level 3 contractors, where the contractors share best safety practices with one another.

### **Compliance assistance**

During the second quarter, MNOSHA Compliance handled 1,131 calls, split at about 34% employees, 46% employers, 3% consultants and 17% all others. MNOSHA Compliance also received 571 written and electronic requests for information.

### **Training activities**

- **OSHA Training Institute (OTI) training:** Three investigators attended the OSHA 2200 Industrial Noise course at OTI. Two were recently hired industrial hygienists, for whom the class is a primary core class, and the third was a safety investigator who took it as part of his secondary core for cross-training purposes.

Two consultants traveled to Nevada to attend the OSHA 1500 Introduction to On-site Consultation class with Nevada OSHA personnel. Another consultant traveled to the OSHA Salt Lake Technical Center in Sandy, Utah, for the OSHA 3280 Industrial Hygiene Chemistry class.

The OSHA Training Institute brought the OSHA 2070 Fire Protection and Life Safety course to the MnDOT Training and Conference Center in Shoreview, Minnesota, Feb. 27 through March 3, 2019. Eleven MNOSHA Compliance inspectors and seven MNOSHA Workplace Safety Consultation consultants attended. Most of the MNOSHA staff members who participated in the class needed it for their primary core requirements.

OTI has notified us it will conduct OSHA 3010 Excavation, Trenching and Soil Mechanics class at the Construction Laborers Training Center in Lino Lakes, Minnesota, June 9 through 11, 2020.

### **External training**

Two industrial hygienists attended Asbestos Inspector Initial Training in February, conducted by Lake States Environmental. This course is part of the employees' primary core training requirements.

## **MNOSHA Workplace Safety Consultation update – Marnie Prochniak for Tyrone Taylor**

### **Consultation visits**

There were:

- 201 initial visits – 156 safety, 32 health and 13 both safety and health.
- 39 formal training visits;
- 26 follow-up visits; and
- 266 total consultation visits for safety and health services including in construction.

### **Hazards identified**

There were 1,218 observed hazards: 1,136 serious (including imminent); 77 other-than-serious; and five regulatory (recordkeeping).

## **Total interventions**

There were 80 interventions, including formal training, Minnesota STAR (MNSTAR) Program activities, conference participation and technical assistance, which impacted 2,060 establishments and 10,637 employees.

## **Other second-quarter highlights**

- Injury and illness recordkeeping: Three formal trainings were offered, with two additional sessions planned this summer at DLI for June 19 and Aug. 16.
- Trenching and excavation safety: There were five formal training and five program assistance interventions.
- HAZWOPER: There were three formal training interventions for construction employers.
- Silica in construction: There were four formal training interventions.
- Participation: MNOSHA Workplace Safety Consultation was an exhibitor at the 2019 Minnesota Construction Summit, in St Paul, Minnesota.
- Ergonomics: The road map to safe patient-handling webinar was presented. There was a formal training intervention about safe patient-handling. There is ongoing planning for a safe-patient-handling conference in September 2019.
- Workplace violence prevention: There were six formal training sessions.
- Other: Additional training and technical assistance about safety and health topics included lockout/tagout, fall protection in construction, eyewash station requirements, confined-space entry, hazard awareness, HazCom, mobile earth-moving equipment and electrical safety.

## **Alliance program**

- Mexican Consulate: Continued monthly TALK series and mobile consulate presentations about MNOSHA Workplace Safety Consultation programs and services.
- Minnesota Municipal Utilities Association (MMUA): Continued scheduling of worker exposure assessments for silica. The initial focus was on street sweeping, with the goal of creating a database of exposure assessment results for various work tasks.
- Minnesota State Colleges: Continued work-site consultations and safety management assistance.
- Hospital safety and health group: Discussed safe patient-handling and other safety and health issues in health care during the quarterly meeting. A safe-patient-handling conference is planned for September 2019.
- Electrical association: MNOSHA Workplace Safety Consultation had its first meeting as an adjunct member of the education committee. We provided input about planning for coming events and continue to provide articles for the quarterly newsletter.

## **Minnesota Safety and Health Achievement Recognition Program (MNSHARP)**

- In general industry, there are 38 MNSHARP sites and two Pre-MNSHARP sites (Alliance Machine, Inc. and ABC Companies).
- In the construction industry, there are five MNSHARP Construction sites and four Pre-MNSHARP Construction sites.

The current MNSHARP Construction sites are:

1. A&P, St. Peter Correctional Facility;

2. A&P, Elk River Sherburne County Government Center;
3. Knutson, Mercy Hospital Expansion;
4. Mortenson Construction, 333 Hennepin; and
5. Mortenson Construction, Minnesota United Soccer Stadium.

The Pre-MNSHARP sites are:

1. Mortenson Construction, Minneapolis Public Service Center;
2. JE Dunn Construction, University of Minnesota Health Sciences Center;
3. Ryan Construction, Sons of Norway; and
4. PCL Construction, MAC Terminal.

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

There are 35 MNSTAR Program sites. This quarter: a previous Merit site became a full MNSTAR Program site; we gained a new MNSTAR Program site; and one company withdrew from program participation.

### **Safety Grant Program (third quarter of the state fiscal-year)**

Forty-five grant applications were received and reviewed (\$352,112.36 total money was requested). Forty grants were awarded, totaling \$196,862.51. The total for project costs was \$1,788,387.39.

## **MNOSHA Compliance update, second quarter of federal-fiscal-year 2019 – Jim Krueger**

### **Inspections**

From Oct. 1, 2018, through March 31, 2019, MNOSHA Compliance:

- investigated 11 fatalities and 38 serious injuries that occurred under its jurisdiction;
- conducted 837 inspections;
- handled 671 total complaints, which resulted in 155 inspections, with a response time to these complaints of within 3.3 days; and
- issued citations within 22 days for safety issues, 24 days for health issues.

### **Emphasis programs**

MNOSHA Compliance is prioritizing:

- excavations;
- fall protection;
- machine guarding and lockout/tagout;
- industrial hygiene sampling; and
- essential preplanning.

There is ongoing training and inspecting in the excavations emphasis area.

### **Significant legislation, rulemaking**

- Minnesota rulemaking and legislation: None.

- Federal standards:
  - Interim Final Rule on Maximum Penalty Increases – legislative action to change penalties for MNOSHA is pending; and
  - Final Rule on Cranes and Derricks in Construction: Operator Qualification – MNOSHA is reviewing this standard against the current statute. MNOSHA’s intent is to adopt the federal standard as written, but wants to ensure it is aware of potential enforcement issues between the two requirements.

## **Federal OSHA**

- The budget level for federal-fiscal-year 2019 MNOSHA enforcement remains near those of federal-fiscal-years 2015, 2016, 2017 and 2018. MNOSHA enforcement’s inspection numbers are also projected to remain at the levels of federal-fiscal-years 2015, 2016, 2017 and 2018; the inspection goal for federal-fiscal-year 2019 is 1,800. The appropriation for federal-fiscal-year 2020 includes a \$20 million increase for state plans.
- MNOSHA received the draft Minnesota federal-fiscal-year 2018 comprehensive FAME Report. MNOSHA had no findings. The report should be available in June on the federal OSHA website.

## **Staffing**

- There is currently an open supervisor position in the Duluth office.

## **Renovation**

- I am happy to report that all of our staff members are in renovated office space on the fourth floor. It is open, bright and clean.

## **Occupational Safety and Health State Plan Association (OSHSPA) federal meeting**

- The next OSHSPA is May 13 and 14 in Chicago.

## **Discussion**

Aasen: There are a lot of people who don’t think about safety. If you go to the data, every four days a Minnesotan dies. Every day, 200 workers seek some form of care and half have loss of work. Human impact; that interruption alone is a big deal. Minnesota does pretty well overall. There is an opportunity for us to improve. Let’s go around the room and state where there is room for improvement.

Anderson: One thing is how do we expand our outreach? For 20 years, I have been working with one employer at a time.

Elizabeth Rheingans: I wish I could get the employers that I work with to be involved in the MNSTAR Program or MNSHARP. I struggle getting these people to understand, because they fear OSHA. The agricultural industry is a little behind the times about realizing OSHA is not the bad guy.

Aasen: Farmfest is a farm safety outreach program and the idea would be to elevate the knowledge. There is an effort that will be going on at Farmfest.

Prochniak: Said MNOSHA Workplace Safety Consultation will have a booth there. Safety grant monies will be available.

Hysell: Suggested trenching fatalities and small employers/residential employers be focused on as we approach the summer season. Another item would be workplace violence prevention; this is a growing concern because of active shooters. No-tolerance policies should be communicated upon hiring.

Krueger: I'm looking forward to the day we stop talking about maritime standards and look at it from a global perspective. Construction falls have decreased; general-industry falls increased, but the risk hasn't changed.

Girard Goder: There is an opportunity to improve workers' rights, especially in disadvantaged work groups; he provided examples of hazards he encountered regarding workers with no fall protection. There can be more opportunity for growth.

Bibeau: Training businesses and bilingual and disadvantaged workers. We provide training for free, but cannot force these members to come. Maybe instilling mandatory training – the most recent OSHA class had four people in it. Training and getting the people involved.

Parker: Keep the workers safe. Lots of workers seem to only care about the money. Complacency on workers. Possibly developing a MNSTAR Program, an incentive program for workers.

Xavier Escobedo: I conduct training on evenings and weekends and don't see union or non-union providing training. I believe training should be mandated. Contractors are not getting their employees proper training.

Prochniak: The language barrier is a challenge. MNOSHA Workplace Safety Consultation finds that sometimes people don't want industrial hygiene sampling and we need more outreach work.

Tom Moibi: Wellbeing and engagement should be the primary focus. Enable employees to care about safety. Empower employees to identify risks.

Gale: With construction site fall protection, who is the responsible party for protecting the workers?

Aasen: Training is needed about employee right-to-know, workers' rights, impairment and fatigue, sleep deprivation, managing fatigue and worker shortage.

Robertson: Excellent points have been made. For me, I think we have to figure out how to decrease the apathy of the discussion of safety. I think it goes beyond the workplace. I would like to engage the council. What can we do to advance these concerns? I would like to see us engage in brainstorming sessions. How do we prioritize safety in all areas of our lives? How do we bring more safety knowledge to the disadvantaged (and minorities)? I would like to dedicate part of the agenda into areas regarding safety that concern us.

Parker: It is the season of the orange: Watch out for workers.

Aasen: Provide fact sheets about the hands-free law. He supplied a handout to the group and provided some statistics.

## **Adjournment**

The meeting was adjourned at 12:05 p.m.

Respectfully submitted,  
Carrie Rohling  
Acting executive secretary