

FINAL

**SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING AND MEETING MINUTES
THURSDAY, March 19, 2019**

BOARD MEMBERS PRESENT: Mr. David Martinez, Newly Elected Chair
Mr. Travis Parsons, Outgoing Chair
Mr. Charles Stiff, Newly Elected Vice Chair
Dr. Dwight Flammia
Mr. John Fulton
Ms. Tina Hoover
Ms. Anna Jolly
Mr. Courtney Malveaux
Mr. Kenneth Richardson, II
Ms. Milagro Rodriguez
Mr. Thomas Thurston
Mr. Louis J. Cernak, Jr.

BOARD MEMBERS ABSENT: Mr. Jerome Brooks
Mr. Phil Glaize

STAFF PRESENT: Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry
Mr. William P. Burge, Assistant Commissioner
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, OPP & OWP
Mr. Ron Graham, Director, VOSH Health Compliance
Ms. Jennifer Rose, Director, VOSH Safety Compliance
Ms. Diane Duell, Director, Legal Support
Ms. Holly Trice, Senior Staff Attorney
Mr. Rob Feild, Senior Staff Attorney
Mr. Edward G. Hilton, Director of Boiler Safety
Mr. Aleksander Flippen, Health Compliance Officer
Ms. Elizabeth Kendrick, Health Compliance Officer
Mr. Allen Hatch, Consultation Program Manager
Ms. Maryella Mitchell, Regional Health Director, Tidewater
Ms. Suzy Weigle, Health Compliance Officer

OTHERS PRESENT: Mr. Sam Revenson, Associated Risk Management
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

ORDERING OF AGENDA

Chair David Martinez called the Public meeting to order at 10:00 a.m. A quorum was present.

APPROVAL OF AGENDA

Chair Martinez requested a motion to approve the Agenda. A motion to accept the Agenda was made, properly seconded, and carried by unanimous voice vote.

APPROVAL OF MINUTES

Chair Martinez asked the Board for a motion to approve the Minutes from the November 8, 2018 Board meeting. A motion was made and properly seconded. The Minutes were approved by unanimous voice vote.

PUBLIC COMMENTS

There were no comments from the public.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Amendment of 29 CFR 1926 subpart CC – Cranes and Derricks in Construction §1926.1427: Operator training, certification, and evaluation; §1926.1430: Training.

Ms. Jennifer Rose, Director, VOSH Safety Compliance for the Department, requested that the Board consider for adoption federal OSHA's amendment of 29 CFR 1926 Subpart CC to revise sections that address crane training, certification/licensing and competency as published in 83 FR 56198, proposed effective date is May 15, 2019.

Ms. Rose stated that the purpose of these amendments is to alter the requirement that crane-operator certification be based on equipment "type and capacity," instead permitting certification based on "type" or "type and capacity". The amendment also continues required training of operators. She also stated that the amendments are to clarify and continue the employer duty to evaluate operators for their ability to safely operate equipment covered by subpart CC and require documentation of that evaluation.

OSHA published its proposed rule on October 9, 2008; and on November 8, 2010, the final rule, including requirements for crane operator certification, became effective. The original date by which all operators were to be certified was November 10, 2014, but OSHA subsequently extended that date to November 10, 2017, and then further extended it to November 10, 2018. Prior to the amendments to the standard contained in this current final rule, the separate employer duty to evaluate operators was to cease on the date when operator certification was required.

Ms. Rose explained that this final rule revises the prior 2010 crane standard to make permanent the employer duty to evaluate operators in lieu of that requirement expiring on the date certification is required. She explained that the 2010 crane standard required operators to become certified and permitted "four" options for doing so, one of which was a certification by "third-party" organizations. The "third-party" certification is portable, but employers need to know what kind of equipment the operator's certification applies to when making determinations about which equipment to the individual

can operate on the worksite.

The 2010 final rule provides that “third-party” certification must indicate the equipment types and the rated capacities that individuals are certified to operate. She also stated that the other certification options, which are not portable, do not require certification by capacity.

After receiving feedback from stakeholders that the capacity requirements do not provide a significant safety benefit because the lifting capacity of equipment is not a meaningful component of operator testing, OSHA determined that operator certification by capacity of crane should no longer be required; rather, it may be an option for those employers who wish to use it.

For the summary of amendments to Subpart CC, paragraph (a) sets out the employer’s responsibility to ensure that each operator completes three-steps before the employer permits the operator to use equipment covered by subpart CC without continuous supervision. In the regulatory text, OSHA refers to this entire three-step process as “qualification.” Each operator must be trained to do the crane activities that will be performed, be certified/licensed in accordance with subpart CC, and be evaluated on his or her competence to safely operate the equipment that will be used. The final rule makes clear that post-certification training is required.

Paragraph (a)(1) permits an employee to operate equipment as an “operator-in training” prior to being certified and evaluated, provided that he or she is supervised and operates the equipment in accordance with the training requirements in paragraph (b). This is the only means by which an individual may operate equipment prior to being trained, certified, and evaluated as competent to do so. The revised standard also permits certified or licensed operators to operate equipment as operators-in-training before successfully completing an evaluation.

Paragraph (b) addresses operator training and clarifies that the employer’s training duty is both equipment-specific and task-specific.

Paragraph (c), operator certification and licensing, retains the certification and licensing structure of the 2010 crane standard.

Paragraph (d) addresses certification by an accredited crane operator testing organization. The most significant change is that paragraph (d)(1)(ii)(B) replaces the references to certification by “type and capacity” that appeared in previous paragraph (b)(1)(ii)(B) with “type, or type and capacity.”

Paragraph (e) addresses the audited employer program, and the substantive content of paragraph (e) is the same as previous subpart CC.

Paragraph (f), evaluation, sets out specific requirements that employers must follow to conduct an operator evaluation, including evaluation criteria, minimum qualifications for the person conducting the evaluation, documentation, and re-evaluation requirements.

Paragraphs (g) through (q) of the standard have a few minor subsequent changes.

Concerning the impact of these amendments on employers, the total annual cost of the final rule comprises the following cost items: Evaluations were previously calculated with offsets from the removal of the requirements to certify by capacity and with the additional evaluation costs to account

for new skills and tasks. Costs for documentation of the evaluations include the one-time first year evaluation documentation for existing currently employed operators. There is a cost savings due to eliminating the need for all operators who currently have a “type” only certification to obtain a “type and capacity” certification. At a discount rate of 3 percent, the sum of those parts is a cost savings of \$1,752,000. Using a discount rate of 7 percent, there is cost savings of \$2,388,000. The largest cost element of the revisions to the rule is an evaluation requirement with associated training of \$79.22 per training and \$90.04 for each operator evaluation, for a total of \$169.25.

The 2010 final rule concluded that construction workers suffer 89 fatal injuries per year from the types of equipment covered by the final standard. Of that number, OSHA estimated that 21 fatalities would be avoided by compliance with the final standard. In addition, OSHA estimated that the final standard would prevent 175 non-fatal injuries each year.

It is anticipated that any impact of DOLI resulting from adoption of these standards would be negligible.

OSHA determined that the final rule is technologically feasible because many employers already comply with all the provisions of the revised rule, and the revised rule would not require any new technology.

Regarding economic feasibility, OSHA estimates the annual cost to the industry will be \$1,481,000 for the performance of operator competency evaluations, \$62,000 for documenting those evaluations, and \$94,000 for any additional training needed for operators. OSHA also expects some cost savings from the changes to the rule, including a large onetime cost savings of \$25,678,000 from dropping the requirements that crane operators be certified by capacity, because that change eliminates the need for very large number of operators to get an additional certification. The annualized cost for Virginia employers is available on the table.

Finally, the safety benefit of the rule is the prevention of injuries or fatalities resulting when operators certified to operate the type of crane assigned still lack the knowledge or skill required to operate that crane for the assigned task. The 2010 crane rule estimated annual net benefits at \$55.2 million in 2010 dollars. Since there are cost savings for this final rule, net benefits of the joint 2010 final rule and this final rule are substantially greater than zero. OSHA believes that the revised rule, which makes the evaluation duty permanent and includes more detailed evaluation documentation requirements, would make it more likely an employer conducts the appropriate type of evaluation and therefore more likely that such incidents would be avoided in the future.

The Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the amendments to Operator Training, Certification and Evaluation, §1926.1427 and Training §1926.1430 of the final rule for Cranes and Derricks in Construction, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006A.4(c), with an effective date of May 15, 2019.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above cited subsection A.4(c) of the Administrative Process Act.

A motion to accept the Department’s recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA; Final Rule.

Mr. Jay Withrow, Director of Legal Support for the Department, stated that the VOSH Program requests that the Safety and Health Codes Board consider for adoption federal OSHA's final rule on Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA, as published on January 25, 2019 in 84 FR 380. The proposed effective date is May 15, 2019.

Summary of the Standard. OSHA is amending the recordkeeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300A and 300B.

Mr. Withrow explained the OSHA 300 form is a log of work related injuries and illnesses and that the log lists out individually for the year each person that was injured or suffered an illness. The information usually includes a brief description of the incident and for instance, if it was an amputation, what body part was affected. The OSHA 301 form is the injury and illness incident report and that form contains much more detailed information - similar to what the Workers' Compensation Commissioner collects on their First Report of Injury form. Those are the two forms that the regulation is proposing to not require employers to electronically submit. Employers are still required to submit the information from the OSHA Form 300A, which is a summary of injury and illness statistics every covered employer posts annually, and which contains the information that allows OSHA to calculate the injury and illness rate at the specific site.

Mr. Withrow stated that OSHA is also amending the recordkeeping regulation to require covered employers to submit their Employer Identification Number (EIN) electronically with their injury and illness data. This is a new requirement that would be placed on employers. Nothing in the final rule changes an employer's duty to maintain the OSHA Forms 300, 301 and 301A for their work site, it just eliminates the requirement that the information be electronically submitted to OSHA.

Mr. Withrow explained that from a practical standpoint what OSHA uses the information for is to develop two lists that they have used in the past. One, is a list that they would compile and send to all their consultation programs around the country, of companies have an injury rate that is higher than the national average for their NAICS Code (NAICS is the North American Industry Classification System), so that the consultation programs could contact the company to encourage use of consultation services.

Secondly, OSHA uses the information to conduct planned inspections from a list that is called the Site Specific Targeting (SST) program. He stated that if you want to find out more on SST, go to OSHA's website.

He explained that OSHA for years used to conduct a survey of their own of about 80,000 companies in what they considered to be potentially high hazard industries and the cost of that ran about \$1 million a year. At some point, when OSHA's budget was being cut, they decided to eliminate the survey. So, they went a number of years without being able to do site specific targeting planned inspections. Instead relied on their National Emphasis Programs to do planned inspections. At some point, they wanted to get back to having a National List, and so, a number of years ago they amended the recordkeeping regulation to require large companies to submit data electronically so that they could reconstitute their SST program. That is the main purpose of them gathering the information.

At the time that the regulation was adopted, the Assistant Secretary was Dr. David Michaels, who was an academician with a background in occupational safety and health research. He was specifically interested in making online access available to researchers for the detailed kind of injury and illness data that would have been available from the OSHA Forms 300 and 301.

With regard to the basis, purpose and impact of the amendment, OSHA had determined that the final rule would benefit worker privacy by preventing government collection of information that may be quite sensitive, including descriptions of workers injuries, illnesses, body parts affected, etc. Mr. Withrow stated that he thought this to be a reflection of everyone's concern about data breaches and protecting the PII (Personally Identifiable Information), including medical information that is contained on the OSHA 300 and 301 forms.

He also stated that the other purpose of the regulation is to collect the Employer Identification Number (EIN), which will be helpful to OSHA to assure the accuracy of establishment data across databases and enabling them to track data over time. Without the EIN, if OSHA is trying to take data from this database and compare it to their information that they collected in the OSHA Information System, errors could occur because of name or address changes. OSHA collects EIN's when they conduct inspections; inspectors can do a history search on OIS and use the EIN to make sure they are exactly matching the site properly.

With regard to the impact on employers, the final rule reduces substantially the number of injury and illness records that employers are required to submit electronically on an annual basis. OSHA estimates that without the final rule, covered establishments with 250 or more employees would have to report 775,210 injury and illness cases per year to OSHA through the Injury Tracking Application. The final rule does add a new requirement that covered employers submit to OSHA their EIN electronically.

Mr. Withrow also stated that with regard to the impact on employees, OSHA determined that the rescission of the requirement to submit the injury and illness detail data will benefit worker privacy by preventing routine government collection of information that may be quite sensitive and that could possibly be subject to a data breach.

No additional impact on the Department is anticipated from the adoption of this amendment.

Mr. Withrow summarized the benefits. There will be a national cost savings of \$15.9 million per year. Virginia's share of that is roughly \$225,540 per year. There is an additional cost associated with the adoption of the EIN requirement that would cost employers \$4.75 per establishment, with a total net cost of \$2,199,000 for the establishments that are currently known and on the list. There are new companies that are added every year, an approximately 10% increase. Each new establishment would incur costs from entering information electronically and the total cost on an annual basis is about \$223,000 per year. Virginia's share is estimated to be \$5,990.00.

OSHA determined that the amendment was technologically feasible, economically feasible, and that the final rule does not constitute an "economically significant regulatory action" under Executive Order 12866.

Mr. Martinez asked for clarification regarding the electronic submission requirement for the OSHA 300 and 301 forms and the March 2, 2019 due date for electronic submission.

Mr. Withrow explained that the employers have been previously required to submit the 300A data. The requirement for collecting the detailed data did not come in until this year so nobody has actually submitted that detailed data yet. The amendment eliminates that requirement. OSHA will look at the data on a yearly basis and their current SST (Site Specific Targeting) plan is based on the first year's data. They may decide to use that list for just one year and then move on to the next year's data or they might use that same list for a couple of years. Their intent is to look at each year separately. Whether that information will be available to the general public at some point or researchers, we are not clear on that yet. The information is used by OSHA for developing a targeting list for inspections for enforcement, for both the OSH Act and Virginia law as well prohibit giving advanced notice of an inspection.

Ms. Jolly asked about the EIN number, for people already entered in the database are they supposed to login in and add their EIN?

Mr. Withrow stated that OSHA's effective date is [January 25, 2019].

Ms. Jolly asked if the computer was ok and ready to receive data, is that final?

Mr. Withrow replied even though that requirement for electronically submitting the detailed data that had been there for a couple of years, OSHA's contractor had not successfully come up with a way to collect the data. One of the cost savings involved in the amendment was that OSHA would not spending the money to update the system to do that.

Ms. Jolly asked if whole system is really electronically ready to go, for both annual and other data?

Mr. Withrow replied he could access the system and see if actually the EIN number is there and will get back to Ms. Jolly.

Ms. Jolly asked Mr. Withrow to let her know when he has that information.

Finally, Mr. Withrow stated that DOLI has a page on our website about Recordkeeping, and that he can update the information to remind employers about the requirement to provide the EIN number.

A motion to accept the Department's recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

Notice of Periodic Reviews

Ms. Holly Trice, Senior Staff Attorney with VOSH requested authorization by the Board to proceed with the periodic review process of four Board regulations listed below.

She stated that the Administrative Process Act §2.2-4017 of the Code of Virginia and Executive Order 14 (2018)(Amended), entitled "Development and Review of State Agency Regulations" governs the periodic review of existing regulations. This Executive Order requires that agencies conduct a periodic review of regulations every four years. The following regulations have been identified for review in 2019:

- 16VAC25-35, Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permits Fees,
- 16VAC25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors,

16VAC25-73, Regulation Applicable to Tree Trimming Operations and
16VAC25-75, Telecommunications, General, Approach Distances.

She continued that four Safety and Health Codes Board regulations are subject to the periodic review process in the calendar year 2019. After Board approval, the Department will then publish a Notice of Periodic Review to the Virginia Register which opens a comment period of at least 21 days but no longer than 90 days.

Subsequently, the Department will review the regulations and related public comments, and then prepare a briefing package with recommendations to be presented for Board consideration. Based on the decision of the Board, the Department of Labor and Industry will post a report on the Virginia Regulatory Town Hall website indicating whether the Board will retain the regulations with no changes, or will begin a regulatory action to amend or repeal one or more of the regulations.

Ms. Trice stated that the Department of Labor and Industry recommends the Safety and Health Codes Board approve the publication of a Notice of Periodic Review in the Virginia Register for 16VAC25-35, 16VAC25-55, 16VAC25-73 and 16VAC25-75.

Finally she stated that the Department also recommends that the Board state in any motion it may make regarding the periodic review of this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to the periodic review which will be conducted in accordance with the above-cited §2.2-4017 of the Administrative Process Act and Executive Order 14 (2018)(Amended) "Development Review of State Agency Regulations".

A motion to accept the Department's recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

Informational Briefing: Heat Illness Hazards, Guidance and Outreach Materials, State Unique Standards, and OSHA Enforcement Approach (PowerPoint Presentation)

Mr. Jay Withrow, Director of Legal Support for the Department, presented a PowerPoint presentation on Heat Illness Hazards (copy available on the Virginia Regulatory Townhall).

http://townhall.virginia.gov/L/GetFile.cfm?File=meeting\92\28986\Agenda_DOLI_28986_v6.pdf

He reviewed heat related illnesses, symptoms and recommended treatments. He reviewed 11 heat illness fatalities in Virginia from 1999 to 2017 and one non-fatal catastrophe involving the hospitalization of 3 workers. Mr. Malveaux asked if VOSH had issued any general duty clause violations, and Mr. Withrow reviewed the citation history for each inspection and noted that a general duty violation had been issued in two cases and had been upheld both times. He noted that citations of various regulations had been issued in six of the inspections.

Mr. Withrow then reviewed guidance and outreach materials for VOSH, OSHA (e.g., OSHA/NIOSH smartphone App), and NIOSH (National Institute for Occupational Safety and Health), and noted that California and Washington had excellent information available online as well.

Mr. Withrow reviewed regulations adopted by other State Plans, California, Minnesota and Washington. Mr. Malveaux asked if the Department was aware of any impacts seen in those states as a result of the adopting of state unique regulations. Mr. Withrow stated that he would have to research the issue and get back to Mr. Malveaux.

Mr. Withrow reviewed OSHA's enforcement policy for heat stress. He noted that OSHA does not currently have a heat illness standard. OSHA was petitioned by the Public Citizen's Health Research Group on September 1, 2011 to promulgate an emergency temporary standard (ETS) for a heat stress threshold and a subsequent permanent heat stress standard. The petition for an ETS was denied on June 7, 2012, by Assistant Secretary David Michaels. OSHA also indicated they were "not planning on promulgating a [permanent] standard anytime soon". Mr. Withrow noted that on July 17, 2018, Public Citizen and 131 other organizations as well as 89 individuals again petitioned OSHA to adopt a permanent standard applicable to outdoor and indoor exposure to excessive heat. Mr. Parsons noted that David Michaels was a signatory to the 2018 petition.

OSHA's enforcement policy consists of using the following existing laws, regulations and standards:

- §5(a)(1) of the OSH Act "General Duty Violation"
- PPE violations (1910.132(d); 1915.152; 1917.95; 1926.28)
- Recordkeeping violations (1904.7(b)(5))
- Inadequate drinking water (1910.141; 1915.88; 1917.127; 1918.95; 1926.51; 1928.110)
- Medical Services and First Aid violations (1910.151; 1915.87; 1917.26; 1918.97; 1926.50)
- Failure to train construction employees (1926.21)

Mr. Withrow then reviewed the requirements for the "General Duty Clause" (29 U.S.C. §654(a)(1). Va. Code §40.1-51.1.A), and the other current federal standards.

Ms. Jolly commented that in the absence of a Heat Illness regulation, there is limited preventative measures that can be taken. The agency is often faced with having to issue citations as a result of a fatality. Mr. Parsons commented that the state of Florida is considering legislation on the issue and mentioned California's high hazard heat awareness training. Mr. Parsons commented that although climate change is a controversial topic, heat illness hazards are tied to the world getting hotter. Ms. Jolly commented that it was important to remember that general industry employers also have to deal with heat illness hazards and the relationship to employee exposure to heavy metals in hot conditions (e.g., lead, cadmium). Mr. Martinez shared information about a boiler/pressure vessel situation involving a delayed reaction to heat stress/ chemical exposure after entry and work inside a pressure vessel that ended up with an inspector being hospitalized. Mr. Thurston commented that he runs into situations where when heat stress is raised with certain employers, the response is that there is no standard and he does not think all heat illnesses are being properly recorded/reported. Ms. Jolly commented that the fatal accidents are just the tip of the iceberg when it comes to reporting heat illnesses.

Mr. Withrow discussed possible approaches by the Department to address heat illness hazards short of a regulation, including gathering more data on the extent of the heat illness problem by instituting an OIS code for heat illness to be used on VOSH complaints, inspections and interventions; enhanced outreach and training information; a possible VOSH compliance directive on how to conduct heat illness inspections; training for compliance officers on the new enforcement policy, and a possible special emphasis inspection program.

Informational Briefing: Safety and Health Management Systems State and Local Government (Injury and Illness Statistics, VOSH Penalty Regulation, SHMS Elements, State OSH Standards and Further Research Planned)

Mr. Jay Withrow, Director of Legal Support for the Department, presented a PowerPoint presentation on Safety and Health Management Systems (SHMS) in State and Local Government (copy available on the Virginia Regulatory Townhall).

http://townhall.virginia.gov/L/GetFile.cfm?File=meeting\92\28986\Agenda_DOLI_28986_v6.pdf

Mr. Withrow review state and local government (SLG) injury and illness statistics comparing Virginia to national statistics, and comparing SLG rates to private sector rates in Virginia. Since 2012, the Total Case Incident Rate (TCIR) for SLG has been higher than the rate for Virginia Private Industry in a range from 60.0% to 79.2%. Since 2012, the TCIR Rate for State Government has averaged 9% higher than Virginia Private Industry; and Local Government has averaged 91% higher than the rate for Virginia Private Industry.

Mr. Withrow reviewed the 56 fatalities that had occurred in SLG since October 1, 1992. Accident causes included contact with overhead high voltage line, falls in construction and general industry settings, construction work zone accidents, electrocution, diving, caught-in, trench collapse, struck-by equipment, machinery, or vehicle, roll-over and mowing accidents, explosion, interior structural firefighting, confined space, etc.

Mr. Withrow discussed the risks and costs associated with occupational hazards in the workplace:

- Employee injuries, illnesses and fatalities
- Damage to products, materials, machinery, equipment, property and other assets
- Interruption of governmental operations, including accident response by Police, Emergency
- Medical Services, Fire, VOSH compliance inspections, DEQ Inspections, etc.
- Replacing/retraining employees
- Liabilities to third parties
- The Virginia Tort Claims Act can be found at:
<https://law.lis.virginia.gov/vacode/title8.01/chapter3/section8.01-195.1/>

Mr. Withrow reviewed the new VOSH penalty statute and regulation for penalties in state and local government and generally accepted elements of safety and health management systems:

- Management Leadership
- Worker Participation
- Hazard Identification and Assessment
- Hazard Prevention and Control
- Education and Training
- Program Evaluation and Improvement
- Communication and Coordination for Host
- Employers, Contractors and Staffing Agencies
<https://www.osha.gov/shpguidelines/index.html>

Mr. Withrow noted that OSHA does not have a comprehensive standard on safety and health management systems, although there are safety and health program requirements contained in individual standards (e.g., Hazard Communication, Permit Required Confined Spaces, etc.).

Mr. Withrow discussed the importance of management commitment and employee involvement to successfully implement SHMS. He reviewed the many methods to enhance employee involvement:

Developing the program

- Serving on safety and health committees
- Reporting hazards and developing solutions
- Analyzing hazards in each step of routine and non-routine jobs, tasks, and processes
- Defining/documenting safe and healthy work practices
- Conducting site inspections
- Developing and revising safety procedures
- Participating in incident/near miss investigations
- Serving as trainers for current coworkers and new hires
- Developing, implementing, and evaluating training programs

Mr. Withrow reviewed State Plan SHMS standards and regulations for the states of Oregon, Hawaii, North Carolina, and California; and the various approaches taken (e.g., safety and health committees, written safety and health programs; training and education requirements, etc.).

Mr. Withrow informed the Board that the Department intends to conduct further research into the feasibility, costs and benefits of a comprehensive safety and health management system regulation applicable to Virginia State and Local Government entities, for consideration by the Safety and Health Codes Board. He noted that as part of the regulatory promulgation process, VOSH would have to gather information to be used by the Department of Planning and Budget for an economic impact analysis of any regulation. The Department intends to conduct surveys to determine what types of safety and health management systems are currently in use, and hold stakeholder meetings with various organizations and agencies that would be impacted by a SHMS regulation:

- Virginia Municipal League
- Virginia Association of Counties
- Virginia Local Government Management Association
- Virginia Colleges and Universities
- Division of Risk Management
- Authorities and instrumentalities such as the Washington Metropolitan Airports Authority, the Washington Metropolitan Area Transit Authority, and the GRTC Transit System
- Departments of Transportation, Corrections, Juvenile Justice, Fire Programs, Emergency Management, General Services, Health, Medical Assistance Services, Human Resource Management, State Police, Capitol Police, Alcoholic Beverage Control Authority, etc.

Mr. Withrow finished by stating that the Department would welcome participation of interested Board members in the stakeholder meeting process. Only one or two Board members would be requested to attend a particular stakeholder meeting.

Items of Interest from the Department of Labor and Industry

Mr. Davenport, Commissioner of the Department of Labor and Industry, stated that the Department was not successful in securing funding for the compliance side of the house during the last several General Assembly sessions. During the current budget cycle, Governor Northam did include full funding

for 12 VOSH Compliance unfunded vacancies in the amount of \$1.429 million dollars. This was a very important step to have the Governor include this in his budget. Unfortunately, both the House and the Senate chose not to include the funding in the budget. While the reconvened session will be held April 3rd, it is unlikely that the subject will be brought up and acted on again. Commissioner Davenport acknowledged the past support of the Board on this issue and noted that the Department needs to do a better job communicating collectively to our legislators in both the House and the Senate. We believe that a full complement of compliance officers helps us to prevent fatalities in the workplace. Year-to-date, VOSH has investigated 7 fatalities. As you may recall, we completed calendar year of 2016 with more than a 35% increase in fatal workplace accidents over the previous two years. During calendar year 2017, VOSH investigated 34 fatalities. Last calendar year, VOSH investigated 35 fatalities. We believe that anytime there is a fatality in the workplace, that is one too many and we believe that we can do better in Virginia.

Mr. Davenport stated one other proposal that the Administration proposed during the session was to create a Secretary of Workforce Development that would be a secretary in the Governor's Cabinet. The proposed legislation would have moved the Department of Labor and Industry and the Virginia Employment Commission out of the current Secretary of Commerce and Trade and into the Secretary of Workforce Development. The legislation did not pass and we do not believe that it's likely that there will be any additional action on that issue during the reconvened session.

Mr. Davenport thanked the Board for their service on the Safety and Health Codes Board and the Board's commitment to Safety and Health.

Mr. Stiff asked Mr. Davenport about the Department's funding request and previous discussions about a potential letter of support from the Board. Mr. Davenport stated that such a letter would not be appropriate at this time as all 140 seats of the General Assembly are up for re-election in November, so we expect that there will be some changes. There may be committee chair and other changes and when those things are more settled might be the right time to consider a letter of Board support. Mr. Parson asked that in an effort to get more inspectors, what the Board can do to help. Mr. Davenport stated that it is important to always communicate to legislators on the important work the Board and as well as what we do as a whole at the agency. There may be misconceptions sometimes in the employer community where they may not always know the value we provide to them and that is something that we need to continue to communicate. Ms. Jolly stated that you can mention OSHA and employee safety and health to political candidates.

Finally, Mr. Davenport discussed the tragic impact on families when they have lost a loved one in a fatal accident; whether it is a father, son, daughter, brother, sister in the workplace, it brings it real, real close and has a lifelong impact on that family. That's why the work that we do collectively is so important.

Items of Interest from Members of the Board

Mr. Parsons thanked Mr. Withrow for his presentation on Heat Illness and suggested that a Board regulation might be appropriate. Mr. Stiff asked for consideration of other Department options to effectively address Heat Illness issues. Mr. Parsons added that the general duty clause is not cutting it.

Meeting Adjournment

There being no further business, a motion was properly made and seconded to adjourn the meeting. The motion was carried unanimously by voice vote. The meeting adjourned at 12:22 p.m.