



## KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

January 25, 2022

### Public Meeting Minutes

The Kentucky Occupational Safety and Health (OSH) Standards Board, hereinafter referred to as Board, met January 25, 2022 via Zoom.

Chairman Jamie Link called the meeting to order at 1:00 pm EST. Chairman Link and Commissioner Kimberlee Perry confirmed public notice of the meeting as well as notice to the media was provided pursuant to applicable requirements.

Ms. Amy Pennington called the roll. Members attending were Ms. Angela Bednark, Ms. Caitlin Blair, Dr. Traci Byrd, Mr. William Carey, Mr. Hampton Henton, Mr. John Holbrook, Mr. James Kay, Mr. Kenneth Nichter, Mr. Charles Steve Sparrow and Mr. John Stovall. Mr. Robert "Mac" Stone was not present.

Chairman Link noted a quorum was established. Chairman Link introduced himself as the Secretary of the Labor Cabinet, which was in process of merging with the Kentucky Education and Workforce Development Cabinet. Chairman Link advised the new Cabinet will be the Education and Labor Cabinet.

Chairman Link requested a motion to approve the April 21, 2021 meeting minutes. A motion was made by Mr. John Stovall and seconded by Mr. Ken Nichter; motion passed unanimously.

Chairman Link inquired if there was any Old Business. There being none, Chairman Link moved to New Business. Chairman Link turned the floor over to General Counsel Sam Flynn to provide an update on the aforementioned merger.

Mr. Flynn advised the merger would have no impact on this Board or the Department of Workplace Standards at large, so no cause for concerns. Mr. Flynn let members know if they had specific questions, they could contact his office. He advised the legislative process can take bills in a number of ways, but he will try to keep members informed of any changes that will affect the Board or Department of Workplace Standards generally.

Mr. Flynn continued with New Business advising on legislative updates. Mr. Flynn advised House Bill 475, which was codified as KRS 338.062, stated after July 1, 2021, neither the Standards Board, nor the Secretary, shall adopt or promulgate any occupational safety and health administrative regulation that is more stringent than the corresponding federal provision enforced by the United States Department of Labor. The bill passed and is effective. It impacts about thirteen (13) OSH regulations Kentucky currently has on the books, all of which are state-specific OSH regulations or have a state-specific OSH component. This means when these regulations come up for re adoption or repromulgation, the Cabinet and this Board will be



prohibited from repromulgating those to the extent they are more stringent than the federal standard. Mr. Flynn advised House Bill 208, filed this session by Representative Blanton, would add language to that provision to allow for us to re-promulgate essentially in perpetuity those thirteen (13) regulations that were in existence prior to July 1, 2021. Mr. Flynn advised that any questions relating to either bill can be directed to his office.

Chairman Link inquired if there were any questions. There being no questions, Chairman Link turned the meeting over to Commissioner Perry to provide an update on the OSH Program. Commissioner Perry welcomed members and stated COVID remains an area affecting everyone. Commissioner Perry advised Kentucky OSH is not enforcing the President's COVID emergency temporary standard. The Occupational Safety and Health Administration (OSHA) reports a new COVID standard will be forthcoming in about six (6) to nine (9) months.

Commissioner Perry advised enforcement staffing remains an issue. There are twelve (12) health compliance officers and eighteen (18) safety compliance officers. We are six (6) compliance officers below our federally mandated benchmark and actively looking for new qualified hires, as state salaries are unable to compete with the private industry. In 2021, the Division of OSH Compliance received an increase of formal complaints by sixty-two (62) percent, leaving staff with a very heavy workload.

Commissioner Perry stated the Division of OSH Compliance initiated an emphasis program in 2021 addressing the electronic submission of injury and illness records. Thirty-four (34) inspections opened for employers that failed to electronically submit their injury and illness data to OSHA, resulting in twenty-nine (29) citations with penalties totaling \$51,000.

Commissioner Perry advised Kentucky OSH remain partners with the Division of Air Quality in the Energy and Environment Cabinet. Employers are required to report to the Division of Air Quality ten (10) days in advance if they have jobs or projects involving asbestos removal and we received 333 notices in 2021.

Commissioner Perry advised Kentucky OSH receives notices of incidents involving toxins or poisons from the Kentucky Regional Poison Center of Kosair Children's Hospital. Kentucky OSH received fourteen (14) notices from the Poison Control Center last year.

Commissioner Perry stated Kentucky OSH has an agreement with the University of Kentucky Occupational Medicine Doctorate Program. Kentucky OSH hosted one (1) doctor for a thirty (30) day rotation. The doctor gains knowledge and general insight of the OSH Program and employee workplace hazards.

Commissioner Perry advised the annual Governor's Safety and Health Conference and Exposition is again cancelled due to COVID. Kentucky OSH looks forward to hopefully hosting the event in May in Bowling Green. Commissioner Perry reminded the board about the [kysafe.ky.gov](http://kysafe.ky.gov) website, which hosts free OSH webinars and modules with new content added as it is developed. Commissioner Perry also reminded the board about the KYSAFE mobile app



where current KYSAFE events and trainings can be found as well as providing the ability to report hazards or violations.

Commissioner Perry turned the meeting over to Director Lynn Whitehouse to provide an update on consultation tornado outreach efforts in western Kentucky. Director Whitehouse advised KYSAFE, which is the Division of OSH Education and Training, has conducted outreach efforts for workers cleaning up areas affected by the tornados that caused catastrophic damage, including seventy-six (67) lives lost, on December 10-11, 2021. Cities affected were Casey, Hickman, Mayfield, Bowling Green, Benton, Princeton, Dawson Springs, Bremen, Campbellsville, and other surrounding areas. KYSAFE, with the donations of partnering companies, provided personal protective equipment (PPE), such as gloves, hearing protection, high-visibility apparel, and hard hats, along with educational materials such as OSHA Fact Sheets and Quick Cards. KYSAFE printed business cards containing QR codes to access safety and health resources from the KYSAFE and OSHA websites. Efforts concentrated on eliminating additional injuries, illnesses, and fatalities. On December 18, 2021, teams of two (2) KYSAFE consultants were dispatched to each affected area to assess community needs. Teams checked in with Emergency Management, then proceeded to distribute educational materials and appropriate PPE, especially if any unsafe act was identified. KYSAFE continues to visit the areas and outreach efforts have impacted thousands of workers in the Commonwealth.

Chairman Link thanked Commissioner Perry and Director Whitehouse for their updates and turned the meeting over to Mr. Chuck Stribling, OSH Federal-State Coordinator. Mr. Stribling thanked Secretary Link and welcomed board members and members of the general public.

Mr. Stribling advised there were three (3) regulations promulgated since the April meeting, all were promulgated as an emergency standard. First was 803 KAR 2:330E, the adoption of OSHA's first emergency temporary standard which was Occupational Exposure to COVID-19. OSHA published the rule June 21, 2021, and it applied to healthcare and healthcare support services only. Kentucky OSH was required by federal mandate to have the regulation on the books no later than thirty (30) days after the June 21, 2021 publication. It was adopted July 20, 2021 as 803 KAR 2:330E. Mr. Stribling advised that OSHA's basis for the emergency temporary standard was COVID-19 posed a grave danger for employees throughout the nation. Kentucky's statute allows Secretary Link to promulgate a rule absent of the Standards Board approval in order to meet a federally mandated timeline.

Mr. Stribling advised that on December 27, 2021, OSHA issued a public statement that they were withdrawing the aforementioned rule except for the reporting and recording sections. OSHA advised the reporting and recording sections of the rule were promulgated under a different section of the Act that allows OSHA to keep it in force. The statement is available on OSHA's website. Mr. Stribling stated, as previously mentioned by General Counsel Flynn, Kentucky OSH is not currently enforcing the provisions of the standard OSHA announced they are withdrawing. To date, OSHA has not issued the official Federal Register notice withdrawing the rule, but Kentucky OSH anticipates seeing it soon, at which time Kentucky OSH will act accordingly.



Mr. Stribling advised on two (2) other regulations, 803 KAR 2:321E and Ordinary, Occupational Health and Environmental Control, and 803 KAR 2:426E, Stairways and Ladders. Both rules simply adopt the federal requirement, nothing above and beyond. Both rules were put before the Board at the April 21, 2021 meeting and the Board adopted the amendments. The regulations were filed April 27, 2021 and set to become effective November 30, 2021. However, on November 4, 2021, the Legislative Research Commission notified the Labor Cabinet that a certification was not filed for the regulations and the amendments were ineffective. Mr. Stribling explained that the oversight fortunately resolved by quickly acting to file the rules as emergency regulations to meet our federal mandate and ensure coverage. Both regulations were filed November 23, 2021 as emergency regulations and the ordinary regulations were filed simultaneously. The ordinary regulations will replace the emergency regulation after completing the promulgation process. Mr. Stribling turned the meeting over to Chairman Link.

Chairman Link inquired if there were any questions. Hearing none, Chairman Link turned the meeting over to Ms. Robin Maples, OSH Standards Specialist, for consideration of multiple administrative regulations.

Ms. Maples welcomed the board members and addressed proposed amendments for four (4) OSH regulations. All were proposed updates to the Necessity, Function and Conformity language and primarily technical in nature to establish consistency across the body of the regulations. Additionally, minor edits to the Definition section were suggested to harmonize definitions throughout the regulations. All four (4) were construction industry standards. The first was 803 KAR 2:402, General Safety and Health Provisions, last amended October 2015, and adopts 29 C.F.R. 1926 Subpart C. The second regulation was 803 KAR 2:411, Scaffolds, last amended October 2013, and adopts 29 C.F.R. 1926 Subpart L. The third regulation was 803 KAR 2:419, Demolition, last amended October 2013, and adopts 29 C.F.R. 1926 Subpart T. The final regulation, 803 KAR 2:445, Confined Spaces in Construction, last amended October 2015 and adopts 29 C.F.R. 1926 Subpart AA. All proposed amendments were supported by the Kentucky OSH Program.

Chairman Link inquired if there were any questions on the proposed regulatory amendments. There being no questions, Ms. Maples reiterated, if adopted, 803 KAR 2:402, General Safety and Health Provisions; 803 KAR 2:411, Scaffolds; 803 KAR 2:419, Demolition; and 803 KAR 2:445, Confined Spaces in Construction will be amended. Chairman Link asked for a motion to approve the adoption of the proposed amendments. A motion was made by Dr. Traci Byrd; seconded by Mr. Steve Sparrow and the motion passed unanimously.

Having no further business to discuss, Chairman Link thanked the presenters and advised members to feel free to present any questions that arise to a member of the Cabinet or himself. Chairman Link proceeded to ask for a motion to adjourn the meeting. A motion was made by Mr. John Stovall and seconded by Mr. James Kay; motion passed unanimously.

The meeting adjourned at 1:36 pm EST.