



St. Louis Chapter Newsletter



In This Issue

- Upcoming Events
- [President's Note](#)
- [WISH Save-the-date: Virtual Event](#)
- [WISH Gold Award Announced](#)
- [Newsletter Formatting Note](#)
- [Golf Scholarship Fundraiser Information](#)
- [Membership Update](#)
- [Chapter Board Contacts](#)
- [Committee Chairs](#)
- [Safety Article by Bill Kincaid](#)

Important Links

- [Chapter Website](#)
- [Chapter Documents](#)
- [Current Job Postings](#)
- [Like Us on Facebook](#)
- [Follow us on Twitter](#)
- [Connect on LinkedIn](#)

Upcomming Events

No Current In Person Meetings Planned

The chapter executive board continues to meet monthly and evaluate the current conditions for meetings. Currently our typical style of meetings are not within local guidelines. The board will meet again in July to evaluate future plans for networking and meeting in a safe manner.

Scholarship Golf Outing - Friday, August 21

The golf outing has been rescheduled to this date. [Sign up today](#), and see the flyer for more information below. The board continues to evaluate the best ways to maintain social distancing and COVID safety measures during this worthy event raising money to support safety education in our area.

President's Note

~Steve Williams

Although I have never served our country, I find myself revolving my days lately around a mantra used by the Marines, "Improvise, Adapt, Overcome". A lot has changed since our last meeting at the PDC in March. The world as we know it is fundamentally different at home and at work. Positions within our own companies have changed or been eliminated, job responsibilities may have shifted, and we may even have new office partners seated around our kitchen table. While these times are undoubtedly challenging, I firmly believe that safety professionals are some of the most adaptable individuals out there. The last three months may have tested us in ways that we couldn't have possibly imagined, but I sincerely believe that these times have opened doors for our profession and allowed our colleagues and customers to appreciate the importance of the job we do, day in and day out.

July 1st begins the new calendar year for the ASSP. As we transition into a new year, please help me welcome the new members to the board. I will be taking over as Chapter President and look forward to leading the best chapter in our region. Dennis Pivin will serve as Vice President, Mae Patrick will be our

Treasurer, and Nate Richardson will be our Secretary. We all look forward to seeing everyone in our next group meeting.

When I was growing up when my three sisters and I were faced with a big pile of dishes, my mom would always tell us "Many hands make light work." Our chapter is successful because of the work and dedication of our members. If you want to get involved with the chapter, please talk to one of the board or committee members.

Thank you ~ Steve Williams



Join us! Tuesday July 21st, 2020
4:00 pm to 5:00 pm Central Time

(MARK YOUR CALENDARS! THIS IS A VIRTUAL
PRESENTATION – DETAILS COMING SOON!)

Kathi Dobson is a 21+ year veteran of the construction industry and of Alberici Constructors, Inc. Prior to her work in construction, she was a hospital-based critical care nurse with a Bachelor's Degree from Mercy College in Detroit. She works throughout the country & North America supporting safe work efforts in her company's automotive, mining, heavy civil and industrial processes markets. Kathi has held leadership positions with NAWIC at the chapter, region and national levels. She has chaired the OSHA-NAWIC National Alliance since 2013.

Kathi is a passionate advocate for women in the construction building trades and her self-proclaimed mission is to enhance the success of women through efforts to advance safety in the industry. Attention on PPE issues, recruiting and retaining women in construction and identifying ergonomic concerns, harassment issues, bullying, sexism, inclusion, sanitation and more keeps her drive alive.

PPE Issues Affecting Women





2019-2020
St. Louis ASSP Chapter
SPECIAL THANKS TO
ALL OF YOU WHO
HELPED US ACHIEVE
THE GOLD LEVEL
DISTINCTION AWARD
FROM THE WISE CHAPTER
OF ASSP



Newsletter Formatting Note

~Dan Bembower

Some of you have noticed that the chapter newsletter has not been sent as regularly this year as in years past. I am hopeful that this new format will solve some of the technical difficulties we recently encountered, and will bring relevant information to you in the most accessible manner possible. If you're anything like me, you have too much email in your inbox already.

We strive to make these emails meaningful to you and easy to navigate, and so we will continue to experiment with the format and content of the chapter newsletter. If you have ideas to share, or if you want to participate in the newsletter in any way, please let the board know at updates@stl.assp.org or contact me directly at dan.bembower@usi.com



ASSP Scholarship Golf Tournament Fundraiser



*Protecting
People
Property
and the
Environment
since 1911*

RESERVATIONS

FRIDAY - AUGUST 21, 2020

7:30 am – Registration

8:30 am – Shotgun Start

1:30 pm – Lunch and Awards

**The Prairies Golf Club
300 Tricentennial Ct.
Cahokia, IL 62206
Phone: (618) 277-3700**

Please complete the attached
Registration Form promptly to
guarantee your reservation.

Payment can be made via check
or Online at <http://stl.asse.org/>

MAKE YOUR RESERVATION EARLY!!!

Limited to 144 PAID golfers!

\$100 per person - \$400 for a team of four
PAYMENT is due in FULL by August 7, 2020

ALL PLAYERS will be entered
into a drawing for prizes.
Additional tickets may be
purchased on event day.

SPONSORSHIP OPPORTUNITIES

- 1) Co-host for refreshments & meal for \$200
- 2) Sponsor ONE golf hole for \$150
- 3) Sponsor TWO golf holes for \$200
(One on the front 9 and one on the back 9)
- 4) Corporate Level Sponsor - Includes
a golf foursome with mulligans, skins,
two hole signs, a large banner displayed
at registration, lunch and awards
ceremony for \$1,000
- 5) Donate raffle and "goodie bag" items
Call Janola Rigsby at (314) 267-2624

**All beverage and meal sponsors will be listed
on a banner at registration and awards ceremony**

ASSP Scholarship Golf Tournament Fundraiser



Registering online
is fast and easy at
<http://stl.assp.org/>

or Mail Check and
Registration Form to:

Nick Zahner
2459 Country Wood Drive
Maryland Heights, MO 63043
Make Checks Payable to
"ASSP ST. LOUIS CHAPTER"

P: 314.743.7558
E: NZahner@Murphynet.com

You can also contact
Sydney White with any questions
P: 270.869.4127
E: Sydney.White@wwt.com

REGISTRATION

Your name:

Company:

Address:

City/State/Zip

Email:

TEAM

Name of Golfer

Company

Phone Number

Name of Golfer

Company

Phone Number

Name of Golfer

Company

Phone Number

Name of Golfer

Company

Phone Number

**PLEASE REGISTER ONLINE
OR EMAIL THIS REGISTRATION FORM
SO WE MAY RECORD YOUR TEAM INFORMATION.**

Thank you for your participation!

REGISTRATION DETAILS

VALUE

Golf @ \$100 per person or \$400 per foursome		\$
My company will co-sponsor refreshments and meal for \$200	<input type="radio"/> Yes <input type="radio"/> No	\$
My company will sponsor ONE golf hole for \$150	<input type="radio"/> Yes <input type="radio"/> No	\$
My company will sponsor TWO golf hole for \$200	<input type="radio"/> Yes <input type="radio"/> No	\$
Corporate Level Sponsor - Includes a golf foursome with mulligans, skins and all three course games, 2 hole signs, a large banner displayed at registration, lunch and awards ceremony for \$1,000	<input type="radio"/> Yes <input type="radio"/> No	\$
I wish to prepay the following: _____ mulligans for \$5 each (2 per golfer maximum please)	<input type="radio"/> Yes <input type="radio"/> No	\$
My company will donate attendance & golf prizes	<input type="radio"/> Yes <input type="radio"/> No	\$
<i>Thank you for your participation!</i>	GRAND TOTAL	\$

Membership Update

There are currently 600 members of the St. Louis ASSP chapter. There were no new members in June's membership report. If you know someone who should be a member of the world's largest safety association, please invite them to [join today!](#)

New members are sent an invitation to join our next monthly meeting for a free lunch. Members who are currently unemployed are also invited to join us free of charge.

St. Louis Chapter Executive Board Contacts

President - Steve Williams - swilliams@frenchgerleman.com
Vice President - Dennis Pivin - DPivin@aegion.com
Secretary - Nate Richardson - nate.richardson.safety@gmail.com
Treasurer - Mae Patrick - mpatrick@lockton.com
Past President - Rick Reams - ricky_reams@hotmail.com

Mid-Missouri Section Officers

Chairperson - Bret Derrick - bderrick@broadwayergonomics.com
Vice Chair - Mark Woodward - mwoodwar@mem-ins.com
Membership - Bethany Watson - bethany@365safetyervices.com

Chapter Committee Chairs

Website – Dave Callies – dcallies@kelpe.com
Maintains website with updated news, chapter events, and job postings
Newsletter – Dan Bembower – dan.bembower@usi.com
Publishes and distributes the chapter newsletter to all chapter members
PDC Chair – Dennis Pivin – DPivin@aegion.com
Coordinates logistics of professional development activities
Membership – Dianne Gibbs – dianne@ideasftp.com
Ensures new members are recognized & introduced at membership meetings
Public Relations – Steve Williams – swilliams@bellelectrical.com
Promotes chapter activities to the general public. Coordinates poster contest
Awards & Honors – Bill Kincaid – billkincaid@yahoo.com
Recognizes member achievement through chapter awards
Scholarship – Rob Miller – robertmiller91@yahoo.com
Promotes student scholarships & continuing education scholarships for members
Programs – Tim Michel – tmichel@keeleycompanies.com
Plans the program time and needs for presentations & coordinates schedule
Social Media – JaNola Rigsby – jrigsby@qualsafesolutions.com
Maintains Face book & Twitter accounts promoting discussion with local membership

Please contact a board member or committee chair with comments or if you would like to participate in any of the chapter activities.

Q&A: The Ins and Outs of (Not) Kicking OSHA Out

~Bill Kincaid, P.E., CSP, CIT

This month we're going to take a little trip into OSHA territory. We're going to talk about what we at OSHA called "denial of entry" resulting in a "compulsory process", also known as "making OSHA get a warrant".

And we'll do it in a Q&A format. This article isn't going to be a you should /you shouldn't debate. It's just supposed to be informative.

Please note I'm not an attorney, I don't perform legal services, and this article is not legal advice. I am only sharing my experiences as a former OSHA engineer and nothing more. If you have OSHA-related legal questions, please consult an attorney who has substantial experience in OSHA law. OSHA issues are much different from taxes and corporate law, so the typical corporate attorney might not be as prepared for OSHA dealings as would be an attorney with solid OSHA experience.

For various reasons, I am not a proponent of denying OSHA entry. In thirty years in the safety profession I can't remember ever advising anyone to do it, although it's never up to me. Employers should consult with an attorney prior to making that decision if they want a yes/no opinion. For my part, I can simply try to explain the processes we OSHA compliance staff followed and how things played out as a result. In this article I will be as fair to the subject as I can and attempt to cover a few questions of interest.

Q: Why would a company deny entry to OSHA rather than voluntarily let them start their inspection?

A: As an OSHA inspector I was often puzzled to when a company denied me immediate entry into their facilities. It didn't happen often. I would show up, tell them why I was there, the company representative would leave for a while, and when they came back they would send me packing. Sometimes it's their company policy, sometimes their company attorney likes to deny entry, sometimes they think there's a chance OSHA will leave and never come back, and sometimes it's just a bad day to start an inspection.

Q: Can we ask for a warrant whenever OSHA shows up anywhere?

A: There are situations where OSHA wouldn't need a warrant to conduct an inspection even if you told them to get one.

When a compliance officer in an area open to the general public can see workers in danger, much of the inspection could be finished before even entering. You're not supposed to sit there for an hour taking photos like a stalker, but you are allowed to take photos as you walk from your car to the site to present your credentials. You can get a lot of photos in a minute or two which show employees at risk.

The only question would be whose employees they might be. When it's a one-contractor job, such as billboard replacement, and there is a company truck sitting there with the company name on the side, it's not that hard to know what company is responsible. Plus, when you approach those employees, often they're just the hourly working people. As part of the process of asking permission to inspect you ask them who their supervisor is and the name of the company they work for. That's just about enough to issue citations, so the inspection is virtually completed before it's officially started.

At one point, I did a complete inspection and issued citations entirely based on a newspaper article with one photo which showed a couple people in a deep, unprotected trench. I was in St. Louis and the inspection site was a couple hours drive away, but I never went there. They accepted the citation and paid the full penalty.

Also, you may not be able to deny entry when you are at a site controlled by a "host employer" such as a Federal building, military base or a construction site. This applies to all types of locations, not just construction, by the way. The controlling employer can grant OSHA full access to inspect every contracted employer on the site regardless of whether those employers want to deny entry.

For example, the St. Louis Airport Authority might grant permission to inspect an airline's operations or one of the subs the airlines hire to run their airport operations. (At the airport the exception would be for the parts of the operation regulated by FAA, such as the "ramp" where the planes are and the runways.) Or, an auto assembly plant might grant OSHA permission to inspect a vendor building subassemblies on their premises. The owner of a construction site can even be the controlling employer and let you in to inspect all the contractors.

Q: Is it risky to tell OSHA to get a warrant? Can that strategy backfire?

A: Most of us probably know already that we have an Amendment in our Constitution's Bill of Rights which protects us against unwarranted search and seizure. That Fourth Amendment states:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

It's a Constitutional right every citizen has. OSHA people know it's a Constitutional right and they are not supposed to be less forgiving when someone simply exercises their rights. They take an oath to uphold the Constitution.

I can assure you in my OSHA years I never increased the scrutiny on any employer because of a search warrant.

However, some experts who study OSHA contend on average there are harsher outcomes for inspections which were conducted under a warrant. Namely, more citations and higher fines. Is that because the OSHA inspector is mad at you because you made them fill out a bunch of legal paperwork? Are you going to be punished for making them leave and throwing off their plans for the day? Don't assume that. It's the easy answer but the easiest answer to a question isn't always the best one.

Think about this. When OSHA inspects with your permission, there's a little give-and-take where you can have a little control over how the inspection is conducted in exchange for waiving your Constitutional right. You might say no videos, or make sure our safety person is always there or ask permission before you take a photo. You lose that when you opt for a warrant.

A warrant gives the inspector free rein to inspect whatever it takes to fulfill the purposes of the inspection, and to take all the photos, videos and other evidence necessary towards that goal. Asking for a search warrant is in a sense like giving the OSHA person their own set of keys to your building. Does that sound like it can help you? In general, I think it rarely accomplishes anything good.

Q: When you tell OSHA you're denying entry, what are the chances they won't come back with a warrant?

A: I don't have any data on this, but when I was sent away for a warrant, I always got one and came back. OSHA is not required to show probable cause that a violation has occurred in order to obtain a warrant. OSHA essentially must provide only a reasonable basis for believing that a violation is likely to be found, or this inspection assignment is a routine inspection pursuant to the regulatory framework. The typical judge will sign off on a warrant when OSHA's reasons for trying to initiate the inspection are valid, and they generally are. The one exception to always getting the warrant was one of those times I saw something hazardous from my car driving by a construction site and tried to enter to inspect one subcontractor. I remember the judge telling us to leave well enough alone in that instance.

The typical Federal judge wants to make sure OSHA can do its job, but judges are also careful about allowing OSHA to do something which creates a greater injustice than previously existed. Shoving an inspector into a construction site where only one contractor out of multiple subs had only one momentary hazard might have done just that. So I didn't get that warrant. It didn't really matter as that one sub would have been off the job by the time I came back, anyway.

Q: What happens when you tell OSHA they will not be allowed to start their inspection?

A: It's been years since I worked for OSHA, but I think the general format hasn't changed much since then. Upon being told the inspection they'd hoped to start cannot proceed as planned, the OSHA person will leave your premises and contact their immediate supervisor. They will soon return to their office and participate in a conference call or two with OSHA officials and legal counsel to discuss the situation. Then a lengthy process to fill out a warrant application begins.

When the application is ready, it is delivered to the Federal judge - usually by the compliance officer who was denied entry. The judge will ask some questions about the denial of entry to make sure it

was truly a denial rather than some sort of misunderstanding; about the reasons for attempting the inspection in the first place, and other details as to what it will take to complete the mission. If satisfied by the answers, the judge will sign off on the warrant. This is called an “ex parte” proceeding because only the government is represented. The employer has no say in it and is not there to present their side of the story.

In my experience from start to finish it usually took a week or more to get a warrant in hand. At any time during the process, if the employer changed their mind and called us to say we could come back and inspect without a warrant, we would be pleased to drop the warrant application process and oblige.

Q: Doesn't it ruin OSHA's prized "no advance notice" policy – the "element of surprise" - if you make them get a warrant, and then you have a little extra time to fix things up before they come back?

A: In theory, yes. But even when the warrant process moved particularly slowly and it took almost a couple weeks, you'd be surprised by how many obvious violations would be there when I came back. Many companies who sent me away for a warrant made zero use of their advance notice opportunity. Remember the thing about the number of citations and fines being higher for warranted inspections? You'd think with a week or so advance notice they would have been better prepared. But maybe these companies denied entry because they didn't really have a good handle on compliance matters, and a week wasn't enough to fix that. They got more citations because they had more problems.

That also applied when the employers knew exactly what I would be looking at when I came back, namely, when there was an employee complaint. If I showed up to do a complaint inspection and they denied me entry, I always gave them a paper copy of the complaint before I left. What else could I do? If there were serious hazards the last thing an OSHA person should do is hide them from the employer in the hopes of writing citations later.

(Note that if an OSHA inspector presents any of my companies with an employee complaint and after being denied entry takes it back, I'm calling their Area Director immediately, and possibly the Regional Office, and maybe the National Office. OSHA is supposed to protect employees from harm. This means never exposing them to alleged dangers for an extra week just so there will be a shot at some juicy citations when the inspection finally starts! It's not a cat-and-mouse game.)

But even when handed a list of the specific items I would be looking for when I returned, employers often didn't do anything to prepare.

In one case, I had an employee complaint alleging thirteen serious items. The manager kicked me out, so I left the complaint with him and told him to investigate the allegations because I would be back. I returned with my warrant a week and a half later to find all thirteen of those allegations were exactly as described in the complaint. Plus a few more.

No attempt by that employer to “hide” or fix anything. For example, the complainant alleged there was a 480V transformer box on the floor in the middle of a work area which would give you a terrific shock through your pants if you brushed up against it. When I went to look for it, there it was, with a danger sign on top drawn onto a pizza box with a Sharpie. It was so hot my voltmeter almost maxed out on it. There was no way the employer could say they weren't aware of it. Being a nice guy, I didn't call it willful disregard for employee safety, even though it was just that. It made me wonder, though, if they had no plans to address any of the items, why delay my inspection for a week? Why not just get it over with? Made no sense.

Q: What if the reason for the inspection is a serious injury or fatality we were required to report to OSHA? Can we ask for a warrant?

A: It is very unusual for an employer to deny entry when there is a fatality. Yes, you can do it. If things go the way they normally do OSHA will return with a warrant, and maybe more quickly than usual. There will probably be a bit of a stir back at the Federal office building as this doesn't happen often. It will be regarded as an unusual event and will possibly be seen with some suspicion as to the motives.

Recently a company I work with had to report a fatality to OSHA. As we all should know by now, any fatality which happens in the workplace or which may be work-related has to be reported to OSHA within eight hours of learning of the occurrence (except for a fatality which occurs over 30 days after the causal event). So, they dutifully called it in. And OSHA very soon showed up to investigate.

The twist in this case is this company is a subcontractor to a larger company, and the deceased employee was working on the premises of that larger company at the time of his death. When OSHA arrived, the larger company turned them away at the door. The employer would never, ever have done that.

The controlling employer evidently has a practice of denying entry and must believe there is something to be gained in doing so. In this case I suspect the host employer's management thinks the host company will be cited as well as the employer of the deceased person, and they are onto something there as it is a possibility. They also seem to believe if asked to leave then OSHA might not come back. In a fatality situation OSHA's reason for initiating the inspection is a good one which will hold up in the easy *ex parte* proceedings used to establish warrantability and will grab the judge's attention.

OSHA will be back, and they will investigate the fatality, and if they see any violations which they feel should be attributed to the host employer, they will cite the host employer.

Q: What if our company policy is to always deny entry? Can that help us?

A: I'm not sure how it can, but again, this is an opinion based on my scattered experiences and not legal advice. What I've seen is that OSHA keeps track of denials of entry. When there are repeated denials of entry at a given location – and when I say “repeated” I mean a couple in a row – they can, and will, prepare a warrant in anticipation of a denial before they leave the office to start the inspection. They know what's coming, so they prepare for it.

Here is how I've seen this play out. A company I worked with had an “always deny entry” policy. They also had a rather harsh management style with a lot of disgruntled employees who knew they could complain through their union with 100% anonymity and without concern about possible reprisals. As a result, there were employee complaints coming into OSHA more frequently than usual. I think this company denied OSHA entry a few times, then one day OSHA showed up with an employee complaint and an anticipatory warrant. All the drawbacks of a warranted inspection, none of the advance notice. It gave this company good reason to re-evaluate the costs (many) and benefits (none) of their hard-nosed policy.

That's more than enough blabbering for one month's worth of discussion. Knowing many of our readers might have a little more time on their hands than usual this month, hopefully that's okay. Our goal of being informative about OSHA search warrants being accomplished, we will call it a day. Thanks for reading!

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to unsubscribe from ASSP St. Louis Chapter messages.