



A publication of the  
Oregon Independent Aggregate Association  
PO Box 571  
Stayton, Oregon 97383  
[www.oraaggregate.com](http://www.oraaggregate.com)

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## *Oregon Independent Aggregate Association Newsletter*

**April 2019**

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Members of OIAA and other mining industry representatives met with MSHA in Washington D.C. on April 9<sup>th</sup>, including Kim Redding with N-Compliance Safety Solutions; Matt DeAtley with DeAtley Law; Blair Brundige with B&B Roads; Sam DeAtley with DeAtley Crushing Service; and myself. As most of you know, the impetus for this meeting was the inappropriate and abusive inspection practices recently used by MSHA inspectors in the Northwest. Besides bringing these events to light, this meeting was an excellent opportunity to discuss larger concerns directly with some of the highest levels in MSHA.

We shared our experiences and urged MSHA to ensure their staff professionally execute the agency's mission promoting safety and health in the mining industry. Unprofessional interactions can create an atmosphere focused on inspector management rather than worker safety. We do not want to drift back to the adversarial environment from about 10 years ago, which precipitated the formation of OIAA and challenges from industry groups nationwide.

MSHA staff made a commitment to investigate our complaints and also improve communication with our local sector. They highlighted that MSHA wants to encourage open communication with the industry. Suggestions included having MSHA representatives attend industry meetings and stay in frequent contact to discuss topics of concern. This could include having MSHA attend one of our Board meetings in the near future.

During discussions, we emphasized that OIAA is mostly an association of small and family-owned businesses. While the punitive threat of fines is a common practice to steer businesses toward compliance, excessive focus on fines causes undue hardship. This is especially true for small businesses that have limited resources and staff. We asked that MSHA consider increasing efforts to educate miners at their mine sites, including providing more site walks and mock inspections by appropriately trained staff, to help miners identify safety issues and discuss them openly without fear of being immediately cited.

We thank Brian Goepfert, Deputy Administrator for Metal and Nonmetal Mine Safety and Health, for providing the meeting space at MSHA's Arlington offices and organizing a team of staff for discussions. In attendance were Mr. Goepfert, David Weaver (Deputy Administrator for Coal), Kevin Burns (acting Deputy Director for Educational Policy and Development), Brian Thompson (acting Western District Manager, via video conference), and Dennis Yesko (acting Assistant Manager for Western District, also via video conference). We appreciate these MSHA representatives taking the time to meet with us and hear our concerns.

Hopefully improved communication and more fair inspections will result from our meeting. OIAA thanks Kim Redding for arranging this important meeting allowing us to speak up for the industry.

**Erick Staley**  
**Chairman**

*Following Article provided by Matt DeAttley*

## **What is Gravity and Negligence According to MSHA?**

In my previous article, I focused on the definition of an S&S citation and what the requirements are for an MSHA inspector to issue an S&S citation. I discussed that the gravity of the citation, specifically the likelihood of injury and the severity of the injury, are two key factors for an S&S citation. For this article, I will expand on the MSHA definitions of gravity regarding citations. With this information, mine operators can take a proactive stance when an inspector is issuing a citation.

### **Citation Box 10 – Gravity**

As I mentioned in my previous article, four areas comprise the determination of the gravity of a citation: (1) the likelihood of injury, (2) the severity of the injury, (3) S&S designation, and (4) the number of people affected. We covered S&S in the previous article and the number of people affected is simply the number of people that receive injuries if the accident were to occur, so I will not cover those two areas in this article.

Box 10A of the citation form is the likelihood of an injury evaluation. The inspector is anticipating an accident that will result from the violation, then assuming the anticipated accident occurred. The inspector then makes a determination on the likelihood that the anticipated accident will result in an injury, using factors such as the frequency miners are exposed to the hazard, the number of miners exposed, the location or extensiveness of the hazard, or the length of time the hazard has existed. The key to this factor of gravity is that it is the determination of the likelihood of the injury, not the accident, occurring.

- No likelihood – Where there is not a violation of a mandatory health and safety standard. In other words, the violation cannot result in an injury (for example, paperwork violations).
- Unlikely – Violations which normal mining operations would not expect to create circumstances necessary to trigger the injury.
- Reasonably Likely – Violation where an injury or illness is reasonably likely to occur. Reasonably likely does not mean “more probable than not,” instead there is a violation that normal mining operations would expect to create circumstances necessary to trigger the injury causing event.
- Highly Likely – A violation where an injury is highly likely to occur. In other words, the circumstances necessary to trigger an injury or illness causing event already exists and it is merely a matter of time before an injury occurs.
- Occurred – When an injury or illness has resulted from an accident. Remember, this is the likelihood of an injury, not an accident. If an accident has occurred and it did not result in an injury any citations issued should not be written as “occurred”.

Box 10B is the severity of the injury evaluation that the inspector reasonably believes will occur from the violation. In other words, the inspector is assessing: if the violation led to an accident, and the accident resulted in an injury to a miner, then how severe is the injury? The inspector should make this evaluation entirely independent of the likelihood of the injury or illness — the likelihood of an accident will not change how severe the resulting injury is.

- No Lost Workdays – Any injury resulting from a possible accident will not cause the miner to miss any days of work after the accident. If the injury expected is minor enough that the miner only needs to take the rest of the day off, the inspector should write the citation as no lost workdays.
- Lost Workdays/Restricted Duty – Any injury or illness which would cause a miner to lose one or more full scheduled workdays after the first day of the injury or illness or which would cause one or more full workdays of restricted duty.
- Permanently Disabling – Any injury or illness which would be likely to result in the total or partial loss of use of any member or function of the body (even a fingertip!).
- Fatal – Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.

### **How Does This Help?**

Knowing how an MSHA inspector determines the gravity of a citation can help a mine operator ask the right questions and help the inspector properly evaluate the violation. The inspector is not at the mine every day and does not know how the miners interact with the violation or how the mine is operated. The inspector is simply creating a scenario, in his imagination, of the accident that the inspector anticipates will result from the violation. This scenario is incredibly subjective, and a mine operator should ask the inspector for details about the scenario. This gives the operator a chance to correct any inaccuracies the inspector may have assumed about the mine operation. For example, miners may access the area less than the inspector believes, which will strongly affect the likelihood of injury designation.

It is important to remember that these conversations will not always cause an inspector to re-evaluate his determinations. However, if properly documented, these conversations may lead to invaluable evidence when contesting the citation. Such documentation will provide a much stronger case for reducing the citation than the fading memory of the hazard.

For examples of how an inspector should evaluate the gravity in a variety of scenarios, see the MSHA Citation and Order Writing Handbook for Coal Mines and Metal/Nonmetal Mines, PH13-I-1 (1), at <https://arlweb.msha.gov/READROOM/HANDBOOK/HANDBOOK.HTM>

### **About the Author:**

Matt DeAtley is the fifth generation in a mining family and founded DeAtley Law, PLLC with the specific goal of assisting mine operators and contractors with MSHA Disputes. You can contact Matt at [www.deatleylaw.com](http://www.deatleylaw.com) or by calling (208) 816-0625.



Class Dates for the year 2020 Part 46 have been scheduled

Roseburg class will be on March 9, 2020

Albany Class will be on March 10, 2020

Class Instructors will be Josh Schultz and Michael Peelish with Adele Abrams office.

### SAFEPRO Class Information

The June 2019 Safepro Law class is going to be a great class. We only have 12 spots open. Our block of rooms with the Hilton Garden Inn in downtown Savannah can only be held until April 17. Adele L. Abrams, Esq., CMSP President from the law offices of Adele Abrams will be teaching at the Safepro institute this year. If you are in management, supervision in the mining industry this will be a great opportunity to get the latest answers to any questions you may have. This class will give you the knowledge coupled with your mining experience that allows you to be prepared for the imminent MSHA inspection. The Institute information will help you avoid bad citations and the knowledge to comply with the law. You will add value to yourself and your company by attending!

Spouses are welcome if your company allows you to bring them. Shopping in Savannah is considered excellent. Malls and quaint shoppes are within easy walking distance from the hotel. Walking and riding tours of the city can be arranged during the week you are here. If you have any questions or wish to register, just contact us at [safeproinc.com](http://safeproinc.com). We want you to have a good time as well as a great learning experience. I look forward to seeing you Savannah Ga.

Yours in Safe Production

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## ***2019 Board Meeting Schedule***

Our next meeting will be held on September 18, 2019  
*(location to be announced)*

*The Annual work session meeting will be held on December 11, 2019  
(this meeting is closed to board members only)*

### **2019 Board of Directors**

Erick Staley – Chairman  
Roy Garrison – Vice Chairman  
Mary McNatt- Treasurer  
Kellie Ramar – Secretary  
Melissa Mullins  
Jerry Davidson  
Bill Ruchti  
Andrew Siegmund  
Jim Jeffries  
Dan Kauffman

### ***Attention!!***

***We are looking for a few board members to replace those that we will be losing in 2019. If you are interested or would like more information on becoming a voice of your association please contact Chairman Erick Staley.***

VISIT OUR WEBSITE AT [WWW.ORAGGREGATE.COM](http://WWW.ORAGGREGATE.COM)

**Our 2019 Scholarship application is attached. Please pass along to your employees and families.**



***THE OREGON INDEPENDENT AGGREGATE ASSOCIATION 2019  
Davis Creek Rock Quarry Scholarship***

Oregon Independent Aggregate Association (OIAA) is proud to offer two annual scholarships to any deserving students pursuing a career related to the construction, aggregate and forestry industry. Areas of study are to include construction, construction management, engineering, geology, architecture, land use planning, forestry, heavy equipment repair and welding. This year's scholarship is named in honor of Mary McNatt, our Past Chairman and current Treasurer, who founded and continues to own Davis Creek Rock Quarry located in Silverton, Oregon.

**Who May Apply?**

The OIAA Scholarship is open to all current members, employees of current members and their families studying in the required fields as indicated above.

The academic institution may be a university, community college, private college or a trade school with recognized related courses of study. Scholarships will be applied toward full or part-time tuition and or educational material costs within one calendar year.

Your Personal Statement is the most important part of your application! When you prepare your Personal Statement, it's very helpful to tell the OIAA scholarship selection committee about your career goals in the required industries, personal goals, reasons for applying for this particular scholarship, and personal financial circumstances that pertain to your financial need. Your statement should be a minimum of one page and not more than two pages.

**The OIAA Selection and Award Process**

Applications will be directed to the scholarship selection committee. Scholarship recipients will be notified in writing by the OIAA and the recipient's name will be listed on the OIAA website. Those who do not receive scholarships will also be notified by mail.

Unless otherwise noted, the scholarships shall be in the amount of \$ 2,500.00 each as a onetime award.

All recipients will be required to write a short letter of thanks to the OIAA and present it in person at a designated Board Meeting. By attending such meeting you indicate your acceptance of the award and the terms of the scholarship.

Scholarships shall be awarded in compliance with applicable Oregon laws and OIAA policies related to non-discrimination on the basis of sex, race, age, color, national or ethnic origin, marital status, disability, religion, sexual orientation or veteran status.



Scholarship Application (2019)

(Office Use Only) Application Number \_\_\_\_\_

PERSONAL INFORMATION: (PLEASE PRINT OR TYPE)

Applicant's Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Alternate phone number (\_\_\_\_) \_\_\_\_\_

E-mail address: \_\_\_\_\_

I. **ACADEMIC INFORMATION:** (PLEASE PRINT OR TYPE)

Name of High School: \_\_\_\_\_

Year of High School Graduation: \_\_\_\_\_

Current University, College or Trade School: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_

Overall GPA: \_\_\_\_\_ Major: \_\_\_\_\_ Minor: \_\_\_\_\_

When do you expect to graduate? \_\_\_\_\_

II. **Extracurricular and or Community Information:**

List honors, awards, prizes or recognition you have received: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List school and or group activities (sports, clubs, committees, offices) that you have participated in:

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List and describe your hobbies and interests: \_\_\_\_\_

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**III. WORK EXPERIENCE (INCLUDE ON A SEPARATE SHEET OF PAPER IF NEEDED)**

What work experience have you had? \_\_\_\_\_

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Would you be interested in work with a construction, aggregate projects or forestry company?

YES \_\_\_\_\_ NO \_\_\_\_\_ PART-TIME \_\_\_\_\_ SUMMER \_\_\_\_\_

**IV. Remember to attach the following:**

\_\_\_\_\_ A transcript of grades through the last grading period prior to the date of application.

\_\_\_\_\_ A letter of recommendation from a teacher, employer or other relevant acquaintance.

\_\_\_\_\_ Your Personal Statement as required in the Scholarship Guidelines.

*I certify that the information on this application is complete and accurate to the best of my knowledge and belief.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please return you application to the attention of the application committee

**Oregon Independent Aggregate Association**

**P.O. Box 571**

**Stayton, Oregon 97383**

***Application Deadline: September 15, 2019***

**Applicant will be selected for the school term starting September 2019**