

Texas Metals Advisory Committee

MINUTES

Wednesday, August 3rd, 2016

Houston Police Department, North Patrol Command Station
9455 W. Montgomery Road, Houston, TX 77088

Members Present: Committee Chairman Arnold Gachman, Major Jay Alexander, Tom Baker, David Bayouth, Jesse Fite, David Landry, Jim Shapiro, Don Sowell, Mark Tuley

Members on Conference Call: Jerry Brewer, Kevin Lanahan

Non-Members Present: Carrie Fortner, Aaron Grigsby, Liz Kisamore, Jeremy LeCrone, Marc Losa, Steve Moninger, Deadra Nealy, Michael Payne, Nylee Quintero, Nick Rozumny,

Member Absent: Joshua Dean, Jeff Marin

Chairman Gachman called the meeting to order at 9:39 am. A moment of silence was observed for all recently fallen law enforcement officers. RSD AD RenEarl Bowie addressed the committee and thanked them for their dedication. Chairman Gachman echoed this sentiment, and thanked the other committee members for their hard work.

AGENDA ITEMS

- I. Old Business:** Chairman Gachman called for an approval of the previous meeting minutes from 4/25/16. Major Alexander made a motion to accept the previous meeting minutes, motion seconded by Jim Shapiro. Motion passed by all in attendance.
- II. Swearing-In Ceremony:** Chairman Gachman swore in new members Jerry Brewer, Don Sowell and Mark Tuley. All new members were given certificates of appreciation from the Department of Public Safety for their dedication to the committee.
- III. Review of New MRE Inspection Report (RSD-46) and Instructions for Completion (RSD-46A):** Major Alexander explained the history behind the MRE inspection process for the new committee members; stating, that all statewide law enforcement agencies have authority to conduct inspections at an MRE. These inspections are necessary because they ensure effective oversight and compliance. DPS has a statewide presence conducting MRE inspections, as well as, collaborating with local agencies such as Houston and Dallas PD. This statewide collaboration allows DPS to ensure the integrity of the program. Changes to the law brought about by HB2187 and the creation of new administrative rules prompted the creation of the new, RSD-46 MRE Inspection, form. The form was created to account for new regulations, capture violations, and serve as a tracking mechanism for MREs that are in proper compliance. Other law enforcement agencies are free to use the new RSD-46, but are not required. DPS is open to making additional changes/additions to the forms, as needed, to better suit local law enforcement needs. The new RSD-46 will be uploaded into the TOM database. Changes in law, as a result of HB 2187, and mixed interpretations of statute, led to the creation of the RSD-46, with the intent of establishing consistency in how inspections are

conducted. DPS' intention is to solicit input/suggestions from the advisory committee before moving forward. RCS Assistant Manager Jeremy LeCrone provided additional information about the form, explaining that the new RSD-46 allows for more details to be provided on any violation found during the inspection. The new RSD-46 also provides a separate place for signature by the MRE, depending on if any deficiencies were found. This signature is not an admission of guilt, only an acknowledgement of deficiencies. Tom Baker asked if a copy of the inspection form be left with the MRE, Jeremy responded that yes, the intention is for the MRE to retain a copy. Major Alexander went on to clarify that the MRE will get a copy of the inspection report, whether at that time or mailed to the MRE after the fact. It has been discovered during the preliminary hearing process that in a lot of instances, the owner of the MRE was not made aware by their employee of violations found during an inspection. Returning the inspection to the MRE, to the owner's attention should remedy some of this concern. DPS will continue to work on a consistent process. Chairman Gachman inquired as to whether consistent deficiencies by an MRE are tracked through the inspection process, to allow for tracking of consistent, recurring violations. To further explain, does DPS have the capability to track violations and be able to illustrate the most frequently occurring violations in a region or at a particular MRE. This type of data would allow MREs more visibility into the types of violations that are occurring most frequently in their area. Major Alexander and Jeremy responded that yes, DPS does track violations to identify consistent violations of regulation, however at this time we are not capturing statistics in such detail. When a violation is found, DPS sends notice to the original inspecting officer 30 days later, requesting they re-inspect the MRE to determine if compliance has been gained. After the second inspection with violations found, depending on the violation, further disciplinary action to potentially include fines can take place. All final disciplinary actions (reprimands, suspensions and revocations that are no longer able to be appealed) are posted to the DPS website to allow for more visibility into violations. Tom Baker expressed concern over multiple inspections causing typically compliant MREs to be unfairly punished for minor, unintentional violations. Jesse Fite stated that most MREs are compliant- they are warned of an issued, and they immediately come into compliance. The problem is the MREs who are notified and warned of a violation and still choose not to comply. Major Alexander reiterated that the DPS' intention is not to unfairly punish any MRE, but to ensure the integrity of the program. Jim Shapiro shared concerns over MREs properly abiding by regulations for the cash transaction card, including handing the card to the customer in person as opposed to mailing the card to the customer's address. Jim expressed that this happens frequently and wants to know if this is a point that is being addressed during the inspection. Jim also recommended additional training for law enforcement concerning the cash transaction card, so that they are made aware of how to confirm that MREs are in fact mailing cash transaction cards to their customers. Major Alexander reiterated that DPS is working on expanding training for both the MREs and law enforcement and also encouraging the industry to report violations to DPS so they can be investigated. Reporting violations and collaboration between law enforcement agencies and the industry are the only ways to curb some of the violations occurring. Major Alexander also stated that we would send an email to the MREs reminding them of the requirements for cash transaction cards, per HB 2187 and of the potential consequences should they fail to properly comply. Jesse Fite brought up the concern that

some MREs are allowing customers to come in and fill out an application for the cash transaction card and then return later the same day in order to receive cash payment for their materials. This way, they have a valid application on file, even though they have yet to receive their cash transaction card in the mail yet. Several committee members expressed their frustration or disagreement with this, stating that the customer should not be able to receive cash until after they receive their card by mail. This interpretation is not in line with the intended purpose of the bill, which was to combat theft and fraud within the program. After much discussion on this topic, Chairman Gachman asked that the topic be taken offline and handled at a later time.

IV. Implementation of Fines for Certain Violations: DPS now has the authority to administer fines for failure to furnish reports (Texas Occupations Code, Chapter 1956.036) A fine matrix was included in the administrative rules detailing how this would be handled. Up until this time, DPS has not been levying fines against MREs for these violations. Major Alexander shared with the committee that upon conducting multiple preliminary hearings for metals with him and Policy Analyst Steve Moninger, the need for another option for disciplinary action between reprimand and suspension is needed. Major Alexander reiterated to the committee that DPS may only issues fines for failure to furnish reports, per statute. It was asked if we could potentially expand that authority to other violations through the administrative rules. Major Alexander responded that he did not believe that was possible, since statute specifically called for fines only to be issued for violations under Texas Occupations Code Chapter 1956.036. Policy Analyst Steve Moninger also stated that the industry had originally rejected fines for any additional violations outside of 1956.036. Jim Shapiro expressed his hesitation concerning MREs who consistently receive disciplinary action for intentional violations of law versus “throwing the book” at these types of MREs. Major Alexander reminded the committee that all MREs that receive any type of disciplinary action are free to utilize the appeal process to include a preliminary hearing with DPS and a formal hearing through the State Office of Administrative Hearings (SOAH). Major Alexander also stressed that the intention behind the disciplinary actions, including fines, is to gain compliance and maintain consistency with the program. David Landry shared that he feels the process of advisory letters, reprimands, monetary fines and suspensions that we currently have in place establishes a pattern of behavior for those MREs that consistently fail to comply.

V. Discuss Upcoming Law Enforcement Training: Major Alexander shared with the committee that recently the Dallas area council of governments (COGs) had reached out to DPS concerning a rash of regulated material thefts in the DFW area. These thefts have caused a considerable amount of damage to the critical infrastructure to include thefts of cameras, copper and brass pipes, wires, valves, etc. The COGs reached out to DPS for their potential involvement, and have asked DPS to develop training for law enforcement and prosecutors to help determine a better way to handle these thefts. DPS has agreed to do the training and absorb all costs involved, and would like to request additional involvement from the various representatives of the advisory committee. Major Alexander also added that he feels like this training would be a great stepping stone into phase two of the online MRE training for law enforcement. Jim Shapiro immediately offered the use of any of his facilities for any training

necessary. Chairman Gachman expressed that several of the thefts involve telephone and surveillance systems and are an impact to homeland security. Chairman Gachman also added that stakeholders and law enforcement together need to stress the importance of program regulation, to further encourage the relationship between law enforcement and the industry. Jim Shapiro suggested also involving the district attorneys association in this training. Chairman Gachman added that elected officials also be included, to keep them informed on what the committee and law enforcement are doing to combat theft and fraud. Further meetings will be held with DPS, the Dallas area COGs and any advisory committee members willing to participate. In addition to training with the Dallas area COGs, Sheriff Sowell mentioned that the new sheriff's school will be put on by the Sheriff's Association this December. At this school, the collaboration between law enforcement officials across the state, as well as various industries is encouraged. Sheriff Sowell stressed that for so many newly elected sheriffs, detailed information concerning the metals program and the assistance that could be provided to them would be vital information. He suggested having various members of the advisory committee present information at the school to allow for education to new sheriffs, as well as networking opportunities. This school will be held in San Marcos on December 5th through 9th. Jim Shapiro also added that the Sheriff's Association was free to contact any of the industry members on the committee that they would be more than happy to help whenever needed. Further information on this school will be provided by Sheriff Sowell to the advisory committee.

- VI. Statistics:** Handout detailing disciplinary statistics for CY2016. No further discussion needed.
- VII. Upcoming Legislative Session:** Major Alexander asked if the committee had any concerns or issues they wanted addressed during the upcoming legislative session. He reminded the committee that DPS does not advocate for or against any laws; we only enforce the laws passed by the Texas Legislature. At this time, there are no concerns. Jim Shapiro shared that he feels like the program is headed in the right direction, we need to give HB 2187 more time to see the full implications.
- VIII. Texas Metals Program Recycler Training** – RSD Program Specialist Carrie Fortner and RSD Assistant Manager Nick Rozumny provided a status on the recycler training that is currently in development. Filming has been completed at Austin Metal and Iron, and is scheduled to take place with Dallas PD the last week of August. The training will be two parts – the first for MREs and the second for law enforcement. There will be six total modules for the MRE training. The training will be provided at no cost to the MRE, and will be a requirement for all new applications and renewals. If any substantial changes are made in future laws, DPS will make the necessary changes to the training modules. A brief description of each module and the test requirements was provided for the new committee members. A full demonstration of module two- registration – was provided. A link to OC Chapter 1956 is at the bottom of every slide in the training, to allow for quick access to statute. Chairman Gachman asked if there would be a way to provide access to the training for those in a private enforcement capacity (AT&T, railroad, etc.). Major Alexander and Steve Moninger responded that they see no reason why we wouldn't be able to provide them

access to the training. Tom Baker suggested using photos more descriptive of the problems with the specific types of materials typically sold to MREs, such as problematic copper wire or communication wire. Carrie and Nick responded that some of the photos used were generic stock photos, and could be updated with different photos. After viewing the training video, Carrie shared that each module would have between five and seven questions on the test. The tests are currently in development.

IX. Other Topics: No other topics noted.

Meeting adjourned by Chairman Arnold Gachman at 12:24 pm.