



February - March 2014

# MNLICA

# NEWS

Land Improvement Contractors of America • Minnesota Chapter

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*Nordis Estrem*

## **WELCOME NEW MEMBERS**

### **TJ's Trucking and Excavating Inc.**

Tom Williams - Winona, MN

## **WELCOME NEW ASSOCIATE**

### **Tesmec USA, Inc.**

Stefano Leghissa - Alvarado, TX

*See page 16*

## **MNLICA STATE CONVENTION**

*January 15-17, 2014 Kahler Grand Hotel, Rochester, MN*

*See page 11*

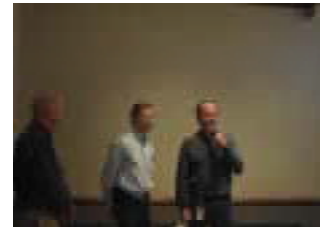
**Brad Herickhoff  
Contactor 2013**



**Bruce Mosier  
Associate 2013**



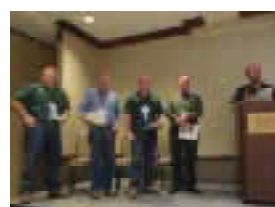
**Mark Morreim, President  
Al Kean, BWSR,  
Mark Deitrich. Dept. Of Ag**



**Gaining knowledge**



**New MNLICA Officers**



**Thank You Mark Morreim**



**Making new friends**



**Tradeshow**



**Ladies getting pretty**





## GREETINGS From Your PRESIDENT

Greetings all,

Another year has gone by, and it seems it goes faster and faster. MnLICA had another busy year with meetings, conventions and some fun golf. Thanks again for all the sponsors and golfers that raised money for the scholarship program.

### Here is a rundown of some of our activities:

- January – State MnLICA Convention in Mankato.
- February – National LICA Convention in Savanna Georgia.
- March – Legislative meetings in St. Paul.
  - MSHA trainings in Dennison.
  - MnLICA Board meeting at Bakken's
- April – Drainage Work Group Meeting in Eagan.
- May – No meetings, watched it rain every day !
- June – Drainage Work Group in Eagan.
  - Farm Tap meeting at GSOC.
- July – Summer National LICA Convention in Cleveland, Ohio.
  - NRCS meeting at Chuck Wingert's office in Mankato.
- August – Drainage Work Group in Eagan.
  - Scholarship golf day and Board meeting at St. James Golf Club.
- September – Drainage Work Group in Eagan.
- October – NRCS and FSA meeting in St. Paul
- November – No meetings.
- December – Drainage Work Group in Eagan.
  - MnLICA Board meeting in New Ulm.
  - Farm Tap meeting in St. Paul.
- January 2014 – Drainage Work Group in Eagan.
  - Safety Training & Membership Drive, Mankato
  - MnLICA State Convention & Tradeshow

As you can see, we were busy. Thanks to Nordis and Jeanie for all your hard work, and thanks to the new officers taking over. I hope you enjoy it as much as I have .

Mark Morreim

**MnLICA Web-Site; [www.mnlica.org](http://www.mnlica.org)**

**E-mail: [nordisestrem@frontier.com](mailto:nordisestrem@frontier.com)**

  
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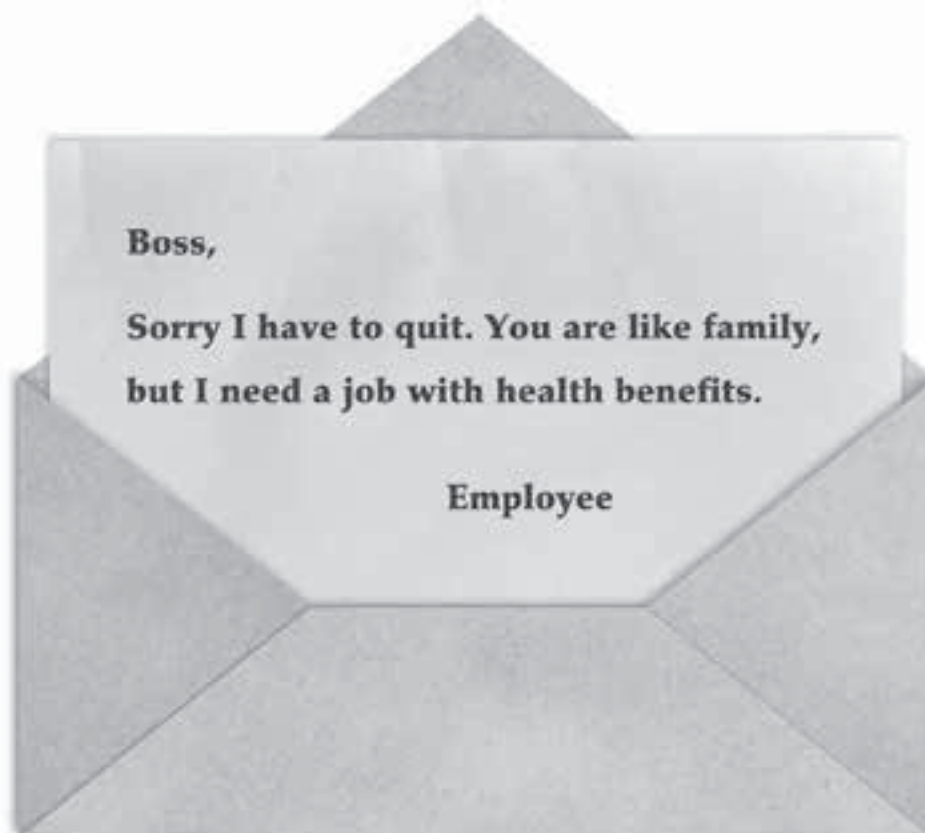
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## **Clean Water Act and Wetlands: Redeposit vs. Incidental Fallback**

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By Kale R. Van Bruggen and John C. Kolb  
Rinke Noonan Law Firm, Ltd., Saint Cloud, Minnesota

In the December/January 2013-2014 MNLICA Newsletter, we noted that Section 404 of the Clean Water Act (“CWA”) requires a permit from the Army Corps of Engineers (“Corps”) to discharge dredged or fill material into a “Water of the United States”. The article focused on the U.S. Supreme Court’s attempt to define which wetlands fall under the Corps’ jurisdiction. This article focuses on the agency’s definition of “discharge” and the level of disturbance necessary within a protected water to trigger CWA permitting requirements.

The CWA states that the discharge of any pollutant by any person is unlawful. “Discharge of pollutants” is defined as any *addition* of any pollutant to navigable waters from any point source. Among other things, “pollutants” covers dredged spoil and biological materials. Historically, installation of drain tile by tile plows was not considered to create a significant enough disturbance to be a regulated “discharge.” However, we recently reviewed a Notice of Violation and Administrative Order issued to a Minnesota landowner and his tiling contractor by the U.S. Environmental Protection Agency (“EPA”) which found plowed installation of six inch drain tile unlawful for discharging dredged material into wetlands allegedly covered by the CWA. The Order demands the tile be removed and the wetlands restored. The tile was installed using a Waynes Tile Pro plow pulled by a John Deere 9520 tractor. In the Order, the EPA describes the unlawful “discharge” as “excavation of trenches of about 12 inches in width and between 3 and 6 feet in depth, sidecasting the excavated material along the side of the trench, laying of drainage tile, and then replacing the sidecast material on top of the installed drainage tile.” The Order states the tiling plow is a “point source” which “discharges pollutants” into wetlands that are considered Waters of the United States.

To evaluate the legitimacy of EPA’s claims, it is important to understand how the courts have interpreted the agency’s regulations regarding whether a disturbance is a regulated “discharge” or an unregulated deposit incidental to a lawful activity. In 1993, the agencies issued the *Tulloch* Rule which defined “discharge” as “[a]ny addition, including redeposit, of dredged material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.” The rule also covered “incidental fallback”—the sediment that falls off of a backhoe, for example, during excavation. Several trade associations successfully challenged the agencies’ authority to regulate incidental redeposits, and a new rule was issued by the agencies which excluded all regulation of all “incidental fallback.”

“Incidental fallback” was originally defined as “the redeposit of small volumes of dredged material that is incidental to excavation activity . . . when such material falls back to substantially the same place as the initial removal.” In 2007, the federal District Court for the District of Columbia held that the definition of “incidental fallback” violated the Clean Water Act because the definition used volume to determine what is “incidental.” The court clarified that the difference between “incidental fallback” and regulated “redeposit” is best understood using two factors: (1) the time the material is held before being dropped to earth and (2) the distance between the place where the material is collected and the place where it is dropped. The less time the excavated material is held in extraction before being redeposited and the closer the redeposit takes place to its location of extraction, the less likely the agencies can require a permit to regulate the redeposit.

In response to the 2007 challenge, the agencies removed the definition of “incidental fallback” completely from the regulation, stating that “deciding when a particular redeposit of dredged material is subject to Clean Water Act jurisdiction will entail a case-by-case evaluation, consistent with our Clean Water Act authorities and governing case law.” The current rule defines “discharge of dredged material” to include “[a]ny addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.”

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Continued from page 5:

We have several concerns for land improvement contractors and landowners if tiling plowing is determined to cause a discharge. First, given the agency's intent to expand the scope of regulated waters, the potential for unwitting or unintended violation is substantially increased. Second, agency's definition of regulated waters is significantly different from other agency definitions of wetlands – thus creating uncertainty as to whose definitions can be relied upon when making decision on whether and where to do work. Third, from a technical view, it is hard to imagine how tile plowing creates a discharge when nothing leaves the ground to be deposited or re-deposited. Fourth, the penalties for violating the CWA are massive – up to \$37,500 per day for work performed without a permit.

The court have not yet ruled on whether installation of drain tile using a tiling plow is a discharge or creates a significant enough disturbance of the soil to be exempted as “incidental fallback” or regulated as a “redeposit of pollutants.” With the agencies positioning themselves to expand their reach over wetlands, tiling contractors and landowners are likely to see another level of regulation and permitting for installation of drainage tile in Minnesota.

### MNLICA & Mankato Ziegler/Cat Safety Training

A good turnout for a very cold and blustery day. Contractors gained valuable information from Bruce Mosier of Prins Ins. on how to save money on insurance and the most common accidents that raise your insurance rates. Mankato Ziegler/Cat gave a great tour of their new facility and the men got to see the new equipment and how it works.







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## HARD HATS

The average hard hat weighs about 14 ounces. The average man's head weighs about 14 pounds. So there is an ounce of safety for every pound of head--provided the head protection is properly worn and maintained.

The brain is the control center of the body. The slightest damage to any part of the brain will cause malfunction of some area of the body. The skull, under normal circumstances, protects the brain. But when a possibility of injury from falling or flying objects exists, additional protection is required.

Hard hats not only reduce the chances of serious injury resulting from falling objects, but when you bump your head on things like machinery, duct work, ceiling tie wires and forms. Non-conductive hard hats protect you from electrical shock and burns. The better care you take of your hard hat, the better care it will take of you.

Here are some suggestions:

1. Properly adjust suspension systems to maintain clearance between your head and the shell of the hat.
2. Don't cut holes for ventilation. Don't heat and bend the hard hat.
3. Don't substitute a "bump cap" they aren't strong enough.
4. Don't paint your hard hat.
5. Don't put anything under the hard hat.
6. Don't wear it backwards.

The hard hat is a useful piece of safety equipment. But like any other protective device, it must be properly adjusted and worn and kept in good condition to give you maximum protection.

### Little Known Facts About Minnesota

In 1930, Sinclair Lewis became the first American to receive the Nobel Prize in Literature. Born in 1885 in Sauk Centre, Minnesota, Lewis authored "Main Street" and "Babbitt".

Mention Wetlands, Drainage, or Permits and Someone will Mention



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attorneys at law



Kurt Deter  
kdeter@rinkenoonan.com



John Kolb  
jkolb@rinkenoonan.com



Gary Leistico  
gleistico@rinkenoonan.com

Landowners are becoming increasingly aware of the difficulties in dealing with wetlands, drainage, and acquiring permits. The DNR, NRCS, Corps of Engineers, county and local governments all may have interests that must be addressed.

Our work involves wetlands, drainage, and other water related issues, permits - areas of law that are constantly changing and becoming more specialized.

If you're facing a challenge in any of these areas, or are wondering if you could benefit from legal help, call Kurt, John, or Gary at (320) 251-6700 or (888) 899-6700

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### **Deadline approaching for CDL self-certification and med-card requirements**

#### **Drivers who miss January 30, 2014 deadline deemed "Not Certified"**

Commercial driver's license (CDL) holders now have less than 30 days to contact their state licensing agencies to let them know what kind of driver they are and if necessary, submit a copy of their medical card.

Under federal rules adopted in 2008, state licensing agencies are required to obtain information by January 30, 2014., from all CDL holders on the type of driving they perform (interstate or intrastate) as well as the status of their medical examiner's certificate.

For most CDL drivers, their medical qualification status will then appear on their driving record so enforcement officers and motor carriers can verify that they are medically qualified to drive.

After January 30, 2014:

Any interstate CDL holder who is subject to the federal medical standards but has not provided a current, valid medical card to the state licensing agency is deemed "Not Certified" to drive a commercial vehicle in interstate commerce.

For any driver whose CDL driving record includes medical certifications status, the motor carrier must keep a copy of the driving record instead of the medical card as proof of medical qualification, and will need to get a new driving record each time the driver renews the medical card.

Drivers and carriers can use a copy of each new medical card for up to 15 days as proof of medical qualification, to give the state time to enter the data into the driving record (the state has 10 days). After those 15 days, interstate CDL drivers will no longer have to carry the medical card, and the employers will need a copy of the new driving record on the driver's file.

Non-CDL drivers are not affected by the new requirements. They will need to continue carrying their medical cards and providing copies to their employers.

The self-certification will need to be updated each time a driver renews, transfers, or upgrades the CDL.

The federal rules governing this process are primarily concerned with interstate drivers, so states have leeway to adopt or not adopt the same requirements for their in-state-drivers. Check with your state for details. (most have web-sites)

---



## Drainage Water Management Training and TSP Certification Orientation

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**Total Amount Enclosed = \$ \_\_\_\_\_**

Please return form and payment by February 7, 2014  
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### ~Register Today~

Registration has been limited to 30 trainees.

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## Technical Service Provider (TSP)

What is it and why is it important?

The 2002 Farm Bill expanded the capacity of USDA conservation programs to protect the nation's natural resources on private and tribal lands. In order to better serve agricultural producers, the 2002 Farm Bill also encouraged USDA to use technical service providers to increase the technical assistance available to help landowners meet their conservation goals.

Technical service providers are certified individuals, private businesses, non profit organizations or public agencies that are qualified to help meet the conservation technical assistance needs of America's farmers and ranchers.

Under the 2008 Farm Bill, provisions were implemented to compensate qualified landowners by providing financial and technical assistance to help pay for TSP Services. Contact your local NRCS field office for more information about the Technical Service Provider Program. Contact Dana Larsen, TSP Team for more information about this workshop.

Upon Completion of this course you will be certified as a TSP technician and listed on both the NRCS and ADMC websites.

### Instructors

Gary R. Sands, Ph.D.  
University of Minnesota  
TSP Coordinator Specialist  
USDA/NRCS

### DWM TRAINING

Drainage Design and Soils Principles  
Review of basic drainage design, field topography, and discussion of important soil properties, principles, and tools.

Intro to Drainage Water Management (DWM)  
Basic DWM concepts, rationale and benefits, history and present status of the practice

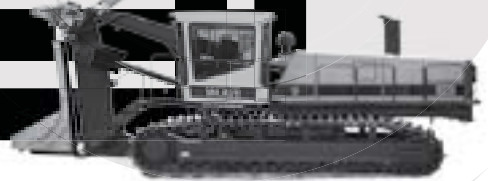
Economics Considerations

Discussion of systems costs, profitability analysis, and federal cost sharing availability

### DWM Design & Management

Participants will develop a DWM plan and design on several fields, contrasting conventional drainage designs with zoned systems. Both retrofit and new systems will be discussed.  
Seasonal management considerations (offseason vs. growing season) and reducing risk of excess water and installing/checking wells with DWM will be discussed.

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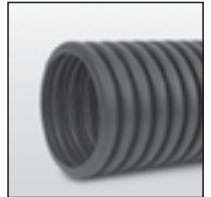
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The National Association of Conservation Districts (NACD) represents America's 3,000 conservation districts, their state associations, and the more than 17,000 public officials who serve on their governing boards. Conservation districts were born out of the 1930s Dust Bowl to address America's devastating soil erosion. At that time, President Franklin D. Roosevelt declared soil and water conservation a national policy priority, leading to the creation of conservation districts.

Conservation districts are local units of government established under state law to carry out natural resource stewardship programs at the local level. Conservation districts have been involved in delivering voluntary, locally-led conservation across America for more than 70 years. They exist in nearly every county and community in the nation, where they work with landowners, farmers, ranchers, and non-industrial private forestland owners to help them manage and protect natural resources on private land.

### **Conservation Districts at a Glance**

Promote voluntary, incentive-based, and locally-led solutions to natural resource concerns

Provide technical assistance to landowners to address natural resource concerns

Help farmers, ranchers, and non-industrial, private forestland owners implement best management practices to protect soil health, water quality and quantity, air quality, and wildlife habitat

Assist landowners in their efforts to secure financial assistance to implement conservation practices

Support a strong agriculture base and believe conservation practices should be economically-viable in order to encourage maximum participation by agriculture operations

Facilitate wetlands conservation and restoration to purify water and provide habitat for birds, fish, and other wildlife

Provide support to farmers and ranchers in complying with federal and state regulatory requirements

Assist local communities in managing storm-water, reducing runoff, and keeping sediment out of streams and lakes

Work with communities and homeowners to plant trees and other vegetation to hold soil in place, clean the air, provide cover for wildlife, and beautify neighborhoods

Educate communities and schools about the value of natural resources and encourage conservation efforts .

**Conservation districts' work results in clean air, clean water, healthy habitat, and productive soils across the nation.**



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750 Cantilever Plow



750 Double Link Plow



750 RC Link Plow



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## MNLICA SAFETY TRAININGS

MNLICA will be hosting an **MSHA Safety Training** in Dennison, Minnesota on March 11<sup>th</sup>, 2014. Cost for members and employees will be \$75.00 each. Watch for an e-mail blast with the signup sheet attached, in the mail and in this newsletter **on PAGE 16 IS THE FORM!**

Doug Breberg of Larson Tiling will be hosting a 10 Hour OSHA Training in Dawson, Minnesota on February 25<sup>th</sup> and 26<sup>th</sup>, 2014. **Topics covered will be:** Competent Person, Confined Space, Changing of MSDS Sheets to the New Global Harmonization Systems, Focus Four Which Covers Electrical, Fall Protection, Struck By and Caught In Between. If you would like to attend this training, watch for an e-mail blast with the signup sheet attached and also in the mail.

Bruce Mosier of Prins Insurance is also working on a very exciting safety program with National LICA that potentially will become a very big benefit for all LICA members. This should be up and running by spring of 2014. It will be an online customized safety program with individual company names on the forms. This could be really big as it would help with compliance with various enforcement agencies. If you would like a safety training in your area please call me at 612.328.2784 or e-mail me at [bakken4957@gmail.com](mailto:bakken4957@gmail.com) and we'll see what we can do.

Sincerely yours through MNLICA,  
Kevin Bakken



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## DIRECTORS REPORT

MNLICA will be offering several trainings over the winter. Look on our web-site for information as to what classes are being offered and where. Jeanie will also send out an e-mail form to be sent back in. She will mail to those who do not have an e-mail address.

If you did not attend the MNLICA State Convention, you missed out on a lot of important information on Wetland Determinations and several other important small construction business owners information. We need to keep on top of what rules and regulations we need to be aware of in our business.

Have a safe winter and hope to see you in Las Vegas for the NLICA winter meeting and Con-Expo the first week in March.

If you have a local business to contact for membership and want help with this, just call Nordis, Karlen or Mark.

**JUSY GET ONE!!! We will double in size and Voice!**

## Cheesy Tortelloni with veggies

- 1-garlic clove, chopped**
- 3/4 pound crimini mushrooms (4-cups)**
- 1-pound mixed summer squash (zucchini & Yellow squash) quartered lengthwise and sliced**
- 1 pound fresh or frozen cheese tortelloni**
- 1/3 cup grated Parmesan cheese**
- 2 Tablespoons snipped chives**

Bring a large pot of salted water to a boil.

Heat 2 Tablespoons each, olive oil and butter in a large skillet over medium heat. Add garlic and sauté, 1-2 minutes. Add mushrooms and sauté for 5 minutes. Add squash, 1/4 teaspoon salt and pepper, continue to sauté for 3-4 minutes more. Cover & keep warm.

Add tortelloni to boiling water and stir and cook well. Remove 1/2 cup of pasta cooking water, then drain pasta. Toss tortelloni into mushroom sauce, adding some of the pasta water to make a light sauce. Stir in the parmesan and chives.

Serves 4-6



## MEMBERSHIP APPLICATION

Please enroll me as a Member of the Minnesota Land Improvement Contractors Association. I understand That I will receive all member benefits, and that they will begin as soon as my application is approved and My dues are received in the State Office. My membership fee includes membership in the National Land Improvement Contractors of America.

Name: \_\_\_\_\_

Spouse: \_\_\_\_\_

Company: \_\_\_\_\_

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

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Birthday (for Ins.): \_\_\_\_\_

Please enclose check payable in the appropriate amount as indicated below and mail this form to:

MnLICA, 9600 South Dennison Blvd.  
Northfield, MN. 55057

Contractor Member	\$350.00
Associate Member	\$200.00
Retired Member	\$ 50.00

## MEMBER BENEFITS

1. National & State Conventions
2. **National & State Newsletter Communication**
3. Legislative Representation at State & National Levels
4. **Exchange of Ideas**
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11. U of M Accredited Trainings
12. MSHA & OSHA Accredited Trainings
13. Accredited First Aid & Adult CPR Trainings
15. **ACCESS TO DRUG & ALCOHOL TESTING**
16. LICA Store ([www.clubcolors.com/LICA](http://www.clubcolors.com/LICA))
17. **Access to a wide variety of Associate Members for Equipment supplies & Advice in all areas of Small Business**
18. A comprehensive Safety Program & up-to-date information on OSHA regulations
19. **A National Equipment Register**
20. Petrocon Program( reduced prices on Tires, Lubricants, Greases, Antifreeze & others with no extra fee to join— A \$2500.00 Value)
21. **Beyond Perks (discounts on-line shipping, with no additional fees)**
22. Representation on the USDA's State Technical Committees
23. **REPRESENTATION on the Environmental Issues Council, which works to bring common sense into Government Actions in the name of Environment**
24. National LICA Contractor magazine
25. **LICA Universal Fuel Program (most gas stations accept)**
26. REPRESENTATION ON MPCA COMMITTEE
27. **LICA Hotel Savings Cars (save up to 40%)**
28. LICA Dental Insurance Program
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## MINNESOTA LICA SAFETY TRAINING

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**(WHICH IS ONE WEEK BEFORE THE CLASS)**

**IF LESS THAN TWENTY-FIVE (25) THE CLASS WILL BE CANCELLED!**

**MARCH 11<sup>TH</sup>, 2014**

**DENNISON CITY HALL**

**DENNISON, MN 55018**

The training will be from 8:00 a.m. – 4:30 p.m.

Cost per person: \$75.00 for LICA members \$100.00 for non-member

Breaks and Lunch Included

Safety Training will meet the requirements for MSHA Certification

For more information please contact:

**MNLICA – Kevin Bakken**

**9600 South Dennison Blvd., Northfield, MN 55057**

Cell: 612.328.2784

E-mail: [bakken4957@gmail.com](mailto:bakken4957@gmail.com)

**To register please fill out the form below and return with your payment to: MNLICA, 9600 South Dennison Boulevard, Northfield, MN 55057-4547 by February 28, 2014**

**COMPANY:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY, STATE, ZIP:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

## New Member:

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Tom Williams

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Winona, MN 55987

Phone: [507-452-5225](tel:507-452-5225)

Fax: [507-457-9790](tel:507-457-9790)

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Stefano Leghissa

12520 East FM 917

Alvarado, TX 76009

Phone: [817-728-5464](tel:817-728-5464)

Fax: [817-473-9742](tel:817-473-9742)

e-mail: [sleghissa@tesmec.com](mailto:sleghissa@tesmec.com)

Web Site: [www.tesmec.com](http://www.tesmec.com)

Product: Farm Drainage Trencher and Excavators

### MNLICA WEB MAIL

To put items on the MNLICA Web page  
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507-381-9791

or you may

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**2014 UPCOMING EVENTS**

MNLICA Web-site: [www.mnllica.org](http://www.mnllica.org)

**TRAININGS**

<b>February 25-26</b>	<b>10 Hour OSHA Training (Doug Breberg)</b>	<b>Dawson, MN</b>
<b>February 4-5</b>	<b>Drainage Water Management Training</b>	<b>Toledo, OH</b>
<b>February 25-27</b>	<b>and TSP Training ADMC</b>	<b>Quad Cities</b>
<b>March 1-3</b>	<b>NLICA Convention-Riviera Hotel</b>	<b>Las Vegas, NV</b>
<b>March 3-8</b>	<b>Con-Expo Tradeshow and Trainings</b>	<b>Las Vegas</b>
<b>March 11</b>	<b>MSHA Safety Training (Kevin Bakken)</b>	<b>Dennison, MN</b>
<b>March 22</b>	<b>MNLICA Board Meeting</b>	<b>New Ulm, M</b>



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