

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
January 17, 2019
Rancho Cordova, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:03 a.m., January 17, 2019, in the Council Chambers of the Rancho Cordova City Hall, Rancho Cordova, California.

ATTENDANCE

Board Members Present

Dave Thomas
Barbara Burgel
Dave Harrison
Dr. Nola Kennedy
Chris Laszcz-Davis
Laura Stock

Board Members Absent

Board Staff

Christina Shupe, Executive Officer
Marley Hart, Special Consultant
Mike Manieri, Principal Safety Engineer
Peter Healy, Legal Counsel
Lara Paskins, Staff Services Manager I
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health

Others Present

Chris Dalavera, Buckingham Mfg.
Sonny, Nunez, Crown Castle Fiber
Greg McClelland, Western Steel Council
Saskia Kim, CA Nurses Association
Elizabeth Treanor, PRR
Kevin Bland, Ogletree Deakins
Nicole Marquez, Worksafe
Kipp Jenson, Buckingham Mfg.
Jay Weir, AT&T

Brian K. Miller, CEA, Rudolph & Sletten
Charley Rea, CalcIMA
Mitch Steiger, CA Labor Federation
Gail Blanchard-Saiger – CHA
Anne Katten, CRLAF
Ernest Pacheco, CWA
Jamie Carlile, Southern CA Edison
Weldon Mann, SME Steel
Russ McCrary, CIEC/DCIW Safety Inst.

Michael Musser, CA Teachers Association	Cindy Sato, CEA
Len Welsh, Ironworkers	Sheila Lawton, IBEW Local 1245
Ryan Stewart, IBEW 1245	Jerome Candelaria, CCTA
Kevin Thompson, Cal/OSHA Reporter	Bill Benham, BBC Consulting
Bruce Smith, Waymo LLC	

Mr. Thomas introduced the Board's newest member, Dr. Nola Kennedy, and administered the Oath of Office.

B. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Charley Rea, CA Construction Industrial Materials Association, stated that the rulemaking for guarding of conveyor support rollers will be perceived as a big change because of the way that it is being proposed and amended to reference a code on guarding that is very broad. He said that if there is any misunderstanding of this proposal in the field, it may result in more citations being issued, which is a concern for members of his organization because they have many miles of conveyors. He stated that it will cost about \$200 to properly guard 6 feet of conveyors if this proposal is passed. He said that the proposal references Section 4002, and Section 4002 is very broad and makes it seem like everything needs to be guarded, which could cause confusion. He said that the note in the current standard is plain language for how to understand these standards, and the proposal takes away from that. He also stated that the current standard has been in place for 35 years, and there is no record of accidents or serious problems to indicate that changes to the standard are necessary. He asked the Board to vote "no" on the proposal.

Bryan Little, CA Farm Bureau Federation, stated that many members of his organization operate food processing facilities and packing houses, and if the proposal for guarding of conveyor support rollers passes, it will force these employers to guard unpowered rollers. He said that this will create a problem for them because these guards will create small spaces that are very difficult to get clean. He stated that cleaning in these facilities already requires an enormous amount of time, effort, and resources, and this change will make it even more difficult. He asked the Board to vote "no" on the proposal.

Anne Katten, CA Rural Legal Assistance Foundation, stated that her organization supports the proposal regarding guarding of conveyor support rollers. She said that it makes sense and will make the provision more protective.

Kevin Bland, representing the CA Framing Contractors Association and the Residential Contractors Association, stated that the proposal for guarding of conveyor support rollers is not correct. He said that the advisory committee that came up with the note that is in the current standard put a lot of stock in the note, and it is very much needed. He asked the Board to vote "no" on the proposal. He also welcomed Dr. Kennedy to the Board.

Mr. Bland also spoke about petition 570. He stated that it is a good idea to send the petition to an advisory committee where everything can be discussed, information can be shared, and in this particular case, there is the added benefit of something that has been tested in the field and might make a good regulation. He also stated that all parts of the petition proposal should be discussed at the advisory committee meeting.

Len Welsh, representing the Ironworkers and the Western Steel Council, stated that petition 570 is the result of years of experimentation by the ironworkers and the Western Steel Council to come up with a cone and bar barricade (CBB) alternative to guarding in situations where guarding does not provide better safety. He said that there have been no fatalities or injuries while using the CBB method. He stated that his organizations support the Board staff's recommendation to send this petition to an advisory committee, but they do not agree with the staff's decision to reject the other issues that were mentioned in the petition request. He said that his organizations believe that these issues should also be discussed during the advisory committee meeting because these are very significant safety issues that occur at very hazardous worksites. He stated that discussing everything at an advisory committee meeting will bring together lots of good information, the best expertise, and possibly some ideas for new requirements in Section 1710. He said that the current standards were written in 1970, so it's important to look at how things have changed since then. He stated that in 1970, any wood that was at least 2 inches thick was used for planking. Nowadays, planking is done using either metal or treated wood that is thinner and stronger. He said that it is important for the advisory committee to look at how the current standard is working with current work practices.

Cindy Sato, Construction Employers Association, stated that her organization supports the Board staff's and Division's evaluations of petition 570, and they also support the decision to convene an advisory committee to discuss the petition. She said that they have questions about the CBB system, and whether or not regulation is needed, so they would be interested in participating in the advisory committee meeting.

Brian Miller, Rudolph and Sletten, and the Construction Employers Association, stated that the evaluations of petition 570 by the Division and Board staff are spot on, and his organization would like to participate in the advisory committee process, but his organization is confused as to why an advisory committee is needed, since the CBB system is widely used throughout the state with no confusion on how to use it. He said that there is an absence of training requirements and a definition of cone and bar barricades in Section 1635(c), but when cone and bar barricade systems are used, employers make sure that the general contractor for the job has training methods to train employees on using the CBB system, and that the employees are properly trained.

Weldon Mann, SME Steel, stated that his organization supports the Board staff's recommendation to send petition 570 to an advisory committee, and his organization would like to participate. He said that they don't see a need to revise the passive fall erection system standards that are currently in place, but they believe that the CBB system has an important use in the industry. He stated that his organization uses the CBB system, but they use it differently than how the petition proposes it to be used.

Russell McCrary, CA Ironworkers Employers Council and District Council of Ironworkers, stated that his organizations feel there is a need to talk about all the parts of petition 570 because the regulations are very old and they cause a lot of confusion regarding what needs to be used and when. He said that the CBB system has been used on jobsites for quite some time, replacing thousands of pieces of plank and plywood. He stated that when it is used correctly, it works very well and has saved many lives. He said that a set of rules are needed to clarify how to use the CBB system safely.

Greg McClelland, Western Steel Council, stated that this petition is the result of many hours of work perfecting the use of the CBB system, and it was developed following several accidents and fatalities where the plank and plywood system was used to cover openings. He said that plywood can soak up water, making it heavier and more likely to cause ergonomic and soft tissue injuries. He also said that plywood can fall back down after an employee falls through a hole, leaving almost no indication that an accident has occurred. He stated that steel erectors and controlling contractors came together and effectively demonstrated that this hazard is a clear and present danger. He said that at that meeting, steel erectors learned various aspects of the CBB system and vetted the differences that are seen in the petition regarding all of the standards that are interlaced. He stated that the steel erection standards are not vertical, and there are many other standards that are referenced in their work. He said that this petition is not asking for a mandate requiring the use of CBB, but for a more vertical standard. He stated that the CBB system has been in use for almost 10 years, but employers are still operating under a letter of clarification and instruction, instead of an actual standard that employers can read and train their employees on. He said that it is necessary to convene an advisory committee meeting to address all of the issues listed in the petition and the interlacing standards.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:37 a.m.

II. **PUBLIC HEARING**

Mr. Thomas called the Public Hearing of the Board to order at 10:37 a.m., January 17, 2019, in the Council Chambers of the Rancho Cordova City Hall, Rancho Cordova, California.

Mr. Thomas opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **TELECOMMUNICATION SAFETY ORDERS**
 Section 8615(g)
 Fall Protection in Telecommunications

Mr. Manieri summarized the history and purpose of the proposal, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

Jay Weir, AT&T, stated that his organization supports the proposed changes, but they have some concerns. He said that the proposal does not give his organization enough time to make the changes. He said that federal OSHA gave electrical companies one year to comply. He

stated that AT&T has 12,000 employees who climb poles, and 6,000 of them will need training on the new equipment that this proposal requires because they were grandfathered in to the point-to-point travel, and anyone who was trained before 2005 will need to be retrained on the new equipment. He also said that the cost proposal that the Board staff provided shows that the training cost per employee will be about \$64. He stated that this is about $\frac{3}{4}$ of the cost of one hour for one instructor. He said that these “climber” employees are paid a little bit more and will be taken off the job for about 8 hours of training, and the loaded labor rate for these employees is about \$120 per hour. He stated that the cost for his organization will be millions of dollars, not thousands of dollars as the Board staff’s cost proposal suggests. He also said that the cost of the equipment that the Board staff listed in the proposal is approximately half of what it will cost his organization to provide it. He said that his organization has started using some of the equipment, but they have 6,000 more employees to get trained on it, and if they get a flash cut, they may not get the equipment in time.

Mr. Weir stated that his organization has the following concerns about some of the wording of Section 8615(g):

- In (g)(1), the word “equipment” should be changed to “system” to match the wording used throughout the rest of the standard.
- The word “except” in section (g)(3) creates confusion because of how the provision is written. His organization recommended removing the word “except” and leaving (g)(3) to state:

“Personal fall protection systems listed in (g)(1) shall meet the applicable requirements in Section 1670 of Article 24.”

- Section 8615(g)(4), as it is proposed, repeats the same requirements that are listed in Section 1670 of Article 24. This is surplus language that should be deleted, and a new (g)(4) should be added that states:

“Linemen’s body belts used for climbing poles, towers or other similar structures, and work positioning shall comply with the requirements of Section 2940.6(c) of the Electrical Safety Orders.”

Mr. Harrison asked Mr. Weir how much time he feels would be sufficient for organizations like his to implement the proposed changes. **Mr. Weir** stated that one year would be sufficient.

Jerome Candelaria, CA Cable and Telecommunications Association, stated that the cable industry is aware of the changes that are being proposed and has begun transitioning to the new climbing methods and fall protection systems. He said that his organization would be happy to be a point of contact for the Board and staff to use if they have any questions.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:53 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:53 a.m., January 17, 2019, in the Council Chambers of the Rancho Cordova City Hall, Rancho Cordova, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 3999(b)
Guarding of Conveyor Belt Support Rollers - Note

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Laszcz-Davis that the Board adopt the proposal.

A roll call was taken, and all members present voted "aye." The motion passed.

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Don Zampa, President
Greg McClelland, Executive Director
Petition File No. 570

Petitioner requests amendments of the Construction Safety Orders, Subsections 1710(b) and (l) to include new definitions, change decking installation requirements, change fall protection requirements, and incorporate the use of a cone and bar barricade (CBB) system around floor openings in lieu of temporary railings or coverings required by Section 1632.

Ms. Shupe summarized the history and purpose of the petition, and stated that the proposed recommendation is to adopt the petition decision, which is to convene an advisory committee to discuss the need for, and the necessary requirements of, a cone and bar barricade system.

Mr. Harrison stated that going to an advisory committee is a good idea, but the scope of the advisory committee should not limit or exclude any of the language that is in the petition itself. He said that an advisory committee meeting is a good place to discuss everything and work out any possible problems, such as possible conflicts with the Labor Code.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Laszcz-Davis that the Board adopt the petition decision and go to advisory committee to discuss all aspects of the petition.

Ms. Stock stated that she is concerned about the amount of time and resources that it takes to do the advisory committee process, and it is important to conduct advisory committee meetings efficiently. She said that some parts of the petition violate the Labor Code, and that is why the petition decision limits the scope of the advisory committee. She also asked the Board staff to address some of the comments that were made regarding outdated requirements for planking.

Mr. Manieri stated that the Board and staff have always examined rulemakings from the standpoint of looking at innovations and changes in technology and industry practices. He said that one has occurred that was not well-defined when this petition was reviewed, and that would cause the Board staff to pause and give it further consideration in the advisory committee and always within the parameters of the Labor Code. He said that it is worthwhile to consider changes and to give the public an opportunity to comment on them, especially real time changes such as these. He stated that in the past, changes in technology and work practices have prompted changes to existing standards, with an eye always turned toward improving safety. He said that the work flow in steel erection is very delicate and involves many parties, and the Board staff would support expanding the scope of the advisory committee to include that.

Mr. Healy stated that because of the volume of language in the petition, it would be a good idea for the Board to add some precision to the motion so that it does not appear that the Board is adopting the entire petition word for word. He suggested that a motion be made to grant the petition to the limited extent that the Board staff shall convene an advisory committee to consider the issues raised by the petition. **Mr. Thomas** agreed with Mr. Healy's recommendation.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Laszcz-Davis that the Board adopt the petition decision to the limited extent that the Board staff shall convene an advisory committee to consider the issues raised by the petition.

A roll call was taken, and all members present voted "aye." The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated he is aware of no unresolved legal or procedural issues regarding items A-M on the consent calendar, and he believes that those items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Laszcz-Davis to adopt the consent calendar.

A roll call was taken, and all members present voted "aye." The motion passed.

D. OTHER

1. Legislative Update

Mr. Healy stated that the Legislature reconvened on January 7, 2019, but since this session is at a very early stage, there is nothing to report at this time. He said that he will continue to monitor the session and report on any bills of interest at a future Board Meeting.

2. Overview of Petition Process and Emergency Rulemaking Process

Ms. Shupe stated that in the Board packet, there are two flowcharts: one showing the petition process and one showing the process for emergency standards rulemakings [Please see the file copy of the Board packet to view these flowcharts]. She said that the petition process begins when a petition is received and the Board staff docket it. She stated that when the petition is docketed, it starts the 6-month time clock during which the petition must be evaluated, and a petition decision must be drafted by the Board staff and voted on by the Board. She said that if the petition is denied by the Board, the process is complete, but if the Board approves the petition, it may be sent to an advisory committee. She said that the emergency rulemaking process is different from the petition process because it reflects the actual rulemaking process. She stated that emergencies can be identified by the Board, Board staff, Division, or both. She said that when an emergency is identified, research studies and reports are done and the rulemaking is created. She stated that evidence is necessary to show the need for the emergency regulation, and the regulation must be legally defensible and meet the six requirements of the Administrative Procedures Act (APA). After the rulemaking is created, it is sent to the Labor Secretary for approval, along with a fiscal analysis. Once the Labor Secretary approves the rulemaking, it goes to the Board for a decision. If the Board adopts it, then it is sent to the Office of Administrative Law (OAL), and OAL only has 10 days to approve it.

Ms. Burgel stated that the emergency regarding exposure to wildfire smoke was brought up via petition 573. She asked if the Board will have to make a determination as to whether or not it is truly an emergency in order to move petition 573 forward and discuss the Air Quality Index (AQI) due to wildfires. **Ms. Shupe** stated that the petition stands on its own, and the Board will decide whether to grant or deny the petition. She said that the issue regarding whether it's an emergency or not is a separate issue that the Board must decide.

Ms. Stock stated that the only place on the emergency rulemaking standards flowchart where a timeframe appears is at the end, whereas with the petition process, there is a six-month timeframe. She asked Ms. Shupe if the six-month timeframe is still applicable to the emergency standards rulemaking process. She said that the only place where it appears that the emergency rulemaking process speeds up is at the very last stage. **Ms. Shupe** stated that there is no concurrence of timelines between the petition process and the emergency standards rulemaking process. She said that the petition process runs and stands on its own, and the Board has six months to make a decision on it. She stated that if a rulemaking comes out of the petition process, the rulemaking undergoes the standard rulemaking process, and once the rulemaking package is complete, the clock for the emergency standards begins. **Ms. Stock** stated that petition 573 is requesting the Board to do something to protect workers from exposure to wildfire smoke, and to do it quickly so that something is in place before the wildfire season begins. She asked Ms. Shupe if the Board can do anything to encourage the

staff that is working on the petition to expedite it. **Ms. Shupe** stated that this petition pertains to a health issue, so the Division will need to review it. She said that the Board staff is already working on it with the Division and looking into how they can accelerate the process. **Ms. Stock** stated that she is glad to hear that the process for petition 573 is being accelerated, and she would like to learn more about the petition process to the extent that it can be accelerated in situations like this. **Ms. Burgel** echoed Ms. Stock's last comment.

Ms. Laszcz-Davis stated that the flowcharts were very helpful and asked Ms. Shupe if they are available on the Board's website. **Ms. Shupe** stated that they are not presently on the Board's website, but they will be added.

3. Executive Officer's Report

Ms. Shupe stated that she had nothing to report, but that the Board staff is looking forward to working with the new governor and administration.

4. Future Agenda Items

Ms. Shupe stated that she and Ms. Hart are working on the 2018 Year in Review, and Ms. Shupe will be presenting that to the Board at the next meeting.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:15 a.m.