

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
March 16, 2017
Sacramento, 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 10:17 a.m., March 16, 2017, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

Dave Thomas
David Harrison
Barbara Smisko
Laura Stock

Board Member Absent

Chris Laszcz-Davis
Patty Quinlan

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
Peter Healy, Legal Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health

Others Present

Gavin Dillon, CalTrans
Jay Weir, AT&T
Hal Lindsey, Diversified Utility Services
Bill Taylor, PASMA
Marion Betz, HERE Local 49
Loren Delicana, OSHA Region IX
Jeff Fairbanks, MID
Marti Fisher, CalChamber
Trina Caton, Keenan Insurance Broker
Nelson Hernandez, Unite Here Local 49
Linda Gonzales, Unite Here Local 49
Roxana Tapia, Unite Here
Dan Leacox, Leacox & Associates

David Jones, AGC
Terry Thedell, SDG&E
Ralph Armstrong, International Brotherhood
of Electrical Workers Local 1245
Ronald Kilburg, El Dorado Irrigation District
Bret Gwaltney, SMUD
Denise Fernandez, Unite Here
Michael Rice, PG&E
Jane Thomason, CA Nurses
Association/National Nurses United
Justin Witson
Jim Allsio, US Health
Robert Holshouser, International Line

Kevin Bland, Ogletree Deakins	Builders, Inc.
Elizabeth Treanor, PRR	Isabel Barrera, Unite Here
Veronica Chavez, Unite Here	Ana Lepe, Unite Here
Adam Cohen, AHF	Jamie Carlile, SCE
P. Adrian Medrano, SCE	Bret Barron, NECA
Michael Musser, CA Teachers Association	AJ Zartman, Diversified Utility Services
Theresa Drum, CalTrans	Patricia Gaydos, OSHA
Jeremy Pugliese, Unite Here	Patricia Durham, SMUD
Cindy Sato, CEA	Isela Martinez, Unite Here
Bruce Wick, CALPASC	Robert Flatt, Unite Here Local 49
Kenna Cook, Free Speech Coalition	Bruce Zike, Supervisor HES
Larry Wong, University of CA Office of the President	Nicole Marquez, Worksafe
	Kevin Thomspson, Cal-OSHA Reporter

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.

Isela Martinez, Unite Here Local 49, stated that the hotel housekeeping proposal will make a significant improvement in protecting hotel housekeepers from injury if properly put into practice. She said that if hotel housekeepers are given the opportunity to inform the hotel management of workplace hazards, injuries can be prevented. She stated that simple, feasible, effective changes exist that can be implemented to mitigate these hazards. She thanked the Board staff, Division, and Labor and Workforce Development Agency (LWDA) for continuing to move the hotel housekeeping proposal forward, and she asked that it be noticed for public hearing by April 1 so that a public hearing can be held before the end of June. **Isabel Barrera, Unite Here Local 11 and Nicole Marquez, Worksafe**, echoed Ms. Martinez's comments.

Veronica Chavez, Hotel Housekeeper, Unite Here Local 11, stated that it is physically demanding work to lift mattresses to make beds, clean bathrooms, and push carts that can weigh 120 lbs. when empty. She said that pushing the housekeeping carts on carpeted floors puts stress on the body and can cause injury. She stated that hotel housekeepers worry about getting injured and not being able to provide for their families. She said that the hotel housekeeping proposal can prevent these injuries and will assure the safety of hotel housekeeping jobs in the future.

Ana Lepe, Housekeeper at Disneyland Grand CA Hotel, stated that employees at her hotel have told the hotel management about how heavy the housekeeping carts are and how they can lead to injury. She said that the hotel was recently remodeled, and as a result, the housekeepers' workload has increased, but they are only given 30 minutes to clean each room.

Ms. Hart stated that the rulemaking documents for the hotel housekeeping proposal are currently being reviewed by the LWDA, and as soon as they are approved, the Board staff will prepare the notice for submission to the Office of Administrative Law for publication.

Verta, Adult Performer Advocacy Committee (APAC), asked the Division to consider holding a second advisory committee meeting for petitions 557 & 560 in southern California so that more adult film workers and experts can attend. She said that petition 560 presents the opportunity for performers to work with the government to draft regulations that will not hinder their ability to do their work or make their work less safe. She said that the regulations need to mitigate the risk of contracting sexually transmitted infections (STI's) while also providing workers with a sense of security.

Coco, Free Speech Coalition, stated that the agenda for the January 31 advisory committee meeting was packed with performer- and industry-specific topics to be discussed, but were largely unaddressed because the Division and AHF needed a lot of basic background information on the adult film industry and how it operates. She said that it is important that the Division conduct a survey of adult film performers to collect accurate information about the industry, and it is also important to hold whiteboard sessions in collaboration with performers to explain how employee/employer relationships are set up. She stated that a majority of the adult film industry is located in southern California, so it is essential that a second advisory committee be held in southern California, and it is important that the Division listen to as many of the performers' voices as are in attendance at the advisory committee. She said that adult film workers' voices need to be heard because these regulations will affect them the most.

Adam Cohen, AIDS Healthcare Foundation (AHF), stated that the January 31 advisory committee for petitions 557 and 560 was very productive and a positive step forward, especially with the comments that were made by current adult film performers regarding the current working conditions in the adult film industry. He also said that a study came out in February where performers stated that films containing condoms do not sell, and performers do not have a choice whether or not to use a condom. He stated that performers, especially women, who choose to use condoms during a shoot are often let go and replaced with performers who choose not to use a condom. Therefore, performers can only work if they don't use condoms, or they will not be able to work at all.

Justin Wilson, Adult Film Performer, stated that the January 31 advisory committee for petitions 557 and 560 was very beneficial, and each side had different ideas about how the adult film industry functions. He said that during the advisory committee, a suggestion was made that the Division hold some whiteboard sessions with each of the interested parties to write down the different rules, regulations, industry experiences and beliefs that each party has, and then combine them to make a well-formed and beneficial regulation for the adult film industry to protect workers from STI's. He stated that having another advisory committee in southern California would also be beneficial so that more workers in the industry can be heard.

Bruce Wick, CALPASC, stated that the memo that the Board received from Ms. Hart [Please see the file copy of the Board packet to view this document] regarding available actions to take regarding the silica proposal has several options, but his organization would like the Board to consider waiting 30 to 60 days before taking any action. He said that during that time, it will allow manufacturers to get enough sample data for the variety of tools that they have so that this data can be discussed at an advisory committee. He said that his organization has been pressing manufacturers to get sampling data, and last night, data was received from

IQ Power Tools regarding 3 main power tools that have been used over the last 9 years and that come in with a PEL that is lower than 50 on an average workday. He presented a copy of this information to the Board Members for their review [Please see the file copy of the Board packet to view this document]. The data says that these and other tools are viable options and fall within the PEL, so they should be considered. He said that vacuum tools are the future, they have many benefits, and if they are not included in Table 1, they will be viewed as disfavored.

Kevin Bland, representing the Mason Contractors Association of CA, the CA Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council, stated that having an additional advisory committee to discuss the silica proposal would be beneficial because there is data available to prove that the equipment that employers have been using for the last 9 years is within the PEL and at least as effective as the federal regulation, and therefore, it should be added to Table 1. He said that since the Board adopted the federal standard via the Horcher process, it is now the California standard, regardless of what federal OSHA does with its regulation, so now is the time to make any necessary changes to the California standard. He stated that the preamble from the federal regulations contains a lot of explanations and other information that would be good to include in the California standard, especially regarding items that federal OSHA has already decided on.

Jeremy Smith, State Building Construction Trades Council, stated that his organization is looking forward to reviewing this new data that proves the equipment that manufacturers have been using for the last 9 years is at least as effective as the federal standard when it comes to silica exposure. He said that the preamble in the federal regulation is included by federal OSHA to provide a rationale for the regulation, and the exceptions in the preamble should not be ignored. He stated that the exceptions mean that there is not enough data showing that there is enough exposure to include those items in the regulation, but that does not mean that there is no exposure. He said that an advisory committee should be convened soon to discuss this new data and move forward with the proposal.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:58 a.m.

II. PUBLIC HEARING

Mr. Thomas called the Public Hearing of the Board to order at 10:58 a.m., March 16, 2017, in the Auditorium of the State Resources Building, Sacramento, California.

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

1. TITLE 8: **LOW VOLTAGE ELECTRICAL SAFETY ORDERS**
Article 1. Definitions, Section 2300
Article 3. Work Procedures, Sections 2320.2, 2320.7, and 2320.8; and
New Section 2320.11
Article 4. Requirements for Electrical Installations, Section 2340.17

HIGH VOLTAGE ELECTRICAL SAFETY ORDERS

Article 1. Definitions, Section 2700

Article 23. Transformers, Section 2874

Article 29. Capacitors, Sections 2887 and 2893

Article 36. Work Procedures and Operating Procedures, Sections 2940, 2940.1, 2940.2, 2940.5, 2940.6, 2940.7, and 2940.8;

New Sections 2940.11, 2940.12, 2940.13, 2940.14, 2940.15, and 2940.16; Sections 2941, 2941.1, and 2943;

New Section 2943.1; Section 2944; and New Section 2944.1,

New Appendix A, Appendix C, New Appendix D, and New Appendix E

Article 37. Provisions for Preventing Accidents Due to Proximity to Overhead Lines, Section 2946

Article 38. Line Clearance Tree Trimming Operations, Section 2951

GENERAL INDUSTRY SAFETY ORDERS

Article 7. Miscellaneous Safe Practices, Sections 3314

Article 10. Personal Safety Devices and Safeguards, Section 3389

Article 12. Tree Work, Maintenance or Removal, Sections 3422 and 3425;

and New Section 3428

Article 108. Confined Spaces, Section 5156

TELECOMMUNICATIONS SAFETY ORDERS

Article 1. Telecommunications, Section 8617

**Electric Power Generation, Transmission, and Distribution;
Electrical Protective Equipment: Final Rule**

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.

Elizabeth Treanor, Phylmar Regulatory Roundtable, thanked Maryrose Chan for her work on this proposal. Her organization has concerns regarding the lack of clarity in this proposal and the fact that some sections are inconsistent with existing regulations. She recommended the following and asked the Board staff to work with stakeholders to resolve these issues:

- In Section 2940.6 regarding portable ladders and platforms, subsection 5 should be deleted and subsection 6 should remain as it is for clarity. It will be difficult for employers to find ladders that support 2.5 times the maximum intended load as is required by this subsection and it will confuse workers if the load limit in the regulations is different from what is listed on the ladder. It is also inconsistent with Section 3276. **Bill Taylor, PASMA**, echoed this comment.
- In Section 2940.11 regarding protection from flames and electric arcs, the term "covered" and "noninsulated conductors" are two different terms and are not recognized by workers. The terms "energized" and "unprotected" should be used instead because they are much clearer for workers and employers.

Jamie Carlile, Southern California Edison, stated that more work needs to be done on this proposal to make it clearer, and his organization is interested in working with the Board staff

through an advisory committee to help do that. He said that his organization does not object to the concepts in the proposal, but further discussion with California utilities and other stakeholders is necessary to ensure clarity and comprehension, and further discussion of the following items will ensure greater compliance and worker safety.

- In Section 2940.6(d) regarding portable ladders and platforms, further clarification is needed regarding the provision that portable ladders and platforms shall be capable of supporting at least 2.5 times the maximum intended load.
- In Section 2320.11(e) regarding non-current carrying metal parts, further clarification is needed and may require reshaping the verbiage because the verbiage will cause confusion for those working on this type of equipment.
- In Section 2944, the term “work” is broadly used throughout the section and leaves room for varying interpretation. This can be cleared up through definition or alternative language.
- In Section 2943.1 regarding enclosed spaces, there is a level of confusion among industry representatives regarding the introduction of this section and the elimination of the broadly and successfully used other confined space provisions that have been utilized in the electric utility industry. There needs to be more discussion to ensure that the intent of this addition is met and safety factors are enforced.
- In Section 2940.11(b) regarding protection from flames and electric arcs, the term “covered” should be replaced with “energized unprotected”. This will provide clarity without altering the intent of the proposal.

Ralph Armstrong, IBEW 1245, stated that his organization has some concerns about this proposal and would like to see an advisory committee convened to discuss this. He said that all voltage levels are lethal, so the likelihood of an injury occurring should not be defined by the voltage – it should be determined by the employee’s level of training and competency in the work. He stated that the language in Section 2320.2 is weak and should, at a minimum, require that the work be performed by an employee who is trained and competent in the work practices and safety requirements for performing energized work.

Bill Taylor, Public Agency Safety Management Association (PASMA), stated that more work needs to be done on this proposal, and it would be beneficial to convene an advisory committee to determine the scope, necessity, and feasibility of this proposal. He said that this proposal needs more clarity and understanding, and employers need to make sure that employees have the right equipment to do the job and that they understand what they need to do to comply with this regulation.

Robert Holshauser, International Line Builders, stated that his organization has questions about information transfer, which he emailed to the Board and staff. He said that his organization is concerned because the multi-employer language in the current standard does not accomplish federal OSHA’s goal of recognizing who the responsible party is. He said that the federal standard calls the responsible party the “host employer” and all other employers the

“contracted employers”. He stated that many utilities contract out their projects, and it is important to identify who the host employer is on the project.

Mr. Harrison asked about the timeline for this proposal and how holding an advisory committee might affect it. **Ms. Hart** stated that the Board has 1 year to take action on the proposal from the day it was noticed to the public, and if an advisory committee is convened, it will need to be convened sometime during that 1-year period. She said that it takes several months to do an advisory committee, especially without suggested language from stakeholders. She stated that Ms. Treanor has provided some suggested language that addresses some issues, but not all. She said that it might be a good idea for the Board staff to speak more fully with commenters to see what the commenters are suggesting. She stated that holding an advisory committee won’t delay the timeframe for the proposal, but it will compress it.

Ms. Stock stated that because the staff’s time and resources are limited, the Board must be judicious about what it asks the staff to undertake. She said that a better idea might be to ask the commenters to submit possible language in writing by 5:00 p.m. that day, the end of the 45-day comment period. **Ms. Hart** stated that discussion with affected stakeholders on this issue will continue after the 5:00 p.m. deadline to help the Board staff decide how to move forward, but any discussion that occurs after the deadline will not become a part of the official rulemaking record.

Ms. Treanor asked Ms. Hart about the date by which commenters should submit suggested language. **Ms. Hart** stated that it would be best to receive them by the end of March. She said that, if the Board desired, the 45-day comment period could be extended to March 31, 2017 to give commenters additional time to submit suggested language and have it be included in the record.

There were no objections from any Board Members present. The comment period for this proposal was extended to March 31, 2017.

A. ADJOURNMENT

Mr. Thomas adjourned the public hearing at 11:30 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:30 a.m., March 16, 2017, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that items A-Q on the consent calendar are ready for consideration, and possible adoption, by the Board.

MOTION

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

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

B. VARIANCE DECISION – PETITION FOR REHEARING

1. OSHSB File No. 16-V-110, In The Matter of Application For Permanent Variance by Riverside County Sheriff’s Department (added per Government Code Sec. 11125.3(a)(2))

Mr. Healy informed the Board that the item had been added to the agenda of the Business meeting of the Board, pursuant to Government Code Section 11125.3(a)(2), because on March 10, 2017, the office of the Board received a Petition for Rehearing of the subject permanent variance decision, submitted on behalf of the employee having participated as a party in the variance matter. Mr. Healy explained that, although the item had been added as an agenda item per Title 8, Section 427.3, the Board is fully within its discretion to let stand its decision in this matter simply by taking no further action, and moving on to the next agenda item. Nonetheless the item has been added, because the choice of further proceeding, action, or neither, is the Board’s choice to make, and denial of the Petition would occur by lapse of 30 days, prior to the Board’s next regularly scheduled meeting in April. Regarding the central question of the Petition’s request for rehearing, Mr. Healy went on to inform the Board that he was aware of no issue of evidence or law which would prevent the Board choosing, within its sound discretion, to let the subject decision speak for itself, and the Petition for Rehearing to be deemed denied by lapse of 30 days from receipt, absent further Board action.

Ms. Smisko observed that hearing in the matter had resulted in a particular recommended decision, that the Board had adopted that recommendation, and that now it sounded like the Petitioner was asking the Board to double-check that decision.

Mr. Thomas stated that he stood behind the Board’s original decision concerning the variance matter.

The Chair then stated that in the absence of a motion concerning the Petition for Rehearing, or objection, the Board would move on to the next agenda item. No motion or objection being heard, the Chair then moved on to the next agenda item, having taken no action on the Petition.

C. OTHER

2. Legislative Update

Mr. Healy stated that there are 3 bills in the early part of the legislative session that the Board staff is watching:

- AB 263 pertains to emergency medical service workers. This bill expands and clarifies their rights regarding hours, wages, and other things. It also includes provisions to protect them from workplace violence that are similar to some of the provisions that are in the workplace violence prevention standard for healthcare workers.
- AB 402 pertains to medical plume. A bill that was similar to this made it to the Governor's desk last session, but the Governor vetoed it because he wanted to preserve the Board's discretion in this area.
- AB 978 pertains to employees' right to access their workplace's injury and illness prevention program.

3. Executive Officer's Report

Ms. Hart stated that, per the Board's instruction, advisory committee meetings were convened regarding respirable crystalline silica and field survey operations (working alone). She said that since these items were brought up by members of the Board, the Board staff is seeking further guidance from the Board on how to proceed on each. Regarding silica, Ms. Hart stated that the Board has the following options to choose from:

1. Discontinue the rulemaking effort and ask the Division to review the compliance guide to ensure that it addresses the specific needs of California employers.
2. Move forward with the rulemaking effort that the Board staff went to advisory committee with. She said that this option could be problematic in some ways due to federal OSHA's issues.
3. Continue the subcommittee discussions that specifically address controls and respirator requirements for employees to safely cut tiles on steep roofs.

She also stated that Mr. Wick presented another option during the public meeting today. She said that this is the first time that the Board staff has seen the data that Mr. Wick presented, and more data is coming. She stated that that data will need to be reviewed before it can be taken to an advisory committee.

Ms. Stock stated that she is definitely not in favor of discontinuing the rulemaking effort. She said that she is curious about how the other two options will impact the deadline requirement for this rulemaking. She stated that the third option to continue subcommittee discussions will take a lot of time, and before moving forward with that option, the Board

needs to make sure that that option will contribute to the endpoint. She stated that she prefers the second option because it is the most balanced option. She said that it will allow the process to continue moving forward, and it acknowledges the important contributions that California's version of the standard could make to clarify Table 1. She also stated that it is important that the Board meet the legislative deadline.

Ms. Hart stated that there are no deadlines to meet in this case. She said that if changes were made to the standard, they would have to be made and become effective by June 23, 2017. She stated that that is not possible at this point, so the standard that the Board adopted will go into effect on June 23 as is, and the current process will result in changes or improvements in clarity down the road in Table 1. **Ms. Stock** stated that she feels the second option is preferential to meet this goal.

Ms. Smisko recommended that the Board take the second option and focus on clarifying Table 1 using the data that is coming in. She said that there will be other opportunities to clarify other parts of the standard. **Ms. Hart** stated that there are other options to clarify other parts of the standard if people want to, and focusing on one part during this process will expedite the process. **Ms. Smisko** stated that as information comes in, the Board staff will provide that information and have further dialogue as needed. **Ms. Hart** stated that the second option would need to be modified to state that more advisory committees will be held as needed based on data that is received. She said that more discussion with stakeholders will be necessary in order to come up with a good rulemaking that meets federal OSHA's requirements and suits the public.

Ms. Stock asked Ms. Hart which option she would recommend. **Ms. Hart** stated that she recommends waiting for additional data to come in and be reviewed and distributed by the Board staff before making a determination as to whether further action is needed. **Mr. Thomas** stated that he feels that Ms. Hart's recommendation is the best option in this case.

There were no objections from any Board Members present. The decision was made to wait to take further action on the silica standard until additional data comes in and is reviewed and distributed.

Regarding field survey operations, Ms. Hart stated that this item was brought up by Mr. Harrison at a previous Board meeting as an issue regarding working alone in construction and evolved into a more focused issue regarding field survey operations. She said that Michael Nelmidia was the advisory committee chairperson, and Mr. Nelmidia recommends not moving forward with a rule for surveyors. She said that there are several regulations already in place, such as the CalTrans MUTCD, that have specific rules for surveying on center lines of high volume roads as opposed to surveying on construction sites. She also stated that there is not a lot of accident data to prove necessity for the rule without duplicating existing standards.

Mr. Harrison stated that he is disheartened that this issue has not gone any further. He said that he hopes that the Division will do more enforcement of the MUTCD vehicle code, and he is shocked that there is not a lot of accident data even though this is a hazardous industry. He stated that he hopes this issue is not dead. **Ms. Hart** stated that the part regarding surveyors is

over. **Mr. Harrison** stated that this is an important issue that needs to be addressed either through more enforcement or additional rulemaking. **Ms. Hart** stated that CalTrans may be able to do further rulemaking on this issue, since they are the ones who write the MUTCD.

Mr. Manieri stated that the CalTrans MUTCD is derived from the federal version of the MUTCD, and the federal version has extensive requirements that address this issue. He said that some of the language contains permissive phrasing, but it could be taken from there and used to enhance standards regarding high visibility apparel and traffic controls. He stated that it could also be converted into language that is enforceable, which would give it more enforcement weight. **Ms. Hart** stated that the MUTCD is already incorporated by reference, but further amendments could be made to the California version.

Ms. Stock asked Mr. Harrison if he feels that there are regulations regarding this that are not adequately being enforced. **Mr. Harrison** stated that this issue came about when there was discussion about technology and the ability of the survey industry to work in remote locations. He said that many workers in these locations do not have access to first aid and do not have cell phone reception to call 911. He stated that the advisory committee participants' comments indicated that the injury and illness prevention plans (IIPP's) that employers are required to have already addresses this issue. He said that if that is the case, then he would like to see the Division do better enforcement of that. He stated that the MUTCD also addresses this issue.

Mr. Berg stated that Section 3395 applies to outdoor places of work and has specific language that requires employees to be able to contact supervisors in the event of an emergency. He said that the title of "outdoor heat" is confusing and perhaps could be changed to clarify that the section applies to outdoor places of work, regardless of the temperature.

Ms. Hart stated that the Division will look into clarifying the title of Section 3395, and continued outreach and education on this issue is important, as well as following the MUTCD.

4. Future Agenda Items

No future agenda items were suggested.

1. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:01 p.m.