

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
March 18, 2021 OSH)
Standards Board Meeting)
_____)

TELECONFERENCE

*PLEASE NOTE: In accordance with Executive Order N-29-20, and
Executive Order N-33-20, the
March Board Meeting will be conducted via teleconference.*

THURSDAY, MARCH 18, 2021

10:00 A.M.

Reported by:
Peter Petty

CALIFORNIA REPORTING, LLC
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APPEARANCES

BOARD MEMBERS:

David Thomas, Chair
Barbara Burgel, Occupational Health Representative
Kathleen Crawford, Management Representative
Dave Harrison, Labor Representative
Nola Kennedy, Public Member
Chris Laszcz-Davis, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer
Autumn Gonzalez, Chief Counsel
Sarah Money, Executive Assistant
Michael Nelmda, Sr. Safety Engineer

BOARD STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Michael Manieri, Principal Safety Engineer
Lara Paskins, Staff Services Manager
David Kernazitskas, Sr. Safety Engineer
Jennifer White, Regulatory Analyst

ALSO PRESENT:

Eric Berg, Deputy Chief of Health, Division of Occupational Safety and Health (Cal/OSHA)
Michael Wilson

TKO STAFF:

John Gotcher
John Roensch,
Maya Morsi
Rey Ursey
Brian Monroe

INTERPRETERS:

Susana Haikalis, SWI Interpreters
Esther Hermida, CA Interpreting
Alejandro Franco, CA Interpreting

PUBLIC COMMENT:

Dr. Jeffrey Klausner, University of Southern California (USC) Keck School of Medicine

Mike Smith, United Steelworkers (USW)

Norman Rogers, United Steelworkers (USW) Local 675

Kevin Buchan, Western States Petroleum Association (WSPA)

Nick Plurkowski, United Steelworkers (USW) Local 5

Tracy Scott, United Steelworkers (USW) Local 5 in Martinez

Doug Subers, California Professional Firefighters

Rick Swan, International Association of Fire Fighters (IAFF)

Margaret (Maggie) Robbins, Worksafe

I N D E X

	Page
I. CALL TO ORDER AND INTRODUCTIONS	7
II. PUBLIC MEETING (Open for Public Comment)	9
III. PUBLIC HEARING	25
A. EXPLANATION OF PROCEDURES	
B. PROPOSED SAFETY ORDERS (Revisions, Additions, Deletions)	
1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS Article 10.1, section 3401, section 3402, new sections 3402.1 - 3402.3, sections 3403 - 3410, new section 3410.1, and section 3411 Fire Fighters’ Personal Protective Clothing and Equipment – AB 2146	
IV. BUSINESS MEETING – All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.	41
<p>The purpose of the Business Meeting is for the Board to conduct its monthly business.</p>	
A. PROPOSED PETITION DECISION FOR ADOPTION	41
1. Oyanga A. Snell, Esq. Western States Petroleum Association Petition File No. 584	
<p>Petitioner requests to amend title 8, section 5189.1, Process Safety Management, definitions of Major Change, Employee Representative and Participation, Highly Hazardous Materials and amendment of the High Hazard Control Analysis hierarchy.</p>	

I N D E X (Cont.)

	Page
A. PROPOSED PETITION DECISION FOR ADOPTION (Cont.)	45
2. Marisa “Reese” Fortin, Area HS&E Manager Sundt Construction, Inc. Petition File No. 585	
Petitioner requests to allow the internal guying/bracing of reinforcing steel (rebar) assemblies when the guying/bracing system is designed by a qualified person and to clarify that external guying and bracing of rebar assemblies shall be prohibited.	
B. PROPOSED VARIANCE DECISIONS FOR ADOPTION	51
1. Consent Calendar	
C. REPORTS	52
1. Division Update	
2. Legislative Update	
3. Executive Officer’s Report	
D. NEW BUSINESS	60
1. Future Agenda Items	
Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code sections 11125 & 11125.7(a).).	

I N D E X (Cont.)

	Page
IV. BUSINESS MEETING (Cont.)	61
E. CLOSED SESSION	
1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270	
2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210	
3. National Retail Federation, et. al., v OSHSB, et. al., County of San Francisco, CA Superior Court Case No. CGC-20-588367	
4. Western Growers Association, California Farm Bureau Federation, et. al. v OSHSB, et al., County of San Francisco, CA Superior Court Case No. CPF-21-517344	
5. Personnel	
F. RETURN TO OPEN SESSION	62
1. Report from Closed Session	
G. ADJOURNMENT OF THE BUSINESS SESSION	62
Next Meeting:	April 15, 2021
	Teleconference and Video-conference (In accordance with Executive Orders N-29-20 and N-33-20) 10:00 a.m.
Reporter's Certificate	63
Transcriber's Certificate	64

1 PROCEEDINGS

2 MARCH 18, 2021

10:02 a.m.

3 CHAIR THOMAS: Good morning. This meeting of the Occupational Safety
4 and Health Standards Board is now called to order. I am Dave Thomas, Chairman, and
5 the other Board Members present today are Ms. Barbara Burgel, Occupational
6 Health Representative; Ms. Kathleen Crawford, Management
7 Representative; Mr. David Harrison, Labor Representative; Ms. Nola
8 Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management
9 Representative; and Ms. Laura Stock, Occupational Safety
10 Representative.

11 Also present from our staff for today's meeting are Ms.
12 Christina Shupe, Executive Officer; Ms. Autumn Gonzalez, Chief Counsel;
13 Ms. Sarah Money, Executive Assistant; and Mr. Michael Nelmidia, Senior
14 Safety Engineer, who is providing technical support.

15 Supporting the meeting remotely are Mr. Michael Manieri,
16 Principal Safety Engineer; Ms. Lara Paskins, Staff Services Manager; Mr.
17 David Kernazitkas, Senior Safety Engineer; and Ms. Jennifer White,
18 Regulatory Analyst.

19 Via teleconference, we are joined today by Mr. Eric Berg,
20 Deputy Chief of Health, representing the Division of Occupational Safety
21 and Health.

22 If you have not already done so, we ask that you email
23 oshsb@dir.ca.gov to provide your name and contact information, which
24 will become a part of the official record of today's proceedings. Today's
25 agenda and other materials related to today's proceedings are posted on

1 the OSHSB website.

2 In accordance with the Executive Order N-29-20 and N-33-20,
3 the March Board Meeting will be conducted via teleconference, with an
4 optional video component.

5 This meeting is also being live-broadcast via video and audio
6 stream in both English and Spanish. Links to these non-interactive live
7 broadcasts can be accessed via the “what’s new” section at the top of the
8 main page of the OSHSB website.

9 We have limited capabilities for managing participation
10 during public comment periods, so we’re asking everyone who is not
11 speaking to place their phones on mute and to wait to unmute until they
12 are called to speak.

13 As reflected on today’s agenda, today’s meeting consists of
14 three parts. First, we will hold a public meeting to receive public
15 comment or proposals on occupational safety and health matters.
16 Anyone who would like to address any occupational safety and health
17 issues, including any of the items on our business meeting agenda, may
18 do so at that time. Members of the public who have contacted staff
19 either by email or phone and asked to be placed in the public comment
20 queue will be called on in turn. Additionally, those joining via WebEx
21 may ask to join the queue via the chat function.

22 The WebEx chat function is monitored exclusively by staff
23 and is only available to send requests to join the public comment queue.
24 It is not a method for providing public comment to Board Members.
25 Board Members will not consider or respond to any messages delivered

1 via the web chat function, nor will such comments become part of the
2 official rulemaking record.

3 Please listen for your name and an invitation to speak before
4 addressing the Board. And please remember to mute your phone or
5 computer after commenting. After everyone in the queue has been
6 provided an opportunity to speak we will then open public comment to
7 anyone on the call who was not able to enter the queue. If you wish to
8 speak more than once, please contact staff and have your name placed
9 back in the queue.

10 Board staff can be contacted by email at oshsb@dir.ca.gov or
11 via phone at 916-274-5721 to be placed in the comment queue. If you
12 experience a busy signal or are routed to voicemail please hang up and call
13 again.

14 After the public meeting we will conduct the second part of
15 our meeting, which is the public hearing. At the public hearing we will
16 consider the proposed changes to the specific occupational safety and
17 health standards that were noticed for review at today's meeting.

18 Finally, after the public meeting is concluded, we will hold a
19 business meeting to act on those items listed on the business meeting
20 agenda. The Board does not accept public comment during the business
21 meeting unless a member of the Board specifically requests public input.

22 We will now proceed with the public meeting. Anyone who
23 wishes to address the Board regarding matters pertaining to occupational
24 safety and health is invited to comment, except however, the Board does
25 not entertain comments regarding variance decisions. The Board's variance

1 hearings are administrative hearings where procedural due process rights
2 are carefully preserved. Therefore, we will not grant requests to address the
3 Board on variance matters.

4 At this time, anyone who would like to comment on any matters
5 concerning occupational safety and health will have an opportunity to speak.

6 For our commenters who are native Spanish speakers, we are
7 working with an interpreter, Susana Haikalis, to provide a translation of
8 their statements into English for the Board. At this time, Ms. Haikalis will
9 provide instructions to the Spanish-speaking commenters, so they are aware
10 of the public comment process for today's meeting.

11 Ms. Haikalis, Good morning.

12 INTERPRETER HAIKALIS: Thank you, Chair. Thank you.

13 [READS THE FOLLOWING IN SPANISH] Public Comment
14 Instructions.

15 "Good morning, and thank you for participating in today's
16 Occupational Safety and Health Standards Board public meeting. Board
17 Members present are Mr. Dave Thomas, Labor Representative and Chairman;
18 Ms. Barbara Burgel, Occupational Health Representative; Ms. Kathleen
19 Crawford, Management Representative; Mr. Dave Harrison, Labor
20 Representative; Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis,
21 Management Representative and Ms. Laura Stock, Occupational Safety
22 Representative.

23 "As reflected on the agenda, today's meeting consists of three
24 parts. First, we will hold a public meeting to receive public comments or
25 proposals on occupational safety and health matters.

1 "After the public meeting, we will conduct the second part of
2 our meeting, which is the public hearing. At the public hearing, we will
3 consider the proposed changes to the specific occupational safety and
4 health standards that were noticed for review at today's meeting.

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6 business meeting to act on those items listed on the business meeting
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8 meeting unless a member of the Board specifically requests public input.

9 "We have limited capabilities for managing participation during
10 the public comment period. We are asking everyone to keep their phones
11 and WebEx audio on mute until your name is called to address the Board.
12 Please remember to mute again after you have finished commenting.

13 "Please note that the WebEx chat function is not a method for
14 providing public comments to Board Members. Board Members will not
15 consider or respond to any messages delivered via the chat function, nor will
16 such comments become part of the official rulemaking record.

17 "This meeting is also being live broadcast via video and audio
18 stream in both English and Spanish. Links to these non-interactive live
19 broadcasts can be accessed via the "what's new" section at the top of the
20 main page of the OSHSB website.

21 "Please listen for your name to be called for comment. If you
22 have not provided a written statement, please allow natural breaks after
23 every two sentences so that we may follow each statement with an English
24 translation."

25 CHAIR THOMAS: Thank you, Ms. Haikalis.

1 Before we have Mr. Gotcher allow people into the queue, I
2 want to remind commenters who wish to address the Firefighters' Personal
3 Protective Clothing and Equipment to make those comments during the
4 public hearing. Thank you.

5 Mr. Gotcher who do we have in the queue?

6 MR. GOTCHER: Our first commenter is Dr. Jeffrey Klausner from USC
7 Keck School of Medicine.

8 DR. KLAUSNER: Hello, good morning everyone.

9 CHAIR THOMAS: Good morning.

10 DR. KLAUSNER: Thank you for allowing me to provide public comment
11 today on an important issue of COVID-19 awareness education and vaccination
12 programs in employer-based settings.

13 So as a small business owner I was very happy to receive the letter from
14 the Department of Industrial Relations in February notifying me that it was my
15 responsibility to educate my employees about the risks of COVID-19 and comply with
16 laws regarding sick leave policies. It was noted in that letter that those, information and
17 the direction from the state was based on finalization of regulatory guidance on
18 November 20th. I was a bit struck by the long delay it took the state to come out with
19 concrete employer regulations and recommendations and the further delay in
20 notification, as to which I didn't receive until February.

21 That said, I'd like to have the Board seriously consider a more accelerated
22 and updated process, particularly for vaccination. On March 16th, the CDC published
23 updated guidelines on employer educational activities in workplace vaccination
24 programs. I would encourage the Board to review that March 16th CDC notification and
25 look at how that might be consistent with requirements in the State of California, and to

12

1 promote similar requirements statewide. In those CDC requirements it also begins to
2 address the hot topic of employer mandates for COVID-19 vaccination.

3 So as an infectious disease epidemiologist, a former deputy health officer
4 in San Francisco, a former CDC medical officer, I've been studying the epidemiology of
5 COVID-19 since the beginning epidemic in February last year. And of note, there's been
6 a tremendous number of cases among essential workers. And it's those workers, really,
7 that I think that OSHA and the Department has a duty to protect. And I would
8 encourage the Board to take up urgently the issue of updating vaccination
9 requirements, addressing the legality and requirements for employer mandates and
10 vaccination promotion and accessibility programs among employers in the State of
11 California. Thank you.

12 CHAIR THOMAS: Thank you.

13 Who do we have up next Mr. Gotcher?

14 MR. GOTCHER: Our next commenter is Norman Rogers from USW Local
15 675.

16 CHAIR THOMAS: Norman, can you hear us?

17 (No audible response.)

18 MR. GOTCHER: Norman, if you called in on a phone you may need to
19 type *6 to unmute yourself.

20 MS. SHUPE: It looks like his video is frozen. Can we add him back into
21 the queue and go to the next speaker?

22 MR. GOTCHER: Okay. The next speaker is Mike Smith from United
23 Steelworkers.

24 MR. SMITH: Good morning, can everybody hear me?

25 CHAIR THOMAS: Yes. Go ahead.

1 MR. SMITH: I'm keeping my video off just because I'm having the same
2 problem with the weather. So my name is Mike Smith, I'm the Chair of the National Oil
3 Bargaining Program for the United Steelworkers. United Steelworkers represents
4 30,000 refinery, pipeline workers across the U.S. Prior to that I was actually a refinery
5 worker out of California and a representative at a Local in Northern California and
6 worked tirelessly on the 5189.1 Process Safety Management regulation over four or five
7 years as our regulation was updated.

8 I'm speaking, I'm here to speak in support of the staff's recommendation
9 to the Board as far as Petition 584. It's our belief we're not really convinced that there
10 has to be more advisory committee meetings on a reg. that was worked through four
11 years between industry workers, the state, the communities. But, we are pleased that
12 the employee participation section is not going to be, or at least not recommended, to
13 be part of that process. But we are looking forward to participating in the other three
14 that are recommended.

15 And as we do go forward I want to make one thing clear, going through
16 that first four years we, it's a representative advisory committee, but we also want to
17 make sure it's balanced as the workers and the community members were sitting on
18 that. A lot of times it was 6,7,8 to 1. So we would also ask for a balanced advisory
19 committee. Thank you for your time.

20 CHAIR THOMAS: Thank you.

21 Who do we have up next, John?

22 MR. GOTCHER: Our next commenter is Ronald Espinoza from USW, Sub-
23 District Director.

24 CHAIR THOMAS: Do we have him on the line?

25 MR. GOTCHER: Ronald Espinoza, are you on the line? (No audible

1 response.)

2 CHAIR THOMAS: You may have to unmute yourself. We're not hearing
3 anything yet.

4 MR. GOTCHER: Yeah, if you dialed in using a phone you may need to type
5 *6 to unmute yourself.

6 CHAIR THOMAS: Still not hearing anything. Why don't we put him back
7 in the queue and go to the next?

8 MR. GOTCHER: Sounds good. Let's try Norman Rogers again from USW
9 Local 675.

10 MR. ROGERS: Good morning. Can you hear me?

11 CHAIR THOMAS: We can. Go ahead, Norman.

12 MR. ROGERS: Woo, all right. So as mentioned my name is Norman
13 Rogers and I'm here from USW Local 675 in Southern California. And I'm asking the
14 Board to please accept the Board staff recommendations to deny all requests by WSPA
15 regarding Petition 584.

16 I spoke before this Board four years ago to urge the acceptance of the
17 updated standard. I am here again today asking that the years' long effort that went
18 into developing and adopting the new standard not be undone. I can attest to the last
19 three and a half years of having the new standards and I have seen progress towards the
20 desired goal of making our refineries a safer place to operate. It has not been easy but
21 it is working. And to remind the Board that the safety we speak of with process safety,
22 is not of the slip, trip, and fall variety, it is of the catastrophic variety along the lines of
23 what we saw just over at Carson, California. Thankfully, there were no injuries or
24 fatalities, but it closed the 405 freeway right in the surrounding community, and those
25 folks that work at the facility.

1 Such was the same for the 2015 incident in Torrance; no fatalities, but
2 shaken workers and a community ever since then that wants the refinery gone.

3 Taken to its full extremes there is the 2019 explosion of the Philadelphia
4 Energy Solutions Refinery where again, thankfully, there were no fatalities and no
5 serious injuries unless you count the 1,000 people that lost their jobs because the
6 refinery closed its doors.

7 These standards are not just about saving lives, they are also about
8 saving livelihoods. And if conditions are not safe for those of us who work in these
9 facilities then it's not only a threat to our health, but to the health of the industry as
10 well. Simply put, employee health and safety equals industry health and safety.

11 With the Hummer coming back as an electric vehicle, the popularity of
12 the Prius and the Tesla and other major auto manufacturers moving towards electric
13 vehicles, there is a great deal of pressure on refining. But we here in California have an
14 ace up our sleeves with the clean-burning fuels we produce. For those of us old enough
15 to remember, we have not had a stage 2 smog alert in literally decades.

16 In the end, this is all about change, just what changes and what does not.
17 I have worked at the same facility for over 21 years, but have done so for 5 different
18 companies. I know folks with 30, 35 and even 40-plus years of working at the same
19 refinery and changes in ownership just go up.

20 So with that on behalf of the folks I represent, I ask the Board to please
21 give us and please leave us with these regulations as they currently stand. For the
22 people that work though these jobs, through different companies, different operating
23 philosophies and different maintenance practices, all we have that remains consistent
24 are the process safety regulations.

25 So again, I ask please accept the Board's staff recommendations to deny

1 all requests in the WSPA petition. Thank you.

2 CHAIR THOMAS: Thank you.

3 John, who do we have next?

4 MR. GOTCHER: Our next commenter is Kevin Buchanan from WSPA.

5 MR. BUCHAN: Good morning Board, Chair and members of the Board.

6 Can you hear me?

7 CHAIR THOMAS: Yes, Kevin. Go right ahead.

8 MR. BUCHAN: Thank you. My name is Kevin Buchan, with the Western
9 States Petroleum Association. I'm the Manager of Regulatory Affairs in our Bay Area
10 region.

11 Today we at WSPA request the Board grant our request to consider
12 amendments regarding the Cal PSM regulations and hold an advisory committee to
13 review all the issues relating to the four regulations addressed in our Petition No. 584.

14 Our petition is in alignment and consistent with the two Form 9's
15 submitted by the Division, which acknowledge the need to clarify definitions of
16 "employee representative", "employee participation", "provisions" and the definition of
17 "major change."

18 Additionally, staff have agreed that an advisory committee would be
19 helpful in considering the other two issues WSPA set forth in its petition, specifically
20 regarding the hierarchy of hazard control analysis, provisions and the definition of
21 "highly hazardous material."

22 Lastly, Cal OES is considering changes to all four of these regulatory
23 provisions in parallel with the Cal ARP regulations. So we'd like for you to consider
24 having the advisory committee, and that's outlined in our petition. Thank you.

25 CHAIR THOMAS: Thank you.

1 Mr. Gotcher, who do we have up next?

2 MR. GOTCHER: Our next commenter is Nick Plurkowski from the United
3 Steelworkers Local 5.

4 MR. PLURKOWSKI: Hi, good morning, everyone. Can you hear me?

5 CHAIR THOMAS: Yes. Go ahead, Nick.

6 MR. PLURKOWSKI: Hi, I'm Nick Plurkowski. I'm a Health and Safety Rep
7 for the United Steelworkers from Local 5. I work at the PBF Martinez Refinery. And I
8 started my career in the same week of the Chevron Richmond fire in 2012.

9 Under federal law, workers are entitled to working conditions that do not
10 pose a risk of serious harm. And I believe that the PSM reg., 5189.1 has improved
11 industry safety by not just stating that refineries should be safe, but finally adding a key
12 element that it's been missing this whole time, an essential part of any safety record,
13 and that's the worker. I believe training and understanding of hazards is essential for
14 any operator or maintenance employee. But what employee participation does is it gets
15 them involved in the discussion of what's going on.

16 So by methodically checking each of the processes and asking some of
17 the simplest questions, how do we know this isn't going to blow up? How do we know
18 this isn't going to leak? How do we know this isn't going to catch fire? And taking those
19 discussions head-on and being able to push for better controls, safer systems of safety.

20 And I just want to say that I'm here to support the Board's
21 recommendation to deny all the requests by WSPA in the petition 584 to change 5189.1,
22 with the exception of three changes. And thank you for your time, appreciate it.

23 MS. SHUPE: Thank you. At this time we are going to go ahead and take a
24 ten-minute break. We are having some technical issues and we'll re-join shortly. Thank
25 you.

1 (Off the record at 10:24 a.m.)

2 (On the record at 10:31 a.m.)

3 CHAIR THOMAS: All right we are back in session. Sorry about that, a little
4 technical difficulties here. So John, where are we at right now? Who's next in the
5 queue?

6 MR. GOTCHER: Our next commenter is Tracy Scott.

7 CHAIR THOMAS: Tracy, can you hear us?

8 MR. SCOTT: I can. Can you hear me?

9 CHAIR THOMAS: Yeah, go right ahead, Tracy.

10 MR. SCOTT: Good morning, (indiscernible - audio cuts in and out).

11 CHAIR THOMAS: We're losing you a little bit, Tracy.

12 MR. SCOTT: (Inaudible - audio cuts in and out.)

13 MS. SHUPE: Mr. Scott?

14 CHAIR THOMAS: So John, where are we at right now? Who's next in the
15 queue?

16 Mr. Scott can you -- your mic is a little shaky.

17 (Audio issues continue for Mr. Scott.)

18 CHAIR THOMAS: We're going to have to mute Mr. Scott, and we'll have
19 him come back later, because --

20 MR. SCOTT: (Indiscernible -- audio cuts in and out.)

21 CHAIR THOMAS: Yeah, we can't hear you. So we're going to put you
22 back in the queue. And John, can you send us to the next commenter? And we will get
23 back to you, Tracy.

24 MR. GOTCHER: Yeah. Tracy, WebEx isn't allowing me to mute you right
25 now. I believe it has something to do with your connection. If you wouldn't mind

19

1 muting yourself.

2 And our next commenter is Ronald Espinoza from USW Sub-District
3 Director.

4 MR. SCOTT: I'm going to try and call in if you can hear me.

5 CHAIR THOMAS: All right, we can hear you. Wait.

6 MS. SHUPE: Thank you, Mr. Scott.

7 CHAIR THOMAS: Yes, thank you. Do we have Ron on now?

8 MR. GOTCHER: Ronald Espinoza, are you on the line?

9 (No audible response.)

10 CHAIR THOMAS: Hello, Ronald?

11 MR. GOTCHER: And if you dialed in using a phone you need to press *6
12 to unmute yourself.

13 (Indiscernible talking)

14 CHAIR THOMAS: Go ahead, caller.

15 MR. SCOTT: This is Tracy Scott. I called back in.

16 CHAIR THOMAS: Go ahead, Tracy, since you've got a good line.

17 MS. SHUPE: Wait, we need to pause because Mr. Scott's computer audio
18 is also transmitting his phone call. And we can't remove Mr. Scott from the meeting at
19 this location, so if the technical team could remove Mr. Scott's participation from the
20 WebEx that would be helpful.

21 MR. GOTCHER: It looks like he's muted his computer now.

22 MR. SCOTT: So am I okay to proceed now?

23 MR. GOTCHER: Go ahead, Mr. Scott.

24 MR. SCOTT: My apologies for those difficulties.

25 So again, I'm Tracy Scott. I'm the President of Local 5, United

1 Steelworkers Local 5 in Martinez. Local 5 represents its membership in three Bay Area
2 refineries. We have about 1,400 members. I'm here to state for the record that we
3 disagree with WSPA on its perception that the PSM regulation 5189.1 is flawed as it was
4 promulgated.

5 The work that brought about this vast improvement to worker safety in
6 refineries in the state of California was made after the citizens of this state spoke loudly
7 and clearly that decisive action was needed and that definitive steps needed to be taken
8 by Cal/OSHA to act on their behalf to improve their individual safety and that of their
9 community.

10 The PSM system in place at the time of the Chevron (indiscernible) fire
11 was not sufficient keep the types of corporate management system failures from
12 occurring, much to the detriment of the employees and the community and the
13 environment of the state. As you know, stakeholders from all groups affected and those
14 regulated worked tirelessly to achieve what is now in place in California to address the
15 concerns of its citizens, the employees in the regulated workplace and the industry.

16 I'm here to express our support for OSHA Standards Board staff
17 recommendation that the Board deny all requests made by WSPA in petition 584 to
18 change 5189.1, apart from three changes. And while I am not certain that these three
19 sections of the regulation really need to be modified we would be happy to participate
20 in a balanced advisory committee, which discusses the terms of the "achieved in
21 practice" and "related industrial sectors," and whether "threshold quantity" should be
22 added to 5189.1.

23 I'd like to thank you again for the opportunity to address you this
24 morning on this important item. And again my apologies for the technical difficulties.

25 CHAIR THOMAS: No, thank you.

1 Who do we have next on the queue, Mr. Gotcher?

2 MR. GOTCHER: There are no further commenters in our queue.

3 CHAIR THOMAS: Oh, okay. Did we have any --

4 MS. SHUPE: Did we hear from Mr. Espinoza?

5 CHAIR THOMAS: Yeah, did we get Mr. Espinoza yet? That was --

6 MR. GOTCHER: Yeah, Ronald Espinoza, are you on the line?

7 (No audible response.)

8 CHAIR THOMAS: I think he's trying to get on. Can you hear us Mr.

9 Espinoza? Sounds like we -- not so.

10 So thank you. The Board appreciates your testimony today and the
11 public meeting is adjourned and the record is closed.

12 We will now proceed with the public hearing. During the
13 hearing, we will consider the proposed changes to the occupational safety
14 and health standards that were noticed for review today.

15 The Occupational Safety and Health Standards Board adopts
16 standards that, in our judgment, will provide such freedom from danger as
17 the nature of the employment reasonably permits and that are enforceable,
18 reasonable, understandable, and contribute directly to the safety and health
19 of the California employees.

20 Sorry.

21 The Board is interested in your testimony on the matter before
22 us. (Overlapping Spanish colloquy) We've got some crosstalk out there. The
23 Board is interested in your testimony on the matters before us. Your
24 recommendations are appreciated and will be considered before a final
25 decision is made. If you have written comments you may read them into the

1 record, but it is not necessary to do so as long as your comments are
2 submitted to Ms. Sarah Money, our Executive Assistant, via email at
3 oshsb@dir.ca.gov by 5:00 p.m. today. Ms. Money will ensure that they are
4 included in the record and forward copies of your comments to each Board
5 Member. And I assure you that your comments will be given every
6 consideration. Please include your name and address on any written
7 materials that you submit.

8 I would also like to remind the audience that the public hearing
9 is a forum for receiving comments on proposed regulations, not to hold
10 public debates. While rebuttal comments may be appropriate to clarify a
11 point, it is not appropriate to engage in arguments regarding each other's
12 credibility.

13 If you would like to comment orally today please contact staff
14 via phone at 916-274-5721, or via email at oshsb@dir.ca.gov to be placed in
15 the public hearing comment queue, or address the Board when I open the
16 teleconference for additional testimony. Please state your name and
17 affiliation, if any, and identify what portion of the regulation you intend to
18 address each time you speak.

19 After all testimony has been received and the record is closed,
20 staff will prepare a recommendation for the Board to consider at a future
21 business meeting.

22 At this time, Ms. Haikalis will provide instructions to the
23 Spanish-speaking commenters so they are aware of the public hearing
24 comment process for today's meeting. Ms. Haikalis?

25 MS. HAIKALIS: Thank you.

1 [READS THE FOLLOWING IN SPANISH] Public Comment

2 Instructions.

3 "The Occupational Safety and Health Standards Board adopts
4 standards that, in our judgment, will provide such freedom from danger as
5 the nature of the employment reasonably permits and that are enforceable,
6 reasonable, understandable, and contribute directly to the safety and health
7 of California employees.

8 "The Board is interested in your testimony on the matters
9 before us. Your recommendations are appreciated and will be considered
10 before a final decision is made.

11 "If you have written comments, you may read them into the
12 record, but it is not necessary to do so as long as your comments are
13 submitted to Sarah Money, Executive Assistant, via email at
14 oshsb@dir.ca.gov by 5:00 p.m. today. Ms. Money will ensure that they are
15 included in the record and forward copies of your comments to each Board
16 Member, and I assure you that your comments will be given every
17 consideration. Please include your name and address on any written
18 materials you submit.

19 "I would also like to remind the audience that the public
20 hearing is a forum for receiving comments on the proposed regulations, not
21 to hold public debates. While rebuttal comments may be appropriate to
22 clarify a point, it is not appropriate to engage in arguments regarding each
23 other's credibility.

24 "If you would like to comment orally today, please contact staff
25 via email at oshsb@dir.ca.gov to be placed in the public hearing comment

24

1 queue."

2 CHAIR THOMAS: Thank you, Ms. Haikalis.

3 We will now turn to the proposal scheduled for today's public
4 hearing. Title 8, General Industry Safety Orders, Article 10.1, section 3401,
5 section 3402, new sections 3402.1 and 3402.3, sections 3403, 3410, new
6 section 3410.1, and section 3411, Fire Fighters' Personal Protective
7 Clothing and Equipment – AB 2146.

8 Mr. Manieri, will you please brief the Board? You need to
9 unmute yourself, Mike. Thank you.

10 MR. MANIERI: Good morning, Chairman Thomas. Can you all hear me
11 clearly?

12 CHAIR THOMAS: We can.

13 MR. MANIERI: Okay, very good. I will begin. Chairman Thomas and
14 members of the Board, on September 29, 2014, the Governor approved Assembly Bill
15 2146 Occupational Safety: Firefighters Personal Protective Equipment (PPE). The bill
16 instructed the Department to convene an advisory committee to evaluate if California's
17 safety orders pertaining to firefighter PPE need to be updated to align with standards
18 promulgated by the National Fire Protection Association you all know as NFPA.

19 The bill required the committee to present its findings and
20 recommendations to the Standards Board by July 1, 2016. Consequently, the Standards
21 Board convened advisory committee meetings with representatives from county and
22 city fire departments, Cal Fire, manufacturers of personal protective equipment, labor
23 unions, businesses in the fire protection industry, and of course the NFPA. The
24 committee met three times: October 22nd, 23rd, 2015 in Sacramento, January 20th in
25 Los Angeles, and May 2nd and 3rd, 2016 in Merced, California.

25

1 On June 16th, 2016, the Board’s Executive Officer briefed the Standards
2 Board that the California firefighter standards need to be updated based upon advisory
3 committee discussions and Board staff findings.

4 The advisory committee was able to reach consensus on necessity and
5 developed a comprehensive proposal. However, as you may know, extensive work was
6 needed to determine the cost of the proposal. The delay in the completion of the cost
7 assessment caused the Board to miss AB 2146’s deadline of July 1, 2017, to render a
8 decision regarding the adoption of changes to the safety orders, or other applicable
9 standards and regulations, in order to maintain alignment with the NFPA standards.
10 Additionally, the proposal could result in claims of reimbursable state mandate, which if
11 sustained by the Commission on State Mandates, could result in a general fund impact.

12 The proposal updates Article 10.1 of the General Industry Safety
13 Orders, Protective Clothing and Equipment for Firefighters. And now the key
14 provisions of this proposal include harmonization of the application and definitions of
15 section 3401 and 3402 to be consistent with new updated regulatory text. It requires
16 the new purchases of personal protective equipment six months after the effective date
17 of the standard to meet modern consensus standards in new sections 3402.1 and
18 3402.2.

19 It incorporates NFPA 1971 standards on protective ensembles for
20 structural firefighting, the NFPA 1977 standard on protective clothing and equipment
21 for wildland firefighting, the 2016 edition, the NFPA 1982 standard on personal alert
22 safety systems; and the NFPA 1981 standard on open circuit self-contained breathing
23 apparatus.

24 Finally, it also incorporates guidelines from the United States Department
25 of Agriculture, Forest Service specifications for fire shelters, which is dated August 2nd,

1 2011.

2 It also requires in-service PPE to meet a certain quality in sections 3403
3 through 3409 and 3410.1, which touches upon the NFPA 1971 standard; the NFPA 1977
4 standard; and requires SCBA face pieces, if available, to be upgraded in accordance with
5 the NFPA 1981 standard. So this has been a very comprehensive inclusion of many
6 incorporated documents by reference, dealing with the types of PPE that, from a
7 standpoint of quality and performance.

8 It does add a new program for the selection, inspection, and
9 maintenance of protective ensembles for structural firefighting and proximity
10 firefighting in section 3402; it incorporates 3402.3.

11 It incorporates by reference NFPA 1851, which is a standard on selection,
12 care, and maintenance of protective ensembles for structural firefighting and proximity
13 firefighting, the 2014 Edition.

14 It also provides a phase-in period, which is a technique we've used in
15 many of the standards in the past for specific chapters of the NFPA 1851. And it
16 requires helmets 10 years from the date of manufacture.

17 It also adds a new program for selection, care and maintenance for SCBAs
18 in section 3409, and by doing that it incorporates a reference to the NFPA 1852
19 standard for standards on selection, care, and maintenance of open-circuit self-
20 contained breathing apparatus, the 2019 edition. A three-year phase-in has been
21 provided for employers to perform their component upgrades.

22 It adds a new program for the selection, inspection, and maintenance of
23 protective ensembles for wildland fire fighting in section 3410. The advisory committee,
24 by the way, developed this proposal because there is no NFPA standard at this present
25 time. We do know, however, that NFPA is currently working on an NFPA 1877 standard

1 for the selection, care, and maintenance of wildland firefighting clothing and
2 equipment. And we'll be keeping our eye on that as time progresses, of course.

3 It implements a new work practice in section 3409, requiring that SCBA's
4 shall be worn during overhaul operations unless the employer can demonstrate that a
5 lesser level of protection is appropriate.

6 Well finally, this proposal requires private fire brigades, which is the only
7 element that we share in common with federal OSHA in terms of having to be
8 commensurate, with federal OSHA has private fire brigade standards and so do we. But
9 they don't address the wide scope of other firefighting issues that I just previously
10 described. It requires private fire brigades to follow PPE and equipment standards
11 contained in article 10.1., sections 3402.1 and 3402.3 through 3409. This will place
12 private firefighters, will be under the same rules, as government firefighters. That's an
13 important point.

14 Now the Board staff is aware that Region IX Federal OSHA has deemed
15 this proposal to be commensurate with their federal OSHA firefighter standards.
16 Specifically, as I mentioned, those that regulate private fire brigades. We're aware also
17 that there have been several written comments that have been received to the Board
18 up to date. The Board staff at this time believes the proposal is ready for the Board's
19 consideration and the public's comment. Thank you.

20 CHAIR THOMAS: Thank you, Mr. Manieri. It's been a while since I've
21 heard you elaborate, so that was very good. Good to hear from you.

22 MR. MANIERI: Good, thank you.

23 CHAIR THOMAS: At this time we'll be accepting public testimony. Mr.
24 Gotcher, who do we have in the queue?

25 MR. GOTCHER: The first commenter in the public hearing is Doug Subers

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1 from California Professional Firefighters.

2 MR. SUBERS: Thank you for the opportunity to provide comment here
3 today. My name is Doug Subers. I'm here today on behalf of the California Professional
4 Firefighters State Council of the International Association of Fire Fighters. We represent
5 more than 30,000 career firefighting and emergency medical services personnel
6 statewide. We work to enhance the health and safety of our members through
7 advocacy to strengthen PPE standards, reduce exposure to hazardous materials, and
8 improve firefighter health overall. CPF was proud to sponsor AB 2146 in 2014 and
9 participate in the advisory committee process for this proposed standard.

10 We appreciate the work of the Standards Board and staff to develop this
11 proposal. It will represent a significant step forward in protecting the health and safety
12 of firefighters.

13 We would like to highlight some areas where we believe the proposed
14 standards should be strengthened and clarified during my comments here today. We
15 have submitted written comments that have our specific recommendations regarding
16 edits to the language that we have submitted to the Board.

17 First, we support the exceptions found in the proposed standard section
18 3402.1, which ensure the most recent version of the relevant NFPA standard meets the
19 requirements of this standard. We propose including that language throughout the
20 proposal. This will ensure that the standard before you today sets a floor but not a
21 ceiling, as updated NFPA standards will comply with the regulation.

22 Second, we believe the proposed section 3409 subdivision (b) standard
23 regarding the use of self-contained breathing apparatus, or SCBA, should be
24 strengthened during overhaul. Specifically, the flexibility for the employer to
25 demonstrate that a lesser level of protection is appropriate should have clear guardrails.

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1 We recommend that this standard reference air-purifying respirators and powered air-
2 purifying respirators as respiratory protection that may be authorized instead of an
3 SCBA.

4 Further, the regulation should be clear that if an IDLH environment or
5 hazardous atmosphere are still present, a lesser level of protection should not be
6 considered appropriate.

7 Finally, we believe that the employer and authorized labor representative
8 should establish a standard operating procedure for when a lesser level of protection is
9 appropriate.

10 Third, regarding wildland respiratory protection we appreciate the work
11 in this proposed regulation to try to move the needle on wildland firefighting respiratory
12 protection. This is an area that has been difficult to address and more research and
13 innovation are necessary. In section 3410.1 subdivision (c) we believe an exception
14 should be included to provide flexibility to the incident commander or supervisor to
15 continue work without the use of respiratory protection contemplated in this section
16 under specified conditions where the work is necessary and the respiratory protection
17 use is not feasible.

18 In section 3410.1 subdivision (c), paragraph 2, exception on market
19 availability, we believe there should also be a field evaluation process before a new
20 respiratory product is introduced. Wildland firefighting is incredibly difficult and
21 challenging. The respiratory protection that restricts airflow could create other
22 unintended health risks for firefighters who are expending significant amounts of energy
23 fighting the fire in the wildland. And given that including a field evaluation process that
24 may create flexibility within this proposed regulation, we believe that there should be a
25 clear role for both the employer and the authorized labor representative to ensure that

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1 new technology in this area meets the needs of NFPA 1984, but does not create other
2 health risks.

3 In addition --

4 MS. SHUPE: Mr. Subers?

5 MR. SUBERS: Yes?

6 MS. SHUPE: Hi, I apologize. We're doing live translation. Would you
7 mind to slow it down just a little bit?

8 MR. SUBERS: Yeah, no problem. I apologize.

9 So just that if a breathing respiratory protection meets the standard of
10 1984, but creates other health risks, we don't think it should be required to be used in
11 the field. Ensuring that both labor and management have a clear role in a field
12 evaluation will protect against this being used in a manner to avoid the introduction of
13 new technology, because of costs or other logistical challenges, but really focused on
14 ensuring firefighter health and protection.

15 Finally, we believe that the authorized labor representative should be
16 embedded in the decision-making process around key items in this regulation such as
17 overhaul to use, SCBA overhaul use during overhaul, and wildland respiratory
18 protection. We know that all stakeholders in the fire service want to enhance the safety
19 and protection of firefighters and ensuring that labor has a seat at the table with clear
20 decision-making role will help support the outcomes we all are working towards.

21 We stand ready to work with the Standards Board and staff as the
22 proposed standard moves forward. Thank you for allowing us to comment today.

23 CHAIR THOMAS: Thank you.

24 Mr. Gotcher, who do we have next in the queue?

25 MR. GOTCHER: Our next commenter is Rick Swan from International

1 Association of Fire Fighters.

2 CHAIR THOMAS: Mr. Swan, are you with us?

3 MR. SWAN: Thank you, sir. Can you hear me?

4 CHAIR THOMAS: We can, go right ahead.

5 MR. SWAN: Thank you very much. As stated my name is Rick Swan. I'm
6 the Director of Health and Safety Operational Services for the International Association
7 of Fire Fighters. we represent over 325,000 members across the United States and
8 Canada.

9 And one of the things that I really want to focus on is that as California
10 goes, so goes the United States in many of the protections that are afforded firefighters
11 in their PPE and in health and safety. I happened to chair several NFPA committees and
12 am now currently the Chair of the Fire and Emergency Services Protective Clothing and
13 Equipment Correlating Committee, which oversees the correlation of all firefighter
14 health and safety PPE standards.

15 And we have gone through many of the work and much of the scientific
16 consensus building to bring these standards up to date. It's a five-year process and by
17 the Board making these changes and approving the exceptions, as my colleague just
18 spoke of, keeps the Cal/OSHA standards up to date and moving forward instead of
19 where it has been in the past where it had to be updated after about 17 years' worth of
20 stagnation.

21 One of the things that has been talked about in many cases in much of
22 this conversation are kind of the new specter of wildland firefighting and the smoke
23 that's generated. Unfortunately the wildland research, wildland protection and urban
24 interface fires don't have as much research that our brothers and sisters from the
25 structural fire here, firefighting, structures have.

1 So what we'd like to do is we are trying to bring this information up, we
2 are trying to move forward especially with the NFPA committees, we are trying to bring
3 new technologies and allow new technologies to be available to bring onto the market.
4 NFPA 1984 has been around for almost 15 years now. There are no products built that
5 are compliant to NFPA 1984. That's because nobody is going to buy them. And it is
6 vitally important that as we're trying to protect we're also trying to look at the
7 manufacturer end to this that they are going to be able to provide products that will do
8 and perform in a safe manner that again my colleague just spoke about.

9 So in closing, the importance of bringing these standards in to line with
10 the NFPA and consensus nationwide is vital to firefighter health and safety. It is a move
11 in the right direction. And as stated the International Association of Fire Fighters
12 supports the comments and the recommendations set by the Board and the material
13 provided by the California Professional Firefighters. Thank you very much.

14 CHAIR THOMAS: Thank you, Mr. Swan.

15 Mr. Gotcher, who do we have next in the queue?

16 MR. GOTCHER: There are no further commenters in the public hearing
17 queue.

18 MS. SHUPE: At this time we'd like to ask if there is anyone else on a call
19 who has not had an opportunity to join the queue, who would like to address the
20 Board?

21 MS. ROBBINS: Hi, guys. This is Maggie Robbins from Worksafe. Can you
22 hear me?

23 CHAIR THOMAS: Maggie, go right ahead.

24 MS. ROBBINS: Hi. Thank you. I just wanted to add my support to the
25 comments we've just heard from the firefighters. While we don't know the details of

1 the specifics of firefighter PPE, the particular comments, two particular comments I
2 wanted to offer our support on. One is that this again is showing the challenge of trying
3 to keep standards up to date as the consensus standards change over time. And it
4 points out to me the need for Cal/OSHA and the Board to be more systematic in
5 reviewing standards to try and keep them more up to date as consensus standards
6 change. This is one of many standards where I think this is a challenge. And I don't
7 know, I don't have a specific proposal, but I do think it's a problem that in five years
8 we're going to be looking at this revision once it's adopted and saying, "Well, it's out of
9 date again." But I do support that you are attempting to try and bring the standard up
10 to date, at least for a time.

11 The other point that we are in strong support of also is the inclusion of
12 firefighter voices in evaluating and selecting and determining the suitability of
13 protective equipment and the ensembles that they will be wearing. I think it's really
14 important. And I think, increasingly, Cal/OSHA standards need to make sure that that
15 input is included all through the decision-making process.

16 Anyway, I look forward to seeing how the standard evolves over time.
17 Thank you for considering my comments.

18 CHAIR THOMAS: Thank you.

19 Do we have any other commenters at this time?

20 BOARD MEMBER STOCK: Dave, this is Laura. I had a quick comment if
21 that's okay, Laura Stock.

22 CHAIR THOMAS: Go ahead.

23 BOARD MEMBER STOCK: So I wanted to see -- I know we just got some
24 comments from the Division. And I wanted to see if there was anybody from the
25 Division who might be able to summarize some of the recommendations they are

1 making related to this proposal.

2 MR. BERG: Yeah, this is Eric from Cal/OSHA. And I'd like to have Michael
3 Wilson speak. He is Cal/OSHA's expert on this subject matter. He is a former firefighter,
4 has consulted with other former firefighters in the Division and outside the Division, and
5 is also a PhD in industrial hygiene.

6 So Michael, would you please talk to this issue? Thank you.

7 MR. WILSON: Sure. Thank you, Eric.

8 Chair, is that all right for me to proceed?

9 CHAIR THOMAS: Go ahead. Go right ahead, Mr. Wilson.

10 MR. WILSON: Okay. Thank you.

11 Yeah, thank you for the question. And I think the Division really
12 appreciates the work of our colleagues on the Board, staff and the stakeholders, the
13 California Professional Firefighters and the IAFF, in bringing this proposal forward. It's a
14 groundbreaking proposal and I think we are heartened to see that there is a lot of
15 overlap between us and the comments that we have heard from CPF and the IAFF
16 around the areas where we think it needs to be strengthened.

17 I think we're in agreement that the regulations represent a really
18 important step forward for the safety and health of firefighters that could address
19 longstanding occupational exposure problems that have plagued the fire service for
20 decades. And I think, as Mr. Swan said, that it's really for the first time nationwide that
21 these, California, is poised to offer a comprehensive, enforceable path forward to
22 protect firefighters from really serious health hazards encountered on the job.

23 And I think to meet that objective most effectively and for this regulation
24 to be practical and meaningful and enforceable we have submitted written comments.
25 And I think just touching on a few of them, we're just echoing the comments from the

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1 CPF and IAFF that the section on overhaul -- which is where firefighters are inside a
2 building after the main fire has been knocked down and are tearing apart walls and
3 ceiling and taking out objects of different kinds -- that at this point, to date really, there
4 has been no real use or effective use of the SCBA during that process. And we are
5 thrilled that that is now in this proposed regulation. And we also think that that that
6 section needs to be strengthened, expanded and clarified, and particularly with regard
7 to the use of SCBA but also powered air-purifying respirators under some conditions,
8 sort of as laid out by NFPA 1500.

9 And, secondly, in the wildland urban interface we had some concerns
10 that this really important area of operation where tens of thousands of firefighters are
11 working in our fire season, that it's not really clear that this regulation would cover that,
12 those working conditions, and those kinds of deployments. We want to make very clear
13 that we are covering firefighters working in the wildland urban interface. As many of
14 you know, the respiratory protection that's used to date tends to be red bandanas or in
15 some cases N-95s, but in any case grossly inadequate. And we are also just very much in
16 support of what the CPF just noted about the importance of making sure that powered
17 air-purifying respirators are included in the set of options that for providing respiratory
18 protection in wildland firefighting.

19 And I think we're also in agreement that there needs to be very clear
20 provisions for worker participation in developing SOPs in part, because this regulation is
21 trying to thread the needle between requiring very clear safety and health protections,
22 but at the same time we do have to recognize that there are dynamic conditions in
23 many cases, particularly in a wildland urban interface, that we really need to give the
24 on-scene supervisor the ability to make a decision about whether and to what extent
25 respiratory protection is used. And to have some flexibility within the rule to do that,

1 and I think we want to avoid introducing new risks.

2 So those are some of our concerns. And as I said we've written --
3 submitted written comments. And again just want to commend our colleagues on the
4 Board and the stakeholders who participated in this. And we stand ready as Division
5 staff to help the Board with the next iteration of the proposal. Thank you.

6 CHAIR THOMAS: Thank you. Thank you, Mr. Wilson.

7 Any other -- yes, Barbara?

8 BOARD MEMBER BURGEL: Yeah, could I also make a comment? I just
9 wanted to acknowledge the work of both the Division and obviously our staff, our
10 Standards Board staff. I am in support of many of the recommendations that were
11 proposed in the Cal/OSHA Mike Wilson, Eric Berg letter that we just recently received.

12 First of all, I want to speak on the fact that this standard will obviously
13 include overhaul protection. That's been a gap for a long, long time.

14 The second issue that I've heard from individuals who work in the
15 firefighting is this whole focus on the ensemble. And there's not a definition on the
16 "ensemble." The fact that there needs to be integrated PPE for firefighters, so the
17 helmets and the eye protection and the hearing protection, so that they actually -- and I
18 know NFPA has been working on this, but there is no definition currently in the
19 proposed standard language.

20 The second point is the language around properly using, ensuring that
21 the employer makes sure that the employee is properly using the PPE that is required by
22 law. And I support that language. It's important for the effectiveness, because I know
23 that a lot of PPE is not enforced in wildland or structural fire situations. And so I support
24 that language and I hope it can be integrated into the next version of the standard.

25 I also, I think there are some issues around counterfeit PPE, but I don't

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1 think the standard can address that. But I know that NFPA, and I know that the
2 Academy of Sciences, has been focusing on that counterfeit PPE issue. But I'm not quite
3 sure what role it has in this standard.

4 I support the wildland urban interface, that definition that was proposed
5 by, in that latest letter, the comment letter, in adding the definition of "immediately
6 dangerous to life or health."

7 And I also wanted to echo Worksafe Maggie Robbins comment, and the
8 whole emphasis on making sure that the most current NFPA standards are integrated in
9 this standard going forward. So thank you.

10 CHAIR THOMAS: Thank you, Barbara.

11 Dave? Mr. Harrison go ahead.

12 BOARD MEMBER HARRISON: So I'd like to also thank Board staff for their
13 hard work on this. It looks like Maryrose Chan and many of the Board staff worked hard
14 on this for a long time. 2014 when the bill was passed. It's been a long time in the
15 making. And we know rulemaking is never fast. This is kind of the epitome of the length
16 of rulemaking sometimes, so I want to thank those folks.

17 I want to also say that I support the comments of California Professional
18 Firefighters and IAFF. Specifically, around a couple of things. The most current NFPA
19 standards, you know we come across this problem constantly with the elevator safety
20 orders and the outdated standards and the inordinate amount of variances that we
21 hear, because of that. So I'd like to avoid that as well by recognizing the most current
22 NFPA standards.

23 And the other issue that I wanted to echo was the inclusion of labor while
24 we're any doing field testing or evaluations of PPE. I think that's a critical piece. And I
25 think the folks that are out there during the work, whether it's the administrators,

1 whether it's the firefighters with the boots on the ground, from top to bottom they
2 were all a part of labor in this particular industry at one point or another. So I think it's
3 critical to keep those folks involved.

4 And I don't want to be redundant on some of the other things, but I
5 wanted to thank Worksafe and their comments as well. Thank you.

6 CHAIR THOMAS: Thank you.

7 BOARD MEMBER BURGEL: Can I -- I just wanted to add one more point,
8 David, to my comments and to echo Dave's comments about the fact that the advisory
9 committee, quite a lot of rigorous feedback was gathered in those transcripts, which
10 was very helpful.

11 There was one comment about, or several comments about, addressing
12 chemical biologic radiation in nuclear provisions. And I did not see that in this version of
13 the proposed standard. And so I'm not quite sure, maybe I missed it, but I'm not quite --
14 I think that that should be integrated somehow in a future -- in the next version of the
15 language. So thank you.

16 BOARD MEMBER STOCK: Yeah, this is Laura Stock again, and I just
17 wanted to echo the comments that were made by my fellow Board Members. And also
18 I know that the process, at this point there is not going to be another advisory
19 committee meeting, and the process is now for the Board to integrate the comments
20 that they've heard today. And so I just want to -- clearly there is a lot of appreciation for
21 the hard work and there's a lot more work that needs to be done. So I hope that the
22 Board staff will work closely with the Division and take the time that they need to
23 incorporate and improve the proposed standard before it comes back to a vote. Thank
24 you.

25 CHAIR THOMAS: All right, thank you.

1 Any other comments at this time? Hello?

2 BOARD MEMBER LASZCZ-DAVIS: This is Chris, just very, very quickly.

3 Without going into a lot of detail, I support my colleagues in regards to the comments
4 they have made.

5 CHAIR THOMAS: Thank you, Chris.

6 Any further comments?

7 MS. SHUPE: This is Christina Shupe. I just wanted to address the Board
8 very quickly and address one of the issues around maintaining currency with NFPA
9 standards.

10 I just want to let the Board know that first I'd like to really congratulate,
11 and thank, Maryrose Chan, for the work that she's done on preparing this proposal. This
12 was a big, heavy lift and she's done a tremendous job.

13 And I did want to just let everybody know that this has been in fiscal
14 review for over two years now. And any substantial financial change to the proposal will
15 require it to go back into that sort of review period. And so that will be part of what
16 informs our decisions when we are responding to comments. But that does not mean
17 that more substantive changes can't be considered in further iterations of the regulatory
18 process.

19 CHAIR THOMAS: Thank you.

20 Any other comments? All right, hearing none there will be no further --
21 oh, Barbara?

22 BOARD MEMBER BURGEL: Actually, I just wanted to put on the record
23 that I am concerned with the current language in the standard where it says,
24 "firefighters use in overhaul." The SCBA during overhaul, unless the employer can
25 demonstrate that a lesser level of protection is appropriate. I think that is -- causes

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1 caution. And I just wanted to echo the concern of the commenter, the first commenter
2 -- I think it was Doug, Mr. Subers -- about the fact that there needs to be guardrails
3 around that situation and a field assessment. So I wanted certainly that to be noted.
4 Thank you.

5 CHAIR THOMAS: Thank you. Any other comments at this time?

6 Right, there being no further comments the public hearing is
7 closed. Written comments will be received until 5:00 p.m. today. Thank
8 you very much for your testimony.

9 We will now proceed with the business meeting. The purpose of
10 the business meeting is to allow the Board to vote on matters before it and
11 to receive briefings from staff regarding the issues listed on the business
12 meeting agenda.

13 The Proposed Petition Decision for Adoption, 1. Oyanga A.
14 Snell, Esquire. Western States Petroleum Association, Petition File No.
15 584. Petitioner requests to amend title 8, section 5189.1, Process Safety
16 Management, definitions of "major change", "employee representative
17 and participation", "highly hazardous materials" and amendment of the
18 high hazard control analysis hierarchy.

19 Ms. Shupe, will you please brief the Board?

20 MS. SHUPE: Thank you, Chair Thomas.

21 The Western States Petroleum Association has petitioned the Board
22 seeking changes to title 8, section 5189.1 of the General Industry Safety
23 Orders, Process Safety Management for Petroleum Refineries, otherwise known as the
24 Cal-PSM standards.

25 The Petitioner has requested changes to the definitions of

1 "major change," "employee representative," "employee participation,"
2 and "highly hazardous material." Additionally, Petitioner requests
3 changes to sections 5189.1(l)(4)(D) and (E) pertaining to hierarchy of
4 controls analysis.

5 The petition has been thoroughly evaluated by your Board
6 staff. The Board staff disagree with Petitioner's assertions that the
7 terms "major change," "employee representative," and "employee
8 participation," are impermissibly vague and do not recommend granting
9 the request for changes.

10 Staff does note that the Petitioner raises questions of
11 interference with collective bargaining rights with regard to the
12 definition of "employee participation" currently in section 5189.1.

13 These questions are the subject of litigation and are outside
14 the scope of a technical evaluation drafted by a Board staff engineer, and
15 as such were not considered in the evaluation.

16 Board staff does agree with the Petitioner's assertion that
17 the term "highly hazardous material" may be suited for amendment to
18 reflect a more contemporary scope of process safety management,
19 augmented with threshold quantity limits and recommends that an
20 advisory committee be convened to consider the matter.

21 Board staff evaluation also agrees with Petitioner that
22 section 5189.1(l)(4)(D) may benefit from review to further clarify the
23 terms "achieved in practice," and "related industrial sectors."

24 However, the staff evaluation concludes that the Petitioner's
25 proposed limitations on what practices and processes should be reviewed

1 would not promote workplace safety and would be an unnecessary and
2 arbitrary limitation on the scope of such a review.

3 Board staff recommends a limited grant of the petition to
4 the extent that an advisory committee be convened to review the
5 hierarchy of controls analysis and consider amending or clarifying the
6 phrases “achieved in practice,” and “related industrial sector,” as well as
7 a consideration of an amendment to the definition of “highly hazardous
8 material” and a review of the threshold quantity limits in the hierarchy
9 of controls analysis.

10 The Division declined to submit an evaluation for Petition
11 584 and instead refers the Board to its own requests to consider
12 amendments to section 5189.1.

13 For that reason, the proposed decision before you today
14 recommends a grant in part of the petition to the extent that it directs
15 Board staff to work with the Division to convene a representative
16 advisory committee meeting tasked with consideration of Petitioner’s
17 Requests 3 and 4 to the extent recommended in the Board staff
18 evaluation.

19 Additionally, it directs Board staff to include elements of the Division’s
20 requested amendments in the advisory committee agenda for consideration as
21 appropriate.

22 The decision is now ready for your consideration.

23 CHAIR THOMAS: Thank you, Christina.

24 Do I have a motion to adopt the petition decision?

25 BOARD MEMBER HARRISON: So moved.

1 BOARD MEMBER STOCK: Seconded.

2 CHAIR THOMAS: I have a motion. I have a second. Dave
3 made the motion. I believe Barbara seconded it, was it Barbara or Laura?

4 BOARD MEMBER STOCK: Laura.

5 CHAIR THOMAS: Laura seconded it. Is there anything on the
6 question? Hearing none --

7 BOARD MEMBER STOCK: (Overlapping colloquy.) Yes, just
8 one second. Well, I'm just going to make a quick comment, Dave.

9 CHAIR THOMAS: Go ahead.

10 BOARD MEMBER STOCK: So I just wanted to recognize and
11 acknowledge the testimony that we heard earlier today, and appreciate
12 the years of work that went into developing the existing regulation. And
13 support the desire to not redo or revisit some of those critical elements.
14 And so I just wanted to speak in support of the Board staff
15 recommendation that very narrowly defines the scope of what would be
16 discussed in an advisory committee to the noted length, while rejecting
17 some of broader requests that were made by the Petitioner.

18 And I also want to just highlight a request that was made by
19 one of people who testified to ensure that the advisory committee is
20 balanced. Or just if there is a possibility to get more of an even
21 representation, so that all voices can be heard equally.

22 But with that I would support the Board staff
23 recommendation with that particular comment. Thank you.

24 CHAIR THOMAS: Thank you, Laura.

25 Any other questions or comments before I ask for a vote?

1 (No audible response.)

2 CHAIR THOMAS: Seeing none, Ms. Money will you please call
3 the roll?

4 MS. MONEY: Ms. Burgel?

5 BOARD MEMBER BURGEL: Aye.

6 MS. MONEY: Ms. Crawford?

7 BOARD MEMBER CRAWFORD: Aye.

8 MS. MONEY: Mr. Harrison?

9 BOARD MEMBER HARRISON: Aye.

10 MS. MONEY: Ms. Kennedy?

11 BOARD MEMBER KENNEDY: Aye.

12 MS. MONEY: Ms. Laszcz-Davis?

13 BOARD MEMBER LASZCZ-DAVIS: Aye.

14 MS. MONEY: Ms. Stock?

15 BOARD MEMBER STOCK: Aye.

16 MS. MONEY: Chairman Thomas?

17 CHAIR THOMAS: Aye. The motion passes. Thank you very much.

18 Next, we have Marisa "Reese" Fortin, Area HS and E Manager;
19 Sundt Construction, Inc.; Petition File No. 585.

20 Petitioner requests to allow the internal guying and bracing
21 of reinforcing steel (rebar) assemblies when the guying/bracing system is
22 designed by a qualified person and to clarify that external guying and
23 bracing of rebar assemblies shall be prohibited.

24 Mr. Manieri, can you please brief the Board?

25 MR. MANIERI: Yes, Chairman Thomas, Board Members. On June 2nd,

45

1 2020, the Standards Board received a petition from Marisa “Reese” Fortin, Area Safety
2 and Health Manager, Sundt Construction, requesting an amendment to Construction
3 Safety Orders section 1711(e)(3), to permit the internal guying and bracing of
4 reinforcing steel, otherwise and also known as “rebar,” assemblies when the guying and
5 bracing system is designed by a registered engineer and to clarify that external guying
6 and bracing of rebar assemblies is prohibited. Presently the practice of using reinforcing
7 steel as a guy or a brace is now prohibited by our section 1711(e)(3).

8 The Petitioner proposed an amendment to section 1711(e)(3) consistent
9 with their petition request. The amendment also specifies that reinforcing steel used
10 for internal bracing be designed by a registered professional engineer and specifies the
11 types of calculations that the registered professional engineer must perform using the
12 load and resistance factor design calculations that are to include wind and person-on-
13 the-cage loads, human loading factors.

14 The Petitioner seeks relief from possible Division of Occupational Safety
15 and Health enforcement actions by elimination of confusion or conflict between the
16 existing 1711 (e)(2)(A) and (e)(3) when a qualified person designs internal bracing using
17 reinforcing steel for a column cage or other steel assembly. Now, section 1711(e)(3)(A)
18 requires currently that guying and bracing systems be designed by a qualified person.
19 And (e)(3) states that reinforcing steel shall not be used as a guy or a brace without
20 distinguishing between internal or external bracing.

21 The Petitioner is of the opinion that internal rebar bracing designed by a
22 registered professional engineer is actually safer for workers than relying on external
23 bracing. A consultant that they consulted with, Innova Technologies, was hired by the
24 Petitioner to study this issue. And Innova’s report support the Petitioner’s assertions
25 over the safety of a registered professional engineer-designed internal bracing over

1 external guying and bracing.

2 The Division expressed an opinion in their evaluation that rebar should
3 not be the only bracing -- internal rebar bracing -- should not be the only bracing
4 method used to prevent collapse or falling of reinforcing steel assemblies. The Division
5 was not persuaded by the Petitioner's Innova report findings, stating that they were
6 somewhat overly simplistic and lacked information vital to making a conclusive
7 determination of the safety of internal bracing.

8 And a second report by the University of Nevada Center for Civil
9 Engineering and Earthquake Research deemed internal bracing alone is not adequate to
10 prevent collapse. And this is of a particular concern in a state like California where we
11 have seismic risk factors up and down the state. The inference here is that internal
12 bracing alone during a seismic event obviously could result in catastrophic failure of a
13 structure. That's a concern.

14 The Division also took issue with the Petitioner's unsupported claim that
15 the removal of external bracing poses a hazard to employees, that internal bracing
16 eliminates the need for coordination at the worksite and concluded that the petition be
17 denied. The Division however did concede that properly designed, internally installed
18 reinforcing steel bracing systems, improve the strength and stability of the structure.
19 But they should not be allowed as the sole means of stability.

20 The Board staff concurred on many of these points indicating that we
21 note that the last rulemaking project involving 1711 added subsection (e) to prevent
22 vertical rebar steel structures from becoming insecure and collapsing. Subsection(e)(3)
23 was added, we believe, to prevent rebar from being used as an external brace.

24 Also, we find that 1711(e)(3) was never really intended to make internal
25 bracing illegal in the first place.

1 The competent person onsite, typically the registered professional
2 engineer, must always render professional judgement in determining where and what
3 type of additional stabilizing elements in the structure are needed to be applied to
4 ensure a stable vertical and horizontal column, wall or other reinforcing assembly.

5 The Board staff has, with the Division, joins in stating that we reached the
6 conclusion that the petition request framed by the proposed language suggested by the
7 Petitioner lacks merit and should be denied.

8 However, and this is important, Board staff believes that 1711, section
9 1711, is an excellent candidate for technical revisions to subsection (e) and recommends
10 that section 1711 be amended to clarify three main points: 1) that internal bracing is not
11 illegal, and 2) it must be designed by a registered professional engineer, and lastly, we
12 believe it would be beneficial to consider the safe practices contained in the ANSI/ASSE
13 A10.9 standard for concrete and masonry work for inclusion into section 1711.

14 Now, the proposed decision before you encompasses these
15 recommendations and would direct the Board staff to develop an amendment with the
16 assistance of a focus group of select stakeholders. Now, this is a technique as you know,
17 that is not unfamiliar to the Board staff. We've used this numerous times successfully
18 and productively in the past, and of course to work with the Division.

19 In addition, the proposed decision would direct the Board and Division
20 staff to consider whether -- are any justifiable situations where the use of internal
21 bracing may be permitted on some vertical and horizontal column installations, walls
22 and other reinforcing assemblies. We don't know. We need to work at this in more
23 depth and we can do that together with the Division.

24 The decision we believe, having said this, is now ready for your
25 consideration. Thank you.

1 CHAIR THOMAS: Thank you, Mr. Manieri. Are there any questions for
2 Mr. Manieri at this time?

3 BOARD MEMBER STOCK: Yes, this is Laura. It's actually a question for the
4 Division. We've seen both, and you know they were recommending it be denied. And I
5 hear that the Board staff is recommending that these pieces be -- that this discussion
6 occur. And I just wondered if the Division has any comments that they would like to add
7 based on what Mr. Manieri said?

8 MR. BERG: No, I agree with Mr. Manieri. We can discuss those further.
9 So I agree with Mr. Manieri on that, that's a fair point.

10 CHAIR THOMAS: Okay. Any other questions for Mr. Manieri?

11 (No audible response.)

12 CHAIR THOMAS: All right, I'll entertain a motion to adopt the petition
13 decision.

14 BOARD MEMBER LASZCZ-DAVIS: This is Chris. I'd like to propose that
15 Petition No. 585 be denied as originally crafted, but that also be considered a merit --
16 there is some merit to having the Board direct staff to consider an amendment of CSO
17 section 1711(e) to clarify several elements.

18 CHAIR THOMAS: All right. I have a motion. Do I have a second?

19 BOARD MEMBER CRAWFORD: I second.

20 CHAIR THOMAS: I have a motion and a second. Is there anything on the
21 question?

22 (No audible response.)

23 CHAIR THOMAS: Hearing none, Ms. Money, will you please call
24 the roll?

25 MS. MONEY: I'm sorry, who was second?

1 BOARD MEMBER CRAWFORD: Crawford.

2 MS. MONEY: Who?

3 MS. SHUPE: I'd also like to clarify, Chris, your motion is not to
4 accept the proposed decision, but instead to deny?

5 BOARD MEMBER LASZCZ-DAVIS: The proposal was to deny the Board
6 staff rec -- accept the Board staff recommendation.

7 MS. SHUPE: Okay, thank you. My apologies.

8 CHAIR THOMAS: Okay. So who made the motion? Was it Chris?

9 BOARD MEMBER LASZCZ-DAVIS: Yes, it was.

10 CHAIR THOMAS: And who seconded?

11 BOARD MEMBER CRAWFORD: Kate Crawford.

12 CHAIR THOMAS: Oh, Kate, thank you. Kate Crawford seconded the
13 motion. Do you have that Sarah?

14 MS. MONEY: Yes, I do.

15 CHAIR THOMAS: Okay. All right, can you please call the roll then?

16 MS. MONEY: Ms. Burgel?

17 BOARD MEMBER BURGEL: Aye.

18 MS. MONEY: Ms. Crawford?

19 BOARD MEMBER CRAWFORD: Aye.

20 MS. MONEY: Mr. Harrison?

21 BOARD MEMBER HARRISON: Aye.

22 MS. MONEY: Ms. Kennedy?

23 BOARD MEMBER KENNEDY: Aye.

24 MS. MONEY: Ms. Laszcz-Davis?

25 BOARD MEMBER LASZCZ-DAVIS: Aye.

1 MS. MONEY: Ms. Stock?
2 BOARD MEMBER STOCK: Aye.
3 MS. MONEY: Chairman Thomas?
4 CHAIR THOMAS: Aye. The motion passes.
5 Proposed Variance Decisions for Adoption. Ms. Gonzalez, will
6 you please brief the Board?

7 MS. GONZALEZ: Of course, good morning Chair Thomas and
8 Board Members. Today for you on the consent calendar are proposed
9 decisions A through M. Items A and items F have been amended to fix
10 several non-substantive clerical errors. There's several typos. These items
11 are all ready for Board consideration and your possible adoption.

12 CHAIR THOMAS: Thank you, Ms. Gonzalez.
13 Are there any questions for Ms. Gonzalez? Hearing none a motion
14 would be in order to adopt the consent calendar.

15 BOARD MEMBER STOCK: So moved.

16 BOARD MEMBER LASZCZ-DAVIS: Second.

17 CHAIR THOMAS: I have a motion and second. Is there anything
18 on the question?

19 (No audible response.)

20 CHAIR THOMAS: Ms. Money, will you please call the roll?

21 MS. MONEY: Ms. Burgel?

22 BOARD MEMBER BURGEL: Aye.

23 MS. MONEY: Ms. Crawford?

24 BOARD MEMBER CRAWFORD: Aye.

25 MS. MONEY: Mr. Harrison?

1 BOARD MEMBER HARRISON: Aye.

2 MS. MONEY: Ms. Kennedy?

3 (No audible response.)

4 CHAIR THOMAS: Are you there, Ms. Kennedy?

5 BOARD MEMBER KENNEDY: Aye.

6 MS. MONEY: Ms. Laszcz-Davis?

7 BOARD MEMBER LASZCZ-DAVIS: Aye.

8 MS. MONEY: Ms. Stock?

9 BOARD MEMBER STOCK: Aye.

10 MS. MONEY: Chairman Thomas?

11 CHAIR THOMAS: Aye. And the motion passes.

12 Division Update. Mr. Berg, will you please brief the Board?

13 MR. BERG: Yes. Thank you, Chair Thomas. There were some

14 questions last meeting about the COVID Emergency Temporary Standard.

15 And so I will answer those questions. They were from Ms. Stock. So the

16 ETS, or the Emergency Temporary Standard became effective November

17 30th. And there is a question whether the Emergency Temporary Standard

18 impacted complaints, citations, and inspections.

19 So in looking at and talking with our enforcement staff, the

20 number of complaints spiked significantly in early December right around

21 the time when the Emergency Temporary Standard came into effect. And

22 the high level of complaints stayed high throughout December and then

23 declined in mid-January. And returned to similar complaint levels prior to

24 the Emergency Temporary Standard taking effect in February.

25 But we don't know that the Emergency Temporary Standard

1 caused those spikes in complaints because we had similar spikes in July and
2 March.

3 In July, there was a large increase in COVID cases and March is
4 when the emergency first started. So we are not sure for sure it caused the
5 spike in December; whether it was the emergency temporary standard or
6 just because there was a large increase in cases. But there was a very large
7 increase in deaths and serious illnesses from COVID in December and
8 through parts of January. And that increase in deaths and serious illnesses
9 was much higher in December and January than the increase in July. So that
10 was the most serious episode of COVID we had was in December and the ETS
11 was in effect in the high spike.

12 Another question was that the nature of our inspections, have
13 they changed as a result of the ETS? And in talking with enforcement staff
14 the nature of inspections has not changed. We're still looking at all the
15 same prevention measures, so that basically has not changed.

16 Another question is, is enforcement easier? And the answer is
17 COVID-19 prevention measures under the Emergency Temporary Standard
18 are more enforceable and easier to understand than previously when we
19 were using the Injury and Illness Prevention Program. So it has made a
20 drastic improvement in our ability to -- and staff to understand the
21 requirements and other stakeholders to understand the requirements, and
22 they more enforceable than before under the IIPP.

23 And Cal/OSHA's efforts, enforcement efforts have been
24 streamlined and strengthened through the COVID-19 specific Emergency
25 Temporary Standard.

1 And that's all I have. Are there any questions?

2 BOARD MEMBER STOCK: Yes, this is Laura Stock. Thank you, Eric, for
3 that report. I really, really appreciate it. One question I neglected to think of in
4 advance, and perhaps you are not prepared to answer, is there any comment you would
5 make about the impact on the appeals process, and whether there have been a lot of
6 citations under appeal?

7 And then also I imagine that -- so that's question number one. Question
8 number two, I imagine because the time from inspection to citation can be many, many
9 months long I know that it may be in fact too soon to see a big impact on citations
10 related to the ETS. But could you describe whether there have been citations and
11 anything you might want to comment on that? So those are the appeals and the
12 citations.

13 MR. BERG: Yeah, and there has been only a very few citations so far. As
14 you said it's too early, so probably a few more months before we start issuing a large
15 number of citations under the new standard. So we don't have enough information on
16 that yet. And I'm not aware of any appeals, because like you said only a few citations
17 have come out so far. Those will come out in the near future, so maybe two or three
18 months down the line, I can provide more detailed information on that.

19 CHAIR THOMAS: Are there any other questions for Eric?

20 BOARD MEMBER BURGEL: Can I ask a question of Eric? This is Barbara
21 Burgel.

22 CHAIR THOMAS: Go ahead.

23 BOARD MEMBER BURGEL: Could you update us on how the temporary
24 language, the draft regulatory language, is coming along? And I think at last month's
25 meeting you thought it would be most likely the end of April. Or will we see language

1 before the April meeting or timeline?

2 MR. BERG: Yeah, we've been working on the language. We've worked
3 closely with CDPH and the legal unit in crafting language, so we are making good
4 progress. And we are incorporating -- there's a commenter today about the new CDC
5 vaccine guidelines. So we are incorporating those guidelines and talking to CDPH about
6 those guidelines, so they are also in agreement with the CDC guidelines. But the CDC
7 guidelines do change. I think they have changed two or three times on vaccines, but we
8 think this more recent recommendation will be stuck with.

9 I mean, the data right now in the case of vaccines are good at preventing
10 transmission. So CDC does recommend not quarantining after close contact for
11 someone that is fully vaccinated. You know, they've had both vaccines and it's been
12 two weeks since the vaccines, or for Johnson & Johnson the one vaccine, and two weeks
13 has gone by. So that data does look pretty strong. And we look to incorporate that,
14 although CDC still says to test even a fully vaccinated person, who according to CDC still
15 needs to be tested after close contact.

16 So we are going to talk more with CDC and CDPH about that if they might
17 be changing that recommendation, because we don't want to have a draft regulation
18 and then two days later CDC changes that recommendation. So we want to be in close
19 contact with them, make sure that that's not going to change.

20 BOARD MEMBER BURGEL: Thank you.

21 BOARD MEMBER STOCK: Yeah, I'm sorry Barbara, did you want to ask
22 something else?

23 BOARD MEMBER BURGEL: No. No, I just wanted to thank Eric.

24 BOARD MEMBER STOCK: Yeah. And Eric just on that final point I know
25 we've been hearing a lot of confusion about CDC's recommendations about

1 quarantining, because on the one hand they have not yet -- they have pretty
2 consistently said that we don't know for sure whether transmission, mild infection and
3 transmission is prevented by the vaccine. So they've had that message and then they
4 simultaneously had that statement about, well, quarantine in workplaces isn't
5 necessary. So I just would second the point of -- that point is still confusing, not
6 resolved. And that obviously until any of those things get resolved the current
7 requirements are in place. Thank you. But thank you for providing that report.

8 MR. BERG: Thank you.

9 CHAIR THOMAS: Thank you, any more questions for Mr. Berg?

10 BOARD MEMBER LASZCZ-DAVIS: Not a question, but perhaps a
11 comment, Dave. And I know it's been said before, but I want to reiterate the fact that
12 the three days' worth of advisory committee hearings that took place earlier this year,
13 I'm very impressed and I think directionally the right way to address very complicated
14 regulations. So thank you.

15 MR. BERG: Thank you very much. Yeah, we thought it worked well and
16 will continue to use that format where appropriate.

17 CHAIR THOMAS: Great. Good, good. Any other questions?

18 (No audible response.)

19 CHAIR THOMAS: Hearing none, Legislative Update, Ms. Gonzalez.

20 MS. GONZALEZ: Thank you Chairman. As you can see from your Board
21 packages we are monitoring a number of bills that could potentially impact the Board
22 and the Board's operations, so we will keep you updated on those.

23 I did also want to let you know about a bill that was introduced after your
24 packets went out, and that's SB 410 from Connie Leyva. And that's a proposed bill to
25 exempt occupational safety and health standards from the standardized regulatory

1 impact analysis requirements. So we will add that to your list as well. And that's all I
2 have.

3 CHAIR THOMAS: Thank you.

4 Any questions for Ms. Gonzalez?

5 BOARD MEMBER CRAWFORD: Yes. Yes I'm sorry, this is Kate Crawford.
6 Can you repeat the SB number please, Autumn?

7 MS. GONZALEZ: Yeah, it's 410.

8 CHAIR THOMAS: Thank you. All right, no further questions?

9 Executive Officer's Report, Ms. Shupe, will you please brief the
10 Board?

11 MS. SHUPE: Thank you, Chair Thomas.

12 Earlier this week Board staff provided an overview and introduction to
13 the Occupational Safety and Health Standards Board for new DIR staff. We coordinate
14 these cross-pollination sessions with Cal/OSHA periodically to familiarize our field staff
15 at DIR with the framework for regulatory adoptions, giving them valuable information
16 that they can utilize when interacting with the public, employers and employees. This is
17 something we haven't been able to do for quite some time, so I was very pleased to see
18 that Cal/OSHA was able to arrange that. And that our Senior Safety Engineer David
19 Kernazitkas was available to participate.

20 Looking forward Board staff will participate in the Cal/OSHA advisory
21 committee meeting on March 25th. And next month on April 14th Board staff will chair
22 a date palm advisory committee in its second day of considerations for proposed
23 amendments to regulations for the harvesting of California date palms.

24 Our next meeting is coming up very quickly and on April 15th, the Board
25 will consider adoption of amendments to the commercial diving standards and adoption

57

1 of regulations for technical diving operations.

2 Are there any questions from the Board Members?

3 BOARD MEMBER CRAWFORD: Christina, are all of those still virtual
4 meetings?

5 MS. SHUPE: They are indeed, yes.

6 CHAIR THOMAS: Yeah, we'll get past it. It may take a few more months
7 or maybe early next year, but hopefully we will have in-person meetings sometime next
8 year.

9 MS. SHUPE: So this is a question that comes up quite frequently. And it
10 is simply a matter of the environment that we are in. When we do go back to in-person
11 meetings, we will be contemplating a hybrid model. There is also several pieces of
12 legislation there are pending that would impact the resumption of in-person meetings
13 and how we would navigate that.

14 Our first meeting, when it occurs will likely be at the DIR offices in
15 Oakland, which is a large auditorium style. And it has the technical capability to also
16 support hybrid web interface for participants. A lot of our previous meeting locations
17 do not have either the space or the technical capability to support those types of
18 meetings. But at this point we are still in a virtual meeting mode. When we do return
19 to in-person options, we will provide at least three months' notice to the public.

20 BOARD MEMBER STOCK: Yeah, Christina, this is -- if I could just make a
21 comment, this is Laura -- on what you just said. So yeah, of course I'm greatly looking
22 forward to being able to meet in-person and seeing everybody, Board Members,
23 etcetera. And I've really appreciated the tremendous increase in access to our meetings
24 that remote meetings have provided. And I really feel like we saw that during the
25 testimony for the ETS where many people participated who I am quite certain would not

58

1 have been able to participate.

2 So I have been thinking that -- I appreciate what you said about exploring
3 the possibility of continuing in a hybrid manner, so we can both be able to meet in-
4 person, but still enhance access for Californians across the state. So I'm happy to hear
5 that you're saying that that's under consideration.

6 MS. SHUPE: Absolutely.

7 BOARD MEMBER BURGEL: And I also want to echo I think it's fabulous
8 having the simultaneous translation for Spanish, wonderful to increase access. And I'm
9 trusting that will continue.

10 CHAIR THOMAS: Yeah, I think we are making many advances in bringing
11 the public into our meetings. And hopefully we can continue that with the technology
12 that we have and that we have kind of incorporated. We do have to have the right
13 place to do that as Christina said, but I think that's going to just become part of how we
14 conduct our meetings. So I look forward to that.

15 BOARD MEMBER BURGEL: Can I ask, Dave, one question?

16 CHAIR THOMAS: Sure.

17 BOARD MEMBER BURGEL: I'm sorry, I just wondered if indeed we would
18 get simultaneous translation in Chinese? I don't know whether that is possible. I know
19 that there's a cost, but based on our demographics as a state we might want to consider
20 that.

21 MS. SHUPE: There is currently legislation that would propose providing
22 translation services for languages that are within a jurisdiction that are 5 percent or
23 more. At this point Mandarin is not currently at that threshold; however, trends
24 indicate that it may reach thresholds with the release of the 2020 census data.

25 All of this is a matter of funding as well. And so the live translation that

1 we provide now is paid for out of cost savings, because we are not holding in-person
2 meetings. These are likely in order to continue these services moving into a hybrid
3 model. We will have to seek a budget augmentation in order to continue them.

4 BOARD MEMBER BURGEL: Thank you. I would support highly the budget
5 augmentation request.

6 CHAIR THOMAS: Wouldn't we all.

7 BOARD MEMBER BURGEL: Yeah.

8 CHAIR THOMAS: So at this time future agenda items. Do Board
9 Members have any questions regarding new agenda items, or upcoming?

10 BOARD MEMBER BURGEL: I would like an update on the indoor heat
11 standard. I know it's still in fiscal I think. And I know the workplace general violence
12 prevention standard. I don't want to lose sight of those two.

13 MS. SHUPE: And so Mr. Berg if you are still on the meeting if you could
14 please add that to your list for next month we would very much appreciate it.

15 MR. BERG: Okay. I mean, we don't have much to say about those. They
16 have been --

17 BOARD MEMBER BURGEL: I know.

18 MR. BERG: -- basically (indiscernible).

19 BOARD MEMBER BURGEL: We can't speed it up, can we?

20 MR. BERG: Okay, I'll provide a non-update next month. (Laughter.)

21 MS. SHUPE: Okay. I feel like the need to jump in and really defend Mr.
22 Berg and his staff. They have just been incredibly overworked and doing just amazing
23 things with very few resources. And so we appreciate all the effort that they have been
24 putting forth.

25 MR. BERG: Great. Thank you.

1 CHAIR THOMAS: I don't know, Eric, looks pretty relaxed and
2 (indiscernible). Sorry, Eric, just kidding.

3 MR. BERG: It's okay. I don't show my stress. (Laughter.)

4 CHAIR THOMAS: All right, at this time there being no further questions,
5 we're going to move into closed session. And you guys all have the number, Board
6 Members have the number? So how are we going to do this? Are they going to stay on
7 or come back?

8 MS. SHUPE: No, so the Board Members will go ahead and disconnect
9 from the WebEx and join the closed session via teleconference. And then we'll rejoin
10 once the closed session has ended.

11 CHAIR THOMAS: So we are going to go into closed session. Those of
12 you that are on this site now just remain. I don't know how long it will be,
13 probably not more than a half hour. We'll see.

14 BOARD MEMBER STOCK: So I'm sorry, Christina, are you saying
15 that we should not -- we could simply mute and stop our video and join the
16 others. But you're saying we should actually completely disconnect from
17 the WebEx?

18 MS. SHUPE: So if you're quite certain that you are muted and
19 you have stopped your video and we have that confirmed by technical then
20 you can go ahead and stay connected.

21 BOARD MEMBER STOCK: Okay, thank you.

22 CHAIR THOMAS: Okay, so at this time this meeting is going into
23 closed session. So we are in recess until we come back, probably in half an
24 hour or so. Thank you.

25 (Off the record at 11:49 a.m.)

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(On the record at 12:10 p.m.)

CHAIR THOMAS: Thanks, John. This meeting of the Occupational Safety and Health Standards Board is back in session. The Board took no action during closed session.

Therefore, the next regularly scheduled Board meeting and hearing is scheduled for April 15th, 2021, and via teleconference and videoconference. Please visit our website and join our mailing list to receive our latest updates.

Thank you for your attendance today. There being no further business to attend to, this meeting is now adjourned. Don't forget it's tax day, April the 15th, but they're going to extend it one month so you have extra time.

Thanks everybody, we'll see you next month.

(The Business Meeting adjourned at 12:18 p.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of September, 2021.



ELISE HICKS, IAPRT CERT**2176

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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Myra Severtson
Certified Transcriber
AAERT No. CET**D-852