

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
December 13, 2018
Sacramento, California

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Acting Chairman Dave Harrison called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:09 a.m., December 13, 2018, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

Dave Harrison
Barbara Burgel
Chris Laszcz-Davis
Barbara Smisko
Laura Stock

Board Members Absent

Dave Thomas

Board Staff

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

Division of Occupational Safety and Health

Amalia Neidhardt, Senior Safety Engineer

Others Present

Saskia Kim, CA Nurses Association
Charles L. Rea, CalcIMA
Pamela Murcell, KWA Safety/CIHC
Jamie Carlile, SCE
Kevin Bland, Ogletree Deakins
Elizabeth Treanor, PRR
Dan Leacox, Leacox & Associates
Kevin Thompson, Cal/OSHA Reporter
Mitch Steiger, CA Labor Federation

Nicole Marquez, Worksafe
Ann Katten, CRLAF
Jane Thomason, CNA/NUU
Michael Strunk, IUOE Local #3
Bruce Wick, CALPASC
Michael Musser, CA Teachers Association
Marti Fisher, CalChamber
Jon Rodriguez, Cornerstone Law Group

Mr. Harrison welcomed Ms. Shupe to the Standards Board staff as Executive Officer and administered the oath of office. Mr. Harrison also stated that today's meeting is Ms. Smisko's last meeting as a Board Member. He presented Ms. Smisko with a plaque on behalf of the Board and staff to recognize and thank her for her time and dedication during her tenure as a member of the Board from June 2012 to December 2018.

Ms. Smisko stated that she appreciated the opportunity to serve on the Board and thanked Christine Baker for giving her the opportunity to apply to serve on the Board. She also thanked Governor Jerry Brown for his support of the Board's process, the public for their participation, and the Board staff and Division for their work. She said that it has been a pleasure to serve with the other Board Members and she wished Ms. Shupe good luck in her new role as Executive Officer.

Ms. Stock stated that she has enjoyed serving on the Board with Ms. Smisko. She said that they didn't always see eye to eye on things, but she appreciated Ms. Smisko's thoughtful reasoning.

Ms. Laszcz-Davis also thanked Ms. Smisko for her service on the Board.

Mr. Harrison stated that he, Ms. Smisko, and Ms. Stock were all sworn in as Board Members at the same meeting in June 2012, and he has enjoyed being neighbors with her on the dais and having some great discussions.

B. OPENING COMMENTS

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

Marti Fisher, CA Chamber of Commerce, stated that she will be retiring on January 4, and she thanked the Board and staff for being so wonderful to work with over the years. **Mr. Harrison** thanked Ms. Fisher for her hard work and dedication.

Elizabeth Treanor, Phylmar Regulatory Roundtable, thanked the Board Members for their work over the last year to keep California workers safe. She congratulated Ms. Shupe on becoming Executive Officer and wished her great success in her new role. She also thanked Ms. Smisko for her service to the Board.

Mitch Steiger, CA Labor Federation, submitted a petition request to the Board for emergency regulations requesting better protections for outdoor workers from wildfire smoke. He said that many outdoor workers are forced to work in extremely hazardous conditions when a wildfire breaks out. He stated that protections, such as masks and respirators, are spotty at best, and regulations are not clear on what workers and employers are supposed to do when this happens or when the air gets hazardous really fast. He said that Section 3203 regarding injury and illness prevention plans requires employers to look at hazards like wildfires and come up with a plan to address them, but they are not being used to protect workers from the specific hazards associated with wildfires. He stated that Section 5141 directs employers to minimize a worker's harmful exposure to wildfire smoke, but it is very

short and does not provide detailed suggestions or recommendations other than recommending the use of engineering controls. He said that it also mentions using respirators to protect workers, and Section 5144 provides very detailed instructions on how respirators work, when to use them, and it mentions that a medical evaluation and fitting are required prior to using them, but these standards are very open-ended and indicate that respirators are only necessary to protect a worker's health. He stated that his organization believes that it makes sense to use the Air Quality Index (AQI) as a threshold for determining what sort of action employers must take when their employees are working outdoors and exposed to wildfire smoke. He said that although there have been questions raised regarding geography, what public agency determines the AQI, and what area it covers, it is publicly available and gives clear guidelines that are backed up by science as to when air is unhealthy for certain groups to breathe. He stated that this petition is only seeking to cover outdoor workers because including indoor workers would make things much more complicated. His organization feels that filing an emergency petition is the best way to address this issue because fire season is now a year-round event, and the regular rulemaking process is very slow. He said that the long term effects of exposure to wildfire smoke are unknown, but there is an immediate impact on people with preexisting conditions, so a clear and simple standard is needed to address this hazard. He stated that it is also important to consider the harmful substances that are in old structures, such as lead and asbestos, that could be lurking in wildfire smoke.

Ms. Burgel asked Mr. Steiger if the petition is requesting that the AQI used is specific to wildfires, and not just outdoor air situations. **Mr. Steiger** stated that the threshold levels are hard to reach with situations other than wildfires. He said that it is probably a good idea to stick with using AQI across the board, even though this petition is geared toward wildfire smoke. **Ms. Hart** stated that in the written petition request submitted by Mr. Steiger, the first sentence ends with the statement: "in areas where air quality meets or exceeds unhealthy levels due to wildfire smoke." [Please see the file copy of the Board packet to view the written petition request.]

Nicole Marquez, Worksafe, stated that her organization supports the CA Labor Federation's petition request to come up with a standard to protect outdoor workers from exposure to wildfire smoke. She said that wildfire smoke has high levels of fine particulate matter that can reduce lung function and worsen preexisting heart and lung conditions. She stated that it is important to create a strong wildfire smoke protection standard that is based on requiring protections when AQI measurements reach unhealthy levels due to wildfire smoke. She said that this standard is needed to protect low wage and immigrant workers. She stated that when the wildfires occurred in Santa Rosa and Sonoma last year, many agricultural workers and day laborers reported that they had no choice but to continue working and being exposed to the smoke. She said that this standard needs to include feasible engineering and administrative controls to protect workers from wildfire smoke, as well as strong anti-retaliation language.

Ms. Marquez also stated that her organization supports the current draft language for the standard regarding workplace violence prevention in general industry. She said that her organization is looking forward to reading and reviewing comments and feedback from the advisory committee regarding the draft language.

Anne Katten, CA Rural Legal Assistance Foundation, stated that her organization supports the CA Labor Federation's petition request develop a standard to protect outdoor workers from exposure to wildfire smoke. She said that during the recent wildfires, her organization

has seen some employers use administrative controls to protect their workers from wildfire smoke, but many employers do not provide any protection for their workers, so this regulation is urgently needed. She also stated that her organization is very pleased with the current draft of the regulation for workplace violence prevention in general industry. She also thanked Ms. Smisko for her service on the Board.

Dan Leacox, Leacox & Associates, thanked many members of the Board staff and the Division for their hard work on record number of variances that were applied for this year, many of which applied to elevators. He also spoke about the upcoming revisions to the Elevator Safety Orders. He said that since the Elevator Safety Orders were moved to Cal/OSHA rulemaking in 2002, there have been many updates to various codes that affect the Elevator Safety Orders, but there have not been any updates to the Elevator Safety Orders to reflect these code changes. He stated that Labor Code Statute 7323 anticipates that any time the elevator model code is updated, the Division will provide the Board with updates to the code to keep CA elevator codes current, but this has not been the case. He said that the upcoming revised elevator standard has taken eight years to evolve and does not contain a sustainable process for keeping up on the elevator code. He stated that consideration needs to be taken regarding incorporating updates to the elevator codes into the Elevator Safety Orders, and the proper ways to do it.

Bruce Wick, CALPASC, stated that he has worked with many boards throughout the state, and the Standards Board is the best one to work with. He said that he appreciates the professional collaboration that takes place between the Board, the Board staff, the Division, and stakeholders, and with this collaboration, many good standards have been created that employers are willing to comply with. He stated that he is looking forward to working with the Board in 2019 to do more good work. He said that he will miss the folks who are leaving, but he is looking forward to working with the new folks. **Michael Musser, CA Teachers Association**, echoed Mr. Wick's comments.

Michael Musser, CA Teachers Association, stated that a regulation is needed to protect employees from the harmful effects of wildfire smoke. He said that during the Thomas fire last year, he worked as a carpenter at a school district in Ventura, and he was asked to help make sure that the classrooms were safe for students to return to after the fire. He stated that management soon discovered that this job needed to be done by someone with the necessary skills to do it, so an outside contractor was brought in to do the job. He also thanked the Board and staff for their work on the proposal for workplace violence prevention in general industry. He said that his organization supports the current draft of the proposal, especially the requirements regarding the violent incident log.

Kevin Bland, representing the CA Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council, thanked the Board and the Board staff for their work throughout this past year. He said that he will miss Ms. Smisko and Ms. Fisher, and he welcomed Ms. Burgel and Ms. Shupe. He is looking forward to continuing to work with the Board and staff in 2019.

C. ADJOURNMENT

Mr. Harrison adjourned the public meeting at 10:50 a.m.

II. **BUSINESS MEETING**

Mr. Harrison called the Business Meeting of the Board to order at 10:50 a.m., December 13, 2018, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

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

MOTION

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

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

B. OTHER

1. Legislative Update

Mr. Healy stated that there was nothing to report to the Board. He said that the Legislature did convene on December 3, and it will reconvene on January 7.

2. Executive Officer's Report

Ms. Shupe thanked Ms. Hart and the Board staff for their warm welcome. She said that she is very grateful for their assistance, and especially to Ms. Hart for being willing to assist during the transition. She also thanked the Board, Board staff, and stakeholders for their work and collaboration. She said that she has been following the Board's work for the last few months, and she appreciates the fact that everyone works really well together.

Ms. Shupe stated that the 2019 Board meeting schedule has been finalized and copies of the schedule are available at the meetings and on the Board's website. She said that for each quarter of the year Ms. Money was able to schedule one meeting in the Sacramento area, one meeting in the Bay Area, and one meeting in southern California. She stated that the meetings are scheduled to take place on the third Thursday of every month.

Ms. Shupe stated that the Board staff is continuing to provide public outreach presentations to inform the public about the Board's operations. She said that yesterday she attended Mr. Manieri's presentation for the administrative law judges at the Occupational Safety and Health Appeals Board. She stated that the Board will continue to look for other opportunities to do this presentation for labor and management groups, as well as for other interested agencies.

3. Future Agenda Items

Ms. Stock welcomed Ms. Shupe to the Board and thanked the stakeholders for submitting the petition to the Board regarding employee exposure to wildfire smoke. She asked the Board staff to add an agenda item to next month's meeting explaining the steps that are involved for the Board to address this issue as quickly as possible.

C. ADJOURNMENT

Mr. Harrison adjourned the Business Meeting at 10:55 a.m.