

DEPARTMENT OF INDUSTRIAL RELATIONS  
Occupational Safety and Health Standards Board  
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**SUMMARY**  
**PUBLIC MEETING AND BUSINESS MEETING**  
**October 15, 2020**  
**Teleconference in Sacramento, California**

**I. PUBLIC MEETING**

**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., October 15, 2020, via Webex/teleconference, in accordance with Executive Order N-29-20.

**ATTENDANCE**

Board Members Present at OSHSB Office  
Dave Thomas

Board Members Absent  
NONE

Board Members Present via  
Teleconference and/or Webex

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

Board Staff Present at OSHSB Office  
Christina Shupe, Executive Officer  
Michael Nelmda, Senior Safety Engineer  
Sarah Money, Executive Assistant

Division of Occupational Safety and Health  
Staff Present via Teleconference and/or Webex  
Eric Berg, Deputy Chief of Health

Board Staff Present via Teleconference  
and/or Webex

Mike Manieri, Principal Safety Engineer  
Lara Paskins, Staff Services Manager  
David Kernazitskas, Senior Safety  
Engineer  
Jennifer White, Staff Services Analyst

Others Present via Teleconference and/or Webex

Elizabeth Treanor, Phylmar Regulatory  
Roundtable  
Janette Bell, Unite Here  
Sarah Wiltfong, Los Angeles County  
Business Federation  
Michael Donlon, Construction Employers  
Association

Oralia Summers, Unite Here  
Guadalupe Garcia de Solis, Unite Here  
Bruce Wick, CA Professional Association of  
Specialty Contractors  
Eric Frumin, Change to Win  
Kevin Thompson, Cal/OSHA Reporter  
Megan Shaked, Conn Maciel Carey LLP

Anne Katten, CA Rural Legal Assistance  
Foundation  
Bryan Little, CA Farm Bureau Federation  
Maggie Robbins, Worksafe  
Michael Miiller, CA Association of  
Winegrape Growers

Robert Moutrie, CA Chamber of Commerce  
Brian Heramb, San Diego Gas & Electric  
Dan Leacox  
Cassie Hilaski, Nibbi Brothers General  
Contractors  
Michael Holland, Clarke Construction Group and  
Carpenters Local 405 in San Jose

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

**Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR)**, asked the Division to release a copy of the draft language for the emergency temporary standard (ETS) pertaining to COVID-19 exposure in the workplace. It is important that stakeholders have an opportunity to review the draft language and have dialogue with the Division. She also asked the Division to review and consider using the performance-based standard that her organization submitted. It is important to put requirements in the ETS that will protect workers, allow flexibility for evolving science and information, and will not become outdated quickly.

**Guadalupe Garcia de Solis, Unite Here**, stated that she works as a hotel housekeeper, and the hotel management has not done enough to protect her and her coworkers from exposure to COVID-19. The management does not require guests to wear masks when dealing with the hotel staff and forces housekeepers to clean rooms when guests are present in the room, and if they refuse to do it, they get disciplined for it. **Oralia Summers, Unite Here**, echoed Ms. Garcia de Solis's comments.

**Eric Frumin, Change to Win**, stated that it is important for the Division and employers to be vigilant regarding COVID-19, and his organization feels that a performance-based standard will not suffice given the behavior of some employers in response to this pandemic. A performance-based standard does not take the risks associated with COVID-19 exposure seriously. He asked the Division to release a draft of the ETS text to the public in time for the public to comment on it before the Board votes on it.

**Janette Bell, Unite Here**, stated that she was informed of a COVID-19 case among her coworkers, but was not told what department the person worked in or who they came in contact with. The training for how to clean rooms effectively with extra precautions for COVID-19 is not sufficient. More effective personal protective equipment (PPE) is needed. When guests are not wearing masks, management or security personnel should be telling them to do so, not the employees.

**Bruce Wick, CA Professional Association of Specialty Contractors (CALPASC)**, stated that even if there is an opportunity for the public to comment on the ETS, any changes made as a result of those comments will not be made until after the regulation is adopted. It would be better for the Division to focus its time and resources on enforcement and making bad actors comply. If the Board chooses to continue moving forward with the ETS, the ETS should mirror what is already being done that is effective, and the Board should take an extra month or two to work with stakeholders to fine tune it before voting on it.

**Sarah Wiltfong, Los Angeles County Business Federation**, stated her organization has concerns about the following regarding the ETS for COVID-19:

- The timeline is too quick to adopt a regulation of this magnitude.
- There is a serious lack of input from stakeholders who will be affected by this regulation.
- This regulation is a one-size-fits-all approach that does not account for the different sizes and types of businesses that there are around the state.
- This regulation will be difficult to change when new information becomes available.

She asked the Board to consider giving more time after the draft regulation has been released so that stakeholders can weigh in on it and adjustments can be made before it is adopted.

**Brian Heramb, San Diego Gas & Electric (SDG&E)**, stated that the ETS should reflect the current approaches that are working to address COVID-19 exposure in the workplace, allowing information that has been learned over the last few months to guide employers. The process to develop the ETS should be transparent and involve stakeholder input before the ETS is voted on by the Board. He asked the Division to release a draft of the proposal before the next Board Meeting so that stakeholders can comment and assist the Board in making a decision.

**Robert Moutrie, CA Chamber of Commerce**, stated that stakeholder input regarding the COVID-19 ETS will make it more effective and workable, as well as give the Division and stakeholders an opportunity to catch any issues. Also, several of the issues mentioned are covered under existing standards, so the ETS should only cover legal holes, not enforcement holes. The ETS also needs to be consistent with what has already been implemented and is working effectively, must be feasible, and must be implementable in a short amount of time. He advised the Division to be careful regarding the scope of the regulation, since issues like rest breaks and sick leave, which were mentioned in the language in petition 583, fall under the authority of the Labor Commissioner. He also read a comment into the record from Len Welsh asking the Division to keep the language for the ETS simple. **Cassie Hilaski, Nibbi Brothers General Contractors**, echoed Mr. Moutrie's comments.

**Bryan Little, CA Farm Bureau Federation**, stated that he is concerned that the Board is going to vote on the COVID-19 ETS next month without any stakeholder input involved in the development of the regulation. He said that the Board staff's analysis of petition 583 indicated that there is no evidence that employers are not complying with the guidance that has already been issued, and the Division is enforcing the requirements mentioned in the guidance documents through the injury and illness prevention program (IIPP) standard. A regulation that is far-reaching, like a COVID-19 standard, should be developed using the normal regulatory process, not the emergency process.

**Dan Leacox** stated that employers' voices have been ignored throughout the development of the COVID-19 ETS. It is important that the Board look at the bigger picture and how this ETS will impact all aspects, not just the health and safety benefits. The compliance numbers demonstrate that what is currently being done to address COVID-19 exposure in the workplace is effective, and the Board should demand evidence to demonstrate that further

regulation is needed before proceeding with the ETS.

**Michael Miiller, CA Association of Winegrape Growers**, stated that his organization is concerned about the ETS for COVID-19 because no stakeholder input has been allowed during the process and it violates the requirements of the Administrative Procedures Act (APA). He asked the Division to continue its stringent enforcement of the requirements in the guidance documents against bad actors. More regulation will not make bad actors comply. This proposal needs to be properly vetted before the Board votes on it.

**Maggie Robbins, Worksafe**, stated that her organization agrees it is important to keep the COVID-19 ETS simple, but it needs to note specific mitigation measures, such as social distancing, handwashing, and cleaning measures, that are needed to specifically address the COVID-19 hazard. She said that situations such as the shortage of N95 masks may come up, but those situations can be addressed through guidance from the Division, as was done for compliance with the wildfire smoke regulation. She asked the Division to move quickly on the COVID-19 ETS and produce a draft for the public to view.

**Michael Donlon, Construction Employers Association**, stated that his organization would like to help the Division come up with an effective regulation that addresses COVID-19 hazards in the workplace, protects workers, and does not conflict with existing guidance documents from health departments. Having a performance-based standard in place to address COVID-19 is best because it can be applied to all industries without being too prescriptive. Also, enforcement of existing standards and guidance is preferable, can be done immediately, and has been proven to be effective to protect workers from COVID-19 exposure in the workplace.

**Michael Holland, Clarke Construction Group and Carpenters Local 405 in San Jose**, asked the Division to convene an advisory committee to address COVID-19 so that stakeholders have an opportunity to discuss the regulation and ensure that it is not too prescriptive. He also stated that the guidance documents issued by local health departments have been very effective for preventing the spread of COVID-19.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 11:21 a.m.

II. **BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 11:21 a.m., October 15, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via Webex/teleconference, in accordance with Executive Order N-29-20.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Pamela S.  
**Petition File No. 579**

Petitioner requests to amend various sections of Title 8 (presumably in the GISO and CSO) to address water damaged building (WDB) mold investigation and

remediation methodologies that will prevent chronic respiratory illness syndrome attributable to mold.

Ms. Shupe summarized the history and purpose of petition 579, and stated that the proposed decision is to deny the petition.

#### MOTION

A motion was made by Mr. Harrison and seconded by Ms. Laszcz-Davis that the Board adopt the petition decision.

**Ms. Stock** stated that it appears the Board staff and the Division agree that the regulations need to be strengthened, but they each are proposing different ways of getting there. The Division is proposing to grant the petition in part and convene an advisory committee, while the Board staff is saying that the regulations can be updated without a petition. She asked Mr. Berg why the Division recommended that the Board grant the petition in part and convening an advisory committee to strengthening the existing regulations. **Mr. Berg** stated that the regulations can be strengthened using either method when the Division has the resources available to do so, and in their evaluation of the petition, the Division was indicating that it agrees the regulations need to be looked at.

**Mr. Harrison** stated that if this petition is passed as presented, the Board could decide to add this as a future agenda item to keep on the agenda until it is addressed. **Ms. Burgel** stated that she would prefer to see the Board grant the petition in part and have the Division convene an advisory committee meeting so that this does not get lost in the process.

**Ms. Shupe** explained that the petitioner asked for specific, prescriptive remediation that conflicts with the Centers for Disease Control, the World Health Organization, and the CA Department of Public Health. This was mentioned in the Board staff's and Division's evaluations of the petition, and that is why the proposed decision recommends denying the petition. She urged the Board to consider that before moving forward with granting the petition.

**Mr. Thomas** stated that it would be best for the Board to deny the petition and then have the Division convene an advisory committee as soon as possible to address any of the issues that it is able to address. **Ms. Shupe** also advised the Board that in addition to adding this item as a future agenda item, the Board can request the Division to provide an update on it in a few months.

**Ms. Stock** asked Mr. Berg how the Division could move forward to address these issues in a limited way, excluding items that the Division does not agree with, if the Board denies the petition. **Mr. Berg** stated that it would be added to the Division's project list after the other petitions and advisory committees that have already been approved, and an advisory committee meeting would be convened for stakeholders to discuss the issues. The Division is committed to doing this whether or not the Board grants or denies the petition. **Ms. Stock** stated that the Board needs to take action on this project in such a way that ensures it does not get lost among other projects. She recommended that the Board implement a future agenda item to have the Division update the Board on the status of the advisory committee process in a few months.

**Ms. Shupe** recommended that the Board adopt the proposed decision and then take a separate action to address what the Board would like the Division to do in terms of putting this item on a future Board Meeting agenda.

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

#### MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock to request that the Division convene an advisory committee meeting to discuss the issues listed in petition 579.

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

#### B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

##### 1. Consent Calendar

Ms. Shupe stated that on item K regarding KONE Monospace 500 Elevators, a clerical error was made and a reference to the review draft proposed decision, “PD5”, was left in the footer on page 1 of the proposed decision. It should have been removed before the decision was finalized and distributed. She said she is aware of no unresolved procedural issues regarding the items A-K on the consent calendar, and she 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.

#### C. OTHER

##### 1. Emergency Regulation Process - Overview

Ms. Shupe provided the Board with an overview of the emergency rulemaking process, as requested by Board Members at previous meetings, and explained how the process will move forward regarding the COVID-19 emergency temporary standard.

**Ms. Burgel** stated that she is concerned that there has not been any stakeholder input integrated into the process to develop the COVID-19 ETS. She asked Ms. Shupe if any draft text has been put forth yet, and if an advisory committee meeting will be held given the short timeframe in which the rule is being developed. **Ms. Shupe** stated that the Division is currently doing research to develop and draft the regulation.

**Ms. Stock** stated that she was under the impression that there would be no advisory committee meetings held regarding the COVID-19 ETS because of the short timeline, and that the proposed decision for petition 583 included a process that would allow the regulation to be reviewed to address any potential issues then. She asked Ms. Shupe if the draft text might be able to be released sooner than 5 days before the November meeting. **Ms. Shupe** stated that

the timeline that was worked out with the Division before the proposed decision was developed for petition 583 assumed that the complete regulatory text for the proposal would have been received by the Board staff by last Monday (October 12, 2020), but that has not happened because the text is not ready. The Division is working with the Department of Public Health on the proposed text. She said that the text will be released to the public as soon as possible, but the Board staff will need to review it before it is released. There is also a possibility that since the timeline for this proposal has not been met, it may not be ready to notice 5 days ahead of time, and therefore, it may have to be pushed to December. **Ms. Stock** asked Mr. Berg if he thinks the proposal will be ready in time to meet the deadline for the November meeting. **Mr. Berg** stated that the Division is hopeful it will be ready in time to meet the deadline for the November meeting, but they do not know when it will be ready.

**Ms. Laszcz-Davis** stated that she is concerned by what she heard in today's discussion, and she feels that an advisory committee meeting should be convened before the Board takes action on the COVID-19 ETS. There are a lot of good things being done to protect workers from COVID-19, and the Division should focus on providing stringent enforcement action against bad actors. **Ms. Burgel** echoed Ms. Laszcz-Davis's comments.

**Ms. Stock** stated that she is concerned because the regular rulemaking process and the advisory committee process both take several months to do, and therefore, will add several months to this process. There are also other ways in which the public can provide input. She said that many stakeholder have provided comments at the Board Meetings over the last several months, and she hopes that the Division is incorporating those comments into the ETS and that the other Board Members will consider them when voting on the proposal.

**Ms. Laszcz-Davis** stated that a public comment period is not the same as having an opportunity for a stakeholder forum to take place where best practices can be developed that are workable and simple. She also said that with the given timeline, no one will have enough time to provide input that makes sense for the Board to vote on the ETS in November.

**Ms. Burgel** asked if there is enough time to use another process to review the ETS, such as a small group discussion to crosswalk documents. **Ms. Shupe** advised the Board that when the proposal comes before the Board for a vote, if the Board is not satisfied with the proposal, the Board has the authority to vote it down and direct the Division to come back with changes to the proposal. **Mr. Thomas** stated that once a draft of the proposal is released, everyone will know the strengths and weaknesses of the proposal. Until the draft is released, the Board does not need to make a decision on the length of the process. When it is released, the Board can make a decision as to the best way to move forward.

## 2. Legislative Update

Ms. Shupe provided updates on the following bills:

- AB 685
- AB 1512
- AB 2043
- AB 2092
- AB 2537
- SB 275
- SB 1257

3. Executive Officer's Report

Ms. Shupe thanked the Board staff and the Division for their hard work during these difficult times.

Mr. Thomas called for a break from 12:20 p.m. to 12:35 p.m.

D. CLOSED SESSION

Pursuant to Government Code Sections 11126(e)(1) and 11126(a)(1), the Board conferred with counsel regarding the pending litigation matters listed on the agenda and consideration of personnel matters. Closed Session began at 12:35 p.m.

E. RETURN TO OPEN SESSION

1. Report on any Closed Session Action

Closed Session ended at 1:05 p.m. No action was taken during the Closed Session.

2. Board Member Comments and Future Agenda Items (handled out of order from what was listed on the agenda)

**Ms. Kennedy** stated that she appreciates the passionate anecdotal stories of workers who have been affected by situations such as COVID-19, but she would also like to see more data and evidence before making decisions. She said that she feels the Board is not always given this type of data. The Board asked the Division for information regarding how many citations have not been able to be issued under the existing regulations, how many citations have been issued, and how many complaints have been received, but the Division has not provided that information. **Mr. Thomas** and **Ms. Laszcz-Davis** echoed Ms. Kennedy's comments. **Ms. Stock** added that she would like to know the number of incidents of workplace exposure and outbreaks. There is also a huge need for better data collection regarding enforcement and workplace exposures, and she hopes that with the new legislation that the Governor just signed requiring better incident reporting, that will help.

F. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 1:13 p.m.