

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD  
PUBLIC MEETING, PUBLIC HEARING AND BUSINESS MEETING

In the Matter of:                    )  
April 20, 2023 OSHA                )  
Standards Board Meeting         )  
\_\_\_\_\_                              )

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

Cal/EPA Building  
Coastal Hearing Room  
1001 I Street  
Sacramento, CA 95814

Attend the meeting via Video-conference

THURSDAY, APRIL 20, 2023

10:00 A.M.

Reported by:  
C. Caplan

**CALIFORNIA REPORTING, LLC**  
**229 Napa Street, Rodeo, California 94572 (510) 224-4476**

APPEARANCES

BOARD MEMBERS PRESENT AT CAL/EPA BUILDING:

Dave Thomas, Chairman  
Kathleen Crawford, Management Representative  
Dave Harrison, Labor Representative  
Nola Kennedy, Public Member

BOARD MEMBERS PRESENT VIA TELECONFERENCE:

Barbara Burgel, Occupational Health Representative  
Chris Laszcz-Davis, Management Representative  
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT CAL/EPA BUILDING:

Christina Shupe, Executive Officer  
Amalia Neidhardt, Senior Safety Engineer  
Autumn Gonzalez, Chief Counsel  
David Kernazitskas, Senior Safety Engineer  
Jesi Mowry, Administration and Personnel Support Analyst

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager

CAL/OSHA PRESENT IN SACRAMENTO:

Eric Berg, Deputy Chief of Health, Cal/OSHA  
Susan Eckhardt, Staff Services Manager

TKO STAFF:

Maya Morsi  
John Roensch

SPANISH INTERPRETERS:

Fabian Londono, Interpreter  
Erin LaFargue, Interpreter

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (\*Online testimony)

Bruce Wick, Housing Contractors of California  
Brian Miller, Rudolph & Sletten  
Chris Walker, California Association of Sheet Metal & Air  
Conditioning Contractors  
\*Renee Guerrero Deleon, Southern California Coalition for  
Occupational Safety & Health  
\*Stephen Knight, Worksafe  
\*Daniel Leacox, Leacox & Associates  
Robert Marshall, Eberhard  
Michael Miiller, California Association of Wine  
Grape Growers  
Mitch Steiger, California Labor Federation  
Marc Connerly, Roofing Contractors Association  
of California  
Steven Johnson, Associated Roofing Contractors of the  
Bay Area Counties, Inc.  
\*Amy Boas, CIH, NELCO Worldwide  
\*Ariana Makau, Nzilani Glass Conservation  
\*Richard Lawson, The Lawson Roofing Co. Inc.  
Dave Fehr, AT&T  
Don Schinske, WOEMA  
\*Pamela Murcell, California Industrial Hygiene Council  
\*Christopher Lee, United Contractors, Northern California  
Allied Trades, Wall and Ceiling Alliance and the  
Painting and Decorating Contractors of California  
Roger Miksad, Battery Council International  
Carl Raycroft, Ecobat Battery Recycling aka Quemetco, Inc.  
Zachary Cox, U.S. Battery Mfg. Co.  
\*Mark Ames, AIHA  
\*Jacqueline Chan, Occupational Lead Poisoning Prevention  
Program, Occupational Health Branch, California  
Department of Public Health  
\*Sharon Hilke, Painting & Decorating Contractors of  
California, Inc.  
Ross Gardiner, Interspace Battery & Concorde Battery  
Joseph Richard, C&D Trojan Battery  
Jeremy Malson, Independent Consultant, CIH, CSP  
\*Perry Gottesfeld, OK International  
\*Dr. Cris Williams, International Lead Association  
\*AnaStacia Nicol Wright, Worksafe, California Rural Legal  
Assistance Foundation

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (\*Online testimony)

Helen Cleary, Phylmar Regulatory Roundtable, OSH Forum  
Robert Moutrie, California Chamber of Commerce  
\*Abraham Parra, Environmental Contractor  
\*Denise Kniter, LA County Business Federation (BizFed)

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1 P R O C E E D I N G S

2 APRIL 20, 2023

10:00 A.M.

3 CHAIR THOMAS: Good morning. This meeting of the  
4 Occupational Safety and Health Standards Board is now  
5 called to order. Let's, and I haven't done this for a  
6 while, let's stand for the flag salute.

7 (Whereupon the Pledge of Allegiance was recited.)

8 CHAIR THOMAS: Thank you. I'm Dave Thomas,  
9 Chairman. And the other Board Members present here in  
10 Sacramento today are Ms. Kathleen Crawford, Management  
11 Representative; Mr. Dave Harrison, Labor Representative;  
12 Ms. Nola Kennedy, Public Member.

13 Board Members attending via teleconference are  
14 Ms. Barbara Burgel, Occupational Health Representative;  
15 Chris Laszcz-Davis, Management Representative; and Ms.  
16 Laura Stock, Occupational Safety Representative.

17 Present from our staff for today's meeting are  
18 Ms. Christina Shupe, Executive Officer; Ms. Amalia  
19 Neidhardt, Principal Safety Engineer, who is also providing  
20 translation services for our commenters who are native  
21 Spanish speakers. Ms. Autumn Gonzalez, Chief Counsel; Mr.  
22 David Kernazitskas, Senior Safety Engineer; and Ms. Jesi  
23 Mowry, Administrative and Personnel Support Analyst.

24 Also present is Mr. Eric Berg, Deputy Chief of Health  
25 for Cal/OSHA, and Susan Eckhardt, Senior Safety Engineer.

1 Supporting the meeting remotely is Ms. Lara Paskins, Staff  
2 Services Manager.

3 Copies of the agenda and other materials related to  
4 today's proceedings are available on the table near the  
5 entrance to the room, and are posted on the OSHSB website.

6 This meeting is also being live broadcast via  
7 video and audio stream in both English and Spanish. Links  
8 to these non-interactive live broadcasts can be accessed  
9 via the "Meetings, Notices and Petitions" section on the  
10 main page of the OSHSB website.

11 If you are participating in today's meeting via  
12 teleconference or videoconference, we are asking everyone  
13 to place their phones or computers on mute and wait to  
14 unmute until they are called on to speak. Those who are  
15 unable to do so will be removed from the meeting to avoid  
16 disruption.

17 As reflected on the agenda, today's meeting  
18 consists of three parts. First, we will hold a public  
19 meeting to receive public comments, or proposals on  
20 occupational safety and health matters. Anyone who would  
21 like to address any occupational safety health issues,  
22 including any of the items on our business meeting agenda,  
23 may do so when I invite public comment. We ask though,  
24 that you hold any comments regarding the lead rulemaking  
25 proposal until the business meeting, and we will hold our



1 public hearing on the topic.

2           If you are participating via teleconference or  
3 video conference, these instructions for -- the  
4 instructions for joining the public comment queue can be  
5 found on the agenda. You may also join by clicking the  
6 public comment queue link in the "Meetings, Notices and  
7 Petitions" section of the OSHSB website, or by calling 510-  
8 868-2730 to access the automated public comment queue  
9 voicemail.

10           When the public comment begins, we are going to  
11 alternate between three in-person and three remote  
12 commenters.

13           When I ask for public testimony, in person  
14 commenters should provide a completed speaker slip to the  
15 staff person near the podium and announce themselves to the  
16 Board prior to delivering their comments.

17           Commenters attending via teleconference or video  
18 conference, please listen for your name and an invitation  
19 to speak. When it's your turn to address the Board, please  
20 unmute yourself using WebEx or dial \*6 on your phone to  
21 unmute yourself if you're using a teleconference line.

22           We ask all commenters to speak slowly and clearly  
23 when addressing the Board. And if you are commenting via  
24 teleconference or video conference, remember to mute your  
25 phone or computer after commenting. Today's public

1 comments will be limited to two minutes per speaker, and  
2 the public comment portion of the meeting will be extended  
3 for up to two hours, so that the Board may hear from as  
4 many members of the public as is feasible. Individual  
5 members and total public comment time limits may be  
6 extended by the Board Chair.

7           After the public meeting, we will conduct the  
8 second part of our meeting, which is the public hearing.  
9 At the public hearing, we will accept comments on proposed  
10 changes to the occupational safety and health standards  
11 that were noticed for today's meeting.

12           Finally, after the public meeting is concluded,  
13 we will hold a business meeting to act on those items  
14 listed on the business meeting agenda.

15           We will now proceed with the public meeting.  
16 Anyone who wishes to address the Board regarding matters  
17 pertaining to occupational safety and health is invited to  
18 comment, except however, the Board does not entertain  
19 comments regarding variance matters. The Board's variance  
20 hearings are administrative hearings where procedural due  
21 process rights are carefully preserved. Therefore, we will  
22 not grant requests to address the Board on variance  
23 matters.

24           For our commenters who are native Spanish  
25 speakers, we are working with Ms. Amalia Neidhardt to

1 provide translation of their statements into English for  
2 the Board.

3 At this time Ms. Neidhardt will provide  
4 instructions to the Spanish speaking commenters, so they  
5 will be aware of the public comment process for today's  
6 meeting.

7 Amalia?

8 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]

9 "Good morning, and thank you for participating in  
10 today's Occupational Safety and Health Standards Board  
11 public meeting. The Board Members present in Sacramento  
12 are Mr. Dave Thomas, Labor Representative and Chairman; Ms.  
13 Kathleen Crawford, Management Representative; Mr. Dave  
14 Harrison, Labor Representative; and Ms. Nola Kennedy,  
15 Public Member.

16 "The Board Members attending via teleconference  
17 are Ms. Barbara Burgel, Occupational Health Representative;  
18 Ms. Chris Laszcz-Davis, Management Representative; and Ms.  
19 Laura Stock, Occupational Safety Representative.

20 "This meeting is also being live broadcast via  
21 video and audio stream in both English and Spanish. Links  
22 to these non-interactive live broadcasts can be accessed  
23 via the "Meetings, Notices and Petitions" section on the  
24 OSHSB website.

25 "If you are participating in today's meeting via

1 teleconference or videoconference, please note that we have  
2 limited capabilities for managing participation during  
3 public comment periods. We are asking everyone who is not  
4 speaking to place their phones or computers on mute and  
5 wait to unmute until they are called to speak. Those who  
6 are unable to do so will be removed from the meeting to  
7 avoid disruption.

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

12 "If you are participating via teleconference or  
13 videoconference, the instructions for joining the public  
14 comment queue can be found on the agenda. You may join by  
15 clicking the public comment queue link in the "Meetings,  
16 Notices and Petitions" section at the top of the main page  
17 of the OSHSB website, or by calling 510-868-2730 to access  
18 the automated public comment queue voicemail.

19 "When public comment begins, we are going to be  
20 alternating between three in-person and three remote  
21 commenters. When I ask for public testimony, in-person  
22 commenters should provide a completed request-to-speak slip  
23 to the attendee near the podium and announce themselves to  
24 the Board prior to delivering a comment.

25 "For our commenters attending via teleconference

1 or videoconference, listen for your name and an invitation  
2 to speak. When it is your turn to address the Board,  
3 please be sure to unmute yourself if you're using WebEx or  
4 dial \*6 on your phone to unmute yourself if you're using  
5 the teleconference line.

6 "Please be sure to speak slowly and clearly when  
7 addressing the Board, and if you are commenting via  
8 teleconference or videoconference, remember to mute your  
9 phone or computer after commenting. Please allow natural  
10 breaks after every two sentences so that an English  
11 translation of your statement may be provided to the Board.

12 "Today's public comment will be limited to four  
13 minutes for speakers utilizing translation, and the public  
14 comment portion of the meeting will extend for up to two  
15 hours, so that the Board may hear from as many members of  
16 the public as is feasible. The individual speaker and  
17 total public comment time limits may be extended by the  
18 Board Chair.

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

24 "Finally, after the public meeting is concluded,  
25 we will hold a business meeting to act on those items

1 listed on the business meeting agenda.

2 "Thank you."

3 CHAIR THOMAS: All right, if there are any in-  
4 person participants who would like to comment on any  
5 matters concerning occupational safety and health other  
6 than lead, I repeat other than lead, you may begin lining  
7 up at this time. We will start with the first three in-  
8 person speakers, and then we will go to the first three  
9 speakers in teleconference and the video conference queue.

10 So at this time, who do we have?

11 MR. WICK: Good morning.

12 CHAIR THOMAS: I think your mic is off but I'm  
13 not sure.

14 MR. WICK: Is that on?

15 CHAIR THOMAS: There you go.

16 MR. WICK: Okay. Now we're good. Okay, thank  
17 you. Bruce Wick, Housing Contractors of California.

18 I did want to respond to a comment made at the  
19 last meeting that I think is important to clarify. The  
20 Division said, in response to our across-the-board  
21 frustration with the delay in regulations, that we have a  
22 lack of understanding of the amount of work it takes to  
23 produce a reg. I respectfully disagree with that. I think  
24 it's important to know the transparency of the Standards  
25 Board staff has shown us how much work is involved. We see

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1 it right now with Maryrose Chan and the Walking-Working  
2 Surfaces. She's doing an enormous amount of work, walking  
3 through that reg in the right kind of way. We see it. We  
4 understand it. What we have a hard time understanding is  
5 the process.

6 I'm not going to say anything specific about the  
7 lead reg other than the process, and the heat illness reg.  
8 After eight years of input committee, not advisory  
9 committee, we get a reg substantially different than  
10 before. And no side by side, no way for us to walk through  
11 this. And right in the middle of many stakeholders, both  
12 sides, labor and management, are dealing with the  
13 Legislature's cutting them in bills, suddenly turning  
14 around a thousand bills we're trying to work through. We  
15 have this lead reg and a 45-day comment period, and right  
16 in the middle of that a month later, we get the heat  
17 illness reg put on us. This is not a good idea on how to  
18 work through regs with stakeholder engagements.

19 As well we have the question again  
20 (indiscernible) for resources. In 2017, employers paid  
21 above their Workers' Comp as a surcharge of \$110 million  
22 for Cal/OSHA. That number this year is \$195 million. A 77  
23 percent increase, going up every year. We see the Appeals  
24 Board hiring people. We see Cal/OSHA Standards Board  
25 hiring people. Eric Berg is very well respected for his

15

1 dedication and work ethic. Kevin Graulich, I've known him  
2 a long time, a sane, dedicated person. Why are we not  
3 putting more resources into Research and Standards so they  
4 have enough personnel to walk these through?

5 Those are our frustrations, and they are  
6 understandable. Thank you.

7 CHAIR THOMAS: Thank you.

8 Who do we have next?

9 MR. MILLER: Good morning, Chairman Thomas and  
10 Board Members. My name is Brian Miller. I work for the  
11 office of Rudolph and Sletten. I'm the Safety Director.  
12 And I want to make a comment about the pending permanent  
13 infectious disease standard, or aerosol transmissible  
14 disease standard, and the inclusion of exclusion pay in  
15 that standard. I don't think it's the right vehicle for  
16 sick pay to be in a safety standard.

17 I know somebody's come here and say, but Brian,  
18 they already have seniority. You know, it's not really  
19 sick pay, but they had medical removal in the lead  
20 standard. And that's true. There's a big difference.  
21 It's not an apples-to-apples comparison. And the  
22 difference is between knowing and not knowing, or knowingly  
23 and unknowingly.

24 So I am for the record, a certified asbestos  
25 consultant. Pardon my shaking, I have something going on

16



1 health wise and I'm going through the process of figuring  
2 that out. I'm also a CDPH-certified lead project monitor  
3 and lead supervisor. I've been a CAC for 20 years, and  
4 I've been a lead supervisor since 1999 so (indiscernible).  
5 So I do the work.

6 So when I have employees (indiscernible)  
7 contractor employees come to my project to install lead  
8 shielding or to abate lead-containing paint, I'm knowingly  
9 exposing them to that hazard. To the risks of that.

10 Now Eric, take it easy. We've got all the PPE in  
11 place, work practices and whatnot and we're taking care of  
12 the employees. But I'm knowingly exposing them. It's all  
13 through construction, steel erection, placing concrete.  
14 I'm knowingly asking those employees to be exposed to those  
15 hazards.

16 So for a health standard, I'm not knowingly  
17 exposing my employees to a health standard. Anyone in this  
18 room right now can be carrying a number of infectious  
19 diseases. Any one of us right now can be infecting  
20 somebody else, and none of our employers know that. So  
21 it's not the right vehicle. The Legislature is a better  
22 vehicle for sick pay. And I know there's legislation  
23 (indiscernible) informed me there's legislation going  
24 through right now to increase the amount of sick pay in  
25 California. So thank you very much.

1 CHAIR THOMAS: Thank you. So anybody with  
2 infectious diseases or anything else, you are excused now  
3 (indiscernible).

4 Go ahead.

5 MR. WALKER: Good morning, Mr. Chair, members of  
6 the Board. Chris Walker here today on behalf of the  
7 California Sheetmetal and Air Conditioning Contractors  
8 Association. We represent over 300 contractors that are a  
9 signatory with the Sheet Metal, Air, Rail and Transit Union  
10 employing over 25,000 workers in the state.

11 I'd like to take this opportunity now to speak  
12 about a particular reg, but regulations in general and  
13 safety regulations in general. The marketplace that we're  
14 dealing with right now, we're in a very uncertain time. We  
15 only work when our customers have the money to hire us to  
16 do the work.

17 Right now our customers -- we have private  
18 customers defined as homeowners, small businesses,  
19 commercial enterprises in general industry. Our public  
20 customers are local and state taxpayers, school districts,  
21 water districts, local governments, general services, and  
22 the State of California.

23 We're all suffering, whether it's private or  
24 public, from incredible inflation. Prices have gone up 18  
25 percent since 2019. Their ability to purchase products has

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1 been reduced by 18 percent. Interest rates have gone up,  
2 reducing our access to capital. Jobs that we had on  
3 backlog are not materializing, because of the cost of  
4 capital.

5 Energy costs. Our customers are paying the  
6 highest energy costs in the nation. Decarbonization costs.  
7 Our Governor and this administration is asking homeowners,  
8 business owners, and the public taxpayer to convert their  
9 businesses and structures to decarbonize them over the next  
10 10 or 15 years, removing all natural gas, electrifying  
11 these things. These -- this is going to be an enormous job  
12 to retrofit all of California's existing building stock to  
13 get to that decarbonized point in time.

14 The condition of our contractors, sheet metal  
15 contractors, I'll speak for them. We are facing the  
16 biggest uncertainty that we've had in recent decades. This  
17 goes back to the '08, '09 time period. We don't know what  
18 lies ahead. We're looking at a recession. Our customers  
19 are pulling back from those residential and commercial  
20 projects and our man hours are suffering. Our man hours  
21 are down tremendously year over year.

22 These challenges are significant, and the  
23 barriers are real. It's why the adoption of any new  
24 regulation needs to be fully and carefully considered, but  
25 not in a silo without the context of a larger reality.

1 Getting regulations right whether it's today or next week  
2 or next month, is incredibly important. And it will be the  
3 difference between getting things built, retrofitted, and  
4 decarbonized in the next 10 to 15 years, using high-road  
5 contractors with union workers or not.

6 Every time the costs increase in an economically  
7 challenged environment, the delta between my contractors'  
8 ability to bid a job and the underground economy widens.  
9 Right now, the underground economy due to Workers'  
10 Compensation, health and safety rules, employer mandates  
11 from the Legislature can be as much as 25 percent. In a  
12 challenging marketplace they're getting the work, and our  
13 union jobs are not materializing. Thank you very much.

14 CHAIR THOMAS: Thank you. So we're going to go  
15 to callers that are online. Maya, who do we have?

16 MR. MORSI: First up is Renee Guerrero Deleon  
17 with Southern California Coalition for Occupational Safety  
18 and Health.

19 CHAIR THOMAS: Renee, can you hear us? You need  
20 to unmute yourself, Renee.

21 MS. DELEON: Oh, sorry. Can you hear me now?

22 CHAIR THOMAS: Yeah, go ahead. You have to speak  
23 louder. Go ahead.

24 MS. DELEON: Okay, sorry about that. Good  
25 morning, everyone. I want to thank the Board's staff and

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1 interpretation for your hard work and for receiving our  
2 comments today. My name is Renee Guerrero Deleon with  
3 Southern California Coalition for Occupational Safety and  
4 Health. And our organization is founded on the principle  
5 that workplace deaths and injuries are preventable.

6           And I just wanted to make sure that the Board  
7 Members are aware of the recent *LA Times* editorial on  
8 indoor heat, expressing just how deeply felt this issue is  
9 in the community. We have heard testimony from workers  
10 suffering from heat and seen stories about drivers and  
11 others literally collapsing on the job.

12           Two weeks ago the *LA Times* editorial board  
13 pointed out that more than a million other workers in  
14 largely non air-conditioned warehouses, factories, kitchens  
15 and other workplaces that were unprotected, despite a legal  
16 deadline to have indoor heat standards in place by 2019.  
17 Observing that officials say that there is no chance the  
18 rules will be in place as we approach yet another hot  
19 summer, the *LA Times* has declared that this is  
20 unacceptable. Workers need protections now. These rules  
21 should have been finalized years ago, as required under a  
22 2016 law, and should already be in place to save lives and  
23 prevent illness and injuries during dangerous heat waves.

24           It's important that the Board Members are aware  
25 of this level of public urgency about the indoor heat

1 standard that is on their agenda at next month's meeting.  
2 And the Times editorial board did not stop there, pointing  
3 out that California's success in protecting workers will  
4 also depend almost entirely on how strongly these rules are  
5 enforced. With that in mind, the State should devote  
6 additional staff and resources to inspect workplaces,  
7 investigate complaints, and hold employees accountable for  
8 failure to comply.

9 Thank you so much to the Board staff and  
10 interpretation again for your time this morning. And we  
11 know that you'll make the best decision for working  
12 families.

13 CHAIR THOMAS: Thank you.

14 A/V REPRESENTATIVE: Mr. Chairman, may I  
15 interject briefly?

16 CHAIR THOMAS: Go ahead.

17 A/V REPRESENTATIVE: For our speakers that are on  
18 WebEx or in the room, because we are translating this into  
19 Spanish for our Spanish-language speakers, it's extremely  
20 helpful if you can speak slowly and clearly for our  
21 interpreters. So with that in mind for our WebEx  
22 participants, or in-room participants, please do your best  
23 to speak slowly. We realize you want to get as much in as  
24 you can, but it's a big help. Thank you.

25 CHAIR THOMAS: Thanks, John.

1           So we're going to continue with our next speaker.  
2 Maya.

3           MS. MORSI: Up next is Stephen Knight with  
4 WorkSafe.

5           CHAIR THOMAS: Stephen, are you with us?

6           MR. KNIGHT: Yes. Hi, good morning.

7           CHAIR THOMAS: Thank you. Go ahead.

8           MR. KNIGHT: Stephen Knight with WorkSafe. As  
9 I'm following up on SoCal's cautious comment, the Board has  
10 indoor heat on its agenda next month, which is a serious  
11 dangerous workplace condition that has drawn international  
12 attention, but also far too much inaction.

13           And I just wanted to underscore a central fact  
14 that's not well understood. High heat is a hazard that  
15 leads to a wide array of workplace injuries far beyond just  
16 heat illness itself. I shared with the Board last year the  
17 work of public health researchers who took 18 years of  
18 California Workers' Compensation injury reports and built a  
19 database of more than 11 million injuries. They had injury  
20 dates and zip codes allowing them to cross reference the  
21 temperature for each day and place.

22           As the *Times* reported, according to the cause of  
23 injury with Workers' Comp reports, there were about 850  
24 injuries per year in California classified as caused by  
25 heat. But the researchers found that on days when the

1 temperature was between 85 and 90 degrees, the overall risk  
2 of workplace injuries was 5 to 7 percent higher than when  
3 the temperatures were in the 60s. And when temperatures  
4 got over 100 degrees, the overall risk of injuries was 10  
5 to 15 percent greater.

6 So a worker fell off a ladder or was injured in a  
7 vehicle crash, or twisted their back, none of which would  
8 have happened if they weren't working in 89 or 94 degree  
9 temperatures. Researchers found extreme heat is likely to  
10 have caused 20,000 extra workplace injuries of all kinds  
11 every year, or 360,000 extra injuries to California workers  
12 in that 18-year span to 2018. Which is 19 times the annual  
13 number of workplace injuries shown in the Workers'  
14 Compensation records.

15 MR. ROENSCH: Sorry to interrupt you, but you're  
16 at your two-minute timeframe.

17 MR. KNIGHT: Just to conclude this study suggests  
18 that the estimation by the RAND Corporation that the --  
19 over the first 10 years the proposed indoor heat reg would  
20 result in about 2,000 fewer non-fatal and 10 fewer  
21 fatalities. It is a significant underestimate of the  
22 impact of this important rule. Thank you.

23 CHAIR THOMAS: Thank you.

24 Let's not do that two minute anymore  
25 (indiscernible). Who do we have next, Maya?



1 MS. MORSI: Up next is Dan Leacox with Leacox and  
2 Associates.

3 CHAIR THOMAS: Dan, can you hear us?

4 MR. LEACOX: I can. Am I coming through okay?

5 CHAIR THOMAS: Yeah, go ahead.

6 MR. LEACOX: Great. And thanks for removing that  
7 two-minute limit. That allows me to say hello to my  
8 friends on the Board and (indiscernible) --

9 CHAIR THOMAS: We didn't remove the --  
10 (indiscernible) but go ahead.

11 MR. LEACOX: Okay. All right, it's hard to not  
12 rush and stay under two minutes. But anyway, I'll march  
13 forward with just a little comment stemming from discussion  
14 at the Board meeting last month about SRIA, and what makes  
15 rulemakings take so long, and the notion that oh well, it's  
16 the SRIA. And I think I can help with a little more  
17 insightful analysis that may be helpful. And I think what  
18 we're looking at in these situations is wrestling with the  
19 unproductive burden in a rule.

20 So when a rule gets crafted, typically, you know,  
21 it's to some degree in a vacuum not familiar with the  
22 workplace situations that are going to be impacted. And  
23 when we're writing more and more of these massive rules,  
24 taking effect in every workplace with a wide variety, but  
25 with the same rules, you're going to generate rules with a

25

1 lot of unproductive burden. And by that I mean burden to  
2 the employer that doesn't necessarily generate more safety.  
3 It's just more burden on the employer.

4 And so, you know, we've been in an era with these  
5 more massive health-based rules putting more and more on  
6 the employer. And so naturally we've had rules with more  
7 and more unproductive burdens. So how do those how do  
8 those come out? How are those exposed and addressed?

9 And there's really a couple of ways and the main  
10 way traditionally has been a consensus process. Because  
11 what happens in a consensus process, in a roundtable type  
12 advisory committee is the stakeholders bring alternatives  
13 that achieve safety without the unproductive burden, or as  
14 best they can. If you walk through that process carefully,  
15 then you start filtering out these unproductive burdens.  
16 If you don't, then they remain part of it. And what you  
17 then get is you get stakeholders engaging at every  
18 opportunity seeking to remove them. So you get a lot of  
19 conflict and a lot of fight and that's not limited to  
20 comments at the advisory committee. They will pull out  
21 their resources to engage at whatever level in the process  
22 of a rulemaking to deal with those unproductive burdens.

23 One of those opportunities is the SRIA. The SRIA  
24 can expose and in fact it's designed, it's supposed to  
25 consider alternatives and expose those unproductive

1 burdens, with a task of providing safety with the least  
2 burden. So it calls for assessment of alternatives, for  
3 example. And one of the great values of the SRIA is  
4 exposing those unproductive burdens, putting some  
5 measurement to them, quantifying them to some degree. Or  
6 in the absence of them being exposed, one can at least  
7 expose them as a shortcoming in the SRIA. And I think  
8 you're going to hear a lot about that in today's lead rule.

9 But my point is that it isn't the SRIA so much  
10 that adds to the time, it's that fight. It's that lack of  
11 consensus in the first place that then generates a fight.  
12 And that adds a lot of time. You look back over the  
13 history of rulemaking and where you have that you're going  
14 to get that fight. Removing SRIA from the process, just  
15 losing opportunity to sunshine those unproductive burdens.

16 So that's my notion of a little better assessment  
17 of what's occurred. And good luck going forward.

18 CHAIR THOMAS: Thank you.

19 So now we're going to have three in-person  
20 commenters. So whoever is up, who would like to speak?

21 Good morning.

22 MR. MARSHALL: Good morning. My name is Robert  
23 Marshall. I'm a certified health and safety technician and  
24 a lead abatement supervisor. Thank you for the opportunity  
25 to speak today on behalf of the construction industry in

1 general --

2 CHAIR THOMAS: Hold on. Are we talking about  
3 lead?

4 MR. MARSHALL: Yes.

5 CHAIR THOMAS: No, we're not doing that until the  
6 business meeting, sorry.

7 Do we have anybody that wants to make a comment  
8 from the audience about anything other than lead? Now  
9 don't blow it, because you just heard it this  
10 (indiscernible)

11 MR. MARSHALL: I'll try to get the lead out.  
12 Come on (indiscernible) something. Okay. (Laughter.)

13 MR. MIILLER: Thank you, Board Members and staff.  
14 I appreciate your hard work, your public service. And  
15 thank you always for what you do. You guys have a hard  
16 job, but I appreciate you. I will try to speak slowly and  
17 clearly to allow for the translator, but also try to stay  
18 under the two minutes if I can do both. So please forgive  
19 me if I take a little bit long.

20 I'm going to speak about three quick issues. The  
21 first one is COVID-19. The second one is workplace  
22 violence. And the third is autonomous tractors, and it  
23 will be brief on all three.

24 Today I'd like to formally ask that the Board  
25 consider rescinding the COVID-19 workplace safety

1 standards. I make this request, because while labor  
2 representatives testified to this Board that they need to a  
3 COVID-19 prevention regulation, they are now providing a  
4 very different message to the public. Specifically, the  
5 California Labor Federation recently made a Twitter post  
6 stating, when you stay at a hotel, please demand daily  
7 cleaning. It makes the hotel housekeeper's job more  
8 manageable. That Twitter --

9 CHAIR THOMAS: Could we get your name for the  
10 record, please?

11 MR. MIILLER: Oh, I'm so sorry. Michael Miiller,  
12 California Association of Wine Grape Growers, thank you.

13 That Twitter post made no mention or  
14 consideration of COVID-19. The statement was from the same  
15 labor organization that came to you demanding that the  
16 COVID-19 workplace safety regulation include employer  
17 provided housing. Keep in mind that an article about  
18 current COVID-19 protocol dated April 3rd, 2023 at  
19 financebuzz.com states and reported many hotels have  
20 already implemented procedures to limit housekeeping  
21 services, including turndown service until the guest stay  
22 is over. This limits the number of people entering the  
23 hotel room.

24 In complying with the current regulation, an  
25 employer using a hotel for employer provided housing would

1 advise your employees to follow the hotel protocols.  
2 However, the union is now telling dues paying members to  
3 ignore those protocols. As you can imagine, this puts  
4 employers and employees in a really difficult situation.  
5 Therefore, we ask that you revisit the need for, at a  
6 minimum, the employer provided housing provisions and those  
7 regulations.

8           Relative to workplace violence. And again, I'll  
9 be brief. As the Board is contemplating development of new  
10 regulations and workplace violence, it is important to know  
11 that while labor unions are coming to you asking for the  
12 strongest safety protocols for workplace violence, they are  
13 conveying a very different message to the Legislature.  
14 Specifically, they're calling for the Legislature to  
15 prevent an employer from refusing to hire a new employee  
16 who has a criminal history of workplace violence.  
17 Specifically, this year's bill is SB 809.

18           To put this in context, SB 809 means an employer  
19 may have to hire someone who has a history of hate crimes,  
20 workplace violence, etc. When that employee starts work,  
21 your proposed regulation may mean that every existing  
22 employee can ask for accommodation including paid leave,  
23 because they feel they are in danger because of that new  
24 hire. Keep in mind that the State Capitol was recently  
25 under lockdown because of an active gunman situation. This

1 was because a random person had threatened to come to the  
2 Capitol and shoot up the place.

3           While each Board Member serving on this Board  
4 today went through a thorough background check before being  
5 appointed, SB 809 would prohibit every employer in this  
6 room today from refusing to hire the gunman who forced the  
7 Capitol into lockdown. I ask that the Board please  
8 consider this absurdity in public policies as you move  
9 forward with the regulation.

10           And finally, relative to autonomous tractors, I  
11 do want to thank the Board for your due diligence in the  
12 conversation at the Board meeting last week. I think that  
13 was very enlightening, and I appreciate that genuinely. I  
14 really appreciate it. The big takeaway from that meeting  
15 for us is it became abundantly clear the labor unions'  
16 primary concern with autonomous agriculture that is about  
17 the potential loss of jobs. We respect their perspective,  
18 but respectfully disagree.

19           To the contrary, we believe autonomous ag  
20 equipment presents an incredible opportunity for job  
21 growth. Nonetheless, as we are primarily focused on  
22 workplace safety we want to address the Board's request  
23 last month for data. So I put together some key data  
24 points for your consideration, and I'll hand them out to  
25 you if you'd like.

1           Keep in mind that the labor unions have a long  
2 history of resisting the development of technology. If  
3 there was any data anywhere in the universe, showing that  
4 this equipment wasn't safe, labor unions would have  
5 enthusiastically and eagerly brought that to your  
6 attention. To our knowledge, there is no such bad data.  
7 So instead, labor unions are relying on tired and worn-out  
8 talking points that are frankly as old as this data swivel  
9 regulation.

10           So we ask that you please closely review the  
11 data that we're providing today. And if you need  
12 additional data, please feel free to come to us and ask us.  
13 We look forward to working in partnership with you and want  
14 to make ourselves available for you as you move forward  
15 with this. Thank you so much for your time.

16           CHAIR THOMAS: Thank you.

17           Do we have any other in-person speakers at this  
18 time?

19           MR. STEIGER: Thank you, Chair Thomas, members  
20 and staff. Mitch Steiger with California Labor Federation.  
21 I hadn't planned to make comments, but being so directly  
22 called out, I guess we have no choice now.

23           CHAIR THOMAS: I knew that was coming.

24           MR. STEIGER: Related to the COVID prevention  
25 standard, obviously we're big supporters of that measure.



1 And thank the Board very much for approving it and would  
2 urge the final version of it as it relates to the permanent  
3 aerosol transmissible disease standard, that's whatever  
4 we're going to call it -- suspended all of the workers that  
5 do include exclusion pay. There is legislation moving  
6 through the Legislature that would expand paid sick leave.  
7 But without rehashing all the testimony from yesterday,  
8 workers need more than seven days. One COVID infection  
9 alone can easily take five to ten days to recover from. To  
10 say nothing of cold and flu, and other conditions that  
11 didn't result from work-related exposure. Workers very  
12 much do need exclusion pay, and they very much do need  
13 expanded paid sick leave if they have any hope of staying  
14 safe on the job, and any hope of making sure that their  
15 rights are protected, and that we do what we can to slow  
16 the spread of the pandemic.

17           Regarding the relationship between the COVID  
18 standard, and our support for hotel housekeepers continuing  
19 on with their work and their jobs, we don't see any kind of  
20 conflict between those two. There is a way to do every job  
21 safely. There is always some risk involved. But there are  
22 ways to make sure through things like a COVID prevention  
23 standard, that workers can do what they need to do with  
24 minimal risk to themselves. And so, we see no conflict  
25 there.

1           Regarding some of the other points that were  
2 mentioned, specific to automated tractors. Okay, frankly  
3 there aren't a bunch of studies showing the danger, because  
4 we don't need them. Because we're all exposed to this  
5 technology, day in day out. And we see how often it  
6 doesn't work and we see how often technology glitches.  
7 Just this morning my phone failed in the middle of a call.  
8 The end result was a call that had to end, the end result  
9 was not anything that endangered anyone's lives.

10           That isn't the case with autonomous driving  
11 technology. It very much does, by definition bring with it  
12 very clear risk to workers' lives. And that's why we need  
13 to look at it very differently and why we need to look at  
14 it very carefully.

15           And our position still stands of there are  
16 advantages to human drivers. There are advantages to  
17 safety technology. We need to design the safety technology  
18 so that it maximizes the benefits of both the worker and  
19 both the technology, so that when the worker is having a  
20 bad day, the technology can step in and do what it needs to  
21 do to keep a worker safe. Then when the technology fails,  
22 the worker is there to take over and make sure that the --  
23 whatever the job is, is being done as well as it can be and  
24 that workers are kept as safe as they can be.

25           And that we should move forward with that

1 perspective rather than moving forward with this apparent  
2 goal of taking workers off of tractors, taking workers out  
3 of cars. Because we really are, we believe by definition  
4 given the limitations of the technology, endangering  
5 everyone by doing so.

6 And those are our comments on those matters.  
7 Thank you.

8 CHAIR THOMAS: Thank you.

9 Any other in-person speakers? All right, seeing  
10 that there aren't any others then I'm assuming most of you  
11 are here to speak on the lead issue. Who do we have on the  
12 phone, Maya?

13 MS. MORSI: We do not have any more public  
14 commenters. The rest are public hearing?

15 CHAIR THOMAS: And they'll be ready for lead,  
16 right?

17 MS. MORSI: For lead. Yeah.

18 CHAIR THOMAS: Okay. All right. So there being  
19 no initial commenters, the Board thanks you and appreciates  
20 your testimony. The public meeting is adjourned, and the  
21 record is closed.

22 We will now proceed with the public hearing.  
23 During the hearing, we will consider the proposed changes  
24 to the Lead Occupational Safety and Health Standards that  
25 were noticed for review today. The Standards Board adopts

1 standards that in our judgment are enforceable, reasonable,  
2 understandable and contribute directly to the safety and  
3 health of California employees. The Board is interested in  
4 your testimony on the matters before us. Recommendations  
5 are appreciated and will be considered before a final  
6 decision is made.

7           If you have written comments, you may read them  
8 into the record but it's not necessary to do so as long as  
9 the comments are submitted via email at [OSHSB@dir.ca.gov](mailto:OSHSB@dir.ca.gov) by  
10 5:00 p.m. today. Board staff will ensure that they are  
11 included in the record. I will forward copies of your  
12 comments to each Board Member, and I assure you that  
13 comments will be given every consideration. Please include  
14 your name and address on any written materials you submit.

15           I would also like to remind the audience that the  
16 public hearing is a forum for receiving comments on  
17 proposed regulations, and not to hold public debates.  
18 While rebuttal comments may be appropriate to clarify a  
19 point, it's not appropriate to engage in arguments. We  
20 just saw a perfect example of that, in just the last two  
21 speakers.

22           If you would like to comment orally today, please  
23 line up at the podium when I ask for public testimony.  
24 Please state your name and affiliation if any, and identify  
25 what portion of the regulation you intend to address each

1 time you speak. If you are participating remotely and  
2 would like to comment, you may join the comment queue by  
3 clicking the public comment queue link in the Standards  
4 Board updates section at the top of the main page of the  
5 OSHSB website. Or by calling 510-868-2730 to access the  
6 automated public comment queue voicemail.

7 When the public comment begins we are once again  
8 going to alternate between three in-person and three remote  
9 commenters. When I ask for public testimony, in-person  
10 commenters should provide a completed request to speak slip  
11 to the attendee near the podium, and announce themselves to  
12 the Board prior to delivering comments.

13 Commenters attending via teleconference or video  
14 conference, please listen for your name and an invitation  
15 to speak. When it's your turn to address the Board, unmute  
16 yourself if you're using WebEx or dial \*6 on your phone to  
17 unmute yourself if you're the using a teleconference line.

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

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

25 Ms. Neidhardt, go ahead.

1 MS. NEIDHARDT: [READS INSTRUCTIONS IN SPANISH  
2 FOR UPCOMING TFOLLOWING IN SPANISH]

3 "The Standards Board adopts standards that, in  
4 our judgment, are enforceable, reasonable, understandable,  
5 and contribute directly to the safety and health of  
6 California employees.

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

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

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

25 "If you are participating via teleconference or

1 videoconference and would like to comment orally today, you  
2 may join the public hearing comment queue by clicking the  
3 public comment queue link in the "Standards Board Updates"  
4 section at the top of the main page of the OSHSB website or  
5 by calling 510-868-2730 to access the automated public  
6 hearing comment queue voicemail.

7 "When public comment begins, we are once again  
8 going to alternate between three in-person and three remote  
9 commenters.

10 "When the Board Chair asks for public testimony,  
11 in-person commenters should provide a completed request-to-  
12 speak slip to the attendee near the podium, announce  
13 themselves to the board and identify what portion of the  
14 regulation they intend to address prior to delivering a  
15 comment.

16 "For commenters attending via teleconference or  
17 videoconference, please listen for your name and an  
18 invitation to speak. When it is your turn to address the  
19 board, unmute yourself if you're using WebEx, or dial \*6 on  
20 your phone to unmute yourself if you're using the  
21 teleconference line. We ask all commenters to speak slowly  
22 and clearly when addressing the board, and if you are  
23 commenting via teleconference or videoconference, please  
24 remember to mute your phone or computer after commenting.

25 "If you have not provided a written statement

1 before today's meeting, please allow natural breaks after  
2 every two sentences so that an English translation of your  
3 statement may be provided to the board.

4 "Thank you."

5 CHAIR THOMAS: Thank you, Amalia.

6 We will now turn to the proposal scheduled for  
7 today's public hearing, Construction Safety Order section  
8 1532.1, General Industry Safety Order section 5155 and  
9 5198.

10 Mr. Berg, will you please brief the Board? (No  
11 audible response.) I think your mic is off.

12 MR. BERG: Can you hear me? All right, thank  
13 you.

14 Occupational lead poisoning is a serious threat  
15 to the health and lives of certain high-risk and vulnerable  
16 workers. The current regulations do not adequately protect  
17 these workers. Existing requirements are based on lead  
18 toxicity information that is now more than 40 years old.  
19 We now recognize that harmful effects can occur at levels  
20 well below those currently allowed by Cal/OSHA's Lead  
21 Regulations.

22 Lead poisoning can be insidious. Initially, a  
23 worker with lead poisoning can appear and feel healthy.  
24 However, even though the worker is not noticing the damage  
25 to the body, serious damage is occurring. Lead exposures



1 can cause serious and life threatening or life-altering  
2 diseases such as high blood pressure, heart disease, kidney  
3 damage, decrease in brain function, and harmful  
4 neurological and reproductive effects. These harmful and  
5 damaging effects can occur to employees in workplaces where  
6 lead exposures are well below those allowed in the existing  
7 lead regulations.

8           And the law says that our regulations must  
9 protect workers, even if they are exposed to the harmful  
10 substance for the entire worker -- their entire working  
11 lives. The current lead regulations failed to do that.  
12 The proposed changes will significantly improve worker  
13 protections from harmful lead exposure.

14           And now for some general comments about the  
15 proposed regulations. Number one, the proposal will lower  
16 the eight-hour time weighted average permissible exposure  
17 limit for lead in the air from 50 micrograms per cubic  
18 meter to 10 micrograms per cubic meter. And then it will  
19 also lower the action level from 30 micrograms per cubic  
20 meter to 2 micrograms per cubic meter. And these changes  
21 are necessary to reduce blood lead levels in workers to a  
22 level that is much less likely to cause serious harm and  
23 disease to workers, which is less than 10 micrograms per  
24 deciliter of blood where serious harm occurs, or even  
25 lower.

1           The proposed air levels are based on  
2 comprehensive scientific research and pharmacokinetic  
3 modeling conducted and published by the California Office  
4 of Environmental Health Hazard Assessment, also called  
5 OEHHA. OEHHA is the lead state agency for assessment of  
6 health risks posed by environmental contaminants, and we're  
7 very grateful for their assistance with this project.

8           Number two, it's imperative that the public  
9 stakeholders, Cal/OSHA and the Standards Board, rely on  
10 credible information to make informed decisions about  
11 workplace safety and health. Unfortunately, some who are  
12 opposed to these needed worker protections against lead  
13 overexposures, have provided incorrect information about  
14 the proposed standard.

15           Specifically, some who oppose the lead standard  
16 represented that the current proposal is perilously close  
17 to background levels. And that statement is not correct.  
18 The average blood level per deciliter of blood in adults in  
19 the United States is less than 1 microgram. In fact, 90  
20 percent of US adults have less than 2 micrograms per  
21 deciliter of blood. And that contrasts with the medical  
22 removal levels in this proposal, which are many times  
23 greater than those background levels. But the proposal  
24 requires temporary medical removal when the worker has an  
25 individual test of blood lead at or above 30 micrograms per

1 deciliter. And compare that to the background with less  
2 than 1 so, more than 30 times difference.

3 And beginning, after one year of the effective  
4 date of the regulation, we'll also have temporary medical  
5 removal when there's two consecutive tests at or above 20  
6 micrograms per deciliter.

7 The airborne lead levels in this proposal are  
8 also set much higher than what would be considered worst  
9 case scenario for background levels. The USDA has set a  
10 standard for the maximum average lead levels in ambient air  
11 at 0.15 micrograms per cubic meter, to protect public  
12 health. The permissible exposure limit in this proposal is  
13 10 micrograms per cubic meter, just 67 times higher than  
14 this maximum allowed background level for ambient level.  
15 These are -- even those levels are much higher than what  
16 you consider background.

17 And then the action level which is two 2  
18 micrograms per cubic meter is 13 times higher than this  
19 maximum allowed in ambient air.

20 Number three, hair samples can be analyzed to  
21 determine if the proposed action level is exceeded. Per  
22 one of the available NIOSH analytical methods, the working  
23 range for lead in the air for an eight-hour measurement can  
24 start at about 0.06 micrograms per cubic meter, which is  
25 about 7.5 times below the proposed action level. The

1 action level can be measured using existing methods.

2 Number four, worker protection laws and  
3 regulations are critically important in safeguarding  
4 workers. They are the foundations on which education,  
5 outreach, consultation with employers and employees, and  
6 many other actions are taken to protect workers. They also  
7 provide necessary support for unions and advocate efforts  
8 to protect the safety of workers.

9 Number five, the California Department of Public  
10 Health and other health experts agreed well over a decade  
11 ago that the existing Lead Regulations are inadequate and  
12 insufficient when they requested Cal/OSHA undertake this  
13 rulemaking. Although this proposal is not as stringent as  
14 CDPH and the health experts would prefer, we have carefully  
15 considered stakeholder input over many years and many  
16 advisory meetings and crafted a regulation that protects  
17 employees and is feasible for employers.

18 For example, the proposed PEL for lead of 10  
19 micrograms per cubic meter, are set higher than what CDPH  
20 recommended, which was 0.5 micrograms per cubic meter, but  
21 in no case higher than 2 micrograms per cubic meter.

22 Now, I'll turn it over to our subject matter  
23 expert for Cal/OSHA, Susan Eckhardt. Thank you, Susan.

24 MS. ECKHARDT: Okay. Thank you, Eric.

25 I'd like to give you some specific information

1 about the proposed regulations. This rulemaking  
2 encompasses three Title 8 sections with proposed changes.  
3 The Construction Safety Orders section 1532.1 Lead in  
4 Construction; construction -- I'm sorry --General Industry  
5 Safety Orders section 5198, Lead in General Industry; and  
6 General Industry Safety Orders section 5155, Permissible  
7 Exposure Limits.

8           Important proposed changes to section 1532.1 Lead  
9 in Construction include the following: Number one, in  
10 subsection (B), at "airborne action level," which triggers  
11 certain required protective measures is lowered from 30  
12 micrograms per cubic meter as an eight-hour time-weighted  
13 average to 2 micrograms per cubic meter.

14           Number two, in subsection (c)(1), the airborne  
15 eight-hour time weighted average Permissible Exposure  
16 Limit, or PEL, for lead is lowered from 50 micrograms per  
17 cubic meter to 10 micrograms per cubic meter.

18           Number three, in subsection (d)(2) there are  
19 several new terms used: level 1 trigger task; level 2  
20 trigger task, level 3trigger task, and trigger tasks not  
21 listed, which until an employee exposure assessment is  
22 completed assume a certain level of employee exposure based  
23 on the task performed, and trigger certain required  
24 protective measures. Task-based requirements are already  
25 required in the existing regulation, but they are given

1 names already used in the construction sector in this  
2 proposal and are further clarified and updated.

3           Number four, subsection (d)(2)(E) requires  
4 additional measures as interim protection based on  
5 performing trigger tasks. These include requiring medical  
6 exams, regulated areas, eating areas and a lead training  
7 program. Additional protections are required when  
8 employees conduct level 3 trigger tasks. These include  
9 providing shower facilities and making blood lead level  
10 testing available at least monthly.

11           Number five, subsection (d)(2)(E)7 limits the  
12 maximum amount of time an employee can conduct dry abrasive  
13 blasting to five hours per day. Except that after five  
14 years from the effective date of the regulation, the amount  
15 of time will be limited to two hours per day.

16           Numbers number six, in subsection (i)(1)(A)  
17 general hygiene requirements apply when employees have  
18 occupational exposure to lead rather than exposure to lead  
19 above the PEL. This change is important to correct  
20 something lacking in the existing regulation. Lead can be  
21 transferred from, for example, contaminated hands to the  
22 mouth resulting in an oral route of exposure. This can  
23 occur regardless of airborne levels, so hygiene protections  
24 must not be dependent on airborne lead levels.

25           Number seven, subsection (j)(1) requires blood

1 lead level testing for employees whose exposure is, or is  
2 expected to be, at or above the action level for 10 or more  
3 days in a year. Or who perform trigger tasks, and a  
4 negative initial determination has not been made.

5           Number eight, in subsection (j)(1)(A), a  
6 requirement to provide zinc protoporphyrin or ZPP testing  
7 on a routine basis when doing blood lead testing is  
8 deleted. Deleting this requirement will require -- I'm  
9 sorry, deleting this requirement will reduce some of the  
10 blood lead testing burden currently on employers.

11           Number nine, in subsection (j)(2)(A) the  
12 frequency of blood lead level testing is increased for  
13 employees when their blood lead level is at or above 10  
14 micrograms per deciliter, or their airborne exposure is  
15 above 500 micrograms per cubic meter. A response plan is  
16 required when an employee's blood lead level is at or above  
17 10 micrograms per deciliter.

18           Number ten, in subsection (j)(3)(A)1., the blood  
19 lead level at which certain employees must be offered  
20 medical examinations and consultations at least annually,  
21 is lowered from 40 micrograms per deciliter to 20  
22 micrograms per deciliter.

23           Number eleven, subsections n (j)(2)(D) and  
24 (j)(3)(E) require employers to ensure employees receive  
25 specified health information from the physician following a

1 blood lead test or medical examination.

2           Number twelve, subsection (k)(1)(A) lowers the  
3 criteria for temporary removal from work with lead due to  
4 elevated blood lead levels, known as Medical Removal  
5 Protection, or MRP, from 50 micrograms per deciliter to one  
6 blood lead level at or above 30 micrograms per deciliter.  
7 Or beginning one year after the effective date of the  
8 regulation when the last two blood lead levels are at or  
9 above 20 microgram per deciliter, or the average of all  
10 blood lead levels in the last six months is at or above 20  
11 micrograms per deciliter.

12           Number thirteen, subsection (k)(1)(A) expands the  
13 type of work that employees on MRP must be removed from to  
14 include performing trigger tasks and altering or disturbing  
15 lead containing material.

16           Number fourteen, in subsection (k)(1)(C), a blood  
17 lead level that employees must achieve before returning  
18 from MRP to work involving lead is lowered from 40  
19 micrograms per deciliter from -- I'm sorry, from 40  
20 micrograms per deciliter to 15 micrograms per deciliter.

21           And number fifteen, subsection (l)(2) expands the  
22 contents of required training.

23           Okay, in subsection 5155, Airborne Contaminants,  
24 there's a few changes. Number one, the airborne eight-hour  
25 time-weighted average PEL for lead chromate is reduced from



1 20 micrograms per cubic meter to 10 micrograms per cubic  
2 meter when measuring the amount of lead in a sample. A PEL  
3 for chromium in a sample remains unchanged at 5 micrograms  
4 per cubic meter.

5           Number two, the airborne eight-hour time-weighted  
6 average PEL for elemental lead and inorganic lead compounds  
7 are reduced from 50 micrograms per cubic meter to 10  
8 micrograms per cubic meter of lead to match the changes  
9 made in sections 1532.1 and 5198.

10           Number three, the eight-hour TWA PELs for  
11 tetraethyl lead and tetramethyl lead remain at 75  
12 micrograms per cubic meter and are not changed by this  
13 rulemaking.

14           In section 5198, Lead in General Industry, there  
15 are a number of changes to section 5198 that are identical  
16 to the changes made to the Construction Safety Orders,  
17 section 1532.1. Including the following: lowering the  
18 airborne action level and permissible exposure limit,  
19 lowering the threshold for when general hygiene  
20 requirements apply, lowering the blood lead levels at which  
21 employees are offered medical exams, lowering the blood  
22 lead levels that trigger temporary removal from work with  
23 lead exposure, lowering the blood lead levels when  
24 employees can return to work with lead exposure, increasing  
25 the frequency of blood lead testing for certain employees

1 and removing some ZPP blood testing requirements, and  
2 expanding the content of required training.

3           There are several changes to section 5198 that  
4 are unique to that section. Including number one, in  
5 subsection (b) Definitions, the term Presumed Hazardous  
6 Lead Work, or PHLW, is new and trigger certain required  
7 protective measures where applicable.

8           Number two, subsection (d) (2), respiratory  
9 protection, protective clothing and equipment, medical  
10 surveillance, training and warning signs for lead are  
11 required when employees perform presumed hazardous lead  
12 work.

13           And number three, in subsection (e) (1) (B) there  
14 are less stringent Separate Engineering Control Air Limits,  
15 or SECALs for particular processes in the manufacturing of  
16 lead acid batteries. In addition to the changes just  
17 mentioned, there are changes to the appendices to section  
18 1532.1 and 5198. Although the appendices make up the  
19 majority of the pages of the proposal, these appendices are  
20 informational only, and do not create any additional  
21 obligations or requirements for employers. The proposed  
22 changes in the appendices make them consistent with the  
23 proposed changes to the regulatory language just discussed,  
24 as well as update scientific information, non-medical  
25 recommendations.

1 CHAIR THOMAS: At this time, we'll accept public  
2 testimony. If there are in-person participants who would  
3 like to comment, you may begin lining up at the speaker's  
4 podium at this time. When it's your turn to speak, please  
5 provide the completed request to speak slip to the attendee  
6 near the podium and announce yourself to the Board prior to  
7 delivering comments.

8 We will take three in-person speakers, and then  
9 we'll do three video -- or audio speakers. So line up, get  
10 ready. All right, go ahead. Introduce yourself and we'll  
11 start.

12 MR. WICK: Thank you, Chair Thomas, Board  
13 Members. Bruce Wick, Housing Contractors of California.  
14 We are part of the Construction Coalition letter issued to  
15 you April 17 by Marc Connerly.

16 As Eric Berg said, lead is a serious issue. It's  
17 a complicated issue. And --

18 CHAIR THOMAS: Can I do this before --

19 MR. WICK: Yes.

20 CHAIR THOMAS: -- before you continue, and to all  
21 of our speakers. Speak slowly, you know, kind of like  
22 Forrest Gump. Kind of like that tone. That might work. I  
23 don't know if that'll work or not, but we'll see. Anyway,  
24 yeah just kind of slow it down because they're trying to  
25 transcribe this. Continue, thanks.

1 MR. WICK: Okay. Thank you.

2 Lead is serious. That's why we have done so much  
3 work publicly and occupationally to reduce the amount of  
4 lead. We have a whole generation of workers who have never  
5 inhaled fumes from lead gasoline or had to deal with the  
6 use of lead paint. You have a generation of workers who  
7 have not experienced those in their adult lives. So many  
8 products have less lead or no lead in them today.

9 So it's hard for us to understand why we need a  
10 93 percent reduction in the action level, an 80 percent  
11 reduction in the PEL. And information was provided, but  
12 occupational safety health experts disagree with what's  
13 been presented. And I really think we need a meeting where  
14 the occupational safety and health people come together.  
15 We need to understand what the real issues are, what's  
16 proven to be caused by a serious exposure to lead. And  
17 then what is the commensurate reduction if needed in the  
18 PEL or the AL to go in these dramatic reductions, it's not  
19 understood.

20 We have a 45-day notice for a very significant  
21 reg that changed a lot from the last draft. It would have  
22 been really helpful for us to get a side by side of the  
23 previous draft, the new draft and the federal reg.

24 You know, employers were sending \$1.5 billion to  
25 DIR this year above our Workers' Comp payments. And you'd

1 think one person at DIR could be able to do that for us to  
2 be able to work through this reg. It's taken us 45 days  
3 just figure out what's there and try to get some idea of  
4 the costs. We know the costs are in the billions, we don't  
5 know if it's 2 or 5 billion a year. This is a massive  
6 thing. The informative -- the notice in *Informative Digest*  
7 in answer the question will this reg have any substantial  
8 cost to housing, the answer was, "None."

9           We know this will have a substantial cost to new  
10 construction housing. We know it will have a substantial  
11 cost to keep, maintaining housing with all the work that  
12 has to be done. It would be best really just start this  
13 over, have an advisory committee. The last input committee  
14 from eight years ago, a lot of people have retired and  
15 moved on. There's a lot of new people that need to engage  
16 in this. We need time. We need an extension in the public  
17 comment period. We need -- I hope you will require someone  
18 to give us the true budget cost numbers of this reg as  
19 proposed. It is significant.

20           In construction, as you know, we do competitive  
21 bid. The underground economy gets more competitive with  
22 any unnecessary part of a reg in public works. When the  
23 costs go up, you either scale back the project, you delay  
24 it, or you might eliminate it altogether if the costs go  
25 too high. So these are substantial costs. We need to pull

1 this information together and a lot more to be done. I  
2 hope you demand the information we need to work our way  
3 through this reg and extend our public comment period.  
4 Thank you.

5 CHAIR THOMAS: Thank you.

6 MR. MILLER: I have some visuals. So I'm Brian  
7 Miller of Rudolph and Sletten. I'm the Safety Director.  
8 Again I am a CDPH-certified lead project monitor and lead  
9 supervisor. And again I'm also a CAC. I also do this  
10 work. I go in containment multiple times every year, I  
11 don't like it, but I do it.

12 People have asked me, why are you certified? I  
13 am because of my mom. My mom was a housekeeper for 20  
14 years, and she became the manager of the group. And she  
15 looked at me and said one day, "If I'm not willing to scrub  
16 a toilet, how do I tell somebody else to go scrub a toilet?  
17 So you have to be willing to do the work." So that's why I  
18 became certified.

19 I want to just talk about the action level. I do  
20 this work. This is going to be tough. And I mean, this  
21 standard is going to really inspire people to not want to  
22 follow the standard because it's so darn confusing.

23 This is a cubic centimeter, one cubic centimeter.  
24 That's a cubic centimeter. This is a packet of Sweet-n-  
25 Low. This is one gram of Sweet-n-Low. That's 1 million

1 micrograms in this packet. I challenge everybody to come  
2 grab one of these today, take it home, go to your table,  
3 put it on a piece of paper, cut it in half, it's 500,000  
4 micrograms. You have to continue to do that 20 times to  
5 get down to two micrograms. I can't even do it. I can't  
6 even do it.

7           And I'm telling you working on lead is very  
8 dirty, okay. You just touch a lead brick, and your gloves  
9 are instantly covered in lead dust. It's just the nature  
10 of lead. It's very challenging. And you're right. We  
11 tell our employees don't touch your face, because it's  
12 going to transfer. When you start working if you have an  
13 itch you have to go out, you have to wash up, fix your itch  
14 and then go back into containment, because they transfer a  
15 lot.

16           So, I'm not sure how Rudolph and Sletten is going  
17 to be able to do the work. And yes, we do install a lot of  
18 lead shielding. But still, for those of you who don't  
19 know, lead about that thick, steel about that thick, and  
20 concrete about that thick. So -- and lead is very  
21 affordable. It's very malleable. It's very durable. And  
22 we do a lot of lead and steel -- lead shielding install.  
23 It's on our labs and almost every single one of our health  
24 care companies like Kaiser and El Camino. So we do it  
25 quite often, because it's still a great product.

1           So I just don't know what I'm going to do. So  
2 please reconsider putting an advisory committee back  
3 together and having some people to do the work, a fair way  
4 to come to a happy medium between what CDPH wants and what  
5 the people who do the work want. Thank you.

6           CHAIR THOMAS: Thank you.

7           MR. MILLER: Oh, one final thing. Last time I  
8 saw you guys I gave a challenge coin to Chief Killip. May  
9 I explain the challenge coin (indiscernible). I give these  
10 to our investors and trades people who go above and beyond  
11 for safety or even just do normal the normal safety item.  
12 And I told you I would bring you one. So I brought you one  
13 today, so I'll bring this up to you. Thank you.

14          CHAIR THOMAS: Thank you.

15          Go ahead, good morning.

16          MR. CONNERLY: Mr. Chair and the Board Members,  
17 life is like a box of chocolates. Did I take you too  
18 literally there. I'm sorry if I --

19          CHAIR THOMAS: I thought someone was going to do  
20 that. Okay. That's okay.

21          MR. CONNERLY: Marc Connerly, Executive Director  
22 of the Roofing Contractors Association of California.

23          The underground economy in California is valued  
24 at somewhere between \$100 billion and \$150 billion if not  
25 more. Bad actors in the underground economy don't pay



1 taxes. They don't follow wage laws or employment laws.  
2 They don't pull permits, and they don't follow regulations.  
3 And because of this the state is cheated out of tax  
4 dollars. Employees are cheated out of wages. Employees  
5 are left less safe on job sites. And the legitimate,  
6 honest, hardworking entities who follow the rules are left  
7 at a competitive disadvantage.

8           Now, there are some companies who will never  
9 follow any regulation or standard or rule or law, they  
10 simply won't. And there's also a segment who will try to  
11 follow every set standard and regulation, no matter how  
12 onerous it may be, no matter how costly. But there's a  
13 significant segment of industry in the middle. A segment  
14 who will assess how reasonable, how feasible, how costly,  
15 and what the perceived benefits of a regulation are. And  
16 then they will make their determination on whether or not  
17 to follow that standard based on that assessment.

18           If a standard is reasonable and feasible, and can  
19 be complied with and implemented relatively easily, in a  
20 manner that that allows the company to continue operating  
21 and protecting its employees and continue to make a profit,  
22 they will follow the standard. But again if it is not  
23 those things, be the number, the percentage of entities who  
24 won't comply, who will just ignore it, is going to increase  
25 dramatically.

1           So I have one simple question and a request. The  
2 simple question is would you rather implement a standard or  
3 implement an effective standard. A standard that really  
4 does protect employees. A standard where more companies  
5 are willing to comply, they feel that there's a  
6 scientifically proven benefit. And they feel that they've  
7 been a part of the process. They've been your allies in  
8 this rather than your adversaries.

9           The entities that signed on to the construction  
10 coalition letter, the 21 entities, want to protect our  
11 employees unanimously. We want to do the right thing. And  
12 we want to be your allies, your partners in implementing  
13 effective regulations and standards. And that brings me to  
14 my request. My request is that you slow this freight train  
15 down, take a step back, consider the very serious flaws  
16 that are going to be pointed out today by the many entities  
17 before you, engage with us, talk through the issues, and  
18 collaborate with us. And allow us all to create a standard  
19 that will protect more employees, because more entities  
20 will come on board and be willing to implement it and  
21 comply and follow the rule. Thank you.

22           CHAIR THOMAS: Thank you. Who do we have? We  
23 have one more, good.

24           MR. JOHNSON: Thank you, Chairman Thomas, Members  
25 of the Board, Standards Board staff and Cal/OSHA staff. My

1 name is Steve Johnson. I'm with Associated Roofing  
2 Contractors of the Bay Area Counties. And our association  
3 has signed on to the coalition letter. The 21 contractors,  
4 contractor organizations, contractor affiliations. At  
5 least half of the organizations are union affiliated  
6 organizations that have signed on to the coalition letter.

7           So I want to focus my comments on the lead  
8 standard. And I also want to recognize the Phylmar  
9 Regulatory Roundtable and Cal Chamber letters as well.  
10 They focus on general industry and construction both. And  
11 I'm focusing my comments today on the construction  
12 standard, and particularly the SRIA, or the Standardized  
13 Regulatory Impact Assessment.

14           Some of the issues that that we have with the  
15 SRIA is that the SRIA was conducted in in February of 2019,  
16 and that was previous to COVID. That was previous to the  
17 runaway inflation that we have in the economy today. And  
18 that's what the SRIA was based on.

19           Other issues with the SRIA. They call out a  
20 figure of \$10,647 in year one, for a construction company  
21 to comply with the lead standard. That's just simply  
22 wrong. That's underestimated by many, many times. It also  
23 states that employers, construction employers, are not  
24 particularly susceptible to competition from outside of the  
25 state since their work must be performed in California.

1 All firms engaging in these activities are therefore  
2 subject to the proposed regulations.

3           So the firms are subject to the regulations. But  
4 that doesn't necessarily mean that the firms will follow  
5 the regulations. So there are a couple of things that that  
6 it doesn't acknowledge. There are out-of-state contractors  
7 that come into California that did work, that don't even  
8 understand California regulations, don't know the  
9 California regulations, and they're essentially predatory  
10 contractors that come in, do the work and leave.

11           So secondly, it makes the assumption that  
12 everyone will comply. Just because we change the  
13 regulation, everyone will comply. Cal/OSHA doesn't have  
14 the enforcement capability to make all contractors comply.  
15 So that's a substantial problem with enforcing the  
16 regulation. So the regulation has to be reasonable, has to  
17 be enforceable. And if we have a regulation that's so  
18 complicated that it's not understandable or reasonable,  
19 it's also hard to enforce.

20           A couple more things I want to focus on with the  
21 SRIA, and I'll conclude my comments. So one of the things  
22 that Cal/OSHA stated that in nearly all sectors considered  
23 in this analysis, the simplifying assumption is made that  
24 businesses would comply with the proposed regulations by  
25 protecting workers from lead in the workplace. So they

1 just make the assumption that businesses will comply by  
2 simply changing the regulation.

3           So another quote, the new demand for labor and  
4 materials created by each compliance action could create an  
5 opportunity for new businesses to develop in the state.  
6 Any compliance action by Cal/OSHA should not put  
7 contractors who are currently doing business and employing  
8 union contract -- union employees out of business simply  
9 because there's an opportunity for new businesses to come  
10 in. That just does not make any sense to me.

11           One of the things that Cal/OSHA stated, for  
12 example, more stringent air monitoring requirements will  
13 increase demand for industrial hygienists. The advanced  
14 hygiene requirements will increase demand for portable  
15 showers and washrooms.

16           CHAIR THOMAS: Can you wrap it up, because --

17           MR. JOHNSON: Sure.

18           CHAIR THOMAS: It's been 5 minutes.

19           MR. JOHNSON: I'm getting to my dramatic  
20 conclusion. I'm trying to speak slowly in the two minutes  
21 that I'm allotted. So one of the issues that I think other  
22 speakers are going to address is that right now portable  
23 showers aren't even really available on a large basis, on a  
24 consumption type bases for rent -- shower rentals. And the  
25 shower companies that do rent portable showers, they will

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1 not allow any lead work. Somebody that could potentially  
2 contaminated shower was lead, they won't even rent the  
3 shower out. So we've got a big problem with just mandating  
4 some of these requirements.

5 I'll let others talk about other points that I  
6 want to discuss, but I don't have time to discuss. But  
7 thank you for your indulgence. And I hope that we can have  
8 more stakeholder engagement as we go along, because we  
9 don't really feel like that's happened. Thank you.

10 CHAIR THOMAS: I'm sure other people will cover  
11 your points.

12 We're going to the ones on the phone. Maya, who  
13 do we --

14 MS. MORSI: We have Amy Boas with NELCO  
15 Worldwide.

16 CHAIR THOMAS: What was the name again?

17 MS. MORSI: Amy Boas.

18 CHAIR THOMAS: Amy, are you with us?

19 MS. BOAS: Yes. Can you hear me?

20 CHAIR THOMAS: Yeah, go right ahead.

21 MS. BOAS: Great, hi. So my name is Amy Boas. I  
22 am commenting on both the Construction and the General  
23 Industry Safety Orders. And I work for NELCO Worldwide.  
24 You probably haven't heard of NELCO, but there's a good  
25 chance that our products have helped care for one of your

1 loved ones or maybe even yourself.

2 We make cancer diagnosis and cancer treatment  
3 possible. We manufacture and install radiation shielding  
4 systems for cancer centers and hospitals. And we are the  
5 largest medical radiation shielding company in America. We  
6 handle honest to goodness lead products to help save lives.  
7 Lead brick, lead sheets, lead line plywood, and lead line  
8 sheet rock.

9 In California, we fall under the general industry  
10 safety orders for our manufacturing facility, and the  
11 construction and safety orders for our installation  
12 activities. We handle lead and build cancer diagnosis and  
13 treatment facilities and hospitals. We also manufacture  
14 and install industrial radiation shielding for security  
15 based operations for the detection of hazardous prohibited  
16 and dangerous materials that are not intended to enter a  
17 building, an airplane, or cross the borders into our  
18 country. We already keep our employee blood lead levels  
19 below what the proposed regulations are asking. And that  
20 is with using the existing PEL a 50 micrograms per meter  
21 cubed.

22 Even still, these proposed regulations have the  
23 potential to drive us out of California. I'm asking that  
24 consideration be given to NELCO and to others in our sector  
25 of the marketplace to have SECALs or other exemptions

1 established to allow us to continue to protect our  
2 employees, to protect others around us and the environment  
3 while continuing to do our important work. Thank you.

4 CHAIR THOMAS: Thank you.

5 Who do we have next?

6 MS. MORSI: Up next is Ariana Makau with Nzilani  
7 Glass Conservation.

8 CHAIR THOMAS: Ariana, can you hear us?

9 MS. MAKAU: I can. Can you hear me?

10 CHAIR THOMAS: We can. Speak a little bit  
11 louder, thank you.

12 MS. MAKAU: Sure. Is this better?

13 CHAIR THOMAS: Yep. Go ahead.

14 MS. MAKAU: Great. Hello, everyone. I am Ariana  
15 Makau. I'm the Owner and Principal Conservator of Nzilani  
16 Glass Conservation, and I'm the past Board Member of the  
17 Stained Glass Association of America, and also their Health  
18 And Safety Chair.

19 Members of the Board, environmental safety is at  
20 the core of my business, which is involved daily with lead.  
21 We specialize in large scale monumental stained glass  
22 preservation, in which the two main components are glass  
23 and lead. I support any regulations that empower both  
24 workers to require safe working spaces and employers to  
25 have guidelines to which they should adhere. And as their

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1 president, I really embody Nzilani's motto to be safe, have  
2 fun and do excellent work, which literally puts safety  
3 first. Yeah, I have a love -- really love-hate  
4 relationship with the proposed regulations.

5 I suspect we're the only stained glass company in  
6 -- do people hear a weird reverb, or is it just on my side?  
7 Okay, I'm going to turn down my volume just a little bit.

8 CHAIR THOMAS: I think it's just your side. Cell  
9 phone.

10 MS. MAKAU: Okay. I suspect that Nzilani is the  
11 only stained glass company that adheres to current rigorous  
12 lead and safety training, plus regulatory requirements for  
13 PPE. While we're the safest, and I dare say the  
14 healthiest, our average BLL levels are five micrograms per  
15 deciliter, or lower, and versing -- versus our competitors  
16 which are 20 or higher. We're the most disadvantaged when  
17 bidding jobs because the majority of other companies like  
18 other professionals here are less stringent.

19 Currently to onboard an employee it's about  
20 \$3,000 to pay for classes, and I've yet to take a course  
21 where I'm not training the trainers. There's a real  
22 disconnect between what stained glass workers need and what  
23 is currently required. We've spent countless hours working  
24 on our safety criteria and also working on our effluent  
25 water which goes back into the public municipal water

1 filtrations. And in the last 20 years that I've been --  
2 have owned my company, 30 years in the business, I have yet  
3 to be enforced local. And I haven't heard of this  
4 happening with any of my other competitors.

5 Understandably, others have no reason to adhere  
6 to current or future laws if they will -- it'll be  
7 negatively affecting their bottom line and it puts them on  
8 tenuous financial footing. So conceivably we're the best  
9 and most informed company, and yet un-hirable, it'll be  
10 because we have higher noncompetitive rates when there's no  
11 teeth that have boots on the ground regulatory systems.  
12 I'm all for more stringent regulations if they can be  
13 enforced.

14 While intending to promote better health and  
15 sustainability for our communities, current and future  
16 regulations completely missed (indiscernible) on our boots  
17 on the ground experience. As a result, those of us who  
18 have done the work and literally paid the price for it to  
19 be in better companies are adversely affected by your  
20 efforts. Thank you.

21 CHAIR THOMAS: Thank you.

22 Who do we have next, Maya?

23 MS. MORSI: Up next is Richard Lawson with The  
24 Lawson Roofing Co.

25 CHAIR THOMAS: Richard, can you hear us?

1 MR. LAWSON: Yeah. Can you hear me?

2 CHAIR THOMAS: Yeah, go right ahead.

3 MR. LAWSON: Thank you for this opportunity. My  
4 family has been in the roofing business since 1907 serving  
5 the San Francisco Bay Area. One of our most important  
6 assets are obviously our workers. They're the guys that  
7 perform the work for us. We do have to deal with lead from  
8 time to time. It's part of a component of many different  
9 types of roofing systems.

10 My testimony here is going to be more about the  
11 cost as it addressed to a single family homeowner. If we  
12 have a typical residential house, maybe a three bedroom,  
13 bath and a half, say 1500 square feet of roof area. If  
14 it's a flat roof, (indiscernible) roof, we'll remove and  
15 replace it, wrong budget numbers to do that, that'd be  
16 about \$30 to \$35,000. If you had a composition shingle  
17 roof, the same size, maybe a 6 and 12 pitch, that cost too  
18 will be around \$30,000 or so to remove and replace, getting  
19 the proper permits and hopefully having labor that has got  
20 Workers' Comp insurance and the contractor has as typical  
21 insurances.

22 Adding this regulation where it'll add with the  
23 portable showers and other issues on top of it, the numbers  
24 I've heard varied for each particular job site. You cannot  
25 bring your work to me where I could have standards and

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1 showers in such nature right there that readily available.  
2 They all have to be brought out to the jobsite so the guy  
3 doesn't get into the car with the lead. He does not want  
4 to get home with a -- he has to get cleaned up at the site.  
5 Doing so, showers typically are not available.

6           We've already heard that if they are available,  
7 you get them, you can't have any hazardous materials inside  
8 them be washed down. What do you do with the water that  
9 comes out of the showers? I've heard that the cost to  
10 comply at each particular job site can be \$15 to \$20,000 or  
11 even exponentially more.

12           So if I'm going to you to put a roof on your  
13 house, which is going to cost around \$30,000 well now it's  
14 going to cost \$45 to \$50,000 to comply with this regulation  
15 as it is set today. So all it's going to do is the  
16 neighbor down the street says, "Hey I got this guy in a  
17 pickup truck, he'll go put your roof on for \$20,000." And  
18 so it's going to add to a very noncompetitive environment.  
19 And it's going to make it much more difficult for our  
20 contractors to try to obey the law and go ahead and secure  
21 work at a reasonable cost and still treat your employees  
22 fairly.

23           That's my testimony. Thank you.

24           CHAIR THOMAS: Thank you.

25           Before we continue on with in-person testimony,

1 we're going to take a 15-minute break and we'll be back at  
2 11:50.

3 (Off the record at 11:36 a.m.)

4 (On the record at 11:51 a.m.)

5 CHAIR THOMAS: All right, we're back on the  
6 record. We're going to continue with in-person speakers,  
7 so go right ahead, introduce yourself and good morning,  
8 still. It should be green, the green button.

9 MR. FEHR: Good morning, Chair Thomas, Board  
10 Members and Staff. I'm Dave Fehr, Senior EH&S Manager with  
11 AT&T. We submitted our comments electronically. I'm also  
12 going to submit some hard copies for the record.

13 AT&T appreciates and understands the need to  
14 update the lead and construction standards to protect  
15 California's workers. And we're not here to challenge the  
16 data, which lead CDPH to conclude that blood lead levels of  
17 employees should not exceed 5 to 10 micrograms per  
18 deciliter. We believe that the telecommunications industry  
19 presents a special circumstance that warrants  
20 consideration.

21 To give you an idea of how short duration our  
22 exposure is, in 2022 our average worker exposure to lead  
23 was about 8 hours for the entire year. Our maximum  
24 exposure was about 72 hours for the year. While we support  
25 the proposed standard for industries where lead exposure is

69

1 a concern, the proposed standard covers more activities  
2 than is necessary.

3           We offer suggested amendments with proposed in  
4 approach for our work that includes administrative controls  
5 to limit or eliminate exposures that might raise BLLs.  
6 Despite the short duration of our work, many of our  
7 employees work with lead more than the 10 day per year  
8 threshold that triggers medical surveillance. Our written  
9 comments offer a suggested amendment that substitutes the  
10 10 day threshold with 80 hours and is therefore no less  
11 protected.

12           Our work requires mobile dispatch to repair and  
13 restore service, and technicians may not know that  
14 disturbance of lead is necessary until they arrive to  
15 perform the work. Work locations change constantly and  
16 provide little room on roadsides, in manholes, and 15 to 20  
17 feet above the ground, making it difficult to comply with  
18 many of the proposed requirements.

19           We think our unique work warrants an exception  
20 for repair and maintenance work where disturbing lead  
21 sheathed cable is incidental to maintaining essential  
22 services. We've modeled worker exposure using the same  
23 model that OEHHA used and are confident that the nature of  
24 our work coupled with administrative controls will ensure  
25 that worker BLLs will be below 10 micrograms per deciliter.

1           Again, we offer a suggested language for a  
2 limited exception in our written comments. We're hopeful  
3 that the Division and Board will respond to our concerns by  
4 adopting amendments in the final rule to reflect the unique  
5 work performed by telecommunications workers.

6           Thank you for your time and consideration.

7           CHAIR THOMAS: Thank you.

8           Who do we have next? Good morning

9           MR. MARSHALL: Hi, my name is Robert Marshall.  
10 I'm a certified health and safety technician and lead  
11 abatement supervisor. I represent Eberhard Roofing,  
12 Waterproofing and Sheet Metal in Southern California. We  
13 employ 250 staff and field personnel.

14           Thank you for the opportunity to speak today on  
15 behalf of the construction industry in general, and my  
16 industry roofing, waterproofing and sheet metal in  
17 particular. The new regulations being proposed I believe  
18 have more negative effects than positive based on the  
19 following.

20           Using a common and typical repair project  
21 consisting of gutter downspout and edge metal removal and  
22 reinstallation on a school district, such as Los Angeles  
23 Unified School District, here are the numbers: Remove 500  
24 linear feet lead painted edge metal facia, remove 500  
25 linear feet lead painted rain gutter and associated

1 downspout, replace it with new 24 gauge galvanized metal,  
2 work is all elevated at or beyond two stories. The cost  
3 for this type of job is about \$128,000. Added costs for  
4 new regulations are estimated to now include hazardous  
5 waste disposal, tool rooms, shower rooms, clean rooms,  
6 tents to enclose the shower and changing room, propane  
7 heaters to warm the tent enclosures, blood lead level  
8 medical testing.

9           There are other unknowns at this time. The cost  
10 estimates based on the newly proposed OSHA regulations are  
11 about \$166,000. The added cost being applied without a  
12 solid basis of improved benefit to the worker based fully  
13 on science helps no one and in fact hurts the worker as the  
14 additional costs will take away from more work getting  
15 done.

16           While the above project is only a small example,  
17 it is definitely accurate in what kind of cost impact the  
18 new regulation can and will have on construction projects.  
19 We have experienced exactly zero cases involving a claim of  
20 exposure to lead whereby increased blood lead levels were  
21 identified as a cause based on other injury or illness.  
22 Our personal history in the roofing industry, having dealt  
23 with the asbestos issue, going back almost three decades,  
24 proved that all asbestos is not created equal.

25           Early on asbestos was considered friable and



1 hazardous. Though great expense and industry involvement  
2 in 1994, the National Roofing Contractor Association was  
3 able to put together a book of objective data that is still  
4 applicable today. What it proved is the worker can at the  
5 same time, reduce the cost for abatement adding that  
6 opportunity for the worker will be getting additional  
7 hours. We believe the same course of action should be  
8 taken for lead abatement prior to any new regulation being  
9 introduced.

10           The more regulations increase, the harder it gets  
11 for legitimate contractors to compete. Competition is  
12 already great in the construction market, adding more  
13 regulation further drives already marginal contractors to  
14 cheat even more. As an example, ignoring abatement and  
15 proper disposal requirements, failing to provide proper  
16 worker training for the type of work being done, working  
17 without permits to aid, and remaining below the radar,  
18 disposal at inappropriate landfills for the product in  
19 question, or flat out illegal dumping, which is happening  
20 more and more in our communities.

21           On top of all of this, we have out-of-state  
22 contractors who know little of our state codes and  
23 regulations competing in the market, but they still  
24 maintain a California contractor's license. So they can  
25 literally -- they could cherry pick our work in our state.

1           Also, asking an employee to submit to numerous  
2 blood samples per year will prove to be a very difficult  
3 task, as evidenced during the COVID pandemic. We believe  
4 the ones who will be hurt the most are the ones we all care  
5 about protecting the most, our employees. Thank you again  
6 for your time today.

7           CHAIR THOMAS: Thank you.

8           Good morning.

9           MR. SCHINSKE: Morning. Thank you, Chair Thomas  
10 and members and staff. My name is Don Schinske. I'm here  
11 on behalf of the Western Occupational and Environmental  
12 Medical Association. We urge the Board to adopt these  
13 standards promptly. WOEMA is the regional component of the  
14 American College of Occupational Environmental Medicine.  
15 Our 500 members are occupational medicine specialists,  
16 health and safety professionals across five western states.

17           We petitioned for a revision to the standards  
18 back in November 2009. We went back and looked it up. We  
19 did so then, not because we expected science to emerge that  
20 met what we were seeking. We did so because the science  
21 had moved on and had moved on decades earlier.

22           We were pleased to participate in the workgroups  
23 that assembled to work on this standard. During the course  
24 of those, we did advocate for greater stringency on  
25 airborne exposure limits, medical surveillance

1 examinations, stronger medical removal protection and other  
2 measures. We're pleased that we've come to this point here  
3 today.

4 We do have a couple, I guess, suggestions to make  
5 the regulations a little bit stronger. We would ask that a  
6 definition of physician get added and that it be reserved  
7 to licensed medical doctors or doctors of osteopathy. We  
8 think this jives with Federal OSHA's interpretation of this  
9 matter. We like to think we're offering that without  
10 prejudice, but we do know of employers who have engaged  
11 paramedics and chiropractors to do medical surveillance  
12 exams. Simply we just believe doctors are the best  
13 equipped to understand and evaluate the complex health  
14 effects of lead on multiple organ systems.

15 Secondly, on page 155 it gives a lead level limit  
16 of .5 micrograms for parents who -- or people who are  
17 intending to be parents soon, we would just suggest that we  
18 go with the California Department of Public Health  
19 recommendation there, and that .35 micrograms seems like  
20 the more prudent level there. Other than that, thank you  
21 Division and Board for getting us to this point. It's been  
22 a long time for the health California workers. We think it  
23 will have been worth it. Thank you.

24 CHAIR THOMAS: Thank you.

25 We will go to online now. Who do we have?

1 MS. MORSI: Up next is Renee Guerrero Deleon with  
2 Southern California Coalition for Occupational Safety and  
3 Health.

4 CHAIR THOMAS: Renee, can you hear us?

5 MS. DELEON: Yeah. Can you guys hear me?

6 CHAIR THOMAS: Yes, go right ahead.

7 MS. DELEON: Awesome, thank you. Renee from  
8 SoCalCOSH.

9 I just wanted to say today that SoCal COSH  
10 supports the comment letters submitted by WorkSafe and  
11 other organizations that urges the Board to adopt the  
12 proposed amendments to Title 8, the California Code of  
13 Regulations, section 1532.1 of the Construction Safety  
14 Orders and sections 5155 and 5198 of the General Industry  
15 Safety Orders.

16 California workers who have occupational exposure  
17 to lead deserve to have the protections that acknowledge  
18 the scientific evidence that links low level lead exposure  
19 to work related illnesses. Thank you so much.

20 CHAIR THOMAS: Thank you.

21 Who do we have next, Maya?

22 MS. MORSI: Up next is Pamela Murcell with  
23 California Industrial Hygiene Council.

24 CHAIR THOMAS: Pamela, can you hear us?

25 MS. MURCELL: I can hear you, and hopefully you

1 can also hear me.

2 CHAIR THOMAS: We can hear you just fine. Go  
3 ahead.

4 MS. MURCELL: All right. I'll even show my face  
5 for a few minutes. So, good morning. My name is Pamela  
6 Murcell, I'm the current President of the California  
7 Industrial Hygiene Council.

8 Chair Thomas, Board Members and staff, we  
9 appreciate the opportunity to provide this testimony today.  
10 And this testimony is actually to give you a kind of a  
11 high-level view of our written comments that we'll be  
12 providing, as well the proposed changes. We have some  
13 particular concerns on a few of the items.

14 The CIHC represents the occupational and health  
15 professionals in California, to advance public policy for  
16 the improvement of the health and safety of workers and the  
17 community. We understand that exposure to lead is  
18 historically well documented as a chronic health toxin, and  
19 control of exposure is critical. However, the goal with  
20 regulation should be to assure that requirements are  
21 effective and can be correctly implemented.

22 With that in mind, this testimony is to provide  
23 an overview of the salient points covered by more detail in  
24 our written comments. We have the following  
25 recommendations. Incorporate assurances for exposure

1 assessment data quality by requiring that air sampling is  
2 conducted by or under the supervision of a certified  
3 industrial hygienist, and that sample analysis be completed  
4 by an appropriately accredited laboratory. These  
5 requirements should also be applied to surface sampling.

6           Incorporate a requirement for quantitative  
7 assessment of surface cleanliness, not just the qualitative  
8 approach currently addressed. In other words, establish a  
9 numerical value for the cleanliness of a workplace, or the  
10 cleanliness of the workplace surfaces due to lead  
11 contamination. And just as an example of what that might  
12 look like. For example, 500 micrograms per square foot.  
13 Just throwing that out as a number just to clarify the  
14 point.

15           Establish the action level at 5 micrograms per  
16 cubic meter, which would be half of the proposed new PEL.  
17 This is a widely accepted and utilized approach for the  
18 relationship of an action level to the corresponding PEL  
19 for occupational health exposure evaluation. And an action  
20 level of 5 micrograms per cubic meter would also address  
21 the concerns of the proposed action level at 2 micrograms  
22 per cubic meter that might not accurately be assessed due  
23 to the constraints of detection limits and the current  
24 standard methods for sampling and analysis.

25           Replace the language in subsection (f)

1 Respiratory Protection, with language analogous to that  
2 used in work recently adopted substance specific standards,  
3 such as that presented in the respirable crystalline silica  
4 regulations.

5 For subsection (d) Exposure Assessment, present  
6 the requirements based on results of exposure evaluation in  
7 a table format. We have provided examples in our written  
8 comments.

9 The proposed text presentation of these  
10 requirements, with excessive verbiage is confusing and  
11 difficult to follow. Also, for subsection (j), Medical  
12 Surveillance, present the requirements in a table format  
13 based on the various criteria that trigger medical  
14 evaluation. Again, the proposed text presentation of these  
15 requirements, with excessive verbiage is confusing and  
16 difficult to follow.

17 And similarly, for subsection (k) Medical Removal  
18 Protection, present the required date requirements for  
19 medical removal based on results of blood lead levels in a  
20 table format. We do provide some examples of that in our  
21 written comments. And again, the excessive text is  
22 difficult to follow and very confusing.

23 That's all I have as far as general comments for  
24 today. We appreciate the opportunity. And thank you for  
25 the opportunity to participate in this process.

1 CHAIR THOMAS: Thank you.

2 Who do we have next, Maya?

3 MS. MORSI: Next is Christopher Lee with United  
4 Contractors.

5 CHAIR THOMAS: Christopher, can you hear us?

6 MR. LEE: Yes, I can. Can you hear me?

7 CHAIR THOMAS: Yeah, can you turn your mic up a  
8 little bit?

9 MR. LEE: Is that better?

10 CHAIR THOMAS: Yeah, there you go. Thank you.  
11 Good afternoon.

12 MR. LEE: Good afternoon, Chair Thomas, Board  
13 Members and Division staff. I'm Chris Lee, I represent  
14 United Contractors, Wall and Ceiling Alliance, Northern  
15 California Allied Trades and the Painting and Decorating  
16 Contractors of California.

17 First, I want to recognize the hard work of the  
18 Division and the challenges it faces, which I saw firsthand  
19 when I served as Deputy Chief. All four union affiliated  
20 construction associations I represent are committed to the  
21 safety and wellbeing of their employees. Collectively, we  
22 represent over 1,000 contractors.

23 These associations are signatory to the Coalition  
24 letter dated 4-17-23 and share the concerns it expresses.  
25 I won't go into all the issues, but want to draw your



1 attention to the following.

2           The Division must provide an appropriate and  
3 truly scientific analysis of the suggestion that lead can  
4 do harm to workers at lower exposures than previously  
5 understood. The 2019 Standardized Regulatory Impact  
6 Assessment must be revised significantly, as it does not  
7 fully consider the impact of competition from out-of-state  
8 contractors who do not fully comply with Cal/OSHA  
9 regulations, if at all; substantially underestimates the  
10 cost of compliance; burdens employers with unnecessary  
11 requirements; and does not demonstrate the need for  
12 extensive blood lead level testing.

13           We advocate the scheduling of an advisory  
14 committee meeting, extending the comment period. However,  
15 if the revision is approved we recommend delay the  
16 implementation for three years to allow tens of thousands  
17 of employers to understand, prepare for, and implement the  
18 changes. If this proposal is approved, I strongly  
19 recommend that the following actions be implemented to  
20 assist employers: develop a summary table that clearly  
21 defines tasks and respiratory protection levels, like Table  
22 1 in the respirable crystalline silica standard; provide a  
23 simplified plain language guide of what is required;  
24 develop e-tools (indiscernible) program frequently asked  
25 questions; and possibly a pocket guide to lead in

1 construction.

2           And last, prepare the consultation service to  
3 undertake an extensive education and outreach program to  
4 assist employers. There will be likely a significant  
5 demand for assistance. And a recommendation is made to  
6 Chief Killip to fill management and consultant positions in  
7 this regard.

8           That concludes my comments. I yield back to the  
9 Chair.

10           CHAIR THOMAS: Thank you.

11           We'll go to in person, please step up to the mic,  
12 state your name and affiliation. Thank you.

13           MR. MIKSAD: Good afternoon and thank you for  
14 having us. My name is Roger Miksad. I'm the Executive  
15 Director of Battery Council International. We're the  
16 primary trade association in North America for battery  
17 manufacturers and recyclers. I personally have been  
18 involved in the Cal/OSHA advisory council process for this  
19 rule for more than 12 years, and so I will thank you in  
20 advance for your indulgence if I go beyond two minutes.

21           The lead battery manufacturing industry  
22 represents more than 50 percent of the US's battery  
23 manufacturing capacity. And there are four manufacturing  
24 companies here in California as well as one recycling  
25 company.

1           Lead battery manufacturing represents 95 percent  
2 plus percent of the intentional use of lead metal in the  
3 United States and 100 percent lead metal police in the US  
4 is from battery recycling. That means that this industry  
5 has perhaps, in the general industry, the deepest pool of  
6 EHS (phonetic) industrial hygiene experience over the last  
7 100 years, with lead and lead exposure and how to protect  
8 workers from lead.

9           BCI, just to be clear upfront and to dispel any  
10 notions, BCI agrees with Cal/OSHA that protection of  
11 workers from excess lead exposure is of paramount  
12 importance. And we agree that the rules that are based on  
13 the 1970s that the blood lead levels in that rule are  
14 appropriate for revision today. And we agree with the  
15 levels being proposed by Cal/OSHA.

16           CHAIR THOMAS: I'm hearing a "but" in that.

17           MR. MIKSAD: But --

18           CHAIR THOMAS: Go ahead.

19           MR. MIKSAD: -- we believed based on real world  
20 experience that the proposals in the rulemaking related to  
21 air lead levels are misguided and are not based on real  
22 world sound data from industry.

23           Most importantly, you know, our agreement is not  
24 recent. BCI and our members since 1997 have adopted  
25 voluntary programs to reduce worker blood leads below the

1 Cal/OSHA and Federal OSHA standards and have had those in  
2 place since that time with ever increasing restriction.

3 Industries experience real workers in real  
4 facilities in California and across the nation is that the  
5 blood lead levels being sought by Cal/OSHA can, and are  
6 today being achieved, without changes to air lead levels  
7 within those workers. That's both with respiratory  
8 protection and without respiratory protection.

9 Industry data shows that air lead levels being  
10 talked about by Cal/OSHA, and this data has been provided  
11 to Cal/OSHA over the last 10 years, worker blood leads do  
12 not correlate with air lead levels in the workplace. There  
13 are other factors at play. Hand to mouth ingestion is a  
14 primary route of exposure. Worker hygiene upon leaving the  
15 workplace is a critical effort. Smoking after working with  
16 lead is another critical route of exposure.

17 These rules are addressing fundamentally both the  
18 wrong route of exposure as well as the single most  
19 expensive route of exposure to try and control.

20 The other issue with the current rules as being  
21 proposed at the action level, in particular the permissible  
22 exposure limit, starting 10 years ago we have provided data  
23 to Cal/OSHA staff showing the process needed in a general  
24 industry manufacturing facility to reduce air lead weapons,  
25 whatever the target levels. And we, with our written

1 comments that are being submitted today, have provided a  
2 consultant's report on a typical construction schedule. As  
3 currently written, the proposed rules would change the PEL  
4 from 50 micrograms per meter cube to 10 micrograms per  
5 meter cube on the day of -- on the effective date of the  
6 entire rule.

7 I can, without getting anyone in trouble in  
8 general industry, tell you that nobody can change air lead  
9 levels the facility overnight, it is physically impossible.  
10 Changing air lead levels in a facility requires the  
11 installation of air handling equipment to control air lead  
12 levels in the facility and to draw that air through a  
13 filtering mechanism, whether it's internal and a HEPA  
14 filter, or for a larger facility through a back house that  
15 discharges that air to the outside.

16 Lead is also, properly, a regulated air  
17 pollutant, which means that in order to install a back  
18 house, you have to go to (indiscernible) and get a permit.  
19 That process, both the design, construction and permitting  
20 process, cannot happen in less than 30 months in the best  
21 case scenario. Cal/OSHA's rule would go into effect in 24  
22 hours. You simply cannot come into compliance in 24 hours  
23 with a new rule.

24 So as an initial and fundamental model, we  
25 disagree with changing the PEL at all. It's unnecessary

1 and it's based on non-real world bull. If the Standard  
2 Board moves forward with a change in the PEL, industry must  
3 be given a period of time to come into compliance with  
4 those changed rules. We are here to protect workers who  
5 want to comply with the rules set forth so that there's an  
6 even playing field. The Board should not be putting  
7 industry in the position of knowingly -- the Board should  
8 not knowingly be putting industry into position being out  
9 of compliance with a rule on the day of effect.

10 I also want to address two or three other  
11 elements of the rule. The first is, as you heard from  
12 Cal/OSHA staff, there was an intentional deletion in some  
13 aspects of the rule when the rule is -- when certain  
14 aspects of the rule are triggered. Today they're triggered  
15 on exposure above the PEL. They're moving to just the term  
16 -- triggering those on the term exposure.

17 Exposure is undefined in the proposed rule. So  
18 they've moved from a quantifiable term to an unquantifiable  
19 term of exposure to lead. As industrial hygienists, I  
20 think a lot of industrial hygienists understand what  
21 exposure is. But because it's not defined in the global  
22 exposure can also mean the physical presence of lead in  
23 your work.

24 That encompasses therefore ammunition, lead  
25 batteries, electronics with lead in them, which could mean

1 arguing that every single retail establishment that sells  
2 those objects is suddenly subject to medical surveillance  
3 (indiscernible).

4 CHAIR THOMAS: Can you wrap it up?

5 MR. MIKSAD: You bet. The other thing I'll note  
6 is that we have concerns about nonoccupational exposure.  
7 There's data that's been provided to the agency that  
8 nonoccupational exposure such as recreational firing ranges  
9 can lead to blood leads above the levels being proposed for  
10 removal, and the Board needs to consider that in the  
11 revisions too. Thank you.

12 CHAIR THOMAS: Thank you.

13 Good afternoon.

14 MR. RAYCROFT: Good afternoon Board Members. My  
15 name is Carl Raycroft. I work for the Ecobat Lead Acid  
16 Battery Recycling Facility, the one recycling facility in  
17 the State of California, formerly known as Quemetco.

18 I wanted to provide some high level comments.  
19 We've provided more detailed comments through our board --  
20 or the trade association that we belong to, the Association  
21 of Battery Recyclers, and that's already been submitted to  
22 the Board. The Ecobat recycling facility provides an  
23 essential service to the State of California. We ensure  
24 that over 10 million batteries per year are recycled  
25 responsibly. The Ecobat facility ensures California's

1 spent lead acid batteries do not end up being disposed of  
2 or recycled unless responsible facilities.

3           We understand the hazards of our industry. And  
4 we're very proud of our continuous improvement approach to  
5 protect the environment, the community in which we operate,  
6 and most importantly our employees. I am convinced that  
7 our employees' blood lead average levels are among the  
8 lowest in the industry. Through our years of experience  
9 and evaluation of data, we have determined that managing  
10 blood lead levels requires so much more than controlling  
11 the lead and air levels.

12           My first ask is that the standard remained  
13 focused on the employee blood lead levels and less on the  
14 lead in air levels. The State of Michigan has completed  
15 extensive investigation into data and determined the best  
16 approach for protecting workers is to maintain the existing  
17 permissible exposure level at 50 micrograms per deciliter  
18 and allow industry expertise to determine the best methods  
19 for managing employee blood lead levels. We support this  
20 approach.

21           At a minimum, I encourage the proposed standard  
22 allow separate engineering control, air limits, SECALs, for  
23 specific tasks within the battery recycling industry. The  
24 proposed standard has established SECALs for specific  
25 processes in the battery manufacturing industry. Standards



1 should include similar consideration for the battery  
2 recycling industry that has an even higher burden of  
3 controlling lead and air for specific operations.

4           The feasibility of controlling lead in air needs  
5 to be considered versus more effective proven means of  
6 controlling blood lead levels. I am asking for  
7 establishment of similar SECAL determination for specific  
8 tasks within the battery recycling industry.

9           Lastly, I'm asking for a three year  
10 implementation time period for the new regulations. I  
11 realized proposed regulations have been in the works since  
12 2010. Since 2010, our operations have reduced blood lead  
13 levels from an average of 10 micrograms per deciliter down  
14 to this current month, we're at 5.4 micrograms per  
15 deciliter. The proposed standard will require a focus on  
16 possibly different engineering controls and respirator  
17 protection that was not deemed necessary under the existing  
18 standard.

19           Adding additional ventilation controls will  
20 require analysis, permitting, and equipment delivery.  
21 These changes will take time in today's challenged supply  
22 chain and regulatory permitting environment. We are  
23 currently seeing a six-month/one-year lead time for powered  
24 air purifying respirators and supporting equipment for  
25 operating those respirators.

1           In summary, my three priority asks are let's  
2 maintain the existing PEL and action levels consistent with  
3 what the state of Michigan has adopted in their new  
4 regulations. Let's focus on the worker blood lead levels.  
5 Let's allow utilization of the SECALs for the battery  
6 recycling industry and allow a three year phase in time  
7 period for the significant changes in the rules that were  
8 impacting the industry. I appreciate your time.

9           CHAIR THOMAS: Thank you.

10           Who do we have next? Good afternoon.

11           MR. COX: Hello, thank you. My name is Zachary  
12 Cox. I'm representing U.S. Battery Manufacturing Company.  
13 We've been building lead batteries for electric vehicles  
14 and electric pieces of equipment in California for over 30  
15 years. A lot of our employees are still there from the day  
16 that we actually built the facility. So we have a lot of  
17 experience in managing lead exposure.

18           We currently have 130 employees that are under a  
19 medical surveillance for lead exposure under the current  
20 regulations. I'm happy to report that all 130 employees  
21 are under the proposed limits for blood lead levels. And  
22 that's at the current PEL and action level for air lead.

23           In our experience, there's a weak correlation  
24 between lead and air and blood lead levels. A lot of times  
25 when we have an employee that has an elevated blood lead,

90

1 when we do an investigation, the root cause the vast  
2 majority of the time is hygiene practices or work  
3 practices.

4           Typically, when we embark on these improvements  
5 it's a long, drawn-out process. And so one of the assets  
6 that we have is if there is further reductions in the PEL,  
7 and the action level, which again, we think is unnecessary,  
8 that there'd be allowed a phase in period. Because as some  
9 of the other gentleman spoke about, there's a long  
10 permitting and construction and design process to install  
11 air handling equipment, and associated controls.

12           One of the other issues that we have with the  
13 rule is, there's no accounting for non-occupational lead  
14 exposure. So if an employee for example, is an avid  
15 shooter, or motor sports or an aviation connoisseur, then  
16 there is lead exposure from that that could impact the  
17 blood leads.

18           Additionally, one of the issues that we have with  
19 the rule is the frequency of blood draws. We operate in a  
20 pretty tight labor market already. And so the frequency of  
21 blood draws for new employees and employees with blood  
22 leads over 10 would increase to either monthly or every two  
23 months, which is a significant ask of new employees or  
24 current employees to get their blood drawn that frequently.

25           But again, I think our core message is that the

1 air leads, or excuse me, the PELs and the action levels  
2 should remain as they are. We agree with lowering the  
3 blood lead standard. And we feel that we are already  
4 complying with that blood lead standard with the current  
5 lead nares that we have now. Thank you.

6 CHAIR THOMAS: Thank you.

7 We will go to the phones again. So, Maya, who do  
8 we have?

9 MS. MORSI: Up next is Mark Ames with AIHA.

10 CHAIR THOMAS: Mark, can you hear us?

11 MR. AMES: I can, can you hear me?

12 CHAIR THOMAS: You can turn your mic up a little  
13 bit please.

14 MR. AMES: Sure. Let me work on -- trying to  
15 start the video. There we are. Wonderful.

16 Good afternoon, everyone. My name is Mark Ames,  
17 and I'm here testifying on behalf of AIHA as their Director  
18 of Government Relations. AIHA is the association for  
19 scientists and professionals committed to preserving and  
20 ensuring occupational and environmental health and safety  
21 in the workplace and community. AIHA appreciates the  
22 opportunity to provide feedback on the proposed changes to  
23 California's lead regulations. Please note that my  
24 testimony is only a high level summary of the more detailed  
25 recommendations that we've submitted.

1           Regarding exposure assessment and monitoring, we  
2 recommend that the following language be included in final  
3 regulations. "The employer shall ensure that all exposure  
4 assessments and monitoring are performed by or under the  
5 supervision of a certified industrial hygienist, as  
6 codified in BMP sections 2700 through 2705." The certified  
7 industrial hygienist credential represents the benchmark  
8 for competence in industrial hygiene. More than half of  
9 AIHA has nearly 8,500 members hold this distinction.

10           Regarding sampling and analysis, we recommend  
11 replacing the exposure assessment and monitoring assurance  
12 language in sections 1532.1 and 5198 with the following,  
13 "Laboratories used for lead analysis of samples collected  
14 for exposure assessment and monitoring shall be accredited  
15 by a program like ELAP." closed quote. ELAP stands for the  
16 Environmental Lead Laboratory Accreditation Program, which  
17 is recognized by the United States Environmental Protection  
18 Agency's National Lead Laboratory Accreditation Program.

19           Regarding roots of lead exposure, AIHA believes  
20 that the best way to determine body lead burdens is by  
21 periodically measuring blood lead levels in workers  
22 wherever lead may be present as a result of workplace  
23 activities.

24           CHAIR THOMAS: Can you slow it down just a little  
25 bit with the comments. I'm having trouble keeping up. Go

1 ahead.

2 MR. AMES: Of course. Exposure to lead in the  
3 workplace can lead to contaminated clothing. When  
4 contaminated clothing is worn and taken home, the result is  
5 possible lead exposures to the worker's family members or  
6 others they live with. The ingestion of the true exposure  
7 must also be considered in the rulemaking process by  
8 identifying when clothing must not be taken home, and when  
9 shower facilities should be required to be provided.

10 Similarly, the rule should contain requirements  
11 for leaving contaminated clothing in the workplace for  
12 proper cleaning, without exposure to persons who launder  
13 the contaminated clothing. Additionally, the rule should  
14 specify when workers need to wash their hands and face  
15 before eating, drinking, or smoking.

16 In conclusion, my testimony represents only a  
17 high level summary of the more detailed comments that AIHA  
18 has submitted, which also address respiratory protection,  
19 medical removal criteria, and other topics. On behalf of  
20 AIHA, I thank you all for the opportunity to provide our  
21 feedback on how California can protect more workers and  
22 their communities. Thank you.

23 CHAIR THOMAS: Thank you.

24 Who do we have next up, Maya?

25 MS. MORSI: Up next is Jacqueline Chan with --

1 Acting Chief of the Occupational Lead Poisoning Prevention  
2 Program.

3 CHAIR THOMAS: Jacqueline, can you hear us?

4 MS. CHAN: Yes. Can you hear me?

5 CHAIR THOMAS: Yeah. You might want to turn up  
6 the volume just a bit.

7 MS. CHAN: Oh okay.

8 CHAIR THOMAS: Thank you.

9 MS. CHAN: Good afternoon. My name is Jacqueline  
10 Chan, and I'm an industrial hygienist and Acting Chief  
11 representing the Occupational Lead Poisoning Prevention  
12 Program at the California Department of Public Health.

13 Today I'm speaking in strong support of the  
14 proposed amendments to the occupational lead standards.  
15 CDPH tracks worker blood lead levels across all lead  
16 industries in California, and has technical experts across  
17 many disciplines, who collaborated with Cal/OSHA to  
18 establish the sound scientific support for revisions to  
19 these lead standards.

20 Over 2,000 workers per year experience  
21 occupational lead poisoning in California. This is likely  
22 a significant underestimate as not all employers provide  
23 the required testing for blood lead. In the nearly half  
24 century since the OSHA lead standards were established,  
25 scientific research has clearly demonstrated that even low

95

1 blood lead levels over long term exposures can cause high  
2 blood pressure, kidney disease, brain injury, fetal harm  
3 and other conditions.

4           We found that many employers with lead poisoning  
5 in their workers have not performed required air testing  
6 for lead. The proposed amendments make important changes,  
7 including increasing the use of blood lead testing in  
8 workers, requiring medical removal at lower blood lead  
9 levels, and ensuring that workers at risk are offered  
10 protections even before air monitoring is done.

11           Additionally, children, pregnant women and other  
12 household members who are more vulnerable to the damaging  
13 effects of lead will be more protected by the proposed  
14 requirements that improve training on how to stop bringing  
15 lead home. These are the most important changes to the  
16 lead standards in almost 50 years, and is based on sound  
17 science and principles of public health.

18           Thank you for considering adopting the revised  
19 occupational lead regulations.

20           CHAIR THOMAS: Thank you.

21           Who do we have next, Maya?

22           MS. MORSI: Up next is Sharon Hilke, Executive  
23 Director of Painting and Decorating Contractors of  
24 California.

25           CHAIR THOMAS: Hello -- is it Sharon?



1 MS. MORSI: Sharon.

2 MS. HILKE: Yes.

3 CHAIR THOMAS: Sharon, are you there?

4 MS. HILKE: Yes.

5 CHAIR THOMAS: Turn up the volume just a hair  
6 please. Thank you.

7 MS. WILKE: It's at 100. All right. Let's  
8 figure this out. I'll just be closer to you.

9 Chairman Walker, Standard Board Members and  
10 staff. My name is Sharon Hilke and I'm the Executive  
11 Director of Licensed Painting Contractors of California,  
12 and I'm representing their concerns today. I want to  
13 specifically address the issue of showering stations.

14 So, let's start with this. Portable showering  
15 stations are not actually available for the prescribed use  
16 as prescribed by Cal/OSHA. So portable showering stations  
17 as we think of them are really for campgrounds, campsites  
18 and some personal events. They are not permitted to be  
19 used for any kind of lead decontamination. That is just  
20 not in the offering. What is intended but isn't addressed  
21 or specified in the proposed regulation, is that what is  
22 required are portable decontamination showering facilities.

23 So a decontamination showering facility will have  
24 HEPA filters for the water, the air. They have a dirty  
25 station, their name not mine, where you undress and put

1 your clothes in a laundry washer on site. Then you go into  
2 a shower station, then a clean station and lockers for a  
3 change of clothes. These are not available for rent. You  
4 cannot rent a decontamination showering unit. They are  
5 only available by sale or purchase. They're specifically  
6 used, are primarily used for firefighters and for -- I've  
7 got COVID allergies -- and industrial environmental waste  
8 removal companies.

9           So the cost of purchasing a decontamination  
10 showering unit ranges from \$78,000 to \$94,000. A small  
11 business equity contractor, the people that I represent,  
12 that has 10 employees, would probably run two residential  
13 job sites. Which means they need two showering stations  
14 for purchase. And if AB 521 passes, which requires  
15 Cal/OSHA to require separate bathroom facilities for men  
16 and women on construction, that would obviously logically  
17 translate into separate showering stations as well.

18           So again small painting contractor, 10 employees,  
19 two little residential work sites, they could be up to  
20 purchasing four of these units. The cost of them is  
21 172,000 to \$344,000. Plus, a decontamination showering  
22 station, at a minimum is 16 by 8 feet. And according to  
23 the manufacturer it requires a one ton dually truck to move  
24 them. You're going to have to get encroachment permits,  
25 because they're huge and they're going to be parked out

1 there for one or two weeks or more. There's also a  
2 considerable loss of active working hours due to the time  
3 they got to schedule at the end of every shift for  
4 showering -- excuse me.

5           So in terms of the cost beyond the initial  
6 impact, there's 300,000 licensed contractors in California;  
7 129,000 of them are just general contractors, roofers, and  
8 painting contractors. If every contractor had to buy one,  
9 just one decontamination showering unit, which obviously is  
10 going to come close to the need, that cost would be  
11 \$11,094,000,000.

12           CHAIR THOMAS: One minute, please. One minute,  
13 please, go ahead.

14           MS. HILKE: Excuse me?

15           CHAIR THOMAS: You have one more minute.

16           MS. HILKE: Okay. This doesn't include multiple  
17 stations, which there's over 200 -- I mean 2 million  
18 employees in there. The regulation is basically going to  
19 destroy construction buildings. It's not hyperbole, it's  
20 just a fact. Small to mid-size businesses will not be able  
21 to comply and will not be able to compete with the  
22 underground economy. Those people can't even bother to get  
23 a license, do you think they're going to buy a portable  
24 regimen showering station?

25           The result of an underground economy is that more

1 and more workers are actually going to get sick, because  
2 they don't get the PPE. They're not going to have all the  
3 protections that we provide them. Because contamination  
4 showering units have to be purchased at an excruciating  
5 loss to the contractor, again about \$90,000 per unit. The  
6 showering standard is unattainable. And it's not just  
7 inconvenient. It's not just the cost of doing business.  
8 It is completely unattainable.

9 For that and for many other reasons, the  
10 decimation of small to mid-sized businesses, the impact on  
11 employment, the impact of women in construction. If you're  
12 a contractor, it's going to cost you another \$100,000 to  
13 hire or put a woman on your crew. And they won't hire  
14 women. That's just a -- we all know that's going to  
15 happen.

16 And the basic degradation of workers showering in  
17 a public bathroom on a public street. I'm pretty sure  
18 nobody in this room in that hearing room would like to get  
19 in line right now and take a shower in the street, it's  
20 absurd. The showering requirement respectfully should be  
21 stricken from the proposed regulation in its entirety.

22 Thank you very much for your time and  
23 consideration of our concerns. I appreciate the  
24 opportunity.

25 CHAIR THOMAS: Thank you.

1 All right, we'll continue with in-person  
2 comments.

3 MR. GARDINER: Good afternoon, Chair Thomas,  
4 Board Members and staff members. My name is Ross Gardiner.  
5 I'm here on behalf of Interspace Battery and Concorde  
6 Battery. Combined, we employ over 200 employees in the  
7 battery manufacturing field. We manufacture batteries for  
8 applications, including military aircraft, civilian  
9 aircraft and renewable energy applications.

10 We -- our current employees are all under the  
11 proposed reduced blood lead levels in the new rule, under  
12 the medical renewable and under the target level of the new  
13 rule. And we've been able to do that with the current  
14 environment of a PEL of 50 micrograms per cubic meter, and  
15 an action level of 40 micrograms per cubic meter. And what  
16 we find with a lot of experience through blood lead  
17 testing, and reviewing with employees is that the most  
18 common cause of elevated blood leads is either through  
19 hygiene practices or additional training on work practices.

20 And so we commonly see two employees in a similar  
21 job position with identical air leads who have much  
22 different blood lead levels. And when we coach and counsel  
23 that employee, we find that the blood lead levels can come  
24 down through improved hygiene practices and improved work  
25 practices. So we asked that the PEL and the action level

1 remain at the current levels, and we certainly support the  
2 reduced blood lead levels that are in the new rule.

3           If the air lead levels continue at the proposed  
4 level, there will certainly, as many people have spoken  
5 already, be a need for a phase-in period. In addition to  
6 the timeline to install new air filtering equipment, which  
7 is up to three years, could be longer, there's a lot of  
8 permitting involved with that as well.

9           There's also additional time to put in shower  
10 facilities for certain manufacturers. So we would  
11 definitely need a three-year phase-in period to be able to  
12 attempt to attain the lower PELs. But again, we don't  
13 believe that the lower PEL or action level is necessary as  
14 proven by our ability to meet the worker protections  
15 through the lower blood lead levels with the current PEL  
16 and action level.

17           In regards to respiratory protection, the latest  
18 version of the rule adds a -- in 5198(f)(3) restricts the  
19 ability to use filtering facepiece respirators. And these  
20 are really important for us for a couple of reasons.  
21 Filtering facepiece respirators we offer as an option to  
22 our employees, especially in hot work areas in the summer.  
23 And those employees that elect to use them find that they  
24 are much more comfortable and lead to lower heat. And  
25 therefore are important to avoid heat stress and heat

1 illness, which is an important topic for us all.

2 In addition filtering facepiece respirators allow  
3 for easier communication, especially when that  
4 communication is integral to safety is important. So we  
5 asked that 5198(f)(3) recently revised to allow for  
6 filtering facepiece respirators, and subsection (f)(3)(D)  
7 be amended to add 1095, R95, and T95 type filtering  
8 facepiece respirators.

9 Along the lines of employee protection from heat  
10 stress. A really important change that is needed is the  
11 allowance of hydration stations near the employees' work  
12 area. In Cal/OSHA's recent outdoor heat standard, there is  
13 a requirement to provide hydration stations as close as  
14 practicable to the work area. And of course, that's  
15 important to allow employees to get water, to hydrate as  
16 often as possible, to really fend off heat illness.

17 So we ask that BCI reinstate the language from  
18 the 2016 draft, which allowed for hydration stations, which  
19 are properly designed and safe to be near the employee  
20 workstations rather than having employees be required to go  
21 to a separate break or lunch area. Thank you.

22 CHAIR THOMAS: We're going to hear two more in-  
23 person commenters. Then we're going to go do a half-hour  
24 water break for everybody. It's getting late in the  
25 afternoon. And when we come back after that, we'll do half

1 an hour to 45 minutes of comments and then we're going to  
2 cut it off. (Indiscernible.) Go ahead, continue.

3 MR. RICHARD: Good afternoon, everyone. My name  
4 is Joe Richard. I'm the Director of Industrial Hygiene and  
5 Safety for C&D Trojan Battery. We have two facilities here  
6 in California, approximately 400 employees.

7 What I wanted to propose is that the PEL and the  
8 action level is -- I think the reduction is based on air  
9 levels instead of blood leads. And I think the  
10 relationship between air concentrations and blood leads is  
11 highly uncertain and variable and not constant over time.  
12 And I think that with that, our facility along with the  
13 Battery Council -- we've really reduced our blood leads  
14 considerably over the years. And we've brought them below  
15 the new proposed standard. And we focused -- and we've  
16 heard this before -- on hygiene methods and behaviors. And  
17 we find that that is one of the better ways to reduce our  
18 blood leads.

19 And we, in addition to that we measure that on a  
20 monthly basis, we have monthly metrics that we cover on all  
21 our plants. And we continue to drive that. And right now,  
22 we're under 8 micrograms per deciliter on average.

23 We're also as far as medical monitoring and  
24 removal, we would be already compliant with the new  
25 proposed standards. So we like the blood lead part of the



1 standard. But the ask is not to go downward with the PEL  
2 and the action level.

3 Now that segues right into the SECALs. We're  
4 also very supportive of the SECALs. I believe that they're  
5 reasonable, and they give us a little time to reduce. They  
6 also improve some of the protection for our employees. And  
7 we've already done a lot of that with PAPRs, full face  
8 respirators, lead testing and so on.

9 So one other thing. We did talk -- or the last  
10 speakers talked about the filtering facepiece. And we'd  
11 like -- and I would like that back in there. Because we do  
12 have our staff that travel through our plants, very minor  
13 potential exposures, but it's nice to have the filtering  
14 facepiece for protection. And we won't have to put them  
15 into a respirator program when they're only going to be out  
16 on the floor for a few minutes. I myself use that when I  
17 visit the plants, and I feel very comfortable, and my blood  
18 lead is below detection. So I feel very comfortable with  
19 that.

20 That's it. Thank you very much.

21 CHAIR THOMAS: Thank you.

22 Good afternoon.

23 MR. MALSON: Good afternoon, Jeremy Malson, also  
24 in the CIH and CSP. I've heard a lot from battery folks  
25 today, a lot of roofers, very little from welders, bracing

1 blasters, and very few consultants like me.

2 A couple of things to think about. Under 1529,  
3 the Asbestos standard subsection (r), there's a requirement  
4 for contractors to be licensed to work with asbestos. One  
5 of the biggest failures of my opinion with the lead rule,  
6 as it's currently standing and proposed is there's no  
7 similar license from lead-related work.

8 Welders, bracing blasters, trigger task 2 people,  
9 if you want compliance then owners need to know who are the  
10 lead licensed individuals or firms that they can hire. It  
11 does represent a standard. Roofers can talk about the C-22  
12 license and what that meant to their industry. But similar  
13 to the asbestos standard that should be looked at.

14 When we get to what a lot of folks have been  
15 saying today about air thresholds versus dust thresholds,  
16 with ingestion being one of the major routes of exposure  
17 and trying to incorporate that into Cal/OSHA standard.  
18 Things to think about, California Department of Public  
19 Health has at least four or five different standards for  
20 dust and or soils, 10 micrograms per square foot floors,  
21 100 for other horizontal surfaces like desktops, 400  
22 micrograms per square foot for exterior horizontal  
23 surfaces.

24 The difficulty as a consultant with clients is  
25 for children in a play yard the dust threshold is 400. As

1 soon as I crossed the barrier to the school, it drops to  
2 10. Explain that to a parent with blood lead poisoning on  
3 why those different thresholds exists.

4 Under federal OSHA compliance directive, as free  
5 as practically from the contamination of lead they use a  
6 value of 200 micrograms per square foot. Something needs  
7 to be injected into 1532.1 and even 5198, if we're going to  
8 really tackle the hygiene on it.

9 Regarding showers, the asbestos industry  
10 routinely uses showers for (indiscernible) work. They are  
11 available, difficult to use, difficulty is hot water  
12 heaters, difficulty is wastewater, and they're small so you  
13 have throughput with a lot of employees that need to use  
14 it. It does not take a truck-mounted rig to use it and  
15 they do set up three stage decontamination chambers.

16 CHAIR THOMAS: Can I ask you one question, could  
17 you restate your name and affiliation because we missed it  
18 somehow?

19 MR. MALSON: Sure. Jeremy Malson, Independent  
20 Consultant.

21 CHAIR THOMAS: Thanks.

22 MR. MALSON: Regarding exposure assessments, I  
23 concur with AIHA, I concur with CIHC about the CIH and  
24 exposure assessments. As a safety professional also,  
25 safety in my opinion is done more effectively and better

1 than industrial hygiene on construction sites. Hard hats,  
2 safety nets, backup alarms, fall protection, all of that is  
3 readily viewable when you audit a job site. What is not is  
4 periodic exposure assessments and periodic exposure  
5 regimes, and that whole process.

6           When we tried to look at 1532.1, which is purely  
7 driven for regulated areas, to demarcation, to shower  
8 facilities, to respiratory protection based on air results,  
9 that's probably the one area in industry that is least  
10 performed, day to day on every single project. With  
11 minimum standards of one time manually for similar exposure  
12 groups, etc. it would be better to have some sort of  
13 increase in requiring additional help with exposure  
14 assessments.

15           I believe that there should be a delicate balance  
16 with turning workers into pin cushions. Every month, going  
17 to the doctor to draw blood. We need to think about what  
18 that means for workers having to routinely go get needles  
19 poked into them.

20           Specialty contractors, we've heard of SECALs,  
21 abrasive blasting limitation to two hours a work week. I'm  
22 forecasting 10 years out that you have an abrasive blaster  
23 that works the first two hours for contractor one, it's a  
24 gig economy now, he goes to contractor two for his next two  
25 hours. The next two hours, he's with contract three

1 because he needs to fill his eight hour day. And they're  
2 so special in what they do, they're not going to be able to  
3 do a non-lead task for the other eight hours or the other  
4 six hours on the job site. Imagine abrasive blasting one  
5 of the Bay Area bridges. And that's a concern that the  
6 abrasive blasting industry has.

7 Also, when we look at abrasive blasting we are  
8 forcing them into containment. We are forcing them to have  
9 higher exposures for other environmental concerns. So when  
10 we look at SECALs and we look at the abrasive blasting  
11 industry, that is concerning. And I believe that is really  
12 all that I have today and I thank you (indiscernible)  
13 feedback.

14 CHAIR THOMAS: Thank you very much.

15 So we are going to adjourn until 1:30. All  
16 right, yeah. We're going to adjourn until 1:30 and then  
17 we'll come back in session. And then we'll hear some more  
18 testimony for about a half hour, 45 minutes, and then we'll  
19 be done with the (indiscernible). So anyway we're in  
20 recess. Thanks.

21 (Off the record at 12:53 p.m.)

22 (On the record at 1:33 p.m.)

23 CHAIR THOMAS: All right, we're back in session.  
24 And we start with I think we have (indiscernible) so we can  
25 start with that, Maya?

1 MS. MORSI: Up next is Perry Gottesfeld with OK  
2 International.

3 CHAIR THOMAS: Perry, can you hear us?

4 MR. GOTTESFELD: Yes. Good afternoon.

5 CHAIR THOMAS: Turn up your mic just a little  
6 bit, please?

7 MR. GOTTESFELD: Yes.

8 Good afternoon. I'm Perry Gottesfeld with  
9 Occupational Knowledge International. We want to urge you  
10 to move quickly to approve the proposed regulations to save  
11 lives in California, given that the latest estimate that  
12 almost a million people a year are dying from lead  
13 exposure.

14 The industry has told you that this proposal is  
15 an onerous regulation that is impossible to comply with.  
16 But in fact, the proposed standard took so long in coming  
17 that it simply codifies the status quo in lead battery  
18 manufacturing and recycling facilities in the US. The  
19 industry, which have some of the highest exposures, and  
20 most number of impacted employees has been very successful  
21 at reducing exposures and employee blood lead levels over  
22 the past decade, so that the proposed standards have  
23 largely been achieved.

24 In fact, 12 years ago, RSR, now Ecobat, the  
25 largest battery recycling facility here in California,

1 encouraged OSHA to revise its work protection standards  
2 with a metal removal level of 20, and return to work below  
3 15 micrograms per deciliter.

4 Last year, EUROBAT, the European Battery  
5 Association submitted comments to the EU regulators stating  
6 that current standards, "Are no longer reflective of  
7 scientific evidence of health effects at the workplace, or  
8 the current performance of industry in managing lead  
9 exposures." EUROBAT also agreed with European  
10 government's proposals that the existing biologic -- excuse  
11 me biological limit value should be revised down to 15  
12 micrograms per deciliter, 1-5. They also noted that  
13 Germany already has a limit value of 15 micrograms per  
14 deciliter.

15 The BCI website states that today is -- "Today, a  
16 significant majority to BCI member workers maintain below  
17 blood lead levels below 10 micrograms per deciliter with  
18 the industry average below 9." And as you heard today,  
19 they've continued to make improvements and lower average  
20 blood lead levels.

21 The industry will tell you that reductions in  
22 airborne PEL are not necessary and infeasible. But the  
23 proposed standard already accounts for industries' concerns  
24 with the compromise language calling for separate  
25 engineering control air limits, or SECALs. In fact, BCI

1 told OSHA last year, Federal OSHA last year that, "Should  
2 OSHA decide to pursue reductions to the PEL, BCI strongly  
3 supports the inclusion of separate engineering control air  
4 limits SECALs as contained in the Cal/OSHA draft."

5 In summary, the proposed Cal/OSHA lead standard  
6 is simply adopting requirements that the industry has  
7 already voluntarily adopted, and in most cases, has already  
8 achieved. Thank you very much.

9 CHAIR THOMAS: Thank you.

10 From this point on we're going to go to about  
11 2:00 o'clock with comments. We'll take as many as we can,  
12 so try not to repeat what other people have said and just  
13 get your point. And we'll try and get through as many as  
14 we can.

15 All right, who do we have next, Maya?

16 MS. MORSI: Next is Dr. Cris Williams, with  
17 International Lead Association.

18 CHAIR THOMAS: Dr. Williams, can you hear us?

19 DR. WILLIAMS: I can. Can you hear me and see  
20 me?

21 CHAIR THOMAS: Yeah, go right ahead.

22 DR. WILLIAMS: Right. And it's actually -- so my  
23 name is Cris Williams. I'm a Toxicologist and Senior  
24 Scientist for Health at the International Lead Association.

25 I'm going to comment on the model that's being



1 used as the basis for the proposed rule's PEL and action  
2 level, referring specifically to the California Office of  
3 Environmental Health Hazard Assessments pharmacokinetic  
4 model for lead. In simple terms, this model was developed  
5 to show the relationship between blood lead concentrations  
6 and air lead concentrations for the purpose of establishing  
7 air lead limits based on health based blood limits. But  
8 there is a new study about to be published that will show  
9 that the model is an extremely poor predictor of air lead  
10 concentrations based on blood lead concentrations.  
11 Especially at the low air lead concentrations targeted by  
12 the proposed PEL and action level.

13           This new study overseen by one of the world's  
14 leading academics in the field of lead health  
15 (indiscernible) looked at workers in a modern lead handling  
16 facility for which more than 700 data points were available  
17 for worker blood lead, and personal inner lead  
18 concentrations collected for a given worker at the same  
19 time. In this study, air and blood lead data were  
20 collected for workers under conditions of no respirator use  
21 and also possessing background blood lead levels at the  
22 time of enrollment in the study.

23           I'll cut to the chase. The key -- excuse me, the  
24 key findings of the study were one, when air lead  
25 concentrations were plotted against blood lead

1 concentrations for each of the workers in the study, there  
2 was shown to be no relationship between air lead  
3 concentrations and blood lead concentrations. And  
4 statistical analyses of the data confirm this conclusion.

5 And secondly, when air lead -- the air lead-blood  
6 lead relationship from the study was compared to the  
7 relationship is established by OEHHA's pharmacokinetic  
8 model, statistical analysis demonstrated that the model was  
9 an extremely poor fit the data from the study.

10 So the overall conclusion of this new study was  
11 that the air lead-blood lead relationship from the OEHHA  
12 model in no way resembled the relationship demonstrated by  
13 real world data from a modern lead handling facility. So  
14 on this basis, it's inappropriate to use the model as the  
15 basis for establishing the PEL and the action level in the  
16 proposed rule.

17 The lead industry has previously submitted a  
18 detailed comments to the State of California over the years  
19 on the technical flaws of the model that might explain why  
20 the model does not reflect conditions in a modern lead  
21 handling facility.

22 So I'll end just by noting that the information  
23 I've just presented exists in greater detail in ILA's  
24 comments on the proposed rule that were submitted today.  
25 Thank you.

1 CHAIR THOMAS: Thank you.

2 And then we'll take one more call. Go ahead.

3 MS. MORSI: Up next is AnaStacia Nicol Wright  
4 with WorkSafe.

5 CHAIR THOMAS: AnaStacia, can you hear us?

6 MS. NICOL WRIGHT: Yes, I can. Give me one  
7 second.

8 CHAIR THOMAS: It's a little bit loud. A little  
9 bit loud.

10 MS. NICOL WRIGHT: I'm too loud?

11 CHAIR THOMAS: You're okay now? We'll see. No,  
12 go ahead. Go ahead.

13 MS. NICOL WRIGHT: Okay. Hi, everybody. Good  
14 afternoon. I'm AnaStacia. I'm here with WorkSafe or on  
15 behalf of WorkSafe. I'm also here on behalf of California  
16 Rural Legal Assistance Foundation. And I know we're short  
17 on time, so I just want to express that WorkSafe submitted  
18 a letter, a comment letter on the lead standard recently in  
19 support of the proposals. And we also signed it in  
20 coalition with a whole bunch of other worker-based orgs as  
21 well. And just bringing your all attention to that. And  
22 let you know that we're here again to continue to express  
23 strong support for the important proposed amendments that  
24 you guys have put forth in the lead standard. And I'll  
25 leave it at that since we're short on time. And thank you

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1 all.

2 CHAIR THOMAS: Thank you very much.

3 So we'll go to in-person now. So let's step up  
4 to the mic and state your name and good afternoon.

5 MR. STEIGER: Good afternoon, Chair Thomas,  
6 Members and staff. Mitch Steiger with the California Labor  
7 Federation and appreciate the opportunity to testify today.  
8 And as always, I definitely want to appreciate all of the  
9 work that Cal/OSHA and Board staff has done to get us to  
10 this point.

11 In short, we're here to urge the Board to adopt  
12 the lead standards. I'm thinking back to a lot of the  
13 testimony that we've heard today. It's covered a lot of  
14 different topics, but one thing that has been really light  
15 on is a discussion of the effect of lead on the human body.  
16 So let's talk about that.

17 Lead, it starts in the brain, it causes all sorts  
18 of problems in the brain. Looking around the room, most of  
19 us are old enough to have been born in the era of leaded  
20 gasoline. And as a result of that, we all go through life  
21 with reduced brain function. We have three to six fewer IQ  
22 points than we would have otherwise if we hadn't been  
23 exposed to that toxin at a young age. It means reduced  
24 impulse control. It means greater likelihood of learning  
25 disabilities, greater likelihood of mental illness. And

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1 those are just some of the effects on the brain, which is  
2 just one part of the body.

3 As all of the evidence shows, it affects every  
4 part of our body, we all have a higher risk of heart  
5 disease, because we were exposed to this. Our circulatory  
6 systems don't work as well. Our kidneys don't work as  
7 well. Everywhere there is in our body, if there's a place  
8 that can be harmed by lead it's been harmed by lead and we  
9 can't recover from that.

10 Not only am I old enough to have been born in the  
11 era of leaded gasoline, I worked in the era of leaded  
12 gasoline, and spent a lot of time standing next to idling  
13 cars. And as a result of that, probably have an even more  
14 pronounced effect from the exposure to that lead.

15 And the industry has -- I've heard several people  
16 make the argument that there's no relationship between lead  
17 in the air and lead in our bodies. Which must be news to  
18 the people who research this topic and especially all those  
19 who found all of these links between lead in gasoline and  
20 lead in a body. Or people who live downwind from a small  
21 airport that still uses leaded gasoline and lead in the  
22 blood of the children and the families who live there. I  
23 don't know how to explain it. I mean, I guess they're  
24 drinking gasoline or playing and gasoline a lot more than  
25 they realize or something. But there's all sorts of

1 evidence. There are all sorts of clearly demonstrated  
2 links out there between lead in the air, and lead in the  
3 body. And that's one of the pieces that's driving this  
4 standard. And one of the reasons that it's so important.

5           And the more that you look into this, and the  
6 more that you research the effect that lead has on a human,  
7 hopefully most people have the same reaction we do in  
8 looking at that, which is how on earth has it taken this  
9 long? How have we been talking about this for so many  
10 decades, however we've been looking at this specific  
11 standard since 2010. I was hired at the Labor Fed in 2010.  
12 And in 2013, I went to a two-day training where they went  
13 through all the different effects that lead has on the  
14 body. And had all sorts of charts and all sorts of  
15 horrifying data. And everyone just spent the whole time  
16 shaking their heads just in disbelief that it's taken this  
17 long to get us here.

18           But it would seem that the response from the  
19 industry has been, let's take longer. Let's slow down.  
20 Let's do more advisory committees. Let's walk it back.  
21 Let's criticize the data that all of the people who aren't  
22 involved in the industry seem to agree on. And let's slow  
23 things down and take longer. But it really does seem like  
24 there's a relationship between that perspective and an  
25 unwillingness to discuss what lead actually does to a human

1 being. And we think most people who look at this and learn  
2 more about what lead does to a person reached the same  
3 conclusion, which is, we need to do something about this  
4 right now. We need to pass these regulations right now we  
5 need to get going. That's definitely the perspective of  
6 the labor movement. It's been the perspective of a few  
7 people who've spoken today. And we certainly hope it's the  
8 perspective of the Board today.

9           And we urge your support for the new lead  
10 regulations. Thank you.

11           CHAIR THOMAS: Thank you. And I don't know about  
12 this thing about leaded gas. I must be way too young to  
13 have known that. Anyway, who do we have next? Good  
14 afternoon.

15           MS. CLEARY: Good afternoon, Chair Thomas, Board  
16 Members. My name is Helen Cleary and I'm the Director of  
17 PRR Occupational Safety and Health Forum.

18           PRR supports the overall objective to reduce  
19 blood lead burden on workers. And we agree that a lower  
20 PEL and action level is warranted. However, we do have  
21 some concerns with the proposed text. We submitted  
22 extensive written comments yesterday that details the  
23 concerns, and some of the specific language as well.  
24 Hopefully, you'll have time to review that before you make  
25 a decision about the text. But I wanted to touch on our

1 primary concerns today.

2           The primary issue with the general industry rule  
3 is the complexity and potential impact it will have on  
4 employers in industries not currently subject to the lead  
5 standard. In addition to complexity, our concern about the  
6 construction standard is that it does not consider  
7 frequency or duration of exposure, especially for unknown  
8 exposures and short tasks at low levels.

9           Based on our understanding, we do not believe the  
10 proposal appropriately considers workers who may come into  
11 contact with lead containing material that is incidental  
12 and infrequent to their primary duties. The regulation  
13 requires a significant amount of work that needs to be done  
14 prior to potential exposures that include very low  
15 exposures. Many of these low exposures will be  
16 intermittent and infrequent. And this adds to the  
17 complexity and it limits the employers opportunity to  
18 determine the actual employee exposures as required. It's  
19 highly unlikely that the employer and construction and  
20 general industry will be able to determine and test the  
21 concentrations of airborne exposures for these types of  
22 tasks.

23           If these assessments cannot be completed prior to  
24 exposure, interim protections may be required, and the  
25 interim measures are significant. They require respiratory



1 protection, PPE change areas, shower facilities and medical  
2 surveillance that includes the blood lead testing. Once  
3 the pre-exposure tests are complete there are some  
4 exemptions and the follow-up monitoring and response is  
5 easier to manage. It's the upfront heavy burden in the  
6 beginning to get you there that we find unreasonable.

7           One major concern we have is the possibility due  
8 to the use of leaded gasoline like people have been talking  
9 about previously, in roadside construction or any digging  
10 in areas with airily deposited lead contains soil that  
11 could trigger that requirements. Many California utilities  
12 and communication companies must perform routine  
13 replacement and emergency maintenance on utility lines,  
14 your water, gas, power, cable. Negative exposure  
15 assessments would not be applicable given the transitory  
16 nature of utility repair and short duration of the task.  
17 And during emergency operations there just won't be time.

18           The result would be interim procedures for  
19 utility crews on the streets, full face (indiscernible)  
20 respirators or even a PAPRs, full Body protective clothing,  
21 gloves, hat, shoes, face shields, (indiscernible) as  
22 required. And that's because we don't know the exposure,  
23 not because it's necessarily high exposure. This could  
24 raise public concern and would be a heat hazard created by  
25 wearing these types of protections in August on the road.

1 We don't believe this is an appropriate solution or  
2 response. And if we're misunderstanding we would love to  
3 hear from the Division on this, because this is one of our  
4 series our major concerns.

5 We strongly recommend that the Board rejects this  
6 draft and ask Cal/OSHA to continue working with  
7 stakeholders to draft simplified amendments that will  
8 protect workers and address industry's concerns. Such a  
9 low PEL requires a different strategy, than what is in  
10 place now, and frequency needs to be considered for  
11 exposure assessments in the construction standard.

12 CHAIR THOMAS: Can you slow down just a little  
13 bit?

14 MS. CLEARY: Yeah, sorry. I was trying to move  
15 forward.

16 There are other approaches that will reduce the  
17 burden on employers and honor and protect workers at the  
18 same time. And that's what we're asking to explore.

19 In addition, we asked for a phase-in period as  
20 others have asked for. With the necessary data analysis,  
21 there's going to be a lot of front data analysis to be  
22 done. In addition to building out potential changes to  
23 facilities and buildings and structures, there will be time  
24 needed to do that.

25 And it's important to acknowledge that workers

1 will not be left unprotected while we try to figure this  
2 out. California's lead standards do provide a level of  
3 protection and despite the PEL and action level being out  
4 of alignment, slow down, with the current understanding  
5 these regulations have resulted in effective lead  
6 management programs. These programs directly reduce  
7 occupational exposures to lead. And according to a CDPH  
8 report that was issued, blood lead levels are trending down  
9 in California. CDPH stated in its report released in 2021,  
10 Lead Levels In California Workers, "While lead poisoning  
11 remains a significant concern for California workers  
12 exposed to lead, blood lead test results reported to the  
13 Occupational Blood Lead Registry in the years 2015 to 2018  
14 suggest that there may be a trend in exposed workers having  
15 lower blood lead levels. This conclusion is based on an  
16 increase in reported BLL (phonetic) results less than 5  
17 micrograms per deciliter, with missing information  
18 concerning employer and exposure sources not sought by OLPP  
19 occupational exposure sources most likely."

20 We also want to note that Federal OSHA is  
21 actively working on amendments to lead blood standard as  
22 well.

23 PRR realizes that this rule has been in the works  
24 for many years, and that DIR, Cal/OSHA, CDPH, the Board,  
25 everyone's eager to finalize it. However, as we've pointed

1 out there are significant concerns that need to be  
2 addressed. And these are concerns that industry has  
3 highlighted since 2015 and that Board staff has  
4 acknowledged.

5 Today marks the end of the public comment period  
6 for these amendments. This is the official time for  
7 stakeholders to provide feedback for the Board and Division  
8 to consider as an integral and required step in the  
9 rulemaking process. And we hope that the comments today  
10 are heard and responded to despite the fact that the rule  
11 has been in the works for too many years. And because the  
12 SRIA has already been based on a previous draft from this  
13 draft.

14 PRR believes and we hope the Board agrees it is  
15 more important to get it right than just to get it done.  
16 So thank you for your time today.

17 CHAIR THOMAS: Thank you.

18 Go ahead. Good afternoon, yes.

19 MR. MOUTRIE: Good afternoon, Mr. Chair and  
20 Members, Robert Moutrie for the California Chamber of  
21 Commerce. I will try to not repeat anything that was said  
22 today by more experienced people than myself or closer to  
23 lead industry. I'd like to focus on a procedural piece  
24 first and echo the comments of Bruce Wick that on a going  
25 forward basis, to the extent that drafts are updated

1 shortly before votes specifically, when they're  
2 significantly updated, we would really request a red line  
3 if possible, provided. I attempted to make one but when  
4 the drafts released are in PDF, we can't redline that Visio  
5 software easily. It doesn't catch cross throughs. So a  
6 simple request would be red lines in Word that we can then  
7 more quickly assess our comments and provide input to you  
8 when drafts are updated (indiscernible).

9 I echo the concerns raised by construction, also  
10 stained glass, battery, colleagues. And focusing on the  
11 concerns that the PEL and the BLL are not necessarily  
12 correlated. That air lead levels are not the same as blood  
13 levels and that blood lead is where the harm is. I think  
14 those are well spoken, so I won't spend more time on them.

15 I also of course echo the colleague -- or the  
16 comments of my colleague Helen Cleary from PRR.

17 CHAIR THOMAS: Don't talk too fast.

18 MR. MOUTRIE: Helen, I (indiscernible) so yes,  
19 thank you. I will.

20 Now I want to step back to I think the broad  
21 question. I've heard many times here, and also in the  
22 Legislature, that the goal is to separate the good and bad  
23 actors, right? And to punish the bad and hopefully not  
24 punish the good on the way. And I have a significant  
25 concern here, as the comments of many have reflected that

1 there is a timeline to doing the things this regulation  
2 compels us to do that will not be feasible, even for the  
3 good actors who start today well before you vote.

4           If you were to start today, and you've heard  
5 about a 30-month or a three-year timeline for  
6 installations, even well before you vote, it could not be  
7 in compliance by the time this goes into effect. And that  
8 is not something we dealt with the same way in the COVID  
9 Reg, on wildfire smoke regs, where you did not have the  
10 kind of installations necessary, right? And the permitting  
11 necessary and the construction necessary.

12           So I hope although there's a range of issues  
13 here, I'll turn to the relief. I hope that the Board and  
14 staff would consider a 15-day change to address many of the  
15 industry specific concerns here. And above all, make sure  
16 that the timeline to get into compliance is allowed,  
17 potentially with an actor's ability to demonstrate that  
18 they're moving towards compliance. And this especially is  
19 important for the PEL element. Because as was noted, the  
20 institutional implementation to change the air lead levels  
21 is very significant. And it's not something that can be  
22 done quickly. So even good actors will be getting  
23 potentially cited for years as they attempt to do what you  
24 want. And we don't want that. I don't think that  
25 separates the good and the bad actors.

1           As to the vehicle, again I think we would ask  
2 that -- and this is something I know the Board is sensitive  
3 about making sure you meet the timeline for formal  
4 rulemaking, right? And we had the issue with first aid and  
5 we don't want to repeat that. But I am hopeful that if we  
6 can move to the 15-day change order rapidly, that will not  
7 affect the ability to pass this on time. It will not delay  
8 that, but will let us address some of these industry  
9 specific concerns.

10           I also need to very briefly address some of the  
11 assertions that were made by my colleague in the Labor Fed  
12 about industry's positions, because I believe it was  
13 misstated. The vast majority of industry you've heard  
14 today did not say lead was not a threat, right? The  
15 assertion was we've never heard of lead, and we're not sure  
16 how it works. That's not what you heard from anyone else.  
17 What we have said is -- and I don't -- what we have said is  
18 the problem for us is "how," not "what." And I understand  
19 that that is not the concern of labor advocates  
20 necessarily. They don't have to solve "how" but we as the  
21 business implementing do have to solve the "how" problem.  
22 And that is where most of our comments and concerns are.  
23 And I hope that we can address the how, because we're not  
24 fighting about the "what" but we do have to figure out the  
25 "how." Thank you.

1 CHAIR THOMAS: Thank you.

2 So let me just see how many people we have in  
3 person that want to speak left. All right, you're it. Go  
4 ahead. We'll go one more, and then we'll finish up with  
5 the phone. Okay, good afternoon.

6 MR. WALKER: Thank you so much, Mr. Chair,  
7 Members of the Board, Chris Walker on behalf of the  
8 California Association of Sheet Metal and Air Conditioning  
9 Contractors.

10 First, our ask is that you guys get this right.  
11 Not that we don't act, but that we get this right. We're  
12 very familiar with lead. And we've heard often times there  
13 is no safe level of lead, we get that. Our workers are our  
14 friends. They're our family. We are a close-knit  
15 community in our union contract with businesses. And we  
16 don't want harm on anybody. And we would like to see the  
17 continued lead standards adopted and fulfilled and complied  
18 with.

19 Unfortunately, out in the field -- that's where  
20 we work -- we're seeing a lack of enforcement even on the  
21 current standard. What we would ask along with our  
22 partners, the labor partners, sheet metal, air, rail, and  
23 transit workers is there be a year delay in any adoption of  
24 a rule, to allow for the building trades and the workers  
25 that are affected to have involvement. And we can talk



1 about all the issues that were brought up today where  
2 there's different sides of whether it's a decontamination  
3 shower, or if it's a shower, which one is it? The costs  
4 and consequences are huge. A lot of issues that are out  
5 there need to be addressed. And we would ask, with our  
6 labor partners, there be a year of delay in adoption.

7           The underground economy is real. We've been  
8 working very hard to implement Title 24 building standards  
9 throughout California. We're working closely with the  
10 California Energy Commission and the Building Standards  
11 Commission. Unfortunately, the underground economy is out  
12 there. We have a permit pull rate in the residential  
13 sector of less than 12 percent. They'll tell you that no  
14 one's safety is being protected in those 88 percent of  
15 those jobs that aren't being permitted.

16           When we look at light commercial it gets slightly  
17 better. But not by much. Commercial, we're okay. It could  
18 be better. Public works, we're almost perfect, right? But  
19 we've got a huge task in front of us to implement Title 24.  
20 Not to mention, as I raised earlier, the decarbonization of  
21 existing building structures between now and 2035. Any job  
22 that we have to go into, that's going to be held up with  
23 additional requirements, additional costs, better be done  
24 right. And we're asking for you to take the time to do it  
25 right.

1 California Department of Public Health testified  
2 earlier today that sound science is in the interest of  
3 public health. And we too, are concerned about the impacts  
4 of lead on brain, heart, blood pressure, organs, kidneys,  
5 absolutely. But if we're looking at science objectively  
6 from the California Department of Public Health, I think  
7 they would agree, the presence and ingestion on the  
8 worksite and workplace of high fatty foods and sugary  
9 drinks is a higher threat to all three metrics of health.  
10 Far higher, right? The Occupational Safety Health  
11 Standards Board wouldn't adopt something like that, because  
12 you have to adopt things that are reasonable and  
13 enforceable, okay?

14 And so what we're looking for is that reasonable,  
15 enforceable filter, as applied to the changes, radical  
16 changes that have been made to the standard. I understand  
17 people have been talking about 12 years, but they weren't  
18 talking about what was released. They're talking about  
19 something different. We need a year before adoption to sit  
20 back and go through all the changes that have been  
21 forwarded as a proposal and get this right. Thank you.

22 CHAIR THOMAS: Thank you.

23 So we're going to go the phone now. And we're  
24 going to take two calls and then we're done. So go ahead.

25 MS. MORSI: Up next is Abraham Pyro with

1 Environmental Contractor.

2

3 CHAIR THOMAS: Abraham, can you hear us?

4 MR. PARRA: Yeah, can you hear me?

5 CHAIR THOMAS: Yeah, go right ahead.

6 MR. PARRA: All right, cool. Yeah, so my name is  
7 Abraham Parra. Thank you guys for having me here. I'm a  
8 safety manager for a very large environmental contractor.  
9 I've also worked in the field removing lead-based paint in  
10 homes, hospitals, high-rise buildings, etc.

11 From my experience with this, I feel that  
12 currently the PEL and action level, and also the blood lead  
13 levels are pretty high. So I actually believe that this  
14 regulation is long due. There's a lot of workers that are  
15 definitely, you know, pretty much excited about the fact  
16 that they're going to bring down the levels. Because we  
17 kind of noticed that in the work that we do it's very  
18 difficult to even get to the current action level in the  
19 PEL. And that is currently with the practices that we  
20 engage to lower it.

21 So you know I feel like if we're able to do it,  
22 other companies are able to do it. At the end of the day  
23 this is to protect workers, to protect families. Because  
24 at the end of the day too, these employees are also taking  
25 lead dust to their homes contaminating their homes and

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1 their children.

2 (Audio from a different speaker cuts in briefly.)

3 UNKNOWN SPEAKER: (Audio from unknown speaker  
4 cuts in) I'm listening to a Standards Board meeting. It's  
5 really dry and boring, but I know they're going to vote on  
6 a standard and make us adopt it.

7 CHAIR THOMAS: Kim, I think you've turned on your  
8 mic.

9 Abraham, are you still there?

10 MR. PARRA: Yeah, I'm still here.

11 CHAIR THOMAS: Go ahead, continue. (Laughing.)

12 MR. PARRA: Yeah. No, I mean, that's pretty much  
13 it. Yeah, I fully support your guys decision. You know, I  
14 feel like this is long due. At the end of the day this is  
15 to protect workers, you know, and I'm very excited for it.  
16 So thank you.

17 CHAIR THOMAS: Thank you.

18 And last caller?

19 MS. MORSI: Denise Kniter with LA County Business  
20 Federation.

21 CHAIR THOMAS: Denise, can you hear us?

22 MS. KNITER: Yes. Can you hear me?

23 CHAIR THOMAS: Yes, go right ahead.

24 MS. KNITER: So I really want to thank the Board  
25 for hearing the comments today. I know this is a really

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1 important and complicated issue. I also won't be repeating  
2 too many of the concerns that have been listed today, but  
3 on behalf of the Business Federation in LA County, we  
4 represent over 400,000 employers and over 5 million  
5 employees. And specifically those in construction, health  
6 care, utilities and communications, telecom, have  
7 significant concerns that we've outlined in our written  
8 comment as well.

9           We really want to echo the concerns about having  
10 an imperfect standard passed that could have effects that  
11 last unintentionally in making it more difficult to build  
12 housing. More difficult to provide protection to health  
13 care workers who work with spaces where they need lead to  
14 protect themselves from X-rays and things like that.

15           We also have significant concern about utilities  
16 and telecom being able to provide emergency repairs. Like  
17 it was stated earlier, many times the lead standard isn't  
18 known until workers arrive at the site. We also agree that  
19 it's important to update these standards, we want to  
20 protect workers. We also want to make sure that we aren't  
21 creating an imperfect standard that has to be indefinitely  
22 altered, amended, or create exemptions. It would be more  
23 important to pass the correct standard that reflects the  
24 concerns of the people who have to actually implement it,  
25 as well as the workers. And we hope that the Board has

1 taken into consideration the many comments that say, you  
2 know, we've implemented higher standards and some of what's  
3 outlined in this process doesn't actually lead to lower  
4 blood levels or air contamination, as was previously stated  
5 by other speakers.

6 So I appreciate your time, and thank you.

7 CHAIR THOMAS: Thank you.

8 And that will be the end of our comments today.  
9 Sorry, we couldn't get everybody in, but I think two-and-a-  
10 half hours of comments is plenty. And I think we got every  
11 viewpoint here. There being no other persons that I will  
12 allow to come forward at this time to make comments, so the  
13 public meeting is closed. Written comments will be  
14 received until 5:00 p.m. today, so you do have time to get  
15 those in.

16 And we're going to go into our business meeting  
17 now. The purpose of the business meeting is to allow the  
18 Board to vote on the matters before it, to receive  
19 briefings from staff regarding the issues listed in the  
20 business meeting agenda. Public comment is not accepted  
21 during the business meeting unless a Member of the Board  
22 specifically request public input.

23 We have the proposed variance decisions for  
24 adoption listed on the consent calendar. Ms. Gonzalez,  
25 will you please brief the Board?

1 MS. GONZALEZ: Thank you, Chair Thomas. We have  
2 docket number -- well, we have items number 1 through 77  
3 ready for your vote and approval. But let me please direct  
4 you to strike item number 63, which is actually not yet  
5 ready. So 1 through 77, striking number 63 is ready for  
6 your review and possible adoption.

7 CHAIR THOMAS: Thank you. So do I have a motion  
8 to accept the consent calendar 1 through 77, minus 63?

9 BOARD MEMBER HARRISON: (Overlapping) Motion to  
10 approve. Motion to approve.

11 CHAIR THOMAS: Thank you. Do I have a second?

12 BOARD MEMBER CRAWFORD: Second.

13 BOARD MEMBER LASZCZ-DAVIS: (Overlapping) Second.

14 CHAIR THOMAS: I have a motion and a second.

15 Is there anything on the question?

16 MS. SHUPE: Who was our second?

17 CHAIR THOMAS: Was that you, Nola?

18 BOARD MEMBER KENNEDY: It was Chris.

19 CHAIR THOMAS: Was that Chris? Was that the  
20 second?

21 BOARD MEMBER LASZCZ-DAVIS: I am here. It was  
22 Chris.

23 CHAIR THOMAS: Okay.

24 MS. SHUPE: Okay, so I have a dispute. I have  
25 Kate Crawford as a second. And I also have Chris.

1 CHAIR THOMAS: You know, I reviewed it. It was a  
2 complete tie, so pick one.

3 BOARD MEMBER LASZCZ-DAVIS: Just pick one.

4 MS. SHUPE: It would be Kate Crawford, because  
5 I'd already started writing her name.

6 CHAIR THOMAS: Good call. So we have a motion  
7 and a second. Is there anything on the question? (No  
8 audible response.) Hearing none who's going to call the  
9 roll?

10 MS. SHUPE: I will.

11 CHAIR THOMAS: Thank you.

12 MS. SHUPE: Ms. Burgel?

13 BOARD MEMBER BURGEL: Aye.

14 MS. SHUPE: Ms. Crawford?

15 BOARD MEMBER CRAWFORD: Aye.

16 MS. SHUPE: Mr. Harrison?

17 BOARD MEMBER HARRISON: Aye.

18 MS. SHUPE: Ms. Kennedy?

19 BOARD MEMBER KENNEDY: Aye.

20 MS. SHUPE: Ms. Laszcz-Davis?

21 BOARD MEMBER LASZCZ-DAVIS: Aye.

22 MS. SHUPE: Ms. Stock?

23 BOARD MEMBER STOCK: Aye.

24 MS. SHUPE: Chairman Thomas?

25 CHAIR THOMAS: All right, the motion passes.



1 (Indiscernible) will you please put that on there  
2 -- oh. That's not on there, sorry about that.

3 So Division Update, Mr. Berg, will you please  
4 brief the Board?

5 MR. BERG: Can you hear me?

6 CHAIR THOMAS: Yep.

7 MR. BERG: Okay, next month we'll have the public  
8 hearing for the indoor heat proposal. It was noticed, I  
9 believe, March 31st. And then we also have three other  
10 packages we've already sent forward. It's the Aerosol  
11 Transmissible Disease Standard section 5199 to add COVID to  
12 a list of airborne transmissible diseases. There's also a  
13 permissible exposure limit change to trichloroethylene.  
14 And then the first aid package. We'll be doing that one.

15 And also shortly we should have updated language  
16 for the workplace violence proposal posted, so people can  
17 look at that before we schedule an advisory meeting for  
18 that.

19 And we also have a petition for countertop  
20 manufacturing and silicosis. So we're working that and  
21 hope to have that done soon.

22 I think that's about it.

23 CHAIR THOMAS: Any questions from the Board for  
24 Mr. Berg?

25 BOARD MEMBER STOCK: Yeah, I have a question.

1 This is Laura. Can you hear me okay?

2 CHAIR THOMAS: Yeah.

3 MR. BERG: Yeah.

4 BOARD MEMBER STOCK: Yeah, Eric. And maybe you  
5 could answer a little now or more in detail next month.  
6 But we've heard a lot about the emergency nature of the  
7 indoor heat crisis. And somebody discussed the *LA Times*  
8 editorial, I wonder if you could just describe what the  
9 process is or will be after the hearing? And just I know,  
10 when we discussed this once before you were saying that it  
11 could take up to a year until it was available for a vote.  
12 So I'd just like to understand the timeframe a little bit  
13 better. And also be thinking about the things that we can  
14 do to accelerate the timeline.

15 So I don't know if right now you could just  
16 quickly say what happens if the hearing happens, and then  
17 what are the milestones after that?

18 MR. BERG: Yeah. After the public hearing, we're  
19 getting written comments during this 45-day comment period.  
20 So we're getting a lot of written comments and I assume  
21 I'll get plenty of oral comments during the meeting.

22 So after the public hearing, we'll get started on  
23 reviewing each comment very carefully, and seeing what  
24 changes need to be made to proposal based on those concerns  
25 that are addressed to us. And so we'll work through that

1 and develop any changes and then publish that for a 15-day  
2 comment period. Also for each comment we get we have to  
3 prepare a detailed written response. So that's just a  
4 timely process, just how all rulemakings work. And then  
5 after that 15-day change is done we'll get more comments,  
6 and review those and make any additional changes as needed.

7 And then once that's complete, we'll work on all  
8 the stage 2 rulemaking documents, just primarily updating  
9 stage 1 rulemaking documents with what changes have been  
10 made, and how it impacts everything. And also the final  
11 Statement of Reasons we have to prepare. So they'll all be  
12 prepared.

13 And once it's all complete, we send it to the  
14 Standards Board staff for their review. And then when  
15 that's all a complete, there'll be a vote. So we can do  
16 that as quickly as possible. Sorry, go ahead.

17 BOARD MEMBER STOCK: (Overlapping) Yeah, and so  
18 do you anticipate -- do you feel like there's a sense of  
19 confidence that it would be ready for next summer?

20 MR. BERG: Yeah, it'll be ready for next summer  
21 for sure, because it expires after one year after it's  
22 noticed. And it was noticed March 31st, so it has to be  
23 voted on assume the latest would be the February/March  
24 Board meeting.

25 BOARD MEMBER STOCK: That's helpful to know. So

1 that's when the vote would have to take place? And is  
2 there any timeframe, just out of curiosity? I know it's a  
3 lot of work to respond to all of those comments. Is there  
4 any time limitations in terms of how long as it's possible  
5 to take or do you have to complete the response to those  
6 comments within a specified time?

7 MR. BERG: Well, we have to finish everything  
8 before the timeline expires. Now we try to do those as  
9 fast as absolutely possible. But that's --

10 BOARD MEMBER STOCK: So it sounds like the  
11 timeline will expire, so that we would expect to see a vote  
12 in the February or March meeting based on what you're  
13 saying.

14 MR. BERG: Yeah, we have to complete all those  
15 documents a couple months before that for our review, so  
16 (indiscernible) --

17 BOARD MEMBER STOCK: Thank you.

18 MR. BERG: Yeah, sure.

19 CHAIR THOMAS: Any other questions the Board may  
20 have?

21 BOARD MEMBER BURGEL: I have a question or  
22 comment for Eric, Dave?

23 CHAIR THOMAS: Barbara then Chris. Go ahead,  
24 Barbara.

25 BOARD MEMBER BURGEL: Okay. This is about the

1 Lead Poisoning Program at the California Department of  
2 Public Health and the communication with Cal/OSHA. And I  
3 wanted to hear from you, Eric, how the communication works  
4 between the two agencies. Specifically, I know that if a  
5 blood lead level is 20 or higher micrograms per deciliter  
6 that it's automatically reported. It's a reportable  
7 disease in California, to the California Department of  
8 Public Health. And they're charged with doing the  
9 occupational exposure investigation is my understanding.  
10 But they communicate to Cal/OSHA for enforcement purposes.  
11 And so I'd like to hear from you if that -- how that works.  
12 How, what's the timeframe? When you get notified of  
13 elevated blood lead levels from the California Department  
14 of Public Health?

15 MR. BERG: Well, okay I don't think I can answer  
16 your question on the spot and I'd have to read up. I know  
17 we do get those reports and they do investigations in  
18 response to those reports. I don't know the exact  
19 timelines, but I think it's in the Labor Code section. I  
20 don't know it off top my head and it's -- I don't handle  
21 this part of Cal/OSHA so I'm not involved. It's by  
22 Enforcement.

23 BOARD MEMBER BURGEL: Okay.

24 MR. BERG: I would have to check with them.

25 BOARD MEMBER BURGEL: Okay. The reason why I ask

1 is I was on the federal rulemaking site for lead. And in  
2 one of the comment letters in that federal docket was  
3 critical of our California program specifically around the  
4 9 or 10 lead exposed workers working on the Bay Bridge  
5 Project. And the comments in that comment letter,  
6 essentially said that the CDPH was not communicating in a  
7 timely fashion to Cal/OSHA for enforcement purposes. So I  
8 had --

9 MR. BERG: That was before the law went into  
10 effect, I believe.

11 BOARD MEMBER BURGEL: Okay. All right, thank  
12 you.

13 Yeah, I'm just hoping there's collaboration  
14 there, because it just would seem a shame. It seems a  
15 little odd to me, that the California Department of Public  
16 Health is charged with doing that investigation process,  
17 when I see that as Cal/OSHA's role. But I know that this  
18 has been driven by the Senate bill, and then the recent  
19 Assembly Bill. So anyway, thank you.

20 MR. BERG: Sure. Yeah, I know, we do get reports  
21 from the Occupational Lead Poisoning Prevention Program,  
22 and we are doing inspections.

23 BOARD MEMBER BURGEL: Okay.

24 MR. BERG: I know that's (indiscernible) and we  
25 communicate all the time with the CDPH occupational health

1 management. OLPP is part of that. We have regular  
2 meetings.

3 BOARD MEMBER BURGEL: Yeah. Okay, good. Thank  
4 you.

5 CHAIR THOMAS: Thank you.

6 Chris, you had a question?

7 BOARD MEMBER LASZCZ-DAVIS: Well, I don't know  
8 that I have a question. I have some comments on what we've  
9 heard today; is this the appropriate place to share them?

10 CHAIR THOMAS: Yeah, go right ahead.

11 BOARD MEMBER LASZCZ-DAVIS: Oh, okay. Can you  
12 hear me?

13 CHAIR THOMAS: Yeah.

14 BOARD MEMBER LASZCZ-DAVIS: All right, good.

15 I had three pages of comments, I'm only kidding.  
16 It's only one set of comments here I just wrote to myself,  
17 as I listened to everybody earlier today. You know, when I  
18 think about the role of the Standards Board our role is to  
19 develop a consensus standard that's reasonable,  
20 enforceable, and effective in mitigating risk. And I think  
21 we need to kind of keep that center. We have an existing  
22 lead standard versus having nothing in place, so it isn't  
23 like California has been ignoring the issue. And in fact,  
24 there have been reports by CDPH and others that in fact,  
25 it's been effective. Is it effective enough? It sounds

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1 like it probably isn't, but it's important to make sure  
2 that as we take the next quantum level in terms of  
3 mitigating risks we get it right.

4 I agree as an industrial hygienist, a CIH, that  
5 the levels should likely be lowered. But that it does not  
6 appear that the scientists are aligned as to what air  
7 levels and blood levels are reasonable and effective. And  
8 then we just had Dr. Cris Williams, you know, share the  
9 fact that study has come out questioning the OEHHA  
10 mathematical model. So is there an issue of that the  
11 science that we're relying upon to determine the levels  
12 that are in the proposed regs?

13 A couple of other thoughts just for what it's  
14 worth and I know it's been mentioned by several today. The  
15 applicability issue here has been expanded. It's not the  
16 same old lead standard or application. It's now being  
17 expanded to the utilities and constructions, mobile  
18 workforces, maintenance, and others. That expansion  
19 warrants a more robust review that extends beyond the 45  
20 days that's been allowed. In fact, you know, in the ideal  
21 world I'd say we need an advisory committee to take a look  
22 at it, because it's a whole new standard. It's just not  
23 building on what we had before. It certainly suggests that  
24 there be a phased-in period.

25 The regulatory regulations, I think, need to be



1 feasible, enforceable, practical and effective. Lowering  
2 levels alone doesn't result in risk mitigation. You've got  
3 to make sure that the levels have companion operating  
4 practices and procedures that are easily interpreted by the  
5 stakeholders. And we've got a number of new stakeholders  
6 this go round. That's only when the risk gets mitigated.  
7 So whatever we ended up with has got to be understandable,  
8 effective, enforceable, and I'm hearing that that's a  
9 struggle. It's a challenge at this point in time.

10           The issue of cost came up a couple of times. It  
11 seems to me, and I'm not learned of the economic impact  
12 statement, but given what's transpired over the last three  
13 to four years I'm not sure that the costs of implementation  
14 that were cited several years ago are still appropriate  
15 today. I think that needs a revisiting.

16           And the thing that I worry about just a little  
17 bit, I know we're on this timeline of 45 review, 45-day  
18 review period, and on. And no more advisory committees in  
19 play, because we had our share of advisory committee  
20 committees to discuss this. But I think things have  
21 changed enough that we shouldn't let the rulemaking process  
22 hinder our ability to develop what the California workers  
23 really need, which is a reasonable, enforceable  
24 understandable regulation.

25           You know, at the end of the day if I were to

1 suggest anything, we either need to have a comment -- we  
2 need to have one or a combination of the following: an  
3 extension of that 45-day comment period. You've got a  
4 whole host of stakeholders you did not have before. A  
5 phased-in period, effective April doesn't make a whole lot  
6 of sense when people don't even understand how to interpret  
7 what's presently proposed. And then somebody had suggested  
8 a 15-day change order. I don't know what combination of  
9 things of what combination of those things are available.  
10 But I think to consider something that is supposed to be  
11 effective, April, immediately, with a whole host of new  
12 stakeholders having -- with a proposed regulation that  
13 isn't understandable, just doesn't seem to make a whole lot  
14 of sense to me. So my thoughts

15 CHAIR THOMAS: Any other comments,  
16 (indiscernible).

17 BOARD MEMBER BURGEL: I have a question, Dave.  
18 Is this a time that we're going to be talking about the  
19 lead standard, because I have a whole list of comments as  
20 well. I thought that would come later in the agenda, but  
21 is this the time?

22 CHAIR THOMAS: I don't know the -- we listened to  
23 the public comments. And I don't think we need to make any  
24 comments until we vote on it.

25 BOARD MEMBER BURGEL: Well, no. I actually would

1 like to make some comments now, but I mean again, again, if  
2 it's appropriate.

3 CHAIR THOMAS: Well, Dave had a question first.

4 BOARD MEMBER BURGEL: Okay.

5 BOARD MEMBER HARRISON: I'm right in line with  
6 Barbara. I have some comments I'd like to make regards to  
7 that as well, Dave. And I would like to have our comments  
8 on the record prior to the actual votes, if we need to  
9 actually affect some changes if there's in fact going to be  
10 some.

11 BOARD MEMBER BURGEL: I agree.

12 CHAIR THOMAS: So we're talking about commenting  
13 before the vote, or (indiscernible) to do the vote.

14 BOARD MEMBER HARRISON: I would rather have  
15 comments on the record, so if we are going to effect  
16 changes as Board Members, we can do that prior to a final  
17 rule coming to us to vote on.

18 CHAIR THOMAS: Fine, if you have comments go  
19 right ahead.

20 BOARD MEMBER HARRISON: And I'll be brief and I  
21 hope my comments aren't dry and boring, as we heard  
22 earlier. (Laughter.)

23 So first I want to thank the Division. This has  
24 been a long time coming. I can't imagine the amount of  
25 work that you and all the staff, the leadership, the

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1 Division counsel, (indiscernible).

2 I also want to thank the commenters today. I  
3 heard some things that really resonated with me, a couple  
4 of which I'll speak about. And I just like to say that  
5 I've -- in the '90s, as a young operating engineer I  
6 actually worked in the maritime industry and was a personal  
7 witness to the effects of lead poisoning and that does to  
8 workers.

9 And so some of the things we heard today were  
10 delayed implementation. One of the most powerful comments  
11 I heard from somebody that I didn't necessarily know what  
12 they were going to say was we're not arguing with what, but  
13 how. And I heard that loudly today. I think delayed  
14 implementation based on that would be appropriate for three  
15 years or two-and-a-half years, and I heard a year. This  
16 has been 13 years in the making. I don't know that I would  
17 support three years, but I think one year of delayed  
18 implementation once a final rule was approved would be  
19 appropriate. That's just my opinion.

20 Another thing that I heard from Mr. Malson, talk  
21 about specific CSLB licensing for lead contractors as with  
22 the asbestos contractors. I would support that 100  
23 percent. I think that's right on. It hit the nail on the  
24 head. I would completely support that.

25 So those are my comments, Dave. I just wanted to

1 get those on the record, so hopefully if we are going to  
2 affect some change we (indiscernible).

3 And my final comment, I hope I'm not beating you  
4 to the punch, I'd just like to finish with "Go Warriors."

5 BOARD MEMBER BURGEL: Yes, I agree.

6 CHAIR THOMAS: I hate to be like this, but we're  
7 done.

8 BOARD MEMBER BURGEL: Dave, I'd like to have some  
9 comments on this?

10 CHAIR THOMAS: Yeah, Barbara, go ahead.

11 BOARD MEMBER BURGEL: First of all, I also want  
12 to thank Cal/OSHA, California Department of Public Health,  
13 the Standards Board in the stakeholders who participated in  
14 the six advisory committees from 2011 to 2015. I fully  
15 support lowering the PEL and the action level in to the  
16 lowered blood lead levels in the medical removal program as  
17 proposed in the new drafts.

18 I support the trigger tasks in the construction  
19 lead standard. And the focus in both standards on exposure  
20 assessments. I believe this, in addition to substitution  
21 which is of course not mentioned, but substitution -- we  
22 can't forget substitution -- engineering, ventilation, and  
23 administrative controls, personal protective equipment,  
24 housekeeping, hygiene, and training are critically  
25 important primary prevention measures.

1 I fully support a certified industrial hygienist  
2 be included in supervising the exposure assessment  
3 processes, because that is in the primary prevention side  
4 of the equation.

5 I support the hygiene emphasis in the standards  
6 and believe that there will be less worker exposure and  
7 less work to home exposure. I took care of a lead-exposed  
8 painter. Actually, it wasn't a painter, it was a recycled  
9 computer cable person who's 18-month-old child had a blood  
10 lead level of 27. His blood lead level was 46. And so  
11 this work-to home exposure is really critically important.  
12 And it's a very important public health problem.

13 And so I do believe that we need periodic  
14 training in multiple languages at educational levels  
15 appropriate to the target population. I'm not so happy  
16 with Appendix B. It's 17 pages long and I don't think it  
17 can be used in training. It's got an educational level  
18 that's very high.

19 I will again speak to the need to use language,  
20 the following language in this standard, "physicians or  
21 other licensed health care professionals" in the standards  
22 update. I was surprised again to see that the word  
23 physician, licensed physicians, licensed healthcare  
24 provider and healthcare provider are used in the two  
25 standards liberally. Physicians and medical provider is

1 also used in the 45-year-old federal lead legislation and I  
2 anticipate that will be changed when it's updated.

3 I wish to note that the PLHCP, which is the  
4 physician or other licensed health care professionals, is  
5 in the Cal/OSHA 5204 Silica Standard that was noted in the  
6 rationale section of our packets. And for some reason  
7 "physician," which is 45-year-old language, not defined as  
8 Wilma has mentioned, should be updated to the current  
9 language that's in most standards now: "physicians or other  
10 licensed health care professionals."

11 I believe the standards as written focus too much  
12 on the role of the medical provider. I mean, there's quite  
13 a lot of that first opinion, second opinion, third opinion  
14 stuff, which I realized is in the federal standard as well.  
15 The advisory committees really did not spend much time on  
16 the medical evaluation that should happen with people who  
17 have elevated blood lead levels. And I believe that it's -  
18 - I think Barbara Materna mentioned in one advisory  
19 committee that blood pressure should be measured. And  
20 certainly a complete blood count should be measured. The  
21 ZPP's not relevant. And so but it wasn't really fully  
22 addressed. The federal standards again is it hasn't been  
23 updated. So I believe that could benefit from a different  
24 perspective.

25 Again, the word "physician" was mentioned 57

1 times in the actual construction language. It was  
2 mentioned twice in Appendix A, 27 times in Appendix B and  
3 32 times in Appendix A. And again, I would rather place  
4 the emphasis on prevention. Ventilation was only mentioned  
5 two or three times in the whole standard. Engineering  
6 controls was mentioned two or three times. So I think it's  
7 a little bit unbalanced, the standard it feels unbalanced  
8 to me.

9 I do also think, and this is going to be  
10 controversial, I believe that anyone who is in the medical  
11 removal program for an elevated blood lead level, that  
12 those cases should be entered into the Workers'  
13 Compensation system. In the Workers' Compensation systems  
14 we have independent medical examiners, qualified medical  
15 examiners. There's a whole process of protecting patient  
16 privacy information. It's a system that employers have  
17 already set up and they pay for in their premium. And it  
18 seems to me that that would be appropriate to shift those  
19 individuals in the Workers' Comp system who are involved  
20 in, and have to be medically removed, from lead-based work  
21 until their blood lead levels are below 15. I think, again  
22 that the whole medical emphasis in the standard could be  
23 simplified.

24 I am glad that there is inclusion of an employer-  
25 written elevated blood level response plan, okay. It's



1 kind of a funny language. This is the CAPA process that we  
2 use all the time in occupational health. It's called the  
3 Corrective Action Process. It's required if the blood lead  
4 levels are 10 or higher in this new draft. There are no  
5 details provided regarding what is required in this  
6 response plan.

7           And what happens in industry as you know,  
8 occupational health nurses, I'm an occupational health  
9 nurse, so what happens is we do a lot of medical  
10 surveillance. There is a lot of data, a lot of data, a lot  
11 of data. And 99, probably 98 percent of it is normal data,  
12 normal. Once we have an abnormal finding we consult with  
13 our occupational health physician colleagues. We consult  
14 with our industrial hygienist and safety consultants who  
15 are -- if available on the worksite. And we basically do a  
16 deep dive, you know? We repeat blood lead levels. We go  
17 in and look and make sure that the individual is using PPE.  
18 That we do a walkthrough with the stationary engineer and  
19 make sure the ventilation hasn't been turned off. I mean,  
20 we do look at the aggregate. And we look and see if  
21 there's other people working doing the same job, if their  
22 blood lead levels were elevated as well. I feel like that  
23 aggregate perspective is sort of missing the standard. And  
24 I think that that medical response plan -- and we always  
25 retrain. So there's steps in there that could be, I think,

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1 further delineated.

2           And I too would support -- and my final comment -  
3 - I too would support a certification of lead abatement  
4 workers in all steps of that process. Currently, there is  
5 a lead abatement and there's a lead certification that's  
6 used for people who inspect, but it's not used uniformly  
7 through all the steps of lead abatement. And I think that  
8 would be a really good enhancement.

9           Thank you for the opportunity to provide  
10 feedback.

11           CHAIR THOMAS: Thank you, Barbara.

12           Any other comments? Go ahead.

13           BOARD MEMBER CRAWFORD: Well, I think I have to  
14 start with what everyone else has started with, which is I  
15 want workers protected. I do want to be protective of the  
16 workers. But it is astounding to listen to all of the  
17 people in this room from all of the different affiliations,  
18 and hear so many concerns with the regulation, as it's  
19 written right now. I think we have gotten it wrong. And I  
20 think we have to -- we don't go back to the drawing board.  
21 I think we need to insert as much time as possible to get  
22 this right.

23           So I don't know if I can -- if this is a time to  
24 ask you a question, Christina, about time. So how do we  
25 get this right? How do we insert more time into this? If

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1 possible, go back to the advisory committee. You know, we  
2 brought that up last month and we addressed (indiscernible)  
3 will address it again. And how do we put time in this to  
4 get all of these concerns addressed?

5 MS. SHUPE: So at this point the rulemaking  
6 proposal has been noticed with the Office of Administrative  
7 Law, which starts the one year timeline. The only way to  
8 add time to that is when you're in Phase 2, for this Board  
9 to instruct its staff to withdraw the rulemaking proposal  
10 from the Office of Administrative Law.

11 BOARD MEMBER CRAWFORD: That is the only way?

12 MS. SHUPE: That is the only way to add time  
13 beyond the one-year allowed (indiscernible).

14 BOARD MEMBER CRAWFORD: There's no way to add 15  
15 days or anything like that?

16 MS. SHUPE: (Overlapping) The one year, no.

17 BOARD MEMBER CRAWFORD: So is it a better  
18 decision to make to withdraw?

19 MS. SHUPE: I would not comment to that.

20 BOARD MEMBER CRAWFORD: I'm just putting it out  
21 there. I'm speaking it.

22 MS. SHUPE: I can comment on procedure and  
23 (indiscernible) decision remedies.

24 CHAIR THOMAS: (Indiscernible)

25 BOARD MEMBER STOCK: Can I --

1 CHAIR THOMAS: Go ahead, Laura.

2 BOARD MEMBER STOCK: I have a comment, so I just  
3 want to -- this procedure, this regulation, has been in  
4 the works for 13 years. And we heard that there has been  
5 multiple advisory committees that that have occurred. And  
6 so maybe we could ask Eric to -- or somebody to talk a  
7 little bit more if needed about those advisory committees,  
8 how many. We could get more information at a future  
9 meeting about what was covered. Because I think that the  
10 idea that we need to go back to the drawing board or  
11 reinstitute an advisory committee is really not giving  
12 credence to the many -- over a decade worth of work.

13 So I really strongly believe, I mean I hope we  
14 don't get to the point of a vote on withdrawing this. I  
15 feel like we need to move forward. I think the process  
16 allows now, there's been a lot of comments on both sides,  
17 and so now there is the mandated period of time that we  
18 were just hearing Eric describe about responding to all the  
19 comments. So there's going to be an opportunity for those  
20 comments to be considered and responded to. And then we'll  
21 -- correct me if I'm wrong, it's the same process, we'll  
22 then get a version. And then at that point, determine  
23 whether there are significant changes that require like  
24 whether a 15-day notice or a 30-day notice. So that  
25 there's things built into the process that we're currently

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1 engaged in that allows these comments to be addressed.

2 I also want to just respect the work that not  
3 only the Division, but the California Department of Public  
4 Health -- we had somebody who was the head of -- who works  
5 in the Lead Prevention Program from the California  
6 Department of Public Health, urging us to move forward on  
7 this regulation. So I, of course, would strongly object to  
8 delaying the process, but would allow the process to work  
9 in the way it's been designed. And to see what the  
10 Division, what the next draft is going to look like. That  
11 we'll be incorporating responses to these comments and  
12 making adjustments, and then there'll be another  
13 opportunity for people to take a look at it.

14 And I think within there some of the questions  
15 about like, you know, implementation, whether there's a  
16 phased-in limitation, what elements have to be complied  
17 with at certain times, those can be incorporated into the  
18 final language of the regulation.

19 I just want to make one last comment. When I  
20 think about our goals, and you know I appreciated it,  
21 Chris, as you were saying they have to be reasonable and  
22 they have to be practical. But I would actually object to  
23 the idea that they are consensus standards. I feel like  
24 our response, in the multiple years that I've been on the  
25 Board, I have rarely seen a regulation that has not had

1 multiple different points of view. And we've had to make  
2 decisions where many people disagreed on the outcome. I  
3 think our charge is that we have to have regulations that  
4 are feasible and protective. Reaching a consensus is not  
5 in our charge. I mean, the more that we can have all the  
6 stakeholders together the better it will be. But there are  
7 many times where when stakeholders are disagreeing, I go  
8 back to our primary responsibility to develop regulations  
9 that are protective, and sufficiently protective to the  
10 hazard. So that's the one comment I would want to say.

11 I feel like if that becomes a goal, to only vote  
12 on standards where there are consensus we wouldn't have  
13 passed many, many of the really important regulations that  
14 were passed during the time since I've been on the Board.  
15 Thank you.

16 CHAIR THOMAS: Thank you, Laura.

17 So I guess the question at this point at this  
18 point (indiscernible) --

19 BOARD MEMBER STOCK: I think Chris might have a  
20 response. I see her hand up.

21 CHAIR THOMAS: Okay, perfect.

22 BOARD MEMBER LASZCZ-DAVIS: I'll just take a  
23 minute. I just wanted to push back a little bit on that,  
24 Laura. I'm certainly not suggesting that we all strive for  
25 consensus standards. But I think we need to strive to seek

1 those opportunities where we can get the people around the  
2 table who have disparate views, so that we get closer to  
3 consensus than we appear to be today. And that was really  
4 the intent of my comment.

5  
6 BOARD MEMBER STOCK: Thank you, Chris. And I  
7 agree with that and that's why I appreciate that there have  
8 been 13 years and multiple advisory committees with that  
9 exact goal. And I appreciate your clarification. Thank  
10 you.

11 CHAIR THOMAS: So I have a question, Mr. Berg.  
12 How many of the questions that were asked today, how long  
13 will that take you to put a Q&A sheet together?

14 MR. BERG: At least a couple of months, I think,  
15 (indiscernible).

16 CHAIR THOMAS: When did our timeline start?

17 MS. SHUPE: That rulemaking was noticed on March  
18 31st. So Mr. Berg noted earlier that the Board would be --  
19 oh no, I'm sorry. That's heat.

20 MR. BERG: That's heat, yeah.

21 MS. SHUPE: Yeah, do you know the notice date for  
22 responding to (indiscernible) 45 days to go?

23 CHAIR THOMAS: So it was this year? So what --

24 MR. BERG: (Overlapping) Yeah, like March 1st.

25 MS. SHUPE: Of this year, yeah.

1 MR. BERG: Around March 3rd maybe.

2 CHAIR THOMAS: So --

3 MS. SHUPE: So we're looking at a January or  
4 February deadline for adoption by the Board. So that gives  
5 you all of 2023.

6 CHAIR THOMAS: So what I'd like to see, and  
7 hopefully this satisfies everybody, because I mean I think  
8 everybody wants to lead license. There's no -- I don't  
9 know why there isn't. But there's things in the works,  
10 I'll just say that. But so yeah there are some differences  
11 here. And I know that as I was listening there are certain  
12 industries that probably won't be ready. And I don't know  
13 what we'll do about that. But I'll say again 13 years is a  
14 long time. They should have been getting ready for it, but  
15 you know.

16 MR. BERG: Well, I mean it is in the standard to  
17 use respiratory protection if engineering controls aren't  
18 available while you work on engineering controls.

19 CHAIR THOMAS: Right.

20 MR. BERG: That's as good as it gets.

21 CHAIR THOMAS: Yeah, so there is a way to --  
22 there's a workaround so that you don't just wait a year or  
23 two years or three years before you do anything. You use  
24 controls while you try and -- what they were talking about  
25 with the air HEPA filter systems and everything, which



1 would take a lot longer and be more effective. But you  
2 know, controls are okay. So we wouldn't really have to  
3 delay. It would just be a matter of how you get to the  
4 point where you control any lead levels, right? That's  
5 really the point of it.

6 MR. BERG: Yeah, that's great.

7 CHAIR THOMAS: So I think we still have -- I  
8 don't think we're in a huge rush. But I think once we get  
9 the Q&A we'll kind of know where we're going from there.  
10 And then there's going to be other comments, so it's not  
11 like we'll vote on this next month, right?

12 So I was getting a feeling that everybody was  
13 thinking, okay this is happening right now. And it's not  
14 happening, but it has been 13 years so it should happen  
15 pretty soon. So I think we should all just chill, get the  
16 Q&A, see what that looks like. And then we'll come back  
17 and then there'll be another session where you can ask  
18 questions on the questions, or the answers to the questions  
19 that you got, if there's anything else to say? And you may  
20 get answers that answer your -- I mean, really answer the  
21 questions you have. There'll probably still be some  
22 outstanding things. But I don't think we're at the point  
23 where we need to make too many changes. I mean, let's let  
24 this go forward and see what comes up.

25 I mean, does that sound reasonable to everybody?

1 BOARD MEMBER LASZCZ-DAVIS: I've got a question,  
2 Dave, if you might?

3 CHAIR THOMAS: No, go ahead.

4 BOARD MEMBER LASZCZ-DAVIS: I'm the one who's a  
5 little unclear on the process. So today, what are we going  
6 to do today? And if we -- let's say we vote it in, what is  
7 going to happen? And if it doesn't get the vote what  
8 happens?

9 MS. SHUPE: So Chris, I can address that for you.  
10 There is no vote scheduled on the lead proposal today.

11 BOARD MEMBER LASZCZ-DAVIS: Yeah, can you talk  
12 louder, Chris? I can't hear you.

13 MS. SHUPE: Sure, yeah. So there is no vote  
14 scheduled on the lead proposal today. Today is simply a  
15 public hearing. It's an opportunity for the Board to hear  
16 comments from the public, for the public to submit those  
17 comments for both Board and Division consideration. And  
18 then the Division will go back, they will prepare responses  
19 to each and every comment that was given today, up until  
20 5:00 p.m. this evening. And that's the process that Eric  
21 was referring to that takes time, because each and every  
22 comment needs to be addressed. And then once they review  
23 all of those comments, if they see the need for changes  
24 they will make those changes to the regulation, and then  
25 those will be re-noticed for additional public comment.

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1 And we'll come back to the Board for another public  
2 hearing. Again, not a vote, another public hearing.

3 CHAIR THOMAS: That's why I was getting a little  
4 nervous that people weren't really -- that's not happening.  
5 I mean, it has been 13 years. It's been a very long time.  
6 And we did our -- never mind, I'm not going to -- and we  
7 get ripped on that all the time. You take so long, and  
8 then when we get to it, it's like wait, wait, wait,  
9 everybody stop, everybody stop. We need time and there's  
10 still time, right? There's still time, and the questions  
11 will be answered. And we will have a chance to comment on  
12 those. We'll have another public hearing.

13 But at some point, and I agree with Laura, we're  
14 going to have a vote on this. It's probably going to be  
15 January or February of next year. And I think by that time  
16 we will have walked through all this. Hopefully, I hope so  
17 because that's when (indiscernible).

18 BOARD MEMBER LASZCZ-DAVIS: And that helps, thank  
19 you.

20 CHAIR THOMAS: Go ahead.

21 BOARD MEMBER KENNEDY: First I want to say thank  
22 you to Division and everyone who's been working on this.  
23 It's a lot of work.

24 As you're preparing your responses to the  
25 comments and questions that have come up today, I would

1 really like to see a presentation of -- and I'm all for  
2 updating the lead standard, it's way overdue. But I would  
3 like to see a presentation on how the 2 micrograms per  
4 cubic meter action level was derived at. I mean, how the  
5 OEHHA model was used to get there.

6 I do agree with some comments that were made that  
7 it's a little unusual to have an action level lower than  
8 half of the PEL. I mean, that's sort of what many of us  
9 are used to. And so I'd like -- I mean, it'd be nice to  
10 see that presented. And then also maybe to address some of  
11 the comments that have been made about the applicability of  
12 the OEHHA model and some of its flaws. And if we need to  
13 reconsider that or not.

14 MR. BERG: Okay, thank you. And you'll recall,  
15 the CDPH recommended a PEL of 0.5.

16 BOARD MEMBER KENNEDY: Right.

17 MR. BERG: And in extreme circumstances, the  
18 highest the 2, which is the absolute highest they said the  
19 PEL should be. And we're sitting at five times higher than  
20 that and it's in our action level.

21 BOARD MEMBER KENNEDY: That's fine. I just want  
22 you to tell me how you came to that number. That's all I  
23 want.

24 MR. BERG: Sure, we can do that.

25 BOARD MEMBER KENNEDY: Okay. Thanks.

1 CHAIR THOMAS: Thank you. So yeah, I think  
2 everybody's chilled out a little bit about which way we're  
3 going.

4 BOARD MEMBER LASZCZ-DAVIS: Got you worried.

5 CHAIR THOMAS: So any other questions? Any other  
6 comments for anybody, anybody out there? Yes?

7 BOARD MEMBER CRAWFORD: I have a question that I  
8 would direct at Eric, he there may not know the answer.

9 CHAIR THOMAS: Oh, go ahead. Go ahead.

10 BOARD MEMBER CRAWFORD: So Eric, do you have a  
11 sense or can you give any update on or just knowledge on  
12 the federal work on the lead standard? Can you provide  
13 anything there?

14 MR. BERG: What as far as timing? No. I mean,  
15 they typically take about 20 years or so to develop  
16 regulations. So I wouldn't expect it.

17 CHAIR THOMAS: So we're ahead of them, yeah.

18 MR. BERG: Yeah, we're ahead of them. I don't  
19 expect it in my lifetime, but I could be surprised.

20 CHAIR THOMAS: I was only kidding about the  
21 (indiscernible), which I'm sorry, my bad.

22 All right, so we're going to continue on and  
23 we'll do our Legislative Update, Ms. Gonzalez?

24 MS. GONZALEZ: There's not a lot to report to you  
25 this month. Next month, you'll have a bit more robust

1 report when our new Legislative Analyst, Kelly Chau, will  
2 be drafting that report for you.

3 CHAIR THOMAS: Thank you, and then we'll do  
4 Executive Officers Report, Christina.

5 MS. SHUPE: Well, Autumn just stole a little bit  
6 of my thunder. So I'm very happy to say that we have added  
7 two new staff members. These are the first two additions  
8 to our permanent staffing level in I believe over 20 years.  
9 So that's really fantastic, especially since over that  
10 time, California's workforce has nearly doubled.

11 Michelle Iorio is an Attorney III and she'll be  
12 assisting our Chief Counsel with review of regulations in  
13 our variance program. And as Autumn mentioned, Kelly Chau.  
14 She has joined us as a legal analyst. She brings an  
15 extensive legal background to her role, and she will be  
16 supporting legislative analysis, full support rulemaking  
17 and assist with records requests. And we're thrilled to  
18 have both of them on the team.

19 CHAIR THOMAS: Thank you.

20 All right, I think we've covered future agenda  
21 items pretty well unless somebody else has a question about  
22 it.

23 Okay, so we're going to go into closed session.  
24 So because we don't have a room, we're going to have to  
25 excuse everybody, but you better come back. No, hopefully

1 you'll come back. We're going to go into closed session  
2 and we will see you -- hold on, about 15 minutes. So right  
3 around 3:00 o'clock. Thank you. We're in recess.

4 (Off the record at 2:48 p.m.)

5 (On the record at 3:17 p.m.)

6 CHAIR THOMAS: All right, we are back in session.  
7 During closed session the Board passed a motion to take  
8 steps to resolve a long-standing gender pay equity salary  
9 compaction issue for the Executive Office.

10 And with that our next OSHA Standards Board  
11 meeting will be on May 18, 2023 in San Diego via  
12 teleconference and video conference. Please go to our  
13 website and join our mailing list to receive the latest  
14 updates.

15 We thank you for your attendance today. There  
16 being no further business to attend this meeting is  
17 adjourned. Thank you very much, appreciate it.

18 (The Business Meeting adjourned at 3:18 p.m.)

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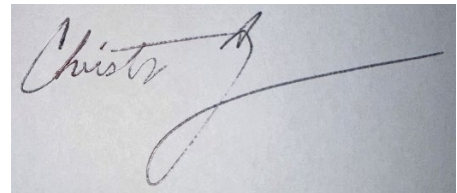
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IN WITNESS WHEREOF,

I have hereunto set my hand this 28th day of August, 2023.

A photograph of a handwritten signature in cursive script, which reads "Chris Caplan". The signature is written in dark ink on a light-colored background.

---

Chris Caplan  
Electronic Reporter



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Myra Severtson  
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