

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
November 16, 2023 OSH)
Standards Board Meeting)
_____)

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

Harris State Building
Auditorium
1515 Clay Street
Oakland, CA 94612

Attend the meeting via Video Conference

THURSDAY, NOVEMBER 16, 2023

10:00 A.M.

Reported by:
M. Nelson

APPEARANCES

BOARD MEMBERS PRESENT AT HARRIS STATE BUILDING:

Dave Thomas, Chairman
Joseph Alioto, Public Member
Kathleen Crawford, Management Representative
Nola Kennedy, Occupational Health Representative
Laura Stock, Occupational Safety Representative

BOARD MEMBERS PRESENT VIA TELECONFERENCE:

Chris Laszcz-Davis, Management Representative

BOARD STAFF PRESENT AT HARRIS STATE BUILDING:

Autumn Gonzalez, Chief Counsel and Acting Executive Officer
Amalia Neidhardt, Principal Safety Engineer
Lara Paskins, Staff Services Manager
Kelly Chau, Attorney
Michelle Iorio, Attorney
Sarah Money, Executive Assistant

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Jesi Mowry, Administration & Personnel Support Analyst
Jennifer White, Regulatory Analyst

ALSO PRESENT IN OAKLAND:

Jeff Killip, Chief of Health, Cal/OSHA
Eric Berg, Deputy Chief of Health, Cal/OSHA
Susan Eckhart, Senior Safety Engineer for Cal/OSHA
Research and Standards Unit
Katie Hagen, California Department of Industrial Relations
DIR

TKO STAFF:

Maya Morsi
Sean Acrea
John Roensch

INTERPRETERS:

Fabian Londono
Erin Lafargue

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony)

Bryan Little, California Farm Bureau Federation
Robert Moutrie, California Chamber of Commerce
Barbara Materna, Ph.D., CIH, California Department of
Public Health CDPH
Michael Horowitz, retired Cal/OSHA Inspector
Perry Gottesfeld, Occupational Knowledge International
Bruce Wick, Housing Contractors of California
Steve Johnson, Associated Roofing Contractors of the Bay
Area
AnaStacia Nicol Wright, Worksafe
Dave Smith, Dave Smith & Co.
*Helen Cleary, Phylmar Regulatory Roundtable
*Pamela Murcell, California Industrial Hygiene Council
*Janie Gittleman, Association of Occupational and
Environmental Clinics
*Anne Katten, California Rural Legal Assistance Foundation
*Robert Blink, MD, Western Occupational Environmental
Medical Association
*Michael Miiller, California Association of Winegrape
Growers
*Don Schinske, Western Occupational Environmental Medical
Association
*Rania A. Sabty, PhD, Exide Technologies Advisory Group
*Ben Ebbink, Fisher Phillips
*Andrea Hricko, USC Keck School of Medicine

I N D E X

	Page
I. CALL TO ORDER AND INTRODUCTIONS	6
II. PUBLIC MEETING (Open for Public Comment)	9
A. PUBLIC COMMENT - 13	
B. ADJOURNMENT OF THE PUBLIC MEETING - 80	
III. BUSINESS MEETING - All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.	80
<p>The purpose of the Business Meeting is for the Board to conduct its monthly business.</p>	
A. PROPOSED VARIANCE DECISIONS FOR ADOPTION	80
1. Consent Calendar	
B. REPORTS	82
1. Division Update - 82	
2. Legislative Update - 106	
3. Acting Executive Officer's Report - 106	
C. NEW BUSINESS	107
1. Future Agenda Items	
<p>Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code sections 11125 & 1125.7(a).).</p>	

I N D E X

III. BUSINESS MEETING (Cont.)	Page
D. CLOSED SESSION	80
<u>Matters Pending Litigation</u>	
1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270	
2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210	
<u>Matters on Appeal</u>	
1. 22-V-054T Operating Engineers Local 3, District 89.	
<u>Personnel</u>	
E. RETURN TO OPEN SESSION	80
1. Report from Closed Session	
F. ADJOURNMENT OF THE BUSINESS MEETING	107
December 14, 2023 Robert H. Miller III Rotary Clubhouse 7150 Baldwin Dam Road, Folsom, CA 95630 10:00 a.m.	
Reporter's Certificate	108
Transcriber's Certificate	109

1 P R O C E E D I N G

2 NOVEMBER 16, 2023

10:10 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 stand for the Pledge of Allegiance.

6 (Whereupon the Pledge of Allegiance was recited.)

7 CHAIR THOMAS: Thank you. Sorry about the late
8 start. We're still waiting for one of our Board Members, so
9 hopefully when I get finished reading this he'll be here.

10 Anyways, I'm Dave Thomas, Chairman. And the
11 other Board Members present here in Oakland are Joseph
12 Alioto, not yet, Public Member. He'll be here in just a
13 few minutes. Kathleen Crawford, Management Representative;
14 Nola Kennedy, Occupational Health Representative; Laura
15 Stock, Occupational Safety Representative.

16 We have a Board Member attending via
17 teleconference, Chris Laszcz-Davis, Management
18 Representative.

19 Present from our staff for today's meeting are
20 Autumn Gonzalez, Chief Counsel and Acting Executive Officer
21 for today's meeting; Amalia Neidhardt, Principal Safety
22 Engineer who is also providing translation services for our
23 commenters who are native Spanish speakers; Lara Paskins,
24 Staff Services Manager; Kelly Chau, Attorney; Michelle
25 Iorio, Attorney and Sarah Money, Executive Assistant.

1 Also present are Jeff Killip, Chief of Cal/OSHA;
2 Eric Berg, Deputy Chief of Health for Cal/OSHA and Susan
3 Eckhart, Senior Safety Engineer for Cal/OSHA Research and
4 Standards Unit.

5 Supporting the meeting remotely are Jesi Mowry,
6 Administration and Personnel Support Analyst; and Jennifer
7 White, Regulatory Analyst.

8 Also we have Katie Hagen here with DIR. I saw
9 her come in.

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

13 This meeting is also being live broadcast via
14 video and audio system in both English and Spanish. Links
15 to these non-interactive live broadcasts can be accessed
16 via the "Meetings, Notices and Petitions" section on the
17 page of the OSHSB website.

18 If you are participating in today's meeting via
19 teleconference or videoconference, we are asking everyone
20 to place their phones or computers on mute and wait to
21 unmute until they are called to speak. Those who are
22 unable to do so will be removed from the meeting to avoid
23 disruption.

24 As reflected on the agenda, today's meeting
25 consists of two parts. First, we will hold a public

1 meeting to receive public comments on proposals or
2 occupational safety and health matters. Anyone who would
3 like to address any occupational safety and health issue
4 including any of the items on our business meeting agenda
5 may do so when I invite public comment.

6 If you are participating via teleconference or
7 videoconference, the instructions for joining the public
8 comment queue can be found on the agenda. You may join by
9 clicking the public comment queue link in the "Meetings,
10 Notices and Petitions" section on the OSHSB website, or by
11 calling 510-868-2730 to access the automated public comment
12 queue voicemail.

13 When the public meeting begins, we are going to
14 alternate between three in-person and three remote
15 commenters. When I ask for public testimony, in-person
16 commenters should provide a completed speaker slip to the
17 staff person near the podium and announce themselves to the
18 Board prior to delivering any comments.

19 For commenters attending via teleconference or
20 videoconference, please listen for your name and an
21 invitation to speak. When it is your turn to address the
22 Board, unmute yourself if you are using WebEx, or dial *6
23 on your phone to unmute yourself if you are using the
24 teleconference line.

25 We ask all commenters to speak slowly and clearly

1 when addressing the Board, and if you are commenting via
2 teleconference or videoconference, remember to mute your
3 phone or computer after commenting. Today's public comment
4 will be limited to two minutes per speaker more or less,
5 and the public comment portion of the meeting will extend
6 for up to two hours, so that the Board may hear from as
7 many members of the public as is feasible. Individual
8 speakers and total public comment time limits may be
9 extended by the Board Chair.

10 After the public meeting is concluded, we will
11 hold a business meeting to act on those items listed on the
12 business meeting agenda.

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

22 For our commenters who are native Spanish
23 speakers we are working with Amalia Neidhardt to provide a
24 translation of their statements into English for the Board.
25 At this time, Amalia will provide instructions to Spanish

1 speaking commenters, so they are aware of the public
2 comment process for today's meeting. Amalia.

3 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]
4 Public Comment Instructions.

5 "Good morning and thank you for participating in
6 today's Occupational Safety and Health Standards Board
7 public meeting. The Board Members present today are Dave
8 Thomas, Labor Representative and Chairman; Joseph Alioto,
9 Public Member; Kathleen Crawford, Management
10 Representative; Nola Kennedy, Public Member; and Laura
11 Stock, Occupational Safety Representative.

12 "We have a Board Member attending via
13 teleconference, Chris Laszcz-Davis, Management
14 Representative.

15 "This meeting is also being live broadcast via
16 video and audio stream in both English and Spanish. Links
17 to these non-interactive live broadcasts can be accessed
18 via the "Meetings, Notices and Petitions" section on the
19 OSHSB website.

20 "If you are participating in today's meeting via
21 teleconference or videoconference, please note that we have
22 limited capabilities for managing participation during
23 public comment periods. We are asking everyone who is not
24 speaking to place their phones or computers on mute and
25 wait to unmute until they are called to speak. Those who

10

1 are unable to do so will be removed from the meeting to
2 avoid disruption.

3 "As reflected on the agenda, today's meeting
4 consists of two parts. First, we will hold a public
5 meeting to receive public comments or proposals on
6 occupational safety and health matters.

7 "If you are participating via teleconference or
8 videoconference, the instructions for joining the public
9 comment queue can be found on the agenda. You may join by
10 clicking the public comment queue link in the "meetings,
11 notices and petitions" section on the OSHSB website, or by
12 calling 510-868-2730 to access the automated public comment
13 queue voicemail.

14 "When public comment begins, we are going to be
15 alternating between three in-person and three remote
16 commenters. When the Chair asks for public testimony, in-
17 person commenters should provide a speaker slip to the
18 staff member near the podium and announce themselves to the
19 board prior to delivering a comment.

20 "For our commenters attending via teleconference
21 or videoconference, listen for your name and an invitation
22 to speak. When it is your turn to address the Board,
23 please be sure to unmute yourself if you're using Webex or
24 dial *6 on your phone to unmute yourself if you're using
25 the teleconference line.

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

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

14 "After the public meeting is concluded, we will
15 hold a business meeting to act on those items listed on the
16 business meeting agenda.

17 "Thank you."

18 CHAIR THOMAS: Thank you, Amalia.

19 CHAIR THOMAS: If there are in-person
20 participants who would like to comment on any matters
21 concerning occupational safety and health, you may begin
22 lining up at this time. We will start with the first three
23 in-person speakers and then we will go to the first three
24 speakers in teleconference and video conference in the
25 queue.

1 Go right ahead. Please introduce yourself.

2 MR. LITTLE: All right, good morning Cal/OSHA
3 Standards Board Members, agency staff and Board staff.
4 Thank you for being here this morning and thank you for the
5 opportunity to offer a few comments.

6 I'm Bryan Little with California Farm Bureau
7 Federation. For those of you might not know, California
8 Farm Bureau is the largest general industry agricultural
9 organization in California. We represent everybody that
10 grows everything from apples to zucchini, in California and
11 everything in between. And as a result, we have a lot of
12 employers who are interested in the things that the --
13 slow, sorry.

14 (Overlapping colloquy) Well, the rest of that's
15 just (indiscernible).

16 CHAIR THOMAS: We (indiscernible) signal that but
17 --

18 MR. LITTLE: The important part is coming and it
19 will be slow. We have a lot of employers who are very
20 interested in the things that the Agency and the Standards
21 Board do and that's why I'm here today.

22 One thing I'd like to mention, and I only have
23 one item for today, is our concerns about the
24 implementation of SB 553 - the Cortese bill the that the
25 Legislature passed and the Governor signed in October.

1 That bill as you probably know, puts a general industry,
2 workplace violence standard in the Labor Code. That's a
3 little challenging for us, because when you're talking
4 about general industry, and the kinds of things that the
5 workplace violence standard for health care requires
6 employers to do, is going to be challenging for a lot of
7 smaller employers in particular to be able to do.

8 I would like to take the opportunity if I could,
9 to please urge the Agency and urge the Standards Board to
10 urge the Agency to please work with stakeholders who are
11 people like me who are going to be responsible for
12 educating our members about what that workplace violence
13 standard will require them to do. To help us with
14 guidelines, guidance, frequently asked questions, workplace
15 violence program templates, and talk to us about what those
16 things might look like perhaps a little bit before they're
17 actually released to the public. So we can provide a
18 little bit of feedback as to what those things are going to
19 look like, and the degree to which we can coach our members
20 and the member employers to be able to actually implement
21 those things.

22 Because this is going to be a bit of a new world
23 for a lot of our employers. I know that we've always had
24 workplace violence obligations under 3203. I think we
25 recognize that, but the extent and the specificity of what

1 SB 553 will require employers to do is going to be a lot of
2 new things that I'm really not sure I could explain to our
3 members, at least not right now. And not without having
4 the opportunity to talk to the Agency about what their
5 expectations are going to be about how they intend to
6 enforce that.

7 So that was item number 1 and then item number
8 1a, I just wanted to offer a comment about the timing of
9 the second 15-day comment period on the indoor heat illness
10 standard.

11 I understand that we're all facing deadlines.
12 And at this time of the year, with the frequent occurrence
13 of holidays, it can be difficult to coordinate things like
14 that. The problem here is that the timing of that, our 15-
15 day comment period will include two holidays and at least
16 one business day when a great many people try to take off
17 and I suppose recover from eating too much turkey and
18 watching too many football games. I'm not sure the
19 football games of Thanksgiving are often worth watching
20 anyway, but a lot of people do it.

21 So my sense of it is that perhaps it could have
22 been timed in a way to give us some more time to be able to
23 offer constructive comment. As opposed to in this case,
24 the way the timing is going to work out we're going to have
25 8 business days out of what's supposed to be a 15-day

1 comment period to be able to digest those changes and be
2 able to come back to the Agency and to the Standards Board
3 with constructive and meaningful comments.

4 So in the future I mean I worked at the Labor
5 Department during the Bush Administration. I participated
6 in a few Friday afternoon news drops. And I don't know
7 that that was what was happening here. It may have been
8 just a case of running up against a deadline, and needing
9 to get things done. But I would ask you to please in the
10 future, try to be mindful of giving us time to be able to
11 comment on these things.

12 And that's all I have for you. Thank you for
13 your time.

14 CHAIR THOMAS: Thank you.

15 Who do we have?

16 MR. MOUTRIE: Good morning, Mr. Chairman and
17 Members, Robert Moutrie for the California Chamber of
18 Commerce. And I will endeavor to speak slowly as well
19 though I welcome hand gestures in the event that I fail.

20 So again good morning, California Chamber of
21 Commerce, Robert Moutrie, I'm going to touch on three
22 issues.

23 First, I'd like to thank staff for the work on a
24 number of issues. I mean, obviously, the indoor heat 15-
25 day, which we are working and responding to and a lot of

1 work goes in there. And a whole bunch of issues that are
2 flying right now.

3 First as a procedural note I wanted to touch on I
4 understand there will be two presentations around the lead
5 regulation. Two presentations around the lead regulation
6 today. One substantive event and it looks like one
7 procedural. And those are appreciated. I know it's been a
8 topic which stakeholders and the Board have sought more
9 information on, so I look forward to seeing those.

10 My only request would be going forward would be
11 to the extent that it's possible to include those notes in
12 the agenda. I mean since I walked in this morning an hour
13 ago I saw those notes and I learned to these presentations.
14 And I've been calling and texting people who I thought
15 might be concerned, you know, who are closer to those
16 issues than I am but were not aware. And so I'm not sure
17 that candidly, they'll be able to get onto the Zoom today
18 to even catch these presentations, which will be helpful
19 I'm hoping. So to the extent those can be included in
20 future agendas, you know it would be appreciated.

21 Turning to the indoor heat letter I want to flag,
22 we will be submitting comments on this. And I appreciate
23 the attempts to address vehicle issues and kind of a de
24 minimis access issue. We have some writing suggestions to
25 I think improve the draft language we will be submitting

17

1 but appreciate the work there.

2 And then I want to echo my colleague, Mr.
3 Little's comments, about SB 553. I was the prime or I
4 should say the lead employer side negotiator on that bill,
5 worked on it for many, many hours and many drafts. And I
6 will say that I have gotten myself more than 20 businesses
7 calling me already saying, hey will there be guidance?
8 Will there be templates on these workplace violence plans?
9 There's a lot and those are from well-organized employers
10 who can see far enough ahead to see that coming, right?

11 For the small and medium-sized employers I'm sure
12 they are not going to be ready in that timeline. And these
13 are not quick to set up. These are not cut-copy kind of
14 things or copy-paste kind of things, excuse me. So to the
15 extent that we can, you know, beg more of the Division's
16 very stretched time we would appreciate any help that can
17 be done there before it goes into effect. Thank you.

18 CHAIR THOMAS: Thank you.

19 Come right on up. Introduce yourself, please.

20 DR. MATERNA: Thank you. Good morning, Board
21 Members and staff. I'm Dr. Barbara Materna, a certified
22 industrial hygienist and retired Chief of the Occupational
23 Health Branch in the California Department of Public
24 Health. I'm here to share some of my personal history
25 working on lead poisoning prevention, and speak on behalf

1 of workers whose health would be far better protected under
2 the revised lead standards that you'll soon be voting on.

3 In 1992, I first began to lead the Occupational
4 Lead Poisoning Prevention Program at CDPH. The program
5 compiles all lab reported blood lead tests on California
6 adults, investigates work related lead poisoning, and
7 provides technical assistance and education.

8 Lead is a potent poison, affecting many body
9 systems, and perhaps the most well-studied toxin. Once
10 lead in the environment was reduced by regulating it out of
11 gasoline and paint studies could be done to document its
12 harmful effects at lower and lower blood levels. Concerned
13 that the standards were based on data from the 1970s we
14 helped to convene a national panel of lead experts charged
15 with evaluating the newer scientific evidence and
16 recommending what should be done to better protect lead-
17 exposed adults. I was a member of the panel, which began
18 meeting in 2003, 20 years ago.

19 In 2007, the Journal Environmental Health
20 Perspectives published the panel's work. Separate articles
21 documented that chronic lower level lead exposure is linked
22 to cardiovascular disease and reduced cognitive function.
23 Panel members including myself, coauthored an article
24 laying out how lead poisoned adults should be medically
25 managed. This work is cited in Cal/OSHA's rulemaking

1 package.

2 In 2010, CDPH made a formal recommendation for
3 revising the lead standards with four key changes to
4 improve health protection. One, lower the blood lead level
5 that triggers medical removal protection. Two, increase
6 the frequency of blood lead testing. Three, base the
7 requirement for blood lead testing and other sensible
8 hygiene measures on the presence of lead in the work
9 environment rather than air monitoring results. And four,
10 lower the permissible exposure limit of lead in air.

11 To recommend a health-based PEL CDPH contracted
12 with Cal/EPA's Office of Environmental Health Hazard
13 Assessment, because it was necessary to update the modeling
14 used to develop the first OSHA lead standard. OEHHA's
15 modeling, which has been published in peer reviewed
16 journals, supported CDPH says recommendation for a health
17 based PEL. Since Cal/OSHA may also consider feasibility,
18 they proposed a new PEL of 10 micrograms per cubic meter.
19 This is five times the upper bound of our health-based
20 recommendation, but unquestionably an important step toward
21 better protecting workers health.

22 So who are the workers who will benefit from the
23 long overdue revision of the lead standards? They're
24 largely nonunion, low wage and blue collar workers in a
25 range of industries. They paint and remodel homes, and

1 work on steel structures coated in lead-containing paint.
2 They clean up filthy shooting ranges and work in various
3 manufacturing industries that still use lead. They're
4 immigrant workers, many with limited English.

5 Outside of the battery industry they likely won't
6 be -- outside of the battery industry many have never had a
7 blood lead test. If they have high blood pressure, heart
8 disease or kidney disease, they likely won't be filing for
9 Workers' Compensation. They are hidden among the many
10 other hardworking people who lack health insurance, suffer
11 from chronic diseases common among Americans, and die
12 earlier than our better off white workers in less hazardous
13 jobs. And they are likely not to come to a Standards Board
14 meeting to ask you to vote for revised standards that will
15 better protect their health.

16 Besides the fact that these proposed standards
17 are science based, and address your mission of protecting
18 California workers' health, there are a few other reasons
19 that support a yes vote to adopt them. First, California
20 passed a law with a 2020 deadline for revised lead
21 standards. The Legislature also passed a law that requires
22 CDPH to report workplaces where a worker has a blood lead
23 level at or above 20 to Cal/OSHA for an enforcement
24 inspection. But Cal/OSHA is hampered by unprotected
25 standards where many lead safety hazards cannot be cited

1 without air monitoring that documents exceedance of the
2 outdated PEL.

3 Second, the proposed standards include the
4 critical changes CDPH recommended in 2010. These are
5 relatively simple tweaks to the complex structure of the
6 existing standards, so that Federal OSHA will find them
7 acceptable. They can be summarized clearly in educational
8 materials that are understandable to employers and workers
9 in lead industries. And CDPH and Cal/OSHA will work
10 together on this.

11 Finally, rejecting these proposed changes and
12 forcing Cal/OSHA to begin again on a path to new lead
13 standards would represent a tragic waste of state resources
14 invested since we began this important worker protection
15 effort well over 20 years ago.

16 Thank you for your time.

17 CHAIR THOMAS: Thank you.

18 Who do we have online, Maya? (No audible
19 response.) Do we have Maya?

20 MR. ROENSCH: Maya, could you repeat that please,
21 for us?

22 MS. MORSI: Up next is Enrique Huerta with
23 Climate Resolve.

24 CHAIR THOMAS: Is that Enrique?

25 MS. MORSI: Enrique Huerta.

1 CHAIR THOMAS: Enrique, can you hear us? (No
2 audible response.) Enrique?

3 All right. We'll go on to the next and we'll see
4 if we can get him back. Who's next, Maya?

5 MS. MORSI: Up next is Dr. Janie Gittleman,
6 Executive Director, Association of Occupational and
7 Environmental Clinics.

8 CHAIR THOMAS: Can you hear us?

9 MS. MORSI: Dr. Janie Gittleman.

10 CHAIR THOMAS: Dr. Gittleman, can you hear us?
11 (No audible response.) I hate when this happens. Yeah, *6
12 or unmute?

13 MS. MORSI: Yeah, I'm not seeing the name in
14 WebEx.

15 CHAIR THOMAS: Let's go to the next until we get
16 someone.

17 MS. MORSI: Okay. Up next is Dorothy Wigmore,
18 M.S.

19 CHAIR THOMAS: Dorothy, can you hear us? (No
20 audible response.). Yeah, Dorothy, can you hear us?

21 MS. MORSI: I also do not see Dorothy in the
22 participant list.

23 CHAIR THOMAS: Let's go to the next.

24 MS. MORSI: Up next is Barbara Materna, PhD,
25 retired Chief of the Occupational Health Branch, California

1 Department of Public Health. Barbara Materna.

2 CHAIR THOMAS: She already commented.

3 And of course, you can comment again if you would
4 like. (Indiscernible) So well let's do this. Let's go to
5 the people that are here and we'll go through them. And
6 then we'll see if we can come back to the video or audio
7 and get some.

8 MS. MORSI: Okay.

9 CHAIR THOMAS: So who's ever next, come on up and
10 state your name and affiliation.

11 MR. HOROWITZ: My name is Mike Horowitz, I have
12 no current affiliation. I worked for the Division for 30
13 years, the last 12 of them with Research and Standards.

14 My only relation to the -- I'm here to speak
15 about the lead standard, but my only relationship to its
16 actual -- the proposed changes to the lead standards -- my
17 only relation to those was taking notes at some of the
18 early advisory committee meetings. I contributed not a
19 word or not a thought to any of the changes that were made
20 by my then colleagues. I've been -- at the end of this
21 month, I will have been retired in five years.

22 My statement is about time and change as it
23 relates to scientific and technical progress and knowledge
24 and work. And, in particular with a few words about the
25 OEHHA developed Leggett + pharmacokinetic model. So well

24

1 time and its passage, you know, spoiler alert, I'm urging
2 with all the emotional emphasis I can that the Board
3 Members pass the proposed package in its current form.

4 It's long past due to pass these kinds of changes to the
5 lead standards to improve the health-based exposure limit.

6 So I mean I could tell you horror stories of what
7 I saw during my time when I was in enforcement. I'll just
8 mention one because it didn't involve a direct exposure.
9 There was or used to be a small battery recycling operation
10 in Southern Alameda County. And this wasn't my inspection,
11 but I accompanied it. And the reason we were there was
12 because a child was detected with a blood lead level of
13 104, four years old. The only exposure that his parents
14 had, who was a delivery driver, was that he smoked
15 cigarettes and occasionally went in and ate lunch at the
16 lunch table. So I think that speaks a little bit to the
17 pharmacokinetic model.

18 But certainly it's long overdue to change this.
19 I really thought that when I think Barbara Materna
20 mentioned their early work. Well, in 2011 the CDPH pulled
21 together a symposium that was held in Berkeley that I had
22 opportunity to attend. It was chaired by Dr. John Howard
23 the head of NIOSH. And I think his message at that time
24 was it's time to change the lead standard.

25 But as I said I go way back in health and safety,

25

1 even way before my Cal/OSHA days. When I was a worker in
2 1973 I filed one of the probably first few complaints with
3 Federal OSHA, which had a newly rolled out enforcement
4 unit. So I've seen a lot, but I've also seen a lot of
5 changes.

6 One thing I've noticed about the longer and more
7 complex standards is that prior to their adoption the
8 regulated community is often doubtful that it can comply
9 with all the requirements, some of which they fear may be
10 too onerous or too expensive, too onerous to implement or
11 too expensive, but time passes. And one of the things I
12 think that you all can be proud of as being part of a
13 process that advances health and safety. That helps
14 provide an impetus to science and technology and business
15 itself, to innovate and provide the products and the
16 knowledge, consultancies emerge that help employers comply.
17 And it happens time after time after time, standard after
18 standard.

19 So let me give you a couple of examples of
20 standards that, you know, I saw developed during my time in
21 Cal/OSHA. One would be the blood borne pathogen standards,
22 which was highly resisted by those which fall within its
23 purview. And, you know, in the early days there were there
24 were grave deficiencies in implementing it. But I think
25 today, I think it's more fervent supporters will be found

26

1 in the employer community that must implement it.

2 More recently, one standard I worked on somewhat
3 when I was in the Research and Standards Unit was 51 -- no,
4 sorry, 1532.3, which is the silica and construction
5 standard. You know, what I used to notice and driving
6 around, when I saw concrete being broken up, huge clouds of
7 dust. I often had to walk -- within blocks of here I used
8 to have to walk through it or walk around it trying to do
9 our due diligence to see whether -- this is when I was in
10 Research and Standards -- to see whether it was feasible.
11 Because that is something that we try and look at before
12 bringing a package to the Board, was it feasible? And I
13 learned from talking to vendors and equipment rental
14 companies is they had equipment that would bring water to
15 those kinds of operations, but they couldn't rent them.
16 Nobody wanted them.

17 But if you walk around today really I haven't
18 seen a really dusty concrete breaking operation. I mean,
19 not that I go out looking but just, you know, ordinary life
20 I don't see it much anymore. So it was feasible. It does
21 work. And I think people are safer for it.

22 Some other standards more recently that some of
23 you all sitting there have been involved in, the health
24 care lifting standard. I don't think it took that long for
25 employers to get on board, but there was tremendous

1 opposition. The hotel housekeeping standard. I'm not
2 involved anymore. I'm not aware of any huge difficulties
3 in implementing that standard. That would be 3345 and 5120.

4 CHAIR THOMAS: Can you wrap up? We have quite a
5 few people to get to.

6 MR. HOROWITZ: I'm sorry?

7 CHAIR THOMAS: Could you wrap up, please? We
8 have a few other people to get to.

9 MR. HOROWITZ: Sure.

10 CHAIR THOMAS: Thank you.

11 MR. HOROWITZ: So, you know, science has advanced
12 in the time I've been involved with occupational exposures.
13 New PELs used to be based upon, you know, a couple of
14 exposure/disease studies. It really wasn't possible to
15 measure with such what we're able to do today, the
16 knowledge base is so much greater.

17 And I think one thing during the time that I was
18 involved with PEL development, which was a big part of my
19 work at Cal/OSHA, more and more you heard from the
20 scientific community that standards ought to include a PBPK
21 model, which is basically pharmacokinetic. And that some of
22 our attempts to adopt new PELs didn't include those. And
23 as a consequence of that the Division hired a toxicologist
24 to head up its PEL unit, and I think that's the Leggett
25 model, the OEHHA model, the Leggett + model that OEHHA

1 developed, you know, speaks to that. It probably wasn't
2 possible 30, 40 years ago, but it now is.

3 And I've read the model. And I think that it is
4 not excessive. In fact, it is conservative in the best
5 sense of the meaning of that word. It actually
6 underestimates exposure, if you read it carefully. And I
7 think that's, you know, appropriate to be cautious and not
8 go way out there on the limb. So this is not an extreme
9 standard, or an extreme model. I wanted to make that
10 point. I'm not a toxicologist, but that's to the extent I
11 understand it.

12 So again to return back to my initial point is
13 the existing lead standard adequate? So somewhere, I don't
14 remember the exact year, somewhere in the 2010s I went to
15 industrial hygiene conference. And I had the opportunity
16 to meet and have a brief conversation with Eula Bingham who
17 was the head of OSHA in the 1970s. And I talked to her
18 about the lead standard. And she told me then that she was
19 almost furious at the time in the early '80s, because the
20 scientific knowledge at that point indicated that the PEL
21 that they adopted was not adequate to protect workers. So
22 I don't know if she ever put that in writing anywhere, but
23 that's what she told me.

24 And so I don't know if people remember during
25 George Bush Jr's. term there was an effort to look at all

1 the existing standards that various agencies had and all
2 agencies were required to look at all their standards and
3 see if they were effective. This was in 2007. And the
4 Federal OSHA looked at its lead standard, and this is what
5 they said. They said, "New technology and economic
6 development have made compliance with its lead standard
7 easier."

8 Since there's a lot of time passed since then
9 then I think it's time to realize, you know, Eula Bingham's
10 dream. It's time to realize the efforts of the California
11 Department of Public Health. It's been 20 years of their
12 efforts to bring forth a standard that better protects the
13 workforce exposed to lead.

14 CHAIR THOMAS: Thank you.

15 Go ahead. Go ahead.

16 MR. GOTTFELD: Good morning. I'm Perry
17 Gottesfeld with Occupational Knowledge International.
18 I've been working on lead poisoning prevention for the past
19 30 plus years. In April I spoke to the Board to encourage
20 you to approve the proposed lead regulations. Since the
21 April meeting new information has come to light that should
22 be considered in expediting your approval of the revised
23 lead standard.

24 First, a recently published study by the World
25 Bank estimates that every year 5.5 million adults are dying

1 of cardiovascular disease due to lead exposure. They
2 estimated that the annual cost of lead exposure globally
3 was \$6 trillion. With more than 75 percent of this due to
4 cardiovascular disease mortality. We hear a lot about
5 childhood lead poisoning, but clearly this is having a huge
6 impact on adults around the world.

7 Number two, in September OSHA issued a \$160,000
8 citation against U.S. Battery Manufacturing Company for
9 their facility in Augusta, Georgia. I raise this, because
10 this is a California-based manufacturer with facilities in
11 Southern California. Federal OSHA found serious violations
12 for airborne lead concentrations that exceeded the current
13 permissible exposure limit by more than nine times and
14 exposures on the production line for making lead batteries
15 were greater than 100 micrograms per cubic meter.

16 Number three, there is growing evidence that
17 ultrafine lead particles released from heating lead in a
18 furnace such as is typical in a lead battery manufacturing
19 unit or recycling unit, or from gunshots, generate
20 significant airborne exposures of nanosized particles. We
21 also know that these extremely small particles can pass
22 directly from the nose to the brain, and are unaccounted
23 for with blood lead level tests. The evidence linking
24 airborne lead to brain health is a clear reason why it is
25 time for action to lower the airborne limit.

1 And finally, the most recent data from the
2 California Department of Public Health shows that more than
3 20 percent of lead poisoning cases amongst children from
4 non-housing sources are linked to take-home occupational
5 exposures. Other states have reported that parental
6 exposures on the job are responsible for between 10 and 20
7 percent of childhood lead poisoning. Reducing lead
8 exposures in the workplace will reduce exposures in the
9 population at large.

10 In summary, the Standards Board can save lives by
11 adopting the proposed Cal/OSHA lead standard without delay.
12 Thank you.

13 CHAIR THOMAS: Thank you.

14 MR. WICK: Good morning --

15 CHAIR THOMAS: Good morning.

16 MR. WICK: -- Chair Thomas, Board Members, Chief
17 Killip and Director Hagen and everyone else, Bruce Wick,
18 Housing Contractors of California. I have two main points
19 to talk about.

20 One is I want to thank you and tell you how much
21 it was appreciated at last meeting when your responses to
22 our public testimony really told all stakeholders that we
23 are all listened to thoughtfully by you. It was really,
24 really encouraging and important.

25 And I do want to add something. Laura Stock, you

1 brought up a very important point about certain regulations
2 need a certain level of complexity to protect workers.
3 That's very true. But that's why also when your Standards
4 Board staff conducts an advisory committee, and we're all
5 sitting around the table, we spend extra time trying to
6 maintain that level of complexity but make it as simple and
7 clear as possible of the regulation when we go by sentence
8 by sentence to make it as clear as possible while
9 maintaining that level that's needed. So thank you for
10 your response. I believe I can say on behalf of all
11 stakeholders, thank you that we all appreciate being
12 listened to thoughtfully even if we disagree. That's okay.
13 That's a good exchange.

14 I was saddened by the Division's response. And
15 I'm just going to give one example of that. Steve Johnson
16 talked about training. And Cal/OSHA has a significant word
17 they put into training, that training must be "effective."
18 That the feds say you must train, we say training must be
19 effective.

20 And we understand there can be reasons for that
21 if you have a good clear reg. But it means that nine
22 months after the training an employee needs to be able to
23 tell the Cal/OSHA inspector that they substantively
24 understand what they were trained on. Sometimes employees
25 are intimidated by being interviewed by a Cal/OSHA

1 inspector and employers are cited based on that, even
2 though they can document the training, the certification of
3 the trainer the employee signed off, but they maybe can't
4 remember. So it's an important point that California has
5 and Steve brought that up, Steve Johnson.

6 The response was specifically with the lead reg
7 that the appendices are informational only, non-mandatory,
8 and do not create any additional obligation. And being
9 constructively critical I will offer a different and
10 hopefully better response that could have been given to
11 you.

12 Steve Johnson works for the Associated Roofing
13 Contractors. They are all union contractors. Their
14 employees show up from the union hall, union trained, but
15 his members say we want to go levels above that. So Steve
16 is a full-time employee of that association going around
17 training their supervisors, their safety directors, and
18 employees themselves. It's a very short list of people who
19 know more about effective training than Steve Johnson. So
20 when Steve brings up a point he should be thoughtfully
21 responded to. Here's how he should have been responded to
22 in my opinion. "Steve, you're right."

23 This reg says any employee who is exposed to 2
24 micrograms on any day, one day, that can mean an employee
25 who's not ever handling lead themselves. Construction, an

1 employer right next to you operating, another employee 25
2 feet away from you. Getting to 2, and we know that's from
3 our current 30, people have talked about we need to do
4 something. Okay, let's go from 30, but it's 93 percent to
5 go to 2. Those people have to be effectively trained.

6 And it's true the appendices say -- and I'll read
7 the whole sentence. "The information contained in the
8 appendix to this section is not intended by itself to
9 create any additional obligations, not otherwise imposed by
10 this standard nor detract from any other obligation." In
11 the standard it says training, "This effective training to
12 employees shall be on the content of this standard and its
13 appendices."

14 So that employee who is exposed one day at a 2
15 must be safely trained. And yes, the Division could not
16 cite under the appendix, 1532.1 Appendix A, but they would
17 cite under 1532.1 the training section of that. That's why
18 we've talked about this dropping it to 2, that's a big
19 deal. Dropping it to something, you know, sounds like it's
20 overdue okay. But 2 is a big deal when it triggers this
21 level of training, to try to make an employee who never
22 handles lead themselves sit through either 91 pages of the
23 construction safety orders or 179 pages of the whole thing.
24 And retain that. That's a big deal.

25 The second point, last quick point I want to make

1 is on the indoor heat illness. We talked a couple of
2 months ago about how we have hundreds of thousands of
3 containers on construction sites. And that containers were
4 not accepted from the short term deal. And we understand
5 they were trying to include the freight moving containers
6 and it was supposed to be fixed by this revision. It was
7 not.

8 Any sunny day in California when those containers
9 hit 87 degrees an employee who goes in there for two
10 minutes is under the indoor heat illness provision the way
11 it is. That needs to be fixed. A construction employer
12 can be in complete compliance with outdoor heat and have an
13 employee go in there for two minutes, and you're now under
14 all the engineering administrative controls PPE, having to
15 analyze all of that. That should be exempted for a short
16 duration.

17 And just one final point on that. This is now the
18 Division's 10th revision, I'm sorry, 10th proposal, 9th
19 revision from the original. They're going to have to go to
20 the 11th to fix that.

21 This is why I implore the Division, and I implore
22 you to implore them, to follow your example of your staff
23 in doing advisory committees. That's why in those
24 committees we go line by line through a regulation. We
25 don't have to do it 4, 7 or 11 times to get to the right

1 place. We all walk through it and put the best language we
2 can. Keeping it to the complexity it needs, but making it
3 as simple as possible so we can effectively train employees
4 on it. Thank you.

5 CHAIR THOMAS: Thank you.

6 Do we have any other in-person speakers or
7 commenters today?

8 MR. JOHNSON: Good morning, Board Members,
9 Chairman Thomas, Division, Division staff, and DIR,
10 distinguished members from DIR, welcome. And my name is
11 Steve Johnson. I'm the Safety Director for Associated
12 Roofing Contractors of the Bay Area Counties.

13 And I just want to focus my comments on a few
14 things with the heat illness prevention standard. I could
15 take up probably half an hour on what we've talked about so
16 far on lead, but I think I would get the shepherd's hook on
17 that one. So I will focus my comments on heat illness,
18 indoor heat illness. I do really want more input from the
19 Division on lead before there's a vote just with
20 collaboration with industry, because I think it's really
21 needed.

22 And one of the things that I'd like to just
23 mention is that I don't -- I think that Cal/OSHA really
24 discounts the cumulative impact that all of these written
25 programs have on employers, small to medium employers, in

37

1 administering and developing written programs. It's piling
2 on and piling on and piling on. So we're going to have
3 workplace violence, we're going to have written program to
4 deal with on that. We're going to have indoor heat,
5 there's going to be a written program required for that.
6 And that's just two additional. Last count I was somewhere
7 around 28 written programs that employers have to annually
8 administer, they have to annually do training on. And so
9 you wind up administratively having all of these written
10 programs combined.

11 I really think it should be a requirement for an
12 inspector who works for Cal/OSHA to work for a year in
13 private industry, and be a safety director or field safety
14 person for an employer for at least a year. And implement
15 all of these programs to their employees, for at least a
16 year, before even being considered to be hired as a
17 Cal/OSHA inspector. I think there is a huge disconnect
18 with employers on what's really required by Cal/OSHA and
19 the overburden and the administrative impact on all these
20 written programs. It's just glossed over.

21 My comments on the indoor heat, with the outdoor
22 heat there was I thought a lot of collaboration with the
23 employers on developing the outdoor heat. It went through
24 a couple of revisions were a new trigger temp was added at
25 95 for high heat that was really, you know, agreed upon.

1 Not everybody agreed, but we finally landed on a trigger
2 temp at 95 for high heat that was understandable. That
3 employers could measure. That once you hit 95 okay you've
4 got all of these high heat procedures that kick in. You've
5 got a written program that you need to do training on. And
6 employers, at least in construction, where I focus in
7 construction, could understand it. And could do training
8 on it, and could enforce it, and enforce it with their own
9 companies. And require -- you know, do safety walks and
10 require these procedures.

11 With the indoor heat I think we've really veered
12 off the path. And instead of instead of a simple trigger,
13 now we're going to require a measurement of heat index.
14 And that in my mind just muddies the water. I think that a
15 simple trigger, just based on whatever the number winds up
16 being, at 82, the simple trigger of 82 that kicks off some
17 requirements to think about procedures and what you're
18 going to do. That's fine. It's based on a thermometer
19 reading. But then you get into the higher trigger where
20 you start talking about heat index, and that's where the
21 waters really get muddy. And employers get confused.

22 And I want to talk a little bit about -- because
23 I mentioned a couple of meetings ago that the heat illness,
24 the heat index is not a reliable measurement. It is based
25 on a study in 1979 by Robert Steadman, who did "An

1 Assessment of Sultriness, Parts I and II." It's based on
2 parameters and assumptions that aren't even relevant to a
3 work environment. It requires employers to use an
4 inaccurate heat index in Appendix A, from the National
5 Weather Service.

6 I think it opens Cal/OSHA enforcement to legal
7 challenges from the regulated employers. I think it uses -
8 - one of the complications is that when I try to explain to
9 a superintendent or a safety director for one of our
10 contractors that the reasoning behind the regulation is
11 it's based on a heat index. And they have to take a heat
12 index reading, and a thermometer temperature reading,
13 record both of those, decide which is higher and go by that
14 number. Where a simple thermometer reading, even if it has
15 to be taken several times throughout the day to kind of
16 track how the day's going, is just much simpler. And
17 really, I think needs to be changed. And it just hasn't
18 been addressed.

19 I haven't been approached by anybody from the
20 Division about the second 15-day notice. No one's reached
21 out to me. And I made these same comments a few meetings
22 ago. So that's something I'd like to see really changed.

23 The lead standard, the comments that I've heard
24 so far about the lead standard, there is regulation in
25 place. And the construction standard for the federal lead

1 standard was updated in 1993. We're talking about new
2 regulation for heat illness that is going to be based on
3 the heat index study for 1979. And call and writing that
4 into current regulation. I don't see the connection there.
5 Because there is some protection for -- with hygiene
6 practices, with monitoring, with using personal protective
7 equipment already in place for lead.

8 So these are just some of the things that I would
9 like input, I would like dialogue with the Division before
10 these things get written into a regulation that I'm now
11 responsible for presenting to our employers. And doing
12 training and trying to explain the reasons why. Because I
13 lose a lot of credibility when I have to talk about
14 something that just doesn't make any sense to employers.

15 Thank you.

16 CHAIR THOMAS: Thank you.

17 Go ahead.

18 MS. NICOL WRIGHT: Good morning, everybody. It's
19 nice to see you all in person for the first time.

20 CHAIR THOMAS: Good morning.

21 MS. NICOL WRIGHT: This is my first time I think
22 talking in public since COVID, so please bear with me. So
23 good morning, Board Members, staff, colleagues. My name is
24 AnaStacia Nicol Wright with WorkSafe and I'm here to
25 comment on the proposed lead standard and heat standard.

1 I would also encourage Chief Killip to not make
2 the inspector requirements any more strenuous than they
3 already are, but back to the lead standard.

4 The current lead standards are outdated and based
5 on epidemiological evidence that is over 40 years old.
6 Last month we heard a lot from employers and industry with
7 a grab bag of complaints about Cal/OSHA's proposal being
8 unscientific government overreach. Their pushback,
9 respectfully was intentionally orchestrated to create
10 confusion and delay. The standard cannot be delayed any
11 longer to accommodate industry's desire for a more watered
12 down ineffective standard.

13 This proposal is already long overdue. It is now
14 time for the Board to act. In 2019 the Governor signed SB
15 83 establishing Labor Code section 6717.5, which required
16 the Division to submit a proposal to the Standards Board
17 and the Board to vote on the proposal by September of 2020.
18 This of course, was delayed by COVID. But the proposal was
19 then heard on April 28 of 2023.

20 Two Notices of Proposed Modifications have been
21 issued. The current rulemaking results from proposals by
22 the California Department of Public Health in 2010 and
23 2013, recommending that lead standards be amended to
24 reflect current knowledge about hazards of lead exposure.
25 It's also informed by six public advisory meetings held by

1 Cal/OSHA between 2011 and 2015. And backed by scientific
2 data from California's Office of Environmental Health
3 Hazard Assessments, and the Center of Occupational and
4 Environmental Health at the University of California,
5 Berkeley.

6 Throughout all the comments we heard last month,
7 the most important voices weren't heard -- the voice of the
8 workers. And while splitting hairs and creating more delay
9 may benefit the few, in the meantime employees are
10 continuing to suffer the health effects of lead
11 overexposure. And in many cases the lack of sanitation
12 facilities puts the employees' households at risk as well.
13 For these reasons, I urge the Board to pass this proposal
14 without further delay.

15 Lastly, I'd like to thank the Division for the
16 time and effort that went into releasing a new draft of the
17 indoor heat standard. We were pleased to see proworker
18 safety changes such as the removal of a continuous -- or
19 the contiguous voting language. And the additional
20 exceptions under the former section a(1)(c) were eager to
21 dive deep into the revisions during football and turkey,
22 and provide extensive comment by the end of the 15-day
23 period. Thank you, everybody.

24 CHAIR THOMAS: Thank you.

25 Come up. We're going to go through all the in-

1 person and then we'll see if we can get the other to work.
2 Go ahead.

3 MR. SMITH: Good morning, everyone. I'm Dave
4 Smith, a Safety Consultant in California. And I'm the
5 original author of the first, first aid petition or first
6 aid kits petition in 2006.

7 And I'm here to ask again, why do you think to
8 take so long? The only way things seem to actually get
9 done in recent years in health and safety is passing bills
10 in the Legislature that are signed into law by the
11 Governor. And that's how workplace violence got here. Now
12 we have to figure out how to do that.

13 At previous Board meetings the issue of process
14 and resources was raised. We need to give the committed
15 staff professionals at the Board and at the Division the
16 tools they need to do their jobs. Government should be
17 transparent in its process, and engage all stakeholders in
18 developing standards that are effective, practical, and
19 understandable. Processes should be transparent.

20 Things to think about are adequate resources
21 provided to the Standards Board staff. What about the
22 standards group at the Division? Are there any roadblocks
23 or process delays that we can streamline? Are any required
24 processes redundant, unneeded? Do we need new legislation
25 to solve these problems? Can stakeholders help?

1 We all look forward to hearing more reports about
2 the resource process effectiveness and efficiency issues.
3 Thank you.

4 CHAIR THOMAS: Thank you.

5 Do we have any other in-person speakers,
6 commenters? If not, we're going to go back to Maya. Who
7 do you have on the line?

8 MS. MORSI: Up next is Helen Cleary with PRR OSH
9 Forum.

10 CHAIR THOMAS: Helen, can you hear us?

11 MS. CLEARY: I can, yeah. Can you hear me, okay?

12 CHAIR THOMAS: Thank God, somebody is there. Go
13 ahead, go ahead.

14 MS. CLEARY: I'm here. Excellent, okay. Thank
15 you. Good morning, everybody here today: Chair Thomas,
16 Board Members, Division, and Board staff. My name is Helen
17 Cleary, and I'm the Director of the PRR Occupational Safety
18 and Health Forum. And we primarily are going to talk about
19 the indoor heat 7-day notice.

20 But quickly, I'd like to touch on some of the
21 lead comments made today. We weren't aware there was going
22 to be a presentation or an extensive discussion. So I just
23 wanted to remind the Board that PRR has not disputed the
24 health risks associated with lead exposure, or the need to
25 update the rule, or the goal to reduce blood lead burden on

45

1 workers. It is the entire suite of requirements, the
2 interim protections, the pre-exposure requirements that are
3 a result of the lowered leverage levels that we're
4 concerned about.

5 We sympathize with workers who are exposed and
6 have long term health effects. It's horrible. We don't
7 support it. We don't support members and doing any of
8 that. When listening to some of the examples that were
9 given it sounds like some of those violate or are
10 violations from the current standard.

11 And to be clear PRR's comments last week were not
12 -- or last month -- were not an orchestrated attempt to
13 delay the rule. The fact that multiple employer
14 stakeholders are expressing significant concerns, we think
15 means there is something inherently wrong with the strategy
16 and the approach to lower the exposure limits. Not the
17 fact that we want to lower the limits.

18 Also, we 100 percent agree with Bruce Wick's
19 explanation of the concerns surrounding training
20 requirements and the appendices. We detailed this in our
21 written comments.

22 Okay, thank you for that opportunity to touch on
23 that.

24 Next, I just want to say thank you to Chief
25 Killip for taking the time out of his extremely busy

1 schedule to present to PRR members at our fall 2023 event
2 last week. We were thrilled to have him join us and we
3 appreciate his efforts to engage with stakeholders. So
4 thank you, Chief, for making yourself available to us.

5 And it was while I was facilitating the event
6 that the second 15-day notice was issued for heat. I
7 eagerly pulled up the text. I quickly scanned it, and was
8 genuinely excited when I saw the new exception. I looked
9 at our members and I said I think we finally got an
10 exception based on duration of exposure. PRR has been
11 asking for this for years. I told our taskforce, "Please
12 tell me if this is helpful. I really want to tell the
13 Board that we like this draft."

14 Members were quiet and someone said, "What do we
15 really gain from this?" It provides a window of five
16 degrees, 82 to 87 for 15 minutes, and it creates another
17 category to track and monitor. The irony and the
18 frustration is that this is for incidental exposures. It
19 should be a carve-out that can be easily applied to areas
20 that are not normally occupied and present little to no
21 risk. They are repurposed shipping containers and storage
22 sheds. There are stairwells, indoor parking structures,
23 and large buildings that people walk through to get to a
24 climate controlled office. As drafted it's just too
25 restrictive, and it will add a significant element of

1 complexity to manage. It does not solve PRR's issue in
2 these types of spaces.

3 And in addition, we don't believe that limiting
4 the exception will improve health and safety. Incidental
5 exposures to 82 and 87 degrees do not result in heat
6 illness and we'd like to understand the validity of these
7 temperatures. Workload, physical activity, endurance, time
8 spent exposed, are all key elements this regulation does
9 not consider. They are also key components in the studies
10 and literature on occupational heat strain the regulation
11 references.

12 Okay, now PRR understands and supports the goal
13 to keep the regulations simple and easy to understand. And
14 we are not advocating for inclusion of these factors. But
15 we mentioned this, because without considering contributing
16 factors beyond temperature and heat index, there needs to
17 be some element that ensures that this regulation is
18 practical and does not unnecessarily include low risk
19 situations.

20 PRR continues to agree with the need for an
21 indoor heat standard. And we appreciate an exception that
22 considers time spent exposed, but it needs one more tweak.
23 We recommend that the section does not apply to incidental
24 heat exposures where an employee is exposed to temperatures
25 above 82 degrees for less than 15 minutes in a 60-minute

1 period. Period. No additional requirement to meet or
2 temperature to measure. We urge the Board for a practical
3 application (indiscernible) solution to address short
4 duration and incidental exposures before the final draft is
5 issued.

6 We are submitting written comments that well and
7 thank you for listening to us today. Oh and Happy
8 Thanksgiving to everybody. Thank you.

9 CHAIR THOMAS: Thank you.

10 Who do we have next, Maya?

11 MS. MORSI: Up next is Pamela Murcell with
12 California Industrial Hygiene Council.

13 CHAIR THOMAS: Do we have -- I'm sorry, I didn't
14 get the name?

15 MS. MURCELL: Pam.

16 CHAIR THOMAS: Pam, can you hear us?

17 MS. MURCELL: Are you able to hear me?

18 CHAIR THOMAS: I can hear you.

19 MS. MURCELL: Are you able to hear me?

20 CHAIR THOMAS: Yep, go ahead.

21 MS. MURCELL: Thank you. This is Pamela Murcell,
22 California Industrial Hygiene Council.

23 CHAIR THOMAS: Yeah, go ahead.

24 MS. MURCELL: Okay, thank you very much. I had
25 to switch to my phone, because I wasn't able to make access

1 things work on the WebEx this morning.

2 So in any case, I want to get straightaway to my
3 comments. These are relevant to the proposed revisions to
4 the lead regulations and a request to the Board regarding
5 certified industrial hygienist designation. So Chair
6 Thomas, the Standards Board Members, all of the Standards
7 Board staff and Cal/OSHA representatives we really
8 appreciate your time. And we're going to submit these
9 comments in writing as well. The California Industrial
10 Hygiene Council did provide written comments back in April,
11 April 20th, 2023 to be exact. And our follow up is based
12 on some of those comments.

13 We remain deeply concerned about the issue of
14 exposure assessment data quality, and specifically
15 reference the item one and our April 20 2023 comments.
16 CIHC implored the Board to incorporate the Certified
17 Industrial Hygienist designation, CIH, in the proposed regs
18 revisions. And required that that CIH designation is in
19 the revised language of all three of the regulations that
20 are up for consideration. Specifically 5198, 1532.1 and
21 5155(e).

22 As vital assurance, the CIH would provide a vital
23 assurance of exposure assessment data quality. The
24 benchmark for competence in industrial hygiene is
25 certification by the Board for global EHS credentialing.

1 That's formerly known as the American Board of Industrial
2 Hygiene. Certified industrial hygienist is codified in
3 California's Business and Professions Code, sections 20701
4 through 20705.

5 CIHC understands that the Board may consider this
6 request is self-serving considering our stakeholders.
7 However, it is important for the Board to appreciate that
8 CIHC's mission is "advancing public policy to improve the
9 health and safety of workers and the community." As stated
10 in our letterhead the mission is our driver. Getting it,
11 the exposure assessment right is essential for the proper
12 application of the provisions of the lead regulation, which
13 ultimately affects both labor and management.

14 Getting it right relies on the skill set of CIHs,
15 the anticipation, recognition, evaluation and control of
16 hazards. This skill set encompasses understanding multiple
17 complex factors, including synergistic reactions, how to
18 properly evaluate different exposure groups, how to
19 evaluate data and data quality, and the application of
20 resulting data for exposure control.

21 From a technical standpoint there's a very narrow
22 tolerance for error in the measurement of exposures,
23 especially with the proposed action level of 2 micrograms
24 per cubic meter.

25 One of the concerns regarding the proposed action

1 level at the 2 micrograms per cubic meter, which the CIHC
2 previously conveyed, is the high potential of the action
3 level not being accurately assessed due to the constraints
4 of detection limits in the current standard methods for air
5 sampling and analysis. Errors can be introduced in
6 numerous and subtle ways, which argues for some assurance
7 about the expertise and skills of the evaluator.

8 The correct application of most of the
9 requirements in the lead regulations depends upon having
10 verifiable, reproducible exposure assessment results. If
11 results are erroneously too low, employees will be harmed.
12 If erroneously too high, employers will have unnecessary
13 requirements imposed. Getting it right is important for
14 the health of the workers and their families.

15 CIHC believes this request is appropriate for
16 both labor and management support. CIHC respectfully
17 implores the board to require DOSH to add the CIH
18 designation to the final draft revisions for these
19 regulations and recommends that the Board adopt the
20 requirement.

21 CHAIR THOMAS: (Overlapping) Pamela, can you slow
22 down just a little bit? Pamela, can you slow down just a
23 little bit? We have people that are transcribing it.

24 Thank you

25 MS. MURCELL: Sure. No worries, I only have one

1 more sentence.

2 CHAIR THOMAS: Too late.

3 MS. MURCELL: Anyway, we highly -- we obviously
4 are very supportive of our recommendations. You, the
5 Standards Board Members, are the ultimate arbiters of
6 adopted Cal/OSHA regulatory requirements. We thank you for
7 your time and consideration.

8 CHAIR THOMAS: Thank you.

9 Who do we have next, Maya?

10 MS. MORSI: Up next we have Louis Blumberg with
11 Climate Resolve.

12 CHAIR THOMAS: What was the first name again,
13 Louis?

14 MS. MORSI: Louis Blumberg.

15 CHAIR THOMAS: Thank you.

16 Louis, are you there? Hello, Louis, are you
17 there? Star 6 if you're on a phone or unmute yourself.
18 (No audible response.) All right, well we're going to go
19 on to the next. Can you move on, Maya?

20 MS. MORSI: Up next is Kevin Riley with UCLA
21 Labor Occupational Safety.

22 CHAIR THOMAS: Kevin, can you hear us? Hello,
23 Kevin. (No audible response.)

24 All right, let's move on to the next.

25 MS. MORSI: Up next is Andrea Carrico, retired

1 professor.

2 CHAIR THOMAS: Andrea, can you hear us? (No
3 audible response.) All right, I'm not sure if these people
4 are still on what. But you know, what --

5 MS. MORSI: I can't find this person online
6 either.

7 CHAIR THOMAS: So we're going to -- I want you
8 guys to check and make sure that we're getting people on.
9 We're going to take a 10-minute break. Let's make it 15,
10 And we'll be back at 20 to 12:00. So we're going to take a
11 break. Thank you.

12 (Off the record at 11:27 a.m.)

13 (On the record at 11:43 a.m.)

14 CHAIR THOMAS: All right, we are back in session.
15 And I think there is - oh, what's the number to call in?
16 I'm looking for it here. I think there's -- I got a
17 comment that it was given too - oh, here it is.

18 (Off-mic colloquy.)

19 CHAIR THOMAS: Yeah, so if you're calling in and
20 you can't -- you have the number, you don't have the right
21 number.

22 It's 510 --

23 MR. ROENSCH: Dave, if I may? I'll repeat it.
24 I'll repeat it for you.

25 CHAIR THOMAS: Go ahead.

1 MR. ROENSCH: It's the number to call in on WebEx
2 to participate in the meeting is 844-992-47261.

3 CHAIR THOMAS: One more time.

4 MR. ROENSCH: Yes. The number again is 844-992-
5 4726. And Dave, if you call it on that number you'll need
6 to enter the meeting code. And the meeting code I will
7 give you now. It's 268-984-996. And I'll repeat that.
8 The meeting code when prompted is 268-984-996.

9 CHAIR THOMAS: Thank you. Oh, and push #.

10 MR. ROENSCH: The # sign, yes.

11 CHAIR THOMAS: So guaranteed nobody's going to
12 make it through that. (Laughter) Anyway, okay. Oh, hi
13 Chris.

14 So we're going to continue with comments from
15 call-in, calling-in people. So Maya, who do we have next?

16 MS. MORSI: Up next is Dr. Janie Gittleman.

17 CHAIR THOMAS: Can you hear us, doctor?

18 DR. GITTLEMAN: Hello?

19 CHAIR THOMAS: Yes, go right ahead.

20 DR. GITTLEMAN: Can you hear me now?

21 CHAIR THOMAS: Yeah.

22 DR. GITTLEMAN: Terrific. Hi. Sorry, I can't be
23 there on WebEx, but I'm here verbally. So my name is Dr.
24 Janie Gittleman. I'm the Executive Director of the
25 Association of Occupational and Environmental Clinics. The

55

1 Association of Occupational and Environmental Clinics is a
2 nonprofit association, representing over 53 occupational
3 and environmental medicine clinics across the US, and over
4 200 individual occupational health and safety experts.

5 For the past 36 years, AOEC has championed safe
6 workplaces, healthy workers, and healthful and sustainable
7 environments while honoring the principles of justice,
8 equity, diversity and inclusion. We provided written
9 testimony to this committee in April of this year. We feel
10 it is important for us to reiterate our support for the
11 proposed regulations to amend the Cal/OSHA standards. In
12 fact, it's long past time to enact the proposed amendment.

13 It's over 10 years since the CDC Office of
14 Environmental Health Hazard Assessments provided an elegant
15 model of the relationship between workplace lead exposure
16 and blood lead levels of workers. Their goal was to keep
17 workers' blood lead levels below 5 to 10 micrograms per
18 deciliter. Why is that? Research over the last several
19 decades has definitively shown that blood lead levels as
20 low as 5 to 10 micrograms per deciliter in adults damage
21 kidneys, increase the risk of high blood pressure, impair
22 brain function, cause tremors and harm reproduction,
23 including low birth weights and increased miscarriages.
24 Workplace controls clearly exist to keep lead exposure
25 levels low enough to ensure that workers blood lead levels

1 stay below that 5 to 10 micrograms --

2 MS. MORSI: Janie, would you mind slowing down?

3 DR. GITTLEMAN: Certainly. Blood lead levels,
4 stay below to that 5 to 10 micrograms per deciliter target.
5 And remember that 5 to 10 is still 5 to 10 times higher
6 than the blood lead level in unexposed adults in the US.

7 Cal/OSHA has been a leader in occupational health
8 and safety in the US. Last year, Federal OSHA published an
9 advanced notice of proposed rulemaking to update Federal
10 OSHA's lead standards. California is setting the benchmark
11 to the country. We have a responsibility to provide a safe
12 and healthy environment for lead-exposed workers. This
13 standard is feasible and evidence based and will help
14 protect --

15 MS. MORSI: My apologies, Dr. Janie. You're
16 still a little too fast. This is from the interpreters.

17 DR. GITTLEMAN: Okay, would you like me to
18 continue? Go back? What would you like me to do?

19 CHAIR THOMAS: Just continue.

20 MS. MORSI: Would you mind continuing, just
21 slower?

22 DR. GITTLEMAN: Okay, certainly. And will help -
23 - what I was saying was that we have a responsibility to
24 provide a safe and healthy environment for lead-exposed
25 workers. This standard is feasible and evidence based, and

57

1 will help protect the health of our patients. As we said
2 in April, we urge you to swiftly approve the proposed
3 amendments to the Cal/OSHA lead standard.

4 Thank you. That's the end of my comments. Sorry
5 about going so fast.

6 CHAIR THOMAS: Thank you.

7 Who do we have next, Maya?

8 MS. MORSI: Up next is Anne Katten.

9 CHAIR THOMAS: Anne, can you hear us?

10 MS. KATTEN: With California Rural Legal
11 Assistance Foundation, can you hear me?

12 CHAIR THOMAS: Yeah, Anne, we can hear you. Just
13 talk slow.

14 MS. KATTEN: I'm sorry.

15 CHAIR THOMAS: Yeah, we can hear you.

16 MS. KATTEN: Very good.

17 CHAIR THOMAS: Just talk slow.

18 MS. KATTEN: Okay, yes. Yes. Good morning Chair
19 Thomas, Board Members, Board and Division staff. I'm
20 speaking today first in strong support of the proposed lead
21 standard update. And I strongly support the testimony of
22 Dr. Materna, and others. That was highly informative and
23 more expert than mine.

24 But the current standard is dangerously out of
25 date, because it's designed to control blood levels only to

1 40 micrograms per deciliter now considered a level where
2 workers can experience very serious health effects. It's
3 also important that the proposed regulation would improve
4 washing and changing facility access, so that workers would
5 be able to decontaminate thoroughly before going home to
6 their families. Whereas now there is not adequate
7 requirement for this.

8 The proposed regulation is based on a peer
9 reviewed, physiologically based pharmacokinetic model
10 developed by OEHHA that correlates airborne lead levels
11 with blood lead levels. And actually based on this model,
12 at an eight-hour permissible exposure level of 2.1
13 micrograms per meter cubed 95 percent of workers would have
14 a blood lead level less than 10 micrograms per deciliter
15 over their working lifetime.

16 However, Cal/OSHA concluded that a PEL of 2
17 micrograms per meter cubed wasn't feasible, but that a PEL
18 of 10 micrograms per meter cubed, with an action level of 2
19 micrograms per meter cubed that triggered additional
20 monitoring, sanitation, and workplace controls, that this
21 would be feasible and protective. So thus the action level
22 of 2.2 micrograms per meter cubed is therefore needed to
23 assure that as required in the Labor Code, no employee will
24 suffer impairments to their health from exposure during
25 their working life.

1 In addition, we need to keep in mind that in the
2 decade since that it has taken to develop this proposal,
3 new research has led CDPH and other public health entities
4 to recommend that the blood lead levels should be
5 maintained considerably lower than the 10 micrograms per
6 deciliter level.

7 And then in summary I urge you to support this
8 regulation to prevent lead exposure in workers and their
9 families and its debilitating effects.

10 Then secondly, I also once again urge your
11 support for the indoor heat illness regulation to provide
12 specific heat protections for indoor workers. We will be
13 providing comment on the new revision. We certainly would
14 have preferred a regulation without a 15-minute per hour
15 exception, which we think is far more than incidental
16 exposure. But we think that having temperature limits
17 during that time period is at least a step forward.

18 And thank you very much for the time to comment.

19 CHAIR THOMAS: Thank you, Anne.

20 Who do we have next, Maya?

21 MS. MORSI: Up next is Dr. Bob Blink with WOEMA.

22 CHAIR THOMAS: Robert, can you hear us? Robert?

23 DR. BLINK: Can you hear me, okay?

24 CHAIR THOMAS: Yeah, go right ahead. I can see
25 you too.

1 DR. BLINK: This is Bob Blink here, independent
2 practice occupational medicine, and a member of Western
3 Occupational Environmental Medicine Association. I wanted
4 to speak on all three of the issues that had been covered
5 today: silica, lead and heat.

6 Regarding silica, just number one I wanted to
7 commend the Board for having moved forward with the
8 emergency standard. And just to kind of think about silica
9 and lead, we're dealing with a pretty new problem and a
10 very old problem in those two elements.

11 Silica has been with us for a long time, but just
12 in the past 10 years or so the advantage of widespread use
13 of engineered stone countertops has greatly changed the
14 exposure and risks to workers who are encountering this
15 substance. And we've got this extremely rapidly developing
16 lung disease that is not treatable, is not curable, and
17 which has now been diagnosed in its relatively severe form
18 in almost 100 workers in California alone, just in the past
19 couple of years. Many of these workers go on to die of the
20 disease. Some of them have had to have lung transplants.
21 And there's something new going on here that has to do with
22 the machining of these new materials that have only
23 recently come into widespread use.

24 So I really commend the Standards Board for
25 having moved forward with this and strongly recommend on my

1 own sake, and also on behalf of WOEMA for adopting the
2 standard at the next meeting in December. Thank you for
3 that.

4 As far as lead goes, I personally have been
5 working on the lead issue with the standards in California
6 for 16 years, 2007. And for those in -- honestly I'm not
7 sure why anybody would oppose this other than purely
8 economic reasons of self-interest. It's very clear that
9 the standard that's been in place for over 50 years is
10 grossly out of out of date. I've seen that over 50, almost
11 50 years. And as some others have commented were based on
12 a preventing blood lead levels of 40, or even 50.

13 We now know and it was shown by the OEHHA study
14 that was published in 2013 that we can say with a 95
15 percent degree of confidence that you can prevent human
16 disease if you keep levels at a number that is actually
17 below 3. So you're talking about more than a 10 fold
18 decrease has been proven to adversely affect human health.

19 One of the problems with lead exposure is that
20 it's (indiscernible). In children of course it causes
21 problems with brain development and many other things. In
22 adults it may do some of that, but primarily it's a
23 cardiovascular risk. The primary indicator of lead
24 exposure health impacts is death. And that death is
25 essentially hidden. These are hidden deaths that occur,

1 and they come about as being cardiovascular, high blood
2 pressure, kidney disease, other causes that are not clearly
3 delineated. But there's a good body of evidence showing
4 that if your blood lead goes too high, and that's not very
5 high at all, it does cause increased deaths. So we have led
6 to expose workers, they've got their exposures, who they
7 bring led home on their clothing, and their families who
8 are exposed to that. And they're all exposed to this
9 increased deaths.

10 So we have lead-exposed workers. They've got
11 their exposures who they bring lead home on their clothing.
12 And their families who are exposed to that and they're all
13 exposed to this increased risk. So we know that levels
14 below 3 are still increasing risk. And that's blood lead.
15 And what the standard is asking for is 10, so this is
16 actually in many people's view inadequate, but it's a whole
17 lot better than what we have now.

18 And so we strongly recommend that that be adopted
19 at the February meeting. And I want to thank you all for
20 helping to move that forward. The reproductive hazard, of
21 course on that for women who are exposed either in the
22 workplace, or for those who have secondary lead exposure in
23 the homes, is also relatively severe for adverse pregnancy
24 outcomes.

25 As far as heat goes, I don't want to get into too

1 much detail on this today. But one of the earlier speakers
2 said something like there's no evidence since 1979, a bad
3 study showing the link between the heat index and adverse
4 health effects. That's, honestly I don't know why anyone
5 would even say that unless they were simply trying to delay
6 adoption of a better standard. And I'm disappointed to
7 hear that.

8 There definitely has been research. And some of
9 the indices that have been looked at are Heat Index.
10 There's something called Humidex that's used in Canada.
11 There's the so-called WBGT which is the WetBulb Globe
12 Temperature. All three of those measures, and there are
13 others in use in other parts of the world. Germany, for
14 example, that incorporate some combination of the
15 atmospheric temperature and the humidity. And I think
16 anybody who spent any time outside of a desert environment
17 knows that if it's more humid, it's a bigger stress on you
18 at the same atmospheric temperature. So it's kind of
19 foolish to think that that's not so.

20 And it's not hard to measure. You can get WBGT
21 indexes. You can do that -- the CDC has published an app
22 you can put on your cell phone, and you can tell how much
23 the heat index is on a given point. So anyway, I just
24 wanted to make sure that that was corrected in the record.

25 At any rate thank you for your time, and your

1 attention, and for your diligent work on this. And thanks
2 for the time and allowing me to speak today.

3 CHAIR THOMAS: Thank you.

4 Who do we have next, Maya?

5 MS. MORSI: Up next is Michael Miiller with
6 California Association of Winegrape Growers.

7 CHAIR THOMAS: Mike, can you hear us?

8 MR. MIILLER: Yes, I can. Thank you. Thank you,
9 Mr. Chair and Members. Good morning. I am Michael Miiller
10 with the California Association of Winegrape Growers. As
11 you know, we represent the interests of vineyard owners all
12 over California. And in that capacity, we highly recommend
13 to you and your families either a nice California Pinot
14 Noir, or sparkling California rosé to be served next week
15 for your dinners. Both wines pair incredibly well with
16 turkey.

17 Switching gears today I'd like to comment briefly
18 on the recent amendments to the proposed indoor heat
19 illness prevention standard. First, they need to echo the
20 comments from Bryan Little and Bruce Wick as I too wish
21 things could be more collaborative. We all want safer
22 places and we all want a regulation that is easily
23 understood, is workable, and accomplishes this public
24 policy objective. All of that is best achieved when we
25 work together collaboratively.

1 For releasing these amendments the day before
2 Veterans Day and headed into Thanksgiving, and with no real
3 explanation of the purpose of the amendments or what
4 they're intended to accomplish, just makes it difficult for
5 any of us to respond in a way that is helpful to the
6 process or fully informed. Frankly, reading these
7 amendments feels a lot like following Waze directions in
8 our cars without understanding why Waze is seemingly taking
9 us 20 miles out of our way. Nonetheless, this is where we
10 find ourselves today, and I will do my best to address the
11 recent amendments.

12 In doing so I really want to appeal to the
13 lawyers and those with a legal mind in the room. This
14 regulation has substantial problems in how it is currently
15 written and how it is to be interpreted. There is no
16 question that it needs additional amendments. Today I will
17 address only three issues and I will try to be brief. And
18 these issues are actually very related. The first is
19 vehicles, then incidental exposure, and the third is how
20 the existing outdoor regulation works together with a
21 proposed indoor regulation.

22 For vehicles, we believe that if the vehicle has
23 a functioning air conditioner that vehicle should not be
24 subject to this regulation at all. For our growers, it is
25 hard for me to explain to them the driver going to pick up

1 from one vineyard to another vineyard is considered "indoor
2 work." That just doesn't pass the lab (phonetic) test. If
3 the vehicle has a fully functioning air conditioning, what
4 additional protection is provided by including that vehicle
5 in the indoor regulation?

6 Additionally, if the truck has a removable roof
7 is it indoors when the roof is on, but outdoors when the
8 roof is off?

9 Relative to vineyard work, a logical mind will
10 conclude that time in that pickup is outdoor work when that
11 worker is already covered by the outdoor heat regulation.

12 For incidental exposure, let me refer to
13 Washington's existing outdoor heat exposure regulation,
14 which states that it, "Does not apply to incidental
15 exposure. Incidental exposure means that employee is not
16 required to perform work activity outdoors for more than 15
17 minutes in any 60 minute period." That is Washington's
18 current law today.

19 This exemption means that Washington's entire
20 outdoor heat regulation does not apply to incidental
21 exposure. As an example, this includes incidental work in
22 90 degree heat in direct sunlight. This is because based
23 on medical data, and scientific evidence, the risk
24 associated with incidental exposure does not warrant a
25 regulatory action. Consequently, we ask that the same

1 exemption used in Washington today be included in
2 California's proposed indoor regulation.

3 The third issue is how this proposed indoor heat
4 regulation interacts with existing outdoor heat regulation.
5 We believe the recent amendments go in the wrong direction.
6 And we ask that if a worker is already covered under the
7 outdoor regulation, that worker's entire shift should
8 already be covered by that existing regulation. Especially
9 when the worker has minimal work indoors.

10 But subjecting a worker to both sets of
11 regulations is a nightmare. Let me explain this with an
12 example. If a worker is working in a vineyard and wants a
13 cooldown period, that worker may want to go inside an air
14 conditioned truck to take a break. When that worker is
15 outside they are under the outdoor reg. When they are in
16 the truck, they are under the indoor reg. This makes no
17 sense and creates incredible confusion. This is because
18 those regulations are inconsistent.

19 For example, in the definitions provided in the
20 indoor regulation one term, which is defined states that
21 the definition only applies to the indoor regulation.
22 Which raises the question, do the other definitions in the
23 indoor regulation apply more broadly to other regulations,
24 such as the outdoor reg? What is the intent? We really
25 don't know.

1 As currently written, we're looking at different
2 definitions and requirements relative to monitoring,
3 measure the temperature, determining if the worker has high
4 risk factors, and much more. What this means for that
5 worker sitting in the truck to cool down is as follows.
6 Taking the temperature in the vineyard must be done
7 differently than taking the temperature in the truck. In
8 determining potential high risk factors for that worker,
9 when the worker is in the truck the employer must consider
10 the employee's medications. However, when the worker is in
11 the vineyard, the employer must look only at whether those
12 medications are prescribed, and not over-the-counter
13 medications.

14 In monitoring whether that employee has any heat
15 illness symptoms, the employer has different regulations
16 depending on whether the worker is in the truck or in the
17 vineyard. I have to believe that this is not the intent of
18 the proposed indoor heat illness regulation. But
19 nonetheless, that is how it reads at the moment.

20 I hope I am wrong in how I'm reading this
21 proposed regulation, because as is the regulation would
22 create a lot of confusion. And it would be difficult to
23 interpret. But as I said at the beginning, when there
24 isn't a collaborative process it is difficult to evaluate
25 what this regulation is intended to accomplish. And how we

1 can provide constructive comment that may help and
2 accomplish the objectives of this regulation. We look
3 forward to working with the Division, Board staff, and any
4 and all parties on this issue. And we believe that there
5 is a collaborative solution available.

6 Thank you for your time. And I hope you all have
7 a wonderful happy Thanksgiving.

8 CHAIR THOMAS: Thank you.

9 Who do we have next, Maya?

10 MS. MORSI: Up next is Don Schinske with WOEMA.

11 CHAIR THOMAS: Are you with us? I think it was
12 Donna, but I'm not sure. Or Don.

13 MS. MORSI: Don Schinske.

14 CHAIR THOMAS: Don, are you there?

15 MS. MORSI: I believe I saw him in --

16 MR. SCHINSKE: I'm sorry, can you hear me now?

17 CHAIR THOMAS: Don, there you go.

18 MS. MORSI: Yes.

19 CHAIR THOMAS: Don, go ahead.

20 MR. SCHINSKE: Thank you guys for hanging in
21 there.

22 I'll keep this brief. I'm Don Schinske. I'm
23 here on behalf of the Western Occupational Environmental
24 Medical Association. I'd certainly like to align ourselves
25 with our member and colleague, Dr. Blink, who just spoke.

1 We were the petitioners back in 2009, I believe,
2 or revision to the general construction lead standards.
3 You know, despite some of the comments today I'll leave it
4 out there whether people think that's too fast a process or
5 to slow of one. I just want to call attention to maybe
6 something that hasn't been brought up is the SRIA that was
7 done three years ago. That simply concluded that despite
8 some early upfront compliance costs of the new standards,
9 the health outcomes that we get in terms of reducing
10 cardiovascular risk or reducing reproductive risk, those
11 outcomes particularly in the out years more than justified
12 adopting the new regulation.

13 So with that, I would just ask the Board to act
14 expeditiously. There's no reason for any further delay on
15 this. Thank you.

16 CHAIR THOMAS: Thank you.

17 Who do we have next, Maya?

18 MS. MORSI: Up next is Rania Sabty, PhD.

19 CHAIR THOMAS: Hello, are you there?

20 MS. SABTY: Hello, can you hear me?

21 CHAIR THOMAS: Rania, are you there?

22 MS. SABTY: Yeah, can you hear me?

23 CHAIR THOMAS: Yeah, go right ahead.

24 MS. SABTY: Okay, thank you. I appreciate the
25 opportunity and I'm sorry I won't be able to turn on my

1 video.

2 I'm speaking, because I've been serving for the
3 past seven years on the Exide Technologies Community
4 Advisory Group in Los Angeles. It's an advisory group for
5 the cleanup of residential properties that have been
6 affected by lead contamination in a large area of Southern
7 California. Over 10,000 homes, parks, schools and other
8 public spaces, have been contaminated with lead in at least
9 five zip codes in which many low income and minority
10 residents live. This is a group, community advisory group
11 co-chaired by DTSC, the Department of Toxic Substances
12 Control and the Executive Director of the ETAG (phonetic)
13 Communities for Environmental Justice.

14 So I wanted to let you know what my perspective
15 is. And that I do want to say that I support the passing
16 of the standard. I thank the Standards Board for their
17 efforts on it. It's been over 2,000 years of recognized
18 adverse health effects from exposure to lead, and we've
19 known about them. And the standard update has been just
20 delayed too long. The proposed PELs are backed by sound
21 science and just really would like to support its passing
22 and thank the Board for all their hard work on it.

23 I also want to add that the standard could be
24 enhanced. As an advisory group member along with my fellow
25 members on the Board, we've witnessed as workers and

1 community members continuously are concerned about workers
2 taking lead home to their families, including their
3 children. The current standard and the proposed new
4 language of the standard, would not prevent their taking
5 lead home. In the proposed standard, employers would
6 implement measures to prevent taking lead home when
7 exposure of workers is above the PEL.

8 This PEL is an airborne measure of lead exposure
9 and does not represent the lead dust that is carried on
10 worker clothes and shoes, after disturbing soil that's
11 contaminated with lead by shoveling it, and removing it and
12 hauling it all day long, during their entire shift that
13 lead, the lead dust deposits on their shoes and clothes.
14 And if they do not remove it, which you know currently they
15 don't, it can find its way to being ingested by workers as
16 it moves from their clothes and shoes to their vehicles,
17 living services, hands, fingers, food etcetera.

18 We all know that any amount of lead that enters
19 the body builds up inside the body by depositing in the
20 bones. So exposure builds up over the years to become high
21 levels of internal lead deposits in the body, causing long-
22 term health impacts. Dust from clothes and shoes also make
23 its way to children in the homes that the parents go to by
24 exactly the same mechanism that I just described. And so
25 this applies to children too, with the exception that

1 children are highly susceptible to low doses of exposure to
2 lead mainly affecting their development or the development
3 of their central nervous system. And specifically, they're
4 even more at risk.

5 And now for women, the risks are even more severe
6 if they are pregnant, and should they ever get pregnant in
7 the future. Because during pregnancy lead mobilizes from
8 the mother's bone deposits, crosses the placenta barrier,
9 and goes to the fetus who is at very high risk from central
10 nervous system damage from that lead.

11 So one more thing I'd like to add here is that
12 the topic of taking lead home has been addressed by many.
13 And it is recommended by so many agencies that workers who
14 work in lead or with lead, no matter the amount of lead,
15 remove their clothes before going home. And I'm going to
16 list the following agencies that have published materials
17 on this matter and make it available to the public and to
18 workers and so on.

19 It's NIOSH, the Environmental Protection Agency,
20 the California Department of Public Health, and even OSHA
21 in their OSHA quickcard entitled, "If you work around lead,
22 don't take it home." In fact, that is what it's called.
23 And so that's the title of the quickcard.

24 And so, once again I just want to say that I do
25 support the passing of the standard. It's been long

1 overdue. I think as soon as possible is exactly when it's
2 needed. It's been way too long, too many people are
3 exposed, and we hope that you will pass it and expedite
4 doing it too. Thank you.

5 CHAIR THOMAS: Thank you.

6 Who do we have next, Maya?

7 MS. MORSI: Up next is Ben Ebbink with Fisher
8 Phillips.

9 CHAIR THOMAS: Ben, can you hear us? Hello, Ben.

10 MS. MORSI: He is unmuted. There we go.

11 MR. EBBINK: Can you hear me?

12 CHAIR THOMAS: Yeah. Go ahead, Ben.

13 MR. EBBINK: Thanks. Hi, my name is Ben Ebbink.
14 I'm an attorney with Fisher Phillips. We are a law firm
15 that advises employers on Cal/OSHA issues.

16 I'll be very brief. I did just want to
17 underscore or echo two concerns we saw with the 15-day
18 Notice of Change on the indoor heat rule. The first, as
19 has already been mentioned, has to do with the exception
20 for vehicles. And I think really our concern is with the
21 placement of that exception. We think limiting it to
22 subdivision (e) (1), which is monitoring for temperatures is
23 really too narrow. And would mean you'd still have to
24 comply with E2 control measures for vehicles, which we just
25 don't think makes very much sense or is necessary. So we

75

1 would recommend making the exemption for vehicles
2 applicable to the entire standard, which I think would
3 involve moving it up to the scope section. And we think
4 this is consistent with how vehicles were treated under the
5 wildfire smoke regulation.

6 The second point I wanted to echo, which has also
7 been mentioned is the incidental exposure exception. We
8 think it's too limiting. The last portion of that
9 exception says that it doesn't apply to incidental
10 exposures, "Not subject to any of the conditions listed in
11 (a)(2), which is the triggering temperatures." So that
12 means if you hit those triggers, you would still have to
13 consider control measures even for incidental exposures.

14 Again, we think this is unnecessary. And we
15 would propose just eliminating that last portion of the
16 sentence. We think a clean exception for incidental
17 exposure of 15 minutes and a 60-minute period makes more
18 sense. And would also echo it's more consistent with how
19 Washington treats incidental exposures under their outdoor
20 heat rule.

21 So thank you for the opportunity to make
22 comments.

23 CHAIR THOMAS: Thank you.

24 Maya, how many callers do we have left?

25 MS. HRICKO: Hi, can you hear me? This is Andrea

1 Hricko. You called on me earlier and I wasn't able to get
2 in. Can I speak now?

3 CHAIR THOMAS: Go right ahead.

4 MS. HRICKO: Okay. Thank you for the opportunity
5 to address the Board. My name is Andrea Hricko. And for
6 the transcript the last name is H-R-I-C-K-O. And I am a
7 retired professor of environmental health at USC's Keck
8 School of Medicine.

9 I'm here in strong support of the proposed
10 amendments to the Cal/OSHA lead standard. Though not
11 perfect, the amendments would lower the PEL for lead and
12 lower the allowable blood lead level in workers thereby
13 protecting public health for thousands of California
14 workers.

15 I know you've been -- the Board has been
16 bombarded with a concerted campaign by contractors and
17 construction companies arguing. One of them argued in
18 their comments that Cal/OSHA needs to know three things:
19 haven't proven a need for the standard, haven't proven a
20 need, haven't proven a need. They argue that blood lead
21 levels had been declining over the years, and that
22 workplace lead exposures have also been declining. I take
23 great exception to these comments. It is good news that
24 exposures and blood levels have been declining. But while
25 that may be true, between 2015 and 2021, data shows that we

77

1 still have more than 3,000 workers with blood lead levels
2 over 10 micrograms per deciliter in Los Angeles County
3 alone; 3,000 workers in that period of time.

4 And one contractor argued that Cal/OSHA has not
5 shown that the current standards are failing to protect
6 workers. In fact, information from the California
7 Department of Public Health shows exactly that. Workers
8 are developing high levels of lead in blood under the
9 current Cal/OSHA lead regulations. In fact, one contractor
10 in Los Angeles County had 28 employees with blood lead
11 levels above 10 at a workplace with fewer than 50
12 employees. That's 28 employees out of 50 with blood lead
13 levels above 10.

14 An MPH candidate from George Washington
15 University made an important note in her comments. She
16 stated that revising the Cal/OSHA lead standard is a matter
17 of health equity. And she pointed out that according to a
18 January 2017 State Health Department study in California,
19 "the majority of California workers with elevated blood
20 lead levels are Hispanic."

21 I looked at the number of workers with blood lead
22 levels over 10 micrograms at battery manufacturing plants
23 in LA County, or also at storage battery smelters during
24 that period of time from 2015 to 2021. Quemetco had 812
25 workers during that period with over 10. Trojan Battery in

1 Santa Fe Springs had more than 1,000 workers with blood
2 lead levels over 10. More Power Industrial Services had
3 254 workers and Ramcar Batteries in Commerce had 105
4 workers.

5 I would argue that the number of workers with
6 elevated blood lead levels just at battery plants, just at
7 Battery plants in LA County, constitutes a public health
8 emergency.

9 Finally, I agree with the comments from the
10 Western Occupational Environmental Medical Association that
11 suggests a revision to the proposed text, which currently
12 states, "that blood lead levels of employees who intend to
13 parent in the near future should be maintained below 5
14 micrograms per deciliter." Instead, the association argues
15 that blood lead levels to be maintained below 3.5
16 micrograms per deciliter to minimize reproductive health
17 effects to the mother and developing fetus. And I agree
18 with that.

19 Thank you for the opportunity to support the
20 Cal/OSHA proposed lead amendments.

21 CHAIR THOMAS: Thank you.

22 Who do we have next, Maya?

23 MS. MORSI: So I'm going to go back to the ones
24 that I called earlier. Enrique Huerta with Climate
25 Resolve?

1 CHAIR THOMAS: Hello, can you hear us?

2 MS. MORSI: Okay, so the next one will be Dorothy
3 Whitmore.

4 CHAIR THOMAS: Dorothy, can you hear us?

5 MS. MORSI: Okay, our next one is Louis Blumberg.

6 CHAIR THOMAS: Louis, can you hear us?

7 MS. MORSI: Okay, and the last one is Kevin
8 Riley.

9 CHAIR THOMAS: Kevin, can you hear us? All
10 right.

11 MS. MORSI: And that is it for public comment.

12 CHAIR THOMAS: That's it.

13 All right. The Board would like to thank you for
14 your comments and your testimony. The public meeting is
15 adjourned and the record is closed.

16 At this time we're going to go into closed
17 session and we will be back some time before 1:00 I think.
18 So we will see you then. We are in recess.

19 (Off the record at 12:20 p.m.)

20 (On the record at 2:02 p.m.)

21 CHAIR THOMAS: All right, we're back in session.
22 No action was taken in closed session, so we will go on to
23 the business meeting.

24 Proposed variance decisions for adoption are
25 listed on the consent calendar. Michelle Iorio, will you

80

1 please brief the Board?

2 MS. IORIO: Thank you, Chair Thomas. On the
3 consent calendar this month we have proposed decisions 1
4 through 62 ready for your consideration and possible
5 adoption.

6 CHAIR THOMAS: Thank you.

7 Do I have a motion to adopt the consent calendar?

8 BOARD MEMBER CRAWFORD: So moved.

9 BOARD MEMBER STOCK: Second.

10 CHAIR THOMAS: I have a motion and second. Is
11 there any anything on the question? (No audible response.)
12 Hearing none, Sarah will you please call the roll.

13 MS. MONEY: Okay. I just want to make sure I had
14 this correct. Ms. Stock was the motion and Ms. Crawford
15 was second, correct?

16 BOARD MEMBER STOCK: Yes, ma'am.

17 MS. MONEY: Okay.

18 Joseph Alioto.

19 BOARD MEMBER ALIOTO: Aye.

20 MS. MONEY: Kathleen Crawford?

21 BOARD MEMBER CRAWFORD: Aye.

22 MS. MONEY: Nola Kennedy.

23 BOARD MEMBER KENNEDY: Aye.

24 MS. MONEY: Chris Lasczc-Davis?

25 BOARD MEMBER LASZCZ-DAVIS: Aye.

1 MS. MONEY: Laura Stock?

2 BOARD MEMBER STOCK: Aye.

3 MS. MONEY: Chairman Thomas.

4 CHAIR THOMAS: Aye and the motion passes.

5 We'll go to Division Update, Eric.

6 MR. BERG: Thank you, Chair Thomas. So we'll
7 postpone our lead presentations until January, was that you
8 said?

9 CHAIR THOMAS: Until January, yeah.

10 MR. BERG: Okay. So that's our update.

11 (Laughter.)

12 CHAIR THOMAS: I like that. I'm --

13 MR. BERG: Well, I could do a little briefing on
14 the heat with the 15-day heat change. So it's from
15 November 9th to November 28, which is I guess 19 days. So
16 it's a few more days, I guess, maybe because the holidays,
17 but they added some extra days there. So I'll just go over
18 this quickly.

19 There wasn't too many changes. There was an
20 addition to subsection (a)(1) exception (C), the scope of
21 the regulation. So the short-term exemption, yeah the 15
22 minutes and 60 minutes exemption, before it was limited to
23 certain locations. That was just expanded to any location
24 as long as it's under that threshold of 87 degrees. So it
25 applies to any location, that exception, if the exposure is

1 less than 15 minutes in a 60-minute period.

2 And we didn't want to have no temperature limit,
3 because if there's high exertion in 15 minutes, and it's
4 like 110 degrees, you could definitely kill someone like
5 that. So we're not going to have that as an open-ended
6 exemption.

7 And another exception was added for emergency
8 operations. Those are exempted from the scope of the
9 regulation.

10 And then before we had an exemption that allows
11 employers to use indoor heat regulation instead of outdoor
12 heat regulation. And that's been deleted due to
13 stakeholder feedback.

14 Then we added a definition for "high radiant heat
15 source." I think, Nola, you asked for that. Did you ask
16 for that? I thought that was you, Nola. But anyways, we
17 put it in there. So it's there now.

18 And then Appendix A, the National Weather Service
19 Heat Index Chart. There was a request to expand that,
20 because it didn't have -- it didn't go up to like 120
21 degrees, I forgot, It goes higher now. We added some
22 added some rows to that, so it goes to higher.

23 I think that's it.

24 CHAIR THOMAS: All right. Any questions for
25 Eric?

1 MR. BERG: Hey, Nola.

2 BOARD MEMBER KENNEDY: So I don't know if this is
3 the right time or we should bring it up --

4 BOARD MEMBER STOCK: I'm turning (indiscernible).

5 BOARD MEMBER KENNEDY: Well, thank you, Laura.

6 I don't know if this is the right time, or if we
7 should bring it up with agenda items for future meetings.
8 But since you're so good at making presentations.

9 MR. BERG: Right, yes.

10 BOARD MEMBER KENNEDY: There are some other
11 questions. Oh, I've got a cough drop in my mouth. This is
12 really awkward. There are some other questions around the
13 heat regulation that I would be interested in hearing the
14 answers.

15 So Dave, is this the time to bring this up or
16 should I wait?

17 CHAIR THOMAS: Well, I just -- yeah, ask
18 questions.

19 BOARD MEMBER KENNEDY: I'm going to ask a
20 question. You don't have to answer it today. You can
21 bring your answer in the future.

22 MR. BERG: Okay. Well, we'll prepare a 60-page
23 PowerPoint in response to your question.

24 CHAIR THOMAS: That might be a violation, I'm not
25 sure. No, go ahead. Go ahead.

1 BOARD MEMBER KENNEDY: So one of the things
2 that's been sticking with me, because I'm really glad that
3 it considers humidity and other factors. But I am curious
4 about why they use the Heat Index and not the Heat Stress
5 Index.

6 MR. BERG: I mean, that's the -- I'm sorry, did I
7 interrupt you? Go ahead.

8 BOARD MEMBER KENNEDY: It's okay. You're
9 allowed. That was kind of it.

10 MR. BERG: Okay. I mean, it's the most widely
11 used. The National Weather Service Heat index is what we
12 use. It's not --

13 BOARD MEMBER KENNEDY: It may be for the general
14 population. I'm not sure it's the most widely used for
15 occupational health.

16 MR. BERG: We didn't use WBGT, because the heat
17 index meters you can buy are much cheaper and easier to use
18 than the WBGT meters. That was one of the reasons we
19 didn't use WBGT.

20 BOARD MEMBER KENNEDY: But you can get hand-held
21 WBGT meters for \$40.

22 MR. BERG: Yeah, that's true. But the Heat Index
23 was considered simpler, I think was that's why we used it.

24 BOARD MEMBER KENNEDY: Okay. I guess I'd like
25 that maybe explored more. And then --

1 MR. BERG: Why we didn't use the WBGT?

2 BOARD MEMBER KENNEDY: Yeah.

3 MR. BERG: Okay, we did have it in our initial
4 drafts. And we got a lot of feedback from employer
5 stakeholders saying that it was too difficult and too
6 expensive. So we took it out.

7 BOARD MEMBER KENNEDY: Okay, well --

8 MR. BERG: And we did a simpler version of just
9 the Heat Index, which everyone is familiar with. Because
10 you see it in every weather report.

11 BOARD MEMBER KENNEDY: Yeah, kind of like
12 everybody's familiar with the AQI, which I'm really not
13 sure is the best thing to be using for wildfires. But
14 that's a past question.

15 Anyways, if that's the answer that's fine. I'll
16 accept it. I just really think the Heat Stress Index would
17 be a better (indiscernible).

18 MR. BERG: You mean the WBGT (indiscernible)?
19 Okay.

20 BOARD MEMBER KENNEDY: Yeah, I think the WBGT is
21 like saying Kleenex for facial tissue or Xerox for
22 photocopy. But yes.

23 MR. BERG: Like I said we had it in our first
24 drafts, and there was objections that it was too difficult
25 and too expensive. So we went to the simpler next thing

1 that still at least took into fact humidity, which is
2 indoors you definitely have radiant heat, but it's not as
3 common as outdoors.

4 BOARD MEMBER KENNEDY: And then the other thing
5 I'm curious about, and this might be more of a history
6 lesson than anything else, is I understood why when we
7 developed the outdoor heat standard, we just did an outdoor
8 heat standard. I understand why that happened. But when
9 we decided to look at heat as an occupational health issue
10 for everybody, including indoor workers, I'm not sure why
11 we haven't -- why we didn't just then come up with a heat
12 standard that would cover everything, and we would no
13 longer have the outdoor heat standard.

14 MR. BERG: Yeah, we had that too in our advisory
15 committee meetings and we had almost unanimous opposition
16 to that from both employers and labor. Because we had --
17 like in one of the advisory meetings we had like three
18 different versions. And one of them was the combined
19 regulation and 3395.

20 BOARD MEMBER KENNEDY: And these are the same
21 people who want things simpler? Who wanted the different
22 standards?

23 MR. BERG: Yeah, I mean there was almost
24 universal opposition to that. So I mean it goes back four
25 or five years, but we did try that. And it didn't work.

1 BOARD MEMBER KENNEDY: Okay, because that makes
2 the most sense to me instead of having two different
3 standards. But that's maybe just me

4 CHAIR THOMAS: No, I think what happened was they
5 didn't think they were going to have enough to complain
6 about, so they wanted two standards so they could complain.
7 I just heard that today, so.

8 BOARD MEMBER ALIOTO: Was the opposition to
9 having an indoor and an outdoor in the same regulation, or
10 was it to what Nola is saying, which if I'm understanding
11 your question or your comment correctly, is, why not just
12 have a standard that regardless of whether you're indoors
13 or outdoors if you are being subjected to excess heat and
14 that's a danger then why not just have a standard related
15 to heat?

16 MR. BERG: Yeah, I don't recall the precise
17 objections?

18 CHAIR THOMAS: I think their answer was that it
19 was not -- they didn't want to do it.

20 MR. BERG: I mean, we had -- everyone opposed a
21 unified standard.

22 BOARD MEMBER ALIOTO: They opposed that.

23 MR. BERG: Yeah, they opposed one unified
24 standard. Maybe because it would be too complicated.

25 (Overlapping colloquy - multiple speakers.)

1 BOARD MEMBER STOCK: Can I just -- wait. I mean,
2 it seems like I mean, there's a little bit of sort of
3 history and looking at the minutes from those meetings,
4 etcetera, are available. So it feels like it's not --
5 Board Members can go back and get, you know, kind of get
6 refamiliarized.

7 And I also just -- so there were reasons, and I
8 don't remember what they were either. And it might have
9 been concerns about things, certain things that are
10 different on some of the issues that we hear about heat and
11 triggers and things like that. But in any case, it feels
12 like right now we're in the point of there was a
13 legislative mandate to pass this heat standard that also
14 was several years ago. So there's a vote coming up, is it
15 February or March?

16 MR. BERG: March, I think March.

17 BOARD MEMBER STOCK: March? Yeah, an urgent need
18 to get this regulation in place before the summer heat. So
19 I just think some of these are good big picture questions,
20 but are not really possible to be implemented at this
21 point.

22 I just want to be really mindful of like,
23 everything that everybody's saying about how long it takes
24 to pass regulations and how we move forward. And I just
25 think, you know, it's good to have that context. But it's

1 too late to be making -- unless we vote the whole thing
2 down and say start over again.

3 But I just want to be mindful of the deadlines
4 that we're under. And of the extreme benefit of trying to
5 move things forward expeditiously, particularly in this
6 particular hazard. Which is we're going to be facing even
7 worse and deadly heating conditions going forward.

8 MR. BERG: Yeah, we tried to make it almost
9 identical to the outdoor heat. Like all the subsections
10 follow along. The one that's different is the engineering
11 controls in subject (e). But everything else we tried to
12 pretty much mimic the outdoor standard, so it would be easy
13 to comply. And it even says you can use the same training
14 program. You can do both at the same time, or you can use
15 the same written program so you can just have one written
16 program.

17 BOARD MEMBER KENNEDY: I mean, I'm not as implied
18 trying to slow down the process or keep this from
19 happening. But it seems to me an explanation that a
20 physical agent is a physical agent regardless if you're
21 indoors or outdoors. Heat is heat. Humidity as humidity.
22 Radiant heat. I mean, these things don't change. It's
23 like sound, whether inside or outside, it affects your body
24 the same way. And it seems to me that could have been
25 explained to stakeholders if we had -- and I don't know why

1 they wouldn't. If that was reasoned to them, I don't know
2 why they wouldn't accept that.

3 So like I said it may just be more of a history
4 lesson for me, instead of anything else. It just seems
5 like in this era when we're trying to make -- or not era,
6 when we're required to make regulations that are easy to
7 follow and to enforce, it just seems redundant to have two
8 different regulations that really cover the same thing.
9 Just based on whether indoor outdoor.

10 MR. BERG: Well, certain controls are possible
11 indoors that you couldn't do outdoors.

12 BOARD MEMBER KENNEDY: You could still cover that
13 in one standard.

14 MR. BERG: Yeah, you could cover in one standard,
15 right. You would have subsections that would apply to just
16 indoors.

17 BOARD MEMBER KENNEDY: Anyway, not to be -- it's
18 just a question. It's not trying to throw a monkey wrench
19 in anything or change anything, but it just seems
20 inefficient.

21 CHAIR THOMAS: Can I say no more question for
22 Eric. That's it. (Overlapping colloquy - multiple
23 voices.) No, go ahead. Go ahead.

24 BOARD MEMBER ALIOTO: Eric, I'm the new guy on
25 the Board. I have not yet had an opportunity to come and

91

1 see you live in an advisory committee meeting. But I'm
2 hoping to see that at some point in the near future. And
3 that's not a threat.

4 But I'm curious, because I've now heard over the
5 course of a couple of different meetings, where there's
6 been comment about what I would term a lack of
7 collaborative or constructive interaction with
8 stakeholders. And what I presumed to be you, or your
9 representatives, or the representatives of the Division.
10 And so my question I just wanted -- and I've seen this in,
11 there have been various comments, particularly in the lead,
12 related to the lead standard about a lack of collaboration.
13 But also a lack of explanation as to why certain thresholds
14 have changed. Why it's gone from 30 to 2, for instance,
15 just by way of example.

16 I'm just curious if you want to respond to that.
17 I don't know if you've had an opportunity last month, but
18 how do you respond to those comments or criticisms?

19 MR. BERG: Well, we have -- yeah, it's in our
20 PowerPoint. But I'll just do it quickly. We had six
21 advisory committees for lead. And we had numerous
22 concessions doing exactly what industry said. Like the
23 showers and construction, we know that's super important.
24 But they raised high hell over that, so we took it out. And
25 there's numerous instances where we've done exactly what

1 they've asked for.

2 And they want to do advisory committees where you
3 go line by line and write the regulation in group. We
4 haven't been doing that, because our regulations are pretty
5 complex and lengthy. But we get all their input and take
6 into account.

7 And we've seen other advisory meetings where it's
8 maybe 90 95 percent employers and industry and maybe two or
9 three representatives from Labor. And having that group
10 write the regulation, I don't think is a good idea. I mean
11 if you can get a super balanced advisory committee that's
12 fine. But if it's weighted really heavily to one side, I
13 don't think that's a good process. I think you'll get that
14 one group basically writing the regulation. And we don't
15 want that. We don't want just one group writing the
16 regulation.

17 So we take everyone's perspective and account and
18 our goal is to protect workers. So that's what we do when
19 we write a regulation.

20 CHAIR THOMAS: Could I say this? I think it's
21 more a matter of style. There is a certain way that the
22 Standards Board has done advisory committees, which is more
23 talking back and forth. And for whatever reason, the
24 Division, it takes -- they take the comments. And I think
25 a lot of times what happens is, since there's not a give

1 and take which they like, they don't think anything ever
2 gets done.

3 But I watched last meeting. You know, they asked
4 all these questions, and you answered every one of them
5 after the fact. And they either didn't read it or didn't
6 want to read it or just didn't like the fact that there
7 wasn't this give and take thing. But it's just a matter of
8 style. You know, all you have to do is read and you can
9 figure out if it's changed or not. And then I'm assuming
10 if it's not changed then it needs to be in there. And if
11 it is changed, it's because there was a valid reason to
12 change it.

13 And that doesn't mean just because you're talking
14 back and forth that you're going to get what you want. I
15 mean, I think that's what they think. "If I talk enough,
16 I'll get it." And that isn't the way it works.

17 And I agree with you. If there's not like a 50-
18 50 between employers and unions or whoever represents
19 workers, then it's not fair to do it that way. And you can
20 just take comments, and then you can get more comments
21 later from the other side. But I think it's more of a
22 matter of style than anything. And that's, I mean that's
23 what I've seen.

24 MR. BERG: And we get a lot of written comments
25 too. We have an advisory meeting and we do have back and

1 forth discussion during the advisory meeting. And we do
2 write on the screen or take notes of what the suggestions
3 are. So we're trying to do that. We've tried to improve
4 on that. But we also get a lot of --

5 CHAIR THOMAS: I think you guys do fine. I'm not
6 complaining either way.

7 MR. BERG: Well, we're always trying to improve,
8 but we also get a lot of written comments afterwards. And
9 so then we make further changes during that. And then we
10 post it and get more written comments, like the silica.
11 The emergency silica proposal we've gone through four
12 versions, and we've taken a lot of back and forth with
13 industry. And then pointing out now this is not practical.

14 Like we had negative pressure enclosures in
15 there, where the work had to be done in a negative pressure
16 enclosure. And they said it wouldn't work. We have cranes
17 that drop stuff in, it's not going to work. We deleted it,
18 because it's not practical.

19 BOARD MEMBER STOCK: So what you're saying is the
20 advisory committee process is working.

21 MR. BERG: Yeah. I think it works, yeah.

22 BOARD MEMBER STOCK: That's great.

23 MR. BERG: If your goal is to protect workers.

24 BOARD MEMBER LASZCZ-DAVIS: Well, this is Chris.
25 I'd like to say a few thoughts, a few things, Eric, if I

1 might?

2 CHAIR THOMAS: Go ahead, Chris.

3 BOARD MEMBER LASZCZ-DAVIS: Yeah, you know, a lot
4 of great discussion today. Just a few comments as it
5 relates to the lead standard. Personally, I don't have any
6 issue with lowering the standard. And I think there's a
7 fair amount of documentation study and research that
8 suggests that what we're doing is appropriate in that
9 regard.

10 What I really hear today is it's more I think,
11 Dave, and you suggested it as well -- it's more an approach
12 in implementation. The people, what I hear are people
13 struggling with implementation, not the level or the
14 metric. But how do you implement a complex regulation like
15 this, given the normal workday?

16 And I know, Barbara Materna had suggested that if
17 there was some guidelines that were crafted between the
18 CDPH and the Division, it would be very clear and
19 understandable. I mean, that's -- I think that's a great
20 direction to go.

21 But I keep on hearing we don't have an advisory
22 committee process. The final regulations are not clear,
23 actionable, operational. So I'm not sure what the rub is.
24 Is it the advisory committee processor or is it the final
25 standard?

1 And if it's the final regulation that's to be
2 determined I have to go back to what is our responsibility
3 as a Board, as a Division? We have a responsibility to
4 protect California workers. Lowering the level is one half
5 the equation. The other half is it's got to be
6 understandable such that it's implementable. And if that
7 seems to be the rub, what is it that we have to do to turn
8 that. To advance the needle so we, in fact, have people
9 whether they agree wholeheartedly or not being able to say,
10 "Yep, I can take this and run with it." And put it into
11 practice whether it's a small, medium or large business.

12 That's the piece I struggle with. So the
13 quandary we as a Board have oftentimes is, you know, is the
14 overall standard acceptable in terms of protecting worker
15 health, in terms of lowering a PEL or an action level?
16 Well, that's not the issue. The issue is, as it presently
17 stands, is it understandable and implementable? And if
18 it's not it doesn't matter where we lower it to, business
19 cannot take it and run with it.

20 So that's my quandary with all this. And I don't
21 know whether or not Eric or others have any thoughts. But
22 I struggle with this every time we have a new regulation on
23 the table.

24 CHAIR THOMAS: You know, I know a lot of times
25 what we've done is we've had a Q&A, right? All the

1 questions that come up, that seem to keep coming up, you
2 write them out and then you answer them. And how it's
3 implemented or what you need to do for that particular part
4 of the regulation, how to implement it.

5 And that seems to -- I mean we did that quite a
6 few times with COVID. You know, how do we implement? What
7 do we do? What, you know? And because I think, I mean,
8 the people that are here that come to these meetings, they
9 may not like everything but they just want to know what to
10 do so they don't get cited, or their employers don't get
11 cited.

12 And that's I think probably that would be one
13 thing that would be helpful with this is, you know, all the
14 questions that we -- pick out 20 or 30 of them that really
15 they keep asking. And just write a line or two about how
16 you implement that or how you serve that regulation. You
17 know, that you're doing the right thing. And I think
18 that's all that really needs to. I mean, at least that way
19 you have answered questions that you know you're getting
20 all the time.

21 And I mean, that's how you can't do any more than
22 that, right? I mean, they may keep asking them, but if you
23 answer them and it's concise and you have it on a sheet,
24 they can use it.

25 BOARD MEMBER STOCK: Yeah, can I just jump in on

1 that? Because I think, you know, and this relates to other
2 comments we heard during the -- you know, somebody say
3 there's all these written programs people have to comply
4 with and the burden. And that whole kind of theme that we
5 frequently hear. It's like I think we need to separate out
6 the regulation, which has provisions which have been
7 determined to be protected to workers. That is our
8 mission. That is our goal and the process that you're
9 describing.

10 And the presentation that we will hear
11 eventually, but didn't get to yet is going to lay out I'm
12 confident, all of the science and all of the theory and
13 everything that everybody was talking about last time, we
14 didn't have. You're ready to provide it. And it's not
15 your fault we didn't have the chance to do it today. But I
16 just want to like there's one thing about are the
17 provisions warranted by science and by our mission to
18 protect workers. And that's one thing.

19 The other is once we have a regulation that is
20 leading those things we need to be prepared or California
21 needs to be prepared the resources for employers and
22 workers and unions and everybody else. To be able to
23 comply, to understand what the requirements are, and to
24 enforce. And given the limited resources that everybody
25 has including the Division, I feel like there's been a lot

1 of really great examples of that.

2 And COVID is a perfect example. Not only were
3 there many frequently asked questions documented that were
4 updated continually as science changed, because it did
5 constantly, but not moreover there were model programs that
6 were developed. That if you have a -- if you need to put -
7 - because we heard these concerns about all these programs,
8 which are essential to have. If you have a regulation you
9 need to have a written program about how you're going to
10 comply. That is like must be there. But we should make it
11 easy for people.

12 So to the extent that when we have these things,
13 there are model programs, there are templates, there are
14 frequently asked questions, there are webinars, you know,
15 all the education and outreach that needs to go along with
16 a regulation. I think we probably -- everybody on this
17 board in the community agrees that that's essential. I
18 want to just like acknowledge that, but not let that get
19 too straight into the discussions that we have a
20 responsibility to have, which are what are the provisions
21 that are essential to protect workers? Sometimes they're
22 complicated. Sometimes they're different for different
23 kinds of workplaces. And yes, they're hard.

24 So I just want to kind of separate those, and
25 acknowledge the need for education and outreach. And a lot

1 of support for employers about how to comply. And then
2 allow us to look at the information that you've provided
3 for us about what's the science that supports it. What are
4 the provisions that we need. And be able to make our
5 decisions based on that, not on whether it's going to be
6 hard for people. So that's my two cents on that.

7 MR. BERG: Well, Jeff was going to talk about a
8 consultation, all the help, they can provide, our
9 publications unit and FAQs and guidelines, all sorts of
10 stuff. That was part of our presentation. Jeff is going
11 to go first and go through all that.

12 BOARD MEMBER STOCK: Yeah, I think that's going
13 to be really great. I'm really sorry. I mean part of the
14 reason and maybe the benefit of postponing is that a lot of
15 people are not here to hear it. And I think that the
16 information that you provided is really essential for
17 stakeholders, as well as Board Members to hear. So I'm
18 glad. Thank you for doing it and I look forward to hearing
19 it.

20 CHAIR THOMAS: And if they're not here to hear
21 it, then it to them it hasn't been done, right? So we want
22 to make sure that they're here to hear it.

23 BOARD MEMBER STOCK: Right. Yeah.

24 CHAIR THOMAS: Okay, no more questions for Eric.

25 BOARD MEMBER ALIOTO: Well this conversation

1 though is kind of existential. And I think also should be
2 had along with the public.

3 CHAIR THOMAS: Oh, absolutely. Absolutely.

4 BOARD MEMBER ALIOTO: Like the one that Laura and
5 Chris are partaking in and others on the Board. And I
6 think it's a really important issue that should be fleshed
7 out.

8 CHAIR THOMAS: No, there was --

9 BOARD MEMBER STOCK: There may be people still
10 here I'm just acknowledging -- (overlapping colloquy.)

11 CHAIR THOMAS: Yeah, there are people on this
12 yeah.

13 BOARD MEMBER STOCK: (Indiscernible) but I hope
14 the public is still out there (indiscernible).

15 BOARD MEMBER LASZCZ-DAVIS: Well, you know what,
16 may I say something and follow up to Laura's commentary?

17 CHAIR THOMAS: Yeah, yeah.

18 BOARD MEMBER LASZCZ-DAVIS: You know, what not
19 being there I'm at a disadvantage. But you know, Laura, I
20 hear what you're saying. And you expressed it very
21 articulately. But I thought that what I heard you say was
22 that our only responsibility as a Board was to ensure that
23 the science was correct. And that whatever the Division
24 produced in terms of education and guidance was not within
25 our realm to comment on or even to vote on.

1 And I disagree with that, because I think --
2 again, let me go back to a comment I made earlier. I think
3 our role is to, you know, given the resources that we have
4 is to help protect the California worker. There two sides
5 to that equation, the science and then whether or not
6 you've got the infrastructure to make that happen. You
7 have the science, and you don't have the other half,
8 nothing happens.

9 So we've reneged our responsibility to protect
10 the California worker. So you correct me if I'm wrong, but
11 I think part of our responsibility is to take a look at the
12 companion pieces that enable the implementation for all
13 employers regardless of where they are. So I mean, I'll
14 push back on that, and we can talk about it further. But
15 that's where I'm at today.

16 BOARD MEMBER STOCK: Yeah, thank you. I'll just
17 quickly respond. So thank you for what you're saying,
18 Chris. To clarify what I mean, is, and this is a
19 conversation, we continue and get more guidance about
20 literally what our role is.

21 So for example, the Board itself is not
22 developing these educational materials, is not typically in
23 the position of reviewing them. And all the work that Mr.
24 Killip was going to describe in terms of what Cal/OSHA
25 consultation and everybody else does.

1 But we do have a really important role. And I
2 don't disagree with you at all, I feel like both of those
3 things are really, really important. And to the extent
4 that we can lend our voice to advocating for that, for
5 materials and resources to be made available for people, I
6 completely believe that we should do that. I was really
7 more kind of trying to comment on literally like, you know,
8 the Board is not developing those interventions, and that
9 education and outreach work that is essential to be a
10 companion with every regulation. So that's the only point
11 I was trying to make.

12 I don't disagree with you about the importance of
13 it and the value of us advocating for that.

14 BOARD MEMBER LASZCZ-DAVIS: Okay, thanks, Laura.

15 BOARD MEMBER STOCK: And I'm enjoying the picture
16 of your family in the background.

17 BOARD MEMBER LASZCZ-DAVIS: Oh, shoot.

18 CHAIR THOMAS: Any other questions for Eric?

19 BOARD MEMBER STOCK: So I had a question related
20 to lead. So I'm just wondering, but maybe it's a future
21 agenda item. It's really short.

22 CHAIR THOMAS: Just go ahead.

23 BOARD MEMBER STOCK: I'll throw it out there.
24 And this is maybe a future agenda item after you've done
25 everything that you are now going to have to do. I am

1 aware of a lot of the conversation, like I know you all are
2 and many are, about the new guidelines from the CDC about
3 airborne for health care. And there's a lot of concerns
4 about that. And I'd be interested at some point in the
5 future to hear what the implication of those conversations
6 will have both on our existing ATD reg and on the work
7 we're engaged in now, when you get around to it, to the
8 general infectious disease. So I just wanted to kind of
9 put that out for a future agenda item, because I've just
10 been getting a lot of questions about it. And I'm
11 concerned about it.

12 Also, I don't think the changes that CDC are
13 doing are -- you know, they're very concerning. And I'm
14 hoping that we'll be able to preserve the effectiveness of
15 California's regulation. So that's just a future agenda
16 item for when you would be prepared to speak to that.

17 MR. BERG: Yeah, we can do that. We've been
18 following closely HICPAC, which is -- I forget what stands
19 for, but it's the part of CDC sending these guidelines for
20 airborne infectious diseases. And we've submitted written
21 comments. We've provided oral comments in opposition to
22 what they're doing, because they're much less protective
23 than what's in the ATD standard. But yeah, I can provide
24 further information.

25 BOARD MEMBER STOCK: Actions we can take to

1 protect the work that we've done in California is kind of
2 hard (indiscernible).

3 MR. BERG: Yeah, the problem is it kind of
4 undercuts the ATD standard. It provides much lower level
5 protections or no protections in many cases in conflict
6 with our existing regulation, which has been around since
7 2009, so it creates confusion when CDC comes out with
8 recommendations that are completely contrary to what the
9 ADT standard says in the law.

10 So yeah, it's a difficult thing that's going on.

11 CHAIR THOMAS: Okay. I don't want to ask this,
12 but any more questions for Eric? You better run Eric.

13 MR. BERG: Okay, thank you.

14 CHAIR THOMAS: Thank you. Thank you very much,
15 appreciate it.

16 Legislative Update, Kelly Chau.

17 MS. CHAU: Thank you, Chairman. We do not have a
18 Legislative Update for this month, because the legislative
19 season has ended. It will start again next year in the
20 early January. Thank you.

21 CHAIR THOMAS: Thank you.

22 Autumn, will you please brief the Board,
23 Executive Officer's Report, please.

24 MS. GONZALEZ: Sure. I don't have a lot to
25 report. I just wanted to let everyone know that the

1 Executive Officer posting has been extended through
2 November 30th, so folks still have an opportunity to apply
3 for that.

4

5 CHAIR THOMAS: All right, that's it.

6 Yeah, okay. Any questions for Autumn, anything?

7 (No audible response.)

8 All right, future -- new biz -- future agenda
9 items, any Board Member? I think we kind of went through
10 all that.

11 All right, so we already had closed session, no
12 action was taken.

13 So the next Standards Board regular meeting is
14 scheduled for December the 14th 2023 in Folsom, California
15 via teleconference and video conference. Visit our website
16 and mailing list for the latest updates, and we thank you
17 for your attendance today.

18 There being no further business to attend to this
19 meeting is adjourned. Thank you. See you next month.

20 (The Business Meeting adjourned at 2:33 p.m.)

21

22

23

24

25

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of March, 2024.



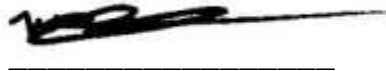
MARTHA L. NELSON, CERT**367

TRANSCRIBER'S CERTIFICATE

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of March, 2024.



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