

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address www.dir.ca.gov/oshsb



SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
May 19, 2016
San Diego, California

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

Acting Chairman David Harrison called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:03 a.m., May 19, 2016, in Room 310 of the County Administration Center, San Diego, California.

ATTENDANCE**Board Members Present**

David Harrison
Dr. Robert Blink
Patty Quinlan
Barbara Smisko
Laura Stock

Board Member Absent

Dave Thomas

Board Staff

Marley Hart, Executive Officer
Mike Manieri,
Principal Safety Engineer
Peter Healy, Legal Counsel
David Kernazitskas,
Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Steve Smith, Principal Safety Engineer

Others Present

Salvador Long, Local 30
Adam Cohen, AIDS Healthcare Foundation
Steve Johnson, Alliance Roofing
Bruce Wick, CALPASC
Siouxie Q
Sandra Lomeli, Unite Here Local 30
Brenda Lesczynski, Unite Here Local 30
Rick Bates, Unite Here Local 30
Maria Quesada, Unite Here Local 30
Kevin Thompson, Cal/OSHA Reporter

Grace Delizo, DOSH
Dan Leacox, Leacox & Associates
Michael Musser, CA Teachers Association
Shawn Alff, Writer
Hal Lindsey, Diversified Utility Services,
Inc.
Cuolos P Placencon, Unite Here Local 30
Miguel Aguilar, Unite Here Local 30
Terry Webber, American Wood Council
Terry Thedell, SDG&E

Jay Weir, AT&T
Eric Paul Leue, Free Speech Coalition
Tim Woodman, Pro Villain Productions
Cupcake Sinclair, Free Speech Coalition

Armando DeLean Luvenant, Local 30
Oscar Salazar, Unite Here Local 30
Mia Li, Free Speech Coalition
Evan Stone, Adult Industry Rep.

B. OPENING COMMENTS

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

Maria Quesada, Unite Here Local 30, stated that she has been injured doing hotel housekeeping work. She said that many hotel housekeepers are injured to the point that they are no longer able to work, leaving them unable to provide for their families. She asked the Division to submit the hotel housekeeping proposal to the Board by June 1 and to mention in it the control measures that can be used to help hotel housekeepers avoid injury, such as fitted sheets and long-handled tools. She also asked that the proposal be noticed for public hearing before August 1 so that this proposal can be heard at a public hearing before the end of 2016.

Rick Bates, Unite Here Local 30, stated that his organization is happy to hear that the final draft of the hotel housekeeping rulemaking is on schedule to be delivered to the Board staff by June 1. He asked the Division to define the term "control measures" in the final draft so that housekeepers will feel safe talking to their employers about using the various control measures that are available. He said that by doing this, housekeepers will not have to fear retaliation from their employers for asking them to provide these materials, and they will be able to do their jobs safely and avoid injury. He stated that his organization recommends using the following language to define the term "control measures":

"The control measures to be considered include, but are not limited to, mops, long-handled and adjustable length tools for dusting and scrubbing walls, showers, tubs, and other surfaces, fitted bed sheets, lightweight and motorized carts, and those measures identified in the Cal/OSHA 2005 publication 'Working Safer and Easier for Janitors, Housekeepers, and Custodians'."

He asked for the hotel housekeeping proposal to be noticed for public hearing before August 1 so that a public hearing can be held for it before the end of 2016. He said that 2017 will be the 5-year anniversary since his organization filed the petition that started this process.

Siouxie Q, Free Speech Coalition, asked the Division to consider the petition that was recently submitted by her organization regarding bloodborne pathogen protection in the adult film industry. She asked the Division to involve adult film industry workers in the process of developing a proposal to address this because this proposal will affect adult film workers. She said that adult film workers need to have a variety of options available for them to choose from in order to keep them safe. She stated that the FSC's petition includes the industry's bloodborne pathogen protection plan, which has worked for adult film employees for over a decade. She said that if the Division works with adult film employees, they can work together to find a workable solution to protect adult film workers from bloodborne pathogens. **Tim**

Woodman, Adult Film Performer, echoed Ms. Q's comments.

Mia Li, Adult Film Performer, stated that she trusts the adult film industry's current testing scheme, and the industry's standards for protecting employees from bloodborne pathogens do protect workers. She said that performers should have the right to choose the form of protection that is best for them and to understand how they will affect the performer personally and financially. She stated that when it comes to developing a standard to address bloodborne pathogen protection in the adult film industry, the true stakeholders are the adult film performers. She asked the Division to allow adult film performers to participate in the process so that their voices can be heard. **Tim Woodman, Adult Film Performer**, echoed Ms. Li's comments.

Chris Vargas, Adult Film Performer, asked the Division to think about the motive behind the AIDS Healthcare Foundation's push to get regulations passed requiring condoms to be used in the adult film industry.

Evan Stone, Producer, Director, and Talent Manager in the Adult Film Industry, stated that safety is of utmost concern to all workers in the adult film industry, and performers know what works best for them to keep them safe. He said that the adult film industry is a closed system where everyone is tested, so they do not generate STD's. He stated that when someone tests positive for an STD, the industry shuts itself down. He said that statistics about people in the industry who become infected with an STD need to be identified and closely scrutinized, and a determination needs to be made as to how those elements got introduced into the industry's closed system.

Eric Paul Leue, Free Speech Coalition, thanked the Board staff for accepting the petition that the FSC filed. He said that his organization is looking forward to participating in stakeholder meetings, and they are willing to participate in as many meetings as it takes to make sure that adult film industry workers' voices are heard in the process of developing a standard to address bloodborne pathogen protection in the adult film industry.

Adam Cohen, AIDS Healthcare Foundation, stated that there is scientific evidence of a connection between adult film production and STI risk and acquisition. He said that the adult film industry believes that testing is better protection against bloodborne pathogens than the primary prevention requirements outlined in the current bloodborne pathogen standard. He also stated that the industry believe that the current bloodborne pathogen standard does not apply to them – it only applies to healthcare workers. He asked the Division and Board staff to expedite Petition 557.

C. CONTINUING PUBLIC COMMENTS REGARDING GISO SECTION 5155,
AIRBORNE CONTAMINANTS, WOOD DUST AND WESTERN RED CEDAR

Mr. Smith summarized the history and purpose of the proposal.

Dan Leacox, Leacox & Associates, representing the American Wood Council, stated that the organization he is representing has some serious issues regarding feasibility determination for this proposal and the criteria used to determine that the PEL in this proposal is feasible. He said that this is part of a continuing discussion regarding feasibility criteria for PEL's, and this

proposal would set a rulemaking precedent regarding the determination of feasibility for future PEL's. He submitted a letter on behalf of a coalition of several people who are affected by PEL's and are concerned about the precedent that this proposal might set for determining feasibility for future PEL's that contains some examples of what their concerns are [Please see the file copy of the Board packet to view this document]. He stated that it is difficult to get strong proof that a PEL is feasible or infeasible because it is usually at a level that has not been tried before, and the Division has the statutory burden to demonstrate the PEL's feasibility. He said that advocates for this PEL have recommended shifting the statutory burden to stakeholders and the regulated community to prove whether or the PEL is feasible, which is convenient when it is difficult to prove that a PEL is feasible or infeasible. He stated that feasibility gives the Board control over the PEL setting, so the Board needs to consider this carefully. He said that if infeasibility to the standard must be proven, an employer will wind up having to accept the health-based numbers that have been developed by other agencies under other standards that are not necessarily thinking about the workplace. He stated that in order to adopt reasonable PEL's, a good standard for demonstrating feasibility must be maintained.

Mr. Leacox stated that during its briefing last month on this proposal, the Division stated that the FAC recommended adopting the proposed PEL, but the committee was actually split on their decision. He said that 2 members of the FAC recommended a PEL of 2 as feasible, while another 2 members recommended a PEL of 1 as feasible. He said that the difference in feasibility between PEL's of 1 and 2 is very large.

Mr. Leacox also stated that, in the Initial Statement of Reasons (ISOR), the following statement was made:

“At the FAC meeting held on October 6, 2010, a representative of the American Forest and Paper Association and American Wood Council suggested that an 8-hour TWA PEL of 2 mg per liter cubed total particulate could be achieved by most employers using engineering controls, but a PEL of 1 would probably necessitate the use of respirators by many employees. This sentiment was echoed by a representative of Sierra Pacific Industries, a large, multi-location California wood products producer. However, information to support this suggestion was not provided.”

Mr. Leacox stated that the studies relied upon in the ISOR add up to 6,400+ exposure measurements that were above the proposed PEL, which is a lot of information that supports the notion that the PEL recommended in this proposal would force people to wear respirators, and it appears that this information was dismissed in the ISOR. He also said that the ISOR acknowledges the Kalliny study as the most robust study of exposure levels. He stated that in the Kalliny study, 75% of the air samples collected were below the proposed PEL, while 25 % were above, but the economic analysis says that 75% of the facilities would be in compliance with the proposed PEL. He said that it is not clear how this determination was made because all of the facilities in the Kalliny study reported air samples that were above the proposed PEL, and the ISOR dismisses 25% of the Kalliny study, which represents about 600 air samples that were above the proposed PEL.

Mr. Leacox stated that the financial impact assessment indicates that only 1,000 California firms will be financially impacted by the proposed PEL. He said that he is not sure how the

number of impacted firms became a factor in determining whether or not a PEL is feasible. He stated that this presents a serious feasibility issue.

Mr. Leacox also stated that the ISOR mentions several new technologies that have been developed since the FAC first met in 2010 that make the PEL feasible, but his organization feels that it is not clear if those technologies have been tested in the industry, and no testing has been done to see if these technologies are workable in the facilities. He said that there is no substantial evidence to show that the PEL is feasible, and he asked the Division to reconsider the PEL and bring a PEL back to the Board that is feasible.

Terry Webber, American Wood Council, asked the Division to carefully reconsider the proposed PEL and come up with a revised PEL that is supported by substantial evidence. He said that his organization does not believe that a reduction in the current wood dust PEL is justified by the available science, and a PEL of less than 2 mg is infeasible. He stated that a PEL of 1 mg is not feasible for a substantial portion of affected California companies. He said that the Division's discussion and application of the Kalliny study in the ISOR is fundamentally flawed and dramatically underestimates the economic burden of the proposal. He stated that in the ISOR, the Division treated the 25% of samples in the Kalliny study that tested above the proposed PEL as trivial, when they are actually very significant when considering the types and number of facilities where that PEL would likely be exceeded. He said that the ISOR contains a major oversight regarding the size of the facilities that were sampled in the Kalliny study. He stated that the Glen Meyer companion longitudinal study said that the number of exposed workers from each of the facilities in the Kalliny study is 142 to 760. He said that this is a serious error that makes the ISOR assume that only smaller facilities will be affected by the proposed PEL, which may or may not be true, and data from the Kalliny study cannot be used to support this conclusion. He stated that the Division erroneously assumes that smaller facilities are the ones who are the most out of compliance. The Division should not be so casual about the economic impact that this proposal will have, especially since this proposal will require these smaller facilities to go from a PEL of 5 mg or higher to a PEL of 1 mg.

Mr. Webber also stated that the Division's and HEAC's analysis of the health effects of exposure to wood dust is technically flawed and relies on scientific studies that have notable deficiencies and discount or ignore other available scientific studies that have greater interpretive value in evaluating the health effects of exposure to wood dust. He said that each of the 3 studies mentioned in the ISOR as support for the proposed PEL have serious flaws in them that preclude their use for this purpose, and there is no reference to the Glen Meyer study, which is the largest and most data-intensive longitudinal pulmonary function study of wood workers across the wood processing industry. He stated that the Glen Meyer study has a statistically robust foundation of data for a health-protective value showing no adverse effects from inhalable dust within an exposure interval.

Ms. Stock stated that she is interested in the 25% from the Kalliny study who were not able to comply with the proposed PEL. She asked if there is evidence in the study to indicate that the PEL cannot be achieved using engineering controls and personal protective equipment. **Mr. Leacox** stated that the facilities studied were employing the current technology, and that is why this proposal would push people into being required to use respirators. **Ms. Stock** stated that respirators are not precluded as a measure to achieve feasibility. She said that while

engineering controls are preferable, having to use respirators does not mean that the PEL is infeasible. **Mr. Leacox** stated that a letter will be coming to the Board from the industry that will provide a deeper guide on the subject of respirators, and that will contain examples of rulemakings that demonstrates how pushing a group of workers into using respirators makes the PEL infeasible [Please see the file copy of the Board packet to view the letter from Robert W. Glowinski, which was submitted via email from Stewart Holm].

Bruce Wick, CALPASC, stated that his organization concurs with the statements made by Mr. Leacox and Mr. Webber. He said that the main goal is to protect workers, and the best way to do that is through a high level of employers complying with the regulation. He stated that lowering the PEL from 5 mg to 1 mg is a very dramatic move, and there needs to be clear and compelling information to convince employers to comply with it. He said that the Division needs to take the time to get it right because more PEL revisions are coming, and this proposal will pave the way for that. He stated that a consensus on the PEL needs to be found because employers who do not buy into it will not comply.

Ms. Smisko asked the Division to respond to the comments made regarding the issues with demonstrating feasibility and the criteria for determining whether or not a PEL is feasible. She said that each regulation will be different and will make it difficult to develop generic criteria for determining feasibility, but some guidance on the basic criteria would be helpful.

Dr. Blink asked the Division to provide an analysis of the economic impact that may occur as a result of the PEL being lowered to 1 mg, seemingly the coalition's main concern.

D. ADJOURNMENT

Mr. Harrison adjourned the public meeting at 11:00 a.m.

II. BUSINESS MEETING

Mr. Harrison called the Business Meeting of the Board to order at 11:00 a.m., May 19, 2016, in Room 310 of the County Administration Center, San Diego, California.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. James Sherman
Petition File No. 552

Petitioner requests the Board amend Title 8, Telecommunication Safety Orders, Section 8615(g), with regard to fall protection for telecom workers point to point travel on poles, towers & similar structures.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Quinlan that the Board adopt the proposed decision.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he was aware of no unresolved legal issues that would prevent the Board from considering for adoption the items on the consent calendar.

MOTION

A motion was made by Dr. Blink and seconded by Mr. Harrison to adopt the consent calendar.

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

C. OTHER

1. Legislative Update

Mr. Healy provided updates on the following bills:

- AB 7 and SB 5: These bills were signed by the Governor. AB 7 prohibits smoking in owner-operated businesses, and SB 5 expands the definition of tobacco products to include electronic cigarettes.
- AB 2539: This bill pertains to working conditions for fashion models. It has been moved to the suspense file.

2. Executive Officer’s Report

Ms. Hart stated that the proposal for hotel housekeeping is still on schedule to be received by the Board staff in June. She said that when the Board staff receives the rulemaking package, it will work with the Division to get the proposal prepared for noticing as quickly as possible, but it is not possible for it to be ready for noticing for public hearing by August.

Ms. Hart stated that the Division will need more time to complete the rulemaking process for workplace violence prevention in healthcare due to the high volume of comments received during the 45-day comment period. She said that the Division is preparing the documents that are needed for a 15-day notice that will modify the proposal in response to those comments, and these documents will be completed and submitted to the Board staff

for review by June 30. She stated that after the 15-day notice is issued and comments are received, the Division will respond to those comments and the proposal will be prepared for adoption at a later date. She said that the Board must take action on the proposal by October 30, otherwise the process will start over.

Ms. Stock stated that she would like an update on when the advisory committee process will begin for developing a proposal to address workplace violence prevention in general industry. She said that the structure is in place from workplace violence prevention in healthcare for the advisory committee process to start for addressing workplace violence prevention in general industry, and the decision was made a long time ago to not wait until the process for workplace violence prevention in healthcare is complete before beginning the process to develop a regulation to address workplace violence prevention in general industry. **Mr. Smith** stated that the process has not begun because the staff that is currently working on the proposal for workplace violence prevention in healthcare is the same staff that will be working on workplace violence prevention in general industry, and since the proposal for workplace violence prevention in healthcare is a higher priority, the Division will not be able to start the process for workplace violence prevention in general industry until the staff is available. **Ms. Stock** stated that she would like to see a possible timeline for beginning the process.

Ms. Quinlan asked Mr. Smith for an update on the proposal for lead. **Mr. Smith** stated that the person who was working on this project retired, and a field worker has been promoted to fill this position. He said that this person is completing her casework from her previous position, and once she is done, she will begin working on this project. He stated that the Division held 6 advisory committee meetings on this, and it doesn't anticipate having any more. He said that the Division will use the comments received from the last advisory committee to develop the final draft of the proposal, and after it is reviewed by the Division staff, it will be sent to the Board staff by the end of the year.

Ms. Hart stated that the advisory committee minutes for residential fall protection trigger heights will be sent out to the committee members by the end of the month. She said that the minutes will discuss several steps that the proposal must take prior to being noticed for the 45-day public comment period. There will be a brief period of time for the advisory committee members to comment on this before the rulemaking documents are developed. She stated that some of the advisory committee members have offered to assist in the economic impact assessment, but the proposed language must be finalized before that can be done.

Ms. Hart stated that the Board staff hired Mark Kaphle as a Senior Safety Engineer to fill the position that was left vacant in December when Conrad Tolson retired, and Conrad Tolson is returning to the Board staff as a retired annuitant in July. She said that Conrad will assist new staff with elevator matters and finish up the CDAC revisions, which is almost ready to be noticed.

Ms. Hart stated that the Board staff received the rulemaking package for process safety management for refineries. She said that the Division submitted it to the Board staff about

4 weeks ago, and an analyst has been assigned to work on it after she finishes up her other projects. She stated that this rulemaking is very large and very comprehensive.

Ms. Hart stated that the Free Speech Coalition submitted a petition to the Board. It has been docketed as Petition 560 and is going through the petition process. She said that at some point, it may be joined up with Petition 557 from the AIDS Healthcare Foundation.

Ms. Hart stated that federal OSHA issued a federal final rule regarding recordkeeping, but it will not be undertaken by the Board or the Board staff. She said that the Division will review the final rule and determine if changes need to be made before it is adopted by the Director's office. She stated that no further updates will be provided on this unless a Board member requests an update.

3. Future Agenda Items

Ms. Hart asked the Division to provide its quarterly update at next month's meeting and include an outline of the timeline for developing a proposal to address workplace violence prevention in general industry, as well as an update on the status of the proposal for lead.

Ms. Quinlan asked the Division to provide an update regarding the chemicals that are still outstanding for Section 5155. **Ms. Hart** stated that the proposal for benzyl chloride was submitted to the Board staff, and the Board staff returned it to the Division in February with comments. The Board staff is waiting for the Division to send it back. She also said that a Board staff analyst is currently reviewing the rulemaking package for trichloroethylene. She stated that the Division can provide further updates on other chemicals at next month's meeting.

A. ADJOURNMENT

Mr. Harrison adjourned the Business Meeting at 11:22 a.m.