

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
August 18, 2011
Sacramento, California

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

Chairman John MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., August 18, 2011, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

John MacLeod
Bill Jackson
Jack Kastorff
Dave Thomas
Hank McDermott
Guy Prescott
Willie Washington

Board Members Absent**Board Staff**

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
David Beales, Legal Counsel
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Deborah Gold, Deputy Chief, Health
Steve Smith, Principal Safety Engineer
Pat Bell, Senior Safety Engineer

Others present

Terry Thedell, SDG&E
Wendy Holt, CSATF/AMPTP
Kevin Thompson, Cal-OSHA Reporter
Kate Smiley, AGC
Dan Leacox, Greenberg Traurig
Mark Stone, Epic Insurance Broker
Kevin Bland, CFCA, RCA
Dave Harrison, Operating Engineers Local 3
Jay Weir, AT&T

Paul Myers, Sacramento County
Carol Frehm, HJ McDermott, Inc.
Judi Freyman, Mercer ORC Networks
Steve Johnson, ARC-BAC
Marti Fisher, Cal Chamber
Larry Pena, So Cal Edison
Bruce Wick, Cal PASC
Elizabeth Treanor, PRR
Joan Gaut, CTA

B. OPENING COMMENTS

Mr. MacLeod 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

There were no public comments.

C. ADJOURNMENT

Mr. MacLeod adjourned the public meeting at 10:05 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEM

Mr. MacLeod called the Public Hearing of the Board to order at 10:05 a.m., August 18, 2011, in the Auditorium of the State Resources Building, Sacramento, California.

Mr. MacLeod opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 3
Section 1512
ELECTRICAL SAFETY ORDERS
Division 1, Chapter 4, Subchapter 5
Group 1, Section 2320.10 (Low-Voltage Electrical Safety Orders)
Group 2, Section 2940.10 (High-Voltage Electrical Safety Orders)
First Aid for Electrical Workers (Horcher)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is ready for the Board's consideration and the public's comment.

There were no public or Board comments on this proposal.

Mr. MacLeod then introduced the next item noticed for Public Hearing:

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 4, Section 1533
Article 6, Section 1541
TUNNEL SAFETY ORDERS
Division 1, Chapter 4, Subchapter 20, Article 1
Section 8403
Ventilation Inside Shafts, Culverts, and Pipelines

Mr. Manieri summarized the history and purpose of the proposal and indicated that it was ready for the Board's consideration and the public's comment.

There were no public comments on this item.

Mr. Washington asked whether staff planned to address the concerns of Federal OSHA. Mr. Manieri responded affirmatively.

Mr. McDermott stated that the definition of ventilation was somewhat unclear because it requires a mechanical exhaust ventilation system, but then it goes on to state that a forced air blower system may be used in conjunction with or in lieu of a mechanical exhaust system. He stated that it seems that the wording could be clearer.

Mr. Jackson stated that it appears that back in December 2007 the Division sent a memo which, if the Board had received it from anyone else, would have been a petition to change the regulation. His recollection is that the Mining and Tunneling Unit was pushing the envelope and was trying to apply the tunnel standards to construction operations that clearly were not covered. They then submitted this second document, dated December 2010, again petitioning the Board to amend the regulation by adopting a new standard.

However, there is no indication as to why the change is necessary, other than that the Division wants the change, and there is no rationale in the rulemaking proposal to assign 60 lineal feet per minute flow rate to a five-foot deep shaft under construction or 200 cubic feet per person. Those are clearly out of the Tunnel Safety Orders. Heretofore, these exposures have been regulated as confined spaces, and the confined space standard seems to be pretty clear about what protections employees will be provided when they are working in those exposures. It does not seem appropriate to change the definition of a confined space in the absence of any evidence that what has been working up until this time is no longer working effectively.

Thus, there are two concerns. The first is that when the Board receives a petition from the Division, the Board is not able to treat it like a petition. Staff goes directly to rulemaking instead of bringing it to the Board first, as they would with a request from any other stakeholder. The second concern is that there does not seem to be any support in the rulemaking record for the necessity for the proposal.

Mr. Prescott stated that if the confined space standard does apply in the instant case, that standard is much more stringent than the proposal, and we need to ensure that we are not putting a less stringent standard into effect regarding these conditions. He also echoed Mr. Jackson's concerns about why staff handles Division Form 9 requests differently than petitions.

Mr. MacLeod asked Mr. Manieri to clarify whether the matter had been discussed during at least one advisory committee meeting. Mr. Manieri responded that at least one of the Mining and Tunneling advisory committee meetings discussed the current state of the Tunnel Safety Orders versus the Construction Safety Orders on this particular issue. He stated that the Construction Safety Orders do not discuss shafts, culverts, or tunnels 20 feet or less.

B. ADJOURNMENT

Mr. MacLeod adjourned the Public Hearing at 10:34 a.m.

III. BUSINESS MEETING

Mr. MacLeod called the Business Meeting of the Board to order at 10:34 a.m., August 18, 2011, in The Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED PETITION DECISION FOR ADOPTION

1. David Feerst, Director of Safety
Winco, Inc.
Petition File No. 522

Petitioner requests that the Board amend Title 8, California Code of Regulations, Construction Safety Orders, Section 1905 to delete the requirement for grounding helicopters and their fuel source before and during fueling operations.

Ms. Hart reviewed the history and purpose of the petition, and she asked that the Board adopt the proposed petition decision granting the petition.

MOTION

A motion was made by Mr. Kastorff and seconded by Mr. Washington that the Board adopt the petition decision as proposed.

Mr. Prescott expressed agreement with the petitioner that when there is a rubber-wheeled fueling vessel fueling a helicopter, there is no need for grounding, as long as there is bonding. However, if that helicopter is at an airport, that system is built

in and already grounded. Thus, we might make sure that we are dealing with remote locations rather than fixed locations, because grounding is required at fixed locations under FAA regulations, but not at a portable site.

If a fuel tank is underground, it is grounded, and thus, when you bond the fuel tank to the helicopter or aircraft it becomes grounded as well as bonded. He wants to ensure that we are not putting people in the position of trying to figure out how to unground something that is required to be grounded. Specifying the use of a rubber-wheeled vehicle would clarify that we are looking at remote sites rather than fixed sites.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales requested that the Board adopt the consent calendar as proposed.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Washington to adopt the consent calendar as proposed.

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

C. OTHER

1. Legislative Update

Mr. Beales stated that in addition to the information in the written materials provided, there is one amendment to SB 432, which concerns long-handled cleaning equipment and fitted sheets in lodging establishments. That bill was amended on August 15, 2011, and among other things, the proposed changes to the bill would allow employers to have more time to comply and more options for compliance as far as fitted sheets are concerned under certain circumstances.

2. Executive Officer’s Report

Ms. Hart stated that she has filed a hiring freeze exemption request to fill the position vacated by Tom Mitchell, and she expects to hear back from the Budget Office and the Director’s Office by September 1.

3. Future Agenda Items

Mr. Prescott asked that the Board look at why Division Form 9s are handled differently from petitions and what can be done to change that process so that the Board has a chance to look at them before they go to rulemaking.

Mr. MacLeod stated that the Board may have discussed the subject before.

Mr. Jackson agreed, but stated that he did not remember the outcome.

Ms. Hart stated that it could be discussed at the next meeting.

D. CLOSED SESSSION

The closed session was cancelled.

E. ADJOURNMENT

Mr. MacLeod adjourned the Business Meeting at 10:29 a.m.