

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
San Diego, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**December 15, 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., December 15, 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

**Board Members Absent**

Willie Washington

**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**

Steve Smith, Principal Safety Engineer  
Patrick Bell, Principal Safety Engineer

**Others present**

Wendy Holt, CSATF/AMPTP  
Kate Smiley, AGC-CA  
Alex Miller, InterWest  
Jim Halloran, CAT  
Joan Gaut, CTA  
Mark Stone, Epic Insurance Brokers

Kevin Bland, CFCA/WSC  
Dave Harrison, Operating Engineers #3  
Bruce Wick, CalPASC  
Elizabeth Treanor, PRR  
Dan Leacox, Greenberg Traurig  
Steve Johnson, ARC-BAC

**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

The following people spoke in support of the proposed adoption of the Vehicle Exhaust Retrofit proposal on today's Business Meeting Agenda:

- Dave Harrison, Safety Director of Operating Engineers Local 3
- Bruce Wick, Director of Risk Management for the California Professional Association of Specialty Contractors (CalPASC)
- Kate Smiley of the Associated General Contractors (AGC) of California and the AGC of San Diego

**James Jack** of the Emission Control Technology Association Diesel Retrofit Committee spoke in opposition to the proposed adoption of the Vehicle Exhaust Retrofit proposal.

**Elizabeth Treanor**, Director of the Phylmar Regulatory Roundtable, spoke in support of the proposed termination of the Portable Ladder Inspection proposal on today's Business Meeting Agenda.

#### C. ADJOURNMENT

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

## II. PUBLIC HEARING

### A. PUBLIC HEARING ITEM

Mr. MacLeod called the Public Hearing of the Board to order at 10:10 a.m., December 15, 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 25  
Section 1675  
**GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 4  
Sections 3276 and 3278  
**Single-Rail Ladders**

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 35  
Section 1905  
**Helicopter Fueling**

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.

Ms. Treanor spoke in support of the proposal.

B. ADJOURNMENT

Mr. MacLeod adjourned the Public Hearing at 10:18 a.m.

### III. BUSINESS MEETING

Mr. MacLeod called the Business Meeting of the Board to order at 10:18 a.m., December 15, 2011, in The Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4  
Article 2, Section 1504  
Article 10, Section 1591, New Appendix A  
Article 11, Section 1597  
**GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7  
Article 25, Section 3363  
Article 93, New Section 4925.1  
**MINE SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 17, Article 17  
Section 7016  
**Vehicle Exhaust Retrofits**  
(Heard at the February 17, 2011, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Thomas to adopt the proposal.

Mr. Prescott and Mr. Jackson both praised the staff for their work with stakeholders on developing a proposal that was almost universally acceptable.

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

2. TITLE 8:        **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4  
Article 4, Section 1532.1  
Article 15, Section 1615.7  
**GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7  
Article 9, Section 3361  
Article 101, Sections 5042, 5044, 5045, 5047, and 5049  
Article 107, Section 5144  
Article 109, Sections 5191, 5198, and 5209  
**SHIP BUILDING, SHIP REPAIRING, SHIP BREAKING**  
**SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 18, Article 4  
Section 8355  
**Federal Final Rule, Standards Completion Project—Phase III**  
**(Horcher)**  
(Heard at the November 17, 2011, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board’s adoption.

MOTION

A motion was made by Mr. Prescott and seconded by Mr. Thomas to adopt the proposal.

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

3. 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**  
(Heard at the August 18, 2011, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. McDermott that the Board adopt the proposal.

Mr. Jackson expressed continuing concern about the showing of necessity and the incorporation of quantities and flow rates for ventilation that appear to have come directly from the Tunnel Safety Orders without a showing of why that is necessary in shafts that may be only a few feet deep. Mr. Jackson understands the assertion that this proposal might improve safety, but there is not any showing of a reason for developing this proposal. There is no history of an event that has been reported to the Board that causes the Board to develop this proposal other than the fact that it was suggested by the Mining and Tunneling advisory committee.

Mr. Prescott agreed with Mr. Jackson, and he expressed concern that this did come from the mining and tunneling industry, yet it affects the construction industry. He is concerned that people from the construction industry may not have been involved in the development of the proposal as it moved forward.

A roll call was taken, and Mr. Jackson, Mr. McDermott, and Mr. Prescott voted "no;" Mr. Kastorff, Mr. Thomas, and Mr. MacLeod voted "aye." The motion failed.

**B. PROPOSED VARIANCE DECISIONS FOR ADOPTION**

1. Consent Calendar

Mr. Beales stated that a hearing was held prior to today's Board meeting, and all of the decisions marked "Grant or Deny" are to be granted. Mr. Beales further stated that the Board is requested to adopt all of the proposed decisions on the consent calendar.

## MOTION

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

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

### C. OTHER

#### 1. Terminate Portable Ladder Inspection rulemaking proposal

Ms. Hart stated that as a result of public comment and Board member concern, the rulemaking proposal dealing with the frequency of ladder inspections is proposed for termination. Based on comments received, Board staff has determined that the existing language provides suitable inspection interval and also meets Federal equivalency.

#### 2. Executive Officer’s Report

Ms. Hart stated that on December 9, Governor Brown appointed Christine Baker as Director of the Department of Industrial Relations. Ms. Baker has been serving as the Chief Deputy Director and Acting Director since April 1. She has received the support of employers and labor representatives, and we at the Board congratulate Ms. Baker and applaud her appointment and look forward to our continued relationship with her.

Additionally, last month, Ms. Hart told the Board that we had hired a replacement for Tom Mitchell and that Patrick Corcoran would be joining the Board on December 12; however, on an unfortunate note, Patrick informed us late last week that he would not be joining our staff after all. So, we have reopened our search efforts to find an industrial hygienist or a safety engineer with health experience, and Ms. Hart will keep the Board posted on those efforts.

On another unfortunate note, Chris Witte, our Executive Secretary, has given notice that she will be leaving the Board on January 6, 2012. It has long been a desire for Chris and her family to relocate to the San Diego area, and therefore, she has accepted an Executive Assistant position with the San Diego Regional Water Quality Control Board. Chris has been with the Board for almost six years, as she started here in February 2006, and since that time, she has coordinated, scheduled, maintained, and followed up on all the things related to the Board Members, as well as scheduling public hearings, preparing minutes, and assisting Ms. Hart with whatever she may ask of her. She has also done a fabulous job of organizing our website and keeping it current. Today is her last meeting with the Board, and Ms. Hart is going to miss her very much, as she has come to rely on her for many things, but she is also very happy that she is able to make this move. She wished Ms. Witte the best and expressed appreciation for her dedication.

Ms. Hart stated that this meeting also wraps up 2011 for the Board and Board staff. Each year in State service seems to be more interesting and challenging than the last, and Ms. Hart is sure that 2012 will prove no different. Board staff is up for the challenges and are committed and pleased to

be contributing to the safety and health of California workers. She wished everyone a Merry Christmas and a safe and healthful 2012.

3. Future Agenda Items

None identified.

D. CLOSED SESSSION

Pursuant to Government Code Sections 11126(e)(1) and (e)(2)(A), the Board met in closed session to discuss the following pending litigation: *Bautista, et al. v. State of California, et al.*, Los Angeles Superior Court Case No. BC418871 and Second District Court of Appeal No. B226102. The Board discussed only the matter noticed, and no action was taken.

E. ADJOURNMENT

Mr. MacLeod adjourned the Business Meeting at 10:46 a.m.