

**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
December 13, 2012
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 13, 2012, in Room 205 of the Social Services Office Building, Sacramento, California.

ATTENDANCE

Board Members Present

John MacLeod
Bill Jackson
Hank McDermott
Barbara Smisko
David Harrison
Dave Thomas

Board Members Absent

Laura Stock

Board Staff

Marley Hart, Executive Officer
Mike Manieri,
Principal Safety Engineer
David Beales, Legal Counsel
David Kernazitskas,
Associate Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Deborah Gold, Deputy Chief of Health

Others present

James E. Hall, California Portable Ride
Owners
Raymond Rieger, Ray Rieger Loss
Control Services, LLC
Michael Musser, California Teachers
Association
Russ McCrary, Iron Workers

Wendy Holt, CSATF/AMPTP

Boyd Jensen, CalPRO General Counsel
Kevin Thompson, Cal-OSHA Reporter
Elizabeth Treanor, Phylmar Regulatory
Roundtable
Amber Jadosz, Federal OSHA

Steve Hooper, Unger Construction
Patrick Bell, DIR/DOSH
Suzanne Marria, DIR/DOSH

Kate Smiley, AGC
Jeff Fleckstor, Unger Construction

Ms. Hart presented Mr. MacLeod with a plaque on behalf of the Board and staff to recognize and thank him for his time and dedication during his tenure as Chairman of the Board from January 2006 to December 2012. She stated that Mr. MacLeod submitted his resignation to the Governor a few months ago and that today's meeting will be his last meeting as Chairman.

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.

Elizabeth Treanor, Phylmar Regulatory Roundtable, thanked Mr. MacLeod for his service on the Board as Chairman and congratulated Hans Boersma on his retirement.

Deborah Gold, DOSH, also thanked Mr. MacLeod for his service on the Board.

Boyd Jensen, General Counsel for CalPRO, spoke to the Board regarding Petition 520 regarding certification of independent inspectors for portable amusement rides. He stated that CalPRO came to the Board in 2010 with this petition because they felt that the Division's inspectors were not qualified to inspect portable amusement rides. In June of 2011, the Board granted Petition 520 and instructed the Division to develop regulations to certify independent inspectors for portable amusement rides, but since then, nothing has happened. He stated that since the petition was granted, CalPRO has appeared before the Board several times trying to get the Division to develop those regulations as instructed by the Board. He asked the Board to help get the Division to move forward on this issue.

Ray Rieger, Ray Rieger Loss Control Services, also addressed the Board regarding Petition 520. He stated that he and the other members of CalPRO are here to offer an alternative solution to the high cost of portable amusement ride inspections. He said that allowing third party inspectors to perform portable ride inspections is a win-win situation for both the Division and portable ride operators because it alleviates the costs of inspections to the Division, and since independent inspectors have more predictable costs, it allows portable amusement ride operators to budget their money for inspections.

Jim Hall, CalPRO, stated that he was concerned and angered by a comment previously made by the Division stating that they are afraid that inspections made by third party inspectors will be "drive by" inspections. He stated that this is not true and that all carnival operators are very concerned about the safety of their rides because it is their business. He also stated that fairs and non-profit organizations are dependent upon carnivals for funding and fundraising. He said that he is frustrated because the Division is

dragging their feet when it comes to creating regulations to certify independent portable amusement ride inspectors and urged the Board to help them in this matter.

Suzanne Marria, DOSH Special Counsel, stated that the Board has been clear in its decision on Petition 520 that it does not have authority on the issue of creating regulations regarding certifying third party portable amusement ride inspectors, so it referred the matter to the Division. She stated that CalPRO and Mr. Jensen have been in litigation with the Division regarding a fee increase that the Division tried to implement, and an order was given to the Division not to implement the fee increase. She said that the litigation in this case continues to go on, and in August, she instructed Ms. Gold not to go into details regarding this issue at the Standards Board Meeting because settlement negotiations were in progress. She also stated that one of the big problems in settling this case is that the litigation over the authority regarding statutory fees has become litigation over certifying third party inspectors for portable amusement rides. She said that the Division has been open to Mr. Jensen and CalPRO for settlement and discussion about both issues and that during the last meeting between the parties, Mr. Jensen wanted to think about their proposal and would call the Division back in August, but no call has been received. She stated that she plans to talk with Mr. Jensen in person today regarding these issues and that she hopes that Mr. Jensen and CalPRO will engage in dialogue with the Division on these issues before the next briefing is due on the case.

Mr. Harrison asked Ms. Marria when the next brief is due on the case. Ms. Marria stated that the next brief will be due sometime in January. Mr. Jensen stated that this has nothing to do with the standard.

C. ADJOURNMENT

Mr. MacLeod adjourned the public meeting at 10:42 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Mr. MacLeod called the Public Hearing of the Board to order at 10:43 a.m., December 13, 2012, in Room 205 of the Social Services Office Building, Sacramento, California.

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 59, Section 4309
Horizontal Pull Saw (Radial Arm Saw) Guarding

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.

B. ADJOURNMENT

Mr. MacLeod adjourned the Public Hearing at 10:49 a.m.

III. BUSINESS MEETING

Mr. MacLeod called the Business Meeting of the Board to order at 10:50 a.m., December 13, 2012, in the Room 205 of the Social Services Office Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 15, Sections 1610.3 and 1616.3
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7
Article 91, Section 4885 and Article 98
New Section 4993.1 and Sections 4999 and 5001
Work Area Control (Crane Swing Radius Hazards)
(Heard at the September 20, 2012, 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. Harrison and seconded by Mr. Thomas to adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 2, Section 3210 and Article 35, Section 3900
Elevated Locations - Guardrail Exception for Portable Amusement Rides
(Heard at the October 18, 2012, 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.

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Robert Jungers
Borax Mine
Petition File No. 530

Petitioner requests that the Board amend Title 8, General Industry Safety Orders, Section 3314, regarding energy control procedures.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to deny the petition request for the reasons stated by the Board staff and the Division.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Harrison that the Board adopt the proposed decision denying the petition.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales recommended that all variances and variance modifications on the consent calendar be granted and that the consent calendar be approved.

MOTION

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

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

D. OTHER

1. Legislative Update

Mr. Beales stated that there was no update.

2. Division Update on Advisory Committees and Possible Rulemakings

Mr. Donlon provided an update to the following activities that the Division is working on (items a-g below):

- a. Elevator Safety Orders: The Division will have an advisory committee meeting on December 18, 2012 in Oakland to discuss the 2-step process to adopt possible changes. The agenda and a discussion draft of amendments to Group II, III, and IV elevators has been posted online. The 2013 ASME is scheduled to be released in October.
- b. Tunnel Safety Orders: The Tunnel Safety Orders are still being reviewed by Board staff and should be ready for Public Hearing sometime next year.
- c. Tramway Safety Orders: The Division is beginning to work on the Tramway Safety Orders. They are updating the referenced code and working with people in the industry to address safety issues with patrons that the industry has expressed an interest in addressing.
- d. Safe Patient Handling: The Division still plans to bring a rulemaking to the Board on this issue early in 2013. They are continuing to do new outreach on this matter, and new stakeholders have appeared with new concerns that the Division feels they need to address before bringing the rulemaking to the Board.
- e. Hotel Housekeeping: The Division plans to hold a second advisory committee meeting during the first quarter of next year.
- f. Air Contaminants and New Round of Health Expert Advisory Committee (HEAC): Drafts of the rulemaking documents for N-methylpyrrolidone, hydrogen chloride, and naphthalene will be sent to the Board by the end of the month. The December 6th meeting had to be postponed for a number of reasons. This meeting will now take place sometime during the first quarter of next year. There are very few substances left to discuss from the previous advisory committee meeting. The meeting will focus on those remaining substances and prioritize substances for the coming round.
- g. Petition 513 - Bloodborne Pathogens Protection, Adult Film Industry: The Division continues to conduct inspections under the current standards. The Division is working on a new draft that will be circulated to interested parties during the first quarter of next year, resources permitting. Los Angeles County voters passed Measure B, which requires the use of condoms in the adult film industry. Ms. Gold does not know what the impact of Measure B will be on the Division's enforcement efforts.
- h. Diacetyl: The Division submitted a rulemaking package to the Board to permit analysis to be done by laboratories certified by the AIHA.
- i. Petition 519 – Required First Aid Supplies: The Division still plans to bring a rulemaking to the Board by the end of January. A final discussion draft will be sent out to interested parties in the next few weeks.
- j. Petition 524 – Respiratory Protection for Emergency Responders: The Board staff is currently reviewing this rulemaking.

k. Globally Harmonized System: Steve Smith is working on a response to comments received. The Division plans to move forward on this issue in 3 stages:

- 1) Horcher the items that can be Horchered.
- 2) The Board staff will submit a proposal to address changes in the definitions of flammable and combustible liquids as a regular rulemaking.
- 3) An advisory committee will be held to discuss the items that cannot be Horchered.

The Division is hoping to have the Horcher part of this process done in time for the January Public Hearing.

l. Form 9's for High Visibility Garments (GISO) and Night Work in Agriculture: The Division is going to pull back these form 9's and revise and resubmit them to ensure appropriate timing on them. They will submit a new form 9 for Night Work in Agriculture, followed by a form 9 for High Visibility Garments (GISO).

Ms. Gold also spoke about lead, stating that it continues to remain on their list of tasks for Construction Safety Orders and General Industry Safety Orders. She stated that the Division is waiting for the California Department of Public Health to issue a critical report that will address the blood leads with exposure and ingestion issues, as well as air contaminants. CDPH has informed the Division that this report will be issued early next year.

Mr. McDermott stated that, regarding GHS, the Labor Code requires MSDS's to be sent to the Division. He asked Ms. Gold if it would be a good idea to have the advisory committee handle this, given the fact that the Division has tight resources. He also pointed out that this is an internal Division responsibility.

Ms. Gold stated that that is their duty under the Labor Code and that there will be issues that need to be sorted out in the years to come.

3. Termination of Rulemaking: Section 3328(b), Machinery and Equipment, Used and Operated

Ms. Hart stated that the memo from the Board staff stating the intention to terminate this rulemaking, as well as the meeting minutes from the Public Hearing in which it was heard, were included in the Board packet. She stated that if the Board had no objections, the Board staff will take steps to terminate this rulemaking. No Board objections were stated.

4. Executive Officer's Report

Ms. Hart stated that the 2013 rulemaking project list was included in the Board packets to show the Board the projects that the Board staff plans to work on in 2013. The Division's list did not arrive in time to be included in the Board packets, so it was included in the Board Members' folders that were handed out today.

Ms. Hart also stated that the 2013 Board Meeting schedule has been finalized and was included in the Board packets. She stated that all dates and locations have been confirmed and that the Board Members may add them to their calendar.

Ms. Hart also had some requests for the Division. She requested that the Board staff be included in the revision of the Elevator Safety Orders and stated that the Board staff will participate in the advisory committee meeting next week regarding it. She also requested that the Division add her to the list of people to whom they will submit revised language for review regarding requirements for First Aid supplies. She also stated that the timeline for getting the GHS Horcher ready for adoption at the January Public Hearing is tight and may not be possible. She said that the Agenda for the January meeting is scheduled to be posted on January 3, and the package would go out to the Board on January 10, which will not leave the Board staff very much time to create the rulemaking package.

Ms. Hart also stated that Hans Boersma will be retiring at the end of this month, and she is working on filling his position before the end of the fiscal year. She also thanked the Board and Board staff for their work during 2012.

5. Future Agenda Items

Mr. Jackson stated that he would like to hear from the Division where they are on creating a rulemaking regarding Petition 520. Ms. Hart stated that Ms. Marria has indicated that this is not a rulemaking that the Board will see; this is a rulemaking that the Division will act on independently. However, she asked the Division to keep the Board in the loop regarding its progress because the Board has contact with CalPRO.

A. ADJOURNMENT

Mr. MacLeod adjourned the Business Meeting at 11:20 a.m.