

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

February 19, 2009
Oakland, California

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., February 19, 2009, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California.

ATTENDANCE

Board Members Present

Chairman John MacLeod
Jonathan Frisch, Ph.D.
Bill Jackson
Jack Kastorff
Willie Washington

Board Members Absent

Josè Moreno

Board Staff

Marley Hart, Executive Officer
David Beales, Legal Counsel
Mike Manieri, Principal Safety Engineer
Tom Mitchell, Senior Safety Engineer
George Hauptman, Senior Safety Engineer
Bernie Osburn, Staff Services Analyst
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Len Welsh, Chief
Steve Smith, Principal Safety Engineer
Larry McCune, Principal Safety Engineer

Others present

Ralph Morales, Rudolph & Sletten
Joel Cohen, The Cohen Group
Jim Hay, State Fund
Elizabeth Treanor, Phylmar Regulatory Roundtable
Ken Clark, Willis Insurance Services
Jason Fell, Drywall Information Trust Fund
Dee McGregor, PCI
William Dunleavy, Painters & Allied Trades DC 36
Darell Lawrence, Drywall-Lathing Apprenticeship

Greg Allaire, Southwest Carpenter Training Fund
Bruce Wick, CalPASC
Kevin Thompson, Cal-OSHA Reporter
Steve Johnson, ARC-BAC
Michael Logue, WWCCA
Christine Young, CPIL, USD School of Law
Frank Nunes, LRP Institute
Dan Benter, Painters & Allied Trades DC 36
Tony Hernandez, Drywall-Lathing

Apprenticeship

Kevin Bland, Granado Bland
Rick Ragsdale, State Fund
Tina Kulinovich, Federal OSHA
David Lanza, PCI
Benji Palmer, PCI

Bo Bradley, AGC of California
Marcia Dunham, PG&E
Loren Hormigoso, Federal OSHA
Pat Connolly, Granite Industries
Greg Tate, PCI

Chair MacLeod stated that on January 13, 2009, Steve Rank had resigned his position with the Standards Board to serve on the State Compensation Insurance Fund Board. Mr. Rank was appointed as Chairman of the Occupational Safety and Health Standards Board on May 21, 2003, and he served in that position until January 2006. He stated that the Board would miss Mr. Rank, and the Board would formally recognize his service at a future meeting.

Chair MacLeod recognized Larry McCune, Principal Safety Engineer with the Division of Occupational Safety and Health (DOSH), who will be retiring at the end of February. Chair MacLeod stated that Mr. McCune has been a valuable resource for the Standards Board for almost 15 years, and he has been instrumental in a number of standards such as Tower Crane Certification, Suspended Scaffold Systems in Window Cleaning, Lockout/Tag Out, Fall Protection in Residential Construction, and the High- and Low-Voltage Electrical Safety Orders. Chair MacLeod stated that Mr. McCune's contributions and assistance to the Standards Board staff has led to significant protection for California workers. He also expressed appreciation for Mr. McCune's sense of humor, and he stated that Mr. McCune will be missed.

Mr. McCune thanked Chair MacLeod and stated that it has been a pleasure to work with the Board, Board staff, and the regulated community.

B. OPENING COMMENTS

Chair 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 was no public comment.

C. ADJOURNMENT

Chair MacLeod adjourned the meeting at 10:07 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public Hearing of the Board to order at 10:07 a.m., February 19, 2009, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California.

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

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 22
Sections 1637 and 1646
Riding on Rolling Scaffolds

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

Joel Cohen, author of the petition identified as Petition File No. 465, from which this proposal resulted, summarized the history and purpose of the petition, the advisory committee meeting, and the proposed language.

Mr. Cohen stated that the installation or application of wall materials such as drywall and drywall finishing compounds, as well as the installation of metal grid ceilings, is commonly accomplished by employees standing on a scaffold platform. The vast majority of interior ceilings in commercial and residential construction are ten feet or less. Current regulations allow for workers to move while riding on a scaffold as long as someone is pushing the scaffold from below, but the extra manpower to move a scaffold in this manner is rarely available. Therefore, the worker performing the wall or ceiling task is generally required to climb on and off the scaffold repeatedly to perform his work and comply with the statutory requirements.

Mr. Cohen believes that the continual climbing on and off of scaffolds throughout the day poses a far greater hazard than allowing a single employee to self-propel the scaffold on which he or she is working under certain conditions, which have been addressed in the proposed language. He estimates conservatively that an employee performing the tasks previously mentioned is required to climb on and off the scaffold 80 to over 100 times in an eight-hour day. In addition to the increased risk exposure of such repetitive motion, Mr. Cohen believes that it poses a significant ergonomic hazard to the worker as well.

Mr. Cohen also stated that one large employer at the advisory committee meeting showed a significant number of accidents reported just from climbing on and off the scaffold and not from self-propelling the scaffold. Mr. Cohen then presented a video depicting an employee climbing on and off a rolling scaffold platform; the video also depicted the same employee "surfing," or riding, on the rolling scaffold.

Mr. Cohen stated that, in reviewing the accident statistics on the IMIS database, he found ten accidents reportedly occurring on low platforms. Nine of the ten were accidents occurred at heights of six feet or greater and primarily resulted from workers falling off ladders that were placed on the scaffold platform. In one accident, where few facts are known, the worker suffered a fractured wrist. The proposed language limits the self-propelled platform height to four feet.

Cal-OSHA identified 23 accidents in their review of DOSH inspections. One had no reported facts; 21 of the accidents occurred at heights greater than four feet, and one involved an employee working on a platform height of four feet; however, the worker fell while working on a single plank or not a full plank on that scaffold. The proposed language addresses that issue, as well.

Mr. Cohen has conducted an informal polling of the scaffold accident disability claims among the liable contractors associations, and he was told that two accidents occurred on the smaller scaffolds, commonly referred to as the “fold and roll” type of scaffold. There were no reported accidents from the type of scaffold addressed in the proposal. The fold and roll scaffolds are far different than the scaffolds subject to the proposal.

Mr. Cohen noted that a letter to the editor in the August 22, 2008, Cal-OSHA Reporter comments on the proposed changes. The letter is descriptive of the hazards associated with the smaller scaffolds, which are not subject to the regulation. Thus, while the author’s comments have merits, the proposal would not apply to the smaller scaffolds.

Mr. Cohen stated that the advisory committee was well attended by labor, contractors, and scaffold equipment manufacturers. The consensus reflected in the proposal was virtually unanimous among the attendees. He concluded his remarks by expressing his belief that the proposal provides safety regulations that are at least as effective as, and in some cases more stringent than, comparable federal OSHA regulations, and it provides for a safe workplace.

Michael Logue, Technical Director for the Western Wall and Ceiling Contractors Association (WWCCA), stated that all of WWCCA’s member companies and contractors use rolling scaffolds. He stated that he has received numerous letters from WWCCA member companies and labor groups supporting the proposed amendments and stating that the work being done on rolling scaffolds set 48 inches from the floor or lower is much safer when workers are allowed to self-propel rather than climb up and down, in some cases more than 100 times in an eight-hour workday. Mr. Logue stated that he has spoken to dozens of rolling scaffold users on job sites in Southern California, and his findings are that the act of self-propelling as depicted on the video, when done by a trained worker, is a natural and fluid process. He stated that the safe use of rolling scaffolds begins with training. WWCCA’s union apprenticeship program spends a large percentage of time on safety. In accordance with the proposed regulation, all persons using scaffolding will be trained to do so by the respective union apprenticeship programs. The overwhelming support of both labor and management coupled with a very low number of injuries associated with self-propelling on these types of scaffolds solidifies the need for the proposed amendments.

Jason Fell, Technical Director for the Drywall Information Trust Fund (DITF), stated that in his 30 years of experience, he has not seen self-propelling on rolling scaffolds as an issue. He stated that if the proposal is adopted, DITF’s apprenticeship training program would include scaffold training.

The following attendees also spoke in support of the proposal:

- Steve Johnson, Associated Roofing Contractors of the Bay Area Counties (ARC-BAC)
- Bruce Wick, Director of Risk Management for the California Professional Association of Specialty Contractors (CalPASC)

- Kevin Bland, representing the Pacific Rim Drywallers Association, California Framing Contractors Association, Residential Contractors Association, and Wendy Holt of the Alliance of Motion Picture and Television Producers.
- David Lanza, Regional Safety Manager for Performance Contracting Group.
- Pat Connolly, Granite Industries. Mr. Connolly also demonstrated a braking mechanism for rolling scaffolds designed by Granite.

Ralph Morales, Jobsite Safety Coordinator for Rudolph and Sletten, spoke in opposition to the proposal. He asked whether anyone had considered creating a scaffold platform specifically designed for surfing. He stated that in his 25 years of experience, he has seen a number of scaffolds that have been damaged down at the base by the wheels, which might be the result of surfing. Rudolph and Sletten does not allow surfing, and employees are encouraged not to do it if they are seen surfing. Mr. Morales also stated that manufacturers' recommendations specifically recommend against surfing. He expressed concern that if the proposal were adopted, it is directly in conflict with manufacturers' recommendations. He also expressed concern that on a construction site, there may be obstructions on the floor that would prevent the scaffold from rolling, causing the employee riding on that scaffold to fall and sustain an injury.

Mr. Kastorff asked Mr. Connolly about the cost of the braking mechanism he demonstrated. Mr. Connolly responded that the retail price for a pair is \$225 to \$229. Mr. Kastorff then asked how long it takes to install the braking device. Mr. Connolly responded that it takes approximately ten minutes to install it to both ends of the scaffold.

Dr. Frisch asked Mr. Connolly whether the braking mechanism is automatic. Mr. Connolly responded negatively; the employee must engage the brake. Dr. Frisch then asked Mr. Connolly whether it would be obvious to a supervisor or a casual observer that the brake was or was not engaged. Mr. Connolly responded affirmatively.

Dr. Frisch expressed concern regarding debris on the floor that might obstruct the scaffold's wheels. Mr. Hauptman responded that that issue was discussed in the advisory committee, but debris that might obstruct the scaffold would have to be fairly large. He stated that the primary concern would be an abrupt stop caused by an obstruction, using a shopping cart as an analogy.

Dr. Frisch also expressed concern about the language requiring "an effective device used to prevent movement of the scaffold," stating that the definition of "an effective device" is unclear. Mr. Hauptman responded that the device demonstrated by Mr. Connolly is sold in pairs for exactly that reason. If the brake is applied on only one end, the scaffold can still move, but if both ends are locked, it cannot.

Dr. Frisch asked whether there are other examples in Title 8 in which the regulation specifically states that the regulation takes precedence over manufacturers' recommendations. Mr. Manieri responded affirmatively, citing the avalanche blasting regulations as an example. Mr. Hauptman added that manufacturers are well aware of the conflict and most recommendations state that they are not intended to supersede OSHA regulations.

Mr. Jackson asked whether there was any citation history for employees riding on rolling scaffolds. Mr. Hauptman responded that there were citations in which the wheels had been unlocked when an employee was on the scaffold, but he was unaware of any citations that specifically addressed surfing.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 10:59 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:59 a.m., February 19, 2009, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **HIGH VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5, Group 2
High-Voltage Electrical Safety Orders
(Heard at the December 18, 2008, Public Hearing)

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

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Jackson that the Board adopt the proposal.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales stated that three of the proposed variance decisions listed on the consent calendar were heard via the expedited process immediately prior to the Board meeting. He also stated that the Board members had received the final versions of the proposed decisions in the other three matters both in their Friday mail and in their Board packets. He asked that the Board adopt all of the decisions as proposed.

MOTION

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

Dr. Frisch asked whether all variance applications on the consent calendar would be granted,

and Mr. Beales responded affirmatively.

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

C. OTHER

1. Termination of Rulemaking—"Definition of Equipment"

Mr. Beales stated that pursuant to the memo included in the Board packet, Board staff has determined that no useful purpose is to be achieved with proceeding with this rulemaking proposal. Therefore, unless the Board disagrees, it is the staff's recommendation to terminate rulemaking action on this proposal. The Board expressed no disapproval of that course of action.

2. Legislative Update

Mr. Beales stated that there was no legislative update for February; however, the legislature is currently in session and voting to adopt a proposed budget agreement.

3. Executive Officer's Report

Ms. Hart stated that the results of the budget agreement currently in the legislature are yet to be seen. She said she would keep the Board members informed. She stated that twice-a-month furloughs will continue for the time being. Ms. Hart further stated that staff had been advised that payment of travel expense claims would be suspended; however, after the suspension was announced, TEC reimbursement checks were received. She was unsure how long the suspension would continue.

Ms. Hart stated that in addition to the Calendar of Activities, there is one more meeting scheduled for February 27, 2009, at the Division of Occupational Safety and Health, to discuss heat illness enforcement issues. The meeting is not intended to be a forum for amendments to the standard, but should such an amendment come from that meeting, staff would be informed.

Mr. Jackson asked whether Board staff would be participating in the Mining & Tunneling advisory committee meeting scheduled for today. Mr. Manieri responded that he had been in touch with Steve Hart, and his understanding was that there was going to be another continuation of the advisory committee meeting, but he had not received any notification of today's meeting. Mr. Manieri stated that Board staff fully intends to continue attending those advisory committee meetings. Ms. Hart stated that Board staff is on the mailing list and receives all of the meeting minutes, and staff will receive the minutes from today's meeting as well.

4. Future Agenda Items

Dr. Frisch asked the Division for an update on progress with the PEL process and regarding the proposed amendments regarding sensitizing agents at the April meeting.

Dr. Frisch then asked about progress on rulemaking activity regarding ROPS for riding lawn mowers. Mr. Hauptman responded that the regulatory text for the proposal is almost complete, and he is reviewing the minutes with the goal to distribute the minutes and the revised regulatory text in March.

D. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:12 a.m.