

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**January 21, 2010**  
**San Diego, 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., January 21, 2010, in Room 358 of the County Administration Building, San Diego, California.

ATTENDANCE

Board Members Present  
Chairman John MacLeod  
Jonathan Frisch, Ph.D.  
Bill Jackson  
Jack Kastorff  
Guy Prescott  
Willie Washington

Board Members Absent

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

Division of Occupational Safety and Health  
Joel Foss, Principal Safety Engineer

Others present  
Eric Schellenberger, Amot  
Robert Taylor, USW  
Deb Foster, EORM  
Steve Johnson, ARC-BAC  
Bob Miller, Southwest Carpenters JATC  
Kevin Bland, CFCA, RCA  
Ben Sloan, Chevron

Jogen Bhalla, Amot  
Bruce Wick, CalPASC  
Daniel Barker, DIR  
Kevin Thompson, Cal-OSHA Reporter  
Karen Belcher, DOSH Elevator Unit  
Rebecca Weinrib, USD PI  
Joan Gaut, CTA

Elizabeth Treanor, Phylmar  
Regulatory Roundtable

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

**Robert Taylor, a refinery firefighter**, spoke in opposition to the termination of the diesel engine safety device proposed in Petition File No. 505. He stated that he sees the device as a proactive measure and that vapor releases in refineries are not common, but they happen from time to time. He stated that California refineries have been lucky on vapor releases. Refineries are experts at making gasoline, not developing safety regulations, which is the job of the Board.

**Peter Greyshock, Director of the Southern California Coalition for Occupational Safety and Health (SoCalCOSH)**, read his written comments into the record.

Dr. Frisch asked Mr. Greyshock whether he was indicting the entire PSM process because it consists of administrative controls. Mr. Greyshock responded that there need to be greater engineering controls to complement the administrative controls in the PSM.

Dr. Frisch expressed concern regarding his impression that the testimony presented today implies that the PSM is an ineffective way to manage refineries and whether such management should be given to another body. Mr. Greyshock responded that the PSM is not the only solution, and engineering controls are necessary to complement the PSM.

Dr. Frisch asked whether the entire PSM process was inefficient or in just this particular area. Mr. Greyshock responded that it was just this area. Dr. Frisch asked why just this area, and Mr. Greyshock responded that it is the petition that is being considered.

Dr. Frisch asked if the Board could expect further petitions regarding the PSM. Mr. Greyshock responded that SoCalCOSH would support further petitions based on their merits.

**Jogen Bhalla, the Petitioner**, summarized his written comments, stating that following the PSM as it is currently written requires several steps, such as making sure combustible materials are removed from ignition sources in order to issue entry permits. He stated that the question is whether this hazard can be eliminated, and that there are no uniform, comprehensive standards in the United States to prevent diesel runaway accidents. He stated that California should learn from its counterparts in Europe, the Middle East, and Asia.

Mr. Prescott asked whether Federal OSHA is going to promulgate a standard for this device. Mr. Bhalla responded affirmatively.

Mr. Kastorff asked whether the device could be activated both manually and automatically. Mr. Bhalla responded affirmatively.

**Ben Sloan, maintenance and reliability specialist with Chevron**, stated that he participated in the advisory committee and that this is a solution in search of a problem. California refineries do not have a history of leaks of this magnitude. The PSM requires employers to perform actions that would have prevented the explosion in Texas City, upon which the petition was based. He noted that California refineries have different physical arrangements from those in other countries and that the Texas City flare that ignited the catastrophic explosion could never happen in California. In response to the Texas City incident, Chevron moved a lot of personnel away from its refineries. He stated that if Chevron saw a need for this device in California, they would be the first to implement it.

Mr. Prescott asked whether Mr. Sloan feels that the PSM properly covers refinery safety. Mr. Sloan responded affirmatively, stating that when studying a plant from a hazards operation perspective, he asks questions about situations like this. His group studies risk-based inspection in which they study the risk of everything, including the risk of not doing something or the risk of delaying shutdowns.

Dr. Frisch asked whether Mr. Sloan agreed with Mr. Taylor's comment that refineries are not safety experts. Mr. Sloan responded in the negative, stating that it is often just the opposite, and in many cases the safety group has more to do with safety than they do with refineries. He stated that refineries hire people from colleges who have degrees in safety and have very little knowledge of refining. He stated that his role is to bridge the gap between the safety personnel and the refinery personnel, communicating what the safety group is trying to enact with what the refinery is trying to do. He further stated that the oil industry has over-interpreted the PSM standards.

**Eric Schellenberger, President of AMOT Controls**, stated that the advisory committee process was flawed because it was centered on the language of the proposal rather than the risks of the problem. He expressed the opinion that there had been an agreement to change the scope of the proposal, but later it was just decided to terminate the rulemaking. He stated that Mr. Boersma had indicated that the Division would not take a stand on a proposed new standard until there was an accident, and he stated that there was not equal management-labor representatives on the committee.

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:45 a.m.

## II. PUBLIC HEARING

### A. PUBLIC HEARING ITEM

Chair MacLeod called the Public hearing of the Board to order at 10:45 a.m., January 21, 2010, in Room 358 of the County Administration Building, San Diego, California.

Chair 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 4301  
**Spreaders for Self-Feed Circular Ripsaws**

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

Mr. Prescott asked whether Federal OSHA had issued an opinion on this proposal. Mr. Manieri responded affirmatively.

There was no public comment on this matter.

### B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 10:51 a.m.

## III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:51 a.m., January 21, 2010, in Room 358 of the County Administration Center, San Diego, California.

### A. PROPOSED SAFETY ORDER FOR ADOPTION

1. TITLE 8:      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 154  
Sections 6070, 6074, 6075, 6080, 6085, 6087, 6089, 6090, 6100,  
6115, and 6120, and Appendices A and B  
**Pressurized Worksite Operations**  
(Heard at the July 16, 2009, Public Hearing)

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

MOTION

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

Dr. Frisch thanked staff for addressing his question regarding having a physician available. He stated that Mr. Manieri's description of the process had allayed his concern. Mr. Mitchell responded that in most cases when people have the bends, it occurs hours after they have emerged from the pressurized environment.

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

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Mike Coghlan, Vice President, Sales and Marketing  
Sabre Towers and Poles  
**Petition File No. 510**

Petitioner requests that the Board amend Title 8, Telecommunication Safety Orders, Section 8608(a) and (b), regarding telecommunication tower ladders for consistency with Federal OSHA Standards.

Ms. Hart summarized the history and purpose of the petition and indicated that the proposed decision was ready for the Board's adoption.

MOTION

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

Mr. Prescott expressed concern that the petition asks to downgrade California standards to meet Federal OSHA standards and that convening an advisory committee to poll stakeholders regarding the necessity for such an amendment might be a waste of limited staff resources.

Ms. Hart stated that she would defer to Mr. Manieri, but it was her impression that Telecommunication Safety Orders did not contain ladder requirements, and employers must rely on the General Industry Safety Orders. Petitioner would like tower ladder requirements to be spelled out in the Telecommunication Safety Orders. There is the possibility that employers could apply for a variance if they have equivalent or greater safety measure in place.

Chair MacLeod commented that staff evaluations of variance applications also would divert limited staff resources.

Mr. Manieri stated that the GISO, Section 3776, which is the ladder standard, has ladder rung requirements for fixed ladders that are much wider than the Federal OSHA requirement for telecommunication tower ladders. There was not much information in the petition, and the function of an advisory committee, in part, would be to poll the stakeholders and determine how many ladders in California fall inside or out of existing California standards and whether there is a need for a new or revised standard. He also stated that some of the towers are leased by two different entities that are regulated by two different sets of standards. For instance, part of the tower is leased by a public utility company and the other part is leased by a telecommunications company, which can lead to confusion for both employers.

Mr. Jackson asked whether staff knew when the most recent review of the Telecommunication Safety Orders had taken place. Mr. Manieri responded that it has been many years.

Mr. Jackson stated that, if that is the case, we do not know whether they are comparable to the federal requirements. Mr. Manieri responded that we are not completely sure because the federal standard, and their interpretation and application of it is very irregular.

Dr. Frisch asked whether there have been any citations on this issue. Mr. Foss responded in the negative.

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

#### C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales requested that the San Francisco Bay Area Rapid Transit matter (07-V-161) and the eight Mitsubishi elevator cases (09-V-082, 09-V-084, 09-V-085, 09-V-086, 09-V-087, 09-V-088, 09-V-089, 09-V-090, and 09-V-112) be removed from the consent calendar. He also noted that the Kone elevator matters (09-V-119, 09-V-120, and 09-V-121) and the Otis elevator matters (09-V-116, 09-V-128, 09-V-130, 09-V-131, and 09-V-132) had been heard prior to the Board meeting this morning, and the recommendation in all of those matters is to grant the variances, and the consent calendar would be modified to reflect that recommendation. He asked the Board to adopt the consent calendar with the suggested modifications.

#### MOTION

A motion was made by Mr. Jackson and seconded by Dr. Frisch to adopt the consent calendar as modified.

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

D. OTHER

1. Termination of Rulemaking: Diesel Engine  
Safety Device

Ms. Hart stated that the Board members had received a memo stating Board staff's intent to terminate rulemaking activity for the proposal to require air intake shutoff devices for diesel engines operating in refineries. They had also received copies of the minutes of the advisory committee convened by Mr. Boersma on August 27, 2009, in response to the petition decision (Petition File No. 505) adopted November 20, 2008.

The recommendation to the Board is to terminate action on this petition at this time, as there was no consensus at the advisory committee meeting to move forward with rulemaking action, particularly with the language as proposed to the advisory committee. In speaking with people following the advisory committee meeting, it has become clear to staff that the PSM standard is working, and it is in place for a reason. The question is whether there still would be a problem if the current standards are followed, and the answer appears to be no.

In doing this, however, as stated in the advisory committee minutes, the Division would like to examine whether this issue should be addressed in the General Industry Safety Orders, because the diesel engine runaway hazard is found in many areas. Board staff and the Division recognize the value of the safety device, and the Division, after exploring the issue further, might submit a Form 9 request for rulemaking to Board staff.

Mr. Foss stated that the Division has been contacted by Federal OSHA on this issue. They intend to study this issue as well, and the Division will participate with them in that study.

Mr. Jackson thanked Mr. Boersma for his work on the advisory committee.

Chair MacLeod stated that testimony had been presented earlier today regarding the make-up of the advisory committee, to which he is particularly sensitive. For some time, the Board has had guidelines regarding how to assemble advisory committees in order to obtain perspectives from all stakeholders, including labor, management, and all other interested parties. He asked whether these guidelines were followed in this case.

Mr. Manieri responded that those guidelines are publicly available on the Board's website, and staff follows them in every case as closely as possible. Board staff cannot control the attendees, although they make a great effort to identify all the factions, splinter groups, representatives, etc., to fully represent all points of view on an issue and provide the appropriate subject matter experts. The guidelines indicate that the representation should reflect labor, management, and other subject matter experts, as necessary, and as they state the definition of consensus; those guidelines were followed in this case, as they have been in the past and as they will be in the future.

Chair MacLeod asked to see a copy of the rosters of who was invited and who attended the advisory committee.

Ms. Hart stated that if the Board is in agreement with staff's recommendation to terminate the rulemaking at this time, it will be terminated. An affirmative Board action was needed only if the Board disapproved the Board staff's intent to terminate the rulemaking; no such Board action took place.

#### Legislative Update

Mr. Beales stated that there is one new bill, which was introduced on January 14, 2010, by Assemblymember Jones. It pertains to the ski industry and largely duplicates another bill introduced by Assemblymember Jones last year, which did not go anywhere. The bill concerns signage and safety equipment at ski resorts. Among other things, ski resort operators are to report to the Division regarding accidents, among them, employee accidents. However, in its current form, the focus is on patron accidents. If the bill is passed, it will require that ski resorts report certain accidents to the Division, both on an accident-by-accident and an annual basis. The bill has also garnered some media attention, because there is a provision requiring that skiers under age 18 wear helmets.

Dr. Frisch asked whether there is any instruction in the bill as to what the Division is supposed to do with the accident information. Mr. Beales responded in the negative, stating that there is a provision to the effect that the Division shall have no responsibility to evaluate or summarize the annual information provided by the ski resorts.

#### Executive Officer's Report

Ms. Hart summarized the 2009 year in review report included in the Board packet, stating that the Board has been able to maintain the same amount of rulemaking work as in prior years, despite the mandated furlough days. However, there has been a slight reduction in the number of variance applications reviewed, with the majority of them still pertaining to elevators. Staff continues to evaluate the other applications and bring them to hearing in an expeditious manner.

She anticipates that in 2010, it will become more difficult to notice as many rulemaking proposals because of the furloughs. The preparatory work performed for all the rulemakings, especially those requiring advisory committee meetings, takes several months. With that in mind, many of the proposals that were noticed in 2009 were actually started and developed in 2008. In 2009, each staff member of the Board, along with the rest of the state employees, was required to take 28 furlough days, which is equivalent to 5.6 work weeks, in addition to vacations and other time out of the office. She anticipates that the furlough days will continue into June and possibly further. Thus, the staff's numbers probably will be a little lower in 2010. She is not sure how many advisory committee meetings staff will be able to convene. There are a few that were convened in 2009 that will be continued in 2010 and a few already in the works for 2010.

Also included in the Board packets was a list of rulemaking projects that staff hopes to undertake in 2010, and several of them have been noticed or will be noticed shortly for public hearing. Included in that list are not only the rulemakings that the Board staff will undertake but also the proposals that the Division may undertake in 2010. The last two items are federal final rules that staff believe will be issued in 2010, one dealing with combustible dust and the other with cranes and derricks. Both of them are very comprehensive and will require a lot of staff time to review. Should those two federal final rules be issued, staff will adjust the work plan accordingly. When Federal OSHA issues a final rule, the state has six months to adopt an equivalent regulation.

Mr. Jackson asked whether there is a presumption that those federal final rules will come before the Board as Horcher rulemakings. Ms. Hart responded affirmatively, stating that whenever there is a federal final rule, California must be equivalent, so it falls under the Horcher category.

Dr. Frisch observed that even a Horcher rulemaking requires a considerable amount of staff time, and he stated that he wanted to take the opportunity to express his appreciation for Board staff's ability to persevere in light of challenges presented by the budget situation. The actual numbers tell only half the story; what is left unsaid is that those issues that have been placed in front of the Board in 2009 have seen progress; we may move slower than we have in past years, but it speaks to the integrity of the Board staff that they are persevering, and he appreciates the fact that when petitions are presented or variances are requested, they are not sitting in a pile waiting to go; they are attended to.

Ms. Hart thanked Dr. Frisch for his comments. She stated that the Board will be receiving a federal final rule on acetylene in April. With the two that are anticipated, Mr. Manieri and his staff look at proposed federal final rules early on; we have an idea of what is coming before we even start formulating our own ideas on how much modification will be necessary, but they are very comprehensive.

Ms. Hart moved on to address the Governor's proposed budget, the impact of which on the Standards Board remains the same, which is a good thing for us. However, the Governor is proposing that the furlough days be eliminated and replaced with a 5% pay reduction and an additional 5% employee contribution for retirement benefits. A denial of the requested federal funds to supplement the general fund will result in an additional 5% pay cut. How that will affect the Board staff remains to be seen. She did emphasize however, that even with the furloughs and the unknowns of the proposed budget, staff morale remains high—everyone is continuing to come to work and do their jobs. The across-the-board dedication among the staff is amazing to her.

The staff recently had a celebration for Mike Manieri, who has completed 25 years of dedicated state service. Mr. Manieri started at the Board in 1985, and except for a brief period during disengagement, has been with the Board ever since. He has the distinction of being the Board's longest tenured employee. Board staff spent some time looking

back at a number of the high profile and complicated rulemaking proposals that Mr. Manieri worked on, including Section 5189, Process Safety Management, as well as comprehensive work on the Construction Safety Orders regarding fall protection, crane operator certification, and Section 1541, dealing with excavations, which was prompted by a tragic accident. He is the fearless leader of the engineering world and a great resource. He received a watch and an engraved plaque in recognition of his contribution to state service.

Mr. Prescott commented that although the furlough days do not have an effect on the employees' retirement benefit calculations, but the proposed 5% or 10% pay cuts do. He further stated that 100% of the engineering staff is eligible for retirement. Ms. Hart responded affirmatively, stating that the Board's legal counsel and some of the analytical staff are of eligibility age.

Mr. Prescott expressed concern that if the proposed pay cuts do take effect, a number of the Board staff could and might retire, which would have a significant impact on the work load. Ms. Hart agreed, stating that management staff continue to address that through advance planning and having a succession plan in place.

Future Agenda Items

ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:25 a.m.