

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
January 17, 2013
Oakland, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Acting Chair Laura Stock called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:01 a.m., January 17, 2013, in the Auditorium of the Harris State Building, Oakland, California.

ATTENDANCE

Board Members Present

Laura Stock
Bill Jackson
Hank McDermott
Barbara Smisko
David Harrison
Dave Thomas

Board Members Absent

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
Bob Barish, Senior Safety Engineer

Others present

Elizabeth Treanor, Phylmar Regulatory
Roundtable
Dan Leacox, Greenberg Traurig
Nancy Olsson, DOSH
Kathy Hughes, RN, SEIU NA of CA
Ingela Dahlgren, RN, SEIU NA of CA
David Shiraiishi, Fed OSHA

Steve Johnson, Associated Roofing
Contractors
Catherine Porter, CA Healthy Nail Salon
Collaborative
Marti Fisher, CalChamber
M. Oberg
Kate Smiley, AGC

Andrew Hamilton, USD Law Center for
Public Interest Law
Mark Roy McGrath, AIDS Healthcare
Foundation
John L. Bobis, Aerojet, The Bobis Group
Carol Fream, H.J. McDermott, Inc.
Valerie Royo, DOSH
Bob Hornauer, NCCCO
Dorothy Wigmore, Worksafe
Suzanne Marria, DOSH

Adam Cohen, UCLA Reproductive Health
Interest Group
Wendy Holt, CSATF/AMPTP
Cristina Perez, Ogletree Deakins
Patrick Bell, DOSH
Kashyap Thakore, CDPH
Paul Evans, Ghilotti Construction
Amalia Neidhart, DOSH
Mark Stone, Epic Insurance Brokers

B. OPENING COMMENTS

Ms. Stock 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.

Mark McGrath, AIDS Healthcare Foundation, commented on Petition 513 – Bloodborne Pathogen Protection in the Adult Film Industry. He stated that producers and talent agents in the adult film industry continue to flaunt the state's health and safety laws, putting workers' lives in danger. He said that workers in the adult film industry should be entitled to the same right to a clean and healthy workplace that other Californians enjoy and that it is unfair that these workers are expected to put their lives at risk to earn a living. He stated that requiring the use of condoms is the single most effective way to protect adult film workers from life-threatening diseases. He also stated that a long advisory committee process has been held for this petition in which the Division has held many meetings and circulated draft language to stakeholders and that his organization is eagerly awaiting a revised draft. He said that local jurisdictions are currently taking matters into their own hands regarding this issue, but they are still looking to the state for guidance. He stated that the industry continues to provide inadequate medical monitoring and that workers are required to pay for this monitoring, which is contrary to California law. He asked the Board to come to a reasonable and ethical decision on this petition that is informed by the working conditions of 21st century California.

Kevin Bland, representing the Free Speech Coalition, also commented on Petition 513. He said that there is a bloodborne pathogen standard that the Division is currently enforcing, so this issue is not being ignored. He stated that there are two sides to every story and asked the Board to listen to both sides and come to a reasonable resolution on this matter. He also stated that safety is the most important thing to the Free Speech Coalition and that they are still actively involved in the process for this petition.

Adam Cohen, Reproductive Health Interest Group, also commented on Petition 513. He stated that the adult film industry continues to ignore the current health and safety standard and has tried to find ways to get around being regulated. He said that the Free Speech Coalition is currently suing Los Angeles County over Measure B which was

passed by voters in November. He asked the Board to continue working on improving the language in the bloodborne pathogen standard that supports the health and safety of workers in the adult film industry.

C. ADJOURNMENT

Ms. Stock adjourned the public meeting at 10:19 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Ms. Stock called the Public Hearing of the Board to order at 10:20 a.m., January 17, 2013, in the Auditorium of the Harris State Building, Oakland, California.

Ms. Stock 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 10, Section 3381
Federal OSHA Direct Final Rule – Head Protection

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.

Ms. Stock then introduced the next item noticed for Public Hearing:

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 107
Section 5155
Airborne Contaminants - Ethylbenzene

Mr. Barish 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.

The following public comments were made on this proposal.

Catherine Porter, CA Healthy Nail Salon Collaborative, stated that the Healthy Nail Salon Collaborative has been attending Health Expert Advisory Committee meetings regarding ethylbenzene. She stated that an analysis was done by Dr. Julia Quint and that Dr. Quint recommended a permissible exposure level of 0.5 ppm based on that analysis. She said that she is concerned that the Initial Statement of Reasons does not reflect Dr. Quint's analysis and that the procedure and documentation that are before the Board are inadequate for consideration. She asked the Board to consider a level of 0.5 ppm as recommended in Dr. Quint's analysis.

Dorothy Wigmore, Worksafe, echoed the concerns of Ms. Porter regarding the procedural issue and that the recommended permissible exposure limit does not protect workers. The recommendation of 0.5 ppm recommended by Dr. Quint is better than 5 ppm, but still does not adequately protect workers. She stated that the 0.5 ppm level can cause 1 in 1,000 cancers and that Worksafe advocates for a permissible exposure level that will only cause 1 in 100,000 cancers. She said that the recommended 5 ppm yields 10 excess cancers for every 1,000 workers. She stated that the industry association for ethylbenzene acknowledges that substitution is the best way to reduce exposure, but that was not discussed during the Feasibility Advisory Committee. She said that more coordination is needed between the green chemistry initiative and Cal/OSHA to reduce exposures, and if the Feasibility Advisory Committee does not consider substitution, then it is not a good process. She asked the Board to have more discussion with Cal/OSHA on this matter and to set a permissible exposure level based on Dr. Quint's recommendations and accurate data.

Dan Leacox, Greenberg Traurig, representing the Styrene Information and Research Center, stated that ethylbenzene is part of a large study group and that a great deal of factors went into the Division's evaluation and recommendation of 5 ppm. He said that the industry group recommended a permissible exposure level of 7 to 20 ppm, and even though the Division's recommendation of 5 ppm is outside of that range, it is something that they could still support. He also stated that based on recent studies of ethylbenzene exposure to mice and rodents, the cancer causing point is not relevant to humans.

Ms. Wigmore stated that a study titled "Clarifying Carcinogenicity of Ethylbenzene" contradicts Mr. Leacox's last statement by saying, that when a chemical causes cancer in animals, we should quickly pay attention to those results rather than ignore them. She also stated that there is other evidence that contradicts Mr. Leacox's statement and that this evidence should be considered.

Ms. Stock stated that the Initial Statement of Reasons stated that the permissible exposure level of 0.5 ppm is not feasible. She asked Mr. Barish to explain how that conclusion was reached and what the criteria is for determining feasibility. **Mr. Beales** responded by stating that the public hearing is a chance for the Board Members and the public to comment on the proposal so that the Board staff can respond to those comments in future documents. Ms. Stock then asked the Board staff to address her questions in the response to comments.

Mr. McDermott thanked those who commented on this proposal today and stated that he was on the original Feasibility Advisory Committee that was conducted in 2009 in which ethylbenzene was discussed. He said that he is looking forward to the Division's response to comments received today, but he is concerned that the original discussions were so long ago. He also stated that he is concerned because there is not very much exposure information available on either side of the argument as to whether the permissible exposure level should be raised or lowered. He stated that the cost to analyze and air sample for ethylbenzene is about \$50.00, but based on the materials he has been given, as

well as the public's testimony today, it seems no one has collected and analyzed an air sample in the last 5 years to test whether the level should be higher or lower. He said that, as a result of this, the Board has to rely on the Division's assessment of what was presented during the Health Expert and Feasibility Advisory Committees.

Mr. Jackson stated that he would like to see the Division address in their response to comments whether or not there is a credible estimate as to how many California employees are exposed to ethylbenzene and, if there is, the level to which they are exposed. He stated that, if lowering the permissible exposure limit is necessary and appropriate, the Board should lower it to a level that the Division recommends, and if a lower number than that is found to be appropriate, they can do that later. He asked the Board to not put off something better in anticipation of something perfect coming later on.

B. ADJOURNMENT

Ms. Stock adjourned the Public Hearing at 10:53 a.m.

III. BUSINESS MEETING

Ms. Stock called the Business Meeting of the Board to order at 10:54 a.m., January 17, 2013, in the Auditorium of the Harris State Building, Oakland, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

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 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 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. Thomas and seconded by Mr. Harrison to adopt the consent calendar as modified.

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

C. OTHER

1. Legislative Update

Mr. Beales stated that over the years, he has found that bills of most concern for the Board are those pertaining to occupational safety and health and the Administrative Procedures Act. He said that the legislature is in session, and he has reviewed the Leginfo website to see if any bills pertaining to those items have come up, but he could not find any.

2. Division Update on Advisory Committees and Possible Rulemakings

Ms Gold provided an update regarding the following activities that the Division is working on:

- a. Elevator Safety Orders: The Division held an advisory committee meeting in Oakland on December 18, 2012 which was attended by manufacturers, unions, and members of the fire service. Some people asked for an extension of time to submit comments, so they are hoping to get all comments in by February 1 so that they can move forward with a draft of the proposal.
- b. Hotel Housekeeping: The Division has scheduled a second advisory committee meeting for March 19 in Los Angeles, and notice of the meeting will be posted and sent out to interested parties next week.
- c. Globally Harmonized System: The Division is scheduling a meeting for the second week of April for the non-Horcher items. For the items that can be Horchered, the Division plans to have them ready in time for the Board Meeting in February.
- d. Petition 513 - Bloodborne Pathogens Protection, Adult Film Industry: The Division has assigned additional staff to replace people who have left, and they want to continue to meet with stakeholders on this issue. They are also working with the California Department of Public Health and local health officials to provide outreach and assistance in utilizing the current standard.
- e. Safe Patient Handling: The Division gave the advisory committee members one month following the last meeting to submit comments. Comments are continuing to come in at this time. The Division plans to have a draft of the language to the Board staff by the end of February and to bring a rulemaking to the Board early this year.

3. Executive Officer's Report

Ms. Hart stated that she has received permission to fill the Senior Safety Engineer position vacated by Hans Boersma last month. She stated that the position will be formally listed in the next few weeks and will hopefully be filled very soon after that.

4. Future Agenda Items

Ms. Stock and Mr. McDermott both stated that they would like to get more information on determining feasibility and the criteria used in regards to ethylbenzene.

A. ADJOURNMENT

Ms. Stock adjourned the Business Meeting at 11:04 a.m.