

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
June 21, 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 10:05 a.m., June 21, 2012, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

John MacLeod
Dave Harrison
Bill Jackson
Hank McDermott
Barbara Smisko
Laura Stock
Dave Thomas

Board Members Absent**Board Staff**

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
David Beales, Legal Counsel
Bernie Osburn, Staff Services Analyst

Division of Occupational Safety and Health

Ellen Widess, Chief
Deborah Gold, Deputy Chief of Health

Others present

Michael Vlaming, Orange Growers Assc.	Andras Uhlyarik, California Pulse
Brian K. Miller, Rudolph & Sletten	Pamela Vossen, Unite Here International
Kate Smiley, AGC-CA	Elizabeth Treanor, PRR
Conrad Tolson, OSHSB	Dana Lahargoue, Roebbelen Contracting
Montan Very, Unite Here	Eloazar Demuk, Unite Here
Joan Gaut, CTA	Dave Gaut
Leigh Shelton, Unite Here	Cathy Youngblood, Unite Here Local 11
Teresita Cain, Unite Here Local 11	David Wong, Unite Here
Mitch Seaman, California Labor Federation	Mallori Spilker, United Contractors
Mark Stone, Epic Insurance Brokers	Jora Trang, WorkSafe
Sarah Julian, Unite Here	Amy Estrella, Lockheed Martin
Rachel Leary, Lockheed Martin	Larry Cahey, Ovezaa Construction

John Tyner, Penta Building Group
Bob Downey, CEA
Anne Katten, CRLAF
Lynn Mohrfield, CA Hotel and
Lodging Association
Patrick Bell, DOSH
Mike Donlon, DOSH
Deborah Gold, DOSH
Russ McCrary, IW Comp Program
Cindy Sato, CEA
Bobbie Signg-Allen, CLIA
Suzanne Marria, DOSH
Bob Hornauer, NCCCO
Martha Reyes, Unite Here
Gail Bateson, WorkSafe
Steve Johnson, ARC-BAC
Bill Kipaney, Suiblan Reid
Jack Gribbon, Unite Here
Patrick Corcoran, DOSH
Ellen Widess, Chief DOSH

Allen Thomas, Thomas N Thomas
Jedd Hampton, CA Chamber
Cheryl Jordan, CSATF
Baruch Fellner, CA Hotel and
Lodging Association
Amalia Neidhardt, DOSH
Larry Pena, Southern CA Edison
George Hauptman, OSHSB
Greg McClelland, Western Steel Council
Kevin Bland, CFCA/RCA
Gary L. Hong, CLIA
Jay Weir, ATT&T
Hans Boersma, OSHSB
Judi Freyman, Mercer ORC Networks
Sarah Fielding, WorkSafe
Peder H. Lenvik, Lockheed Martin
Marty Jordan, Lyles Services Company
Eric Myers, Davis, Cowell & Bowe, LLP
Harvey Peelle, BT Mancini Company
Kevin Thompson, Cal-OSHA Reporter

B. OPENING COMMENTS

Chairman MacLeod introduced the three new Board members, Dave Harrison, Barbara Smisko and Laura Stock, and administered the Oath of Office.

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

Mr. MacLeod stated that today's Public Meeting comments would be divided into three parts. We will hear comments regarding Petition 526, then Petition 528 and finally other occupational safety and health issues.

Petition 526

There were four different decision options for this petition. The following speakers supported adoption of Option Number 1, which was to grant the petition to the extent that the Division is requested to convene a representative advisory committee:

Cathy Youngblood, Unite Here Local 11
Teresita Cain, Unite Here Local 11
Eloazar Demuk, Unite Here
Pamela Vossen, Unite Here International
Eric Myers, Davis, Cowell & Bowe, LLP

Jora Trang, WorkSafe
Mitch Seaman, California Labor Federation
Anne Katten, CA Rural Legal Assistance Foundation
Ellen Widess, Chief, DOSH

The following people spoke in opposition of Petition 526 proposed decisions:

Baruch Fellner, CA Hotel and Lodging Association
Gary L. Hong, CA Lodging Industry Association

Petition 528

This petition regards standards for the recirculation of exhaust air from spray areas using Flammable or Combustible Materials.

Deborah Gold, Deputy Chief of Health for the Division, stated that the Division is concerned about the language in this proposed decision. Ms. Gold stated that this language goes against the "hierarchy of controls." Ms. Gold stated that the Division has vast experience with this issue, and that the Division evaluation indicated their concerns with this petition. Ms. Gold stated that the Division's concerns were not addressed in the Board staff's Proposed Petition Decision.

Ms. Gold summarized for the record the letter to the Board from Ms. Ellen Widess, Chief of the Division dated June 19, 2012, also stating that the Division believes the petition should be turned over to the Division to conduct an advisory committee either solely or in conjunction with Board staff. Ms. Gold reiterated that if the petition decision was adopted by the Board, that the paragraph that goes against the hierarchy of controls should be deleted.

Gail Bateson, WorkSafe, stated that they oppose this petition decision, believing by allowing the recirculation of exhaust exposes workers to various hazardous chemicals and health concerns. Ms. Bateson stated that, if the Board decided to adopt the petition decision, it is essential the Division be involved in developing the proposed rulemaking, since it is mandated that the Division be involved in the health standards.

Andras Uhlyarik, California Pulse, Petitioner; first gave a brief description of the processes used in spray booths. Mr. Uhlyarik stated he believes that an interstate commerce issue exists, which allows a product produced in California to be sold in all other states except California. He stated that this poses a big problem for industry, and he believes this creates an uneven playing field for manufacturers. Mr. Uhlyarik concluded, stating that spraying with recirculation creates benefits by reducing energy and green house gases.

Ms. Smisko stated she believed that selling re-circulated air was prohibited by Fed OSHA. Mr. Uhlyarik answered, stating that the CFR prohibits selling re-circulated air, however there are two clarification letters that explain the acceptable methods of spraying with recirculation.

Mr. MacLeod stated he believes the emissions Mr. Uhlyarik is speaking about are regulated by the Air Resources Board, and asked if these emissions are what Mr. Uhlyarik is asking to be able to re-circulate. Mr. Uhlyarik answered in the affirmative.

Ms. Gold stated that while the painters are in the spray booth, they are not at all times spraying, which means it is the background concentration they are exposed to. Also, more than one painter is in the booth meaning that they are exposed to re-circulated air at all times. Ms. Gold stated that she believes the Air Resources Board should be consulted regarding this petition.

Ms. Gold concluded stating that the Division's position is if the Board is going to allow recirculation, substantial effort should be involved in figuring out how to protect employees in those spray paint booths.

C. ADJOURNMENT

Mr. MacLeod adjourned the public meeting at 12:30 p.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Mr. MacLeod called the Public Hearing of the Board to order at 12:45 p.m., June 21, 2012, 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 3, Section 1512
ELECTRICAL SAFETY ORDERS
Division 1, Chapter 4, Subchapter 5
Group 1, Article 3, Section 2320.10 (Low-Voltage Electrical Safety Orders)
Group 2, Article 36, Section 2940.10 (High-Voltage Electrical Safety Orders)
First Aid for Electrical Workers – Application & Scope

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: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 109, Section 5189, Appendix A-Mandatory
Section 5192(a)(3) and Section 5198(j)(2)(D)(2)
CONSTRUCTION SAFETY ORDERS
Division 1, Chapter 4, Subchapter 4
Section 1532.1(j)(2)(D)(2)
Federal OSHA Amendments and Technical Corrections

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 final item noticed for Public Hearing:

3. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 12, Section 1600
Article 15, Sections 1610.1, 1610.3, 1610.4, 1610.9, 1611.1, 1612.3, 1613,
1613.2, 1613.10, 1616.1, 1617.1, 1617.2, 1617.3, 1618.1, 1619.1 and
New Sections 1613.11 and 1613.12
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7
Article 91, Section 4885
Article 98, Section 4999
Cranes & Derricks in Construction (Clean-Up)

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.

The following public comments were made on this proposal.

Dana Lahargoue, Roebbelen Contracting and Construction Employers' Association, summarized her written comments by stating she would like the board to exclude all forklifts from the scope [Section 1610.1(c)(8)], because forklifts are not cranes, and forklift training as addressed in Section 3668 should be adequate.

Greg McClelland, Western Steel Council, stated that Section 1610.1(c)(8) is not written as agreed upon in the advisory committee, which he participated in. He recalled that consensus was reached to use the words "winch and hook" not "winch or hook". He concurred with Ms. Lahargoue's comments regarding the forklifts exclusion.

Kevin Bland, CFCA/RCA, stated that he also participated in the advisory committee for this proposal and opposes the word "or" in Section 1610.1(c)(8). He stated that the language should stay as currently written, but replace the word "or" with "and" as agreed upon by the advisory committee.

He further stated that once you put a hook on a forklift, the forklift falls into the crane operator certification requirements, and there is not a crane operator certification category for this type of equipment.

Bob Hornauer, NCCCO, stated that Mr. Bland was correct, that no program currently exists to certify forklift operators to operate forklifts as cranes. He updated the Board on the plans to establish such a program. He stated they have had numerous discussions with Federal OSHA and they are awaiting further guidance before proceeding to develop a certification program.

Board Member Harrison asked Mr. Hornauer if he agrees that there are more hazards present when lifting with the load below the forks.

Mr Hornauer, stated he believes there were more hazards from lifting with the load suspended from the forks.

Board Member Harrison stated as a point of clarification that he was aware of a reportable accident involving a forklift equipped with a winch. He stated that, as an Operating Engineers Local 3 representative, he can testify to several rollovers that occurred on equipment using hooks, jibs and winches.

He stated that he was part of the advisory committee and the consensus was to change change “winch or hook” to “winch or hoist.” However, changing back to the original “winch or hook” is acceptable. He stated that changing “winch or hook” to “winch and hook” is not at least as effective.

Board Member Jackson asked whether the standard as it exists today requires the certification of a forklift operator? Is it possible for employers to have their forklift operators independently certified? Will employers be able to comply with this standard?

III. BUSINESS MEETING

Mr. MacLeod called the Business Meeting of the Board to order at 1:35 p.m., June 21, 2012, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 1, Section 3207
Article 20, Section 3558, and
Article 54, Section 4184
Guarding of Microtomes

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. McDermott that the Board adopt the proposal.

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Kurt Peterson, UNITE HERE Local 11
Pamela Vossen, UNITE HERE International Union
Petition File No. 526

The Petitioner requests the Board to amend Title 8, California Code of Regulations, to address the occupational hazards that may cause musculoskeletal injuries to housekeepers in the hotel and hospitality industry.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the proposed decision granting it to the extent that the Division convene an advisory committee to consider the Petitioner's recommendations.

MOTION

After a discussion, all Board Members concurred that option #1, to convene an advisory committee, was the best way to have all aspects of this issue addressed.

A motion was made by Mr. Thomas and seconded by Ms. Stock to adopt the option #1 of the proposed petition decision as proposed.

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

2. Mr. Andras Uhlyarik, President
California Pulse, Inc.
Petition File No. 528

The Petitioner requests that the Board amend Title 8, California Code of Regulations (CCR) by adopting Section 7.5 of the National Fire Protection Association (NFPA) 33, 2011 edition. The referenced Section 7.5 of the NFPA 33-2011 contains standards for the recirculation of exhaust air from spray areas using Flammable or Combustible Materials.

Ms. Hart summarized the history and purpose of the petition. She stated that the Division recommends denying the petition as indicated both in its written evaluation and public comments today. On June 19, 2012, the Division sent a letter to the Board stating that, if the Board granted sending this petition to an advisory committee, it should be referred to the Division to conduct the advisory committee.

Ms. Hart stated that Board staff's evaluation recognizes the hazards of spray coating operations. Board staff also recognizes that technical advances make changes to safety standards both reasonable and necessary. Board staff supports convening an advisory committee to determine if changes to the standard are necessary.

Ms. Hart further stated that Board staff convened an advisory committee in 2003 to consider changes to Section 5193 to permit the recirculation of spray booth exhaust. Minutes from that meeting indicated there was consensus on several issues, which included having the proposal

address staffed and unstaffed spray booth operations. Several meetings were planned but none were convened and this issue was postponed. It is recommended the Board adopt the proposed decision granting it to the extent that that Board staff convene an advisory committee to consider the Petitioner's recommendations.

Mr. MacLeod stated the Division is concerned about the "hierarchy of controls". He asked Mr. Boersma of the Board staff if he addressed the "hierarchy of controls."

Mr. Boersma stated that he looked at the hierarchy of controls, and the reality is that the painters have to wear respirators, and in most cases, they wear air purifying respirators no matter what they apply. He stated that, even if we were to go to a re-circulating operation, the painters already have a respirator requirement. He stated that the hierarchy was not ignored, but improvement in safety would be better served by requiring positive pressure respirators.

Mr. Manieri stated for clarification that Board staff did not dismiss the hierarchy of controls, but focused more on the engineering controls. He stated that the technology aspect may merit being examined through an advisory committee.

Mr. McDermott stated that there are so few re-circulating booths, they should be addressed through the variance process. He suggested that the Board deny the petition. However, if the Board were to move forward with this petition, the petition should be given to the Division, since this is a health issue.

Ms. Stock concurred with denying the petition, stating that the merits of this petition are better addressed as suggested by using the variance process.

Mr. Jackson stated that, since there are not any re-circulating booths in California, he is in favor of denying the petition.

Mr. Harrison stated he believes the Board would agree not to sacrifice employee safety for the sake of air quality just to grant a petition from a manufacturer. He is in favor of denying the petition.

Ms. Smisko asked, if the petition is denied, was there another avenue the petitioner can use to get his issues addressed.

Ms. Beales stated that Mr. Uhlyarik was a manufacturer. Therefore, he could not apply for a variance.

Mr. McDermott, stated that, in the future, if a spray booth employer wanted to install one of these systems, that employer could work with the petitioner or a vendor of choice and apply for a variance.

MOTION

A motion was made by Mr. Thomas and seconded by Ms. Smisko to deny the proposed petition decision.

A roll call was taken. Mr. MacLeod voted “No”, and all other Board Members voted “aye”. The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that the variance matters were heard by a hearing panel just before today’s meeting with the recommendation that the Board adopt the proposed decisions that appear in the Board packet.

MOTION

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

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

D. OTHER

1. Legislative Update

Mr. Beales stated that the only thing to add to the Board materials was that SB 1520, by Senator Calderon, has passed the State Senate.

2. Executive Officer’s Report

Ms. Hart stated that David Kernazitskas, will attend the next Board meeting, and the Board has filled the Executive Assistant position. The new hire, Sarah Money, will start on June 27th.

3. Future Agenda Items

Mr. MacLeod requested that the Division provide an update on Elevators and other Division projects.

E. ADJOURNMENT

Mr. MacLeod adjourned the Business Meeting at 2:20 p.m.