

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
March 15, 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., March 15, 2012, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

John MacLeod
Bill Jackson
Jack Kastorff
Dave Thomas
Hank McDermott
Guy Prescott

Board Members Absent

Willie Washington

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
David Beales, Legal Counsel
Bernadine Osburn, Staff Services Analyst
Rebecca Estrella, Variance Secretary

Division of Occupational Safety and Health

Deborah Gold, Deputy Chief of Health
Suzanne Marria, Special Assistant to the Chief
Patrick Bell, Principal Safety Engineer

Others present

Pat McDermott, Davey Tree Surgery
Mark Foster, Asplundh Tree
Larry Pena, S. CA Edison Co.
Mark McGrath, Aids Healthcare Foundation
Anthony Studebaker, State Fund
Kevin Thompson, COR
Steve Johnson, ARC-BAC
Jay Weir, AT&T
Bob Hornauer, NCCCO
Wendy Holdt, CSATF/AMPTP
Judi Freyman, ORC Mercer
Kate Smiley, AGC
Jared Vaughn, ASM

David Handt, Davey Tree
Michael Santos, Davey Tree
Walter Robinson, Laborer's Union
Ron Myers, Laborer's Union
David Shiraishi, Federal OSHA
Kevin Bland, ULCC/CFCA/FSC/RCA
Kimberly Washington, USD Law
Dan Leacox, Greenberg Traurig
Karen Tynon, Attorney
Joan Gaut, CTA
Jennifer Martin, State Fund
Hollis Day, Mountain F. Enterprises
Dave Harrison, Operating Engineers #3

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

The following people spoke in support of the proposed adoption of the Ventilation Inside Shafts, Culverts, and Pipelines proposal on today's Business Meeting Agenda:

- Dave Harrison, Safety Director of Operating Engineers Local #3
- Walter Robertson, Laborer's Union

C. ADJOURNMENT

Mr. MacLeod adjourned the public meeting at 10:03 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Mr. MacLeod called the Public Hearing of the Board to order at 10:04 a.m., March 15, 2012, in the Auditorium of the State Resources Building, Sacramento, California.

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

1. TITLE 8: **HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5, Article 38
Section 2950
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 12
Sections 3420-3428
Tree Work Maintenance or Removal

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.

- Kevin Bland, representing ULCC/CFCA/FSC/RCA

Mr. Bland supports the proposal subject to minor changes and clarifications. He specified the need for clarification of the definition of the term "unattended" as used in "unattended climbing lines left on trees," and "unintended" as used in "unintended movement."

- Larry Pena, S. CA Edison Co., also representing Louis Renner of PG & E

Mr. Pena expressed concern about the utility company's ability to restore service safely to the general public and about the issue of safety in line clearing. He expressed concern that, as written, Section 2950(a), applies to "all" line clearance activities and that the word "trouble" needs to be defined in the regulation. He asked the Board to consider adding an exception to Section 2950. Exception #2, would apply to operations or conditions not specifically covered in both Article 3 and Article 36, in order to allow Qualified Electrical Workers to continue to do their work.

Mr. Kastorff stated that the definition for "prusik loop" includes reference to a "prusik knot," and this seems unclear, since he and others may not know what a "prusik knot" is. He also stated that the term "raveling" used in Section 3422(h) should be changed to "unraveling." He also expressed concern in regards to the requirement for aerial rescue and stated that relying on 911 does not provide adequate safety because not all fire stations are capable of an aerial rescue. He expressed concern with the requirement for identifying the age of palm frond skirts and suggested leaving room for discretion in that area.

B. ADJOURNMENT

Mr. MacLeod adjourned the Public Hearing at 10:15 a.m.

III. BUSINESS MEETING

Mr. MacLeod called the Business Meeting of the Board to order at 10:16 a.m., March 15, 2012, in The Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 4, Section 1533
Article 6, Section 1541
TUNNEL SAFETY ORDERS
Division 1, Chapter 4, Subchapter 20, Article 1
Section 8403
Ventilation Inside Shafts, Culverts, and Pipelines
(Heard at the August 18, 2011, 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.

Mr. Thomas recommended that the proposal be adopted as written, as there is nothing wrong with being overcautious.

Mr. Jackson commented that it is unclear why the changes are necessary. He suggested that if there are identifiable operations where the existing standards are inadequate to protect employees, that

those operations should be identified along with buildings and enclosed spaces in section 1533(a). Mr. Jackson stated that subsection (b) is unnecessary.

Mr. Kastorff commented that it is unreasonable to expect employees on site to identify 60 lineal feet or to have the proper equipment to measure it or to know what the engine brake horsepower is.

Mr. MacLeod questioned whether it was accurate that Section 1533 currently only applies inside buildings or enclosed structures. Mr. Manieri answered that it was correct.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Prescott to adopt the proposal.

A roll call was taken, Mr. Jackson and Mr. Kastorff voted “no,” and all other Board members present voted “aye.” The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that a correction of a clerical error was made to the proposed decision for Variance file 11-V-030, in which a union local was incorrectly identified as 9199 instead of 9119. Mr. Beales further stated that, subject to that one clerical correction, the Board is requested to adopt all of the proposed variance decisions that appear in the Board members’ materials.

MOTION

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

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

C. OTHER

1. Division Update – Outstanding Petitions / Rulemaking Proposals

Ms. Gold thanked the Board for the opportunity to catch up on these outstanding items. She briefed the Board on issues a through d.

a. Petition 508 – Elevator Safety Orders, Ascending Car Overspeed Detection Means.

On December 29, 2009: the Division issued Circular Letter E-09-01 explaining that compliance with Section 3141 (the subject of Petition 508) could be achieved by using a device that complied with either ASME A17.1-2004 section 2.26.2 or with section 2.19.1.2(a). The Circular Letter was posted on the Division’s website relating to elevator industry information and was mailed to a list of interested parties maintained by the Elevator Unit. On March 12,

2012, the Division provided a memorandum to the Board stating that the concerns raised in the petition had been satisfactorily addressed. Mr. Prescott asked whether there was a need to have the petitioner formally withdraw the petition. Ms. Hart stated that the Board has received an e-mail from the Division and has everything needed to close out petition 508.

b. Petition 513 – Bloodborne Pathogen Protection, Adult Film Industry

The Division has held six advisory committee meetings, the last one being held in June 2011. At the June 2011 meeting, a draft regulatory proposal was circulated for discussion. The Division is also in contact with other state agencies regarding regulated waste and medical waste so as not to capture activities that are not within this rulemaking's scope. Mr. Prescott asked whether the Division is currently using Section 5193 and whether it is working. Ms. Gold stated that enforcement of Section 5193 continues, which the Division finds to be effective in this industry, but that some employers do not perceive themselves as employers and that is where the enforcement efforts are focused. Mr. Kastorff asked whether the issue of employee/employer relationship is something that the Division can address or whether it should be a legislative action item. Ms. Gold stated that the Division regularly consults with the Division of Labor Standards Enforcement legal unit on a case-by-case basis. Mr. MacLeod stated that the city of Los Angeles is moving forward with its process, approaching it from a public health standpoint. Ms. Gold said that it is possible that a proposal will be submitted by the Division to the Board staff by the end of 2012.

c. Petition 519 – Required First Aid Supplies

An advisory committee was held at the end of June regarding the issue of the doctor's letter being required in first aid kits and also the minimum required contents of first aid kits. Mike Horowitz is currently working on a rulemaking proposal to remove the doctor's letter requirement and establish what the contents requirements should be. The Division hopes to get the proposal to the Board in May 2012. There was no consensus at the advisory committee on this issue.

d. Safe Patient Handling

There was one advisory meeting attended by Division and Board staff, and another one is scheduled for March 29, 2012. There has been discussion with the stakeholders and circulation of stakeholders' proposed language. There are challenges posed by possible overlaps with issues regulated by the Department of Public Health and the Division of Labor Standards Enforcement. They hope to get a proposal to the Board sometime around June 2012.

e. Petition 520 – Certified Inspectors and Inspections of Portable Amusement Rides

Ms. Marria addressed the Division's actions regarding this petition. The Board granted the petition and asked for a new standard to be developed governing the certification of inspectors employed by insurance companies for inspection of portable amusement rides. There was discussion between Mr. Jensen and the Division as to some of the concepts to be included in such a regulation. Ms. Marria stated that litigation was filed by Mr. Jensen preceding his

petition to the Board, and there has been no resolution of the litigation. The Division decided that an advisory committee with stakeholders should be held at which time the Division will have proposed regulatory language addressing the different issues. The advisory committee is expected to be held in late June.

Mr. MacLeod asked about the two inspectors that paid a \$600 fee, passed the exam and then found that there was no process in place for them to carry out their work. He asked whether litigation was a factor in the delay in developing the regulation.

Ms. Marria stated that, she did not know the answer to Mr. MacLeod's question.

Ms. Gold stated that the Division will have to figure out how to deal fairly with the people who took the exams and paid the fee, but the first need is to adopt an appropriate regulation.

Mr. Jackson commented that he was glad the Division recognizes that it did not seem fair that the State of California charges individuals \$600 to take a test but will not allow them to do the work. We should let them do their work or give them their money back.

Mr. MacLeod asked how many people are presently employed in the Division's Research and Standards unit and how many of them are dedicated to developing standards. He noted that only one Division-initiated standard was developed last year (a carryover from the previous administration), and that only one form 9 was received. He further noted that the Division has the responsibility to develop health standards and asked what was transpiring in this arena.

Ms. Gold named Mike Horowitz, Bob Barish, Bob Nakamura, Grace Delizo, Amalia Neidhart, and Steve Smith, Principal Engineer. All of those people have primary responsibility for standards but can be called on to assist with enforcement and consultation activities. They are moving forward on some projects, such as safe patient handling, the PEL's (substance by substance), the first-aid package, the adult film issue and the issue of hotel housekeeping, which may result in an advisory committee. An advisory committee was held on March 7, 2012 regarding a small amendment of section 5199. An advisory committee will be held on March 26, 2012 regarding the transportation of agricultural workers. The Division is putting the emphasis on the quality of the work on proposals to the Board and there should be more activity this year.

Mr. MacLeod expressed concerns regarding rulemaking with respect to updating the elevator safety orders and the mining and tunneling standards.

Ms. Gold stated the tunnel safety orders are still being updated by Joel Foss and should be heading back to Board staff for review in early April 2012. Division management still need to meet with the Elevator Unit in terms of proposed changes to the elevator safety orders.

2. Legislative Update

Mr. Beales had nothing to add to the existing written material in the Board packet.

3. Executive Officer's Report

Ms. Hart stated that last week the Assembly and Senate Subcommittees rejected the Governor's proposal to eliminate the Standards Board. She has requested approval to fill our vacant positions, especially the Senior Safety Engineer that also serves as our industrial hygienist. No response has been received yet but we hope to fill this position by June 30, 2012.

Ms. Hart stated that on March 22, 2012 in Sacramento, David Beales and Mike Manieri will co-chair an advisory committee meeting regarding Employer Duty to Pay for Personal Protective Devices and Safeguards. The roster has about 30 members of industry and labor representatives, Division staff and several others. There is considerable interest in this meeting, and several interested parties will be attending.

4. Future Agenda Items

None Identified

Mr. McDermott noted that several letters were received from stakeholders and their sponsors speaking on behalf of the Standards Board, and that is was nice to hear something good about the work we do.

D. ADJOURNMENT

Mr. MacLeod adjourned the Business Meeting at 11:10 a.m.