

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

May 21, 2009
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., May 21, 2009, in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

ATTENDANCE

Board Members Present

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

Board Members Absent

Board Staff

Marley Hart, Executive Officer
David Beales, Legal Counsel
Mike Manieri, Principal Safety Engineer
Tom Mitchell, 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
Deborah Gold, Senior Safety Engineer

Others present

Kevin Thompson, Cal-OSHA Reporter
Bruce Wick, CalPASC
Bob Hornauer, NCCCO
Terry Thedell, SDG&E
Ingela Dahlgren, RN, SEIU
Joe Crispell, NACB
Jennifer Wozniak, LIUNA
Jesse Abril, CWA
Tom Eller, AMR
Roger Richter, CHA
Dan Leacox, Greenberg Traurig
Greg Allaire, Southwest Carpenters

Tina Kulinovich, Federal OSHA
Larry Pena, Southern California Edison
Dr. Robert Harrison, CDPH
Mark Catlin, SEIU
Barbara Materna, CDPH
Tim Johnson, NCCER
Kevin Bland, Granado Bland
Michael Heyenga, CWA
Vickie Wells
Barbara Osborne, ASSE
Steve Johnson, ARC-BAC
Roy Swift, ANSI

Jonathan Wilby, Orange County Fire Authority
Elizabeth Treanor, Phylmar Regulatory Roundtable
Brian Whatley, ILWU
Katherine Hughes, RN, SEIU
Robert Nakamura, CalOSHA
Anne Katten, CRLA
Jay A. Weir, AT&T
Donna Smith, UNAC
Pete Greyshock, SoCal OSHA

Lilly Kaneshige, Kaiser Permanente
John Vocke, PG&E
Lisa Barbato, SEIU
Marilou Weiss, RN, SEIU
Enid Eck, Kaiser Permanente
Max Carbuccia, CNA
Greg Bashem, Teamsters Local 986
Maxine Davidson, SEIU
Kevin White, California Professional Firefighters

Wendy Holt, AMPTP

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.

The following people spoke in support of the adoption of the Aerosol Transmissible Disease and Zoonotics standards:

- Elizabeth Treanor, Director, Phylmar Regulatory Roundtable
- Barbara Materna, Chief, Occupational Health Branch, California Department of Public Health
- Roger Richter, California Hospital Association
- Enid Eck, Regional Director, Infection Prevention and Control, Quality & Risk Management Department, Kaiser Permanente
- Matt Carbuccia, Labor Representative, California Nurses Association
- Kevin White, EMS/Health and Safety Director
- Ingela Dahlgren, RN Labor Specialist, SEIU Nurse Alliance
- Anne Katten, California Rural Legal Assistance Foundation
- Pete Greyshock, Southern California Coalition for Occupational Safety and Health
- Jesse Abril, Vice President, CWA Local 9511
- Michael Heyenga, Area Steward, CWA Local 9509
- Greg Bashem, Business Representative, Teamsters Local 986
- Jennifer Wozniak, Representative, Laborers' Local 777
- Donna Smith, Staff Representative, UNAC/UHCP
- Mark Catlin, SEIU
- Vickie Wells, Director, Occupational Safety & Health, Department of Public Health, City and County of San Francisco

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:35 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public Hearing of the Board to order at 10:35 a.m., May 21, 2009, in Room 358 of the County Administration Center, 1600 Pacific Highway, 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 10
 Section 3385(c)(2)
 Foot Protection

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.

John Vocke, an attorney with Pacific Gas and Electric Company, stated that the American National Standards Institute (ANSI) standard incorporated by reference bans the use of after-market strap-on or hang-on toe and metatarsal protection devices. This prohibition conflicts with Construction Safety Orders Section 1519, which permits the use of these devices.

Elizabeth Treanor, Director of the Phylmar Regulatory Roundtable, agreed with Mr. Vocke's comments.

Dr. Frisch asked staff to clarify that the current proposal is simply to correct an error in which ANSI standard is referenced. Ms. Hart responded affirmatively.

Mr. Jackson expressed concern that incorporation of the particular ANSI standard renders current industry practice for temporary, short-term exposures to foot injuries obsolete. He also reiterated his concern that incorporating ANSI standards by reference in California occupational safety and health regulations makes it incumbent upon the employer to obtain the referenced ANSI standards in order to determine exactly what level of compliance is required. He expressed approval of Mr. Vocke's suggestion that if the regulation is to specify the type of foot protection that is acceptable, that requirement be specified in the regulation itself rather than in an ANSI standard incorporated by reference.

Dr. Frisch also expressed concern that when the time for an adoption vote arrives, the Board will face the unintended consequence of rendering current industry practice illegal.

Mr. Kastorff expressed the opinion that the Board should not require California employers to obtain referenced ANSI standards in order to be in compliance with California occupational safety and health regulations.

Mr. Manieri stated that the ANSI standard is very clear that it does not prohibit the use of after-market strap-on or hang-on foot protection devices. The only equivalence is what is integral to the design of the footwear. He stated that if the Board wishes to direct staff to explore a rulemaking package incorporating the use of these devices into Title 8, staff would be happy to consult with

stakeholders in order to comply with that request. However, the purpose of the current proposal is simply to correct a typographical error that appeared in the earlier regulation.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 14
Section 3466(j)-(1)
Marine Terminal Operations—Vertical Tandem Lifts

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.

Brian Whatley, President of the International Longshore and Warehouse Union (ILWU) Local 29, stated that the ILWU was heavily involved in the rulemaking process that resulted in the federal regulation. They have been working actively with federal OSHA to remind the agency that the information regarding container handling operations based on first hand experience and knowledge from doing this type of work on a regular basis. ILWU is pleased that federal OSHA listened to many of their concerns regarding the unsafe nature of these operations, and ILWU's efforts to educate the agency are reflected in the final rule. Although the union had sought an all-out ban on vertical tandem lifts (VTLs), it ultimately agreed with federal OSHA that some regulation is better than none. For this reason, the ILWU commends the Board for seeking to adopt the federal final rule verbatim.

Because California is a leader in worker health and safety matters, ILWU feels the rule could be improved in at least two important ways: inspections and training. The provisions relating to the inspection of the semi-automatic twist locks and container corner castings can and should be modified. ILWU recommends that the Board require that twist locks and container corner castings should be inspected very carefully and thoroughly before being allowed to be used in a VTL. The internationally-recognized International Labor Standard (ILO) convention 152 standard should be adopted, as it requires an actual and thorough annual examination of the twist locks for structural integrity and the proper function prior to and after their use in a VTL operation. The final federal VTL rule requires only a visual inspection and determination that they are sufficiently operational with no apparent corrosion. This represents a weakening of an existing international standard. California should adopt a rule that ensures that the individuals who will be performing these inspections have the technical knowledge and equipment to conduct more than a superficial visual check for corrosion before allowing the twist locks and corner castings to be used in a VTL. The federal standard does not go far enough.

The federal rule gives too much discretion to employers to set up safe work zones and not enough guidance or direction on training. ILWU believes that if VTL operations are going to go forward, then all maritime workers must be trained regarding the safe handling of VTLs.

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 98
Section 5006.1
**Mobile and Tower Crane Operator Qualifications—
Accreditation of Certifying Entities**

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.

There was no public comment on this proposal.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 11:00 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 11:00 a.m., May 21, 2009, in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 109
Section 5199
Aerosol Transmissible Diseases
(Heard at the August 21, 2008, Public Hearing)

Ms. Gold 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. Jackson that the Board adopt the proposal.

Mr. Jackson commended Ms. Gold for her work on the proposal.

Dr. Frisch thanked Ms. Gold, Mr. Nakamura, and all other staff on their work on the proposal. He stated that this is a remarkable piece of work, and he noted the repeated theme among the public commenters of how thorough and transparent the process of developing the proposal had been. He stated that Ms. Gold and others had gone above and beyond any rulemaking he had seen in the recent past in regard to thoroughness. He further stated that this is a ground-breaking regulation in many ways, and he was very pleased with the resolution to his previously stated concerns. He stated that, judging from the public comments this morning, the Board's "customers," both labor and management, are comfortable with the way the issues have been resolved. He stated that the hard part starts now, because employees need to be trained and employers need to understand how to implement a complicated but very important regulation.

Chairman MacLeod echoed Dr. Frisch's comments, and he stated that this proposal represented exemplary staff work to be used as a model for future rulemakings.

Mr. Welsh stated that this is the most comprehensive standard with which he has ever been involved, and Ms. Gold had done an amazing job on it. He stated that it is a historic event, and over the years, the occupational health and safety community would be eternally grateful to Ms. Gold for her hard

work. There is now a base from which to work, and he expects this regulation to eventually affect the entire nation. He concluded by stating that this rulemaking package could not have been possible without Ms. Gold.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 109
New Section 5199.1
Aerosol Transmissible Diseases—Zoonotics
(Heard at the August 21, 2008, Public Hearing)

Ms. Gold 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.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales stated that two matters were removed from the hearing calendar on the day they were to be heard: 08-V-042 and 08-V-043. They were removed from the hearing calendar because there was a strong indication that the owner of the conveyance changed prior to the hearing. In addition, there were typographical errors in two of the proposed decisions. The first was in 07-V-036M1, in which there was a punctuation mark added and a superfluous "the," which should have been deleted. In the ISIS I proposed decision for May 12, 2009, on page 9, condition 36(d) should have item 6.35 removed. With those revisions, the consent calendar was ready for the Board's vote.

MOTION

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

Dr. Frisch asked whether the Division was contemplating an extension of the deadline for replacing the ropes in the ISIS elevators to 2010, or whether it was anticipated that all of the replacements would be completed by 2009. Mr. Beales responded that he did not have a definite answer at this time.

Mr. Jackson asked whether the Division has reduced the frequency with which they are issuing experimental variances. Mr. Beales responded that the Division has not issued any experimental variances for ISIS elevators for a couple of years. He stated that the permanent variances that are currently coming before the Board are following up the experimental variances that already have been issued.

Mr. Welsh stated that the Division has to walk a line between shutting down a building and granting an extension on an experimental variance. The Division's position has always been that

the ISIS elevators are safe but they were not being given enough oversight. He stated that the Division is going to be proposing a performance based proposal to the Board in the next few months, which would greatly help reduce the number of experimental variances issued.

Mr. Jackson stated that he had asked because it had seemed at one point that there were too many experiments being conducted. Mr. Welsh responded that bad technology was brought out too soon.

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

C. OTHER

1. Legislative Update

Mr. Beales stated that AB 143, regarding defibrillators, was amended in a technical aspect and it passed the Assembly on April 20. AB 990 by Assembly Member Jones, regarding the presentation of accident and injury reports from ski resorts to the Division also passed the Assembly. AB 1312, by Assembly Member Swanson, involving defibrillators was also fine-tuned by amendment, and it passed the Assembly on May 18. AB 1494, by Assembly Member Eng, passed the Assembly on May 14.

He stated that there are three additional bills to mention as well. SB 443, in its present form, requires the Office of Environmental Health Hazard Assessment (OEHHA) to perform a study of potential hazards from cleaning products used in supermarkets. OEHHA is supposed to work with Cal OSHA in performing that study. AB 493 has been modified to resemble a bill that was introduced in the last session, which would abolish the Unemployment Insurance Appeals Board, the Occupational Safety and Health Appeals Board, and the Workers' Compensation Appeals Board and replace all three with one joint board that would be called the Employment and Benefits Appeals Board. Finally, SB 284 has been modified to require safety plans for ski resorts be submitted to the Division.

Dr. Frisch asked whether SB 284 dovetails with AB 990. Mr. Beales responded with words to the effect that it does not appear to do so.

2. Executive Officer's Report

Ms. Hart stated that Mr. Manieri and one of the senior safety engineers attended a meeting convened by the Division regarding performance based code for elevators, which was held in April. She was uncertain when the minutes of that meeting would be distributed, but she felt that it might be something in which the Board might be interested. The Division has stated that it will be proposing related standards to the Board. Mr. Welsh stated that there were no minutes from that meeting, as it had been an open discussion about the concept of the performance based code for elevators.

Ms. Hart asked whether that would suffice as an advisory committee meeting, or whether the Division would be convening other meetings. Mr. Welsh responded that there had been a broad consensus that a performance based standard for elevators was a good idea. He stated that if the Board would like him to brief them on it, he would be happy to do so.

Ms. Hart responded that that would probably be a Future Agenda Item.

She went on to state that the Board's retired annuitant, Richard Parenti, has now completed his hours for the current fiscal year, so he will not be returning until July 1. Thus, his workload has been disseminated among the other engineers.

She further stated that she had provided each of the Board members with copies of the Governor's May Budget Revise and the 2009-2010 May Revision for General Fund proposals. She pointed out that they included information on new proposals, including a shift of DIR fund dollars to a fee-supported program. She has asked Mr. Welsh to brief the Board on that. He successfully established the OSHA fund last year, and this year there was an added push on that fund, and he could speak on that. Mr. Welsh responded that he could not give a lot of detail, except that there is currently \$19 million in the fund, and the Division needs another \$24 million to get DOSH off of general fund. Of course, the Department of Industrial Relations is another \$20 to \$30 million.

Ms. Hart stated that Board staff is continuing to monitor spending, and if further information is provided, she would let the Board know. She indicated that the meeting schedule might need to be revised with regard to locations due to the availability of funds for travel.

3. Future Agenda Items

Mr. Welsh stated that he would provide an update regarding the performance based code for elevators at the next meeting in Oakland in June.

D. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:55 a.m.