

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
May 19, 2011
San Diego, 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., May 19, 2011, in Room 310 of the County Administration Center, San Diego, California.

ATTENDANCE**Board Members Present**

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

Board Members Absent**Board Staff**

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
Conrad Tolson, Senior Safety Engineer
David Beales, Legal Counsel
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Joel Foss, Acting Principal Safety Engineer
Nancy Medeiros, Senior Safety Engineer

Others present

Dave Harrison, Operating Engineers
Elizabeth Treanor, PRR
Hank Rivera, I.L.B.
Jose Guennero, Asplundh Construction
Larry Pena, So Cal Edison
Betty Fracisco, Garrett & Jensen
Kate Smiley, AGC
Dan Leacox, Greenberg Traurig
Marti Fisher, Cal Chamber

Carol Frehm, H.J. McDermott, Inc.
Jay Weir, AT&T
Hal Lindsey, Asplundh Construction
Phillip Yow, Cal/OSHA Crane Unit
Wendy Holt, CSATF/AMPTP
Mark Stone, Epic Insurance Brokerage
Tomas Vargas, SDG&E
Louis Renner, PG&E
Steve Johnson, ARC-BAC

Peter Moellenbernd, Fed/OSHA
Karen Santo-Pietro, Fed/OSHA
Bill Taylor, PASMA
Paul Leary, Fed/OSHA

Joan Gaut, CTA
Kevin Bland, CFCA, RCA, Western Steel
Dick Roberts, Cal/OSHA

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

Laurence Pena, Southern California Edison's Manager of Corporate Safety Policy and Regulations, requested that Board staff convene an advisory committee to address an exemption from the proposed Crane and Derrick standard for digger derrick trucks after the proposal has been adopted.

The following people spoke in support of Mr. Pena's comments:

- Bill Taylor, PASMA, City of Anaheim
- Hal Lindsey, Asplundh Construction
- Hank Rivera, International Line Builders
- Louis Renner, PG&E
- Jay Weir, AT&T
- Elizabeth Treanor, Phylmar Regulatory Roundtable
- Kevin Bland, representing the California Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:18 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Chairman MacLeod called the Public Hearing of the Board to order at 10:18 a.m., May 19, 2011, in Room 310 of the County Administration Center, San Diego, California.

Chairman 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 2, Section 1504
Article 12, Section 1600
Article 13, Sections 1602-1603.1
Work Over or Near Water

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.

Chairman MacLeod then introduced the next item noticed for Public Hearing:

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 2
Section 1504
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 1
Section 3207
Definition of Certified Safety Professional (CSP)

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

Steve Johnson, Director of Safety and Compliance Services for the Associated Roofing Contractors of the Bay Area Counties, requested that definitions for Occupational Safety and Health Technologist (OHST) and Construction Health and Safety Technologist (CHST) be added to the proposal, stating that both are professional designations that are monitored and managed by the Board of Certified Safety Professionals.

Mr. Foss stated that the Division did not support the petition, stating that the petition narrowly defines a CSP as being someone certified by a particular group, and there are other certified safety professionals (persons who hold other certifications that are not defined in Title 8), and this proposal would not be in the interest of occupational health and safety, but rather, it is in the career interest of people who have this particular designation.

Ms. Hart stated that the evaluation from the Division is provided in the Board packet.

Hal Lindsey of Asplundh Construction questioned the necessity of the proposal, stating that all Title 8 standards are designed and intended to provide safety, and the definitions in the definition sections provide guidance to those standards. There is a reason for a Certified Industrial Hygienist (CIH) definition, because there are certain portions of the standard that require CIH involvement in developing programs to protect against

exposures. There may be the same requirements for a Registered Professional Engineer. However, he was unsure whether there was any requirement in the standards for a CSP.

Mark Stone, Vice President of Risk Control Services for Epic, stated that he is in favor of adding this definition to the standards. More and more contractors and other employers are requiring CSPs and CIHs to oversee their safety programs.

Mr. Prescott stated that if there are other agencies or areas that are certifying safety professionals, those agencies should not be eliminated from the standard if they are of equal rating as the Board of Certified Safety Professionals.

B. ADJOURNMENT

Chairman MacLeod adjourned the Public Hearing at 10:34 a.m.

III. **BUSINESS MEETING**

Chair MacLeod called the Business Meeting of the Board to order at 10:34 a.m., May 19, 2011, in Room 310 of the County Administration Center, San Diego, California.

A. PROPOSED SAFETY ORDER FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 15, Sections 1610 through 1619
Article 28, Section 1694
ELECTRICAL SAFETY ORDERS
Division 1, Chapter 4, Subchapter 5
Group 2, High-Voltage Electrical Safety Orders
Article 36, Section 2940
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 153
Section 6060
Cranes and Derricks
(Heard at the January 20, 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.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. McDermott that the Board adopt the proposal.

Mr. Jackson stated that on Page 2 of 99, in proposed section 1610.1(c)(8), the industrial trucks are exempted from the standard unless they are equipped with a hoist or a hook, at which time they would be regulated as cranes. In addition, on Page 72 of 99, proposed section 1618.1(b)(1)(C) requires that crane operators, arguably forklift operators in a forklift with a hook, must pass a written examination promulgated by an independent third party that is accredited to perform that testing. To date, Mr. Jackson is uncertain what crane examination a forklift operator needs to take to be qualified to operate a forklift with a hook, and he has been unable to get a sufficient answer from Federal OSHA. Thus, this is something that the Board needs to move to the fore and decide whether that exemption needs to be amended to ensure that forklifts and industrial trucks are different than cranes.

Chair MacLeod asked Mr. Manieri whether there was any issue with convening an advisory committee to address digger derricks, forklifts, and other industrial trucks as requested by the stakeholders. Mr. Manieri responded in the negative, stating that Board staff had anticipated that that might be a part of CDAC II to address through the advisory committee process.

Mr. Jackson stated that he wanted to ensure that, as stated in Mr. Manieri's briefing, the Board does not lose the kind of safety that is provided in the crane regulations in the General Industry Safety Orders, because we were incentivized to adopt the Federal standard that might have reduced the standard of protection provided to workers in California. Thus, some of the issues under discussion should go to an advisory committee to address stakeholder concerns.

Mr. Prescott expressed concern that stakeholders are accustomed to referring to the General Industry Safety Orders to find crane requirements, and he stated that it might be helpful to provide a note in the GISO referring the construction industry to the CSO. Mr. Manieri responded that, to some extent, the Title 8 index would probably address many of those concerns, such as where the requirements are located and to which industries they refer.

Chair MacLeod thanked Mr. Tolson for his work on the package.

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Boyd F. Jensen II
Garrett & Jensen, Attorneys at Law
Petition File No. 520

The Petitioner requests that the Board amend Title 8, California Code of Regulations, Article 35 by adding New Section 3921, regarding Certified Inspectors and Inspections of Portable Amusement Rides.

Ms. Hart reviewed the history and purpose of the petition, and she asked that the Board adopt the proposed petition decision granting the petition.

MOTION

A motion was made by Mr. Prescott and seconded by Mr. Washington that the Board adopt the petition decision as proposed.

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

Betty Fracisco of Garrett & Jensen thanked the Board for adopting the petition decision.

2. John McCullough, CSP, Assistant Vice President
Wells Fargo Insurance Services
Petition File No. 521

The Petitioner requests that the Board amend Title 8, California Code of Regulations, Section 3276 of the General Industry Safety Orders, regarding the frequency of portable ladder inspections.

Ms. Hart reviewed the history and purpose of the petition, and she asked that the Board adopt the proposed petition decision granting the petition.

MOTION

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

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales requested that the Board adopt the consent calendar as proposed.

MOTION

A motion was made by Mr. Prescott 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 in addition to the materials provided in the Board packet, there is one additional bill to mention: Assembly Bill 1213 by Assemblymember Nielsen. The bill previously was a statement of principles for rulemaking, but it was amended to provide more specifics, one of which concerns the definition of necessity. All of the Board’s rulemakings are dependent on the concept of necessity. This bill, if passed, would change the nature of that standard. Currently, the Administrative Procedure Act states that necessity must be established by substantial evidence, and this bill would make the standard a preponderance of the evidence. Substantial evidence essentially means any evidence, whereas a preponderance of the evidence is a higher standard. In addition, it is a standard that generally applies to adversary proceedings rather than quasi-legislative proceedings.

2. Executive Officer’s Report

Ms. Hart stated that on April 26, Governor Brown issued an Executive Order that bans all non-essential state travel. Travel for the Board has been approved for this meeting and for the meeting next month in Oakland, which has already been publicly noticed. Board staff is looking to move the remainder of the year’s meetings to Sacramento so that the costs can be minimized, and staff will provide the Board with an updated meeting schedule once all of the details have been finalized. From this point forward, all travel must be approved by the Agency, and only what they deem to be mission critical travel will be approved.

Additionally, the Governor’s May Revise document proposes the elimination of the Standards Board and transfers its responsibilities to the Division of Occupational Safety and Health. At this time, Ms. Hart has not received any specific information about this transfer, but she is seeking information from DIR as to how this transfer would take place and how the staff at the Board would be impacted. As information is provided, Ms. Hart will share it with the Board.

Last month, Ms. Hart and Chairman MacLeod met with Marty Morgenstern, the Labor and Workforce Development Agency secretary. It was a meeting initiated by the Board to discuss his perception of the Board and his take on the restructuring of the Department of Industrial Relations. At the meeting, Mr. Morgenstern stated that the Governor’s office was looking at all possible scenarios for fiscal savings and at duplication of services. Ms. Hart and Chairman MacLeod provided information to him about the role and responsibility of the

Board as part of the Cal/OSHA program and discussed many of the strengths of the Board. They did ask about the rumors indicating the elimination of the Board, and at that time Mr. Morgenstern said that there was no plan developed yet, but that everything remained on the table. As of this week, the plan has been revealed.

3. Future Agenda Items

Mr. Prescott asked for an update of the diesel retrofit proposal at the next meeting.

Chair MacLeod stated that Mr. Jackson would chair the meetings in June and July, as Chair MacLeod would be out of the country.

E. CLOSED SESSSION

Pursuant to Government Code Sections 11126(e)(1) and (e)(2)(A), the Board met in closed session to discuss the following pending litigation: Bautista, et al. v. State of California, et al., Los Angeles Superior Court Case No. BC418871 and Second District Court of Appeal No. B226102.

The Board discussed only the matter described, and no action was taken.

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:05 a.m.