

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
May 16, 2013
Walnut Creek, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:01 a.m., May 16, 2013, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

ATTENDANCE

Board Members Present

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

Board Member Absent

Board Staff

Marley Hart, Executive Officer
Mike Manieri,
Principal Safety Engineer
David Beales, Legal Counsel
David Kernazitskas,
Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Deborah Gold, Deputy Chief of Health
Steve Smith, Principal Safety Engineer

Others present

Michael Musser, California Teachers
Association
Kevin Thompson, Cal/OSHA Reporter
Dorothy Wigmore, Worksafe
Jay Weir, AT&T
David Shiraishi, Fed-OSHA

Kevin D. Bland, Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Justin Walley, ODNSS
Dan Leacox, Greenberg Traurig
Matthew Antonucci, CSATF/AMPTP
Marti Fisher, CalChamber

Amalia Neidhardt, DOSH
Nicole Marquez, Worksafe
Steve Johnson, Associated Roofing
Contractors

Ken Clark, Willis Insurance Services
Bob Hornauer, NCCCO
Amber Novey, LUNA

B. OPENING COMMENTS

Mr. Thomas 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 comments were made on item C. 2 of the Business Meeting agenda:

Dr. Julia Quint, retired from Department of Public Health, developed the document for the Health Expert Advisory Committee (HEAC) regarding permissible exposure levels (PELs) for ethylbenzene. She stated that she is concerned about the lack of robust discussion and objective data on feasibility in the Initial Statement of Reasons (ISOR) for the proposal on ethylbenzene. In her document for the HEAC, she recommended a PEL of 0.5 ppm. She stated that the ISOR recommends a PEL of 5 ppm with very little discussion regarding the basis for that reduction based on feasibility. She also stated that the HEAC procedures manual clearly spelled out the procedure and data that need to be developed to establish a PEL and that she does not see that same type of definition for the Feasibility Advisory Committee (FAC). She said that bringing up the PEL tenfold over her recommendation for ethylbenzene is a very serious thing and needs more substantial data to support it.

Dan Leacox, Greenberg Traurig, stated that the statutory criteria for determining feasibility comes from Labor Code Section 144. In that section, having the phrase "to the extent feasible" puts a burden on the Division to demonstrate feasibility. He also stated that feasibility data can be difficult to obtain because in the process of obtaining new PELs, the levels can be far below the existing PEL and in areas that people have not worked to control to. He stated that this must be understood in the context that the Division has some burden to demonstrate feasibility and that legislation has been set up to shift that burden so that the Board has to accept the lowest health-based number unless infeasibility can be demonstrated. He said that this would put the Board in a position where its PELs would be dictated by other agencies that set up health-based numbers under different criteria.

Dorothy Wigmore, Worksafe, stated that there need to be criteria for determining feasibility and it needs to be seen in the context of the PEL process itself. She said that the definition of feasibility is not static; it does change. She stated that to determine the role of the FAC in decisions made for health-based standards, there are models in the U.S. and other parts of the world that could be followed.

Mr. Leacox stated that this situation is different from other advisory committee situations, because FACs are only providing advice to the Division. They are not recommending, voting on, or deciding what the PELs are. He said that this difference guided the criteria mentioned in the Division's PEL process document that was created a few years ago.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:20 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:21 a.m., May 16, 2013, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

Mr. Thomas 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 36, Section 1933
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 141
Sections 5541 and 5543, Article 143, Section 5559
Article 145, Section 5600, Article 159, Section 6170
**Fire Control, Update of References to NFPA 13
Standard, Installation of Sprinkler Systems**

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.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:27 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:28 a.m., May 16, 2013, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 7, Section 3329
Working on (Dismantling) Pressurized Pipe
(Heard at the April 18, 2013 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 Ms. Stock that the Board adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 109, Section 5197 – Appendix A,
Subsection (c)(1)
Laboratory Accreditation for Diacetyl Analysis
(Heard at the April 18, 2013 Public Hearing)

Mr. Smith 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. McDermott and seconded by Ms. Quinlan that the Board adopt the proposal.

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

3. TITLE 8: **SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 18, Article 2, Section 8352
Scope and Application – Ship Building
(Heard at the April 18, 2013 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. Harrison and seconded by Mr. Jackson that the Board 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 stated that variance number 12-V-162 on the calendar has not been finalized yet and that a further hearing will be held next week; so it should be removed from the calendar. He stated that all the other variance decisions on the calendar should be granted as proposed in the Board packet.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Quinlan 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 there are no additional items to report except what is listed in the Board packet.

2. Division Report on Criteria Used to Determine Feasibility

Ms. Gold stated that there are three issues that the Division assesses when determining feasibility. First, it determines whether it is technically possible to measure exposures at the proposed level. She stated that there are occasional issues regarding measurement that need to be addressed. The second issue it deals with is how to handle technical issues associated with means and methods of control of exposure for compliance, which gets down to the end user. The third issue is determining where, and if, a chemical is used in California. The Division does this by locating stakeholders through general sectors on their PEL mailing list and specific outreach to people with more broad knowledge (such as industry associations) to help them find more stakeholders.

Ms. Gold also stated that the Division reviews published literature and occupational exposure limits noted by other sources, including those with background documents that offer their own assessments regarding feasibility, to gather more information. It also draws on its own experience in sampling for the substance, as well as history of violations involving the substance, to gather information. It also speaks to manufacturers of the substance. All of this information helps to identify more stakeholders, possible participants in the HEAC, and end users of the substance to find out where it is used in California.

Ms. Gold stated that, based on the information gathered, the FAC is formed to gather further information to determine feasibility. She said that during the PEL process, the Division is responsible for developing the proposal and the Board is responsible for deciding on the proposal. Once an initial determination is made and the FAC has weighed in, the FAC may or may not provide consensus.

Ms. Gold also stated that, if a determination is made that the PEL is infeasible, the determination of infeasibility needs to include all alternatives to mitigate feasibility and cost impact. She stated that the Board has several options to rectify this, including having a delayed effective date, a stepped effective date, or using a temporary variance. She also stated that feasibility can change over time and new PELs for substances can be brought up as it changes.

Mr. McDermott stated that he was a core member of the FAC and agreed with Ms. Gold's description. He said that at the FAC meeting, he also expressed disappointment that very little monitoring data was brought forth at the meeting. He stated that in 1982, a standard was brought forth requiring employers to give employees and their representatives access to medical and exposure records information that the employer has, and in the future, he would like to see everybody work together to bring this information to the FAC for consideration. He also stated that there is a core tension regarding the health risk assessment that came out of the HEAC because the HEAC sets a level that gives the statistical risk of getting an illness or injury from exposure at that level, but the PEL is the level of exposure that cannot be exceeded at any time. He said that this is something that is up to the Division to resolve.

Ms. Stock thanked everyone for their comments and Ms. Gold for her report. She stated that there are some issues that make the process a bit confusing. She said that the process to determine feasibility is not detailed and needs to be as transparent and clear as possible. She stated that there are issues regarding burden of proof and what it is that need to be addressed. She also stated that there needs to be guidance for employers who will be invited to the FAC to demonstrate infeasibility. She asked for information about what employers who find the PEL infeasible can do, in addition to filing for a variance. She also asked if these issues need to be addressed through a revision of the P&P and if there are additional procedures that could be put into place to help the Division regarding outreach to stakeholders.

Ms. Gold stated that the P&P is an agency procedure, not an adopted rule. She said that the best initial step will be for the Division to get suggestions from interested parties of how to approach feasibility, take those suggestions to the next FAC meeting, and then put down criteria in writing.

Ms. Stock stated that she is interested in seeing what the Division comes up with and that she hopes the Division will also provide opportunities to include opinions from those who spoke today in their discussion. She asked the Division to decide whether the FAC will be a standing committee for all chemicals, or if it will be different for each chemical. She also asked the Division to consider how it will deal with problems or conflicts of interest

that arise in a standing committee. She also wants to know how the Division will ensure that the broadest group of people is involved in the FAC.

Ms. Quinlan asked Ms. Gold if the Division anticipates doing the FAC process for the remaining chemicals that are still in the rulemaking process. Ms. Gold stated that there are 4 chemicals still in the rulemaking process that were discussed during the second FAC advisory committee, one of which is ethylbenzene. She stated that some of these chemicals were successful in going through the FAC and their feasibility was determined, but some were not. The ones that were not successful will have to go through the new FAC when the Division gets it going. She said that it is possible that the next new round for those chemicals will be a FAC, but the Division will need to assess that for sure. She said that they have been reaching out to interested parties to participate in the HEAC and FAC for these chemicals.

Ms. Stock asked Ms. Gold about what the Division plans to do in situations where more than one recommendation comes out of the HEAC to go to a FAC, such as that which Dr. Quint pointed out. Ms. Gold stated that the goal of having more than one level go to the FAC was to indicate what is necessary to protect against several endpoints such as cancer. She said that the Division does not propose or recommend a range. It recommends a level based on an endpoint. She said that when the FAC considers a change to the PEL level of a chemical, the FAC needs to be advised that it is not just accepting risk on one endpoint. It is accepting risk on other endpoints called into question because of that change. It is not simply a numerical difference. She also stated that this does not guarantee that someone will fall victim to the endpoint in question; it just raises the risk.

Ms. Smisko stated that it would be helpful for industry folks to have some guidance regarding what information would be helpful in determining feasibility. She said that having criteria clearly stated about certain areas regarding feasibility would help direct people's focus. She stated that when something is determined to be infeasible, define exactly what that means (i.e. cost, equipment, etc.) and lay out how individual concerns and situations can be dealt with.

3. Executive Officer's Report

Ms. Hart stated that the Board Members recently received information on required ethics training and the Incompatible Activities statement. She asked the Board to take the ethics training and send in their certificates of completion by June 30. She also stated that a 15-day notice was issued regarding Strap-On Foot Protectors and that the printed deadline for receiving comments was May 27, but since that is the Memorial Day holiday, the deadline has been extended to 5:00 P.M. on May 28. She also said that Senior Engineer Conrad Tolson has been appointed to the ASME B30 Regulatory Authority Council which fosters communication between state, local, and national government entities and the B30 Crane Safety Standards Committee. The appointment is for a 4-year term. He will also be working on consolidating the crane standards from the General Industry Safety Orders and Construction Safety Orders.

Ms. Quinlan asked Ms. Hart how soon the Strap-On Foot Protectors rulemaking will come back to the Board after the May 28 deadline. Ms. Hart stated that it will depend on the number of comments received. She said that the Board staff will need to summarize and respond to each of those comments. If it is determined that another 15-day notice is not necessary, then it should come before the Board in June or July.

Ms. Stock asked Ms. Hart what is going on with GHS. Ms. Hart stated that the temporary rulemaking for GHS – Health that was adopted by the Board was approved by the Office of Administrative Law on May 6 and became effective on that date as well. She also stated that the Division held an advisory committee meeting on April 9 to get feedback on that, and the Division is finalizing its proposal to send back to the Board. It should be finalized in the near future and turned around by the Board staff soon after. She also stated that GHS – Safety has been forwarded to Agency and is awaiting their approval. This item was originally scheduled to be heard at the July Board Meeting, but if Agency does not approve it by next Tuesday to meet the Office of Administrative Law’s publication deadline, it will be moved to the August Board Meeting.

4. Future Agenda Items

None were suggested.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:19 a.m.