

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING

August 16, 2007
Sacramento, California

I. PUBLIC MEETING

CALL TO ORDER AND INTRODUCTIONS

Chair MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:0 a.m., August 16, 2007, in Hearing Room 102A of the Bonderson Building, 901 P Street, Sacramento, California.

A. ATTENDANCE

Board Members Present

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

Board Members Absent

Board Staff

Keith Umemoto, Executive Officer
David Beales, Legal Counsel
Michael Manieri, Principal Safety Engineer
Tom Mitchell, Senior Industrial Hygienist
Christina Witte, Executive Secretary

Division of Occupational Safety and Health

Len Welsh, Acting Chief
Steven C. Smith, Supervising Industrial Hygienist

Others Present

Tina Kulinouich, Fed/OSHA
Greg McClelland, Western Steel Council
Bruce Wick, CALPASC
Kevin Bland, RCA
Jeremy Simth, CA Labor Fed
John Bobis, Aerojet
Larry McCune, CAL/OSHA
Dennis Seyfa, IBEW 1245
Dan Leacox, Greenberg Traurig
Judi Freymay, ORC
Bo Bradley, AGC of CA

Rob Olmstead, Senator Dave Cox Office
Kevin Thompson, CAL/OSHA Reporter
Steve Johnson, Assoc. Roofing Contractors
Patrick Bell, CAL/OSHA
Larry Heywood, CSIA
Lynne Formigli, CTA
Janet Hendricksch, Phylmar Group
Marti Fisher, Cal chamber
Cynthia Lion, CMTA
Jodi Blow, CFCA
Rob Neenan, CLFP

B. OPENING COMMENTS

Chairman MacLeod welcomed Mr. Washington to the Board and administered the Oath of Office.

The people listed below spoke in support of General Industry Safety Orders, Chapter 4, Subchapter 7, Article 121, New Sections 5349, 5350, 5351, 5352, 5353, 5354, and 5355.1 and Sections 5355, 5356, 5357, and 5358, Snow Avalanche Blasting.

- Bob Roberts, Executive Director, California Ski Industry Association
- Eric Knudsen, Avalanche control professional at Squaw Valley Ski Resort
- Evan Sonky (sp?), Ski Patroller and Assistant Avalanche Forecaster at Alpine Meadows Ski Area
- C. Duane Niesen, Author of Petition Number 476
- Larry Heywood, California Ski Industry Association

Steve Hart, Blasting Program Administrator of the Division of Occupational Safety and Health, spoke in opposition to certain provisions of the avalanche proposal.

C. ADJOURNMENT

Chair MacLeod adjourned the Public Meeting at 10:41 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public Hearing of the Occupational Safety and Health Standards Board (Board) to order at 10:41 a.m., August 16, 2007, in Hearing Room 102A of the Bonderson Building, 901 P Street, Sacramento, California.

Chair MacLeod opened the Public Hearing and introduced the first item on the agenda.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
Section 1532.2
GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 110
Sections 5203 and 5206
**SHIP BUILDING, SHIP REPAIRING, AND SHIP
BREAKING SAFETY ORDERS**
Chapter 4, Subchapter 18, Article 4
Section 8359
Carcinogen Report of Use Requirements for Chromium VI

Mr. Smith summarized the purpose and history of this proposal and noted that no written comments had been submitted to the Board.

Chairman MacLeod opened the floor for public comment.

There was no public comment on this item.

Dr. Frisch asked whether the language “can be reasonably expected to exceed” is commonly used, and he asked for a definition of the term “reasonably expected.” Mr. Smith responded that the language was included to be consistent with the manner in which a PEL is established.

Mr. Rank asked whether the performance of air sampling and air monitoring tests would clarify the word “reasonable.” He commented that there were many users who may use as little as five pounds of welding consumables containing Chromium VI, such as welding rods, wire, and stainless steel. He asked whether someone using such a small amount would be required to report to the Division. Mr. Smith responded that if the use of that five pounds resulted in an exposure above the PEL, it would need to be reported.

Mr. Smith went on to state that even in the existing standard, there are several exemptions for certain uses, one of which is whether the use is not expected to exceed the action level of exposure, the entire standard does not apply.

Mr. Welsh added that he and Mr. Rank had spoken regarding the performance of air sampling and monitoring tests. He stated that reports would be prioritized according to amount of usage and likelihood of exposure. A small user who goes to the trouble of taking samples is least likely to appear on the Division’s radar.

Chairman MacLeod announced the next item on the agenda:

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Appendix B
Plate B-17
GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 2
Section 3214 and Figure E-1 of Section 3231
Stair Railing Design

Mr. Manieri summarized the purpose and history of this proposal and noted that no written comments had been submitted to the Board.

Chairman MacLeod opened the floor for public comment.

There was no public comment on this item.

Mr. Jackson expressed concern regarding the clarity of the proposed amendments. He asked why a stair rail installed prior to April 3, 1997, was safe at 30 inches, as opposed to a stair rail installed after that date. He stated that the standard should not be based on dates, but rather addresses the hazard of an employee falling on a stairway. He also expressed concern regarding the diagrams included with the proposed standard, as they do not include the exception for stair rails installed prior to April 3, 1997. On

another note, Mr. Jackson expressed concern regarding the appearance that the Division's Form 9s receive special deference not accorded to other petitioners to the Board.

Mr. Manieri responded that the manner in which Form 9s are handled relates to the overall process by which rulemaking is decided, and that he would address Mr. Jackson's concerns in the Final Statement of Reasons.

Chair MacLeod stated that the Division is a part of the petition process, and in the case of the Form 9s, they would be evaluating their own petitions. He further stated that Board staff sends a rulemaking calendar to the Office of Administrative Law at the beginning of each year outlining the projects for the coming year.

Mr. Beales indicated that in Section 147.1(c) there is, arguably, statutory authority for the Division to determine the necessity for a standard and develop and present proposed standards to the Board.

Mr. Kastorff asked about the difference between the two graphics. Figure E-1 indicates 75°, whereas Plate B-17 indicates 70°. Mr. Manieri responded that they were existing parameters in both plates; one plate was taken from the General Industry Safety Orders, while the other was from the Construction Safety Orders.

Mr. Kastorff stated that, while the proposal stated that "local building standards may require four-inch spacing of the intermediate vertical members," the Building Code states that "open guard rails shall have intermediate rails or an ornamental pattern such as a sphere four inches in diameter cannot pass through." He commented that the Board should not require employers to have vertical intermediate rails when there are other methods to ensure safety. Mr. Manieri responded that if employers choose to use vertical intermediate members, the spacing between them need only be consistent with the International Building Code.

Dr. Frisch echoed Mr. Kastorff's concern regarding the discrepancy between the two figures.

ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 11:03 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Occupational Safety and Health Standards Board (Board) to order at 11:03 a.m., August 16, 2007, in Hearing Room 102A of the Bonderson Building, 901 P Street, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. **TITLE 8: LOW VOLTAGE ELECTRICAL SAFETY ORDERS**
Chapter 4, Subchapter 5, Article 3
Section 2320.2

Energized Equipment or Systems
(Heard at the April 19, 2007, public Hearing)

Mr. Manieri summarized the purpose and history of the proposal, noting that a 15-day notice had not resulted in further public comment.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Jackson to adopt the proposed safety order.

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 13
New Section 3458.1
Date Palm Operations-Use of Special Purpose Ladders
(Heard at the July 19, 2007, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, stating that no public comment had been received and that the proposal was now ready for adoption by the Board.

MOTION

A motion was made by Mr. Kastorff and seconded by Dr. Frisch to adopt the proposed safety order.

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

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 90
Section 4884
Hammerhead Tower Cranes
(Heard at the July 19, 2007, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, stating that no public comment had been received and that the proposal was now ready for adoption by the Board.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Rank to adopt the proposed safety order.

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

4. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 121
New Sections 5349, 5350, 5351, 5352, 5353, 5354, and 5355.1

and Sections 5355, 5356, 5357, and 5358
Snow Avalanche Blasting
(Heard at the February 15, 2007, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, stating that a 15-day Notice of Proposed Modification had resulted in no further public comment.

MOTION

A motion was made by Mr. Jackson and seconded by Dr. Frisch to adopt the proposed safety order.

Dr. Frisch expressed his support for the proposal and commented that he had been struck repeatedly by the dedication of the people who perform this work on a daily basis to safety. He noted that standards are not static and that, if necessary, aspects of this standard could be revisited.

Mr. Rank commended Dr. Frisch for all the time he had spent on this proposal and thanked staff for their work on the proposal.

Chairman MacLeod thanked the staff for their work on this proposal, particularly Hans Boersma.

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 noted that the address on File Number 07-V-059 was incorrect in the original proposed decision, but a revised copy had been provided listing the correct address, and he recommended that all of the proposed variance decisions on the consent calendar be adopted and that the variances thereby be granted.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Jackson to adopt the consent calendar. A roll call was taken, and all members present voted "aye." The motion passed.

C. OTHER

1. Indoor Heat Illness Update

Mr. Welsh stated that the Division has determined that no specific standard is necessary at this time, as the Division has focused instead on educational outreach and enforcement of the existing Injury and Illness Prevention Program standard. The Division will work with California Chamber of Commerce to form a Heat Illness Prevention Network, an early warning system to notify employers of an impending heat emergency. Mr. Welsh indicated that he would provide an update on the Heat Illness Prevention Network to the Board once it is up and running.

Dr. Frisch asked whether the model IIPP documents provided by the Division would be modified for both indoor and outdoor heat illness. Mr. Welsh responded in the affirmative.

2. Termination of Seatbelt Width for ROPS Rulemaking proposal (Petition File No. 484)

Mr. Manieri summarized the history of the proposal and stated that the advisory committee had not reached consensus; therefore, staff determined that it was unnecessary to continue any rulemaking action.

3. Termination of Crane Operator Certification, Exception No. 1 Rulemaking proposal (DOSH Form 9)

Mr. Manieri summarized the history of the proposal and stated that the advisory committee had not reached consensus; therefore, staff determined that it was unnecessary to continue any rulemaking action.

4. Legislative Update

Mr. Beales stated that a written report had been provided to the Board members in their materials, and he indicated that there had been no updates on any of the items.

5. Executive Officer's Report

Mr. Umemoto stated that this was his last Board meeting as Executive Officer, indicating that he was taking another position in state government. He expressed his appreciation for those with whom he had worked and cited examples of the Board's accomplishments during the past four years.

Chairman MacLeod thanked Mr. Umemoto for his service and wished him success in his future endeavors.

Dr. Frisch expressed his appreciation to Mr. Umemoto for all of his assistance over the past year since he had been appointed to the Board.

Mr. Moreno stated that Mr. Umemoto's efforts and assistance had made his job easier, and he thanked Mr. Umemoto for his service.

6. Future Agenda Items

Mr. Welsh stated that he and Marti Fisher would like to brief the Board on the Heat Illness Prevention Network once it was completely up and running.

D. CLOSED SESSION – 11:49 a.m.

The Chair asked the meeting attendees to clear the room in order to allow the Board to conduct the closed session, and he stated that the public portion of the meeting would be reconvened to announce any decisions made and to adjourn the meeting.

Chairman MacLeod reconvened the meeting at 12:42 p.m. He announced that Mike Manieri, Principal Safety Engineer, had been asked to act as the Interim Executive Officer until the position could be filled on a permanent basis. In addition, Chairman MacLeod stated that the Board had authorized a committee of three Board members, Dr. Frisch, Mr. Jackson, and Chairman MacLeod, to act as a recruitment subcommittee with hiring authority to interview and hire a permanent Executive Officer. He indicated that the committee intended to make a decision regarding which candidates to interview on September 6, and that meeting would be noticed ten days in advance.

ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 12:46 p.m.