

**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

October 18, 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 10:01 a.m., October 18, 2007, in the Auditorium of the State Resources Building 1416 Ninth Street, Sacramento, California

A. ATTENDANCE**Board Members Present**

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

Board Members Absent

Steve Rank

Board Staff

Michael Manieri, Interim Executive Officer
David Beales, Legal Counsel
Tom Mitchell, Senior Industrial Hygienist
Leslie Matsuoka, Programs Analyst
Bernie Osburn, Staff Services Analyst

Division of Occupational Safety and Health

Steven Smith, Supervising Industrial Hygienist
Larry McCune, Principal Safety Engineer

Others present

Wendy Holt, AMPTP
John L. Bobis, Aerojet
Jeff Tanenbaum, Nixon Peabody
Len McGill, Fleetwood Enterprises, Inc.
Judy Freyman, ORL Worldwide
Tina Kulinovich, Fed OSHA
Kevin Thompson, Cal OSHA Reporter
Elizabeth Treanor, Phylmar Group Roundtable

Kevin Bland, CFCA/RCA
Marti Fisher, California Chamber of Commerce
Lynne Formigli, CTA
Jodi Blom, CFCA
Tim F. Reese
Steve Johnson, ARCBAC
Laura Sheppard, USD Center of Public Interest Law
M. Soble

B. OPENING COMMENTS

Ms. Elizabeth Treanor, Director of the Phylmar Group's Regulatory Roundtable, spoke in support of creating an index for Title 8. She is personally in support of reform but recognizes that the advisory committee is not and supports continuing with the Title 8 reform element for an improved index. The advisory committee convened in September agreed that an index was a more reasonable solution than a complete reformation of Title 8.

C. ADJORNMENT

Chairman MacLeod adjourned the Public Meeting at 10:07 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 10:07 a.m., October 18, 2007, in the Auditorium of the State Resources Building 1416 Ninth Street, Sacramento, California

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

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 2
Section 3228
Number of Exits

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.

Dr. Frisch asked how employers would demonstrate that they did not need more than one exit. Mr. Manieri responded that there were a number of criteria, including the type of business, the number of employees, the configuration of the workplace, and the distance to the exits.

Dr. Frisch then asked whether there was a document to which employers could refer to determine whether or not more than one exit is necessary. Mr. Manieri responded that there were tables and diagrams within Title 24 which would guide employers in making that determination.

Dr. Frisch asked whether staff would consider paralleling the language of Title 24 in the proposed standard. Mr. Manieri responded in the affirmative.

Mr. Kastorff asked why staff had used the Building Code language as opposed to that of the National Fire Protection Agency (NFPA) Standard, stating that he was more comfortable with the language of the NFPA Standard. Mr. Manieri responded that the proposal originally had referenced the NFPA standards, but its approval by the Labor and Workforce Development Agency was contingent upon reference to the Building Code for purposes of harmony with California Building Standards.

Chairman MacLeod announced the next item on the agenda:

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 25
Section 3650
Industrial Trucks, General (Blue Signal Protection)

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.

ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 10:19 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:19 a.m., October 18, 2007, in the Auditorium of the State Resources Building 1416 Ninth Street, Sacramento, California.

A. PROPOSED SAFETY ORDER FOR ADOPTION

1. 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
(Heard at the August 16, 2007, Public Hearing)

Mr. Manieri summarized the purpose and history of the proposal, noting that a 15-day notice had not resulted in public comment. He stated that the proposal was now ready for the Board's adoption.

MOTION

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

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Petition File No. 496
Submitted by Salvador Gonzales

Mr. Manieri summarized the reason for and history of the petition, noting that both Board staff and Division evaluations recommended denial of the petition.

MOTION

A motion was made by Mr. Washington and seconded by Mr. Jackson to adopt the proposed petition decision.

A roll call was taken, and all members, with the exception of Dr. Frisch, voted "aye." Dr. Frisch voted "no." The motion passed.

2. Petition File No. 497
Submitted by Brenda Roach, Chair of the Associated General Contractors of California

Mr. Manieri summarized the reason for and history of the petition, noting that both Board staff and Division evaluations recommended denial of the petition.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Moreno to adopt the proposed petition decision.

Mr. Jackson expressed surprise that the Division's evaluation of the petition did not reflect what the Mining and Tunneling Unit was doing. He participated in training provided by the Mining and Tunneling Unit in which a Unit representative made statements that, on their face, were at odds with the Division's evaluation of this petition. Mr. Jackson asked that Mr. Manieri share the Division's evaluation in its entirety with the Petitioner in order to facilitate the Petitioner's understanding of the Division's position.

Mr. Kastorff asked whether the Petitioner could use the proposed decision in dealings with Enforcement. Mr. Jackson responded that he suspected so.

Mr. Manieri stated that the Board's discussion today, in conjunction with the Division and Board staff's evaluations of the petition, was a powerful statement to employers regarding what standards do and do not apply.

Chair MacLeod expressed his belief that, in some respects, there was a failure to communicate between the Petitioner and the Division. He asked Mr. Smith whether the Division had a way to communicate its policies and procedures to employers prior to an employer petitioning the Board when there is a problem. Mr. Smith responded that an employer can ask for a letter of interpretation for clarification of the Division's position on a particular standard.

Mr. Jackson stated that one of the things with which the Petitioner was having a problem was enforcement of the Tunnel Safety Orders on operations other than tunnels requiring the use of a certified tunnel safety representative and a certified gas tester, and there are not many individuals who meet the regulatory requirement for qualification to perform that work. The Mining and Tunneling Unit has been providing training to meet the knowledge requirement and then issuing limited certifications that limit those people not to underground mines and tunnels but to pipeline and culvert operations. Thus, there is still some conflict between the regulatory minimum qualifications and the certification issued by the Mining and Tunneling Unit. He stated that it was very important, therefore, for Board staff to be intimately involved with the Mining and Tunneling Unit when it comes to rulemaking activity to solve these potential problems before they come before the Board in the form of a petition.

Mr. Manieri suggested that construction representatives also be invited to participate in the rulemaking process and meeting to ensure that the "loop is closed," and that there are no discrepancies.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. 05-V-024 Fleetwood Motor Homes of California

Mr. Beales briefed the Board on the proposed decision for the Fleetwood variance application and asked that the Board adopt the decision as written.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Moreno to adopt the proposed variance decision.

Chair MacLeod stated that this had been a very difficult and challenging variance, covering an extensive period of time. He expressed appreciation for and thanked Board staff, Mr. Beales, Dr. Frisch, and Ms. Arioto for the work that had gone into the decision.

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

C. OTHER

1. Legislative Update

Mr. Beales stated that of the bills the Board had been tracking this legislative session, nine had passed the legislature, and the time for the Governor to either sign or veto them had elapsed. SB 144, a local government omnibus act that has a provision regarding the definition of subsurface installations was signed by the Governor. SB 171 regarding hospital lifting was vetoed. SB 783 regarding amusement park rides was signed by the Governor, and all the rest of the bills were vetoed. These vetoed bills were: AB 1045 regarding heat illness exposure; AB 1467 removing some exemptions on places where people could smoke; AB 1393 regarding public records; and three bills involving green building standards, AB 35, AB 888, and AB 1058.

2. Executive Officer's Report

Mr. Manieri reviewed the Calendar of Activities included in the Board packets, and announced the receipt of two petitions, File No. 498 from Mr. Howard Hill regarding the inspection and testing of window cleaning, load sustaining devices and equipment, and File No. 499 regarding hammerhead tower cranes.

Dr. Frisch expressed appreciation for Rebecca Estrella of the Board staff for her work on the variances.

3. Future Agenda Items

Dr. Frisch requested a report regarding the November 2, 2007, PEL meeting to be presented at the next Board meeting, and Chair MacLeod asked that Board staff present a report on the Title 8 Reform advisory committee meeting within the next couple of months.

D. CLOSED SESSION (Not held, as explained below)

Chair MacLeod expressed his belief that there was nothing to be discussed at the current time that required a closed session, and asked that the discussion be held in open session; the Board members agreed to this suggestion.

Chair MacLeod stated that the Staff Services Manager I position was still open, in addition to the Executive Officer position. The intention was to hire an Executive Officer first and then hire a SSM-I. Interviews for the Executive Officer position began on October 15, 2007, and would continue this afternoon.

ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 10:53 a.m.