

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)**NOTICE OF PROPOSED MODIFICATIONS TO****TITLE 8: Chapter 4, Subchapter 4, Article 12, Sections 1600 and 1601  
of the Construction Safety Orders****File Driving and Methods of Unloading Piles**

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named regulations in which further modifications are being considered as a result of public comments and/or Board staff evaluation.

On June 19, 2003, the Standards Board held a Public Hearing to consider revisions to Title 8, Sections 1600 and 1601 of the Construction Safety Orders, California Code of Regulations. The Standards Board received oral and written comments on the proposed revisions. The regulations have been further modified as a result of the comments and Board consideration.

A copy of the full text of the regulations as originally proposed, and a copy of the modified text clearly indicating the further modifications, is attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and staff responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on August 22, 2002 at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. These regulations will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Keith Umamoto at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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Date: August 1, 2003

Keith Umemoto, Executive Officer

**REGULATIONS AS ORIGINALLY PROPOSED**

STANDARDS PRESENTATION  
TO  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,  
TITLE 8, CHAPTER 4

Amend Section 1600 as follows:

§1600. Pile Driving.

(a) Site-Specific Safety Plan.

(1) Prior to the start of the job the employer shall develop a written safety plan specific to the job site that includes, but is not limited to the following elements:

(A) An outline of the construction plan and the steps involved in drilling and/or driving piles.

(B) A list of the potential safety and health hazards for each step and procedures necessary to protect employees from identified hazards including:

1. Means and methods to minimize employee exposure to an operating drill and/or hammer.

2. Means and methods to provide safe access, handling, storage, and setup of piles, equipment and vehicles.

(C) A projected work schedule and minimum number of employees needed to safely complete each step.

(D) Special job procedures, equipment and/or training such as for blasting operations, shoring, -sloping and benching requirements, emergency response procedures, traffic control, confined space operations, proximity to overhead lines, work over water, etc.

(2) A copy of the Site-Specific Safety Plan shall be available on site and shall be provided to the Division upon request.

~~(b) (a) When conditions are such that a worker might logically be expected to work or be under the hammer, the hammer shall be secured in the leads by means of an adequate chock, toggle, or other device to safely support the hammer.~~

~~EXCEPTION: Where it is necessary for a worker, momentarily, to lean through the leads to spot a pile under hammer, it is not required that the hammer be secured in the leads.~~

A blocking device, capable of safely supporting the weight of the hammer, shall be provided for placement in the leads under the hammer at all times while employees are working under the hammer.

~~(b) Steam hose leading to a steam or jet pipe shall be securely attached to the hammer with an adequate length of at least 1/4 inch diameter chain or equivalent rated capacity wire rope to prevent whipping in the event the joint of the hammer is broken. Air hammer hoses shall be provided with the same protection as required for steam lines.~~

(c) Steam and air hammer hose connections.

~~Safety chains, or equivalent means, shall be provided for each hose connection to prevent the line from thrashing around in case the coupling becomes disconnected.~~

(1) All pile driver hose connections including those to pile driver hammers, pile ejectors, or jet pipes shall be securely tethered with an adequate length of at least 1/4 inch (0.635 cm) alloy steel chain having 3,250 pounds (1,500 kg) rated capacity (working load limit), or equivalent strength alloy steel cable, to prevent the line from thrashing around in case the coupling becomes disconnected.

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(2) Chains or wire rope shall not be shortened with knots, bolts or other makeshift devices.

(d) Wherever it is necessary for ~~workers~~ employees to work aloft on pile drivers ~~in normal operation while pile is being driven, and the fall distance exceeds 7 1/2 feet,~~ working platforms shall be provided.

Such platforms shall be of sufficient size so that the ~~worker~~ employee can easily avoid contact with the hammer. It shall be surrounded on all sides, except between the hammer leads, with a railing or guard line 42 inches to 45 inches in height. Guard lines shall be ~~drawn~~ taut and ~~shall be~~ at least 3/8 inch wire rope, ~~or 1-inch Manila rope~~ or equivalent. If rigid railings are used, they shall be constructed in accordance with ~~provisions of Section 1620, Article 16, with the~~

EXCEPTION: that Pipe or structural steel railings may be used if of equivalent strength may be used.

(e) ~~Precautionary measures~~ Precautions shall be taken to ensure that objects are secured against wind and accidental displacement, to which will prevent tools, material, and equipment from falling off elevated platforms. ~~There shall be a toe board at least 3 1/2 inches high~~ Toeboards shall be installed on all sides of the platform in accordance with Section 1621(b).

(f) ~~Fixed~~ Leads shall be provided with ladder, and adequate rings, or similar attachment points, so that the ~~loft worker~~ employee may engage ~~the a~~ a personal fall ~~arrest~~ protection system to the leads. The personal fall ~~arrest~~ protection system used shall comply with the requirements of ~~Section 1670 Article 24.~~ If the leads are provided with loft platform(s), such platform(s) shall be protected by standard guardrails.

(g) Stirrups shall be provided for use on sheet piles or a mechanical device shall be used to guide the pile into place. If a ~~worker~~ an employee is required to go aloft on sheet piling, the ~~worker~~ employee shall use a ladder ~~or be carried up in a boatswain's chair.~~

EXCEPTION: Where it is unsafe to use a ladder, a boatswain's chair may be used in accordance with Section 1662.

(h) ~~The worker~~ Employee(s) shall not ride the hammer.

(i) Where work is to be performed, walkways at least 20 inches in width shall be provided across piles or other open work with the exception of those piles on which the driver is standing.

(j) Where a drop hammer is used for driving piling other than sheet piling, a driving head or bonnet shall be provided to bell the head of the pile and hold it true in the leads.

(k) Ring buoys shall be provided in accordance with Article 13 and located where readily available at intervals not exceeding 200 feet on all structures over water under the course of construction.

Where ~~workers~~ employees are concentrated in groups, there shall be additional ring buoys consisting of not less than 1 additional buoy for each 25 ~~workers~~ employees in that area. Portable standards or equivalent means to hold the ring buoys in plain view shall be provided. Life saving boats shall be provided in accordance with Article 13.

(l) All floating rigs, with the exception of small work rafts or pontoons, shall be equipped with at least 2 ring buoys.

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(m) In every crew there shall be a designated signaler, and the engine ~~operator~~ or winch-operator shall receive signals from no other except, ~~however~~, that when a ~~worker~~ an employee is aloft, the hammer shall not be moved except on the signal of the ~~worker~~ employee aloft.

NOTE: For recommended standard hand signals, see Plate C-11.

(n) All deck engines, not operated by an operator on the throttle sides, shall be equipped with a cross extension of the throttle that is within the reach of the spool tender.

(o) Every hoisting drum used on a pile driver that uses a dog and ratchet arrangement to hold it in position shall be equipped with an adequate dog. This dog shall be readily visible from the engine operator's station or shall be provided with a directly connected and positive telltale device ~~which~~ that will be visible.

(p) No arrangement of counterweights or springs on the dog shall be permitted which will allow the dog to be automatically disengaged either by relieving the load or rotating the drum.

(q) Stop blocks shall be provided for the leads to prevent the hammer from being raised against the head block.

(r) When the leads must be inclined in the driving of batter piles, provisions shall be made to stabilize the leads.

(s) Steam line controls shall consist of two shutoff valves, one of which shall be a quick-acting lever type within easy reach of the hammer operator.

(t) Guys, outriggers, thrustouts, or counter-balances shall be provided as necessary to maintain stability of ~~the~~ pile driver rigs.

(u) All employees shall be kept clear when piling is being hoisted into the leads.

(v) When steel tube piles are being "blown out," employees shall be kept well beyond the range of falling materials.

(w) When driving jacked piles, all access pits shall be provided with ladders and bulkheaded curbs to prevent material from falling into the pit.

NOTE: Section 5158 of the General Industry Safety Orders prescribes the minimum standards for preventing employee exposure to dangerous air contamination and/or oxygen deficiency in confined spaces.

(x) Hoisting of piling shall be done by hooks provided with a means to prevent accidental disengagement or a shackle shall be used in place of a hook.

(y) Taglines shall be used for controlling unguided piles and free hanging (flying) hammers.

(z) Hammers shall be lowered to the bottom of the leads while the pile driver is being moved.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

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PROPOSED STATE STANDARD,  
TITLE 8, CHAPTER 4

Amend Section 1601 as follows:

§1601. Methods of Unloading Piles.

~~(a) Hand Unloading From Trucks and Trailers. The following method shall be used in unloading piles from a truck or trailer when the load is to be rolled off one side by hand. This method shall not be attempted unless trucks and trailers are equipped with bunk chocks arranged so as to be released from the side opposite that from which the load is to be dumped, and at least 2 binder chains encircle the load of piles. Binders shall be arranged so that their release is accomplished from the side opposite that from which the load is to be dumped.~~

~~(1) Piles shall be prevented from coming off on the wrong side of the vehicle by tilting the vehicle body so that the unloading side is approximately 10 inches below the opposite side or by securely bracing the load on one side with at least 2 timber shores, 4 inches by 6 inches in cross section, or material of equivalent strength. In tilting the vehicle, advantage may be taken of sloping ground or a special device may be used.~~

~~(2) Chocks and binders are to be released from a safe position after the requirements of Order 1601 (a)(1) have been complied with.~~

~~(3) If skids are used, they shall be in place before the binders or chocks are released.~~

~~(4) When it is necessary to use peaveys to remove the last piles from the truck or trailer, the workers shall work from the ends of the load and shall stand clear of the area exposed to rolling piles.~~

~~(b) Power Unloading From Trucks and Trailers. If power is to be used, the following method of rolling the load off one side shall be followed in unloading piles from a truck or trailer, unless an equally safe power method is used in which no individuals are exposed to the hazard of rolling or falling piles:~~

~~(1) Before the load is released, a bridle from the source of power shall be passed over the load from the unloading side, then passed under the load and the 2 ends secured at separate points to the unloading side of the vehicle or to dead men. After it is pulled taut, the chocks and binders may be released from a safe position, additional power being applied as necessary to complete unloading.~~

~~(2) All requirements and limitations for unloading by hand, as described under Order 1601 (a), shall be followed, with the exceptions of (1) and (2).~~

~~(c) Hand Unloading From Flat Cars. The following method shall be used in unloading piles from a flat car when the load is to be rolled off one side by hand:~~

~~(1) Skids shall be set on the unloading side of the car and secured to the car or to the bolsters under the piles. The upper end of the skids shall be below the lower layer of piles.~~

~~(2) At least 2 shores not smaller than 4 inch by 6 inch timbers shall be braced against the side opposite the unloading side of the load, with the upper end of the shores secured to car stakes or wedged against a pile in the second or third layer from the top. These shores shall be set near each bolster.~~

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~~(3) Car stakes on the unloading side shall be notched approximately 1/4 of their thickness just above stake pockets.~~

~~(4) Binder wires or straps shall be cut on unloading side, with the exception of the top and bottom wires or straps which shall be cut from the opposite side after the other cutting is complete.~~

~~(5) When it is necessary to use peaveys to remove the last piles from the flatcar, the workers shall work from the ends of the load and shall stand clear of the area exposed to rolling piles.~~

~~(d) Power Unloading from Flat Car. The following method of rolling the load off 1 side shall be followed in unloading piles from a flat car, unless an equally safe power method is used in which no individuals are exposed to the hazard of rolling or falling piles:~~

~~(1) Skids shall be set on the unloading side and secured to the car or to the bolster under the load.~~

~~(2) A bridle from the source of power shall be passed over the load from the unloading side, then passed under the load and the ends secured to the unloading side of the car and a strain taken on the line.~~

~~(3) Car stakes on the unloading side shall be notched approximately 1/4 of their thickness just above the stake pockets.~~

~~(4) Binder wires or straps shall be cut on the unloading side with the exception of the top and bottom wires or straps which shall be cut from the opposite side after the other cutting is complete.~~

~~(5) Additional tension may thus be applied to the bridle from the power source so as to remove the load.~~

Piles shall be unloaded in a controlled manner so that employees are not exposed to the hazard of rolling or falling piles.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

**PROPOSED MODIFICATIONS**

**(Modifications are indicated by bold, double-underlined for new language and bold, strikeout for deleted language.)**

**(Only modified pages are included.)**

STANDARDS PRESENTATION  
TO  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,  
TITLE 8, CHAPTER 4

Amend Section 1600 as follows:

§1600. Pile Driving.

(a) Site-Specific Safety Plan.

(1) ~~Prior to the start of the job the employer shall develop a~~ A written safety plan specific to the job site ~~shall be developed, implemented and maintained by a competent person and the identity of the competent person shall be documented. The site-specific safety plan shall be developed prior to the start of the job and shall~~ ~~that~~ includes, but ~~is~~ not ~~be~~ limited to the following elements:

(A) An outline of the construction plan and the steps involved in drilling and/or driving piles.

(B) A list of the potential safety and health hazards for each step and procedures necessary to protect employees from identified hazards including:

1. Means and methods to minimize employee exposure to an operating drill and/or hammer.

2. Means and methods to provide safe access, handling, storage, and setup of piles, equipment and vehicles.

(C) A projected work schedule and minimum number of employees needed to safely complete each step.

(D) Special job procedures, equipment and/or training such as ~~for~~ **but not limited to** blasting operations, shoring, -sloping and benching requirements, emergency response procedures, traffic control, confined space operations, proximity to overhead lines, **and** work over water, ~~etc.~~

(2) **Any changes to the site-specific safety plan shall be approved by the competent person and the identity of the competent person shall be documented.**

~~(2)~~(3) A copy of the Site-Specific Safety Plan **with all approved changes** shall be available on site and shall be provided to the Division upon request.

~~(b) (a) When conditions are such that a worker might logically be expected to work or be under the hammer, the hammer shall be secured in the leads by means of an adequate chock, toggle, or other device to safely support the hammer.~~

EXCEPTION: Where it is necessary for a worker, momentarily, to lean through the leads to spot a pile under hammer, it is not required that the hammer be secured in the leads.

A blocking device, capable of safely supporting the weight of the hammer, shall be provided for placement in the leads under the hammer at all times while employees are working under the hammer.

~~(b) Steam hose leading to a steam or jet pipe shall be securely attached to the hammer with an adequate length of at least 1/4 inch diameter chain or equivalent rated capacity wire rope to prevent whipping in the event the joint of the hammer is broken. Air hammer hoses shall be provided with the same protection as required for steam lines.~~

(c) Steam and air hammer hose connections.

Safety chains, or equivalent means, shall be provided for each hose connection to prevent the line from thrashing around in case the coupling becomes disconnected.

STANDARDS PRESENTATION  
TO  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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TITLE 8, CHAPTER 4

(1) All pile driver hose connections including those to pile driver hammers, pile ejectors, or jet pipes shall be securely tethered with an adequate length of at least ¼ inch (0.635 cm) alloy steel chain having 3,250 pounds (1,500 kg) rated capacity (working load limit), or equivalent strength alloy steel cable, to prevent the line from thrashing around in case the coupling becomes disconnected.

(2) Chains or wire rope shall not be shortened with knots, bolts or other makeshift devices.

(d) Wherever it is necessary for ~~workers~~ employees to work aloft on pile drivers ~~in normal operation~~ while pile is being driven, and the fall distance exceeds 7 ½ feet, working platforms shall be provided.

Such platforms shall be of sufficient size so that the ~~worker~~ employee can easily avoid contact with the hammer. It shall be surrounded on all sides, except between the hammer leads, with a railing or guard line 42 inches to 45 inches in height. Guard lines shall be ~~drawn~~ taut and ~~shall be~~ at least 3/8 inch wire rope, or 1 inch Manila rope or equivalent. If rigid railings are used, they shall be constructed in accordance with ~~provisions of Section 1620, Article 16, with the~~  
EXCEPTION: that Pipe or structural steel railings may be used if of equivalent strength may be used.

(e) ~~Precautionary measures~~ Precautions shall be taken to ensure that objects are secured against wind and accidental displacement, to which will prevent tools, material, and equipment from falling off elevated platforms. There shall be a toe board at least 3 1/2 inches high Toeboards shall be installed on all sides of the platform in accordance with Section 1621(b).

(f) ~~Fixed~~ Leads shall be provided with a ladder, and adequate rings, or similar attachment points, so that the ~~loft worker~~ employee may engage the a personal fall ~~arrest~~ protection system to the leads. The personal fall ~~arrest~~ protection system used shall comply with the requirements of ~~Section 1670~~ Article 24. If the leads are provided with loft platform(s), such platform(s) shall be protected by standard guardrails.

(g) Stirrups shall be provided for use on sheet piles or a mechanical device shall be used to guide the pile into place. If a ~~worker~~ an employee is required to go aloft on sheet piling, the ~~worker~~ employee shall use a ladder ~~or be carried up in a boatswain's chair.~~

EXCEPTION: Where it is unsafe to use a ladder, a boatswain's chair may be used in accordance with Section 1662.

(h) ~~The worker~~ Employee(s) shall not ride the hammer.

(i) Where work is to be performed, walkways at least 20 inches in width shall be provided across piles or other open work with the exception of those piles on which the driver is standing.

(j) Where a drop hammer is used for driving piling other than sheet piling, a driving head or bonnet shall be provided to bell the head of the pile and hold it true in the leads.

(k) Ring buoys shall be provided in accordance with Article 13 and located where readily available at intervals not exceeding 200 feet on all structures over water under the course of construction.

## **SUMMARY AND RESPONSE TO COMMENTS**

## SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS

### I. Written Comments:

Mr. Pat Karinen, NCCRC Field Representative, Pile Drivers Local Union No. 34, by letter dated June 20, 2003.

#### Comment:

Mr. Karinen noted that the proposed regulations contained no reference to CFR 1926.603(c)(5) which requires that “When it is necessary to cut off the tops of driven piles, pile driving operations shall be suspended except where the cutting operations are located at least twice the length of the longest pile from the driver.”

Mr. Karinen stated that piling typically being driven at Northern California worksites where his members are employed is 90 to 140 feet in length. He also stated that typical building footprints in congested metropolitan areas are in the 150 to 200 foot square size; therefore, Mr. Karinen is of the opinion that the federal standard is impractical in Northern California. He opined that a more reasonable work safety zone would be 50 feet from the center pin of the crane. Mr. Karinen felt this would provide a safer position for crews cutting off piles while still permitting the pile driver to work.

#### Response:

The Board notes that Mr. Karinen’s assessment that the federal standard is impractical is consistent with the Advisory Committee consensus that the federal standard is unreasonable and unworkable on a large number of worksites in California due to tight working conditions frequently encountered. However, due to the possibility for many different site conditions that can be encountered, the Advisory Committee consensus was to propose a performance-oriented approach to providing safe working conditions for employees where pile is being driven. Although 50 feet may be much more realistic than the federal requirement for twice the distance of the longest pile, it is conceivable that 50 feet clearance may not provide safety equivalent to that provided by the comparable federal standard under some site conditions. Therefore, the Board declines to accept the suggested 50-foot safety zone; however, the Board accepts Mr. Karinen’s comment to the extent that the proposal has been modified to add administrative controls (i.e., a competent person will develop, implement and maintain a site-specific safety plan) in order to assure that the proposed performance-oriented standard will provide safety at least as effective as the comparable federal standard.

The Board thanks Mr. Karinen for his comments, suggestion, and participation in the rulemaking process.

Mr. William Myers, Business Representative and President, Pile Drivers, Bridge, Dock and Wharf Builders Local Union 2375, by letter received June 20, 2003.

Mr. Myers stated that his Local represents employees engaged in pile driving, bridge, dock and wh building, marine construction and welding in Southern California, and that Local 34 represents employees engaged similarly in Northern California. The Board notes furthermore, that both the petitioners, Messrs. Dennis Jones and Rod Hurd, are members of Local 2375. Page 2 of 7

Comment #1:

Mr. Myers stated that both Dennis Jones and Rod Hurd attended the advisory committee convened August 18, 2000, in Anaheim and that Mr. Jones contends the proposed performance-based site-specific safety plan was not the consensus of the committee. Furthermore, Mr. Jones alleges that the site-specific safety plan was the opinion of one person and that a new consensus was devised without the “adverse interest of others who are directly affected by this rulemaking.”

Response:

Advisory committee meeting minutes which indicated there was a consensus were mailed to all advisory committee members, including Mr. Jones, on or about May 22, 2002, and committee members were given until June 17, 2002, to respond with comments and corrections. A cover letter sent out with the minutes specifically requested committee members to carefully review the minutes for accuracy, and called members’ attention to the proposed disposition of the two issues of the petitions: crew size and safety zone. The cover letter read, in part, as follows:

“The draft minutes prepared by Mr. Strickler [Chair] indicated that consensus had been reached on several issues which resulted in proposed amendments to CSO Section 1600; however, information available at that time was inconclusive regarding consensus on recommended changes to CSO Section 1601. It is also unclear whether consensus was reached on the issues raised by the petitioners (Petition Nos. 410 and 413). The minutes indicate that the committee discussed the use of a Site-specific Safety Plan (SSP) as a means of addressing provision of a zone of safety for employees who have to perform work in close proximity to an operating hammer (Petition No. 410), and issues of crew size (Petition No. 413).

California is required by Labor Code Section 142.3 to adopt standards at least as effective as federal standards. One of the Petitioners, Mr. Dennis Jones, noted that California Title 8 does not currently contain any corresponding requirement that is at least as effective as the federal requirements contained in 1926.603(c)(5). However, the minutes indicate that many committee members were of the opinion that the federal standard, in its current form, is not practical, and that it could shut down many pile driving operations in California. The minutes appear to indicate that the advisory committee may have reached a consensus to provide equivalent safety through use of an SSP addressing both the zone of safety and crew size issues; however, it did not appear that the specific details of the SSP were worked out at the committee meeting. Further, the minutes indicate that several committee members asked whether there would be another advisory committee meeting to continue discussion of the SSP and, presumably, to develop specific requirements for the SSP. The minutes indicate that Mr.

Strickler proposed to draft a SSP that would incorporate the comments and ideas expressed by the committee and include it with the meeting minutes, which would afford an avenue for committee members to offer further comments and suggestions.

Subsequent to the advisory committee and prior to his departure, Mr. Strickler did draft a SSP for inclusion in the proposed revisions to section 1600; however, it does not appear that this draft has been previously distributed to committee members. Prior to making a determination on the necessity to reconvene the advisory committee, staff believes it would be beneficial to solicit your input on the draft SSP. Please review and comment on the minutes and the proposed changes to Sections 1600 and 1601, attached. Based on your responses and comments, staff will then make a determination regarding the necessity to reconvene the advisory committee. If there is consensus that the advisory committee does not need to be reconvened, we will proceed to bring the proposal to the Standards Board at a future public hearing.”

As noted above, the cover letter sent with the advisory committee minutes specifically requested the committee members to review and comment on the proposed site-specific safety plan (SSP). Mr. Jones is the only individual who responded to this letter and minutes and challenged the committee consensus. Board staff has contacted a sampling of committee members and they have indicated agreement with the minutes, including the consensus for a SSP. Furthermore, only Mr. Jones’ Local has actually taken issue with the consensus proposal during the 45-Day comment period.

“Consensus”, as commonly defined and as noted on the OSHSB web page<sup>1</sup>, is described as being more than a simple majority, but it does not refer to a unanimous recommendation or position held by the Advisory Committee members. Thus, although there may not have been unanimous agreement about the proposed site safety plan, subsequent actions by committee members and the regulated public indicate that the proposal does, in fact, represent a consensus both of the committee and of the industry. Therefore, the Board rejects Mr. Jones’ comment that the proposal is the opinion of one person and that it does not represent the consensus of the committee.

Comment #2:

Mr. Myers requested that they be kept informed of the status and progress of the rulemaking and of its proposed adoption.

Response:

The Board accepts Mr. Myers comment. By virtue of being a petitioner and a commenter, Mr. Jones and Mr. Myers will be included on all mailings and notices related to this rulemaking. Likewise, the Board is including all members of the advisory committee on the mailing list for this rulemaking.

Comment #3:

The letter states that Mr. Jones’ petition requested that Cal-OSHA revise the current pile driving standards by replacing them with 29 CFR 1926.603(a)(5).

Response:

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<sup>1</sup> <http://www.dir.ca.gov/oshsb/acguidelines.html>, Staff Guidelines On Using An Advisory Committee To Develop A Rulemaking Proposal, Procedures, Item 12.

29 CFR 1926.603(a)(5) requires:

“A blocking device, capable of safely supporting the weight of the hammer, shall be provided for placement in the leads under the hammer at all times while employees are working under the hammer.”

This requirement is included verbatim in the proposal at Section 1600(b).

Comment #4:

Mr. Myers’ letter opines that several of the standards in Sections 1600 and 1601 are not equivalent to current federal standards as noted in 29 CFR 1926.603(c)(5).

Response:

The only specifics provided were that the commenter is of the opinion that the proposal is not equivalent with federal standards with respect to 29 CFR 1926.603(a)(5) [see response to comment #3, above], and 29 CFR 1926.603(c)(5) [see response to comment #6, below]. Therefore, the Board rejects this comment.

Comment #5:

Mr. Myers stated that the proposed rulemaking fails to address Mr. Jones’ request for standards equivalent or better than OSHA standards.

Response:

The Board is required by Labor Code, Section 142.3 to adopt standards at least as effective as the federal standards; however, it has been established that “at least as effective” is not necessarily verbatim. Mr. Jones has correctly identified a federal standard for which Title 8 is currently not at least as effective, and this rulemaking action has been undertaken to correct that deficiency. The consensus of an ad hoc advisory committee is that the proposed site-specific safety plan of Section 1600(a) will provide safety at least as effective as the federal requirement for reasons stated in the Initial Statement of Reasons. The Board, therefore, rejects this comment.

Comment #6:

Mr. Myers stated that proposed Section 1600(a) fails to address Mr. Jones’ request and that it has no prescriptive requirements as found in 29 CFR 1926.603(c)(5), but rather, it contains only a performance-based outline for safety guidelines.

Response:

There is no requirement that Title 8 standards contain prescriptive requirements, but only that they be at least as effective as the federal standards. Based on input from the ad-hoc advisory committee, the Board is of the opinion the prescriptive requirements of the federal standard are impractical and unworkable in California and that the proposed regulations effectively address the issue using a performance-oriented approach, which was the consensus of the ad-hoc advisory committee.

Furthermore, there are other precedents for performance-oriented regulations in Title 8, including CSO Article 24, Section 1671.1, Fall Protection Plan. Federal OSHA also permits the use of site safety plans, for example, in Subpart R, Steel Erection, Appendix A. The proposed site-specific safety plan for pile driving has been modeled after both of these. The Board therefore rejects this comment.

Comment #7:

Mr. Myers stated that the proposed standards rely on self-policing and self-reporting.

Response:

The proposed regulations, if adopted, will be subject to the same enforcement as any other standard in Title 8 of the California Code of Regulations. California Labor Code, Division 5, Safety in Employment, provides for inspections by the Division of Occupational Safety and Health if the Division learns or has reason to believe that any employment or place of employment is not safe or is injurious to employees. The Division may, of its own motion, or upon complaint, investigate working conditions with or without notice or hearings. The Division is also required to respond to employee complaints within specified time intervals, and there are provisions for employee confidentiality and protection from retaliation. Employee complaints may be initiated by the employee or his/her representative, including, but not limited to, an attorney, health or safety professional, union representative, or representative of a government agency.

However, the Board accepts Mr. Myers' comment to the extent that a modification of Section 1600(a) is proposed which will clarify that the site-specific safety plan be developed, implemented and maintained by a competent person. CSO Section 1507 defines a competent person as one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Comment #8:

Mr. Myers stated that the proposed rulemaking contains no guidelines for consistent safe work practice and production standards.

Response:

Pile driving operations, as all construction operations, are subject to all applicable requirements of the Construction Safety Orders, including Section 1509, Illness and Injury Prevention Program. Section

1509 requires employers to adopt a written Code of Safe Practices, modeled after relevant parts of Plate A-3 of the Appendix. This is supplemented by the proposed Site-Specific Safety Plan [Section 1600(a)]. However, the Board accepts Mr. Myers' comment to the extent that the administrative modifications made in response to Comment 7 (above) will assure that the site-specific safety plan is developed, implemented and maintained by a competent person to assure safe work practices. Page 6 of 7

Comment #9:

Mr. Myers stated that the proposed rulemaking does not specify a safe work zone and how employees are informed of [the site-specific plan].

Response:

As previously discussed, based on consensus of the ad-hoc advisory committee, the proposal takes a performance-oriented approach to site safety. Furthermore, the draft proposal requires the employer to maintain a copy of the site-specific safety plan on site, thereby assuring availability of the plan to employees. However, the Board accepts Mr. Myers' comment to the extent that the proposal has been modified to clarify that the site-specific safety plan shall be prepared, implemented and maintained by a competent person.

Comment #10:

Mr. Myers contends that 49 other states are using 29 CFR 1926 and that the current proposal does not affirm the request of Mr. Jones' petition.

Response:

Board staff assumes Mr. Myers is referring specifically to 29 CFR 1926.603(c)(5), since that is the section for which Title 8 currently lacks language that is comparable to the federal requirement. See response to Comments 5 and 6 regarding equivalency. Furthermore, Board staff has researched the federal OSHA Integrated Management Information System (IMIS) and has been unable to determine that 29 CFR 1926.603(c)(5) is being cited in those states that have adopted or are governed only by federal regulations for accidents involving cutting operations in near proximity of an operating pile driver. The Board is of the opinion that this apparent lack of citations in other states lends support to the committee consensus that the federal standard is impractical and unworkable and therefore rejects the notion that California is out-of-step with 49 other states.

Comment #11:

Mr. Myers challenged the advisory committee rationale that the federal standard is unworkable and that it would shut down most jobsites.

Response:

The consensus of the ad hoc advisory committee was that the federal standard is unworkable and that it would shut down most jobsites (see response to Comment 1). The Board therefore rejects this comment.

Comment #12:

Mr. Myers requested that the Standards Board consider additional proposals or revisions to the rulemaking, specifically to the proposed site-specific safety plan and that his Local be directly involved with the finalized regulations. Mr. Myers stated that his Local is interested in “a reasonable and prudent solution in achieving an equivalent standard acceptable to the federal standard.”

Response:

The Board accepts Mr. Myers’ comment to the extent that Section 1600(a), Site-Specific Safety Plan, has been modified to require that the plan be developed, implemented and maintained by a competent person. Local 2375 is included in the mailing list for this 15-Day notice of proposed modifications.

The Board thanks Mr. Myers for his comments and participation in the rulemaking process.

II. Oral Comments:

Oral comments received at the June 19, 2003 Public Hearing in Sacramento, California.

Mr. William Myers, Business Representative and President, representing Pile Drivers Local 2375.

Comment:

Mr. Myers stated that he had only had a brief amount of time to review the proposal before the Public Hearing; however, he took issue with the consensus that the site-specific safety plan is the only workable solution to the federal standard 1926.603(c)(5). He stated that the proposal needed to include safeguards to protect employees.

Response:

The Board accepted Mr. Myers’ comment to the extent that in order to allow Mr. Myers the opportunity to submit his comments in writing, the Chair left the record open until 5:00 p.m. on Friday, June 20, 2003. Prior to the close of the record, written comments were received from Mr. Myers, Local 2375, and Mr. Karinen, Local 34. Responses to these written comments are contained in the summary and response to written comments above.