

Memorandum

To : ALL STANDARDS BOARD MEMBERS

Date : June 3, 2009

From : **Occupational Safety and Health Standards Board**
David Beales, Industrial Relations Counsel III (Specialist)

Subject : **Marine Terminal Operations—Vertical Tandem Lifts**

At the May 21, 2009 Public Hearing, the Occupational Safety and Standards Board (Board) considered revisions to California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 7, Article 14, Section 3466(j)-(l) of the General Industry Safety Orders regarding marine terminal operations—vertical tandem lifts. This standard is substantially the same as the federal standard.

Labor Code Section 142.3(a)(3) exempts the Board from providing a comment period when adopting a standard substantially the same as a federal standard. However, the Board nonetheless provided a comment period for the purpose of identifying issues that fall in the following three categories: (1) any clear and compelling reasons for California to deviate from the federal standards; (2) any issues unique to California related to this proposal which should be addressed in this rulemaking and/or subsequent rulemaking; and (3) comments on the proposed effective date.

No changes were made to the original proposal as a result of public comments.

SUMMARY AND RESPONSES TO WRITTEN AND ORAL COMMENTS

I. Written Comment:

Christine S. Hwang, attorney with Leonard Carder, LLP, representing the International Longshore and Warehouse Union (ILWU), by letter dated May 21, 2009.

Comment:

While the ILWU commends the Board for adopting the federal standard verbatim, thus providing more protection than exists in the absence of a standard, the ILWU recommends that the Board include specific language requiring joint labor and management coordinated training for all California marine terminal workers and longshore workers regarding the safe handling of vertical tandem lifts (VTLs), emergency handling, interbox connector and semi-automatic twistlock and corner casting inspection and maintenance, operation of all vehicles used to transport VTLs, and any particular concerns unique to transporting VTLs. If the personnel most affected by the container operations are inadequately trained in handling these lifts, the consequences for life threatening injury and death are great.

Response:

The Board thanks Ms. Hwang for her comment and for her client's support of this rulemaking. The suggestions she makes, if followed, would require substantial divergence from the wording of the corresponding Federal OSHA standard, and such divergence may not be manifested in a rulemaking undertaken in accordance with Labor Code Section 142.3(a)(3). Therefore, the Board declines to make the suggested changes. However, such changes may be considered as part of a future rulemaking.

II. Oral Comments at the May 21, 2009 Public Hearing:

Brian Watley, President of ILWU Local 29.

Comment No. 1:

Although the ILWU originally sought to ban VTLs, the ILWU ultimately agreed that some regulation is better than none, and the ILWU commends the Board for seeking to adopt the federal rule verbatim.

Response to Comment No. 1:

The Board thanks Mr. Watley for his comment and for the ILWU's support of this rulemaking.

Comment No. 2:

The ILWU nonetheless recommends that the regulation be improved in the areas of inspections and training. The Board should require that twist locks and container corner capsons be inspected carefully and thoroughly before being used in a VTL. The internationally-recognized International Labor Standard (ILO) convention 152 standard should be adopted, as it requires an actual and thorough annual examination of the twist locks for structural integrity and proper function prior to and after use in a VTL operation. The final federal VTL rule requires only a visual inspection and determination that they are sufficiently operational with no apparent corrosion, which represents a weakening of an existing international standard.

Response to Comment No. 2:

The suggestions made, if followed, would require substantial divergence from the wording of the corresponding Federal OSHA standard, and such divergence may not be manifested in a rulemaking undertaken in accordance with Labor Code Section 142.3(a)(3). Therefore, the Board declines to make the suggested changes. However, such changes may be considered as part of a future rulemaking.

Comment No. 3:

California should adopt a rule that ensures that the individuals performing these inspections have the technical knowledge and equipment to conduct more than a superficial visual check for corrosion before allowing the twist locks and corner capsons to be used in a VTL. The federal standard does not go far enough.

Response to Comment No. 3:

Please see the response to Mr. Watley's Comment No. 2.

Comment No. 4:

The federal rule gives too much discretion to employers to set up safe work zones and not enough guidance or direction on training. The ILWU believes that if VTL operations are going to go forward, all maritime workers must be trained regarding the safe handling of VTLs.

Response to Comment No. 4:

Please see the response to Mr. Watley's Comment No. 2.

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Memorandum to All Standards Board Members, provided for the May 21, 2009 Public Hearing regarding this matter.