

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**August 17, 2017**  
**Pasadena, California**

**I. PUBLIC MEETING****A. CALL TO ORDER AND INTRODUCTIONS**

Acting Chair David Harrison called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:01 a.m., August 17, 2017, in the Council Chambers, Room S249 of the Pasadena City Hall, Pasadena, California.

**ATTENDANCE****Board Members Present**

David Harrison  
Chris Laszcz-Davis  
Patty Quinlan  
Barbara Smisko  
Laura Stock

**Board Member Absent**

Dave Thomas

**Board Staff**

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

**Division of Occupational Safety and Health**

Eric Berg, Deputy Chief of Health

**Others Present**

Fionn O'Neill, Can Am Minerals	Jeff Tannenbaum, Nixon Peabody, LLP
Michael Strunk, IUOE Local Union No. 3	Paul Mellon, Strategic Materials
Jay Weir, AT&T	Mark Kolanz, Materion Corp.
Elizabeth Treanor, PRR	Jamie Carlile, SCE
James Mackenzie, SCE	Adam Cohen, AIDS Healthcare Foundation
Michael Musser, CA Teachers Association	Nicole Marquez, Worksafe
Elle Farmer, Unite Here Local 11	Dan Leacox, Leacox & Associates
Kevin Bland, Ogletree Deakins	David Morris, DOSH Elevator Unit
Paul Dimeo, Aquarium of the Pacific	Kevin Graulich, DOSH
	Andrew Solomon, CA Science Center Foundation

B. OPENING COMMENTS

Mr. Harrison 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.

**Paul Mellon, Strategic Materials**, stated that his organization supports the beryllium proposal that is scheduled for a vote today. He said that this proposal will protect workers in California, and other states will follow suit with similar rules. He said that slag companies are spending lots of money to force federal OSHA to reopen the beryllium rule and remove the part of the rule that requires employers to notify employees about what is in the chemicals that they are using at work, what beryllium is, and help them to understand that they have the option of getting medical testing if they are exposed to beryllium. He stated that the proposal will keep these protections in place, and by adopting this proposal, California will send a clear message to federal OSHA that the federal standard should not be changed.

**Mark Kolanz, Materion**, stated that his organization and the United Steel Workers (USW) came together in 2012 and put together a model proposal for beryllium which they presented to federal OSHA. He said that federal OSHA revised this proposal, and his organization is surprised at how many changes federal OSHA made between the original proposal and the proposal that is before the Board today for adoption. He stated that federal OSHA added many things that were not in the original proposal, and his organization is very surprised that maritime in construction was added. He said that both his organization and USW have voiced their concerns about these changes to federal OSHA, and federal OSHA has acknowledged that it needs to open select parts of the general industry portion of the standard so that these issues can be fixed. He stated that federal OSHA feels it can fix these issues with simple compliance directives or letters of interpretation, and significant changes are in progress for all sectors covered by the beryllium rule. He said that as a result of this, the revised federal standard will be significantly different from the proposal that is before the Board for adoption today. He asked the Board to postpone the adoption of the beryllium proposal until federal OSHA completes its work on the federal level.

**Jeff Tannenbaum, Nixon Peabody, representing Can Am Minerals, Kleen Blast, and Abrasive Blasting Materials Alliance (ABMA)**, stated that at this time, it would be most appropriate to delay taking action on the beryllium proposal, and to wait and see what happens at the federal level. He said that not taking action today will not put workers at risk for exposure to beryllium because California's current beryllium standard is more effective than the federal OSHA rule. He stated that the PEL in the current California standard is at least as effective as the PEL in the federal standard, and although the California standard does not have a STEL, it does have a ceiling limit that is at least as effective as the STEL in the federal standard. He also said that federal OSHA recognized some errors that it made when it promulgated the January 9 rule, including:

- Workers in construction and shipyard industries are already effectively protected from beryllium exposure by numerous other standards.
- After further reviewing the exposure data, federal OSHA found that worker exposures to beryllium are already typically below the proposed PEL and STEL.

- Federal OSHA originally determined that there was insufficient evidence to indicate that it is necessary to proceed with a construction and shipyard rule, and it has not received additional evidence to justify the need to proceed.

**Ms. Quinlan** stated that the California abrasive blasting standards are not specific to beryllium. **Mr. Tannenbaum** stated that the California abrasive blasting standards are broader than that. He said that it is not safe to engage in abrasive blasting without using personal protective equipment and engineering controls. He stated that abrasive blasters wear full protective gear to protect them from exposure to beryllium and other substances that may be present during abrasive blasting, and as a result, there is no history of adverse effects or illness from beryllium exposure.

**Ms. Laszcz-Davis** stated that the Department of Energy has a broad-based medical surveillance program to gauge beryllium sensitivity because it may take years to profile the disease. She asked Mr. Tannenbaum if any medical surveillance is being conducted in the sectors to gauge beryllium sensitivity. **Mr. Tannenbaum** stated that there have been several studies, but they are limited in scope. He said that a few years ago, NIOSH recommended that a broader study be done before proceeding further with rulemaking, but the broader study never happened.

**Ms. Quinlan** stated that she works with physicians at UCSF who have done a lot of research and science on beryllium and who are part of the Department of Energy's medical surveillance program that is researching beryllium sensitivity. She said that in their study, beryllium exposure and sensitivity has been found in people with very minimal exposure, such as office workers at the labs. She stated that the medical surveillance program that is outlined in the beryllium standard that is scheduled for a vote today is very necessary, and not adopting this proposal will leave workers unprotected. **Mr. Tannenbaum** stated that the studies Ms. Quinlan referenced may pertain to exposure to beryllium alloys, not the mineral form of beryllium. He said that the proposal goes way beyond seeking additional medical surveillance. He stated that his organization is not opposed to additional studies being done, but they do not feel that California needs to do that in order to be at least as effective as the federal standard.

**Elizabeth Treanor, Phylmar Regulatory Roundtable**, stated that it is appropriate for the Board to not take action on the beryllium proposal today, and to wait and see what happens with it at the federal level. She said that when the January 9 federal OSHA standard was proposed in 2015, it only covered general industry, and folks associated with general industry were given the opportunity to comment on it. However, when the final rule was promulgated, it covered the construction and shipyard industries as well, but folks associated with those industries were never given the opportunity to comment on it before the final rule was promulgated. She stated that this is an unprecedented move by federal OSHA, and federal OSHA issued a notice in July that is finally giving folks in the construction and shipyard industries an opportunity to comment on federal OSHA's proposal. She also said that if federal OSHA chooses to address issues regarding the rule with a compliance directive, this will present a problem for California because California cannot enforce compliance directives.

**Kevin Bland, representing the Western Steel Council**, stated that his organization echoes the comments that were made by Ms. Treanor and Mr. Tannenbaum regarding the beryllium proposal.

**Fionn O'Neill, Kleen Blast Abrasives**, stated that all blasting materials, as well as objects that are blasted and job sites where blasting is done, contain trace amount of beryllium. He said that there are no known cases of beryllium illness in the blasting and maritime industries. He stated that blasters wear full protective suits with supplied air, so if the Board chooses not to adopt the beryllium proposal today, workers will continue to be protected. He said that if this proposal is adopted, it will increase the cost of monitoring and compliance for the contractor, it will hurt small businesses by precluding them from working on projects, and it will result in the loss of skilled labor in California.

**Tim Spurgeon, Can Am Minerals**, stated that only a handful of shipyards remain in California due to California's regulations making them unable to compete with shipyards in other states. He said that if the Board decides to adopt the beryllium proposal today, it could be the end of ship repair work in California due to the expense required for doing the total decontamination of the facility that is required in the proposal. He stated that the parts of the proposal pertaining to maritime and construction are poorly written and would require any vehicle that leaves a shipyard to be decontaminated. He also said that it will wipe out ship repair jobs in California. He stated that workers are already protected from beryllium exposure, so it is best to wait and see what happens on the federal level, especially when it comes to the parts of the standard that apply to maritime and construction, before proceeding.

**Nicole Marquez, Worksafe**, stated that her organization and the AFL/CIO would like the Board to adopt the beryllium proposal that is scheduled for a vote today. In addition to her organization and the AFL/CIO, she said that there are many other groups who support the beryllium proposal that was promulgated by federal OSHA on January 9 and is now before the Board for adoption today. She stated that there is no safe level of exposure to beryllium, which makes the requirements in the proposal for specific and comprehensive exposure controls very urgent, especially for shipyard and construction workers. She said that federal OSHA noticed the proposal, and interested parties were given time to comment before the January 9 rule was promulgated, and using the Horcher process to adopt all 3 standards is appropriate in this case. She stated that if the Horcher is not adopted today, worker's rights will be rolled back. She also said that if the Board adopts the Horcher today, other states will follow suit, and California will be a model for the nation. She also read a letter into the record from the AFL/CIO. The letter stated that the PEL in the Horcher proposal is feasible, and the proposal contains ancillary provisions that are necessary to reduce the health risks further that the PEL alone cannot achieve. The letter said that the proposal requires employers to do exposure assessments that include monitoring the actual level of beryllium exposure to ensure that worker exposure is below the PEL and that personal protective equipment protects workers from exposure. The letter stated that the provisions regarding medical surveillance will help ensure early detection of beryllium-related diseases and will help employers find areas where improved controls are needed. The letter also said that other necessary provisions in the proposal include other methods for controlling exposure, housekeeping measures, hazard communication, and record keeping. The letter stated that federal OSHA is now trying to roll back the important provisions that it had in the January 9 standard, including those regarding medical surveillance and exposure monitoring, which would put construction and maritime workers at risk for beryllium exposure, and would put them on a two-tier system of protection. **Alice Berliner, Southern California Coalition on Occupational Safety and Health**, echoed Ms. Marquez's comments and those mentioned in the AFL/CIO letter that Ms. Marquez read into the record.

**Alice Berliner, Southern California Coalition on Occupational Safety and Health**, stated that beryllium is a dangerous substance, and most workers are unaware of the safety and health impacts of it. She said that the beryllium proposal that is scheduled for a vote today is a good one with strong requirements that will protect workers. She stated that limiting the scope of the beryllium proposal will disempower and hurt working people. She urged the Board to adopt the proposal. She also read a letter into the record from the National Employment Law Project asking the Board to adopt the proposal.

**Elle Farmer, Unite Here Local 11**, stated that the hotel housekeeping proposal must remain as written because it will significantly reduce the number of hotel housekeeper injuries on the job. He asked that the Division make no changes to the proposal that could weaken it. He said that the language in Section 4(D) regarding reviewing and updating the worksite evaluation should remain intact. He stated that it is important to review and update worksite evaluations when renovations are made to the hotel because those renovations can cause changes in the housekeeper's workload. He also said that the language in Section 4(B) regarding involvement of hotel housekeepers and their union representatives in designing and conducting worksite evaluations should also be preserved. He stated that reducing the frequency of worksite evaluations will reduce the amount of protection that this proposal can provide for housekeepers, and if worksite evaluations take place less often, it will reduce hotel housekeeper involvement. He said that hotel housekeepers are experts at their jobs, so they should be involved. **Guadalajara, Hotel Housekeeper**, echoed this comment. Mr. Farmer asked the Division to move the hotel housekeeping proposal forward so that it can be voted on by the Board by November 2017, and he asked the Board to add an item to its monthly agenda to provide an update on the progress of the hotel housekeeping proposal. **Rachel Smith, Unite Here Local 11, and Nicole Marquez, Worksafe**, echoed Mr. Farmer's comments.

**Adam Cohen, AIDS Healthcare Foundation**, stated that the current law requires adult film performers to wear condoms while working in adult film production. He said that it also considers adult film performers to be employees. He stated that his organization appreciates the Division's consistency in advocating for efforts to clarify and enforce the existing bloodborne pathogen protection standard in the adult film industry, and his organization is looking forward to continuing working with the Division to protect adult film workers from sexually transmitted infections.

**Siouxie Q James, Free Speech Coalition**, stated that some adult film performers are independent contractors, and the industry's testing protocols are very effective from a public standpoint. She said that her organization hopes to continue doing meaningful outreach and education with the Division, including putting information about the industry's testing protocols front and center for the public to see, that is without stigma, shame, or ignorance.

C. ADJOURNMENT

Mr. Harrison adjourned the public meeting at 11:15 a.m.

Mr. Harrison called for a break at 11:15 a.m. and reconvened the meeting at 11:25 a.m.

## II. PUBLIC HEARING

Mr. Harrison called the Public Hearing of the Board to order at 11:15 a.m., August 17, 2017, in the Council Chambers, Room S249 of the Pasadena City Hall, Pasadena, California.

Mr. Harrison opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS SAFETY ORDERS**  
                                 Sections 6052, 6056, 6056.1 (New), 6057, 6060, and 6062  
                                 **Commercial Diving Operations (HORCHER)**

Mr. Manieri summarized the history and purpose of the proposal, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

**Paul Dimeo, Aquarium of the Pacific, Association of Dive Program Administrators and Association of California Zoos and Aquariums**, stated that California diving regulations are different than the federal regulations, but they are not any less effective or safe. He said that if a review of lost time accidents is done for commercial diving in California, it will show an exemplary record of safety. He stated that the vast majority of dives are conducted using scuba and hookah diving. He said that the film and TV production industries use scuba, hookah, and re-breathers for underwater photography and videography operations. They follow the current California diving regulations and have an exemplary safety record as well. He stated that, as required by Labor Code Section 142.3, the current California diving regulations are at least as effective as the federal regulations and are unique in many ways, the most important of which being how it defines particular tasks that divers conduct underwater. He said that this is not the same as the federal standard because the federal standard does not go to the same degree that the California standard does. He stated that the California standard is very progressive in nature, and the use of these definitions should be considered when revising the regulations because, as they are currently written and approved, they will give the Board the opportunity to take into consideration the entire occupational diving industry, not just commercial dive companies and the ADCI. He said that the current California diving regulations include Article 153 titled "Commercial Diving Operations", which is written specifically to provide additional safety standards for when divers are working under conditions that the state defines as commercial diving. Many of the proposed regulations that federal OSHA is talking about can be included in this article. He stated that having non-commercial diving industries, such as zoos and aquariums, many of which are non-profit, comply with the federal standard will fundamentally change how they operate, will create a significant increase in costs for them, and will make their diving operations less safe in the following ways:

- Section 6056(a)(2) removes the option of having an in-water standby diver, leaving only a top-side standby diver. In zoo and aquarium operations, the safest standby diver option is to have an in-water standby diver. The average depth of an aquarium exhibit is less than 20 feet, and the water is crystal clear, but training and rescue drills show that the response times to a scuba diver in trouble in an exhibit is vastly decreased if the in-water standby

diver is replaced with a standby diver that is on the surface. Using an in-water standby diver reduces the response time from minutes to seconds. He asked the Board to consider putting in an exemption to this requirement for technical diving if the Board decides to adopt this proposal.

- Section 6057(b)(4) will require divers to carry 3 separate scuba tanks (the primary air source, the secondary air source, and an additional air source for buoyancy compensation) on every dive, even in shallow exhibits. This will make diving operations at zoos and aquariums less safe by tripling the failure points of the gas system and increasing the weight that the diver has to carry. This proposal is identifying a problem that does not exist in zoo and aquarium diving, which is the diver running out of gas. He asked the Board to consider putting in an exemption to this requirement for technical diving if the Board decides to adopt this proposal.
- Section 6057(b)(4) also requires buoyancy devices to have a manually-activated inflation source that is independent of the breathing supply. Once again, this proposal is identifying a problem that does not exist in zoo and aquarium diving, which is the diver running out of gas. Manually-activated inflation sources used to be CO<sub>2</sub> cartridges that would fail constantly. They are no longer part of any manufactured buoyancy compensator, the CO<sub>2</sub> cartridges are no longer readily available, they are not recyclable, and they will end up in landfills and the ocean. Furthermore, many divers have never been trained on how to use them because they are outdated. He asked the Board to consider putting in an exemption to this requirement for technical diving if the Board decides to adopt this proposal.

Mr. Dimeo stated that by putting in exemptions for technical diving, industries outside the clearly defined scope of commercial diving will be able to continue operating as they have been with their exemplary safety records without causing them financial hardship or creating unsafe conditions where none previously existed. He also asked the Board to add zoos and aquariums to the definition of “technical diving” if the Board decides to adopt this proposal and to put in an exemption for technical diving. He said that California has a more effective standard for commercial diving operations, and institutions around the country use the California commercial diving standard because it is safe and has a relatively straightforward implementation process.

A. ADJOURNMENT

Mr. Harrison adjourned the Public Hearing at 11:43 a.m.

**III. BUSINESS MEETING**

Mr. Harrison called the Business Meeting of the Board to order at 11:43 a.m., August 17, 2017, in the Council Chambers, Room S249 of the Pasadena City Hall, San Diego, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: CONSTRUCTION, GENERAL INDUSTRY, AND SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS

New Sections 1535.1, 5205, 8359.1, and existing Section 5155  
**Occupational Exposure to Beryllium (HORCHER)**

Mr. Kernazitskas 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 Ms. Stock and seconded by Ms. Quinlan that the Board adopt the proposal.

**Ms. Stock** urged the other Board Members to vote "aye" on this proposal. She said that it is very straightforward and the Horcher process is the right way to do it. She also stated that if federal OSHA makes any changes to the standard, it could take months or years to do so, and the Board can address those changes as needed at that time.

**Ms. Laszcz-Davis** stated that she will vote "aye" on this proposal, but in the future, she feels that there should be further deliberation on these kinds of issues. She said that this issue gives her pause because by adopting this proposal, the Board is bypassing an honored process.

**Ms. Quinlan** stated that the Board should adopt the proposal as is, with all 3 parts in it. She said that the process on the federal level could take years to sort out, and although California already has a very effective PEL, the other provisions from this proposal need to be put into place. She said that if federal OSHA makes any changes, the Board can revisit this regulation and make necessary changes at that time.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that a revised decision for item L on the consent calendar, OSHSB File No. 16-V-301M2, was issued on August 14 to correct a clerical error. He said that he is aware of no unresolved legal issues regarding items A-T on the consent calendar, including item L, and he believes that these items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Ms. Quinlan and seconded by Ms. Stock to adopt the consent calendar.

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



C. OTHER

1. Division Update on Rulemakings and Advisory Committees

Mr. Berg stated that the Division Update is also posted on the Division's website for public viewing at any time. In addition to the written update that the Division provided in the Board packet, Mr. Berg provided the following updates:

Antineoplastic Drugs: The Division has finished preparing the draft rulemaking documents and is working with the Director's office to finalize them before submitting them to the Board staff.

First Aid Kits: The rulemaking package went to the Board staff for review and then returned to the Director's office. The Division is working with the Director's office to finalize the documents before the package goes to rulemaking.

Hotel Housekeeping: The Division has been reviewing and responding to comments and recently received a copy of the oral comments that were made during the May 18 public hearing. Once the Division has reviewed and responded to comments, it will let the Board know what the next steps will be.

Indoor Heat: The Division has held 2 advisory committee meetings regarding this and is taking the feedback received into account. The Division plans to publish a third draft of the proposal on its website in the next month or so, and then hold another advisory committee to discuss the changes that were made.

Lead in Construction and General Industry: The Division is preparing the significant regulatory impact analysis (SRIA) for this, and preparing a SRIA is a long process. This process is being contracted out to UC Berkeley, who is the same contractor for the SRIA's for residential fall protection and firefighter personal protective equipment. A SRIA is required to be completed when the economic impact of a rulemaking is estimated to exceed \$50 million, and it must have approval from the Department of Finance as well.

Medical Marijuana: The Division completed the advisory committee process and provided its recommendations to the Board at a previous meeting. There is no need to move forward with rulemaking regarding this at this time.

Recreational Marijuana: The Division is planning to hold an advisory committee to determine if rulemaking is necessary.

Permissible Exposure Limits:

- Tetrabromomethane, n-Propanol, Cyclohexane, and Trimelitic Anhydride: The Division is preparing a rulemaking proposal to submit to the Board for these substances.
- Trichloroethylene: The Division is still working on this proposal with the Board staff. **Ms. Hart** stated that the Board staff has returned its comments to the Division on this proposal, and the Division is gathering its documents relied upon and responding to

comments to finalize the necessary documents. **Mr. Berg** stated that this proposal should be coming before the Board for public hearing shortly.

- Wood Dust: This proposal is done and has become effective already.
- Benzyl Chloride: This proposal is scheduled for public hearing at the Board meeting next month.

Process Safety Management: This proposal has been approved and will go into effect on October 1.

Sexually Transmitted Infections: The Division is providing education and outreach to the adult film community regarding the requirements of Section 5193 and does not plan to do any rulemaking on this issue at this time.

Workplace Violence Prevention in General Industry: The Division is working on the draft version of the text for this proposal. When that is complete, the text will be published on the Division's website, and an advisory committee will be held to discuss it.

## 2. Legislative Update

Mr. Healy provided updates on the following bills:

- AB 402 pertains to medical plume. This bill has been referred out of the Senate Labor and Industrial Relations Committee and has gone to the Senate Appropriations Committee. It is now in the suspense file.
- AB 978 pertains to employees' right to access their workplace's injury and illness prevention program upon request. This bill has passed the Senate Appropriations Committee, has had its second reading, and has been ordered to have its third reading.
- SB 258 requires manufacturers of designated cleaning products to disclose information about the chemicals contained in those products on product labels and product-specific internet sites. This bill has advanced to the Senate, has passed out of both the Environmental Safety and Toxic Materials Committee and the Labor and Employment Committee, and is now with the Appropriations Committee.
- SB 772 exempts any occupational safety and health standard and order from the standardized regulatory impact analysis (SRIA) requirement of the Administrative Procedures Act that has the \$50 million threshold for extensive economic analysis. This bill has advanced out of the Senate Appropriations Committee, passed its second reading, and has been ordered to have its third reading.

## 3. Executive Officer's Report

Ms. Hart stated that she had nothing to report.

## 4. Future Agenda Items

**Ms. Stock** asked Mr. Berg to provide a more detailed update on the progress of the hotel housekeeping proposal at next month's meeting, as well as further details about the process that it will need to go through before it can come before the Board for a vote.

D. ADJOURNMENT

Mr. Harrison adjourned the Business Meeting at 12:05 p.m.