

**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
February 16, 2017
Walnut Creek, California

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

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:03 a.m., February 16, 2017, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

ATTENDANCE**Board Members Present**

Dave Thomas
Chris Laszcz-Davis
Patty Quinlan
Barbara Smisko

Board Member Absent

David Harrison
Laura Stock

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

Jamie Carlile, SCE
Jay Weir, AT&T
Michael Musser, CA Teachers Association
John Swartos, Aerotek
Kevin Bland, Ogletree Deakins
John Egoavil, Aerotek
Marti Fisher, CalChamber
Ken Clark, BB&T
Nicole Marquez, Worksafe
Stan Stubbs, Keenan Loss Control
Steve Johnson, Alliance Roofing Co.

James Mackenzie, SCE
Larry Davenport, CalTrans
Daniel O'Connell, SAFETRAN, LLC
Bruce Wick, CALPASC
Jonathan Johnson, UAL
Larry Wong, UC Office of President
Dan Leacox, Leacox & Associates
Eric Paul Leue, FSC
Suzanne Marria, AIDS Healthcare
Foundation
Elizabeth Treanor, PRR

Mr. Thomas introduced the Board's newest member, Chris Laszcz-Davis, and administered the Oath of Office.

B. OPENING COMMENTS

Mr. Thomas 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.

The following individuals expressed their condolences regarding the passing of Amy Martin, Division Special Counsel:

- **Kevin Bland**
- **Nicole Marquez, Worksafe**
- **Bruce Wick, CALPASC**
- **Ella Darling, APAC**
- **Eric Leue, Free Speech Coalition**
- **Suzanne Marria, AIDS Healthcare Foundation**
- **Elizabeth Treanor, Phylmar Regulatory Roundtable**

Candy, Unite Here Local 2 San Francisco, stated that hotel housekeepers do physically demanding work every day, and many are not given the tools that they need to do their jobs safely. She said that they also do not feel comfortable reporting injuries or unsafe working conditions to hotel management. She stated that many of them are injured when they lift heavy mattresses to make beds, when they strain to reach high shower walls, and when they get down on their hands and knees to scrub the bathroom floors. She said that they also get injured when pushing and pulling the housekeeping carts. She stated that carts are very difficult to push on carpeted floors, especially when they are full of towels, linens, and amenities, and the wheels on them are not maintained. She said that these injuries can leave housekeepers out of work and unable to provide for their families, but they can be prevented. She stated that it has been 5 years since Unite Here filed its petition to address this. She asked the Division to issue a public hearing notice by April 2017 for the hotel housekeeping proposal so that a public hearing can be held before June 2017.

Nicole Marquez, Worksafe, stated that this is a very crucial time where protections for hotel housekeepers, such as the ones in the hotel housekeeping proposal, are needed. She said that many hotel housekeepers are women, immigrants, and people of color, and this proposal will provide them with a safe and healthy workplace. She urged the Director to move quickly on this proposal so that it can progress to the next stage.

Ms. Marquez also commented on the proposal regarding wood dust and western red cedar that is scheduled for adoption during the business meeting. She said that her organization prefers the permissible exposure limit (PEL) of 1 mg/m³ that was mentioned in the original proposal, but they also support the new proposed PEL of 2 mg/m³ because it is a significant improvement from the current PEL of 5 mg/m³. She said that this PEL will increase the use of engineering controls to meet the standard, rather than over-relying on respirators as a control

mechanism. She stated that her organization also supports the PEL of 0.5 mg/m³, for western red cedar because it will preserve the health and safety of all workers.

Francisca Carranza, Unite Here Local 2850 Oakland, asked the Division to move the hotel housekeeping proposal forward. She said that each day that passes without this regulation in place, more hotel housekeepers get injured and are working without the necessary protections in place that could prevent those injuries.

Ms. Hart stated that the hotel housekeeping proposal package has been sent to the Director's office, it has been signed by the Director, and by the end of this week, the Director's office should be sending it to the Labor and Workforce Development Agency (LWDA) for the agency's signature. She said that depending on how long it takes for LWDA to sign off on it, it is possible that a public hearing could be held before June.

Dan Leacox, Leacox & Associates, representing the American Wood Council, stated that his organization supports the proposed permissible exposure limit (PEL) of 2 mg/m³ as listed in the proposal for wood dust and western red cedar. He said that his organization feels that the extent of feasibility is more around 2.5 mg/m³, and that there is really no justifiable reason for having a PEL of less than 5 mg/m³, but 2 mg/m³ is middle ground that they can support. He asked the Board to vote "aye" on this proposal.

Bruce Wick, CALPASC, stated the construction coalition for silica is working on getting data from manufacturers, and he hopes to give that information to the Board at next month's meeting. He also stated that his organization supports the PEL 2 mg/m³ that is listed in the proposal for wood dust and western red cedar. He said that his organization feels that it will protect workers without going over a feasibility level where compliant employers will be at a disadvantage against noncompliant employers in the competitive marketplace.

Marti Fisher, CalChamber, welcomed Ms. Laszcz-Davis to the Board. She also stated that her organization is in support of the new proposed PEL for wood dust and western red cedar, and she urged the Board to vote "aye". **Kevin Bland, representing the CA Framing Contractors Association and the Residential Contractors Association**, echoed Ms. Fisher's comments.

Eric Leue, Free Speech Coalition, stated that the advisory committee on January 31 for petition 557 and 560 went well. He said that his organization would like to see another advisory committee held in southern California so that more adult film performers can attend. He submitted a letter with some recommendations for the Division to consider [Please see the file copy of the Board packet to view this document]. He said that the letter recommends that the Division hold some whiteboard sessions to discuss some of the unique issues that the adult film industry faces, including how employee-employer-contractor relationships work, and how vaccinations and work schedules work.

Ella Darling, Adult Performer Advocacy Committee (APAC), welcomed Ms. Laszcz-Davis to the Board. She also asked for a second advisory committee to be held in southern California regarding petitions 557 and 560. She said that her organization opposes petition 557 and supports 560. She stated that the AHF does not feel that performer's voices matter. She said that APAC is willing to work with the Division and Board staff to put together official survey data about the adult film industry to answer any questions that the Division and

Board staff have about the adult film industry.

Suzanne Marria, AIDS Healthcare Foundation, welcomed Ms. Laszcz-Davis to the Board. She said that the advisory committee meeting regarding petitions 557 and 560 was productive and positive. She said that the CDC and other major health organizations agree that when pre-exposure prophylaxis (PREP) is used to prevent sexually transmitted diseases (STD's) in the adult film industry, condoms and testing must also be used in conjunction with it. She stated that 1 in 4 adult film performers have been infected with chlamydia, despite being tested on a regular basis. She said that her organization supports amending the current bloodborne pathogen protection standard in Section 5193 or the proposed Section 5193.1 as long as amendments are made to the text to address things that were not sufficiently addressed when the text was first issued, such as testing for extra-genital infections, which can detect oral and rectal gonorrhea. She stated that her organization is willing to participate in a second advisory committee as long as it is structured in such a way that will lead to regulatory language being developed that can be adopted to address the needs of performers, provide proper protection for them, require medical testing to be paid for by employers, and confidentiality protections.

Kevin Bland, representing the Free Speech Coalition (FSC), stated that he does not like having to re-litigate issues every month regarding bloodborne pathogen protection in the adult film industry. He said that many of these items should be discussed in the advisory committee. He stated that adult film performers come before the Board every month because they are the stakeholders who will be directly affected by the regulation. He stated that his organization is embracing the advisory committee process, and he hopes that the advisory committee process will continue on the right track so that a regulation can be developed that will be safe for performers.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:20 a.m.

II. PUBLIC HEARING

Mr. Thomas called the Public Hearing of the Board to order at 10:40 a.m., February 16, 2017, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

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

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Section 1637(n) Access
 **Use of Hook-On and Attachable Ladders with Scaffolds and Rest
 Platforms (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.

There were no public or Board Member comments.

Mr. Thomas then introduced the next item noticed for Public Hearing:

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 3220(b). Elements
Emergency Action Plan (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.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that her organization supports this proposal because it makes sense. She said that procedures that are developed are always different for emergency medical services and rescue services, so this proposal is appropriate for clarity and represents an improvement in the standard.

Bruce Wick, CALPASC, stated that this proposal is reasonable and has good definition. He also stated that as this proposal moves forward through the process, it is a good time for the Division to remind employers of the importance of having a well-thought-out emergency action plan.

A. ADJOURNMENT

Mr. Thomas adjourned the public hearing at 10:50 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:50 a.m., February 16, 2017, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 4306
Underhung/Slung (Jump) Saw Guarding

Mr. Manieri 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. Quinlan and seconded by Ms. Smisko that the Board adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Section 5155
 Airborne Contaminants – Wood Dust and Western Red Cedar

Mr. Berg 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. Quinlan and seconded by Ms. Smisko that the Board adopt the proposal.

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

Ms. Smisko thanked the Division for taking the proposal back and revising the PEL to 2 mg/m³. She said that the process for determining feasibility, as well as the burden of proof, still needs to be further clarified.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that item A on the consent calendar is ready for consideration, and possible adoption, by the Board.

MOTION

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

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

C. OTHER

1. Executive Officer's Report

Ms. Hart stated that there will be an item on next month's business meeting agenda for the Board to further discuss the proposal for silica. She said that an advisory committee was convened on December 14, 2016, as the Board requested, and at that advisory committee, there were diverse opinions, but there was no consensus on the original proposal from the coalition. She stated that stakeholders suggested developing new exceptions using language from the federal preamble that discusses certain tasks which are not expected to create silica dust in excess of the action level. They also suggested requirements for allowing vacuum tools to be added to Table 1 and further discussion of dust controls for cutting on steep roofs. She stated that the Board staff developed a new proposal for a subcommittee to review, and although the responses diverged along the lines of the coalition and labor, everyone agreed that wet methods should not be required to be used

on steep slope roofs, and further discussion on this may be warranted. She said that the Board staff had a discussion in January with federal OSHA, and during that discussion, federal OSHA expressed concerns about having any exceptions for dust controls on rooftops that could lead to an employee being exposed to silica dust levels in excess of the PEL. She stated that further direction from the Board is needed on this, since this was a Board-directed advisory committee, and there are 3 possible courses of action to consider:

1. Discontinue the current rulemaking effort and refer employers to federal OSHA's small entity compliance guide so that they can more easily comply with the standard.
2. Move forward with the current rulemaking effort and put as much information about vacuum controls and exceptions into the regulation as possible.
3. Continue the subcommittee discussion to specifically address the controls and respirator requirements necessary for employees to safely cut tiles on steep roofs.

She said that the minutes from the advisory committee and subcommittee will be available shortly.

Ms. Hart stated that the Board staff has hired Jennifer White to fill the position that was left vacant by Michele Quinonez at the end of 2016.

2. Future Agenda Items

No future agenda items were suggested.

A moment of silence was held in remembrance of Amy Martin, Division Special Counsel.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:08 p.m.