

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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SUMMARY PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING November 17, 2016 Costa Mesa, 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 10:00 a.m., November 17, 2016, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

ATTENDANCE

Board Members Present

Dave Thomas
David Harrison
Patty Quinlan
Barbara Smisko
Laura Stock

Board Member Absent

Board Staff

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

Division of Occupational Safety and Health

Kevin Graulich, Senior Safety Engineer,
Research and Standards and
Occupational Health Unit

Others Present

Michael Musser, CA Teachers Association	Cesar De la Cruz, Unite Here
Larry Wong, UC Office of the President	Richard Negri, SoCalCOSH
Jaime Gomez-Cook, Unite Here Local 11	Lizette Cruz, Unite Here Local 11
Clementine Sanchez, Unite Here Local 11	Jay Weir, AT&T
David Morris, DOSH Elevator Unit	Mark Wickens, DOSH Elevator Unit
Lorena Lopez Masoumi, Unite Here	Liwen Bazaan, Great Fan
Miguel Bazan, Great Fan	Michael Bazan, Great Fan
Rachele Smith, Unite Here Local 11	Tom Swanson, SoCalCOSH
James Mackenzie, Southern CA Edison	Hal Lindsey, Diversified Utility Services
AJ Reid, US DOL-OSHA	Veruca James, Adult Performer Advocacy Committee
Marbella De Dics, Unite Here Local 11	Verta, Adult Performer Advocacy Committee
Jessica Drake, FSC, APAC, Wicked Pictures	

Lorena Palacios, Unite Here Local 11
Soledad Garcia, Unite Here Local 11
Argelia Rico, Unite Here Local 11

Nereyda Soto, Unite Here Local 11
Monica Martinez, Unite Here Local 11
Isabel Barrera, Unite Here Local 11

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.

Michael and Miguel Bazan, Great Fan, provided the Board with a written summary of the air sampling inside porta potties that the Board requested when Miguel petitioned the Board last year regarding requiring the use of fans to circulate air inside porta potties. Michael stated that the results from the air sample show that when the Great Fan is used for 15 minutes inside of a porta potty, the humidity inside the porta potty is reduced by 5%, the carbon dioxide inside the porta potty is reduced by over 150 part per million, and the particles in the air of a 60 cubic foot porta potty are reduced by over 150,000 molecules in ½ cubic foot of air inside the porta potty. He said that there are health risks inside porta potties that must be addressed, and the Great Fan can help diminish the risks. Miguel said that both of the Great Fan models run on solar power, with one model that operates only when there is motion inside the porta potty, and one model that remains on constantly. Michael stated that a threshold limit value needs to be set for porta potties in order to lower health risks to workers. Miguel stated that the regulations currently require regular bathrooms to have fans in them, but porta potties are not required to have fans.

Michael Musser, CA Teachers Association, thanked the Board and Division staff for their work on the proposal regarding workplace violence prevention in healthcare. He said that his organization is looking forward to beginning the process to develop a regulation to address workplace violence prevention in general industry. He stated that he has staff available to work with him on this, and these staff members are eager to attend the advisory committee meeting in January to give their testimony on workplace violence in education.

Richard Negri, Southern CA Coalition for Occupational Safety and Health, thanked the Board and Division staff for its work regarding the proposal for workplace violence prevention that was adopted by the Board last month. He said that his organization is in support of developing a proposal to address workplace violence prevention in all industries, as well as a proposal to protect adult film performers from bloodborne pathogens. His organization would also like to know when the Secretary's Office Action Request will be done for the hotel housekeeping proposal. He said that his organization would like to see a public hearing notice issued regarding the hotel housekeeping proposal before the end of 2016.

Soledad Garcia, Unite Here Local 11 Orange County, stated that she has worked as a housekeeper, and it is very physically demanding work. She said that many housekeepers get injured when they lift heavy mattresses to make the beds, push heavy carts, and strain to reach high portions of shower walls and doors. She stated that many of them are not getting the tools that they need to do the job safely, and the serious injuries that occur as a result can leave

housekeepers disabled and unable to financially provide for their families. These injuries can be prevented. She asked the Division and Board staff to issue a public hearing notice for the hotel housekeeping proposal before the end of 2016 so that the public hearing can take place in early 2017. **Rachele Smith, Unite Here Local 11 Orange County**, echoed Ms. Garcia's last comment.

Lorena Lopez Masoumi, Unite Here, stated that the hotel housekeeping proposal is urgently needed to protect the health and well-being of housekeepers. She said that the injuries that hotel housekeepers experience on the job can be so painful that they affect the housekeeper's ability to do other tasks in their daily life, such as cooking, holding a coffee cup, or picking up their children. She stated that even though housekeepers continue to get injured, hotel management does not provide them with the tools that they need to do their jobs safely. She also said that many hotel housekeepers are immigrants and women of color. She stated that her organization would like to know when the Secretary's Office Action Request is prepared for the hotel housekeeping proposal, and they would like the Division and Board staff to issue a public hearing notice for the hotel housekeeping proposal before the end of 2016 so that the public hearing can take place in February 2017.

Adam Cohen, AIDS Healthcare Foundation (AHF), stated that the law requires adult film performers to wear condoms while performing. He said that it is very important that the process to amend the bloodborne pathogen protection standard comes to a logical conclusion, and not just one that fits the business model of the adult film industry. He stated that adult film industry representatives keep telling the public that the current bloodborne pathogen protection standard does not apply to the adult film industry, and the January 31, 2017 advisory committee is an opportunity for them to negotiate with the Division against the use of condoms. He said that the industry continues to put their profits over performers' safety by not using condoms because condoms hurt their bottom line. He stated that the industry's voluntary testing scheme is not equivalent to the primary prevention provided by condoms, and testing alone is not sufficient to prevent the transmission of sexually transmitted infections (STI's).

Mark McGrath, AHF, stated that his organization is looking forward to the January 31, 2017 advisory committee meeting with stakeholders to develop a standard to address bloodborne pathogen protection in the adult film industry. He said that no matter what standard the advisory committee comes up with, it must be equivalent to the federal bloodborne pathogen protection standard and should include universal precautions and engineering control practices. He stated that it should include proper medical monitoring as it is outlined in the Labor Code. He said that current medical monitoring is not adequate and should include the following:

- Tests for bloodborne pathogens, such as HIV antibodies
- Measures for acute HIV infection and viral hepatitis
- Appropriate screening for non-bloodborne pathogens, such as chlamydia and gonorrhea

He stated that employers should also be required to pay for vaccinations against hepatitis A and B, as well as the full series of vaccinations for HPV. He said that having more meetings

will give more stakeholders a chance to have their voices heard, and he encouraged the Division to hold an additional advisory committee meeting in southern California.

Verta, Adult Performer Advocacy Committee (APAC), asked the Division to allow adult film performers to be a direct part of helping to develop regulations that affect the adult film industry. She said that adult film performers know what the industry needs to protect itself. She also asked the Division to consider holding a second advisory committee in southern California, in addition to the advisory committee meeting that will be held in Oakland in January, so that they can participate in the advisory committee process.

Veruca James, Adult Film Performer, stated that while she was on the board of APAC, she helped develop and implement the 14-day testing protocol and the moratorium protocol that is implemented to protect performers when an STD transmission occurs on set. She said that when new protocols come out that keep adult film workers safe, performers want them and will stand up to producers in order to protect themselves. She stated that condom-only protection for adult film performers is outdated, and there are many new technologies that should be considered, in addition to testing. She asked the Board to consider Petition 560.

Jessica Drake, Wicked Pictures, stated that she is looking forward to helping draft bloodborne pathogen protection regulations that are specific to the adult film industry. She asked the Division to consider holding a second advisory committee meeting in southern California, in addition to the one that is being held in Oakland in January. She said that condoms are uncomfortable to wear and carry risks when they are used for long periods of time like they are in the adult film industry. She asked the Board to consider Petition 560.

Siouxsie Q James, Free Speech Coalition and Adult Film Performer, stated that her organization is looking forward to discussing bloodborne pathogen protection for adult film workers at the January advisory committee meeting. She said that condoms will not hurt the adult film industry's bottom line, but they will hurt performers' bodies because long shoots are common in the adult film industry, and condoms alone are not safe for these types of shoots. She stated that condoms are only 70% effective with typical use, and using them on adult film sets is not considered typical use. She said that condoms often fall off or break during adult film shoots, so something better is needed. She stated that many of the testing items that Mr. McGrath spoke about are being implemented by the adult film industry, and information about that is outlined in Petition 560. She asked the Division to include the experience that adult film performers have in the industry when drafting regulations that affect the adult film industry.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:33 a.m.

II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:33 a.m., November 17, 2016, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Hart stated that items A through M on the consent calendar are ready for consideration, and possible adoption, by the Board. Regarding item M on the consent calendar, OSHSB File No. 15-V-349, Mack Urban, LLC, the proposed decision recommends granting the variance, and a copy of the proposed decision was emailed to the Board Members. Item N regarding OSHSB File No. 16-V-074, Metalco Inc. should be removed from the consent calendar because it is not ready for the Board's vote.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Quinlan to adopt the consent calendar as modified.

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

B. OTHER

1. Executive Officer's Report

Ms. Hart stated that the proposal regarding hotel housekeeping has been returned to the Division along with the Board staff's comments. The Division will review those comments, make any necessary changes, and return the proposal to the Board staff, along with the text, Initial Statement of Reasons (ISOR), and other supporting documents. She also said that the fiscal analysis needs to be completed, as well as getting the necessary signatures from the Labor and Workforce Development Agency (LWDA), prior to the proposal being noticed for public hearing, so it will not be heard in February 2017.

Ms. Hart stated that the 2017 meeting schedule is included in the Board packet. She said that the Board will continue to meet on the third Thursday of the month except in September. She stated that there is a Jewish holiday on the third Thursday in September, so the meeting will be held on either the second or fourth Thursday of that month. She said that some of the information on the meeting schedule is tentative because some locations have not released their 2017 calendar yet. One of the locations that has not responded is Walnut Creek. She said that depending on Walnut Creek's availability, some of the meetings that are currently scheduled for Oakland may be moved there. She also stated that the Costa Mesa City Hall Council Chambers is scheduled to undergo remodeling sometime in 2017, but it is unknown when the remodeling will start. As a result, the April and October meetings, which are currently scheduled to be held in Costa

Mesa, may be moved to an alternate location if they conflict with the schedule of the remodel.

Ms. Hart stated that the Division has scheduled an advisory committee meeting regarding bloodborne pathogen protection in the adult film industry. She said that the meeting is scheduled for January 31, 2017 in Oakland. She stated that Mr. Graulich will inform the Division of the numerous requests that were made today to hold a second advisory committee meeting in southern California.

Ms. Hart stated that Conrad Tolson is continuing to work on consolidating the crane standards into the General Industry Safety Orders (GISO). She said that the general industry language and supporting documents have been developed, but it is taking more time to do strikeouts of the construction standards, and to prepare a cross-reference document showing what is being deleted and how each section is being moved into the GISO. She stated that this is a very lengthy process, but Mr. Tolson plans to have it done and back to an analyst by January for review. She said that she is hoping for a minimal cost impact, since all that is being done is moving the crane safety orders into the GISO.

Ms. Hart stated that an advisory committee meeting was held regarding working alone in construction. She said that the advisory committee concluded that broad-based regulations are not necessary, but it recommended holding a subcommittee to look at surveyor work. She stated that after the subcommittee meeting was held, another advisory committee meeting was held, and it was the opinion of the Board staff that rulemaking to address working alone in remote locations is not necessary because it is too broad. Options that will be considered:

- Terminate the rulemaking regarding construction employees who work alone in remote locations because it is not necessary at this point.
- Explore the necessity of modifications to Section 1598 to augment the requirements within the California MUTCD to require the temporary traffic control plan that is referenced in the California MUTCD for employees working in traffic lanes.
- Explore the necessity of modifications to Section 1592 to augment requirements that protect workers on foot to include measures such as adding spotters. Section 1592 only requires spotters for backup operations right now.

She stated that the Board staff will issue the minutes and post-advisory committee documents and will work with the advisory committee to determine the next steps to take.

Ms. Stock asked for an update on the proposal regarding Process Safety Management.

Ms. Hart stated that the proposal is with the Division and the Division is reviewing the comments that were received during the 45-day comment period and public hearing. She said that a 15-day notice will be issued. She stated that the notice was published on July 15, so the Board will need to take action on the proposal no later than the June 2017 meeting.

Ms. Smisko asked for an update on the proposal regarding workplace violence prevention in healthcare that was adopted last month. **Ms. Hart** stated that the Board staff received the necessary approval documents from the Department of Finance, and they were submitted, along with the proposal, to the Office of Administrative Law (OAL) for its review. She estimates that the effective date for the proposal will be April 1, 2017, provided OAL has no questions or problems with the proposal.

Ms. Stock asked if a date has been set for the advisory committee to meet to begin discussing workplace violence prevention in general industry. **Mr. Graulich** stated that a tentative date of January 12, 2017 has been set.

Ms. Hart stated that the advisory committee meeting to discuss silica in construction has been scheduled for December 14, 2016 in Sacramento.

Ms. Quinlan asked for an update regarding the indoor heat illness rulemaking. **Ms. Hart** stated that the bill regarding indoor heat illness just passed, and the Division will be looking into that.

2. Future Agenda Items

No other future agenda items were suggested.

A. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 10:50 a.m.