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
September 15, 2016
Sacramento, 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 10:01 a.m., September 15, 2016, in The Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present
Dave Thomas
David Harrison
Patty Quinlan
Barbara Smisko
Laura Stock

Board Member Absent
Dr. Robert Blink

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
Kumani Armstrong, Special Counsel for the Department of Industrial Relations

Others Present
Michael Musser, CA Teachers Association
David Jones, AGC of California
Dr. Rania Scably-Daily, UCLA – LOSH
Edgard Kurnia, Smith & Burgess
Larry Wong, University of CA Office of the President
Paul Penn, CalEPA
Jamie Carlige, SCE
Jon Rodriguez, Sedgwick
Erik Conradson, CNA
Adam Cohen, AIDS Healthcare Foundation
Bruce Wick, CALPASC
Richard Baum, Smith & Burgess
Tom Butler, American Society of Safety Engineers
Jed Pierce, Assoc. Roofing Contractors of the Bay Area Counties
James Mackenzie, SCE
John Burgess, Smith & Burgess
Liwen Mellinger, CNA

Diane McClure, CNA
Greg Karras, CBE
Zulma Michaca, CNA
Amber Novey, LiUNA
David Dumais, Fire Dept.
Tracy W. Scott, United Steel Workers
Laura Boatman, SBCTC
Ray Sisneros, USW 675
Karen Boxley Cottman, CNA
Roxana Tapia, Unite Here Local 49
Jeremy Smith, State Building Trades
David Karnstis, CNA
Yakini Martin, CNA
Michael Strunk, IUOE Local No. 3
Charlotte Brody, Blue Green Alliance
Bret Gwaltney, Sacramento Muni Utility District

Aarti Huber, INEOSP USA
Mitch Seaman, CA Labor Federation
Robert Ennis, CSATF
Pamela Vossenas, Unite Here
Thomas Campbell, Cal OES
Doug Parker, Worksafe
Dan Leacox, NEII
Nelson Hernandez, Unite Here Local 49
Michelle Unimuke, CNA
Gabriel Lewin, CNA
Shirley Toy, CNA
Tina B. Rufo, CNA
Jane Thomason, CNA
Taylor Jackson, Assembly Labor Committee
Stuart Makner, Smith & Burgess
Jason Pfeifle, CALPIRG
Jim Payne, USW Local 5
Elaine Naecina El- Askan, UCB
James Gillen, Local 675 USW
David Mueillo, CALPASC
Ernest Pacheco, CWA-D9
Joel Guth, iQ Power Tools

Sarah Jane Atienza, CNA
David Karostis, CNA
Josh Sonnenfeld, Sierra Club
Tom Umenhofer, WSPA
Mike Smith, United Steelworkers Local 5
Melinda Hicks, Kern Oil & Refining Co.
Marti Fisher, CalChamber
George Galvan, USW 675
Michael Lucien, Assemblymember Tony Thurmond District 15
Kimberly Rosenberger, SEIU State Council
Minnie Gill, CNA
Glen Sharp, CNA
Kevin Thompson, Cal-OSHA Reporter
Alyce Engle, CEA
Kevin Bland, RCA/CFCA/MCAC
Don Holmstrom, US Chemical Safety and Hazard Investigation Board

Bill Benham, Bill Benham Consulting
Cindy Sato, CEA
Amber Rose, Fed OSHA
Jack Harrah, Cal OES
Amy Blankenbiller, NEII
Isela Martinez, Unite Here Local 49
Kim Jakob, CNA
Katie Phelan, CNA
Zen Quebral, CNA
Shane Brinton, CNA
Jose Lopez, CBE
Minnie Gill, RN for Kaiser
Gail Blanchard-Saiger, CA Hospital Association
Kerry F. Morrison, The Erdllevia Compass & Greenpeace
Jennifer Haley, Kern Oil & Refining Co.
Colin Sueyres, FSB Core Strategies
Randy Sawyer, Contra Costa Health Service
Damon Conklin, SRBX
Julie Trost, Mason Contractors Association of California, Inc.

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.

Dan Leacox, Leacox & Associates, representing the National Elevator Industry, Inc. (NEII), discussed the benefits of machine-room-less (MRL) elevators in anticipation of a rulemaking from the Division that opposes the use of them. He said that MRL elevators have the machine that drives them located in the hoistway, instead of in a separate machine room, and thousands of them are in use in the United States and Europe. He stated that it is designed to be an alternative or replacement to machine room elevators and hydraulic elevators in low- and mid-rise buildings. He said that contrary to what the Division feels, MRL elevators are an industry going in the right direction, and there has been a long, downward trend in the number of accidents involving MRL elevators despite their increase in sales. He stated that the Division's statistics from 2009 to 2013 show a steep increase in accidents from 2012 to 2013, but these statistics do not provide a reason to believe that new MRL elevator designs are to blame for these accidents. He said that MRL elevators are mostly the same as other elevators, and accidents that occur on parts of the elevator, such as the door, have nothing to do with the machine or the machine's location. He stated that the risk of putting the machine in the hoistway must be weighed with the risk associated with using other alternatives. He said that elevators with machine rooms have the same equipment as MRL elevators, and machine rooms also have their own access issues, such as stairs and exposed rooftops, and they can also be accessed by non-elevator personnel. He stated that MRL elevator hoistways are fully dedicated to operation and safety, and access to the machine is limited to mechanics and inspectors. He also said that having the machine in the hoistway allows for the machine to be hoisted down to a car top and moved out through the elevator doors, whereas machines in machine rooms must be carried downstairs. He stated that it is better to determine how to deliver the value of MRL elevators with a reasonable level of safety, rather than not allowing them to be used.

Isela Martinez, Unite Here Local 49 Sacramento, stated that she has seen many hotel housekeepers get injured doing their daily work, and some of them suffer injuries that require surgery or leave them permanently disabled. She said that her organization is looking forward to the Division completing its review of the current hotel housekeeping proposal so that the Board staff can move forward with its next steps in October. She asked the Board staff and Division to continue the swift progress so that the proposal can be noticed for public hearing before the end of 2016 and be heard at a public hearing in early 2017.

The following individuals echoed Ms. Martinez's comments:

- **Pamela Vossenas, Unite Here**
- **Mitch Seaman, CA Labor Federation**
- **Doug Parker, Worksafe**
- **Maria Garcia, Unite Here Local 49 Sacramento**

Pamela Vossenas, Unite Here, stated that NIOSH did a qualitative study on work organization hazards in hotel housekeeping, which included focus group meetings with hotel housekeepers and key informant meetings with hotel line supervisors and managers and union officials. The goal of the study is to get a comprehensive view of hotel housekeeping hazards, health impacts, and measures for intervention. She said that the official results will be available in the next few years, but NIOSH has provided some preliminary findings. She gave

the Board a written summary of those preliminary findings [Please see the file copy of the Board packet to view this document]. She stated that NIOSH will use the data that it gets from this study to provide guidance documents on its website for training and recommended interventions.

Doug Parker, Worksafe, stated that his organization has some concerns regarding the definition of the term "union representative" in the current hotel housekeeping proposal. He said that the definition is very narrow and different from the Labor Code's definition of an "employee representative". He asked the Division to carefully review this definition to ensure that hotel housekeepers are not treated like second class citizens when it comes to employee representation. He also asked the Board to adopt the proposal regarding silica.

Kimberly Rosenberger, SEIU, stated that her organization has some concerns about the current version of the workplace violence prevention proposal:

- Her organization is disappointed that the subsections of the proposal regarding ancillary healthcare operations have been removed from the proposal. When it comes to workplace violence in healthcare, one of the biggest problems is underreporting of incidents, and ancillary healthcare clinics already face a lot of underreporting. They are also located in underserved communities where there is not enough data to determine what workplace violence hazards, if any, exist there. The San Bernardino area, where a shooting took place this year, would have been excluded under these subsections. Her organization also disagrees with the assumption that including ancillary healthcare operations in this proposal will escalate the cost to more than $50 million. Injury and illness prevention plans are already a requirement and can be made flexible. Areas with low levels of violence will require minimal training. Because the IIPP is flexible, the cost will not be excessive.

- Her organization is also disappointed that healthcare workers in the Department of Corrections and Rehabilitation (CDCR) have been removed. This is the area of healthcare with the highest number of problems and where some of the worst workplace violence incidents have occurred. Her organization feels that the costs were hyper-inflated to create puffery and hide the fact that CDCR's current workplace violence prevention plan is not adequate. She said that CDCR should be included because this new plan is more far-reaching than what they currently have.

- The proposal provides less incentive for employers to provide in-person training where questions will be answered immediately by employees.

Gail Blanchard-Saiger, CA Hospital Association, stated that her organization is concerned about the narrowing of the scope of the workplace violence prevention proposal to exclude medical office buildings and clinics and CDCR. She said that this shows how big of an obligation this proposal is, and it will create a situation where similar operations are treated differently. She stated that it will create a difficult situation for facilities that have a small medical office or clinic in them, which does not fall under the regulation, and a similar hospital-licensed facility with a medical office or clinic, which is covered under the regulation. She said that further work needs to be done on the proposal to address this.

Jane Thomason, CA Nurses Association, stated that her organization has some concerns about the language regarding training in the workplace violence prevention proposal. She said that the one day timeframe given for response to employees' questions regarding the workplace violence prevention creates a potential delay in employer response to these questions. She stated that her organization believes that in-person training is the most effective method of training, but the proposal does not require the training to be conducted in-person. She also said that her organization is disappointed that the scope of the regulation has been decreased. She stated that all healthcare workers deserve to be protected from workplace violence. She said that despite these concerns, her organization would like the Board to adopt the workplace violence prevention standard at its next meeting.

Adam Cohen, AIDS Healthcare Foundation, stated that the World Health Organization recently released new treatment guidelines for syphilis, gonorrhea, and chlamydia because of these STD's increased resistance to antibiotics. He said that gonorrhea has developed the strongest resistance, and because of its growing resistance, there is only one class of antibiotic drugs that is still effective enough to treat it, but the antibiotic is showing decreasing effectiveness. He stated that if its resistance continues, it will become a superbug because it is multi-drug resistant. He said that drug-resistant strains of syphilis and chlamydia are also a problem in many parts of the world. He stated that Petition 560 recommends using antibiotic pre-exposure prophylaxis to prevent transmission of STD's on adult film sets. He said that PREP requires producers to provide performers with antibiotics to take before a film shoot. He stated that this is a hazardous recommendation not just because it is hazardous to the health of adult film performers, but also because it falls far below what is required in the federal standard. He asked the Division to hold an advisory committee as soon as possible to put together proposed language that will protect workers in the adult film industry and come up with that language in a reasonable timeframe.

Jeremy Smith, State Building Construction Trades Council, asked the Board to adopt the proposal regarding silica because it is very protective for workers. **Mitch Seaman, CA Labor Federation,** echoed Mr. Smith's comment.

Bruce Wick, CALPASC, stated that his organization is not opposed to having a regulation regarding silica for construction, but it does have concerns about adopting the Horcher proposal. He said that his organization would like the Board to extend the effective date by 15 months, just like federal OSHA did with their standard. He stated that extending the effective date will allow time for an advisory committee to figure out a way to keep the current state standard in place and fix the federal regulation without causing a lot of disruption to employers who are already complying with the current state standard. He said that the federal regulation is less protective than the current state standard because in the federal standard, it is unclear who is included and what compliance methods are needed. It also requires employers and employees to read a 606-page document that is confusing. He stated that regulations need to be easy to understand and easy to train on in order to get employers and employees to comply, and the current state standard does that. He also said that the federal standard does not allow employers to use wet and vacuum saw cutting methods side by side, and if methods other than wet cutting are used, employers must prove that the equipment they are using is okay to use. He stated that his organization prefers to use dry cutting methods, and if the federal standard is adopted, they will not have that option anymore. He also said that the current state standard has clear exceptions and emergency response personnel provisions that

tell emergency personnel how they can protect themselves when responding to emergency situations where silica may be present.

The following individuals echoed Mr. Wick's comments:

- **David Jones, Associated General Contractors of California**
- **Marti Fisher, CA Chamber of Commerce**
- **Cindy Sato, Construction Employers Association**
- **Alyce Engel, Herrero Builders**

Jed Pierce, Associated Roofing Contractors of the Bay Area Counties, asked the Board not to Horcher the federal silica standard. He said that his organization supports the idea of convening an advisory committee to work on incorporating the federal standard into the existing California standard. He said that the rooftop exemption that is in the current California standard is a critical safety component that must be maintained. He stated that if the Board decides to adopt the Horcher proposal, his organization would like to see the Board extend the effective date long enough for an advisory committee to complete its work (at least 15 months).

Julie Trost, Mason Contractors Association of California, stated that the federal silica standard trades one safety hazard for another. She said that wet cutting takes silica out of the air and puts it on the ground, and the resulting water runoff and slurry containment create trip and fall hazards, as well as a hazardous waste containment issue. She stated that it also creates a shock hazard by combining power tools and water, as well as an increased scaffolding hazard because more workers will be going up and down scaffolding to make wet cuts because they cannot wet cut safely on scaffolding. She said that the current California standard is effective and employers have access to high performance technology and vacuum systems that provide an effective dust control option to wet cutting. She stated that employers need to have options so that they can select the right tool to do the job safely. She asked the Board to accelerate the advisory committee process and delay the adoption of the Horcher proposal so that the advisory committee's work can be reflected in the final silica standard.

Joel Guth, IQ Tools, provided the Board with a handout containing information regarding several technologies and methods that are available for contractors to use to keep their employees safe when they are working around silica [Please see the file copy of the Board packet to view this document]. He said that many employers in the state have purchased these technologies and employ these methods at their job sites. He stated that employers need to be able to determine what the best methods and practices are for their employees, and all safe silica options need to be included in Table 1 of the proposal.

Kevin Bland, representing the CA Framing Contractors Association, the Residential Contractors Association, and the Masonry Contractors Association of California, stated that the technologies and methods that Mr. Guth talked about are much safer options for employees, and they also help meet the new PEL set by federal OSHA. He said that he would like to see the effective date on the California standard extended 15 months like federal OSHA did with its standard. He stated that during that time, an advisory committee can be convened to discuss the merits of the safe options that employers in California use, and to give

employers enough time to retool if necessary. He said that it is important to not ignore the safe and healthy options that California already has in use in order to please federal OSHA.

Adam Conklin, Sacramento Regional Builders Exchange, stated that his organization would like to see the effective date for the silica standard extended just like the effective date was extended for the federal rule. He said that emphasis should be put on compliance with the standard, rather than on lowering the PEL.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:58 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:58 a.m., September 15, 2016, in the Auditorium of the State Resources Building, Sacramento, California.

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
   Chapter 4, Subchapter 7, Article 109
   New Section 5189.1
   Process Safety Management for Petroleum Refineries

Mr. Armstrong summarized the history and purpose of the proposal and indicated that the proposal is ready for the Board's consideration and the public's comment. **Alice Reynolds, California Environmental Protection Agency,** also provided a brief summary about its work with DIR on this proposal and its parallel regulatory package regarding the California Accidental Release Program (CalARP) statute, which will be implemented by the Governor's Office of Emergency Services.

Mr. Thomas called for a break at 11:30 a.m. and reconvened the meeting at 11:40 a.m.

Tom Umenhofer, Western States Petroleum Association, stated that there is still work to be done on this proposal because there are several issues that have not been resolved:

- The proposed amendments still include vague, inaccurate, and inconsistent definitions that will trigger significant, burdensome operational requirements that will have little or no benefit to enhancing safety. They may even have a negative impact on safety.

- The proposed amendments do not include grandfathering or reasonable implementation of timing provisions that recognize a refinery's need to meet federal and certified unified program agencies (CUPA) requirements, and to transition into the new process safety management (PSM) regulations along with the current CalARP regulations.

- The proposed employer/employee language violates existing collective bargaining agreement rules.

- This proposal and the CalARP regulations have not been harmonized as the Governor envisioned. It is important to harmonize them so that both sets of regulations are clearly and consistently applied.

He also stated that the economic analysis report failed to address the impact of the ready gap initial requirements, and did not address the impact of the CalARP requirements at all. In response to this, his organization commissioned its own economic analysis report, called the Turner Mason Report, which points out critical elements that need to be addressed. He said that the RAND report does not meet the requirements or criteria to be considered a sufficient and complete economic cost benefit analysis.

He asked the Division and Board staff to do the following:

- Continue to work with stakeholders to address the unresolved issues.

- Work with CalEPA to harmonize the proposal with the CalARP regulations.

- Go back to RAND and have them look at the Turner Mason evaluation, and then have RAND revise its report so that it meets the requirements of the law.

Diane McClure, CA Nurses Association, stated that her organization supports the Division's efforts to improve this standard so that workers are protected and community members stay out of the hospital. However, her organization is concerned and disappointed that the Division has chosen to weaken the standard by adding language that could allow oil refineries to avoid implementing critical protections. She asked the Division to look into this further.

Shirley Toy, Nurse, UC Davis Sacramento, stated that she supports stronger rules regarding process safety management because unsafe activity affects the environment and communities.

The following individuals echoed Ms. Toy's comments:

- **Anisa Cabral, CA Nurses Association**
- **Tina Rufo, Registered Nurse, Kaiser Roseville**
- **Sara Atienza, CA Nurses Association**
- **Karen Boxley Cottman, CA Nurses Association**
- **Lee Wen Meringer, CA Nurses Association**

Amber Novey, Laborers International Union of North America, stated that the proposal is innovative and a major step forward in refinery safety. She said that her organization is looking forward to the implementation of this rule.

Kerry Morrison, Eco Media Compass, representing Greenpeace, stated that Greenpeace supports the recommendations mentioned in the joint letter submitted by the Blue Green Alliance, United Steel Workers, and the California Federation of Labor. He asked the Division

to implement these recommended changes into both the PSM proposal and the CalARP proposal, as well as implement the recommendations from Communities for a Better Environment regarding public disclosure and the California Environmental Quality Act so that the proposal cannot be weakened in any way. He said that both the PSM and CalARP proposals are a fair compromise and need to be moved forward quickly. He also stated that the CalARP proposal requires that certain oil refineries conduct a safer technology and alternatives analysis, but only 12% of the 12,500 oil refineries will be required to do this analysis, and even if safer alternatives are found and deemed feasible, the refineries will not be required to use them, which creates a loophole. He said that this loophole needs to be closed, and although cost effective, safer alternatives are widely available, voluntary measures have not been adopted at hundreds of facilities.

Mitch Seaman, CA Labor Federation, stated that his organization supports strengthening the PSM regulations, but it does have concerns about the changes that were made to the language in July of 2016. His organization would like to see the language changed so that it is closer to the language that was proposed in September of 2015. He said that his organization believes that implementing inherently safer systems, especially safer solutions that are raised by the process hazard analysis, to the greatest extent feasible is ideal. He stated that some of his organization's concerns include:

- The elimination of the 6-month time limit that was originally included in the September 2015 version of the proposal. His organization feels that if there is no time limit by which employers need to get things done, they may never get done.

- In the September 2015 version of the proposal, damage mechanism reviews (DMR's) would have been required to be completed as part of the investigation. In the July 2016 version, this was reworded to state that the "incident investigation team shall recommend that a DMR be conducted within a specific time frame." He said that DMR's must be conducted to prevent high corrosion situations that can lead to events such as the Chevron fire, and by changing the language to simply recommend that a DMR be done, rather than requiring it, weakens the language in the proposal.

He said that these are short-sided moves in light of the numbers shown in the RAND study. He stated that the study did quantify the cost of compliance at $58 million dollars based on the refineries' own numbers. He said that this cost is small compared to the $220 million that incidents such as the Chevron fire would cost the refineries, the $800 million to $1.5 billion that they would cost the California economy, and the potential toll on human lives.

Jeremy Smith, State Building Construction Trades Council, stated that his organization supports strengthening the PSM regulations, but it has concerns. He said that in the September 2015 version of the proposal, section (h)(2)(B) required refiners to ensure that contractors and their employees who are brought on site to do construction work were trained on hazards and other critical information. He stated that in the July 2016 version, the word "ensure" has been changed to "require". He said that his organization feels that this change will only require contractors to provide this information to their employees, and the word "require" should be changed back to "ensure" so that there is as much oversight as possible to ensure that contractors and their employees are adequately trained on hazards and other critical information.

Jason Pfeifle, CA Public Interest Research Group, stated that his organization supports the recommendations mentioned in the joint letter submitted by the Blue Green Alliance, United Steel Workers, and the California Federation of Labor. He asked the Division to implement the changes that are recommended in that letter and then move the proposal forward as quickly as possible.

Randy Sawyer, Contra Costa County Health Service, stated that similar PSM regulations in Contra Costa County have made a difference in reducing the number of accidents that have occurred, and this proposal will do the same for California. He said that it strengthens the PSM regulations, and the RAND report indicates that if these regulations are passed as written, they will provide a great benefit to the economy in California.

Mike Smith, United Steel Workers Union #5, stated that he worked at the Chevron refinery when the accident occurred in August of 2012. He said that his organization supported the 2015 version of this proposal, but in the drafts since then, the language in the proposal has continued to erode, so his organization no longer supports the proposal. He asked the Division to consider the recommendations and rationale that his organization provided in its comment letter, and to consider going back to the 2015 draft of the proposal. He said that without these changes, this proposal will not make workplaces and communities safer.

Ron Espinoza, United Steel Workers, asked the Division to pay attention to the recommendations that USW submitted in writing because these recommendations will help prevent serious injuries from occurring. He said that California leads the nation when it comes to standards like this, so this standard should be strong. He also asked the Division to pay attention to the parts of the proposal where there is limited employee participation. He said that employee participation is paramount and provides a level of transparency that cannot be removed. He stated that employees at the Chevron refinery voiced their concerns prior to the incident that occurred in August of 2012, but nothing was done, and the incident occurred as a result.

Greg Karras, Communities for a Better Environment, stated that it is important to close the loophole that allows people to grant land use permits without having an inherently safer systems analysis (ISSA) performed first. He said that if an ISSA would have been done during the permitting process, the Chevron incident may not have happened because the pipes would have been replaced. He said that his organization supports the recommendations submitted by the Blue Green Alliance, the United Steel Workers, and the California Federation of Labor. He asked the Division to consider these recommendations, close the loophole, and move this proposal forward quickly.

Charlotte Brody, Blue Green Alliance, stated that her organization provided a comment letter that contains language that is much stronger than the language being proposed today. She said that regulations that have recommendations instead of requirements can lead to accidents such as the Chevron fire because it makes it easy for employers to avoid doing the hard work of problem solving. She stated that some supervisors pass off the responsibility to the next person in order to maximize employee productivity and profits, and as a result, it never gets done. She said that the stronger language in her organization's letter turns good intentions into clear mandates and creates a level playing field for all refineries, as well as a safety table where all workers can participate equally, which will help make refineries safer.

The following individuals also asked the Division to incorporate the recommendations submitted in the letter from the Blue Green Alliance, United Steel Workers, and CA Labor Federation, and to not allow the standard to be further weakened:

- **Ernest Pacheco, Communication Workers of America**
- **Jim Payne, United Steel Workers Local #5**
- **Josh Sonnenfeld, Sierra Club**
- **Pamela Vossenas, Unite Here**

Don Holdstrom, US Chemical Safety Board, stated that this proposal does improve upon the existing PSM program and has the potential to serve as a model to the nation, but his organization does have suggestions for improving it:

- The definitions of the terms "major change" and "major incident" need to be revisited. Minor changes can accumulate to make up the causal chain that can lead to a major accident. All hazards that are subject to PSM should be subject to the more rigorous tools described in the proposal.

- The scope and purpose of the proposal is problematic because the major goal of accident prevention has been diminished to a partial and undefined goal of reducing risks. The goal of PSM is to prevent incidents through targeted risk reduction to a level that is as low as practical or to the greatest extent feasible. His organization recommends using the following text:

"This section contains requirements for petroleum refineries to reduce risks by preventing major incidents and applying a hierarchical approach to eliminate and control process safety hazards to which employees may be exposed."

- In Section C, safety guidance and technical reports from AIChE and CCPS were dropped from the definition of recognized and generally accepted good engineering practices (RAGAGEP). Federal OSHA consistently references these documents as compliance guidelines, and it is crucial that the detailed guidance that these documents provide is included in the proposal because it exists nowhere else. Also, the definition of RAGAGEP should not permit the industry to consider standards, guidelines, or practices that are developed for internal use by the employer as RAGAGEP unless they are more protective than RAGAGEP. Deleting this language from the proposal transforms RAGAGEP into a self-regulatory provision where satisfying the requirement is determined by the employer.

- Proactive regulatory inspections, a hierarchy of controls analysis, targeted risk reduction, and collection and assessment of process safety indicators are critical to ensure effective implementation of corrective actions following incidents, and they help identify safety deficiencies.

- In Section X regarding implementation, the term "feasible" is used, while in all other areas of the proposal, the phrase "to the greatest extent feasible" is used. These sections should be consistent with each other, and the higher standard of the two should be

implemented.

James Gillen, Chevron Torrance Refinery, stated that he was there when the Chevron incident happened. He said that the cost to the oil refineries following the incident has been huge. He stated that the refinery was shut down for 1.5 years following the incident, and employees were forced to work 12 hour shifts with only 2 days off per month, which caused them a lot of stress. As a result, many employees quit their jobs or went on stress leave. He said that the current PSM standard does not force employers to comply and allows them to use their own discretion when they do comply. He said that the proposal needs to force employers to take action so that these types of incidents can be prevented.

Dr. Rania Scably-Daily, UCLA Labor Occupational Safety and Health Center (LOSH), submitted a letter on behalf of the UCLA Center for Occupational and Environmental Health (COEH) [Please see the file copy of the Board packet to view this document]. She said that her organization feels that the proposal includes a number of groundbreaking elements that advance public health principles in the refinery industry and could serve as a model for the rest of the nation to follow. She stated that there are several contextual factors that demonstrate the need for improved safety regulations for oil refinery operations:

- Many refineries are located in densely populated areas that consist of low income individuals and people of color.

- Refinery incidents can be very costly to refineries and the public.

She said that this proposal will benefit the public, the refinery industry, and the California economy, in addition to protecting the lives of workers, residents, and society at large. She stated that the proposal contains 4 critical tenets that will prevent refinery disasters:

- It implements inherently safer solutions while focusing on the hierarchy of hazard controls analysis.

- It ensures the integrity of equipment and structure and includes conducting damaged mechanism reviews.

- It requires an analysis of human factors.

- It requires a root cause analysis.

She stated that effective and timely implementation of these tenets will be ensured with the following:

- Effective employee participation in all phases of these tenets.

- Transparency and timely corrective action.

- Implementation with enforceable timelines.

She said that the PSM changes in this proposal are feasible because many of the previously-mentioned elements are already included in the industry's guidelines, such as the Center for Chemical Process Safety's document on inherently safer chemical processes. She also stated that the RAND study shows how costly these disasters are, and it proves that this proposal will benefit the refinery industry and the California economy, as well as protect the lives and health of workers and communities by providing the greatest possible protection and eliminating risks.

Doug Parker, Worksafe, stated that his organization supports the written comments that were submitted by the Blue Green Alliance, USW, and CA Labor Federation. He said that his organization is concerned about the elimination of the deadline for developing inherently safer solutions to address or identify hazards. He stated that it is important to have this because if there is no deadline, employees may have to wait a long time for an employer to address a hazard in the workplace. He said that 6 months is a reasonable timeframe for employers to address these hazards. He also stated that requiring employers to track and report temporary seal leaks is very reasonable and gives the Division the opportunity to hold management accountable and make sure that these issues get addressed. He asked the Division to think about the worst case scenario in management lapse as it continues to work on this proposal because those types of situations are not that remote when hazards exist in the workplace in a high risk industry.

Jennifer Haley, Kern Oil and Refining Company, stated that this proposal is a one-size-fits-all approach that does not fit small, less complex refineries like Kern Oil. She said that her organization is concerned about the expanded PSM proposal and the disproportionate effects it will have on small refineries. She stated that what might make sense for large refineries does not always make sense for small refineries. She said that her organization was disappointed that the final RAND economic analysis did not mention anything about the effect that the PSM proposal will have on small refineries, despite the fact that Kern's input was requested and given. She stated that the cost benefit analysis of the PSM proposal for small refineries demonstrates the inappropriateness of applying it to small facilities like Kern. She said that the proposal will disproportionately impact small refineries because while larger refineries will only be doing an additional 2 to 3 covered process units under this proposal, this proposal will force Kern to do an additional 8 to 9 covered process units, which is double the amount of what it currently does. She stated that this disproportionate impact on small refineries should be addressed. She asked the Division to consider a simpler and more streamlined PSM process for small refineries.

Ms. Stock stated that from the comments that have been received, it is clear that the recent draft of the proposal contains some very critical changes that occurred after the advisory committee process concluded, and she is concerned about the lack of specificity in this proposal that could undermine this regulation. She said that the proposal needs to be clear and enforceable, with clear deadlines and encouragement of employee participation at all phases. She asked the Division to review and respond to the comments submitted by the stakeholders and consider reinstating the language that gives clear deadlines and maximizes worker participation. **Mr. Harrison** echoed Ms. Stock's comments.

Mr. Harrison stated that if the Division is not going to restore the language that was in the September 2015 version of the proposal, he would like for the Division to provide a rationale

to explain why the changes were made before this proposal comes up for a vote.

Ms. Quinlan echoed Mr. Harrison's and Ms. Stock's comments. She said that the changes that were made to the proposal seem to weaken it.

Mr. Thomas stated that without timelines, nothing will get done in a timely manner. He asked the Division to include timelines in the next draft of the proposal to ensure that things will get done in a timely manner.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 12:57 p.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 12:57 p.m., September 15, 2016, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION AND GENERAL INDUSTRY SAFETY ORDERS**
New Sections 1532.3, 5204, and Existing Section 5155
Respirable Crystalline Silica (Horcher)

Mr. Kernazitskas summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

Mr. Thomas stated the he feels the Board should adopt the proposal without extending the effective date.

Ms. Stock stated that she also feels that the Board should adopt the proposal without extending the effective date. She said that the advisory committee will discuss the effective date and determine if an extension is necessary.

Mr. Thomas asked Ms. Hart what the effective date will be for the proposal if it is passed today. **Ms. Hart** stated that the effective date listed in the proposal is June 23, 2017.

Ms. Quinlan recommended that the Board adopt the proposal as it is with the June 23, 2017 effective date. She said that adopting it today will not affect the good things in the current standard for the next 9 months, and in that time, an advisory committee can be convened to discuss stakeholders' concerns and decide whether or not an extension of the effective date is necessary.

Ms. Smisko asked Ms. Hart what the administrative options would be for the advisory committee. **Ms. Hart** stated that if the advisory committee comes up with recommended changes to the proposal, it would have to be able to prove that those changes offer equivalent safety to that in the federal standard, and if equivalency can be shown, the Board can adopt

language containing those changes and present it to federal OSHA. **Ms. Smisko** asked Ms. Hart if the June effective date will still apply even if there is no resolution in the lawsuit against the federal regulation. **Ms. Hart** stated that if federal OSHA makes any changes to its standard based on the lawsuit, it will put out a notice regarding those changes and changes will be made to the California standard if necessary. She said that if the Board decides to extend the effective date for 6 months, it will give California the same 15-month timeframe in which to comply as other states have had under the federal rule, but extending the effective date cannot be done administratively. It would have to be done through the rulemaking process, and there is not enough time to do that before the June 23 effective date arrives. She said that by June 23, an advisory committee will hopefully be underway, and changes can be made to the proposal through the advisory committee process.

Mr. Thomas stated that extending the effective date 6 more months will not hurt anyone, and this proposal requires some big changes to be made. **Ms. Hart** stated that extending the effective date out 6 months will allow more time for the changes recommended by the advisory committee to go through the regulatory process. She said that a proposal containing those changes cannot be developed and implemented before June 23, 2017, and it may not even be done by the end of 2017.

Mr. Thomas stated that this is a huge change for employers to undergo, and he is not sure that it is necessary to do anything until a final rule is adopted by federal OSHA and California has reviewed its procedures to see if there is anything acceptable to federal OSHA regarding dry cutting, which is much more protective than wet cutting. He said that the issues regarding the proposal will not be resolved before June 23, and it is unknown what federal OSHA will do regarding its standard.

Ms. Hart asked Mr. Kernazitskas if employers will still be required to meet the new PEL on June 23, even if the effective date for the proposal is extended. **Ms. Quinlan** asked Mr. Kernazitskas to explain how extending the effective date may affect GISO Section 5204. She said that if it extends the effective date for both of them, she does not support that. **Mr. Kernazitskas** stated that if the effective date is extended, it would delay employers having to comply with the PEL. Employers do not focus on compliance with the PEL; rather they will focus on using prescribed engineering controls. He stated that they currently use wet and dry vacuum methods to comply with the PEL, and they want the exceptions to be able to work with the requirements in Table 1 so that they don't have to sample. He said that if this proposal is passed, they will have to sample beginning June 23.

Ms. Stock stated that she feels that delaying the effective date will only result in more people being exposed to a significant hazard because it delays the protection. She recommended that the Board approve the proposal and then convene an advisory committee to discuss the various issues with stakeholders.

Mr. Harrison stated that he is concerned about the 6-month timeline in which the Board must adopt a proposal that provides safety that is equivalent to that provided in the federal standard, and that 6-month deadline is near. He said that it sounds like the main issue that is causing controversy deals with the rooftop exemption. He stated that he will not throw out this proposal just because of that exemption. He said that it will take extra time and management from roofing contractors to get through that until an advisory committee is convened, but it

can be done.

Mr. Manieri stated that dry methods of cutting do not have the historical reputation for being as effective as wet cutting methods. He said that wet cutting is the classic method for controlling silica dust, and by using wet cutting methods, one can assuredly reach the 50 µg PEL. He stated that dry cutting technology is advancing, and one can reach the 50 µg PEL using dry cutting, but not as assuredly as when wet cutting is used, so it is very reasonable that one would want to sample in that case.

Ms. Smisko stated that if there are some situations where dry cutting methods may be as effective, then it might be good to find out what they are by doing sampling. She said that this may result in a small number of situations where dry cutting methods are at least as effective as wet cutting methods. **Mr. Kernazitskas** stated that Table 1 is based on objective data like that, and for some reason, vacuum controls were not included. He said that this would be something for the advisory committee to look into.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Quinlan that the Board adopt the proposal.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he was aware of no unresolved legal issues that would prevent the Board from considering for adoption items A through C and E through J on the consent calendar.

Regarding item D on the consent calendar concerning OSHSB File No. 15-V-349, Mack Urban, LLC, Mr. Healy stated that he received an email from the applicant's representative requesting an opportunity for participants to further propose and comment on conditions of the variance which may be included within the final decision that is before the Board today in this matter. He recommended that the Board not vote on this matter and let it remain under consideration by the hearing panel (Mr. Harrison and Ms. Quinlan) in order to allow further participant briefing in this matter and the possibility of revision to the proposed decision.

MOTION

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

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

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Quinlan to not vote on item D on

the consent calendar, OSHSB File No. 15-V-349, Mack Urban, LLC, and let it remain under consideration by the hearing panel until such time that the hearing panel requests that it be placed on the meeting agenda before the full Board.

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

C. OTHER

1. Legislative Update

Mr. stated that the following bills have passed through the legislative process and are on the Governor's desk awaiting his signature:

- AB 1050: This bill pertains to the permanent variance process and requires applicants to notify elevator mechanics and their unions when a variance has been filed. It allows elevator mechanics and their unions an opportunity to participate as parties in variance proceedings, rather than giving them intervener status.

- AB 2272: This bill pertains to medical plume and requires the Board to create and adopt a rulemaking that addresses the dangers of plume to workers in the medical field.

- SB 1167: This bill pertains to indoor heat illness and requires the Division to develop a proposal, and the Board to engage in rulemaking, to address indoor heat illness. This bill also allows the Division and the Board to limit the scope of the proposal, and to certain industries, if appropriate.

2. Executive Officer's Report

Ms. Hart stated that the Division will return the latest draft of the hotel housekeeping proposal to the Board staff with its comments by the end of September.

Ms. Hart stated that she and Mr. Manieri had a conference call with federal OSHA regarding the changes that were made to the proposed language for residential fall protection, and the revised language was also vetted through the Division and forwarded to federal OSHA for its review. She said that the Board staff has contacted UC Berkeley to do the fiscal impact and economic analysis, and the Board staff is putting together a contract so that that can be done. She stated that the Board staff has made federal OSHA aware of the constraints that it is facing regarding the economic impact and will continue to work with federal OSHA.

Ms. Hart stated that the second 15-day notice for workplace violence prevention in healthcare closed on September 12, and the Division is reviewing and responding to the comments that were received. She said that the Division will submit the Final Statement of Reasons to the Board staff for final review of the changes that were made from the very beginning to the final version of the proposal, and the Board staff will review the changes

that were made to the initial cost and economic impact assessment. She said that this proposal is scheduled to be voted on in October.

3. Future Agenda Items

No future agenda items were suggested.

A. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 1:35 p.m.