

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
June 20, 2013
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 10:02 a.m., June 20, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

Dave Thomas
Laura Stock
Bill Jackson
Hank McDermott
David Harrison
Barbara Smisko
Patty Quinlan

Board Member Absent**Board Staff**

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

Division of Occupational Safety and Health

Steve Smith, Principal Safety Engineer

Others present

Michael Musser, California Teachers
Association
Kevin Thompson, Cal/OSHA Reporter
Mallari Spilker, UCON
Kate Smiley Crawford, AGC
Elizabeth Treanor, PRR

Kevin D. Bland, Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Bill Taylor, PASMA
Mark McGrath, AIDS Healthcare
Foundation
Matthew Antonucci, CSATF/AMPTP

Jose Benavides, FedOSHA
Steve Johnson, Associated Roofing
Contractors

Marti Fisher, CalChamber
Bob Hornauer, NCCCO
Amber Novey, LUNA

Mr. Thomas stated that item A.2 of the Business Meeting agenda will occur immediately following the public meeting because one Board Member needs to leave at 11:00 A.M.

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.

Mark McGrath, AIDS Healthcare Foundation, addressed the Board regarding Petition 513. He stated that he is gravely concerned that the Division is losing control of the petition's process and wants to get the process moving forward. He said that the petition was filed 4 years ago and that the Division has held six advisory committee meetings since then. He also stated that world-renowned infectious disease experts have offered to help the Division with this petition and that there is also strong public support. He said that the Division circulated draft language 1½ years ago and that it keeps delaying the time at which it will bring a proposal for it before the Board. He stated that if the Board feels that revisions to Section 5193 are not necessary, the petitioner agrees to let the weight of the current law stand, but the Division has been lackadaisical on this issue, and we cannot rely on pornographers to ensure that their employees are protected.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:13 a.m.

II. BUSINESS MEETING – PART I

Mr. Thomas called the first portion of the Business Meeting of the Board to order at 10:14 a.m., June 20, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Group 16, Article 109
Section 5199(g)(3)(B), Exception 2
Aerosol Transmissible Diseases Respirator Exception
(Heard at the February 21, 2013, Public Hearing)

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

Ms. Quinlan stated that she opposes this standard because P100's are more effective than N100's, and this standard will bring up more issues. She said that it is difficult for people to determine whether to use an N mask or a P mask in certain situations. She also stated that she opposes the addition of both N and R. She recommended that the standard only have a P, and then continue giving variances, if appropriate.

Ms. Smisko asked what the usual practice is for workers in the field. **Mr. McDermott** stated that he served on the variance panels regarding this issue, and that the P100 requirement was put in due to a recommendation stated in a document from the International Fire Chiefs Association indicating that since the situation is unknown, it is prudent to require a P100. A few years later, Cal Fire and other entities filed variance applications in regards to this because they were never in situations where oil mist was present. He said that most EMT's and firefighters indicated they would not go in and treat the person if there is smoke around. They would move the person to a safe location and then treat them. If necessary for their own safety, they would use a breathing apparatus to protect themselves while moving the person to a safe place or call for other necessary assistance. He stated that this issue really comes down to whether or not the N100 mask will adequately protect responders working in specialized situations where oil mist is likely to be present, such as a machine shop, and they may not know that it exists. He also did some additional research and found a study where several masks, including N95 filter masks, were exposed for various amounts of time to an oil mist coming off of an oil bath in a plant to see what the oil mist penetration would be. In that study, none of the masks showed any oil penetration. He stated that based on this, an N95 mask is adequate against the occasional exposure to oil mist.

Mr. Thomas asked what the difference is between an N95 mask and an N100 mask. **Mr. McDermott** stated that the difference is the percentage of a certain size of test-generated smoke or aerosol that the mask removes. An N95 mask removes 95% while an N100 removes 99.7%. Therefore, an N100 mask has a better filter.

Ms. Stock stated that in this case, a variance is more appropriate than this rulemaking. Variances require individual employers to demonstrate the procedures that are put in place to allow for the various circumstances, such as this, that may arise. She said that the research and documentation in this area is not robust, so it is not known if this remedy is widely accepted, or if there are alternatives that could be used. She also stated that though the event is rare, it still requires the most protection possible, and unknown situations should require the highest protection possible.

Ms. Quinlan echoed Ms. Stock's comment that a variance is more appropriate in this case.

Mr. Harrison asked what the cost difference is between each of the masks. **Ms. Quinlan** stated that the N100 mask is much more expensive than the N95, but costs less than the

P100. She also stated that there is a cost differential in training people and fitting them for 2 types of masks. **Mr. Thomas** asked Mr. Smith if he had any of that data. **Mr. Smith** stated that he did not, but he remembered from the variances that people wanted to go with the N100 masks because they were much cheaper than the P100's: \$1.00 per unit for the N100's and \$5.00 - \$7.00 per unit for the P100's. He said that SEIU sent in a comment letter indicating that the cost difference is only 10% between the N100 and P100.

Mr. McDermott stated that having several fire departments come in for the same variance is costly for them because there are usually several people that have to travel to attend the variance hearing. It's okay to do variances if there are only a handful of fire departments that want them, but when it is more than that, it becomes cumbersome because some variances will sneak through because they are worded differently than others, so having a standard that everyone must adhere to makes sense in this case.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. McDermott that the Board adopt the proposal.

A roll call was taken. Mr. Harrison, Ms. Stock, and Ms. Quinlan voted "no", and all other members present voted "aye." The motion passed.

Mr. Thomas adjourned this portion of the Business Meeting at 10:38 a.m.

III. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:39 a.m., June 20, 2013, 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: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 4, Section 1533
Internal Combustion Engine-Driven Equipment
(Technical Amendments)

Mr. Manieri 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.

Kate Smiley Crawford, AGC, stated that she appreciates the process, dialogue, and analysis that the Board staff used in creating this rulemaking. She said that she is pleased with the way that the Board staff fine-tuned the technical amendments in Section 1533 so that the Division can enforce them properly and employers can comply with them.

Steve Johnson, Associated Roofing Contractors, stated that he supports the changes to the regulation.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:48 a.m.

IV. BUSINESS MEETING – PART II

Mr. Thomas called the second portion of the Business Meeting of the Board to order at 10:49 a.m., June 20, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 36, Section 1933
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 141,
Sections 5541 and 5543
Article 143, Section 5559, Article 145, Section 5600,
Article 159, Section 6170
**Fire Control, Update of References to NFPA 13 Standard,
Installation of Sprinkler Systems**
(Heard at the May 16, 2013, Public Hearing)

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. Stock and seconded by Mr. Jackson 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. Beales recommended that the variance requests be granted and that all of the decisions listed in the Board packet be adopted.

MOTION

A motion was made by Ms. Quinlan 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.

C. OTHER

1. Legislative Update

Mr. Beales stated that there are possible amendments coming forward to the Public Records Act which provides the public and the media with transparency in government functions by allowing them to request records. These changes are in Section 4 of Assembly Bill 76 and apply to local government, not state government. He stated that these changes will probably not affect the public’s and media’s access to what the Standards Board does.

2. Executive Officer’s Report

Ms. Hart stated that the Board staff received a letter from FedOSHA regarding 15-foot type crane fall protection. FedOSHA asked for information regarding the various fall protection heights in California. She stated that the Board staff is working on this, and that FedOSHA has given them a due date of July 29, 2013. She said she will update the Board further on this in September. She also stated that it is the end of the fiscal year and reminded the Board Members to turn in any outstanding Travel Expense Claims for the 2012 – 2013 fiscal year that have not already been submitted. She also asked them to complete their ethics training by June 30.

Ms. Hart stated that she did a presentation for the Mercer Group in Newport Beach about the Board and its activities. She said that more and more people are asking for those kinds of presentations and that it is very beneficial to do them to get the word out about the Board.

Ms. Stock asked about the status of Petition 513. **Ms. Hart** stated that during the Division’s monthly update at the Board Meetings, it kept extending its due dates, so the monthly update was changed to a quarterly update, and at next month’s meeting, the Division will do its report, and it will include a status update on Petition 513. **Ms. Stock** asked if Mr. Smith had any update right now since Mr. McGrath brought up the issue

again at today's meeting. **Mr. Smith** stated that it is still on the Division's radar and that it plans to bring back a proposal on it by the end of the year. He said that Ms. Gold will have a further update next month. **Ms. Stock** stated that this issue has been in discussion for quite some time, and the Division may need to review its workload and priorities because of that.

Ms. Quinlan asked about the timeline for GHS. **Ms. Hart** stated that the safety portion of GHS will be heard at the August 15, 2013 Board Meeting. She also stated that the Board staff is waiting on the Division to bring back a proposal on the health portion of GHS. She said that a permanent proposal for the health portion must be adopted within a year, and that in the meantime, the temporary proposal will need to be re-adopted in October.

Ms. Quinlan also asked about the status of the rulemaking regarding Strap-On Foot Protectors. **Ms. Hart** stated that there will be an update on that at next month's meeting. Based on new information that has come to light, the Board staff is determining whether or not to proceed with the rulemaking and is finalizing information to give to the Board.

Ms. Smisko asked about the status of the rulemaking for Safe Patient Handling. **Ms. Hart** stated that it was recently finalized and submitted for the necessary approvals, and it is scheduled for public hearing in September. **Ms. Smisko** asked when that information will be available to the public. **Ms. Hart** stated that the language will be published at the end of July (45 days before the meeting).

3. Future Agenda Items

Mr. Thomas asked Mr. Smith if the Bloodborne Pathogens in the Adult Film Industry rulemaking will come before the Board. He stated that he had heard rumors that other boards should consider it instead of the Standards Board. **Mr. Smith** stated that he had heard that a proposal will be brought to the Standards Board by the end of the year, and that Ms. Gold will have more information on it for the Board next month. **Mr. Beales** asked Mr. Thomas if he was asking whether or not there is a legal impediment to the Board considering the revision to the standard. **Mr. Thomas** stated that he wanted to be sure that the Standards Board will be considering it. **Mr. Beales** stated that there is no legal impediment that he knows of to the Board considering the revision.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:04 a.m.