

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 509)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on July 29, 2009, from Mr. Garth Patterson (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, Section 3395 of the General Industry Safety Orders, concerning heat illness prevention and the provision of mechanical misters to cool employees.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

SUMMARY

The Petitioner asserts that the only true protection for employee heat stress safety in the field is mechanical cooling. He further states that the body core temperature must be lowered when in heat stress to save lives. The Petitioner proposes that Section 3395 be amended to provide the following:

“Provide work groups of 10 or more a heat relief area no more than 5 walking minutes from the work. The area shall be 20 degrees lower than the ambient temperature of 90 degrees. The area must contain seating, cool water, shade, and first aid kits. The heat relief area shall be in operation at all times when temperatures are 90 degrees and above. The cooling area shall seat a minimum of 12 workers without crowding.”

DIVISION’S EVALUATION

The Board received the Division’s evaluation of Petition 509 on October 6, 2009. The Division’s evaluation notes that the Petitioner was made aware of a current Notice of Proposed Rulemaking to amend Section 3395, the 45-day public comment period, and the public hearing scheduled for October 15, 2009. The Division also notes that the Petitioner provided written comments to the Board regarding that rulemaking. The Division concludes that the ongoing rulemaking by the Board regarding Section 3395 adequately addresses the Petition. Therefore, the Division recommends that Petition 509 be denied.

STAFF'S EVALUATION

On September 22, 2009, staff called the Petitioner and discussed the Petitioner's suggested revisions to Section 3395. The Petitioner manufactures a trailer mounted cooling station that includes misting fans, available shade and seating for 12, and drinking water. Staff explained the petition and the rulemaking processes. At that time, a rulemaking proposal to amend Section 3395 was currently noticed for Public Hearing on October 15, 2009. Therefore, staff encouraged the Petitioner to submit comments on that rulemaking proposal during the public comment period. On September 22, 2009, the Board received the Petitioner's comments on that proposed rulemaking. The Petitioner's comment in regards to the rulemaking is substantively the same as the revision he is requesting in the Petition. The Petitioner's comment will be considered during the current rulemaking process to amend Section 3395. The Board's response to the Petitioner's comment will be included in the Final Statement of Reasons, and that rulemaking document will be posted on the Board's website when the proposed amendments are scheduled for adoption at a future Board Meeting.

Staff concludes that the Petitioner's request is being addressed through the rulemaking process which is currently considering proposed amendments to Section 3395. Therefore, staff recommends that Petition 509 be denied.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Mr. Garth Patterson, to make recommended changes to Section 3395 of the General Industry Safety Orders, concerning heat illness prevention and the provision of mechanical misters to cool employees. The Board has also considered the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the Petition is hereby DENIED.