

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Applications for Permanent)
Variances Regarding:)
)
Strap-on foot Protection)
)
)
_____)

OSHSB FILE Nos. 09-V-124 and 09-V-125

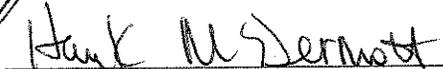
DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by David Beales, Hearing Officer.



JOHN D. MACLEOD, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD



HANK MCDERMOTT, Member

Date of Adoption: August 19, 2010

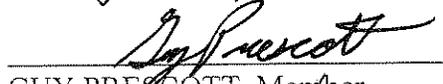


WILLIAM JACKSON, Member

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.



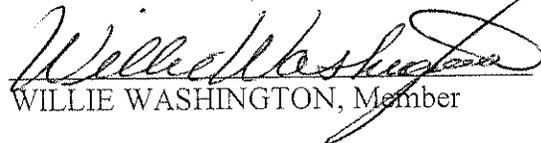
JOHN KASTORFF, Member



GUY PRESCOTT, Member



DAVID THOMAS, Member



WILLIE WASHINGTON, Member

Note: A copy of this Decision must be posted for the Applicant's employees to read, or a copy thereof provided to the employees' Authorized Representative(s).

(2) Protective footwear purchased on or before January 26, 2007 shall meet the requirements of either the American National Standard for Personal Protection-Protective Footwear, American National Standards Institute (ANSI) Z41-1999, or the American Society for Testing and Materials (ASTM) F2412-05, Standard Test Methods for Foot Protection and ASTM F2413-05, Standard Specification for Performance Requirements for Foot Protection which are hereby incorporated by reference.

The intent of Section 3358(c) is to protect workers from crushing and penetrating foot injuries by mandating the use of appropriate, effective foot protection. According to Board staff, both the ANSI Z41-1999 and the ASTM standards contain identical performance and test methods for protective footwear. Both exclude strap-on foot protection devices by mandating that toe caps be an integral and permanent part of the foot wear. Additionally, ANSI Z41-1999, Section 1.4.1 states in part that:

This standard does not consider the use of aftermarket, "hang-on" or "strap-on" toe appliances, toe caps or metatarsal guard appliances or other devices as an acceptable means for providing adequate protection under ANSI Z41-1999. Any protective toe cap or metatarsal guard must be designed, constructed and manufactured into the shoe during the manufacturing process and tested as an integral part of the footwear.

C. Findings of Fact

Based on the evidence in the record of this proceeding, the Board makes the following findings of fact:

1. SCGC and SDG&E are both public utilities, and both are subsidiaries of an entity known as Sempra Energy. SCGC's operations are centered in the Los Angeles Area, and SDG&E's operations are centered in the San Diego area. Both Applicants have many work locations in California, and both engage in construction and maintenance activities that require their employees to use foot protection.
2. These matters involve similar facts and circumstances, and no substantial right of any party is prejudiced by consolidating these matters for hearing and decision.
3. The following facts are derived from Board staff evaluations filed in these matters; those evaluations state words to the effect that the information in question was provided by the Applicants:
 - a. For about 30 years, the Applicants have provided their employees with strap-on foot protectors for use during underground utility installation, maintenance and repair activities.
 - b. A review of accident data indicates that use of strap-on foot protectors has shielded employees' feet effectively from impact and compression hazards.

- c. The Applicants' strap-on foot protectors were designed, built and tested to the same strength standards as those specified in the ASTM and ANSI foot protection standards referenced in Section 3385; they meet the impact, compression and clearance performance standards for Class 75 protective footwear (the class appropriate for the Applicants' operations).
 - d. The Applicants submitted this variance application in response to a 2009 amendment of Section 3385(c); the amendment referenced versions of national consensus standards that preclude the use of strap-on foot protection devices.
 - e. The Applicants propose to use strap-on foot protectors during activities involving the use of jackhammers, rock drills, clay spades, tampers or other similar equipment used in the installation, maintenance and repair of underground utilities.
 - f. The Applicants would provide strap-on foot protectors to all employees exposed to the above hazards to protect the entire foot-instep (metatarsals) and toes.
 - g. The proposed strap-on foot protectors consist of metal or fiberglass shields worn over the work boots and cover the foot protecting the toes and metatarsal area. To attach the strap-on foot protectors and keep them properly positioned on the work boot, either a one-piece rubber strap with a tension buckle or a two-piece leather strap with a spring fastening device is used.
 - h. The Applicants require employees to wear work boots under the subject foot protectors, and the Applicants provide an annual cost reimbursement to each affected employee for the work boots. The employee may elect to purchase steel-toed footwear with the company-provided funds; however the employee is still required to wear strap-on foot protectors over the boots in order to provide metatarsal protection per company policy.
 - i. The Applicants' requirement that employees wear the strap-on foot protectors is limited to the time necessary for the employees to complete tasks that would require such foot protection.
 - j. The affected employees perform numerous other tasks not requiring foot protection during the same work shift.
 - k. The strap-on foot protectors are designed to fit over any boot; they are light enough to be worn for extended periods of time, and are they are reusable.
4. The Board staff evaluation further states words to the following effect:
- a. Work boots that provide built in metatarsal protection and meet the requirements of the ANSI Z41-1999 and ASTM standards are bulky and not flexible, akin to ski boots. Because metatarsal safety boots are extremely cumbersome and restrictive during work activities that require bending, squatting and kneeling, their use could lead to foot pain

and strain-related injuries if used during the performance of the Applicant's underground utility installation, maintenance and repair work.

- b. Strap-on foot protectors can become unsafe if straps break or if loose buckles or if straps get trapped under foot and cause the employee to slip, trip or fall. Additionally, strap-on foot protectors that are damaged (by such things as corrosion or metal fatigue) or deformed may not provide equivalent protection to that provided by foot protectors that comply with Section 3358(c). Therefore, any foot protection program that includes the use of strap-on foot protectors needs to address care, maintenance and training issues.
5. Among other things, the Division evaluations filed in these matters say words to the following effect:
 - a. The strap-on foot protectors are designed to fit over any sized boot, and according to the Applicants, the work that requires foot protection is done only intermittently by the Applicants' employees.
 - b. The discomfort associated with the use of Section 3385-compliant non-strap-on foot protectors makes enforcement of the use of those devices difficult, especially in operations where the work is not under direct supervision.
 - c. The Federal occupational safety and health standards discussed by the Division are flexible enough to allow the possibility of using strap-on foot protectors; for instance, 29 CFR 1910.136(b)(2) in effect allows employers to use strap-on foot protectors if the employers show that strap-on foot protectors meet ANSI/ASTM performance requirements.
 6. On January 20, 2010, Board and Division staff conducted a site visit regarding this matter at an SDG&E facility in San Diego where the use of the strap-on foot protectors was demonstrated.
 7. During February, 2010, Board staff had contact with representatives of three unions that represent various Sempra Energy employees: the International Brotherhood of Electrical Workers (IBEW), the International Chemical Workers Union (ICWUC—the acronym used in the Board staff evaluation) and the Utility Workers Union of America (UWUA). The IBEW spokesperson indicated that IBEW supports the variance applications. The ICWUC spokesperson indicated that the ICWUC is not on record as supporting or opposing the variance applications. The Board staff evaluation states words to the effect that the UWUA spokesperson did not voice any concerns or objections regarding the variance applications.
 8. The applications filed in these matters say, among other things, words to the effect that the strap-on foot protectors are superior to Section 3385-compliant built-in foot protection in the following respects:
 - a. The strap-on foot protectors “provide a superior level of protection by deflecting the impact energy to the surrounding walking surface rather than to the foot itself.”

- b. Footwear with built-in toe and metatarsal protection “would be extremely cumbersome in the utilities construction environment.”
9. At the hearing, Mr. Roberts stated words to the effect that the deflection protection provided by strap-on foot protectors might well be superior to the deflection protection provided by built-in foot protectors. Also at the hearing, Mr. Boersma stated words to the effect that, with respect to such tasks as working in trenches, strap-on foot protectors might well be more comfortable than built-in foot protectors, and Mr. Foss said words to the effect that the more comfortable the foot protection, the greater the chance that it actually will be used.
10. Safety is enhanced by the conditions set forth in the Decision and Order.

D. Reasons for the Decision

The procedural matters, legal authority and findings of fact stated above lead to the following conclusions:

1. The Applicants have complied with the statutory and regulatory requirements that must be met before an application for a permanent variance may be granted.
2. A preponderance of the evidence establishes that the Applicants’ proposals, combined with the conditions set forth in the Decision and Order, will provide employment and a place of employment that are as safe and healthful as those that would prevail if the Applicant complied with the safety order at issue. The conditions set forth in the Decision and Order are based in large part on the Board staff’s and Division’s recommendations.

E. Decision and Order

The applications that are the subject of this proceeding are GRANTED to the extent that, upon the Board’s adoption of this Proposed Decision, the Southern California Gas Company and San Diego Gas and Electric shall each have a permanent variance from California Code of Regulations, Title 8, Section 3385(c) (only to the extent necessary to allow each Applicant to have its employees use strap-on foot protectors rather than footwear with built-in foot protection at the Applicant’s work locations in California), subject to the following conditions:

1. The strap-on foot protectors shall meet the impact, compression and clearance performance standards for Class 75 protective footwear specified by the ANSI or ASTM standards referenced in California Code of Regulations, Title 8, Section 3385(c) (as Section 3385(c) reads on the date the Board adopts this Proposed Decision).
2. The strap-on foot protectors shall be cared for, used and maintained in accordance with manufacturer’s recommendations.
3. The strap-on foot protectors shall be visually inspected prior to each use by checking for cracks or holes, for corrosion or deformation of the foot protectors and for weakened or

broken straps, buckles or laces. Damaged, defective or deformed strap-on foot protectors shall not be used.

4. Employees using the strap-on foot protectors shall be trained regarding the following:
 - a. Manufacturer's recommendations as to the use, care and maintenance of the strap-on foot protectors;
 - b. Inspection of strap-on foot protectors and the removal of strap-on foot protectors from service per Condition No. 3.
5. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way that it notified them of the application for permanent variance.
6. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employees(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in the manner prescribed for its issuance.

I hereby certify that the above Proposed Decision is the decision of the Hearing Panel, and the Hearing Panel recommends its adoption by the Occupational Safety and Health Standards Board as the Board's decision in this proceeding.

DATED: August 3, 2010



David Beales
Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
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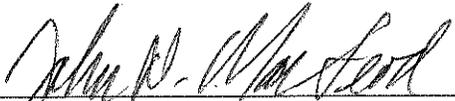
In the Matter of an Application for a
Permanent Variance by:

Pacific Gas and Electric Company,
Applicant.

OSHSB FILE No. 10-V-069

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by David Beales, Hearing Officer.



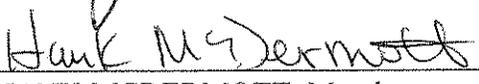
JOHN D. MACLEOD, Chairman



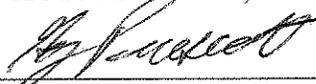
WILLIAM JACKSON, Member



JOHN KASTORFF, Member



HANK MCDERMOTT, Member



GUY PRESCOTT, Member



DAVID THOMAS, Member



WILLIE WASHINGTON, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: May 19, 2011

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, or a copy thereof provided to the employees' Authorized Representative(s).

the American Society for Testing and Materials (ASTM) F2412-05, Standard Test Methods for Foot Protection and ASTM F2413-05, Standard Specification for Performance Requirements for Foot Protection which are hereby incorporated by reference.

Additionally, ANSI Z41-1999, Section 1.4.1 states in part that:

This standard does not consider the use of aftermarket, "hang-on" or "strap-on" toe appliances, toe caps or metatarsal guard appliances or other devices as an acceptable means for providing adequate protection under ANSI Z41-1999. Any protective toe cap or metatarsal guard must be designed, constructed and manufactured into the shoe during the manufacturing process and tested as an integral part of the footwear.

C. Findings of Fact

Based on the record of this proceeding, the Board makes the following findings of fact:

1. The Applicant is a public gas and electric utility serving Northern and Central California. The Applicant has many work locations, and it engages in activities that require its employees to use foot protection.
2. The following facts are derived from the Board staff evaluation filed in this matter; according to that evaluation, these facts were provided by Louis Renner, the Applicant's safety and health manager, during a December 7, 2010 telephone conversation with Mr. Boersma:
 - a. For about 30 years, the Applicant has provided its employees with strap-on foot protectors for use during underground utility installation, maintenance and repair activities.
 - b. According to the Applicant, the use of strap-on foot protectors effectively shields employees' feet from impact and compression hazards.
 - c. The strap-on foot protectors used by the Applicant were designed, built and tested to the same strength standards specified in the ASTM and ASME foot protection standards referenced in California Code of Regulations, Title 8, Section 3385. These strap-on foot protectors meet the performance standard for impact, compression and clearance for Class 75 protective footwear (the appropriate class for the Applicant's operations).
 - d. The Applicant submitted this variance application in response to a 2009 amendment of Section 3385(c); the amendment referenced versions of national consensus standards that preclude the use of strap-on foot protection devices.

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- e. The Applicant proposes to use strap-on foot protectors during activities involving the use of jackhammers or other similar equipment used in the installation, maintenance and repair of underground utilities. The Applicant would provide strap-on foot protectors to all employees exposed to such hazards to protect the entire foot-instep (metatarsals) and toes.
 - f. The proposed strap-on foot protectors consist of metal shields (toe caps) attached by leather or rubber straps; the toe caps are worn over the work boots and cover the foot, protecting the toes and the metatarsal area.
 - g. The Applicant requires employees to wear work boots under the strap-on foot protectors.
 - h. The Applicant's requirement that employees wear the strap-on foot protectors is intermittent, limited to the time necessary for the employees to complete tasks that require such foot protection. The affected employees perform numerous other tasks not requiring foot protection during the same work shift.
 - i. The strap-on foot protectors are designed to fit over any boot; they are light enough to be worn for extended periods of time, and are they are reusable.
 - j. To keep the strap-on foot protectors properly positioned on the work boot, either a one-piece rubber strap with tension buckle or a two piece leather strap with a spring fastening device is utilized.
 - k. The Applicant's strap-on foot protectors have been effective in protecting the Applicant's employees, and no foot injuries have occurred as a result of wearing the strap-on foot protectors.
3. The Board staff evaluation further states words to the following effect:
- a. Work boots that provide built in metatarsal protection and meet the requirements of the ANSI Z41-1999 and ASTM standards are bulky and not flexible, akin to ski boots. Because metatarsal safety boots are extremely cumbersome and restrictive during work activities that require bending, squatting and kneeling, their use could lead to foot pain and strain-related injuries if used during the performance of the Applicant's underground utility installation, maintenance and repair work.
 - b. Strap-on foot protectors can become unsafe if straps break or if loose buckles or straps get trapped under foot and cause the employee to slip, trip or fall. Additionally, strap-on foot protectors that are damaged (by such things as corrosion or metal fatigue) or deformed may not provide equivalent protection to that provided by foot protectors that comply with Section 3358(c). Therefore, any foot protection program that includes

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the use of strap-on foot protectors needs to address care, maintenance and training issues.

- c. On December 8, 2010, Mr. Boersma spoke by telephone with Ralph Armstrong, a business/safety representative of International Brotherhood of Electrical Workers, Local 1245. Mr. Armstrong said words to the effect that the Union supports the Applicant's proposal, so long as the strap-on foot protectors provide adequate protection and so long as the strap-on foot protectors are tested and meet the ANSI or ASTM performance standards. Mr. Armstrong also indicated that the strap-on foot protectors provided in the past by the Applicant have worked well.
4. Although the Division generally supports the Applicant's proposal, the Division evaluation notes that the Applicant has failed to provide the Division with the following information that the Division has asked the Applicant for: third-party test reports demonstrating that the strap-on foot protection devices that the Applicant intends to use meet the Class 75 criteria specified in the ASTM F2412-05 and ASTM F2413-05 standards. The Division evaluation also urges the adoption of a condition addressing the impact of the proposed variance on collective bargaining agreement provisions regarding payment for personal protective equipment (the Division proposes that the a condition state words to the effect that such a collective bargaining agreement provision takes precedence over the variance).
 5. Safety is enhanced by the conditions set forth in the Decision and Order.

D. Reasons for the Decision

The procedural matters, legal authority and findings of fact stated above lead to the following conclusions:

1. The Applicant has complied with the statutory and regulatory requirements that must be met before an application for a permanent variance may be granted.
2. A preponderance of the evidence establishes that the Applicant's proposal, combined with the conditions set forth in the Decision and Order, will provide employment and a place of employment that are as safe and healthful as those that would prevail if the Applicant complied with the safety order at issue. The conditions set forth in the Decision and Order are based in large part on the Board staff's and Division's recommendations.

The Board declines to impose the collective-bargaining-agreement-related condition suggested by the Division. This variance merely provides, in effect, that the Applicant does not engage in conduct citable by the Division if the Applicant complies with the variance and its conditions. A collective bargaining agreement is a contract enforceable by the parties. No variance relieves an employer of its contractual obligations.

E. Decision and Order

The application that is the subject of this proceeding is GRANTED to the extent that, upon the Board's adoption of this Proposed Decision, the Pacific Gas and Electric Company shall have a permanent variance from California Code of Regulations, Title 8, Section 3385(c) (only to the extent necessary to allow the Applicant to have its employees use at the Applicant's work locations in California strap-on foot protectors rather than footwear with built-in foot protection), subject to the following conditions:

1. The strap-on foot protectors shall meet the impact, compression and clearance performance standards for Class 75 protective footwear specified by the ANSI or ASTM standards referenced in California Code of Regulations, Title 8, Section 3385(c) (as Section 3385(c) reads on the date the Board adopts this Proposed Decision).
2. Within three weeks of the Board's adoption of this Proposed Decision, the Applicant shall provide the Division with a written list of the specific makes and models of strap-on foot protectors that the Applicant will utilize in accordance with this variance, and within those same three weeks, the Applicant shall provide the Division with the manufacturer's written third-party test results showing that the listed devices meet the performance standards specified in Condition No. 1. In addition, before the Applicant utilizes any strap-on foot protector not on this original list, the Applicant must provide the Division with (a) a writing that identifies the make and model of the device and (b) the manufacturer's written third-party test results showing that the device meets the performance standards specified in Condition No. 1.
3. The strap-on foot protectors shall be cared for, used and maintained in accordance with manufacturer's recommendations.
4. The strap-on foot protectors shall be visually inspected prior to each use by checking for cracks or holes, for corrosion or deformation of the foot protectors and for weakened or broken straps, buckles or laces. Damaged, defective or deformed strap-on foot protectors shall not be used.
5. Employees using the strap-on foot protectors shall be trained regarding the following:
 - a. Manufacturers' recommendations as to the use, care and maintenance of the strap-on foot protectors;
 - b. Inspection of strap-on foot protectors and the removal of strap-on foot protectors from service per Condition No. 4;
 - c. Any limitations on use as identified by the manufacturer and any improper uses as identified by the manufacturer.

Proposed Variance Decision
OSHSB File Nos. 10-V-069

6. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way that it notified them of the application for permanent variance.
7. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employees(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in the manner prescribed for its issuance.

I hereby certify that the above Proposed Decision is the decision of the Hearing Panel, and the Hearing Panel recommends its adoption by the Occupational Safety and Health Standards Board as the Board's decision in this proceeding.

DATED: May 3, 2011



David Beales
Hearing Officer

DECLARATION OF SERVICE BY MAIL

I, Rebecca Estrella, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

On May 23, 2011, I served the attached Decision with respect to Pacific Gas and Electric Company, OSHSB File No. 10-V-069, by placing true copies thereof in an envelope addressed to each of the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with first class postage thereon fully prepaid:

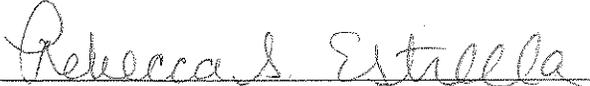
Mark Sweeney and Valarie Sharpe
P.O. Box 7442 Mail Code B30 A
San Francisco, CA 95120

Ellen Widess
Division of Occupational Safety and Health
1515 Clay Street, Suite 1901
Oakland, CA 94612

Joel Foss
Division of Occupational Safety and Health
Research and Standards Safety Unit
2000 E. Mc Fadden Ave., #203
Santa Ana, CA 92705

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 23, 2011, at Sacramento, California.


Rebecca Estrella