

4 June 2019

Occupational Safety and Health Standards Board
2520 Venture Oaks Way
Suite 350
Sacramento, CA 95833

RE: Protection from Wildfire Smoke Draft Emergency [Regulation](#)

Dear Chair Thomas and Members of the Board:

The Phylmar Regulatory Roundtable (PRR) understands there is an opportunity to provide comments on the Division of Occupational Safety and Health's (DOSH's) 21 May 2019 [draft](#) proposal for an emergency regulation for "Protection from Wildfire Smoke." PRR filed previously comments with DOSH on 26 April 2019 and 10 May 2019. We understand that there is not a formal rulemaking underway for this regulation, but that comments are welcome. We ask the Board to carefully consider these comments, as they were provided by PRR members who are among those responding to restore power, water, gas and communications systems during and after a wildfire. PRR comments were developed based on the experience, guidance and recommendations of PRR members. Of course, the opinions expressed below are those of PRR, and can differ from beliefs and comments of individual PRR members.

PRR is a group of 40 companies and utilities; 15 of the members rank among the Fortune 500. Combined, PRR members employ more than 847,000 individuals in the U.S. and have annual revenues of more than \$937 billion. PRR members are committed to improving workplace safety and health. Toward that end, PRR provides informal benchmarking and networking opportunities to share best practices for protecting employees. In addition, participating entities work together in the rulemaking process to develop recommendations to federal and state occupational safety and health agencies for effective workplace regulatory requirements.

PRR comments and recommendations are below. Any revised and/or additional content PRR recommends is in **bold**; suggested deletions are in ~~strikethrough~~.

General Comments

Wildfire Smoke Situations Should Be Treated Differently From Typical Workplace Safety and Health Issues In a Regulatory Context – As we have seen, wildfires can be catastrophic; they seem to be occurring with increasing frequency and resulting in significantly more damage than used to be the case. Any emergency regulation **MUST** take into account that restoring operations in the power, water, and communications sectors is of critical importance in wildfire

recovery efforts. We are concerned that the regulation as drafted may impair these efforts. Further, it is critically important to remember that wildfire smoke exposure results from an emergency condition, wildfires themselves. DOSH and the Board are well aware that emergency circumstances require greater flexibility for employers in protecting employee safety and health and relief from regulatory burden that can slow or hinder such efforts. One example is 8 CCR [5141\(c\)](#) which provides relief from the usual hierarchy of controls during emergencies, to better allow the use of respiratory protection. We recommend this approach as a guiding principle in developing the emergency regulation and any permanent regulations.

As a result, we had urged DOSH to take a step back and think “outside the box” with regard to several of the provisions in the draft regulation, particularly with regard to the scope, controls, and training subsections. Wildfires break out without notice and require immediate response by different industries and employers. Implementing traditional engineering controls is simply not practical, will require expenditure of resources needed more urgently in other places, and may not actually protect any workers who are likely no longer working in that area by the time structures could be built. We were pleased to see, and strongly support, DOSH’s exception in (f) that engineering and administrative controls are not necessary for utilities and communications work when such operations are directly aiding firefighting or emergency response. We continue to urge that these utility and communications operations be exempt from the standard, as are firefighters engaged in wildland firefighting.

Specific Comments

PRR comments and recommendations are listed under the appropriate sections as identified in the 21 May 2019 draft. Any revised and/or additional content PRR recommends is in **bold**; suggested deletions are in ~~strikethrough~~. A redlined version of the draft regulation is also attached for your convenience. We offer the following comments and recommendations for your consideration:

Subsection (a) Scope

A. Recommendations for (a)(1):

CONCERN: The AQI is Not an Appropriate Basis for an Occupational Health

Regulation: PRR is concerned about the use of a threshold developed for environmental not occupational exposure. The Air Quality Index (AQI) is not an 8 hour time-weighted average, but it is intended to educate the general public, not establish occupational exposure limits.

B. Recommendation for (a)(2)(B):

CONCERN: The Current Language Puts a Burden on Employers that is Not Feasible to Comply With:

It is unreasonable in an emergency situation to require that the employer “ensure that windows, doors, or other openings” of enclosed vehicles are “kept closed to minimize contamination by outdoor or unfiltered air.” Where employees are in mobile crews, the employer is not present to ensure that these potential openings are kept closed. The employer should include the importance of keeping vehicle opening closed in the information provided to employees, but “*ensuring*” that they are kept closed, when the

employer may have no way of doing so, is unreasonable. This is not a situation where employees are parked at a single worksite and are easily supervised.

Recommended Language for (a)(2)(B):

Enclosed **air conditioned** vehicles **when the employer informs employees of the use of the recirculation feature to reduce air intake from the exterior of the vehicle.** ~~where the air is filtered by a cabin air filter and the employer ensures that windows, door, or other openings are kept closed to minimize contamination by outdoor or unfiltered air.~~

Rationale: This language limits the scope of the exemption to air conditioned vehicles and removes the requirement that employers ensure that openings are kept closed which is not feasible when mobile crews are restoring gas, power, water and communications systems during wildfire emergencies.

C. Recommendation for subsection (a)(2)(D)

CONCERN: The previous draft regulatory text would have required that respirators be provided on a voluntary basis to employees walking from one building to another on a corporate campus or walking through a loading dock.

COMMENT: We strongly support the added language in subsection (a)(2)(D) which considers that “dose” is both a function of concentration (here, AQI of 150 or greater for PM2.5) and duration of exposure to that concentration.

Rationale: Shortages of N95s and other respiratory protective equipment have been experienced during recent wildfire events. It is important that these not be exacerbated by an emergency regulation requiring respirators for non-emergency circumstances. Employers should not be required to provide respirators for use on a voluntary basis to employees walking outdoors within a corporate campus, or to the parking lot to leave for a sales or service call.

Occupational illness is related to a “dose” of something sufficient to cause harm. “Dose” is both a function of concentration (in this case, AQI of 150 or greater for PM2.5) **and** duration of exposure to that concentration. Occupational health standards are established to prevent occupational illnesses from occurring by controlling employee exposure to, or below, that dose. We support that the regulation establishes a minimum exposure duration as well.

D. Recommendations for subsection (c) Identification of Harmful Exposures:

CONCERN – Mobile Crews: The first sentence is a requirement that an employer check the AQI forecasts and the current AQI on various websites before each shift and periodically thereafter. Some PRR members have extensive mobile crews that are in various locations during the course of a day. It would be impractical, and sometimes infeasible, to track all the AQI forecasts during the work hours which may bear no relationship to the actual AQI at a given time and location. Moreover, it would be virtually impossible for employers with mobile workforces to track local conditions for each employee in a sufficiently specific and timely manner.

Moreover, PRR members are concerned that the AirNow website is not always a reliable source to obtain an AQI. We understand that the website crashed during past wildfires due to over-capacity. We recommend that DOSH carefully review this issue and if that problem persists, referral to the AirNow website should not be required. Nor should employer have to track multiple websites. If there is not a single reliable source, this would be yet another reason not to use the AQI standard.

Recommended Language:

EXCEPTIONS; (1) Subsection (c) does not apply where an employer assumes the current AQI for PM2.5 is greater than 500 and uses that assumption to comply with subsection (f)(4)(B).

(2) For mobile employees and crews, an employee working alone or a designate crew member may be required to periodically check the AQI for PM2.5 and communicate to the employer any air quality concerns or local conditions that adversely impact air quality.

Rationale for Recommended Language:

An exception for mobile employees is appropriate for the reasons stated above. This issue was also recognized with the outdoor heat illness prevention standard, and an attempt was made to address this issue by requiring two-way communication between the employer and the mobile or solo employee who would be in the best position to monitor local conditions. See 8 CCR 3395(e). Employers should be able to rely on employees who are out in the field to let them know when conditions worsen and other action is needed.

E. Recommendations for subsection (c) and (c)(1):

CONCERN: The second sentence requires the employer to “use the monitoring station that is closest to the worksite.” There are no online tools for an employer to use to determine which of, say, six monitoring stations in a county is closest to the worksite where mobile crews are working. Employers had understood previously that it was driven by zip code. PRR members are unable to discern how to determine AQI where employees are located closer to one air monitoring station or another.

Recommended Language:

(c) **Identification of harmful exposures.** The employer shall determine employee exposure to PM2.5 for the affected worksite(s) before each shift and periodically thereafter, as needed, by any of the following methods:

- (1) Check AQI forecasts and the current AQI for PM2.5 from any of the following: U.S. EPA AirNow website, U.S. Forest Service Wildland Air Quality Response Program website, California Air Resources Board website, local air pollution control district website, or local air quality management district website. ~~The employer shall use the monitoring station that is closest to the worksite.~~

Rationale for Recommended Language:

This language makes it clear that the AQI must be determined for the worksite where employees are working. For the reasons above, a requirement that employers determine “the monitoring station that is closest to the worksite,” particularly for mobile crews, is not a straightforward way for employers to identify **in an emergency situation** which of several air monitoring stations in a county is closest to the worksite.

F. Recommendation for subsection(d) Communication:

CONCERN about (d)(1): PRR members, and most employers in the State, do not employ trained meteorologists. Requiring employers and employees to always be able to identify changing wind patterns, temperature inversions, or other factors leading to a worsening of air quality simply cannot be done amidst the response to the wildfire emergency.

Recommended Language:

(1) ~~Informing~~ **Communicating with** employees **about** ~~of~~: ...

Rationale: See recommendations above for subsection (c). PRR recommends that DOSH consider delegating some duties to the mobile employees who would be in the best position to monitor local conditions. This language encourages two-way communication so that both employer and employees stay informed and decisions made as to what they can reasonably do in an emergency.

G. Recommendations for subsection (e) Training and Instruction:

CONCERN 1: PRR members are often involved in restoring gas, power, water, and communications systems to communities and areas that have been affected by wildfires, among other activities in areas impacted by wildfire smoke. The PRR members involved in these efforts conduct pre-job briefings, tailgate meetings, or other on-the-job instruction in the safety and health hazards of the work environment and the measures employees must take to protect their health. Wildfires are unannounced events in most cases, requiring immediate response. Stopping to conduct training, which for PRR members involves development of curricula, attendance rosters, and following tracking processes, will delay the much-needed immediate response. PRR members have found that classroom training is often less effective than on-the-job instruction.

Recommended Language:

(e) ~~Training and~~ Instruction. The employer shall provide employees with ~~effective training and~~ **Instruction** on the information contained in Appendix B

Rationale for Recommended Language: Wildfire events, although more frequent in recent years, are not commonplace working situations. PRR recommends that DOSH recognize this truth and diverge from its typical rulemaking approach. The words “effective training” have been used since 1991 in the Injury and Illness Prevention Program and have a particular interpretation as planned, formal programs (e.g., a compliance officer asks for “training records” and signed attendance rosters). What is most important in emergency restoration efforts is that employees understand how to protect themselves from the hazard of wildfire

smoke. We urge the Board to keep its eye on the goal here, which is to protect workers during wildfire events.

H. Recommendation for (f)(1) – Control of Harmful Exposures to Employees

CONCERN: The previous draft regulatory text would have required that utility and communications employers, when their employees are directly aiding firefighting or emergency response, provide engineering controls and administrative controls where feasible.

COMMENT: We strongly support the language in subsection (f)(1) which exempts utilities and communications operations when they are directly aiding firefighting or emergency response.

Rationale: As stated during the Public Meeting portion of the OSH Standards Board 3/21/19, the previous draft’s emphasis on “feasible engineering controls” such as enclosed structures was inappropriate for inclusion in an emergency regulations. Wildfire smoke emergency conditions do not provide the time or material for constructing such enclosures. By the time the structures are completed, the smoke hazard has likely passed. Expenditure of resources in this manner is wasteful, particularly in light of other urgent needs at this time to restore gas, power, water and communications systems, shelter, etc.

While the feasibility of engineering and administrative controls is certainly an appropriate topic for consideration during a permanent rulemaking process, it is not appropriate to require such additional controls as part of an emergency regulation with virtually no opportunity for input on the feasibility of such controls, particularly where there is no evidence that such additional controls will be practicable in emergency conditions, or will, in fact, protect even one worker. Further, it has long been recognized by The Board that respiratory protective equipment “shall be used to prevent harmful exposures ...in emergencies” 8 CCR 5141(c)(3).

I. Recommendation for (f)(4)(B):

CONCERN: Because of the unique circumstances involved in wildfires, we recommend that the Board not require mandatory use of respirators at all.

Recommended Language: Deletion of (f)(4)(B).

Rationale: The Respiratory Protection Standard (8 CCR [5144](#)) and its federal OSHA equivalent were written for situations where there is a regular exposure to an atmospheric hazard or hazards. These hazards are to be addressed through the hierarchy of controls. Wildfire smoke above any designated trigger value is not a regular exposure and 5144 should not be applied to any emergency wildfire situations. Because the assigned protection factor for N-95s is 10, employees would use the same type of respiratory protection for an AQI of 501 as they would for an AQI of 150. The requirement for mandatory respirators obligates employers to provide fit testing and medical evaluations, which require time not available when responding to an emergency. As we have stated before, we are not aware of any respirator that has been approved as Fire Resistant for use by electrical workers performing

energized work necessary to take out downed power lines and restore power; delays will put the utilities at odds with the California Public Utilities Commission. Again, we recommend that the Board keeps its eye on the goal here: protecting employees during emergency wildfire events.

J. Appendix B Recommendation subsection (2)

CONCERN/COMMENT: It appears that a requirement has been included in the text of Appendix B, (2), which states that “Employers must have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke.” Employers are already required to do this under 8 CCR [3400](#). We recommend that this language be included in the text of the emergency regulation itself or not at all because it currently exists in Title 8, section [3400](#).

K. Appendix B, subsection (7)(2)

CONCERN: There is inconsistency between the regulatory text (a)(3) and (f)(4) Note, and Appendix B(7)(2) which require employers to instruct employees that they should:

2. Read and follow all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirators limitations.

However, manufacturers’ instructions state that a Respiratory Protection Program, including medical evaluation and fit testing must be in effect for the use of the respirator. This will create confusion for both employers and employees because voluntary use of a respirator does not require either medical evaluation or fit testing.

L. Appendix B Recommendation for (7)(2) and (8)

CONCERN: It will be confusing for employees and small employers to see language about “maintenance, cleaning and care” of an N-95 which should be disposed of after no more than one day. No maintenance, cleaning or care is required for these respirators, nor should employees be expected to do so under emergency conditions.

Recommended Language:

2. Read ~~and follow all instructions provided by the manufacturer on use, maintenance, cleaning and care, and~~ warnings regarding the respirator’s limitations.

(8) How to properly put on, ~~use and maintain~~ the respirators provided by the employer.

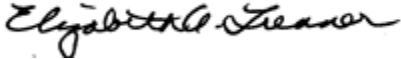
Rationale for Recommended Language:

N-95 filtering facepiece respirators are not designed to be worn for more than one day, and should not be. Therefore, no maintenance, cleaning or care instructions need to be read or followed. As stated above in (I), the “use” part of manufacturers’ instructions discuss medical evaluations and fit testing, which is not required to be done for voluntary use. Further, it is not reasonable for anyone to expect that in a wildfire emergency, employees are going to read and follow all instructions provided by the manufacturer.

All references to maintenance, cleaning or care of the respirator should be deleted to eliminate confusion. This would include subsection (8).

In conclusion, PRR supports the intent of the regulation, which is to reduce adverse health effects experienced by worker exposure to PM2.5 during wildfire events. We look forward to continued participation in this important process as well as the formal rulemaking once that commences. Please let me know if you have any questions.

Sincerely,



Elizabeth Treanor

Director

Phylmar Regulatory Roundtable – OSH Forum

cc: Eric Berg
Amalia Neidhardt

PRR Sacramento Office
P. O. Box 660912, Sacramento, California 95866
+1.916.425.3270