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MINUTES OF THE ADVISORY COMMITTEE FOR GISO ARTICLES 60-61, SECTIONS 4345, 4351, 4352, and 4354 STATIONARY AND MOBILE COMPACTION EQUIPMENT AND BALERS

December 6, 2013
Sacramento, CA

1. Call to Order.

The meeting was called to order by the chairman, David Kernazitskas, Senior Safety Engineer, Occupational Safety and Health Standards Board (OSHSB), at 9:05 am on Friday, December 6, 2013, in Sacramento. The Chair was assisted by Bernie Osburn, Staff Services Analyst, OSHSB.

2. Opening remarks.

Mr. Kernazitskas went over the handouts and started the introductions of the attendees. He then reviewed the Standards Board policy regarding the use of advisory committees; i.e., the Board has found advisory committees to be an effective way to develop a proposal because of the expertise of the attendees, and provided general information about the rulemaking process.

3. Discussion of the proposed rulemaking:

Background

The Chair stated that the advisory committee was convened to address a regulatory gap discovered in the course of a variance hearing. Waste Management applied for a variance concerning the operation of their dual control mobile compaction equipment. During the hearing, it was pointed out that current Title 8 standards for mobile compaction equipment are based upon ANSI Z245.1-1992, in which dual control equipment is not mentioned. The 1999 and subsequent versions of the standard address dual control mobile compaction equipment. The latest version of ANSI Z245.1 is the 2012 edition.

In addition to ANSI Z245.1, Articles 60 and 61 of the General Industry Safety Orders mention ANSI Z245.2 and ANSI Z245.5, which have 2008 and 2013 as the latest versions, respectively.

Discussion on Necessity

The Chair asked if there is a need to update the standards from the 1992 to the 2012 editions. Jim Dufour (Attorney, Dufour Law) stated that ANSI Z245.1-2012 should be incorporated by reference into Section 4355 because it is an industry standard, but cannot be used as a defense for an OSHA citation if it is not referenced in the regulations. The Chair pointed out that the current reference to ANSI Z245.1 in Title 8 is to the 1992 version, and several editions have been published since. The committee agreed that there was a need to update references to older versions of the various ANSI Z245 standards and to discuss adopting them whole or in part.

Rulemaking Language Discussion

The Chair asked the committee about the prevalence of dual drive equipment in California. Billy Martin (Waste Management) stated the dual drive trucks make up 10-15% of the trucks in their fleet, but eventually they hope to move to completely automated trucks.

The Chair asked whether we wanted to adopt the 2008 or 2012 version of the ANSI Z245.1. Mr. Martin stated that we should adopt the latest version of the standard even though the differences between 2008 and 2012 were minor and mostly limited to changes in terminology. Nathan Redden (Autocar, LLC) said that his company manufactures the equipment according to the latest consensus standards, which would be the 2012 version.

Michael Manieri (OSHSB) mentioned that crane standards require that cranes be designed, built, used, and operated in accordance with consensus standards. He asked if we wanted to incorporate by reference similar requirements for waste compaction equipment. The Chair asked the committee to decide whether we needed to incorporate ANSI Z245.1 into the operating procedures described in Section 4355 *Operating Rules for Compaction Equipment*. Mr. Martin explained that Waste Management procedures meet or exceed those required by ANSI Z245.1. He also explained that the ANSI standard was split up into various sections, which apply to manufacturers, employers, and operators separately. The committee decided not to incorporate the entire standard by reference, but to instead use it as a resource from which to pull specific requirements.

Mr. Martin said that we should add “Transit Mode” to the list of proposed definitions to clearly distinguish between “Transit Mode” and “Collection Mode” and the requirements of each. Additionally,

he said that his company employs safe practices that are gleaned from the ANSI standard. For instance, he believes that if a stop is greater than 2-tenths of a mile, his employees will not travel below 20 mph. As a result Waste Management requires that employees be seated when driving farther than 2-tenths of a mile to the next stop. The Chair asked how limits on speed and travel distance would be enforced by an employer, and Mr. Martin replied that onboard computers and GPS track the information.

Bill Lyons (Recology) stated that 2-tenths of a mile is a long distance for his trucks to travel. In San Francisco, stand-up drivers only have about 20-30 feet between stops. Mr. Martin added that his company's policy to limit travel distances while operating from the stand-up position may not be necessary to be in the standard due to the different geography of each hauler in California. Jeff Ritchie (EDCO) said that stops are much closer in cities than in rural areas. He preferred that we focus on speed instead of distance as a limiter.

The Chair asked whether or not a right-side drive truck ever needed to go faster than 20 mph. Eric Eyman (Autocar, LLC) and others said that there was often a need to travel faster than 20 mph from the right side of the vehicle, but only from a seated position. Mr. Martin explained that in regard to right-side drive trucks, ANSI Z245.1 provisions deal with operators in the stand-up position. Seated positions are addressed similarly in the standard whether on the left or right side of the truck. Mr. Ritchie explained that under automated collection, equipment has both left and right hand seated positions, either of which can be used, depending on the preference of the driver. When a route requires that the driver exit the vehicle to load materials from the right side, trucks are operated from a stand-up position and can travel no more than 20 mph. When trucks return to the yard, they must be driven from the traditional left hand position.

The Chair asked the Autocar representatives if their trucks were limited to 20 mph when driven from the stand-up position. Mr. Redden said that the trucks were limited to "about" 20 mph by the transmission, but due to tire size and other issues, the speed could slightly exceed 20 mph. He explained that they were limited to 3rd gear and if they were driven faster than 20 mph for any period of time, the trucks would break down due to misuse. The Chair asked if older trucks were limited as well, or if this was a recent safety modification. Mr. Martin stated that he believed they were limited as far back as the 1990s.

The Chair asked if anyone had any concerns with the proposed operating rules listed in Section 4354. Eric Berg (Division) said that the Division did not agree with the proposed 4354(d), which intends to allow the trucks to be operated without a latching bar or chain in place while the trucks are travelling at speeds under 20 mph. He stated that an employee could fall out of the cab of a vehicle at any speed if the chain or bar was not required to be installed across the right-side opening. He insisted that the safety bar must always be used, regardless of collection or transmit mode. Mr. Manieri asked if the Division had any concerns about the repetitive motions presented by moving and replacing the bar or chain up to 800 times per day. Mr. Berg responded that a safety bar could be employed and would not require any repetitive motions to use. Mr. Martin commented that his company tried a safety bar for a period, but found that it did not work well, especially for taller employees because it hit them too low on the body. His company opted for reducing the speed instead of using the bar. He admitted that speed limits were not bullet proof, but that when you look at the exposure versus the experience, the risk is very low for injury.

The Chair pointed out that ANSI Z245.1 requires that a restraint be installed across the right-side opening, but that the currently proposed wording does not. He stated that in his experience of speaking to waste collection companies, the restraint is often not used. Mr. Ritchie said that in his experience, he has never seen an injury from a lack of a safety chain or bar while the truck was being operated in collection mode at speeds less than 20 mph. Mr. Martin pointed out that the ANSI standard section that requires the installation of the restraint is addressing manufacturers: it must be installed just like headlights and a steering wheel. Mr. Berg stated that whether you are run over at 1 mph or 20 mph, you are still dead. Mr. Martin said that he was only talking about where the standard applied to manufacturers. Mr. Berg said that Mr. Martin was trying to say that the speed limit protects people. The Chair pointed out that someone could trip going down stairs at any time. Marley Hart (OSHSB) asked if there were other accidents which involved the lack of a safety chain or bar. Mr. Berg replied that he is aware of a couple accidents from other states, but that the accident in question is the only one he is aware of in California. Mr. Dufour pointed out that the circumstances of the California accident are very unique (the truck was driving close to a wall so that when the operator fell out, he was forced back under the truck) and that there are still a lot of unknowns about it so it is difficult to know if it applies to this situation. He further stated that it was doubtful that we could make anything absolutely safe.

The Chair related that in his preparation for the meeting, he contacted a representative from the ANSI Z245.1 committee for clarification on the restraint requirements. The 2008 version explicitly requires a restraint during transit mode, but is silent on a restraint during collection mode; however, the 2012 version removes the distinction of "transit mode" and requires a restraint at all times while driving in the secondary position (See ANSI Z245.1-2012 Section 7.4.8.7.3).

The Chair noted that there was no labor representation for the committee and explained that he spoke with Teamsters representatives from Sacramento and Los Angeles via email and phone call, inviting them to the committee, but that none of them had shown up. Mr. Berg said that we needed to hear their input and the Chair agreed.

The Chair asked for managements' position on having the chain installed across the opening of the vehicle while operating from the secondary drive position in collection mode. Mr. Ritchie responded that he agrees with the currently proposed language, which includes an exception to the restraint while operating in collection mode. Mr. Lyons and Mr. Martin agreed. Mr. Dufour stated that he has heard from several employees who have stated that using a restraint device every time they exit the vehicle during collection mode would be terribly impractical and ineffective. Mr. Berg stated that he did not support language which does not require the use of a restraint at all times during vehicle operation.

The Chair reminded the committee that the final proposed wording of the regulation would be circulated to all of the invitees, including labor representatives, as part of the advisory committee process. Mr. Berg stated that the Division was opposed to the exception that would allow people to fall out of the truck. The Chair pointed out that an employee could still fall out of a vehicle with the restraint in place based upon Mr. Martin's experience with employees of different heights. Mr. Berg asked if we wanted to specify a height for the restraints. The Chair stated that we did not want to discuss a height requirement because the vehicles are already manufactured to code specifications and we would not want to create a conflict with them.

The Chair asked if we wanted to address the use of seatbelts. He opined that the ANSI standard is ambiguous as to their use in collection mode. Mr. Berg stated that the Division preferred language requiring seatbelts whenever the vehicle is in motion and the driver is seated. The Chair pointed out that refuse trucks have an exemption from seatbelts under the vehicle code while collecting wastes or

recyclables. Mr. Ritchie and Mr. Lyons stated that requiring seatbelts while seated was acceptable to them.

The Chair asked if a person leaning on the folded-up jump seat in the secondary position would be considered seated. Mr. Berg replied no. The Chair continued by asking if an employee could be considered seated even though the chair was not lowered into the appropriate position. Mr. Berg replied that the seatbelt would only be required when the driver was seated on the folded-down chair.

Mr. Redden suggested that language be added to the standard addressing the use of the work brake in accordance with the ANSI standard. Mr. Ritchie stated that EDCO trucks all have the brake installed and that it can improve efficiency. Mr. Redden said that the misuse of the work brake can be a safety hazard. He suggested language requiring that the work brake be used as designed. Mr. Berg said that the Division supported such language. The proposed language agreed upon by the committee adds the following in a new paragraph (j): "Work brake performance. On vehicles which are so equipped, the work brake feature shall not be used as the primary means of stopping the vehicle. A safety sign shall be placed within the operator(s) view, such as: DO NOT USE WORK BRAKE INSTEAD OF SERVICE BRAKE TO STOP VEHICLE." The committee was unanimous regarding the paragraph's wording.

Mr. Berg asked where the 20 mph limitation originated. He said that it seemed too fast. Mr. Martin said that the requirement had been in the ANSI Z245.1 standard for many editions. He also stated that in a high density residential neighborhood, the vehicle would travel around 10 mph because it could not get up to 20 mph in a short distance. Mr. Berg stated that if a truck traveled on a bumpy surface or ran over potholes, 20 mph would be unsafe. Mr. Manieri said that 20 mph was likely the result of a compromise of efficiency and safety. Mr. Lyons stated that the vehicles are required to round corners to get to the next pick up location and if they travel too slowly, they are a hazard to the flow of traffic. Mr. Martin stated that the trucks do not accelerate like cars. He said that trucks can take two or more blocks to accelerate to 20 mph. The Chair pointed out that the training requirements of the proposed language and contained in the ANSI standard would require the operator to drive as conditions allow. Mr. Berg stated that allowing the trucks to travel 20 mph could add to work pressures and should be lowered. Mr. Martin stated that 20 mph has been the standard for 30 years and should remain the same.

The Chair asked Mr. Berg what speed he suggested and Mr. Berg replied 10 mph. Mr. Berg stated that he did not have any accident data or scientific basis for the recommendation, but he felt that it would be a safer speed. Mr. Martin queried how the Division would enforce a 10 mph speed limit because the GPS onboard can be off by as much as 5 mph. He insisted that travelling at 20 mph in collection mode was very rare. Mr. Manieri asked if there was any evidence that 20 mph was unsafe. He said that if there is none and the consensus standard recommends 20 mph, we should be compelled to leave the limit at 20 mph. The Chair pointed out the ANSI standard recommended 20 mph or 30 kph, which are not equal (20 mph is actually closer to 33 kph), so 20 mph is actually faster than 30 kph. He wondered that if the speeds were approximations, do we need to set a speed limit or just let the gear ratios of the trucks limit the speeds? Mr. Berg responded that access to the GPS data would be sufficient for them to enforce a 10 mph speed limit.

The committee took a short break to think about the wording. After the break, Mr. Ritchie proposed a compromise with the Division. He asked if the Division would consider allowing the vehicles to operate in collection mode without the continual use of the safety chain or latching bar, if the industry agreed to lower the speed limit from 20 mph. Mr. Berg responded that if speed limits were kept below 10 mph, the Division would allow the trucks to operate without the restraints across the doorway in collection mode. Mr. Berg also expressed concern for bad weather and a need to further reduce speeds during rainy or low-visibility conditions.

The Chair asked the parties if they agreed with the proposed speed limit change and compromise, and there was unanimous support. Mr. Lyons said that he had a concern with further limitations for rainy weather. He said that San Francisco often has rainy weather and he is concerned about further limiting driving speed. The Chair suggested that slippery surfaces are already addressed by injury and illness programs so they don’t need to be addressed here. The Division agreed.

The Chair asked the Division if they would like to lower the speed limit in the exception for seatbelt use in collection mode. The Division responded affirmatively.

The Chair restated the areas of agreement on the proposed language. Everyone present agreed that the speed of the vehicle should be limited to 10 mph when operated from the stand-up position during collection mode and that mirrors should be adjusted to provide adequate visibility from the driving

position. They also agreed that seatbelts should be worn at all times while the vehicle is in motion, except while standing during collection mode and traveling under 10 mph. The proposed language requiring occupant restraints across the openings of the cab of the vehicle, except when the operator is standing during collection mode and traveling under 10 mph was also agreed upon unanimously.

The Chair asked if there were any comments on the proposed training requirements. Mr. Berg suggested removing the language "employees determined by their employer to be qualified, authorized, and specifically trained to operate this type of vehicle" because it is unnecessary. The paragraph was changed to read "Only qualified and trained operators shall be permitted to drive in the stand-up position." Mr. Manieri suggested that the word "qualified" is often used in Title 8 and carries special meaning, implying employer authorization.

Proposed Section 4354(j) on work brake performance was also unanimously accepted by the committee.

Mr. Dufour suggested that a change to Section 4355 Operating Rules for Compaction Equipment was necessary because the section may conflict with our proposed rulemaking. He pointed out that Section 4355(a)(2) requires that training "include the operating instructions provided by the manufacturer for each machine." He said that if a manufacturer adopts ANSI Z245.1-2012 for its operating instructions, the 20 mph provision in the ANSI standard will conflict with the 10 mph exception in our proposed wording. He opined that manufacturers should not be allowed to legislate OSHA regulations. He continued by saying that if a manufacturer changes its manual, it affects the enforcement of Cal/OSHA regulations.

Mr. Dufour stated that he would like to see the requirement for training according to the manufacturer's instructions be deleted from Section 4355(a)(2) because the requirements can vary from manufacturer to manufacturer. He said that he has seen some manuals that quote verbatim the ANSI standard and others that ignore it entirely. He pointed out that if the ANSI standard said that the chain or latching bar was required at all times, as in the 2012 version, the proposed provision of allowing it not to be used while traveling under 10 mph would be in conflict. He stated that some manuals are hundreds of pages long and can change without notice, making full compliance impossible. Mr. Berg stated that the Division opposed striking the phrase in question. Mr. Redden pointed out that each truck could have an owner's

manual, transmission, chassis, and other manuals, which could comprise thousands of pages and be very difficult to train on completely.

Mr. Manieri suggested adding a phrase to 4355(a)(2) that stated that the employer's operating rules will take precedence over the operating manual where the two are inconsistent. Mr. Berg stated that the Division is opposed to such a change. He said that Section 4355(a)(2) simply meant that the operator training should include relevant parts of the manufacturer's manual. Mr. Dufour said that there would still be a conflict if the manufacturer's manual required the occupant restraint at all times, but our proposed regulation allowed it not to be used in certain situations. Mr. Berg said that the employer should enforce the more stringent standard, even if that meant using the safety chain or latching bar when driving under 10 mph. The Chair said that he feared that if we deleted the phrase in question, we would be saying that it is okay to ignore the manufacturer's instructions completely; however, under the Division's interpretation, the manufacturer could be dictating Title 8 regulations. He also stated that because the Appeals Board is currently hearing at least two cases dealing with this issue, it may be best to leave it alone until we have the Appeals Board ruling. Because this section is not a focus of the proposed amendments and due to the lack of consensus on the matter, he suggested leaving it for a future rulemaking effort. Mr. Manieri suggested that we discuss the issue further via email to see if it needs to be included with the proposed amendments.

The Chair reviewed the points of consensus and there were no additional changes suggested.

8. Economic Impact.

The Chair explained to the committee that an important and required part of the rulemaking process is the identification of the cost impact of the proposed rulemaking, and he asked the committee members for their assistance.

He asked if anyone saw a fiscal impact on California business. Mr. Redden said that there may be manufacturing costs for dealing with customer requests for upgrades, but the Chair explained that those costs would not be a concern for the current rulemaking since they would apply to any such modifications requested by an employer, and would be paid for by the employer requesting the modification.

Mr. Martin opined that the proposed rulemaking would have very little or no fiscal impact on his operations. Mr. Redden stated that any regulatory changes are reviewed extensively by Autocar, LLC, to determine whether or not they are in compliance and can be very expensive. Mr. Manieri pointed out that those costs would be manufacturing costs and not employer costs. Mr. Lyons stated that he did not see any economic impact. Mr. Ritchie agreed. The committee was of the opinion that there would be no cost or fiscal impact from the proposed regulation.

9. Conclusion.

The Chair reviewed the rulemaking process with the committee. He noted that the advisory committee had determined a necessity for changes and had reached a consensus on the changes proposed. He stated that committee members will receive a copy of the meeting minutes, along with a copy of the final consensus proposal within 2-3 months. They will have an opportunity to comment on them before he moves forward with preparation of a formal rulemaking proposal. The Chair noted that although consensus on the proposal was achieved, there will be additional opportunities for public comment. A formal rulemaking proposal will be noticed and he estimated that could be 3-4 months out. The notice will be mailed to the committee members, so he urged them to be sure they signed the attendance roster if they want to receive a copy. The notice will also be on the OSHSB website for viewing.

The Chair estimated that the rulemaking process could take up to a year from when the formal notice is published for public comment.

The Chair thanked the committee members for their attendance and participation and adjourned the meeting at 12:30 p.m.