

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Website address: www.dir.ca.gov/oshsb**MINUTES OF THE SUBCOMMITTEE MEETING****Certification, Recertification of Construction Personnel Hoists (CPH) Safety Brakes and Governors, Preventive Maintenance and Servicing**

December 5, 2014
Sacramento, California

The meeting was called to order by the Chairman, Marty Tamayo, Associate Engineer, Occupational Safety and Health Standards Board (Board) at 9:00 a.m. on Friday, December 5, 2014. The Chair was assisted by Ms. Leslie Matsuoka, Associate Government Program Analyst, Board. Board staff present at the meeting was Ms. Marley Hart, Executive Officer, Mr. Mike Manieri, Principal Engineer and Senior Engineer Mr. Michael Nelmda. Mr. Larry McCune, Research and Standards, represented the Division of Occupational Safety and Health (Division). The Petitioner, Alimak Hek, Inc. (petition file number 534) was represented by Mr. Dale Stoddard, President of Alimak Hek and company attorney Mr. Penn Spell. Mr. Kevin Bland, Esq., Ogletree, Deakins, Nash, Smoak & Stewart, P.C., represented the Construction Elevator Contractor's Association and Western Steel Council (CECA/WSC). Mr. Jeremy Smith, State Bldg. & Construction Trades Council of California, represented labor. The Chairman welcomed the subcommittee members and asked for self-introductions for the record.

The Chairman explained that the subcommittee was convened to provide another opportunity for the parties involved to resolve the issues encountered from the Advisory Committee held on September 23, 2014 in Sacramento, CA. which resulted in a lack of consensus. Prior to the meeting, the Chairman requested that subcommittee members submit alternative language for consideration to assist in expediting the process. Only Alimak Hek provided revised language for discussion at the meeting. The Petitioner maintained their position that the servicing and maintaining of sealed safety brakes and speed governors used on rack and pinion driven CPHs should only be performed by the manufacturer.

Kevin Bland, representing CECA/WSC, reiterated the issue from the Advisory Committee (AC) meeting in September that necessity for this proposal has yet to be established. Board Executive Officer Ms. Marley Hart interjected that discussions from the AC suggested that there were areas that could be examined for further clarity and that is the focus for this committee. Issues such as the meaning of the manufacturer's specifications not being available and qualifications of third party certifiers need to be clarified. Further, Ms. Hart iterated that this regulatory amendment is global and encompasses much more than just resolving an Alimak issue with brakes alone but any piece of equipment that needs to be serviced or returned.

Mr. Penn Spell, attorney representing Alimak Hek, reminded the committee that their concern was the safety of the brakes and lack of consistency in the regulations. He quoted the Labor Code Section 7300 pertaining to construction hoists and ASME 17.1 as the minimum standards applicable to permanent and construction elevators that stipulate that sealed brakes be returned to the manufacturer for replacement at intervals set by the manufacturer. Mr. Spell noted that Section 1604.1(c)(1) is in conflict with ASME 17.1 and therefore is in conflict with the statute. According to Mr. Spell, Section 1604.1 allows an engineer to sign off on brakes, but ASME 17.1 does not allow it and Alimak's alternative language is virtually the language of the statute.

Board Principal Engineer, Mike Manieri, interjected that there is an element of the statute of legislative law that talks about the spirit of the law versus the wording of the law. Mr. Manieri stated that the legislature may have spoken in terms of ASME 17.1 to all elevators, but the spirit of the law is not being violated by the current standard which allows ASME 10.4 and we are not gravitating away from that. He urged the committee to not indulge in this discussion because this is not the correct forum to have it. Mr. Manieri does not believe that the standard is in violation of the statute because it meets the spirit of the law by providing an alternative standard for the safety and effectiveness of the equipment.

Mr. Larry McCune, Division Research and Standards, opined that the Division Elevator Unit would never permit a construction personnel hoist to be used as a substitute for an elevator that is permitted under the elevator safety orders. He stated that just picking the word elevator out of the statute doesn't necessarily mean that a construction personnel hoist is an elevator.

Mr. Kevin Bland, Esq., representing CECA/WSC, expressed that this creates an overburden for the Division which is already shorthanded. He reiterated that we have not identified any issues dealing with safety other than anecdotal examples from both sides of the argument. Mr. Jeremy Smith, State Bldg. & Construction Trades Council of CA, interjected that just because there are no known safety issues does not mean we should not try to make the regulations better. He further stated that there are no regulations on third-party providers and this could be the first step in creating some policy or procedure to regulate third-party entities as this was his sense from the last meeting. Ms. Marley Hart, Board Executive Officer, agreed with Mr. Smith that this was also her takeaway from the Advisory Committee meeting.

Mr. Penn Spell, Esq., representing Alimak, stated that Alimak's suggested new language mirrors what the statute stipulates so how can it be an imposition on anybody. It allows a third-party to come forward and express their capability to demonstrate or provide a better brake that is at least as good as the manufacturer's brake. Mr. Bland, representing CECA/WSC, responded that the new language does not call for a professional engineer. We are ignoring what the current regulation says which is simple; you apply the manufacturer's specifications and if they will not give them to you, you get a Professional Engineer to look at it and put their stamp on it. Mr. Bland remarked that he does not understand why Alimak's new language is better than what exists other than quoting the wrong elevator ANSI code and placing it in the public safety instead of the construction elevator code. This new language, according to Mr. Bland, does not improve the current clear regulations which put the burden of proof on the employer while the new

language puts the burden on the Division. Larry McCune, Division Research and Standards, interjected that placing the burden on the Division is an unsavory position. He would rather have the burden on a Professional Engineer as the Division's Elevator Unit does not certify devices of this nature.

The discussion reverted back to anecdotal examples by Alimak of third-party certifiers not replacing critical parts and third-party stories of brakes not properly reconditioned by Alimak. Mr. Stoddard, President of Alimak Hek, insisted that they are concerned from the safety perspective of third-party brake discrepancies and is the reason that drives Alimak's petition to amend the regulations. Mr. Manieri, Board Principal Engineer, suggested that perhaps the discussion should focus on what criteria for inspection needs to be specified in the standard when the manufacturer's specifications are not available. The other component suggested by Mr. Manieri is the individual performing the inspection and what criteria should govern his/her competency to do it. According to Mr. Manieri, by putting these two components together, you may have the solution. Mr. Bland, representing CECA/WSC, stated that the proposal Mr. Manieri was making could be stipulated in a P & P (policy and procedures) manual or through a manufacturer's bulletin thereby saving hundreds of thousands of dollars in the process. Ms. Marley Hart, Board Executive Officer, brought up the issue of cost impacts for regulatory proposals. She iterated that the Standards Board has to identify all the costs to the state that will occur because of promulgating this regulation and the way it is drafted by Alimak could amount to significant costs to the Division; meaning that they would have to go to the Department of Finance for approval because we would be using state money to implement it. Ms. Hart concluded by stating that for the Division, to change their program or develop a new program would be very costly.

Mr. Penn Spell, attorney for Alimak, noted that Alimak has presented a proposal that is a compromise from what was originally proposed in the petition. He stated that he has not heard anyone make a counter proposal other than Section 1604.1 should be left alone and that an engineer makes the determination for specifications of the brakes. Mr. Spell made it clear to the committee that Alimak is drawing a line in the sand and will not accept this position. He did, however, offer to provide new language based on the issues discussed during the meeting and will provide it to the Board for review. He also suggested that the Standards Board or the Division develop alternatives such as a P & P or some other method to address the problems encountered and have Alimak review it. Mr. Manieri, Board Principal Engineer, agreed that based on what was learned here today, the Board and the Division could put their heads together and come up with another proposal and distribute to the committee members for review and comment.

The committee agreed it was apparent that a compromise or consensus was not probable at this time. The Chairman reviewed the agreements and stated that the minutes of this meeting would be prepared and provided to committee members. The chairman thanked the committee for their participation and adjourned the meeting.

As was promised in the meeting, Board staff developed alternative language and distributed to subcommittee members for their review in a final attempt to achieve compromise. The proposed language was amenable to the majority of stakeholders but was summarily rejected by the Petitioner. Subsequent to this, Board staff has recommended that this petition be terminated.