

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY  
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING  
April 21, 2016  
Walnut Creek, California**

**I. PUBLIC MEETING**

**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:06 a.m., April 21, 2016, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

**ATTENDANCE**

**Board Members Present**

Dave Thomas  
Dr. Robert Blink  
David Harrison  
Patty Quinlan  
Barbara Smisko

**Board Member Absent**

Laura Stock

**Board Staff**

Marley Hart, Executive Officer  
Mike Manieri,  
Principal Safety Engineer  
Peter Healy, Legal Counsel  
David Kernazitskas,  
Senior Safety Engineer  
Sarah Money, Executive Assistant

**Division of Occupational Safety and Health**

Eric Berg, Deputy Chief of Health  
Steve Smith, Principal Safety Engineer

**Others Present**

Paul Niemer, Sierra Pacific Industries  
Gavin Dillon, CalTrans HQ  
John Swartok, Aerotek  
Cassie Hilaski, Nibbi Bros.  
Siouxie Q, Free Speech Coalition  
John Strum, Cal PIA  
David Jones, AGC of CA  
Adam Cohen, AIDS Healthcare Foundation

Michael Strunk, IUOE Local No. 3  
Michael Musser, CA Teachers Association  
Jay Weir, AT&T  
Steve Johnson, Condon-Johnson  
Jack Hammer, Free Speech Coalition  
Daniel J. Gallet, Plywood Pullers LLC  
Dan Leacox, Greenberg Traurig  
Kevin Bland, Ogletree Deakins

Heather Gribben, Ogletree Deakins  
Linda Morse, MD, M&M Occupational  
Health and Safety  
Scott McAllister, M&M Occupational  
Health and Safety

David Shiraishi, Fed OSHA  
Gail Bateson, Worksafe  
Mike Horowitz, Cal/OSHA  
Elizabeth Treanor, PRR

B. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

**Gail Bateson, Executive Director, Worksafe**, stated that her organization supports the proposal regarding wood dust and western red cedar that is going to be discussed during the public hearing today. She also urged the Division to move forward with the proposals regarding hotel housekeeping and lead, and to begin the process for developing a proposal to address workplace violence prevention in general industry.

**Daniel Gallet, Plywood Pullers LLC**, submitted a written petition to amend Title 8, Section 1541.1 requirements for protective systems pertaining to underground construction and excavation sites [Please see the file copy of the Board packet to view this document]. He said that his proposal includes adding the following language to the existing section:

- 1.) "All shoring installation/removal lifting devices shall be in compliance with the ASME B30.20, and the tabulated data shall reflect a maximum rated lifting capacity and shall not be exceeded." He said that there are many alternative tools that can be used, but there is a lack of standardization in Title 8. He stated that the language that he is proposing would amend Title 8 to say that the tools that are used are for the job that the employee is performing.
- 2.) "The use of damaged or unrated ropes for lifting is prohibited." He said that using damaged or unrated ropes poses potential hazards to employees on construction sites.
- 3.) "The use of chains alone to lift malleable shoring material is prohibited due to the increasing possibility of kick outs, falling loads, and damage to the material." He said that malleable materials, such as plywood, can be damaged when chains are used to lift them, which could pose a potential hazard to employees.
- 4.) "The use of pallet pullers for lifting are prohibited, as they are designed specifically for horizontal pulling on a smooth, flat surface and may present an unnecessary hazard to employees." He said that using pallet pullers to lift materials such as plywood can damage the materials. He also stated that the user's manuals that come with pallet pullers specifically stated that they should not be used for lifting, but 80% of companies use them for lifting anyway.

**Jeff Buchanan, Petition 549**, stated that he did some additional research following the

Board's decision on Petition 549, and he found 5 additional passive safety devices that are available, 3 of which could be used on wood chippers, in addition to the one that he came up with and demonstrated to the Board last August:

- 1.) Radio frequency devices, which operate on radio frequencies similar to that of cell phones and TV's
- 2.) Captive proximity devices, which put a signal inside a person's body and have sensors inside the machine that detect the proximity of the person's body
- 3.) Metal detective devices
- 4.) RFID devices
- 5.) Magnetic devices, where a change in the magnetic field trips the device

He said that there is value in using passive safety devices, and they need to be a rule, not an option.

**Candy Hu, Housekeeper, Hyatt Regency Hotel**, stated that she must clean 14 rooms and make over 20 beds during her shift, as well as push a housekeeping cart that weighs over 60 pounds. She said that her job is very labor-intensive, especially on the weekends and during the summer and high seasons, because the rooms are very messy. She stated that she has a hard time cleaning the shower doors and walls because of her height, and she cannot reach the higher parts without entering the bathtub or standing on the edge of the tub and leaning against the wall. She said that she suffered leg and arm injuries when she fell into the tub while cleaning the bathroom, and she also has pain in her arm and shoulder from trying to reach up and clean the higher parts of the tub and shower. She asked the Division to issue a public hearing notice for the hotel housekeeping proposal by August 1 so that the public comment period can begin and the public hearing for it can be held before the end of 2016.

**Delmy Servano, Housekeeper, Hyatt House Emeryville**, asked the Division to put rules in place by August 1 to help protect hotel housekeepers from injury on the job. She said that her hotel was recently remodeled, and the bathroom doors are now made of glass, which makes her work much harder to do. She stated that she is experiencing pain in her head, neck and shoulders, and by the 5<sup>th</sup> day of work each week, she cannot lift her arm due to the pain in her shoulder. She said that hotel housekeepers need the proper cleaning tools to help them do their work and avoid injury. She stated that young housekeepers like her will not be able to work as long as some of their older coworkers if things do not change.

**Adrianna Carranza, Unite Here Local 2 San Francisco**, stated that the revised February version of the hotel housekeeping proposal is a standard that can prevent hotel housekeeper injuries, but it still needs the following changes:

- The term "control measures" must be defined in the list of definitions. Her organization provided the following definition:

"The control measures to be considered include, but are not limited to, mops, long-handled and adjustable length tools for dusting and scrubbing walls, showers, tubs, and other surfaces,

fitted bed sheets, lightweight or motorized carts, and those measures identified in the Cal/OSHA 2005 publication “Working Safer and Easier for Janitors, Housekeepers, and Custodians”.”

- Hotel housekeepers and supervisors must have access to the appendices. The appendices in the February version of the proposal included excellent training materials that housekeepers and supervisors must be made aware of.
- The proposal needs to state the number of days that an employer has to post the results of a worksite evaluation once it is completed.

She said that her organization is concerned that the proposal was not submitted to the Department of Industrial Relations for internal review by the April 1 deadline that was outlined in the Division’s timeline. She asked the Division to provide a status update at today’s meeting on the proposal’s progress. She said that the proposal needs to be submitted to the Board staff by June 1 and noticed for public hearing and comment by August 1 so that a public hearing will be held for it before the end of 2016.

**Adam Cohen, AIDS Healthcare Foundation**, stated that when it comes to protecting workers in the adult film industry, the Division has done a good job enforcing the existing law, but it is up against an industry that cheats the system, so better regulation is needed, in addition to better enforcement. He said that there are two ways that the adult film industry evades the current regulation:

- 1.) There is a 6-month statute of limitations that is currently in place. If a workplace violation occurs (i.e. an employer does not provide condoms for performers to use on set), the Division can investigate and issue a citation within 6 months of the date that the violation occurred. Producers in the industry get around this by delaying the release of an adult film for 6 months.
- 2.) Producers, agents, and others with a financially vested interest in the production of adult films avoid responsibility for the safety and health of adult film workers because they will not be cited for not following the law as long as they do not set foot on the shoot where the workplace violation occurs. The director of the film is the one who is cited because he is the one who the Division catches breaking the law. However, producers finance directors on the condition that condoms will not be used, and agents knowingly send performers to sets where condoms are not provided.

**Siouxie Q, Adult Film Performer**, stated that the adult film industry wants to work with the Division to develop a proposal that addresses sexually transmitted infections in the adult film industry. She said that the industry does not skirt the current regulations and does not need to be punished. She stated that adult film performers are already targeted with harassment, discrimination, and lack of healthcare access and justice when they are victims of crime. She asked the Division to continue including adult film workers in the process.



A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Rob Neenan  
**Petition File No. 552**

Petitioner requests the Board amend Title 8, General Industry Safety Orders, Section 3314, with regard to exception 2, cord and plug regulations.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to deny the petition.

MOTION

A motion was made by Ms. Quinlan and seconded by Mr. Harrison that the Board adopt the proposed decision to deny the petition.

A roll call was taken, and all members present voted “aye.” The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he was aware of no unresolved legal issues that would prevent the Board from adopting the items on the consent calendar.

MOTION

A motion was made by Mr. Harrison and seconded by Dr. Blink to adopt the consent calendar.

A roll call was taken, and all members present voted “aye.” The motion passed.

C. OTHER

1. Petition 549: Woodchippers – Division Update on Passive Device Detection Systems

Mr. Berg stated that following the Board’s decision in January to grant Petition 549, the Division researched additional passive safety device technology for wood chippers. He showed a PowerPoint presentation that contained information that the Division found for the following passive safety devices:

- ChipSafe Safety Device: Mr. Berg stated that this device is the same device that the petitioner demonstrated to the Board in August. He said that employees wear the device (i.e. glove, shoe, or bracelet) that has a magnetic device in it that stops the machine’s infeed wheels when the antennas inside the machine detect the magnetic field.

- IndSAFE Passive Safety Device, manufactured in Australia by Invetech: Mr. Berg stated that this device is similar to the ChipSafe device, but uses radio frequencies to detect the device. He said that the employee wears the device on his extremities, and when the safety system detects the device, it stops the machine immediately. He stated that this machine can feed a 4-meter long tree trunk through the machine in under 10 seconds (about 2 feet per second). He said that the Division has spoken with the manufacturer about this device, and though it is past the prototype phase, it is not available for purchase at this time. He stated that the Division will follow up with the manufacturer to find out when this device will be available.
- Hit-Not Safety System: Mr. Berg stated that this system operates using magnetic fields. He said that the system was originally designed for use on forklifts, but the manufacturer said that it could be adapted for use on wood chippers. He stated that the employee wears a device that would shut down the system if it detects the magnetic field. The cost to install this system on a forklift is \$900.
- Coal Buddy System: Mr. Berg stated that this system is used in the mining industry to keep people from being injured on large machines, but it costs \$10,000 to install, so it is not economically feasible.
- Vermeer Bottom Feed Stop Bar: Mr. Berg stated that this device is already on wood chippers, but the petitioner feels that it does not provide equivalent safety. He said that it has a stop bar on the bottom of the feed table, and if a person gets sucked in, they may not be able to reach the bar. He stated that this device does have a patent, but when he spoke with the manufacturer, the manufacturer said they have given up the patent in British Columbia where this device is required on wood chippers, and they would be willing to give it up in California. He also said that the manufacturer is interested in participating in the advisory committee process.
- Pressure Sensing Mats: Mr. Berg stated that this is not a workable solution because it must be set up by the operator each time the wood chipper is used.
- Sawstop Technology: Mr. Berg stated that this technology is adaptable to wood chippers, and the manufacturer is interested in participating in the advisory committee process. He said that when the metal blade detects skin through changes in the electric current, it shuts down the machine.
- Patent US4260114: Mr. Berg stated that this patent was filed in 1971 and senses the weight of the branches on the feed table. He said that if the weight on the feed table is over a certain amount that the branches would likely weigh, the machine shuts off. He stated that the Division has not seen it in use anywhere, but may possibly be in use by Asplundh Tree Company. He said that the Division tried to contact Asplundh, but did not get a response back.
- Patent US5667152: Mr. Berg stated that this patent was filed back in 1997, and this device is similar to the one that the petitioner demonstrated last August. He said that it uses magnetic sensors in the infeed chute.

Mr. Berg stated that the Division also looked at alternatives to passive safety device technology. He said that the Division looked at improvements in the design of infeed tables and hoppers, as well as improvements to shutdown devices. He stated that the regulations for wood chippers in the United Kingdom and British Columbia regulate the height and length of the feed table so that an employee is less likely to fall on it. He also said that the United Kingdom and British Columbia regulations require that the stop bar be placed at the front of the feed table, and a passive safety device similar to the petitioner's is required to be used.

Mr. Berg stated that there is also the option of using "last chance" cables, which hang down from the top of the hopper and can be pulled on to stop the machine. He said that this device should not be used by itself – it should require that another passive safety device be used in conjunction with it. He stated that during the advisory committee process, the Division will need to find out if there has ever been a problem with branches getting tangled in the cables, and if anyone has actually been saved using these cables.

Mr. Berg recommended that the petition be moved to an advisory committee so that the advisory committee can look at the United Kingdom and British Columbia regulations, as well as the available technology and better hopper designs, to determine if regulations are needed. He said that there are many manufacturers and tree trimming companies that are willing to participate in the advisory committee process.

**Ms. Hart** stated that a memo from Juliann Sum that was received a few days ago has been given to the Board Members today [Please see the file copy of the Board packet to view this document], and it summarizes the information that Mr. Berg just presented. She said that she spoke with Mr. Manieri and Michael Nelmidia yesterday about this memo, and they feel that the current setup for wood chippers does not give an employee a viable means to save their life if they enter a wood chipper machine, so something should be done about it. She said that the Board staff supports the Division's recommendation to send this petition to an advisory committee to look at alternative approaches to technology and reconfiguring the distance of the hopper. She also said that the Division recommends sending this to an advisory committee to determine how and when to implement technology and designs that can provide passive and active protection, but the Board staff feels that further consideration needs to be given on this before sending it to an advisory committee. She stated that further consideration needs to be given because there are already several of these types of devices out there that need to be reviewed and tested if they are going to be considered to be a primary source of safety, and if a standard is developed, it will need to include standardized design criteria.

**Mr. Harrison** thanked Mr. Berg for his presentation. He said that he feels the Division is headed in the right direction on this issue. He stated that during the course of the advisory committee process, he would like to see a comparison of accident rates that have occurred on wood chippers in the United Kingdom and British Columbia. He also said that he would like to see a comparison of the wood chipper standards in the United Kingdom and British Columbia versus the California standard. He stated that he feels the California standard is severely lacking compared to the standards in the United Kingdom and British Columbia.

**Dr. Blink** stated that the advisory committee should also look at the possible ways that both active and passive system devices can fail, and then go with the most workable solution that will be the most protective for workers in the worst possible circumstances. He said that if the

magnetic device that is supposed to shut down the system is located in a worker's glove, and that glove comes off while he's unconscious on the feed table, it won't shut down the system before possibly killing the worker. He stated that the system should be designed with a feature that is similar to lock-out tag-out where the machine is not able to function until the right protections and personnel are in place.

**Ms. Hart** stated that Board staff will go ahead and convene an advisory committee to discuss this issue because it is warranted based on the information provided by the Division.

2. Division Update on Rulemakings

**Mr. Berg** provided the following updates on the following projects that the Division is working on:

- Workplace Violence Prevention in Health Care: The Division is very close to done with putting together a 15-day notice and will get it to the Board staff for review very soon.

**Ms. Quinlan** asked what the deadline is by which the Board must vote on this proposal. **Mr. Berg** stated that it must be voted on no later than at the June meeting in order to meet the July 1, 2016 deadline listed in SB 1299. **Ms. Hart** stated that once the Board staff receives the 15-day notice from the Division, it will take some time for the Board staff to do its review of the notice before it is issued. She said that after the 15-day notice has been issued and comments have been received, the Division will respond to those comments, and hopefully, a second 15-day notice will not be needed. She stated that after that, the proposal will be ready for the Board to vote on it. She said that it would be ideal for the Division to get the 15-day notice to the Board very soon so that the Board can meet the July 1 deadline.

**Ms. Smisko** stated that she is concerned about employers having enough time to do what they need to do to comply with this standard by the July 1 deadline. **Ms. Hart** stated that July 1 is the deadline for the standard to be adopted, not the effective date. **Mr. Berg** stated that if the proposal is adopted by the July 1 deadline, it will become effective on October 1, 2016, and after that, there will be a phase-in period to give employers time to meet the requirements listed in the standard.

- Sexually Transmitted Infections: The Division is currently evaluating the new petition that was received in March from the AIDS Healthcare Foundation. The Division will submit their review of this petition to the Board staff shortly. **Ms. Quinlan** asked what will happen with the process that the Board approved back in February, and how long it will take. **Ms. Hart** stated that the petition review is a separate process from the motion that the Board made in February to restart the original process with stakeholder involvement. **Mr. Berg** stated that the new petition request is identical to the old petition request.
- Lead in Construction and General Industry: The Division has finished the advisory committee process and is finalizing the text and rulemaking documents for these proposals. **Ms. Quinlan** asked if these proposals will come before the Board for public hearing in 2016. **Ms. Hart** stated that the Division will submit the documents to the

Board staff in 2016 for public hearing, but the public hearings themselves will not take place until 2017.

- Permissible Exposure Limits: The Division will be hiring staff soon to start up the HEAC and FAC committees again.
- Hotel Housekeeping: The Division has finished reviewing the comments that were submitted following the advisory committee meeting in February and has finalized the rulemaking draft of the proposal. The Division is now preparing the necessary rulemaking documents and is on schedule to submit the rulemaking package to the Board staff in June.
- Antineoplastic Drugs: The Division has completed the advisory committee process and is preparing the final draft of the rulemaking, along with the rulemaking documents. The Division plans to submit the rulemaking package to the Board staff sometime before the end of 2016.
- Medical Services and First Aid: The Division has finished its work on this proposal and submitted it to DIR for its review. **Ms. Hart** stated that this package was submitted to the Board staff, the Board staff sent it back to the Division, and it is now back at DIR. She said that more work is being done on the fiscal impact, and as soon as that is done, the package should be just about ready to go.

**Ms. Quinlan** asked Mr. Berg when the Division will begin setting up an advisory committee to develop a proposal to address workplace violence prevention in general industry. **Mr. Berg** stated that the Division will assign staff after they have finished their work on the proposal for workplace violence prevention in healthcare.

### 3. Legislative Update

Mr. Healy provided updates on the following bills:

- AB 2225 and 2437: These bills are now being used as shell bills and no longer pertain to occupational safety and health.
- AB 2539: This bill pertains to working conditions for fashion models. A high-profile committee meeting was held earlier this month regarding this bill, and on March 31, the author introduced substantial amendments to it that narrowed its scope. These amendments provide a clearer focus and more straightforward goals for the bill. This bill, by definition, would make models employees, instead of independent contractors, which would give them employee protections overseen by the Labor Commissioner. The bill also states the concerns about eating disorders, but has an approach to address it that is less prescriptive and leaves the Board some flexibility to do something if it comes to the Board for action.

### 4. Executive Officer's Report

Ms. Hart stated that the Board staff held an advisory committee meeting earlier this month regarding residential fall protection. She said that it was well-attended and 3 representatives from federal OSHA attended. She stated that the advisory committee is only going to focus on residential construction at this point because it will move the quickest. She said that a draft proposal was considered at the meeting, and that proposal was refined for rulemaking by the advisory committee. She stated that the Board staff is currently reviewing the final text and minutes from the advisory committee meeting, and both documents will be sent out to the advisory committee attendees and federal OSHA for review, and the formal rulemaking process will begin after that. She said that some people from the advisory committee have offered to work on the economic and fiscal impact for this proposal because they have access to the necessary data and cost information, but they cannot begin doing that until the final language is determined. She said that federal OSHA still has some additional concerns, but for now, the 6-foot trigger height in residential construction will be addressed. **Mr. Manieri** stated that the industry has also asked to have an 18-month phase-in period included so that employers may make the necessary changes in order to comply.

**Ms. Quinlan** stated that she is concerned about what will happen if there are any delays in the process, and the effect that those delays might have on federal OSHA. She said that she is concerned that federal OSHA may say the Board is not moving fast enough to address this issue. **Ms. Hart** stated that federal OSHA has asked the Board to show that it is making positive steps forward, and federal OSHA has not indicated that the progress that is currently being made is not acceptable.

**Ms. Hart** stated that federal OSHA issued a rule last month regarding silica that is very comprehensive. She said that the Board staff met with the Division to discuss this, and the decision was made to adopt the federal language verbatim using the Horcher process. She stated that this will be done as quickly as possible with the hopes of meeting the 6-month timeframe to put it in place.

Ms. Hart stated that there are several advisory committees coming up:

- April 26 in Sacramento: Working Alone (Surveyors)
- May 2 -3 in Merced: Firefighter Personal Protective Equipment
- May 11 in Sacramento: Industrial Painter Certification

5. Future Agenda Items

No future agenda items were mentioned.

A. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:50 a.m.