

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
April 16, 2020
Teleconference in Sacramento, 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 10:00 a.m., April 16, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-531-0749, and via WebEx at www.webex.com.

ATTENDANCE

Board Members Present at OSHSB Office

Dave Thomas

Board Members Absent

NONE

Board Members Present via Teleconference
and/or Webex

Barbara Burgel

Dave Harrison

Nola Kennedy

Chris Laszcz-Davis

Laura Stock

Board Staff Present at OSHSB Office

Christina Shupe, Executive Officer

Michael Nelmida, Senior Safety Engineer

Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Present via Teleconference and/or Webex

Eric Berg, Deputy Chief of Health

Board Staff Present via Teleconference
and/or Webex

Mike Manieri, Principal Safety Engineer

Marian Johnston, Legal Counsel –

Volunteer Advisor

Lara Paskins, Staff Services Manager

David Kernazitskas, Senior Safety Engineer

Jennifer White, Staff Services Analyst

Others Present via Teleconference and/or Webex

Taylor Jackson, CA Nurses Association

Maggie Robbins, Worksafe

Elizabeth Treanor, Phylmar Regulatory

Roundtable

Gail Blanchard-Saiger, CA Hospital Assoc.

Jessica Early, National Union of Healthcare
Workers

Alice Berliner, Southern California Coalition
on Occupational Safety and Health

Amber Rose, Federal OSHA

Gary Arcemont, San Luis Obispo County
Air Pollution Control District
Eric McClaskey, Elevator Industry Work
Preservation Fund

Renee Amador, The Maintenance
Cooperation Trust Fund

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.

Alice Berliner, Southern CA Coalition for Occupational Safety and Health (SoCalCOSH), stated that an emergency regulation is needed because employers are not providing essential workers with the necessary personal protective equipment (PPE) that they need to protect themselves from exposure to the COVID-19 virus, and employers are not being held accountable for that. She said that the current regulations are not enough to protect essential workers from exposure, and essential workers should not have to choose between staying healthy and earning a paycheck.

Jessica Early, National Union of Healthcare Workers (NUHW), stated that healthcare workers deserve to have the full protection that Title 8, Section 5199 pertaining to aerosol transmissible diseases (ATD) allows them to have. However, it is not being fully implemented by healthcare employers, and as a result, healthcare workers are being exposed to COVID-19. She said that the interim guidance issued by the Division on March 28, 2020 regarding COVID-19 for healthcare facilities with severe respiratory supply shortages has undercut the respiratory protection standards for healthcare workers.

Mr. Thomas called for a break at 10:15 a.m. to resolve technical difficulties with the meeting audio and reconvened the meeting at 10:17 a.m.

Taylor Jackson, CA Nurses Association, stated that although the government has given out PPE, employers have been locking up and rationing out the PPE, and when nurses have demanded that PPE be provided to them when treating COVID-19 patients, or when they have brought their own PPE, they have been disciplined for it. Her organization is glad to hear that 200 million respirators and surgical masks will be coming to California each month, and the Division should ensure that employers are in full compliance with the ATD standard. Until those respirators and surgical masks arrive, the Division should ensure whether or not there is truly a shortage of PPE at each facility before allowing employers to lower protections. This can be done by asking for documentation of attempts to get additional respirators. Her organization also has significant concerns regarding the decontamination procedures used to clean N95 masks because there is no safe way to do so and the Centers for Disease Control (CDC) does not recommend reusing them.

Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR), asked for an update on the permanent regulation pertaining to protection from wildfire smoke that will be the public hearing item at the May 21, 2020 Board Meeting. She asked how the regulation will be affected by the Governor's recent Executive Orders regarding delays.

Renee Amador, Maintenance Cooperation Trust Fund, stated that janitors are being required to work without basic PPE, and they are now having to use harsher chemicals or new cleaning products with no information or training on how to use them. They are also not being

notified of new COVID-19-positive cases in the workplace, and they are not informed of when or if janitorial equipment is disinfected between shifts or how to do it properly. She said that contractors should be mandated to provide written instructions on how they want their businesses cleaned, and those instructions should be given in the janitor's primary language.

Maggie Robbins, Worksafe, stated that existing regulations are failing to protect workers even during anticipated events and situations, so a review of what regulations are out there to protect workers in the service sectors needs to be done, especially those service sectors affected by COVID-19. This review is needed to address the gaps in the regulatory structure so that workers and employers are given the protection and guidance that they need. It is also important to look at what will need to be done to protect workers upon reopening the economy in order to prevent another spike in COVID-19 cases. The ATD standard also needs to be bolstered so that it is properly implemented by employers.

Gail Blanchard-Saiger, CA Hospital Association, stated that there is a known global shortage of PPE going on right now and the hospitals are struggling with that. They are working with the Division, the CA Department of Public Health (CDPH), and the CDC to get guidance for infection control, and that guidance impacts patient care and employee safety. Her organization feels that looking at each individual hospital's supply of masks and PPE would be too narrow because it is unknown when the 200 million masks that the Governor ordered will be coming or what the demand for those supplies will be at that time.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 10:34 a.m.

II. **BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 10:34 a.m., April 16, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-531-0749, and via WebEx at www.webex.com.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 5189
**Process Safety Management of Acutely Hazardous Materials,
Appendix A List of Acutely Hazardous Chemicals, Toxics and
Reactives (HORCHER)**

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's consideration and vote.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock that the Board adopt the proposal.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Shupe stated that she is aware of no unresolved procedural issues regarding the items on the consent calendar, and she believes that those items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Laszcz-Davis to adopt the consent calendar.

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

C. OTHER

3. Board Member Comments and Future Agenda Items (handled out of order from what was listed on the agenda)

Ms. Stock stated that there appears to be some significant gaps in regulations such as the ATD and IIPP standards and enforcement of those standards. She said that now is a good time to review the current regulations, improve enforcement, and implement new regulations as needed to fill the gaps. She said that she would like to hear more from stakeholders on where the gaps are in the regulations, and she would like to hear more from the Board staff on what they feel can be done to address these issues. **Ms. Burgel** echoed Ms. Stock's comments.

Ms. Burgel stated that she was surprised when the CDC rolled back its aerosol protections to a droplet and contact precaution because she feels that COVID-19 is transmissible via aerosol means. She said that she would like to hear what the Division's opinion is on the CDC's precautions, and if the Division does not concur, she would like to know if the Division plans to counter the CDC's recommendations. She also advised everyone to keep an open mind about disinfecting N95's. She said that hydrogen peroxide off-gases to hydrogen and water, so it is not viewed as hazardous, and doing this while there is a shortage of PPE is an option. She also stated that she was surprised to hear that hospitals and other employers are not better prepared with N95's on hand in response to the wildfire smoke regulation.

Ms. Kennedy stated that in a pandemic situation like COVID-19, healthcare workers should not be relying on a filtering face piece respirator for protection. She said that for this type of situation, it is better for healthcare workers to use personal half mask respirators, and employees should've been fit tested for them beforehand. Half mask respirators are reusable and can be disinfected.

Ms. Laszcz-Davis stated that there appears to be an issue with supply and demand, so it is important that the Division have a discussion with Governor's office, emergency centers in California, the National Association of Industrial Hygiene, the CDC, and others. She said that the proliferation of messages needs to be aggregated and given the best pitch given the information that is available at the given time, and there are many things that can be done for workers and the community at large.

Ms. Stock stated that she wanted to hear more about the regulations that cover non-healthcare workers. She said that the ATD standard has language in it that allows the Division to broaden and expand the scope of workplaces that are covered by the ATD standard. She also wanted to know the following:

- 1.) What steps can be taken to identify gaps in the regulations and propose changes to strengthen worker protections?
- 2.) How are existing regulations being applied, and how can they be applied to non-healthcare workers?
- 3.) How are the existing regulations for healthcare workers being enforced?
- 4.) How do stakeholders provide input regarding the gaps they see in the regulations or places where the regulations could be strengthened?

Mr. Berg stated that the Division's guidance documents indicate respirators must be used to protect employees unless there are supply constraints. He also stated that for employers not covered by the ATD standard, the IIPP standard covers them because it requires an employer's IIPP to address infectious disease hazards, investigate workplace hazards, and take necessary measures to protect employees from those hazards. He said that they can also use the Division's guidance documents and recommendations from the CDC to help them.

Ms. Stock stated that many commenters at today's meeting have indicated that hospitals are stockpiling and locking up access to respirators and other PPE. She asked Mr. Berg if the Division is taking steps to verify whether or not respirators are available. **Mr. Berg** stated that the Division investigates this when they receive complaints. Per the ATD standard, employers are required to notify their employees and their representatives when there is an issue regarding the supply of respirators that results in employees having to use non-respiratory protection. It is a change in their ATD program that employees must be informed about and trained on.

Ms. Burgel asked Mr. Berg if the Division has done any investigations or enforcement actions pertaining to non-healthcare workers in healthcare settings, such as janitors. **Mr. Berg** stated that he was not aware of any, but the Division has received 1,500 complaints related to COVID-19. He said he was not sure how many of those complaints have been investigated, but many of them have been responded to by letter or email. **Ms. Burgel** asked Mr. Berg if hospitals are required to seek out supplies of PAPR's and half-face respirators while there is a shortage of N95 masks, and if so, what does the Division consider to be a reasonable and feasible effort to get those supplies? **Mr. Berg** stated that elastomeric respirators are acceptable for hospitals to use except where sterile fields are required, such as surgery. Elastomeric respirators have an exhalation valve that does not protect the patient from the breath of the wearer. He said that he is not aware of any shortages of those kinds of respirators.

Ms. Stock asked Mr. Berg if the Division has the authority to expand the coverage of the ATD standard to non-healthcare workplaces, and if so, is the Division considering doing that? **Mr. Berg** stated that there is a provision in the ATD standard that allows the Division Chief to issue an order to take special action to require an employer who is not currently covered by the ATD standard to comply with it. However, it can only be applied to an individual

employer, not an entire industry. He said that he is not aware of any special orders having been issued in response to the COVID-19 crisis. He stated that employers not covered by the ATD standard are covered by the IIPP standard and must identify and address workplace hazards, such as COVID-19 exposure, through their IIPP program. He said that the Division expects employers to follow those regulations in addition to any guidelines that the Division issues that are more specific for certain industries, such as retail.

Ms. Laszcz-Davis stated that since these are not normal times, the normal channels of communication need to be broadened so that employer can receive clarification on what they need to do to protect their employees. She asked Mr. Berg about the communication channels that are available to the Division on a broader scale. **Mr. Berg** stated that he will work with the DIR communications staff to see if there are other methods of communication that could be used. **Ms. Shupe** stated that the DIR communications staff came to the December 2019 Board Meeting and did a presentation regarding their outreach efforts that they have used to communicate to employers regarding the wildfire smoke regulation, and they are using those same communication outlets to reach out to employers regarding COVID-19. **Ms. Stock** stated that she would like to get an update from DIR about the communication methods that they use to reach out to employers regarding COVID-19.

1. Legislative Update

Ms. Shupe stated that in March, lawmakers voted unanimously to go into recess from March 20 to April 13. The legislature reconvened on April 13, but there are no new legislative developments to report. The Governor issued the following Executive Orders, which have direct impact on the Board staff's operations:

- N-33-20, which is the statewide stay-at-home orders
- N-40-20, which provides a 60-day extension for some Administrative Procedures Act (APA) timeline requirements

While the Governor has issued Executive Order N-29-20, which waives a majority of the requirements of the Bagley-Keene and Brown Act requirements, the Board staff has continued to adhere to these requirements as much as possible during the pandemic while maintaining fully remote operations.

2. Executive Officer's Report

Ms. Shupe stated that on March 23, Katie Hagen joined the DIR team as the new Director. Ms. Shupe met with her last week via teleconference where Ms. Shupe provided her with an overview of the Board's mission and operational scope.

Ms. Shupe stated that while the Standards Board office has gone to remote operations for all staff, all essential work and rulemakings continue to stay on track. She said that a new mailing address has been set up, and the mailing address was sent out to all of the contacts on the Board's email contact list, as well as posted on the Board's website.

Ms. Shupe stated that review of the Group V Elevator Safety Orders rulemaking package is complete and the package has been submitted to DIR via Secretary Action Request (SAR) this week. She also said that the Horcher rulemaking pertaining to Crane Operator Certification

has been approved by the Office of Administrative Law (OAL) and will become effective on April 6, 2020.

At next month's meeting, the Board will hear public comments pertaining to the Certificate of Compliance for the Protection from Wildfire Smoke proposal, which is also known as version 2.0. The current emergency standard, which is also known as version 1.0, has been extended by 60 days by the Governor's Executive Order N-40-20. Version 2.0 is substantially similar to version 1.0 and will make it permanent while version 3.0 is being developed.

3. Board Member Comments and Future Agenda Items (continued)

Ms. Laszcz-Davis asked if there will be any advisory committees while version 3.0 of the Protection from Wildfire Smoke standard is being developed. She said that it is important that version 3.0 is practical, comprehensive, and understandable. **Ms. Shupe** stated that she has been speaking with Doug Parker at the Division, and the Division is planning to hold additional advisory committees while developing version 3.0.

C. CLOSED SESSION

The need did not develop for the Board to hold a closed session at this time.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 10:56 a.m.