

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address www.dir.ca.gov/oshsb



**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
August 20, 2015
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 10:01 a.m., August 20, 2015, in the Council Chambers of the Sacramento City Hall, Sacramento, California.

ATTENDANCE

Board Members Present

Dave Thomas
Dr. Robert Blink
David Harrison
Patty Quinlan
John Sacco
Barbara Smisko
Laura Stock

Board Member Absent

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

Juliann Sum, Division Chief

Others Present

Adam Cohen, AIDS Healthcare Foundation	Michael Musser, CA Teachers Association
Jeff Buchanan	Casey Gross
Jim Haas	Cidneah Gums, Unite Here Local 49
Angelina Garcia, Sheraton Unite Here	Jodi Blom, CA Framing Contractors Assoc.
Elizabeth Treanor, PRR	Bruce Wick, CALPASC
Dan Leacox, Greenberg Traurig	Anne Katten, CRLAF
Rexmen Tepia, Unite Here Local 49	Kevin Bland, Ogletree Deakins
Frances Low, State Senate	Kevin Thompson, Cal-OSHA Reporter

Matt Antonucci, CSATF	David Jones, AGC of CA
David Shiraishi, Fed OSHA	Patricia Gaydos, OSHA
Isela Martinez, Unite Here Local 49	Jenny Amaya, Sheraton Grand Local 49
Julia Pomeen, Unite Here Local 49	Linda Taylor, Thunder Valley Unite Here Local 49
Larry Wong, University of California	Joel Sherman, Grimmway Farms
Michael Strunk, IUOE Local Union No. 3	Marti Fisher, CalChamber
Mitch Seaman, CA Labor Federation	
Steve Johnson, Condon-Johnson and Assoc.	

Ms. Hart introduced the Board's newest members, Dr. Robert Blink and John Sacco. Christine Baker, Director of DIR, administered the Oath of Office to Dr. Blink and Mr. Sacco, as well as to Mr. Harrison, Ms. Smisko, Ms. Stock, and Mr. Thomas, who have been reappointed by the Governor.

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.

Jeff Buchanan, Tree Contractor, stated that there is a need for increased safety for operators who operate wood chipper machines. He said that the current wood chipper safety standards are extremely limited and not designed to address the dangers associated with operating wood chipping machines. He stated that wood chipper machine manufacturers have implemented safety technology and devices to protect the operator, but they require the operator to activate them by bumping or pulling something, which is not always possible because of how the individual enters the device. He said that materials enter the wood chipper at 20 feet per second, which does not leave the operator very much time to save himself if any part of him enters the wood chipper. He stated that CCR Subchapter 7, Article 12, provides limited safety because it requires that the machine's feed table have a distance of 85 inches from the pinch point to the ground measured over the center line of the feed table, and for wood chippers with a mechanical infeed, it requires that they be equipped with a control bar to stop or reverse the infeed. He said that the federal regulation for wood chippers requires that wood chippers have protections in place to keep an operator's body from entering the danger zone. He stated that he invented a passive device that could be used on wood chippers because it meets the federal regulation by ending the wood chipper's cycle before the operator enters the danger zone. He demonstrated its operation.

Isela Martinez, Unite Here Local 49 Sacramento, stated that her organization is glad that a new revised draft of the hotel housekeeping standard was released last week, and that it included some of their feedback. She said that hotel housekeepers have very physically demanding jobs, and there are many ways to make the job easier and safer, but employers continue to not implement them. She stated that her organization is looking forward to the next advisory committee meeting, and she asked that it take place soon after the mid-September deadline to receive comments on the new draft, if not by the end of October.

Linda Taylor, Hotel Housekeeper, stated that housekeepers who belong to a union have to clean 15 rooms per day, and non-union housekeepers may have to clean up to as many as 25 rooms per day. She said that they are lifting beds, getting on their knees to tuck in sheets, clean bathtubs and toilets, and reaching up high to clean bathroom walls and shower stalls, all at a rapid pace and while pushing a heavy cart containing linens and supplies. She said that all of these actions have caused serious injuries to hotel housekeepers, but it does not have to continue to be this way. She asked the Division to move forward and hold another advisory committee meeting this fall so that housekeepers like her can give their input on the new draft of the proposal that was just released.

Adam Cohen, AIDS Healthcare Foundation, stated that one third of the one-year deadline by which the standard regarding sexually transmitted infections in the adult film industry must be adopted has passed, and if the Board does not monitor the timeline and the Division's progress, his organization is worried that time will run out. He asked the Division when it will produce the Final Statement of Reasons for the standard. He said that there are thousands of documented cases of sexually transmitted infections in the adult film industry that have occurred, and many studies have shown high rates of infectious diseases occurring in the adult film industry despite the industry's testing scheme.

Ms. Stock asked for clarification regarding the one-year deadline that Mr. Cohen mentioned, and what happens if the one-year deadline passes with no action taken by the Board. **Ms. Hart** stated that when a rulemaking is noticed for public hearing, the publication date for that notice begins the one-year clock for that rulemaking. She said that during that one-year period, a public hearing must be held for that proposal, final documents must be prepared, the Board must vote on the proposal, and it must be submitted to the Office of Administrative Law for their review and approval. She stated that she has spoken with the Division regarding the proposal for sexually transmitted infections, and the Division is working on their response to comments, as well as a 15-day notice that will be issued soon. She said that the Division has finished reviewing the comments that were received and has indicated the direction that it wishes to go with this proposal, and it is now being reviewed by the Division's legal staff. She stated that in order to make the one-year deadline for this proposal, it must be completed and voted on by the March 2016 meeting.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:36 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:36 a.m., August 20, 2015, in the Auditorium of the State Resources Building, Sacramento, California.

Mr. Thomas opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Section 3328(a)
 Definition of Adequate Design

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

Kevin Bland, representing the California Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council, stated that his organizations are concerned about the original language that was proposed. He said that the language leaves out the fact that the employer is not always the designer of the equipment. He stated that the safe use of the equipment, and using it as designed and recommended by the manufacturer, is the main key. He proposed the following new language:

“All machinery and equipment shall be used or operated in accordance with the manufacturer's recommended speeds, stresses, and load requirements where such recommendations are available.”

He said that this new language keeps employers out of an overload situation and keeps the mode of operation consistent with the manufacturer's specifications. He stated that the new language also enhances safety and the employer's capability of compliance. **Marti Fisher, CalChamber, and Steve Johnson, Condon-Johnson and Associates**, echoed Mr. Bland's comments, and Ms. Fisher provided written copies of the new language that Mr. Bland proposed.

Ms. Stock asked Mr. Bland what could be done if information from the manufacturer for a piece of equipment is not available. **Mr. Bland** stated that other available information for that piece of equipment could be used if it identifies what the stresses, speed, and load requirements are. **Ms. Stock** stated that might benefit from further clarification, and the final language should address and clarify those circumstances. **Ms. Hart** stated that the Board staff will develop final language in consultation with Mr. Bland's suggestion, and it will be reflected in the Final Statement of Reasons.

Bruce Wick, CALPASC, stated that the language that Mr. Bland proposed works. He said that when the Division issues a citation that is not sustained, it is appropriate to revisit that regulation and review it. He said that it would be ideal to bring all of the involved stakeholders together to discuss the case behind this regulation, and to have all of the information available about the case for them to discuss. He stated that it is important that employers are not discouraged from using equipment because they cannot figure out if it is okay to use that equipment to transport materials. He said that equipment should be able to be used to lift, load, and carry materials to protect employees from injury.

Mr. Harrison suggested that Michael Strunk and other labor representatives present at today's meeting speak to the folks who just spoke on this issue to ensure that they get the opportunity to weigh in on Mr. Bland's proposed new language. **Ms. Hart** stated that during the development of the Board staff's proposal, the engineers did reach out to the Division and stakeholders for their input.

Mr. Sacco stated that he thinks this is a good change to the regulation. He said that farm workers will benefit from it because it will reduce the likelihood of them getting heat stress.

Ms. Smisko stated that she is glad that everyone who worked on this regulation worked together and came up with a regulation that benefits everyone.

Dr. Blink stated that he is concerned about the provision regarding the 5% grade of slope of a field because it does not address potholes and ruts. He said that just because the land is flat does not mean that it is safe to operate a tractor and PTC on. **Mr. Manieri** stated that the advisory committee discussed field leveling extensively for this proposal. He said that if there is concern regarding operating a tractor and PTC on a piece of land that might not be safe, the decision can be made to either change the route or repair the land so that it is safe. He stated that the language in the proposal was considered by the advisory committee to be the most practical. **Mr. Thomas** stated that item number 2 in Section (H) on page 4 of 5 addresses this issue.

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Robert Jungers
Petition File No. 547

Petitioner requests that the Board change the California Code of Regulations, Title 8, to add a new section with regard to workplace bullying.

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. Smisko and seconded by Mr. Sacco that the Board adopt the proposed decision to deny the petition.

Ms. Stock stated that this is a very complicated issue that is reminiscent of the discussions that are currently being had regarding workplace violence prevention. She said that this issue appears to be part of workplace violence. She recommended that the Board wait to address this issue and see how it might be addressed through the discussions regarding workplace violence prevention that are already in progress.

Mr. Sacco stated that workplace bullying is an issue, but it is not something that is appropriate for the Division to handle. He said that it would be difficult for the Division to enforce it because compliance officers are not trained in workplace bullying.

Dr. Blink stated that he endorses the Division’s and Board staff’s analysis on this issue. He said that the California Code of Civil Procedures Section 527.6 already makes bullying illegal.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he sees no issues that could prevent the Board from adopting the items on the consent calendar.

MOTION

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

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

D. OTHER

1. Division Update on Rulemakings and Advisory Committees

Ms. Sum stated that the Division’s quarterly update has been provided in the Board packet. [Please see the file copy of the Board packet to view this document]. She added the following updates:

Workplace Violence Prevention in the Healthcare Industry: The latest draft of the proposal is now posted on the Division’s website. She said that the Division has had discussions with labor and management stakeholders about this issue since last month’s Board meeting, and the Division has encouraged SEIU and the California Hospital Association to work together and negotiate issues in the proposal that they do not agree on to see what they can come up with. She stated that they have not been able to come to an agreement on all of the areas that they disagree on, but they are still talking. She said that due to the timeline for this proposal, a consensus will not be reached before this proposal enters the rulemaking process. She stated that the Division will have this package to the Board staff by tomorrow.

Sexually Transmitted Infections: The Division has completed its review of the comments received, and the package is now with the legal staff at the Director’s office for them to review.

Lead: The Division is making good progress on this project with the advisory committee meetings that have been held, and another advisory committee meeting will be held soon.

Hotel Housekeeping: The latest draft of the proposal has been posted on the Division’s website, and the deadline by which to submit comments is in mid-September. Another advisory committee meeting will be held, but no date has been set yet. There are several tentative dates, but they conflict with other meetings and room availability is very limited. The Division hopes to hold the advisory committee meeting in October, but that decision will be based on the number of comments received by the mid-September deadline. If it is not held in October, it will be held in November.

Antineoplastic Drugs: The Division is working on the results of the last advisory committee and plans to hold another advisory committee meeting later this year.

First Aid Kit Contents: The Division is currently working on the financial and legal parts of this proposal.

Process Safety Management: The Division will begin working on preparing the package to start the rulemaking process after some advisory committee meetings are held.

Mining Safety Orders: This project is currently on hold while the Division gets more resources to work on it.

Elevator Safety Orders: The Division has had meetings with labor and management stakeholders, and more meetings are to come before the proposal will be finalized to start the rulemaking process. This rulemaking will have to go through the SRIA process because it is a major regulation that has a financial impact of more than \$50 million. **Ms. Hart** stated that these are very comprehensive regulations because of all the variances that the Board staff does and the fact that there are so many elevators in the state of California. She said that this is a very costly rulemaking, so it requires that a very detailed analysis of the economic and fiscal impact be developed.

Tunnel Safety Orders: The Division is currently preparing the Economic and Fiscal Impact statement for this rulemaking.

Tramway Safety Orders: The Division is in the final stages of preparing this proposal for the rulemaking process.

Mr. Sacco stated that he was on the PEL advisory committee several years ago, but it stopped meeting. He asked Ms. Sum what happened with that. **Ms. Sum** stated that because the Division is short-staffed, some standards are moving forward, but not as quickly as they did when the Division was fully staffed. She said that the Division is working with HESIS on toxicology reviews since there is not a full-time toxicologist on staff. She stated that she is pushing the Division to get more resources, but it is a difficult process.

Ms. Quinlan asked Ms. Sum if the Division is working on any newly proposed PEL's, or if it is just finishing up the ones that have already been started. **Ms. Sum** stated that the process of updating the PEL's is an ongoing process. She said that no new PEL's have been proposed.

Ms. Stock stated that it is important to come up with ways to streamline the PEL and feasibility processes, as well as ways to clarify the criteria regarding feasibility. She said that the current PEL process is very cumbersome, and the fact that the Division has very limited resources makes it much more difficult. She stated that she supports the Division's work to get more resources to do research and standards development so that the projects that are currently on hold due to lack of staffing can move forward.

Mr. Harrison asked if the Division is going to do any hiring to the Mining and Tunneling Unit, since many of the folks there have retired. **Ms. Sum** stated that the Division is working with CalHR and the Department of Finance to hire additional resources for that unit.

Ms. Stock asked Ms. Sum for a status report on the proposal regarding workplace violence prevention for all California industries. She said that she hopes the Division will begin the process as soon as possible so that it can utilize the energy and ideas that were obtained during the advisory committee process for workplace violence prevention in healthcare. **Ms. Sum** stated that the Division will need to see how close the language for workplace violence prevention in healthcare is to finalization and then review what comes out of it before they can start the process of developing a proposal to address workplace violence prevention in all California workplaces. She said that it is better to address any controversy that comes up with the language that is currently being developed for workplace violence prevention in healthcare than to begin the process of developing language to address workplace violence prevention in all California workplaces and spread the controversy to that process. She stated that once the proposal for workplace violence prevention in healthcare gets to the point that it only needs some minor tweaking done, then the Division can begin looking into starting the process to address workplace violence prevention in all California workplaces.

Ms. Quinlan asked about the legal deadline by which the proposal for workplace violence prevention in healthcare must be voted on. **Ms. Sum** stated that the deadline is July 1, 2016. She said that the first time that the Division submitted the package to the Board staff for review was on June 19, 2015. **Ms. Hart** stated that the Board staff reviewed the package and sent it back to the Division with its minor clarifications and recommendations about two weeks ago, and the Division is reviewing those clarifications and recommendations to make sure that the proposal is compliant with the Administrative Procedures Act and that all references to other standards fit correctly. She said that the Division will submit the proposal back to the Board staff for noticing. She stated that once it comes back from the Division, there are some approvals that it will need to go through for noticing, and the Board staff will try to get it expedited through that process. She said that the best case scenario for this proposal to be heard during the public hearing may be November or December of this year.

Ms. Quinlan also asked when the proposal regarding sexually transmitted infections might be ready to be voted on. **Ms. Hart** stated that a 15-day notice of modifications will probably be issued first, and the public will be able to submit written comments on those modifications. She said that the extensiveness of those comments will determine how long it takes the Division to respond to them and get the final package sent to the Board staff.

2. Executive Officer's Report

Ms. Hart stated that there are some advisory committee meetings coming up:

- October 7-8: CDAC recombining Construction Safety Orders into the General Industry Safety Orders for cranes and other hoisting equipment. This meeting will be convened by Conrad Tolson, and information about it is posted on the OSHSB website. This will be the final advisory committee meeting for this issue before the documents are prepared for rulemaking.
- October 22-23: Personal Protective Clothing and Equipment for Firefighters. This meeting will be convened by Maryrose Chan. Legislation that was passed last year requires the Standards Board to hold this advisory committee meeting to see if the

firefighter protective equipment and clothing standard needs to be updated. There is still an issue regarding local and state mandates on this issue, so the Board staff has asked the DIR legal staff to review this and contact the Department of Finance for a ruling on this. If it is considered to be a mandate, the legislature must provide funding for the regulation to be enforceable. If the standard is changed or updated and there is no funding available, it will not be in effect for local and state governments.

- November 3-4: Residential Fall Protection Trigger Heights. This meeting was requested, and will be attended by, federal OSHA, and it pertains to the issues between federal OSHA's 6-foot trigger height and California's 15-foot trigger height. This meeting will be chaired by Mr. Manieri. The Board staff has reached out to labor and management stakeholders to get their input. Information about this meeting will be posted to the OSHSB website as soon as the meeting composition and necessary documents are completed.

Ms. Hart stated that she and Mr. Manieri will be doing two speaking engagements in September: one at the conference for Telecom Environmental Health and Safety, and another for the Association of General Contractors. At these speaking engagements, Mr. Manieri and Ms. Hart will provide an overview of the Board's activities and upcoming projects.

Ms. Hart also stated that Senior Engineer Conrad Tolson and Associate Engineer Marty Tamayo are both retiring at the end of December. The Board staff is taking the necessary steps to make sure that projects are in a good state to be turned over to other staff upon their departure. She said that the Board staff has had a vacant Associate Engineer position for a while that used to be used for salary savings, and the Board staff has decided to fill that position. She stated that applications are in and are being screened, and interviews will hopefully be conducted in the near future. She said that the Board hopes to fill this position prior to Mr. Tolson's and Mr. Tamayo's departures. She stated that Mr. Tamayo's and Mr. Tolson's retirements are going to have a huge financial impact on the Board's budget, so she is working with the budget office and CalHR to determine when the Board staff can fill either one or both of those positions.

3. Future Agenda Items

No future agenda items were mentioned.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:42 a.m.