

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY  
PUBLIC MEETING AND BUSINESS MEETING  
December 19, 2019  
Rancho Cordova, 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 10:02 a.m., December 19, 2019, in the Council Chambers of the Rancho Cordova City Hall, Rancho Cordova, California.

ATTENDANCE

Board Members Present

Dave Thomas  
Barbara Burgel  
Dave Harrison  
Nola Kennedy  
Chris Laszcz-Davis  
Laura Stock

Board Members Absent

NONE

Board Staff

Christina Shupe, Executive Officer  
Mike Manieri, Principal Safety Engineer  
Peter Healy, Legal Counsel  
Lara Paskins, Staff Services Manager  
David Kernazitskas, Senior Safety Engineer  
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Chris Kirkham, Principal Safety Engineer

Department of Industrial Relations

Erika Monterroza, Deputy Director of  
Communications

Others Present

Bruce Wick, CA Professional Association of Specialty Contractors (CALPASC)	Michelle LeBlanc, Free Speech Coalition (FSC)
Jamie Carlisle, Southern CA Edison (SCE)	Michael Miiller, CA Association of Winegrape Growers
Bryan Little, CA Farm Bureau Federation	Robert Armstrong, Pacific Gas & Electric (PG&E)
Cindy Sato, Construction Employers Association (CEA)	Michael Strunk, International Union of Operating Engineers (IUOE) Local Union No. 3
Eric W. McClaskey, Elevator Industry Work Preservation Fund	Steve Johnson, Walters & Wolf
Justin Hess, Sacramento County Transportation Department	Benjamin Sanchez, Littler Mendelson
Gail Blanchard-Saiger, CA Hospital Association	Bruce Smith, Abbott Labs

Dan Leacox, Leacox & Associates	Charley Rea, California Construction and Industrial Materials Association (CalCIMA)
Taylor Jackson, CA Nurses Association	Amber Novey, Laborers' International Union of North America, Pacific Southwest (LiUNA PSW)
Eddie Moreno, C Environmental Justice Alliance (CEJA)	Mitch Steiger, CA Labor Federation
Eric Hobbs, Ogletree Deakins	James Dunbarr, University of California Davis Health
Michael Steinbacher, Department of Water Resources (DWR)	Jere Ingram, Medishare Environmental Health and Safety (EHS)
Nicole Marquez-Baker, Worksafe	Greg McClelland, Western Steel Council
John Nichols, CSAC-EIA	Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR)
Anne Katten, California Rural Legal Assistance Foundation (CRLAF)	Karin Umfrey, Worksafe
Lloyd I. Cargo IV, International Brotherhood of Electrical Workers Local Union (IBEW LU) 1245	Marley Hart
Kevin Bland, Ogletree Deakins	Pamela Murcell, California Industrial Hygiene Council
Kevin Goddard, CalTrans	Robin Flint, Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA)
Scott Bourdon, California State University (CSU) Systemwide Risk Management	Rosie Sanchez, University of California Los Angeles – Labor Occupational Safety and Health
Verònica Ponce de Leòn, University of California Los Angeles – Labor Occupational Safety and Health	
Kim Hudson, Association of General Contractors of California (AGC of CA)	
Jeff Long, Keenan & Associates	

B. PUBLIC MEETING COMMENTS

**Elizabeth Treanor, Phylmar Regulatory Roundtable**, stated that her organization has significant ongoing concerns about the wildfire smoke emergency regulation that the Board is scheduled to vote on today. She said that her organization hopes for ongoing dialogue to address these concerns before the permanent regulation is adopted.

**Nicole Marquez-Baker, Worksafe**, commented in support of the wildfire smoke emergency regulation, but her organization has some concerns regarding implementation of the emergency standard, including access to real time information, especially when there is an evacuation alert, and access to fact sheets in languages other than English. For the permanent standard, her organization would like to see the following changes:

- Lower the trigger application for PM 2.5 from 151 to 101.
- Lower the threshold for when workers must have a fit test and medical evaluation done for using a respirator from 500 to 301, as well as requiring in-person training on how to use them.
- Make sure that domestic workers are covered by the standard.

**Eddie Moreno, CA Environmental Justice Alliance and the Central Coast Alliance United for a Sustainable Economy**, echoed Ms. Marquez-Baker's comments.

Ms. Marquez-Baker also read a statement into the record from Verònica Ponce de Leòn of UCLA-LOSH. In that statement, Ms. Ponce de Leòn commented in support of re-adopting the wildfire smoke emergency regulation, but stated that her organization has concerns regarding the fact that many workers have been required to continue working in areas where evacuations have been ordered. She also stated that more education and outreach from the Division is needed for both employers and workers.

**Bryan Little, CA Farm Bureau Federation**, commented in support of re-adopting the wildfire smoke emergency regulation. He also expressed ongoing concerns with the proposal pertaining to nighttime agricultural work. He said that the language issued in the second 15-day notice is a vast improvement over the original language and is much easier to explain, but clarification is still needed regarding measuring area light and its adequacy, as opposed to task lighting. His organization also has concerns regarding the cost analysis for the regulation. There are thousands of farms that do nighttime agricultural work throughout the year, so the estimate that only 1,600 farms do nighttime work for 2 months out of the year, and therefore will be the only ones affected by this regulation, is not correct. He recommended sending the proposal for a standardized regulatory impact analysis (SRIA) because his organization believes the cost is much higher than what the cost analysis currently indicates. **Michael Miiller, CA Association of Winegrape Growers**, echoed Mr. Little's comments on the nighttime agricultural work proposal.

**Michael Miiller, CA Association of Winegrape Growers**, stated that when there are power outages, employers may be unable to get AQI information because many of the AQI monitors are powered by electricity. He said that during the Kincade fire, if the AQI office was evacuated or the AQI monitor lost power, the website showed the AQI reading as "unavailable". He stated that it is important to address this so that employers know what to do when that happens and are able to comply. **Anne Katten, CA Rural Legal Assistance Foundation**, echoed Mr. Miiller's comments.

**Karin Umfrey, Worksafe**, read a statement from Nancy Zuniga of IDEPSCA into the record. In the statement, Ms. Zuniga commented in support of re-adopting the wildfire smoke emergency regulation. She said that the permanent wildfire smoke standard needs to provide clear guidance to employers regarding their responsibility to communicate with workers regarding things such as an evacuation plan. She also encouraged the Division to do more education and outreach similar to what was done for the heat illness prevention standard. Also for the permanent standard, she recommended lowering the AQI trigger for PM 2.5 to 101 and lowering the threshold for requiring fit testing and medical evaluation for respirator use to 301, as well as adding a provision that takes into account poor air quality after a wildfire.

**Anne Katten, CA Rural Legal Assistance Foundation**, commented in support of re-adopting the wildfire smoke emergency regulation. She also commented in support of the proposal pertaining to nighttime agricultural work, but expressed disappointment about the most recent draft, including the removal of the hierarchy requiring consideration of area lighting options over personal hands-free lighting and the reduction of lighting requirements for work that does not involve sharp tools.

**Michelle LeBlanc, Free Speech Coalition**, asked the Board to appoint her to the advisory committee that will be discussing workplace violence prevention in the adult film industry.

**Bruce Wick, CALPASC**, asked the Division to ensure that when the advisory committee process begins for the permanent wildfire smoke regulation, that it is as collaborative and interactive as possible. It is also important to make sure that employers are able to comply with the regulation without having to risk the safety and health of their employees to do so. **Steve Johnson, Walters and Wolf**, echoed Mr. Wick's comments.

**Steve Johnson, Walters and Wolf**, stated that it is important when the permanent wildfire smoke standard is developed, that it is easy for employers to follow and comply with, and that it makes it simple for employers to provide training and protection to their employees. He said that N95 filtering face pieces are easy to put on and do not require fit testing. He also stated that he is concerned about adjusting the triggers for requiring the use of N95's because in some cases, such as a shortage of N95's, it can result in a job site having to shut down in order to comply.

**Gail Blanchard-Saiger, CA Hospital Association**, stated that her organization supports re-adopting the wildfire smoke emergency standard, but they continue to have concerns. She said that if hospitals have to evacuate during a wildfire, the obligation to monitor air quality becomes burdensome for them as they work to evacuate patients, some of whom require assistance to leave the facility. She stated that as the process continues to develop the permanent wildfire smoke standard, the Division needs to consider a nuanced evaluation of worksites and special circumstances, such as those that occur in hospitals.

**Dan Leacox, Leacox & Associates**, thanked the Board and staff for their work this year on the variances. He also said that in the coming year, he will be coming back to talk to the Board about economic analyses for rulemakings.

**Mitch Steiger, CA Labor Federation**, commented in support of re-adopting the wildfire smoke emergency regulation and echoed the concerns of CRLAF and Worksafe regarding changes that need to be made to strengthen the protections for employees and clarify the requirements for employers.

**Kevin Bland, representing the CA Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council**, thanked the Board and staff for their work this year and said that he is looking forward to working with them in the coming year.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:00 a.m.

**II. BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 11:00 a.m., December 19, 2019, in the Council Chambers of the Rancho Cordova City Hall, Rancho Cordova, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS  
Sections 3420 and 3425  
**Tree Work, Maintenance or Removal – Use of Portable Power Saws**

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

MOTION

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

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

B. PROPOSED EMERGENCY SAFETY ORDER FOR READOPTION

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS  
Chapter 4, Subchapter 7,  
New Section 5141.1  
**Protection From Wildfire Smoke**

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

**Ms. Laszcz-Davis** stated that everyone seems to agree that the temporary standard should be re-adopted, but there seems to be concern that the temporary standard will become the permanent standard without any changes being made. She asked if the process to develop the emergency standard has enough engagement with stakeholders to address these concerns so that the permanent standard will be a good one. **Mr. Kirkham** stated that the Division has had several meetings with stakeholders outside of the advisory committee meeting process. The Division has also responded to the comments received and is open to ideas about changing the advisory committee process, and the Division is continuing to evaluate what they are going to do in the future.

**Mr. Thomas** stated that he would like to see the Division have a much more open format when it comes to advisory committee meetings. There needs to be more give and take during those meetings so that everyone can understand where everyone else is coming from. **Ms. Stock** added that it is important that the Division ensure that all participants have equal access and opportunity to speak at the advisory meetings.

**Mr. Harrison** stated that in Northern California, there seems to be a problem with PG&E losing power, and as a result, there is no avenue to monitor the AQI level and no way for employers to check the AQI level, and that needs to be addressed during the advisory committee process.

**Ms. Kennedy** stated that as the process moves forward for the permanent standard, she would like to see an analysis of how the AQI is used as a proxy for exposure, and how useful it is as a measurement for exposure.

MOTION

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

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 item B on the consent calendar, OSHSB File No. 19-V-028, should be removed from the consent calendar because it is not ready for the Board’s consideration yet. Regarding item A on the consent calendar, OSHSB File No. 18-V-335, he is aware of no unresolved procedural issues and believes that it is ready for the Board’s consideration on the question of adoption.

MOTION

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

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

D. OTHER

1. DIR Communications Update

Ms. Monterroza provided an update to the Board regarding DIR’s efforts to provide information and outreach to workers regarding their rights, and to employers regarding their responsibilities, using various media outlets, especially in terms of the wildfire smoke emergency regulation.

2. Division Update

Mr. Kirkham stated that for folks who want to have the AQI website translated into languages other than English, there are website translators available online that people can use to do that. The Division has put in a request to have Appendix B of Section 5141.1 translated into Vietnamese, Spanish, Korean, and Chinese, and many of the links that Ms. Monterroza noted in her presentation are available in Spanish. For those that are not available in Spanish, the Division is working on getting them translated.

Regarding workers being forced to work in evacuation areas, Mr. Kirkham stated that the Division has opened inspections based on allegations of that. He said that most of the Division’s inspections regarding this have been as a result of media covering the issue rather than complaints. No citations have been issued yet, but these investigations are still open and mostly involve employers, not homeowners. He said that he is not aware of any investigations into complaints regarding homeowners that kept their employees working in evacuation zones.

Regarding other Sections that may apply to wildfire smoke exposure, Mr. Kirkham stated that the Division is looking at subsection (a)(6) of Section 3203, which deals with making corrections during imminent hazards, as well as the Emergency Action Plan in Section 3220.

Mr. Kirkham stated that he did some research on household domestic service workers and the questions that were raised at last month's meeting regarding that, and he discovered that in the Labor Code, there is a definition of employment which contains an exception for household domestic services. Given the right circumstances, the Division will cite the employer of these workers who keep their employees in mandatory evacuation zones.

**Ms. Stock** asked about the cases where workers are covered by the exemption and if there are other remedies to cover them or what can be done legally to address that exemption. She also asked if there are any other regulations that could cover domestic and other workers that fall into the exemption category. **Mr. Kirkham** stated that he was unsure, but would take those questions back to the Division and provide answers at a future meeting.

### 3. Legislative Update

Mr. Healy stated that both chambers of the legislature are in recess until January 6, so there is nothing to report to the Board.

### 4. Executive Officer's Report

Ms. Shupe stated that the Board's 2020 meeting schedule has been finalized and is available to the public. She said that a new location, Santa Clara City Hall, has been added to the rotation.

Ms. Shupe stated that the Board staff has been utilizing the services of court reporters for Board Meetings to help balance the staff's workload, and in 2020, the Board staff will be looking at using court reporter services for advisory committee meetings as well. Having court reporter transcripts allows for a more streamlined meeting minutes format that meets the Bagley-Keene and the Brown Open Meeting Act and speeds the delivery of meeting minutes and transcripts while preserving the transparency of the Board's business.

At the January 2020 Board Meeting, the Board will be voting on a proposal pertaining to Employee Access to Injury and Illness Prevention Program, as well as a proposed decision for Petition 578, which seeks to amend Construction Safety Orders, Section 1710 to clarify when the use of barrier planking is required.

The Secretary Action Request (SAR) for a proposal pertaining to Commercial Diving Operations was recently approved by the Labor and Workforce Development Agency and will soon be submitted to the Office of Administrative Law for noticing. The Board staff expects that this proposal will be heard during the February 2020 Board Meeting, along with a Horcher rulemaking for Section 5189 pertaining to Process Safety Management.

### 5. Future Agenda Items

No future agenda items were mentioned.

E. CLOSED SESSION

Mr. Healy stated that the need for a closed session did not develop, so a closed session was not held.

F. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:48 a.m.