

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**February 19, 2015**  
**Oakland, 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., February 19, 2015, in the Auditorium of the Harris State Building, Oakland, California.

**ATTENDANCE****Board Members Present**

Dave Thomas  
David Harrison  
Bill Jackson  
Barbara Smisko  
Laura Stock  
Patty Quinlan

**Board Member Absent****Board Staff**

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  
Amy Martin, Chief Counsel

**Others Present**

Gail Bateson, Worksafe  
Mitch Seaman, CA Labor Federation  
Carmen Knutson, Shea Homes  
David Jones, AGC of CA  
Bill Wacker, Monterey Mechanical  
Victor Duraj, UC Davis  
Bryan Little, CA Farm Bureau  
Dan Leacox, Greenberg Traurig and Cal  
SEIA

Kengo Takahagh, Trench Shoring Co.  
Edward Calderon, Shea Homes  
Elizabeth Treanor, Phylmar Regulatory  
Roundtable  
Richard Thompson, NCCCO  
Kevin D. Bland, Esq, Ogletree, Deakins,  
Nash, Smoak & Stewart, P.C.  
Tim Schmelzer, Wine Institute  
David Shiraishi, DOL-OSHA

Anne Katten, CRLAF  
James A. Leslie, OECF  
Kevin Thompson, Cal/OSHA Reporter  
Michael Strunk, IUOE Local #3  
Bruce Wick, CALPASC  
Katherine Hughes, SEIU Local 121 RN  
Richard Negri, SEIU Local 121 RN  
Larry Hopkins, Operating Engineers  
Matt Antonucci, CSATF/AMPTP  
Cynthia Rice, CRLA

Chris Walker, Cal SMACNA  
Dan Schuetz, Independent Construction  
Michael Musser, CA Teachers Association  
Bob Hornauer, NCCCCO  
Steve Johnson, Condon-Johnson  
Mark Stone, EPIC Insurance Brokers  
Chris Lee, United Contractors  
Mike Horowitz, Cal/OSHA  
John Robinson, CAPA

B. OPENING COMMENTS

**Richard Negri, SEIU Local 121 RN**, stated that the fourth advisory committee meeting regarding workplace violence prevention in the healthcare industry took place on February 5 in Los Angeles. He said that at this meeting, stakeholders discussed the first draft of the regulation, and his organization submitted revisions and comments to the Division in response to that draft. He stated that this regulation puts necessary and effective safeguards in place to protect healthcare workers as much as possible from the hazards of workplace violence. He also stated that the advisory committee process is right on schedule, and he thanked Bob Nakamura and his team for their hard work on this issue. He said that he will provide another update at next month's meeting.

**Mitch Seaman, CA Labor Federation**, asked the Board to adopt the heat illness prevention standard that is being voted on during the business meeting today. He said that most heat illness deaths are preventable and the current standard has failed to prevent these types of incidents. He stated that the new standard provides an extra layer of protection that doesn't require a lot of extra work to implement. He also stated that it provides greater access to shade and water and improved monitoring by employers to help prevent heat illness in employees.

**Gail Bateson, Worksafe**, stated that her organization supports the new heat illness prevention standard, especially the revisions made regarding emergency response. She said that the provisions regarding emergency response are more specific and are a good model that can be carried out by employers. She recommended developing a similar standard to address issues related to indoor heat illness as well.

**Anne Katten, CRLAF**, urged the Board to adopt the new heat illness prevention standard. She stated that it is the right and is not an extreme change to the current heat illness prevention standard. She said that the new standard improves access to water, shade, and rest areas, as well as strengthens requirements for worker training, observation during acclimatization, and emergency response.

**Dan Leacox, Greenberg Traurig, representing the CA Solar Energy Industry Association**, stated that the new heat illness prevention standard contains many improvements, but his organization has some major concerns about items in the standard that could still get well-meaning employers into trouble. He said that he hopes those items will be addressed in the Division's guidance documents. He also stated that the enforcement data that the Division has relied upon to prove necessity for the changes has not been provided.

**Bryan Little, CA Farm Bureau Federation**, stated that the new heat illness prevention standard could have been much more collaborative from the beginning. He said that his organization asked the Division to tell them what parts of the current heat illness prevention standard are not working or need to be changed so that they could discuss these items with them, but the Division never gave them that information. **Chris Walker, CALSMACNA**, echoed this comment. He stated that some of the changes in the new heat illness prevention standard are going to be very problematic in the real world. He said that providing shade for 100% of their crew may not always be feasible for employers to do in certain agricultural production areas because of what is around the area or adjacent to it. He also stated that using terms such as “fresh, pure, and suitably cool” regarding water and “deter or discourage” regarding access to shade are still very unclear. He also said that the requirements for documenting rest periods taken every 2 hours during high heat situations will require employers to document every single break or rest period that an employee takes throughout the day, creating more paperwork for the employer to do and maintain as records to prove their compliance. **Tim Schmelzer, Wine Institute**, echoed Mr. Little’s comments.

**Steve Johnson, Condon-Johnson and Associates**, stated that the current standard works and is understandable, so there is no need to change it. He said that he is a member of the CalChamber’s heat illness coalition, and he supports their comments. He stated that water that is “fresh, pure, and suitably cool” may discourage employees from drinking water and hydrating properly because the water may be too cold, which can hurt their teeth. He also stated that some employees don’t like to drink water that is cold because it makes it harder to drink a sufficient quantity of it quickly. He asked the Board to oppose the new heat illness prevention standard.

**Chris Walker, CALSMACNA**, stated that the terms “fresh, pure, and suitably cool” regarding water and “does not deter or discourage access” regarding shade are very vague, and because of that, employers could end up being cited. He is concerned that if an employee finds that the water is too cold for them to drink, that could be a violation, and if the shade is located near a noisy area, that might deter or discourage an employee from accessing it, which would also be a violation. He asked the Board to reject the new heat illness prevention standard.

**Cynthia Rice, CRLAF**, stated that the advisory committee process for heat illness prevention was very collaborative and both employers and labor groups were equally given opportunities to comment on drafts of the proposal and make recommendations. She stated that the new heat illness standard adds specificity regarding how the water should be for employees. She said that if it’s suitably cool, it will not hurt people’s teeth or burn their mouths. She stated that the data that proves this new standard is necessary is that heat illness-related deaths have continued to occur since the current standard was implemented, and many of these deaths occurred because employees were not taking breaks. She said that the provisions in the new standard are designed to help encourage employees to take the breaks that they need to in order to avoid getting heat illness. She also stated that the shade requirement only requires employers to provide enough shade to accommodate all employees who are on rest or recovery breaks, not the whole crew. She said that this may encourage employers to stagger breaks, which would allow employers to decide how many employees can go on break at one time, and therefore, how much shade they will need to provide.





**Mr. Harrison** stated that many comments were made today regarding the necessity for the changes that were made. He asked Ms. Martin to speak regarding this issue and what the Division has done to address it. **Ms. Martin** stated that the Division has been discussing issues with the current heat illness prevention standard for a number of years, and during those years, information has come to light from medical professionals and industrial hygienists who have studied heat illness regarding the measures that are critical to preventing heat illness. She said that this information has been shared in the response to comments and other supporting documentation submitted with the rulemaking package. She stated that based on the statistics provided by the medical community, the military, and the industrial hygiene community, hydration is a key factor in preventing heat illness. She said that the Division reviewed the current standard and the heat illness cases that it has investigated, and the Division discovered that in almost every heat illness case, hydration was an issue. She said that these reports are available for the public to review. She also stated that the Division has provided studies and attached documents with the rulemaking package, as well as addressed in its response to comments, to address issues regarding providing immediate emergency services for employees who are experiencing heat illness.

**Ms. Smisko** asked Ms. Martin to list the various kinds of documentation that are required to comply with this rulemaking, and the need for each of them. **Ms. Martin** stated that there is no required documentation except for what is called for in the written program. She said that employers will not be required to document when an employee takes an additional break during high heat periods or after 8 hours, but it is recommended. She stated that guidance documents will be drafted and amended to provide clarification to employers regarding what is expected of them.

**Ms. Smisko** stated that she is concerned that employees who are being “closely monitored” or are under “close observation” by the employer for heat illness may feel that the employer is constantly watching over their shoulder as they work. **Ms. Martin** stated that there are only two situations mentioned in the regulation where monitoring of employees is required: during periods of high heat and anytime that an employee is experiencing heat illness symptoms. She said that this regulation does not intend for employers to constantly hover over employees, but rather to ensure that someone is keeping an eye on the employee for heat illness. She stated that the provision regarding monitoring employees during high heat periods gives employers options to choose from when monitoring their employees, some of which don’t require employer involvement at all, such as having a buddy system. She also stated that there is a provision in the regulation that allows employers to come up with their own ideas for monitoring employees that better suit their needs. She said that these provisions will be further clarified in guidance documents.

**Ms. Smisko** stated that this regulation still puts the burden on the employer of monitoring employees for heat illness symptoms. She said that it makes it very difficult for employers to support their employees making their own decisions and determining the limits of their work skills because they are having to monitor their employees so very closely in order to comply with this regulation.

**Ms. Quinlan** stated that the burden of monitoring employees and ensuring that they are not experiencing heat illness symptoms will fall on the employer regardless of what happens with this regulation. She said that this regulation provides a more prescriptive plan containing

common procedures for employers to follow to protect their employees from heat illness. She also stated that this regulation does not require employers to constantly hover over their employees.

**Mr. Jackson** stated that he is concerned about the necessity for this regulation and the fact that this process has been fraught with unavailability of information. He said that he asked the Division three times before the first advisory committee meeting to provide a copy of the proposal to stakeholders before the meeting was held, but the Division did not provide any copies until the day of the meeting. He believes the Division decided that the changes were necessary and that the Division was going to make the changes without regard to whether there is a record to show that parts of the regulation that, when complied with, still result in people getting heat illness. He stated that in its response to comments, the Division states that they have a wealth of data that proves these changes are necessary, but the Division did not provide the written documentation to demonstrate the need. He said that there is no written documentation stating the Division's collective experience on this issue, or a review of the heat-related illnesses and injuries that the Division has dealt with, and how those injuries and illnesses related to compliance with the existing regulation. He also stated that terms in the new regulation, such as "fresh, pure, and suitably cool" and "observing an employee" reduce the clarity of the standard. He said that if the standard is clear to begin with, no guidance documents are necessary.

**Ms. Stock** stated that she believes that the testimony that was heard today and at the public hearing on September 25, the numbers of citations and studies available, and the Division's experience and expertise on this issue prove that the changes made to the current standard are necessary. She said that the current standard is very general and there are gaps that continue to allow people to get sick and die from heat illness. She stated that the process that the new standard has gone through has been very collaborative and that the Division has been very responsive to people's concerns, which resulted in the substantial changes that were made to the current standard. She said that areas needing further clarification will be addressed in guidance documents like they have been in past rulemakings. She stated that many regulations have guidance documents, and the clarity that they provide is very beneficial and makes it easier for people to comply with the standard. She said that although the new standard still excludes some outdoor workers, and she is concerned about the high heat trigger remaining at 95 degrees, she feels that the new standard is responsible, reasonable, and clear, and there is a well-documented need for it. She asked the other Board members to vote "aye" on this proposal. She also stated that she would like to see a similar proposal developed to address indoor heat.

**Ms. Quinlan** stated that this standard has been substantially revised since the public hearing in September. She said that the provisions requiring that water be located no more than 400 feet, and shade be located no more than 700 feet, from where employees are working have been removed, and the standard contains exceptions and alternatives for employers to use if they cannot feasibly provide access to shade for their employees. She also said that the standard contains provisions regarding emergency and high heat procedures. She stated that many individuals and organizations asked for these changes along with the Division. She asked the other Board members to vote "aye".

**Mr. Thomas** stated that at last month's meeting, he had indicated that he was not happy with this proposal. He said that he reviewed the proposal again before today's meeting, and he feels that a lot of employees are pressured by their employers to produce. He said that employees who need water too often or need to take extra rest breaks are often looked upon by their employer as unproductive. He stated that this regulation is necessary to ensure that employees can take breaks and access water when needed so that they do not get heat illness. He said that the changes made regarding emergency response, acclimatization, monitoring, and training are necessary to protect employees from heat illness. He said that the proposal is clear and reasonable enough, and he supports it.

**Mr. Harrison** asked what will happen if the Board deadlocks in voting at 3-3. He also asked how long it will take for this proposal to become the final rule if it is passed. **Ms. Hart** stated that in order to pass a regulation, there must be 4 "aye" votes. She said that if the proposal passes, the Office of Administrative Law will have 30 working days to review the proposal. She stated that the Board staff is going to request that the Office of Administrative Law set an effective of May 1, 2015 for this proposal so that it will be in place before the heat season begins.

**Ms. Smisko** stated that heat illness is a serious condition for workers and there is not a lot of lay knowledge about it, so education is very important. She said that it will be a huge challenge for advocacy groups to be on both the employer's and employee's side regarding this issue. She stated that they will really need to make sure that employees are doing their part to protect themselves from heat illness by hydrating properly and taking breaks in the shade when needed.

**Ms. Stock** stated that there are many reasons why employees do not take the breaks that they need, such as being paid piece rate, and because of that, the extra provisions in this standard on the employer's part seem to be very appropriate. She said that while reasons like these exist, there needs to be something in place to counter them and encourage employees to take the breaks that they need.

A roll call was taken. Mr. Jackson voted "no" and all other members present voted "aye." The motion passed.

## B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

### 1. Consent Calendar

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

### MOTION

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

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

C. OTHER

1. Division Update on Possible Rulemakings and Advisory Committees

Ms. Sum stated that a written copy of the update has been provided [Please see the Board's file copy to view the written update]. She also provided the following additional updates:

Workplace Violence in Healthcare: In addition to the four advisory committee meetings that have already occurred, the Division may hold one more before submitting the proposal to the Board staff for review.

Sexually Transmitted Infections and Bloodborne Pathogens in the Adult Film Industry: The Division is currently reviewing the financial documents that are part of the rulemaking. These documents will also be reviewed by the Director's office staff and the Labor Agency to ensure that it will pass the Executive Branch's financial analysis.

Lead: The Division is currently working on a draft proposal that will be presented during an advisory committee meeting that will take place later this year.

Hotel Housekeeping: The Division has taken a break on this project to focus on other rulemakings, but will pick it up again soon by holding more advisory committee meetings and drafting language. This is going to be one of the Division's top priorities.

Permissible Exposure Limits: This rulemaking is an ongoing process. The Division is receiving help from HESIS and the Department of Public Health on this project.

**Ms. Stock** stated that she hopes that the Division will clarify the process and definitions for feasibility regarding permissible exposure limits, as has been discussed during past meetings. She also asked if the bloodborne pathogen protection standard is still scheduled to be heard at the April public hearing. **Ms. Hart** stated that the deadline to put it on the April notice has passed, so it will not be heard in April. **Ms. Stock** stated that the continuing delays in getting this proposal to public hearing are very frustrating. **Ms. Sum** stated that all of the documents relating to this proposal have to undergo a very careful review before it can be noticed for public hearing. **Ms. Stock** also stated that she feels now would be a good time to begin looking into a proposal to address indoor heat illness. She said that a lot of the information gathered during the process for outdoor heat illness will be useful to help draft a regulation to address indoor heat illness as well. **Ms. Sum** stated that she will work with Ms. Hart on getting that process going.

**Ms. Smisko** stated that she would like to see the Elevator Safety Orders revision placed as a high priority on the Division's list. She said that over the last year, there have been 300 – 400 variances filed regarding elevators because the revisions to the Elevator Safety Orders are not complete, and that results in day-long variance hearings. She said that by finishing the revisions on the Elevator Safety Orders, this will cut down on the number of variances and will free up more staff resources to work on other projects.

**Ms. Quinlan** asked for clarification on the permissible exposure limits. She asked if the Division is trying to finish up the PEL's that were recommended several years ago, and if

there are any further PEL advisory committees planned. **Ms. Sum** stated that nothing is planned at this point, but finishing the PEL's that the Division currently has is a top priority. **Ms. Quinlan** said that it seems that the lead proposal has been dragging on for a long period of time. **Ms. Sum** stated that the Division is moving on that proposal, but there have been other projects that are a higher priority because of the deadlines attached to them.

## 2. Executive Officer's Report

Ms. Hart stated that the Board packet includes a list of proposed rulemaking projects that the Division may undertake during 2015. She said that this list was provided by Ms. Sum to the Board staff and the Office of Administrative Law. She stated that this list and the Board staff's list of proposed rulemaking projects are simply projected lists to give the Office of Administrative Law and the public an idea of the projects that each entity may undertake, and neither entity is required to undertake any or all of them.

Ms. Hart also stated that the Board staff is going to work with the Division staff and federal OSHA regarding the current standard for residential fall protection pertaining to trigger heights. She said that the Board staff received a letter on May 28, 2013 from federal OSHA requesting information regarding California's 15-foot trigger height, and the Board provided this information to them on August 16, 2013, along with a response letter stating that the current standard is at least as effective as the federal final rule that requires fall protection at 6 feet, and that the Board would be willing to convene an advisory committee with stakeholders to discuss whether or not changes might be appropriate. She stated that on January 20 and February 4, 2015, Board staff met with Division staff, the Director's office, and federal OSHA to discuss the issues that federal OSHA has with the current standard, and federal OSHA stated that they were finalizing their written response to the Board staff's August 2013 letter. Ms. Hart stated that the Board staff received this response letter 2 days ago, and it states that federal OSHA feels the current California standard is not at least as effective as the federal standard, even though the California construction fatality rate that has been achieved with the current standard is lower than the national average. She said that federal OSHA has offered to help set the agenda for the advisory committee to address these issues, and the Board staff will work with federal OSHA, the Division, and stakeholders on this, but no timeframes or dates have been set yet. She stated that a copy of the letters from federal OSHA are in the Board packet, along with copies of the letter received 2 days ago stating federal OSHA's findings.

Ms. Hart stated that there are several upcoming advisory committees:

1. Conrad Tolson is working on combining the CDAC into the General Industry Safety Orders. Advisory committee and subcommittee meetings have already been held, and another 2-day advisory committee meeting is scheduled for the end of March, with possibly more to come after that.
2. A follow-up advisory committee has been scheduled regarding nighttime illumination in agriculture. During a previous advisory committee on this in 2014, the participants were charged with doing light metering and studies. This information is back, and the advisory committee will come together to develop a consensus standard.

Ms. Hart also stated that the Board staff has made an offer to one of the applicants for the open Office Technician position.

3. Future Agenda Items

No future agenda items were mentioned.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:12 p.m.