

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 AND BUSINESS MEETING February 20, 2020 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 10:00 a.m., February 20, 2020, 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

Eric Berg, Deputy Chief of Health

Office of the California Attorney General

Jonathan Eisenberg, Deputy AG

Others Present

Michelle LeBlanc, Free Speech Coalition	Andrew Solomon, CA Science Center Fdn.
Elizabeth Treanor, PRR	Paula Vlaming, Crane Owners Association/ Mobile Crane Operators Group
Chris Moulton, Contract Services	James Mackenzie, SCE
Stephen Knight, Worksafe	Michael Miiller, CAWG
Gail Blanchard-Saiger, CA Hospital Assoc.	Eric McClaskey, EIWPH/IUEC
Kristin Haman, SDGE	Ed Klinenberg, CIHC
Dan Leacox, Leacox & Associates	Jonathan M. Eisenberg, Cal DOJ
Karen Tynan, Ogletree Deakins	Jeremy Berry
Amber Novey, LiUNA	Kevin Goddard, CalTrans
Trina Caton, Keenan	Amber Rose, Fed OSHA
Bryan Little, CA Farm Bureau Federation	George Peterson, Monterey Bay Aquarium
Kevin Thompson, Cal/OSHA Reporter	Peter McDonald
Sean Tracy, Dept. of State Hospitals	Michael Strunk, IUOE Local Union No. 3
Paul Dimeo, Aquarium of the Pacific	Bruce Smith, Abbott
Maggie Robbins, Worksafe	

Jamie Carlile, SCE
Nicholas Chavez, UFW
Juanita Ontiveros, CRLAF

Anne Katten, CRLAF
Benjamin Sanchez, Littler Mendelson

B. PUBLIC MEETING 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.

Bryan Little, CA Farm Bureau Federation, commented in support of the revisions made to the proposal for Outdoor Agricultural Operations During Hours of Darkness, but also voiced some unresolved concerns, especially concerns regarding the cost analysis for the regulation. He also commented on the 2.0 version of the proposal for Protection from Wildfire Smoke.

Michael Müller, CA Association of Winegrape Growers, commented in opposition of the proposal regarding Outdoor Agricultural Operations During Hours of Darkness, contending that the fiscal analysis is inaccurate.

The following individuals commented in support of the proposal regarding Outdoor Agricultural Operations During Hours of Darkness:

- **Anne Katten, CA Rural Legal Assistance Foundation**
- **Juanita Ontiveros, CA Rural Legal Assistance Foundation**, read a letter into the record from Jorge Martinez, a farmworker [Please see either the file copy of the Board packet or the Board website to view this document].
- **Nicholas Chavez, United Farm Workers**
- **Steven Knight, Worksafe**

Michelle LeBlanc, Free Speech Coalition, asked the Board to appoint her to the advisory committee that is being conducted for Petition 576, which was granted in-part by the Board in October of 2019 and seeks to amend General Industry Safety Orders, Section 5193, Bloodborne Pathogens.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:31 a.m.

II. **PUBLIC HEARING**

Mr. Thomas called the Public Hearing of the Board to order at 10:31 a.m., February 20, 2020, in the Council Chambers of the Rancho Cordova City Hall, Rancho Cordova, California.

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

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, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

There were no public comments on this proposal.

Mr. Thomas introduced the next item noticed for public hearing.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Sections 6051, 6056, and 6057
 Commercial Diving Operations

Mr. Manieri summarized the history and purpose of the proposal, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

Paul Dimeo, Aquarium of the Pacific, stated that his organization supports the amendment being proposed in the regulation because many zoos and aquariums have been operating as stated in the amendment for many years, and in most of those operations, their safety records have remained exemplary. In 2019, his organization did 17,000 scuba and hookah dives, which totals more than 7,000 hours of diving, and they had 0 dive-related or pressure-related injuries, incidents, or lost time accidents. He asked the Board to think about the California diving industry as a whole, and technical diving in specialized environments, such as zoos and aquariums, when considering this regulation because there are many more technical diving operations occurring daily in California than commercial diving operations. He said that federal OSHA has failed to keep up with diver safety in specialized environments since its regulations were developed in the 1970's, but California did it differently. He stated that Article 152 in the California regulations not only accommodated diver safety in construction and maintenance environments, but also in specialized environments like zoos, aquariums, and film and TV productions. The amendment in this proposal will protect divers in specialized environments like Article 152 has for years, and federal OSHA doesn't have any data to show that the exemptions in this regulation are any less safe or effective in these specialized environments.

George Peterson, Monterey Bay Aquarium, stated that his organization supports the proposal because will keep divers safe in a very unique and specialized environment. It will help keep these environments pristine, which is paramount to zoo and aquarium efforts to inspire conservation of the oceans. He said that it will allow zoos and aquariums to continue operating in an extremely safe and efficient manner without any undue financial impact or loss of safety measures, which is especially important because many zoos and aquariums are non-profit organizations that contribute to the economy.

Andrew Solomon, CA Science Center Foundation, stated that his organization supports the proposal because it will allow institutions to continue to operate under existing conditions without creating overwhelming financial implications or conditions that are less safe.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:50 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:50 a.m., February 20, 2020, in the Council Chambers of the Rancho Cordova City Hall, Rancho Cordova, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Subchapter 4, Article 15. Cranes and Derricks in Construction
Sections 1618.1 and 1618.4
**Cranes and Derricks in Construction: Operator Qualification
[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.

Ms. Burgel stated that two Board Member comments were made during the public hearing about the section pertaining to physical examinations being done by a physician not being found in the federal standard. **Mr. Manieri** stated that he was unable to find that in the federal standard either, but since the language is shown in underlying format in the proposal that was taken from the federal standard, which refers to a physician conducting the exam, he had no objections to expanding that to include other licensed, qualified medical expertise. He said that making these changes can be done at a later date and would need to be checked with federal OSHA before they are done, but he believes federal OSHA would be OK with making that change. **Ms. Burgel** stated that she did not find any requirements in the federal standard regarding a medical requirement for operator competency, so she fears that the Board staff is looking in the wrong section. She said that because there hasn't been a response to her comment regarding this, she is going to abstain from voting, and she hopes to be able to discuss further action about this with Mr. Manieri. She also stated that the language indicates that the DOT allows nurse practitioners, physician assistants and other licensed, qualified medical professionals to do these physical examinations, so she would like to see the language be consistent with what DOT offers. She said that this seems to be an editorial change, which is allowed to be done to a Horcher rulemaking.

Ms. Stock asked Mr. Manieri about what could be done to add the change that Ms. Burgel recommended to the regulation if the Board decided to adopt the proposal. **Ms. Shupe** stated that there is a follow-up rulemaking pertaining to CDAC that is in progress, and the change that Ms. Burgel recommended can be incorporated into that.

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. Ms. Burgel abstained from voting, and all other members present voted “aye.” The motion passed.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Sections 3441 and 3449
 Outdoor Agricultural Operations During Hours of Darkness

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.

Ms. Laszcz-Davis stated that there seems to be a lot of disagreement regarding the cost impact for this proposal. She asked Mr. Manieri if there is anything that should be done about that. **Mr. Manieri** stated that there is no recourse due to the limited amount of time left on the one-year adoption time clock for this regulation.

Ms. Stock encouraged the other Board Members to adopt this regulation. She stated that when it comes to cost analysis for many regulations, there is always a difference of opinion, and she felt that the cost of this regulation has been properly assessed over the 6 years that this regulation has been in development. She said that this regulation is needed to provide nighttime agricultural workers with the proper protections. She stated that there is room for improvement, and she is concerned that the hierarchy of controls was removed from the regulation, but nonetheless, it should be adopted.

Mr. Harrison thanked the Board staff for their work on this proposal and encouraged the other Board Members to adopt it.

Mr. Thomas stated that this regulation is needed so that night time agricultural workers can see what they’re doing and be protected from injury, and he encouraged the other Board Members to adopt it. He said that the cost impact will change over the coming years as the industry changes.

MOTION

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

A roll call was taken. All members present voted “aye.” The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated he is aware of no unresolved procedural issues regarding items A-Y on the consent calendar, and he 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. Stock to adopt the consent calendar.

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

C. OTHER

1. Legislative Update

Mr. Healy provided updates on the following bills:

- AB 2092
- AB 2162

2. Executive Officer’s Report

Ms. Shupe stated that the Board staff held an advisory committee meeting on February 12-13 regarding walking working surfaces. This advisory committee considered proposed amendments to Section 3277 to make the regulation at least as effective as the federal standard. The Board staff is going to hold an advisory committee on March 12 in Palm Desert to address proposed amendments to Section 3657 and New Section 3458.2 regarding date palm operations.

Ms. Shupe stated that the agenda for next month’s meeting contains the following items:

- A public hearing on a proposal pertaining to technical amendments to section 1630(a) regarding Elevators for Hoisting Workers
- An update from staff on the progress of the regulations pertaining to protection from wildfire smoke versions 1, 2, and 3
- The Board is scheduled to vote on a second 90-day extension of the emergency regulation pertaining to protection from wildfire smoke that was originally adopted by the Board in July 2019

Ms. Burgel asked if a date had been set for the advisory committee meeting regarding the adult film industry. **Mr. Berg** stated that it has not been scheduled yet. He said that before an advisory committee meeting can be scheduled, the Division needs to release draft language, get comments back on the draft language, and revise the draft language.

Ms. Burgel also asked Mr. Berg about the status of the proposal pertaining to indoor heat. **Mr. Berg** stated that the draft standardized regulatory impact analysis (SRIA) is currently being reviewed by the Department of Finance.

Ms. Stock asked Mr. Berg about the status of the proposal pertaining to workplace violence in general industry. **Mr. Berg** stated that the Division is working on a new draft to post for comments, and that draft should be posted within the next calendar year.

3. Future Agenda Items

No future agenda items were mentioned.

D. CLOSED SESSION

Pursuant to Government Code Sections 11126(e)(1), the Board conferred with counsel regarding pending litigation. Closed Session began at 11:24 a.m.

E. RETURN TO OPEN SESSION

1. Report on any Closed Session Action

Closed session ended at 2:10 p.m. No action was taken during the Closed Session.

F. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 2:12 p.m.