

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
June 16, 2016
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 10:03 a.m., June 16, 2016, in The Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

Dave Thomas
Dr. Robert Blink
David Harrison
Patty Quinlan
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

Eric Berg, Deputy Chief of Health

Others Present

Adrian De Orta, Unite Here Local 49
Robert Kelsey, CDCR
Barbara Brenner, City of Sacramento
Lam Chac
Elizabeth Treanor, PRR
Michael Musser, CA Teachers Association
Enriqueta Layune, Unite Here Local 49
Katherine Hughes, SEIU
Pamela Vossen, Unite Here

Angelina Garcia, Sheraton
Larry Wong, University of CA, Office of the
President
Mario Gonzalez
Michael Strunk, IUOE Local No. 3
Lou Paulson, CA Professional Firefighters
Roxana Tapia, Unite Here Local 49
David Jones, AGC of CA
Enriqueta Castro, Bickmore

Steve Rothert, American Rivers	Amber Novey, LIUNA
Karen Tynan, Free Speech Coalition	Isela Martinez, Unite Here Local 49
Jenny Amaya, Unite Here Local 49	Marion Betz, Unite Here Local 49
Ever Hernandez, Unite Here Local 49	Robert Sestik, Sac Metro Fire
Dick Weise, Los Angeles County Fire Dept.	Dan Leacox, Leacox & Associates
Gavin Dillen, CalTrans	Matt Antonucci, CSATF
Damon Godden, Cal Fire Academy	Kevin Bland, Ogletree Deakins
Gail Blanchard-Saiger, CA Hospital Assoc.	Steve Johnson, Alliance Roofing Company
Doug Parker, Worksafe	Don Schinske, WOEMA
Carroll Wills, CA Professional Firefighters	Nicole Marquez, Worksafe
Jose Benavides, Fed OSHA	Ralph Scott, Scott's PPE
James Fong, Scott's PPE	Amy Howard, L.A. Professional Firefighters
Marisa Crapson, ACT	

Mr. Thomas administered the Oath of Office to Ms. Quinlan, who has been reappointed to the Occupational Safety and Health Standards Board 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.

Katherine Hughes, SEIU, stated that the next version of the proposal regarding workplace violence prevention in healthcare will be issued soon, with a 15-day comment period to follow. She said that her organization has some concerns about the draft of the proposal that was discussed at the December public hearing, and she hopes that these issues will be addressed in the next version of the proposal:

- Her organization is glad to see that ancillary healthcare operations have been removed from the regulation. This will allow smaller clinics that provide more than first aid to be held to a higher standard because they will be required to have their own injury and illness prevention plan (IIPP), rather than falling under the host facility's IIPP.
- Her organization would like to see the term "threat of violence" defined in the proposal as "a statement or conduct, for example, harassment, intimidation, and other threatening, disruptive behavior, that causes a person to fear for his or her safety and serves no legitimate purpose."
- The definition of the term "workplace violence" in the proposal needs to include conduct such as verbal, physical, and sexual intimidation that conveys an intent to cause harm to persons or property.
- The proposal needs to include language to address active shooter situations. It needs to include what actions employees will take, including evacuation to designated safe areas or sheltering in a place of safe refuge.

- The post-incident logs must have as much information logged on it about an incident so that it can be addressed and prevented from happening again in the future. The log should have an area where employees can have direct input and describe the incident in their own words, and if they are not comfortable doing this, they should be able to opt out. She stated that during the advisory committee process, stakeholders expressed concern that this might cause an employee to violate a patient's privacy, so they agreed that the employer could fill out that section of the log with the direct input of the employee. She said that stakeholders also expressed concern about this log possibly violating privacy rights, but her organization feels that it does not violate privacy because this information is logged in the 300 log anyway and is therefore not protected.
- Levels of training in workplace violence prevention should be reflected on the hazard assessment. She said that areas with a high workplace violence hazard assessment means that there is a high prevalence of violence in that area, and therefore, the workplace violence prevention training plan should be strong, while areas that have a low workplace violence hazard assessment have a lower prevalence of violence, and therefore, need less training.

Nicole Marquez, Worksafe, echoed Ms. Hughes's comments.

Gail Blanchard-Saiger, California Hospital Association, stated that the definition of workplace violence that is in the proposal is as good as it can get. She said that her organization has been advocating for a definition of workplace violence that is as objective as possible because of the record keeping requirements listed in the proposal, as well as the fact that hospitals must report incidents to the Division. She said that the labor stakeholders' definition of workplace violence contains several areas of ambiguity. She also stated that her organization supports the idea of having the employer fill out the violent incident log with the direct input of the employee. She said that they were concerned that this log might violate the privacy rights of patients and employees, but those concerns have been addressed. She also stated that the training for workplace violence prevention should be different based on whether or not an employee has direct contact with patients.

Nicole Marquez, Worksafe, stated that regarding the scope and application for the proposal for workplace violence prevention in healthcare, it is important to make sure that rights of ancillary clinic workers are protected. She said that the definition of the term "threat of violence" in the proposal needs to include both verbal and physical conduct. She also stated that her organization supports the proposal for hotel housekeeping and would like to see it noticed for public comment by early fall of 2016.

Maria Crapson, Area Congregation Together Sacramento, stated that hotel housekeeping is physically demanding work, and many hotel housekeepers are women, immigrants, and women of color. She said that some hotel housekeepers are the head of their household, so their income makes a difference for their families, and if they cannot work, it can leave them in financial hardship. She stated that when hotel housekeepers are injured, their injuries can be serious enough to affect their home and family life, and some can be permanently injured to the point that they are no longer able to work. **Jenny Amaya, Unite Here Local 49**, echoed this comment. Ms. Crapson asked the Division to work quickly to get the hotel housekeeping proposal ready for noticing so that it can be noticed by September and the public comment

period can begin before the end of 2016.

Isela Martinez, Unite Here, stated that the current version of the hotel housekeeping standard is strong and will make hotel housekeeper jobs safer. She said that her organization is glad to see that the term “control measures” has been defined in the proposal. She stated that 2017 will mark the 5-year anniversary since her organization filed the petition to develop a hotel housekeeping proposal, and she would like to see the proposal noticed for public hearing by the fall of 2016 so that the public comment period can begin before the end of 2016. **Jenny Amaya, Unite Here Local 49**, echoed Ms. Martinez’s last comment.

Pamela Vossenias, Unite Here, thanked the Division for sending the hotel housekeeping proposal to the Board staff for final review. She said that hotel housekeepers know firsthand how physically demanding their work is. She stated that the final advisory draft of the proposal is strong and will help reduce the number of musculoskeletal injuries for hotel housekeepers. She asked the Board staff to swiftly review the proposal so that it can be noticed, and the public comment period can begin, by early fall of 2016. She also stated that her organization supports the recommendations of the healthcare workers’ unions regarding the proposal for workplace violence prevention in healthcare.

Barbara Brenner, City of Sacramento, stated that respiratory and dermal absorption exposures for firefighters can be easily mitigated in a reasonable way by using a self-contained breathing apparatus. She said that equipment and cleaning proposals are needed, but the most important regulation that is needed is the continued use of a self-contained breathing apparatus in the post-extinguishment phase of a fire. She stated that toxins continue to be released for long periods of time during overhaul and when a fire smolders, and the self-contained breathing apparatus is the best available technology to protect firefighters. She said that employers can rotate crews and implement other tactics to shorten the amount of time that it takes to do overhaul and the amount of time that someone must work in that environment, and this will make the self-contained breathing apparatus a reasonable and feasible option. She stated that full face pieces are best because they limit dermal absorption of toxins, especially that which can occur in the eyes. She said that specific regulations will be needed in order to make change happen. She stated that requiring the use of a self-contained breathing apparatus during overhaul is low in cost and does not require more than a change in the way the work is done. She said that firefighters deserve to have their health and safety protected with this regulation, and she asked for the Board’s support.

Michael Miller, Senior Safety Engineer, Division of Occupational Safety and Health (DOSH), stated that the current firefighter personal protective equipment (PPE) standards are not enforceable and were created back in 1981, and therefore, use outdated PPE methods, so these standards need to be updated. He said updates the PPE standards are important, but so are the provisions regarding cleaning, inspection, and training to help prevent exposure when the fire goes out. He stated that most municipal and larger fire departments already meet the requirements that are being proposed because they have the latest equipment and up-to-date materials, but even though volunteer firefighters in California are identified as employees and are covered by the occupational safety and health standards, they often receive hand-me-down equipment from other jurisdictions, and therefore, do not always have the latest equipment. He said that it is important to make sure that volunteer firefighters are included in this proposal so that unpaid firefighters can receive the same level of protection that is given to their paid

counterparts.

Karen Tynan, Free Speech Coalition, stated that she and Eric Paul Leue, president of the Free Speech Coalition, met with Amy Martin, Division Counsel, and discussed bloodborne pathogen protection in the adult film industry. She said that they provided Ms. Martin with some supplemental information, and her organization is looking forward to working with the Division to develop an industry-specific regulation that will protect adult film workers.

Verna, Adult Film Performer, stated that the livelihoods of adult film performers are being threatened by the AIDS Healthcare Foundation's political crusade to require condoms to be used in the adult film industry. She said that this will impede on a performer's ability to do their job in a safe and practical manner and will impact their lives. She asked the Division to carefully review the FSC's petition and consider adult film workers' knowledge and experience when developing proposals that affect them.

Rand Martin, MVM Strategy Group, representing the AIDS Healthcare Foundation, stated that the AIDS Healthcare Foundation is very knowledgeable regarding sexually transmitted diseases (STD's), how to protect people from STD's, and how to minimize the spread of STD's among at-risk populations. He said that AHF is looking forward to bringing this knowledge and expertise to the table as the process moves forward with their petition and working to resolve the issue of protecting workers in the adult film industry.

Don Schinske, Western Occupational and Environmental Medical Association, asked the Division for an update on the progress of the lead standard. He said that his organization filed a petition to change the lead standard in 2009, and the last advisory committee meeting was held in November of 2015. He stated that a blood level of 50mcg is too high, and his organization feels that 20 mcg is best. He also said that the action levels are too high and exempt too many workplaces. He stated that he hopes that the final draft of the proposal will be coming soon.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:54 a.m.

II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:54 a.m., June 16, 2016, in The Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Miguel Bazan
Petition File No. 554

Petitioner requests the Board amend the Construction Safety Orders, pertaining to porta potties to require the use of solar powered ventilation systems that can be

affixed to the stack of the porta potty unit for better temperature and ventilation control.

Ms. Hart summarized the history and purpose of the petition, and stated that the proposed recommendation is to deny the petition request.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Quinlan that the Board adopt the proposed decision.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he was aware of no unresolved legal issues that would prevent the Board from considering for adoption the items on the consent calendar.

MOTION

A motion was made by Mr. Harrison and seconded by Dr. Blink 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

Mr. Berg provided the following updates on the following projects that the Division is working on:

Workplace Violence Prevention in Healthcare: The Division has revised the proposed text and prepared a 15-day notice with those revisions on it. The Division has sent the 15-day notice to DIR for its review, which should be completed in the next two weeks. After DIR has completed its review, it will send the notice to the Board staff.

Workplace Violence Prevention in General Industry: The Division plans to convene an advisory committee approximately 2 months after the proposal for workplace violence prevention in healthcare is adopted.

Sexually Transmitted Infections and Bloodborne Pathogen Protection in the Adult Film Industry: The Division has completed its evaluation of the petition that was submitted by the

AIDS Healthcare Foundation and is now working on evaluating the petition that was submitted by the Free Speech Coalition, which should be done by July 9. After that, the Division will convene an advisory committee with all stakeholders.

Lead in Construction and General Industry: The Division held 3 advisory committee meetings on this last year. The Division is finalizing the rulemaking documents and plans to submit them to the Board staff by the end of this year.

Permissible Exposure Limits: The Division submitted the rulemaking documents to the Board staff for trichloroethylene and benzyl chloride. The Division has also hired a new toxicologist to their staff who will start in July and restart the PEL advisory committee meetings.

Hotel Housekeeping: The Division completed the rulemaking documents and submitted them to the Board staff on May 31 for review and noticing.

Antineoplastic Drugs: The Division has completed the advisory committee process and plans to complete and submit the rulemaking and supporting documents by the end of this year.

Medical Services and First Aid: The Division has submitted the proposed text to the Board staff and the Division is working on the Economic and Fiscal Impact Statement, which should be submitted to the Board staff sometime this summer.

Medical Marijuana: The Division will convene an advisory committee before January 2017 to see if there is a need to develop industry-specific regulations related to industries that handle or distribute medical marijuana.

Ms. Stock stated that when the PEL feasibility advisory committee starts up again, she hopes that the Division will review the process of determining feasibility and make the criteria more understandable, predictable, and objective for when something is determined to be feasible or infeasible. She said that in the past, Board Members and the public provided the Division with recommendations on how to make the process more transparent and straightforward. **Ms. Quinlan** echoed Ms. Stock's comments. **Mr. Berg** stated that the Division can work on that with the new staff toxicologist when that person starts in July.

Ms. Stock also asked if there is a consequence for not meeting the July 1, 2016 legislative deadline that was set in SB 1299 for workplace violence prevention in healthcare. **Mr. Berg** stated that he is not sure what the consequences would be for not meeting that deadline, but he is certain that the Division will not be able to meet that deadline. He said that the proposal should be ready for the Board to vote on it at the October meeting. **Ms. Hart** stated that the one-year deadline by which the proposal must be adopted is October 30, 2016, so the Board must vote on the proposal no later than the October 20, 2016 meeting. She said that there is still a lot that needs to be done before the Board can vote. She stated that the Division is going to send the 15-day notice documents to the Board staff on June 30. She said that the Board staff will review the 15-day notice documents and the 150-page summary and response to comments and issue the 15-day notice. She stated that after the 15-day comment period closes, the Division will respond to the comments received in response to the 15-day notice and determine if another 15-day notice is needed. If another 15-day notice is needed, it will be done quickly so that the proposal is ready for the Board to vote on in October. **Ms. Stock**

asked Ms. Hart how soon after the October adoption the standard would become effective. **Ms. Hart** stated that after the Board adopts the proposal, the Office of Administrative Law has 30 working days to approve the proposal, not counting holidays, so it would probably be approved sometime in December. Then, there is a quarterly timeline of effective dates. She said that it probably will not get approved in time to make the January 1, 2017 effective date, so it will probably become effective on April 1, 2017.

Ms. Stock also thanked Mr. Berg for the update on the timeframe for the proposal regarding workplace violence prevention in general industry. She said that based on this information, it appears that the Division's goal is to begin convening an advisory committee in early 2017. **Mr. Berg** stated that that is the Division's goal at this point.

Ms. Quinlan asked Mr. Berg what is happening with the proposal for wood dust. **Mr. Berg** stated that the Division is currently reviewing the comments that were received, and if it is determined that changes need to be made, the Division will issue a 15-day notice. **Ms. Quinlan** asked Mr. Berg if the new toxicologist will be working for the Division or for HESIS. **Mr. Berg** stated that the toxicologist will be working full-time for the Division. **Ms. Quinlan** asked Mr. Berg if the Division will get some support from HESIS on this proposal. **Mr. Berg** said that the Division will get some support from HESIS. **Ms. Quinlan** also asked if the Division is planning to hire more staff to help with its various projects. **Mr. Berg** stated that the Division hired one person to replace someone that retired, and that person is working on the lead standard. He said that they are currently just replacing people that retire, not hiring additional staff.

2. Legislative Update

Mr. Healy provided updates on the following bills:

- AB 2539: This bill pertains to working conditions for fashion models. It is still in the suspense file.
- SB 1167: This bill pertains to developing regulations regarding indoor heat illness prevention. It has been amended to add language that will "not prohibit the Division from proposing, or the Standards Board from adopting, a standard that limits the application of high heat provisions to certain industry sectors." This language will add more flexibility to the bill.

Dr. Blink asked Mr. Healy to explain the amendment to SB 1167 and what the provisions refer to. **Mr. Healy** stated that this bill directs the Board to adopt heat illness prevention regulations that address indoor heat, and the provisions in the bill allow the Board to narrow the focus of the regulations to specific industries that are affected by indoor heat illness.

3. Executive Officer's Report

Ms. Hart stated that Board staff received the proposal for hotel housekeeping from the Division on May 31 and is reviewing it. She said that the Board staff hopes to submit the documents back to the Division along with its comments in early July. She stated that after

the Division receives the documents back along with the Board staff comments, the Division staff will make the necessary changes to the documents and resubmit them to the Board staff. After that, the proposal will be noticed for public hearing. She stated that noticing this proposal for public hearing in early fall (September or October) is not likely. She said that noticing it for public hearing in November or December is not out of the question, but it will depend on the turnaround time for the documents and how long it takes to get the necessary approvals.

Ms. Hart stated that the Board staff is moving expeditiously to develop a proposal to implement federal OSHA's required 6-foot trigger height for residential construction. She said that the Board staff is reading through the 1994 cost data that federal OSHA provided, as well as reaching out to stakeholders to get further cost data information. She stated that the cost impact portion of this rule will be significant and cannot be determined until the Board staff knows what the standard will say.

Ms. Stock asked about the timeframe for the 6-foot trigger height proposal, and if federal OSHA is on board with what the Board staff is doing. **Ms. Hart** stated that federal OSHA has received documentation of everything that has been done up to this point and has participated in the advisory committee meetings, so they do know what is happening. She said that Mr. Manieri is drafting the rulemaking documents, which will need to be formally reviewed. She stated that she estimates it will take at least a year to develop the proposal and prepare it for public hearing. **Mr. Manieri** stated that he has completed all of the rulemaking documents except for the cost impact analysis. He said that he tried to do it, but determining the estimated cost of reducing the trigger height is very complex. He said that if the cost impact is determined to be more than \$50 million, it will take much longer to get the proposal to public hearing due to the fact that additional forms will need to be filled out and additional scrutiny of the proposal will be required. **Ms. Stock** stated that other states already follow federal OSHA's 6-foot trigger height rule, so they may have cost estimate data that could be helpful in developing the cost analysis. **Mr. Manieri** stated that if data from other states is used to help determine the cost analysis, it should be used cautiously because California has very unique residential construction and roofing operations due to the size of the state. He also said that California's current system of controlling falls in residential framing has been in effect for the last 18 years, and as a result, employers will have to transition to the new standard.

Ms. Hart stated that AB 2146 required the Board staff to convene an advisory committee to evaluate if California's safety orders pertaining to firefighter personal protective equipment (PPE) need to be updated. She said that Senior Safety Engineer Maryrose Chan convened the advisory committee, and the consensus of the advisory committee was that the standards do need to be updated. She stated that the rulemaking will be very comprehensive because the current standard is outdated and difficult to comply with. She said that, with the Board's permission, the Board staff will develop the necessary rulemaking documents for a public hearing on this in the future. She stated that extensive work is needed to determine the cost of the proposal, and the Board staff will be reaching out to DIR for assistance, since the Board staff does not have expertise on this issue. She said that the Board staff will have to go outside of DIR to get studies in order to determine

the cost of the rulemaking, but the Board staff is fairly certain that the cost will exceed \$50 million.

Mr. Harrison thanked Ms. Chan and the advisory committee members for their work on this. He said that this rulemaking will have a tremendous impact on small town fire departments.

Ms. Quinlan asked Ms. Hart if the Board will be able to meet the July 1, 2017 deadline that is noted in AB 2146 by which the Board must render a decision regarding the adoption of changes to the firefighter PPE. **Ms. Hart** stated that the Board will not be able to meet that deadline, and she has informed the legislative unit that the Board will be unable to meet that deadline.

All Board Members present agreed that the Board staff should move forward and begin developing the necessary rulemaking documents to update the standards for firefighter PPE.

Ms. Hart also stated that Senior Safety Engineer Mark Kaphle has joined the Board staff and is attending today's meeting. She said that Conrad Tolson will return to the Board staff on July 1 as a Retired Annuitant working 2 – 3 days per week. She stated that he will finalize the CDAC proposal so that it can move forward. She also stated that the Board staff's rulemaking contact, David Shiraishi, Area Director for federal OSHA, has retired. She said that a permanent replacement has not been made for David's position, but for now, Jose Benavides will be the Acting Area Director, and the Board staff will work with him to make sure that rulemakings are at least as effective as the federal standard.

Ms. Hart noted Ms. Stock's request for the Division to review the process of determining feasibility and make the criteria more understandable.

4. Future Agenda Items

No other future agenda items were suggested.

A. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:36 a.m.