

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
March 21, 2019
Pasadena, 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., March 21, 2019, in the Council Chambers of the Pasadena City Hall, Pasadena, California.

ATTENDANCE

Board Members Present

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

Board Members Absent

Dave Harrison

Board Staff

Christina Shupe, Executive Officer
Marley Hart, Special Consultant
Mike Manieri, Principal Safety Engineer
Peter Healy, Legal Counsel
Lara Paskins, Staff Services Manager I
David Kernazitskas, Senior Safety Engineer
Maryrose Chan, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health
Amalia Neidhardt, Senior Safety Engineer

Others Present

Gilbert Dauli, UFCW Western States
Council
Mitch Steiger, CA Labor Federation
Elizabeth Treanor, PRR
Dennis Burgess, Keenan & Associates
Emanuel Benitez, CRLA
Lorezon Pastrana, Worker
Bill Taylor, PASMA
Dan Leacox, Leacox & Associates

Justin Simmons, SMUD
Cynthia L Rice, CRLAF
Pamela Murcell, CA Industrial Hygiene
Council
Michael Musser, CA Teachers Association
Carlos Maldonado, CRLAF
David McAfee, Bloomberg Law
Bryan Little, CFBF
Ephraim Camacho, CRLAF

Wes McCracken, SCE
Abraham Zavala, So. Cal. COSH
Stan Llaban, Walters & Wolf
Lori Pena, SMUD-Safety
Bonnie Burns, So. Cal. Gas
Mark Stone, Alliant Insurance Services
Jamie Carlile, SCE
Kevin Bland, Ogletree Deakins
Steve Johnson, Walters & Wolf
Linda Delp, UCLA-LOSH

Arzan Kanali, SCE
Cal Soto, NDLO
Jay Weir, AT&T
Anne Katten, CRLAF
Lucia Marquez, CAUSE
Mark Schacht, CRLAF
James Mackenzie, SCE
John Swartos, Aerotek
Richard Negri, IATSE L. 600

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.

Dan Leacox, Leacox & Associates, representing National Elevator Industry, Inc. (NEII), stated that elevators are regulated by state and local agencies, and there are over 100 jurisdictions in the United States. He said that standardization of the elevator code has been a critical factor and an essential part of safety, and that the development of standardized code can codify safety in design, maintenance, procedures, and inspections for elevators. He stated that this decreases variability across jurisdictions, and variability impacts safety and increases the chances for errors and unintended consequences to occur. He said that having more standardized operating controls makes it easier to train and provide safety programs for the operation of the equipment. He stated that ASME develops the national elevator codes and is accredited by ANSI and features committees that are composed of the following:

- Technical experts
- Qualified persons
- Enforcement authorities
- Engineers
- Labor
- Designers
- Consultants
- Industry experts

These committees are restricted in size for composition and balance according to the ANSI standard. He submitted a handout to the Board further explaining the ASME process [Please see the file copy of the Board packet to view this document]. He said that most local jurisdictions adopt the ASME national standard with very few changes or no changes at all, and less than 10 have adopted it with over 20 changes. He stated that these changes are usually for differences in local conditions, such as seismic, weather, and climate issues. He said that any changes to California's elevator code should be held to rigorous standards that are similar to those that ASME is held to in the development of their code in terms of real hazard assessment and real consensus.

Tim Shadix, Worksafe, stated that his organization would like to see the Board grant Petition 573 in full and have the Division draft an emergency regulation, bring it to the Board in June or July for a vote, and then initiate an advisory committee to develop a permanent regulation. He said that this will ensure that minimum common sense protections are in place before the next wildfire season. He stated that wildfire smoke causes serious health problems for outdoor workers, and there is a lot of confusion among employers and employees about what to do to maintain safety in these conditions. He said that many people are concerned about what is the best measurement or standard to use as a threshold for measuring hazards from wildfire smoke, and his organization feels that the Air Quality Index (AQI) is the best and most workable measurement. He stated that during the wildfires in Ventura and Santa Barbara Counties, both local air districts provided city-by-city breakdowns of the AQI, and this made it easy to check the levels of exposure in the air. Mr. Shadix said that having the AQI provide worksite-by-worksite evaluations is the best and least cost-prohibitive way to assess the hazards of PM 2.5 in wildfire smoke. He stated that the argument regarding AQI being based on a 24-hour exposure instead of an 8-hour exposure is a little misleading because most members of the public are only outside for a few hours, and the AQI is still used to assess their exposure. He said that many outdoor workers are outdoors for 8 hours or more in these conditions. He stated that in the proposed petition decision, the Board staff recommended convening an advisory committee meeting. He said that this can take up to 4 months to do, which is not an effective use of time and ignores the urgency of the situation. He stated that employers and employees need common sense protection and guidance now, and his organization feels that the Division's recommendation to grant the petition is the best course of action.

Anne Katten, CA Rural Legal Assistance Foundation, stated that outdoor workers should not have to endure another fire season without clear protections in place. She said that the 4-month review process outlined in the proposed decision is not an acceptable response to this emergency, and Labor Code Section 144.6 specifies that standards to address toxic materials shall be based on prevention of impairment or health, not on achieving consensus of stakeholders. She stated that it is true that the AQI and AirNow Monitoring Network were designed with public health controls in mind, rather than worker health controls. She said that the AQI for PM 2.5 is based on a very thorough evaluation of studies and PM 2.5 has been shown to be the predominant pollutant during wildfires, and the AQI and AirNow are readily available. Ms. Katten stated that it will take several years to develop a permissible exposure limit (PEL) for PM 2.5, and reliable direct monitoring devices are very expensive, and therefore, are not available to most employers. She said that with AirNow, it is easy to look up AQI by zipcode, and during wildfires, additional monitors are brought in and many areas provide more air quality alerts. She stated that while the AQI for PM 2.5 is calculated on a 24-hour average level, it is not set to be an acceptable exposure level for 24 hours because it is based on the health effects to members of the public, and most members of the public are outside for only an hour or two per day, while most outdoor workers are outside for 8 or more hours per day. She also said that wildfire smoke may contain any number of toxic pollutants, in addition to fine particles that we don't have a good way to measure in real time right now, and while the AQI for PM 2.5 is not sufficient to protect workers in wildfire smoke, it is what's available right now and does represent a consensus of public health experts. She asked the Board to amend the proposed decision to grant the petition in full, request the Division to draft an emergency regulation, bring that emergency regulation to the Board for a vote as soon as possible, and then convene an advisory committee to begin working on developing a permanent rule.

Elizabeth Treanor, Phylmar Regulatory Roundtable, asked the Board to adopt the petition decision for petition 573 and said that her organization is looking forward to participating in the upcoming advisory committee process. She stated that many members of her organization help restore power, water, and communication systems following wildfires, so they have experience protecting their employees during these events. She said that her organization agrees with the Board staff's evaluation in that certain areas and counties already have unhealthy levels under the AQI, regardless of whether or not wildfire smoke is present, so it is important that the regulation clarifies that it is wildfire smoke creating the unhealthy levels under the AQI. Ms. Treanor stated that her organization is concerned about the Division's emphasis on feasibility engineering controls as the first order. This may be a situation where the traditional hierarchy of controls may not be the most appropriate way to address it. For instance, while employers who have the means to erect enclosed structures with ventilation systems are capable of doing so, by the time they are erected and functioning, there may no longer be a wildfire smoke hazard, so it is not an efficient use of resources. She stated that her organization is concerned about using the AQI and other environmental limits, but in this case, it is the most pragmatic approach. She said that when it comes to voluntary use of respirators, her organization understands that the only time voluntary use of respirators is acceptable is when an employer can demonstrate through air monitoring that none of the limits in Section 5155 have been exceeded. She stated that in the regulation, the Division should make it clear that this enforcement posture may be different in cases of wildfire smoke because it deals with emergency situations. **Brian Heramb, San Diego Gas and Electric (SDG&E) and Jay Weir, AT&T**, echoed Ms. Treanor's comments.

Gilbert Dauli, United Food and Commercial Workers (UFCW) Western States Council, stated that his organization supports petition 573 because strong regulations are needed to protect outdoor workers from exposure to wildfire smoke, and wildfire smoke is a situation that requires immediate attention and adoption of emergency regulatory standards. He said that last year, during some of the deadliest wildfires, employees were still expected to work outside in conditions that the CalEPA called unhealthy and hazardous for even the healthiest of people. He said that authorities recommend against prolonged exposure, but employers are not sure how to proceed and protect their employees. He stated that this emergency regulation will provide guidance for employers for the upcoming fire season.

Cal Soto, National Day Labor Organizing Network, encouraged the Board to adopt petition 573 because it is a reasonable regulation and will save lives. He said that day laborers are outside not just during their work hours, but when they are preparing for work and looking for work, and they are particularly vulnerable to smoke-related health conditions. He stated that there is growing concern among day laborers regarding protection and training of workers during, and after, wildfires because their exposure can be extensive and they are often called upon to do demolition, construction, and cleanup in areas affected by wildfires. He stated that during the recent wildfires, there were many cases of respiratory issues and exacerbation of chronic illnesses of the heart and lungs, some of which occurred to the point of hospitalization and death. Mr. Soto said that the current regulations are not sufficient, and as wildfires grow larger and more deadly, the risk of illness due to exposure to smoke has also increased. He also stated that in December 2017, the Division issued an advisory for outdoor worker safety when exposed to wildfire smoke, and these materials are still posted on the Division's website today. These materials explain that employers are required to determine if outdoor air is a harmful exposure to employees, and they direct employers to the local air quality districts, which are used to create the AQI, and urges them to pay special attention to the EPA's AQI.

Mr. Soto asked if the measurement was good then and is still posted on the Division's website, why is it not good enough today? He said that AQI is the measurement that we have now.

Nancy Zuniga, IDEPSCA, stated that her organization has worked with many workers who lost their jobs due to the wildfires. She said that many were forced to continue working, despite the unsafe conditions, to help homeowners move and clean up as the fires were going on, while others who lost their jobs waited in the area to seek new employment. She stated that many of these workers are low-wage and immigrant workers, and they are the most vulnerable because they do not know who is responsible for providing protection for them, or how to use devices such as N95 masks, and they often do not have health insurance or access to healthcare. She said that since the recent fires, many workers have come down with a cough that won't go away, and others have experienced exacerbation of preexisting medical conditions as a result of being exposed to wildfire smoke. She stated that her organization has given demonstrations to these employees on how to use N95 masks, but despite the hazards of the wildfire smoke, employers have not been providing them. As a result, many continued to work in these hazardous conditions so that they could keep providing for their families. She said that workers should not have to compromise their health to provide for their families. Ms. Zuniga asked the Board to vote "aye" on petition 573.

Maria, Domestic Worker, stated that she has worked in the Malibu area following the wildfires, and she and her coworkers have not been provided with protective equipment to protect them from exposure to smoke and dust, which they feel can affect their health in the long term. She said that many of them have developed coughs and other illnesses as a result of being exposed. She asked the Board to vote "aye" on petition 573 because there is an urgent need for regulations to protect workers from wildfire smoke.

Abraham Zavala, Southern CA Coalition for Occupational Safety and Health (SoCalCOSH), stated that workers in a number of industries are disproportionately impacted by wildfire smoke, including:

- Car wash
- Construction
- Residential and commercial cleaning
- Caregiving
- Restaurants

He said that many workers in these industries are low wage and immigrant workers who do not have access to healthcare or training on use of personal protective equipment (PPE), and as a result, they experience long-term health effects from exposure to wildfire smoke. He stated that these workers must continue working to provide for their families, but their job duties are much more difficult to perform when the air quality is poor. He said that some of these workers must purchase their own respirators or are given PPE without training on how to use it. Mr. Zavala asked the Board to vote "aye" on petition 573 so that a temporary standard can be put in place because the lives and health of these workers depend on it.

Lucida Marquez, Central Coast Alliance United for a Stable Economy (CAUSE), stated that her organization handed out over 15,000 N95 masks to workers during the Thomas fire, and even though the air quality was bad for over 2 months, hundreds of farm workers continued to work in the fields. She said that many workers complained of difficulty breathing, dizziness, headaches, and respiratory related health issues as a result of being exposed to wildfire smoke. She stated that the central coast is home to the state's most fire-prone hillsides that sit above agricultural plains that are highly labor-intensive, and these areas are harvested quickly when food and safety is threatened by smoke and ash. That's why many workers continue working, even when the working conditions are poor. She said that since the Thomas fire, her agency has advocated for several policy changes, but there has been a lack of urgency from policy makers and industry leaders because many of them do not expect another major wildfire to strike Ventura County, even though there is evidence that wildfires could occur and wildfires are occurring more frequently throughout the state. She stated that the lack of implementation of protections following the Thomas fire resulted in workers being put at risk again when the Hill and Woolsey fires occurred, and they will continue to be at risk if a standard is not put in place now because, after this winter's rain, the hills will have a plethora of vegetation that will dry out quickly in the summer, creating fuel for more wildfires in the fall.

James Mackenzie, Southern CA Edison, stated that his organization supports the petition decision for petition 573 and the comments that were made by Ms. Treanor. He said that his organization hopes an advisory committee meeting will be convened expeditiously, and they are looking forward to participating in the advisory committee.

Juvenal Solano, NECAL, stated that a strong standard is needed to protect outdoor workers during wildfires, and petition 573 will create a standard that requires supervisors to train employees on how to protect themselves and identify the risks associated with breathing in wildfire smoke. He said that during the Thomas fire, his organization joined with CAUSE and others to hand out N95 masks to workers who were not given appropriate masks to wear. He stated that one worker, who was healthy before the fire, became ill with asthma, and since the worker didn't have health insurance, the worker could not go see a doctor and buy the necessary medication to treat it, so the worker had to return to his home country. He said that other workers have complained of headaches, respiratory issues, sore throat, headache, and eye pain as a result of exposure to wildfire smoke. However, these workers continued to work so they could provide for their families and because they didn't know what their rights were. Many have also faced language barriers. Mr. Solano asked the Board to vote "aye" on petition 573.

Mitch Steiger, CA Labor Federation, stated that his organization supports the adoption of petition 573 as indicated in the Division's response to the petition. He said that there are three actions that the Board can take regarding petition 573:

- 1.) Do nothing and go with the current law.
- 2.) Move forward with the Board staff's proposed decision.
- 3.) Adopt petition 573.

He said that doing nothing and continuing with the current law is not an option because the current law is not working, asks too much of everyone, and is too vague and cumbersome for employers who are even aware of it. For example, the current law tells employers that they must do something when the exposure is harmful, which is defined as either something in excess of the PEL in Section 5155 or of such a nature by inhalation as to result in, or have a probability to result in, injury, illness, disease, impairment, or loss of function. He stated that many workers were exposed to these types of situations for many days and weeks during last year's wildfires, but there may be employers who disagree. He said that if a worker had filed a complaint, he feels that it would've gone to the Appeals Board and the outcome would've been unknown. He also stated that even if employers decide to use respirators, a medical evaluation and fit test are required before they can be used, and it does not make sense to do all of that in sudden and temporary situations, such as wildfire smoke. It is also infeasible to get that done in mere hours for hundreds of workers.

Mr. Steiger feels that moving forward with the Board staff's proposed decision for petition 573 is also not an ideal option because it does not align with the urgency and inevitability of the hazard that workers and employers are facing. He said that in the proposed decision, the Board staff notes that an advisory committee should determine whether a consensus emergency rulemaking should be initiated, and that the advisory committee should propose provisions, if any, that should constitute such emergency rulemaking action. Mr. Steiger stated that advisory committees don't always end in consensus regarding what action should be taken, and if no consensus is reached, the option of continuing to enforce existing law is still on the table, which is not a good option. He also said that the proposed decision requests the Division to report back to the Board within four months, which will bring us to July or August, which is when workers will already be dealing with wildfire smoke. He said that this could lead to the Division reporting that the only action taken was convening an advisory committee meeting, no consensus was reached, and/or more time is needed, and it will not clarify whether or not the Division is preparing an emergency rulemaking proposal.

Mr. Steiger feels that adopting petition 573 is the best option because it gives employers clarity so that they can comply, and it takes the guesswork out of whether or not an exposure is harmful, or whether or not an employer needs to take action. Although the AQI is not perfect and not designed for use with employee exposure to wildfire smoke, it is the best option and provides a more clear and objective threshold. It is not designed for people doing strenuous work in very harmful air, but it gives employers something to work with and is a step in the right direction for the short term.

Bryan Little, CA Farm Bureau Federation, stated that he agrees with Mr. Steiger that it is difficult to implement fit testing and medical evaluation for respirator use in situations, such as wildfires, where it is unknown where and when the air quality will turn bad quickly. He also stated that he echoed the comments made by Ms. Treanor. He said that it makes the most sense to adopt the proposed petition decision for petition 573 and convene an advisory committee meeting with stakeholders to discuss what can be done, and his organization is looking forward to participating in the advisory committee. **Brian Heramb, San Diego Gas and Electric (SDG&E)** echoed Mr. Little's comments.

Linda Delp, UCLA Labor Occupational Safety and Health Program, stated that outdoor workers, such as those who are exposed to high heat conditions and wildfire smoke, are disproportionately exposed to job hazards and also lack the basic protections from those

hazards. She said that her organization has worked in collaboration with other organizations to train day laborers about the potential hazards of wildfire smoke and how to correctly use N95 respirators. She stated that during this time, her organization discovered that there were many misconceptions and questions about how to properly use them. They found that employers also had questions, and very little guidance, on how to protect their employees. She said that this demonstrates the desperate need for accurate and accessible information about adequate protection for both workers and employers. Ms. Delp stated that there needs to be a focus now on how California can build capacity among employers, labor unions, worker centers, and community organizations to ensure that workers are trained and employers have clear guidance on this before the next wildfire season begins. She said that in the Board staff's evaluation of petition 573, the question of whether or not to use the AQI as a measure to trigger worker protection from wildfire smoke contaminants was counterposed with the traditional approach to worker protection based on identification, evaluation, and controls. She stated that the implication is that the traditional approach is better, but could be problematic in this context, so there needs to be an examination of this in the context of disasters where conditions and worker exposure fluctuate considerably.

Ms. Delp said that the first step in the hazard identification process is to review the job processes where workers are exposed to the hazard and develop a sampling strategy. She stated that this approach is unrealistic in wildfire conditions because they are unpredictable and dynamic, with the potential for wind plumes carrying smoke to change direction. These fluctuating conditions raise the question of where, when, and how often air sampling would be required to characterize worker exposure.

Ms. Delp stated that in the traditional approach to worker protection, employers are required to evaluate the hazards of air contaminants by monitoring the air, analyzing the results, and interpreting the results by comparing them to established worker exposure limits. This raises two questions:

- Do we expect employers, whose day to day work processes may not expose workers to air contaminants, to have the capacity to accurately monitor the air, using appropriate instruments and determining when and where to sample in a fluctuating and potentially chaotic environment?
- If accurate PM 2.5 air monitoring results are obtained, how are those results to be interpreted?

Ms. Delp stated that there is no federal or state standard limiting worker exposure to PM 2.5, so therefore, there is no legal limit at which employers would be required to protect workers. She said that promulgating a standard to address this would take several years to do, and the existing standard that covers PM 10, which protects workers from exposure to larger, less dangerous particles, would not protect workers from the much smaller and more toxic particles, which comprise 80-90% of wildfire smoke particulates. She said that these constraints to the employer's ability to accurately assess workers' exposure must not limit action to protect workers from exposure to the hazards of wildfire smoke.

Ms. Delp stated that when it comes to how we can ensure workers are protected from the hazards of wildfire smoke while discussing the best way to do so, in the proposed decision for petition 573 the Board staff recommends the employer's injury and illness prevention program

(IIPP) as an option to protect workers. She said that this was the same recommendation given to address heat illness, but for various reasons it was deemed not viable in both the temporary and permanent regulations for heat illness prevention. She stated that the petition proposes a temporary reliance on the AQI as a trigger for action, which provides guidance for employers and workers. In addition to the questions that the Board staff provided in its evaluation of the petition, she added these questions:

- Should we be concerned that the AQI, an area measurement, might not accurately reflect the personal exposure of each worker?
- Do we expect employer monitoring to give a more accurate assessment of exposure, given the previously-mentioned constraints?
- Should we be concerned that the requirements to protect workers would be triggered at a level designed to protect the public from unhealthy air if the AQI is the temporary trigger?
- Why would it be more concerning to use a more protective standard, such as the AQI, than to use the worker standard for PM 10, which does not adequately protect workers from the PM 2.5 particles that are constituents of wildfire smoke?

Ms. Delp stated that if we do not have specific standards for PM 2.5, she feels it is best to err on the side of being more protective of workers' health, and it is best to rely on the AQI to afford workers and employers some form of protection while discussing what to do in the long term to protect workers. She said that it is important to be responsive to the unique needs for worker protection among the large population of outdoor workers, and this requires a different approach to evaluating and controlling hazards. The heat illness prevention standard is an example of how weather conditions and temperatures can be used as a trigger for certain worker protections, and how implementing basic controls can mitigate worker exposure to hazards, even in settings where environmental conditions are beyond the employer's control. It also provides a warning about the dangers of delaying action. She said that relying on the AQI temporarily as a trigger of worker protection makes sense, is based on scientific research, and is supported by an existing extensive infrastructure. Once basic protections are in place, discussions regarding a permanent wildfire smoke regulation can begin.

Pamela Murcell, CA Industrial Hygiene Council (CIHC), stated that her organization would like to see the Board adopt the petition decision for petition 573. She said that her organization would like to be part of the advisory committee process and can provide technical support to the committee. She also thanked the Board for moving petition 572 forward. She also stated that her organization is monitoring the following bills as they move through the legislature:

- AB 35 - Blood lead level reporting
- AB 457 – Lead exposure levels
- AB 1124 – Wildfire smoke. Her organization is specifically watching for what happens with regard to respiratory protection.

so that employees know how to obtain it. He stated that it was made far more complex and perilous for employers by introducing the means and requirements for third party, non-employee and non-union access, which is far beyond what he petitioned for. He said that limited access to the IIPP only, not the documents created by the IIPP, is what persuaded his organization and the employer community to reach consensus at an advisory committee in support of the rule that is before the Board today. He stated that all of the issues that were raised in the advisory committee were resolved to some agreement, except for the potential for employer obligation to more than one representative for the same employee, and that does not appear to be addressed in the proposal, nor does it say anywhere that it would not be addressed. He also said that ANSI defines consensus as “a substantial agreement that has been reached by directly and materially affected interest categories. This signifies the concurrence of more than a simple majority, but not necessarily unanimity. Consensus requires that all views and objections be considered and an effort be made toward their resolution.” He stated that consensus is a very workable means of filtering out extreme and unreasonable positions and is not a process or requirement that should be bypassed.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that her organization was surprised to see a bill introduced into the Legislature requiring employee access to their employer’s IIPP because they encourage their employees to identify and report hazards, and they feel that employees have the right to access the IIPP. She said that employees are experts at their jobs, and employers want to know and understand the hazards that their employees face in the workplace. Her organization questions whether or not this proposal will contribute to the safety and health of California employees because it seems to be based on outliers. She stated that her organization is aware of only one employer who refused to give employees access to the IIPP, and if there are more, the Initial Statement of Reasons (ISOR) didn’t indicate that. She said that if there is evidence of an industrial sector where access is being denied, it would be better to have the proposal focus on that particular sector. She stated that this proposed regulation will require companies to establish a procedure and appoint someone to be in charge of it because it has a 5-day requirement that must be complied with, and it must have a redundant system in place in case the primary person is out sick or on vacation. She said that some employers have had this information posted online for many years, and employees have known where to find it during that time, but this proposal requires that an element be placed in the employee training explaining how to find the IIPP. She stated that it does not seem like this proposal will protect anyone or make anything safer. **Jay Weir, AT&T**, echoed Ms. Treanor’s comments.

Anne Katten, CA Rural Legal Assistance Foundation, stated that her organization supports the proposal, but recommends a few changes:

- The deadline for providing an employee with a copy of the IIPP should be shortened from 5 working days to 2 working days. 5 days is a long time to wait for safety information that should be readily available, and since other records, such as ventilation system records, must be made available within 2 working days, it is possible to make the IIPP available in that amount of time too.
- Employees should be entitled to a paper copy of the IIPP unless they request an electronic copy.
- Employees will only have sufficient access to the IIPP if there is access to the

program's implementation and maintenance, including worksite evaluations and incident review records. This level of access is consistent with the access requirements listed in the hotel housekeeping injury prevention regulation that the Board adopted last year.

- Section 3204 already requires employers to provide access to medical and exposure records, as well as analyses of these records. In order to be consistent with that, access to the steps taken to analyze exposure and incidents should be provided.
- The language should be made more affirmative and clear that if an employer has distinctly separate operations with distinctly separate programs, the employee should have access to the IIPP's for all programs that are applicable to them.

Tim Shadix, Worksafe, echoed these comments.

Ms. Katten stated that the CA Nurses Association (CNA) and National Nurses United (NNU) are in support of the proposal and the recommendations that she made.

Emanuel Benitez, CA Rural Legal Assistance, Inc., stated that employees need to know what is in the IIPP, but many of them do not know where it is located. He said that many workers have complained about unsafe working conditions, such as not being able to see at night and being approached by rattlesnakes.

James Mackenzie, Southern CA Edison, stated that his organization believes it is important for employees to have access to their employer's IIPP because each element is important for an effective safety program. However, his organization has concerns about the administrative complexity of this proposal. He said that the approach needs to be simplified and the requirements need to be better aligned, and by doing this, it will create a regulation that provides safety and health to employees by removing the administrative complexity. He stated that the time limit by which an employer must provide access to the IIPP creates a "gotcha" moment that creates challenges for both employers and employees. He also made the following recommendations:

- In Section 8(A), the language regarding the term "unobstructed access" should be moved to the definitions section. The language should also be revised to clarify the expectation that employees have free and timely access to the documents during work hours through company-provided equipment also qualifies. The language that is currently in the proposal leans toward office employees and hinges on email technology and computer access, and instead, it needs to focus on getting employees access to the IIPP without retribution or hassle.
- In Section 8(B), the 5-day deadline for the employer to provide access to the IIPP is challenging because of illness and vacation, so it should be extended to 10 days. This is an administrative role that may not require backup systems to be in place, but it is important to have someone managing it. In Section 3204, which pertains to access to employee medical records, the provisions give employers 15 days to provide access, and although they require much more effort to retrieve, this provides an upward bound for turnaround for records requests from employees and representatives. 10 days is less than what is required in Section 3204 and seems reasonable.

- Section 8(C) should be revised to clearly state that only the written program needs to be provided when the IIPP is requested. The current proposed language does imply that other program language is not required because it is not within the scope, but it may create more confusion than it resolves.

Carlos Maldonado, CA Rural Legal Assistance, read a declaration on behalf of Antonio Vivas [Please see the file copy of the Board packet to view this document]. In the declaration, Mr. Vivas stated that he has been farmworker for several years, and in 2014, he suffered an injury while helping a coworker to clear trees. As he helped his coworker cut a tree trunk with a chainsaw, the coworker lost control of the chainsaw and cut Mr. Vivas's leg. Mr. Vivas said that he is still suffering from the internal damage done to his leg and is unable to work. At his job, he was not permitted to use a chainsaw, but he was given the option to view a video about the dangers of using a chainsaw. He stated that he is familiar with the dangers of using ladders, and when growing is done on hillsides or mountainous terrain, it makes it difficult to place a ladder on solid ground. It is also difficult to place a ladder in such a way to prevent branches from swaying, breaking, or dropping when weight is placed on it or removed. It is dangerous to use very tall ladders, especially when they are used with 12-foot poles. He said that he has received very minimal safety training, and no training on pesticides or how to use a ladder and pole correctly. He stated that he received a lot of informal training by learning from coworkers' instructions. There are also many other dangers, including extreme heat, eye injuries while picking fruits or clearing trees, tripping in gopher and mole holes, or slipping on rocks when climbing steep hills. These can be exacerbated when an employee is working at a fast pace. He said that it would've been helpful for him to know what kinds of safety equipment or measures his employer felt were best to protect him from these hazards, but they were never discussed during safety training. He stated that he would like to read the IIPP to find out how to protect himself from these kinds of hazards, but he believes that the law does not currently give him the right to access the IIPP, and he doesn't want to ask his employer for fear of being labeled a troublemaker or losing his job. He said that it is important for employees to have access to the IIPP, and to feel comfortable asking their employer to give them access to it. He also stated that it is important that the IIPP be provided to the employee in a paper format, especially if they do not know how to use a computer or do not have a computer accessible at the worksite. Mr. Vivas stated that a paper copy of the IIPP will allow the employee to read it at a time and place that is comfortable and convenient for them.

Lorenzo Pastrano, Worker, stated that workers do not know what protections are available to them, and it is important that there is a regulation in place to protect them.

Mitch Steiger, CA Labor Federation, stated that his organization supports this proposal because the more clearly access to the IIPP is guaranteed, the more we can guarantee that an employer's IIPP exists. He said that it is very common for employers to not have an adequate IIPP or to not have an IIPP at all. Many of them do not feel that they have the time to put one together because of all the other things that they need to do, so the more clear it is in the law that the employee has the right to access the IIPP, and that it must be provided in a certain amount of time, the more likely it will be that the employer will take the time to go through the process of creating an IIPP and identifying and addressing workplace hazards. He also stated that this can be a very collaborative opportunity between the employee and employer because it allows the employer to go to the employee, find out what workplace hazards exist, and how they can best address them. This proposal will encourage them to have this discussion.

Tim Shadix, Worksafe, stated that his organization supports this proposal, and it needs to be as strong as possible. He said that when employees or their representatives ask employers for access to their IIPP, employers have stonewalled, dragged out the timeline, retaliated against the employee, or found loopholes in the rule that obstruct access to the IIPP. He stated that it is important for workers to understand their safety on the job, what policies exist, and how and when the policies are implemented. He said that this proposal does not require any additional records or maintenance, and when it comes to accessing other records, such as exposure records and log 300's of injuries, some must be made available on the next business day, so employers already have processes in place to respond to those requests, and therefore, they will be able to respond to requests for the IIPP in a short timeframe.

Ephraim Camacho, CA Rural Legal Assistance, stated that he has found many violations of Division regulations, such as no drinking water, no shade, no wash water, and no toilets. He stated that when it comes to getting a copy of an employer's heat illness prevention plan and IIPP, employers and their counsel refuse to provide them and tell him that he does not have a right to access them. He said that workers call and complain of heat illness symptoms, and that they are ignored by their employer and not taken to the hospital for treatment. They are told by their employer to go home and use home remedies, and because they haven't seen their employer's IIPP, they don't know if there are procedures in place to address this, what they are, or if their employer is even following them. He also stated that workers who prune grape vines get injured when they pull the canes on the wires, which can hit their faces and eyes. He said that many workers who are injured do not report these injuries to their employer for fear of retaliation or not being called back to work the next day or next season. He also stated that dairy farm workers face hazards at their jobs, such as having to deal with bulls who attack them in the pen, lifting broken gates, and splashing from cleaning agents in the milking lines, which can cause injury to the employee. He said that personal protective equipment, such as boots and aprons, are not provided by the employer, and if the employee wants them, they must buy them themselves with no reimbursement from the employer. He stated that there are no regulations that apply specifically to these health and safety risks, so the IIPP is the only source for the employee to refer to so that they know how to reduce the risk of injury, or what steps to take when an injury occurs.

Bryan Little, CA Farm Bureau Federation, stated that while some large corporations can get an employee access to the IIPP in a short time, many agricultural employers are very small, and only having 2 days to provide an employee with access to the IIPP is far too short. In some cases, the employer may have the IIPP, but they may be away from the location where the IIPP is kept, and it may take them longer than that to get back to the location and give access to the employee, which may put them in violation of the regulation. He said that 5 days is also not enough. He feels that 10 days is much more reasonable. He stated that regulations regarding access to medical exposure records give the employer 15 days to provide access to them, and they are more time sensitive than access to the IIPP. He said that employers need a reasonable amount of time to respond to requests for access to the IIPP. He also stated that a requirement should be added stating that requests to access the IIPP need to be made in writing. By requiring requests to be submitted in writing, it will allow the employer to have a "paper trail" showing who requested access, when the request was made, and the date by which the employer must comply.

Cynthia Rice, CA Rural Legal Assistance, Inc., stated that her organization has asked for access to the IIPP and been denied, so the need to have access to the IIPP as a guaranteed right is paramount for there to be any effective access to the IIPP and the safety programs that it contains. She said that many employees are afraid to request access because there is no absolute right to obtain it. She stated that the simplest way to expand the current draft would be to include something in Section C that states that the program provided to the employee or designated representative shall include the records of inspection required by Section 3203 (B)(1), but need not include other records. She said that these records are likely to be available and address exactly the types of hazards that workers face. She stated that (B)(1) requires employers to do periodic inspections, and keep records of those inspections. She also said that the requirement for access to records needs to be expanded to only include records of inspection and things that are vital to identifying the hazards, and the corrective actions taken by the employer to address them. She stated that expanding the response timeframe to 10 days wouldn't really mean that the employee has access to the IIPP because in some situations, such as weather, the hazard may exist only for a short amount of time, and by the time the IIPP is provided, the hazard may no longer exist. She feels that 2 days is a rational and reasonable amount of time.

Jay Weir, AT&T, stated that he is wondering why this proposal is necessary. He said that this proposal will add more regulations to employers who are already complying with the current standard, when the issue really pertains to enforcing the current standard with employers who are not doing it properly and getting them to comply.

Pamela Murcell, KWA Safety & Hazmat Consultants, stated that her organization supports access information being added to the IIPP because there are situations where it is needed. She said that there is huge diversity in compliance with IIPP requirements because some employers, even though they have been required to have an IIPP for quite some time, do not have an IIPP, while others have very comprehensive IIPP's that are very well implemented. She stated that there is a need for assuring that employees have access to the IIPP, but this is also an educational issue. She said that the elements of the IIPP regarding communication and training of employees make it somewhat surprising that if an employer does have an IIPP in place, that they don't make it accessible to their employees. She stated that both of those elements require interaction with employees, so why would employers not provide them access to that information? She said that another required element of the IIPP pertains to an employer's self-evaluation, which is very important. Ms. Murcell asked if the employer has an IIPP that includes this, in order for it to have been done correctly, it would require that employees be involved, so why are employees not being given access to it?

Mark Schacht, CA Rural Legal Assistance Foundation, stated that work injury and illness statistics for 2013 to 2017 show that the agricultural industry had the highest average fatality rate of any industry in California, and it also has one of the highest percentages of violations among California major industrial groups. He said that for some employers, it is a competitive advantage to not comply with the law, and not only do these employers not create or maintain an IIPP, but they also commit other violations, such as wage theft and firing injured workers who want to see a worker's compensation doctor. He stated that this proposal is a small step to encourage these employers to develop an IIPP. He also said that the Division needs to focus on enforcing this law and other laws on those employers who are not complying.

Kevin Bland, representing the Western Steel Council, the Residential Contractors Association, and the CA Framing Contractors Association, stated that the language in the proposal was very carefully considered during the advisory committee process, and it is very important to maintain the language in Section 8(C) which refers to the limitation that the IIPP is the only thing to be provided. He said that he has handled thousands of cases over the last 20 years, and during that time, only one employer did not have an IIPP. The others did have it and handed it out freely to their employees. He stated that expanding the proposal to include other kinds of records could lead to litigation and the Division being used as a tool for early discovery and discovery without limitations or code of civil procedure to provide those protections. He said that expanding the language is a slippery slope that could impact the rights of both employees and employers. He also stated that Section 3204 is specific to the medical records of the employee who is requesting them, which is different than requesting everything pertaining to the IIPP, which may contain things that do not apply to the employee. He said that an IIPP is a simple document made up of several core elements and serves as a how-to guide for an employer's safety program. He also stated that he is concerned about the expansion of the definition of the term "representative" in the proposal because it could open an employee up to the possibility of being represented by folks who do not have the employee's best interests in mind.

Mr. Leacox stated that he wanted to provide some rebuttal comments, as well as some additional comments that were made during the advisory committee process that were not included in his written comments. He said that Section 3204 does limit access to records to only records that pertain to the employee that is requesting them, but there are many protections in there that protect the employer, including a whole subsection that explains what is considered a medical record and what is not. It is not a blanket access to records, and it is a much different prospect to provide access to an employee's medical records than it is to provide access to an employer's business records. He also stated that during the advisory committee process for workplace violence prevention in healthcare, there were many folks who had an issue with this in a narrow context. It was not an issue that was vetted with the broad business community. He also said that if an employer is doing an accident investigation, there is concern that an employee representative could be a plaintiff attorney who is looking for a basis for a lawsuit or other action against an employer, and the employer could be writing a record for that particular individual. He said that there is an inherent liability in creating records in situations such as that. He stated that in situations of citations or litigation, there are many protections in place that tell the employer what they must provide and what is not required, and bypassing those protections in some kind of pre-discovery process would not be appropriate. He said that the Board's job is to create a means for enforcement for the Division that contains protections for the employer, not to provide means of enforcement via private parties.

Rebecca Cornelio, UCLA Labor Occupational Safety and Health Program, stated that it is very wrong to believe that enough is already being done to protect worker health and safety. She said that the IIPP is one of the best tools that employers have to protect the health and safety of their employees, and it is important that they take on this responsibility, and other responsibilities to keep their workers safe, instead of putting profits before people.

BOARD MEMBER COMMENTS

Ms. Laszcz-Davis stated that it appears there are gradients of conformance when it comes to employers complying with regulations pertaining to the IIPP. She said that it appears people are asking for the standard to be revised or upgraded so that it addresses the need for implementation, but she is not sure if that warrants a new standard or whether it can be addressed through the education process. She stated that if the new, upgraded requirements facilitate implementation, then that is something that the Board needs to seriously consider. However, it also appears that the Board is creating a standard to implement a standard because the issue seems to be regarding implementation, and revising the standard may not take care of the issue. She said that education is a key component, but if the revised standard does in fact provide clarity and facilitation, then it will have something of value.

Ms. Stock stated that she is glad to hear that some employers have been providing access to their IIPP's for quite some time, but as the testimony today has demonstrated, there are still many more who are still not doing it. She said that in her regular job, she does a lot of training on IIPP requirements, and many workers have informed her that they don't know if the IIPP exists because they have never seen it, and many employers don't know that they need to provide access to it. Regarding the provision in the proposal pertaining to records of implementation of the IIPP, she supports the suggestions made by Ms. Rice for how to make it simple and clear, and she agrees that it is not a fishing expedition for records. She said that Ms. Rice's suggestions only include records that are readily available and make it specific and clear as to what needs to be provided. She also stated that many IIPP's are written by consultants, put away on a shelf, and do not have very much association with what actually goes on in the workplace, and the best way to make sure that an IIPP is effective and having a positive impact is to let people see how it is being implemented. The goal of an effective IIPP is to promote worker involvement so that workers can see not just what is supposed to happen and when, but that it has actually happened, and what control measures, if any, are being implemented.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 12:57 p.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 12:57 p.m., March 21, 2019, in the Council Chambers of the Pasadena City Hall, Pasadena, California.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Mitch Steiger, California Labor Federation
Douglas L. Parker, Worksafe
Anne Katten, California Rural Legal Assistance Foundation
Petition File No. 573

Petitioners request development of an emergency standard to put in place protections for outdoor workers impacted by wildfire smoke.

Ms. Shupe summarized the history and purpose of the petition, and stated that the proposed recommendation is to adopt the petition decision, which is to swiftly convene an advisory committee to consider measures to address wildfire smoke exposure, including proposal of an emergency rulemaking that would provide protections to non-first response outdoor workers for the upcoming fire season and beyond, and to have the Division convene an advisory committee, including experts in areas of evolving wildfire response, to consider the development of robust and permanent rulemaking that fully investigates the concerns, challenges, and available resolutions to provide increased safety for all workers exposed to wildfire smoke.

MOTION

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

Ms. Stock stated that it seems clear that this is an emergency that requires the Board to take action immediately, and she is concerned because advisory committees can take many months to do. She said that the difference between the Board staff's recommendation and the Division's recommendation is that the Division's recommendation states that they also plan to discuss and address some of the outstanding issues, but in the context of an agreement that a regulation is needed and will be developed. She stated that questions and issues can be discussed during the advisory committee process, and the Board should direct the Division to come up with regulatory language in consultation with interested parties. With this in mind, Ms. Stock made the following motion:

Amend the proposed decision to state that the Board finds specific grounds for considering exposure of outdoor workers to wildfire smoke events to constitute the basis for an emergency regulation. Therefore the Board requests the Division to draft an emergency rulemaking proposal for consideration no later than the July Board meeting. The Board further instructs the Board staff to work with the Division to develop a timeline to ensure that the proposal will be ready for consideration and adoption at that meeting.

The Board also requests that the Division convene an advisory committee process to develop a permanent regulation regarding control of exposure of employees to hazardous levels of wildfire smoke. Experts from the California Department of Public Health, Cal/EPA, CalFire and other state and local government agencies, as well as labor and management representatives should be invited to participate.

Mr. Healy stated that the original motion made by Ms. Stock, and that was seconded by Ms. Laszcz-Davis, was to adopt the written petition decision. He said that if the Board wishes to consider Ms. Stock's amended motion, then at a minimum, the already-seconded original motion should be formally withdrawn with Board consent.

MOTION

A motion was made by Ms. Laszcz-Davis and seconded by Ms. Stock to withdraw Ms. Stock's original motion.

All Board Members present agreed with the motion. Ms. Stock's initial motion was withdrawn.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Laszcz-Davis to amend the proposed decision to state that the Board finds specific grounds for considering exposure of outdoor workers to wildfire smoke events to constitute the basis for an emergency regulation. Therefore the Board requests the Division to draft an emergency rulemaking proposal for consideration no later than the July Board meeting. The Board further instructs the Board staff to work with the Division to develop a timeline to ensure that the proposal will be ready for consideration and adoption at that meeting. The Board also requests that the Division convene an advisory committee process to develop a permanent regulation regarding control of exposure of employees to hazardous levels of wildfire smoke. Experts from the California Department of Public Health, Cal/EPA, CalFire and other state and local government agencies, as well as labor and management representatives should be invited to participate.

Ms. Burgel asked Ms. Stock how her proposed decision is different from that of the written proposed decision. **Mr. Thomas** stated that it puts the Division on notice to act quickly to get an emergency regulation in place. He said that advisory committees can take several months to do, so drafting an emergency regulation in the meantime will put something in place to protect workers while the advisory committee process goes on, and at the end of the advisory committee process, a permanent rulemaking can be done. **Ms. Stock** stated that her proposed decision is very similar to what the Division recommended in the written proposed decision.

Mr. Thomas stated that this is an issue that needs to be addressed now because there are workers working in areas following the wildfires who need protection, and workers will need to be protected during and after future wildfires.

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 he is aware of no unresolved legal or procedural issues regarding items A-Q 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 Ms. Laszcz-Davis 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 reported on the following bills:

AB 1124: This bill pertains to outdoor workers' potential exposure to wildfire smoke. It was introduced on February 21, 2019 and would require the Board to adopt an emergency regulation by June 13, 2019 that would require employers to make respirators available to employees working outdoors when the employer reasonably expects them to be exposed to wildfire smoke, with local AQI measurements designated as the basis of reasonable expectation that the smoke exposure will be harmful. This bill would authorize the Board to adopt temporary exceptions to Title 8, Section 5144 provisions that require employees to be medically evaluated and fit tested prior to respirator use being necessary or required, as long as the exemptions don't render Title 8 less effective than the federal standard. This bill would expressly find the regulations necessary to address an emergency situation and extend the temporary rule's allowable duration from 180 days to 1 year plus two 90-day extensions. This bill was referred to the Senate Labor and Employment Committee on March 7, 2019.

SB 363: This bill pertains to workplace violence prevention in certain state agency hospitals. Labor Code Section 6709 called for the Board to adopt a workplace violence prevention standard for healthcare, which the Board did in 2016. Labor Code Section 6709 allowed the Board to exempt the Department of State Hospitals (such as Atascadero and Napa), the Department of Developmental Services (DDS), and the Department of Corrections (CDCR) from those standards. However, the Board chose to only exempt certain DDS facilities slated for closure and CDCR facilities. This bill would require that the workplace violence prevention in healthcare standard not exempt those three types of hospital facilities. It would also require those facilities to report the monthly total of violent incidents to the bargaining units of the affected employees, as well as provide annually a violent incident compilation to the Legislature.

2. Executive Officer's Report

Ms. Shupe stated that she has been in touch with Mr. Leacox and NEII to schedule elevator tours, as requested by several Board Members to assist them in educating themselves on elevators and their functions because they are frequently the subject of variances. She said that NEII has agreed to make a variety of elevators available in the Sacramento area and southern California for Board Members and Board staff to look at, and this will be a great educational tool for them. She is going to be contacting Board Members next week to begin scheduling the elevator tours.

Ms. Shupe stated that she participated in a panel presentation with Mr. Manieri and Ms. Neidhardt for the American Composite Manufacturers Association. This presentation educated stakeholders on how they can participate in the development of regulations. She said that the Board and Division staff are open to doing this presentation and outreach for other interested groups.

Ms. Shupe stated that the public hearing topics for next month's meeting will be Outdoor Agricultural Operations During Hours of Darkness and Single User Toilet Facilities.

3. Future Agenda Items

No future agenda items were mentioned.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 1:17 p.m.