

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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www.dir.ca.gov/oshsb



SUMMARY
PUBLIC MEETING, PUBLIC HEARING AND BUSINESS MEETING
March 18, 2021
Teleconference in Sacramento, California

I. 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 18, 2021, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-5726, via WebEx/teleconference, in accordance with Executive Orders N-29-20 and N-33-20.

ATTENDANCE

<u>Board Members Present at OSHSB Office</u>	<u>Board Members Absent</u>
Dave Thomas	NONE

Board Members Present via
Teleconference and/or Webex

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

Division of Occupational Safety and Health
Staff Present via Teleconference and/or
Webex

Board Staff Present at OSHSB Office
Christina Shupe, Executive Officer
Autumn Gonzalez, Chief Counsel
Michael Nelmida, Senior Safety Engineer
Sarah Money, Executive Assistant

Eric Berg, Deputy Chief of Health
Michael Wilson, Senior Industrial Hygienist

Board Staff Present via Teleconference
and/or Webex

Mike Manieri, Principal Safety Engineer
Lara Paskins, Staff Services Manager
David Kernazitskas, Senior Safety
Engineer
Jennifer White, Regulatory Analyst

Others Present via Teleconference and/or Webex

Dr. Jeffrey Klausner, USC Keck School of Medicine (Division of Disease Prevention, Policy and Global Health Department of Preventive Medicine)	Norman Rogers, United Steelworkers Local 675
Nick Plurkowski, United Steelworkers Local 5	Mike Smith, United Steelworkers
Ronald Espinoza, United Steelworkers Sub-District Director	Tracy Scott, United Steelworkers Local 5
	Doug Subers, CA Professional Firefighters Association (WSPA)
	Kevin Buchan, Western States Petroleum Association (WSPA)
	Maggie Robbins, Worksafe
	Rick Swan, International Association of Firefighters

II. PUBLIC MEETING

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.

A. PUBLIC COMMENT

The following individuals commented during the public meeting. To read their testimony, please refer to the meeting transcript, which will be posted on the Board's website at www.dir.ca.gov/oshsb, as soon as it becomes available.

Dr. Jeffrey Klausner, USC Keck School of Medicine (Division of Disease Prevention, Policy and Global Health Department of Preventive Medicine) asked the Board to update COVID-19 vaccination requirements and requirements for employer mandates, vaccination promotion and accessibility programs.

Mike Smith, United Steelworkers commented in support of the Board staff's recommendation regarding petition 584 which is to grant the petition in part by denying items 1 and 2 in the petitioner's request and convening an advisory committee to discuss items 3 and 4 in the petitioner's request.

Norman Rogers, United Steelworkers Local 675, commented in support of denying all the requests made by the Western States Petroleum Association in petition 584.

Nick Plurkowski, United Steelworkers Local 5, commented in support of denying all the requests made by the Western States Petroleum Association, with the exception of three changes.

Kevin Buchan, Western States Petroleum Association (WSPA) asked the Board to grant his organization's requests in petition 584 to consider amendments to the California Process Safety Management regulations and hold an advisory committee to review all of the issues raised in their petition.

Mr. Thomas called for a break at 10:23 a.m. to address some technical issues and reconvened the meeting at 10:29 a.m.

Tracy Scott, United Steelworkers Local 5, commented in support of denying all the requests made by the Western States Petroleum Association, with the exception of three changes.

B. ADJOURNMENT OF THE PUBLIC MEETING

Mr. Thomas adjourned the Public Meeting at 10:36 a.m.

III. PUBLIC HEARING

Mr. Thomas called the Public Hearing of the Board to order at 10:36 a.m., March 18, 2021, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726, via Webex/teleconference, in accordance with Executive Orders N-29-20 and N-33-20.

A. EXPLANATION OF PROCEDURES

B. PROPOSED SAFETY ORDERS (Revisions, Additions, Deletions)

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Article 10.1, section 3401, section 3402, new sections 3402.1 - 3402.3,
sections 3403 - 3410, new section 3410.1, and section 3411
Fire Fighters' Personal Protective Clothing and Equipment – AB 2146

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

C. PUBLIC COMMENT

The following individuals commented during the public hearing. To read their testimony, please refer to the meeting transcript, which will be posted on the Board's website at www.dir.ca.gov/oshsb, as soon as it becomes available.

The following individuals commented in support of the proposal and provided some recommendations:

- **Doug Subers, CA Professional Firefighters**
- **Rick Swan, International Association of Firefighters**

- **Maggie Robbins, Worksafe**

Ms. Stock asked the Division if they could speak about their recommendations for this proposal. **Michael Wilson** stated that the Division believes the proposal will go a long way in protecting the health and safety of firefighters and will address longstanding occupational exposure problems. The Division is pleased to see that SCBA use during the overhaul process has been included in the regulation, and would like to see that part of the regulation strengthened, expanded and clarified, especially when it comes to using SCBAs and PAPRs.

The Division recommends it be made clear that this regulation covers firefighters who are working in the wildland urban interface. Respiratory protection used in wildland firefighting is grossly inadequate, so it is important that PAPRs are considered for respiratory protection. There also needs to be clear provisions in the regulation regarding worker involvement during the development of standard operating procedures.

Ms. Burgel stated the following:

- She is in support of many of the recommendations in the Division's comment letter to the Board, especially regarding overhaul protection.
- She is concerned about the current overhaul language that indicates SCBA shall be used unless the employer can demonstrate that a lesser level of protection is appropriate. This causes caution and she agrees that guardrails should be in place around that situation and that a field assessment should be required.
- There needs to be a definition in the proposal of what PPE is included in the "ensemble".
- She supports the language regarding the employer ensuring that the employee is using PPE properly, as well as the definition of "wildland urban interface" as indicated in the Division's comment letter and adding the definition of "immediately dangerous to life or health" to the regulation.
- She echoed Ms. Robbins' comment to ensure that the current NFPA standards are integrated into this standard.
- She would like to see the proposal address chemical biologic radiation and nuclear provisions.

Mr. Harrison stated that he supports the comments provided by the California Professional Firefighters and the International Association of Firefighters regarding integrating the most current NFPA standards into this proposal, and the inclusion of labor during field testing and the evaluation of PPE.

Ms. Stock and **Ms. Laszcz-Davis** spoke in support of the comments made by Mr. Harrison and Ms. Burgel.

Ms. Shupe stated that this proposal has been in the fiscal review process for over two years and any substantial financial changes to the proposal will require it to go through the review process again. This will be part of what informs the Board staff's decisions when responding to comments, but it does not mean that more substantive changes cannot be considered in future versions.

D. ADJOURNMENT OF THE PUBLIC HEARING

Mr. Thomas adjourned the Public Hearing at 11:14 a.m.

IV. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:14 a.m., March 18, 2021, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726, via Webex/teleconference, in accordance with Executive Orders N-29-20 and N-33-20.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Oyango A. Snell, Esq.
Western States Petroleum Association
Petition File No. 584

Petitioner requests to amend title 8, section 5189.1, Process Safety Management, Definitions of Major Change, Employee Representative and Participation, Highly hazardous Materials and amendment of the High Hazard Control Analysis hierarchy.

Ms. Shupe summarized the history and purpose of petition 584 and stated that the proposed decision is to grant the petition, to the limited extent that an advisory committee meeting be convened to consider items three and four from the petitioner's request as recommended in the Board staff's evaluation. Additionally, the proposed decision directs the Board staff to include elements of the Division's requested amendments in the advisory committee agenda for consideration as appropriate.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock to adopt the petition decision.

Ms. Stock stated that she supports the Board staff's recommendation that very narrowly defines the scope of the advisory committee so that it will address the necessary points

while leaving out some of the broader points brought up by the petitioner. She also asked the Division and Board staff to make sure that the representation at the advisory committee is balanced so that all voices can be heard equally.

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

2. Marisa “Reese” Fortin, Area HS&E Manager
Sundt Construction, Inc.
Petition File No. 585

Petitioner requests to allow the internal guying/bracing of reinforcing steel (rebar) assemblies when the guying/bracing system is designed by a qualified person and to clarify that external guying and bracing of rebar assemblies shall be prohibited.

Mr. Manieri summarized the history and purpose of petition 585 and stated that the proposed decision is to grant the petition in part to the extent that the Board directs the Board staff to consider amendments to section 1711 to clarify three main points:

- That internal bracing is not illegal.
- It must be designed by a registered professional engineer.
- It would be beneficial to consider including the safe practices contained in the ANSI/ASSE A10.9 standard for concrete and masonry work into section 1711.

The proposed decision also directs the Board staff and the Division to consider whether there are any justifiable situations where the use of internal bracing may be permitted on some vertical and horizontal column installations, walls and other reinforcing assemblies.

MOTION

A motion was made by Ms. Laszcz-Davis and seconded by Ms. Crawford to deny the petition as originally crafted and accept the Board staff’s recommendation to consider amending Construction Safety Orders section 1711(e) to clarify several elements.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Gonzalez stated that items A and F have been amended to fix some non-substantive clerical errors. With those amendments, items A through M on the consent calendar are

ready for the Board's decision on the question of adoption.

MOTION

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

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

C. REPORTS

1. Division Update

Mr. Berg provided the following update to the Board on the COVID-19 emergency temporary standard (ETS) in response to questions that Ms. Stock asked at the January 21 and February 18, 2021 Board Meetings.

- The number of complaints received spiked in early December right after the COVID-19 ETS became effective and remained high throughout December, but began to decline in January and February, returning to similar pre-ETS complaint levels. It is unknown if the ETS caused the spike in December or if it was due to a large number of COVID-19 cases. Similar spikes occurred in March and July of 2020.
- The nature of the Division's inspections has not changed as a result of the COVID-19 ETS.
- Enforcement has become easier because the COVID-19 prevention measures under the COVID-19 ETS are more enforceable and easier for everyone to understand than they were under the injury and illness prevention program (IIPP).

Ms. Stock asked Mr. Berg if the COVID-19 ETS has had any impact on the appeals process. She also asked if any citations have been issued related to the ETS. **Mr. Berg** stated that it will take a few more months before a large number of citations are issued that pertain to the COVID-19 ETS. He said that only a few citations have been issued and he is not aware of any appeals pertaining to the ETS. He might be able to provide more detailed information on that in a few months.

Ms. Burgel asked Mr. Berg about the status of the draft regulatory language for the readoption of the COVID-19 ETS. **Mr. Berg** stated that the Division is working closely with the California Department of Public Health (CDPH) and the Division's legal unit on the draft language. They are working to incorporate the Centers for Disease Control's (CDC) guidelines for vaccines and vaccinated people. **Ms. Stock** stated that there is a lot of confusion regarding the CDC's recommendations about quarantining. She said that it is a good idea to keep the current quarantine requirements in place until the issue is

resolved by the CDC.

2. Legislative Update

Ms. Gonzalez provided an update on SB 410. To view a more detailed version of this update, please refer to the meeting transcript, which will be posted on the Board's website at www.dir.ca.gov/oshsb, as soon as it becomes available.

3. Executive Officer's Report

Ms. Shupe stated that on March 15, Senior Safety Engineer, David Kernazitskas, held a presentation introducing the Standards Board to new DIR employees at the Orientation to Enforcement.

The Board staff will be participating in two upcoming events:

- Principal Safety Engineer, Mike Manieri, will attend a Division advisory committee on March 25 to provide an update on the status of current projects.
- Senior Safety Engineer, David Kernazitskas, will chair an advisory committee pertaining to date palms. This is the second advisory committee meeting where proposed amendments to the regulations for harvesting date palms will be considered.

Ms. Shupe stated that at the April Board Meeting, the Board will be voting on a proposal to amend the commercial diving standards and adopt regulations for technical diving operations.

Ms. Crawford asked Ms. Shupe if the upcoming meetings will still be held virtually or if they will be held in-person. **Ms. Shupe** stated that they will be held virtually until further notice. She said that when in-person meetings resume, the Board staff will let the public know three months in advance. The Board staff is considering using a hybrid model once in-person meetings resume.

Ms. Stock stated that she supports the idea of using a hybrid model when in-person Board Meetings resume.

Ms. Burgel stated that she is glad to see that Spanish interpretation is available and would like to see Chinese interpretation included.

D. NEW BUSINESS

1. Future Agenda Items

Ms. Burgel asked the Division to provide updates on the proposals pertaining to indoor heat and workplace violence prevention in general industry at next month's meeting.

E. CLOSED SESSION

Pursuant to Government Code sections 11126(e)(1) and 11126(a)(1), the Board conferred with counsel regarding the pending litigation matters listed on the agenda and consideration of personnel matters. Closed Session began at 11:48 a.m.

F. RETURN TO OPEN SESSION

1. Report on any Closed Session Action

Open session resumed at 12:17 p.m. No action was taken during the Closed Session.

G. ADJOURNMENT OF THE BUSINESS MEETING

Mr. Thomas adjourned the Business Meeting at 12:18 p.m.