

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
2520 Venture Oaks Way, Suite 350  
Sacramento, California 95833  
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In the Matter of a Petition by: )  
) )  
Scott A. Kronland, Attorney ) )  
Zoe Palitz, Attorney ) )  
Altshuler Berzon LLP ) )  
177 Post Street, Suite 300 ) )  
San Francisco, CA 94108 ) )  
) )  
\_\_\_\_\_ Applicant. ) )

PETITION FILE NO. 550  
DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION.

Board Member	Aye	No	Abstain	Absent
Dr. Blink	X			
Mr. Harrison	X			
Ms. Quinlan	X			
Ms. Smisko	X			
Ms. Stock	X			
Chairman Thomas	X			

By: Marley Hart  
Marley Hart, Executive Officer

DATE: 1/21/2016  
Attachments

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 550)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on August 26, 2015, from Scott A. Kronland and Zoe Palitz, attorneys for the International Union of Painters and Allied Trades (IUPAT), (Petitioners). The Petitioners request the Board to amend Title 8, California Code of Regulations, General Industry Safety Orders to adopt a safety and health standard governing the performance of corrosion prevention work on industrial and infrastructure projects in California.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal.

**SUMMARY**

Citing a 2002 study released by the Federal Highway Association, the Petitioners note that deterioration of America's aging infrastructure costs the United States \$276 billion per year. They state that "the primary defense against corrosion involves the application of protective coatings to surfaces, which is done by IUPAT members and other painters throughout the country." The petition mentions numerous health effects, including cancer, respiratory diseases, lead poisoning, and brain degeneration (also known as "chronic painter's syndrome), that can occur if essential safety and health precautions are not observed during the application or removal of protective coatings.

To aid in reducing employee exposure and the resulting health effects, two industry groups, the Society for Protective Coatings (SSPC) and the National Association of Corrosion Engineers (NACE), International, collaborated to develop a consensus standard for the certification of painters performing corrosion prevention work. The resulting standard is known as the NACE No. 13/SSPC-ACS-1 "Industrial Coating and Lining Application Specialist Qualification and Certification" (NACE 13/ACS 1).

The Petitioners request that the Board adopt the proposed standard to require that all employers performing surface preparation and coating application for steel and concrete surfaces for complex industrial and infrastructure projects (corrosion prevention work) utilize only personnel that have been trained and certified in accordance with the NACE 13/ACS 1 standard. They state that “the proposed Standard for Preparation and Coating for Corrosion Prevention would ensure that all painters who perform corrosion prevention work obtain this critical safety training, not just those who participate in a state-approved apprenticeship program.”

#### DIVISION’S EVALUATION

In a report dated December 7, 2015, the Division discussed the various hazards of corrosion prevention work and the many sections in Title 8 that currently address such hazards. The Division report states “the regulatory language suggested by this petition does not appear to strengthen or augment requirements established by current Title 8 regulations, but simply acts to reinforce the existing requirements.” The report takes exception to the Petitioner’s proposed exemption of some corrosion work from the requirements of the standard. The Division points out that without explanation or justification, the proposal would exempt employees performing corrosion prevention work on refinery piping systems, yet include employees working on the refinery structure. In conclusion, the Division states “the recommended regulation and the [NACE 13/ACS 1] standard would likely have a positive effect on employee safety by reinforcing current Title 8 regulations, [however,] the recommended regulation, as submitted, has numerous deficiencies that outweigh the benefits of the proposal.” The Division, therefore, recommends that the petition be denied, though it invites the Petitioners to resubmit the petition after correcting some of the deficiencies.

#### STAFF’S EVALUATION

The Petitioners submitted wording for a proposed standard, which would apply to all employers “performing surface preparation and application of protective coatings and linings to steel and concrete surfaces for the purpose of corrosion prevention on industrial or infrastructure projects.” They included several definitions, including one for “trained and certified,” which states that employees holding a certificate issued by an approved organization that meets the NACE 13/ACS 1 standard would be considered trained and certified. Employees registered in an industrial apprenticeship, “who are receiving the supervision required by the program,” would also be considered “trained and certified.”

The proposed standard would allow only trained and certified personnel to perform corrosion prevention work on industrial or infrastructure projects, unless the employees meet each of the following three requirements: 1) the employee holds valid certificates issued by an approved organization stating that the individual meets the C3, C7, and C12 standards of the SSPC, 2) the employee performs corrosion prevention work only under the direct supervision of a trained and certified supervisor, and 3) the employer ensures that at all times on the job site, there are three trained and certified individuals performing corrosion prevention work for every one employee who is not trained and certified to perform such work.

The remainder of the Petitioners' proposal requires the employer to maintain records of compliance with the training and certification requirements, and details a phase in period for transitioning to the use of trained and certified personnel.

The Petitioners provided several letters of support from painting and finishing contractors advocating for the adoption of the proposed standard. Some of the letters describe the hazardous conditions, processes and substances associated with corrosion prevention work. The hazards described, however, are not unique to corrosion prevention work. Chemical exposures, confined spaces, and various other health and safety hazards exist in many California industries. Although the petition describes the various hazards and potential health effects, it does not propose unique solutions which are not already addressed by existing Title 8 regulations. It does, however, introduce the concept of certification for employees performing corrosion prevention work, which is not currently required in Title 8.

In accordance with the petition, employees would be required to be certified in the requirements of the NACE 13/ACS 1, which includes knowledge of safety and health issues as well as experience and training in the performance of corrosion prevention work. Successful completion of the training would earn the employee a certification as an "Industrial Coating and Lining Application Specialist." Although the concept of requiring employees to be certified, or qualified, to perform specific tasks already exists in certain sections of Title 8, it would be new if applied to painting and corrosion prevention work.

The requirements for training and certifying an employee to drive a forklift (i.e. powered industrial truck) are an example of existing regulatory framework that could be used as a model to train and certify an Industrial Coating and Lining Application Specialist. Section 3668 "Powered Industrial Truck Operator Training" requires that each powered industrial truck (PIT) operator be competent to operate the truck safely, "as demonstrated by the successful completion of the training and evaluation specified in this section." Trainees may operate a PIT only under the direct supervision of persons with "the knowledge, training and experience to train operators and evaluate their competence, and where such operation does not endanger the trainee or other employees." Additionally, the training must "consist of a combination of formal instruction (e.g., lecture, discussion, interactive computer learning, video tape, written material), practical training (demonstrations performed by the trainer and practical exercises performed by the trainee) and evaluation of the operator's performance in the workplace."

Section 3668 lists several specific topics which must be included in the course of PIT training, as well as requirements for refresher training and evaluation. Employers must certify that each operator has been trained and evaluated in accordance with the section prior to operating a PIT for other than training purposes. If deemed necessary, the regulatory framework used for PIT training could be applied to the development of a new standard to certify painting and coating specialists.

Board staff is not convinced that Title 8 regulations will be enhanced by the adoption of the Petitioners' proposal. Although several government agencies already require employers performing corrosion prevention work on infrastructure projects to comply with the NACE 13/ACS 1 standard, it may not be appropriate or necessary for all employers performing such work if their employees are equivalently trained through other methods. Another concern is that the Petitioners assert the work must be performed by certified individuals, yet their proposal allows employees who have not been trained and certified to perform the work as long as their "supervisor is in the immediate area of the employee, within visual sighting distance and is able to effectively communicate with the employee." Having a supervisor in the immediate visible area does not guarantee that an employee is competent as an individual or safely performing the work. For instance, if an employee is working at elevation or in a confined space, he or she could be at risk of serious injury if not properly trained. The proposal requires at least "three trained and certified individuals [for] every one employee who is not trained and certified," performing corrosion prevention work. Board staff is concerned that if the nature of the work necessitates training and certification in order to be performed safely, all employees performing the work should be trained and certified before being allowed to engage in such work. Using the example of the forklift training requirements in Section 3668, employees are not allowed to operate the PIT until they have been deemed competent by their employer, except as necessary for training purposes.

Other questions which should be addressed by a group of stakeholders include the appropriateness of the NACE 13/ACS 1 standard as the benchmark safety and health document for the entire painting and corrosion industry. The committee should discuss whether requirements need to be added or removed, or whether other consensus standards would be a better fit for the industry. Furthermore, as pointed out in the Division's evaluation, if corrosion prevention work on industrial and infrastructure projects should be covered by the NACE 13/ACS 1 standard, shouldn't all of the corrosion work on the project (plumbing and piping) be covered as well? A thorough discussion to clarify the exact nature of corrosion prevention work (i.e. how it differs from painting in auto body shops and similar industries) would be beneficial as well.

Because of the importance of competent corrosion prevention work and controlling the associated safety and health risks, further investigation into the need for employees to be certified as meeting the requirements of the NACE 13/ACS 1 standard may be warranted. Due to the many existing options in Title 8 for ensuring that work is performed by competent, qualified, and/or certified employees, the Board staff should convene an advisory committee to discuss the necessity of adding to those requirements and requiring that all corrosion prevention work be performed only by employees who are NACE 13/ACS 1 compliant.

### CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Scott A. Kronland and Zoe Palitz, attorneys for the International Union of Painters and Allied Trades to make recommended changes to the General Industry Safety Orders to adopt a safety and health

standard governing the performance of corrosion prevention work on industrial and infrastructure projects in California. The Board has also considered the recommendations of the Division and Board staff.

Based on the foregoing information the Petitioners' request is GRANTED to the extent that an advisory committee is convened to discuss the necessity for amending Title 8 to include the requirements of the NACE 13/ACS 1 standard. The advisory committee should be directed to include the following in its discussion on the necessity for a standard similar to the one proposed by the Petitioners:

- 1) The need for employees to be trained and certified to perform corrosion prevention work.
- 2) The suitability of the NACE 13/ACS 1 standard as the primary reference for safety and health practices for stakeholders performing painting and corrosion work on industrial and infrastructure projects.
- 3) The need for all employees to be certified (rather than the 3:1 ratio mentioned in the proposal) before performing corrosion work, other than for training purposes.
- 4) The need for all corrosion prevention work to be covered by the NACE 13/ACS 1 or similar standard instead of only the work performed on industrial or infrastructure projects.
- 5) The nature of corrosion prevention work and how it differs from painting in auto body and similar industries.
- 6) The training, competency, and experience of the entities able to train and certify employees.

The Petitioners and any other subject matter experts from management and labor of affected industries, who perform industrial and/or infrastructure corrosion prevention work, should be extended an opportunity to participate in the advisory committee deliberations.