OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

BOARD STAFF'S REVIEW OF THE PETITION

Petition File No. 550
Scott A. Kronland and Zoe Palitz

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Introduction

On August 26, 2015, the Occupational Safety and Health Standards Board (Board) received a petition from Scott A. Kronland and Zoe Palitz, attorneys for the International Union of Painters and Allied Trades (Petitioners). The Petitioners requested that the Board amend 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.

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 to render its decision no later than six months following their receipt. In accordance with Board policy, the purpose of this evaluation is to provide the Board with relevant information upon which to base a reasonable decision.

History

The International Union of Painters and Allied Trades (IUPAT) is a labor organization that represents more than 160,000 active and retired workers in the United States and Canada. Through its affiliated local unions, IUPAT represents approximately 20,000 painters, glaziers, and other workers in California, including journey-level workers and apprentices. Part of IUPAT's mission is to protect the health and safety of all workers in its industries.

Reason for the Petition

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."

National Consensus Standard

The current NACE 13/ACS 1 standard was approved in December of 2008 and is "designed to ensure that any worker certified as meeting the NACE 13/ACS 1 knows how to protect him or herself, his or her colleagues, and the public from the many environmental, safety, and health hazards associated with corrosion control work." The body of the standard provides requirements for qualification and certification of an Application Specialist, defined as one "who engages in surface preparation and application of protective coatings and linings to steel and concrete surfaces of complex industrial structures." The three levels of qualification (Levels I-III) are based upon meeting Body of Knowledge and testing requirements. Body of Knowledge requirements include environmental, safety, and health topics; process control; materials and safety data sheets knowledge; surface preparation; and application of coatings. Tests are both written and practical, depending on the level of classification.

A draft of the 2008 standard was developed by a committee and then circulated to the NACE membership, which "includes tens of thousands of corrosion engineers and experts in the field," who suggested changes, which were incorporated into the final standard and approved by at least ninety percent of the membership.

Federal OSHA Standards

Federal OSHA has various requirements for employers to provide safe working environments for their employees, including requirements covering painting and coating engineers and ancillary processes. Federal standards do not currently require specific certifications to perform such work.

Division of Occupational Safety and Health (Division) Report

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 that "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 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 that "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 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 C3, C7, and C12 certificates mentioned in item 1 are certifications of completion for coursework on the subject of lead paint removal, abrasive blasting, and spray application, respectively. The SSPC website lists the courses as 2-4 day classes with costs of about $1,000 each.

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.

Several Title 8 regulations already require competency in a field in order to allow an employee to perform the work or specific task. The definition of "qualified person, attendant, or operator" reads as follows:

> Qualified Person, Attendant or Operator. A person designated by the employer who by reason of his training and experience has demonstrated his ability to safely perform his duties and, where required, is properly licensed in accordance with federal, state, or local laws and regulations. (Title 8, Section 3207)

Instances where a qualified person is required to perform certain tasks include crane operations (signaling, rigging, inspection, etc.), date palm harvesting, inspection of fall protection equipment, electrical work, logging operations, and laser equipment operation. The concept of a "qualified person" includes a licensing requirement where required by regulation.

Additionally, various Title 8 regulations require a competent person to perform certain work and tasks. A competent person is defined as:

> Competent Person. One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. (Title 8, Section 1504)

Competent persons are required in various sections, including mine safety, asbestos operations, excavations, avalanche blasting, fall protection, and forklift operations.

The requirements for training and certifying an employee to drive a forklift (i.e. 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 Petitioners assert that 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. The advisory committee should be directed to include the following, at a minimum, 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 to painting in auto body and similar industries

6) The training, competency, and experience of the entities able to train and certify employees

Recommendation

Based on the foregoing discussion, Board staff believes the Petitioners' request has merit 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. Such discussions should at least include items 1-6 above. 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.