

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of a Petition by:)
)
) PETITION FILE NO. 572
) DECISION
Pamela Murcell, President CIHC)
C/o KWA Safety & HAZMat)
Consultants, Inc.)
P.O. Box 5573)
El Dorado Hills, CA 95762)
)
_____) Applicant.)

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

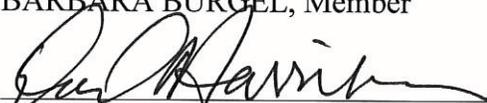
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD



DAVID THOMAS, Chairman



BARBARA BURGEL, Member



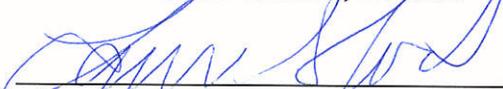
DAVE HARRISON, Member

(RECUSED)

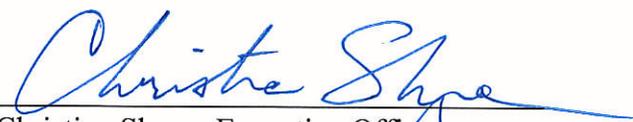
NOLA KENNEDY, Member



CHRIS LASZCZ-DÁVIS, Member



LAURA STOCK, Member

By: 
Christina Shupe, Executive Officer

DATE: May 16, 2019
Attachments

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
REGARDING PETITION FILE NO. 572****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on December 3, 2018, from Ms. Pamela Murcell, President of the California Industrial Hygiene Council (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, Section 3203, Injury and Illness Prevention Program (IIPP).

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.

In accordance with Labor Code Section 142.2, the submission has been assigned OSHSB Petition file No. 572, and duly considered by the Board.

SUMMARY

The Petitioner seeks to amend Section 3203 to add a definition of “effective”, add “qualified person” requirements for inspections and investigations, add a requirement for a “competent person” to administer IIPP’s, and to require mandatory labor/management safety meetings for employers with greater than 20 employees.

It is the position of the Division and Board staff the proposed definition and added requirements are not necessary for reasons including:

- Defining “effective” for a performance standard where components of an effective IIPP may vary depending on employer, industry, workplace hazards, environment, and other variables would be problematic and may cause unintended consequences.
- Adding a “qualified person” requirement for inspections and investigations and adding a “competent person” requirement for the IIPP administrator is unnecessary. Under the present standard, it incumbent upon employers to obtain the resources necessary to have an effective program.

- There is insufficient evidence to support a requirement that labor/management safety committees must be used by all employers with more than 20 employees, nor that such a requirement would result in appreciable safety improvements.

DISCUSSION

Section 3203 is a performance standard, allowing employers to achieve compliance by identifying and addressing work hazards particular to each workplace. There are many components needed to make an IIPP “effective,” such as management commitment and involvement, employee participation, good communication between management and employees, the ability of employees to raise safety and health issues without fear of reprisal, appropriate training, and well-designed policies and procedures to identify and correct hazards. Additionally, “effective” is a term used throughout Title 8. Defining it to a specific meaning within the context of Section 3203 could have unforeseen and unintended consequences.

The Petitioner observes correctly that IIPP administrators must be knowledgeable about occupational safety and health matters and be capable of managing the program. The Petitioner also correctly observes that the Division, as the agency charged with enforcement of Title 8, occupational safety and health standards, has substantial experience enforcing, and citing Section 3203. However, contrary to the Petitioner’s position, and of significance to the Board, the Division reports that Section 3203, as presently written, is adequately clear and specific to be appropriately enforceable.

It is proposed that the existing subpart (a)(4) requirement to identify and evaluate workplace hazard, be more prescriptive in requiring that an expressly defined “qualified person” carry out those functions. The Petitioner asks that such a “qualified person” be defined as “a person...who by reason of training, experience, instruction, or certification from a recognized occupational health and safety organization (e.g., ABIH, BCSP) has demonstrated the ability to identify and evaluate workplace hazards.” However the Petitioner has not shown, nor do the Division or Board staff presently advise, that IIPP effectiveness, and Section 3203 enforceability, necessitate mandating the person or persons with authority and responsibility for implementing the program have any such prescriptively defined qualifications.

Section 3203 allows employers to use a safety committee as a means to communicate safety and health information to its employees, but it is an option, not a mandatory requirement. Employers should not uniformly be compelled to utilize such committees, as they will not be effective for certain businesses, such as an employer with individual or small number of employees spread out over several locations statewide. Additionally, whether or not utilizing a labor/management safety committee is beneficial, will vary from one workplace setting or industry to another.

Government Code Section 11340.1 states, in relevant part: *“It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and*

that this substitution shall be considered during the course of the agency rulemaking process.”

Title 8, Section 3203, is quite purposefully a performance focused standard. Neither Division nor Board Staff presently recommend making the IIPP requirements more prescriptive, nor has the Petitioner’s proposal shown how doing so would increase its effectiveness in protecting workers.

CONCLUSION AND ORDER

Having considered Petition File No. 572, and associated analyses and recommendations of the Division and Board staff, the Board hereby DENIES the Petition.