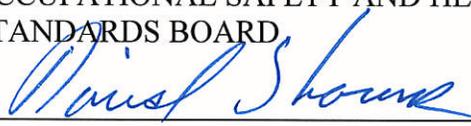


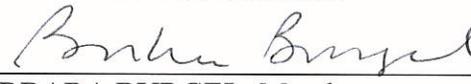
STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
2520 Venture Oaks Way, Suite 350  
Sacramento, California 95833  
(916) 274-5721

In the Matter of a Petition by: )  
)  
) PETITION FILE NO. 574  
Michael J. Vlaming )  
Executive Officer ) DECISION  
CECA )  
447 Georgia Street )  
Vallejo, CA 94590 )  
)  
\_\_\_\_\_) Applicant.)

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

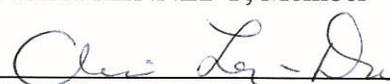
OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

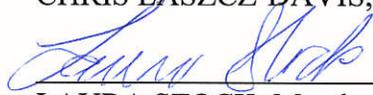
  
\_\_\_\_\_  
DAVID THOMAS, Chairman

  
\_\_\_\_\_  
BARBARA BURGEL, Member

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DAVE HARRISON, Member

  
\_\_\_\_\_  
NOLA KENNEDY, Member

  
\_\_\_\_\_  
CHRIS LASZCZ-DAVIS, Member

  
\_\_\_\_\_  
LAURA STOCK, Member

By:

  
\_\_\_\_\_  
Christina Shupe, Executive Officer

DATE: June 20, 2019  
Attachments

DEPARTMENT OF INDUSTRIAL RELATIONS  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
Tel: (916) 274-5721 Fax: (916) 274-5743  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 574)**

**INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on December 26, 2018, from Mr. Michael J. Vlaming (Petitioner), Executive Director of Construction Elevator Contractors Association (CECA). The Petitioner requests that the Board amend Title 8, Construction Safety Order, Section 1604.5(d)(2), requirements for anchoring to a building or structure, by replacing the prescriptive maximum vertical distance between anchoring points with a requirement that anchorage intervals be “in conformance with, or be equal to [hoist] manufacturer’s specifications.”

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. The Division has 60 days after receipt to submit an evaluation regarding the proposal.

**SUMMARY**

The Petitioner requests the Board to amend Section 1604.5(d)(2), as proposed shown below in underline and strikeout format:

*§1604.5. Construction of Towers, Masts, and Hoistway Enclosures.*

\*\*\*\*\*

*(d) Hoist Structure.*

\*\*\*\*\*

*(2) Each hoist structure shall be anchored to the building or other structure ~~at vertical intervals not exceeding 30 feet.~~ in accordance with, or be equal to, manufacturer’s specifications. Where the building or other structure is of such character that tie-ins cannot be made, the hoist structure shall be guyed by means of a suitable number of guys. Such guys shall be fastened to adequate anchorages to ensure hoist structure stability. When wire rope is used for guys, the rope shall be at least 1/2-inch in diameter.*

\*\*\*\*\*

The Petitioner asserts that the Division has not been consistent when enforcing Section 1604.5(d)(2) due to possible conflicting requirements in Section 1604.5(d)(3) shown below:

*§1604.5. Construction of Towers, Masts, and Hoistway Enclosures.*

\*\*\*\*\*

*(d) Hoist Structure.*

\*\*\*\*\*

*(3) Tie-ins shall conform to, or be equal to, the manufacturer's specifications and shall remain in place until the tower or mast is dismantled.*

\*\*\*\*\*

The Petitioner contends that the proposed amendment is necessary due to inconsistent enforcement of Section 1604.5(d)(2) and deviation from the consensus standards on which the requirements were originally based.

The Petitioner deems significant that the language of Section 5.4.2 of ANSI/ASSE A10.4-2007 is similar to that of Section 1604.5(d)(2) requiring construction elevator anchors at vertical intervals not to exceed 30 feet, but the 2016 edition of ANSI/ASSE A10.4 was amended to allow anchors to be installed at vertical intervals in accordance with manufacturer's design specifications.

The Petitioner contends that 1604.5(d)(2) is no longer in line with consensus standards and deviates from the intent of the original regulation.

**Related Consensus Standard at Issue:**

Title 8, Section 1604.5(d)(2) is based, in significant part, on ANSI A10.4-1973 Section 5.4.2 which states:

*Each hoist structure shall be anchored to the building or other structure at vertical intervals not exceeding 25 feet.*

Allowance is made for tie-ins to be installed at up to 30-foot intervals under Section 1604.5(d)(2), rather than the 25-foot interval stated in the originating consensus standard.

The Petitioner argues for the differing approach taken under the ANSI/ASSE A10.4-2016 version of Section 5.4.2:

*Each hoist structure shall be anchored to the building or other structure at vertical intervals in accordance with manufacturers design specifications. Where the building or other structure is of such construction that tie-ins cannot be made, other means of*

*securing the mast to the structure shall be designed by the manufacturer or by a registered professional engineer.*

### **DIVISION EVALUATION**

In its report concerning the Petition, dated April 23, 2019, the Division disagrees that Sections 1604.5(d)(2) and 1604.5(d)(3) include differing requirements for elevator anchor placement.

The Division states that the requirements of Section 1604.5(d)(2) refer to the location(s) at which an elevator tower must be anchored to the building or structure via a tie-in. The anchor is the physical connection that fastens a tie-in to a structure.

Furthermore, Section 1604.5(d)(3) does not contain requirements regarding the location of anchor points, but rather requires the elevator tie-ins themselves to be in conformance with, or equal to, the manufacturer's specifications. Therefore, the Petitioner's argument that these two subsections conflict does not have merit as it conflates two separate requirements that refer to different components used to secure a construction elevator tower.

The Division points out that although Section 1604.5(d)(3) was promulgated with guidance from the 1973 edition of ANSI/ASSE A10.4, there is no statutory requirement for Title 8 regulations to comply with consensus standards.

Finally, the proposed amendments to Section 1604.5(d)(2) would not comply with Federal OSHA regulation 29 CFR 1926.552(c)(3) which are, like California's standards, prescriptively specific as to maximum anchorage spacing. In contrast, elevator manufacturer's specifications may allow for spacing nearly double that allowed by Federal OSHA. Labor Code section 142.3 requires Title 8 regulations to be at least as effective as the Federal OSHA standards.

The Division's review included information provided in the Petitioner's application, applicable Federal OSHA and consensus standards, review of elevator installation documentation and communications with the Division's Elevator Unit.

Based on the information gathered during the evaluation, the Division recommends the Occupational Safety and Health Standards Board deny the Petition.

### **BOARD STAFF EVALUATION**

The Board staff evaluation dated April 10, 2019 states that Board staff examined the relevant federal, state, and national consensus standards. Moreover, Board staff reviewed the Board's original rulemaking records related to the Section 1604.5(d)(2) rulemaking of 1974, when the existing language was adopted.

Further, Board staff reviewed the February 1986 rulemaking effort regarding construction passenger hoists, which was ultimately disapproved by the Office of Administrative Law. The Board did not pursue further revision of the 1986 disapproval.

Board staff considers it to be, at minimum, an implicit intent of Section 1604.5(d)(2) that tie-ins serve as the primary means by which the hoist structure is “anchored.” Where tie-ins cannot be made, the regulation requires that *guys shall be fastened to adequate anchorages to ensure hoist structure stability*. Tie-ins are the preferred anchor contemplated under Section 1604.5(d)(2).

It is the position of Board staff that granting Petition 574 would decrease protections afforded under the current standard. Manufacturers design and build construction passenger hoists (CPHs) and CPH components to conform to the ANSI/ASSE code in effect at the time. Manufacturer’s specifications make assumptions based on the current consensus standard when the CPH is designed. Where assumptions are made, the manufacturer’s specifications may not specifically call out consensus standard constraints. When employers are required to interpret the manufacturer’s specifications without the benefit of the stated constraints the manufacturer included in their design, employers could inadvertently deviate from the manufacturer’s design while remaining consistent with the manufacturer’s stated specification. Such deviation could be made in a manner that threatens the safety and stability of the CPH. Presently, the requirement that the interval between anchors be no greater than 30 feet is unambiguously clear. The Petitioner’s proposal would instead depend upon the varying sufficiency and clarity of manufacturer’s specifications, including those of pre-2016 CPHs written in the context of earlier, more definitive ANSI/ASSE code anchorage interval requirements. Simply put, reliance upon, and interpretations of, the manufacturer’s specifications as an alternative, would not provide the essential clarity and certainty of the existing standard.

The Petitioner’s proposal would reduce the safety of the regulation and would reduce its clarity and specificity. Board staff therefore recommends against the proposed amendments to Section 1604.5(d)(2).

### **DISCUSSION**

Although CPH installations are by nature temporary, and normally dismantled upon completion of erection or demolition of the building or structure, some remain in service on larger, or slower construction projects for periods of more than a year.

Significantly, manufacturers design and build CPHs and CPH components to conform to the latest ANSI/ASSE code in effect at the time. However, it cannot be safely assumed that still in service CPHs, manufactured perhaps decades ago, can conform to, or even be wholly compatible with, later editions of ANSI/ASSE A10.4. Further, each successive edition of the code does not necessarily provide greater protections than the superseded code – it may be more permissive, and not drafted with earlier hoist models in mind.

### **CONCLUSION AND ORDER**

Having carefully considered Petition 574, and evaluations of it by the Division and Board staff, the Board hereby DENIES the Petition.