

State of California
Department of Industrial Relations
Division of Occupational Safety and Health



Memorandum

Date: March 3, 2021

To: Christina Shupe, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

From: Eric Berg, Deputy Chief of Health *Eric Berg*
Division of Occupational Safety and Health

Subject: Evaluation of Petition No. 584 to amend Title 8 Section §5189.1, Process Safety Management for Petroleum Refineries.

On June 2, 2020 the Division of Occupational Safety and Health (Cal/OSHA) received a petition from Oyango Snell (petitioner), Senior Vice President and General Counsel for the Western Petroleum States Association (WSPA). The petition seeks to amend Title 8, Section §5189.1 *Process Safety Management for Petroleum Refineries*. WSPA is a trade association that represents companies that explore for, produce, refine, transport, and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states.

Labor Code Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health to the Occupational Safety and Health Standards Board (Standards Board). Labor Code section 147 requires the Standards Board to refer to Cal/OSHA for evaluation of any proposed occupational safety and health standards.

This petition follows a Cal/OSHA "Request for New or Change in Existing, Safety Order" (Cal/OSHA Form-9) to amend section 5189.1 (see Attachment 1) from April 2020.

Section 5189.1 has been tremendously important and effective in protecting the health and safety of workers, and have been effectively enforced for several years.

Cal/OSHA disagrees with the specific requests set forth in the Petition. However, Cal/OSHA agrees that possible changes (as identified in the Cal/OSHA Form 9) should be considered by an Advisory Committee process in which the petitioner would have an opportunity to participate.

Cal/OSHA 9

State of California
Department of Industrial Relations

1. Date: April 9, 2020
2. Eng/IH: Clyde Trombetta,
Statewide Manager, PSM

Division of Occupational Safety and Health **3. Region/District/Unit:** PSM UNIT

REQUEST FOR NEW, OR CHANGE IN EXISTING, SAFETY ORDER

4. Industry:

Petroleum Industry

5. Proposal for New Safety Order or Change in Existing Safety Order:

Change in existing safety order; see Part 2.

PART 1 NEW SAFETY ORDER

6. Hazard Description (include process, condition, machinery, equipment or product involved):

N/A – see Part 2.

7. Recommended New Safety Order Language (Use any guidelines, standards or codes of work practices):

N/A – see Part 2.

PART 2 CHANGE IN EXISTING SAFETY ORDER

8. Reason(s) for request (employer's appeal granted, advice of Legal Unit Staff, Safety Order needs clarification or other):

Safety Order Needs Clarification

A stakeholder has expressed concern that the current definition of "employee representative" imposes the requirements of being "on-site" and "qualified for the task" only on an employee representative in a non-union workplace. Although the Division of

Occupational Safety and Health ("Cal/OSHA") disagrees with this interpretation, which is contrary to both intent and Cal/OSHA enforcement, the sentence structure and punctuation in the current text may have led to the concern. Cal/OSHA proposes clarifying the regulation to make clear that these requirements apply to employee representatives in both union and non-union workplaces. Cal/OSHA also proposes clarifying that the employee representative is responsible for selecting the employees who participate in the PSM program and other PSM-related activities.

9. Section/Subsection reference to existing Title 8 Safety Order:

Title 8 section 5189.1(c) Definitions: Employee Representative
 Title 8 section 5189.1(q)(2) Employee Participation

10. Suggested change(s) to existing Safety Order (exact new wording):

The Cal/OSHA Process Safety Management Unit proposes the following changes:

New language with exact wording changes indicated in black-lining format:

Title 8 section 5189.1(c), Definitions:

Employee Representative. ~~A union representative, where a union exists, or an employee-designated representative~~ An individual, who is on-site and qualified for the task, designated by an authorized collective bargaining agent or by the employees, in the absence of an authorized collective bargaining agent. ~~a union that is on-site and qualified for the task. The term is to be construed broadly, and may include the local union, the international union, or a refinery or contract employee designated by these parties, such as the safety and health committee representative at the site.~~

Title 8 section 5189.1(q)(2), Employee Participation:

~~"Authorized collective bargaining agents may~~ The employee representative(s) select(s) (A) employee(s) to participate in overall PSM program development and implementation planning and (B) employee(s) to participate in PSM teams and other activities, pursuant to this section.

New exact wording without black-lining indicating the changes:

Title 8 section 5189.1(c) Definitions: Employee Representative

An individual, who is on-site and qualified for the task, designated by an authorized collective bargaining agent or by the employees in the absence of an authorized collective bargaining agent.

Title 8 section 5189.1(q)(2), Employee Participation:

The employee representative(s) select(s) (A) employee(s) to participate in overall PSM program development and implementation planning and (B) employee(s) to participate in PSM teams and other activities, pursuant to this section.

11. **Signature of Requestor:** 

12. **Signature of Supervisor:** 

Cal/OSHA Form 9

State of California

Department of Industrial Relations

Division of Occupational Safety and Health

1. Date: April 9,2020

2. Eng/IH: Clyde Trombettas, Statewide Manager,PSM

3. Region/District/Unit: PSM UNIT

REQUEST FOR NEW, OR CHANGE IN EXISTING, SAFETY ORDER

4. Industry:

Petroleum Industry

5. Proposal for New Safety Order or Change in Existing Safety Order:

Change in existing safety order; see Part 2.

PART 1 NEW SAFETY ORDER

6. Hazard Description (include process, condition, machinery, equipment or product involved):

N/A – see Part 2.

7. Recommended New Safety Order Language (Use any guidelines, standards or codes of work practices):

N/A – See Part 2.

PART 2 CHANGE IN EXISTING SAFETY ORDER

8. Reason(s) for request (employer's appeal granted, advice of Legal Unit Staff, Safety Order needs clarification or other):

Safety Order Needs Clarification

There has been concern expressed by some in the regulated industry that the definition of "Major Change" in the existing Safety Order could potentially be read more broadly than was intended. While the Division of Occupational Safety and Health

("Cal/OSHA") does not necessarily agree with such characterization or concern, it has concluded that the definition would benefit from minor changes and clarifying language.

In addition, the proposed changes will largely align the definition of "Major Change" in the Cal/OSHA Process Safety Management ("PSM") regulations with the definition of the same term in the California Office of Emergency Services ("Cal OES") Accidental Release Prevention regulations (referred to as "Program 4" or the "CalARP Program"). As the PSM and CalARP regulations have a number of parallel provisions, more closely aligning the definition of "Major Change" may provide benefits to enforcement efforts, as well as to the public and regulated community.

The clarifications proposed below will ensure consistent future enforcement and promote safety at refineries by focusing critical resources on the major changes and resulting potential process safety hazards that Cal/OSHA intended the PSM regulations to address.

9. Section/Subsection reference to existing Title 8 Safety Order:

Title 8 section 5189.1(c) Definitions: Major Change

10. Suggested change(s) to existing Safety Order (exact new wording):

The Cal/OSHA Process Safety Management Unit proposes the following changes:

Title 8 section 5189.1(c) Definitions:

New language with exact wording changes indicated in black-lining format:

~~"Major Change" means: (1) Any of the following: I • introduction of a new process, or (2) introduction of new process equipment, or new highly hazardous material that results in any operational change outside of established safe operating limits; or (3) • Any operational change outside of established safe operating limits; or, • Any alteration in a process, process equipment, or process chemistry that introduces a new process safety hazard or worsens an existing process safety hazard.~~

New exact wording without black-lining indicating the changes:

"Major change" means: (1) introduction of a new process, or (2) introduction of new process equipment or new highly hazardous material that results in any operational change outside of established safe operating limits; or (3) any alteration in a process, process equipment, or process chemistry that introduces a new process safety hazard or increases an existing process safety hazard.

11. Signature of Requestor: 

12. Signature of Supervisor: 