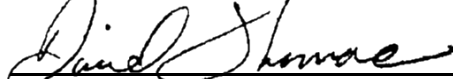


STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of a Petition by:)
)
) PETITION FILE NO. 586
)
Rex and Judy Barton)
Owners)
LunarGlo LLC)
22385 Via Pompeii)
Elkhart, IN 46516)
)
_____) Applicant.)

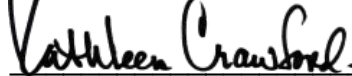
The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

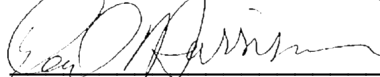


DAVID THOMAS, Chairman

BARBARA BURGEL, Member



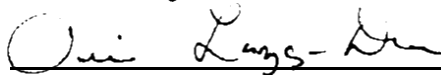
KATHLEEN CRAWFORD, Member



DAVE HARRISON, Member



NOLA KENNEDY, Member



CHRIS LASZCZ-DAVIS, Member



LAURA STOCK, Member

By: 
Christina Shupe, Executive Officer

DATE: June 17, 2021
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
www.dir.ca.gov/oshsb



**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 586)**

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on August 19, 2020, from Rex and Judy Barton, representing LunarGlo LLC (Petitioners). The Petitioners request the Board to amend title 8, California Code of Regulations, section 3449 concerning the required illumination levels for portable restrooms used by agricultural employees.

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. This timeline has been extended 120 days by Governor Gavin Newsom's Executive Orders N-63-20 and N-71-20, in recognition of the State of Emergency caused by COVID-19.

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; this timeline, running concurrently with the Board's timeline as described above, has also been extended 120 days pursuant to Executive Orders N-63-20 and N-71-20.

SUMMARY

The Petitioners request the Board to take the following actions:

- Amend the required illumination levels with title 8, section 3449, to 2.9 foot candles (ft-c) measured at 34 inches from the floor or 5 ft-c measured at 53 inches from the floor.
- Add, within title 8, section 3449, that the hours of operation for solar light be defined as "consistently lit from dusk to dawn."

DIVISION'S EVALUATION

The Division's evaluation report dated March 23, 2021, states the Division does not support the Petitioners' requested changes and recommended the Petition be denied. In its recommendation, the Division stated product performance is not a valid basis to amend title 8 regulations and the existing regulations do not prevent the use of the Petitioners' product. Finally, the Division stated it was of the opinion that the proposed requirement for continuous lighting is not necessary and creates an unnecessary burden upon the employer.

BOARD STAFF'S EVALUATION

Board staff prepared an evaluation dated March 29, 2021, which concurs with the Division that the Petition lacks merit and should be denied by the Board.

The Board staff evaluation restated the fact that the illumination levels required by title 8, section 3449(a)(1) can be achieved by either hands-free or area lighting. Board staff relied upon American National Standard, Illuminating Engineering Society, Nomenclature and Definitions for Illuminating Engineering (ANSI/IES RP-16-17) which specifically defines the work plane as a horizontal plane 0.76 meters or 30 inches above the floor. The Board staff also relied upon the ANSI-IES RP7-1991, Industrial Lighting, to determine under what task circumstances what optimum lighting levels should be provided; in this case agricultural operations are best classified high activity and high hazard work requiring visual detection.

Board staff noted that the Petitioners are seeking to lower the standard to 2.9 ft-c at 34 inches above the floor or 5 ft-c at 53 inches above the floor, without any justification other than to say that the LunarGlo product, while not achieving the required levels, appeared to be satisfactory in the past. Board staff is of the opinion that a reduction in the required illumination level equates to an increase in risk to agricultural workers performing their tasks, which is unacceptable. Board staff notes that while a single LunarGlo lighting device may be ineffective at producing the required illumination level, the standard does not prohibit supplementation of the light by other means, such as hands-free portable lights or installing multiple LunarGlo fixtures.

It is further noted that the current regulation is performance based and does not require the use of solar lighting devices; the determination as to the best lighting device or combination of devices to use is left to the discretion of the employer.

Finally, the Board staff rejected the Petitioners' request to add language specifying hours by which solar lights must operate as being "consistently lit from dusk to dawn." This terminology is problematic as weather forecasts typically identify the times for sunset and sunrise. California employers are required to provide illumination inside the restroom from sunset to sunrise when the restroom is occupied.

DISCUSSION

Both the Division and Board staff agree that amendment of title 8, section 3449 is not justified merely because the Petitioners' lighting devices are not able to produce the illumination called for by the existing standard. Despite the apparent inability of the LunarGlo product to produce the required illumination levels, there is nothing in section 3449 that would prevent an employer from purchasing the LunarGlo product and supplementing it with other acceptable forms of illumination or purchasing multiple LunarGlo illumination devices. To lower the required illumination levels to better conform to the performance characteristics of the Petitioners' product at the expense of employee safety is unacceptable.

The Board concurs with the Division and Board staff finding that the Petitioners' proposed continuous lighting language is unnecessary and would create a burden upon the employer, when the standard specifically requires illumination be provided from sunset to sunrise when the portable restroom is occupied.

The Board also notes, as both the Division and Board staff acknowledge in their reports, that the current standard does not mandate the use of a specific type of lighting technology. The safety order is a performance standard, meeting employers' need for flexibility and adaptation to local conditions. The Petitioners have provided no compelling safety-related reason for further amendment of the current standard, and the Board declines to create a prescriptive requirement that serves only to place one type of lighting device in competitive advantage over others for reasons unrelated to worker safety and health.

CONCLUSION AND ORDER

Having considered Petition 586 and the evaluations by the Division and Board staff, for the reasons outlined in the preceding DISCUSSION, the Board hereby DENIES the Petition.