OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address: www.dir.ca.gov/oshsb

PROPOSED PETITION DECISION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (PETITION FILE NO. 541)

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on April 29, 2014, from Steven R. Lynn, General Manager of Lynn Safety (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, Subchapter 7, General Industry Safety Orders governing the use of boatswain's chairs and controlled descent apparatus (CDA) for window cleaning.

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

SUMMARY

The Petitioner states that the proposed changes will save the contractors time, money, potential injuries causing workers compensation expenses, hundreds of dollars in missed time and claims costs from missed work and much more. Additionally, he states that the building owners will see a reduced cost in their window cleaning and be able to save significant money perhaps enabling them to provide additional safety equipment, cleanings or services to their buildings.

He proposes that the restriction for boatswain's chairs and CDA equipment to be used only when other safe and practicable means are not available be removed as follows:

> §3286. Manual Boatswain's Chairs and Controlled Descent Apparatus Equipment (CDA).
> (a) Use and Application.
> (1)(A) ~~Boatswain's chairs and CDAs shall be used for window cleaning operations only where the windows cannot be cleaned safely and practicably by other means.~~
> ~~(B)~~ When boatswain's chairs or CDAs are used for window cleaning operations, the following conditions shall be complied with:
> *****

Additionally, he proposes to require that the Operating Procedures Outline Sheet (OPOS) be signed by the Scaffold Inspection and Testing (SIT) agency's Engineer of Record (EOR) as follows:

> 3282(p)(1)(C)(2). An OPOS shall be developed by a person(s) with knowledge in the design, installation and use of building maintenance equipment (i.e. possessing Scaffold Inspection Testing certification as specified in Section 3296) <u>and signed by the S.I.T.'s E.O.R</u>. The OPOS shall be written in manner that can be readily understood by employers. An OPOS that requires structural modifications to the building or existing building maintenance equipment shall have such modifications designed by a mechanical, structural or civil engineer currently registered in the State of California with experience in the design and installation of such equipment.

DIVISION'S EVALUATION

The Division's evaluation report dated June 23, 2014, states that the Division has a duty to assure that buildings have the required building safety equipment and Title 8, Section 3282(a) requires "Windows shall not to be cleaned from the outside or inside unless means are provided to enable such work to be done in a safe manner as provided in these orders."

The Petitioner recommends deleting subsection 3286(a)(1)(A) "Boatswain's chairs and CDAs shall be used for window cleaning operations only where the windows cannot be cleaned safely and practicable by other means." This deletion would eliminate the consideration of safer window cleaning and exterior building maintenance methods. The provision of other building safety equipment required for façade maintenance, such as window replacement, painting, caulking, metal polishing, water blasting, light maintenance and other work, cannot be performed with CDA repelling systems. The initial cost for some CDA systems may be less, but it leaves a building owner unable to perform other maintenance without costly installations of additional suspension equipment and approved anchorages. In some cases, it may not be safe or practical to rig platforms from the roof or ground due to obstructions or architectural configurations. There are many building features that make CDA equipment unsafe to use, such as non-structural parapets, extended overhanging ledges, fragile curtain walls, restricted landing areas, sloped parapets, glazed canopies and insufficient structure for independent anchorages. The decision to use the CDA system for window cleaning should only be made with full consideration of other façade access systems. The installation of incomplete or inappropriate CDA systems has required the building owners to retrofit building safety equipment involving extensive building structural reinforcement and roof modifications.

The Petitioner's proposal for the SIT agency's EOR to sign or approve the OPOS has been explored by the Division. The term "Engineer of Record" is normally the professional engineer that evaluated and approved the building's structural design. If modifications are made to a building's window cleaning safety equipment the changes are required to be approved by an engineer experienced in such design. The SIT agencies are either California Professional Engineers experienced in the design of window cleaning and building maintenance equipment or SIT agencies that contract for such engineering services. Many of the professional engineers are

reluctant to approve equipment, structural portions of the building or work procedures that they have not evaluated or have been included in their scope of work.

Therefore, the Division recommends that the Board not approve the petition, because it would eliminate the consideration of safer window cleaning systems for California workers. Existing regulations require that modification of or new building safety equipment be approved by an engineer, and it is not necessary to add additional confusing language to the safety orders.

STAFF'S EVALUATION

Board staff concurs with the Division evaluation. Although boatswain's chairs and CDAs are not prohibited in California, safer methods exist for cleaning windows and in many cases should be utilized before using the chair or CDA.

The principle of selecting more protective methods for ensuring employee safety is not unique to window cleaning. Title 8's hierarchy of controls standard (Section 5141) requires that employers first seek to address a hazard using feasible engineering controls, then administrative controls, and finally personal protective equipment (PPE). Although PPE is very useful in protecting employees from harmful exposures, other protective options must be implemented first to provide employees with the most effective level of safety.

Board staff is not convinced by the Petitioner's claim that the proposed changes will save contractors time and money, while reducing their injury rates. For example, although ear plugs are an inexpensive and effective option for dealing with the hazards of excessive noise, best practices and Title 8 regulations dictate that engineering and administrative controls must be investigated as the first options for control.

Furthermore, for the reasons cited by the Division, Board staff does not feel that the Petitioner's request to have the SIT's EOR sign the OPOS will increase the level of safety over what is currently required by Title 8 regulations.

Based on the foregoing discussion, Board staff concurs with the Division and recommends that the Petition be denied.

CONCLUSION AND ORDER

The Board has considered the Petition and the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the petition is hereby DENIED.