

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

BOARD STAFF'S REVIEW OF THE PETITION

**Petition No. 541
Steven R. Lynn**



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Title: Senior Safety Engineer
Date: July 2, 2014**

Introduction

On April 29, 2014, the Occupational Safety and Health Standards Board (Board) received a petition from Steven R. Lynn, General Manager of Lynn Safety (Petitioner). The Petitioner requested that the Board amend the 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 to render its decision no later than six months following their receipt. In accordance with Board policy, the purpose of this evaluation is to provide the Board with relevant information upon which to base a reasonable decision.

History

Sections 3282 and 3286, which are proposed for amendment by the Petitioner, were updated several times in the 1980s and 1990s. The last major revision to both standards was in 1998. In April, 2000, Section 3286(a)(4) was added to require fall protection for employees using boatswain's chairs or CDA equipment. The requirement that boatswain's chairs be used only where other means cannot be safely or practicably used has been part of the regulation since at least 1984.

Reason for the Petition

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 (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) and signed by the S.I.T.'s E.O.R. 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.

National Consensus Standards

ANSI/ASME A120.1 Safety Requirements for Powered Platforms and Traveling Ladders and Gantries for Building Maintenance establishes safety requirements for buildings where window cleaning and related services are accomplished by means of suspended equipment at heights over 35 feet. Although the standard mentions boatswain's chairs and CDA equipment, it does not discuss their safety relative to other types of window cleaning equipment.

Federal OSHA Standards

Federal OSHA covers building maintenance, including window cleaning, in 29 CFR 1910.66, but does not have regulations directing an employer to use one type of equipment over another.

Division of Occupational Safety and Health (Division) Report

The Division submitted an evaluation for Petition No. 541 dated June 23, 2014, which recommended denying the Petitioners' request because "it would eliminate the consideration of safer window cleaning systems for California workers." The Division also found the Petitioner's request to require the EOR's signature on OPOS to be potentially confusing to employers and unnecessary.

Board Staff Evaluation

In its evaluation, the Division states that Labor Code sections 7325-7332 require the Division to ensure that buildings have the necessary safety equipment to perform building

maintenance. Requiring boatswain's chairs and CDA equipment to be used only when other methods are impracticable assists the Division in complying with the Labor Code, because it ensures that safety equipment is available to perform the myriad of other tasks related to building maintenance, including window cleaning. The Division claims that many maintenance activities, such as "window replacement, painting, caulking, metal polishing, water blasting, [and] light maintenance" cannot be performed using a CDA. It also lists many building features that make CDA equipment unsafe to use.

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, 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.

Recommendation

Based on the foregoing discussion, Board staff concurs with the Division, and for the same reasons given in their June 23, 2014 evaluation report, recommends that the Petition be denied.