

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

In the Matter of:)
January 16, 2020 OSH)
Standards Board Meeting)

STATE OF CALIFORNIA

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

COUNTY ADMINISTRATION CENTER

ROOM 358

1600 PACIFIC HIGHWAY

SAN DIEGO, CALIFORNIA

THURSDAY, JANUARY 16, 2020

APPEARANCES

BOARD MEMBERS

David Thomas, Chair

Barbara Burgel, Occupational Health Representative

Dave Harrison, Labor Representative

Nola Kennedy, Public Member

Chris Laszcz-Davis, Management Representative

Laura Stock, Occupational Safety Representative

BOARD STAFF

Christina Shupe, Executive Officer

Michael Manieri, Principal Safety Engineer

Peter Healy, Legal Counsel

Sarah Money, Executive Assistant

Eric Berg, Deputy Chief of Health

PUBLIC COMMENT

AUGUSTINE ROMERO, STAFF ATTORNEY AT WORK SAFE

DAN LEACOX

1 proceedings are also available on the table next to the
2 attendance roster.

3 As reflected on the agenda, today's meeting consists of
4 two parts. First, we'll hold the public meeting to receive
5 public comments and proposals on occupational safety and health
6 matters. Anyone who would like to address any occupational
7 safety and health issues should come up to the microphone during
8 the public meeting when I invite public comment. After the
9 public meeting, we will conduct the second part of our meeting,
10 which is a business meeting to act on those items listed on the
11 business meeting agenda. The Board does not accept public
12 comment during its business meeting unless a Board member
13 specifically requests public input.

14 We will now proceed with the public meeting. Anyone who
15 wishes to address the Board regarding matters pertaining to
16 occupational safety and health is invited to comment except,
17 however, the Board does not entertain comments regarding
18 variance decisions. The Board's variance hearings are
19 administrative hearings where procedural due process rights are
20 carefully preserved. Therefore, we will not grant requests to
21 address the Board on variance matters. At this time, is there
22 anyone who would like to comment on any matters concerning
23 occupational safety and health? If you would like to, please
24 come up to the microphone and state your name and affiliation
25 for the record.

1 Good morning.

2 AUGUSTINE EICHWALD-ROMERO: Good morning, Chairman;
3 members of the Board; DAR staff; CAL-OSHA staff and Board staff.
4 My name is Augustine Eichwald-Romero. I'm the staff attorney at
5 Worksafe. On behalf of Worksafe, I would like to extend our
6 appreciation to the Division for providing us with the
7 opportunity to provide comments during the previous meetings.
8 This is regarding the proposed safety order for adoption which
9 is the Employee Access to Injury and Illness Prevention
10 Programs. We thank you for the comments at the previous
11 meetings, for taking our comments at previous meetings, and we
12 are grateful to Division staff for their responses to our
13 comments and for their thorough and expeditious effort in
14 drafting this standard.

15 We believe that workers' rights access to IIP's is vital
16 to the successful implementation of any IIP. Access to
17 employers' IIP is vital to ensuring workers know how to
18 communicate hazards to their employers and understand, or be
19 aware of, the various controls an employer would use and lay out
20 their IIPP. We want to let everyone know that it is important
21 because it allows all workers to have a meaningful role in
22 creating a safe workplace. So we strongly urge adoption of
23 Employee Access to IIPP as a standard. Please note that in
24 addition to Worksafe, the California Rural Assistance Foundation

1 and the California Nurses Association are also in support of
2 these comments. Thank you.

3 CHAIRMAN: Thank you.

4 DAN LEACOX: Good morning Board and staff. Dan Leacox,
5 petitioner for this rulemaking being voted on today. So, I
6 would agree with the Worksafe comments. We are saying the same
7 thing. Special thanks to Mr. Kernazitskas who was the most
8 hands-on about it, but also thank you to the staff. This is one
9 of those rulemakings where a lot of things, in my opinion, it
10 could have gone in a lot of very problematic directions, but the
11 staff managed to thread that needle nice and quickly. After
12 reading the responses and comments feel like it was well thought
13 out and well-intended as to the result, so I also would urge
14 that you pass the rule. Thank you.

15 DAVID THOMAS: Any other comments? Hearing none, thank
16 you for your testimony. The Board appreciates the public
17 testimony. This meeting is adjourned, and the record is closed.

18 We will now proceed with the business meeting. The
19 purpose of the business meeting is to allow the Board to vote on
20 matters before it and to receive briefings from staff regarding
21 issues listed on the business meeting agenda. The Board does
22 not accept public comment during its business meeting unless a
23 member of the Board specifically requests public input.

24 Proposed safety orders for adoption. Title 8, General
25 Industry Safety Orders, Section 3203. Public Employee Access to

1 Injury and Illness -- Employee Access to Injury and Illness
2 Prevent Program. Mr. Manieri, will you please brief the Board?

3 MR. MANIERI: Yes. Chairman Thomas and members of the
4 Board, the Board and the public will recall the adoption of the
5 proposed petition decision regarding petition file 562 on
6 June 15th, 2017. The petition, submitted by Mr. Dan Leacox,
7 pertains to timely employee access to the employer's IIPP. The
8 petition decision directed Board staff convene an advisory
9 committee for the purpose of considering the development of a
10 rulemaking proposal to address the issue described in the
11 petition.

12 Factually, Section 3203, the Injury and Illness
13 Prevention Program standard does not explicitly state that
14 employees are entitled to receive, review, or copy their
15 employer's IIPP. The current proposal is intended to ensure
16 employee access to the IIPP by specifying who can request such
17 access, what information is to be provided, and the timeframe
18 for the request to be fulfilled. The amendments are necessary
19 to clarify to the employer that the employees have a right of
20 access to the IIPP, and what that access actually entails. The
21 proposal contains several definitions. Among them, one that
22 defines the term access and what is a designated representative.
23 There is specific language which explains the employer's duty to
24 provide timely access and communication between the employer and
25 the affected employees regarding their access rights.

1 The proposed rulemaking differs from the federal
2 regulations in that there are no comparable federal IIPP
3 regulations to begin with. Consequently, federal OSHA
4 determined, as you know, the proposal is commensurate with their
5 standards. Board staff believes that the anticipated benefits
6 of the proposal, which was developed with the assistance of an
7 advisory committee, will ensure that, number one, all employees
8 have sufficient access to the employer's IIPP. Number two, the
9 employee's understanding of how to communicate those hazards to
10 their employer under the IIPP is improved, and number three,
11 will aid in the understanding of the injury and illness
12 prevention program, and the role of the employee/employer
13 relationship and partnership in creating and maintaining a safe
14 and healthful workplace, which is the underlying intent and
15 spirit of the IIPP law which became effective many years ago.
16 The proposed access standards will clarify the employer's
17 responsibility and the process under Title 8 IIPP requirements
18 to communicate important workplace safety program information to
19 their employees consistent with petition 562 and the spirit
20 again of Section 3203. At this time, the Board staff recommends
21 that the proposal be adopted by the Board. Thank you.

22 DAVID THOMAS: Thank you Mr. Manieri. Do I have a
23 motion to adopt the revisions as proposed?

24 LAURA STOCK: So moved

25 CHRIS LASZCZ-DAVIS: Second.

1 DAVID THOMAS: I have a motion and second. Is there any
2 questions by the Board before we go to vote? Hearing none,
3 Ms. Money, would you please call roll?

4 SARAH MONEY: Ms. Burgel?

5 BARBARA BURGEL: Aye.

6 SARAH MONEY: Ms. Kennedy?

7 NOLA KENNEDY: Aye.

8 SARAH MONEY: Ms. Laszcz-Davis?

9 CHRIS LASZCZ-DAVIS: Aye.

10 SARAH MONEY: Ms. Stock?

11 LAURA STOCK: Aye.

12 SARAH MONEY: Chairman Thomas?

13 CHAIRMAN THOMAS: Aye. And the motion passes.

14 Proposed petition decisions for adoption. Richard
15 Manuel, Safety Director of Lancaster Burns Construction, Inc.
16 Petition file number 578. Petitioner requests amendment to the
17 Construction Safety Orders, Section 1710(1) to clarify to
18 employers when the use of barrier planking is required as a
19 means for preventing workers from falling through floor openings
20 during multi story high rise steel erection through the use of
21 an exception to subsection (1). Ms. Shupe, will you please
22 brief the Board?

23 CHRISTINA SHUPE: Thank you, Chair Thomas. The petition
24 has been thoroughly evaluated by the both Division and the Board
25 staff. The Division recommends denying the petition, including

1 the petitioner's proposal contradicts both California labor code
2 and federal OSHA regulations, and petitioner's proposal to add
3 clarity would instead unnecessarily be duplicative of existing
4 requirements.

5 Board staff, after a thorough examination of relevant
6 federal, state, and national consensus standards, also
7 recommends the petition be denied. Board staff participated
8 with the Division in an on-site visit to further explore
9 petitioner's proposal and takes the position that petitioner's
10 description of his experience may imply that at least some of
11 the regulated public is unaware of the major reasons for
12 providing temporary flooring within 30 feet, or two stories
13 below, steel erection work and concludes that an employer
14 seeking a potentially safer way of performing the task may run
15 into conflict with the unstated reasons for requirements of the
16 temporary flooring. However, both Board and Division staff are
17 in concurrence that the provisions of Labor Code Section 7253,
18 which specifically requires planking or nets, and Labor Code
19 142.3, which requires the Board adopt regulations at least as
20 effective as federal regulations, limit the Board's authority to
21 provide the regulatory exceptions proposed by the petition. For
22 these reasons, the proposed decision before you today proposes
23 denying the petition. The petition is now ready for your
24 decision.

1 DAVID THOMAS: Thank you Ms. Shupe. Are there any
2 questions for Ms. Shupe? Hearing none, do I have a motion to
3 deny the petition?

4 CHRIS LASZCZ-DAVIS: I so move.

5 LAURA STOCK: Second.

6 DAVID THOMAS: I have a motion and second. Is there
7 anything on the question? Hearing none, Ms. Money will you
8 please call the roll?

9 SARAH MONEY: Ms. Burgel?

10 BARBARA BURGEL: Aye.

11 SARAH MONEY: Ms. Kennedy?

12 NOLA KENNEDY: Aye.

13 SARAH MONEY: Ms. Laszcz-Davis?

14 CHRIS LASZCZ-DAVIS: Aye.

15 SARAH MONEY: Ms. Stock?

16 LAURA STOCK: Aye.

17 SARAH MONEY: Chairman Thomas?

18 DAVID THOMAS: Aye. Motion passes.

19 Proposed variance decisions for adoption. The proposed
20 variance decisions for adoption are listed on the consent
21 calendar. Mr. Healy, will you please brief the Board?

22 PETER HEALY: Yes. Thank you, Chair Thomas and members.
23 On your consent calendar today are proposed variance decisions,
24 items A through L. Regarding proposed decisions items A through
25 L, I am aware of no unresolved procedural matters and believe

1 items A through L are ready for your consideration on the
2 question of adoption.

3 DAVID THOMAS: Thank you, Mr. Healy. Are there any
4 questions for Mr. Healy?

5 BARBARA BURGEL: I have a question. We got this in our
6 packet. Is this an additional vote?

7 PETER HEALY: It contained a clerical correction. The
8 substance, it did not change the substance of the decision.
9 We're always scrupulous about the formalities. It's that even
10 with the clerical correction, that was formally served, and you
11 were provided that as the actual one that you will be voting on.

12 BARBARA BURGEL: Okay. Okay. So this is actually in
13 addition to the Otis?

14 PETER HEALY: It's, in substance, the one covering the
15 same case numbers, and it comes with a page two clerical
16 correction. The substance of the decision otherwise is
17 identical.

18 BARBARA BURGEL: Thank you.

19 DAVID THOMAS: Any other questions for Mr. Healy? If
20 not, do I have a motion to adopt the consent calendar A through
21 L?

22 LAURA STOCK: So moved.

23 CHRIS LASZCZ-DAVIS: Second.

1 DAVID THOMAS: I have a motion and second. Is there
2 anything on the question? Hearing none, Ms. Money will you
3 please call the roll?

4 SARAH MONEY: Ms. Burgel?

5 BARBARA BURGEL: Aye.

6 SARAH MONEY: Ms. Kennedy?

7 NOLA KENNEDY: Aye.

8 SARAH MONEY: Ms. Laszcz-Davis?

9 CHRIS LASZCZ-DAVIS: Aye.

10 SARAH MONEY: Ms. Stock?

11 LAURA STOCK: Aye.

12 SARAH MONEY: Chairman Thomas?

13 DAVID THOMAS: Aye. And the motion passes.

14 Legislative update. Mr. Healy will you please brief the
15 Board?

16 PETER HEALY: Is that me? Am I there?

17 SARAH MONEY: To your right.

18 PETER HEALY: To my right? Okay. We were sharing the
19 same switch. Okay. The legislature is just getting back up to
20 speed after coming into session, only earlier this month, and
21 we're still assessing what's developing and what's part of the
22 session. I've taken a look. A preliminary look. Nothing stood
23 out thus far, but we'll have time to more deeply assess what's
24 going on and have that reported to you next month.

1 DAVID THOMAS: Thank you. Executive Officer's Report.
2 Ms. Shupe, will you please brief the Board?

3 CHRISTINA SHUPE: Thank you, Chair Thomas. Last year,
4 the Department of Industrial Relations began a long-term
5 accessibility update to their website, and the documents housed
6 on it, with the goal of bringing us into compliance with
7 Government Codes 7405 and 11135. As part of this , a number of
8 older rulemaking documents are being archived and will no longer
9 be posted on the OSHSB website. We're carefully evaluating
10 documents prior to archiving them, and none of the Board's
11 proposed, recently adopted, or otherwise active documents will
12 be affected. Documents that are archived are still available to
13 the public through the Board's public records officer, and a
14 statement to that effect has been added to our webpages.

15 I'm also excited the share with the Board a new addition
16 to our staff. Jacquelyn Lowe has joined us as a retired
17 annuitant. She brings more than 35 years of administrative
18 legal support and analytical experience to our team. Most
19 recently, Jackie has spent 18 years with the Department of
20 Consumer Affairs assigned to the Board for professional
21 engineers, land surveyors and geologists. She'll be assisting
22 us on various projects over the next year as we update internal
23 procedures and streamline processes, an area in which she
24 excels.

1 Looking forward to next month, the Board will hold
2 public hearings on a regulatory proposal for Commercial Diving
3 Operations, and a Horcher rulemaking for Cranes and Derricks in
4 Construction: Operator Qualifications -- I apologize. That's a
5 misstatement. The Board will be holding public hearings on
6 Commercial Diving Operations and a proposed Horcher for
7 technical corrections to section 5189. The Board will also
8 consider for adoption a proposal for Outdoor Agricultural
9 Operations During Hours of Darkness, and for adoption a proposal
10 for the Horcher rulemaking for Cranes and Derricks in
11 Construction: Operator Qualification.

12 DAVID THOMAS: Thank you Ms. Shupe. Future agenda
13 items. Do the Board members have any questions regarding future
14 agenda times for this year?

15 All right. At this time, pursuant to Government Code
16 Section 11125.4(a)(1), the Board shall now enter into a closed
17 session to confer with counsel regarding pending litigation
18 matters listed on today's agenda. We ask that members of the
19 public and the staff please clear the room at this
20 time -- sorry -- and after the session is concluded, we'll
21 reconvene and I'll call the meeting back to order. So we'll be
22 back in a bit.

23 (Off the record at 10:22 a.m.)

24 (On the record at 11:37 a.m.)

1 DAVE THOMAS: We're back in session. We had a closed
2 session. We took no action. The next Standards Board regular
3 meeting and hearing is scheduled for February 20, 2020, in
4 Rancho Cordova. There being no further business to attend to,
5 this business meeting is adjourned. Thank you for coming.