

# OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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## SUMMARY PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING

February 21, 2008  
Oakland, California

### I. PUBLIC MEETING

#### A. CALL TO ORDER AND INTRODUCTIONS

Chair MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., February 21, 2008, in the Auditorium of the Harris State Building in Oakland, California.

#### ATTENDANCE

##### Board Members Present

Chairman John MacLeod  
Jonathan Frisch, Ph.D.  
Bill Jackson  
Jack Kastorff  
Willie Washington

##### Board Members Absent

Jose Moreno  
Steve Rank

##### Board Staff

Michael Manieri, Principal Safety Engineer  
David Beales, Legal Counsel  
Tom Mitchell, Senior Safety Engineer  
Bernie Osburn, Staff Services Analyst  
Chris Witte, Executive Secretary

##### Division of Occupational Safety and Health

Len Welsh, Chief  
Al Tafazoli, Principal Safety Engineer  
Bob Barish, Senior Industrial Hygienist

##### Others present

Larry Pena, Southern California Edison  
Greg Peters, Huddleston Crane Service  
Edward Calderon, Shea Homes, LLC  
Thomas Patzlaff, City of Los Angeles Dept. of Water & Power  
Tina Kulinovich, Federal OSHA  
Dan Leacox, Greenberg Traurig  
Judy Freyman, ORC Worldwide  
Don Bradway, Monarch-Kneis Insurance Service  
  
Elizabeth Treanor, Phylmar Regulatory Round Table  
Jose Mora, Petersen Dean, Inc.

Wendy Holt, AMPTP  
Danielle Lucido, WorkSafe!  
Clement Hsieh, Cal OSHA  
Christine Hirai, Federal OSHA  
Bo Bradley, California AGC  
Renee Pinel, WPHA  
Lynne Formigli, California Teachers Association  
Clyde Trombetta, Cal OSHA  
Leslie Matsuoka, OSHSB

Bob Hornauer, NCCCO  
Bruce Wick, Cal PASC  
Alvan Mangalindan, Crane Owners Association  
Julianne Broyles, Lumber Association  
of California and Nevada

Michael Battaini, Sheedy Crane & Rigging  
Perry Churchill, Bragg Crane & Rigging  
Alvaro Gomez, Rooking

Wendy Holt, AMPTP

B. OPENING COMMENTS

Chair MacLeod indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Chair MacLeod then opened the floor for public comment.

C. ADJOURNMENT

With no public comments, Chair MacLeod adjourned the Public Meeting at 10:05 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEMS

Chair MacLeod called the Public Hearing of the Occupational Safety and Health Standards Board (Board) to order at 10:05 a.m., February 21, 2008, in the Auditorium of the Harris State Building in Oakland, California.

Chair MacLeod opened the Public Hearing and introduced the first item on the agenda.

1. TITLE 8:        **CONSTRUCTION SAFETY ORDERS**  
                         Chapter 4, Subchapter 4, Article 3  
                         Section 1524  
                         **Drinking Water in Construction**

Mr. Manieri summarized the history and purpose of the proposal and indicated that it is now ready for public comment and the Board's consideration.

Larry Pena of Southern California Edison Company expressed appreciation for the work done to craft the proposed language. He expressed concern, however, regarding the Exception language that cups provided for use with drinking fountains or faucets be "effectively cleansed and sterilized." He stated that sterilization would be difficult on a construction site and suggested that the two words "and sterilized" be struck from the proposal.

Bruce Wick of CalPASC, who also was speaking on behalf of Kevin Bland for the California Framing Contractors Association and the Residential Contractors Association, stated that all three organizations strongly support the proposal.

Bo Bradley of the California Associated General Contractors, Elizabeth Treanor of the Phylmar Regulatory Roundtable, and Julianne Broyles of the Lumber Association of California and Nevada, all expressed support for the proposal with the change suggested by Mr. Pena.

Dr. Frisch stated that there is a substantial difference between cleansing and sterilizing. He suggested exploring measures taken in the restaurant industry for cleaning and sterilizing similar cups. He also suggested changing the phrase “personally identifiable” to “personally identified” in order to clarify the proposal. He asked whether the employer or the employee is responsible for maintaining the cleanliness of personal water containers.

Mr. Manieri responded that the responsibility for maintaining the cleanliness of the drinking cups was the employer’s.

Dr. Frisch asked that staff evaluate the language to ensure that that responsibility is clear in the regulation.

Mr. Jackson suggested that the exception be split into two separate exceptions, one for containers with drinking fountains or faucets and another for cups or containers that are effectively cleaned or sterilized after use. He also expressed concern about maintaining sterility on a construction site. He then asked what responsibility employers would have to prevent employees from using a container they brought into the workplace or whether such personal containers should be prohibited.

Mr. Kastorff asked whether alternative fluids or beverages such as Gatorade would be included in the proposed regulation as well as in the heat illness prevention regulation.

Mr. Manieri, Mr. Mitchell, and Mr. Welsh all responded separately that the primary concern in the proposal and in Section 3395 is potable water.

Dr. Frisch asked staff to explore whether the employer or the employee should be responsible for monitoring and ensuring for the disposal of personal containers once they have become unsuitable for use through contamination.

2. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7  
Article 91, Section 4885  
Article 93, Section 4924  
Article 98, Section 5004(e)(3)  
**Mobile Crane Load Safety Devices**

Mr. Manieri summarized the history and purpose of the proposal and indicated that it is now ready for Board consideration and public comment.

Alvan Mangalindan of the Crane Owners Association expressed concern that the exception in the proposal allows for the operator of an upright crane to continue operation when the load indicating device fails or malfunctions, but the same type of exception does not apply when a similar electronic hoisting monitoring device or a boom angle radius indicator also fails or malfunctions. He stated that on most, if not all cranes, the load indicating device and the boom angle or radius indicator are displayed on the same component; thus, if one indicator fails, the other will also fail and not be displayed. He asked that the same exception in Section 4924(a) be applicable to the boom angle/radius indicating device required in Section 4924(c). He stated that this would allow for reasonable flexibility in the operation of the mobile crane without unduly jeopardizing safety.

Michael Battaini of Sheedy Drayage Company expressed support for Mr. Mangalindan's comments. He stated that the boom angle can be determined by means other than the boom angle indicator, such as measuring the radius and looking at the crane load chart, which indicates the maximum load for the configuration of the crane. By these means, the crane operator can easily assess the boom angle without the device and determine the maximum permitted load.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 10:31 a.m.

**III. BUSINESS MEETING**

Chair MacLeod called the Business Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:31 a.m., February 21, 2008, in the Auditorium of the Harris State Building in Oakland, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: ELEVATOR SAFETY ORDERS  
Chapter 4, Subchapter 6  
Sections 3000, 3001, 3009, 3094.2, 3120.6, and 3137  
New Sections 3140, 3141, 3141.1 through 3141.13, 3142,  
3142.1, 3142.2, 3143, 3144, 3145, and 3146  
**Revisions to the Elevator Safety Orders**  
(Heard at the April 19, 2007, Public Hearing)

Mr. Tafazoli summarized the history and purpose of the proposal, stating that no comments had been received in response to a 15-day Notification of Proposed Modification, and he indicated that it was now ready for the Board's adoption.

Chair MacLeod commended Division staff and Board staff, particularly Leslie Matsuoka and Mr. Tafazoli, for their work on the rulemaking package.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Kastorff that the Board adopt the proposed safety order.

Dr. Frisch asked how many variance applications would no longer be necessary as a result of the adoption of the rulemaking. Mr. Tafazoli responded that he estimated approximately 25% would no longer be necessary.

A roll call was taken, and all members present voted "aye." The motion passed.

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Petition File No. 499  
Dale H. Curtis

Mr. Manieri summarized the history and purpose of the petition and asked that the Board adopt the proposed petition decision denying the petition.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Kastorff to adopt the petition decision as proposed, which called for denial of the petition.

A roll call was taken, and all members present voted "aye." The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales summarized the 18 proposed variance decisions for adoption and asked that the Board approve the consent calendar and thereby adopt the proposed decisions as written.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Washington to adopt the consent calendar as proposed.

A roll call was taken, and all members present voted "aye." The motion passed.

D. OTHER

1. PEL Advisory Committee Update

Mr. Barish stated that there have been two meetings of the PEL Advisory Committee, and there have been four substances presented at those meetings. The first set of PELs will be brought before the Board after they have been presented to a feasibility and cost assessment advisory committee.

Dr. Frisch asked whether Mr. Barish was satisfied with the pace of the process and if it was in keeping with past PEL Advisory Committee processes. Mr. Barish responded that he was very satisfied with the quality of the presentations at the two meetings thus far and that the pace was similar to previous processes. Mr. Welsh added that although some stakeholders were not pleased with the speed of the process, many of the substances being presented require careful consideration and the committee is doing the best it can to meet those requirements.

Mr. Washington asked for a time frame in which the first set of PELs would be brought to the Board for adoption, and Mr. Barish responded that the Division is very close to having the proposal ready to send to Board staff for review.

Dr. Frisch asked what Mr. Barish meant by "close." Mr. Welsh responded that Division staff needs to review the proposal a final time in order to sort out the disparate opinions expressed, and that the package should certainly be sent to the Board staff by April.

Mr. Barish then went on to state that there had been two resignations from the committee, which had brought it down to 13 members, and a few weeks ago another member had resigned, so there were 12 remaining members. A copy of the roster of current members was provided to Board members and Board staff.

Dr. Frisch commented that the complaint that the committee was not moving fast enough had merit. He further stated that while he recognizes the amount of work involved in establishing permissible exposure limits for certain substances, he does not think it unreasonable for the regulated public to expect California to be more aggressive than the federal government at managing PELs, particularly those that are becoming old or out of date.

## 2. Legislative Update

Mr. Beales stated that in addition to the bills mentioned in the written analysis in the Board packets, there were two other bills that may affect the Board's rulemaking activity. The first is AB 2031, introduced on February 15, 2008, which involves oil spill responders, and one of the provisions of that bill requires that such responders be trained in accordance with OSHA standards adopted by the Board. The second bill is AB 1988, introduced by Assembly Member Swanson on February 14, 2008, amending Labor Code Section 6317, which is one of the provisions that allows the Division to cite employers. That bill makes only technical, non-substantive changes at this time, but it could be amended in the future, and Mr. Beales will keep the Board apprised if that should happen.

3. Termination of Rulemaking—Process Safety Management (PSM) Definition of Retail Facility

Mr. Mitchell summarized the history and purpose of the rulemaking, stating that in light of opposition expressed by Renee Pinel of the Western Plant Health Association at the May 17, 2007, Public Hearing, the Board had directed staff to meet with stakeholders to discuss the issues. Mr. Mitchell then summarized meetings with Ms. Pinel, representatives of the fertilizer industry, and the District Managers from the Division's PSM District offices, stating that the participants in these meetings were unable to reach a consensus on a proposal, and further action on the rulemaking would thus be terminated, unless otherwise directed by the Board.

4. Executive Officer's Report

Mr. Manieri stated that staff had recently responded to a Federal OSHA Region IX standard regarding promulgation of a direct final rule regarding the updating of various national consensus standards, and that no action by the Board was necessary. A letter explaining the matter would be sent to the Board. Mr. Manieri went on to state that, in regard to the Low Voltage Electrical Safety Orders, recent discussions with federal OSHA indicate that the federal comment letter had been sent to the Region IX office in the Bay Area, but it had not yet been received by Board staff despite a number of requests.

Chair MacLeod asked how much time the Board has to adopt the package, and Mr. Manieri responded that because the package was noticed for Public Hearing at the end of November 2007, the Board has until November of this year to adopt the package.

5. Future Agenda Items

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:05 a.m.