

**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



SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
April 21, 2011
Sacramento, California

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman John MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., April 21, 2011, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

John MacLeod
Jack Kastorff
Hank McDermott
Guy Prescott
Willie Washington

Board Members Absent

Bill Jackson
Dave Thomas

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
David Beales, Legal Counsel
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Steve Smith, Principal Safety Engineer
Deborah Gold, Senior Safety Engineer
Bob Barish, Senior Safety Engineer

Others present

Dave Harrison, Operating Engineers
Elizabeth Treanor, PRR
Julia Quint, Ph.D.
Catherine Porter, CAHNSC
Larry Pena, So Cal Edison
Carol Frehm, H.J. McDermotte, Inc.
Kate Smiley, AGC
Dan Leacox, Greenberg Traurig
Marti Fisher, Cal Chamber
Larry Wong, University of California

John Bobis, Aerojet
Jay Weir, AT&T
Bruce Wick, Cal PASC
Wayne Howard, Valero
Wendy Holt, CSATF/AMPTP
Marty Tamayo, OSHSB
Judi Freyman, Mercer ORC
Mark Stone, Epic Insurance Brokers
Steve Johnson, ARC-BAC
Joan Gaut, CTA

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

Mark Stone asked when the Cranes and Derricks proposal would be brought before the Board for adoption. Ms. Hart responded that work on that proposal is ongoing, and she hopes to be able to present it for adoption into the Construction Safety Orders at the May Board meeting. She further stated that Board staff has committed to posting the language for review prior to adoption.

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:05 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEM

Chairman MacLeod called the Public Hearing of the Board to order at 10:05 a.m., April 21, 2011, in the Auditorium of the State Resources Building, Sacramento, California.

Chairman MacLeod opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7, Article 107
 Section 5155
 Airborne Contaminants

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

Elizabeth Treanor, Director of the Phylmar Regulatory Roundtable, expressed appreciation to the staff of the Division and the members of the Health Expert Advisory Committee (HEAC) and the Feasibility Advisory Committee (FAC). In addition, she expressed appreciation for the transparency of the HEAC and FAC process, from which this proposal originated. She had no comments on the PELs themselves.

Catherine Porter, Law and Policy Consultant for the California Healthy Nail Salon Collaborative, summarized her written comments regarding toluene.

Judi Freyman with Mercer ORC Networks, summarized her written comments praising the HEAC and FAC process.

Dan Leacox of Greenberg Traurig echoed Ms. Treanor's and Ms. Freyman's praise of the HEAC and FAC process. In addition, on behalf of the Nail Manufacturers Council, he stated that the PEL proposed for toluene was based on the health studies, and there was no feasibility factor that came into play to adjust that number. The number was supported by the science. One can talk about the hazards of toluene, but the fact is that toluene was largely formulated out of these products approximately five or six years ago, thus rendering the feasibility issue moot. Airborne toluene exposure in nail salons is not a feasibility issue at the proposed limit.

Dr. Julia Quint, retired from the California Department of Public Health, was a member of the HEAC when the chemicals in this proposal were being deliberated. She developed the proposal for toluene, and there is extensive documentation that supports the recommendation of 10 ppm. She developed the recommendation initially in July 2008, and it was finalized in October 2008. Subsequent to that, it was listed on the Prop 65 list as known to the state to cause reproductive toxicity. That was based on an epidemiological study that Dr. Quint reviewed as a part of developing the toluene PEL. She derived the PEL based on a key study by Ng, et al., in 1992, and the PEL she developed based on that end point was 3 ppm, not the 10 ppm that she ultimately recommended. She did not base the PEL on the reproductive study because she had concluded that there was an increased number of spontaneous abortions in the toluene-exposed group that was not in the control group. Subsequently, the Office of Environmental Health Hazard Assessment did list it for reproductive toxicity. She concluded that if the PEL were to be based on reproductive toxicity, it would not be 10 ppm, but 3 ppm, and thus the proposal might need to be updated.

Chairman MacLeod then introduced the next item noticed for Public Hearing:

2. TITLE 8: **PETROLEUM SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 15
 Article 2, Section 6755
 Article 8, New Section 6799.1
 Chain or Wire Rope Access Equipment (Jacob's Ladders)

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

There was no public comment on this issue, but Mr. Kastorff asked whether the intent of subsection (c)(1) is to preclude any potential for repair of equipment that should fail the

annual load testing. Mr. Manieri responded that if the annual load testing determines that the ladder is not fit for use and there is no way to repair it, the intent is that the ladder is to be taken out of service.

Chair MacLeod stated that that requirement comes under the inspection and load testing requirement, but there is room for maintenance, since there are instructions further on in the proposal regarding maintenance log and instructions. Mr. Manieri responded that there is a distinction between the annual load testing and the daily use testing, which staff will clarify further in the Final Statement of Reasons.

Mr. Washington asked whether the visual inspection required in subsection (c)(2) is a one-time visual inspection performed by the employer at the time of installation as opposed to having to be visually inspected each time it is used by the employee. Mr. Beales responded that Mr. Washington had pointed out something that may require possible amendment of the language, which would be addressed in the Final Statement of Reasons.

Mr. Washington then expressed appreciation for the clarifications provided in the advisory committee minutes and the Initial Statement of Reasons, which clarified the instructions regarding the hand-carrying of tools. He then asked how the equipment would be secured at the bottom as required in subsection (e)(2)(B) in such a manner as to reduce the risk of explosion from welding. Mr. Manieri responded that staff will clarify that issue in the Final Statement of Reasons as well and provide some possible scenarios and explanations derived from the advisory committee discussion as to how that might be accomplished.

B. ADJOURNMENT

Chairman MacLeod adjourned the Public Hearing at 10:33 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:33 a.m., April 21, 2011, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that a variance hearing was held just before today's Board meeting regarding the Kone and Otis elevator matters. The recommendation in each of those matters is that the variances be granted. There are proposed decisions in the Board packet, which will be modified to indicate that Mr. Washington was the sole hearing panel member. Other than that, the proposed

decisions are presented to the Board for adoption. Noting those modifications to the consent calendar, the recommendation for all of the matters is to grant.

MOTION

A motion was made by Mr. Kastorff and seconded by Mr. Prescott to adopt the consent calendar as modified.

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

B. OTHER

1. Legislative Update

Mr. Beales stated that he had nothing to add to the written update in the Board packet.

2. Executive Officer’s Report

Ms. Hart stated that since the last meeting, there have been some changes within DIR. John Duncan’s last day as Director of the Department was March 31. Governor Brown has appointed Christine Baker as the Chief Deputy Director, and she is also serving as the Acting Director. Ms. Baker has been the Executive Officer of the Commission on Health and Safety and Workers’ Compensation since 1994. She was the Acting Deputy Director of the Division of Workers’ Compensation from 1990 to 1994, the Chief of the Division of Labor Statistics and Research from 1984 to 1989, and a Research Assistant at the University of California Berkeley from 1980 to 1982.

Also appointed by Governor Brown was Ellen Widess as the Chief of the Division of Occupational Safety and Health. Ms. Widess was a Senior Program Officer for the Rosenberg Foundation from 2000 to 2010, a consultant for the Centers for Disease Control on updated child labor standards from 1998 to 1999, Executive Director of Lead Safe California from 1994 to 1998, and the Director of Health Policy at the Children’s Advocacy Institute from 1991 to 1994. Ms. Widess also served at Cal/OSHA as the Chief of the pesticide program from 1978 to 1984. She sends her regrets that she was unable to attend the meeting today. Ms. Hart has spoken with Ms. Widess, and they have set a meeting to discuss the functions of the Board and the Division. Len Welsh has remained with DIR as an assistant to Christine Baker, the Acting Director.

Ms. Hart reminded the Board members that ethics training must be completed by the end of May and thanked those Board members who had already submitted their documents.

She further stated that Tom Mitchell, Senior Safety Engineer, will be retiring at the end of the fiscal year on June 30. Mr. Mitchell is working with Mike Manieri, the other engineers, and Ms. Hart to transition his work assignments to staff. More information regarding his retirement will be provided as the date gets closer.

3. Future Agenda Items

None identified.

C. CLOSED SESSSION

The Closed Session was cancelled.

D. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 10:40 a.m.