

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
August 19, 2010
Sacramento, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., August 19, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present
Chairman John MacLeod
Bill Jackson
Jack Kastorff
Hank McDermott
Guy Prescott
Dave Thomas
Willie Washington

Board Members Absent

Board Staff
Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
Tom Mitchell, Senior Safety Engineer
David Beales, Legal Counsel
Bernie Osburn, Staff Services Analyst
Chris Witte, Executive Secretary

Division of Occupational Safety and Health
Len Welsh, Chief
Steve Smith, Principal Safety Engineer

Others present
Greg Allaire, Southwest Carpenters
Steve Zink, Federal OSHA
Terry Thedell, SDG&E
Amalia Neidhardt, Cal/OSHA
John Robinson, CAPA
Steve Johnson, ARC-BAC

Bob Hornauer, NCCCO
Jim Hay, State Fund
Dave Harrison, Operating Engineers Local 3
Marti Fisher, CalChamber
Steve Townsend, CCMCA
Jim Rucker, Safeway, Inc.

Wendy Holt, CSATF/AMPTP	Kevin Bland, CFCA, RCA, CalPASC
Steve Hooper, Unger Construction	Perry Churchill, Bragg Crane
Cindy Sato, CEA	Dan Leacox, Greenberg Traurig
Mike Felasco, Wine Institute	Ralph Lightstone, DOJ
Larry Pena, SoCal Edison	Elizabeth Treanor, PRR
Tina Kulinovich, Federal OSHA	Van Howell, Federal OSHA
Kelly McKechnie, Western Growers Assn.	Carl Borden, CA Farm Bureau
Bryan Little, CA Farm Bureau	Judi Freyman, ORC
Mike Donlon, Cal/OSHA	Anne Katten, CRLA
Kevin Thompson, Cal-OSHA Reporter	Lisa Orgeka, CC Myers, Inc.
Kate Smiley, AGC	Don Bradway, Monarch-Kneis Insurance
Joan Gaut, CTA	Chris Walker, Cal SMACNA
Gail Bateson, WorkSafe!	Howard Rosenberg, UC Berkeley
Darin Wallace, Cal/OSHA	

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

The following people spoke in support of adopting the Heat Illness Prevention proposal on the Business Meeting Agenda:

- Elizabeth Treanor, Director of the Phylmar Regulatory Roundtable
- Marti Fisher, Legislative Advocate for the California Chamber of Commerce
- Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association, and on behalf of Bruce Wick, Risk Management Director for the California Professional Association of Specialty Contractors
- Carl Borden, Associate Counsel for the California Farm Bureau
- Kelly McKechnie, Government Affairs Analyst for the Western Growers Association
- Kate Smiley, Director of Safety and Health Services for the Associated General Contractors of California

The following people stated that the proposed amendments do not provide enough worker protection, but did not indicate whether they supported or opposed the proposal as written:

- Anne Katten, Industrial Hygienist for the California Rural Legal Assistance Foundation (CRLA)
- Gail Bateson, Executive Director of WorkSafe!

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:13 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public hearing of the Board to order at 10:13 a.m., August 19, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

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

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 29
Section 1709
Maximum Allowable Load

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

Chris Walker of the California Sheet Metal and Air Conditioning Contractors' National Association expressed concern that "any load" cannot be placed on any of these structures unless the employer consults first with someone who has structural engineering expertise. This requirement could present a problem for the construction industry.

There was no Board discussion of this item.

Chair MacLeod introduced the next item noticed for public hearing.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 32
Section 1742
Definitions of "Manifold" and "Header"

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

There was no public comment regarding this item.

Mr. Jackson asked whether it is appropriate to place the definitions portion of the proposal in subsection (e) rather than placing them with the other definitions applicable to the Construction Safety Orders. He stated that some stakeholders might expect to find definitions in the provision entitled "Definitions" rather than in the body of a subsection, and he said that this issue should be considered in the Final Statement of Reasons.

Mr. Kastorff asked whether it is the intent of the regulation to require that oxygen and acetylene bottles on a cart be capped at all times when they are not in use. Mr. Manieri responded affirmatively.

Mr. Kastorff then asked whether taking the caps on and off presents more of a hazard than the common industry practice of leaving the caps off. Mr. Manieri responded that it would depend on the definition of "in use," which was another consideration in the development of the proposal. There are definitions for the term "in use," but in reference to the initial proposal, staff may consider adjusting those definitions during the next stage of development. The consensus standards reviewed by Board staff indicate that these cylinders, particularly oxygen and acetylene, are great contributors to fires and explosions and should be protected from a potential ignition source as much as possible when they are not actually being used. That protection was the Board staff's intent in crafting the language.

Mr. Kastorff agreed that the cylinders should be capped when not in use, but putting them together on a cart provides some protection, in that they are more stable than a single bottle, and he expressed concern that a regulation requiring that the caps be put on and taken off could present more of a hazard. Mr. Manieri responded that Board staff will review that in the Final Statement of Reasons.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 10:24 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:24 a.m., August 19, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 4
Section 1532.2
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 110
Section 5206
**SHIP BUILDING, SHIP REPAIR, AND SHIP BREAKING
SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 18, Article 4
Section 8359
**Employee Notification Regarding Chromium (VI) Exposure
Determinations (Horcher)**
(Heard at the July 15, 2010, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Prescott that the Board adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 10
Section 3395
Heat Illness Prevention
(Heard at the October 15, 2009, Public Hearing)

Mr. Welsh summarized the history and purpose of the proposal and indicated that the package is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Kastorff and seconded by Mr. Jackson that the Board adopt the proposal.

Mr. Jackson thanked Mr. Welsh for taking the proposal back to an advisory committee and engaging the stakeholders, and he stated the opinion that the process had resulted in a superior rulemaking proposal.

Mr. Prescott echoed Mr. Jackson's sentiments, thanking Mr. Welsh for the exemption for the construction industry in particular.

Chair MacLeod also thanked Mr. Welsh, stating that this has been one of the more challenging rulemaking proposals that the Board has encountered in the last few years and expressing appreciation for the work that Mr. Welsh and his staff have put into it. He stated that Mr. Welsh's description of the proposal makes it clear that this regulation is much more protective of workers than the current regulation.

Mr. Welsh agreed with the Chair's assessment.

Mr. Washington congratulated Mr. Welsh for his work on the proposal, but he expressed concern that the additional training required by the proposal is a key part of the implementation of the standard, and those requirements must be clearly communicated to both employers and employees.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that three items on the consent calendar are marked as "Grant or Deny" because the hearing of those matters took place yesterday. The recommendation in all the matters is to grant the variance, and the signed decision for them was presented to the Board this morning. They are substantially the same as those in the Board packet, with the exception of some minor changes, the most significant of which is regarding the Jerry Collier, where it was pointed out that one additional standard variance issue needs to be covered by the decision; that issue is now covered by the revised decision. He asked the Board to approve the consent calendar as modified.

MOTION

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

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

2. Granite Construction Company, Applicant
OSHSB File No. 10-V-028
Tunnel Safety Orders (shafts/construction of columns)

Mr. Jackson stated that he would recuse himself from the discussion and vote on this proposed variance decision, as it concerns his employer, Granite Construction. Mr. Jackson then left the hearing room while the Board considered the matter.

Mr. Beales stated that the proposed decision recommends granting the variance requested, and the Board is asked to approve and adopt that proposed decision.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Prescott to adopt the decision as proposed.

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

C. OTHER

1. Legislative Update

Mr. Beales stated that there are a few things to add to the written update in the Board packet. AB 1652, which concerns ski resorts, focuses on recreational activities rather than work activities, so the changes do not seem to be of concern to the Standards Board.

AB 2738 regarding the Administrative Procedure Act (APA) was most recently amended on August 17 to focus on a revision of a particular provision of the APA that has to do with the notice of proposed rulemaking. The revised version of that provision would take effect on January 1, 2012, and it would sunset on January 1, 2014, which is a change from the previous thrust of this bill, which was to encourage the use of performance standards rather than prescriptive standards.

AB 2774 has moved along the Senate committee process, passing the Senate Appropriations committee and the Occupational Safety and Health committee. The bill has to do with serious violations, and it was extensively amended on August 10 to, among other things, establish a rebuttable presumption of a serious violation and add a number of related changes to existing law.

An additional bill of possible concern is SB 356, which amends the APA to require that more attention be given to the effects of proposed regulations on small business.

2. Executive Officer's Report

Ms. Hart stated that she has nothing to report other than the fact that the furloughs have been reinstated.

3.

Future Agenda Items

D. CLOSED SESSSION

The Board discussed only the closed session item listed on the Agenda, and no action was taken during the closed session.

E. ADJOURNMENT

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