

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
August 15, 2013
Sacramento, California

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

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., August 15, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

Dave Thomas
Laura Stock
Bill Jackson
Hank McDermott
David Harrison
Barbara Smisko
Patty Quinlan

Board Member Absent**Board Staff**

Marley Hart, Executive Officer
Mike Manieri,
Principal Safety Engineer
David Beales, Legal Counsel
David Kernazitskas,
Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Steve Smith, Principal Safety Engineer

Others Present

Mark McGrath, AIDS Healthcare
Foundation
Bruce Wick, CALPASC
Kevin D. Bland, Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.

Elizabeth Treanor, Phylmar Regulatory
Roundtable
Scott Madar, Mercer MSE Networks
Beth Koh, Wendel, Rosen, Black, and
Dean

Michael Musser, California Teachers Association
Santos Jauregui, The Morning Star Company
Dan Leacox, Greenberg Traurig
Kate Smiley Crawford, AGC
Mark Stone, EPIC Insurance Brokers
Matt Antonucci, CSATF/AMPTP

Kevin Thompson, Cal-OSHA Reporter
Allyson Rathkamp, CLFP
Steve Johnson, Associated Roofing Contractors
Dorothy Wigmore, Worksafe
John McCullough, Wells Fargo Insurance Services
Al Philip, Fed OSHA

B. OPENING COMMENTS

Mr. Thomas 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 McGrath, AIDS Healthcare Foundation, addressed the Board on Petition 513. He stated that the foundation is gravely concerned that the process is stalling and reminded the Board that the Division has stated in the past that language on this issue would be coming at a certain time, but nothing has come forward. He said that the Division has been working on an injury prevention plan regarding this issue since 2007 and that the Division keeps insinuating that this is a complex issue, but it is not. He hopes that the Division will have language prepared to present at the September Board Meeting, as Mr. Smith stated at last month's meeting. He brought written information and editorials for the Board [Please see the filed copy of the Board packet to view these documents] and asked that the Board review them with a critical eye like it reviewed the pornography association's documents at the meeting in Costa Mesa in 2010, and then step up and take ethical responsibility regarding this issue.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:11 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:12 a.m., August 15, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

Mr. Thomas 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 2, Section 1504
Article 36, New Section 1929, Sections 1930 – 1932, 1934 – 1936
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 107, Section 5154
Article 109, Sections 5191, 5194
Article 134, Section 5415
Article 137, Sections 5449, 5451
Article 141, Sections 5531 – 5534, 5541 – 5543
Article 142, Sections 5545 – 5547, 5549
Article 143, Sections 5556, 5558, 5560
Article 144, Sections 5566, 5568 – 5570, 5573 – 5579
Article 145, Sections 5590, 5592, 5594, 5596 – 5599, 5601
Article 146, Section 5606
Article 147, Sections 5616 – 5622, and 5624
**Federal Final Rule, Globally Harmonized System - Update to
Hazard Communication (Safety)**

Mr. Manieri 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.

Dan Leacox, Greenberg Traurig, stated that the proposal retains the use of the phrase “Class 3” for flammables, but the federal rule no longer uses this classification. He said that using an old classification designation creates a conflict of terminology in the rule and that the terminology in this proposal needs to be straightened out and conformed for future clarity. **Elizabeth Treanor, Phylmar Regulatory Roundtable**, echoed Mr. Leacox’s comments.

Mark Stone, EPIC Insurance Brokers, pointed out some specific changes that he feels will make the proposal more user friendly. He said that on page 3 of the draft, a table was removed that he feels is important, and on page 17, a table was added under a new category that he feels needs to also be added to the construction standards category. He also stated that the table should be revised to include flash points and boiling points for each category listed in the table to make it easier to understand the changes.

Dorothy Wigmore, Worksafe, echoed Mr. Leacox’s comments and added that this proposal seems to weaken the standard. She also asked the Board to address any issues that the Division has regarding the proposed standard so that they can properly enforce it.

Mr. Thomas then introduced the next item noticed for Public Hearing:

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 25, Section 3650
Powered Industrial Trucks–Excessive Loads

Mr. Manieri 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.

Kevin Bland, representing the Residential Contractors Association, California Framing Contractors Association, and the Western Steel Council, stated that there is an issue with the language in the first sentence of the proposal where loads are required to be balanced, braced, and secured. He said that this statement, as written, requires employers to do all three of those things and gives the Division grounds to cite them if they do not do all three. He said that striking this sentence completely and then modifying the second sentence to state that loads should be secured by proper piling or other means to secure it against dangerous displacement in accordance with the industrial truck's manufacturer's recommendations would give employers a way to comply and address the hazard, as well as follow the manufacturer's requirements. **Bruce Wick, CALPASC**, echoed Mr. Bland's comments.

Mr. Harrison stated that he is shocked by the outcome of the Appeals Board's decision. He said that excessive width, length, and height should be stricken, but he is not sure about adding the last part regarding industrial truck manufacturer recommendations. He stated that he would like to see some examples of some language that might come out of those recommendations. He also said that he does not see why requiring loads to be just balanced and secured is not good enough. He feels that is plenty to ensure workplace safety and that it is something that the Division can enforce.

Mr. Jackson stated that Mr. Bland's comments are really important and that it is appropriate for the Board to solve problems when the regulation does not explain what excessive loads means. He said that there are lots of loads that, when balanced, do not need any other security other than gravity, and that the proposal, as written without the modifiers, requires employers to do all three things. He stated that this proposal also adds another standard for employers to follow because, in addition to requiring them to do those three things, they will now be required to secure the load against displacement in accordance with the manufacturer's recommendations, which could cause further problems. He said that the Board needs to decide what it wants to do, what it means, and it should say so in the regulation.

Mr. Thomas then introduced the next item noticed for Public Hearing:

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

Mr. Smith 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.

Ms. Wigmore stated that Worksafe is pleased that the PEL is being reduced 100-fold in this proposal, but they believe that it is still too high and should be lowered even further to 0.03 ppm with a skin notation. She said that naphthalene is currently listed on several

different hazardous chemical lists around the world, and because of that, as well as the derived unit risk value for naphthalene that was presented to the HEAC, Worksafe cannot support the proposed PEL. They feel that it will not protect workers against cancer and respiratory effects and will create one excess cancer risk for every 1,000 workers exposed to naphthalene over a working lifetime, which is unacceptable to them.

Ms. Stock stated that this proposal is another example for why a better job needs to be done when defining feasibility. She said that strong and clear evidence is needed to justify not going with the most protective PEL and that she did not see any evidence in the FAC minutes to justify not using the 0.03 PEL, which is the most protective level. She stated that the FAC should change to more concretely define PEL levels and their criteria in a way that will guide the Board moving forward.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:59 a.m.

III. BUSINESS MEETING

Mr. Thomas called the second portion of the Business Meeting of the Board to order at 11:00 a.m., August 15, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales recommended that the variance requests be granted and that all of the decisions listed in the Board packet be adopted. He also stated that the proposed decision regarding United States Cold Storage of California contained 5 clerical errors. He said that the errors have been corrected and copies of the corrected version have been given to each Board Member.

MOTION

A motion was made by Mr. Jackson and seconded by Ms. Stock to adopt the consent calendar. **Mr. Harrison** stated that he had a problem with the proposed decision regarding United States Cold Storage of California and that he was going to make a motion to adopt the consent calendar minus the United States Cold Storage of California proposed decision, and he asked Mr. Jackson to change his motion to reflect that. **Mr. Jackson** changed his motion, and the change was seconded by Ms. Stock, to adopt the consent calendar minus the proposed decision for United States Cold Storage of California.

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

MOTION

A motion was made by Mr. Jackson and seconded by Ms. Stock to adopt the United States Cold Storage of California proposed decision.

Mr. Harrison stated that he is not okay with the proposed decision. He said that the current standard requires clearance of one foot between forklifts passing each other in opposite directions, and he is not comfortable with that, so he is definitely not comfortable with granting a variance that would reduce that clearance. He also said that there is pedestrian traffic in these aisles. He stated that the employer wants to install devices on the forklifts that reduce the forklift's speed to 7 mph where possible and have administrative controls everywhere else. He also stated that an accident occurred with the employer, and that is the whole reason that this issue has been brought forward, but the employer indicated that they have not had an accident in the last 30 years.

Mr. Beales stated that the hearing panel determined that equivalent safety was shown by the evidence provided at the hearing and that the key to equivalent safety in this case is the procedure of stopping to make eye contact and ensure that the way is clear. He said that in the proposed decision, the speed that forklifts will be able to pass each other cannot be more than a walking pace. He also said that explanations of equivalent safety are in the proposed decision, and if the Board agrees with them, it should adopt the proposed decision.

Mr. Thomas stated that he was on the hearing panel for this variance and that the accident that occurred in 2011 happened on the loading dock. He said that by the way the rack systems were set up, there were probably only a few times where two forklifts would be operating in the same area. He felt that the work rules that the employer was going to adopt would prevent injury and provide sufficient safety. He also stated that there is very little foot traffic in there and only one aisle has limited space in which to pass.

Mr. Jackson stated that the law states that the Board shall grant a variance if equivalent safety has been established, and in this case, he believes it has been established, so the Board should grant the variance.

Mr. Thomas stated that the standard did not mention anything about the speed of the vehicles passing through. He said that the rules that the employer will put in place will provide much more monitoring of the speed at which employees operate the forklifts.

Mr. Harrison stated that he is not challenging the validity of what is in the variance. He does not believe that equivalent safety has been met in this case and is not comfortable granting this variance for that reason. He also stated that the phrase "walking speed" is extremely vague. **Mr. Thomas** stated that he understands Mr. Harrison's point of view, but he feels that equivalent safety has been met in this case.

A roll call was taken. Mr. Harrison, Ms. Stock, and Ms. Quinlan voted "no", and all other members present voted "aye." The motion passed.

B. OTHER

1. Legislative Update

Mr. Beales stated that Senate Bill 176, which requires contact with stakeholders before putting forward a rulemaking proposal, was amended to require a reasonable effort to be made to contact stakeholders instead of requiring consultation with stakeholders. He also stated that Senate Bill 435, which imposes penalties on employers who do not provide meal or rest periods as required by law, had a reference added to it regarding providing a recovery period, which is a cool down period to prevent heat illness.

2. Executive Officer's Report

Ms. Hart stated that the Standards Board will be holding an advisory committee meeting regarding vertical dough mixers. The meeting will be held on August 29 at the Division office on Arden Way and will be chaired by David Kernazitskas, Senior Safety Engineer.

3. Future Agenda Items

Ms. Hart stated that the Division will provide a list of outstanding PELs that they will be providing rulemakings for, as requested by Ms. Quinlan at last month's meeting.

Ms. Stock asked about the schedule for the remaining portions of GHS. **Ms. Hart** stated that the Division submitted a regular rulemaking for the health portion, and that it is in the pipeline for approvals. If it is approved by Agency by tomorrow, it will be heard at the public hearing on October 17. If it is not approved by tomorrow, it will be heard at the November 21 public hearing. She also said that the temporary standard will need to be re-adopted in October. **Ms. Stock** also asked about the status of the standard for hotel housekeeping. **Ms. Hart** stated that nothing has been received from the Division regarding this.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:17 a.m.