

**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
December 17, 2009
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., December 17, 2009, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present
Chairman John MacLeod
Jonathan Frisch, Ph.D.
Bill Jackson
Jack Kastorff
Guy Prescott
Willie Washington

Board Members Absent

Board Staff
Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
David Beales, Legal Counsel
Tom Mitchell, Senior Safety Engineer
Leslie Matsuoka, Associate Government
Programs Analyst
Chris Witte, Executive Secretary

Division of Occupational Safety and Health
Len Welsh, Chief
Steve Smith, Principal Safety Engineer
Mike Horowitz, Senior Industrial Hygienist

Others present
Ward Ching, Safeway
Richard Parenti
Joan Gaut, CTA
Dick Roberts, DOSH
Michael Kopulsky, Front Line Sales, Inc.
Joe Hector Martinez, Harbor Insurance

Patrick Singh, Safeway
Julio & Madeline Petrini
Kevin Bland, CFCA, RCA
John Gehlhausen
Al Smith, Smith Russo Law
Carol Stiver, City of Sacramento

Russ McCrary, Ironworkers Trust Fund	Wendy Holt, CSATF/AMPTP
Dan Leacox, Greenberg Traurig	Julia Quint
John McCullough, Wells Fargo Insurance	Jodi Blom, CFCA
Don Bradway, Monarch-Kneis, AGC of Southern California	Bo Bradley, AGC of California
Larry Pena, Southern California Edison	Jim Hay, State Fund
Bruce Wick, CalPASC	Steve Johnson, ARC-BAC
Sue North, AHF	William Cameron, John Deere
James Fear, The Toro Company	John L. Bobis, Aerojet
Dave Harrison, Operating Engineers Local 3	Gail Bateson, WorkSafe
Bob Hornauer, NCCCO	Judi Freyman, ORC Worldwide
Michael Smith, WorkSafe	Mike Donlon, DOSH
Jeff Sickenger, KP Public Affairs	Richard Morford, EnviroTech
Barbara Kanengsberg, BFK	Scott Harding
Tim Gotto, Time Warner Cable	Kevin Thompson, Cal-OSHA Reporter
Bill Taylor, PASMA	

B.

OPENING COMMENTS

Ms. Hart introduced Martin Tamayo, Associate Safety Engineer, the newest member of the Board staff. Mr. Tamayo was previously a Senior Safety Specialist with CalTrans, and prior to his position with CalTrans, he was a Senior Loss Control Consultant with the State Compensation Insurance Fund (SCIF).

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

He asked that any comments related to Petition 507 be deferred until the Business Meeting portion, when he would reopen the Public Meeting to receive those comments.

Sue Dorn, representing the AIDS Healthcare Foundation (AHF), presented a petition asking the Board to amend the bloodborne pathogen standard to clarify required protections for workers in the adult film industry. AHF believes that the current phrasing of the regulation should give protection to workers in adult films as well as ensure that those workers are considered employees. However, the adult film industry has steadfastly refused to protect its workers from diseases spread by bloodborne pathogens, resulting in thousands of employees becoming infected with sexually transmitted diseases (STDs).

Clarification and enhanced enforcement of the rules are called for in this case. The adult film industry accounts for thousands of workplace disease infections in California every

year. During the production of adult films, workers including but not limited to performers are exposed to a number of bodily fluids and discharges that may contain STDs. These discharges meet the definition of “other potentially infectious materials” under the California Code of Regulations, Title 8, Section 5193 relative to bloodborne pathogens. Most workers in this industry are provided no protection whatsoever.

The Los Angeles Department of Public Health estimates that condoms and other protections are used in less than 20% of the hard-core, heterosexual adult films made. The Department of Public Health in Los Angeles has documented an epidemic of STDs among the workers in the adult film industry and attributes the epidemic to a variety of high-risk acts, in which the workers are required to engage and to a lack of protective equipment for performance including condoms. According to the Department of Public Health in Los Angeles County, workers in the adult film industry are ten times more likely to be infected with an STD than members of the population at large.

Because the risk to workers in this industry is severe and ongoing, the AHF asks that the Board amend the current regulations governing workplace exposures to bloodborne pathogens to do the following: add definitions for “adult film” and “sexually transmitted disease;” require an employer engaged in the production of such films to maintain engineering and work practice controls sufficient to protect those employees from exposure to blood and any potentially infectious materials, including requiring the use of condoms and any other protective barriers whenever exposure to a pathogen is possible; require that these employers maintain an exposure control plan; require that the adult film employers provide pre-exposure Hepatitis B vaccine to employees at the employer’s expense; require employers to provide information and training to employees at the employer’s expense; and require that employers provide employees with access to post-exposure prophylactic treatment for HIV, comprehensive testing for other STDs, and appropriate treatment for any subsequently diagnosed STDs.

Dan Leacox of Greenberg Traurig stated that, compared to 2007 and 2008, the processing time for elevator-related variance requests in 2009 was about 2/3 that of previous years, and in the last half of 2009, it has been less than half. He commended Board staff and the Division for reducing the processing times on these variances. He further stated that there have not been as many elevator-related variances this year as in previous years, but he is unsure whether that has any relation to the processing time.

Richard Worford, General Counsel for Envirotech International, spoke regarding the proposed Airborne Contaminants rulemaking package for adoption, specifically the five part per million (ppm) PEL for n-propyl bromide. Envirotech provided data on the feasibility of different degreasing systems when the rulemaking was presented for Public Hearing in March, but they did not have the benefit of the staff’s assumption about how employers could get to a five ppm. Once Envirotech knew what those assumptions were, they became concerned. There are two issues that were not considered in the comments that were published in the Final Statement of Reasons. One is that the assumption seems to be an effort to get to the PEL, which is the maximum allowable exposure. The rule of

thumb for industrial hygienists is to get at least and no greater than half the PEL. That is because the variability in measuring devices, such as badges and PID meters, are anywhere between plus or minus 20% to 25% that can be above or below where the actual exposure is. Thus, no one in their right mind will operate at the margin of a PEL because they could actually be testing 25% below to 25% high. It is not an assumption to get down to the maximum, it is to get below the maximum in operation. He expressed the opinion that that was not considered to any degree by the staff.

In addition, the lowest end of the exposure spectrum is five ppm to ten ppm, which is a difference of five ppm of variability of the testing. Even laboratory GCs have a plus or minus 20% of variability in what the number is.

Mr. Worford discussed an article in the newspaper from the previous day which highlighted the first flight of the new 787 Dreamliner, which is built using Envirotech's product, Nsol, in a vapor degreaser that is larger than most swimming pools. That degreaser is monitored 24/7 to be five ppm, based on the ACGIH ten ppm threshold limit value (TLV). Had that TLV been any less than half of the ACGIH's recommendation, they would have had to use TCE, a known carcinogen.

Mr. Worford stated that he also did not find any quantification of an expected health benefit for workers between five ppm and ten ppm in the Final Statement of Reasons, especially when it is known that it can be wrong to 25%. In his comments to the Board in March, Mr. Worford suggested that ten ppm would allow everybody to operate vapor degreasers under good workplace standards at around the five or six ppm exposure level, which is the maximum allowed by the proposed standard. However, if five ppm is the maximum, it is rare that an employer can reduce the level to 2.5 ppm with any kind of certainty. That basically removes NPB solvents as any kind of use in vapor degreasers. The other choices are TCE, a known carcinogen, or other solvents that run anywhere from \$8,000 to \$13,000 per drone. TCE is about \$900, and NPB solvents range anywhere from \$1800 to \$2400. Thus, there is an expense related to the five ppm PEL.

Chair MacLeod asked whether Mr. Worford understands that the record on this matter is closed and that the Board has to make its decision today based on the record.

Mr. Worford responded in the affirmative, stating that his point is that Envirotech had no discussion with staff, and there is no basis in the record for the assumptions made on the feasibility of reaching five ppm, and control by local ventilation is absolutely forbidden for vapor degreasing.

Barbara Kanegsberg, President of BFK Solutions, stated that she wished to provide clarification regarding ventilation as used with degreasers and regarding the use of respirators. Ventilation is a reasonable approach in many situations, but ventilation is not used with vapor degreasing for good reason. In vapor degreasing, effective soil removal and effective solvent containment depend on maintaining the integrity of the vapor (inaudible), where the cleaning, rinsing, and drying occurs. Any type of air movement near a vapor degreaser disrupts the vapor blanket, compromises the process, and

increases emissions. Destroying the vapor blanket is also likely to result in increased worker exposure.

The undesirability of using ventilation is reflected in federal and California regulations. In fact, many California air districts require minimizing ventilation and even outlawing ventilation to avoid destroying the solvent vapor blanket. Examples include SCHUMD Rule 1122, Sacramento Metro 454, and BAAQMD Regulation AQ16 (?).

A (inaudible) preparation request (?) does not suggest ventilation as a control mechanism and an urgent study indicates that ventilation is not preferred for vapor degreasers. Eliminating air movement near degreasers has become standard industrial practice, not only to protect the environment and to achieve optimal process performance, but also to protect workers. Degreasers should never be ventilated.

Using respirators to meet the PEL, particularly where companies are already operating fairly close to the PEL inhalation level places the employer in a Catch-22 situation, and using respirators is not a quick and easy fix. Suppose that the PEL were five ppm and one group of (inaudible) work on three ppm. In over 30 years of industrial experience, the safety professionals with whom Ms. Kanegsberg has associated would not find this to be an acceptable margin; they would elect to operate at no higher than 50% of the PEL, or 2.5 ppm. If working at three ppm, an employer would be faced with the need to introduce respirators. Although it is only within a few ppm or less than one ppm, no one wants to operate at the margin.

It is typically recommended to minimize the use of respirators because they introduce other safety issues into the workplace. The current best practices of industrial hygiene indicate that respirators are the least satisfactory means of exposure control because they provide good protection only if they are properly selected, fit-tested, worn by the employees, and replaced when their service life is over. In addition, some employees may not be able to wear a respirator due to health or physical limitations. Respirators can also be cumbersome to use and hot to wear, and they may reduce vision and interfere with communication. If people use respirators improperly, they may make matters worse, and it is not unknown for people wearing respirators to become entangled in other process equipment.

At the most recent Feasibility Advisory Committee (FAC) meeting, there were several compounds under consideration. Members were presented with a range of proposed inhalation levels from the Health Expert Advisory Committee (HEAC). A similar approach in setting the final limit for NPB, taking into account that there are a range of conclusions on the part of thoughtful, intelligent evaluators, using this approach would have the net effect of setting the inhalation such that it would not force employers into a Catch-22 situation where there is a lot of variability. Such an approach would provide optimal protection for the workers of California.

Dr. Frisch asked whether Ms. Kanegsberg is a certified industrial hygienist. Ms. Kanegsberg responded in the negative, stating that she has followed industrial hygienists frequently in her work because there needs to be a synergy in complex cleaning processes and manufacturing processes, and a lot of that is not taught in industrial hygiene school. Thus, she has taken the courses, and she works frequently with industrial hygienists, but she does not pretend to be one. A lot of people are afraid of safety representatives, so she has to be able to spot problems right away and call in the safety people when she is called in on site visits.

Dr. Julia Quint expressed support for a protective PEL for 1 bromyl propane. She submitted written comments to the Board that provided quite a bit of detail about the basis for a protective PEL. It is very important to have a PEL based number for 1 bromyl propane, as it is a skin-penetrable solvent in addition to exposure by inhalation. She had proposed three ppm, but she supports the proposal of five ppm based on feasibility. She feels that five ppm can be met, particularly since there are many substitutes other than toxic solvents that can be used in vapor degreasers as a substitute for 1 bromyl propane. Aqueous solvents have been to be effective as well, which was included in the 2003 Hazard Alert on 1 bromyl propane. She urged the Board to adopt the proposal of five ppm for the protection of workers.

Dr. Frisch asked whether there were discussions about the feasibility of achieving the levels under discussion today, and he asked whether those measures were strictly substitution, or was the feasibility of achieving those levels using engineering and administrative controls also discussed. Dr. Quint responded that the feasibility of using safer alternatives was discussed early on in the advisory committee process. She did not recall discussions regarding the idea that achieving five ppm was not possible.

Dr. Frisch asked whether industry representatives were present at these meetings. Dr. Quint responded that the meetings were open to everyone, and the discussions regarding 1 bromyl propane have been ongoing for quite some time, and those discussions have included industry representatives.

Dr. Frisch asked whether those meetings predated the March 19, 2009, Public Hearing. Dr. Quint responded affirmatively.

Mr. Kastorff asked whether administrative controls, such as job rotation, would be effective in reducing the overall exposure. Dr. Quint responded that there are methods like job rotation that can be used. Whenever a solvent is used, there are certain things that can be done to reduce exposure to dangerous substances. She stated that she is not an industrial hygienist, so she cannot address industrial hygiene issues, but there are a number of things within the spectrum of administrative controls that can be used to reach an exposure limit that is feasible.

Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association, expressed agreement with the proposed decision

on Petition File No. 509. He stated that the language in the decision was unclear as to whether the language in the petition would be included in the heat illness standard or whether the public comments regarding that standard included similar language. He also expressed appreciation for the Board staff's work on the Piling Material standard and spoke in support of the adoption of that standard.

Michael Smith of Worksafe thanked the Division for the thoughtful process that occurred with the consideration of the chemicals included in the Airborne Contaminants proposal. Everyone had a full and fair opportunity to be heard. Worksafe's differences with the Division's recommendations are outlined in the written comments submitted in March prior to the Public Hearing, but Worksafe supports the vast majority of the recommended PELs.

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:41 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public Hearing of the Board to order at 10:41 a.m., December 17, 2009, 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 22
Section 1648; and Article 25
Sections 1675 and 1678

GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 4
Sections 3276, 3277, 3278, 3279, and 3280;
Article 5, Section 3287; and Article 11, Section 3413
Portable Ladders

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.

Larry Pena, Manager of Corporate Safety for Southern California Edison (SoCal Edison), stated that SoCal Edison actively participated in both advisory committee

meetings, and Mr. Pena acknowledged the efforts of Mr. Mitchell and other staff in attempting to build consensus among industry representatives. SoCal Edison supports the proposed amendments, which govern portable ladders, with certain recommendations. Mr. Pena then summarized SoCal Edison's written comments.

Bruce Wick, Director of Risk Management for the California Professional Association of Specialty Contractors (CalPASC), expressed agreement with Mr. Pena's comments regarding the frequency of inspections, and he stated that the term "competent person" indicates that it is someone who has the authority to provide prompt corrective action to eliminate a hazard if a ladder has to be pulled out of service or replaced due to a defect that would compromise the safety of that ladder. He stated that the use of the phrase "competent person" implies that the employee using the ladder is not competent to make his own decision about the safety of the ladder he is using. He asked that the final statement of reasons or the hearing record make it very clear that an employee who is trained to use a ladder is also trained to identify a defective ladder and have the authority to remove it from service under the employer's supervision.

Mr. Washington stated that a "competent person" as opposed to a "qualified person" has always been a bit of a problem in the regulations and decisions always have to be made regarding equipment that is subject to wear. Generally speaking, there are superintendents, supervisors, and others who do this type of work that have been specifically trained to identify equipment that may be unsafe for use. He stated that the issue raised by Mr. Wick is a very important one—whether someone can make the determination by virtue of having experience with the equipment as opposed to someone who has a certificate indicating qualification. He further stated that it does need to be clarified in the standard so the employer will know exactly who the correct person to make those determinations is. He asked whether an employee using a ladder is competent to determine whether or not that ladder is safe to use.

Mr. Wick responded with the opinion that a user employee can be trained to understand what a defective ladder is and to determine whether he can use that ladder or it has to be pulled from service.

Patrick Singh, Director of Safety and Loss Control for Safeway, Inc., expressed uncertainty regarding the intent of the inspection requirement and whether the inspections are supposed to be documented. He stated that the requirement for inspection at the beginning of each shift could become burdensome and counterproductive. In various industries, multiple and staggered shifts are in effect. For example, in the retail grocery industry, employees may come in at 10:00 p.m., 11:00 p.m., and 12:00 a.m. to restock the shelves, which will require the use of ladders. The proposed regulation implies that each employee will have to inspect each ladder that he or she may or may not use that day. Thus, in a typical store scenario, there could be 40 to 50 inspections at one location. He suggested that the language be

modified to indicate simply that ladders need to be in good, useable condition and will only be inspected if certain things occur.

He stated that the proposal incorporates the ANSI 14.1-2007 standard, which includes step-stools, defined as ladders that are 30 inches or shorter. The grocery industry utilizes a lot of step-stools. He asked whether step-stools pose the same risks as extension or other ladders that reach much higher, whether step-stools need to be inspected with the frequency described in the standard, and whether step-stools need to be ANSI-approved.

Incorporating ANSI standards by reference makes it difficult for small businesses, as they can be very expensive. The ANSI standard regarding reinforced plastic safety requirements, for example, costs approximately \$400. Incorporating ANSI standards also may create a problem when technology advances to the point that something better is available but has not yet been incorporated into the ANSI standard. For example, ANSI-approved step-stools are available, and if employers are required to purchase ANSI-approved step-stools, some small business owners will not be able to purchase a step-stool that is available at a retail facility such as Home Depot.

The proposed language also creates problems because of consistency with federal standards for companies that operate in multiple states. For instance, a step-stool purchased for a Nevada grocery store may not be compliant for California operations and another, California-compliant step-stool would have to be purchased.

Michael Kopulsky, President of Front Line Sales, Inc., stated that while his company would benefit from the proposed regulation because it would create a plethora of new products, he requested that the Board not accept the proposed changes due to some implementation concerns until some clarification is provided specifically related to step-stools.

Section 3276(e)(2) of the proposed regulation requires inspection by a competent person for visible defects prior to the start of each shift. He asked whether that inspection has to be documented, and whether he should be seeking to supply his customers with source books. If so, will a teacher have to inspect and document each time a schoolchild uses a one-step stool to reach the sink? In a broader sense, he asked who is responsible in a non-construction environment to handle this sort of use. Many restaurants keep a step-stool in the stock room for the employees' use; will the employees have to sign a log every time they go into the stock room to get a can? He further stated that many industries have staggered shifts; thus, three employees may share a stepladder during the course of the day, but all three may be on separate, overlapping shifts.

He stated that he is viewing the proposed regulation from an implementation and documentation point of view, and there is a big difference between being 18 feet up in the air and 18 inches. Although he would love to sell log books state-by-state, we

must recognize the knowledge that ANSI and OSHA have already acknowledged—that a step-stool, defined as less than 32 inches, does not present the same degree of risk as a ladder that is used to convey people through a greater distance or height. It is simply used to help a shorter segment of the population reach a height that others might be able to reach without help, as well as being safer than using a piece of furniture.

He suggested that applying construction industry standards for ladders to step-stools defies common sense and stated that the use of step-stools should not be subject to a recording requirement.

Judy Freyman with ORC Worldwide spoke as a proud member of the shorter segment of the population and a frequent user of step-stools. She stated that step-stools need to be excluded from this regulation because they do not present the same safety issues as ladders. There have been a number of use issues that have been used and that were discussed during the advisory committee meeting regarding step-stools. She expressed the belief that the intention was to exclude step-stools from the regulation. She also spoke in support of Mr. Singh's comments regarding the issue of documentation and the frequency of inspections. She stated that in a 24/7 world, things should not be tied to shifts and suggested a more flexible term, such as periodically, which would be more appropriate.

Bill Taylor, President of the Public Agency Safety Management Association (PASMA), summarized his written comments.

Dr. Frisch asked what happens during a fire if a ladder is pulled off of a truck and is found not to be useable. Mr. Taylor responded that the instruction is not to use that ladder.

Dr. Frisch then asked whether the presumption would be that other ladders would be present to be used. He stated that, in this particular application, there is an argument for more frequent inspection of the ladders rather than less because in times of emergency, there is not the luxury of being able to take a ladder out of service and repair it.

Steve Johnson of the Associated Roofing Contractors of the Bay Area Counties (ARC-BAC), expressed agreement with Mr. Wick and Mr. Pena regarding the definition of a competent person to perform inspections. He stated that ladders are tools that roofers use every day, from estimating the job through completion. He expressed concern regarding the transportation of ladders as well, stating that there are frequent reports of ladders on the freeway, which is an issue for the California Highway Patrol. He stated that it is something that employers stress to their employees, that ladders must be securely fastened to the truck before leaving the job site. He also asked that the regulation be clarified regarding the use of sectioned ladders.

Scott Harding stated that he has been working in the construction industry for the last 12 years and has been working in safety and health management for the past couple of years. He stated that consolidating all of the ladder requirements in one section makes sense, and he expressed appreciation for the Board for doing that.

He proposed that Section 3278, subsection (c), which indicates that all parts be free from sharp edges, splinters, irregularities, and defects which affect the ladder's structural integrity, and references Section 1676 regarding job-made ladders be modified to specify those items which might affect the safety of the ladder, such as fasteners, nails, screws, or any protrusion of any kind that may cause an injury or catch on clothing, tools, belts, harnesses or equipment and potentially cause slippage or falls during ascent or descent. He stated that if there is any kind of protrusion when one is climbing a ladder, it could cause a fall. That would include job-made ladders, portable ladders, and extension ladders.

Section 3278 subsection (e)(3) requires frayed or badly damaged ropes to be replaced and ladders to be taken out of service if they are damaged or defective, although subsection (e)(1) already requires ladders to be maintained in good condition at all times. A more precise definition of "good" may be required, as that term may be interpreted differently by different employers. Mr. Harding stated that an employer's telling employees that a particular ladder is not to be used because it is defective is not enough; if they are available and accessible, employees will use them, regardless of damage or defect. He suggested that destroying the ladder, rather than attaching a "Do Not Use" tag or sticker, might be a better way to take it out of service to prevent it from being used.

Subsection (e)(6) requires rungs to be kept free of grease and oil, and the proposal suggests moving this provision to subsection (e)(4) and that it be amended to require that ladders be kept free of oil, grease, and slippery materials. He stated that ladders become slippery in cold, damp, foggy weather conditions as well, and he suggested that the definition of the term "slippery materials" be expanded to include dew, mud, etc., rather than just oil and grease.

Joan Gaut, representing the California Teachers Association, on behalf of the vertically challenged teachers of California, asked the Board to remove step-stools from the proposal.

Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association, expressed agreement with Mr. Pena's and Mr. Wick's comments. He also stated that the inspection issue had been discussed for a good portion of the advisory committee meeting, and his understanding was that the inspection would be part of the construction industry's safe practices or Injury and Illness Prevention Program; the inspection would not be required every single day.

Julio Petrini stated that common sense might dictate that, in the case of grocery stores, a supervisor could check the ladder each day and fill in the log, rather than having each employee that may use that ladder check it at the beginning of his or her shift.

John Bobis, representing Aerojet, stated that the definition of “qualified person” is clearly defined in all of the Title 8 safety orders to mean a person who has the proper education, experience, and demonstrated knowledge of the subject matter to identify potential dangers or damage associated with particular equipment. In regard to the inspection requirement, Mr. Bobis stated that a damaged rung on a ladder is fairly obvious, even to the untrained eye. He further stated that the record-keeping requirement is unnecessarily burdensome for employers, and it should be removed from the proposal.

Mr. Bobis suggested that subsection (f)(5) be amended to indicate that three-point contact with the ladder be required at all times.

Mr. Prescott asked whether incorporating the ANSI standard by reference means that employers do not need to have the ANSI standard, provided that the ladder is labeled as having met that standard. Mr. Manieri responded affirmatively, stating that ladders are manufactured to meet ANSI-defined specifications, and that provision is for the manufacturer rather than the employer.

Mr. Prescott suggested that the proposal be modified to indicate that a ladder must meet the ANSI standard in effect at the time of manufacture rather than the time of purchase. Thus, if the ANSI standard is changed in the near future, the ladders currently available for purchase do not need to meet that new standard.

Mr. Prescott agreed with several of the commenters regarding the use of the term “qualified person” as opposed to “competent person,” stating that under the definitions in Title 8, “qualified person” is the appropriate term. He asked that the choice of the term “competent person” be addressed in the final statement of reasons. He also asked that any cost associated with having a platform or landing between separate ladders be identified in the final statement of reasons.

He stated that subsection (e)(15)(A) references the Electrical Safety Orders and the Telecommunications Safety Orders, and he stated that it does not make sense to refer to the Electrical or Telecommunications Safety Orders when addressing fall protection.

He stated that the provision in subsection (e)(18) requiring signage for conductive ladders is already addressed in the ANSI standards and having that provision in the proposal may be redundant.

Mr. Kastorff stated that there had been a lot of comment regarding the frequency of inspection, when Section 3203 already requires periodic inspections of the workplace. The frequency of those inspections is not specified; the employer establishes the frequency. He stated that similar language could be used in the proposal. He also suggested that step-stools be exempted.

Dr. Frisch agreed with Mr. Prescott's comments regarding labeling. He asked whether Class II and Class III are approved for use anywhere, and if they are not, they should be deleted from the reference table in subsection (d)(2). He suggested that the words "cleaned of" be replaced with "free of" in subsection (e)(4). He also asked that the definition of the term "deteriorating agent" be defined in the final statement of reasons.

Chair MacLeod recessed the meeting at 11:40 a.m. and reconvened at 11:52 a.m., at which time he introduced the next item noticed for public hearing.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 20
Section 3563 and Article 25, Section 3651
**Rollover Protective Structures for Ride-On Power Lawn
Mowers**

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.

Mr. Bobis commended Board staff for the work performed on the proposed standard. He indicated that subsection (c) is confusing, stating that if the technical information from the manufacturer states that the lawn mower is capable of being equipped with ROPS, it should be done and the ROPS should be engineered for that particular mower. He further stated that this regulation is written more for the manufacturer than the user, but a qualified, registered engineer should be able to install the ROPS rather than returning it to the manufacturer.

John Gehlhausen, a plaintiff's attorney from Colorado, stated that although the proposal is a good step, he is fearful that it is too easily avoided and may be counterproductive. He stated that for the last 20 years, he has been involved in rollover litigation, and in that time, he has moved from large tractors that lacked ROPS to riding mowers also lacking ROPS. Manufacturers began equipping more of their equipment with ROPS in approximately 1972, but they only put ROPS on some of their machines, not all of them. A few manufacturers do put them on all of their machines, but those manufacturers are the exception rather than the rule. Mr. Gehlhausen indicated that manufacturers do not equip their machines with ROPS because it puts them at a competitive disadvantage in the market.

Rollover of these machines, according the Consumer Product Safety Commission (CPSC), is the leading killer of people using ride-on power lawn mowers. People are not only killed but also injured. The CPSC statistics for 1980 through 2008 show that some 58,000 have been taken to emergency rooms for treatment because of rollovers. If the ROPS, which consist of a rollbar and a seatbelt, are properly used, they have been proven 99% effective on every type of tractor on which they have been used, including riding mowers.

Mr. Gehlhausen stated that all it takes for a manufacturer to sidestep the proposed regulation is to put a different model number on a similar machine, and there is a significant price difference between the model with the ROPS and the model without.

He further stated that the CPSC has studied slope rollovers as far back as the 1980s, and they occur on any angle a machine can mow, including slopes under 15°. Thus, the provision requiring operators to avoid slopes of 15° or more is ineffective. The cause of a rollover is rarely because of the slope alone, however; there is usually a loss of traction due to wet conditions or loose grass that contributes to the rollover.

Mr. Gehlhausen also stated that the provision requiring operators to remain at least five feet away from a drop-off should be modified to equal the distance of the drop-off due to shear lines. For example, the operator should stay ten feet away from a ten-foot dropoff.

This proposal is designed to prevent injuries. It is a good step in the right direction, but the most effective approach with the least cost effect would be to require ROPS on all ride-on power mowers.

Mr. Taylor read a comment from a PASMA member, stating that they have approximately 8,613 linear feet of lake edge. With a five-foot restriction, this would leave them with one additional acre of turf that would need to mowed by hand each week. In addition, the average water depth along the lake is approximately one foot. Most of the PASMA agencies do not have enough manpower to perform this additional hand mowing each week. PASMA feels there are better ways to mitigate the risks of turnovers in bodies of water that would not require the complete prohibition of mowing within five feet of a body of water. PASMA believes that if operators are in compliance with proposed training requirements, if they always wear seatbelts, these incidents can be avoided. Mr. Taylor further stated that if it is a narrow mower, the prohibition makes sense, but if it is a gang mower where the mowing arm is to the side of the operator, it does not.

Mr. Jackson suggested that staff address where the five-foot margin begins, whether it is supposed to be five feet from the operator, the edge of the tractor, or the mowing apparatus.

Dr. Frisch stated that this had been an item of particular interest to him, and he expressed his appreciation to the Petrinis (the original Petitioners), for their participation in this process. He echoed Mr. Gehlhausen's concern regarding the requirement that only ROPS-equipped mowers be purchased after a particular date. He stated that there may have been a reason that the provision is not feasible, but he did not understand what that reason was, and he would like that addressed in the final statement of reasons. He also questioned the five-foot rule, stating that he did not understand the rationale for it.

In addition, he did not understand the difference between subsection (e)(4)(A) and subsection (e)(4)(C). Subsection (e)(4)(A) states that refresher training is required when an employee has been observed to operate a mower in an unsafe manner, and subsection (e)(4)(C) requires it when the operator has received an evaluation that reveals that the operator is not operating a mower safely. He further questioned what an employer is supposed to do with a third-party report of an operator having been observed to operate a mower in an unsafe manner; he asked whether that third-party report would be included with an evaluation, or would it automatically trigger the refresher training requirement on its own.

He closed by commending the staff and the advisory committee participants for their work on the proposal.

Mr. Kastorff stated that he endorsed Dr. Frisch's comments, specifically concerning a mandatory ROPS requirement, and a better definition of the five-foot rule.

Bill Cameron of John Deere, stated that ROPS is not appropriate for all machines, which was discussed in the advisory committee. He stated that the inclusion of the ANSI standards for manufacturers is very good. He is a member of the ANSI committees that review accidents and develop safety standards. It is an ongoing process, and the very ANSI regulations referenced in the proposal are currently in the revision process. New versions can be expected within the next one to two years.

Mr. Washington asked whether ROPS would be available both to agencies and employers that are subject to the proposed regulation and to individuals for home use, which are not. Mr. Cameron responded that within the John Deere company, there is no such thing as an optional ROPS. If the company determines, through a hazard analysis and a number of different test, that a ROPS is necessary for a particular machine, it will be on that machine for all models.

Mr. Kastorff asked whether John Deere manufactures a riding mower without ROPS. Mr. Cameron responded affirmatively, stating that many of the very small riding lawn mowers do not have ROPS, but generally they are very light weight and in most cases, John Deere advocates that it is far better for the operator to jump off the mower if there is a rollover. A ROPS structure, almost invariably, will raise the center of gravity of any machine, which then makes it more likely to roll over on a given slope.

That is just one of the considerations that need to be evaluated in determining whether a ROPS is necessary. He stated that there are downsides to a ROPS that may, in fact, make a rollover more likely to occur.

Dr. Frisch asked about the impact of requiring that employers buy a ROPS-equipped device; he asked whether that requirement would cut out a large percentage of the available equipment in an employer's purchasing decision. He also asked in what case a ROPS would not be necessary. Mr. Cameron responded that there might be specific instances, such as an application-specific machine that does not have a ROPS, in which an employer would be prohibited from purchasing a machine. There will be special instances where a machine does not have a ROPS, but it fills a specific need.

Dr. Frisch asked how Board staff should approach the issue of shear lines and how close an operator can get to a body of water as they develop the language of the proposal. He stated that it appears that there are certain circumstances where the edge of the device could be closer than five feet without posing a risk to the operator. Mr. Cameron responded that some mowers may have an extension off to the side where it would be safe to have the extension close to a body of water. In regard to the shear line argument, he stated that in his experience, he has never seen a bank collapse.

Madeleine Petrini, Petitioner, thanked the Board and staff for their efforts in developing the proposed standard.

Mr. Gehlhausen returned to state that manufacturers tend not to put ROPS on lightweight mowers, but if the mower is on a slope with a 200-lb. operator, it is much more apt to tip and roll over on the operator, even if it is lightweight. He stated that whether the ROPS raises the center of gravity or not, as stated by Mr. Cameron, it does provide protection for the operator. Most of these machines do not roll over because of the center of gravity, but rather because an embankment collapses or because of slippage on slopes.

Chair MacLeod thanked staff for the work on both items presented during the Public Hearing, and he thanked the advisory committee participants as well.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 12:29 p.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 12:20 p.m., December 17, 2009, in Room 358 of the County Administration Center, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 7
Section 1549
Piling Material
(Heard at the September 17, 2009, 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. Kastorff that the Board adopt the proposal.

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 107
Section 5155
Airborne Contaminants
(Heard at the March 19, 2009, Public Hearing)

Mr. Barish 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 Dr. Frisch and seconded by Mr. Jackson that the Board adopt the proposal.

Dr. Frisch asked for an explanation of the enforcement policy for refractive ceramic fibers. Mr. Welsh responded that the Division does not perform a lot of air sampling to monitor compliance with permissible exposure limits, and it needs to do more. In addition, the employer community itself needs to do more to control exposures, and he would like to explore the possibility of some targeted partnerships to explore different important exposure issues in the workplace. The ironworkers have been doing this project for approximately the last 18 months, where they have been sampling at welding shops and discussing the results of that sampling with the Division. As more employers become included in similar programs, whether it is enforcement, consultation, or in partnership with employers or labor unions, the issue of variability in airborne exposures will come up. The Division currently takes a single sample to measure a particular operation, and that will be the only sample. The sample is then sent to a lab for statistical analysis, which does not take into account the variability associated with (inaudible)

itself. This has been a topic of intense discussion and research since the late 1970's, and the controversy continues today. The question is one of whether the Division is willing to concede that 100% certainty that an employer is below a certain level of a substance in the air is impossible. The idea that the PEL indicates that that particular level can never be exceeded is a nice one, but it does not really have any expression in the real world. The only way to go about this concept is through statistical analyses, and preferably analyses that use many airborne samples so the analyst can construct a distribution from those samples. In 2010, the Division would like to have a couple of meetings with stakeholders to discuss how to go about assessing compliance, whether through consultation or enforcement, and how to incorporate statistical approaches to determining whether there is substantial compliance. In administrative case law, which determines how ALJs decide whether a violation can be proved or not, the standard is substantial evidence. If there is a situation in which only one sample can be obtained, the Division may want to say that if only one sample is available, perhaps the employer should not be held to the PEL for a single sample, for the sake of acknowledging variability. However, Mr. Welsh would prefer to discuss an appropriate number of samples to determine whether or not an employer is in compliance with a PEL and to encourage employers to perform the sampling themselves. If employers perform their own sampling, and they have a scientifically based argument that they have conformed to good industrial hygiene practice, the Division ought to honor those results unless something the Division does negates that argument.

Dr. Frisch stated that the area of dealing with PELs and chemicals is troublesome for people to think about. In issues discussed during the public hearing, such as whether a ladder has rungs missing, it is pretty obvious that that ladder must be removed from service. Dealing with chemicals means dealing with statistics, and in this standard, statistics are being used in a number of different ways. These statistics include industrial hygiene issues where one sample does not prove anything, and the extrapolations and calculations that are done to progress from animal studies to human studies down to levels that we believe are going to be safe. Invariably, people are going to be uncomfortable with basing a regulation on statistics of this type. However, it is the very best that can be done to provide safe workplaces. Dr. Frisch's commended the staff's work in struggling through one of the most difficult parts of occupational health and safety, which is determining a reasonable level of exposure to potentially hazardous chemicals.

As far as the PELs under consideration today, a lot of good arguments have been made, and as he read through the issue presented, it struck Dr. Frisch that one can have discomfort with the numbers established, either from a feasibility standpoint or from a protective PEL standpoint, but the numbers that are presented all have a rational basis. They have all been discussed and vetted. Anyone who had an interest in helping to determine those numbers had an opportunity to have their concerns heard and registered. Science and toxicology both evolve—this is one of the faster-moving areas in health and safety—and what constitutes evidence that leads to occupational health numbers has

changed dramatically over the last 20 years. The technologies have changed, the science has changed, and the body of evidence has grown, and they will continue to do so.

The Board is voting today on establishing some numbers that are more health protective than they were; there is understandable discomfort with that. These are good numbers, and they are defensible numbers, and the science will evolve. One of the reasons that the HEAC never goes away is the evolving science, and there are a number of issues that will need to be faced in the future. Voting for a change in the PELs today does not say that we are done; it states that we have found a number that will work for today, and we will continue to evaluate the evidence. Dr. Frisch knows that the Division is committed to continuing to evaluate new evidence as it comes forward, and he can guarantee that the Board will see the 12 chemicals under consideration today again at some point in the future. That is the nature of occupational health.

Dr. Frisch closed by thanking the staff for their work on this standard, stating that it was nice to be voting on PELs after his being on the Board for three and a half years.

Mr. Washington stated that he understands that there are deadlines for submitting information regarding proposed rulemaking packages. He expressed concern that a deadline might be used as a means of accepting new information that has emerged or become available since the time of the Public Hearing. His concern with this particular proposal is that the discussion of a PEL for n-propyl bromide ranged from a ppm of one all the way up to a ppm of 25 and then back to 10 and 15.

He expressed confusion as to the basis for the five ppm PEL required in the proposal, and he expressed concern that it appears that more information has become available that was not used in establishing the PEL. One of the aspects establishing a PEL, in addition to the safety aspect, is the feasibility of being able to reach that PEL. He asked whether all of these aspects were considered in establishing the PELs. He stated that he saw nothing in the record that indicated consideration of general practices was made. For example, testimony presented today indicated that most employers operate well below the PEL because the chances of exceeding the PEL if an employer starts near the top of the range are pretty high. Therefore, responsible employers are already trying to operate well within current PELs. He expressed concern that the low PEL for substances such as n-propyl bromide is not feasible for employers.

He also expressed concern that information regarding alternatives that was requested within the public comment period was submitted within that time frame, but the record does not reflect that information. For example, information regarding cost data and the impact that a PEL of five ppm for n-propyl bromide would have on the users was requested, but it is not in the record. One of the ways that manufacturers might want to deal with the PEL that is difficult or impossible either feasibly or economically would be to go to another chemical, which might not be feasible for the manufacturer either practically or in terms of costs. However, that information is not in the record that responds to that issue.

Mr. Washington expressed further concern regarding the requirement for use of respirators, stating that any time respirators are required, costs for the employer are increased, but he had seen no information regarding that cost impact in the record. In addition, the justification for the use of ventilation has to be compelling. He stated that, nationally, there is readily available evidence that ventilation is not a recommended method of dealing with a chemical such as n-propyl bromide, and that evidence should have been considered in the development of the proposal, although it appears that it was not.

Mr. Welsh respectfully disagreed that there is no showing in the record that Mr. Washington's concerns have been addressed. He stated that the Division expects there to be a hierarchy of controls in complying with a PEL, in compliance with Section 5141. The first step is to engineer the exposure level down as far as possible, which is where ventilation issues potentially come in. When engineering controls do not reach the required PEL, then employers may use administrative controls, such as rotating employees so they do not spend more than a specified amount of time in a particular operation. The third tier in the hierarchy if the exposure must be still lower is to use respirators.

Respirators are the least preferable of the three approaches because they are the least dependable, requiring employee compliance, training, etc. Thus, if there is another way to reduce exposure to the required level, the employer will choose something other than respirators, but that does not mean that the employer discards respirators as a compliance tool. There will never be an asbestos removal project, for example, in which the employees are not using respirators. People use respirators in many construction projects because it is common sense that one does not want to be breathing what one can see floating in the air. Solvents are something for which people traditionally use respirators in many settings, because it has been known for a long time that breathing these vapors is not desirable if there is a respirator that will reduce exposure. With the combination of those three types of controls, employers can reliably get below five ppm, and even the data submitted by opponents of that PEL showed that, in most cases that they were monitoring, they were already below five ppm even without a PEL in place.

On the ventilation issue, it is simply not true that ventilation is not used in a workplace that uses a vapor degreaser. In most cases, a local exhaust strategy will not be used with a vapor layer vapor degreaser because it will disturb the vapor layer. By the same token, however, employers do not lock employees in a hermetically sealed building and state that they are not going to ventilate the area—replacement of fresh air for polluted air is required in the building, and ventilation is used to maximize the percentage of fresh air and without disturbing the vapor layer near the degreaser. Similarly, if there are adjacent areas, they need to be well ventilated and isolated from the vapor degreaser area, and employee exposure to the degreaser area needs to be minimized, which is an administrative control.

These issues were discussed during the advisory committee process—no issue heard today is new. All of these issues were discussed earlier. There is no new information that has been brought to this meeting today. He asked Mr. Barish whether any users of these solvents had been heard from today. Mr. Barish responded that no users have come forward or been brought forward.

Mr. Barish stated that in convening the advisory committee and in developing the proposal, he tried to identify and contact employers that would have an interest in this standard. For example, during the 2005 advisory committee, Mr. Worford mentioned large scale vapor degreasers as an issue, so Mr. Barish contacted Boeing in Palm Beach and he was told that the safety engineer stated that no evaporative work was being performed at that site, he was unsure whether it ever had been, and if it had been used in the past, it was now performed out of state. Mr. Barish received a similar response from Lockheed in Palmdale. He also contacted Rockwell International, which indicated that not only had they reduced exposures to two to five ppm, they would not have a problem with a five ppm PEL. The only users from which the Division had heard were those with whom they had initiated contact.

Chair MacLeod stated that Mr. Washington had had a number of concerns including cost, ventilation, feasibility, and the time frame for the submission of information. Mr. Washington indicated that when the record was open for comments that some of those questions were not answered. Chair MacLeod asked whether all of those concerns were addressed in the Final Statement of Reasons.

Mr. Barish responded that Initial Statement of Reasons indicated that he had contacted the International Bromate Solvents Association (IBSA) in October 2008 and asked for their reaction to a five ppm PEL, and the response was that they would provide information on feasibility in their written comments. Mr. Worford's comments, which were indicative of the IBSA's comments, highlighted the database that appeared in the Federal Register from the Environmental Protection Agency (EPA) discussing 1 bromyl propane, indicated that that database demonstrated that 55% of results in degreasing had results at or below five ppm, and 70% were at ten ppm, which was an indication of infeasibility. The Division did not see that data as an illustration of infeasibility but rather as a suggestion of feasibility, and they were fully aware of that database in developing the proposal.

Chair MacLeod asked whether that information was obtained before or after the record was closed. Mr. Barish responded that the database was studied after the record was closed, but it was in the record as far as Mr. Worford's written comments highlighted it.

Chairman MacLeod asked whether Mr. Barish was confident that the Final Statement of Reasons addresses Mr. Washington's concerns. Mr. Barish responded affirmatively regarding the submission of information and feasibility.

Chair MacLeod asked about the time frame and cost. Dr. Frisch stated that, regarding the scientific data, he had asked the same question in March, and it was addressed on page 5 of the Final Statement of Reasons. With respect to feasibility, there was already information in evidence on page 9 of the Final Statement of Reasons that speak directly to Mr. Worford's comments regarding the database and to the other work that has been discussed.

A roll call was taken, and all members except Mr. Washington voted "aye." Mr. Washington voted "no." The motion passed.

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Garth Patterson
Heat Relief Solutions
Petition File No. 509

Petitioner requests that the Board amend the General Industry Safety Orders, Section 3395, with regard to heat illness prevention in outdoor places of employment.

Ms. Hart summarized the history and purpose of the petition and indicated that the proposed decision was ready for the Board's adoption.

MOTION

A motion was made by Mr. Prescott and seconded by Mr. Kastorff that the Board adopt the proposed petition decision.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales requested that the Board adopt the consent calendar as proposed.

MOTION

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

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

D. OTHER

1. Board discussion/inquiry regarding the status of the Petition 507 related rulemaking and Board action, if and as

deemed appropriate by the Board, directing Board staff to undertake actions regarding that rulemaking (continued from the November 19, 2009, Business Meeting).

Chair MacLeod re-opened the Public Meeting to receive comments from the public regarding this petition.

Bo Bradley, Association General Contractors (AGC) of California, expressed concern that *de minimus* masking seems to be the focus of the work plan submitted by CARB and Board staff. Currently, zero masking is the rule, and there has been no justification for any degree of masking, nor has there been anything presented that proves that any additional visibility masking other than what the manufacturers already do is acceptable. The work group continues to state that the final criteria will not be as conservative as what is currently in place, which is cause for concern.

Ms. Bradley also stated that the petitioners requested that the public hearing for a rulemaking package be held in April, and according to the work plan, it is not going to be presented for public hearing until August, which is two years after the original petition was submitted. It seems that the time frame continues to be extended, and the reason for the delay is unclear. She is still concerned about how long it is taking to develop a rulemaking package.

Dave Harrison, Operating Engineers Local 3, echoed Ms. Bradley's comments regarding the acceptable degree of masking and the timeline. He stated that the work plan indicates a Notice of Public Hearing will be issued in June with the actual Public Hearing occurring August, and the petitioners have been very cooperative and patient with all of the agencies involved. He stated that if the Public Hearing is held in August, the Operating Engineers will be well into their busy season, and employee safety will be at risk, so he asked that the public hearing be held much sooner than August.

Mr. Harrison stated that the issues of heat and fire hazard had been mentioned in the original petition, but they had not yet been addressed. He stated that with the focus on masking, the heat hazard had fallen by the wayside, and since no one had argued with the language proposed in the petition, he assumed it was acceptable.

Chairman MacLeod closed the Public Meeting portion of the meeting.

Ms. Hart stated that, as directed in the November meeting, Board staff developed a work plan and a timeline for developing this proposal, which is in line with the agreement made with the Governor's Office, CARB, the petitioners, and Board staff. CARB, the Division, and Board staff are working together to develop a methodology for moving forward to achieve safety in the workplace and to meet the air quality standards, which is going to take time.

At the last Board meeting, Eric White indicated that a meeting of the retrofit visibility working group would be held in December. That meeting was held on December 7, and there was a comment made by CARB staff that the final rule would not be as conservative as the current rule of zero masking. In fact, that is a possibility, but it is not certain. The whole purpose of doing the studies that are going to be taking place from January through March is to determine whether there is a *de minimus* amount of masking that is acceptable, but until those studies are completed, there is no indication as to what it might be. It may remain at zero masking, but the studies will have to be examined thoroughly to determine that.

The development of an exemption process and whether employers would be able to have exemptions and what to do with existing equipment were big issues at the November meeting, and CARB is addressing those concerns with various documents and working with employer groups to develop that process. However, in line with the Board's mission of developing and adopting a safety standard, the work plan lays out what it is going to take to get to that point.

As far as Mr. Harrison's concern of employees being at risk this summer, they will not be at risk because right now there is no masking allowed. There are not filters being installed on equipment unless it is under the hood. There is an exemption for equipment that cannot be retrofit without reducing visibility, including equipment which has already been retrofit. That equipment can be taken out of service, or there are other remedies in place, including removal of the filter unit. She realizes that the August public hearing date is a long way away, but she does not feel that employees are being jeopardized because remedies are in place.

Mr. Prescott stated that he is not at all happy with the push-out on the schedule. He was under the impression that a rulemaking proposal would be presented in March or April, and it is being pushed even further back to August. He does not feel that a study is needed. The simple thing is that, as of now, the agreement is that zero masking is the rule, and he feels that the Board should move forward with a rulemaking proposal that indicates zero masking. If at a future date someone comes forward showing that some *de minimus* masking is acceptable, then the rule could be reconsidered at that time. However, he does not want to go to the funeral of a worker and tell his family members, "I am sorry for your loss. It was in the name of the environment, and it was just a *de minimus* loss anyway." There is no *de minimus* masking on this equipment. The construction industry has worked for years with the manufacturers to reduce masking as far as possible, and it has only been in the last few years that they have started tapering engine compartments to allow additional visibility, and to go backward is absolutely unacceptable. He feels that staff should move forward with preparing rulemaking documentation that maintains the zero masking standard. In addition, he feels that we are going way overboard on figuring out what masking is and is not. He is a firm believer in standard engineering practices, and any first-year drafting student at any local community college could figure out the masking of a piece of equipment. It is a matter of sitting where the operator's eyes are, looking at where the blockage is, picking an angle of

downward visibility, and drawing it, and it can be done with a T-square and a couple of triangles. He is very concerned that there has been talk of moving masking, which in reality is additional masking.

He agrees with Mr. Harrison's comments that we have lost sight of two-thirds of this petition; there was not just a visual issue but it also dealt with fire and burn hazards, which are not being addressed anywhere in the schedule. We need to focus some attention on that issue as well.

It would be easily achievable for staff to prepare a written rule by March, not that it would necessarily be noticed at that time, but that it would be available with zero masking so that when the study is complete, we can move forward with rulemaking right away. He can see no way to justify any additional masking from a safety standpoint. The burden of proof on that issue is on CARB, if they feel that somehow losing some percentage of visibility creates no additional hazard, they need to demonstrate that.

Dr. Frisch echoed the comments regarding the fire and burn hazards. He has not heard any argument that those hazards are acceptable. It seems, therefore, that those aspects of this petition could be addressed as part of the rulemaking.

Ms. Hart stated that Board staff has a rulemaking in progress that would address the fire and burn hazard. That rulemaking package will be heard in early 2010.

Dr. Frisch asked whether it was being split from the masking issue. Ms. Hart responded in the affirmative, stating that it was not the intention of the package, but Board staff received a Form 9 from the Division. She asked the Board members to keep in mind that there is no burn issue right now as long as the filters are not being installed. All of the issues identified in the petition will be addressed.

Dr. Frisch went on to state that it seems as though the argument about *de minimus* masking is something that could occur as part of the public hearing. Thus, we could go forward with a regulation that calls for zero masking and evidence could be presented at the public hearing. We would then have an opportunity to respond to it and make changes if necessary. That seems as if it would be a more logical way of moving this forward. He recognizes the need to perform reasonable field tests, but three months to perform them seems excessive, given the time that has already elapsed.

Mr. Jackson recalled from Mr. Welsh's testimony last month was that zero masking is the standard in place today. Thus, nobody is at risk unless an employer has already retrofit their equipment and they have not taken it out of service or removed the retrofit. Those were the two choices that Mr. Welsh explained for the record last month.

Mr. Welsh stated that the retrofit process was brought to a halt. The way things were going before the Governor's office intervened was that this process was steaming along and vehicles were being retrofit every day and creating hazards. We brought the process

to a halt much faster than a rulemaking package could have done. It is not happening anymore, which is what Mr. Jackson was referring to. Right now there are no retrofits happening, and if anybody feels there is any blockage at all, they do not have to do it. They can apply to CARB for an exemption. That whole process was brought to a halt was because there was recognition that there were a lot of companies that were having to make business decisions immediately, and they did not know what was going to be in existence six months from now.

CARB has invited people to go out into the field and see how the testing is going, and the Board members might want to take advantage of that invitation. It might help because developing the testing methodology is not quite as simple as the Board members may think it is. Mr. Welsh thought the same way when he first confronted this issue; he thought it would be a real simple process, but he has been talking with the staff who has been working on this. They thought they had a simple approach also, but then they went out and field tested it, and it was not so simple. They are committed to absolute, total safety, and they are doing their best to achieve that.

We do not need to be arguing so much over this. If we cannot get a regulation in place in a few months, then we are going to have to start talking to CARB and asking for another year of the moratorium on retrofits. That is a solution, too. The point is that the process has been brought to a halt, and it will not get started again unless we have a solution worked out so the retrofits can happen.

The idea behind the *de minimus* masking concept was that perhaps there could be minimal masking and that would make a significant difference in how many vehicles can be retrofit. We do not know yet; it might be that there is no benefit from *de minimus* masking. He stated that since the process has been brought to a halt, there is no emergency, and he asked that we take the time to perform the field work that needs to be done.

Mr. Prescott asked who was involved in the agreement mentioned by Mr. Welsh. Mr. Welsh responded that CARB agreed to halt the retrofits. That is the agreement; there will be no more retrofits, and employers will be allowed to remove their retrofits if there is masking without losing their credits with CARB.

Chair MacLeod expressed his understanding that the agreement was crafted by the Governor's office, and he asked if that was a correct assumption. Mr. Welsh responded that it was a discussion mediated by the Governor's office among the petitioners, CARB, the Division, and Board staff.

Mr. White stated that the process of retrofitting vehicles really come to a stop because of the considerations and concerns of the Standards Board. CARB wanted to make sure that we were erring on the side of caution while this process was ongoing. Thus, nothing that had the potential to be unsafe would happen. Retrofit manufacturers are already not putting retrofits on vehicles, and they are looking to both CARB and the Standards Board

for some direction on how they may be able to move forward. There is a procedure currently in place, and we are very close to releasing some methodology for fleets to use so that these evaluations can be made. All of the pieces for this exemption are ready to go with the exception of distributing the methodology, and staff has been out this week working with CalTrans on some of their vehicles. The commitment from CARB is that the interim policy will remain in effect until the Standards Board acts to put a longer-term solution in place, and if that requires that CARB should take another look at their regulation, they will do that.

Mr. Prescott asked Mr. White whether the zero blockage rule would remain in effect for however long it takes until the Standards Board comes to a decision. Mr. White responded that there is no expiration date on the interim policy that is currently in place. Right now, if the retrofits cannot be performed without creating blockage to the front, rear, or sides, the vehicle will not be retrofit and CARB will issue an exemption for that vehicle.

Dr. Frisch asked whether the field work would be terminated and staff would move forward with a rulemaking should the staff determine an acceptable level of masking during the three month study period, or whether the intent is to wait for the three-month period to expire before moving forward with a rulemaking. Ms. Hart responded that if the field testing provides a clear answer, staff would move forward with a rulemaking package before the expiration of the three-month time period. Staff will not be doing study after study if each study provides the same results.

Chair MacLeod stated that it appears that staff has fulfilled last month's request for a work plan. Although the time period is lengthier than anticipated, it is in concert with the agreement made in the Governor's office, and since there is an interim agreement in place that will not result in anyone being hurt, we should continue on this path.

2.

Executive Officer's Report

Ms. Hart stated that the objective and reform element of the entire Title 8 reform project were reevaluated in September of 2007, and the committee consensus recommendation and subsequent Board direction was that staff update all graphic images and develop a user-friendly, comprehensive Title 8 index. The deadlines for those projects have been met, and the Title 8 users are already benefitting from the improved graphics and soon will be benefitting from the comprehensive Title 8 index. On September 30, 2009, the indexing of Title 8, Chapter 4 was completed by Hans Boersma of the Board staff. This was the in-house completion of the Title 8 index, and right now there is an editorial review of the index, which is scheduled to be completed on January 31, 2010. This a review of some 700 pages, so there is a significant amount of review to be completed by Board staff. Once that review is completed, the IT department will set up a test site so the index can be tested. The important part of the whole process is going to be the updating of the index, so as new terminology and standards are adopted in Title 8, a process is currently in place to update the index on a monthly basis, and that would be

process in which Board staff reviews the OAL-approved standards and updates the corresponding Title 8 references to be incorporated into the index. In addition to the obvious benefits to the Title 8 index, Board staff now feels that the availability of a comprehensive index on Cal-OSHA's program website will draw more employers to our website and provide them with an opportunity to become more familiar not only with our standards but also with the services available through the Cal-OSHA program. Ms. Hart commended Mr. Boersma and Ms. Osburn for compiling all of this information. It is nearly complete.

3.

Future Agenda Items

None identified.

E. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 1:42 p.m.