

**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
February 17, 2011
Oakland, California

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

Chairman John MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:06 a.m., February 17, 2011, in the Auditorium of the Harris State Building, Oakland California.

ATTENDANCE**Board Members Present**

John MacLeod
Bill Jackson
Jack Kastorff
Hank McDermott
Guy Prescott
Dave Thomas
Willie Washington

Board Members Absent**Board Staff**

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

Division of Occupational Safety and Health

Joel Foss, Acting Principal Safety Engineer
Steve Smith, Principal Safety Engineer

Others present

Bill Davis, SCCA
Dave Harrison, OE Local 3
Mark Stone, Epic Ins. Broker
Steve Johnson, ARC-BAC
Paul Niemer, Sierra Pacific Industries
Jogen Bhalla, AMOT

Dan Leacox, Greenberg Traurig
Bruce Wick, CalPASC
Troy Old, Teichert Construction
Grant Stuckney, Peterson Tractor
Kim Heroy-Rogalski, CARB
Ken Clark, Willis ASSE

Chris Lee, Cal OSHA
David Vincent, UCSD
Van Howell, Fed OSHA
Jay Weir, AT&T
Jim Halloren, CAT
Kevin Bland, CFCA/RCA

Joan Gaut, CTA
Rasto Brezny, MECA
Mitch Seaman, CLF
Kate Smiley, AGC
Wendy Holt, CSATF/AMPTP
Skip Brown, Delta Construction

B. OPENING COMMENTS

Chairman 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

C. ADJOURNMENT

Chairman MacLeod adjourned the public meeting at 10:09 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Chairman MacLeod called the Public Hearing of the Board to order at 10:09 a.m., February 17, 2011, in The Auditorium of the Harris State Building, Oakland California.

Chairman 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 2, Section 1504
Article 10, Section 1591, New Appendix A
Article 11, Section 1597
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7
Article 25, Section 3363
Article 93, New Section 4925.1
MINE SAFETY ORDERS
Division 1, Chapter 4, Subchapter 17, Article 17
Section 7016
Vehicle Exhaust Retrofits

Mr. Mitchell summarized the history and purpose of the proposal. He stated that the Board has received several written comments regarding the proposal, including

Federal OSHA's administrative opinion that the proposal is not at least as effective as Federal standards. Staff is evaluating these comments and considering modifications of the proposal, such as removing references to industrial trucks from the proposal, removing references to cranes from the proposal, deleting the complex procedures for measuring masking in Appendix A, and making other changes so that the proposal would be less prescriptive and more performance based. Mr. Mitchell indicated that the proposal is ready for the Board's consideration and the public's comment.

Dave Harrison, Director of Safety for Operating Engineers Local 3, summarized his written comments.

Bruce Wick, Risk Management Supervisor for the California Professional Association of Specialty Contractors (CalPASC) summarized his written comments, and he expressed support for removing Appendix A from the proposal as suggested by Mr. Mitchell, stating that the testing method is too complex.

Rasto Brezny, Deputy Director of the Manufacturers of Emission Controls Association (MECA), summarized his written comments.

Mitch Seaman, Legislative Advocate for the California Labor Federation, expressed support for the comments submitted by Operating Engineers Local 3 and the Associated General Contractors of California.

Kate Smiley, Associated General Contractors of California (AGC), summarized her written comments and expressed support for the comments submitted by Operating Engineers Local 3.

Bill Davis, Vice President of the Southern California Contractors Association (SCCA), spoke in support of the comments submitted by Operating Engineers Local 3, stating that there are 20 deaths a year in California from rollovers or backovers. He suggested that rather than implementing the complex and difficult-to-duplicate testing method detailed in Appendix A, CARB or OSHSB could establish a database listing those systems that have been approved and those that have not been approved due to visibility issues so that contractors can do a quick reference and have the ability to judge whether they have safety issues on their equipment.

Skip Brown, owner of Delta Construction Company, summarized his written comments.

Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association, expressed support for the comments submitted by Operating Engineers Local 3 and AGC. He also stated that the use of cameras and mirrors as advocated by MECA is not practicable because of the vibrations of the equipment and dirt and mud that smudge camera lenses and mirrors.

Mr. Prescott stated that the original petition was not just about diesel retrofits, that was just the catalyst that brought the problem to a head. It was about any blockage of visibility, such as by welding toolboxes onto equipment. That original intent has been lost in the politics of this proposal moving forward, as it has been narrowed down to exhaust retrofits.

Zero additional blockage is the only acceptable thing, which has been the cry from day one, and that has been the only thing that labor and management have repeatedly and frequently agreed on. The manufacturers of this equipment have done tremendous jobs of changing the way that they manufacture and shape the equipment to increase the visibility—a newer piece of equipment has better visibility than an older piece of equipment because they have learned from their mistakes, and this is not a time to go backwards.

The appendix is next to impossible to follow, and Mr. Prescott stated that it allows so much additional blockage that it is virtually useless. People do not get hit by equipment when they are 40 or 50 feet away; they get hit when they are very close. The operator's view to the ground cannot have any additional blockage without creating the possibility of additional fatalities.

Moving the exhaust is not an acceptable option. The original language of the petition did not call for manufacturers to approve any modification that blocked the visibility of the operator. If it fell within the shaded area shown to be the blocked visibility, the original manufacturer did not need to approve that. The reason was put in there was because it was covering all modifications, not just exhaust, and that way it allows using a backhoe attachment on a front-loader because it is a manufacturer-approved option.

Mr. Prescott stated that it is important that we do not lose sight of the original intent of the petition to protect the working men and women of this state, zero additional blockage is the only acceptable means that we have of meeting that intent.

Mr. Kastorff agreed with Mr. Prescott's remarks.

Mr. Thomas stated that one of the commenters had mentioned that no deaths have been attributed to particulate matter, but there will be deaths if there is less visibility. It is too much of a risk to try to retrofit equipment when there is going to be even the slightest blockage of visibility.

Mr. Jackson expressed concern that the first sentence of subsection (m) is a declaration because it states that "exhaust retrofits shall be installed and maintained." It commands the reader to install and maintain an exhaust retrofit. It needs to be amended to reflect that exhaust retrofits, if installed, shall be installed and maintained so that it is very clear that the regulation does not require retrofitting exhaust equipment.

He also stated that he finds it interesting that Federal OSHA has determined that the proposal is not commensurate with their standards. He stated that at least one time in the last 30 years, he has been the victim of conflicting state and Federal regulations. His company had operations where a Federal regulatory agency came to them and said that a particular piece of equipment was too loud and that the company must feasibly retrofit it to comply with their standards.

One of those feasible measures was to install a windshield inside the rollover protective structure (ROPS), and the company did so. Within approximately three weeks of completing that retrofit, Cal-OSHA came to the site and issued another citation because the windshield obstructed the operator's view to the front because of the two-inch frame around the windshield. Because the company could not satisfy both regulatory agencies, they had to retire that piece of equipment from working in California. He wanted to ensure that we are not putting employers in California in a Catch-22 position between Federal and Cal-OSHA regulations.

Mr. Prescott stated that he would highly recommend removing cranes and mining equipment from this proposal. The original proposal was from management and labor in only the construction industry. General industry, the mining industry, and crane people were never involved and did not have any input in the development of the proposal. In addition, the Federal standards are more restrictive than the proposal. Mr. Prescott stated that MSHA has stated that they will cite any additional blockage of visibility.

Chairman MacLeod asked whether changes could be made to the proposal without having to be cleared with CARB.

Mr. Beales responded that the Board has the discretion to deal with this proposal now that it has been noticed for a public hearing unencumbered by collateral considerations except to the extent that the Board wishes to take those collateral considerations into account.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7, Article 2
 Section 3209
 Standard Guardrails

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

There was no public comment on this issue, but Mr. Jackson asked that staff provide a calculation in the record that demonstrates that the 2”x 2” x 1/4” is consistent with the performance standard of 200 lbs. down and out.

B. ADJOURNMENT

Chairman MacLeod adjourned the Public Hearing at 11:04 a.m.

III. BUSINESS MEETING

Chairman MacLeod called the Business Meeting of the Board to order at 11:04 a.m., February 17, 2011, in The Auditorium of the Harris State Building, Oakland California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that four of the variance matters will be moved to future months. They are the BNSF matter, the University of California matter, the Vadnais matter, and the Home Depot matter. As for the others, the recommendation regarding all of those is that those variances be granted. With those changes in the consent calendar, the Board is requested to adopt the consent calendar.

MOTION

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

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

B. OTHER

1. Legislative Update

Mr. Beales stated that one bill had been reproduced in the Board packet, which has to do with extending the time period between filing of a regulation with the Secretary of State and the time the regulation takes effect. After the Board packet was assembled, various legislators have submitted various other pieces of legislation regarding administrative procedure, and there will be a proper, written summary of these various bills in next month’s Board packet.

Mr. Beales mentioned four of those bills. Two bills would change and expand the number of days between when a regulation is submitted to the Secretary of State’s office and when the regulation takes effect. Two others would require each

rulemaking agency, including the Standards Board, to take an inventory of all of their regulations and note which regulations are duplicative or out of date and either repeal or amend them. These actions must be completed within a certain period of time.

2. Executive Officer's Report

Ms. Hart stated that she had nothing to report.

3. Future Agenda Items

None identified.

C. CLOSED SESSSION

The Closed Session was cancelled.

D. ADJOURNMENT

Chairman MacLeod adjourned the Business Meeting at 11:09 a.m.