

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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SUMMARY PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING

January 15, 2009
San Diego, 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., January 15, 2009, in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

ATTENDANCE

Board Members Present

Chairman John MacLeod
Bill Jackson
Jack Kastorff
Willie Washington

Board Members Absent

Jonathan Frisch, Ph.D.
Josè Moreno

Board Staff

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

Division of Occupational Safety and Health

Len Welsh, Chief
Larry McCune, Principal Safety Engineer

Others present

Marti Fisher, California Chamber of Commerce
Kevin Bland
Harvey Porter, Northrop Grumma Shipbuilders
Wendy Holt, AMPTP
Larry McCune, DOSH
Bob Hornauer, NCCCO
Nancy Rachman, Grocery Manufacturers Assn.
Greg Allaire, Southwest Carpenters Training Fund
Elizabeth Treanor, Phylmar Regulatory Roundtable

Dan Leacox, Greenberg Traurig
Kevin Thompson, Cal-OSHA Reporter
Steve Johnson, ARC-BAC
Tina Kulinovich, Federal OSHA
Julie Broyles, California Advocates, Inc.
Andrew Maier, TERA
Caroline Silveira, GMA
George Hauptman, OSHSB
Bruce Wick, CalPASC

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.

Julianne Broyles, speaking on behalf of the Grocery Manufacturers Association (GMA), introduced a presentation regarding a diacetyl workplace exposure regulation. She stated that GMA has been working with the Division for over two years to help develop an effective diacetyl regulation to protect workers.

Diacetyl occurs both naturally and synthetically in many foods, including beer, baked goods, dairy products, roast chicken, tomatoes, wine, coffee, and marshmallows. It is also used as a savory component in many flavorings, such as fruit flavors, creamy flavors, or butter flavors. In many cases, naturally occurring diacetyl as a product part often exceeds the amount of synthetic diacetyl added by a food manufacturer to a product.

GMA has voluntarily partnered with the Division to assess potential issues and review industry practices to ensure that workplaces are safe for employees using the best possible protective systems. GMA is doing this in the firm belief that the best safety and health risk assessment practices to control air quality will protect employees from possible hazard concerns, including diacetyl.

Concurrent with the Cal-OSHA advisory committee process, scientific review has been performed. GMA is updating the Board in the belief that there may be a more effective way to regulate diacetyl in the workplace based on the scientific review that has been performed. Ms. Broyles then introduced Dr. Andrew Maier, Director of Toxicology Excellence for Risk Assessment (TERA) and Dr. Nancy Rockman, Senior Director of Science Policy Chemical Safety for GMA.

Dr. Maier stated that although TERA is an independent non-profit organization, its funding comes from individual mission-related projects. One of the core aspects of its charter and its approval as a non-profit organization is that its work has to be available and released to the public domain. Dr. Maier's presentation is included in the recording made at the Public Meeting, and it is posted on TERA's website, <http://www.tera.org/vera/occupational.htm>.

Mr. Jackson expressed regret that Dr. Frisch was not at the meeting. Ms. Broyles stated that GMA is planning to provide Dr. Frisch with a full briefing of the information presented. She further stated that, although there currently is not a diacetyl standard before the Board, GMA wanted to ensure that the Board had as much information as possible when such a standard is proposed.

C. ADJOURNMENT

Chairman MacLeod adjourned the meeting at 10:42 a.m.

II. BUSINESS MEETING

Chairman MacLeod called the Business Meeting of the Board to order at 10:42 a.m., January 15, 2009, in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 3
Section 3248
Mechanical Refrigeration
(Heard at the July 17, 2008, Public Hearing)

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

MOTION

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

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 7
Section 3336 and Article 25
Sections 3650 and 3653
Powered Industrial Trucks—Seatbelts and Signaler
(Heard at the September 18, 2008, Public Hearing)

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

MOTION

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

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Nicolas Garcia
Body Protection, LLC
(Petition File No. 506)

The Petitioner requests the Board to amend Title 8, Construction Safety Orders, to address personal protective equipment (PPE) provisions for the protection of employees that use pneumatic hammers (e.g., jackhammers, manually operated paving breakers, and similar pneumatic tools).

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. Jackson and seconded by Mr. Washington that the Board adopt the proposed petition decision.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales asked that variance file number 08-V-189, Stanford University, be removed from the consent calendar as there remained an additional issue to be resolved regarding that variance application and that the Board adopt the remainder of the consent calendar.

MOTION

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

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

C. OTHER

1. Legislative Update

Mr. Beales stated that there is no legislative update for January.

2. Update regarding OSHSB Petition File No. 504, Roy Swift petitioner, ANSI/ISO/IEC accreditation option for Crane Operator Certification

Mr. Manieri briefly reviewed the petition's history, and stated that Board staff has contacted a representative number of stakeholders who are interested in this issue and participated in the original development of Section 5006.1. The stakeholders unanimously agreed that an advisory committee is not necessary to add another well-

respected accreditation option to the existing standard. Thus, staff is moving directly to the development of proposed amendments to Section 5006.1 that would allow mobile and tower crane operator certification to be accredited in accordance with ANSI ISO Informative Assessment Standards. The stakeholders, the Board staff, and the Division all agree that offering another accrediting entity in Section 5006.1 would be of great benefit in allowing more agencies and employers to certify crane operators.

3. Termination of rulemaking regarding OSHSB Petition File No. 477, Mr. Russ Pepin Quakeproof, Inc., regarding seismic bracing

Mr. Manieri stated that the Board granted the petition on March 16, 2006, to the extent that a representative advisory committee be convened to consider the Petitioner's request. That advisory committee meeting was convened on December 10, 2008; however the deliberations did not result in a consensus to proceed with amendments to the existing standards. The committee found such standards to be problematic from a variety of standpoints—scope, enforcement, geography issues, definition of what constitutes adequate support, and difficulties associated with hazard identification. In addition, the committee felt that adequate consultative and self-guiding material and information specific to this issue is already available from various government agencies. For these reasons, unless directed otherwise by the Board, staff is terminating further action on Petition File No. 477. The Board did not direct staff to continue with this rulemaking proposal.

4. Executive Officer's Report

Ms. Hart summarized the 2008 Year in Review report in the Board packet, stating that Board staff had docketed eight petitions, held nine advisory committees, and noticed 18 rulemaking proposals. In addition, the Board adopted 18 rulemaking proposals and 208 variance decisions.

Mr. Jackson asked whether the 284 variances docketed in 2007 was a record high for variance applications received. Ms. Hart responded that, with all variances docketed through the end of the year, staff had docketed 284 in 2008, as well.

Ms. Hart summarized the proposed rulemaking packages for 2009, as listed on the schedule included in the Board packets. She stated that the information in that schedule would be forwarded to the Office of Administrative Law, as required by law, before the February deadline. Board staff has not yet received proposed rulemaking projects from the Division, but that information will be included as soon as it is received.

Ms. Hart then summarized the Calendar of Activities and discussed the Governor's December 19, 2008, letter stating that furloughs of two days a month would be instituted as of February 1, 2009, and asking the Department of Personnel Administration (DPA) to initiate lay-offs, reductions, and other efficiencies to achieve General Fund savings. She also mentioned the memo issued by the DPA on January 9, 2009, indicating that effective February 1, 2009, the first and third Fridays of each month would be furlough days, and most state offices, including the Board office, would be closed. The only

accommodation Board staff had to make immediately was to reschedule an advisory committee meeting that had been scheduled for February 20, 2009, to February 18, 2009. Ms. Hart stated that several unions have filed suit disputing the Governor's order, and they are scheduled to be heard on January 29, 2009. As the outcome of those suits is unknown at present, Board staff is planning to observe the furlough days as ordered by the Governor.

Ms. Hart also stated that, as indicated at the December meeting, interviews for the vacant Associate Safety Engineer position had been concluded, and there were several qualified candidates. However, due to the budget situation, staff had reconsidered the decision to fill the vacant position at present and has opted not to fill it at this time.

Pursuant to the Board's direction at the December business meeting, on January 5, 2009, an email request was sent to those that commented on the Bakery Oven rulemaking package. Staff asked for input on proposed language for a standard that is at least as effective as the federal standard and provides clear, enforceable inspection requirements for several categories of ovens. Responses for Board staff's review are due in the office by January 20, 2009.

5. Future Agenda Items

D. ADJOURNMENT

Chairman MacLeod thanked Mr. Jackson and Dr. Frisch for acting in his stead while he was away. He also thanked Mr. Kastorff for coordinating the creation of the plaque presented to the staff at the December meeting. Chairman MacLeod adjourned the Business Meeting at 11:05 a.m.