

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**July 18, 2013**  
**Costa Mesa, California**

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

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., July 18, 2013, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

**ATTENDANCE****Board Members Present**

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

**Board Member Absent****Board Staff**

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

**Division of Occupational Safety and Health**

Steve Smith, Principal Safety Engineer  
Peter Riley, Regional Manager

**Others Present**

Richard Warner, Mercer WOSH Group  
Jay Weir, AT&T  
Kevin Thompson, Cal/OSHA Reporter  
Whitney Engeran, AIDS Healthcare  
Foundation

Kevin D. Bland, Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C.  
Terry Thedell, SDG&E  
Mark McGrath, AIDS Healthcare  
Foundation

Elizabeth Treanor, PRR	Matt Antonucci, CSATF/AMPTP
Michael Strunk, IUOE Local Union 3	Marti Fisher, CalChamber
Steve Johnson, Associated Roofing Contractors	Dan Leacox, Greenberg Traurig
Kate Smiley Crawford, AGC	Ronald Hutton, Mercer WOSH Group
Katy Wolf, IRTA	Adam Cohen, UCLA Fielding School of Health
Coil Dunn, SCE	Andrew Kowalewsky, SDG&E
Jay Vicory, USDOL-OSHA Fed OSHA	Karen Tynan, Attorney
Mark Stone, EPIC Insurance Brokers	Rob Frashefski, MineARC Systems
James Rau, MineARC Systems	Diane Duke, CalChamber
Chris Lopez, RCS Inc. Portable Amusement Company	Betty Fracisco, Garrett & Jensen
Howard Spielman, HAS	Larry Pena, SCE Electric Utility

B. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

**Whitney Engeran-Cordova, AIDS Healthcare Foundation**, addressed the Board regarding Petition 513. He stated that a proposal has been in the works for the last 4 years and that 6 hearings have been held on this topic, and he hopes that the Board will act quickly to approve the proposal when it comes before it.

**Mark McGrath, AIDS Healthcare Foundation**, also commented on Petition 513. He stated that he is disturbed about the lack of Division concern and support regarding this issue. He said that the adult film industry is a de facto workforce that puts women's health at significant risk and is practicing medical monitoring that does not meet the health department's requirements. He also stated that all workers deserve the minimum standard amount of personal protection in their jobs. He asked the Board to ask Peter Riley some critical questions in regards to this issue when Mr. Riley speaks about it during the Business Meeting, including how many citations that the High Hazard Unit has issued regarding this, and how many times has the High Hazard Unit been able to access these settings unabated. He said that time has dragged on regarding this issue and a lot of pressure and phone calls have been required to get this issue moving forward.

**Lauren Natoli, AIDS Healthcare Foundation**, echoed the comments of Mr. Engeran-Cordova and Mr. McGrath.

**Adam Cohen, AIDS Healthcare Foundation**, stated that the state of California is not looking out for the health and safety of adult film performers like it does for other California workers, and that there is a health disparity among female adult film performers. He said that Cal/OSHA has done an exemplary job in issuing citations to adult

film companies that put their employees at risk, but the adult film industry continues to blatantly ignore the law and put their employees at risk for the sake of profit.

**Betty Fracisco, Garrett & Jensen**, stated that the Division has not moved forward in creating regulations regarding certifying independent inspectors for portable amusement rides as required when the Board adopted Petition 520 on May 19, 2011. She asked the Board for its assistance in getting the Division to move forward on this.

**Chris Lopez, Ray Cammack Shows**, echoed Ms. Fracisco's comments. He stated that he has 7 supervisors on his crew that have more and higher credentials than the state inspectors, and he would like to help out in getting them certified to do state inspections. He also said that the state is limited by the budget as to where and when they can inspect portable amusement rides, so having certified independent inspectors for portable amusement rides would really help.

**Rob Frashefski, MineARC Systems**, commented on Petition 533. He stated that MineARC Systems is available for the Board to consult with regarding increasing California's regulations for underground refuge chambers and gassy tunnels to include all tunnels. He said that California is in a good position in which to do this.

**Dr. Julia Quint, retired from the California Department of Public Health**, commented on the Ethylbenzene proposal. She stated that she is concerned about some of the responses to her written comments that she submitted for the public hearing. She said that the document that she prepared was not listed as a document relied upon in the Initial Statement of Reasons. She had requested that it be added to the record because it provided a scientific rationale for the proposed recommended PEL listed in the document and asked the Board to reconsider adding it. She also stated that feasibility was not discussed in an objective way and no alternatives to xylene were explored. She said that there is also confusion regarding short term exposure limits and how they are determined.

**Kevin Bland, Free Speech Coalition**, commented on Petition 513 and encouraged the Board to keep an open mind and consider both sides of this issue when a proposal comes forth. He stated that there are many ways to provide safety to employees and that the Division is enforcing the current standard. He said that he hopes that the coming regulation will meet the needs of both employee safety and the industry, as well as address the unique situations that occur in the industry.

**Diane Duke, Free Speech Coalition**, commented on Petition 513, stating that the FSC is here as a resource and has participated in the process. She stated that the Board previously asked for an epidemiological analysis of the data from both the FSC and AHF camps, but Cal/OSHA did not supply that, so the FSC hired an epidemiologist to create one. Ms. Duke brought copies of it for the Board. [Please see the filed Board packet for more information.] Ms. Duke also stated that the FSC submitted its own bloodborne pathogen plan that was created with input from both the industry and adult performers. She read a letter from Lydia Lee (a.k.a. "Julie Meadows") from the Adult Performers Coalition for Choice, which supports the FSC's bloodborne pathogen plan. [Please see the filed Board

packet for a copy of this letter.]

**Karen Tynan, Attorney**, also commented on Petition 513. She stated that she has worked with adult film performers, Ms. Duke, and Mr. Bland to rebut misinformation regarding the Board's process of developing regulations regarding this issue. She also stated that her clients have been inspected and are compliant during inspections.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:43 a.m.

**II. PUBLIC HEARING**

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:44 a.m., July 18, 2013, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

Mr. Thomas opened the Public Hearing and introduced the first item noticed for public hearing.

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

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

**Dr. Julia Quint** stated that she strongly supports the proposed PEL of 1 PPM with a skin notation. She said that she served on the HEAC and prepared the document containing the scientific basis for the PEL, and that this document is based on scientific evidence that was transparently reviewed and evaluated by the HEAC. She asked that the document be added to the record. She stated that 1 PPM will provide the protection for workers that has been there for non-occupational exposures for over 12 years. She said that it has taken 6 years for the 1 PPM recommendation to reach the Board because stakeholders have been allowed to develop new data that did not exist when the process started. She also stated that in her written comments, she documented the delays that occurred, and she hopes that everyone will learn from the delay. She also said that the data that stakeholders provided had to be re-evaluated by Cal EPA, much of which had already been developed, and this caused further delay. She urged the Board to accept the proposal.

**Dan Leacox, Greenberg Traurig**, stated that he has a number of clients who are interested in the PEL process. He said that he witnessed the gauntlet that Dr. Quint went through with the proposed PEL, and that if a stakeholder felt that they did not get their fair opportunity to get their information included in the record, the stakeholder would be here to explain that to the Board. He also stated that there are times when the stakeholder does

not know what they are responding to until a PEL is proposed, so when they respond, new data may be developed or presented in response to that.

**Dr. Katy Wolf, Institute for Research and Technical Assistance**, supports the PEL of 1 PPM with a skin notation. She stated that she has worked on finding solvent alternatives and has found cheaper and safer alternatives to NMP. She said that she has recently been working on a graffiti removal project where chemicals containing NMP have been put in spray bottles used to spray it on and remove the graffiti. The spray bottles can release the chemical into one's breathing zone, and when the bottle malfunctions, the chemical can get on one's hands and arms. She said that a PEL is needed to communicate that NMP is dangerous.

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

2. TITLE 8:      **TUNNEL SAFETY ORDERS**  
Division 1, Chapter 4, Article 19, Sections 8495, 8496, 8497 and 8500  
**Cranes & Derricks in Construction – Underground and Demolition**

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

There were no public or Board comments on this proposal.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 11:10 a.m.

**III. BUSINESS MEETING**

Mr. Thomas called the second portion of the Business Meeting of the Board to order at 11:11 a.m., July 18, 2013, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8:      **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 4, Section 1533  
**Internal Combustion Engine-Driven Equipment (Technical Amendments)**  
(Heard at the June 20, 2013 Public Hearing)

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

## MOTION

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

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 107  
Section 5155  
**Airborne Contaminants – Ethylbenzene**  
(Heard at the January 17, 2013, Public Hearing)

Mr. Smith summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board’s adoption.

**Mr. Jackson** stated that the two questions that he asked the Division regarding this issue were not answered by the Division. He had asked the Division to estimate how many California employees are exposed to ethylbenzene, and at what level. He said that he is aghast that the Division went out of their way to not answer the Board’s questions. **Ms. Quinlan** responded by stating that many attempts were made by the legislature to pass legislation that would create a comprehensive list of the uses of chemical materials, but none of the legislation passed, and as a result, the data that Mr. Jackson is requesting from the Division does not exist. **Mr. Jackson** stated that he would like to get a response like Ms. Quinlan’s from the Division when he asks them questions.

**Ms. Quinlan** stated that she supports the proposal. She said that at the end of the HEAC process, it is up to the Division to decide on the PEL number and recommend it to the Board. She also said that ranges of PEL numbers are a problem when it comes to chemicals such as ethylbenzene.

**Ms. Stock** stated that she also supports the proposal and that it is a great improvement over the current standard. She requested that Dr. Quint’s document be incorporated into the proposal as Dr. Quint had requested. She also stated that there were several great deficiencies in the process of coming up with the PEL. She said that the Board is required to be as protective as possible in deciding on the PEL unless it can be demonstrated that the PEL recommended by the HEAC is infeasible, and that the burden of proof regarding infeasibility falls on those who believe it is infeasible. She also stated that there is a great need to clarify the process of how feasibility is determined and where the burden of proof lies.

**Ms. Hart** asked Mr. Smith if he wanted to respond to Ms. Stock’s comment regarding incorporating Dr. Quint’s document into the proposal. **Mr. Smith** stated that incorporating Dr. Quint’s document at this point would require the Division to issue a 15-day notice. He stated that the Division did utilize Dr. Quint’s document, as well as all of the advisory committee minutes and developments, to develop this proposal. He said that he does not

want to hold up this proposal any further and wants to move it forward. He also stated that the Division will further strengthen the process of how they use those summary documents.

### MOTION

A motion was made by Mr. McDermott and seconded by Mr. Harrison that the Board adopt the proposal.

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

### B. PROPOSED PETITION DECISION FOR ADOPTION

1. Rob Frashefski  
MineARC Systems America LLC  
**Petition File No. 533**

Petitioner requests that the Board amend Title 8, California Code of Regulations, regarding the requirement to provide a refuge chamber if there is no alternate escape route in a tunnel that is classified as gassy or extra-hazardous.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to convene an advisory committee.

### MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock that the Board adopt the proposed decision to convene an advisory committee.

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

### C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales recommended that the variance requests be granted and that all of the decisions listed in the Board packet be adopted. He also stated that a letter was received from the International Union of Elevator Constructors Local 18 approximately 48 hours ago regarding the Gen2S matter. [A copy of this letter and Mr. Beales’s response is filed in the Board packet. Please see the Board packet for more information.] The Local 18 letter urged the Board not to adopt the proposed decision. Mr. Beales asked the Board to make one of the following motions:

- Adopt the consent calendar as stated, or
- Remove the Gen2S matter from the consent calendar, adopt the consent calendar as modified, and then consider the Gen2S matter separately.

**Mr. Harrison** asked Mr. Beales what the Board will accomplish by considering the Gen2S matter separately. **Mr. Beales** stated that it will allow the Board to focus on IUEC Local 18's letter and his response to the letter. He also stated that the Board could consider allowing Mr. Leacox to comment, since he represented one of the applicants at the hearing. Mr. Beales said that if the Board is inclined to have Mr. Leacox comment, he will advise them further on that.

**Mr. Harrison** asked Mr. Beales if it is typical to have a one-week comment period following a hearing. **Mr. Beales** stated that a comment period of one week or less is typical, and the purpose of the comment period is to ensure that the conditions agreed upon during the hearing are correctly stated in writing.

**Mr. Thomas** asked Mr. Jackson which motion he would prefer to make. **Mr. Jackson** stated that either one would be fine. He said that since the record on this variance is closed, nothing that the Board discusses or decides today will add or subtract anything from the record.

**Mr. Harrison** asked Mr. Beales if it would be possible to reopen the comment period for IUEC Local 18 if the Board does not pass the Gen2S today. **Mr. Beales** stated that it would be possible, but there are consequences for doing so, and Mr. Leacox should be allowed to address that. He said that Local 18 was told to send their comments via email by July 2, 2013, but Local 18 chose to send a physical letter instead. The letter was sent before the deadline, but it was sent to the wrong address. The comments were also on a previous version of the proposed decision draft, not the one that is scheduled for adoption today.

**Mr. Thomas** asked Mr. Beales if adopting the proposed decision will change what the variance was in any way. **Mr. Beales** said no.

**Ms. Stock** asked Mr. Beales what the implications would be if the Board was to vote to allow them to comment. **Mr. Beales** stated that by allowing Local 18 to comment, the Board would be allowing them to comment on something that they had already been given the opportunity to comment on along with the other involved parties. He said that the other parties managed to send in their comments as instructed, but Local 18 messed up in several different ways. He also stated that Local 18 fully participated in the hearing and received copies of all post-hearing instructions. He also said that there is no due process right to comment on a proposed decision draft.

**Mr. Jackson** recommended taking it off of the consent calendar so that it can be dealt with separately and the other items can move forward.

**Mr. Harrison** and **Mr. Thomas** asked the audience if there are any representatives from Local 18 in attendance. No one came forward. **Mr. Beales** stated that he spoke with Mr. Gazzaniga (the author of the letter) and told him that he would forward copies of Local 18's letter to the Board and that the Board would decide from there what to do regarding this matter, and that Mr. Gazzaniga accepted that.

During the course of the Gen2S discussion, Mr. Beales made additional points, including the following:

- (1) No party has a right to review a proposed decision draft; such review is for the benefit of the hearing panel, not the parties, largely to ensure that the conditions are stated correctly,
- (2) At the hearing, all of the parties, including Local 18, had a great deal of opportunity to review and consider the proposed conditions, and there seemed to Mr. Beales to be consensus regarding the conditions, a consensus that included Local 18.

**Ms. Stock** asked what the next step would be for this issue if the Board decides to remove it from the consent calendar. **Mr. Beales** and **Mr. Jackson** stated that the Board will vote on this item immediately after they vote on the rest of the consent calendar.

#### MOTION

A motion was made by Mr. Harrison and seconded by Mr. Jackson to remove the Gen2S item from the consent calendar and adopt the consent calendar as modified.

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

**Mr. Harrison** asked Mr. Beales what the ramifications would be for having Mr. Leacox comment on the Gen2S item that has been removed from the consent calendar. **Mr. Beales** recommended that the Board not listen to Mr. Leacox if a majority of the Board is planning to vote “aye” on this item.

#### MOTION

A motion was made by Mr. Jackson and seconded by Mr. Thomas to adopt the Gen2S proposed decision.

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

#### D. OTHER

##### 1. Legislative Update

Mr. Beales stated that there is nothing to add to the written materials in the Board packet.

##### 2. Section 3385 Strap-On Foot Protectors – Termination of Rulemaking

Ms. Hart stated that a memorandum was included in the Board packet indicating the Board staff’s decision to terminate this rulemaking, and if there are no objections from the Board, the staff will submit the Decision Not to Proceed to the Office of Administrative

Law. The Board had no objections.

3. Division Update and Board Discussion on Petition 513 (Adult Film)

Mr. Riley stated that the Division will have a proposal to the Board prior to the September Board Meeting.

4. Division Update on Other Possible Rulemakings and Upcoming Advisory Committees

Ms. Gold submitted a written report regarding rulemaking updates from the Division, which Mr. Smith read. Please see the copy of this document that is in the filed copy of the Board packet.

**Mr. Thomas** asked Mr. Smith if something will be coming to the Board regarding Petition 520 before the end of the year. He stated that it appears that we have what we need to get it done, and it does not make sense to keep switching it on and off. **Mr. Smith** stated that he will bring Mr. Thomas's concerns back to Ms. Gold and Suzanne Marria. **Mr. Thomas** stated that he would like to see something come before the Board before the end of the year so that this matter can be taken care of.

**Ms. Stock** asked Mr. Smith how long it will take to bring a proposal before the Board regarding Petition 513 after the proposal has been submitted to the Board staff in September. **Mr. Smith** stated that it usually takes a few months to go through the Division and Board staff's review process. **Ms. Hart** added that there are other deadlines that the proposal must hit after that before it comes before the Board. **Ms. Stock** stated that this issue and several others that were brought up today have taken years to get through the system, and she asked if there is anything that can be done to address this delay issue. **Ms. Quinlan** agreed with Ms. Stock regarding that.

**Ms. Quinlan** asked for clarification as to when the proposal for GHS - Health will be coming before the Board again. **Ms. Hart** stated that it is scheduled to be heard in either September or October. **Ms. Quinlan** asked if the Health portion of the GHS standard will need to be readopted at that time. **Ms. Hart** said yes.

**Ms. Quinlan** also asked if there are any other chemicals that went through the PEL process that have not been noticed for public hearing besides hydrogen chloride. **Mr. Smith** said that there are several, including naphthalene, which is scheduled for public hearing next month. There are about 3 or 4 after hydrogen chloride that need to be noticed. **Ms. Quinlan** asked Mr. Smith if there is a list of these chemicals and their statuses in the process. **Mr. Smith** stated that there is a list on the Division's website containing this information.

**Ms. Quinlan** also asked Mr. Smith about what is holding up lead in the PEL process. She said that she feels it has something to do with the DPH and OEHA. She asked Mr. Smith if the delay is because there is difficulty in coming up with a recommended blood level,

doing a risk assessment on what the current PEL should be, or both. **Mr. Smith** stated that he believes it is both and that the Division is also waiting for a report on this from DPH.

5. Executive Officer's Report

Ms. Hart had nothing further to report.

6. Future Agenda Items

**Ms. Hart** stated that the Division will provide a list of outstanding PELs from the Division that they will be providing rulemakings for, as requested by Ms. Quinlan.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:58 a.m.