

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**

June 19, 2008  
Oakland, California

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

Chair MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., June 19, 2008, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California.

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

Chairman John MacLeod  
Bill Jackson  
Jack Kastorff  
Willie Washington

**Board Members Absent**

Jonathan Frisch, Ph.D.  
José Moreno  
Steve Rank

**Board Staff**

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

**Division of Occupational Safety and Health**

Steve Smith, Principal Safety Engineer  
Larry McCune, Principal Safety Engineer

**Others present**

Patrick Singh, Safeway Stores, Inc.  
Bo Bradley, AGC of California  
Larry Pena, Southern California Edison  
Kevin Bland, CFCA and RCA  
Lynne Formigli, California Teachers Association

Marcia Dunham, PG&E  
Dan Leacox, Greenberg Traurig  
Kevin Thompson, Cal OSHA Reporter  
Steve Johnson, ARCBAC  
Elizabeth Treanor, Phylmar Regulatory Roundtable

B. OPENING COMMENTS

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.

Chair MacLeod then opened the floor for public comment.

C. ADJOURNMENT

With no comments, Chair MacLeod adjourned the Public Meeting at 10:05 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public Hearing of the Board to order at 10:05 a.m., June 19, 2008, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California.

Chair MacLeod opened the Public Hearing and introduced the items noticed for public hearing.

1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 69  
Section 4530  
**Bakery Ovens—Inspections**

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.

Patrick Singh, Director of Safety and Loss Control, Corporate Risk Management, for Safeway Stores, Inc., supplemented his written remarks by stating that the proposal is vague in regard to definition of terms such as "bakery," "inspection," and "safety device." He stated that this vagueness could create confusion and expose employees to unnecessary risk of electrical hazards and that bimonthly inspections would be unnecessarily burdensome to employers without a corresponding increase in workplace safety. Mr. Singh further stated that the counterpart federal standard, upon which this proposal is based, was adopted at the enactment of the OSHA Act, is based on ANSI Z50.1-1947, and has not been changed since it was enacted. The intent at that time was not to regulate bakery ovens in retail settings, but to regulate ovens in commercial bakeries. He concluded by suggesting changes that would make the proposal more in keeping with National Fire Protection Agency (NFPA) 86, which requires safety devices on bakery ovens to be inspected by a qualified person at least once a year.

Mr. Washington asked whether there had been stakeholder input in the development of the proposal.

Mr. Manieri answered that staff had contacted a representative from the American Retail Bakers Association during the formation of the language, and no objections or concerns were expressed about the proposal at that time.

Mr. Washington then asked whether the American Retail Bakers Association represented both commercial bakeries and bakery ovens in small retail facilities, such as fast food restaurants and grocery stores.<sup>1</sup>

Mr. Manieri stated that, while the federal standard does not define “bakery,” that term is defined in the Standard Industrial Classification Codes (SIC Codes). The federal standard is without regard to any specific type of bakery, but there are three main types of bakery ovens, which the proposal was intended to address: rack ovens used by large-scale production bakers; revolving tray ovens used by specialty bakers; and conveyor-type ovens used by institutional bakers. These ovens are fueled by natural gas, propane, or diesel fuel; they are rarely fueled by electricity because of the cost. Of those three types, the rack-type ovens used by large-scale production bakers have, statistically, one of the highest frequency rates of repair.

Mr. Washington expressed the concern that small retail facilities, such as fast food restaurants and grocery stores, would be defined as bakeries under the proposal.

Mr. Singh responded that Safeway stores are not classified as bakeries under the SIC Codes, but rather they are classified as retail stores. He stated that the ovens used by Safeway are designed with a fail-safe mechanism, and operators are trained to call the technician if the oven does not work.

Chair MacLeod asked whether the Division request that prompted the development of the proposal was based on a citable incident or whether it was simply a matter of making the regulation at least as effective as the counterpart federal regulation.

Mr. McCune responded that the proposal originated from field inspections in which the Division was performing “sweeps” of bakeries and similar establishments. Division inspectors determined that there was not an inspection requirement in California, as there is in the federal standard.

Mr. Jackson expressed concern about definitions and required inspections by oven manufacturers. He stated that it was possible that an employer has an oven manufactured by a company that no longer exists or by a foreign manufacturer.

Chair MacLeod directed staff to take another look at the standard to address concerns expressed during the hearing, and to remain at least as effective as the federal standard.

## B. ADJOURNMENT

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<sup>1</sup> Founded in 1918, the Retail Bakers of America (RBA), (also known as the American Retail bakers Association) a 501c6 not-for-profit trade association, represents approximately 20,000 small retail bakeries, allied suppliers and other members. The RBA does not represent large commercial bakeries. Source: Susan Nicolais, CAE, Executive Vice President, RBA.

Chair MacLeod adjourned the Public Hearing at 10:22 a.m.

### III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:22 a.m., June 19, 2008, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California.

#### A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Chapter 4, Subchapter 4, Article 3  
Section 1524  
**Drinking Water in Construction**  
(Heard at the February 21, 2008, Public Hearing)

Mr. Mitchell summarized the history and purpose of the proposal, stating that changes had been made in response to comments received in response to a 15-day Notice of Proposed Modification, and he indicated that the package is now ready for adoption.

#### MOTION

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

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

2. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 14  
Sections 1604.24 and 1604.26  
**Construction Personnel Hoists (Car Top Operations)**  
(Heard at the May 15, 2008, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, and he indicated that the package is now ready for adoption.

#### MOTION

A motion was made by Mr. Jackson and seconded by Mr. Kastorff that the Board adopt the proposed safety order.

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

3.            TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 25  
Section 3649  
**Definition of Agricultural Tractor**  
(Heard at the May 15, 2008, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, and he indicated that the package is now ready for adoption.

MOTION

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

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

4.            TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7  
Article 91, Section 4885  
Article 93, Section 4924  
Article 98, Section 5004(e)(3)  
**Mobile Crane Load Safety Devices**  
(Heard at the February 21, 2008, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, stating that there had been no comments in response to a second 15-day Notice of Proposed Modification, and he indicated that the package is now ready for adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Kastorff that the Board adopt the proposed safety order.

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

B.        PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales summarized the five proposed variance decisions for adoption and asked that the Board approve the consent calendar and thereby adopt the proposed decisions as written.

MOTION

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

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

C. OTHER

1. Update on ANSI/IWCA I-14.1 and ASME/ANSI A120.1 Window Cleaning Advisory Committees

Mr. McCune stated that this update follows up the decision adopted by the Board in January regarding Petition File No. 498, regarding the testing and design of building safety equipment such as roof anchors and suspension equipment used in exterior building maintenance.

Mr. McCune attended the ANSI/IWCA I-14.1 advisory committee meeting in Philadelphia in March, where issues relating to testing and design were debated again, and changes were considered by the committee. The proposed changes are scheduled to be published for public comment before the end of the year, and the Petitioner was notified of that progress. He stated that debate as to how to resolve the issues addressed in the petition is still ongoing.

The ASME/ANSI A120.1 committee, regarding safety requirements for powered platforms, traveling ladders, and gantries for building maintenance, met in Las Vegas April 10-11, 2008. That committee is planning to adopt design and testing standards and frequency of testing requirements that will further clarify the definition of the issues. The committee will meet again in November to finalize revisions before publishing for public comment.

There continues to be some disagreement with the Petitioner regarding the difference between materials and laboratory testing to verify design and the functional testing of installed equipment on a building. There is a substantial difference between the sizes of loads applied for a functional test as opposed to a proof load to verify a design. If there is no history of design evaluation on equipment installed on a building, the Petitioner would like to test the installed equipment to its destruction and replace it with another device.

The ANSI standards are developed in a deliberate way to allow comment and participation to reach consensus. It is likely that both committees will establish testing criteria that exceed the rated load chart of equipment but less than the full design capacity. These committees consist of a number of professional engineers, manufacturers, labor representatives, and government representatives from California and New York. Thus, there is a broad spectrum of qualified individuals in these committees, and Mr. McCune expressed confidence that these issues would be resolved before the end of the year, when proposed standards are scheduled to be published for review.

However, both committees rejected the idea of testing installed equipment to full capacity, where it would have to be replaced to determine whether the equipment has a functional load capability.

Mr. Washington asked whether the ongoing discussions pertained to more states than California.

Mr. McCune responded that the ANSI/ASME standards apply worldwide for design of window cleaning equipment.

Mr. Washington asked whether federal OSHA had been involved in the advisory committees.

Mr. McCune responded that federal OSHA also is involved in the development of the ANSI/ASME standards.

Chair MacLeod asked whether the petitioner had had an opportunity to respond to the proposed standards.

Mr. McCune responded that the Petitioner had commented and will have another opportunity to comment when the standards are published for review. He stated that the Petitioner had been provided the opportunity to attend the advisory committee meetings, but had declined to do so.

Chair MacLeod asked if the ANSI/ASME committees are required to respond to comments received during the comment period.

Mr. McCune responded that if written comments are submitted, the answers to those comments have to go to the committee for approval before the answers can be distributed.

Chair MacLeod asked Mr. McCune to keep the Board informed of the progress of the standards.

## 2. Legislative Update

Mr. Beales stated that SB 107, regarding wave pools, was amended on June 11, 2008, in ways that do not impact OSHA involvement. SB 1473, the green building standards bill, passed both the Senate and the Assembly Business and Professions Committee. AB 1988, regarding OSHA citations and appeals, was amended on June 12, 2008; the change was to remove the proposal that employers of a certain size must pay a filing fee in order to appeal a citation. AB 2031, regarding oil spill prevention and response, passed the Senate Natural Resources Committee on June 10, 2008. AB 515, by Lieber, which would require the Standards Board to adopt, within certain time frames, standards concerning defined types of hazardous substances in the workplace and which has provisions that would affect the functioning of advisory committees, passed the Senate

Environmental Quality Committee on June 16, 2008. AB 1869, Anderson, was introduced on February 4, 2008, amended on April 3, 2008, and failed to pass the Assembly Business and Professions Committee on April 15, 2008. This bill, which is a very long government reorganization bill, contains a proposal to delete certain Boards and Commissions, one of which would be the Appeals Board. The Appeals Board would be combined with two or three other Boards in the Department of Industrial Relations to form a new Board that would hear appeals regarding workers' compensation, unemployment insurance, and OSHA appeals.

### 3. Executive Officer's Report

Ms. Hart summarized the Calendar of Activities, and stated that there was no news to report regarding the budget. She further stated that she has asked the Budget Office to keep her informed regarding potential restrictions on travel. There will definitely be restrictions on spending. In the past, the Board has been able to continue its business as usual without disruption to the Board's meeting schedule, and she anticipates that it will be the same in the forthcoming fiscal year. She reminded Board members that all travel claims must be submitted before the end of June, as staff's last day to submit travel claims for reimbursement is July 2, 2008.

### 4. Future Agenda Items

Chair MacLeod asked for an update on heat illness.

Amy Martin, Special Counsel to the Division, presented an update. She stated that a briefing regarding some of the more long-term actions that the Division is going to take can be provided at the next meeting. For the time being, however, she was able to provide information regarding the ongoing investigation into a recent heat-illness-related fatality. As a result of this investigation, orders prohibiting use have been served on two employers, both of whom had been involved in the incident, and neither of whom had, until this point, taken steps to protect their employees from heat-related illnesses, as required by the standard. The Division is currently considering whether to broaden the scope of the investigation.

Ms. Martin stated that sweeps had been performed throughout the central valley. Those sweeps had been planned more than a year ago, so they were not performed in response to the fatal incident. The area had been changed from that originally planned, in order to include the area where the fatality occurred. Those sweeps have been completed, and more are planned in the next few weeks.

Chair MacLeod asked whether Ms. Martin could provide any information regarding the sweeps and what kind of information had been revealed.

Ms. Martin responded that, although she did not have specific information, she had been in contact with the Economic and Employment Enforcement Coalition (EEEC) and the people performing the sweeps. She stated that the sweeps are going well, and some

deficiencies have been uncovered, but nothing on the scale of the fatality that occurred on May 16.

Mr. Washington asked whether both companies involved in the fatality had been cited previously.

Ms. Martin stated that the company that employed the victim was cited in 2006. It did not abate, it did not appeal, and it did not pay the fine for that citation. Some people in the Division had believed that the other company, whose involvement in the May 16 fatality was more tangential than the first company, had been cited previously, but it turned out that a company with a very similar name had been cited.

Mr. Washington asked for a follow-up report regarding the investigation.

Chair MacLeod asked for a report regarding how well the regulation is doing in terms of compliance.

Mr. Jackson asked that the report include information as to whether the regulation helps employers do a better job of protecting employees from heat-related illness.

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:00 a.m.