

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**June 21, 2010**  
**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., June 21, 2010, in The Hearing Room of the Occupational Safety and Health Appeals Board, 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  
Chris Witte, Executive Secretary

**Division of Occupational Safety and Health**  
Michael Donlon, Senior Safety Engineer

**Others present**

Jim Fear, The Toro Co.  
John Gehlhausen, Attorney  
Wendy Holt, CSATF/AMPTP

William Cameron, Deere & Co.  
Julio & Madeline Petrini, Petitioners  
Joan Gaut, California Teachers Association

**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

John Gehlhausen, a plaintiff's attorney from Colorado, repeated his concerns expressed at the advisory committee meetings, during the public comment period, at the public hearing, and during the 15-day proposed modification comment period. Those comments were to the effect that although the proposal is a good step, it is too easily avoided, and the most effective approach with the least cost effect would be to require ROPS on all ride-on power mowers.

Dr. Frisch asked whether Mr. Gehlhausen would prefer that the Board vote "no" on the proposal today, leaving the State of California without a standard at all. Mr. Gehlhausen responded that, if that was the only choice, he would prefer that the Board adopt the proposal.

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:19 a.m.

## II. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:19 a.m., June 21, 2010, in The Hearing Room of the Occupational Safety and Health Appeals Board, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. 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**  
(Heard at the December 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 Dr. Frisch and seconded by Mr. Jackson that the Board adopt the proposal.

Dr. Frisch commended staff for their work on a model rulemaking, and he acknowledged the Petrinis (the original Petitioners), who have attended many of the meetings that have

been held, traveling great distances to do so, and he stated that it was their dedication to this issue that has driven the proposal through the process so quickly. He stated that work and equipment are dangerous by nature. Working with saws or electricity is always dangerous, as is working with automobiles or other vehicles.

The Board is not interested in stopping work in California nor in ceasing to permit the mowing of lawns and greenery. They are not interested in going back to hand mowing, which has its own hazards. However, the Board is adopting a standard that mandates that equipment meet the national consensus standards that have been established; requires that operating conditions established by the manufacturers be obeyed; requires basic training; and spells out the expectations for ROPS. The standard does not preclude work from being done, but it will prevent injuries and deaths. He stated that he is very pleased to be voting for it.

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 116  
Section 5278  
**Loading of Explosive Materials**  
(Heard at the May 20, 2010, 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. Kastorff and seconded by Mr. Washington 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. Arnold Timothy Galpin, P.E.  
Engineering Manager  
Spanco, Inc.  
**Petition File No. 514**

Petitioner requests that the Board amend Title 8, California Code of Regulations, Section 1670 of the Construction Safety Orders regarding flexible horizontal life lines used in fall arrest applications.

Ms. Hart reviewed the history and purpose of the petition, and she asked that the Board adopt the petition decision as proposed.

MOTION

A motion was made by Mr. Prescott and seconded by Mr. Jackson to adopt the petition decision that the petition be denied, as proposed.

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 stated that the proposed decisions are among the Board’s prepared materials, and he asked that the Board adopt the consent calendar as proposed.

MOTION

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

Dr. Frisch asked whether the proposal for Variance File Nos. 10-V-026 and 10-V-027 was to grant the variances. Mr. Beales responded affirmatively, stating that the hearing panel heard those matters the previous week, and he asked that the motion be modified to adopt the consent calendar indicating that those two variances were granted.

That motion was made by Mr. Prescott and seconded by Mr. Kastorff.

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

D. OTHER

1. Termination of Rulemaking—Rubber Tired  
Gantry Cranes (Petition File No. 495)

Ms. Hart stated that Board staff intends to terminate further rulemaking action related to Petition 495. An advisory committee was convened on May 4, 2010, to consider amendments to Section 4906(c) that requires container-handling rubber-tired gantry crane wheels to be guarded to the front and rear. The committee considered the Petitioner’s request to restore pre-1995 language that specified that wheel guards function to push a person out of the way in order to prevent the person from being run over by the rubber-tired gantry crane. Post-1995 language requires that the guarding extended to the lowest practicable level above the ground. The memorandum to the Board members as well as the advisory committee minutes, which were provided to the Board members on Thursday, June 17, 2010, outline the various issues that lead to the recommendation to

terminate further work on this project. The Board took no action to direct Board staff to follow any course other than that stated by Ms. Hart (termination of the rulemaking).

2. Legislative Update

Mr. Beales stated that there has been some movement on a couple of the bills mentioned in the written summary provided in the prepared materials. AB 846, which concerns civil and administrative penalties including Cal-OSHA penalties, was modified in a manner that affected the maximum penalty that could be levied, and some definitions connected with that modification were also modified. AB 1652, which concerns ski resorts, passed the Assembly on June 1. AB 2529, which is an amendment of the Administrative Procedure Act to require various cost/benefit analyses regarding certain proposed regulations, was amended to narrow its scope to include only certain agencies in a sort of pilot program as opposed to being an across-the-board regulation. The agencies that it covers now are the Air Resources Board, the Department of Fish and Game, and the Department of Housing and Community Development. In its amended form, AB 2529 passed the Assembly on June 3. AB 2774, which has to do with dangerous places of employment, was amended in a nonsubstantive manner and passed the Assembly on June 2, 2010. The deadline for bills to pass their house of origin was June 4, 2010.

Mr. Washington expressed concern that the potential result of AB 2774 could be horrendous when it requires redefining things in the Labor Code after years. In addition, he expressed concern that the bill is attracting federal attention.

There followed a discussion about the history, nature, and scope of the Board's legislative updates, with the apparent consensus that for now, they should continue in their present form.

3. Executive Officer's Report

Ms. Hart stated that a 15-day notice of modifications to the heat illness regulation is being sent out today, and as soon as this meeting is over, they will be approved to go online and send them out via email. The 15-day notice period is from June 21, 2010, through 5:00 p.m. on July 6, 2010, which is exactly 15 days.

There are also a couple of future business items pending. One was to discuss the incorporation by reference item and the second is to discuss the petition decision process. Currently, staff is planning to brief the Board on both those items at the July 15, 2010, Board meeting. There is an advisory committee on June 29, 2010, for the bloodborne pathogens standard for the adult film industry. Tom Mitchell will be attending for Board staff, and it is planned that there will be a second meeting later this year in Oakland, although there is not a definite date for that meeting.

The fiscal year ends on June 30, 2010, so Board members should submit their travel claims as soon as possible. Staff must submit them no later than July 2, 2010. As of today, staff had their last furlough day on June 18.

Mr. Washington asked whether anyone from Board staff attends the HEAC meetings. Ms. Hart responded that Tom Mitchell used to attend them, but we found that the meetings are very technical, and it is more helpful to read the minutes and to get the information from Bob Barish afterward.

Mr. Washington expressed concern about the make-up of the HEAC, because there do not appear to be any employers involved. He stated that employers should have a larger presence because they are the people most affected by the results.

Ms. Hart stated that there is a Feasibility Advisory Committee that reviews the recommendations from the HEAC, and it is not made up of the same medical professionals that are in the HEAC. Board staff has not yet seen anything that has gone through that entire process yet.

Mr. Washington stated that that was his concern. He had received a large volume of medical information, but he had not yet seen anything from the employers, and he was not aware that there was a feasibility committee.

Dr. Frisch stated that the challenge is that the one set of PELs that the Board has seen predated the new committees. He stated that he shares Mr. Washington's frustration with the number of PELs that need to be worked through, but they appear to have gotten stuck. The idea behind the creation of those two committees was specifically to address the question that Mr. Washington raised with respect to feasibility as well as the health experts. It was recognized by DOSH and by others that the technical experts that need to speak to the pure health issue and the technical experts that need to speak to the feasibility issues are not the same people; so the idea was to get all the health issues on the table, get a proposed PEL, and then assess the feasibility and make sure that that number can actually been met in practice. Nothing produced by that process has yet made it to the Board.

Mr. Washington thanked Dr. Frisch for his remarks, because he has been very concerned.

Chair MacLeod stated that the reason DOSH had gone to the new process was to address the frustration expressed by Mr. Washington and Dr. Frisch.

4. Future Agenda Items

Dr. Frisch stated that it might be time to ask DOSH for an update on the PEL process.

Chair MacLeod expressed his agreement with the suggestion.

George Hauptman of the Board staff thanked the Board on behalf of the Petrinis for the manner in which the lawn mower standard was handled from the petition all the way through to the rulemaking package.

E. CLOSED SESSION

The Board discussed only the closed session item listed on the Agenda, and no action was taken during the closed session.

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 10:57 a.m.