

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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SUMMARY PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING November 21, 2013 San Diego, 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 10:01 a.m., November 21, 2013, in Room 310 of the County Administration Center, San Diego, 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

Others Present

Cait Casey, Aspen RMG	Mark Stone, EPIC Insurance Brokers
Michael Musser, CA. Teachers Association	Kevin Thompson, Cal/OSHA Reporter
Bruce Wick, CALPASC	Grace Delizo, Cal/OSHA
Jay Vicory, USDOL-OSHA	Dan Leacox, Greenberg Traurig
Jay Weir, AT&T	Katherine Hughes, SEIU

Michael Strunk, IUOE Local Union No. 3
Terry Thedell, SDG&E
Jennifer Bonilla, CRLAF
Kate Crawford, AGC
Russ McCrary, Iron Workers

Kevin Bland, ODNSS
Steve Johnson, Associated Roofing
Contractors
Jason Resnick, WGA

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.

Jennifer Bonilla, CRLAF, commented on Petition 536. She asked the Board to deny the petition for 3 reasons:

1. It conflicts with the federal tractor safety rule that prohibits non-driver riders on tractors. She said that convening an advisory committee only to arrive at this conclusion is not an efficient use of the Division's time and resources.
2. A permanent variance application that was filed by Grimmway is currently under review regarding this issue and awaiting a full hearing, and her organization feels that it is premature to initiate rulemaking discussions when a directly related permanent variance application is under review.
3. The petition is not supported by safety data or a good policy rationale. She said that all safety data, including the data that was cited in the Division's evaluation report, demonstrates that there are many serious accidents that have resulted from non-driver riders riding on tractors.

Mark Roy McGrath, AIDS Healthcare Foundation, stated that his organization is pleasantly surprised to see a proposal from the Division regarding sexually transmitted infections in the adult film industry. He submitted written comments from his organization and said that the comments discuss ways to make the proposal more robust and easier for employees [Please see the Board's filed copy to view these comments]. He said that the Division has issued over 50 serious citations to employers in the adult film industry, and the citation fines were automatically halved in the hopes that employers will comply. He stated that adult film employees need to be recognized and protected just like employees in other industries and encouraged the Board to move the proposal forward.

Kevin Bland, representing the California Framing Contractors Association, Residential Contractors Association, and the Western Steel Council, asked the Board to vote "no" on the proposal for Powered Industrial Trucks-Excessive Loads. He stated that the first sentence is clear and specifies what needs to be done when lifting a load, but the second and third sentences make it confusing and need to be clarified. **Bruce Wick, CALPASC**, echoed Mr. Bland's comments.

Jason Resnick, Western Growers Association, commented on Petition 536 and stated that his organization supports convening an advisory committee on this issue. His organization is interested in discussing safe design, structure, training, and use of tractor-mounted transportation units. He said that these devices save the workers from having to walk several miles to get from place to place in the field, especially in high heat temperatures, which helps prevent injury and heat illness. He also said that it reduces the number of vehicles on the farm, which reduces the potential for collisions or pedestrian accidents.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:25 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:25 a.m., November 21, 2013, in Room 310 of the County Administration Center, San Diego, 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 145, Section 5605
CONSTRUCTION SAFETY ORDERS
Division 1, Chapter 4, Subchapter 4, Article 7, New Section 1550
Tank Storage Subject to Flooding, Precautionary Measures

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 comments on this proposal.

Mr. Jackson stated that this proposal only applies to tanks in Group 20 and that the proposed Section 1550 is not necessary. He said that this proposal will apply to tanks associated with construction operations regardless of whether or not it is addressed in the construction standards, because the general industry standard applies to all things that are not specifically different in the construction standards. He also said that the revision is not required to make it at least as effective as the federal standard.

Mr. Thomas stated that because the Water Control Resources Board just became aware of this proposal, the deadline to receive written comments on this proposal will be extended to December 19, 2013 to give them time to review it and submit written comments.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:34 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:34 a.m., November 21, 2013, in Room 310 of the County Administration Center, San Diego, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 25, Section 3650
Powered Industrial Trucks–Excessive Loads

Mr. Manieri 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 question regarding how much caution is enough caution has still not been answered. He said that the first sentence is clear enough, and the second and third sentences do not add anything. He suggested that the Board consider sending this proposal back to the Board staff to reconsider the opinions that have been shared.

Ms. Stock asked Mr. Manieri to explain the difference between the second and third sentences. She said that the third sentence seems to contradict the second sentence. **Mr. Manieri** stated that the concept is between off center loads and generically arranged loads, which are considered by the Industrial Truck Association and ANSI to be two distinct situations. He stated that "caution" in this proposal means that employees and employers must exercise due diligence in making sure that loads are spread out, stabilized evenly, and secured, and that off center loads are not tipping the vehicle. **Mr. Beales** added that according to his discussion with Mr. Manieri and the Final Statement of Reasons, the first sentence is a modification of the present standard, the second sentence comes from the federal standard, and the third sentence comes from the ANSI standard.

Mr. Harrison echoed Ms. Stock's comment that the second and third sentences contradict each other and stated that he would like to see that fixed. He asked Mr. Smith if the Division would be able to enforce the regulation if only the first sentence was adopted.

Mr. Smith stated that he did not know. **Mr. Harrison** asked what the Board's options are.

Ms. Hart stated that the Board can vote on the proposal or send it back to Board staff for further development.

Ms. Quinlan stated that she does not see a contradiction anywhere, and that a load that is off center is not necessarily unstable.

Mr. Manieri stated that loads can be stable and safely arranged prior to being lifted, but when the forks are introduced, the load could be off center and unbalanced. He believes

that this is why the ITA and ANSI put the second sentence into their standards.

Mr. Jackson stated that this issue was first brought up because of an Appeals Board decision, and at that time, no one knew what excessive length, width, and height were. He said that by striking that and instead requiring loads to be balanced, braced, or secured makes the regulation much clearer, but this proposal adds several other unnecessary things to it that create confusion.

Ms. Quinlan stated that the proposal seems very clear to her and that the second sentence is reiterating the federal standard. She said that Mr. Jackson's comments pertain to the third sentence.

Mr. McDermott stated that the third sentence does not add anything to the regulation, and he recommended sending the proposal back to the Board staff to have them redefine or remove the third sentence.

Ms. Stock stated that the second sentence is very important and the third sentence is the one that is being disputed. She said that the second sentence not only requires the load to be in a certain state, but it also requires employees not to lift the load unless it is in that state.

Mr. Thomas recommended adding a phrase such as "when being lifted by the forks" after "balanced, braced, or secured to prevent tipping or falling", because if tipping or falling occurs, it indicates that the load was not properly balanced, braced, or secured. He said that the second sentence seems okay and the third sentence does not seem to add anything to it. He recommended that the Board send the proposal back to the Board staff and delete the third sentence.

Ms. Stock asked what the impact would be if the Board sends the proposal back to the Board staff. **Ms. Hart** stated that there would be no serious impact. She said that the proposal would still have a one year timeframe, and if the Board staff makes any changes while reviewing it, there would be a 15-day comment period on those changes.

Ms. Quinlan asked if the third sentence is in the federal language or in the ANSI standard. **Mr. Manieri** stated that it is in the ANSI standard, and if that sentence is stricken, it will not present a challenge to Federal OSHA because there will be no off center loads in California.

The Board decided to send the proposal back to the Board staff for further review.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 59, Section 4297
Definitions of Woodworking Machines and Equipment

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. Harrison and seconded by Mr. Jackson that the Board adopt the proposal.

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 107, Section 5155
Airborne Contaminants, N-Methylpyrrolidone

Mr. Smith 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 Ms. Quinlan 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.

4. 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 now ready for the Board’s adoption.

MOTION

A motion was made by Mr. Harrison 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.

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Wesley Selvidge, Partner
 Buttonwillow Land and Cattle Company

 Darren Filkins, Vice President of Agricultural Operations
 Wm. Bolthouse Farms, Inc.
 Petition File No. 536

Petitioners request that the Board make recommended changes to Title 8, California Code of Regulations, Section 3441 of the General Industry Safety Orders regarding

tractor mounted transportation units.

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. Jackson and seconded by Mr. McDermott that the Board adopt the proposed decision to convene an advisory committee.

Mr. Harrison stated that he does not like this petition because he fears that rollovers could occur with tractor mounted transportation units. He said that he hopes that rollover protections will be discussed during the advisory committee process and asked Ms. Bonilla to bring several labor representatives from her organization to participate in the process.

Ms. Stock recommended denying the petition decision because it conflicts with federal safety rules, and there is no national consensus standard on this issue, which would make it difficult for the Division to come up with a standard. She said that there are other alternatives, such as providing passenger vehicles, to transport workers. She also stated that she is concerned about using the Division's limited staff and resources on this advisory committee.

Mr. Jackson stated that if the petition decision is adopted, the advisory committee will be convened simply to find out if tractor mounted transportation units are the right thing to use in this situation and if there are better alternatives. He said that this is an opportunity to find a right and better way to do it and to specify how it should be done.

Ms. Quinlan echoed Ms. Stock's concern regarding using the Division's limited resources for this advisory committee. She also said that the results of the Grimmway variance evaluation have not come in yet. She asked to defer voting on this petition until those results come in.

Mr. McDermott stated that he would like to see an advisory committee convened regarding this issue so that input from all concerned parties may be considered. He said that this will allow the Board and staff to come up with the best possible solutions.

Ms. Smisko stated that she also would like to see an advisory committee convened because there are a lot of creative ways to move employees from one place to another. An advisory committee will allow people to discuss those options and determine which methods are the safest and most effective. She also stated that variances only address one particular situation, and in this case, there are several situations where this issue can occur, and convening an advisory committee to come up with a solution that will address as many of these situations as possible is ideal.

Ms. Stock noted that the federal safety rules prohibit non-driver riders on tractors. She asked what the Board could do to get around that. **Mr. Beales** stated that the resulting regulation must be at least as effective as the federal regulation. He said that the effectiveness could perhaps be measured in terms of the number of injuries and accidents that occur. He stated that the advisory committee may be able to come up with requirements for the regulation that may result in the number of injuries and accidents that occur being equal to or less than that in areas subject to the federal regulation, which arguably could make the state regulation at least as effective as the federal regulation.

A roll call was taken. Ms. Stock and Ms. Quinlan voted “no”, and all other members present voted “aye.” The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales recommended removing variance decision number 13-V-075 from the consent calendar and voting on it separately. With that modification, he recommended granting the other decisions and adopting the modified consent calendar.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Quinlan to adopt the proposed decisions and the modified consent calendar.

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

Mr. Jackson left the room while the Board discussed and voted on variance decision number 13-V-075.

Mr. Beales recommended granting the variance decision for 13-V-075.

MOTION

A motion was made by Ms. Quinlan and seconded by Mr. Harrison to adopt the proposed decision.

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

Mr. Jackson returned to the room.

D. OTHER

1. Legislative Update

Mr. Beales had nothing further to add to the written copy in the Board packet.

2. Executive Officer's Report

Ms. Hart stated that the Division is initiating amendments to the Mining Orders and will be having 6 advisory committee meetings between mid-December and March of 2014. She said that the Board staff will be participating in those advisory committees.

Mr. Jackson asked Ms. Hart if the Division has published a list of invitees for the advisory committee meetings. **Ms. Hart** stated that an initial interest letter has been sent out to people on the Division's master list asking those who are interested in participating to contact the Division for further information. **Mr. Jackson** stated that he is concerned because the first meeting is in December, but he has not heard about it until now. He wants to make sure that there will be a broad cross section of people involved in this advisory committee process. **Ms. Hart** stated that Mr. Smith will take these concerns back to the Division and evaluate their list of attendees for the advisory committees.

Ms. Hart also stated that the Division is still doing a final review of the Tunnel Safety Orders and that they should be coming back to the Board staff before getting too far into working on the Mining Orders.

Ms. Hart also stated that DIR is implementing a new electronic process for processing travel expense claims. She asked the Board Members to fill out the enrollment form in their folders and give them to Ms. Money for processing.

Ms. Stock asked Ms. Hart for an update on the Hotel Housekeeping and Safe Patient Handling standards. **Ms. Hart** stated that the Division was planning to send her a 15-day notice this month regarding the Safe Patient Handling standard, but she just received an email from Bob Nakamura indicating that there is a policy snag that may delay it to next month. Regarding Hotel Housekeeping, Ms. Hart stated that there has been no movement by the Board staff on this issue and the Division plans to convene another advisory committee on this issue. **Mr. Smith** stated that the Division staff is currently developing a draft proposal and having it reviewed by the Division Chief and Deputy Chief, and once that is done, they will convene another advisory committee and present the draft proposal there.

Ms. Hart also stated that a proposal has been received from the Division regarding Bloodborne Pathogen Protection in the Adult Film Industry. She said that the Board staff will return it to the Division by tomorrow with comments, questions, and recommendations for the Division to consider. She said that they are hoping to get it to public hearing in March or April of 2014.

Ms. Hart also stated that the 2014 meeting schedule is in the Board packet. She said that the meetings will still be held on the third Thursday of each month, but some of the cities have changed, as well as the rotation schedule. She asked the Board to let her know by next week if there are any questions or concerns regarding the schedule so that the Board staff can get the schedule finalized.

3. Future Agenda Items

Mr. Harrison asked for an update on the crane standards and incorporating the General Industry Safety Order and Construction Safety Orders.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:33 a.m.