

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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

September 17, 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., September 17, 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
Guy Prescott
Willie Washington

Board Members Absent

Jonathan Frisch, Ph.D.

Board Staff

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

Division of Occupational Safety and Health

Joel Foss, Acting Principal Safety Engineer

Others present

Bruce Wick, CALPASC
Kevin Bland, Granado Bland
Dan Leacox, Greenberg Traurig
Dave Harrison, Operating Engineers Local 3
Beth White, CARB
Lauren Mendonsa, USD Law School
Don Rogers, AGC San Diego

Wendy Holt, AMPTP
Elizabeth Treanor, Phylmar Regulatory Roundtable
Bo Bradley, AGC of California
Kim Heroy-Rogalski, CARB
Brad Barnum, AGC San Diego
Joan Gaut, CTA

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.

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:04 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public Hearing of the Board to order at 10:04 a.m., September 17, 2009, in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

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

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 4, Article 7
 Section 1549
 Piling Material

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.

Bruce Wick, Risk Manager for the California Professional Association of Specialty Contractors (CalPASC), stated that CalPASC agrees with the problem that if 1549(e) is going to be construed the way it was by the Administrative Law Judge (ALJ), a new section clarifying exterior balconies needs to be added. However, the specific wording in the proposal that includes balconies or other elevated locations brings in too many new parameters as to the extent of "other elevated locations." Thus, CalPASC recommends either leaving the language at exterior balconies, which was the specific intent of solving this problem, or "balconies or other similar elevated locations." That language addresses the issue because if the language remains "other elevated locations," there should be an advisory committee to gather all of the potential parties that would be involved in "other elevated locations" into a meeting and make sure the proposal works for everybody. As it stands now, the language is too broad, and CalPASC would like to focus on the specific problem.

Mr. Prescott asked Mr. Wick to provide specific examples of the other areas about which CalPASC is concerned. Mr. Wick responded by listing roofing activities, roofing contractors, framing contractors, sheet-metal contractors, and similar situations. He stated that other elevated locations could include almost anything.

Mr. Prescott asked whether Mr. Wick believes that materials should be secured, and Mr. Wick responded affirmatively.

Kevin Bland, an attorney representing the California Framing Contractors Association and the Residential Contractors Association, expressed agreement with Mr. Wick, stating that the current language could raise an argument that would affect the way that trusses on a floor, for example, when they are brought up with a crane or with a forklift. He also expressed a desire to clarify what the word “positively” is modifying, whether it is only “barricade,” or whether it also is modifying the words “placed” and “secured,” because that could make the proposal more restrictive than what the natural interpretation would be. If planking or lumber are being placed in a safe manner, it may not be positively barricaded or positively placed, but it will be placed safely.

Mr. Jackson asked whether the proposal would change the manner in which roofing contractors are allowed to load roofs before they perform any work. He stated that the language “positively barricaded or placed” may change the interpretation of how they load roofs to solve a problem that may not really exist. He expressed concern that because the proposal is about piling material on balconies, there may be a portion of the regulated community that is unaware that this is a problem. He expressed further concern that an overzealous enforcement officer could cite an employer for having shingles stacked on a roof because they are not barricaded or secured.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 10:15 a.m.

III. **BUSINESS MEETING**

Chair MacLeod called the Business Meeting of the Board to order at 10:15 a.m., September 17, 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 4
Section 3277
Fixed Ladders
(Heard at the June 18, 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 Mr. Jackson and seconded by Mr. Prescott that the Board adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 7
Section 3333 and Article 25, Section 3650
Blue Stop Signs
(Heard at the August 20, 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 Mr. Kastorff and seconded by Mr. Prescott that the Board adopt the proposal.

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

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 116
Section 5306
Electric Blasting in Proximity to Radio, Television or Radar Transmitters
(Heard at the June 18, 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 Mr. Jackson and seconded by Mr. Kastorff that the Board adopt the proposal.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales stated that all of the proposed decisions concerned elevator matters that were heard shortly before today's Board meeting, and he asked that the Board adopt the proposed decisions by approving the matters on the consent calendar.

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 voted "aye." The motion passed.

C. OTHER

1. Legislative Update

Mr. Beales stated that the legislative session concluded on September 11, 2009, and that some of the bills that the Standards Board is tracking were passed by both houses of the legislature are pending the Governor's action one way or the other. One is SB 478, the bill concerns man lifts in agricultural settings. A second is AB 1312, which concerns defibrillators. Third is AB 1561, which requires a report to the legislature regarding citations and some related matters by the Division and the Appeals Board. The fourth, and perhaps most significant, is AB 838 by Assemblymember Swanson. Mr. Beales then read the bill: "On or before July 1, 2011, the Board shall adopt an occupational safety and health standard for controlling the risk of occurrence of heat illness where employees work indoors."

2. Executive Officer's Report

Ms. Hart stated that at the August 20 meeting in Sacramento, several interested persons offered support for Petition 507 and expressed opinions to the effect that the rulemaking process was taking too long. They asked that the Petitioners' suggested regulatory language be prepared for public hearing in an expedited manner. As a result of these comments, the Standards Board requested that a briefing on Board staff's rulemaking activities associated with Petition 507 be given at this meeting today. Included in the Board packets is a chronology of the steps taken since the adoption of the petition decision last November.

The petition decision that was adopted at the meeting in November stated, in relevant part, that "the Petition is hereby granted, and staff is directed to work with the Petitioners, Air Resources Board, and other affected parties as appropriate, to develop a rulemaking proposal to be presented to the Board at a future public hearing." Thus, rather than calling for the convening of an advisory committee, which is customary for the Board, the petition decision directed Board staff to work with the parties in an attempt to reach consensus for a regulatory proposal. Board members firmly stated that they wanted to see a proposal that focused on employee safety issues, as they felt those issues were not adequately addressed in the ARB's retrofit requirements.

Since March 17, 2009, when staff developed a comprehensive plan for the rulemaking action, staff has met with the Air Resources Board and the South Coast Air Quality Management District, with the Division a number of times, and with the Petitioners. As the information in the Board packets indicates, the next steps would be to develop

proposed regulatory text and supporting documents for internal review, and after the internal review, discuss the proposed regulatory text and supporting documents with DOSH, the Petitioners, and the Air Resources Board, and also obtain necessary approvals for submitting rulemaking documents to the Office of Administrative Law for noticing in the California Regulatory Notice Register.

It was stated at last month's meeting that staff anticipated noticing this for public hearing in early 2010, January or February. Although Ms. Hart was unable to attend the meeting last month, she had reviewed the recordings and the minutes of the meeting, and she did hear the passionate testimony from the Petitioners and others regarding the development or the perceived lack of development of a rulemaking proposal. The Standards Board staff and DOSH have both met and have also met with the CARB staff on June 10. That is the only meeting that Board staff had with CARB. As was correctly stated at the August Board meeting, consideration was given to CARB's proposal to use the ISO 5006 standard of baseline testing criteria for determining visibility. In order to give fair consideration to all parties, Board staff evaluated that proposal with the same open mindedness that was given to the Petitioners' proposal. Staff believes that they have carefully considered the language submitted by the Petitioners and that by the Air Resources Board.

There were many comments in August asking why this rulemaking proposal had not been expedited, especially in light of labor-management agreement on the language. While it is true that there was and still is labor-management agreement, the proposed petition decision directed the staff to consider input from all parties and did not direct the staff to notice for public hearing the language submitted by the Petitioners. With this directive in mind, Board staff has been diligently consulting with the necessary stakeholders and considering all alternatives. While there was no directive to expedite the rulemaking process, Board staff understands the urgency for which the Petitioners feel immediate attention is needed, and this issue has been moved ahead of other projects waiting for development in 2009, including some rulemaking proposals that were already under development. Staff believes that they have been able to expedite Petition 507 as much as possible, without negatively impacting other work in the pipeline.

In addition to developing proposed regulatory text, staff must also comply with many regulations and statutes that govern the regulatory process. Staff is required to comply with the Administrative Procedure Act as well as the State Administrative Manual. It is for this reason that a January public hearing is realistic.

Since the August meeting, the Standards Board staff and DOSH are very close to finalizing proposed regulatory text that they believe will provide worker safety and ensure that those working on and around jobsite vehicles and haulage vehicles are not subjected to unnecessary and potentially fatal hazards. At this time, staff is also preparing supporting documents that are required for noticing proposals for public hearing. These documents require approval by the Labor and Workforce Development Agency prior to submittal to the Office of Administrative Law for publication. Staff hopes to be sharing the language with Petitioners and the Air Resources Board in the next

couple of weeks. In any case, they will be fully aware of the proposed language prior to the publication date.

Because of continued budget cuts, the Governor's office has directed the Department of Industrial Relations to eliminate approximately 28 vacant positions, but the vacant Associate Safety Engineer position at the Standards Board was not affected by this directive. However, the Board did lose the authority to utilize retired annuitants from here forward. Richard Parenti, who has been assisting the Standards Board for the past four years as a retired annuitant with the primary assignment of evaluating elevator variance applications and modifications. Unfortunately, Richard's last day with the Standards Board was last Thursday. Richard's contributions to the Board will be missed, as he provided valuable service to the Board, and his workload has been redistributed to the safety engineers.

The Standards Board is currently receiving applications for the vacant Associate Safety Engineer position. The final filing date has passed, applications should be in the office by the end of this week, and Ms. Hart hopes to conduct interviews by the end of September to fill that position.

Board staff has received notice that the State Controller's office will begin paying outstanding travel expense claims for special funds programs, of which the Standards Board is one. It is projected that all claims submitted since July 1 will be paid within 30 days.

Ms. Hart took the opportunity to praise the professionalism and dedication exhibited by the Standards Board staff during the past several months, especially while dealing with the budget cuts and furlough days. Although there is no way to minimize the impact of "Furlough Fridays," staff has remained committed to their current assignments and deadlines. As the months go by, we will see more of the impact of taking three additional days off each month. While the staff may notice an impact on the quantity of work, the quality will not be compromised.

3. Future Agenda Items

D. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 10:36 a.m.