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OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

THE ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

June 14, 2007

Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Re: Petitioner request to amend Title 8, California Code of Regulations,
Tunnel Safety Orders (TSO), Section 8405 and 8403

Dear Honorable Board Members:

The Associated General Contractors of California hereby petitions the California Occupational Safety and Health Standards Board to clarify the regulatory definition of a "tunnel" and to ensure that definition is consistent with the definition of a tunnel as set forth in California Labor Code § 7951(b). This clarification is necessary to ensure a consistency of definitions between the Labor Code definition and the regulatory definition of a tunnel, as set forth in Title 8, California Code of Regulations ("CCR") § 8405.

The statutory definition of a tunnel is relatively brief and understandable.

"Tunnel means an underground passageway, excavated by men and equipment working below the earth's surface, that provides a subterranean route along which men, equipment, or substances can move."

Title 8, CCR § 8405 defines a tunnel as:

"Tunnel. An underground passageway, 30 inches in diameter or greater, excavated by employees working below the earth's surface, that provides a subterranean route along which employees, equipment or substances can move; other than passageways excavated by mine or quarry operators in connection with such operations. For the purpose of these safety orders, 'tunnels' include shafts, raises, underground chambers and premises appurtenant thereto."

The regulatory definition does not cover a typical pipe-laying operation in which pipelines, whatever their purpose, are placed into an open trench or excavation and then backfilled with soil. These types of operations are subject to the Construction Safety Orders; specifically Title 8, CCR § 1540, et seq.

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The Division of Occupational Safety and Health (“Division”), acting through its Mining and Tunneling Unit, has taken the position that this everyday typical pipe-laying operation is to be reclassified as a tunnel operation simply because the pipe material in question is 30 inches or more in diameter, into which employees may need to briefly enter to complete the pipe-laying activity.

This policy places an unnecessary and on occasion, an unreasonable burden upon contractors engaged in such activities; the results are increased costs without any increased safety benefit to employees engaged in the trades.

A pipeline is a pipeline and may not logically, nor reasonably be considered to change in character to that of a tunnel simply due to the fact the pipe is a certain size and employees perform certain, albeit brief, work within such pipes.

Pipe laying operations, be they typical in nature or even in the form of box culvert construction, have been and remain subject to the controlling provisions of the Construction Safety Orders, commencing with Title 8, CCR § 1540. The construction of a pipeline is an activity conducted by pipeline contractors, which contractors are subject to the applicable Construction Safety Orders, and as necessary, the Confined Space Regulations.

Title 8, CCR § 8405 should include exception language which excludes the Tunnel Safety Orders from governing the work of installing pipe lines, including cast-in place pipe and the construction of culverts and manholes; activities subject to existing provisions of the Construction Safety Orders, and provisions of Title 8, CCR, Sections 5156-5158, Confined Space Regulations.

Sincerely,

Brenda Roach

Brenda Roach, Chair
Associated General
Contractors of California

cc: Mr. Len Welsh, Acting Chief, DOSH
Mr. Mike Manieri, Principal Safety Engineer

