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PROPOSED PETITION DECISION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (PETITION FILE NO. 532)

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on December 10, 2012, from William Loupè, Safety Consultant (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, Section 3212(f) of the General Industry Safety Orders, concerning the requirement of personal fall protection systems while working on glazed skylight surfaces, even when the glazed surface has been certified by a registered engineer as being able to support all anticipated loads.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

SUMMARY

Section 3212(f) reads as follows:

> Access shall not be permitted on glazed surfaces such as roofs, vaults, canopies, or skylights glazed with transparent or translucent materials unless an engineer currently registered in the State of California and experienced in the design of such glazed structures has certified that the surface will support all anticipated loads. Employees working on such surfaces shall be protected by a fall protection system meeting the requirements of Section 1670 of the Construction Safety Orders.

The Petitioner asserts that Section 3212(f) is "vague and ambiguous as it relates to compliance or enforcement." In support of that contention, he presents three numbered points:

1. He questions why fall protection is required "When a glazed surface skylight has been tested by a registered engineer to support all anticipated loads...."

2. He presents a narrative regarding an "inspection by Cal-OSHA" where impact tests performed by the employer and manufacturer data indicated "compliance with OSHA 29

CFR 1910.23 (e)(8) [which states, among other things, a minimum load that a skylight screen must withstand] and Cal-OSHA…."

3. He stated that "These types of skylights are installed throughout the United States and if there is any information indicating unreliable testing or an inferior product, a 'Hazard Alert' must be issued."

DIVISION'S EVALUATION

The Division's evaluation dated March 25, 2013, states the Division believes that the Petitioner has misinterpreted the meaning of Section 3212(f), without differentiating "working on" and "working in proximity to" existing skylights. The Division does not view the language in Section 3212(f) as "vague and ambiguous" and does not support a change to this section. Additionally, the change suggested by the Petitioner would have the effect of making the State regulation less effective than the corresponding Federal OSHA regulation (the 29 CFR 1910.23(a)(4) requirement that every skylight floor opening and hole be guarded by a standard skylight screen or a fixed standard railing an all exposed sides). There is nothing in the petition that suggests the existing regulations limit the ability of the regulated community to provide a safe work environment within the context of the existing fall protection regulations. Therefore, the Division recommends that this petition be denied.

BOARD STAFF'S EVALUATION

Board staff prepared an evaluation dated March 18, 2013. As stated in that evaluation, skylights and transparent roof openings are becoming more popular as means to reduce energy consumption during peak hours of the day. The transparent material used in the opening or skylight is referred to as "glazing" and can be made of glass or various types of plastic and plastic-like materials. Skylights are typically stand-alone structures on a roof. An employee performing maintenance or repairs on a skylight is standing on and supported by the roof of the building. Larger roof openings, including vaults and canopies, can be covered by several connected sections of glazing material and cover a large area of the roof. An employee performing maintenance or repair of a glazed surface may not be able to access the inner areas of the surface while standing on the roofing materials. Section 3212(f) comes into play when the latter condition applies.

The thrust of the petition is stated in the Petitioner's first numbered point. The Petitioner's concern regarding the need for fall protection when a surface is certified by a California-registered engineer as being able to support all anticipated loads is perhaps understandable: one might argue that requiring an employer to provide fall protection after such a certification is burdensome. In view of the unpredictability of the hazards of working on glazed surfaces, however, the fall protection requirement is prudent, even where there is an engineer's certification. Potential hazards include slipping and sliding on the glazing and stressors applied to the glazing by tools or sharp objects contacting the surface. Such hazards may arise even where a surface has been the subject of an engineer's certification. The benefit of Section

3212(f) to employers is that an employee can access a glazed surface without the need for scaffolds, catwalks, platforms or other safe access methods required by Section 3212(g). The inclusion of a fall protection requirement in Section 3212(f) does not negate that benefit.

The Petitioner's second and third numbered points also provide no basis for concluding that Section 3212(f) is vague and ambiguous. For instance:

1. The Cal-OSHA inspection he refers to does not disclose any ambiguity or vagueness in Section 3212(f). In fact, to the best of Board staff's knowledge, the work in question was performed near a skylight and not on a skylight's glazed surface, in which case, it appears that the inspection concerned a possible violation of California Code of Regulations, Title 8, Section 3212(e), not Section 3212(f).

2. The Petitioner claims that the lab tests demonstrate that the glazing material is in compliance with federal OSHA and California standards. Section 3212(f) clearly requires that the certification be made by a California-registered engineer. The lab results provided were from a company in Canada with no mention of an engineer registered in California. The requirement that the engineer be registered in California is beneficial, in that it provides a uniform, easily-intelligible basis for ascertaining the engineer's qualifications. Additionally, and more importantly, glazing materials degrade over time and can become severely weakened due to environmental exposures. A California-registered engineer is required to certify the glazing on the specific roof upon which the work is to be performed, not years beforehand (the product evaluation that accompanies the petition is from 2005). A certification for a skylight before installation with no information provided on the expected environmental decay of the glazing is irrelevant to a similar skylight installed on a roof that has been exposed to the elements for a period of time.

CONCLUSION AND ORDER

The Board has considered the Petition and the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the petition is hereby DENIED.