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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 4, Article 12, Sections 1600 and 1601
of the Construction Safety Orders (CSO)

Pile Driving and Methods of Unloading Piles**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE SECOND 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the second 15-day Notice of Proposed Modifications mailed on March 9, 2004, and Board staff evaluation.

Summary and Response to Written Comments:

There were no written comments received during the second 15-Day Notice of Proposed Modifications ending March 26, 2004.

**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE FIRST 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

There were no further modifications to the information contained in the Initial Statement of Reasons resulting from public comments to the first 15-day Notice of Proposed Modifications mailed on August 1, 2003, and August 13, 2003. However, at its October 16, 2003, Business Meeting, the Board expressed concern over whether the proposal, as prepared for adoption, adequately represented the consensus of the advisory committee, convened August 18, 2000. The Board directed staff to reconvene the advisory committee to revisit their concerns and obtain clarification on several issues. Board staff reconvened the advisory committee on January 7, 2004, after which further substantive, sufficiently related modifications were made to the proposal as follows:

Section 1600. Pile Driving.Subsection (a)

It is proposed to delete the site-specific safety plan and replace it with the requirement that a danger zone be clearly delineated around the operating hammer where employees involved in cutting, chipping or welding operations are prohibited from working in order to protect them from the hazard of falling objects. Subsections (a)(1) and (2) are added to specify that the employer is to establish the danger zone, and that the danger zone be maintained under the supervision of a competent person. New subsection (a) is necessary to ensure that employees not essential to the pile driving operation, and who are likely to be unaware of falling object hazards around an operating hammer, are protected from serious injury by means of a specified safety zone. Subsections (a)(1) and (2) are necessary to clarify who is responsible to establish and maintain the safety zone. These modifications will ensure that California is at least as effective as federal pile driving standards contained in 29 Code of Federal Regulations 1926.603(a)(5).

Subsection (b)

A modification is proposed to require that the blocking device required to be provided for placement in the leads under the hammer is also to be used at all times while employees are working under the hammer. The proposed modification is necessary to clarify to the employer that the blocking device, required to be provided in subsection (b), is also required to be used whenever employees are working under the hammer.

It is also proposed to restore the exception statement following subsection (b), which was originally proposed for deletion. The advisory committee determined that the exception is necessary in order to provide pile driving employees with the momentary flexibility necessary to observe whether any piles are under the hammer without having to secure the hammer to the leads.

Subsection (d)

A modification is proposed to delete the first sentence of subsection (d), which requires employees who work aloft on piles above a specified fall distance to be provided with working platforms. It was the consensus of the advisory committee that the use of platforms should not be mandatory; but that when they are used, they are to be designed as outlined in the existing text. The modification is necessary to ensure a more performance-based standard, allowing for other safe, alternative methods to be used.

Subsection (g)

A modification is proposed to permit the use of an aerial device, in lieu of a ladder, to elevate employees when required to go aloft on sheet piling. The proposed exception to subsection (g) is also proposed to be modified to include the term “aerial device” to read, “Where it is unsafe to use an aerial device or ladder, a boatswain’s chair may be used in accordance with Section 1662.” The proposed modifications are based on advisory committee consensus and are necessary to clarify to the employer that they may elevate employees by using an aerial device as well as a ladder.

Summary and Response to Written Comments:

Mr. William Myers, Business Representative and President, Pile Drivers, Bridge, Dock and Wharf Builders Local Union 2375, by letter received via fax on August 29, 2003.

Comment #1:

Mr. Myers opined that the proposed site-specific safety plan was developed “mostly through side-bar conversations within the staff and select individuals” some time after the advisory committee meeting.

Response:

This comment is similar to concerns addressed in the response to Mr. Myers’ first comment received during the 45-Day Public Comment period (see below). Although the advisory committee chair, Mr. Strickler, is no longer on Board staff, both the minutes and other evidence available indicate that, at the conclusion of the advisory committee, Mr. Strickler proposed to draft a Site-Specific Safety Plan (SSP). The draft SSP incorporated his understanding of the comments and ideas expressed by the committee. He included them with the meeting minutes, which afforded committee members the opportunity to offer further comments and suggestions. The May 22, 2002, cover letter for the meeting minutes specifically called attention to this fact; and as previously noted, only Mr. Jones commented on the minutes. Subsequent events and correspondence received during the two public comment periods support the fact that, although committee agreement was not unanimous on the concept and contents of the SSP, the proposed SSP accurately reflects the consensus of a majority of those attending the committee. The Board is of the opinion that the SSP has been developed with public input. Therefore, the proposed SSP has not been developed by select individuals, without opportunity for public scrutiny and input.

Comment #2:

Mr. Myers expressed the opinion that some members of the staff and Board are pre-disposed to the performance-oriented SSP as the only viable alternative to the prescriptive federal standard requiring pile driving operations to be suspended when it is necessary to cut off the tops of driven piles, except where the cutting operations are located at least twice the length of the longest pile from the driver [29 CFR 1926.603(c)(5)]. He noted that Mr. Karinen (Pile Drivers Local 34) had suggested a 50-foot safety zone as an alternative to the federal standard.

Response:

See Board staff’s response to Mr. Karinen’s comment received during the 45-Day Public Comment Period below. In addition to concerns that the 50 feet threshold might not provide equivalent safety in all cases, it is doubtful that Board staff would be able to demonstrate to Federal OSHA that a 50-foot safety zone is equivalent to that provided by twice the length of the longest pile, based on information

received that piling is typically 90-140 feet in length. Consequently, the Board believes that a prescriptive 50-foot safety zone will neither pass federal review nor provide equivalent safety.

Comment #3:

Mr. Myers commented that the safety of other construction trade workers in close proximity of the foundation operations (drilling and pile driving), as well as the public, should be considered in developing a standard.

Response:

Section 1600(a), the SSP, requires a written safety plan specific to the jobsite to be developed prior to the start of the job. The SSP includes, but is not limited to, such elements as the steps involved in drilling and/or driving piles and a list of the potential safety and health hazards for each step and procedures necessary to protect employees from identified hazards, including means and methods to minimize employee exposure to an operating drill and/or hammer. The proposal also requires the SSP to take into consideration special job procedures, including traffic control.

The Board is of the opinion that the proposal addresses the safety of all construction trade workers in proximity to the pile driving operations on multi-employer job sites. Furthermore, the contractor is, and has always been, liable for public safety concerns on the worksite. The Board is therefore of the opinion that this concern is adequately addressed by the proposed standard and that any further modification is unnecessary.

Comment # 4:

Mr. Myers expressed concern that the proposal relies too much on the expertise of a “competent person” to assure the safety of all persons in the area, and commented that safety regulations are only as good as the people who develop them. Furthermore, he stated that safety officers and competent persons are not generally on the work site, and safety plans can be changed in the field.

Response:

Title 8, Sections 1509 and 3203, Illness and Injury Prevention Programs (IIPP), require employers to establish, implement and maintain an effective IIPP and include requirements for a system to ensure that employees comply with safe and healthy work practices. The proposed SSP amplifies these requirements in greater detail for pile driving operations. Modifications made as a result of comments received during the 45-Day Public Comment Period specifically require that any changes to the SSP be approved by the competent person [Section 1600(a)(2)] and that a copy of the SSP with approved changes be available at the jobsite [See 1600(a)(3)]. The Board is of the opinion that these concerns are adequately addressed by the modifications made as a result of public comments and that further modifications are unnecessary.

Comment #5:

Mr. Myers stated that safety personnel can be intimidated or be victims of retaliation for trying to comply with OSHA standards and/or the SSP. He asked who would be on the jobsite to make sure that employers and employees comply with the regulations and the SSP.

Response:

See response to Mr. Myers' Comment #7 of the 45-Day Public Comment Period (below) regarding existing regulatory protections available to employees and their representatives. The Board is of the opinion that these concerns are adequately addressed by existing regulations as well as California Labor Code (i.e., Labor Code Sections 6310, 6311, and 6312) and that no further action is necessary.

Comment #6:

Mr. Myers opined that the Board may have been influenced to propose a performance-oriented approach to pile driving safety by a mistaken opinion that there are unique construction conditions and constraints in California. He stated that, in his opinion, construction in California is not unlike construction in other parts of the nation.

Response:

In proposing a performance-oriented standard, the Board is not accepting the premise that pile driving in California is different and unique from other parts of the country. The advisory committee minutes indicate that some members speculated that the federal standard, specifically 29 CFR 1926.603(c)(5), may have been developed based on different conditions and constraints in other parts of the country. Only one commenter has steadfastly maintained that the federal standard should be adopted verbatim in California. Other comments received supported the consensus opinion that the federal standard is unworkable at many work sites. Furthermore, while the federal standard may have been adopted, staff has been unable to ascertain that the federal standard has ever been cited elsewhere, thus lending credence to the impracticality of the standard. The Board therefore rejects the notion that the performance-oriented approach of the SSP is based on a false premise.

Comment #7:

Mr. Myers commented that the term "blocking device" in Section 1600(b) should be defined.

Response:

Proposed Section 1600(b) is taken verbatim from 29 CFR 1926.603(a)(5). It effectively contains the same requirements as existing Section 1600(a), which requires the use of an "adequate chock, toggle,

or other device to safely support the hammer.” The minutes of the August 20, 2000, advisory committee meeting indicate that Mr. Dennis Jones, Local 2375, contended that “the terms ‘chock’ and ‘toggle’ are unclear and inconsistent with current industry terminology for hammering blocking devices,” and further, that they are “outdated and confusing to crew and supervisors.” Mr. Jones proposed that existing Section 1600(a) be replaced with the language of 29 CFR 1926.603(a)(5), and the committee agreed with Mr. Jones’ proposal. The Board is also of the opinion that the term “adequate” is vague and unenforceable. The federal standards do not find it necessary to define “blocking device,” and neither did the committee see a need to define it. The Board therefore believes that further modification of the proposal is unnecessary.

Comment #8:

Mr. Myers thought that Section 1600(z), which requires the hammer to be lowered when moving the pile driver, had been removed from the proposal as a result of comments received during the 45-Day Public Comment period.

Response:

Section 1600(z) has not been removed nor modified. It is on a page of the proposal that was not modified in response to public comments; therefore, the page was not included in the 15-Day Notice. This is indicated on the cover sheet for the 15-Day Notice of Proposed Modifications: “Only modified pages are included.”

Comment #9:

Mr. Myers concluded by stating that some worthwhile changes have been accomplished by the proposal and that the standard will be greatly improved and better than what exists currently, but in his opinion, it is not as good as it should have been.

Response:

The proposed modifications are intended to provide safety at least as effective as federal standards as required by Labor Code, Section 142.3(a)(2). Board staff believes the proposed consensus language effectively addresses all of the safety issues addressed by the federal regulations.

The Board thanks Mr. Myers for his comments and participation in the rulemaking process.

Mr. Dennis O. Jones, Chairman, Safety Committee, Pile Drivers, Bridge, Dock and Wharf Builders Local Union 2375, by letter received August 20, 2003.

Comment #1:

Mr. Jones commented that the proposed modifications are “a vast improvement to the regulations as they stand at present, however they completely ignore [his] petition (No. 410)” and substitute the SSP for 29 CFR 1926.603(c)(5).

Response:

The Board disagrees with Mr. Jones’ opinion that his petition was ignored. The Board granted Mr. Jones’ petition to the extent that Board staff was directed to convene an advisory committee to consider his request and, if appropriate, develop rulemaking based on consensus, for consideration by the Board at a future public hearing¹. Staff has acted as directed by the Board. The consensus of the advisory committee was that Title 8 is currently not at least as effective as 29 CFR 1926.603(c)(5); however, the committee consensus was to address the requirement in a performance-oriented manner rather than to adopt the federal standard verbatim. See also response to Mr. Myers’ Comment #6 of the 45-Day Public Comment Period below for additional information.

Comment #2:

Mr. Jones contends that the proposal does not address a safe working distance around a running hammer.

Response:

Any prescribed distance that is less than twice the distance of the longest pile would not be equivalent to the federal standard, and committee consensus was that the federal standard is unworkable at many work sites. Therefore, an adaptable performance-oriented approach for providing employee safety (i.e., the SSP) is the only available option that was identified by the advisory committee.

Comment #3:

Mr. Jones commented that he had personally accessed the OSH websites of 26 plan-states and that all of the plan-states, with the exception of California, follow 29 CFR 1926.603(c)(5) in its entirety.

Response:

See response to Mr. Myers’ Comment #10 of the 45-Day Public Comment Period below. The Board is of the opinion that the proposed regulations will be at least as effective in addressing the hazards for site employees who must work in close proximity to pile driving operations, because the standard being proposed is realistic and enforceable.

Comment #4:

¹ Conclusion and Order, Petition, OSHSB File No. 410, Decision adopted June 15, 2000.

Mr. Jones commented that he is skeptical of the performance-oriented proposal and that he is of the opinion that it will leave the door open to a universe of discretionary and unspecified options.

Response:

See response to Mr. Myers' Comment #6 of the 45-Day Public Comment Period below regarding performance-oriented standards.

Comment #5:

Mr. Jones is of the opinion that no performance-oriented standard can provide a level of safety equal to the "simple requirement" of the federal standard for twice the distance of the longest pile.

Response:

Although the federal requirement may be simply stated, a majority of the advisory committee did not agree that compliance with the federal standard would be "simple." Furthermore, comments received during the public comment periods, even those received from other members of the pile driving trade, acknowledge circumstances in which compliance with the federal standard is impractical if not infeasible. For example, see Mr. Karinen's comment received during the 45-Day Public Comment period. Board staff has made modifications in response to comments received during the 45-Day Comment Period, and the Board believes further modification of the proposal is unnecessary.

The Board thanks Mr. Jones for his petition, comments and participation in the rulemaking process.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD

As a result of public comments and/or Board staff evaluation, the following substantive, sufficiently related modifications were made to the Informative Digest published in the California Regulatory Notice Register dated May 2, 2003:

Section 1600. Pile Driving.

Subsection (a).

No changes are proposed to the content of the site-specific safety plan; however, modifications are proposed to require that the site-specific safety plan be developed, implemented and maintained by a competent person, that any changes to the plan be approved by the competent person, and that a copy of the site-specific safety plan with approved changes be available at the work site. The purpose for these modifications is to address concerns that the proposed regulations are not at least as effective as

federal standards and that they rely on self-policing and self-reporting. The proposed modifications provide safeguards modeled after those required for the fall protection plan of CSO Section 1671.1, and assure that the site-specific safety plan is prepared by an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

The modifications are necessary to provide safety at least as effective as that required by 29 Code of Federal Regulations 1926.603(c)(5). The federal standard was not adopted verbatim as the committee consensus was that the federal standard was unworkable in California and could shut down most jobsites if enforced. The proposed site-specific safety plan was developed to provide equivalent safety and yet provide flexibility in addressing unique site conditions.

Summary and Response to Oral and Written Comments:

I. Written Comments:

Mr. Pat Karinen, NCCRC Field Representative, Pile Drivers Local Union No. 34, by letter dated June 20, 2003.

Comment:

Mr. Karinen noted that the proposed regulations contained no reference to CFR 1926.603(c)(5) which requires that “When it is necessary to cut off the tops of driven piles, pile driving operations shall be suspended except where the cutting operations are located at least twice the length of the longest pile from the driver.”

Mr. Karinen stated that piling typically being driven at Northern California worksites where his members are employed is 90 to 140 feet in length. He also stated that typical building footprints in congested metropolitan areas are in the 150 to 200 foot square size; therefore, Mr. Karinen is of the opinion that the federal standard is impractical in Northern California. He opined that a more reasonable work safety zone would be 50 feet from the center pin of the crane. Mr. Karinen felt this would provide a safer position for crews cutting off piles while still permitting the pile driver to work.

Response:

The Board notes that Mr. Karinen’s assessment that the federal standard is impractical is consistent with the Advisory Committee consensus that the federal standard is unreasonable and unworkable on a large number of worksites in California due to tight working conditions frequently encountered. However, due to the possibility for many different site conditions that can be encountered, the Advisory Committee consensus was to propose a performance-oriented approach to providing safe working conditions for employees where pile is being driven. Although 50 feet may be much more realistic than

the federal requirement for twice the distance of the longest pile, it is conceivable that 50 feet clearance may not provide safety equivalent to that provided by the comparable federal standard under some site conditions. Therefore, the Board declines to accept the suggested 50-foot safety zone; however, the Board accepts Mr. Karinen's comment to the extent that the proposal has been modified to add administrative controls (i.e., a competent person will develop, implement and maintain a site-specific safety plan) in order to assure that the proposed performance-oriented standard will provide safety at least as effective as the comparable federal standard.

The Board thanks Mr. Karinen for his comments, suggestion, and participation in the rulemaking process.

Mr. William Myers, Business Representative and President, Pile Drivers, Bridge, Dock and Wharf Builders Local Union 2375, by letter received June 20, 2003.

Mr. Myers stated that his Local represents employees engaged in pile driving, bridge, dock and wharf building, marine construction and welding in Southern California, and that Local 34 represents employees engaged similarly in Northern California. The Board notes furthermore, that both the petitioners, Messrs. Dennis Jones and Rod Hurd, are members of Local 2375.

Comment #1:

Mr. Myers stated that both Dennis Jones and Rod Hurd attended the advisory committee convened August 18, 2000, in Anaheim, and that Mr. Jones contends the proposed performance-based site-specific safety plan was not the consensus of the committee. Furthermore, Mr. Jones alleges that the site-specific safety plan was the opinion of one person and that a new consensus was devised without the "adverse interest of others who are directly affected by this rulemaking."

Response:

Advisory committee meeting minutes which indicated there was a consensus were mailed to all advisory committee members, including Mr. Jones, on or about May 22, 2002, and committee members were given until June 17, 2002, to respond with comments and corrections. A cover letter sent out with the minutes specifically requested committee members to carefully review the minutes for accuracy, and called members' attention to the proposed disposition of the two issues of the petitions: crew size and safety zone. The cover letter read, in part, as follows:

"The draft minutes prepared by Mr. Strickler [Chair] indicated that consensus had been reached on several issues which resulted in proposed amendments to CSO Section 1600; however, information available at that time was inconclusive regarding consensus on recommended changes to CSO Section 1601. It is also unclear whether consensus was reached on the issues raised by the petitioners (Petition Nos. 410 and 413). The minutes indicate that the committee discussed the use of a Site-specific Safety Plan (SSP) as a means

of addressing provision of a zone of safety for employees who have to perform work in close proximity to an operating hammer (Petition No. 410), and issues of crew size (Petition No. 413).

California is required by Labor Code Section 142.3 to adopt standards at least as effective as federal standards. One of the Petitioners, Mr. Dennis Jones, noted that California Title 8 does not currently contain any corresponding requirement that is at least as effective as the federal requirements contained in 1926.603(c)(5). However, the minutes indicate that many committee members were of the opinion that the federal standard, in its current form, is not practical, and that it could shut down many pile driving operations in California. The minutes appear to indicate that the advisory committee may have reached a consensus to provide equivalent safety through use of an SSP addressing both the zone of safety and crew size issues; however, it did not appear that the specific details of the SSP were worked out at the committee meeting. Further, the minutes indicate that several committee members asked whether there would be another advisory committee meeting to continue discussion of the SSP and, presumably, to develop specific requirements for the SSP. The minutes indicate that Mr. Strickler proposed to draft a SSP that would incorporate the comments and ideas expressed by the committee and include it with the meeting minutes, which would afford an avenue for committee members to offer further comments and suggestions.

Subsequent to the advisory committee and prior to his departure, Mr. Strickler did draft a SSP for inclusion in the proposed revisions to section 1600; however, it does not appear that this draft has been previously distributed to committee members. Prior to making a determination on the necessity to reconvene the advisory committee, staff believes it would be beneficial to solicit your input on the draft SSP. Please review and comment on the minutes and the proposed changes to Sections 1600 and 1601, attached. Based on your responses and comments, staff will then make a determination regarding the necessity to reconvene the advisory committee. If there is consensus that the advisory committee does not need to be reconvened, we will proceed to bring the proposal to the Standards Board at a future public hearing.”

As noted above, the cover letter sent with the advisory committee minutes specifically requested the committee members to review and comment on the proposed site-specific safety plan (SSP). Mr. Jones is the only individual who responded to this letter and minutes and challenged the committee consensus. Board staff has contacted a sampling of committee members and they have indicated agreement with the minutes, including the consensus for a SSP. Furthermore, only Mr. Jones’ Local has actually taken issue with the consensus proposal during the 45-Day comment period.

“Consensus”, as commonly defined and as noted on the OSHSB web page², is described as being more than a simple majority, but it does not refer to a unanimous recommendation or position held by

² <http://www.dir.ca.gov/oshsb/acguidelines.html>, Staff Guidelines On Using An Advisory Committee To Develop A Rulemaking Proposal, Procedures, Item 12.

the Advisory Committee members. Thus, although there may not have been unanimous agreement about the proposed site safety plan, subsequent actions by committee members and the regulated public indicate that the proposal does, in fact, represent a consensus both of the committee and of the industry. Therefore, the Board believes that further modification of the proposal is unwarranted.

Comment #2:

Mr. Myers requested that they be kept informed of the status and progress of the rulemaking and of its proposed adoption.

Response:

The Board accepts Mr. Myers' comment. By virtue of being a petitioner and a commenter, Mr. Jones and Mr. Myers will be included on all mailings and notices related to this rulemaking. Likewise, the Board is including all members of the advisory committee on the mailing list for this rulemaking.

Comment #3:

The letter states that Mr. Jones' petition requested that Cal-OSHA revise the current pile driving standards by replacing them with 29 CFR 1926.603(a)(5).

Response:

29 CFR 1926.603(a)(5) requires:

“A blocking device, capable of safely supporting the weight of the hammer, shall be provided for placement in the leads under the hammer at all times while employees are working under the hammer.”

This requirement is included verbatim in the proposal at Section 1600(b).

Comment #4:

Mr. Myers' letter opines that several of the standards in Sections 1600 and 1601 are not equivalent to current federal standards as noted in 29 CFR 1926.603(c)(5).

Response:

The only specifics provided were that the commenter is of the opinion that the proposal is not equivalent with federal standards with respect to 29 CFR 1926.603(a)(5) and 29 CFR 1926.603(c)(5). The responses to these comments are respectively addressed in Comment #3 (above) and Comment #6 (below).

Comment #5:

Mr. Myers stated that the proposed rulemaking fails to address Mr. Jones' request for standards equivalent or better than OSHA standards.

Response:

The Board is required by Labor Code, Section 142.3 to adopt standards at least as effective as the federal standards; however, it has been established that “at least as effective” is not necessarily verbatim. Mr. Jones has correctly identified a federal standard for which Title 8 is currently not at least as effective, and this rulemaking action has been undertaken to correct that deficiency. The consensus of an ad hoc advisory committee is that the proposed site-specific safety plan of Section 1600(a) will provide safety at least as effective as the federal requirement for reasons stated in the Initial Statement of Reasons; therefore, the Board believes that the proposal effectively addresses Mr. Jones’ petition request.

Comment #6:

Mr. Myers stated that proposed Section 1600(a) fails to address Mr. Jones’ request and that it has no prescriptive requirements as found in 29 CFR 1926.603(c)(5), but rather, it contains only a performance-based outline for safety guidelines.

Response:

There is no requirement that Title 8 standards contain prescriptive requirements, but only that they be at least as effective as the federal standards. Based on input from the ad-hoc advisory committee, the Board is of the opinion the prescriptive requirements of the federal standard are impractical and unworkable in California and that the proposed regulations effectively address the issue using a performance-oriented approach, which was the consensus of the ad-hoc advisory committee.

Furthermore, there are other precedents for performance-oriented regulations in Title 8, including CSO Article 24, Section 1671.1, Fall Protection Plan. Federal OSHA also permits the use of site safety plans, for example, in Subpart R, Steel Erection, Appendix A. The proposed site-specific safety plan for pile driving has been modeled after both of these. The Board therefore believes that a performance-oriented standard can provide safety equivalent to the prescriptive requirements of 29 CFR 1926.603(c)(5).

Comment #7:

Mr. Myers stated that the proposed standards rely on self-policing and self-reporting.

Response:

The proposed regulations, if adopted, will be subject to the same enforcement as any other standard in Title 8 of the California Code of Regulations. California Labor Code, Division 5, Safety in Employment, Section 6309 provides for inspections by the Division of Occupational Safety and Health if the Division learns or has reason to believe that any employment or place of employment is not safe or

is injurious to employees. The Division may initiate, on its own or upon a complaint, an investigation on working conditions with or without notice or hearings. The Division is also required to respond to employee complaints within specified time intervals, and there are provisions for employee confidentiality and protection from retaliation. Employee complaints may be initiated by the employee or his/her representative, including, but not limited to, an attorney, health or safety professional, union representative, or representative of a government agency.

However, the Board accepts Mr. Myers' comment to the extent that a modification of Section 1600(a) is proposed which will clarify that the site-specific safety plan be developed, implemented and maintained by a competent person. CSO Section 1504 defines a competent person as one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Comment #8:

Mr. Myers stated that the proposed rulemaking contains no guidelines for consistent safe work practice and production standards.

Response:

Pile driving operations, as all construction operations, are subject to all applicable requirements of the Construction Safety Orders, including Section 1509, Illness and Injury Prevention Program. Section 1509 requires employers to adopt a written Code of Safe Practices, modeled after relevant parts of Plate A-3 of the Appendix. This is supplemented by the proposed Site-Specific Safety Plan [Section 1600(a)]. However, the Board accepts Mr. Myers' comment to the extent that the administrative modifications made in response to Comment #7 (above) will assure that the site-specific safety plan is developed, implemented and maintained by a competent person to assure safe work practices.

Comment #9:

Mr. Myers stated that the proposed rulemaking does not specify a safe work zone and how employees are informed of the site-specific plan.

Response:

As previously discussed, based on consensus of the ad-hoc advisory committee, the proposal takes a performance-oriented approach to site safety. Furthermore, the draft proposal requires the employer to maintain a copy of the site-specific safety plan on site, thereby assuring availability of the plan to employees. However, the Board accepts Mr. Myers' comment to the extent that the proposal has been modified to clarify that the site-specific safety plan shall be prepared, implemented and maintained by a competent person.

Comment #10:

Mr. Myers contends that 49 other states are using 29 CFR 1926 and that the current proposal does not affirm the request of Mr. Jones' petition.

Response:

Board staff assumes Mr. Myers is referring specifically to 29 CFR 1926.603(c)(5), since that is the section for which Title 8 currently lacks language that is comparable to the federal requirement. See response to Comments #5 and #6 regarding worker safety equivalency to federal standards. Furthermore, Board staff has researched the federal OSHA Integrated Management Information System (IMIS) and has been unable to determine that 29 CFR 1926.603(c)(5) is being cited in those states that have adopted or are governed only by federal regulations for accidents involving cutting operations in near proximity of an operating pile driver. The Board is of the opinion that this apparent lack of citations in other states lends support to the committee consensus that the federal standard is impractical and unworkable and therefore rejects the notion that California is out-of-step with 49 other states.

Comment #11:

Mr. Myers challenged the advisory committee rationale that the federal standard is unworkable and that it would shut down most jobsites.

Response:

The consensus of the ad hoc advisory committee was that the federal standard is unworkable and that it would shut down most jobsites (see response to Comment #1). For reasons described in the response to Comment #1, the Board accepts the committee consensus.

Comment #12:

Mr. Myers requested that the Standards Board consider additional proposals or revisions to the rulemaking, specifically to the proposed site-specific safety plan and that his Local be directly involved with the finalized regulations. Mr. Myers stated that his Local is interested in "a reasonable and prudent solution in achieving an equivalent standard acceptable to the federal standard."

Response:

The Board accepts Mr. Myers' comment to the extent that Section 1600(a), Site-Specific Safety Plan, has been modified to require that the plan be developed, implemented and maintained by a competent person. Local 2375 is included in the mailing list for this 15-Day notice of proposed modifications.

The Board thanks Mr. Myers for his comments and participation in the rulemaking process.

II. Oral Comments:

Oral comments received at the June 19, 2003 Public Hearing in Sacramento, California.

Mr. William Myers, Business Representative and President, representing Pile Drivers Local 2375.

Comment:

Mr. Myers stated that he had only had a brief amount of time to review the proposal before the Public Hearing; however, he took issue with the consensus that the site-specific safety plan is the only workable solution to the federal standard 1926.603(c)(5). He stated that the proposal needed to include safeguards to protect employees.

Response:

The Board accepted Mr. Myers' comment and allowed Mr. Myers the opportunity to submit his comments in writing. The Chair left the record open until 5:00 p.m. on Friday, June 20, 2003. Prior to the close of the record, written comments were received from Mr. Myers, Local 2375, and Mr. Karinen, Local 34. Responses to these written comments are contained in the summary and response to written comments above.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.