

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING  
TUESDAY, JANUARY 31, 2006**

The Safety and Health Codes Board (“Board”) held a Public Hearing on Tuesday, January 31, 2006 in Courtroom B of the State Corporation Commission, 1300 East Main Street, Richmond, Virginia. Board Chairman Louis Cernak called the meeting to order at 10:05 a.m.

**BOARD MEMBERS PRESENT:** Mr. Louis Cernak, Chairman  
Ms. Anna Jolly  
Dr. James H. Mundy  
Mr. Linwood Saunders  
Mr. Daniel A. Sutton  
Mr. James J. Golden  
Ms. Juanita Garcia  
Ms. Milagro Rodriguez, Secretary  
Mr. Satish Korpe

**BOARD MEMBERS ABSENT:** Mr. Roger Burkhart, Vice Chairman  
Mr. Alvin Keels, Sr.  
Mr. Kenneth Rigmaiden  
Mr. Chuck Stiff  
Khizar Wasti, Ph.D.

**STAFF PRESENT:** Mr. Ray Davenport, Labor and Industry, Commissioner  
Mr. Bill Burge, Assistant Commissioner – Programs  
Mr. Glenn Cox, Director of VOSH Programs  
Mr. Ronald Graham, Health Compliance Director  
Mr. Fred Barton, Director/Chief Inspector –Boiler Safety  
Compliance  
Mr. Jay Withrow, Office of Legal Support Director  
Mr. John Crisanti, Office of Planning and Evaluation  
Manager  
Ms. Reba O’Connor, Regulatory Coordinator  
Ms. Jennifer Wester, Director, Cooperative Programs  
Ms. Regina Cobb, Agency Management Analyst Sr.

**OTHERS PRESENT:** Mr. Tom Pope, Federal OSHA, Norfolk  
Mr. Robert Ledbetter, Kenbridge Construction Co., Inc.,  
Kenbridge  
Mr. Mark Lambert, KBS, Inc., Richmond  
Mr. Steve Vermillion, Associated General Contractors of  
Virginia, Inc., Glen Allen  
Mr. Stuart Henderson, Safety Alliance, Lynchburg

Mr. Phillip Jamerson, Safety Alliance, Lynchburg  
Mr. Mark Anderson, Richmond  
Ms. Sharon Pendah, Sands Anderson, Fredericksburg

**PUBLIC COMMENT:**

Chairman Cernak began the Public Hearing by explaining that the purpose of the hearing was to take comments from the public regarding two proposed regulations: 16 VAC 25-55, which deals with the Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors; and 16 VAC 25-60, which deals with the Administrative Regulations for the Virginia Occupational Safety and Health (VOSH) Program. He then opened the floor to comments from the public on the proposed regulations:

1) **16 VAC 25-55, Regulation Governing the Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors**

Mr. Mark Anderson, President of the American Boiler Inspection Service, Richmond, VA was the first speaker. *(He distributed documents in support of his positions)* He stated that he opposed the current proposal to regulate the Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors proposed rule. Although he concurred with the need for financial responsibility, he asked the Board to “revise the regulation to better reflect the claim experience and realistic possibilities of risk exposure in Virginia.” He recommended a \$1,000,000 aggregate and a minimum \$500,000 occurrence limit for all inspection companies.

For background, Mr. Anderson stated that the claims history and loss exposure in Virginia do not justify the proposed regulation. He continued by stating that both his company’s experience and DOLI’s records demonstrate that the proposed insurance requirements are unwarranted for companies which do business in the Commonwealth.

Mr. Anderson informed the Board that in 11 years his company had never had a claim as a result of the inspector’s negligent inspection or recommendation for certification of a boiler or pressure vessel. He added that he was unaware of a single claim against any contract fee inspector since they were certified to inspect in Virginia on July 1, 1995, although the proposed regulation appears to address an accident frequency problem.

Mr. Anderson’s second point was that DOLI did not justify this regulation. According to Mr. Anderson, DOLI’s response to his FOIA request regarding this proposed regulation did not contain any documents which provide factual support for the proposed insurance limits for Contract Fee Inspectors nor was there any evidence of public demand for this proposal. As such, he asked how DOLI could have reasonably arrived at the proposed limits.

He stated that the incident average loss value was far below the averaged of \$500,000 put forth by DOLI.

Additionally, Mr. Anderson stated that there is no indication that DOLI approached the primary contract fee inspection companies for their input and that this practice is unfair to the group which will be regulated.

He opined that instead of a tiered insurance requirement, a single insurance requirement for all inspection companies would best serve the public. Mr. Anderson also stated that because all contract fee inspectors will have the opportunity to inspect boilers and pressure vessels with the same exposure to loss, contract fee inspectors should be required to carry the same insurance limits instead of a \$500,000 coverage limit for small companies and \$2,000,000 coverage limit for larger companies.

Mr. Anderson then detailed what he viewed as specific errors and deficiencies to the DOLI proposal.

Next, he expressed concerns about the personal nature of the proposed regulation. First, he charged that DOLI misrepresented its authority regarding financial requirements. Secondly, Mr. Anderson expressed his beliefs that this regulation appeared to be directed solely at his firm without reasonable basis as indicated by comments by Mr. Barton to Mr. Anderson and documents provided in response to Mr. Anderson's FOIA request.

In conclusion, Mr. Anderson reiterated his company's opposition to the current proposal, and concurred with the need for financial responsibility. He again asked the Board to revise the regulation to better reflect the claim experience and realistic possibilities of risk exposure in Virginia. He then recommended a \$1,000,000 aggregate and a minimum \$500,000 occurrence limit for all inspection companies.

**2) 16 VAC 25-60, Administrative Regulations for the Virginia Occupational Safety and Health (VOSH) Program**

Mr. Robert Ledbetter of Kenbridge Construction Co., Inc., Kenbridge, VA, addressed the multi-employer worksite issue. He stated that he would like to speak against the new proposal for multi-employer work site citation policy. He asked that those who fail to meet the safety requirements be the ones who are held accountable, and not just anyone else who is on the site, such as, the general contractor who may have as many as 50 to 100 other employees.

He concluded by asking the Board to consider leaving out the multi-employer worksite provisions and citing only those who fail to carry out their safety programs.

The next speaker was Mr. Steve Vermillion, CEO, Associated General Contractors of Virginia (AGC), Inc. He also expressed concern about the multi-employer requirements. He stated that general contractors were doing everything to keep sites clean and safe. He stated that the AGC does a lot of training. He also noted that the role of the general contractor is not always as the controlling contractor on job sites. He said that nowadays "there are subs to the subs to the subs." He continued by stating that the general

contractor does everything he can to enforce policies and keep the sites clean, but there are people on the site that he hardly knows are there.

Mr. Vermillion stated that they would like clearer guidance from federal OSHA on what they have to do to be “as effective as,” and have a uniform policy based on that.

Mr. Vermillion concluded by recommending that the Board continue with the current regulation on this issue without the new multi-employer worksite policy.

At the conclusion of the comments, Chairman Cernak adjourned the Public Hearing at 10:29 a.m.